



Northern Territory
Treaty Commission

Towards Truth Telling

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EXECUTIVE SUMMARY

BACKGROUND

There is widespread agreement among Aboriginal Australians that genuine, long lasting reconciliation cannot occur until non-Aboriginal Australians confront and acknowledge the legacy of the past and its ongoing consequences. Schools, governments and mainstream media neither adequately address nor generally acknowledge histories of deep injustices and their ongoing after-effects on Aboriginal & Torres Strait Islander Australians. In some cases, these truths are actively denied. Truth telling is a way of confronting the unpalatable parts of the past and their effects today so we can reset and realign relationships.

In 2017, the Uluru Statement from the Heart called for the establishment of a Makarrata Commission, to oversee truth telling about Australia's history and agreement making between governments and First Nations peoples. While the Commonwealth Government did not endorse this recommendation, its 2020 *Closing the Gap* National Agreement supports, in principle, the facilitation of truth telling. In the Northern Territory, the Barunga Agreement acknowledges the *"deep injustice done to the Aboriginal people of the Northern Territory, including violent dispossession, the repression of their languages and cultures, and the forcible removal of children from their families, which have left a legacy of trauma, and loss that needs to be addressed and healed."*¹ The NT Treaty Commission Discussion Paper advocates for truth telling, as does the Northern Territory Government's Aboriginal Affairs Strategy *Everyone Together*.

PURPOSE

Clearly, momentum for truth telling is building. *Towards Truth Telling* aims to solidify that momentum by bringing together research and analysis of truth telling practices overseas and in Australia, in order to inform a potential process here in the NT. It provides suggestions for an evidence-based model that will accompany and augment the treaty process.

Truth telling will provide opportunities for Aboriginal Territorians to share their experiences, for non-Aboriginal Territorians to listen to and acknowledge them, and for all Territorians to create a shared history to move into the future. Truth telling and treaty discussions are separate, but they complement each other; truth telling is foundational to success in treaty making and reconciliation more broadly. Moreover, while truth telling will inform future treaties, it does not and should not have to wait for a treaty or treaty making to begin.

WHAT IS TRUTH TELLING?

In other countries, truth telling has occurred through specific Truth Commissions. These usually temporary, government-sponsored bodies engage a specific population to document past atrocities. Truth Commissions 'unsilence' accounts of the past, restore dignity and begin a process of healing between parties that may also include reparations. In Australia, truth telling about colonisation and its impacts on Aboriginal peoples has occurred as part of land claims

¹ Northern Land Council, Central Land Council, Anindilyakwa Land Council, Tiwi Land Council and Northern Territory Government, 'The Barunga Agreement', Memorandum of Understanding, 8 June 2018, 6.



hearings, numerous Royal Commissions and one National Inquiry, some of which share parallels with a potential Truth Commission in the Northern Territory.

RESEARCH ANALYSIS

While each Truth Commission or truth telling process is unique, they share themes – such as the impacts of colonisation, the effects of intergenerational trauma and the resilience of Indigenous communities. A principal finding of *Towards Truth Telling* is the inability of a Truth Commission to satisfy everyone. No Truth Commission has been without shortcomings, and managing expectations of participants and the community is important. Despite this, we find that Truth Commissions, when well-resourced and culturally appropriate, can re-structure relationships between groups as well as understandings of history and society. Other considerations include protecting participants' wellbeing and the importance of legislative support, adequate funding and political independence. For a more extensive list of the challenges and opportunities identified in the research, see Section 3.8.

RECOMMENDATIONS

We make the following recommendations for a truth telling process in the Territory, noting that consultation with Aboriginal Territorians will ultimately decide the specifics:

1. The establishment of an independent Truth Commission, to run for three years and to carry out a truth telling process for the Northern Territory
2. The use of a two-phase format, where first the Truth Commission is responsible for carrying out a broad, Territory-wide truth telling process. Following this, and as part of future treaty negotiations, the Treaty Commission will allow additional truth telling at the discretion of each First Nations group. This strategy will enable truth telling to begin now, while not forgoing the right of First Nations to truth telling as part of treaty making, on their own terms
3. The Truth Telling Institute will be responsible for the conservation of research and information collected and for the education of all Territorians about our history. Further consultation is required before deciding where this might be based, but our initial suggestion is either the Charles Darwin University or the Batchelor Institute of Indigenous Tertiary Education, in an arrangement similar to the National Centre for Truth and Reconciliation at the University of Manitoba, Canada
4. The mandate of the Truth Commission will be broad and encompass the time from colonisation to the present or very recent past. This means the Truth Commission will be complex, but truth telling must incorporate events, laws, policies and actions in the past, and demonstrate their connections to the systemic issues of the present
5. Consultation will inform themes and issues discussed in truth telling, but participants should have the opportunity to speak about experiences that do not align with these issues. A possible way to account for this would be to categorise stories by issue or time period
6. The Truth Commission will release a Final Report containing recommendations
7. The Commonwealth Government will be approached to fund the Truth Commission in the first instance.



Further information on potential models can be found at Section 4.

CONCLUSION

As argued by the Treaty Discussion Paper, truth telling must begin as soon as possible, before the negotiation of any treaty. Despite the need for swift action, there is an even greater need to get the process right. We cannot address our history without Aboriginal people creating the terms for the telling of their truths. Then, by tracing the journey back through these truths, we can start to weave a new story, what the Uluru Statement from the Heart terms a “*fuller expression of Australia’s nationhood*.”²

The next step on this journey is to begin a discussion between the NT Treaty Commission and the Northern Territory Government, and to seek a response to the *Towards Truth Telling* proposal.

² National Constitutional Convention, *Uluru Statement from the Heart*, 2017. Available at: <https://ulurustatement.org/the-statement>.



1. TRUTH TELLING AND TRUTH COMMISSIONS

1.1 Introduction

In June 2018, the NT Chief Minister and the Chairs of the four NT Statutory Land Councils signed The Barunga Agreement, a Memorandum of Understanding. The Barunga Agreement acknowledges the *“deep injustice done to the Aboriginal people of the Northern Territory, including violent dispossession, the repression of their languages and cultures, and the forcible removal of children from their families, which have left a legacy of trauma and loss that needs to be addressed and healed.”*³ As noted above, schools, governments and mainstream media neither adequately address nor generally acknowledge these histories of deep injustices and their ongoing after-effects on Aboriginal & Torres Strait Islander Australians. These details are actively denied in some cases.

There is widespread agreement by Aboriginal peoples across the country that genuine, long lasting reconciliation cannot occur, nor relationships be reset, until non-Aboriginal Australians confront and acknowledge the legacy of the past and its ongoing consequences. Truth telling is a way of addressing the unpalatable parts of the past and their effects today and is therefore critical to resetting and realigning the relationship between First Nations and non-First Nations Australians.

Truth telling will provide opportunities for Aboriginal Territorians to share their experiences, for other Territorians to listen to and acknowledge them, and for all Territorians to create a shared history in order to move into the future. While truth telling is a separate process to treaty discussions, the two complement each other and share many connections. Truth telling will inform future treaties but does not have to wait for a treaty or treaty making in order to begin. In fact, commencing a truth telling process as soon as possible sends a strong message of progress to Aboriginal Territorians.

There is growing support for truth telling in the Northern Territory and Australia more generally. The Northern Territory Treaty Commission’s Discussion Paper recommends that truth telling begin immediately, as *“Truth telling is at the core of any treaty negotiations and is also at the heart of documenting unfinished business. The timing for it is extremely urgent.”*⁴

The Barunga Agreement lists truth telling as part of the principles guiding the treaty consultation process. According to the Agreement, *“The treaty should aim to achieve successful co-existence between all Territorians that starts with ‘truth telling’ which involves hearing about, acknowledging and understanding the consequences of the Northern Territory’s history.”*⁵ It is clear,

³ NLC, CLC, ALC, TLC, and the NT Government, ‘The Barunga Agreement’, 6.

⁴ Northern Territory Treaty Commission, *Treaty Discussion Paper* (NT Treaty: Darwin, 2020), 10.

⁵ NLC, CLC, ALC, TLC and the NT Government, ‘The Barunga Agreement’, 9.



then, that **truth telling is foundational to success in treaty making and reconciliation more broadly.**

The NT Government has now formalised its support for truth telling. The Government's Aboriginal Affairs Strategy *Everyone Together* identifies 'Healing' as a guiding principle of working together, and 'Truth and healing' as a focus area. The strategy names treaty and truth telling as primary initiatives, indicating their separate yet connected nature.⁶

The 2020 *Closing the Gap* National Agreement recommends governments "*facilitate truth telling to enable reconciliation and active, ongoing healing*" to "*enable them to understand and reflect the history and culture of local communities*".⁷ This statement underlines the potential for truth telling to provide an opportunity for governments to improve their cultural competencies and their relationships with Aboriginal peoples, and to view truth telling as part of the long-term process of reconciliation.

Truth telling is also important for non-government organisations. This is highlighted by the recent University of Technology Sydney report *Do Better* – an Independent review into Collingwood Football Club's responses to Incidents of Racism and Cultural Safety in the Workplace. The *Do Better* report finds evidence of racism experienced by players and fans at the Collingwood Football Club and finds that the Club's responses to these incidents has been inadequate.⁸ The report makes clear that an organisation's internal policies, structures and processes are fundamental to the way it addresses racism and cultural harm.⁹ *Do Better* calls for truth telling, premised on the idea that doing better in the future requires examining, reflecting on and addressing the past.¹⁰ Only then can we create a clear pathway to the future.

The NT Treaty Commission and the Territory and Federal Governments are not alone in recommending that we begin truth telling as soon as possible. In 2017, the Uluru Statement from the Heart advocated for the establishment of a Makarrata Commission to oversee truth telling about Australia's history, as well as agreement making between governments and First Nations peoples. While this process may be a way off at a national level, **truth telling in the NT must begin now.**

Clearly, momentum for truth telling is building. *Towards Truth Telling* aims to solidify that momentum by providing a constructive path forward. It brings together research and analysis of truth telling practices overseas and in Australia and provides suggestions for an evidence-based model that will accompany and augment the treaty process.

⁶ Northern Territory Government, *Everyone Together: Aboriginal Affairs Strategy 2019-2029* (Darwin: Office of Aboriginal Affairs, 2019), 11.

⁷ Closing the Gap Partnership, *National Agreement on Closing the Gap July 2020* (Canberra: Closing the Gap, 2020), 12.

⁸ University of Technology Sydney, *Do Better* (Sydney: Final Report, released 1 February, 2021) 3.

⁹ Ibid.

¹⁰ Ibid, 26.



Towards Truth Telling has five sections, including a conclusion. In this section, we outline what Truth Commissions are, and what the benefits and unique elements of a Northern Territory truth telling process would be. In Sections 2 and 3 we examine pre-existing international Truth Commissions, then Australian truth telling processes (including Royal Commissions), to determine what we can learn from experience. In Section 4 we propose several models for a truth telling process in the Northern Territory, remembering that, ultimately, Aboriginal peoples will decide what the process needs to be.

We use the terms 'First Nation' and 'Aboriginal', but not interchangeably. 'First Nation' refers to a sovereign, landowner group within the Northern Territory, such as the Warlpiri or Yolngu Nation. We use 'First Nations Territorian' when referring to a citizen of these Nations. We use 'Aboriginal' when referring to any Aboriginal person in the Northern Territory. We also acknowledge the strong community of Torres Strait Islanders in the NT, and recommend they are also given the opportunity to participate in truth telling.

