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**11th August, 2024**

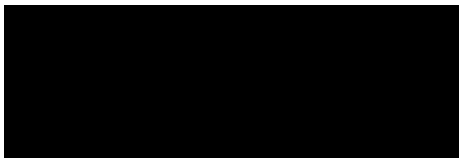
Committee Secretary  
Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Committee Secretary,

***“We Still Have A Responsibility - A Role To Play, In Healing And Building Our Nation”***

We welcome this opportunity to make a submission to the Committee’s inquiry into a *Truth and Justice Commission Bill 2024*.

Respectfully submitted,



Dr Anne Poelina  
Chair

## 1 Introduction – Background to Martuwarra Fitzroy River Council (MFRC)

1.1 The Martuwarra Fitzroy River Council (MFRC) is an Indigenous led organisation established in 2018 in Fitzroy Crossing, Western Australia by native title groups with responsibility and duty of care under First Law as ‘one society’ for the wellbeing of Martuwarra (Fitzroy) River and its catchment area in the Kimberley region. We speak for this River, with people and River as a ‘single living entity’ with a right to live and flow. We govern it on a foundation of First Law, or Warloongarriy and Wunan Laws, underpinned by the concept of ancestral personhood, sacred ancestral serpent beings. We have documented this approach in several publications.<sup>1</sup> We also draw attention to our Martuwarra Fitzroy River Council, soon to publicly launch and host an ‘Interactive Map’ on our website, to reflect the national and global values of this unique place through films, stories, and including a 36, 000-word thesis profiling ‘Country, Culture and Truth telling’ storyline of this unique, national, and Indigenous sacred heritage. Please see the link below to our website, sharing our projects, dreams, locating our past, present and future details of who we are.

<https://www.martuwarra.org/>

1.2 The MFRC is guided by a diverse representation of senior elders with cultural authority; knowledge holders on the front line, with young leaders promoting and protecting diverse yet complimentary Indigenous people, cultures and biodiversity. Recently, we were listed at the Global Water Forum (Bali, May, 2024) as the worlds’ ‘First Living Water Museum’, showcasing it as ‘forever economies’, and ‘economies of wellbeing. We are simultaneously building an evidence base to defend against poverty, the destruction of Indigenous communities and our cultural heritage, and ecological damage, climate change and water injustice.

1.3 The MFRC maintains and develops its capacity as a knowledge broker in the pursuit of Indigenous rights, climate, land, and water justice. With Council’s ability for Truth telling, we continue to build partnerships with conservation groups, industry, and university partners. Importantly, too, our focus on community led initiatives to ensure development will sustain both lifeways and sustainable livelihoods on and with Country.

1.4 We welcome this opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee on the *Truth and Justice Commission Bill 2024*, and make Recommendations for changes and additions to the text of the Bill.

1.5 We commend this initiative and strongly support a Truth and Justice Commission, on the basis of the changes we recommend in this submission.

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<sup>1</sup> Anne Poelina, Katherine S. Taylor & Ian Perdrisat (2019) ‘Martuwarra Fitzroy River Council: an Indigenous cultural approach to collaborative water governance’, *Australasian Journal of Environmental Management*, 26:3, 236-254, DOI: 10.1080/14486563.2019.1651226; Alessandro Pelizzon, Anne Poelina, Afshin Akhtar-Khavari, Cristy Clark, Sarah Laborde, Elizabeth Macpherson, Katie O’Bryan, Erin O’Donnell & John Page (2021): ‘Yoongoorrookoo’, *Griffith Law Review*, DOI: 10.1080/10383441.2021.1996882; Martuwarra RiverOfLife, Katherine S Taylor & Anne Poelina (2021) ‘Living Waters, Law First: Nyikina and Mangala water governance in the Kimberley, Western Australia’, *Australasian Journal of Water Resources*, 25:1, 40-56, DOI: 10.1080/13241583.2021.1880538.

