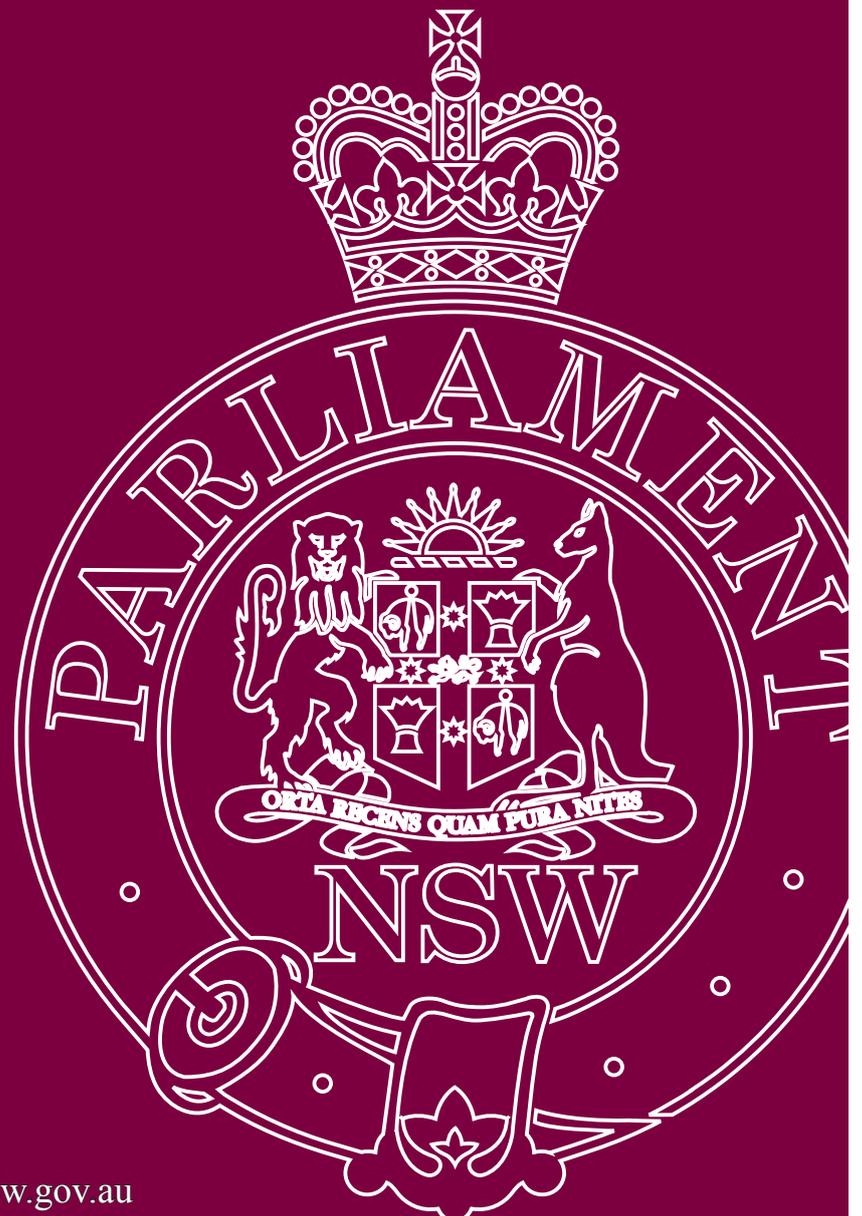




LEGISLATIVE COUNCIL

PRIVILEGES COMMITTEE

Execution of search warrants by the Australian Federal Police No. 5



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Report 94

August 2023

Privileges Committee

Execution of search warrants by the Australian Federal Police No. 5

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Execution of search warrants by the Australian Federal Police No. 5

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Chair: The Honourable Stephen Lawrence, MLC



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Terms of reference

1. That this House notes that:
 - (a) on 10 February 2023, the President referred to the Privileges Committee an inquiry into the status of documents and other things the subject of claims of parliamentary privilege arising from the execution of various search warrants by the Australian Federal Police (AFP) issued on 25 June and 23 July 2020 on Mr John Zhang, then staffer of the Honourable Shaoquett Moselmane and any incidental documents of Mr Moselmane relating to the investigation of Mr Zhang, as delivered to the Acting Clerk by the AFP on 3 February 2023, and
 - (b) the committee's report of 2 March 2023 on this matter entitled 'Execution of search warrants by the Australian Federal Police No. 4' indicated that in the time available, the committee had been unable to resolve the status of all the documents referred to it, and recommended that in the 58th Parliament the House refer a new inquiry to the Privileges Committee in relation to the remaining unresolved documents.
2. That the Privileges Committee further inquire into and report on the status of documents and other things the subject of claims of parliamentary privilege arising from the execution of various search warrants by the AFP issued on 25 June and 23 July 2020 on Mr John Zhang, then staffer of the Honourable Shaoquett Moselmane and any incidental documents of Mr Moselmane relating to the investigation of Mr Zhang, as delivered to the Acting Clerk by the AFP on 3 February 2023.
3. That the committee recommend to the House which of the disputed material falls within the scope of proceedings in Parliament by no later than Thursday 24 August 2023.¹
4. That the committee, for the purposes of making its determination, have access to the relevant indexes of documents and other things in dispute prepared by the AFP together with submissions to the previous inquiry regarding the claims of privilege by the Clerk of the Parliaments, Mr Zhang, Mr Moselmane and the AFP.
5. That, in recommending which documents are privileged, the committee apply the test used in the determination of the matters involving documents seized by the Independent Commission Against Corruption from the Honourable Peter Breen in 2003 and 2004, as amended by the Senate Privileges Committee in its Report 164, dated March 2017, entitled "Search warrants and the Senate".
6. That, if a recommendation cannot be made on the basis of the index and submissions received, the committee be given access to the privileged material held in the custody of the Clerk of the Parliaments.

The terms of reference were referred to the committee by the Legislative Council on Wednesday 28 June 2023.²

¹ The original reporting date was 3 August 2023 (*Minutes*, NSW Legislative Council, 28 June 2023, p 253). The reporting date was later extended to 24 August 2023 (*Minutes*, NSW Legislative Council, 2 August 2023, p 313).

² *Minutes*, NSW Legislative Council, 28 June 2023, p 253.

Committee details

Committee members

Hon Stephen Lawrence MLC	Australian Labor Party	(Chair)
Hon Natasha Maclaren-Jones MLC	Liberal Party	(Deputy Chair)
Hon Wes Fang MLC	The Nationals	
Ms Sue Higginson MLC	The Greens	
Hon Cameron Murphy MLC	Australian Labor Party	
Hon Bob Nanva MLC	Australian Labor Party	
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Chair's foreword

This is the fifth report by the Privileges Committee to arise from the execution of search warrants on various premises associated with the Honourable Shaoquett Moselmane MLC and his then staffer Mr John Zhang by the Australian Federal Police (AFP) in 2020.

