



# **NSWCCL Annual General Meeting 2021**

## **By Zoom Call**

### **Wednesday 27th October 2021 6pm**

## **AGENDA**

### **Acknowledgement of Country**

- 1. Apologies and Visitors**
- 2. Presidents opening remarks**
- 3. Minutes of 2020 Annual General Meeting (Attached)**
- 4. Executive Reports** (All attached and for noting)
  - 4.1 President – Pauline Wright
  - 4.2 Secretary – Michelle Falstein
  - 4.3 Treasurer – Stephen Blanks
- 5. Appointment of Auditor** (Resolution attached)
- 6. Appointment of Returning Officer, Election of Office Bearers & Committee Members** (List attached)
- 7. Motions with Notice:**
  - 7.1 Policy on the Minimum age of criminal responsibility (Attached)
  - 7.2 Policy on Delegated Legislation (Attached)
- 8. Motions Without Notice**
- 9. General Business**

**Item 3. Minutes of 2020 Annual General Meeting**  
**MINUTES NSWCCCL**  
**ANNUAL GENERAL MEETING**

6pm Wednesday 21 October 2020

Conference Call via Zoom

The meeting commenced at 6pm.

**Attendance:**

Members: Nicholas Cowdery, Sarah Baker, David Bernie, Martin Bibby, Stephen Blanks, Simon Bruck, Angela Catallo, Therese Cochrane, Nikolas Cooper, Diane Davie, Tomas Ditton, Michelle Falstein, William Fields, Hans Heilpern, Laurie Hooker, Tom Kelly, Paula Le Dieu, Lesley Lynch, Ramzy Mansour, Rebecca McMahon, Cameron Murphy, Malcolm Ramage, Josh Pallas, Natasha Rose, Eugene Schofield-Georgeson, Lydia Shelley, Nizza Siano, Rafael Sue, John Tan, Susan Tiffin, Nigel Waters, Jared Wilk, Cassandra Wilkinson, Fred Woollard, Pauline Wright

Staff: Amanda Keeling (EO)

Visitors: None

**Apologies:** Roy Bishop, Yuri Kripac

The President declared a quorum was present.

Agenda Item	
1.	<b>Attendance, Apologies &amp; Visitors</b> Apologies were accepted
2.	<b>President's opening remarks</b> The President, Nicholas Cowdery deferred his opening remarks to the President's Report.
3.	<b>Minutes of 2019 Annual General Meeting</b> The Minutes of the 2019 Annual General Meeting were tabled. A motion to accept the Minutes was moved by Michelle Falstein, seconded by Pauline Wright and declared carried.
4.	<b>Information Items</b> <b>4.1 Policy on Reserves</b> The Treasurer, Stephen Blanks, summarised the Reserve Policy. He confirmed that CCL has cash in bank accounts and term deposits and needs a formal policy for dealing with available funds and deciding what proportion of funds is to be invested. The policy framework as been established by the Committee for these purposes.
5.	<b>Executive Reports</b> <b>5.1 President – Nicholas Cowdery</b> The last AGM was held on 23 October 2019 in the Sydney Town Hall. We held Committee meetings in November, January and February 2020 and Executive Committee meetings from time to time. Then the virus came along. The year 2020 has been a disruptive time for everybody and no less for the NSWCCCL. With face-to-face activities unable to proceed after the pandemic was declared, our meetings since March have been by

Zoom or by telephone and we have been unable to hold any gatherings that normally bring members together and facilitate networking and the exchange of ideas in areas of interest.

Our highly successful annual dinners of the past and the Marsden Memorial Lecture have been suspended. Instead, this year on 11 September we held a highly successful online panel discussion focused on Indigenous issues, with the Award for Excellence in Civil Liberties Journalism being announced at the end. We also joined with the Affinity Intercultural Association for a webinar on 2 September. I hope there will be scope for more online events as we continue in the COVID-19 normal mode.

Alongside these events the customary work of NSWCCCL has proceeded. We have responded to the civil liberties challenges of COVID-19, made many media appearances on that and other issues, met with key players in the human rights and law enforcement areas and made many submissions to parliamentary inquiries and statements for publication on the website. We have continued to liaise with other civil liberties groups around the country. We have not taken a virus-induced holiday.

I give thanks to all who have been active in our campaigns and in the ongoing administration of NSWCCCL. I particularly thank our Secretary, Assistant Secretary, Treasurer and Executive Officer who have done mighty work to keep NSWCCCL relevant and effective. Many members of the Committee also deserve our thanks – they know who they are. I refer you to the reports being tabled this evening for more details. When I accepted nomination for President last year I said (as the Minutes of the AGM show) that I would hold the position for one year. I issued a challenge for the next generation to come into leadership positions. I said the organisation needs to be rejuvenated by those at the top, to reflect the increasing interest and involvement of young people.

Not much of that has happened, which is disappointing – but perhaps we can blame the COVID regime to some extent. You will have seen that I am indeed standing for President again – but it will be for only a short time, until January 2021. The plan is that Pauline Wright, whose time as President of the Law Council of Australia interrupted her re-election as President of NSWCCCL, will return as President then and I shall withdraw.

But we still need that rejuvenation that I spoke of twelve months ago. The future of NSWCCCL belongs to you.

### **5.2 Secretary – Michelle Falstein**

The secretary summarised her written report which included a list of submissions for past year. She thanked the Committee and Executive Officer, Amanda Keeling and particularly Lesley Lynch and Therese Cochrane.

The office received an overwhelming amount of correspondence in relation to the Public Health Order restrictions on movement, gathering and mandatory quarantine, particularly affecting travellers, those in the prison population and in the criminal justice system. NSWCCCL was also absorbed with the prolonged Federal Parliament adjournment and the Biosecurity Act and Migration Act determinations. The First Nations justice panel discussion was well received and largely considered to be a great success. We had over 150 registrations, with about 80 people on the webinar. \$8705 was raised from registrations, the auction and new membership generated from the webinar. Many thanks to Amanda Keeling and Rebecca McMahon for their efforts in the broadcast of the event and the preparation of its subject matter.

Thank you to all the volunteers, interns, staff and Committee who have contributed to submissions, statements and policies and have remained committed to the principles of civil liberties.

### **5.3 Treasurer – Stephen Blanks**

Stephen Blanks presented the audited accounts and highlighted:

- The Report speaks for itself. CCL is close to break-even with a loss of \$7000.

	<ul style="list-style-type: none"> <li>Any losses were offset by jobkeeper payments.</li> <li>The biggest significant item is buried in Note 8 of the accounts which is the deposit currently showing as a liability as it is affected by whether the purchaser of Pitt St proceeds. If the sale proceeds CCL will receive a great deal more and Council needs to invest the proceeds properly.</li> </ul>										
<b>6.</b>	<p><b>Appointment of Auditor</b></p> <p>The Treasurer proposed W.L Browne and Associates be appointed auditor for the 2021 financial year. The motion was moved by Stephen Blanks, seconded by Michelle Falstein and declared carried.</p>										
<b>7.</b>	<p><b>Appointment of Returning Officer, Election of Office Bearers &amp; Committee Members</b></p> <p>Susan Tiffin was appointed returning officer by the Chair. All positions were declared vacant.</p> <p>14 eligible CCL members were each nominated by two current CCL members. There was therefore no requirement for a ballot and all nominees were elected.</p> <p>The <b>Executive</b> Officers declared elected were as follows:</p> <table> <tr> <td>President</td><td>Nick Cowdery</td></tr> <tr> <td>Vice President</td><td>Jared Wilk</td></tr> <tr> <td>Secretary</td><td>Michelle Falstein</td></tr> <tr> <td>Assistant Secretary</td><td>Sarah Baker</td></tr> <tr> <td>Treasurer</td><td>Stephen Blanks</td></tr> </table> <p>The Committee members declared elected were as follows:</p> <p>David Bernie  Martin Bibby  Angela Catallo  William Field  Lesley Lynch  Josh Pallas  Malcolm Ramage  Natasha Rose  Rafael Sue</p> <p>The President congratulated all the elected members and noted that there are a number of casual vacancies available which are to be filled at the next scheduled Committee meetings.</p>	President	Nick Cowdery	Vice President	Jared Wilk	Secretary	Michelle Falstein	Assistant Secretary	Sarah Baker	Treasurer	Stephen Blanks
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<b>8.</b>	<p><b>Motions with Notice:</b></p> <p><b>8.1 Special Resolution to amend the NSWCCCL Constitution</b></p> <hr/> <p><b>Proposed amendment of NSWCCCL Constitution for AGM consideration - Removal of inconsistency in relation to requirements for nomination for ordinary member and officer positions.</b></p> <p><b>1 Proposal</b></p> <p>The NSWCCCL Committee recommends that the AGM approves a resolution to amend the NSWCCCL Constitution to remove an inconsistency in the rules relating to the nomination/election of persons for ordinary and officer positions on the Committee.</p>										

Rule 17.1 requires a minimum of three months membership of NSWCCCL to be eligible for election as an ordinary member of Committee, or an Executive Officer, if the nomination is made through the 'normal' process prior to the AGM. However, for those nominating for election to any of these positions which are vacant at the AGM, this minimum membership requirement is not specified (Rule 17.3).

#### *Rule 17 Elections*

*1) Candidates for election as Officers or Ordinary Committee Members must be a member who has been a member of the Council for at least three (3) months.*

*3) If insufficient nominations are received to fill all vacancies, further nominations shall be received at the Annual General Meeting.*

The proposed amendment will insert into Rule 17.3 a requirement for consistency with the three-month membership requirement in 17.1 to remove the current anomaly. Note this amendment applies to nominations for both officer and ordinary committee member positions.

The same amendment will be made in relation to the Committee's power to fill ordinary members' casual vacancies (Rule 15.2) and to co-opt 4 members (Rule 14 a). Note these rules only apply for ordinary committee members.

Rule 15.2 Ordinary members casual vacancies

*In the event of a casual vacancy in the membership of the Committee, the Committee may appoint a member to fill the vacancy and the member so appointed shall hold office, subject to these rules, until the conclusion of the Annual General Meeting next following the date of appointment).*

Rule 14 a)

*The Committee shall have the power to: a) co-opt up to 4 members;*

The reasons for the proposed changes and the specific amendments are set out below.

## **2 Background**

This emerged as an issue at the 2018 AGM when nominations were sought from the floor and nominations were accepted from members who did not meet the three-month requirement.

Subsequently, the Committee considered the issue and the then President, Pauline Wright, sought legal advice on behalf of the NSWCCCL Committee to provide an opinion as to whether or not the three-month membership requirement for nominations specified in Rule 17.1 applies also to persons seeking nomination to a Committee or Executive position under Rule 17.3.

The legal opinion received was that it did not.

The Executive and Committee recommend that following this advice the Constitution should be amended to remove this anomaly between the requirement for three months membership for those nominating prior to the AGM and the lack of any such requirement for those nominating from the floor of the AGM.

The Committee is also recommending for consistency, to make this requirement explicit for the provisions allowing the Committee to co-opt up to 4 members (Rule 14.1(a)) and to fill casual vacancies for ordinary members (Rule 15.2).

