

The Senate

Committee of Privileges

Possible improper influence of a witness
before the Environment and Communications
References Committee

166th Report

August 2017

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Report

Introduction

1.1 The Committee of Privileges reports to the Senate on its inquiry into the possible improper influence of a witness in respect to evidence given or to be given before the Environment and Communications References Committee or induced to refrain from giving evidence before that committee. The possible conduct relates to the references committee's inquiry into fin-fish aquaculture in Tasmania which was undertaken in 2015.

1.2 The matter was referred to the committee on 9 February 2017, in the following terms:

Having regard to the material tabled by the President on 8 February 2017, whether there was any attempt to improperly influence a witness before the Environment and Communications References Committee, and whether any contempt of the Senate was committed in that regard.

1.3 The material tabled by the President on 8 February was the exchange of letters between the President and the Chairs of the references committee. The letters are at attachment 2 of the Appendix.

1.4 In summary, the initial letter, dated 2 November 2016, was from Senator Whish-Wilson, who chaired the references committee during the fin-fish aquaculture inquiry. The letter drew to the President's attention comments made during a Four Corner's program by a submitter (Mr Hastwell) to the fin-fish aquaculture inquiry which implied that he had been offered an inducement by Tassal (a salmon farming company) not to appear before the references committee at the hearings held in Hobart on 15 July 2015. The President wrote to Senators Whish-Wilson and Waters (then the Chair of the references committee) indicating that, as Privilege Resolution 1(18) had not then been pursued, 'the appropriate course of action'¹ in the first instance, would be for the references committee to establish the facts.

1.5 Following the President's advice the references committee undertook this task and provided the information to the President. This letter, dated 27 January 2017, provides the context of this committee's inquiry as it outlines the relevant facts relating to the references committee's fin-fish aquaculture inquiry and the material submitted by both proponents – Mr Hastwell and Tassal. The references committee indicated that it was 'possible that the committee's ability to inform itself fully about the impacts of the fin-fish aquaculture on waterway health was negatively affected as a result of his decision to refrain from giving evidence'.² When the Senate next met the President made a statement, indicating that the references committee had

1 Letter from the President of the Senate to Senator Whish-Wilson, dated 7 November 2016.

2 Letter from Senator Waters to the President, dated 27 January 2017.

‘concluded that the witness may have been improperly influenced’,³ tabled the letters and invited a motion to be lodged which would refer the matter to this committee.

Role of the Committee

1.6 The committee has been charged by the Senate to establish, in the first instance, whether there was any attempt to improperly influence Mr Hastwell and secondly, whether any such action may constitute a contempt of the Senate.

1.7 In addressing these matters, the committee is mindful of Privilege Resolution 6 (10) (*Matters constituting contempts – Interference with witnesses*) which provides:

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 another person in respect of any evidence given or to be given before the Senate or a committee, or induce another person to refrain from giving such evidence.

1.8 At the commencement of the inquiry the committee has before it the letters provided by both Mr Hastwell and Tassal, as well as the correspondence tabled by the President. In addressing the second aspect of the inquiry, the committee also has the terms of Privilege Resolution 3 (*Criteria to be taken into account when determining matters relating to contempt*) to guide its deliberations, specifically:

- whether the actions taken can substantially obstruct the Senate and its committees from performing their functions;
- the existence of any other remedy;
- whether the act was committed with intent or whether there is a reasonable excuse for committing the act.

Conduct of the inquiry

1.9 The committee has always regarded the protection of witnesses as paramount and acknowledged that the protection of the Senate’s committees’ capacity to conduct inquiries requires measures to support witnesses and safeguard the integrity of their evidence.

1.10 In 1988 the Senate adopted resolutions which set guidelines for committees generally and others in their conduct to ensure that witnesses are treated in a manner that achieves this outcome. Privilege Resolution 1 (*Procedures to be observed by Senate committees for the protection of witness*) is routinely provided to witnesses when they are invited to appear before Senate committees. This committee has an additional resolution (Privilege Resolution 2 – *Procedures for the protection of witness before the Privileges Committee*) that instructs it in the conduct of an inquiry. Privilege Resolution 2 requires the committee to inform the person against whom the allegation is made of the nature of the allegation, any evidence provided and to

3 Senate Hansard, 8 February 2017, p 58.

provide them with a reasonable opportunity to respond to the allegations and evidence.

1.11 While the letter of 27 January 2017 from the references committee to the President laid out the relevant facts and the positions of both Mr Hastwell and Tassal, the committee formed the view that Mr Hastwell should be given an opportunity to provide any new evidence to this committee inquiry. The committee wrote to him on 20 February 2017 and received a response on 27 February re-submitting his submission (together with attachments) on the matter to the references committee, and an additional letter which included some comments relating to the submission made by Tassal to the references committee's invitation to comment.

1.12 In accordance with the provisions of Privilege Resolution 2, an invitation to make comment was made to Tassal on 24 March and a response was made on 4 May 2017. The letter responding restated evidence made to the references committee during its investigation and addressed the comments made by Mr Hastwell in his letter of 27 February 2017.

Mr Hastwell's view

1.13 Mr Hastwell first indicated that Tassal's actions during the sale of his marine leases had been determinate in his decision not to appear as a witness before the references committee on the ABC Four Corners program that aired on Monday, 31 October 2016. The program 'Big Fish' canvassed a range of issues concerning salmon farming in Tasmania and interviewed Mr Hastwell in relation to the sale to Tassal of the Dover Bay Mussel marine leases. Mr Hastwell stated that he had decided not to appear at the committee's hearing as 'the cost would have been too great'. He also agreed with the interviewer's suggestion that he was 'prevented or coerced' from giving evidence.

1.14 In his evidence to the references committee Mr Hastwell expanded on his view that giving evidence to the references committee would have incurred a financial cost to him and his company. The Dover Bay Mussel company had encountered financial losses over the preceding financial years and he could not risk the sale of the leases which would 'save a large portion of our capital investment'.⁴

1.15 Mr Hastwell also identified actions taken by Tassal in the negotiations over the sale as contributing factors. Mr Hastwell, through his lawyers, had sought to amend the non-disparagement clause of the sale deed in an email of 10 June 2015. The terms of the proposed new clause were to specifically exclude from the non-disparagement clause the submission provided to the references committee on 27 May 2015 and any oral evidence that Mr or Mrs Hastwell might provide to the references committee. Mr Hastwell submitted that Tassal did not accept the proposed new clause. Further the Hastwells were reminded of the provisions of the non-disparagement and confidentiality clauses in an email from Tassal of 9 July 2015, which noted that they had been invited to give evidence at the hearings. Mr Hastwell

4 Letter from Mr Hastwell to the references committee, dated 16 November 2016.

states that, as the submission was based around the issues in dispute which were the subject of the confidentiality clause of the deed, he was ‘advised that effectively by appearing at the Senate Inquiry I would be potentially in breach of the deed’.⁵

1.16 This email had been preceded by an exchange of emails in the first week of July seeking to finalise the sale of the marine leases. In the email of 1 July 2015, Tassal conveyed to Mr Hastwell’s lawyer that the terms of the offer made via email on 18 June would be withdrawn if it was not accepted by 8 July. That email was followed on 7 July by an email reiterating the withdrawal of the offer if not accepted and requesting clarification as to how the Hastwells were to give evidence at the Senate inquiry without ‘breaching confidentiality around discussions with Ms Sams and the terms of the Deed’.⁶ Mr Hastwell characterises the first of these emails as placing them in the position where they had to accept the offer or ‘suffer a considerable financial penalty’.⁷ He also provides a copy of their response dated 8 July 2015, to Tassal accepting the 18 June offer, ‘... as amended in relation to the payment amounts’.⁸ The letter of acceptance also canvassed evidence to the Senate inquiry, indicating that the Hastwells would not disclose that the leases had been sold nor the terms of the sale. It further stated that the Hastwells intended to ‘proceed with giving evidence on the basis that you have no objection to our clients involvement and attendance at the inquiry provided no disclosure is made in relation to the sale of the leases to your company or the terms of the sale if you do have an objection to any of our clients speaking at the Senate inquiry, then please immediately advise’.⁹ Tassal’s email of 9 July reminding of the provisions of the disparagement clause was in response.

