

Chapter 1

The matter before the committee

Reference

1.1 The following matter was referred to the committee on 24 November 2011:

Having regard to matters raised by Senator Kroger relating to political donations made by Mr Graeme Wood, arrangements surrounding the sale of the Triabunna woodchip mill by Gunns Ltd and questions without notice asked by Senator Bob Brown and Senator Milne:

- (a) whether any person, by the offer or promise of an inducement or benefit, or by other improper means, attempted to influence a senator in the senator's conduct as a senator, and whether any contempt was committed in that regard; and
- (b) whether Senator Bob Brown received any benefit for himself or another person on the understanding that he would be influenced in the discharge of his duties as a senator, or whether he entered into any contract, understanding or arrangement having the effect, or possibly having the effect, of controlling or limiting his independence or freedom of action as a senator or pursuant to which he or any other senator acted as the representative of an outside body in the discharge of their duties as senators, and whether any contempt was committed in those regards.¹

1.2 The 'matters raised by Senator Kroger' were those set out in a letter to the President, dated 22 November 2011, to which was attached a collection of documents, primarily press clippings, media releases and transcripts of interviews.

1.3 On 23 November, the President informed the Senate that he had determined that a motion to refer the matter should have precedence as a matter of privilege. The raising of the matter of privilege and the decision of the President to give the matter precedence attracted some commentary and criticism. The committee makes some observations on those issues in chapter 2.

1.4 After making his statement, the President tabled the letter and attachments and Senator Kroger gave a notice of motion, which was listed as a matter of privilege on the Notice Paper for the following day.

1 *Journals of the Senate*, 24 November 2011, p. 1945.

1.5 On 24 November 2011, Senator Kroger moved the motion as a formal motion and it was agreed to, giving effect to the reference. Senator Brown sought leave to make a statement in relation to the motion, but leave was refused.²

The committee's approach

1.6 The committee has commented before on the challenges of undertaking inquiries into matters which involve allegations of improper conduct by senators, being prosecuted by senators. In its 123rd report, the committee observed:

Cases involving allegations of contempt by one senator against another are unusual territory for this committee, and may raise the difficult prospect for the committee of having to prefer one senator's account over another's.³

1.7 In that case, however, the facts were not in dispute. Similar observations were made in the committee's 142nd report. In that case, the committee made it clear that it did not dispute the senator's account of the contested matters.⁴ The committee recorded its approach as follows:

The committee has endeavoured, however, to approach these inquiries in the same non-partisan way that it has approached all of its other inquiries. It has attempted to establish the facts of the matters by its usual means and to apply its critical faculties in the interests of protecting and preserving the integrity of the Senate and its processes.⁵

1.8 The committee approached this inquiry in the same manner, that is, in accordance with its usual practices and the resolutions of the Senate of 25 February 1988 (the 'Privilege Resolutions') which direct its work.⁶ According to those practices, the committee's method of operation in relation to possible contempt matters typically involves the following stages:

- a general inquiry into the matters referred, during which the committee gathers and considers evidence
- examination of any particular allegations which emerge against any person or persons
- consideration of whether any particular acts (or omissions) may constitute contempts.

2 *Journals of the Senate*, 24 November 2011, p. 1945.

3 Senate Committee of Privileges, 123rd report, PP 224/2005, paragraph 1.23.

4 Senate Committee of Privileges, 142nd report, PP 396/2009, paragraphs 1.6 to 1.9 and elsewhere.

5 142nd report, paragraph 1.9.

6 This approach is documented in the committee's 125th report, *Parliamentary privilege: Precedents, procedures and practice in the Australian Senate 1966–2005*, PP No. 3/2006.

1.9 After considering the evidence gathered in the initial stages of an inquiry, the committee may determine that there are no allegations that require further examination and report this finding to the Senate.

1.10 Should the committee determine that allegations against any person merit further examination, these are investigated in accordance with the requirements of the Privilege Resolutions, which incorporate principles of natural justice.

