



MEMORANDUM OF UNDERSTANDING

Between

The Speaker of the Legislative Assembly for the
Australian Capital Territory

AND

The Minister for Police and Emergency Services for the
Australian Capital Territory

AND

The Chief Police Officer for the Australian Capital Territory

1. Preamble

- 1.1 Under section 7 of the *Legislative Assembly Precincts Act 2001* (the Precincts Act) the authority for control and management of the Assembly precincts is vested with the Speaker of the Legislative Assembly (the Speaker). This section also empowers the Speaker to take any action the Speaker considers necessary for those purposes. This Memorandum of Understanding (MOU) is made in accordance with those powers.

2. General

- 2.1 This MOU sets out arrangements agreed upon between the Speaker, the Minister for Police and Emergency Services (MPES) and the Chief Police Officer for the Australian Capital Territory (the CPO) for conducting policing functions within the precincts of the Legislative Assembly. It replaces the MOU dated 9 November 2006.
- 2.2 To assist in carrying out policing functions, the Speaker, MPES and the CPO agree that the following protocols will be observed, augmented by the incorporation of certain ACT Policing *Standard Operating Procedures* which may be agreed upon from time to time.
- 2.3 A schedule detailing the current *Standard Operating Procedure* forms part of this MOU.

3. Assembly precincts

- 3.1 For the purposes of this MOU, the Assembly precincts are those defined by section 5 of the Precincts Act to be the precincts for the Legislative Assembly for the Australian Capital Territory.

3.2 Section 7 of the Precincts Act provides that the precincts are under the control and management of the Speaker and that the Assembly may give the Speaker directions about the exercise of these functions.

3.3 The external precincts are those parts of the Assembly precincts not within the Assembly building and include the part of Civic Square under the public entrance canopy but does not include the members' car park.

4. General protocol for meetings with Members

4.1 At the instigation and invitation of a Member of the Assembly, police may meet with that Member in the Assembly precincts for the purpose of briefings and discussing matters of a general/ non-operational nature. The Speaker need not be informed beforehand of these meetings.

5. Operational policing functions within the Assembly precincts

5.1 It is understood that, in carrying out ordinary policing functions, police may enter the Assembly precincts when exercising their powers which they possess under the law.

6. Carriage of firearms

6.1 The Assembly's policy that prohibits the carriage of firearms into the Assembly building does not apply to police while they are on duty.

7. Matters involving Members of the Legislative Assembly or other persons within the Assembly precincts

7.1 In instances where police propose to:

(a) conduct an arrest within the Assembly precincts of a member or of another person within the Assembly precincts;

(b) execute a search warrant within the Assembly precincts; or

(c) within the Assembly precincts, interview or otherwise meet with a member or another person in relation to the investigation of an alleged offence,

the Speaker (or his or her delegate) must be consulted beforehand.

By virtue of the potential application of the *Parliamentary Privileges Act 1987* (Commonwealth), this requirement applies irrespective of the nature of the matter being investigated.

7.2 The requirements of clause 7.1 do not apply where the purpose of the meeting is to allow the Member (or other person) to provide a statement to police as a third party and where the Member (or other person) consents to the meeting taking place on Assembly precincts.

7.3 Procedures to be followed will be detailed in the relevant ACT Policing *Standard Operating Procedure*.

8. Briefings in relation to the Assembly precincts

- 8.1 In the event that the Speaker seeks a briefing from ACT Policing on any matter(s) that may affect the Assembly precincts, the Speaker shall relay that request to the minister responsible for ACT Policing, MPES. Such a request will not be unreasonably withheld by MPES's office and MPES's office may seek to have an Advisor present at the briefing.
- 8.2 The parties to the MOU acknowledge that circumstances may arise where it is not appropriate that MPES be notified or briefed on the progress of a matter, and, in such cases, the Speaker will deal directly with the CPO and/or ACT Policing.

9. Liaison

- 9.1 The Speaker of the Legislative Assembly is the primary point of contact for police in relation to issues involving Members of the Assembly or their staff. If an issue involves the Speaker, the Clerk of the Assembly should be contacted in the first instance. The Clerk of the Assembly should also be the primary point of contact for matters concerning the Office of the Legislative Assembly.
- 9.2 For matters not directly involving members of the Assembly or their staff, or staff of the Office of the Legislative Assembly, the liaison point for ACT Policing should be the Manager, Security and Building Services (62050441).

10. Contact on Operational Matters

- 10.1 Matters not requiring an urgent response will be facilitated by contacting Police Operations on 131 444. For life threatening situations requiring an urgent police response, contact Police Operations on triple zero (000).
- 10.2 The parties to the MOU acknowledge that the Community Policing Liaison Officer based in the relevant minister's office is not an appropriate contact point for matters that require a police response.

