

ANTAR



Submission: Truth and Justice Commission Bill 2024

With thanks:

This submission was authored by:

Jessica Johnston, ANTAR Research & Policy Officer.

With support from:

Professor Megan Davis, Uluru Dialogue Co-Chair & PVC Society UNSW, and

Bridget Cama, PVC Society UNSW Legal Research Officer.

© ANTAR 2024

ANTAR

Email: hello@antar.org.au

Phone: 02 9280 0060

PO Box 77

Strawberry Hills NSW 2012

The Uluru Dialogue

Email: usfh@unsw.edu.au

Phone: 02 9385 1000

UNSW

Sydney NSW 2052 Australia

ANTAR and the Uluru Dialogue are proud to acknowledge and pay our respects to First Nations Peoples as the traditional owners of the lands on which we work across the continent.

About ANTAR

ANTAR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Nations Peoples. We do this primarily through campaigns, advocacy and public education.

ANTAR campaigns for the principles of the Uluru Statement from the Heart, including the establishment of a Makarrata Commission to oversee national agreement-making and truth-telling processes, as well as for the self-determination of First Nations Peoples. We actively support state and territory-based voice, treaty and truth-telling.

ANTAR engages in national advocacy across various policy and social justice issues affecting First Nations communities, including cultural heritage protection; justice reinvestment, over-incarceration and raising the age of criminal responsibility; child safety, development and wellbeing; anti-racism campaigns, native title and land rights, and closing the life equality gap.

ANTAR is a foundational member of both the Close the Gap Campaign and Change the Record Campaign Steering Committee, and an organisational and executive committee member of Just Reinvest NSW. ANTAR has been working with First Nations communities, organisations and leaders on rights and reconciliation issues since 1997. ANTAR is a non-government, not-for-profit, independently funded and community-based organisation.

About the Uluru Dialogue

The Uluru Dialogue represents the cultural authority of the Uluru Statement from the Heart and leads community education on the Uluru Statement's reforms of Voice, Treaty and Truth.

The Uluru Dialogue is based at the Indigenous Law Centre, UNSW Sydney.

“The idea that truth automatically will lead to justice is fraught. It is illusory. It is an ahistorical belief that is simply not borne out by the evidence. It defies the demands we have made as Aboriginal people for rigorous evidence-based thinking and public policy in Indigenous affairs. Beware the ally spruiking truth.”

Megan Davis (Cobble Cobble)¹

“...the riskiness of listening comes partly from the possibility that what we hear will require change from us.”

Susan Bickford²

Introduction

ANTAR and the Uluru Dialogue welcome the opportunity to provide commentary and recommendations on the Truth and Justice Commission Bill 2024 (‘the Bill’) which proposes to establish a Commission to inquire into and make recommendations to Parliament on particular matters relating to historic and ongoing injustices against First Nations Peoples in Australia, as well as the impacts of these injustices.

As organisations working for Voice, Treaty, Truth, justice, rights and respect for First Nations Peoples, ANTAR and the Uluru Dialogue are in support of the Bill in principle, insofar as it addresses a long overdue need to pierce the great Australian silence and unsettle the ‘cult of forgetfulness’ that is routinely practised and upheld by Australian society and its institutions, where historical and contemporary colonial violence inflicted on Aboriginal and Torres Strait Islander peoples is largely ignored, if not deliberately silenced. This exercise of persistent forgetfulness is both a continuing practice of burying our collective head in the sand and a structure that works to establish and continually uphold the status quo. It is in this

¹ Megan Davis, [The truth about truth-telling](#), *The Monthly* (Dec 2021 – Jan 2022)

² Susan Bickford, *The Dissonance of Democracy: Listening, Conflict, and Citizenship*, Cornell University Press (1996): 149.

context that ANTAR and the Uluru Dialogue see the Bill as having the potential to open a pathway toward not just truth-telling but something arguably more important: that is, toward cultivating the capacity for non-Indigenous Australians (and their institutions) to engage in longer term truth-*listening* that leads to structural change.

Alongside scholars who warn of truth processes triggering limited forms of colonial empathy in settler states,³ we envision truth-listening as a deeply unsettling political practice that invites us to:

a) reckon with how we (both individually and collectively) are implicated in and continually benefiting from First Nations dispossession, land theft and structural disadvantage; and

b) *act* in ways which seek to redistribute and remedy this uneven distribution of power and wealth.

