

Dear,

I transmit to you, for your information, the following resolution agreed to by the Senate on 6 December 2018 regarding parliamentary privilege and the seizure of material by executive agencies.

The resolution is as follows:

That the Senate—

- (a) notes that:
  - (i) the law of parliamentary privilege is intended to protect the ability of legislative Houses, their members and committees, to exercise their authority and perform their duties without undue external interference, and
  - (ii) an aspect of that law is the protection of the legislature against improper interference by the judiciary and the executive;
- (b) further notes and affirms that:
  - (i) the powers, privileges and immunities of the Senate and the House of Representatives are secured through s.49 of the Constitution, and include the traditional freedoms formulated in Article 9 of the Bill of Rights 1688, protecting speech and debates in Parliament against being impeached or questioned in any court or place out of Parliament,
  - (ii) the protection of privileged material in proceedings of courts and tribunals, descended from Article 9, is declared and enacted in s.16 of the *Parliamentary Privileges Act 1987*,
  - (iii) the protections recited in Article 9 and secured through s.49 are not confined to courts and tribunals, but also encompass the protection of privileged material against incursion by the executive and executive agencies,
  - (iv) the protection of privileged material against seizure by executive agencies under warrant is acknowledged and secured by a settlement between the legislature and the executive, whose purpose is to ensure that search warrants are executed without improperly interfering with the functioning of Parliament, and
  - (v) the National AFP Guideline developed under this settlement is intended to enable informed claims of privilege to be made and determined, with seized material sealed with a third party until those claims are resolved;
- (c) declares, for the avoidance of doubt:
  - (i) that the right of the Houses to determine claims of privilege over material sought to be seized or accessed by executive agencies adheres regardless of the form of the material, the means by which those agencies seek seizure or access, and the procedures followed, and

- (ii) in particular, that these rights adhere against the covert use of intrusive powers, by which agencies may seek to seize or access information connected to parliamentary proceedings without the use or presentation of warrants;
- (d) requires the executive and executive agencies to observe the rights of the Senate, its committees and members in determining whether and how to exercise their powers in matters which might engage questions of privilege; and
- (e) calls on the Attorney-General, as a matter of urgency, to work with the Presiding Officers of the Parliament to develop a new protocol for the execution of search warrants and the use by executive agencies of other intrusive powers, which complies with the principles and addresses the shortcomings identified in reports tabled in the 45th Parliament by the Senate Committee of Privileges and the House of Representatives Committee of Privileges and Members Interests.

The terms of this resolution have also been forwarded to relevant agencies.

Yours sincerely,

SCOTT RYAN  
(date)

## **Judiciary**

- High Court – The Hon Susan Kiefel AC, Chief Justice of Australia
- Federal Court – The Hon. J L B Allsop AO, Chief Justice, Federal Court of Australia
- State and Territory Supreme Courts - Chief Justices of each
  - ACT — The Hon Helen Gay Murrell SC
  - NSW — The Hon Tom Bathurst AC
  - NT— The Hon Michael Grant QC
  - QLD — The Hon Catherine Holmes CE
  - SA — The Hon Christopher Kourakis
  - TAS — The Hon Alan Blow AO
  - VIC — The Hon Anne Ferguson
  - WA — The Hon Peter Damien Quinlan

## **Executive - ministry**

- Attorney-General, Hon Christian Porter MP
- Minister for Home Affairs, Hon Peter Dutton MP
- Minister for Defence, Hon Christopher Pyne MP

## **Executive – agencies**

- AFP – Commissioner, Mr Andrew Colvin
  - ACT Police — Chief Police Office, Ray Johnson
  - NSW Police Force — Commissioner, Michael Fuller APM
  - NT Police Force — Commissioner of Police and CEO of Fire and Emergency Services, Reece P Kershaw APM
  - QLD Police Force — Commissioner, Ian Stewart
  - SA Police Force — Commissioner, Grant Stevens
  - TAS Police Force — Secretary (Department of Police, Fire and Emergency Management), Darren Hine APM
  - VIC Police Force — Chief Commissioner, Graham Ashton AM
  - WA Police Force — Commissioner of Police, Chris Dawson APM
- ASIO – Director-General of Security, Mr Duncan Lewis.
- Australian Border Force — Commissioner, Michael Outram AM
- Attorney-General’s — Secretary, Chris Moraitis PSM
- Home Affairs — Secretary, Michael Pezzullo
- Department of Defence — Secretary, Mr Greg Moriarty
- ASD — Director General, Mr Mike Burgess

## **Executive - oversight**

- Inspector-General of Intelligence and Security, the Hon Margaret Stone
- Commonwealth Ombudsman, Mr Michael Manthorpe
- Australian Commission for Law Enforcement Integrity – Mr Michael Griffin, Integrity Commissioner
- PM&C — Secretary, Dr Martin Parkinson AC PSM

- Finance — Secretary, Rosemary Huxtable PSM

### **Parliamentary**

- Clerks, Australian state & territory parliaments
  - ACT — Mr Tom Duncan, Clerk of the Legislative Assembly
  - NSW — Ms Hele Minnican (Clerk Legislative Assembly), Mr David Blunt (Clerk of the Parliaments and Legislative Council)
  - NT — Mr Michael Tatham, Clerk of the Legislative Assembly
  - QLD — Mr Neil Laurie, Clerk of the Parliament
  - SA — Mr Richard Crump (Clerk House of Assembly), Mrs Jan Davis (Clerk Legislative Council)
  - TAS — Mr David Pearce (Clerk of the Council), Mr Shane Donnelly (Clerk of the House)
  - VIC — Mr Andrew Young (Clerk Legislative Council), Ms Bridget Noonan (Acting Clerk of the Legislative Assembly)
  - WA — Mr Nigel Pratt (Clerk of the Legislative Council), Ms Kirsten Robinson (Clerk of the Legislative Assembly)
- Clerk, Parliament of New Zealand – Mr David Wilson