

The Senate

Committee of Privileges

Possible false or misleading evidence given to
the former Nauru select committee

162nd Report

May 2016

© Parliament of the Commonwealth of Australia 2016

ISSN 1038-9857 (Print)

ISSN 1447-1396 (Online)

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

MEMBERS OF THE COMMITTEE

Senator the Hon Jacinta Collins (**Chair**) (Victoria)

Senator the Hon Ian Macdonald (**Deputy Chair**) (Queensland)

Senator the Hon Eric Abetz (Tasmania)

Senator Scott Ludlam (Western Australia)

Senator Anne McEwen (South Australia)

Senator Bridget McKenzie (Victoria)

Senator Dean Smith (Western Australia)

Senator Anne Urquhart (Tasmania)

The Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 3360
Facsimile: (02) 6277 3199
Email: priv.sen@aph.gov.au
Internet: www.aph.gov.au

Table of contents

Chapter 1—Introduction.....	1
Chapter 2—Surveillance of a senator	5
Chapter 3—Recording of disturbance, 19 July 2013.....	19
Chapter 4—Conclusions and recommendations.....	23
Appendix	29
Letter from Senator Di Natale to President, raising a matter of privilege, dated 27 October 2015	31
Letter from Senator Gallacher to President, raising a matter of privilege, dated September 2015	33
Statement by the President, 9 November 2015	35
Submission made on behalf of Senator Hanson-Young, dated 8 April 2016	37

*A separate volume of documents presented to the committee accompanies
this report.*

Chapter 1

Introduction

1.1 The Committee of Privileges reports to the Senate on its inquiry into allegations that false or misleading evidence may have been given to the former Nauru select committee.¹ The reference was in two parts.²

Surveillance of a senator

1.2 The first matter, raised by Senator Di Natale,³ relates to conflicting accounts of the surveillance of Senator Hanson-Young undertaken by employees of Wilson Security during her visit to Nauru in December 2013. According to the evidence considered by the select committee – including evidence given in response to media reports – there are two different explanations of the surveillance: the first, that it had been wide-ranging and was authorised by Wilson Security managers; the second, that it was more limited in scope, occurring over only one night and arose out of the unauthorised actions of an individual.

1.3 Because the two accounts were at odds, Senator Di Natale was concerned that false or misleading evidence may have been given to the select committee. This matter is primarily dealt with in chapter 2 of the report.

Recording of incident, 19 July 2013

1.4 The second matter, raised by the chair of the former select committee, Senator Gallacher, related to evidence about the existence of video footage of a disturbance at the regional processing centre in Nauru in July 2013. At two public hearings of the select committee, representatives of Wilson Security indicated that the company held no such footage. ABC Television's 7.30 program subsequently broadcast footage apparently connected to the disturbance. Wilson Security then corrected its evidence.⁴

1.5 Senator Gallacher's letter expressed his concern that the evidence dealing with this matter was indicative of 'deliberate and continual obfuscation' by Wilson Security during the conduct of the inquiry.⁵ This matter is primarily dealt with in chapter 3.

Conduct of the inquiry

1.6 When the Privileges Committee receives a reference involving a possible contempt, its first task is to attempt to establish the underlying facts. The committee's usual process involves writing to those it understands to be affected by the terms of

1 The Select Committee on the Recent Allegations relating to conditions and circumstances at Australia's Regional Processing Centre in Nauru.

2 The terms of reference for the two matters appear at paragraph 2.1 and 3.1, respectively.

3 The letters raising each matter appear in the Appendix, together with the President's statement granting precedence in debate.

4 Select Committee, Report, at paragraphs 5.14 and 5.32–5.33.

5 The letter appears in the Appendix.

reference seeking a submission, prior to determining whether, and what, particular allegations ought be investigated in accordance with the Senate's Privilege Resolutions.⁶

1.7 Accordingly, the committee wrote to the department, Transfield and Wilson Security on 13 November 2015, and received a submission from each. On 9 February 2016 the committee wrote to each entity again with specific questions and wrote to Transfield once more, on 3 March 2016, seeking further clarification.⁷

1.8 The committee wrote to Senator Hanson-Young inviting her to provide further information and received on 8 April 2016 a response made on her behalf, providing personal observations about incidents on Nauru that she noted at the time as being suspicious, and again summarising the evidence before the select committee and media reports. That letter is reproduced in the Appendix.

1.9 The committee also wrote to those it understood to have provided submissions to the select committee alleging that widespread surveillance had been authorised. The committee did not receive a response to these letters. Finally, the committee wrote to Mr Hayden Cooper, the ABC journalist whose story appeared on the ABC 7.30 program, asking whether he was able to assist the committee with information relating to the matter. Again, the committee received no response to that inquiry.

1.10 In relation to each matter referred, the committee is required to consider whether a contempt may have been committed. Before turning to the matters in evidence, it is useful to outline the principles attaching to the committee's consideration of contempt matters.

Consideration of contempt matters

1.11 The Senate's contempt jurisdiction is intended to protect the ability of the Senate, its committees and its members to carry out their functions and exercise their authority without improper interference. This overarching principle informs any inquiry into a possible contempt.

1.12 In Commonwealth law, contempt is assessed by reference to a statutory test in section 4 of the *Parliamentary Privileges Act 1987*:

4 Essential element of offences

Conduct (including the use of words) does not constitute an offence against a House [that is, a contempt] unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

6 A set of Senate resolutions, adopted on 25 February 1988, which declare the manner in which the Senate itself will observe its privileges and provide procedural direction to its committees. They are published on the [Senate's website](#).

7 The submissions and responses received by the committee are published in the volume of documents which accompanies this report.

1.13 Any conduct may constitute an offence if it satisfies this test. This principle is also articulated in the Privilege Resolutions which guide the committee's work. Among these is Privilege Resolution 3, which sets out the criteria the committee (and the Senate) must take into account when determining whether an act might amount to a contempt. To summarise the requirements of resolution 3, the committee must consider:

- (a) whether the use of the contempt jurisdiction is necessary to protect the Senate, its committees and senators against improper acts that may obstruct them in the performance of their functions;
- (b) whether there is an alternative remedy; and
- (c) whether a person who committed an act which might be held to be a contempt did so knowingly, or had any reasonable excuse for doing so.

False or misleading evidence as a possible contempt

1.14 Privilege Resolution 6 sets out a non-exhaustive lists of matters that the Senate may treat as contempts. It includes a prohibition on giving false or misleading evidence, described in the following terms:

Offences by witnesses etc.

(12) A witness before the Senate or a committee shall not:

...

- (c) give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular.

1.15 The rationale for this prohibition is clear. Committees rely upon the integrity of the evidence presented to them. If evidence is deceptive or misleading, the value of the inquiry process is compromised. The giving of false or misleading evidence is therefore an act which has a substantial tendency to obstruct a committee in the performance of its functions, satisfying Privilege Resolution 3(a).

1.16 In its 119th report the committee reflected on earlier inquiries involving allegations of false or misleading evidence. The relevant principles are that evidence 'which has the effect of misleading the Senate or its committees' is misleading evidence for the purposes of the Senate's Privilege Resolutions, however – in order for a contempt to be found – 'there should also be evidence that a witness intended to give misleading evidence'.⁸ This approach accords with the requirement that the committee consider whether a person who committed an act which might be held to be a contempt did so knowingly, or had any reasonable excuse for doing so.⁹

8 Committee of Privileges, 119th report – *Possible false or misleading evidence before the Environment, Communications, Information Technology and the Arts Legislation Committee*, August 2004, at paragraph 1.24.

9 See Privilege Resolution 3(c).

1.17 As the committee noted on that occasion:

The difficulty of establishing that a witness deliberately intended to mislead the Senate or a committee has hitherto prevented the committee from making any findings of contempt on this ground.¹⁰

1.18 Often the purpose of invoking the contempt jurisdiction is to instigate corrective action. If, through the investigation of a matter involving possible false or misleading evidence, that evidence is clarified or corrected – so that, for instance, the impairment to a committee’s work may be rectified – then the investigation may have achieved its aim.

Outline of report

1.19 Returning to the substance of the matters before the committee, chapter 2 deals with evidence relating to the surveillance of Senator Hanson-Young, while chapter 3 deals with the disturbance of 19 July 2013. Chapter 4 contains the committee’s conclusions and findings.

1.20 It is important to note that the surveillance matter involves questions as to whether conflicting accounts indicate that false or misleading evidence was given. The committee has not been asked to investigate the surveillance itself as a possible contempt. The committee makes some observations on that matter in chapter 4, under the heading *Improper interference with a senator’s duties*.

10 Committee of Privileges, 119th report, at paragraph 1.24.

Chapter 2

Surveillance of a senator

Background

2.1 The first matter was raised by Leader of the Australian Greens, Senator Di Natale, and referred in the following terms:

- (a) Whether any false or misleading evidence was given to the former Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru in relation to the apparent surveillance of a senator while on a visit to Nauru in December 2013; and
- (b) If so, whether any contempt was committed in that regard.¹

Two conflicting accounts of events

2.2 Wilson Security provides security services to the regional processing centre at Nauru, as a subcontractor to Transfield Services.² Transfield is, in turn, contracted to the Department of Immigration and Border Security. In evidence to the select committee, and in media reports, it emerged that employees of Wilson Security had undertaken surveillance of Senator Hanson-Young during her visit to Nauru to inspect the regional processing centre. Two very different accounts of the surveillance were given.

2.3 Two submissions made to the select committee – submissions 62 and 99 – apparently from former Wilson Security employees, contained allegations that Wilson Security had authorised members of an Emergency Response Team (ERT) to spy on Senator Hanson-Young’s movements both inside and outside the centre throughout her visit from 15 to 18 December 2013. On 13 August 2015, similar allegations were broadcast on ABC Television’s *7.30* program and the following day on ABC Radio’s *AM*.

