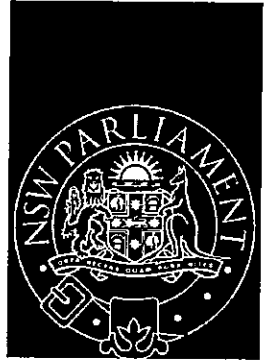


LEGISLATIVE ASSEMBLY



Standing Committee on Parliamentary Privilege and Ethics

**REPORT ON A MEMORANDUM OF UNDERSTANDING WITH THE NSW
POLICE RELATING TO THE EXECUTION OF SEARCH WARRANTS ON
MEMBERS' PREMISES**

October 2010

REPORT ON A MEMORANDUM OF UNDERSTANDING WITH THE NSW POLICE RELATING TO THE EXECUTION OF SEARCH WARRANTS ON MEMBERS' PREMISES

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MEMBERSHIP AND STAFF

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	<u>Mr Phillip Costa MP*, Member for Wollondilly</u>
	<u>Mr Malcolm Kerr MP, Member for Cronulla</u>
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	<u>Mr Gerard Martin* MP, Member for Bathurst</u>
	<u>Ms Clover Moore MP, Member for Sydney</u>
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	<u>Hon Graham West MP*, Member for Campbelltown</u>
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CHAIRMAN'S FOREWORD

This report builds upon the previous work of the Committee in developing a Memorandum of Understanding with an external investigative agency regarding execution of a search warrant on an office of a Member of the New South Wales Parliament. Such MOUs are an important recognition of the privileges connected with the respective constitutional functions of the Parliament, the executive of the Crown, and the Courts.

On 11 December 2009, the Hon Richard Torbay, Speaker of the Legislative Assembly and the Hon Amanda Fazio, President of the Legislative Council, executed a Memorandum of Understanding with the Hon David Ipp, AO QC Commissioner of the Independent Commission Against Corruption on 11 December 2009. The Memorandum of Understanding had been drawn up following an extensive consultation process between this Committee, the Legislative Council Privileges Committee, and the Independent Commission Against Corruption.

As the NSW Police Force is the other agency most likely to seek to execute a search warrant in the premises of a member, this Committee and the Privileges Committee sought a reference from the Parliament to undertake development of a similar MOU with the NSW Police. The recommended agreement which will be reported to the Legislative Assembly can be found at Appendix 9 of this report.

I commend this report to the House.

A handwritten signature in black ink, appearing to read 'Paul Pearce', with a large, sweeping flourish extending to the right.

Paul Pearce, MP
Committee Chairman

Summary of recommendations

Recommendation 1:

That the House resolve that the Speaker enter into the Memorandum of understanding on the execution of search warrants in the premises of Members of the New South Wales Parliament between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly, as set out in Appendix 9 of this report.

Recommendation 2:

That the House consider the message of the Legislative Council which was reported on October 19, 2010 and send a message advising that it has agreed to the request.

CHAPTER 1: Terms of reference

STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS REFERENCE

The order of the day was read.

Mr Aquilina moved, That:

- (1) This House notes that in December 2009, the Speaker of the Legislative Assembly, the President of the Legislative Council, and the Commissioner of the Independent Commission Against Corruption entered into a memorandum of understanding on the execution of search warrants in the Parliament House offices of members of the New South Wales Parliament.
- (2) The Standing Committee on Parliamentary Privilege and Ethics inquire into and report on:
 - (a) the development of a memorandum of understanding between the Speaker and the Commissioner of Police covering the execution of search warrants by the New South Wales Police Force on the premises of members, and
 - (b) whether it would be appropriate to enter into a similar memorandum of understanding with any other relevant agency.
- (3) The Committee report by the last sitting day in September 2010.
- (4) The Committee have leave to meet together with the Legislative Council Privileges Committee.
- (5) A message be sent informing the Legislative Council accordingly.

Debate ensued.

Question put and passed.

Excerpt from Votes and Proceedings of the Legislative Assembly No 184, Entry 10, Friday 23 April 2010

CHAPTER 2: Background to the Inquiry

On 26 November 2009, the Legislative Assembly Committee on Parliamentary Privilege and Ethics tabled a report¹ recommending the adoption of a protocol, to be agreed between the Presiding Officers and the Independent Commission Against Corruption, to guide execution of search warrants on members' offices in Parliament House. The need for such a protocol arose in the wake of the Independent Commission Against Corruption's execution of a search warrant on the Parliament House office of the Hon Peter Breen MLC in 2003. The Inspector of the ICAC, in a Special Report tabled in the Legislative Assembly on 23 September 2008, had subsequently reported on inadequacies in the ICAC's application for, and execution of, the search warrant and of clear deficiencies in the understanding of parliamentary privilege on the part of ICAC officers.

By resolutions dated 25 November 2009 and 3 December 2009 respectively, the Houses authorised the President and the Speaker to enter into the Memorandum of Understanding with the ICAC Commissioner regarding the execution of search warrants on members' offices. The MOU serves as a confirmation and preservation of the privilege necessary to maintain the balance between the role and function of the courts and Parliament in our constitutional system. The MOU contains the ICAC protocol for dealing with search warrants, covering the process to be followed where the ICAC proposes to execute a search warrant on the Parliament House office of a member of the New South Wales Parliament.

The Committees' reports² on the MOU with the Independent Commission provide further information on parliamentary privilege and members' documents, and the process of developing the agreement with the ICAC.

At the time of reporting on the Memorandum of Understanding with the ICAC, the Committee also recommended that consideration be given to establishing similar Memorandums of Understanding with the New South Wales Police, the Australian Federal Police and, if appropriate, the Director of Public Prosecutions. In October 2009 the Presiding Officers had entered a Memorandum of Agreement with the NSW Police Force for the provision of security services by Special Constables within the Parliamentary Precincts, subject to detailed protocols. Along with the ICAC, the NSW Police Force is the agency most likely to seek to execute a search warrant in the premises of a member.

On 23 April 2010, on motion of the Leader of the House, the House resolved to establish this inquiry to report on the development of a memorandum of understanding between the Speaker and the Commissioner of Police covering the execution of search warrants by the New South Wales Police Force on the premises of members, and whether it would be appropriate to enter into a similar memorandum of understanding with any other relevant agency. The Legislative Council advised by message of 22 April 2010, that it had made a similar reference to the Privileges Committee of that House. The terms of reference of each House permitted the two Committees to confer, with the aim of reaching agreement on terms of the Memorandum of Understanding.

¹ Standing Committee on Parliamentary Privilege and Ethics, Memorandum of Understanding – Execution of Search Warrants by the Independent Commission Against Corruption on Members Offices, November 2009

² Legislative Council Privileges Committee, A memorandum of understanding with the ICAC relating to the execution of search warrants on members' offices, Report No 47, November 2009.

CHAPTER 3: The Memorandum of Understanding

In implementing the resolution of each House, that the Legislative Assembly Committee on Parliamentary Privilege and Ethics, and the Legislative Council Privileges Committee, inquire into developing an MOU with the NSW Police, and possibly other agencies, each Committee agreed to a proposal that the Chairs of the two Committees correspond jointly to the Commissioner of Police and the heads of the other agencies contacted. The Committees each held their own inquiry, and are reporting separately, as each House is required to authorise its own Presiding Officer to execute any Memorandum of Understanding affecting the rights and obligations of its own membership. As will be noted in the appendices to this report, the terms of the MOU were developed by a process involving a discussion and exchange of views between the Commissioner of Police and the Committees, through correspondence with the two Committee Chairs. The Committees were not required to meet jointly, and are tabling separate reports.

The process of developing the MOU commenced on 20 May 2010, with the forwarding of a draft Memorandum, based on the text of the Memorandum of Understanding with the ICAC, and the December 2005 Memorandum of Understanding between the Presiding Officers of the Commonwealth Parliament and the Commonwealth Government concerning the execution of search warrants by the Australian Federal Police, to Mr Andrew P Scipione APM, Commissioner of Police. A copy of the correspondence and draft Memorandum can be found at Appendix 1 and 2.

On 30 June 2010, the Commissioner responded suggesting a number of amendments and raising the issue of the possibility of waiver of privilege. On 16 July, the Committee Chairs wrote to Commissioner of Police responding to suggestions made by NSW Police concerning the issues identified by the Commissioner, including waiver of privilege, the extent and level of authority necessary prior to issue of a search warrant, and whether there would be benefit in the MOU containing reference to the specific operating procedures governing issue and execution of a search warrant, rather than relying on the provisions within the Law Enforcement (Powers and Responsibilities) Act. The correspondence is at Appendix 3, and the Committee considered the response forwarded by the Privileges Committee (Appendix 4) at its meeting on 2 September, 2010. A revised draft MOU (Appendix 5) had been forwarded in July 2010.

Each of the appendices below track the discussion between the Committees and the Police Commissioner regarding the draft clauses and proposed amendments. Appendix 8 records the issues discussed at the Committee's meeting of 23 September 2010, which led to the terms of the final MOU. The Memorandum of Understanding contained in Appendix 9 reflects the agreed final text between the Commissioner of Police, the Privileges Committee and this Committee.

Recommendation 1:

That the House resolve that the Speaker enter into the Memorandum of understanding on the execution of search warrants in the premises of Members of the New South Wales Parliament between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly, as set out in Appendix 9 of this report.

Recommendation 2:

That the House consider the message of the Legislative Council which was reported on October 19, 2010 and send a message advising that it has agreed to the request:

Message of the Legislative Council reported in the Legislative Assembly on 19 October 2010.

Mr SPEAKER

The Legislative Council desires to inform the Legislative Assembly that it has this day agreed to the following resolution:

- 1. That this House notes the report of the Privileges Committee entitled "A memorandum of understanding with the NSW Police Force relating to the execution of search warrants on members' premises", tabled on 23 September 2010, and in particular recommendation 1 of the committee:*

"That the House resolve that the President enter into the 'Memorandum of understanding on the execution of search warrants in the premises of Members of the New South Wales Parliament between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly' set out in Appendix 9 of this report."

- 2. That this House authorises the President to enter into a memorandum of understanding with the Commissioner of Police concerning the execution of search warrants on members' offices in the terms set out in Appendix 9 to the report.*
- 3. That a copy of the memorandum of understanding set out in Appendix 9 of the report be transmitted to the Legislative Assembly for its consideration and the Legislative Assembly be invited to pass a similar resolution.*

Legislative Council

President

Excerpt from the Votes and Proceedings of the Legislative Assembly, 19 October 2010, Entry 34, Page 2352.

Other agency responses

The terms of reference required the Committee to also consider whether it would be appropriate for the Parliament to enter into a similar Memorandum of Understanding with any other relevant agency.

The Committees therefore also wrote to the heads of the Australian Federal Police, the NSW Crime Commission, the NSW Law Reform Commission and the Australian Crime Commission seeking their views about the likelihood of their agency executing a search warrant on the premises of members and the value of entering into a search warrants protocol with the Parliament. The response from the Australian Federal Police is at Appendix 10. No formal response was received from other agencies. The Committee does not consider it necessary to enter into a similar MOU at this time.

APPENDIX 1

**DRAFT MEMORANDUM OF UNDERSTANDING ON THE EXECUTION OF
SEARCH WARRANTS IN THE PREMISES OF MEMBERS OF THE NEW SOUTH
WALES PARLIAMENT BETWEEN THE COMMISSIONER OF POLICE, THE
PRESIDENT OF THE LEGISLATIVE COUNCIL AND THE SPEAKER OF THE
LEGISLATIVE ASSEMBLY**

**MEMORANDUM OF UNDERSTANDING
ON THE EXECUTION OF SEARCH WARRANTS
IN THE PREMISES OF
MEMBERS OF THE NEW SOUTH WALES PARLIAMENT
BETWEEN
THE COMMISSIONER OF POLICE
THE PRESIDENT OF THE LEGISLATIVE COUNCIL
AND
THE SPEAKER OF THE LEGISLATIVE ASSEMBLY**

1. Preamble

This Memorandum of Understanding records the understanding of the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly on the process to be followed where the NSW Police Force proposes to execute a search warrant on premises used or occupied by a member of the New South Wales Parliament, including the Parliament House office of a member, the ministerial office of a member, the electorate office of a member and the residence of a member.

