

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into the 2023–24 Budget Estimates

Melbourne – Wednesday 7 June 2023

MEMBERS

Sarah Connolly – Chair

Nicholas McGowan – Deputy Chair

Michael Galea

Paul Hamer

Mathew Hilakari

Lauren Kathage

Bev McArthur

Danny O’Brien

Ellen Sandell

WITNESSES

Ms Gabrielle Williams MP, Minister for Treaty and First Peoples, and

Ms Elly Patira, Deputy Secretary, First Peoples–State Relations Group, Department of Premier and Cabinet.

The CHAIR: I declare open this hearing of the Public Accounts and Estimates Committee.

I ask that mobile telephones please be turned to silent.

On behalf of the Parliament, the committee is conducting this Inquiry into the 2023–24 Budget Estimates. The committee's aim is to scrutinise public administration and finance to improve outcomes for the Victorian community.

I advise that all evidence taken by the committee is protected by parliamentary privilege. However, comments repeated outside this hearing may not be protected by this privilege.

As Chair I expect that committee members will be respectful towards witnesses, the Victorian community joining the hearing via the live stream and other committee members.

Witnesses will be provided with a proof version of the transcript to check. Verified transcripts, presentations and handouts will be placed on the committee's website.

I welcome the Minister for Treaty and First Peoples the Honourable Gabrielle Williams as well as an official from the Department of Premier and Cabinet. Minister, I invite you to make a 5-minute opening statement or presentation, and this will be followed by questions from the committee. Your time starts now.

Gabrielle WILLIAMS: Before I begin, please let me acknowledge the traditional owners of the land on which we are gathered, the Wurundjeri people, and pay my respects to their elders past and present and any other elders we may have here with us today and of course to all of you for the important work that you are doing, and challenging work it is.

Visual presentation.

Gabrielle WILLIAMS: My colleague Elly Patira is going to click through these slides for me. Thank you, Elly, for doing that.

Victoria is proudly the first jurisdiction in the nation to action all three elements of the *Uluru Statement from the Heart* – voice, treaty and truth – and continues to reach significant milestones in delivering upon this commitment. Our journey to date has shown us the vital importance of each element and, importantly, the mutually reinforcing nature of all three of these elements. The truth-telling that has happened thus far through the Yoorrook Justice Commission is providing us with a clear understanding of how the actions of yesterday are driving the unjust structures and the ongoing injustice taking place today.

Building off the key preparatory achievements of the last term, this Labor government will begin this country's first-ever treaty negotiation process later this year, and it has been a significant body of work to get us to this point. In doing so we will fundamentally renegotiate the relationship between the state and the First Peoples of Victoria, and of course Voice is giving First Nations people a say in the decisions that affect their lives. We are already seeing the clear benefits of this through the success of the First Peoples' Assembly of Victoria.

This budget continues the Andrews government's deep commitment to transformative reform for First Peoples in Victoria, with a record investment of close to half a billion dollars. Of significant note is our further investment in the treaty process, with funding to ensure both the state and the First Peoples' Assembly of Victoria can prepare for and enter into treaty negotiations on an equal footing. This government is committed to embedding Aboriginal self-determination, and this budget invests in policies, programs and services across government that are Aboriginal led.

Full self-determination is a significant endeavour that needs long-term commitment as well as sustained effort, and of course it involves the transfer of power and resources. This budget therefore ensures that traditional

owners are given self-determining power as well as the resources they need to successfully fulfil those responsibilities. These investments demonstrate the government's ongoing commitment to a future in which all Aboriginal people, families and communities are healthy, safe, resilient, thriving and living culturally rich lives.

