

**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**THE SENATE**

**COMMITTEE OF PRIVILEGES**

**EXECUTION OF SEARCH WARRANTS  
IN SENATORS' OFFICES — SENATOR HARRIS**

**105<sup>TH</sup> REPORT**

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# EXECUTION OF SEARCH WARRANTS IN SENATORS' OFFICES — SENATOR HARRIS

## Introduction

1. On 14 February 2002 the Senate referred the following matter to the Committee of Privileges, on the motion of Senator Harris:

- (a) Whether any breaches of the immunities of the Senate or contempts were involved in the search and seizure, and continued possession, by the Queensland police of material from the office of Senator Harris, and, if so, what remedies should be applied;
- (b) whether any steps should be taken to ensure that any such material protected from seizure by parliamentary privilege is returned to Senator Harris without further access to the material by the police; and
- (c) whether procedures should be established to ensure that, in cases of the execution of search warrants in senators' premises, material protected by parliamentary privilege is appropriately treated.<sup>1</sup>

2. The reference derived from a letter from Senator Harris to the President, extracts from which are as follows:

On 27 November 2001 Queensland Police entered my Mareeba office and produced a search warrant authorising them to search for material relating to election reimbursement claims submitted by Pauline Hanson's One Nation Queensland Division for the 2001 state general election.

.....

While in the office the police searched and examined material having no relevance to the authorisation of the warrant, including personal belongings of my staff and correspondence from constituents. I particularly asked that they not examine the constituents' correspondence, but this request was ignored.

.....

Material was removed from the office and taken by the police, including copies of information on the hard drives of my computers and the computer belonging to the Commonwealth. In taking this material, the police had no regard to the authorisation of their warrant and made no attempt to confine their examination and seizure of material to that which was authorised by the warrant.

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1 Appendix A, p. 1.

You will appreciate that, having copied the material on the hard drives of my computers, the police are able to manipulate that material as they choose. As a precaution I sealed the hard drives of my computers and have not used the Commonwealth computer since the search.

On 30 November 2001, the Clerk of the Senate, after I consulted him about the search, wrote to the Commissioner of the Queensland Police pointing out that it appeared that material outside the authorisation of the search warrant had been seized from my office and that some of the material seized may be immune from seizure by virtue of parliamentary privilege. He also pointed out that, since the Senate had risen for the general election, I would have no opportunity to raise the matter in the Senate until the Senate met again. He drew attention to the proper procedure for handling material which is the subject of a claim of parliamentary privilege, namely, that the material be sealed and placed outside the possession of the police.

I informed the police that a claim of parliamentary privilege would be made in relation to material which they had seized and taken away, including material copied from my computers.

Subsequently, I was invited to inspect the material in the possession of the police and to indicate which documents were the subject of a claim of parliamentary privilege. I have not done this in relation to the material copied from the computers; I would have no way of knowing whether the material purportedly copied from my hard drives and presented to me for inspection in electronic form actually is the material taken from those hard drives, uncorrupted and unaltered.<sup>2</sup>

3. Senator Harris continued:

The material copied from my computers has remained in the possession of the police since the search and they have been able to make any use of it they choose. Nothing has been done to identify material not authorised for seizure by the warrant and not relevant to their inquiries, or to place any of the material outside of the possession of the police. The police have continued to have access to material immune from inspection and seizure by virtue of parliamentary privilege, and to confidential correspondence from constituents, who may be placed in peril by police access to that correspondence.<sup>3</sup>

4. In conclusion, he commented:

I emphasise that I have no difficulty with police properly investigating suspected offences, including by way of lawfully executing properly obtained search warrants. Senators have no immunity from properly conducted criminal investigations. The point is that this search was not

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2 Appendix B, pp. 5-6.

3 *ibid.*, p. 6.



properly conducted and, as a result, the immunities of the Senate have been infringed.<sup>4</sup>

5. Included in the papers which the President tabled when giving precedence to the matter of privilege was the above-mentioned letter, dated 30 November 2001, from the Clerk of the Senate to the Commissioner of the Queensland Police Service. He raised with the Commissioner two problems relating to the execution of the warrant:

[I]t appears that material falling outside the authorisation of the search warrant has been seized.

[S]ome of the material seized may be immune from seizure by virtue of parliamentary privilege in that it is closely connected with Senator Harris' performance of his functions in the Senate and in Senate committees (such material may also be immune from substantive use in any subsequent proceedings).<sup>5</sup>

6. The Clerk explained that Senator Harris was unable to raise the matters in the Senate as a result of the November general election, and suggested that the Queensland Police Service should follow the procedure, now followed by the Australian Federal Police, of sealing the material seized under warrant 'until such time as the court or the Senate determines the legality of the seizure of the material.'<sup>6</sup>

7. He then drew the Commissioner's attention to a Federal Court judgment that it was for the Senate to determine the legality of the seizure of such material, and suggested that:

the Queensland Police should follow the same procedure, that Senator Harris should be given an opportunity to claim that any of the material seized is immune from seizure by virtue of parliamentary privilege, and that any such material be sealed and placed in the possession of a court accordingly.<sup>7</sup>

8. The President, when giving precedence to Senator Harris' motion to refer the matter, drew attention to the 75<sup>th</sup> report of the Committee of Privileges, which canvassed:

[the] serious problem arising from the execution of search warrants to seize material in the possession of senators, in that material protected from seizure by parliamentary privilege may fall immediately into the possession of the police by the execution of warrants.

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4 *ibid.*, p. 7.

5 *ibid.*, p. 14.

6 *ibid.*

7 *ibid.*, p. 15.

She added:

The committee referred to the lack of any procedures whereby questions of parliamentary privilege may be raised and resolved.<sup>8</sup>

and further advised:

Subsequently, in 2000 and 2001, the Senate, following the judgment of Mr Justice French, put in place a special process to determine whether material seized in the search which gave rise to that case was protected by parliamentary privilege and to ensure that such material was returned to the senator without going into the possession of the police. This action by the Senate indicates that the question of the seizure of material protected by parliamentary privilege is regarded very seriously by the Senate.<sup>9</sup>

9. During debate on the reference of the matter, the Chair of the Committee of Privileges, Senator Ray, made the following comment:

It is a worrying fact that in too many cases where warrants are issued material in excess of the warrant is captured by police. This is a worrying thing for us all as citizens, but I have to say to Senator Harris that that is his problem. That is exacerbated by the fact that so much material is now in electronic form that it is very hard to distinguish where it starts and finishes. But if there is material there that has been taken that is outside the warrant, Senator Harris will have to take his own legal action.

He went on to point out, however, that:

If there is material that he wishes to claim parliamentary privilege for, it is a matter for this chamber to determine.<sup>10</sup>

### **Conduct of inquiry**

10. Following the reference of the matter the committee first wrote to Senator Harris, asking whether he could provide it with information about any developments which had occurred since he raised the matter with the President. It asked specifically whether the material was still held by the Queensland police and went on to request:

any details you may be able to provide about the nature of the electronic material, how extensive it might be, and what steps, if any, you have taken since the matter was referred to the committee to establish or assert

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8 *ibid.*, p. 3.

