



PARLIAMENT OF AUSTRALIA

**PRESIDENT OF THE SENATE**  
SENATOR THE HONOURABLE STEPHEN PARRY



7 November 2016

Senator Whish-Wilson  
Parliament House  
Canberra ACT 2600

Dear Senator ~~Whish-Wilson~~ *Peter,*

Thank you for your letter dated 2 November 2016, raising a matter of privilege arising from information revealed by the ABC Four Corners program broadcast on 31 October 2016 about the Tasmanian farmed salmon industry.

I am satisfied that the matter meets the first criterion I am required to consider under Privilege Resolution 4, 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 Senate has always regarded the protection of witnesses as one of its highest duties and has accepted that the protection of committees' capacity to conduct inquiries requires measures to support witnesses and safeguard the integrity of their evidence. Some of these measures are contained in the Privilege Resolutions.

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

In this case there is another remedy, at least in the first instance and, for that reason, I do not propose to grant precedence to a motion to refer the matter to the Privileges Committee at this stage.

Privilege Resolution 1(18) places the following obligation on committees:

Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence

given, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the Senate.

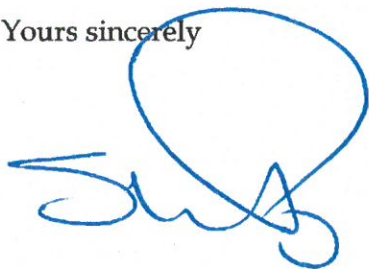
I believe that the appropriate course of action in this case would be for me to bring the matter to the attention of the Environment and Communications References Committee and ask it to make the necessary inquiries and report in accordance with Privilege Resolution 1(18). At that point, a reference to the Privileges Committee can be reconsidered in light of any further facts of the matter that the committee has been able to ascertain.

As noted by the Legal and Constitutional Affairs Legislation Committee in reporting on an alleged case of false or misleading evidence in relation to an inquiry conducted in the preceding Parliament, "Senate committees have a general and ongoing role to protect the integrity of their processes" (*Northern Land Council's evidence to the committee's inquiry into the provisions of the National Radioactive Waste Management Bill 2010*, report presented November 2011). By asking the committee concerned to make inquiries, I believe that the matter can be examined in context more effectively.

For completeness, I draw your attention to standing orders 81(4) which does not now operate, and 81(6):

- (4) A senator shall not take any action in relation to, or refer to, in the Senate, a matter which is under consideration by the President in accordance with this resolution.
- (6) A determination by the President that a motion relating to a matter should not have precedence of other business does not prevent a senator in accordance with other procedures taking action in relation to, or referring to, that matter in the Senate, subject to the rules of the Senate.

Yours sincerely



(STEPHEN PARRY)



PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE  
SENATOR THE HONOURABLE STEPHEN PARRY



7 November 2016

Senator Larissa Waters  
Chair - Environment & Communications References Committee  
Parliament House  
Canberra ACT 2600

Dear ~~Senator Waters~~ Larissa,

Recently, I received correspondence from Senator Whish-Wilson raising a matter of privilege arising from information revealed by the ABC Four Corners program broadcast on 31 October 2016 about the Tasmanian farmed salmon industry.

According to the correspondence, a witness who provided a submission to the Environment and Communications References Committee's inquiry into the regulation of the fin-fish aquaculture industry in Tasmania appeared on the ABC program and alleged that Tassal provided an inducement to him not to appear at the public hearings held by the committee in Hobart. The witness was Mr Warwick Hastwell. He and Ms Irene Hastwell provided Submission No. 41 to the committee's inquiry. The program also showed footage of an email, dated 9 July 2015, from Monika Maedler, General Counsel and Company Secretary, Tassal, to Mr Hastwell, warning against making disparaging statements, including in relation to the Senate inquiry, in the following terms:

We remind your clients of their obligation not to make disparaging statements whether in relation to the Senate Enquiry [sic] or to the media or otherwise.

From this information, it appears that there may well be grounds for concern about whether the witness was improperly influenced by Tassal.

I was satisfied that the matter met the first criterion I am required to consider under Privilege Resolution 4 ("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 Senate has always regarded the protection of witnesses as one of its highest duties and has accepted that the protection of committees' capacity to conduct inquiries requires measures to support witnesses and safeguard the integrity of their evidence. Some of these measures are contained in the Privilege Resolutions.

However, I was not satisfied that the matter met second criterion that I am required to consider, namely, the existence of any remedy other than the contempt power for any act which may be held to be a contempt.