## **3 Justification for the three-month requirement**

It is uncontroversial. Most incorporated civil society organisations have similar rules requiring a period of prior membership for nomination to committee/ executive positions– for good reasons including:

To allow a candidate time to acquire some knowledge of, and commitment to the policies and priorities of the organisation

To allow a Committee/Board to do due diligence in checking the commitment and relevant skills of candidates prior to electing them

To inhibit the capacity for destabilising or stacking of the Committee/Executive

These reasons hold regardless of the nomination/selection process. No sound reason is apparent for deviating from the requirement set out in Rule 17.1 for any of the processes for electing/co-opting officers/members to the NSWCCCL Committee.

#### 4 Resolutions

RESOLVED THAT pursuant to Rule 37 of the Constitution of the NSW Council for Civil Liberties the AGM approves the following amendments:

i) Amend Rule 17.3 to specify it is 'consistent with Rule 17.1' to read as follows:

*If insufficient nominations are received to fill all vacancies, further nominations shall be received at the Annual General Meeting **consistent with Rule 17.1**.*

ii) Amend Rule 15.2 to specify it is consistent with Rule 17.1 to read as follows:

*In the event of a casual vacancy in the membership of the Committee, the Committee may appoint a member **consistent with Rule 17.1** to fill the vacancy and the member so appointed shall hold office, subject to these rules, until the conclusion of the Annual General Meeting next following the date of appointment.*

iii) Amend Rule 14 a) to specify 'it is consistent with 17.1' to read as follows:

*The Committee shall have the power to: a) co-opt up to 4 members **consistent with Rule 17.1**.*

#### Timing

These amendments will become operational as soon as practical after the conclusion of the 2020 AGM and apply to any casual nominations/co-options in 2020 and beyond.

The Secretary summarised the above policy and the President added that the resolution was necessary to provide consistency and to clarify the Constitution.

The Secretary moved that the Resolutions set out in point 4 of the Special Resolution to amend the NSWCCCL Constitution be adopted. The motion was seconded by Martin Bibby and passed.

#### 8.2 Policy on visa cancellations on character grounds.

##### Preamble

Section 501 of the Migration Act enables the Minister for Home Affairs or his delegates to cancel the visa or to refuse a visa of any person who is decreed to have failed what is termed 'the character test'. The grounds on which this can be done are many: they include inter alia serving a total of 12 months' imprisonment; conviction for any offence, no matter how inconsequential, while in immigration detention; being a person who has been or is a [member](#) of a group or organisation, or has had or has an association with a group, organisation or person, and that group, organisation or person has been or is involved in criminal conduct; being a person whose criminal *or general* conduct is such that the person is not of good character; or having been ordered by a court to participate in a drug rehabilitation scheme. If a court has found a person guilty of an offence against a child, or found a charge against the person proved for an offence against a child, *whatever the penalty or even if the person was discharged without a conviction*, they fail the character test. Persons can also be found to have failed the character test if there is only a risk that they may engage in criminal conduct, vilify a section of the Australian community, or incite discord in a section of that community. Harassment, which is defined as including threats to the property of a person, also constitutes a failure of the character test.

Persons are taken to have been sentenced to twelve months of imprisonment if they have received sentences for separate crimes which add up to twelve months or more, even when a court has ordered that two or more sentences be served concurrently.

If the Minister suspects one of these conditions apply to a visa holder, he may cancel the person's visa, and the rules of natural justice apply. Such decisions are subject to review by the Administrative Appeals Tribunal. But the Minister is able to overrule the Tribunal.

But if he thinks it is in the national interest to cancel the visa as well, the rules of natural justice do not apply. But under subsection 501 (3A), if the Minister is satisfied (as opposed to suspecting) that the character test has been failed, he *must* cancel the visa, and the rules of natural justice do not apply.

Section 500A enables the Minister to refuse a Safe Haven visa on similar grounds. So refugees are explicitly included.

Under section 499 of the Act, the Minister the Minister may give written directions to a person or body having functions or powers under this Act if the directions are about the performance of those functions or the exercise of those powers.

Under section 116, visas may be cancelled where they have been granted on the basis of misinformation; but also where the presence of its [holder](#) in Australia is or may be, or would or might be, a risk to the health, safety or good order of the Australian community or a segment of the Australian community; or the health or safety of an individual or individuals.

In many respects, this legislation is unjust. A person who has served their time after a criminal conviction should not be subjected to a second penalty or other forms of harm; and though the High Court has found that having a visa cancelled and subsequent detention do not count as a punishment, the effect on the person is the same as if it was. A person who has reformed while in prison should not be treated as a risk to the Australian community. A person who has been found by a parole board not to be a risk should not be treated as though they are such a risk. It is unjust to deprive a family of a close member on whom they depend for financial or emotional support. And while there is a case for sending persons who were criminals before they entered Australia back to the countries where they became criminals, it is not just to send back people who became criminals during their time in Australia.

The ability of the Minister to overrule the AAT is contrary to the rule of law, and should be abolished.

### **Policy**

The CCL preferred position is that section 501 of the Migration Act be repealed.

However, until that happens, the following changes should be made

### **Funding**

Legal representation should be assured for all people for cancellation cases being heard at the General or Migration and Refugee Divisions of the Administrative Appeals Tribunal.

Funding should be available for legal representation for people facing cancellation at the primary stages. Increased funding should be provided for the federal courts of Australia to ensure timely processing of cases.

**Changes to the Act, and to directions made under section 499.**



The Act and the current direction should be amended to enshrine

- The principle that the following people ought not have their visas cancelled in any but the most serious circumstances, for example national security:
  - people who have lived in Australia for over 10 years;
  - people who arrived in Australia as children;
  - people with serious disability, impairment or health issues;
  - people who will face serious harm if they were removed from Australia;
  - people who have been recognised as refugees;
  - people who are considered by the sentencing judge or a parole board to not represent a significant ongoing risk to the Australian community.
- The principle that a person's visa should not be cancelled if they have no criminal record and are awaiting hearing of charges in any but the most serious circumstances.
- The principle that the primacy of freedom of speech in respect of s 501(6)(d) (risk of vilifying or inciting discord) ought to be given significant weight, and balanced against potential harm to the community.

Law and policy regarding sections 500A and 116 should be updated to reflect the foregoing.

Legislative timeframes should be instituted for decision-making.

Protections against cancellation should be inserted for all of the above categories of people.

#### **Departmental and Ministerial powers**

Mandatory cancellation under s 501(3A) ought to be abolished. (Cancellation can proceed under other limbs of s 501.)

- All visa cancellations ought to be revocable by the Minister for other reasons, in addition to proving satisfaction of the character test.
- All ministerial decisions under the Migration Act should be subject to the rules of natural justice. They should all be subject to merits review.
- Ministerial personal powers ought to be reserved for the most serious cases.
- The Minister should not have power to set aside a positive AAT decision, other than for new reasons of national security. Such decisions should also be reviewable by the AAT.
- The character test should be amended as follows:
  - Subsection (6)(b) ought to make clear that association alone is insufficient, and there must be attendant risk;
  - Subsection (7A) ought to be abolished so that concurrent sentences are counted in the way they are imposed by the court.
  - The term 'national interest' should be defined in the Act.
  - Paragraph 501(6)(aa), which means that a person fails the character test for *any* offence committed while the person was in immigration detention, should be repealed.

#### **Reviews – merits and judicial**

- Section 501(6L), the provision meaning the AAT will be taken to have affirmed a cancellation decision if no decision has been made within 84 days, ought to be reversed, so that the decision is taken to be set aside.
- Timeframes for response across the cancellation regime ought to be harmonised: in all cases, people affected should have 35 days from the date of the decision to respond or to seek review.
- Subsection 501(6H) should be abolished. If it is not abolished, it should be applied to all documents given to the Tribunal, including by the Minister. (Subsection 501(6H) requires material presented



to the AAT as part of an application for a review of a visa cancellation, to be given in written form to the Minister two days before a hearing. It creates a serious imbalance.)

#### **Detention**

- An effective detention review mechanism ought to be legislated, entitling a person to appear before an independent body regarding the appropriateness of their ongoing detention.

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Martin Bibby assumed that everyone had read the policy which was formulated by the asylum seekers action group. There was discussion about whether the classes of people who should not have their visa cancelled should be widened to include those in earlier iterations of the policy.

Malcolm Ramage congratulated Martin on the depth and compassion of the report.

Martin Bibby moved that the proposed policy on visa cancellation on character grounds, together with its preamble, be approved as circulated and adopted. The resolution was seconded by Angelo Catallo and passed.

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### **8.3 Policy on Human Rights and Technology**

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#### **Human Rights and Digital Technology**

Australia has experienced an exponential uptake and increased sophistication of surveillance methods, AI informed decision making, and other modern technologies collecting vast amounts of data (Digital Technology). At the same time, laws protecting individuals against breaches of their privacy rights have not kept pace with those technologies. There has been a “drift towards self-regulation in the technology sector, as laws and regulators have not effectively anticipated or responded to new technologies” <sup>(1)</sup>.

While there will always be some degree of regulatory lag with regards to policy design and implementation, capacity-building programs should specifically target policy makers to ensure the development of a policy framework that remains relevant as technology progresses.

NSWCCL acknowledges that “digital technologies have the potential to facilitate efforts to accelerate human progress, to promote and protect human rights and fundamental freedoms” but also that “the impacts, opportunities and challenges of rapid technological change [...] are not fully understood”. <sup>(2)</sup> In fact, surveys have shown that community trust in new and emerging Digital Technologies has been diminishing, for example, with most Australians concerned about their online privacy. <sup>(3)</sup>

Safeguards are necessary to ensure that the liberties and rights of Australians are not unreasonably curtailed by Digital Technology. As a society, we need to avoid the possibility that people feel unable to go about their normal business because they are constantly being watched or tracked. Once collected, used and stored by third parties, personal private information becomes increasingly difficult to protect and regulate. Often that personal private information is collected or used in a manner that is without the knowledge, or consent, of the individual.

NSWCCL policy, in the face of the expansion of Digital Technology, includes:

1. A national strategy on new and emerging Digital Technologies that promotes effective regulation, consistent with Article 22 of the EU General Data Protection Regulation (GDPR).

Australian government policy on Digital Technology has tended towards self-regulation which is also, inevitably, fragmented. The Australian Productivity Commission has called for fundamental,

systematic change in the way governments, businesses and individuals handle data.<sup>(4)</sup> As a starting point, the substance of Article 22 of the GDPR, should be adopted by Australian legislators, as best practice. Article 22 of the GDPR provides for the right not to be subject to a decision based solely on ‘automated processing, including profiling’ which has a legal or significant impact on the individual.

2. A National Bill of Rights. One of the most significant gaps, from a policy perspective, with regards to the protection of human rights, data collection and AI informed decision making, is the absence of legislated human rights protection, particularly through a national Human Rights Act or charter. As a corollary, international policies and treaties around human rights and Digital Technology protection need to be more effectively implemented.

3. Implementation of legislative framework with a human-rights centred approach.

Australia needs “greater statutory clarity regarding the ambit of responsibility and consequence of automated decision making”.<sup>(5)</sup> The overarching framework should provide for Digital Technology being designed and applied around principles of transparency, accountability, responsibility, mitigation of risk, fairness and trust. It should provide for clear and enforceable laws as a main means to ensure and promote an accountable and responsible use of Digital Technology, aiming at fostering innovation while also protecting human rights.

