

House of Representatives  
Committee of Privileges

Report concerning a letter  
received by Mr Nugent, MP



**MEMBERS OF THE COMMITTEE**

**MR G GEAR, MP (CHAIRMAN)**

**MR P H COSTELLO, MP (DEPUTY CHAIRMAN)**

**HON K C BEAZLEY, MP**

**HON J A CROSIO, MBE, MP**

**HON J D M DOBIE, MP**

**DR H R EDWARDS, MP**

**HON G T JOHNS, MP**

**MR P J McGAURAN, MP**

**MR P K REITH, MP**

**MR J H SNOW, MP**

**HON W E SNOWDON, MP**



1. On 25 February 1992, Mr Nugent, raised a matter of privilege in connection with a letter dated 13 February 1992 received by him from Dwyer and Company, solicitors acting on behalf of a named public servant. A copy of the *Hansard* record of Mr Nugent's statement in raising the matter is at Attachment A.
2. Mr Speaker considered Mr Nugent's complaint and reported to the House on it on 26 February. Mr Speaker stated that, having considered the matter and having examined material provided by Mr Nugent, he was satisfied that a *prima facie* case existed such as would warrant precedence being granted to a motion in respect of the matter. Mr Nugent then moved the following motion, which was agreed to by the House:

That the matter of the letter dated 13 February 1992 from Dwyer and Company, solicitors of 344 St Kilda Road, Melbourne, to the Member for Aston be referred to the Committee of Privileges.

A copy of the *Hansard* record of the Speaker's statement is at Attachment B.

#### Conduct of inquiry

3. At its first meeting on the matter the committee resolved that Mr Nugent and Dwyer and Company be invited make a submission in connection with the matter. Each party was asked to confirm the authenticity of copies of relevant correspondence held by the committee. Dwyer and Company was provided with a copy of the papers tabled in connection with the complaint, together with relevant extracts from the *Hansard* record of proceedings on the matter on 25 and 26 February.
4. A copy of a letter received on 18 March from Dwyer and Company is at Attachment C, and a letter, with attachments, received from Mr Nugent on 19 March is at Attachment D. The committee also received a detailed memorandum from the Clerk of the House on the matter.

#### The circumstances

5. Mr Nugent explained the background to his complaint as follows: On 27 September 1991 a Mr Radisich, a constituent, had come to Mr Nugent's electorate office seeking assistance concerning an application Mr Radisich had made concerning training allowances and other matters. Mr Nugent said that Mr Radisich had stated that he had been to the Department of Social Security in Ringwood and that at various times he had received erroneous and conflicting advice from different members of the staff and that finally he (Mr Radisich) had asked for the Department's advice/information to be put in writing. Mr Nugent stated that this matter was referred to a supervisor who had phoned Mr Radisich. Mr Nugent went on to say that Mr Radisich complained

that the supervisor was rude in her manner and had told Mr Radisich that he would not receive the information requested in writing and "that he was to stop bothering them (the DSS)". Mr Nugent said that Mr Radisich had also specifically requested that his complaint concerning the rudeness of the supervisor be referred to the Department of Social Security. Mr Nugent said that he had written to the (then) Minister for Social Security, Senator Richardson, on 4 October 1991. (Mr Nugent confirmed the authenticity of a copy of this letter held by the committee). Mr Nugent stated that he had subsequently received a letter from the Parliamentary Secretary to the Minister for Social Security dated 3 December advising that the matter had been referred to the Minister for Employment, Education and Training.

6. Mr Nugent stated that on 18 February he had received in his Melbourne office by fax a copy of a letter from Dwyer and Company Solicitors. The fax was dated 18 February, Mr Nugent stated, but the letter itself was dated 13 February.
7. The fax/letter from Dwyer and Company advised Mr Nugent that the firm acted on behalf of the supervisor, who had provided the firm with a copy of Mr Nugent's letter of 4 October. The solicitors' letter stated that their client was distressed by the contents of Mr Nugent's letter and, in particular, the allegation that she was rude to Mr Radisich. The letter stated that the client denied that she was rude to Mr Radisich and that an "internal Department investigation" had cleared her of any impropriety. The letter stated that the allegations of rudeness had not been prefaced as being Mr Radisich's but appeared in Mr Nugent's letter as a statement of fact. Dwyer and Company's letter referred to the time that it had taken for Mr Nugent's letter to come to their client's attention because it had been addressed, Dwyer and Company stated, to the Department of Social Security. The solicitors stated that the damage done by the letter went beyond personal hurt to their client and extended to her reputation within the workplace. The letter included the following statement:

"Accordingly, our client requires a written apology from you together with a clarification to be sent to both the Department of Social Security and the Department of Employment, Education and Training within seven days, failing which we are instructed to commence proceedings for libel".

The letter went on to state that should Mr Nugent wish to discuss the matter he should not hesitate to contact the writer.

8. In his letter of 17 March Mr Nugent stated that he had written, by fax, and telephoned the Canberra office of the Minister for Employment, Education and Training to try to establish what actions his Department had taken but that, as at 17 March, he was still awaiting a response. Mr Nugent also stated that his own solicitors had responded to Dwyer and Company denying liability and stating that he would vigorously defend any proceedings that might be brought against him.

