



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
SELECT COMMITTEE ON RESERVES
(RESERVE 43131) BILL 2003
IN RELATION TO THE
RESERVES (RESERVE 43131) BILL 2003**

Presented by Hon Peter Foss MLC (Chairman)

Report
November 2004

SELECT COMMITTEE ON RESERVES (RESERVE 43131) BILL 2003

Date first appointed:

June 25 2003

Terms of Reference:

Select Committee on Reserves (Reserve 43131) Bill 2003

- (1) That a Select Committee of five members, any three of whom constitute a quorum, is appointed to inquire into and report to this House the basis or grounds on which the Government introduced the *Reserves (Reserve 43131) Bill 2003* and the reasons underlying its passage through both Houses at such short notice.
- (2) The Committee, and the proceedings of the Committee, are subject to Chapter XXII of Standing Orders and it is to be regarded for all purposes as a committee appointed under that Chapter.

Members as at the time of this inquiry:

Hon Peter Foss MLC (Chairman)

Hon Jon Ford MLC

Hon Louise Pratt MLC

Hon Robyn Chapple MLC

Hon Derrick Tomlinson MLC

Staff as at the time of this inquiry:

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ISBN 1 9208 8629 X

Note

The Report of the Select Committee on Reserves (Reserve 43131) Bill 2003 consists of a Report of the Committee, and a Minority Report of the Hon Jon Ford MLC and Hon Louise Pratt MLC.

The minority of the Committee disagrees with the following paragraphs of the Report: 11-19, 21-37, 39-41, 11.22, 12.56, 17.5, 17.13, 17.22-17.24, 17.26, 17.29, 17.30-17.39, 17.44, 17.47, 17.52, 17.53.

The minority of the Committee disagrees with the following observations: 13, 18, 19 and 23-31.

The minority of the Committee disagrees with the following findings: 2, 11, 14, 19-21, 28 and 29.

The minority of the Committee disagrees with all recommendations.



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Government Response

This Report is subject to Standing Order 337:

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible Minister. The Leader of the Government or the Minister (if a Member of the Council) shall report the Government's response within 4 months.

The four-month period commences on the date of tabling.

List of Acronyms and Defined Terms

AAPA	Aboriginal Affairs Planning Authority
Administrator	Mr Barry Jameson, Chartered Accountant, Partner, Thomas Noble and Russell
AHIC	Aboriginal Housing and Infrastructure Council
AHIU	Aboriginal Housing and Infrastructure Unit
APLO	Aboriginal Police Liaison Officers
Assembly	Legislative Assembly
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIS	Aboriginal and Torres Strait Islander Service
Bill	Reserves (Reserve 43131) Bill 2003
CCU	Crisis Care Unit
Committee	Select Committee on the Reserves (Reserve 43131) Bill 2003
Community	Swan Valley Nyungah Community
Coroner's Report	Coroner's report into the death of Susan Taylor, November 2001
Corporation	Swan Valley Nyungah Community Aboriginal Corporation Inc.
Council	Legislative Council
CSO	Crown Solicitor's Office
Cth	Commonwealth
Cullacabardee	Cullacabardee Aboriginal Community
DCD	Department for Community Development
Department of Family and Children's Services	Now the Department for Community Development
DET	Department of Education and Training
DGGIG	Directors General Gordon Implementation Group

DHW	Department of Housing and Works
DIA	Department of Indigenous Affairs
DLI	Department of Land Information Note: Formerly DOLA
DOJ	Department of Justice
DOLA	Department of Land Administration Note: DOLA became DLI on June 30 2003.
DPC	Department of Premier and Cabinet
DPI	Department of Planning and Infrastructure
Gordon Inquiry	Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities
Gordon Report	Report of the Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, July 31 2002
LAA	<i>Land Administration Act 1997</i>
Leader of the Government	Hon Kim Chance MLC, Leader of the Government in the Legislative Council
Leader of the Opposition	Hon Colin Barnett MLA. Norman Moore MLC, Leader of the Opposition in the Legislative Council
Lord Street camp	Swan Valley Nyungah Community
MAAG	Midland Aboriginal Advancement Group
PCO	Parliamentary Counsel's Office
PPS	Principal Private Secretary
"Putting People First"	"Putting People First - the Western Australian State Government's Action Plan for Addressing Family Violence and Child Abuse in Aboriginal Communities. The Response to the Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities",

Government of Western Australia, November 2002.

RDA	<i>Racial Discrimination Act 1975 (Cth)</i>
Reserve	Reserve 43131
Saunders Street	Urban Aboriginal Community
SOGIG	Senior Officers Gordon Implementation Group
SVNC	Swan Valley Nyungah Community
SVNCAC	Swan Valley Nyungah Community Aboriginal Corporation Inc.
SVNC management	Swan Valley Nyungah Community Aboriginal Corporation Inc.
Sydney Road	Gnangara Nyoongar Community
WAPS	Western Australian Police Service

List of People Involved

Mr Roland Bayman	Acting Manager, Department for Community Development, Midland Office.
Ms Jane Brazier	Director General, Department for Community Development
Mr Robert Bropho	Spokesperson, Swan Valley Nyungah Community Aboriginal Corporation Inc.
Mr Jim Clarysse	Sergeant, Western Australian Police Service (Supervisor, Kiara Police Station)
Mr Gordon Cole	Chairperson, Perth Noongar Regional Council
Mr Richard Curry	Director General, Department of Indigenous Affairs
Mr Mike Daube	Director General, Department of Health
Ms Sandra Eckert	Legal Officer, Department of Land Administration
Ms Colleen Egan	Journalist, <i>The Australian</i> and <i>The Sunday Times</i>
Mr Michael ('Mick') Gooda	State Manager, Aboriginal and Torres Strait Islander Commission
Mrs Susan Gordon AM	Magistrate, Perth's Children's Court
Mr Barry Jameson	Chartered Accountant, Partner, Thomas Noble and Russell (Administrator of Reserve 43131)
Mr Greg Joyce	Director General, Department of Housing and Works
Mr David Parkinson	Superintendent, Western Australian Police Service
Mr David Pedler	Acting Assistant Director Regional Management, Department of Indigenous Affairs
Mr Robert Mumme	Inspector, Western Australian Police Service
Mr Kieran Murphy	Premier's Principal Media Adviser
Mr Grahame Searle	Acting Chief Executive Officer, Department of Land Information
Mr Sean Walsh	Premier's Chief of Staff
Ms Lynsey Warbey	Senior Policy Officer and Manager, Gordon Implementation Secretariat, Department of Premier and Cabinet

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OVERVIEW, FINDINGS AND RECOMMENDATIONS

- 1 The Committee recognises that the Nyungah peoples have had a long and sorry history. Their attempts to reclaim their traditional lands date back to 1919 when the Guildford Aboriginals were transhipped to the Moore River native settlement. In more recent times, Robert Bropho and his extended family campaigned vigorously for the right to occupy the area which presently takes in Reserve 43131.
- 2 Since the establishment of the current Lord Street camp in 1977, the residents of this community have suffered tragedy, both real and perceived. These are modern symptoms of poverty and alienation.
- 3 The Committee has identified a number of more recent facts important to an understanding of the sequence of events that led to the introduction of the Reserves (Reserve 43131) Bill. Some are historical and others were disclosed only after the Committee called for documents from a number of persons and agencies. The following outline of pertinent facts is presented to assist the reader in understanding the report.
- 4 There were, of course, many other important facts ascertained and many other matters into which the Committee enquired, but for a reasonable understanding of what occurred, these are sufficient.

Recent History of the Lord Street Camp

- 5 The following is a recent history of the Lord Street camp. In stating these facts the Committee recognises that there are other historical facts:

July 19 1994	(1) Reserve 43131 at Lord Street vested in SVNAC. The Corporation had been offered freehold title but elected reserve status because of Native Title implications.
February 12 1999	(2) Death of Susan Taylor at Lord Street camp.
October 22-30 2001	(3) Coronial Inquest into Susan Taylor's death.
November 21 2001	(4) Coroner's Report on Susan Taylor Inquest.
January 15 2002	(5) Gordon Inquiry commenced.
April 26 2002	(6) Interim Gordon Report.
July 31 2002	(7) Final Gordon Report.
August 2002	(8) Directors General Taskforce established to advise Government on response to Gordon Report.
August 2002	(9) Directors General established smaller Directors General group (DGGIG) to implement Government's response.
August 15 2002	(10) Hon Alan Carpenter MLA, Minister for Indigenous

	Affairs, was reported as stating that management order should be revoked because SVNAC had failed to manage Reserve for benefit of Aboriginal persons. ¹
August 20 & 27 2002	(11) Minister for Lands, Hon Alannah MacTiernan MLA meets SVNAC at Lord Street camp to negotiate new management order.
October 1 2002	(12) Government removed demountable school building from Lord Street camp.
October 11 2002	(13) Management order revoked and new order put in place guaranteeing authorities' right of entry to Reserve. SVNAC given six months to prepare management plan.
December 3 2002	(14) Government tabled "Putting People First" a response to Gordon Report: rejected recommendation for memoranda of understanding between agencies and SVNAC.
December 4 2002	(15) Community Inspection Audit of Lord Street camp undertaken by Department of Health, DCD, DET and WAPS. Media attended despite assurances to contrary.

Pertinent facts disclosed to the Committee

- 6 Some of the pertinent facts disclosed as a result of the Committee's inquiry are as follows:

November 2002	(16) Inter-agency working group established by DIA to negotiate with SVNAC and co-ordinate service delivery.
March 2003	(17) ATSIC endorsed its National Family Violence Policy.
March 11 2003	(18) Meeting between DIA, DHW and representatives of Noongar Regional Council of ATSIC at which closure of the four Urban Aboriginal Camps was raised in discussions.
April 29 2003	(19) ATSIC Perth Regional Council Chairman wrote to Richard Curry, Director General, DIA confirming ATSIC opposition to closure of the four Urban Aboriginal Camps.
March 14 2003	(20) DGGIG resolved to make submission to the Cabinet Standing Committee on Social Policy that the safety of women and children at the Lord Street camp could not be guaranteed because of management structure.
March 21 2003	(21) Inter-agency meeting at DIA initiated by DGGIG to discuss progress with service provision and compile data on services to SVNC.
April 4 2003	(22) Proposed management plan for Reserve submitted to

¹ *The West Australian*, 15/08/02.

	Minister for Lands by SVNCAC.
April 22 2003	(23) SOGIG presented with summary notes of services to SVNC. Several service providers reported no progress.

The immediate happenings:

- 7 Facts disclosed to the Committee about events immediately before the decision to close the SVNC are as follows:

April 29 2003	(24) Journalist Colleen Egan commenced enquiries as follow up to <i>The West Australian</i> report of August 15 2002 that Minister Carpenter wanted management order revoked and the SVNC closed. Egan anticipated a story along the lines that Minister Carpenter either had been overruled by other members of Cabinet or had not done anything to carry it out. (25) Her enquiries took her to a number of Ministers and departments. (26) Her enquiries were reported back to the Premier's Principal Media Adviser, Kieran Murphy.
May 1 2003	(27) Murphy talked to Premier in corridor immediately before Premier chaired Strategic Management Council Meeting and informed him of Egan's enquiries. (28) Murphy reported Egan's enquiry as involving specific allegations and that "nothing had changed" at the SVNC and he suggested the Premier question the Directors General about this.
May 1 2003	(29) Premier raised question of SVNC with Directors General under 'Other Business' at end of Strategic Management Council Meeting. (30) The Directors General of DIA and DCD informed the Premier that "nothing had changed" and the women and children at SVNC were at unacceptable risk.
May 1 2003	(31) Premier ordered urgent action to find a solution and instructed his Chief of Staff, Sean Walsh, to coordinate and chair meetings of senior bureaucrats to make a recommendation to the Government.
May 1 2003 pm	(32) First of meetings of senior bureaucrats chaired by Walsh. Various proposals discussed. Curry raised issue of ATSIC acceptance. Mick Gooda, ATSIC State Manager, attended another meeting later that day and was instructed to seek ATSIC Regional Council's view on closure. Gooda advised that ATSIC would be "ok" with plan as it was consistent with ATSIC Family Violence Policy, and suggested that it happen quickly and women and children

	be looked after.
May 2 2003	(33) Meeting of senior bureaucrats. Lynsey Warbey, Manager, Gordon Implementation Secretariat Secretariat, gave preliminary legal advice received from CSO. Issues of natural justice and notice periods required under LAA process for the revocation of management orders discussed and concerns expressed about using ministerial powers under LAA. DOLA officer suggested Reserves Bill. Gooda advised that ATSIC willing to participate in a review of the camps and that if the safety of women and children could not be “guaranteed”, the SVNC should be shut down. Gooda listed conditions of ATSIC support, including that the Reserve be maintained for Aboriginal use.
May 2 2003(pm)	(34) DCD attended Lord Street camp at request of residents. 13 year old girl temporarily residing there leaves with them voluntarily. The girl had run away from her father and gone to the Lord Street camp. Residents were afraid that her presence would cause trouble with her father.
May 2 2003	(35) Murphy spoke to Egan and was told of specific allegations regarding incidents involving Lord Street camp. He promised her an exclusive on an important story if she held off publishing.
May 5 2003	(36) Warbey and Grahame Searle, Acting Chief Executive Officer, Land Information, DOLA, met with Deputy Crown Solicitor at CSO seeking advice on legal matters. Option of revoking the management order by legislation discussed. Later that day, Warbey briefed meeting of senior bureaucrats on advice that there was no reason why an appropriately worded Reserves Bill could not be employed. Murphy also provided information about specific allegations disclosed by Egan. Decision made to proceed with Reserves Bill.
May 5 2003	(37) Legal Officer, DCD, advised Jane Brazier, Director General, DCD, that proposed SVNCAC management plan was inconsistent with management order in relation to Clause 3 on access.
May 6 2003	(38) Local service providers met to identify requirements for Government’s Action Plan for closure of SVNC.
May 7 2003	(39) Meeting chaired by Walsh and Ministerial Officers, which asked for Cabinet Minute to carry out closure plan.
May 7 2003	(40) Mike Daube, Director General, Health, wrote to Brazier critical of SVNCAC management plan and stating that it was inconsistent with patient confidentiality.

May 8 2003	(41) Senior bureaucrats receive written legal advice from CSO on options being considered arising from meeting with Warbey and Searle on 5 May 2003. Advice pointed out possibility of interim injunctions and that Reserves Bill could be employed.
May 8 2003	(42) Meeting of Directors General at DPC.
May 8-11 2003	(43) Various meetings involving Warbey to finalise Cabinet Minute.
May 12 2003	(44) Cabinet Meeting: Directors General of DIA and DCD with Warbey attended to brief Cabinet on SVNC. Cabinet agrees to closure plan and gives approval for drafting of Bill.

The process reaches Parliament

8 The facts relating to the process in Parliament are as follows:

May 12 2003	(45) Premier advised Parliament of Cabinet's decision and says he was told of problem the week before.
May 13 2003	(46) Meeting between Warbey, Sandra Eckert, Legal Officer DOLA, and Parliamentary Counsels Greg Calcutt and Anne O'Dwyer at PCO to draft legislation as a matter of urgency.
May 14 2003	(47) Report in <i>The Australian</i> by Egan that Government intended to close camp.
May 14 2003	(48) Premier made Ministerial Statement to Assembly foreshadowing tough action on SVNC and Government's intention to close the Lord Street camp.
May 14 2003	(49) Premier met with two ATSIC executive representatives and one Councillor for Perth Noongar Regional Council from area where Reserve is located.
May 14 2003	(50) Warbey and Eckert briefed Premier on Bill.
May 14 2003	(51) Late at night Leader of Opposition informed of Bill.
May 15 2003 10.30 am	(52) Briefing for Opposition arranged but cancelled because "Bill not available".
May 15 2003 1.00 pm	(53) Hon Derrick Tomlinson MLC received copy of Bill.
May 15 2003 1.15 pm	(54) Leader of Opposition received copy of Bill.
May 15 2003 3:40 pm	(55) Bill introduced into Assembly, declared urgent and passed in approximately one hour. (56) In course of debate Leader of Opposition observes that the Bill had not been

	scrutinised in Assembly but would be in Council.
May 16 2003	(57) Gooda, on behalf of ATSIC, and at the request of Leader of Opposition in Council, wrote to confirm ATSIC support for the Bill because of ATSIC's view that Government could not guarantee the safety of women and children at the SVNC.
May 16 2003	(58) Robert Bropho, spokesperson for SVNCAC, re-arrested on revived sex charges.
May 16 2003 9.00 am	(59) Council Opposition Bill briefing by Government policy officers and Gooda. Specific allegations cited. (60) Part way through meeting, some government officers left to brief Greens(WA) members at 10.00am. Director General DCD attends this briefing.
May 16 2003	(61) Bill introduced in Council. (62) Amendments moved by Hon Peter Foss QC MLC and accepted. (63) Bill sent to Assembly seeking agreement on Council amendments.

After the Bill passes the Legislative Council

9 The facts after the Bill was passed by the Council are as follows:

May 16 2003	(64) Government commenced media campaign against Council amendments.
May 19 2003	(65) Leader of Opposition's Office requested meeting between the drafter of the amendments, Hon Peter Foss QC MLC, and Premier to discuss amendments, and continued to do so until meeting took place on May 30 2003.
May 21 2003	(66) DCD social worker allegedly intimidated by Robert Bropho and Iva Hayward Jackson at SVNC.
May 21 2003	(67) Hon Peter Foss QC MLC was informed that the Premier's Office had indicated that it did not want him to be at the meeting with the Premier scheduled for the next day. Hon Peter Foss QC MLC provided a memorandum to the Leader of the Opposition regarding the proposed meeting suggesting further amendments he was prepared to propose to meet the Government's objections.
May 22 2003	(68) Meeting between Premier, Leader of the Opposition, Hon Derrick Tomlinson MLC, Walsh and Curry. Leader of the Opposition informed the Premier of Hon Peter Foss QC MLC's suggestions and requested Government to meet him to discuss solution to impasse.

May 26 2003	(69) Leader of Opposition's office rang Premier's Office every day thereafter to request meeting.
May 27 2003	(70) Government received CSO advice on Council's amendments.
May 29 2003	(71) Premier refers to CSO opinion critical of the Council's amendments at press conference.
May 30 2003	(72) Hon Peter Foss QC MLC received CSO opinion. (73) Hon Peter Foss QC MLC met with Walsh and Eckert to discuss possible amendments. He asked them to suggest what they wanted and he also made some suggestions. The Government participants indicated they were not in a position to make any decisions.
June 3 2003	(74) Assembly rejected Council amendments and alternative amendment proposed (Sunset clause) in Message to Council.
June 7 2003	(75) Lord Street residents vacated Reserve.
June 10 2003	(76) Council considers Assembly Message and agrees to not insist on its amendments and accepts the Assembly's amendment.
June 12 2003	(77) Act assented to and comes into force.

After the Bill became law

10 The facts after the Bill became law are as follows:

June 13 2003	(78) Administrator took possession of Reserve (this was the 26 th anniversary of the Lord Street camp being established).
June 25 2003	(79) Select Committee on Reserves (Reserve 43131) Bill 2003 established. Opposed by government members.
July 22 2003	(80) Bella Bropho commenced legal action in Federal Court on behalf of former residents claiming breaches of <i>Racial Discrimination Act 1974</i> (Cth).

11 The following commentary shows where the Committee considers things went wrong and where mistakes were made. The Committee indicates where improvements can be made, where the system was at fault, where procedures should have been adhered to more strictly, and where departures from usual procedures caused errors to be made.

12 References to facts are to the fact number in the table, namely (80) for the very last fact.

Findings on the Principal Participants

13 A number of the principal participants in the events came to them with negative attitudes – even to the extent of prejudice and dislike of other significant players - or with private agendas:

- Robert Bropho had been part of the group of Nyungahs whom, all their lives, authorities have “moved on” from various places in the metropolitan area as the encroaching white society took objection to their presence. Robert Bropho distrusted governments but had found that if he took a strong stand for his rights he could achieve changes. His camp at Lord Street was a remarkable achievement in terms of obtaining benefits for his family. At the same time, his high profile as an activist earned him widespread distrust. He has been the subject of considerable adverse publicity – much of it over matters that the Gordon Report² had identified as endemic in Aboriginal communities throughout the State.
- Richard Curry, the Director General of DIA, displayed strong views on matters of policy. He believed in ‘firm’ action generally and in particular was keen to do something about the “urban settlements” as the four fringe camps were described. He regarded them as a “failed experiment”. He drew inferences against Robert Bropho which the facts did not justify and, in advance, had formed the view that Robert Bropho and the SVNAC be removed from the management of the Lord Street Reserve and that it be vested in the Aboriginal Affairs Planning Authority.³
- Mick Gooda, the State Manager of ATSIC, in addition to advancing ATSIC’s Family Violence Policy, had strong personal feelings against domestic violence and child abuse. Previous to the events described here, he had no direct involvement in allegations of abuse at the SVNC. After he attended the meeting of senior bureaucrats on May 1 2002, others led him on ‘facts’ regarding child abuse and family violence at the SVNC. The Committee has found some of these ‘facts’ to be untrue.
- Jane Brazier, the Director General of DCD, has considerable empathy for clients of her Department, but, in this instance, she appears to have been marginalised in the decision-making process. Her capacity to prevail in interdepartmental discussions, even in areas within her responsibility, appears to have been rendered impotent.

² Report of the Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, July 31 2002.

³ Mr Curry is Commissioner for Aboriginal Planning under section 10 of the *Aboriginal Affairs Planning Authority Act 1972*.

Other Principal Participants

- Kieran Murphy, the Premier's Principal Media Adviser;
- Sean Walsh, the Premier's Chief of Staff;
- Colleen Egan, a journalist with *The Australian* and *Sunday Times*; and
- The Premier.

FINDINGS ON CRITICAL FACTS

14 There are also some important historical events that proved critical for the events that followed:

- The Susan Taylor Inquest;
- The Gordon Report;⁴
- The removal of the schoolroom at Lord Street;
- The Governments' rejection of the sole Gordon Report recommendation directly affecting the SVNC, that departments seeking access negotiate memoranda of understanding with its management body, the SVNCAC; and
- The change in the management order and the subsequent negotiation of the SVNCAC management plan.

The remaining critical events can be examined in this historical context.

The Community Inspection Audit

15 The 'audit' as it was termed by the Government, or the 'raid' as it was termed by the SVNCAC (15) was a high-handed act. It smacked of the way Aboriginal people were routinely treated by police and welfare officials in the past, but is now discredited in public policy. What is surprising was that there was no indignation expressed by key government officers, particularly officers of DCD and DIA entrusted with protecting the interests of Aboriginal people, at what was clearly improper.

16 The 'audit' made no distinction between alleged perpetrators and their victims. Instead, with only 15 minutes notice, in the presence of an inordinate number of police officers⁵ and a curious media contingent, all residents were assembled in an open area

⁴ Report of the Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, July 31 2002.

⁵ The Committee received evidence that eight police officers attended.

outside their homes and lectured by government officers. It was humiliating and intimidating and quite in breach of their rights as citizens in a democracy governed by the rule of law. It could only have made it more difficult for residents to trust government service agencies. This was a significant event leading to what occurred later.

Recommendation to remove Reserve management from SVNAC

- 17 Mr Curry appears to be the one who pushed the recommendation to remove the SVNAC from management of the Reserve. It had been preceded by an apathetic performance or no performance by departments, including that of which Mr Curry was the Director General. Those departments that attempted to do something were positive in their attitude to the SVNC. Those that had not, including DIA and DCD, were willing to blame the SVNC and its management for lack of progress.
- 18 Evidence given to the Committee establishes that:
- DCD, apart from two social workers at the Cannington Office assigned to particular cases, did nothing until the Community Inspection Audit in December 2002;
 - DHW had given no exceptional priority to previous housing applications from Lord Street residents who wanted to leave the camp;
 - The Department of Health, apart from an Aboriginal Health worker at Midvale Health Centre, were not involved;
 - DIA was not involved other than being a coordinating agency for service provision to the SVNC and through heritage matters and its Urban Settlements Project; and
 - Police had tried and were succeeding in establishing a mutual working relationship with the SVNAC and residents of the camp.
- 19 It is concerning that, in the events that emerged subsequently, senior bureaucrats proffered to the Premier advice that was unfounded. It is even more concerning that, had they checked, they would have found that their departments were inactive in regard to the Lord Street camp.
- 20 Had the Directors General comprising DGGIG checked what their departments were doing before making their decision, the Premier might have been given correct information at the Strategic Management Council meeting on May 1 2003.

The Colleen Egan telephone calls to departments

- 21 The calls by Colleen Egan appear to have caused an urgency over the SVNC that the Directors General previously had not perceived (24).
- 22 Ms Egan was passed from office to office and each office, in accordance with instructions in these matters, reported her enquiry to DPC. Kieran Murphy, the Premier's Principal Media Adviser, was informed of these calls and saw them as significant. Unfortunately, Mr Murphy apparently misunderstood the nature of Ms Egan's enquiry. This compounded the misleading advice given by the Directors General and led to the events that followed.

Keiran Murphy informs the Premier of Colleen Egan's enquiry

- 23 Mr Murphy told the Premier of Ms Egan's enquiry as the Premier walked down the corridor to the Strategic Management Council meeting (28), and told him what Ms Egan had said - that "nothing had changed" at the SVNC and that specific allegations had been made of continuing abuse. The timing was unfortunate because it led to the next event.

Premier asks Directors General for information during Other Business

- 24 As a consequence of what Mr Murphy told him, the Premier raised it in 'Other Business' at the end of the meeting. His surprise request to the assembled Directors General was unfortunate. Without previous warning that the Premier would seek particular advice about the SVNC, the Directors General did not have an opportunity to ensure that they had accurate information.

Directors General give misleading response

- 25 The Directors General, particularly of DIA and DCD, gave responses to the Premier based on incorrect, misleading and unsubstantiated anecdotal evidence. It is interesting that Ms Egan said she would not have published the allegations without checking them, yet the Directors General were willing to condemn the SVNC without even that elementary precaution.
- 26 The Directors General showed either weakness of character in not revealing to the Premier the paucity of their information or lack of diligence in not testing the veracity of information given to them or their departments in areas that they should have known to be a Government priority.
- 27 Mr Curry took a strong lead in advocating the removal of the SVNCAC from management of the Reserve. Ms Brazier, who should have urged caution, merely confirmed the 'facts'. The process at Strategic Management Council has inherent procedural problems when important matters are raised under 'Other Business'.

Order to Chief of Staff to solve the problem

- 28 Acting on what he had heard, the Premier ordered his Chief of Staff, Sean Walsh, to find an immediate solution (31). This led to further problems. By law and by job description, the Chief of Staff had no authority over public servants. Despite his influential position close to the Premier's ear, he is in fact relatively junior in comparison with the Directors General.
- 29 In this instance at least, Mr Walsh was vested with the apparent authority to speak for the Premier, and for his pronouncements to be taken as though they were statements of Government Policy, which once formed, public servants were obliged to carry out – no matter how much they may have advocated otherwise.
- 30 This process completely bypassed the convention that public servants should advise vigorously and honestly and governments should decide in the light of their advice. By the time the advice came to the responsible Ministers, the political content already had been inserted and matters eliminated that might otherwise have been argued vigorously. The matter of the SVNC being raised without warning under 'Other Business' during the Strategic Management Council meeting aggravated this.

The promise by Keiran Murphy to Colleen Egan of an exclusive

- 31 Mr Murphy formed the view that there was an imminent press story about incidents at the Lord Street camp (28), in which the Government would be criticised for having done nothing. To head this off, he promised Ms Egan an exclusive on a significant action that the Government was about to take (35).
- 32 This promise made Mr Murphy's active participation in decision making all the more improper. Under any circumstances, his active participation cannot but have helped to drive the process in a direction that addressed the perceived public relations problem rather than the abuse that may have been endured by the residents of the camp. In particular, Mr Murphy's obligation to deliver to Ms Egan a dramatic and media-worthy response militated against a considered and measured resolution. That does not excuse the failures of the Directors General, but it contributed to the atmosphere in which they occurred.

Failure to check facts relied on later

- 33 The incident involving the 13 year old girl (34) became grossly distorted and exaggerated. It was relayed to members attending Government briefings on the Bill as DCD officers attending the Lord Street camp to remove a girl who had been persistently taken to the camp against her will and who was removed by DCD using its compulsory powers to prevent abuse of children. Nothing could have been further from the truth.

- 34 The real facts, as detailed to the Committee by the officers actually involved, could have been confirmed easily. They were not. Instead, the embellished untruthful version was given to members of the Opposition and the Greens (WA) to persuade them of the justness and urgency of the Government's action and to pass the Bill expeditiously (59).

The failure to check alternative solutions

- 35 Although the Government had mapped out an Action Plan for the closure of the SVNC that included the provision of Homeswest accommodation that some of the residents could be moved to after the Bill was passed, no one checked the current housing applications of those same residents to move. This fact emerged only in questioning by the Committee. In fact, before the decision was made to close the camp, five of the resident families had applied for Homeswest accommodation. Their applications were current and some were years old.
- 36 One of these applications made by a woman living in a refuge had been approved by DHW but vetoed by DCD to prevent a denial of access to a child by the male partner. The facts in possession of DCD at that time identified the male partner as one of the individuals who was of significant concern to DCD. This male was later named by Government in its Action Plan as a person to be removed so as to facilitate access by agencies to women and children residents.

The speed with which events progressed

- 37 Events in this matter moved with a speed that militated against the true facts being ascertained, or proper advice being tendered. The decision to act rapidly, by-passing all normal processes, was justified on false information.
- 38 The haste in which the Bill was drafted and the very late time at which it became available (52), (53) and (54), meant that the Assembly did not scrutinise the Bill. That role was left to the Council. This could be seen as an abdication of the Assembly's legislative responsibility. When the Opposition agreed to pass the Bill through the Assembly on the proviso that the Council would scrutinise it, it placed an intolerable burden on the Council. When Opposition members of the Council disagreed with the Assembly's decision and amended the Bill, political capital was made of what the Government portrayed as dissension among Opposition members of the two Houses.
- 39 In fact, the failure to scrutinise the Bill in the Assembly greatly contributed to the failure of either House of Parliament to scrutinise it properly. The Bill was not scrutinised in the various party rooms. All participants seem to have gone to water in the face of the threat of an "imminent" repeat of the "Susan Taylor incident". Both Houses threw out principles and did not follow their usual procedures for dealing with proposed legislation. When the Council did amend the legislation it was criticised by

the Government and non-government members were subjected to threats of being made responsible for further deaths at the Lord Street camp.

The failure of the Government to follow usual processes to resolve inter-house disputes

40 Once the Council had passed amendments to the Bill, they were never the subject of earnest negotiation between persons able to resolve the dispute. When finally a meeting took place with the drafter of the amendments, Hon Peter Foss QC MLC, on May 30 2003, the failure of the Government to send persons with authority to negotiate showed an unwillingness to resolve the impasse.

The failure of the Houses to insist upon their usual processes for considering Bills

41 Both Houses, but the Council in particular, have procedures in their Standing Orders for Bills to be dealt with in a measured way to ensure they are properly scrutinised. When Standing Orders are suspended, or where Bills are dealt with urgently, there is a real chance of error. In the Council, the Government, even if it had the support of the Greens (WA) members, lacked the absolute majority necessary to suspend Standing Orders.⁶ In this case, they were not supported by the Greens (WA). The Opposition supplied the required majority. Of the three motions to suspend Standing Orders to enable the Council to deal with the Bill on May 16 2003, two were passed by absolute majority after divisions called by the Greens (WA)⁷ and a third was passed without division.

FINDINGS

42 Findings are grouped as they appear in the text at the page number indicated:

Page 37

Finding 1. The Committee finds that the most likely basis for the Government's rejection of the Legislative Council amendments to the Bill was its legal advice.

⁶ In this context this also includes the Council's Sessional Orders in place on 16/05/03.

⁷ *Parliamentary Debates (Hansard)*, 16/05/03, pp.7965-7966. Division 1: that so much of the sessional order be suspended as to enable the House to move to the Bill contained in message No 75, passed by absolute majority 21-5. Division 2: that so much of the standing orders be suspended to enable the vote on the second reading stage of the Reserves (Reserve 43131) Bill 2003 be taken at 4.00 pm and that the vote on the third reading stage of the Bill be taken at 5.45 pm today, passed by absolute majority 22-5. A third question - that so much of standing orders and sessional orders be suspended as will enable the House to progress through all stages of the Reserves (Reserve 43131) Bill 2003 at this day's sitting was passed with absolute majority without division.

Finding 2. The majority of the Committee finds that once the Bill was amended in the Legislative Council the Government took the opportunity to encourage the media to portray the events in the Council as an issue of leadership in the Liberal Party.

Finding 3. The Committee finds that the evidence supports the Government's allegation that Robert Bropho intimidated a DCD social worker whilst she was undertaking her duties at the Reserve on May 21 2003. However, this was at a time after the Government had announced its intention to close the SVNC, when it would be expected that feelings against the Government would be running high.

Finding 4. The Committee finds that contrary to the impression given to the Committee by a senior government officer and a claim made during Government briefings on the Bill, a DCD social worker did not take stress leave after being confronted by Robert Bropho and another male SVNCAC member on May 21 2003.

Finding 5. The Committee finds that the practice of visiting the SVNCAC administration office to determine whether and where a person may be does not compromise patient or client confidentiality. Merely because a person attends the office and asks to see a named person reveals nothing of the nature of the client's medical condition or other confidential matter.

Finding 6. The Committee finds that there was no requirement in the SVNCAC management plan for government workers to attend the SVNCAC administration office as a precondition of obtaining access to members of the Community.

Page 77

Finding 7. The Committee finds that the practice of attending the office of the SVNCAC was encouraged by the Midland office of DCD and the SVNC inter-agency working group, other than in circumstances where a proposed visit involved a child protection matter.

Page 82

Finding 8. The Committee finds that Jane Brazier, Director General of DCD:

- was aware of the importance to her Department of the matters raised by the Coroner's Report into the death of Susan Taylor and the Gordon Report;
- despite the above, failed to ensure that Midland DCD, the Office with primary responsibility for the SVNC, visited the Lord Street camp;
- failed to communicate with the Acting Manager of DCD Midland, her November 2002 concerns regarding the safety of women and children at the Lord Street camp; and
- had no proper basis upon which to advise the Premier on May 1 2003 that 'nothing had changed' at the Lord Street camp.

Page 87

Finding 9. The Committee finds that, apart from two social workers at its Cannington Office, DCD made little concerted effort to establish a meaningful relationship with Robert Bropho and other residents of the SVNC. The number of different staff visiting and the relatively few visits to the Community by DCD meant that the key requirement of relationship building with SVNC management or residents could not be achieved.

Page 107

Finding 10. The Committee finds that Richard Curry, Director General of DIA:

- had a preconceived view that Aboriginal urban settlements had failed to advance the interests of Aboriginal people;
- was eager to progress the Urban Settlements Project as part of a response to his view that Aboriginal urban settlements were a 'failed experiment';

- like his Minister, who publicly favoured the closure of the Lord Street camp, held the view that the SVNCAC, and in particular Robert Bropho should be removed from the management of the Reserve;
- like his Regional Director, David Pedler, relied on anecdotal accounts for his information on the SVNC;
- relied on this anecdotal information to support his view that the SVNCAC should be removed from the management of the Reserve;
- saw the removal of the SVNCAC and residents of the Reserve as an opportunity to advance the Urban Settlements Project on the now vacant Crown land;
- provided advice to the Premier that agencies were doing all they could within the limits of access and there was considerable risk to women and children at the SVNC; and
- had no proper basis for providing his advice to the Premier.

Page 112

Finding 11. The majority of the Committee find that the argument that attending at the SVNCAC administration office and requesting to see someone could be viewed as breaching that person's patient confidentiality is fallacious. No evidence was presented to the Committee that health workers visiting the SVNC were asked the nature of their visit or that providing confidential medical information was a condition for access to an individual.

Page 118

Finding 12. The Committee finds that there is no evidence to support the claim made by the Department of Health that following the Gordon Inquiry and the October 2002 management order, access to health services was being deliberately interfered with or impeded by the management of the SVNC.

Page 119

Finding 13. The Committee finds that there was no evidence of a denial of clinical services to residents by the management of the Reserve. On the contrary, residents had access to a general medical practice and were assisted in this regard by Department of Health workers. In addition, the Department of Health acknowledged that preventative health

services, although largely limited to an Aboriginal health worker, were being provided and progress was being made.

Page 127

Finding 14. The majority of the Committee find that the Government's plan for rehousing former residents of the SVNC by reserving two houses for two of the alleged perpetrators of abuse and their families, including their wives and children, did not achieve the Government's stated objective of separating the alleged perpetrators of abuse from women and children.

Page 127

Finding 15. The Committee finds that DHW was not in a position to accommodate former residents of the SVNC quickly, as they had not anticipated their quitting the Reserve and had significantly underestimated the number of families and individuals requiring assistance.

Page 127

Finding 16. The Committee finds that on two occasions in early and mid 2002, DHW denied priority applications for accommodation from former residents of the SVNC who ultimately returned to the SVNC and were residing there at the time the Bill was passed. The applications cited domestic violence as the reason for their need for alternative housing. One applicant was living in a womens' refuge and the other had claimed his defacto partner had stabbed him in the head.

Page 127

Finding 17. The Committee finds that in most cases, DHW accorded no extraordinary priority or priority to applications for housing assistance by residents of the SVNC over any other applications. However, DHW did act on an urgent basis when three families living outside the Reserve, who claimed intimidation or harassment from SVNC residents, made applications for priority assistance. Two of these families had members who were connected to the criminal prosecutions against Robert Bropho.

Page 129

Finding 18. The Committee finds that there is no evidence to suggest that one of the Government's motivations for the Bill, and its plan to remove all residents and the SVNCAC from the Reserve, was to make the prospect of developing adjacent land at the Pyrton site more feasible.

Page 142

Finding 19. The majority of the Committee finds that from Superintendent Parkinson downward, WAPS showed the best practices in the Government for dealing with indigenous communities. Superintendent Parkinson set policy and processes and this flowed through and was adopted at Inspector, Sergeant, Constable and APLO level. Staff changes were made to ensure policy and processes were carried out. This approach resulted in little or no problems with access by police to the SVNC or its residents.

Page 157

Finding 20. The majority of the Committee finds that the actions of the Premier were primarily motivated by:

- the desire to protect women and children living at the SVNC;
- the concern that despite the Premier's clearly expressed views, and having set up a high level bureaucratic mechanism for implementation, he was informed by those same bureaucrats eight months later that the circumstances in the Lord Street camp were much the same. He had been told this initially not by them but through a journalist who his Principal Media Adviser believed was going to publish a story criticising Government inaction on the SVNC;
- the need to remove a likely impediment (the SVNCAC and in particular Robert Bropho) to the successful implementation of the Government's \$75 million response to the Gordon Inquiry. This was because the public perceived that the Government's resolve in implementing the Gordon Report recommendations was linked to progressing improvements at the SVNC. This was despite the fact that the Gordon Inquiry was far broader than the specific issues at the SVNC and was predominantly concerned with how service delivery could be improved to deal with child abuse, domestic violence and substance abuse in the Aboriginal community; and
- the need to deal with the SVNC in a manner that would indicate the Government's earnest resolve to deal with the problem of child sex abuse, domestic violence, substance abuse and self-harm in the Aboriginal community.

Page 191

Finding 21. The majority of the Committee finds that:

- one witness was the likely source of information regarding the three allegations used during Government briefings on the Bill on May 16 2003;
- this witness had no primary evidence to substantiate these allegations when she passed them on to government departments; and
- as a result of its investigations into the three allegations used during Government briefings and other allegations made by this witness, the Committee has concluded that this person was unreliable and not a credible witness.

Page 192

Finding 22. The Committee finds that at the time of her leaving the SVNC on May 2 2003, there was no credible evidence that :

- a 13 year old girl was forcibly taken to the SVNC by a resident of that Community;
- the girl was removed from the SVNC by the police or DCD due to a risk of physical or sexual abuse at the SVNC; or
- the girl was removed by DCD officers exercising powers under the *Child Welfare Act 1947*.

Page 192

Finding 23. The Committee finds that DPC, which prepared the Cabinet Minute, and DIA which took responsibility for it, relied upon DCD to provide the facts relating to the 13 year old girl. DCD failed to check with its officers regarding the events surrounding the 13 year old girl leaving the SVNC. This would have quickly confirmed the true situation.

Page 192

Finding 24. The three non government Committee members who attended the Government briefings find that the Government's allegation made during briefings given on May 16 2003 that a 16 year old youth had both of his legs broken by a resident of the SVNC in August 2002 could not be verified. One person was identified as the victim by Ms Egan's sources and a witness before the Committee identified this person's brother as

the victim. Both DCD and WAPS advised the Committee that they could not establish that this incident had occurred.

Page 193

Finding 25. The Committee finds that departments failed to check with police to determine the known facts surrounding the allegation that a 16 year old resident of the Lord Street camp had both of his legs broken by a resident of the SVNC during August 2002.

Page 193

Finding 26. The three non government Committee members who attended Government briefings on the Bill on May 16 2003 find that DCD relocated a former resident of the SVNC from her Homeswest home as a result of the former resident's assertion that she was the subject of intimidation or harassment by two residents of the SVNC. However, the Committee has not been able to establish whether this alleged intimidation or harassment occurred and there is no evidence to suggest that, if it did, this was to force the resident to return to the SVNC.

Page 193

Finding 27. The Committee finds that had the three allegations been thoroughly checked, departments would have quickly realised that two of the three allegations were false and would not have used these examples in Government briefings to non-government members on May 16 2003 to justify the Government's proposed action against the SVNC.

Page 193

Finding 28. The majority of the Committee finds that Robert Bropho exercised control over access to the SVNC both prior to and after the change in management order in October 2002. However no compelling evidence was presented to the Committee that, since the introduction of the October 2002 management order, Robert Bropho or persons under his direction hindered interviews and reduced the likelihood that disclosures would be made.

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Finding 29. The majority of the Committee finds that the behaviour of SVNC residents who requested third parties to be present during interviews was indicative of a longstanding mistrust by Aboriginal persons of Government agencies (particularly ‘welfare’ agencies). It was not a calculated attempt by SVNC management to prevent disclosure of child sexual abuse, substance abuse or domestic violence.

Page 195

Finding 30. The Committee finds that the Parliament did not receive accurate and complete information in order to assist members to reach a decision on whether or not to support the Bill.

RECOMMENDATIONS

43 Recommendations are grouped as they appear in the text at the page number indicated:

Page 212

Recommendation 1: The majority of the Committee recommends that the Ministerial Chiefs of Staff and other Ministerial staff not chair meetings of public servants or be placed in a position where their views may be interpreted as the views of their Minister – to be acted on as if the Minister were present and had made that direction. Chiefs of Staff should be briefed as to the effect of Section 74 of the *Public Sector Management Act 1994* and on the dangers of by-passing the normal constitutional processes of a responsible government.

Page 212

Recommendation 2: The majority of the Committee recommends that it is not satisfactory, in light of the prohibition contained in section 74 of the *Public Sector Management Act 1994*, for the management of the Whole of Government role of the Premier to fall by default to a Ministerial Officer. The Committee recommends that the Department of Premier and Cabinet address this structural problem.

Page 212

Recommendation 3: The majority of the Committee recommends that, if the Premier holds meetings with Directors General in the absence of their Ministers, such meetings be confined to the provision of information. If the Premier intends that decisions are to be made during meetings with Directors General, the relevant Ministers responsible for the administration of the affected departments should be present.

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Recommendation 4: The Committee notes that Cabinet has a 10-day rule that is intended to prevent late business being considered but that the Strategic Management Council meetings do not. The majority of the Committee recommends that the Department of Premier and Cabinet consider a similar process relating to late business items at Strategic Management Council meetings.

Page 214

Recommendation 5: The majority of the Committee recommends that the Legislative Council Standing Orders be amended as follows:

“Any motion to suspend Standing Orders to enable passage of a Bill shall be subject to the provision that any such suspension is only until such time as a member shall raise an objection under this Standing Order. Where pursuant to this Standing Order a member raises an objection that the Bill by its provisions–

- (a) imposes a restriction on the rights of the individual that is excessive and unusual;
- (b) deprives people of rights without compensation; or
- (c) decides a factual matter against an individual without that individual having an opportunity to be heard,

such order shall terminate and cease to have effect and the President shall consider whether the Bill does any of those things, and if the President forms that opinion shall not permit any further motion for suspension except by leave of the House.”

