

SUBMISSION TO THE COMMONWEALTH TRUTH AND JUSTICE COMMISSION BILL 2024

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Acknowledgement

SNAICC shows respect by acknowledging the Traditional Custodians of Country throughout Australia and their continuing connections to land, waters and communities. SNAICC's head office is located on the lands of the Wurundjeri People of the Kulin Nation, and SNAICC operates nationally.

SNAICC acknowledges Traditional Owners of all lands and waters across this continent, and pays respects to Elders past and present. We acknowledge and respect their continued connection to Country, care for community and practice of culture for generations uncounted.

About SNAICC

SNAICC is the national non-government peak body for Aboriginal and Torres Strait Islander children. We work for the fulfilment of the rights of our children, to ensure their safety, development, and well-being.

SNAICC has a dynamic membership of Aboriginal and Torres Strait Islander community-based child care agencies, Multi-functional Aboriginal Children's Services, crèches, long day care child care services, pre-schools, early childhood education services, early childhood support organisations, family support services, foster care agencies, family reunification services, family group homes, services for young people at risk, community groups and voluntary associations, government agencies and individual supporters.

Since 1981, SNAICC has been a passionate national voice representing the interests of Aboriginal and Torres Strait Islander children and families. At the heart of SNAICC's work is championing the principles of community control and self-determination as the means for sustained improvements for children and families – whether in child protection and wellbeing or early childhood education and development. Today, SNAICC is the national peak body for Aboriginal and Torres Strait Islander children and for the sector supporting these children. Our work comprises policy, advocacy, and sector development. We also work with non-Indigenous services alongside Federal, State and Territory Governments to improve how agencies design and deliver supports and services for Aboriginal and Torres Strait Islander children and families.

As the national peak body for Aboriginal and Torres Strait Islander children, SNAICC consults with its member organisations and Aboriginal and Torres Strait Islander leaders to ensure the experiences, needs and aspirations of our leaders, our sector and ultimately, our children and families are the foundation for our submissions and recommendations.

Executive Summary

Aboriginal and Torres Strait Islander culture is the world's longest continuous culture. For more than 60,000 years, Aboriginal and Torres Strait Islander families have been raising their children to be strong in culture, family and community, and to thrive. However, the colonisation and dispossession of Aboriginal and Torres Strait Islander lands has resulted in unresolved historical and intergenerational trauma.

After more than 230 years of dispossession and settler-colonial violence, Aboriginal and Torres Strait Islander children, families and communities deserve justice. Redressing harms done by the settler-colonial state against Aboriginal and Torres Strait Islander people requires holistic and structural solutions. Truth telling can be an effective, necessary but not sufficient step towards healing the cumulative intergenerational trauma which has caused substantial socioeconomic inequities today.¹

SNAICC supports the Bill for an Act establishing a Commission into the historic and ongoing injustices against Aboriginal and Torres Strait Islander people (the Commission).

SNAICC's submission highlights the need for a Truth and Justice Commission and outlines recommended amendments to the Bill along with implementation recommendations designed to ensure the strong operation and functioning of the Commission in line with its intended purpose.

SNAICC provides the following six (6) recommendations to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs:

1. The Australian Government enact the Bill to establish the Truth and Justice Commission Act establishing a commission into historic and ongoing injustices and discrimination against Aboriginal and Torres Strait Islander people.
2. Amend section 7, clause 2 of the Bill to explicitly state that members are not appointed to the Commission unless the Joint Ministers are satisfied that the person has the knowledge of and experience with the human rights of children and Aboriginal and Torres Strait Islander people.
3. Amend section 7, clause 3 of the Bill to explicitly state that the Joint Ministers must make appointment decisions through a shared decision-making mechanism.
4. Amend section 8 of the Bill to expand the Terms of Reference of the Commission to:
 - a. provide for the Commission to be empowered to inquire into historic and contemporary injustice and discrimination perpetrated by State and Territory governments.
 - b. include within the scope of the Commission's inquiry all forms of historic and ongoing racism and racial discrimination against Aboriginal and Torres Strait Islander people.

¹ Morris, A. (2015). 'Lessons from New Zealand: Towards a Better Working Relationship between Indigenous Peoples and the State,.' *Australian Indigenous Law Review*, 67 18(2), 67-87. Retrieved from: <https://www.jstor.org/stable/26423291>

- c. include within the scope of the Commission's inquiry human rights breaches made against Aboriginal and Torres Strait Islander people and communities.
- 5. Amend section 8, clause 4 of the Bill to include trauma-aware and healing-informed practice as principles underpinning all dealings with Aboriginal and Torres Strait Islander people.
- 6. In implementing the Truth and Justice Commission Act, the Commission should:
 - a. be fully legislated, resourced and empowered.
 - b. embed, uphold and advance in its design, establishment and functions the principle of self-determination.
 - c. embed, uphold and advance in its design, establishment and function the rights of Aboriginal and Torres Strait Islander people, including but not limited to, those set out in the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities.
 - d. commit to an expansive definition of cultural safety as the positive recognition and celebration of Aboriginal and Torres Strait Islander culture, including providing sufficient resourcing to allow the Commission to adhere to cultural protocols.
 - e. ensure alignment with the National Agreement on Closing the Gap, including in all positive recommendations and/or advice on reform to existing institutions, law, policy and practice and in considering how the Commonwealth, State and Territory government can be held accountable.
 - f. facilitate meaningful participation from Aboriginal and Torres Strait Islander children and young people at all stages of its work.
 - g. engage with existing accountability mechanisms including the Australian Human Rights Commission and the National Commissioner for Aboriginal and Torres Strait Islander Children and Young people once it is established.
 - h. uphold the principles of data reciprocity, Indigenous Data Sovereignty and Indigenous Data Governance in its operations.

Introduction

SNAICC recognises that the intent of the Bill is to establish a Commission in the image of the Makarrata Commission and in response to the Uluru Statement from the Heart's call for a "truth telling about our history" and welcomes the Commission's primary aim of advancing the human rights of Aboriginal and Torres Strait Islander people.

The Referendum Council noted in 2017 that a truth telling Commission is a development "of great importance to Aboriginal and Torres Strait Islander peoples."² The Referendum Council envisaged a Commission which would facilitate truth-telling between Indigenous peoples and the Australian state. However, truth-telling itself "has not been absent in the relationship between Indigenous and non-Indigenous Australia."³ In the Council's vision, truth and just outcomes would be tied together. Too often before these have been untethered.

