



WIYI YANI U THANGANI INSTITUTE
FOR FIRST NATIONS GENDER JUSTICE

SUBMISSION TO THE JOINT STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS ON THE TRUTH AND JUSTICE COMMISSION BILL 2024

September 2024

The Bill

Explanatory Memoranda

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INTRODUCTION

The Wiyi Yani U Thangani Institute welcomes the opportunity to provide a submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs on the Truth and Justice Commission Bill 2024. We acknowledge Senators Cox and Shoebridge for delivering the Truth and Justice Commission Bill to the Federal Parliament and thank the Joint Standing Committee for opening submissions on the Bill to ensure First Nations communities, organisations and other stakeholders have an opportunity to contribute to the design of this important legislation.

We are disappointed that the Albanese Labor Government is no longer committed to the implementation of Makarrata as put forward by the Uluru Statement from the Heart.

We provide this submission to reaffirm and show our full support for the implementation of a Makarrata Commission as fundamental to recognising and safeguarding the rights of First Nations peoples.

The referendum on the Voice to Parliament made it abundantly clear, that a national process for truth-telling and agreement-making are vital in progressing **reconciliation and systemic change**. The establishment of a Makarrata Commission as a truth and treaty mechanism, the second and third element of the Uluru Statement from the Heart, is instrumental in making this a reality.



We welcome the introduction of a Truth and Justice Commission (the Commission), however, recognise that this does not include a treaty element. A treaty process must remain a priority, and we encourage it to be addressed either within this Commission or elsewhere.

Although the Commission does not have this treaty function, the approach taken should draw on local truth-telling and treaty processes described by the Joint Select Committee on Constitutional Recognition related to Aboriginal and Torres Strait Islander Peoples, and state and territory models, including Victoria Government's Yoorrook Justice Commission as these mechanisms serve as meaningful models for listening and learning from First Nations peoples to ensure past and contemporary injustices are recognised and responded to.ⁱ

In support of the Commission, this submission puts forward recommendations to ensure the Bill reflects the values, needs and aspirations of First Nations peoples, and guarantees a safe, inclusive and meaningful space to share knowledge and lived experience. This submission considers the purpose and role of the Commission in representing cultural safety, meaningfully listening to First Nations peoples' experiences, and challenges the hearing model that the Bill describes for gathering evidence. In reflection of this model, our submission suggests that the Commission be grounded in a peacebuilding and healing-informed approach. Secondly, we consider what measurement, evaluation and learning (MEL) in the Commission may look like, suggesting a model more aligned with Wiyi Yani U Thangani that embeds MEL throughout all stages of the Commission's development and operations. This approach departs from the traditional Western evaluation model to better reflect the needs and values of First Nations people engaging with the Commission.

Recommendations

To ensure that the Commission effectively addresses the needs and concerns of First Nations peoples, we propose the following recommendations. These recommendations are aimed at enhancing the Commission's design, scope, and operations to establish culturally safe and inclusive practices, ensure a comprehensive and transparent investigation process, promote accessibility and inclusivity, address historical and contemporary injustices, and ensure effective follow-up and implementation. The Bill should be amended to:

- **Include scoping for an engagement approach** that brings evidence-building into communities and spaces across the country ensuring that First Nations peoples are represented in all their diversity.
- **Include principles for culturally safe and inclusive practices**, including the requirement for health professionals and experts to influence and shape engagement with First Nations peoples.



- Include commitment to collaborating with state and territory, and local community truth-telling and engagement processes, where partnerships for gathering, holding and evaluating evidence are shared between stakeholders.
- **Remove penalties and offenses, replacing these sections with a peacebuilding and healing approach** to gathering evidence and working with communities in a culturally safe and respectful manner. Where penalties are required, these should be discretionary based on the advice of experts engaging with the Commission.
- **Include a definition of justice that aligns with First Nations knowledge systems.**
- **Include scoping for a measurement, evaluation and learning approach,** which includes an accountability and governance framework that is grounded in First Nations principles.
- **Include commitment to Indigenous data sovereignty and governance principles,** including considerations of how information can remain in the ownership of Indigenous communities and knowledge holders.

THE PURPOSE AND ROLE OF THE TRUTH AND JUSTICE COMMISSION

Relating to:

Part 2—Establishing the Truth and Justice Commission
Part 3—Powers of the Truth and Justice Commission

The proposed Commission must embed **culturally and healing-informed methodology and governance** to ensure a safe and inclusive truth-telling process and to not reproduce existing injustices, harms and violence.

