

Mr David Blunt  
Clerk of the Parliaments and  
Clerk of the Legislative Council  
Parliament House, Macquarie Street  
Sydney New South Wales 2000

Dear Mr Blunt *David,*

Thank you for giving the NSW Government the opportunity to respond to the outcome of the Legislative Council General Purpose Standing Committee No. 1 Inquiry into the Gentrader Transactions.

On 29 April 2011, by Letters Patent made and issued under the authority of the *Special Commissions of Inquiry Act 1983*, the Honourable Brian Tamberlin QC was appointed as Special Commissioner to inquire into and report on all matters relating to the electricity transactions.

The Special Commissioner provided an initial report on 31 August 2011, which I attach for the information of the Standing Committee. A final report will be provided by the Special Commissioner by 31 October 2011. I will arrange for the report of the Special Commissioner to be tabled in Parliament. The Government's response to the Special Commissioner's report will be forwarded to the Standing Committee once available.

Yours sincerely

Barry O'Farrell MP  
Premier

*Received at 3pm  
Thursday 27 October 2011*



## Special Commission of Inquiry Electricity Transactions

31 August 2011

Her Excellency Professor Marie Bashir AC, CVO  
Governor of NSW  
Office of the Governor of NSW  
Level 3, Chief Secretary's Building  
121 Macquarie Street  
SYDNEY NSW 2000

By hand

Your Excellency

### Special Commission of Inquiry into the Electricity Transactions

In accordance with the Letters Patent made and issued on 29 April 2011, I am pleased to deliver to you the Initial Report of the Special Commission of Inquiry into the Electricity Transactions.

Yours faithfully

The Honourable Brian John Tamberlin QC  
**Commissioner**  
**Special Commission of Inquiry into Electricity Transactions**



Special Commission of Inquiry into the Electricity Transactions

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# Initial Report of the Special Commission of Inquiry into the Electricity Transactions

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The Honourable Brian John Tamberlin QC  
31 August 2011

# Initial Report of the Special Commission of Inquiry into the Electricity Transactions

- 1.1 The terms of reference for the Special Commission of Inquiry into the Electricity Transactions are contained in Appendix 1 to this Initial Report.
- 1.2 Those terms of reference require an initial report by 31 August 2011 and a final report on or before 31 October 2011.
- 1.3 The Inquiry commenced on 29 April 2011 and by mid May, senior counsel and counsel were engaged and a solicitor to the Commission appointed. Premises were located and the necessary administrative arrangements were put in place. Administrative staff commenced work.
- 1.4 Notices were placed in *The Australian*, *The Australian Financial Review*, *The Daily Telegraph* and *The Sydney Morning Herald* on 14 and 18 May 2011 setting out the Inquiry's terms of reference and inviting submissions by 17 June 2011.
- 1.5 Twenty seven submissions have been received.
- 1.6 The Inquiry held a public hearing on 23 May 2011 at which leave was granted to the following parties to appear: Delta Electricity and a number of its current and former directors; Eraring Energy; the State of NSW, acting through the Department of Premier and Cabinet, NSW Treasury and the Department of Trade and Investment, Regional Infrastructure and Services; Ausgrid, formerly EnergyAustralia; Credit Suisse Australia Limited; Essential Energy, formerly Country Energy; Ms Jan McClelland, a former director of Eraring Energy; TRUenergy Pty Ltd; Mr Kimberly Yeadon and Mr John Dermody, former directors of Delta Electricity. Subsequently, other individuals and agencies have sought and been granted leave to appear before private hearings.
- 1.7 The Inquiry has established a website at [www.lawlink.nsw.gov.au/sciet](http://www.lawlink.nsw.gov.au/sciet). All significant information concerning the progress of the Inquiry is placed on that website.
- 1.8 Shortly after the commencement of the Inquiry, letters were sent to 54 key agencies and individuals, inviting them to participate in the Inquiry and provide relevant information.
- 1.9 Eighty two summonses have been issued to a range of public sector and private sector bodies and individuals requiring the production of documents and information. Thus far, over 340 folders of documents and numerous CDs and USB flash drives have been produced and reviewed by the Inquiry. It is expected that there will be a need to summons further material.
- 1.10 The Inquiry has held private hearings with 20 people in relation to its first and second terms of reference. Those hearings have been held in private because of the commercial in confidence nature of the terms of the electricity transactions.
- 1.11 Meetings, which have been recorded and transcribed, have been held with over 35 individuals, many representing agencies and companies. Each person interviewed or examined has been summonsed to do so. Directions under sections 7 and/or 8 of the *Special Commission of Inquiry Act 1983* were made which included preventing the publication of evidence given.