1.11 Should the committee determine it necessary to consider whether particular acts (or omissions) may constitute a contempt, the committee has regard to:

- section 4 of the *Parliamentary Privileges Act 1987*, which provides a statutory definition for contempt
- the criteria to be taken into account when determining matters relating to contempt (Privilege Resolution 3) and
- the list of possible contempts in Privilege Resolution 6.

Conduct of the inquiry

1.12 As is usual in possible contempt matters, the committee commenced its inquiries by contacting persons who the committee was aware may be affected by the reference, advising them of the terms of reference and inviting written comments. Accordingly, on 24 November 2011, the committee wrote to Senator Brown, to Senator Milne and to Mr Graeme Wood inviting comments ‘as soon as practicable, but in any event before the end of January 2012.’

1.13 The committee received and entered into correspondence with Senator Brown and with Mr Roland Browne, a lawyer representing Senators Brown and Senator Milne, on a number of matters relating to the inquiry process. These are, in the main, dealt with in Chapter 2.

1.14 By letter dated 23 December 2011, Mr Browne indicated that Senator Brown and Senator Milne would be seeking an extension of time to respond to the reference. On 20 January 2012, Mr Browne nominated 14 February as the date of the extension sought. The committee received two submissions on behalf of Senator Brown and Senator Milne: a submission on procedural matters, dated 8 February 2012 (the *first submission*) and a further submission, dated 27 February 2012, which, among other things, addressed the substantive matters before the committee (the *second submission*). On 1 March 2012 the committee resolved to publish these submissions on its web pages, together with the statement made by the President and the material from Senator Kroger raising the matter.

1.15 A representative for Mr Wood informed the committee that he would be unable to provide a statement to the committee in line with its original timeframe. The committee received a letter from Mr Wood, dated 9 March 2012. The committee published the letter online on 14 March 2012.

1.16 A volume of documents and evidence accompanies this report.

The matter before the committee

1.17 In his statement of 23 November 2011, the President described the matter in the following terms:

The matter concerns a possible relationship between Senator Bob Brown and Mr Graham Wood and whether, on the one hand, Senator Brown sought a benefit from Mr Wood in the form of political donations on the understanding that he would act in Mr Wood's interests in the Senate or, on the other hand, whether Mr Wood, through large political donations, improperly influenced Senator Brown and other Australian Greens senators, including Senator Milne, in the discharge of their duties as senators, including by the asking of questions without notice.

...there is no question that the matters raised by Senator Kroger are very serious ones. The freedom of individual members of parliament to perform their duties on behalf of the people they represent and the need for them to be seen to be free of any improper external influence are of fundamental importance. Matters such as these go directly to the central purpose of the law of parliamentary privilege, which is to protect the integrity of proceedings in parliament.⁷

1.18 The committee considers that the allegations are very serious. It is also notable that the allegations go to possible areas of contempt which have not previously been addressed by the committee.

1.19 The Senate, subject to section 4 of the Parliamentary Privileges Act, has the power to determine that particular acts constitute contempts. The Senate has provided guidance, in Privilege Resolution 6, as to the categories of acts that may be treated as contempts. Resolution 6 declares that breaches of certain prohibitions – and attempts or conspiracies to do the prohibited acts – may be treated by the Senate as contempts. The terms of reference for the inquiry draw upon the language of Resolution 6(2), *Improper influence of senators*; and Resolution 6(3), *Senators seeking benefits etc.*

Improper influence of senators

1.20 Resolution 6(2) is in the following terms:

(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.

1.21 An attempt to do the prohibited act may also be treated by the Senate as a contempt.

1.22 The Senate and the committee have on a number of occasions considered possible contempt cases involving attempts to influence senators by way of

⁷ *Senate Debates*, 23 November 2011, p. 9380.

intimidation, force or threat. From the first such case, considered by a select committee in 1904, the Senate has taken ‘a robust view as to whether senators have been improperly obstructed.’⁸ However, the committee has not previously had cause to consider allegations of improper influence ‘by the offer or promise of any inducement or benefit’.

Senators seeking benefits etc.

