

General Purpose Standing Committee No. 5

Inquiry into Land Clearing by TransGrid

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Terms of Reference

- 1) *That General Purpose Standing Committee No. 5 inquire into and report on the clearing and overclearing of land in the vicinity of TransGrid transmission lines in the northern Kosciuszko region, and in particular:*
 - a) *the level of environmental damage caused to Kosciuszko National Park, Brindabella National Park, Namadgi National Park, Bago State Forest and Bimberi Nature Reserve,*
 - b) *the measures required to effectively remediate the area to ensure the long-term viability of the area,*
 - c) *the total costs associated with the remediation of the area and liability for such costs,*
 - d) *the extent of communication between, and the involvement and response of, the following agencies:*
State Forests,
The National Parks and Wildlife Service,
The Environment Protection Authority, and
The Department of Land and Water Conservation,
 - e) *the adequacy of the present controls on the management and use of easements for transmission lines, pipelines and roads in national parks, State forests and nature reserves,*
 - f) *the use of timber, bush rock or soil removed from the cleared areas,*
 - g) *measures to prevent any further inappropriate clearing and over clearing in national parks, State forests and nature reserves.*
- 2) *That in relation to any cross-border issues with the Australian Capital Territory, the committee be authorised to meet with relevant committees of the Australian Capital Territory Legislative Assembly.*
- 3) *That the committee report by Tuesday 18 September 2001.*

These terms of reference were referred to the Committee by House on 20 June 2001.¹

¹ Minutes of the Proceedings No. 107, 20 June 2001, Item No. 14.

Committee Membership

The Hon Richard Jones MLC Independent *Chair*

Ms Jan Burnswoods MLC Australian Labor Party *Deputy Chair*

The Hon Richard Colless MLC National Party

The Hon Amanda Fazio MLC Australian Labor Party

The Hon John Jobling MLC Liberal Party

The Hon Malcolm Jones MLC Outdoor Recreation Party

The Hon Janelle Saffin MLC Australian Labor Party

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Chair's Foreword

In April and May of last year the NSW government owned power corporation TransGrid undertook land clearing for transmission lines in several national parks and reserves. The works caused significant environmental harm in sections of Brindabella National Park, Kosciuszko National Park, Bimberri Nature Reserve, Bago State Forest, the Namadgi National Park (in the ACT) and private lands and crown reserves in the Brindabella Valley. TransGrid has admitted its responsibility for the damage caused.

The Legislative Council in June 2001 referred the matter to General Purpose Standing Committee No 5 for investigation of several aspects of the incident. Subsequently, however, the matter has become the subject of litigation and may be still subject to further action by relevant agencies such as the National Parks and Wildlife Service. The inquiry was delayed, and, with the current Parliament nearing the end of its term the Committee agreed that, given the on-going legal proceedings concerning the land-clearing conducted by TransGrid, the Committee has decided that the inquiry not be undertaken at this stage. However the Committee does believe that the reference should be re-considered by the successor to the General Purpose Standing Committee No. 5 in the new Parliament, as by this time the outcomes of the legal and other action will be clearer.

To report back to the House the Committee has prepared this current document which summarises the situation since the reference was given. I would like to thank the individuals and agencies who prepared submissions to this inquiry when it was begun last year, and I would also like to thank John Young from the committee secretariat for his work on this report.

The Hon Richard Jones MLC
Chair

Report

On 20 June 2001 the Legislative Council resolved to refer the following terms of reference to the General Purpose Standing Committee No. 5:

- 1) *That General Purpose Standing Committee No. 5 inquire into and report on the clearing and overclearing of land in the vicinity of TransGrid transmission lines in the northern Kosciuszko Region, and in particular:*
 - a) *the level of environmental damage caused to Kosciuszko National Park, Brindabella National Park, Namadgi National Park, Bago State Forests and Bimberri Nature Reserve,*
 - b) *the measures required to effectively remediate the area to ensure the long-term viability of the area,*
 - c) *the total costs associated with the remediation of the area and the liability for such costs,*
 - d) *the extent of communication between, and the involvement and response of the following agencies:*
 - State Forests,*
 - National Parks and Wildlife Service,*
 - the Environment Protection Authority, and*
 - the Department of Land and Water Conservation,*
 - e) *the adequacy of the present controls on the management and use of easements for transmission lines, pipelines and roads in national parks, state forests and nature reserves,*
 - f) *the use of timber, bush rock or soil removed from the cleared areas,*
 - g) *measures to prevent any further inappropriate clearing and overclearing in national parks, state forests and nature reserves.*
- 2) *That in relation to any cross border issues with the Australian Capital Territory (ACT), the committee be authorised to meet with relevant committees of the ACT Legislative Assembly.*
- 3) *That the committee report by Tuesday 18 September 2001.*

1.1 The Committee placed advertisements in metropolitan and regional newspapers during June 2001 calling for written submissions, with a closing date of 31 August 2001. The Committee Chair also wrote to the Government Ministers responsible for the relevant government agencies (TransGrid, State Forests, National Parks & Wildlife Service, Environmental Protection Authority, Department of Land and Water Conservation) requesting written submissions from those agencies.