1.17 Mr Hastwell acknowledges a further email sent on 10 July 2015, in which Tassal indicated that it was withdrawing its ‘offer as it may be construed as contravening the protection of witnesses procedures’.¹⁰ The email further indicated that their consideration of the sale would be resumed after the references committee reported on the fin-fish aquaculture inquiry. Mr Hastwell’s solicitors responded by email on 13 July 2015:

Your purported withdrawal of the offer to purchase is not accepted on the basis that our clients accepted your offer by letter of 8 July 2015 and accordingly your offer can no longer be withdrawn.¹¹

1.18 The email went on to state that ‘our clients do not intend to attend the Senate inquiry unless ordered by the Committee so to do’.¹²

5 *Ibid.*

6 *Ibid.*

7 *Ibid.*

8 *Ibid.*

9 *Ibid.*

10 *Ibid.*

11 Attachment ‘G’ to letter from Mr Hastwell to the references committee, dated 16 November 2016.

1.19 Mr Hastwell advised the references committee that he ‘was advised by my Lawyer that Tassal could not withdraw the offer ... and there was no guarantees that the offer would be presented in the same form and if we allowed them to withdraw we could end up with nothing’.¹³ Further, he expressed the view that if Tassal were concerned ‘to not be seen to contravene the requirements for protection of witnesses, all they had to do was ask for an amendment to the Deed as per our request in the letter of 10/6/15’.¹⁴

1.20 On the morning of the 15 July 2015 hearing, Mr Hastwell informed the references committee that he would not be appearing as a witness due to medical reasons. The references committee confirms the explanation provided by Mr Hastwell as to his withdrawal from the witness list and indicates that it was supported by Mrs Hastwell in a subsequent phone call.¹⁵ The references committee also advised that it had been notified earlier that Mr Hastwell was to undergo surgery.

1.21 Mr Hastwell provided copies of the various emails, some with text redacted, in his submission to the references committee.

Tassal’s response

1.22 Tassal, in responding to Mr Hastwell’s submissions, provided an account of the negotiations similar to that provided by Mr Hastwell, with some additions. Tassal indicated that the sale of the Dover Bay Mussel marine leases was negotiated in two tranches. The negotiations initially took place between Mr Hastwell and Tassal’s Head of Sustainability (Ms Sams) who ‘had offered to assist Mr Hastwell with his operations’.¹⁶ Tassal acknowledge that sale offer was accepted in principal by Mr Hastwell in an email, dated 13 May 2015, in which he also indicated that:

We would also agree not to proceed with legal action and unless compelled to do so withdraw from the senate enquiry process, we will also not continue with our media campaign.¹⁷

1.23 Tassal, in an email of 20 May 2015, responded by indicating that it was best to now place the matter in the hands of the lawyers so that ‘... the details around payment, legal action, confidentiality and the like,’ could be sorted out.¹⁸

1.24 On 21 May 2015, Mr Hastwell, in providing the name of the law firm which would act for him in the sale, also advised Tassal that ‘as the deadline for submissions to the senate enquiry is looming time is of the essence, please ask your lawyers to have an Agreement for Sale prepared and submitted to Scott Law for our perusal by

12 *Ibid.*

13 Letter from Mr Hastwell to references committee, dated 16 November 2015.

14 *Ibid.*

15 Letter from references committee to the President, dated 27 January 2017.

16 Letter from Tassal to the references committee, dated 23 November 2015.

17 *Ibid.*

18 *Ibid.*

1100 Monday 25 May on the basis that if satisfactory it will be signed by the end of the week'.¹⁹

1.25 Tassel further submitted that a number of the terms of the sale were the subject of further negotiation, including the confidentiality and the non-disparagement clauses. Each of the clauses was routinely included in Tassel's documents for commercial transactions. On 4 June 2015, in an email seeking external legal advice on the terms of the draft deed, Tassal's Legal Manager indicated that:

We have made it very clear to the Hastwells as well as their lawyer ... that this arrangement does not restrict the Hastwells from making a submission to the upcoming Senate Inquiry;²⁰

1.26 Tassal's response to Mr Hastwell's lawyer's email of 10 June 2015 which proposed the amendment to the disparagement clause in the deed of sale was made in an email sent on 18 June 2015. The response stated, 'We confirm, as per my conversation with you on or about 25 May 2015 that the Deed is irrelevant to the Federal Senate Standing Committee on Environment and Communications in relation to the regulation of the fin-fish aquaculture industry'.²¹

1.27 The exchange of emails between Mr Hastwell's lawyers and Tassel intensified in early July 2015. This exchange included the email of 9 July 2015 in which Tassal reminded Mr Hastwell, through his lawyer, '... of their obligations not to make disparaging statements whether in relation to the Senate Enquiry or to the media or otherwise'.²²

1.28 Tassel acknowledges the wording relating to the Senate inquiry in some of its emails could have been drafted more clearly but point out that the correspondence was between lawyers negotiating a sale. They contend that their Legal Manager's 'intent and legal focus was on dealing with the issues of disparagement and confidentiality with Mr Law, not Mr Hastwell's involvement with the Senate inquiry'.²³ Tassal notes that Mr Hastwell had access to his own legal advice during the negotiations and in making the decision to withdraw from the hearing.

Committee's view

1.29 The committee's responsibility is to examine the facts to form a view as to whether Tassal acted in a manner that was designed to prevent Mr Hastwell from giving evidence to the references committee, or to influence what Mr Hastwell provided as evidence. The committee has two similar accounts of the negotiations that took place between the two parties over the sale of the Dover Bay Mussels marine leases. Neither contradicts the facts of the other, but rather provides different

19 Letter from Tassal to committee, dated 4 May 2017.

20 Letter from Tassal to the references committee, dated 23 November 2015.

21 *Ibid.*

22 Letter from Mr Hastwell to the references committee, dated 16 November 2016.

23 Letter from Tassal to references committee, dated 23 November 2015.

perspectives about what transpired in the negotiation and the intent of those negotiations. The committee has considered both accounts. On the evidence before the committee, it is unable to conclude with any certainty that Tassal sought to influence Mr Hastwell either in his decision to appear before the committee or in the evidence that he might give to the hearing.

1.30 Central to Mr Hastwell's view that he was prevented from giving evidence to the references committee is the timeline for the sale of the marine leases. In the information provided by both Mr Hastwell and Tassel, the sale of the marine leases had been agreed prior to the hearing of 15 July. In relation to Tassal's purported withdrawal from the proposed sale on 10 July, Tassal informed the committee that, when it became aware of the protection afforded to witnesses as outlined in the *Procedures to be Observed by Senate Committees for the Protection of Witnesses*, it 'became concerned that an acquisition of Mr Hastwell's leases may potentially be construed or perceived as an inducement or benefit given to Mr Hastwell to influence him potentially in relation to any evidence he may give'.²⁴ The matter was resolved before Mr Hastwell withdrew from the hearing's witness list on the morning of the hearing with Mr Hastwell acknowledging that he acted in accordance with the advice of his lawyer. Tassal indicated that the lawyer's advice was incorrect as the sale deed, which included the non-disparagement clause, had not been executed at the date of the hearing.²⁵

1.31 Another factor contributing to Mr Hastwell's view that he had been prevented from giving evidence to the references committee's fin-fish aquaculture inquiry was Tassal's failure to amend the non-disparagement clause. Mr Hastwell informed the committee that it remained open to Tassal to adopt the amendments proposed by him which would have then made it clear that any evidence provided to the references committee was not covered by its provisions. However, Tassal had indicated on more than one occasion to both to Mr Hastwell and others that it was not seeking to place any prohibitions on the evidence Mr Hastwell might give to the references committee. It had confirmed in an email of 18 June to Mr Hastwell's lawyer a conversational comment that 'the Deed is irrelevant to the Federal Senate Standing Committee on Environment and Communications'.²⁶ The submission made by Mr Hastwell to the fin-fish aquaculture inquiry was published on the references committee's website on 16 June 2015. In this context it would seem unnecessary to amend the terms of the disparagement clause to specifically exclude the submission and any evidence required to be given. The submission was already published and the negotiations on the sale of the marine leases were on-going.

1.32 The other action taken by Tassal, which Mr Hastwell describes as the 'got you' moment, was the email reminder of 9 July 2015 to Mr Hastwell's lawyer which referenced the Hastwells' obligations under the confidentiality and non-disparagement

24 Letter from Tassal to the committee, dated 4 May 2017.

25 *Ibid.*

26 *Ibid.*

clauses in the deed'.²⁷ As this reminder was in response to a question posed by Mr Hastwell's lawyer it is difficult to conclude that it was designed to apply undue influence on Mr Hastwell.

1.33 The committee is concerned that reference to evidence to the fin-fish aquaculture inquiry appears to be commonplace during the negotiations, together with references to media campaigns and legal action. It would make the observation that the primary purpose of the contempt provisions of parliamentary privilege is to protect the integrity of the work of the Parliament. Decisions about whether to give evidence and/or what evidence a witness might give should not be used as currency in commercial negotiations.

1.34 The other feature of this inquiry that the committee finds of concern is the manner in which the Senate became aware of Mr Hastwell's view that he was influenced in his decision to withdraw from the fin-fish aquaculture inquiry. Had Mr Hastwell indicated to the references committee that he felt under pressure to withdraw from the inquiry, both the references committee and, if necessary, this committee could have pursued the matter earlier. To have over a year elapse before the Senate was made aware of Mr Hastwell's view has required a reliance on correspondence and memory and this may have compromised the committee's ability to undertake its work. As a matter of practice the committee would encourage those who feel unable to provide evidence to a Senate committee inquiry because of outside pressure to inform that committee of the circumstance so that the facts can be established contemporaneously.

