

## 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.<sup>1</sup>

#### *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.<sup>2</sup> 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 committee<sup>3</sup> and in the additional comments appended to that report by Australian Greens

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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.<sup>4</sup> 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.)

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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.<sup>5</sup>

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.<sup>6</sup> 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.'<sup>7</sup> 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

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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.<sup>8</sup>

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.<sup>9</sup>

### ***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'.<sup>10</sup> 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.<sup>11</sup>

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

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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.

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

### ***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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup>

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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.<sup>17</sup>

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.<sup>18</sup>

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

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

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

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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,<sup>19</sup> 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.’<sup>20</sup> 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’

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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.<sup>21</sup>

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;

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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’,<sup>22</sup> 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.<sup>23</sup>

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.<sup>24</sup> 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’;

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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.’<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

### *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

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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’.<sup>28</sup> 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,<sup>29</sup> and was not reportable under departmental guidelines:

The information and allegations in relation to the incident on 15<sup>th</sup> 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.<sup>30</sup>

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.’<sup>31</sup>

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

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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.<sup>32</sup> 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.<sup>33</sup>

### ***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.<sup>34</sup>

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.<sup>35</sup>

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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.’<sup>36</sup> The department initially indicated that no internal investigation occurred.<sup>37</sup> A second position was that the department was satisfied by the investigations one of its officers had undertaken,<sup>38</sup> but there was no written report.<sup>39</sup> The department’s initial submission to the Privileges Committee indicated that ‘The Department immediately conducted an investigation into the matter.’<sup>40</sup>

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.<sup>41</sup>

### ***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

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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.<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup>

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.

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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.