## 2 Recommendations

We note that the purpose of the proposed *Truth and Justice Commission Bill 2024* (“The Bill”) is to ‘establish a Commission to inquire into and make recommendations to Parliament on particular matters relating to historic and ongoing injustices against First Peoples of Australia and the impacts of these injustices on Indigenous Australians’.

We strongly support a national Truth and Justice Commission. However, our recommendations are for substantial changes to the proposed Bill, especially structural change, as we argue that a Commission should be established from a local, bottom-up, Indigenous community-based decision-making and representative process. It should not be a top-down process based on and informed by political decisions and Ministerial selection processes.<sup>2</sup>

### **We therefore recommend the following:**

- 1 Changes to Section 6 (Establishment of the Commission) and Section 7 (Appointment of Members) to incorporate our suggestions for a grass-roots, bottom-up, Indigenous representative and elected structure and membership of a Commission;
- 2 Additional Sections be added to the Bill, to provide for:
  - (a) Recognition and Protection of Indigenous Cultural and Intellectual Property Rights,
  - (b) Protection of Indigenous Data Sovereignty,
  - (c) Acknowledgement of Indigenous cultural safety, and protection from cultural harm,
  - (d) Appropriate ethics,
  - (e) Appropriate Management and Protection for culturally sensitive information, including oral histories and stories.
- 3 That the Parliament also take stronger actions to introduce a range of additional Truth-Telling mechanisms, processes, and initiatives, and also to support and strengthen existing and developing local and other Truth-Telling initiatives; and
- 4 That Parliament take measures to implement in full the 1948 *Genocide Convention* into Australian domestic law;
- 5 That Government and the Parliament take steps to build greater community awareness and information about crimes against humanity, including genocide, and more education about the stories and histories of our people.

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<sup>2</sup> Turnbull, S., Stoianoff, N., and Poelina, A. (2023), ‘Polycentric self-governance and Indigenous knowledge’, *Journal of Behavioural Economics and System Science*, 5(1-2), 62-82, [https://globalaccesspartners.org/wp-content/uploads/2023/11/GAP\\_Journal\\_BEES2022\\_v5\\_n1-2-1.pdf](https://globalaccesspartners.org/wp-content/uploads/2023/11/GAP_Journal_BEES2022_v5_n1-2-1.pdf)

### 3 Rationale

Our rationale for the above recommendations is based on our call for an urgent process of truth-telling, so that our stories can be told, heard and listened to.

- (1) The Australian government is not adequately acknowledging the continuing impacts of colonisation, and the continuing invasion, and justification of unjust development projects. There is a need to consider the ‘politics of economics’. These unjust development projects do not have a ‘social license’ to operate, and they undermine our rights as human beings<sup>3</sup>, and of our non-human kin to live in a clean environment free for harm, pollution on our lands and waters. The need for truth-telling is urgently called for, in the light of the continuing water capitalism, with the destruction of our lifeways and livelihoods, as genocide and ecocide.<sup>4</sup>
- (2) Governments have, historically and continuing, under-funded and/or discontinued successful Indigenous community strategies that are demonstrating improvements in remote community settings. The continuing government culture of central control of policy and funding undermines contemporary philosophy that proposes collaborative relationships between government and communities. In this circumstance government needs to include a wider range of portfolios, beyond Indigenous affairs. For example, resource extraction has a huge impact on Traditional Owners, however governments, both federal and state, maintain exclusive decision-making control over resource policy and law. These are among the reasons for our recommendation that a Truth and Justice Commission must be an Indigenous, self-determining entity, formed through local and regional, Indigenous led, community consultative and decision-making processes.
- (3) Governments have created a lottery. There continues to be short term investment as the small amount of funding that is made available is released in dribs and drabs of uncoordinated election cycle competitive grants that communities submit and hope they will be lucky, each time.
- (4) There is insufficient funding, policy and goodwill required for a genuine collaborative relationship between government and each individual community. Members of the MFRC are developing a long-term strategy to create sustainable holistic community led practice.
- (5) There is insufficient funding and/or policy to support community created initiatives to negotiate culturally appropriate place-based training, education, and information, as well as building stronger community awareness about genocide and other crimes against humanity, to encourage prevention from further institutional harm.