- 1.12 In addition, the Inquiry has requested information from agencies and most of this has been provided, however, some remains outstanding.
- 1.13 On 17 June 2011, the Commissioner and Inquiry staff attended the offices of the Australian Energy Market Commission where a presentation as to the operation of the National Energy Market was made.
- 1.14 On 23 June 2011, the Commissioner and Inquiry staff visited Bayswater power station operated by Macquarie Generation and toured its trading room at Lambton.
- 1.15 On 15 and 16 August 2011, the Commissioner and Inquiry staff visited Capital Wind Farm, near Bungendore, a solar farm at Queanbeyan and Tumut 3 power station operated by Snowy Hydro Limited.
- 1.16 The Inquiry expects to complete the gathering of evidence in relation to the first two terms of reference shortly.
- 1.17 It has engaged an expert to provide assistance for the inquiring into and reporting on terms of reference three and four and expects this report in the near future.
- 1.18 The final two terms of reference concern reporting on options for the future action that could be taken to further the public interest in a competitive NSW electricity sector. The Inquiry has sought the views of many working within the electricity sector and has obtained the services of several experts to provide a short report on their views. In addition, Professor Owen, who prepared the report for the NSW Government in 2007, has been retained to supplement and update his earlier report and express his opinion on future options.
- 1.19 Given the volume of material sought and received and which remains outstanding, and the complexity of the transactions the subject of this Inquiry, no conclusions, findings or recommendations can be made at this time.
- 1.20 Final reports will be provided to the Governor on or before 31 October 2011 which will contain the conclusions, findings and recommendations of the Inquiry.

## Appendix 1 Terms of Reference

### New South Wales

ELIZABETH THE SECOND, by the Grace of God, Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

To the Honourable Justice Brian John Michael Tamberlin QC

By these Our Letters Patent, made and issued under the authority of the *Special Commissions of Inquiry Act 1983*, We hereby, with the advice of the Executive Council, authorise you as Commissioner to inquire into and report to Our Governor of the said State on all matters relating to the electricity transactions (occurring both before and after entering into those transactions), including:

1. compliance with applicable laws, policies and practices;
2. the circumstances surrounding the resignation and appointment of directors of Eraring Energy and Delta Electricity in December 2010;
3. the value for money achieved for the State compared to the retention value of the assets to the State;
4. the costs and benefits to the State of the electricity transactions, including potential risks and liabilities and the extent to which the transactions can deliver the stated objectives for entering into them; and
5. any other related matters.

AND FURTHER, WE authorise you to inquire into and report on options for future action that could be undertaken to further the public interest in a competitive NSW electricity sector, including options to:

1. address any issues identified in relation to the electricity transactions; and
2. promote competitive electricity prices and ensure reliability of supply.

AND hereby establish a Special Commission of Inquiry for that purpose. The Special Commission may be assisted by one or more experts on matters that the Commissioner considers require expert opinion.

AND OUR further will and pleasure is that you do, as expeditiously as possible, but in any case on or before 31 August 2011 deliver your initial report, and on or before 31 October 2011 deliver your final report covering all the matters hereto specified.