### Mr Nugent's concerns

9. Mr Nugent stated that he believed his letter of 4 October did not contain any defamatory statement, that it was addressed to the Minister, not the Department, that he had a right and a duty to correspond with Ministers on matters affecting his constituents and that accordingly his letter was clearly covered by qualified privilege. He stated that, contrary to Dwyer and Company's assertion, he had not made allegations of rudeness as a matter of fact and that the context of his letter made it plain that he was conveying to the Minister the substance of a complaint made to him by his constituent. Mr Nugent stated his concerns as follows:

- that a letter or a copy of it from a Member to a Minister had been made available to a public servant who was the subject of the letter and that the contents were then released in the public domain;
- that the timing of the fax from Dwyer and Company on 18 February, its stated deadline and its content was an attempted intimidation of a Member. Mr Nugent said that he felt at the time the Dwyer and Company letter was received that he was being pressured both by way of the short time scale to respond and the implication of threatened legal action with its resultant publicity to withdraw his representations made on behalf of his constituent;
- that, had he acquiesced and written as sought, any future representations he should make on behalf of constituents could be inhibited. Mr Nugent stated that he saw the solicitors' action as having a tendency to impair his independence in the future performance of his duty, and
- that the knowledge that action by a firm of solicitors on behalf of a public servant had induced a Member to withdraw representations would have become public knowledge and that thus other Members of Parliament might similarly have felt their independence was impaired had he submitted.

### Dwyer and Company's position

10. In its letter of 18 March 1992 Dwyer and Company confirmed the authenticity of a copy of the firm's letter dated 13 February which had been provided to the committee. The firm advised the committee that it had been instructed to act by its client on 12 February. The firm advised that the client considered that her reputation and career prospects had been damaged by Mr Nugent's letter dated 4 October which, it said, had been sent to the Department of Social Security. The firm stated that its client was an employee of the Department of Employment, Education and Training and indicated that the fact that the letter had been sent to the Department of Social Security resulted in the letter being disseminated widely and taking approximately three months to get to the client.

The solicitors stated that Mr Nugent's letter contained a bland allegation that the client "rang and told Mr Radisich in a very rude manner that he would not be sent a letter outlining his entitlements and told not to keep bothering them". Dwyer and Company stated that its client denied that there was any factual basis for this statement and that had the client been given the opportunity to respond this would have become clear. The solicitors stated that this statement was defamatory and had obviously caused damage. Dwyer and Company stated "This firm has no intention of intimidating Mr Nugent in his capacity as a Member of Parliament or to impair his independence in the future performance of his duties". It stated "Unfortunately, however Mr Nugent, whilst attempting to represent his constituent has failed to respect the rights of our client". The solicitors stated that they could understand that Mr Nugent felt obliged to represent his constituents with vigour and that they appreciated that Mr Nugent was in a position where constituents often made unsupported allegations to him. The solicitors said however that they would have thought that those allegations should be reiterated as allegations only and not as statements of fact and that they should have been made in confidence and to the correct Department. Dwyer and Company noted that it had received a letter from solicitors acting for Mr Nugent on 21 February and said that Mr Nugent claimed his rights both as a Member of Parliament and as a citizen, but that "all our client claims is her rights as a citizen". The letter stated that the writer would be prepared to appear before the committee at its convenience.

11. After Mr Nugent's letter of 17 March was presented to the committee, it was published to Dwyer and Company for any comment or submission the firm might like to make.
12. On 14 April a further letter, dated 10 April, was received from Dwyer and Company - a copy is at Attachment E. This letter stated that the firm made no comment regarding Mr Nugent's discussion with his constituent and that as stated in the firm's earlier correspondence the principal grounds of complaint by its client against Mr Nugent were:
  - that he had made an incorrect statement of fact that the client had been rude to his constituent;
  - that Mr Nugent's letter of complaint was made to the incorrect Department and it noted that in his letter of 17 March Mr Nugent confirmed that his letter was referred from the Minister for Social Security to the Minister for Employment, Education and Training;
  - that Mr Nugent's assertion that he did not make allegations of rudeness against the client was incorrect, and the solicitors quoted from Mr Nugent's letter of 4 October in this regard;
  - *that the firm's assertion that an internal investigation had cleared its client of any impropriety was made upon instructions from the client which she stood by, and*



- that any question of privilege could only apply where the complaint was made to the correct Department.

In summary, Dwyer and Company said it was not suggesting that Mr Nugent should be prevented from acting in the best interests of his constituent but that it also had an obligation to act in the best interests of its client. The solicitors stated that their client had her rights under the law, that they were not about to compromise those rights and that the firm would continue to represent its client to the best of its ability.

