



17 September 2024

Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs
PO Box 6021, Parliament House, Canberra ACT 2600

RE: Inquiry into Truth and Justice Commission Bill 2024

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

The Victorian Aboriginal Child and Community Agency (VACCA) welcomes the opportunity to provide input into your inquiry of the *Truth and Justice Commission Bill 2024* (the Bill). VACCA is the largest Aboriginal Community-Controlled Organisation (ACCO) servicing children, young people, families and community members and has worked to protect and promote the rights of Aboriginal children and families for over 40 years. We have also participated extensively in the work of the Yoorrook Justice Commission which has been investigating injustices against First Peoples in Victoria.

VACCA commends the Commonwealth Government for progressing the establishment of a federal Truth and Justice Commission. This was a commitment made by Anthony Albanese in his election night speech in 2022, when he promised to implement the *Uluru Statement from the Heart* in its entirety, including a Makarrata Commission to facilitate treaty-making and truth-telling. The work of the future Truth and Justice Commission is made more urgent by the country's rejection of the proposed Indigenous Voice to Parliament. This loss revealed the gulf that exists between Aboriginal and Torres Strait Islander, and non-Indigenous understandings of the historical and contemporary experiences of First Peoples on this continent.

VACCA supports the intention of a future commission to "inquire into and make recommendations to Parliament on particular matters relating to historic and ongoing injustices against First Peoples in Australia and the impacts of these injustices on First Peoples."¹ At the same time, we think there are some key areas where the Bill could be strengthened to ensure it achieves its aims.

We provide the following specific feedback on the Bill for the Committee's consideration.

1. That the process for appointment of Commission members should be led by an independent panel with majority First Peoples representation.

Section 7 of the Bill proposes that Commission members will be appointed by the Joint Ministers, with them satisfied that the person has skills, knowledge or experience in many

¹ First reading of the Truth and Justice Commission Bill 2024

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2FBills%2Fs1420first-senate%2F0000%22;rec=0>

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areas related to First Peoples. VACCA does not think that the requirement for the Joint Ministers to “consult with relevant stakeholders” on this matter adequately respects the right of self-determination held by First Peoples. Furthermore, given the primary purpose of the Commission is to investigate historical and ongoing injustices perpetrated by the Commonwealth government and bodies, it is inappropriate that the government appoints its own commissioners.

We note that the process for selecting Commissioners for the Yoorrook Justice Commission included a public expression of interest, with an assessment and selection by an independent panel that included representatives of the Aboriginal community in Victoria. It is our opinion that the federal process should follow a similar model. This independence is important for ensuring that the Commission is viewed as legitimate and culturally safe by Aboriginal and Torres Strait Islander communities.

2. The Bill does not contain any references to government accountability, or its obligation to act upon the recommendations made by the Commission; and ignores the structural change goals envisioned by the Uluru Statement.

Under the proposed Bill, the Commission is required to submit a final report to Parliament which contains its findings and any recommendations relevant to the inquiry. While the Bill does not state this explicitly, the convention is that government usually provides a formal response to any final report of findings by a royal commission indicating how it will act upon the recommendations. VACCA wants a government response made a requirement in the Bill. As the members of the Committee would be aware, Aboriginal and Torres Strait Islander peoples have participated in numerous Royal Commissions, inquiries, and review processes established to address systemic discrimination and structural inequalities experienced by Aboriginal peoples in legislation, policy, practice. We have committed our time, resources and knowledge to such processes, outlining the solutions that are required, with the hope they will lead to change. However, in many instances, federal and state governments have failed us by not enacting the solutions for change proposed by our communities.

The intention behind the Makarrata Commission is not only truth-telling, but also the facilitation of a treaty-making process between First Peoples and the Commonwealth Government. The Bill in its current form completely ignores this crucial context which speaks directly to how First Peoples conceptualise reconciliation with non-Indigenous Australians. Concerningly, this appears to reflect the federal government’s own position on the relationship between treaty and truth.² The real value of these processes comes in

² Middleton, K. (2024, 4 August). Albanese endorses ‘principle’ of makarrata but stops short of backing truth and justice commission. *The Guardian*. Retrieved from: <https://www.theguardian.com/australia-news/article/2024/aug/04/albanese-endorses-principle-of-makarrata-but-stops-short-of-backing-truth-and-justice-commission>

assessing the government's capacity to implement the recommendations provided to it, and whether their actions lead to more equitable power sharing between First Peoples and the state; and provides redress for the historical and ongoing injustices experienced by individuals and communities. While Victorian Government adoption of the Yoorrook Justice Commission recommendations to date has been slow, the potential for the Commission to make substantial and structural change is promising. A prominent example is that on the eve of the Yoorrook hearings into the Child Protection system in Victoria, the then Victorian Premier announced a commitment to transfer Aboriginal decision-making into Aboriginal people's hands. This was followed in the next State Budget with an investment of \$144 million that is delivering structural change through the Aboriginal Children in Aboriginal Care program which gives Aboriginal Community Controlled Organisations, under section 18 of the *Children's Youth and Family Act 2005* legal responsibility for Aboriginal children and young people who have been placed on a Children's Court Protection Order. In response to the Yoorrook hearings into the justice system, Victoria Police issued an apology for their role in enabling the Stolen Generations and are actively implementing a 75 point plan to effect structural policing change into the future.