1.2 The Committee received thirteen submissions. Five of the submissions were from the relevant New South Wales government agencies, five submissions were received from organisations concerned with the preservation and protection of the natural environment,

and the remaining three submissions were received from individuals. The authors of submissions are listed in Appendix 1.

- 1.3** In general terms, the submissions were concerned with ensuring that: remedial action was taken to repair and regenerate the damaged land areas; the responsible parties were identified and subjected to the available penalties and made responsible for all remediation costs, and that procedures be put in place so that land-clearing of this nature never occurred again.²

Responsibility

- 1.4** In its own internal investigation and report into the land-clearing, TransGrid acknowledged that it was the responsible party. The report stated that procedures were in place to ensure that an incident such as this should not happen. However, a number of procedures, including those covering easement maintenance and the environment were not followed. Compliance with these procedures would have ensured the works were appropriately carried out.³
- 1.5** TransGrid also reported that it was undertaking a range of process, procedural, management and training improvements to ensure that such an incident did not occur again.
- 1.6** In its submission the National Parks and Wildlife Service (NPWS) noted that with respect to the incidents that are the subject of the Inquiry, TransGrid first and foremost failed to honour a primary obligation to notify the NPWS prior to carrying out any maintenance work on transmission lines managed by the Service. This procedural obligation is contained within a 1994 agreement that exists between the NPWS and the Electricity Association of NSW titled: "*Procedures for power line maintenance in lands administered by the National Parks and Wildlife Service of NSW*" (1994 Agreement). The NPWS further noted that given TransGrid is a NSW Government authority, it is the NPWS contention that there was a reasonable and genuine expectation that TransGrid would uphold this obligation.⁴

Procedural improvements

- 1.7** Looking towards the future, the National Parks and Wildlife Service advised that since the discovery of the damage caused by TransGrid a thorough review of the current procedures and controls has taken place leading to actions and plans aimed at preventing any further similar incidents. These include:

The NPWS and TransGrid have established a working group to update and revitalise the 1994 Agreement. This review will tighten processes for notification of works, contractor training, monitoring and compliance and ensure the

² Submissions Nos 6 & 8 both provide a contrary view and submit that the damage was not significant and that natural regeneration was occurring.

³ TransGrid Submission, p 15.

⁴ National Parks and Wildlife Service Submission, executive summary p i.

agreement explicitly addresses the requirements of the *Threatened Species Conservation Act 1995*.

This incident has also highlighted the need for such an agreement to have legislative backing and stiff penalties for non-compliance.

It is envisaged that the final document produced between the NPWS and TransGrid will provide a template that can be adopted for the management of utility infrastructure in conservation reserves elsewhere in NSW.

...

Over the past eighteen months, the NPWS has been reviewing the *National Parks and Wildlife Act 1974* to examine the definition of offences and the raising [of] penalties.⁵

- 1.8** In May 2001 following inspections of the affected areas, the Environment Protection Authority served TransGrid with a clean-up notice issued under section 91 of the *Protection of the Environment Operations Act 1997*. The EPA issued four clean-up notices (three sequentially then one over-arching notice). The notices required TransGrid to undertake short and long-term requirements. The long-term requirements will be on-going for some time. Environment ACT also issued TransGrid with clean-up notices.
- 1.9** TransGrid has liaised with the NSW EPA regarding the status of work in NSW, including the submission of a Rehabilitation Plan 29 June 2001. The rehabilitation plan was prepared by independent specialists following consultation with the National Parks and Wildlife Service, State Forests and the performance of archaeological surveys involving local aboriginal groups.