9 *ibid.*

10 *ibid.*, pp. 3-4.

parliamentary privilege in respect of any material which the Queensland police may still hold.<sup>11</sup>

11. On 20 March 2002 Senator Harris advised the committee that:
- (a) copies of Hansard have been forwarded via legal representatives to the QLD Police Service.
  - (b) QLD Police response dated 5<sup>th</sup> March indicating that the material held on computer disk is still held in a safe in Police Headquarters and has not been transferred to a Court as requested by myself and recommended by the Senate Clerk.
  - (c) the 5<sup>th</sup> March correspondence indicates the QLD Police do not intend to allow access to the material until the matter is determined by the Senate.<sup>12</sup>
12. In relation to the nature and extent of the material he advised:
- (a) the material is electronic copies of responses to correspondence from constituents including outcomes and recommendations from departmental and Ministers relating to that correspondence.
  - (b) the material contains the names and contact details of those constituents mentioned in (a) and therefore constitutes a breach of their privacy relating to their contact details and the content of the issue raised, particularly if those issues related in any way to the QLD Police Force.
- ... the material relates back to July 1999 and fills 5 (five) compact disks.<sup>13</sup>

He stated that he had taken no further action to ascertain parliamentary privilege in relation to the material, preferring to allow the Privileges Committee to further the matter.

13. Following consideration of this response, the committee wrote on 21 March 2002, and again on 16 May, to the Queensland Police Service. The Chair's letters included the following:

The committee does not wish to intrude into operational matters but, given the broad scope of the warrant, as tabled in the Senate on 13 February 2002, would find it helpful if you could identify the specific areas on which your investigation is concentrated. [emphasis in original]

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11 Letter, dated 14 March 2002, to Senator Len Harris.

12 Appendix C, p. 16.

13 *ibid.*

14. On 27 May, the committee received a helpful response from the Commissioner, setting out reasons for the police investigation and action taken. The committee quotes this letter in full as follows:

I refer to your letter of 21 March 2002 requesting specific arrears of identification of the investigation currently being undertaken by members of the Queensland Police Service (QPS).

The investigation concerns an allegation that invoices provided to substantiate a claim for election funding, for the Queensland State General Election, under the *Electoral Act 1992 (Qld)* were forged with the intent to fraudulently obtain election funding from the electoral Commission of Queensland. A voucher in support of that claim was sent from the electoral offices of Senator Harris. It is reasonably suspected the records seized will assist in identifying electronically stored information and equipment used to generate forged documents.

I propose outlining some of the background to Mr Strofield, (the QPS Solicitor) with him securing certain material in his office safe.

On 30 November 2001 a letter, of that same date, from the Clerk of the Senate was referred to and the advice of the QPS Solicitor sought. The QPS Solicitor then consulted the investigating police officers. The Senator's solicitors wrote to the Officer in Charge of the investigating police that same date.

On 4 December 2001 the QPS Solicitor wrote to the Clerk of the Parliament advising that the material and documents seized were delivered to his office and placed in his safe.

The QPS Solicitor requested the Senator's solicitors to identify the material or documents contended to be immune from seizure by virtue of Parliamentary privilege.

Additionally, they were informed that if they did not identify such material it was proposed to release the documents and material to the investigating police on 11 December 2001. The QPS Solicitor also referred the Senator's solicitors to the decision of *Crane v. Gething* [2000] FCA 45.

You may be aware, there are no similar guidelines, as currently exist between the Australian Federal Police and the Law Council of Australia, in existence in Queensland.

It was at that time the QPS Solicitor had intended, as is his procedure in matters involving claims of legal professional privilege, delivering the material and documents, said to be the subject of a privilege claim, to the Registrar of the Supreme Court at Brisbane. It is the QPS Solicitor's practice, notwithstanding that proceedings in respect of a privilege claim had not been filed in the court, that once a firm indication is made, by a claimant or lawyers acting on the claimant's behalf, that a claim will be pursued, to deliver material said to be subject to a privilege claim to the Registrar of the Supreme Court.

However, as you know, following the decision of *Crane v. Gething*, the Courts do not have jurisdiction to determine issues of parliamentary privilege. However the view of the QPS Solicitor is that the integrity of material, the subject of such a claim, must be maintained and with that in mind the QPS Solicitor took the step of securing the material in his safe. So that the parliamentary privilege claim might proceed, arrangements were then put in place, and on 7 December 2001, the Senator and his solicitor met with the QPS Solicitor to inspect the documents and material seized by police. The “material” is described by the QPS Solicitor as “a sealed plastic container containing 5 computer discs”. He has described the “documents” as a manila folder containing some 21 documents and 2 ink stamps.

On 7 December 2001 the contents of the computer discs were not accessed by the Senator or his solicitor. The contents of the manila folder were accessed.

By correspondence dated 13 December 2001 the Senator’s solicitors confirmed —

- (i) that parliamentary privilege did not attach to the documents in the manilla folder; and
- (ii) the 5 computer discs contained documents upon which parliamentary privilege attached.

On the same date the QPS Solicitor, in correspondence, suggested to the Senator’s solicitors, the material in respect of which it was contended parliamentary privilege attached, could be identified by accessing the computer in the Senator’s office. Although the Senator’s solicitors accepted that proposition, it was suggested the appropriate course was for the documents to be inspected by the Senator and his solicitor.

Arrangements were then made for the Senator and his solicitor to access the discs, to identify the particular documents upon which it was contended that parliamentary privilege applied. QPS computer equipment was to be used for that purpose. For this to occur the data on the computer discs had to be restored to harddrive. On 4 January 2002 the Senator’s solicitor was invited to witness the restoration procedure. This invitation was not taken up.

Restoration took place on 7 January 2002. On 10 January 2002 the Senator’s solicitor was advised that restoration was completed and to advise of the availability of the Senator to inspect the material.

On 16 January 2002 the Senator’s solicitors wrote seeking advice as to the following —

- The procedure which was adopted to place the information contained on the five discs to the computer facilities you have referred to;
- The name of the person/s who attended to the task of placing the information on the computer equipment; and

- The current status of the five discs and the status of the computer equipment such as where they are located, who has access to them, and if they have been sealed in some way, to preserve the integrity of our client's claim.

The QPS Solicitor replied on the same date and a copy of his reply is attached.<sup>14</sup> Tentative arrangements were made for the inspection of the discs to occur at 11am on 30 January 2002. The Senator and his solicitor did not attend on that date. The QPS Solicitor then wrote on 1 February 2002 inviting the Senator's solicitors to nominate a suitable date in the week 4 - 8 February 2002 to inspect the material. The 11 February 2002 was identified as a suitable date for the Senator to attend. The inspection did not take place on that day.

I understand the matter of parliamentary privilege was raised in the Senate on 14 February 2002. On 1 March 2002 the Senator's solicitors wrote to the QPS Solicitor suggesting at that stage the QPS will not be permitted to access the documentation over which a claim for parliamentary privilege existed until the Senate Privileges Committee had investigated the issue.

On 5 March 2002 the QPS Solicitor responded to the suggestion that QPS members not be permitted to access the material until the matter of privilege had been determined by the Senate. A copy of his letter is attached.<sup>15</sup>

I trust this is of assistance to you. Should you require copies of any of the correspondence mentioned, the QPS Solicitor will provide it to you upon request.<sup>16</sup>

15. Copies of all correspondence to the committee, together with relevant attachments, are at appendices A-D of this report.

