

ANZSOG CASE PROGRAM – TEACHING NOTE

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Unfinished Business? The Victorian Yoo-rrook Justice Commission and Truth Telling in Australia

An ANZSOG Teaching Note by Harry Hobbs

Keywords: Uluru Statement from the Heart, truth-telling, Aboriginal and Torres Strait Islander people, constitutional recognition, transitional justice

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Summary

This case focuses on the development of Australia's first comprehensive truth-telling commission: the Yoo-rrook Justice Commission in Victoria. The Commission was established as part of the Victorian government's commitment to negotiating a treaty with Aboriginal Victorians. The idea of a formal process of truth-telling emerged organically out of that treaty process. Guided by the views of Aboriginal Victorians and developed in partnership with the First Peoples' Assembly of Victoria – a state-wide Indigenous representative body – the Yoo-rrook Justice Commission is tasked with investigating historical and ongoing injustices arising from colonisation. Its report and recommendations are expected to support the State's treaty process. The Commission was welcomed by many Aboriginal Victorians. However, it remains to be seen whether the Commission will succeed in its goals. Earlier truth telling processes in Australia have not led to the sort of political and legal reform that Aboriginal and Torres Strait Islander peoples argue

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is necessary to recognise and protect their rights. This teaching note outlines key learning objectives, before setting out suggested discussion questions that are designed to prompt critical thinking and conversation.

Learning Objectives

The case offers several different teaching opportunities on a variety of topics, including public administration, Indigenous affairs, public policy, and law. This case will enable students to:

- Identify why Aboriginal and Torres Strait Islander peoples' desire a formal process of truth-telling about Australia's colonial history.
- Make comparisons between the Yoo-rrook Justice Commission and earlier, large-scale, national truth-telling processes and inquiries, like the Royal Commission into Aboriginal Deaths in Custody and the Senate Legal and Constitutional References Committee's Inquiry into Stolen Wages.
- Assess the strengths of and challenges facing the Yoo-rrook Justice Commission.
- Reflect on the relationship between the Yoo-rrook Justice Commission and the national debate on constitutional recognition of Aboriginal and Torres Strait Islander peoples.

Course Audience

The audience for this case study may include:

- Postgraduate students enrolled in a Masters (or other postgraduate course) in Indigenous affairs, public administration, law, government, and related areas.
- Final year undergraduate students in any of the above areas.
- Public sector employees working in Indigenous affairs.

Suggested Teaching Approaches

1	Question for class discussion	Why is a process of truth-telling about colonisation necessary in 2022? In his 1968 Boyer Lecture, <i>After the Dreaming</i>, W.E.H. Stanner coined the term the 'Great Australian Silence'. According to Stanner, Australians did not simply fail to acknowledge injustices caused by colonisation, but rather chose not to think about them at all. Since 1968, there has been a concerted effort to rectify this silence. Inquiries and reports have documented the systemic and ongoing injustices caused by colonisation, while popular media and school textbooks have incorporated the experience of Aboriginal and Torres Strait Islander peoples into the larger Australian narrative. Considering this: - Why do Aboriginal and Torres Strait Islander peoples call for a process of truth-telling today? - What value do they see in a truth commission? Students can discuss the relationship between truth and justice. - Is a shared understanding of history needed before political and legal reform is possible? - Are there other reasons that support the development of a truth commission?
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		The material below can support the discussion. • Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples. (2018, November). Final Report. Chapter 6 'Truth Telling' • McKenna, M. (2018) Moment of Truth: History and Australia's Future. Quarterly Essay 69 https://www.quarterlyessay.com.au/essay/2018/03/moment-of-truth • Referendum Council. (2017) Final Report of the Referendum Council • Rowse, T. (2021, September 10) Telling Truths. Inside Story https://insidestory.org.au/telling-truths/
2	Question for class discussion and potential assignment topic	Why did earlier truth-telling processes in Australia fail to lead to significant political and legal reform? The case study notes that several large-scale truth-telling processes have previously been undertaken in Australia. - What were these processes? - How did they operate? - What challenges did they face? As individuals or in small groups, students can research earlier national inquiries or reports. They can examine the development and design of these processes, read their final report, and consider how the findings were received by government. - Were the recommendations acted upon? - Why or why not? Students can consider these questions in discussion groups or in a research assignment. The material below on the Royal Commission into Aboriginal Deaths in Custody can support that work. • Davis, M. (2011) A Reflection on the Royal Commission into Aboriginal Deaths in Custody and its Consideration of Aboriginal Women's Issues. Australian Indigenous Law Review 15:1 25-33 • Marchetti, E. (2005) Critical Reflections upon Australia's Royal Commission into Aboriginal Deaths in Custody'. Macquarie Law Journal 5, 103.
3	Question for class discussion	What challenges will the Yoo-rrook Justice Commission face? How can they be addressed? The Yoo-rrook Justice Commission is Australia's first truth-telling commission tasked with examining Indigenous peoples' experiences of historic and contemporary systemic injustices arising from colonisation. It has a significant and important mandate. The success of the Commission relies on several factors, including securing the support of Aboriginal Victorians, the non-Indigenous community, and government. It must also develop recommendations that have broad public support, complement the treaty process and are readily implementable by government. However, the nature of the Commission's function makes this difficult. For example, some Victorians may be confronted by the Commission's report and withdraw their support for the process. - How can the Commission respond to this – and other – challenges? Students can consider these questions in discussion groups. The material below can support the discussion. • Arthur, P, et al. (2012) Strengthening Indigenous Rights through Truth Commissions: A Practitioner's Resource, International Center for Transitional