2.4 In response to those submissions, Wilson Security conceded that it had been made aware of surveillance activities immediately after they occurred, but rejected any suggestion that they had been authorised. Wilson’s evidence was that the surveillance occurred on a single night only, was unauthorised, and was stopped immediately it was discovered. Transfield and the department each gave evidence to the select committee indicating that they accepted Wilson’s account.

2.5 These matters were dealt with in the report of the Nauru select committee³ and in the additional comments appended to that report by Australian Greens

1 *Journals of the Senate*, 10 November 2015, p. 3335.

2 Transfield advised the committee it has changed its name to Broadspectrum (Australia) P/L, or BAPL, however the name Transfield is primarily used throughout this report.

3 Select Committee, Report, under the headings *Allegations of contractor staff ‘spying’ on a senator* at paragraphs 2.124 – 2.137, and *Surveillance of a member of the committee*, at paragraphs 5.40 – 5.42.

senators.⁴ The letter from Senator Di Natale raising the matter of privilege summarises much of the information in those additional comments. The attachments to Senator Di Natale's letter, which appear in the volume of documents accompanying this report, include extracts of the evidence provided to the select committee, as well as transcripts of relevant media reports.

2.6 The evidence on the surveillance matter may be broadly divided into two parts. First, evidence about the two conflicting accounts of events – primarily involving the submissions noted above and responses from Wilson Security. Secondly, evidence about the subsequent reporting and investigation of the incident. The evidence from Transfield and from the department primarily relates to the second matter, which is dealt with later in this chapter.

Evidence about the conflicting accounts

2.7 In formulating its approach to this matter, the committee agreed that the central questions are:

- whether the surveillance was sanctioned (and, if so, what was the scope of the surveillance and how high up the chain of command did the authorisation go); and
- whether – by denying that the surveillance was authorised, or by denying knowledge of the surveillance and/or its authorisation – any person knowingly gave false or misleading evidence to the select committee.

2.8 As allegations about the surveillance emerged during the select committee's inquiry, Wilson Security had the opportunity to provide written responses and evidence at public hearings. The allegations, and Wilson's responses, are dealt with here.

Submission 62

2.9 Submission 62 claimed that Wilson Security had 'organised a team from ERT to spy' on Senator Hanson-Young while she was on Nauru:

This included following her around the island while she was outside of the OPCs [offshore processing centres] and setting up an observation post to watch her room at the Menen hotel. The briefing was given by ERT supervisor [name redacted in published submission] in which he gave orders to spy on the senator. This briefing included her room number, vehicle registration and even using code name "Raven" over the radio to make reference to her.

2.10 This is the only information about the surveillance contained in submission 62. The author provided his name to the select committee but asked that it not be published. (The submission also included information about video footage of the riot in July 2013, which is dealt with in chapter 3.)

4 Select Committee, Report, under the heading *Surveillance of a member of the Australian Senate*, at paragraphs 1.105 – 1.115.

2.11 In a written response, Wilson Security rejected the allegation that it organised such a team, but conceded that it had been made aware of the surveillance:

Wilson Security is aware of individuals who attended the Menen Hotel at the same time as Senator Hanson-Young. We understand that their primary motivation was the security of the Senator.

This activity was not authorised by Wilson Security, and is not a part of our scope of works in providing security at the Regional Processing Centre.

The matter was immediately investigated by Wilson Security and the individuals involved were subject to disciplinary action for acting beyond their brief.⁵

2.12 Wilson Security gave evidence that its ERT supervisor became aware of the surveillance at around 5.10am on 16 December 2013, during a shift handover. This accords with a file note provided to the select committee, time-stamped 5.45pm the same day. The note, written by the ERT supervisor, stated that the night team leader had arranged surveillance of the senator's car at her hotel overnight, and that he had done so without authorisation, and of his own volition.⁶ This account is also supported by an affidavit made by the night team leader (later provided to the select committee in confidence, dated 7 August 2015) which says that he ordered, without higher authorisation, the surveillance to take place.

Media reports

2.13 On 13 August 2015, the ABC television program, 7.30, broadcast a segment titled 'Spying and abuse described by Nauru detention centre's former staff.'⁷ This included an interview with someone described as a former Wilson Security guard. The relevant extract is as follows:

HAYDEN COOPER [Journalist]: Wilson admitted the spying, but said it was limited in scope to one supervisor and two of his staff.

WILSON SECURITY REPRESENTATIVE [Footage of committee proceedings on 20 July 2015]: Senator, there was no reporting that came out of this [It] didn't inform any decision-making. It was the rogue actions of a misaligned individual.

HAYDEN COOPER: But several former guards have told 7.30 that in fact up to eight Wilson employees were involved.

FORMER WILSON SECURITY GUARD: What I was aware of or what I'd heard from other guys who were involved was that they were briefed on her room number, the vehicle and what time she was going to be in and out

5 Wilson Security, response to Select committee submission 62, dated 2 June 2015.

6 File note (redacted version) provided by Wilson Security on 17 July 2015 as part of response to questions on notice.

7 ABC 7.30 transcript, 13 August 2015, <http://www.abc.net.au/7.30/content/2015/s4293119.htm> (accessed 14 January 2016)

of the camp. They were also told to follow her and they were told to keep notes on who she was talking to around the island and in her room.

HAYDEN COOPER: So it was quite an extensive spying operation?

FORMER WILSON SECURITY GUARD: Yes.

HAYDEN COOPER: Do you have any doubts about that at all?

FORMER WILSON SECURITY GUARD: I have no doubts.

HAYDEN COOPER: Later when news spread, they panicked.

FORMER WILSON SECURITY GUARD: Basically, the individuals involved and the supervisor were called into the Wilson office. They were told to shred pages from their notebooks and any reports they had written up.⁸

2.14 During the select committee's hearing on 20 August 2015, Mr John Rogers, for Wilson Security responded:

I have seen the allegations of anywhere from six to eight additional staff being briefed. It causes me concern. However, we have investigated this matter...and we have been unable to determine any further involvement than what we have very clearly and factually described to you.⁹

Submission 99

2.15 The select committee received and published on 19 August 2015 another submission (submission 99) alleging authorised, widespread surveillance. This was an anonymous submission 'regarding recent allegations concerning events on Nauru'.¹⁰ The submission went into more detail about the surveillance:

This operation involved approximately 6-8 ERT members and consisted of recording her every movement both in and out of the camps, they were also to report on whom she spoke with and if possible they were to ascertain what was said.

Staff were requested to compile reports on her movements, contact with employees or Stakeholders. These reports and video surveillance footage were to be handed to the Intelligence unit for collation and dissemination.¹¹

2.16 Wilson Security provided a detailed response reiterating their arguments dismissing submission 62, and adding:

We reject the allegation that management authorised and sanctioned any such operation regarding the collection of information on Senator Hanson-Young. We also reject the claim that we have misled the Committee in any

8 ABC 7.30 transcript, <http://www.abc.net.au/7.30/content/2015/s4293119.htm> (accessed 14 January 2016).

9 *Select Committee Hansard*, 20 August 2015, p. 28 of Proof Hansard.

10 Anonymous, Select committee submission 99, p. 1.

11 Anonymous, Select committee submission 99, p. 1.

way... Despite a thorough investigation, we have not found any evidence in support of these allegations.¹²

Submission 95

2.17 The select committee also received a submission from a former Wilson Security employee, Mr Jon Nichols, covering many matters relating to the operation of the RPC, including allegations of widespread surveillance of Senator Hanson-Young. Mr Nichols' evidence was noted in the response to the Privileges Committee made on behalf of Senator Hanson-Young.¹³ Mr Nichols was questioned by the select committee on other matters during the hearing on 20 August 2015, where questions were raised about the veracity of parts of his evidence.¹⁴ Mr Nichols also alleged that a fellow Wilson Security employee, Mr Louis Davies had shown him recorded footage of Senator Hanson-Young while the senator was on Nauru. Mr Davies provided a response to the select committee in the following terms:

In Regards to the elements stated in the transcript referring to myself by Mr Nichols, I can confirm his statements are untrue.¹⁵

2.18 The committee notes that much of the evidence given by Mr Nichols on the surveillance matter relies on what he says he was told, rather than what he observed first-hand, making it inherently more difficult to test.

Evidence from Wilson Security to the Privileges Committee

2.19 The Privileges Committee received a joint submission from Mr John Rogers and Mr Brett McDonald, who had each given evidence to the select committee on behalf of Wilson Security. They describe the various allegations – what they refer to as the 'contradictory statements' – as deriving from unsworn statements by ex-employees:

Together the contradictory statements effectively assert that 6 to 8 ERT members conducted spying or observation on Senator Hanson-Young whilst she visited Nauru in December 2013, and that the spying was authorised and sanctioned by Wilson Security management.

Wilson Security has previously provided several statements to the Inquiry to the effect that:

- only 3 Wilson Security staff members were involved in this regrettable incident, and
- Wilson Security management neither authorised nor sanctioned the surveillance.¹⁶

12 Letter to the select committee, dated 25 August 2015, page 1.

13 At pages 3–4.

14 *See* Select Committee Report, Dissenting Report by Coalition Senators, at paragraphs 1.18 – 1.25.

15 Response from Mr Louis Davies, 27 August 2015.

16 Wilson Security submission, 27 November 2015, paragraph 3.1.

2.20 They go on to recite the various statements to that effect made to the select committee, before stating:

We are not aware of greater surveillance or observation than that which was referred to in our evidence given to the Select Committee. We have extensively investigated this issue and have obtained a signed affidavit from the Supervisor involved, which was corroborated by the others involved.

Mr Rogers did not knowingly give false or misleading evidence. There is no credible evidence that the evidence provided by Mr Rogers is in fact false. In any case, Mr Rogers did not give false or misleading evidence knowingly.¹⁷

2.21 The submission also offers some observations about submissions 62 and 99, and the ABC media reports, suggesting that they lack credibility, are unclear and vague, and untested. As examples of what they call ‘the inadequacies in the statements’, they note:

Submission 62 states that the writer ‘witnessed or became aware of’ certain things, but for the most part does not distinguish between personal observations and rumours that the writer has heard.