11. Review of Agreement

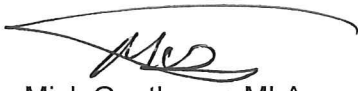
The parties to this MOU will review its terms every four years or as agreed between them from time to time and, in particular, as may be necessitated by legislative change or changes in the security environment.



Joy Burch MLA
Speaker
19 September 2017



Justine Saunders
Chief Police Officer for the ACT
19 September 2017



Mick Gentleman MLA
Minister for Police and Emergency Services
19 September 2017

Schedule 1

ACT Policing Standard Operating Procedure to be followed in matters relating to the Legislative Assembly for the Australian Capital Territory.

1. Standard Operating Procedure on ACT Parliamentary Privilege and Protocols (ACT Policing).

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Functional Governance Standard Operating Procedure

ACT parliamentary privilege and protocols (ACT Policing)

Date of initial endorsement:	31 May 2017
Date of last review:	15 May 2017
Endorsed by:	Chief Police Officer ACT Policing
Owner:	Chief Police Officer ACT Policing
Contact:	Coordinator Ministerial Policy and Performance
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IPS Status	Exempt

Disclosure and classification

This document is classified UNCLASSIFIED and is intended for internal AFP use. Disclosing any content must comply with Commonwealth law and the AFP National Guideline on information management.

Compliance

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the expectations for appointees to adhere to the requirements of the framework. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979 \(Cth\)](#).

This document is a functional governance instrument as defined under s.4 of the [AFP Commissioner's Order on Governance \(CO1\)](#).

Acronyms

ACT	Australian Capital Territory
AFP	Australian Federal Police
DPP	Director of Public Prosecutions

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MLA	Member of the ACT Legislative Assembly
MPP	Ministerial Policy and Performance

Definitions

AFP appointee	Deputy Commissioner, an AFP employee, special member or special protective service officer and includes a person: • engaged overseas under s. 69A of the Australian Federal Police Act 1979 (Cth) (the AFP Act) to perform duties as an AFP employee • seconded to the AFP under s. 69D of the AFP Act • engaged under s. 35 of the AFP Act as a consultant or contractor to perform services for the AFP and determined under s. 35(2) of the AFP Act to be an AFP appointee. (See s. 4 of the AFP Act.)
AFP member	A member of the AFP as defined in s. 4 of the AFP Act.
Contempt of the Assembly	Conduct (including the use of words) constitutes an offence against the Legislative Assembly when it amounts, or is intended or likely to amount, to an improper interference with the free exercise by the Legislative Assembly, a committee of its authority or functions, or with the free performance by a member of their duties as a member of the Legislative Assembly.
Executing officer	An AFP member responsible for executing a search warrant.
Legal professional privilege	A rule of law that protects the confidentiality of communications made between a lawyer and his or her client. The privilege belongs to the client and may only be waived by the client.
Parliamentary privilege	Legal immunity in which MLAs are granted protection against civil or criminal liability for actions done or statements made in the course of their legislative duties. The principles underlying this privilege are designed to protect proceedings in parliament (or the Assembly) from being questioned in courts or tribunals, and apply to any document (or information) or other thing which falls within the concept of 'proceedings in parliament'.
Proceedings in parliament	Defined in the Parliamentary Privileges Act 1987 (Cth) to mean words spoken and acts done in the course of, or for purposes of or incidental to, transacting the business of a House or of a committee. It includes evidence given before a committee, documents presented to a House or a committee, documents prepared for the purposes of the business of a House or committee and documents prepared incidentally to that business.

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Public interest immunity	An exception to the usual rule that all parties in litigation must disclose any evidence that is relevant to the proceedings. Public Interest Immunity requires the public interest in the administration of justice (which demands that relevant material is available to the parties to litigation) and the public interest in maintaining the confidentiality of certain documents (whose disclosure would be damaging) is upheld. Public Immunity Interest can apply to any document (or information) if the contents of the document are such that the public interest in keeping the contents secret outweighs the public interest in investigating and prosecuting offences against the criminal law. Public interest immunity can arise in any situation, but it is more likely to arise in relation to documents held by a Minister than by an MLA who is not a Minister.
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Introduction

This Standard Operating Procedure (SOP) provides guidance for AFP appointees for the procedures to be followed, and legal obligations owed by AFP appointees when the AFP proposes to carry out an investigation involving a member of the ACT Legislative Assembly (MLA), including the execution of a search warrant on premises occupied or used by an MLA, or a person search of an MLA.

The SOP is designed to ensure that search warrants are executed without improperly interfering with the functions of the Assembly, and that MLAs are given a proper opportunity to raise claims of parliamentary privilege or public interest immunity in relation to things seized or examined.

