

Inquiry into Truth and Justice Commission Bill 2024

Submission to Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs

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Executive summary

UNICEF Australia welcomes the opportunity to provide a submission to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs on the Truth and Justice Commission Bill 2024.

Our work across 190 countries is underpinned by the United Nations Convention on the Rights of the Child (UNCRC) to protect and improve the lives of children and young people. In Australia, we defend these rights, amplify the voices of children and young people and help them fulfill their potential across every aspect of their childhood.

We believe that establishing a Truth and Justice Commission is a fundamental step in addressing the ongoing and systemic injustices against Aboriginal and Torres Strait Islander children and young people in Australia.

This is part of our continuing support for the Uluru Statement from the Heart and upholding the rights of Aboriginal and Torres Strait Islander children and young people, articulated in the UNCRC and UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

The words of the Uluru Statement from the Heart say it best – “When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country”¹. UNICEF Australia shares this vision for Australia in which Aboriginal and Torres Strait Islander children enjoy the fulfilment of all their rights and aspirations.

We make this submission to offer our perspective as a leading child rights organisation, but acknowledge and respect the leadership, knowledge and authority Aboriginal and Torres Strait Islander Peoples in all matters relating to them and their children. In alignment with the UNDRIP, our submission is grounded in the guidance generously provided to us by Aboriginal and Torres Strait Islander leaders.

Summary of Recommendations

1. Establishing a Truth and Justice Commission

- *Establish a Truth and Justice Commission in alignment with the UNDRIP and UNCRC, and which articulates a commitment to upholding a rights-based approach*

2. Aboriginal and Torres Strait Islander Voice

- *Express a specific provision for Aboriginal and Torres Strait Islander appointees on the Commission*

3. Children and Youth Voice

- *Articulate commitment to engage with Aboriginal and Torres Strait Islander children and young people*

¹ First Nations National Constitutional Convention. (2017). Uluru Statement from the Heart. Central Land Council. Retrieved from <https://ulurustatement.org/the-statement/view-the-statement/>

Detailed Recommendations

1. Establishing a Truth and Justice Commission

For more than 60,000 years, Aboriginal and Torres Strait Islander Peoples have cared for our continent according to the laws and customs by which they choose to live². Their sacred link to the land has continued and endured even through our comparatively recent colonial history, which has seen the systematic dispossession of land lay the foundations for the Australia we know today³. The impacts of injustices against Aboriginal and Torres Strait Islander Peoples have transcended generations and present in structural inequalities that persist for children and young people today, be it through disparities in education, health, development, incarceration and child removal⁴.

Structural problems require structural solutions, which is why UNICEF Australia fully supports the establishment of a Truth and Justice Commission to support a formal process of inquiry into and redress of the historic and ongoing injustices against Aboriginal and Torres Strait Islander Peoples. Only through structural reform can we realise a future for all of Australia's children based on justice, and truth about our shared history is a crucial step in this journey.

The injustices against Aboriginal and Torres Strait Islander children and young people in Australia since colonisation are significant and well evidenced. The *Royal Commission into Aboriginal Deaths in Custody 1991* highlighted the systemic discrimination in the justice system which has separated children from their families, dismantled family structures and cultural connections and incarcerated Aboriginal and Torres Strait Islander children at unprecedented rates⁵. The *Bringing Them Home Report 1997* documented the forced removals of Aboriginal and Torres Strait Islander children and assimilation policies and practice that have profound impacts for families and communities and persist today through systems of oppression and intergenerational trauma⁶.

Both reports recommended truth telling as a crucial mechanism for addressing the historical injustices of colonial conflict and dispossession while highlighting the strength and resilience of Aboriginal and Torres Strait Islander Peoples to promote healing and reconciliation⁷.

Our progress against the National Agreement on Closing the Gap (the Agreement) shows why this is so necessary. The latest Annual Data Report on the Agreement by the Productivity Commission highlights significant disparities in outcomes for Aboriginal and Torres Strait Islander children and young people, many of which are either stagnating or worsening, including the number of children in incarceration, number of children in out of home care and percentage of children commencing school who are developmentally on track⁸.

A Truth and Justice Commission would offer a formal mechanism for Aboriginal and Torres Strait Islander children and their families to share their experiences, seek justice, and promote healing from past and present discrimination⁹.

² Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). (n.d.). Australia's First Peoples. Retrieved from <https://aiatsis.gov.au/explore/australias-first-peoples>

³ UNICEF Australia. (n.d.). UNICEF Australia's full position on the Indigenous Voice to Parliament. Retrieved from <https://www.unicef.org.au/unicef-australia-full-position-indigenous-voice-to-parliament>

⁴ UNICEF Australia. (n.d.). UNICEF Australia's full position on the Indigenous Voice to Parliament. Retrieved from <https://www.unicef.org.au/unicef-australia-full-position-indigenous-voice-to-parliament>

⁵ Royal Commission into Aboriginal Deaths in Custody. (1991). National Report. Retrieved from <https://www.royalcommission.gov.au/>

⁶ Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. (1997). Human Rights and Equal Opportunity Commission. Retrieved from [bringing_them_home_report.pdf \(humanrights.gov.au\)](https://www.humanrights.gov.au/bringing-them-home-report)

⁷ Australian Human Rights Commission. (n.d.). History of Aboriginal and Torres Strait Islander Social Justice. Retrieved from <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/history-aboriginal-and-torres-strait>.

