

Dr Geoff Gallop; Mr Colin Barnett; Mr Max Trenorden; Mr Phillip Pendal; Dr Janet Woollard; Mr Rod Sweetman; Mrs Cheryl Edwardes; Ms Sue Walker; Dr Elizabeth Constable

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**RESERVES (RESERVE 43131) BILL 2003**

*Message - Appropriations*

Message from the Governor received and read recommending appropriations for the purposes of the Bill.

*Introduction and First Reading*

Bill introduced, on motion by Dr G.I. Gallop (Premier), and read a first time.

*Second Reading*

**DR G.I. GALLOP** (Victoria Park - Premier) [3.40 pm]: I move -

That the Bill be now read a second time.

It is a fundamental responsibility of the Western Australian Government to provide a safe and secure environment for all its citizens, particularly its children. Yesterday I addressed the House about a community in which such an environment had not been ensured for the residents. The tragic death of Susan Taylor at the Swan Valley Nyungah Community is but one terrible example of the systemic sexual and physical abuse, substance abuse, family violence and intimidation that has occurred, and continues to occur at this community. Susan's death was the impetus for this Government to commission the Inquiry into Responses by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, headed by Magistrate Sue Gordon. The Gordon inquiry raised a number of concerns about the Swan Valley community, particularly the difficulties experienced by government agencies in accessing the site and providing services to the residents due to such access being controlled by the management of the community. It is entirely unacceptable that residents' rightful access to services and assistance be hindered in this way.

As I have detailed in this place at other times, this Government has made a major commitment to address the child abuse and family violence issues raised by the Gordon inquiry. In addition to the \$75 million package, which will fund a raft of strategies to address these problems, the Government revoked the management order over the Swan Valley reserve held by the Swan Valley Nyungah Community Aboriginal Corporation, and replaced it with one that guaranteed government officers full access to the site. However, despite these actions, grave concerns continue to be held about the safety of children and women living in the Swan Valley community. Senior government officers advise that residents are not free to access government services, that intimidatory tactics prevent reporting of incidents, and that communication between children and women, and government officers is being hampered by the community management.

I will not stand by and allow a tragedy like Susan Taylor's death to be repeated. Unless we tackle these issues in a meaningful way, the despair and dysfunction that characterises this community will continue. There is only one course of action that will secure for the children and women of the Swan Valley Nyungah Community the protection and safety they deserve and halt the cycle of abuse and violence; that is, the current management order must be revoked, and the Swan Valley reserve be vested in the Aboriginal Affairs Planning Authority so that the reserve might truly fulfil its role "for the use and benefit of the Aboriginal inhabitants".

The Bill before the House today is the only option to resolve the ongoing safety and management issues at this community in a timely fashion. Further amendments to the management order will not result in women and children being able to live safely at the community. It is inappropriate to allow the Swan Valley Nyungah Community Aboriginal Corporation to retain responsibility for implementing any new management order that demands greater access by government officers when some members of the corporation have been connected to the problems, particularly the access problems, at the community.

Let it be shown that the corporation has been given ample opportunity to improve the situation for children and women at the reserve. In October last year, following the Gordon inquiry, a new management order was put in place with conditions to ensure that service providers are able to access residents and to require the Swan Valley Nyungah Community Aboriginal Corporation to present a management plan for the community. I put it to the House today that the plan offered by the corporation does nothing to address the very serious abuse and violence issues at the community and demonstrates the corporation's total disregard for the safety and wellbeing of the women and children at the community.

The failure of the corporation to take action on the abuse and violence endemic at the Swan Valley community is highlighted all the more by the commitment of the Aboriginal and Torres Strait Islander Commission to do everything in its power to eradicate the scourge of family and sexual violence. As the national leader of indigenous peoples, ATSIC has adopted a family violence policy statement setting out principles and strategies for action on this issue. I also note the comments of the ATSIC spokesman yesterday that gave support to the Government for taking action to protect the women and children of the Swan Valley Nyungah Community. It is no longer appropriate for the Swan Valley Nyungah Community Aboriginal Corporation to be responsible for

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the care, control and management of this reserve. Legislation revoking the management order and rescinding the vesting of the reserve in the corporation is therefore our only option to bring an end to this terrible litany of abuse and violence.

Under the provisions of the Bill, the existing management order will be revoked, but the reserve will continue to exist for the use and benefit of indigenous people, and management of the reserve is placed with the Aboriginal Affairs Planning Authority. The authority will appoint an administrator to manage the transition. To address the issues that have made the revocation of the management order necessary, the new management will have additional powers to ensure a smooth transition. The administrator will have the power to direct a person to leave the reserve, a direction that can be made either in writing or verbally by an authorised officer. If the person should refuse to leave the reserve, the police may remove him. These powers attach to the land, and ultimately lie with the minister responsible for the Land Administration Act, should some other person or body not be empowered to use them, either by statute or by the minister.

The administrator will also be responsible for the day-to-day management of the land, and activities on the land, and the future planning for the land in accordance with reserve purposes. It is the firm commitment of this Government that the reserve, in line with the original vesting legislation, be retained for the use and benefit of the Aboriginal peoples. At present the reserve does not serve the broader Nyoongah community, but is monopolised by only one group. Options for its future use are being considered. Any future use will be decided through a consultative process with the indigenous community, to ensure the land and structures are best used. It is also the intention of this Government that the management of any future activities on the reserve will be passed to an appropriate Aboriginal organisation. The administrator appointed to manage this transition will pass day-to-day responsibility to an Aboriginal organisation at the earliest possible date.

I do not undertake this legislation lightly, but with much consideration and concern for the children and women of the Swan Valley Nyungah Community, as it has become abundantly clear that the Swan Valley Nyungah Community Aboriginal Corporation is no longer fit to continue in its management role of the reserve. This issue is not about race; it is about intimidation, violence and abuse. The safety of all our children must be paramount, and it is incumbent upon all Western Australians to uphold the right of every child in this State to security and protection.

I take this opportunity to invite all members of this House to support this Bill as a strong message that neither the Government, nor the Legislative Assembly, of Western Australia will tolerate child abuse and violence wherever it may arise. I commend this Bill to the House.

*Declaration as Urgent*

**DR G.I. GALLOP** (Victoria Park - Premier) [3.47 pm]: In accordance with Standing Order No 16(2), I move -  
That the Bill be considered an urgent Bill.

**MR C.J. BARNETT** (Cottesloe - Leader of the Opposition) [3.48 pm]: Before commenting I will put on the public record what has happened in the parliamentary process. I will return to the merits or otherwise of this action in a moment. The first the Opposition knew of this Bill was when the leader of opposition business in the House, the member for Hillarys, was informed of it late last night.

Dr G.I. Gallop: It wasn't late.

Mr C.J. BARNETT: Last night after dinner. The parliamentary secretary to the Premier, the member for Rockingham, informed me of the Bill when I returned from a function about 10.30 pm.

A government member interjected.

Mr C.J. BARNETT: When someone is doing the Government a favour, members opposite should concentrate and show some courtesy. The Opposition was informed that the Bill was to be introduced. It was also informed that the Government would provide a briefing for the Opposition at 10.30 this morning because the Government wanted to proceed with the Bill as a matter of urgency.

Dr G.I. Gallop: With regret. We thought the Bill would be available at the time. We could have had the briefing but we thought it was not appropriate until the final draft of the Bill was available. There were technical issues. We regret that, but it is one of those things that happens.

Mr C.J. BARNETT: That is not good enough.

Dr G.I. Gallop: Don't make an issue of this. Let's get on with it. You're being, you know -

Mr C.J. BARNETT: I have been on my feet for one minute and the Premier has already insulted me, while I am doing the Government a favour and facilitating its legislation.

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Dr G.I. Gallop: I'm not having a go at you.

Mr C.J. BARNETT: Within one minute the Premier has made a personal insult. I restate the point: the Opposition was informed that the Government wanted to debate this Bill as a matter of urgency. We were told that a briefing would be available for opposition members at 10.30 this morning. The Government cancelled that meeting.

Dr Gallop: With regret.

Mr C.J. BARNETT: With regret! Members on this side of the Chamber have not seen the Bill. They have not had any opportunity to ask questions of the public servants involved on any aspect.