## Comment

16. Having considered all the documents available to it, the committee has concluded that the Queensland Police Service has fulfilled its obligations in respect of parliamentary privilege impeccably. The committee draws attention specifically to the number of occasions, as set out in the Commissioner's letter, that Senator Harris and/or his solicitors were invited to participate in the handling of the computerised documents. The committee makes particular reference to the following:

On 16 January 2002 the Senator's solicitors wrote seeking advice as to the following —

- The procedure which was adopted to place the information contained on the five discs to the computer facilities you have referred to;

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14 Appendix D, pp. 22-23.

15 *ibid.*, p. 24.

16 *ibid.*, pp. 19-21.

- The name of the person/s who attended to the task of placing the information on the computer equipment; and
- The current status of the five discs and the status of the computer equipment such as where they are located, who has access to them, and if they have been sealed in some way, to preserve the integrity of our client's claim.

17. The QPS response, on the same day, identified what had happened to the computer disks, advising who undertook the work and where the disks and hard drives were now located (in the office of the Queensland Police Service Solicitor).

18. Senator Harris raised the question of privilege a month after this exchange of correspondence.

19. The committee considers that there is one way to resolve the impasse between the Queensland Police Service and Senator Harris and his legal advisers, that is, that Senator Harris take up the invitation proffered regularly by the Queensland Police Service Solicitor before the matter was referred to the committee to make a claim of privilege regarding documents included on the discs held by the Police Service Solicitor. The committee notes that Senator Harris' solicitors confirmed that parliamentary privilege did not attach to documents in a manilla folder but that the five computer discs contained documents to which parliamentary privilege attached. Until Senator Harris makes an explicit claim of privilege in respect of identified documents, there appears no reason for either this committee or the Senate to involve itself further.

20. If the Queensland Police Service were to dispute any claim of privilege which Senator Harris might make, and there is no resolution of the claim between the Queensland Police Service and Senator Harris, the committee considers that it is only at that point that any further action might be required.

## Conclusions

21. Having taken all the above into account, particularly the Queensland Police Service action since being alerted by the Clerk of the Senate to the potential privilege implications of the seizure of material from Senator Harris' office, the committee concludes as follows:

***In respect of paragraph (a) — whether any breaches of the immunities of the Senate or contempts were involved in the search and seizure, and continued possession, by the Queensland police of material from the office of Senator Harris, and, if so, what remedies should be applied*** — the Committee of Privileges does not consider that any such breaches or contempts were involved. It therefore follows that no remedies should be applied.

***In respect of paragraph (b)*** —whether any steps should be taken to ensure that any such material protected from seizure by parliamentary privilege is returned to Senator Harris without further access to the material by the police — the Committee of Privileges considers that the only step that needs to be taken at this stage is that Senator Harris and his solicitors take the opportunity offered by the Queensland Police Service to claim privilege in respect of identified material.

***In respect of paragraph (c)*** —whether procedures should be established to ensure that, in cases of the execution of search warrants in senators' premises, material protected by parliamentary privilege is appropriately treated — procedures originally recommended in the 75<sup>th</sup> report of the Committee of Privileges, relating to the establishment of guidelines between the Presiding Officers and the Australian Federal Police, should be developed and that such guidelines should also be applicable to the police forces of the states and the Northern Territory.

The committee further **concludes** that the question of the seizure of documents over which a claim of parliamentary privilege is not made, and which are not covered by the authorisation of search warrants, is a matter for the courts, and not for the Senate, and should be determined in the courts accordingly.

### **Finding**

22. In the light of the above conclusions, the Committee of Privileges has established that no contempt of the Senate is involved in the matter referred to it on 14 February 2002.

Robert Ray  
**Chair**



## APPENDICES

APPENDIX	DOCUMENT	PAGES
<b>A</b>	Extract from <i>Journals of the Senate</i> No. 3, 14 February 2002	1
<b>B</b>	<p>Extract from Senate <i>Hansard</i>, 14 February 2002, pp. 317-319</p> <p>Tabled papers:</p> <ul style="list-style-type: none"> <li>• Letter, dated 13 February 2002, from Senator Len Harris to the President of the Senate</li> <li>• Search warrant</li> <li>• Facsimile message, dated 27 November 2001, from Miss Anne Lynch, Deputy Clerk of the Senate to Senator Harris' office</li> <li>• Letter, dated 30 November 2001, from Mr Harry Evans, Clerk of the Senate to Mr Robert Atkinson APM, Commissioner, Queensland Police Service</li> </ul>	<p>2-4</p> <p>5-7</p> <p>8-10</p> <p>11-13</p> <p>14-15</p>
<b>C</b>	<p>Letter, dated 20 March 2002, from Senator Len Harris</p> <p>Attachments:</p> <ul style="list-style-type: none"> <li>• Facsimile, dated 27 February 2002, from Nyst Lawyers to Queensland Police Service</li> <li>• Facsimile, dated 6 March 2002, from Nyst Lawyers to Queensland Police Service [Attachments to this facsimile are at Appendices B and D]</li> </ul>	<p>16</p> <p>17</p> <p>18</p>
<b>D</b>	<p>Letter, dated 14 May 2002, from Mr Robert Atkinson APM, Commissioner, Queensland Police Service</p> <p>Attachments:</p> <ul style="list-style-type: none"> <li>• Letter, dated 16 January 2002, from Queensland Police Service to Nyst, Lawyers</li> <li>• Letter, dated 5 March 2002, from Queensland Police Service to Nyst, Lawyers</li> </ul>	<p>19-21</p> <p>22-23</p> <p>24</p>



THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE SENATE*Extract from Journals of the Senate*  
No. 3 dated 14 February 2002**21 PRIVILEGES—STANDING COMMITTEE—STATEMENT BY PRESIDENT—REFERENCE**

The President made a statement relating to a matter of privilege raised by Senator Harris concerning a search of his Mareeba office conducted by the Queensland police on 27 November 2001.

The President informed the Senate that, pursuant to the procedures provided by standing order 81 and resolutions of the Senate of 25 February 1988, she had determined that a motion relating to the matter may have precedence of all other business today.

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*Document:* The President tabled the following document:

Letter from Senator Harris to the President, dated 13 February 2002 and attachments [3].

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Senator Harris moved—That the following matters be referred to the Committee of Privileges:

- (a) whether any breaches of the immunities of the Senate or contempts were involved in the search and seizure, and continued possession, by the Queensland police of material from the office of Senator Harris, and, if so, what remedies should be applied;
- (b) whether any steps should be taken to ensure that any such material protected from seizure by parliamentary privilege is returned to Senator Harris without further access to the material by the police; and
- (c) whether procedures should be established to ensure that, in cases of the execution of search warrants in senators' premises, material protected by parliamentary privilege is appropriately treated.

Debate ensued.

Question put and passed.

Thursday, 14 February 2002

SENATE

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**PRIVILEGE**

The **PRESIDENT** (3.00 p.m.)—Senator Harris, by letter dated 13 February 2002, has raised a matter of privilege relating to a search of his Mareeba office conducted by the Queensland police on 27 November 2001. In essence, Senator Harris claims that breaches of the immunities of the Senate were involved in the search and seizure of material in his office. He draws attention to the following matters. Material was seized in his office, including material in electronic form on the hard drive of his computers, without regard to the limitation of the authorisation of the warrant. Police disregarded the possibility that some material in the office was immune from seizure by virtue of parliamentary privilege. Police have remained in possession of the material, although Senator Harris has made a claim of parliamentary privilege in relation to the material. Appropriate processes were not observed by the police in executing the search warrant.