⁸ Productivity Commission. (2024). Closing the Gap Annual Data Compilation Report, July 2024. Retrieved from <https://www.pc.gov.au/closing-the-gap-data/annual-data-report/closing-the-gap-annual-data-compilation-july2024.pdf>

⁹ Australian Institute of Family Studies. (n.d.). Child protection and Aboriginal and Torres Strait Islander children. Retrieved from <https://aifs.gov.au/resources/policy-and-practice-papers/child-protection-and-aboriginal-and-torres-strait-islander>

This process is essential for addressing the root causes of ongoing inequities, building trust between governments and communities and fostering a more inclusive and equitable society where all children can realise their full potential¹⁰.

Importantly, rights outlined in the UNDRIP should be central to the development and conduct of the Commission to ensure activities undertaken are meaningful, culturally safe and protect the autonomy and ownership by Aboriginal and Torres Strait Islander Peoples over the process and outcomes¹¹. This will increase the legitimacy of the Commission and ensure systems of discrimination, marginalisation and power imbalances do not persist through the structures and work of the Commission.

The UNDRIP and the UN Convention on the Rights of the Child (UNCRC) provide comprehensive frameworks for the protection and promotion of the rights of Indigenous peoples and children, respectively. By articulating a strong commitment to upholding these rights, the Commission can ensure all activities are aligned to internationally recognised standards and support the best possible outcomes for Aboriginal and Torres Strait Islander children, families and communities.

As a signatory to the UNCRC, the Australian Government has committed to protecting and upholding the rights of all children within its jurisdiction¹². Articulating this commitment in the Bill would legitimise the work of the Commission with children and young people, ensuring both meaningful participation and safeguarding in line with child rights principles.

A commitment to the UNDRIP, including the right to participation in decision-making processes that affect their lives will similarly increase the legitimacy of the work carried out by the Commission and ensure that Aboriginal and Torres Strait Islander voices and perspectives are central to the reconciliation process¹³.

Recommendation

Establish a Truth and Justice Commission in alignment with the UNDRIP and CRC, and which articulates a commitment to upholding a rights-based approach

2. Aboriginal and Torres Strait Islander Voice

While UNICEF Australia supports the establishment of the Truth and Justice Commission, we do not provide specific advice on the design or function. In our view, and consistent with a rights-based approach in alignment with the UNDRIP, the Commission should be established, and activities delivered, under the guidance and leadership of Aboriginal and Torres Strait Islander Peoples.

In the absence of a national constitutionally enshrined Voice, we support the advice from the Uluru Dialogue leadership that the Bill should include a specific provision for Aboriginal and Torres Strait Islander appointees on the Commission to ensure representation, mitigate power imbalances and ensure legitimacy of function.

Recommendation

Express specific provision for Aboriginal and Torres Strait Islander appointees on the Commission

3. Children and Youth Voice

¹⁰ Australian Government. (2021). Safe and Supported: the National Framework for Protecting Australia's Children 2021–2031. Retrieved from https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf.

¹¹ Australian Human Rights Commission. (n.d.). Self-determination and Indigenous Australians. Retrieved September 18, 2024, from <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/self-determination-and-indigenous>

¹² "United Nations Convention on the Rights of the Child." UNICEF Australia, <https://www.unicef.org.au/united-nations-convention-on-the-rights-of-the-child>

¹³ UN Declaration on the Rights of Indigenous Peoples. Office of the High Commissioner for Human Rights, <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples>

Participation and expressing views freely in matters that affect them are fundamental rights that empower children and young people to influence decisions that affect their lives¹⁴. This is particularly pertinent for Aboriginal and Torres Strait Islander children whose voices have historically been marginalised¹⁵.

UNICEF Australia strongly recommends that the Truth and Justice Commission articulate a commitment to engage with Aboriginal and Torres Strait Islander children and young people across all functions. This will both uphold their right to participate in the inquiry process and share their experiences, while also giving them agency and a sense of ownership over the reconciliation process.

Recommendation

Articulate commitment to engage with Aboriginal and Torres Strait Islander children and young people across the development and activities of the Commission

¹⁴ “United Nations Convention on the Rights of the Child.” UNICEF Australia, <https://www.unicef.org.au/united-nations-convention-on-the-rights-of-the-child>

¹⁵ SNAICC. (2022). Family Matters Report 2022. Retrieved from <https://www.snaicc.org.au/resources/family-matters-report-2022>