#### Matters for consideration

13. The committee notes that the key facts are not challenged - that is, that Mr Nugent wrote to the (then) Minister for Social Security a letter dated 4 October 1991 in the terms quoted, and that Dwyer and Company sent a letter dated 15 February by fax to Mr Nugent in the terms complained of. Accepting these facts, the committee saw the essence of the issue before it as being whether Dwyer and Company's action in writing to Mr Nugent in the terms it did should be held to be a contempt of the House. In forming a view on this question, the committee considered:
  - the circumstances in which Mr Nugent's letter of 4 October 1991 was written;
  - the wider issue of the position of Members in such circumstances, and
  - the background to and terms of Dwyer and Company's letter/fax to Mr Nugent.

#### *Mr Nugent's action*

14. The committee has noted Mr Nugent's explanation of the circumstances which led him to write in the terms that he did to the (then) Minister for Social Security on 4 October 1991. The committee is of the view that in writing to the Minister on behalf of Mr Radisich, Mr Nugent was making representations on behalf of a constituent in circumstances that, in the committee's view, would be familiar to all Members. One of the recognised duties of Members is to assist constituents in their dealings with Commonwealth Departments and agencies. This assistance often takes the form of representations by letter to Ministers and to Departments (see *House of Representatives Practice*, pp 166-7).
15. Mr Nugent has expressed the view that he had a right and a duty to correspond with Ministers on matters affecting his constituents. The committee agrees with this view. As a general statement, the committee believes that in writing to Ministers to bring to their attention matters of concern on behalf of constituents Members are indeed performing proper duties as Members. In the present case, Mr Nugent's action in writing as he did to the Minister for Social Security on 4 October was done in the performance of his duties as a Member.

What is the position of Members in such circumstances?

16. The committee understands that, in law, the scope of absolute privilege is strictly limited and that it is confined to actions and words done in the course of and incidental to the transacting of the business of a House or of a committee - in other words, actions done as part of "proceedings in Parliament". With the detailed statement in subsection 16(2) of the *Parliamentary Privileges Act 1987* of matters that are included within the ambit of "proceedings in Parliament", the Parliament has defined more precisely what the term means in the Commonwealth jurisdiction.
17. The committee does not consider that letters written by Members on behalf of their constituents to Ministers would be held to form part of "proceedings in Parliament", and notes that no claim has been made to this effect in the present case.
18. The matter to be considered is rather whether an action complained of is a contempt - that is, whether it is an action which amounts to or is intended or likely to amount to an improper interference with the free performance by a Member of the Member's duties as a Member. In cases such as the present, this means that while Members would not be absolutely protected in such actions on behalf of constituents, it would be open to the House to hold that in a particular case a certain action constituted a contempt.

The circumstances of Dwyer and Company's letter

19. Dwyer and Company's involvement arises because the firm has acted for the departmental officer mentioned in Mr Nugent's letter. In their letters of 18 March and 10 April the solicitors made several points:
  - that their client considered that her reputation and career prospects had been damaged by Mr Nugent's letter, the letter had been sent to the wrong Department and this resulted in it being disseminated widely and taking a considerable time to get to their client;
  - that Mr Nugent's letter contains an allegation that the client had spoken to Mr Radisich "in a very rude manner" and, the firm says, its client denies that there is any factual basis for this statement and that had the client been given the opportunity to respond this would have become clear. The firm states that the statement in Mr Nugent's letter is defamatory and has obviously caused damage;
  - that the statement that an internal investigation had cleared their client of any impropriety was made upon instructions from the client, which she stands by;
  - that any question of privilege can only apply where the complaint is made to the correct Department.

Mr Nugent's letter asserts as fact that Mrs Spearing acted "in a very rude manner". An informed reader would conclude that this allegation could only have come from Mr Radisich as it is clear Mr Nugent had no personal dealing with Mrs Spearing.

The Committee takes the view that Members should distinguish clearly between when they are putting forward their own view and when they are relaying the views of a constituent.

20. The key question is whether the action complained of amounted to or was intended or likely to amount to an improper interference with the free performance by Mr Nugent of his duties as a Member.
21. Persons who engage solicitors are entitled to expect that, with a presumed knowledge of the law and in conformity with the law, those solicitors will act in defence of and in pursuit of their interests. The committee would not want to argue that Members should be made immune from the laws of defamation in respect of correspondence with Ministers. Nor would it want to see a situation created where a citizen could not write, or have written, a letter to a Member complaining of actions the Member may have taken or seeking an apology, for example. The question in such cases is in what circumstances might an action such as that complained of by Mr Nugent be held to constitute improper interference with a Member's free performance of his or her duties as a Member.
22. Section 4 of the *Parliamentary Privileges Act 1987* states:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member.

The House has given no guidance as to the way this provision should be interpreted. Some relevant material was included in a recommendation of the Joint Select Committee on Parliamentary Privilege in its 1984 report. Under the heading of "Improper influence of Members" the committee proposed the following provision for inclusion in a resolution of the House concerning contempts:

"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 a Member in his conduct as a Member...."