Conclusion and recommendation

1.35 On the evidence before it the committee is unable to conclude with any certainty that there was any attempt to improperly influence a witness before the Environment and Communications References Committee and it **recommends** to the Senate that a contempt should not be found.

(Senator the Hon. Jacinta Collins)

Chair

27 Letter from Mr Hastwell to the references committee, dated 16 November 2016.

Appendix

- 1 Statement by the President, 8 February 2017**
- 2 Documents tabled by the President on 8 February 2017:**
 - Letter from Senator Whish-Wilson to President, dated 2 November 2016
 - Letter from President to Senator Whish-Wilson, dated 7 November 2016
 - Letter from President to Senator Waters, dated 7 November 2016
 - Letter from Senator Waters to President, dated 27 January 2017
- 3 Letter from Mr Hastwell to the Committee of Privileges, dated 27 February 2017**
- 4 Letter from Mr Hastwell to the Environment and Communications References Committee, dated 16 November 2016**
- 5 Letter from Tassal to the Committee of Privileges, dated 4 May 2017**
- 6 Letter from Tassal to the Environment and Communications References Committee, dated 23 November 2016**

SPEECH

<p>Date Wednesday, 8 February 2017 Page 58 Questioner Speaker PRESIDENT, The</p>	<p>Source Senate Proof Yes Responder Question No.</p>
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The PRESIDENT (15:34): Senators, I wish to advise you about a matter of privilege that has been raised by Senator Waters. By letter dated 27 January this year, the Chair of the Environment and Communications References Committee, Senator Waters, has raised a matter of privilege concerning that committee's 2015 inquiry into fin-fish aquaculture in Tasmania.

In her letter, Senator Waters reports on the committee's consideration of a matter first raised with me by Senator Whish-Wilson in November last year. The catalyst was an ABC *Four Corners* program broadcast on 31 October 2016, which alleged that representatives of Tassal may have improperly interfered with the right of a witness to appear before the committee.

Matters of privilege must be raised and determined in accordance with the Senate privilege resolutions. These require me to determine, having regard to the criteria in privilege resolution No. 4 and only those criteria, whether a proposal to refer the matter to the privileges committee should have precedence in debate over other business.

When the matter was first raised by Senator Whish-Wilson I was satisfied that it met the first criteria—that is, 'the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions'. The Senate has always regarded the protection of witnesses as one its highest duties, so any credible allegation that a witness has been improperly influenced in respect of their evidence is likely to satisfy this criterion.

However, I consider that the second criterion—the existence of a remedy other than the use of the contempt power—had not, at that stage, been satisfied. An alternative remedy was available, namely the investigation of the matter by the relevant committee.

I therefore wrote to Senator Whish-Wilson, on 7 November last year, indicating that I intended to bring the matter to the attention of the Environment and Communications References Committee, and I wrote to the chair, Senator Waters, on the same date asking the committee to make the necessary inquiries and to report to the Senate in accordance with Privilege Resolution 1(18), should the facts warrant it. Senator Waters' letter comprises a report on that investigation.

The purpose of the investigation was to enable the committee to determine whether the allegations had substance. Having taken the necessary steps, the committee has concluded that the witness may have been improperly influenced. The only remaining remedy to address those concerns is the use of the Senate's contempt powers. In that sense, the second of the criteria I am required to consider is satisfied.

The purpose of these criteria is to ensure that a matter which meets them is given an appropriate opportunity to be dealt with as an item of business, so that the Senate may then make a decision on the merits of the case. The decision by the President to grant precedence is not a recommendation that the matter should be referred to the Privileges Committee for inquiry, simply that the Senate should be given the earliest opportunity to make that decision for itself.

I therefore grant precedence to a motion to refer the matter to the Privileges Committee. I table the correspondence and now invite Senator Whish-Wilson to give notice of such a motion on behalf of Senator Waters.



PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE
 SENATOR THE HONOURABLE STEPHEN PARRY



7 November 2016

Senator Whish-Wilson
 Parliament House
 Canberra ACT 2600

Dear Senator ~~Whish-Wilson~~ Peter,

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

I am satisfied that the matter meets the first criterion I am required to consider under Privilege Resolution 4, namely, "the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate".

The Senate has always regarded the protection of witnesses as one of its highest duties and has accepted that the protection of committees' capacity to conduct inquiries requires measures to support witnesses and safeguard the integrity of their evidence. Some of these measures are contained in the Privilege Resolutions.

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

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

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

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

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

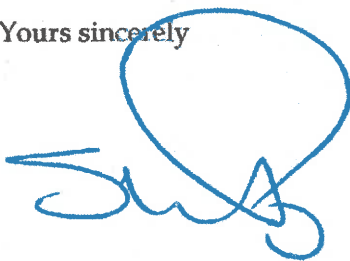
I believe that the appropriate course of action in this case would be for me to bring the matter to the attention of the Environment and Communications References Committee and ask it to make the necessary inquiries and report in accordance with Privilege Resolution 1(18). At that point, a reference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

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

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

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

Yours sincerely



(STEPHEN PARRY)



PARLIAMENT OF AUSTRALIA

PRESIDENT OF THE SENATE

SENATOR THE HONOURABLE STEPHEN PARRY



7 November 2016

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

Dear ~~Senator Waters~~ Larissa,

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

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

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

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

I was satisfied that the matter met the first criterion I am required to consider under Privilege Resolution 4 ("the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for senators against improper acts tending substantially to obstruct them in the performance of their functions, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate"). The Senate has always regarded the protection of witnesses as one of its highest duties and has accepted that the protection of committees' capacity to conduct inquiries requires measures to support witnesses and safeguard the integrity of their evidence. Some of these measures are contained in the Privilege Resolutions.

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

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

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

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

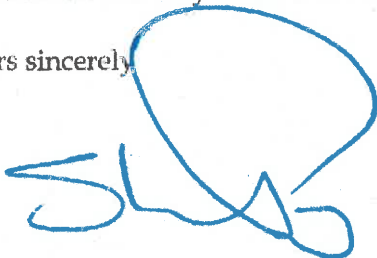
A committee is authorised (and indeed required) by Privilege Resolution 1(18) to "take all reasonable steps to ascertain the facts of the matter" when its attention is drawn to the alleged improper influence and notwithstanding that the inquiry was completed in a previous session.

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

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

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

Yours sincerely,



(STEPHEN PARRY)



SENATOR PETER WHISH-WILSON
Australian Greens Senator for Tasmania



2 November 2016

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

Dear Mr President

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

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

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

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

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

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

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

Regards

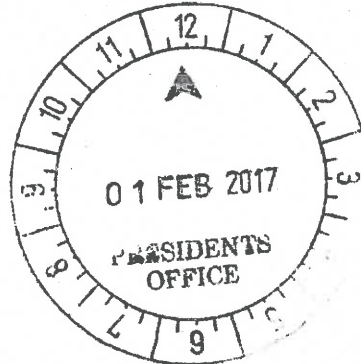
Peter Whish-Wilson
Australian Greens Senator for Tasmania



ENVIRONMENT AND COMMUNICATIONS REFERENCES COMMITTEE

27 January 2017

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



Dear Mr President

Matter of privilege relating to the protection of a witness

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

Background

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

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

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

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

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

Relevant facts

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

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

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

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

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

Mr Hastwell's position

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

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

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

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

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

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

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

Tassal's position

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

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

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

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

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

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

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

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

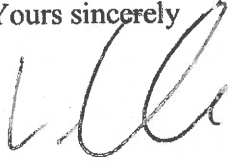
Conclusion

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

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

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Waters', written over the typed name.

Senator Larissa Waters
Chair

Warwick Hastwell

27/02/2017

To the

Committee of Privileges

“Inquiry into possible improper influence of a witness before the Environment and Communications Reference Committee”

In response to your Letter of 20/02/17, I wish to submit my initial information in its existing Form and also make some comments in regards to Tassal’s response to my allegations

- 1) Tassal’s allegations that I had a history of breaching confidentiality, whilst I was in initial discussions with Tassal regarding the issues I had raised with them and potential avenues to resolve them, I had been asked to refrain from speaking to the media or discussing the issues with other parties, I accepted this and refrained from doing so. On 18/03/2014 I received a letter from [redacted], Head of Farming Marine Operations, Tassal. Stating that they accepted no liability for my situation and would not be looking to acquire more of my marine Leases and assets other than a small area of one lease negotiated prior to me raising my issues, as such I was no longer bound by any media gag or confidentiality agreements, the following week after raising my issues and evidence to support them with a participant in a Marine Farming Review Board hearing in to Tassal’s Expansion, I was asked to comment to the media and did so as [redacted], This coupled with other events contributed in the Senate enquiry being called, I also lobbied various politicians, presenting the evidence to support my claims in an attempt to try to get an investigation into my situation, it was after this that a third party mediator [redacted] offered to try and broker a deal with Tassal regarding the sale of my Marine Leases, once this process started confidentiality was restabilised as a requirement, Tassal made allegations as to me breaching this when I was being pressured to accept their offered deal by the deadline set by them even though we were not completely happy with the terms, we challenged this allegation and asked for evidence to support it which was declined as such allegations of my history of breaching confidentiality are rather spurious.