IN these Letters Patent "electricity transactions" refers to:

1. the sale of State-owned electricity retailers (EnergyAustralia, Integral Energy and Country Energy) by the NSW Government in 2010/11;
2. the sale of the electricity trading rights of State-owned generators (Eraring Energy and Delta West) by the NSW Government in 2010/11;
3. the Cobbora coal mine development;
4. the sale of development sites suitable for power generation by the NSW Government, including at Marulan and Mt Piper in 2010/11; and
5. the proposed sale of the electricity trading rights of State-owned generators (Macquarie Generation and Delta Coastal) that was not completed by the NSW Government.

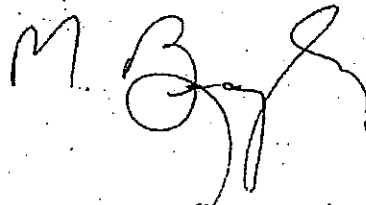
AND pursuant to s. 21 of the *Special Commissions of Inquiry Act 1983* it is hereby declared that sections 22, 23 and 24 shall apply to and in respect of the Special Commission the subject of these Our Letters Patent.

IN TESTIMONY WHEREOF, WE have caused these Our Letters to be made Patent and the Public Seal of Our State to be hereunto affixed.

WITNESS

The Honourable Justice Margaret Beazley AO  
Administrator of the State of New South Wales in the Commonwealth of Australia.

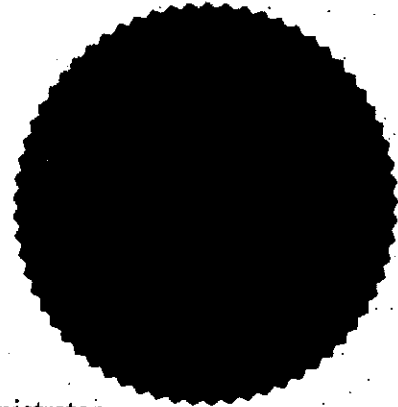
Dated this 29 April 2011.



By the Administrator's Command.



Premier



The Administrator

# From Hansard Transcript (Legislative Council, 13 October 2011, Proof)

## Order of Business

### Motion by the Hon. Mick Veitch agreed to:

That Private Members' Business item No. 313 outside the Order of Precedence be called on forthwith.

**The Hon. MICK VEITCH** [11.19 a.m.]: I seek leave to amend Private Members' Business item No. 313 outside the Order of Precedence, of which I have given notice, by omitting in paragraph 4 the words "28 days" and inserting instead "60 days".

Leave granted.

Accordingly, I move:

1. That this House notes that the President reported on 11 October 2011 that under standing order 234, government responses had not been received to various committee reports tabled during the last session of parliament.

2. That this House notes the following correspondence tabled in the House on Tuesday 11 October 2011:

(a) the letter from the Honourable Duncan Gay, Leader of the House and Deputy Leader of the Government in the Legislative Council, dated 7 September 2011, indicating the Government's intention to not provide responses to Committee reports tabled during the 54th Parliament, and

(b) advice by the Clerk of the Parliaments, dated 9 September 2011.

3. That this House notes the statement in Mr Gay's letter, dated 7 September 2011, that "The Government would of course provide a response to any report of a Legislative Council Committee from the previous parliament in relation to which the Legislative Council resolves to request a response from the Government."

4. That there be laid upon the table of the House within 60 days of the passing of this resolution a response to each of the following Legislative Council Committee reports tabled during the 54th Parliament:

(a) Standing Committee on State Development:

(i) Report No. 34 entitled "New South Wales Planning Framework", dated December 2010—response due 10 June 2010,

(ii) Report No. 35 entitled "Wine grape market and prices", dated December 2010—response due 3 June 2011,



(b) Standing Committee on Law and Justice:

(i) Report No. 42 entitled "Spent convictions for juvenile offenders", dated July 2010—response due 6 January 2011,

(ii) Report No. 43 entitled "Review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council—Tenth Report", dated October 2010—response due 28 April 2011, (iii) Report No. 45 entitled "Review of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council—Third Report", dated November 2010—response due 11 May 2011,