1.2 What is a Truth Commission?

In other countries, truth telling has occurred through specific Truth Commissions. Priscilla Hayner, a scholar and architect of several Truth Commissions, provides the following definition:

*A truth commission (1) is focused on past, rather than ongoing, events; (2) investigates a pattern of events that took place over a period of time; (3) engages directly and broadly with the affected population, gathering information on their experiences; (4) is a temporary body, with the aim of concluding with a final report; and (5) is officially authorized or empowered by the state under review.*¹¹

A truth telling process in the Northern Territory would mostly fulfil this definition:

1. Focus on the past

Truth telling would gather evidence of Aboriginal Territorians' experiences of colonisation. However, our process would potentially deviate from Hayner's definition by examining the ways in which institutional racism continues to affect Aboriginal Territorians, noting that the experience of colonisation has not ended. Nonetheless, the focus would be on understanding the ways in which past events have continuing effects on the lives of Aboriginal people.

2. Investigation of a pattern of events that took place over a period of time

A truth telling process would investigate patterns of colonisation and institutional racism, linking experiences that range from severe human rights abuses, such as massacres, to everyday experiences of racism and repression, such as wage discrepancies. We recommend that truth telling in the NT take a broad approach. Some Truth Commissions have had narrow terms of reference and exclusively examined instances of death or torture. These Commissions

¹¹ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed. (New York: Routledge, 2011), 11–12.



failed to adequately and comprehensively engage in the truth telling process and/or to distribute reparations to all those affected; often, authorities had to establish a second or even third Truth Commission in order to address further issues.

3. Broad and direct engagement with the affected population

This engagement occurs in two fundamental ways. First, the affected population (that is, Aboriginal Territorians) must have a key role in designing the process and setting its terms. This may involve different methodologies of truth telling depending on the group, area and issue under investigation. Second, truth telling will centre Aboriginal Territorians' voices; the process will gather information by listening to their stories. Centring voices and stories will also inform the recommendations of the final report and be one of several ways that the truth of the past is honoured and acknowledged.

4. Temporary body, with a final report

The length of time over which the truth telling process operates will depend on a range of factors, including community needs. As detailed in Sections 4.1 and 4.5, we recommend a two-phase process, with an initial Territory-wide Truth Commission to go for three years. A final report will help publicise experiences of colonisation, leading to a greater understanding of the past and its effects on the present among Aboriginal and other Territorians alike.

5. Authorisation and empowerment by the State

The linking of the truth telling process to the treaty process is vital, as is further backing from the Northern Territory Government, including legislative support. Government backing can lead to greater funding, access to archives, and a higher chance of implementation of the final report's recommendations.

1.3 What can we achieve through a truth telling process?

We now have a good grasp on what a Truth Commission is – a temporary, Government-sponsored body that engages a specific population to document past atrocities. In this section, we cover three major reasons a truth telling process is necessary in the Northern Territory.

1.3.1 Reflection and Recognition

A truth telling process provides an opportunity to hear stories, particularly from Elders, about the past. It can be a way of unearthing and 'unsilencing' important accounts never before heard by the broader public. Even if a community or group is well aware of experiences of dispossession that occurred in the past, having others listen to their stories through truth telling can create greater public awareness of these experiences and their continuing effects on the group.

Truth telling also works to restore dignity and to begin a process of healing from the past. Truth telling gives affected populations a chance for their stories to be heard. Participants can relate stories that have previously been ignored or dismissed, and are given a safe, culturally appropriate space to do so. This process allows both the public and the participants to come



to terms with what has occurred, promoting individual and group healing through acknowledgment and validation of past trauma.

The role of the audience is also significant in the process of truth telling. Initially, empathy is important, but this process requires more than passive empathy. The act of “*bearing witness*” is uncomfortable and compels non-Aboriginal people to think critically about “*one’s own historical, cultural and current context in relation to the story being told*”.¹² The NT process should consider engaging with non-Aboriginal Territorians – including prior to sharing participant testimonies – concerning their responsibilities as an audience.

Finally, a truth telling process would allow us to record Elders’ stories before their passing, and to mitigate against losing details of the past as a result.

1.3.2 Reconciliation

While speaking about and recording painful parts of our past can give participants a sense of dignity and respect, it also has benefits for non-participants. A large proportion of Australians might be aware of the problems Aboriginal people face, but often they have little understanding of the long history of government perpetuation of policies that created these issues. **A well-run truth telling process has the power to shift national narratives and attitudes and can have concrete effects on education and public discourse.** It can also allow us to see the bigger picture: rather than thinking of dark incidents in our past as individual and disconnected, we can understand the patterns and context of institutional racism that leads and has led to many Aboriginal Territorians suffering from violations of their rights.

Truth telling often uncovers and publicises incidents that have remained hidden for decades or even centuries. **With public trust and adequate resources, a truth telling process can quash denial of past atrocities and lead to a greater consensus regarding the broad contours of an area’s history.** In turn, this can lead to a greater public understanding of the effects of the past, and of intergenerational trauma. All this aids in the overarching process of reconciliation, not only between groups but also between the past and the present. Reconciliation, of itself, will not produce a new united Australia, true reconciliation must be but one outcome of a good faith negotiated treaty process and settlement.

As a result, a major aim of a truth telling process in the NT could be to uncover as much detail as possible concerning the Aboriginal experience of colonisation and the effects of this experience on the present. The truth telling process could publicise the stories of participants through the media and through its report(s). These report(s) could contain recommendations for greater education concerning Australia’s past (for example, more discussion of the Frontier Wars in history classes), as well as sections summarising patterns of abuse and rights violations in our history. The translation into Aboriginal languages of audio-visual or audio versions of the report(s) and their conversion into child appropriate versions would aid in the further dissemination of the findings. Overall, publicising the findings and process of the Commission

¹² Jo-Ann Archibald, *Indigenous Storywork: Educating the Heart, Mind, Body, and Spirit* (Vancouver: UBC Press, 2008), 32.



could lead to a greater consensus on Northern Territory history and the continuing impacts of colonisation.

1.3.3 Reparations and Responsibility

Many Truth Commissions recommend reparations for the victims of past atrocities, as part of the process of healing from the past. According to the United Nations' Van Boven/Bassiouni Principles (see Appendix 1), reparations are not always a form of monetary compensation; instead, they can be administered as restitution (for instance, of property), rehabilitation (including psychological care), and satisfaction and guarantees of non-repetition (such as apologies, commemorations and greater education about the abuses).¹³

A Northern Territory truth telling process may recommend several different types of reparations on both an individual and communal level; however, the administration of these reparations would be more appropriate as part of the treaty process. It is important for the Truth Commission's focus to remain solely on truth telling, and to provide space for the conversations that need to occur. We encourage broad participation in the truth telling process. This may mean listening to versions of the past that contradict each other. It may mean that some reminiscences are vague and/or inaccurate, while others are clear and rich with detail. We will not arrive at a singular, definite understanding of the past, and so the process should not be adversarial in nature. Truth telling is about providing opportunities to listen to and acknowledge the stories told. Any recommendations, as discussed in Section 4, could still feed into a future treaty process.

A truth telling process can also identify both individual and institutional perpetrators and call them to responsibility. Some Truth Commissions make recommendations concerning prosecution or 'delegitimation', which is the removal or exclusion of perpetrators from specific roles, often in the bureaucracy or military. In the spirit of reconciliation, a Northern Territory truth telling process is unlikely to lead to the delegitimation or prosecution of individuals. However, the process could still help us to understand the past by identifying perpetrators and could recommend structural change based on institutional instances of abuse and dispossession. Indeed, as per the Van Boven/Bassiouni principles, reparations can come in the form of *"improving, on a priority basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials"*.¹⁴

While understanding reparations in this broad sense can lead to more useful, targeted recommendations, **it is important that reparations not be a substitute for government services.** For instance, while reparations involving economic development can be useful, the Government should not label basic infrastructure – which it should provide to communities regardless – as a form of reparations.

¹³ Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, (E/CN.4/Sub.2/1996/17, 1996).

¹⁴ Ibid, p. 5.



1.4 What about what we *can't* achieve?

A truth telling process can have a powerful and positive impact on our society. However, just like treaty making, truth telling is a long game, the effects of which may not be felt immediately. It is worth approaching truth telling and its potential realistically, and thinking about what it cannot achieve – at least in the short term.

A truth telling process – much like a treaty – will not signify the ‘end’ of reconciliation.

According to academic Onur Bakiner, Truth Commissions can play “an important role by providing the factual basis upon which to build a politics of recognition and forgiveness ... [but] Reconciliation is a complex and multivalent process that defies quick closure”.¹⁵ Truth telling can change the way we think and talk about the past: for instance, Priscilla Hayner credits the South African Truth and Reconciliation Commission for creating the conditions in which no South African would champion Apartheid, even if they had supported segregation while it was formally in place.¹⁶ This does not mean the struggle for equality in South Africa is over; instead, this acknowledgement of the atrocities of the past is a solid foundation on which to build. We can expect a truth telling process in the Northern Territory to be similar, in that it will lead to solid gains but not solve all our problems.

A truth telling process cannot establish a unified, uncontested truth. The process can aim to uncover information about the past, and to educate as many as possible about what happened. However, some forgotten parts of our past will remain forgotten. Some victims will not be willing or able to speak; other atrocities, such as massacres, may have left no witnesses. Others, who did not experience these events, will be unwilling to listen or to acknowledge what occurred. Some may be mistrustful of the process, feeling that oral accounts of the past are less reliable than the written word. We acknowledge that some participants may not be able to provide detailed accounts, and that distance and trauma can alter memories. However, historians have long recognised both the power and overall accuracy of oral history, as well as the fact that written records can be subject to the same inconsistencies as oral accounts. We can and should hope to make many aware of our history, good and bad. We can also hope to establish patterns and contours, with some specific incidents well documented, and others less so. In other words, we can uncover a general truth, even if we cannot detail every aspect of our past.

While truth telling can provide healing for those sharing their stories, it is not an adequate substitute for ongoing psychological support. Psychological services are essential for those who participate in truth telling processes. Not all will find telling their story cathartic; these participants will need greater support once their role in the truth telling process has concluded. Some survivors may not wish to participate directly at all or may wish to participate

¹⁵ Onur Bakiner, *Truth Commissions: Memory, Power and Legitimacy* (Philadelphia: University of Philadelphia, 2016), 105.

¹⁶ Hayner, *Unspeakable Truths*, 187.



anonymously; Section 4.10 sets out in detail what options may be employed for these people to engage in the process.

Finally, a Northern Territory truth telling process is unlikely to involve punitive mechanisms, although there may be recommendations for further investigations where there have been clear instances of criminal breaches, particularly in the more recent past.

1.5 A specific focus or a broad mandate?

Dispossession is part of the history of what is now the Northern Territory, from first contact through to today. As a result, it can be difficult to imagine where a truth telling process may begin and end. Should we focus on the most traumatic atrocities, making sure they receive due attention, or should we try to cover many areas, to obtain as complete a picture as possible?

There are advantages and disadvantages to both a specific focus and a broad mandate. A specific focus can allow us to highlight some of the darkest parts of our history, including incidents not widely known to the public. A specific focus also guards against the ‘dilution’ of the seriousness of these incidents; in other words, the worst atrocities would not get lost in a sea of information. Finally, a specific focus would give the process a greater structure, making it easier and faster to analyse the data.