Dr G.I. Gallop: It was handed out a couple of hours ago.

Mr C.J. BARNETT: The Premier should listen. That is what happened. I understand from the officer who informed my office that the briefing had been cancelled that some drafting matters had to be finalised. I accept that, but I did not have a choice. Given a choice, I would have been prepared to proceed with a briefing and be told that some technical issues were being sorted out. At least members on this side of the House would have been given the courtesy of an opportunity to read the Bill and ask obvious questions.

Mr Marlborough: The Premier has apologised.

Mr C.J. BARNETT: This Government chose not to do that. I do not care whether he apologised. The Opposition received a copy of the Bill at 1.15 pm today. I have not read it. A staff member of mine has gone through it quickly, and the members for Kingsley and Nedlands are flicking through the Bill now, using their legal experience to discover issues. I understand that the Bill went to the Labor Caucus, and that Labor members were briefed, last night. Is that correct?

Dr G.I. Gallop: We offered you a briefing last night, but you were not available.

Mr C.J. BARNETT: I was not offered a briefing last night.

Dr G.I. Gallop: I went to the opposition leader of the House.

Mr C.J. BARNETT: The Premier did not come to me.

Dr G.I. Gallop: You were not here.

Mr C.J. BARNETT: At no stage did anyone from the Government come to me yesterday or contact me and my staff and offer a briefing, yet Labor members were briefed at a meeting of Caucus. Labor Party members were given an opportunity to ask questions on the Bill, for which the Premier seeks immediate and bipartisan support. The Premier chose not to allow members on this side of the House to have knowledge of the Bill. It may not have been intentional, but that happened.

Mr R.C. Kucera: If it's not passed, more children will suffer.

Mr C.J. BARNETT: Does the Minister for Health have a contribution to make, or was that his usual insult to Parliament? The Premier could have contacted me yesterday afternoon and made the Bill available even at a preliminary stage on a confidential basis.

Dr G.I. Gallop: I did. I went to the member for Hillarys.

Mr C.J. BARNETT: We received the Bill at 1.15 pm, two and a half hours ago, in my office. No-one had received it prior to that time. At 1.15 pm, we got a copy of the Bill. That is the reality. Labor Party members had it last night, yet the Premier wants bipartisan support for its passage through Parliament. The Premier has not been genuine on this matter in not allowing members of Parliament any opportunity to read the Bill, to look at it and to ask cursory initial questions. No attempt was made to do so. A briefing was cancelled. This was the only opportunity we had to learn about the Bill, and we were willing to go along with it.

Incredibly, I am still willing to go along with this measure. There is a fair amount of justified criticism from some of my colleagues: they rightly point out that we are asked to vote on a Bill we have not even seen. I can understand their criticism of me for making the decision to proceed. No good grace is shown by the Government on this at all - none! That is the truth, Premier. The Premier can scowl and shake his head. He could have dealt with this yesterday. He could have come to me, as is the convention in this Parliament -

Dr G.I. Gallop: I came to you. I knocked on your door and no-one was there.

Mr C.J. BARNETT: If there is a matter of urgency - I am willing to accept there is a matter of urgency in this matter - the Premier could have contacted me personally.

Dr G.I. Gallop: I did. You weren't there.

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Mr C.J. BARNETT: It was a big attempt, Premier- he knocked on the door! Maybe I was in the Chamber. The Premier did not contact me. He did not have his staff contact me yesterday, and no attempt was made to treat this matter with urgency. He now asks members of Parliament to vote on something they have not seen, and he cancelled the briefing this morning. The Premier can shake his head, but that is the reality. We are asked to support legislation we have not seen.

Even if we had considered this legislation, I imagine we would support it. Representatives from the Swan Valley Nyungah Community wanted today to express their point of view to me. I might not agree with them; nevertheless, they have been denied any opportunity to express their point of view, whatever that might be. That is hardly a democratic process or natural justice. Whether I agree with them or not, that community has been denied the opportunity to present their point of view to the Opposition. That is what the Premier has done. Having said that, and having put up with the insults from members opposite, in good faith I am willing to back the Premier's judgment on this matter. I am willing to give bipartisan cooperation to get the Bill through Parliament. That is far more gracious and courteous than the Government has been to the Opposition.

I do not draw parallels, but I remind members that I asked this Chamber yesterday to hear Julie Fawcett for half an hour, and government members made fun of it, called it a stunt, denied it and accused me of abuse of Parliament. Here we are 24 hours later and the tables are turned, but the response is different. I respect the urgency of the situation. I am prepared to take it on good faith. I hope the Premier is right in what he is doing and that this measure is properly constructed. We will not find out in the Chamber today whether that is the case. I am working off a few notes hurriedly put together by my staff. A couple of members are flicking through clauses of the Bill. No serious debate will take place on this measure, and we must take it on good faith.

I have not seen an Opposition placed in this position before in my 12 years in Parliament. It is asked to vote without having seen or read the Bill. I have not even discussed it with the member for Kingsley or Nedlands, let alone the shadow Minister for Indigenous Affairs or the shadow Attorney General. I have not discussed it with my colleagues in the National Party. No discussion has taken place, and no Liberal Party room meeting has been held. We will vote on the Bill that the Liberal Party has not had an opportunity to discuss. That is what the Premier asks us to do. I tell the Premier that we will do so in good faith. However, is there any good grace shown by those opposite? There is none at all.

This issue arose from the Gordon inquiry following a coronial inquest into the very tragic death in 1999 of 15-year-old Susan Taylor at the Swan Valley Nyungah Community. From that event, the Government established the Gordon inquiry. It received bipartisan support for the establishment of the inquiry, which came down with a significant number of recommendations. The Opposition supported those recommendations. The Premier is not even listening. The Government adopted those recommendations bar two. Significantly, one of the recommendations of the Gordon inquiry rejected by the Government was to establish a commissioner for children. Is it not an ironic coincidence that the week this Bill is rushed to Parliament without any scrutiny, Hon Barbara Scott moved in the upper House to establish a select committee to inquire into the creation of a commissioner for children? That move was strenuously opposed by the Labor Party in the upper House, yet today this Bill is walked into Parliament in this fashion. The Liberal Party supported the establishment of the Gordon inquiry and, unlike Labor, supported all of its recommendations.

This Bill relates to reserve 43131, which is crown land situated in the Swan Valley that has been made available for the use and benefit of Aboriginal people. Registered management order No 1262262 was issued under the Land Administration Act 1967 to place the care, control and management of the reserve with the Swan Valley Nyungah Community Aboriginal Corporation. The previous Government took the action at the request of the community to give a degree of independence to try to bring about what was hoped would be a more cohesive community. I recognise that this has not happened and that the abuse of children has occurred in the community. That is a tragedy.

Still government members do not listen. I am trying to make a point to the Premier.

Dr G.I. Gallop: I'm listening.

Mr C.J. BARNETT: The Premier is talking to his colleagues. I am explaining a couple of points. The Premier brings in the Bill, but does not have the courtesy to listen.

Dr G.I. Gallop: I'm listening.

Mr C.J. BARNETT: He is not. I make a 10-minute speech to make a few points to the Premier, but he shows no courtesy to me or to Parliament. I am cooperating with the Government. I am doing my best. I have not read the Bill. I am working on notes I am reading for the first time right now. I am thinking as I read, and I seek some comments and reaction, if that is not too much to ask. I promise I will keep the Premier no more than 10 minutes. It is not a lot to ask.

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The previous Government established the facility hoping the community would be more cohesive and functional. It was not, and the abuse of children continued. I take it on good faith that the reason for the urgency of this Bill is that the Premier has evidence of continuing abuse of children. I assume that the reason this Bill is being put through this Parliament without effective debate is that there is an urgency relating to the protection of children today. I would like some verification of that. The reason I give the Premier good-faith support for the passage of this Bill without scrutiny of any sort is that I assume children are at risk right now. I assume that is the reason for the urgency. The Premier's second reading speech did not make clear why this Bill is being proceeded with in this way. We have had no briefing or advance warning, and we have no opportunity for scrutiny and proper debate. I hope that the Premier can verify and explain the reason for the urgency, because his second reading speech did not do so.

