

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

**ALLEGED THREATS TO A WITNESS
BEFORE THE SELECT COMMITTEE
ON A NEW TAX SYSTEM**

86TH REPORT

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ALLEGED THREATS TO WITNESSES BEFORE THE SELECT COMMITTEE ON A NEW TAX SYSTEM

Introduction

1. On 7 December 1999 the Senate referred the following matter to the Committee of Privileges on the motion of Senator Allison:

Whether threats were made against persons who made submissions to the Select Committee on A New Tax System in consequence of their submissions to the committee and, if so, whether any contempt was committed in that regard.¹

Background

2. Senator Allison raised the matter of privilege as a consequence of receiving a letter, dated 16 November 1999, from Mr Fred Wren, Managing Director of Wren Oil. In the course of the lengthy and detailed letter concerning the recycling of waste oil, Mr Wren discussed the question of attempted price fixing within the industry. He asserted that two officers of Nationwide Oil, one of whom was the then Managing Director, Mr Fortescue, had sought an undertaking from Wren Oil:

...to start charging for waste oil collections on the basis that Nationwide was charging. Wren Oil refused.

He went on:

They continued pressuring us by phone, meetings and even at ORAA [Oil Recyclers Association of Australia] meetings until they finally realised that we would not bend. The tone of friendliness changed. We have received phone threats as recently as June 99 from Fortescue who alleged that our own actions concerning the submission and evidence given in February to the Senate Select Committee Inquiry into the GST bordered on illegality and that Nationwide Oil would consider what action (presumably legal action) it could take against Wren Oil in the future. The threat came after the announcement of the CPSS [Comprehensive Produce Stewardship System for Waste Oil] resulting from the political agreement.²

3. In the next paragraph Mr Wren implied that threats were made to another company, which appears also to have given evidence to the Senate inquiry, but these were not specified in detail and did not relate to the evidence before the committee. The remainder of the letter discussed various operations within the oil industry.

1 Appendix A, p. 1.

2 Appendix B, pp. 4-5.

Conduct of inquiry

4. Following receipt of the reference, the committee wrote both to Mr Wren and to Mr T.J. Peabody, the present Managing Director of Nationwide Oil. Mr Wren responded on 10 January 2000, clarifying one element of the tabled letter of 16 November 1999. This related to his recollection that the perceived threat regarding his evidence to the select committee had occurred as late as June 1999. In fact, according to his records the threat was made on 21 April 1999, at about the time the committee was finalising its reports. Attached to the letter was a detailed record, although not dated, of the 21 April threat. Also attached was a brief diary note, also undated, relating to a meeting in Sydney on 20 April 1999, signed by Mr David Braham, a colleague of Mr Wren's. Mr Braham stated that he had advised a director of ORAA that he (Mr Braham) and Mr Wren had made submissions and given evidence to the select committee. A further note from Mr Braham, recording a meeting of 20 June 1999, stated that unspecified threats had been made about Mr Wren, but there is no mention of these threats being made as a result of Mr Wren's having given evidence to the committee.³

5. Mr Peabody made a first response to the committee on 7 January 2000. He sought clarification about what was to be the scope of the committee's inquiry and in particular whether it related to 'alleged offensive actions by Mr Fortescue'.⁴ Mr Peabody focussed on the two paragraphs quoted and referred to at paragraphs two and three above.

6. In a substantive response of 3 February 2000, Mr Peabody's response on behalf of Nationwide Oil was, as foreshadowed in his earlier letter, based on:

...the presumption that the only allegations of threats that relate to any evidence that Mr Wren may have given to the Committee are directed only at Mr Fortescue. If the Committee, in its response to my communication of 7 January 2000 suggests otherwise, my company reserves the right to make a further submission on that point.⁵

The committee confirms in this report that this was the only aspect which it regarded itself as required by the Senate to address.

7. Given the content of the original tabled letter from Mr Wren to Senator Allison, Mr Peabody also supplied background details on the nature of Nationwide Oil's operations and responded to several extraneous matters raised by Mr Wren. While the committee's usual practice is to focus only on those areas that are the subject of possible contempt, in this case it has decided to publish the submission in full⁶ as in effect a right of reply to matters raised in the tabled letter. As with its normal approach

3 Appendix C, pp. 7-12.

4 Appendix D, p. 13.

5 *ibid.*, p. 15.

