



Truth, Justice & Healing Project

‘Hear My Heart’

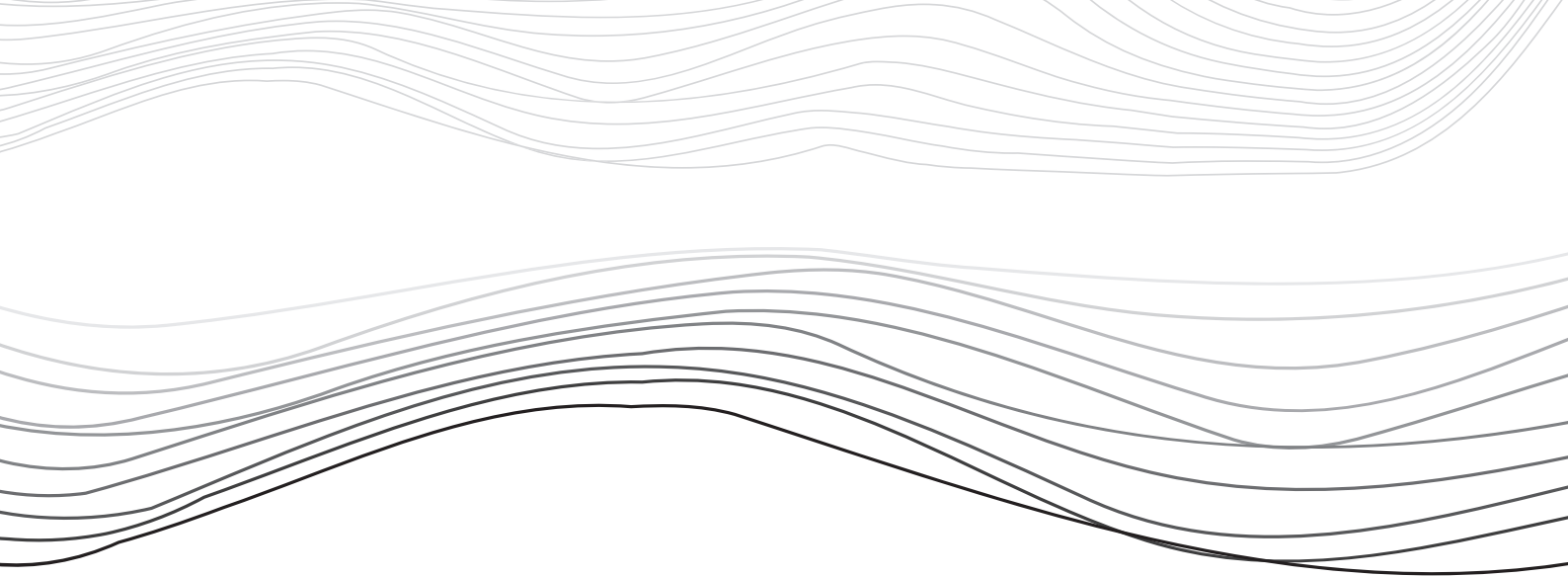
Discussion Paper
SUMMARY

What are the strengths and weaknesses of truth-telling initiatives in Australia and globally?

September 2020
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ebony

ABORIGINAL +
TORRES STRAIT ISLANDER
INSTITUTE



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This discussion paper is informed by:

- 60 000 years of excellence, wisdom and dreaming;
- hundreds of years of resistance and resilience;
- decades of activism and organisation; and
- the many tears and healing yet to come.

We honour and thank our Aboriginal and Torres Strait Islander Ancestors, Elders, nations, communities, families and leaders for their blood, sweat and tears.

We thank the following people for their contributions to this Discussion Paper (Summary):

- The title of the paper, 'Hear My Heart', was gifted to Ebony by Jill Gallagher;
 - Leonie Taylor wrote earlier versions;
 - Gregory Phillips provided significant re-writing and edits, and Timmah Ball, Narelle Warren and Eugenia Flynn copy-edited;
 - Dr Lilla Watson and Dr Mary Graham provided cultural and technical guidance;
 - Professors Larissa Behrendt and Mark McMillan acted as Technical Advisors;
 - The Reference Group for this Project (Appendix B) and a workshop of key thinkers (Appendix C) helped shape our thinking, providing strong support and clear advice;
 - Jamie Thomas, Sara Jones and Will Austin from the Wayapa Wuurk Aboriginal Wellness Foundation supported Ebony as moral supporters and as an auspice body; and
 - The Annamila Foundation deserve our strong appreciation for their visionary and generous support and funding of this Project, and of the ideals and values we espouse.
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FOREWORD

The Belly of the Snake

Our old people have been through the fire, the fire of colonialism, that forced a retreat into the belly of the snake. Our time spent in the belly of the snake has been a time of rebuilding our strength and energy, regathering and rearming ourselves with cultural knowledge. Aboriginal people are now emerging from the mouth of the snake and taking over the power of definition, in defining who we are, where we come from, where we belong, and indeed where we are going.

The health of the land and all its people are dependent on each and every one of us to be responsible for its care, for the care for each other and for the care of our future generations to create a healthier and better society.

The belly of the snake is the very land we live on; it is our life force. It is time for us to once more be in control of running our country based on Aboriginal Terms of Reference. This means the education of White Australians into Aboriginal Terms of Reference, for them to be just as responsible as Aboriginal people to create a healthy country for all of us and our coming generations.

All of us who live on this land have been affected by the event of colonialism, it is time for White Australians to understand to what extent colonialism has affected them and shake themselves awake and make themselves be part of this emergence from the belly of the snake.

© Dr Lilla Watson, used with permission.

DECLARATION OF SOVEREIGNTY

We, the Aboriginal and Torres Strait Islander Peoples of what is now called 'Australia', declare and assert sovereignty over our lands, waterways and seas.

We have always done this, and we will continue to do so.

We have owned this land from at least sixty thousand years ago, we own it today, and we will continue to own it for sixty thousand more years.

This right and responsibility of ownership has been encoded and confirmed in thousands of years of our existence, knowledges, laws, customs, practices, beliefs, cultures, values, languages, and ceremonies.

We declare and assert our right and responsibility to look after the lands, seas and waterways in perpetuity.

We have never ceded sovereignty.

We are subject to illegal invasion and occupation.

We declare and assert our right and responsibility to tell these truths.

We declare and assert our right and responsibility to negotiate with the illegal occupier, the Commonwealth of Australia and the British Crown, for a just and peaceful settlement.

We seek national unity and healing, on fair and just terms.

BACKGROUND

The Ebony Aboriginal and Torres Strait Islander Institute's vision is for a sustainable and cohesive Australia, based on Aboriginal and Torres Strait Islander wisdom. The Ebony Institute is a not-for-profit organisation with a one hundred percent Aboriginal board (see Appendix A). Ebony's values are respect, truth, belonging and connection.

One of the Ebony Institute's objectives is to promote truth, justice and healing for Aboriginal and Torres Strait Islander Peoples. The Truth, Justice and Healing (TJH) Project furthers that goal. Ebony have partnered with the Annamila Foundation and Wayapa Wuurk Aboriginal Wellness Foundation to support them in undertaking this Project.

