



OFFICE OF THE NATIONAL MANAGER POLICY & GOVERNANCE

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18 June 2010

The Clerk to the Committee
New South Wales Legislative Council
Privileges Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

RECEIVED

23 JUN 2010

LEGISLATIVE
COUNCIL

Dear Sir/Madam

Thank you for your letter dated 20 May 2010 concerning a protocol covering the execution of search warrants on the premises of Members of the New South Wales Parliament.

You have asked for our views on the likelihood of the Australian Federal Police executing a search warrant on premises used by Members of the NSW Parliament. You have also sought our views on the value of the AFP entering into a search warrants protocol with the NSW Parliament.

Because the AFP's responsibilities include the investigation of Commonwealth criminal offences, there may be infrequent occasions where evidence relevant to such investigations is located on the premises of a Member of the New South Wales Parliament. While I would expect these occurrences to be rare, it is not possible to provide definitive views on the likelihood of this situation occurring, due to the unpredictable nature of criminal activity and the diverse range of circumstances that could lead to evidence being located on those search premises.

As you are aware, the AFP currently has a Memorandum of Understanding and agreed procedures in place for the execution of search warrants on premises of Members of the Federal Parliament ('the AFP MOU'). I understand that the AFP MOU and associated procedures have to some degree operated as a model for the development of similar protocols in other jurisdictions.

In my view, the AFP MOU and the associated procedures contained in the *AFP National Guideline for Execution of Search Warrants where Parliamentary Privilege may be involved* represent an appropriate framework for dealing with parliamentary privilege claims and related issues that may arise when

executing a search warrant on premises occupied by a Member of a State Parliament.

The current AFP MOU also provides scope for disputed claims of parliamentary privilege to be resolved on a case by case basis. As you will be aware, there are different views regarding the way parliamentary privilege operates in relation to the seizure of material under a search warrant, so there appears to be value in continuing to deal with such issues in accordance with the procedures set out in the AFP's MOU.

On that basis there does not appear to be any pressing requirement for the AFP to enter into an additional Protocol with NSW or other State Parliaments covering the same issues that are currently dealt with in the AFP MOU. However, the AFP would be happy to give further consideration to this proposal if it was recommended by the Inquiry.

I have sent this same response to the New South Wales Legislative Assembly Privileges and Ethics Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Black', with a long horizontal stroke extending to the right.

Chris Black
Performing the Duties of National Manager
Policy & Governance