6 *ibid.*, pp. 15-20.

to right of reply matters under Privilege Resolution 5, the committee has not evaluated the truth or otherwise of the issues raised in either the letter from Mr Wren or Mr Peabody's response.

8. Mr Peabody's submission then turned to the alleged contempt. Mr Peabody advised that Mr Fortescue has now retired from Nationwide Oil but has briefed him in respect of the matters raised by Mr Wren. Having placed discussions in the context of the relationship between Nationwide Oil and Wren Oil as a smaller competitor, Mr Peabody advised as follows:

The specific allegation against Mr Fortescue relating to a threat to Mr Wren as a consequence of his giving evidence is, on any test, but one of a myriad of disputes raised in Mr Wren's letter which, on a proper examination of them in totality, is a complaint that a competitor (and we are but one) has foreshadowed and addressed environmental and legislative requirements, whereas Wren Oil's failure to do so has resulted in loss of business.

Mr Fortescue states that he indeed did make a call to Mr Wren and quite rightfully pointed out to him that the submission made [to the select committee] contained blatant inaccuracies and had it not been made without the protection of parliamentary protection would have been actionable. To be specific, in the evidence provided to the Senate, Mr Wren asserted that tests (or the results thereof) carried out by the CSIRO with the cooperation of Freight Corp were falsified. This related to the satisfactory testing of diesel fuel with oil additive (supplied by Nationwide Oil) in a locomotive engine. That is a very serious (and totally erroneous) accusation which needed to be addressed.

It must be stressed (and Mr Fortescue is empathetic [emphatic?] in this regard) that notwithstanding he was (understandably) distressed by the fact that Mr Wren would deliberately seek to flavour his evidence with the result that it was misleading, he did not make the statements to Mr Wren because of Mr Wren's giving evidence to the Senate Committee, but rather because of the quality of that evidence and the fact that Mr Wren took the opportunity of using that forum to intertwine that which was relevant to the Committee with matters that relate solely to matters of dispute with our company that he unilaterally perceives he has.

Neither Mr Fortescue nor any other employee of our organisation would do anything to hinder, obstruct or otherwise interfere with Mr Wren's giving evidence. However we feel that in the circumstances of this matter, Mr Fortescue was entitled to make comment to Mr Wren in terms of that which took place.⁷

7 *ibid.*, p. 19.

Comment

9. The committee has decided to publish as appendices to this report all the documents it has received, but has also decided that no useful purpose would be served by pursuing the matter further. If the committee were to do so, not merely would it need to receive submissions from the primary parties; it would also need to give all persons named in the documents an opportunity to make submissions to it. For reasons given at paragraph 11 below, the committee does not consider it necessary to following this course.

10. The committee has also decided to dispense with its usual practice of exchanging documents between the respective parties for further comment. It is clear, from the original letter to Senator Allison, that the perceived threat relating to the giving of evidence before the select committee was peripheral to a more intensive commercial dispute which was under way well before the select committee's inquiry, and has in fact continued. In the committee's view the documents suggest that the then Managing Director of Nationwide Oil mentioned the select committee proceedings more in the heat of the moment than as a core component of his attempts to deal with a company with different and conflicting interests.

11. As previous reports of the Committee of Privileges have consistently made clear, the committee has always regarded possible intimidation of or threats against witnesses as among the most serious matters of contempt referred to it. In this case, however, in reaching a finding, it has decided that the matters raised by Mr Wren do not reach the threshold required by criterion (a) of Privilege Resolution 3, in order for it to consider making a finding of contempt. This criterion provides that:

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.⁸

The committee has concluded that Mr Fortescue's comments do not warrant further inquiry, which would lead to an escalation of hostilities out of all proportion to any possible offence of contempt.

Finding

12. The committee finds that, on the basis of the evidence before it, no contempt of the Senate has been committed.

Robert Ray
Chair

8 Privilege Resolution 3(a), *Standing and Other Orders of the Senate*, February 2000, p. 104.