23. In the present case, whilst understanding and whilst having no reason to dispute the solicitors' comments to the committee as to the background of the matter, there are aspects of concern to the committee. Dwyer and Company has not disputed Mr Nugent's claim that, while the firm's letter was dated 13

February, it was not received by Mr Nugent until 18 February, yet it stated that the client "required" an apology and a "clarification" within seven days failing which the firm was instructed to commence proceedings for libel. On Mr Nugent's calculation, this allowed him only until 20 February to consider the matter - that is, 48 hours after he had actually received the letter by fax.

24. Dwyer and Company has stated to the committee that "This firm has no intention of intimidating Mr Nugent". It is possible that the writer of the letter did not intend to intimidate Mr Nugent or to obstruct him or to interfere improperly with his work when the letter dated 13 February was prepared and sent. Nevertheless, Mr Nugent has stated that he saw the letter in this light and that he felt that he was being pressured to withdraw his representations on behalf of his constituent. He said that he felt that the timing of the letter and its content was an attempted intimidation.
25. Dwyer and Company has made the point to the committee that, in its view, any question of privilege can only apply where the complaint is made to the correct Department. It has not been disputed that Mr Nugent's letter of 4 October was addressed to the Minister for Social Security, who was not in fact responsible for the matters of concern to Mr Radisich. While the issue as to whether or not a communication is addressed to the responsible or correct recipient may well be an issue in other circumstances, in the view of the committee such a fact would not justify an action which might otherwise constitute a contempt - that is, it would not excuse or justify improper interference or intimidation.
26. It needs to be recognised that Members do indeed perform functions, such as writing letters to Ministers, on behalf of constituents. The committee believes that the House must be able and willing to act should it conclude that a Member has been intimidated or that the performance of his or her duties as a Member has been subject to improper interference, even if the issue does not concern the Member's participation in proceedings in Parliament. Members involved would be the beneficiaries of actions the House might take in such cases but the committee notes that the wider community has an interest in ensuring that Members are able to perform their legitimate functions without improper obstruction or interference.

### Conclusion

27. The committee recognises that in such cases there are competing proper interests. Members, and the constituents they assist, have an interest in the capacity of Members to be able to make representations to Ministers without the threat of actions for defamation. On the other hand, there can be no disputing the proposition that citizens have a basic right to act to protect their reputations and, if necessary, to have recourse to the courts of law. Complaints in this area need to be considered on their merits and in light of the circumstances applying in each case. In the view of the committee the threat to commence proceedings against a Member in respect of a letter written to a Minister on behalf of a constituent can be held to constitute improper

interference with the free performance by a Member of the Member's duties as a Member. In the present case, although the person or persons responsible for the letter dated 13 February from Dwyer and Company to Mr Nugent may have acted without a full knowledge of the legal and related issues involved, and although the person or persons may not have intended to intimidate or to influence Mr Nugent in an improper way, the terms of the letter and the circumstances of its receipt had a tendency to impair Mr Nugent's independence in the performance of his duties.

**GEORGE GEAR**  
Chairman

**7 May 1992**

**PRIVILEGE**

Mr NUGENT (Aston)--I rise on a matter of **privilege**. In October of last year I made representations to the former Minister for Social Security, Senator Richardson, on behalf of a constituent, Mr Paul Radisich. Amongst the matters Mr Radisich asked me to represent to the Minister was a complaint about the behaviour of a public servant, Mrs Lana Spearing. I subsequently learned from the Minister's office that my letter had been passed to the Minister for Employment, Education and Training (Mr Beazley) for action. I have received no further communication from either Minister.

On the afternoon of Tuesday of last week, 18 February, in my electorate office in Melbourne I received a letter by facsimile from a firm of solicitors, Dwyer and Co. of Melbourne, who stated that they were acting on behalf of Mrs Spearing. Their letter stated that Mrs Spearing had been cleared of any impropriety by an internal departmental investigation in the matter concerning Mr Radisich. In their letter the solicitors stated that they required a written apology from me, together with clarification to be sent by me to both the Department of Social Security and the Department of Employment, Education and Training within seven days, failing which they were instructed to commence proceedings for libel. The letter was dated 13 February, albeit that I did not receive it by facsimile until 18 February, and therefore the implication was that I had 48 hours in which to respond. Attached to the solicitors' letter was a photocopy of my original letter to the Minister.

I believe that the letter from Dwyer and Co. amounts to an attempt to intimidate me as a member of the Parliament and is an attempt to impair my independence in the future performance of my duties in representing constituents and corresponding with Ministers. This is also the type of situation in which other members might find themselves in the normal course of their duties when representing constituents and it could be considered that such action could have wider implications.

I ask, therefore, that this matter be referred to the Speaker to establish whether a

prima facie case of **privilege** exists so that a motion to refer the matter to the Standing Committee of Privileges could be given priority. I am able to submit herewith copies of the correspondence from the solicitors concerned.

Mr DEPUTY SPEAKER (Mr Ronald Edwards)--If the honourable member for Aston submits the documents, they will be considered. I believe the correct procedure is to refer the matter to the Speaker to allow him to consider the question put before the House.

**PRIVILEGE**

**Mr SPEAKER**-Order! Will the honourable member for Riverina-Darling resume his seat. The Leader of the Opposition might resume his seat or leave the chamber.