1.23 Resolution 6(3) is in the following terms:

(3) A senator shall not ask for, receive or obtain, any property or benefit for the senator, or another person, on any understanding that the senator will be influenced in the discharge of the senator’s duties, or enter into any contract, understanding or arrangement having the effect, or which may have the effect, of controlling or limiting the senator’s independence or freedom of action as a senator, or pursuant to which the senator is in any way to act as the representative of any outside body in the discharge of the senator’s duties.

1.24 Again, the committee has not previously considered allegations made against any senator in the terms of this part of the resolution.

1.25 In the context of the current matter, the committee observes that the conduct declared to be prohibited by these provisions can be seen as two sides to the same coin: a person shall not improperly offer or give a benefit, nor shall a senator improperly seek or receive one. In each paragraph of the terms of reference, the committee is asked to consider, in effect, whether an improper arrangement was sought, or put in place, in respect of the matters raised by Senator Kroger. The committee turns to the evidence on that point.

The letter from Senator Kroger

1.26 It is apparent from Senator Kroger’s letter raising the matter that her main focus is on Privilege Resolution 6(3):

My concern goes to matters of Senators seeking benefits, etc. (and possibly improper influence of senators), as laid out in the resolutions on Parliamentary Privilege agreed to by the Senate on 25th February 1988 [the letter quotes resolution 6(3)].

Specifically I believe that Senator Brown negotiated the acceptance of a benefit on behalf of the Greens, thus entering into an arrangement with Mr Graeme Wood which had the effect of controlling or limiting his independence, specifically in relation to the sale of the Triabunna woodchip mill, and pursuant to which Senator Brown acted as the representative for

8 See 125th report, paragraphs 4.27 to 4.29.

Mr Wood. This arrangement also affected the actions of Senator Christine Milne and other Greens senators.⁹

1.27 The first part of Senator Kroger's letter comprises a section headed 'The evidence', which sets out newspaper accounts of discussions which occurred between Mr Wood and Senator Brown prior to Mr Wood making a donation to the Australian Greens.

1.28 Senator Kroger concludes:

It is therefore apparent that Senator Brown entered into "an arrangement" with Mr Wood. I note that it is usual practice for political parties to bar their parliamentarians from such dealings with donors, precisely to avoid perceptions of arrangements being made which might benefit donors.

I contend that this donation, not only had the effect of, both influencing and appearing to influence the conduct of Senator Brown in the Senate and elsewhere, it also in turn influenced the conduct of Senator Milne in the Senate and elsewhere, and other Greens senators in the Senate.¹⁰

1.29 The next part of Senator Kroger's letter argues that Senator Brown 'repeatedly acted to advantage the bid by Mr Wood's Triabunna Investments Pty Ltd and to damage his competitor's efforts to secure the Triabunna woodchip mill', alleging 'a contradictory pattern of behaviour, including behaviour in the Senate, [which] can only be explained as a serious, continuing, coordinated, and ultimately successful attempt to act as Mr Wood's representative in breach of the resolution on Parliamentary privilege'. The alleged 'contradictory' behaviour focused on what is described as an 'about face [by] Senator Brown and the Greens' in relation to right of Gunns Ltd to compensation for giving up its logging contracts.¹¹

1.30 In support of the above allegations, the remainder of the letter sets out a chronology of events and invites certain inferences to be drawn from the actions of Senator Brown and Senator Milne in participating in debate and asking questions in the Senate, and of votes of the Australian Greens senators.

1.31 Attached to the letter are various documents, primarily press clippings, media releases and transcripts of interviews referred to in the chronology of events.

1.32 Senator Kroger concludes:

Regardless of whether or not the Greens and Mr Wood's interests were aligned, there is evidence that there was a benefit and an arrangement which

9 Letter to the President from Senator Kroger, dated 22 November 2011, p. 1.

10 Letter to the President from Senator Kroger, p. 3.

11 Letter to the President from Senator Kroger, p. 4.

had the effect of controlling Senator Brown's independence and which led him to act as a representative of Mr Wood's Triabunna Investments.¹²

Submission from Senators Brown and Milne

1.33 The second submission made on behalf of Senator Brown and Senator Milne addresses the substantive matters before the committee. It sets out an alternative account of the contested matters.¹³ Annexures 1 and 2 contain statements from Senator Brown and from Senator Milne, respectively.

