

The Senate

Committee of Privileges

Possible threat to senators

177th Report

November 2019

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ISBN 978-1-76093-018-9

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Report

Introduction

1.1 On 19 September 2019, the Senate referred a possible contempt to the Privileges Committee for inquiry in the following terms:

Having regard to the statements made to the Senate by Senators Patrick and Lambie on 16 September 2019 and the document tabled by the President on 18 September:

- (a) whether there was any attempt to improperly interfere with the free performance by any senator of their duties as a senator;
- (b) whether there was any attempt to improperly influence any senator in their conduct as a senator, by intimidation, force or threat of any kind; and
- (c) if so, whether any contempt was committed in respect of those matters.

1.2 Having undertaken a preliminary investigation into the facts of the matter, the committee reports that it does not consider the alleged conduct warrants further investigation as a possible contempt in the terms set out in Privilege Resolution 2.

Background

1.3 On 16 September 2019, Senators Patrick and Lambie made statements to the Senate regarding a media report relating to audio allegedly of Mr John Setka (the Secretary to the Victorian division of the Construction, Forestry, Maritime, Mining and Energy Union) reporting on a meeting he had with Senator Lambie at her home in Tasmania.

1.4 Senator Patrick, in his statement, characterised Mr Setka's remarks as 'threats' to Senator Griff, Senator Lambie and himself in relation to the Senate's consideration of the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019, and, in particular, how the three senators might vote on the bill. He informed the Senate that he was considering what actions he might take in relation to the threats. Senator Lambie spoke in support of Senator Patrick statement, indicating 'Politics can be brutal but it should never become violent'.¹

1.5 On the next day, Senator Patrick wrote to the President raising a matter of privilege in accordance with standing order 81, and asking that the President grant precedence to a privilege motion. In his letter Senator Patrick quoted from the media report at length, including:

1 *Senate Hansard*, 16 September 2019, p. 2254.

In 20 years time when the Centre Alliance Senators were walking down the street they could expect to be abused, he [Mr Setka] said.

'Someone is going to point the finger and say, "There's them f---ers that voted for that Bill that f---ed up not just construction workers but all workers in Australia'. And I said [to Senator Lambie], 'They can f---ing wear that'.

1.6 Senator Patrick expressed his view that these paragraphs of the media report 'amount to a threat against myself and the other crossbench senators to subvert us freely exercising our votes in relation to the bill'.² Senator Patrick suggested that the union that Mr Setka leads was comfortable 'with the use of coercive conduct' and that he had witnessed two union members 'accosting [former senator] Nick Xenophon at a Perth airport lounge around the time of the ABCC/ROC legislation³ being voted on' and this led him to form the view that the comments reported in the media 'amounted to a threat'.⁴

1.7 On 18 September the President, in a statement, indicated that he had determined Senator Patrick's matter had met the criteria he is required to consider and granted precedence to the motion. The President's determination is not a recommendation that a matter be referred; that is a matter for the Senate. In making his determination, he is proscribed from considering the merits of the matter, his decision turns on the nature of the allegation, and whether alternative remedies are available.

1.8 Senator Patrick gave notice and made a statement indicating that the matter had also been referred to the Australian Federal Police. The next day the matter was referred to the committee. The Senate's decision to refer the matter was made following brief comments from the Leader of the Australian Greens and the Leader of the Opposition in the Senate.

Role of the Committee

1.9 The committee has been charged by the Senate to establish, in the first instance, whether Mr Setka in making his remarks sought to either improperly interfere with or improperly influence the three senators in the free performance of their duties as senators. Secondly, the committee must consider whether any such actions may constitute a contempt of the Senate.

1.10 In addressing these matters, the committee has the guidance of the Privilege Resolutions, and in particular Privilege Resolutions 3 and 6. Privilege Resolution 6 sets out matters which may constitute a contempt of the Senate, including 6(1) and (2) which are relevant to this matter. Consideration of the second aspect of the inquiry is

2 Senator Rex Patrick, correspondence received, p. 2 (tabled 18 September 2019).

3 Building and Construction Industry (Improving Productivity) Bill 2016/(Fair Work (Registered Organisations) Amendment Bill 2016.

