



NSW Police Force
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OFFICE OF THE COMMISSIONER

The Honourable Kayee Griffin MLC
Chair, Legislative Council
Privileges Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Mr Paul Pearce MP
Chair, Legislative Assembly
Privilege and Ethics Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

D/2010/85861

Dear Chairs,

I refer to your letter dated 20 May 2010, requesting the NSW Police Force (NSWPF) provide comment on a draft *Memorandum of Understanding on the Execution of Search Warrants in the Premises of Members of the NSW Parliament between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly* (the draft MoU).

Upon review of the draft MoU, the following comments and recommendations are provided for your consideration.

Clause 7 (1) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member and clause 7 (1) concerning the execution of a warrant on premises used or occupied by a member (not being at Parliament House) refer to the role of the Commissioner.

It is recommended that these clauses be amended to refer to the *Commissioner or the Commissioner's delegate*.

As acknowledged in your letter, it is imperative that the agreed procedures for the execution of search warrants on the premises of members of the NSW Parliament both ensure documents subject to parliamentary privilege are identified and protected from seizure and preserve the integrity of criminal investigations. Indeed, it is in the interests of all parties that the agreed procedures be sufficiently rigorous and beyond reproach.

Recognising that the parliamentary privilege afforded the Parliament is unquestionable, it is the case that the Speaker may waive the exercise of parliamentary privilege in relation to the whole or any part of a search warrant. In this regard, I make the following recommendation for amendment to clause 7 of the draft MoU.

Clause 7 (4) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member provides that:

The (Officer of the NSW Police Force) will allow the member and the Clerk a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.

Similarly, clause 7 (3) of the draft MoU concerning the execution of warrants on premises used or occupied by a member (not being at Parliament House) provides that:

The (Officer of the NSW Police Force) will allow the member a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.

It is recommended that the above clauses be expanded upon to provide that, whenever possible, the search warrant, or a draft, be provided to the Speaker in advance in order that the Speaker may, on legal advice if necessary, consider waiving parliamentary privilege in respect of the execution of the whole or any part of the search warrant.

Clause 7 (5) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member and clause 7 (4) concerning the execution of a warrant on premises used or occupied by a member (not being at Parliament House) provide that the (Officer of the NSW Police Force) will assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege.

To provide the necessary flexibility for the execution of search warrants, it is suggested these clauses be amended to provide that the NSWPF *may* assign a lawyer to attend.

Proposed clauses 4, 5 and 6 of the draft MoU concern search warrants issued in NSW to the NSWPF; procedures prior to applying for a warrant; and applying for a warrant respectively. In the highlighted notes of the draft MoU it is suggested the NSWPF provide the content for these clauses; outlining relevant NSWPF procedures or guidelines.

Given the NSWPF procedures with respect to applying for search warrants in NSW are prescribed by the *Law Enforcement (Powers and Responsibilities) Act 2002*, it is suggested that proposed clauses 4, 5 and 6 are unnecessary inclusions in this MoU.

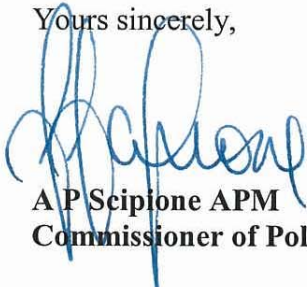
A modern complexity experienced by the NSWPF in the execution of search warrants is the electronic storage of documentation. In the context of this MoU, the identification of documents and other material attracting parliamentary privilege which are, for example, stored in a computer along with other documents not attracting parliamentary privilege, presents practical challenges.

To ensure the integrity of criminal investigations it is imperative that electronically stored documents attracting parliamentary privilege are identified and separated, allowing police access to the remaining documents and material within the scope of the search warrant. In these circumstances, a technical information expert may be required to attend the search and I suggest that consideration be given to whether it is necessary to amend the draft MoU accordingly.

Finally, highlighted references to the *Officer of the NSW Police Force* may be amended to the *Search Team Leader* throughout and it appears the word *phase* in clause 3, paragraph 4 is a typographical error.

I look forward to receiving your feedback on these recommendations. Should you have any queries concerning the comments provided, please do not hesitate to contact Ms Letitia Davy, Office of the Commissioner, on (02) 8263 6361 or email davy1let@police.nsw.gov.au

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'A P Scipione', written over the typed name and title.

A P Scipione APM
Commissioner of Police

30 JUN 2010