As explored by Professor Megan Davis in the *Family is Culture Review* (2019), a business-as-usual approach to addressing First Nations peoples' needs and experiences is often ineffectual.ⁱⁱ She described this approach as 'regulatory ritualism' in which mainstream ways of working, including listening and engaging with First Nations communities, often do not reflect the outcomes that Indigenous-focused projects and policies are trying to achieve—self-determination, truth-telling, empowerment, and safety. This is a result of working within existing mainstream systems and structures that are not designed to respond to intersectional lived experiences and diverse needs. Changing this culture of ritualism was a key recommendation of the Review, and should be reflected on across all Government departments and mechanisms with outcomes to support First Nations peoples.



We highlight four key approaches that need to be reflected in the Bill to ensure that the Commission operates as a meaningful National truth-telling mechanism:

Intersectionality and Gender Justice; Human Rights; and cultural safety. This consideration of framing is fundamental to the Commission's success, as asserted by the Northern Territory Treaty Commission. Based on research analysis into the development of similar bodies, the NT Commission shares that "No Truth Commission has been without shortcomings, and managing expectations of participants and the community is important. Despite this, we find that Truth Commissions, when well-resourced and culturally appropriate, can re-structure relationships between grounds as well as understandings of history and society".ⁱⁱⁱ

Gathering evidence of intersectional lived experiences

Relating to:

Part 2—Establishing the Truth and Justice Commission

As reflected in the various truth-telling, treaty and First Nations community development programs across Australia, place-based approaches to listening and engaging with communities are preferred to one-size-fits-all models. Associate Professor Gabrielle Appleby and Professor Megan Davis argue that "Truth-telling must come from local communities, led by Aboriginal and Torres Strait Islander peoples working with non-Aboriginal people in that community. This work might be undertaken in conjunction with local councils, local history societies, or other local community groups. Indeed, as Penelope Edmonds has explained, locality is key because so many individuals and communities are wary of attempts at reconciliation led by the government, viewing previous attempts as 'state-based and top-down social program[s]' that can be 'repressive and reinforce colonial hegemonies'" counteracting the purpose of truth-telling in promoting reconciliation and self-determination.^{iv} This must be considered in the way the Commission is designed to gather evidence.

We strongly believe that special consideration be given to the voices of First Nations women, young people, older persons, peoples with disability, incarcerated peoples, those whose primary language is not English, and all other persons whose life experience and circumstances limit their ability to engage in a conventional consultation process. This will require diverse ways of engaging communities beyond requesting individuals' presence at a hearing. For instance, this may mean that the Commission is not a static body, but seeks out evidence in different settings, partnering with different Indigenous groups and organisations, and travelling across the country to where people can feel most comfortable and safe in engaging and sharing their stories.



A meaningful example of such an engagement model is the Wiyi Yani U Thangani project developed at the Australian Human Rights Commission by former Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar AO. The project set out to listen and learn from the lived experiences of First Nations women and girls across the country. The initial engagements resulted in the landmark Wiyi Yani U Thangani Report (2020) which is currently the most comprehensive and intersectional engagement with First Nations women in Australia taken place to date providing a nuanced and complex understanding of how justice and injustices have been experienced by First Nations women country-wide. The report also provided recommendations for systemic change which have been followed up and actioned through various mechanisms such as hosting the Wiyi Yani U Thangani Summit, workshops and further engagement, advocacy and research; and the development of the Wiyi Yani U Thangani Institute, which is the first dedicated space for First Nations women in Australia.

Initial engagement for the project involved a multi-year consultation process, involving over 2000 First Nations women and girls from urban, regional and remote communities and through conversations taking place in people's homes, by campfires, the ocean, footy fields, women's prisons, and any other places where women felt comfortable to share. **By travelling to women ensured that consultations could be representative of different groups, lived experiences, cultures and intersectional identities. Relationships were forged to create safe, inclusive and empowering spaces to share knowledge and maintain connections for future work.** Consultations were also directed by the women, meaning there were no set questions or assumptions in the conversations. This allowed women to share their stories and knowledge as they saw fit, allowing conversations to travel across different topics, histories and issues, drawing a holistic picture of their experiences, rather than imposing parameters on the conversation limiting the information gathered.

