

## **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.*





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27 October 2015

Senator the Hon Stephen Parry  
President of the Senate  
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Canberra ACT 2600

Received President's Office  
Hobart 1345 27/10/15  
JMN/HE

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;



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- (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



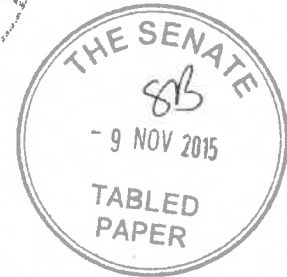
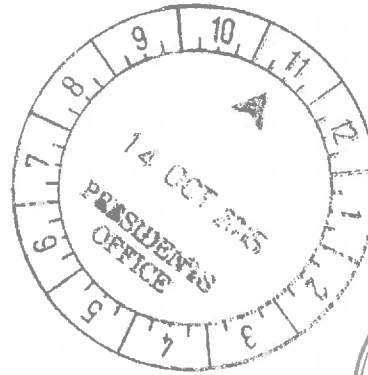
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September 2015

Senator the Hon Stephen Parry,  
President of the Senate  
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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".<sup>1</sup>

<sup>1</sup> 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"<sup>2</sup>.

While Wilson Security has acknowledged that the evidence provided by various witnesses on their behalf was "not reflective of the true situation"<sup>3</sup> 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"<sup>4</sup>. The Department advised the committee that the footage was not available to them.<sup>5</sup>

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*

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

<sup>3</sup> Wilson Security, Clarification of evidence, received 24 August 2015.

<sup>4</sup> Wilson Security, Answer to question on notice, 20 August 2015.

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

## SPEECH

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

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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

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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.



### **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;<sup>1</sup>
- 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;<sup>2</sup>
- There were 6-8 ERT members involved and briefed on the operation;<sup>3</sup>
- Those ERT members advised their colleagues that they were pleased that our client did not discern that the surveillance was taking place;<sup>4</sup>

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

<sup>2</sup> Name Withheld, *Submission 62*, p. 1; Mr Jon Nichols, *Submission 95*, p. 2.

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

<sup>4</sup> 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;<sup>5</sup>
- The amount of footage taken was described as 'considerable.'<sup>7</sup>

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.<sup>8</sup>*

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'<sup>9</sup> and stated that these images "were known to exist by Wilson Security management."<sup>10</sup> He added that "it was made very clear that anyone who spoke to the Senator would be dealt with."<sup>11</sup>

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.<sup>12</sup>*

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.<sup>13</sup>*

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:

<sup>5</sup> 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)).

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

<sup>8</sup> Mr Jon Nichols, *Submission 95*, pp. 8-9.

<sup>9</sup> Mr Jon Nicols, *Submission 95*, p. 3.

<sup>10</sup> Mr Jon Nicols, *Submission 95*, p. 3.

<sup>11</sup> Mr Jon Nicols, *Submission 95*, p. 8.

<sup>12</sup> Mr Jon Nichols, *Submission 95*, p. 2.

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

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.<sup>15</sup>*

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.<sup>16</sup>*

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.<sup>17</sup>

### 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.<sup>18</sup>

These allegations stated that:

<sup>14</sup> Mr Jon Nicols, *Submission 95*, p. 1.

<sup>15</sup> Mr Jon Nicols, *Submission 95*, p. 1.

<sup>16</sup> Mr Jon Nicols, *Submission 95*, p. 1.

<sup>17</sup> Dr Peter Young, *Committee Hansard*, 9 June 2015, p. 13.

<sup>18</sup> 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-guards-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 discovered<sup>20</sup> 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**

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<sup>20</sup> Mr Neil Skill, *Hansard*, 20 July 2015, pp. 85-86