PURPOSE

This discussion paper has been written for the following reasons:

- For Aboriginal and Torres Strait Islander Peoples to learn from the experiences of truth-telling in Australia and globally;
- To support the primacy of Aboriginal and Torres Strait Islander Peoples' voices, opinions and views about truth-telling; and
- To inform national and local debates by reviewing the strengths and weaknesses of truth-telling initiatives in Australia and globally.

This discussion paper will be used to inform a series of local and national conversations with Aboriginal and Torres Strait Islander Peoples and communities about the best way forward for truth-telling in Australia.

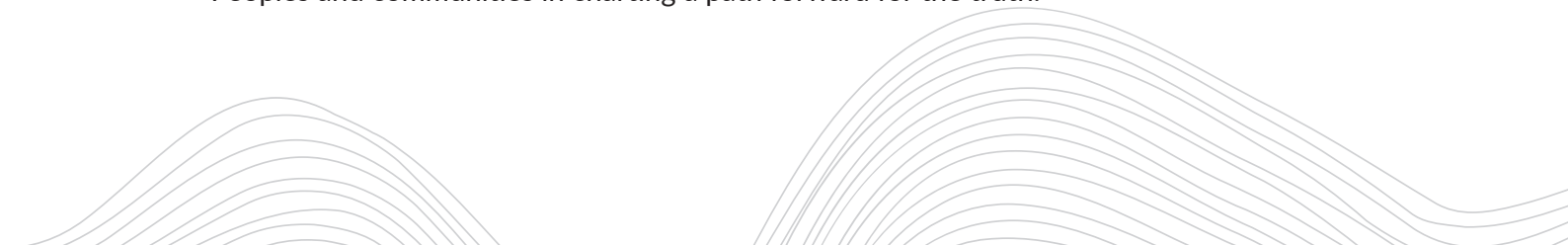
The Ebony Institute wants to listen and learn from them about the right pathway for truth, justice and healing in our nation.

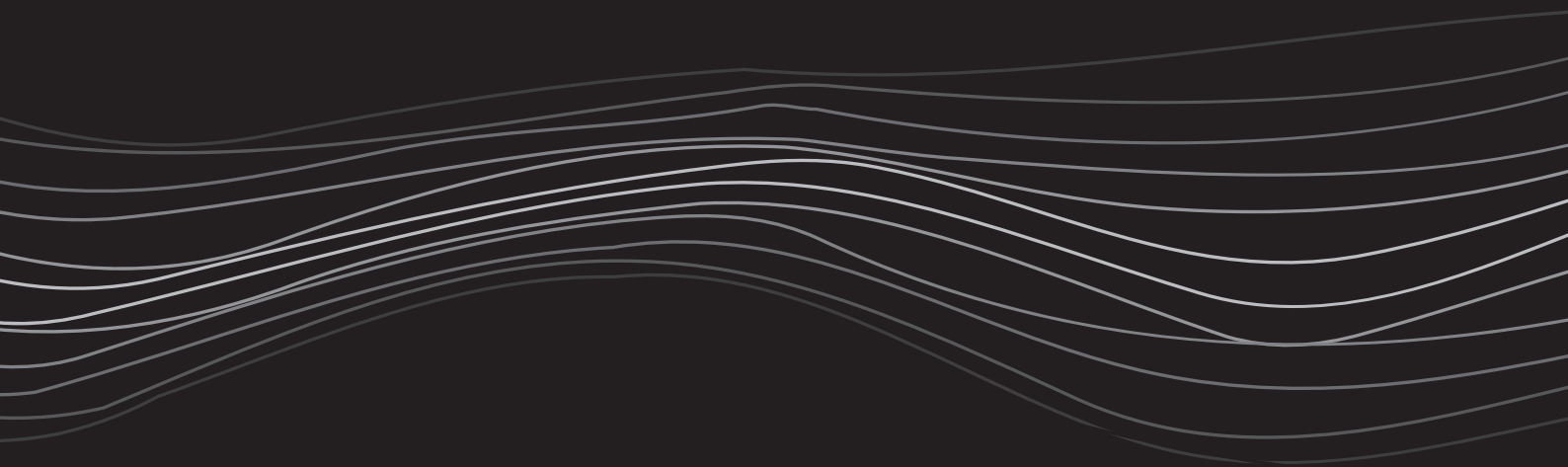
This discussion paper has not been written to satisfy non-Aboriginal demands for dealing with any discomfort, sweeping things under the carpet, or for quick fixes.

The Ebony Institute is concerned with genuine and full truth-telling, deep healing and learning, and substantive and lasting justice.

SCOPE AND METHODOLOGY

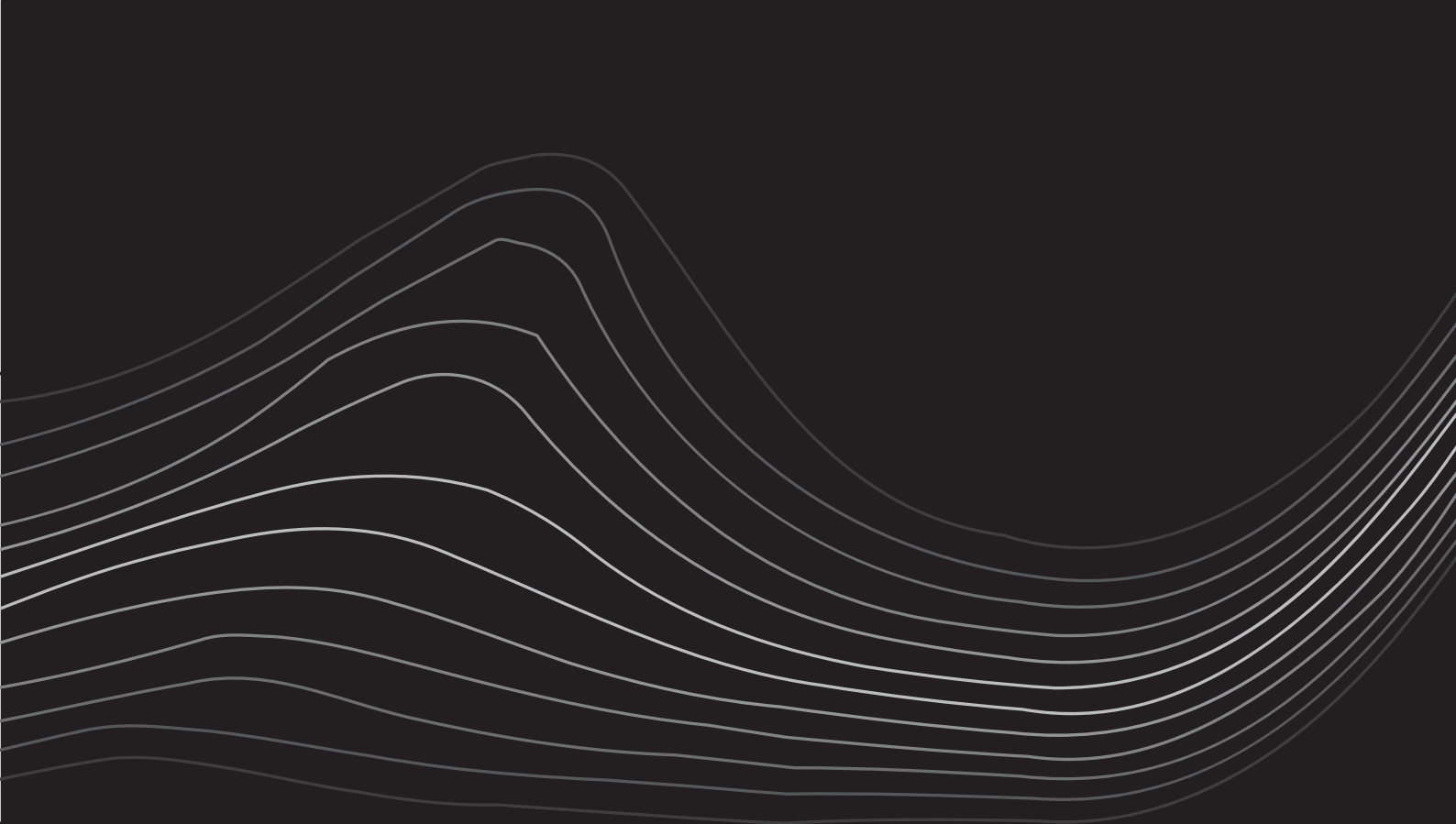
This discussion paper:

- Reviews experiences of truth-telling and truth-seeking in Australia and globally;
 - Considers key themes emerging from those experiences; and
 - Identifies key issues and questions to be considered by Aboriginal and Torres Strait Islander Peoples and communities in charting a path forward for the truth.
- 



“It is time we stopped pretending that meaningful change can happen in a system that is grounded in denial. So, in 2020, as a nation, we need to turn away from denial as usual and towards truth.”

June Oscar, 2020



“...while truth commissions do not replace the need for prosecutions, they can reach out to thousands of victims in an attempt to understand the extent and the patterns of past violations, as well as their causes and consequences.”

Office of the High Commissioner
for Human Rights, 2006

EXECUTIVE SUMMARY

The Ebony Aboriginal and Torres Strait Islander Institute acknowledges our Ancestors and Elders and the previous generations' attempts to tell the truth, for justice to be served, and for the healing of individuals and the nation to occur.

This discussion paper is grounded in Aboriginal and Torres Strait Islander sovereignty, wisdom and knowledges.

This discussion paper has been written to learn from Australian and global experiences in truth-telling, to listen to and give primacy to Aboriginal and Torres Strait Islander Peoples' voices and views about truth, justice and healing, and to better inform national conversations.

Telling the truth about conflict, genocide, trauma or abuse or other wrongdoing can be done in formal ways, through official truth commissions or inquiries or, if there is limited or no political will for formal approaches, through informal initiatives undertaken by civil society, grassroots communities and activists.

The United Nations (OHCHR, 2006) recognises that:

"...while truth commissions do not replace the need for prosecutions, they can reach out to thousands of victims in an attempt to understand the extent and the patterns of past violations, as well as their causes and consequences."

There have been 32 formal truth commissions or inquiries at the national level, with features including uniqueness, political will, operational independence, international support, non-replacement of legal processes, and opportunities for a safe platform to tell the truth. Strengths of formal truth commissions can include:

- An opportunity for political leaders and civil society to help their country understand why and how certain events happened, and what lasting impacts there are on society;
- An opportunity to help prevent further abuses occurring again;
- An opportunity to identify and implement reparations, justice, and institutional and policy reforms; and
- An opportunity for individual, family, community, and national healing.

Weaknesses of formal truth commissions include:

- Lack of self-determination in the establishment of any formal commission;
- Unclear or contested expectations, parameters and terms of reference, for example, focussing exclusively on the past, whether amnesty should be offered, and whether a commission should have powers of compulsion;
- Lack of support for those telling and hearing the truth;
- Limited or no guarantee the abuse or conflict will stop;
- Lack of justice or substantive reform;
- Potential for recommendations to not be implemented; and
- Unwillingness to address the fundamental causes of conflict or abuse.

In either formal or informal truth initiatives, it is critically important that transitional justice be implemented while waiting for formal legal proceedings; that transgenerational responsibility for justice, atonement and healing is acknowledged and observed; and that self-determination for the voices of those aggrieved must be given primacy.

Aboriginal and Torres Strait Islander Australians and their friends have implemented numerous attempts at truth-telling over many generations, both formal and informal, including the Royal Commission into Aboriginal Deaths in Custody, the Royal Commission into the Forced Separation of Aboriginal and Torres Strait Islander Children from Their Families (Bringing Them Home Inquiry), and decades of civil society advocacy and grassroots community activism.

However, the recommendations of formal commissions and inquiries remain largely un-implemented.

Globally, lessons from Canada, South Africa and other countries highlight that:

- Political will helps, but must not hinder, the independence of truth initiatives;
- The voices of those aggrieved must be given primacy in decision-making apparatus;
- The terms of reference of any formal commission must have strong terms of reference and potentially legal powers;
- Issues of substantive justice like reparations and institutional and policy reform must be implemented; and
- Public education in the form of memorialisation, curricula reform and public ceremonies, and opportunities to remember and prevent must occur.

In Australia, key issues facing Aboriginal and Torres Strait Islander Peoples include:

- Establishing readiness to tell the truth, which includes deciding whether telling the truth again is even a good idea;
- Political will – including whether any truth-telling should occur in formal or informal ways, or both;
- Providing support for those telling their stories and for those hearing them;
- Consideration of the most strategic purpose for and structure of any formal truth commission, including whether it should have the power to compel witnesses;
- Strategies for optimal access to formal truth commission information and processes to ensure ethically and culturally safe recording, ownership and storage of people's stories;
- Public education requirements after the truth is told (e.g. memorialisation, curriculum reform, public remembrance); and
- Consideration of what substantive justice and healing might look like, potentially including reparations and institutional and policy reform.

The Ebony Aboriginal and Torres Strait Islander Institute commends this paper to Aboriginal and Torres Strait Islander Peoples and communities, and aims to ensure your voices and considerations of these issues are given primacy to better inform national conversations about initiatives for truth, justice and healing.





WHAT IS TRUTH-TELLING?

A) TRUTH-TELLING AND TRUTH-SEEKING – WHAT IS THE DIFFERENCE?

Telling the truth about conflict, genocide, trauma or abuse, or other wrongdoing usually takes one of two forms.

- Formal truth-telling
 - Relies on political will to tell or uncover the truth;
 - Usually operates at a national and official level, e.g. commissions;
 - Is a matter of national interest;
 - Has international support and interest;
 - Operates independent of government control; and
 - Considers issues of reparations or other substantive forms of justice.
- Informal truth-seeking
 - Occurs when there is no or limited political will to tell or uncover the truth;
 - Operates at either local, regional or national levels;
 - Is a civil society movement by grassroots people or activists;
 - Provides opportunities for individual and collective survivor healing, validation and support to move forward with their lives in the face of official disinterest or denial; and
 - Has no capacity for reparations or other forms of substantive justice.

Telling and seeking the truth does not always fall neatly into these categories. For example, in Australia, formal commissions and inquiries like the Royal Commission into Aboriginal Deaths in Custody and the Bringing Them Home Report included all of the features of formal truth-telling listed above, yet no reparations or substantive forms of justice resulted. Interestingly, they still provided some level of survivor validation and healing.

B) TRUTH COMMISSIONS

Truth commissions are formal processes for truth-telling, usually instigated at the national level after conflicts, abuse or trauma.

