

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

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

**MATTERS ARISING FROM THE 105TH REPORT
OF THE COMMITTEE OF PRIVILEGES**

114TH REPORT

AUGUST 2003

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ISSN 1038-9857
ISBN 0 642 71288 3

This document was prepared by the Committee of Privileges, and printed by the Senate Printing Unit, Parliament House, Canberra

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TABLE OF CONTENTS

Membership of the committee	iii
Overview	1
Background	1
Events since the 105 th report.....	2
The report by Mr Skehill	5
Comment	8

Appendices 1—5

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

**MATTERS ARISING FROM THE 105TH REPORT OF THE
COMMITTEE OF PRIVILEGES**

Overview

1. This report deals with the outcome of matters relating to the execution of a search warrant in the Mareeba, Queensland, office of Senator Len Harris. It sets out the findings of the independent counsel appointed to examine the documents seized under the warrant, and addresses issues raised by the way in which the warrant was executed. The question of whether any breaches of the immunities of the Senate or contempts were involved in the search and seizure was considered in the 105th report of the Committee of Privileges, presented to the Senate in June 2002.

Background

2. Queensland Police executed a search warrant in the Mareeba office of Senator Harris on 27 November 2001 and seized several documents and copied the contents of the hard discs of computers in the office. The search warrant was issued in connection with an investigation into election reimbursement claims submitted by Pauline Hanson's One Nation Queensland Division for the 2001 state general election.

3. As some of the material seized might be immune from seizure by virtue of parliamentary privilege the Clerk of the Senate wrote to the Commissioner of the Queensland Police Service on 30 November 2001 proposing that the material seized be sealed until such time as a court or the Senate determined the legality of the seizure. The Queensland Police Service later advised the Clerk and Senator Harris' solicitors that the material had been sealed and would be kept in a safe in the office of the Queensland Police Service Solicitor until the question of privilege had been determined.

4. On 14 February 2002 the Senate, on the motion of Senator Harris, referred the following matter 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.¹

5. In raising the question whether contempt was involved, Senator Harris claimed:

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.²

6. The Committee of Privileges reported in June 2002, in its 105th report. It concluded that no breaches of the immunities of the Senate or contempts were involved in the search and seizure and therefore that no contempt of the Senate was involved. It found that the Queensland Police Service had fulfilled its obligations in respect of parliamentary privilege and concluded that the matter would best be progressed if Senator Harris and his legal advisers were to take up the invitation proffered by the Queensland Police Service 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. If the Queensland Police Service were to dispute any claim of privilege which Senator Harris might make, and there was no resolution of the claim between the Queensland Police Service and Senator Harris, then it would only be at that point that any further action might be required.³

7. The committee also concluded that the question of the seizure of documents over which a claim of parliamentary privilege was not made, and which were not covered by the authorisation of search warrants, was a matter for the courts, and not for the Senate, to determine.⁴

Events since the 105th report

8. Following the presentation to the Senate of the 105th report of the Committee of Privileges, Senator Harris' solicitors on 27 and 30 July 2002 advised the Queensland Police that Senator Harris wished to maintain the claim of parliamentary privilege over all documents contained on computer hard-drives currently in the possession of the Queensland Police Service.⁵

1 Journals of the Senate, 14 February 2002.

2 Letter from Senator Harris to the President of the Senate when raising the seizure as a matter of privilege, quoted in Senate Committee of Privileges, 105th Report, June 2002, P.P. No. 310/2002, para. 2.

3 105th Report, p. 9.

4 105th Report, p.10.

5 See Appendix 1, pp. 2 and 3.

9. On 30 September 2002 the Queensland Police Service Solicitor wrote to the Committee of Privileges requesting that, in light of the correspondence from Senator Harris' solicitors maintaining the general claim of privilege, the Committee of Privileges or the Senate determine the question of parliamentary privilege claimed by Senator Harris.⁶

10. On 4 December 2002 Senator Harris gave notice of a motion to appoint an independent assessor to examine the documents seized by the Queensland Police to determine whether any of the documents were not covered by the warrant or were immune from seizure under warrant by virtue of parliamentary privilege. The independent assessor was to divide the documents into two categories, those not covered by the warrant or immune from seizure and those not immune from seizure. The documents not covered by the warrant or immune from seizure were to be returned to Senator Harris and those not immune from seizure were to be forward to the Queensland Police. The terms of the notice of motion are at Appendix 2.

11. The terms of the notice were similar to resolutions of the Senate which authorised independent counsel to examine material seized from the state and Parliament House offices of former Senator Winston Crane in December 1998 in respect of another matter. In that matter 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 was an executive act and not a judicial proceeding, and that only the House concerned and the executive might resolve such an issue (*Crane v Gething* 2000 169 ALR 727).

12. The judge's 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.⁷ The judge ordered that the documents be forwarded to the Senate to determine whether any were privileged. The Senate appointed independent counsel to examine the documents to determine whether any were immune from seizure by parliamentary privilege or because they were beyond the scope of the warrant, to return any documents so protected to Senator Crane, and to provide the remainder to the police.

13. Senator Harris subsequently postponed the notice to enable the Committee of Privileges to consider whether it should become involved in the matter.