I reject Tassal’s claim that my claim was unmeritorious as they were never independently investigated and subsequent published research almost 100% supports the probability of waste from

Tassal’s net cleaning being the potential cause of my problems, **“Potential environmental risks associated with biofouling management in salmon aquaculture, Oliver Floerl1, 2,* , Leif Magne Sunde1, Nina Bloecher1”, 25/07/2016**

The lack of concern by Marine farming Branch, DPIPWE into investigating my situation was one of my main points in my submission.

At no stage did I threaten Tassal that I would breach confidentiality if they didn’t accede to my demands and in the absence of evidence to support this allegation it should be ignored.

Tassals statement that their emails sent by them were not directives to me but rather communications between lawyers is rather interesting as they were quite specific in referencing the Senate inquiry, and the advice from my solicitor was that to appear at the senate Inquiry could be seen as a breach of the Non-disparagement clause and give cause for Tassal to withdraw from the agreement, also Tassals statement "that the clauses did not prevent or restrict the giving of evidence to the committee" are rather curious especially since they specifically referenced the Senate Inquiry

Tassals statement that more care should have been taken by Ms Maedlar in the wording of her correspondence is really an attempt to "shut the gate after the horse has bolted" Ms Maedlar is a legal professional and carefully worded correspondence is her "stock in Trade", also the opportunity to amend the Non disparagement clause had been offered previously and was still an avenue open to her,

Also ' The "Procedures to be observed by Senate Committees for the protection of witnesses" document is available from senate website and was referenced when submissions were first called, once again as a legal professional Ms Maedlar had ample opportunity to avail herself of them prior to the situation she found herself in just prior to my appearance at committee

Yours respectfully

Warwick Hastwell
Dover Bay Mussels Pty Ltd

Warwick Hastwell

16/11/2016

To the

Environment and Communications References Committee

In response to your letter of the 10/11/16, I will give a brief timeline of my dealings with Tassal regarding the sale of our marine Leases in Dover, This Transfer of our leases was to settle a dispute between Tassal and Dover Bay Mussels Pty Ltd regarding allegations made by me regarding contamination of my farm with Net cleaning material, causing a serious decline in our productivity, these Allegations and Tassal denial were referred to as the "matters in dispute" in the Lease Transfer deed.

Initially we were verbally advised that this deal was not related to the Senate Inquiry into the regulation of the Salmon industry and we were free to make a submission, which I did. We also tried to have the "Non Disparagement Clause" amended to include this as per letter to Monika Maedlar Tassal on 10/6/15, "A"

On the 1/7/15 we were advised by Tassal that we had until COB on Wed 8th July to accept offer or it would be withdrawn, no amendment to the Non Disparagement clause had been made. Email 1/7/15 marked "B"

This left us in the position that we had no option but to accept the offer or suffer a considerable financial penalty as finding another buyer for our leases with the problems attached to them would have been near impossible, in the Letter accepting Deal 8/7/15 we also once again sought clarification of Tassal's position regarding giving evidence at the Senate Inquiry, letter marked "C" this was in response to an email from Tassal on the 7/7/15 marked "D"

On the 8/7/15 we received an email from Tassal reminding us of our obligations not to make disparaging statements under the deed and confidentiality requirements regarding discussions and the "issues in Dispute" email marked "E", this for us was basically a "got you" moment as our senate inquiry submission was based around the "issues in dispute" so I was advised that effectively by appearing at the Senate Inquiry I would potentially be in breach of the deed. As my Wife and I could not afford financially to risk selling our leases we decided that it would be unwise to appear before Senate committee.

Late on Fri 10/7/15 at 7:38pm an email was sent from Tassal advising that they were going to withdraw their offer as it may be construed as contravening the protection of witnesses procedures of the Senate, and they would revisit the offer after Senate Inquiry issues its final report Email marked "F" this email was not seen by my Lawyer until Mon 13/7/15

I was advised by my Lawyer that Tassal could not withdraw the offer as it had already been accepted by the deadline imposed by them and there was no guarantees that the offer would be presented in the same form and if we allowed them to withdraw we could end up with nothing, once again the financial cost would have been too great and we advised Tassal that we would not accept their withdrawal and would proceed to honour the agreement Letter 13/7/15 marked "G"

Whilst all this was going on my Wife and I were under a lot of financial pressure with the failure of our business and the deal proposed by Tassal was really our only way to save a large portion of our

capital investment, initially we were lead to believe that it was separate to us making a submission to The Senate Inquiry and as such we made a written submission. Tassal then gave us an deadline to accept the deal that was one week before I was due to appear at Senate Inquiry, the next day they effectively knobbed me by referencing my obligations regarding Confidentiality and Non Disparagement clauses in the Deed, then one day later they tried to withdraw from the deal altogether. If their concerns were to not be seen to contravene the requirements for protection of witnesses, all they had to do was ask for an amendment to the Deed as per our request in the letter on 10/6/15 "A". As it was, My wife and I felt that we really had no option but to hold Tassal to the accepted deal for the "Transfer of our Leases" even though it meant we had to remain silent. To appear at the Senate Inquiry in person, held too great a financial risk, as such I notified the Senate Inquiry that I would not be appearing due to medical reasons.

Yours faithfully

Warwick Hastwell

Dover Bay Mussels Pty Ltd

" B "

From: Monika Maedler <Monika.Maedler@tassal.com.au>
Sent: Wednesday, 1 July 2015 2:30 PM
To:
Subject: RE: Dover Bay Mussels

Dear Mr. Law

I refer to your email of 25 June 2015.

We have no concerns as to your clients' discussions with

However, as we have stated previously, it is of concern to us that we have been made aware of a potential breach of confidentiality, as it gives us little assurance that contractual obligations will be observed.

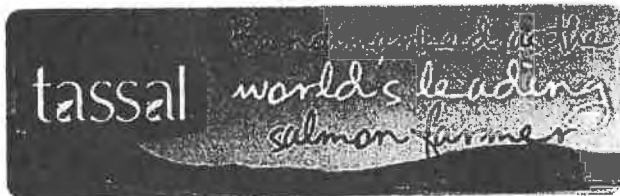
It is not appropriate for us to reveal the source of the information.

Ms. Linda Sams made a fair and reasonable offer on behalf of Tassal, to your clients on a confidential basis and in good faith, but it's all becoming too difficult.

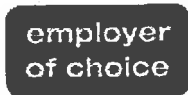
Accordingly I am instructed that unless your clients accept the offer as outlined in my email of 18 June 2015, the offer will be withdrawn as of close of business on Wednesday 8 July 2015.

Kind regards

Monika Maedler
General Counsel and Company Secretary



Corporate, Social & Environmental Reporting- Seafood Intelligence 2014



TASSAL GROUP LIMITED

T: 03 6244 9035
F: 03 6244 9002

E: monika.maedler@tassal.com.au

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Please consider the environment before printing this E-mail

From:
Sent: Thursday, 25 June 2015 4:32 PM
To: Monika Maedler
Subject: Dover Bay Mussels

Dear Monika

E. R. HENRY, WHERRETT & BENJAMIN

Barristers & Solicitors

SCOTT W. LAW, B.COM, LLB.
DAVID M. REES, B.A., LLB.

YOUR REFERENCE

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G.P.O. BOX 612
HOBART, TASMANIA 7001
DX 106 Hobart
hwb@hwblawyers.com.au
TEL: 03 6220 7777
FAX: 03 6223 6487

IN REPLY PLEASE QUOTE

SWL:cjc:69592

8th July 2015

Tassal Group Limited
GPO Box 1645
HOBART TAS 7001

By email: monika.maedler@tassal.com.au
linda.sams@tassal.com.au

By Facsimile: 6244 9002

Dear Madam

RE: PURCHASE FROM DOVER BAY MUSSELS

We refer to your email of the 7th July in relation to the concessions that you are prepared to make in response to our letter of the 2nd July.

Notwithstanding that your offer of the 18th June is not consistent with the terms of the agreement as originally negotiated, in an effort to resolve this matter we are instructed to advise that our client agrees to accept the offer as put forward in your email of the 18th June as amended in relation to the payment amounts.

Please forward to us an amended contract for signing by our clients.

As to the final paragraph of your email of the 7th July, we are instructed to advise that when speaking at the Senate Inquiry, our client will not disclose that the leases have been sold to your company nor will the terms of the sale be disclosed.

