AGM Policy in relation to the Uluru Statement from the Heart

Background
ATSI peoples have a long and largely unsuccessful history of collectively demanding self-determination from the Australian State, from which they were excluded since colonization.

NSWCCL was especially encouraged by the highly consultative and democratic nature of the 2017 Uluru process, which marked the first time that a process on constitutional reform with respect to Aboriginal and Torres Strait Islanders (ATSI) peoples was devised and conducted wholly by and for themselves.

Its key recommendations called for a First Nation's Voice to the Australian Parliament and a very overdue 'truth telling' and treaty making process as a prelude to effective recognition their political, social and cultural rights.

The initial and immediate public rejection of the proposed 'Voice' by the Turnbull Government was particularly disrespectful and disappointing.

The NSWCCL has recently argued for support of the recommendations of the Referendum Council in the NSWCCL Submission to the Australian Federal Parliamentary Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples.

Resolution

1 **The 2018 AGM of the NSWCCL resolves to endorse the recommendations of the Final Report of the Referendum Council in 2017 relating to:**
   i. **The Constitutional enshrinement of a representative body that gives Aboriginal and Torres Strait Islander First Nations a Voice to the Commonwealth Parliament;**
   ii. **The establishment of a 'Makaratta Commission' to oversee the process of truth-telling and agreement making;**
   iii. **Extra-constitutional recognition of the unique role played by our First Nations communities in Australia.**

We consider these would be a clear assertion of ATSI self-determination and have the potential to profoundly benefit Aboriginal and Torres Strait Islander (ATSI) peoples and so we call on the Australian Government - or failing that, the Australian Parliament - to respect and act on he recommendations of the Referendum Council Report.

(To be moved by Dr Eugene Schofield-George Convenor of the Human Rights Action Group)

AGM Policy in relation to defending the Independence of the Australian Broadcasting Corporation

Australian's have never had a greater need for an independent and robust ABC than in the present era. The growth in unchecked executive power, the insidious extension of secrecy laws encompassing an extraordinary range of Government activity and the active hostility of the current

Government to whistle-blowers has seriously compromised the accountability of Government and its agencies to the Australian people.
Instead of defending its independent public role we have seen the ABC's resources cut, its board stacked with members unsympathetic to public broadcasting and/or members whose major qualifications are their connections to the Government of the day.

There is a concerted effort from the Murdoch media – and parts of Government - for the full or partial privatisation of the ABC.

NSWCCL considers major changes are necessary to protect the ABC's independence as a public broadcaster. The most important change is to achieve a genuinely independent ABC Board with a membership that has appropriate skills **and** is committed to the independence of the public broadcaster.

The current Board – with a few exceptions - fails both these criteria. Its composition reflects the inherent weakness of an appointment process which allows the majority of members to be effectively appointed by the Minister (the Governor-General appoints on the advice of the Minister).

The only current directors with experience in the media are the staff-elected director and one other. The current Board's failure to protect the independence of the ABC is manifest – most dramatically in the leaked emails from the Chair calling for the dismissal of a high profile ABC journalist because of Government hostility.

The introduction in 2013 of a mediating Recruitment Panel process to restrain Governments from stacking the Board with unqualified people did not work. In practice the Minister still determines the membership of the Panel and the selection criteria and does not have to accept the Panel's recommendations – and therefore still determines, the Board members – who then select the chair. The current Minister was legally able to disregard the Panel's recommendations for 5 appointments.

The future independence of the ABC can only be guaranteed by amending the legal framework to ensure future ABC Boards are not appointed by the Minister or overly influenced by the Government of the day.

Effective independence also requires surety of public funding as the Government of the day can exercise significant influence over the ABC - including in relation to editorial policy – by withdrawing or increasing funding.

Resolution

2 **The 2018 AGM of the NSWCCL resolves that the ABC Act 1983 (Cth) be amended to ensure the effective independence of the ABC from Government interference. While there are numbers of ways this could be achieved, we recommend the ABC Act be amended to:**

- **i. i. require a commitment to the independence of the ABC from Government intervention as an essential selection requirement for all board members;**
- **ii. ii. require broadcasting or media related skills and experience, including journalism, as essential selection criteria for a majority of board members;**
- **iii. iii. expand the number of board members who are nominees of relevant organisations and have the relevant specified skills (eg: ABC staff, friends of the ABC, Australian Journalists Association, privately owned media organisation);**
- **iv. iv. limit the Minister's role to the appointment of one board member;**

v. **v. restore the ABC 's funding to an adequate level to successfully function in the digital era of broadcasting and put in place a statutory mechanism to maintain a stable level of funding in real terms.**