(c) Report No. 44 of the Standing Committee on Social Issues entitled "Inquiry into services provided or funded by the Department of Ageing, Disability and Home Care", dated November 2010—response due 11 May 2011,

(d) Report of the Select Committee on Recreational Fishing entitled "Recreational fishing in New South Wales", dated December 2010—response due 10 June 2011,

(e) Report No. 32 of General Purpose Standing Committee No. 5 entitled "The inquiry into the RSPCA raid on the Waterways Wildlife Park", dated September 2010—response due 9 March 2011, and

(f) Report No. 36 of General Purpose Standing Committee No. 1 entitled "The Gentrader transactions", dated February 2011—response due 22 August 2011.

5. If at the time at which the government seeks to report to the House, the House is not sitting, a Minister may present the response to the Clerk.

6. A response presented to the Clerk is:

(a) on presentation, and for all purposes, deemed to have been laid before the House;

(b) to be printed by authority of the Clerk;

(c) for all purposes, deemed to be a document published by order or under the authority of the House;

(d) to be recorded in the Minutes of Proceedings of the House; and

(e) to be distributed by the clerk of the committee to inquiry participants.

This motion cuts directly to the importance that this House places on the work of committees, the committee process and the role committees play in assisting the House to fulfil its role as a House of review. A most crucial aspect of the committee process is the government response to committee reports tabled in this House. Committees have been an aspect of the work of this House since 1824 when a subcommittee was formed to investigate the female factory at Parramatta. The use of committees has evolved since then. The requirement or practice of

providing government responses to committee reports commenced with the appointment of the first two standing committees in 1988 at the time of the Greiner Government.

The standing orders now require the Clerk to refer all committee reports that recommend action be taken to the Leader of the Government for a response within six months of the report being tabled. How did we get to this point today? On 20 June this year, the Leader of the Government advised the House that the Government intended to respond to outstanding committee reports tabled in this House within six months of the election in March. By all accounts I would suggest that is fair and reasonable. I do not think there are too many members who would disagree with that arrangement. Why would any members be worried when they read the correspondence from the Leader of Government Business? He said:

We undertake to provide a full response to each report within six months of the date on which this Government took office, 26<sup>th</sup> March 2011.

This Government is committed to providing a thorough response to each recommendation contained in these reports in accordance with the Standing Orders.

On Tuesday this week the House was advised that the Government does not intend to provide a response to any of the outstanding committee reports tabled in the House. That is not acceptable to a number of members in this Chamber. It smacks of arrogance from the Government. It is most definitely a slight, indeed disrespectful, to committee members, the hard-working secretariat, and to all the citizens of New South Wales who took time to prepare a submission or to attend a public hearing. There are citizens of New South Wales waiting to see what the government response will be to a particular committee report, whether they be wine grape growers, recreational fishers or people with a disability. The letter by the Leader of Government Business to the Clerk does however provide the House with a way forward. It states:

The Government would of course provide a response to any report of a Legislative Council Committee from the previous Parliament in relation to which the Legislative Council resolves to request a response from the Government.

The correspondence tabled this week from the Clerk of the Parliaments dated 9 September 2011 provides a very clear opinion on the need for the Government to respond to recommendations in a committee report tabled in the House. It states:

While prorogation has the effect of terminating all business pending before the House, the requirement for the Government to respond to recommendations in a committee report is not a matter pending before the House. It is a requirement under a standing order which has force whether or not the House is able to meet, ... If it was intended that the requirement to respond to recommendations would be limited to a particular parliament, I believe the standing order would need to specify such. Since it does not, I believe the current Government is bound by its provisions.

It is a very dangerous precedent indeed for the Government of the day not to respond to a committee report tabled in this House, regardless of when it was tabled and regardless of whoever

has formed government in the Legislative Assembly. I ask members to consider supporting this important motion.