4 Senator Rex Patrick, correspondence received, p. 2 (tabled 18 September 2019).

guided by the terms of Privilege Resolution 3⁵ (Criteria to be taken into account when determining matters relating to contempt) and in conducting the inquiry the committee is also required to follow the procedures set out in Privilege Resolution 2.⁶ If the committee considers that there are allegations against any person which warrant investigation as a possible contempt, then it must inform the person of the allegations made against them and the particulars of any evidence known to the committee. The person should be given the opportunity to respond to those allegations.

1.11 The committee is also guided by the views expressed by its predecessors in relation to earlier inquiries.

Previous Inquiries

1.12 At the end of the 45th Parliament the committee, in reporting on the possible improper interference with a senator in the free performance of his duties, noted that:

since the first case of alleged intimidation of a senator was investigated in 1904, the Senate has taken a fairly robust view as to whether senators have been improperly obstructed, on the basis that senators are generally capable of looking after themselves. The only area in which the committee has departed from this view is where it has been asked to consider allegations of interference arising from covert conduct, which is not a relevant factor in this matter.⁷

1.13 In its 53rd Report the committee also examined whether possible threats made to a senator in connection with comments made in the Senate in debate constituted a contempt. The committee did not find a contempt had been committed although it acknowledged that:

The aggressive way in which he [the subject of the inquiry] prosecuted his campaigns understandably gives rise to a perception that such behaviour is threatening. However, the Committee does not regard the actions in this case as having had the effect or tendency of substantially obstructing a senator in the performance of his duties⁸

1.14 Possible threats to the Senate and its committees were also considered in the committee's 43rd Report. The committee examined the actions of the Eros Foundation and its public relations consultants during a senate select committee inquiry. There were two possible contempts arising from a submission and then an interview with the media. The committee determined that the actions investigated could 'give rise to a perception of a threat,' but concluded 'on the evidence that a threat was not involved, and therefore that their actions, while inept and offensive, could not be regarded as

5 [Link to resolution 3](#)

6 [Link to resolution 2](#)

7 Committee of Privileges, *Possible improper interference with a Senator in the free performance of his duties*, 175th Report, April 2019, p.3. para 1.16.

8 Committee of Privileges, *Possible threat to a senator*, 53rd Report, March 1995, p.4. para 9.

having the effect or tendency of substantially obstructing Senators in the performance of their functions'.⁹

1.15 In that report the committee also reemphasised that 'only under extreme circumstances would it consider treating an action as a contempt because of its intrinsic seriousness, regardless of the motivation or intent of the people performing it'.¹⁰

Conduct of the Committee's Inquiry

1.16 The committee conducts its work in an open and transparent manner, taking guidance from the Privilege resolutions.

1.17 In its early consideration of the matter, the committee dismissed any covert conduct as a relevant factor: Senator Lambie has not questioned Mr Setka's advice to his union colleagues that he and a colleague visited Senator Lambie's home at her invitation to discuss the Integrity bill. The audio published by the media suggests that during these discussions, Senator Lambie asked Mr Setka to relinquish his leadership of the union as it was a 'target'. Mr Setka reported that he asked Senator Lambie whether his resignation would result in the Integrity bill's failure to pass the Senate – 'So if I step down will the Integrity bill not go through and she goes, "there are no guarantees in life...".¹¹

1.18 The committee also discussed Senator Patrick's referral of the matter to the AFP, noting that in its 175th Report the committee had decided not to pursue a matter under police investigation as such inquiries were not generally commenced until the police investigations or subsequent court proceedings were finalised.¹² On 23 October, Senator Patrick wrote to the committee informing it that he had been advised by the AFP that they had completed their investigations and that, despite pursuing all avenues of inquiry, the AFP found no case. In his letter to the committee Senator Patrick reminded it of his statement when giving notice:

The elements and thresholds associated with a threat-related crime are different to the elements and thresholds associated with an attempt to improperly interfere with the free performance of any senator's duties as a senator.¹³

1.19 The committee considered Senator Patrick's reminder in his letter to the President of the terms of section 4 of the Privileges Act and Privilege Resolution 6,

9 Committee of Privileges, *Possible Threats to Senate Select Committee or Senators*, 43rd Report, December 1993, p.11.para 2.10.