Without associated structural change, state-led truth-telling risks becoming an exercise in co-opting First Peoples' trauma in order to marginalise their political and legal claims.⁴ It is critical that any national truth-telling process does not become detached – either by design or inadvertently through its delivery – from the fundamental demand to respect, uphold and prioritise First Nations self-determination. ANTAR and the Uluru Dialogue are adamant that truth-telling must be one component of an ecosystem of mechanisms working to achieve self-determination, autonomy and a recognition of First Nations sovereignty.

Similarly, while we strongly support and have long campaigned for the establishment of a national body to oversee truth-telling processes, we are cognisant of the risks that such processes pose, particularly when carried out in the current context of deep power imbalance and structural injustice. In what follows, we will briefly outline the policy context along with the risks inherent in undertaking truth-telling without structural change, before turning to our proposed

³ For more, see: Kathleen Absolon, Wholistic and Ethical: Social Inclusion with Indigenous Peoples, *Social Inclusion*, 4(1) (2016); Rosemary Nagy, 'Settler Witnessing at the Truth and Reconciliation Commission of Canada', *Human Rights Review* 21(3) (2020); Vanessa Barolsky, 'Truth-telling about a settler-colonial legacy: decolonizing possibilities?' *Postcolonial Studies*, 26(4) (2022); and Poppy de Souza & Tanya Dreher, 'Dwelling in Discomfort: On the conditions of listening in settler colonial Australia', *borderlands* Vol 20 No 2 (2021).

⁴ Megan Davis, [The truth about truth-telling](#), *The Monthly* (Dec 2021 – Jan 2022)

model for a national truth and justice commission that takes into account and aims to mitigate such risks. We will then outline four elements that are critical to the model we have proposed. Namely:

- i. the relationship between national and local-level truth-telling;
- ii. truth-telling as a localised, bottom-up process;
- iii. the importance of settler truth-listening; and
- iv. truth-telling as part of an ecosystem of complementary mechanisms.

Context

While the demand for truth-telling in Australia re-emerged with a higher profile in 2017 as a core component of the Uluru Statement from the Heart, First Nations community-led truth-telling has been underway across the continent since invasion, and takes many forms: place re-claiming and re-naming, massacre mapping, festivals, oral history recordings, counter-monuments and museum practice, decolonial digital archival practices, and public artwork projects are just some of the dizzying array of examples of community truth-telling processes. Community-led truth practices can also be survivor-led, such as the work of the Kinchela Boys Home Aboriginal Corporation and the Coota Girls Aboriginal Corporation. Recent initial mapping of community-led truth practice reveals several hundred initiatives and projects currently underway across Australia.⁵

These community-led processes manage to deliver a complicated and nuanced dual aim: on the one hand, they challenge and unsettle colonial narratives that have been constructed in order to obfuscate and deny the systematic colonial violence of invasions, wars, massacres, genocide, assimilation, dispossession, land theft, child removal and stolen labour that have built the country we now call Australia; simultaneously, they tell stories of resistance, resilience, and survival that put the devastation of colonisation in its rightful place: considering 60,000 years of continuing culture and connection to Country, the 236 years since colonisation of Australia is 'but a pin prick' against the ancient and enduring legacy of First Nations Peoples histories. In this way, many of these community-led truth processes centre

⁵ Vanessa Barolsky, '[Reckonings with truth: Sovereign truths on Country](#)' *Journal of Sociology* (2024): 13.

and amplify 'extra-colonial histories';⁶ that is, local histories of First Nations knowledge and experience which do not revolve around settler-colonial domination but focus instead on powerful assertions of First Nations sovereignty, ingenuity and resistance.

In its more formal expression, truth-telling has been established as one of several transitional justice mechanisms – along with official apologies, reparations and court-based prosecutions – intended to guide societies and communities to respond to the legacies of massive and serious human rights violations, and to pursue justice.⁷ Australia's first formal First Nations-led truth-telling process, the Yoorrook Justice Commission, was established in Victoria in May 2021. A second formal state-based process, Queensland's Truth-telling and Healing Inquiry, officially began on 1 July, 2024.

Even where the Australian state has engaged in larger scale truth-telling – such as the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families which culminated in the 1997 Bringing them Home Report, Prime Minister Paul Keating's Redfern Speech and Prime Minister Kevin Rudd's Apology to the Stolen Generations – the recommendations and substantive reforms resulting from these truth processes have been largely ignored in favour of maintaining the status quo. In 1991, the RCIADIC Final Report made 339 recommendations on the matter of disproportionate First Nations incarceration and deaths in custody. More than 30 years later, very few of the recommendations have been implemented and in fact many of the recommendations have been directly contravened by government laws and policies.⁸ Perhaps even more tellingly, in the 33 years since RCIADIC, there have been at least 556 First Nations deaths in custody.⁹

Similar political impotencies plague state-led truth commissions elsewhere. In Turtle Island (Canada), the oft-celebrated Truth and Reconciliation Commission

⁶ For more, see Shino Konishi, '[First Nations Scholars, Settler Colonial Studies, and Indigenous History](#)', *Australian Historical Studies*, Vol 50 Issue 3 (2019)

⁷ [What is Transitional Justice?](#) International Center for Transitional Justice, nd.