On the basis of point 11 of your email of the 18th June in which you confirmed "that the Deed is irrelevant to the Federal Senate Standing Committee on Environment and Communications in relation to the regulation of the fin-fish aquaculture industry in Tasmania", our client intends to proceed with giving evidence on the basis that you have no objection to our client's involvement and attendance at the Inquiry provided no disclosure is made in relation to the sale of the leases to your company or the terms of the sale. If you do have an objection to any of our clients speaking at the Senate Inquiry, then please immediately advise.

Yours faithfully,
E.R. HENRY WHERRETT & BENJAMIN



SWLAW



"D"

From: Monika Maedler <Monika.Maedler@tassal.com.au>
Sent: Tuesday, 7 July 2015 5:00 PM
To:
Cc: Linda Sams
Subject: RE: Dover Bay Mussels

Dear Scott

I refer to your email of 2 July 2015 and reiterate that unless your clients accept the offer as outlined in my email of 18 June 2015, that offer will be withdrawn as of close of business tomorrow.

The only concessions Ms. Sams is prepared to make in relation to that offer are as follows:

- Item 6 - Ms Sams is prepared to make the [REDACTED] of [REDACTED] the [REDACTED] payable [REDACTED]
- Item 7 - Ms Sams is prepared to agree to your clients' request for two months to clear Lease nos. 36 & 192.

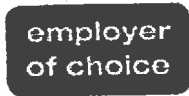
It has come to our attention that one of your clients has been asked to speak at the Senate Enquiry. Please clarify how your client intends to do this without breaching confidentiality around discussions with Ms Sams and the terms of the Deed.

X

Kind regards
Monika Maedler
General Counsel and Company Secretary



Corporate, Social & Environmental Reporting - Seafood Intelligence 2014



TASSAL GROUP LIMITED

T: 03 6244 9035
F: 03 6244 9002

E: monika.maedler@tassal.com.au

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Please consider the environment before printing this E-mail

From:
Sent: Tuesday, 7 July 2015 4:12 PM
To: Monika Maedler
Cc: Linda Sams
Subject: Dover Bay Mussels

Dear Monika

"E"

From: Monika Maedler <Monika.Maedler@tassal.com.au>
Sent: Thursday, 9 July 2015 12:28 PM
To:
Subject: Dover Bay Mussels
Attachments: FINAL Dover Bay Deed 9 July 2015.pdf; Tracked version of Deed 9 July 2015 docx

CONFIDENTIAL AND SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE

Dear Scott

I refer to your email of 8 July 2015.

Please find **attached** a final copy of the Deed for execution by your clients together with a version containing tracked changes made since the version sent on 17 June.

I note specifically the following:

- Change [REDACTED]
- [REDACTED] days from date Deed is signed by both parties, and
- The marine leases 2 months from deed is signed by both parties.

Please print off 2 copies for your clients to sign and include copies of the Marine Leases as Annexure A to the 2 copies of the Deed.

Please send the executed copies to me for execution by Tassal.

We understand that one or more of your clients has been invited to give evidence at the Senate Enquiry.

We remind your clients of their obligations not to make disparaging statements whether in relation to the Senate Enquiry or to the media or otherwise. This is in addition to your clients obligations regarding confidentiality in relation to the terms of the Deed as well as the discussions with Ms. Sams and the issues that were in dispute (the allegations) as defined in the Deed.

Kind regards

Monika Maedler

General Counsel and Company Secretary



Corporate, Social & Environmental Reporting - Seafood Intelligence 2014

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of choice

TASSAL GROUP LIMITED

T: 03 6244 9035

F: 03 6244 9000

e: monika.maedler@tassal.com.au

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' F ' N

From: Monika Maedler <Monika.Maedler@tassal.com.au>
Sent: Friday, 10 July 2015 7:38 PM
To:
Subject: Fwd: Confidential and subject to legal professionals privilege

Dear Mr Law

We have just been provided a copy of the Senate's Standing Committee on Environment and Communications Reference Committee letter relating to the Inquiry into the Regulation of the Finfish Aquaculture Industry in Tasmania dated 10 July 2015.

We note your client's appearance as a witness at the Inquiry.

In particular we reference the procedures to be observed by Senate Committees for the protection of witnesses.

It appears to us, on reviewing the procedures, that our offer may be construed by others as contravening these procedures and accordingly we withdraw our offer as tabled with immediate effect.

I am instructed that Tassal will revisit the offer after the Senate Enquiry issues its final report.

Kind regards

Monika Maedler
General Counsel and Company Secretary

<image001.jpg>

TASSAL GROUP LIMITED

E. R. HENRY, WHERRETT & BENJAMIN

Barristers & Solicitors

SCOTT W. LAW, B.COM., LL.B.
DAVID M. REES, B.A., LL.B.

YOUR REFERENCE

IN REPLY PLEASE QUOTE

SWL:dc:69592

A.B.N 54 809 189 312

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13th July 2015

Tassal Group Limited
GPO Box 1645
HOBART TAS 7001

By email: monika.maedler@tassal.com.au
linda.sams@tassal.com.au

By Facsimile: 6244 9002

Dear Madam

RE: PURCHASE FROM DOVER BAY MUSSELS

We refer to your email of the 10th July.

Your purported withdrawal of the offer to purchase is not accepted on the basis that our clients accepted your offer by letter of the 8th July 2015 and accordingly your offer can no longer be withdrawn.

Our clients intend to honour the agreement now existing between them and your company and expect you to do the same.

As far as the Senate Inquiry is concerned, our clients do not intend to attend the Senate Inquiry unless ordered by the Committee so to do.

We will now proceed to arrange for our clients to sign the contract and forward same to you for execution as per your email of the 9th July 2015.

Yours faithfully,

E.R. HENRY WHERRETT & BENJAMIN

Per:

S W LAW



Tassal Group Limited
ABN 15 106 067 270
Tassal Operations Pty. Ltd.
ABN 38 106 324 127
De Costi Seafoods Pty Ltd
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website: www.tassal.com.au

4 May 2017

CONFIDENTIAL

Senator the Hon Jacinta Collins
Chair
Australian Senate
Committee of Privileges
Parliament House
CANBERRA ACT 2600

Email: priv.sen@aph.gov.au

Dear Senator Collins,

**Inquiry into possible influence of a witness before the Environment and Communications
References Committee**

We refer to your letter 24 March 2017, which attached a copy of:

1. Mr Warwick Hastwell's response to the Australian Senate Committee of Privileges (**Committee**) by way of his letter dated 27 February 2017; and
2. Mr Hastwell's letter dated 16 November 2017 other documents previously submitted by Mr Hastwell to the Environment and Communications References Committee (**ECRC**) on 16 November 2016 in relation to this matter

(collectively, **Mr Hastwell's Documents**).

We thank the Committee for providing us with Mr Hastwell's Documents.

We are also grateful for the extension of time that was granted to enable this response to be prepared.

Committee's Investigation

By a letter dated 23 November 2016, we responded to the ECRC's invitation to respond to the allegations that Mr Hastwell may have been improperly influenced in relation to his non-attendance at the public hearing on 15 July 2015 of the ECRC's Inquiry into the regulation of the fin-fish aquaculture industry in Tasmania in 2015 (**ECRC Inquiry or Inquiry**).

Our letter to the ECRC provides a detailed account of Tassal's interactions with Mr Hastwell and his lawyers. We wish to restate our comments made in our letter to the ECRC for the purposes of the Committee's own investigation into these allegations.

On the basis of the detailed information contained our letter to the ECRC and this letter, we submit that Tassal did not prevent Mr Hastwell, or pressure Mr Hastwell against, giving evidence at the ECRC's public hearing on 15 July 2015 or the ECRC Inquiry generally.

Background

Having reviewed an extract of a transcript of Mr Hastwell's comments on the Australian Broadcasting Corporation (ABC) Four Corners program episode entitled 'Big Fish' (which aired on 31 October 2016) and Mr Hastwell's Documents, it is clear to us that Mr Hastwell formed a mistaken and unsubstantiated view that Tassal caused contamination to his former Dover Bay mussels farm site for the purposes of commercial gain.

Mr Hastwell has never produced any substantive evidence to support his allegation that Tassal caused contamination to his site.

In an email dated 2 February 2015 from Mr Hastwell to Ms Linda Sams of Tassal and various other parties, he stated:

"Thanks for response Linda

I appreciate Tassal is looking at their operations to see any links can be found between your operations and our problem, at this stage I can only conjecture what cause may be and really feel that whatever problem is it needs investigation urgently Thanks Warwick"

By his own admission, Mr Hastwell states that he can only guess as to what may have caused the contamination at his site.

As stated in our letter to the ECRC, after an operational and scientific review of Mr Hastwell's site, Tassal was satisfied that:

- (a) his allegations were unfounded; and
- (b) the issues arising at his site were not caused by Tassal.