CHAPTER 1

INTRODUCTION

ESTABLISHMENT AND RATIONALE

- 1.1 The Legislative Council (Council) established the Select Committee on the Reserves (Reserve 43131) Bill 2003 (Committee) on June 25 2003⁸ in response to the extraordinary events surrounding the passage of the Reserves (Reserve 43131) Bill 2003 (Bill).
- 1.2 The Bill was introduced by the Premier into the Legislative Assembly (Assembly) on the afternoon of Thursday, May 15 2003, declared an urgent Bill and was passed after approximately one hour of debate. The Opposition received a copy of the Bill during the luncheon adjournment less than two and a half-hours prior to it being introduced. A briefing on the Bill intended to be given to Opposition members at 10:30am that morning was cancelled due to the final print of the Bill not being available.⁹
- 1.3 The Council considered the Bill the next day. The Council's Standing and Sessional Orders were suspended to enable the Bill, and the amendments sought to be made to it, to be dealt with urgently on that day. Amendments were made to the Bill but were not considered by the Assembly until it returned from a two-week recess. The Assembly subsequently rejected the amendments and substituted its own amendment.¹⁰ After further deliberation, the Council agreed to the Bill on June 10 2003 with the only amendment being the agreement to include a sunset provision.
- 1.4 By the date of the Committee's establishment, the Bill had already passed into law having received the Royal Assent on June 12 2003.¹¹ The object of the Bill, namely the cancellation of the management order and rescinding the vesting of the Crown Reserve 43131 at Lord Street, Lockridge (Reserve), with the Swan Valley Nyungah Community Aboriginal Corporation Inc. (SVNCAC) had been achieved. The residents of that Swan Valley Nyungah Community (Community) had vacated their

⁸ Motion of Hon Jim Scott MLC as amended on the motion of Hon Peter Foss QC MLC. Agreed to as amended by division (17 ayes, 12 noes). Government members opposed the motion.

⁹ *Parliamentary Debates (Hansard)*, 15/05/03, p.7903.

¹⁰ Legislative Assembly Votes and Proceedings No 57, 3/06/03, and *Parliamentary Debates (Hansard)*, 3/06/03 and Legislative Assembly Message No. 77.

¹¹ See *Reserves (Reserve 43131) Act 2003* (No. 32 of 2003).

homes and left the land prior to the Administrator attending at the Reserve on Friday, June 13 2003 to evict its spokesperson Robert Bropho.¹²

- 1.5 It might seem curious as to why the Council would establish a committee to inquire into a Bill that it had agreed to pass. The rationale for doing so is to be found in one of the principal roles of an upper House of Parliament - the scrutiny of the decision-making processes of the Executive Government and of the legislation that is introduced to implement government decisions or policies. The purposes of this scrutiny include providing proper account of the actions of the Government and the Parliament in bringing forward and legislating an oppressive law with undue haste, and to propose checks against the hasty passage of such legislation in the future.
- 1.6 Proper scrutiny involves ensuring that legislation is debated with care and examined with caution, particularly where the legislation erodes or abrogates the rights of an individual or body that continue to be enjoyed by other citizens. In the case of this Bill, it was clearly directed at an Aboriginal corporation, the SVNAC, led by Robert Bropho, a well-known Aboriginal activist.
- 1.7 The purpose of the Bill was to revoke the management order and rescind the vesting of the Reserve in the SVNAC. The Government's view was that this action was necessary to protect women and children living at the Reserve from domestic violence, sexual abuse and substance abuse. The rights that the SVNAC held over the land at Lockridge were to be extinguished and the Government's intention was to remove all of the residents, including the victims of the alleged abuse, from the land and offer them alternate housing in the general community.
- 1.8 The Bill contained measures that are seldom ever seen in legislation that comes before the Western Australian Parliament. These measures included the removal of the rights of natural justice¹³ and of the supervisory jurisdiction of the civil courts.¹⁴ The Government intended that the Bill be introduced and passed by both Houses of Parliament in two consecutive sitting days.
- 1.9 Due to the limited time available to members of the Council during the initial debate on the Bill,¹⁵ the allegations presented by the Government to persuade members to vote in favour of the Bill and to justify its speedy passage could not be properly examined or verified. These allegations were raised in debate and during briefings

¹² This was the 26th anniversary of the Lord Street camp first being settled by 37 fringedwellers on 13/06/77. See "The Fringedweller's Struggle: Cultural Politics and the Force of History" by Sharon Delmege. Presented for the degree of Doctor of Philosophy of Murdoch University 2000, Reprint March 2003, p.189.

¹³ Reserves (Reserve 43131) Bill 2003, clause 8.

¹⁴ *Ibid*, clause 11.

¹⁵ In order to pass the Bill on the one sitting day, the Legislative Council imposed upon itself time limits on which to debate the second reading and third reading of the Bill. See Legislative Council Minutes No.63, 16/05/03.

given to members by departmental officers that day. Members were essentially asked to “take on trust” what was being said by the Government without the time usually available to consult with constituents and affected individuals to determine their views, to verify facts and if necessary seek legal or other advice.

1.10 The Council has no procedure in its Standing Orders for dealing with urgent Bills. However, in the vast majority of cases, members know the content and effect of Bills identified by the Government as urgent well before their introduction into the Council. This was not the case with the Bill. Due to:

- the significant rights that were removed from and denied to the SVNAC, its members and residents of the Reserve by the legislation; and
- the abbreviated manner in which the Bill was agreed to,

the Council considered that an inquiry of this type should proceed *post facto*.

THE GOVERNMENT’S DECISION TO LEGISLATE

1.11 The Government claimed that its decision to introduce legislation to cancel the management order and rescind the vesting of the Reserve in the SVNAC was based on information and advice it had received from senior public servants seen in the light of the Susan Taylor coronial inquest and the Gordon Report.¹⁶ This advice was that there was an unacceptable risk to the safety of women and children living at the Reserve. These risks to safety included allegations of sexual abuse of children, domestic violence, substance abuse and intimidation of residents so as to prevent the reporting of these incidents to authorities.¹⁷

1.12 The Government claimed in briefings on the Bill to some members of the Council that the SVNAC, as the management body of the Reserve, had failed to take adequate measures to deal with these risks. It alleged that some of this abuse was perpetrated by certain male members of the SVNAC involved in the management of that Community.¹⁸

1.13 Access by the women and children residents living at the Reserve to the services provided by various government agencies, primarily the Department for Community Development (DCD), was said to be hindered or obstructed by certain male members of the Community, in particular Robert Bropho and his “lieutenants”.¹⁹ Four such

¹⁶ Report of the Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, July 31 2002.

¹⁷ The Premier Hon Dr Geoff Gallop MLA, *Parliamentary Debates (Hansard)*, 15/05/03 at p.7896.

¹⁸ Notes of Hon Derrick Tomlinson MLC and Hon Peter Foss QC MLC.

¹⁹ Submission No 29 from DCD, 18/09/03, p.8 and *Transcript of Evidence*, identifying Harvey, Herbert and Richard Bropho as Robert Bropho’s “lieutenants”.

male members were identified initially²⁰ and then a further male²¹ and two females²² were referred to in the Government's plan to remove from the Reserve persons considered to be obstructing access by government agencies to women and children living there.²³ The Government's claim was that the very people who managed the Community were hindering the flow of information between government officers and the women and children who resided there.²⁴

- 1.14 This flow of information was necessary for DCD and other government agencies to determine whether there were circumstances existing at the Reserve to justify the exercise of their statutory powers. The need to "engage", that is to build relationships of trust with the residents, was said to be essential to this process of information exchange.²⁵
- 1.15 The Committee has heard from witnesses that the sources of information to the Government in relation to what was allegedly occurring at the Reserve varied from allegations made by residents and former residents to those made by persons outside the Community who were told of "the goings on" inside the Community. This included information on specific incidents provided to a journalist that was passed on to the Premier's Office and in turn to the Premier.
- 1.16 This media query prompted the Premier to ask questions during a meeting of the Strategic Management Council, a regular meeting between the Premier and the Directors General of government departments. Advice provided at that meeting was that there was an unacceptable risk to women and children living at the Reserve. The Premier decided that immediate action was necessary. He directed his Office²⁶ to coordinate a series of meetings of senior public servants to advise him urgently on what action should be taken.
- 1.17 Within a week, the Premier received a recommendation to remove the management of the Reserve from the SVNAC, to close the Swan Valley Nyungah Community (Lord Street camp) and to remove its residents and achieve this by means of a Reserves Bill. This recommendation was accepted by the Premier and endorsed by Cabinet on Monday, May 12 2003.

²⁰ Robert Bropho and his sons, Herbert Bropho, Harvey Bropho and Richard Bropho.

²¹ Iva Hayward Jackson

²² Margaret Jeffery and Sharon Davies

²³ Management Order Plan Swan Valley Nyungah Community, {'Action Plan'}, undated, p.1.

²⁴ Hon Kim Chance MLC, *Parliamentary Debates (Hansard)*, 25/06/03, p.9180.

²⁵ *Transcript of Evidence*, Brazier, Session 3, 18/08/03, p.4.

²⁶ Department of Premier and Cabinet (PCO).

- 1.18 On the day that the Bill was introduced into the Council, Robert Bropho was re-arrested and charged with sex offences involving a teenage girl.²⁷ These offences allegedly occurred sometime between 1975 and 1977 whilst the girl was in his care.²⁸ The charges had previously been the subject of a *nolle prosequi* by the Director of Public Prosecutions in September 2000.²⁹ In addition Robert Bropho was subsequently charged with:
- seven counts of aggravated sexual penetration of a child under 16³⁰ and one count of indecently dealing with a child under 13 years of age³¹; and
 - two counts of indecently dealing with a child aged 13 years or over but under 16 years of age.³²
- 1.19 At the trial of the reinstated charges, the Crown did not offer any evidence in relation to three of the five charges that proceeded to trial.³³ The trial judge acquitted Robert Bropho of the other two rape charges on September 3 2004.³⁴
- 1.20 The subsequent charges involve two other complainants, one alleging that offences took place between 1989 and 1991 and the other alleging that offences took place in 2003. These subsequent charges are *sub judice*³⁵ and the Committee has examined these issues only to the extent that they may have played some part in the Government's decision to remove management responsibilities from the SVNAC and relocate its residents from the Reserve. The Committee is mindful that these allegations have yet to be determined by the courts.

PURPOSE

- 1.21 To achieve its terms of reference the Committee decided to examine:

²⁷ "Bropho charged with rape of niece" by Colleen Egan, *The Weekend Australian*, 17 to 18/05/03, p.9.

²⁸ Robert Bropho was charged in 1999 with one count of indecent assault pursuant to section 328, *The Criminal Code*, and five counts of rape pursuant to Section 325 and 326, *The Criminal Code*. 'DNA' evidence that the Crown alleged supported the claim that Robert Bropho was the father of the victim's child was flawed and the charges were the subject of a *nolle prosequi*.

²⁹ A procedure where the Director of Public Prosecutions may terminate criminal proceedings, usually in circumstances where it is in the public interest. Unlike an acquittal, a *nolle prosequi* does not bar a further prosecution.

³⁰ Section 324E of *The Criminal Code*.

³¹ *Ibid*, section 189(3).

³² *Ibid*, section 32 1(4).

³³ Two charges of rape pursuant to sections 325 & 326 *The Criminal Code* and one charge of indecent assault pursuant to section 328 of *The Criminal Code*.

³⁴ "Bropho slams DNA Evidence" by Paul Lampathakis, *The Sunday Times*, 5/09/04, p.5.

³⁵ "Still being considered by a court of law; not yet decided, unsettled and not to be canvassed publicly because of the risk of being in contempt of court." Dr P Nygh and P Butt, *Butterworths Australian Legal Dictionary*, Butterworths, Australia, 1997, p.1123.

- the quality, veracity and cogency of the information and advice provided firstly to the Government and subsequently by the Government to members of the Council;
- the options that were explored in response to this information and advice; and
- the decision-making processes and motivations that resulted in the introduction of the Bill and its passage through the Parliament at such short notice.

1.22 The Committee's purpose is not to criticise individuals, but to determine whether the facts presented by Government to members of the Council were accurate and supported the Government's action.

1.23 In undertaking its task the Committee heard evidence from 40 witnesses and received 32 written submissions. A list of witnesses and submissions is contained in Appendices A and B respectively. Not all witnesses or submitters are named due to the Committee's decision to keep certain evidence confidential, either due to the nature of the evidence or to protect witnesses or persons named by them. The Committee has taken great care to avoid naming persons in this report that could, as a result of them being identified, lead to the risk of retribution or intimidation or cause prejudice to ongoing investigations or prosecutions.

CHAPTER 2

BACKGROUND ISSUES

DEFINITIONS

2.1 This report refers to the “SVNC”, the “Lord Street camp”, the “Community” and also to the “SVNCAC”, the “Corporation” or the “SVNC management”. Where all but the latter three are mentioned, it is a reference not to the management body incorporated under the *Aboriginal Councils and Associations Act 1976* (Cth) but to the group of Aboriginal persons living at Reserve 43131. Where the “SVNCAC”, the “Corporation” or the “SVNC management” is used it is referring specifically to the incorporated body responsible for the management of the Reserve.

2.2 Where the report refers to the “Reserve” it is referring to Reserve 43131, the Crown land vested in the SVNCAC on which the Lord Street camp is situated.

THE SWAN VALLEY NYUNGAH COMMUNITY

2.3 The Lord Street camp at Lockridge was first established in 1977 and was, at the time, intended to be a temporary camp as an alternative to the Aboriginal tent camp that had been established in a park at Stirling Street, Guildford. At that time the Lockridge land was vested with the Mental Health Services Department. A plan to relocate the residents at the Lord Street camp to more permanent accommodation did not eventuate. The Swan Valley Fringe Dwellers Inc, an incorporated body led by Robert Bropho, was funded to maintain the Lord Street camp.

2.4 The SVNCAC was incorporated under the *Aboriginal Councils and Associations Act 1976* (Cth) on February 25 1994.³⁶ The Rules of the Corporation contain the objects for which it is established. These include:

- protecting the health and welfare and working for the benefit of all Nyungah Aboriginal people;
- upgrading the living conditions of the Aboriginal people; and
- supporting and protecting Aboriginal culture.

2.5 On July 19 1994, under sections 29 and 33(2) of the *Land Act 1933*, Reserve 43131 (Swan Location 11942) was vested in the SVNCAC for the designated purposes of the

³⁶ Certificate of Incorporation issued by Registrar of Aboriginal Corporations dated 25/02/94.

- “Use and Benefit of Aboriginal Inhabitants”.³⁷ The Reserve is designated and was vested as a “C” class reserve.
- 2.6 On December 5 1995, so that the Reserve would also include a strip of land bordering Lord Street, the order vesting Reserve 43131 was revoked and replaced with a new vesting order that also included Swan Location 11966.³⁸ This vested the now larger Reserve of 8.8767³⁹ hectares in the SVNCAC for the same purposes - “Use and Benefit of Aboriginal Inhabitants”.
- 2.7 In 1993, the SVNCAC was offered the opportunity to take the Reserve in freehold rather than as a Crown vesting, but refused due to its view that it would adversely impact upon native title.⁴⁰
- 2.8 The SVNCAC has made several applications to develop the land. Included on the land are 13 mud brick homes, a wind turbine and solar panels for power supply and bituminised roads. The land is used as a residential area for members of the SVNCAC or those permitted by the Corporation to live at the Reserve. To this extent the land was clearly being used for the purpose for which it was vested - the “Use and Benefit of Aboriginal Inhabitants”.
- 2.9 Reserve 43131 is a listed site under the *Aboriginal Heritage Act 1972*.⁴¹ It also comprises part of the land contained in a combined claim by the Nyungah peoples under the *Native Title Act 1993* (Cth) seeking recognition of native title to land in the Perth metropolitan area.⁴²

MANAGEMENT

- 2.10 Under the *Aboriginal Councils and Associations Act 1976* (Cth) the SVNCAC is required to submit a statement of compliance listing the members of the management committee and confirming that it has complied with the provisions of the Act. As at September 21 2002, the members of the management committee were:⁴³

- Harvey Bropho;

³⁷ Notified in *Government Gazette*, 22/07/94.

³⁸ Notified in *Government Gazette*, 12/12/95.

³⁹ Not 44 hectares as commonly reported in the Press.

⁴⁰ “Abuse scandal signals end to activist’s power” by Charlie Wilson-Clark, *The West Australian*, 15/08/02, p.5.

⁴¹ Previous applications under section 18 of the *Aboriginal Heritage Act 1972* have resulted in the Aboriginal Cultural and Materials Committee rule that the Reserve is “a site” under section 5(a) and (b) of the Act and to be “of significance” under section 39(2)(a), (b) and (c) of the Act.

⁴² The Reserve was previously the subject of a freehold grant in 1837 (grant No.EC78) which resulted in an earlier native title claim failing in the courts due to the freehold grant extinguishing native title rights.

⁴³ SVNCAC Statement of Compliance by Committee Members for financial year ended 30/06/02.

- Bella Bropho;
- Denise Sambo;
- Philomena Bropho;
- Robert Bropho;
- Robert Baker; and
- Charlotte Bropho-Lyndon.

2.11 The SVNCAC resolved to make Robert Bropho the spokesperson for the Corporation. Also under the Act, all Aboriginal corporations are required to have a public officer. This officer has responsibility for maintaining the register of members and for providing an address for all official correspondence to the corporation.⁴⁴ The public officer of the SVNCAC since July 1994 has been Margaret Jeffery,⁴⁵ who is also the secretary and office manager.

OTHER URBAN ABORIGINAL COMMUNITIES

2.12 The Swan Valley Nyungah Community (SVNC) was one of four urban Aboriginal communities in the Perth metropolitan area. The other communities are:

2.12.1 Cullacabardee Aboriginal Community (Cullacabardee);⁴⁶

2.12.2 Urban Aboriginal Community (Saunders Street);⁴⁷ and

2.12.3 Gnangara Nyoongar Community (Sydney Road).⁴⁸

2.13 Self-managed urban Aboriginal communities were first established in the late 1950s in the Guildford area.⁴⁹ They were a response to homelessness and the poor living conditions experienced by Aboriginal people, many of whom lived in makeshift

⁴⁴ Section 57, *Aboriginal Councils and Associations Act 1976* (Cth).

⁴⁵ Form 4, *Aboriginal Councils and Associations Act 1976* (Cth) - Notice of Name of and Address of Public Officer, dated 15/07/94.

⁴⁶ Located at Beechboro Road, Cullacabardee, with approximately 50 residents. The community has been operating for 25 years.

⁴⁷ Located at Saunders Street, Henley Brook, with approximately 10 residents.

⁴⁸ Located at Sydney Road, Gnangara, with approximately 60 residents.

⁴⁹ The Coolbaroo League approached the Native Welfare Department for permission to house homeless Aboriginals in disused airforce buildings on the former Guildford Aboriginal reserve. On 2/05/58 it was appointed to manage the 'Allawah Grove Reserve'. At the time this was the only non-institutionalised Aboriginal settlement with individual housing in Western Australian. See "The Fringedweller's Struggle: Cultural Politics and the Force of History" by Sharon Delmege, presented for the degree of Doctor of Philosophy of Murdoch University, 2000, Reprint, March 2003, p.136.

- camps on reserves established under the *Native Welfare Act 1954*. Cullacabardee was established in the 1970s, and was originally designed for four different groups (including Robert Bropho's family) that were having difficulty surviving in 'white suburbia'.⁵⁰
- 2.14 The three current urban Aboriginal communities are located on land that is part of the Aboriginal Lands Trust established under the *Aboriginal Affairs Planning Authority Act 1972*.⁵¹ As a result, the Department of Indigenous Affairs (DIA) has a direct involvement with those properties via the Trust and the land branch of DIA.⁵² The tenure of this land was subject to the provisions of the Act and the Trust and as such any complaint in relation to the management of the land can be dealt with by DIA.
- 2.15 The land which was vested in the SVNCAC was Crown land that was not part of the Aboriginal Lands Trust. Although DIA had involvement with that land in respect of cultural and heritage issues, neither the Trust, the Authority nor DIA could exercise any powers over that land under the *Aboriginal Affairs Planning Authority Act 1972*.
- 2.16 The vesting of Reserve 43131 in 1994 and again in 1995 was a significant achievement for the Aboriginal residents of the land and of their spokesperson, Robert Bropho, who negotiated the arrangement on behalf of the SVNCAC with the then Liberal Coalition State Government. The vesting of the land granted the SVNCAC and its members a degree of security of tenure, subject to the vesting purposes of "Use and Benefit of Aboriginal Inhabitants" and the powers granted to the Minister for Lands under the *Land Administration Act 1997* (LAA) to revoke the management order.

RESERVE 43131 AND THE *LAND ADMINISTRATION ACT 1997*

- 2.17 In March 1998 the new LAA came into force and repealed the *Land Act 1933* under which the vesting of the Reserve in the SVNCAC had been made. As part of the new Act's transitional provisions, land reserved under the repealed Act such as Reserve 43131, is taken to be reserved under section 41 of the LAA.⁵³ An order vesting land under the repealed Act is therefore treated as if it were a management order made under the LAA.
- 2.18 A management order made pursuant to section 46 of the LAA, or a vesting order taken to be a management order under the transitional provisions, can be revoked under section 50 of the LAA in three ways:

⁵⁰ *Transcript of Evidence*, Joyce, Session 2, 25/09/03, p.3.

⁵¹ *Aboriginal Affairs Planning Authority Act 1972*, s.20.

⁵² *Transcript of Evidence*, Pedler, Session 3, DIA 10/09/03, p.4.

⁵³ *Land Administration Act 1997*, Schedule 2, Clause 16(1).

- by agreement between the Minister of Lands and the body which holds the management order;⁵⁴
- by the Minister, in the event that the management order is breached or where the Minister requires a management plan to be submitted by the body and it is either not submitted within the time required or is subsequently breached;⁵⁵ or
- by the Minister, where, in the Minister's opinion, such revocation is in the "public interest".⁵⁶

2.19 An "amendment" to a management order is affected by agreement between the parties and requires the revocation of the existing management order and its replacement with a new management order. Where a management plan has been approved, the management body must manage the land in accordance with the plan unless the Minister approves a variation of the plan.⁵⁷

Power to exclude persons

2.20 The nature of the rights that flow from the vesting of land under the LAA do not equate to the rights of a person who holds an indefeasible title to freehold land. The vesting of Crown Land in the SVNAC entitled it to possession of the land subject to the purpose or conditions of the vesting and the provisions of the LAA.⁵⁸ The vesting thus provided the SVNAC with a type of statutory tenure but not such that it would or could be converted to a freehold title. That entitlement to possession, subject to any condition imposed under the vesting, gave the SVNAC the power to exclude all persons from the land other than those that had a lawful right to enter or a better title to the land.

2.21 The right to enter may be granted under common law or statute, either expressly or by necessary implication. At common law a person has an implied licence to enter land in the conduct of his or her lawful business.⁵⁹ However, once the implied licence is withdrawn a person who remains on the land without the permission of the owner or occupier commits a trespass.⁶⁰ Other exceptions are granted by the common law including the right of a police officer to enter premises to effect an arrest or in pursuit of a felon or to prevent the commission of a felony. However, no public official,

⁵⁴ *Ibid*, section 50(1)(a).

⁵⁵ *Ibid*, section 50(1)(b).

⁵⁶ *Ibid*, section 50(2).

⁵⁷ *Ibid*, section 49(4)(a)&(b).

⁵⁸ *Ibid*, section 46(5) provides that a vesting does not create any interest in Crown land in the relevant reserve in favour of the management body of that Reserve.

⁵⁹ *Robson v. Hallett* (1967) 2 QB 939 at 951.

⁶⁰ *Plenty v Dillon* (1991) 71 CLR 635 and *Davis v. Lisle* (1936) 2 KB 434.

police constable or citizen has any right at common law to enter a dwelling house merely because he or she suspects that something is wrong.⁶¹

- 2.22 Due to perceived limitations in the court declared common law or to clarify the common law position, the Parliament has enacted numerous statutes that expressly grant the power to enter premises. For example, section 711 of *The Criminal Code 1913* grants the power of a magistrate to issue a search warrant giving police officers the power to enter premises, using force if necessary. Section 564(5) permits a police officer to enter upon any place where a person is or where the police officer suspects, on reasonable grounds, the person may be to effect an arrest. Section 146A of the *Child Welfare Act 1947* empowered a justice of the peace or magistrate to grant an order authorising a person to enter and inspect premises and, if necessary, apprehend a child suspected to be in need of care and protection.
- 2.23 The need for express words is generally required in statutes that seek to erode or abrogate the common law right to quiet enjoyment of property. This is because the courts approach the interpretation of legislation that purports to erode or abrogate “fundamental” rights or liberties on the basis of a presumption intended to preserve these rights. This presumption is that the legislature will not overthrow fundamental principles, infringe rights or depart from the general system of law without expressing this intention with irresistible clarity.⁶²
- 2.24 The right to quiet enjoyment to property is one such fundamental principle of the common law. As a result the presumption operates so that in the absence of express words to the contrary, general words contained in a statute that may be capable of being interpreted as granting a power of entry are read down. This accords with the principle that without clearly manifesting its intention to abrogate or erode the common law right of quiet enjoyment to land, the legislature does not intend by its legislation to authorise what would otherwise be a trespass.⁶³ However, the courts have recognised that this presumption may be displaced by necessary implication.⁶⁴

Observation 1. The Committee observes that, as a consequence of the vesting orders made in 1994 and 1995, the SVNCAC had possession of Reserve 43131 and had authority to exclude persons, including government officers, from the land. This, however, was subject to the conditions of vesting and extensive powers of entry granted under the common law and statute. This situation was not unique to the SVNCAC.

⁶¹ *Great Central Railway Co. v. Bates* (1921) 3 KB 578, at 581-582.

⁶² *Potter v Minaham* (1908) 7 CLR 277, per O'Connor J at p.304.

⁶³ *Entick v Carrington* (1765) 2 Wils KB 275 at 291 [95 ER 807 at 817].

⁶⁴ *Coco v The Queen* (1994) 179 CLR 427.

2.25 The use by the SVNCAC of its right to exclude entry to the Reserve was criticised by the Coroner in his report into the death of Susan Taylor.⁶⁵ It was also the subject of comment in the Gordon Report resulting in a recommendation that memoranda of understanding be entered into between the SVNCAC and government agencies to ensure access to residents.⁶⁶

CORONIAL INQUEST INTO THE DEATH OF SUSAN TAYLOR

2.26 The death of Susan Taylor at the SVNC on February 12 1999 and the subsequent coronial inquiry were catalysts for government action in relation to the problems of child abuse, substance abuse and domestic violence in Aboriginal communities throughout Western Australia.

2.27 In order to examine the circumstances that may have contributed to Susan Taylor's death, the coronial inquest examined the circumstances under which she, and similarly placed young persons in the community, lived. The result was evidence presented to, and accepted by, the Coroner that:

- rape and sexual abuse of young Aboriginal persons was widespread throughout Western Australia, and that few of these cases are reported;
- sexually transmitted infections in Aboriginal children are many times higher than in non-Aboriginal children;
- Aboriginal infant mortality rates are many times those in the remainder of the community; and
- drug-taking behaviour constitutes a major problem for Aboriginal people, both in Aboriginal communities and in the general community.

2.28 The Coroner also heard evidence regarding alleged sexual abuse taking place in locations near the Reserve by Caucasian males providing paint or glue to young people for sexual favours.⁶⁷ Allegations were also made against Robert Bropho of sexual misconduct, involving Susan Taylor and her mother Lena Spratt.⁶⁸ An allegation of indecent assault made by Susan Taylor against Robert Bropho's son, Richard Bropho,⁶⁹ was not pursued due to her death and a lack of corroborating evidence. Robert and Richard Bropho have strenuously denied these allegations.

⁶⁵ Coroner's Report, pp.34-35.

⁶⁶ Gordon Report, Chapter 14, recommendation 141.

⁶⁷ Coroner's Report, pp.26-27.

⁶⁸ *Ibid*, pp.14-15.

⁶⁹ *Ibid*, p.9.

- 2.29 The Coroner also noted the responsibilities of the Department of Health and DCD, the Aboriginal Medical Service and the Western Australian Police Service (WAPS), and the need for organisations providing important services to have access to Aboriginal communities, for the wellbeing of children living in those communities. In making particular reference to the SVNC, the Coroner, while accepting the proposition that rights, including private property rights of individuals within an Aboriginal community should be respected, observed that the Susan Taylor case highlighted why access to Aboriginal communities by government agencies should not be limited.⁷⁰
- 2.30 The Coroner came to this view after hearing evidence of the difficulty government agencies and the Aboriginal Medical Service had in gaining physical access to the Lord Street camp. This evidence included allegations that on different occasions, Robert Bropho had “banned” the Aboriginal Medical Service from visiting the Community after the death of an infant, and had banned the Department of Family and Children’s Services (now DCD) in 1996 after a child had disclosed inappropriate touching by older boys. The Department claimed that this action prevented its staff from following up the allegation and put an end to a playgroup that it had established as an early intervention strategy, aimed at encouraging positive interaction between parents and their children.⁷¹
- 2.31 The Coroner’s Report into the death of Susan Taylor (Coroner’s Report), was published on November 21 2001. As a result of this report, the Government announced its own inquiry, chaired by Aboriginal magistrate Sue Gordon.⁷² The Inquiry into the Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities (Gordon Inquiry) was established on January 15 2002.⁷³ One of its terms of reference was to:

Examine the issues raised by the Coroner’s inquiry into the death of Susan Taylor in relation to the way that Government agencies dealt with the issues of violence and child sexual abuse at the Swan Valley Nyoongar Community.

- 2.32 The Gordon Inquiry produced an interim report on April 26 2002 and a final report (Gordon Report) on July 31 2002.

⁷⁰ *Ibid*, p.35.

⁷¹ *Ibid*, pp.22-23.

⁷² Announcement by the Premier, Hon Dr Geoff Gallop MLA, 28/11/01.

⁷³ Inquiry established by the Acting Premier and Minister for Public Sector Management Hon Eric Ripper MLA pursuant to section 11(1) of the *Public Sector Management Act 1994*. Mrs Sue Gordon AM, chairperson; Hon Kay Hallahan, inquiry member and Mr Darrell Henry, inquiry member.

GORDON INQUIRY AND RECOMMENDATIONS RELEVANT TO THE SWAN VALLEY NYUNGAH COMMUNITY (RECOMMENDATION NO.141)

- 2.33 There was only one recommendation contained in the Gordon Report that specifically referred to the SVNC. That was recommendation 141. This provided as follows:

141. The Inquiry recommends that urgent steps be taken to develop Memoranda of Understanding between the Swan Valley Nyungah Community and those government agencies which may reasonably seek access to that community. In developing those Memoranda of Understanding, the conclusion of the Inquiry as to the good faith of service providers and their legitimate exercise of government function, ought to be taken into account.⁷⁴

- 2.34 The Government responded to the Gordon Report in November 2002.⁷⁵ It adopted all but two of the Gordon Report's 197 recommendations.⁷⁶ One of the rejected recommendations was recommendation 141.⁷⁷
- 2.35 Prior to the Government's response to the Gordon Report being tabled in the Assembly,⁷⁸ the Government had, by its actions, already rejected recommendation 141. This rejection was manifest by the Government negotiating with the SVNCAC to revoke its previous vesting/management order.⁷⁹ This order contained the sole condition that the SVNCAC manage the Reserve for the "Use and Benefit of Aboriginal Inhabitants".
- 2.36 The right of the SVNCAC to exclude certain persons was altered when the vesting order was revoked by the Minister with the consent of the SVNCAC and replaced with a new management order made under the LAA on October 11 2002. The new management order included conditions intending to overcome the difficulties that had been outlined by the Coroner. One of these conditions provided that persons representing or acting on behalf of State, Federal or local government authorities had an entitlement to enter and remain on the Reserve when carrying out lawful business,

⁷⁴ Gordon Report, p.380.

⁷⁵ "Putting People First - the Western Australian State Government's Action Plan for Addressing Family Violence and Child Abuse in Aboriginal Communities. The Response to the Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities", Government of Western Australia, November 2002, ("Putting People First").

⁷⁶ The recommendation for a Commissioner for Children has since been adopted. See "Backflip on child protection" by Ben Martin, *The West Australian*, 20/05/04, p.12.

⁷⁷ The other rejected recommendation was recommendation 144 - to establish an independent Commissioner for Children. See Gordon Report p.411.

⁷⁸ Tabled in the Legislative Assembly on 3/12/02, Tabled Paper No. 589.

⁷⁹ These negotiations commenced with a meeting between the Minister for Planning and Infrastructure and SVNCAC representatives at Lord Street on 20/08/02. See letter Minister for Planning and Infrastructure to SVNCAC dated 12/09/02.

without the need to obtain prior permission from the SVNCAC or to give prior notice.⁸⁰

GORDON IMPLEMENTATION GROUPS - EXPLANATION, MEMBERSHIP, STRUCTURE AND PURPOSE

- 2.37 In response to the Gordon Inquiry's findings, the Government established a Directors General Taskforce to prepare an implementation plan for the Government's response. A secretariat was established to support the Taskforce. An inter-agency reference group comprising senior officers co-chaired by a representative of the Aboriginal and Torres Strait Islander Commission (ATSIC)⁸¹ and Department of Premier and Cabinet (DPC) was established to provide advice to the Taskforce.⁸² This inter-agency reference group was known as the Senior Officers Gordon Implementation Group (SOGIG).
- 2.38 The Taskforce comprised the Directors General of DPC, DCD, the Department of Justice (DOJ), DIA, the Department of Education and Training (DET), the Department of Housing and Works (DHW), Local Government and Regional Development, Health, Treasury and Finance and the Commissioner of Police. The Taskforce established a smaller Directors General group to oversee the ongoing implementation of the Government's response to the Gordon recommendations. This group was known as the Directors General Gordon Implementation Group (DGGIG), and comprised the Directors General of the departments principally dealing with Aboriginal people. DGGIG meetings were co-chaired by Barry Matthews, the then Commissioner of Police, and Jane Brazier, Director General, DCD.
- 2.39 The Taskforce reported to the Premier and Cabinet via the regular meetings between the Premier and the Strategic Management Council, a body comprising the various heads of Departments, or to the Cabinet Standing Committee on Social Policy and through it to the Cabinet.
- 2.40 Following the tabling of the Government's response to the Gordon Report on December 5 2002, the implementation phase of the recommendations accepted by the Government commenced. A smaller secretariat, the Gordon Implementation Secretariat, staffed by three officers from DPC remained in place to assist the Directors General with implementation of the Government's response. In addition to SOGIG, local inter-agency groups were utilised to assist in gathering information and coordinating service provision to Aboriginal communities. One such group was formed to deal specifically with gathering information in relation to the service provision to the SVNC. This was known as the SVNC inter-agency working group.

⁸⁰ Annexure to Management Order for Reserve 43131 dated 11/10/02, cl.3.

⁸¹ Mick Gooda, State Manager, ATSIC.

⁸² "Putting People First", p.1.

- 2.41 A diagram of the Across Government Collaborative Model and Reporting Structure and the Directors General Taskforce Response Preparation Structure is attached at Appendix 4. A progress report on the implementation of the Government's response was tabled in the Assembly on June 24 2003.⁸³

INDIGENOUS URBAN SETTLEMENTS PROJECT

- 2.42 The Indigenous Urban Settlements Project was a project originating from DIA. Its aim was to examine the future direction for the four urban Aboriginal communities in the metropolitan area. It was intended to be an avenue for discussion and debate on the future of those settlements given the differing views about those communities.⁸⁴
- 2.43 One criticism of Aboriginal communities is that they are a blight on the community and do nothing to advance the broader interests of Aboriginal people. A senior DIA officer claimed that some members of the Aboriginal community, including ATSIC councillors, wanted these communities developed into specific purpose facilities such as aged housing or for the development of youth centres, rather than residential areas for family groups such as existed at the SVNC.⁸⁵ DIA canvassed what might be done to solve the problem.
- 2.44 In early 2002, the Minister for Indigenous Affairs had accepted a recommendation that his Department liaise with ATSIC to develop a position and strategy for addressing these issues and the future of metropolitan communities.⁸⁶ This involved discussions between the Directors General of DIA and DHW, and representatives of ATSIC. The management bodies of the four affected urban Aboriginal communities were not directly consulted.

ATSIC NATIONAL FAMILY VIOLENCE POLICY

- 2.45 In March 2003, the Board of ATSIC formally endorsed the ATSIC National Family Violence Policy. The Policy sets out a national framework to address family violence and child sexual abuse in Aboriginal communities.⁸⁷ ATSIC Western Australian State Councillors have endorsed the objectives and principles of the national body's policy.⁸⁸ By doing so, the councillors accepted their mandated responsibility to take action against family and sexual violence amongst Aboriginal people and to empower

⁸³ First Progress Update on the Implementation of "Putting People First: Addressing Family Violence and Child Abuse in Aboriginal Communities", Government of Western Australia, tabled 24/06/03 (Tabled Paper 1248).

⁸⁴ *Transcript of Evidence*, Pedler, Session 3, 10/09/03, p.14.

⁸⁵ *Ibid*, pp.14 & 18-19.

⁸⁶ Urban Settlements Project (USP) - DIA document tabled before Committee by Richard Curry, Director General on 18/08/03.

⁸⁷ Submission No 32 from ATSIC, 12/08/03, p.2.

⁸⁸ ATSIC WA State Council Family Violence Policy Statement.

- Aboriginal people to speak out on the issue and whilst at the same time protecting these people from reprisals.
- 2.46 ATSIIC was involved at all stages of the Gordon Inquiry including being consulted on the formation of the Government's response to the inquiry's recommendations.⁸⁹ In December 2002, shortly after the Government's response was published, ATSIIC WA State Council and the Government signed a communique to progress the implementation of the Government's response to the Gordon Inquiry's recommendations.⁹⁰
- 2.47 Less than two months after ATSIIC Western Australian State Council endorsed the Family Violence Policy, its resolve in this regard was put to the test. The Government raised allegations of domestic violence, substance abuse and sexual abuse of children at the Lord Street camp to support legislation that dispossessed an Aboriginal group of the place where it had lived since 1977.
- 2.48 ATSIIC support was based on an acceptance of the view of the Government that the safety of women and children at the community could not be "guaranteed". These safety issues were directly related to the Government's view, as related to ATSIIC, that agencies were not given full and unfettered access to residents within the Community who may wish to deal with issues of family violence and sexual abuse.⁹¹
- 2.49 ATSIIC also had a significant financial investment in the Reserve, having allocated over \$1 million in grants to the SVNAC for municipal services and infrastructure from 1998 to 2002.⁹² There was therefore a considerable financial incentive for ATSIIC to push for the Reserve to be retained for Aboriginal use as a condition for supporting the Government's closure plan.

⁸⁹ ATSIIC WA Submission to the WA State Government's Inquiry into Response by Government Agencies of Complaints of Family Violence and Child Abuse in Aboriginal Communities.

⁹⁰ Government of Western Australia and Indigenous Leaders Roundtable Communique, 11/12/02.

⁹¹ Submission No 32 from ATSIIC, 12/08/03, p.3.

⁹² Letter Colleen Hayward, Acting Manager, ATSIIS State Office to the Committee, dated 17/06/04.

CHAPTER 3

THE BILL

DESCRIPTION AND PURPOSE

3.1 The Bill was brief, comprising six pages excluding its contents page. It contained 12 clauses when introduced into the Council. However, the powers that the proposed law intended to grant and the rights that it intended to abrogate were significant. A copy of the Bill as amended by the Council is attached at Appendix 5. Notwithstanding the Council's amendments, the only change to the Bill, as eventually agreed to by both Houses of Parliament, was the inclusion of clause 13, a sunset provision providing for the Act's expiry after two years of operation.

3.2 The purposes of the Bill were to:

- revoke the management order granted to the SVNAC, thereby removing its management powers over the Reserve;
- place the management of the Reserve in the Aboriginal Affairs Planning Authority (AAPA);
- introduce new management powers that would apply to the land in the Reserve in the future, and set out how those powers would be exercised and by whom; and
- prevent legal challenges to the exercise of those new management powers.⁹³

3.3 The object of the revocation of the management order and the appointment of an Administrator were so that the alleged perpetrators of abuse and intimidation could be removed from the Reserve, thereby permitting government agencies to have access to women and children allegedly at risk. Although not spelt out in the Bill, the Government's plan was that all residents of the Reserve were to be removed and resettled into the general community.

Revocation of Management Order

3.4 Clause 4 of the Bill revokes the management order that granted the SVNAC the management of the Reserve.⁹⁴ The revocation takes effect as if it were a revocation of a management order under section 50(2) of the LAA. This section provides the

⁹³ Reserves (Reserve 43131) Bill 2003, Explanatory Memorandum, p.1.

⁹⁴ Management Order I262262.

Minister for Lands with the power to revoke a management order in specified circumstances.⁹⁵

Vesting Reserve 43131 in Aboriginal Affairs Planning Authority

- 3.5 Clause 5 of the Bill places the care, control and management of the Reserve with the AAPA for the same purpose, or for a purpose ancillary or beneficial to the purpose, for which the land was vested with the SVNAC, that is, the “use and benefit of aboriginal inhabitants”.
- 3.6 The AAPA is a body corporate⁹⁶ established under the *Aboriginal Affairs Planning Authority Act 1972*. The purpose of this Act is to establish the AAPA, a Commissioner for Aboriginal Planning⁹⁷ and an Aboriginal Affairs Advisory Council for the purpose of providing consultative and other services for the economic, social and cultural advancement of persons of Aboriginal descent.
- 3.7 The Act also establishes an Aboriginal Lands Trust. The Trust is capable of acquiring and holding real and personal property. The Trust may hold reserved land transferred to it by the Governor on the request of the AAPA.⁹⁸ Reserved land is land that has been reserved for the use and benefit of the Aboriginal inhabitants.⁹⁹
- 3.8 Under section 14 of the *Aboriginal Affairs Planning Authority Act 1972*, the AAPA has “all such powers, rights and privileges as may be reasonably necessary to enable it to carry out its duties and functions.” As a body corporate there is power under the LAA to vest land in that body in addition to the specific vesting provided for in clause 5 of the Bill.
- 3.9 Similar to the revocation clause, clause 5 of the Bill provides that the placing of the care, control and management of the Reserve with the AAPA has effect as if it were done under the LAA. The Minister for Lands has an existing power under section 46(1) of the LAA to vest the care, control and management of a reserve by executive order without the need for parliamentary authority.¹⁰⁰ The Bill does this by legislative

⁹⁵ There are three specified circumstances: (1) by agreement with the management body; (2) where the management body has breached the management order or a management plan, or fails to present a management plan when requested by the Minister; and (3) where, in the Minister’s opinion, it is in the public interest to do so.

⁹⁶ Section 8, *Aboriginal Affairs Planning Authority Act 1972*.

⁹⁷ The Commissioner for Aboriginal Planning is Richard Curry, Director General, DIA.

⁹⁸ Section 24, *Aboriginal Affairs Planning Authority Act 1972*.

⁹⁹ The AAPA holds 84 reserves and eight freehold blocks. 83 of the reserves are “proclaimed reserves” subject to the special protections under Part III of the *Aboriginal Affairs Planning Authority Act 1972*. Under section 24 of the Act, the day-to-day control and management of most proclaimed reserves has been conferred on the Aboriginal Lands Trust by virtue of section 27.

¹⁰⁰ Such vesting is not subject to disallowance under section 42, *Interpretation Act 1984*, by either House of Parliament.

means, but at the same time permits the Minister to act on the management order as if it were an order that had been made by executive act under the LAA. The Minister can therefore revoke the management order put in place by the Bill and exercise all other powers under section 50 of the LAA, any other provisions of that Act or any other written law in relation to the Reserve without the need for further legislation.

Appointment of Administrator

- 3.10 Clause 7 of the Bill provides for the appointment of an administrator by the AAPA,¹⁰¹ “...to enable the Authority to perform its functions effectively in relation to the reserve.” The Bill grants the AAPA the discretion to either appoint an officer of the AAPA as an administrator under section 15 of the *Aboriginal Planning Authority Act 1972* or engage a person as administrator under a contract for services. On June 12 2003, the AAPA appointed Barry Jameson as the administrator of the Reserve.¹⁰² The period of engagement was for nine separate days from June 12 to 20 2003.¹⁰³ Mr Jameson is an accountant and auditor based in New South Wales.
- 3.11 The Committee notes that, under section 15 of the *Aboriginal Planning Authority Act 1972*, there is an existing power for the Minister to engage a person under a contract for services to assist the AAPA to effectively carry out its functions.

UNIQUE FEATURES

- 3.12 The Bill contained several unique features that enable the administrator to effectively carry out his powers and to prevent these powers from being the subject of legal challenge.

Revocation by Legislative rather than Executive Action

- 3.13 Clause 4 of the Bill as mentioned above revoked the management order that vested the land in the SVNAC. Under section 50 of the LAA, the Minister for Lands has the power to revoke management orders, but only in specified circumstances. In the absence of agreement by the SVNAC, the Minister would have to revoke the management order on one of three grounds. Firstly, that the SVNAC had breached the management order. Secondly, that it had failed to provide a suitable management plan within the time required by the Minister (in the event that the management order required a management plan). Thirdly, that it is in the public interest to revoke the management order.

