POLICY RESOLUTIONS FOR AGM CONSIDERATION

6.1. Senate Electoral Reform (Sacha Blumen)

In the 2013 senate elections fundamental democratic principles were breached. Many, if not most voters, would not have known who they would end up voting for if they voted above the line. Many were surprised and angry that their vote for a party of their choice ended up with a party they did not want to support. The system was open to 'gaming' and this was effectively manipulated. The outcomes were skewed and undemocratic.

NSWCCL made two submissions and gave evidence to the Parliamentary Committees inquiring into this issue. We argued for fundamental democratic principles that must be adhered to in any electoral system that purports to be democratic. As the current senate process breaches these principles, reform of the senate voting process is one of the most significant of current civil liberties issues.
A democratic election process is fundamental to the protection of all liberties and rights.

The Interim report of the Joint Standing Committee on Electoral Matters (May 2014) found the Senate 2013 elections:

- 'will long be remembered as a time when our system of Senate voting let voters down'
- 'delivered in some cases outcomes that distorted the will of the voters'
- 'These circumstances demand reform from this Parliament'

Reform of the Senate is imperative. The findings of the Joint Committee had unanimous bi-partisan support and were sensible and proportionate and in line with CCLs principles. The report was published in May 2014 and stressed the urgency for action. Unfortunately neither of the major parties has shown any willingness to act on the report or the issue –no doubt because of the current interest of some cross bench interests in protecting the current system.

Resolutions

6.1.1. NSWCCL calls on the Australian Government to ensure that our Senate electoral system is consistent with the following democratic principles:

a) the body that is elected must have legitimacy – i.e. popular acceptance of its authority
b) the body that is elected must reflect the collective expressed intention of voters
c) voters must be freely able to easily cast a formal vote that reflects their preferences
d) voters should not have to register a vote for candidates they oppose or do not wish to support
e) voters must be able to easily understand the potential effect of their vote
f) barriers to new candidates and parties contesting an election must be sufficiently low so that they are not material barriers to new candidates and parties contesting an election
g) the administration of electoral systems and conduct of elections must be conducted transparently

6.1.2. As the current Senate electoral system is not consistent with these principles, NSWCCL urges the Australian Parliament to act on the recommendations of the ***Interim report on the inquiry into the conduct of the 2013 Federal Election*** *(Joint Standing Committee on Electoral Matters, May 2014) which recognises the undemocratic aspects of the current system and proposes sensible solutions.*

6.2. Democratic local government election processes: the City of Sydney Elections Amendment Act 2014 (Sacha Blumen)

The voting changes enacted in the City of Sydney Amendment (Elections) Bill 2014 (the 'Borsak Bill') offend basic civil liberties principles.

The amendment increased the current entitlements for corporations owning, leasing or occupying rateable land in the City of Sydney from one to two votes. This is a move in precisely the wrong direction for democratic government. The notion of the property franchise should be being rejected in the interest of effective democracy- not strengthened as has occurred.

The franchise should be based on the fundamental democratic principle of one person one vote.

Resolutions

6.2.1. The NSWCCL calls on the NSW Government to ensure that no elector should have more than one vote in any election for the Lord Mayor of the City of Sydney or the City of Sydney Council or in any election for any NSW local council.

6.2.2. The NSWCLL records its strong opposition to the City of Sydney Elections Amendment Act 2014 ***passed*** *in September 2014 which arbitrarily breaches this core democratic principle and calls on the Parliament of NSW to repeal this repugnant law.*

6.3. Asylum Seekers (Jo Murphy)

Over 12 months ago The UN Human Rights Committee in Geneva found that Australia had committed 143 serious violations of international law by indefinitely detaining 46 refugees for four years, on the basis of their 'adverse security assessments' issued by ASIO.

The UN Committee directed Australia to provide the refugees with an effective remedy, including release from detention on appropriate conditions, rehabilitation and compensation. It also asked Australia to prevent future violations to review its migration laws.

The UN Committee asked Australia to report to it within 180 days on the steps it has taken to remedy these violations of international treaty law.

The Australian government has taken no action on the UN's recommendations

Resolution

6.3.1. NSWCCL notes that the Australia Government has failed to respond to the 2013 UN Human Rights Committee report by the due date of February 2014 and calls on it to do so immediately in relation to the key findings including that:

a) Australia has committed 143 serious violations of international law by indefinitely detaining 46 refugees for four years, on the basis of their 'adverse security assessments' issued by ASIO

b) That Australia must provide these refugees with an effective remedy, including release from detention on appropriate conditions, rehabilitation and compensation

c) Australia should review its migration laws to prevent future violations.

6.4. Fundamental legal principles (Nicholas Cowdery)

Australia honours the principles laid down in the Magna Carta of 1215 and is a party to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

Magna Carta is founded upon the notion that, as a starting point, all persons shall be free. Article 3 of the UDHR guarantees the rights to life, liberty and security of person and that is reflected in Article 9 (1) of the ICCPR.