The memorandum and associated processes are designed to ensure that search warrants are executed without improperly interfering with the functioning of Parliament and so its members and their staff are given a proper opportunity to claim parliamentary privilege in relation to documents in their possession.

2. Execution of Search Warrants

The agreed process for the execution of a search warrant by the ICAC over the premises used or occupied by a member is spelt out in the attached 'Procedures for the execution of search warrants in the premises of members of the New South Wales Parliament'.

3. Promulgation of this Memorandum of Understanding

This Memorandum of Understanding will be promulgated within the NSW Police Force.

This Memorandum of Understanding will be tabled in the Legislative Council by the President and in the Legislative Assembly by the Speaker.

4. Variation of this Memorandum of Understanding

This Memorandum of Understanding can be amended at any time by the agreement of all the parties to the Memorandum.

This Memorandum of Understanding will continue until any further Memorandum of Understanding on the execution of search warrants on the premises of members of the New South Wales Parliament is concluded between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly.

The Commissioner of Police will consult with the President of the Legislative Council and the Speaker of the Legislative Assembly in relation to any revision of this memorandum.

Revocation of agreement to this Memorandum of Understanding

Any party to this Memorandum of Understanding may revoke their agreement to this Memorandum. The other parties to this Memorandum of Understanding should be notified in writing of the decision to revoke.

Signatures

**Mr Andrew P Scipione APM
Commissioner**

/ / 2010

**The Hon Amanda Fazio MLC
President**

/ / 2010

**The Hon Richard Torbay
Speaker**

/ / 2010

PROCEDURES FOR THE EXECUTION OF SEARCH WARRANTS IN THE PREMISES OF MEMBERS OF THE NEW SOUTH WALES PARLIAMENT

1. Purpose of these procedures

These procedures are designed to ensure that officers of the NSW Police Force execute search warrants on the premises of members of the New South Wales Parliament in a way which does not amount to a contempt of Parliament and which gives a proper opportunity to members to raise claims of parliamentary privilege in relation to documents that may be on the search premises.

2. Application of these procedures

These procedures apply, subject to any overriding law or legal requirement in a particular case, to any premises used or occupied by a member including:

- the Parliament House office of a member;
- the ministerial office of a member who is also a minister;
- the electorate office of a member; and
- any other premises used by a member for private or official purposes at which there is reason to suspect that material covered by parliamentary privilege may be located.

3. Parliamentary privilege

A search warrant, if otherwise valid, can be executed over premises occupied or used by a member of the New South Wales Parliament, including the Parliament House office of a member, the ministerial office of a member who is also a minister, the electorate office of a member and the residence of a member. Evidential material cannot be placed beyond the reach of officers of the NSW Police Force simply because it is held by a member or is on premises used or occupied by a member.

However, in executing a warrant on the office of a member of Parliament, 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 specified in Article 9 of the *Bill of Rights 1689*. Article 9 applies in New South Wales under the *Imperial Acts Application Act 1969*.

It is a contempt of Parliament for an officer of the NSW Police Force or any person to improperly interfere with the free performance by a member of his or her parliamentary duties.

The scope of 'proceedings in Parliament' is not defined in legislation. In general terms, the phrase is taken to mean all words spoken or acts done by a member in the course of, or for the purposes of or incidental to, the transacting of the business of a House or committee of Parliament.

In the context of the execution of a search warrant on the premises of a member, material in the possession of members that may fall within the scope of 'proceedings in Parliament' may include

of the warrant. As far as possible a search warrant should be executed at a time when the member or a senior member of his or her staff will be present.

4. The ~~(Officer of NSW Police Force)~~ will allow the member and the Clerk a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.
5. The ~~(Officer of NSW Police Force)~~ will assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege.
6. On arrival at Parliament House the Search Team Leader ~~(or other Officer of NSW Police Force)~~ and assigned lawyer should meet with the Clerk of the House and member or the member's representative for the purpose of outlining any obligations under the warrant, the general nature of the allegations being investigated, the nature of the material it is believed is located in the member's office and the relevance of that material to the investigation.
7. The Search Team Leader ~~(or other Officer of NSW Police Force)~~ is to allow the member a reasonable opportunity to claim parliamentary privilege in respect of any documents or other things located on the premises.
8. The Search Team Leader ~~(or other Officer of NSW Police Force)~~ should not seek to access, read or seize any document over which a claim of parliamentary privilege is made.
9. Documents over which parliamentary privilege is claimed should be placed in a Property bag ~~(or other bag)~~. A list of the documents will be prepared by the ~~(Officer of NSW Police Force)~~ with assistance from the member or staff member. The member, or member's staff, should be given an opportunity to take copies before the documents are secured.
10. The Search Team Leader ~~(or other Officer of NSW Police Force)~~ should request the Clerk to secure and take custody of any documents over which a claim for parliamentary privilege has been made.
11. At the conclusion of the search the Search Team Leader ~~(or other Officer of NSW Police Force)~~ should provide a receipt recording things seized. If the member does not hold copies of the things that have been seized the receipt should contain sufficient particulars of the things to enable the member to recall details of the things seized and obtain further advice.
12. The Search Team Leader ~~(or other Officer of NSW Police Force)~~ should inform the member that the NSW Police Force will, to the extent possible, provide or facilitate access to the seized material where such access is necessary for the performance of the member's duties.
13. Any claim of parliamentary privilege will be reported by the Search Team Leader ~~(or other Officer of NSW Police Force)~~ to the ~~(Officer of NSW Police Force)~~ who will consider the matter in conjunction with the ~~(Officer of NSW Police Force)~~ the Deputy Commissioner and the Commissioner for the purpose of determining whether the NSW Police Force will object to such a claim.
14. Where a ruling is sought as to whether documents are protected by parliamentary privilege the member, the Clerk and a representative of the NSW Police Force will jointly be present at the examination of the material. The member and the Clerk will identify material which they claim falls within the scope of parliamentary proceedings.

15. A list of material considered to be within the scope of proceedings in Parliament will then be prepared by the Clerk and provided to the member and the NSW Police Force representative.
16. Any material not listed as falling within the scope of proceedings in Parliament will immediately be made available to the NSW Police Force.
17. In the event the NSW Police Force dispute the claim for privilege over these documents listed by the Clerk the Commissioner may, within a reasonable time, write to the President of the Legislative Council or Speaker of the Legislative Assembly to dispute any material considered to be privileged material and may provide written reasons for the dispute. The issue will then be determined by the relevant House.

Execution of a warrant on premises used or occupied by a member (not being at Parliament House)

The following procedures are to be observed in relation to the executing of a warrant on premises used or occupied by a member, not being an office at Parliament House:

1. A search warrant should be executed on premises used or occupied by a member at a time when the member, or a senior member of his or her staff, will be present, unless the Commissioner is satisfied that compliance with this restriction would affect the integrity of the investigation.
2. To minimise the potential interference with the performance of the member's duties the **Officer of NSW Police Force** should also consider, unless it would affect the integrity of the investigation, whether it is feasible to contact the member, or a senior member of his/her staff, prior to executing the warrant with a view to agreeing on a time for execution of the warrant.
3. The **Officer of NSW Police Force** will allow the member a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.
4. The **Officer of NSW Police Force** will assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege.
5. On arrival at the premises, the Search Team Leader **Officer of NSW Police Force** and assigned lawyer should meet with the member or the member's representative for the purpose of outlining any obligations under the warrant, the general nature of the allegations being investigated, the nature of the material it is believed is located in the member's office and the relevance of that material to the investigation.
6. The Search Team Leader **Officer of NSW Police Force** is to allow the member a reasonable opportunity to claim parliamentary privilege in respect of any documents or other things located on the premises.
7. The Search Team Leader **Officer of NSW Police Force** should not seek to access, read or seize any document over which a claim of parliamentary privilege is made.
8. Documents over which parliamentary privilege is claimed should be placed in a Property bag **Officer of NSW Police Force**. A list of the documents will be prepared by the **Officer of NSW Police Force** with assistance from the member or staff member. The member, or member's staff, should be given an opportunity to take copies before the documents are secured.

9. At the conclusion of the search the Search Team Leader ~~(or other Officer of NSW Police Force)~~ should provide a receipt recording things seized. If the member does not hold copies of the things that have been seized the receipt should contain sufficient particulars of the things to enable the member to recall details of the things seized and obtain further advice.
10. The Search Team Leader ~~(or other Officer of NSW Police Force)~~ should inform the member that the NSW Police Force will, to the extent possible, provide or facilitate access to the seized material where such access is necessary for the performance of the member's duties.
11. The Search Team Leader ~~(or other Officer of NSW Police Force)~~ should deliver any documents over which parliamentary privilege is claimed to the Clerk of the House.
12. Any claim of parliamentary privilege will be reported by the Search Team Leader ~~(or other Officer of NSW Police Force)~~ to the ~~Officer of NSW Police Force~~ who will consider the matter in conjunction with the ~~Officer of NSW Police Force~~ the Deputy Commissioner and the Commissioner for the purpose of determining whether the NSW Police Force will object to such a claim.
13. Where a ruling is sought as to whether documents are protected by parliamentary privilege the member, the Clerk and a representative of the NSW Police Force will jointly be present at the examination of the material. The member and the Clerk will identify material which they claim falls within the scope of parliamentary proceedings.
14. A list of material considered to be within the scope of proceedings in Parliament will then be prepared by the Clerk and provided to the member and the NSW Police Force representative.
15. Any material not listed as falling within the scope of proceedings in Parliament will immediately be made available to the NSW Police Force.
16. In the event the NSW Police Force disputes the claim for privilege over these documents listed by the Clerk the Commissioner may, within a reasonable time, write to the President of the Legislative Council or Speaker of the Legislative Assembly to dispute any material considered to be privileged material and may provide written reasons for the dispute. The issue will then be determined by the relevant House.

APPENDIX 2

**LETTER OF THE CHAIR OF THE COMMITTEE AND THE CHAIR OF THE
LEGISLATIVE COUNCIL PRIVILEGES COMMITTEE TO MR ANDREW SCIPIONE
APM, COMMISSIONER OF POLICE, DATED 20 MAY 2010**



NSW LEGISLATIVE COUNCIL PRIVILEGES COMMITTEE
NSW LEGISLATIVE ASSEMBLY STANDING COMMITTEE ON PARLIAMENTARY PRIVILEGE AND ETHICS

20 May 2010

Mr Andrew P Scipione APM
Commissioner of Police
Police and Emergency Services NSW
Locked Bag 5102
PARRAMATTA NSW 2124

Dear Commissioner:

Inquiry into a memorandum of understanding with the NSW Police Force concerning the execution of search warrants on the premises of members of Parliament

On 22 April 2010 the Legislative Council referred to the Legislative Council Privileges Committee the following terms of reference concerning a memorandum of understanding with the NSW Police Force covering the execution of search warrants on the premises of members of Parliament:

1. That this House notes that in December 2009, the President of the Legislative Council, the Speaker of the Legislative Assembly and the Commissioner of the Independent Commission Against Corruption entered into a 'Memorandum of understanding on the execution of Search Warrants in the Parliament House Offices of Members of the New South Wales Parliament'.
2. That the Privileges Committee inquire into and report on:
 - (a) the development of a Memorandum of Understanding between the President and Commissioner of Police covering the execution of search warrants by the NSW Police Force on the premises of members, and
 - (b) whether it would be appropriate to enter into a similar Memorandum of Understanding with any other relevant agency.
3. That the Committee report by the last sitting day in September 2010.
4. That a message be forwarded to the Legislative Assembly informing it of the terms of reference agreed to by the House, and requesting that the Legislative Assembly Privileges and Ethics Committee be given a similar reference.

On 23 April 2010 the Legislative Assembly referred similar terms of reference to the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics.