This Bill will revoke the management order providing that the Swan Valley Nyungah Community Aboriginal Corporation is the management body for that reserve, and will place the care, control and management of the reserve with the Aboriginal Affairs Planning Authority. That is appropriate. It will also set out how the reserve should be dealt with. The effect of clause 5 of the Bill will be to ensure that the reserve can be dealt with and handled under the Land Administration Act in the same way as reserve and management orders that are created in the normal manner. Clause 6 will allow the Registrar of Titles to record the revocation of the management order on the register of titles in accordance with the Transfer of Land Act.

Clause 7 is a significant clause that will allow the Aboriginal Affairs Planning Authority to appoint an administrator who will have the power to direct people to leave or not enter the reserve. The clause will also allow the administrator to be provided with the assistance that he requires to remove a person from the reserve or prevent a person from entering the reserve. The administrator will essentially have a policing role over the reserve. He will approve who can go into the reserve, who can live in the reserve and who can leave the reserve. They are extraordinary powers over the Swan Valley Nyungah Community. The clause will also give the land administration minister the power to place the control of the reserve with a person other than the authority, and provide that the clauses of the Bill that apply to the administrator also apply to that person. In the absence of an administrator, the minister will have the ability to exercise the administrator's powers. Police officers will be empowered to prevent people entering the reserve or to remove people from the reserve.

I am sure the lawyers in the Parliament will have an interest in the latter clauses of the Bill. Clause 8 will exclude the rules of natural justice. The Bill also provides that the discretion of persons acting under clause 7 will be absolute. They will be immune from judicial review and protected from liability when acting in good faith. I am not a lawyer. I do not know if the lawyers in the Parliament can grasp the import of that. Maybe the member for Innaloo can help me out. If the members for Innaloo and Nedlands have something to offer, I would appreciate it. I understand that this Bill will remove natural justice, give absolute power and protect anyone who abuses that absolute power from redress. Is that a broadly correct interpretation for a layperson? That is significant. This might be an isolated issue relating to a small community, but it is a significant change in the legislation. For those reasons alone the Opposition should have been given better opportunity to consider this Bill. We are affecting natural justice and giving absolute power. This Bill will impact on one particular community, and it has not had any scrutiny. Members of this place had no prior knowledge of it. I hope that by the time the Bill gets to the upper House, Hon Peter Foss, Hon Derrick Tomlinson and other members will have had more opportunity to look at it. They may even have the opportunity to talk to the Aboriginal people concerned. I and others in this place have had no such opportunity.

We have allowed this debate to proceed. I accepted in good faith the Premier's word that this is an urgent matter, and I have extended to him a courtesy that to my knowledge is unprecedented in this Parliament. I wish the Premier had shown us a similar courtesy this week. Nevertheless, the Premier has been extended an unprecedented courtesy. I am not sure that I am doing the right thing. I can see a few raised eyebrows among my colleagues on this side of the House. I am sticking my neck out in allowing a piece of legislation to go through essentially without debate. I hope the Premier is right. I take him in good faith on this.

**MR M.W. TRENORDEN** (Avon - Leader of the National Party) [4.04 pm]: This is a very draconian act against a group of people. The Premier last night offered me a briefing. I refused that because it would not have made any difference to our position. We would still have been only half informed instead of fully informed. We would have had no opportunity to go beyond that briefing and seek input from anywhere else. I saw little point in attending a briefing -

Mr D.A. Templeman interjected.

Mr M.W. TRENORDEN: Of course I do that for everything.

Mr D.A. Templeman interjected.

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Mr M.W. TRENORDEN: I attend briefings as part of the learning process and to engage in the scrutiny of a Bill. I am saying that we have no opportunity to scrutinise this Bill. The member cannot deny that.

I do not want to speak for very long. I am prepared to take two people on trust, one of whom is the Premier. He has said that he wants this Bill passed. On behalf of the five members of the National Party, I abdicate our responsibility and duty to scrutinise this Bill. On the Premier's call, we are giving that up, and we are happy to do that. The Premier must admit that I did not argue with him.

Members of the Nyoongah community have spoken to me. They were not from the Swan Valley Nyungah Community. Those people are opposed to what is happening on that reserve. I have had that representation, unlike the Leader of the Opposition, so I at least know that a section of the Aboriginal community clearly wants this stopped. The Minister for Health is nodding his head. Last night he called me a racist because I criticised the Aboriginal funding in the health budget. I could do the same to him today, but I will not because he is not a racist.

We will perform a very draconian act against a very small section of Western Australia. This is an example of the enormous pressure of the might against not just the small but the minuscule. We are taking the Premier at his word. Frankly, that is good enough for me.

**MR P.G. PENDAL** (South Perth) [4.07 pm]: This is the first and only occasion in eight years that I can think of in which there is some justification for the House to set aside the normal constraints of standing orders to allow a Bill to be treated as urgent and to presumably pass all stages in one sitting. It is perhaps a reminder to all of us that the rules exist for good reason. Regardless of the Government in power, there has too often been a view that the constraints of standing orders can be easily dispensed with. Over the years I have been disappointed at the reaction of some members who think that - regardless of who is in government - when a party has the numbers, it can do anything. It is true that it can do anything, and that is all the more reason that a party that has the numbers should proceed with great caution in asking the Parliament to set aside its rules to treat a Bill as urgent. I repeat that this is the only occasion that I can think of in which the Parliament has some justification in acting in the way it is about to act; that is, if it is true that the welfare of children, women and men are at risk.

Two clauses of the Bill are of exceptional gravity. The Leader of the Opposition touched on them very briefly. The first is that when this Bill is passed, it will put any of the actions taken under the Bill beyond judicial appeal. The second is that it will set aside the rules of natural justice. That is how grave is the matter that we are dealing with procedurally today. We are setting aside, because of the gravity of the situation, not only our own internal rules but also other external rules that would ordinarily put this Bill within the scope of judicial appeal and the rules of natural justice. That is not an ideal position, and it is one that I hope I will not see for another eight years, albeit that I make my own judgment that this is the only time in eight years that this serious step has been justified. I hope that we do not see it again for another eight years, or, for that matter, for many years to come.

The question of early warnings to members is of concern to me. I learnt about this Bill not last night by someone mentioning it in the corridor or knocking on my door - because, in the end, every person's vote in this place is and should be equal - but from a staff member when I came to Parliament this morning. Again, for us to concertina our views, set aside our own natural instincts and suspicions and take the Government on trust is something that I do not do lightly. However, I place a lot of store on what has been outlined in the Premier's speech. I also place a lot of store on the fact that the Premier has chosen to introduce the Bill himself, because this is not a Bill that would normally be introduced by the Premier; I presume that in the normal course of events it would be introduced by the minister responsible for lands. That sends a message to me that the Government has put the highest possible premium on seeing the legislation through, and seeing it through quickly. In those circumstances, and I stress only in those circumstances, and with great reluctance, I support a Bill that will put this decision beyond judicial appeal, that will set aside all the rules of natural justice, and that has already set aside our own constraints on debate in this Chamber. However, because of the Premier's request, and taking the Government at face value, I am prepared to support the Bill.

**DR J.M. WOOLLARD** (Alfred Cove) [4.12 pm]: I think we are all aware of the problems in the Swan Valley Nyungah Community. The fact that the Reserves (Reserve 43131) Bill has just been put on the Table reminds me of the situation in the past within my own community of Melville and the grave concerns that were expressed when often just before the Christmas break, at 10 o'clock or 11 o'clock at night, the council would put things on the Table that it wanted to get through quickly. This issue has not just blown up this week, yet it has been left until the last item of business on a Thursday afternoon to be put on the Table. The Premier's speech did not outline to the Parliament what other options the Government considered before it came up with this Bill. The Bill makes no mention of what will happen to the families who are currently living in that community and whether they will be moved together into group housing or will be divided. I have been informed that the Premier has discussed this matter with the Aboriginal and Torres Strait Islander Commission council and

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administration. However, if these discussions have been going on for a while, why could the Parliament not have been informed? Like probably many other members in this Parliament, I have a good relationship with the Aboriginal elders in my community. It is very difficult to contact people when we are given less than one day's notice of the introduction of a Bill. I would have liked to have been able to discuss this Bill with the Aboriginal elders in my community to see whether they were aware of the Bill, what they have heard from ATSIC, and what options they would have liked to have had considered in dealing with this issue. I hope that when the Premier responds, he will address the issue of what other options were available, and what will happen to the families in that community. We need to know whether they will be moved down south to Albany or up north somewhere, and what the communication links will be. We all know that there have been problems in that community, but there probably are also strengths within some members of it. They may lose those strengths if they are moved all around the State.