Establishing an official public record of historic and contemporary injustice and discrimination against Aboriginal and Torres Strait Islander people must lead towards practical and accountable restitution and reform. SNAICC's submission refers to both the *Royal Commission into Aboriginal Deaths in Custody Report* and the *Bringing Them Home Report* as previous examples of truth-telling. In the 33 years and 27 years respectively since those inquiries concluded, both the over-criminalisation and over-incarceration of Aboriginal and Torres Strait Islander children, and the over-representation of Aboriginal and Torres Strait Islander children in child protection systems, remain endemic and unacceptable. Without commitments to justice and reform, these truth telling processes are incomplete.

Strategic Context

Self-Determination

SNAICC advocates for the full enactment of self-determination in all legislation, policies, and strategies. Self-determination describes the right of Aboriginal and Torres Strait Islander peoples to autonomy and self-governance.⁴ The United Nations Expert Mechanism on the Rights of Indigenous People under UNDRIP connects the capacity of Indigenous peoples to meet their children's needs with their ability to exercise self-determination⁵.

For too long, governments have decided what works and what doesn't for Aboriginal and Torres Strait Islander people and communities without delivering meaningful and tangible positive change

² Australian Government Referendum Council 2017, 'Final Report of the Referendum Council.' Retrieved from: <https://www8.austlii.edu.au/au/other/IndigLRes/2017/2.pdf>, pg. 2.

³ Appleby, G and Davis, M. (2018). 'The Uluru Statement and the Promises of Truth' Australian Historical Studies 49(4), 501-509. Retrieved from: https://www.researchgate.net/publication/329188831_The_Uluru_Statement_and_the_Promises_of_Truth pg. 501.

⁴ SNAICC 2022, 'The Family Matters Report 2022: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care'. Retrieved from: <https://www.familymatters.org.au/wp-content/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf> pg. 90.

⁵ United Nations Human Rights Council 2021, 'Rights of the Indigenous child under the United Nations Declaration on the Rights of Indigenous Peoples'. Retrieved from: [G2121979.pdf \(un.org\)](https://www.un.org/ruhr/2021/09/20210921-Indigenous-Child-Rights-Declaration), pg. 2

for our children and families. Enacting self-determination is critical to designing and implementing effective policies that achieve better outcomes for Aboriginal and Torres Strait Islander children.

Truth telling is a product of Aboriginal and Torres Strait Islander self-determination. It was one of three central tenets of the Uluru Statement from the Heart: Voice, Treaty, Truth. Truth telling grew 'organically but undeniably from the Dialogues themselves.'⁶ Establishing the Commission would enable Aboriginal and Torres Strait Islander people to realise their self-determined priorities and recognise Aboriginal and Torres Strait Islander practices of story-telling and witnessing as legitimate sources of historical evidence.

Human Rights Frameworks

Human rights give all people an entitlement to freedom to make choices about our lives and to be free from fear, harassment, or discrimination. Basic human rights have been agreed on by people and governments around the world and they include the right to life, fair trial, freedom from torture and cruel and inhumane treatment, freedom of speech, religion and the right to health, education and an adequate standard of living.⁷

International human rights frameworks are important because they provide guidance for all governments on how they should approach legislation, policy, and practice for upholding human rights. They are also useful for measuring how much or how little governments are doing to protect human rights.

Australia has ratified seven international human rights treaties including:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
- Convention on the Rights of the Child (UNCRC)
- Convention on the Rights of Persons with Disabilities (UNCRPD).⁸

Aboriginal and Torres Strait Islander children's rights include those owed to all people as well as their unique rights as Indigenous Peoples.

⁶ Appleby, G and Davis, M. (2018). 'The Uluru Statement and the Promises of Truth' Australian Historical Studies 49(4), 501-509. Retrieved from: https://www.researchgate.net/publication/329188831_The_Uluru_Statement_and_the_Promises_of_Truth pg. 503.

⁷ Australian Human Rights Commission, 'An Introduction to Human Rights'. Retrieved from: <https://humanrights.gov.au/our-work/education/introduction-human-rights#:~:text=their%20human%20rights,-.Human%20rights%20are%20a%20set%20of%20principles%20concerned%20with%20equality,from%20fear%2C%20harassment%20or%20discrimination.>

⁸ Attorney-General's Department, 'International Human Rights System'. Retrieved from: [https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/international-human-rights-system#:~:text=Australia%20is%20a%20party%20to,Forms%20of%20Racial%20Discrimination%20\(CERD\)](https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/international-human-rights-system#:~:text=Australia%20is%20a%20party%20to,Forms%20of%20Racial%20Discrimination%20(CERD))

United Nations Convention on the Rights of the Child

The rights of all children are set out in the UNCRC and are specific to children, their contexts, and needs. These are additional rights that are offered to children in recognition of their vulnerability to abuse and exploitation and these rights must be safeguarded effectively.⁹ The UNCRC contains 54 articles and is based on four core principles:

- Non-discrimination
- Devotion to the best interests of the child
- The right to life, survival and development and
- Respect for the views of the child

The UNCRC also contains articles that are especially important to Aboriginal and Torres Strait Islander children such as the right to enjoy their culture, and to learn and use the language and customs of their Indigenous Nations. The United Nations Committee on the Rights of the Child has provided important guidance on how the UNCRC must be implemented to protect the rights of Indigenous children. This guidance reaffirms that the active protection of Indigenous children's rights requires dedicated attention and the application of special measures.

United Nations Declaration on the Rights of Indigenous Peoples

In addition to the rights under the UNCRC Aboriginal and Torres Strait Islander children also have rights under the UNDRIP. The articles under UNDRIP include rights to practice and revitalise their cultural traditions and customs, and to pass on to future generations their histories, languages and oral traditions.¹⁰ Rights also extend to land, maintaining cultural heritage and traditional knowledge, and to the highest attainable standard of physical and mental health.¹¹

Particular attention is to be paid to the rights and special needs of Indigenous children and measures taken to ensure that Indigenous children enjoy the full protection and guarantees against all forms of violence and discrimination.¹²

Australia has also endorsed UNDRIP, referring to the Declaration as a non-legally binding document.¹³ Framing the Declaration in this way means little has been done to incorporate these rights into legislation and processes for rights protection and accountability. Notably, the Declaration is excluded from current requirements for Commonwealth Bills to include a statement of compatibility with Australia's human rights obligations.¹⁴ SNAICC acknowledges the recent recommendations from the Parliament of Australia Joint Standing Committee on

⁹ Australian Human Rights Commission, 'What are Children's Rights?'. Retrieved from: <https://humanrights.gov.au/our-work/education/what-are-childrens-rights#:~:text=As%20well%20as%20the,to%20exploitation%20and%20abuse>

¹⁰ United Nations Declaration on the Rights of Indigenous Peoples. Retrieved from: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf, articles 11(1) and 13(1).