14. The committee, mindful of the action previously taken in the case of former Senator Crane, and of Senator Harris' notice of motion, decided on 12 December 2002 that it would undertake the course of action sought by the Queensland Police Service Solicitor, based on Senator Harris' notice. It made this decision acting under the terms of its original inquiry into the seizure, which was the subject of the 105th report.

6 See Appendix 1, p. 1.

7 *Odgers' Australian Senate Practice*, 10th edition, p. 43.

15. The committee sought, and obtained, the approval of the President to appoint Mr Stephen Skehill SC to assist it. Mr Skehill had evaluated the material provided to the Senate in respect of former Senator Crane. Mr Skehill agreed to the appointment.

16. The chair of the Committee of Privileges, Senator Ray, made a statement to the Senate on 5 February 2003 in relation to the decision by the committee to commission Mr Skehill to evaluate the documents seized by the Queensland Police. The statement is at Appendix 3. Senator Harris withdrew his notice of motion at the conclusion of Senator Ray's statement, as the matter was to be dealt with by the Committee of Privileges.

17. The committee wrote to the Commissioner of the Queensland Police Service and Senator Harris on 20 December 2002, advising of the intended appointment of Mr Skehill and asking each whether they would be willing to accept Mr Skehill's determination in respect of both parliamentary privilege and material which was not covered by the warrant executed on 27 November 2001. The Commissioner and Senator Harris each responded that they were willing to accept Mr Skehill's determination in respect of both matters. The correspondence is at Appendix 4.

18. The consultancy agreement between the Department of the Senate and Mr Skehill provided as follows in respect of the evaluation to be undertaken by Mr Skehill:

1.1 The Consultancy Services to be provided are described below:

- (a) The Secretary of the Committee of Privileges shall provide to the Consultant, Mr Stephen Skehill, documents seized under warrant by Queensland Police in the office of Senator Harris on 27 November 2001.
- (b) The Consultant shall examine the documents referred to in 1.1(a) to determine whether any of the documents are not covered by the warrant or are immune from seizure under warrant by virtue of parliamentary privilege, having regard to the *Parliamentary Privileges Act 1987*, relevant court judgments relating to the interpretation and application of the Act, relevant sections of Privileges Committee reports dealing with the protection of documents of senators and such other matters as the Consultant considers relevant.
- (c) The Consultant shall divide the documents into two categories, those not covered by the warrant or immune from seizure and those not immune from seizure, and seal them into two packages identified accordingly. Those documents that are not covered by the warrant or are immune from seizure are to be returned to Senator Harris and those not immune from seizure are to be provided to the Secretary of the Committee of Privileges.

- (d) Before sealing the package of documents not immune from seizure the Consultant shall cause such documents to be copied and the copies of the documents shall be forwarded to Senator Harris at the same time as the originals are provided to the Secretary of the Committee of Privileges.
- (e) For the purposes of 1.1(c), where documents are included with other documents in electronic form on a disk or tape, the documents shall be printed out, only printed copies of such documents shall be placed in the package of documents not immune from seizure, and the disks or tapes shall be placed in the package of documents not covered by the warrant or immune from seizure.
- (f) On completion of the Consultancy Services, the Consultant shall provide the Secretary of the Committee of Privileges with a brief statement that the task had been completed.⁸

19. The agreement provided that the discs onto which the Queensland Police had copied the material from Senator Harris' computers were to be provided to Senator Harris with the documents not covered by the warrant or immune from seizure, that is, they were not to be returned to the Queensland Police.

The report by Mr Skehill

20. Mr Skehill commenced his evaluation of the materials seized in January 2003, and concluded it in early August. At the conclusion of the exercise, a total of 74,098 pages of documents had been printed and examined.

21. Under the terms of the consultancy, Mr Skehill was required to provide to the secretary of the Committee of Privileges a statement in relation to the performance of the consultancy. That statement was provided on 7 August 2003, and is at Appendix 5.

22. The statement addresses several technical matters relating to access to the five compact discs and three hard drives provided by the Queensland Police. It canvasses legal issues arising from the evaluation of the documents and sets out findings.

23. In his discussion of technical matters Mr Skehill stated:

- 2.1 When Queensland Police Service officers purported to execute the warrant at Senator Harris' office on 27 November 2001, they "mirrored" the hard discs of computers located in that office onto 5 compact discs in a compressed and encrypted form.
- 2.2 Subsequently, they de-compressed and de-encrypted the contents of those compact discs and transferred the content onto 3 hard drives.⁹

8 Consultancy agreement between Mr Stephen Skehill and the Department of the Senate.

9 Appendix 5, p. 12.

24. Mr Skehill reported that he was unable to access the material on the compact discs because they were encrypted. On the basis of advice from the Queensland Police Service that the content of the hard drives was identical to that of the compact discs, he resolved to examine the content of the hard drives, but subject to the proviso that, if he determined that any document contained thereon was not immune from seizure, he would request the Queensland Police Service to de-compress and de-encrypt the compact discs in his presence so that he could ascertain that such document was the same as that on a compact disc created at the time of execution of the warrant and that it had not been subsequently altered. In the end, he did not have to act in accordance with the proviso.