Principles of deep listening, sense-making and reciprocity were foundational to this consultation which has remained embedded in the work of Wiyi Yani U Thangani as our Ways of Working, described in more detail below. These principles are not specific to our work but are a First Nations practice seen replicated in various models, including the Yoorrook Justice Commission. **We believe that these principles are integral to meaningful and safe engagement with First Nations communities and should be embedded within the Commission. We recommend that parameters in the Bill be considered for how evidence gathering includes diverse voices, and how these voices are included in the Commission's operations and reporting. Consideration of how Commission members are selected and what intersectional experiences and knowledge they hold should also be a priority.**

We encourage the Commission to work concurrently with states and local communities so that diverse processes and models of truth-telling can flourish in ways that best suit community needs, noting the interaction between state and



territory processes in Part 2, Section 9 of the bill. This collaborative model may also support the retention of Indigenous data remaining with communities, and only feeding into the national Commission as necessary. Consideration of Indigenous data sovereignty and governance are discussed in the following section in more detail.

Strengthening First Nations human rights

The design and operation of the Commission must align with human rights principles grounded in First Nations ways of working, knowing and being. We acknowledge that the Bill states that it is compatible with human rights, although exploring this in more depth, including articulating how it adheres to the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is crucial.

The four key principles of UNDRIP are Self-determination; Participation in decision-making; Respect for and protection of culture; and Equality and non-discrimination. Applying a gender lens to these principles, as articulated through Wiyi Yani U Thangani is important to ensure women, girls and gender-diverse peoples are adequately represented, as discussed above. In the Wiyi Yani U Thangani report, these principles are defined as follows:^v

- **Self-determination:** Aboriginal and Torres Strait Islander women and girls have a right to shape their own lives, including their economic, social, cultural and political futures.
- **Participation in decision-making:** Aboriginal and Torres Strait Islander women and girls have the right to participate in decision-making in matters that affect their rights and through representatives they choose. This participation must be consistent with the principles of free, prior and informed consent. Aboriginal and Torres Strait Islander women and girls must be respected and treated as key stakeholders in developing, designing, implementing, monitoring and evaluating all policies and legislation that influences their wellbeing.
- **Respect for and protection of culture:** Aboriginal and Torres Strait Islander women and girls have a right to maintain, protect and practise their cultural traditions and cultural heritage. This includes protecting their integrity as distinct cultural peoples, their cultural values, intellectual property and Indigenous languages.
- **Equality and non-discrimination:** Aboriginal and Torres Strait Islander women and girls should be able to enjoy their human rights without discrimination from individuals, governments and/or external stakeholders.

These principles and acknowledgement of the UNDRIP is reflected in the Yoorrook Justice Commission's methodology.^{vi} In practice, this may look like embodying an engagement approach as described above, safeguarding Indigenous data sovereignty



and governance principles, creating spaces that are culturally safe and inclusive and ensuring that First Nations peoples have a role in shaping the Commission at all stages of its life—from development to operation to evaluation and reporting. It also provides a form of accountability that ensures that the Commission can meaningfully understand injustices and inequalities and not recreate these settings through its processes.

Creating cultural safety and inclusive spaces for truth-telling

Relating to:

Part 2—Establishing the Truth and Justice Commission

Part 3—Powers of the Truth and Justice Commission

Part 4—Offences

Cultural safety is paramount in any process involving First Nations people and we respect that the Bill recognises this in [Part 2 Section 9\(4\)](#). However, we believe that this could be better articulated in the Bill to reflect an approach that prioritises deep listening, reciprocity and respect for First Nations knowledge systems, and creates safe spaces where First Nations people can share their stories without fear of retribution or misunderstanding. **Foremost, we believe cultural safety is missing in the Bill as the operation of the Commission described may be harmful and exclusionary to many First Nations peoples.**

The Bill states that the Commission will hold hearings supported by legal counsel, the summoning of witnesses and related penalties for non-compliance (defined in Part 4). This approach could create an atmosphere of fear and exclusion, particularly within First Nations communities that have historically, and continue to be disempowered by the legal systems due to colonial, racist and patriarchal policies and attitudes. The provisions in the Bill have the potential to inadvertently re-traumatise those engaging, silence important voices and deter community participation in the truth-telling process.