I am required to determine whether a motion to refer the matter to the Privileges Committee should have precedence over other business, having regard to the following criteria: (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 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.

Past Presidents' rulings have held that a matter will be regarded as meeting criterion (a) if the matter is capable of being held by the Senate to meet that criterion, and crite-

tion (b) if there is no other readily available remedy.

Each of the aspects of the search and seizure raised by Senator Harris is capable of being held by the Senate to be a breach of the immunities of the Senate and a contempt. In particular, the seizure of material not authorised by the warrant without regard to the question of parliamentary privilege and the continued possession of that material by the police could be so regarded by the Senate.

In relation to criterion (b) the judgment by Justice French in *Crane v. Gething* means that only the Senate can resolve a question of parliamentary privilege arising from the execution of a search warrant to seize documents in the possession of a senator. The matter therefore meets the criteria I am required to consider.

In its 75th report of March 1999, titled *The execution of search warrants in senators' offices*, the Privileges Committee drew attention to the serious problem arising from the execution of search warrants to seize material in the possession of senators, in that material protected from seizure by parliamentary privilege may fall immediately into the possession of the police by the execution of warrants. The committee referred to the lack of any procedures whereby questions of parliamentary privilege may be raised and resolved. The committee recommended that such procedures be put in place by means of guidelines agreed to by the Presiding Officers and Attorneys-General. Such procedures have still not been established. The committee may wish to revisit the matter and pursue these questions further.

Subsequently, in 2000 and 2001, the Senate, following the judgment of Justice French, put in place a special process to determine whether material seized in the search which gave rise to that case was protected by parliamentary privilege and to ensure that such material was returned to the senator without going into the possession of the police. This action by the Senate indicates that the question of the seizure of material protected by parliamentary privilege is regarded very seriously by the Senate. I therefore determine that a motion to refer the matter to

the Privileges Committee may have precedence.

I table the letter from Senator Harris and attachments. Under paragraph (7) of standing order 81, because the Senate is not meeting for more than seven days, Senator Harris may now move a motion to refer the matter to the Privileges Committee.

**Senator HARRIS** (Queensland) (3.04 p.m.)—I move:

That the following matters be referred to the Committee of Privileges:

- (a) whether any breaches of the immunities of the Senate or contempts were involved in the search and seizure, and continued possession, by the Queensland police of material from the office of Senator Harris, and, if so, what remedies should be applied;
- (b) whether any steps should be taken to ensure that any such material protected from seizure by parliamentary privilege is returned to Senator Harris without further access to the material by the police; and
- (c) whether procedures should be established to ensure that, in cases of the execution of search warrants in senators' premises, material protected by parliamentary privilege is appropriately treated.

**Senator ROBERT RAY** (Victoria) (3.05 p.m.)—There are two issues here, and I think the Senate should have a clear idea of what it is voting on in terms of these two issues. They have been dealt with before. Any action by police entering a senator's office to seize material may or may not be in breach of parliamentary privilege. But mentioned in the statement was material that has been seized not in line with the warrant from the police. We should be very explicit—and I think Senator Harris should understand this—that it is not the direct concern of the Senate or the Senate Privileges Committee whether the police have exceeded their warrant. If they have, Senator Harris may take the appropriate remedial action that any other citizen can take, because he has no better exemption there than anyone else.

It is a worrying fact that in too many cases where warrants are issued material in excess of the warrant is captured by police. This is a worrying thing for us all as citizens, but I have to say to Senator Harris that that is his

problem. That is exacerbated by the fact that so much material is now in electronic form that it is very hard to distinguish where it starts and finishes. But if there is material there that has been taken that is outside the warrant, Senator Harris will have to take his own legal action. If there is material that he wishes to claim parliamentary privilege for, it is a matter for this chamber to determine.

I should also warn the Senate that the last time this came up, in *Crane v. Gething*, the Senate Privileges Committee did not resolve it. In fact, some of the more senior senators had to get together and make recommendations, draw up motions and move those motions in this chamber. For the record, that can be a very expensive process. I do not blame Senator Hill for his original estimate of what the Crane matter would cost us. I think it is true to say he indicated it would be about \$10,000. Give or take another \$50,000 on top, that is exactly what we may be up for. But if that is what we are up for, that is what we are up for—we do not have a choice.

What I am trying to indicate, as Chairman of the Privileges Committee—not with the authority of the Privileges Committee—is that I am not sure that we can directly deal with this particular matter. As a committee, we do not like looking at Senator Harris's documents. We do not feel comfortable looking at Senator Harris's private documents and trying to determine whether they are privileged or not, because then we try to put up Chinese walls. There may be stuff in there that, politically, we are not entitled to know and we do not want to know. It is then very hard to exercise that knowledge out of your mind having seen it.

The process with regard to Senator Crane was that, through the Senate, through the help of Madam President and others, we had a senior counsel look at the matter and determine it. It may well be that this matter may go to the Privileges Committee and we may have to draw up a similar resolution to have a senior counsel advise this chamber, to classify the material into different areas and then proceed. But the one thing we do not want and do not need is for matters of privilege of this nature to be determined by the courts. I think Justice French was absolutely

right in his judgment. Justice Jones, however, was a much bigger worry in terms of his ruling on this—given our knowledge of privilege, it is much better to be settled here.

I am not opposing the motion; I am just saying that those areas that are outside the warrant but do not constitute a parliamentary privileged area are not our business, regrettably. That will have to be settled between Senator Harris and the police. When it does go to the Privileges Committee, I think we will have to use the *modus operandi* previously used in the case of Senator Crane that got us out of that particular fix.

**Senator BROWN** (Tasmania) (3.09 p.m.)—I support the motion.

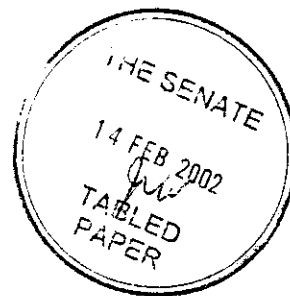
**Senator HARRIS** (Queensland) (3.10 p.m.)—During the process of the execution of the warrant, the police officers in charge were provided with excerpts of advice from the Senate Clerk that clearly stated that the material they were taking was of a privileged nature in that it pertained exclusively to constituent issues. I had no problems and complied with the police in providing them with hard documents for which we were not, and are not, seeking privilege. The only thing we are seeking privilege for are the issues relating to constituents' matters.

Question agreed to.



Senator Len Harris

*Pauline Hanson's One Nation  
Senator for Queensland*



13 February 2002

Senator the Hon Margaret Reid  
President of the Senate  
Parliament House  
CANBERRA ACT 2600

RECEIVED  
13 FEB 2002  
CLERK'S OFFICE

Dear Madam President

**MATTER OF PRIVILEGE — SEIZURE OF MATERIAL BY QUEENSLAND POLICE**

I raise a matter of privilege under standing order 81. I do so at the earliest opportunity, the Senate not having met since the relevant events occurred.

On 27 November 2001 Queensland Police entered my Mareeba office and produced a search warrant authorising them to search for material relating to election reimbursement claims submitted by Pauline Hanson's One Nation Queensland Division for the 2001 state general election.

I should note that this office is privately funded, but there was one computer which is the property of the Commonwealth in the office.