According to the International Centre for Transitional Justice, the objectives of truth commissions can include:

- i. Establishment and explanation of facts – The core function of a truth commission is to ascertain facts. Mandates differ in the scope of those facts, their legal classification, or the depth of the explanation required.
- ii. Protection, recognition, and restoration of the rights of victims – This function distinguishes truth commissions from courts of law and advisory panels, placing the rights of victims and their experiences at the centre of the commission's work.
- iii. Positive social and political change – Some mandates have entrusted commissions to suggest ways for government, civil society, and the public to contribute to reconciliation, reform, democracy, and prevention of recurrence.

(Gonzalez and Varney, 2013)

C) UNITED NATIONS GUIDELINES FOR BEST PRACTICE FOR TRUTH COMMISSIONS

The Office of the United Nations High Commissioner for Human Rights (UNHCR) developed guidelines for best practice for those establishing a truth-telling commission. These include:

- i. Uniqueness – It should be expected that every truth-telling commission will be unique; responding to the national context and special opportunities present;
- ii. Political will – It is expected that there is an official recognition of the need to tell or uncover the truth;
- iii. Operational independence – It is expected that the commission will operate in an independent and impartial manner;
- iv. International support – There is sufficient international support for and interest in the process for undertaking and outcomes of the commission;
- v. Do not replace the need for legal proceedings – Truth commissions are public political and/or administrative inquiries, which may or may not support legal proceedings; and
- vi. Safe platform – Truth commissions should provide a safe platform for those affected by the past to speak openly about their truth.

(UNHCR, 2006)



D) ADDITIONAL THEMES IN THE LITERATURE

Additionally, there are some important themes arising in the literature.

Acknowledgement – The importance of acknowledgement and recognition of past conflict, trauma and abuse cannot be understated.

“It is time we stopped pretending that meaningful change can happen in a system that is grounded in denial. So, in 2020, as a nation, we need to turn away from denial as usual and towards truth.”

(Oscar, 2020)

- i. Transgenerational Responsibility – It is critically important that those who were not directly a part of the conflict or directly responsible for it understand that they may be benefitting from the continued denial, impoverishment or disenfranchisement of the victims (Andina, 2018).
- ii. Transitional Justice – Rather than focussing only on telling the truth, transitional justice can assist jurisdictions to address and implement justice initiatives such as institutional reform and remembrance in a forward-looking way, with a focus on preventing further abuses from occurring again. In this way, transitional justice can provide a framework for addressing the root causes of conflict, trauma or abuse.
- iii. Safe Platforms – There is critically important value in victims and perpetrators being given safe platforms for their voices to be heard, for healing to occur, and to support the emotional and mental wellbeing of witnesses and staff (Royal Commission Into Institutional Responses to Child Sexual Abuse, 2017), given the potential for vicarious trauma (de Ridder, 1997).
- iv. Healing as a Journey – Telling the truth must be seen in a larger context of healing, justice and prevention of the conflict, abuse or trauma from occurring again. Healing is often very important in considering and renewing national narratives of history, identity and belonging. Yet it has been pointed out that telling the truth cannot be an end in itself, but is rather a critical step in healing and in national development.

“When apartheid ended and the Truth and Reconciliation process started, Adams says he thought it would genuinely lead to a united South Africa. He’s disappointed that the coloured population, in particular, has been left behind, effectively ghettoized, at least in part.”

(Magistad, 2017)

If telling the truth is the first step, and some healing is a result, then it follows that justice and change are essential if telling the truth is not in vain, and if healing is to be completed. Adam Kahane (2010), writing about the transformative scenario planning process that helped underpin South Africa’s growth from apartheid to liberation, says:

“We cannot address our tough challenges only through driving towards self-realization (using power) or only through driving towards unity (using love). We need to do both.”

AUSTRALIAN EXPERIENCES

Since colonisation, Aboriginal and Torres Strait Islander Peoples have sought to tell the truth in informal ways such as storytelling, oral histories, community organising, activism, and art.

Governments have instigated formal processes such as the Royal Commission into Aboriginal Deaths in Custody and the Bringing Them Home Report.

Both truth-telling and truth-seeking processes have not necessarily resulted in the implementation of recommendations or outcomes that substantively addressed justice and healing.

Additionally, there is a lack of literature documenting local truth-telling and seeking processes in Australia, despite significant information regarding these processes internationally.

A) INFORMAL OR COMMUNITY-LED TRUTH-SEEKING

There is a significant history of informal community-led truth-telling and seeking in Australia. Here are but a few of thousands of examples:

- Myall Creek Massacre, 1838 – New South Wales Memorial, 2000
- Fiona Foley, Witnessing to Silence, Brisbane Magistrates Court, 2004
- The Killing Times Frontier Wars online map, The Guardian Australia, 2019
- Deathscapes: Mapping Race and Violence in Settler States, 2016

B) GOVERNMENT APPROACHES TO TRUTH-TELLING

Over the years, Australian governments have conducted multiple consultations with Aboriginal and Torres Strait Islander communities, apparently with the intent of improving relations or policies, and moving forward as a country.

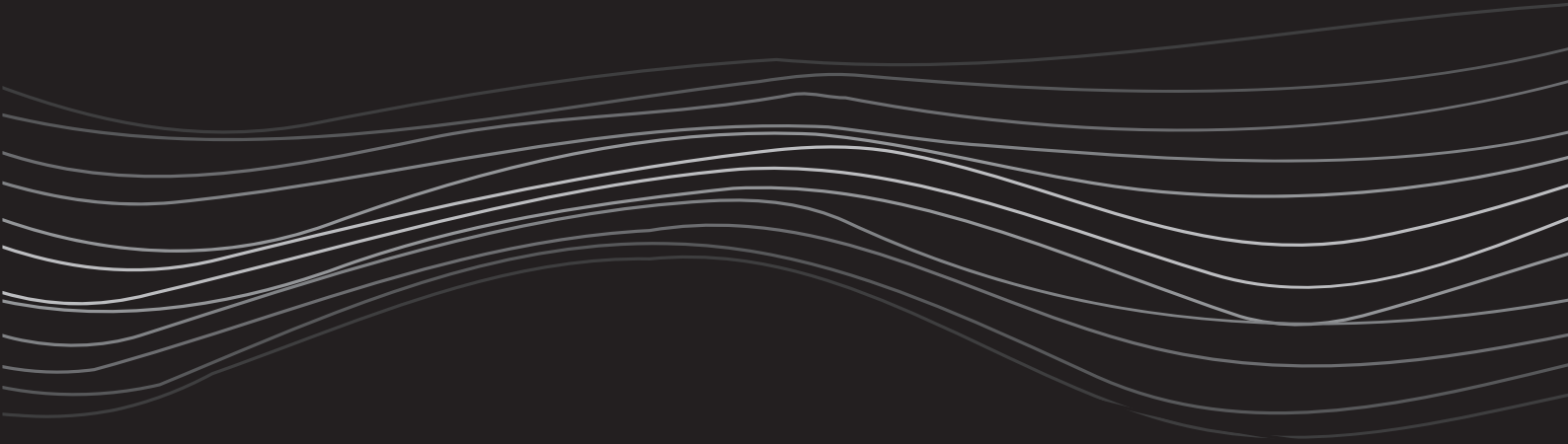
These consultations include Royal Commissions, inquiries, discussion papers, formal feedback, conferences and gatherings.

