

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

Name: The Clerk of the Parliament, Queensland

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Queensland Parliamentary Service

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Hon Peter Primrose MLC
Chair
Legislative Council Privileges Committee
Parliament House
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Dear Hon Primrose

Thank you for your invitation to make a submission to the Legislative Council Privileges Committee's inquiry into the execution of search warrants by the Australian Federal Police (AFP) (No. 3). Please find below a submission in response to the terms of reference (ToR) concerning claims of privilege in the Queensland context and the execution of search warrants by law enforcement agencies on members of the Legislatively Assembly.

ToR (a) – (c) Privilege and 'proceedings of parliament'

Parliamentary privilege exists to enable the parliament, including its committees and members, to proceed with its business without interference or molestation and to protect it against unwarranted attacks upon its authority. Generally, the powers, rights and immunities of the United Kingdom House of Commons apply to the Legislative Assembly of Queensland, by virtue of section 9 of the *Constitution of Queensland 2001*.

With respect to claims of privilege made by members and staff over documents in their possession and control, the *Parliament of Queensland Act 2001* (POQA) is most relevant. Section 8 of the POQA is in essence a reproduction of the *Bill of Rights 1688*, which enshrines the most important provision relating to parliamentary privilege—freedom of speech and debates in the Parliament. This provides that speeches, debates or other proceedings in the parliament cannot be impeached or questioned in any court or place out of parliament.

For parliamentary privilege to apply, it must be determined whether the document is in fact a 'proceeding' of parliament. The POQA defines the term 'proceedings in the Assembly' and provides for the protection of the Record of Proceedings (Hansard) and other documents published under the authority of the House or a committee. Section 9(1) of the POQA provides that the term 'proceedings in the Assembly' include all words spoken and acts done in the course of, or for the purposes of or incidental to, transacting business of the Assembly or a committee.

Section 9(2) of the POQA provides that 'proceedings in the Assembly' include:

- a) *giving evidence before the Assembly, a committee or an inquiry;*
- b) *evidence given before the Assembly, a committee or an inquiry;*
- c) *presenting or submitting a document to the Assembly, a committee or an inquiry;*
- d) *a document tabled in or laid before, or presented or submitted to, the Assembly, a committee or an inquiry;*

- e) *preparing a document for the purposes of, or incidental to, transacting business mentioned in paragraph (a) or (c);*
- f) *preparing, making or publishing a document (including a report) under the authority of the Assembly or a committee; and*
- g) *a document (including a report) prepared, made or published under the authority of the Assembly or a committee.*

Section 55 of the POQA authorises the production of 'evidentiary certificates', whereby an authorising person¹ can certify whether a document is considered a proceeding of parliament to which privilege would therefore apply.² The process of determining whether a document is a proceeding of parliament, and therefore protected by privilege, is the same whether a claim of privilege is raised by a member or a staffer.

ToR (d) Privilege and the execution of search warrants

The execution of a search warrant is one way in which the immunity of a member's communications may be impinged upon. Members' parliamentary communications vary widely in nature. They include correspondence with ministers, departments and other entities; attachments to letters; file notes; diary entries; and emails and other electronic communications. During the course of executing a search warrant on a member's office, vast amounts of material may potentially be seized under the warrant, some of which may be immune from seizure because it is subject to parliamentary privilege.

In 2003, the Members' Ethics and Parliamentary Privileges Committee (MEPPC) undertook an inquiry into parliamentary privilege in Queensland, with a focus on communications with members, members' representations to government and information provided to members.³ In the course of its inquiry, the MEPPC found that while the execution of search warrants had not been an issue in Queensland, the development of protocols for the execution of search warrants would ensure the integrity of parliamentary process is preserved, and that any material to which a claim of privilege attaches can be appropriately identified.

In 2014, former Speaker Simpson signed a memorandum of understanding (MoU) with the Queensland Police Service (QPS); and on 13 October 2015, former Speaker Wellington made a statement in the House advising of the finalisation of protocols for the execution of search warrants on members of the Legislative Assembly by the [QPS](#) and the [Crime and Corruption Commission](#) (*copies enclosed*).⁴ While there has been no MoU entered into with the AFP, in practice when they have executed warrants on members electorate offices the same principles and steps in the MoUs have been followed.