25. In his discussion of legal issues Mr Skehill examined the scope and nature of the search warrant, issued on 23 November 2001, in respect of the search of Senator Harris' office. The warrant was issued under section 69 of the *Police Powers and Responsibilities Act 2000 (Qld)*. In Mr Skehill's view the powers conferred under the Act did not expressly include a power to "mirror" on to compact discs, or download a copy of, the contents of computers located on the premises named in the warrant and to take away the copy thereby made. In his view:

...the warrant only allowed to be taken material that was reasonably suspected to be evidence of the relevant offence and not an entire media which might, or might not, contain such evidence.¹⁰

Mr Skehill continued:

3.8 Moreover, the only computer storage media that could be seized (as opposed to created) was that "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 601, 614, 662, 663 and 664". Accordingly, the warrant did not authorise the seizure (let alone the duplication of) of computer storage media that related or purported to relate to any other matter.

3.9 In my view, the police officers executing the search warrant could only have formulated a reasonable suspicion that the information stored on computers located in Senator Harris' office related to the alleged offence, if they had opened and inspected each computerised file and became satisfied that the contents of each file may have contained such information or evidence.

3.10 But even if such examination had led to the requisite degree of satisfaction on the part of the police officers in question, it would seem that they would have had only limited capacity to remove anything from Senator Harris' premises:

- (a) if the identified electronic document was on a computer media that could be categorised as "purporting to relate to" the

10 See Appendix 5, paras 3.7(a) and (b), p. 15.

specified matter, they would have been able to seize and remove that media but such categorisation of a whole media would appear problematical where the media contained many thousands of other, unrelated documents;

- (b) alternatively, they might perhaps have photographed a copy of the computer screen displaying the identified electronic document, but they would appear to have had no power either to download that file onto another media or to print out and take away a copy of the electronic file.

3.11 In my view, therefore, the actions of the Queensland Police Service in:

- (a) “mirroring” or downloading Senator Harris’ computerised information onto compact discs;
- (b) removing those discs from Senator Harris’s office; and
- (c) transferring the data on those compact discs onto hard drives,

were outside the scope of its powers under the search warrant.

3.12 On that basis then, I consider that it would have been possible to decide, without any examination of them or their contents, that none of the documents able to be printed from the hard drives provided by the Queensland Police Service was within the warrant and that all should be immediately provided only to Senator Harris.¹¹

26. Mr Skehill went on to say that, nevertheless, because the terms of his engagement required that all documents be examined, and in case his view of the law was incorrect, he did examine each of the 74,098 pages of documents. He concluded:

4.2 As a result of that examination, I determined that none of those 74,098 pages was covered by the warrant. That is, none of the material contained therein was material “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 601, 614, 662, 663 and 664”.

4.3 It was accordingly unnecessary to determine which of the documents would also have been immune from seizure on the basis of parliamentary privilege.¹²

27. Mr Skehill summarised his findings as follows:

5.1 For the reasons set out below, I consider that:

11 Appendix 5, p. 16.

12 Appendix 5, p. 16.

- (a) the actions of the Queensland Police Service in:
 - (i) “mirroring” or downloading Senator Harris’ computerised information onto compact discs;
 - (ii) removing those discs from Senator Harris’s office; and
 - (iii) transferring the data on those compact discs onto hard drives,were outside the scope of its powers under the search warrant; and
- (b) in any event, none of the material taken away by the Queensland Police Service in electronic form was within the material that could have been seized under the warrant because it did not purport to relate to “election re-imbusement claims submitted by Pauline Hanson’s One Nation Queensland Division for the 2001 State General Election to include vouchers 601, 614, 662, 663 and 664”.

5.2 Therefore, all the documents printed out by me, the 5 compact discs and the 3 hard drives are to be returned to Senator Harris and no material is to be provided to the Committee of Privileges for transmission to the Queensland Police Service.¹³

28. The committee wishes to record its appreciation of the work performed by Mr Skehill and his colleagues in evaluating the documents and preparing the statement to the committee.

Comment

29. Mr Skehill did not have to determine which of the documents would have been immune from seizure on the basis of parliamentary privilege because, in his evaluation, none of the 74,098 pages of documents lawfully could have been seized under the warrant. As all of the documents were found to be outside the terms of the warrant the question as to whether any were privileged documents did not need to be pursued.

30. The Senate has, on two occasions, in the case of Senator Crane and, through the Committee of Privileges, in the case of Senator Harris, commissioned independent counsel to determine whether documents seized by police from senators’ offices were immune from seizure because of parliamentary privilege. On each occasion independent counsel was also asked to determine whether any of the documents were outside the terms of the search warrant. In respect of the documents seized by the Australian Federal Police from Senator Crane’s offices, a large proportion was found to be outside the search warrant. In respect of the documents seized from Senator Harris’ office, all were found to be outside the search warrant.

13 Appendix 5, p. 17.

31. The committee records that the Senate is effectively performing a function which should be performed by the courts. The decision in *Crane v Gething* is not the appropriate response to the issue of determining the application of the law of parliamentary privilege to documents seized by police under warrant. In the committee's view, it should be for the courts to apply the law of parliamentary privilege and to make such determinations, as the courts do with any other law. This was the submission made by the Senate in that case.

32. Apart from the issue of the application of parliamentary privilege, the courts have the responsibility of determining whether documents are immune from seizure because they are beyond the scope of a search warrant. The committee is of the view that the Senate should not normally be involved in determining whether documents seized by police fall within the terms of a search warrant. Such determinations would not be necessary if police forces observed the limitations set out in particular warrants when executing searches. That is what they are required to do by law.