It gives me great pleasure as minister to report that we are delivering major investment across not only this portfolio but the whole of the Victorian government, noting that it is a whole-of-government commitment, and that is a strong feature of this agenda for this government. This will be achieved in 2023–24 with a budget that delivers, as I have outlined, record treaty and First Peoples investment of more than \$475 million. It is a vital investment that is not only needed for the whole of the Victorian government to prepare for treaty but to achieve better outcomes for First Peoples Victorians right now. This includes \$163 million output funding over four years in the treaty and First Peoples portfolio. This is headlined by the next phase of treaty investment, which I will no doubt get the opportunity to speak to, but it also includes ongoing supports for traditional owners, continuing our investment in world-class cultural heritage management and, importantly, celebrating the many achievements of Victorian First Peoples through a range of different community events as well.

The investment of \$138.2 million over four years in the 2023–24 budget ensures that Victoria continues to lead the nation in progress towards treaty. Victoria's nation-leading treaty process achieved significant milestones last year, including the establishment of the Treaty Authority, the treaty negotiation framework and the self-determination fund. These elements are required under the *Advancing the Treaty Process with Aboriginal Victorians Act* and were jointly agreed and established between the state and the First Peoples' Assembly of Victoria. With all treaty elements now established, Victoria is preparing to embark on the commencement of formal treaty negotiations later this year.

As part of the Victorian government's commitment to actioning all elements of the *Uluru Statement from the Heart*, the state has ensured adequate funding for the First Peoples' Assembly as the democratically elected and statewide body representing the voice of all First Peoples in this treaty process. Modelling for state funding has been informed by extensive research into comparative jurisdictions and is a modest and cost-effective approach comparative to some of the international examples.

In summary, this budget continues to deliver for the many important challenges that confront us right now, but importantly it is also a budget that acknowledges that shifting the dial on First Nations outcomes in this country has been far too slow for far too long and requires a different approach, and treaty is central to that. That is why this is a budget that fundamentally engages the levers of reform that by design confront that deep structural element of injustice that has been experienced by First Nations Australians since colonisation. And those levers of course are truth, treaty and voice, which have been captured so eloquently in the *Uluru Statement from the Heart* as being the keys to achieving:

... a fair and truthful relationship ... a better future for our children based on justice and self-determination.

The CHAIR: Thank you, Minister. The first 8 minutes of questions go to Mr O'Brien.

Danny O'BRIEN: Thank you, Chair, and good morning again, Minister. Minister, evidence provided at the recent Yoorrook Justice Commission shows that the rate of Aboriginal children in the child protection system has risen from 14.9 per cent at the end of 2016 to 20.9 per cent at the end of 2022. You have got \$140 million in budget paper 3, page 3, in the forward estimates to transform the children and families service system, so the question is: when will the rate of Aboriginal children in the state's care return to below 2016's rate of 14.9 per cent?

Gabrielle WILLIAMS: Thank you, Mr O'Brien. As that investment falls within the portfolio responsibility of the Minister for Child Protection – or 'children and families' I think we are now calling it – I would refer you to speak more specifically to that budget allocation and indeed the outcomes that you are seeking to achieve from that to her.

What I can say as relevant to my portfolios is that – and you touched on it in terms of the work of the Yoorrook Justice Commission – that commission has a very pragmatic focus that involves it looking not only backwards to establish a record of what injustice has occurred but also requires it to have a forward-looking purpose which is in making recommendations as to how to address that injustice going forward. The Yoorrook Justice Commission will hand down its second interim report later this year, and that will go no doubt towards addressing some of the issues that you have identified, noting of course that that work has already been

commenced through this investment by Minister Blandthorn, so I would urge you to talk to her in more detail about that.

Danny O'BRIEN: On that, on page 5 of budget paper 3 it states that funding package will include:

the transfer of an additional 774 Aboriginal children to the Aboriginal Children in Aboriginal Care program

And you may be aware that Yoorrook commissioner Maggie Walter in the hearing on, let me just clarify, 12 May said that:

... if I was an ACCO I would be pretty scared of what is coming ... just handing the responsibility for failure to Aboriginal people.

What performance measures will the government have in place to ensure that ACCOs deliver better outcomes and a significant reduction of children in care?

Gabrielle WILLIAMS: Again, I think that your question actually pertains to the work of Minister Blandthorn and the work also of DFFH as a supporting department for child protection and children and families.