The police did not inform me that the search was to take place, and I understand that you were also not informed, contrary to the long-established practices relating to the execution of search warrants in senators' offices.

While in the office the police searched and examined material having no relevance to the authorisation of the warrant, including personal belongings of my staff and correspondence from constituents. I particularly asked that they not examine the constituents' correspondence, but this request was ignored.

In the course of the search I provided to the police officers advice given to me urgently by fax by the Deputy Clerk of the Senate. That advice clearly indicated that material protected by parliamentary privilege is immune from inspection and seizure under search warrant. This advice was ignored by the police.

Material was removed from the office and taken by the police, including copies of information on the hard drives of my computers and the computer belonging to the Commonwealth. In taking this material, the police had no regard to the authorisation of their

warrant and made no attempt to confine their examination and seizure of material to that which was authorised by the warrant.

You will appreciate that, having copied the material on the hard drives of my computers, the police are able to manipulate that material as they choose. As a precaution I sealed the hard drives of my computers and have not used the Commonwealth computer since the search.

On 30 November 2001, the Clerk of the Senate, after I consulted him about the search, wrote to the Commissioner of the Queensland Police pointing out that it appeared that material outside the authorisation of the search warrant had been seized from my office and that some of the material seized may be immune from seizure by virtue of parliamentary privilege. He also pointed out that, since the Senate had risen for the general election, I would have no opportunity to raise the matter in the Senate until the Senate met again. He drew attention to the proper procedure for handling material which is the subject of a claim of parliamentary privilege, namely, that the material be sealed and placed outside the possession of the police.

I informed the police that a claim of parliamentary privilege would be made in relation to material which they had seized and taken away, including material copied from my computers.

Subsequently, I was invited to inspect the material in the possession of the police and to indicate which documents were the subject of a claim of parliamentary privilege. I have not done this in relation to the material copied from the computers; I would have no way of knowing whether the material purportedly copied from my hard drives and presented to me for inspection in electronic form actually is the material taken from those hard drives, uncorrupted and unaltered.

The material copied from my computers has remained in the possession of the police since the search and they have been able to make any use of it they choose. Nothing has been done to identify material not authorised for seizure by the warrant and not relevant to their inquiries, or to place any of the material outside of the possession of the police. The police have continued to have access to material immune from inspection and seizure by virtue of parliamentary privilege, and to confidential correspondence from constituents, who may be placed in peril by police access to that correspondence.

I therefore ask that precedence be given to a motion to refer this matter to the Privileges Committee, so that that committee can inquire into the following matters:

- the seizure of material outside the authorisation of the warrant
- the disregard of the police for the likelihood that some material was immune from seizure by virtue of parliamentary privilege
- the continued access by the police to the material notwithstanding that situation
- the failure of the police to observe appropriate procedures when executing search warrants in senators' premises

and other relevant matters arising from the search.



Attached are copies of the search warrant and the advice which the Clerk of the Senate provided to the police.

I emphasise that I have no difficulty with police properly investigating suspected offences, including by way of lawfully executing properly obtained search warrants. Senators have no immunity from properly conducted criminal investigations. The point is that this search was not properly conducted and, as a result, the immunities of the Senate have been infringed.

I ask that you make your determination on this matter under standing order 81 as early as possible.

Yours sincerely

A handwritten signature in black ink, appearing to read "Len Harris". The signature is written in a cursive, somewhat stylized script.

Len Harris  
**SENATOR FOR QUEENSLAND**

QUEENSLAND  
Police Powers and Responsibilities Act 2000  
Section 69

SEARCH WARRANT

To Detective Sergeant Graham John NEWTON  
of Major Fraud Investigation Group  
or all police officers of the Queensland Police Service.

(Ver. 1 - 01/07/00)

*K.O. Taylor*  
I, a magistrate after hearing a sworn application by  
Detective Sergeant Graham John NEWTON

am satisfied there are reasonable grounds for suspecting evidence of the commission of the offence

\* is at the place  
Details of place: Shop 5 Post Office Centre, 94 Byrne Street, Mareeba

# This warrant is issued in relation to an offence  
That on or about the 9th day of July 2001 at Brisbane in the State of Queensland Pauline Lee  
HANSON attempted to dishonestly obtain seventy four thousand dollars from the Electoral  
Commission of Queensland

AND FURTHER

That on a date or dates unknown between the 8th day of July 2001 and the ~~11th day of September~~ <sup>4th day of October</sup>  
2001 at Ipswich in the State of Queensland Pauline Lee HANSON and Morrie MARSDEN with  
intent to defraud forged a document purporting to be a claim for state election funding voucher

AND FURTHER

That on or about the ~~10th day of September~~ <sup>4th day of October 2001</sup>  
2001 at Brisbane in the State of Queensland Pauline  
Lee HANSON and Morrie MARSDEN with intent to defraud, uttered a forged document  
purporting to be a claim for state election funding voucher

~~# This warrant is issued in relation to a forfeiture proceeding authorised under the Police Powers and  
Responsibilities Act 2000.~~

Details of evidence that may be seized under this warrant.  
Documentation and computer storage media purporting to relate to election re-imburement claims  
submitted by Pauline Hanson's One Nation Queensland Division for the 2001 State General  
Election to include vouchers 614, 662, 663 and 664.  
*1681*

This warrant authorises that a police officer may enter the place and exercise search warrant powers at  
the place, namely: Shop 5 Post Office Centre, 94 Byrne Street, Mareeba

- (a) power to enter the place stated in the warrant (the "relevant place") and to stay on it for the time reasonably necessary to exercise powers authorised under the warrant and this section;
- (b) power to pass over, through, along or under another place to enter the relevant place;
- (c) power to search the relevant place for anything sought under the warrant;
- (d) power to open anything in the relevant place that is locked;

This is page 1 of "Search Warrant"

Magistrate/Justice

*23/11/01*  
Date

person has anything sought under the warrant;

- (f) if the police officer reasonably suspects a person on the relevant place has been involved in the commission of an offence, power to detain the person for the time taken to search the place;
- (g) power to dig up land;
- (h) power to seize a thing found at the relevant place, or on a person found at the relevant place, that the police officer reasonably suspects may be evidence of the commission of an offence to which the warrant relates;
- (i) power to muster, hold and inspect any animal the police officer reasonably suspects may provide evidence of the commission of an offence to which the warrant relates;
- (j) power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence to which the warrant relates;
- (k) power to remove wall or ceiling linings or floors of a building, or panels of a vehicle, to search for evidence of the commission of an offence.

This warrant also authorises the following search warrant powers:

- ~~\* power to search anyone found at the relevant place for anything sought under the warrant that can be concealed on the person;~~
- ~~\* power to search anyone or anything in or on or about to board, or be put in or on, a transport vehicle;~~
- \* power to take a vehicle to, and search for evidence of the commission of an offence that may be concealed in a vehicle at, a place with appropriate facilities for searching the vehicle.

~~+ This warrant also authorises power to do anything at the relevant place that may cause structural damage to the building.~~

This warrant also authorises a police officer to execute the warrant at night between hours of 8:00 am/pm and 4:00 am/pm.

^ This warrant orders, Senator Len HARRIS, the person in possession of documents at the place to give the police officer all documents of the following type:

~~Documentation and computer storage media purporting to relate to election reimbursement claims submitted by Pauline Hanson's One Nation Queensland Division for the 2001 State General Election to include vouchers 614, 662, 663 and 664.~~

~~Failure, without reasonable excuse, to comply with the order, may be dealt with under the Criminal Code, Section 105. (Disobedience to lawful order issued by a statutory authority.)~~

The warrant ends on 7 days after it is issued.