However, as some of our later analysis will show, earlier Truth Commissions with a specific focus have been criticised for ‘individualising’ socioeconomic problems, and for ignoring important incidents that fall outside their mandate. A Northern Territory truth telling process may risk the same fate should it choose to focus solely on a few key issues. If the process exclusively examines massacres, for example, the public may (despite the process’ findings) attribute the blame for colonisation and its impacts to a handful of mounted constables who mostly operated more than one hundred years ago. Additionally, Aboriginal people who experienced other instances of dispossession may feel this narrow focus denies the reality and intensity of their suffering.

We know that colonisation is pervasive and systemic: it functions across society, through many actors and actions. It does not begin and end with specific, violent incidents, but is often manifest in casual or institutional racism. Therefore, **colonisation and its impacts exist on a continuum, ranging from practices as horrific as genocide to everyday racist assumptions.** For these reasons, it could be beneficial to have a broader mandate, examining not just traumatic instances of murder and displacement, but also wider socioeconomic disadvantage. This approach would allow the process to make links between varying instances of colonisation, demonstrating the continuum of dispossession.

Despite these clear advantages to a broad mandate, there is no denying its potentially unwieldy nature. For reasons we outline in Section 4, Truth Commissions need an end date. We also need to think realistically about budget constraints, and about whether a broad mandate would preclude effective analysis of the data. Above all, it is important to acknowledge that a truth telling process cannot be all things to all people; some areas will have to remain unexamined, simply because it is impossible to cover all details of every historical wrong.



The tensions between covering too much and too little may be resolved structurally. We propose a two-phase approach, beginning with broad truth telling but also allowing First Nations to continue the process as part of treaty making. This two-phase approach would allow us to move from the general to the specific, and vice versa, in the hope of **demonstrating how historic and systemic issues have manifested in a range of detrimental outcomes in the present**. We outline the proposed two-phase process in further detail in Section 4.1, but ultimately, Aboriginal Territorians will decide on the mandate as part of further research and consultation.

1.6 How would truth telling in the NT be unique?

The Northern Territory is unlike many of the places that have held Truth Commissions. Often these countries have just emerged from a dictatorship or civil war, with the Commission established in the decade or even the year after the end of hostilities. The country may be in the process of democratising, including instituting fair elections or new governmental structures. While this will not be the case in the Northern Territory, we may think about **truth telling as being part of a 'transition', just as Truth Commissions elsewhere are**. The treaty process brings about this transition, as First Nations implement their rights to self-determination and form part of a government-to-government relationship with the Northern Territory Government.

A Northern Territory truth telling process will also likely **focus on a longer time span than other Truth Commissions**. As Truth Commissions often examine dictatorships or civil wars, they normally cover approximately one to two decades. Further consultation about the time span covered by the NT process has to occur before making the final decision. We can expect that the investigation may begin with the colonisation of the Territory in the early to mid-nineteenth century. The Truth Commission could then examine more recent events, like the Intervention and the amalgamation of Local Governments. This scope would allow the process to examine colonisation on a broader scale and to uncover and understand as much about the past as possible.

This potentially broad scope will have several consequences. One is that **the process will need to rely on oral histories passed down through generations, as opposed to only the testimonies of those who directly witnessed events**. Another is that there will be less of a focus on perpetrator testimony, and the potential prosecution of perpetrators. Some of the perpetrators of instances of dispossession will be long dead and it may be difficult to entice those who are still living to testify. However, the process could involve the participation of perpetrators' descendants. Liza Dale-Hallett, the great-niece of the leader of the Coniston Massacre, took part in the ninetieth anniversary commemoration of that event, stating, "*We are here today because we believe in facing our history, Australia's history.*"¹⁷ The truth telling process might involve similar participation, or could recommend this as a form of reparations. Finally, truth telling in the NT may look different structurally to many Truth Commissions, as it may need to be adapted to different First Nations.

¹⁷ Liza Dale-Hallett quoted in NT Treaty Commission, *Discussion Paper*, 30.



1.7 Who will be held accountable?

Another factor making truth telling in the Northern Territory unique is its history of changing jurisdictional responsibility. Section 72 of the *Northern Territory (Self-Government) Act 1978* indemnifies the Northern Territory Government “*against any action, claim or demand brought or made against the Territory in respect of any act done or omitted to be done by or on behalf of the Commonwealth*”.¹⁸ Further, this indemnification “*extends to damages, expenses and costs*” related to these actions, claims and demands.¹⁹ In other words, for the purposes of a Territory-based truth telling process, the NT Government cannot be held responsible (including financially) for incidents that occurred prior to its existence.

Prior to 1863, the Northern Territory was part of New South Wales. Although the New South Wales Government attempted to colonise the Territory multiple times, all settlements failed and there was no consistent coloniser presence in the Territory during this era.

From 1863 to 1911, the South Australian Government controlled the Territory. The SA Government renewed efforts to establish a permanent white settlement, in turn leading to the forms of dispossession, which, by default, accompany settler-colonialism. Several of the missions to which children were forcibly removed date from this era, as does the establishment of the pastoral industry, which often employed First Nations workers in conditions akin to slavery, and whose white employees were responsible for multiple massacres.

The Commonwealth assumed control after 1911, meaning that many of the rights violations that occurred in the Territory’s history fell under earlier Federal Government administrations and were often the direct result of federal policies and laws. Aboriginal Territorians still bear the effects of colonisation and dispossession today. More recent federal policies, however, have had, and continue to have, significant negative impacts upon Aboriginal Territorians. Part of the truth telling process must cover policies grounded in institutional racism and paternalism, like the Intervention, the cashless welfare system and the enforcement of culturally inappropriate education.

Successive Northern Territory Governments should also be held accountable for their policies. Despite the Royal Commission into the Detention and Protection of Children in the Northern Territory, incarceration rates of Aboriginal youth remain excessively high and many children still end up in out-of-home care. The amalgamation of 58 rural and remote councils into eight shire councils in 2008 has been dramatically detrimental to First Nations peoples living within those areas. Policies like this have rarely been subject to evaluation. Finally, events such as the shooting of Kumanjayi Walker in Yuendumu in 2019 have highlighted ongoing tensions between communities and authorities.

We expect that Aboriginal Territorians will identify an extensive spectrum of potential subjects during consultation. While it is likely that Government actions will be the focus of many

¹⁸ *Northern Territory (Self-Government) Act 1978* (Cth), s72.

¹⁹ *Ibid.*



grievances, subjects for truth telling will not always reflect an 'event' or particular policy; they might be, for example, an experience of casual racism. It may be tempting to focus our attention on the more dramatic and distant events of the past, but truth telling also acknowledges the diverse ways in which racism continues to manifest in our communities, remembering this is not always clear to everyone. These conversations can be uncomfortable and divisive but are also critical to creating a better understanding.



2. TRUTH COMMISSIONS AROUND THE WORLD

There is a growing body of scholarly literature on Truth Commissions, assessing their successes and failures and making suggestions for future impact. However, there is a significant lack of consensus in this field. As an example, two studies using near-identical data have concluded that A) Truth Commissions have negative impacts when used in isolation, and are only effective when used in conjunction with trials, amnesties or other processes, and that B) Truth Commissions are effective when used alone or in tandem with other processes.²⁰ This does not mean that Truth Commissions are ineffective, or that we cannot learn from previous truth telling exercises. It is important to examine other jurisdictions' Truth Commissions to discover what works and – just as importantly – what does not. We consider this below.

There have been dozens of Truth Commissions in various forms with diverse mandates, which have operated all over the world. The earliest of these was in Uganda in the 1970s, however, the earliest, truly effective Truth Commission was in Argentina in 1983, with the National Commission on the Disappearance of Persons (which investigated the fate of the victims of Argentina's military dictatorship). More recently, Canada and South Africa have provided examples of contemporary Truth Commissions to look to as models.

Each Truth Commission is unique because each place and its history are unique. Truth Commissions are established for many reasons, including after conflict, as a way to acknowledge and redress suffering. The United Nations states

When a period characterised by widespread or systemic human rights abuses comes to an end, people who suffered under the old regime find themselves able to assert their rights to begin dealing with their past. As they exercise their newly freed voices, they are likely to make four types of demands of the transitional State, namely demands for truth, justice, reparations and institutional reforms to prevent a recurrence of violence.²¹

Many Truth Commissions align with this statement. However, when there has not been a transition in governance following conflict, people continue to suffer. In these circumstances Truth Commissions are important because they can highlight issues of ongoing oppression and demand changes in governance and/or an end to practices underpinning harmful experiences. This example is particularly relevant to Truth Commissions in places like Canada and Mauritius, and to a truth telling process here in the Northern Territory. While the Territory has not been subject to dictatorship, policies like the Intervention exist on a continuum with earlier experiences of colonisation; for many Aboriginal Territorians, there has not been a clear shift where conflict has definitively ended.

²⁰ Bakiner, *Truth Commissions*, 90.

²¹ United Nations Office of the High Commissioner for Human Rights, *Right to the truth: Report of the Office of the High Commissioner for Human Rights* (A/HRC/12/19, 2009).



While truth telling processes in Australia will be unique, there is merit in looking to nations that have undertaken Truth Commissions to inform our own process. Many historical themes are tragically common, such as the impacts of colonisation, the forcible removal of children and intergenerational trauma. And there are also positive connections, such as the resilience of Indigenous peoples who continue to fight for their rights, their cultures and their communities. The following examples from around the world provide insight into potential challenges and opportunities relevant to the Northern Territory context.

2.1 Canada – Truth and Reconciliation Commission (2008–2015)

The Canadian Government established a Truth and Reconciliation Commission as part of the Indian Residential Schools Settlement Agreement. This Agreement was struck in response to a weight of litigation brought by Indigenous Canadians concerning the Residential Schools policy. This policy mandated the forcible removal of more than 150,000 Indigenous children from their families and re-homed them in residential schools. The central purpose of the practice was to eliminate, by assimilation, Canada's Indigenous population.²²

The Commission's mandate was to show Canadians the truth about the history of the residential school system and the ongoing impacts suffered by former students, and to guide a process of healing and reconciliation. The Commission collected the stories of more than 6,000 witnesses over six years, mostly from former students. The Commission also held national events, funded community events, established a research centre to hold records and witness accounts and, finally, issued a report outlining its findings, which included 94 recommendations. These recommendations were vast and detailed, covering child welfare, education, language and culture, health, justice and reconciliation. While the Canadian Government has committed to implementing the recommendations, there were only ten in place by 2018.²³

Public testimonies occurred in two different ways – 'sharing panels', which were held in larger venues, videotaped and livestreamed, and 'sharing circles', which were more intimate. Sharing circles were audio recorded, but not videotaped, and unlike the panels, they were not subject to time limits. As well as being critical in the healing process for many victims, the Commission's public hearings purposefully foregrounded Indigenous cultures and traditions, in an attempt to redress the suppression of cultural identity suffered by survivors.²⁴ Sharing sessions opened with a prayer, the lighting of a *qullig* (an Inuit oil lamp) and the burning of sweetgrass, and also involved a ceremonial fire outside for the duration of the event (sometimes for days). Many of

²² Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* (Winnipeg: Truth and Reconciliation Commission of Canada, 2015), 2.

²³ Donna Carreiro, 'Beyond 94: Where is Canada at with Reconciliation?' *CBC News*, 19 March 2018, <https://www.cbc.ca/news/indigenous/beyond-94-truth-and-reconciliation-1.4574765>.

