

**INQUIRY INTO INQUIRY INTO EXECUTION OF SEARCH  
WARRANTS BY THE AUSTRALIAN FEDERAL POLICE**

**Name:** The Clerk of the Parliaments

**Date Received:** 15 September 2020

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LEGISLATIVE COUNCIL

OFFICE OF THE CLERK

15 September 2020

D20/45073

The Hon. Peter Primrose MLC  
Chair  
Privileges Committee  
Legislative Council  
Parliament House  
SYDNEY NSW 2000

Dear Chair,

**Submission – Inquiry into the execution of search warrants by the AFP**

Thank you for the opportunity to make a submission to this important inquiry and for providing me with a copy of the initial submission of Mr Moselmane (submitted by his Counsel, Mr Stephen Stanton) and the submission of the Australian Federal Police.

I understand from the Clerk of the Committee that the draft report being prepared for consideration by the Committee deals with the factual matters in relation to the execution of the search warrants in respect of the home and parliamentary office of the Hon. Shaoquett Moselmane MLC on 26 June and 23 to 25 July 2020, as well as key principles concerning parliamentary privilege and the procedures being followed under the *AFP National Guideline for Execution of Search Warrants where Parliamentary Privilege may be involved*. I will therefore not elaborate on any of these issues but will focus solely on the question of which of the documents potentially in dispute are proceedings in Parliament.

I note that Mr Moselmane (Stanton) in his submission submitted that 12 of the documents from the consolidated list prepared by my office, based upon the indexes prepared by the AFP, are privileged. I also note that the AFP in its submission accepts the claims of privilege made by the member in respect of each of those 12 items. The 12 items are listed with their identifying number and description from the consolidated index in attachment 'A' to this submission.

In my view each of the 12 documents identified meet either step 1 or step 2 of the three step test "used in the determination of the matters involving documents seized by the Independent Commission Against Corruption from the Honourable Peter Breen in 2003 and 2004, as amended by the Senate Privileges Committee in its Report 164, dated March 2017, entitled "Search warrants and the Senate".

In my submission it would therefore be appropriate for the Committee to recommend to the House that it uphold Mr Moselmane's claim of privilege in relation to those 12 listed items and for a notice of motion to be given by the Chair of the Committee to that effect, including the document details as set out in attachment A.

I note Mr Moselmane's (Stanton's) further submission that the other 107 items currently in my safekeeping remain so and not be released to or accessed by the AFP until the conclusion of the proceedings brought before the High Court of Australia by Mr Zhang in relation to the search warrants executed in relation to Mr Zhang's premises and electronic documents. I note that the AFP submits that the Committee should decline the member's request and sets out relevant reasons, including asserting that the AFP is currently "at liberty to access and use the material in the Zhang proceeding, despite the challenge to the warrants pursuant to which the material was seized". It is my understanding that generally speaking I do not have the authority to do anything other than to release most of the other 107 items to the AFP once the House has determined the status of the 12 documents referred to above. The one caveat I have been advised I should make however is in relation to seven items which are electronic documents listed in the index as items 113 to 119 and which were sought to be seized pursuant to the warrant executed on 23 to 25 July, which warrant is one of those the subject of the Zhang High Court proceedings. I have been advised that in order to ensure that I fully discharge my responsibilities under the *AFP National Guideline for Execution of Search Warrants where Parliamentary Privilege may be involved*, before releasing those six items to the AFP, I should inform both Mr Moselmane (Stanton) and Mr Zhang. Presumably if either of them object to the release of those items I will need to seek written legal advice before doing so.

However, whilst I am not in a position to accede to Mr Moselmane's (Stanton's) request, I do appreciate the reasons he has made the request. I would welcome the opportunity to discuss these with the Committee, together with a number of other matters the Committee may wish to consider exploring during a follow up inquiry related to these matters.

Please do not hesitate to contact me if I can be of any further assistance.

Yours sincerely, ..

**David Blunt**  
Clerk of the Parliaments

Encl:

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**ATTACHMENT A**

7. Document – 'PEOPLE'S REPUBLIC OF CHINA FOUNDING SEVENTIETH ANNIVERSARY.docx'
  - A motion by Mr Moselmane to the House in relation to the seventieth anniversary of the founding of the People's Republic of China.
11. Document – 'NoM Commemoration of 200 years of Chinese Migration.docx'
  - Draft Notice of Motion from Mr Moselmane, regarding celebrations of the 200<sup>th</sup> Anniversary of Chinese Migration to Australia.
  - Details notable attendees and acknowledges the organising committee, including president Professor Xiangmo Huang and others.
14. Document – 'Speech on Chinese Community Language teachers presentation.doc'
  - Speech acknowledging support of the Australian Chinese community, and recognising a number of named individuals in attendance.
  - Congratulates a number of Chinese community language teachers.
54. Document – 'Rockdale Council resignation letter.doc'
  - Appears to be collection of Hansards (inaugural speech) cut and pastes of Moselmane in Parliament.
  - Near bottom of document, talking about Australia Chinese Association. Also his history with China.
55. Document – 'November 22 DRAFT Notice of Motion.doc'
  - Collection of draft notice of motion. Some relate to Australian Federation of Chinese organisations of Vietnam, Kampuchia, Laos re peaceful reunification of China.
56. Document – 'inaugural speech – SPECIAL ADJOURNMENT.doc'
  - Moselmane's inaugural speech to Parliament, gives thanks to Chinese Consul members in attendance at this moment – Peng Douyi, Fu Aiming
58. Document – 'Inaugural Speech – Hansard.doc'
  - Moselmane's inaugural speech to Parliament, gives thanks to Chinese Consul members in attendance at this moment – Peng Douyi, Fu Aiming
60. Document – 'Shaoquett Moselmane MLC inaugural speech.doc'
  - Moselmane's inaugural speech to Parliament, gives thanks to Chinese Consul members in attendance at this moment – Peng Douyi, Fu Aiming

- 63. Document – 'shaoquett FINAL speech LATEST Wednesday.doc'
  - Appears to be draft of inaugural speech.
  
- 110. HON%20SHAOQUETT%20MOSELMANE%20-%20Inaugural%20speech[l].pdf
  - a. Inaugural speech for Moselmane.
  
- 111. Draft motion for Australian Chinese Daily 20120309.docx
  - a. Draft motion to note and congratulate the Australian Chinese Daily in its role for promoting Australian-Chinese communities.
  
- 112. November 22 Draft Notice of Motion.doc
  - a. Several motions put forward by Moselmane relating to Australian Chinese community and in promotion of the peaceful reunification of China.