¹⁰¹ Richard Curry, Director General of DIA, has been delegated powers of AAPA that enable him to delegate the powers provided in the Bill to the Administrator. These powers can be withdrawn in the event that the Administrator does not carry out his duties as required.

¹⁰² Letter of Engagement between AAPA and Barry Jameson, dated 12/06/03.

¹⁰³ *Ibid*, clause 4

- 3.14 The Bill contained the power to revoke the management order in circumstances where this could be achieved by the executive act of the Minister acting under existing powers contained in the LAA. The reason for including the revocation in the Bill was to clothe it with legislative as opposed to executive authority. Administrative acts of the Minister to revoke the management order may have been subject to legal challenge. By legislating to effect this revocation, a legal challenge on the grounds that the revocation was not in accordance with the requirements of the LAA was avoided.
- 3.15 In addition legislating to revoke the management order removed the need for the Minister for Lands to comply with the rules of natural justice by providing notice to the SVNAC of her intention to revoke the management order and to consider submissions from the SVNAC objecting to the closure. This would be required in circumstances where the Minister was to revoke a management order under section 50 of the LAA.
- 3.16 Most importantly for the Government, by having the Parliament legislate to revoke the management order, it could proceed without delay in closing the Community once the Bill had been assented to by the Governor. This accorded with the Government's view that speed was necessary so as to minimise the risk to women and children living at the Lord Street camp. It also had the political advantage of involving all members of Parliament in the process of consenting to this drastic action.
- 3.17 Another consequence of the legislative approach was that the Government avoided the possibility of delay in the courts in the event that a revocation by the Minister was challenged. If the revocation under the LAA were challenged, the Minister would have had to present evidence to the court to justify the revocation on one of the three grounds listed above. By legislating, the Government ensured that Parliament rather than the State courts determined these matters.

Powers of Administrator

- 3.18 The Bill confers considerable powers on the administrator over who can remain on or enter the Reserve. Under clause 7(3), the administrator can direct a person not to enter the Reserve or direct a person to leave the Reserve. These directions can be for a specified time or until the direction is revoked. Using this power, the administrator can bar persons from the Reserve indefinitely. The direction of the administrator need not be in writing as long as it is given to the person who is the subject of the direction.
- 3.19 The power to direct is backed by the capacity of the administrator to call in assistance including the police, to remove persons from the Reserve in the event of non-compliance with the direction or to prevent a person from entering.¹⁰⁴ A person who

¹⁰⁴ Clause 7(7)(a)&(b), Reserves (Reserve 43131) Bill 2003.

assists the administrator in these tasks may use such force as is reasonably necessary when exercising the power.¹⁰⁵

3.20 The administrator may direct a person to leave the Reserve or prevent a person from entering the Reserve even in circumstances where that person has a legal or equitable right or interest in the land and whether or not the land remains a reserve under the LAA.¹⁰⁶

3.21 The administrator, persons who assist him and the Crown, to the extent that it may be vicariously liable for the actions of those persons, are protected from liability in tort for anything done in the performance or purported performance of a function under the Act if acting in good faith.¹⁰⁷

Natural justice

3.22 Clause 9 of the Bill provides that the discretion of the administrator to direct a person to leave the Reserve, or to prevent a person from entering the Reserve, does not require the administrator to give that person any reasons for the direction. In addition, the Bill expressly provides that a person is not entitled to expect the discretion to be exercised in any particular way. For example, merely because it has been exercised in a particular way in the past does not mean that it will continue to be exercised in that same manner. This removes the potential for a claim by a person that he or she had an interest amounting to a “legitimate expectation” that required the administrator to accord the person a right to be heard prior to making a direction.¹⁰⁸

3.23 Clause 8 expressly excludes the rules of natural justice from applying to any direction made by the administrator under Clause 7(3)(a) or (b). The rules of natural justice have been developed by the common law to ensure fair decision-making where the rights, interests (and legitimate expectations) of individuals are affected by administrative action. The two basic requirements of natural justice, where there is a duty to observe them, are the right to a hearing and the rule against bias by the decision-maker. The requirements of natural justice will vary with the circumstances of the case. The nature of the right, privilege or legitimate expectation affected by a decision will have a considerable bearing on what is required to satisfy fairness.¹⁰⁹

¹⁰⁵ Clause 7(9), Reserves (Reserve 43131) Bill 2003.

¹⁰⁶ *Ibid*, Clause 7(10).

¹⁰⁷ *Ibid*, Clause 12.

¹⁰⁸ ‘Legitimate expectation’ is a legal concept attracting the requirements of natural justice/procedural fairness. It applies where the nature of the “interest or privilege” is such that it would not be fair to deprive the person of the continuation or renewal of an authorisation or permit without the decision-maker granting him a hearing prior to the exercise of his discretion. A failure to do so can result in the decision being invalidated by the courts. *Salemi v MacKellar (No 2)* (1977) 137 CLR 396.

¹⁰⁹ *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342.

- 3.24 The Committee is in no doubt that a direction to not enter the Reserve given to a resident can have significant consequences. The person may have a proprietary interest in a dwelling or property built on the Reserve or have family that he or she wishes to visit or to co-habit with.
- 3.25 A statutory conferral of a discretion can be made in such broad terms as to impliedly exclude natural justice.¹¹⁰ The fact that the administrator is not required to give any reasons for the exercise of his discretion is one factor that would tend to indicate that natural justice was excluded, even without an express exclusion of natural justice contained in the Bill.
- 3.26 However, conversely, the fact that one of the prime purposes of conferring such a discretion was to enable the administrator to remove troublemakers from the Reserve or to prevent them from entering, leads to a result in which the rules of natural justice would usually apply. This is because the administrator would be exercising his discretion on the basis of an adverse finding of fact about an individual. The High Court of Australia has determined that a similar discretion, in relation to the “warning off” of persons from racecourses, was subject to the rules of natural justice requiring the affected persons to be heard prior to its exercise.¹¹¹

Observation 2. The Committee observes that in the absence of the express provision excluding the rules of natural justice, the exercise of the administrator’s discretion would, at the very least, require the person subject to a direction to be heard. This would involve the person being given the opportunity to know of and rebut the allegations upon which the decision-maker intends to exercise his discretion.

- 3.27 The reasons for removing the application of the rules of natural justice in relation to a direction of the administrator was to ensure that a direction could not be challenged in the courts on the basis that the administrator had failed to accord natural justice to the person affected. Such a challenge may result in the granting of an interim injunction against the administrator preventing the carrying out of his direction. This would result in delay and considerably erode the effectiveness of the administrator’s power.

Removing the supervisory jurisdiction of the courts

- 3.28 Finally, clause 11 of the Bill completes the removal of the capacity to challenge the direction of the administrator by excluding the supervisory jurisdiction of the civil courts. The clause provides that no prerogative writ, declaration or injunction (whether interim or absolute), is to be given or granted in respect of any decision made or any thing done or purported to be done under clause 7.

¹¹⁰ *Ex parte R. (ex rel. Warringah Shire Council); Re Barnett* (1967) 70 SR (NSW) 69.

¹¹¹ *Heatley v Tasmanian Racing and Gaming Commission* (1977) 137 CLR 487 and *Forbes v New South Wales Trotting Club Ltd* (1979) 143 CLR 242. Both cases involved the ‘warning off’ of punters from race courses.

3.29 Again, the reason for the inclusion of this clause was the need to avoid a situation in which a direction of the administrator, or action by a person authorised to assist the administrator in carrying out or enforcing a direction, was challenged in the courts. Hon Graham Giffard MLC, the Parliamentary Secretary to the Minister for Planning and Infrastructure,¹¹² with responsibility for the carriage of the Bill in the Council, explained the purpose behind these clauses as follows:

*[The Bill] is deliberately designed to ensure that the decisions of the administrator are not wrapped up, frustrated or prevented in the courts for a considerable period. It provides for the administrator to make decisions to move quickly on situations that, in his judgment, require immediate action, and to do so without the threat that those decisions will be held up and frustrated for what may be a considerable period.*¹¹³

¹¹² Hon Alannah MacTiernan MLA. This Minister is also the Minister for Lands under the *Land Administration Act 1997*.

¹¹³ *Parliamentary Debates (Hansard)*, 16/05/03, p.7978.

CHAPTER 4

THE BILL'S PASSAGE IN THE LEGISLATIVE COUNCIL

GOVERNMENT'S JUSTIFICATION

- 4.1 The Bill was introduced into the Council on the morning of Friday, May 16 2003.¹¹⁴ Debate on the Bill was adjourned so that non-government members could receive or resume briefings on the Bill prior to further debate in the House. Debate on the Bill resumed later in the afternoon under self-imposed time limits so as to ensure that the Bill was passed that day.¹¹⁵
- 4.2 In his second reading speech, Hon Graham Giffard MLC,¹¹⁶ outlined the Government's reasons for the Bill's introduction. Fundamentally, three related issues were the grounds upon which the Government action was based:
- 4.2.1 The danger to the women and children living at the Reserve;
 - 4.2.2 The difficulties experienced by government departments in gaining access to women and children at the Reserve requiring their services; and
 - 4.2.3 The failure of the SVNCAC to manage the Reserve in a manner whereby the dangers to women and children could be addressed and so the Reserve could fulfil its role of being "for the use and benefit of the Aboriginal inhabitants".¹¹⁷

Danger to the Women and Children of the SVNC

- 4.3 The Government claimed that systemic sexual and physical abuse, substance abuse and family violence had and was continuing to occur at the Lord Street camp. The Bill was presented as the only option to bring to an end "...this terrible litany of abuse and violence"¹¹⁸ and to prevent a repeat of the tragic hanging death such as occurred with Susan Taylor.¹¹⁹

¹¹⁴ Legislative Assembly Message No.75.

¹¹⁵ The Council suspended its Standing and Sessional Orders to enable the Bill to progress through all stages that day and then further suspended its Standing Orders so that the vote on the second reading stage of the Bill be taken at 4.00pm and the vote on the third reading stage be taken at 5.45pm that day. All members of The Greens (WA) opposed the motions. *Parliamentary Debates (Hansard)*, 16/05/03, p.7949 and pp.7965-7966.

¹¹⁶ The carriage of the Bill was later taken by the Leader of the House, Hon Kim Chance MLC.

¹¹⁷ Hon Graham Giffard MLC, *Parliamentary Debates (Hansard)*, 16/05/03, p.7967.

¹¹⁸ *Ibid*, p.7967

¹¹⁹ *Ibid*, p.7967

- 4.4 This risk to women and children was presented as immediate. The Bill was presented as a response to a critical situation.¹²⁰ The Government inferred in debate that if the Council did not act quickly to pass the Bill in the form in which the Government presented it then members would have to live with the consequences of any delays. For example, amending the Bill in a manner that would permit legal challenges to the exercise by the administrator of his powers could cause delay. This delay could result in further opportunity for children to be abused.¹²¹
- 4.5 The Government saw the Bill as the only solution to the perceived problems at the Lord Street camp and with the management body, the SVNAC. In his second reading speech, Hon Graham Giffard stated:

*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.*¹²²

Departmental Access

- 4.6 The Government claimed that departments attempting to provide services were either denied access to the Reserve or if granted access were impeded in the effective prosecution of their statutory obligations. Impediments to the provision of services included allegations of intimidation of residents to prevent them from reporting to relevant authorities incidents of domestic violence, substance abuse and sexual abuse of children.¹²³
- 4.7 The Government claimed that SVNC management was hampering communication between government officers and the women and children living at the reserve.¹²⁴ The degree of control exercised by the management body over visits to the Community included the Government's claims that:

¹²⁰ Hon Kim Chance MLC, *Parliamentary Debates (Hansard)*, 16/05/03, p.7982.

¹²¹ *Ibid*, p.7982.

¹²² Hon Graham Giffard MLC, *Parliamentary Debates (Hansard)*, 16/05/03, p.7967

¹²³ *Ibid*, p.7967.

¹²⁴ *Ibid*, p.7967.

- government officers required permission from persons staffing the SVNAC administration office as a pre-condition to gaining access to individuals at the Reserve; and
- either Robert Bropho or persons under his direction insisted on being present during interviews conducted by government officers.¹²⁵ This also raised the issue of confidentiality and the claim that the presence of third parties hindered the reporting of abuse.

Inappropriate to have the SVNAC manage the Reserve

- 4.8 The Government claimed that the SVNAC had been given ample time to improve the situation for women and children at the Reserve but had not addressed the issue. As evidence, it pointed to what it alleged were deficiencies in the SVNAC management plan. The requirement to submit a management plan to the Minister for Lands within six months was one of the conditions attaching to the new management order applying to the management body as from October 11 2002.
- 4.9 A comparison was made in debate between the commitment given by ATSIC with the release of its Family Violence Policy and the SVNAC management plan. The Government's view was that the SVNAC management plan did "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."¹²⁶
- 4.10 The Government claimed that some elements of the management plan indicated unwillingness on the part of the SVNAC to comply with the unfettered access requirements of the management order. In its view the management plan required government officers to obtain permission as a precondition to accessing individuals living at the Reserve. This was said to be inconsistent with the management order¹²⁷ and inappropriate in relation to patient confidentiality.¹²⁸
- 4.11 The Government was not confident that a new management order expanding on the existing conditions for access would bring about the required improvements in government officers having access to women and children. This was because the implementation of these conditions would be left in the hands of the Corporation and

¹²⁵ Hon George Cash MLC, *Parliamentary Debates (Hansard)*, 16/05/03, p.7969.

¹²⁶ Hon Graham Giffard MLC, *Parliamentary Debates (Hansard)*, 16/05/03, p.7967.

¹²⁷ Memorandum Tara Gupta, Director Legal Services, Department for Community Development, to Jane Brazier, Director General dated 5/05/03. See also remarks of Hon Derrick Tomlinson MLC, *Parliamentary Debates (Hansard)*, 16 May 2003, pp.7975-6.

¹²⁸ Letter Mike Daube, Director General, Department of Health to Jane Brazier, Director General, DCD dated 7/05/03.

it was members of the Corporation that had been connected to the access problems.¹²⁹
This statement was referring to the activities of Robert Bropho and the other male members of the Community identified in Government briefings.

Examples given during briefings

4.12 Other than Robert Bropho, the names of the four male persons the Government wanted to be removed from the Reserve and its management was not mentioned in debate. These names were provided by government officers to at least one member of the Council during the briefings on the Bill given to non-government members.¹³⁰

4.13 To provide evidentiary support for its actions government officers presented an overview of the history of the SVNC and what were offered as some recent examples of why non-government members should support the Bill in the form that it was introduced. These allegations were intended to demonstrate that sexual abuse, violence and intimidation persisted at the Lord Street camp. The examples included:

- a 13 year old girl was forcibly taken to the Community by a SVNC resident and had to be removed by police and DCD due to the risk of sexual abuse;
- a 16 year old youth having both legs broken by a resident of the SVNC; and
- a former resident of the Community being intimidated by a resident of the SVNC and as a result had to be placed in a “safe house”.

4.14 As a result of the importance of these allegations the Committee investigated them to determine whether the allegations were based in fact. The Committee’s investigations and findings are contained in Chapter 15.

4.15 Two further allegations were raised during the briefing and by DCD in evidence before the Committee as examples of why the SVNCAC should no longer be responsible for the management of the Reserve. These were:

- that either Robert Bropho or persons under his direction insisted on attending interviews conducted by government officers. This presence hindered interviews and reduced the likelihood that disclosures would be made. A specific example of a child maltreatment allegation relating to a eight year old girl was given; and
- that a social worker was physically threatened by Robert Bropho whilst she was undertaking her work on the Reserve resulting in the worker having to

¹²⁹ Hon Graham Giffard MLC, *Parliamentary Debates (Hansard)*, 16/05/03, p.7967.

¹³⁰ Swan Valley Nyungah Community Management Order - Summary presented by government officers to Hon Derrick Tomlinson MLC during a briefing on the Bill on 16/05/03.

take stress leave. This was presented as an example of intimidation and the continuing problems that government agencies had in gaining access to the Reserve.

- 4.16 The Committee investigated these allegations and its findings are contained in Chapter 15.

LEGISLATIVE COUNCIL AMENDMENTS

- 4.17 The Council made thirteen amendments to the Bill.¹³¹ The purpose and intent of these amendments was to ensure that the persons identified as the perpetrators of abuse at the SVNC were permanently removed from the Reserve but at the same time allowing the remainder of the Community to stay in their homes. The central objection to the Bill by non-government members was that the Government's plan of removing all of the residents from the Community punished the victims when the Government should have been directing itself to stopping the abuse.¹³² Non-government members did not want to be part of a plan to dispossess those innocent victims of their homes and the rights otherwise enjoyed by persons in the wider community to natural justice and the protection of the courts.
- 4.18 The Council amendments sought to achieve this, not by revoking the existing management order and removing the SVNCAC from the management of the Reserve but by granting a power to amend the management order without the need for the management body to consent to such changes. The administrator (or the AAPA) would have a role in ensuring that the management body carried out the requirements of the management order as amended from time to time by the Minister for Lands.
- 4.19 Under the existing provisions of the LAA, an amendment to a management order was not effected by amending an existing management order but by revoking it and replacing it with a new management order that included the required changes. These amendments were agreed as between the Minister for Lands and the management body. The need to obtain the consent of the management body to make changes to the management order was a significant impediment to government control over the Reserve under the existing provisions of the LAA. This was because, in the absence of consent of the management body to amend the management order, the Minister's powers were limited to revocation under the three grounds discussed above.
- 4.20 Revocation for breach of the management order was not available to the Minister for Lands in relation to the SVNC because as late as April 2003, the Department of Land Administration (DOLA) had indicated that there had been no breach of the new

¹³¹ See Legislative Council Message No. 73, 16/05/03.

¹³² Hon Peter Foss QC MLC, *Parliamentary Debates (Hansard)*, 16/05/03, p.7980.

- management order.¹³³ Revocation for breach of the management plan required to be followed as part of the management order was not available to the Minister as the process for finalising the SVNCAC management plan had not been completed and the Minister had not given her final approval to the plan. Revocation on the grounds of the public interest raised the issue of proof that the SVNCAC was not managing the Reserve for the “benefit of aboriginal inhabitants”.
- 4.21 In the absence of the Bill, all three grounds would require adequate notice to be given to the SVNCAC, including details of the grounds for the proposed revocation, and an opportunity provided to receive and consider submissions from the management body in response so as to comply with natural justice requirements. All of these grounds for revoking the management order raised the prospect of the revocation being challenged in the court or delayed through the granting of an interim injunction prior to a hearing of the substantive merits of the case.
- 4.22 The object of the Council amendments was to continue the land tenure in the SVNCAC and provide an environment where DCD, Health and other government agencies could have access to the women and children at the Reserve without being impeded. By removing those individuals identified as troublemakers or alleged perpetrators of abuse, the women and children residing at the Reserve would not be in fear of intimidation or retribution. The amendments to the Bill would have resulted in the alleged victims of abuse being able to remain on the Reserve and not be resettled in the general community as envisaged by the Government’s plan.
- 4.23 The non-government members saw this as preferable to the Government’s plan of removing the alleged perpetrators of abuse and then re-housing them and their victims in the general community. It was argued that such a plan punished the victims for the sins of perpetrators by denying them their homes and making it more likely that the victims would continue to be subject to abuse. This was because DCD or other government agencies could be denied entry to private homes but not the Reserve if the management order guaranteeing physical access continued in place.
- 4.24 The Lord Street camp residents were largely members of the Bropho family. The proposition was put forward in debate in the Council that if this family group were to be relocated in the general community they would tend to congregate and would go with the very people from whom the Government was attempting to protect them. The relocation of the victims with the perpetrators would merely shift the problem not resolve it.¹³⁴ This initially was the case when three family groups from the SVNC moved to Saunders Street.¹³⁵ One object of the proposed amendments was to keep the

¹³³ 430/2002 Briefing Notes on Reserve 43131 Lord Street, Lockridge - Draft Management Plan, by Andrew Burke, A/Director, Land Information and Administration Services, April 2003.

¹³⁴ Hon Derrick Tomlinson MLC, *Parliamentary Debates (Hansard)*, 16/05/03, p.7987.

¹³⁵ Hon Kim Chance MLC, *Parliamentary Debates (Hansard)*, 10/06/03, p.8389.

victims in their Community, where they would be protected from violence and abuse by the perpetrators being locked out.¹³⁶

- 4.25 Another object of the amendments was to keep the majority of residents in their homes so that disturbance in the wider community that could result from displacing all of the residents would be minimised. Police have confirmed to the Committee that when the SVNC residents moved to the Saunders Street community, there was a significant increase in the number of complaints and incidents requiring police action at that community.¹³⁷
- 4.26 The passing of amendments to the Bill by the Council was not intended to obstruct the Government's stated objective of protecting the women and children at the SVNC. It was to provide an alternative means by which this objective could be achieved and at the same time ameliorate the more draconian elements of the Bill.

GOVERNMENT REJECTION OF THE COUNCIL'S AMENDMENTS

- 4.27 The Government's view in opposing the amendments was that the existing management structure could not be reformed; it needed to be removed entirely. It argued that the changes would result in litigation that would defeat the urgency of action that the Bill was designed to achieve with the consequences that entailed.¹³⁸ The Premier considered that the Council amendments rendered the Bill worthless.¹³⁹ His view was that the Council was blocking Government legislation rather than performing its review function.¹⁴⁰ The Assembly rejected the amendments and made one amendment of its own to include a sunset provision when it considered the Council's amendments on June 3 2003.

Observation 3. The Committee observes that the constitutional arrangements in Western Australia do not limit the role of the Legislative Council to a mere review function. In a system of responsible government, it is the function of both Houses to bring the Executive to account for its actions. The Legislative Council has all of the legislative powers of the Legislative Assembly; other than in the important matters of proposed legislation that requires the appropriation of money or imposition of taxation.¹⁴¹

¹³⁶ Hon Derrick Tomlinson MLC, *Parliamentary Debates (Hansard)*, 16/05/03, p.7987.

¹³⁷ The police received 25 complaints/incidents from the Saunders Street community between 6/06/03 - 18/12/03 compared to 5 in the previous corresponding period. Further information provided to the Committee by Inspector Robert Mumme 11/12/03.

¹³⁸ Hon Kim Chance MLC, Leader of the House, *Parliamentary Debates (Hansard)*, 16/05/03, p.7980.

¹³⁹ Premier's Media Statement, 17/05/03, p.1.

¹⁴⁰ Hon Robin Chapple MLC, *Parliamentary Debates (Hansard)*, 10/06/03, quoting transcript of ABC news, 27/05/03, p.8374.

¹⁴¹ Section 46, *Constitution Acts Amendment Act 1899*.

Observation 4. The Committee observes that notwithstanding the Government's stated urgency for the Legislative Council to pass the Bill unamended, the Legislative Assembly was not recalled earlier to deal with the Council's amendments to the Bill.

- 4.28 The Government received written legal advice from the Crown Solicitor's Office (CSO) in relation to the Council's amendments on May 27 2003, 11 days after the amendments were passed. The advice was that a major practical difficulty existed in leaving the SVNAC as the management body with responsibility for the care, control and management of the Reserve whilst at the same time having an administrator. The administrator would not have general administrative powers for the day to day management of the Reserve, as was the case in the unamended Bill. This would remain in the hands of the SVNAC to be overseen by the administrator.
- 4.29 The administrator would have the power to direct the SVNAC in relation to management of the Reserve in accordance with the management order which could be amended from time to time by the Minister for Lands without the need for the SVNAC to consent to such changes. As the Bill no longer revoked the management order, the Crown Solicitor's advice expressed doubt as to whether the Minister's power to amend a management order would extend to the power to revoke it.¹⁴² If it did not then, in the absence of consent by the management body, the administrative process under the LAA would have to be implemented with the attendant spectre of a legal challenge.
- 4.30 In the opinion of the Crown Solicitor's Office, this situation combined with the removal by the Council of the provisions of the Bill that denied natural justice and legal challenges to the administrator's decisions, was likely to lead to disputation between the SVNAC and the administrator that would frustrate the Bill's purpose:

*Failure to provide such provisions make it extremely likely that all measures taken under the Bill, once enacted, will be challenged in the Supreme Court by prerogative writs involving injunctions. Such challenges will, at least, be most disruptive. They could cause months of delays.*¹⁴³

¹⁴² The High Court of Australia has determined that in certain circumstances a prohibition on amending an Act can extend to repealing that Act. See *Attorney-General v Marquet* [2003] HCA 67, 13/11/03.

¹⁴³ Legal advice Crown Solicitor's Office to DPI, 27/05/03, p.5.

Observation 5. The Committee observes that it was not surprising that the amendments to the Bill passed by the Legislative Council may have been imperfect. The speed at which the Bill was dealt with left little time for the drafting of the amendments or their consideration. If the normal deliberative process of the Legislative Council were followed these criticisms could have been avoided.

Government negotiations with the Opposition

- 4.31 The point of difference between the Government and the Council in respect of the amendments was a legal argument as to the efficacy of the Council amendments. In an effort to come to a compromise the Leader of the Opposition sought a meeting with the Premier and the drafter of the amendments Hon Peter Foss QC MLC to discuss these issues. A meeting took place on May 21 2003 but Hon Peter Foss MLC was excluded.
- 4.32 Further Amendments were proposed by the Opposition to address the issues raised by the Government but not offend the principles that the Council sought to protect in passing its amendments. The proposed amendments included:
- an amendment that made it clear that the Administrator had the right to manage the Reserve during the term of his engagement with the rights of management in the SVNAC suspended during this period;¹⁴⁴ and
 - an amendment that prevented the Supreme Court from granting an interim injunction.¹⁴⁵
- 4.33 The first proposed amendment was put forward as an attempt to resolve the Government's objection that the original amendments resulted in a potential conflict of responsibility between the Administrator and the SVNAC.
- 4.34 The second proposed amendment was in response to the Government's objection that by removing the prohibition on the supervision of the courts, the Administrator's functions would be frustrated by court action. This amendment was intended to allow litigants their right to pursue their grievance in the court and permitted the court to make a final determination on the merits, but not impose an immediate fetter on the administrator via interim injunction.
- 4.35 Sandra Eckert, one of the legal officers responsible for the drafting instructions for the Bill, Lynsey Warbey, the Manager of the Gordon Implementation Secretariat and Mr Walsh met with Hon Peter Foss QC MLC and Hon Derrick Tomlinson MLC to

¹⁴⁴ Hon Peter Foss QC MLC, *Parliamentary Debates (Hansard)*, 10/06/03, p.8383.

¹⁴⁵ *Ibid*, p.8383.

discuss the proposed amendments.¹⁴⁶ This occurred after the Premier had called a press conference in which he referred to the CSO advice that was critical of the Council amendments.¹⁴⁷ Ms Eckert prepared a summary of what was discussed and the proposals put forward and then discussed this further with Mr Walsh later that day. Mr Walsh spoke with the Premier over the weekend about the matter. The next thing that Ms Eckert heard was that the proposed amendments were unacceptable.¹⁴⁸

4.36 The Assembly communicated its rejection of the Council amendments by Message dated June 3 2003, which included an amendment to add a sunset clause.¹⁴⁹ The Council considered the Assembly's Message on June 10 2003 and agreed to not insist on its 13 amendments and to accept the amendment made by the Assembly.¹⁵⁰ The Council's capitulation in this respect was in part due to the considerable pressures being placed on the Opposition by media reporting of a perceived disagreement between Assembly and Council members of the Liberal Party.¹⁵¹

Media reporting of Council's amendments

4.37 It was unfortunate that the disagreement between the Government and the Council in relation to the amendments was portrayed in the media as one in which the Council was seen as obstructionist or as rejecting the Bill. The non-government members of the Council merely had a different view to the Government of how to best deal with the problems of sexual abuse, substance abuse and domestic violence allegedly occurring at the SVNC. This approach was predicated on the view that:

- the innocent victims of abuse should be allowed to remain in their homes rather than being evicted along with the alleged perpetrators; and
- the exclusion of fundamental rights by the Bill such as natural justice, and the capacity to obtain the protection of a court were not required to achieve the Government's objective.

4.38 When questioned by the Committee, the Premier's Principal Media Adviser, Kieran Murphy specifically denied that he saw the events in the Council as a media

¹⁴⁶ This meeting took place on May 30 2003. See *Transcript of Evidence*, Murphy, Session 2, 17/09/03, p.21.

¹⁴⁷ "Problems found in Swan camp Bill amendments" by Leith Paganoni, *The West Australian*, 30/05/03, p.11.

¹⁴⁸ *Transcript of Evidence*, Eckert, Session 2, 21/08/03, p.20.

¹⁴⁹ Legislative Assembly Message No. 77, dated 3/06/03.

¹⁵⁰ Agreed by Division, Ayes 22, Noes 5 (All members of the Greens (WA) voted against the Council not insisting on its amendments and agreeing to the Assembly amendment inserting a sunset clause). See also Legislative Assembly Message No. 74 dated 10/06/03.

¹⁵¹ "Stand-off on closure of camp" by Steve Butler, *The West Australian*, 19/05/03, p.12, "Libs split over Bropho camp" by Roger Martin, *The Australian*, 3/06/03, p.1.

opportunity for the Government.¹⁵² He admitted that it was possible that he may have contacted media to suggest some avenues of reporting that they might follow, but that he could not recall specifically whether he did this.¹⁵³ He told the Committee that this may well have been to report a rift between the Council and Assembly members of the Liberal Party as this is how he viewed these events.¹⁵⁴ Newspaper articles were published that took this view.¹⁵⁵ One journalist reported that he was encouraged by the Premier's Office to report the events in the Council as a rift among Liberal members of Parliament on the decision to close the SVNC.¹⁵⁶

- 4.39 Mr Murphy specifically denied to the Committee that one of the principal motivations for the Government rejecting the Council amendments was that he saw it as an opportunity for the Government to make political capital out of it.¹⁵⁷

Finding 1. The Committee finds that the most likely basis for the Government's rejection of the Legislative Council amendments to the Bill was its legal advice.

Finding 2. The majority of the Committee finds that once the Bill was amended in the Legislative Council the Government took the opportunity to encourage the media to portray the events in the Council as an issue of leadership in the Liberal Party.

A MINISTER'S VIEW

- 4.40 The Committee explored what Hon Kim Chance MLC, the Leader of the Government in the Council, knew about the allegations of abuse at the Reserve prior to the Bill's introduction and during its passage in the Council.
- 4.41 Hon Kim Chance's first advice on the matter came directly from the Premier. The Premier told him that the heads of the relevant departments had advised him that they were no longer able to guarantee the safety of women and children at the SVNC and that it was necessary for the Government to act quickly.¹⁵⁸

¹⁵² *Transcript of Evidence*, Murphy, Session 2, 17/09/03, p.17.

¹⁵³ *Ibid*, p.18.

¹⁵⁴ *Ibid*, p.18.

¹⁵⁵ "Stand-off on closure of camp" by Steve Butler, *The West Australian*, 19/05/03, p.12, "Libs split over Bropho camp" by Roger Martin, *The Australian*, 3/06/03, p.1.

¹⁵⁶ "Swan camp stench over Gallop team" by Steve Pennells, *The West Australian*, 19/09/03, p.54.

¹⁵⁷ *Transcript of Evidence*, Murphy, Session 2, 17/09/03, p.18.

¹⁵⁸ *Transcript of Evidence*, Chance, Session 1, 30/07/03, p.1.

- 4.42 Hon Kim Chance MLC, as a Minister¹⁵⁹, and member of Cabinet, was never personally provided with any direct evidence to support the Government's view that there was an immediate threat to the women and children of the SVNC.¹⁶⁰ Within the Cabinet process he was provided with advice from departmental heads and he accepted the Premier's advice that it was a matter that had the current involvement of the relevant Ministers.¹⁶¹ He told the Committee that in the main the evidence of the immediate threat to women and children emerged during the debate on the Bill in the Council.¹⁶²
- 4.43 Opposition members questioned the need for the Lord Street camp to be closed due to the activities of four identified male persons. The logical question presented by this argument was how the victims of the alleged abuse could be protected in the event that the perpetrators of the alleged abuse were removed into the general community along with the victims of the abuse.
- 4.44 Hon Kim Chance MLC's understanding of the Government's objective in removing all of the residents was explained in evidence as follows:

The way I saw that occurring was twofold in effect, both in terms of the physical removal of all of the camp's dwellers from the area of risk and then the separation of those parties who were causing the risk from those who were at risk. That is the first view that I had. The second view I had was that by removing the at-risk people from the camp - I think this probably addresses your question more accurately - that removed the impediments that the agencies felt applied to them with regard to providing for the needs of the people who were at risk. The agencies had told the Government that they were unable to effectively service the needs of a group of vulnerable people while they were in that location. The Government's first response was to remove those people from that location. The second response - although simultaneous - was to remove those persons who may have been threatening vulnerable people from the vulnerable people. They are two quite clear elements.¹⁶³

- 4.45 Hon Kim Chance MLC saw the location as being distinctive. This was because it was his view that members of the management body used the management order to prevent government agencies servicing the needs of people who needed their services. What justified the action on the part of the Government was the fact that agencies could not

¹⁵⁹ Hon Kim Chance MLA is Minister for Agriculture, Forestry and Fisheries.

¹⁶⁰ *Transcript of Evidence*, Chance, Session 1, 30/07/03, p.4.

¹⁶¹ *Transcript of Evidence*, Chance, Session 1, 30/07/03, p.10.

¹⁶² *Ibid*, p.5.

¹⁶³ *Ibid*, p.5.

- service people's needs. If people were at risk as a result of that inability while they were in that location, one solution was to move them to another location where their needs could be serviced.¹⁶⁴
- 4.46 DCD, DIA and the Department of Health were identified as departments that had claimed that at various times they were either refused access to people within the Community or had great difficulty gaining access.¹⁶⁵
- 4.47 Hon Kim Chance MLC's evidence was that these difficulties spanned the period both prior to and after the change to the management order on October 11 2002. Prior to the management order being changed these difficulties included being denied physical access to the Reserve by the management body of the SVNCAC exercising its possessory title to the Reserve. After the change in management order physical access was granted but the agency workers were required to seek permission from the administration office and this permission was on occasions denied or conditions were placed on the access which were inappropriate.¹⁶⁶
- 4.48 Hon Kim Chance MLC's personal view was that after the removal of the residents of the Reserve they could, at some later time return to the Reserve.¹⁶⁷ This was clearly not contemplated by the Government. The intention was to remove all residents permanently from the Reserve.
- 4.49 As a consequence of the allegations made by the Government the Committee embarked on a factual inquiry to determine whether, and to what extent, government agencies were being prevented or hindered in their access to women and children at the Reserve.

¹⁶⁴ *Ibid*, p.5.

¹⁶⁵ *Ibid*, p.6.

¹⁶⁶ *Ibid*, p.8.

¹⁶⁷ *Ibid*, p.4.

CHAPTER 5

GENESIS OF THE BILL

ORIGINS

- 5.1 One of the difficulties facing the Committee in determining the motivations for the Bill was pinpointing the origins of the Government's intention to close the SVNC. *The West Australian* newspaper contained a report on August 15 2002 that the then Minister for Indigenous Affairs, Hon Alan Carpenter MLA had expressed his view that the Community should be closed. This view was based on the grounds that the management of the Lord Street camp had failed to bring about benefits for the Aboriginal inhabitants.¹⁶⁸
- 5.2 This media report coincided with the tabling in the Assembly on August 15 2002 of the Gordon Report, which acknowledged the widespread incidence of child abuse, domestic violence, and substance abuse in Aboriginal communities throughout Western Australia. It also came at a time when the Minister, in his capacity as Minister for Education and Training was embroiled in a dispute with Robert Bropho and the SVNCAC over the recovery of a demountable school building that had been located on the Reserve as an annex to the Lockridge Primary School.
- 5.3 Evidence was given to the Gordon Inquiry that the DET closed down the annex in October 1997 due to safety concerns for the teachers who worked at the Reserve. The SVNCAC used its possessory title to the Reserve to prevent access by government officers and contractors to remove the school building.¹⁶⁹ Since the closure of the school, the building had been put to other uses by the SVNCAC, including the teaching by a volunteer worker of music classes to Community children. The Minister, in his capacity as Minister for Education and Training, actively encouraged these uses and, as at May 2001, was aware that DET was working with the SVNCAC to establish several programs at the site.¹⁷⁰ The Minister became aware of DET's attempts to recover the school building from the Reserve only after his officers gave evidence to the Gordon Inquiry in March 2002.¹⁷¹
- 5.4 The building was DET property. The Minister for Education and Training was being frustrated in his attempts to remove the building by the intransigence of the SVNCAC and its spokesperson Robert Bropho in blocking access to the Reserve and insisting

¹⁶⁸ "Bropho could be forced from camp" by Charlie Wilson-Clark, *The West Australian*, 15/08/02, p.5.

¹⁶⁹ "Bropho blocks access" by Charlie Wilson-Clark, *The West Australian*, 7/05/02, p.3.

¹⁷⁰ Letter Hon Alan Carpenter MLA to Sophie Davidson dated 15/05/01 responding to letter from Ms Davidson and Robert Bropho dated 29/03/01.

¹⁷¹ "Bropho blocks access" by Charlie Wilson-Clark, *The West Australian*, 7/05/02, p.3.

that removal of the building would breach the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).¹⁷² Access was granted and the building removed on October 1 2002 after the Federal Environment Minister Dr David Kemp determined that there was no heritage or cultural significance attached to the classroom site.

5.5 The five-month saga was another example of the power of the SVNCAC and Robert Bropho to control access to the Reserve due to the nature of its vesting. Other examples included allegations that:

- Robert Bropho frustrated social workers attempting to investigate a claim of sexual abuse of a seven year old girl by an adolescent boy in 1996 by insisting on the presence of lawyers whilst conducting interviews;¹⁷³
- Robert Bropho obstructed a Crown prosecutor when she visited the SVNC to speak with a witness relevant to the prosecution of Mr Bropho's nephew, Timothy Bropho and a juvenile.¹⁷⁴ Timothy Bropho and the juvenile were later convicted of raping a two and a half year old girl at the SVNC in April 2000; and
- Robert Bropho had at various times "banned" the Aboriginal Medical Service (now Derbarl Yerrigan) and the Department of Family Services (now DCD) from entering the Reserve.¹⁷⁵

5.6 The school room dispute was the most recent in a series of incidents that contributed to the action by the Government on October 11 2002 to change the management order that at that time existed over the Reserve. Ten days after the removal of the school building from the Reserve, the previous vesting/management order was revoked and replaced with a new management order the object of which was to guarantee access to the Reserve by departmental officers.

5.7 The Minister for Lands explained that the need for the new management order was to provide greater assurance that the Reserve would be managed in the best interests of the residents. The change was prompted by the Government's concern for the residents' wellbeing following the coronial investigation into the death of Susan Taylor at the Reserve and its rejection of recommendation 141 of the Gordon

¹⁷² Robert Bropho on behalf of the SVNCAC made an application under section 10 of the Act seeking the preservation of protection from injury or desecration of Reserve 43131. The nature of the claim was that the site on which the school building had been located was the death site of a young Nyungah person and "beside a swamp of Sacredness". The application claimed that the excavation of the concrete footings on which the building was located would cause damage injury and desecration to the land.

¹⁷³ "Bropho denied sex abuse" by Colleen Egan, *The Australian*, 8/03/02, p.6.

¹⁷⁴ "Rape case witness interview blocked" by Colleen Egan, *The Australian*, 20/03/02, p.6.

¹⁷⁵ Coroner's Report, p.22-3.

Report.¹⁷⁶ The Committee notes that the Coroner's Report was published in November 2001 and the final Gordon Report was made public in mid August 2002 during the dispute between the Minister for Education and Training and the SVNCAC over the school building.

- 5.8 When questioned by the Committee on whether DCD, the lead agency dealing with the issue of child protection, agreed to or acquiesced in the Government's decision to reject recommendation 141, Mr Lex McCulloch, Executive Director, Community Development and Statewide Services said:

*I guess that was a political decision, not a departmental decision. My recollection is that the Premier was very clear that the management order was going to be the way it was; and that is the way it was.*¹⁷⁷

- 5.9 Ms Brazier, DCD Director General, told the Committee that she was not involved in this decision¹⁷⁸ or the subsequent negotiations for a new management order intended to guarantee access to the SVNC by government officers, including those from her department.¹⁷⁹ DCD did provide advice to the Government on recommendation 141 of the Gordon Inquiry. DCD advised that it "...had been progressing this initiative on an ongoing basis for some time without an end result. At the end of the day it is the Community's choice to engage with the Department in the signing of this MOU."¹⁸⁰

MANAGEMENT ORDER RATHER THAN MEMORANDA OF UNDERSTANDING

- 5.10 The rejection of the Gordon Inquiry recommendation 141, that memoranda of understanding be entered into between Government agencies and the SVNCAC, occurred prior to the Government tabling its official response to the Gordon Inquiry recommendations in November 2002.¹⁸¹ On August 2002, less than a week after the Gordon Report was tabled, the Minister for Lands, Hon Alannah MacTiernan MLA, met with the SVNCAC at the Lord Street camp to discuss a new management order.¹⁸²
- 5.11 The negotiations for this change occurred during the dispute between the SVNCAC and the Minister for Education and Training involving the removal of the demountable school building. The Department of Planning and Infrastructure (DPI) has advised the Committee that during the meeting of August 20 2002, the Minister's power under

¹⁷⁶ *Parliamentary Debates (Hansard)*, 17/10/02, p.1972.

¹⁷⁷ *Transcript of Evidence*, McCulloch, Session 3, 18/08/03, p.14.

¹⁷⁸ *Ibid*, p.15.

¹⁷⁹ *Transcript of Evidence*, Brazier, Session 3, 18/08/03, p.14.

¹⁸⁰ Responses to the Gordon Inquiry Recommendations, 10/09/02, pp.33&34.

¹⁸¹ "Putting People First".

¹⁸² Letter Larry Fouracres, Manager Land Asset - Metropolitan; Sandra Eckert, Legal Officer and Rosemary Menage, Legal Officer, DPI (formerly of DOLA) to Committee dated 18/10/04, p.2.

- section 50 of the LAA to revoke the existing management order may have been mentioned.¹⁸³ The Department also briefed the Minister for Lands on the existence of section 50 of the LAA.¹⁸⁴
- 5.12 Under this section the management order could be revoked on the grounds that the SVNCAC had breached its management order or if the Minister for Lands considered that it was in the public interest to do so. The expression “in the public interest” has been interpreted expansively by the courts.¹⁸⁵ This gives the Minister a broad discretion to revoke the management order if there was sufficient evidence to demonstrate that the management of the Reserve by the SVNCAC resulted in an adverse rather than a beneficial effect on the life of its inhabitants.¹⁸⁶
- 5.13 The negotiations for the change in management order took place in an environment where a refusal by the SVNCAC to agree to the terms considered essential by the Government could have led to the Minister for Lands using section 50 of the LAA to revoke the management order. A revocation would have resulted in the SVNCAC being removed from the management of the Reserve.
- 5.14 The Government’s justification for introducing the Bill was that the SVNCAC did have an adverse effect on the inhabitants of the Community. However, it was not prepared to proceed with a ministerial revocation under section 50(2) of the LAA due to the delays that would be caused by the requirement to accord natural justice to the SVNCAC and the risk of legal action by the Corporation.
- 5.15 There is a significant distinction between a memorandum of understanding desired by the SVNCAC and a management order. Both are consensual in that each party must agree to the terms for them to be entered into. However, a management order has a legislative foundation with consequences for non-compliance. The consequence of a breach is that it provides an opportunity for the Minister for Lands to exercise the powers of revocation under s.50 LAA. The breaching of a memorandum of understanding has no consequences other than a resulting diminution of the good-will of the parties to continue to abide by it.
- 5.16 Good-will between the SVNCAC and the Government was in short supply during the period of negotiation for the new management order as it occurred during the dispute over the removal of the school building from the Reserve. Despite this, three officers who assisted the Minister for Lands in negotiating the new management order with the

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ *O’Sullivan v Farrar* (1989) 168 CLR 210, at p.216.

¹⁸⁶ Advice by Crown Solicitor’s Office to DOLA dated 8/05/03, p.2.

SVNCAC advised the Committee that the SVNCAC cooperated with the process that led to the new management order.¹⁸⁷

5.17 A letter from the SVNCAC to the Minister for Lands dated September 21 2002 indicates the Corporation's willingness to permit access to the Reserve without the need to attend at the office of the management body or to announce a visit. It provided:

- where individual persons have requested government departments to come to see them, the government departments can come without asking or prior appointment;
- where the government department officers wish to see individual persons living here, the government departments are to write or ring first on home numbers to individual persons and give those individual persons reasonable notice;
- It is not necessary for government departments to ring or come to the office of the management body, ie SVNCAC;
- all government department visitors are to have clearly seen identification on their car and identification on themselves so that there is no confusion with undesirables; and
- government departments officers are to drive with caution at 5kph within the Reserve and park in parking areas along the roads.