²⁴ 'Public Hearings: Platforms of Truth, Dignity and Catharsis', *International Centre for Transitional Justice*, 23 March 2017, <https://www.ictj.org/news/public-hearings-platforms-truth-dignity>.



the submissions expressed that participants' reconnection with their cultural identity had helped to heal some of the trauma associated with their removal from family.

The Commission established the National Centre for Truth and Reconciliation at the University of Manitoba to hold and provide access to information gathered as part of its research and hearings. The Commission has now ended but the Centre remains an ongoing legacy. Survivors are still able to record and access statements, both at the Centre and through its website, meaning that the archive continues to grow. Educators, researchers, and the public can also access the Centre, supporting the creation of a new shared history.²⁵

There are criticisms of the Commission, the most significant of which is its sole focus on the school system, which was only one method in a much broader structure of assimilation. This is a relevant lesson for the Northern Territory process. In terms of mandate, bigger is often better. Truth telling should not just examine past atrocities, but the socioeconomic and institutional conditions that allow these to occur. According to Bakiner, *"the choice of not contextualising political violence or assigning individual and/or institutional responsibility for violations reduces forensic data to a set of isolated and incomplete truths, devoid of logical connection and meaning ... [it] may drive a truth commission to irrelevance."*²⁶ In Canada, the Commission's mandate was a government reaction to a specific issue – increasing litigation brought by former students. The Government set the Commission's mandate with little consultation, and as a result, the Commission was limited in its capacity to achieve broad and far-reaching outcomes.

The Canadian Commission has also been criticised for framing colonising events as historical and not as ongoing. This framing limited the report's potential to instigate compelling institutional change. Further consultation before setting the Commission's mandate may have prevented this, and looking at more diverse ways to engage in truth telling would also have been beneficial, as it is difficult to uncover the full truth through individual stories alone. Explaining how individual stories fit within the context of the broader system of assimilation, which is inextricably linked to intergenerational trauma and disadvantage in the present, could have helped build the argument for institutional reform. Without this, the implementation of the report's recommendations is likely to remain hindered.

Finally, there were examples of poor cooperation between the Canadian Government and the Commission. Despite the original agreement stating that the Canadian Government would provide all relevant documents to the Commission, the Commission faced sustained challenges in accessing government records and ultimately pursued court action. The court ordered that the Canadian Government provide all residential school documents.²⁷

²⁵ 'About the National Centre for Truth and Reconciliation', *National Centre for Truth and Reconciliation*, n.d., accessed 11 August 2020, <https://nctr.ca/about-new.php>.

²⁶ Bakiner, *Truth Commissions*, 66.

²⁷ The Canadian Press, 'Ottawa ordered to provide all residential schools documents', *CBC*, 30 January, 2013, <https://www.cbc.ca/news/politics/ottawa-ordered-to-provide-all-residential-schools-documents-1.1345892>.



2.2 South Africa – Truth and Reconciliation Commission (1995–2002)

Many academics consider South Africa's Truth and Reconciliation Commission the gold standard in truth telling exercises. The Commission's objectives were to "*establish as complete a picture as possible of the causes, nature and extent of the gross violations of human rights*" committed between 1960 and 1993.²⁸ The Commission also aimed to grant amnesty for perpetrators with political objectives who fully disclosed their crimes, to establish the fate and whereabouts of victims and to compile a report of findings and recommendations to prevent the reoccurrence of abuses. Beginning in 1995 and continuing for seven years, the Commission heard the accounts of approximately 21,000 victims and perpetrators, with 2,000 appearing at public trials. More than 7,000 perpetrators requested amnesty; 849 of these requests were granted.

The Commission was given legislative effect through the *Promotion of National Unity and Reconciliation Act 1995*. The Commission comprised three independent committees – the Human Rights Violations Committee, the Reparation and Rehabilitation Committee and the Amnesty Committee. A key element of the Commission was its ability to bring victims and perpetrators face to face, allowing victims to question perpetrators' actions. This was a clear and functional example of restorative justice. The Commission produced a seven-volume final report, containing a detailed history of the period of Apartheid in South Africa, with an entire volume dedicated to the Commission's conclusions and recommendations.

A compelling feature of the Commission was its broadcast of select proceedings on live television and radio, which attracted public attention from around the country and the world. Broadcasts have become an element of numerous Commissions since. There is, however, considerable debate regarding the benefits and drawbacks of high levels of publicity in this context. One argument is that the communal experience of watching testimonies was intrinsic to national healing. Another is that these broadcasts diminished the role of individual perpetrators because they focused on them, rather than the entrenched and systemic structures of Apartheid, which were the key and underlying problem.²⁹

Martha Evans finds that live radio and television broadcasts, as well as summaries of the report, attracted less attention than was imagined, with soap operas often scoring higher ratings than the weekly documentary program about the Commission's proceedings, *Special Report*.³⁰ However, *Special Report* did achieve higher ratings than the televised hearings. The *Special Report* approach might provide an insight into how media can be effectively used as a truth-sharing tool, however, this clearly requires careful consideration. Evans notes that Truth Commissions need context because often the evidence is too specific for a viewer to tune in midway through a broadcast. Victims also do not always give their testimony eloquently; when

²⁸ *Promotion of National Unity and Reconciliation Act 34 1995* (South Africa), preamble.

²⁹ Martha Evans, 'Televising South Africa's Truth and Reconciliation Commission: what liveness tells us about the commission; what the commission tells us about liveness', *Media, Culture and Society* 38, no.5 (2016): 704–720.

³⁰ *Ibid*, 713.



they do, it can be because they are responding to a line of questioning which has been designed for television audiences, rather than in the spirit of truth telling. In the above example, *Special Report* was more successful because it was dramatised and tailored to a broader audience. Max Du Preez, the reporter presenting *Special Report*, stated

*It is always tempting to give preference to the story of a victim who is eloquent and speaks English rather than feature testimony of a stuttering witness who was not well translated. It is morally and ethically questionable, but we also have a duty to make technically good, popular television.*³¹

There is risk that survivors are re-traumatised if they do not receive support from the public and so it is important that participants are not de-prioritised for the sake of generating greater public interest. Despite this, the comparative success of the South African Commission is linked to its mediatisation, which highlights that publicity is an important, albeit fraught, consideration for all truth telling processes.

When setting up a Truth Commission, it is vital to ensure the focus of the mandate is balanced between individuals and structures. The South African example failed in this regard. Janis Grobbelaar, an Information Manager for the Commission, notes that its narrow focus potentially failed to ask, “How did people experience Apartheid in this country?”³² Grobbelaar answers her own question: “As poverty-stricken people, with very little opportunity to change that. Anything outside of that was white”.³³ Grobbelaar’s comments alert us to the importance of investigating the wider context in which murders, kidnappings and other human rights violations took place. Indeed, economic disadvantage may form an important area for truth telling and recommendations for reparations in the Northern Territory process. These reflections also serve as a reminder of the importance of researching widely to understand and disseminate a more accurate narrative of the past.

Entrenched problems remain in South Africa, and some of the community characterise the Commission as a failure because of this. The portrayal of the Commission as the vehicle that would definitively achieve reconciliation in South Africa was ill-advised, however, every Truth Commission has limitations. We now know that reconciliation may be best seen as not so much a destination but as an ongoing process. While not perfect, the Commission remains a critical part of that process, without which the journey may never have begun.

2.3 Guatemala – Historical Clarification Commission (1997–1999)

The Guatemalan Commission investigated atrocities committed during the Civil War, which occurred over three decades and resulted in the deaths of 200,000 people. Guatemala’s Commission faced a number of limitations, including time, funding (it was largely internationally funded and given administrative support through the United Nations) and powers (it was

³¹ Max Du Preez quoted in Evans, ‘Televising South Africa’s Truth and Reconciliation Commission’, 714.

³² Janis Grobbelaar quoted in Hayner, *Unspeakable Truths*, 80.

³³ Janis Grobbelaar quoted in Hayner, *Unspeakable Truths*, 81.



prohibited from issuing subpoenas and had difficulties accessing information). There was no public consultation on the mandate for the Commission.³⁴

Despite these problems, the Commission collected a vast amount of information from victims and put significant effort into visiting rural and remote locations to collect data. The Commission produced a comprehensive final report recording crimes and human rights violations, and although only three of the 626 massacres documented by the Commission have resulted in prosecution, the report still had a long-term impact on the political, social and judicial life of Guatemala.³⁵ Despite its mandate not including naming perpetrators, the Commission identified that 93% of the violence that occurred was state or military sponsored and that these agents committed mass acts of genocide against Mayan people.³⁶ The Guatemalan experience highlights the need for broad consultation, including travelling to remote areas, where necessary, to solicit testimony. In addition, the Commission's decision to identify those responsible – despite its narrow mandate – indicates the importance of approaching the truth telling process holistically and flexibly, guided by principles rather than bureaucratic obligations.

2.4 Mauritius – Truth and Justice Commission (2009–2011)

The Mauritius Truth Commission was the first Commission to focus specifically on the effects of colonisation and slavery, including for descendants. It was also unique because it covered the longest period of any previous Commission – 370 years. The *Truth and Justice Commission Act 2008* gave the Commission important powers but neglected the central issue of compensation and denied the ability to name perpetrating individuals and institutions. Although the Act did not provide the capacity to dispense compensation, the Commission still recommended it in their final report, including to descendants of slaves.

A critical analysis by academics Richard Croucher, Mark Houssart and Didier Michel argues that the elite political process that resulted in the Commission's establishment later precluded it from successfully engaging the public.³⁷ Few of the Mauritian Kreol citizens the researchers interviewed were aware of the Truth Commission, despite them and their ancestors being its central subject matter.³⁸ In addition, this Commission attracted little media coverage and there

³⁴ 'Challenging the Conventional: Case Studies: Guatemala', *International Centre for Transitional Justice*, n.d., accessed 11 August 2020, <https://www.ictj.org/sites/default/files/subsites/challenging-conventional-truth-commissions-peace/guatemala.html#01>.

³⁵ Ibid.

³⁶ Hayner, *Unspeakable Truths*, 34; 'Truth Commission: Guatemala' *United States Institute of Peace*, n.d., accessed 11 August 2020, <https://www.usip.org/publications/1997/02/truth-commission-guatemala>.

³⁷ Richard Croucher, Mark Houssart and Didier Michel, 'The Mauritian Truth and Justice Commission: Legitimacy, Political Negotiation and the Consequences of Slavery', *African Journal of International and Comparative Law* 25, no. 3 (2017): 326–346.

³⁸ Ibid, 338.



was no translation of its reports into Kreol.³⁹ As a result, none of the Commission's recommendations have been implemented and the researchers could find no evaluation deeming the Commission a success.⁴⁰ This outcome is a reminder of the importance of bottom-up approaches, including the use of local languages, in truth telling.

2.5 Peru – Truth and Reconciliation Commission (2001–2003)

The Peruvian Commission inquired into human rights abuses committed by the Peruvian Government and terrorist organisations over a twenty-year period beginning in 1980. The Commission was well-funded, with 500 staff at its peak, and had collaborative arrangements with NGOs to collect data. As a result, the Commission collected 17,000 detailed statements and was able to revise previous statistics on deaths and displacements. The vast majority of victims were Indigenous people. The Commission's greatest success was establishing the extent of what had happened, and how many people had been affected. It was able to document, and in some cases exhume, thousands of burial sites throughout the country.

