

## ADVICE NO. 36

**PARLIAMENTARY PRIVILEGE—EXECUTION OF SEARCH WARRANTS  
DRAFT GUIDELINES**

Today I attended a meeting with officers of the Attorney-General's Department and the Australian Federal Police (AFP) at which we discussed a proposed memorandum of understanding between yourself, the Speaker, the Attorney-General and the Minister for Justice and Customs to agree to the proposed AFP guidelines for execution of search warrants where parliamentary privilege may be involved.

An amended version of the guidelines was presented at the meeting. All of the amendments which were endorsed by the Senate Privileges Committee have been incorporated, with the exception of the suggestion that the Presiding Officer and Clerk of the relevant House could be added to the list of examples of neutral third parties who might be asked to hold material until a process for determining its status is conducted. The guidelines do not preclude anyone acting as a neutral third party, but the AFP is reluctant to expand the list of possible examples beyond the indication in the guidelines that the warrant issuing authority or another agreed third party may perform this role. I indicated that, as this was merely a suggestion and did not substantively affect the operation of the guidelines, you and the Privileges Committee would probably not insist on the amendment. The other amendments, which have all been made, are of greater significance.

Attached is a copy of the draft memorandum of understanding. It will be noted that it provides for the guidelines to be changed by the AFP, but only after consultation with yourself and the Speaker. As the guidelines are issued by the AFP to bind their officers and may need to be changed in accordance with operational exigencies or emerging legal requirements, I think that this provision is appropriate. There is a remote possibility that the guidelines might be changed, even after that consultation, in a way which is not approved by yourself or the Speaker. Because of that possibility, I suggested that the memorandum include a revocation clause whereby the Presiding Officers could revoke their agreement to the guidelines. This suggestion was accepted. The only other amendment of the draft memorandum is that the "promulgation" referred to in section 3 will be carried out by tabling in each House.

I think that, with these amendments, the proposed memorandum is appropriate for signature. It will be provided for that purpose in the next few weeks.

I am sending a copy of this note to the Privileges Committee in case the committee wishes to make any further comment on the guidelines or the proposed memorandum.