

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

Name: The Australian Federal Police

Date Received: 4 March 2021



AFP
AUSTRALIAN FEDERAL POLICE

COMMISSIONER

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4 March 2021

The Hon Peter Primrose MLC
Chair
New South Wales Legislative Council
Privileges Committee

Via email: Privilege@parliament.nsw.gov.au

Dear Mr Primrose

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

Thank you for your correspondence of 16 December 2020 inviting the AFP to make a submission on the merits of a formal memorandum of understanding between the New South Wales Parliament and the AFP.

I welcome the opportunity to continue to work with the NSW Parliament whenever issues of parliamentary privilege arise to ensure both entities can effectively fulfil their functions. The strength of our existing relationship was evident in the cooperative and professional manner of both parties when the AFP executed search warrants in June 2020.

The June 2020 warrants were conducted in accordance with the *AFP National Guideline for Execution of Search Warrants where Parliamentary Privilege may be involved* (**National Guideline**), which forms part of the 2005 MOU on the execution of search warrants in the premises of members of (Commonwealth) Parliament. The conduct of those warrants highlighted how that process is still sufficient to protect parliamentary privilege while facilitating the legitimate objectives of the AFP to enforce the Commonwealth criminal law.

The MOU (and National Guideline) is currently under review, following a resolution passed by the Senate on 19 December 2018.

Any revised MOU and accompanying guideline will likely result in changes to the scope of material covered by the current guidance documents, and may well alter the process of how claims of privilege may be made and resolved. The drafting process is being led by the Attorney-General's Department (**AGD**) in consultation with the Department of Home Affairs (**DHA**) and the AFP, and representatives of the President of the Senate and Speaker of the House of Representatives and other parliamentarians being consulted by them.

In the meantime, the AFP would continue to apply the current Commonwealth MOU and guideline to matters relating to NSW Parliament.

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This is consistent with the commitment made by the AFP in our correspondence of 18 June 2010 to the Privileges Committee in response to a similar proposal (attached).

I understand the current Commonwealth MOU is substantially the same as that which applies to NSW executive agencies, and our recent experience suggests that it can be applied successfully.

While there may be merit in exploring a standalone MOU between the Parliament of NSW and the AFP, I consider any concluded view about the necessity of such a document should wait until the Commonwealth MOU drafting process is finalised.

I look forward to continuing the longstanding cooperation between the AFP and NSW Parliament into the future.

Yours sincerely

Reece Kershaw APM
Commissioner

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