10 Committee of Privileges, *Possible Threats to Senate Select Committee or Senators*, 43rd Report, December 1993, p.10. para 2.2.

11 Transcription of available audio undertaken by the committee ([link to article](#))

12 Harry Evans and Rosemary Laing, eds, *Odgers' Australian Senate Practice*, 14th edition, Department of the Senate, 2016, p. 89.

13 *Senate Hansard*, 18 September 2019, p. 2480.

which provide the context for his comments that thresholds for a crime and a contempt are different.

1.20 The Privileges Act is a partial codification of the powers and immunities that the Commonwealth inherited from the House of Commons on federation. Section 4 of the Act states:

4 Essential element of offences

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

1.21 The section establishes a statutory test, by which contempts can be assessed. As the committee set out in its 164th Report the threshold for finding a contempt is a high one, requiring evidence of an improper act which is intended or is likely to substantially interfere with the functions or duties of the Senate or senators. However, any conduct which satisfies this test may constitute an offence¹⁴, even if that act is lawful.

1.22 Privilege resolution 6 provides guidance as to the particular acts that may constitute a contempt, including the following two offences identified by Senator Patrick:

Interference with the Senate

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

and

Improper influence of senator

- (2) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer of promise of any inducement or benefit of any kind, or by other improper means, influence a senator in the senator's conduct as a senator or induce a senator to be absent from the Senate or a committee.

1.23 The first task the committee set itself was to establish whether Mr Setka's comments as reported could constitute a threat and therefore warrant further investigation as a possible contempt. If the committee considers that a possible contempt occurred, it is obliged to observe the procedures set out in Privilege Resolution 2 in conducting an inquiry.

14 Committee of Privileges, *Search warrants and the Senate*, 164th Report, March 2017, p.12. para 3.4.

Was there a threat? Was there substantial obstruction?

1.24 When giving his notice of motion to refer the inquiry to the committee, Senator Patrick, set out a case that:

The remarks made by Mr Setka go beyond threatening to run a campaign against Centre Alliance at the next election – an action which one would correctly characterise as 'just politics'. Rather, Mr Setka foreshadowed members of his organisation crossing paths with myself and Senator Griff at some future time and engaging in abuse.¹⁵

1.25 Senator Patrick indicated that he has 'been the uncomfortable and concerned witness to two CFMEU members accosting [former senator] Nick Xenophon at Perth Airport lounge at about the same time as the ABCC and ROC legislation was being voted on ... I put it to you that it is not something that Senator Griff or I should have to factor in when dealing with how to vote in this chamber.'¹⁶

1.26 While the media report quoted by Senator Patrick in his letter to the President did indicate that Mr Setka had said that the Centre Alliance senators could expect 'abuse' in years to come, the available audio of Mr Setka does not use that term. Instead Mr Setka is recorded as saying

... we're going to make sure that in 20 f* years' time when they're walking down the street someone is going to point the finger and say, there's them f*ers that voted for that Bill that f*ed up not just construction workers but all workers in Australia ...¹⁷

1.27 Senator Patrick linked the media commentary (rather than Mr Setka's comments) with events (the incident in the airport lounge) that Mr Setka, in making his comments, could not have foreseen.

1.28 While Senator Lambie spoke of violence, she indicated that her vote 'will never be determined by who bullies me the most'¹⁸ and again called on Mr Setka to resign his position in the union. Senator Lambie did not cast Mr Setka's statements as a threat that would be influencing her in her consideration of the Integrity bill.

1.29 Senator Lambie has been clear in her statements that she considers Mr Setka should resign his position and that her view on his leadership has become interwoven with her position on the legislation. Media coverage also link the two matters and Mr Setka's commentary suggests that his view of the outcome of his discussion with Senator Lambie is an inextricably link between the two. Mr Setka has also publicly stated that his intention was not to threaten but to have his say in the discussion:

'When you're a politician, you've got to get used to campaigning. It's a two-way street; they have their say, I have my say,' he said.

