

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

PERSON REFERRED TO IN THE SENATE

(12TH REPORT)

DECEMBER 1988



**MEMBERS OF THE COMMITTEE**

Senator Patricia Giles (Western Australia), Chair

Senator John Black (Queensland)

Senator Bruce Childs (New South Wales)

Senator John Coates (Tasmania)

Senator the Honourable Peter Durack, Q.C. (Western Australia)

Senator Janet Powell (Victoria)

Senator Baden Teague (South Australia)

The Senate  
Parliament House  
CANBERRA A.C.T. 2601



## REPORT

### Introduction

1. On 10 November 1988, in answer to a Question without Notice, the Minister for Finance, Senator the Honourable Peter Walsh, referred to certain persons by name (see Appendix I). Later that day the Leader of the Opposition in the Senate, Senator the Honourable F. M. Chaney, drew the Senate's attention to Resolution 9 of the Resolutions relating to Parliamentary privilege, as agreed to by the Senate on 25 February 1988 (see Appendix II), and asked the President to consider whether he should 'draw the attention of the Senate to the spirit and the letter of this resolution' (see Appendix III).
2. The President, when indicating that he would investigate the matters raised by Senator Chaney and report back to the Senate, also reminded the Senate that individuals named by a Senator in the Senate could write to him and raise a matter under Resolution 5 of the Privileges Resolutions (see Appendix IV).
3. On 14 November 1988, Mr Tony Motion wrote to the President concerning Senator Walsh's answer to the Question without Notice.
4. On 22 November 1988, the President, having considered the matters raised by Senator Chaney, drew the Senate's attention to Privileges Resolution 9 concerning the exercise of freedom of speech (see Appendix V). The President also reported that he had received a complaint from one of the people (that is, Mr Motion) named in Senator Walsh's answer to the Question without Notice and was considering the letter.

5 Mr Motion wrote again to the President on 28 November 1988, and requested, pursuant to Resolution 5(1)(b), that "an appropriate response be incorporated in the parliamentary record".

6 The President, having considered Mr Motion's correspondence and having accepted it as a submission in accordance with Resolution 5(1), referred the correspondence to the Committee of Privileges for consideration (see Appendix VI).

#### Consideration by the Committee of Privileges

7. The Committee, pursuant to Resolution 5(3), decided to consider the submission from Mr Motion, and met in private session on 6 December 1988. In considering the submission, the Committee did not find it necessary to confer with either Mr Motion or the Minister. After deciding to recommend to the Senate that an agreed statement be incorporated in Hansard, the Committee contacted Mr Motion and the statement at paragraph 8 below has been agreed to by Mr Motion and the Committee in accordance with Resolution 5(7)(b).

#### Recommendation

8. The Committee recommends:

That a response by Mr T. Motion, in the terms specified below and agreed to by Mr Motion and the Committee, be incorporated in Hansard:

RESPONSE BY MR T. MOTION,

AGREED TO BY MR MOTION AND THE COMMITTEE OF PRIVILEGES

PURSUANT TO RESOLUTION 5(7)(b) OF THE SENATE OF 25 FEBRUARY 1988

Remarks made by Senator Walsh in the Senate on 10 November in relation to myself appeared in the West Australian newspaper on November 11.

Senator Walsh stated that I was a 'spiv' who has 'lounged' around Perth for as long as he can remember. Senator Walsh used the word spiv 3 times so it appears that it was a deliberate choice of word.

The Oxford Dictionary defines 'spiv' as a 'shady character who avoids honest work and lives by his wits especially in black market traffic'. The same source defines lounge as 'go lazily, saunter; loll, recline; idle etc'.

I regard Senator Walsh's use of the words in relation to myself as defamatory, especially in view of the following facts.

Since the mid 1970's I have been engaged full time in the Tourist/Hospitality industry.

Since 1982 I have lived and worked at the above address [Northam, Western Australia] which is 110 km from Perth. My wife and I have spent considerable funds and energy restoring Buckland and opening it to the public. To make ends meet we also accept overnight guests.

Like many people in the hospitality industry we work incredibly long hours, seven days a week and have done so for many, many years.