In this case there is another remedy, at least in the first instance and, for that reason, I advised Senator Whish-Wilson that I did not propose to grant precedence to a motion to refer the matter to the Privileges Committee at this stage.

Privilege Resolution 1(18) places the following obligation on committees:

Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the Senate.

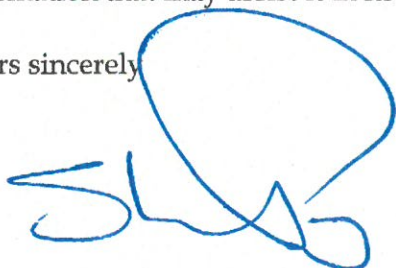
A committee is authorised (and indeed required) by Privilege Resolution 1(18) to "take all reasonable steps to ascertain the facts of the matter" when its attention is drawn to the alleged improper influence and notwithstanding that the inquiry was completed in a previous session.

I am therefore bringing this matter to the committee's attention so that it may make the necessary inquiries to ascertain the facts, and report to the Senate in accordance with Privilege Resolution 1(18) should the facts warrant it. At that point a referral to the Privilege Committee may be reconsidered.

As noted by the Legal and Constitutional Affairs Legislation Committee in reporting on an alleged case of false or misleading evidence in relation to an inquiry conducted in the preceding Parliament, "Senate committees have a general and ongoing role to protect the integrity of their processes" (*Northern Land Council's evidence to the committee's inquiry into the provisions of the National Radioactive Waste Management Bill 2010*, report presented November 2011). In asking the committee concerned to make inquiries, I believe that the matter can be examined in context more effectively.

I suggest the committee ascertain from Senator Whish-Wilson whether he has any further information that may assist it in its task.

Yours sincerely



(STEPHEN PARRY)



SENATOR PETER WHISH-WILSON  
Australian Greens Senator for Tasmania



2 November 2016

Senator Stephen Parry  
President of the Senate  
Parliament House  
Canberra ACT 2600

Dear Mr President

I am writing to you to ask that you consider a matter of privilege.

Specifically, I am writing to ask that you consider whether Tassal provided, or attempted to provide, an inducement to a potential witness not to give evidence to the Senate Environment and Communications References Committee.

On 31 October 2016, ABC Four Corners aired a program on salmon farming in Tasmania. As you would be aware, this issue was the subject of a references inquiry by the Senate Environment and Communications Committee during 2015. This committee reported on this inquiry on 21 August 2015.

Submission 41 to the inquiry was from Warwick and Irene Hastwell, the proprietors of Dover Bay Mussels. Warwick Hastwell appeared on the Four Corners program and alleged that an inducement was provided to him by Tassal not to appear at the Senate inquiry public hearings that were held in Hobart.

Four Corners also showed footage of an email dated 9 July 2015 from Monika Maedler, General Counsel & Company Secretary, Tassal, to Warwick Hastwell. *Inter alia*, this email stated:

*We remind your clients of their obligations not to make disparaging statements whether in relation to the Senate Enquiry [sic] or to the media or otherwise.*

I would ask that you examine this matter and determine whether and, if so, when a motion should be brought before the Senate.

Regards

Peter Whish-Wilson  
Australian Greens Senator for Tasmania

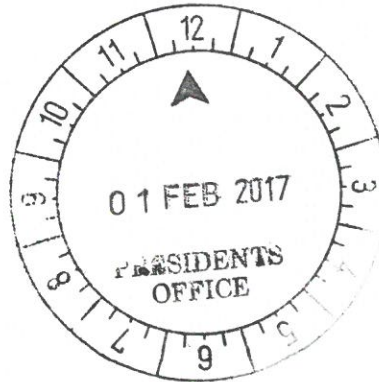




## ENVIRONMENT AND COMMUNICATIONS REFERENCES COMMITTEE

27 January 2017

Senator the Hon Stephen Parry  
President of the Senate  
Parliament House  
CANBERRA ACT 2601



Dear Mr President

### Matter of privilege relating to the protection of a witness

I write to you on behalf of the Environment and Communications References Committee (the committee) to formally raise a matter of privilege under Standing Order 81. The matter relates to the protection of a witness who may have been improperly influenced in respect of evidence given or to be given before the committee or induced to refrain from giving such evidence before the committee.

### Background

On 15 July 2015, the committee conducted a public hearing in Hobart in connection with its inquiry into fin-fish aquaculture in Tasmania. Mr Warwick Hastwell of Dover Bay Mussels was invited to give evidence at the hearing in support of his submission to the inquiry.