As noted in paragraph 1 of the terms of reference, in December 2009 the Presiding Officers of the Parliament entered into a Memorandum of Understanding with the Commissioner of the Independent Commission Against Corruption (ICAC) concerning the execution of search warrants in the Parliament House offices of members. The adoption of this Memorandum followed a series of inquiries by the Parliament's Privileges Committees concerning the execution of search warrants on members' offices arising from the seizure of documents from a member's office in 2003.¹

The rationale for such a memorandum of understanding is that it puts in place procedures to ensure that documents which may be subject to parliamentary privilege can be identified and protected from seizure, leaving other documents available to investigating officers and the usual processes of the law. While members of Parliament have no immunity from compulsory processes such the execution of search warrants, documents or other material which is subject to parliamentary privilege are immune from seizure by virtue of article 9 of the *Bill of Rights 1689* which applies in NSW.

As you would be aware, there is currently no memorandum of understanding between the NSW Parliament and the NSW Police Force concerning the execution of search warrants in premises used by members of Parliament. As a result, there are currently no agreed procedures in place to ensure such powers are exercised in a manner which takes proper account of the requirements of parliamentary privilege.²

Pursuant to the terms of reference, the Legislative Council Privileges Committee has prepared a draft memorandum of understanding between the President of the Legislative Council, the Speaker of the Legislative Assembly and the Commissioner of Police, concerning the execution of search warrants by the NSW Police Force on the premises of members of Parliament. This draft memorandum is modelled on the terms of the Memorandum of Understanding with ICAC referred to earlier, and the Memorandum of Understanding which governs the execution of search warrants by the Australian Federal Police (AFP) in premises of members of the Federal Parliament. The draft memorandum with the NSW Police Force, as prepared by the Legislative Council Privileges Committee, is provided at Attachment 1. The existing Memoranda of Understanding with ICAC and the AFP on which the draft memorandum is based are provided at Attachments 2 and 3.

The Legislative Council Privileges Committee and Legislative Assembly Privileges and Ethics Committee invite you to comment on the draft memorandum of understanding contained in Attachment 1. In particular, parts of the draft memorandum have deliberately been left blank where they concern matters that are the expertise of the NSW Police Force or matters concerning the internal operation of the Police.

¹ Legislative Council, Standing Committee on Parliamentary Privilege and Ethics, *Parliamentary privilege and seizure of documents by ICAC*, Report No. 25, December 2003; Standing Committee on Parliamentary Privilege and Ethics, *Parliamentary privilege and seizure of documents by ICAC No. 2*, Report No. 28, March 2004; Privileges Committee, *Protocol for execution of search warrants on members' offices*, Report No. 33, February 2006. Legislative Council, Privileges Committee, *A memorandum of understanding with the ICAC relating to the execution of search warrants on members' offices*, Report No. 47, November 2009; Legislative Assembly, Standing Committee on Parliamentary Privilege and Ethics, *Report on a memorandum of understanding with the Independent Commission Against Corruption*, November 2009.

² A Memorandum of Understanding with the Commissioner of Police dated 3 December 2004 includes provision for police to obtain authorisation from the Presiding Officers before executing any process in the parliamentary precincts (including a search warrant), but does not include procedures to be followed to allow for issues of parliamentary privilege to be raised. Similarly, a Memorandum of Agreement with the Commissioner of Police concerning security services for the Parliament dated 2009 provides for relevant protocols to be observed before entry to a member's office is allowed, but does not set out any relevant steps to be followed to ensure that parliamentary privilege is preserved.

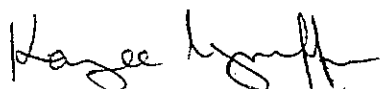
The Committees would be grateful to receive your comments by Friday 18 June 2010. Comments should be sent to both:

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

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

If you would like to discuss any aspect of this matter, please contact the Clerk to the Legislative Council Privileges Committee and Deputy Clerk of the Legislative Council, Mr David Blunt on 9230 2323 or david.blunt@parliament.nsw.gov.au, or the Clerk to the Legislative Assembly Privileges and Ethics Committee and Clerk Assistant (Procedure) of the Legislative Assembly, Ms Ronda Miller, on 9230 2225 or ronda.miller@parliament.nsw.gov.au.

Yours sincerely



Hon Kayee Griffin MLC
Chair
Legislative Council
Privileges Committee



Mr Paul Pearce MP
Chair
Legislative Assembly
Privileges and Ethics Committee

APPENDIX 3

**LETTER FROM MR ANDREW SCIPIONE APM, COMMISSIONER OF POLICE, TO
THE CHAIR OF THE COMMITTEE, AND THE CHAIR OF THE LEGISLATIVE
COUNCIL PRIVILEGES COMMITTEE**



NSW Police Force
www.police.nsw.gov.au

OFFICE OF THE COMMISSIONER

The Honourable Kayee Griffin MLC
Chair, Legislative Council
Privileges Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Mr Paul Pearce MP
Chair, Legislative Assembly
Privilege and Ethics Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

D/2010/85861

Dear Chairs,

I refer to your letter dated 20 May 2010, requesting the NSW Police Force (NSWPF) provide comment on a draft *Memorandum of Understanding on the Execution of Search Warrants in the Premises of Members of the NSW Parliament between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly* (the draft MoU).

Upon review of the draft MoU, the following comments and recommendations are provided for your consideration.

Clause 7 (1) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member and clause 7 (1) concerning the execution of a warrant on premises used or occupied by a member (not being at Parliament House) refer to the role of the Commissioner.

It is recommended that these clauses be amended to refer to the *Commissioner or the Commissioner's delegate*.

As acknowledged in your letter, it is imperative that the agreed procedures for the execution of search warrants on the premises of members of the NSW Parliament both ensure documents subject to parliamentary privilege are identified and protected from seizure and preserve the integrity of criminal investigations. Indeed, it is in the interests of all parties that the agreed procedures be sufficiently rigorous and beyond reproach.

Recognising that the parliamentary privilege afforded the Parliament is unquestionable, it is the case that the Speaker may waive the exercise of parliamentary privilege in relation to the whole or any part of a search warrant. In this regard, I make the following recommendation for amendment to clause 7 of the draft MoU.

Clause 7 (4) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member provides that:

The (Officer of the NSW Police Force) will allow the member and the Clerk a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.

Similarly, clause 7 (3) of the draft MoU concerning the execution of warrants on premises used or occupied by a member (not being at Parliament House) provides that:

The (Officer of the NSW Police Force) will allow the member a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.

It is recommended that the above clauses be expanded upon to provide that, whenever possible, the search warrant, or a draft, be provided to the Speaker in advance in order that the Speaker may, on legal advice if necessary, consider waiving parliamentary privilege in respect of the execution of the whole or any part of the search warrant.

Clause 7 (5) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member and clause 7 (4) concerning the execution of a warrant on premises used or occupied by a member (not being at Parliament House) provide that the (Officer of the NSW Police Force) will assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege.

To provide the necessary flexibility for the execution of search warrants, it is suggested these clauses be amended to provide that the NSWPF *may* assign a lawyer to attend.

Proposed clauses 4, 5 and 6 of the draft MoU concern search warrants issued in NSW to the NSWPF; procedures prior to applying for a warrant; and applying for a warrant respectively. In the highlighted notes of the draft MoU it is suggested the NSWPF provide the content for these clauses; outlining relevant NSWPF procedures or guidelines.

Given the NSWPF procedures with respect to applying for search warrants in NSW are prescribed by the *Law Enforcement (Powers and Responsibilities) Act 2002*, it is suggested that proposed clauses 4, 5 and 6 are unnecessary inclusions in this MoU.

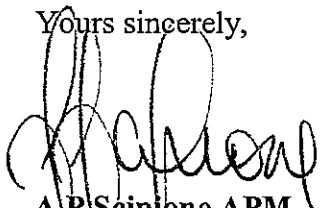
A modern complexity experienced by the NSWPF in the execution of search warrants is the electronic storage of documentation. In the context of this MoU, the identification of documents and other material attracting parliamentary privilege which are, for example, stored in a computer along with other documents not attracting parliamentary privilege, presents practical challenges.

To ensure the integrity of criminal investigations it is imperative that electronically stored documents attracting parliamentary privilege are identified and separated, allowing police access to the remaining documents and material within the scope of the search warrant. In these circumstances, a technical information expert may be required to attend the search and I suggest that consideration be given to whether it is necessary to amend the draft MoU accordingly.

Finally, highlighted references to the *Officer of the NSW Police Force* may be amended to the *Search Team Leader* throughout and it appears the word *phase* in clause 3, paragraph 4 is a typographical error.

I look forward to receiving your feedback on these recommendations. Should you have any queries concerning the comments provided, please do not hesitate to contact Ms Letitia Davy, Office of the Commissioner, on (02) 8263 6361 or email davy1let@police.nsw.gov.au

Yours sincerely,



A P Scipione APM
Commissioner of Police

3.0 JUN 2010

APPENDIX 4

**PRIVILEGES COMMITTEE'S RESPONSE TO THE ISSUES RAISED IN THE
LETTER OF MR ANDREW P SCIPIONE APM, COMMISSIONER OF POLICE,
DATED 30 JUNE 2010**

Appendix 4 Committee's response to the issues raised in the letter of Mr Andrew P Scipione APM, Commissioner of Police, dated 30 June 2010

NSW Police Force suggestion	Response
<p>Clause 7(1) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member and clause 7(1) concerning the execution of a warrant on premises used or occupied by a member (not being at Parliament House) refer to the role of the Commissioner.</p>	<p>Agreed. An amendment has been made in the revised draft.</p> <p>In addition, as referred to in the suggestion opposite, it is noted that the previous draft had the following somewhat confusing structure:</p>
<p>It is recommended that these clauses be amended to refer to the <i>Commissioner or the Commissioner's delegate</i>.</p>	<p>7. Execution of a warrant</p> <p><u>Execution of a warrant on the PH office of a member</u></p> <p>...</p> <p><u>Execution of a warrant on premises used or occupied by a member (not being at Parliament House)</u></p> <p>...</p> <p>For ease of reference, that structure has been simplified in the revised draft as follows:</p> <p>5. Execution of a warrant on the Parliament House Office of a member</p> <p>...</p> <p>6. Execution of a warrant on premises used or occupied by a member (not being at Parliament House)</p> <p>...</p>
<p>As acknowledged in your letter, it is imperative that the agreed procedures for the execution of search warrants on the premises of members of the NSW Parliament both ensure documents subject to parliamentary privilege are identified and protected from seizure and preserve the integrity of criminal investigations. Indeed, it is in the interests of all parties that the agreed procedures be sufficiently rigorous and beyond reproach.</p>	<p>Not supported. It is not the case that the President of the Legislative Council or the Speaker of the Legislative Assembly may waive privilege. The privilege that attaches to 'proceedings in Parliament', as provided for in statute through the adoption of the <i>Bill of Rights 1689</i> under the <i>Imperial Acts Application Act 1969</i>, cannot be waived either by an individual member (including the Presiding Officers) or by the Houses. It may only be waived by express statutory provision.</p>
<p>Recognising that the parliamentary privilege afforded the Parliament is unquestionable, it is the case that the Speaker may waive the exercise of parliamentary</p>	

NSW Police Force suggestion**Response**

Clause 7(1) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member and clause 7(1) concerning the execution of a warrant on premises used or occupied by a member (not being at Parliament House) refer to the role of the Commissioner.

It is recommended that these clauses be amended to refer to the *Commissioner or the Commissioner's delegate*.

Agreed. An amendment has been made in the revised draft.

In addition, as referred to in the suggestion opposite, it is noted that the previous draft had the following somewhat confusing structure:

7. Execution of a warrant

Execution of a warrant on the PH office of a member

...

Execution of a warrant on premises used or occupied by a member (not being at PH)

...

For ease of reference, that structure has been simplified in the revised draft as follows:

5. Execution of a warrant on the Parliament House Office of a member

...

6. Execution of a warrant on premises used or occupied by a member (not being at Parliament House)

...

