

First Peoples Disability Network:

Submission

Truth and Justice Commission Bill 2024

September 2024



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First Peoples
Disability Network

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About First Peoples Disability Network

FPDN is the community-controlled disability peak and a member of the Coalition of Peaks, a partner to all Australian governments to the Closing the Gap National Agreement. We are also the First Nations Disability Representative Organisation actively representing the voices of First Nations peoples across Australia's Disability Strategy, the NDIS and related governance structures.

For millennia, First Nations peoples, communities, and cultures have practiced models of inclusion.

However, despite this, since colonisation, First Peoples with disability and their families have been and continue to be amongst the most seriously disadvantaged and disempowered members of the Australian community. FPDN gives voice to their aspirations, needs and concerns and shares their narratives of lived experience. Our purpose is to promote recognition, respect, protection, and fulfilment of human rights, secure social justice, and empower First Peoples with disability to participate in Australian society on an equal basis with others.

To do this, we proactively engage with communities around the country, influence public policy and advocate for the interests of First Peoples with disability in Australia

and internationally. We are also guided by both the social and cultural models of disability. The social model views disability to be the result of barriers to equal participation in the social and physical environment. These barriers can and must be dismantled. However, FPDN recognises the critical need to move beyond a social model to ensure the cultural determinants of what keeps First Nations people with disability strong is centered when working with and in designing policies and programs to improve outcomes for First Nations people. We call this a cultural model of inclusion.

A cultural model of inclusion recognises the diversity of cultures, languages, knowledge systems and beliefs of First Nations people and the importance of valuing and enabling participation in society in ways that are meaningful to First Peoples¹.

Our work is underpinned by the [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#) and the [Convention on the Rights of Persons with Disability \(CRPD\)](#).

Any questions regarding this document should be directed to Tahlia-Rose Vanissum, Head of Policy via email, policy@fpdn.org.au.

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¹Avery, S., (2018) Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with a disability, First Peoples Disability Network, (Australia), Sydney, Australia





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Committee Secretary

Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs

PO Box 6021

Parliament House

Canberra ACT 2600

5th September 2024

Dear Committee Secretary,

First Peoples Disability Network (FPDN) welcomes the opportunity to respond to this inquiry into the Truth and Justice Commission Bill 2024. FPDN supports Truth Telling and holds the position that it has the power to have a transformative effect on First Nations people, and throughout all levels of Australian society.

Truth Telling is one of the most important ways of making change. Since colonisation historical and ongoing actions and injustices drive how systems and structures affect First Nations People today. Thus, Truth Telling, and correspondingly governments taking accountability for past actions is vital for healing.

Because of this, one of the central outcomes of the Truth and Justice commission should be to establish an official record of historical and ongoing injustices against First Peoples since invasion.

“The process of colonisation has had multiple and continuing impacts on the Aboriginal and Torres Strait Islander population. First, massacres and the introduction of foreign diseases drastically reduced the Aboriginal population in the first decade following European contact. Second, the imposition of guns, alcohol, tobacco and sugar as agents of colonisation resulted in hugely increased levels of disablement among the surviving population and their future generations, which has had a long-term impact on population health status. Third, the colonisation itself was founded on the imperial legal doctrine of ‘terra nullius’, literally meaning ‘nobody’s land’...

Colonisation had a particular impact upon Aboriginal and Torres Strait Islander people with disability, centering them at a convergence of armed aggression dispossessing them from their land as Aboriginal people, alongside their social ‘othering’ as people with disability...Amongst the key ideas of the theory of market economics is a concept of ‘human capital’, which equates people to physical resources in a production process. A corollary of ‘human capital’ is the notion of a ‘disabled person’, an idea that was socially constructed to categorise those people that were perceived to be unable to participate in the market economy, or raw materials in a production process and discarded as not meeting a standard specification.² Scott Avery

² Avery, S., (2018) Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with a disability, First Peoples Disability Network, (Australia), Sydney, Australia, p. 8



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First Nations disability and intersectional disadvantage

First Nations people are twice as likely to be living with disability as non-First Nations Australians³. However, this is a conservative number, given the lack of data on prevalence of psychosocial disability, and issues around overall data collection in this space. This includes the fact that many First Nations people do not recognize they have a disability, nor do they self-identify. First Nations languages do not have a specific word for disability. For example, in Pitjantjatjara language there is no word for disability as there is an acceptance of all as part of the human experience.⁴ Further to this, some First Nations people with disability are reluctant to take on another perceived negative label of disability particularly if they already experience discrimination based upon their Aboriginality. First Nations people with a disability are amongst the most disadvantaged members of the Australian community, facing the double disadvantage⁵ of racism and ableism due to their disability and being an Aboriginal or Torres Strait Islander person. FPDNs position is that this high prevalence of disability, and the subsequent double discrimination means that First Nations people with disability need to be represented in the Truth-telling process from the outset, and that this process needs to be accessible and inclusive to facilitate this.