In accepting the invitation, Mr Hastwell informed the committee secretariat that he was undergoing surgery. He was offered the opportunity to give evidence via teleconference but indicated that he wished to appear in person. On the morning of the hearing, Mr Hastwell emailed the committee secretariat stating that he was unable to attend to give evidence due to his medical condition. The email was followed by a telephone call to secretariat from Mrs Hastwell similarly indicating that Mr Hastwell was unwell.

On Monday, 31 October 2016, the ABC *Four Corners* program 'Big Fish' canvassed a range of matters related to salmon farming in Tasmania. The program included Tassal's purchase of the Dover Bay Mussels leases and Mr Hastwell's failure to appear at the committee's hearing. During the program, Mr Hastwell stated that he decided not to appear at the committee's hearing as 'the cost would have been too great'. Mr Hastwell also agreed with the *Four Corners* interviewer's suggestion that he believed that he was 'prevented or coerced' from giving evidence.

At a private meeting on 10 November 2016, the committee considered the issues raised on *Four Corners* and your correspondence dated 7 November 2016 in relation to this matter. In accordance with Privilege Resolution 1(18), the committee resolved that there was reason to believe that Mr Hastwell may have been improperly influenced in respect of the evidence he was to give at the hearing of 15 July 2015 and, therefore, that it would take all reasonable steps to ascertain the facts of the matter. To this end, the committee agreed that the chair would write

to Mr Hastwell and to Tassal seeking statements and information relevant to the matters aired on *Four Corners*.

### **Relevant facts**

At a private meeting on 29 November 2016, the committee considered statements and documents provided by Mr Hastwell and Tassal in relation to this matter. On the basis of the information provided in those statements, the following facts were considered by the committee as relevant to the questions:

- In January 2015, Tassal commenced negotiations for the purchase of the Dover Bay Mussel leases.
- On 24 March 2015, the inquiry into the fin-fish aquaculture industry was referred to the committee.
- The deed of sale for the mussel leases provided by Tassal to the Hastwells contained a confidentiality and non-disparagement clause. On 10 June 2015, the Hastwells' solicitor sought to have the clause amended to specify that the submission to the committee provided by Dover Bay Mussels and any evidence that Mr Hastwell or Mrs Hastwell were required to give to the inquiry would not be deemed as constituting a breach of the non-disparagement clause.
- On 16 June 2015, the submission from Dover Bay Mussels was published on the inquiry webpage. The submission canvassed issues related to Mr Hastwell's concerns about in water net cleaning by the fin-fish industry and problems on the mussel lease which Mr Hastwell believed were related to this practice.
- On 18 June 2015, Tassal responded to the email of 10 June 2015 from the Hastwells' solicitor and indicated that the deed was 'irrelevant' to the inquiry.
- On 1 July 2015, Ms Monika Maedler, Tassal General Counsel, emailed the Hastwells' solicitor advising that Tassal had become aware of a potential breach of confidentiality, that the matters were becoming 'difficult' and that the sale offer made on 18 June 2015 had to be accepted by close of business 8 July 2015 or it would be withdrawn.
- On 7 July 2015, Tassal became aware that Mr Hastwell was to appear before the committee on 15 July 2015. Ms Maedler, Tassal General Counsel, sought to clarify how Mr Hastwell intended to give evidence without breaching confidentiality around discussions with Tassal representative Ms Linda Sams and the terms of the sale deed.
- On 8 July 2015, the Hastwells' solicitor informed Tassal that the sale offer was accepted and that Mr Hastwell intended to proceed with the giving of evidence to the committee on the basis that Tassal had no objection to Mr Hastwell's involvement and attendance at the inquiry 'provided that no disclosure is made in relation to the sale of the leases to your company or the terms of the sale'. A response was sought if Tassal had any concerns with Mr Hastwell appearing.
- On 9 July 2015, Ms Maedler, Tassal General Counsel, in an email to the Hastwells' solicitor providing the final deed of execution, again reminded the Hastwells of their obligations 'not to make disparaging statements whether in relation to the Senate Enquiry or to the media or otherwise. This is in addition to your clients obligations regarding confidentiality in relation to the terms of the Deed as well as the discussions with Ms Sams and the issues that were in dispute (the allegations) as defined in the Deed.'