Given under my hand at Brisbane

[Signature] 23/11/01 3:25 am/pm  
(date) (time)

This is page 2 of "Search Warrant"

[Signature] 23/11/01  
Magistrate/Justice Date

The within warrant was executed at the within named premises  
on the \_\_\_\_\_ day of \_\_\_\_\_, 2001 at \_\_\_\_\_ am/pm.

The warrant was executed on one \_\_\_\_\_

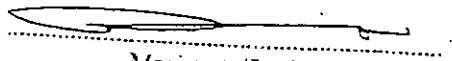
The occupier of the place was one \_\_\_\_\_

The warrant was executed by \_\_\_\_\_

Name	Rank	Reg No.	Station

COPY

This is page 3 of "Search Warrant"

  
Magistrate/Justice

23/10/01  
Date



AUSTRALIAN SENATE  
CANBERRA ACT

COMMITTEE OF PRIVILEGES

PARLIAMENT HOUSE  
CANBERRA ACT 2600  
PHONE: (02) 6277 3360  
FAX: (02) 6277 3199  
EMAIL: Priv.sen@aph.gov.au

4594

FACSIMILE

The information contained in this facsimile may be confidential information, and may also be protected by parliamentary privilege. If you are not the intended recipient, any use, disclosure, or copying of this document is unauthorised. If you have received this document in error, please notify the Committee of Privileges immediately by telephone.

To: *Toni - Leah Harris' office*

Fax Number: *07 409 22755*

Date: *27.11.01*

Number of Pages: *3*  
(including this cover sheet)

From: *Anne Lynch*  
*Secretary*

Subject: *Search Warrants*  
*Extract from Oa gen,*  
*as above.*

Please notify the Committee of Privileges on ☎ (02) 6277 3360 if this transmission is incomplete

*Toni: and see also his*  
*extract from 75th*  
*Report of Privileges*  
*Committee*  
*Anne*

## Subpoenas, search warrants and members

Members have no explicit immunity as such against subpoenas or orders for discovery of documents issued by courts or tribunals or search warrants, which may be used to obtain access to documents held by members (for the service of subpoenas in the precincts, see under Matters constituting contempts, below; for the execution of search warrants in the precincts, see under Police powers in the precincts, below). The use before a court or tribunal of material obtained by subpoena, discovery or search warrant is of course restricted by the law of parliamentary privilege as has been indicated above.

There may be, however, an effective immunity from such processes for compulsory production of documents where the documents are so closely connected with proceedings in Parliament that their compulsory disclosure would involve impermissible inquiry into those proceedings.

In *O'Chee v Rowley*, Queensland Court of Appeal, 1997 150 ALR 199, the court, influenced by an American precedent, *Brown and Williamson Tobacco Corp v Williams*, 1995 62 F 3d 408, in effect held that documents created for purposes of or incidental to parliamentary proceedings would be immune from orders for discovery of documents, although there was some uncertainty about whether this extended to documents created by persons other than the senator concerned. This case was referred to in the 75th Report of the Committee of Privileges, PP 52/1999.

In *NTEIU v the Commonwealth* (19/4/2001, not reported) the Federal Court accepted submissions on behalf of the Senate and by the Australian Government Solicitor to the effect that certain documents were immune from production because they were matters done for purposes of and incidental to parliamentary proceedings.

In *Crane v Gething* 2000 169 ALR 727, a case involving the seizure of documents under search warrant in the offices of a senator, a judge of the Federal Court found that the court did not have jurisdiction to determine whether parliamentary privilege prevented such a seizure, as the issue of search warrants is an executive act and not a judicial proceeding, and that only the House concerned and the executive may resolve such an issue. This finding was contrary to a submission made by the Senate, to the effect that parliamentary privilege protected from seizure only documents closely connected with proceedings in the Senate, and that the court could determine whether particular documents were so protected (the submission was tabled in the Senate: 13/3/2000, J.2423-4). This aspect of the judgment was not appealed and is unlikely to be regarded as authoritative. The documents in question were forwarded to the Clerk of the Senate in accordance with the order of the court (3/10/2000, J.3267). The Senate appointed a person to examine the documents to determine whether any were protected from seizure by parliamentary privilege, to return any so protected to the senator, and to provide the remainder to the police (5/12/2000, J.3726-7).

## Prosecution of members

The words and actions of members are immune from impeachment and question by way of legal proceedings only in so far as they are part of proceedings in Parliament or are for purposes of or incidental to such proceedings. Members may be prosecuted for actions constituting criminal offences and falling outside this protected area.

For that reason, it may be considered that a special procedure should be put in place in respect of search warrants.

I hope that this is a clearer summary of the background to this matter.

Recent case: attitude of law enforcement bodies

In a recent case of the execution of a search warrant in the offices of a senator (which has become a matter of public knowledge), the Australian Federal Police, with the apparent concurrence of the Director of Public Prosecutions, suggested that, as part of the procedure for the search under warrant, any material the senator claimed to be protected by parliamentary privilege should be sealed and delivered to a court until the claim of parliamentary privilege could be determined.

In making this proposal, those law enforcement authorities appear to accept that parliamentary privilege may provide a shield against the seizure of material under search warrant, and that there should be some procedure for determining whether the shield applies in a particular case. It also appears that they are ready to adopt such a procedure.

No doubt they were influenced by the agreed procedure already applying to warranted searches of legal practitioners' offices, whereby material claimed to be the subject of legal professional privilege is to be sealed and delivered to a court. They appear to see no reason, however, why the same procedure should not apply to parliamentary materials.

The Committee may wish to take this into consideration when determining whether it should recommend the adoption of the kind of procedure referred to.

Please let me know if the Committee would like any further information on this matter.

Yours sincerely



(Harry Evans)



hc/let/13454

30 November 2001

Mr Robert Atkinson APM  
Commissioner  
Queensland Police Service  
Police Headquarters  
GPO Box 1440  
BRISBANE QLD 4001 CDE M30

Dear Commissioner

**SENATOR HARRIS — EXECUTION OF SEARCH WARRANT**

I am advised that Queensland Police executed a search warrant in the Mareeba office of Senator Harris on Tuesday, 27 November 2001, and seized several documents, including a complete copy of the hard disk of Senator Harris' Commonwealth computer. I have been supplied with a copy of the search warrant.

There are two problems with the execution of this warrant:

- it appears that material falling outside the authorisation of the search warrant has been seized
- some of the material seized may be immune from seizure by virtue of parliamentary privilege in that it is closely connected with Senator Harris' performance of his functions in the Senate and in Senate committees (such material may also be immune from substantive use in any subsequent legal proceedings).

Normally Senator Harris would be able to raise these matters in the Senate, but the Senate is not expected to sit for some time because of the recent general election and he will not have an opportunity to raise the matters until the Senate meets again. I am therefore writing to you at this stage to draw your attention to these issues.

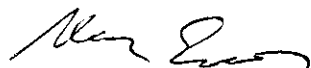
The Australian Federal Police have a procedure whereby, if material is seized under search warrant in the premises of a senator, and the senator claims that any of the material is immune from seizure by virtue of parliamentary privilege, such material is sealed and provided to a court of competent jurisdiction until such time as the court or the Senate determines the legality of the seizure of the material. In a recent case the Federal Court held that it is for the Senate to determine the legality of the seizure of such material (*Crane v Gething* 2000 169 ALR 727).