15 *Senate Hansard*, 18 September, p.2480.

16 *Senate Hansard*, 18 September, p. 2480.

17 Transcription of available audio undertaken by the committee ([link to article](#))

18 *Senate Hansard*, 16 September, p. 2254.

'There's no threat been made.'

Mr Setka denied being a 'bully' and said he had 'no reason to step down' while he had the support of his branch members.¹⁹

1.30 In making its assessment as to whether a threat was made, and therefore a possible contempt occurred, the committee has the terms of Privilege Resolution 3 (Criteria to be taken into account when determining matters relating to contempt) to guide its deliberations, which require it to consider:

- Whether the actions taken can substantially obstruct the senators from performing their functions;
- Whether there is any other remedy;
- Whether the act was committed with intent or whether there is a reasonable excuse for committing the act.

1.31 In its deliberations on the matter, the committee considered the precedents in previous findings. It noted the findings of the 43rd Report where the committee found that, although the actions under consideration could give rise to a perception of a threat, the explanations of the actions indicate that they were not intended to obstruct senators in the performance of their duties, but designed to contribute to the discussion on the matter. On that occasion the committee did not find a contempt had occurred.²⁰

1.32 The committee's findings in its 53rd Report were also instructive, as again the committee did not find a contempt had occurred despite the possible perception of threatening behaviour. The findings indicated the committee's view that 'All Senators and Members of Parliament receive threats of this nature and regard themas "part of the risk of public life"²¹.'

1.33 The findings of the inquiry concerning the possible interference with a witness to a Senate committee reported in the 166th Report²² influenced the work of the committee. In that inquiry the committee noted that a decision whether or not to participate in the inquiry had effectively been treated as currency in sale negotiations and it could not conclude that a contempt had occurred because the alleged 'threat' was mired in other factors.

Conclusion

1.34 The committee acknowledges Senator Patrick's argument that 'No senator should ever be threatened or intimidated in relation to a vote. Lobbied, challenged on

19 Dana McCauley, 'I am not a bully': Controversial union boss John Setka denies threatening senators, refuses to step down', *Sydney Morning Herald*, 18 September 2019 ([link](#))

20 Committee of Privileges, *Possible Threats to Senate Select Committee or Senators*, 43rd Report, December 1993, p.11.para 2.10.

21 Committee of Privileges, *Possible threat to a senator*, 53rd Report, March 1995, p.4.

22 [Link to report](#)

the merits, presented with contrary views, and criticised? Yes. Threatened? No.²³. It agrees that '[T]here should be zero tolerance for anyone who seeks to influence a senator's vote by way of threat²⁴.' The committee also acknowledges that Mr Setka has clarified his intentions in public statements, indicating while seeking to influence voting on the Integrity bill, his comments were not designed to apply undue influence on the three senators' decisions on how to vote.

1.35 The committee does not condone Mr Setka's comments to advance his union's position on the Integrity bill. However, any substance to the alleged threat appears to be established in a media report and previous unrelated events and the intent of the comments has been clarified.

1.36 The committee and the Senate have an established practice of applying its contempt powers sparingly and only for the reasonable protection of the Senate, its committees and senators against improper acts tending substantially to obstruct them in the performance of their functions (Privilege Resolution 3(a)). The committee's expressed views on how they should be used for the protection of senators acknowledges that senators are robust, resilient and can generally take care of themselves, unless there is a covert element, which is missing in this matter.

1.37 In its examination of this matter the committee found no evidence to suggest that the committee should depart from the established practice on such matters. It concluded that the alleged conduct whilst extremely distasteful did not require further investigation as a possible contempt in the terms set out in Privilege Resolution 2.

Senator Deborah O'Neill

Chair

23 *Senate Hansard*, 16 September 2019, p. 2254.

24 *Senate Hansard*, 16 September 2019, p. 2254.

Appendix 1

STATEMENTS

Setka, Mr John

Senator PATRICK (South Australia) (15:01): Mr President, I seek leave to make a short statement in relation to threats made by a CFMMEU official towards me, Senator Griff and Senator Lambie over the weekend.

Leave is granted.