⁸ Thalia Anthony, Kirrily Jordan, Tamara Walsh, Francis Markham & Megan Williams, [30 years on: Royal Commission into Aboriginal Deaths in Custody recommendations remain unimplemented](#) (Working Paper No. 140), Centre for Aboriginal Economic Policy Research, Australian National University (2021): 1.

⁹ Declan Brennan, [Highest number of Indigenous deaths in prison since records began - report](#), National Indigenous Times, 15 December 2023.

(TRC) delivered 94 Calls to Action as the culmination of its 6-year long truth-telling process to inquire into the impacts of the Residential School system on First Nations survivors, their families and communities. As of 2023, First Nations-led research institute Yellowhead reported that 8-years on from their release, 81 of the 94 Calls to Action remain unfulfilled.¹⁰

What these statistics on the many failed or partially implemented recommendations underscore is that for truth-telling to have its intended impact – that is, if it is to be transformative, emancipatory and justice-oriented for First Nations Peoples – it must occur at all levels (community, state/territory and national) whilst being fundamentally First Nations community-driven, it must be tied to substantive justice outcomes, and it must be embedded in an ecosystem of complementary systemic and structural reform processes. Whilst the transformative potential and benefit of community-led processes is not contingent upon the state's participation or funding, the burden of these truth processes has so far been largely on the shoulders of First Nations communities with minimal funding. ANTAR and the Uluru Dialogue urge governments at all levels to ensure that sustainable resourcing is provided for truth-telling activities at a national, state and local level.

State-led truth-telling: some risks

Firstly, it must be acknowledged that historical ignorance, wilful blindness to historical facts and racial discrimination makes many non-Indigenous Australians an 'unsafe audience' for First Nations Peoples to engage with, particularly when their stories are met with disbelief, denial and/or a refusal to engage.¹¹ Following the year-long campaign leading up to the 2023 Voice Referendum, we witnessed first hand the unprecedented racism, discrimination and harmful misinformation that First Nations Peoples are subjected to when their lives, stories and voices take centre-stage in public discourse and are (mis)used as material for political posturing. This is of particular concern for any national truth-telling endeavour.

Secondly, research following state-led truth processes in settler states such as the Canadian TRC suggests that even when witnesses to truth-telling processes

¹⁰ Eva Jewell and Ian Mosby, '[Calls to Action Accountability: A 2023 Status Update on Reconciliation](#)', Yellowhead Institute (2023)

¹¹ Penny Taylor & Daphne Habibis, '[Widening the gap: White ignorance, race relations and the consequences for Aboriginal people in Australia](#)', *The Australian Journal of Social Issues*, 55(3) (2020): 365.

respond with empathy, it may be a passive empathy that fails to produce meaningful action, instead provoking a misguided desire to ‘help’ the seemingly dysfunctional other, rather than challenging one’s own group and its structures as the source of the problem – a new way to fix the ‘Aboriginal problem’.¹² Worse, settler state-sanctioned truth-telling without proper relational scaffolding that is trauma-informed, culturally safe and committed to substantive justice, risks becoming a parade of Indigenous trauma – the ‘performance’ of Blak suffering for largely white audiences – which rewards non-Indigenous Australians with a sense of catharsis without any proper restitution and power shifts.¹³

Thirdly, as mechanisms of transitional justice, state-led truth commissions are often criticised for their lack of focus on structural issues and for their temporal limitations, with a tendency to focus on past wrongs whilst failing to address the ongoing impacts of injustices and circumventing political transformation.¹⁴ In this sense, transitional justice mechanisms often work to legitimise, strengthen and/or consolidate state power.¹⁵ This is particularly relevant in settler colonial states, where unlike other international examples in which truth commissions are used as tools for post-conflict settings, there has been no recent point of rupture and no major regime change. In their guide for establishing truth commissions, the Office of the United Nations High Commissioner for Human Rights (OHCHR) states that a country is only ripe for a truth commission once the violent conflict, war or repressive practices have come to an end.¹⁶ This begs the question: how can and should a national Truth and Justice Commission operate in Australia when the

¹² Paulette Regan, *Unsettling the Settler Within: Indian Residential Schools, Truth Telling, and Reconciliation in Canada*. Vancouver: UBC Press (2010): 11.