Observation 6. The Committee observes that the SVNCAC request, contained in its letter dated September 21 2002 to the Minister for Lands, liberalised access to the Community. Its cooperation in the process for negotiating the new management order is an indication that the SVNCAC was being active in encouraging access by departmental officers rather than resisting it.

Conditions attaching to new Management Order

5.18 One of the new conditions attached to the management order was intended to deal with the issue of access to the Lord Street camp. It permitted any person representing or acting on behalf of, a Commonwealth, State or a Local Authority to enter on and remain within the boundaries of the Reserve in order for them to carry on the lawful exercise and performance of their functions and duties without that person being required to:

¹⁸⁷ Letter Larry Fouracres, Manager Land Asset - Metropolitan; Sandra Eckert, Legal Officer and Rosemary Menage, Legal Officer, DPI (formerly of DOLA) to Committee dated 18/10/04, p.4.

- a) obtain the prior approval of; or
- b) give prior notification to;
- the SVNCCAC.¹⁸⁸
- 5.19 The new management order also required the SVNCCAC to install a pedestrian gate.¹⁸⁹ Other conditions related to governance issues, including advising the relevant Minister of changes to office bearers, members of the Governing Committee and members of the Corporation and providing documents.¹⁹⁰
- 5.20 In addition the new management order contained a condition that required the SVNCCAC to provide a management plan to the satisfaction of Minister for Lands within six months.¹⁹¹ Once agreed to by the Minister this management plan would form part of the conditions of the management order so that a substantive breach of the management plan would also be grounds available to the Minister to support a revocation of the management order.¹⁹²
- 5.21 The SVNCCAC requested two matters to be specified in the management order to be also included in its management plan. These involved the need for the management plan to include provisions about notifying persons of speed restrictions and the need for officers to show identification.¹⁹³ No other requirements for the management plan were specified in the management order.
- 5.22 The four government officers that assisted in the negotiation of the management order provided the SVNCCAC with copies of two sample management plans, section 49 of the LAA and pages 4-23 of the *DOLA Crown Land Administration and Registration Practice Manual* to assist it in drafting its management plan. The latter document sets out what should be included in a management plan. These precedents were followed by the SVNCCAC in producing its management plan.
- 5.23 No further advice was provided by the officers to the SVNCCAC on what matters should be included in its management plan.¹⁹⁴ There was no requirement or advice given by the Government to the SVNCCAC in relation to including in its management plan matters to deal with sexual abuse of children, substance abuse or domestic violence.

¹⁸⁸ Clause 3 Annexure to Management Order for Reserve 43131.

¹⁸⁹ *Ibid*, Clause 2.

¹⁹⁰ *Ibid*, Clause 4.

¹⁹¹ The management order set an April 10 2003 deadline for the SVNCCAC to submit its management plan.

¹⁹² Clauses 6 & 7 Annexure to Management Order for Reserve 43131.

¹⁹³ *Ibid*, Clause 7(a).

Alteration of the SVNAC's right to exclude government officers

- 5.24 The new management order resulted in a significant change to the legal rights of the SVNAC to exclude persons including government officials from the land. An exclusion in circumstances where a condition of the management order was breached would be grounds to support a revocation of the management order by the Minister for Lands.

Observation 7. The Committee observes that the new management order altered the legal right of the SVNAC to exclude government officials from the Reserve other than where statute or the common law permitted access without consent. The right of entry and the requirement to submit a management plan which formed part of the conditions of the management order were designed to provide a significant incentive for the SVNAC to abide by the new management order.

DIRECTORS GENERAL GORDON IMPLEMENTATION GROUP

- 5.25 DGGIG met on March 14 2003. As part of its deliberations discussion included the SVNC. The minutes of the meeting state:

...there was considerable discussion on this issue. Each Department is undertaking individual efforts to improve the conditions within this community. However, the consensus is that these efforts will not succeed while the current management committee is in place. There also is currently no measure with which to evaluate the success of the projects being undertaken.

The consensus was that the current focus on providing better services to the community would not address the issue of child safety either from physical/sexual abuse, substance use or self harm. It was suggested and agreed that this issue needs to be referred back to the Ministers and a preferred solution to the problem be presented to the Cabinet Standing Committee on Social Policy. To facilitate this it was agreed that each Department should contribute information to a report on what was currently being done to try to address the problems within the community. It was also stated that ATSIC should be engaged in discussions to get their support for the alternatives.¹⁹⁵

¹⁹⁴ Letter Larry , Manager Land Asset - Metropolitan; Sandra Eckert, Legal Officer and Rosemary Menage, Legal Officer, DPI, (formerly of DOLA) to Committee dated 18/10/04, p.5.

¹⁹⁵ Minutes of DGGIG, 14/03/03, p.2.

5.26 DGGIG directed its secretariat to collate a report on the services being provided to the SVNC by all departments and their perceived effectiveness. Departments were also asked to provide information on their concerns and options for improving SVNC management.¹⁹⁶ Subsequently, the secretariat began to collect information about the progress of service delivery at the SVNC with the intention of presenting a submission to the Cabinet Standing Committee on Social Policy on May 26 2003.¹⁹⁷

INTER-AGENCY WORKING GROUP

5.27 An inter-agency working group was established in November 2003¹⁹⁸ to coordinate a collaborative approach by agencies providing services to the SVNC and the three other urban Aboriginal communities.¹⁹⁹ An inter-agency working group meeting, which included regional managers and some service delivery officers of the various departments, was held at DIA on March 21 2003 to determine the current position²⁰⁰ and agreed to meet regularly to develop and coordinate strategies.²⁰¹

5.28 The notes of the meeting of the inter-agency working group on March 21 2003 list concerns with the SVNC including the frustration of hearing “stories” about what was going on inside the camp but not one person having made a child protection complaint since the Gordon Report. Frustration was also evident in the difficulties of getting access to school records, including school attendance records, as a result of children from the Community going to a private Aboriginal school rather than to a government school. The management of the SVNC, including negotiations with Robert Bropho and “his lieutenants”, was also mentioned as a concern.²⁰²

5.29 Despite these concerns, the notes of the meeting state that the consensus of those present was that there was “more risk of something happening at the other two camps - Cullacabardee, Saunders St - than at the [SVNC] camp.”²⁰³ This reference to the likelihood of child sexual abuse taking place at other urban Aboriginal communities was explained in evidence before the Committee as being a consequence of the agency focus being on the SVNC.²⁰⁴ It was not that there was any greater risk being present at other communities when compared with the SVNC, although these risks were

¹⁹⁶ Minutes of DGGIG, 21/03/03, p.3.

¹⁹⁷ Statement Lynsey Warbey, Senior Policy Officer, DPI, 20/08/03, para 17.

¹⁹⁸ The inter-agency working group first met at DIA Midland Office on November 29 2002 to establish a group of service providers to explore how services could be better provided to the Lord Street camp. See Submission No 30 from DIA, 8/08/03, p.6 and Annexure 8, p.1.

¹⁹⁹ Report on Service Provision to Swan Valley Nyungah Community, April 2003, p.1, tabled at SOGIG, Meeting, 22/04/03, 11.30am-12.30pm.

²⁰⁰ Statement Lynsey Warbey, Senior Policy Officer, DPI, 20/08/03, para 12.

²⁰¹ Draft Notes from Meeting regarding SVNC, 21/03/03 at 10.30am, DIA Conference Room, p.1.

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ *Transcript of Evidence*, Douglas, Session 1, 17/09/03 p.8.

acknowledged as comparable.²⁰⁵ The notes of the working group indicate that the approach to be taken was one of “slow but firm progress”.²⁰⁶

REPORT ON SERVICE PROVISION TO SVNC - APRIL 2003

- 5.30 A report on service provision to the SVNC was compiled in April 2003 and tabled at the SOGIG meeting on April 22 2003.²⁰⁷ The report included a draft table of the progress departments were having in providing services to the SVNC. The Committee notes that there was a divergence of views on the degree to which service providers had ease of access to the residents of the Community. It was also made clear at that meeting that significant problems and dysfunction existed at the other discrete metropolitan indigenous communities.²⁰⁸
- 5.31 Three of the six government departments contributing to the report, WAPS, DOJ and DET indicated that there was no significant concern with access to the Lord Street camp. The latter two departments had developed or where developing protocols for obtaining access to the Community. DIA noted the attempt to involve the SVNC in a forum with the other three urban Aboriginal communities but that Robert Bropho was only interested in entering into a memorandum of understanding with the Government rather than at agency level. This was futile given that the Government had, by its actions in instituting the October 2002 Management Order and its correspondence to the SVNCAC, made it clear that memoranda of understanding would not be considered.²⁰⁹
- 5.32 The Department of Health listed the services it provided which included regular visits by Aboriginal Health Workers based in Midvale and facilitating access to clinical treatment at the local private medical practice. Its only listed concern was the lack of a male health worker. The officer from the Department of Health who provided the information on behalf of the Department later qualified the listed concerns in evidence before the Committee noting the failure of the SVNCAC to allow access to individuals in a manner that would guarantee patient confidentiality.²¹⁰ This was referring to two matters:
- health workers being required to present at the administration office of the SVNCAC to request permission to see a person or family; and

²⁰⁵ *Ibid*, p.9.

²⁰⁶ Draft Notes from Meeting regarding SVNC, 21/03/03 at 10.30am, DIA Conference Room, p.2.

²⁰⁷ SOGIG, Minutes of Meeting, 22/04/03, 11.30am-12.30pm, p.1.

²⁰⁸ Statement Ms Lynsey Warbey, Senior Policy Officer, DPI, 20/08/03, para 14.

²⁰⁹ Letter Hon Dr Geoff Gallop, Premier to SVNC dated 18/12/02.

²¹⁰ *Transcript of Evidence*, Douglas, Session 1, 17/09/03, p.7.

- a practice whereby persons associated with SVNC management would be present during interviews of residents.
- 5.33 DCD noted concerns including the reticence of Robert Bropho to agree to meetings with DCD taking place outside the Reserve or for residents to leave the camp to obtain services. It noted that although the tendency was for residents to access services only at crises times or for financial assistance, there had been some improvement of residents' access to services with the Cannington, Northam and Mirrabooka branches of DCD.²¹¹
- 5.34 The different views expressed at the meeting seemingly were dependent on the services being offered and the individual relationship between the officer and those who held themselves out as leaders of the Community.²¹² This is consistent with the evidence given to the Committee by DCD caseworkers that relationship building and a level of trust, as well as mutual respect, had to be developed between officers and leaders of the Community to ensure that engagement was meaningful and effective. This could be a time consuming and difficult process when dealing with marginalised or damaged people.²¹³
- 5.35 The report also noted that the other three urban Aboriginal communities were "considered to have similar or higher risk factors in regard to child abuse, family and domestic violence and substance abuse."²¹⁴ The principal concern expressed in the report was not that the risk to women and children at the SVNC was any greater than at other urban Aboriginal communities but the failure of the SVNC management to work constructively with some of the service providers for the benefit of residents. Five matters were listed as examples of unsatisfactory management:
- residents not having access to the full range of available services and support in the District;
 - service providers not having ready access to residents to assess risk, determine service delivery needs, identify who is in residence, and assess school attendances;
 - departments and inter-agency representatives not receiving cooperation in collaborative initiatives;

²¹¹ Report on Service Provision to Swan Valley Nyungah Community April 2003, p.3, tabled at SOGIG, Meeting, 22/04/03, 11.30am-12.30am.

²¹² Statement Lynsey Warbey, Senior Policy Officer, DPI, 20/08/03, para 13.

²¹³ *Private Transcript of Evidence*, Bayman, Session 3, 22/10/03, p.6.

²¹⁴ Report on Service Provision to Swan Valley Nyungah Community, April 2003, p.1 tabled at SOGIG Meeting, 22/04/03, 11.30am-12.30pm

- reluctance to engage in constructive dialogue at venues other than the camp; and
- ensuring the safety, protection and empowerment of women and children.

5.36 The report states:

*Departments report that positive development at SVNC remains limited whilst issues such as intimidation of residents, lack of confidentiality of health issues, the lack of supportive environment for victims of domestic violence or child abuse to seek assistance, or lack of freedom for residents to leave camp and contact service providers still remain.*²¹⁵

5.37 The report expressed doubts that continuing negotiations with SVNC management for access to residents or cooperation in collaborative approaches would result in the effective levels of access or cooperation required. In summary the report acknowledges that the service providers and inter-agency group had made improvements for the residents, but that the extent of the improvements in relation to the management of the SVNC were beyond the capacity of service providers alone.²¹⁶

5.38 The report was intended to provide information to DGGIG for its submission to the Cabinet Standing Committee on Social Policy so that “a preferred solution to the problem” could be presented on May 26 2003. The Committee has received a copy of the DGGIG draft submission. It states:

*...for some observers the SVNC is a yardstick for the effectiveness of the Government’s Response to the Gordon Inquiry. Whilst there are many strong arguments as to why the Swan Valley Nyungah should not be so regarded, it is fair to say that the public perception of the issue of indigenous family violence and child abuse focus very much on the SVNC.*²¹⁷

5.39 The view of DGGIG was that the public perception of the success or otherwise of the Government’s response was tied to the progress of service provision at the SVNC. The view of the Directors General in the submission was that the change to the management order made in October 2002 had not been in place for a sufficient time to

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ Proposed submission from DGGIG to Cabinet Standing Committee on Social Policy, p.1.

show clear results.²¹⁸ It also noted the serious concerns of the Directors General not only with the SVNC but with the other discrete urban indigenous communities.²¹⁹

- 5.40 Despite this acknowledgment, the Directors General appeared to be influenced by the view that the SVNC was the litmus test of Government resolve in relation to its response to the Gordon Inquiry. As distinct from the other Directors General, only the Director General of DIA, Richard Curry, was prepared to recommend a solution.
- 5.41 Mr Curry's preferred solution was to have the care and control of the Reserve removed from the SVNC and have it vested in the Commissioner for Aboriginal Affairs under the *Aboriginal Affairs Planning Authority Act 1972*. The Commissioner for Aboriginal Affairs is Mr Curry. This solution was consistent with the Urban Settlements Project being advanced by his Department that was intended to remove autonomy from the four metropolitan Aboriginal communities and have overall management of all urban Aboriginal communities under DIA control. The DIA policy included the closure of one of the four urban Aboriginal communities.²²⁰ This policy resulted from Mr Curry's view that these communities had failed to advance the interests of Aboriginal people and was consistent with his view that the communities were a "failed experiment".²²¹ Mr Curry's solution was the one accepted by the Premier, his Cabinet and ultimately the Parliament, but with the added element that all of the residents of Lord Street camp be removed and rehoused in the broader community.
- 5.42 The DGGIG draft submission concluded by stating that there remained ongoing risk to women and children at the SVNC and that three issues needed to be addressed before conditions would improve:
- (1) establishment of relationships of trust between service providers and community members;
 - (2) removal of persons from the SVNC who have a negative influence on the Community members and who prevent residents from accessing services. This includes, but is not limited to, Robert Bropho and Margaret Jeffery; and
 - (3) addressing long term problems at discrete indigenous communities in the metropolitan areas.²²²

²¹⁸ *Ibid*, p.3.

²¹⁹ *Ibid*.

²²⁰ Cullacabardee was cited for closure as a result of it being located on the Priority One water mound.

²²¹ *Transcript of Evidence*, Curry, Session 1, 14/10/04, p.23.

²²² Proposed submission from DGGIG to Cabinet Standing Committee on Social Policy, p.4.

- 5.43 DGGIG acknowledged that although service providers were working hard to address (1), it was not clear how (2) would be addressed and there was not a clear plan for the implementation of strategies to address (3). DGGIG also raised the issue of how the new management order introduced in October 2002 was intended to deal with (2) or (3).²²³ It is curious that DGGIG considered that there was no clear plan to address the long-term problems at discrete indigenous communities when the Government had published its response to the Gordon Report and had committed \$75 million to address issues common to all indigenous communities. DIA was also promoting its Urban Settlements Project in response to these issues.
- 5.44 The submission was never presented to the Cabinet Standing Committee on Social Policy. This was a direct result of the Premier's intervention on May 1 2003 when information passed on by a journalist prompted him to ask questions of his Directors General at a Strategic Management Council Meeting about progress with the SVNC.

PRESS QUERIES

- 5.45 From its investigations, the Committee finds it likely that the catalyst for Government action against the SVNC had its origins in a series of questions being asked by a journalist and the Premier's subsequent direct intervention. These events pre-empted consideration of the draft submission prepared by DGGIG and other processes²²⁴ that could have assisted with dealing with the issues of sexual abuse, substance abuse and domestic violence allegedly occurring at the SVNC.
- 5.46 The Government has a system in place to ensure that all media queries of government departments and agencies are referred to the Premier's media advisers at first instance.²²⁵ The person responsible for media matters in the Premier's Office at the time was Mr Kieran Murphy, the Premier's Principal Media Adviser. The Principal Media Adviser is the first point of contact for media wanting access to the Premier, and the Premier's primary source of media advice. It is also part of the Principal Media Adviser's function to monitor media and look at trends and stories and keep the Premier abreast of what is happening in the media.²²⁶
- 5.47 On April 29 2003, Colleen Egan, a journalist at *The Australian* and *Sunday Times* newspapers, contacted DCD. Ms Egan had reported extensively on the Susan Taylor Coronial inquest and on the Gordon Inquiry hearings. She was following up the story that had been published in *The West Australian* on August 15 2002 in which it was reported that the Minister for Indigenous Affairs, Hon Alan Carpenter MLA had

²²³ *Ibid.*

²²⁴ Finalising the SVNCAC management plan.

²²⁵ Statement Lynsey Warbey, Senior Policy Officer, DPI, 20/08/03, para 20.

²²⁶ *Transcript of Evidence*, Murphy, Session 2, 17/09/03 pp.22&29.

expressed an opinion that the SVNC should be closed.²²⁷ Her sources had told her that nothing had changed at the Community as far as child sexual abuse, substance abuse and domestic violence was concerned since the Gordon Report more than eight months earlier.

- 5.48 The contact with DCD came after Ms Egan spoke with the Press Secretary to the Minister for Indigenous Affairs to try to arrange an interview with the Minister to question him on why his plan for closure of the Reserve had not been instigated. This interview was refused. However, Ms Egan was referred to the Minister for Planning and Infrastructure's Press Secretary, having been advised that it was this minister who was responsible for the Reserve. Ms Egan's intention was to question the Minister, Hon Alannah MacTiernan MLA on what her Cabinet colleague, Hon Alan Carpenter MLA, had said in August 2002 that the SVNC was a "place of misery"²²⁸ and should be shut down and why this had not happened.²²⁹
- 5.49 Ms Egan interviewed Hon Alannah MacTiernan MLA. The Minister advised Ms Egan that the management order had been changed in October 2002 to ensure physical access to the Reserve, that Robert Bropho was no longer a member of the Governing Committee and that she had requested the Federal authorities to investigate the finances and administration of the SVNC. As far as the issue as to whether things had improved at the SVNC since the Gordon Inquiry, the Minister invited Ms Egan to contact the departments concerned. Ms Egan's impression of the interview was that the Minister "...was really questioning whether these agencies were going in there and doing what they should be doing."²³⁰
- 5.50 Ms Egan then contacted DCD. The Department duly informed the Premier's Office, which in turn advised Mr Murphy of the nature of the questioning. This occurred on April 29 2003.²³¹ One or two days later, Mr Murphy contacted Ms Egan. In evidence before the Committee Ms Egan related the subsequent conversation with Mr Murphy as follows.

Kieran contacted me on this one, specifically to ask me about any evidence that I might have and to say that things had not changed at the camp. He said on an off-the-record basis that the Premier was having a meeting with some department heads. From having covered the story all the way along, I know that the Premier feels emotionally about the Taylor findings and that he has a personal interest in the story. It did not really surprise me. Kieran said on an off-the-record

²²⁷ "Bropho could be forced from camp" by Charlie Wilson-Clark, *The West Australian*, 15/08/02, p.5.

²²⁸ *Ibid.*

²²⁹ *Transcript of Evidence*, Egan, Session 2, 12/11/03, p.3.

²³⁰ *Ibid*

²³¹ Statement Lynsey Warbey, Senior Policy Officer, DPI, 20/08/03, paras 18&20.

*basis that if nothing had changed out there, the Premier would not be happy about it. He asked me whether my sources would be willing to tell us any more detail. He said there was a meeting of department heads and I said I would go back to my sources*²³².

- 5.51 The Committee finds that this conversation probably occurred on or before May 1 2003, prior to the Premier’s Strategic Management Council meeting.²³³ Ms Egan provided further detail to Mr Murphy the following day on May 2 2003.²³⁴ Immediately before the Premier chaired a meeting of the Strategic Management Council, Mr Murphy told the Premier about the matters raised by Colleen Egan.²³⁵ Mr Murphy described his conversation with the Premier as follows:

*I got him just before he went in there, and it was a case of he was gathering his papers and about to walk in there. I think it was a case of getting him and following him along the corridor and saying, “Look, there have been some media queries about the Swan Valley Nyungah Community. I am told that Colleen Egan is of a view, or has contacts or sources that tell her, that nothing has changed; that government agencies are having problems getting access to women and children there; that there have been specific allegations that have been made about incidents. You have got the DGs in there - the directors general - check it out.”*²³⁶

STRATEGIC MANAGEMENT COUNCIL MEETING - MAY 1 2003

- 5.52 Meetings of the Strategic Management Council are held on a regular basis between the Premier and his Directors General, i.e. the Chief Executive Officers of all government departments, so that the Premier is kept up to date with what is occurring within the bureaucracy. On this occasion, the Strategic Management Council was an opportunity for the Premier to be informed of the progress in implementing the Government’s action plan in response to the Gordon Inquiry recommendations.
- 5.53 Mr Murphy’s suggestion to the Premier that he question his Directors General regarding the media allegations was so that it could be determined “whether the concerns of the journalist were relevant or whether they were to be believed. They

²³² *Transcript of Evidence*, Egan, Session 2, 12/11/03, p.8.

²³³ *Ibid*, p.13.

²³⁴ Handwritten notes of Kieran Murphy, Premier’s Principal Media Adviser.

²³⁵ *Transcript of Evidence*, Murphy, Session 2, 17/09/03, p.5.

²³⁶ *Ibid*.

would either back them up or discount them.”²³⁷ The Premier’s questioning occurred during general business, as the SVNC was not a specific agenda item for discussion.²³⁸

5.54 The Committee has received submissions and heard evidence from witnesses present at the Strategic Management Council meeting. Four of the Directors General present at that meeting have given evidence to the Committee:

- Richard Curry, DIA;
- Jane Brazier, DCD;
- Michael Daube, Department of Health; and
- Greg Joyce, DHW.

5.55 When questioned by the Premier the Directors General advised him of the difficulties that had been discussed and identified at the DGGIG meeting on March 14 2003.²³⁹ Mr Curry told the Committee that he advised the Premier that in his opinion, agencies were doing all they possibly could, but that there was still a considerable risk to the women and children on that site.²⁴⁰ Ms Brazier advised the Premier that given the lack of progress at the SVNC there was an unacceptable level of risk to the safety of the women and children residing at the Community.²⁴¹

5.56 After hearing this from his Directors General, the Premier demanded urgent action to protect the women and children claimed to be at risk. The Premier instructed his Chief of Staff, Sean Walsh, to convene a series of high level meetings of senior bureaucrats to determine the best way to achieve this objective and advise him accordingly.

FOLLOW UP WITH COLLEEN EGAN

5.57 After speaking with her sources, Ms Egan spoke with Mr Murphy again on or shortly after May 2 2003, in which she provided further detail on specific allegations. Those that Mr Murphy noted at the time were that:

- a 10 year old boy who had left the camp had been forcibly taken back to the SVNC by a resident;²⁴²

²³⁷ *Ibid*, pp.24-25.

²³⁸ Minutes of Strategic Management Council meeting, 1/05/03.

²³⁹ Submission No 29 from DCD, 8/08/03, para 73.

²⁴⁰ *Transcript of Evidence*, Curry, Session 1, 18/08/03, p.2.

²⁴¹ *Transcript of Evidence*, Session 3, 18/08/03, p.2.

²⁴² *Private Transcript of Evidence*, Egan, Session 2, 12/11/03, pp.8&9.

- a 16 year old boy had both of his legs broken by a resident of the SVNC. This was reported to DCD and the police but nothing had been done about it;²⁴³ and
- a 13 year old girl had been forcibly taken to the SVNC by a resident and later had to be removed from the Lord Street camp by DCD and police. The girl had alleged that her father was “messing around with her” the clear inference being that she was being sexually molested.²⁴⁴

5.58 Ms Egan gave evidence that during this conversation she had given Mr Murphy some historical background, which included an incident that had occurred several years previously regarding a former resident of the camp being intimidated and having her Homeswest accommodation burnt down allegedly by a resident of the SVNC. This was described in Mr Murphy’s notes of this conversation as the home being “fire bombed”.²⁴⁵ This was said to arise from a child sexual abuse court case in which two young perpetrators, one a juvenile, had been convicted of raping a toddler at the Lord Street camp. The tenant, the child’s mother, was a witness in this case.

5.59 The fire-bombing incident²⁴⁶ was described by Ms Egan to Mr Murphy as indicative of a pattern of behaviour by one of the residents of the SVNC to intimidate former residents so that they would return to the Community.²⁴⁷ It was not related to Mr Murphy as a fresh or current allegation but used to support the view that “nothing had changed” given that all three incidents above involved the same resident.²⁴⁸ Another aspect of this alleged pattern was the claim that the resident forcibly took children to the SVNC to encourage their parents to return to the camp.²⁴⁹ The above allegations regarding the 10-year-old boy and 13 year old girl were examples of this pattern continuing.

5.60 These incidents were passed on by Mr Murphy during his participation in the high level meetings of senior bureaucrats²⁵⁰ given the task of recommending a course of action to Government, and was used as evidence to justify the view that “nothing had changed” at the SVNC. They were put to Mr Mick Gooda, Western Australian State

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ Handwritten notes of Kieran Murphy, Premier’s Principal Media Adviser, p.4.

²⁴⁶ The police concluded that the fire that destroyed the home on 2/03/01 was deliberately lit and started on or about a mattress in the rear bedroom. Memorandum Detective Senior Constable Williams 8055 to John Tilbury, Ministry of Housing dated 13/03/01, (Homeswest Accommodation File F16260Y95A-02, Folio 41).

²⁴⁷ *Private Transcript of Evidence*, Egan, Session 2, 12/11/03, p.7.

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ Hand written notes of Mr Mal Wauchope, Director General, DPC, of meeting of senior bureaucrats on 5/05/03.

Manager of ATSIC in an effort to persuade ATSIC to support the Government's proposed action to close the SVNC.

- 5.61 A further allegation was made that was not listed in Mr Murphy's notes but which he told the Committee was also related to him by Ms Egan.²⁵¹ This allegation was that a former resident of the SVNC was harassed by one of the four males identified by the Government to such an extent that she, her child and sister were placed in a "safe house" by DCD.²⁵² Mr Gooda was also aware of this allegation as he told the Committee that ATSIC was also looking to provide the woman with secure accommodation due to her fears of retribution.²⁵³ This allegation was used by Government officers during briefings given to non-government members in an attempt to gain cross party support for the Bill.
- 5.62 Ms Egan made it clear to the Committee that although she believed her sources to be credible, she had not verified the information relayed to Mr Murphy. She had not spoken to the alleged victims to confirm what her sources had told her. The incidents were not initially intended to form the basis of any story she intended to publish. They were merely used as justification by her to ask the questions that she was asking of the departments.²⁵⁴ The allegations were hearsay.
- 5.63 The following exchange between the Chairman of the Committee and Ms Egan illustrates that the purpose of her inquiries was not to make allegations *per se* but to elicit a response to an earlier expressed intention by one Minister to close the SVNC. Ms Egan's recollection of the response she obtained from the Minister was one in which the Minister advised that, in her capacity as Minister for Lands, she had done all that she could to permit unfettered physical access to the Reserve, but questioned whether departments had taken advantage of the changed management order.

The CHAIRMAN: You understand though that everyone in the Government seems to think that you were ringing up with a set of new allegations and therefore something had to be responded to. In fact, this all started with, "Why haven't you done something when you said you were going to do something?"

Ms Egan: Yes.

The CHAIRMAN: That is interesting.

²⁵¹ *Transcript of Evidence*, Murphy, Session 2, 17/09/03, p.10.

²⁵² Confidential Supplementary Information provided under cover of letter from Greg Joyce, Director General, DHW dated 9/10/03.

²⁵³ *Private Transcript of Evidence*, Gooda, Session 2, 22/10/03, p.6.

²⁵⁴ *Private Transcript of Evidence*, 12/11/03 p.5.

Ms Egan: Reading the transcript, that seemed to be their interpretation. It seems to be that there is a journalist ringing making allegations. I mean, they were not my allegations to make.

The CHAIRMAN: We got the distinct impression that they thought you were about to publish allegations in the paper of fresh problems at the camp and that was imminent.

Ms Egan: Yes. It is possible that that may have occurred. I still had not decided where the story was going to go and I would not have done it without further checking, but that certainly was not outside the realms of what I would have written. The allegations I was being given were that not much had changed at the camp, the conditions were still bad. What I had sat through in the Susan Taylor inquiry was still going on basically, which I did not find hard to believe at all, having sat through that inquest. So, it could well be that my story would have been along those lines. The start of the story was, "Alan Carpenter had said this time ago that the place was going to be shut down, it was a place of misery. What happened to Alan Carpenter's plans and what happened to what he had said?" I think by that stage I had got it to a point where I had Alannah MacTiernan blaming the Commonwealth for something or other and criticising her own government departments by saying, "They have got access, why don't they go in there and use it?" although I had no information that government departments were accessing the site. That was not part of what I had been told.

The CHAIRMAN: So it was Alannah who brought up the question of access, not you?

Ms Egan: Yes.

The CHAIRMAN: That was something that she was concerned about?

Ms Egan: My question was that Alan Carpenter had said that it should be shut down, so why did she not shut it down, and her answer basically was that she could not shut it down because of some technical reason; however, her aim was to make sure the access was there, because physically they should be able to access it.

The CHAIRMAN: So she raised it, not you?

*Ms Egan: I cannot swear to that, but that is my recollection.*²⁵⁵

- 5.64 The issue of access to the Community was pivotal to the Government's argument to close the SVNC. It was this alleged lack of access that prevented women and children of the Lord Street camp from having available to them government services and from making disclosures about domestic violence, substance abuse and child abuse. A central element of the Government's access argument was that Robert Bropho, or persons under his direction, exercised control over who was permitted onto the Reserve. The change to the management order in October 2002 removed the issue of physical access. The issue of government access then focused on the allegation that Robert Bropho, or persons under his direction, attended interviews between government officers and SVNC residents or intimidated them, thereby hindering or preventing the reporting of abuse.
- 5.65 These allegations, those passed on by Ms Egan to the Premier's Office and Mr Murphy, became central to the Government's argument in favour of closing the SVNC. These allegations were later used during briefings to non-government members as examples of why there was an urgent need to close the Lord Street camp. The Committee therefore investigated the degree of access government officers had to the Lord Street camp and to its residents and also attempted to determine the accuracy of the allegations raised by Ms Egan and other allegations raised during government briefings and in debate on the Bill. The Committee also explored whether the media queries were a motivation for Government action rather than merely a catalyst.

MEETINGS OF SENIOR BUREAUCRATS

- 5.66 The first of the meetings of senior bureaucrats took place on the afternoon of May 1 2003 following the Strategic Management Council meeting and indicated the urgency with which the Premier wanted action on the issue. Subsequent meetings occurred on May 2, 5, 7 and 8 leading up to the Cabinet meeting on Monday May 12 2003 when the plan to close the SVNC was endorsed and instructions were given to draft the Bill.
- 5.67 These meetings were coordinated through the Premier's Office, with the Premier's Chief of Staff Mr Walsh as chairman. Senior bureaucrats in attendance included the Directors General comprising the DGGIG or their representatives, the Chiefs of Staff of the Ministers for Police, DCD and DIA, Acting Chief Executive Officer of DOLA, representatives of ATSIC and an Assistant Commissioner for Police.²⁵⁶ The only participant with direct contact on a day to day basis with the SVNC was a police

²⁵⁵ *Transcript of Evidence, Egan, Session 2, 12/11/03 pp.6&7.*

²⁵⁶ Attendees at Meetings Regarding the SVNC, undated, provided by DPI under cover of letter dated 25/09/03.

sergeant.²⁵⁷ Also present at some of these meetings was the Premier's Principal Media Adviser, Mr Murphy.

Legal advice

- 5.68 The senior bureaucrats sought legal advice from the Crown Solicitor's Office (CSO) on the options available to remove the management of the Reserve from the SVNAC. Preliminary advice became available at the meeting on May 2 2003²⁵⁸ and a more definitive written opinion was produced following a meeting on May 5 2003 at CSO between the Deputy Crown Solicitor and two participants in the meetings of senior bureaucrats.²⁵⁹ The legal advice was that the Minister for Lands could only revoke the management order without the consent of the SVNAC if the Corporation had committed a significant breach of the management order or if it were in the public interest. Both options would require the Government to accord natural justice to the SVNAC. This would include providing sufficient notice of the intention to revoke the management order and the substance of the grounds upon which the Minister intended to act so as to allow an opportunity for the SVNAC to respond to the proposed revocation.
- 5.69 CSO advised that both options would result in considerable delay and leave open the prospect of a legal challenge. For example, an interim injunction that would prevent the revocation taking effect until the primary issue had been determined may have resulted in months of delay. Ministerial action on the basis of a breach of the management order appeared to be a moot point in any event as the legal advice noted from the request that "there had been no relevant breach of condition at the present time."²⁶⁰ This left only the public interest option.

Legislative option

- 5.70 In the course of the senior bureaucrats' discussions, a representative of DOLA suggested the possibility of using a Reserves Bill.²⁶¹ Reserves Bills are commonly used to alter the classification or boundaries of a reserve or to excise portions of a reserve for other uses.²⁶² Where the reserve is an "A" class reserve these changes require parliamentary approval. Reserve 43131 was not an "A" class reserve.

²⁵⁷ Sergeant Jim Clarysse of the Kiara Police Station.

²⁵⁸ Handwritten notes Mr Mal Wauchope, Director General, DPC, of meeting of senior bureaucrats on 2/05/03.

²⁵⁹ Advice by Crown Solicitor's Office to DOLA dated 8/05/03. Ms Lynsey Warbey, Senior Policy Officer DPC and Manager, DGGIG secretariat and Mr Grahame Searle of DOLA.

²⁶⁰ Advice by Crown Solicitor's Office to DOLA dated 8/05/03.

²⁶¹ *Transcript of Evidence*, Walsh, Session 1, 21/08/03, p.5. *Transcript of Evidence*, Searle, Session 1, 25/09/03, p.3.

²⁶² Reserves (Neerabup National Park) Bill 2000 and Reserves (Dampier to Bunbury Natural Gas Pipeline Corridor) Bill 2002

- 5.71 Reserves Bills are seldom used to deprive people against their wishes of rights that they hold. The suggestion of a Reserves Bill was offered as a legal solution to the difficulties identified by CSO. A Reserves Bill was seen to have the advantage of avoiding issues surrounding the administrative process of revoking the management order by ministerial action. By placing the issue into a Bill the matter would be considered by Parliament where debate could take place in a public forum with a focus on the objective of protecting women and children rather than the administrative process of revocation.²⁶³ The use of a Reserves Bill was presented with other options to CSO during discussions on May 5 2003 prior to the meeting of senior bureaucrats that afternoon. The CSO advice, confirmed later in writing, was that “[t]here would appear to be no legal reason why an appropriately drafted Act could not be employed for the purpose in question.”²⁶⁴
- 5.72 Ensuring that the recommended course of action did not create a platform for Robert Bropho or anyone else to go to court to argue about the process was also a factor in recommending a Reserves Bill as the most appropriate avenue to achieve the Government’s objective. It was seen by the senior bureaucrats to be the legally safest route.²⁶⁵

Recommendation

- 5.73 The Deputy Crown Solicitor’s legal advice was discussed at the meeting of senior bureaucrats on May 5 2003. A timeframe was discussed for the passage of the Bill including its proposed introduction on Thursday, May 15 2003. Various tasks were assigned with a view to preparing a Cabinet submission for Monday, May 12 2003. These tasks culminated in the preparation by DPC of an Action Plan²⁶⁶ following Cabinet approval of the recommendation by senior bureaucrats to use a Reserves Bill. Another imperative discussed during the meeting of senior bureaucrats was to “pull together the justification argument.”²⁶⁷

SVNC MANAGEMENT ORDER PLAN (ACTION PLAN)

- 5.74 The meetings of senior bureaucrats formulated the Action Plan in consultation with the Premier’s Office to manage the closure of the Community and the removal and rehousing of its residents. The Government’s plan was for the administrator to exercise his powers under section 7 of the *Reserves (Reserve 43131) Act 2003* to remove members of SVNCAC considered troublemakers or those associated with the

²⁶³ *Transcript of Evidence*, Session 1, 25/09/03, p.1.

²⁶⁴ Advice by Crown Solicitor’s Office to DOLA dated 8/05/03, p.3.

²⁶⁵ *Transcript of Evidence*, Session 1, 25/09/03, p.9.

²⁶⁶ Management Order Plan Swan Valley Nyungah Community (‘Action Plan’).

²⁶⁷ Handwritten notes Mr Mal Wauchope, Director General, DPC, of meetings of senior bureaucrats on 5/05/03.

management of the Reserve seen to impede access to women and children. The action plan provided:

Key figures to be removed to ensure the successful implementation of the new Management Order are Robert Bropho, in the first instance, and Herbert Bropho, Harvey Bropho, Sharon Davies, Margaret Jeffries and Iva Haywood-Jackson. Ms Davies, Ms Jeffries²⁶⁸ and Mr Hayward-Jackson do not live at the Community.²⁶⁹

- 5.75 In the absence of the above individuals it was then intended that the various departments would have access to the women and children *in situ*. The Action Plan contemplated a two-stage process that allowed women and children to remain for a period at the Reserve and for them to be rehoused over time. There was some disagreement between Ms Brazier and Mr Curry as to how long the women and children would be permitted to stay. Ms Brazier preferred a period that would enable meaningful engagement to occur, whereas Mr Curry preferred that the Government move quickly to re-settle the residents. This reflected the different focus of the two departments; DCD on the women and children and DIA on issues surrounding managing the land.²⁷⁰ This aspect of the Action Plan was dependent upon the women and children remaining at the Reserve. This did not eventuate. As predicted in debate on the Bill in the Council, all of the residents of the Reserve vacated prior to the Bill being passed by both Houses.²⁷¹ The majority of the Community moved to the Urban Aboriginal Community (Saunders Street).
- 5.76 The Action Plan did not take into account this possibility and none of the witnesses before the Committee who attended the meetings of senior bureaucrats had contemplated that this would occur. This proved problematic because DHW had responsibility for supplying accommodation for the former residents. Notes of one of the meetings indicate that DHW had only sufficient housing immediately available to deal with those named persons who were to be evicted by the Administrator.²⁷²

THE PREMIER'S ANNOUNCEMENT

- 5.77 Cabinet approved the plan to close the SVNC and remove its residents at its meeting on Monday May 12 2003. Drafting instructions for the Bill were then produced with

²⁶⁸ This was in fact referring to Margaret Jeffery, SVNCAC Office Manager.

²⁶⁹ Management Order Plan Swan Valley Nyungah Community, p.1.

²⁷⁰ *Transcript of Evidence*, Warbey, Session 2, 21/08/03, p.10

²⁷¹ *Parliamentary Debates (Hansard)*, 16/05/03, p.7971. The Lord Street camp residents left the Reserve on or about 7/05/03.

²⁷² Handwritten notes dated 12/05/03, author not identified, provided to the Committee by Mr Sean Walsh, Premier's Chief of Staff, DPC in letter dated 28/11/03.

the intention of introducing the Bill into the Assembly on Thursday, May 15 2003.²⁷³
 The Premier foreshadowed this action in his announcement in the Assembly on Wednesday, May 14 2003.²⁷⁴

- 5.78 In introducing the Bill into the Assembly on May 15 2003 the Premier urged the Parliament to take a strong stand against child abuse and family violence by supporting the Bill.²⁷⁵

DISTINGUISHING FEATURE OF SVNC

- 5.79 The proposition that emerged from the evidence taken by the Committee was that the level of domestic violence, substance abuse and child abuse at the Lord Street camp was comparable to the levels and risks at other Aboriginal urban communities throughout Western Australia. Indeed, the risks at some remote Aboriginal communities may have been far greater given the absence of law enforcement and other services available to those communities.²⁷⁶
- 5.80 The question was asked in the Council as to why the Bill was targeting the SVNC alone, given that other Aboriginal communities allegedly had similar endemic abuse issues. It was the view of the Government that what distinguished the SVNC from other Aboriginal communities was the difficulties experienced by departmental officers in accessing people for services.²⁷⁷ The Government claimed that intimidatory tactics prevented the reporting of incidents and hampered this access. Community management was also allegedly hampering communication with women and children²⁷⁸ through controlling interviews by DCD officers. The access issue had two dimensions. Firstly, physical access to the Reserve. Secondly, personal access to the residents of the Reserve in an environment where matters can be discussed and services provided in confidence and without fear of intimidation.
- 5.81 Physical access to the Reserve had been addressed by the change to the management order on October 11 2002. However, the Government claimed that this did not adequately resolve the issue of access to the women and children of the Community. This difficulty was said to be a direct result of the management of the Reserve, predominantly exercised by Robert Bropho and people acting on his direction.

²⁷³ Letter Ms Sandra Eckert, Legal Officer, DOLA Legal Service Branch (now DPI) to Mr Greg Calcutt, Parliamentary Council dated 12/05/03 and Management Order Plan Swan Valley Nyungah Community, ('Action Plan'), undated, p.3.

²⁷⁴ Brief Ministerial Statement, *Parliamentary Debates (Hansard)*, 14/05/03, p.7655.

²⁷⁵ Premier's Media Statement, 15/05/03, p.2.

²⁷⁶ *Transcript of Evidence*, Egan, Session 2, 12/11/03, p.16.

²⁷⁷ *Transcript of Evidence*, Walsh, Session 1, 22/08/03, p.7.

²⁷⁸ Ministerial Briefing Note: Reserves (Reserve 43131) Bill Issues Raised in the Legislative Council, undated, p.4.

- 5.82 Ms Brazier's assessment was that the management focus of the SVNCAC on political issues was the principal barrier to access by her officers:

...I believe that we were looking at a management arrangement that probably had an ideological position about working with government and that the focus of that management group was around the politics, if you like, of the relationship with government, rather than a focus on necessarily the people in the community. That certainly is my view.²⁷⁹

- 5.83 The Directors General who advised the Premier on these difficulties and the risks to women and children at the SVNC had no direct experience with the Community. They relied upon information that had been supplied by managers and subordinates to formulate a view. The Committee therefore examined the services provided by each of the relevant departments, and in particular the views of service delivery officers at the "coal face" to determine whether the Government's position accurately reflected the experience of these officers.

²⁷⁹ *Transcript of Evidence, Brazier, Session 3, 18/08/03, p.12.*

CHAPTER 6

DEPARTMENT FOR COMMUNITY DEVELOPMENT

SERVICE PROVISION

- 6.1 The protection of children is a major responsibility of DCD. At the time of the action against the SVNC, the mandate for the protection of children was derived from the *Child Welfare Act 1947*.²⁸⁰ The Act granted the department the necessary powers to ensure the safety of children who have been or are at risk of harm or neglect by placing them in safe care when they are unable to remain with their families.
- 6.2 Through the *Child Welfare Act 1947*, the *Welfare and Assistance Act 1961* and the *Community Services Act 1972*,²⁸¹ DCD was responsible for the development of frameworks and responses and the provision of services that strengthen families and build the capacity of communities to care well for children.²⁸² These roles are now provided for under a single legislative framework - the *Children and Community Services Act 2004*.
- 6.3 Officers from DCD in evidence before the Committee, stressed the need to build relationships with people. In the language of the social worker this is to ‘engage’ with clients so as to establish trust and an environment where issues such as family violence, substance abuse, health or other issues can be raised and addressed. A large part of this work is based on a surveillance model. For example, in having the contact take place in the family home the social worker is in a position to observe other issues. These include whether standards of hygiene are adequate within the home, whether the children are adequately clothed and cared for, whether they are attending school and whether there are injuries consistent with physical abuse. It also places people in a familiar environment where they may be more likely to make disclosures of domestic violence, sexual abuse or substance abuse.
- 6.4 The obvious difficulty with intra-familial child abuse is that the abuser is often controlling and can refuse entry to their home by DCD officers unless there is sufficient cause for DCD to exercise its statutory powers of entry. In the absence of a relationship of trust, it is difficult for DCD to gather sufficient information on which to exercise this power. Reliance upon and coordination with other agencies such as the Department of Health and DET can assist in this regard. A child presenting at an

²⁸⁰ Now *Children and Community Services Act 2004*.