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<sup>3</sup> Poelina, A., Brueckner, M., & McDuffie, M. (2021). For the greater good? Questioning the social licence of extractive-led development in Western Australia’s Martuwarra Fitzroy River region. *The Extractive Industries and Society*, 8(3), 100827. <https://doi.org/10.1016/j.exis.2020.10.010>.

<sup>4</sup> Poelina, A. (2022). *Submission - On Just Terms*. Martuwarra Fitzroy River Council. <https://doi.org/10.6084/m9.figshare.21103456.v1>

### **3 General Comments on the Proposed Truth and Justice Commission Bill**

3.1 While we acknowledge that the Committee asks that submissions to this inquiry focus solely on the proposed *Truth and Justice Commission Bill*, we wish to make a few general observations about the concept of a Truth and Justice Commission. This is because, we argue, the call for a Makarrata Commission to progress treaty and truth-telling as put forward in the 2017 Uluru Statement from the Heart, cannot be separated from the matter of consultations and representation, which are central to our specific comments below regarding the way the proposed Truth and Justice Commission would be formed, including selection of its members. In this context, we draw attention to the concept of dialogue – which we believe must also form part of the process and mechanism of establishing a Truth and Justice Commission.

3.2 The Uluru Statement from the Heart, delivered to the people of Australia in 2017, included, in addition to a call for a constitutionally entrenched Voice to Parliament, the establishment of a Makarrata Commission to advance treaty and truth-telling. We commend the Prime Minister's wish to give priority to closing the gap on Indigenous disadvantage, as reported from his attendance at the recent Garma Festival, and especially in the light of the recent Australian Productivity Commission's report on Closing the Gap which shows a disturbing lack of improvement for many of the targets. However, we would stress the critical need also for a process of truth-telling, including the establishment of a Truth and Justice Commission.

3.3 In this submission we are of the view that the pathway is one of a truth-telling process. Our stories need to be told and listened to, as vital to our being able to sustain our lifeways, whilst working with others to secure investment to build capacity and better livelihoods for our people. We contend that a Truth and Justice Commission would be an essential plank in work needed to improve disadvantage across all areas of Indigenous lives. This is because a fundamental part of that work must involve a deeper understanding of the conditions and circumstances, including the history, of how Indigenous people's disadvantage has arisen. Not only how it has arisen, but evidenced repeatedly, in the failure to 'close the gap'. The intergenerational evidence is overwhelming, as witnessed through the ongoing structural violence and systemic racism grounded in decades of deceitful narratives. An Indigenous led, grassroots based Truth and Justice Commission would therefore be essential to the kind of structural reform that the nation requires if we are to come together and build stronger, more resilient and healthy Indigenous communities.

### **4 Our Recommended Specific Changes to the Truth and Justice Commission Bill**

We strongly **support** the Bill, but with substantial changes to the text.

#### **Formation and Structure**

4.1 Our collaborative approach to governance, based on First Law and our people's stories, forms a strong foundation and frame for truth-telling. The MFRC is, we would suggest, a successful model of a local/regional Aboriginal self-determining entity. There are many examples of local and regional Aboriginal and Torres Strait Islander organisations that can and

must be engaged with in the development and operation of a national Truth and Justice Commission.

4.2 Our recommendation relating to the proposed structure of the *Truth and Justice Commission* goes to our concern at the way it is intended to be established. The Commission is to be established with appointments made by the 'Joint Ministers'. These Ministers will make their decisions on the basis of their being 'satisfied that the person has skills, knowledge or experience in several 'fields', (Section 7(2)) which are listed in Section 7(2) a-g.