**Mr Downer**-What about those people over there? Don't they count?

**Mr SPEAKER**-I warn the honourable member for Mayo.

Yesterday the honourable member for Aston raised a complaint of breach of **privilege** concerning a letter dated 13 February he had received from Dwyer and Co., a firm of solicitors acting for an employee of the Department of Employment, Education and Training.

The letter referred to a letter the honourable member had written to the Minister for Social Security in October 1991 and in which the honourable member had referred to the employee. Amongst other things, the solicitor's letter advised that the employee required a written apology from the honourable member together with a clarification to the two departments in question, failing which, the letter advised, the solicitors were instructed to commence proceedings for libel.

The honourable member presented a copy of the solicitor's letter and stated that he regarded it as an attempt to intimidate him and impair his independence in the performance of his duties in representing his constituents.

It is open to the House to treat as a contempt an action which it considers amounts to, or is intended or likely to amount to, an improper interference with the free performance by a member of the member's duties as a member.

I am not aware of any exact precedent for the honourable member's complaint in so far as this House is concerned but there are precedents for the House referring to the Committee on Privileges actions which have been seen as possibly threatening the ability of members to perform their functions free from improper interference or obstruction.

In the circumstances I am prepared to allow precedence to a motion on the matter raised by the honourable member for Aston.

Motion (by **Mr Nugent**) agreed to:

That the matter of the letter dated 13 February 1992 from Dwyer and Company, Solicitors, of 344 St Kilda Road, Melbourne, to the member for Aston be referred to the Committee of Privileges.

received 1:24pm  
Johnson 18/3/92

**DWYER & COMPANY SOLICITORS**

344 St. Kilda Rd  
MELBOURNE, VIC. 3004  
Phone: (03) 696 4022  
Fax: (03) 696 3832

18th March, 1992

Our ref: RL

Your ref: George Gear

The Chairman,  
Mr. Gear,  
Committee of Privileges,  
Parliament House,  
CANBERRA, A.C.T. 2600

Dear Mr. Gear,

**RE: MS. LANA SPEARING AND MR. PETER NUGENT**

We refer to your letter dated the 2nd of March, 1992. We confirm that the letter dated the 13th of February, 1992 is from this office.

We were instructed to act by Ms. Spearing on the 12th of February, 1992.

Ms. Spearing considers that her reputation and career prospects have been damaged by Mr. Nugent's letter dated the 4th of October, 1991. The letter was sent to the Department of Social Security. Our client is an employee of the Department of Employment, Education and Training. This resulted in the letter being disseminated widely and taking approximately three months to get to our client. The letter contains a bland allegation that:

*"A Ms. Lana Spearing rang and told Mr. Radtsich in a very rude manner that he would not be sent a letter outlining his entitlements and told not to keep bothering them."*

Our client denies that there is any factual basis for this statement. Indeed, had our client been given the opportunity to respond this would have become clear. The statement is defamatory and has obviously caused damage.

This firm has no intention of intimidating Mr. Nugent in his capacity as a Member of Parliament or to impair his independence in the future performance of his duties. Unfortunately, however Mr. Nugent, whilst attempting to represent his constituent, has failed to respect the rights of our client.



We can understand that Mr. Nugent feels obliged to represent his constituents with vigour. We also appreciate that Mr. Nugent is in a position where constituents often make unsupported allegations to him. However, we would have thought that those allegations should be reiterated as allegations only and not as statements of fact. Further, they should have been made in confidence and to the correct Department.

We note we received a letter from solicitors acting for Mr. Nugent on the 21st of February, 1992. Mr. Nugent claims his rights both as a Member of Parliament and as a citizen. All our client claims is her rights as a citizen.

The writer would be prepared to appear before the Committee at its convenience.

Yours faithfully,  
Dwyer & Company

Per:





**PETER NUGENT, M.P.**

FEDERAL MEMBER FOR ASTON

Ref:PN/ty

17 March 1992

Mr George Gear  
Chairman  
Committee of Privileges  
Parliament House  
CANBERRA ACT 2600

Dear Mr Gear,

I refer to your letter dated 2 March 1992 concerning the House of Representatives 26 February resolution:

*"That the matter of the letter dated 13 February 1992 from Dwyer & Company, solicitors of 344 St Kilda Road, Melbourne, to the Honourable Member for Aston be referred to the Committee of Privileges."*

The facts of the matter are as follows.

On 27 September 1991 a Mr Paul Radisich, a constituent, came to my Melbourne Electorate Office seeking assistance concerning an application he had made concerning Training Allowances and other matters.

He stated that he had been to the Department Social Security in Ringwood and that at various times he had received erroneous and conflicting advice from different members of DSS staff. Finally, he had asked for the DSS advice/information to be put in writing. This matter was referred to "a supervisor", a Ms Lana Spearing, who phoned Mr Radisich.

Mr Radisich complained that Ms Spearing was rude in her manner and told him that he would not receive the information requested in writing and that he was to stop bothering them (the DSS).