Danny O'BRIEN: Minister, you had three slides, and one of them was all about whole of government. Surely you have got some responsibility for Aboriginal children in this portfolio.

Gabrielle WILLIAMS: I think, as I adequately explained, the treaty and First Peoples agenda across government is a whole-of-government agenda, so we all have responsibility for different parts of that agenda. Of course in my responsibilities I have oversight of some of our key enablers, including the Yoorrook Justice Commission process and indeed our broader treaty process. Within that I have, for example, carriage of things like cultural heritage protection, but of course –

Danny O'BRIEN: Closing the Gap?

Gabrielle WILLIAMS: every other portfolio intersects. Closing the Gap is a whole-of-government commitment, so every portfolio will have responsibilities under Closing the Gap. That is a great example. Child removal targets will be the responsibility for –

Danny O'BRIEN: But you are the key government spokesperson for Aboriginal Victorians.

Gabrielle WILLIAMS: To a point I previously made, Mr O'Brien, quite a feature of this space in this government is that every single minister in this government has responsibility for improving the outcomes for our First Nations people insofar as it affects the work of their portfolios. That is really significant because that is how we are going to get change – not by siloing it but by making it a collective responsibility, which it is.

Danny O'BRIEN: This is exactly the point, though, Minister. It is not siloing it. If you are the minister responsible for Aboriginal Victorians and helping to coordinate that whole-of-government response, why can't you answer these questions about improving basic things for Aboriginal children in care?

Gabrielle WILLIAMS: Because that line item in the budget, Mr O'Brien, is a funding allocation out of the portfolio of Minister Blandthorn and backed by a –

Danny O'BRIEN: No, it is literally whole-of-government Aboriginal affairs.

The CHAIR: Mr O'Brien, the minister has answered your question in relation to the portfolio that she is responsible for.

Gabrielle WILLIAMS: I have gone to great effort, sorry, Chair to –

Danny O'BRIEN: Whole-of-government Aboriginal affairs. Isn't this the Aboriginal affairs portfolio?

Gabrielle WILLIAMS: I have gone to great extent to explain how that part intersects with the work I do have carriage of. I did not have to do that, Mr O'Brien; I am doing that because these are issues I care deeply about. So I have tried, as best as I can, to draw your question to direct relevance to my responsibilities. But you

will have an opportunity to speak to the minister for child protection about the measures that directly relate to her funding streams, and I know that she will be very eager to talk to those. It is a point of pride – that work.

Danny O'BRIEN: Minister, page 50 in the DPC questionnaire shows that \$7 million was repurposed from the Treaty Authority in 2022–23 to support:

... Meeting the State's legal requirements to enter Treaty negotiations in 2023–24 ...

and the First Peoples' Assembly. Was any of that \$7 million used to prepare the government for hearings with the Yoorrook commission?

Gabrielle WILLIAMS: Not to my knowledge, Mr O'Brien. I think that funding is about, effectively, funding for the First Peoples' Assembly in the next stage, which is the commencement of treaty negotiations from the end of the year.

Danny O'BRIEN: No, it was funding for the Treaty Authority that was repurposed.

Gabrielle WILLIAMS: Yes. But the funding is going to the First Peoples' Assembly to prepare for treaty negotiation.

Danny O'BRIEN: Okay. So none of it was used for government legal fees then?

Gabrielle WILLIAMS: Not that I aware of, no.

Danny O'BRIEN: How much did the government spend to prepare for the Yoorrook commission's hearings earlier in the year?

Gabrielle WILLIAMS: Bear with me.

Danny O'BRIEN: I note, while you are looking for it, that the commission itself was very critical of the government's delays, which forced them to reshuffle hearings because the government just was not ready.

Gabrielle WILLIAMS: I think that is a somewhat inaccurate construction of the reasons behind the criticism. I take absolute ownership, as does the government as a whole, of the criticisms that were levelled about delays in providing documents, particularly out of the Department of Justice and Community Safety. Now, the reason for those delays, as explained in the directions hearing, was that there was a very large volume of documents requested, which took extra time to be able to deliver.