This inquiry follows directly from the committee's fourth report entitled Execution of search warrants by the Australian Federal Police No. 4 which was tabled on 3 March 2023 at the very end of the 57th Parliament. In that report, the committee considered various claims of privilege in relation to material contained on Mr Zhang's mobile phones which was accessed by the AFP following the execution of the search warrants. The processing of the content of the phones had not been completed by the AFP at the time of the committee's previous inquiries. The material was only delivered by the AFP to the Acting Clerk of the Parliaments on 3 February 2023.

In its fourth report the committee found that parliamentary privilege extended to certain documents contained on the phones that were identified in a submission by the Acting Clerk of the Parliaments. However, in the time available to the committee before it had to report on 3 March 2023, the committee was unable to determine claims of parliamentary privilege made by Mr Stanton on behalf of Mr Moselmane and by Mr Miralis on behalf of Mr Zhang. This owed to discrepancies in the descriptions of the documents over which Mr Stanton and Mr Miralis claimed privilege when compared with the material that the AFP provided to the committee.

Accordingly, in June 2023, at the commencement of the 58th Parliament, the House referred this further inquiry to the committee to resolve the outstanding claims of privilege from the fourth inquiry and report.

In its approach to this inquiry, the committee first sought further information from the AFP to reconcile the discrepancies in the documents subject to a claim of privilege from the fourth inquiry. The committee then gave the concerned parties, Mr Moselmane and Mr Miralis on behalf of Mr Zhang, further opportunity both to confirm their previous claims of privilege and to substantiate those claims if they wished.

Based on that process, the committee is satisfied that it has largely resolved the discrepancies in the documents subject to a claim of privilege, although even now it cannot be absolutely certain. But even in the absence of that absolute certainty, the sum total of the inquiry is relatively straightforward: in the committee's view, privilege should be extended only to those documents on Mr Zhang's P20 and P30 mobile phones, however cited, which reproduce Hansard extracts of speeches in the Legislative Council by Mr Moselmane.

The committee recommends that the House assert privilege over those documents, and that those documents should not form part of any further AFP investigations or proceedings and should be returned to the President.

The committee also urges the AFP to resolve this matter speedily.



Hon Stephen Lawrence MLC
Committee Chair

Recommendations

Recommendation 1

10

That the House assert parliamentary privilege in relation to the following documents on Mr Zhang's P30 mobile phone:

- a speech delivered by Mr Moselmane in the Legislative Council on 24 October 2019 about Lebanon (p 938 of report SP03.26JUN20.001_2023-02-02), and
- a speech delivered by Mr Moselmane in the Legislative Council on 3 June 2020 about COVID 19 and racism (pp 2917-2918 of report SP03.26JUN20.001_2023-02-02).

Recommendation 2

10

That the House assert parliamentary privilege in relation to the following documents on Mr Zhang's P20 mobile phone:

- a speech delivered by Mr Moselmane in the Legislative Council on 20 June 2019 about former Prime Minister RJ Hawke (pp 1220 and 1580 of report SP03.26JUN20.024_2023-02-02), and
- a speech delivered by Mr Moselmane in the Legislative Council on 6 August 2019 about the Museum of the Chinese in Australia (pp 1224, 1227 and 1591 of report SP03.26JUN20.024_2023-02-02).

Recommendation 3

11

That by 5.00 pm on Friday, 7 September 2023, or such other time as deemed appropriate by the President and the Commissioner of the AFP:

- the AFP return to the President all hard copies of the privileged documents listed in Recommendations 1 and 2
- the Commissioner of the AFP provide a written undertaking to the President that electronic copies of the privileged documents have been deleted, to the extent possible, and
- the AFP return Mr Zhang's phones containing the privileged documents to the President.

Chapter 1 Background

This chapter summarises previous inquiries by the Privileges Committee concerning the execution of search warrants by the Australian Federal Police and the circumstances in which the current inquiry was established. The chapter then outlines the process adopted in this inquiry to address the resolution of issues relating to a further claim of parliamentary privilege arising from the execution of search warrants on Mr John Zhang.

The AFP search warrants and previous inquiries

- 1.1 This is the fifth inquiry by the Privileges Committee to arise from the execution of search warrants on various premises associated with the Honourable Shaoquett Moselmane MLC and his then staffer Mr John Zhang by the Australian Federal Police (AFP). The warrants were authorised under various sections of the *Crimes Act 1914* (Cth), to obtain evidence for the possible prosecution of Mr Zhang under the so-called 'foreign interference' laws, that is, section 92 of the *Criminal Code 1995* (Cth). As has been noted in previous inquiries, the warrants did not identify Mr Moselmane as having committed any offences, and both on the day and subsequently the AFP confirmed to Mr Moselmane that he was not a suspect despite contrary media coverage.
- 1.2 The first inquiry considered claims of parliamentary privilege made by Mr Moselmane over material collected by the AFP from search warrants executed on 26 June 2020 and 24 July 2020.³ Following the resolution of the House on 15 October 2020,⁴ 12 items subject to a claim of privilege were returned to Mr Moselmane, and the remainder of the documents and other things held were returned by the Clerk to the AFP for their investigation.
- 1.3 The second inquiry considered claims of parliamentary privilege arising from the execution of search warrants on Mr Zhang.⁵ Following the resolution of the House of 19 November 2020,⁶ three documents subject to a claim of privilege were returned to Mr Zhang and the remaining documents, until then held in the custody of the Clerk, were provided to the AFP.
- 1.4 The third inquiry considered a number of broader issues that had been raised during the first two inquiries for which there had been insufficient time to consider in detail. These issues included the rights available to a staffer to make a claim of privilege over documents, the rights available to a member to make a claim of privilege over documents held by their staffer regardless of any claims of privilege made by the staffer, and the privileged status of translations of parliamentary proceedings.⁷

³ Privileges Committee, *Execution of search warrants by the Australian Federal Police*, Report 80, October 2020.

⁴ *Minutes*, NSW Legislative Council, 15 October 2020, p 1422.

⁵ Privileges Committee, *Execution of search warrants by the Australian Federal Police No. 2*, Report 81, November 2020.

⁶ *Minutes*, NSW Legislative Council, 19 November 2020, p 1738.

⁷ Privileges Committee, *Execution of search warrants by the Australian Federal Police (No.3)*, Report 89, November 2022.

- 1.5 The fourth inquiry further considered claims of parliamentary privilege arising from the execution of search warrants on Mr Zhang.⁸ These claims related to material contained on Mr Zhang's mobile phones, the processing of which had not been completed by the AFP at the time of the second inquiry. The committee found that parliamentary privilege extended to documents identified in a submission by the Acting Clerk of the Parliaments but was unable to determine privilege claims made by Mr Stanton on behalf of Mr Moselmane and Mr Miralis on behalf of Mr Zhang in the time available due to discrepancies in the descriptions of documents that were claimed to be privileged. The committee therefore recommended that in the 58th Parliament the House refer a new inquiry to the Privileges Committee in relation to the remaining unresolved documents.