Application of the SOP

The SOP applies, subject to any overriding law or legal requirement in a particular case, to any premises used or occupied by an MLA including:

- their Legislative Assembly office
- any other premises used by the MLA for private or official purposes where there is reason to suspect relevant material covered by parliamentary privilege may be located.

These SOPs should also be followed, as far as possible, if a search warrant is being executed at any other premises where the occupier claims that documents on the premises are covered by parliamentary privilege.

If an MLA raises a claim for legal professional privilege (sometimes called client legal privilege) for a document, the executing officer should follow the normal procedure (refer to the Investigator's Toolkit for 'legal professional privilege' procedures) that applies in cases where the claim is made for a document that is on a premises other than one belonging to a lawyer, law society or like institution.

Legal background

When a search warrant is executed on premises occupied or used by an MLA, evidential material cannot be placed beyond the reach of the AFP simply because it is held by an MLA or is on premises used or occupied by an MLA.

There are provisions for which persons including police officers can be found to be in contempt of the Assembly by improperly interfering with the duties of an MLA. While the Legislative Assembly does not have the power to imprison or fine people who are in contempt, the Assembly has the power to punish breaches of privilege or contempt.

Many matters that are breaches of privilege of the Assembly are also crimes under statute law. For example, an attempt to bribe or intimidate a Member of the Assembly is contempt, but it is also an offence against the *Criminal Code 2002* because Members, Ministers and Assembly staff are included within the statute's definition of 'public official'.

In serious cases of contempt which include breaches of criminal law, the Speaker of the Legislative Assembly may advise the Attorney-General of the details of the matter with a view to initiating prosecution.

The source of the Legislative Assembly's powers and immunities is in the [Australian Capital Territory \(Self-Government\) Act 1988](#) (Cth). Section 24 of that Act provides that the Assembly may make laws declaring its powers and until the Assembly makes such laws, it has the same powers as the Commonwealth House of Representatives.

Therefore, the principles of parliamentary privilege with regard to the House of Representatives, as set out in the [Parliamentary Privileges Act 1987 \(Cth\)](#), currently apply to the Legislative Assembly. These principles are designed to protect proceedings in parliament (or the Assembly) from being questioned in courts or tribunals. They may also have the effect that documents (and other forms of information) which attract parliamentary privilege cannot be seized under a search warrant.

It may be difficult to determine whether a document (or information) falls within proceedings in parliament. It may depend on what the AFP member intends to do with it, rather than what it contains or where it was found.

It is also possible a document (or information) held by an AFP member will attract public interest immunity even if it is not covered by parliamentary privilege. The High Court has determined that a document which attracts public interest immunity cannot be seized under a search warrant (*Jacobsen v Rogers* (1995)127ALR159).

Further information in relation to the legal principles which apply in these cases can be found in the [CDPP Search Warrants Manual](#). That document is not a public document, but has been provided to the AFP by the Commonwealth Director of Public Prosecutions.

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Obtaining a search warrant

Before applying for a search warrant for premises used or occupied by a member of the ACT Legislative Assembly, AFP members must seek approval from the Chief Police Officer or in his or her absence, a Deputy Chief Police Officer.

If approval is subsequently granted, the AFP member will consult the office of the appropriate Director of Public Prosecutions (DPP) before applying for a search warrant. In cases involving alleged offences against Commonwealth law, the appropriate DPP is the Commonwealth DPP. In cases involving alleged offences against ACT law, the appropriate DPP is the ACT DPP. The appropriate DPP can provide assistance in drafting the affidavit and warrant and can provide any legal advice required in order to appropriately execute the search warrant.

Procedure prior to executing a search warrant

In accordance with the MOU, if the premises, or person, to be searched are within the Legislative Assembly precincts, the executing officer should notify the Community Policing Liaison Officer (CPLO). The CPLO or executing officer will contact the Speaker's Office via the Clerk of the Assembly to notify them of the proposed search warrant and afford the Speaker the opportunity to raise any concerns or considerations prior to the execution of the search warrant.

The purpose of engaging the Speaker, or other member of the Assembly, is to ensure compliance with the *Parliamentary Privileges Act*.

Unless it would affect the integrity of the investigation, the executing officer or CPLO should contact the MLA or a member of their staff to provide the MLA the opportunity to be present during the execution of the search warrant. Additionally, the executing officer must ensure, in consultation with all relevant parties, that the search warrant is executed at such a time as to minimise any potential disruption to Assembly business.

Executing a search warrant

If possible, the executing officer should comply with the following procedures, unless compliance would affect the integrity of the investigation:

- A search warrant on Legislative Assembly premises should not be executed on an Assembly sitting day.
- A search warrant should be executed at a time when the MLA, or a senior member of their staff, is present.
- The MLA should be given reasonable time to consult the Speaker, a lawyer, or other person before the warrant is executed.