(To be moved by Josh Pallas VP)

AGM Policy in relation to the offshore immigration detention regime

The NSWCCL supports the appointment of a Royal Commission into the mistreatment of all detainees in the offshore immigration detention network

Australians from all walks of life are increasingly expressing their concern and dismay about the cruel and inhumane treatment of asylum seekers and refugees within Australia's system of offshore detention. In the last two years, UN human rights working groups have issued seven opinions advocating for the release of individual asylum seekers from detention centres including one opinion delivered on October 16.[1] Around 6000 doctors from the AMA recently called for release of the 80 children on Nauru so they can receive urgent medical attention.[2]

In light of the growing chorus, the NSWCCL calls for a Royal Commission into the mistreatment of detainees in offshore detention. At a minimum, the Commission should be able to determine a time frame for processing and resettling current and future detainees. It should also highlight the desperate plight of those in detention, exposing the legal and ethical damage wrought by the policy of indefinite offshore detention so callously supported by both major parties.

The NSWCCL acknowledges that as a result of this bi-partisan support, neither major party is likely to call a Royal Commission. It also acknowledges that Australians have been exposed many times since 2001 to the horror and illegality of our offshore detention regime, and that numerous High Court challenges have been unsuccessful. In the absence of a Bill of Rights, constitutional challenges to the administrative detention of aliens have been rejected as long as detention is reasonably capable of being seen as for a non-punitive purpose, a requirement of which is that the duration of detention is objectively ascertainable from time to time.[3] Thus, a Royal Commission is not a certain way to produce change.

It may, however, be a necessary condition. We believe that a vivid and comprehensive public inquiry is necessary to decisively expose the inhumane policies of successive Australian governments. Only a sustained change in public opinion, which a Royal Commission can often generate – think the commissions into institutional abuse, protection and detention of children, and the financial sector – can drive meaningful change of these policies. Whether this takes the form of a Royal Commission, some other form of inquiry, or even a 'Peoples Tribunal' like that led by Bertrand Russell and Jean-Paul Satre during the Vietnam War, something must be done.

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[1] https://www.theguardian.com/australia-news/2018/oct/16/un-body-says-australia-breached-human-rights-laws-and-needs-to-review-migration-act.

[2] https://www.theguardian.com/australia-news/2018/oct/15/almost-6000-doctors-sign-letter-to-pm-demanding-children-be-taken-off-nauru.

[3] See e.g: *Lim v Minister For Immigration Local Government And Ethnic Affairs* [1992] HCA 64; *Plaintiff S4/2014 v Minister for Immigration and Border Protection* [2014] HCA 34; *North Australian Aboriginal Justice Agency Limited v Northern Territory* [2015] HCA 41; *Plaintiff M68/2015 v Minister for Immigration and Border Protection* [2016] HCA 1; *Plaintiff M96A/2016 v Commonwealth of Australia* [2017] HCA 16.

Let us remember the context of this rising concern. Those on Manus and Nauru are guilty of no crime, having the right under international law to seek asylum in whatever manner is available. Since most agree that administrative detention for a limited vetting period may be necessary, the Government cloaks its program in the ethically neutral garb of 'processing until resettlement'. In effect however, the current system amounts to detention for an indefinite period subject to the will of Australian governments to resettle and that of competent, safe foreign governments to accept. Some of the people on Manus and Nauru have been there since the beginning of the current iteration of offshore detention in 2012, under the Rudd Labour government. In addition to being indefinite, detention is evidently an appalling experience. For years Australians journalists have revealed horrific stories about awful living conditions, negligent security contractors, a physical and mental health epidemic among detainees, attempted suicides and self-harming on the islands. The combination of cruel and indefinite detention makes it fairly clear that the Australian government is deliberately setting out to make an example of a small group of innocent and desperate people to score political points.

As the full public exposure to this program would likely cause an even greater uproar than is already the case, the program has been accompanied by draconian secrecy laws that pose an additional threat to civil liberties. One example is s42 of the Australian Border Force Act 2015 (Cth), which creates an offence punishable by maximum 2 years imprisonment where an entrusted person makes a record of or discloses information that is deemed 'Immigration and Border Protection Information', subject to only limited exceptions.[4]

In light of this dire situation for human rights, the least that civil society should be calling for is some form of inquiry which can catapult the issue into the public spotlight once more, thereby eliciting a much needed process of law reform.

Resolution

3 The NSWCCL supports the appointment of a Royal Commission into the mistreatment of all detainees in the offshore immigration detention network

(To be moved by Therese Cochrane Secretary)

[4] *Australian Border Force Act 2015* (Cth), ss41-51.