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Federal Truth and Justice Commission Bill 2024

Submission

Commissioner Natalie Lewis,
Queensland Family and Child Commission



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Family & Child
Commission



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1. Introduction

I am the Commissioner at the Queensland Family and Child Commission (QFCC). A key part of my role is to ensure the interests of Aboriginal people and Torres Strait Islanders are adequately and appropriately represented. I welcome the opportunity to provide a submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (JSCATSI) about the Bill to enact a Federal Truth and Justice Commission (the Commission). I am pleased to support this Federal Truth and Justice Commission Bill.

2. About the Queensland Family and Child Commission

The QFCC is a statutory body of the Queensland Government. Our purpose is to influence change that improves the safety and wellbeing of Queensland's children and their families. We are committed to Aboriginal and Torres Strait Islander children and families and to advancing the rights of all children.

The QFCC recognises the fundamental importance of truth telling in (post) colonial societies for building equality, justice and respect for First Nations self-determination. The QFCC supported the passing of Queensland's Path to Treaty Act in 2023.¹ Justice begins with truth telling

Aboriginal and Torres Strait Islander peoples have long called for Australia's history to be told truthfully. There have been few mechanisms established at the Commonwealth level to hold accountable persons accused of committing or bearing responsibility for gross violations of human rights. While there have been several formal investigations into issues such as Aboriginal and Torres Strait Islander deaths in police and prison custody, the recommendations from these inquiries have not been *effectively implemented* in any Australian jurisdiction.

While there have been no comprehensive truth commissions in Australia at a Commonwealth level, there has been a National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, which was established between 1995 and 1997 amid sharp concerns from Aboriginal and Torres Strait Islander peoples that the poorly understood history of forcible removal was hindering the recognition of the needs of its victims and their families and the provision of services.

I recognise progress in relation to truth telling and treaty across some state and territory jurisdictions. I consider this to be an important foundation for a national truth telling (and deep listening) exercise. I further recognize that truth seeking can address impunity, and provide an important forum for victims, survivors and perpetrators of human rights violations to safely tell their story.

3. Seeking truth for Aboriginal and Torres Strait Islander women and children

I acknowledge that colonisation has had specific and enduring impacts on Aboriginal and Torres Strait Islander women and children including systematic sexual and gender-based violence, forced sterilisation, and the forcible removal of children from their families.

¹ QFCC (2023), Submission to Community Support and Services Committee regarding Path to Treaty Bill, available from <https://www.qfcc.qld.gov.au/sector/policy-submissions>.

Colonisation is not a single event; it is a continuing process. There is an unbroken line from invasion, displacement and the forcible removal of children, generations of discriminatory policy through to the overrepresentation of Aboriginal and Torres Strait Islander peoples in the child protection and youth justice systems.

Should there be a commitment to a National Truth and Justice Commission, there should be an intentional consideration of gender and gender justice and the experiences of Aboriginal and Torres Strait Islander women and children.

Truth commissions should acknowledge, protect and amplify the voices of victims and survivors. Commissions should further establish a relationship with victims and survivors not only as informers, but as rights-holders, and partners in creating change.

4. All Australians will be beneficiaries of truth telling

Truth-telling is a key demand in the Uluru Statement from the Heart 2017 which calls for the creation of a Makarrata Commission to oversee agreement-making and facilitate a truth telling process. Despite the outcome of the 2023 Referendum, all components of the Uluru Statement from the Heart remain critically important in achieving transitional justice and the full enjoyment of rights for Aboriginal and Torres Strait Islander peoples.

While truth telling does not guarantee reconciliation, global practice indicates that meaningful reconciliation cannot occur without it. Truth telling can draw history into the present, it draws clear connections between past policy, present policy and current injustices. It makes evident the complex ways in which present policies reinscribe historical injustices, racism and inequality.

The establishment of a Federal Truth and Justice Commission will be historic and will benefit Australia for generations to come. The proposed Commission would facilitate open and genuine conversations, based on evidence, about how Australia's past still affects its present.