4. Accountability of institutions for decisions that are made using Digital Technology and liability for the consequences of those decisions.

Exclusion and discrimination can be exacerbated by the “feedback loop of injustice”.<sup>(6)</sup> For example, if AI is tasked to make a decision it will base its decision on past data, and if a person is affected that is part of a group sharing a characteristic such as race, age, gender or other, it is therefore likely to replicate past imbalances and injustices that that group was involved in.

This problem concerns society defining areas, such as capital distribution (who gets the home loan?), employment (who gets the job?), and criminal justice (who goes to jail?). While the public discussion of the human rights implications of Digital Technology has tended to focus on the right to privacy and non-discrimination, other areas are also engaged, such as the right to equality, the right to work, the right to justice, and the right to health.

5. Notification to the individual impacted when Digital Technology facilitated decision making occurs. The Council of Europe, Commissioner of Human Rights, considers that those who have had a decision made about them by a public authority, that is solely or significantly informed by the output of an AI system, should be promptly notified.<sup>(7)</sup> In the context of public services, especially justice, welfare, and healthcare, the individual user needs to be notified in clear and accessible terms that an AI system will be interacting with them and that there is a hasty recourse to a complaints person. Specific information about processing, purpose and the legal basis for processing, should be available to the individual whether that information is retrieved directly, or from other sources.
6. A Consumer Protection approach to Consent. While consent of the user is a necessary condition for the use and decision-making processes of Digital Technology, it is not sufficient. A user should not be able to consent to waive rights under consumer law; laws which provide that the data controller must do certain specified things. Where consent is required and sought, that consent needs to be express, voluntary, specific and unambiguous;<sup>(8)</sup> not bundled consent, nor opt out. Any changes in use of information collected or stored should prompt a requirement for renewed express consent.

7. Reform to more easily assess the lawfulness of decision-making by Digital Technology. Accessing technical information used in decision-making or having open source AI are methods for doing so.
8. Easily accessed complaints and independent appeal processes, and remedies for the benefit of the adversely affected individual user.

Digital technologies are still developing and high error margins need to be accounted for. At any stage, a user affected by automated decision making should have the right to human intervention.<sup>(9)</sup> The appeal system(s) that will need to be established must be easily and cheaply accessible, so that those in vulnerable positions have the chance to contest contentious decisions.

9. A moratorium on the use of the technology should be implemented in any situation where the use of a technology in a specific situation is not regulated clearly enough by the policy and/or legislative framework.

Digital Technology needs to be continuously assessed for accuracy and reliability, as software behind, for example, facial recognition can still show high error margins and substantial system bias. Misidentification and bias affecting citizens have led to various city and state governments, international organisations and software companies, to either impose or call for a moratorium on the technology's use, until its functionality and the laws around it meet certain conditions.<sup>(10)</sup>

10. The establishment of a Digital Regulatory Body (DRB) tasked with developing policies around the design and application of big data, AI informed decision-making systems and advanced surveillance technologies. Its powers including:
  - i) Enforcement of policies. The DRB should be tasked with supervising compliance with data protection regulations by government and the private sector.<sup>(11)</sup> The powers invested in the body, like European models, should include investigation and access to premises and data processing equipment, for the purposes of compliance with regulations. There should be authority to impose a fine and/or a ban on processing.<sup>(12)</sup>
  - ii) Regular auditing of public and private organisations' systems to ensure high rates of policy compliance. Regular auditing also serves to detect potential bias in Digital Technologies. The DRB, given the appropriate expertise, should be able to keep intellectual property confidential and yet recognise where algorithms reinforce social differences and discrimination.
  - iii) Advocacy, encouraging laws and practices around technologies to be human rights compliant and used for the public good. Soft measures could take the shape of offering targeted education and training for decision makers and leaders, in the Australian private and public institutions, to build capacity around existing and new laws in the context of new technologies.
  - iv) Fostering innovation and technological progress. In order to achieve both human rights compliance and technological innovation and progress, the regulatory body could be tasked with the implementation of 'regulatory sandboxes'. In these regulatory sandboxes "new products or services can be tested in live market conditions but with reduced regulatory or licensing requirements and exemption from legal liability, and with access to expert advice and feedback"<sup>(13)</sup>.
  - v) Research into making AI more privacy friendly. Privacy friendly AI systems can more easily comply with regulations, use anonymisation techniques and explain how data is processed.<sup>(14)</sup>

11. A limited statutory cause of action to sue for serious breach of privacy, where there is a reasonable expectation of privacy. The existing privacy legislation at Commonwealth and State levels does not provide protection, or remedy, for many kinds of invasion of personal privacy. Any cause of action needs to be broadly formulated to capture future forms of privacy infringement.<sup>(15)</sup>

In 2019, the Australian Competition and Consumer Commission recommended that a new statutory cause of action be created to cover serious invasions of privacy with the aim to reduce the “bargaining power imbalance” between individuals and digital platforms.<sup>(16)</sup>

<sup>1</sup> Farthing, S., Howell, J., Lecchi, K., Paleologos, Z., Saintilan, P. and Santow, E., 2019. Human Rights and Technology: Discussion Paper. <[https://humanrights.gov.au/sites/default/files/document/publication/techrights\\_2019\\_discussionpaper\\_0.pdf](https://humanrights.gov.au/sites/default/files/document/publication/techrights_2019_discussionpaper_0.pdf)> [Accessed 13 September 2020] at p.38

<sup>2</sup> UN Human Rights Council, 2019. New and emerging digital technologies and human rights: 41st session. [online] Available at: <<https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/208/64/PDF/G1920864.pdf?OpenElement>> [Accessed 13 September 2020] at p.2

<sup>3</sup> Goggin, G., Vromen, A., Weatherall, K., Martin, F., Webb, A., Sunman, L., & Bailo, F. (2017) Digital Rights in Australia *Departments of Media Communications, and Government and International Relations, Faculty of Arts and Social Sciences, and the University of Sydney Law School, University of Sydney*. <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3090774](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3090774)> accessed 25 Feb 2020

<sup>4</sup> Australian Productivity Commission (2017) Data Availability and Use Report, p. 12 in Goggin, G., Vromen, A., Weatherall, K., Martin, F., Webb, A., Sunman, L., & Bailo, F. (2017) Digital Rights in Australia *Departments of Media Communications, and Government and International Relations, Faculty of Arts and Social Sciences, and the University of Sydney Law School, University of Sydney*. pp21-22 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3090774](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3090774)> accessed 25 Feb 2020

<sup>5</sup> Murray, A., 2019. Legal technology: Computer says no ...but then what. *The Proctor*, 39(8), 48-49.

<sup>6</sup> Eubanks, V., 2017. Automating inequality: How high-tech tools profile, police, and punish the poor/Virginia Eubanks. New York, NY: St. Martin's Press.

<sup>7</sup> Council of Europe Commissioner of Human Rights (May 2019) Unboxing Artificial Intelligence: 10to protect Human Rights <<https://rm.coe.int/unboxing-artificial-intelligence-10-steps-to-protect-human-rights-reco/1680946e64>> Also Art 13 GDPR

<sup>8</sup> The Norwegian Data Protection Authority (January 2018) Artificial Intelligence and privacy *Datatilsynet*, p.29

<sup>9</sup> Art 22 GDPR

<sup>10</sup> Conger, K., Fausset, R. and Kovalski, S. F., 2019. San Francisco Bans Facial Recognition Technology. *The New York Times*. [online] 14 May. Available at: <<https://www.nytimes.com/2019/05/14/us/facial-recognition-ban-san-francisco.html>> [Accessed 14 September 2020];

Kelion, L., 2019. MPs call for halt to police's use of live facial recognition. *BBC*. [online] 18 Jul. Available at: <<https://www.bbc.com/news/technology-49030595>> [Accessed 14 September 2020]; Larson, N., 2020. *UN urges 'moratorium' on facial recognition tech use in protests*. [e-book]: AFP. <<https://news.yahoo.com/un-urges-moratorium-facial-recognition-tech-protests-142542401.html>> [Accessed 26 June 2020].

<sup>11</sup> Shaping Europe's digital future -Report/Study (8 April 2019) Ethics guidelines for trustworthy AI <<https://ec.europa.eu/digital-single-market/en/news/ethics-guidelines-trustworthy-ai>>

<sup>12</sup> The Norwegian Data Protection Authority op.cit. p.23

<sup>13</sup> Op.cit. Farthing, et al., 2019 p.118

<sup>14</sup> The Norwegian Data Protection Authority op.cit. p.28

<sup>15</sup> Witzleb, Normann (2011) A statutory cause of action for privacy? A critical appraisal of three recent Australian law reform proposals *19 Torts Law Journal* 104-134 DOI: 10.13140/2.1.3159.16841

<sup>16</sup> Australian Competition and Consumer Commission (June 2019) Digital Platforms Inquiry- Final Report <<https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>>

Michelle Falstein summarised the policy. Angela suggested considering consent as an employee consumer right. Jared would like to see the development of a NSWCCCL model of statutory cause of action rather than the ACCC model. Pauline emphasised that global players will be the biggest threat.

Michelle moved that the proposed policy be approved as circulated and adopted. The resolution was seconded by Stephen Blanks and passed.

#### 8.4 Expression of concern with aspects of the AFP raid on the home and parliamentary office of Shaoquett Moselmane MP

Lesley Lynch explained that there are a number of amendments that should be made to the policy with new developments to Moselmane's situation. Nick Cowdery suggested that the amendments should be dealt with individually with each amendment to be voted on by the Committee.

Josh Pallas abstained from voting on the policy.

Cameron Murphy suggested an amendment to Resolution 3 to clarify that it is the party officers, not Jody McKay, who can suspend.

The Policy is reproduced with the amendments highlighted.

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**The Committee of the NSWCCL recommends that** the AGM expresses its strong concern about aspects of the public raid on the home and parliamentary office of Shaoquett Moselmane MLC on the 26<sup>th</sup> June 2020.

### **Context**

#### **A public drama and deliberate take-down**

The full-scale raid on the home of Shaoquett Moselmane MLC by around 40 AFP officers at 6.30am on 26<sup>th</sup> June 2020 was deliberately orchestrated by someone unknown as a high drama event to generate maximum publicity in Australia and beyond.

We do not know of any denial by the Government and/or ASIO and/or the AFP as to their involvement in the strategic tip-off which allowed live TV to be in place outside Moselmane's home before the raid began. Nor did the Government register any concern about the tip-off or the ensuing publicity. Given at least one recent precedent, we consider it most probable that the tip-off came from a highly placed person in the Government or the involved agencies.

Public statements by the Prime Minister as to the seriousness of the matters under investigation and the immediate reaction of the NSW ALP leader Jodi McKay (who had been 'briefed') to suspend the MLC from the ALP and, more extraordinarily, to call for his expulsion from the NSW Parliament, clearly suggested Moselmane was the target of the raid and was a suspect in relation to a serious national security offence involving some unlawful foreign Influence activity. He was known for his public, and sometimes controversial, statements of support for China.

Within days the predictable result was the shredding of the MLC's reputation, his suspension - and effective expulsion - from the ALP, irreparable damage to his career and embarrassment and pain to his family.

