

Chapter 1

Search warrants and the Senate

1.1 When Australian Federal Police (AFP) officers execute a search warrant where parliamentary privilege may be involved, they are required to do so in accordance with a national guideline adopted in 2005 as the result of a memorandum of understanding between the then Presiding Officers and Attorney-General.

1.2 The preamble to the national guideline states that it:

... is designed to ensure that search warrants are executed without improperly interfering with the functioning of Parliament and that Members and their staff are given a proper opportunity to raise claims for parliamentary privilege or public interest immunity in relation to documents or other things that may be on the search premises.

1.3 The committee considers that these purposes – safeguarding against improper interference and ensuring that privilege claims may be properly raised and determined – should inform the interpretation and implementation of the guideline. If these purposes are not met in the execution of warrants, then the protections available under parliamentary privilege are undermined.

1.4 The guideline has been tested for the first time in the investigation of a suspected leak from NBN Co, involving the execution of three search warrants. The background is set out in the committee's [163rd report](#). The committee now reports on two inquiries arising from the matter, which in turn deal with:

- the disposition of seized material over which privilege has been claimed; that is, whether the privilege claim should be upheld (the privilege matter) and
- allegations of possible contempts arising from the way warrants were executed (the contempt matter).

1.5 Although referred separately, the committee reports on these matters together, partly because of their common factual bases, but also because the committee's recommendations on the two matters are interlinked.

Documents available to the committee

1.6 The main evidence before the committee comprises:

- Documents tabled by the President, including correspondence from former Senator the Hon. Stephen Conroy and a background paper from the Clerk of the Senate about the execution of search warrants
- A submission from former Senator Conroy on each matter
- A submission from the AFP on the 'disposition' matter, but including background relevant to both matters
- A list from the AFP of the documents seized, though in general terms, argued (in the AFP submission) to be insufficient to assist in determining their status

- Copies of the three search warrants and the affidavits sworn by AFP officers seeking the warrants, with redactions
- Correspondence from the AFP and from NBN Co responding to the contempt allegations.

1.7 The committee is for now reserving its decision about the publication of these documents, other than those published with its preliminary report. A number of them contain details of the AFP investigation, which is ongoing, as well as details of the seized material.

Structure of the report

1.8 Under the guideline, former Senator Conroy made a claim of parliamentary privilege over the seized material. The committee must recommend to the Senate whether that claim ought be upheld. Documents held to be privileged would be withheld from the AFP investigation. These matters are dealt with in chapter 2.

1.9 Part of the committee's assessment of the privilege claim addresses the question whether the impact of the execution of the search warrants may have amounted to an improper interference with the Parliament. The facts underlying the contempt matter are relevant to determining this question. The contempt matter is dealt with in chapter 3.