¹¹ Ibid, articles 24(2), 25, 31(1).

¹² Ibid, article 22.

¹³ Attorney-General's Department, 'International Human Rights System'. Retrieved from: [https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/international-human-rights-system#:~:text=Australia%20is%20a%20party%20to,Forms%20of%20Racial%20Discrimination%20\(CERD\)](https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/international-human-rights-system#:~:text=Australia%20is%20a%20party%20to,Forms%20of%20Racial%20Discrimination%20(CERD))

¹⁴ Attorney-General's Department, 'Statements of Compatibility'. Retrieved from: <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/statements-compatibility>

Aboriginal and Torres Strait Islander Affairs in November 2023 which attempts to address UNDRIP's absence from processes and broader governmental policy, however these recommendations have not yet been accepted or adopted by government.¹⁵

Given the vulnerability of Aboriginal and Torres Strait Islander children's rights, SNAICC supports all efforts to strengthen the discourse and protection of human rights in Australia. The establishment of the Commission will compel governments to consider the legacies and ramifications of historical and contemporary rights abuses and injustices. It will continue to contribute to a culture of truth-telling and accountability and answering back to past and contemporary silences and reactionary responses to progress. These institutional and cultural changes will help prevent breaches of Aboriginal and Torres Strait Islander children's rights. Offering advice for human rights-based approaches to reform and redress, with appropriate accountability for inaction and continued violations, will push Australian governments to uphold the set of rights owed to Aboriginal and Torres Strait Islander children.

National Agreement on Closing the Gap

In July 2020, the Australian Government, all state and territory governments, and the Coalition of Peaks signed the National Agreement on Closing the Gap (National Agreement). The National Agreement seeks to overcome the entrenched inequalities faced by Aboriginal and Torres Strait Islander people, pushing for equality in life outcomes for all Australians.

The National Agreement is built around four Priority Reforms to change the way governments work with Aboriginal and Torres Strait Islander communities, organisations, and people across the country. The Priority Reforms are based on what Aboriginal and Torres Strait Islander people have been saying for a long time is needed to improve the lives of our people, and have been committed to by all Australian, state and territory governments. They have strong alignment with a number of rights recognised in the *United Nations Declaration on the Rights of Indigenous Peoples*.

The Priority Reforms must inform all government action including legislation, policy, and practice, whether these actions are targeted for Aboriginal and Torres Strait Islander peoples or impact them as part of the general population. The Priority Reforms are listed below.

1. Formal Partnerships and Shared Decision Making

Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements.

2. Building the Community-Controlled Sector

¹⁵ Parliament of Australia 2023, 'Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia.' Retrieved from: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/UNDRIP/Report

There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country.

3. Transforming Government Organisations

Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund.

4. Shared Access to Data and Information at a Regional Level

Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.¹⁶

The need for the Commission

SNAICC supports the establishment of a national Truth and Justice Commission to respond to the Uluru Statement from the Heart's call for national truth telling. The long and ongoing history of human rights breaches against Aboriginal and Torres Strait Islander children clearly illustrates why such a Commission is needed.

Historic and ongoing racism

For more than 60,000 years, Aboriginal and Torres Strait Islander children have been raised to be strong in their culture and to thrive, supported by family, community, Country and culture. While many Aboriginal and Torres Strait Islander families and communities continue to raise children this way, other are faced with disadvantage that stems from colonisation, both historic and ongoing discriminatory laws, practices and policies, leading to a range of harmful impacts including inequitable life outcomes and intergenerational trauma.¹⁷

The settler-colonial Australian state sought to erase Aboriginal and Torres Strait Islander peoples and their political sovereignty, dispossess them of their Country, and disconnect them from their families, communities and culture. It used policies of forcible child removal, denial of culture, and criminalisation as instruments of control. Subsequently, the cumulative effects of ongoing colonising state practices have resulted in persistent disparities between Aboriginal and Torres Strait Islander and non-Indigenous Australians in socioeconomic domains like health, education, social and emotional wellbeing, safety, economic participation and more.¹⁸

Historic and ongoing experiences of racism Aboriginal and Torres Strait Islander people experience a unique form of racism originating in and driven by the ongoing impacts of

¹⁶ Australian Government, 'Closing the Gap Priority Reforms'. Retrieved from: <https://www.closingthegap.gov.au/national-agreement/priority-reforms>

¹⁷ Australian Institute of Health and Welfare 2023, 'Intergenerational trauma and mental health.' Retrieved from: <https://www.indigenoussmhspc.gov.au/getattachment/6f0fb3ba-11fb-40d2-8e29-62f506c3f80d/intergenerational-trauma-and-mental-health.pdf?v=1599>

¹⁸ Ibid.

colonisation. Racism underpinned the erroneous legal justification of Terra Nullius, the denial of recognition of Aboriginal and Torres Strait Islander people in the Australian Constitution until 1967, the deprivation of opportunities to participate as equal citizens, and centuries of coercive and marginalising policies. Despite progress, Aboriginal and Torres Strait Islander people continue to experience systemic and institutional racism. Institutional racism manifests itself in the policies, practices and structures of systems and organisations with which Aboriginal and Torres Strait Islander people interact, and results in poorer outcomes.¹⁹ Systemic racism also manifests itself in everyday and interpersonal racism.²⁰ All forms of racism and racial discrimination exact an enormous toll on the physical and mental health, and the social-emotional and cultural wellbeing of Aboriginal and Torres Strait Islander people.²¹

The Voice to Parliament Referendum shone a stark light on Australian racism against Aboriginal and Torres Strait Islander people. Reactionary backlash to the Voice resulted in increased experiences of racism and racial vilification in Australia. A national crisis support organisation for Aboriginal Torres Strait Islander, 13YARN, reported a 108 per cent increase in callers reporting racism and abuse between March and June of 2023.²² High profile advocates for the Voice to Parliament regularly reported receiving racist abuse, and SNAICC's own social media channels were, and continue to be, consistently flooded with racist comments.²³

Over-representation in statutory systems

Through history and presently, Aboriginal and Torres Strait Islander children have had their health, development, wellbeing and safety threatened by discriminatory or neglectful state policy and practice. We need only to look at the shocking rates of overrepresentation in the child protection and youth justice systems as evidence of the systemic and institutional neglect of Aboriginal and Torres Strait Islander children's rights and wellbeing at both federal and state/territory levels.