Similarly, Submission 99 purports to make sweeping observations about the state of mind of ‘Wilson management’, without basis, attribution or identifying what tier of management it refers to.

There is also no ability to analyse the motives, or the personal situation, of the person making the allegation, which is vitally important in assessing its reliability. Submission 62, for example, seems to have been written by someone with a grudge against our employer. The extent to which this affects the issues now at hand, and which might have consequences for each of us, is untested.

The ABC broadcast on 13 August 2015 includes an interview with an anonymous person said to be a former Wilson Security guard. The dates of the guard’s employment are never disclosed, a detail which is likely to have been relevant to a number of questions. The nature of the questioning falls well short of the scrutiny and analysis that would apply in a court or Committee environment. For the most part they are leading questions or invitations to speculate. Again, there is no attempt to distinguish between personal observations and accounts heard from others. The statements and allegations made have simply not been tested.¹⁸

2.22 The committee notes the identification by Wilson of possible short-comings in the submissions and other statements, particularly the suggestion that much of the evidence turns on the submitter reporting accounts ‘heard from others’, rather than personal observations. The committee agrees that there was insufficient opportunity for senators on the select committee to properly test the veracity of some of the statements and allegations made, particularly as the select committee was unable to

17 Wilson Security submission, 27 November 2015, paragraph 3.1.

18 Wilson Security submission, 27 November 2015, paragraph 3.3.

question the submitters about their evidence. As will be seen, the same difficulty arises here for the Privileges Committee.

Availability of corroborating evidence

2.23 Apart from the evidence put before the select committee, the Privileges Committee has before it additional submissions and responses from Wilson Security, as well as from Transfield and the department who, broadly speaking, accept the evidence provided by Wilson on this point. However, the committee has not been able to elicit any additional evidence from parties alleging that wide-ranging surveillance occurred.

2.24 Using contact details obtained from the records of the select committee,¹⁹ the committee wrote to a number of people identified in those records, including the unnamed authors of submissions 62 and 99. The committee received no response to that correspondence.

2.25 One difficulty with assessing the select committee evidence is that it is not clear what – if any – connection there is between the unnamed author of submission 62, the anonymous author of submission 99 and the former guard who was interviewed in the ABC segments, whose identity is not known. The additional comments appended to the report of the select committee by Australian Greens senators include a note that ‘The Australian Greens understand from the ABC that its reports relied on the evidence of three former Wilson guards, none of whom gave evidence to [the select] committee.’²⁰ The response provided on behalf of Senator Hanson-Young repeats this statement, adding ‘On that basis, there seem to be five separate current or former Wilson Security guards who have made the suggestion that the evidence submitted by Wilson may be incorrect.’ The Privileges Committee is not in a position to test this detail or confirm this conclusion.

2.26 With this in mind, the committee also wrote to the ABC reporter, Mr Haydon Cooper, indicating that it would welcome any assistance he could provide in putting the former guards referred to in his report in contact with the committee, and would also welcome any information he was able to provide in relation to this matter. The committee received no response to this request. The committee draws no inference from this, noting the journalistic imperative to protect sources. However, without this information, the committee has no way of testing the sources behind the media reports.

Committee’s view about the conflicting accounts of surveillance

2.27 On its consideration of the conflicting accounts given of the surveillance – the matter deemed to be the principal focus of this part of the inquiry – the committee is in the same position at the end of the inquiry as at the beginning: faced with two conflicting versions of events, and unable – absent further cogent evidence – to determine the matter. Without adopting wholesale the ‘inadequacies in the statements’

19 See *Journals of the Senate*, 24 November 2015, p. 3450, for the resolution authorising access.

20 Select Committee, Report, Additional comments, paragraph 1.112.

identified by Wilson Security, above, the committee agrees that it ought not make a finding against any person on the basis of evidence it is not able to test.

2.28 The evidence provided by Wilson Security, and accepted by Transfield and the department, was that the surveillance was an isolated incident organised by a single employee acting without authority. The account provided in the media and in submissions 62 and 99 was of authorised, systematic and widespread surveillance; however, without cogent evidence in relation to this version of events the committee has no basis upon which to conclude that the evidence given by Wilson Security was false or misleading.

2.29 Of course, the reverse is also true. The committee is not in a position to conclusively determine whether the evidence submitted to the select committee in submissions 62 and 99 is false or misleading and, lacking access to their authors, the committee cannot assess their intentions in putting the evidence forward. However, through this inquiry, further information has been placed on the public record which may assist those seeking to assess the conflicting accounts.

2.30 The committee also notes, for completeness, the following statement in the submission from Mr Rogers and Mr McDonald:

If any further observation of the Senator did in fact take place, it did not occur with our knowledge, and was not authorised by Wilson Security management. We emphasise, however, that we have absolutely no knowledge of any such observation, despite our thorough inquiries. Any inaccuracy in our evidence would be the result of us being unknowingly misinformed or misled by others.²¹

2.31 Lacking any evidence to the contrary, the committee would have no basis to conclude that Wilson Security's representatives knowingly gave false or misleading evidence on the surveillance matter.

2.32 The committee considers that the evidence before it does not establish the contention in the terms of reference that false or misleading evidence may have been given to the former Nauru select committee in relation to the apparent surveillance of a senator. On that basis, the committee therefore **finds** that no contempt was committed in this regard.

Reporting and investigation of the surveillance

2.33 The committee's main focus in the surveillance matter was on the conflicting accounts about its extent and authorisation, dealt with in the first part of this chapter. However, the committee also received evidence about the reporting and investigation of the incident, including evidence clarifying or correcting information given to the select committee. In this regard, there are three matters on which the committee makes comment:

- the evidence from Transfield about its being informed of the incident;

21 Wilson Security submission, 27 November 2015, paragraph 3.3.

- the decisions taken by Wilson Security and Transfield not to report the incident; and
- the evidence from the department about its investigations into the incident.

2.34 Each of these matters is dealt with briefly, in turn. They exemplify confused or conflicting evidence being put before the select committee and delays in discharging accountability obligations, including the requirement to correct evidence. Again, the focus for the committee is whether any false or misleading evidence was given.

When was Transfield informed of the incident?

2.35 Transfield did not receive a copy of the Wilson Security file note about the surveillance until 5 June 2015, while ‘undertaking a further investigation of the allegations raised in submission 62’,²² but evidence given to the select committee indicated that Transfield first became aware of the surveillance shortly after it occurred:

Senator Ludlam: ...When were you first made aware of the allegations that those out of scope activities had occurred?

Mrs Munnings: I can take up the evidence at that point. I understand – and the evidence is – that at 7.40am on 16 December 2013 Wilson reported the matter to Transfield, having been made aware of it by the individuals involved contemporaneously to that time.

Senator Ludlam: Okay, 7.40 am coincides with the file note, which I am presuming that you have a copy of—by Ben Gilbert relating to the CSO, Jason Kahika. So, on your evidence, if it was around 7.40 on Monday, the 16th, Transfield was notified immediately the security manager was made aware of it. Does that sound consistent?

Mrs Munnings: Our evidence is that after Wilson were made aware of it they informed Transfield, correct.²³

2.36 This evidence appears to provide independent confirmation of matters put into evidence by Wilson Security. In its submission to the Privileges Committee, Transfield restated that evidence, and attested to its accuracy.²⁴ However, Transfield provided a different answer in response to the committee’s follow up questions, in summary:

- that its operations manager on Nauru ‘was informed in general terms’ that Wilson Security officers had engaged in surveillance of Senator Hanson-Young ‘some time after the unauthorised surveillance operation occurred in December 2013, but prior to June 2015’;

22 Transfield Services, answer 7 to question on notice taken on 20 July 2015.

23 Mrs Kate Munnings, Chief Executive Operations, Logistics, Construction and Consulting, Transfield Services, *Select Committee Hansard*, 20 July 2015, p. 28.

24 Submission, Transfield Services, 26 November 2015, p. 2.

- that he ‘does not have any recollection...of Mr McDonald communicating the information to him either on 16 December 2013 or subsequently... [but] accepts that the oral report described by [Wilson’s] Mr McDonald as having taken place on 16 December 2013 may have been the occasion on which he first learnt about the unauthorised surveillance operation’; and
- that ‘It was not until early June 2015 that BAPL (Broadspectrum Australia Pty Ltd formerly trading as Transfield Services) first became aware at an organisational level that there had been unauthorised surveillance of Senator Hanson-Young while she was at Nauru in December 2013.’²⁵

2.37 The committee sought clarification of this response, which seemed to contradict earlier evidence, including Transfield’s submission to the Privileges Committee. The further response goes to some lengths to assert that the original evidence was and remains accurate.²⁶ In doing so, it explains that, in preparing to give evidence to the select committee Transfield did not seek to confirm its evidence with its Nauru-based operations manager; rather, the evidence given at the 20 July 2015 hearing of the select committee was based on:

...the identification of a contemporaneous file note created by Wilson Security regarding events on 16 December 2013 and BAPL accepted those records as accurate and comprehensive and relied on them when briefing its witnesses who appeared to give evidence to the Senate Select Committee on 20 July 2015.²⁷

Committee’s view

2.38 The committee makes the point that this qualification changes the character of the evidence given to the select committee. Rather than providing independent confirmation of Wilson’s account, it appears that the evidence given by Transfield at the 20 July 2015 hearing was drawn from the same source, reducing somewhat its value.

2.39 The committee also notes the substantial difference between attesting to something being communicated at ‘7.40am on 16 December 2013’ and Transfield’s revised position that its operations manager on Nauru was informed ‘in general terms’ of the surveillance ‘some time after the unauthorised surveillance operation occurred in December 2013, but prior to June 2015’. It may be that members of the select committee would have considered the original evidence to have been misleading.

