

27 August 2024

Joint Standing Committee on Aboriginal and Torres Strait Island Affairs

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Dear Committee Secretariat

Re: Inquiry into Truth and Justice Commission Bill

My name is Peter Murchland. I am a Non-indigenous Australian, living on Kurna Country.

I strongly support the Bill to establish the (National) Truth and Justice Commission. This is a critical step in advancing reconciliation between First and Second Peoples in Australia such that we can establish a shared national story and identity and move towards a more inclusive, just, equitable and healed nation. It is an important step in the maturing of our nation.

The establishment and operation of the Truth and Justice Commission is also essential in respectfully responding to the gracious invitation afforded to the Australian Peoples through the Uluru Statement from the Heart. I had not appreciated until recently reading “Broken Heart : a True History of the Voice Referendum” by Shireen Morris, the full significance of the Uluru Statement. I knew it represented the broadest consultation with the First Peoples in Australia, but had not considered the significance of support by 97% of participants, achieving consensus despite north-south rivalries, despite remote, regional and urban divides, despite all the usual personal and political differences and the cultural and linguistic diversity of the First Peoples in Australia. This consensus deserves greater recognition and respect, especially in light of being reminded through the Voice Referendum process that we often inappropriately expect First Peoples to be homogenous when they are no more homogenous than Second Peoples.

There are a number of issues which require the attention of the Committee and the Parliament before proceeding to consider this bill, including:

- Scope
- Approach
- Outputs

Scope

In reviewing the draft Bill, it is apparent that insufficient distinction is made between those matters relevant to the Australian nation and the Commonwealth of Australia, as opposed to those matters relevant to the States and Territories.

Some States and Territories are already advancing truth-and-justice-like processes. It is appropriate and, I would suggest, advisable that States and Territories address matters of truth and justice arising from the time of colonisation through to the present day within the limits of their jurisdiction. However, any process pursued by the Commonwealth Government should be restricted to those aspects of First People’s lives which have been and may still be impacted by processes of Federation and the subsequent establishment and operation of the Commonwealth Government and Commonwealth government bodies, as reflected in the limits expressed within the Australian Constitution.

To do otherwise is to undertake a process which would cause massive duplication of effort and resources, an unwarranted degree of pain for participants, and a gross distraction in exploring and addressing issues where the Commonwealth Government has no remit or capacity to act.

From a timeline perspective, I would suggest that the Commission is limited to considerations spanning the period 1890 to the present day, and explores those areas where the Commonwealth Government has the power and capacity to establish arrangements which will have a positive impact on present and future generations. There are numerous injustices to explore simply focussing on the processes of Federation and the subsequent Commonwealth legislation, policies and practices that emerged, and in some cases, continue to prevail today. One only has to consider the journey to the Voice Referendum to appreciate the need for truth-telling and restorative actions in order to redress the injustices perpetrated against First Peoples. Having undertaken a genuine engagement with constitutional conservatives to develop a credible and acceptable “middle way” incorporating multiple aspects of compromise, First Peoples then experienced their efforts over more than ten years being cruelly sacrificed on the altar of political ambition.

More broadly, we Non-indigenous Australians need to be alert to the manner in which our worldview influences our thinking and our behaviour and leads to injustices which would never occur to us. The terms of reference and/or explanatory notes need to be expressed in a manner that opens up exploration of any injustice inherent in a Westminster based system of national governance or inherent in an adversarial based approach to decision making when we are already aware the Indigenous forms of thinking and decision making (like yarning circles) operate on a radically different basis.

Approach

With respect to the approach that the Commission might take in fulfilling its proposed Terms of Reference, I encourage the Committee and Parliament to learn from the experience of the Yoorrook Justice Commission in Victoria.

It is evident from the Letters Patent establishing this Commission, that careful consideration was given as to how the Commission could determine a culturally appropriate process and provide for the cultural safety of participants. This does not seem to have been given sufficient emphasis in the draft Bill and may reflect the absence of a Voice to appropriately frame such considerations. There is a risk that the Terms of Reference expressed in the Bill reflect a colonial mindset and constrain the Commission in the approach that it might otherwise have determined to take. I note that this was experienced by the Yoorrook Justice Commission.

In light of the limitations that can arise in framing the Terms of Reference for the Commission, as laid out in Section 8, given the experience of the Yoorrook Justice Commission, I recommend that the Commission proceed through three phases:

- Preliminary – confirming scope
- Discovery – identifying and prioritising the range of issues to be considered
- Detailed – enabling more detailed consideration around key, prioritised issues

Report

In conjunction with the suggested three phases, I recommend that the reports designated in Section 10 are extended to encompass:

- Preliminary Report entailing
 - Confirmation of scope in a manner that clearly distinguishes national versus state/territory responsibilities, interests and issues
 - Confirmation of approach in a manner which is culturally appropriate and culturally safe
- Interim Report as prescribed
- Final Report as prescribed

Conclusion

I urge each member of the Committee in considering the submissions and their recommendations to plumb the depths of their spirit to consider the implications of their recommendations and their impact on the soul of our nation. In particular, attention should be given to the injustice and accumulating injustices that would prevail if the Committee or Parliament were to fail to proceed with a Truth and Justice Commission.

This is a point in our history where a lack of bi-partisan support should not be an excuse for failing to proceed, and thereby stalling the advancement of an Australian nation that is experienced by First Peoples as more inclusive, just, equitable and reconciled than at present. Indeed, the recent Referendum demonstrates that there is a real risk that some members of Parliament may place greater priority on their own political interests than on the interests of our nation.

I thank the Joint Standing Committee for the opportunity to make this submission and look forward to considering the report and recommendations of the Committee as our next step in advancing truth, justice and healing in our nation.

Yours sincerely

Peter Murchland