¹³ Shireen Morris and Harry Hobbs, ‘Imagining a Makarrata Commission’, *Monash University Law Review* Vol 48, No 3 (2022): 26.

¹⁴ For more, see Anne Maree Payne and Heidi Norman, ‘[Coming to terms with the past? Identifying barriers and enablers to truth-telling and strategies to promote historical acceptance](#)’, Reconciliation Australia and UNSW (2024); see also,

¹⁵ For more nuanced arguments on the way in which transitional justice mechanisms tend to work within the paradigm of Western state-building, see Chris Cunneen, ‘Settler Colonial States and Transitional Justice’ in *The Oxford Handbook of Transitional Justice*, Jens Meierhenrich (ed.) et al. (2023): 12; Jennifer Matsunaga, ‘Two Faces of Transitional Justice: Theorizing the Incommensurability of Transitional Justice and Decolonization in Canada’, *Decolonization: Indigeneity, Education and Society* 5 (2016): 26 and Jennifer Balint et al., ‘Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach’, *The International Journal of Transitional Justice* 8 (2014): 194–216.

¹⁶ [Rule-of-Law tools for post-conflict states: truth commissions](#), Office of the United Nations High Commissioner for Human Rights (2006): 2.

settler colonial project and its violence is itself ongoing? That the violence is often less direct and more structural does not make it any less real.¹⁷

Without substantive structural or constitutional change, the settler colonial project has no formal point of conclusion.¹⁸ As Chris Cunneen points out, the unarticulated logic often underpinning transitional justice mechanisms is that such processes help failed states and authoritarian regimes 'out there' transition to the ideal of the Western liberal democratic state, the place where it is assumed that the rule of law and real 'justice' prevail.¹⁹ What is less often articulated – though no less true – is that liberal democracies such as Australia are neither inherently just nor have they truly reckoned with their own history. What is the role of transitional justice mechanisms such as truth and justice commissions when the harm, persecution and injustice is ongoing and firmly built on the legacy of colonial violence, exclusion, dispossession, and subjugation?

We note that the current Bill attempts to address some of the aforementioned risks; namely, the failure of the state to properly deal with matters of structural reform. It does this in part by proposing that the Commission, in addition to considering the causes and consequences of historical injustices perpetrated against First Peoples, should undertake an evaluation of the contemporary relationship between First Peoples and the Commonwealth government and the impact of contemporary policies, practices, conduct and laws on First Peoples, including:

- how historical injustices can be effectively and fairly acknowledged and redressed in a culturally appropriate way;
- how ongoing injustices can be addressed or redressed, including recommended reform to existing institutions, law, policy and practice and considering how the Commonwealth government can be held accountable for addressing these injustices and preventing future injustices; and
- how best to raise awareness and increase public understanding of the history and experiences of First Peoples before and since the start of colonisation.²⁰

¹⁷ For more on direct vs structural violence, see Johan Galtung's work on developing a typology of violence in '[Violence, Peace, and Peace Research](#)', *Journal of Peace Research*, Vol. 6, No. 3 (1969): 167-191.

¹⁸ Jennifer Balint and Julie Evans, '[Transitional Justice and Settler States](#)', Sydney Institute of Criminology (2011): 3.

¹⁹ Chris Cunneen, 'Settler Colonial States and Transitional Justice' in *The Oxford Handbook of Transitional Justice*, Jens Meierhenrich (ed.) et al. (2023): 2.

²⁰ Truth and Justice Commission Bill 2024, [Explanatory Memorandum](#), Parliament of Australia, 2024.

ANTAR and the Uluru Dialogue support this focus on the contemporary structural relationship between First Nations Peoples and the settler colonial state, and in particular the attention given to matters of redress, law, policy and institutional reform and government accountability.