2.40 The committee accepts that there may have been good reasons for Transfield not immediately seeking confirmation of that evidence, however, the original evidence was allowed to stand for more than 6 months – from 20 July 2015 to 25 February

25 Response by Transfield Services/Broadspectrum to questions from the Privileges Committee, 25 February 2016, p. 1

26 Further response by Transfield Services/Broadspectrum to questions from the Privileges Committee, 11 March 2016, p.2.

27 Further response by Transfield Services/ Broadspectrum to questions from the Privileges Committee, 11 March 2016, p. 2.

2016 – during which no attempt was made to correct the record. The committee considers that Transfield’s evidence about its knowledge of the surveillance has been confused and that it should not have taken the prompting of the Privileges Committee for Transfield to have provided this correction to its earlier evidence.

Why wasn’t the incident reported?

2.41 The select committee took considerable evidence about the incident reporting requirements that exist under the contractual relationships between the department, Transfield and Wilson Security. Within these arrangements, there are specific requirements about reporting incidents, which include timeframes – counted in hours – for reporting incidents categorised as ‘critical’, ‘major’, and ‘minor’.²⁸ Despite these guidelines neither Wilson Security nor Transfield reported the surveillance incident to the department.

2.42 Wilson Security explained that the incident was managed as an internal disciplinary matter,²⁹ and was not reportable under departmental guidelines:

The information and allegations in relation to the incident on 15th December 2013 has developed over time. The incident was not categorised as surveillance and the classification decision was made in relation to unauthorised observation of the Senator’s vehicle, from another vehicle. At the time it was not considered likely to attract media attention. It therefore did not fall within Department guidelines for reporting major incidents. As such Wilson Security only reported the matter to Transfield.

In hindsight, we acknowledge this may have been short-sighted. This assessment notwithstanding, Wilson Security undertook a thorough investigation with appropriate internal disciplinary action.³⁰

2.43 Wilson Security makes the argument that the surveillance was an internal disciplinary matter because the senator was not personally observed, the incident was confined to an unauthorised observation from the carpark and no records were generated as a result of this observation. While this may be correct, it is also the case that treating the surveillance as an internal disciplinary matter meant that the incident was not open to wider scrutiny. Wilson Security now considers that ‘in retrospect, the incident does appear to be the type of incident capable of attracting media attention’ and ‘that it should have been classified as a major incident and reported.’³¹

2.44 Transfield, ‘with the benefit of hindsight,’ has also accepted ‘that the unauthorised surveillance operation was an incident that was likely to attract media attention and for that reason it was an incident that was captured by the Incident Reporting Guidelines’. Noting the evidence to the select committee that Transfield

28 Department of Immigration and Border Protection, Select committee submission 31, and the contractual timeframes for reporting internal incidents at Attachment F of that submission.

29 Wilson Security, responses to questions on notice, 17 July 2015, p. 2; Response by Wilson Security to Privileges Committee questions, 9 February 2016, p. 3.

30 *See* Response by Wilson Security to Privileges Committee questions, 9 February 2016, p. 2.

31 Response by Wilson Security to Privileges Committee questions, 9 February 2016, p. 3.

had known about the surveillance for approximately 18 months, and noting too its contractual arrangement with the department, it was not initially clear why Transfield did not report the incident to the department. The explanation referred to above – that no-one at Transfield, other than ‘possibly’ one manager on Nauru, knew of the surveillance prior to June 2015 – is also provided to explain this matter.³² Transfield also submits:

...that if (as he accepts may have occurred) [Transfield’s Nauru-based operations manager] was informed of the operation on 16 December 2013, his decision that the information did not need to be reported (both in accordance with the Incident Reporting Guidelines or otherwise) was made in good faith and on the basis of his informed understanding of the guidelines at the time.³³

Committee’s view about incident reporting

2.45 It is self-evident that unauthorised surveillance of an Australian senator is an incident ‘likely to attract media attention’, and the committee recognises the belated acceptance by Wilson and Transfield that the matter falls well within their contractual reporting obligations.

2.46 At the select committee’s public hearing on 9 June 2015, Mr Pezzullo, the Secretary of the department, confirmed his view that the incident should have been reported to the department:

If I may say specifically, yes, I would expect that reporting on the monitoring of the activities or monitoring from a security point of view of the movement of an Australian senator should have been escalated to various senior levels of management.³⁴

2.47 The committee notes – and strongly agrees with – that view. Even accepting that internal investigation and discipline by Wilson Security of its employees was an appropriate response, the matter should nonetheless have been urgently brought to the attention of the department.

2.48 It is also worth noting that neither Wilson Security nor Transfield thought to mention the surveillance in evidence to the select committee prior to being asked to respond to submission 62, notwithstanding that the senator in question was a member of that committee. Their responses to the Privileges Committee’s question as to why they didn’t ‘take the opportunity to tell the select committee about the surveillance’ at its public meeting on 19 May 2013, in essence, are because they weren’t asked.³⁵

32 Response by Transfield Services/Broadspectrum to questions from the Privileges Committee, 25 February 2016, p. 4

33 Response by BAPL/Transfield to Privileges Committee questions, 25 February 2016, p3.

34 *Select Committee Hansard*, 9 June 2015, p. 63. This position was maintained at the subsequent hearing, *Select Committee Hansard*, 20 July 2015, p. 86.

35 Responses to questions from the Privileges Committee: Wilson Security, 23 February 2016, p 4; Transfield/Broadspectrum, 25 February 2016, p 6.

2.49 The approach taken by both parties had the effect of constraining the capacity of the select committee to undertake its work, not only because they did not initially put relevant matters into evidence, but also because – by not reporting the matter to the department as required – Transfield and Wilson Security arguably hampered the department in discharging its accountability obligations to the parliament.

What investigations did the department undertake?

2.50 The committee notes that various different responses were provided by the department about its own investigations, after becoming aware of the surveillance. During the select committee’s public hearing on 9 June, Mr Pezzullo, Secretary of the department said, in relation to the surveillance, that ‘Wilson has provided its response. I have no reason at all to question that.’³⁶ The department initially indicated that no internal investigation occurred.³⁷ A second position was that the department was satisfied by the investigations one of its officers had undertaken,³⁸ but there was no written report.³⁹ The department’s initial submission to the Privileges Committee indicated that ‘The Department immediately conducted an investigation into the matter.’⁴⁰

2.51 The committee wrote again to the department on 9 February 2016 seeking to finally clarify the status of any investigations into the surveillance. The department’s final position was as follows:

The Department did not conduct an internal investigation into the allegations of surveillance.

The Department did conduct an internal investigation to determine if any officials were aware of the alleged surveillance prior to 4 June 2015. This investigation was conducted after the allegations were reported by the ABC news on 4 June 2015.⁴¹

Committee’s view on investigation of surveillance

2.52 The committee notes that the department provided a final and categorical statement about the department’s response to the surveillance on 25 February 2016. It is regrettable that this evidence was not available in this form to the select committee at the time it reported. Had the incident been appropriately reported, the department

36 Mr Michael Pezzullo, Secretary, Department of Immigration and Border Protection, *Select Committee Hansard*, 9 June 2015, p. 52.

37 Department of Immigration and Border Protection, Answers to questions on notice from 9 June 2015, SQ15-006092.

38 Mr Neil Skill, First Assistant Secretary, Detention Services Division, Department of Immigration and Border Protection, *Select Committee Hansard*, 20 July 2015, p. 85.

39 Mr Neil Skill, First Assistant Secretary, Detention Services Division, Department of Immigration and Border Protection, *Select Committee Hansard*, 20 July 2015, p. 88.

40 Submission, Department of Immigration and Border Protection, 13 November 2015, p. 3.

41 Response from the Department of Immigration and Border Protection, 25 February 2016, p. 2.

no doubt would have been in a better position to discharge its accountability obligations to the parliament.

Select committee observations on the reporting requirements

2.53 The lengthy delay before the matter came to the attention of the department was taken by the select committee to indicate shortcomings in the effectiveness of Commonwealth oversight and a weakness in the reporting structure mandated in the contracts for the management of the regional processing centre.⁴² The select committee observed:

The fact that the incident was not reported to the department, and that when it came to light the department accepted at face value the contractors' advice that it had been dealt with and did not conduct any further investigation or action is of grave concern to the committee.⁴³

2.54 On the other hand, the dissenting report from Coalition senators notes:

...the progress of implementation of the recommendations of the Moss Review is already putting in place enhanced and strengthened service delivery, and better communications between stakeholders. The Commonwealth government has taken the opportunity to strengthen contractual arrangements to ensure that service providers clearly understand and meet the relevant standards.⁴⁴

2.55 The Privileges Committee considers that these improvements to contractual reporting arrangements, and more alacrity in correcting evidence should it be found to be incorrect, are necessary to ensuring that parliamentary committees are able to undertake their work with confidence about the evidence that comes before them.

Conclusions on the reporting and investigation of the incident

2.56 The committee makes no findings as to whether the matters in this part of the report, relating to the reporting and investigation of the surveillance incident, ought formally be dealt with as misleading evidence. Other committees undertaking work in this area may take up any of the evidence now published by the committee to the extent that it is relevant to their inquiries.

2.57 The committee again expresses the view that it should not require repeated questioning via correspondence before accurate answers are provided to Senate committees. The onus is on witnesses to provide accurate and clear answers and to correct any mistakes as soon as possible.

2.58 The next chapter, dealing with the inconsistent evidence given in relation to the existence of video footage connected with the disturbance on Nauru on 19 July 2013, provides a case in point.