As acknowledged in your letter, it is imperative that the agreed procedures for the execution of search warrants on the premises of members of the NSW Parliament both ensure documents subject to parliamentary privilege are identified and protected from seizure and preserve the integrity of criminal investigations. Indeed, it is in the interests of all parties that the agreed procedures be sufficiently rigorous and beyond reproach.

Recognising that the parliamentary privilege afforded the Parliament is unquestionable, it is the case that the Speaker may waive the exercise of parliamentary privilege in relation to the whole or any part of a search warrant. In this regard, I make the following recommendation for amendment to clause 7 of the draft MoU.

Clause 7 (4) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member provides that:

The (Officer of the NSW Police Force) will allow the member and the Clerk a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange

Not supported. It is not the case that the President of the Legislative Council or the Speaker of the Legislative Assembly may waive privilege. The privilege that attaches to 'proceedings in Parliament', as provided for in statute through the adoption of the *Bill of Rights 1689* under the *Imperial Acts Application Act 1969*, cannot be waived either by an individual member (including the Presiding Officers) or by the Houses. It may only be waived by express statutory provision.

for a legal adviser to be present during the execution of the warrant.

Similarly, clause 7 (3) of the draft MoU concerning the execution of warrants on premises used or occupied by a member (not being at Parliament House) provides that:

The (Officer of the NSW Police Force) will allow the member a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.

It is recommended that the above clauses be expanded upon to provide that, whenever possible, the search warrant, or a draft, be provided to the Speaker in advance in order that the Speaker may, on legal advice if necessary, consider waiving parliamentary privilege in respect of the execution of the whole or any part of the search warrant.

Clause 7 (5) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member and clause 7 (4) concerning the execution of a warrant on premises used or occupied by a member (not being at Parliament House) provide that the (Officer of the NSW Police Force) will assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege.

To provide the necessary flexibility for the execution of search warrants, it is suggested these clauses be amended to provide that the NSWPF may assign a lawyer to attend.

Agreed. It is noted that the Federal MoU does not require the presence of a legal officer from the Police. The revised draft MoU also provides a safeguard at clauses 5(4) and 6(3) that the member and the Clerk may seek legal advice in relation to the search warrant prior to its execution, and that the member may arrange for a legal adviser to be present during the execution of the warrant.

Accordingly, clauses 5(5) and 6(4) in the revised draft now provide:

The Search Team Leader may assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege ...

In addition, clauses 5(6) and 6(5) in the revised draft have also been amended to provide:

On arrival at the premises, the Search Team Leader and assigned lawyer (if present) ...

Proposed clauses 4, 5 and 6 of the draft MoU concern search warrants issued in NSW to the NSWPF; procedures prior to applying for a warrant; and applying for a warrant respectively. In the highlighted notes of the draft MoU it is suggested the NSWPF provide the content for these clauses; outlining relevant NSWPF procedures or guidelines.

The *Law Enforcement (Powers and Responsibilities) Act 2002* do not spell-out the specific operating procedures to be followed by the NSW Police when applying for and conducting a search warrant. By contrast, the ICAC MoU does spell out the internal ICAC procedures for applying for a warrant at some detail.

Given the NSWPF procedures with respect to applying for search warrants in NSW are prescribed by the *Law Enforcement (Powers and Responsibilities) Act 2002*, it is suggested that proposed clauses 4, 5 and 6 are unnecessary inclusions in this MoU.

Without going to the detail of the ICAC MoU, which is an internal matter for the NSW Police Force, it is proposed that the following clause be inserted in the revised draft, replacing the former clauses 4, 5 and 6:

4. Procedure prior to obtaining a search warrant

An officer of the NSW Police Force who proposes to apply for a search warrant in respect of premises used or occupied by a member should seek approval from the Commissioner or the Commissioner's delegate before applying for the warrant.

If approval is given, the officer should obtain legal advice before applying for a search warrant.

Care should be taken when drafting a search warrant to ensure that it does not cover a wider range of material than is necessary to advance the relevant investigation

This new proposed section is drawn from paragraphs 5.1 – 5.3 of the *AFP National Guidelines for Execution of Search Warrants where Parliamentary Privilege may be involved*, as adopted as part of the Memorandum of Understanding which governs the execution of search warrants by the Australian Federal Police (AFP) in premises of members of the Federal Parliament (please see attached).

This proposed section was also discussed at paragraphs 4.6 – 4.8 of the 2006 report of the Legislative Council Privileges Committee entitled *Protocol for execution of search warrants on members' offices* (please also see attached). It is understood that this proposal, as amended, was acceptable to the NSW Police Force at the time.

The proposed new clause would place two significant requirements on officers of the NSW Police Force when obtaining a search warrant:

- that the application for a warrant should have the approval of the Commissioner or the Commissioner's delegate.
 - that the warrant does not cover a wider range of material than is necessary to advance the relevant investigation.
-

It is considered that these are worthwhile and practical provisions to ensure that the use of search warrants is restricted to appropriate circumstances.

A modern complexity experienced by the NSWPF in the execution of search warrants is the electronic storage of documentation. In the context of this MoU, the identification of documents and other material attracting parliamentary privilege which are, for example, stored in a computer along with other documents not attracting parliamentary privilege, presents practical challenges.

To ensure the integrity of criminal investigations it is imperative that electronically stored documents attracting parliamentary privilege are identified and separated, allowing police access to the remaining documents and material within the scope of the search warrant.

In these circumstances, a technical information expert may be required to attend the search and I suggest that consideration be given to whether it is necessary to amend the draft MoU accordingly.

Finally, highlighted references to the Officer of the NSW Police Force may be amended to the Search Team Leader throughout and it appears the word phase in clause 3, paragraph 4 is a typographical error.

Agreed. Clauses 5(5) and 6(4) in the revised have been further amended as follows:

4. The Search Team Leader may assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege, and a technical information expert to assist with accessing information stored in a computer.

Reference to an 'Officer of the NSW Police Force' has been changed to a 'Search Team Leader' throughout. However, clauses 5(13) and 6(12) in the revised draft continue to include reference to an 'Officer of the NSW Police Force' or 'Officers of the NSW Police Force'. It would be appreciated if the NSW Police Force could nominate appropriate officers.

The word 'phase' in Paragraph 3 has been corrected to 'phrase'.

APPENDIX 5

SECOND DRAFT MEMORANDUM OF UNDERSTANDING ON THE EXECUTION OF SEARCH WARRANTS IN THE PREMISES OF MEMBERS OF NEW SOUTH PARLIAMENT BETWEEN THE COMMISSIONER OF POLICE, THE PRESIDENT OF THE LEGISLATIVE COUNCIL AND THE SPEAKER OF THE LEGISLATIVE ASSEMBLY

**MEMORANDUM OF UNDERSTANDING
ON THE EXECUTION OF SEARCH WARRANTS
IN THE PREMISES OF
MEMBERS OF THE NEW SOUTH WALES PARLIAMENT
BETWEEN
THE COMMISSIONER OF POLICE
THE PRESIDENT OF THE LEGISLATIVE COUNCIL
AND
THE SPEAKER OF THE LEGISLATIVE ASSEMBLY**

REVISED DRAFT AS AT 16 JULY 2010

1. Preamble

This Memorandum of Understanding records the understanding of the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly on the process to be followed where the NSW Police Force proposes to execute a search warrant on premises used or occupied by a member of the New South Wales Parliament, including the Parliament House office of a member, the ministerial office of a member, the electorate office of a member and the residence of a member.

The memorandum and associated processes are designed to ensure that search warrants are executed without improperly interfering with the functioning of Parliament and so its members and their staff are given a proper opportunity to claim parliamentary privilege in relation to documents in their possession.

2. Execution of Search Warrants

The agreed process for the execution of a search warrant by the NSW Police Force over the premises used or occupied by a member is spelt out in the attached 'Procedures for the execution of search warrants in the premises of members of the New South Wales Parliament'.

3. Promulgation of this Memorandum of Understanding

This Memorandum of Understanding will be promulgated within the NSW Police Force.

This Memorandum of Understanding will be tabled in the Legislative Council by the President and in the Legislative Assembly by the Speaker.

4. Variation of this Memorandum of Understanding

This Memorandum of Understanding can be amended at any time by the agreement of all the parties to the Memorandum.

This Memorandum of Understanding will continue until any further Memorandum of Understanding on the execution of search warrants on the premises of members of the New South Wales Parliament is concluded between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly.

The Commissioner of Police will consult with the President of the Legislative Council and the Speaker of the Legislative Assembly in relation to any revision of this memorandum.

Revocation of agreement to this Memorandum of Understanding

Any party to this Memorandum of Understanding may revoke their agreement to this Memorandum. The other parties to this Memorandum of Understanding should be notified in writing of the decision to revoke.

Signatures

**Mr Andrew P Scipione APM
Commissioner**

/ / 2010

**The Hon Amanda Fazio MLC
President**

/ / 2010

**The Hon Richard Torbay
Speaker**

/ / 2010

PROCEDURES FOR THE EXECUTION OF SEARCH WARRANTS IN THE PREMISES OF MEMBERS OF THE NEW SOUTH WALES PARLIAMENT

1. Purpose of these procedures

These procedures are designed to ensure that officers of the NSW Police Force execute search warrants on the premises of members of the New South Wales Parliament in a way which does not amount to a contempt of Parliament and which gives a proper opportunity to members to raise claims of parliamentary privilege in relation to documents that may be on the search premises.

2. Application of these procedures

These procedures apply, subject to any overriding law or legal requirement in a particular case, to any premises used or occupied by a member including:

- the Parliament House office of a member;
- the ministerial office of a member who is also a minister;
- the electorate office of a member; and
- any other premises used by a member for private or official purposes at which there is reason to suspect that material covered by parliamentary privilege may be located.

3. Parliamentary privilege

A search warrant, if otherwise valid, can be executed over premises occupied or used by a member of the New South Wales Parliament, including the Parliament House office of a member, the ministerial office of a member who is also a minister, the electorate office of a member and the residence of a member. Evidential material cannot be placed beyond the reach of officers of the NSW Police Force simply because it is held by a member or is on premises used or occupied by a member.

However, in executing a warrant on the office of a member of Parliament, 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 specified in Article 9 of the *Bill of Rights 1689*. Article 9 applies in New South Wales under the *Imperial Acts Application Act 1969*.

It is a contempt of Parliament for an officer of the NSW Police Force or any person to improperly interfere with the free performance by a member of his or her parliamentary duties.

The scope of 'proceedings in Parliament' is not defined in legislation. In general terms, the phrase is taken to mean all words spoken or acts done by a member in the course of, or for the purposes of or incidental to, the transacting of the business of a House or committee of Parliament.

In the context of the execution of a search warrant on the premises of a member, material in the possession of members that may fall within the scope of 'proceedings in Parliament' may include

notes, draft speeches and questions prepared by the member for use in Parliament, correspondence received by the member from constituents if the member has or is seeking to raise the constituent's issues in the House, correspondence prepared by the member again if the member has or is seeking to raise the issue in the House, and submissions and other material provided to the member as part of his or her participation in committee inquiries.

Items that are unlikely to be captured within the scope of 'proceedings in Parliament' include a member's travel documentation and political party material.

In some cases the question of whether material constitutes 'proceedings in Parliament' will 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 was found.

4. Procedure prior to obtaining a search warrant

An officer of the NSW Police Force who proposes to apply for a search warrant in respect of premises used or occupied by a member should seek approval from the Commissioner or the Commissioner's delegate before applying for the warrant.

If approval is given, the officer should obtain legal advice before applying for a search warrant.

Care should be taken when drafting a search warrant to ensure that it does not cover a wider range of material than is necessary to advance the relevant investigation.