Child protection systems

Since colonisation Aboriginal and Torres Strait Islander children and families have been separated at disproportionate rates. The landmark *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) documented the history of the Stolen Generations and the impact of the forcible removal on children, families,

¹⁹ Bourke, C.J. Marrie, H. and Marrie, A. (2019) 'Transforming institutional racism at an Australian hospital', *Australian Health Review*, 43 (6), 611–618. Retrieved from: <https://pubmed.ncbi.nlm.nih.gov/30458120/>.

²⁰ Thurber, K. (2021). 'Prevalence of Everyday Discrimination and Relation with Wellbeing among Aboriginal and Torres Strait Islander Adults in Australia.' *International Journal of Environmental Research and Public Health* 18 (6577), 1-18. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8296443/pdf/ijerph-18-06577.pdf>.

²¹ Truong, M and Moore, E 2023, 'Racism and Indigenous wellbeing, mental health and suicide.' Retrieved from: [file:///C:/Users/Nick%20Davis/Downloads/Racism-and-Indigenous-wellbeing%20\(2\).pdf](file:///C:/Users/Nick%20Davis/Downloads/Racism-and-Indigenous-wellbeing%20(2).pdf)

²² Australian Broadcasting Commission 2024, 'Voice to Parliament referendum impacting mental health of Indigenous Australians as charities report increase in racism.' Retrieved from: <https://www.abc.net.au/news/2023-10-03/indigenous-mental-health-impacts-of-voice-referendum-debate/102923188>.

²³ Al Jazeera 2023, 'As vote nears, 'horrific racism' mars Australian Voice referendum campaign.' Retrieved from: <https://www.aljazeera.com/news/2023/10/6/as-vote-nears-horrific-racism-mars-australian-voice-referendum-campaign>; Australian Broadcasting Commission 2023, 'Linda Burney treated 'appallingly' during Voice debate, feels 'betrayed' by Jacinta Nampijinpa Price's colonisation claim.' Retrieved from: <https://www.abc.net.au/news/2023-09-15/linda-burney-feels-betrayed-by-price-colonisation-comments/102859658>.

and communities. Many of these children grew up without connection to their culture, Country, and identities.²⁴ The impact of assimilationist policies and other systemic discrimination, racism and harm included intergenerational trauma resulting from the removal and widespread practices of emotional, physical and sexual abuse, adverse social and emotional wellbeing and mental health,²⁵ domestic and family violence, and substance abuse.²⁶

The *Bringing Them Home* report states that in 1993 Aboriginal and Torres Strait Islander children were 7.4% more likely than non-Indigenous children to be ‘in care.’²⁷ In the 27 years since that report was released, governments have not meaningfully reduced this over-representation. In fact, the data indicates they have gone backwards. SNAICC analysis of the latest data from AIHW’s Child Protection Australia²⁸ report found that in 2022-23, Aboriginal and Torres Strait Islander children were 10.8 times more likely to be in out-of-home care or on a third-party parental responsibility order. Analysis of these trends shows that they are steadily increasing, with the rate of over-representation in out-of-home care at its highest point since data was recorded. Additionally, pre-natal and infant child protection notifications and the removal of infants are increasing over time; Aboriginal and Torres Strait Islander people are over-represented in this trend too.²⁹

Under the National Agreement, all governments in Australia have committed reducing the significant over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent by 2031. Progress towards this target is off-track and unlikely to be met without significant transformational change by all governments of child protection systems, policy and practice. In 2023, the rate of Aboriginal and Torres Strait Islander children in out-of-home care was 57.2 per 1,000 children. For non-Indigenous children, the rate was 4.7 per 1000 children. Far from the 45% reduction, the Productivity Commission is projecting that by 2031, the rate of Aboriginal and Torres Strait Islander children in out-of-home care will have increased by 16% from 2019.

There are more Aboriginal and Torres Strait Islander children living away from their families, cultures and communities today than there were when the *Bringing Them Home* report was handed down. In order to avoid history repeating itself and new cycles of intergenerational trauma

²⁴ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families 1997, ‘Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.’ Retrieved from: <https://humanrights.gov.au/our-work/projects/bringing-them-home-report-1997>

²⁵ Australian Institute of Health and Welfare 2018, ‘Aboriginal and Torres Strait Islander Stolen Generations and descendants: numbers, demographic characteristics and selected outcomes.’ Retrieved from: <https://www.aihw.gov.au/reports/indigenous-australians/stolen-generations-descendants/summary>.

²⁶ Ibid.

²⁷ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families 1997, ‘Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families.’ Retrieved from: <https://humanrights.gov.au/our-work/projects/bringing-them-home-report-1997>, pg. 372

²⁸ Australian Institute of Health and Welfare 2024, ‘Child protection Australia 2022–23.’ Retrieved from: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-insights/contents/about>

²⁹ O’Donnell, M et al. (2023). ‘Infant and Pre-birth Involvement with Child Protection Across Australia.’ *Child Maltreatment* 28 (4), 608-620. Retrieved from: <https://journals.sagepub.com/doi/pdf/10.1177/10775595231186647>.

being created, holistic approaches to reforming child protection underpinned by self-determination are needed.

SNAICC welcomes the introduction of the Commission, and the breadth of its Terms of Reference as outlined in the Bill. This will provide an opportunity for governments to confront the shameful history of child removal and assimilationist policies and practices and to acknowledge the harmful and discriminatory practices that underpin current child protection systems. SNAICC is encouraged that the Commission's Terms of Reference are expansive enough to understand the consequences of these policies, which impact the identities, cultural knowledge, languages, social emotional wellbeing, safety, physical and mental health, education and employment.

Justice systems

In all aspects of Australia's youth justice system we have seen – and continue to see – the effects of neglectful and often deliberately racist policies of over-criminalisation and over-incarceration of Aboriginal and Torres Strait Islander children. In all states and territories, Aboriginal and Torres Strait Islander children and young people contend with over-policing, punitive justice systems chronically predisposed to presuming their guilt, and systemic lack of legal supports. There is also an overrepresentation of Aboriginal and Torres Strait Islander children and young people with disability in youth justice systems and a significant association between time in out-of-home care and contact with the justice system.