Danny O'BRIEN: Thank you for clarifying. That actually was not the question.

Gabrielle WILLIAMS: Apologies were issued, as they rightly should have been, and in the end all documents were provided as requested by the commission.

Danny O'BRIEN: Do you have the data I have asked for?

Gabrielle WILLIAMS: The Deputy Secretary might want to add to that.

Elly PATIRA: In the 2021–22 state budget there was \$13 million allocated over four years to support the government's response to Yoorrook commission. That includes the entire resourcing for legal fees. So there were not any additional resourcing requirements to meet the state's obligations in terms of responding to Yoorrook Justice Commission. It falls within that \$13 million application.

Danny O'BRIEN: Can you tell me how much of that has currently been expended?

Elly PATIRA: I can tell you it has been expended year on year. In 2020–21 there was \$517,000 allocated; in 2021–22, \$4.249 million allocated. In terms of expenditure, I can take that on notice.

Danny O'BRIEN: Sorry, I thought you said 2021–22 there was \$13 million allocated. Did I misunderstand?

Elly PATIRA: In that state budget over four years.

Danny O'BRIEN: Right. And there had been money prior to that allocated – the \$517,000?

Elly PATIRA: That is correct.

Danny O'BRIEN: If you could provide a breakdown on notice for us on what has been spent and what it has been spent on by classification, that would be wonderful. Thank you.

The CHAIR: Thank you, Mr O'Brien. Your time has expired. We are going to go to Mr Galea for the next 11 minutes.

Michael GALEA: Thank you, Chair. Hello again, Minister, and good morning, Ms Patira. Thank you for joining us. Minister, I would like to draw your attention to budget paper 3, page 3. My question relates to the treaty process. I understand from these papers that \$138.2 million has been allocated over four years in order for the government to meet its key obligations pertaining to the *Advancing the Treaty Process with Aboriginal Victorians Act 2018*. Could you please provide an overview of where the preparations for treaty negotiations currently are between the state and the First Peoples' Assembly of Victoria?

Gabrielle WILLIAMS: Sure. Thank you, Mr Galea. There has been, as I touched on in my opening remarks, quite a comprehensive body of work that has led us to this point in time, noting of course that we are the only jurisdiction in the country that is well underway in enacting all three pillars of the Uluru Statement from the Heart. To give you a bit of a sense of the pathway that we have taken to get here, where we are on the cusp of being able to commence negotiating treaty, in 2018 we passed Victoria's treaty Act, and that outlined the key elements required for negotiations to begin between the state and the First Peoples' Assembly. Those key elements included a treaty negotiation framework, a self-determination fund and the Treaty Authority. A landmark \$151.4 million was provided in the 2022–23 state budget to support the establishment and operation of those three key treaty elements, and since that time we have seen really significant progress in the establishment of each of those elements.

To go through those, the treaty negotiation framework – I will start with that – was finalised in October last year. It essentially sets the ground rules for treaty negotiations and so as such is a very important piece of work that informs our pathway forward. It is grounded in the principle of self-determination. It sets out the key parameters upon which treaty will be negotiated, including things like who will negotiate treaty, what treaty can cover, how negotiations will be run and how treaty will be finalised and then ultimately enforced as well, and that framework is binding and signals the establishment of a new relationship between First Peoples and the government and so is a very significant piece of work.

To go to the Self-Determination Fund, this is a fund that will provide funding for the dual objectives of supporting Victoria's First Peoples in a level playing field in negotiation of treaties – that was something that community itself told us was very important, to have this sort of dedicated funding stream that they could control that put them on a level playing field with government – and also a secondary purpose, which is around building economic capacity, wealth and prosperity for First Nations communities going forward. So a key point of distinction about the SDF is that it is a First Peoples owned and controlled resource. It is really important that that is understood. It is truly, as the name suggests, self-determined, and it provides us with significant opportunities going forward in the way that services are offered and delivered to First Nations communities. So the SDF will be overseen by the First Peoples' Assembly and will operate independently from government. It is clear evidence of our commitment to truly handing over resources to First Peoples through the treaty process, and the first objective of the SDF will be to support each traditional owner group at each stage of the treaty journey, from early stage nation-building activities on the ground in communities through to ensuring that traditional owner groups have the resources and expertise they require to negotiate treaty with government.