Mr Moselmane immediately and repeatedly denied any wrongdoing and expressed his incomprehension as to why he was suspected of any offence or threat to Australia by ASIO and the AFP.

By the time it was clarified by the AFP that Mr Moselmane was neither accused of any offence nor the target for the current investigation by ASIO and that the AFP did not have any current plan to charge him with any offence, the damage was done.

It seems likely that this was the intention of ASIO and/or the AFP and/or the Government.

It is not normal process. National security investigations, especially those involving active ASIO investigations, are wrapped in strict secrecy and there are multiple laws and serious criminal offences to enforce this.

#### **Related secret events**

Three months after the public raid on the MP's home and parliamentary office the public learned, through Chinese Government sources, the startling information that on the very same day ASIO and the AFP had raided the residences of four Chinese journalists working for Chinese news outlets in Australia. ASIO is reported as confirming these raids were "*in connection to its probe involving the office of suspended NSW Labor MP Shaoquett Moselane.*" (SMH 9/9/20.)

It also emerged that the Home Affairs Department had cancelled the visas of two Chinese academics who participated in a WeChat group with Moselmane and his part-time employee John Zhang, on the

basis of ASIO advice that they were a threat to Australia's national security. Both academics have denied any wrong-doing and described the allegations as ridiculous.

This information provided a broader context for the Moselmane raid. It also fundamentally changed the public's understanding of the recent, highly publicised police raid on Australian journalists in China. The latter was not, as had been reported, an arbitrary exercise of Chinese Government censorship of foreign journalists – it was political 'tit for tat' payback.

It is notable that that while the 6.30am raid on Moselmane's residence was set-up to generate maximum drama and publicity, the raids on the Chinese journalists on the same day on the same matter, were kept secret and, it is reported, the journalists were told to keep quiet about it. Similarly, the cancellation of the academics' visas was not made public until they made public statements.

#### **Why publicly trash Moselmane?**

We do not question that ASIO and the AFP may have had reasonable grounds to probe the nature of foreign influence within the NSW Parliament - including in relation to Moselmane and his office.

The important question is why the raid on Moselmane was so deliberately staged as a public event which would clearly destroy his reputation and career.

If it was, as we presume likely, the Government or one of the agencies responsible- It may have been a pragmatic response to the probability that a raid on the home of an MLC of the NSW Parliament would be difficult to keep secret. But the immediate comments by the Prime Minister and others were clearly planned. They could easily have included up-front statements that Moselmane was **not** the target and **not** charged with, nor suspected of any crime– which they conspicuously did not.

Given this is the first known use of the controversial foreign influence legislation, it is more likely that the Government and/or ASIO and/or the AFP wanted to send a message to members of parliament that these new laws with their array of serious offences will be activated, and that members of Parliament who engage with 'unfriendly' foreign nations have no immunity and run the risk of being targeted for investigation by ASIO with potentially dire impacts.

(The public raids by AFP on the ABC and Newscorp journalist Annika Smethurst in 2019 are an earlier example of sending a clear warning – on that occasion to any journalist considering reporting on any national security /intelligence related activity.)

It may be fair enough to send a 'be very careful' message - but when it includes the trashing of an individual it should follow – not precede - the collection of evidence that would justify charging the person with a foreign influence offence.

It would be even more disturbing if the motivation was to warn off other politicians and public figures from making any public comments in support of China – as Moselmane has done in recent years. His statements may be politically controversial - but they hardly constitute a threat to Australia's national security. Many Australian politicians, business persons and academics, among others, have a lot to worry about if it emerges that this was the case.

It may eventuate that evidence emerges that will lead to Moselmane being charged with a national security offence - but that would not justify the deliberate decision to do him as much reputational damage as possible before such evidence was available.

As far as we are aware, ASIO has not made an Adverse Security Assessment in respect of Moselmane. If it had done so, he would have the right to receive detailed reasons and seek a merits review in the Administrative Appeals Tribunal.

It is difficult, with the limited public information available, to identify any national security or public interest benefit in this very deliberate public trashing of Moselmane.



Regardless of how this investigation develops, the manipulation of the publicity to damage Moselmane is a disturbing and potentially dangerous strategy for ASIO and/or the AFP and/or the Government – if they were responsible. It also constitutes a major breach of fair and proper process.

Given the high public profile the raid was given and the damage done to an individual and the further unsettling of the Australia-China relationship, we can only presume that the activities that ASIO and the AFP have under investigation pose a real and serious threat to Australia's national security.

At this point in time we presume the investigation is on hold pending the outcome of the application to the High Court by John Zhang challenging the constitutionality of the search warrants in relation to his home.

### **The underpinning legislation**

Although the controversial *National Security Legislation Amendment (Espionage and Foreign Interference) Bill 2017* was significantly improved, NSWCCCL maintained concerns about the ambit of central definitions and the potential for innocent activity to be captured under the amended legislation passed in 2018. The difference between lawful and unlawful foreign influence activity under the legislation is not always clear cut. NSWCCCL was and remains sceptical as to the need for specific foreign influence legislation. The updated espionage, treason and secrecy legislation adequately covered the area.

Key sections of the Act will be subject to a review by the PJCIS in June 2021. Although the PJCIS cannot review ASIO operations, this review may be able to consider some aspects and implications of the Moselmane case. It may be useful to refer our concerns to the Inspector-General of Intelligence and Security.

### **Proposed Resolutions:**

1. The NSWCCCL AGM considers - on the basis of available information - the deliberate publicity surrounding the AFP raid on the home of Shaoquett Moselmane MP, which caused him great reputational and personal harm in the absence of any charge or formal allegation that he was suspected of unlawful activity, was improper and a major breach of fair process and unwarranted on national security grounds.

#### **Amendment:**

1. *The NSWCCCL AGM considers the publicly visible, full-scale AFP raid on the home of Shaoquett Moselmane MLC and the ensuing negative and damaging publicity in the absence of any charge or formal allegation that he was suspected of unlawful activity, was improper, a breach of fair process and, on the basis of available information, unwarranted on national security grounds.*
2. The NSWCCCL AGM calls on the Prime Minister to clarify to the Australian community whether or not the Government and/or ASIO and/or the AFP were responsible for the tip-off to the media prior to the raid on Shaoquett Moselmane's home.

#### **Amendment**

2. **Noting that**, in answer to a question in Parliament on 20/10/20 as to who had tipped-off the media in advance, the AFP Deputy-Commissioner indicated that the AFP was investigating whether anybody within the AFP was responsible and the Director-General of ASIO indicated that he was confident that it had not come from his office:



	<p><b><i>The NSWCCCL AGM calls on the Prime Minister to: i) assure the Australian community that neither he nor his office or that or any other Minister was responsible for the media tip-off prior to the raid on Shaoquett Moselmane's home, and ii) to refer the matter to the AFP for a wider investigation to determine who was responsible for the tip-off to the media.</i></b></p> <p>3. The NSWCCCL AGM indicates its concern at the hasty decisions of the <del>Leader of the NSW Opposition</del> <b><i>NSW Labor Party</i></b> to suspend Shaoquett Moselmane from the ALP and to seek his expulsion from the Parliament (though this was abandoned) in the absence of any charge, or formal allegation that he was suspected of any unlawful activity. As soon as it is legally possible the NSW ALP should explain to its members and the public the evidence on which it acted.</p> <p>4. The NSWCCCL AGM considers that If ASIO has made an Adverse Security Assessment against Mr Moselmane he should be informed of this and the reasons as soon as possible so he has the option of seeking a merit review before the Australian Administrative Tribunal.</p> <p>5. The NSWCCCL AGM is concerned that ASIO and/or the AFP and/or the Government may have orchestrated the publicity around the Moselmane raid to warn-off members of parliament and others from being openly supportive of China even where this support does not include unlawful activity. If this was the case, we strongly condemn the action as a dangerous and undemocratic politicisation and distortion of the formal purpose of the legislation to protect Australia's national security and public safety.</p> <p><b>Amendment</b></p> <p>5. <i>The NSWCCCL AGM remains concerned that the public nature of the raid and the failure to clarify immediately that Moselmane was not a suspect or person of interest in any investigation may have been intended to warn-off members of parliament and others from being openly supportive of China even where this support does not include unlawful activity. If this was the case, we strongly condemn the action as a dangerous politicisation of the formal purpose of the legislation to protect Australia's national security and public safety.</i></p> <p>6. The NSWCCCL AGM directs the NSWCCCL Executive to consider the option of referring the Council's concerns about the apparent manipulation of publicity in relation to the raid on the home and parliamentary office of Shaoquett Moselmane MLC to the Inspector-General of Intelligence and Security in the light of what is known and any additional information which comes to hand.</p> <p><b>Amendment</b> Delete 6 – in light of ASIO DG statement.</p> <hr/> <p>Lesley Lynch moved that the NSWCCCL recommends that the AGM expresses its strong concern about aspects of the public raid on the home and parliamentary office of Shaoquett Moselmane MLC on the 26th June 2020, as set out in the amended policy. Seconded by Hans Heilpern and passed</p>
9.	<p><b>Motions Without Notice</b> Jared Wilk introduced two motions without notice.</p> <p><b>9.1 Proposed Policy on protest and Covid-19</b></p>

Covid-19 is fatal, highly transmissible, deadly disease which has presented the greatest public health challenge since the Spanish Influenza. NSWCCCL does not underestimate its seriousness one iota. However, NSWCCCL strongly believes that the current Public Health Order regime, and the apparent policy of the NSW Police to oppose the holding of almost any significant protest in NSW, shows an underappreciation of the fundamental importance of protest as a means of political expression.

As a society, we have chosen to recognise that freedom to protest, as a form of the free expression of political opinion is “indispensable to the exercise of political sovereignty by the people of the Commonwealth”.<sup>(1)</sup> It is unnecessary to traverse the familiar justifications for protecting these freedoms; they are values espoused almost universally by Australians. As Justice Adamson wrote in *Commissioner of Police v Gray* [2020] NSWSC 867, protest cannot simply be replaced by social media activism; demonstrations remain a powerful and irreplaceable form of activism.

It must therefore be conceded, in the context of the COVID-19 pandemic, that these freedoms should be limited only when their importance is outweighed by the legitimate aim of protecting public health and safety. This was essentially the approach taken by Justice Adamson.

At this point in time, the risk of transmission in NSW is low. Hospitality venues and corporate events can allow up to 300 socially distanced people on premises; football stadiums can allow up to 10,000 socially distanced people, and entertainment facilities up to 1000. Life has returned to a ‘new normal’. However, the combined force of the Public Health Order and the discretion of NSW Police have precluded protests in this State from a return to some semblance of normalcy. In recent weeks, many small protests, where physical distancing and appropriate hygiene have been maintained, have been met with unwarranted shows of force from police. A particularly stark example of this disproportionate policing occurred at the 14 October protest at Sydney University, where Professor Simon Rice had his legs swept from under him, despite not even partaking in the protest.

In light of the current level of COVID-19 risk, the other activities currently permitted under the Public Health Order, and the importance of protest in a liberal society, NSWCCCL supports:

- (1) the adoption of a model of community policing based on fundamental respect for human rights;
- (2) the exemption of small protests, organised and executed in accordance with a COVID-19 safety plan from the prohibition on outdoor public gatherings in the Public Health Order (COVID-19 Restrictions on Gathering and Movement) Order (No 5) 2020.