Truth-telling has been evident in each of these fora, where individuals and communities have shared their lived experiences of past and current trauma. However, as Wilson (2008) notes:

“One thing that most of these Indigenous inquiries hold in common is that they look at social, historical and economic factors to explain the differences between Indigenous and non-Indigenous peoples, and then make recommendations that are intended to adapt the dominant system to the needs of Indigenous people.”

Rarely do Australian governments consider other alternatives like self-government or self-determination. This raises a critical question for Aboriginal and Torres Strait Islander Peoples in truth-telling and truth-seeking: Can the truth ever be fully told if the colonial power refuses to recognise Indigenous Peoples' sovereignty?



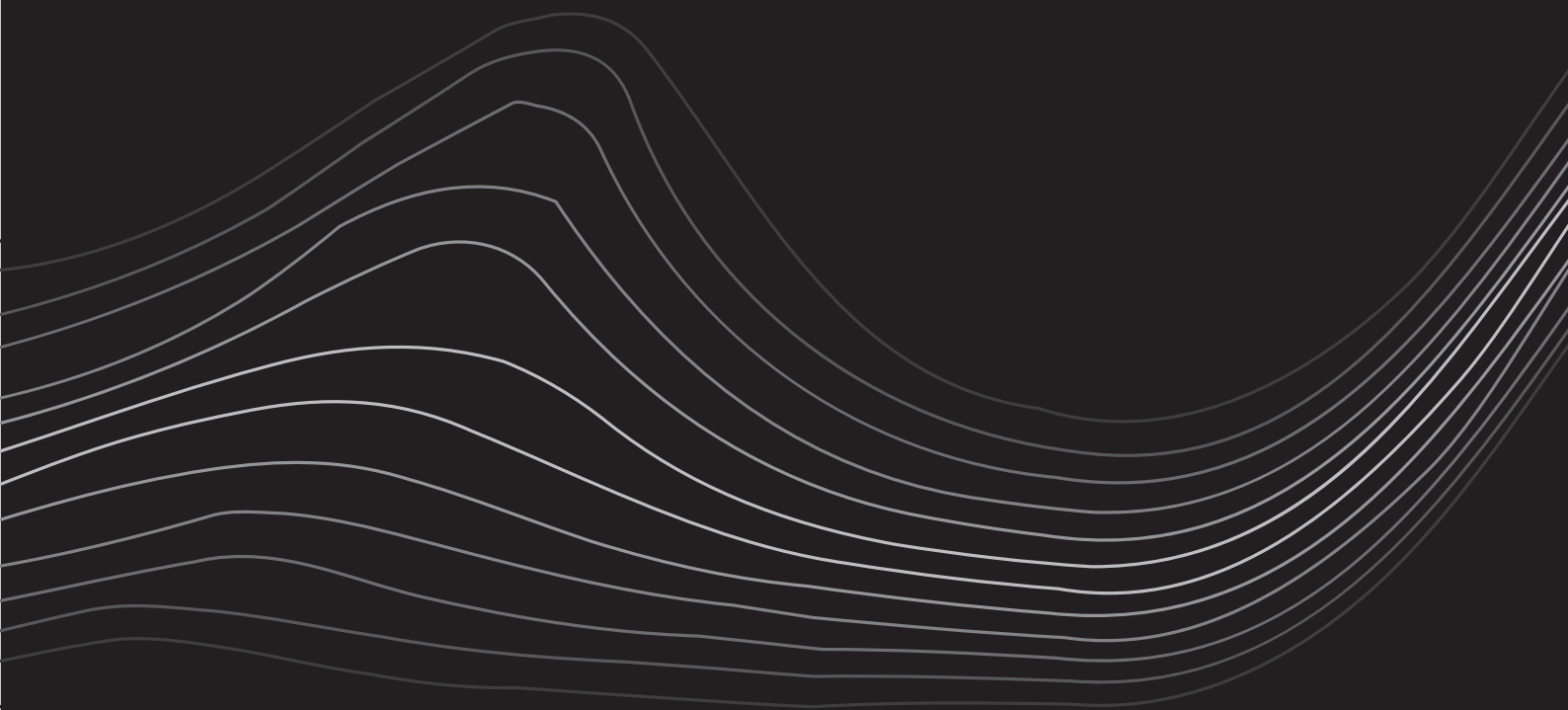
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“One thing that most of these Indigenous inquiries hold in common is that they look at social, historical and economic factors to explain the differences between Indigenous and non-Indigenous peoples, and then make recommendations that are intended to adapt the dominant system to the needs of Indigenous people.”

Shawn Wilson, 2008

“We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations people and truth-telling about our history. In 1967 we were counted, in 2017 we seek to be heard.”

Uluru Statement From The Heart, 2017



This question represents the nexus between truth-telling and Aboriginal and Torres Strait Islander rights and political representation.

Despite the critical issue of Indigenous political representation and rights, various forms of government instruments have been lobbied for by Indigenous Peoples in their attempts to tell the truth or seek the truth. Some key moments in truth-telling include:

- Royal Commission into Aboriginal Deaths in Custody, 1989
- The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, 1997 (also known as the Bringing Them Home Report)
- The Apology to Australia's Indigenous Peoples, 2008

C) NEXT STEPS AND CHALLENGES

In December 2015, The Referendum Council was appointed by the Federal Government and the Opposition to consult with Aboriginal and Torres Strait Islander Peoples and other stakeholders, and take the next steps towards achieving constitutional recognition (Referendum Council, 2016).

The Referendum Council conducted consultations from 2016-2017 across Australia and their report was completed in June 2017.

In May 2017, the Uluru Statement from the Heart collectively rejected the symbolic recognition of constitutional recognition and called upon the government to establish a First Nations Voice to be enshrined in the Constitution, and a Makarrata¹ Commission to oversee agreement making between governments and First Nations communities (Uluru Statement, 2017).

The Statement's closing proclamation was:

"We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations people and truth-telling about our history. In 1967 we were counted, in 2017 we seek to be heard."

Since the Uluru gathering, the call for a political voice has been watered down in successive political interventions:

- The Referendum Council (2017) recommended the voice be merely an advisory voice to parliament, not the voice the delegates at Uluru called for;
- The Prime Minister at the time, Malcolm Turnbull, immediately rejected the advisory voice to parliament as a 'third chamber of parliament'; then
- The Minister for Aboriginal Affairs, Ken Wyatt, suggested it could be an advisory voice to government, and established an Indigenous Affairs Advisory Council. However, he has limited the parameters of what they are allowed to discuss – they are not allowed to suggest options for a voice.

Since the Uluru Statement from the Heart, Aboriginal and Torres Strait Islander Peoples continue to seek a political voice in their own homelands, the right to self-determine as sovereign custodians of Australia (possibly through a mechanism such as a treaty or treaties), and a full and honest account of the truth.

1 'Makarrata' is a Yolngu word that means two parties coming together after a struggle.

LESSONS FROM AUSTRALIAN AND GLOBAL EXPERIENCES

This section summarises lessons from formal and informal truth-telling and truth-seeking initiatives in Australia and globally.