1.34 In his statement Senator Brown describes his meeting with Mr Wood in May 2010:

3. At no time did Ben [Oquist, Senator Brown's Chief of Staff] or I discuss with Mr Wood any benefit to Mr Wood or to his business interests or to anyone in return for him donating money to the Greens. There was no suggestion or hint of any favour sought or future cooperation to be given. I would not countenance this state of affairs, in any event. Neither would Ben.

4. At the time of the discussions with Mr Wood, in May 2010, I had no knowledge that the Triabunna woodchip mill was going to be put on the market by Gunns Limited. I had no knowledge that Mr. Wood was going to set up a company with Jan Cameron and try to purchase the woodchip mill. I had no knowledge that Forestry Tasmania would involve itself in a consortium ... to try to purchase the woodchip mill with government assistance.

5. The first knowledge I had of the sale of the Triabunna woodchip mill was 6 months later, in November 2010...¹⁴

1.35 In her statement, Senator Milne responds to allegations of the existence of an improper arrangement:

4. I have no knowledge of, nor have I been involved in any discussion about, any favour or assistance being provided by the Australian Greens of the Tasmanian Greens or Senator Bob Brown (or anybody for that matter) to Graeme Wood or any company or person connected to him. I would never agree to or condone such an arrangement. I do not believe any such arrangement ever existed.

1.36 Senator Milne goes on to state:

5. The assertion that Senator Bob Brown, or anybody else, influenced me in my duties as a Senator is wrong. The questions I ask in the Senate, the points of order I take and the contributions I make to debate are not directed

12 Letter to the President from Senator Kroger, p. 12.

13 See second submission made on behalf of Senators Brown and Milne, principally at paragraphs 38 to 63.

14 Second submission, Annexure 1, p. 1.

by anybody. I follow my conscience and The Australian Greens Policy Platform.

6. For the 24 years of my public life, my statements have been directed towards forest conservation, ending the woodchipping of Tasmania's native forests, ending subsidies to the forest industry through public funds...

7. My statements, questions, speeches and motions in the Parliament are consistent with my long standing position.¹⁵

1.37 Each statement sets out an account of the senators' actions and the motives for them. The submission observes that the actions of Senator Brown and Senator Milne were consistent with their own longstanding policy positions and with longstanding policy commitments of the Greens.¹⁶

1.38 The submission argues that there is no evidence of any causal connection between the donation to the Australian Greens in August 2010 and the conduct of Australian Greens senators from mid-2011. It notes the timing of the announcement by Gunns Ltd., in November 2010, of the proposed sale of the woodchip mill, and concludes that:

The purported conflation of the 2010 donation with the 2011 conduct conveniently ignores the simple and obvious fact that, at the time of the 2010 donation, the events the subject of the questions [asked in the Senate] were not even remotely in prospect or foreseeable, thereby rendering any causal relationship between the two to be fanciful.¹⁷

1.39 The submission goes on to argue that 'the Kroger letter makes highly selective and inaccurate use of the sources relied upon'.¹⁸ In relation to the allegations of 'contradictory behaviour mentioned at paragraph 1.29, above, the submission argues, that the allegations are largely based on 'two flawed factual premises':

The Kroger letter refers to this as an "about face", asserted to be explicable only by reference to the 2010 donation. But there is simply no factual basis for the existence of the alleged conditions.¹⁹

1.40 The submission observes that:

...the Kroger letter asks the Committee to disregard the obvious, well known and public explanation for that outcome, namely that the 2011 conduct was nothing more than the continuing pursuit of longstanding policy objectives of the Greens concerning the environmental damage that

15 Second submission, Annexure 2, p. 1.

16 Second submission, at paragraphs 64 and 65 and in Annexures 3, 4 and 5.

17 Second submission, paragraphs 22 and 25; *see also* paragraphs 35 and 36.

18 Second submission, paragraph 27.

19 Second submission, paragraphs 29 to 32 and 57 to 63.

Gunns' mill and woodchipping had caused in Tasmania and of opposing the use of public funds to maintain the woodchip industry.²⁰

1.41 The submission concludes that:

..the material before the Committee patently does not support the asserted causal connection...