<sup>1</sup> Brown

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It was agreed that CCL will come back to Jared’s proposal and it would be considered alongside a Committee meeting.

## **Item 9.2 Proposed Policy on ICAC**

NSWCCCL strongly affirms the crucial role of the Independent Commission Against Corruption in NSW. As Richard Ackland writes, the episode currently playing out with respect to Daryl Maguire, and incidentally, Gladys Berejiklian, is “a timely reminder of the disinfecting sunlight that ICAC is capable of shining”.<sup>(1)</sup> To quote our President, “while the present proceedings may not encourage federal parliamentarians to move forward more speedily with a federal ICAC, they are certainly encouraging the electors to push for one.”<sup>(2)</sup>

	<p>NSWCCL deplores the recent cuts to ICAC's funding, which Chief Commissioner Peter Hall QC warned in 2019, "have an immediate and serious effect on the commission's frontline services, and therefore its ability to fight corruption."<sup>(3)</sup> ICAC should be funded independently of the usual funding process for government agencies; it is not like any other government agency. Such changes would help temper the influence which the Executive can potentially wield to hinder the fight against corruption in NSW.</p> <p><sup>1</sup> <a href="https://www.theguardian.com/commentisfree/2020/oct/13/nsw-would-be-a-more-unsavoury-place-without-icac-we-need-a-real-federal-anti-corruption-body">https://www.theguardian.com/commentisfree/2020/oct/13/nsw-would-be-a-more-unsavoury-place-without-icac-we-need-a-real-federal-anti-corruption-body</a></p> <p><sup>2</sup> <a href="https://www.smh.com.au/national/stand-aside-premier-while-this-cloud-hangs-over-you-20201015-p565dj.html">https://www.smh.com.au/national/stand-aside-premier-while-this-cloud-hangs-over-you-20201015-p565dj.html</a></p> <p><sup>3</sup> <a href="https://www.theguardian.com/australia-news/2019/oct/21/icac-head-says-funding-cuts-will-have-immediate-and-serious-effect">https://www.theguardian.com/australia-news/2019/oct/21/icac-head-says-funding-cuts-will-have-immediate-and-serious-effect</a></p> <hr/> <p>The proposed policy on ICAC and the need for a Federal ICAC was adopted.</p>
<b>10.</b>	<p><b>General Business</b></p> <p>Pauline Wright wanted to thank Nick Cowdery for his Presidency, a sentiment supported by the Executive and Committee.</p>
	Meeting closed 7.31pm

Minutes Prepared by Michelle Falstein

Date: 9 November, 2020

## Item 4 Executive Reports

### 4.1 President – Pauline Wright

#### NSWCCL President's Report 2021

Welcome everyone and thank you for joining us tonight for our Annual General Meeting. As you all know, NSWCCL was founded in 1963, and has become a leading Australian leading human rights and civil liberties organisation which is proudly non-sectarian and non-party political. We were privileged to be granted Special Consultative Status with the Economic and Social Council of the United Nations in 2006, one of very few Australian NGOs to have that status.

This year, as in every year, we have continued to monitor and fight against infringement of our rights and liberties and the abuse of power by government, its agencies and others. We have also worked to influence public debate and secure amendments to laws or changes in policy to strengthen our democratic rights and liberties.

We have prepared numerous submissions to government – on average every two weeks – and we have engaged in key public debates, with the media seeking comment from us regularly.

COVID-19 has created a difficult environment for civil liberties, but I can't think of a recent time when awareness of the importance and fragility of civil liberties has been so much in the forefront of the public mind. At times, fighting for our rights while respecting the need for some changes in our lives to keep the community safe has required a careful balance, bringing into focus the importance of

considering rights and liberties as an organic whole. The exercise of one person's rights unfettered may have severe consequences upon those of another or others.

I would like to thank the CCL Executive Committee – our Secretary Michelle Falstein, Treasurer Stephen Blanks, Vice Presidents Lydia Shelly and Jared Wilk, and Assistant Secretary Sarah Baker – and to each and every one of our Committee members – David Bernie, Dr Martin Bibby, Angela Catallo, Billy Field, Jonathan Gadir, Hans Heilpern, Elizabeth Htwe, Paula Le Dieu, Dr Lesley Lynch, Rebecca McMahon, Josh Pallas, Rafael Sue, Malcolm Ramage QC, Natasha Rose, Cassandra Wilkinson, and of course our immediate past president Nicholas Cowdery **AO QC** for their dedication, skill, talent and support. I also thank those of our Action Group convenors who are not committee members, Felicity Graham, Craig Longman, Chadi Irani and Kush Sood and the volunteers on each of our Action Groups.

We operate by the generosity of our volunteers giving their time and expertise to the Action Groups, with only one full-time equivalent staff member, our wonderful Executive Officer, Rebecca Payne with the assistance of Talia, Matt and Scott. Our volunteers have been worked tirelessly on a vast array of topics, writing numerous submissions and ensuring our voice is heard.

- We spoke out repeatedly on the continued detention and mistreatment of asylum seekers; we recently met with the Ombudsman for ongoing discussions about the unnecessarily harsh treatment of detainees during quarantine.
- We repeatedly spoke out against Mark Latham's misguided Bills, orchestrating joint media releases with other community groups and generating significant media coverage in opposition to these bills.
- We called the government to account on everything from the abuse of electoral laws to entrench the ALP/LNP duopoly, and the mis use of "gag" orders to stifle debate, to their blatant and cynical attempt to avoid transparency by giving the National Cabinet the status of a 'Cabinet' to keep its deliberations secret
- We demanded that government address issues of sexual harassment within its ranks
- We advocated for public interest whistle-blower protections and the rights of Australians like Bernard Collaery to open justice
- We called out police abuses including mistreatment of Legal Observers and the blind eye turned to officers wearing symbols associated with white supremacy on their uniforms; we also raised concerns over the possible use of equipment similar to what's been seen recently in Melbourne.
- We raised the case of First Nations fishers in NSW being prosecuted under State law contrary to their Native Title rights.
- We advocated to raise the minimum age of criminal responsibility and to end the over-incarceration of Indigenous Australians.
- We wrote about the attacks on media freedoms and the misuse of executive power against 'FriendlyJordies'.
- We kept up the fight for privacy against the ever-increasing encroachments of the digital age, critiquing the use of data provided for check-ins and questioning the use of facial recognition in at-home quarantine.

And our work has not gone unnoticed: it has been covered extensively in the media. Just last week, we were quoted by The Age, Channel 10, Mondaq, Hack, City News and the Nikkei-Asia on topics as diverse as the National Cabinet, quarantine restrictions and Latham's inquiry into his own bill.

Our Virtual Annual Fundraiser and Excellence in Civil Liberties Journalism Awards night on 14 October 2021 was an exciting event, with Dr Anne Aly as our keynote speaker in conversation with Walkley Award-winning news.com.au journalist, Samantha Maiden. Following that session, Samantha joined a panel discussion with a number of the other journalists shortlisted for our Open Award: **Christopher Knaus** from The Guardian, Four Corners journalist Louise Milligan – another Walkley Award-winner, ABC Investigative Journalist Mario Christodoulou and, Paul Gregoire, an independent journalist regularly reporting on social justice issues and infringements upon civil liberties. Currently, he writes for the Sydney Criminal Lawyers website.

The ABC's radio journalist Linda Mottram, who couldn't join us, was also shortlisted, together with some group nominations for their collective work in the pursuit of human rights, civil liberties and holding to account those in power:

- Alex Mann and Kevin Nguyen (Background Briefing)
- Paul Farrell, Alex McDonald, Kirsten Robb, James Elton (7.30)
- Caro Meldrum-Hanna, Jaya Balendra, Patrick Begley, Dunja Karagic and Sue Spencer for *Exposed*

Of this stellar cast of journalists, the winner of the Open Award was Paul Gregoire, nominated by David Shoebridge as the 'sole voice telling the stories of the impact of the overreach of terrorism and surveillance powers and the harms caused by aggressive policing'. Our winner of the Young Journalist Award was Kate Allman, chosen from a brilliant shortlist including Kishor Napier-Ramon and Amber Schultz, both from *Crikey*.

Kate Allman is a multimedia journalist, producer, video host, writer and the Online Editor of *LSJ*, the monthly member magazine for members of the Law Society of NSW, for her stories on the fragile balance between civil liberties and the law and exposing over-policing in certain sectors through the pandemic among other things including Indigenous deaths in custody.

The shortlist for the Inaugural NSWCCCL Kafka Award for the most egregious public statements and acts offensive to civil liberties and human rights included John Barilaro, for his spurious defamation proceedings and misuse of the Fixated Persons Unit against Friendlyjordies and Alex Hawke, the Minister for Immigration, for his creative defence of the Migration Amendment (Clarifying International Obligations for Removal) Bill 2021. This Bill gave the minister a broad unchallengeable power to withdraw a person's refugee status recognition and allowed the government to detain a refugee indefinitely where it had cancelled their visa but could not send them back to their country of origin because they would face persecution. But the winner was Clubs NSW, for demanding via lawyers that an ex-employee whistleblower, facing financial ruin over court costs, stop crowdfunding to finance his court case and return donations already received or face further court action.

I'd like to congratulate Martin Bibby for having the brilliant idea to instigate the journalism awards. It's become a highlight of our year and an increasingly important event on the civil liberties calendar and clearly attracted nominations among some of the leading voices in the nation.

I would also like to thank our judges, John Cleary and Sarah Moulds for participating in the painstaking task of developing the shortlist and selecting the award-winners.

It's clear that there is an urgent need to monitor and to ensure that the limitations that were placed on our freedoms – sometimes for good reasons but sometimes representing overreach – are dismantled as quickly as possible.

For example, under the most recent health order, it is now legal to hold a commercial event for up to 500 people. But an outside, COVID safe protest can only be attended by 50 people. That's neither reasonable nor workable.

But in addition to the issues arising from the pandemic, an increasing concern has been the lack of transparency in government, notably at the Federal level. Last week's unprecedented vote by the Coalition, against the recommendation of the Speaker of the House, not to refer Christian Porter's blind trust donation scandal to the Parliamentary Privileges Committee was just one example. Porter's decision to press the button on the prosecution of Witness K for daring to report wrongdoing by the Howard-era government over spying on a friendly nation, Timor Leste, against international law to gain the upper hand in a commercial deal was shameful. And to charge his lawyer Bernard Collaery with conspiracy for just doing his job was a disgrace. The Federal Government's continuous efforts to keep the case secret despite the public interest in open court proceedings, all in the spurious name of national security, is nothing short of scandalous.

The need for a national integrity and corruption body has never been more apparent – hence the increasingly strident shouting from certain Federal politicians about ICAC. I am looking forward to appearing at the National Press Club with Geoffrey Watson SC (former counsel assisting ICAC) on 1 December 2021

Finally, I would like to thank you, our members. We are financially reliant on memberships and donations to survive – we receive no government funding, grants or other assistance. So thank you for your continued support.

Our work is not over. It will never be over. If eternal vigilance is the price of liberty, CCL is the loyal watchdog to rights and freedoms, holding those in power to account lest they harden into despotism.