Similar to the child protection system, the drivers of over-criminalisation and over-incarceration of Aboriginal and Torres Strait Islander children and young people are rooted in history. Criminalisation and incarceration of Aboriginal and Torres Strait Islander children and young people historically operated as an apparatus of control, and shaped their interactions with the criminal justice system thereafter.³⁰

In 1991 the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that the disproportionate incidence of deaths in custody is primarily a function of over-representation in custody.³¹ It found that children and young people were “grossly over-represented in appearances in the juvenile justice system throughout the country”, and that “the penalties which they receive are demonstrably more severe than those of equivalent non-Aboriginal [children and young people].”³² In every state, the RCIADIC found that Aboriginal and Torres Strait Islander children were anywhere between 25 times (NSW) or 7 times (NT) as likely as non-Indigenous children and young people to be in detention.

The RCIADIC made 339 recommendations to reduce over-representation in criminal justice systems, including of children and young people, to eliminate deaths in custody, and to address

³⁰ Rosco, K and Godfrey, B. (2022). 'Postcolonial churn and the impact of the criminal justice system on Aboriginal people in Western Australia, 1829–2020.' *Journal of Criminology* 55 (4), 532-549. Retrieved from: <https://journals.sagepub.com/doi/full/10.1177/26338076221129926>

³¹ Government of Australia 1991, 'Royal Commission into Aboriginal Deaths in Custody, National Report. Retrieved from: <https://www.austlii.edu.au/au/other/IndigLRes/rciadic/>.

³² Ibid, vol. 2, chapter 14.3.

downstream causes of criminalisation and incarceration. All governments are responsible for implementing and tracking progress of these recommendations. In 2023, 32 years after the final report on the RCIADIC was published, Aboriginal and Torres Strait Islander children and young people remain 29 times as likely as non-Indigenous young people to be in detention.³³

Access to universal services

The drivers of over-representation in youth justice systems and child protection systems are a direct result of colonisation. The Australian Government is failing Aboriginal and Torres Strait Islander children, families and communities by not focusing funding, resources and reform on addressing factors such as upstream disadvantage experienced by families and communities, systemic racism and discrimination, pre-existing health conditions (including neurodisability and mental health issues) and trauma experiences.³⁴

Despite their commitments under the National Agreement on Closing the Gap, governments have failed to take meaningful steps to address the systemic inequity and disadvantage faced by Aboriginal and Torres Strait Islander people. The Productivity Commission's Review of the National Agreement on Closing the Gap found there was significant progress needed by governments to deliver on their commitments, particularly in relation to the implementation of the Priority Reform areas.

The Productivity Commission particularly highlighted that urgent change was needed to progress Priority Reform 3 – structural transformation of government agencies and institutions to be culturally safe and responsive to Aboriginal and Torres Strait Islander people, and eliminate entrenched institutional racism. The Productivity Commission found a clear absence of commitment by governments to doing this, which risks reifying and leaving unchallenged the practices, structure and mindsets that have caused much historical and contemporary injustice.³⁵ The establishment of the Commission will be an important mechanism to ensure truth-telling and accountability for the impact of both government policies and decisions, but also the impact that stems from a lack of government action and willingness for reform.

The Australian Government has responsibility for providing primary and secondary service systems in order to limit or prevent contact with tertiary systems for Aboriginal and Torres Strait Islander children. These include housing, health, education, early years education and care, domestic and family violence, income support, food security, land rights and environmental health. Aboriginal and Torres Strait Islander children and their families must have equitable access to the universal primary service systems that ensure their health and wellbeing and allows them to thrive.

³³ Australian Institute of Health and Welfare 2023, 'Youth detention population in Australia 2023.' Retrieved from: <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/trends-in-detention>.

³⁴ Office of the Children's Commissioner Northern Territory 2023, 'Use of Spit Hoods and Restraint Chairs on Children Position Paper'. Retrieved from: https://occ.nt.gov.au/_data/assets/pdf_file/0011/1240040/OCC-Position-Paper-Use-of-Spit-Hoods-and-Restraint-Chairs-on-Children.pdf

³⁵ Australian Government Productivity Commission 2024, 'Review of the National Agreement on Closing the Gap: Study Report, vol. 1.' Retrieved from: <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report>, pp. 55-61.

It is well documented that many Aboriginal and Torres Strait Islander children miss out on accessing quality early years education which is culturally responsive and appropriate. The result of this is that Aboriginal and Torres Strait Islander children experiencing disproportionate disadvantage in relation to development and education outcomes in the early years. Compared to non-Indigenous children, Aboriginal and Torres Strait Islander children were 2.6 times more likely to be developmentally vulnerable on 2 or more domains in 2021. This rate of developmental vulnerability has increased for Aboriginal and Torres Strait Islander children since 2018, while that for non-Indigenous has been declining. The Productivity Commission recently reported that progress towards Target 4 to improve child development in all five AEDC domains to 55% has worsened.³⁶

A series of historical policy failures from all governments have led to this point. These include under resourcing ACCOs which deliver holistic, integrated and cultural responsive early years services proven to improve children's developmental outcomes, and the establishment and imposition in many Aboriginal and Torres Strait Islander communities of a market-based early years system underpinned by Western concepts of child development. Governments also bear responsibility to address historical, wide-ranging, complex and interrelated factors that prevent Aboriginal and Torres Strait Islander families from accessing and participating in early years services. Many of these are rooted in history, including preventable health conditions that stem from histories of colonisation, child removal and the long-term impacts of intergenerational trauma, socioeconomic disadvantage, discrimination, and the lack of supports for families with low levels of literacy and confidence.³⁷

ACCOs are best placed to provide community-led, holistic and culturally safe child and family services to Aboriginal and Torres Strait Islander communities. They are accountable to their communities and thus deliver high quality, responsive, and culturally safe services, and their position as a preferred provider in their communities ensures higher levels of engagement with service users. This enables families and communities to resolve family challenges without escalation to the removal of children.³⁸ However Aboriginal and Torres Strait Islander communities and SNAICC have long been concerned by the discriminatory under-investment in the wellbeing of Aboriginal and Torres Strait Islander families, through under-resourcing of ACCOs relative to known community needs.

Meanwhile, the shameful legacy of colonisation and the Stolen Generations, alongside continuing high rates of removal of Aboriginal and Torres Strait Islander children from their families, has led

³⁶ Australian Government Productivity Commission 2023, Closing the Gap Information Repository 'Socioeconomic outcome area 4'. Retrieved from: <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area>.

³⁷ SNAICC – National Voice for Our Children and Early Childhood Australia 2019, 'Ensuring equality for Aboriginal and Torres Strait Islander Children in the Early Years. Retrieved from: <https://www.snaicc.org.au/wp-content/uploads/2019/02/SNAICC-ECA-Discussion-Paper-Feb2019.pdf>.

