



SENATE
REPORT

Committee of Privileges

Possible improper interference with a witness
before the Rural and Regional Affairs and
Transport Legislation Committee

116th Report

March 2004

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CONTENTS

	Page
Introduction	1
Background	1
Conduct of Inquiry	4
Comment	5
Finding	8
Appendices A & B	

POSSIBLE IMPROPER INTERFERENCE WITH A WITNESS BEFORE THE RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE

Introduction

1. On 2 December 2003 the Senate referred the following matter to the Committee of Privileges on the motion of Senator McGauran, at the request of the Chair of the Rural and Regional Affairs and Transport Legislation Committee (the RRAT Committee), Senator Heffernan:

Having regard to the material submitted to the President by the Rural and Regional Affairs and Transport Legislation Committee, whether there was any attempt improperly to interfere with a witness before the committee, and whether any contempt of the Senate was committed in that regard.¹

2. The reference of the matter derived from a letter written by Senator Heffernan to the President of the Senate, Senator the Hon. Paul Calvert.

Background

3. At the time of the referral, the RRAT Committee was conducting an inquiry into the Statutory Funding Agreement, dated 31 December 2000, between the Commonwealth of Australia (represented by the Minister for Agriculture, Fisheries and Forestry), Australian Wool Innovation Pty Limited (AWI) and Australian Wool Services Limited. The inquiry was being conducted under standing order 25(2)(b) which authorises legislation committees to inquire into, among other things, the performance of departments and agencies allocated to them, and had arisen from evidence given by officials of the Department of Agriculture, Fisheries and Forestry Australia to the committee at its 2003-04 budget estimates hearings in May 2003. Questions had been raised about aspects of the management of AWI.²

4. The RRAT Committee sought submissions and held public hearings in relation to the inquiry, commencing on 23 June 2003. One of the first submissions published by the committee,³ though not dated, was from Mr Alix Turner, a wool grower, in a private capacity. In the course of his submission he made the following comments about Mr Colin Dorber, former Managing Director of AWI:

1 *Journals of the Senate*, 2 December 2003, p. 2810.

2 Statement by the Chair of the Committee, Senate Debates, 4 December 2003, pp. 18647-8; the committee's report was tabled on 12 February 2004 (*Australian Wool Innovation Limited – Application and expenditure of funds advanced under Statutory Funding Agreement dated 31 December 2000*).

3 The submission is no. 3 in the list of submissions published by the RRAT Committee on its website (http://www.aph.gov.au/Senate/committee/rrat_ctte/index.htm) and listed in Appendix One of the committee's report.

However if evasion and reticence are a feature of the conduct of the Minister or representatives of his department these may well pale into insignificance alongside the evasion, sharp practice and other unthinkable conduct by sometime AWI Managing Director Mr Dorber and by the acquiescence of the board that permitted it.

... ..

It is this writer's belief that evasion and sharp practice, if not outright embezzlement in some form or other, have been options deliberately exercised by Mr Dorber with or without the knowledge of the board.⁴

5. Mr Dorber gave evidence at the RRAT Committee's public hearing in Canberra on Thursday, 26 June 2003. During the hearing, Senator O'Brien asked him whether he had seen the submissions received by the committee, to which Mr Dorber replied "I was told by the secretary that they would be posted to me by express mail. They have not arrived. I am very keen to read them".⁵

6. Some days later, the RRAT Committee received a supplementary submission from Mr Alix Turner in which he stated that he had received a telephone call from Mr Dorber the previous Saturday evening, 28 June 2003, in response to the comments he had made about Mr Dorber in his submission. Mr Turner's principal concern was a threat allegedly made by Mr Dorber to take action to ensure that the collection of any future wool levy would be terminated which, by implication, would bring about the demise of AWI, whose existence, according to Mr Turner, depended on the levies.⁶

7. In his brief supplementary submission, which is undated, Mr Turner said:

It is not the purpose of this supplementary submission to formally allege that Mr Dorber subjected me to any threat, intimidation, harassment or discrimination. Among other things it is outside my competence to make a meaningful judgement on this. However it is conceded that the timing of this call was not convenient.⁷