²⁸¹ These Acts have since been repealed by the *Children and Community Services Act 2004*, Act No. 34 of 2004. This Act has incorporated and updated these Acts into one piece of legislation and was in part a response to the Gordon Inquiry.

²⁸² Submission No 29 from DCD, 8/08/03.

emergency department with injuries inconsistent with the explanation given by a parent or guardian or truanting from, misbehaviour, or a sudden decline in grades or social interaction at school can be information that may assist in determining whether action should be taken.

6.5 Ms Brazier's evidence was that her officers did not have free and unfettered access to women and children at the SVNC. She also did not believe that residents of the Lord Street camp were free to discuss issues with DCD when they had concerns they needed addressed. Her view was that there was an element of intimidation perpetrated by others at the Lord Street camp that prevented these disclosures from being made.²⁸³

6.6 Ms Brazier's primary concern with access was that entry to the Lord Street camp was always conditional upon reporting to the SVNCAC administration office. Ms Brazier told the Committee that any access to women, children or families in that camp was conditional upon the agreement of the office staff to that access and was always monitored by somebody from the office.²⁸⁴ The sources of Ms Brazier's concerns in this regard were twofold:

- the information that she had received from the managers and staff of the Midland Office of DCD; and
- the response by the SVNCAC to the requirement of the October 2002 management order to provide a management plan to the Minister for Lands within six months of the management order coming into effect.²⁸⁵

6.7 The media also played some part in Ms Brazier's assessment that there was an unacceptable risk to women and children at the Community. Later, during the meetings of senior bureaucrats she was given further detail of the allegations made by Ms Egan's sources. Ms Brazier gave weight to these allegations, notwithstanding that they had yet to be verified by her or Ms Egan:

In our business I regard the media as often the voice of a community, either generally or specifically, that for whatever reason is not able to come to us directly with its concerns. I think historically we might have had a defensiveness about media interest in our business, but I take the view that the media does represent a voice and that it is a voice that needs to be listened to, and I always take very seriously where the media may be coming from. In this instance we were talking about a very credible journalist who I believe had some access to some people that we did not have access to, and so it was important

²⁸³ Transcript of Evidence, Brazier, Session 3, 18/08/03, p.22.

²⁸⁴ *Ibid*, p.3.

²⁸⁵ *Ibid*.

that we respond to those concerns. So coupled together with the cases that I have given you information about, there was also some information that was coming to us from a third-party source. Having said that, I then began to get additional information - I do not want to speak about the details - that was coming to me via people who had a direct connection with individuals, shall we say.²⁸⁶

INFORMATION MS BRAZIER RECEIVED FROM MIDLAND DCD

Examples of Access Difficulties

6.8 Ms Brazier gave the Committee two examples related to her by the managers of the Midland branch of DCD of how the management of the Reserve restricted access by departmental officers.

(1) Child mistreatment allegation

6.9 On December 5 2003, the Acting Manager of the Midland DCD office, Mr Roley Bayman, attended the Lord Street camp with a caseworker in relation to a health concern raised regarding a child suffering pneumonia. The child had a history of glue sniffing²⁸⁷ and had allegedly been discharged early from hospital. There was a suggestion that the child was being neglected as, in addition to the child's health concerns, the informant said that the child had received no visitors during her confinement in hospital. Mr Bayman telephoned the SVNAC in advance to announce the visit as a courtesy and to request that the interview take place in the child's home. On arriving, although access was freely granted to the Reserve, Robert Bropho would not permit the interview to be undertaken in the child's home. The interview took place in the Community's open space. One of the Community's voluntary workers, Ms Sharon Davies, attended and took notes.²⁸⁸

6.10 Mr Bayman, although satisfied that the voluntary worker's presence had not had an impact on the conversation with the child and her aunt,²⁸⁹ later expressed his concerns to Ms Brazier in an e-mail sent that day which stated, in part, as follows:

Overall the visit went well but it raises a number of issues:

1....

2. We need to look at how we manage each visit particularly where we need privacy and confidentiality, and the need to assess the home

²⁸⁶ *Ibid*, p.21.

²⁸⁷ DCD Child Maltreatment Allegation Investigation Outcome Report, 14/02/03, p.1.

²⁸⁸ *Transcript of Evidence*, Brazier, Session 3, 18/08/03, p.4.

²⁸⁹ *Private Transcript of Evidence*, Session 3, 22/10/03, p.6.

environment. These issues will need to be explored further through our interagency meetings and with SVNC members in terms of practice

*We have made some tentative gains and presently there are no obvious concerns for the immediate safety of [x].*²⁹⁰

- 6.11 These privacy and confidentiality issues were again raised by the Acting Manager in an e-mail to Midland, Mirrabooka and the Crisis Care Unit²⁹¹ staff of DCD on December 9 2002. Whilst acknowledging that the departments had some way to go in establishing an ongoing constructive relationship, Mr Bayman described the visit on December 5 2002 and the Community Inspection Audit that took place on December 4 2002²⁹² as “a small breakthrough in accessing the community”.
- 6.12 Mr Bayman also advised staff “...that where possible we will telephone ahead as a sign of respect, to announce a visit but there will be occasions where this is not appropriate.”²⁹³ Those occasions would be where it was a high priority child protection matter.²⁹⁴ This example was not such a case.
- 6.13 The Committee subsequently heard evidence from Ms Sharon Davies, the SVNC voluntary worker who was the cause for DCD concerns regarding privacy and confidentiality. Ms Davies told the Committee that she had been asked by the girl’s aunt to attend with her because the aunt was fearful of DCD. As a child, the aunt had been taken from her parents by the government welfare agency and considered herself one of the ‘stolen generation’. The aunt had not been told of the reason for DCD’s visit and given that this occurred the day after the Community Inspection Audit she was fearful and required support.²⁹⁵ Ms Davies also denied that the child had been discharged early from hospital and that no one had visited her. According to Ms Davies, the girl’s aunt, who was caring for four other children, had visited the girl every day in the evening.²⁹⁶ Ms Davies was also concerned that DCD did not even know the child’s correct age.²⁹⁷

²⁹⁰ Edited e-mail Roley Bayman, Acting Manager Midland DCD to Jane Brazier et al dated 5/12/03, p.2.

²⁹¹ An after hours contact staffed by social workers from the DCD.

²⁹² See paragraphs 6.45-6.53.

²⁹³ E-mail Roley Bayman, Acting Manager Midland DCD to Bill Currie et al dated 9/12/02, p.1.

²⁹⁴ *Private Transcript of Evidence*, Session 3, 22/10/03, p.6.

²⁹⁵ *Transcript of Evidence*, Davies, Session 2, 11/12/03, p.7.

²⁹⁶ *Ibid*, p.6.

²⁹⁷ DCD record had the girl’s age as 12 years when she was only 8 years old. Letter provided by the girl’s aunt dated 10/12/03.

6.14 The child was healthy apart from a minor medical condition that was resolving and for which she had received appropriate treatment at the local medical practice. The child maltreatment allegation was subsequently found by DCD to be unsubstantiated.²⁹⁸

(2) Intimidation of a DCD social worker

6.15 On May 21 2003 a social worker who had only recently graduated was directed by the new manager of Midland DCD to visit the Lord Street camp so as to ‘engage’ with the women and children. The social worker had had some contact with the women of the Lord Street camp in the Midland office of DCD.²⁹⁹ The social worker attended with a police officer that had a good working relationship with Robert Bropho. This police presence was not for her protection but as a means to introduce the new worker to Robert Bropho.³⁰⁰

6.16 On her arrival at the Lord Street camp Robert Bropho was not there. She and the police officer reported to the office and then went about their respective business in different parts of the camp. Robert Bropho and another male Community member then arrived in a vehicle. The social worker gave evidence that Robert Bropho confronted her waving his walking stick, demanding to know what she was doing and saying that the matter was “political” and that “anybody could come out there and walk freely around the camp, but only if he was notified first.”³⁰¹ The social worker was then taken to the office by the other male Community member, required to hand over her identification so that it could be photocopied and was placed in an enclosed patio area. The social worker was fearful for her safety and felt intimidated. However, she was still able to ‘engage’ with two women and a child at the Community without someone else being present.³⁰²

Observation 8. The Committee observes that the comments of Robert Bropho indicated that despite the change in management order and the views expressed by the SVNAC that agency personnel could visit unannounced and without attending the administration office,³⁰³ he still expected that he be notified before government officers accessed the Reserve. This was in direct contradiction to the conditions of the management order put in place in October 2002.

6.17 Robert Bropho’s expectation that he be notified prior to visits by government agencies was to some extent accepted and encouraged by the previous manager of DCD Midland by instructing his officers to phone ahead to announce a visit as a sign of

²⁹⁸ DCD, Child Maltreatment Allegation Investigation Outcome Report, 14/02/03, p.2.

²⁹⁹ *Private Transcript of Evidence, Session 3, 22/10/03, p.2*

³⁰⁰ *Private Transcript of Evidence, Session 4, 25/09/03, p.11.*

³⁰¹ *Ibid, p.13.*

³⁰² *Ibid, pp.12-13.*

³⁰³ Letter SVNAC to the Minister for Lands dated 21/09/02.

respect.³⁰⁴ This instruction was not followed on this occasion by the new manager of Midland DCD. This appeared to be a contributing factor to the subsequent confrontation with Robert Bropho, who had returned to the Community to find the social worker on the premises.

- 6.18 Although it accepts that the social worker was physically intimidated, the Committee notes that this visit occurred one week after the Premier had announced that the Government intended to close the Lord Street camp. It may have been anticipated that at that time feelings against the Government (and any person who represented the Government) would be running high at the SVNC. The reaction of Robert Bropho though in no way condoned by the Committee, and in direct contradiction to the conditions of the management order, must be seen in the context of the timing of the visit. A further factor was that, unlike the previous visit by DCD and contrary to the direction given by the previous manager, DCD did not telephone Community to announce the visit.
- 6.19 In his evidence, Mr Lex McCulloch, DCD Executive Director, Community Development and Statewide Services, left the Committee with the impression that the social worker was so affected by the incident that she had to take two days off work on stress leave.³⁰⁵ This was also stated to members of the Council during briefings on the Bill³⁰⁶ and later in the Assembly by the Minister for Community Development.³⁰⁷ The social worker later gave evidence to the Committee specifically denying that she had taken any stress leave as a result of the incident.³⁰⁸ She had in fact gone on a course to train her to conduct child interviews jointly with police.³⁰⁹ This was corroborated by evidence given to the Committee by her manager who also confirmed that such confrontations in the job as a social worker were not unusual.³¹⁰ The manager's view is backed by statistics from DCD. In the 12-month period from June 2002 DCD received 46 reports from its social workers throughout Western Australia of being physically threatened.³¹¹

³⁰⁴ E-mail Roley Bayman to Bill Currie et al dated 9/12/02. The SVNC Working Group also directed agencies to "show respect when visiting the community" and "to Report to the office on arrival". See Minutes of SVNC Working Group, DIA Midland, 19/03/03, p.1.

³⁰⁵ This was also how the incident was reported in *The West Australian* newspaper the next day.

³⁰⁶ Hon Robin Chapple MLC, Government Briefing to Greens (WA) members on 16/05/03.

³⁰⁷ Answer to question without notice No. 734 asked by Mr M McGowan MLA to the Minister for Community Development, Women's Interests, Seniors and Youth, *Parliamentary Debates (Hansard)*, 3/06/03, p.8001.

³⁰⁸ *Private Transcript of Evidence*, Session 4, 18/08/03, p.7.

³⁰⁹ *Ibid*, p.19.

³¹⁰ *Private Transcript of Evidence*, Thomas, Session 3, 22/10/03, p.3.

³¹¹ Answer to question without notice No. 965 asked by the Hon Norman Moore MLC to the Parliamentary Secretary representing the Minister for Community Development, Women's Interests, Senior and Youth. *Parliamentary Debates (Hansard)*, 10/06/03, p.3868.

Finding 3. The Committee finds that the evidence supports the Government's allegation that Robert Bropho intimidated a DCD social worker whilst she was undertaking her duties at the Reserve on May 21 2003. However, this was at a time after the Government had announced its intention to close the SVNC, when it would be expected that feelings against the Government would be running high.

Finding 4. The Committee finds that contrary to the impression given to the Committee by a senior government officer and a claim made during Government briefings on the Bill, a DCD social worker did not take stress leave after being confronted by Robert Bropho and another male SVNCAC member on May 21 2003.

Evidence of Cannington based DCD caseworkers - A different perspective

- 6.20 The lack of success of Midland based DCD social workers in building relationships with SVNC management and residents is in stark contrast to the success of the DCD's Cannington based social workers. Two Cannington social workers had been involved in a case that required a high level of cooperation with Robert Bropho. Robert Bropho in fact initiated the involvement.³¹² The social workers had developed a relationship with Robert Bropho based on mutual respect and trust. This involved the process of announcing their visits at the SVNCAC administration office. The workers did not see this as something sinister or a means by which SVNC management controlled access but as a courtesy.³¹³
- 6.21 The case involved an infant and her teenage mother. The mother had previously been homeless and was living on the street before the birth of her child. The Cannington social workers succeeded in placing the mother and her newborn at the Lord Street camp where the mother could obtain support from her partner's family. This was in January 2003.

Observation 9. The Committee observes that if, as the Government claimed, the Lord Street camp posed such a danger to the safety of women and children, the DCD case workers or their superiors would have discouraged the placement of the mother and child there in January 2002. They did not, suggesting that they did not perceive there to be an unacceptable risk.

- 6.22 After the closure of the SVNC the mother and child were relocated to temporary accommodation and then a Homeswest dwelling was made available to them. DCD

³¹² *Private Transcript of Evidence, Session 4, 25/09/03, p.4.*

³¹³ *Ibid, p.9.*

has since exercised its powers under the *Child Welfare Act 1947* to remove the infant from the mother's care. Ms Margaret Jeffery, Secretary and Office Manager for the SVNCAC, gave evidence to the Committee that as a result of the relocation caused by the closure of the SVNC, the negative influence of the mother's family had resulted in the mother resuming her substance abuse. Ms Jeffery told the Committee that when the mother lived at the SVNC, the negative influence of the mother's relatives was avoided.³¹⁴ The girl's placement in Homeswest accommodation was unsuccessful. Her tenancy was terminated less than five months after she had moved in with the dwelling requiring over \$7 000 in repairs.³¹⁵

SVNCAC MANAGEMENT PLAN

- 6.23 The second of the issues raised by Ms Brazier contributing to her view that SVNC management was not permitting free and unfettered access to residents at the Lord Street camp was the form of the SVNCAC management plan. The management plan was a requirement of the management order introduced in October 2002. The management order set a deadline of April 10 2003 for the management plan to be presented to the Minister for Lands. The Minister could then request items for inclusion and require a response from the SVNCAC within one month. Once approved by the Minister, the management plan became part of the conditions of the management order.³¹⁶
- 6.24 The SVNCAC management plan was provided in draft to the Government under the cover of its letter dated March 30 2003.³¹⁷ The SVNCAC had assistance in formulating its draft management plan from four officers at DOLA who acknowledged Robert Bropho's cooperation in the process.³¹⁸ The extract from the DOLA Crown Land Administration and Registration Practice Manual and example management plans provided by the Government were followed by the SVNCAC in drafting its management plan.³¹⁹ No advice was provided to the SVNCAC on having to include in the management plan matters dealing with domestic violence, sexual abuse or substance abuse.³²⁰ The SVNCAC merely followed the examples provided by DOLA officers.

³¹⁴ *Private Transcript of Evidence*, Jeffery, Session 2, 11/12/03, p.3.

³¹⁵ DHW File No.2003/22996, folio 108.

³¹⁶ Clause 6(b), Management Order.

³¹⁷ 430/2002 Briefing Notes on Reserve 43131 Lord Street, Lockridge - Draft Management Plan, by Andrew Burke, Acting Director, Land Information and Administration Services, DOLA, April 2003, p.6.

³¹⁸ E-mail Helen Phelan to Lynsey Warbey, Senior Policy Officer, DPI dated 4/04/03.

³¹⁹ Mooranoppin Aboriginal Heritage, Culture and Conservation Reserve, Draft Management Plan 2001 and Galena Mining Heritage Area Management Plan, Galena Management Plan Steering Committee, December 2000.

³²⁰ Letter Larry Fouracres, Manager Land Asset - Metropolitan; Sandra Eckert, Legal Officer and Rosemary Menage, Legal Officer, DPI (formerly of DOLA) to Committee dated 18/10/04.

- 6.25 However, the SVNAC management plan was then subjected to criticism by Government during debate on the Bill³²¹ and cited as an example by Ms Brazier of SVNAC management failing to adequately address the issues raised in the Gordon Report.³²²
- 6.26 The process to finalise the management plan had not been completed at the time the Bill was introduced. The SVNAC draft management plan was circulated to relevant government departments for comment with a view that these comments would be returned by May 20 2003 and then provided to the Minister for Lands at the end of May with DOLA's views and the consolidated views from relevant agencies.³²³

DCD Legal Advice

- 6.27 Ms Brazier sought advice on the management plan from her legal officer. This advice was provided on May 5 2003. The Committee notes that this was after she had attended the Strategic Management Council meeting with the Premier on May 1 2003 and on the same day as CSO advice was given to the meeting of senior bureaucrats that a suitably drafted Reserves Bill could be utilised to close the SVNAC.
- 6.28 The legal advice from DCD was that the draft management plan was inconsistent with the management order in relation to the issue of access. The issue of access is dealt with in item 2 of the SVNAC management plan. In part it states:

The gate is always open except if threat of lawbreakers. New and unannounced visitors are advised to come to the Office in the first place They are then directed to who they need to see... Government workers if they want to visit are requested to carry easily seen identification on vehicles and on their person and to park in the designated parking area so they can be distinguished from the high class bungemen³²⁴ and other law-breakers. By common courtesy most first time visitors ring ahead.³²⁵

- 6.29 Despite there being no requirement, merely a request, that government officers attend at the SVNAC administration office, the legal advice provided was that:

These statements are not consistent with clause 3 of the Annexure to the Management Order, signed by the Minister, which indicates that the person representing, amongst others, a State Authority is and will

³²¹ Second Reading Speech, Hon Graham Giffard MLC, Parliamentary Secretary representing the Minister for Planning and Infrastructure, *Parliamentary Debates (Hansard)*, 16/05/03, p.7967.

³²² *Transcript of Evidence*, Brazier, Session 3, 18/08/03, p.3.

³²³ E-mail Helen Phelan to Lynsey Warbey, Senior Policy Officer, DPI dated 29/04/03.

³²⁴ A person who gives girls, and in some cases boys, drugs and in particular solvents, in return for sex.

³²⁵ SVNAC Management Plan, p.6.

*be entitled to enter on and remain within the boundaries of the Reserve in order to carry out the lawful exercise and performance of the functions and duties of that authority without being required to obtain the prior approval, or give prior notification to the Swan Valley Nyungah Community Aboriginal Corporation.*³²⁶

- 6.30 When challenged by the Committee that the SVNCAC management plan did not have a requirement that prior approval or notification be given but merely a request, Ms Brazier explained the legal advice in terms of what occurred in practice when DCD officers visited the Community. The view of her officers as related by Ms Brazier was that access was in practice conditional upon attending the SVNCAC administration office and obtaining permission. Ms Brazier's Department's legal advice reflects this view.

ACCESS AND CONFIDENTIALITY

- 6.31 The Committee has heard from six DCD officers that attended the Lord Street camp in the six months prior to its closure. Two from the Cannington branch have told the Committee that they had no access difficulties. Midland officers had no difficulties in physically accessing the Community, but expressed some concerns about the manner in which Robert Bropho required a particular interview to take place. This was the interview with the child in the company of her aunt and the SVNC voluntary worker Sharon Davies. There was no suggestion that this interview involved an allegation of child sexual abuse, rather it referred to a medical condition and the enquiry originated from the Swan Health Service. It was accepted by the acting manager conducting the interview that the presence of the voluntary worker did not impede the interview or influence what was said. The primary concern was that due to the interview taking place in the open space, the child's home environment could not be observed and also that the child's confidentiality was compromised by the presence of Ms Davies taking notes.

Observation 10. The Committee observes that patient confidentiality is at the discretion of the patient or, if the patient is a child, the child's parent or guardian. If a patient or her guardian does not object to, or prefers, a third person being present during an interview or examination then no valid objection can be taken that the presence of that person compromised patient confidentiality. However, the Committee acknowledges that a valid objection could be raised where the failure to object to the presence of third parties was the result of intimidation.

- 6.32 Government officers from the Department of Health and WAPS have told the Committee that reporting to the office of an Aboriginal community is the common means by which access is obtained. This has both a cultural and practical aspect. The

³²⁶

Memorandum Tara Gupta, Legal Officer DCD to Jane Brazier, Director General, DCD, May 5 2003.

cultural aspect is that it pays due respect to the person(s) leading the community. The practical aspect in that it is often only by attending the office that accurate information regarding the whereabouts of the person or family the officer wishes to visit can be obtained. None of the witnesses before the Committee said that they were questioned regarding an individual's medical condition when they attended the office when attempting to access individual residents at the SVNC.

Finding 5. The Committee finds that the practice of visiting the SVNCAC administration office to determine whether and where a person may be does not compromise patient or client confidentiality. Merely because a person attends the office and asks to see a named person reveals nothing of the nature of the client's medical condition or other confidential matter.

6.33 A request in the SVNCAC management plan for new or unannounced visitors to attend the office or for first time visitors to ring ahead to announce their visit, is not an unusual request in view of established practice in Aboriginal communities. The Committee appreciates that in certain circumstances an announcement of a visit is neither practical nor appropriate, such as when a visit involves a child protection matter.

Finding 6. The Committee finds that there was no requirement in the SVNCAC management plan for government workers to attend the SVNCAC administration office as a precondition of obtaining access to members of the Community.

Finding 7. The Committee finds that the practice of attending the office of the SVNCAC was encouraged by the Midland office of DCD and the SVNC inter-agency working group, other than in circumstances where a proposed visit involved a child protection matter.

6.34 Although there was no requirement in the SVNCAC management plan for government workers to attend the administration office as a precondition for obtaining access to residents of the Reserve, the common practice was to attend the office for both practical and cultural reasons. The success of individual officers to obtain unimpeded access to residents varied depending upon the approach taken by the workers, the level of trust that had been established and the subject matter of the visit. In any event, such perceived deficiencies in relation to access could have been resolved if the process for finalising the SVNCAC management plan was allowed to continue.

- 6.35 Ms Brazier did not communicate with the SVNCAC as to why its management plan was unacceptable. The SVNCAC was given no opportunity to rectify deficiencies in its plan or address criticism such as those raised by Ms Brazier in her evidence.³²⁷ This was because the media queries set off a chain of events that overtook the issue of the SVNCAC management plan. The plan then became redundant due to the Government's decision to legislate to revoke the management order in order to remove the SVNCAC from management of the Reserve and then to remove all residents. Up to that time DOLA had indicated that in all respects the SVNCAC had complied with the management order that was put in place in October 2002.³²⁸

Observation 11. The Committee observes that Ms Brazier's claim that the SVNCAC management plan is an example of a recalcitrant management is unsupportable. This management plan was based on examples provided by the Government and produced with the assistance of the Government. The SVNCAC had fully cooperated and the process that was to be followed for its final formulation had not been completed. No feedback or opportunity was given to the SVNCAC to rectify the perceived deficiencies in the management plan identified by either Ms Brazier or any other departmental head. The Corporation in following the example management orders and guidelines provided was doing exactly what the Government had asked.

RECORD OF DCD ACCESS TO SVNC

- 6.36 Physical visits to the SVNC by DCD Midland staff were non-existent for a year prior to the Community Inspection Audit that took place on December 4 2002. Ms Brazier explained this lack of contact as resulting from the difficult relationship between government officers and the management of the SVNC during the period of the Gordon Inquiry's investigation and also the period between the tabling of the Inquiry's report and the Government response. Due to these sensitivities, DCD officers would not have visited the SVNC except in very unusual circumstances during the whole of 2002.³²⁹
- 6.37 Another factor raised by Ms Brazier explaining the lack of visits was the desire by women and children of the Community to meet government officers outside the SVNC for reasons of safety. Ms Brazier claimed that if SVNCAC management were aware that individuals had been interviewed by DCD in relation to abuse issues, it was likely that they would be the subject of intimidation or other action to ensure that the women and children would not speak frankly. Ms Brazier based this assessment on second hand information gained by some of her officers.³³⁰

³²⁷ 430/2002 Briefing Notes on Reserve 43131 Lord Street, Lockridge - Draft Management Plan, by Andrew Burke, A/Director, Land Information and Administration Services, April 2003, p.6.

³²⁸ *Ibid.*

³²⁹ Letter Jane Brazier, Director General, DCD to Committee dated 20/10/03, p.2.

³³⁰ *Ibid.*

- 6.38 The Acting Manager of Midland DCD, Mr Bayman, told the Committee that in the 12-month period prior to December 4 2002 there was no reason for his social workers to go to the Lord Street camp. He based this view on the grounds that in that time he had not received any allegation that would raise an issue of child protection.³³¹ Notwithstanding this, Ms Brazier told the Committee that she ordered her staff to participate in the Community Inspection Audit at the Lord Street camp on December 4 2002. According to Ms Brazier the purpose of DCD's involvement in the audit was for DCD to assess a number of the children who lived there.³³² Ms Brazier also advised the Committee that concerns regarding the safety of women and children at the SVNC had first come to her attention in November 2002.³³³ The Committee finds it difficult to accept that the Acting Manager of the DCD branch with responsibility for the SVNC and the person who led the Community Inspection Audit would not have been aware of these concerns. If these concerns had been raised in November, why had Ms Brazier not communicated these to Mr Bayman and instructed him to interview the children of concern?
- 6.39 Despite the change in management order, Mr Bayman expressed the view that DCD treated the SVNC like any other private dwelling in Midland. DCD would not go into the Lord Street camp unless invited or if it had strong concerns that warranted DCD's presence, such as an issue of child protection.³³⁴ The Committee was curious as to why DCD did not visit the SVNC more regularly given the concerns raised in the Coroner's Report into the death of Susan Taylor and the Gordon Report. It would be expected that with the concerns expressed in these reports that visits to the SVNC and other Aboriginal communities would increase in an attempt to build relationships of trust and an environment where disclosures of domestic violence or child abuse could be made. These contacts could occur outside the SVNC if this was necessary, but as a first step, the Committee would expect that relationships would have to be developed and that this would require regular visits to the Community.
- 6.40 Ms Brazier advised the Committee that Midland DCD officers did visit the SVNC on eight occasions from December 2002 to June 2003.³³⁵ Six different officers attended on these occasions. One visit in May 2003, during which the social worker was allegedly intimidated, was one week after the Premier had announced that the SVNC would be closed. Another, in early June 2003, was after all the residents had vacated the Reserve. The first of these visits was the Community Inspection Audit in December 2002 that Robert Bropho refers to as 'the raid' and a 'media stunt'. The second arose from a child maltreatment allegation that was subsequently not

³³¹ *Private Transcript of Evidence*, Bayman, Session 3, 22/10/03, p.15.

³³² *Transcript of Evidence*, Brazier, Session 3, 18/08/03, p.4.

³³³ Submission No 29 from DCD, 8/08/03, para 27.

³³⁴ *Private Transcript of Evidence*, Bayman, Session 3, 22/10/03, p.9.

³³⁵ Letter Jane Brazier, Director General, DCD to Committee dated 20/10/03, Annexure One.

substantiated by DCD.³³⁶ Only one of these visits, on May 2 2003 was related to an issue of abuse and this did not involve a resident of the SVNC or any occurrence at the SVNC. A member of the management committee of the SVNCAC initiated this contact. The allegation of abuse only became apparent after social workers spoke to the girl at the SVNC. The girl claimed that her father who lived outside the Lord Street camp was physically abusing her and that she had run away to the SVNC for her own protection.³³⁷ A month later she made an allegation against Robert Bropho that has resulted in further criminal charges against him.³³⁸

- 6.41 Ms Brazier acknowledged that she regarded the SVNC issue as a matter of particular importance after the Susan Taylor inquest and the Gordon Inquiry.³³⁹ However, the Acting Manager of Midland DCD told the Committee that there was no reason to go to the SVNC as he had not received any child protection complaint. This view was remarkable given Ms Brazier's acknowledgment of the importance of the SVNC.
- 6.42 Other than seeking information on the incidents that had occurred at the SVNC and those children considered at risk,³⁴⁰ Ms Brazier did nothing to encourage contact between DCD officers and the Lord Street camp residents or SVNCAC management during the year prior to the Community Inspection Audit in December 2002. When questioned by the Committee on this issue, she acknowledged that the level of contact between Midland DCD and the SVNC was not adequate.³⁴¹
- 6.43 Ms Brazier admitted under questioning the inadequacy of DCD visits to the SVNC. This lack of visits by DCD was inexcusable, but what was more inexcusable was Ms Brazier's failure to ensure action was taken by her Department to visit the SVNC after the Coroner's Report into Susan Taylor's death in November 2001 and the Gordon Report in July 2002. Ms Brazier acknowledged that these were matters of particular attention to her Department.³⁴² Ms Brazier's lack of knowledge of the complete inactivity of DCD Midland Office prior to the Community Inspection Audit on December 4 2002 did not prevent her from advising the Premier of the access difficulties DCD officers allegedly experienced at the SVNC. It is difficult to accept from the perspective of DCD that "nothing had changed" if DCD did not go to the Lord Street camp.
- 6.44 The following exchange between the Chairman and Ms Brazier illustrates this point:

³³⁶ DCD Maltreatment Allegation Investigation Outcome Report dated 14/02/03.

³³⁷ *Private Transcript of Evidence*, Session 1, 12/11/03, p.3.

³³⁸ Two counts of indecently dealing with a child aged 13 years or over but under 16 years.

³³⁹ *Private Transcript of Evidence*, Brazier, 1/11/04, p.3.

³⁴⁰ *Ibid*, p.4.

³⁴¹ *Ibid*.

³⁴² *Ibid*, p.3.

The CHAIRMAN: *The fact is that the Midland office for 12 months prior to December did not go there and in December only went there because the Department of the Premier and Cabinet ordered it to.*

Ms Brazier: *And the Midland office had a very different relationship with the senior management in the Swan Valley community because it had a history of confronting issues that went to the heart of children's wellbeing.*

The CHAIRMAN: *Yes, I think there is a point that seems to have got away. My first question was: if you regarded the Swan Valley as important, how was it that you did not take proactive action? The answer to that was because you did not have access. The fact is that your people did not go there.*

Ms Brazier: *Yes, and, Mr Chairman, I have already indicated that I do not think that level of visitation was adequate or appropriate.*

The CHAIRMAN: *I know, but if you had said to those people, "I regard Swan Valley as important and I want you to be proactive over Swan Valley, because look at what has come out of the Susan Taylor inquest and look at what has come out of the Gordon inquiry", then they might not have sat there for 12 months doing nothing.*

Ms Brazier: *They might not have.*

The CHAIRMAN: *What I want to know is what your role was, in having come to the realisation that Swan Valley was important. What did you do to ensure that somebody from your department actually got out there and did something about it?*

Ms Brazier: *I would have made that quite clear to senior management, and it is of concern to me that there was not a greater level of visitation.*

The CHAIRMAN: *The concern of the committee is that had there been a better level of communication in that 12 months, then something might have changed.*

Ms Brazier: *I would not be optimistic that it would have.*

The CHAIRMAN: *I know, but it is very hard to expect change if your people do not go there.*

Ms Brazier: *Yes, you have made that point and I have accepted it.*

The CHAIRMAN: The reason we are concerned about it is that that was the evidence that was given to the Premier when he asked the strategic management council what had happened. I think you might have used the same terms yourself, and certainly other people attributed it as the general nature of what you said, that nothing much had changed. Would that be a fair summation of what you said to the Premier at that time?

Ms Brazier: Yes.³⁴³

- Finding 8. The Committee finds that Jane Brazier, Director General of DCD:**
- was aware of the importance to her Department of the matters raised by the Coroner's Report into the death of Susan Taylor and the Gordon Report;
 - despite the above, failed to ensure that Midland DCD, the Office with primary responsibility for the SVNC, visited the Lord Street camp;
 - failed to communicate with the Acting Manager of DCD Midland, her November 2002 concerns regarding the safety of women and children at the Lord Street camp; and
 - had no proper basis upon which to advise the Premier on May 1 2003 that 'nothing had changed' at the Lord Street camp.

COMMUNITY INSPECTION AUDIT

6.45 The 'Community Inspection Audit' or the 'Audit' was a term used by government agencies to describe an action taken against the SVNC on December 4 2004 in which a group of senior public servants, in the company of eight police officers attended the Lord Street camp. The Audit team had the residents of the Lord Street camp assemble in the Community's open space where discussions took place. Mr Bayman, the Acting Manager of DCD Midland Office told the Committee that the Audit's purpose was to advise women and children of the government services available to them and of the right of these officials to visit and provide services and engage with people.³⁴⁴ Another purpose of the Audit was to determine who lived at the camp.³⁴⁵

6.46 The Audit was arranged as a result of a direction from the Premier.³⁴⁶ Mr Richard Curry, Director General of DIA, coordinated the Audit.³⁴⁷ According to the DIA

³⁴³ *Private Transcript of Evidence*, Brazier, 1/11/04, pp.5-6.

³⁴⁴ *Private Transcript of Evidence*, Bayman, Session 3, 22/10/03, p.4.

³⁴⁵ *Ibid.*

³⁴⁶ *Transcript of Evidence*, Curry, Session 1, 14/10/04, p.13.

- submission to the Committee, the impetus for the audit was the SVNAC refusing to comply with a request on December 2 2002 to meet with DIA that month. The purpose of the proposed meeting was to discuss the possibility of the SVNAC becoming involved in a collaborative and coordinated agency approach to service provision.³⁴⁸
- 6.47 DIA had taken the lead role in establishing a SVNC inter-agency working group in late November 2002.³⁴⁹ This inter-agency working group comprised service delivery officers from relevant departments to coordinate and explore new ways to attempt to provide services to the Lord Street camp and address the issues of domestic violence, substance abuse and child abuse. Further meetings of the Working Group were proposed on December 5 and 12 2002. DIA acknowledged that the time lines were “very ambitious given the variables that could impact on the process”.³⁵⁰ One of these variables was the cooperation and availability of SVNC management.
- 6.48 Margaret Jeffery, on behalf of the SVNAC, advised DIA that the meeting proposed for December could not take place until January 2003.³⁵¹ This response was “unacceptable to Government”³⁵² which in that context meant the Director General of Indigenous Affairs.³⁵³ As a result the Audit inspection was arranged for December 4 2002. Mr Bayman described this action as a “take that” strategy.³⁵⁴
- 6.49 Mr Bayman attended a meeting at DIA on December 3 2002 with other government officials and was directed to lead the group that comprised representatives from DCD, Department of Health, WAPS and DET.³⁵⁵ Mr Bayman suggested that he was given this task because under the *Child Welfare Act 1947* and other legislation, DCD has authority to enter premises, and the other departments participating in the Audit, other than the police, did not.³⁵⁶ Mr Bayman was told by Mr Curry to take a “firm approach”³⁵⁷ and to let women and children know about the services available and that they were there to ensure the safety and protection of women and children.³⁵⁸

³⁴⁷ Submission No 30 from DIA, 8/08/03, paras 14 and 26.

³⁴⁸ *Ibid*, Annexure 8, p.3.

³⁴⁹ Document tabled before Committee by David Pedler, Acting Assistant Director, Regional Management, DIA on 10/09/03.

³⁵⁰ Submission No 30 from DIA, 8/08/03, Annexure 8, p.3.

³⁵¹ *Ibid*, para 25.

³⁵² *Ibid*, p.3.

³⁵³ *Transcript of Evidence*, Pedler, Session 3, 10/09/03, p.7.

³⁵⁴ *Private Transcript of Evidence*, Bayman, Session 3, 22/10/03, p.8.

³⁵⁵ Statement Lynsey Warbey dated 20/08/03, para 8

³⁵⁶ *Private Transcript of Evidence*, Bayman, Session 3, 22/10/03, p.16.

³⁵⁷ *Ibid*, p.14.

³⁵⁸ *Ibid*, p.5.

- 6.50 The Committee found it curious that DCD, the lead agency for the protection of children, was neither the initiator nor the coordinator for the Audit. In fact the involvement of Ms Brazier amounted to one short telephone conversation with Mr Curry in which Mr Curry requested Ms Brazier to nominate a senior officer to attend a meeting the following day to plan the Audit. The aims of the Audit were not discussed.³⁵⁹
- 6.51 At the meeting to coordinate the Audit, WAPS representatives expressed concern about the possible adverse consequences of an unannounced visit by so many government officials in the company of police.³⁶⁰ Fifteen minutes before the Audit, Sergeant Jim Clarysse at the direction of his Superintendent³⁶¹ attended the SVNC and foreshadowed what was going to happen.³⁶² Four police vehicles and eight police officers accompanied the government officials.³⁶³ Despite Mr Bayman being assured at the DIA meeting that media would not be advised of the Audit, television cameras and reporters were present outside the gates of the Lord Street camp when the government officials arrived.
- 6.52 Mr Curry, who coordinated the Audit and chaired the organising meeting, told the Committee that media attendance would be counterproductive to the process.³⁶⁴ Mr Curry said that it was clear at the meeting that the Premier's Office would handle media from the Audit. He was asked how the media knew of the proposed Audit. Mr Curry said:
- I can clarify that this was driven out of the Premier's office. I would have had no control over any media whatsoever. It is quite clear that anything to do with the media was the responsibility of the Premier's office.*³⁶⁵
- 6.53 Robert Bropho alleges that the Audit was a media stunt. The visual inspection of the women and children took place in open area at the camp and did not reveal any evidence of abuse or maltreatment.³⁶⁶ Mr Bayman acknowledged to the Committee that the Audit was not conducive to establishing a relationship of trust, particularly given the presence of the media, although he believed it was effective in getting the

³⁵⁹ Questions for Hearing 01/11/04, Jane Brazier, Director General, DCD, answer 14.

³⁶⁰ Minutes - SVNC Agency Strategy Meeting at DIA 3/12/02 instructs Police to observe and Inspector David Parkinson and Sergeant Jim Clarysse arrive 10 minutes prior to other agencies and advise Robert Bropho of the visit.

³⁶¹ *Transcript of Evidence*, Clarysse, Session 1, 10/09/03, p.11.

³⁶² *Private Transcript of Evidence*, Davies, Session 2, 11/12/03, p.4.

³⁶³ *Private Transcript of Evidence*, Session 3, 22/10/03, p.5.

³⁶⁴ *Transcript of Evidence*, Curry, Session 1, 14/10/04, p.13.

³⁶⁵ *Ibid.*

³⁶⁶ DIA Briefing Note, 7/02/03, p.3

Government's message across.³⁶⁷ Magistrate Sue Gordon agreed with the Committee that such an action was the very antithesis of her recommendation for memoranda of understanding.³⁶⁸ Mr Mick Gooda, ATSI State Manager said that he would not have done it and understood how it would have been upsetting for the Community.³⁶⁹

Observation 12. The Committee observes that the Community Inspection Audit was likely to have been seen as intimidating by both the management and residents of the SVNC. Forcing the Community to assemble in the open to make a visual inspection and to advise residents of what government services were available to them with the media filming outside the gates of the Reserve is unlikely to engender a relationship of trust between the Community and government officials.

Observation 13. The majority of the Committee observes that the Community Inspection Audit was:

- **of doubtful legal correctness, without legal authority and most likely a trespass;**
- **an audacious invasion of civil rights;**
- **An event that, if it had occurred in any other community, would have been met with a public outcry.**

6.54 It is often the case that a strong approach, like the one Mr Curry directed Mr Bayman to take during the Audit, will be met with a strong response. This possible response was the reason for the police taking the sensible step of warning the Community of what was to occur so as to avoid a physical confrontation. Such an approach by Government is unlikely to engender feelings of trust from the residents and SVNC management. In fact it is almost certain to reinforce the existing mistrust of government institutions by the Aboriginal inhabitants flowing from past injustice perpetrated by government policy and practice against Aborigines. As a means to engender cooperation from the SVNCAC or residents, it was a plan doomed to fail.

6.55 In an e-mail to Ms Brazier following the Audit, Mr Bayman advised that although the Audit was a shock to Robert Bropho, he had accepted that agencies should be able to visit.³⁷⁰ Mr Bayman made a subsequent visit the next day without police presence to investigate the allegation of child mistreatment which Ms Brazier proffered as an example of access difficulties. Mr Bayman again visited without police on December

³⁶⁷ *Private Transcript of Evidence, Bayman, Session 3, 22/10/03, p.5.*

³⁶⁸ *Transcript of Evidence, Gordon, Session 1, 30/06/04, p.5.*

³⁶⁹ *Transcript of Evidence, Gooda, Session 1, 22/10/03, p.12.*

³⁷⁰ E-mail Roley Bayman to Jane Brazier, Director General, DCD, 5/12/02.

18 2002 with Mr David Pedler, Regional Manager, DIA, to discuss a proposed workshop to facilitate service provision to the SVNC.

- 6.56 From the date of the Audit to the announcement to close the SVNC on May 14 2003 was a period of five months. Mr Bayman agreed with the Chairman that this was not a long time to establish a relationship, but his view was that Robert Bropho would not concede ground and that in his opinion, further gains were unlikely:

*Yes. In some of my e-mails I indicated that I felt that the issue of trust was a big one, and that was on both sides. It would only take time to resolve, but I am still clearly of the opinion that I was not going to get any further gains than we had already achieved. Robert was very clear with me that "You will do it on my terms. If you are talking about provision of service delivery, it will be at the community. It is not about my community members going out in the mainstream and accessing it." He kept coming back to the issue about the classroom. He wanted that back. He saw that as a priority, as a gesture of goodwill dare I say, and things could then continue to be negotiated.*³⁷¹

- 6.57 The Committee accepts the point made by Ms Brazier that access to the women and children of the SVNC was not a simple physical issue relating to the number of visits by DCD officers to the Community.³⁷² Access is a matter of women and children being able to freely approach DCD officers to receive support services and make disclosures without fear of intimidation or "payback".³⁷³ In large part that was the reason for DCD pushing the need for services to be accessed outside the SVNC so that this would provide an opportunity for confidentiality.

Observation 14. The Committee observes that it is difficult to see how DCD could have expected to develop a relationship with the SVNC and its management without having physical and meaningful contact on a regular basis with residents of the Lord Street camp. Officers from DCD Midland did not visit for a year prior to December 2002. In the following seven months, six different officers visit on six occasions prior to the announcement to close the SVNC and two visited after the announcement. This engagement commenced with the Community Inspection Audit with the media present. These events were unlikely to form the basis of a good working relationship.

- 6.58 During this later period, the two Cannington based DCD social workers had access to the SVNC because they had developed a relationship with Robert Bropho based on mutual trust and respect. This was not the limit of contact. From time to time

³⁷¹ *Private Transcript of Evidence*, Bayman, Session 3, 22/10/03, p.14

³⁷² Letter Jane Brazier, Director General, DCD to the Committee dated October 20 2003, p.1.

³⁷³ *Ibid*, p.2.

members of the Community would make telephone contact with duty officers or visit the Midland office of DCD, normally around issues of emergency relief, and for assistance for travel, food and from time to time accommodation.³⁷⁴ Ms Brazier advised that the DCD client and community service system and duty log computer system had recorded 106 telephone contacts in relation to 76 individuals whose addresses were recorded as the SVNC between January 2002 and the closure of the SVNC in June 2003.³⁷⁵ This belies the claim by Government that Robert Bropho insisted that services should be provided only within the SVNC.³⁷⁶

Finding 9. The Committee finds that, apart from two social workers at its Cannington Office, DCD made little concerted effort to establish a meaningful relationship with Robert Bropho and other residents of the SVNC. The number of different staff visiting and the relatively few visits to the Community by DCD meant that the key requirement of relationship building with SVNC management or residents could not be achieved.

