



20 January 2011

Legislative Council General Purpose Standing Committee No. 1

Inquiry into the Gentrader Transactions

The following individuals have been served with a summons to attend a hearing for the Inquiry into the Gentrader transactions on Monday 24 January 2011, as authorised by order of the General Purpose Standing Committee No. 1:

- Mr Ross Bunyon AM, former Chairman, Eraring Energy
- Mr Tony Maher, former Director, Eraring Energy
- Mr John Dermody, Director, Delta Electricity
- Mr James Henness, former Chief Executive and Director, Delta Electricity
- Mr Michael Knight AO, former Director, Delta Electricity
- Mr Loftus Harris, former Director, Delta Electricity
- Mr Paul Forward, former Director, Delta Electricity
- Ms Sandra Moait, former Director, Delta Electricity.

Two other former directors from Eraring Energy, Mr Michael Vertigan and Mr Dean Pritchard, are not within New South Wales, so have yet to be served with a summons.

The Committee was advised this afternoon by the legal representatives of these individuals that they would not be attending the hearing.

The Committee also invited current directors from the boards of Delta Electricity and Eraring Energy to attend a hearing on Friday 21 January 2011. The current directors have also declined the Committee's invitation.

The Committee will meet on Monday 24 January 2011 to discuss the course of action it wishes to pursue in regard to the non-attendance of these former and current directors. Legal advice has been sought from Mr Bret Walker SC to assist the Committee.

Further information about the inquiry can be obtained from the Committee Secretariat on (02) 9230 3504 or via the Committee's website at: www.parliament.nsw.gov.au/gpsc1.

For comment please contact Revd the Hon Fred Nile, Committee Chairman on 9230 3338

BY HAND

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20 JAN 2011

Level 36, Grosvenor Place
225 George Street
Sydney NSW 2000
Australia

Blake Dawson

Reverend the Honourable Fred Nile MLC
Chairman of Legislative Council General Purpose Standing Committee No 1
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

T 61 2 9258 6000
F 61 2 9258 6999
DX 355 Sydney

Locked Bag No 6
Grosvenor Place
Sydney NSW 2000
Australia

www.blakedawson.com

The Honourable Amanda Fazio MLC
President
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

20 January 2011

Our reference
PHV AAL 02 2028 1225

Partner
Peter Voss
T 61 2 9258 6090
M 0418 691 163
peter.voss@blakedawson.com

Contact
Amanda Lees
T 61 2 9258 5754
M 0439 419 942
amanda.lees@blakedawson.com

Nicole Huggins
T 61 2 9258 5865
nicole.huggins@blakedawson.com

Copy to:

Ms Lynn Lovelock, Clerk of the Parliaments

Mr Steven Reynolds, Clerk Assistant and Usher of the Black Rod

Dear Reverend Nile and Ms Fazio

**Legislative Council General Purpose Standing Committee No. 1 Inquiry
Into Gentrader Transactions**

We act for the following persons who are former Directors of Delta Electricity
and are writing on their behalf:

- Mr Michael Knight AO, former Director, Delta Electricity;
- Mr Loftus Harris, former Chairman, Delta Electricity;
- Mr Paul Forward, former Director, Delta Electricity; and
- Ms Sandra Moait, former Director, Delta Electricity.

We understand that summonses have been or are to be served on the above
persons purporting to compel their attendance to give evidence to the
Legislative Council General Purpose Standing Committee No. 1 (**the
Committee**) Inquiry on the Gentrader Transactions on Monday 24 January
2011.

Inquiry into the Gentrader Transactions

Conflicting views have been expressed by the Crown Solicitor and the Clerk of
the Parliaments as to the question of whether a standing committee of the
Legislative Council can function while the Council is prorogued, at least in the
absence of legislative authority.

According to remarks made by the Chairman of the Committee at the Inquiry on 17 January 2011 the President has recognised that "there is no legal certainty regarding the powers of the Committee" and "advised that the Committee should proceed with caution due to there being no guarantee of legal protection." The Chairman also noted that the Clerk of the Parliaments had "issued a cautionary note that the extent of the Committee's powers during prorogation has yet to be tested before the courts".

The Crown Solicitor has expressed the view that:

...there is a risk that statements made and documents provided to the committee would not be protected by parliamentary privilege. This could expose witnesses to claims for defamation and breaches of confidence.

These issues can only be resolved by the Courts.

Our clients are concerned that if they attend in answer to the summonses and give evidence in the Inquiry they may not be protected by parliamentary privilege, including under section 12 of the *Parliamentary Evidence Act 1901 (the Act)*, and may be liable to claims for:

- breach of the relevant secrecy provisions in the Memorandum and Articles of Association of Delta Electricity,
- breach of confidence arising from covenants that the corporations have given to third parties to keep certain matters confidential; and
- defamation.

Our clients are also concerned by the Premier's evidence to the Inquiry on 17 January 2011 where she declined to give a guarantee that the Government would not take any action against our clients if they gave evidence revealing the retention value of the assets. Moreover, the Premier declined to give an indemnity to any of our clients in respect of any evidence they gave.

Our clients believe that the fair and reasonable course would be for the Committee to clarify these issues in the Courts before purporting to issue summonses.

Having regard to the above, our clients are unable to attend the Inquiry on Monday 24 January 2011 in answer to the summonses. Our clients would willingly give evidence if the Supreme Court determined that the summonses were lawful and parliamentary privilege did apply to the Inquiry.

Please provide us with your advice if you intend to take any action in relation to our clients' intention to not attend the Inquiry so that our clients can make submissions as to their just cause and reasonable excuse for not complying with the summonses.

Yours faithfully

Peter Voss
Partner
T 61 2 9258 6090
peter.voss@blakedawson.com

Amanda Lees
Senior Associate
T 61 2 9258 5754
amanda.lees@blakedawson.com

Nicole Huggins
Senior Associate
T 61 2 9258 5865
nicole.huggins@blakedawson.com