

17 September 2024

Committee Secretariat  
Truth and Justice Commission Bill 2024  
Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs

Dear the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs,

**CALL FOR SUBMISSIONS:**

**An Inquiry into Truth and Justice Commission Bill 2024**

We thank you for the opportunity to make a submission to this phase of the *Truth and Justice Commission Bill 2024* ('TJC Bill'). We are excited to see this on the Committee's agenda.

We put forward a joint submission, authored by Jumbunna Institute for Indigenous Education and Research (Jumbunna) and the National Justice Project. Our partnership is driven by our alignment to a social justice agenda and specifically First Nations justice.

The National Justice Project acknowledges the expertise Jumbunna brings to this submission as leaders in quality work on Indigenous legal and policy issues.

We deeply support and recognise the importance of acknowledging matters relating to historic and ongoing injustices against First Peoples in Australia and the impacts these systemic injustices have on First Peoples and communities.

The ongoing nature of these injustices are at the core of why the National Justice Project fearlessly fights to end discrimination and why Jumbunna pushes for change through policy transformation underpinned by Indigenous knowledge. For real change to systemic barriers to be achieved, these systems must allow for genuine acknowledgment of how they uphold the ongoing injustices as experienced by First Nations and Indigenous communities across Australia. At the heart of this is truth telling and direct action based on that truth.

We suggest the Committee would find the following resources useful:

- Ebony Institute's [Truth Justice and Healing project](#)
- Reconciliation Australia's reports on [Recognising Community Truth-Telling](#) and [Identifying Barriers and Enablers of Truth Telling](#)
- Jonathon Tjandra's article on the shifting role of Royal Commissions: [From Fact Finding to Truth-Telling](#), and Adam Kochanski's article on patterns and lessons in the design of truth-telling commissions across the world: [Mandating Truth](#).

Below, we provide general comments regarding the TJC Bill and investigation into historical and systemic injustice. We welcome any questions the Committee may have.

Overall, we commend the Bill. All of our comments are made in the spirit of making the TJC Bill the best it can be, rising to meet the opportunity and responsibility of truth-telling.

## 1. General comments

Truth-telling commissions are novel, purpose-built commissions by design. The task of building them is daunting and complicated but the Commission can build on precedents with recent examples of truth-telling on this continent. They present opportunities for reflection and learning, and they shape community expectations of truth-telling at a Commonwealth level.

### ***1.1. Establishing the Commission – Learning from the Yoorrook Justice Commission***

To date there has only been one formal truth-telling process into the historical and ongoing injustices experienced by First Nations people in Australia. This is the *Yoorrook Justice Commission*, which is still in progress and expected to conclude 30 June 2025 for the state of Victoria.<sup>1</sup> This historic truth-telling provides a blueprint for the establishment of a Commonwealth Commission and an opportunity to reflect on any strengths and weaknesses of the process.

The establishment of *Yoorrook* was a formal agreement between the First Peoples' Assembly of Victoria and the Victorian Government, yet operates independently to both. The foundation for this process is bound by a formal and genuine partnership. This practice is essential for any justice commission that is seeking to operate and commit to building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision making-authority with Governments. This is also in line with other national frameworks and agreements (Closing the Gap, Priority Reform One).<sup>2</sup>

The scope of *Yoorrook* is for both past and ongoing injustices experienced by First People's in Victoria in all areas of life. Two key components to this are the *ongoing* impacts and that this is not siloed to only a few areas of people's lives. This holistic and overarching lens is critical to understanding how past and ongoing injustices intersect and have a genuine domino effect on people's ability and right to the full enjoyment as a collective or as individuals and freely pursue economic, social and cultural development.<sup>3</sup>

The inclusion of the development of a shared understanding of the impact of colonisation and the diversity, resilience of First People's cultures is a critical design feature that gets to the heart of the shared understanding needed for truth telling. This is a must have for any national truth and justice commission.

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<sup>1</sup> Yoorrook Justice Commission, About Yoorrook, <https://yoorrookjusticecommission.org.au/about/>.

<sup>2</sup> Closing the Gap, Priority Reform One – Formal Partnerships and Shared Decision-Making, <https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/one>.