At the same time, we wish to point out that First Nations individuals, organisations and communities have for many decades been engaged in truth-telling about necessary reforms to existing institutions, law, policy and practice, as well as how best to prevent future injustices. The proposal for meaningful constitutional reform in order to recognise Aboriginal and Torres Strait Islander Peoples in the Constitution through the establishment of a constitutionally enshrined representative Voice body was one such reform. The four priority reforms of the National Agreement on Closing the Gap are a further four reforms that have been directly informed by Aboriginal and Torres Strait Islander people seeking to fundamentally change the way governments work with First Nations communities. The list goes on: the calls to raise the minimum age of criminal responsibility to 14, to reduce the number of First Nations children in out-of-home-care by handing decision-making power related to child protection to ACCOs, to properly address and eliminate systemic and institutional racism, to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into domestic legislation and be guided by its principle of free, prior and informed consent (FPIC) in all dealings with First Nations Peoples and to return ancestral land. These and many more are necessary reforms required to address injustices and prevent future injustice. They are not, however, adequately listened to and acted on by those with the power.

Noting these risks – and the tendency of successive Australian Governments to engage in affective and performative measures such as apologies, speeches and other ‘reconciliation’-based politics that effectively function as nation-building projects that stop well short of fundamentally altering or dismantling the enduring settler colonial structure – ANTAR and the Uluru Dialogue offer a proposed model for a national truth-telling process which we believe mitigates the likelihood of truth-telling becoming yet another nice-sounding and well-intentioned measure that does more to ease settler guilt than it does to deliver justice. In this way, we

support the Bill in principle but recommend substantial changes to its top-down approach.

Recommendations / Our Model

Recommendation 1: to establish an enduring legislated national truth body to animate, coordinate, resource and support localised, First Nations community-led truth-telling. This scaffolding body should be First Nations-designed and led, established in accordance with the principle of Free, Prior and Informed Consent, and operate beyond a fixed time period; and

Recommendation 2: the above national truth body could, after operating for an appropriate period of time, use the experience, outcomes and engagement it has garnered with and from local truth-telling processes to inform the design, purpose and scope of a national Truth and Justice Commission which would operate for a fixed period of time, with the powers of a Royal Commission, to lead a national truth-telling process.

There is evidence that truth-telling processes that are meaningfully led by First Nations communities are more effective.²¹ As such, in our proposed model, ANTA and the Uluru Dialogue envision a national truth-telling process in the form of a national truth body to animate, coordinate, facilitate, resource and support localised, bottom-up, citizen and First Nations community-led truth-telling. A national truth-telling body set up this way – to constellate and empower localised First Nations-led truth processes – is consistent with the call for Truth that was articulated by First Nations communities in the First Nations Regional Dialogues.

The purpose of this body would be twofold: first, it would function primarily as an operationally flexible national body that acts as scaffolding for localised truth-telling activities; secondly, it would later serve to inform the design and scope of a national First Nations-led Truth and Justice Commission with the powers of a

²¹ Vanessa Barolsky, Karen Berger and Kirstie Close, '[Recognising community truth-telling: An exploration of local truth-telling in Australia](#)', Alfred Deakin Institute for Citizenship and Globalisation, Centre for Inclusive and Resilient Societies and Reconciliation Australia (2023): 130.

Royal Commission to facilitate a national truth-telling process that is truly inclusive and reflective of local truth processes and community needs.

We are proposing that the national truth body have a fixed structure, with the relationship between the national body and the local truth-telling activities that it supports varying according to need. Whilst we envision the national truth body playing a key role in informing the design and scope of a future Truth and Justice Commission, the national body would continue to operate alongside the Commission, with both bodies performing independent yet complementary functions.

A national truth body set up this way offers an opportunity for a national mechanism to bring together what are otherwise stand-alone local truth-telling processes, forming a powerful constellation of local truths and truth-driven outcomes that can lead to comprehensive and justice-oriented settlements built on a shared acknowledgement of past and current injustices.

One need only glance at the history of First Nations-led activism or the many pages of First Nations-authored submissions to the many parliamentary Inquiries over the years to get a sense of the practical, clear and detailed asks for structural reform and transformation intended to deliver justice. As such, we suggest that the focus should instead be on how governments at all levels can be held accountable for addressing these injustices through reform to, and transformation of, their own systems and ways of working. Localised truth-telling processes (such as the many community-led processes, as well as state and territory-based formal processes) will generate their own pathways toward material redress and structural reform in ways that are relevant, contextual and place-based (including, but not limited to, treaty and agreement making). By focusing on flexibly supporting, facilitating and resourcing these local processes, a national truth body can help drive accountability and reform.

According to our envisioned model, part of the function of a national truth-telling body would be to provide hands-on guidance to local communities on how to design and deliver local truth-telling and innovating beyond the ineffective transitional justice processes. This could include delivering practical resources such as [‘Strengthening Participation in Local-Level and National Transitional](#)

[Justice Processes: A Guide for Practitioners](#)' by Jennifer Tsai and Simon Robins, and ['Drafting a Truth Commission Mandate: A Practical Tool'](#) developed by the International Center for Transitional Justice. It could also include assistance with documenting local truth-telling processes.