A) GLOBAL TRUTH-TELLING COMMISSIONS

In reviewing global experiences with formal truth-telling commissions, the lessons include:

- i. Political will – past conflict and human right violations require the political will of their leaders to advocate for safe platforms for survivors to be listened to and heard;
- ii. Truth-telling as dialogue – dialogues can help countries discuss their darkest times of violence, dispossession, and the need for healing and reconciliation;
- iii. Public education – the general public became educated about their own country's past conflicts and how the past conflict was still in living memory;
- iv. Legal parameters – the legal structures, parameters and terms of reference for truth-telling matter;
- v. Reparations and compensation – restitution and reparation can be supported as a way of giving back and assisting survivors on their road to recovery. Potential limitations and restrictions in accessing compensation must be addressed (including legislation, government policies and practices);
- vi. Healing – there must be resources allocated for healing projects for victims and perpetrators; and
- vii. Data access and ownership – there must be transparent access and ownership of information for victims, families and future generations. This includes oversight of incorporating Indigenous Peoples' cultural knowledges and practices as a part of truth-telling and healing.

B) AUSTRALIAN TRUTH-SEEKING INITIATIVES

In Australia, while there has been no formal truth-telling commission, there have been numerous formal truth-seeking initiatives, including:

- Royal Commission into Aboriginal Deaths in Custody (1991);
 - National Inquiry into Separation of Aboriginal and Torres Strait Islander Children from Their Families aka the 'Bringing Them Home' Report (1997);
 - National Congress of Australia's First People (2010);
 - Recognise campaign begins for Aboriginal and Torres Strait Islander people to be recognised in the Australian constitution (2012);
 - Referendum Council (2015);
 - Final Report of the Referendum Council (2017); and
 - Various and numerous community advocacy, activism and reports.
- 

The lessons from these initiatives include:

- i. **Accountability** – the primary lesson from these attempts at truth-telling are that the recommendations have mostly not been implemented; thus, the issue of accountability and independent auditing of implementation is paramount.
- ii. **Being Heard** – While some of these initiatives provided Aboriginal and Torres Strait Islander individuals, their families and communities with opportunities to tell their truths and to be listened to, many report they have not always felt heard.
- iii. **Cultural Leadership** – Aboriginal and Torres Strait Islander leaders have made clear their requests to successive governments, including calls for truth-telling. These include:
 - 1963 – Yolngu leaders presented the Yirrkala Bark Petitions to the Australian Parliament, protesting the seizure of more than 300 square kilometres of Aboriginal land in Arnhem Land for mining.
 - 1982 – Sovereign Treaty Campaign, inspired by the Yolngu’s concept of Makarrata, which is a call for governments to work more strategically with First Nations Peoples. The campaign occurred while the world was looking at Australia as they hosted the Commonwealth games.
 - 2017 – Uluru Statement from the Heart to adopt voice, treaty and truth as ways to move forward as a country. Unfortunately, there was no strategic implementation plan after Uluru, and the Federal Government knocked the idea of a voice on the head before it could be fully discussed.
- iv. **Reconciliation** – ‘Reconciliation’ in Australia has become expressed as a White process, often conflated with benevolence, niceness, romanticised views of cultures, and a politeness that fails to recognise the need for political engagement. While reconciliation, yarning circles and group activities have helped as general public education, they have often been led by non-Aboriginal peoples and have not focussed on racism or issues of substantive justice. Reconciliation Action Plans have been adopted by mainstream corporations and organisations, but these have been focussed on Aboriginal disadvantage and problematised Aboriginal capacity, rather than being concerned with strategic decolonisation or adequately dealing with racism and Whiteness.
- v. **Healing and Community Activism** – Aboriginal and Torres Strait Islander Peoples have initiated Link-Up services, legal services, health services and education groups, for example, all in efforts to help families rebuild family connection and identity, and to gain access to equitable services and some form of healing and justice.

C) FURTHER LESSONS FROM HOME AND AFAR

Informal attempts at truth-seeking by civil societies and grassroots activists are critical. Lessons from such initiatives include the following:

- i. **Safe Space** – Projects provided safe places for survivors to come and share their truths, where they could also be provided with the necessary supports of counselling and therapy.

- ii. Validation – Projects and programs gave survivors validation so that they could work through past conflicts, abuse and trauma.
- iii. Church or Courts’ Denial – Redress and restitution through the courts or churches can be inhibited or delayed due to their denial.
- iv. Lack of Political Will – Government support and willingness to acknowledge conflicts, abuse and trauma can be a major stumbling block to formal processes, but need not inhibit grassroots, local or state government action.
- v. Lack of Community Support – Truth initiatives are more likely to succeed where there is a groundswell of community awareness and action for change. Similarly, where communities fear retribution, general awareness and action for change can be inhibited.
- vi. Retribution – There are risks involved with being activists for change, and with public memorialisation without broad community support. Public memorials and monuments may be vandalised or destroyed, such as when Eddie Koiki Mabo’s original tombstone was vandalised in Townsville.

STAKEHOLDER CONTRIBUTIONS

This section summarises the initial feedback received from various stakeholder groups.

A) REFERENCE GROUP

Working with the Project Reference Group (see Appendix B), the following principles and concerns have been identified as critical to truth, justice and healing in Australia.

- i. Audience - The TJH Project should aim to build respect, truth, belonging and connection primarily between Aboriginal and Torres Strait Islander Peoples first, and then consider and allow for truth-telling with non-Indigenous people.
- ii. Primacy of Aboriginal and Torres Strait Islander Voices - The Ebony Institute should aim to illuminate and respect Aboriginal and Torres Strait Islander Peoples’ truths and voices. The Project should not be limited to what non-Aboriginal people want to hear or are comfortable hearing.
- iii. Justice and Healing - Truth-telling is courageous and is a part of an ongoing justice and healing process. The Ebony Institute should give thought to the strategic implications of what happens after the truth is told – what does substantive justice and healing look like?
- iv. Crimes against Individuals and Countries - Reference Group members identified that while crimes were committed against individuals and communities, they were also committed against lands and waters, and this continues to be the case. Any truth-telling initiative could include a broad Terms of Reference to include these issues.
- v. Power, Motivation and Ethics - The quality of truth-telling depends on who is doing the asking, how they are doing it, and why they are doing it.
- vi. It’s not just ‘all in the past’ - There are many current mistreatments and crimes against Aboriginal and Torres Strait Islander Peoples that also need inquiry.



B) STAKEHOLDER WORKSHOP

In July 2019, a national workshop of thirty Aboriginal and Torres Strait Islander leaders and community stakeholders (see Appendix C) reached resounding commitment to and consensus that the Project was important, timely, and very much needed due its unique evidence-based and community-driven approach. Participants identified that the following issues needed to be considered:

- i. Readiness – It will be necessary to ensure the readiness of Indigenous communities and governments to engage in truth, justice and healing processes. The political, cultural and social authorising environments for truth-telling is critical, and careful planning around the following issues is required:
 - Should it be a process led and owned by Aboriginal and Torres Strait Islander Peoples? What preparations and supports will be necessary?
 - If it is led and owned by government, what guarantees are there for self-determination and primacy of Aboriginal and Torres Strait Islander voices? Are governments genuinely ready to face the truth and name genocide?
 - What preparations would be necessary for the truth to be told and heard correctly?
 - Sovereignty – Aunty Mary Graham proposed that the Project, this discussion paper, and ensuing consultations and engagement processes must be grounded in a solid declaration of Aboriginal and Torres Strait Islander sovereignty. Participants agreed.
- ii. Purpose – Participants discussed the purpose of truth-telling in detail, and identified that there may need to be two parallel tracks of truth-telling:
 - One for Aboriginal and Torres Strait Islander Peoples primarily concerned with validation and healing; and
 - One for non-Indigenous people concerned with education, justice and change.
- iii. Access – Participants felt strongly that access to, and communications of, this discussion paper’s contents will be a critical issue to prepare for.