I suggest that the Queensland Police should follow the same procedure, that Senator Harris should be given an opportunity to claim that any of the material seized is immune from seizure by virtue of parliamentary privilege, and that any such material be sealed and placed in the possession of a court accordingly.

Please let me know if you require any clarification of the content of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read "Harry Evans". The signature is written in a cursive style with a prominent initial "H" and a long, sweeping tail.

(Harry Evans)



Senator Len Harris

*Pauline Hanson's One Nation  
Senator for Queensland*

Wednesday, 20 March 2002

Committee of Privileges  
Parliament House  
Canberra ACT 2600

Chairman,  
Senator Ray,

**Re:- Parliamentary Privilege.**

Dear Sir,

Thank you for your correspondence of 14<sup>th</sup> March please find the answers to your queries as follows:-

1) what developments have occurred since I have raised the issue with the President? (a) copies of Hansard have been forwarded via legal representatives to the QLD Police Service. (b) QLD Police response dated 5<sup>th</sup> March indicating that the material held on computer disk is still held in a safe in Police Headquarters and has not been transferred to a Court as requested by myself and recommended by the Senate Clerk. (c) the 5<sup>th</sup> March correspondence indicates the QLD Police do not intend to allow access to the material until the matter is determined by the Senate.

2) nature of the material; (a) the material is electronic copies of responses to correspondence from constituents including outcomes and recommendations from departmental and Ministers relating to that correspondence. (b) the material contains the names and contact details of those constituents mentioned in (a) and therefore constitutes a breach of their privacy relating to their contact details and the content of the issue raised, particularly if those issues related in any way to the QLD Police Force,

3) how extensive is the material:(a) the material relates back to July 1999 and fills 5 (five) compact disks.

4) what steps have I taken to assert Parliamentary Privilege; (a) as a result of the 5<sup>th</sup> March correspondence I have not taken any further action regarding the material, preferring to allow the Privileges Committee to further the matter.

Please find attached, copies of correspondence as indicated above.

Yours faithfully

Len Harris  
Senator for Queensland.

RECEIVED

20 MAR 2002

CLERK'S OFFICE

# NYST

LAWYERS

## FACSIMILE

# COPY

**To:** Queensland Police Service  
**Attention:** Colin Strofield  
**Fax No:** 3364 6615  
**From:** Mr Jason Murakami  
**Subject:** Senator Len Harris  
(Claim for Parliamentary Privilege)

**Date:** 27 February 2002  
**Pages:** 7 inclusive

Dear Sir

Please find **enclosed** a copy of the Hansard in relation to the instant matter.

It would seem to the writer that at this stage the Queensland Police will not be permitted to access the documentation over which a claim for parliamentary privilege exists until the Senate Privileges Committee has investigated the issue. If you are of an alternate view we would be most obliged if you would advise the writer.

Yours faithfully  
**NYST LAWYERS**

Contact: Jason Murakami; jmurakami@nystlawyers.com.au  
Our reference: CJN:JJM:ED:00157/01

W:\CRI\OneNat00157\_01\QPSFAX270202.doc

Important - The contents of this facsimile (including attachments) may be privileged and confidential. Any unauthorised use of the contents is expressly prohibited. If you have received the document in error, please advise us by telephone (reverse charges) immediately and then shred the document. Thank you.

16 Nerang Street, PO Box 907, Southport Qld 4215 ☐ Telephone: 07 5509 2400 ☐ Facsimile: 07 5571 0949  
Email: mailus@nystlawyers.com.au

# NYST LAWYERS

**FACSIMILE**

**To:** Senator Len Harris  
**Fax No:** 4092 2755  
**From:** Jason Murakami  
**Subject:** Search Warrant (Claim for Parliamentary Privilege)

**Date:** 6 March 2002  
**Pages:** 3 inclusive

Dear Sir

Please find **enclosed** the following correspondence, the contents of which are self-explanatory:-

1. Letter from Nyst Lawyers to the Queensland Police Service dated BLANK;
2. Letter from the Queensland Police Service to Nyst Lawyers dated 5 March 2002.

We would be most obliged if you would advise of any outcome from the Senate Privileges Committee in relation to this matter.

Yours faithfully  
**NYST LAWYERS**



Contact: Jason Murakami (07) 5509 2405 [jmurakami@nystlawyers.com.au](mailto:jmurakami@nystlawyers.com.au)  
Our reference: CJN:JJM:ED:00157/01

Important - The contents of this facsimile (including attachments) may be privileged and confidential. Any unauthorised use of the contents is expressly prohibited. If you have received the document in error, please advise us by telephone (reverse charges) immediately and then shred the document. Thank you.

16 Nerang Street, PO Box 907, Southport Qld 4215 ☐ Telephone: 07 5509 2400 ☐☐ Facsimile: 07 5571 0949  
Email: [mailus@nystlawyers.com.au](mailto:mailus@nystlawyers.com.au)



# QUEENSLAND POLICE SERVICE

## Appendix D

COMMISSIONER'S OFFICE  
200 ROMA STREET BRISBANE QLD 4000 AUSTRALIA  
GPO BOX 1440 BRISBANE QLD 4001 AUSTRALIA  
TELEPHONE: 07 3364 6488 FACSIMILE: 07 3364 4650

873.12.01CJS:pg

Our Ref:

Your Ref:

14 May 2002

Miss Anne Lynch  
Secretary  
Committee of Privileges  
Australian Senate  
Parliament House  
**CANBERRA ACT 2600**

**RECEIVED**

**27 MAY 2002**

**CLERK'S OFFICE**

Dear Ms Lynch

**RE: SENATOR HARRIS – EXECUTION OF SEARCH WARRANT**

I refer to your letter of 21 March 2002 requesting specific arrears of identification of the investigation currently being undertaken by members of the Queensland Police Service (QPS).

The investigation concerns an allegation that invoices provided to substantiate a claim for election funding, for the Queensland State General Election, under the *Electoral Act 1992 (Qld)* were forged with the intent to fraudulently obtain election funding from the Electoral Commission of Queensland. A voucher in support of that claim was sent from the electoral offices of Senator Harris. It is reasonably suspected the records seized will assist in identifying electronically stored information and equipment used to generate forged documents.

I propose outlining some of the background to Mr Strofield, (the QPS Solicitor) with him securing certain material in his office safe.

On 30 November 2001 a letter, of that same date, from the Clerk of the Senate was referred to and the advice of the QPS Solicitor sought. The QPS Solicitor then consulted the investigating police officers. The Senator's solicitors wrote to the Officer in Charge of the investigating police that same date.

On 4 December 2001 the QPS Solicitor wrote to the Clerk of the Parliament advising that the material and documents seized were delivered to his office and placed in his safe.

The QPS Solicitor requested the Senator's solicitors to identify the material or documents contended to be immune from seizure by virtue of Parliamentary privilege.

Additionally, they were informed that if they did not identify such material it was proposed to release the documents and material to the investigating police on 11 December 2001. The QPS Solicitor also referred the Senator's solicitors to the decision of *Crane v. Gething* [2000] FCA 45.