This is particularly clear in [Part 4, Section 17](#) regarding unauthorized presence at hearings and the publication of evidence – The inclusion of penalties such as imprisonment is deeply concerning. These measures are likely to be seen as coercive and intimidating. Such punitive measures risk undermining the very principles of truth-telling, transparency and justice that the Commission intends to uphold.

It is critical that the Commission's work is carried out in a manner that fosters trust and encourages open dialogue and participation, without resorting to punitive measures.

We advocate and recommend for the removal of these penalties, with a focus on restorative practises that align with the values of justice, healing and respect for First Nations people. As the Joint Select Committee on Constitutional Recognition



relating to Aboriginal and Torres Strait Islander Peoples suggests, collaborating with Indigenous health organisations and groups would help the Commission provide support for witnesses ensuring that their knowledge and lived experiences can be shared in a safe environment, especially where conventional hearings spaces are inappropriate.^{vii}

This legal approach to justice also does not respond to how many First Nations communities interpret justice or view meaningful processes towards justice. Throughout the Wiyi Yani U Thangani Report (2020) and broadly across Australian media and academia, many First Nations peoples have expressed that they do not see the current Australian legal and court system as providing ‘justice’. Rather, it is an actively unsafe and violent system that negatively impacts all areas of First Nations people’s lives. As noted by women in the Wiyi Yani U Thangani Report (2020), “Unless there is a healing pathway, no one will say anything. Everything is about punishment—a learned behaviour from colonisation”^{viii}

This sentiment is further shared in the landmark final report of the Inquiry into Missing and Murdered Indigenous women and children, sharing the horrific rates of violence and responses to violence through the justice system perpetuated against First Nations women and finding there has been “little, if any, justice” for these victims.^{ix} It is therefore unlikely that First Nations peoples will meaningfully engage or feel safe in providing evidence through the hearing system proposed in the Bill, nor in an environment that does not clearly reflect principles aligning with cultural safety, self-determination and healing.

Furthermore, defining justice in relation to the Commission’s abilities to inquire into the historic and ongoing injustices against First Peoples in Australia and the impacts of these injustices should be further defined to reflect what ‘justice’ means to First Nations peoples. We recommend that the Commission replicate a model of truth-telling built on the premise of ‘healing’ and ‘peacebuilding’ as articulated by First Nations communities and organisations, including Wiyi Yani U Thangani and the Yoorrook Justice Commission. We believe that this approach would better represent a process of justice and allows those engaging with the Commission to feel more comfortable to express what justice and injustice means to them. Although Yoorrook does include hearings, they are deeply grounded in the principles described above.

Approach to truth-telling

The Commission must ensure that truth-telling extends beyond the recounting of histories and serve as a catalyst for societal transformation. Without actionable components, the process risks becoming symbolic, rather than effecting real change. Truth-telling must not be an end in itself but a pathway to addressing the root causes of injustice, fostering structural reforms in governance, policy, and social relations.



A relational approach to truth-telling, where the stories of Elders, youth, women, men, and gender-diverse peoples are shared together, will contribute to a collective healing process. The Wiyi Yani U Thangani Change Agenda for First Nations Gender Justice (Change Agenda) emphasises lateral love, ensuring that truth-telling does not divide communities but strengthens relationships by nurturing empathy, understanding, and collective responsibility.

Truth-telling and agreement-making processes currently exist across Australia within various sectors and spaces, grounded in First Nations communities and organisations. These processes, often led by First Nations women, embody 'healing' and 'peacebuilding.' They work to keep culture and community safe and thriving amidst the historical legacy and ongoing systemic violence, dispossession, and inequality that undermine the rights and wellbeing of First Nations peoples.

The intersection between truth-telling and healing is highlighted in the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples' Final Report (2018), which explores the value of a truth-telling body or process in responding to the disempowerment, frontier violence, and ongoing marginalisation caused by colonisation and settlement in Australia.^x The Committee endorses truth-telling as an approach to healing, stating that it is crucial in empowering Aboriginal and Torres Strait Islander peoples. It also plays a vital role in enriching Australian culture and building support for reconciliation.

According to the First People's Assembly of Victoria, truth-telling, involves openly sharing historical truths after periods of conflict to enable societies to move forward in a more inclusive way, grounded in justice and human rights. It recognises the injustices that have been largely ignored and actively hidden from the Australian consciousness, reshaping how Australia's history is viewed. This process empowers individuals to share their stories openly and have their truths acknowledged. Furthermore, truth-telling embodies healing and peacebuilding and exposes the impacts of colonisation, identifies the causes and responsible parties, and reveals how these structures continue to affect First Nations peoples today.