**MR R.N. SWEETMAN** (Ningaloo) [4.15 pm]: I wish to make a couple of comments on the Reserves (Reserve 43131) Bill. I will not go into any of the technical aspects of the Bill that have already been highlighted by other speakers. However, I must say that for me this is a great occasion to be in the Parliament, because the reason I came into the Parliament in the first instance was to try to improve the circumstances of people in the broader community. That is what this Bill will do. My only reservation or caution in giving my wholehearted support to the Bill is perhaps in knowing the consequences of turning many of these troublemakers out of this community, because to simply show them the gate will not in any way make these people - these despots and monsters - any better people. I can tell the Premier, and I am sure he already knows, that the Swan Valley Nyungah Aboriginal Community is not the only problem community in Western Australia, although it has received a lot of attention and I believe is the epicentre of a lot of the problems in the Perth urban area. One example of the problems that exist in other Aboriginal communities in Western Australia is the women's refuge in Carnarvon. To give a snapshot of the problem, the temporary facility has been operating in Carnarvon for about three or four years. I think I mentioned in the Parliament either earlier this year or last year that in the 10-month period from January to October last year about 355 women went through that refuge. Only six of those women were non-Aboriginal. That is a clear indication that this problem is endemic in many Aboriginal communities. I have been shouting about this matter from the rooftops for as long as I have been a member of Parliament. I have had Aboriginal women sit opposite my desk in my electorate office in Carnarvon, weeping and saying that they cannot do anything about this; I am the only one who can. I managed to get the former Minister for Aboriginal Affairs, Hon Kim Hames, to come to Carnarvon. Kim Hames is a wonderful and very compassionate man, but because he was under so much pressure from Aboriginal people in very high and significant places who were giving him information, he did not directly intervene in the problem. I remember my embarrassment when I sat with a group of Aboriginal women at the Aboriginal medical centre on the day minister Hames came in to address the serious issue of child abuse and molestation and the bashing of women in the Aboriginal community in Carnarvon, and in the Mungullah community and the broader area of the Gascoyne, and he announced what I think was a \$2.4 million advertising campaign that would be the answer to all their problems. We would educate people through an advertising campaign that they should not bash and molest their kids or bash their wives. I was embarrassed and they were embarrassed, and of course the problem continued. Those advertisements ran for a while, but the people who were supposed to be targeted by that message were never going to get that message.

I support the Bill. It is a wonderful step. However, regardless of what people may want to read into it, such as it is a violation of a person's human rights, and of natural justice and things like that, we must take it one step further. We must be involved in behaviour modification programs. Many of the despots and monsters to whom I referred earlier became what they are as a result of the abuse of one substance or another, generally alcohol. There are many of these people, yet even though on this occasion we can deny them natural justice and turn them out of this community, we think it would be going too far to further impinge on their human rights and put them into some sort of rehabilitation or detoxification programs and directly intervene through behaviour modification programs. These people are almost always men. Hopefully we might turn them into better people, so that they would be better husbands and better carers for their wives and children. A consequence of that would be that the State would have far fewer dysfunctional families and these people would make far greater contributions to Western Australian society.

I have kept my comments as brief as possible. I wholeheartedly support the Bill. I hope that it does the job. The future is quite vague, because it is assumed that people will be found who will be a whole lot better than those who are currently in the community and that they will administer the community during the transitional period from the current corporation to the next corporation. The Government must be extremely diligent in ensuring that the right people go into the community and do what the Government expects in the time frame in which it expects it to be done.

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The speedy transition of the Bill through this House, and hopefully the upper House, will create an excellent precedent. I am not being in any way partisan about this, but I believe that we as legislators could look at the situation community by community and region by region, if that is what it takes to get similar measures in place to improve the circumstances of all Aboriginal women and children in this State.

**DR G.I. GALLOP** (Victoria Park - Premier) [4.22 pm]: I thank the members for their contributions to the debate on this Bill. It is an extraordinary Bill that has been introduced in circumstances that are quite different from any we normally face in the Parliament. I appreciate the support that members are giving. I hope the Bill will go through this Parliament with the full support of all members on the basis of their proper consideration of all the clauses, because clearly, even though we want the Bill to be treated as an urgent Bill, I trust that all members will be confident that they are voting for something they can be satisfied with.

I will not dwell on the issues raised by the Leader of the Opposition except to say that I am deeply disappointed that he would think that I was trying to keep the Opposition out of the discussion of this Bill. It only went through the Labor Caucus during the dinner break last night. Before that happened, of course, I was not in a position to go to the Opposition. I approached the Leader of the Opposition, but unfortunately he was not in his office. I then went to the opposition manager of business in the House. It was not possible to have the briefing last night. We organised it for 10.30 this morning. It was not possible because the Leader of the Opposition was not here. We could have had the briefing last night, but it was much better to have it at 10.30 this morning. Unfortunately the final print of the Bill was not available, so the decision was made that, rather than have the briefing in the absence of it, we would get the Bill and give it to the Opposition, which we did at 1.15 this afternoon, and then hopefully later on in the afternoon we would be able to deal with it. I tried to cooperate with the Opposition. If opposition members feel that that was not done, I am disappointed that they would think that.

Mr R.F. Johnson: You did come and talk to me; that is absolutely true. The reason I said that the briefing would not be possible last night is that the upper House does not sit on a Wednesday night, so many members had left by the time you spoke to me. It was certainly difficult to get those members together. We agreed to have a briefing at 10.30 this morning, but unfortunately you had a problem with the Bill so that had to be cancelled.

Dr G.I. GALLOP: As I said, I regret that. I appreciate the support given to me by the opposition manager of business.

Ms S.E. Walker: Are you going to ensure that the Bill will move quickly through the upper House?

Dr G.I. GALLOP: That is a matter for the upper House, but we would like to see that happen if it is possible. The upper House sits on Friday.

We were advised by the directors general of the Department for Community Development and the Department of Indigenous Affairs that there was an unacceptable level of risk. The history of the camp indicated that we could not ensure that there would not be a recurrence of the tragic incidents that have occurred there in the past. We determined that decisive action needed to be taken.

In answer to the good question asked by the member for Alfred Cove as to other alternatives, we could have gone to court and argued that the management order given to the Swan Valley Nyungah Community was not being properly abided by. We believe that we would have had a strong case, but the matter could have got strung out in the court. We have seen how that process has occurred with other issues relating to the Swan Valley Nyungah Community. We could have gone to court and said that it was in the public interest to revoke the management order. That matter could have been strung out in court proceedings. We had to make a decision whether to go by that route or to go directly to the Parliament. We decided to come directly to the Parliament because we believe that we can do it in a more timely manner with the concurrence of members. We do not have the numbers in the Legislative Council, but we hope that through good argument we can convince them to agree with us.

Mr J.H.D. Day: When did you make the decision that it was necessary?

Dr G.I. GALLOP: The advice was given at the cabinet meeting on Monday.

Mr J.H.D. Day: When were you advised that there was such a major problem?

Dr G.I. GALLOP: We were told of the problem the week before I went to the cabinet meeting on the Monday.

We understand the point on natural justice made by the member for South Perth. Natural justice is only taken away in respect of clause 7(3)(a) and (b) and I remind the member as to what those provisions contain. They deal with directing a person to leave the reserve or stopping someone going onto the reserve. They therefore deal with those specific points in relation to natural justice. They do take away those aspects of natural justice, but the reason is quite simple. If the administrator makes a decision to remove someone from the reserve - I believe there are good reasons for thinking that will be necessary - again, we would not want that tied up in court



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processes. We believe that decisive action must be taken, and these provisions give the power to enable that to happen.

I think I have answered the specific points that have been raised by the members.

Dr J.M. Woollard: You have not mentioned where the women and children are to be placed.

Dr G.I. GALLOP: I am coming to that.