33. It appears to be the current custom of some police when executing search warrants to sweep up every piece of information in an office and then spend weeks, months or years examining it to determine whether it has any relevance to the alleged offence. It may be that this is seen as an "easy way out" of the problem created by the vast amount of information which can be stored in a computer. If that is so, the law relating to search warrants needs to be re-examined to determine whether there is a satisfactory solution to that problem which does not involve granting police arbitrary and unlimited powers of seizure and repeating the circumstances of this case.

34. In respect of material which may be subject to a claim of parliamentary privilege, the Committee of Privileges has for some years advocated that appropriate protocols be developed between the Presiding Officers and law enforcement authorities to provide agreed procedures for the execution of search warrants in senators' and members' offices.

35. The committee canvassed the development of such protocols in its 75th report.¹⁴ It recommended the guidelines developed by the Australian Federal Police and the Law Council of Australia, in relation to legal professional privilege, as an appropriate basis for discussion between the Presiding Officers and the Attorney-General on the development of similar guidelines in respect of claims of parliamentary privilege. Under such a model, where police proposed to seize documents in respect of which a claim of privilege was raised, the documents would be sealed and delivered to a neutral third party until their status could be determined by a court.

36. Following the presentation of the 105th report of the Committee of Privileges, the chair, on 18 July 2002, wrote to the then President of the Senate requesting advice of any progress towards developing appropriate guidelines. The President responded that discussions had taken place between officers of both Houses and officers of the Australian Federal Police and the Attorney-General's Department, and that the

14 Senate Committee of Privileges, 75th report, March 1999, PP No. 52/1999.

Attorney-General's Department had subsequently indicated that development of the guidelines would proceed "with expedition". However, draft guidelines have not yet been provided to the Presiding Officers.

37. The Committee of Privileges **recommends** that the Presiding Officers and the Attorney-General finalise draft protocols as proposed as soon as practicable, and that the committee be given opportunity to comment on the draft.

Robert Ray
Chair

APPENDICES

APPENDIX	DOCUMENT	PAGES
1	<p>Letter, dated 30 September 2002, from Mr C.J. Strofield, Queensland Police Service Solicitor</p> <p>Attachments:</p> <ul style="list-style-type: none"> • Letter, dated 27 July 2002, from Nyst, Lawyers to Queensland Police Service • Letter, dated 30 July 2002, from Nyst, Lawyers to Queensland Police Service 	<p>1</p> <p>2</p> <p>3</p>
2	Extract from Senate Notice Paper, 5 December 2002	4-5
3	Extract from Senate Hansard, 5 February 2003	6
4	<p>Letter, dated 20 December 2002, to Mr Robert Atkinson APM, Commissioner, Queensland Police Service</p> <p>Letter, dated 20 December 2002, from Mr Robert Atkinson APM, Commissioner, Queensland Police Service</p> <p>Letter, dated 20 December 2002, to Senator Len Harris</p> <p>Letter, dated 23 December 2003, from Senator Len Harris</p>	<p>7</p> <p>8</p> <p>9</p> <p>10</p>
5	Statement, dated 7 August 2003, from Mr Stephen Skehill	11-17



QUEENSLAND POLICE SERVICE

OFFICE OF THE QUEENSLAND POLICE SERVICE SOLICITOR
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Our Ref: 873.12.01CJS:pg

Your Ref:

30 September 2002

Ms Ann Lynch
Secretary
Committee of Privileges
Australian Senate
Parliament House
CANBERRA ACT 2600

RECEIVED
- 3 OCT 2002
CLERK'S OFFICE

Dear Ms Lynch

RE: SENATOR HARRIS – EXECUTION OF SEARCH WARRANT

I refer to the 105th report of the Committee of Privileges entitled Execution of Search Warrants in Senator's Offices – Senator Harris.

The Senator's solicitors were requested to identify the material over which a claim for parliamentary privilege is made. **Enclosed** are copies of correspondence I have received from the Senator's Solicitors. In those circumstances, I respectfully request the Committee of Privileges or the Senate determine the question of parliamentary privilege claimed by Senator Harris.

The material seized from Senator's Harris' electoral office remains secured in my office safe.

Yours faithfully

CJ STROFIELD
QUEENSLAND POLICE SERVICE SOLICITOR

NYST

LAWYERS

FACSIMILE

To: Queensland Police Service
Attention: Colin Strofield
Fax No: 3364 6615
From: Mr Jason Murakami
Subject: Senator Len Harris

Date: 27 July 2002
Pages: 1 inclusive

Dear Sir

We refer to your correspondence of 2 July 2002, received at our office on 4 July 2002 in relation to our abovenamed client and thank you for same.

We apologise that we did not respond to your correspondence earlier, however we have been awaiting instructions in this matter.

We confirm receipt of the 105th Report of the Senate Committee of Privileges. We advise that we have received instructions from our client that he wishes to maintain the claim of parliamentary privilege over all documents which were contained on computer hard-drives which are currently in the possession of the Queensland Police Service.

Therefore, we are instructed to advise you that if indeed the Queensland Police Service wish to bring proceedings in relation to the documents we have instructions to accept service of any such initiating documents.

Should you have any inquiries in relation to the above please do not hesitate to contact the writer.