Referral of the current inquiry

- 1.6 On 28 June 2023 the House agreed to a motion by the Chair of the Privileges Committee referring this further inquiry to the committee to address the unresolved issues identified by the committee in its fourth report in relation to claims of privilege over material on Mr Zhang's mobile phones. The terms of reference for the inquiry, listed at page iv of this report, required the committee to further consider the status of items subject to privilege claims arising from the execution of search warrants on Mr Zhang, and any incidental documents of Mr Moselmane, and to recommend which of the disputed material falls within the scope of 'proceedings in Parliament'.

Conduct of the inquiry

- 1.7 At its first meeting concerning the inquiry on 29 June 2023 the committee resolved that:
- Submissions to the Inquiry into the execution of search warrants by the Australian Federal Police No. 4 be made available for inspection by members of the committee in the Office of the Clerk but not otherwise distributed.
 - The Committee Clerk be authorised to meet with representatives of the AFP investigation team to reconcile the documents described differently in the various submissions to that inquiry.
 - Once the documents are clearly identified the Chair write to the legal representatives of Mr Zhang and Mr Moselmane to advise which documents the Clerk has suggested are privileged, providing an opportunity to make a further submission in response, if they wish, with a two week response time.
- 1.8 On 3 July 2023 the Clerk to the Committee wrote to the AFP asking them to identify documents cited in privilege claims discussed in the committee's previous report⁹, to provide electronic copies of the relevant pages of the documents and identify the navigation pathway for accessing the documents on the USB previously provided to the Office of the Clerk.

⁸ Privileges Committee, *Execution of search warrants by the Australian Federal Police No.4*, Report 92, March 2023.

⁹ Privileges Committee, *Execution of search warrants by the Australian Federal Police No.4*, Report 92, March 2023

- 1.9** The AFP responded by correspondence dated 12 July 2023 in which the AFP identified what it believed to be the documents over which Mr Stanton, on behalf of Mr Moselmane, and Mr Miralis on behalf of Mr Zhang, had claimed parliamentary privilege, providing copies of those documents and the navigation pathway on the USB available to the committee.
- 1.10** Based on this information, the committee subsequently sent further correspondence to Mr Moselmane and to Mr Miralis on behalf of Mr Zhang, seeking confirmation that the documents identified by the AFP were indeed the documents over which they had originally claimed parliamentary privilege. The committee also afforded the parties an opportunity to make any further submissions in relation to their claims of privilege.
- 1.11** Responses were received from Mr Miralis on behalf of Mr Zhang on 26 July 2023 and from Mr Moselmane on 27 July 2023. These responses are discussed in further detail in the following chapter.
- 1.12** As with the previous inquiries, the committee has treated the index of material that is subject to claims of privilege as a confidential document: the index has not been distributed to committee members and has instead been inspected only in the Office of the Clerk. Being mindful of the need to protect confidentiality for an active investigation, at no time in any of the inquiries have any committee members inspected the actual items, as descriptions in the index or the submissions has been sufficient for decisions to be made on privilege.
- 1.13** Also in line with the approach adopted in the previous inquiries, the committee chose not to publish submissions except to the extent necessary to explain the committee's findings in this report.

Chapter 2 Assessment of privilege claims

This chapter further considers claims of parliamentary privilege arising from the execution of search warrants on Mr John Zhang and the Hon Shaoquett Moselmane that were originally examined by the committee in its Inquiry into the Execution of Search Warrants by the Australian Federal Police No. 4. In that inquiry, the committee was unable to determine claims of privilege made by Mr Miralis, the legal adviser for Mr Zhang, and Mr Stanton, the legal adviser for Mr Moselmane, due to discrepancies in the way in which documents claimed to be privileged had been described. In the current inquiry, the committee received new information which enabled it to finalise its assessment of the claims in accordance with the three-step test for determining claims of privilege adopted by the committee in previous reports and endorsed by the House.

The test of parliamentary privilege

- 2.1** In its first report on the execution of the AFP search warrants,¹⁰ the committee adopted the three-step test used by the Privileges Committee in the determination of the Breen matter in 2003 and 2004, as amended by the Senate Privileges Committee in 2017.¹¹ At the committee's recommendation, on 15 October 2020 the House subsequently resolved that this test be adopted in any future determinations as to whether an item attracts parliamentary privilege.¹²
- 2.2** In its second report on the execution of the AFP search warrants, the committee adopted the three-step test in determining the status of the documents subject of claims of parliamentary privilege by Mr Zhang.¹³

¹⁰ Privileges Committee, *Execution of search warrants by the Australian Federal Police*, Report no. 80, October 2020, p 14.

¹¹ In 2003, a search warrant was executed on the office of a member of the Legislative Council, the Hon Peter Breen MLC, by the Independent Commission Against Corruption. That matter led to two inquiries by this committee in 2003 and 2004. The committee developed a simple three-step test for the determination of whether or not documents fell within the scope of 'proceedings in parliament'. This test was subsequently used in an amended form by the Australian Senate Privileges Committee in determining claims of privilege made by Senator Stephen Conroy following the execution of search warrants by the AFP in 2016. A summary of the test and the amendments made is provided at Chapter 3 of this committee's first report on the execution of the AFP search warrants.

¹² *Minutes*, NSW Legislative Council, 15 October 2020, p 1438.

¹³ Privileges Committee, *Execution of search warrants by the Australian Federal Police No. 2*, Report no. 81, November 2020, p 7.

2.3 In the current inquiry the committee has applied the same test to all claims of privilege made as part of the inquiry. This test provides:

STEP 1: Were the documents *brought into existence* in the course of, or for purposes of or incidental to, the transacting of business of a House or a committee?

YES → falls within “proceedings in Parliament”.

NO → move to step 2.

STEP 2: Have the documents been *subsequently used* in the course of, or for purposes of or incidental to, the transacting of the business of a House or a committee?

YES → falls within “proceedings in Parliament”.

NO → move to step 3.

STEP 3: Is there any contemporary or contextual evidence that the documents were *retained or intended for use* in the course of, or for purposes of or incidental to, the transacting of the business of a House or a committee?

YES → falls within “proceedings in Parliament”.

NO → report that there are documents which fail all three tests.

Note: Individual documents may be considered in the context of other documents.

Summary of claims of privilege considered in the previous inquiry

2.4 In its previous report on the execution of search warrants by the Australian Federal Police (AFP) the committee summarised the claims of privilege over documents on two mobile phones owned by Mr Zhang as follows:

Mr Zhang’s P30 Mobile Phone (SP03.26JUN20.001)

2.33 Mr Stanton on behalf of Mr Moselmane claimed parliamentary privilege in relation to the following documents in the WeChat conversations:

- parliamentary speech by Mr Moselmane relating to Lebanon (p 747)
- parliamentary speech by Mr Moselmane relating COVID 19 and Racism (pp 2733-2734).