The Bill raises an interesting question: what is the role of the State in our community? We often talk about the role of the State being to facilitate improvement in the community and obviously to pass laws that restrict the liberties of people in the interests of the public. However, in the end the State exists to protect people from anarchy and tyranny, because the alternative to having a Government in society is either anarchy or tyranny. We have all studied those subjects over the years as members of Parliament and before that as citizens. In a way what we are saying through this legislation is that the Government is asking this Parliament to give the Government power to act in a very decisive way to protect the rights and interests of women and children at that camp.

This is a great set of powers that we are giving to the State. Why are we doing it? It is not to aggrandise the State but, as the member for Ningaloo put it, to look after the interests of women and children. It is decisive action and it is giving the State strong power, but it is to do the very thing that Governments exist for; that is, to protect the interests of those who are vulnerable and those who are at risk, even if it means taking on powerful people, people who over the years have got away with things that they should not have got away with and people who might use every avenue available to them to resist the process. These are occasions when we must contemplate the use of that power. It is circumscribed to a particular area and in a particular way, but it is necessary to protect the interests of the women and children.

I will assure the member for Alfred Cove of two things. First, the interests of indigenous people in respect of that land will be protected. We have already had a discussion with the Aboriginal and Torres Strait Islander Commission on that matter. We will be looking for new ideas about the way in which that land can be used for indigenous purposes. We certainly give that guarantee. We are also very conscious of the families. When we as the Government discussed that matter, it was foremost in our mind that we would have to work with those families to find appropriate accommodation for them in our society.

I thank members for their comments. This is an extraordinary situation. Given the advice that we have, and given the history of this issue, action is justified.

Mr J.H.D. Day: You said you would be working with them but can you guarantee that you will find accommodation for them?

Dr G.I. GALLOP: Of course; that is the responsibility of the Government through the Department of Housing and Works.

Question put and passed.

Bill read a second time.

#### *Consideration in Detail*

**Clauses 1 and 2 put and passed.**

#### **Clause 3: Definitions -**

Mrs C.L. EDWARDES: I refer the Premier to the definition of "management order no. I262262". I received a copy of the annexure to the management order on the reserve while the Premier was making his second reading speech. The Gordon inquiry report was handed down in July. This management order is dated 11 October 2002. The Government of Western Australia responded to the Gordon inquiry in November 2002. I understand the management order was made following the handing down of the Gordon inquiry report, and that a number of changes were made to the order. Will the Premier outline to the House the reason for the management order and the changes that were made to the order as a result of the Gordon inquiry?

Dr G.I. GALLOP: The Gordon inquiry recommended a revision in the relationship between the Government and the Swan Valley Nyungah Community through the development of an understanding of the rules and regulations. As the member knows, the coronial inquiry said that access to the land was a problem. There was a gate there that caused difficulty for government officers and there was a climate of opposition to government officers going in there and consulting with the family. The changes that were made in the first instance related to access. There had to be free access to that site, and that was backed by the Government's ensuring that the gate was open. The difficulty we found was that, although there was formal access, in reality the power structures at

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the camp were such that the Government was unable to talk properly to the people in the community. Secondly, the desire of the Government to develop a program and policies to look after the welfare of the women and children at that camp was made almost impossible by the attitude of those who controlled the camp. Basically there was no proper governance in place and there was a lack of access. The management order attempted to deal with those issues as best it could within the framework that existed. However, we concluded at the end of the day that it was not successful.

Ms S.E. WALKER: I want to sort something out in relation to the original management order to ensure that all ground is covered. In the Government's action plan for addressing family balance and child abuse in Aboriginal communities dated November 2002, the Premier referred to the registration of a new management order. I presume that new management order is the annexure to management order No I262262 referred to in clause 3. What will happen to the original management order? Is that original management order on foot and can it be used to circumvent the other provisions in this Bill?

Dr G.I. GALLOP: Management order No I262262 replaces the original order. The difficulty with the original order was that no vesting conditions were placed on the management of the community; in other words, management was passed over to the Swan Valley Nyungah Community and it was basically given the right to do what it liked in that camp. That was the problem. We tried to address that problem following the Gordon inquiry; however, although we put conditions on the management, we were unsuccessful in addressing it.

Ms S.E. WALKER: I understand that. I hope this Bill is scrutinised closely in the upper House to ensure that the original management order is not still on foot.

Dr G.I. Gallop: It is not.

Ms S.E. WALKER: Secondly, part 1 of the Government's action plan required a management plan to be prepared by the Swan Valley Nyungah Community Aboriginal Corporation within six months. That requirement was included in the annexure to the management order. Was that management plan produced by the corporation?

Dr G.I. GALLOP: I believe that such a plan was put forward. It was unacceptable. It did not deal properly with the issue of access; that was one factor we took into account in our decision. The attitude of the people at the community was such that it was impossible for us to have a proper relationship.

Ms S.E. WALKER: The Premier said that he had seen it and it was not acceptable; I accept that. How long did it take for the management plan to come from the corporation?

Dr G.I. Gallop: It was received on 30 March.

Mrs C.L. EDWARDES: I will follow through on the management plan, because I understand that part of the reason for this legislation, which is unusual and unique, is that the management plan was unacceptable. The plan went to the respective directors general who have responsibility for this area and they advised the Premier that there remained a high and unacceptable risk. Was feedback on the management plan given to the Swan Valley Nyungah Community Aboriginal Corporation that it was deficient in some areas? If so, was it after that discussion that relations and communications broke down; or did the directors decide that the plan was so deficient that it was unacceptable? Given the other information that the Premier provided, was there still such a high and unacceptable risk to women and children at the community that the Premier believed the best procedure was for the Government to take over the management of the place?

Dr G.I. GALLOP: As I said, the proposed plan arrived on 30 March and was considered by the Government. The comments from the directors did not go back to the Swan Valley Nyungah Community. However, events intervened following that to lead to this debate in the Parliament today. In answer to the question: no, the comments were not passed back to the Swan Valley Nyungah Community on this matter. The matter was considered in government. The advice to the Cabinet was - I think I can say this - that the proposed plan indicated the attitude of the Swan Valley Nyungah Community to what we were doing. That attitude was negative and such that we reached the conclusion that we could not work through that vehicle.

Mrs C.L. EDWARDES: Without breaching the privacy of particular individuals, could the Premier, in a generic sense, give an indication of what events overtook the receipt of the plan by the directors general, informed their decision not to go back to the Swan Valley Nyungah Community Aboriginal Corporation and led to this unique legislation?

Dr G.I. GALLOP: The answer is: two factors; first was the advice coming through the government system from the officers on the ground in the various departments, who were set up to deal with this issue following the Gordon inquiry. Their advice was of the continuing obstruction and difficulty in accessing the women and children. Second was continuing allegations about violence in the camp, and the dangers facing some of the women and children at the camp. Those two factors put together led to a decision to close the camp.

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Mrs C.L. EDWARDES: Although this is a unique situation, perhaps there are some parallels between police intervention and intervention by the child protection unit at the Department for Community Development, when abuse of children takes place in the home. Can any such parallels be drawn?

Dr G.I. GALLOP: There are some parallels. On many occasions the police are asked to intervene in domestic violence situations, and they have powers they can use in those situations. We are dealing here with allegations about a community and we are following them up with legislative action. There is a general parallel here.

Mrs C.L. EDWARDES: You cannot go in and remove the children, as can be done in a child protection case?

Dr G.I. GALLOP: The problem is that the power structure in that camp is such that getting through to the women and children and enabling them to speak freely about what is going on is impossible. Even though there are ways and means by which certain information filtered out to the government officers that led them to be concerned about the liberties and rights of certain individuals there, resolving the issues in the way the member has just suggested was deemed to be impossible. Therefore, the more decisive action of closing the camp was thought to be the better way to go.

Ms S.E. WALKER: I fully support the reasons behind this legislation. Have any charges or complaints been made by the community since the management plan? If so, how many?

Dr G.I. GALLOP: We have had some anonymous complaints, but the people who made them were not willing to follow them up by making formal complaints. Issues at the camp, however, have led to real concerns on the part of the government officers.

Ms S.E. WALKER: How many members does the corporation have, and were they all from inside the camp?