Yours faithfully
NYST LAWYERS

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

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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

31 JUL 2002

30 July 2002

Queensland Police Service
PO Box 1440
BRISBANE QLD 4001

Attention: Colin Strofield

Dear Colleagues,

Senator Harris – Claim for Parliamentary Privilege

We refer to your correspondence of 2 July 2002 and to your subsequent correspondence of 24 July 2002 in relation to our abovenamed client and thank you for same.

We apologise for not responding to you earlier.

We have received instructions from our client in the following terms:-

1. Claim for parliamentary privilege is maintained on all electronic files contained on the hard-drives of computers confiscated from our client's offices by the Queensland Police Service;
2. Claim for parliamentary privilege is not maintained on the following documents:-
 - a. Hard copy documents located in a manila folder confiscated by the Queensland Police service;
 - b. All operating files and documents contained on the hard-drives of computers confiscated from our client's offices by the Queensland Police Service.

Should you have any inquiries in relation to the above please do not hesitate to contact the writer.

Yours faithfully
NYST LAWYERS

Per:

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

EXTRACT FROM SENATE NOTICE PAPER – 5 DECEMBER 2002

On 11 December 2002

General Business — Notice of Motion

Notice given 4 December 2002

290 **Senator Harris:** To move—

- (1) The disposition of the documents seized under warrant by Queensland Police in the office of Senator Harris on 27 November 2001 shall be determined in accordance with this resolution.
- (2) The Senate appoints Mr Stephen Skehill, SC, or, if Mr Skehill is not available, another independent person nominated by a subsequent resolution, to examine the documents.
- (3) The Queensland Police shall provide to the person appointed under paragraph (2) the documents described in paragraph (1).
- (4) The person appointed under paragraph (2) shall examine the documents and determine whether any of the documents are not covered by the warrant or are immune from seizure under warrant by virtue of parliamentary privilege, having regard to the *Parliamentary Privileges Act 1987*, relevant court judgments relating to the interpretation and application of the Act, relevant sections of Privileges Committee reports dealing with protection of documents of senators and such other matters as that person considers relevant.
- (5) The person appointed under paragraph (2) shall divide the documents into two categories, those not covered by the warrant or immune from seizure and those not immune from seizure, and seal them into two packages identified accordingly. Those documents that are not covered by the warrant or are immune from seizure are to be returned to Senator Harris and those not immune from seizure are to be forwarded to the Queensland Police.
- (6) Before sealing the package of documents not immune from seizure the person appointed under paragraph (2) shall cause such documents to be copied and the copies of the documents shall be forwarded to Senator Harris at the same time as the originals are forwarded to the Queensland Police.
- (7) For the purposes of paragraph (5), where documents are included with other documents in electronic form on a disk or tape, the documents shall be printed out, only printed copies of such documents shall be placed in the package of documents not immune from seizure, and the disks or tapes shall be placed in the package of documents not covered by the warrant or immune from seizure.

- (8) The person appointed under paragraph (2), on completion of this task, shall provide the President of the Senate with a brief statement that the task has been completed and the President shall table that statement in the Senate.
- (9) The person appointed under paragraph (2) shall be paid such fee as is approved by the President after consultation with senators.

Privileges Committee

Report

Senator ROBERT RAY (Victoria) (3.57 p.m.)—I have a statement to make on behalf of the Committee of Privileges. Senators may recall that in June 2002 the Committee of Privileges reported to the Senate on a matter referred on a motion by Senator Harris. In brief, the reference involved establishing whether there was any contempt of the Senate in relation to search warrants executed by the Queensland Police Service in the office of Senator Harris. In its 105th report, the committee concluded that no breaches of the immunities of the Senate, or contempts, were involved in the search and seizure or in the continued possession by the Queensland police of material from the office of Senator Harris. It also concluded that the only step which should be taken at that stage to ensure that any such material protected from seizure by parliamentary privilege was returned to Senator Harris, without further access to the material by the police, was that Senator Harris and his solicitors should take the opportunity offered by the Queensland Police Service to claim privilege in respect of identified material. The committee also commended the Queensland Police Service for the impeccable way it had fulfilled its obligations in respect of parliamentary privilege.

An impasse was subsequently reached between the Queensland Police Service and Senator Harris. On 4 December 2002, Senator Harris gave a notice of motion based on a resolution in the Senate in relation to a similar seizure of materials from the office of former Senator Crane. This notice was postponed to 5 February and, subsequently, 4 March, at my request, to enable the Committee of Privileges to consider whether it should become involved. It decided at its meeting on 12 December 2002, acting under the terms of its original inquiry into the seizure, to put in place procedures based on Senator Harris's notice of motion to resolve the matter. It therefore appointed, with the approval of the President, Mr Stephen Skehill to determine whether any of the material held by the Queensland Police Service is subject to a claim of parliamentary privilege or is not covered by the warrant executed on 27 November 2001. It further agreed that the matter should proceed only if the Queensland Police Service and Senator Harris abide by Mr Skehill's determinations. Both

the Commissioner of the Queensland Police Service and Senator Harris gave the requisite assurances. Mr Skehill has commenced his evaluation of the material, and I shall report to the Senate in due course.

Senator HARRIS (Queensland) (3.59 p.m.)—I move:

That the Senate take note of the statement.

I thank Senator Ray for the expeditious way in which the Privileges Committee has dealt with this matter. I have agreed with the request of the Privileges Committee and therefore, having done that, I will withdraw the notice of motion that is due on 4 May.