- On 10 July 2015, the secretariat sent letters (via email) to witnesses formally inviting them to give evidence at the hearing. On the same day, it appears Tassal was provided with a copy of the 'Procedures to be observed by Senate Committees for the protection of witnesses' which had been included in the invitation letters. Ms Maedler, Tassal General Counsel, emailed the Hastwells' solicitor and noted that Mr Hastwell was to give evidence to the committee and referred to the procedures for the protection of witnesses. Ms Maedler stated that, on reviewing the procedures, it appeared to Tassal 'that our offer may be construed by others as contravening these procedures and accordingly we withdraw our offer as tabled with immediate effect. I am instructed that Tassal will revisit the offer after the Senate Enquiry issues its final report.'
- On 13 July 2015, the Hastwells' solicitor wrote to Tassal noting that the sale offer could not be withdrawn because it had been accepted by the Hastwells and indicated that the Hastwells did not intend to attend the inquiry 'unless ordered by the Committee to do so'.
- On 15 July 2015, Mr Hastwell emailed the committee indicating that he was unable to attend the hearing due to his medical condition.

**Evidence as to whether Mr Hastwell may have been improperly influenced in respect of evidence given or to be given before the committee or induced to refrain from giving such evidence**

The central matters considered by the committee in determining whether Mr Hastwell may have been improperly influenced in respect of evidence given or to be given before the committee, or induced to refrain from giving such evidence, were Tassal's references to the confidentiality clause and terms of the non-disparagement clause (including discussion of issues in dispute) in the sale deed and the purported withdrawal of the sale offer.

*Mr Hastwell's position*

On the *Four Corners* program, Mr Hastwell agreed that he had been 'prevented or coerced' from giving evidence. In his statement to the committee, Mr Hastwell noted that, while verbal advice had been given that the sale offer had nothing to do with the committee's inquiry, Tassal had not agreed to amend the non-disparagement clause contained in the sale deed when this was sought on 10 June 2015.

Mr Hastwell stated that, following the Tassal advice that the offer made on 18 June 2015 had to be accepted by close of business on 8 July 2015 or it would be withdrawn, there was no option but to accept the offer or suffer a considerable financial penalty due to the difficulties in finding another buyer.

Mr Hastwell noted that on 7 and 9 July 2015 Tassal corresponded with his solicitor to remind the Hastwells of their obligations under the sale deed and seeking clarification on how Mr Hastwell intended to give evidence without breaching confidentiality around discussions with Tassal's representative and the terms of the deed. The Hastwells' solicitor attempted to clarify Tassal's position in relation to Mr and Mrs Hastwell giving evidence to the committee following receipt of the 7 July 2015 email.

Mr Hastwell described the 9 July 2015 email as 'basically a "got you" moment' as it contained reference to the confidentiality requirements regarding discussions and the 'issues in dispute' which were the basis of the submission provided to the committee. Mr Hastwell further commented that he was advised that by giving evidence he would potentially be in breach of

the deed. As consequence, Mr Hastwell decided that it would be 'unwise' to appear before the committee as he and his wife could not afford financially to risk the sale of the mussel leases.

Mr Hastwell concluded while initially they were lead to believe that the sale was separate from providing a submission to the committee, Tassal imposed a sale deadline one week from the hearing date, Tassal 'effectively knobbed' him by referencing the obligations regarding confidentiality and non-disparagement clauses contained in the sale deed and then attempted to withdraw from the deal.

In relation to the email of 10 July 2015 concerning the withdrawal of the sale offer, Mr Hastwell commented that if Tassal was concerned that it not be seen to contravene the requirements for the protection of witnesses, Tassal should have sought to amend the sale deed in the terms proposed by the Hastwells. However, Mr Hastwell indicated that he and his wife felt that they had no option but to hold Tassal to the sale agreement even though 'it meant that we had to remain silent'. Mr Hastwell concluded that to appear at the hearing would have held too great a financial risk and he therefore notified the committee secretariat that he could not appear due to medical reasons.

#### *Tassal's position*

Tassal's statement asserts that its primary focus was the protection of commercially sensitive information and to ensure that Mr Hastwell did not speak publicly about confidential commercial discussions as this had occurred in the past. Tassal provided media articles to support this claim.

Tassal advised that the inclusion of the confidentiality clause and the non-disparagement clause were standard terms for Tassal in commercial transactions of this nature and were particularly important given Mr Haswell's history of breaching confidentiality. Tassal noted the communications between the parties in relation to the clauses. Tassal stated that confidentiality clauses are important in its commercial transactions, such as the transaction involving the Hastwell, as the fin-fish aquaculture industry in Tasmania is small and highly competitive. In relation to the non-disparagement clause, Tassal noted it was important to protect its reputation particularly in the circumstance where Tassal settled what it perceived to be an unmeritorious claim by a disgruntled person on commercial grounds.