4.3 Who will these 'Joint Ministers' be? By placing responsibility for decision-making for the appointment of Commission members with government ministers, this raises questions and concerns about the authority, politics and power relations that will influence and inform these appointments. In our view, the highly sensitive and culturally specific nature of a Truth-Telling process for First Nations peoples, we submit that it is inappropriate for members to be selected by politicians. Politicians come and go through the electoral cycle and the life of a government. It is essential that a Truth and Justice Commission be a self-determining, Indigenous body, established and operated by our people.

4.4 As stated, it is our strong contention that the initial appointments of Commission members should not be politically based, but must be driven by a grassroots process by at local and regional Indigenous community levels. We would refer the Committee to the way that membership of Victoria's Yoorrook Justice Commission was established through a community consultative process with the State's Congress of First Peoples. That body was established to advance treaty-making in Victoria, and it is entirely appropriate, in our view, that these processes (treaty and truth-telling) are closely inter-connected, as we saw in the Uluru Statement from the Heart. Selecting membership by means of an Indigenous community engagement and consultation process ensures adherence to principles of Indigenous self-determination and rights in decision-making, as provided by the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP).

4.5 Another, closely related concern we have is the Bill's provision that Joint Ministers would appoint Commission Members if they are 'satisfied' that those persons possess 'skills, knowledge or experience' in several 'fields', including such highly sensitive and culturally specific matters as First Peoples' 'history and cultural knowledge'; 'information and data sovereignty'; and 'trauma, redress and healing' (Section 7(2), (a), (b) and (c)). Our concern is, what would be the basis, or foundation for, the authority that the 'Joint Ministers' would have such that they could be 'satisfied' that potential Commission Members have the required 'knowledge or experience' in these crucial matters? We would strongly urge the Committee to review this part of the proposed Bill, to ensure that the selection of Commission Members is carried out through a process involving extensive consultations with Indigenous communities and organisations, and informed by cultural authority.

4.6 Further to the above, we acknowledge and support Section 7(3) which states 'Before the Joint Ministers appoint a person as a member, they must consult with relevant stakeholders' and Section 7(4) which provides that 'In appointing the members, the Joint Ministers must ensure that a majority of the members are First Peoples'. These provisions go to the critical matter of how the Commission intends to firstly, make the appointment of

members, and secondly, how it would engage with Indigenous people in the conduct of its inquiries. Again, we stress that these processes must be based on appropriate community consultations, and drawing on the cultural authority of our people, especially Elders, Traditional Owners, and other representatives.

4.7 The use of the term ‘stakeholders’ in 7(3) does not, in our view, adequately embrace the different kinds of authority in our communities. The wording should include ‘rights-holders’, ‘Elders’, ‘custodians’, and Traditional Owners.

### **Consultation, Partnerships and Engagement in the Establishment of a Truth and Justice Commission**

4.8 To re-iterate, we would offer the suggestion that a *Truth and Justice Commission* be established by means of a fully consultative process with Aboriginal and Torres Strait Islander peoples, communities and organisations. The Committee would do well to consider, as one example, the former Aboriginal and Torres Strait Islander Commission (ATSIC) as a potential model for Commission formed as an elected, representative Indigenous entity. A Truth and Justice Commission might, for example, be established through a ‘co-design’ process, to form a partnership with governments, or some other structural arrangement. Our point here is that this type of organisation would be far preferable to one that is designed by a top-down, politically influenced process.