2.34 The Acting Clerk supported privilege in relation to:

- An exchange which provides a Hansard transcript of the speech the member has given on Lebanon (p 938).
- An exchange which contains a description of the order of business in the Legislative Council and a Hansard proof of a speech by Mr Moselmane (pp 2917-2918)

Mr Zhang’s P20 Mobile Phone (SP03.26JUN20.024)

2.35 Mr Miralis on behalf of Mr Zhang claimed privilege over ‘item 16 – messages of 30/01/2019 – which are contained in a WeChat item’.

2.36 Mr Stanton on behalf of Mr Moselmane claimed parliamentary privilege in relation to:

- parliamentary speech in tribute to Robert Hawke AC, former Prime Minister of Australia (p 178)
- parliamentary speech in relation to the Museum of Chinese in Australia (p 188)
- parliamentary speech in tribute to Robert Hawke ACT (p 1219)
- parliamentary speech in relation to the Museum of Chinese in Australia (p 1122)
- parliamentary speech in relation to the Museum of Chinese in Australia (p 1125).

2.37 Mr Stanton also claimed parliamentary privilege in relation to Document 25, being an extract of the valedictory speech by the Hon Ernest Wong MLC.

2.38 Mr Stanton also claimed parliamentary privilege in relation to a document described as ‘Item 22 MOSELMANE AND LI JIANJUN discuss Australia – China relation to New South Wales Parliament – Parliament in chambers visit’.

2.39 The Acting Clerk supported privilege in relation to two documents:

- a speech about former Prime Minister RJ Hawke delivered on 20 June 2019 (pp 1220 and 1580)
- a speech about the Museum of the Chinese in Australia delivered on 6 August 2019 (pp 1591 and 1227).¹⁴

2.5 The report concluded that the committee was satisfied that parliamentary privilege extends to those documents identified by the Acting Clerk but that the committee had not been able to:

- reconcile the documents identified by Mr Stanton with those identified by the Acting Clerk which the committee was satisfied attracted privilege (see paragraphs 2.33, 2.34, 2.38 and 2.39 quoted above)
- identify and resolve the status of the other documents cited in the privilege claims.¹⁵

2.6 The committee subsequently confirmed with the AFP by email that the discrepancies outlined above owed to the fact that Mr Stanton, Mr Miralis and the Acting Clerk were working from different electronic copies of the material on the two phones. The committee is not fully understanding of why this circumstance arose, but it was clearly very unhelpful, and delayed the resolution of this matter. Obviously it would have been far preferable if all parties had been making claims of privilege from the same material from the start.

New material provided to the current inquiry

2.7 As noted in the previous chapter, on 12 July 2023, at the request of the committee, the AFP provided the committee with a copy of documents the AFP believed to be the documents claimed to be privileged by Mr Miralis on behalf of Mr Zhang and by Mr Stanton on behalf of Mr Moselmane in the committee’s previous inquiry. The documents were labelled Annexures A to J.

¹⁴ Privileges Committee, *Execution of search warrants by the Australian Federal Police No. 4*, Report 92, pp 12-13.

¹⁵ Privileges Committee, *Execution of search warrants by the Australian Federal Police No. 4* Report 92, p 15.

- 2.8 The committee subsequently wrote to Mr Moselmane and to Mr Miralis on behalf of Mr Zhang seeking confirmation that the documents identified by the AFP were indeed the documents over which they had originally claimed parliamentary privilege. The committee also afforded the parties an opportunity to make any further submissions in relation to their claims of privilege.
- 2.9 The responses received by the committee from Mr Moselmand and Mr Miralis are summarised below.

Mr Moselmane's submission

- 2.10 In his correspondence to the committee, Mr Moselmane did not specifically confirm whether the documents provided by the AFP to the committee and forwarded on to him were in fact the documents over which Mr Stanton originally claimed privilege on his behalf. Mr Moselmane simply reiterated a claim of privilege over the following documents:

Mr Zhang's P30 Mobile Phone (SP03.26JUN20.001)

- Annexure A – page 938 in report SP03.26JUN20.001 which the AFP believes to be ‘parliamentary speech by Mr Moselmane relating to Lebanon (p 747)’ as previously subject to a claim of privilege by Mr Stanton, and
- Annexure B – pages 2917-2919 in report SP03.26JUN20.001 which the AFP believes to be ‘parliamentary speech by Mr Moselmane relating to COVID 19 and Racism (pp 2733-2734)’ as previously subject to a claim of privilege by Mr Stanton.

Mr Zhang's P20 Mobile Phone (SP03.26JUN20.024)

- Annexure D – page 1580 of the report titled SP03.26JUN20.024 which the AFP believes to be ‘parliamentary speech in tribute to Robert Hawke AC, former Prime Minister of Australia (p 178)’ as previously subject to a claim of privilege by Mr Stanton,
- Annexure E – page 1591 of the report titled SP03.26JUN20.024 which the AFP believes to be ‘parliamentary speech in relation to the Museum of Chinese in Australia (p 188)’ as previously subject to a claim of privilege by Mr Stanton,
- Annexure F – page 1220 of the report titled SP03.26JUN20.024, which the AFP believes to be ‘parliamentary speech in tribute to Robert Hawke AC (p 1219)’ as previously subject to a claim of privilege by Mr Stanton,
- Annexure K – page 1224 of the report titled SP03.26JUN20.024, which the AFP believes to be ‘parliamentary speech in relation to the Museum of Chinese in Australia (p 1122)’ as previously subject to a claim of privilege by Mr Stanton, and
- Annexure H – page 1227 of the report titled SP03.26JUN20.024, which the AFP believes to be ‘parliamentary speech in relation to the Museum of Chinese in Australia (p1125)’ as previously subject to a claim of privilege by Mr Stanton.¹⁶

- 2.11 Whilst the committee has not been able to confirm categorically that the documents over which Mr Stanton originally claimed privilege on behalf of Mr Moselmane are the documents identified by the AFP as listed above, the committee is satisfied to rely on the new claim of privilege made

¹⁶ Correspondence from Mr Moselmane to the Chair, 27 July 2023, p 3.

by Mr Moselmane directly. The committee notes that this new claim of privilege essentially aligns with the claim of privilege originally made by the Acting Clerk.

2.12 The committee is satisfied that these documents, being reproductions of Hansard extracts of speeches in Parliament, attract parliamentary privilege.