Dr G.I. GALLOP: The governance of the community was one of the issues we were trying to address following the Gordon inquiry. It was very difficult to work out precisely what that community was. Some people were still part of the community, but not living there. Governance was a very important issue, and was one of the reasons it was difficult to use the strategy recommended by the Gordon inquiry to deal with this issue, which was to have a new relationship with the community, given that the definition and formal structures of that community were very hard to find and decipher. It was almost impossible to go down that track. The question asked by the member for Nedlands is a good one, because it was one of the very problems that led to the decision to legislate.

Ms S.E. WALKER: I understand that besides the children at the camp, other children who may be enticed to visit the camp are a problem as well. Is that correct?

Dr G.I. GALLOP: That is indeed one of the problems with this camp. It is not just the children; it is the adults who come and go. The Susan Taylor tragedy was very much related to that issue.

Mr R.N. SWEETMAN: I want some further clarification of the definitions, including "administrator", "authority", "management order" and "the reserve". When I went to the briefing this morning, the question in my mind was whether the camp would be completely shut down. From the news bulletin last night it was very clear that everybody was out. However, when I began reading aspects of the legislation in relation to the administrator, the authority, and natural justice, I formed the impression that the Government was trying to integrate sections of the Aboriginal Communities Act 1975, passed by the Court Government. That Act allowed Aboriginal communities to make local laws, which are enacted in various communities throughout the north west and have served those communities very well. They are able to turn out of their communities people who cause problems. For example, if it is a dry community and people bring in alcohol or go on a drinking binge, they can very quickly be told to leave the community. I thought this was a bit of a mix and match when I speed-read through the clauses of the Bill and the explanatory memoranda. The issues of the administrator, the authority and natural justice perhaps apply to people who want to squat and then resist the order to move off the community. It creates another problem. While I applaud the Government for what it is doing with this Bill, it must have contemplated the possibility that it is simply shifting the problem from here to there. The Government is intervening in the community as it is currently structured. What long-term measures will be taken to interfere with this quite extraordinary behaviour of systematic abuse and molestation taking place in the families in the community?

Dr G.I. GALLOP: I will repeat the first point I made. The original order that vested management of the land in the Swan Valley Nyungah Community Aboriginal Corporation was deficient. No controls were put in place at that time. It is the intention of the Government to close the camp, and it is proposing the means to that end. There must be a means to an end that is legally enforceable and practical, and that will lead to the desired result. In terms of the issue raised by the member for Ningaloo, the Government responded to the Gordon inquiry with a \$75 million investment, extra child protection workers and more police officers to deal with this issue. A relationship has been developed with the Aboriginal and Torres Strait Islander Commission, which is committed to working on this issue. The Government will work on the issues through the community. The one thing the

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Government will not do, which is implicit in the member's question, is recreate the Swan Valley Nyungah camp somewhere else.

**Clause put and passed.**

**Clause 4: Revocation of management order no. I262262 and effect -**

Mrs C.L. EDWARDES: I have a question about clause 4(2). What does section 50(2) of the Land Administration Act say? What, therefore, is the meaning of this subclause? There is also a reference to section 5(2) of that Act under clause 5(5). To save time, could the Premier respond about the impact of both provisions?

Dr G.I. GALLOP: Section 50 of the Land Administration Act deals with the revocation of management orders. Clause 5(5) of the Bill allows future action along the lines of section 50 of the Act in relation to this order.

Ms S.E. WALKER: I have a copy of the Land Administration Act, which states that a minister can revoke a management order in any event. I suppose it is a double whammy. Section 50(1) states -

When a management body -

(a) agrees that its management order should be revoked -

Dr G.I. Gallop: I will perhaps answer the member's question while she is on her feet: that was the point I made in my reply to the second reading debate. The Government considered the court action approach, either on the grounds of public interest or that the Swan Valley Nyungah Community was not acting in accordance with its agreement with the Government. However, we felt the time it would take and the possibility of legal delay etc would not be in the interests of the people at the reserve.

Mrs C.L. EDWARDES: This clause provides that section 50 of the Land Administration Act will remain in place, irrespective of this legislation. This legislation will not replace any of the minister's powers under section 50.

Dr G.I. Gallop: That is correct.

**Clause put and passed.**

**Clauses 5 and 6 put and passed.**

**Clause 7: Additional powers in relation to care, control and management -**

Ms S.E. WALKER: It appears that the administrator who will oversee the removal of people from this community will be appointed under the Aboriginal Affairs Planning Authority Act.

Dr G.I. GALLOP: In effect, the administrator will be appointed by the minister. It is clearly an important position and one that is required so that this transition can occur, to move people from that site and pave the way for a new approach to the delivery of indigenous interests on that land.

Mrs C.L. EDWARDES: Is the responsible minister the Minister for Indigenous Affairs and not the Minister for Planning and Infrastructure, even though the Minister for Planning and Infrastructure has responsibility for the Land Administration Act?

Dr G.I. Gallop: That is correct.

Mrs C.L. EDWARDES: I wanted to clarify that point. Could the Premier provide some indication of who will be appointed to this position? Subclause (3) outlines what the administrator will be able to do in directing a person not to enter or to leave the reserve. I am concerned that under subclause (4) the direction may be given orally. The exclusion of the rules of natural justice and judicial review in subclause (3) will protect and provide some immunity to the administrator. Therefore, it is not necessary to put that into the legislation. However, it would be far better for the operational procedures to provide that if the administrator is placed in the position of having to give a direction orally, it must be done in the presence of another person so that there is a witness to it. We do not know how broad these exclusion rules will be. Allegations of assault or actions of a criminal nature may be made. These rules may or may not protect that individual.

Dr G.I. GALLOP: I thank the member for the point she has made. I am advised that the administrator, who will deal with that very point, will put procedures and processes in place for the giving of oral directives. In terms of the general issue of appointing an administrator, we must find someone who is experienced in these matters. Work is already being done to find such a person. There are many Aboriginal communities in Australia. From time to time, decisive action is needed in the management of those communities. Australia has some people who are very experienced in this area. Such a person must be capable of acting decisively. The Government is consulting the Aboriginal and Torres Strait Islander Commission on finding an appropriate person for that job. I appreciate the member's contribution.

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Mrs C.L. EDWARDES: I refer the Premier to subclause (9), which states -

A person who may exercise a power under subsection (3)(c) -

Which in turn states -

with such assistants as the administrator thinks are necessary -

- (i) prevent a person from entering the reserve . . .
- (ii) remove a person from the reserve -

Subclause (9) concludes -

. . . may use such reasonable force as is necessary for the purpose of exercising the power.

That provision would place an individual, other than a police officer, in a very difficult position. What advice has the Premier received on the “reasonable force as is necessary” that a person will be able to use?

Dr G.I. GALLOP: These powers would be used by the person assisting the administrator. If a situation arose and that power needed to be exercised, in most circumstances it would be exercised by the police, who have this sort of power in any case.

**Clause put and passed.**

**Clause 8: Exclusion of rules of natural justice -**

Mrs C.L. EDWARDES: Because of the sensitive nature of this clause, I ask the Premier to put on record what this provision to exclude the rules of natural justice means.

Dr G.I. GALLOP: There are two points. The first is that the rules of natural justice - lawyers always put things in the negative and it confuses me enormously - will no longer apply in respect of clause 7(3)(a) and (b), which of course deals with the direction to a person not to enter or to leave the reserve. This clause applies only to those areas. The Government’s experience of these sorts of issues and this camp is that legal avenues are often used to thwart the proper pursuit of justice. This is something that Governments do not necessarily like to do. However, if we are to ensure that the interests of people in this case are to be properly protected, we do not want lengthy legal processes to hold up that exercise of power.

Ms S.E. WALKER: I suppose other statutes that could potentially override the provisions of this Bill have been examined; for instance, the Interpretation Act. I put that matter in *Hansard* for when this Bill goes to the upper House.

Dr E. CONSTABLE: I understand why this clause is in the Bill, even though all members in almost all circumstances would consider the denial of natural justice to be a very worrying matter. There is always the potential for abuse with a clause such as this. Can the Premier provide an outline of the accountability or record keeping the Government will expect of the administrator, so that some sort of oversight of this clause can be documented?

Dr G.I. GALLOP: Ultimately, the administrator will be accountable through the processes to the minister. The second point is that should these powers not be exercised properly, I am sure that it would be publicised.

Dr E. Constable: I expect that they will be, but I still think that accountability needs to be built into the process.