8. In a letter to the Chair of the RRAT Committee, dated 26 August 2003, some two months later, Mr Simon Campbell, President of WoolProducers, of whose executive Mr Turner was a member, alleged that Mr Turner had been subjected to "verbal intimidation and threats designed to influence the private evidence provided by Mr Turner to the Committee in a written submission."⁸

9. Mr Campbell then provided an extract from an email from Mr Turner to Mr Joe Sullivan, NSWFA Executive Officer, dated Monday, 30 June 2003, in which

4 Mr Alix Turner's (undated) submission to the RRAT Committee (Appendix B, pp. 6-7).

5 Committee Hansard, (RR&T34).

6 Mr Alix Turner's (undated) supplementary submission to the RRAT Committee (Appendix B, p. 8).

7 Appendix B, p. 8.

8 Appendix B, p. 9.

Mr Turner gave an account of the phone call on the previous Saturday evening from Mr Dorber. Mr Turner recollected the following salient points about the conversation with Mr Dorber:

- Mr Dorber had invited Mr Turner to repeat his allegations outside of parliamentary privilege and implied that if he did he could expect to be sued.
- Mr Dorber invited Mr Turner to consider withdrawing the relevant part of the submission on the basis that Mr Turner was unable to substantiate the allegations.
- Mr Dorber claimed that he would “make it his business to see that growers [were] elected to terminate the payment of any levies to support AWI.”

10. Mr Campbell invited the committee to investigate this matter, citing subsection 12(1) of the *Parliamentary Privileges Act 1987*.⁹

11. It may be inferred from the papers provided to this committee that the RRAT Committee wrote to Mr Turner asking whether he considered all or part of Mr Dorber’s conversation with him to be a breach of section 12 of the Parliamentary Privileges Act. Mr Turner replied on 15 September 2003 as follows:

I can only say that there is absolutely no doubt in my mind that the initiation and conduct of that conversation did constitute a breach of that Act and that I believe it to have been an offence.¹⁰

12. At the same time, Mr Turner provided to the RRAT Committee a further statement in response to that committee’s request that he document as fully as possible the content and circumstances of the telephone conversation that occurred on 28 June 2003.¹¹

13. Meanwhile, following the hearing on 26 June 2003, Mr Dorber provided a supplementary submission to the RRAT Committee, dated 7 August 2003, in which he responded to a number of allegations made in submissions and raised with him at the hearing. Mr Dorber noted the comments made by Mr Alix Turner in his original submission and commented that the submission had been published without providing Mr Dorber with an opportunity to respond. Mr Dorber refuted Mr Turner’s assertions and stated as follows:

I have contacted Mr Turner who initially said he did not recall writing those words. When pressed he informed me it was only his opinion. He acknowledged that he had no specific information to support the claim made.

9 Appendix B, p. 10.

10 Appendix B, p. 11.

11 Appendix B, pp. 12-14.

Mr Turner was requested by me to immediately report his allegations, which are most offensive, untrue and defamatory, to the NSW Police or to ASIC so that they might be investigated. Mr Tuner [sic] declined.¹²

14. Mr Dorber did not comment on Mr Turner's supplementary submission in which he informed the committee of the telephone call of 28 June 2003. However, in the course of its investigations into the matters raised by Mr Campbell, the RRAT Committee wrote to Mr Dorber seeking his comments on Mr Turner's supplementary submission. Mr Dorber responded by email on 30 October 2003. Mr Dorber noted Mr Turner's acknowledgement that:

nothing improper took place between us when we spoke privately, following my challenging him to support his written defamatory allegations about me, as the former Managing Director of AWI Ltd. (Published by your committee without investigation and without informing me of its contents so that I might protect my reputation, as is the right of every citizen of this Country).

... ..