<sup>3</sup> United Nations, United Nations Declaration On The Rights of Indigenous Peoples, Article 1 & Article 3, [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf).

To finalise, the Commission will be making recommendations for healing, system reforms and practical changes to laws, police and education and matters for future treaties. This is critical for a path of direct and effective action. We note that any practical changes to the law must be presented and responded to with the urgency they deserve. The onus sitting with Government to respond timely for how they will implement the recommendations received. If Governments chose not to implement recommendations, they at the very least must be mandated to give reasons for why it is the case and what other actions they intend to do working towards policy recommendations.

Learning from the experiences of *Yoorrook* the process must be well funded and given the adequate resources needed for a historic process that is relying so heavily on peoples' stories, expertise, cultural authority and collective experiences. The process cannot be rushed and must have the financial resources for holistic support to create cultural, psychological and emotional safety in order for people to participate.

Lastly, there must be ongoing evaluation and feedback methods embedded in the Commission process. This cannot be reserved for the beginning and end. As the Commission will span over multiple years there must be opportune moments for people to give feedback on the progress of the Commission and whether it is fulfilling its objectives.

### ***1.2. Outcomes, genuine actions and respect***

The Senate Legal and Constitutional Affairs Committee released the final report for the inquiry titled, *Missing and Murdered First Nations Women and Children*. The report included countless submissions, public hearings and research. Contributions and evidence to the inquiry were deeply personal and often involved families reliving the effects of violence on their missing and murdered loved ones. The cultural and emotional load was carried by families wanting to honour and commemorate their loved ones who have been lost to violence. After two years the report was released outlining ten (10) recommendations. None of the recommendations hold institutions and systemic injustices to account.

To put this in comparison the Canadian National Inquiry into Missing and Murdered Indigenous Women and Girls final report includes a total of 231 recommendations of *Calls for Justice*.<sup>4</sup> Furthermore, the report speaks to genocide and colonisation as a tool for gendered oppression. Taking into consideration the context for violence the report also outlines the right to culture, health, safety and justice as key rights for people to be safe from violence. The inquiry includes longer-term aftercare services through Indigenous Services Canada offering counselling and cultural support services for survivors, family members and people affected by the issue of missing and murdered Indigenous women and girls.

We cannot provide comment for whether the Canadian inquiry was void of any faults, however, the above provides a stark contrast for the respect and outcomes given to families who ultimately have to commit to any truth-telling process. The end goal must be that people believe any commission operates from a place of respect and care with a genuine vested interest to having truth-telling in this country. Actions will speak louder than words for any decision for the Commission process.

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<sup>4</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*, <https://www.mmiwg-ffada.ca/final-report/>.

## 2. Specific comments on this Bill

We have briefly considered the Bill in its existing form, appreciating much of it will change before the Committee.

### *2.1. Design elements of the Commission*

The strength of the truth-telling initiatives outlined above is their relative community control - Yoorrook being grounded in an agreement between the Victorian Government and the First Peoples Assembly of Victoria as well as international truth-telling processes being led by community partnerships or existing treaties. The Committee may consider how the establishment of this Commission could be part of a similarly meaningful partnership.

**Appointments:** The Bill might consider looking for other ways to appoint Members of the Commission than through the Attorney General and Minister for Indigenous Affairs. As it stands, this appointment mechanism may produce real or apprehended bias, particularly where the Commission examines the conduct of current Governments and the Ministry of Indigenous Affairs.

**Terms of reference:** We are especially enthusiastic about the inclusion of s8(1)(a)(vii) (unfair policies and practices relating to policing, youth and criminal justice, incarceration, detention, and the broader legal system) and s8(1)(a)(ix) (unfair policies and practices relating to health and healthcare). These are matters of urgency for First Nations and Indigenous communities.