42 Select Committee, Report, paragraphs 5.40 – 5.42.

43 Select Committee, Report, paragraphs 5.41.

44 Select Committee, Report, Dissenting Report by Coalition Senators, paragraph 1.12.

Chapter 3

Recording of disturbance, 19 July 2013

Overview of evidence

3.1 The second matter was raised by the chair of the former select committee, Senator Gallacher and referred in the following terms:

- (a) Whether any false or misleading evidence was given to the former Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru in relation to a disturbance at the centre on 19 July 2013; and
- (b) If so, whether any contempt was committed in respect of those matters.¹

3.2 In his letter, Senator Gallacher provided an outline of his concerns:

- The select committee had received evidence (in submission 62²) that camera footage existed of a disturbance at the regional processing centre on 19 July 2013.
- At a select committee hearing on 19 May 2015, in response to questioning about the use of body cameras, representatives from Wilson Security said there was no relevant information about the incident arising from any camera footage.
- In a letter dated 20 May 2015 the select committee asked Wilson Security to respond to allegations in submission 62 about the conduct of their staff on 19 July 2013. Wilson advised that it was ‘not aware of the video footage referred to in the submission’.³
- At the select committee’s public hearing on 20 July 2015, the issue of body cameras and camera footage was again raised and Wilson Security again indicated that there was no footage of the riot held by the company.
- On 13 August 2015, ABC television broadcast a segment on 7.30 which included the footage apparently referred to in submission 62.
- At the select committee’s public hearing on 20 August 2015, Wilson Security indicated that its previous evidence was incorrect. Mr Brett McDonald, Security Contract Manager for Wilson Security, also indicated that he was aware that evidence given at the previous hearing

1 *Journals of the Senate*, 10 November 2015, p. 3335.

2 Other matters raised in select committee submission 62 were dealt with above, at paragraphs 2.9 – 2.12.

3 Wilson Security, response to select committee submission 62, p. 4.

on 20 July was incorrect but he ‘did not pick it up at the time to think to correct it.’⁴

- In addition, Wilson Security, in a response to a question taken on notice at the 20 August 2015 hearing, said that ‘A copy of all footage was provided to the Department [of Immigration and Border Protection] and the Nauru Police Force’.⁵ The Department, in its own response, advised the select committee that ‘the footage was not available to them.’⁶

3.3 The inconsistencies in the evidence by Wilson Security outlined above led to concerns that false or misleading evidence may have been given to the select committee. Senator Gallacher concluded his letter as follows:

My concern about the seemingly deliberate and continual obfuscation of Wilson Security during the conduct of the inquiry prompts me to propose that the matter should be referred to the Committee of Privileges to investigate.

Consideration by the select committee

3.4 The matter was dealt with in the report of the select committee under the heading *Recording of events of 19 July 2013*, at paragraphs 2.67 to 2.74, and in that committee’s conclusions at paragraphs 5.32 to 5.35.

3.5 The committee was particularly critical that ‘no attempt was made to advise [the select committee] of the incorrect evidence in the month after it was given’,⁷ and that the error was revealed only during questioning. The select committee also made the point that the performance of the department was ‘called into question by their lack of knowledge of serious incidents [demonstrating] the limits of Commonwealth control or oversight of the RPC on Nauru’.⁸ This echoes the point made by this committee in the previous chapter.⁹ Without full knowledge of incidents, it is not possible for the department to properly discharge its accountability obligations to the parliament.

Response by Wilson Security

3.6 The Privileges Committee wrote to Wilson Security on 13 November 2015. Wilson Security provided a detailed response acknowledging that, while ‘there were inadvertent errors, there was never any intention to mislead the Committee.’¹⁰ Wilson

4 Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 20 August 2015, p. 34.

5 Wilson Security, answer to question on notice, 20 August 2015.

6 Department of Immigration and Border Protection, answer to question on notice, 21 August 2015.

7 Select Committee, Report, paragraph 5.33.

8 Select Committee, Report, paragraph 5.34

9 See paragraphs 2.53 – 2.55, above.

10 Wilson Security, response to the Privileges Committee, 27 November 2015, section 6.

Security addressed each of the above concerns in turn. An important aspect of the response lies in the distinction between footage of the disturbance and what Wilson Security describes as ‘pre-disturbance footage’.

3.7 The submission confirmed that Wilson only became aware of the footage in question when it was aired on the 7.30 program, and provided the following further detail:

The procedure followed by Wilson Security at the time of the disturbance was that, after the occurrence of an incident on Nauru, any available video footage would be collected, reviewed, and anything that was not relevant was deleted. The objective is to retain only relevant footage.

This process was followed after the disturbance on 19 July 2013. The footage that was retained was provided to the Nauru Police, and a copy retained by Wilson.

The specific footage that was shown on ABC Television, and which was the subject of the statement in the Submission and Mr Rogers’ response, was not footage that Wilson Security was able to locate during the Inquiry. It was clearly taken from a bodycam being worn by a Wilson Security officer.

We can only presume that individual retained a copy of this particular footage for their own purposes, but that the footage was either deleted by Wilson Security or unable to be recovered from the post-disturbance computer system¹¹. We do not know who held on to the video footage, or how it was taken from the Wilson Security computer system.¹²

3.8 At the select committee hearing on 20 July 2015, Mr Rogers stated ‘I do not believe that we had any kind of individual video cameras in place at the time of the July 2013 riot’ and ‘There is none [footage] held by the company that I have been able to obtain.’¹³ Wilson Security concede that these two statements were incorrect, but maintain that Mr Rogers ‘believed them to be correct at the time he made them.’¹⁴

3.9 In relation to the provision of footage to the department and the Nauru Police force, Wilson Security explained the confusion to the Privileges Committee by making a distinction between pre-disturbance footage and footage of the actual riot.

By way of clarification, the response quoted by Senator Gallacher...was in reference to footage of the actual disturbance – not the pre-disturbance footage. The footage that aired on the ABC was not provided to the

11 Wilson Security’s IT infrastructure was damaged during the riot on 19 July 2013 and remained inoperable for six months. During that period there was no server infrastructure and Wilson Security relied on staff saving information on individual computers. *Committee Hansard*, 20 August 2015, p. 30.

12 Wilson Security, submission, 27 November 2015, section 4.3.

13 Mr John Rogers, Executive General Manager, Southern Pacific, Wilson Security, *Committee Hansard*, 20 July 2015, p. 42.

14 Wilson Security, submission, 27 November 2015, section 5.5.

Department as it occurred prior to the disturbance taking place. This particular footage would also not have been made available to the Nauru Police force.¹⁵

3.10 Wilson Security contend that, while mistakes were made, they were made innocently, and that the failure to correct the mistakes as soon as possible was due to oversight rather than any intention to delay or mislead the select committee. The submission pointed to a previous example where Wilson officers sought to correct the record as soon as possible, providing corrected information on 25 August 2015 to answers previously given on 19 May 2015.¹⁶ In concluding, Wilson Security representatives offered that they did their best to assist the select committee in its inquiries into a complex and wide ranging matter.

Our answers often reflect a degree of uncertainty. Sometimes they reflect confusion about the questions. We did our best to research matters and make inquiries.¹⁷

Committee view

3.11 The committee considers that the further response provided by Wilson Security clarifies the matter. The response contends that the witnesses' errors in providing evidence to the select committee were inadvertent, and the committee has no basis on which to challenge that contention. Only the members of the former select committee, and other committees which have taken evidence on related matters, would be in a position to assess whether the additional details provided to this inquiry comprehensively correct the record. However, this committee considers that Wilson Security has made a genuine attempt to satisfy the concerns raised in relation to this matter.

3.12 The record now having been corrected, and accepting that Wilson Security's representatives did not knowingly provide misleading evidence on the matter, the committee **finds** that no contempt was committed in this regard.

3.13 The committee's conclusions are in the next chapter.

15 Wilson Security, submission, 27 November 2015, section 5.4.

16 Wilson Security, submission, 27 November 2015, section 5.6.

17 Wilson Security, submission, 27 November 2015, section 6.

Chapter 4

Conclusions and recommendations

4.1 Before turning to its findings and conclusions, the committee makes some observations about the clarity of evidence and the accountability of witnesses to Senate committees. At the end of the report, the committee also makes some comments about the conduct which led to the first referral, that is the covert surveillance of a member of the Australian Senate.

The importance of clear evidence

4.2 As has been noted above, committees rely upon the integrity of the evidence presented to them. If evidence is deceptive or misleading, the value of the inquiry process is compromised. The committee notes that some of the evidence provided to the select committee, which has been referred to in this report, was unclear. For instance, the department made conflicting statements about whether it had conducted an investigation into the surveillance, Wilson Security made confusing statements about whether camera footage of the July 2013 disturbance existed and in relation to the use of body cameras, and Transfield Services heavily qualified its evidence about when it first became aware of the surveillance. The committee reminds all witnesses of their obligations to correct evidence promptly where it is found to be incorrect.

4.3 As noted in chapter 2, the lengthy delay in reporting the surveillance incident impaired the ability of the department to properly discharge its accountability obligations.

4.4 The committee considers it would have been appropriate for Wilson Security and Transfield to provide evidence about what they knew of the surveillance incident to the select committee, regardless of the emergence of media reports and anonymous submissions about it, both on the basis that the surveillance involved an Australian senator and because the matter was well within the terms of reference of the select committee. It is not unreasonable to expect an entity which is undertaking roles connected to activities of government to deal with an incident like this transparently.

Findings

4.5 The focus of the committee's inquiry was whether false or misleading evidence may have been provided to the former Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru, and whether any contempt may have been committed in that regard. Chapter 1 sets out the principles which apply to contempt matters, and the criteria the committee take into account in determining whether a contempt has been committed. In particular, Privilege Resolution 6 provides that a witness shall not:

... give any evidence which the witness knows to be false or misleading in a material particular, or which the witness does not believe on reasonable grounds to be true or substantially true in every material particular.¹

1 Privilege Resolution 6(12)(c). *See also* paragraphs 1.11 to 1.18, above.

4.6 Among other matters, the committee must consider whether a person who committed an act which might be held to be a contempt did so knowingly, or had any reasonable excuse for doing so. The practice in cases involving possible false or misleading evidence is that the committee does not make a recommendation of contempt unless it can be determined that a witness intended to give misleading evidence.² The committee's findings apply these principles.