In respect of Mr. Turner's comments about my view in respect of the AWI levy going forward, I note as follows:

1. The position of the former Board (support for the reduction of the levy to 1-1½% at the wool poll this year (effective July 04) and to zero in the future, with income to be sourced from voluntary contributions, intellectual property and royalty rights, was developed and championed by me.
2. My private position has [sic] (and remains) the same as that promulgated by the former Board.¹³

15. The Committee of Privileges has included the documents referred to as appendices to this report.

Conduct of inquiry

16. In determining to give precedence to a notice of motion referring the matter raised by Senator Heffernan to the Committee of Privileges, the President tabled several relevant documents, including Mr Turner's original and supplementary submissions to the RRAT Committee, Mr Campbell's letter of 26 August 2003, Mr Turner's response, dated 15 September 2003, to the committee's invitation to consider whether he regarded Mr Dorber's telephone call as constituting a breach of Section 12 of the Parliamentary Privileges Act, and Mr Dorber's response, dated 30 October 2003, to the committee's invitation to respond to Mr Turner's supplementary submission. Subsequently, the RRAT Committee Secretary provided the Clerk of the Senate with a copy of a further submission from Mr Dorber, dated 7 August 2003, in which Mr Dorber sought to rebut the allegations in Mr Turner's

12 Appendix B, pp. 17-18.

13 Appendix B, pp. 15-16.

original submission and, in the course of doing so, gave an account of the telephone conversation with Mr Turner of 28 June 2003. The Clerk of the Senate made this submission, which had been published by the RRAT Committee, available to this committee.¹⁴

17. The Committee of Privileges considered these papers at a private meeting and determined that it would not require additional information in order to make a finding on this matter, particularly since the RRAT Committee had itself conducted a preliminary investigation.

Comment

18. Section 12 of the Parliamentary Privileges Act 1987 provides:

(1) A person shall not, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means, influence another person in respect of any evidence given or to be given before a House or a committee, or induce another person to refrain from giving any such evidence.

Penalty: (a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or
(b) in the case of a corporation, \$25,000.

(2) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of:

(a) the giving or proposed giving of any evidence; or
(b) any evidence given or to be given;

before a House or a committee.

Penalty: (a) in the case of a natural person, \$5,000 or imprisonment for 6 months; or
(b) in the case of a corporation, \$25,000.

(3) This section does not prevent the imposition of a penalty by a House in respect of an offence against a House or by a court in respect of an offence against an Act establishing a committee.

The Senate's Privilege Resolution No. 6, which sets out actions which may be treated as contempts of the Senate, provides similarly in paragraphs (10) and (11):

Interference with witnesses

(10) 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.

Molestation of witnesses

14 Appendix B, pp. 17-22.

- (11) A person shall not inflict any penalty or injury upon, or deprive of any benefit, another person on account of any evidence given or to be given before the Senate or a committee.

19. In cases of alleged interference with a witness, the Senate has a choice of prosecuting the alleged offender for the criminal offence under the statute or proceeding against the alleged offender for contempt of the Senate. In referring this matter to the Committee of Privileges, the Senate has determined to investigate whether a contempt of the Senate has occurred and therefore to exercise its own jurisdiction, rather than initiating a prosecution. The latter course is impractical where a prosecution would need to rely on evidence given to a committee, which is protected by parliamentary privilege from being examined in a court. (Subsection 16(6) of the Act would not seem to cover these kinds of circumstances.) As has been established by the committee in many previous cases, improper interference may be constituted by conduct that is otherwise lawful.

20. The accounts of the telephone conversation given by Mr Turner and Mr Dorber are not incompatible, although they are not similar in all material respects. For example, Mr Dorber does not mention that he is alleged to have challenged Mr Turner to repeat his allegations outside of Parliament so that legal action could be taken, although, by Mr Dorber's account, he encouraged Mr Turner to report his allegations to the proper authorities if he could substantiate them. Mr Turner gave a near-contemporaneous account of the conversation in an email to Mr Sullivan two days later. Mr Dorber's recollections are dated 7 August and 30 October 2003, some weeks and months later. However, as there are no major points of dispute between the two accounts, and as it is unlikely this committee would be able to independently substantiate either account, the committee sees no value in pursuing further evidence about the conversation.