The Commission was the first in Latin America to hold public hearings which were also publicly broadcast. There is contention regarding how well-received this public broadcasting was. Hayner argues that there were particularly powerful public reactions in Lima as its people had been relatively unaffected by the violence that gripped regional areas.⁴¹ However, Lisa J. Laplante and Kelly Phenice also point out that some of the media contributed to the ongoing polarisation of the Peruvian population, and therefore should become subject to reform along with state institutions.⁴² They argue that in Peru, the media reported stories according to the values of their organisations, often focusing attention on controversy about the Commission itself rather than its findings.⁴³ As a result, Peru failed to create a shared consensus on the Commission, undermining its potential for healing. Despite this, it was also the media that led to the eventual downfall of the Peruvian leader, Alberto Fujimori, through collecting thousands of pieces of evidence of his bribery. After the Commission, there was limited success in prosecutions associated with the abuses, but a congressional sub-committee continues to work on implementation of the report's recommendations, including reparations and prosecutions. As with the South African Truth and Reconciliation Commission, the Peruvian experience indicates the integral yet fraught role of the media in truth telling. The Peruvian Commission also highlights the need for ongoing work after the conclusion of the truth telling process.

³⁹ Ibid, 344.

⁴⁰ Ibid, 331.

⁴¹ Hayner, *Unspeakable Truths*, 36.

⁴² Lisa J. Laplante and Kelly Phenice, 'Mediating Post-Conflict Dialogue: The Media's Role in Transitional Justice Processes', *Marquette Law Review* 93, no. 1 (2009): 251.

⁴³ Ibid, 271.



2.6 Timor-Leste – The Commission for Reception, Truth and Reconciliation (2002–2005)

The Timor-Leste Commission was supported by the United Nations and informed by international experiences of Truth Commissions. It was created after a national consultation process. The Commission's mandate was to research and document human rights violations that occurred during Indonesian occupation between 1974 and 1999. The Commission had subpoena powers and the ability to seize information with the help of police. Over 300 staff supported the Commission, which found that over ten per cent of Timor-Leste's population had died during the conflicts. The Commission offered an amnesty/reconciliation process for perpetrators found guilty of less serious crimes, with reparation requirements of community services, payments, or public apology. Built on the cultural process of *ladat*, these arrangements were facilitated by the Commission and approved by a court. A financial reparation program dispersed limited funding from the World Bank, but the Timor-Leste Government has ignored the recommendation for a more substantial reparations scheme.⁴⁴ The Commission also included a unique women's hearing. Initially the Government refused to release the final report, however, it was ultimately released online by a third party – the Centre for Transitional Justice, based in New York.

The Commission appears to have adopted many successful principles and processes from elsewhere, while also implementing appropriate grassroots adaptations. Despite this, Holly L. Guthrey's research reveals that some participants found the Commission culturally inappropriate, with some of Guthrey's interviewees insisting that hearings about sexual violence made women "*a victim twice*" and that they "*regretted disclosing [their] sad story in public*".⁴⁵ This research points to a lack of ownership of the process, despite the Commission taking measures to reflect local norms. Again, we see the tensions inherent in mediatizing the process, as witnesses explained they felt "*embarrassed because they [the Commission] publicised it through television*".⁴⁶ The Timor-Leste experience indicates the importance of providing private hearings for those who may experience trauma or shame when testifying publicly. The Commission also faced, and continues to face, the challenge of a lack of political will and appropriate funding for reparations.

⁴⁴ 'After 10 Years, the CAVR Report Still Resonates in Timor-Leste and Around the World', *International Centre for Transitional Justice*, 23 February 2016, <https://www.ictj.org/news/10-years-cavr-report-timor-leste-truth>.

⁴⁵ Holly L. Guthrey, 'Local Norms and Truth Telling: Examining Experienced Incompatibilities within Truth Commissions of Solomon Islands and Timor-Leste', *The Contemporary Pacific* 28, no. 1 (2016): 13, 16.

⁴⁶ *Ibid*, 15–16.



3. TRUTH TELLING IN AUSTRALIA

While there has not been an official government-led truth telling process in Australia *per se*, truth telling has occurred as part of several Land Rights Claims, Royal Commissions, and through one National Inquiry. Royal Commissions encourage and accept submissions from people as part of their investigative processes. As with the Royal Commission into Child Sex Abuse, these public hearings can provide opportunities for survivors to heal from trauma and to generate public awareness of their experiences. Analysing these examples can help to inform a truth telling process in the NT, through the methodologies they have adopted, as well as some of the extensive documentation they have collected.

Some Aboriginal Territorians will have contributed to the processes outlined below.

3.1 NT Land Rights Claims (1976–)

The *Aboriginal Land Rights (Northern Territory) Act 1976* (the ALRA) allows Traditional Owners to claim inalienable freehold title within the Northern Territory, as long as the land in question is Crown land or land already owned by Aboriginal people. To make a claim, the Traditional Owners must prove their enduring connections to the land in front of the Aboriginal Land Commissioner, who is always a judge or former judge. Although the deadline to lodge a land claim was 1997, several claims lodged before the deadline are still unresolved.

The land claims process has involved truth telling, as Traditional Owners and claim groups have detailed their histories as part of their claims. These histories involve discussions of colonial oppression. For example, the transcripts of the Warlpiri and Kartangarurru-Kurintji land claim, the Willowra land claim and the Mount Barkly land claim contain references to the Coniston Massacre and its impacts on connections to country and culture. In the latter of these claims, Milly Nangala described the massacre:

At that time, the people were performing a ceremony for making young men and it was at the stage where the young boys were coming out of the bush as young men. The women were singing: 'Kardarrarra, Kardarrarra' when the white men came out of the bush. A voice could be heard: 'Ah, something's shooting at Audrey's grandfather'. Audrey's grandfather defended himself with his shield ... old Jampijinpa from Pawu was shot by the whites – whites shooting people.⁴⁷

3.2 Royal Commission into Aboriginal Deaths in Custody (1987–1991)

The Federal Government appointed the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) in 1987 to investigate why 99 Aboriginal deaths in custody had occurred (from 1980 to 1989) and to make recommendations to prevent similar tragedies in the future. The Commission examined both the individual and broader structural circumstances of each of the

⁴⁷ Milly Nangala quoted in Petronella Wafer, 'Mt Barkly claim heard', *Land Rights News Central Australia* no. 18 (1983): 16.



deaths. It held public hearings, meetings and received submissions, and issued two reports – an interim report in 1988, followed by a final report in 1991.

The Commission found that there was a similar death rate between Aboriginal and non-Aboriginal people in custody, but the incarceration rate for Aboriginal people was significantly higher. The RCIADIC report also found a correlation between survivors of the Stolen Generations and negative outcomes, including the likelihood of imprisonment. While the deaths were often not a direct result of police or corrections officers' violence, they could generally be attributed to system failures or an absence of due care.

Public hearings and meetings were held, where possible, in the hometowns of the deceased or where their death occurred. Research units in each state and the Northern Territory completed interviews with individuals and organisations.

In 2018, the Australian Government engaged Deloitte Access Economics to conduct a review into the implementation status of the Commission's recommendations. The review found that only two thirds of the recommendations of the RCIADIC had been fully implemented.⁴⁸ Despite this, the recommendations still provide a useful reference for policymaking today.

Elena Marchetti's research, which involves interviews with 48 staff supporting the RCIADIC, argues that a preliminary examination of the problem prior to establishing the Terms of Reference would have been beneficial, as the Commission's narrow scope ultimately limited its success. There were also tensions between the legal, sociological, and criminological perspectives of the Commissioners and, as with many other Commissions, time and resource constraints and limited powers of investigation affected the process.⁴⁹

3.3 Bringing Them Home: The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1995–1997)

The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families investigated the government policies and actions that resulted in the forcible removal of Aboriginal and Torres Strait Islander children from their families. The Inquiry explored potential reparations and examined current laws and policies that affect both past survivors and Aboriginal children in the present. The Human Rights & Equal Opportunity Commission (now the Australian Human Rights Commission) conducted the Inquiry, and its report, *Bringing Them Home*, included numerous personal testimonies of Stolen Generations survivors and 54 recommendations, including a national apology and compensation for victims.

While the Australian Government implemented very few of these recommendations, the Inquiry and the *Bringing Them Home* report raised public awareness of the history and ongoing impacts of the Stolen Generations. The Inquiry sought to provide a culturally and psychologically safe environment for survivors to give testimony, and for many it was an

⁴⁸ Deloitte Access Economics, *Review of the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Canberra: Deloitte Access Economics, 2018), xi.

⁴⁹ Elena Marchetti, 'Critical Reflections upon Australia's Royal Commission into Aboriginal Deaths in Custody', *Macquarie Law Journal* 5 (2005): 103–125.



opportunity to tell their stories and have them acknowledged. Testament to this, Hayner describes the Inquiry and report as a successful alternative to a Truth Commission, using it as an example to show that

There are a range of other kinds of official inquiries into past human rights abuses that have not been understood as truth commissions, but they have served a very important role and indeed may be a better approach than a truth commission, in some moments and in some contexts.⁵⁰

The report included numerous survivor stories and detailed explanations of the history surrounding them, which would be highly relevant for inclusion in an NT truth telling process. The Inquiry also noted that some survivors had previously told their stories in other forums. The ability for survivors to include these as submissions if they would prefer (instead of re-telling) might also be a consideration for the truth telling process in the NT.

3.4 The Royal Commission into Institutional Responses to Child Sex Abuse (2013–2017)

The Royal Commission into Institutional Responses to Child Sex Abuse was the largest Royal Commission in Australia's history. The Commission's initial budget was \$372 million over three years, which increased to \$500 million over five years. The Commission held 57 public hearings, involving 1200 witnesses over 444 days, and further private sessions where survivors could speak directly to Commissioners. The Commission's website holds the vast documentation collected, including many narratives and private statements read by actors. The livestreamed public hearings, reported upon consistently throughout the media, generated widespread awareness and support. The hearings also held many of the responsible institutions publicly accountable. A unique aspect of this Commission was its ability to follow up on recommendations through a series of final review hearings, which required institutions to detail their current policies and practices to demonstrate how they would prevent future abuse.⁵¹

Aboriginal Territorians were among the survivors giving testimony, including in the public hearings for Case Study 17, concerned with the child sexual abuse that occurred at the Retta Dixon Home, which housed many forcibly removed Aboriginal children.⁵²

While the Commission has concluded, the redress scheme will continue until 2028, and the Commission still has its own website, enabling the continued sharing of survivor stories, as well as access to its documentation and research.

While the Royal Commission is one of Australia's most highly regarded public inquiries, it also had its limitations. As with most Truth Commissions, while giving recommendations to

⁵⁰ Hayner, *Unspeakable Truths*, 15.

⁵¹ Katie Wright, Shurlee Swain and Kathleen McPhillips, 'The Australian Royal Commission into Institutional Responses to Child Sexual Abuse', *Child Abuse and Neglect* 74 (2017): 3.

⁵² Royal Commission into Institutional Responses to Child Sex Abuse, *Report of Case Study No. 17: The response of the Australian Indigenous Ministries, the Australian and Northern Territory governments and the Northern Territory police force and prosecuting authorities to allegations of child sexual abuse which occurred at the Retta Dixon Home* (Sydney: Royal Commission into Institutional Responses to Child Sex Abuse, 2015).