Surveillance matter

4.7 The chief concern identified by Senator Di Natale was that false and misleading evidence may have been given to the select committee in relation to the surveillance of Senator Hanson-Young, in light of the two conflicting accounts that had emerged. The committee considered that the primary focus of this part of the reference was the question whether the surveillance had been authorised by Wilson Security managers and, if so, whether – by denying that the surveillance was authorised, or by denying knowledge of the surveillance and/or its authorisation – any person knowingly gave false or misleading evidence to the select committee.³

4.8 After considering the evidence available to it, the committee was unable to conclusively determine the matter, partly because of its inability to elicit additional evidence to corroborate the version of events alleging wide-ranging, authorised surveillance. The committee determined that it should not make findings against Wilson Security on the basis of evidence it is not able to test. Neither was the committee in a position to conclusively determine whether the evidence submitted to the select committee in submissions 62 and 99 is false or misleading.⁴

4.9 The committee considers that the evidence before it does not establish the contention in the terms of reference that false or misleading evidence may have been given to the former Nauru select committee in relation to the apparent surveillance of a senator. On that basis, the committee therefore **finds** that no contempt was committed in this regard.

4.10 The committee also considered evidence relating to the reporting and investigation of the surveillance incident, but makes no findings as to whether that evidence ought formally be dealt with as misleading evidence. The committee has published the evidence it received, with minor redactions made for reasons of privacy.

Recording of disturbance

4.11 The chief concern identified by the chair of the former select committee, Senator Gallacher was that false and misleading evidence was supplied to the select committee in relation to a disturbance at the Regional Processing Centre on 19 July 2013.

2 See paragraphs 1.11 to 1.188, above.

3 See paragraph 2.7, above.

4 See paragraphs 2.28 to 2.32, above.

4.12 The committee considers that the further response provided by Wilson Security clarifies the matter, and accepts on the evidence before it that the errors in the evidence provided to the select committee were inadvertent. The committee has no basis on which to challenge that contention. The record now having been corrected, and accepting that Wilson Security's representatives did not knowingly provide misleading evidence on the matter, the committee **finds** that no contempt was committed in this regard.

4.13 Again, the committee has published the evidence it received on this matter.

Recommendation

4.14 The committee recommends that the Senate:

- (a) adopt the finding at paragraph 4.9, that no contempt was committed in relation to the first matter referred, relating to possible false and misleading evidence in relation to the apparent surveillance of a senator; and
- (b) adopt the finding at paragraph 4.12, that no contempt was committed in relation to the second matter referred, relating to possible false or misleading evidence in relation to a disturbance at the centre on 19 July 2013.

Improper interference with a senator's duties

4.15 The committee has not been asked to consider whether the surveillance of a senator in the circumstances described in chapter 2 might amount to a contempt, but nevertheless makes the following observations.

4.16 As has been noted,⁵ the Senate's contempt jurisdiction is intended to protect the ability of the Senate, its committees and its members to carry out their functions without improper interference. Contempt in Commonwealth law is assessed by reference to a statutory test in section 4 of the Parliamentary Privileges Act:

Conduct (including the use of words) does not constitute an offence against a House [that is, a contempt] unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

4.17 Any conduct may constitute an offence if it satisfies this test. In this regard, the Senate has declared that:

A person shall not improperly interfere with the free exercise by the Senate or a committee of its authority, or with the free performance by a senator of the senator's duties as a senator.⁶

5 See paragraph 1.11, above.

6 Privilege Resolution 6(1).

4.18 It is well-established in this context that ‘improper’ does not necessarily mean ‘unlawful’ or ‘unauthorised’. It refers to conduct which has the effect or tendency of obstructing the Senate or senators carrying out their functions.

4.19 The committee last had cause to consider the scope of this prohibition in its 160th report, noting that ‘The Senate has always taken “a robust view as to whether senators have been improperly obstructed”, particularly in relation to conduct involving intimidation, force or threat.’⁷ This approach recognises the capacity of senators to protect themselves, including through their access to privileged proceedings. The committee went on, however, to note circumstances in which interfering conduct might be less apparent – for instance, in the diversion of emails, the tapping of telephones or, in the matter dealt with in that report, through the use of closed-circuit television images. The committee noted that:

The action that senators may take individually to resist these less overt forms of interference should they arise is limited. In such circumstances the committee considers that greater recourse to protection through the Senate’s contempt jurisdiction may be warranted.⁸

4.20 It is not difficult to imagine circumstances in which the covert surveillance of a senator may amount to a contempt, and the committee would caution any person against such conduct.

4.21 In this matter, however, the committee notes the significant jurisdictional difficulties which arise from the surveillance having occurred in a foreign country. Parliamentary privilege operates within the jurisdiction of the Commonwealth of Australia to protect the work of the Australian Parliament, its committees and members. It is not generally understood to have any extraterritorial application. For example, Senate committees seeking evidence from witnesses overseas are regularly reminded of these jurisdictional limits; that witnesses are subject to the laws of the countries from which they give evidence and that Australian law cannot protect them in respect of the publication of their evidence overseas.⁹

4.22 Although it has not been conclusively determined, it is likely that the same jurisdictional limits would apply in relation to the investigation of the surveillance in this matter.

4.23 Quite apart from the technicalities of the Senate’s privilege powers, however, the committee considers that it is incumbent on those who undertake any role connected with government activities to deal appropriately with the Senate, its committees and its members. As part of that requirement, the committee considers that

7 Committee of Privileges, 160th report – *The use of CCTV material in Parliament House*, December 2014, paragraph 1.20; more generally see 125th report, paragraphs 4.27 – 4.29.

8 160th report, paragraph 1.20

9 See Evans H and Laing R (eds), *Odgers’ Australian Senate Practice*, 13th edition, 2012, p. 551. In that context, committees have adopted approaches calculated to reduce the risks to their witnesses – for instance, by declining to accept evidence or by taking evidence in camera and determining that it not be published.

any such person who becomes aware of conduct of the type identified in the statutory definition of contempt – that is, conduct that improperly interferes with the functions of the Senate or the duties of senators – should promptly bring that matter to the attention of the relevant authorities, the Senate or the senator concerned. The committee also draws attention to the need for those dealing with such matters to take care to provide full and accurate information, so as to avoid the need to subsequently correct the record.

(Senator the Hon. Jacinta Collins)

Chair

Appendix

Letter from Senator Di Natale to President, raising a matter of privilege, dated 27 October 2015

Letter from Senator Gallacher to President, raising a matter of privilege, dated September 2015

Statement by the President, 9 November 2015

Submission made on behalf of Senator Hanson-Young, dated 8 April 2016

A separate volume of documents presented to the committee accompanies this report.



DR RICHARD DI NATALE
Leader of the Australian Greens
 Senator for Victoria

senator.dinatale@aph.gov.au
 Level 4, 199 Moorabool St, Geelong VIC 3220
 P. (03) 5221 4100 F. (03) 5221 5100

Parliament House, Canberra ACT 2600
 P. (02) 6277 3170 F. (02) 6277 3185

THE SENATE

8 NOV 2015

TABLED
 PAPER

27 October 2015

Senator the Hon Stephen Parry
 President of the Senate
 Suite SG.40
 Parliament House
 Canberra ACT 2600

Received President's Office
 Hobart 1345 27/10/15
 JENNETT

Mr President

MATTER OF PRIVILEGE ARISING FROM PROCEEDINGS BEFORE THE SELECT COMMITTEE ON THE RECENT ALLEGATIONS RELATING TO THE
 CONDITIONS AND CIRCUMSTANCES AT THE REGIONAL PROCESSING CENTRE IN NAURU

I write to raise a matter of privilege under standing order 81 and ask that you grant precedence to a notice of motion referring the matter to the Senate Standing Committee of Privileges. It is my concern that potentially false or misleading evidence was supplied to the Select Committee by the Department of Immigration and Border Protection and representatives from Wilson Security and Transfield Services.

The evidence in question was given during public hearings on 9 June and 20 July 2015 regarding a covert operation that saw multiple people spy on Senator Sarah Hanson-Young while she was on Nauru in December of 2013.

In summary, the Select Committee received the following evidence in relation to the spying;

- On 4 June 2015 the committee met and determined to accept and publish a submission from a former employee of Wilson Security. The submission alleged that Wilson Security organised a group from their Emergency Response Team to spy on Senator Sarah Hanson-Young throughout her visit to Nauru.
- At the committee's public hearing on 9 June 2015, Secretary of the department, Mr Michael Pezzullo, stated that his department had investigated the matter and found that one rogue Wilson employee instructed two other Wilson employees to monitor Senator Hanson-Young's car overnight while it was parked outside her hotel and that is the extent of the spying that took place.
- At the public hearing on 20 July 2015, Senator Scott Ludlam questioned the department, Wilson Security and Transfield Services in relation to these allegations. All parties denied the spying went any further than outlined by the department at the hearing on 9 June 2015.
- On 13 August 2015 on the 7.30 program, a number of former guards reported to Australian Broadcasting Corporation (ABC) that:
 - (a) the surveillance of Senator Hanson-Young involved up to eight members of the Emergency Response Team;



100% post-consumer recycled



DR RICHARD DI NATALE
Leader of the Australian Greens
Senator for Victoria

senator.dinatala@aph.gov.au
 Level 4, 199 Moorabool St, Geelong VIC 3220
 P. (03) 5221 4100 F. (03) 5221 5100

Parliament House, Canberra ACT 2600
 P. (02) 6277 3170 F. (02) 6277 3185

- (b) the surveillance continued for the full three days Senator Hanson-Young was in Nauru;
 (c) guards were ordered to photograph Senator Hanson-Young and make notes about who she met with; and
 (d) one guard witnessed shredding of all documents relating to surveillance operation, including photos and notes.

The Australian Greens understand from the ABC that its reports relied on the evidence of three former Wilson guards, none of whom gave evidence to the Select Committee. Transcripts from the 7.30 program, as well as the ABC AM radio program which includes related testimony, are attached.

