

RECOMMENDATION 2

That the Legislative Council rescind its Order No. 4 made on 15 August 2019

6 The PPC's Ongoing Inquiry

State Solicitor's Office Procedure for Determining Parliamentary Privilege

- 6.1 The PPC has taken evidence from a Deputy State Solicitor who was responsible for determining the procedure used by the SSO to determine which of the documents and data tagged by the CCC as relevant to its investigation were subject to parliamentary privilege. As team leader, this very senior and experienced SSO lawyer managed the procedure undertaken on behalf of the Director General of the DPC. The Deputy State Solicitor's Statement about the procedure carried out by the SSO in relation to two CCC notices to produce records is attached at Appendix 4.
- 6.2 The Deputy State Solicitor prepared and distributed a memorandum which included a checklist to assist SSO staff to determine whether or not a document was subject to parliamentary privilege (attached at Appendix 5). The Committee notes that the SSO checklist is not based on the test universally recognised amongst Australasian Parliaments as first developed by the NSW Legislative Council, and adapted for use by the Australian Senate. The application of this recognised test occurred recently in the Australian Senate in a matter involving Senator Conroy and the execution of search warrants by the Australian Federal Police on the Australian Parliament and at the home of a staff member to Senator Conroy.⁸ The test used by the Australian Senate and the one intended to be adapted for use by the independent third party appointed by the PPC in undertaking the PPC procedure for dealing with the documents is attached by way of comparison at Appendix 6.
- 6.3 The evidence of the Deputy State Solicitor revealed that the procedure undertaken by SSO was over a two-week period determined by deadlines set by the CCC under extensions to its first two s.95 Notices to Produce. During this two-week period, approximately 30 SSO employees and assistants viewed approximately 68,000 electronic files of the former members and their staff. The SSO cohort undertaking this task included law student vacation clerks, articulated clerks, junior lawyers of less than 5 years' standing and senior lawyers. Speed, rather than accuracy appeared to be the dominant requirement. That need for speed arose directly from deadlines set by the CCC.
- 6.4 The SSO procedure identified over 2000 documents as being subject to parliamentary privilege.
- 6.5 The documents determined by the cohort of SSO staff as not being subject to parliamentary privilege were not further reviewed following that initial determination.
- 6.6 However, after the SSO procedure was completed, and not as part of that procedure, the team leader undertook a random 'spot check' of files that had been determined as not being subject to parliamentary privilege. The outcome of that spot check over a period of approximately one hour was that the team leader identified a further 8 privileged documents

⁸ Senate Reports 163 and 164, Committee of Privileges, Status of material seized under warrant, 2016-2017.