Senator PATRICK: Senators may be aware of media reports over the weekend relating to threats made to me, Senator Griff and Senator Lambie by Mr Setka in relation to a pending vote in this chamber on the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019. No senator should ever be threatened or intimidated in relation to a vote. Lobbied, challenged on the merits, presented with contrary views, and criticised? Yes. Threatened? No.

This is a very serious matter. Senators Griff, Lambie and I are giving careful consideration to what action we will take in relation to the threat. Under consideration are a number of options, including referral to the Privileges Committee, referral to the police, or inviting Mr Setka to appear before the Education and Employment Committee to explain his remarks. It will likely be a combination of these things. There should be zero tolerance for anyone who seeks to influence a senator's vote by way of threat. We cannot possibly leave this matter unattended.

Senator LAMBIE (Tasmania) (15:03): I seek leave to make a short statement in relation to John Setka.

Leave is granted.

Senator LAMBIE: I rise to support the statement from Senator Patrick regarding the conduct of Mr John Setka. To seek to influence a vote in this chamber by threat or intimidation is completely inappropriate. I dish it out myself a fair bit in this place, so I cannot be complaining when it comes back in my direction, but the comments attributed to Mr Setka in recent reports are entirely beyond the pale. Politics can be brutal but it should never become violent. We are closely examining what options are available to us to ensure that this kind of intimidation gets the response it rightfully deserves. My vote will never be determined by who bullies me the most. I won't be swayed by threats or the people who make them. But allowing these threats to go unanswered is no longer an option. I won't be saying anything further on the matter until we have determined the most appropriate course of action.

To John: I can only appeal to whatever is left of your sense of decency and honour, by asking you to consider doing what is plainly in the best interests of your union members—I urge you, once again, to stand down and resign.

Appendix 2

PRIVILEGE

The PRESIDENT (09:31): I have a statement to make relating to parliamentary privilege. By letter dated 17 September, Senator Patrick has raised a matter of privilege concerning comments of Mr John Setka reported in the media over the past weekend. The allegation is essentially that these comments amount to an attempt to intimidate crossbench senators in respect of their votes on a fair work amendment bill currently before the parliament. Where a matter of privilege is raised, my role is to consider whether a motion to refer the matter to the Privileges Committee should have precedence in debate. In doing so, I am bound to have regard only to the two criteria in privilege resolution 4. The first of these criteria seeks to reserve the Senate's contempt powers for matters involving substantial obstruction to Senate and committee processes or to the performance of senators' duties as senators. Any credible allegation that a person has sought to intimidate a senator to change their vote is a serious one, meeting the first of the criteria I must consider.

The second criterion, regard for the existence of any other remedy, recognises that the Senate is generally reluctant to deal with conduct as a contempt where another, more appropriate avenue for redress is available. It may be that there is an alternative remedy available in respect of the conduct reported as the foundation for these allegations. However, only the Senate can deal with allegations of improper interference with its own proceedings. Accordingly, on the basis of the criteria I am required to consider, I have determined that the matter should have precedence as a matter of privilege. The question of whether the matter should be referred to the Privileges Committee for investigation as a possible contempt is a

question for the Senate itself. I table the correspondence and call Senator Patrick to give a notice of motion in respect of the matter.

Senator PATRICK (South Australia) (09:33): I give notice that, on the next day of sitting, I shall move:

That the following matter be referred to the Senate Committee of Privileges for inquiry and report:

Having regard to the statements made to the Senate by Senators Patrick and Lambie on 16 September 2019 and the documents tabled by the President on 18 September 2019:

(a) whether there was any attempt to improperly interfere with the free performance by any senator of their duties as a senator;

(b) whether there was any attempt to improperly influence any senator in their conduct as a senator, by intimidation, force or threat of any kind; and

(c) if so, whether any contempt was committed in respect of those matters.

I seek leave to make a short statement.

Leave granted.

Senator PATRICK: Tomorrow I will ask the Senate to refer this matter to the Privileges Committee. I am hoping not just for support but for unanimous support. No-one in this chamber should ever cast a vote a particular way on the basis that, if they don't, they will be subject to abuse. The Senate must protect not only its members but the very core of democratic lawmaking.