Protocols for the execution of search warrants on members of the Legislative Assembly

Under the protocols, prior to the warrant being executed, the QPS will advise the Speaker of its intention to execute a warrant on a confidential basis. The Speaker will advise the Clerk at the earliest opportunity and may seek the advice of the Clerk on the matter. In the absence of the Speaker, the QPS will advise the Clerk. A warrant should not be executed on a sitting day or a day on which a committee involving the member is meeting unless compliance with this prohibition would affect the integrity of the investigation. These are necessary protocols to minimise any potential disruption to the proceedings of the Assembly rather than to provide members with special concessions.

While the protocols should be considered in their entirety, the following excerpts relate specifically to claims of privilege and highlight processes to be taken into account by officers executing a search warrant:

Parliamentary privilege and contempt

3.1 A search warrant, if otherwise valid, can be executed over premises occupied or used by a member of the Queensland Legislative Assembly. Evidentiary material cannot be placed beyond the reach of QPS Officers simply because it is held by a member or is on premises used or occupied by a member.

¹ Per section 48 of the POQA, 'authorising person' means the Speaker, the chairperson of a committee, the Clerk or the chief reporter.

² See section 55(2) of the POQA.

³ MEPPC, *Report on Inquiry into Communications to Members, Members' Representations to Government and Information Provided to Members*, [Report No. 60](#).

⁴ Queensland Parliament, Record of Proceedings, 13 October 2015, Hon Mr Peter Wellington MP, Speaker.

3.2 However, in executing a warrant on premises used or occupied by a member care must be taken regarding any claim of parliamentary privilege. Parliamentary privilege attaches to any material including electronic documents, which falls within the scope of 'proceedings in Parliament' as per Article 9 of the Bill of Rights 1688.

3.4 The question of whether the material constitutes 'proceedings in Parliament' may turn on what has been done with the material, or what the member intends to do with it, rather than what is contained in the material or where it is found.

3.5 Care must also be taken by QPS Officers in executing a warrant on premises used or occupied by a member not to improperly interfere with the free exercise by the member of the performance of their duties or the authority or function of the Assembly or its committees.

Processes specific to claims of privilege

4.1.8 The QPS will allow the member a reasonable opportunity to claim parliamentary privilege in respect of the documents or other things located on the premises.

4.1.9 Hard copy documents over which parliamentary privilege is claimed should be placed in a property bag or other secured container. A list of those documents should be prepared by the QPS with assistance from the member or staff member. The member or staff member or the Clerk should be given the opportunity to make copies of those documents before they are secured.

4.1.10 Electronic documents (such as files on a computer hard drive) may need to be removed from the premises in order to copy them. For evidentiary purposes such removal and copying may be necessary prior to the documents being viewed for the purposes of identifying claims of privilege. In such instances, the QPS must advise the member or staff member or the Clerk of its intention to remove the electronic documents and the place of copying and agree to the time and place for the member or staff member and the Clerk to view the electronic documents for the purposes of identifying claims of privilege. Any electronic documents identified as being privileged should be partitioned by the QPS' forensic staff and not provided to the investigative staff.

4.1.11 At the conclusion of the search the QPS should provide the member with a list of the items seized and inform the member that to the extent possible the QPS will facilitate access to the seized material where necessary for the performance of the member's duties.

4.1.12 The QPS should deliver any documents over which parliamentary privilege is claimed in a property bag or other the secured container to the Clerk of the Parliament who will examine each document.

4.1.13 A list of material considered to be within the scope of the proceedings of Parliament will then be prepared by the Clerk and provided to the member and the QPS.


4.1.14 Any material not listed as falling within the scope of proceedings of Parliament will made be available to the QPS by the Clerk.

4.1.15 In the event the QPS disputes the claim of privilege, the QPS may write to the Speaker of the Legislative Assembly and the matter will then be determined by the House or judicial process.

The committee may wish to consider these protocols that have been developed in the Queensland context when determining whether to proceed with a formal memorandum of understanding between the Parliament of New South Wales the AFP.

For further information in relation to this submission, please do not hesitate to contact the Clerk's Office on 07 3553 6451 or at ClerksOffice@parliament.qld.gov.au.

Yours sincerely

 Neil Laurie
The Clerk of the Parliament