However, we caution against being too prescriptive in the terms of reference. Commissions are often surprised on scope, especially as they engage communities who see an issue's detail and interconnectivity from different angles. We note, for instance, that there is no ground for gender or sexuality-based violence, both critical frames for understanding colonial injustice against Indigenous women and LGBTQSB+ mob. While we appreciate s8(1)(g) gives opportunity for incidental matters, we think this still constrains the Commission and may lead to unnecessary disputes or confusion on scope. We suggest instead a general scope in ss8(1)(a)-(b), with specific subject areas to be determined in the course of the Commission's work.

This can be guided by Commission members, Chief Commissioners or subsequently by the rule-making power set out in s36. This may also allow for community submissions and scoping studies on what the Commission should examine, as well as what it can viably examine.

### *2.2. Miscellaneous feedback*

**Immunities and liabilities:** We recommend outlining the immunities and liabilities of Members explicitly, so they can be relevant for institutional needs and transparent for the public.

**Cultural safety:** We propose consulting with cultural safety experts specifically on the design of this Commission. Cultural safety should be at the core of the Commission's design rather than observing principles from 'the majority position' in order to 'recognise, respect and further the unique cultural identity of First Peoples'. We also caution that cultural safety defies definition from a 'majority position'.

Cultural safety will require nation and culture-specific measures and principles for the many varied First Nations cultures that will appear before the Commission. Cultural safety may also mean different things for every Aboriginal and/or Torres Strait Islander person who appears before the Commission.

**Membership composition:** We suggest that a minimum of 60% of members be required to be First Peoples. We also suggest where any State or Territory is represented by a member who is not Indigenous, that the State or Territory's next appointed member must be Indigenous.

**Reporting:** We suggest that formats other than Reports be considered as a product of the Commission's work. This will be critical for community relevance. Numerous studies on this continent and surrounding islands highlight how important it is that truth-telling projects produce outputs in the community and at local levels. Some of these have included the development of local memorials, history education programs, dance, song, videos, and storytelling.

**Criminalisation:** We strongly advise against the creation of criminal offences related to the Commission's functions, and the use of warrants for the arrest of persons who fail to appear. We are concerned that linking federal police functions with the Commission will undermine community trust and make some community members hesitant to be involved. The use of search warrants should be a last resort for the same reason.

We also urge caution against creating an offence for false or misleading evidence. This Commission will regularly hear contested stories. These stories won't just be contested *between* the settler colony and Indigenous people, they will be contested *among* Indigenous people too. Wrestling with the idea of singular truth and how the Commission might reach one if desirable, is a central part of a truth-telling commission. It can only do this if Indigenous witnesses are allowed to give evidence without fear of prosecution if that evidence is contested or not a consensus position in community or among Commissioners. It is antithetical to the Commission's aims to facilitate the criminalisation of participants. We do not think that this risk is mitigated by requiring intent to mislead, as this is easily alleged but not always easily discerned.

We also strongly urge against a contempt model that criminalises protest or political speech in or about the Commission. The Commission should expect itself to be a site of contest, not just on whitefulla terms through the adducing of or examination of evidence in a formal setting but on blackfulla terms too, where hierarchies of knowledge are disputed sometimes through community disruption of formal processes and through publicly critiquing institutions. Any truth-telling commission must be ready to deal with these contests without police or prisons. It must navigate them as part of Indigenous political and social life.

Contests of this nature won't just be external to the Commission or between the Commission and its participants. It may likely also involve internal disagreement among Commissioners. The Commission should have very clear structure and governance in how it makes its decisions across its membership in anticipation of these disagreements. It is not clear in this Bill how the Commission will make such decisions. We note that a 50/50 split would be possible among members at the Commission's proposed composition, which is an even number.

### **2.3. Broader aims of the institution**

Finally, we encourage the Committee to explore the difference between a truth-telling institution and a fact-finding institution. Truth-telling institutions are not always seeking new evidence or even trying to produce new knowledge, but are providing spaces for new narratives, new evidence and existing evidence to be ventilated together in the community interest. As it currently stands, the design of this Commission is posed towards a more traditional Royal Commission fact-finding design. What becomes possible if it is freed of these constraints?

Thank you for the opportunity to comment. We welcome any questions you may have for further information.

This submission has been co-authored by Senior Researchers of Jumbunna Institute and Chloe Fragos of the National Justice Project.



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