Currently, the Memorandum of Understanding for the Truth and Justice Commission Bill outlines that the *majority* of the Commission's members are to be First Nations people. Instead, FPDN strongly recommends revising this to include a requirement for *all* members to be First Nations people. 'The agency and self-determination of local First Nations communities is centred and guides the truth-telling that occurs, including identifying the harms that need to be addressed and the means through which this redress will occur. Non-Indigenous communities are invited into this space of cultural authority and autonomy to build relationships that are reciprocal, healing and transformative.'⁶

Additionally, FPDNs position is that the Commissioners must include First Nations people with disability to ensure the Commission is inclusive of disability voices. We know that First Nations people with disability are over-represented and marginalised across many areas of Australian society. Commonwealth systems historically have and continue to fail First Nations people with a disability, and any Commission exploring truth and justice needs to address this representation at the forefront.

The need for culturally responsive, trauma-informed and disability responsive engagement practices

Culturally responsive, trauma-informed and disability responsive engagement practices must be embedded in the Truth and Justice Commission processes to ensure that all First Nations people, including those with disability, are able to share their voices and truths and are not excluded by the design of engagements.

³ <https://www.indigenoushpf.gov.au/measures/1-14-disability>, viewed 4 September, 2024

⁴ Arriotti Louis, Social Construction of Anangu Disability, *The Australian Journal for Rural Health*, Vol 7, Number 4, November 1999

⁵ Bostock, L., (1991) Access and inequity for people with a double disadvantage, *Australian Disability Review*, Vo1.2, pp 3-8

⁶ Barolsky, V & Berger, K (2023), 'Recognising the power of community truth-telling', *ADI Policy Briefing Papers*, Alfred Deakin Institute for Citizenship and Globalisation, Deakin University, Melbourne. Available at: <https://apo.org.au/sites/default/files/resource-files/2023-09/apo-nid324192.pdf>





Consequently, the way the Truth and Justice Commission engages with First Nations people with disability should be informed by already established best practice approaches. FPDN recommends mirroring the engagement formats used by the Disability Royal Commission and the Yoorrook Justice Commission, both of which had strong principles of inclusivity and culturally responsiveness.

Given the double disadvantage First Nations people with a disability experience, it is also critical that participants are made aware of options for advocacy and mental health support before, during and after any consultation activities to prevent and address trauma. This must include support through disability and First Nations led organisations. FPDN recommends that the Truth and Justice Commission mirror the Disability Royal Commission's engagement approach in Volume 9 on First Nations people with disability: *All engagements were conducted in a way and in settings participants found comfortable and accessible. We held meetings in homes and community places, as well as on front lawns, under trees, in town camps, and on park benches. In the Torres Strait, we held some meetings while walking along the beach. Where possible, the team also made themselves available to the community after work hours and on weekends to provide as much flexibility and opportunity for people to share their stories and information.*⁷

Yoorrook established an engagement approach early on that prioritised safety, stating: *The proposed functions of the Yoo-rrook Justice Commission include providing a safe, supportive and culturally appropriate forum for First Peoples to participate in the process, including by adopting practices to minimise harm and avoid re-traumatisation. It is also proposed that culturally appropriate mental health and counselling support services are available.*⁸ Additionally, the Yoorrook Justice Commission utilizes "Truth receivers" to help ensure that the engagement with First People's is as inclusive and culturally responsive as possible.⁹ The Yoorrook Justice Commission also provides legal assistance to anyone who may encounter legal issues directly related to their evidence.¹⁰

Similarly, throughout the Disability Royal Commission, the Australian Government also funded dedicated advocacy and counselling support services for people engaging with or affected by the Royal Commission. FPDN Strongly recommends that the proposed Truth and Justice Commission includes funding for dedicated First Nations led support services.