- On 19 August 2015 the Committee received another submission which appeared to be from a former Wilson Security guard. That submission contradicted the evidence given by the department, Wilson Security and Transfield Services during the public hearings on 9 June and 20 July 2015. Specifically it said that approximately 6-8 ERT members conducted the spying and that the operation was authorised, sanctioned and fully supported by senior Wilson Security managers.

The evidence given to the committee by the department, Wilson Security and Transfield Services regarding the extent of the spying is at odds with the evidence of five separate Wilson Security guards with first-hand knowledge of these events, who have each separately approached this committee or the media, suggesting these organisations have misled the senate, either wilfully or as a result of inadequate investigations conducted by them into these matters.

I attach a copy of the two submissions referred to above and relevant parts of the transcript of the public hearings. I also attach the relevant 7.30 program transcript, as well as a related ABC AM radio transcript from 14 August 2015.

I am concerned that false or misleading evidence may have been given to the Select Committee and therefore propose the issue be considered by the Committee of Privileges.

I appreciate your consideration of this very serious matter.

Yours sincerely,

Senator Richard Di Natale
 Leader of the Australian Greens



265 Churchill Road
Prospect SA 5082
Tel: +61 8 8269 6022
Fax: +61 8 8269 6034

Parliament House
Canberra ACT 2600
Tel: +61 2 6277 3450
Fax: +61 2 6277 5966

senator.gallacher@aph.gov.au



September 2015

Senator the Hon Stephen Parry,
President of the Senate
Suite SG40
Parliament House

CANBERRA ACT 2600

Mr President,

**MATTER OF PRIVILEGE ARISING FROM PROCEEDINGS BEFORE THE SELECT COMMITTEE
ON THE RECENT ALLEGATIONS RELATING TO CONDITIONS AND CIRCUMSTANCES AT THE
REGIONAL PROCESSING IN NAURU**

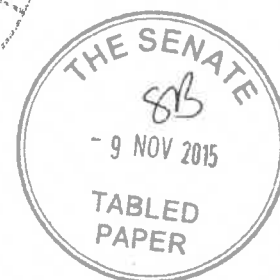
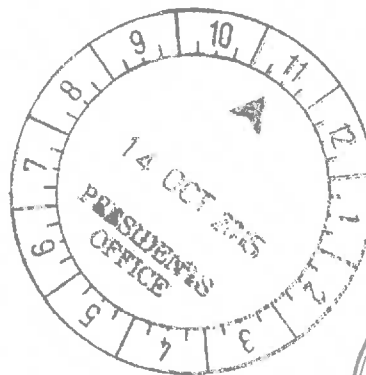
I write to raise a matter of privilege under standing order 81 and to ask that you grant precedence to a notice of motion referring the matter to the Committee of Privileges. The matter of privilege I wish to raise relates to evidence taken by the Select Committee on the recent allegations relating to conditions and circumstances at the Regional Processing Centre in Nauru which reported on 31 August 2015.

The committee received evidence about the disturbance which occurred at the Regional Processing Centre on 19 July 2013 which resulted in the destruction of most of the buildings and infrastructure at the site. Wilson Security, a company that provided security services at the Centre, provided evidence to the committee.

At the committee's hearing on 19 May 2015, representatives from Wilson Security were asked a series of questions about the use of body cameras by their security staff during the incident and the company's policy about who could use the cameras and how the information recorded by the cameras is stored and used. In the course of the hearing it was suggested that there was no relevant information about the incident arising from any camera footage.

On 20 May 2015 Wilson Security was asked to respond to allegations made in a submission concerning the conduct of Wilson Security staff on the day of the disturbance. In their response, Wilson Security advised that they were "not aware of the video footage referred to in the submission".¹

¹ Wilson Security, response to Submission 62, p 4.




Again at a committee hearing on 20 July 2015 the issue of body cameras and their use on the day of the disturbance was canvassed and again Wilson Security indicated that there was no footage held by the company.

On 13 August 2015 the Australian Broadcasting Commission on the program 7.30 aired a report that included footage referred to in Submission 62. The committee held a further public hearing on 20 August 2015 at which Wilson Security indicated that previous evidence that had been given to the committee was incorrect. The Security Contract Manager (Mr Brett McDonald) indicated that he was aware that evidence given on 20 July was incorrect, but "did not pick it up at the time to think to correct it"².

While Wilson Security has acknowledged that the evidence provided by various witnesses on their behalf was "not reflective of the true situation"³ they have rejected the characterisation of their evidence as being false. In a further response to a question taken on notice on 20 August 2015, the company advised that "A copy of all footage was provided to the Department [of Immigration and Border Protection] and the Nauru Police Force"⁴. The Department advised the committee that the footage was not available to them.⁵

My concern about the seemingly deliberate and continual obfuscation of Wilson Security during the conduct of the inquiry prompts me to propose that the matter should be referred to the Committee of Privileges to investigate.

Yours sincerely,



Alex Gallacher
Senator for South Australia

² Mr Brett McDonald, Security Contract Manager, Wilson Security, *Committee Hansard*, 20 August 2015.

³ Wilson Security, Clarification of evidence, received 24 August 2015.

⁴ Wilson Security, Answer to question on notice, 20 August 2015.

⁵ Department of Immigration and Border Protection, answer to question on notice, 21 August 2015.

SPEECH

Date Monday, 9 November 2015	Source Senate
Page 57	Proof Yes
Questioner	Responder
Speaker PRESIDENT, The	Question No.

The PRESIDENT (15:35): I have received letters from the Leader of the Australian Greens, Senator Di Natale, and Senator Gallacher, raising as matters of privilege several instances of possibly false or misleading evidence given to the former Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru. The allegations relate to evidence given to the committee about a disturbance at the centre on 19 July 2013 and the apparent surveillance of a senator while on a visit to Nauru in December 2013.

Separately, and together, the letters raise the prospect that the former select committee was given false or misleading evidence by witnesses to the inquiry. The Senate and the Privileges Committee have always taken seriously any suggestion that false or misleading evidence has been given to a committee. The letters clearly meet the first criterion I am required to consider, namely:

... the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate.

The second criterion is the existence of any remedy other than the contempt power for any act which may be held to be a contempt.

I note, in consequence of a recommendation of the select committee, matters relating to the Nauru and Manus Island regional processing centres are now the subject of a fresh inquiry by the Legal and Constitutional Affairs References Committee, with terms of reference suggested by the select committee. On one view, the fresh inquiry might be an appropriate forum to follow up these allegations. On another view, if conduct which also has the potential to improperly obstruct the fresh inquiry is not addressed, that fresh inquiry may also be misled. These are matters of judgement for the Senate.

In terms of the criteria that I am required to consider, the possibility that another committee may re-examine the same material does not necessarily provide a remedy, simply a forum for further investigation. Only the Privileges Committee has the requisite authority to make findings of fact and recommendations to the Senate about questions of contempt, after a thorough examination of the evidence in accordance with the Privilege Resolutions. On that basis, I am satisfied that both matters of privilege meet the criteria I am required to consider, and I have therefore determined that they should have precedence.

I table the correspondence and now invite Senators Di Natale and Gallacher to give notices of motion to refer the matters to the Privileges Committee.



8 April 2016

Mr Richard Pye
Secretary to the Senate Privileges Committee
Australian Senate
Parliament House
CANBERRA ACT 2600

Maurice Blackburn Pty Limited
ABN 21 105 657 949

Level 10
456 Lonsdale Street
Melbourne VIC 3000

PO Box 523
Melbourne VIC 3001

DX 466 Melbourne

T (03) 9605 2700
F (03) 9258 9600

Dear Mr Pye,

We confirm that we act for Senator Hanson-Young ('our client') and write in response to correspondence received by our client from the Hon. Jacinta Collins dated 9 February 2016.

Ms Collins' letter invited our client to provide further information to the Senate Privileges Committee's inquiry into whether false or misleading evidence was provided to the Senate Select Committee on the Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru.

We make the following submissions in relation to the potentially false and misleading evidence received by the Senate.

Background

Our client visited Nauru in her capacity as a Senator to observe immigration detention facilities and the conditions of the local community from 15 December 2013 to 18 December 2013.

It was subsequently brought to our client's attention by various sources, from as early as 2014, that covert surveillance of her, including the secret recording of video footage, was undertaken by employees of Wilson Security during the visit.

Minister for Immigration and Border Protection, the Hon. Peter Dutton, initially stated at a press conference on 4 June 2015 that the allegations of spying were unfounded. However, in response to questions tabled on notice at the Senate Select Committee on 19 May 2015 and at the public hearings of 9 June 2015 and 20 July 2015, representatives of Wilson Security admitted, in part, the allegation that our client was spied upon.

The conduct was described by Wilson Security to the Senate Select Committee as minimal in scope and not authorised by management. Wilson Security gave testimony that the conduct was appropriately investigated and that the individuals in question were subject to disciplinary action.

In contrast, a number of allegations were made to the Senate Select Committee that the surveillance was wider in scope than stated by Wilson Security and in fact, authorised by management. This raises serious concerns that misleading evidence was provided to the Senate Select Committee.

The reasons for these concerns are detailed throughout this letter.



Maurice Blackburn Offices in Victoria, New South Wales, Queensland, Australian Capital Territory and Western Australia
mauriceblackburn.com.au

Personal observations of our client whilst on Nauru

Our client instructs us that there were several incidents that occurred on Nauru that she noted at the time as being suspicious. For example:

- Our client instructs us that she hired her own car to use whilst on Nauru. She recalls that on one occasion, the vehicle that she was travelling in was being followed by another vehicle. This was after our client had finished her duties at the detention centre. Our client concluded that she was being followed as the same car continued to drive behind her for a substantial period of time. Our client stopped to let the car in question overtake her, but noticed that it continued to follow her shortly thereafter.
- Our client instructs us that upon arrival at the detention centre each day, staff insisted that she give them her car keys and they took possession of her car.
- Our client instructs us that the room she was staying in at the hotel was isolated from the other rooms and had curtains that would not close. She requested that the hotel staff fix this issue but the curtains were not repaired for the duration of her stay. As such, our client instructs us that anyone outside the windows could view the inside of her hotel room.
- Outside our client's hotel was a restaurant/cafe area. Our client instructs us that on one occasion, she approached a table at which various workers connected to the detention centre were sitting. Almost instantaneously, all workers left the table, with the exception of one individual. This individual advised our client that the workers had been told that they would 'get into trouble' if they spoke with our client. Our client was later informed by this individual that she had lost her job shortly afterwards, which she believed to be due to her conversation with our client.