Relationship between a national body and local truth processes

In the proposed model for a national truth body that we put forth, the relationship between local-level processes and a national body is key. We propose a model of hybridity whereby a national body flexibly facilitates and connects community-level processes. Importantly, this means that a national truth body would not step into the space of local processes, but provide them with support and resources.²²

Evidence-based research on transitional justice initiatives globally suggests that local-level processes have the ability to operate in a huge range of social and political claimed spaces, and at varying scales, from the national to the local community level, and as such have a huge potential to impact people's lives in positive ways.²³ Furthermore, such research suggests that local-level initiatives operate most powerfully when they are coordinated with national and state-based processes in order to prevent duplication and ensure they are linked as part of a broader, visible, societal-wide movement.²⁴

Internationally, a similar hybrid transitional justice model to the one we are proposing was followed by East Timor with its Commission for Reception, Truth and Reconciliation (CAVR), where an independent national statutory body resourced and oversaw localised non-judicial community-based hearings that were driven by local needs and values – including local conceptions of justice – and informed by ancestral Timorese rituals. In particular, these localised processes, assisted by the CAVR, used participatory tools such as timelines and community conflict mapping during the documentation process to tell their stories and decide how and in what ways the information would be used.²⁵ While the CAVR process was not without its

²² Gabrielle Appleby & Megan Davis, [The Uluru Statement and the Promises of Truth](#), *Australian Historical Studies* Vol 49 Issue 4 (2018): 509.

²³ 'Strengthening Participation in Local-level and National Transitional Justice Processes: A Guide for Practitioners' by Jennifer Tsai and Simon Robins, International Coalition of Sites of Conscience (2018): 49.

²⁴ *ibid*

²⁵ For more on different types of local-level processes, see 'Strengthening Participation in Local-level and National Transitional Justice Processes: A Guide for Practitioners' by Jennifer Tsai and Simon Robins, International Coalition of Sites of Conscience (2018): 34.

criticisms, it acknowledged that it is within local communities and families that the rebuilding of relationships and the negotiation of the future takes place, and that the transformative work of truth-telling cannot be instituted from above.²⁶

It is crucial that any and all truth processes being resourced and coordinated by a national body are based on an inclusive, trauma-informed, culturally safe and participatory design – the structure and details of which will look different for different communities – that is developed through close consultation with First Nations community members. Furthermore, truth-telling at a community, state/territory and national level must be informed by principles of Indigenous data sovereignty and Indigenous Cultural and Intellectual Property, in order to ensure that those who tell their truths remain in charge of those truths, including how and when they are told and what happens to them after they are shared.²⁷

As mentioned earlier, it is widely recognised that truth commissions may operate through the objectification of the victim to support the broader aims of the state.²⁸ In fact, studies show that public truth-telling may be actively harmful when not undertaken in a trauma-informed and purposeful manner.²⁹ Whilst our model's focus on localised community-led truth-telling does not entirely mitigate the risk of local truth processes becoming extractive or even potentially re-traumatising, they offer much higher chances for the scope, processes, methodologies and intended outcomes of truth processes to be designed and led by First Nations Peoples in those communities. This level of grassroots involvement and participation allows for a rebalancing of power toward individuals and communities, thus providing greater levels of cultural safety and relevance than a strictly national or state-led process. To this end, we envision a core responsibility of the national truth body, in this model, as being to ensure that its own processes, as well as processes followed at a local level, are led by the principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). In particular, the national body must ensure that all of its dealings with First Nations Peoples are underpinned by the key principle of free, prior and informed consent (FPIC).

²⁶ Lia Kent, '[Rethinking Transitional Justice: Lessons From East Timor](#)', Australian National University In Brief 6 (2013): 2.

²⁷ For more, see '[Indigenous Data Sovereignty and Data Governance](#)', Yoorrook Justice Commission (2022) as well as '[Maiam Nayri Wingara Principles of Indigenous Data Sovereignty](#)', nd.

²⁸ Tsai and Robins, 'Strengthening Participation', 51.