Further, the statements [from Senator Brown and Senate Milne] not only conclusively contradict the adverse inferences and assertions sought to be made in the Kroger letter, but they positively demonstrate that there is no case to answer...²¹

The letter from Mr Wood

1.42 In his letter to the committee, Mr Wood states:

I completely reject any suggestion that there was any impropriety in the donation I made to the Australian Greens in 2010. I also completely reject any suggestion that I attempted to influence any Senator by offering an inducement or benefit. Any such suggestions or claims are untrue.

1.43 Mr Wood goes on to state:

I have examined the material put forward by Senator Kroger. It lacks any evidence of any impropriety on my part, or any evidence that the donation was part of an arrangement. It provides no factual basis for any suggested interference with a Senator's performance of their duties. I believe there are no allegations in that material that warrant investigation, and there is no basis for any further investigation by the Committee.

Indeed the claims in the material do not even pass the basic test of timing. The donation was made in mid-2010. The transaction that was supposedly the reason for the donation was not anticipated then, and first arose many months later.

Consideration of matters

1.44 As noted above, it is unusual for the committee to find itself in the position of having to prefer one senator's account of matters over another's. However, in the absence of persuasive evidence to the contrary, the committee would have no cause to dispute an account given by a senator of matters within his or her own personal knowledge. This is consistent with the approach the committee has previously taken in relation to allegations involving senators.

1.45 The committee does not have such evidence before it in this case. While the allegations made in Senator Kroger's letter are serious ones, the committee does not consider that the material submitted to support those allegations amounts to more than

20 Second submission, paragraph 37.

21 Second submission, paragraphs 68 and 69.

circumstantial evidence. The committee considers that any questions which do arise as a result of that material are answered by the responses of the three people named in the terms of reference.

The existence of an improper arrangement

1.46 As has been noted, each paragraph of the terms of reference requires the committee to consider, in effect, whether an improper arrangement was sought, or put in place. In seeking to establish that an improper arrangement exists, Senator Kroger's case rests on three matters:

- conduct of Australian Greens senators in the Senate, in asking questions and voting on matters, which appeared to serve (or at least align with) Mr Wood's interests in relation to the purchase of the woodchip mill
- as part of that conduct, apparently contradictory positions being taken in relation to compensation flowing to Gunns Ltd for the sale of the mill (again, appearing to serve Mr Wood's interests)
- the perception that Senator Brown had entered into a relationship which limited his independence, by virtue of his personally discussing the donation with Mr Wood.

1.47 While Senator Kroger's letter offers some evidence that conduct occurred which aligned with Mr Wood's interests, it does not provide evidence of a causal connection. The second submission from Senators Brown and Milne demonstrates that the conduct of Senator Brown, Senator Milne and the other Australian Greens senators was in line with longstanding policy positions held by those senators and by the Australian Greens party. The submission also provides an explanation for what are described by Senator Kroger as contradictory positions; and again, this explanation is consistent with longstanding policy positions.

1.48 Where Senator Kroger's letter raises a question around the perceptions arising from Senator Brown personally discussing these matters, it merely invites the inference that Senator Brown entered into an improper arrangement, rather than providing evidence. In the absence of evidence to the contrary, the committee sees no reason to dispute Senator Brown's account of the discussions with Mr Wood and his assurance that he and Mr Wood neither discussed, nor entered into, any agreement by which the independence of Senator Brown, Senator Milne or other Australian Greens senators was compromised. Similarly, the committee sees no reason to dispute Senator Milne's accounts of her actions.