4.9 In the design and formation of a Truth and Justice Commission, there are many Aboriginal and Torres Strait Islander local and regional, and umbrella and peak bodies that can, and must be engaged with by governments in the design, formation and operation of a Truth and Justice Commission. An example is the Coalition of Peaks, an organisation that the Government is already working with in several areas of Indigenous wellbeing.<sup>5</sup>

## **5 Other Models of Truth Commissions**

5.1 Following on from our comments about the way the proposed Bill would establish the Commission, including by means of appointments to be made by the ‘Joint Ministers’, we strongly recommend that the Committee conducts research into comparative truth, justice and reconciliation commissions. By examining other models, the Committee can fully inform itself and establish a sound basis upon which to consider the particular structure of the proposed Truth and Justice Commission. Of particular note, is the Yoorrook Justice Commission, established in Victoria in 2014, which was formed out of a grassroots, community process.

5.2 The Yoorrook Justice Commission (Yoorrook) is the first truth-telling body to be established in Australia. It was established as a Royal Commission under the *Inquiries Act 2014* (Vic). Yoorrook was formed from the First Peoples’ Assembly of Victoria, a body designed to advance treaty in the State of Victoria.<sup>6</sup> The First Peoples’ Assembly of Victoria is an

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<sup>5</sup> <https://www.coalitionofpeaks.org.au/>.

<sup>6</sup> Harry Hobbs (2022) ‘Unfinished Business? The Victorian Yoorrook Justice Commission and Truth Telling in Australia’. Australia and New Zealand School of Government, John L. Alford Case Library: Canberra.

independent and democratically elected body representing Traditional Owners of Country and other Aboriginal and Torres Strait Islander people in the State of Victoria.<sup>7</sup>

5.3 We also suggest that, as part of this exercise to consider the design of a Truth and Justice Commission, that the Committee look into the establishment and operation of other commissions and inquiries that have been held and conducted in Australia, particularly the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), and the Bringing them Home Inquiry.

## **Global Models**

### *South Africa Truth and Reconciliation Commission*

5.4 The Truth and Reconciliation Commission (TRC) of South Africa was established through the adoption of the *Promotion of National Unity and Reconciliation Act (1995)*. Its mandate was to investigate the gross human rights violations that occurred under apartheid between March 1960 and May 1994.<sup>8</sup>

5.5 The TRC ‘sought to provide a platform for victims/survivors to share their stories, document these abuses in its final report and provide recommendations for redress and measures to prevent future abuses’. The TRC also ‘provided amnesty for politically motivated violations, which required perpetrators to disclose the truth about their role in these abuses’. The TRC ‘focused on what it termed “gross human rights violations,” which included torture, killing, severe ill-treatment and the “attempt, conspiracy, incitement, instigation, command or procurement to commit such acts.”’<sup>9</sup>

### *Canada Truth and Reconciliation Commission*

5.6 The Canadian Truth and Reconciliation Commission (TRC) is ‘one component of the Indian Residential Schools Settlement Agreement (IRSSA), the largest out-of-court settlement agreement in Canadian history’.<sup>10</sup>

## **6 Our Comments on the Terms of Reference**

6.1 We note the Terms of Reference (Section 8), including the reference to ‘massacres, wars, killing and genocide or other acts of a similar gravity’ (at Section 8(1)(iv)) being among the many ‘historic and ongoing injustices’ that the Commission would inquire into. Many questions need to be asked of the Terms of Reference in the proposed Bill. Among these are:

- How would the Commission conduct these inquiries?

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<sup>7</sup> <https://www.firstpeoplesvic.org/the-assembly/>.

<sup>8</sup> Centre for the Study of Violence and Reconciliation (CSV), African Transitional Justice Hub, <https://atjhub.csvr.org.za/south-africa-truth-and-reconciliation-commission-1996-2002/>.

<sup>9</sup> Ibid.

<sup>10</sup> Nagy, Rosemary. (2014). The truth and reconciliation commission of Canada: genesis and design. *Canadian Journal of Law & Society*, 29(2), 199-218, at p. 200.



- What methods and approaches would be engaged with?
- What measures would be in place to guarantee cultural safety, privacy, respect for Indigenous cultural and intellectual property, adherence to and respect for Indigenous protocols, and ethics?
- What approaches would be used to manage and store such sensitive information, and protocols for access?
- Careful consideration is needed in regard to how a Commission will gather the information, and how such critically sensitive information is to be managed, used, and protected.