²⁹ *ibid*

In terms of the structure of the national truth body itself, we propose that it be a self-determining, First Nations-established and led body that is set up through consultations with First Nations communities and informed by cultural authority. As suggested by Dr Anna Poelina and the Martuwarra Fitzroy River Council in their submission to this Inquiry, the initial appointments of national truth body members should not be politically based or led by Ministers, but rather driven by a grassroots process at local and regional community levels.³⁰ We would add that such processes, particularly where they are co-designed by or involve the Australian Government, must also be led by and consistent with the principle of FPIC. The process followed by Victoria's Yoorrook Justice Commission in appointing its commissioners – in collaboration and consultation with their representative body, the First Peoples' Assembly of Victoria – could be used by a national truth body as a guiding example.³¹

Truth-telling as a local, bottom-up process

It has been well-established in transitional justice literature and praxis that local-level transitional justice processes differ significantly from national, state-led institutional approaches. Increasingly, scholars of transitional justice are cautioning against – for good reason – the tendency to transplant pre-existing transitional justice models and frameworks based on Western legal human rights discourse, calling instead for a genuine engagement with local communities in the co-creation of a contextualised approach to transitional justice.³² It is this localised version of truth-telling which forms the foundation of our proposed model, based on transformative justice principles of participation, contextualisation, local ownership and capacity-building.³³

While the state is in a unique legal position to summon witnesses, take evidence and issue search warrants, as well as to garner greater public interest through media attention, national truth processes often focus on the law and structures of formal governance and lack an ability to address the breadth of needs articulated

³⁰ Martuwarra Fitzroy River Council Submission, Inquiry into a Truth and Justice Commission Bill 2024, Parliament of Australia, 11 August 2024.

³¹ For more, see [Yoorrook Justice Commission FAQ](#)

³² Wendy Lambourne, '[What are the pillars of transitional justice? The United Nations, Civil Society and the Justice Cascade in Burundi](#)', *Macquarie Law Journal* Vol 13 (2014): 41.

³³ Lambourne, 'What are the pillars of transitional justice?', 42.

by individuals and communities.³⁴ By contrast, local-level processes are socially situated, meaning they can be tailored to address local needs and demands, as well as account for diverse experiences and divergent narratives without conflating them into a single truth, whilst still developing shared understandings. They are also highly relational, possessing the ability to work at an intimate 'everyday' level on the re-storying of dominant colonial versions of history as well as the transformation of relationships between people and communities. In this way, community-led processes have the potential to deliver a form of justice of, by and for the people.

In their research on Indigenous truth-telling in the context of the limitations of the Canadian TRC, Jeff Corntassel (Cherokee), Chaw-win-is (Nuu-chah-nulth) and T'lakwadzi (Kwakwaka'wakw) write about the necessity of making space for Indigenous stories and living histories. In particular, they argue that any pursuit of reconciliation with the state must first acknowledge the asymmetrical power relationships between states and First Nations Peoples which can so easily derail questions of justice and decolonisation, particularly with respect to land.³⁵ They write:

"The TRC was designed to fit within a Western model of justice where individuals may seek compensation (usually financial) for their losses. The issue of land is treated as a separate issue from that of the residential school, ignoring the fact that the issues with which survivors from the residential school era contend are rooted in the forced removal of entire families and communities from their homelands."³⁶

Corntassel et al argue instead for the need to move beyond state-mandated truth models and toward re-storying at the family and community levels, using Indigenous-centred methodologies that foster relational accountability and truth-telling.

In our model, it is these relational and First Nations-centred methodologies and living histories that community-led truth-telling, supported by a national

³⁴ Jennifer Tsai and Simon Robins, [Strengthening Participation In Local-Level And National Transitional Justice Processes](#) (2018): 34.

³⁵ Jeff Corntassel, Chaw-win-is, & T'lakwadzi, Indigenous Storytelling, Truth-telling, and Community Approaches to Reconciliation. *ESC: English Studies in Canada*, 35(1) (2009): 145.

³⁶ Corntassel et al, 'Indigenous Storytelling', 146.

truth-telling body, would be able to employ. By first developing and supporting a foundation of networked community-led truth-telling across the country, our model then allows for a national First Nations-led truth commission to later operate in ways that are more connected to, and informed by, these local processes.

Cultivating truth-listening and truth-action

While the national truth body in our model would be First Nations-established, designed and led, non-Indigenous Australians play a key role in its functions, wider implications and its efficacy.