2.13 Mr Moselmane did not maintain a claim of privilege previously made by Mr Stanton over:

- Annexure I – which the AFP believed to be ‘Document 25, being an extract of the valedictory speech by the Hon Ernest Wong MLC’
- Annexure J – which the AFP believed to be ‘Item 22 MOSELMANE AND LI JIANJUN discuss Australia – China relation to New South Wales Parliament – Parliament in chambers visit’.¹⁷

2.14 The committee agrees that these documents are not covered by parliamentary privilege.

Mr Miralis’ further submission

2.15 As noted previously, Mr Miralis on behalf of Mr Zhang previously claimed parliamentary privilege over ‘item 16 – messages of 30/01/2019 – which are contained in a WeChat item’.

2.16 The AFP subsequently indicated to the committee that it believes this document to be Annexure C, being pages 612-626 of the material originally viewed by Mr Stanton. The committee was able to identify this material separately in the report titled SP03.26JUN20.024 at pages 540-556.

2.17 In his further correspondence to the committee, Mr Miralis maintained a claim of privilege over only one page of Annexure C.¹⁸

2.18 The material in question constitutes a number of short chats on WeChat. The committee is satisfied that they are not connected with proceedings in Parliament and as such do not attract parliamentary privilege.

Committee comment

2.19 As indicated above, this inquiry has been made far more difficult than it should have been by the fact that different parties were working from different sources in claiming privilege. The committee has been asked to reconcile claims of privilege by Mr Stanton on behalf of Mr Moselmane and Mr Miralis on behalf of Mr Zhang using one set of material with advice provided by the Acting Clerk of the Parliaments using another set of material. The committee acknowledges the assistance of the AFP in identifying what the AFP believes to be the documents over which Mr Stanton and Mr Miralis originally claimed privilege. But even now, following further correspondence from Mr Moselmane and Mr Miralis, the committee has not been able to fully verify with complete certainty Mr Moselmane’s and Mr Miralis’ original claims of privilege.

¹⁷ Correspondence from Mr Moselmane to the Chair, 27 July 2023, p 3.

¹⁸ Correspondence from Mr Miralis to the Chair, 26 July 2023.

2.20 Nevertheless, even in the absence of that absolute certainty, the sum total of the inquiry is relatively straightforward: in the committee's view, privilege should be extended to only those documents on Mr Zhang's P20 and P30 mobile phones, however cited, which reproduce Hansard extracts of speeches in the Legislative Council by Mr Moselmane. Using the page numbering in the USB stick made available to the committee, the committee believes those documents to be:

The following documents on Mr Zhang's P30 mobile phone:

- a speech delivered by Mr Moselmane in the Legislative Council on 24 October 2019 about Lebanon (p 938 of report SP03.26JUN20.001_2023-02-02), and
- a speech delivered by Mr Moselmane in the Legislative Council on 3 June 2020 about COVID 19 and racism (pp 2917-2918 of report SP03.26JUN20.001_2023-02-02).

The following documents on Mr Zhang's P20 mobile phone:

- a speech delivered by Mr Moselmane in the Legislative Council on 20 June 2019 about former Prime Minister RJ Hawke (pp 1220 and 1580 of report SP03.26JUN20.024_2023-02-02), and
- a speech delivered by Mr Moselmane in the Legislative Council on 6 August 2019 about the Museum of the Chinese in Australia (pp 1224, 1227 and 1591 of report SP03.26JUN20.024_2023-02-02).

2.21 The committee recommends that the House assert parliamentary privilege in relation to the documents identified above.

Recommendation 1

That the House assert parliamentary privilege in relation to the following documents on Mr Zhang's P30 mobile phone:

- a speech delivered by Mr Moselmane in the Legislative Council on 24 October 2019 about Lebanon (p 938 of report SP03.26JUN20.001_2023-02-02), and
- a speech delivered by Mr Moselmane in the Legislative Council on 3 June 2020 about COVID 19 and racism (pp 2917-2918 of report SP03.26JUN20.001_2023-02-02).

Recommendation 2

That the House assert parliamentary privilege in relation to the following documents on Mr Zhang's P20 mobile phone:

- a speech delivered by Mr Moselmane in the Legislative Council on 20 June 2019 about former Prime Minister RJ Hawke (pp 1220 and 1580 of report SP03.26JUN20.024_2023-02-02), and
- a speech delivered by Mr Moselmane in the Legislative Council on 6 August 2019 about the Museum of the Chinese in Australia (pp 1224, 1227 and 1591 of report SP03.26JUN20.024_2023-02-02).

- 2.22** As noted in the previous report, the committee and the House is in an unusual position that these documents are already in the possession of the AFP in electronic format if not also printed format.
- 2.23** There is legal authority that documents ordinarily subject to parliamentary privilege are immune from processes of discovery as part of investigations by investigative bodies such as the AFP.¹⁹ While regrettably in this instance that point has now passed – the documents listed in Recommendations 1 and 2 have in fact already been discovered and are in the possession of the AFP – nevertheless they should not form part of any further AFP investigations or proceedings and should be returned.
- 2.24** The committee therefore recommends that by 5.00 pm on Friday, 7 September 2023, or such other time as deemed appropriate by the President and the Commissioner of the AFP:
- the AFP return to the President all hard copies of the privileged documents listed in Recommendations 1 and 2,
 - the Commissioner of the AFP provide a written undertaking to the President that electronic copies of the privileged documents have been deleted, to the extent possible, and
 - the AFP return Mr Zhang’s phones containing the privileged documents to the President.

Recommendation 3

That by 5.00 pm on Friday, 7 September 2023, or such other time as deemed appropriate by the President and the Commissioner of the AFP:

- the AFP return to the President all hard copies of the privileged documents listed in Recommendations 1 and 2
- the Commissioner of the AFP provide a written undertaking to the President that electronic copies of the privileged documents have been deleted, to the extent possible, and
- the AFP return Mr Zhang's phones containing the privileged documents to the President.

- 2.25** If this recommendation is adopted by the House, the Committee requests that the President write immediately in these terms to the Commissioner of the AFP.
- 2.26** Finally, the committee wishes to specifically comment on the serious ongoing impact of this matter, now in its fourth year, on the health and welfare of the Hon Shaoquett Moselmane, a member of the Legislative Council for 13 years from 2009 to 2023, and his family. The committee accepts from the submissions before it that this has clearly caused Mr Moselmane and his family significant distress.
- 2.27** As stated in previous reports on this matter, the committee understands that at the time of the execution of search warrants by the AFP on various premises associated with Mr Moselmane

¹⁹ *O’Chee v Rowley* (1997) 150 ALR 199 at 215 per McPherson JA, at 215 per Moynihan J, Fitzgerald P in dissent at 203-204; *The President of the Legislative Council of Western Australia v Corruption and Crime Commission* [No 2] [2021] WASC 223 at [152]-[154] per Hall J.

and his then staffer Mr John Zhang the AFP confirmed to Mr Moselmane that he was not a suspect in their investigation. This was subsequently confirmed.