To address some of these questions, we would recommend including Sections, or Clauses in the Truth and Justice Commission Bill to provide for the above measures.

## **7 An Urgent Need for Truth-Telling: Genocide: “The Crime that Cannot be Named”**

To contextualise our call for the proposed Bill’s Terms of Reference to be fully informed by a deep understanding of Indigenous people’s histories, and of the circumstances of colonial violence, we offer the following notes.

### **Genocide of Indigenous Peoples**

7.1 The Terms of Reference for the proposed Truth and Justice Commission include inquiring into massacres and genocide. These are crimes of a particularly horrendous nature and will require a great deal of careful consideration regarding how a Commission will gather the information, and how such critically sensitive information is to be managed, used, and protected. Below, to help contextualise and frame the Bill’s Terms of Reference, we offer a brief outline of some of the history, and the present-day situation, of these crimes and injustices against our people. Note we have also provided some of this information in our submission to the Senate Legal and Constitutional Affairs Committee’s inquiry on the *Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024*.

7.2 The *Convention on the Prevention and Punishment of the Crime of Genocide* (the *Convention*) was introduced in 1948, in the aftermath of the genocidal acts of the Holocaust perpetrated on the European Jews by the Nazi regime. Australia signed the *Convention* on 11 December 1948, and it entered into force in Australia in 1951. However, it was not enshrined in Australian domestic law until 2002 when the *Criminal Code Act 1995* (*‘Criminal Code’*) was amended to make it an offence to commit crimes punishable by the International Criminal Court as crimes in Australian law, namely genocide, crimes against humanity and war crimes, sometimes referred to as genocide, and related atrocity crimes. However, the *Genocide Convention* has only been partially implemented domestically, and we argue that the Parliament should act immediately to *fully implement this instrument*.

7.3 The world has witnessed many acts of genocide. Examples include Rwanda, genocide of Armenians under the Ottoman Empire, atrocities in Cambodia, in parts of the former

Yugoslavia (e.g. of Bosnian Muslims), the attempts by the Nazis to eliminate the Roma and Sinti people of Europe, and of course, the Nazi Holocaust, or Shoah of Jews by the Nazis. Recently too, the case taken by South Africa to the International Court of Justice, with claims of genocide being perpetrated by the Israeli Government against the Palestinian people in the Gaza strip, further highlights the ongoing practices of hatred, massive injustice, and crimes against humanity, including genocide.

7.4 The need for an effective, grassroots, Indigenous community driven truth-telling process at all levels cannot be underestimated. The need to hear, and listen to our people's stories of dispossession, loss and genocide is paramount. In this regard, it is important to stress that the atrocity of genocide on Indigenous peoples continues in many forms, with untold massacres and other atrocities of violence on the frontier and beyond. Truth-telling is fundamental for the Stolen Generations.

### *Massacres of Indigenous Peoples*

7.5 Massacres constitute much of the terrible legacy of the colonial and post-colonial state, including in the Kimberley region. The litany of massacres perpetrated during the long decades of colonialism, and continuing, attests to the violence, not only on 'the frontier', but more widely in time and place. One of our people tells the harrowing story. As a child, senior elder Kankawa Nagarra Olive Knight described the men chained from neck-to-neck on their way to the killing fields of 'Rottnest Island', Western Australia in her language as '*dead men walking*'. The history of its legacy as a 'prison' to house the young Indigenous warriors and their wise men of high degree, to remove the resistance fighters and strategic intelligence thinkers is evidence of the genocidal practices, where very few if any of the men returned to their, families and homelands.<sup>11</sup> The number of Kimberley massacre sites are estimated to be in the 100's but the accounts are written by the murderers for the most part, covering their tracks as to the full extent of their crimes. The Australia-wide story has been well documented nation-wide, as can be seen for example by reference to a major truth-telling project led by Lyndall Ryan and others, that documents and produces a digital map of 'Colonial Frontier Massacres in Australia 1788-1930'.<sup>12</sup>