Tassal offered to assist Mr Hastwell with his operations.

However, Mr Hastwell indicated that he wanted to sell his business. Whilst Tassal had no interest in Mr Hastwell's mussel business, Tassal did see some commercial and operational benefit in acquiring some of Mr Hastwell's marine leases for the reasons set out in our letter to the ECRC.

Negotiations for the initial sale of some of Mr Hastwell's marine leases commenced in February 2015. This occurred well before the Senate's referral to the ECRC to inquire into the regulation of the fin-fish aquaculture industry in Tasmania on 24 March 2015.

Following this initial sale, Mr Hastwell continued to express interest in Tassal acquiring his remaining marine leases. The sale of these remaining leases occurred following the finalisation of the ECRC Inquiry, given Tassal's concerns that such a sale could potentially be construed or perceived as influencing Mr Hastwell. Mr Hastwell had insisted on finalising the sale before the finalisation of the ECRC Inquiry, despite Tassal's concerns having been conveyed to Mr Hastwell and his lawyers in this regard.

Mr Hastwell's response to the Committee

We have reviewed the letter from Mr Hastwell to the Committee dated 27 February 2017. We briefly make the following comments:

1. We confirm that Mr Hastwell repeatedly breached confidentiality in relation to the discussions he held with Tassal regarding the sale of his leases and related matters. This is discussed further in this letter and also in our letter to the ECRC.
2. With Mr Hastwell having engaged lawyers in this matter, it is surprising that he believes that his obligation of confidentiality was dependent on Tassal acceding to his demands or threats or on him achieving his desired commercial outcome. It became evident to us that if Mr Hastwell did not achieve his desired outcome or Tassal did not accede to his demands or threats, he believed that he no longer had any obligation of confidentiality (please see paragraph 1 of his letter). Mr Hastwell's proposition, especially when the breach occurs during commercial negotiations between the parties, lacks a sound legal basis.
3. Negotiations over the sale of the leases were lengthy and conducted over many months between the parties and their lawyers so that there was ample opportunity for both Mr Hastwell and his lawyers to seek to negotiate the terms. It is surprising that Mr Hastwell states that he was not happy with the terms, especially given that when Tassal decided to withdraw from the proposed sale, Mr Hastwell made demands and threats and insisted on the sale proceeding. This is discussed further in this letter and also in our letter to the ECRC.
4. Mr Hastwell had expressed his gratitude to Tassal for agreeing to review his farm site and his problem. As stated earlier, Mr Hastwell had stated that he could only guess as to what may have caused the contamination at his site by his own admission.
5. We note that Mr Hastwell has effectively stated the reason for not attending the ECRC's public hearing on 15 July 2015 was due to his lawyers having advised him that the non-disparagement clause prevented him from appearing before and giving evidence to ECRC. That legal advice was incorrect. Further, as at 15 July 2015, the sale deed containing the non-disparagement clause had not been executed by any of the parties. The sale deed was executed by Mr Hastwell (and his spouse and company) on 21 May 2015 and by Tassal on 3 August 2015.

6. As pointed out in Tassal's letter to the ECRC of 23 November 2016, the emails from Ms Maedler were not intended to interfere with the proceedings of the ECRC but were drafted in the context of ongoing discussions concerning the confidentiality of commercial transactions. Of course, in hindsight they could have been drafted more clearly. That is quite a different matter from seeking to interfere with the procedures of the ECRC Inquiry. The Committee should not draw an adverse inference with respect to interference when the whole context of the dispute has been properly understood, together with the other matters set out in this letter.

Mr Hastwell's objectives

As stated in our letter to the ECRC, it was important to Tassal that its negotiations in relation to the acquisition of marine leases from Mr Hastwell remained confidential given their commercially sensitive nature, and this was conveyed to Mr Hastwell during his meetings with Tassal. However, it became clear to us that Mr Hastwell was speaking publicly about these confidential commercial discussions. Further, Mr Hastwell had repeatedly threatened Tassal to approach third parties and the media and to breach confidentiality if his offer for the sale of his leases was not accepted by Tassal.

Mr Hastwell had been using threats of legal action and conducting a media campaign adverse to the interests of Tassal throughout the negotiations for the sale of his leases.

Mr Hastwell's repeated breaches of confidentiality and his threats to make disparaging statements about Tassal and disclose details of our commercially sensitive negotiations were of significant concern to Tassal. Numerous examples of these threats are set out in in our letter to the ECRC, and include:

1. By email from Mr Hastwell to Ms Linda Sams of Tassal on 11 May 2015, Mr Hastwell stated:

"We are prepared to maintain the confidence we agreed upon for a further period of 48hrs to give your company time to revise your offer, we have other parties involved in our case, media included awaiting the outcome of this meeting and we will hold off discussions with them for this period."

2. In Mr Hastwell's email to Ms Sams of Tassal dated 13 May 2015, he stated:

"We would also agree not to proceed with legal action and unless compelled to do so withdraw from the senate enquiry process, we will also not continue with our media campaign."

3. In Mr Hastwell's email to Ms Sams of Tassal and his lawyers dated 21 May 2015, he stated:

"My solicitor will be Scott Law, ER Henry Wherrett & Benjamin, 9 Victoria St Hobart as the deadline for submissions to the senate enquiry is looming time is of the essence, please ask your lawyers to have an Agreement for Sale prepared and submitted to Scott Law for our

perusal by 1100 Monday 25th May on the basis that if satisfactory it will be signed by end of week Regds Warwick”

It is also apparent that Mr Hastwell’s threat to use the media and environmental groups to further his own commercial objectives is not limited to Tassal.

For example, in an email dated 2 February 2015 from Mr Hastwell to the Department of Primary Industries, Parks, Water and Environment of Tasmania (and other parties including copying in Tassal on his email), he stated:

“At this stage I am reluctant to involve the media and environmental lobby groups as negative press is never good for the seafood industry, but if a satisfactory response to my request for some urgent investigation is not forthcoming I will be left with little option.”

It is our view that Mr Hastwell believed that his threats, which he consistently deployed as a tactic, would enhance his chances for securing the sale of his leases to Tassal.

In our letter to the ECRC, we refer to Tassal’s numerous concerns over breaches of confidentiality on the part of Mr Hastwell.

Notwithstanding Mr Hastwell’s threats and breaches of confidentiality, Tassal did not accede to Mr Hastwell’s insistence for the sale of his remaining leases to occur before the finalisation of the ECRC Inquiry.

ECRC Inquiry

As stated earlier, our letter to the ECRC sets out Tassal’s interactions with Mr Hastwell and his lawyers. In particular, we note:

1. Mr Hastwell was legally represented at the relevant times and also obtained legal advice, albeit incorrect advice, as to whether he attended or did not attend the ECRC’s public hearing on 15 July 2015. In relation to this issue, Tassal dealt directly with Mr Hastwell’s lawyers and not with Mr Hastwell.
2. On 18 June 2015, Ms Monika Maedler of Tassal sent an email to Mr Hastwell’s lawyers in relation to various points to be negotiated in the sale deed for the leases in which Ms Maedler stated:

“We confirm, as per my conversation with you on or about 25 May 2015 that the Deed is irrelevant to the Federal Senate Standing Committee on Environment and Communications in relation to the regulation of the fin-fish aquaculture industry in Tasmania.”

3. Despite some superficially broad wording in a few subsequent emails from Ms Maedler of Tassal to Mr Hastwell’s lawyers regarding Mr Hastwell’s appearance before the ECRC Inquiry (as referred to in our letter to the ECRC) in the context of confidentiality, we wish to confirm that these particular emails were intended to preserve the confidentiality of the proposed sale of the leases and related communications between the parties in this regard. Tassal was concerned to protect its commercial interests, confidentiality and reputation on matters that were not relevant to the ECRC Inquiry.

4. On 10 July 2015, when Tassal became aware of the paragraph under the heading “Interfering with witnesses” in a document entitled “Procedures to be Observed by Senate Committees for the Protection of Witnesses”, Tassal became concerned that an acquisition of Mr Hastwell’s leases may potentially be construed or perceived as an inducement or benefit given to Mr Hastwell to influence him in relation to any evidence he may give to the ECRC. Accordingly, Tassal attempted to withdraw from the proposed sale transaction and did not finalise and complete the acquisition of the leases of Mr Hastwell until after the finalisation of the ECRC Inquiry.
5. Far from being an attempt to influence Mr Hastwell or to deprive him of any benefit on account of his giving evidence to the ECRC, the purpose of the attempted withdrawal from the proposed sale transaction and the non-finalisation and completion of acquisition of the lease until after finalisation of the ECRC Inquiry was undertaken for the very purpose of avoiding the possibility of an improper influencing of a witness before the Inquiry or the perception of same.
6. Tassal entered into negotiations with Mr Hastwell well before the ECRC Inquiry began and commercial negotiations happened to continue between the parties in relation to the remaining leases that Mr Hastwell was seeking, if not insisting, to sell to Tassal.
7. The timing of the ECRC Inquiry was unfortunate in the present circumstances given the timing of Mr Hastwell’s continued persistence to sell his leases to Tassal. If Tassal finalised and completed the acquisition of the leases, as Mr Hastwell insisted, prior to his scheduled appearance date of 15 July 2015 or the finalisation of the ECRC Inquiry, it may well have been argued that there had been the possibility of improper influence having been applied to Mr Hastwell, as a witness before the ECRC, or the perception of same, on the basis of Tassal having been seen to have given an inducement or benefit to Mr Hastwell in the form of the purchase price for the leases.
8. Similarly, Tassal was concerned to protect the integrity of the ECRC Inquiry and its proceedings.