As such, it is essential that this process be inclusive of all members of Aboriginal and Torres Strait Islander communities, including children, young people and families. Actively engaging children and young people and listening to their views is critical for understanding their contemporary experiences of colonialism and discrimination and identifying opportunities to improve the systems that affect their lives.

Currently there is insufficient knowledge in the broader community about the influence of our history on inter-generational trauma and why many First Nations people think self-determination is necessary. Truth telling is foundational and without an understanding of Australia's full history and the ongoing effects of colonisation, important reforms being driven by the Federal government such as *Closing the Gap* and *Safe and Supported: The National Framework for Protecting Australia's Children 2021-2031* are unlikely to succeed. This is because our systems, organisational structures, ways of doing business and social values have never been examined in terms of their historical and current impact on First Nations peoples. This examination will be uncomfortable, but necessary if we are to advance towards shared understanding, respect and trust.

An open and educative approach to truth-telling will move us collectively towards awareness and, eventually, a more informed public and an equal society. System leaders will take accountability for the effect of their existing systems on First Nations children, young people and their families. Truth telling will make the teaching of Australian history richer and more balanced. It will support teachers to feel more confident in teaching the history of colonisation and by so doing will make schools safer places for First Nations children.

A Commission can also provide an opportunity for the achievements and contributions of First Nations peoples to be recognised and celebrated.

A Commission can assist in building understanding of Aboriginal and Torres Strait Islander self-determination to become full participants in nation building.

5. Child protection and youth justice systems

Through our systems oversight work, the QFCC has observed how past policies and practices influence present day drivers of over-representation of Aboriginal and Torres Strait Islander children and families in child protection and youth justice. Simultaneously, we see continuing under-representation of First Nations peoples in leadership of service and decision-making models. We note Victoria's Yoorook Commission chose to investigate the criminal justice and child protection systems first because Elders were concerned by the degree of harm done to First Nations people by these systems. Yoorook found child removal and surveillance of First Nations people commenced during the 19th century and has never ceased.

The extent to which this overrepresentation is a product of poverty, intergenerational trauma, limited availability of specialist education and health services and systemic bias, rather than family neglect or criminality, is known but has yet to be consistently acknowledged, communicated or practised. The number of children in youth justice with an insufficiently treated health issue or disability is an ongoing human rights violation that is further compounded by keeping these young people in custody where they may be harmed further.

Meanwhile *Closing the Gap* data tells us the proportion of First Nations children in out of home care, is worsening overall and there is no improvement in youth justice. In Queensland, 55% of children in the statutory youth justice system are First Nations. Yet with each round of changes to toughen the Youth Justice Act, this overrepresentation is never considered. A Federal Truth and Justice Commission may give us pause to reflect upon why this overrepresentation exists and provide national leadership that supports the rights of First Nations children, disrupting the policy cycle of knowing the risk but proceeding anyway and later lamenting over apparent “unintended consequences” for First Nations people.

6. Practical matters

The unreconciled damage to indigenous peoples from colonisation that never ceased, is not specific to Australia. The Commission can draw on history and clear learnings from equivalent Commissions from New Zealand, Timor Leste, USA, Canada, New Zealand and South American nations.

Alongside Indigenous knowledges and ways of being, the Commission should use the UN Declaration on the Rights of Indigenous Peoples and the UN Convention on the Rights of the Child to guide its work.

Truth telling needs to be place-based. The Commission must be able to travel across the country and sit with First Nations communities to truly understand the incongruence between national aspirations and local, lived reality. That said, protocols must be established so that any wider sharing of stories or local cultural knowledge is only with the agreement of the local community. The Commission must lead by example in how its members are selected and how community is consulted and engaged. The Bill may need to include provision for children who are in the child protection and youth justice system to be able to access truth telling. The Commission must be appropriately resourced.

7. Conclusion

I would welcome the opportunity to continue to be involved in the Committee's deliberations on this or any other matter, for example through providing policy and jurisdictional advice or by providing advice and guidelines for engaging with children, young people and families.

Should Committee members have any queries in relation to this submission they may contact Amy Lamoin, Executive Director, First Nations and Child Rights Advocacy, via email at [REDACTED]