KEY ISSUES

It is critical these key issues are fully considered during consultations and engagement with Aboriginal and Torres Strait Islander Peoples on how the truth should be told.

- i. Voice – The primacy of Aboriginal and Torres Strait Islander Peoples’ voices is paramount, whether formal truth-telling or informal truth-seeking initiatives are undertaken. Justice will not be served if truth-telling is limited by what non-Aboriginal people, particularly governments, are comfortable with.
- ii. Sovereignty – Truth-seeking and truth-telling must be grounded in Aboriginal and Torres Strait Islander sovereignty and self-determination.
- iii. Purpose and Motivation – The purpose of, and motivation for, any truth-telling process is critical. This includes:
 - Validation – Will there be validation? Will people be heard and believed?
 - Healing – Will processes be sensitive enough to allow for healing?
 - Education – Will the public be educated about the process, the rationale, and the outcomes of truth-telling? Will the historical record be corrected?
 - Justice – Will the purpose of truth-telling be to change people, institutions, systems and the whole country so it never happens again? Will justice be served, and if so, what will it look like? Will reparations be required?
 - Identity – What reforms or changes will be required to hold the national polity to account for the outcomes of truth-telling? Will sovereignty be shared?
 - Ownership and Authorising Environment – The ownership of, and authorising environment for, truth-telling initiatives is a critical issue.
- iv. Readiness and Support – Is Australia ready to tell the truth? Critical issues include:
 - Political will – Is there political and social will for the truth to be told? Is the government ready to tell and admit the truth?
 - Civil society – Are there enough civil society organisations, communities and activists willing to seek the truth and pursue change?
 - Support – Are Aboriginal and Torres Strait Islander communities ready to tell the truth? Do they have access to the supports?
 - Trust – Do they believe it is worth telling the truth, again? Will anything change?
- v. Structure – The structure of any formal truth-telling commission, or any informal truth-seeking initiatives, will be critical. These include issues such as:
 - Independence – Is the initiative significantly operating with independent authorisation and powers?



- Terms of Reference – Are the terms of reference broad enough to allow for past and current abuse and trauma to be addressed? Do they allow for abuses against Peoples and communities, as well as lands and waters? Are the terms of reference manageable and achievable?
 - Legal Powers – Will any formal commission have legal powers to investigate, compel testimony, make referrals to courts, make findings of guilt, and/or make binding recommendations of justice, reform, reparations or healing?
 - Access – Any truth-telling or truth-seeking initiative should ensure culturally appropriate access, including in public education, the testimonial process, the hearing process, and the communication of outcomes.
- vi. Ethics – Any truth-telling commission must ensure ethical processes are followed in the recording and documentation of people’s stories, including confidentiality, informed consent and respect for the truth-tellers and the people who hear their testimony including families, communities, commissioners, staff and the public.
- vii. Data Sovereignty – It will be necessary to ensure data sovereignty of Aboriginal and Torres Strait Islander Peoples’ information. This includes:
- Ownership of Intellectual Property
 - Storage and Archiving
 - Confidentiality and Communication
- viii. Public Education – Truth-telling initiatives should consider and recommend any necessary reforms based on its outcomes. This includes consideration of changes and reform to:
- Curricula
 - Public education
 - Memorialisation
 - Symbols and place names
- ix. Strategic Order of Reform – Should the truth be told first? Or is it more important to develop a political voice and treaty/treaties?
- x. So What! What Does Justice Look Like? – There is a critical strategic issue to be considered before any truth-telling or truth-seeking initiatives are undertaken – once the truth is told, so what? What does justice look like?

REFERENCES

Please see the full discussion paper for a complete list of references.

KEY QUESTIONS

The Ebony Institute wants to hear the views of Aboriginal and Torres Strait Islander Peoples on issues of truth, justice and healing in Australia. Through community consultations and engagement, we will ask the following questions:

Truth

1. Should we tell the truth, again? Why?
2. Are Aboriginal and Torres Strait Islander Peoples ready for truth-telling or truth-seeking? What supports would we need?
3. Is the wider Australian and the international community ready for truth-telling or truth-seeking? What supports would they need?
4. Should we aim for a formal truth commission, or informal truth-seeking, or both?
5. What should be included in the Terms of Reference?
 - Ownership and governance?
 - Past or current mistreatment or both?
 - Ownership and control of people's stories?
 - Legal powers of compulsion? Amnesty?