Mr Radisich came to my office on 27 September for help with resolving his problem.

For the record, Mr Radisich has now obtained appropriate allowances following intervention from my office.

Mr Radisich also specifically requested that his complaint concerning the rudeness of Ms Spearing be referred to the Minister for Social Security.

....12

Rec'd 1.20 pm  
19-3-92  
Blight

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I wrote to the then Minister, Senator Richardson, on 4 October 1991. I confirm the authenticity of the letter attached to your letter of 2 March 1992 which is a copy of my letter to the Minister For Social Security dated 4 October 1991.

Obviously, the over-stamping of the Ministerial Correspondence Unit and handwritten annotations are additions to the letter since it left my office on 4 October 1991.

I subsequently received a letter from the Hon Con Sciacca, MP, Parliamentary Secretary to the Minister for Social Security dated 3 December 1991 advising that the matter had been referred to the Minister for Employment, Education and Training. I enclose a copy of Mr Sciacca's letter. (Attachment A).

On the afternoon of 18 February 1992, I received in my office in Melbourne facsimile copy of a letter from Dwyer & Company Solicitors of 344 St Kilda Road, Melbourne.

The facsimile was clearly dated 18 February 1992 and the time was 14:26.

The letter being transmitted was dated five days prior - 13 February 1992. I attach a copy of that letter. (Attachment B).

In their letter, Dwyer & Co stated that an internal department investigation had cleared Ms Spearing of any impropriety.

Neither, I, my staff or Mr Radisich, as at the date of this letter has been made aware of any DEET inquiry.

Dwyer & Co sought from me an apology to Ms Spearing and "clarification to be sent to both the Department of Social Security and the Department of Employment, Education & Training within seven days". If I did not respond " we are instructed to commence proceedings for libel".

In effect, given that the letter was dated 13 February 1992, the seven days was due to expire on 20 February 1992, only 48 hours after I had actually received the facsimile from Dwyer & Co.

That same day I wrote, by facsimile, and telephoned the Canberra offices of the current Minister for Employment, Education & Training, Hon. Kim Beazley, MP, to try to establish what actions his department had taken. I am still awaiting a response from the Minister.

For the record, my own solicitors responded to Dwyer & Co denying liability and stating that I would vigorously defend any proceedings that might be brought against me.

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Attached to the Dwyer & Co letter to me was a copy of my letter of 4 October 1991 to Minister Richardson. It clearly showed at the top of the page details indicating that it had been sent to Dwyer & Co by facsimile on 12 February 1992 from the Ringwood CES Office. (Attachment C).

I believe that my letter to Minister Richardson dated 4 October 1991 did not contain any defamatory statement. My letter was specifically addressed to the Minister and not the Department. I have a right and a duty to correspond with Ministers on matters affecting my constituents. Accordingly, my letter was clearly covered by qualified privilege.

In addition, contrary to Dwyer & Co's assertion, I had not made allegations of rudeness "as a matter of fact". The context of the letter makes it plain that I was conveying to the Minister the substance of a complaint made to me by my constituent.

On the first sitting day following receipt of the Dwyer & Co communication, I raised this matter as one of Privilege in the House of Representatives.

My concerns are several.

One, that a letter, or copy thereof, from a Member of Parliament to a Minister should have been available to a public servant who was the subject of that letter and that the contents were then released in the public domain.

Secondly, I submit that the timing of the Dwyer & Co facsimile on 18 February 1992, its stated deadline for response, effectively only 48 hours - and its content was an attempted intimidation of a Member of Parliament (Refer to House of Representatives Practice, page 706).

I felt at the time that the Dwyer & Co letter was received that I was being pressured both by way of the short time scale to respond and the implication of threatened legal action, with its resultant publicity, to withdraw my representations made on behalf of my constituent.

Further, I felt, and still believe, that had I acquiesced and written as Dwyer & Co sought, that any future representations I should make on behalf of constituents could be inhibited. I saw the Dwyer & Co action as having a tendency to impair my independence in the future performance of my duty.

The knowledge that action, by a firm of solicitors on behalf of a Public Servant, had induced a Member of Parliament to withdraw representations on behalf of a constituent would have become public knowledge. Thus other Members of Parliament might similarly have felt that their independence was impaired had I submitted to this attempted intimidation.

.../4

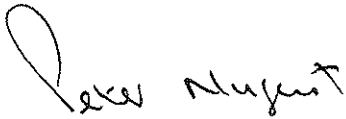
**PETER NUGENT, M.P.**  
FEDERAL MEMBER FOR ASTON

4-

In view of the forgoing, I considered this matter as being worthy of submission to the House of Representatives Committee of Privileges.

I would be pleased to provide the Committee with my further material that they may require.

Yours sincerely,

A handwritten signature in cursive script that reads "Peter Nugent". The signature is written in dark ink and is positioned to the left of the typed name.

PETER NUGENT  
Federal Member for Aston



COMMONWEALTH OF AUSTRALIA

Attachment A.