5. Execution of a warrant on the Parliament House Office of a member

The following procedures are to be observed in relation to the executing of a warrant on the Parliament House Office of a member:

1. A search warrant should not be executed on premises in Parliament House on a parliamentary sitting day or on a day on which a parliamentary committee involving the member is meeting unless the Commissioner or the Commissioner's delegate is satisfied that compliance with this restriction would affect the integrity of the investigation.
2. The Search Team Leader will contact the relevant Presiding Officer prior to execution of a search warrant and notify that officer of the proposed search. If the Presiding Officer is not available the Search Team Leader will notify the Clerk or Deputy Clerk or, where a Committee's documents may be involved, the Chair of that Committee. The Clerk will arrange for the premises the subject of the warrant to be sealed and secured pending execution of the warrant.
3. To minimise the potential interference with the performance of the member's duties the Search Team Leader should also consider, unless it would affect the integrity of the investigation, whether it is feasible to contact the member, or a senior member of his/her staff, prior to executing the warrant with a view to agreeing on a time for execution of the warrant. As far as possible a search warrant should be executed at a time when the member or a senior member of his or her staff will be present.
4. The Search Team Leader will allow the member and the Clerk a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.

5. The Search Team Leader may assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege, and a technical information expert to assist with accessing information stored in a computer.
6. On arrival at Parliament House the Search Team Leader and assigned lawyer (if present) should meet with the Clerk of the House and member or the member's representative for the purpose of outlining any obligations under the warrant, the general nature of the allegations being investigated, the nature of the material it is believed is located in the member's office and the relevance of that material to the investigation.
7. The Search Team Leader is to allow the member a reasonable opportunity to claim parliamentary privilege in respect of any documents or other things located on the premises.
8. The Search Team Leader should not seek to access, read or seize any document over which a claim of parliamentary privilege is made.
9. Documents over which parliamentary privilege is claimed should be placed in a Property bag ~~(or other means?)~~. A list of the documents will be prepared by the Search Team Leader with assistance from the member or staff member. The member, or member's staff, should be given an opportunity to take copies before the documents are secured.
10. The Search Team Leader should request the Clerk to secure and take custody of any documents over which a claim for parliamentary privilege has been made.
11. At the conclusion of the search the Search Team Leader should provide a receipt recording things seized. If the member does not hold copies of the things that have been seized the receipt should contain sufficient particulars of the things to enable the member to recall details of the things seized and obtain further advice.
12. The Search Team Leader should inform the member that the NSW Police Force will, to the extent possible, provide or facilitate access to the seized material where such access is necessary for the performance of the member's duties.
13. Any claim of parliamentary privilege will be reported by the Search Team Leader to the ~~(Officer of NSW Police Force)~~ who will consider the matter in conjunction with the ~~(Officer of NSW Police Force)~~ the Deputy Commissioner and the Commissioner for the purpose of determining whether the NSW Police Force will object to such a claim.
14. Where a ruling is sought as to whether documents are protected by parliamentary privilege the member, the Clerk and a representative of the NSW Police Force will jointly be present at the examination of the material. The member and the Clerk will identify material which they claim falls within the scope of parliamentary proceedings.
15. A list of material considered to be within the scope of proceedings in Parliament will then be prepared by the Clerk and provided to the member and the NSW Police Force representative.
16. Any material not listed as falling within the scope of proceedings in Parliament will immediately be made available to the NSW Police Force.
17. In the event the NSW Police Force dispute the claim for privilege over these documents listed by the Clerk the Commissioner may, within a reasonable time, write to the President of the Legislative Council or Speaker of the Legislative Assembly to dispute any material

considered to be privileged material and may provide written reasons for the dispute. The issue will then be determined by the relevant House.

6. Execution of a warrant on premises used or occupied by a member (not being at Parliament House)

The following procedures are to be observed in relation to the executing of a warrant on premises used or occupied by a member, not being an office at Parliament House:

1. A search warrant should be executed on premises used or occupied by a member at a time when the member, or a senior member of his or her staff, will be present, unless the Commissioner or the Commissioner's delegate is satisfied that compliance with this restriction would affect the integrity of the investigation.
2. To minimise the potential interference with the performance of the member's duties the Search Team Leader should also consider, unless it would affect the integrity of the investigation, whether it is feasible to contact the member, or a senior member of his/her staff, prior to executing the warrant with a view to agreeing on a time for execution of the warrant.
3. The Search Team Leader will allow the member a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.
4. The Search Team Leader may assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege, and a technical information expert to assist with accessing information stored in a computer.
5. On arrival at the premises, the Search Team Leader and assigned lawyer (if present) should meet with the member or the member's representative for the purpose of outlining any obligations under the warrant, the general nature of the allegations being investigated, the nature of the material it is believed is located in the member's office and the relevance of that material to the investigation.
6. The Search Team Leader is to allow the member a reasonable opportunity to claim parliamentary privilege in respect of any documents or other things located on the premises.
7. The Search Team Leader should not seek to access, read or seize any document over which a claim of parliamentary privilege is made.
8. Documents over which parliamentary privilege is claimed should be placed in a Property bag (or other means²). A list of the documents will be prepared by the Search Team Leader with assistance from the member or staff member. The member, or member's staff, should be given an opportunity to take copies before the documents are secured.
9. At the conclusion of the search the Search Team Leader should provide a receipt recording things seized. If the member does not hold copies of the things that have been seized the receipt should contain sufficient particulars of the things to enable the member to recall details of the things seized and obtain further advice.
10. The Search Team Leader should inform the member that the NSW Police Force will, to the extent possible, provide or facilitate access to the seized material where such access is necessary for the performance of the member's duties.

11. The Search Team Leader should deliver any documents over which parliamentary privilege is claimed to the Clerk of the House.
12. Any claim of parliamentary privilege will be reported by the Search Team Leader to the ~~(Officer of NSW Police Force)~~ who will consider the matter in conjunction with the ~~(Officers of NSW Police Force)~~ the Deputy Commissioner and the Commissioner for the purpose of determining whether the NSW Police Force will object to such a claim.
13. Where a ruling is sought as to whether documents are protected by parliamentary privilege the member, the Clerk and a representative of the NSW Police Force will jointly be present at the examination of the material. The member and the Clerk will identify material which they claim falls within the scope of parliamentary proceedings.
14. A list of material considered to be within the scope of proceedings in Parliament will then be prepared by the Clerk and provided to the member and the NSW Police Force representative.
15. Any material not listed as falling within the scope of proceedings in Parliament will immediately be made available to the NSW Police Force.
16. In the event the NSW Police Force disputes the claim for privilege over these documents listed by the Clerk the Commissioner may, within a reasonable time, write to the President of the Legislative Council or Speaker of the Legislative Assembly to dispute any material considered to be privileged material and may provide written reasons for the dispute. The issue will then be determined by the relevant House.

APPENDIX 6

**LETTER FROM THE CHAIR OF THE COMMITTEE AND THE CHAIR OF THE
LEGISLATIVE COUNCIL PRIVILEGES COMMITTEE TO MR ANDREW SCIPIONE
APM, COMMISSIONER OF POLICE, DATED 16 JULY 2010**



NSW LEGISLATIVE COUNCIL PRIVILEGES COMMITTEE
NSW LEGISLATIVE ASSEMBLY PARLIAMENTARY PRIVILEGE AND ETHICS COMMITTEE

16 July 2010

Mr Andrew P Scipione APM
Commissioner of Police
Police and Emergency Services NSW
Locked Bag 5102
PARRAMATTA NSW 2124

Dear Commissioner

Inquiry into a memorandum of understanding with the NSW Police Force concerning the execution of search warrants on the premises of members of Parliament

We refer to your letter of 30 June 2010 in which you provided your comments on the draft *Memorandum of Understanding on the Execution of Search Warrants in the Premises of Members of the New South Wales Parliament between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly*.

On behalf of the Legislative Council Privileges Committee and Legislative Assembly Privileges and Ethics Committee, we would like to thank you for your comments. Following further consideration of the matter, we believe that finalisation of a Memorandum of Understanding should not prove too difficult.

At Attachment A, we have provided a table in which we list your comments from your letter of 30 June 2010 in the left-hand column, together with our response in the right-hand column.

Based on the matters discussed in Attachment A, we have also developed a revised draft Memorandum of Understanding as at 16 July 2010. I enclose a copy.

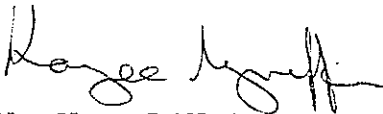
We would again invite your comments on the revised draft Memorandum of Understanding, with a view to settling those matters that remain outstanding from Attachment A. If you could provide a response by Friday, 20 August 2010, that would be appreciated. As before, comments should be sent to both:

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

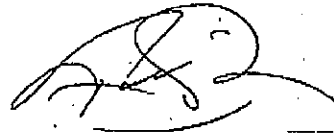
The Clerk to the Committee
New South Wales Legislative Assembly Privileges and Ethics Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

As before, if you would like to discuss any aspect of this matter, please contact the Clerk to the Legislative Council Privileges Committee and Deputy Clerk of the Legislative Council, Mr David Blunt on 9230 2323 or david.blunt@parliament.nsw.gov.au, or the Clerk to the Legislative Assembly Privileges and Ethics Committee and Clerk Assistant (Procedure) of the Legislative Assembly, Ms Ronda Miller, on 9230 2225 or ronda.miller@parliament.nsw.gov.au.

Yours sincerely



Hon Kayee Griffin MLC
Chair
Legislative Council
Privileges Committee



Mr Paul Pearce MP
Chair
Legislative Assembly
Privileges and Ethics Committee

ATTACHMENT A

NSW Police Force suggestion (copied from letter dated 30 June 2010)	Response
<p>Clause 7(1) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member and clause 7(1) concerning the execution of a warrant on premises used or occupied by a member (not being at Parliament House) refer to the role of the Commissioner.</p> <p>It is recommended that these clauses be amended to refer to the <i>Commissioner or the Commissioner's delegate</i>.</p>	<p>Agreed. An amendment has been made in the revised draft.</p> <p>In addition, as referred to in the suggestion opposite, it is noted that the previous draft had the following somewhat confusing structure:</p> <p>7. Execution of a warrant</p> <p><u>Execution of a warrant on the PH office of a member</u></p> <p>...</p> <p><u>Execution of a warrant on premises used or occupied by a member (not being at PH)</u></p> <p>...</p> <p>For ease of reference, that structure has been simplified in the revised draft as follows:</p> <p>5. Execution of a warrant on the Parliament House Office of a member</p> <p>...</p> <p>6. Execution of a warrant on premises used or occupied by a member (not being at Parliament House)</p> <p>...</p>
<p>As acknowledged in your letter, it is imperative that the agreed procedures for the execution of search warrants on the premises of members of the NSW Parliament both ensure documents subject to parliamentary privilege are identified and protected from seizure and preserve the integrity of criminal investigations. Indeed, it is in the interests of all parties that the agreed procedures be sufficiently rigorous and beyond reproach.</p> <p>Recognising that the parliamentary privilege afforded the Parliament is unquestionable, it is the case that the Speaker may waive the exercise of parliamentary privilege in relation to the whole or any part of a search warrant. In this regard, I make the following recommendation for amendment to clause 7 of the draft MoU.</p> <p>Clause 7 (4) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member provides that:</p> <p>The (Officer of the NSW Police Force) will allow the member and the Clerk a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be</p>	<p>Not supported. It is not the case that the President of the Legislative Council or the Speaker of the Legislative Assembly may waive privilege. The privilege that attaches to 'proceedings in Parliament', as provided for in statute through the adoption of the <i>Bill of Rights 1689</i> under the <i>Imperial Acts Application Act 1969</i>, cannot be waived either by an individual member (including the Presiding Officers) or by the Houses. It may only be waived by express statutory provision.</p>

present during the execution of the warrant.

Similarly, clause 7 (3) of the draft MoU concerning the execution of warrants on premises used or occupied by a member (not being at Parliament House) provides that:

The (Officer of the NSW Police Force) will allow the member a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.

It is recommended that the above clauses be expanded upon to provide that, whenever possible, the search warrant, or a draft, be provided to the Speaker in advance in order that the Speaker may, on legal advice if necessary, consider waiving parliamentary privilege in respect of the execution of the whole or any part of the search warrant.

Clause 7 (5) of the draft MoU concerning the execution of a warrant on the Parliament House Office of a member and clause 7 (4) concerning the execution of a warrant on premises used or occupied by a member (not being at Parliament House) provide that the (Officer of the NSW Police Force) will assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege.