### *Cultural Genocide*

7.6 The genocide of the Aboriginal people remains a key component of the Australian colonial settler-state relationship. Genocide as colonial violence continues to take many forms. Not only has it comprised the physical elimination of a people. It has also included germ

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<sup>11</sup> For details about Aboriginal sentencing in Western Australia in the later 19<sup>th</sup> century with reference to the Rottnest Island prison, see Neville Green, 'Aboriginal sentencing in Western Australia in the late 19<sup>th</sup> century with reference to Rottnest Island prison', in : *Fire and Hearth: Forty Years on: Essays in Honour of Sylvia J. Hallam*. Bird, Caroline and Webb, R. Esmee (eds), *Records of the Western Australian Museum* 79 (2011): 77-85, <https://museum.wa.gov.au/sites/default/files/9.%20Green.pdf>.

<sup>12</sup> <https://humanities.org.au/power-of-the-humanities/the-australian-wars-new-insights-from-a-digital-map/>; also 'Colonial Frontier Massacres in Australia 1788-1930 Bibliography' © Ryan, Lyndall; Debenham, Jennifer; Pascoe, Bill; Smith, Robyn; Owen, Chris; Richards, Jonathan; Gilbert, Stephanie; Anders, Robert J; Usher, Kaine; Price, Daniel; Newley, Jack; Brown, Mark; Le, Le Hoang; Fairbairn, Hedy. The project is funded by the Australian Government through the Australian Research Council, PROJECT ID: DP140100399. <http://hdl.handle.net/1959.13/1340762>.

warfare (such as small pox infected blankets), and biological practices such as removal of children from their families, and other state interventions aimed at ‘cleansing’ the fledgling colony of its original inhabitants, or assimilating them into the general population. The Stolen Generations bear the scars and trauma from these practices. As we point out below, genocidal actions also include denial, erasure, and destruction of Indigenous culture in all its forms. Many instances of this, it has been suggested, were intentional, with policies and programmes at various levels of government deliberately devised to eliminate Indigenous peoples, including by means of assimilating them into wider society – effectively orchestrating their ‘disappearance’.

7.7 Genocidal practices include the destruction, erasure, and denial of Indigenous culture in all its forms, including language, heritage, knowledge, and ceremony. Cultural genocide therefore is another, insidious aspect of genocide. Further, the destruction of Indigenous people’s Country, the removal of people from their lands and territories, and various environmentally destructive practices, constitute forms of ecological genocide, as another element of genocide. In Indigenous people’s cosmologies there is no separation between human and non-human species, or between humans and our environment. In this regard then, we suggest, with scholar Lauren J Eichler, that ‘the destruction of nonhuman animals, land, water, and other nonhuman beings constitute forms of genocide according to Indigenous metaphysics’.<sup>13</sup>

7.8 Cultural genocide is well documented in the Australian literature, although the discussions also highlight the challenges, legal, policy and others, in societal and political acceptance of the term being applicable. Perhaps the most prominent instance of this atrocity was the removal of Indigenous children from their families, well documented by the 1997 *Bringing Them Home Report*.<sup>14</sup> Among many aspects of cultural genocide was the attempt to destroy Aboriginal people’s ways of life as they returned to their traditional Country in Arnhem Land.<sup>15</sup> This is well documented by anthropologist Jon Altman, who, drawing on the seminal writings by Raphael Lemkin on genocide, argued that this term was not just applicable to the physical destruction of a people. Rather, as Altman points out these techniques for the ‘destruction of the national pattern of the oppressed group’ that Lemkin identified as one facet of genocide, ‘seemed to bear some striking resemblance to the programmes that were being administered by the Australian state in remote Arnhem Land’.<sup>16</sup>