Truth-telling is essential for developing an official record and shared understanding of our history across both Aboriginal and non-Aboriginal communities in Victoria, ensuring that these truths cannot be denied or minimised. Through this process, truth-telling has the power to change minds and behaviour, fostering a more just and inclusive society.

Learnings from Wiyi Yani U Thangani's Ways of Working

Our nine Ways of Working, as articulated in The Wiyi Yani U Thangani Change Agenda, offers a powerful framework and foundation for truth-telling that is deeply rooted in First Nations knowledge, values and experiences.^{xi} These Ways of Working are designed



to respect cultural protocols, honour relationality, and foster a holistic approach to justice and healing:

(Re)Learning:

(Re)Learning is about recognising the importance of learning and unlearning in the pursuit of truth and justice. This principle encourages the Commission to approach its work with humility and an openness to new knowledge and perspectives. It acknowledges that the truth-telling process is an ongoing journey that requires a willingness to confront uncomfortable truths and to learn from the experiences and wisdom of First Nations communities. When we connect to our ancestral knowledges and ways of doing and being, we free our minds from colonial and patriarchal thinking. This connection enables us to embrace other perspectives, ideas, and ways of living that challenge inequalities, prejudice, and individualism. By embracing (re)Learning, the Commission can work towards collective, societal, and ecological wellbeing, ensuring that its processes are informed by the latest insights and understandings while honouring the deep knowledge and wisdom within First Nations cultures. This approach will help create a more dynamic responsive truth-telling process that is capable of adapting to the needs and realities of the communities it serves.

Respect and Relationality

Respect and relationality are fundamental to all interactions within First Nations communities. This principle requires the Commission to honour and respect cultural protocols and practices throughout its processes. It emphasises the interconnectedness of all individuals and communities, recognising the importance of building and maintaining relationships based on trust, mutual respect, and understanding. When we recognise the interdependence between all human and more-than-human beings¹, we are able to set aside our egos and connect from the heart. This connection fosters relationships of mutual respect and trust, where care and support are exchanged. By embedding this principle into its operations, the Commission can create a space where First Nations voices are heard, valued, and treated with the dignity they deserve. This approach will help foster respectful dialogue that honours the rich diversity of experiences and perspectives within First Nations communities, ensuring that the truth-telling process is both inclusive and equitable.

Lateral Love

Lateral love underscores the importance of nurturing and supporting one another within the community. This principle calls for the Commission to embrace a compassionate and empathetic approach in all its interactions, ensuring that the truth-

¹ Referring to plants, animals and all creatures in our environment.



telling process is not just about uncovering historical truths but also about healing and reinforcing the bonds within First Nations communities. When we practice lateral love, our spirits grow, and we become open to challenging conversations without feeling threatened. Instead, we embrace one another, fostering connections, healing from past divisions, and thriving in a society built on care, trust and respect. By incorporating lateral love into its work, the Commission can create a safe and supportive environment where individuals feel empowered to share their stories without fear of judgment or retribution. This approach will help to build resilience and solidarity within communities, ensuring that the truth-telling process contributes to healing, unity, and collective strength.

Embracing All Our Identities

Embracing all our identities acknowledges the rich diversity within First Nations communities, recognising the varied experiences, identities, and perspectives that shape them. This principle calls for the Commission to ensure its processes are inclusive and reflective of the full spectrum of First Nations identities, including differences in age, gender, sexuality, additional abilities, and cultural background. When we embrace, celebrate and respond to our multiple and vibrant identities and abilities, we gain a deeper appreciation for diverse perspectives and ways of expressing ideas and knowledge. There is strength in our diversity, which contributes to the collective wellbeing. By embedding this principle into its work, the Commission can create a space where all individuals feel seen, heard, and respected. This approach ensures that the truth-telling process is not only inclusive but also deeply reflective of the rich and varied identities within First Nations communities, harnessing the collective strength that comes from embracing diversity.