6.59 Ms Brazier's evidence about the unacceptable risk to the safety of women and children at the SVNC was based on information from sources that she acknowledged provided "second-hand" or hearsay evidence. Reinforcing Ms Brazier's concerns were four matters:

- the lack of cooperation from Robert Bropho in participating in meetings to progress coordinated service provision to members of the SVNC;
- the issue of confidentiality and Robert Bropho's control of the venue surrounding the interview of the child at the Reserve on December 5 2002;
- a disclosure made to DCD in February 2003 that contributed to Ms Brazier's level of concern regarding the safety of 10 children at the SVNC. These concerns were related to the abuse and neglect of children and domestic and family violence issues,³⁷⁷ and
- the allegations raised by the journalist Colleen Egan which Ms Brazier considered to be credible.

³⁷⁴ *Private Transcript of Evidence*, Bayman, 22/10/03, p.2.

³⁷⁵ Letter Jane Brazier, Director General, DCD to the Committee dated 20/10/03.

³⁷⁶ Submission No 29 from DDC, 8/08/03, para 55.

³⁷⁷ *Ibid*, para 21.

- 6.60 In Ms Brazier's view these events could not be divorced from what had occurred in the past at the SVNC, prior to the release of the Gordon Report.³⁷⁸ These events included:
- the hanging death on April 12, 1999 of Susan Taylor;
 - the rape in April 2000 of a two and a half year old toddler at the Lord Street camp by two young males affected by solvents and alcohol; and
 - the death on September 20 2001 of Morgan Spratt/Bropho.
- 6.61 The Coroner made an open finding in relation to Susan Taylor's death as he could not rule out the possibility that other parties were involved in her death.³⁷⁹ The Deputy Coroner found that Morgan Spratt/Bropho died from acute toluene toxicity caused by the sniffing of solvents.³⁸⁰

SPECIFIC CHILD PROTECTION CONCERNS

- 6.62 Ms Brazier told the Committee that a child who had witnessed the rape of the 2 and a half-year-old toddler at the camp in April 2000 had also alleged that the same perpetrators had sexually abused him. He alleged that he had also been sexually abused by another camp resident. The child witness had identified 10 children whom he considered were also being either physically or sexually abused at the SVNC.
- 6.63 These matters had come to Ms Brazier's attention due to the failure by DCD to follow up the initial police interview with the child that took place in August 2001. The purpose of this interview was to obtain a statement of evidence for the prosecution of the two perpetrators.³⁸¹ The police statement included allegations of the child's abuse. Prior to this interview the child witness also identified the 10 children to a DCD caseworker who took notes of the allegations. After an 18-month delay in following up these issues, DCD attempted to re-interview the child witness in late February 2003 after removing him from his school. Although the child witness acknowledged that he had made the previous disclosures, he did not wish to discuss those matters further.³⁸²

³⁷⁸ Submission No 29 from DCD, 8/08/03, para 15.

³⁷⁹ Due to the lack of evidence in respect of the discovery of the body, the state of her clothing and the possible involvement of others in her death, the Coroner made an open finding rather than finding that the death was a suicide. See State Coroner's finding on Investigation of the Death of Susan Taylor dated 21/11/01, p.30.

³⁸⁰ Deputy State Coroner's Record of Investigation of Death of Morgan Spratt dated 2/04/04, pp.23-25.

³⁸¹ The child was an eyewitness to the offences that occurred on 12/04/00 in which a formal complaint was made the next day.

³⁸² "Review of Processes at the Cannington Office re Swan Valley Noongah Community", Report by Rosemary Cant, June 2003, p.1.

- 6.64 Ms Brazier advised the Committee that she commissioned an independent inquiry into her department's failure. The report found that the "window of opportunity" for a useful second interview had passed as a result of DCD's delayed response.³⁸³ A principal reason was that the child witness returned to live at the SVNC with a person who he had identified as one of his abusers and therefore was not in a safe and secure place, well removed from the situation in which the alleged abuse had occurred.³⁸⁴
- 6.65 DCD claims that Robert Bropho removed the child witness from the Lord Street camp to the child's sister's house in March 2003 to avert the need for DCD to access the camp and as a consequence of the Department's attempts to pursue the disclosers.³⁸⁵ However, despite the child witness no longer living with his alleged abuser, no further disclosure has been made.

THE NEED FOR TIMELY AND ACCURATE INFORMATION

- 6.66 The nature of the evidence supporting the concerns of DCD was not sufficient for it to exercise its powers of removal under *Child Welfare Act 1947* in relation to any of the 10 children living at the SVNC identified by the child. Despite this, DCD gave advice to Government that resulted in it deciding to introduce the Bill to close the Lord Street camp.
- 6.67 Good decision making relies upon accurate and timely information. The standard of proof in relation to child protection matters is far lower than that required for a criminal prosecution. There are good public policy reasons for the lower standard. The object of one is to determine whether a child is at risk and ought to be removed from that risk, the overriding purpose being the protection and welfare of the child. The other is to balance the rights of an accused person whose liberty may be at stake against the public interest in obtaining a conviction, its deterrence value and protection for the victim and the community.
- 6.68 Under the *Child Welfare Act 1947* DCD had the power to act on the basis of evidence that would not satisfy the standard required to proceed with a criminal prosecution, let alone obtain a conviction.³⁸⁶ The Committee notes that in only one case from the time of the Coroner's Report to the closure of the SVNC did DCD use these statutory powers to remove a child it considered at risk living at the SVNC. This was the removal from her mother's care of the two and a half year old who had been raped.

³⁸³ *Ibid*, p3.

³⁸⁴ *Ibid*.

³⁸⁵ "Concerns regarding the welfare of people associated with the Swan Valley Nyungar camp". DCD Ministerial Briefing Note dated 24/05/03 including Case Study e-mailed to Sean Walsh, Chief of Staff, Premier's Office, 28/05/03.

³⁸⁶ See section 146, *Child Welfare Act 1947*.

- 6.69 Since the closure of the SVNC, DCD has removed a further two children who it considered were at risk. Neither of these children were one of the 10 children identified by the child witness as being the victims of sexual or physical abuse. Since the closure of the Lord Street camp, now more than 17 months ago, none of the 10 children have been interviewed or made disclosures corroborating the child's claims of sexual or physical abuse.³⁸⁷
- 6.70 DHW claimed that the two removals indicated the success of the Government's action. The Government's claim that the closure would break up the power relationships at the SVNC thereby making disclosures of physical or sexual abuse more likely has not been borne out in the case of the 10 children identified by the child witness as being at risk.

Crisis Care Unit

- 6.71 The importance of accurate information and the tendency for departmental records to perpetuate misinformation is evidenced by an example in a Ministerial Briefing Note provided by DCD in late May 2003. Much of the information on the SVNC was contained in entries in DCD's client and community service system and duty log computer system. DCD workers in the CCU log much of this information. The CCU is an after hours telephone help service. One case study provided by DCD in the Ministerial Briefing Note indicates that a caller had made 3 contacts to CCU in November 2002 and one in May 2003 regarding domestic violence. The caller's address details were incorrectly listed in the system as the SVNC.³⁸⁸ This was revealed only after action had been taken against the SVNC.
- 6.72 This was not the only incident in which the Committee discovered that information contained on the community service system and duty log computer system was portrayed as fact when thorough checking would have shown that the claim was either false or significantly exaggerated.³⁸⁹ The majority of the matters listed in the logs is anecdotal or claims that are not later corroborated. However, when they are written down they appear to be treated as 'fact' by DCD and those departments to which the information is provided.

THE DIFFICULTY OF SEPARATING FACT FROM FICTION

- 6.73 The Committee notes that there are well known internecine disputes within the Aboriginal community. One such long standing is between the Bropho and Wilkes families in relation to the Reserve land and the previously competing native title claims to the Swan River and Swan Coastal Plains land that includes Reserve

³⁸⁷ Questions for Hearing 1/11/04, Jane Brazier, Director General, DCD, answers 87 & 88.

³⁸⁸ "Concerns regarding the welfare of people associated with the Swan Valley Nyungar camp". Ministerial briefing note dated 24/05/03.

³⁸⁹ See paragraphs 12.38-12.44.

43131.³⁹⁰ There may be other motivations behind allegations made about the SVNC, including familial disputes within the Community, or between other Aboriginal groups and the SVNC. The Committee cannot determine whether these matters played a part in any allegation made against management of the SVNC.

- 6.74 The following exchange in a private hearing between the Chairman and two DCD caseworkers with first hand experience with the SVNC highlights the difficulties in determining what is fact warranting action by government authorities and what is merely innuendo, gossip or deliberate false allegation based on a personal or broader family dispute:

The CHAIRMAN: Have you heard allegations from people who are speaking from first-hand knowledge or have you spoken to actual complainants?

Witness DCDI: Not the complainants, no.

The CHAIRMAN: You have not spoken to the complainants?

Witness DCDI: I have not had anyone come to me and say this is what happened.

The CHAIRMAN: Have you spoken to somebody who says they had a complaint from someone other than a victim?

Witness DCDI: A girl made a sweeping allegation in a conversation and around the circumstances - it has been documented with the department. It will be followed up but it is not a clear disclosure.

The CHAIRMAN: Apart from those three cases that have been actioned by the police, are you aware of any allegations in which the person is sufficiently near the evidence that has led you to believe it is other than gossip?

Witness DCDI: Nothing has come through as clear disclosure for us to warrant an interview.

The CHAIRMAN: You can see the problem we have, of course. Everyone seems to know about all these allegations but tracking down who made them is becoming very difficult.

Witness DCDI: It is. It is the same for us. You cannot just go in and destroy a family based on hearsay. That is what we are trying to say.

³⁹⁰ Since converted into a single Nyungah claim by registered Native Title Claimants Robert Bropho, Albert Corunna, Richard Wilkes, William Warrell, Greg and Kelvin Garlett.

You must build relationships with these families. I am not disqualifying any allegations that have been made.

The CHAIRMAN: We are not saying that they are wrong.

Witness DCD2: One of the experiences I have had with working with [Y] and her family is that if they are annoyed with somebody, they tend to say things that are untrue, just to get them into trouble. I have always found it difficult to find out the facts because they can tell you something one day and change it the next day. It is a difficult position.

The CHAIRMAN: They do not do that because someone is intimidating them necessarily; it is simply because -

Witness DCD2: They are mad and want to get even.

Witness DCD1: They do on each other.³⁹¹

Observation 15. The Committee observes there was a contradiction in the ways in which DCD field officers dealt with hearsay evidence and the way in which the same evidence was utilised by their senior officers. DCD field officers would not act on unsubstantiated allegations to proceed against families. In this case, senior officers used this evidence to justify the closure of the Lord Street camp.

SVNC MANAGEMENT ORDER PLAN (ACTION PLAN)

6.75 The Government's rationale for the Bill was to protect women and children at the SVNC. Four males at the SVNC had been identified as persons of concern. Despite this, the Committee finds it curious that the plan of action for rehousing the former residents of the SVNC included having two of the so-called 'lieutenants' being accommodated with their families. Evidence has established that DHW was aware of previous allegations of domestic violence and DCD was aware of allegations of sexual abuse made against this person. His wife had applied to Homeswest for alternative accommodation for herself and her child in July 2002 due to domestic violence.³⁹² DHW rejected the application³⁹³ on the grounds that she had not demonstrated urgent need or exhausted all other options.³⁹⁴ If the purpose of closing the Community was to protect the women and children at the camp, why did the Government's Action Plan accommodate one of the alleged perpetrators of abuse with his family?

³⁹¹ Edited *Private Transcript of Evidence*, 25/09/03, p.25.

³⁹² Confidential Supplementary Information provided under cover of letter from Greg Joyce, Director General, DHW, dated 9/10/03, p.6.

³⁹³ *Ibid*, p.6.

³⁹⁴ Homeswest Accommodation File F16018Y90A-02, Homeswest Decision Review Form dated 1/08/02.

- 6.76 Furthermore, four of the ten children of concern to DCD were children in the care of two of the four males the Government identified as interfering with Government access to women and children, one of whom had allegedly sexually assaulted a young boy. Ms Brazier claimed that she did not have responsibility for Housing and did not have sufficient evidence to apprehend the children so could do nothing about this arrangement.³⁹⁵
- 6.77 In addition, the Committee observed that when the four males identified as the ‘troublemakers’, together with their families and other former SVNC residents, moved to Saunders Street, DCD suddenly managed to ‘engage’ with the women. The men whom DCD had alleged were the persons preventing or restricting access and intimidating the women and children were residing there, so how did DCD officers suddenly get access to women and children when they allegedly had so much difficulty when the women resided at the SVNC? Was it because they now needed these services because they were no longer in their homes? Was it because DCD was just trying harder to engage with the women and children, or was it because the dynamics of and ability to control access to the women and children by the so-called troublemakers had been diminished?
- 6.78 Ms Brazier explained this apparent contradiction to the Committee as follows:

The critical difference with any of those families living anywhere else, be it Saunders Street or out in the community, is that while they are still potentially the subject of intimidatory action - I can give a little more information about that - they are not under the control of the corporation, which would monitor who went in, who went out and how they were spoken to. That does not mean that there have not been issues in relation to the intimidation and harassment of families since they left the camp. But we have far greater opportunity to manage that because we can, in a different setting, have much easier access to these women. The other thing is that when the women moved out, although I indicated that initially the families who moved to Saunders Street did not want to know about us, over time - it was a matter of a couple of weeks - the women started coming forward and saying “we want this” or “we want that” and “we want you to hear from us directly.” There was, if you like, a breaking up of the dynamics that enabled that kind of access to occur. One can only speculate about why that happened, but that is what happened.³⁹⁶

- 6.79 The DHW did not have sufficient accommodation immediately available for the majority of these families due to the planned staged removal of the residents not

³⁹⁵ Questions for Hearing 1/11/04, Jane Brazier, Director General, DCD, answer 106.

³⁹⁶ *Transcript of Evidence*, 18/08/03, p.11.

eventuating. No contingency plan was formulated to take into account the possibility that families would leave their homes prior to the closure and where they might go despite this possibility being canvassed in the Council,³⁹⁷ and the places where they would relocate having been predicted by a senior police officer.³⁹⁸

³⁹⁷ *Parliamentary Debates (Hansard)*, 16/05/03, p.7971.

³⁹⁸ *Transcript of Evidence*, Mumme, Session 1, 3/12/03, p.6.

CHAPTER 7

DEPARTMENT OF INDIGENOUS AFFAIRS

SERVICE PROVISION

7.1 The role of DIA is to build and support partnerships with and between Aboriginal people, government and the broader community.³⁹⁹ This principally involved addressing issues of land transfer and management through the AAPA, the Aboriginal Lands Trust, and the protection, management and promotion of heritage and culture through the Aboriginal Cultural Materials Committee.

DIA INVOLVEMENT WITH RESERVE 43131

7.2 Reserve 43131 was not land included in the Aboriginal Lands Trust. DIA staff visited the SVNC only at the request of the Community and these visits generally took place only twice a year and related mainly to Aboriginal heritage matters.⁴⁰⁰ Other contacts generally occurred outside the Community when Robert Bropho contacted DIA alleging a disturbance of a registered Aboriginal heritage site.⁴⁰¹ In terms of the service provision to the Community, the Midland office of DIA never had any problem in dealing with the SVNC.⁴⁰²

7.3 The involvement of DIA with the SVNC was limited until the release of the Gordon Report, the Government's response to it and the establishment of the various bodies including DGGIG to coordinate the implementation of the Government's response. In November 2002 the DIA, through its Director General's involvement with the DGGIG took the lead role in attempting to provide a more coordinated and collaborative provision of services to the SVNC.⁴⁰³

7.4 The experience of Mr David Pedler, Regional Manager of DIA and a member of the SVNC inter-agency working group established in November 2002 by DGGIG to coordinate service provision to the camp, was that the issue of access was defined by the nature of the service provision. Essentially, if the nature of the service provision was positive, there was not an issue. If SVNC management saw the nature of the service provision as coercive or negative, then problems of access arose. Mr Pedler acknowledged that this was not unusual in Aboriginal communities but that the SVNC

³⁹⁹ Submission No 30 from DIA, 8/08/03, p.1.

⁴⁰⁰ Letter Pam Thornley, DIA to Andrew Burke, DOLA dated 5/09/03.

⁴⁰¹ Submission No 30 from DIA, 8/08/03, para 16.

⁴⁰² *Transcript of Evidence*, Pedler, Session 3, 10/09/03, p.5.

⁴⁰³ *Ibid.*

had an image that was essentially negative and resulted in government workers not wanting to go, or having reservations about going, to the Community.⁴⁰⁴

- 7.5 As DIA had a positive role to play in the preservation and advancement of Aboriginal culture and heritage, there was cooperation with the SVNC and the experience of DIA officers with the Community was positive. This was not to say that there was no conflict between Robert Bropho and DIA. Robert Bropho had been critical of the efforts of DIA to preserve Aboriginal sites that he considered were culturally significant.⁴⁰⁵ Mr Pedler told the Committee that DIA became aware of the negative image surrounding the SVNC as a result of DIA's involvement with other agencies that provide services perceived by the SVNC as being negative in nature, such as the services of DCD.
- 7.6 Mr Pedler explained that this awareness came about as a consequence of what officers of DIA and other departments had told senior management at DIA about the lack of success in establishing a working relationship with SVNC management, and in particular Robert Bropho. Mr Pedler's experience of problems with the SVNC was limited to his involvement as a member of the SVNC inter-agency working group. His only direct experience with Robert Bropho was his attendance at one meeting at Lord Street on December 18 2002 to discuss a proposed workshop with the SVNC in January 2003. On that occasion there was no difficulty in gaining physical access to the Reserve and police presence was not required.⁴⁰⁶
- 7.7 Mr Pedler told the Committee that the sources of information about the SVNC to DIA included its Aboriginal staff with extended networks in the Aboriginal community, the metropolitan commission of elders and the Derbarl Yerrigan Committee for the reburial of Yagen's head. Mr Pedler also cited the allegations made by the Director of the Derbarl Yerrigan Aboriginal Health Service, Mr Ted Wilkes during his evidence to the Coronial inquest into the death of Susan Taylor.⁴⁰⁷ Mr Pedler noted the Committee's observation that the allegations made by Mr Wilkes against Robert Bropho and the SVNC may be coloured or unreliable as a result of the Wilkes's family claim that they were dispossessed by Robert Bropho in getting the Lockridge land.⁴⁰⁸ However, it was the consistency of anecdotal evidence across the indigenous community and the fact that many of Mr Pedler's sources held that view who did not

⁴⁰⁴ *Ibid.*

⁴⁰⁵ Letters from "The Combined Swan River and Swan Coastal Plains Native Title Claims" to the Minister for Indigenous Affairs, Hon Alan Carpenter and to Members of the Aboriginal Cultural Materials Committee, dated 2/08/01 and to Hon Eric Ripper MLA dated 7/08/01 and to the Premier dated 8/08/01, 29/09/01.

⁴⁰⁶ *Transcript of Evidence*, Pedler, Session 3, 10/09/03, p.8. and *Transcript of Evidence*, Bayman 003, 22/10/03, p.6

⁴⁰⁷ *Private Transcript of Evidence*, Pedler, Session 4, 10/09/03, p.2.

⁴⁰⁸ *Ibid*, p.3.

necessarily have an axe to grind against Robert Bropho that in his view distinguished it from mere scuttlebutt or gossip.⁴⁰⁹

ACCESS ISSUES

7.8 According to Mr Pedler, the issue of access for departments attempting to provide services to the SVNC was directly related to the difficulty of obtaining Robert Bropho's cooperation. Government officers were concerned with providing services. Robert Bropho and other Community leaders had broader issues in addition to service provision that may have been seen to be equally or more important. These included issues of land rights, the protection of culturally significant sites, funding and ATSIC and government policy. Mr Pedler explained the problem dealing with SVNC management was similar to the difficulties he experienced in dealing with Cullacabardee. He said of Cullacabardee:

*Whenever you went to talk with the corporation, essentially the issues that it would raise would be around Government, government policy, funding, the Aboriginal and Torres Strait Islander Commission, ATSIC deficiencies - a whole range of matters. When we sat down to try to work through that, we concluded that somehow we needed to separate out the issues around the corporation, governance and funding and that sort of thing and actually try to talk about the needs of the people who resided at the settlement. In other words, we were trying to separate the population from organisation, if you like.*⁴¹⁰

7.9 Mr Pedler related his understanding of the SVNC as follows:

*With regard to the Swan Valley, the activities of Mr Bropho as the leader of that community are well known in terms of his role as an activist and political lobbying and things of that nature. We were trying to get beyond that to deal with the service level officers and to develop a relationship with the community on that basis. There was also a recognition, which was referred to in some notes somewhere, that the issues of governance and funding and all those things needed to be addressed at some point, but at a higher level.*⁴¹¹

7.10 In fact, Robert Bropho did have constructive suggestions to make to government agencies on how they could assist the SVNC residents. During the meeting at the Reserve on December 18 2002 attended by members of the SVNC inter-agency working group, Robert Bropho provided a document headed "Preliminary Suggestions

⁴⁰⁹ *Private Transcript of Evidence*, Pedler, Session 4, 10/09/03, p.3.

⁴¹⁰ *Transcript of Evidence*, Pedler, Session 3, 10/09/03, p.6.

⁴¹¹ *Ibid.*

for Assistance”. Amongst other things the document requested assistance for emergency food relief funding, for psychiatric services, support for bush camps for teaching culture to youth at the Community and for a community health and education centre to teach literacy, numeracy, music, computer skills and health education.⁴¹² In February 2003,⁴¹³ Robert Bropho also wrote to a number of government departments seeking assistance with projects associated with petrol sniffing and vulnerable children at the community.⁴¹⁴ This suggestion was one of many that Robert Bropho, the SVNCAC, the Nyungah Circle of Elders or other Nyungah elders or Nyungah people had proposed to Government or taken action on since 1990 in an attempt to address the issue.⁴¹⁵ The Departments referred these matters to the Drug and Alcohol Office.⁴¹⁶

- 7.11 The Committee wrote to Mr Mike Daube, Director General of Health, requesting details of the action taken by his Department in response to Robert Bropho’s requests. Mr Daube advised that the requests from the SVNCAC were discussed at a joint agency meeting on March 21 but without resolution. The Department of Health representative at this meeting recalled that the various requests were to be discussed at subsequent meetings of the group but that this did not occur.⁴¹⁷
- 7.12 Despite the requests for assistance from the SVNCAC and the Department of Health’s failure to act on them, DIA was of the view that Robert Bropho was avoiding meaningful discussion and applying a “passive resistance” strategy to attempts of government agencies to “normalise” relationships and access arrangements to SVNC residents.⁴¹⁸ The policy of normalisation of reserves, established under the previous Liberal Coalition Government involved an opening up of reserve communities to ensure that they became part of the broader community both in terms of infrastructure and access to services. The DIA saw the goal of Robert Bropho as a direct opposite of this policy. The view of DIA was that Robert Bropho sought “a closed environment where access to government services is limited and positive influences and scrutiny are avoided.”⁴¹⁹

⁴¹² Submission No 30 from DIA, 8/08/03, Annexure 5: SVNC “Preliminary Suggestions for Assistance”, December 2002.

⁴¹³ Letter SVNC to Roley Bayman, DCD et al dated 19/02/03.

⁴¹⁴ DGGIG Weekly Update: 10 March - 14 March 2003, p.2.

⁴¹⁵ Nyungah Circle of Elders: Record of Actions and Proposals to Government by Swan Valley Nyungah Community in Conjunction with Nyungah Circle of Elders and other Nyungah Elders and Nyungah People on the Problem of Sniffing of Glue, Paint and other Substances by our Young People, undated.

⁴¹⁶ Letter Dr Denzil McCotter, A/Executive Director, Drug and Alcohol Office to SVNC dated 17/04/03 and Letter SVNC to Dr Denzil McCotter, A/Executive Director, Drug and Alcohol Office et al dated 30/04/03.

⁴¹⁷ Letter Mike Daube, Director General, Department of Health to the Committee dated 18/08/04.

⁴¹⁸ Submission No 30 from DIA, 8/08/03, Annexure 8: DIA Briefing Notes SVNC dated 5/02/03, p.5.

⁴¹⁹ DIA Briefing Notes - Proposed Closure of Swan Valley Nyungah Community (SVNC) Settlement, undated, p.5.

7.13 The view of DIA arose as a result of two observations. Firstly, that Robert Bropho, unlike the management of the three other Urban Aboriginal Communities, was unwilling to meet with the inter-agency working group outside the SVNC to facilitate service provision.⁴²⁰ Secondly, because Robert Bropho raised in discussions with the working group grievances that were not directly relevant to service provision. This included Robert Bropho requesting:

- a response from the Coroner to his request to correct what he saw as errors in the coronial report into the death of Susan Taylor;⁴²¹
- the need for certain provisions of the *Aboriginal Heritage Act 1972* to be implemented;
- that a memorandum of understanding be entered into between the Government and the SVNCAC; and
- the return of the DET demountable school building removed on October 1 2002.⁴²²

7.14 Robert Bropho may have had a political agenda as evidenced by the airing of the above grievances, but equally the Government appeared to have an agenda specifically in relation to the SVNC and its management. This agenda commenced with the rejection of recommendation 141 of the Gordon Inquiry that recommended memoranda of understanding between the SVNCAC and those government agencies which may reasonably seek access to the Community.

7.15 Richard Curry, Director General of DIA, told the Committee that the Government did not consult him in relation to its decision to reject recommendation 141 of the Gordon Inquiry.⁴²³ He said that at the time the two departments consulted on recommendation 141, WAPS and Health, it was known that the Government did not support this recommendation.⁴²⁴ Robert Bropho persisted with his request for a memorandum of understanding notwithstanding the Government's rejection of this recommendation

⁴²⁰ Letter SVNC to David Pedler, Regional Manager, DIA dated 27/01/03 and *Transcript of Evidence*, Pedler, Session 3, 10/09/03, p.6.

⁴²¹ Letter SVNC to David Pedler, Regional Manager, DIA dated 27/01/03 referring to letter from SVNC to the Coroner dated 7/12/01 handed to David Pedler with Preliminary Suggestions for Assistance on 18/12/02. The purpose of providing the letter to the Coroner was to "...clear your mind of false beliefs you and your Department may have based on the Coroner's Report and the media reports."

⁴²² Submission No 30 from DIA, 8/08/03, Annexure 8: DIA Briefing Notes SVNC dated 5/02/03, p.4.

⁴²³ *Transcript of Evidence*, Curry, Session 1, 14/10/04, p.1.

⁴²⁴ *Ibid*, pp.1&2.

and the introduction of a new management order designed to guarantee access to the Community by government agencies.⁴²⁵

- 7.16 The DIA also had a policy agenda. Mr Curry and Mr Pedler were actively promoting the Urban Settlements Project⁴²⁶ which Aboriginal urban settlements saw as a threat to their autonomy and ultimately their very existence.⁴²⁷ The policy discussions involved not only DIA but also the Directors General of DCD⁴²⁸ and DHW. The future of Cullacabardee was of particular concern to DIA given that it was located on the Priority One water mound and had an accumulation of building waste dumped illegally on that site.⁴²⁹
- 7.17 The Directors General of DIA and DHW and Mr Pedler met with the ATSIC Chairman Perth Noongar Regional Council,⁴³⁰ WA Commissioner South West Zone⁴³¹ and WA Regional Manager⁴³² on March 11 2003 to discuss the Urban Settlements Project.⁴³³ The purpose of the meeting was to open a dialogue with ATSIC on the future of urban settlements. The Director General of DIA, Mr Curry, requested the ATSIC representatives to have the matter considered by the full membership of the Perth Noongar Regional Council in order to establish an ATSIC “position”.⁴³⁴ The issue was considered but rejected by the Council at its April 2003 meeting.
- 7.18 In his letter to the Director General of DIA dated April 29 2003 the Perth Noongar Regional Council’s Chairman Gordon Cole stated:

At the April meeting of the Perth Noongar Regional Council, a paper was presented to the Council advising that DIA is seeking ATSIC advice on the Council’s position on the future of the four urban settlements: Cullacabardee, Henley Brook, Nyoongah Community Inc; and the Swan Valley Nyungah Community.

⁴²⁵ Letters SVNC to Premier, Hon Dr Geoff Gallop MLA dated 17/10/02, 5/11/02 and 3/12/02 and response dated 18/12/02.

⁴²⁶ Urban Settlements Project (USP) - DIA document tabled before Committee by Richard Curry, Director General on 18/08/03.

⁴²⁷ Letter ATSIC to Richard Curry, Director General, DIA, dated 29/04/03.

⁴²⁸ *Transcript of Evidence*, Brazier, 18/0/03, p.16.

⁴²⁹ Urban Settlements Project (USP) - DIA document tabled before Committee by Richard Curry, Director General on 18/08/03.

⁴³⁰ Gordon Cole.

⁴³¹ Farley Garlett.

⁴³² Mick Gooda.

⁴³³ Letter Richard Curry, Director General DIA to Gordon Cole, Chairperson ATSIC Perth Noongar Regional Council dated 13/03/03.

⁴³⁴ *Ibid.*

After considering the paper and engaging in considerable discussion, the Council made the following decision (decision no 022):

“That the Perth Noongar Regional Council strongly opposes the wholesale closure of Cullacabardee, Henley Brook (Saunders Street), Nyooongah Community Inc Gnangara and Swan Valley Nyungah Community, and supports a review by ATSIC and DIA of the four settlements...”⁴³⁵

- 7.19 The letter proposed a review of the four settlements by ATSIC and DIA, but not with a view to closing them down. Mr Cole pointed out that “The residents of the four targeted urban settlements should not be penalised because of past failed attempts by Government to deal with urban Indigenous homelessness.”⁴³⁶
- 7.20 Despite this reaction by the Perth Noongar Regional Council, both Mr Curry and Mr Pedler⁴³⁷ denied in evidence before the Committee that there was any intention to institute a wholesale closure of the four urban communities. However, these witnesses confirmed that Cullacubardee was cited for possible closure given the potential for contamination of the Priority One water mound.⁴³⁸ Mr Curry explained the purpose of the meeting as follows:

Closure was not the focus of that meeting; I can assure you of that. The intention was to have a discussion with ATSIC about how we should move forward with that, and what we should do. The proposition was put to ATSIC that we are prepared to sit down and have a discussion, and we would like to have some sensible advice to provide to government on what those camps might look like in five, 10 or 15 years time. Undoubtedly, closure would have been discussed. It would have made sense to say, “Well, will they still be there in five or 10 years time; perhaps we should move towards dealing with that because we are dealing with people on those properties?”⁴³⁹

- 7.21 Although wholesale closure may not have been the intention of the project, its object was to remove autonomy from the Aboriginal groups and place direct control in the hands of the Aboriginal Lands Trust or similar vehicle rather than small indigenous communities.⁴⁴⁰ It is not surprising that Nyungah groups, including the SVNAC would have a reasonable apprehension that such a move could be a step towards

⁴³⁵ Letter ATSIC to Richard Curry, Director General, DIA, dated 29/04/03.

⁴³⁶ *Ibid.*

⁴³⁷ Acting Assistant Director Regional Management, DIA.

⁴³⁸ *Transcript of Evidence*, Curry, Session 1, 18/08/03 p.14. *Transcript of Evidence*, Pedler, 10/09/03, p.15.

⁴³⁹ *Transcript of Evidence*, Curry, Session 1, 14/10/04, p.4.

⁴⁴⁰ Proposed submission from DGGIG to Cabinet Standing Committee on Social Policy, p.3-4.

wholesale closure and a step backward in their quest for self-determination. This was particularly the case in circumstances where the management bodies of these urban settlements were not even consulted on the proposal.

- 7.22 Adding to the perceived ‘threat’ of the Urban Settlements Project were the views expressed by the Minister for Indigenous Affairs who by his public statement had pre-committed himself to closing the SVNC. It was this remark reported on August 15 2002⁴⁴¹ that later precipitated the chain of events that resulted in the Premier asking questions to his Directors General about progress with the SVNC during the Strategic Management Council meeting on May 1 2003. The view that the SVNCAC should be relieved of its management responsibilities over the Reserve was strongly held by both the Minister and the Director General of DIA. It certainly ended up as the clear policy view of DIA and ultimately the Government.

THE FUTURE OF URBAN ABORIGINAL COMMUNITIES

- 7.23 The intention of senior bureaucrats at the DIA is made clear by the view expressed by Mr Pedler that the policy of Aboriginal settlements had not advanced the interests of Aboriginal people. This view correlates with the view of the Director General, Mr Curry that the urban Aboriginal communities had been a “failed experiment”.⁴⁴² Mr Pedler explained the reasons for DIA wanting to progress the Urban Settlements Project as follows:

*The way I would put it is that essentially all the communities were established in response to social problems at the time. It had been seen as the answer to those social problems, and they have gone on to become further social problems. I think that is why we were very keen on the urban settlements program to get some discussion about that in terms of the future. As I have said previously in the evidence I have provided here, the view of a number of agencies is that essentially the settlements are dysfunctional in just about every way and that it needs to be addressed.*⁴⁴³

- 7.24 These sentiments were echoed by Mr Greg Joyce, Director General of the DHW during evidence to the Committee when in answer to a question by Hon Derrick Tomlinson MLC, Mr Joyce said:

There is a genuine question to be asked, Derrick, about whether these camps continue to exist. Three of them had their infancy in the 1970s and the latter one in Saunders Street in the 1980s. To me there is a

⁴⁴¹ “Bropho could be forced from camp” - by Charlie Wilson-Clark, *The West Australian*, 15/08/02, p.5.

⁴⁴² *Transcript of Evidence*, Curry, 001, 14/10/04, p.23.

⁴⁴³ *Transcript of Evidence*, Pedler, Session 3, 10/09/03, pp.23-24.

*genuine question to ask as to whether we continue with them or whether they should be closed and the occupants absorbed into general suburbia. I know people will be quick to criticise me and say that it is not politically correct to use words like assimilation and integration, but there is a substantial argument. What needs to happen is to review the efficacy of those four camps and to decide in a balanced way whether they are effective. I think you must look at the financial cost of them compared with a per capita view of what it costs to house Aboriginal people in the community. I think that is a legitimate consideration. I think, most importantly, you must look at the policy outcome of what is happening with the camps and whether we are actually improving the wellbeing of Aboriginal people by having those camps.*⁴⁴⁴

Observation 16. The Committee observes that given the public statements by the Government in respect to the SVNC and other urban Aboriginal communities, it is not surprising that the residents of these communities, the SVNCAC and Robert Bropho were suspicious of government initiatives like the Urban Settlements Project. In their view this policy was the thin edge of the wedge for all Aboriginal communities which they saw as providing havens for individuals unable to function in the broader community, the preservation of Aboriginal culture and heritage and bases from which Aboriginal political activism could operate. That suspicion probably persists. A policy that would result in reduced autonomy or closure of these communities and housing former residents in the general community was seen by Robert Bropho as a direct attack on Aboriginal culture, heritage and its capacity for political activism and a return to the assimilation policies of the past.⁴⁴⁵

- 7.25 The Committee acknowledges that, as indicated in the Gordon Report, there is a far greater incidence of domestic violence and sexual abuse in Aboriginal communities when compared with the general population. This creates a considerable challenge as to how it might be resolved.
- 7.26 Many of the opponents of the decision to close the SVNC were of the opinion that these issues cannot be resolved by dispersing these individuals into the general community. The Government, on the other hand, supported the view that the closure of the SVNC and the resettlement of its residents was the only practical way of breaking the control allegedly exercised by Robert Bropho and his 'lieutenants' over the women and children residing at the Community. It was this control that allegedly prevented the reporting of incidents of domestic violence and sexual abuse that would ultimately lead to the authorities taking action to protect them.

⁴⁴⁴ Transcript of Evidence, Joyce, Session 2, 25/09/03, p.2.

⁴⁴⁵ Submission No 10 from SVNCAC, 3/08/04.

7.27 This was the point of difference between the SVNC and the three other urban Aboriginal communities that the Government acknowledged shared a number of common problems. The view of DIA was that the SVNC had characteristics that made it unique when compared with these other communities. These were:

- it was totally controlled by the Bropho family with access and residency determined by that family; and
- service provision by Aboriginal workers and Aboriginal service agencies are also rejected by the SVNCAC.

7.28 These factors, in the view of DIA, made the continued operation of the Lord Street camp untenable for Government.⁴⁴⁶

7.29 Mr Pedler and Aboriginal officers within DIA were the primary source of information on the SVNC to DIA Director General Richard Curry.⁴⁴⁷ In addition, Mr Curry told the Committee that other people who had links with the Aboriginal community, and whom he named in a private hearing, passed on to him information about the SVNC.⁴⁴⁸ He acknowledged that this information “generally comes anecdotally”.⁴⁴⁹ One of these sources indicated that subsequent to the Gordon Inquiry there was an expectation that something would be done about the SVNC.⁴⁵⁰

7.30 Mr Curry’s view was that the SVNC had clearly run out of chances in attempting to demonstrate that it was genuine about dealing with issues of sexual abuse, substance abuse and family violence: He told the Committee:

*There was no, in my view, willingness shown by the governing body of the Swan Valley Nyungah Community to make any concession or any genuine effort to say that this is a problem that we jointly have to solve. I have given you a copy of the objects of the incorporation of the Swan Valley Nyungah Community, which quite clearly states that it has a responsibility for the health and welfare of people on that site. My view was that since Gordon nothing had changed; this was becoming nothing more than a window-dressing exercise and really wasting time.*⁴⁵¹

⁴⁴⁶ DIA Briefing Notes - Proposed Closure of Swan Valley Nyungah Community (SVNC) Settlement, undated, p.5.

⁴⁴⁷ *Transcript of Evidence*, Curry, Session 1, 14/10/03, pp.8&19.

⁴⁴⁸ *Private Transcript of Evidence*, Curry, Session 2, 18/08/03, pp.1&2.

⁴⁴⁹ *Transcript of Evidence*, Curry, Session 1, 18/08/03, p.21.

⁴⁵⁰ *Private Transcript of Evidence*, Curry, Session 2, 18/08/03, p.2.

⁴⁵¹ *Transcript of Evidence*, Curry, Session 1, 18/08/03, p.4.

7.31 Mr Curry told the Committee that he had previously been to the Lord Street camp on several occasions but had not visited from the time the Gordon Report was handed down in July 2002 to the closure of the camp on June 13 2003. His information on the SVNC came from “My regional manager and intelligence from the Aboriginal community.”⁴⁵² The Regional Manager, Mr Pedler’s, only direct contact with the SVNC was a meeting with Robert Bropho at the Reserve on December 18 2002. Other than for this single direct contact, Mr Pedler’s only source of information on the SVNC was, like Mr Curry’s, anecdotal evidence across the indigenous community.

7.32 The evidence establishes that:

- both Mr Curry and Mr Pedler, since the Susan Taylor coronial inquest, had minimal direct personal knowledge of the Lord Street camp;
- both Mr Curry and Mr Pedler acquired their knowledge of the Lord Street camp from anecdotal sources;
- DIA had direct contact with the Lord Street camp and its management mainly for liaising with Robert Bropho on matters surrounding sacred sites and cultural and heritage matters usually involving the Cultural Materials Committee, most of which occurred outside the Reserve; and
- DIA as a coordinating agency for an inter-agency working group had, through Mr Pedler, met with Robert Bropho on only one occasion in December 2002.

7.33 In addition, Mr Curry displayed under questioning by the Committee a tendency to accept allegations adverse to the SVNC and Robert Bropho to the point of bias or fail to read or misread evidence taken in previous inquiries. He said:

- the Coronial Inquest into Susan Taylor’s death determined that the Lord Street camp was frequented by caucasian males for the purpose of gaining sexual favours from children there;⁴⁵³ and
- Robert Bropho and the SVNCAC failed to call police to prevent these ‘bungemen’ from entering the camp to prey on young girls.⁴⁵⁴

7.34 In fact the evidence to the inquest was that these persons did not perpetrate their trade at the Lord Street camp.⁴⁵⁵ Similarly, the evidence of police to the Committee was

⁴⁵² *Ibid*, p5.

⁴⁵³ *Ibid*.

⁴⁵⁴ *Ibid*, p.5 and *Private Transcript of Evidence*, Curry, Session 2, 18/08/03, pp.33-36.

⁴⁵⁵ *Private Transcript of Evidence*, Curry, Session 2, 18/08/03, pp.33-36. One of them operated in a private home in Lockridge; one of them operated from a vehicle in the streets of the town of Midland; the third operated in a youth facility in the town of Midland, far removed from the SVNC.

that Robert Bropho had in fact contacted them and to assist them regarding this matter. These were both examples of this misreading and bias.

- 7.35 Mr Curry acknowledged that these adverse reflections on Robert Bropho were the result of him having no confidence in Robert Bropho's management of the SVNC.⁴⁵⁶
- 7.36 The role of DIA is to advocate on behalf of Aboriginal people, especially in the areas of cultural protection and land deprivation. Given the seriousness consequences to a group of Aboriginal people of the Government's planned action to remove them from their homes, it was disappointing that the Director General of DIA took any notice of unsubstantiated scuttlebutt from certain sectors of the Aboriginal community.
- 7.37 In his evidence, the Director General of DIA had a view that the Aboriginal urban settlements had failed to advance the interests of Aboriginal people. The concerns raised by DCD and Health regarding access to the SVNC noted by Mr Curry in his role as a member of DGGIG reinforced these views. He alone among the members of DGGIG was prepared to recommend in the DGGIG draft submission to the Cabinet Standing Committee on Social Policy, the removal from the SVNC of its management rights to the Reserve.⁴⁵⁷ Such a recommendation was consistent with his view and served his purpose of progressing the Urban Settlements Project. A Briefing Note dated May 26 2003 by Mr Curry to his Minister on the proposed closure of the SVNC concludes:

*It is considered appropriate that the future of the SVNC settlement site be considered in the context of the USP [Urban Settlements Project] and advice provided to Government as a matter of priority.*⁴⁵⁸

- 7.38 Despite his lack of knowledge of what was happening at the Lord Street camp, Mr Curry gave strong advice to the Premier supporting concerns about the camp. He said:

*My advice to the Premier was that the directors general had resolved to put advice to the cabinet standing committee on social policy reflecting our unanimous concerns that the safety of the women and children on that site was of concern to us. On that basis, I could not give him the assurances that he would want - that anything really had changed - even though agencies were doing all they could within the limits they could in relation to access.*⁴⁵⁹

⁴⁵⁶ *Private Transcript of Evidence*, Curry, Session 2, 18/08/03, p.35.

⁴⁵⁷ DGGIG draft submission to Cabinet Standing Committee on Social Policy.

⁴⁵⁸ DIA Briefing Notes - Proposed Closure of Swan Valley Nyungah Community, dated 26/05/03.

⁴⁵⁹ *Transcript of Evidence*, Curry, Session 1, 14/10/04, p.7. Mr Curry repeated this evidence on more than one occasion. *Transcript of Evidence*, Curry, Session 1, 14/10/04 and *Transcript of Evidence*, Curry, Session 1, 18/08/03, p.3.

Finding 10. The Committee finds that Richard Curry, Director General of DIA:

- had a preconceived view that Aboriginal urban settlements had failed to advance the interests of Aboriginal people;
- was eager to progress the Urban Settlements Project as part of a response to his view that Aboriginal urban settlements were a ‘failed experiment’;
- like his Minister, who publicly favoured the closure of the Lord Street camp, held the view that the SVNCAC, and in particular Robert Bropho should be removed from the management of the Reserve;
- like his Regional Director, David Pedler, relied on anecdotal accounts for his information on the SVNC;
- relied on this anecdotal information to support his view that the SVNCAC should be removed from the management of the Reserve;
- saw the removal of the SVNCAC and residents of the Reserve as an opportunity to advance the Urban Settlements Project on the now vacant Crown land;
- provided advice to the Premier that agencies were doing all they could within the limits of access and there was considerable risk to women and children at the SVNC; and
- had no proper basis for providing his advice to the Premier.

DIFFICULTIES IN DEALING WITH ROBERT BROPHO

7.39 Robert Bropho has a history as one of the persons regularly displaced by the actions of successive Governments and has no reason to trust or like Governments or their bureaucrats.⁴⁶⁰ The highly repressive conditions applicable to Aboriginals in the last century were well within his memory and experience. As a consequence, his dealings with Governments and their representatives have tended to be confrontational. A transient lifestyle is not merely a matter of culture for Aboriginal people. It is in part a response to public pressure to remove them from urban localities.

7.40 The Committee acknowledges that Robert Bropho has been stubborn in some of his dealings with certain public authorities. He has also been a persistent and effective advocate and brought attention to the plight of Aboriginal people. In doing so he has attained benefits for his family and the Aboriginal community. That said, there were ways of securing Robert Bropho’s trust and cooperation. These are the same methods

⁴⁶⁰ Robert Bropho was displaced from Allawah Grove in the late 1960s and it was from there that he commenced living in Stirling Park, Guildford prior to moving to the Lockridge site.

that have been used in other parts of the State by departments such as DCD. This is to pay the usual courtesies and seek to gain basic agreement on how the department and the community would deal with each other. In some Aboriginal communities this has been achieved through the mechanism of a memorandum of understanding.