³⁸ SNAICC – National Voice for Our Children 2016, 'Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care: Policy Position Statement.' Retrieved from: https://www.snaicc.org.au/wp-content/uploads/2016/07/SNAICC-Achieving_stability-1.pdf.

to a fundamental lack of trust in non-Indigenous service providers.³⁹ Despite the well-evidenced benefits of investing in prevention and early intervention programs, 84.1 per cent of national expenditure on the child protection system is directed at the tertiary end of the system, including intervention and out of home care services. 15.9 per cent of funding is directed towards prevention and early intervention and spending decreased between 2016 and 2020 from 17.1 to 15.9 per cent.⁴⁰ ACCOs must be prioritised as providers of child and family services, and funded accordingly.

The Commission must acknowledge the positive right held by Aboriginal and Torres Strait Islander children to effective early years and child and family supports which enable them to thrive throughout their lives, and reduce the unacceptable likelihood that they will come into contact with youth justice systems.

Recommendation One: The Australian Government enact the Bill to establish the Truth and Justice Commission Act establishing a commission into historic and ongoing injustices and discrimination against Aboriginal and Torres Strait Islander people.

The framework for establishing the Commission

As outlined above, the Commission is a necessary mechanism for truth telling and accountability. To be able to do this effectively, the Commission must have the right framework for operating, including establishment framework, authorising environment, membership, functions and operating structure.

SNAICC is broadly supportive of the framework outlined in the Bill, however recommends the following amendments to the Commission's Terms of Reference as outlined in the Bill to strengthen the operation of the Commission.

Membership appointment

In the Bill, the appointment of members by the Joint Ministers requires that prospective member have the required skills, knowledge and experience to execute the Commissions functions. SNAICC welcomes the requirement that the majority of Commission members are to be Aboriginal and Torres Strait Islander people, along with the other broad criteria set out in the Bill. It is critical that members have the right mix of skills, knowledge and experience to sit as Commission members, and SNAICC welcomes the specifications that have been included in the Bill. However, given the ongoing system injustices perpetrated against Aboriginal and Torres Strait

³⁹ SNAICC – National Voice for Our Children 2010, 'Working and Walking Together: Supporting Family Relationship Services to Work with Aboriginal and Torres Strait Islander Families and Organisations.' Retrieved from: <https://www.snaicc.org.au/>; Nole-Isles, D. et al. (2021). 'Enablers and Barriers to Accessing Healthcare Services for Aboriginal People in New South Wales.' *International Journal for Environmental Research and Public Health* 18 (6), 3014. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7999419/>.

⁴⁰ SNAICC – National Voice for Our Children 2023, 'Stronger ACCOs, Stronger Families Report'. Retrieved from: <https://www.snaicc.org.au/resources/stronger-accos-stronger-families-report/>, p. 16.

Islander children, SNAICC recommends the criteria be expanded to include a specific understanding of the human rights and experiences of Aboriginal and Torres Strait Islander children and experience in upholding these.

Additionally, the Bill requires that the Joint Ministers consult with ‘relevant stakeholders’ before appointing any member. To ensure membership appointment is aligned with the National Agreement on Closing the Gap, shared decision-making with Aboriginal and Torres Strait Islander people should be embedded into this process. SNAICC recommends that the appointment of members be done through a shared decision-making body that includes representatives from both government and the Coalition of Peaks. This could be a sub-group of Joint Council.

Recommendation Two: Amend section 7, clause 2 of the Bill to explicitly state that members are not appointed to the Commission unless the Joint Ministers are satisfied that the person has the knowledge of and experience with the human rights of children and Aboriginal and Torres Strait Islander people.

Recommendation Three: Amend section 7, clause 3 of the Bill to explicitly state that the Joint Ministers must make appointment decisions through a shared decision-making mechanism.

Inclusion of the States and Territories into the Commission’s scope

Historic and contemporary injustices and discrimination were not perpetrated solely by the Commonwealth government; they belong to State and Territory governments as well. SNAICC’s submission has underscored the persistent rights breaches that have occurred, and continue to occur, in statutory systems administered in part or in full by State and Territory governments.

As currently drafted, the Bill excludes inquiry into historical injustices carried out by State and Territory governments. For the Commission’s inquiries and proposals for change to be adequately holistic, it must be empowered to inquire into State and Territory wrongdoing too, and work in partnership with parallel truth-telling processes of States and Territories, such as Victoria’s Yoorrook Justice Commission.

Inclusion of all forms of historic and ongoing racism and racial discrimination

As outlined earlier in this submission, Aboriginal and Torres Strait Islander people have experienced significant historic and ongoing structural and systemic racism. Injustice against Aboriginal and Torres Strait Islander people cannot be decoupled from racism and racial discrimination.

The Bill should explicitly acknowledge this and provide for the Commission to specifically inquire into all natures, forms and impacts of racism against Aboriginal and Torres Strait Islander people.

Inclusion of human rights breaches made against Aboriginal and Torres Strait Islander people and communities

As outlined earlier in the submission, Aboriginal and Torres Strait Islander people, including children, have a distinct set of rights owed to them under international law. There is a well documented history of the human rights violations of Aboriginal and Torres Strait Islander people in Australia and time and again the United Nations has found that Australia is not living up to its human rights obligations.⁴¹

Truth-telling and justice cannot sit separately from the fundamental human rights of Aboriginal and Torres Strait Islander people. The Bill should acknowledge this and provide for the Commission to specifically inquire into human rights breaches made against Aboriginal and Torres Strait Islander people and communities in collaboration with the Australian Human Rights Commission and other human rights accountability mechanisms within Australia.

Recommendation Four: Amend section 8 of the Bill to expand the Terms of Reference of the Commission to:

- a. provide for the Commission to be empowered to inquire into historic and contemporary injustice and discrimination perpetrated by State and Territory governments.
- b. include within the scope of the Commission's inquiry all forms of historic and ongoing racism and racial discrimination against Aboriginal and Torres Strait Islander people.
- c. include within the scope of the Commission's inquiry human rights breaches made against Aboriginal and Torres Strait Islander people and communities.

Trauma-aware and healing-informed operations

SNAICC welcomes the Bill's attention to the principle of cultural safety, adherence to cultural protocols, and the need to embed these throughout the Commission's design, establishment, operations and functions.

This submission documents the debilitating effects of trauma through generations. Truth telling and remembering can be a positive means of confronting and dealing with trauma, provided this is facilitated in such a way as to lead to healing, rather than re-traumatisation. The nature of the content and evidence which the Commission will undoubtedly hear requires that all practices, operations and functions must also be trauma-aware and healing-informed. SNAICC believes that the trauma-aware and healing-informed conduct of the Commission is so important to its effective function that we strongly recommend that the language of the Bill is updated at section 8, clause 4 to include 'trauma aware and healing-informed' practice as a requirement of the Commission.