Ultimately this is about addressing the power imbalance between First Peoples and government to ensure the negotiation of treaty is a fair process, and late last year in October the Self-Determination Fund was agreed between the state and the First Peoples' Assembly of Victoria. A month later the former Victorian treaty advancement commissioner Jill Gallagher made a foundational donation into the fund, which in her role as settlor brought the fund into formal existence – so both a symbolic appointment, given Jill Gallagher's role in that, but also obviously of very practical significance in actually marking the commencement, the formal existence, of that fund.

The Treaty Authority is effectively the independent umpire that oversees treaty negotiations. It was signed into agreement in June last year. The authority's job is to oversee treaty negotiations and ensure that parties are

following the rules of the treaty negotiation framework, and it has as part of its function a role in assisting to resolve disputes where necessary or indeed carrying out important research which may help progress in negotiation. The Treaty Authority will be independent from the assembly and of government and has to uphold not only law but Aboriginal lore and cultural authority as well. So it is a culturally informed entity, and that is really important, given its role. The Treaty Authority will be led by five First Peoples leaders, and a panel is currently underway to select its members. Much work has gone into this since the passing of that legislation in 2018, as you can see, across those three elements, and we are now on track to begin treaty negotiations at the end of this year.

I also want to take this opportunity to note the enormous body of work that has been undertaken by the First Peoples' Assembly. They have worked in very close partnership with the Victorian government in establishing those key treaty elements and in communicating with us what is required to build trust within our First Nations communities in this process. That is a journey, and I do not think I need to explain to anyone around this table that post colonisation and after a couple of hundred years of some pretty terrible behaviour, trust can be a big issue to overcome. It has been an important journey for us to be on, in partnership with the First Peoples' Assembly over the last few years, through this process not only to deliver those pillars that have a functional role in our negotiations but in doing so to be able to build trust with the First Peoples' Assembly and the communities that it represents.

In light of all of those developments that I have been able to share with you today, I am very excited to be able to detail this government's investment of a further \$138.3 million to ensure that the state is able to continue to meet its legal obligations to enter treaty negotiations as required under the framework and the Act. This includes \$82 million for the First Peoples' Assembly as the presumptive First Peoples representative body for statewide treaty negotiations and \$53.3 million to enable the state to uphold its obligations to join those negotiations with the expertise and preparations required to meet the increased complexity of those formal negotiations as well. That new investment provides the next phase of resourcing to enable the government and the First Peoples' Assembly of Victoria to embark on negotiating Australia's first ever treaty. This will finally deliver on a centuries-old request for treaty from Australian First Peoples, and as Victorians we should be very proud of that. It is also, though, a moment that comes with extraordinary responsibility. Jurisdictions around Australia and indeed the world are looking and learning from our example, as we have looked and learned from others. Treaty is a real opportunity to provide self-determination in all policy areas and is fundamentally about handing back control of Aboriginal affairs to Aboriginal people. We do that not for reasons of symbolism but because we know that better outcomes are achieved for First Nations people when they are in charge of their own affairs.

Probably an important point to conclude my remarks, in terms of responding to your question, is that often treaty and truth-telling are dismissed as somewhat symbolic pursuits. They are not. I have both the privilege but also far too frequently the disappointment of sitting around the table at national Closing the Gap meetings and seeing that the rate of change is persistently slow. If you were to draw on that old adage about the definition of stupidity being doing the same thing over and over again and expecting a different outcome, then we could do that, but I think certainly here in Victoria we know that the only way we are going to genuinely start shifting the dial and getting better outcomes for First Nations people, First Nations families and First Nations communities is if we fundamentally do something transformative and different. That is ultimately what treaty and truth-telling are about. We have been very ambitious in the model of our truth-telling process here. I spoke to the two elements, not only the backward element – which would be the easy bit to do, can I say. It would be easy for us to all apologise for what happened 200-odd years ago, but our commitment is greater than that. That work is important for a different reason.