Conclusion

We have sought in this submission, amongst other things, to answer the allegations which are contained in Mr Hastwell’s letter of 27 February 2017. In many ways that letter is inaccurate and wrongly accuses Tassal of using its alleged power in commercial negotiations with him in order to deflect his obligation to the ECRC Inquiry as he saw it.

We have pointed out that Mr Hastwell was assisted by his lawyer in relation to his negotiations. We have further pointed out that Mr Hastwell’s method of negotiation had shown little respect for the issue of confidentiality in the context of a complex commercial arrangement so that it was perfectly legitimate for Tassal to have concerns about the importance of confidentiality.

We have further pointed out that the legal advice that Mr Hastwell obtained suggesting the non-disparagement clause prevented his appearing before the ECRC Inquiry was not correct.

Mr Hastwell's complaints in relation to Tassal's conduct in relation to withdrawing from the agreement are misconceived. It was indeed Tassal's concern that an acquisition of Mr Hastwell's leases coinciding with the timing of the ECRC Inquiry that prompted Tassal's attempt to withdraw from the proposed sale transaction and not finalise and complete acquisition of leases precisely to avoid either the possibility of improper influence or at least that perception.

It was indeed the timing of the Inquiry in relation to the commercial dealings that placed Tassal in the situation in which it would be damned if it did and damned if it did not. It would be damned if it did complete the commercial transaction on the basis that that could be seen to be improper influence with respect to giving evidence at the ECRC Inquiry, or at least that perception; it would be damned if it did not withdraw from the commercial transaction because the same possibility of improper influence, or at least that perception, could be suggested.

Tassal's motivation in relation to its dealing with Mr Hastwell in respect of the commercial transaction at the time of the Inquiry was a concern to protect the integrity of the ECRC Inquiry and its proceedings and not the reverse as suggested by Mr Hastwell – there was not an attempt to interfere with or influence Mr Hastwell in relation to the Inquiry, but Tassal sought to preserve the integrity of the ECRC Inquiry, investigation and procedures from the possibility of improper influence or the perception thereof.

We would of course be pleased to expand upon any of these matters should the Committee desire this to be done.

Yours faithfully,

Mark Ryan
Managing Director and CEO



23 November 2016

Senator Larissa Waters
 Chair
 Environment and Communications References Committee
 The Senate
 Parliament House
 PO Box 6100
 CANBERRA ACT 2600
By email: ec.sen@aph.gov.au

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CONFIDENTIAL

Dear Senator Waters

I refer to your letter dated 10 November 2016, which attached an extract of a transcript of the Australian Broadcasting Corporation (ABC) *Four Corners* program episode entitled 'Big Fish' which aired on 31 October 2016. Your letter and this extract refer to some of Tassal's interactions with Mr Warwick Hastwell of Dover Bay Mussels Pty Ltd in 2015.

Below, I provide the Environment and Communications Reference Committee (**Committee**) with a detailed account of Tassal's interactions with Mr Hastwell and his lawyer which demonstrates that Tassal did not intend to influence or interfere with a witness in contravention of the *Parliamentary Privileges Act 1987*, the Senate Privileges Resolutions or otherwise.

I note that Tassal sought advice as to the power of the Committee to undertake the task that it is presently undertaking, however, in light of the Committee Secretariat's clarification of the issue, which I am grateful for, and the Committee's interpretation of Senate Privileges Resolution 1(18), Tassal wishes to co-operate with the Committee by providing the information contained herein.

I am similarly grateful for the extension of time that was granted to enable this response to be prepared.

The extract from the transcript of the *Four Corners* episode contains very limited information that is derived exclusively from Mr Hastwell. I note that Tassal was not afforded an opportunity by the journalist concerned or indeed the ABC to respond to Mr Hastwell's allegations that he was interfered with or improperly influenced as a witness due to appear before the Committee. In Tassal's view it is important that the Committee is provided with a detailed account of Tassal's dealings with Mr Hastwell to enable the Committee to properly consider the matter.

Background

Dover Bay Mussels Business

Mr Hastwell and Tassal commenced discussions in relation to Mr Hastwell's business operations, Dover Bay Mussels, in January 2015. Mr Hastwell approached Tassal with allegations that his business was suffering as a result of contamination caused by Tassal's operations at its neighbouring site. Tassal took these concerns very seriously and undertook a thorough investigation. After an operational and scientific review Tassal satisfied itself that the allegations were unfounded, and that the issues arising at Mr Hastwell's site were not caused by

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Tassal's operations. Tassal met with Mr Hastwell and provided detailed information to Mr Hastwell in this regard.

Tassal's Head of Sustainability, Ms Linda Sams, offered to assist Mr Hastwell with his operations. Mr Hastwell indicated that he wanted to sell his business, and Tassal saw some commercial and operational benefit in acquiring some of Mr Hastwell's mussel leases which would allow for better access to Tassal's sites, allow for training opportunities and provided a potential for integrated multi-trophic aquaculture (IMTA) in line with Tassal's overarching seafood strategy. In fact, Tassal is currently utilising this site for a kelp-farming trial.

Negotiations for the sale of the first of Mr Hastwell's leases (**First Sale**) were prolonged and commenced well before the Senate's referral to the Committee to inquire into the regulation of the fin-fish aquaculture industry in Tasmania (**Senate Inquiry**) on 24 March 2015.

Confidentiality

Tassal and Mr Hastwell continued to discuss the potential for Tassal to acquire some or all of Mr Hastwell's remaining leases at his Dover Bay site (**Second Sale**). It was important to Tassal that these negotiations remained confidential given their commercially sensitive nature, and this was conveyed to Mr Hastwell at those meetings. During this time, it became clear that Mr Hastwell was speaking publicly about the confidential commercial discussions, not only in the local community but more widely in the media (see articles attached). Mr Hastwell had threatened to approach third parties and the media and to breach confidentiality if his offer for the sale of his leases was not accepted by Tassal.

By email from Mr Hastwell to Ms Sams on 11 May 2015, Mr Hastwell stated:

We are prepared to maintain the confidence we agreed upon for a further period of 48hrs to give your company time to revise your offer, we have other parties involved in our case, media included awaiting the outcome of this meeting and we will hold off discussions with them for this period.

In response to these threats, Ms Sams wrote to Mr Hastwell by email on 13 May 2015:

I am sorry you feel that way about our meeting which I called in the hope that we could sit together and work through a solution. As I have said before there are opportunities for Tassal to use your marine leases to pursue IMTA research and/or local training, education opportunities; it is also in line with our larger seafood strategy.

As you know at the beginning of our meeting we agreed that it was to be without prejudice and that the terms of our discussions were to remain confidential for the benefit of both parties. I reject the comment in your email that this confidentiality was limited to just 48 hours...

Overall I have sincerely tried to address your concerns and work towards a solution...

Mr Hastwell had been using threats of legal action and conducting a media campaign adverse to the interests of Tassal throughout the negotiations. As much was acknowledged by him in an email of 13 May 2015 in which he accepted Tassal's offer and said:

We would also agree not to proceed with legal action and unless compelled to do so withdraw from the senate enquiry process, we will also not continue with our media campaign.

On 20 May 2015 Tassal and Mr Hastwell reached in principle agreement for the Second Sale and the parties sought to have the details of the matter finalised by their lawyers. Mr Hastwell exerted some pressure on Tassal to have the Second Sale finalised with some urgency. On 20 May 2015 Ms Sams wrote to Mr Hastwell:

...as to the details around payment, legal action, confidentiality and the like, I think its best we now hand this over to the lawyers to sort out. Can you please send me your lawyers details and I will give them to our lawyer?

Tassal's General Counsel, Ms Monika Maedler, liaised directly with Mr Hastwell's solicitor, Mr Scott Law, in relation to the terms of the deed for the Second Sale (**Sale Deed**).

A number of terms were being negotiated between the parties, the most relevant to the issues at hand were:

1. a confidentiality clause, and
2. a non-disparagement clause.