Dr G.I. GALLOP: The administrator will ultimately be accountable to the minister. I refer to the appointment of the administrator under clause 7(2). The minister ultimately has the authority to remove an administrator if he needs to.

Ms S.E. WALKER: With regard to this Bill, we have put our trust in the Premier, as the Leader of the Opposition said today. It dismantles a group that currently has control of a reserve in the Swan Valley. Once that group has gone and the authority has taken over control of the property, will this clause still operate with regard to other people? Do these clauses and the denial of natural justice apply only to the removal of 25 people, or will they continue to apply indefinitely, because that is then a different situation? I have not read the Bill closely, but there may be a provision in clause 7 or elsewhere in the Bill that limits the duration of the denial of natural justice to the 25 people who are currently at the reserve. Bearing in mind that other people are accustomed to being allowed onto the reserve, how long will this denial of natural justice be enforced with regard to sections of the Aboriginal community?

Dr G.I. GALLOP: While this legislation is active, these powers are capable of being exercised if given to an administrator of this issue. Over time, when all these questions have been resolved, we hope to repeal the legislation. Future management bodies will be given powers under the Land Administration Act and there will be an agreement with the Government on how it should operate etc. That is how it should operate now for the

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Swan Valley Nyungah Community, but the powers are not adequate at the moment. Obviously, this is extraordinary legislation for an extraordinary situation. Once all the matters at the community have been resolved and everyone is satisfied with the situation, the legislation will not be necessary. In any case, a future management body of this land would not necessarily be given these powers.

Ms S.E. WALKER: I raised this matter because under clause 7(6) a variety of people can be granted the power to remove people. I do not know whether this provision has been thought through properly, and perhaps the Premier could give it some consideration, because this will be the only tract of land that is administered by the authority with powers such as these indefinitely.

Dr G.I. Gallop: It could happen.

Ms S.E. WALKER: Is that not a cause for concern? We are trying to deal with a problem - I am not trying to be difficult -

Dr G.I. Gallop: I agree with the member. That could be the case but I indicated earlier that when all those issues are resolved and the situation becomes acceptable again, we will be in a position to repeal the Bill.

Ms S.E. WALKER: Then perhaps there should be some sort of review clause in the legislation.

Mrs C.L. Edwardes: Or sunset clause.

Ms S.E. WALKER: A review clause would be better because the situation may not be resolved by the time a sunset clause takes effect. There should be some sort of clause in the Bill, because otherwise draconian laws will apply to the community indefinitely.

Dr G.I. GALLOP: The difficulty is not knowing how long it will take to reach an acceptable situation. We hope that it can be done speedily and in a timely manner. That is why a sunset clause has not been placed in the Bill. I assure the member that this Bill is all about the Swan Valley Nyungah Community and this particular management order. It is not something that can be used in other areas. It is a specific reserves Bill. The member can have confidence in knowing that that is what we are trying to do and we will not take it any further than that.

Mrs C.L. EDWARDES: I understand what the Premier is saying. However, if he refers to clause 5, he will note that an administrator will be responsible for the care, control and management of the reserve forever and a day; there is no end time. It is nothing to do with the Swan Valley Nyungah Community; the administrator is not linked to that. The administrator is linked to the land and he can toss off people or allow people or his representatives onto the land. There is no control in terms of natural justice and, consequently, in terms of authority. I understand that there might not be enough time to get that authority set up, but there is no backup for the administrator and there is no time frame within which to end this management order. What if somewhere down the track there was a plan for this piece of land? What would stop a Government selling off or redeveloping that land under LandCorp? Will anything that is not in front of us prevent someone or something doing that?

Dr G.I. GALLOP: It has been made absolutely clear in the second reading speech that we have no intention whatsoever of doing such a thing. This land has been vested for Aboriginal purposes and we will be consulting with the Aboriginal and Torres Strait Islander Commission about its future use.

Mrs C.L. Edwardes: So the vesting still stays in place for Aboriginal purposes and it can only ever be used for Aboriginal purposes.

Dr G.I. GALLOP: That is our view -

Mrs C.L. Edwardes: Is that the legal position?

Dr G.I. GALLOP: Yes, while it is a reserve.

Ms S.E. WALKER: I know it has been a long week and we are all a little tired, but what concerns me is that this Bill may be putting that piece of land in a worse position than it is in already. This legislation will give an administrator, appointed by the minister, the power to prevent anyone from coming onto that reserve, forever. Nobody has that power at the moment. Under an annexure to the management order, a gate has just been put on the reserve -

Dr G.I. Gallop: But the administrator is accountable to the minister.

Ms S.E. WALKER: That may well be the case, but will he have powers under this Bill? I urge the Premier, some time between now and when the Bill gets to the upper House, to insert a sunset clause. This legislation will give the Aboriginal Affairs Planning Authority unlimited power, forever, to prevent any person from entering the reserve or to direct a person to leave the reserve, and it will allow the administrator to appoint

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anybody to do that. That will open up a minefield. I hope the Premier reconsiders that provision before the Bill passes.

Dr G.I. GALLOP: Two points must be made. First, the minister appoints an administrator and, in this very Parliament, that minister is accountable to the people of Western Australia. That is absolutely clear accountability. Second, I refer the member to clause 12, which deals with protection from liability. This occurs only if actions are conducted in good faith. If such a person started doing the things to which the member has referred, he would be subject to legal action.

Ms S.E. WALKER: That is exactly why I raised this point. It has taken us years to find out what is really going on in the community, and this Bill is setting us up for the same situation to occur again. I am not having a go at the Bill - I know it was put together quickly - but I urge the Premier to reconsider the situation.

Dr G.I. GALLOP: We must go back and remember why the Bill is here.

Ms S.E. Walker: It does not matter.

Dr G.I. GALLOP: No, it is important. The Bill deals with a particular issue and this is the means to that end.

Dr E. CONSTABLE: I draw the Premier's attention to his second reading speech in which he stated -

It is also the intention of this Government that the management of any future activities on the reserve be passed to an appropriate Aboriginal organisation. The administrator appointed to manage this transition will pass day-to-day responsibility to an Aboriginal organisation at the earliest possible date.

It seems to me, from listening to the comments of the members for Nedlands and Kingsley, that it would be wise if provision were made that clause 8 cease to exist when the day-to-day responsibility is passed to an Aboriginal organisation. I can almost accept, as an emergency measure, that the exclusion of rules of natural justice should apply in certain circumstances, but it should not be an open-ended provision. We should be clear, in passing this legislation, that this clause will cease to exist when the day-to-day responsibilities are passed to an Aboriginal organisation.

Dr G.I. GALLOP: Ultimately, the rules that apply to the new management would have to be given authority by the minister and the Government of the day. Although the administrator will be engaged to organise the transition, as indicated in the second reading speech, the ultimate authority will reside with the minister. The powers to be given will be determined through the process.

Ms S.E. WALKER: That simply is not the case, Premier. This is legislation. The member for Churchlands is correct in saying that it is for Parliament to determine. Whether the Premier likes it or not, it is not for the minister to direct - it is here by statute. Following the comments of the member for Churchlands, the Government has a problem not only with clause 8, but also with immunity from the judicial supervision in clause 11 and protection from liability in clause 12. I do not want to debate those points or raise the same issues again. Nevertheless, they are important. It is no good flippantly saying that the minister will give out the rules, Premier, because the rules are in legislation. I refer to the person seeking natural justice in 10 years, five years, two years or one year once it has all settled down and the new community is going well and a bad apple turns up. The same problems may arise. The Government will not be able to do anything about it, and it may take a year until the situation builds and the statute returns to Parliament as people seek natural justice and judicial supervision. I urge the Premier to look at the legislation.

Dr G.I. GALLOP: I refer the member to clause 7(5), which deals with the point she raised. It reads -

The LAA Minister, in an order under the LAA section 46(1) by which the care, control and management of the reserve is placed with a person other than the Authority, may authorise a person, or the holder of an office, specified in the order, to exercise any power set out in subsection (3).

Ms S.E. WALKER: It is not a matter of what the minister will direct the administrator to do, but what a person will be denied. It will apply in perpetuity. I hope this issue is taken up in the upper House. Some sunset clause is needed or this Bill needs some review in the not too distant future.