Question agreed to.



AUSTRALIAN SENATE
CANBERRA ACT

COMMITTEE OF PRIVILEGES

aj/pr/sh/5682

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

20 December 2002

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

Dear Commissioner

**EXECUTION OF SEARCH WARRANTS IN SENATORS' OFFICES — SENATOR HARRIS
105TH REPORT OF THE COMMITTEE OF PRIVILEGES**

I write to confirm my oral advice that the Committee of Privileges intends, with the approval of the President of the Senate, to appoint Mr Stephen Skehill SC to evaluate the material at present held in the office of Mr C.J. Strofield over which Senator Len Harris has claimed parliamentary privilege, based on the terms indicated in the attached notice of motion.

Before doing so, I ask for your confirmation, in writing, that you are willing to accept Mr Skehill's determination in respect of both parliamentary privilege and material which he considers is not covered by the warrant executed on 27 November 2001.

I should appreciate your early advice on these matters, and also on the arrangements you wish to make about the method of delivery of the material to the Senate.

Yours sincerely

A handwritten signature in black ink, appearing to read "Robert Ray", written over a horizontal line.

Senator Robert Ray
Chair

cc Senator Len Harris

cc Mr C.J. Strofield
Queensland Police Service Solicitor



QUEENSLAND POLICE SERVICE

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



Our Ref:

Your Ref:

Senator Robert Ray
Chair
Committee of Privileges
Australian Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Ray

RE: EXECUTION OF SEARCH WARRANTS IN SENATORS' OFFICES - SENATOR HARRIS 105TH REPORT OF THE COMMITTEE OF PRIVILEGES

Thank you for your letter of today's date, received by facsimile transmission, advising of the intended appointment of Mr Stephen Skehill SC to evaluate material over which Senator Harris has claimed parliamentary privilege.

I am willing to accept Mr Skehill's determination, in respect of both parliamentary privilege and the material which he considers is not covered by the warrant executed on 27 November 2001.

It will be necessary for the material to be collected from the Queensland Police Service Solicitor, Mr Strofield and returned to him at the completion of Mr Skehill's evaluation.

Suitable arrangements can be made for delivery of the material currently secured in Mr Strofield's safe by contacting him on 07 3364 4148.

Yours faithfully


R ATKINSON
COMMISSIONER

QUEENSLAND POLICE SERVICE



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

aj/pr/sh/5683

20 December 2002

Senator Len Harris
PO Box 2206
MAREEBA QLD 4880

Dear Senator Harris

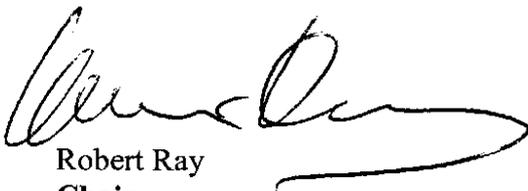
**EXECUTION OF SEARCH WARRANTS IN SENATORS' OFFICES — SENATOR HARRIS
105TH REPORT OF THE COMMITTEE OF PRIVILEGES**

I wish to inform you that, following consideration of the enclosed correspondence from Mr C.J. Strofield, Queensland Police Service Solicitor, and your postponed notice of motion relating to this matter, the Committee of Privileges decided at its meeting on 12 December to appoint, with the approval of the President, Mr Stephen Skehill SC to undertake an evaluation of your material, based on the terms indicated in your notice of motion.

The committee has sought an assurance from the Commissioner of the Queensland Police Service that the Service will abide by the determination made by Mr Skehill in respect of both your claim of parliamentary privilege and material not covered by immunity from seizure under the warrant.

Before proceeding any further, the committee would appreciate similar assurances from you on this matter.

Yours sincerely



Robert Ray
Chair

cc Mr Robert Atkinson APM
Commissioner, Queensland Police Service

cc Mr C.J. Strofield
Queensland Police Service Solicitor



AUSTRALIAN SENATE

SENATOR LEN HARRISSenator for Queensland
One Nation Party

23 December 2002
P O Box 2206
Mareeba QLD 4880

Ref: - Matter of Privilege

Senator Robert Ray
Chair Committee of Privileges
Parliament House
Canberra ACT 2600

Dear Robert,

With reference to your December correspondence referring to Mr Stephen Skehill's evaluation of the material seized in my Mareeba office 5/94 Byrnes St, Mareeba QLD 4880, based on the terms as set out in the Notice of Motion No 290 lodged in the Senate on 4 December 2002 and deferred to 5 February 2003.

I wish to inform you and your committee that I will accept Mr Stephen Skehill's decisions that are arrived at by Mr Stephen Skehill applying the process and conditions as set out in the Notice of Motion 290 to the material seized in my Mareeba Office regard Parliamentary Privilege and material Mr Skehill determines is not covered by the warrant and abide by his determinations.

Your's Faithfully,

Senator Len Harris.
Senator for Queensland.

Shop 11A, Post Office Centre, 94 Byrne Street, Mareeba QLD 4880

PO Box 2206, Mareeba QLD 4880

Tel: (07) 4092 3194 Fi

20 Mob: 0429 871 008

Fax: (07) 4092 27

harris@aph.gov.au

RECEIVED TIME 23. DEC. 9:37

10

PRINT TIME 23. DEC. 9:38

**EXECUTION OF A SEARCH WARRANT
BY THE QUEENSLAND POLICE SERVICE
AT THE OFFICE OF
SENATOR LEN HARRIS**

1 Introduction

1.1 On 9 January 2003 the Commonwealth Department of the Senate engaged me to examine materials seized from the office of Senator Len Harris by the Queensland Police Service on 27 November 2001 in order to determine whether those materials were:

- (a) within the terms of a warrant in reliance upon which they were purportedly seized; and
- (b) if so, were subject to parliamentary privilege.