Tassal stated that it had made clear in June 2015 that the negotiations around the sale deed and the terms of the deed did not interfere with the Hastwells' engagement in the committee's inquiry. Tassal commented that its response to the information that Mr Hastwell was to appear before the committee was based on concerns that Mr Hastwell would divulge commercially sensitive information and 'perhaps a lack of clarity as to Senate Committee procedures'. Tassal asserted that the emails between the Tassal representative and the Hastwells' solicitor in early July 2015 were drafted 'in light of the emphasis on the confidentiality of the commercial transactions and that the communications between the parties in relation to commercial confidentiality and non-disparagement had been lengthy'. In addition, Tassal noted that Mr Hastwell had previously breached confidentiality and had threatened to do so again if Tassal did not accede to his demands.

Tassal also commented that the emails were not directives from Tassal to Mr Hastwell, but rather in the nature of communications between lawyers. Further, Tassal noted that it did not speak directly to Mr Hastwell about his submission or scheduled appearance at the committee hearing. Tassal stated that its intention was not to prevent or discourage Mr Hastwell's participation in the inquiry 'but rather to remind him through his lawyer of his wider

obligations under the Sale Deed'. Tassal also acknowledged the clauses did not prevent or restrict the giving of evidence to the committee but did apply to comments made by Mr Hastwell outside the committee hearings and it was to this aspect 'which the emails were directed'.

The email of 10 July 2015 was described by Tassal as a 'purported withdrawal' of the offer to purchase the mussel leases. Tassal stated that this had been inaccurately portrayed by Mr Hastwell. Rather, Tassal informed the committee that Ms Maedler believed that 'the offer could potentially be construed as influencing Mr Hastwell and that...withdrawing the offer would be liberating for Mr Hastwell in relation to the Senate Inquiry and any evidence that Mr Hastwell may give before the Committee'. Tassal advised that it was also seeking to avoid any potential perception that it had attempted to influence evidence that may be given to the committee by purchasing assets of a party which had made complaints about Tassal. Tassal stated that the withdrawal of the offer 'was not an attempt to interfere with or influence Mr Hastwell, or to deprive him of any benefit of account of him giving evidence, but an effort to avoid a possible contravention of parliamentary procedure and privilege.'

Tassal did not consider that Mr Hastwell's claim that he was coerced were reflected by his actions or threats and pointed to Mr Hastwell's submission to the committee, his public comments disparaging Tassal and his threats to breach confidentiality. Tassal maintained that the decision not to appear at the hearing was a 'discretionary decision' by the Hastwells' made with the benefit of their legal representative's legal insight.

Tassal acknowledged that more care should have been taken by Ms Maedler in the wording of her correspondence with the Hastwells' solicitor. In particular, Tassal commented that it may have been better had the correspondence referenced the distinction between the giving of evidence to the committee and statements made outside the committee process. However, Tassal reiterated that Ms Maedler's intent and legal focus was on dealing with issues of disparagement and confidentiality with the Hastwells' solicitor and not Mr Hastwell's involvement with in the committee inquiry.

## **Conclusion**

After following the process prescribed by Privilege Resolution 1(18), the committee considers that, on the basis of the information before it, representatives of Tassal may have improperly influenced Mr Hastwell in relation to the evidence he was to have given to the committee at its public hearing on 15 July 2015. Mr Hastwell's decision to refrain from giving evidence at the public hearing meant the committee could not question Mr Hastwell about the matters raised in his submission or otherwise explore matters within Mr Hastwell's knowledge that were directly related to the inquiry.

The committee cannot know what evidence Mr Hastwell may have given during the 15 July 2015 public hearing. However, it is possible that the committee's ability to inform itself fully about the impacts of fin-fish aquaculture on waterway health was negatively affected as a result of his decision to refrain from giving evidence. Committee members did not have the benefit of Mr Hastwell's oral evidence to inform the possible lines of questioning they could pursue with other witnesses. It follows that this could have had implications for the findings and recommendations that could be considered by the committee for its report.

Accordingly, the committee requests that you give precedence to a notice of motion to refer this matter to the Committee of Privileges. The committee would of course be happy to provide the Committee of Privileges with any supporting documentation the Committee of Privileges requires.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Waters', written in a cursive style.

Senator Larissa Waters  
**Chair**