



Animal Defenders Office

Using the law to protect animals

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The Animal Defenders Office is accredited by Community Legal Centres Australia Inc.

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

By email: JSCATSIA@aph.gov.au

Dear Sir/Madam

RE: Inquiry into Truth and Justice Commission Bill 2024

Thank you for the opportunity to provide a submission to the inquiry into the Truth and Justice Commission Bill 2024 (**the Bill**) by the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (**the Inquiry**).

About the Animal Defenders Office

The Animal Defenders Office (**ADO**) is a nationally accredited community legal centre that specialises in animal law. The ADO recognises the special bond between humans and animals and seeks to protect that bond through law reform.

The ADO is founded on principles of social justice and fairness. The ADO aims to pursue justice for all sentient creatures, but believe this can take place only in a country where justice has been achieved for its First Nations peoples. Without achieving justice and self-determination for Aboriginal and Torres Strait Islander peoples, the ADO believes that all social justice campaigns will struggle to succeed.

Furthermore, as acknowledged in the *Uluru Statement from the Heart* (2017) (**the Uluru Statement**),¹ the ADO recognises that Aboriginal and Torres Strait Islander peoples were the first sovereign Nations of the Australian continent and its adjacent islands, and that this sovereignty has never been ceded. The ADO also acknowledges and respects the strong ties of coexistence that are present in Indigenous cultures between people, land and nonhuman animals.

Finally, the ADO respectfully accepts the invitation in the Uluru Statement to walk with Aboriginal and Torres Strait Islander peoples in this ‘movement of the Australian people for a better future’.

¹ *Uluru Statement from the Heart* (2017), https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF.

The ADO's submissions

The ADO supports the move to establish the Truth and Justice Commission (**the Commission**). The ADO supports the reasons behind this proposal, as set out in broad outline in Senator Cox's second reading speech;² and agrees in principle that this initiative has the potential to have a positive impact on First Nations peoples through establishing a foundation for truth-telling.

Without diminishing the value of concurrent reform, the ADO understands that the Uluru Statement sets out the path toward reconciliation as involving the *sequence* of Voice, Treaty, and then Truth. In the words of Sana Nakata, "[t]o make our Truth count, we must have Treaty. And to have Treaty, we must have Voice."³ Therefore, without either a Voice or Treaty mechanism, it is particularly imperative to conduct the move towards truth-telling with care and respect for First Nations perspectives.

It is in this spirit that the ADO makes several higher-level recommendations to improve the efficacy of the Commission. The ADO's comments coalesce around the broad themes of (1) truth-telling as an ongoing, bottom-up process; and (2) the need for ground-level support.

Truth-telling as an ongoing, bottom-up process

Other than enabling the voluntary provision of interim reports, the Commission appears designed to culminate in a single report at the conclusion of a four-year timeframe. This presents two obstacles to creating a process of genuine truth-telling.

First, it is not actively conducive to keeping civil society, especially First Nations stakeholders, informed about or engaged with the Commission's processes and progress throughout the four-year period. Indeed, Amnesty International's *Checklist for the Establishment of an Effective Truth Commission* recommends that "[t]hroughout its operations a truth commission should regularly disseminate information about its work, through a range of media, languages and formats to ensure the information is accessible to all interested sections of the public."⁴ Similarly, the International Center for Transitional Justice's publication *Truth Seeking: Elements of Creating an Effective Truth Commission*⁵ stresses the need for commissions to "pay particular attention to outreach strategies so that its mission and achievements are understood and communities have the opportunity to offer feedback and ideas that may enrich its work."

Second, the Commissions lacks either the power to follow up its findings or result in any binding outcomes or processes that will continue after its four-year tenure. This undermines the degree to which it can fostering ongoing dialogue.

²<https://www.aph.gov.au/Parliamentary%20Business/Bills%20Legislation/Bills%20Search%20Results/Result/Second%20Reading%20Speeches?BillId=s1420>.

³ Sana Nakata, "On Voice, and Finding a Place to Start," *Indigenous Constitutional Law*, 3rd March 2021, <https://www.indigonlaw.org/sana-nakata-on-voice-and-finding-a-place-to-start>.

⁴ <https://www.amnesty.org/en/documents/pol30/020/2007/en/>.

⁵ Available at: <https://www.ictj.org/publication/truth-seeking-elements-creating-effective-truth-commission>.

With these limitation in mind, the ADO recommends that:

- (a) A mechanism be inserted into the legislation that provides a minimum structural foundation for the ongoing dissemination of the Commission’s activities. One example would be the annual publication of a ‘progress report’.
- (b) A consultative mechanism be established that allows for community input and feedback into the work of the Commission.
- (c) The Commission be designed to encourage long-term dialogue. This could be achieved in a variety of ways, including making the Commission a permanent body; granting it the voluntary power to open new lines of inquiry after the four years should it see fit; and/or mandate the production of a set of informational resources such as brochures or pamphlets that can be utilised for ongoing community education.

Ground level support

Having had the benefit of reading a number of submissions to the Inquiry, the ADO shares the sentiment that an effective truth-telling requires creation of culturally safe spaces and trauma-informed support systems. To this end, the ADO endorses the submissions of the National Aboriginal Torres Strait Islander Women's Alliance (“NATSIWA”), which include *inter alia*:⁶

- “**Cultural Competency Training:** The Bill should include mandatory cultural competency training for all Commission members and staff to maintain a culturally safe environment.”
- “**Support for Participants:** The Bill should provide for psychosocial support, including counselling services, for individuals who participate in the Commission's processes, particularly those recounting traumatic experiences.”
- “**Gender Balance and Representation:** The Bill should ensure not only a gender balance among Commission members but also that representation reflects the diversity of First Nations communities, including those from urban, regional, and remote areas, as well as both Aboriginal and Torres Strait Islander peoples.”
- “**Data Sovereignty and Indigenous Data Governance:** Strengthened provisions are needed to ensure First Nations ownership, control, and governance over data collected during the inquiry. Additionally, the Bill should respect and incorporate Indigenous research methodologies, ensuring that all processes align with the principles of Indigenous data sovereignty and governance.”

Such recommendations assume even greater relevance considering that the activities of the Commission will be carried out in the shadow of the failed Voice Referendum; and it appears as

⁶ Please note that the express support of a particular submission is not intended to imply a lack of support for other recommendations made by that or another group.

though the current Australian Government is currently of a different mind as to the optimal path forward post-referendum.⁷ The absence of broad-based social and political support risks turning the truth-telling process into a polarising and divisive process.

Finally the ADO submits that the Bill should expressly provide for First Nations appointees on the Commission. Currently First Nations appointees are only indirectly provided for.⁸ This limits the ability of the Bill to achieve Makarrata, that is, the coming together of indigenous and non-Indigenous Australians for a better future in a post-Voice referendum Australia.

Thank you for considering the ADO's submissions.

Jake Fitzgerald and Tara Ward

Volunteers

Animal Defenders Office

⁷ See Kate Middleton, "Albanese endorses 'principle' of makarrata but stops short of backing truth and justice commission," *Guardian*, 4th August, 2024, <https://www.theguardian.com/australia-news/article/2024/aug/04/albanese-endorses-principle-of-makarrata-but-stops-short-of-backing-truth-and-justice-commission>.

⁸ For example, proposed section 7 of the Bill.