THE HONOURABLE CON SCIACCA MP  
FEDERAL MEMBER FOR BOWMAN (QLD)  
PARLIAMENT HOUSE  
CANBERRA, ACT 2600

PARLIAMENTARY SECRETARY TO  
THE MINISTER FOR SOCIAL SECURITY  
Ph (06) 2774980  
Fax (06) 2734575

Mr Peter Nugent MP  
Member for Aston  
Unit 7  
426 Burwood Highway  
WANTIRNA SOUTH VIC 3152

*Peter*  
Dear Mr Nugent

Senator Richardson has asked me to thank you for your personal representations of 4 October 1991 on behalf of Mr Paul Radisich of Bayswater, concerning his dealings with the Ringwood Regional Office of the Department of Social Security. I am replying on Senator Richardson's behalf.

Formal training allowance is administered by the Commonwealth Employment Service (CES) which comes under the Department of Employment, Education and Training.

Mr Radisich would appear to have been in contact with the Ringwood office of the CES when he made his query concerning formal training allowance and has, quite understandably, confused that office with an office of the Department of Social Security.

For this reason, I have referred your representations to the Minister for Employment, Education and Training for consideration.

Yours sincerely

*Con Sciacca*  
CON SCIACCA MP

3rd. November 1991  
*December*

# Attachment B.

DWYER & COMPANY SOLICITORS

344 St. Kilda Rd  
MELBOURNE, VIC. 3004  
Phone: (03) 696 4022  
Fax (03) 696 3832

13th February, 1992

Our ref: RL

Mr. Peter Nugent M.P.,  
Federal Member for Aston,  
Unit 7,  
426 Burwood Highway,  
WANTIRNA SOUTH VIC 3152  
FACSIMILE NO: 887 3893

Dear Mr. Nugent,

RE: LANA SPEARING

We act on behalf of Mrs. Lana Spearing, an employee of the Department of Employment, Education and Training. Mrs. Spearing has provided us with a copy of your letter to the Department of Social Security dated the 4th of October, 1991, a copy of which we enclose for your information.

Our client is distressed by the contents of the letter and, in particular the allegation that she was rude to Mr. Radisich. Our client denies that she was rude to Mr. Radisich. An internal department investigation has cleared her of any impropriety.

Unfortunately, the allegations of rudeness are not prefaced as being Mr. Radisich's but appear in your letter as a statement of fact.

The letter has taken approximately three months to come to my client's attention due to it being mistakenly addressed to the Department of Social Security. As you will appreciate the damage done by the letter goes beyond personal hurt to our client and extends to her reputation within the workplace.

Accordingly, our client requires a written apology from you together with a clarification to be sent to both the Department of Social Security and the Department of Employment Education and Training within seven days, failing which we are instructed to commence proceedings for libel.

Should you wish to discuss this matter please do not hesitate to contact the writer.

Yours faithfully,  
DWYER & COMPANY

Per:

enc.

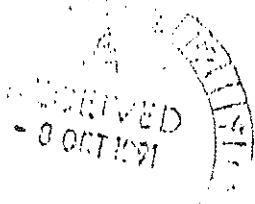
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**Attachment C.**



PARLIAMENT OF AUSTRALIA  
HOUSE OF REPRESENTATIVES



**PETER NUGENT, M.P.**  
FEDERAL MEMBER FOR ASTON



Ref:PN/6-485

VI-E  
STAFF  
COM PLAIN

4th October 1991  
MINISTERIAL CORRESPONDENCE UNIT  
SCH. No.                      DUE DATE  
CX/127178                      - 5 NOV. 91

~~The Hon Senator Graham Richardson~~  
DEPT. OF SOCIAL SECURITY  
Minister for Social Security  
Senate  
Parliament House  
CANBERRA ACT 2800

Dear Senator,

I have received representations from Mr Paul Radisich of Bayswater regarding a matter with the Department of Social Security at Ringwood.

Mr Radisich has requested that I formally complain about the lack of service he has received and in particular the rudeness of a staff member Mrs Lana Spearing.

Apparently Mr Radisich applied with the C.E.S. for a <sup>PERSONAL TRAINING ALLOWANCE</sup> ~~personal training allowance~~ after some time this was approved. Consequently when he inquired with the Social Service Department at Ringwood in regards to date of payment and other allowances he would be entitled to and requested this in writing, he was met with a vague answer. He then requested to speak to a supervisor and was told that the supervisor would return his call later.

A Mrs Lana Spearing rang and told Mr Radisich in a very rude manner that he would not be sent a letter outlining his entitlements and told not to keep bothering them.

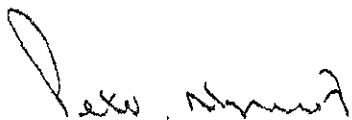
Mr Radisich is most upset with both the manner in which he was spoken to and also the fact that he needs to budget and would like to know what other entitlements are available, for example he knows he is entitled to a book allowance but is unsure how much the entitlement is.



As I feel these requests he has made are quite reasonable, I would appreciate if one of your officers could investigate this matter and keep me informed.

Thank you for your co-operation.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Peter Nigent".