1.49 For his part, Mr Wood also completely rejects any suggestion of impropriety. Again, the committee has before it no cogent evidence which would cause it to dispute Mr Wood's account.

Political donations

1.50 The submission observes that Senator Kroger’s letter invites the committee to ‘draw an adverse inference from the fact that Mr Wood perceived it to be in his best interests to make the donation’. It goes on to observe:

The motive for any political donation will almost always be perceived to be because the donation helps a party whose policies or election the donor, for its, his or her own reasons, supports;

Accordingly, for a donor to perceive that the making of a donation will be in the donor’s interests is merely to state the *raison d’être* for political donations by donors.²²

1.51 The committee considers that this is an unremarkable position. Mr Wood, in his letter to the committee, makes a similar observation:

I expect the committee would agree that making a legal donation to a political party cannot alone raise an inference of contempt or improper interference with a Senator’s performance of their duties. If that were so, every Senator whose party received donations would be compromised.

1.52 Such matters only become problematic if there is an inappropriate *quid pro quo* arrangement. The committee finds that there is no cogent evidence of such an arrangement in this case.

1.53 The letter from Senator Kroger comments on the ‘perceptions’ involved in having a parliamentarian involved in discussions with donors:

I note that it is usual practice for political parties to bar their parliamentarians from such dealings with donors, precisely to avoid perceptions of arrangements being made which might benefit donors.²³

1.54 While that may be so, if evidence (in another case) were found of a party entering into an arrangement which compromised the independent action of its senators, the committee does not consider that the particular party structure (or the identity of the person or persons involved in establishing that arrangement) would be the determinant of whether a contempt might be found. Rather, the case would depend upon the facts of the particular matter.²⁴

Findings and conclusions

1.55 The committee considers that the evidence before it does not establish a causal connection between the donation made by Mr Wood, and the conduct in the

22 Second submission, paragraph 36.

23 Letter to the President from Senator Kroger, p. 3.

24 The committee notes, however, the longstanding caution expressed by the committee and the Senate about applying the principles prohibiting improper influence to the practices of political parties. *See* 103rd report, at paragraphs 1.43 to 1.50.

Senate about which Senator Kroger complains. The committee does not consider that there is any cogent evidence to support the contentions set out in the terms of reference. Such questions as arose from the material provided by Senator Kroger in raising the matter are answered by the accounts of Senator Brown, Senator Milne and Mr Wood.

Senators seeking benefits etc.

1.56 As has been noted above, the focus of Senator Kroger's letter was on paragraph (b) of the terms of reference. In relation to paragraph (b), as outlined above, the committee **found** that the evidence before it did not support either of the following contentions:

- that Senator Brown received any benefit for himself or another person on the understanding that he would be influenced in the discharge of his duties as a senator
- that Senator Brown entered into any contract, understanding or arrangement having the effect, or possibly having the effect, of controlling or limiting his independence or freedom of action as a senator or pursuant to which he or any other senator acted as the representative of an outside body in the discharge of their duties as senators.

1.57 To the extent that questions were raised on these matters in the letter from Senator Kroger, those questions were answered by the accounts of Senator Brown and Senator Milne.

Improper influence of senators

1.58 The question of improper influence was included in paragraph (a) of the reference, but the letter raising the matter seemed to the committee to include this element almost as an afterthought. As noted, however, the committee considered this allegation and the allegations in paragraph (b) as two sides of the same coin. Given that the committee has found that the evidence does not support allegations that an improper arrangement existed, nor that one was sought, the committee accepts the position put by Mr Wood rejecting any suggestion of impropriety.

1.59 In relation to paragraph (a) of the terms of reference, the committee **found** that there was no evidence that Mr Wood, by the offer or promise of an inducement or benefit, or by other improper means, attempted to influence a senator in the senator's conduct as a senator.

Conclusion

1.60 Given that the committee has found that the evidence before it did not support the contentions in either paragraph of the terms of reference, the committee **concludes** that **no question of contempt arises** in regard to the matter referred.