Legal proceedings

- 1.10** The option of taking legal action against TransGrid was and is available to the Environment Protection Authority, National Parks & Wildlife Service, Department of Land and Water Conservation and State Forests, through their various relevant Acts.
- 1.11** At a deliberative meeting on 18 September 2001, the Committee determined that it should defer the inquiry process and reporting date until the status of any potential legal proceedings was clarified.
- 1.12** The Environment Protection Authority took legal action under section 120 of the *Protection of the Environment Operations Act 1997*. TransGrid have pleaded guilty to four charges under the Act. Three days of hearing during late November 2002 have been set aside in the Land and Environment Court. The hearings will involve legal argument with respect to the level of damage and culpability. It is anticipated that the judgement with respect to a penalty determination will be returned in 2003.
- 1.13** State Forests had the option of issuing penalty notices for two breaches of the Forestry Act Regulations, the maximum penalties for which are \$100 and \$2,200. State Forests could

⁵ National Parks and Wildlife Service Submission, executive summary pp v-vi.

also issue penalty notices under the *Protection of the Environment Operations Act 1997* – but not if the EPA prosecutes such actions.⁶ State Forests have decided not to take legal action on the basis that the EPA is taking action and the penalties available to the EPA for offences under the POEO Act are much greater than offences under the Forestry Act of Regulation – up to \$1 million for a corporation.

- 1.14** In its submission to the inquiry, the Department of Land and Water Conservation advised that it was investigating the land-clearing to determine if the *Native Vegetation Conservation Act 1997*, the *Crown Lands Act 1989* or the *Rivers and Foreshores Improvement Act 1948* had been breached. Should the department find that an alleged breach has occurred the Director-General, DLWC, has several options available including a choice of prosecution or remediation orders, or both, as appropriate.⁷ The DLWC subsequently advised, in September 2002, that it would be issuing notices under the various provisions, and that it had also determined not to initiate prosecution action.
- 1.15** In its submission to the inquiry, the National Parks and Wildlife Service advised that possible offences for actions such as this within a National Park may be dealt with under the *National Parks and Wildlife (Land Management) Regulation 1995*. Possible offences include section 9(1)(h), 15(1)(a) and 6(1)(e). The statute of limitations on these offences is two years. The penalties are \$1,100 per offence. In a Nature Reserve the offence is section 57(1) of the *National Parks and Wildlife Act 1974*. The statute of limitations is two years and the penalty is \$4,400.⁸
- 1.16** In October 2002, the National Parks and Wildlife Service commenced proceedings against TransGrid for offences under both the *National Parks and Wildlife Act* and the *National Parks and Wildlife Regulation*. Proceedings were made by way of summons with a first return date set for 29 November 2002 at the Downing Street Local Court.
- 1.17** Recent amendments to the *National Parks and Wildlife Act* have upgraded the penalties for the offences referred to in paragraph 1.16 and also created a new offence and section: 156A – Damaging Reserve Land, which contains a commensurable penalty. However, the previous penalties will apply in the current proceedings.

Continuation of Inquiry

- 1.18** At its meeting of 24 October 2002, the Committee agreed that, given the on-going legal proceedings concerning the land-clearing conducted by TransGrid, the Chair should report back to the House and recommend that the inquiry not be undertaken at this stage, and that the reference be re-considered by the successor to the General Purpose Standing Committee No. 5 in the new Parliament. The minutes of the Proceedings of the Committee are reproduced in Appendix 2.

⁶ State Forests of New South Wales Submission, page 12.

⁷ Department of Land and Water Conservation Submission, page 3.

⁸ National Parks & Wildlife Service Submission, page 29.

Recommendation

The Committee recommends that, given the on-going legal proceedings concerning the land-clearing conducted by TransGrid, which is the subject of the reference for this Inquiry, the Inquiry not be undertaken at this stage, and that the reference be re-considered by the successor to General Purpose Standing Committee No. 5 in the new Parliament.

Appendix 1

Submissions

Submissions

No	Author
1	Ms Sue SWANN (<i>Tumut Region Ecological Education Society Inc</i>)
2	Mr Clive HURLSTONE (<i>National Parks Association of the Australian Capital Territory Inc</i>)
3	Mr David RIDLEY (<i>State Forests of New South Wales</i>)
4	Dr Tony FLEMING (<i>NSW National Parks and Wildlife Service</i>)
5	Mr James PREST
6	Mr Colin KELL
7	Mr Alex Colley OAM (<i>The Colong Foundation of Wilderness Ltd</i>)
8	Mr Ron SMITH
9	Mr Gary WHYTCROSS (<i>Environment Protection Authority</i>)
10	Mr David CROFT (<i>TransGrid</i>)
11	Mr Andrew COX (<i>National Parks Association of New South Wales</i>)
12	Mr Geoff FISHBURN (<i>Department of Land and Water Conservation</i>)
13	Mr Peter MITCHELL (<i>The National Parks and Wildlife Service, Snowy Mountains Advisory Committee</i>)

Appendix 2

Minutes of the Proceedings

Minutes of the proceedings

Minutes No. 62

Tuesday 18 September 2001

At Parliament House (Room 1136) at 1:00pm

1. Members present

Mr R Jones (Chair)

Ms Burnswoods

Mr Colless

Mr Jobling

Mr M Jones

Ms Saffin

2. Apologies

Mr Costa

3. Confirmation of minutes

Resolved, on the motion of Mr Jobling, that: the minutes of meeting number 61 be confirmed.