PETER NIGENT  
Federal Member for Aston

ATTACHMENT E

DWYER & COMPANY SOLICITORS

344 St. Kilda Rd  
MELBOURNE, VIC. 3004  
Phone: (03) 696 4022  
Fax: (03) 696 3832

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CONFIDENTIAL

10th April, 1992

Our ref: RL/1296

Attention: Mr. George Gear.

The Chairman,  
The Committee of Privileges,  
Parliament House,  
CANBERRA. A.C.T. 2600.

Dear Sirs,

RE: SPEARING & NUGENT.

We refer to your letter dated the 1st April, 1992 enclosing letter from Mr. Nugent dated the 17th March, 1992.

We make no comment regarding Mr. Nugent's discussion with his constituent, Mr. Radisich. As stated in our earlier correspondence, the principal grounds of complaint by our client against Mr. Nugent were:-

1. That he had made an incorrect statement of fact that our client had been rude to his constituent; and
2. That his letter of complaint was made to the incorrect department. We note in Mr. Nugent's letter of the 17th March, 1992, he confirms that his letter of complaint was referred from the Minister for Social Security to the Minister for Employment, Education and Training.
3. Mr. Nugent's assertion that he did not make allegations of rudeness against our client is incorrect. His letter dated the 4th October, 1991 states:-

*"A Mrs. Lana Spearing rang and told Mr. Radisich in a very rude manner that he would not be sent a letter outlining his entitlement and not to keep bothering them".*

4. Our assertion that an internal investigation has cleared Ms. Spearing of any impropriety, was made upon instructions from our client, which she stands by.
5. Any question of privilege can only apply where the complaint is made to the correct department.

Mr. George Gear

2.

10th April, 1992

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In summary, we are not suggesting that Mr. Nugent should be prevented from acting in the best interests of his constituent. However, we also have an obligation to act in the best interests of our client. Presumably Mr. Nugent's solicitors have a similar view as far as he is concerned. Furthermore,, our client has her rights under the law. We are not about to compromise those rights. Notwithstanding, we will continue to represent our client to the best of our ability.

Yours faithfully,  
DWYER & COMPANY

Per:

A handwritten signature in cursive script, appearing to be 'J.M.', written in dark ink.

COMMITTEE OF PRIVILEGES  
MINUTES OF PROCEEDINGS

Parliament House - Canberra  
Monday, 2 March 1992

PRESENT:

Mr Gear (Chairman)  
Mr Dobie

Mr Snow

The meeting opened at 8.10pm.

The minutes of the meeting held on 14 November 1991 were confirmed.

Reference concerning letter from Dwyer & Company received  
by Mr P E Nugent, MP

The committee deliberated.

Resolved (on the motion of Mr Snow) - That the committee write to Dwyer & Company and to Mr Nugent inviting a submission from each and asking for confirmation of the authenticity of the relevant letters.

At 8.12pm the committee adjourned until 8.00pm on Thursday 26 March.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES  
MINUTES OF PROCEEDINGS

Parliament House - Canberra  
Thursday, 30 March 1992

PRESENT:

Mr Gear (Chairman)	Dr Edwards
Mrs Crosio	Mr McGauran
Mr Dobie	

The meeting opened at 8.08pm.

The minutes of the meeting held on 2 March 1992 were confirmed.

Reference concerning letter from Dwyer & Company received by Mr P E Nugent, MP

The Chairman presented extracts from the Votes and Proceedings of 25 and 26 February 1992.

The Chairman presented:

- (a) a letter dated 17 March from Mr Nugent, with attachments;
- (b) a letter dated 18 March from Dwyer and Company.

The committee deliberated.

Resolved (on the motion of Mr McGauran) - That the letters be received as evidence.

The committee deliberated.

Resolved (on the motion of Mr McGauran) - That after consultation between the Chairman and Mr Nugent, the letter of 17 March from Mr Nugent to the Chairman be published, under the provisions of the Parliamentary Papers Act, to Dwyer and Company for comment and any submission they might wish to make.

At 8.25pm the committee adjourned until 8.00pm on Monday 4 May.

Confirmed.

CHAIRMAN

COMMITTEE OF PRIVILEGES  
MINUTES OF PROCEEDINGS

Parliament House - Canberra  
Monday, 4 May 1992

PRESENT:

Mr Gear (Chairman)	Mr Snow
Mr Costello	Mr Snowdon
Mr Dobie	

The meeting opened at 8.08pm.

The minutes of the meeting held on 30 March 1992 were confirmed.

Reference concerning letter from Dwyer & Company received  
by Mr P E Nugent, MP

The Chairman presented a letter dated 10 April from Dwyer and Company.

Resolved (on the motion of Mr Snowdon) - That the letter be received as evidence.

The committee deliberated.

Mr Snow moved—That the House be advised that the letter from Dwyer and Company does have a tendency to impair Mr Nugent in the future performance of his duties.

The committee deliberated.

Mr Snow, by leave, withdrew his motion.

At 9.33pm the committee adjourned until a date and time to be fixed.

Confirmed.

CHAIRMAN