Government, Royal Commissions cannot force their implementation, and some institutions have been more proactive than others in addressing reforms. There were also some criticisms of the redress scheme, and complaints from survivors who were excluded from the Commission because they experienced other forms of abuse.

3.5 The Royal Commission into the Protection and Detention of Children in the Northern Territory (2016–2017)

Following an ABC *Four Corners* investigation, which identified numerous human rights abuses occurring in the Northern Territory's youth justice system, a Royal Commission into the Protection and Detention of Children in the Northern Territory was established to investigate the programme's claims.

Over 1,000 people attended thirteen public community meetings. The Commission established special rules for taking evidence and protecting privacy and identity, and collected 480 witness statements. It identified a number of significant and concerning findings regarding detention and welfare in the NT, making 227 recommendations aimed at reforming youth justice and detention systems.⁵³ It is not known, without a review, how many of the recommendations have been implemented. However, the NT Government has given in-principle support to implement all the recommendations.

The report is available online. A report overview, also available online, provides a good example of successfully condensing a huge text into a succinct and easy-to-read summary of findings. The overview is available in plain English and seventeen additional Aboriginal and Kriol languages.

In the broader public domain, the Commission and its findings remain a polarising issue. Opponents of the Commission and its findings often dismiss the explanatory links between youth in the justice system and the complex, systemic issues they face. Of concern is the fact that public perceptions of incarcerated youth seem to have worsened since the *Four Corners* investigation that prompted the Commission.⁵⁴

3.6 State and Territory-led truth telling

The Australian Government has preferred to let states and territories take the lead on treaties and truth telling. In July 2020, the Victorian Government announced it would establish a formal truth and justice process, as recommended by the Victorian First Peoples' Assembly.⁵⁵ The First Peoples' Assembly will lead the process, consulting with the broader community and then

⁵³ Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations* (Darwin: Royal Commission into the Protection and Detention of Children in the Northern Territory, 2017).

⁵⁴ Chris Teng and Matthew Shaw, *Exploring the Narratives Surrounding Young People in the Northern Territory* (Darwin: NT Youth Round Table, 2017), 4.

⁵⁵ 'Truth-telling process in Victoria a critical step towards reconciliation', *Reconciliation Australia*, 13 July 2020, <https://www.reconciliation.org.au/truth-telling-process-in-victoria-a-critical-step-towards-reconciliation/>.



collaborating with the Victorian Government to establish the Terms of Reference. The process will run in parallel with the current Treaty process. The Victorian Government and the First Peoples' Assembly have yet to release further details about the structure and implementation of their process.

The Northern Territory and Victoria are not the only jurisdictions pursuing truth telling. Queensland's Treaty Working Group has also advocated for a Truth Commission. A national body to assist in coordination and collaboration across the country could be beneficial. The NT Treaty Commission and any truth telling body in the NT will continue to monitor developments elsewhere in Australia to maximise opportunities for collaboration and learning.

3.7 Truths already told

Royal Commissions have been an important vehicle for truth telling in Australia, where the absence of an independent Truth Commission has meant fragments of Aboriginal truth telling are instead scattered throughout mainstream interpretations of history, such as newspaper articles, court cases, various standing committees and countless government reports. These rarely place Aboriginal people at the centre of the story, even less so on their own terms.

Despite these shortcomings, many Aboriginal people have told their stories where they can, and through a variety of other means – books, art, dance, song and storytelling. Rich collections of recorded stories do exist.

A truth telling process might need to consider how to incorporate these existing testimonies, and how to allow participants to choose if, and how, they would like to share (or re-tell) stories, to bring together these fragments and to weave them collectively with the truths that have yet to be told.

3.8 United Nations Best Practice

In 2006, the Office of the UN High Commissioner for Human Rights advised on best practice for Truth Commissions in a report titled *Rule-of-Law Tools for Post-Conflict States: Truth Commissions*. Some findings are relevant to potential truth telling processes in the NT, particularly the core principles and operating assumptions. These include a requirement for broad consultation to ensure support for the Commission and the design of an appropriate model, and to start this consultation early to adequately develop a mandate. **A Commission supported by political will is likely to be more successful, as long as it still maintains operational independence.**⁵⁶

In 2009, the Office of the UN High Commissioner for Human Rights also released a report on the Right to Truth, detailing best practices for the effective keeping of archives and records

⁵⁶ United Nations Office of the High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Truth Commissions* (HR/PUB/06/1, 2006).



and the protection of witnesses.⁵⁷ Keeping archives requires not only the collection and sharing of submissions and testimony, but also access to previous state-owned documents that relate to the truth telling process. Appropriate archive keeping is also critical to support the security and physical and psychological wellbeing of witnesses who provide submissions to the Commission. This may involve observing the right to privacy. Participants must be central to the process and they should own the terms of their truth telling, including how their testimonies are stored once complete.⁵⁸

3.9 What We Can Learn From Others

While all truth telling processes and Commissions are unique, the above analysis shows some emerging themes and important considerations for the development of a truth telling process in the NT. The following provides a synthesis of the challenges and opportunities for consideration. It is not an exhaustive list of what *could* happen, rather what our research has identified.

Challenges:

- The inability of a Commission to be perfect and to satisfy everyone – no Commission model has been without its shortcomings, which means that the careful prioritisation of objectives is required
- Managing expectations – a Truth Commission is only a step in the process of reconciliation
- How to best protect the wellbeing of participants, which includes considering the potential for submissions to re-traumatise them and the risk that people discount or disregard their story
- The importance of strong legislative support
- Challenging timeframes, funding and resources
- A lack of consultation/understanding of the mandate of a Commission
- The pitfalls of top-down approaches
- Mandates being too narrow and later constraining what a Commission can achieve
- The significant task of documenting, preserving, storing and providing ongoing access to materials, both pre-existing and generated by a Commission's activities
- How to ensure the implementation of report recommendations after a Commission has disbanded
- The impacts of external forces such as political will, financial capability, and public support
- A lack of engagement, both with survivors and the public
- The difficulty of conveying structural inequalities through personal stories alone
- How to best utilise the media while also being respectful to participants
- How the success of a Commission is best evaluated.

⁵⁷ United Nations Office of the High Commissioner for Human Rights, *Right to the truth*.

⁵⁸ Ibid, 5.



Opportunities:

- The opportunity to acknowledge the resilience of Aboriginal & Torres Strait Islander Australians who, despite everything, have persevered, and the potential for **this to be at the heart of the Australian story**
- The healing that truth telling can bring to participants
- Sharing truth telling with the broader population can help overturn prejudices and build a different national narrative
- The collection of stories and information can form a 'library', which can then be used by participants, their families, researchers, teachers, etc.
- While participants may not be able to face perpetrators (as with the South African Commission), there may be opportunities to engage with descendants, as with the Myall Creek Massacre and Coniston Massacre commemorations
- The potential for truth telling processes to foreground and celebrate cultural identity
- The publication of reports and dissemination of truth telling can be adapted to different audiences with great impact – a shorter version of the Argentine Truth Commission's report became a national best-selling book, and the *Chega!* Report by the Timor-Leste Commission was made into a series of children's comic books
- The opportunity to generate public support for future treaties
- Non-Aboriginal Australians being given a part to play in truth telling by 'bearing witness', acknowledging and supporting decolonisation (although they may need help to understand this).



4. TRUTH TELLING MODELS

The decision as to how truth telling will work in the Northern Territory must follow extensive consultation with and feedback from Aboriginal Territorians. As mentioned in earlier sections, culturally appropriate structures and ownership of the truth telling process are integral to success. In this section, we outline several considerations and recommendations for a model, based on academic research and our analysis of other jurisdictions' Truth Commissions. However, we intend this as a guide only, not as a definitive description of how the process will occur in the Northern Territory.

4.1 How to establish the truth telling process?

As examined in Section 1.7, jurisdictional responsibility for the Northern Territory has changed over history, between New South Wales, South Australia, and the Commonwealth Governments, before self-government in 1978. It is important to consider how to engage all of these jurisdictions in a truth telling process, remembering that, as per the *Northern Territory (Self-Government) Act 1978*, the Northern Territory Government is indemnified against acts committed by the Commonwealth. We recommend first approaching the Commonwealth Government for funding.

We recommend the process occur in two phases: first, a broadly mandated, Territory-wide truth telling process, which would be the responsibility of an independent Truth Commission. This would allow us to begin the process of truth telling as soon as possible, rather than waiting for treaty making to commence. The Commission responsible for this phase would release a final report, as is common in Truth Commission processes. It would then hand its research, including recorded testimonies, to a Truth Telling Institute, open to First Nations, researchers and anyone else interested in learning more about the truth of the Territory's past. The Institute would operate similarly to the National Centre for Truth and Reconciliation at the University of Manitoba, in that it would function as an archive and a place to record more stories and be attached to an establishment like Charles Darwin University or the Batchelor Institute of Indigenous Tertiary Education. **The second phase would occur during the negotiation of individual treaties with First Nations.** This phase would involve requests from First Nations to undertake (further) truth telling specific to their group, parallel to and informing the outcomes of treaty making. As it is likely that the Truth Commission will have completed its work by this stage, the Treaty Commission would be responsible for such truth telling processes, potentially with the aid of the Truth Telling Institute.

Initially, the Treaty Commission proposes to include discussions of truth telling as part of our treaty consultations, enabling conversations to begin earlier and the Treaty Commission to gather initial feedback on the model proposed here. It is important that Aboriginal Territorians can see tangible progress toward truth telling; beginning discussions as soon as possible will facilitate that. Once a Truth Commission is established, it can continue the consultation process.

This model would allow for immediate action, building on the current momentum for truth telling. The model also acknowledges the long game of reconciliation and the rights of groups to include truth telling as part of their individual treaty processes. While the Truth Commission will eventually disband, **there should not be an end date to the practice of truth telling;** groups



should still have the opportunity to share their stories in the future. The establishment of a Truth Telling Institute means that this opportunity will exist indefinitely.

With this model in mind, there are several potential ways to establish the process:

1. **The creation of a Truth Commission as a new and separate body.** This method would ensure independence and would avoid many of the issues associated with options 2 and 3. However, this method would involve a longer set-up period than the other options.
2. **The Truth Commission becoming part of the Northern Territory Treaty Commission's functions.** The NT Treaty Commission could establish and oversee the Truth Commission. Joining the roles would allow the truth telling and treaty processes to collaborate easily when necessary. It would mean the Truth Commission would be, by default, clearly independent from Government. However, it is important that truth telling and treaty making are connected, yet fundamentally separate; if the Truth Commission were part of Treaty NT, the distinctions between the two may become opaque. As we detail below in our budget, the truth telling process would most likely involve more staff than the Treaty Commission, meaning Treaty NT in its current form may not have adequate resources to manage it.
3. **The Truth Commission as an arm of an existing institution.** We recommended this method in our Treaty Discussion Paper, to reduce costs and to take advantage of pre-existing research repositories.⁵⁹ Potential options include the Charles Darwin University, the Batchelor Institute of Indigenous Tertiary Education, the Northern Territory Library, the Land Councils, the NT Archives Service or the Library of the Supreme Court. The viability of this method depends on the funding, commitments, access options and interest of these institutions; these can change both rapidly and drastically, meaning the budget and mandate of the truth telling process could be under threat. This method may also compromise the perceived neutrality and independence of the process. As a result, Treaty NT's views have changed, and **we now believe a new and separate body is the best method to establish a truth telling process.**

We strongly recommend the enactment of legislation concerning the Truth Commission and its role. Legislation will make the mandate of the Commission transparent and considered.