Deep Listening

Deep listening is about truly hearing, understanding, and connecting with the stories and experiences of First Nations people. This principle requires the Commission to approach its work with patience, attentiveness, and a profound respect for the knowledge and wisdom being shared. When we practice deep listening, empathy and connection flourish. We become fully present, immersing ourselves in the words, feelings, energies, and other non-verbal cues. This fosters genuine communication and learning, encouraging us to explore new, old and transformative ways of knowing and understanding. By embedding deep listening into its processes, the Commission can create a truth-telling journey that genuinely honours the voices and experiences of First Nations people. This approach ensures that the truth-telling process is not only meaningful but also deeply rooted in a true understanding of the histories and realities of First Nations communities.

Self-Reflective and Aware

Self-reflective and aware encourages the Commission to continuously reflect on its practices, biases, and assumptions. This principle calls for a deep commitment to self-awareness and a willingness to critically examine the Commission's role in the truth-telling process. When we consider the environments and interactions that have shaped our thoughts and behaviours, and those of others, we are gifted the opportunity to practice curiosity, healing, and mindfulness. This reflection fosters greater acceptance of our lived experiences and expressions, as well as those of others. By embracing self-reflection and awareness, the Commission can ensure that its processes are fair, just, and free from bias, leading to more trusting and meaningful relationships and a truth-telling process that is transparent and accountable to the communities it serves.

Intergenerational Action

Intergenerational action highlights the importance of engaging with and learning from both elders and younger generations within First Nations communities. This principle urges the Commission to ensure that its processes are deeply informed by the wisdom of the past while remaining forward-looking and responsive to the needs and aspirations of future generations. When we sow seeds of care, we lovingly act with an intergenerational mindset, understanding that what we do today, as our ancestors have done before us, will sprout and bloom for a new tomorrow. By planting knowledges and practices for our young ones, sharing stories across generations, and contributing to a healthy and safe world, the Commission can create a truth-telling process that honours the continuity of knowledge and culture across generations, respecting the past while nurturing hope for the future.

Shaping and Keeping Balance

Shaping and keeping balance calls us to fully engage our whole being when connecting with the world around us. This means leading not only with our hearts and minds but also drawing on the energies of all that surrounds us. It involves listening to the voices of our ancestors, the trees, waterways, animals, and the wind, to make sense of who and what we are engaging with and to understand what we need to do next. When we see and understand the roles and responsibilities of others, in all their diversity, including our more-than-human kin, we act to nurture and balance wellbeing. We recognise the role everyone has in shaping our world, maintaining, and growing the strength of our knowledges, practices, and ways of being. Incorporating this principle into the Commission's work requires a holistic approach that honours the interconnectedness of all living things. By embracing this way of working, the Commission can ensure that its processes are grounded in a deep respect for the natural world and the wisdom it holds. This approach is transformative, helping to break down hierarchy, discrimination, and inequality, while ensuring that truth-telling



efforts are not only effective but also spiritually and culturally aligned with First Nations ways of knowing and being.

Sense-making

Sense-making involves understanding and interpreting the intricate realities and histories of First Nations communities. This principle urges the Commission to approach its work with a holistic commitment to grasping the broader context in which stories and experiences are shared. When we engage our whole being in connection with the world around us, we lead not only with our instincts but also with our hearts and minds. By drawing on the energies of everything that surrounds us and listening to the voices of our ancestors, the trees, waterways, animals, and the wind, we can make sense of who and what we are engaging with and determine what needs to be done next. Through practising sense-making, the Commission can ensure that the truth-telling process is deeply informed by the complex realities of First Nations peoples, creating a more nuanced and comprehensive approach to addressing the interconnected issues they face.

MEASURING AND EVALUATING THE EFFECTIVENESS OF THE COMMISSION

Relating to:

Part 2—Establishing the Truth and Justice Commission
Part 3—Powers of the Truth and Justice Commission

Key to embedding the approaches of healing, peacebuilding and truth-telling, and what holds us accountable to the Wiyi Yani U Thangani 'Ways of Working' is having a meaningful measurement, evaluation, and learning (MEL) framework. The Bill does not include discussion of MEL, only referring to reporting on the evidence in [Part 2, Section 10](#). While reporting may be useful in some contexts, we believe that it is not suited to the work of the Commission where focus should be on listening to and responding to the experiences of First Nations people and creating a safe and meaningful space for learning, beyond simply collecting evidence. Largely, the Commission has the opportunity to be an emblem of reconciliation and self-determination if it holds spaces to listen, learn, calls mainstream Australia to account for injustice, and direct action for change.