If the MLA is present when the search is conducted, the executing officer should allow them a reasonable opportunity to claim parliamentary privilege or public interest immunity.

There is a public interest in maintaining the free flow of information between constituents and their Assembly representatives. Accordingly, even if there is no claim for privilege or immunity, the executing officer should take all reasonable steps to limit the amount of material that is examined or seized in the course of the search.

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As part of that process, the executing officer should consider inviting the MLA, or a senior member of their staff to identify those documents or seizable items which fall within the scope of the search warrant being executed.

Procedure when privilege or immunity is claimed

If an MLA claims parliamentary privilege or public interest immunity for anything on the searched premises, the executing officer should ask the MLA to identify the basis for the claim.

The CPLO, on behalf of the executing officer, must notify the Speakers office via the Clerk, in any case where a claim of parliamentary privilege has been made by an MLA. The assessment of the basis of the claim can be made by the Speaker.

The executing officer should advise the MLA of the following procedure to ensure the relevant documents are not examined until the claim has been resolved:

- The relevant document(s) should be placed in audit bags in accordance with the [AFP National Guideline on property and exhibits](#) handling procedures. A list of the documents should be prepared by the executing officer with assistance from the MLA or member of staff.
- The MLA should be given an opportunity to copy any documents before they are secured. The copying should be done in the presence of the executing officer.
- The items, once secured, should be delivered into the safekeeping of a neutral third party, who may be the warrant issuing authority, the registrar of a relevant court or an agreed third party.
- The MLA has five working days (or other agreed period), from the delivery of the items to the third party, to notify the executing officer either that the claim for privilege or public interest immunity has been abandoned or to commence action to seek a ruling on whether the claim can be sustained. It is a matter for the MLA to determine whether to seek that ruling from a court or from the Speaker.
- If the executing officer has not heard from the MLA after five working days (or other agreed period), the executing officer and the third party are entitled to assume the claim for privilege or public interest immunity has been abandoned and the third party will deliver the items to the executing officer.

In some cases an MLA may claim that all the documents on the premises attract privilege or public interest immunity, and on that basis the proposed search should not proceed in any form. If this occurs, the executing officer must refer the claim directly to the Speakers office via the Clerk, for consideration and determination.

Obligations at the conclusion of the search

The executing officer should provide a receipt recording all of the items seized under the search warrant (whether requested or not). If the MLA does not hold copies of the items that have been seized, the receipt should contain sufficient details to enable the MLA to obtain further advice.

The executing officer should inform the MLA that the AFP will, to the extent possible, provide or facilitate access to the seized material where such access is necessary for the performance of the MLA's duties. The Investigating Officer on behalf of the AFP should ensure access is provided or facilitated on those terms where possible, and may also provide or facilitate access on any other grounds permitted under applicable laws and SOPs.

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The executing officer and the AFP must comply with any requirements set out in the legislation under which the relevant search warrant was issued.

Recorded interview/questioning

An AFP member who proposes to conduct a recorded interview or other questioning of an MLA for an alleged offence must seek approval from their Coordinator.

Where an interview is proposed to take place in the precincts of the Assembly, the AFP member conducting the interview must ensure that, prior to commencing the interview the Speaker of the Assembly is notified, via the CPLO or Executing Officer.

An AFP member should not conduct a recorded interview, or other questioning, on an Assembly sitting day or at a time when the MLA is required to perform parliamentary duties.

In all cases where an MLA is to participate in a recorded interview, or other questioning, the investigating AFP member must comply with the obligations under Part 1C of the [Crimes Act 1914](#) (Cth).

Briefing members of the ACT Legislative Assembly

When an AFP member has been requested to provide a verbal briefing to an MLA, the member is to notify Coordinator Ministerial, Policy and Performance (MPP) of the request. MPP will then assure all appropriate notifications and clearances have been sought on behalf of the AFP member and provide a briefing pack for the member prior to the verbal briefing.

Further advice

Queries about the content of this SOP should be referred to Coordinator of Ministerial Policy and Performance.

Resources

Legislation

- [Australian Capital Territory \(Self-Government\) Act 1988](#) (Cth)
- [Australian Federal Police Act 1979](#) (Cth)
- [Crimes Act 1914](#) (Cth)
- [Parliamentary Privileges Act 1987](#) (Cth)
- [Legislative Assembly Precincts Act 2001](#) (ACT)

AFP governance instruments

- Memorandum of understanding which sets out arrangements between the Speaker and the Chief Police Officer for the ACT for conducting policing functions within the precincts of the Legislative Assembly.
- [AFP National Guideline on property and exhibits.](#)
- Standard Operating Procedure on [Executing searches and search warrants.](#)

Other sources

- [CDPP Search Warrants Manual.](#)