**The Hon. ROBERT BROWN** [11.24 a.m.]: As I said in my contribution to the urgency debate, in the last Parliament I was chair of the Select Committee on Recreational Fishing. That committee inquiry cost the taxpayers of this State of the order of \$277,000. It took over 1,000 submissions, held five or six public hearings around the State and had scores of witnesses at those hearings wanting to express an opinion as stakeholders. I recall that in the last Parliament when the Hon. Duncan Gay was the shadow spokesperson for fisheries and agriculture he and I stood shoulder to shoulder at a number of forums in public places telling the recreational fishers of New South Wales that we understood their disquiet at a lot of things that were going on. Indeed, the then Opposition supported the motion that set up that inquiry.

It behoves the Government to make sure it responds properly to that report, and to all reports. I know there is urging within the fishing community, particularly from the Recreational Fishing Alliance, for the Government's response to that report to be made as soon as possible. Members will be aware that I have a bill on the *Notice Paper* that looks at restructuring the representation model for recreational fishers in this State. I was expecting that the formulation of the legislation and the debate could be informed by a response from the Government to the recreational fishing inquiry. I hope that that will now occur. Therefore, I urge all members to support the motion.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [11.26 a.m.]: The Government will not be opposing the motion. As I indicated in my letter of 7 September, it is obvious the House has a will in this area. The Government would of course provide a response to any report of Legislative Council committees from the previous Government in relation to which the Legislative Council resolves to request a response from the Government. At the end of the day we all are the servants of the House, and appropriately so.

There is a difference in the two legal opinions. I was given a Crown Solicitor's advice on this, as was the previous Government on occasions. The Legislative Council has the advice of the former Clerk that made a different recommendation. As a member of the Government, when one is given legal advice by the Crown Solicitor one should take that advice and act on it, which I did, and I sent the appropriate letter. There was a great deal of alacrity to do reports on some of these matters, which I will come to in a moment. The Crown Solicitor's advice was to do with the propriety of a different Government doing a report on issues that came to the committee section under a previous Government. Its recommendation was that it was inappropriate and unnecessary for us to reply to the reports.

I thank the Hon. Mick Veitch and members of the House for allowing the amendment which the mover of the motion put in place to increase the time to 60 days. We are about to deal with the budget estimates, when members and the bureaucracy will be very much sidetracked on particular issues. In part I can understand the Opposition wanting to move this motion but I look forward to the Government's response to paragraphs (d), (e) and (f)—the report of the Select Committee on Recreational Fishing, the inquiry by General Purpose Standing Committee No. 5 into the RSPCA, and report No. 36 of General Purpose Standing Committee No. 1 entitled "The Gentrader transaction".

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I suspect that there is delight in the now Opposition wanting to use an opinion of the former Clerk to shove it up the nose of the Government. I suspect that delight will diminish when the Government response and report on the detail of the mess that was generated are available and members are aware of the terrific work done by the parliamentary committees to at least lift the lid on some of the mess that existed at the time. As I indicated, on the legal advice the Government had and on my advice, we did not believe it was appropriate. But, as always, we are in the hands of the House. The House is of a mind to go this way and, as I indicated in my letter, if that is the way the House wishes to go the Government will not oppose that.

**Dr JOHN KAYE** [11.30 a.m.]: The Greens support the motion. I had intended to make a longer speech about the importance of the cycle which finishes with the Government's response and about the importance of committees of this House. I shall not do so because the Government has indicated its agreement to the motion and its willingness to comply with the motion as by leave amended. However, I will say that the Government's response on the gentrader inquiry is important, not just to spend time raking over the coals of the disaster that was the botched gentrader transactions but also to look into the mind of the Government and understand where it is

going with ownership of the electricity industry, a matter on which there is now a substantial lack of clarity. The Greens support the motion before the House.

**The Hon. PAUL GREEN** [11.31 a.m.]: I speak on behalf of the Christian Democratic Party. The reasons that the House should support the motion have been well articulated, and I therefore commend the motion to the House.

**Question—That the motion as amended be agreed to—put and resolved in the affirmative.**

**Motion as amended agreed to.**