To provide the necessary flexibility for the execution of search warrants, it is suggested these clauses be amended to provide that the NSWPF may assign a lawyer to attend.

Agreed. It is noted that the Federal MoU does not require the presence of a legal officer from the Police. The revised draft MoU also provides a safeguard at clauses 5(4) and 6(3) that the member and the Clerk may seek legal advice in relation to the search warrant prior to its execution, and that the member may arrange for a legal adviser to be present during the execution of the warrant.

Accordingly, clauses 5(5) and 6(4) in the revised draft now provide:

The Search Team Leader may assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege ...

In addition, clauses 5(6) and 6(5) in the revised draft have also been amended to provide:

On arrival at the premises, the Search Team Leader and assigned lawyer (if present) ...

Proposed clauses 4, 5 and 6 of the draft MoU concern search warrants issued in NSW to the NSWPF; procedures prior to applying for a warrant; and applying for a warrant respectively. In the highlighted notes of the draft MoU it is suggested the NSWPF provide the content for these clauses; outlining relevant NSWPF procedures or guidelines.

Given the NSWPF procedures with respect to applying for search warrants in NSW are prescribed by the *Law Enforcement (Powers and Responsibilities) Act 2002*, it is suggested that proposed clauses 4, 5 and 6 are unnecessary inclusions in this MoU.

The *Law Enforcement (Powers and Responsibilities) Act 2002* do not spell-out the specific operating procedures to be followed by the NSW Police when applying for and conducting a search warrant. By contrast, the ICAC MoU does spell out the internal ICAC procedures for applying for a warrant at some detail.

Without going to the detail of the ICAC MoU, which is an internal matter for the NSW Police Force, it is proposed that the following clause be inserted in the revised draft, replacing the former clauses 4, 5 and 6:

4. Procedure prior to obtaining a search warrant

An officer of the NSW Police Force who proposes to apply for a search warrant in respect of premises used or occupied by a member should seek approval from the Commissioner or the Commissioner's delegate before applying for the warrant.

If approval is given, the officer should obtain legal advice before applying for a search warrant.

Care should be taken when drafting a search warrant to ensure that it does not cover a wider range of material than is necessary to advance the relevant investigation

This new proposed section is drawn from paragraphs 5.1 – 5.3 of the *AFP National Guidelines for Execution of Search Warrants where Parliamentary Privilege may be involved*, as adopted as part of the Memorandum of Understanding which governs the execution of search warrants by the Australian Federal Police (AFP) in premises of members of the Federal Parliament (please see enclosed).

This proposed section was also discussed at paragraphs 4.6 – 4.8 of the 2006 report of the Legislative Council Privileges Committee entitled *Protocol for execution of search warrants on members' offices* (please also see enclosed). It is understood that this proposal, as amended, was acceptable to the NSW Police Force at the time.

The proposed new clause would place two significant requirements on officers of the NSW Police Force when obtaining a search warrant:

- that the application for a warrant should have the approval of the Commissioner or the Commissioner's delegate.
- that the warrant does not cover a wider range of material than is necessary to advance the relevant investigation.

It is considered that these are worthwhile and practical provisions to ensure that the use of search warrants is restricted to appropriate circumstances.

A modern complexity experienced by the NSWPF in the execution of search warrants is the electronic storage of documentation. In the context of this MoU, the identification of documents and other material attracting parliamentary privilege which are, for example, stored in a computer along with other documents not attracting parliamentary privilege, presents practical challenges.

To ensure the integrity of criminal investigations it is imperative that electronically stored documents attracting parliamentary privilege are identified and

Agreed. Clauses 5(5) and 6(4) in the revised have been further amended as follows:

4. The Search Team Leader may assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege, and a technical information expert to assist with accessing information stored in a computer.

separated, allowing police access to the remaining documents and material within the scope of the search warrant.

In these circumstances, a technical information expert may be required to attend the search and I suggest that consideration be given to whether it is necessary to amend the draft MoU accordingly.

Finally, highlighted references to the Officer of the NSW Police Force may be amended to the Search Team Leader throughout and it appears the word phase in clause 3, paragraph 4 is a typographical error.

Reference to an 'Officer of the NSW Police Force' has been changed to a 'Search Team Leader' throughout. However, clauses 5(13) and 6(12) in the revised draft continue to include reference to an 'Officer of the NSW Police Force' or 'Officers of the NSW Police Force'. It would be appreciated if the NSW Police Force could nominate appropriate officers.

The word 'phase' in Paragraph 3 has been corrected to 'phrase'.

APPENDIX 7

**LETTER FROM MR ANDREW SCIPIONE APM, COMMISSIONER OF POLICE, TO
THE CHAIR OF THE COMMITTEE AND THE CHAIR OF THE LEGISLATIVE
COUNCIL PRIVILEGES COMMITTEE, DATED 17 SEPTEMBER 2010**



NSW Police Force
www.police.nsw.gov.au

OFFICE OF THE COMMISSIONER

The Honourable Kayee Griffin MLC
Chair, Legislative Council
Privileges Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Mr Paul Pearce MP
Chair, Legislative Assembly
Privilege and Ethics Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

D/2010/121264

Dear Chairs,

I refer to your letter dated 16 July 2010, responding to comments provided on the draft *Memorandum of Understanding on the Execution of Search Warrants in the Premises of Members of the NSW Parliament between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly* (the draft MoU).

Reviewing the feedback provided and drafting revisions, I agree that the finalisation of a Memorandum of Understanding is achievable.

I refer to the following proposed clause 4 to the revised draft MoU (numbering added for review purposes):

4. Procedure prior to obtaining a search warrant

- (1) An officer of the NSW Police Force who proposes to apply for a search warrant in respect of premises used or occupied by a member should seek approval from the Commissioner or the Commissioner's delegate before applying for the warrant.
- (2) If approval is given, the officer should obtain legal advice before applying for a search warrant.
- (3) Care should be taken when drafting a search warrant to ensure that it does not cover a wider range of material than is necessary to advance the relevant investigation

Notwithstanding comments provided to the Privileges Committee in 2006, it is the current position of the NSWPF that the *Law Enforcement (Powers and Responsibilities) Act 2002* (LEPRA) is the proper source of police procedures for obtaining lawful search warrants in NSW, and that the appropriate focus for this draft MoU is the interface between the NSWPF and Parliament during the execution of a search warrant.



However, in the interests of progressing the draft MoU, the following revisions are recommended should clause 4 be retained.

In reference to clause 4 (2), whilst legal advice may be obtained in any investigation, this course of action is best informed by the individual circumstances of a particular matter and need not be mandatory. It is proposed that clause 4 (2) either be removed or amended to provide that the officer *may* obtain legal advice before applying for a search warrant.

In reference to clause 4 (3), it is the practice of the NSWPF to draft search warrants in accordance with the statutory requirements of section 62 (3) of LEPR. As you are aware, section 62 (3) of LEPR provides that, when determining whether there are reasonable grounds to issue a warrant, the eligible issuing officer is to consider (but is not limited to considering) the following matters:

- (a) the reliability of the information on which the application is based, including the nature of the source of the information,
- (b) if the warrant is required to search for a thing in relation to an alleged offence – whether there is sufficient connection between the thing sought and the offence.

Whilst it is difficult to appreciate what additional protection clause 4 (3) provides, its inclusion places no additional burden on the NSWPF and may remain as drafted.

Clauses 5 (13) and 6 (12) of the revised draft MoU concern reporting claims of parliamentary privilege for the purpose of determining whether the NSWPF will object to such a claim. To provide an appropriate chain of command for this reporting, the following revision is proposed:

Any claim of parliamentary privilege will be reported by the Search Team Leader to their Commander who will consider the matter in conjunction with the Commissioner's delegate for the purpose of determining whether the NSW Police Force will object to such a claim.

Practical considerations concerning clauses 5 (8) and (9) have also been identified:

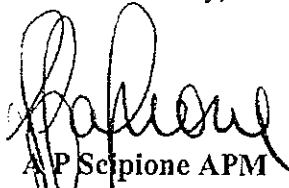
- 5 (8) The Search Team Leader should not seek to access, read or seize any document over which a claim of parliamentary privilege is made
- (9) Documents over which parliamentary privilege is claimed should be placed in a Property bag. A list of documents will be prepared by the Search Team Leader with assistance from the member or staff member. The member, or member's staff, should be given an opportunity to take copies before the documents are secured.

Where a Search Team Leader complies with clause 5 (8) and does not *access* a document over which a claim of privilege is made, it may be unfeasible for the Search Team Leader to compile a list of documents as required at clause 5 (9). I suggest that a redrafting of this clause, and similarly clauses 6 (7) and (8), may be required to achieve the necessary practical arrangements.

Finally, I accept your advice that parliamentary privilege may only be waived by express statutory provision.

Should you have any queries concerning the comments provided, please do not hesitate to contact Ms Letitia Davy, Office of the Commissioner, on (02) 8263 6361 or email davy1let@police.nsw.gov.au

Yours sincerely,



A P Scipione APM
Commissioner of Police

17 SEP 2010

APPENDIX 8

**COMMITTEE'S RESPONSE TO THE ISSUES RAISED IN THE LETTER OF MR
ANDREW SCIPIONE APM, COMMISSIONER OF POLICE, DATED 17
SEPTEMBER 2010**

Appendix 8 Legislative Assembly Standing Committee's response to the issues raised in the letter of Mr Andrew P Scipione APM, Commissioner of Police, dated 17 September 2010

NSW Police Force suggestion

Response

<p>Proposed Clause 4</p> <p><u>4. Procedure prior to obtaining a search warrant</u></p> <p>(1) An officer of the NSW Police Force who proposes to apply for a search warrant in respect of premises used or occupied by a member should seek approval from the Commissioner or the Commissioner's delegate before applying for the warrant.</p> <p>(2) If approval is given, the officer should obtain legal advice before applying for a search warrant.</p> <p>(3) Care should be taken when drafting a search warrant to ensure that it does not cover a wider range of material than is necessary to advance the relevant investigation.</p> <p>Notwithstanding comments provided to the Privileges Committee in 2006, it is the current position of the NSWPF that the <i>Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA)</i> is the proper source of police procedures for obtaining lawful search warrants in NSW, and that the appropriate focus for this draft MoU is the interface between the NSWPF and Parliament during the execution of a search warrant.</p> <p>However in the interests of progressing the draft MoU, the following revisions are recommended should clause 4 be retained.</p> <p>In reference to clause 4(2), whilst legal advice may be obtained in any investigation, this course of action is best informed by the individual circumstances of a particular matter and need not be mandatory. It is proposed that clause 4(2) either be removed or amended to provide that the officer <i>may</i> obtain legal advice before applying for a search warrant.</p> <p>In reference to clause 4(3), it is the practice of the NSWPF to draft search warrants in</p>	<p>The Committee notes the provisions in LEPRA which require an issuing officer to consider the reliability of information on which the application for a search warrant is based, and whether there is a sufficient nexus between the thing being sought and an alleged offence.</p> <p>The Committee was of the view that including specific reference to these mandatory considerations, within the text of the MoU, would emphasise that issues of parliamentary privilege may well arise in the context of a search warrant issued in relation to a member's office or premises, and for that reason any issue or execution of a search warrant should be in scrupulous conformity with statutory requirements.</p> <p>Incorporation of Standing Operating Procedures, similar to the detailed steps incorporated into the MoU between the Presiding Officers and the Independent Commission Against Corruption, would serve to inform all parties affected by the MoU of the considerations involved. The Committee noted that the incorporation of clause 4(3) addresses the issue of scope of a warrant. Clause 4(1) requires that the most senior Police, the Commissioner or his or her delegate, are to be consulted in relation to a search warrant in respect of a member's premises, a surety that warrants would only be issued where there are real grounds to justify the search warrant.</p> <p>Clause 4(1) states: <i>An officer of the NSW Police Force who proposes to apply for a search warrant in respect of premises used or occupied by a member should seek approval from the Commissioner or the Commissioner's delegate before applying for the warrant".</i></p> <p>Given the Committee's concern about the need for reliability of information to be properly assessed prior to issue of a warrant, the</p>
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<p>accordance with the statutory requirements of section 62(3) of LEPR. As you are aware, section 62(3) of LEPR provides that, when determining whether there are reasonable grounds to issue a warrant, the eligible issuing officer is to consider (but is not limited to considering) the following matters:</p> <ul style="list-style-type: none"> (a) the reliability of the information on which the application is based, including the nature of the source of the information, (b) if the warrant is required to search for a thing in relation to an alleged offence – whether there is sufficient connection between the thing sought and the offence. <p>Whilst it is difficult to appreciate what additional protection clause 4(3) provides, its inclusion places no additional burden on the NSWPF and may remain as drafted.</p>	<p>Committee sought further information and a specific undertaking as to the level to which the Commissioner's approval powers could be delegated. Advice was received on 15 October 2010 from the Commissioner's office that the delegation would extend no further than the respective Assistant Commissioner or Superintendent.</p> <p>The Committee notes that the Commissioner proposes removing or amending clause 4(2), so that it is not mandatory for an officer to obtain legal advice. The Committee agrees that it should not be mandatory for the Police to obtain legal advice before applying for a search warrant.</p>
<p>Clauses 5(13) and 6(12) of the revised draft MoD concern reporting claims of parliamentary privilege for the purpose of determining whether the NSWPF will object to such a claim. To provide an appropriate chain of command for this reporting, the following revision is proposed:</p> <p>Any claim of parliamentary privilege will be reported by the Search Term Leader to their Commander who will consider the matter in conjunction with the Commissioner's delegate for the purpose of determining whether the NSW Police Force will object to such a claim.</p>	<p>Agreed.</p>
<p>Practical considerations concerning clauses 5 (8) and (9) have also been identified:</p> <p>5(8) The Search Team Leader should not seek to access, read or seize any document over which a claim of parliamentary privilege is made</p> <p>(9) Documents over which parliamentary privilege is claimed should be placed in a Property bag. A list of documents will be prepared by the Search Team Leader with</p>	<p>The Committee acknowledges that while it is undesirable for the officer executing a search warrant to read or seize any document over which parliamentary privilege is claimed, there is a practical need to be able to identify the nature of a document for the purpose of listing it as a document over which a claim of privilege is made. Thus the following amendment to clause 5(8) has been agreed:</p>