## **8 The Truth Deniers need to be Stopped**

8.1 The debates and discussion in the Australian literature, led by historians such as Henry Reynolds, Bain Attwood, and Lyndall Ryan, among others, have done much to expose the genocide, in documenting the painful details of the devastation wrought on our peoples. At

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<sup>13</sup> Lauren J. Eichler (2020) ‘Ecocide Is Genocide: Decolonizing the Definition of Genocide,’ *Genocide Studies and Prevention: An International Journal*, Vol. 14, Issue 2 (2020), pp. 104-121, at p. 104; Crook, Martin, Damien Short, and Nigel South, ‘Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and global ecosystems environments’, *Theoretical Criminology* 22, no. 3 (2018), pp. 298-317.

<sup>14</sup> See for example Robert van Krieken ‘Cultural genocide in Australia’, pp. 128-55 in Dan Stone (ed) *The Historiography of Genocide*, London: Palgrave Macmillan, 2008.

<sup>15</sup> Jon Altman ‘Raphael Lemkin in Remote Australia: The Logic of Cultural Genocide and Homelands’, *Oceania*, 2018, p. 3.

<sup>16</sup> Ibid.

the same time, the attempt by those such as Keith Windshuttle to deny and refute the facts of the genocide of our people, in the so-called 'History-Wars', itself constitutes a part of the ongoing prejudices and injustices that prevail, that are structurally embedded in our society.

8.2 A serious commitment to a Truth-Telling process at all levels of society, supported and resourced by governments, is essential, as part of a suite of measures we recommend to ensure the prevention of genocide. The enormity of the crimes committed against our peoples since the commencement of the colonial-settler state cannot be underestimated. As reported for example in *The Guardian* by Lorena Allam and Nick Evershed, the extent of massacre sites, with more still to be uncovered, and the legacy of poisonings, shootings and other atrocities, all highlight the critical importance of Truth-Telling, and of full implementation of the *UN Genocide Convention* in Australia, as well as the range of measures we provide in our Recommendations.<sup>17</sup>

## 9 Concluding Comments

9.1 We need to build a strong suite of legislative and policy mechanisms and processes to mitigate against genocide and genocidal actions. These must also include effective truth-telling, reckoning and reparations measures.

9.2 As stated, we strongly recommend that a Truth and Justice Commission should be established on an Indigenous, self-determining, community consultative basis. A Truth and Justice Commission Bill must include provisions to guarantee cultural safety, that appropriate ethics and protocols are adhered to, for the management and protection for culturally sensitive information, and for recognition and protection for Indigenous cultural and intellectual property rights.

9.3 Our proposition is that a Truth and Justice Commission is just one of many measures that are essential if we are to ensure that Australia as a nation state act in good faith and in the true spirit of healing and reconciliation and recognise that, as First Australians, we have the right and the responsibility to reach our full potential as human beings. The politics of economics should not be used as a weapon to enact genocide and ecocide intentions and practices. We respectfully provide this submission to build peace, harmony and reconcile and heal our nation. To walk and work together, as senior Nyikina elder, Lucy Marshall championed "shoulder to shoulder", as First Australians, "we still have a role to play". Responsibilities from the past, into the present to ground the future as Australian citizens. It is important too, that our nation consider the inter-generational equity and the rights and responsibilities of our young Australians, for Indigenous and non-Indigenous to reach their full potential as human beings. These measures must secure a strong and enduring architecture of reforms to enable smooth and efficient prosecution and punishment of such crimes against humanity. Most critically, we emphasise the need for Australia to fully implement the *UN Genocide Convention* into domestic legislation, and for Truth-Telling at all levels to be fully introduced, supported and resourced.

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<sup>17</sup> Lorena Allam and Nick Evershed, 'The Killing Times: the massacres of Aboriginal people Australia must confront', Special report, *The Guardian*, Mon 4 Mar 2019.