I have also been involved with numerous voluntary committees and associations since arriving in Australia in 1969. One that gives me particular satisfaction was the commencement of a scheme for unemployed youth in this area. The culmination of that initiative takes place this afternoon with the launching of the Group Apprentice Training Scheme here in Northam by the Minister of Employment and Training.

I have the honour to have been presented by the Town of Northam with a certificate as a token of appreciation for my services in local community work.

In the early 1970's in company with Mr John Tonkin, Mr Brodie Hall and other distinguished persons I addressed a public meeting on the subject of 'the gold tax'. Is this the event that Senator Walsh takes such exception to? Ironically, at that meeting, I suggested a graduating tax over the years - say ten years! I was, at the time, Chairman of Metramar Minerals Limited.

Senator Walsh's remarks have caused my family considerable distress and quite unjustifiably. This would be a classic example of why the general public hold political institutions in such disdain.

Tony Motion

Winner of the Sir David Brand Medal for Tourism 1984  
Former Chairman West Australian Tourist Advisory Council  
Former President WA Restaurant Association  
Former Councillor WA Australian Hotel Association  
Former Member of Executive Committee Festival of Perth  
Former Member of the Board of the WA Ballet Company  
Former Chairman Avon Valley Tourist Association

Patricia Giles

Chair

7 December 1988

## GOLD TAX

**Senator BEAHAN**—I refer the Minister representing the Treasurer to newspaper reports about confusion in the ranks of supporters of the goldmining lobby about the justification for opposing the removal of the exemption from tax of income derived from the mining of gold. I ask: What are the disadvantages of not taxing income derived from the mining of gold and the implications of continued opposition to it? Who will be the losers from the decision to apply normal taxation rules to gold?

**Senator WALSH**—The losers are very easy to identify. When the proposed legislation is passed and proclaimed, as I confidently expect it will be before the end of this year, the losers will be the spivs who are funding the State election campaign of the Western Australia Liberal Party, and their own campaign, and the United States Treasury, which will lose the \$70m a year it is presently getting in unplanned and unofficial foreign aid from Australia.

**Senator Chaney**—Mr President, I rise on a point of order. The Minister has just made an extremely unpleasant and defamatory statement which, of course, is covered by privilege. I draw your attention to the fact that the stance taken by the Western Australian State Liberals to whom the Minister is referring is exactly the same as the stance taken by Premier Dowding. There is a provision in the Standing Orders which prohibits disorderly reflections upon members of another Parliament. I ask you to consider what the Minister has said because he is clearly in ending his remarks to be a reflection on those Western Australian members of the Liberal Party who, as it happens in this case, are accompanied in their pleas, as I understand, by Premier Dowding. You cannot have it both ways, Mr President. I suggest that the answer is out of order.

**The PRESIDENT**—There is no point of order. I do not think Senator Walsh referred to members of Parliament. I call Senator Walsh.

**Senator WALSH**—One group that certainly will not lose when the Government's legislation is passed are those people who actually work in the goldmining industry, that is the workers who have always paid taxes on the wages they receive. The people who will lose is that succession of spivs who lounge around in Perth, who have done for as long as I can remember. I have seen them all; Tony Motion, Duncan Bell, Ian Cornelius, who incidentally did a bit of time in the slammer, along with Peter Briggs, for conspiracy to defraud the Commonwealth—not as much time as he should have done; but he did go to the slammer for it. Of course, this is the group of people that the Liberal Party is pandering to in Western Australia in order to pick up, it hopes, votes and, more importantly, donations.

Let me make it very clear that the spivs are wasting their money because the legislation will be passed; it will be proclaimed. Even if, in the highly unlikely event of a Liberal Government being returned federally and the Liberal Party being able to sort out its internal confusion, to which Senator Beahan referred at the beginning of his question, it will not have the numbers to repeal the legislation anyway. So the spivs are wasting their money.

In reference to the United States Treasury, a couple of days ago I explained that because of the double taxation agreement tax paid in Australia is deductible for United States equity holders against their United States tax liability. Because the tax is not paid in Australia, it is paid in Washington instead. As I have said before, although the United States has deteriorated very badly economically under the Reagan Administration, it is certainly not a Third World country and does not deserve to be the recipient of Australian foreign aid, which it currently is and which the Liberal Party would have it continue to be.