1.2 For that purpose, I was provided with 5 compact discs and 3 hard drives which had been passed to the Secretary of the Senate Committee of Privileges by the Queensland Police Service.

1.3 My terms of engagement required me to:

- (a) print out copies of documents contained in electronic form on those discs;
- (b) examine the printed documents to ascertain whether they were immune from seizure under warrant by virtue of parliamentary privilege;
- (c) divide the documents into two categories:
 - (i) those not covered by the warrant or immune from seizure; and
 - (ii) those not immune from seizure,and seal documents in each category in separate packages;
- (d) provide to Senator Harris:
 - (i) the discs provided by the Queensland Police Service;
 - (ii) those sealed packages containing documents not covered by the warrant or immune from seizure; and
 - (iii) copies of any documents not immune from seizure;
- (e) provide to the Secretary of the Committee of Privileges those sealed packages containing documents not immune to seizure; and
- (f) provide to the Secretary of the Committee of Privileges a brief statement in relation to the performance of the above tasks.

1.4 This is the statement referred to under (f) above.

2 Technical Matters Arising

- 2.1 When Queensland Police Service officers purported to execute the warrant at Senator Harris' office on 27 November 2001, they "mirrored" the hard discs of computers located in that office onto 5 compact discs in a compressed and encrypted form.
- 2.2 Subsequently, they de-compressed and de-encrypted the contents of those compact discs and transferred the content onto 3 hard drives.
- 2.3 On receipt of the 5 compact discs and 3 hard drives, I attempted to access the material on the compact discs. Because they were encrypted, I was unable to do so. I was however able to open and access each of the hard drives. In discussion with technical personnel of the Queensland Police Service I was informed that the content of the hard drives was identical to that of the compact discs.
- 2.4 I thus resolved to examine the content of the hard drives for the purposes set out in my terms of engagement, but subject to the proviso that, if I determined that any document contained thereon was not immune from seizure, I would request the Queensland Police Service to de-compress and de-encrypt the compact discs in my presence so that I could ascertain that such document was in fact the same as that on a compact disc created at the time of execution of the warrant and had not been subsequently altered in any way. As it transpired, it was not necessary for me to act in accordance with this proviso.
- 2.5 Because the Queensland Police Service had "mirrored" the entire contents of the hard drives of the computers in Senator Harris's office, the electronic copies provided to me included not only documents created or received by Senator Harris and his staff but also proprietary operating systems software and programs. I did not print copies of each document in these latter categories because they could not in any event fall within the terms of the warrant.
- 2.6 The hard drives disclosed that Senator Harris and his staff had created and maintained their documents in numerous and multi-structured folders and sub-folders. Accordingly, a highly methodical approach was required to opening and printing those documents in order to ensure that no document was over-looked. For this purpose a control copy of the structure was printed out and this, by itself, filled 3 lever arch folders.
- 2.7 It was possible to access all but three of the documents listed in the control copy without external assistance (other than the purchase of some proprietary software not already owned by my office). However, three of the documents were password protected and unable to be accessed by us using the electronic tools then available.
- 2.8 Accordingly, through the Secretary of the Committee of Privileges, an approach was made to Senator Harris for assistance. In the end result, after various other options failed, Senator Harris provided to us a further compact disc containing a software program that had been compiled for him to create the documents in question. By use of that program, we eventually managed to access these three remaining documents.
- 2.9 It is appropriate that I record that Senator Harris readily provided all the assistance I sought in this regard.
- 2.10 At the conclusion of the exercise required by the terms of engagement, a total of 74,098 pages of documents had been printed and examined. Clearly this was a major and time-

consuming task. I record my appreciation for the great assistance provided to me in this respect by my colleagues Geoff Adams, Kathryn Evans and Emma Bailey.

3 Legal Issues Arising

3.1 The warrant purportedly exercised by the Queensland Police Service was issued under section 69 of the *Police Powers and Responsibilities Act 2000 (Qld)* ("the Act"). That section authorises the issue of a search warrant only if the issuer is satisfied there are reasonable grounds for suspecting evidence of the commission of an offence is at the place, or is likely to be at the place within the next 72 hours.

3.2 Section 73(1) of the Act states that:

(1) A search warrant must state--

(a) that a police officer may enter the place and exercise search warrant powers at the place; and

(b) if the warrant is issued in relation to--

(i) an offence--brief particulars of the offence for which the warrant is issued; or

(ii) a forfeiture proceeding--the Act under which the forfeiture proceeding is authorised; or

(iii) a confiscation related activity--brief particulars of the activity; and

(c) any evidence that may be seized under the warrant; and

(d) if the warrant is to be executed at night, the hours when the place may be entered; and

(e) the day and time the warrant ends.