These clauses are standard terms used by Tassal in commercial transactions of this nature, and were particularly important to Tassal given Mr Hastwell's history of breaching confidentiality. There were various exchanges between the lawyers in relation to this issue. On 18 June 2015 Ms Maedler wrote to Mr Law reminding him of Mr Hastwell's confidentiality obligations. On 23 June 2015 by email to Mr Law, Ms Maedler again emphasised:

Your client has a legal obligation to maintain confidence that has arisen in equity. We confirm that before each meeting between your client and Linda Sams... Ms Sams clearly expressed to your client that the discussions were confidential in nature even going so far as stopping the conversation until your client expressly agreed to keep the confidential information confidential... on this basis we ask that you reiterate to your client the importance of maintaining this confidence.

It is evident from these communications that confidentiality and non-disparagement had been key concerns of Tassal surrounding its negotiations with Mr Hastwell and ongoing points of discussion between the parties. Confidentiality clauses are important to Tassal in commercial transactions of this nature because of the commercially sensitive information involved and the fact that the fin-fish aquaculture industry in Tasmania is highly competitive with only a small number of participants in the market. Non-disparagement clauses are important to Tassal to protect its reputation particularly in circumstances such as this where Tassal settled what it perceived to be an unmeritorious claim by a disgruntled person on commercial grounds.

Senate Inquiry

The Senate Inquiry was referred to the Committee on 24 March 2015, after Tassal had commenced discussions with Mr Hastwell in relation to his business operations. On 4 June 2015 Tassal's Legal Manager sought advice from external solicitors in relation to the commercial terms of the draft Sale Deed, and by email wrote:

Thank you for your time. As per our discussion, can you please arrange for one of your commercial litigation colleagues to run their eye over the attached...

We have made it very clear to the Hastwells as well as their lawyer... that this arrangement does not restrict the Hastwells from making a submission to the upcoming Senate Inquiry that is focusing on the Tasmanian salmon industry.

Further, on 18 June 2016 Ms Maedler sent an email to Mr Law in relation to various points to be negotiated in the Sale Deed. Ms Maedler noted:

We have now had the opportunity to discuss the response from your clients in relation to our offer and the Deed. Below is our response to the positions set out in your email dated 10 June 2015...

11	Senate Inquiry	We confirm, as per my conversation with you on or about 25 May 2015 that the Deed is irrelevant to the Federal Senate Standing Committee on Environment and Communications in relation to the regulation of the fin-fish aquaculture industry in Tasmania.
----	----------------	--

On or around 7 July Tassal became aware that Mr Hastwell had been listed as a witness before the Senate Inquiry. With the importance of confidentiality at front of mind, concerned that Mr Hastwell would divulge commercially sensitive information and perhaps with a lack of clarity as to Senate Committee procedures, Ms Maedler sent an email to Mr Law:

It has come to our attention that one of your clients has been asked to speak at the Senate Enquiry. Please clarify how your client intends to do this without breaching confidentiality around discussions with Ms Sams and the terms of the Deed.

An email from Ms Maedler to Mr Law on 9 July again reminded Mr Law of his client's confidentiality obligations, which is the email which was referred to in the *Four Corners* program. That email included:

We remind your clients of their obligations not to make disparaging statements whether in relation to the Senate Enquiry or to the media or otherwise. This is in addition to your clients obligations regarding confidentiality in relation to the terms of the Deed as well as the discussions with Ms. Sams and the issues that were in dispute (the allegations) as defined in the deed.

Whilst superficially these emails could be interpreted as demonstrating a lack of understanding of the Committee's powers and the privileges that attach to proceedings of the Senate (which includes the Committee), it is important to note that they were drafted in light of the emphasis on the confidentiality of the commercial transactions and that the communications between the parties in relation to commercial confidentiality and non-disparagement had been lengthy. The e-mails were also drafted in light of the fact that Mr Hastwell had previously breached Tassal's confidentiality and had previously threatened to do so again if Tassal did not accede to his demands.

That said, these emails were not directives from Tassal to Mr Hastwell, but rather were in the nature of communications between lawyers. They were sent from Ms Maedler to Mr Hastwell's lawyer Mr Law and were not sent by Tassal to Mr Hastwell. What action Mr Law then took or what advice he may have given his client is unknown.

I emphasise that Mr Hastwell had legal representation and Tassal did not speak directly to Mr Hastwell about his submission to or appearance at the Senate Inquiry.

Tassal's intention was not to prevent or discourage Mr Hastwell from participating in the Senate Inquiry, but rather to remind him through his lawyer of his wider confidentiality and non-disparagement obligations arising under the Sale Deed. Tassal accepts that the confidentiality and non-disparagement provisions of the Sale Deed do not operate to prevent or restrict evidence being given before the Committee. Those obligations do continue to apply, however, to statements that Mr Hastwell might have made outside the Committee hearings: It is latter aspect to which the emails were directed.

On 10 July 2015 Tassal received a copy of a document entitled "Procedures to be Observed by Senate Committees for the Protection of Witnesses" (**Senate Procedures**). At about this time Tassal's lawyer purported to withdraw the offer to purchase Mr Hastwell's leases. The purported withdrawal has been inaccurately portrayed by Mr Hastwell. Ms Maedler believed the offer could potentially be construed as influencing Mr Hastwell and that putting withdrawing the offer would be liberating for Mr Hastwell in relation to the Senate Inquiry and any evidence that Mr Hastwell may give before the Committee.

Tassal was also concerned to protect the integrity of the Senate Inquiry by avoiding any potential perception that Tassal had attempted to influence evidence that might be given before the Committee by purchasing significant assets owned by a party that had made numerous complaints about Tassal and its operations, even though in reality the arrangements between Tassal and Mr Hastwell were in all other respects simply a normal commercial transaction.

On 10 July 2015, Ms Maedler wrote to Mr Law (emphasis added):

... We note your client's appearance as a witness at the Inquiry.

In particular we reference the procedures to be observed by Senate Committees for the protection of witnesses.

It appears to us, on reviewing the procedures, that our offer may be construed by others as contravening these procedures and accordingly we withdraw our offer as tabled with immediate effect.

I am instructed that Tassal will revisit the offer after the Senate Enquiry issues its final report.

This was not an attempt to influence Mr Hastwell or deprive him of any benefit on account of him giving evidence, but an effort to avoid a possible contravention of parliamentary procedure and privilege.

As it transpired, Mr Hastwell rejected Tassal's purported withdrawal of the offer and insisted on finalising the sale notwithstanding the fact that Tassal had indicated that it would revisit the sale following finalisation of the Senate Inquiry. The transaction was completed according to the terms of the Sale Deed.

Conclusion

Tassal entered into a commercial arrangement with Mr Hastwell to the mutual benefit of both parties. During this commercial process, the Senate Inquiry began and commercial negotiations

were handled by various Tassal staff and Mr Hastwell before being finalised by Tassal's and Mr Hastwell's lawyers. Once negotiations moved from Ms Sams and Mr Hastwell directly, Mr Law was responsible for giving his client legal advice regarding the Sale Deed and the Senate Inquiry.

The claim that Mr Hastwell was coerced was not reflected in his actions or threats. Mr Hastwell made a written submission to the Senate Inquiry, publicly disparaged Tassal and threatened to breach confidentiality. Tassal maintains that it was a discretionary decision by the Hastwells, with the benefit of Mr Laws' legal insight, not to appear at the Senate Inquiry.

The withdrawal of the offer, while now portrayed negatively, was an attempt to comply with the Senate Procedures. It was not an attempt to interfere with or influence Mr Hastwell, nor to deprive him of any benefit of account of him giving evidence.

It is correct to assert that as negotiations progressed, Tassal staff did not want Mr Hastwell to continue to disparage the company, however, at no time was their objective to prevent him from giving evidence at the Senate Inquiry. The intent of Tassal's later correspondence with Mr Law was to highlight the terms of a commercial contract.

In retrospect, Ms Maedler could have afforded more care when referring to the Senate Inquiry in some of her correspondence to Mr Law, and Ms Maedler acknowledges that some of her emails to Mr Law were not clearly worded. With hindsight, it may have been better had Ms Maedler's correspondence to Mr Law referenced the distinction between the privileges that attach to giving evidence in proceedings before the Senate including the Committee, and statements that Mr Hastwell may make outside of proceedings of the Senate. However, her intent and legal focus was on dealing with issues of disparagement and confidentiality with Mr Law, not Mr Hastwell's involvement in the Senate Inquiry.

Throughout its dealings with Mr Hastwell, but particularly insofar as those dealings related to the Senate Inquiry, Tassal was concerned to protect its commercial interests, confidentiality and reputation, and at the same time was concerned to protect the integrity of the Senate Inquiry and the proceedings of the Committee. To the extent that Mr Hastwell and some others may have misinterpreted Tassal's intentions on behalf of Tassal I apologise.

Yours faithfully

Mark Ryan
Managing Director and CEO