It is important for people to understand why treaty is really important – to be able to set the story, to tell the narrative and to show the impact. But that forward-looking piece that asks the Yoorrook Justice Commission to make recommendations to tell us what needs to be done to rectify that ongoing injustice – indeed the very acknowledgement that the actions of the past continue to inform injustice to this very day – makes that quite a unique truth-telling process. Indeed to then have that fold into a treaty process, which will again by its very definition involve handing back control to First Peoples of their own affairs, is fundamentally about shifting the dial and fundamentally about driving better outcomes. Whether it be in child protection, whether it be the justice system or whether it be in environmental management, land management more generally or any other range of areas, this is something that touches every portfolio of government. Treaty will touch every portfolio

in government, and it is something that I am very pleased to be able to say my colleagues around the cabinet table share my enthusiasm for and are proactively engaged with in the context of their portfolio responsibilities.

Michael GALEA: Thank you, Minister.

The CHAIR: Thank you, Minister. The last 3 minutes of this session today go to Ms Sandell.

Ellen SANDELL: Thank you, Chair. Good morning, Ms Patira and Minister. I would also like to ask about treaty. Public land will no doubt form part of the negotiations, but the government is currently selling off quite a lot of public land, including in regional Victoria. Will the government pause government land sales in good faith until treaty negotiations happen, or at least consult with the First Peoples' Assembly prior to significant land sales to ensure that they can consider whether those parcels of public land are appropriate to be part of the treaty negotiations?

Gabrielle WILLIAMS: I think treaty is going to cover a range of different issues – in fact, as I have just outlined, issues that will touch every corner of government policy and decision-making. It has been really important in this process, and indeed something that has been a point of conversation with the First Peoples' Assembly, not to stop progress where we are making it. They do not want to put everything on hold and simply wait for treaty. So obviously business as usual for government has to continue, but on issues of land and cultural heritage protection and environment it is important to note that – and again I would refer you to the ministers that have direct responsibility for many of those programs, although I can speak a little bit about cultural heritage – there is already a significant amount of work underway to try and implement self-determination in a real sense within our portfolio responsibilities.

To your point and to speak about it from my portfolio responsibilities and make it as relevant as I can to the budget item lines that relate to my work, the cultural heritage system is one that falls under my responsibilities. It is one that intersects obviously with land rights as well. We have a world-leading cultural heritage protection system here in Victoria that makes our traditional owners the decision-makers, contrary to what some developers and landowners might like. I do not have ministerial override of those decisions, and I am quite proud of that – that when there are questions around what is done on various types of different land too, ultimately it is up to traditional landowners to grant authority through cultural heritage management plans about what happens on their land. At any given time obviously these are processes that are going through for a range of different reasons, so that is one way where we are already doing the work to ensure that we are building a system that is strong and preserving not only better outcomes, in that example for cultural heritage, but also has self-determination at its core.

Ellen SANDELL: I understand that, but if we are selling off large parcels of land, then they are no longer really able to be part of treaty negotiations.

Gabrielle WILLIAMS: Sorry, Elly, did you want to address that?

Elly PATIRA: I just want to add one – so where we have formally recognised traditional owner groups, under either native title or the *Traditional Owner Settlement Act*, there are obligations under the agreements struck where we are required to deal with Crown land in particular ways subject to those agreements.

Ellen SANDELL: Thank you.

The CHAIR: Thank you, Ms Sandell. Your time has expired. Minister and Ms Patira, thank you very much for appearing before the committee today. The committee is going to follow up on any questions taken on notice in writing and responses are required within five working days of the committee's request.

The committee is now going to take a short break before beginning its consideration of the police portfolio, commencing at 11:45 am.

I declare this hearing adjourned.

Witnesses withdrew.