7.41 Some of the actions of the Government, often at a senior level, were the antithesis of the cooperative arrangements sought by delivery level officers. These actions included:

- the publication on the day the Gordon Report was released of the view held by the then Minister for Indigenous Affairs of his desire to close the SVNC, contrary to the recommendation contained in the Gordon Report for relevant departments to negotiate memoranda of understanding with that Community;
- the rejection of recommendation 141 of the Gordon Report for memoranda of understanding and instead the negotiation of a new management order for the SVNCAC;
- the removal of the demountable school building on October 1 2002 after the Minister for Education and Training⁴⁶¹ (who at the time was also the Minister for Indigenous Affairs) had, in May 2001, indicated his support for the school room being used for community education by a voluntary worker;⁴⁶²
- the Community Inspection Audit on December 4 2002;
- the refusal to respond to requests and suggestions from the SVNCAC including the Preliminary Suggestions for Assistance provided to DIA by Robert Bropho on December 18 2002;
- the announcement by the Premier on May 14 2003, without any warning or consultation with the management of the SVNC or its residents, that the Community would be closed; and
- the use of Parliament to effect the removal of the SVNCAC from the management of the Reserve by the introduction of a Bill with little public consultation and inadequate notice given to non-government members of either House.

⁴⁶¹ Hon Alan Carpenter MLA.

⁴⁶² Letter Hon Alan Carpenter MLA to Ms Sophie Davidson dated 15/05/01.

CHAPTER 8

DEPARTMENT OF HEALTH

SERVICE PROVISION

- 8.1 The Department of Health provided non-clinical community health services to the SVNC. These included regular visits by Aboriginal Health workers based in Midvale to mothers and young children, giving advice on parenting and health promotion and facilitating transport to the general medical practice at Lockridge.⁴⁶³
- 8.2 The provision of health services to families and children is based on an early intervention and surveillance model. In the course of that service provision, issues of significance can be identified and may lead to referral either to other medical or health staff or DCD if the matter involves concerns regarding a child's welfare.⁴⁶⁴

SUBSTANCE ABUSE ISSUES

- 8.3 The Government claimed that health workers were being denied access to the SVNC and that its management had failed to deal adequately with the issues of child abuse, domestic violence and substance abuse. Substance abuse includes the abuse of all drugs but in relation to the SVNC, the focus was on the abuse by young people of solvents by glue and paint sniffing.
- 8.4 In February 2003, the SVNCAC had requested assistance from various departments, including Health, in dealing with substance abuse.⁴⁶⁵ This was but one in a series of requests and suggestions put forward by the SVNCAC and other Aboriginal groups and individuals since solvent abuse was first identified as a problem in the Aboriginal community in the 1980s.⁴⁶⁶
- 8.5 The Committee wrote to the Director General of Health, Mr Mike Daube, asking what his Department had done in response to the request by SVNCAC for assistance, together with details of action taken to deal with the issue of substance abuse in the Aboriginal community. Mr Daube advised that the requests from the SVNCAC were discussed at a joint agency meeting on March 21 2003, but without any resolution

⁴⁶³ Report on Service Provision to Swan Valley Nyungah Community, April 2003 - Schedule p.2, tabled at SOGIG, Meeting, 22/04/03, 11.30am-12.30am.

⁴⁶⁴ *Transcript of Evidence*, Corrigan, 17/09/03, p.15.

⁴⁶⁵ Letter SVNC to DCD, DHW, DIA, Department of Health, Midland Police, and District Director of Education dated 19/02/03. See also DGGIG Weekly Update: 10 March - 14 March 2003, p.2.

⁴⁶⁶ Nyungah Circle of Elders: Record of Actions and Proposals to Government by Swan Valley Nyungah Community in Conjunction with Nyungah Circle of Elders and other Nyungah Elders and Nyungah People on the Problem of Sniffing of Glue, Paint and other Substances by our Young People, undated

- being made. The requests were to be discussed at subsequent meetings of that group, which did not occur.⁴⁶⁷
- 8.6 Mr Daube's response indicates that although solvent abuse was identified as a concern in the North Eastern metropolitan health area, and specifically Midland, no service delivery staff dealt exclusively with this problem. Rather, these staff provided services on a range of drug problems. He claimed that significant initiatives had been undertaken to address volatile substance use and listed in his letter a range of activities that had taken place since 1986. The Committee accepts the proposition put forward by Mr Daube that the involvement of the Community in initiatives to address substance abuse is vital to their success. The evidence of police was that the SVNC were involved and attempting to deal with the issue of substance abuse, particularly of young people using solvents.⁴⁶⁸
- 8.7 The Committee heard evidence that the SVNCAC was accepting people into the Community who had substance abuse problems. These transients were taken in because there was no rehabilitation services available in the Midland area.⁴⁶⁹ Local police were aware of this issue as the Report to DGGIG on Service Provision to SVNC - April 2003 mentions the problems caused by transients at the SVNC.⁴⁷⁰
- 8.8 Dr Charles Douglas, Director, East Metropolitan Population Health Unit, explained in his evidence to the Committee that the Department of Health does not have data on the degree of substance abuse in the Aboriginal population when compared with the non-Aboriginal population on a suburb by suburb basis. It therefore could not confirm the perception by its health workers that the degree of substance abuse in the Aboriginal population in the Midland area is greater than in other areas.⁴⁷¹
- 8.9 The Committee accepts that substance abuse, particularly the inhalation of solvents such as paint, glue and petrol is widespread among some sectors of the Aboriginal population.⁴⁷² The Gordon Inquiry identified substance abuse as an underlying factor in the incidence of family violence and child abuse.⁴⁷³ The inhalation of solvents by perpetrators of abuse was a significant factor leading to the rape of a two and a half year old girl at the SVNC in April 2000 by two young males affected by solvents and

⁴⁶⁷ Letter Mr Mike Daube, Director General, Department of Health to the Committee dated 18/08/04, p.1.

⁴⁶⁸ *Transcript of Evidence*, Clarysse, Session 1, 10/09/03, p.9.

⁴⁶⁹ Other than for the North Eastern Metropolitan Community Drug Service Team located at Midland, providing treatment services directed to offenders diverted through police or courts, treatment centres are located in Perth.

⁴⁷⁰ Report on Service Provision to SVNC - April 2003 (Report to DGGIG).

⁴⁷¹ *Transcript of Evidence*, Douglas, 17/09/03, p.24.

⁴⁷² Gordon Report, p.67.

⁴⁷³ Gordon Report, Recommendation 26, p.126.

alcohol.⁴⁷⁴ However, evidence given by the WAPS indicates that the problem of solvent abuse was not centred at the SVNC and was not tolerated by its management.⁴⁷⁵ The WAPS advised that Robert Bropho had made attempts to help substance abusers, to engage government services to assist in dealing with this problem and to provide information to police on suppliers.⁴⁷⁶

ACCESS ISSUES

- 8.10 Prior to the Bill coming before House, Mr Daube rang Hon Peter Foss QC MLC at the request of the Premier's Chief of Staff, Sean Walsh, to try to persuade the Opposition to support the legislation because of what was allegedly occurring at the SVNC. Mr Daube's view was that his Department had significant concerns about access to members of that community.⁴⁷⁷ These difficulties of access were in relation to the Department's community health area and the mental health area.⁴⁷⁸
- 8.11 During his evidence to the Committee, Mr Daube produced a letter dated May 7 2003 from himself to Jane Brazier, in her capacity as co-chair of DGGIG, commenting on the SVNCAC management plan. This letter was initiated not by Mr Daube, but as a result of a request from DGGIG.⁴⁷⁹ Mr Daube's response to DGGIG was that the SVNCAC management plan was deficient. He noted that while a particular Aboriginal health worker had been identified as acceptable within the plan, there was no broader mention of access for health care providers, and in particular no mention of access for emergency ambulance services.⁴⁸⁰
- 8.12 Mr Daube acknowledged that the SVNCAC management plan did not deny entry to Health workers but raised identical concerns to those expressed by DCD. He saw the request in the management plan for unannounced or first time visitors to report to the SVNCAC administration office as consistent with past practice of health workers being permitted access only after they had first reported to the office.⁴⁸¹ His staff saw the practice of reporting to the office as a significant constraint to accessing individuals in that Community and also as a significant concern in relation to patient confidentiality.⁴⁸²

⁴⁷⁴ "Long term for child rape" by David Darragh, *The West Australian*, Wednesday May 15 2002, p.10.

⁴⁷⁵ *Transcript of Evidence*, Mumme, Session 1, 3/12/03, pp.8-9.

⁴⁷⁶ *Transcript of Evidence*, Clarysse, Session 1, 10/09/03, p.9.

⁴⁷⁷ *Transcript of Evidence*, Daube, Session 1, 17/09/03, p.2.

⁴⁷⁸ *Ibid*, p.3.

⁴⁷⁹ Either from a request by Jane Brazier or Barry Matthews. *Transcript of Evidence*, Daube, Session 1, 17/09/03, p.4.

⁴⁸⁰ Letter Mike Daube, Director General, Department of Health to Jane Brazier, Director General, DCD dated 7/05/03, p.1

⁴⁸¹ *Transcript of Evidence*, Daube, Session 1, 17/09/03, p.6.

⁴⁸² *Ibid*, p.6.

Observation 17. The Committee observes that under the management order that was put in place in October 2002 to guarantee access to the Reserve, government officials from any department with business at the Reserve could enter without the management plan having to expressly deal with each department's particular access needs. This would include ambulance and health worker access.

8.13 As indicated previously, the request contained in the SVNCAC management plan for first time or unannounced visitors to attend the administration office was not a requirement or condition precedent to access. In general, attending the office of Aboriginal communities was the common manner of obtaining information on the whereabouts of the patient to be visited. This differs little in character to knocking on the door of a house, providing proof of identity and requesting to see a particular resident.

Observation 18. The majority of the Committee observes that it is not a breach of a patient's confidentiality to attend at a reception area of an Aboriginal community to ask a person's whereabouts. The same argument could be raised in response to the Department of Health's staff assisting a resident with transport to the local private medical practice or someone sitting outside a suburban general practice observing who was going in. There is knowledge that the person is going into a medical practice but no information (unless the condition is obvious) as to the nature of the person's medical condition.

8.14 A requirement of the SVNCAC management plan was that government staff wear clear identification so that people staffing the SVNCAC office could identify the person and the department from which they came by their name badge. This requirement was included to ensure that undesirables such as 'bungemen' were not given access to the Community. There was no objection taken by government departments to this requirement and indeed this was the usual practice of government workers accessing the Community in any event.⁴⁸³

Finding 11. The majority of the Committee find that the argument that attending at the SVNCAC administration office and requesting to see someone could be viewed as breaching that person's patient confidentiality is fallacious. No evidence was presented to the Committee that health workers visiting the SVNC were asked the nature of their visit or that providing confidential medical information was a condition for access to an individual.

⁴⁸³ For example, the DCD worker allegedly intimidated at the SVNC on 21/05/03 was wearing identification. See *Private Transcript of Evidence*, Session 4, 25/09/03, p.13. This practice was encouraged by DOLA, which contacted all relevant departments to ensure that all relevant executive and senior level officers informed their service delivery officers carry formal agency identification when accessing the SVNC. See e-mail from Andy Duckworth, A/Director Office of Director General Health to Larry Fouracres, DOLA dated 23/09/02.

- 8.15 It emerged in evidence that the real issue was a perception that a patient or his or her parent may not disclose to health workers issues such as substance abuse or other abuse in circumstances where SVNC management was aware that health workers had visited a particular individual. This would be revealed in circumstances where office staff were told whom the government worker wished to see. Doctor Charles Douglas explained the problem as follows:

*I guess the concern is with any community, but with the Swan Valley community it was that if the worker went there and was required to say who they wanted to visit, not even necessarily why, our perspective was that there might then be a reluctance on the part of the person visiting to perhaps begin to trust and disclose, for fear that they would then be questioned afterwards about what they were talking about...*⁴⁸⁴

- 8.16 Dr Douglas stated that there was a difference between the practice of attending the office at the SVNC and the usual practice of attending the office of other Aboriginal communities at which health services were more welcome. At these communities it was a matter of announcing the visit and then attending to several families or individuals during which a variety of issues could be discussed. At the SVNC, Department of Health staff were required to identify whom they wished to visit. They were then directed to the home, the visit concluded and the health staff left. Dr Douglas suggested that this was different to the usual practice.⁴⁸⁵
- 8.17 Mr Daube made the point that if the patient knew that he had been identified in the administration office as the person who was to be seen, it might be extremely difficult for that person to discuss issues such as substance abuse, violence or abuse of any other kind.⁴⁸⁶

Observation 19. The majority of the Committee observes that the SVNC was a small community and it would be likely that community members would be aware of health workers or other government officials visiting individuals in any event. Similar issues would arise whether or not health workers paid the community and its elders the courtesy of announcing their visit at the office or revealing whom they wished to see.

- 8.18 The Committee heard evidence from three health workers, including two Aboriginal health workers who had worked with SVNC residents. One Aboriginal health worker had worked at the Lord Street camp for approximately six years up to 2002 and never

⁴⁸⁴ *Transcript of Evidence*, Douglas, Session 1, 17/09/03, p.19.

⁴⁸⁵ *Ibid.*

⁴⁸⁶ *Ibid*, pp.19-20.

experienced any difficulties getting access to the Reserve or to individual residents living there.⁴⁸⁷

8.19 This Aboriginal health worker also dealt with another Aboriginal urban community and with Aboriginals in private dwellings. The SVNC amounted to approximately 10% of her workload. She had witnessed the consequences of domestic violence and was aware that children, predominantly transients, living at the SVNC had substance abuse problems.⁴⁸⁸ However, she told the Committee that her other patients had much the same problems as residents of the SVNC.⁴⁸⁹ She did not receive any complaints of child abuse from SVNC residents or her other patients.⁴⁹⁰

8.20 As at the date of Mr Daube's response to Ms Brazier contained in his letter of May 7 2003, the group of senior bureaucrats, which included both of these Directors General, had already decided to recommend to Cabinet that:

- the SVNCAC be removed from the management of the Reserve;
- the residents be removed from the Reserve and rehoused in the general community; and
- that this be achieved through the mechanism of a Reserves Bill.⁴⁹¹

8.21 Mr Daube told the Committee that the content of the letter was expressing the concerns of his departmental officers that had been raised previously, rather than attempting to justify the Government's action after the event.⁴⁹²

8.22 Mr Daube's evidence contrasts with that of the manager to whom the Aboriginal health worker reported. She told the Committee that other than being asked what presence the Department had at the Lord Street camp, she was not asked or consulted as to what her views were on the adequacy or otherwise of service delivery at the SVNC.⁴⁹³ On one or two occasions this manager attended at the Lord Street camp with the Aboriginal health worker and experienced no difficulty in gaining access to the Community.⁴⁹⁴ In her opinion access to the SVNC was not an issue.⁴⁹⁵

⁴⁸⁷ *Private Transcript of Evidence*, Session 3, 30/06/04, p.3.

⁴⁸⁸ *Ibid*, p.5.

⁴⁸⁹ *Ibid*, p.6.

⁴⁹⁰ *Ibid*, p.6.

⁴⁹¹ Hand written notes of Mal Wauchope, Director General DPC of meeting of senior bureaucrats on 5/05/03.

⁴⁹² *Transcript of Evidence*, Daube, Session 1, 17/09/03, p.4.

⁴⁹³ *Private Transcript of Evidence*, Session 3, 30/06/04, p.3.

⁴⁹⁴ *Ibid*.

⁴⁹⁵ *Ibid*, p.9.

- 8.23 The Department of Health had previously provided information to the Gordon Implementation Secretariat on the services provided to the SVNC by e-mail⁴⁹⁶ and letter⁴⁹⁷ to assist with the preparation of the DGGIG submission to the Cabinet Standing Committee on Social Policy. In late March 2003, the Department of Health's only listed concern was the lack of a male health worker.⁴⁹⁸
- 8.24 DOLA had provided a Briefing Note to the Office of the Minister for Planning and Infrastructure in April 2003 that confirmed that the SVNCAC management plan "was still being considered by relevant agencies and no comment about changes required to the management plan have been made to the SVNC."⁴⁹⁹ DOLA was responsible for coordinating the responses from the various agencies having contact with the SVNC. The SVNCAC was not made aware by Government of Mr Daube's criticisms or any criticisms of its management plan.⁵⁰⁰
- 8.25 The Committee notes that Mr Daube's letter is dated two working days prior to the Cabinet submission being finalised on Friday, May 9 2003. On the following Monday, May 12 2003, the submission was presented to Cabinet. The Committee has some difficulty reconciling the sequence of events and the information obtained from other Department of Health witnesses and DOLA with Mr Daube's explanation.

Specific examples of access difficulties

- 8.26 Access was not a simple matter of being able to physically enter the Reserve as provided for under the October 2002 management order and SVNCAC management plan. It was a matter of engaging with residents. Mr Daube raised the issue of health workers feeling unwelcome or being fearful of their safety as examples of the SVNCAC hindering effective access by health workers.⁵⁰¹
- 8.27 Mr Daube told the Committee that he was aware of specific instances where Department of Health staff had been threatened.⁵⁰² He later provided the names of three Department of Health officers to assist with evidence of these specific incidents.⁵⁰³ One witness advised that her "capacity to add to the Select Committee

⁴⁹⁶ E-mail from Dr Charles Douglas, Department of Health to Helen Phelan dated 1/04/03 at 8.23am, regarding information for Gordon Secretariat - SVNC.

⁴⁹⁷ Notes for Submission to Cabinet prepared by Dr Charles Douglas, Department of Health dated 21/03/03.

⁴⁹⁸ *Ibid.*

⁴⁹⁹ Briefing Notes on Reserve 43131 Lord Street, Lockridge - Draft Management Plan by Andrew Burke, Acting Director Land Information and Administration Services, April 2003.

⁵⁰⁰ Letter Larry Fouracres, Manager Land Asset - Metropolitan; Sandra Eckert, Legal Officer and Rosemary Menage, Legal Officer, DPI (formerly of DOLA) to Committee dated 18/10/04, p.3.

⁵⁰¹ *Transcript of Evidence*, Daube, Session 1, 17/09/03, p.16.

⁵⁰² *Ibid.*

⁵⁰³ Document 9 in list of documents provided by Mr Mike Daube, Director General of Health, in his letter to the Committee dated 8/12/03.

- Hearings [was] questionable due to hearing such information ‘third hand’”.⁵⁰⁴
 Another wrote to the Committee and said that she had “not had any direct contact with the Swan Valley Nyungah Community in any form.”⁵⁰⁵
- 8.28 The one witness identified by Mr Daube that gave evidence could only tell the Committee of his experience between 1994 and 1997-1998, well prior to the Gordon Inquiry, and had no knowledge of the situation that existed in the critical post Gordon Inquiry period. The witness had been a member of the Midland Aboriginal Advancement Group (MAAG) and involved as an Aboriginal liaison officer for the Swan Health Service in a mental health team dealing with youth suicide and substance abuse. He established a youth program with the assistance of local police for the young people living at the SVNC.
- 8.29 He estimated that at the time there were approximately 50 sniffers in the Midland area with “maybe eight to 10” from the SVNC.⁵⁰⁶ The program was initially successful in engaging youth from the Lord Street camp. However some criticism from residents of the SVNC that Robert Bropho came to know of from minutes of a police committee meeting soured the relationship.⁵⁰⁷
- 8.30 The witness who initially had a good rapport with Robert Bropho found that he was denied access to the SVNC and then other workers from the program were denied access.⁵⁰⁸ This occurred in 1996 or 1997.⁵⁰⁹ However, the witness did not provide any evidence in relation to threats being made against him or other health workers as suggested by Mr Daube.
- 8.31 Mr Daube later provided the Committee with a copy of a submission presented to the Gordon Inquiry by a Department of Health worker to support his argument that access continued to be a problem at the SVNC.⁵¹⁰ The submission explained that the Aboriginal health worker’s presence at the SVNC had been accepted because of her support and care for Edna Bropho Snr (Robert Bropho’s wife) prior to her death. However, permission had not been granted for other Department of Health staff to access the Reserve.⁵¹¹ This statement appears contrary to the evidence that was obtained from the Aboriginal health worker and her manager. The submission noted

⁵⁰⁴ Letter Nardeen Fenton, Manager, Swan Health Service, to the Committee dated 25/06/04.

⁵⁰⁵ Letter Dr Tracy Westerman, Managing Director Indigenous Psychological Services, dated 27/8/04.

⁵⁰⁶ *Private Transcript of Evidence*, Session 2, 30/06/04, p.6.

⁵⁰⁷ *Ibid*, pp.4-5.

⁵⁰⁸ *Ibid*, p.4.

⁵⁰⁹ *Ibid*.

⁵¹⁰ Letter from Mr Michael Daube, Director General, Department of Health to the Committee dated 8/12/03.

⁵¹¹ Swan Health Service Submission to Gordon Inquiry, undated, p.5.

the past difficulties in accessing Cullacabardee but that this had improved since October 2001. There had been no access difficulties with Saunders Street.⁵¹²

- 8.32 One of the principal issues identified in the submission was that the opportunity for health providers to follow up referrals was inconsistent or negligible due to not having permission to enter some Aboriginal communities. The submission did not single out the SVNC as the only offender in this regard and noted that in the past a doctor and nurse from the Lockridge general medical practice had provided a clinical service at the SVNC. This had been discontinued due to the limited utilisation of the service by Community members and not because of access difficulties.⁵¹³
- 8.33 The essence of Mr Daube's evidence was that the access problems prevented the Department from carrying out its surveillance function so that preventative health care could be provided and immediate health needs assessed. The Department could not know the extent of or improve the health problems of the Community if access was prevented or hindered.
- 8.34 However, it was clear that residents of the SVNC were not being denied clinical medical care by management of the Reserve. Their health care needs were being met by the private sector. The Aboriginal health nurse sometimes facilitated transport to the Lockridge general practice. Some non-clinical involvement by departmental staff had been well established with Aboriginal health workers visiting mothers and young children, giving advice on parenting and health promotion. Progress was being made.⁵¹⁴ The real concerns that the Department had related to substance abuse, family violence, child abuse and mental health.⁵¹⁵ Clinical care could only deal with the effects of this abuse, whereas the Department's focus was on preventative measures and health promotion.
- 8.35 The Committee notes that health services, other than in the limited circumstances provided for under the *Mental Health Act 1996* are voluntary.⁵¹⁶ Physical access can be achieved but whether or not residents avail themselves of services is a matter of choice. The Department of Health's claim was that this free choice was being interfered with by the deliberate actions of management. The evidence given to the Committee contradicts this assertion.

⁵¹² *Ibid*, pp.2-3.

⁵¹³ *Ibid*, p.4.

⁵¹⁴ Report on Service Provisions to Swan Valley Nyungah Community, April 2003.

⁵¹⁵ *Transcript of Evidence*, Corrigan, Session 1, 17/09/03, p.23.

⁵¹⁶ See Part 3, *Mental Health Act 1996*.

Finding 12. The Committee finds that there is no evidence to support the claim made by the Department of Health that following the Gordon Inquiry and the October 2002 management order, access to health services was being deliberately interfered with or impeded by the management of the SVNC.

MR DAUBE'S EVIDENCE

- 8.36 The Committee observed that Mr Daube was extremely vague on the details of what occurred during the Strategic Management Council meeting on May 1 2003 and the series of meetings of senior bureaucrats convened by the Premier's Chief of Staff that followed. He claimed that given the length of time that had passed and the other events and activities in which he was involved he would have to refresh his memory about precise details of these meetings.⁵¹⁷ He described these failings as the result of his "faulty recollection."⁵¹⁸
- 8.37 Mr Daube's frequent failings to recollect events whilst acknowledging his attendance at some of these meetings was despite being advised well prior to giving his evidence that the Committee would question him in detail about what was discussed and what decisions were made at these meetings.⁵¹⁹ This contrasted with other senior public servants who came well prepared for their examination before the Committee.
- 8.38 It was also curious that of the three Department of Health workers identified by Mr Daube as being able to assist the Committee by providing evidence of threats being made against health workers, two told the Committee that they could not assist. The other did not provide any recent evidence in relation to the SVNC or any evidence of being threatened. The Committee took evidence from two other health workers with recent direct contact with the SVNC, an Aboriginal health worker and her supervisor. Neither had experienced any difficulties with access nor had they been threatened whilst undertaking their duties at the camp.

Observation 20. The Committee observes that :

- the request to Mr Daube to provide information direct to DGGIG that was critical of the SVNC occurred at a time when a series of meetings of Directors General and senior bureaucrats, which included Mr Daube and Ms Brazier, were charged by the Premier with finding a solution to protecting the victims of alleged continuing child sexual abuse, domestic violence and substance abuse at the SVNC. Legal advice that an appropriately drafted Bill could achieve this objective had been given on

⁵¹⁷ *Transcript of Evidence*, Daube, Session 1, 17/09/03, p.12.

⁵¹⁸ *Ibid*, p.16.

⁵¹⁹ Discussed in a telephone conversation between the Committee's Advisory Officer and Mr Daube, Director General, Department of Health on 17/08/03. *Transcript of Evidence*, Daube, Session 1, 17/09/03, p.2.

May 5 2003, and a decision was made to proceed with this legislative option two days prior to Mr Daube's letter.

- Mr Daube's criticisms in his letter dated May 7 2003 that the SVNAC management plan did not provide for access for health care providers and emergency ambulance services was not justified. These were dealt with adequately in the October 2002 management order;
- the SVNAC was given no opportunity to address Mr Daube's criticisms of its management plan or any criticism from Government as it was unaware of these criticisms;
- Mr Daube's letter dated May 7 2003, although requested earlier, was produced in response to a later request by Lynsey Warbey, Manager of the Gordon Implementation Secretariat, at a meeting of senior bureaucrats charged with recommending a solution to Government;
- the witnesses Mr Daube identified as being able to assist with evidence of specific instances of health workers being threatened could not assist the Committee; and
- Mr Daube's lack of specificity of the discussions that occurred during the Strategic Management Council Meeting and the meetings of senior bureaucrats that followed gave an impression that he was either:
 - ill prepared for his examination;
 - was unaware of all or any of the issues surrounding this important decision; or
 - was deliberately avoiding giving answers.

Mr Daube had been put on notice that these issues would be discussed in detail.

Finding 13. The Committee finds that there was no evidence of a denial of clinical services to residents by the management of the Reserve. On the contrary, residents had access to a general medical practice and were assisted in this regard by Department of Health workers. In addition, the Department of Health acknowledged that preventative health services, although largely limited to an Aboriginal health worker, were being provided and progress was being made.

CHAPTER 9

DEPARTMENT OF HOUSING AND WORKS

SERVICE PROVISION

- 9.1 At the time the SVNC was closed, DHW had no program or funding involvement with the Community. The Department constructed a house at the Reserve in 1996/97 and in 1995 funded and managed the upgrading and construction of new essential service infrastructure with a total budget of \$600 000. This included earthworks, roads, storm water disposal, installation of a sewer pump station and pressure main and water, sewer and power reticulation.⁵²⁰
- 9.2 In 1996 DHW contributed \$43 000 to the construction cost of a renewable energy supply at the Community through an ATSIC program.⁵²¹ All housing construction and renovation works were undertaken and primarily funded by ATSIC, aside from a \$120 000 contribution by DHW. Under the Aboriginal Housing Infrastructure Development Town Reserves Regularisation Program, DHW undertook the emergency repair of essential services at the SVNC. In 2001/2002, DHW renewed a sewer pump, repaired leaks to a water main and arranged for the installation of water sub-meters and isolation valves.⁵²² At the time of the closure of the SVNC there was no ongoing relationship between the Department and the Lord Street residents or management.⁵²³
- 9.3 The Committee toured the SVNC after its closure and also the Cullacabardee, Sydney Road and Saunders Street Aboriginal communities.⁵²⁴ By comparison with the other three communities, the standard of accommodation at the SVNC was in general higher than at the other communities. The Administrator had a contrary view. He described the condition of the buildings as poor, with many in his opinion uninhabitable.⁵²⁵ This assessment was contradicted by Magistrate Sue Gordon, who told the Committee that “it was an adequate and reasonably well maintained facility.”⁵²⁶ Those members of the Committee who had visited the SVNC prior to its closure were of the view that the

⁵²⁰ Confidential Supplementary Information provided under cover of DHW letter dated 9/10/03.

⁵²¹ Letter Hon Tom Stephens MLC, Minister for Housing and Works to Hon Alannah MacTiernan MLA, Minister for Planning and Infrastructure dated 26/09/03.

⁵²² Confidential Supplementary Information provided under cover of DHW letter dated 9/10/03.

⁵²³ Letter Greg Joyce, Director General, DHW to Grahame Searle, Acting Chief Executive Officer, DOLA dated 6/05/03.

⁵²⁴ These tours occurred on July 30 and 31 2003.

⁵²⁵ *Transcript of Evidence*, Jameson, Session 4, 22/10/03, p.11.

⁵²⁶ *Transcript of Evidence*, Gordon, Session 1, 30/06/04, p.7.

standard of accommodation was higher than at any other urban Aboriginal community.

HOMESWEST HOUSING APPLICATIONS

- 9.4 Access to the SVNC was not an issue for DHW. However, access to Homeswest accommodation by residents of the SVNC wishing to leave the Community was more problematic. Two applicants who had cited domestic violence as a reason for applying for Homeswest housing found that this was not accepted as a sufficient reason to give them priority over other applicants. This included an application made in July 2002 supported by a womens refuge⁵²⁷ which was rejected on the basis that the applicant had “not demonstrated urgent need or exhausted all other options.”⁵²⁸ This application occurred at a time shortly after the publication of the Gordon Inquiry Interim Report that cited previous literature⁵²⁹ on indigenous violence, its widespread prevalence and it being a significant problem in Aboriginal communities.
- 9.5 Perhaps one reason for Homeswest reticence was the fact that this applicant had previously been evicted from her Homeswest house in March 2002 for non-payment of rent and water arrears.⁵³⁰ The applicant claimed that she had to vacate these premises due to her partner returning to abuse her and their child.⁵³¹ She eventually returned to the SVNC to live with the male person she had accused of domestic violence.
- 9.6 Documentation provided by DHW has revealed that five applications for alternate housing involving a total of 10 persons who were residing at the SVNC shortly prior to its closure were made to DHW between November 1999 and May 2002. These included the two rejected applications for priority housing that cited domestic violence as a reason for the request. One of these applicants had been offered a house in northwest regional Western Australia but DCD was reluctant to allow the applicant to take up the offer as a result of child access difficulties for the father.⁵³² After the closure of the SVNC, DCD officers exercising their powers under the *Child Welfare Act 1947* entered a home at Saunders Street and removed the child from the male

⁵²⁷ Confidential Supplementary Information provided under cover of DHW letter dated 9/10/03.

⁵²⁸ Homeswest Accommodation File F16018Y90A-02, Homeswest Decision Review Form dated 1/08/02.

⁵²⁹ Violence in Indigenous Communities Report 2001, p.6; cited in Interim Report of Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, April 26 2002, at p.33.

⁵³⁰ Homeswest Accommodation File F16018Y90A-02, Order made by the Small Disputes Division of the Local Court on 7/3/02. The applicant owed Homeswest \$1 982.93 for repairs rent and bills.

⁵³¹ Homeswest Accommodation File, F16018Y90A-02, Tenancy Interview Proforma dated 30/07/02.

⁵³² DHW Assistance Provided to Former Residents of Swan Valley Noongar (sic) Community tabled by Greg Joyce, Director General, DHW on 25/09/03. See also *Private Transcript of Evidence*, Thomas, Session 3, 25/09/03, p.3.

- parents' care on August 22 2003 due to domestic violence.⁵³³ The mother and child subsequently obtained accommodation separate from the father.⁵³⁴
- 9.7 Four of the six families or individuals DHW had resettled since the closure of the Lord Street camp had been on the waiting list well before the closure, some even before the change in Government. These cases were not priority applications and the applicants were placed on a 'wait turn' basis along with other non-priority applicants.
- 9.8 Not all applicants for Homeswest accommodation were unsuccessful. One applicant not included in the four applicants mentioned above who had lived at the SVNC all of her life had obtained Homeswest accommodation for her and her five children after a successful priority application in February 2002. She had first applied for accommodation in October 2000.⁵³⁵ The priority application cited domestic violence on the part of her brother and was supported by a medical report and a letter from the Derbarl Yerrigan Health Service.⁵³⁶ The applicant subsequently altered her application so she could obtain accommodation outside the Perth Metropolitan Area, again citing domestic violence as the reason.⁵³⁷ The applicant moved into a property in October 2002 and was subsequently evicted in March 2003 as a result of property damage and anti social behaviour.⁵³⁸ The tenant owed Homeswest over \$4 000, the majority being for property repairs.⁵³⁹
- 9.9 This pattern of failed tenancy was not uncommon for SVNC residents obtaining Homeswest accommodation outside the camp. A former resident whose child was raped at the SVNC in April 2000 had applied for priority assistance in December 1998.⁵⁴⁰ She alleged that her uncle had been bashing her. Her application was denied, as she did not supply any supporting documentation. She was listed on a wait turn basis on the condition that her debt payments from a previous Homeswest tenancy continued.⁵⁴¹ Accommodation was found for her after the child was raped. However problems with her tenancies continued including refusing Homeswest access for inspection purposes and continuing rent arrears and property damage resulting in a

⁵³³ *Private Transcript of Evidence*, 12/11/03, p.5.

⁵³⁴ *Private Transcript of Evidence*, Thomas, Session 3, 25/09/03, p.2.

⁵³⁵ Homeswest Accommodation File 2002/34553, folio 32.

⁵³⁶ *Ibid*, folios 17, 19 & 20.

⁵³⁷ *Ibid*, folio 31.

⁵³⁸ *Ibid*, folio 152.

⁵³⁹ *Ibid*, folios 47 & 167.

⁵⁴⁰ Homeswest Accommodation File F16260Y95A-01, folio 167.

⁵⁴¹ *Ibid*, folios 171, 172 & 173.

debt of almost \$5 000.⁵⁴² She returned to the SVNC after her Homeswest accommodation burnt down.⁵⁴³

Observation 21. The Committee observes that:

- **If the Government wanted residents to move from the SVNC then it had ample opportunity to do so in relation to the 10 applicants for Homeswest accommodation.**
- **Those residents of the SVNC who had obtained public housing prior to its closure had tenancies characterised by non-payment of rent, anti social behaviour and property damage which subsequently resulted in many tenants returning to the SVNC.**
- **The pattern of failed Homeswest tenancies from SVNC residents and their tendency to return to the Lord Street camp suggests that, with all its faults, the camp offered a refuge for Nyungahs who could not function effectively in the general community.**

ALLEGED HARASSMENT BY RESIDENTS OF THE SVNC

9.10 DHW provided evidence that it had relocated three families from their DHW accommodation due to continual problems being experienced with threats of violence and harassment from SVNC residents.⁵⁴⁴ Two of these families have a direct connection with the allegations made by two complainants that have led to some of the criminal charges against Robert Bropho.

9.11 The Government appears to have been aware of one of the allegations involving DCD having to remove a woman, her young child and sister from her DHW property due to serious concerns for the family's safety and wellbeing. This was an example raised during Government briefings.⁵⁴⁵ Mick Gooda, State Manager of ATSIC described this as DCD having to place the family in a "safe house" for their protection.⁵⁴⁶

9.12 DHW advised the Committee that the family allegedly placed in a 'safe house' was subsequently provided with Homeswest accommodation. The City of Stirling Refuge

⁵⁴² Homeswest Accommodation File F16260Y95A-02, folio 206.

⁵⁴³ The police concluded that the fire that destroyed the home on 2/03/01 was deliberately lit and started on or about a mattress in the rear bedroom. Memorandum Detective Senior Constable Williams 8055 to John Tilbury, Ministry of Housing dated 13.03/01 (Homeswest Accommodation File F16260Y95A-02, Folio 41.

⁵⁴⁴ Confidential Supplementary Information provided by DHW under cover of letter dated 9/10/03.

⁵⁴⁵ Notes of Hon Derrick Tomlinson MLC, from Council Opposition Briefing on Bill by Government officers on 16/05/03.

⁵⁴⁶ *Transcript of Evidence*, Gooda, Session 1, 22/10/03, p.9-10.

Coordinator,⁵⁴⁷ the Domestic Violence Victim Support and Advocacy Service⁵⁴⁸ and the Deaths in Custody Watch Committee⁵⁴⁹ supported the application. DHW also advised the Committee that the Homeswest accommodation provided was later abandoned due to information leaking to the media identifying the suburb in which the family was living and they feared that this was sufficient for their address to eventually be located by the persons allegedly threatening them.⁵⁵⁰ Harassment and intimidation had allegedly been occurring since February 2003.⁵⁵¹

- 9.13 DHW advised that its information was that a second family was transferred, allegedly due to threats of violence, intimidation and attacks on the property from residents at the SVNC. The third family relocated claimed threats of violence and attacks on their property was so severe that the family abandoned the property and moved in with the first family that had been relocated. DHW subsequently provided the family with another house.⁵⁵²
- 9.14 After the closure of the SVNC, DHW claims that several other former residents of the SVNC who had previously endeavoured to leave the SVNC had been threatened with violence. These families were placed in hotel accommodation by DCD until DHW could locate suitable properties for these families.⁵⁵³ In one of these cases the female partner and four children in her care sought accommodation separate from the male partner due to domestic violence. DHW cited this, and the case of the other female with children who had obtained accommodation without her male partner, as evidence that supported the Government's plan to close the SVNC.⁵⁵⁴ Since then, one of the male partners has returned to live with their family.

SVNC MANAGEMENT ORDER PLAN (ACTION PLAN)

- 9.15 The speed at which the Government's plan was to be implemented and the fact that SVNC residents chose to vacate the Reserve rather than suffer the indignity of being evicted resulted in significant resource challenges for DHW. The Government's original plan only required it to provide for the immediate housing needs of two families. This plan assumed that the majority of families and individuals would stay for a period at the Reserve after the Administrator had taken charge, giving DHW more time to source alternate accommodation.

⁵⁴⁷ Letter dated April 22 2003.

⁵⁴⁸ Letter dated April 30 2003.

⁵⁴⁹ Letter dated March 17 2003.

⁵⁵⁰ Confidential Supplementary Information provided by DHW under cover of letter dated 9/10/03, pp.3-4.

⁵⁵¹ *Ibid*, pp.3-4.

⁵⁵² *Ibid*, p.4.

⁵⁵³ *Ibid*.

⁵⁵⁴ *Ibid*, p.8.

- 9.16 The Department's original estimate that only seven families would require housing was significantly underestimated. It transpired that there were probably 12 families who were shown as residing at the Community.

Housing

- 9.17 A document presented to members of the Opposition following a briefing on the Bill on Friday, May 16 2003 by policy officers of DPC in part outlined the plans to accommodate residents of the SVNC. It states:

*The Department of Housing and Works (DHW) has accommodation available for the key people who will be removed from the Community. This includes two houses for Herbert and Harvey Bropho, who have families, and emergency hostel lodging for Robert and Richard Bropho, who do not have dependants, and who, it is believed can source private accommodation elsewhere.*⁵⁵⁵

- 9.18 The Government's Action Plan provided the following in relation to housing residents of the SVNC:

Housing

Both Herbert and Harvey Bropho have families including children and will require housing following their removal from the Community. The Department of Housing and Works advises that two houses will be reserved for this purpose. As Robert Bropho does not have family to consider, emergency hostel lodging will be made available.

- 9.19 Mr Bob Thomas, General Manager, Housing and Facilities Management, DHW was responsible, operationally, to house the former residents of the SVNC.⁵⁵⁶ He told the Committee that DHW had in place hostel accommodation for residents whom DHW identified as single persons expected to be evicted from the SVNC; Robert Bropho and two of his sons, Herbert and Harvey Bropho.⁵⁵⁷ He advised the Committee that he was unaware that Richard Bropho had been identified as a person requiring single person accommodation. He was also personally not aware of the Action Plan quoted from above that had been drafted by DPC following the meetings of senior bureaucrats. This was despite Mr Thomas being present at all of these meetings.⁵⁵⁸

⁵⁵⁵ Document provided to Hon Derrick Tomlinson MLC at briefing on 16/05/03 by Lynsey Warbey, Senior Policy Officer, DPI, (Swan Valley Nyungah Community Management Plan - Summary). *Transcript of Evidence*, 18/08/03, p.8.

⁵⁵⁶ *Transcript of Evidence*, Joyce, Session 2, 25/09/03, p.5.

⁵⁵⁷ *Private Transcript of Evidence*, Thomas, Session 3, 25/09/03, p.4.

⁵⁵⁸ *Transcript of Evidence*, Thomas, Session 2, 25/09/03, p.4.

- 9.20 Despite the documentary evidence contained in the Action Plan, DHW denied that these houses were reserved for Herbert and Harvey Bropho and their families.⁵⁵⁹ This denial is remarkable given the clear written evidence to the contrary.
- 9.21 Mr Thomas also told the Committee that it would have been impossible for DHW to house all of the residents of the SVNC if the Bill, as planned by the Government, was to be passed on Friday, May 16 2003 and all residents required immediate public housing.⁵⁶⁰ DHW managed to house six of the 12 families identified at the SVNC by the first week of August 2003.⁵⁶¹

Finding 14. The majority of the Committee find that the Government's plan for rehousing former residents of the SVNC by reserving two houses for two of the alleged perpetrators of abuse and their families, including their wives and children, did not achieve the Government's stated objective of separating the alleged perpetrators of abuse from women and children.

Finding 15. The Committee finds that DHW was not in a position to accommodate former residents of the SVNC quickly, as they had not anticipated their quitting the Reserve and had significantly underestimated the number of families and individuals requiring assistance.

Finding 16. The Committee finds that on two occasions in early and mid 2002, DHW denied priority applications for accommodation from former residents of the SVNC who ultimately returned to the SVNC and were residing there at the time the Bill was passed. The applications cited domestic violence as the reason for their need for alternative housing. One applicant was living in a womens' refuge and the other had claimed his defacto partner had stabbed him in the head.

Finding 17. The Committee finds that in most cases, DHW accorded no extraordinary priority or priority to applications for housing assistance by residents of the SVNC over any other applications. However, DHW did act on an urgent basis when three families living outside the Reserve, who claimed intimidation or harassment from SVNC residents, made

⁵⁵⁹ Confidential Supplementary Information provided by DHW under cover of letter dated 9/10/03, p.8.

⁵⁶⁰ *Transcript of Evidence*, Joyce, Session 2, 25/09/03, p.8.

⁵⁶¹ *Ibid.*

applications for priority assistance. Two of these families had members who were connected to the criminal prosecutions against Robert Bropho.

THE PYRTON LAND

- 9.22 Immediately adjacent to the SVNC is the Pyrtion site. At the relevant time this was not a Crown reserve.⁵⁶² DHW advised that this site has been vested in the Town of Bassendean because it is an existing incorporated body and “is in the best position to determine community uses for the site taking into account the broader wishes of the community.”⁵⁶³ A plan to vest the site jointly with the Town of Bassendean and traditional Aboriginal owners did not proceed. In February 2000, Cabinet considered a proposal to use the site as a minimum security womens prison which included a recommendation that DHW purchase a portion of the site for use as Aboriginal aged persons accommodation. This did not eventuate, as the proposal was contingent on the womens prison proceeding.
- 9.23 DHW has been generally involved with the disposal of the Pyrtion site. It has been suggested that one of the motivations for the closure of the SVNC was to make the Pyrtion land more attractive for purchase by a developer.⁵⁶⁴ Mr Joyce acknowledged in his evidence that a range of solutions had been thought of and talked about over time. A recent solution involved subdivision of some of the Pyrtion land so that funds obtained from a sale of the land on the riverfront could be used as a ‘sinking fund’ so that the management body has some financial capacity to maintain it in perpetuity.⁵⁶⁵ It was acknowledged that the future use of the SVNC site may have implications on the future use of the Pyrtion site and that this issue would need to be considered as part of consultation with the community as to the land’s future use.⁵⁶⁶
- 9.24 Mr Joyce’s suggestion was that the south eastern part of the Pyrtion land should be carved off for residential purposes so that some funds can be established for the Pyrtion Trust. He also wanted some public housing to be included in the subdivision.
- 9.25 It is likely that the removal of the SVNCAC and the residents from the Reserve and the Government’s proposal that the site be used as a cultural centre rather than for permanent Aboriginal housing will make the Pyrtion land more attractive to potential developers. As a result the land will probably command a higher price.

⁵⁶² Letter Larry Fouracres, Manager Land Asset - Metropolitan; Sandra Eckert, Legal Officer and Rosemary Menage, Legal Officer, DPI (formerly of DOLA) to Committee dated 18/10/04.