We fear that reporting, like many commissioned reports, for example *Bringing the Home* (1997), *Women's Business* (1986), *Family is Culture* (2019), end up on a shelf with little substantive response.^{xii} Not only is this disrespectful to those contributing information

to the reports, but reflects that processes considered for the operation of the Commission are grounded in the regulatory ritualism of government—having little reflection on how to effectively achieve the aims of what the Commission is being created for, and which may not capture the full impact of the Commission’s work.

Consideration of these previous inquiries and reporting should also form part of truth-telling discussions to explore where change has and hasn’t occurred, and how processes need to change to better respond to First Nations peoples needs and values. This information will not only serve as evidence of past and contemporary injustice, but also help model the Commission processes to ensure these failures are not repeated.

We propose that a MEL framework be embedded throughout all stages of the Commissions development and operation. This means that MEL should not be an afterthought or a separate process, but should be integrated into the Commission’s day-to-day activities. This approach would ensure that the Commission is constantly learning and evolving to meet the needs of First Nations people. It will also provide accountability measures to Government that the Commission is functioning effectively, and to the First Nations peoples it engages, including the Commissioners and staff. It will ensure meaningful engagement for those sharing their stories to feel confident and safe in processes, and those listening use stories respectfully and accurately (responding to [Part 2, Section 8\(4\)](#) on ensuring cultural safety).

A First Nations approach to MEL is different from the mainstream western framework, incorporating the human rights, gender justice, healing and peacebuilding approaches described above. An articulation of what this might look like is provided in the Wiyi Yani U Thangani Change Agenda where we describe MEL as a process that takes place across the life of our work and is deeply embedded in our ways of engaging with First Nations peoples. This is largely shaped by our Ways of Working, and reflected back into our work by gathering ‘signals’. The Change Agenda states that “signals are the things that we see, hear, feel or sense, that tell us that we are making progress toward our outcomes. Use of signals is a purposeful shift away from numerical rigid indicators that dictate the process of change, and towards paying close and sustained attention to our surrounding environments and systems.”^{xiii} In listening and learning from First Nations peoples and gathering these signals, we can reflect back on our processes and make changes as needed in real-time. This can be applied to the Commission, for example, when collecting evidence by asking participants how they are feeling in the space, and reflecting on the energy and response received. This will help inform future engagements and use of the information gathered.

In addition to our Ways of Working, the principles we use to enact our MEL are:

- **Engagement and reciprocity:** All measurement and evaluation is done through deep engagement and continuous involvement of First Nations peoples across all stages.



- **Truth-telling:** Recognising the value and importance of sharing and using knowledge.
- **Our ways of knowing, doing and being:** Recognising that data collected is deeply rooted in First Nations stories, lived experiences and understandings
- **Understanding change:** Processes and programs to deliver change have to be analysed and evaluated as they unfold
- **Genuine and safe engagement:** Ensuring safeguards for engagement embed self-determination
- **Our communities are researchers and evaluators:** The knowledges held are valuable, First Nations communities should be resources and supported to engage in evaluation in a self-determined way.

The Yoorrook Justice Commission also builds similar principles into their Methodology. This approach is founded on the principles of Indigenous data sovereignty (IDS).

Protecting IDS must be an important and integral element of the Commission. IDS principles are embedded within the UNDRIP and have been strongly advocated for globally by Indigenous groups to reclaim, protect and safeguard their knowledges, languages, practices, resources and all data pertaining to their lives.^{xiv} The Yoorrook Justice Commission describes IDS as the “right of Indigenous Peoples to own, control, access and possess data that derive from them, and which pertain to their members, knowledge systems, customs, resources or territories. Indigenous data governance (IDG) is the enactment of IDS and refers to the mechanisms that support Indigenous decision-making on how data are controlled, collected, interpreted, accessed, stored, and used”.^{xv}

These principles can be embedded in the ways that the Commission has responsibilities with information it collects through research and engagement with First Nations peoples and how it holds this data safely and respectfully. While [Part 3, Section 15](#) of the Bill states that the Commission will have power to retain and inspect documents and other things produced and provided to the Commission as deemed necessary, consideration of how this aligns with IDS and IDG must be strongly considered. Without, the Commission risks not including individuals holding important knowledge as these knowledge holders may feel unsafe to contribute fearing their stories will no longer belong to them. Taking this knowledge away from communities will risk reproduce the injustices likely raised in engagements throughout the Commission.