I note that yesterday morning in an interview on the wireless, Mr Tuckey, a Liberal Party member of the House of Representatives, claimed that because of the imputation system it really made no difference to the revenue collected by the Government whether gold companies were taxed or whether, through the imputation system, dividends were taxed when distributed to shareholders. That is not entirely true; it is partially true. Let us assume for a moment that that is entirely true and that it makes no difference to the revenue so far as Australian shareholders in goldmining ventures are concerned. If that is true, all that leaves is the \$70m presently being donated to the United States Treasury—the taxes paid in Washington, in lieu of taxes which ought to be paid in Canberra. Therefore, on the basis of Mr Tuckey's analysis of the situation I invite anybody in the Liberal Party to justify having the United States as a recipient of Australian foreign aid. There are plenty of countries, if we were inclined to increase our foreign aid by \$70m, more worthy than the United States to receive it. I also invite the Liberals who will be voting on this matter to table in the Senate the list of their shareholdings in goldmining companies.

APPENDIX II

EXTRACT FROM PARLIAMENTARY PRIVILEGE RESOLUTIONS

AGREED TO BY THE SENATE ON 25 FEBRUARY 1988

9. Exercise of Freedom of Speech

- (1) That the Senate considers that, in speaking in the Senate or in a committee, Senators should take the following matters into account:
  - (a) the need to exercise their valuable right of freedom of speech in a responsible manner;
  - (b) the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;
  - (c) the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament;
  - (d) the need for Senators, while fearlessly performing their duties, to have regard to the rights of others; and
  - (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.
- (2) That the President, whenever the President considers that it is desirable to do so, may draw the attention of the Senate to the spirit and the letter of this resolution.

## APPENDIX III

### STATEMENTS BY A MINISTER

**Senator CHANEY** (Western Australia—Leader of the Opposition) (3.08)—Mr President, I raise with you a matter which is within your jurisdiction under the resolution of the Senate of 25 February 1988 which deals with questions of privilege and a number of other related questions and, in section 9, the exercise of freedom of speech. That resolution of the Senate, Mr President, if I may just remind you since I do not think it is before you, states that Senators speaking in the Senate or in a committee should take certain matters into account. Those matters are:

- (a) the need to exercise their valuable right of freedom of speech in a responsible manner;
- (b) the damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of Parliament;
- (c) the limited opportunities for persons other than members of Parliament to respond to allegations made in Parliament;
- (d) the need for Senators, while fearlessly performing their duties, to have regard to the rights of others; and
- (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.

The resolution goes on to say that you, Mr President, whenever you think it desirable to do so, may 'draw the attention of the Senate to the spirit and the letter of this resolution'. I just wish to raise this matter with you and ask you to consider whether that should be done at the moment, as I believe it should be. I remind you that over the last few days we have had a number of statements in response to questions from Senator Walsh in which he has made very severe attacks on people who are not directly protected by the Standing Orders because they are not members of this place, members of the High Court of Australia, or members of a State parliament. Those attacks have been in the context of the quality and calibre of people who are opposed to the Government's gold tax proposals. I raise that in the context of the fact that on 16 December 1986—not all that long ago—the Treasurer, Mr Keating, and Senator Evans in a joint statement said:

. . . the Government has concluded that the importance of encouraging active exploration and development, and of maximising . . . the consequent export income generated by the gold mining industry, outweighed the arguments in favour of removing the industry's long-standing tax exemption.

On 7 July 1987, the Prime Minister (Mr Hawke) said that he would not introduce a gold tax during the next three-year term of the Labor Government.

I raise that because, whilst within relatively recent times the most senior spokesman for the Government have made these statements about a gold tax, a Minister of the Crown has made exaggerated and intemperate attacks on private citizens who are not directly protected by the Standing Orders. Today was a particularly obnoxious example of that. Individuals were named and certain things were said about them. I think that in at least one case the Minister for Finance is in serious error. He referred by name to a Mr Ian Cornelius. I do not know whether he is aware that there at least two people of that name in Western Australia. It is my understanding that one of them went to gold, but the one who is related to the mining industry is not that person. I mention this because I think there is a clear breach of the spirit of the resolution which was carried in this Senate on the initiative of a Minister of the Government. Mr President, I ask you to consider the replies that have been given by Senator Walsh over the last few days relating to gold tax and to consider whether in all the circumstances you should draw the attention of Senator Walsh, in particular, and the Senate in general to the spirit and letter of the resolution which was passed.