Our client is of the belief that such incidents may demonstrate the existence of a multifaceted and organised surveillance campaign whilst she was on Nauru.

Allegations made to Senate Select Committee

The Committee has received various submissions regarding the surveillance our client was subjected to, which she believe again demonstrates that the surveillance campaign was more comprehensive than what Wilson admitted to the Senate Select Committee. These submissions allege that:

- Members of the Emergency Response Team (ERT) were directed to spy and record our client's movements around the island and set up an observation post to watch her hotel room;¹
- The ERT members were briefed on our client's room number, vehicle registration, and assigned her the code name 'Raven' to use over radio transmissions;²
- There were 6-8 ERT members involved and briefed on the operation;³
- Those ERT members advised their colleagues that they were pleased that our client did not discern that the surveillance was taking place;⁴

¹ Name Withheld, *Submission 62*, p. 1; Mr Jon Nichols, *Submission 95*, p. 2; Name withheld, *Submission 99*, p. 1.

² Name Withheld, *Submission 62*, p. 1; Mr Jon Nichols, *Submission 95*, p. 2.

³ Mr Jon Nichols, *Submission 95*, p. 2; Name Withheld, *Submission 99*, p. 1.

⁴ Mr Jon Nichols, *Submission 95*, p. 2.

- Our client was filmed by the ERT members and that footage was shared with other staff of Wilson Security;⁵
- The amount of footage taken was described as 'considerable'.⁷

In particular, the submission of Mr Jon Nichols dated 29 July 2015 notes that:

The Senator and her entourage were accompanied by members of the Emergency Response Team, a day or two later I spoke to a member of the ERT I cannot recall exactly who he was and do not wish to defame the wrong person, he told me Ranger 1 (Mr Kahika) had us film the whole thing, we've been watching her the whole time. I was shown some video on a mobile phone that was of a female near what appeared to be the Menen hotel. I could not say 100% that it was Senator Hanson Young but believe that is who it was, he said they gave it all to intel so we know what she's been doing. There were some sd cards, the type used in the camera's [sic] carried by ERT, stored in the control room in a small plastic bag attached to white boards for many months, only to be used by ERT, I never saw there [sic] contents.⁸

Mr Nichols also witnessed the distribution of "leaflets with a picture of Senator Hanson-Young crying in the Senate with a 'meme' style wording to the effect 'Poor Whittle Refugees'⁹ and stated that these images "were known to exist by Wilson Security management."¹⁰ He added that "it was made very clear that anyone who spoke to the Senator would be dealt with."¹¹

Mr Nichols expressed concern in regards to the culture of accountability at Wilson Security stating that:

Wilson Security management directed the destruction of incriminating documents (pertaining to anything that needed to be covered up) by filing them into "FILE 13" – a code for an order to shred documents – regularly.¹²

It is worth noting that Submission 62 to the Senate Select Committee also remarks upon this practice of destruction of documents by Wilson Security:

I have not witnessed this myself, however I know people who has [sic] observed and are willing to attest to Wilson Management shredding reports regarding the use of force from 19 July 2013, concerns for safety and anything that will reflect badly on Wilson management or the processing centre.¹³

The Anonymous submission dated 19 August 2015 gave testimony to the Senate Select Committee that the surveillance campaign was authorised by Wilson Security management as follows:

⁵ Mr Jon Nichols, *Submission 95*, p. 2; Name Withheld, *Submission 99*, p. 1; (We note that Wilson Security has confirmed that their staff had access to equipment capable of recording video, including their own personal mobile phones. (Mr John Rogers, *Hansard*, 19 May 2015, p. 35)).

⁷ Mr Jon Nichols, *Submission 95*, p. 2; Name Withheld, *Submission 99*, p. 1.

⁸ Mr Jon Nichols, *Submission 95*, pp. 8-9.

⁹ Mr Jon Nicols, *Submission 95*, p. 3.

¹⁰ Mr Jon Nicols, *Submission 95*, p. 3.

¹¹ Mr Jon Nicols, *Submission 95*, p. 8.

¹² Mr Jon Nichols, *Submission 95*, p. 2.

¹³ Name Withheld, *Submission 62*, p. 2.

...the management of Wilson Security on Nauru both authorised and sanctioned this operation [surveillance of Sarah Hanson Young.] This operation involved approximately 6-8 ERT members and consisted of recording her every movement both in and out of the camps, they were also to report on whom she spoke with and if possible they were to ascertain what was said. Staff were requested to compile reports on her movements, contact with employees or Stakeholders. These reports and video surveillance footage were to be handed to the Intelligence unit for collation and dissemination.¹⁴

This same submission dated 19 August 2015 further stated that:

The Senate has been misled and misinformed by Wilson Security Executive Management that this was the action of a lone wolf operator, management were fully aware of this operation. A considerable amount of video surveillance footage was taken of Sarah Hanson Young, both inside and out of the processing centres by tasked Emergency Response Team members. This was then provided to the Wilson Security Intelligence unit for dissemination.¹⁵

The above submission also made reference to claims that staff were advised against speaking with our client's delegation, stating that:

Wilson Management were very concerned about her agenda while in Nauru and believed Wilson Security could be shown in a negative light. Staff were strongly advised/warned by Wilson Management prior to her arrival to refrain from speaking with her about asylum seekers, centre operations and anything that could be detrimental to Wilson's reputation in the processing centres.¹⁶

We note that this issue was also referenced in the testimony of Dr Peter Young at the public hearing on 9 June 2015:

Senator Hanson Young: (...) there are allegations that I was monitored (...) (a)re you aware of this ever happening to visitors to Nauru?

Dr Young: It is something that is very consistent with the sort of thing that we were aware of when there were independent visitors to the detention facilities. Again, often before a visit like this would occur there would be communications from the department that staff needed to be warned not to speak out of turn, and they would chaperon the visits inside the centres, have people observing when there were interactions between the health staff and the visitors. Again, it would be generally spoken about that if people were trying to make contact or speak to people then that would be reported back and they would know about it.¹⁷

Further allegations

On 13 August 2015 a number of former guards made further allegations to the Australian Broadcasting Corporation ('ABC') regarding the details of the surveillance of our client.¹⁸

These allegations stated that:

¹⁴ Mr Jon Nicols, *Submission 95*, p. 1.

¹⁵ Mr Jon Nicols, *Submission 95*, p. 1.

¹⁶ Mr Jon Nicols, *Submission 95*, p. 1.

¹⁷ Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 13.

¹⁸ Lisa Main, 'Former Wilson guard speaks out against Wilson Security over spying on Sarah Hanson-Young cover-ups and abuse', *ABC News* (online), 14 August 2015 <<http://www.abc.net.au/news/2015-08-13/former-nauru-guard-speak-out-about-wilson-security/6694014>>

- The surveillance of our client involved up to eight members of the ERT;
- The surveillance continued for the full three days that our client was on Nauru;
- Guards were ordered to photograph our client and make notes about who she met with; and
- One guard witnessed shredding of all documents relating to the surveillance operation, including photos and notes.

The Australian Greens understand from the ABC that its reports relied on the evidence of three former Wilson guards, none of whom made submissions to this Committee. On that basis, there seem to be five separate current or former Wilson Security guards who have made the suggestion that the evidence submitted by Wilson Security may have been incorrect.

Wilson Security's response

Wilson Security's representations to the Senate Select Committee as to the scope and nature of the surveillance are in contrast to these abovementioned submissions and allegations.

The affidavit evidence of Jason Kahika ('Mr Kahika') dated 7 August 2015 notes that:

- Our client was surveilled on 15 December 2013 from 1900 until 0300 on 16 December 2013 by two staff members acting under the direction of Mr Kahika;
- The surveillance took place from the car-park of the Menen Hotel, at which our client was staying;
- No documentary evidence was created or recorded during the surveillance, other than a single file note dated 16 December 2013;
- The mobile phones that were provided by staff at the time were not capable of recording videos; and
- Mr Kahika received no instruction from Wilson Security to engage in the surveillance.

In Wilson Security's submissions to the Senate Select Committee on 10 August 2015, they claimed the following:

- That an extensive investigation of video footage was undertaken in relation to the allegation and that no footage of our client was discovered;
- That employees received no warnings from management regarding speaking to myself prior to our client's visit; and
- That management had no knowledge of parodical, captioned images ('memes') of our client that were disseminated prior to her visit.

Accountability

Despite the noted seriousness of the conduct, the Department of Immigration and Border Protection have advised that Wilson Security did not create an incident report when the surveillance project was discovered²⁰ and there has been no documentary evidence submitted to date which confirms disciplinary action was taken against Jason Kahika.

Further, neither Wilson Security management or the Department of Immigration and Border Protection have made any representation as to the specific management directives that were given to Mr Kahika in relation to our client's visit to Nauru. Mr Kahika's affidavit expresses remorse for his lapse of judgment but does not go towards his motivation or reasoning as to his forming the belief that surveilling our client's visit to Nauru was an appropriate course of conduct.

Our client is concerned that there is a discrepancy between the evidence that has been received by the Senate Select Committee to date regarding the spying allegations. As such, we encourage your further inquiries as to whether or not the Committee has received false or misleading evidence.

Yours faithfully,



Jacob Varghese
Maurice Blackburn

²⁰ Mr Neil Skill, *Hansard*, 20 July 2015, pp. 85-86