The remarks made by Mr Setka go beyond threatening to run a campaign against Centre Alliance at the next election—an action which one would correctly characterise as 'just politics'. Rather, Mr Setka foreshadowed members of his organisation crossing paths with myself and Senator Griff at some future time and engaging in abuse. Mr Setka's comments must be considered in the context of an organisation that has a propensity, evidenced in judicial-decision reasonings in numerous cases, for regular contravention of the law and an apparent comfort with the use of coercive conduct.

As I shared with the chamber on Monday, I have been the uncomfortable and concerned witness to two CFMEU members accosting former senator Nick Xenophon at Perth Airport lounge at about the same time as the ABCC and ROC legislation was being voted on. In asking for my motion to be supported tomorrow, I put it to you that it is not something that Senator Griff or I should have to factor in when dealing with how to vote in this chamber. If we care about the integrity of the deliberations of this chamber and if we care about our deliberations being conducted free of external threat or coercion, then a very clear signal needs to be sent that this is not a situation that will ever be tolerated by the Senate.

I wish to advise the chamber that, as foreshadowed, the comments of Mr Setka have been referred to the Australian Federal Police, who are now looking into the matter. In that regard I would point out to the chamber that the elements and thresholds associated with a threat-related crime are different to the elements and thresholds associated with an attempt to improperly interfere with the free performance of any senator's duties as a senator, or an attempt to improperly influence a senator in their conduct as a senator by intimidation, force or threat of any kind.

Although the alleged offences stem from the same set of facts, a criminal offence and a contempt of the Senate are different matters that must be dealt with separately by different

bodies. The police have no ability or jurisdiction to deal with a contempt of the Senate; only the Senate can deal with that. As such, knowledge of the referral to the police should have no influence on whether the Senate should support my referral motion tomorrow. It may influence the way the Privileges Committee approaches any contempt inquiry. Consequently, assuming a privilege inquiry does go ahead, I will ask the police to keep the committee informed of its investigations.

I seek protection from the Senate from threats of abuse, but I also seek protection for everyone who has served, is serving or will serve in this chamber. I urge support for my referral tomorrow.

Appendix 3



REX PATRICK

Centre Alliance
Senator for South Australia

OUR REF : NC/RYA-RP

Senator the Hon. Scott Ryan
President of the Senate
SG.40
Parliament House
Canberra ACT 2600

Scott

Dear Mr President



I write to raise a matter of privilege under Standing Order 81 and to ask that you grant precedence to a motion to refer the matter to the Senate Privileges Committee.

The media reported over the weekend:

In the shop stewards' meeting, Mr Setka took aim at other crossbenchers, including Centre Alliance senators Rex Patrick and Stirling Griff, saying if they voted for the Coalition's Ensuring Integrity Bill, the union would make them pay for it.

"I said (to Senator Lambie) 'Listen, if them f---ing other crossbenchers want to f---ing vote for this Integrity Bill, let em' f---ing vote for it but they will wear the consequences of it. The money we are saving by not giving to the ALP, we will start a f---ing campaign."

"When (former Centre Alliance leader Nick) Xenophon voted for the (construction industry watchdog the Australian Building and Construction Commission) we launched a campaign in South Australia ... we f---ing destroyed that f---er. That's why he's not around. They come from his party, right? So they are aware of the damage we are able to inflict."

In 20 years time when the Centre Alliance Senators were walking down the street they could expect to be abused, he said.

"Someone is going to point the finger and say, 'There's them f---ers that voted for that Bill that f---ed up not just construction workers but all workers in Australia'. And I said [to Senator Lambie], 'They can f---ing wear that'."

I include an excerpt from the report for context purposes, but it is the last two paragraphs of the report that are particularly concerning to me, noting:

- a) The CFM(M)EU has a propensity (evidenced in judicial decision reasoning) for the regular contravention of law, IR and others, and apparent comfort with the use of coercive conduct.

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- b) I have had occasion to be the uncomfortable and concerned witness to two CFMEU members accosting Nick Xenophon at a Perth airport lounge around the time of the ABCC/ROC legislation being voted on.