21. The issue for the committee is whether Mr Dorber's telephone call constituted an improper interference with Mr Turner. As is indicated by paragraphs (10) and (11) of the Senate's Privilege Resolution No. 6, there are at least two elements of improper interference with witnesses. The first is whether improper influence was exerted in respect of evidence given or to be given by a witness, including an inducement for a witness not to give evidence. The second is whether any penalty was imposed on a person (not necessarily the witness) on account of evidence given.

22. In forming its view, the committee has taken the following into account:

- Mr Turner had already lodged his submission with the RRAT Committee before the telephone call and did not subsequently alter or withdraw any part of it.
- In the supplementary submission made by Mr Turner in the week following the telephone conversation, he stated quite clearly that he did not wish to "formally

allege that Mr Dorber subjected [him] to any threat, intimidation, harassment or discrimination.”¹⁵

- The subject of the RRAT Committee’s inquiry, and matters raised at the public hearings and in written submissions, indicate a degree of division within the wool industry about the future direction of AWI, its research and development arm. Mr Turner himself refers in his original submission to “agripolitical energy”, “counterproductive internal squabbling”, and a “we wuz right” faction versus a “we wuz robbed” faction. The complaint on Mr Turner’s behalf was made by an industry body some two months after the telephone conversation took place and was a reversal of his earlier-stated position.¹⁶
- Mr Turner appears to have regarded Mr Dorber’s threat to campaign for a zero levy at the next Board election as retribution for the evidence he gave regarding Mr Dorber. On the other hand, Mr Dorber’s account was that a reduction in the levy, with AWI to be funded from alternative sources such as royalties from intellectual property rights and voluntary contributions, was a viable alternative policy position that had been developed and promoted by him.

23. Robust exchanges are not unusual in Australia’s democracy. The committee is inclined to see the exchange between Mr Turner and Mr Dorber in this context. Mr Turner was entitled to make comments about Mr Dorber under the protection of parliamentary privilege without fear of retribution, just as Mr Dorber was entitled to respond to the adverse reflections made about him by Mr Turner. But the committee regards it as highly undesirable for any person to confront a witness about his or her evidence outside the parliamentary forum. There is a grave risk of contempts being committed, wittingly or unwittingly, in these circumstances.

24. Any exchange between the two witnesses should have occurred under the committee’s supervision, in accordance with paragraphs (11) to (13) of Privilege Resolution No. 1, which require committees to ensure procedural fairness when evidence is given that reflects adversely on a person:

- (11) Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall give consideration to hearing that evidence in private session.
- (12) Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that that evidence is relevant to the committee’s inquiry, the committee shall give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.
- (13) Where evidence is given which reflects adversely on a person and action of the kind referred to in paragraph (12) is not taken in respect of the evidence, the committee shall provide reasonable opportunity

15 Appendix B, p. 8.

16 Appendix B, pp. 3 and 4-5.

for that person to have access to that evidence and to respond to that evidence by written submission and appearance before the committee.

25. By such supervised exchanges, the rights of witnesses and affected parties are protected. It is not clear to this committee whether the RRAT Committee followed these procedures in respect of the comments made by Mr Turner about Mr Dorber, but it appears that Mr Dorber did not become aware of Mr Turner's submission until after it had been published and after Mr Dorber gave evidence on 26 June 2003. An opportunity was thereby lost for Mr Dorber to respond during the hearing. Had there been such an opportunity or had the adverse reflection procedures been earlier employed, it is likely that this incident could have been avoided.

26. The Committee of Privileges therefore takes this opportunity to remind any persons who may be the subject of adverse reflections in evidence given to committees of the potentially serious consequences of taking matters into their own hands.

27. It also reminds all committees of the need to pay particular attention to possible instances of adverse reflections and of their obligation to follow procedures for the protection of witnesses as set out in the Senate's Privilege Resolution No. 1.

Finding

28. The committee concludes that, on the basis of the evidence before it, a contempt of the Senate should not be found.

Robert Ray
Chair