You may be aware, there are no similar guidelines, as currently exist between the Australian Federal Police and the Law Council of Australia, in existence in Queensland.

It was at that time the QPS Solicitor had intended, as is his procedure in matters involving claims of legal professional privilege, delivering the material and documents, said to be the subject of a privilege claim, to the Registrar of the Supreme Court at Brisbane. It is the QPS Solicitor's practice, notwithstanding that proceedings in respect of a privilege claim had not been filed in the court, that once a firm indication is made, by a claimant or lawyers acting on the claimant's behalf, that a claim will be pursued, to deliver material said to be subject to a privilege claim to the Registrar of the Supreme Court.

However, as you know, following the decision of *Crane v. Gething*, the Courts do not have jurisdiction to determine issues of parliamentary privilege. However the view of the QPS Solicitor is that the integrity of material, the subject of such a claim, must be maintained and with that in mind the QPS Solicitor took the step of securing the material in his safe.

So that the parliamentary privilege claim might proceed, arrangements were then put in place, and on 7 December 2001, the Senator and his solicitor met with the QPS Solicitor to inspect the documents and material seized by police. The "material" is described by the QPS Solicitor as "a sealed plastic container containing 5 computer discs". He has described the "documents" as a manila folder containing some 21 documents and 2 ink stamps.

On 7 December 2001 the contents of the computer discs were not accessed by the Senator or his solicitor. The contents of the manila folder were accessed.

By correspondence dated 13 December 2001 the Senator's solicitors confirmed –

- (i) that parliamentary privilege did not attach to the documents in the manilla folder; and
- (ii) the 5 computer discs contained documents upon which parliamentary privilege attached.

On the same date the QPS Solicitor, in correspondence, suggested to the Senator's solicitors, the material in respect of which it was contended parliamentary privilege attached, could be identified by accessing the computer in the Senator's office. Although the Senator's solicitors accepted that proposition, it was suggested the appropriate course was for the documents to be inspected by the Senator and his solicitor.

Arrangements were then made for the Senator and his solicitor to access the discs, to identify the particular documents upon which it was contended that parliamentary privilege applied. QPS computer equipment was to be used for that purpose. For this to occur the data on the computer discs had to be restored to harddrive. On 4 January 2002 the Senator's solicitor was invited to witness the restoration procedure. This invitation was not taken up.

Restoration took place on 7 January 2002. On 10 January 2002 the Senator's solicitor was advised that restoration was completed and to advise of the availability of the Senator to inspect the material.

On 16 January 2002 the Senator's solicitors wrote seeking advice as to the following –

- The procedure which was adopted to place the information contained on the five discs to the computer facilities you have referred to;
- The name of the person/s who attended to the task of placing the information on the computer equipment; and
- The current status of the five discs and the status of the computer equipment such as where they are located, who has access to them, and if they have been sealed in some way, to preserve the integrity of our client's claim.

The QPS Solicitor replied on the same date and a copy of his reply is attached.

Tentative arrangements were made for the inspection of the discs to occur at 11am on 30 January 2002. The Senator and his solicitor did not attend on that date. The QPS Solicitor then wrote on 1 February 2002 inviting the Senator's solicitors to nominate a suitable date in the week 4 – 8 February 2002 to inspect the material. The 11 February 2002 was identified as a suitable date for the Senator to attend. The inspection did not take place on that day.

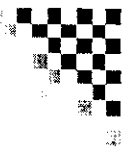
I understand the matter of parliamentary privilege was raised in the Senate on 14 February 2002. On 1 March 2002 the Senator's solicitors wrote to the QPS Solicitor suggesting at that stage the QPS will not be permitted to access the documentation over which a claim for parliamentary privilege existed until the Senate Privileges Committee had investigated the issue.

On 5 March 2002 the QPS Solicitor responded to the suggestion that QPS members not be permitted to access the material until the matter of privilege had been determined by the Senate. A copy of his letter is attached.

I trust this is of assistance to you. Should you require copies of any of the correspondence mentioned, the QPS Solicitor will provide it to you upon request.

Yours faithfully

  
R ATKINSON  
COMMISSIONER



# QUEENSLAND POLICE SERVICE

OFFICE OF THE QUEENSLAND POLICE SERVICE SOLICITOR  
200 ROMA STREET BRISBANE QLD 4000  
GPO Box 1440 BRISBANE QLD 4001  
TELEPHONE (07) 3364 4148 FACSIMILE (07) 3364 6615

Our Ref: 873.12.01CJS:pg

Your Ref:

January 16, 2002

Nyst  
Lawyers  
PO Box 907  
SOUTHPORT Q. 4215

*Nator* COPY

Facsimile: 5571 0949  
Attention: Jason Murakami

Dear Mr Murakami

**RE: SENATOR HARRIS**

I refer to your facsimile transmission dated and received today.

I advise as follows:-

1. Procedure

The five computer disks were placed in a QPS computer. A program was run restoring the data to a file which is then written to harddrive.

2. The person who attended this task

Mr S. Ilett, Forensic Computer Examination Unit of the Queensland Police Service.

3. Current Status

Five computer disks and three harddrives are currently located in a safe in my office. The harddrives have not been accessed by any other person. The five computer disks were provided to the Forensic Computer Examination Unit for the purposes of the restoration process mentioned under the heading of "Procedure". In addition to being held in my safe, the disks are secured in a plastic envelope, and in a similar fashion to the securing which took place after your attendance at my offices on 7 December 2001.

4. The computer disks have not been copied apart from the restoration process mentioned under the heading of "Procedure".



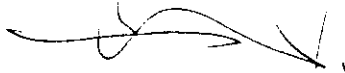
5. No other person, entity or corporation has been provided with any copy or access to any portion of data or material held on the computer disks or the harddrive currently in my possession.

I do not recall making tentative arrangements for your client to attend at my office today. Apart from a telephone conversation with you on 7 January, 2002, my correspondence to you of 10 January and your correspondence of 16 January 2002, I have had no contact from your office and I am unaware of the arrangements which you mention.

I am keen for your client's claim to progress without further delay. However, some advanced warning will be required to collate the computer hardware necessary for the inspection to occur.

At this stage I am available for a significant portion of next week. An inspection could take place during the week commencing 21 January 2002.

Yours faithfully



**CJ STROFIELD**  
**QUEENSLAND POLICE SERVICE SOLICITOR**



# QUEENSLAND POLICE SERVICE

OFFICE OF THE QUEENSLAND POLICE SERVICE SOLICITOR  
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TELEPHONE (07) 3364 4235 FACSIMILE (07) 3364 6615

**COPY**

Our Ref:873.12.01CJS:pg

Your Ref:

5 March 2002

Nyst  
Lawyers  
PO Box 907  
**SOUTHPORT Q. 4215**

Facsimile: 5571 0949  
Attention: Jason Murakami

Dear Mr Murakami

**RE: SENATOR HARRIS**

I refer to your facsimile transmission of 1 March 2002.

Notwithstanding that the material held on computer disks and claimed to be immune from seizure by virtue of parliamentary privilege has not been specifically identified, those disks have, apart from the procedure identified in my correspondence to you of 16 January 2002, remained sealed and stored in a safe in my office.

I do not intend or propose to allow access to the computer disks or the harddrive until the matter of privilege has been determined by the Senate.

Yours faithfully



**CJ STROFIELD**  
**QUEENSLAND POLICE SERVICE SOLICITOR**