

## **Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs**

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### **Alison Whittaker:**

We are speaking today on the lands of the Gadigal people, whose sovereignty was never ceded. We pay our respects to Gadigal Elders past and present and celebrate their ongoing custodianship of land, sea and sky. We honour the enduring resilience and strength of all First Nations Peoples in the ongoing fight for truth and justice.

We speak here today as the National Justice Project and the Jumbunna Institute. We are two separate organisations, brought together by our alignment to a social justice agenda by and with First Nations and first peoples. In our work we each seek to bring First Nations and First Peoples' truth into legal, policy and research domains. We don't do this for the sake of truth alone. All this work is with the same goal in mind: justice.

### **Chloe Fragos:**

This Bill offers a space to speak to both truth-telling and justice in a moment where we can take neither for granted and when some state and territory-based truth-telling processes have been demolished in their early stages. As organisations and as individuals, we both deeply support a truth and justice commission and thank you for the chance to speak to it.

Like many organisations you'll hear from today, our concern is not on the 'should we have a truth and justice commission at the Commonwealth level?' but on the question of 'how?'

A truth-telling commission is purpose built by design. For this reason, we raise the importance of having a truth-telling commission with a clear purpose, and one that is purposefully designed to produce future outcomes or opportunities for justice rather than to issue findings of fact.

There is a temptation for commissions to turn into fact-finding institutions, particularly because these are so familiar to the executive in Royal Commissions. Exclusively prioritising fact-finding carries its own risks and preferences the idea of new knowledges and narratives over a space for healing and truth. Much of what any truth-telling commission will hear is already known by First Nations Peoples and the Australian public, if not in the specific then certainly in the general. We ask this committee to think about what becomes possible if we free ourselves of the mandate to uncover facts and instead think more broadly about hearing truths and the mandate to do something about them?

In exploring purpose, we raise the importance of 'outcomes, genuine actions and respect'. In our submission we put forward the comparison between the recent Parliamentary Inquiry into *Missing and Murdered First Nations Women and Children* and the Canadian National Inquiry into Missing and Murdered Indigenous Women and Girls report.

This inquiry required deeply personal evidence, and families relived the effects of violence on their missing and murdered loved ones. This cultural and emotional load was carried by families as will this Truth and Justice Commission will require. After two years of inquiry procedure, the final report released outlined 10 recommendations – with none of them holding institution and systemic injustices to account. In comparison, the Canadian counter-part final report included a total of 231 recommendations of titled, *Calls for Justice*. The report also spoke to genocide and colonisation as a tool for gendered oppression. The inquiry included after-care support post the inquiry. This comparison 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 care and respect with a genuine vested interest to having truth-telling. Actions will always speak louder than words in this process.

Though these are early days, there is a solid foundation for purpose-built truth-telling within this continent. The Yoorrook Justice Commission has started and provides a blueprint for what has been successful but also are transparent in offering their insights for what can be done better. There are points we want to raise:

- The establishment of Yoorrook is one that recognises and support shared decision-making. This First Peoples' Assembly of Victoria is its own party to the agreement and kept separate to government – all operating independently. Self-determining frameworks need to be present when wanting to unpack historic and ongoing injustice. The Truth and Justice Commission cannot have a framework that upholds traditional power structures present in current government decision making.
- The Yoorrook commission intends to make recommendations for healing, system reforms and practical changes to laws, police and education, and matters for future treaties. This is a critical path of direct and effective action. Any practical changes to the law must be presented and responded to with the urgency they deserve. 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.

## **Alison Whittaker:**

Looking ahead to what a national truth and justice commission can achieve, we raise comments about specifics we believe to be important for any Bill design whilst cautioning the use of others. A truth-telling commission should be designed in a process of community partnership and control.

Speaking to these points is where we re-raise our question – what becomes possible when we are freed of the constraints of conventional fact-finding models?

- **On appointments:** we urge consideration to be given for other ways the Bill may appoint members of the Commission other than through the Attorney General and Minister for Indigenous Affairs. As it stands this may produce real or apprehended bias, particularly when examining past and present government actions and inaction.
- **On terms of reference:** We appreciate the specific inclusions in the terms of reference, and we support the terms given. However, we do caution against being too prescriptive too early in the terms of reference. We do not wish to see a Commission be unintentionally restricted due to limited scope – the impacts of colonisation and systemic injustice are often interconnected and can emerge from unexpected places. For example, there is no ground for the Commonwealth's role in gender or sexuality-based violence, both critical frames for understanding colonial injustice against Indigenous women and LGBTQSB+ mob. Community feedback and submissions should inform the terms of reference, and it is desirable to keep these relatively open.
- **On cultural safety:** For any successful truth-telling commission there must be cultural safety at the core of design. It is not an accessory or an add-on. This position must also seek to include nation and culture specific measures and principle for the many varied First Nations that will appear before the Commission. It is not a one-size-fits all and means different things for every Aboriginal and/or Torres Strait Islander person who appears before the commission. We agree with other submissions that this should include a mandate for localised truth-telling projects as part of the Commission's work.
- **On penalties:** We do have concerns about the use of penalties. Whether this remains in the final Bill, we strongly advise against the creation of any criminal offences related to the Commission's functions. Fear or concerns of criminality for the presentation of contested evidence will impact people's trust of the commission.

The journey of truth telling is one that is also not neat, linear or free from protest. We strongly urge against a contempt model that criminalises protest or political speech in or about the Commission.

- **On outputs:** We urge the reconsideration of issuing only reports as part of this process. Other outcomes are powerful, transformative and possible, and include art, events, storytelling, commemoration, exhibition and dance. We refer the Committee to very well documented and powerful ongoing survivor- and community-driven truth-telling projects on the Myall Creek Massacre and Kinchella Boys Home, to give just two examples.

Finally, we urge the Committee to think boldly. Many of the submissions you hear today, outside of our own, support a vision of truth-telling and institutional design that's yet outside the imagination of conventional fact-finding inquiries. These include receiving submissions in Language, linking agreement-making processes, localising hearings and decentring the state. The Committee must take these seriously. We have here the rare opportunity to do something differently in honouring truth, we need not follow the inquiry formulas that mob have been failed by before. We reiterate the question in our submission: what becomes possible if a truth-telling commission is free of these constraints?