⁴¹ United Nations Human Rights Council, Committee on the Rights of the Child 2019, 'Concluding observations on the combined fifth and sixth periodic reports of Australia.' Retrieved from: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=AUS&Lang=EN

SNAICC has developed resources, including the [Believe Inquire Respond to Disclosures](#) (BIRD) Report, which codify best practice approaches to consistently implementing cultural safety and trauma-informed practice with Aboriginal and Torres Strait Islander children. Additionally, the Commission should draw on the service models and underpinning theories and practices of the [Supporting Healing for Families](#) program.

Recommendation Five: Amend section 8, clause 4 of the Bill to include trauma-aware and healing-informed practice as principles underpinning all dealings with Aboriginal and Torres Strait Islander people.

Implementation of the Commission

As well as being established within a strong framework, how the Commission undertakes its functions and operates day-to-day is equally critical. SNAICC has outlined below key operational considerations for the establishment of the Commission.

Full resourcing and empowerment

Government systems and institutions need to be accountable to the people and communities they serve. The Productivity Commission's recent *Review of the National Agreement on Closing the Gap* demonstrates that governments "are not adequately delivering on [their] commitment[s]" to "overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to those of all Australians."⁴² It found that the accountability mechanisms of the National Agreement are not sufficiently independent, do not compel governments to avoid consequences for failure, are not rigorously monitored and evaluated, and obscure the responsibilities of each party.

The Commission must avoid following this trend by being accountable to Aboriginal and Torres Strait Islander children and families. It must be legislated, fully empowered and resourced to be a transparent and accountable mechanism for truth-telling, both historical and contemporary, and for just outcomes.

Self-determination in operationalisation

The UNDRIP, to which Australia has committed, confirms the right of Indigenous people to self-determination, self-government and to participate in decision-making in matters that affect their rights.

The Commission must not become yet another arena in which Aboriginal and Torres Strait Islander people have to negotiate recognition of their right to self-determination. This right must be embedded in the establishment and all implementation and functions of the Commission.

⁴² Australian Government Productivity Commission 2024, 'Review of the National Agreement on Closing the Gap: Study Report, vol. 1.' Retrieved from: <https://www.pc.gov.au/inquiries/completed/closing-the-gap-review/report>, p. 3.

Provided that the Commission leads to fundamental change in the systems and institutions of government, its laws, policies and practices, and the public narratives and attitudes which shape them, then the Commission will also support Aboriginal and Torres Strait Islander people's path towards full self-determination. Victoria's Yoorrook Justice Commission and the First Peoples' Assembly of Victoria articulate this possibility for truth-telling as "the foundation stone on the path to Treaties and self-determination."⁴³

Human rights centred

This submission has detailed the vulnerability of Aboriginal and Torres Strait Islander children's rights when confronted with systematic racism, discrimination, injustice and negligence. The Commission will unmistakably reiterate the positive duty Australian governments owe to those rights, adding to decades of truth telling and advocacy by Aboriginal and Torres Strait Islander communities.

In witnessing historical and contemporary rights breaches, and making recommendations for a path to human-rights based approaches to redress and reform, the Commission can strengthen the human rights environment in Australia. All advice provided by the Commission must give real, practical effect to the human rights owed to Aboriginal and Torres Strait Islander people. Proposals should lead to complementary investment in meaningful and tangible mechanisms to ensure:

- Aboriginal and Torres Strait Islander children and families have equitable access to universal services needed to thrive;
- Equal access to justice, including accessible, appropriate remedies are provided when rights are breached; and
- Governments are held to account.

Cultural safety

SNAICC urges the Commission to commit to an expansive definition of cultural safety in its operations. Cultural safety is the positive recognition and celebration of cultures. It is more than just the absence of racism or discrimination and more than 'cultural awareness' and 'cultural sensitivity'. It empowers people and enables them to contribute and feel safe to be themselves.

The ceremonies and protocols which form an important part of Aboriginal and Torres Strait Islander culture have survived colonisation. Recognising the importance and diversity of those protocols and respecting them in the Commission's operations will encourage ethical conduct towards Aboriginal and Torres Strait Islander people, including recognises their enduring right to own and control their cultural heritage and cultural and intellectual property. Fully resourcing and embedding cultural safety and respect for cultural protocols is essential to the Commission's effectiveness and impact.

⁴³ First Peoples' Assembly of Victoria, 2021, 'Tyerri Yoo-Rrook (Seed of Truth): Report to the Yoo-rrook Justice Commission from the First Peoples' Assembly of Victoria. Retrieved from: https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/11/Tyerri-Yoo-rrook-Seed-of-truth-Report-2021_Final-1.pdf

Alignment with the National Agreement

The process for establishing the Commission is equally as important as the implementation and operations of the Commission itself. Partnerships with Aboriginal and Torres Strait Islander Peak Bodies, lead service organisations and the broader Aboriginal and Torres Strait Islander community-controlled sector is critical to ensure alignment of the Commission with the National Agreement. To the extent that the Commission provides advice, recommendations and advocacy on how legislation, policies, processes, programs, and practices can be improved to better protect the rights of Aboriginal and Torres Strait Islander children, the Commission should engage with existing and emerging mechanisms for partnership and shared decision making such as the Coalition of Peaks, the relevant Aboriginal and Torres Strait Islander peak body and/or the relevant Policy Partnership established under the National Agreement.

Child and youth participation

Children have a right to participate in decisions that impact their lives. As well as it being a fundamental right, children and young people are experts in their own lives with the real-world knowledge and experience needed to determine what is most needed to improve their lives. It is critical for the Commission to consult with children and young people through direct participation or via trusted intermediaries in the design, establishment, operations and functions of the Commission.

To this end, the Commission may consider commissioning appropriate organisations to undertake dedicated engagement with Aboriginal and Torres Strait Islander children and young people on behalf of the Inquiry. Once legislated and established, the National Aboriginal and Torres Strait Islander Children's Commissioner could be well placed to lead this work, in addition to First Nations Children's Commissioners, Guardians, Advocates, peak bodies and lead service organisations, many of whom existing child and youth participation frameworks and/or mechanisms in place.

