

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.