In my view there is obviously a need for robust debate in this place, and I do not seek to avoid that. However, the attack on the character of people and the imputations against people who are advocating a policy stance which was in fact the policy of this Government until very recently are quite ludicrous. It does little for the reputation of this place to see that continue. I ask you to give it your attention.

**Senator BUTTON** (Victoria—Leader of the Government in the Senate)—by leave—Let me indicate that the Government has no objection, Mr President, to you considering anything. Of course, I assume that you will accede to Senator Chaney's request. However, in considering his request I think you should take some matters into account. There are Standing Orders—

**Senator Chaney**—Which do not protect private citizens.

**Senator BUTTON**—That is a matter of some doubt.

**Senator Chaney**—It's in the resolution.

**Senator BUTTON**—I know. It depends what is said. The second point I hope you will take into account is this: Senator Chaney really has to make up his mind what he is objecting to.

**Senator Crichton-Browne**—Can't you tell?

**Senator BUTTON**—Senator Crichton-Browne's enthusiasm is undoubted but he should let me finish. The matter which I hope you will also take into account, Mr President, in considering this matter is whether Senator Chaney's argument is based on what he describes as ludicrous on the one hand and serious on the other. He describes it as ludicrous on the one hand and serious on the other. He describes it as ludicrous because of a statement made by the Treasurer (Mr Keating) and the Minister for Foreign Affairs and Trade (Senator Evans) in December 1986, which of course has nothing to do with the point he is now making. People may be aggrieved by remarks made by a Minister in this place which are either offensive or not—

**Senator Michael Baume**—That statement shows that it is improper to hold that view.

**Senator BUTTON**—No, it does not show anything of the sort. I am inviting the President to make intelligent consideration of this and it will not be helped by that sort of interjection. The point is that what happened in December 1986 has nothing whatsoever to do with the question of whether remarks—

**Senator Chaney**—It is not proper that a person holding a view should be black-guarded in that way.

**Senator BUTTON**—I see. If that had not been said by the Government in December 1986 it would be all right to blackguard people, in your view? What is the point of the argument? I think honourable senators opposite ought to have a party meeting and work out amongst themselves what they really think about it. It is either a question of being offensive and blackguarding people or it is a serious point. Mr President, in looking at this matter, I hope you will take those observations into account. What this is is a funny little exercise in political point scoring.

**The PRESIDENT**—In reply to the Leader of the Opposition and the Leader of the Government, I believe that today is the first time that the Minister for Finance has named individuals. I know that individuals so named are able to write to me and raise a matter of privilege. Having now found a copy of the report, I will investigate it and report back to the Senate.

APPENDIX IV

EXTRACT FROM PARLIAMENTARY PRIVILEGE RESOLUTIONS

AGREED TO BY THE SENATE ON 25 FEBRUARY 1988

5. Protection of persons referred to in the Senate

(1) Where a person who has been referred to by name, or in such a way as to be readily identified, in the Senate makes a submission in writing to the President:

(a) claiming that the person has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person; and

(b) requesting that the person be able to incorporate an appropriate response in the parliamentary record,

if the President is satisfied:

(c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Committee of Privileges; and

(d) that it is practicable for the Committee of Privileges to consider the submission under this resolution,

the President shall refer the submission to that Committee.

(2) The Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Senate.

(3) If the Committee decides to consider a submission under this resolution, the Committee may confer with the person who made the submission and any Senator who referred in the Senate to that person.

(4) In considering a submission under this resolution, the Committee shall meet in private session.

(5) The Committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Senate.

(6) In considering a submission under this resolution and reporting to the Senate the Committee shall not consider or judge the truth of any statements made in the Senate or of the submission.

(7) In its report to the Senate on a submission under this resolution, the Committee may make either of the following recommendations:

(a) that no further action be taken by the Senate or by the Committee in relation to the submission; or

(b) that a response by the person who made the submission, in terms specified in the report and agreed to by the person and the Committee, be published by the Senate or incorporated in Hansard,

and shall not make any other recommendations.