Non-Indigenous individuals, communities and organisations can be 'invited in' to participate, engage with and learn from truth-telling processes, or to co-create truth-telling by building relationships that are reciprocal, transformative and active.³⁷ In our envisioned model, by inviting non-Indigenous Australians to listen and then *act*, truth-telling shifts – or at the very least shares – the responsibility for solving the 'structural nature' of the problem (in other words, the settler colonial status quo) to non-Indigenous Australians. Implicit in their participation is the responsibility to move from settler witnessing of First Nations trauma to a more active position in which they cultivate within themselves and their communities a responsibility to dismantle violent settler colonial structures. In other words, while truth-telling is something First Nations Peoples enact, truth-listening and truth-action are the responsibility of the wider non-Indigenous community to carry out. It is this action that transforms the listener from a passive or performative recipient of truth-telling to a critically engaged participant and, as Vanessa Barolsky writes, provides a way of 'doing' truth that disputes colonial narratives.³⁸

It is not enough, then, for First Nations Peoples to tell their truths. Central to our model is that local truth-telling will necessarily activate a politics of listening where non-Indigenous Australians re-story their understandings of historical and contemporary Australia, transform their mindsets and build momentum for structural change.

³⁷ Vanessa Barolsky, '[Reckonings with truth: Sovereign truths on Country](#)' *Journal of Sociology* (2024): 6.

³⁸ Vanessa Barolsky, '[Reckonings with truth: Sovereign truths on Country](#)' *Journal of Sociology* (2024): 5.

Truth-telling as embedded in an ecosystem

As many First Nations communities have stated, truth must be connected to substantive reform and redistributive justice measures. This means that truth-telling only 'works' if it is embedded in an ecosystem of complementary processes and mechanisms that are advancing legal and institutional reform.

In Victoria, for example, the work of the Yoorrook Justice Commission is directly informing emerging treaty processes in the state, and the Commission is in a mutually beneficial and supportive relationship with Victoria's First Peoples Assembly. In this way, the calls of the Uluru Statement – Voice, Treaty, Truth – promote an ecosystem of substantive and transformative structural change that when implemented, will deliver on the aspirations of First Nations Peoples for a fair and truthful relationship with the people of Australia. Furthermore, the Uluru Statement treats truth-telling and agreement making as interconnected and to some extent inextricably linked.³⁹

ANTAR and the Uluru Dialogue maintain that any national truth process should not occur in isolation from substantive matters of transformative justice and reform, including but not limited to land return, governance, financial restitution, power sharing, cultural redress, and matters of constitutional recognition and political representation.

Conclusion

At the heart of First Nations demands for justice are calls for structural and institutional reforms. Such transformative processes must centre Indigenous nationhood and sovereignty and be grounded in a deep understanding and acceptance of First Nations cultures and worldview. Truth commissions, as mechanisms of transitional justice, in and of themselves are unlikely to satisfy these requirements, and in fact risk co-opting First Nations Peoples' trauma in order to divorce matters of justice and healing from the fundamental political goals for First Nations self-determination.

³⁹ [Interim Report](#), Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples, Parliament of Australia (2018): 101.

Nonetheless, we strongly support First Nations calls for truth-telling, as well as the many community-led processes already underway, and for this reason support the establishment of a national truth body to coordinate, connect and support localised truth efforts. Once this greater foundation of localised truth has been established across Australia, we believe the national truth body would be in a strong position to inform the design and scope of a national Truth and Justice Commission to complement and galvanise ongoing local truth-telling, as well as to drive government accountability for structural reform at all levels.

We believe a national body of the sort we have proposed has the potential to form a critical part of the work that individuals and communities across Australia have to do in reckoning with past and ongoing injustice, renegotiating the terms of their relationship with each other, engaging in truth-listening, and setting out place-based pathways toward redress and meaningful shifts in power relations. In this way, we are doing what transitional justice scholar Lia Kent calls thinking both within and beyond the prescriptive parameters of the transitional justice toolkit.⁴⁰

Throughout this submission, we have demonstrated our support for a differently imagined Truth and Justice Commission as a 'radicalised' transitional justice mechanism that centres local communities and decentres the settler colonial state. We recognise that while such a model is not yet fully conceptualised or developed, it has the potential to function in transformative rather than performative ways, whilst remaining deeply rooted in First Nations self-determination and the kind of inextinguishable sovereignty articulated in the Uluru Statement: a sovereignty that is borne of a sacred link between the land and Aboriginal and Torres Strait Islander peoples. This is a truth that underlies all other truths, and one that needs to be heard.

⁴⁰ Lia Kent, '[Rethinking Transitional Justice: Lessons From East Timor](#)', Australian National University In Brief 6 (2013): 2.

For further questions or assistance on any issues raised in this submission,
please contact:

A handwritten signature in black ink, appearing to read 'B. Cansdale', with a long horizontal flourish extending to the right.

Blake Cansdale
ANTAR National Director

blake@antar.org.au

Ph: 0475 427 426