- 2.28** Mr Moselmane has never been charged with offences arising from this matter and it seems to the committee logical to infer that he never will be. At the time of the execution of the warrants he was an admitted legal practitioner and held a senior public office which required that he be a person of prior good character in the eyes of the law. He of course enjoys the presumption of innocence, both as a legal principle and as a matter of the fair and restrained collective judgment of the community.
- 2.29** Despite this, extensive media coverage has suggested to the contrary; that is, that Mr Moselmane was a suspect in serious criminality. This was incorrect. The execution of the warrants themselves was attended by journalists and the matter was extensively publicised before it could be expected the media could bring proper attention to the entire circumstances of the matter.
- 2.30** This publicity and its timing has been highly damaging to Mr Moselmane and his family.
- 2.31** The committee does not form a view on the propriety or otherwise of the conduct of the AFP or sections of the media. However, in these circumstances, the committee urges the AFP to ensure sufficient resources are allocated to now resolve the matter speedily. Justice delayed is justice denied.

Appendix 1 Minutes

Minutes no. 1

30 May 2023, 3.06 pm

Privileges Committee

Room 1136

1. Members present

Mr Lawrence, *Chair*

Ms Higginson

Mr Murphy

Mr Nanva

Mr Primrose

Mr Roberts

Secretariat in attendance: Steven Reynolds, Stephen Frappell, and Madolyn Hollins.

2. Apologies

Mrs Maclaren-Jones

Mr Fang

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 6 March 2023 – Email from the Independent Complaints Officer, to the Privileges Committee, attaching the Independent Complaints Officer quarterly report for December 2022 to January 2023
- 6 March 2023 – Correspondence from Ms Kate Boyd, Deputy Secretary, General Counsel, Department of Premier and Cabinet, Mr Steven Reynolds, Acting Clerk of the Parliaments, regarding the orders made by the Privileges Committee on 28 February and 2 March 2023 for the disputed claim of privilege relating to Get Wild Pty Ltd
- 8 March 2023 – Email from Federal Agent Georgia Gallagher, Counter Terrorism and Special Investigations Command, AFP, to Mr Steven Reynolds, Acting Clerk of the Parliaments, confirming a list of documents that will be quarantined until the privileges process is complete and advising that the AFP is happy to assist with clarifying any issues for the Privileges Committee regarding the index
- 17 March 2023 – Email from Federal Agent Georgia Gallagher, Counter Terrorism and Special Investigations Command, AFP, to Mr Steven Reynolds, Acting Clerk of the Parliaments, confirming that the documents listed by the Acting Clerk in correspondence dated 10 March 2023 will remain privileged, and providing advice regarding the numbering issues in the index
- 17 March 2023 – Email from Ms Sarah Johnston, Director, Legal Branch, Department of Premier and Cabinet, to Mr Steven Reynolds, Acting Clerk of the Parliaments, confirming the correspondence from Mr Reynolds dated 16 March 2023, and advising that the Department will provide a response after caretaker period
- 28 April 2023 – Email from Detective Sergeant Tom Morrison, Special Investigations, Counter Terrorism and Special Investigations Command, to Mr Stephen Frappell, A/ Deputy Clerk, providing clarification to Item 16 and the dates claimed by Mr Zhang's legal representative
- 28 April 2023 – Email from Detective Sergeant Tom Morrison, Special Investigations, Counter Terrorism and Special Investigations Command, to Mr Stephen Frappell, A/ Deputy Clerk, advising that the AFP will await instructions for the teleconference.

Sent:

- 7 March 2023 – Letter from the Chair of the Privileges Committee, to the President of the Legislative Council, regarding the inquiry into the *Execution of search warrants by the Australian Federal Police No. 4*, attaching Report No. 92
- 10 March 2023 – Email from Mr Steven Reynolds, Acting Clerk of the Parliaments, to Federal Agent Georgia Gallagher, Counter Terrorism and Special Investigations Command, AFP, clarifying the list of documents that are requested to be kept privileged until further inquiry and advising of the timeline for the Privileges Committee to convene in the 58th Parliament and inquire into this matter
- 16 March 2023 – Letter from Mr Steven Reynolds, Acting Clerk of the Parliaments, to Ms Kate Boyd, Deputy Secretary, General Counsel, Department of Premier and Cabinet, responding to Ms Boyd's correspondence dated 6 March 2023, regarding the orders made by the Privileges Committee on 28 February and 2 March 2023 for the disputed claim of privilege relating to Get Wild Pty Ltd
- 28 April 2023 – Email from Mr Stephen Frappell, A/ Deputy Clerk, to Detective Sergeant Tom Morrison, Special Investigations, Counter Terrorism and Special Investigations Command, advising that a teleconference would be helpful to clarify some discrepancies, but no further action can be taken by Parliament until the Privileges Committee is re-established and it is referred a new terms of reference to inquire into this matter again.

4. Publication of reports from the Independent Complaints Officer of the NSW Parliament to the Legislative Council Privileges Committee and Legislative Assembly Parliamentary Privileges and Ethics Committee, for the periods 1 September 2022 to 30 November 2022 and 1 December 2022 to 28 February 2023.

Resolved on the motion of Mr Murphy: That the reports of the Independent Complaints Officer of the NSW Parliament to the Legislative Council Privileges Committee and Legislative Assembly Parliamentary Privileges and Ethics Committee, for the periods 1 September 2022 to 30 November 2022 and 1 December 2022 to 28 February 2023 be tabled by the Chair next sitting day.

5. Deputy Clerk briefing:

5.1 Deputy Clerk provided the committee with the following documents:

- Independent Complaints Officer Resolution as amended in LC Minutes 8 June 2022 pp. 3420-3421
- The resolution establishing the Privileges Committee in LC Minutes 8 May 2019, pp. 89-92
- Independent Complaints Officer Protocols, dated November 2022.

5.2 Deputy Clerk discussed with the committee:

- Review of Code of Conduct and pecuniary interest disclosures regulation
- Ethical education and conduct of members, meeting with Parliamentary Ethics adviser
- Standing order 54 – arbiter's reports on orders for papers when House not sitting
- Standing orders 208 and 209 Citizen's Right of Reply
- Independent Complaints Officer quarterly reports; 12 month review.

5.3 Deputy Clerk discussed the likely inquiries this year with the committee:

- AFP search warrants – resolution of outstanding issues
- Inquiry into Constitution (Disclosures by Members) Regulation 1983
- Revised Memorandum of Understanding with the ICAC regarding execution of search warrants.

Ms Higginson raised that the Privileges Committee could inquire into recommendation 5 of report No. 18 of Portfolio Committee No. 7 – Planning and Environment entitled "Allegations of impropriety against agents of the Hills Shire Council and property developers in the region".

The committee discussed inquiring into a Privileges Act in New South Wales, noting it would need to be done in consultation with the both the Legislative Assembly and the Executive.

6. Next meeting

The committee adjourned at 3.22 pm, *Sine die*.