Engagement with existing accountability mechanisms

There are a number of existing accountability mechanisms that exist within Australia including, but not limited to, the Australian Human Rights Commissioner, the Social Justice Commissioner, the National Children's Commissioner and the State/Territory Children's Commissioners, Guardians and Advocates established within these jurisdictions. The Australian Government has also committed to establishing an independent National Aboriginal and Torres Strait Islander Children's Commissioner to hold governments to account for breaches of their rights. The Commission must engage on all matters affecting the rights of Aboriginal and Torres Strait Islander children with the National Aboriginal and Torres Strait Islander Children's Commissioner once it is legislated, empowered and resourced.

It is critical, too, that the Commissioner works with the Australian and New Zealand Children's Commissioner, Guardians and Advocates both individually and collectively. Through *Safe and*

Supported: The National Framework for Protecting Australia's Children 2021-2031, all Australian Governments have committed to developing a set of minimum standards for Aboriginal and Torres Strait Islander Children's Commissioners.⁴⁴ These standards are currently being developed and agreed through shared decision-making mechanisms and once implemented across all jurisdictions, Aboriginal and Torres Strait Islander Children's Commissioners will play a critical role in providing oversight and accountability for the rights of First Nations children. The Commission should align to those minimum standards as relevant.

The history recounted in this submission, and that which will no doubt come to the surface throughout the Commission, illustrates what happens when governments are not accountable or transparent. Well-coordinated and complementary accountability and monitoring mechanisms can help bring the culture of unaccountability, opacity and inaction to an end.

Indigenous data sovereignty, governance and reciprocity

The National Agreement commits all governments to a relationship of data reciprocity with Aboriginal and Torres Strait Islander people and communities, in true service of shared decision-making. The Commission's use of sovereign Aboriginal and Torres Strait Islander data must adhere to the Priority Reform 4, and ensure that information and data surfaced through the course of the Commission's operations and functions are shared with Aboriginal and Torres Strait Islander people and communities to drive their own priorities and development.

Additionally, while the National Agreement does not commit to Indigenous Data Sovereignty (IDS) and Indigenous Data Governance (IDG), SNAICC considers them central to Priority Reform 4. This is consistent with Recommendation 2 made by the Productivity Commission in its Closing the Gap review to expand Priority Reform 4 to include IDS and IDG. IDS and IDG principles provide Aboriginal and Torres Strait Islander people the right to exercise control exclusive ownership over their data. The design, collection and use of data relating to Aboriginal and Torres Strait Islander people used through the operations and functions of the Commission must align with IDS and IDG principles.⁴⁵

⁴⁴ https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf

⁴⁵ Maïam nayri Wingara Indigenous Data Sovereignty Collective and Australian Indigenous Governance Institute 2018, 'Indigenous Data Sovereignty.' Retrieved from: <https://static1.squarespace.com/static/5b3043afb40b9d20411f3512/t/63ed934fe861fa061ebb9202/1676514134724/Communique-Indigenous-Data-Sovereignty-Summit.pdf>

Recommendation Six: In implementing the Truth and Justice Commission Act, the Commission should:

- a. be fully legislated, resourced and empowered.
- b. embed, uphold and advance in its design, establishment and functions the principle of self-determination.
- c. embed, uphold and advance in its design, establishment and function the rights of Aboriginal and Torres Strait Islander people, including but not limited to, those set out in the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities.
- d. commit to an expansive definition of cultural safety as the positive recognition and celebration of Aboriginal and Torres Strait Islander culture, including providing sufficient resourcing to allow the Commission to adhere to cultural protocols.
- e. ensure alignment with the National Agreement on Closing the Gap, including in all positive recommendations and/or advice on reform to existing institutions, law, policy and practice and in considering how the Commonwealth, State and Territory government can be held accountable.
- f. facilitate meaningful participation from Aboriginal and Torres Strait Islander children and young people at all stages of its work.
- g. engage with existing accountability mechanisms including the Australian Human Rights Commission and the National Commissioner for Aboriginal and Torres Strait Islander Children and Young people once it is established.
- h. uphold the principles of data reciprocity, Indigenous Data Sovereignty and Indigenous Data Governance in its operations.

Summary of Recommendations

SNAICC provides the following recommendations to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs:

1. The Australian Government enact the Bill to establish the Truth and Justice Commission Act establishing a commission into historic and ongoing injustices and discrimination against Aboriginal and Torres Strait Islander people.
2. Amend section 7, clause 2 of the Bill to explicitly state that members are not appointed to the Commission unless the Joint Ministers are satisfied that the person has the knowledge of and experience with the human rights of children and Aboriginal and Torres Strait Islander people.
3. Amend section 7, clause 3 of the Bill to explicitly state that the Joint Ministers must make appointment decisions through a shared decision-making mechanism.
4. Amend section 8 of the Bill to expand the Terms of Reference of the Commission to:
 - a. provide for the Commission to be empowered to inquire into historic and contemporary injustice and discrimination perpetrated by State and Territory governments.
 - b. include within the scope of the Commission's inquiry all forms of historic and ongoing racism and racial discrimination against Aboriginal and Torres Strait Islander people.
 - c. include within the scope of the Commission's inquiry human rights breaches made against Aboriginal and Torres Strait Islander people and communities.
5. Amend section 8, clause 4 of the Bill to include trauma-aware and healing-informed practice as principles underpinning all dealings with Aboriginal and Torres Strait Islander people.
6. In implementing the Truth and Justice Commission Act, the Commission should:
 - a. be fully legislated, resourced and empowered.
 - b. embed, uphold and advance in its design, establishment and functions the principle of self-determination.
 - c. embed, uphold and advance in its design, establishment and function the rights of Aboriginal and Torres Strait Islander people, including but not limited to, those set out in the United Nations Declaration on the Rights of Indigenous Peoples, the United Nations Convention on the Rights of the Child and the United Nations Convention on the Rights of Persons with Disabilities.
 - d. commit to an expansive definition of cultural safety as the positive recognition and celebration of Aboriginal and Torres Strait Islander culture, including providing sufficient resourcing to allow the Commission to adhere to cultural protocols.
 - e. ensure alignment with the National Agreement on Closing the Gap, including in all positive recommendations and/or advice on reform to existing institutions, law,

- policy and practice and in considering how the Commonwealth, State and Territory government can be held accountable.
- f. facilitate meaningful participation from Aboriginal and Torres Strait Islander children and young people at all stages of its work.
 - g. engage with existing accountability mechanisms including the Australian Human Rights Commission and the National Commissioner for Aboriginal and Torres Strait Islander Children and Young people once it is established.
 - h. uphold the principles of data reciprocity, Indigenous Data Sovereignty and Indigenous Data Governance in its operations.