<p>assistance from the member or staff member. The member, or member's staff, should be given an opportunity to take copies before the documents are secured.</p> <p>Where a Search Team complies with clause 5(8) and does not access a document over which a claim of privilege is made, it may be unfeasible for the Search Team Leader to compile a list of documents as required at clause 5(9). I suggest that a redrafting of this clause, and similarly clauses 6(7) and (8), may be required to achieve the necessary practical arrangements.</p>	<p>The Search Team Leader, apart from sighting a document over which a claim of parliamentary privilege is made for the purposes of identification and listing as per clause 5(9) below, should not seek to access, read or seize the document.</p> <p>A similar amendment is proposed to clause 6(7).</p>
<p>Finally, I accept your advice that parliamentary privilege may only be waived by express statutory provision.</p>	<p>Agreed.</p>

APPENDIX 9

**FINAL MEMORANDUM OF UNDERSTANDING ON THE EXECUTION OF
SEARCH WARRANTS IN THE PREMISES OF MEMBERS OF THE NEW SOUTH
WALES PARLIAMENT BETWEEN THE COMMISSIONER OF POLICE, THE
PRESIDENT OF THE LEGISLATIVE COUNCIL AND THE SPEAKER OF THE
LEGISLATIVE ASSEMBLY**

**MEMORANDUM OF UNDERSTANDING
ON THE EXECUTION OF SEARCH WARRANTS
IN THE PREMISES OF
MEMBERS OF THE NEW SOUTH WALES PARLIAMENT
BETWEEN
THE COMMISSIONER OF POLICE
THE PRESIDENT OF THE LEGISLATIVE COUNCIL
AND
THE SPEAKER OF THE LEGISLATIVE ASSEMBLY**

1. Preamble

This Memorandum of Understanding records the understanding of the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly on the process to be followed where the NSW Police Force proposes to execute a search warrant on premises used or occupied by a member of the New South Wales Parliament, including the Parliament House office of a member, the ministerial office of a member, the electorate office of a member and the residence of a member.

The memorandum and associated processes are designed to ensure that search warrants are executed without improperly interfering with the functioning of Parliament and so its members and their staff are given a proper opportunity to claim parliamentary privilege in relation to documents in their possession.

2. Execution of Search Warrants

The agreed process for the execution of a search warrant by the NSW Police Force over the premises used or occupied by a member is spelt out in the attached 'Procedures for the execution of search warrants in the premises of members of the New South Wales Parliament'.

3. Promulgation of this Memorandum of Understanding

This Memorandum of Understanding will be promulgated within the NSW Police Force.

This Memorandum of Understanding will be tabled in the Legislative Council by the President and in the Legislative Assembly by the Speaker.

4. Variation of this Memorandum of Understanding

This Memorandum of Understanding can be amended at any time by the agreement of all the parties to the Memorandum.

This Memorandum of Understanding will continue until any further Memorandum of Understanding on the execution of search warrants on the premises of members of the New South Wales Parliament is concluded between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly.

The Commissioner of Police will consult with the President of the Legislative Council and the Speaker of the Legislative Assembly in relation to any revision of this memorandum.

Revocation of agreement to this Memorandum of Understanding

Any party to this Memorandum of Understanding may revoke their agreement to this Memorandum. The other parties to this Memorandum of Understanding should be notified in writing of the decision to revoke.

Signatures

**Mr Andrew P Scipione APM
Commissioner**

2010

**The Hon Amanda Fazio MLC
President**

2010

**The Hon Richard Torbay
Speaker**

2010

PROCEDURES FOR THE EXECUTION OF SEARCH WARRANTS IN THE PREMISES OF MEMBERS OF THE NEW SOUTH WALES PARLIAMENT

1. Purpose of these procedures

These procedures are designed to ensure that officers of the NSW Police Force execute search warrants on the premises of members of the New South Wales Parliament in a way which does not amount to a contempt of Parliament and which gives a proper opportunity to members to raise claims of parliamentary privilege in relation to documents that may be on the search premises.

2. Application of these procedures

These procedures apply, subject to any overriding law or legal requirement in a particular case, to any premises used or occupied by a member including:

- the Parliament House office of a member;
- the ministerial office of a member who is also a minister;
- the electorate office of a member; and
- any other premises used by a member for private or official purposes at which there is reason to suspect that material covered by parliamentary privilege may be located.

3. Parliamentary privilege

A search warrant, if otherwise valid, can be executed over premises occupied or used by a member of the New South Wales Parliament, including the Parliament House office of a member, the ministerial office of a member who is also a minister, the electorate office of a member and the residence of a member. Evidential material cannot be placed beyond the reach of officers of the NSW Police Force simply because it is held by a member or is on premises used or occupied by a member.

However, in executing a warrant on the office of a member of Parliament, 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 specified in Article 9 of the *Bill of Rights 1689*. Article 9 applies in New South Wales under the *Imperial Acts Application Act 1969*.

It is a contempt of Parliament for an officer of the NSW Police Force or any person to improperly interfere with the free performance by a member of his or her parliamentary duties.

The scope of 'proceedings in Parliament' is not defined in legislation. In general terms, the phrase is taken to mean all words spoken or acts done by a member in the course of, or for the purposes of or incidental to, the transacting of the business of a House or committee of Parliament.

In the context of the execution of a search warrant on the premises of a member, material in the possession of members that may fall within the scope of 'proceedings in Parliament' may include

notes, draft speeches and questions prepared by the member for use in Parliament, correspondence received by the member from constituents if the member has or is seeking to raise the constituent's issues in the House, correspondence prepared by the member again if the member has or is seeking to raise the issue in the correspondence in the House, and submissions and other material provided to the member as part of his or her participation in committee inquiries.

Items that are unlikely to be captured within the scope of 'proceedings in Parliament' include a member's travel documentation and political party material.

In some cases the question of whether material constitutes 'proceedings in Parliament' will 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 was found.

4. Procedure prior to obtaining a search warrant

An officer of the NSW Police Force who proposes to apply for a search warrant in respect of premises used or occupied by a member should seek approval from the Commissioner or the Commissioner's delegate before applying for the warrant.

Care should be taken when drafting a search warrant to ensure that it does not cover a wider range of material than is necessary to advance the relevant investigation.

5. Execution of a warrant on the Parliament House Office of a member

The following procedures are to be observed in relation to the executing of a warrant on the Parliament House Office of a member:

1. A search warrant should not be executed on premises in Parliament House on a parliamentary sitting day or on a day on which a parliamentary committee involving the member is meeting unless the Commissioner or the Commissioner's delegate is satisfied that compliance with this restriction would affect the integrity of the investigation.
2. The Search Team Leader will contact the relevant Presiding Officer prior to execution of a search warrant and notify that officer of the proposed search. The Presiding Officer shall then inform the Clerk or the Deputy Clerk. If the Presiding Officer is not available the Search Team Leader will notify the Clerk or Deputy Clerk or, where a Committee's documents may be involved, the Chair of that Committee. The Clerk will arrange for the premises the subject of the warrant to be sealed and secured pending execution of the warrant.
3. To minimise the potential interference with the performance of the member's duties the Search Team Leader should also consider, unless it would affect the integrity of the investigation, whether it is feasible to contact the member, or a senior member of his/her staff, prior to executing the warrant with a view to agreeing on a time for execution of the warrant. As far as possible a search warrant should be executed at a time when the member or a senior member of his or her staff will be present.
4. The Search Team Leader will allow the member and the Clerk a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.

5. The Search Team Leader may assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege, and a technical information expert to assist with accessing information stored in a computer.
6. On arrival at Parliament House the Search Team Leader and assigned lawyer (if present) should meet with the Clerk of the House and member or the member's representative for the purpose of outlining any obligations under the warrant, the general nature of the allegations being investigated, the nature of the material it is believed is located in the member's office and the relevance of that material to the investigation.
7. The Search Team Leader is to allow the member a reasonable opportunity to claim parliamentary privilege in respect of any documents or other things located on the premises.
8. The Search Team Leader, apart from sighting a document over which a claim of parliamentary privilege is made for the purposes of identification and listing as per clause 5(9) below, should not seek to access, read or seize the document.
9. Documents over which parliamentary privilege is claimed should be placed in a Property bag. A list of the documents will be prepared by the Search Team Leader with assistance from the member or staff member. The member, or member's staff, should be given an opportunity to take copies before the documents are secured.
10. The Search Team Leader should request the Clerk to secure and take custody of any documents over which a claim for parliamentary privilege has been made.
11. At the conclusion of the search the Search Team Leader should provide a receipt recording things seized. If the member does not hold copies of the things that have been seized the receipt should contain sufficient particulars of the things to enable the member to recall details of the things seized and obtain further advice.
12. The Search Team Leader should inform the member that the NSW Police Force will, to the extent possible, provide or facilitate access to the seized material where such access is necessary for the performance of the member's duties.
13. Any claim of parliamentary privilege will be reported by the Search Team Leader to his or her Commander who will consider the matter in conjunction with the Commissioner's delegate for the purpose of determining whether the NSW Police Force will object to such a claim.
14. Where a ruling is sought as to whether documents are protected by parliamentary privilege the member, the Clerk and a representative of the NSW Police Force will jointly be present at the examination of the material. The member and the Clerk will identify material which they claim falls within the scope of parliamentary proceedings.
15. A list of material considered to be within the scope of proceedings in Parliament will then be prepared by the Clerk and provided to the member and the NSW Police Force representative.
16. Any material not listed as falling within the scope of proceedings in Parliament will immediately be made available to the NSW Police Force.
17. In the event the NSW Police Force dispute the claim for privilege over these documents listed by the Clerk the Commissioner may, within a reasonable time, write to the President

of the Legislative Council or Speaker of the Legislative Assembly to dispute any material considered to be privileged material and may provide written reasons for the dispute. The issue will then be determined by the relevant House.