#### **Clause put and passed**

#### **Clause 9: Nature of discretion -**

Mrs C.L. EDWARDES: Could the Premier advise the purpose of the discretion in clause 9 as linked to clause 10 to disclose any of the reasons? It is a discretion exercised to either refuse entry or throw somebody off the place. The person is not required to give reasons for how the discretion is exercised. What is meant by that? A person is not entitled to expect that a discretion will be exercised in any way. A person is not required to give reasons under clause 10; however, if it is in the public interest to do so, he can disclose all the reasons as

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exercised under clause 7(3)(a) and (b). I know I am linking clauses 9 and 10 together, but it may save later debate.

The SPEAKER: That is reasonable.

Dr G.I. GALLOP: I refer to the reasons I gave in relation to clause 8. The same argument applies relating to the necessity to deal with a problem in a decisive way.

Mrs C.L. Edwardes: What is meant by how the discretion is exercised?

Dr G.I. GALLOP: I am advised that it is whether a person is told to leave or not told to leave.

Dr E. CONSTABLE: The Premier mentioned a number of times that the ultimate responsibility is with the minister. I assume that the administrator will be accountable to the minister. Will the person give reasons to the minister and keep records of excluding people or throwing them off the land, or will this person be a law unto himself? If I were a minister - which I probably never will be - I would want some reporting mechanism and record keeping of the activities of the administrator. To follow the Premier's argument that the minister is ultimately responsible, if the administrator erred in judgment and made a terrible mistake, the minister would be responsible and be sacked.

Dr G.I. GALLOP: Yes. Going back to clause 7(2) by which the authority engages a person, it could be under a contract of service or a nominated officer referred to in the Aboriginal Affairs Planning Authority Act 1972. The minister will have an expectation about the nature of the job. In the case of the contract for service, that aspect will be built into the contract. There is a direct relationship with the minister, and, as I keep pointing out, ultimately, the minister has power over the administrator.

Mr R.N. SWEETMAN: I continue the point made by the member for Churchlands. The Premier has done everything in his comments in the second reading speech, the explanatory memorandum and in consideration in detail - and my basic interpretation of the legislation has encouraged me to this belief - to maintain that this legislation was the Government's best way to get rid of the incorporated body. Are options still open to the Premier to do a deal, for want of a better word, with someone else who may be part of the Swan Valley community and who may approach the Premier? Can that person say, "Mr Premier, we're not the bad people; give us a chance"? Will the Premier have a chance to negotiate an arrangement under which the people could reoccupy the community, and maybe, in the first instance, not leave it? People may point to the local rules as prescribed under the 1975 Act and indicate that they will live rigidly by them - they can hang as a sword of Damocles over their heads. Does that opportunity exist? Is it the case that the problem in the Swan Valley Nyungah Community has been longstanding; therefore, the Government must disband the incorporated body and the connection with everybody else in the reserve? It is like when a council is sacked or a Government is voted out; not only bad members of Parliament are voted out at elections - very good people also are lost. Mr Speaker agrees.

The SPEAKER: Very much so.

Mr R.N. SWEETMAN: It may be that some good and capable people, if given the right opportunities, could provide the right leadership for the community to prosper. In time, and with some assistance, it could become a model Aboriginal community. Does the legislation contain provision for somebody to put such a proposition to the Premier to regain the tenure and reoccupy the area by undertaking to do certain things?

Dr G.I. GALLOP: Technically, it would be possible to do that, but it is certainly not the intention of the Government's legislation. Our aim is to consult Aboriginal communities of Western Australia about the way the land could be best used in the future.

Mr R.F. Johnson: If another Aboriginal group wanted to run the camp, it would have to do so under the authority and the guidance of an administrator?

Dr G.I. GALLOP: No. That would involve setting up a new management order for the area. It is not our aim and intention to set up another residential community like the one in this case.

Mrs C.L. Edwardes: What is the Government's time frame?

Dr G.I. GALLOP: We are dealing with this issue now. The time frame we have is as long as it takes to get a very good result.

Mrs C.L. Edwardes: Are we talking about months?

Dr G.I. GALLOP: It has not entered our minds what the time frame is.



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Ms S.E. WALKER: I was thinking about the Premier's response to the issue I raised that these draconian powers will be available forever to the administrator to use against people who want to go onto the land. The Premier said the minister can tell the administrator which powers he can exercise.

Dr G.I. Gallop: It will be a future management body, not the administrator.

Ms S.E. WALKER: Please hear me out. The Premier keeps referring to the Bill being a dismantling of a community. I accept that. The Bill goes much further than that. It deals with the transfer of the management of the land to another authority. Along with the transfer, the person who administers it, or his representative, receives enormous powers. People who want to go on to the land will have their basic rights revoked. Let us assume the government changes in the next year or so and a shadow minister wants to go onto the land because he thinks something funny is happening. The administrator can tell him to leave. Nothing can be done by the shadow minister about it under this Bill. People are excluded from the rules of natural justice under this Bill. They cannot obtain a writ of certiorari, mandamus, prohibition or any other prerogative writ. No action in tort is available either. I hope the Premier is listening because my point is important. I accept that there is a valid reason for the dismantling of the community. However, I do not accept that the powers given should continue in perpetuity to affect citizens of Western Australia. It will affect anyone who wants to go onto the land.

Mrs C.L. EDWARDES: The debate on clause 7(3) has been on the assumption that we are dealing with individuals and members of the corporation. In fact, clause 7(3)(b), which directs a person to leave the reserve, can be used by the administrator to remove anyone from the reserve. As the Government has indicated, it no longer wants it to be a residential area. One of the competencies that members of Parliament will want is to know how that will occur. Clause 9 states that how it will be done will not be questioned. There may or may not be public reasons for all or any actions. It also means that there should not be any expectation of how the discretion will be referred to. We want to know in advance how people in the community, other than members of the corporation, will be dealt with. How does the Government intend to deal with members of the corporation?

Dr G.I. GALLOP: It is clear that the Government wants to look after the interests of the women and children and start to talk to them about their accommodation needs. The powers given to the administrator to remove anyone will be directed against anyone who makes that difficult to occur or who represents a threat to the community. I remind members why the Government is doing this. This is not a normal piece of legislation because we do not face a normal situation.

Ms S.E. WALKER: The Premier said it is not a residential community -

Dr G.I. Gallop: It is now.

Ms S.E. WALKER: Yes, the Premier is right. It is not envisaged to be a residential community; is that what the Premier is saying?

Dr G.I. Gallop: In the future.

Ms S.E. WALKER: Has the legislation been framed this way so that women and children can stay on the land and undesirables asked to leave?

Mrs C.L. Edwardes: What if some women and children do not wish to leave?

Dr G.I. GALLOP: The Government is keen to close down the camp. We have to follow through on that. We want to talk to the people there about their housing needs. Our view is that it is not an appropriate situation and the best way to resolve it is to be decisive and deal with it comprehensively.

Ms S.E. WALKER: This legislation could work if the women and children stay. What is behind the legislation? There could always be a power for the administrator to direct undesirables to leave. Is that what is really behind this?

Dr G.I. GALLOP: We are protecting the rights of women and children; they are part of families. We will work with those families to find appropriate accommodation.

**Clause put and passed.**

**Clauses 10 and 11 put and passed.**

**Clause 12: Protection from liability -**

Mrs C.L. EDWARDES: I purposely wanted to jump over clause 11 as it refers to immunity from judicial supervision. Questions about the clause have been answered in the same way as questions about excluding rules of natural justice have been answered. I am sure they are the same reasons the Premier would give for the

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inclusion of an immunity from judicial review. Has the Premier been advised that liability may flow to the Government as a result of liabilities of the Swan Valley Nyungah Community?

Dr G.I. Gallop: It is just a standard provision.

Mrs C.L. EDWARDES: Just a standard provision; there is nothing exceptional in it that the Government may take over any of the liabilities that currently vest in the community?

Dr G.I. Gallop: It is a matter for the Aboriginal corporations registrar. There are a lot of assets out there. It is a matter in which it will be interested and concerned.

**Clause put and passed.**

**Title put and passed.**

Leave granted to proceed forthwith to third reading.

*Third Reading*

Bill read a third time, on motion by Dr G.I. Gallop (Premier), and transmitted to the Council.