Mr Steven Reynolds

Deputy Clerk

Minutes no. 2

29 June 2023, 6.17 pm

Privileges Committee

Room 1136

1. Members present

Mr Lawrence, *Chair*

Mrs Maclaren-Jones, *Deputy Chair*

Mr Fang

Ms Higginson

Mr Murphy

Mr Nanva

Mr Primrose

Mr Roberts

Secretariat in attendance: Steven Reynolds, Stephen Frappell, and Madolyn Hollins.

2. Previous minutes

Resolved, on the motion of Mr Murphy: That draft minutes no. 1 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 5 June 2023 – Report from Independent Complaints Officer of the NSW Parliament to Legislative Council Privileges Committee and Legislative Assembly Parliamentary Privileges and Ethics Committee (*tabled in the House on 20 June 2023*)
- 5 June 2023 – Letter from The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption, to the Chair of the Privileges Committee, informing of recent integrity awareness initiatives
- 29 June 2023 – Letter from the Hon John Hatzistergos, Chief Commissioner of the Independent Commission Against Corruption addressed to the Chair of the Privileges Committee, regarding the Commission's report on its "Investigation into the conduct of the then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel)" (*tabled at the meeting*).

4. Correspondence from the Chief Commissioner, Independent Commission Against Corruption – 5 June 2023

The committee noted correspondence received from the Chief Commissioner of the Independent Commission Against Corruption on 5 June 2023, requesting a meeting with the committee to discuss the committee's education function relating to ethical standards applying to members of each House.

Resolved, on the motion of Mrs Maclaren-Jones: That the Chair write to the Hon John Hatzistergos, Chief Commissioner of the Independent Commission Against Corruption thanking him for his interest in engaging with the education functions of the committee and offering to meet at a later date to discuss matters relevant to the Independent Commission Against Corruption.

5. Inquiry into execution of search warrants by the Australian Federal Police No. 5

5.1 Submissions

Resolved, on the motion of Mrs Maclaren-Jones: That the submissions to the Inquiry into execution of search warrants by the Australian Federal Police No. 5 be made available for inspection by members of the committee in the Office of the Clerk but not otherwise distributed.

5.2 Conduct of inquiry

Deputy Clerk briefed the committee.

Resolved, on the motion of Mr Fang:

1. That the Committee Clerk is authorised to meet with representatives of the AFP investigation team to reconcile the documents which are described differently in the various submissions.
2. That once the documents are clearly identified the Chair will write to the legal representatives of Mr Zhang and Mr Moselmane to advise which documents the Clerk has suggested are privileged, providing an opportunity to make a further submission in response, if they wish, with a two week response time.
3. That following the closing date for submissions, the secretariat prepare a brief draft report for the Chair, with a report deliberative scheduled for 2 August 2023.

6. Correspondence from the Chief Commissioner, Independent Commission Against Corruption – 29 June 2023

The Chair noted that in its report the Commission made eight recommendations for reform relevant specifically for the Privileges Committee, and specifically requests that the Committee:

- responds to the Commission in writing within 3 months with details of the proposal to implement any plan of action in response to the relevant recommendations (or a longer period, as arranged with the Commission)
- provides a report on progress of any plan of action within 12 months (and another 12 months after that if the plan is not yet fully implemented).

The committee discussed the letter tabled by the Chair.

Resolved, on the motion of Mr Primrose: That the committee write to the President of the Legislative Council seeking a committee referral under paragraph 3 (a) of resolution of the House establishing the Privileges Committee, 10 May 2023, to consider and report upon the matters relating to privilege contained in the letter from the Chief Commissioner.

7. Next meeting

The committee adjourned at 6.23 pm, until 2 August 2023 at 12.30 pm in room 1136.

Mr Steven Reynolds
Deputy Clerk

Draft minutes no. 3

21 August 2023, 3.32 pm
Privileges Committee
Room 1254 and via Webex

1. Members present

Mr Lawrence, *Chair*
Mr Fang (*via Webex*)
Ms Higginson
Ms Merton (*substituting for Mrs Maclaren-Jones*)
Mr Murphy
Mr Nanva (*via Webex*)

Mr Primrose
Mr Roberts

Secretariat in attendance: Stephen Frappell, Sharon Ohnesorge, Velia Mignacca, Madeleine Dowd, Monica Loftus, Maddie Hollins.

2. Previous minutes

Resolved on the motion of Mr Murphy: That draft minutes no. 2 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 29 June 2023 – Letter from The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption, to Chair, regarding the Commission's report "Investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others: Operation Keppel", citing eight recommendations for reform of the ethics regime regulating the conduct of members relevant to the functions of the Privileges Committee and seeking a response from the committee
- 7 July 2023 – Letter from the President of the Legislative Council to the Chair of the Committee referring terms of reference for a new inquiry into the recommendations of the ICAC arising out of Operation Keppel
- 12 July 2023 – Email from Federal Agent Georgia Gallagher, Special Investigations, Australian Federal Police, to Acting Deputy Clerk, regarding the report on the Execution of search warrants by the Australian Federal Police No. 4, including various annexure attachments
- 17 July 2023 – Letter from the President of the Legislative Council to the Chair regarding the recommendations of the Broderick Review
- 26 July 2023 – Letter from The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption to the Chair regarding the Commission's report "Investigation into the conduct of local member for Drummoyne: Operation Witney", citing seven recommendations for reform of the ethics regime regulating the conduct of members relevant to the functions of the Privileges Committee and seeking a response from the committee
- 26 July 2023 – Letter from The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption to the President of the Legislative Council, regarding the Commission's report "Investigation into the conduct of local member for Drummoyne: Operation Witney", citing seven recommendations for reform of the ethics regime regulating the conduct of members relevant to the functions of the Privileges Committee and seeking a response from the committee
- 26 July 2023 – Letter from Mr Dennis Miralis, Partner, Nyman Gibson Miralis to the Chair regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5
- 27 July 2023 – Letter from The Hon Shaoquett Moselmane to the Chair regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5
- 1 August 2023 – Email from Lara Khider, Senior Solicitor, Nyman Gibson Miralis, to Chair - regarding decision to not provide a submission to the inquiry into the execution of search warrants by the Australian Federal Police No. 5.

Sent:

- 3 July 2023 – Letter from the Chair to the President of the Legislative Council regarding correspondence from ICAC in relation to its report entitled "Operation Keppel", requesting that the President refer terms of reference to the Privileges Committee
- 18 July 2023 – Letter from the Chair to Mr Dennis Miralis, Partner, Nyman Gibson Miralis regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5
- 18 July 2023 – Letter from the Chair to The Hon Shaoquett Moselmane regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5

- 18 July 2023 – Letter from the Chair to The Hon John Hatzistergos AM, Chief Commissioner, NSW Independent Commission Against Corruption, regarding the ongoing educative role of the Privileges Committee in relation to ethical standards for members of the Legislative Council and the opportunity to address this further as part of a new inquiry referred to the Privileges Committee responding to the Report on Operation Keppel.