The presumption of innocence is asserted in Article 11 (1) of the UDHR and Article 14 (2) of the ICCPR.

The onus of proof is placed upon the prosecutor by Article 38 of Magna Carta and Articles 11 of the UDHR and 14 of the ICCPR as reflected in Australian domestic law.

Articles 20 and 21 of Magna Carta and decisions of the High Court of Australia affirm the requirement for proportionality in sentencing (together with other principles).

Grave concerns are held that these principles have been infringed or are in jeopardy by recent and proposed legislation in New South Wales concerning: "show cause" offences in bail legislation; mandatory minimum sentences; and in Commonwealth legislation enabling detention without trial.

Resolutions

Noting that fundamental principles have been infringed, or are in jeopardy, through recent and proposed New South Wales legislation concerning: "show cause" offences in bail legislation and mandatory minimum sentences and at the Commonwealth level in legislation enabling detention without trial:

6.4.1. NSWCCL calls upon Australian governments to adhere to the fundamental principles of the separation of powers and independence of the judiciary in the making, administration and enforcement of laws.

6.4.2. NSWCCL also calls upon lawmakers in the criminal justice process to honour :

a) the right to liberty

b) adhere to the principles of the presumption of innocence, the onus being on the prosecution to prove any matter carrying adverse consequences for any person and

c) *proportionality in sentencing*.

6.5. National School Chaplaincy and Student Welfare Program (Lesley Lynch)

The 2011 AGM endorsed a strong policy statement on the secular nature of public schools and a number of related policies including special religious education, ethics classes and chaplains in public schools.

The specific 2011 resolution on the School Chaplaincy program acknowledged an ameliorating amendment that allowed non-faith based counsellors to be employed under the program – but reaffirmed our opposition to the program.

While NSWCCL notes that the 2011 amendments to the program have removed the outrageous prohibition on the employment of any individuals without affiliation to a recognised faith based religious institution in this Government funded program in public schools, we remain opposed to the National School Chaplaincy and Student Welfare Program.

CCL opposes the Australian Government funded Chaplains in Schools program on the basis that it breaches the principle of separation of church and state in two ways.

- *on the basis of a faith based religious criterion – even though it allows some to be appointed without this criterion*
- *By designating the program as "Chaplains" in Schools, and by appointing some persons on the basis of their faith based religious affiliations, the Government is, in practice, unavoidably creating both the reality and the perception of faith based counselling and welfare support of students in public schools.*

Both these characteristics of the program seriously undermine the secular nature of public schools.

This year the Abbott Government determined to remove the ameliorating provision permitting the employment of non- faith based counsellors.

NSWCCL condemns this as an unwarranted (these secular welfare workers were appreciated in their schools) and ideological based decision blatantly hostile to the secular nature of public schools.

Resolution

6.5.1. Consistent with the policies endorsed at the 2011 AGM in relation to the secular character of public schools and the Chaplains in Public Schools program the NSWCCL:

a) Strongly condemns the unjustified and arbitrary decision by the Prime Minister and the Minister for Education to specifically exclude secular welfare workers from the revamped Australian Government funded Schools Chaplaincy Program

b) Reaffirms its opposition to the commonwealth government funding a religious based chaplains in schools program with public funds

c) Reaffirms the basic principle that public schools are centrally important sites for maintenance and strengthening of democracy and should be secular, free and open to all residents.

6.6. Protection of Privacy from telecommunications surveillance (Martin Bibby)

Privacy is a fundamental human right, in that it is central to the maintenance of democratic societies and is essential to human dignity. In its absence, there is no freedom of expression and information, and no freedom of association.

Of 4,569 warrants issued for telecommunications interception in 2012--2013, only 116 were in relation to terrorism offences, and 1,218 in relation to death, injury or kidnapping. No such details are supplied for the 484 stored communications warrants issued. They can be issued in relation to offences carrying a three year or 180 unit penalty. (Such offences could include, graffiti, shoplifting or assaults.)

At present, the head or deputy of any authority established for a pubic purpose can authorise access to metadata, without judicial oversight. There were 319,874 authorisations for access to existing metadata information or documents in the enforcement of a criminal law—an increase of 29,516 over the previous year (more than 10%). There were a further 10,766 authorisations for access in the enforcement of a law imposing a pecuniary penalty. Some of these were for tower dumps, which

give police data about the identity, activity and location of any phone that connects to targeted cell towers over a set span of time, generally an hour or two. A typical tower dump covers multiple towers, and mobile providers. A single authorization can net information about thousands of mobile phones.
There were, in addition some 7,532 authorisations for access to prospective data.

Resolution

6.6.1. The NSW Council for Civil Liberties resolves that only law enforcement agencies and intelligence and security organizations should be able to access telecommunications information (tapping telephones, accessing stored communications such as emails of accessing "metadata").

6.6.2. Such access must only be on a warrant granted by a judge, and warrants should only be issued where it can be shown on reasonable grounds they are likely to assist in an investigation of an offence involving a risk to life and where there are no other reasonable methods available to the agency to obtain the information.