I am of the view that the comments in the last two paragraphs of the media report amount to a threat against myself and the other crossbench senators to subvert us freely exercising our votes in relation to the government's Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019.

Pursuant to section 4 of the *Parliamentary Privileges Act 1987*, any conduct may constitute a contempt if it "amounts to, or is intended to amount to, an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties". The Senate has supplemented the statutory test with its privilege resolutions. Resolution 6 relevantly declares that breaches of the following prohibitions may be treated by the Senate as acts of contempt:

Interference with the Senate

6(1) A person shall not improperly interfere with the free exercise by the Senate or a committee of its authority, or with the free performance by a senator of the senator's duties as a senator.

Improper influence of senators

6(2) A person shall not, by fraud, intimidation, force or threat of any kind, by the offer or promise of any inducement or benefit of any kind, or by other improper means, influence a senator in the senator's conduct as a senator or induce a senator to be absent from the Senate or a committee.

It is my belief that the comments as reported meet the threshold in section 4 of the Act and thus represent an offence against these parts of privilege resolution 6. I ask that you give precedence to a motion to refer this matter to the Committee of Privileges to determine whether a contempt has been committed.

Yours sincerely,

REX PATRICK

17/09/2019

Appendix 4

Senator DI NATALE: The question before us today asks us to abandon an important democratic principle in order to take action against someone whose behaviour we all find reprehensible. John Setka's behaviour has been disgraceful. Anyone who has followed his case in the media knows that he has been accused of acting in a misogynistic manner towards women and, when given the opportunity to take responsibility for his actions, he's been dismissive of the harm that his behaviour has caused. As recently as last week, he was caught on tape speaking dismissively about conduct that any decent person knows is completely unacceptable. He's not taking the issues confronting him seriously and he clearly does not get it.

But the referral today is not about those matters. It's not about whether John Setka is a good person or a bad person. It's not about whether or not you think he's a good representative for the union movement. The only question before us today is whether John Setka interfered with the operations of the Senate or exerted improper influence on senators and whether doing so meets the test for a referral to privileges. That's the only question we have to decide today and, on the basis of the information before the Senate, he clearly does not.

We accept that Senators Patrick and Lambie are aggrieved by his comments, and we're not saying that they're wrong for feeling the way that they do. What we're saying is that those comments do not meet the test outlined in section 4 of the Parliamentary Privileges Act 1987. The statements made by Mr Setka with regard to Senators Patrick and Lambie, when stripped of their profanity, amounted to nothing more than an organisation stating it would run a campaign against a publicly contested policy position.

A union has the right to run a campaign to protect the rights of Australian workers and the members it represents. Indeed, any organisation or citizen has the right to campaign; it is not a threat to engage in a democratic process. Part (b) of this referral refers to two other CFMEU members, at a time when former senator Nick Xenophon was in parliament, accused of accosting the senator with their views on legislation before the parliament. While these allegations may be legitimate, the Committee of Privileges should not be used to pursue one individual for the behaviour of others. We note that this matter has already been referred to the Federal Police for criminal investigation and we await the result of any subsequent investigation.

However, to support this referral today would send us down a very slippery slope, a slope of politicians abusing an important parliamentary committee to punish their political competitors. We have seen the referrals process abused in the past and we must ensure that it does not happen now. This sets a very dangerous precedent that could be used in future to pursue the leader of any organisation or indeed any citizen seeking to mount a political campaign against something they oppose. If any other evidence should emerge, we will reconsider our position. And, if the Senate does choose to refer this matter to the privileges committee, then we will of course respect that decision.

Senator Patrick: I seek leave to make a one-minute statement.

The PRESIDENT: Leave is not granted. I'll remind people this is not a forum for debate. Requests by party leaders to make statements are granted leave to explain positions adopted by parties, but it is up to any senator to grant or otherwise deny leave. I'm going to put the motion moved by Senator Patrick.

Senator WONG (South Australia—Leader of the Opposition in the Senate) (11:59): I seek leave to make a short statement.

The PRESIDENT: Leave is granted.

Senator WONG: I didn't anticipate that there would be opposition to this motion, so I apologise that I've run into the chamber.