Pauline Wright  
25 October 2021

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## **4.2 Secretary – Michelle Falstein**

### **Secretary's Report to NSWCCCL AGM 27 October 2021**

Thank you for the opportunity to serve as Secretary of the NSW Council for Civil Liberties (CCL) this past year. I have had great assistance in this role from the Committee, the Executive and our new Executive Officer, Rebecca Payne. Thank you also to all our hardworking volunteers and supporters who have contributed to submissions, policies and fundraising and have remained committed to the principles of civil liberties.

This financial year, the global pandemic continued to inform CCL's actions. The organisation engaged in activities, some of which are set out below.

#### **Areas of Engagement**

##### **State**

Since the last AGM, residents of NSW have been subject to heavily reduced sitting of the NSW and federal parliaments. Rushed legislation and *Public Health Act 2010* Orders (PHO) (and other emergency measures) have compromised government transparency and accountability. The executive of the government and its agencies

continue to wield extraordinary powers affecting the everyday lives of NSW residents in intrusive and often abusive ways.

CCL concerns included :

- Overreach of police powers, particularly the banning of protests and the overzealous or confused application of the PHO;
- The worsening outbreak of COVID cases in prisons;
- One Nation's discriminatory and harmful *Education Legislation Amendment (Parental Rights) Bill 2020*. CCL condemned the inquiry into the Bill, which was run by Mark Latham himself, in an abuse of democratic process.
- Calls for the adoption of the 'Ice' Inquiry recommendations of decriminalisation and diversion;
- Legal sanctions faced by journalists in the course of their work, as highlighted by the recent high profile Friendlyjordies case;
- The Service NSW Check-in (QR codes) and the inherent, excessive collection, storage and sharing of data; and
- Most recently the introduction of the 'vaccination passport' which had minimal stakeholder and public consultation.

At the end of 2020 and beginning of 2021, CCL was a physical presence at rallies and protests including the Women's March 4 Justice. We had speakers at the rally protesting Mark Latham's proposed Religious Freedoms Bill and the Drug Reform Rally, David Bernie and Liz Htwe respectively. The Right to Protest Action Group was formed, providing support to protest organisers and protestors.

CCL has forged and strengthened alliances with other libertarian groups by being involved in campaigns for Uniting's Campaign for Fair Treatment, NSW Voluntary Assisted Dying Alliance, #OurDemocracy Campaign, Community Justice Coalition and Human Rights for NSW Alliance, amongst others.

The City of Sydney Street Safety Camera Program Code of Practice Review has been postponed indefinitely. CCL representation is expected in the review panel once it recommences.

## Federal

Federally, NSWCCCL has been active in drawing attention to the:

- Biosecurity Act and Migration Act determinations, which have been exempt from parliamentary scrutiny and continued to ban movement in and out of the country;
- Morrison government Bill that gives National Cabinet the status of a 'Cabinet', meaning that the PMO can now keep its deliberations and documents secret;
- Dangers inherent in living conditions and quarantining of refugees and asylum seekers in immigration detention centres and alternative places of detention;
- Plight of those that have failed the character test under section 501 of the Migration Act, and had their visas cancelled;
- Rejection of Independent MP Zali Stegall's climate action legislation by a government-dominated parliamentary committee;
- Julian Assange extradition bid;
- Prime Minister's abrogation of his responsibility to look into the allegations of historical rape at Parliament house;
- Necessity for a federal integrity commission;
- Systemic police racism and end to indigenous deaths in custody, highlighting the necessity to adopt the Uluru Statement;



- Limitations of the *Privacy Act 1988*, the review of which has again been deferred;
- Introduction of legislation giving law enforcement agencies unprecedented incursions of our civil liberties such as the *Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020*; and
- Regulations that would have allowed the ACNC to deregister an organisation if it “reasonably believes” its members are likely to commit a summary offence.

## Submissions

NSWCCL receives invitations to participate and contribute to Inquiries and reviews of Bills. A number of these submissions resulted in invitations to consult with government agencies, attend round table discussions and appear at committee proceedings to give evidence. A list of submissions lodged since the 2020 AGM is below:

NSW Department of Education 2020 Code of Conduct Review	Josh Krook	28 Oct 2020
Attorney- General’s Department Privacy Act Review Issues Paper-October 2020	Michelle Falstein	29 Nov 2020
Inquiry by the PJCIS into the Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020	Jonathan Gadir	29 Feb 2021
S293 Crimes Act	Rebecca McMahon	9 Jan 2021
NSW Law Reform Commission - Consultation Paper - Open Justice	Michelle Falstein	5 Feb 2021
Data Availability and Transparency Bill 2020 [Provisions] and Data Availability and Transparency (Consequential Amendments) Bill 2020	Jonathan Gadir	13 Mar 2021
Education Legislation Amendment (Parental Rights) Bill 2020	Lesley Lynch Jared Wilk	28 Feb 2021
Migration and Citizenship Legislation Amendment (Strengthening Information Provisions) Bill 2020	Martin Bibby	24 Feb 2021
Data Sharing (Government Sector) Act 2015 -statutory review.	Michelle Falstein	29 Mar 2021
New South Wales Legislative Council Regulation Committee- Inquiry into Environmental Planning Instruments (SEPPs)	Josh Pallas	19 May 2021
National Health (Privacy) Rules 2018 Review	Michelle Falstein	4 June 2021
Privacy and Personal Information Protection Amendment Bill 2021 (NSW)	Michelle Falstein	17 June 2021
Digital Transformation Agency public consultation on the Digital Identity Legislation Position Paper	Michelle Falstein	16 July 2021
Draft Proposals-Open justice review: Court and tribunal information: access, disclosure and publication	Michelle Falstein	8 July 2021
Senate Legal and Constitutional Affairs Legislation Committee- Constitution Alteration (Freedom of Expression and Freedom of The Press) 2019 Inquiry	Cassandra Wilkinson	20 Aug 2021
INSLM Inquiry into Division 105A of the Criminal Code	Josh Pallas	1 Sept 2021

## Events

The CCL annual fundraising dinner and awards night was again held online. Our moderator, Samantha Maiden, spoke to keynote speaker, Dr Anne Aly, Federal Member for Cowan and academic. Dr Aly discussed international parental child abduction, the inadequacy of Australia's action in complying with its obligations under the Hague Convention on the Civil Aspects of International Child Abduction, and the impact of coercive control.

The event was followed by a Q & A with some of the finalists in the 3rd annual Award for Excellence in Civil Liberties Journalism. Our judging panel of John Cleary, Sarah Moulds and Pauline Wright chose the following people as winners:

- Young Journalist's category - Kate Allman, nominated for 'consistently endeavouring to engage Australians with deeper issues and the less-reported side of critically important debates'.
- Open category- Paul Gregoire, nominated as the 'sole voice telling the stories of the impact of the overreach of terrorism and surveillance powers and the harms caused by aggressive policing'.
- The first annual Kafka award for the most egregious public statements or acts offensive to civil liberties and human rights- Clubs NSW for demanding via their lawyers that an ex-employee whistleblower, facing financial ruin over court costs, stop crowd funding to finance his court case and return donations already received - or face further court action.

To coincide with the event CCL ordered a fundraising wine edition with specially designed labels. Registrations, donations and wine sales generated \$6099. Many thanks to Rebecca Payne for her efforts in the preparation and broadcast of the event.

### **State of the Organisation**

Apart from two committee meetings held at the Teachers Federation Building in Surry Hills all Committee meetings were held electronically by zoom conferencing. Thank you Angela Catallo and the Teachers Federation for the use of their rooms and it is hoped CCL may return in 2022.

The offices at PIAC were vacated and for the time being, at least, CCL is operating remotely.

Membership has been constant, up from 213 in October 2020 to 221 this month.

We farewelled our previous Executive Officer Amanda Keeling and welcomed Rebecca Payne. From overhauling our website and logos to engagement of our members and supporters and providing campaign and advocacy leadership and strategy, she's proved to be a great asset to CCL.

Finally, the Australian Council for Civil Liberties has been re-established and is meeting quarterly, focusing on those federal civil liberties matters suitable for joint action.

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### **4.3 Treasurer – Stephen Blanks**

**FINANCIAL REPORT**

**OF**

**NEW SOUTH WALES COUNCIL FOR  
CIVIL LIBERTIES INCORPORATED**

**ABN 85 629 315 154**

**FOR THE YEAR ENDED**

**30 SEPTEMBER 2021**

**JOHN C CHEADLE  
SUITE 8 / 924 PACIFIC HIGHWAY  
GORDON NSW 2072  
PH: (02) 9498 5250**

# NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INCORPORATED

ABN 85 629 315 154

## DECLARATION BY THE EXECUTIVE COMMITTEE

The members of the Executive Committee have determined that the Council is not a reporting entity and that this special purpose financial report should be prepared in accordance with the accounting policies outlined in Note 1 to the accounts.

In the opinion of the Executive Committee of the Council:

1. (a) The Income and Expenditure Statement gives a true and fair view of the results of the Council for the financial year ended 30 September 2021;  
  
and  
  
(b) The Balance Sheet gives a true and fair view of the state of affairs of the Council as at 30 September 2021.
2. At the date of this declaration, there are reasonable grounds to believe that the Council will be able to pay its debts as and when they fall due.

This declaration is made in accordance with a resolution of the Executive Council and is signed on behalf of the Executive Council by:

President \_\_\_\_\_

Treasurer

 \_\_\_\_\_

Dated: 22 October 2021

**NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INCORPORATED**

**ABN 85 629 315 154**

**DECLARATION BY THE EXECUTIVE COMMITTEE**

The members of the Executive Committee have determined that the Council is not a reporting entity and that this special purpose financial report should be prepared in accordance with the accounting policies outlined in Note 1 to the accounts.

In the opinion of the Executive Committee of the Council:

1. (a) The Income and Expenditure Statement gives a true and fair view of the results of the Council for the financial year ended 30 September 2021;  
  
and  
  
(b) The Balance Sheet gives a true and fair view of the state of affairs of the Council as at 30 September 2021.
2. At the date of this declaration, there are reasonable grounds to believe that the Council will be able to pay its debts as and when they fall due.

This declaration is made in accordance with a resolution of the Executive Council and is signed on behalf of the Executive Council by:

President  \_\_\_\_\_

Treasurer \_\_\_\_\_

Dated: 20 October 2021

# W. L. BROWNE & ASSOCIATES PTY LTD

ABN 53 628 254 277

JOHN CHEADLE F.C.A.  
BRADLEY TURNER C.A.

[john@wlbrowne.com.au](mailto:john@wlbrowne.com.au)  
[brad@wlbrowne.com.au](mailto:brad@wlbrowne.com.au)

Suite 8, 924 Pacific Highway  
Gordon NSW 2072  
PO Box 294, Gordon NSW 2072  
Telephone: 02 9498 5250

To the members of New South Wales Council For Civil Liberties Incorporated

ABN 85 629 315 154

In accordance with the requirements of Section 307C of the Corporations Act 2001, I declare that, to the best of my knowledge and belief, during the year ended 30 September 2021, there have been:

- (i) no contraventions of the auditor independence requirements as set out in the Corporations Act 2001 in relation to the audit, and
- (ii) no contraventions of any applicable code of professional conduct in relation to the audit.