Although engagement is vital to any successful truth telling process, FPDN's opinion is that it is equally important that the Commission recognises the reality of consultation fatigue, and the trauma associated with sharing experiences. First Nations people are repeatedly asked to share their stories to inform government policy. However, there is often no meaningful follow-up. As outlined in 'Recognising the power of community truth-telling'¹¹, truth-telling processes must ensure safety and prevent re-traumatisation, should be guided by cultural protocols and ensure informed consent.

⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023), 'Final Report - Volume 9: First Nations people with disability'. Available at: <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%209%2C%20First%20Nations%20people%20with%20disability.pdf>

⁸ First Peoples' Assembly of Victoria (2021), *Truth-telling FAQs*. Available at: <https://www.firstpeoplesvic.org/wp-content/uploads/2021/03/tt-faqs.pdf>

⁹ <https://yoorrookjusticecommission.org.au/truth-receivers/> (viewed 3rd September, 2024)

¹⁰ <https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/02/Lotjpa-Legal-Service-Fact-Sheet.pdf> (viewed 3rd September, 2024)

¹¹ Barlosky, V., ADI Policy Briefing Papers, ISSN 2652-6859 (online), Volume 3, No. 1





Finally, it is critical for this Commission to be open and transparent from the beginning and throughout all engagements about its aims and what can be achieved. FPDN's position is that we must see action and change. Joanne Luke effectively sums up the need for change in Indigenous X¹², stating:

"... we also know that without political leadership that listens to these truths, the nation does not learn from these injustices and trauma continues to be inflicted upon Aboriginal people and communities. As is the intention of the Uluru statement from the heart we need truth-telling combined with political transformation to change this nation."

Political inaction following government-led truth-telling guarantees trauma and distrust. It is absolutely unacceptable in any context, but particularly when engaging a cohort such as First Nations people with disability who have continuously suffered immeasurable and indiscriminate marginalisation and trauma due to government policies, programs and interactions.

Timeline, and state level and community participation

In FPDN's view, the proposed timeline of 4 years is insufficient to allow for a comprehensive, meaningful, culturally responsive, and trauma-informed truth telling process to occur. The Yoorrook justice commission in Victoria was initially given a timeline of 3 years, and has already been granted a 1-year extension, with a further request for an additional time still pending. Given the scale of a national Truth and Justice Commission and the need to ensure that those who want to have their say can meaningfully do so, more time needs to be allowed for this vital process to be carried out properly.

While it is proposed that this Commission will be held at a federal level, it is FPDN's view that it needs to be in conjunction with and supported by state-based organisations and communities. This type of consultation requires a level of trust and connection for First Peoples to meaningfully engage with the process. The Yoorrook Justice Commission has outlined how the purpose of truth-telling can help determine on what scale and level engagement is undertaken, stating that *'truth-telling to achieve justice for First Nations people [is] usually undertaken on a larger scale and informed by human rights frameworks to address systemic injustice at an institutional level'*, and *'truth-telling to promote reconciliation and healing...occurs mostly at the local and community level under the understanding that relationships and dialogue can create change [and is] less likely to be tied to formal outcomes or reparations.'*¹³

For the purposes of the Truth and Justice Commission, Commonwealth enquiry is still an appropriate approach. However, it is FPDN's position that it should occur through small scale, local-level engagements, noting the importance of finding balance between addressing injustice and promoting healing, particularly given that the truth-telling process for justice can be very traumatic. These smaller engagements specifically aimed at healing will be particularly critical to ensure that people with a disability can fully engage in the Truth Telling processes.

As a mechanism for achieving this, the national Commission can delegate components to jurisdictions to ensure state-level coverage but under the umbrella of the broader national work. This approach would also mean existing work (i.e. from Yoorrook) could be consolidated with new work to achieve consistency and leverage the stories people have already shared.

¹² Luke, J (2019), 'Truth-telling to reimagine our nation(s) histories', IndigenousX. Available at: <https://indigenoux.com.au/truth-telling-to-reimagine-our-nations-histories/>

¹³ <https://www.reconciliation.org.au/truth-telling-without-the-voice-there-is-a-way-forward/>



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Given that state-level truth-telling is already underway in Victoria in the form of the Yoorrook Justice Commission, there is a need for the proposed Commonwealth Truth and Justice Commission and state-level commissions to work together to avoid duplication and consultation fatigue, and to ensure that any engagements have a clear purpose with meaningful outcomes.

We thank the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs for the opportunity to make this submission and we welcome discussion on any aspects if required.

With respect,

Tahlia-Rose Vanissum

A handwritten signature in black ink that reads "T. Vanissum".

Head of Policy

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