Justice

6. After the truth is told, what would justice look like?
7. What structural or policy reforms would be necessary?

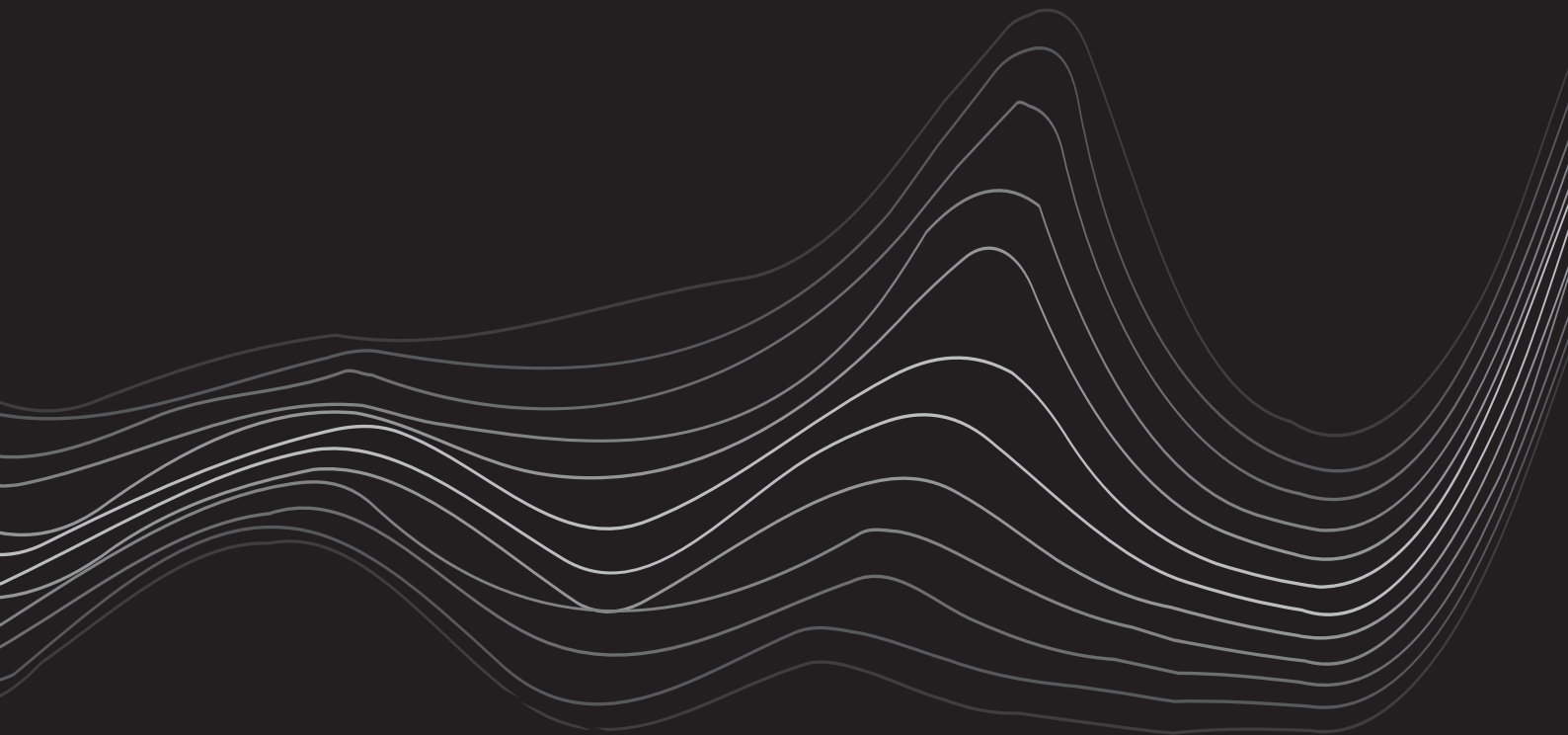
Healing

8. What would healing look like?
9. What is the ultimate goal and purpose of this work?



“All of us who live on this land have been affected by the event of colonialism, it’s time for White Australians to understand to what extent colonialism has affected them, and shake themselves awake and make themselves be part of this emergence from the belly of the snake.”

Dr Lilla Watson



CONCLUSION

Truth-telling and truth-seeking are important attempts to help Peoples and countries admit and atone and recover from conflict, abuse and trauma.

Formal truth-telling commissions globally have produced a variable set of outcomes. At the most positive end of the spectrum, they have allowed the truth into the light in ways that empower victims, help perpetrators admit and atone for atrocities, and have led to lasting justice, healing and institutional reform.

The strengths of formal truth-telling commissions include the state acknowledging the impact of past historical events of conflict endured by survivors, and their need for a safe platform to share their voices. Formal processes can also offer opportunities for healing and reconciliation.

At the least positive end of the spectrum, weaknesses of truth commissions include enabling a conversation that goes nowhere, where victims and their families feel unheard or disappointed about the terms of reference and parameters of the process, the outcomes and lack of substantive reform, justice or healing.

Where there has been no political will or substantive commitment to an honourable and ethical formal truth-telling process, civil society groups and grass community activists have been successful in implementing various forms of less formal truth-seeking initiatives. These initiatives have been important for local, regional and national communities seeking to uncover, highlight and memorialise what has happened.

In Australia, while there has been no formal truth-telling commission, Aboriginal and Torres Strait Islander Peoples and communities have advocated for the truth and led reform over many generations in issues as diverse as deaths in custody, the stolen generations, stolen wages, health, justice, education, housing, child protection and land rights.

Local and regional communities have begun documenting and memorialising massacres, and some schools and health professions are beginning to wrestle with the full weight of genocide and continuing racism in society and institutions.

Truth-seeking initiatives often highlight the resilience and strength of humans to tell and hear the truth; to nurture each other and create safe places to share their experiences; and to advocate for institutional reform and services to address conflicts, abuses and trauma.

Is Australia ready for the truth? Do Aboriginal and Torres Strait Islander Peoples prefer truth-telling or truth-seeking?

In the wise words of Dr Lilla Watson:

“All of us who live on this land have been affected by the event of colonialism, it’s time for White Australians to understand to what extent colonialism has affected them, and shake themselves awake and make themselves be part of this emergence from the belly of the snake.”

Let the wisdom of our ancestors and strength of our Peoples be heard through deep listening.



APPENDICES

Appendix A – Ebony Institute Board Biographies

Gregory Phillips is a Waanyi and Jaru medical anthropologist with a PhD in power and race relations. He leads change in medical education and workforce planning, Indigenous health and social policy. He is CEO of ABSTARR Consulting and Professor of First People's Health at Griffith University (Adjunct).

Jodie Sizer, a founding partner and co-CEO of PricewaterhouseCoopers Indigenous Consulting, is a Djab Wurrung/Gunditjmara woman and one of Australia's foremost Indigenous leaders. Jodie is a Certified Practising Accountant (CPA), possesses a strong background in corporate governance and is a graduate of the Hedland Leadership Program and the University of Melbourne's Asia-Australia New Leaders Program.

Eugenia Flynn is a writer, arts worker and community organiser. Her thoughts on the politics of race, gender and culture have been published widely, including in The Conversation Australia, The Guardian Australia and NITV. Eugenia is Aboriginal (Tiwi and Larrakia), Chinese and Muslim, working within her multiple communities to create change through art, literature and community development.

Taryn Lee is a Yawuru lawyer dedicated to ensuring that the voice and experience of Indigenous peoples are central to policy development. Taryn has predominately worked in social policy, human rights and justice system reform, in the public sector. Taryn has played a lead role in Victoria's Aboriginal health, treaty policy development and justice reform.

Appendix B – Truth, Justice and Healing (TJH) Project Reference Group

- The Ebony Institute Board
- Prof Larissa Behrendt, University of Technology Sydney, Technical Advisor
- Prof Mark McMillan, RMIT, Technical Advisor
- Dr Lilla Watson, Elder and Co-founder, The BlackCard Inc, Technical Advisor
- Dr Mary Graham, Elder and Co-founder, The BlackCard Inc, Technical Advisor
- Mr Jamie Thomas and Ms Sara Jones, Wayapa Wuurk Aboriginal Wellness Foundation
- Mr Indi Clarke, Koori Youth Council
- Ms Julie Kantor, Mr Ian Roberts and Ms Belinda Duarte, Annamila Foundation
- Mrs Leonie West-Taylor, Djkanju Jangiri Jangiri, Research Officer
- Ms Casey Phillips, Waanyi and Arrente, Project Manager

Appendix C – Truth, Justice and Healing (TJH) Project Stakeholders Workshop Attendees

- Ms Mundanara Bayles, Managing Director, The BlackCard Inc
- Mr Jidah Clark, Koori Youth Justice Taskforce, Commission for Children & Young People
- Mr Indi Clarke, Koorie Youth Council
- Mr Eddie Cubillo, Research Fellow, The University of Melbourne Law School
- Commissioner Mick Dodson, Northern Territory Treaty Commission
- Ms Belinda Duarte, CEO, Culture Is Life
- Commissioner Jill Gallagher, Victorian Treaty Advancement Commission
- Mr Tim Goodwin, Barrister at Law
- Ms Jackie Huggins, Co-Chair, Queensland Tracks to Treaty Panel
- Mr Rod Little, Co-Chair, National Congress of Australia's First Peoples
- Ms Pat Turner, CEO, National Aboriginal Community Controlled Health Organisation
- The Ebony Institute Board
- TJH Project Reference Group – Dr Mary Graham, Professor Mark McMillan, Mr Ian Roberts, Mr Jamie Thomas, Ms Sara Jones, Ms Casey Phillips, Mrs Leonie West-Taylor





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