J. C. Cheadle F.C.A.  
Registered Company Auditor

Dated: 14 October 2021

**NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INCORPORATED**

**ABN 85 629 315 154**

**BALANCE SHEET AS AT 30 SEPTEMBER 2021**

	Note	2021 \$	2020 \$
<b>CURRENT ASSETS</b>			
Cash	3	735,333	738,449
Other	4	290	565
<b>TOTAL CURRENT ASSETS</b>		<u>735,623</u>	<u>739,014</u>
<b>NON-CURRENT ASSETS</b>			
Property, Plant & Equipment	5	270,910	270,910
<b>TOTAL NON-CURRENT ASSETS</b>		<u>270,910</u>	<u>270,910</u>
<b>TOTAL ASSETS</b>		<u>1,006,533</u>	<u>1,009,924</u>
<b>CURRENT LIABILITIES</b>			
Creditors & Borrowings	6	5,615	1,702
Provisions	7	1,664	4,776
Deposit received	8	142,800	142,800
<b>TOTAL CURRENT LIABILITIES</b>		<u>150,079</u>	<u>149,278</u>
<b>TOTAL LIABILITIES</b>		<u>150,079</u>	<u>149,278</u>
<b>NET ASSETS</b>		<u>856,454</u>	<u>860,646</u>
<b>ACCUMULATED FUNDS</b>			
Accumulated Funds		856,454	860,646
<b>TOTAL MEMBERS' FUNDS</b>		<u>856,454</u>	<u>860,646</u>



**NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INCORPORATED**

**ABN 85 629 315 154**

**ACCUMULATION ACCOUNT  
FOR THE YEAR ENDED 30 SEPTEMBER 2021**

	Note	2021 \$	2020 \$
OPERATING LOSS FOR YEAR	2	4,191	6,927
Less: Income tax attributable	1c	-	-
OPERATING LOSS AFTER INCOME TAX		4,191	6,927
Adjustment to prior period		-	74
ACCUMULATED FUNDS AT BEGINNING OF YEAR		860,646	867,648
ACCUMULATED FUNDS AT END OF FINANCIAL YEAR		856,454	860,646

**NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INCORPORATED**

**ABN 85 629 315 154**

**NOTES TO AND FORMING PART OF THE ACCOUNTS  
FOR THE YEAR ENDED 30 SEPTEMBER 2021**

**1. SUMMARY OF ACCOUNTING POLICIES**

The following summary explains the significant accounting policies that have been adopted in the preparation of the accounts. Unless otherwise stated such accounting policies are consistent with those used in the previous year.

**(a) BASIS OF ACCOUNTING**

The accounts, being a special purpose financial report, have been prepared for use by the members of the New South Wales Council for Civil Liberties Inc ("the Council"). The members have determined that the Council is not a reporting entity and therefore there is no requirement to apply Accounting Standards and other mandatory professional reporting requirements in the preparation of these accounts.

Unless otherwise stated in the accounts, the accounts have been prepared on an accrual basis and in accordance with the applicable disclosure requirements of AASB 1034 "Information to be Disclosed in Financial Accounts", and other applicable Accounting Standards and mandatory professional reporting requirements except for:

AASB 1005 Financial Reporting by Segments  
AASB 1017 Related Party Disclosures  
AASB 1026 Statement of Cash Flows

The accounts have been prepared on a historical cost basis and do not take into account the changing money values or current valuations, except where stated. The accounting policies adopted by the Council are consistent with those applied in the previous years except as otherwise indicated.

The following is a summary of the significant accounting policies adopted by the Council in the preparation of the accounts

**(b) PROPERTY, PLANT & EQUIPMENT**

Depreciation is calculated on the straight line basis so as to write off the net cost of each fixed asset during its expected useful life.

**(c) INCOME TAX**

The Council is considered tax exempt under the Income Tax Assessment Act and as such is not subject to Income Tax.

# NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INCORPORATED

ABN 85 629 315 154

## NOTES TO AND FORMING PART OF THE ACCOUNTS FOR THE YEAR ENDED 30 SEPTEMBER 2021 (CONTINUED)

	2021 \$	2020 \$
<b>2. OPERATING PROFIT</b>		
Operating Profit/(Loss) has been determined after:		
(a) Including in operating revenue:		
Fundraising Revenue		
Subscriptions	14,050	11,960
Other	13,461	13,674
Other operating revenue		
Interest received from other persons	11,061	14,271
	<u>38,572</u>	<u>39,905</u>
(b) Charging as expense:		
Depreciation of plant and equipment	-	149
Auditor's Remuneration	1,100	1,100
<b>3. CASH (CURRENT)</b>		
Cash Management Account	9,262	6,574
Westpac - Community Solutions	16,879	21,053
Westpac - Cash Reserve	44,583	54,571
ING Direct	28,324	28,291
PayPal	9	9
Cash on Hand	200	200
Term Deposit - ING Direct	328,976	320,651
Term Deposit - ME Bank	200,000	200,000
Cash held in Trust (PJ Donnellan & Co - Solicitors)	107,100	107,100
	<u>735,333</u>	<u>738,449</u>
<b>4. OTHER CURRENT ASSETS</b>		
Debtors	-	275
Prepayments	290	290
	<u>290</u>	<u>565</u>
<b>5. PROPERTY, PLANT &amp; EQUIPMENT</b>		
Suite 203/105 Pitt St, Sydney - at cost	270,910	270,910
	<u>270,910</u>	<u>270,910</u>

# NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INCORPORATED

ABN 85 629 315 154

## NOTES TO AND FORMING PART OF THE ACCOUNTS FOR THE YEAR ENDED 30 SEPTEMBER 2021 (CONTINUED)

	2021 \$	2020 \$
<b>5. PROPERTY, PLANT &amp; EQUIPMENT (CONTINUED)</b>		
Plant and Equipment - at cost	66,579	66,579
Less: Accumulated Depreciation	(66,579)	(66,579)
	<u>-</u>	<u>-</u>
Website Development - at cost	6,465	6,465
Less: Accumulated Depreciation	(6,465)	(6,465)
	<u>-</u>	<u>-</u>
	<u>270,910</u>	<u>270,910</u>
<b>6. CREDITORS &amp; BORROWINGS</b>		
Trade creditors	2,573	1,428
Superannuation Contributions Payable	462	274
PAYG Withholding Payable	2,580	-
	<u>5,615</u>	<u>1,702</u>
<b>7. PROVISIONS</b>		
Provision for Annual Leave	1,664	4,776
	<u>1,664</u>	<u>4,776</u>
<b>8. DEPOSIT RECEIVED</b>		
Deposit received	142,800	142,800
	<u>142,800</u>	<u>142,800</u>

In August 2019, New South Wales Council for Civil Liberties Inc ("the Council") entered into a put & call option with FT Sydney Pty Ltd as Trustee for FT Sydney Unit Trust ("FT Sydney") for the sale of Suite 203/105 Pitt St, Sydney. FT Sydney paid an amount of \$35,700 to the Council upon contractual agreement. Under the terms of this agreement, FT Sydney is granted a 12 month call option to purchase the property and the Council is granted a subsequent 2 week put option to sell the property at the agreed price. This amount of \$35,700 forms part of the deposit if the purchase proceeds. If the purchase does not proceed after these events, this amount is forfeited by FT Sydney and retained by the Council. In August 2020, contracts were exchanged for the sale of the property for \$1,428,000 with an additional \$107,100 received from the purchaser and held in Trust representing a 10% deposit. In July 2021, a deed of variation was entered into to delay the settlement date to 15 December 2022 for a variation fee of \$150,000 with \$100,000 to be received on 31 October 2021 and the remaining \$50,000 to be received on settlement date.

# NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INCORPORATED

ABN 85 629 315 154

## INCOME AND EXPENDITURE STATEMENT FOR THE YEAR ENDED 30 SEPTEMBER 2021

	2021 \$	2020 \$
<b><u>INCOME</u></b>		
Donations	13,461	7,185
Functions etc	-	6,489
Raffles	1,330	-
Rent received	34,216	27,841
Subscriptions	14,050	11,960
Interest Received	11,061	14,271
ATO JobKeeper & Cash Flow Boost (COVID-19 Stimulus)	11,400	36,848
Sundry	2,121	-
	<u>87,639</u>	<u>104,594</u>
<b><u>EXPENSES</u></b>		
Auditor's Remuneration	1,100	1,100
Accounting Fees	3,030	2,733
Advertising	2,772	-
Bank Charges	407	703
Consultants	743	-
Depreciation	-	149
Equipment purchases	1,599	-
Insurance	1,381	1,461
Postage	-	263
Printing & Stationery	-	42
Rates and Taxes	2,195	2,100
Rent	-	6,864
Salaries and Wages	66,918	74,135
Staff - Annual Leave	(3,112)	3,733
Strata Levies	5,088	8,526
Sundry Expenses	3,690	2,294
Superannuation Contributions	5,824	7,043
Telephone & Internet	195	377
	<u>91,830</u>	<u>111,521</u>
NET LOSS BEFORE INCOME TAX	<u>4,191</u>	<u>6,927</u>

# W. L. BROWNE & ASSOCIATES PTY LTD

ABN 53 628 254 277

JOHN CHEADLE F.C.A.  
BRADLEY TURNER C.A.

[john@wlbrowne.com.au](mailto:john@wlbrowne.com.au)  
[brad@wlbrowne.com.au](mailto:brad@wlbrowne.com.au)

Suite 8, 924 Pacific Highway  
Gordon NSW 2072  
PO Box 294, Gordon NSW 2072  
Telephone: 02 9498 5250

## NEW SOUTH WALES COUNCIL FOR CIVIL LIBERTIES INCORPORATED

### INDEPENDENT AUDITOR'S REPORT TO THE MEMBERS

#### Scope

I have audited the attached special purpose Financial Report of the New South Wales Council for Civil Liberties Inc. ("the Council") for the year ended 30 September 2021, comprising the Balance Sheet, Income and Expenditure Statement, and notes to the Financial Report.

The Committee is responsible for the preparation and presentation of the financial report and has determined that the accounting policies used and described in Note 1 to the financial report are consistent with the financial reporting requirements of the Council's constitution and are appropriate to meet the needs of the members. No opinion is expressed as to whether the accounting policies used, and described in Note 1, are appropriate to the needs of the members.

The Financial Report has been prepared for distribution to members for the purpose of fulfilling the Committee's financial reporting requirements under the Council's constitution. I disclaim any assumption of responsibility for any reliance on this report or on the Financial Report to which it relates to any person other than the members or for any purpose other than that for which it was prepared.

My audit has been conducted in accordance with Australian Auditing Standards to provide reasonable assurance as to whether the accounts are free of material misstatement. My procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with Australian accounting concepts and standards and statutory requirements so as to present a view which is consistent with my understanding of the Company's financial position and results of its operations.

The audit opinion expressed in this report has been formed on the above basis.

#### Audit Opinion

In my opinion, the Financial Report of the Council presents fairly in accordance with the accounting policies described in Note 1 to the Financial Report the state of affairs of the Council as at 30 September 2021 and of the results of the Council for the year then ended on that date.