(8) A document presented to the Senate under paragraph (5) or (7):

(a) in the case of a response by a person who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and

(b) shall not contain any matter the publication of which would have the effect of:

(i) unreasonably adversely affecting or injuring a person, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or

(ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person.

REFERENCES TO PERSONS IN  
DEBATE

The **PRESIDENT**—On the last day of sitting, Thursday, 10 November 1988, Senator Chaney asked me to consider, in the context of relevant resolutions of the Senate, certain remarks made in debate by the Minister for Finance (Senator Walsh) concerning certain private citizens in Western Australia. The standing orders of the Senate confer no protection on private individuals in respect of remarks made about them by senators in debate. On that basis I ruled against a point of order which was taken when Senator Walsh was answering a question in relation to the proposed gold companies tax. In his answer, subsequent to that ruling, Senator Walsh named certain individuals and attributed disreputable characteristics to them.

On 25 February this year, the Senate passed certain resolutions relating to matters of parliamentary privilege, including two resolutions concerning statements made in debate about private citizens. One resolution, resolution No. 5, provides a procedure whereby persons aggrieved by remarks made about them in debate may seek to have a response incorporated in the parliamentary record. The first step in this procedure is a submission to the President. The other relevant resolution, resolution No. 9, enjoins senators to exercise their freedom of speech in a responsible manner and to take into account the rights of others and the damage which may be done by allegations concerning individuals. That resolution also allows me to draw its provisions to the attention of the Senate when I consider that it is desirable to do so.

Having considered Senator Chaney's comments, and the remarks in question by Senator Walsh, I think that I ought to draw the attention of all senators to resolution No. 9 and to the responsibility which Senators have to exercise their freedom of speech in a responsible manner, and to indicate that I will consider carefully any submission made to me under resolution No. 5. I have received a complaint from one of the people named and I am considering the correspondence at the present time.

**Senator CHANEY** (Western Australia—Leader of the Opposition)—by leave—I move:

That the Senate take note of the statement.

I welcome the fact, Mr President, that you have drawn the attention of the Senate to resolution No. 9 and to the responsibility that senators have to exercise their freedom of speech in a responsible manner. I might have enjoyed the statement more had you drawn the attention specifically of Senator Walsh to resolution No. 9, but I watched him carefully during the statement and he did not seem to flinch or colour or be overcome or mortified by the admonition. Indeed, I heard him repeat the allegation as he came to his place as you were starting to speak. I suspect the problem is not one that has been solved by your statement.

Mr President, I also welcome the fact that you have given a public indication that you will consider carefully any submission made to you under resolution No. 5, which does give aggrieved individuals a chance to have a statement made in this place if they believe their position has been misrepresented. I made the point when I drew your attention to this matter that in the case of one of the individuals named by Senator Walsh it appeared that he had mixed up two individuals of the same name, one of whom was in the mining industry and the other not—

**Senator Walsh**—They are both in the tax bludging rort and one has been in the slammer.

**Senator CHANEY**—The repeated insults by the Minister simply underline the point of concern that I was expressing in a very gentle manner; namely, that your admonition in your statement is at a level where it is certainly not going, I suspect, to change Senator Walsh's habits. I simply draw your attention to the fact that he has again repeated the defamation in the guise of an interjection. Mr President, I await your advice as to whether you hear further from the people who have been defamed. I seek leave to continue my remarks later.

Leave granted; debate adjourned.





PRESIDENT OF THE SENATE

PARLIAMENT HOUSE  
CANBERRA

30 November 1988

Senator P.J. Giles,  
Chair,  
Committee of Privileges,  
The Senate,  
Parliament House,  
CANBERRA, A.C.T. 2600.

Dear Senator Giles,

I have received the attached letters from Mr T. Motion, of Northam, Western Australia, and have accepted them as a submission in accordance with paragraph (1) of the resolution of the Senate of 25 February 1988 relating to the protection of persons referred to in the Senate.

Pursuant to that resolution, I refer the correspondence to your Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kerry W. Sibraa', written in a cursive style.

(Kerry W. Sibraa)