		Justice https://www.ictj.org/sites/default/files/ICTJ-Truth-Seeking-Indigenous-Rights-2012-English.pdf Williamson, B. (2021, September 16) The Full Truth of the Past: Native Title and the Yoo-rrook Justice Commission, Arena https://arena.org.au/the-full-truth-of-the-past-native-title-and-the-yoo-rrook-justice-commission/
4	Question for class discussion	The First Peoples' Assembly of Victoria were adamant they must be involved in the design of the Yoo-rrook Justice Commission. How would you engage if you were the government official responsible for progressing the development of the body? The Yoo-rrook Justice Commission has been designed in partnership between the First Peoples' Assembly and the State government. This inclusive development process is markedly distinct from the ordinary ways of doing business in government and the public service. - What challenges did government officials face in moving outside their standard processes? - What advantages are found in adopting this new approach? Students can discuss the significance of involving Aboriginal and Torres Strait Islander peoples in the development and design of legislation and policy that affects them. Materials that may support that discussion include: - Gallagher, J. (2021) The Work of the Victorian Treaty Advancement Commission to Bring us Closer to Treaties in Victoria. In H Hobbs, A Whittaker and L Coombes (eds). Treaty-Making 250 Years Later (220-240). Sydney, Australia: Federation Press - Schwab, R. (2021) Co-designing Recommendations to Government: A Literature Review and Case Studies from the OCHRE Initiatives https://www.aboriginalaffairs.nsw.gov.au/research-and-publications/completed-research-and-evaluation/Report-Co-designing-recommendations.pdf
5	Question for class discussion	How does the Yoo-rrook Justice Commission relate to the national debate on constitutional recognition and the Uluru Statement from the Heart? The 2017 Uluru Statement from the Heart called for an Indigenous representative body to be put in the Constitution and a Makarrata Commission to be established by legislation to supervise a process of agreement-making and truth-telling. The Statement's proposals are deliberately sequenced: first Voice, then treaty and truth. The process in Victoria has adopted a different sequence, but it encompasses the three proposals in the Uluru Statement. - How can the Yoo-rrook Justice Commission advance the Uluru Statement? Students can discuss the relationship between the Yoo-rrook Justice Commission and the Uluru Statement. Materials that may support that discussion include: - Bell, K. (2021, June 24) Balancing the Record: Australia's First Truth Commission to Record the Indigenous Narrative. Monash University https://lens.monash.edu/@politics-society/2021/06/24/1383386/balancing-the-record-australias-first-truth-commission-to-record-the-indigenous-narrative - Davis, M. (2021, December) The Truth about Truth-Telling. The Monthly https://www.themonthly.com.au/issue/2021/december/1638277200/megan-davis/truth-about-truth-telling - Fullagar, K. (2021, June 8) Why does Truth come Third?, Inside Story https://insidestory.org.au/why-does-truth-come-third/

Further Resources

First Peoples' Assembly of Victoria, "Tyerri Yoo-Rrook" (Seed of Truth): Report to the Yoo-rrook Justice Commission from the First Peoples' Assembly of Victoria (June 2021)

Uluru Statement from the Heart, 26 May 2017 <https://www.referendumcouncil.org.au/sites/default/files/2017-05/Uluru_Statement_From_The_Heart_0.PDF>

United Nations Expert Mechanism on the Rights of Indigenous Peoples, *Efforts to Implement the United Nations Declaration on the Rights of Indigenous Peoples: Recognition, Reparation and Reconciliation* (Human Rights Council, UN Doc A/HRC/EMRIP/2019/3/Rev.1, 2 September 2019)

Walter, Maggie et al, 'From Dispossession to Massacres, the Yoo-rrook Justice Commission sets a New Standard for Truth-Telling', *The Conversation* (5 November 2021) <<https://theconversation.com/from-dispossession-to-massacres-the-yoo-rrook-justice-commission-sets-a-new-standard-for-truth-telling-170632>>

Yoo-rrook Justice Commission, *Letters Patent* (12 May 2021) <https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2021-05/Letters-Patent-Yoo-rrook-Justice-Commission_0.pdf>

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