  
J. C. Cheadle F.C.A.  
Registered Company Auditor

Dated: 14 October 2021

## Item 5 Appointment of Auditor

### Resolution

That W.L. Browne & Associates Pty Ltd. is appointed as the financial auditor for the 2021/2022 financial year.

**Moved by:**

**Seconded by:**

## Item 6 Appointment of Returning Officer, Election of Office Bearers & Committee Members

Returning Officer appointed by the Chair: Susan Tiffin

### Nominations for NSWCCCL Executive and Committee 2021-22

	POSITION	NAME	FINANCIAL & ELIGIBLE	NOMINATED BY	NOMINATION RECEIVED
1	President	Pauline Wright	Yes	Stephen Blanks Michelle Falstein	13 Oct 2021
2	Vice President	Lydia Shelly	Yes	Stephen Blanks Michelle Falstein	6 Oct 2021
3	Vice President	Josh Pallas	Yes	Stephen Blanks Michelle Falstein	28 Sept 2021
4	Secretary	Michelle Falstein	Yes	Stephen Blanks Josh Pallas	28 Sept 2021
5	Treasurer	Stephen Blanks	Yes	Michelle Falstein Josh Pallas	28 Sept 2021
6	Assistant Secretary	Sarah Baker	Yes	Pauline Wright Michelle Falstein	19 Oct 2021
	<b>Committee</b>				
1	Committee	Nicholas Cowdery	Yes	Josh Pallas Michelle Falstein	28 Sept 2021
2	Committee	Dr Martin Bibby	Yes	Michelle Falstein Stephen Blanks	5 Oct 2021
3	Committee	Tomas Ditton	Yes	Martin Bibby Michelle Falstein	5 Oct 2021
4	Committee	Hans Heilpern	Yes	Martin Bibby Stephen Blanks	6 Oct 2021
5	Committee	Jared Wilk	Yes	Josh Pallas Michelle Falstein	13 Oct 2021
6	Committee	Cassandra Wilkinson	Yes	Pauline Wright Martin Bibby	11 Oct 2021
7	Committee	Jonathan Gadir	Yes	Stephen Blanks Michelle Falstein	16 Oct 2021
8	Committee	Rebecca McMahon	Yes	Jared Wilk Michelle Falstein	18 Oct 2021
9	Committee	Lesley Lynch	Yes	Susan Tiffin Josh Pallas	19 Oct 2021
10	Committee	Malcolm Ramage	Yes	Lesley Lynch Michelle Falstein	20 Oct 2021



11	Committee	David Bernie	Yes	Malcolm Ramage Lesley Lynch	20 Oct 2021
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There are new/renewed members who have indicated that they wish to take up casual vacancies on the Committee at the November and January Committee meeting.

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## Item 7 Motions with Notice

### 7.1 Policy on the Minimum age of criminal responsibility

#### AGM Policy 2021

**Motion: That NSWCCCL adopts the draft policy on raising the age of criminal responsibility.**

The NSWCCCL firmly believes that the Australian community, inclusive of federal, state and territory governments, is collectively responsible for promoting and supporting the welfare of children and young people to allow them to reach their potential and transition into productive and engaged citizens.

NSWCCCL strongly supports the 'Raise The Age' campaign in calling all Australian governments to raise the age of criminal responsibility for children to 14 years.

#### Background

Currently, in all Australian jurisdictions, the age of criminal responsibility sits at 10 years old. Whilst the ACT Legislative Assembly and Northern Territory government has committed to increasing the minimum age to 14 and 12 respectively, legislative change is yet to occur. Placing the minimum age of criminal responsibility at 10 years old is not only inconsistent with international human rights standards (and a violation of Australia's obligations as a party to the Convention of the Rights of the Child ) but also runs against neuroscientific understanding of children's brain (and social) development. Exposing primary school children to arrest, strip-search and detention can not only severely hamper their social-emotional learning, but also increase the likelihood of further interactions with the justice system.

The Council of Attorneys-General (CAG) has considered the issue of criminal responsibility for children since 2018. However, despite receiving more than 90 submissions, CAG has not provided any findings. In 2020, 80% of young people in detention were aged 10–17, with the remainder aged 18 and older. On an average night in the June quarter 2020, 798 young people were in detention. The Federal Government has subsequently deferred decision-making in relation to raising the age of criminal responsibility for children to individual states and territories, rationalising that "...the overwhelming majority of offences involving children are State and Territory, not Commonwealth, offences".

Australia's commitment to international law and improving the justice system for the most vulnerable in the community is fundamental to its standing on the global stage. It is well established by the common law of NSW that a child between the ages of 10 and 14 is presumed not to be capable of having a criminal intention. This common law presumption of *doli incapax* is a presumption that can be rebutted by the prosecution calling evidence, however leading cases have shown how complex and difficult this process is when applied by the courts.

The common law presumption remains controversial as it often leads to erroneous decisions, expensive appeals, and lengthy delays in the courts, resulting in children being held in custody for extended periods of time waiting for a resolution. Many commentators will continue to differ as to the merits of the current system, however raising the age would inhibit the operation of *doli incapax* altogether.

In particular,

1. NSWCCCL asks the CAG to consider the 90 submissions received, respond to the evidence and provide meaningful findings reflecting the urgent need to raise the age of criminal responsibility in Australia. The rights of the child are fundamental to Australia's responsibility to its citizens as well as complying with international humanitarian obligations.
2. NSWCCCL supports the contention that a minimum any lower than 14 years old for criminal responsibility perpetuates a cycle of crime and continued disadvantage, from which many children are unable to break away, and is counter-productive to maintaining safer and more connected communities.
3. NSWCCCL supports alternative sentencing and detention models for less grievous crimes (being the significant majority) and welfare-based responses to offending. Such models allow for therapeutic interventions that prioritise the often holistic needs of the child, including:
  - a) health and mental health care;
  - b) drug and alcohol rehabilitation support;
  - c) support to re-engage with schooling;
  - d) access to safe and appropriate housing and family support programs; and
  - e) programs to help children reconnect with culture, community and education.

Youth work programs have proven to be highly effective at 'significantly' reducing offending and recidivism. The economic cost of youth work programs amounts to \$1,680 per year for each young person, equating to less than half the cost of traditional detention. Investment in such programs is also in line with the recommendations of the Armytage and Ogloff Review.

The minimum age for criminal responsibility should reflect the age at which a young person can safely be held to understand the criminality of prohibited conduct, satisfactorily comprehend what happens during criminal proceedings and effectively participate. This cannot be said, as a general proposition, for a 10-14 year old child. The primary rationale for the minimum age of criminal responsibility should be consideration of the future livelihoods and wellbeing of young children.

NSWCCCL is aware of David Shoebridge's proposed Children (Criminal Proceedings) Amendment (Age of Criminal Responsibility) Bill 2021, which seeks to raise the minimum age for criminal responsibility, and provides in principle support to the Bill in its current form.

#### **Resolution:**

That the proposed policy on raising the age of criminal responsibility, be adopted.

#### **Moved by:**

#### **Seconded by:**

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## **7.2 Policy on Delegated Legislation**

### **Motion: NSWCCCL adopts the following policy position:**

- For the rest of the COVID-19 pandemic, and in a future crisis, the NSW and Commonwealth parliaments ensure that our system of crisis law-making is fit for purpose, including by:
  - embedding human rights scrutiny into all emergency responses, including through the operation of a charter of human rights;
  - subjecting all delegated legislative crisis powers to legislative tests for likely effectiveness, necessity, and proportionality;
  - eliminating the presence of poor regulation-making practices such as Henry VIII clauses or 'skeleton legislation' in crisis legislation;
  - mandating that changes to the law that seriously affect our core civil and human rights are enacted in primary legislation;

- ensuring that all delegated legislation is subject to disallowance, or where in the most exceptional circumstances an exemption is warranted, ensuring that such delegated legislation does not contain Henry VIII clauses and is subject to a sunset period;
- ensuring that emergency periods cannot be extended indefinitely without parliamentary approval;
- providing a merits review avenue with open standing for crisis delegated legislation;
- resolving that parliament should continue sitting, even during emergencies, in order to provide its scrutiny and supervisory functions over delegated legislation;
- providing transparency around decision-making bodies such as the National Cabinet;
- ensuring that ordinary scrutiny mechanisms resume as soon as reasonably practicable;
- actively exercising disallowance powers when available and necessary;
- strengthening the ability of parliamentary committees to review delegated legislation.
- The NSW and Commonwealth governments should:
  - draft crisis delegated legislation for clarity and precision rather than in sparse and general terms which leave citizens and authorities on their own to interpret;
  - limit the discretion of police under crisis delegated legislation that effectively creates criminal offences;
  - ensure that crisis delegated legislation is widely accessible and available;
  - endeavour to avoid crisis delegated legislation that is highly unstable.

### Background and rationale:

The use of delegated legislation<sup>1</sup> in the context of the COVID-19 pandemic has exploded. This is not just about quantity; delegated legislation has intruded into our lives more than ever before, regulating a plethora of activities, answering significant questions of policy, effectively creating serious offences and having a significant impact on individual rights and liberties. For the rest of our lives, we will probably all remember the days when we were not allowed to sing or dance in entertainment venues, leave our country, or even leave our residence without a reasonable excuse.

Many of the most important changes in NSW have been introduced through Public Health Orders made by the Minister for Health under extremely broad powers under section 7 of the *Public Health Act 2010* (NSW). While the States and Territories have been the primary managers of the pandemic response, and therefore the major sources of intrusive regulations, the legal architecture underpinning the Commonwealth response to the pandemic (section 477 of the *Biosecurity Act 2015* (Cth)) is similar.

Delegated legislation has for many years been a major source of legislation, and the modern state depends on it.<sup>2</sup> NSWCCCL acknowledges that there are advantages in using delegated legislation. It may be especially convenient to use delegated legislation for highly technical and expert legislation or for rapidly changing or uncertain situations. Yet convenience does not trump high principle. There has been too little scrutiny, too little accountability, and too much power concentrated in too few hands.

The changes for which NSWCCCL calls should be implemented as soon as possible for the duration of the pandemic and in future crises. They are based on our fundamental commitments to three concepts, or perhaps more accurately, bundles of concepts: civil liberties/human rights, democracy and the rule of law (all of which

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<sup>1</sup> I note that there is some debate about whether the Public Health Orders issued in NSW by the Minister for Health under section 7 of the *Public Health Act 2010* (NSW) are actually delegated legislation, but for convenience I assume that they are for the purposes of this motion.

<sup>2</sup> Ibid.

may be interconnected). From our commitment to civil liberties/human rights we deduce that law-making in a crisis cannot infringe our hard-won rights without serious scrutiny and public justification as to suitability, necessity and proportionality. From our commitment to democracy we deduce that insofar as possible, the elected parliament, subject to the Constitution, is best placed to make our laws. Parliament has a responsibility, not lightly to be abdicated, to play the role of lawmaker-in-chief, and to exercise scrutiny over the government constitutionally accountable to it. This is connected to our third commitment, broadly speaking, the principle that the Executive must be restrained by and subject to the law, otherwise known as the rule of law.

**Resolution:**

That the proposed policy on delegated legislation, be adopted.

**Moved by:**

**Seconded by:**