I understand the Greens are opposing this and I understand that they don't intend to call a division, so I thought that it would perhaps be useful to put on the record that the Labor Party supports the motion from Senator Patrick. I would make the point that the President made yesterday—that the relevant matters are those set out in privileges resolution 4. I would also make the point that backing the President on a procedural matter, such as the granting of precedence, we believe, as a party of government and a responsible actor in this chamber, is important. We believe it is a very significant thing to do in those circumstances where precedence has been granted by the President to fail to support the motion.

And if I may be so bold as to say this: it seemed to me, from listening to the contribution from Senator Di Natale, that he was essentially prejudging the consideration of this matter by the Privileges Committee. The whole purpose of the referral is so that the committee can make a judgement on this. I think that in those circumstances it's disappointing that the Greens political party have chosen to take the course they have. That's a matter for them, but I did want to place on record the Labor Party's position, which is that we will be supporting the referral.

Question agreed to.



Senator Deborah O'Neill
Chair, Senate Standing Committee on Privileges
Parliament House
CANBERRA ACT 2600

Deb

Dear Senator O'Neill,

I refer to the Senate's motion of 19 September 2019 which referred to the Standing Committee on Privileges a matter of privilege concerning comments of the Construction, Forestry, Maritime, Mining and Energy Union Victorian State Secretary, Mr John Setka.

As the Committee will recall, on 18 September 2019, I advised the Senate that, as a matter separate from the question of privilege, Mr Setka's comments had been referred to the Australian Federal Police (AFP).

I have now received a response from the Federal Police which advises that the AFP will not be taking any further action regarding this matter. A copy of the AFP's advice is attached for the information of the Committee.

In this regard I would remind the Committee of my observations to the Senate on 18 September in which I said:

"... I would point out to the chamber that the elements and thresholds associated with a threat-related crime are different to the elements and thresholds associated with an attempt to improperly interfere with the free performance of any senator's duties as a senator, or an attempt to improperly influence a senator in their conduct as a senator by intimidation, force or threat of any kind.

Although the alleged offences stem from the same set of facts, a criminal offence and a contempt of the Senate are different matters that must be dealt with separately by different bodies. The police have no ability or jurisdiction to deal with a contempt of the Senate; only the Senate can deal with that."

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The matters for consideration by the Committee on Privileges are, of course, those set out in the Senate's referral of 19 September, namely:

- (a) whether there was any attempt to improperly interfere with the free performance by any senator of their duties as a senator;
- (b) whether there was any attempt to improperly influence any senator in their conduct as a senator, by intimidation, force or threat of any kind; and
- (c) if so, whether any contempt was committed in respect of those matters.

I trust that the Committee will proceed its inquiry and report on these matters in a timely manner.

Yours sincerely

REX PATRICK

23/10/19



AFP
AUSTRALIAN FEDERAL POLICE

Our reference: 6412627

17 October 2019

Senator Rex Patrick
Office of Senator Rex Patrick

Dear Senator Patrick,

I write to you regarding a referral you made to the AFP Protection Liaison Team on Tuesday 17 September 2019, regarding comments made by Construction, Forestry, Maritime, Mining and Energy Union Victorian State Secretary, John Setka. It was requested the AFP investigate those comments, which you found to be threatening in nature to both yourself and your family members.

All referrals received by the AFP are presented before an Operations Committee for assessment. This assessment is now complete. In carrying out this assessment, all relevant avenues of inquiry have been pursued, and the AFP has been unable to identify sufficient evidence to constitute a prima facie case against John Setka.

Accordingly, the AFP will not be taking any further action regarding this matter.

Consistent with advice that was provided to you at your meeting with the AFP Protection Liaison on Team on 17 September 2019, any ongoing or future concerns regarding your safety or security, or those of your family, if urgent should be directed to the State/Territory Police for an immediate response. If no immediate policing response is required please contact the AFP Protection Liaison team.

Should you wish to discuss this further please contact myself or Commander David Bachi. He can be contacted on telephone 02 5126 4498 or email at david.bachi@afp.gov.au.

Yours sincerely,

Commander Kylie Flower
Performing the duties of Assistant Commissioner
National Manager Protection Operations