4. Inquiry into the execution of search warrants by the Australian Federal Police No. 5

4.1 Correspondence

The committee noted that:

- by email dated 12 July 2023, the committee received advice from Federal Agent Georgia Gallagher, Special Investigations, Australian Federal Police, regarding the page numbering issue raised by the committee in Report No 4 on this matter. The correspondence included annexure attachments in relation to the discrepancies in page numbers
- by correspondence dated 18 July 2023, the Chair wrote to Mr Dennis Miralis, Partner, Nyman Gibson Miralis, acting as legal counsel for Mr Zhang, regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5 and claims of parliamentary privilege. The Chair invited Mr Miralis to make a submission by Tuesday 25 July 2023
- by correspondence dated 18 July 2023, the Chair wrote to The Hon Shaoquett Moselmane, regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5 and claims of parliamentary privilege. The Chair invited Mr Moselmane to make a submission by Tuesday 25 July 2023
- by correspondence dated 26 July 2023, Mr Dennis Miralis, Partner, Nyman Gibson Miralis, acting as legal counsel for Mr Zhang, wrote to the committee clarifying the scope of the parliamentary privilege claim on behalf of Mr Zhang
- by correspondence dated 27 July 2023, The Hon Shaoquett Moselmane wrote to the Chair, regarding the inquiry into the execution of search warrants by the Australian Federal Police No. 5, citing material over which he maintained a claim of parliamentary privilege.

Resolved, on the motion of Mr Roberts: That all correspondence related to the inquiry into execution of search warrants by the Australian Federal Police No. 5 remain confidential and available for inspection by members in the Clerk's Office on request.

4.2 Chair's draft report

Resolved, on the motion of Mr Murphy: That the committee note that the Chair's draft report has been circulated to members less than seven days prior to the report deliberative.

The Chair submitted his draft report entitled "Inquiry into the execution of search warrants by the Australian Federal Police No. 5", which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Murphy: That:

- the draft report be the report of the committee, subject to an amendment to be drafted by the secretariat, circulated by the Chair and agreed to via email, regarding the return of privileged material by the AFP
- the committee present the report to the House on Wednesday 23 August 2023
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee.

5. Inquiry into the recommendations of the ICAC arising out of Operation Keppel

The committee noted that:

- by correspondence dated 29 June 2023, the Chief Commissioner of the Independent Commission Against Corruption (ICAC) wrote to the Chair of the Committee in relation to the report "Investigation into the conduct of then member of Parliament for Wagga Wagga and then premier and others (Operation Keppel)" and a number of recommendations for reform relevant specifically to the Privileges Committee

- by correspondence dated 3 July 2023, the Chair of the Committee wrote to the President requesting a referral to inquire into the matters contained in the Chief Commissioner's letter
- by correspondence dated 7 July 2023, the President responded to the Chair's letter, granting the request to refer the matters for inquiry and providing terms of reference for the establishment of the inquiry, with a reporting date of the last sitting day in 2023.

The committee further noted that these terms of reference were reported by the President to the House on Tuesday 1 August 2023, as follows:

5.1 Terms of reference – Recommendations of the ICAC arising out of Operation Keppel

- (1) That the Privileges Committee:
 - (a) inquire into and report on the recommendations of the Independent Commission Against Corruption in its report entitled "Investigation into the conduct of the then member of Parliament for Wagga Wagga and then Premier and others (Operation Keppel)", dated June 2023, and
 - (b) make recommendations for further action to be considered by the House, the President, the Clerk and the Government, as appropriate.
- (2) That in undertaking the inquiry:
 - (a) in accordance with standing order 226(a), the committee have leave to take evidence, deliberate and make joint reports with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, and
 - (b) the committee consult the President, the Clerk and the Chief Commissioner of the Independent Commission Against Corruption as appropriate.
- (3) That the committee report by the last sitting day in 2023.

The committee also noted that by separate correspondence dated 26 July 2023, the Chief Commissioner of the ICAC wrote to the Chair of the Committee and President of the Legislative Council in relation to the implementation of corruption prevention recommendations made by the ICAC in the report "Investigation into the conduct of local member for Drummoyne (Operation Witney)".

By correspondence dated 18 July 2023, the Chair previously advised the Chief Commissioner of the referral of the terms of reference above for an inquiry into the recommendations arising out of the Keppel inquiry.

Resolved, on the motion of Mr Murphy: That the committee write to the Chief Commissioner of the Independent Commission Against Corruption in response to correspondence sent by the Chief Commissioner of 26 July 2023, to indicate that the recommendations arising out of Operation Witney were previously considered by the committee as part of its 2022 Review of the Code of Conduct for Members, but will be further considered as part of the current inquiry into the recommendations of the ICAC arising out of Operation Keppel.

The committee further noted that there is certain overlap in recommendations arising out of both ICAC reports into Operations Keppel and Witney, as well as recommendations arising out of the Broderick Review that are specific to the Privileges Committee (as per the President's correspondence to the Chair of 17 July 2023).

Resolved, on the motion of Mr Murphy: That the secretariat be tasked with reviewing and reconciling the recommendations of Operations Keppel and Witney, and those recommendations arising out of the Broderick Review that are specific to the Privileges Committee (as per the President's correspondence to the Chair of 17 July 2023), for review by the committee at its next meeting.

6. Review of Independent Complaints Officer system (2023)

The committee noted that under the terms of paragraph 10 of the resolution establishing the ICO, the committee is required to review the Independent Complaints Officer system within 12 months of the establishment of the Independent Complaints Officer position, in consultation with key stakeholders.

Resolved, on the motion of Mr Primrose: That the committee adopt the following terms of reference, and that they be reported to the House on the next sitting day.

6.1 Terms of Reference – Inquiry into the review of Independent Complaints Officer system (2023)

- (1) That, in accordance with paragraph 10 of the resolution of the House establishing the Independent Complaints Officer, the Privileges Committee review the operation of the Independent Complaints Officer system and associated investigations protocol tabled on 17 November 2022, and whether any changes are needed, and in particular:
 - (a) the confidentiality provisions applying in respect of complaints and investigations under the system,
 - (b) the timeliness of complaints assessments and investigations conducted under the system, and
 - (c) the provisions applying with respect to standing for complaints and retrospectivity under the system.
- (2) That, in undertaking the review:
 - (a) the committee consider the recommendations of the Independent Review of Bullying, Sexual Harassment and Sexual Misconduct at NSW Parliament Workplaces, commonly referred to as the Broderick Review, in relation to the role of the Independent Complaints Officer, the Code of Conduct for Members, training for members and any other related matter,
 - (b) in accordance with Standing Order 226(a), the committee have leave to take evidence, deliberate and make joint reports with the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics, and
 - (c) the committee consult the President, the Clerk and other key stakeholders as appropriate.

7. Next meeting

The committee adjourned at 4.04 pm, *sine die*.

Stephen Frappell
Committee Clerk