We know Aboriginal Community Controlled Organisations and State Peak Voices, like VACCA, are critical in and not funded for, responding in areas that the Commonwealth holds policy accountability, whether it is in relation to Stolen Generations, Family Violence, youth justice or forced adoption. Through the First Peoples Assembly of Victoria, Aboriginal peoples in Victoria have voice and representation for negotiating on their behalf. At the federal level, there is no indication of what the government plans on doing with recommendations made through a future Truth and Justice Commission.

In the Victorian Context, the Family Violence Reform Implementation Monitor (FVRIM) is another model that the federal government could draw upon to embed greater monitoring and accountability in its proposed approach. The FVRIM was established to monitor and report on implementation of the 2015 Royal Commission into Family Violence recommendations. It released numerous reports between 2016 and 2023 which examined the government's progress and was a valuable resource for tracking implementation and as a tool for holding government accountable. The Commonwealth Government should commit to establishing a dedicated, Aboriginal-led mechanism for monitoring implementation of the Truth and Justice Commission's recommendations.

3. The government must fund culturally safe, holistic supports for First Peoples' who appear before the Commission.

In relation to the operation of the Commission, the government has a duty to ensure that Aboriginal and Torres Strait Islander participants are provided with culturally safe, holistic services to ensure they are supported to give testimony. In its current form, the Bill appears to be more focused on the needs of the government participants. For example, in relation to assistance for those appearing before the commission, Section 32 references legal and financial assistance, suggesting that it is geared toward government representatives

providing evidence on the injustices perpetrated by the Commonwealth. Nowhere in the Bill is there a specific reference to the social, cultural and emotional wellbeing needs of Aboriginal and Torres Strait Islander participants, nor the government's duty to ensure access to such services by funding them.

The Yoorrook Justice Commission has established an evidence library that captures truth telling submissions and is supported by a team of Truth Receivers. Truth Receivers are trusted Aboriginal community members who assist community to tell truths, make submissions or support engagement opportunities. The Yoorrook Justice Commission has also established a Social and Emotional Wellbeing Team. This team can support community through various mechanisms and means and advocate on their behalf.

There is now substantial evidence from Canada and South Africa which describes the psychological and emotional impacts of testifying before their respective truth commissions.³ While the Truth and Reconciliation in South Africa provided quite limited forms of support according to experts⁴, the infrastructure established to support First Nations, Métis, and Inuit residential school survivors to participate in Canada's Truth and Reconciliation Commission was more extensive. For example, Schedule N of the Indian Residential School Settlement Agreement (which established the TRC), explicitly stated that the Commission's purpose was to "contribute to truth, healing and reconciliation."⁵ It goes on to state that the principles of the Commission, include that it is to be "victim-centred", "health and safety of participants", and also that a key goal was to "provide a holistic, culturally appropriate and safe setting for former students, their families, and communities."⁶ Practical supports funded by the Canadian Government to support the Commission's work included, the Indian Residential Schools Resolution Health Support Program which provided cultural and emotional support, and mental health counselling to survivors and their families; as well as the National Indian Residential School Crisis Line, which provided 24-hour crisis support to students and their families. In addition, support

³ Hamber, B., Nageng, D., & O'Malley, G. (2000). Telling it like it is...": Understanding the truth and reconciliation commission from the perspective of survivors. *Psychology in Society*, 26(1), 18-42.
Gaertner, D. (2016). 'Aboriginal principles of witnessing' and the Truth and Reconciliation Commission of Canada. *Acts of engagement: Taking aesthetic action in and beyond the Truth and Reconciliation Commission of Canada*, 135-156.

The memory of the past and the struggle with the present : an investigation into the restorative possibilities of providing public testimony at South Africa's Truth and Reconciliation Commission. Master's Thesis, University of Capetown. Retrieved from: [The memory of the past and the struggle with the present : an investigation into the restorative possibilities of providing public testimony at South Africa's Truth and Reconciliation Commission \(uct.ac.za\)](https://uct.ac.za/research-and-innovation/theses-and-dissertations/the-memory-of-the-past-and-the-struggle-with-the-present-an-investigation-into-the-restorative-possibilities-of-providing-public-testimony-at-south-africa-s-truth-and-reconciliation-commission)

Niezen, R. (2017). *Truth and indignation: Canada's Truth and Reconciliation Commission on Indian residential schools*. University of Toronto Press.

⁴ Hamber, B. (1998). The burdens of truth: An evaluation of the psychological support services and initiatives undertaken by the South African Truth and Reconciliation Commission. *American Imago*, 55(1), 9-28.

⁵ Indian Residential School Settlement Agreement. (2007). *Schedule N*. Retrieved from: [CPY Document \(residentialschoolsettlement.ca\)](https://residentialschoolsettlement.ca/CPY_Document)

⁶ Ibid.

was available on-site at the hearings of the Commission to support survivors before, during, and after their testimony.

In its current form, the Bill is more government-centred than respectful of Aboriginal world views. Given that the work of the Commission will cover challenging and potentially distressing issues such as dispossession, massacres, protectionist and assimilationist policies, child removal and criminal justice, there is a clear duty of care to ensure that Aboriginal and Torres Strait Islander participants have the supports they need. VACCA's position is that the Bill needs to focus more on the needs and rights of Aboriginal and Torres Strait Islander peoples involved in the Commission's work.

We welcome the opportunity to discuss this feedback further. For more information, please get in touch with Sarah Gafforini, Director, Office of the CEO on [REDACTED]

Yours faithfully,

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CEO VACCA