

Appendix

Statement by the President, 31 August 2016

Letter from Senator Conroy to the President, dated 30 August 2016

STATEMENT BY THE PRESIDENT**MATTER OF PRIVILEGE RAISED BY SENATOR CONROY**

By letter dated 30 August 2016, Senator Conroy has raised as a matter of privilege aspects of the execution of search warrants by the Australian Federal Police (AFP) on his Melbourne office and the home of an Opposition staff member on 19-20 May 2016, and on the Department of Parliamentary Services at Parliament House, Canberra, on 24 August 2016, and related actions allegedly undertaken by the AFP and NBN Co Limited.

Senator Conroy claims that various actions of the AFP and NBN Co staff may have constituted an improper interference with his capacity as a senator to carry out his functions. These include:

- the possibility that the AFP intercepted and made use of his telecommunications and associated data or those of Opposition staff members;
- the alleged capture and dissemination by an NBN Co officer accompanying the AFP on 19-20 May 2016 of images of material over which Senator Conroy had claimed parliamentary privilege, contrary to the Memorandum of Understanding on the Execution of Search Warrants in the Premises of Members of Parliament, and associated AFP Guideline;
- the possibility that NBN Co may have acted on information obtained during the execution of the warrants, over which parliamentary privilege had been claimed, to penalise NBN CO staff alleged to have been connected to the provision of information to enable him to carry out his functions as a senator.

Additionally, the alleged penalisation of NBN CO staff alleged to have been connected to the provision of information to enable Senator Conroy to carry out his functions as a senator is raised as a separate potential contempt.

In determining whether to give precedence to a motion to refer a matter to the Privileges Committee I am required to have regard only to the criteria listed in Privilege Resolution 4 (Criteria to be taken into account by the President in determining whether a motion arising from a matter of privilege should be given precedence of other business). These are as follows:

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in

24 respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate; and

- (b) the existence of any remedy other than that power for any act which may be held to be a contempt.

The purpose of these criteria is to ensure that a matter which meets them is given an appropriate opportunity to be dealt with as an item of business so that the Senate may then make a decision on the merits of the case. The decision by the President to grant precedence is not a recommendation that the matter *should* be referred to the Privileges Committee for inquiry, simply that the Senate should be given the earliest opportunity to make that decision for itself.

In this case, the Senate has declared in Privilege Resolution 6 (1) that:

A person shall not improperly interfere with ... the free performance by a senator of the senator's duties as a senator.

The Senate has also in the past regarded the penalisation of persons who provide information to senators as warranting the contempt jurisdiction of the Senate, although the protection of persons who provide information to members of parliament to assist them in carrying out their functions is not absolute. Parliamentary privilege will only protect such transactions when there is a clear connection to the use of the information by senators in the course of proceedings in parliament

I am satisfied, therefore, that the matters raised by Senator Conroy fall into that category of matters to which precedence has been granted in the past. I therefore grant precedence to a motion to refer the matters to the Privileges Committee. I table the correspondence and now invite Senator Conroy to give notice of such a motion.



30 August 2016

Senator the Hon Stephen Parry
President of the Senate
Parliament House
CANBERRA ACT 2600

*To clerk for
advice please.
S.
31/8/16*



Dear Mr President

I wish to raise a matter of privilege in accordance with standing order 81.

The matter of privilege I wish to raise pertains to whether any contempt has been committed in relation to the execution of search warrants by the Australian Federal Police on 19-20 May 2016 at my office at Treasury Place, East Melbourne, and at the home of a staff member, and at Parliament House on 24 August 2016, and related actions and inquiries undertaken by the Australian Federal Police and NBN Co Limited.

There are several aspects of the investigation which I believe may have involved the commission of a contempt through improper interference with my capacity as a senator to carry out my functions, and by penalising NBN Co staff alleged to have been connected to the provision of information to enable me to carry out my functions as a senator.

Interception of telecommunications

I am concerned that the AFP may have accessed telecommunications data and intercepted other telecommunications in the course of its investigation. I have asked the AFP to advise whether my telephone calls or the calls of any Opposition staff member have been intercepted, however they have refused to respond.

I believe intercepting the telecommunications of parliamentarians, members of staff, witnesses and others communicating with parliamentarians in connection with parliamentary proceedings, such as journalists, may constitute a contempt.

Dissemination of material subject to privilege claim

Prior to the commencement of the search on 19 May 2016, the AFP officers present at the raids were advised that I claimed parliamentary privilege over all documents in my office.

Further, I made it clear that I expected anything taken from my office to be sealed in audit bags and quarantined in the office of the Clerk of the Senate pending determination of my

privilege claim, in accordance with the *Memorandum of Understanding on the Execution of Search Warrants in the Premises of Members of Parliament (the 'MOU')*.

However, during a conference with my legal representatives after the raids on Friday 20 May 2016, the AFP revealed that an NBN Co officer participating in the search of my office, Mr Simon Lee-Steere, had taken images of documents seized at my office and shared them with other NBN Co employees.

Mr Lee-Steere's dissemination of these images was contrary to the MOU and, in my submission, demonstrated contempt for my privilege claim.

Acting on privileged information

I am also concerned that NBN Co may have acted on information obtained during the raids, over which I had claimed privilege, to penalise NBN Co staff alleged to have been connected to the provision of information to enable me to carry out my functions as a senator.

On 23 May 2016 technology website *IT News* reported that NBN Co had utilised information obtained during the raids on 19-20 May 2016 as part of its internal investigations:

TWO NBN STAFF STOOD DOWN IN AFP LEAK INVESTIGATION

Raids lead network builder to alleged culprits

NBN Co has stood down two employees over their alleged involvement in the leaking of damaging internal documents following an Australian Federal Police raid last week.

An NBN spokesperson confirmed the two staff had been stood aside while an investigation is underway, as first reported by The Australian.

Information gathered as part of the AFP's raids on the office of Labor Senator Stephen Conroy and the home [of a staff member] late last week helped lead NBN to the two workers...

Acting on information which is subject to a privilege claim and should be quarantined in the office of the Clerk of the Senate demonstrates contempt for that privilege claim, in my view.

Any adverse action against an employee of NBN Co because of a suspicion that they provided a Senator with information in relation to proceedings in the Parliament may also constitute a contempt.

Referral to Senate Standing Committee on Privileges

I ask you to grant precedence to a motion to refer these matters to the Senate Standing Committee of Privileges to inquire into and report on the possible commission of a contempt in relation to the above concerns.

I believe it may also be a timely opportunity for the Privileges Committee to make recommendations in relation to any revisions to the MOU which may be desirable, noting that the MOU is now over 11 years old.

Yours sincerely,



Senator the Hon Stephen Conroy

Deputy Leader of the Opposition in the Senate

Shadow Special Minister of State

Shadow Minister for Sport

Senator for Victoria