3.3 Section 74 of the Act lists the powers of a police officer under a search warrant. That section is in the following terms:

(1) A police officer has the following powers under a search warrant ("search warrant powers")--

(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;

(e) power to detain anyone at the relevant place for the time reasonably necessary to find out if the person has anything sought under the warrant;

(f) if the warrant relates to an offence and the police officer reasonably suspects a person on the relevant place has been involved in the commission of the 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 or confiscation related evidence 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 or confiscation related evidence to which the warrant relates;

(j) power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence or confiscation related evidence 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 or confiscation related evidence.

(2) Also, a police officer has the following powers if authorised under a search warrant (also "search warrant powers")--

(a) power to search anyone found at the relevant place for anything sought under the warrant that can be concealed on the person;

(b) power to do whichever of the following is authorised--

(i) to search anyone or anything in or on or about to board, or be put in or on, a transport vehicle;

(ii) 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.

(3) Power to do anything at the relevant place that may cause structural damage to a building, may be exercised only if the warrant--

(a) authorises the exercise of the power; and

(b) is issued by a Supreme Court judge.

3.4 The search warrant, issued on 23 November 2001, provides as follows:

Details of evidence that may be seized under this warrant.

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 601, 614, 662, 663 and 664.

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.

3.5 The search warrant goes on to identify which of the section 79 search warrant powers may be exercised under it and appears to exclude only the powers set out at sections 74(2)(a) and 74(2)(b)(i).

3.6 The powers thereby conferred did not expressly include a power to “mirror” on to compact discs, or download a copy of, the contents of computers located on the premises named in the warrant and to take away the copy thereby made.

3.7 Nor do any other of the powers conferred appear to imply that power. For example:

(a) section 74(1)(h) authorises a police officer 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

but the compact discs were not found at the relevant place and, in any event, the warrant only allowed to be taken material that was reasonably suspected to be evidence of the relevant offence and not an entire media which might, or might not, contain such evidence; and

(b) section 74(1)(j) authorises a police officer to:

power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence or confiscation related evidence to which the warrant relates

but the process of “mirroring” or downloading is not photography and, in any event, the warrant only allowed to be taken material that was reasonably suspected to be evidence of the relevant offence and not an entire media which might, or might not, contain such evidence.

3.8 Moreover, the only computer storage media that could be seized (as opposed to created) was that “purporting to relate to election re-imbursement claims submitted by Pauline Hanson’s One Nation Queensland Division for the 2001 State General Election to include vouchers 601, 614, 662, 663 and 664”. Accordingly, the warrant did not authorise the seizure (let alone the duplication of) of computer storage media that related or purported to relate to any other matter.

3.9 In my view, the police officers executing the search warrant could only have formulated a reasonable suspicion that the information stored on computers located in Senator Harris’ office related to the alleged offence, if they had opened and inspected each computerised file and became satisfied that the contents of each file may have contained such information or evidence.

- 3.10 But even if such examination had led to the requisite degree of satisfaction on the part of the police officers in question, it would seem that they would have had only limited capacity to remove anything from Senator Harris' premises:
- (a) if the identified electronic document was on a computer media that could be categorised as "purporting to relate to" the specified matter, they would have been able to seize and remove that media but such categorisation of a whole media would appear problematical where the media contained many thousands of other, unrelated documents;
 - (b) alternatively, they might perhaps have photographed a copy of the computer screen displaying the identified electronic document, but they would appear to have had no power either to download that file onto another media or to print out and take away a copy of the electronic file.

3.11 In my view, therefore, the actions of the Queensland Police Service in:

- (a) "mirroring" or downloading Senator Harris' computerised information onto compact discs;
- (b) removing those discs from Senator Harris's office; and
- (c) transferring the data on those compact discs onto hard drives,

were outside the scope of its powers under the search warrant.

3.12 On that basis then, I consider that it would have been possible to decide, without any examination of them or their contents, that none of the documents able to be printed from the hard drives provided by the Queensland Police Service was within the warrant and that all should be immediately provided only to Senator Harris.

4 Examination of the Documents

4.1 Nevertheless, because my terms of engagement required that all documents be examined (and in case my view of the law as set out above was incorrect), I did examine each of the 74,098 pages of documents printed from the hard drives.

4.2 As a result of that examination, I determined that none of those 74,098 pages was covered by the warrant. That is, none of the material contained therein was material "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 601, 614, 662, 663 and 664".

4.3 It was accordingly unnecessary to determine which of the documents would also have been immune from seizure on the basis of parliamentary privilege.

5 Summary of findings

5.1 For the reasons set out below, I consider that:

- (a) the actions of the Queensland Police Service in:
 - (i) "mirroring" or downloading Senator Harris' computerised information onto compact discs;

- (ii) removing those discs from Senator Harris's office; and
- (iii) transferring the data on those compact discs onto hard drives,

were outside the scope of its powers under the search warrant; and

- (b) in any event, none of the material taken away by the Queensland Police Service in electronic form was within the material that could have been seized under the warrant because it did not purport to relate to "election re-imbusement claims submitted by Pauline Hanson's One Nation Queensland Division for the 2001 State General Election to include vouchers 601, 614, 662, 663 and 664".

5.2 Therefore, all the documents printed out by me, the 5 compact discs and the 3 hard drives are to be returned to Senator Harris and no material is to be provided to the Committee of Privileges for transmission to the Queensland Police Service.



Stephen Skehill
Special Counsel
Mallesons Stephen Jaques
CANBERRA ACT 2600

7 August 2003