4.2 Who will be the Commissioners?

International Truth Commissions normally involve several politically neutral Commissioners. Sometimes these Commissioners are from outside the country to enhance their neutrality. However, in this instance we consider it important that a majority of Commissioners are Aboriginal people who live in, or have a strong connection to, the Northern Territory. The Commissioners will need experience in leadership and in navigating Aboriginal issues. Ideally,

⁵⁹ NT Treaty, *Discussion Paper*, 70.



there will be a gender balance among Commissioners, to ensure a culturally appropriate process.

The Land Councils may play a role in recommending potential Commissioners. However, applications should be open to all who are qualified.

4.3 Who will staff the Commission?

Some international Commissions (such as Peru's Truth and Reconciliation Commission) have employed up to 500 staff. While we are certainly not expecting to employ as many people, this fact highlights the wide-ranging needs and undertakings of Truth Commissions worldwide. These bodies do not just involve the Commissioners and a handful of researchers, but rather people from a wide variety of occupations working together.

Some of the work may be undertaken by contracted consultants and/or non-government organisations. Regardless, the process will need to engage with and/or employ people from the following occupations:

1. Statement takers – specially trained statement takers will listen to and to record the testimonies of interviewees. As this position may be psychologically draining, the Commission should provide support and training to statement takers. Statement takers should also have a basic awareness of the history of colonisation in the Northern Territory. Some Truth Commissions, including in Argentina, hired statement takers from human rights organisations. These staff were better prepared to deal with traumatic testimonies than the civil servants the Argentine Commission initially employed.⁶⁰
2. Translators/interpreters – Participants should be able to provide their testimonies in the language of their preference. This means the Commission will require translation and interpreting services. In addition, translation into major Aboriginal languages and simple English of the final report and updates will be necessary.
3. Psychologists – Truth telling can be a harrowing process. When completed without support, it risks re-traumatising participants. Psychological appointments should be available to participants before and after they provide testimony. Dependent on funding and community interest, this could possibly extend past the initial work of the Truth Commission; as noted in earlier sections, the act of truth telling can only be healing when combined with other support work before and afterwards.
4. Historians – Truth telling has already occurred in Australia in several settings, such as in Land Claims, Royal Commissions and The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. Additionally, the truth can be uncovered through archival research, and consultation of earlier published works of history (more on this process below). The Commission will need to work with historians who can consult and analyse these resources to supplement the testifying process. Oral historians may also be suitable candidates for statement taker positions.
5. General researchers – The Commission may need to hire researchers to focus on non-historical areas, such as international best practice in truth telling. Sourcing these researchers from NGOs and human rights organisations is an option.

⁶⁰ Hayner, *Unspeakable Truths*, 213.



6. Archivists/database managers – Databases of testimonies will be important both during and after the process. Keeping and coding a database during hearings helps researchers understand the broader trends in the data, and in writing the final report. Afterwards, the database can be stored at the Truth Telling Institute and used by other interested parties (including First Nations) to research history and the experiences of Aboriginal Territorians. Hayner's research reveals that often database managers experience even more psychological distress than statement takers in undertaking their work.⁶¹ As a result, these employees will also need psychological support (if requested) and training.
7. Participant liaison – A participant liaison could be helpful in allowing participants to interact with the Commission before and after their involvement. In South Africa, survivors were frustrated by a lack of communication from and access to the Truth and Reconciliation Commission; advocacy group Khulumani suggested that a liaison officer would have solved this issue.⁶²
8. Communications and Media officers – Previous success by Truth Commissions has often been measured by how well they managed to keep the public well informed and interested in their process and report. Media officers can help publicise the Commission's work and disseminate information to participants and the public alike.
9. Administration staff – Of course, administration staff will be integral to keep the Commission running smoothly.

4.4 When will the truth telling process begin?

Ideally, the truth telling process will begin as soon as possible, including before the Northern Territory Treaty Commission completes its Final Report. In the Treaty Discussion Paper, we wrote, *"some of our Elders are very old, many hold in their memories unique experiences of the past."*⁶³ Treaty making will and should take time, but there is no need to wait any longer to commence truth telling.

Beginning truth telling earlier than treaty making also encourages more support for treaty processes. By increasing public knowledge of our history and the systemic issues that exist for Aboriginal people, we can begin to build understandings of the enormous importance and potential of treaty. In addition, the truth telling process could possibly inform reparations administered through treaty making.

4.5 How long will the process take?

In the Treaty Discussion Paper, we recommended that a truth telling body exist for three years.⁶⁴ This is in line with international best practice. Shorter Truth Commissions have often run out of time and/or been forced to examine only a small number of issues. Longer Truth Commissions have failed to hold the public interest for their duration and have depleted their

⁶¹ Ibid, 160.

⁶² Ibid, 226.

⁶³ NT Treaty, *Discussion Paper*, 69.

⁶⁴ Ibid, 70.



funding. A particularly clear example is the Ugandan Truth Commission, which did not have a set deadline. Beginning its tenure in well-appointed offices, it moved four times, eventually ending up in a back alley office in a bad part of town. It also repeatedly ran out of money and had to pause its activities regularly as a result. By the time it published its report – nine years after the beginning of the process – the Ugandan Truth Commission had also lost the public's attention.⁶⁵

After the conclusion of the Truth Commission, Aboriginal Territorians will still have opportunities to engage in truth telling through the treaty-making process. Currently, we envisage that the second phase of truth telling will occur in parallel with treaty negotiation, with the NT Treaty Commission and the Truth Telling Institute providing administrative and research support. The outcomes and truths uncovered as part of this process will then feed into the content of the treaties concluded.

Hayner recommends that prior to officially opening, all Truth Commissions or similar bodies should complete a preparation period of at least three months.⁶⁶ This allows the body to undertake preliminary research (including sourcing permissions from archives, which often requires long wait times), to secure funding, staff, and offices, to design a database system and to publicise and disseminate information to participants and the broader public.

4.6 How will the truth be uncovered?

The Truth Commission will uncover the truth through statements from participants and the examination of historical records. The Commission should employ or consult with historians and other researchers to access sources such as:

1. Previous testimonies from Australian truth telling exercises. As discussed earlier, there have already been several truth telling exercises in Australia, mostly in the form of Royal Commissions. Accessing the testimonies and transcripts from these processes will augment the Commission's research. It will also mean that those who do not wish to dwell on difficult aspects of the past can have their earlier statements reused, should they desire it
2. NT Aboriginal land claim transcripts. During land claim proceedings, claimants have often provided detailed accounts of massacres and other atrocities
3. Pre-existing oral history collections. As an example, the National Library of Australia holds several collections of Aboriginal oral histories. Some of these records are many decades old and contain the memories of those long passed away. These records also provide us with an opportunity, in some instances, to hear the voices of perpetrators
4. Pre-existing primary historical sources (non-oral and non-governmental). The Commission can use sources such as newspaper articles and colonisers' biographies to demonstrate the instances and ongoing impacts of colonisation on Aboriginal Territorians
5. Documents stored in government archives, such as in the National Archives of Australia, the NT Archives Service, and the State Records of South Australia

⁶⁵ Hayner, *Unspeakable Truths*, 216–217.

⁶⁶ *Ibid*, 216.



6. Pre-existing scholarly works. Several academics have already written monographs on the colonisation of the Territory. The perspectives and stories of Elders who have since passed away have informed many of these works. Consulting these would allow the Commission to interact with these Elders' memories, too.

4.7 Where will the process occur?

The process must occur somewhere culturally appropriate. This could entail the Commission travelling to communities for hearings. If the Commission uses a more permanent space, this must not be associated with anything traumatic for the participants. In Chad, the Truth Commission office space was the former detention centre of the security forces, who had been responsible for the very atrocities the Commission was investigating. This meant many potential witnesses did not feel comfortable participating, which hindered the ability of the Commission to uncover the truth.⁶⁷

4.8 How exactly will the process work?

This, especially, is a matter for consultation and further research. As mentioned earlier, a Northern Territory truth telling process will look different to other Truth Commissions for several reasons. It would be both culturally inappropriate and unproductive to copy another Truth Commission's structure. Here are some potential ways the Truth Commission could organise its activities:

1. By group. This would involve a First Nations group, or organisation, volunteering to participate in truth telling, and deciding on the issues to cover. A major advantage of this method would be that each First Nation could have significant, localised input into the process, including the temporary location of the Commission and the support measures in place. However, we are concerned about the role of Stolen Generations members in the process; they deserve a chance to tell the truth too. Mediated outcomes are achievable by allowing organisations as well as First Nations to apply to be part of the process.
2. By issue. The Commission would hold specific, themed hearings about issues and incidents such as wage theft. By using issues to guide the process, the Commission would be in a good position to codify the data and understand it thematically. However, the Commission would risk neglecting an issue that may be very important to some but not to others. This method may also lead to less flexibility in terms of location and statement taking; in other words, the process needs to be easily adapted to fit different First Nations.
3. By time period. As in the previous option, dividing hearings by time period would allow for a better coding of the data. This option would also allow participants to cover unexpected issues. It would suffer from similar disadvantages to the 'issue' method; that is, it would be a less adaptable process.

We recommend consultation on a combination of the above, using the two-phase process outlined earlier. The Commission's first phase could incorporate truth telling at a Territory-

⁶⁷ Ibid, 245.



wide level, allowing categorisation by either time period or issue. While categories can be useful because they give people guidance (bearing in mind that consultation is necessary to identify potential categories), there is a danger of overlooking something, thereby preventing potential submissions. Having time periods as an option protects against this, as the Commission can collect and code a wide variety of data, including some submissions that do not fit a prescribed category. This would allow testimonies to align with a main topic where appropriate, but also not prevent people from raising further issues.

The second part of the proposed truth telling process would occur at a treaty level, i.e. by group, where First Nations groups could incorporate their own truth telling outcomes into their treaty agreements.

The methodology described here aligns with the proposed two-phase process, allows both broad and grassroots truth telling, and enables the process to get underway quickly while not forgoing the rights of groups to tell their own stories on their preferred terms in the future.

4.9 How will the Land Councils and other community organisations be involved?

Many Truth Commissions have attributed their success to their close involvement with human rights groups and non-government organisations. The input of the Land Councils, the NT Stolen Generations Aboriginal Corporation, the Healing Foundation and other Aboriginal community organisations is vital. This input could involve participation in appointing the Commissioners, archiving and database management, co-ordinating hearings and providing access to previous research.

4.10 How will the process be publicised?

The publicity surrounding a Truth Commission can be its key to success or a recipe for disaster. As one of the major aims of Truth Commissions is to shine a light on the atrocities of the past and their impact on the present, we need to make sure the public is engaged in the process. But while capturing attention and educating non-participants is important, so too is ensuring witnesses feel comfortable providing testimony, and that culturally sensitive information is not disseminated indiscriminately.

We recommend that the Truth Commission take a flexible approach. Ideally, many – if not most – of its hearings would be public and reported in the media. The Commission could potentially broadcast its hearings live and/or livestream them. However, research has shown that hearings are rarely ‘watchable’ in the traditional sense and need to be ‘mediatised’.⁶⁸ Commissioners generally do not guide participants with many leading questions and/or lines of interrogation, as they potentially would in a Royal Commission. While this allows participants to tell their stories without interruption, it also means it can be hard to tune into the process midway through. In other words, the media needs to provide explanation and analysis.