4. Inquiry management strategy

The Chair tabled his draft inquiry management strategy for:

- TransGrid land clearing
- Sydney Water biosolids management strategy
- Abolition of Hawkesbury-Nepean Catchment Management Trust
- Feral animals

The committee deliberated.

Resolved, on motion of Mr Colless that: the draft management strategy, Feral animals inquiry, be amended by deleting "Three or four days of public hearings in Sydney and regional areas in the first part of 2002." and inserting instead "Five days of public hearings in rural and regional areas of New South Wales, two in the north, two in the south and one in the central west."

Resolved, on motion of Mr Colless, that: the following inquiry management strategy be adopted.

TransGrid land clearing

Conduct one day site visit in September 2001 - October 2001 to impacts of clearing. A further site visit proposed within the first 6 months of 2002 to consider remediation measures.

Deferral of reporting date until there is a clearer indication as to whether legal proceedings will be initiated by the NSW EPA. (statute of limitations is 4 May 2002).

The committee deliberated.

Resolved, on motion of Ms Saffin, that: the Chair seek leave of the House to amend the reporting date for the Inquiry into TransGrid land clearing until 30 June 2002

The committee deliberated.

5. General business

The committee requested that the Committee Director tender advice on appropriate procedures for committee members making media releases in relation to committee activities.

6. Adjournment

The meeting adjourned at 1:35pm, *sine die*.

Steven Carr
Director

Minutes No. 84

Thursday 24 October 2002 at 1:05pm
Room 1108, Parliament House.

1. Members Present

The Hon Richard Jones MLC (*Chair*)
Ms Jan Burnswoods MLC (*Deputy Chair*)
The Hon Rick Colless MLC
The Hon Amanda Fazio MLC
The Hon John Jobling MLC
The Hon Malcolm Jones MLC
The Hon Peter Primrose MLC (*Saffin*)

2. Apologies

The Hon Janelle Saffin MLC

3. Substitutions

The Chair advised that Mr Primrose as Government Whip had advised him that for this and future GPSC 5 meetings he would substitute for Ms Saffin.

4. Confirmation of draft minutes

Resolved, on the motion of Ms Fazio, that minutes numbers 82 and 83 be confirmed.

5. ***

6. Inquiry into Land Clearing by TransGrid

Resolved, on the motion of Mr Jobling, that the Committee authorise the Chair to report back to the House that, given the on-going legal proceedings concerning the land-clearing conducted by TransGrid, which is the subject of the reference for this Inquiry, the Inquiry not be undertaken at this stage, and that the reference be re-considered by the successor to GPSC 5 in the new Parliament.

7. ***

8. Adjournment

The meeting adjourned at 2:30 pm *sine die*.

Steven Reynolds
Clerk to the Committee

Minutes No. 86

Friday 15 November 2002 at 9:45 am
Jubilee Room, Parliament House

1. Members Present

The Hon Richard Jones MLC (*Chair*)
The Hon John Jobling MLC
The Hon Malcolm Jones MLC
The Hon Peter Primrose MLC
The Hon John Ryan MLC
Ms Jan Burnswoods MLC
The Hon Amanda Fazio MLC

2. Previous Minutes

Resolved, on the motion of Ms Burnswoods, that minutes numbers 84 & 85 be confirmed.

3. TransGrid Land Clearing

Resolved, on the motion of Mr Jobling, that the report, as amended, be adopted.

Resolved, on the motion of Mr Jobling, that the report be signed by the Chair and presented to the House in accordance with the resolution establishing the committee of 13 May 1999.

Resolved, on the motion of Mr Jobling, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to publish the report, all minutes, correspondence, and submissions, except those for which confidentiality has been requested.

4. *****5. Adjournment**

The committee adjourned at 4:45pm until 9.00am on Monday 18 November 2002 at Parliament House.

Steven Reynolds
Clerk to the Committee