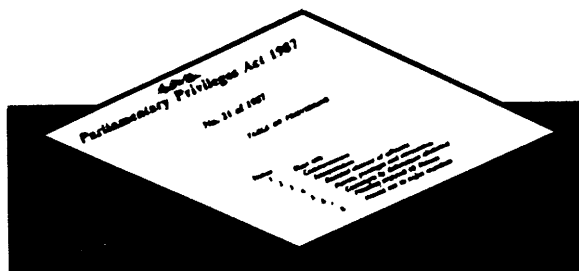




**THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA**

**THE SENATE
COMMITTEE OF PRIVILEGES**



**PERSON REFERRED TO IN THE SENATE
(THE HON. PAUL B. TOOSE)**

38th Report

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(THE HON. PAUL B. TOOSE)

38TH REPORT

OCTOBER 1992

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MEMBERS OF THE COMMITTEE

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Senator Barney Cooney (Victoria)
Senator John Herron (Queensland)
Senator Janet Powell (Victoria)

**The Senate
Parliament House
CANBERRA ACT 2600**

REPORT

1. On 24 September 1992 the Hon. Paul Toose wrote to the President of the Senate, Senator the Honourable Kerry Sibraa, referring to remarks made by the Minister for Justice, Senator Tate, in responding to a question without notice on 2 December 1991. Mr Toose requested that the matter be referred to the Committee of Privileges. The Deputy President, in the absence overseas of the President, having accepted Mr Toose's letter as a submission for the purposes of the Resolution of the Senate of 25 February 1988 relating to the protection of persons referred to in the Senate, referred the letter to the Committee of Privileges on 6 October 1992.
2. The Committee met in private session on 8 October 1992 and, pursuant to Privileges Resolution 5(3), decided to consider the submission from Mr Toose. In considering the submission, the Committee did not find it necessary to confer with either Mr Toose or Senator Tate. After deciding to recommend to the Senate that an agreed statement be incorporated in *Hansard*, the Committee contacted Mr Toose and the statement at Appendix 1 has been agreed to by Mr Toose and the Committee in accordance with Resolution 5(7)(b).
3. The Committee recommends:

That a response by the Honourable Paul Toose, in the terms specified at Appendix 1 and agreed to by Mr Toose and the Committee, be incorporated in *Hansard*.

Baden Teague
Acting Chairman

13 October 1992

APPENDIX 1

**RESPONSE BY THE HON. PAUL B. TOOSE, CBE, QC
AGREED TO BY MR TOOSE
AND THE COMMITTEE OF PRIVILEGES
PURSUANT TO RESOLUTION 5(7)(b) OF THE SENATE OF
25 FEBRUARY 1988**

In the Senate on Monday 2nd December, 1991, Senator Jones asked a question of the then Minister for Justice and Consumer Affairs, Senator Tate, in relation to an article that had appeared that morning in *The Australian* newspaper. Headlined "Politicians 'in the grip of lobbyists'", the article quoted comments made by me when answering the writer's queries concerning aspects of my report, as Chairman, contained in the Annual Report for 1990 of the Advertising Standards Council.

Apart from my surprise at the vehemence and tone of Senator Tate's answer, I was also concerned that his answer also contained many errors of fact which would have had the effect of seriously misleading the Senate. (See Hansard, pages 3730 and 3731).

On 31st March, 1992, with the unanimous support of my Council, I wrote to Senator Tate setting out the correct facts and seeking a withdrawal of his remarks and an apology. The responses I made to the Minister on behalf of the Council and on my own behalf included the following specific denials of the views, actions and role which the Minister ascribed to the Council and to me as Chairman:

- (a) I have not been cast in an adversarial role for many years, and did not make any caricature of lobby groups. I am not and never have been "hostile to representatives of the community view". My Council and I welcome expressions of genuine community views and also those of lobby groups.
- (b) It is not my wish to "vet" those who might come from community groups and voluntary organisations as advisers and lobbyists to Ministers. I have always regarded the selection of Ministerial advisers as the sole responsibility and prerogative of each Minister.
- (c) I have not tried to veto the Minister's nominations for appointments to the Alcoholic Beverages, Cigarette, Slimming and Therapeutic Goods Advertising

Code Councils. While the Trade Practices Commission's report referred to in the Minister's answer made some criticism of the situation concerning nominations, it was based on incorrect facts, acknowledged by the then Chairman of the TPC, Professor Baxt. Unfortunately, the necessary corrections were ultimately not made to the report.

- (d) The TPC did not make scathing comments about the lack of accessibility and timeliness in respect of the ASC and Media Council. Indeed the ASC, which operates totally free of cost to the taxpayer, is far more prompt, productive and effective in its work than comparable Government agencies or the Court system.
- (e) While I am Chairman and from time to time spokesman for the ASC and have certain special powers within the ASC, it cannot be said that I "supervise" it. All 16 members of the Council have an equal vote except in a tied vote when I have a casting vote. It is not my function to supervise the advertising industry through the Media Council or otherwise. I certainly have no supervisory role in relation to the Media Council.

The Senator's reply of 30th April, 1992 was not only inaccurate, inadequate and unsatisfactory, but it also showed his complete unwillingness to make a further statement in the Senate to correct his misleading comments on 2nd December, 1991.

As I was sure that Senator Jones would not wish to be a party to the continuance of this situation, I wrote to him on 9th July, 1992 inviting him to again raise the matter in the Senate "and to seek from Senator Tate a response appropriate to the facts as you now have them." Senator Jones' reply of 3rd August, 1992 stated that "I have noted your comments and will take the matter up with Senator Tate."

I consider that Senator Tate's answer to Senator Jones had the effect of misleading the Senate, as well as being a serious assault on the status of the Advertising Standards Council and on the integrity of myself as Chairman.

The Hon. Paul B. Toose, CBE QC
Chairman
Advertising Standards Council