

**INQUIRY INTO EXECUTION OF SEARCH WARRANTS BY
THE AUSTRALIAN FEDERAL POLICE NO. 3**

Name: The Clerk of the House of Representatives, New Zealand
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18 February 2021

Hon Peter Primrose MLC
Chair of the Privileges Committee
Legislative Council of New South Wales
Parliament House
Macquarie Street
Sydney, NSW 2000
AUSTRALIA

By email to: privilege@parliament.nsw.gov.au

Dear Mr Primrose

Submission on the Inquiry into the execution of search warrants by the Australian Federal Police No. 3

Thank you for the opportunity to make a submission on the Inquiry into the execution of search warrants by the Australian Federal Police No. 3. My submission focuses on the New Zealand Parliament's agreements with the New Zealand Police, and our experience with the operation of these agreements.

Agreements with the New Zealand Police

The New Zealand Parliament has two separate agreements with the New Zealand Police. There is a general agreement governing policing functions within the Parliamentary precincts (the "Policing Agreement"),¹ as well as a specific agreement governing the execution of search

¹ *Policing Functions Within the Parliamentary Precincts - an agreement between the Speaker of the House of Representatives of New Zealand and the Commissioner of the New Zealand Police*, May 2017, available at: <https://www.parliament.nz/media/4071/2017-06-01-signed-policing-protocol-between-the-speaker-and-the-commissioner-of-police.pdf>.

warrants on premises occupied or used by members of Parliament (the “Search Warrant Agreement”).²

The Policing Agreement covers policing functions very generally but it does not deal specially with the execution of search warrants. The Search Warrant Agreement was adopted as an interim agreement in 2006 when the police executed a search warrant as part of the investigation into the activities of a member who was later convicted of 11 charges of bribery and corruption as a MP, and 15 charges of perverting the course of justice. As the search involved material held in parliamentary and electorate offices, the Speaker and the Commissioner of Police entered into an interim agreement prior to the search being undertaken. The Speaker later stated that:³

The interim agreement was designed to ensure that the search warrant was executed without improperly interfering with the functioning of Parliament, and that any claim of parliamentary privilege in relation to physical or electronic documents that the police may have wanted to seize could be raised and properly resolved. Such a situation had not arisen before, and an interim agreement was required to provide for the immediate circumstance.

The interim agreement was presented to the House in November 2006 with a view to it being considered by the Privileges Committee once the matter regarding the member was finally resolved. In the event, this did not occur until 3 September 2012.

On 18 September 2012, the Speaker referred the interim Search Warrant Agreement, together with the Policing Agreement and a further agreement regarding the collection and retention of information by the New Zealand Security and Intelligence Service to the Privileges Committee for review.

The Privileges Committee finally reported on the three agreements in 2014.⁴ The Committee recommended a number of changes to the interim agreement, including greater provision for electronic searches and a dispute resolution process for disagreements about the interpretation or application of the agreement. These changes were made and the Search Warrant Agreement was adopted in final form in 2017.

The Search Warrant Agreement’s key features are:

- Police must get the approval of an Assistant Commissioner of Police or above before applying for a warrant in respect of matters covered by the agreement.
- Prior to executing a warrant the Police must notify Speaker of the proposed search, outline the scope of the warrant and the nature of the material that Police consider is located at the intended search location.
- Any warranted search must not take place at a time when the House is actually sitting or when a committee is actually meeting, the member must be given the opportunity to

² *Agreement for the execution of search warrants on premises occupied or used by members of Parliament* (NZ), June 2017, available at: <https://www.parliament.nz/media/3990/signed-search-warrant-agreement-170601.pdf>.

³ (7 November 2006), Vol 635, NZPD, 6201.

⁴ Privileges Committee (NZ), *Question of privilege concerning the agreements for policing, execution of search warrants, and collection and retention of information by the NZSIS*, 2014.

be present for the search, and where the search takes place within the parliamentary precinct, the search should be conducted when the Clerk is present.

- The member must be given a reasonable opportunity to claim parliamentary privilege in respect of anything being searched and the Police must take all reasonable steps to minimise the extent to which documents that may attract parliamentary privilege are examined or seized.
- Where privilege is claimed by a member, the material is placed in the safe custody of the Clerk until a decision about parliamentary privilege has been made. The Speaker determines any claim of privilege.
- Where there is a dispute about the interpretation or application of the agreement, the agreement provides a process to determine the matter.

The Search Warrant Agreement relies on privilege being claimed by a member. A person working for a member may claim privilege on the member's behalf (with the member's consent), but the agreement does not explicitly provide for anyone other than a member to claim privilege under the agreement.

Any claim of privilege relies on the document or information being a proceeding in Parliament. The New Zealand Parliamentary Privilege Act 2014 defines proceedings in Parliament as "all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of the House or of a committee." While the issue has not arisen in respect of the operation of the Search Warrant Agreement, in my view an exact translation of proceedings in Parliament must be treated in the same way as a copy of the proceedings would be. It is difficult to see why a copy of the proceedings made in English or Māori should be protected but a translation of that information would not be similarly protected.

Recent experiences with using the Search Warrant Agreement

There has been limited reliance on the agreement since it was finally agreed in 2017. In the limited instances where a search warrant has been issued, the relevant members did not claim privilege in any of the material seized under the warrants (these were mainly telephone records of two members and consisted of text exchanges between them).

While that matter did not result in the agreement being operated, the existence of the agreement provided useful guidance for Police and ensured early engagement with my office to ensure that the exercise of their enforcement powers was consistent with the constitutional protections of Parliament.

Yours sincerely

David Wilson
Clerk of the House of Representatives