Not everyone will feel comfortable having their stories publicised, although undoubtedly some participants will actively want to share their truths. The Commission should have several

⁶⁸ Evans, ‘Televising South Africa’s Truth and Reconciliation Commission’, 713–714.



alternatives for those who would prefer a level of privacy. These could include closed hearings, de-identifying data (such as having an actor read the testimony for the public record), more general and less individualised testimony from a community leader or advocate and private, written submissions.

As previously mentioned, we recommend careful consideration of how to engage and educate non-Aboriginal Territorians, who have an important role to play by 'bearing witness' to the truth telling process. We also recommend careful planning of the most appropriate way to engage media. Our initial research shows most media agencies reporting on treaty processes are generally supportive, however articles shared on certain social media platforms can also attract a range of comments from the community. Unfortunately, these comments can be extremely derogatory. This could have a re-traumatising effect on truth tellers. Therefore, we strongly recommend that the process create mechanisms to avoid harassment and derogatory comments on social media, including engaging media agencies before truth telling and requesting their assistance in moderating comments on their social media pages, as well as the appointment of an experienced communications team.

4.11 What will it cost?

Truth Commissions vary in scale and budget, and comparison with international commissions to predict costs may not be useful due to differences in wages and currency fluctuations.

The examples of truth telling in Australia we outlined in Section 3 might be a more useful comparison. Listed below:

- Royal Commission into Aboriginal Deaths in Custody: more than \$50 million over four years⁶⁹
- National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families: \$1.5 million over two years, not including salary or operating costs, which were paid by the Australian Human Rights Commission
- Royal Commission into Institutional Responses to Child Sex Abuse: initially granted a budget of \$372 million over three years, but estimated to have ultimately cost \$500 million over five years⁷⁰
- Royal Commission into the Protection and Detention of Children in the NT: \$54 million for just over one year, jointly funded by the NT and Federal Governments, plus additional estimated costs to the NT (legal expenses and staff hours) of \$16 million⁷¹

⁶⁹ Australian Law Reform Commission, 'Cost, formality of Royal Commissions queried in ALRC Review', *Australian Law Reform Commission*, 6 April 2009, <https://www.alrc.gov.au/news/cost-formality-of-royal-commissions-queried-in-alrc-review/>.

⁷⁰ Child Family Community Australia, 'The economic cost of child abuse and neglect', *Australian Institute of Family Studies*, September 2018, <https://aifs.gov.au/cfca/publications/economic-costs-child-abuse-and-neglect>.

⁷¹ Tom Maddocks, 'Royal commission into child detention and protection costs NT Government more than \$40 million', *ABC News*, 28 November, 2017, <https://www.abc.net.au/news/2017-11-28/royal-commission-costs-the-northern-territory-government-million/9201928>.



- Victoria's Treaty process: allocated \$20.2 million in the 2020/21 budget, but it is unclear if the funding of truth telling will be through this allocation or in addition to it.⁷²

The NT Treaty Commission acknowledges the difficult financial situation facing all Australian Governments at this time. Ultimately, truth telling is intrinsic to addressing our history and our present; without truth telling, it is difficult to build solid foundations for the future. A Truth Commission has the potential to provide these foundations, and to enhance outcomes in a vast range of other areas, including the treaty process. There is economic merit in truth telling, but it is difficult to quantify, and ultimately truth telling should not require an economic justification. It is clearly **the right thing to do**.

The following table provides an estimated cost breakdown for our preferred truth telling model – an independent Truth Commission:

Item	Annual Budget
Costs of 3 full time Commissioners	\$1,050,000
12 Permanent Staff	\$1,600,000
Part time professional staff or consultants	\$1,000,000
Travel	\$ 500,000
Office and operating costs incl. vehicles, IT etc.	\$ 500,000
Initial IT systems, database etc. set up – one off	\$ 200,000
Communications/media	\$ 250,000
TOTAL	\$5,100,000

4.12 What will the process achieve?

The Truth Commission should be free to make wide-ranging recommendations. Based on our research into international Truth Commissions, we would hope to see some of the following outcomes:

- Recommendations for reparations, in line with the Van Boven/Bassiouni Principles and administered by the NT Treaty Commission (discussed in the first section and in Attachment 1)
- A final report, distributed widely and translated into multiple Aboriginal languages and simple English, as well as a children's version of the report
- An archival collection of testimonies, stored at a Truth Telling Institute
- Concrete recommendations regarding education about colonisation and its ongoing impacts
- Concrete recommendations feeding into the treaty process (for example, about local decision making)
- Ongoing support services for participants, in recognition of the potential trauma of testifying, and the incomplete nature of reconciliation and healing

⁷² First Peoples' Assembly of Victoria, 'MEDIA RELEASE: Treaty process to ramp up with new funding', First Peoples' Assembly of Victoria, 24 November 2020, <https://www.firstpeoplesvic.org/media/treaty-process-to-ramp-up-with-new-funding-24-november-2020/>.



Northern Territory
Treaty Commission

Towards Truth Telling

- An overall greater public awareness of the truth of our history and its effects on Aboriginal Territorians today.



5. CONCLUSION

The purpose of *Towards Truth Telling* has been to provide some fundamental understandings of how truth telling has occurred here and around the world, and to identify key issues, challenges and opportunities in developing a truth telling process in the Northern Territory. It has outlined some possible models and processes for consideration but **shaping of truth telling in the NT will ultimately occur through consultation with Aboriginal Territorians.**

As argued by the Treaty Discussion Paper, truth telling must begin as soon as possible, before the negotiation of any treaty and even before the NT Treaty Commission releases its Final Report. Despite the need for swift action, there is an even greater need to get the process right. We cannot address our history without Aboriginal people creating the terms for the telling of their truths. Then, by tracing the journey back through these truths, we can start to weave a new story, what the Uluru Statement from the Heart terms a “fuller expression of Australia’s nationhood.”⁷³

The next step on this journey is to begin a discussion between the NT Treaty Commission and the Northern Territory Government, and to seek a response to this proposal.

5.1 Acknowledgement of Country

The office of the NT Treaty Commission is located on the traditional lands of the Larrakia Nation. We pay our respects to Larrakia elders past and present and all the Larrakia and to all First Nations peoples of the Northern Territory.

5.2 Other Acknowledgements

The compilation of documents such as *Towards Truth Telling* is rarely the work of a single researcher and author. This paper is a group effort and I wish to acknowledge and thank the team at the Treaty Commission for their valuable contributions to this document. I therefore express my deep appreciation to Ms. Saskia Roberts⁷⁴, Research Officer and writer; our Graduate placement, Mrs Charmaine Woods, researcher and writer; Ms Ursula Raymond, Deputy Commissioner, editor; Mr Steve Rossingh, Treaty Commission Director, editor; and Mr Thomas Snowdon, editor; and extremely importantly, Ms Sandra DeSantis, our Executive support officer, who with professional aplomb and efficiency keeps the administrative and logistical cogs a churning.

A handwritten signature in blue ink, reading 'Michael Dodson'.

PROFESSOR (EMER) MICHAEL DODSON AM
NT TREATY COMMISSIONER

⁷³ National Constitutional Convention, *Uluru Statement from the Heart*, 2017. Available at: <https://ulurustatement.org/the-statement>.

⁷⁴ Special thanks to Professor Brian Schmidt, Vice-Chancellor, Australian National University, for appointing and resourcing Ms Roberts’ position as my research officer in my role as Emeritus Professor at the ANU College of Law.



6. APPENDIX 1: The “van Boven/Bassiouni” Principles:

BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF HUMAN RIGHTS AND HUMANITARIAN LAW

The duty to respect and to ensure respect for human rights and humanitarian law

1. Under international law, every State has the duty to respect and to ensure respect for human rights and humanitarian law.

Scope of the obligation to respect and to ensure respect for human rights and humanitarian law

2. The obligation to respect and to ensure respect for human rights and humanitarian law includes the duty: to prevent violations, to investigate violations, to take appropriate action against the violators, and to afford remedies and reparation to victims. Particular attention must be paid to the prevention of gross violations of human rights and to the duty to prosecute and punish perpetrators of crimes under international law.

Applicable norms

3. The human rights and humanitarian norms, which every State has the duty to respect and to ensure respect for, are defined by international law and must be incorporated and in any event made effective in national law. In the event international and national norms differ, the State shall ensure that the norm providing the higher degree of protection shall be applicable.

Right to a remedy

4. Every State shall ensure that adequate legal or other appropriate remedies are available to any person claiming that his or her rights have been violated. The right to a remedy against violations of human rights and humanitarian norms includes the right of access to national and international procedures for their protection.

5. The legal system of every State shall provide for prompt and effective disciplinary, administrative, civil and criminal procedures so as to ensure readily accessible and adequate redress, and protection from intimidation and retaliation.



Every State shall provide for universal jurisdiction over gross violations of human rights and humanitarian law, which constitute crimes under international law.

Reparation

6. Reparation may be claimed individually and where appropriate collectively, by the direct victims, the immediate family, dependents or other persons or groups of persons connected with the direct victims.

7. In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

8. Every State shall make known, through public and private mechanisms, both at home and where necessary abroad, the available procedures for reparations.

9. Statutes of limitations shall not apply in respect of periods during which no effective remedies exist for violations of human rights and humanitarian law. Civil claims relating to reparations for gross violations of human rights and humanitarian law shall not be subject to statutes of limitations.

10. Every State shall make readily available to competent authorities all information in its possession relevant to the determination of claims for reparation.

11. Decisions relating to reparations for victims of violations of human rights and humanitarian law shall be implemented in a diligent and prompt manner.

Forms of reparation

Reparations may take any one or more of the forms mentioned below, which are not exhaustive, viz:



12. **Restitution** shall be provided to re-establish the situation that existed prior to the violations of human rights and humanitarian law. Restitution requires, **inter alia**, restoration of liberty, family life, citizenship, return to one's place of residence, employment of property.

13. **Compensation** shall be provided for any economically assessable damage resulting from violations of human rights and humanitarian law, such as:

- (a) Physical or mental harm, including pain, suffering and emotional distress;
- (b) Lost opportunities including education;
- (c) Material damages and loss of earnings, including loss of earning potential;
- (d) Harm to reputation or dignity;
- (e) Costs required for legal or expert assistance.

14. **Rehabilitation** shall be provided and will include medical and psychological care as well as legal and social services.

15. **Satisfaction and guarantees of non-repetition shall be provided, including, as necessary:**

- (a) Cessation of continuing violations;
- (b) Verification of the facts and full and public disclosure of the truth;
- (c) An official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim;
- (d) Apology, including public acknowledgement of the facts and acceptance of responsibility;
- (e) Judicial or administrative sanctions against persons responsible for the violations;
- (f) Commemorations and paying tribute to the victims;



- (g) Inclusion in human rights training and in history textbooks of an accurate account of the violations committed in the field of human rights and humanitarian law;
- (h) Preventing the recurrence of violations by such means as:
- (i) Ensuring effective civilian control of military and security forces;
- (ii) Restricting the jurisdiction of military tribunals only to specifically military offences committed by members of the armed forces;
- (iii) Strengthening the independence of the judiciary;
- (iv) Protecting the legal profession and human rights defenders;
- (v) Improving, on a priority basis, human rights training to all sectors of society, in particular to military and security forces and to law enforcement officials.