6. Execution of a warrant on premises used or occupied by a member (not being at Parliament House)

The following procedures are to be observed in relation to the executing of a warrant on premises used or occupied by a member, not being an office at Parliament House:

1. A search warrant should be executed on premises used or occupied by a member at a time when the member, or a senior member of his or her staff, will be present, unless the Commissioner or the Commissioner's delegate is satisfied that compliance with this restriction would affect the integrity of the investigation.
2. To minimise the potential interference with the performance of the member's duties the Search Team Leader should also consider, unless it would affect the integrity of the investigation, whether it is feasible to contact the member, or a senior member of his/her staff, prior to executing the warrant with a view to agreeing on a time for execution of the warrant.
3. The Search Team Leader will allow the member a reasonable time to seek legal advice in relation to the search warrant prior to its execution and for the member to arrange for a legal adviser to be present during the execution of the warrant.
4. The Search Team Leader may assign a lawyer to attend the search for the purpose of providing legal advice to the Search Team on the issue of parliamentary privilege, and a technical information expert to assist with accessing information stored in a computer.
5. On arrival at the premises, the Search Team Leader and assigned lawyer (if present) should meet with the member or the member's representative for the purpose of outlining any obligations under the warrant, the general nature of the allegations being investigated, the nature of the material it is believed is located in the member's office and the relevance of that material to the investigation.
6. The Search Team Leader is to allow the member a reasonable opportunity to claim parliamentary privilege in respect of any documents or other things located on the premises.
7. The Search Team Leader, apart from sighting a document over which a claim of parliamentary privilege is made for the purposes of identification and listing as per clause 6(8) below, should not seek to access, read or seize the document.
8. Documents over which parliamentary privilege is claimed should be placed in a Property bag. A list of the documents will be prepared by the Search Team Leader with assistance from the member or staff member. The member, or member's staff, should be given an opportunity to take copies before the documents are secured.
9. At the conclusion of the search the Search Team Leader should provide a receipt recording things seized. If the member does not hold copies of the things that have been seized the receipt should contain sufficient particulars of the things to enable the member to recall details of the things seized and obtain further advice.

10. The Search Team Leader should inform the member that the NSW Police Force will, to the extent possible, provide or facilitate access to the seized material where such access is necessary for the performance of the member's duties.
11. The Search Team Leader should deliver any documents over which parliamentary privilege is claimed to the Clerk of the House.
12. Any claim of parliamentary privilege will be reported by the Search Team Leader to his or her Commander who will consider the matter in conjunction with the Commissioner's delegate for the purpose of determining whether the NSW Police Force will object to such a claim.
13. Where a ruling is sought as to whether documents are protected by parliamentary privilege the member, the Clerk and a representative of the NSW Police Force will jointly be present at the examination of the material. The member and the Clerk will identify material which they claim falls within the scope of parliamentary proceedings.
14. A list of material considered to be within the scope of proceedings in Parliament will then be prepared by the Clerk and provided to the member and the NSW Police Force representative.
15. Any material not listed as falling within the scope of proceedings in Parliament will immediately be made available to the NSW Police Force.
16. In the event the NSW Police Force disputes the claim for privilege over these documents listed by the Clerk the Commissioner may, within a reasonable time, write to the President of the Legislative Council or Speaker of the Legislative Assembly to dispute any material considered to be privileged material and may provide written reasons for the dispute. The issue will then be determined by the relevant House.

APPENDIX 10

LETTER FROM MR CHRIS BLACK, ACTING NATIONAL MANAGER OF POLICY AND GOVERNANCE, AUSTRALIAN FEDERAL POLICE TO THE CLERK OF THE COMMITTEE, DATED 18 JUNE 2010

18 June 2010

RECEIVED

23 JUN 2010

**LEGISLATIVE
COUNCIL**

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

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 Council Privileges Committee.

Yours sincerely

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

Chris Black
Performing the Duties of National Manager
Policy & Governance

APPENDIX 11

EXCERPTS FROM MINUTES OF COMMITTEE MEETINGS

Minutes of Meeting of the Standing Committee on Parliamentary Privilege and Ethics (no.12)

9.30 am, 20 May 2010, in Waratah Room, Parliament House

Members Present

Mr Pearce MP (Chair)

Mr Amery MP

Mr Kerr MP

Ms Moore MP

Ms McMahon MP

Mr Terenzini MP

Mr J. H. Turner MP

Apologies: Mr Martin MP

In attendance: Ms Ronda Miller

1. Minutes of last meetings held 21 April 2010, and 13 May 2010

The minutes of the meetings held on 21 April 2010, and 13 May 2010 which had been circulated, were adopted on the motion of Mr Turner, seconded by Mr Amery.

2. Proposed inquiry into MOU with NSW Police on execution of search warrants in Parliament House

The Committee noted the message from the Legislative Council, considered and agreed to by the Legislative Assembly on 24 April 2010 regarding the referral of the inquiry into a Memorandum of Understanding with the NSW Police on execution of search warrants in Parliament House, and premises of Members.

The Chair advised the Committee that he had been advised that the Privileges Committee had drafted an MOU for forwarding to the NSW Police, based on the MOU entered with the ICAC, but extending the coverage to Members' premises outside of Parliament House. The Privileges Committee proposes forwarding the draft MOU to the Police and seeking a written response. The Clerk advised that the Privileges Committee would then table a report containing the draft MOU for the information of Members of the Legislative Council. A copy of the draft MOU was circulated for information.

The Committee deliberated.

The Committee resolved, on the motion of Mr Turner, seconded by Mr Terenzini, that (1) the Committee agreed to the Chair of the Committee on Parliamentary Privilege and Ethics jointly signing correspondence with the Chair of the Privileges Committee, requesting comment and advice from the NSW Police on the draft MOU; (2) that, similarly to the process followed with drafting the MOU with the ICAC, the LA Committee on Parliamentary Privilege and Ethics would receive and respond to the report of the Privileges Committee; and (3) the Committee would consider holding public hearings on the draft MOU to inform its response and report to the House.

.....

The Committee adjourned at 9.45am, sine die.

**Minutes of Meeting of the Standing Committee on Parliamentary Privilege and Ethics
(no.13)**

9.30 am, 24 June 2010, in Room 1254, Parliament House

Members Present

Mr Pearce MP (Chair)

Mr Amery MP

Mr Kerr MP

Mr Martin MP

Ms Moore MP

Mr J. H. Turner MP

Apologies: Ms McMahon MP, Mr Terenzini MP

In attendance: Ms Ronda Miller

3. Minutes of last meeting held 20 May 2010

The minutes of the meeting held on 20 May 2010 which had been circulated, were adopted on the motion of Mr Turner, seconded by Mr Amery.

4. (a) **Correspondence from the Premier**, dated 25 May 2010, responding to recommendations contained in the Committee's Report on the Memorandum of Understanding – Execution of Search Warrants by the ICAC on Members' offices. The correspondence was noted on the motion of Mr Martin, seconded by Mr Turner.

.....
1. Inquiry on MOU with Police

The Clerk to the Committee advised that letters had been signed by the Chair and the Chair of the Legislative Council Privileges Committee and forwarded to the Commissioner of Police, the Ombudsman, the ICAC, and the Australian Federal Police. A response from the AFP, dated 18 June 2010, was circulated to Members. The Clerk undertook to prepare a briefing note when responses were received.

.....
The Committee adjourned at 9.45am, sine die.

**Minutes of Meeting of the Standing Committee on Parliamentary Privilege and Ethics
(no.14)**

9.30am Thursday 2 September 2010 in Waratah Room, Parliament House

Members Present

Mr Pearce MP (Chair)

Mr Amery MP

Mr Kerr MP

Mr Martin MP

Ms Moore MP

Mr J. H. Turner MP

Hon G West MP

Apologies: Ms McMahon MP

In attendance: Ms Ronda Miller

Minutes of last meeting held 24 June 2010

The minutes of the meeting held on 24 June 2010 which had been circulated, were noted and adopted on the motion of Mr Turner, seconded by Mr Amery.

Inquiry on MOU with Police

The Clerk to the Committee advised that the Chair, and the Chair of the Privileges Committee, had written to the Police Commissioner, responding to the comments provided by the Police Commissioner on 30 June regarding the draft MOU which had been forwarded. A briefing note summarising the points of contention was circulated.

The Committee adjourned at 9.50 am, sine die.

**Minutes of Meeting of the Standing Committee on Parliamentary Privilege and Ethics
(no.14)**

9.30am Wednesday 8 September 2010 in Waratah Room, Parliament House

Members Present

Mr Pearce MP (Chair)

Mr Amery MP

Mr Kerr MP

Ms Moore MP

Mr J. H. Turner MP

Hon G West MP

Apologies: Mr Martin

In attendance: Ms Ronda Miller

1. Minutes of last meeting held 2 September 2010

The minutes of the meeting held on 2 September 2010 which had been circulated, were noted and adopted on the motion of Mr Kerr, seconded by Mr Amery.

.....
2. Inquiry on MOU with Police

The Clerk to the Committee advised that the Police Commissioner's office had advised that their response regarding the remaining points of contention had been due for delivery on 1 September. However, there had been a delay and the response was now due at the end of the week.

.....
The Committee adjourned at 10.00 am, sine die.

**Minutes of Meeting of the Standing Committee on Parliamentary Privilege and Ethics
(no.14)**

9.30am Thursday 23 September 2010 in Room 814-815, Parliament House

Members Present

Mr Pearce MP (Chair)

Mr Amery MP

Ms McMahon MP

Mr Martin MP

Mr J. H. Turner MP

Hon G West MP

Apologies: Mr Kerr, Ms Moore

In attendance: Ms Ronda Miller

1. Minutes of last meeting held 8 September 2010

The minutes of the meeting held on 8 September 2010 which had been circulated, were noted and adopted on the motion of Mr Amery, seconded by Ms McMahon.

.....
Inquiry on MOU with Police

The Committee noted the correspondence from the Police Commissioner regarding the areas of remaining disagreement in the draft MOU.

A briefing note had been circulated with a schedule outlining the Police response to the points of contention.

Debate ensued.

On the motion of Mr West, the Committee resolved that the Clerk obtain further advice from the Police regarding the scope of "commissioner's delegate" in Clause 4. The Committee also noted that the Legislative Council Privileges Committee was due to

table its report on the MOU later in the day. The Committee agreed that the Clerk prepare a briefing note advising of the Privileges Committee's response to the Police correspondence, with a view to the committee meeting again in the next sitting week to consider a draft report to the House.

.....
There being no general business, the Committee adjourned at 10.00 am, until Thursday 21 October at 9.30am.

**Minutes of Meeting of the Standing Committee on Parliamentary Privilege and Ethics
(no.14)**

9.30am Thursday 23 September 2010 in Room 814-815, Parliament House
Members Present

Mr Pearce MP (Chair)
Mr Amery MP
Ms McMahon MP
Mr Martin MP
Mr J. H. Turner MP
Hon G West MP
Apologies: Mr Kerr, Ms Moore
In attendance: Ms Ronda Miller

2. Minutes of last meeting held 8 September 2010

The minutes of the meeting held on 8 September 2010 which had been circulated, were noted and adopted on the motion of Mr Amery, seconded by Ms McMahon

.....
Inquiry on MOU with Police

The Committee noted the correspondence from the Police Commissioner regarding the areas of remaining disagreement in the draft MOU.

A briefing note had been circulated with a schedule outlining the Police response to the points of contention. Debate ensued.

On the motion of Mr West, the Committee resolved that the Clerk obtain further advice from the Police regarding the scope of "commissioner's delegate" in Clause 4. The Committee also noted that the Legislative Council Privileges Committee was due to table its report on the MOU later in the day. The Committee agreed that the Clerk prepare a briefing note advising of the Privileges Committee's response to the Police correspondence, with a view to the committee meeting again in the next sitting week to consider a draft report to the House.

.....
There being no general business, the Committee adjourned at 10.00 am, until Thursday 21 October at 9.30am