Ensuring this does not happen, First Nations communities must be engaged with before collecting data to produce agreements as to who will own the data and where it will be stored. **We recommend that this data be held by First Nations organisations with experience and capacity to host data aligning with IDS and IDG principles.** This may be local community organisations or through processes aligned with local and state-based truth-telling processes as discussed above or at a national level with



Indigenous organisations such as AIATSIS, the Lowitja Institute or the Wiyi Yani U Thangani Institute (for data specific to women, girls and gender-diverse peoples). Consideration of how this data weaves into the Commissions reporting, evaluation and learning approach is also important to ensuring it safeguards the rights of First Nations peoples.

CONCLUSION

We believe that the Truth and Justice Commission represents a significant opportunity to address the injustices faced by First Nations people and to promote healing, reconciliation and systemic change. However, for the Commission to be truly effective, its design and implementation must reflect the principles of cultural safety, inclusivity and meaningful engagement. It must also reflect meanings of justice and truth-telling as articulated by First Nations peoples.

The design and processes of the Commission considered in the Bill risks reproducing the injustices faced by the First Nations peoples it aims to understand by not creating a culturally safe environment to share lived experiences and knowledge. It also does not include accountability and MEL processes that are conducive to ensuring the Commission functions in ways that meets First Nations peoples' needs and values.

We urge the Joint Standing Committee to consider the recommendations outlined in this submission onto ensure that the Commission is designed and acts in a way that respects and honours the experiences and aspirations of First Nations people. By adopting these recommendations, The Commission will be a vehicle towards a more just and equitable future for all Australians.

We appreciate the opportunity to contribute to this important process and look forward to the continued development of a national truth-telling body.

ENDNOTES

- ⁱ Joint Standing Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples (Final Report, November 2018); Yoorrook Justice Commission, (Webpage) <<https://yoorrookjusticecommission.org.au>>.
- ⁱⁱ Megan Davis, *Family is Culture* (Review Report, 2019).
- ⁱⁱⁱ Northern Territory Truth Commission, *Towards Truth Telling* (Report, 12 February 2021) 5.
- ^{iv} Joint Standing Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples (Final Report, November 2018) 172.
- ^v Australian Human Rights Commission, *Wiyi Yani U Thangani: Securing our Rights, Securing our Future* (Report, 2020) 25.
- ^{vi} Yoorrook Justice Commission, *Methodology*, (Key document) <<https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/06/methodology.pdf>>.
- ^{vii} Joint Standing Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples (Final Report, November 2018) 172.
- ^{viii} Australian Human Rights Commission, *Wiyi Yani U Thangani: Securing our Rights, Securing our Future* (Report, 2020) 139.
- ^{ix} Lorena Allam and Kate Lyons, 'Landmark report on murdered Indigenous women condemned as 'weak' and toothless' *The Guardian* (News article 16 August 2024) <<https://www.theguardian.com/australia-news/article/2024/aug/15/landmark-report-on-murdered-indigenous-women-condemned-as-weak-and-toothless>>.
- ^x Joint Standing Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples (Final Report, November 2018).
- ^{xi} Australian Human Rights Commission, *Wiyi Yani U Thangani Change Agenda for First Nations Gender Justice* (Report, March 2024).
- ^{xii} SBS News, 'Bringing Them Home response unfinished 20 years later' (web article, 25 May 2017) <<https://www.sbs.com.au/news/article/bringing-them-home-response-unfinished-20-years-later/7uwgvu9wg>>; Australian Human Rights Commission, *Wiyi Yani U Thangani: Securing our Rights, Securing our Future* (Report, 2020) 17; Dechlan Brennan, "'Leading us down the path of another Stolen Generation": AbSec demands self-determination in child protection services after scathing reports" *NIT* (Web article, 7 June 2024) <<https://nit.com.au/07-06-2024/11860/leading-us-down-the-path-of-another-stolen-generation-absec-call-for-self-determination-in-child-protective-services-in-the-wake-of-scathing-reports>>.
- ^{xiii} Australian Human Rights Commission, *Wiyi Yani U Thangani Change Agenda for First Nations Gender Justice* (Report, March 2024) 19.
- ^{xiv} Lowitja Institute, *Taking Control of Our Data* (Report, January 2024).
- ^{xv} Yoorrook Justice Commission, *Indigenous Data Sovereignty and Data Governance* (Paper) <https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/04/041922_Yoorrook_DataSovereigntyGuidance.pdf>.