⁵⁶³ Confidential Supplementary Information provided by DHW under cover of letter dated 9/10/03, p.6.

⁵⁶⁴ Line of questioning by Committee member, Hon Robin Chapple MLC.

⁵⁶⁵ *Transcript of Evidence*, Joyce, Session 2, 25/09/03, p.13.

⁵⁶⁶ Confidential Supplementary Information provided by DHW under cover of letter dated 9/10/03, p.6.

9.26 However, the Committee finds that there is no evidence to suggest that one of the Government's motivations for the Bill was to make the prospect of developing land at the Pyrton site more feasible, although this ultimately may be one consequence of the closure.

Finding 18. The Committee finds that there is no evidence to suggest that one of the Government's motivations for the Bill, and its plan to remove all residents and the SVNAC from the Reserve, was to make the prospect of developing adjacent land at the Pyrton site more feasible.

THE UTILITY OF ABORIGINAL COMMUNITIES

9.27 The Urban Aboriginal Communities have been described as a "failed experiment". In part the Committee would agree. However, what they do provide is not provided in any other manner or by any other proposal of which the Committee is aware. What they require is not abolition, but improvement or an alternative.

9.28 What urban Aboriginal communities provide is accommodation in a familial setting, though of generally a poorer standard than in the general community, in which residents do not face the same pressures as those living in public housing. The Committee also refers to Observation 16 at page 103 and agrees that they do provide for:

- havens for individuals unable to function in the broader community;
- the preservation of Aboriginal culture and heritage; and
- bases from which Aboriginal political activism could operate.

9.29 In this context, the SVNC could have been considerably more successful than the other three urban Aboriginal communities. The Committee is of the view that action should have been directed to correcting what was wrong with the SVNC. What was actually done was to destroy what could be seen to be a positive improvement of physical living conditions and amenity. The relocation of the residents of the SVNC, does not of itself, solve the problem of child abuse, domestic violence substance abuse or self-harm in this Community. The problems continue regardless of location. While there is no longer an ascertainable and obvious focus for the problem, they continue within the broader community but with an added dimension.

9.30 One of the added dimensions was the isolation that some Aboriginals feel when they are not living with their extended family. Magistrate Sue Gordon explained that she had spoken to one of the former residents of the SVNC after Homeswest had found him a unit. Her Worship described this persons predicament as follows:

*It was alien to him. He was suddenly having to buy furniture and effects for it and there was nowhere to keep his large dog. He did not have any of his extended family around him and suddenly he was isolated in white society, to put it bluntly. That is what the Aboriginal people feel if they get moved out of the so-called Aboriginal metropolitan communities. The closeness of the families who live there has a protective use as well in as much as if somebody is in trouble, that person can just go next door and somebody is there to help. However, if you live in a block of six or eight units and you do not know any of the neighbours and they do not like you because you are Aboriginal, you become isolated and may just leave the house, which would then put you in the predicament of having your rent deducted but you do not live there.*⁵⁶⁷

⁵⁶⁷ *Transcript of Evidence, Gordon, Session 1, 30/06/04, pp.7-8.*

CHAPTER 10

DEPARTMENT OF EDUCATION AND TRAINING

SERVICE PROVISION

- 10.1 The DET provides education and vocational training services. The Committee did not examine witnesses from the Department but received two documents available to the Government prior to the Bill being passed on June 10 2003. One document was the ‘Report on Service Provision to Swan Valley Nyungah Community’ dated April 2003 that was tabled at the SOGIG meeting on April 22 2003. This included DET’s comments on service provision and access to the Community. The other document was a copy of a Briefing Note dated May 20 2003 to the Minister for Education and Training dealing with the enrolment and attendance of students from the SVNC at an independent Aboriginal school. DET records indicated that all of the school-aged children from the SVNC attended this non-government school.
- 10.2 The DET’s comments in the Report on Service Provision to the SVNC were that it was developing protocols for access to the Community. It also expressed frustration with deficiencies in the *School Education Act 1999* and limitations in funding that prevented key employees of DET from exercising any responsibilities with non-government schools.⁵⁶⁸ This was not an access issue that came about as a result of SVNC management but a perceived defect in the capacity for government to monitor non-government schools.

SCHOOL ATTENDANCE RECORD

- 10.3 The Briefing Note stated that school attendance by children of SVNC (other than for three truants) was better than the average attendance by the other 83 students.⁵⁶⁹ The Briefing Note concluded that nine out of 12 is “very satisfactory, with regular attendance being the norm”.⁵⁷⁰ The good attendance record relative to other students was attributed to the closeness of the school to the Reserve, the efforts of a bus driver who collected the children and the school providing breakfast and a further meal prior to the close of each school day.⁵⁷¹

⁵⁶⁸ DET Services Briefing Note for the Minister for Education and Training - Enrolment and Attendance of Students from SVNC at Culunga Aboriginal Community Independent School dated 20/05/03, p.2.

⁵⁶⁹ DET analysis was that non-SVNC students were absent for about 50% of the time.

⁵⁷⁰ DET Services Briefing Note for the Minister for Education and Training - Enrolment and Attendance of Students from SVNC at Culunga Aboriginal Community Independent School dated 20/05/03.

⁵⁷¹ *Ibid*, p.2.

- 10.4 Margaret Jeffery, the Secretary and Office Manager for the SVNAC told the Committee that since the closure of the Lord Street camp, the former SVNC children are not coping in the mainstream government schools and are the subject of racism.⁵⁷²

DEMOUNTABLE SCHOOL BUILDING REMOVAL

- 10.5 Magistrate Sue Gordon, who chaired the Gordon Inquiry, told the Committee that she was surprised that the school building was removed. Her Worship described the school building as being put to good use by the SVNAC for schooling and music lessons. It had no graffiti on it and it was clean.⁵⁷³
- 10.6 In May 2001, the Minister for Education and Training, Hon Alan Carpenter MLA, appeared to have accepted that the school building could remain at the SVNC despite the fact that formal education was no longer conducted there. At that time he agreed with a request from both Robert Bropho and a voluntary teacher for the school building to be used for the teaching of Nyungah art, music and language.⁵⁷⁴
- 10.7 The Minister replied to the request on May 15 2001 in which he said:

The Government is committed to improving educational outcomes for Aboriginal students. I understand that Mr Robert Somerville, Director of Aboriginal Education, has already met with you to discuss the future of the Community School, and that the Education Department is working with you to establish several programs at the site.

*I have also asked the Department to work closely with the Aboriginal Affairs Department in examining the matters that you have raised and to identify areas of assistance to enable you to continue providing an educational program in the Community School.*⁵⁷⁵

- 10.8 However, 10 months later, in March 2002 after his Director General gave evidence to the Gordon Inquiry that DET wanted the school building back,⁵⁷⁶ the Minister changed his mind and determined that the school building should be removed. Then followed a five month dispute between the Minister and the SVNAC and its spokesperson Robert Bropho that ended with the removal of the school building.⁵⁷⁷

⁵⁷² *Transcript of Evidence, Jeffery, Session 2, 11/12/03, p.3.*

⁵⁷³ *Transcript of Evidence, Gordon, Session 1, 30/06/04, p.6.*

⁵⁷⁴ Letter Ms Sophie Davidson and Mr Robert Bropho to Hon Alan Carpenter, Minister for Education dated 29/03/01.

⁵⁷⁵ Letter Hon Alan Carpenter MLA to Ms Sophie Davidson dated 15/05/01 responding to letter from Ms Davidson and Robert Bropho dated 29/03/01.

⁵⁷⁶ "Bropho blocks access" by Charlie Wilson-Clark, *The West Australian*, 7/05/02, p.3.

⁵⁷⁷ See paragraphs 5.3-5.4.

10.9 The Committee has not looked into the educational justification for the removal of the school building or why the Minister for Education and Training changed his mind. However, the consequences of this action were:

- a worsening of Robert Bropho's and the SVNAC's relationship with the Government;
- it deprived the SVNAC of a building being used for educational purposes which the Minister for Education and Training acknowledged would be of benefit to the SVNC; and
- it could be construed as a hardening of the Government's attitude towards the SVNAC and its spokesperson Robert Bropho.

CHAPTER 11

WESTERN AUSTRALIAN POLICE SERVICE

SERVICE PROVISION

- 11.1 The Committee heard evidence from two police officers who had direct contact with the SVNC, Sergeant Jim Clarryse, supervisor Kiara Police Station and Inspector Robert Mumme of the East Metropolitan District Office. Both had extensive experience in dealing with Aboriginal people.⁵⁷⁸
- 11.2 In their dealings with the SVNC and its management, both Inspector Mumme and Sergeant Clarysse observed what they believed from their experience were the proper methods of policing with Aboriginal people. They instilled these methods in the officers under their control, such as probationary constables and Aboriginal police liaison officers (APLO). This method involved building trust through regular contact between them and Robert Bropho and other Community members. Inspector Mumme told the Committee that he had been able to solve many issues between Robert Bropho and police by sitting down and discussing these with him over a cup of tea.⁵⁷⁹ This approach was sanctioned and encouraged by their senior officer, Superintendent David Parkinson.
- 11.3 These officers had sources of information regarding the various Aboriginal communities within the Midland area via APLO who had maintained connections with these communities. Inspector Mumme was also a member of MAAG⁵⁸⁰ which provided a source of information. Prior to this, in 1997 and 1998, the relationship between WAPS and the SVNC was poor, with lockouts of police officers and an incident where police were locked in whilst attending the Lord Street camp.⁵⁸¹
- 11.4 However, the relationships improved considerably after the Coronial inquest into the death of Susan Taylor and the subsequent Gordon Inquiry. It was Sergeant Clarysse and Inspector Mumme who supervised the removal of the DET school building on October 1 2002, which proceeded without any breaches of the peace. This was, in large part, due to Inspector Mumme dealing directly with Robert Bropho after he had heard rumours from his sources that a large number of people were intending to

⁵⁷⁸ Sergeant Clarysse had served in Kalgoorlie, Menzies, Port Hedland, Laverton and Midland. Inspector Mumme had served in Albany, Denmark, Cranbrook, Tambellup, Geraldton, Mt Magnet, Wiluna, Meekatharra and Midland.

⁵⁷⁹ *Transcript of Evidence*, Mumme, Session 1, 3/12/03, p.2.

⁵⁸⁰ Midland Aboriginal Advancement Group.

⁵⁸¹ Briefing Note, Assistant Commissioner T J Atherton Commander Metropolitan Region dated 23/05/03, p.1.

obstruct the removal works. Robert Bropho assured Inspector Mumme that this would not be the case.

- 11.5 As far as access to the SVNC was concerned, Inspector Mumme was of the view that other Aboriginal communities such as Cullacabardee were far worse. In a Briefing Note that he prepared for Assistant Commissioner, Tim Atherton he wrote:

Acting Senior Sergeant Clarysse advised that in relation to access by other Government departments, there had been significant improvements at the conclusion of the Susan Taylor inquest and in particular, since the multi-agency audit in December which involved Superintendent Parkinson and CEO's of other Government Agencies. There have been no lockouts or lockins of police personnel since 1999 and relationships have improved considerably.⁵⁸²

...Acting Senior Sergeant Clarysse is a member of the local Interagency Steering Committee for the implementation of the Gordon Inquiry recommendations, on which all Government departments are represented. This committee has had unfettered access to the campsite since the multi-Government audit of the campsite.⁵⁸³

- 11.6 This improvement in relations between the WAPS and the SVNC occurred during a time that Robert Bropho still faced charges for sex offences involving his niece.⁵⁸⁴ He was also convicted of assaulting former DIA Director General, Hadyn Lowe in December 2000,⁵⁸⁵ and of assaulting a cameraman and reporter arising from an incident outside the Reserve in December 2001.⁵⁸⁶
- 11.7 Sergeant Clarysse told the Committee that in the past the SVNC was a “very violent place”. However, since 1999, the concerted effort of the WAPS to develop a relationship with Robert Bropho had resulted in the SVNC being a very easy community to deal with from a policing perspective. It was his practice to park in the parking area and attend the SVNCAC administration office to announce his visits to the SVNCAC and to locate the person he wanted to see.⁵⁸⁷ Sergeant Clarysse did not see attending the office as a major imposition, but as a courtesy which was consistent

⁵⁸² Briefing Note, Assistant Commissioner, T J Atherton, Commander, Metropolitan Region dated 23/05/03, p.1.

⁵⁸³ Briefing Note, Assistant Commissioner, T J Atherton, Commander, Metropolitan Region dated 23/05/03, p.1.

⁵⁸⁴ Withdrawn by the Director of Public Prosecutions in September 2002 but reinstated on 15/05/03.

⁵⁸⁵ “Bropho guilty of assault” by Yonnene Pearce, *The West Australian*, 29/05/01, p.16.

⁵⁸⁶ “Attacker Bropho beats jail” by Sean Cowan, *The West Australian*, 11/05/02, p.6.

⁵⁸⁷ *Transcript of Evidence*, Clarysse, Session 1, 10/09/03, p.5.

with his past practice when policing the various Aboriginal communities in the Laverton area.⁵⁸⁸

SOLVENT ABUSE AND TRANSIENTS

- 11.8 The evidence provided by WAPS indicated that the SVNC was not a source of solvent abuse in the Midland area and that Robert Bropho and other members of the SVNCAC actively discouraged 'sniffing' within the Community. The source of the solvent problem was the suppliers who were mostly Caucasian males trading solvents for sex. Nyungahs knew these persons as 'bungemen'. The trade centred on Tuohy Park, in Midland, the old Midland Bowling Club (now the North East Regional Youth Council) and around the Midland Central Business District.⁵⁸⁹
- 11.9 Inspector Mumme told the Committee that Robert Bropho had given him a lot of information about people providing solvents to juveniles living at the SVNC in an attempt to have the authorities deal with the source of the problem of solvent abuse.⁵⁹⁰ Transients and young people predominantly caused these problems at the SVNC, which would largely dissipate when these transients moved on.⁵⁹¹ In many cases the police became aware of a problem with solvent abusers only after being contacted by SVNC management.⁵⁹²
- 11.10 Transients are a major problem in Aboriginal housing. The Aboriginal communities themselves are not without problems, but they become exacerbated when transients move in. This is because transients are often chronic substance abusers or have other social problems that have made them unsuitable to be considered for social housing. Greg Joyce, Director General of DHW, told the Committee that some government departments have, on occasion, used some Aboriginal communities as last resort housing for people they cannot house generally in the metropolitan area.⁵⁹³
- 11.11 It is little surprise that transients cause problems when they move into Aboriginal communities. The communities have tried to keep some control over who comes in but there are social obligations deeply entrenched in Aboriginal culture that require them to take people in that they might prefer not to be there. This is a particular problem for urban Aboriginal communities located close to the Swan River such as the SVNC. A witness told the Committee that this is because the river and a park at Success Hill are favoured locations for substance abusers, particularly glue sniffers.⁵⁹⁴

⁵⁸⁸ *Transcript of Evidence*, Clarysse, Session 1, 10/09/03, p.6.

⁵⁸⁹ *Transcript of Evidence*, Mumme, Session 1, 03/12/03, p.9.

⁵⁹⁰ *Ibid*, p.9.

⁵⁹¹ *Transcript of Evidence*, Clarysse, Session 1, 10/09/03, p.8.

⁵⁹² *Ibid*, p.9.

⁵⁹³ *Transcript of Evidence*, Joyce, Session 2, 25/09/03, p.14.

⁵⁹⁴ *Private Transcript of Evidence*, Session 2, 30/06/04, pp.6-7.

Observation 22. The Committee observes that the evidence of local WAPS officers and a mental health service provider was that the SVNC was no worse than other Aboriginal communities in relation to the problem of substance abuse. The SVNC had its share of problems with ‘sniffers’ as a result of a variety of factors common to many Aboriginal communities, but also due to the fact that the Lord Street camp was adjacent to the river which was a favoured location for sniffing.

Observation 23. The majority of the Committee observes that the SVNCAC appeared to handle transients at least as well as, if not better, than most Aboriginal communities. This arose from the control Robert Bropho exercised over the Lord Street camp.

DOMESTIC VIOLENCE: THE SVNC COMPARED TO OTHER ABORIGINAL COMMUNITIES

- 11.12 Sergeant Clarysse told the Committee that there has always been a prevalence of underlying tones of violence at the SVNC and there had been several reports of domestic violence that WAPS had addressed via domestic violence officers. Occasionally a serious assault had occurred.⁵⁹⁵ He had heard from his sources that some former residents of the SVNC had left the Reserve due to domestic violence issues, but he did not have any direct experience to confirm whether this was the case.⁵⁹⁶
- 11.13 When questioned by the Committee about the incidence of domestic violence at the SVNC when compared with other Aboriginal communities, Sergeant Clarysse responded:

I do not know. I have never measured it with other communities but it would probably be the same or less than possibly a lot of other communities. Some of the violence in the communities in the central desert is fairly horrific with the tribal people, albeit for domestic or other reasons - basically it is domestic. However, without looking at statistics I would assume that it would not be greater or less than other communities. I would hazard a guess that if you were to look at a statistical graph you would probably find it would be less.⁵⁹⁷

⁵⁹⁵ Transcript of Evidence, Clarysse, Session 1, 10/09/03, p.7.

⁵⁹⁶ Ibid, p.16.

⁵⁹⁷ Ibid, p.8.

Observation 24. The majority of the Committee observes that the view of WAPS was that the SVNC was no worse and perhaps better than other Aboriginal communities in relation to the incidence of domestic violence. This also correlates with the view expressed in late March 2003 by other service delivery personnel in relation to the lower or comparable risk of child sex abuse at the SVNC when compared to other urban Aboriginal settlements.⁵⁹⁸

POLICE OPINION ON SVNC

11.14 The view of WAPS on the management of the SVNC was put to the Gordon Implementation Secretariat in a Briefing Note by Superintendent Parkinson of the East Metropolitan Police District dated March 27 2003. This Briefing Note dealt with the issue of management of the three urban Aboriginal communities in the East Metropolitan Police District: Saunders Street, Cullacabardee and the SVNC. It advised that the main issues confronting the SVNC appeared to be alcohol, drugs, sexual abuse and domestic violence. This was the unsubstantiated information that Inspector Mumme, the author of the Briefing Note, had received from APLO under his control and via the community through his involvement with the MAAG committee.⁵⁹⁹

11.15 Overall the view of the WAPS on management at the SVNC was as follows:

*It is the opinion of Superintendent Parkinson and his management team that Mr Bropho is trying to conform to the findings of the Gordon Inquiry, and he is slowly coming around to working in with other government agencies. Police at this time are not experiencing any major problems with the campsite or Mr Bropho.*⁶⁰⁰

11.16 According to Inspector Mumme, Superintendent Parkinson had an issue with the Government's focus on the SVNC when in the Superintendent's view police had bigger concerns at other areas within Midland - Cullacabardee being of particular note.⁶⁰¹ Police had heard that between 30 and 50 Aboriginal children from Cullacabardee were not going to school and that firearms were being sold at that community. The police blamed many of the problems at Cullacabardee on its management. Another significant factor was that it had been "utilised as a place to locate problem Aboriginal families who have a history with the Ministry of Housing and do not have any further opportunity to gain public housing within the general

⁵⁹⁸ Draft Notes from Meeting Re SVNC, 21/03/03 at 10.30am, DIA Conference Room, p1.

⁵⁹⁹ *Transcript of Evidence*, Mumme, Session 1, 03/12/03, p.9.

⁶⁰⁰ Briefing Note, Superintendent Parkinson APM, East Metropolitan Police District to Gordon Implementation Group Secretariat dated 27/03/03.

⁶⁰¹ *Transcript of Evidence*, Session 1, 03/12/03, p.11.

community.”⁶⁰² Greg Joyce, the Director General of DHW, conceded to the Committee in evidence that at times this was the case.⁶⁰³

- 11.17 This was not to say that WAPS was not concerned with the management at the SVNC and the rumours of sexual abuse. It was just that these management and abuse issues extended to all Aboriginal urban settlements. Inspector Mumme’s view was that Aboriginal communities required training for management in order to fulfil the goal of self-determination and self-management. This could only be achieved through government intervention.⁶⁰⁴ As far as rumours of sexual abuse occurring at the communities, the Briefing Note acknowledged the difficulties in obtaining evidence that would support a prosecution:

*Whilst not receiving any concrete evidence of sexual abuse at the three aboriginal communities in the East Metropolitan Police District, the amount of whispers and the rumours being circulated, are an indication that these offences are occurring, however, the “Cone of Silence” and the “Aura of Fear” are compelling reasons why they are not being reported to Police.*⁶⁰⁵

- 11.18 Inspector Mumme explained the problem of a lack of reporting of sexual abuse as arising from cultural factors, primarily the reticence of persons within tribal groups of speaking out against a view taken by their recognised elders. This was not something unique to the SVNC, but was his experience throughout the State.⁶⁰⁶

PLANNING ISSUES FOR CLOSURE OF THE SVNC

- 11.19 Inspector Mumme was critical of the planning for dealing with the residents displaced by the decision to close the SVNC:

*I had a personal opinion. I must stress this, and I will probably get in trouble for saying it, but I do not think they had a plan. I really do not think they had a plan.*⁶⁰⁷

And

⁶⁰² Briefing Note, Superintendent Parkinson APM, East Metropolitan Police District to Gordon Implementation Group Secretariat dated 27/03/03, p.3.

⁶⁰³ *Transcript of Evidence*, Joyce, Session 2, 25/09/03, p.3.

⁶⁰⁴ *Transcript of Evidence*, Mumme, Session 1, 3/12/03, p.13.

⁶⁰⁵ Briefing Note, Superintendent Parkinson APM, East Metropolitan Police District to Gordon Implementation Group Secretariat dated 27/03/03, p.5.

⁶⁰⁶ *Transcript of Evidence*, Mumme, Session 1, 3/12/03, p.18

⁶⁰⁷ *Ibid*, p.14

*I am used to working with A, this is the situation; B, this is the action required; if that occurs we need to do that, or if that occurs we need to consider that, and all those things. Specifically, if you are going to displace people, you must have a plan as to where they go. I did not see any planning of such a nature.*⁶⁰⁸

- 11.20 A plan had in fact been formulated by the senior bureaucrats during their series of meetings from May 1 2004. This was the Swan Valley Nyungah Community Management Plan - Summary, known as the 'Action Plan'. This was drafted after these meetings and subsequent to Cabinet consideration of the closure plan on May 12 2003.⁶⁰⁹ The purpose of the Action Plan was to record the proposed actions of each relevant agency at the time of the Bill's passage and to update these. The Action Plan enabled the manager of the Gordon Implementation Secretariat⁶¹⁰ to advise senior officers and to ensure information was disseminated across agencies.⁶¹¹
- 11.21 The DPC advised that Inspector Mumme participated in meetings in which the Action Plan was discussed.⁶¹² Notwithstanding this, Inspector Mumme's view was that there was a lack of communication between the senior bureaucrats and the service delivery officers that had to implement the decision to close the SVNC. In his view, the decision to close the SVNC cut across the progress that was being made by the local police officers in gaining access and communicating with Robert Bropho, who was keen to demonstrate that he was cooperating with them.⁶¹³

Observation 25. The majority of the Committee observes that if the intent of the Action Plan was to ensure information was disseminated across agencies, it failed in this purpose in relation to one of the key participants, the WAPS. The most likely cause of this failure was the rushed nature of planning for the consequences of the passage of the Bill.

CONCLUSION

- 11.22 The WAPS seem to be one of the few agencies that succeeded in achieving some measure of trust with Robert Bropho and the SVNC management. This trust was established by a small group of dedicated police led by officers experienced in dealing with Aboriginal communities. Their efforts demonstrated that with persistence and the correct approach, a cordial working relationship could be established. Protocols were put in place and access to the Community was not a concern to WAPS since

⁶⁰⁸ *Ibid*, p.14

⁶⁰⁹ Letter Lynsey Warbey, A/Principal Policy Officer, DPC dated 21/09/04, p.1.

⁶¹⁰ Lynsey Warbey, Senior Policy Officer, DPC.

⁶¹¹ Letter Lynsey Warbey, A/Principal Policy Officer, DPC dated 21/09/04, p.1.

⁶¹² *Ibid*, Attachment 2.

⁶¹³ *Transcript of Evidence*, Mumme, Session 1, 3/12/03, p.18

before the Gordon Inquiry commenced in 2001 even though Aboriginal residents would have seen the police in the most part as providing negative services.

Finding 19. The majority of the Committee finds that from Superintendent Parkinson downward, WAPS showed the best practices in the Government for dealing with indigenous communities. Superintendent Parkinson set policy and processes and this flowed through and was adopted at Inspector, Sergeant, Constable and APLO level. Staff changes were made to ensure policy and processes were carried out. This approach resulted in little or no problems with access by police to the SVNC or its residents.

CHAPTER 12

DEPARTMENT OF PREMIER AND CABINET

INVOLVEMENT

- 12.1 The DPC had a direct involvement with the issues of sexual abuse, domestic violence, substance abuse and self-harm in the Aboriginal community from the time the Premier announced the Gordon Inquiry. This inquiry was prompted by the Premier's concern following the coronial inquest into the death of Susan Taylor. Senior policy officers within DPC were involved in coordinating the secretariats established to make recommendations to Government on the response to the Gordon Inquiry recommendations and to implement the Government's response.
- 12.2 The DPC's involvement was central to the development of the process that resulted in the closure of the SVNC. After questioning his Directors General at a Strategic Management Council meeting on May 1 2003 about progress with the SVNC, the Premier instructed his Chief of Staff, Mr Sean Walsh, to arrange and chair a series of meetings of departmental heads and senior public servants. The purpose of these meetings was to find a solution to achieve the Premier's objective of protecting women and children at the SVNC.
- 12.3 Mr Walsh and a senior policy officer within DPC, Ms Lynsey Warbey, were together with senior public servants from other departments, given primary responsibility for the carriage of the matter. They, together with the group of Directors General and other senior public servants, formulated and recommended to the Government the policy to close the SVNC, the plan to manage the closure and to achieve this end by way of a Reserves Bill.

STRATEGIC MANAGEMENT COUNCIL MEETING

- 12.4 The Premier had been alerted to the allegations raised by the journalist, Colleen Egan, immediately before the Strategic Management Council meeting on May 1 2003. Toward the end of the meeting and without any notice, the Premier questioned the Directors General about the matters raised with him by Mr Murphy. The expectation appeared to be that the Directors General could give detailed answers sufficient for the Premier to make an immediate decision as to what should be done regarding the SVNC.
- 12.5 The Directors General of DGGIG had already formulated a draft submission to the Cabinet Standing Committee on Social Policy in which the Director General of DIA had recommended the removal of the SVNCAC from management of the Reserve.

- Other than this recommendation, the submission left the question of what to do about the perceived lack of progress with service provision at the SVNC to the Cabinet.
- 12.6 The assessment given to the Premier by his Directors General was that there was an unacceptable risk to women and children at the Reserve and that “nothing had changed”.⁶¹⁴ At some stage the phrase that the Government could not “guarantee the safety of women and children in the camp”⁶¹⁵ came into general usage as a description of the camp situation.⁶¹⁶
- 12.7 Once the Premier made his decision, he left it to his Chief of Staff to devise an appropriate mechanism to achieve his objective. The Government’s stated objective was to protect women and children living at the Reserve from domestic violence, sexual abuse and substance abuse. The assessment made by the Directors General of DIA and DCD was that the SVNC management had failed to adequately deal with these issues because of the negative influences of those persons who exercised control over the Reserve. These persons were identified in the plan devised by the senior bureaucrats and adopted by the Government as Robert Bropho, his sons Herbert Bropho and Harvey Bropho, Sharon Davies, Margaret Jeffery⁶¹⁷ and Iva Haywood-Jackson.⁶¹⁸ The latter three did not live at the SVNC. As a result the Directors’ General view was that woman and children at the Reserve were being placed at an unacceptable risk.
- 12.8 Mr Walsh duly acted on the Premier’s instruction. Within hours he convened a series of meetings of Directors General and other senior bureaucrats. Ms Warbey assisted Mr Walsh and attended all of these meetings. Ms Warbey had been seconded to the Gordon Inquiry in 2002.⁶¹⁹ In that role she had become aware of the allegations made against certain members of the SVNAC through reading the transcript of the Coroner’s inquiry into the death of Susan Taylor and relevant case files subpoenaed from the DCD, WAPS and the Department of Health.⁶²⁰
- 12.9 After returning to DPC, Ms Warbey had been given the task of managing the Gordon Implementation Secretariat. This performed both an administrative and facilitative role in coordinating the various implementation bodies such as DGGIG, SOGIG and the local service provider working groups. It performed *ad hoc* policy and project

⁶¹⁴ *Transcript of Evidence*, Curry, Session 1, 18/08/03, p.5.

⁶¹⁵ *Transcript of Evidence*, Gooda, Session 1, 22/10/03, p.5.

⁶¹⁶ Mr Gooda, State Manager of ATSIC used this or a similar expression in his participation in the meetings of senior bureaucrats and in correspondence dated 16/05/03 to the leader of the opposition in the Legislative Council, Hon Norman Moore MLC.

⁶¹⁷ These five individuals were identified to various Opposition members during briefings on the Bill on May 16 2003.

⁶¹⁸ Management Order Plan Swan Valley Nyungah Community, p.1.

⁶¹⁹ *Transcript of Evidence*, Warbey, Session 2, 21/08/03, p.17.

⁶²⁰ Statement Lynsey Warbey, Senior Policy Officer, DPI dated 20/08/03, para 5.

- management functions and reported to the Government on implementation and other key issues or projects.⁶²¹
- 12.10 Ms Warbey told the Committee that her understanding was that the primary difference between the SVNC and Cullacabardee/Saunders Street was that government agencies were able to work with the latter two Aboriginal communities. They therefore knew the levels of risk and could take measures to deal with that risk. They were less able to do this with the SVNC due to the problems with access.⁶²²
- 12.11 During her evidence, the Committee questioned Mr Warbey as to why the allegations raised by the journalist appeared to be the catalyst for action when they were not materially different from those made during the Gordon Inquiry. Ms Warbey's view was that it was not the fact that a journalist had made the allegations that made them different, they were different because they occurred at the end of the Gordon Inquiry, which in her mind had dealt with those matters.⁶²³
- 12.12 Ms Warbey attended all of the meetings of senior bureaucrats and coordinated a meeting of local service providers to identify the families living at the Reserve and to determine what services would be made available to them.⁶²⁴ This was to enable her to draft the Government's Action Plan formulated by the bureaucrats for dealing with the residents once the legislation passed.⁶²⁵ Ms Warbey also briefed Cabinet on the mechanics of the proposed Bill⁶²⁶ and met with the Government's legal advisers at CSO and PCO.⁶²⁷ Her role at the latter meeting was to stress to the drafters of the Bill the urgency with which the Premier wanted the legislation drafted.⁶²⁸
- 12.13 Ms Warbey acknowledged that the matter was accorded urgency throughout the process due to the Premier's direct involvement.⁶²⁹ She did not seek to determine what the views of the service delivery officers were in relation to the Government's closure plan.⁶³⁰ She was merely carrying out the requirements of Government and her immediate superiors, Mr Walsh, the members of DGGIG and other senior bureaucrats who attended the meetings.

⁶²¹ Statement Lynsey Warbey, Senior Policy Officer, DPC, dated 20/08/03, paras 9-10.

⁶²² *Transcript of Evidence*, Warbey, Session 2, 21/08/03, p.3.

⁶²³ *Ibid*, p.4.

⁶²⁴ Meeting May 6 2003.

⁶²⁵ Management Order Plan Swan Valley Nyungah Community ('Action Plan'), undated.

⁶²⁶ *Transcript of Evidence*, Warbey, Session 2, 21/08/03, p.10.

⁶²⁷ Meetings on May 5 & 13 2003 respectively.

⁶²⁸ Statement Lynsey Warbey dated 20/08/03, para 34.

⁶²⁹ *Transcript of Evidence*, Warbey, Session 2, 21/08/03, p.7.

⁶³⁰ *Ibid*, p.9.

12.14 Later Ms Warbey was one of the public servants who briefed members of the Council on the Bill and provided the three examples that were intended to demonstrate that the existing management order was not effective. This information was provided to convince members to vote in favour of the Bill. Ms Warbey told the Committee that all examples had been investigated by DCD which prepared this information for the briefings.⁶³¹ However, when participating in the briefings to Council members on May 16 2003, Ms Warbey qualified the examples by saying that much of the information was hearsay and was difficult to substantiate.⁶³²

MEDIA CONSIDERATIONS

12.15 The press queries by Colleen Egan had prompted the Premier's questioning of the Directors General of DCD and DIA⁶³³ about progress with the SVNC. Although the media queries prompted questioning, the Committee asks were they, to any extent, a motivation for Government action?

12.16 A negative media reaction to the closure of the SVNC was unlikely. The majority of the electorate were either ambivalent or had a negative opinion of Robert Bropho and the Lord Street camp. He had also alienated many Nyungahs and Aboriginal organisations such as the Derbarl Yerrigan Health Service. Robert Bropho was in dispute with ATSIC over funding issues and housing policies being promoted by Noongar Mia Mia. The SVNAC was therefore unlikely to gain enough support either from the general public or within the Aboriginal community to effectively fight the Government's plan unless the closure was seen as indicating an intention to close more Aboriginal communities. It was therefore essential that the Government obtain support and political legitimacy for its proposed action from ATSIC, and to stress that the action against the SVNAC and residents was not indicative of a general change in policy toward Aboriginal communities and the first in a series of closures.

12.17 Once ATSIC support for the Government's plan was assured, the plan could proceed with the expectation that the Bill would be passed with bipartisan support on two consecutive sitting days, Thursday, May 15 and Friday, May 16 2003. For this reason Mick Gooda, State Manager of ATSIC, was invited to a meeting of the senior bureaucrats on May 1 2002 and asked to report back on the attitude of ATSIC to the proposed closure.⁶³⁴ The next day he reported that ATSIC would support immediate action if the Government could not "guarantee" the safety of women and children at

⁶³¹ *Ibid*, p.6.

⁶³² Notes of Hon Derrick Tomlinson MLC, from Council Opposition Briefing on Bill by Government officers on 16/05/03.

⁶³³ *Transcript of Evidence*, Joyce, Session 2, 25/09/03, p.13.

⁶³⁴ Handwritten notes of Mal Wauchope, Director General, DPC, of meeting of senior bureaucrats on 1/05/03.

the SVNC.⁶³⁵ Two other conditions were required, one of which was that the Reserve, which included over \$1 million of infrastructure paid for by ATSIC grants, remain for the benefit of Aboriginal people.

Involvement of Kieran Murphy

12.18 Present at the meetings of senior bureaucrats following the Premier's instruction to Mr Walsh was the Premier's Principal Media Adviser, Kieran Murphy. Mr Murphy attended at least two of these meetings and actively participated, asked questions, made suggestions and attempted to move discussion on in a way that minimised delay.⁶³⁶ The Committee notes that Mr Murphy was not present during deliberations on the Government's response to the Gordon Inquiry, nor did he make any suggestion as to what the response should be. He performed the usual role of a media adviser by reading the report and preparing the Government's media statement.⁶³⁷

Observation 26. The majority of the Committee observes that it is highly irregular for a media adviser to be actively involved in discussions with senior bureaucrats charged with recommending a course of action to achieve a Government objective. The presence of a senior media adviser may foster an impression that his role was to ensure that the bureaucrats would recommend a solution that would avoid negative media impacts or preferably attract positive media attention.

12.19 Mr Murphy managed media and in this role had daily contact with various journalists. He had been made aware through Ms Warbey of the journalist Colleen Egan making inquiries of various departments, the Minister for Indigenous Affairs and the Minister for Planning and Infrastructure. He was aware that Ms Egan had contact with sources that had alleged that sexual abuse and domestic violence had continued to occur at the SVNC following the Gordon Inquiry and that "nothing had changed". He passed this information to the Premier who used it as the basis for questioning his Directors General during the Strategic Management Council meeting on May 1 2003 on progress being made with the SVNC.

12.20 Mr Murphy had several discussions with Ms Egan. The Committee cannot determine that he discussed with Ms Egan the details of the allegations raised by her sources prior to the strategic management meeting. However, it is certain that Mr Murphy knew through the press secretaries from DIA and DCD that:

- these sources had made allegations of specific instances of abuse;
- government agencies were having trouble accessing the SVNC; and

⁶³⁵ Handwritten notes of Mal Wauchope Director General, DPC, of meeting of senior bureaucrats on 2/05/03.

⁶³⁶ *Transcript of Evidence*, Walsh, Session 1, 21/08/03, p.24.

- these sources and Ms Egan held the view that “nothing had changed” at that community since the Gordon Inquiry.⁶³⁸
- 12.21 Mr Murphy telephoned Ms Egan on or about May 2 2003 to obtain further detail of what Ms Egan’s sources had alleged. After discussing with Ms Egan what her sources had told her, it would appear that Mr Murphy had either not been told or misinterpreted the purpose of her original inquiries of the various departments and Ministers. This purpose was not to make allegations or even to write a story about them.
- 12.22 Ms Egan had not spoken to the alleged victims to check the *bona fides* of the allegations and “would not have hung a story on them.”⁶³⁹ They were “anecdotal stories from contacts”.⁶⁴⁰ She did not have the legal protection afforded to fair reporting of the Coronial investigation into the death of Susan Taylor or inquiries conducted under the *Public Sector Management Act 1994* as was the case with the Gordon Inquiry.⁶⁴¹ Her purpose was to obtain a response from the senior member of the Government, preferably the Minister for Indigenous Affairs, as to what had come of his call reported on August 15 2002 to close the SVNC given her sources had told her that “nothing had changed” despite the Gordon Inquiry. The allegations related to Mr Murphy were intended to be illustrative of this view. They formed the justification for Ms Egan to ask her questions.⁶⁴²
- 12.23 Ms Egan was merely following a standard journalistic principle of attempting to elicit a response from a Minister who had said in August 2002 that he wanted something done (the closure of the SVNC) but this had not occurred and how the Minister felt about this. She told the Committee that whatever the answer, she had a good story:
- Either he says yes, I am still pushing to close the camp or he says no, what I wanted was not done and I am not happy about it. That would be a split in the Government, which would be a good story.*⁶⁴³
- 12.24 Ms Egan suggested that she might never have communicated to Mr Murphy what her original story was going to be.⁶⁴⁴ It was Mr Murphy who had made the call to her asking about the detail of the allegations that had been brought to his attention by the

⁶³⁷ *Transcript of Evidence*, Murphy, Session 2, 17/09/03, p.1.

⁶³⁸ *Ibid*, p.5.

⁶³⁹ *Transcript of Evidence*, Egan, Session 2, 12/11/03, p.4.

⁶⁴⁰ *Ibid* p.3.

⁶⁴¹ Established under section 11 *Public Sector Management Act 1994*. See also Schedule 3.

⁶⁴² *Transcript of Evidence*, Egan, Session 2, 12/11/03, p.5.

⁶⁴³ *Ibid*, p.3.

⁶⁴⁴ *Ibid*, p.12.

media secretaries.⁶⁴⁵ During this conversation Mr Murphy was asking questions and Ms Egan responded specifically about the allegations. He may not have known what Ms Egan's original story was but had assumed that the story would raise these allegations in the context of the view expressed by Ms Egan's sources that "nothing had changed".

12.25 Other participants at the meetings made this assumption. Director General of DIA, Richard Curry told the Committee that the allegations passed on by the journalist were discussed at the meetings chaired by Mr Walsh. Mr Curry believed that "a journalist was pursuing a line of inquiry in which he or she had evidence, or would refer to specific cases, and that a story was imminent and that they were going to Press."⁶⁴⁶

Observation 27. The majority of the Committee observes that the journalist, Colleen Egan, was following a particular line of inquiry where the allegations were merely a side issue to justify her asking questions. After Mr Murphy's questioning, these allegations in his mind became central. As a result they assumed an importance of their own, independent from the information Ms Egan was seeking from senior Ministers. The allegations were then used as examples to illustrate why the Legislative Council needed to act with great speed so as to prevent another incident at the SVNC such as the death of Susan Taylor.

12.26 The evidence indicates that Mr Murphy mistakenly believed that the story that Ms Egan was developing through her questioning of departments would have the theme that "nothing had changed" at the SVNC. Such a story could cause considerable concern to the Government. Having established the Gordon Inquiry, and committing \$75 million to implement its recommendations, the Government was faced with the claim that, at least in relation to the SVNC where the Gordon Inquiry had originated, "nothing had changed."

Observation 28. The majority of the Committee observes that the publication of a story of continuing allegations of abuse at the SVNC, with a theme that "nothing had changed" at the Lord Street camp since the Gordon Inquiry, could have exposed the Government to criticism that:

- it had not acted decisively when the Minister responsible for Indigenous Affairs had expressed the view in August 2002 that the SVNC should be closed for the very reasons evident in the story; and
- it was not genuine in its resolve to implement its response to the Gordon Inquiry. This was because the public perception was that Government resolve was directly

⁶⁴⁵ *Ibid*, p.3.

⁶⁴⁶ *Transcript of Evidence*, Curry, Session 1, 14/10/04, p.11.

linked to its success in progressing improvements at the SVNC and the story would indicate that no progress had been made.

- 12.27 Ms Egan expected that Mr Murphy would use the information she gave him so he could compare this with information from the departments.⁶⁴⁷ This is essentially what occurred during the Strategic Management Council meeting when the Premier questioned the Directors General of DCD and DIA regarding progress at the SVNC.
- 12.28 An indication of Mr Murphy’s mistaken belief that Ms Egan was about to publish a story about allegations of continuing abuse at the SVNC was his arrangement with her to delay publication. Mr Murphy persuaded Ms Egan to delay publication on the promise that there would be a “development” involving the Premier and the SVNC which would end up being her exclusive story.⁶⁴⁸ Ms Egan explained to the Committee that this was not an uncommon journalistic practice. At the time Ms Egan explained that she had a “luke warm story” but, having been advised by Mr Murphy of the Premier’s involvement, was willing to hold off as she anticipated that a better story would eventuate.⁶⁴⁹
- 12.29 Cabinet approved the plan to close the SVNC on Monday, May 12 2003. Mr Murphy advised Ms Egan on Tuesday, May 13 2003 of the Government’s plan to introduce legislation to close the SVNC.⁶⁵⁰ The “development” was the statement made by the Premier in the Assembly on Wednesday, May 14 2003 in which the Premier outlined continuing concerns about the SVNC and its management and the Government’s intention to close the Lord Street camp.⁶⁵¹ Ms Egan published her exclusive story in *The Australian* on May 14 2003, prior to the Premier’s announcement that afternoon.⁶⁵²
- 12.30 Mr Murphy’s arrangement with Ms Egan to delay publication had the advantage of avoiding what he believed would be negative media in relation to Government inaction regarding the SVNC until such time as action could be taken. This action had to be taken quickly because Ms Egan would not hold off on her story indefinitely. However, by agreeing with Ms Egan to hold off on publishing her story and promising a “development”, the Government was placed in a position in which it had to provide one.

⁶⁴⁷ *Transcript of Evidence*, Egan, Session 2, 12/11/03, p.14.

⁶⁴⁸ *Private Transcript of Evidence*, Egan, Session 2, 12/11/03, p.10.

⁶⁴⁹ *Ibid*, pp.10-11.

⁶⁵⁰ *Ibid*, p.15.

⁶⁵¹ *Parliamentary Debates (Hansard)*, 14/05/03, p.7655.

⁶⁵² “Elder’s ‘camp of misery’ to be closed” by Colleen Egan, *The Australian*, 14/05/03, p.17.

Observation 29. The majority of the Committee observes that the Government's decision to close the SVNC had the advantage of turning what Mr Murphy believed was negative media into a story in which the Government was seen to be taking strong action to protect the safety of Aboriginal women and children.

Reinstatement of sex charges against Robert Bropho

- 12.31 Ms Egan also told the Committee that she was aware in the week prior to the introduction of the Bill that the DPP was considering reinstating rape charges against Robert Bropho. The DPP had obtained new support for the DNA evidence and the Director⁶⁵³ had met with the victim to determine her resolve in pursuing the charges in court.⁶⁵⁴ When questioned by the Committee, Mr Murphy could not put a date on when he knew of the prospect of Mr Bropho being re-arrested but may have become aware of the speculation through a journalist.⁶⁵⁵ He told the Committee that he definitely knew about it when the Premier made his statement on May 14 2003, outlining the Government's intention to close the SVNC.⁶⁵⁶
- 12.32 Notes taken at the meetings of senior bureaucrats indicate that on May 2 2003 participants had knowledge of the speculation that Robert Bropho would be re-arrested and knew that the DPP had travelled to meet the witness.⁶⁵⁷ Mr Murphy attended this meeting.⁶⁵⁸ There is no evidence to suggest that Mr Murphy knew prior to the Strategic Management Council meeting that Robert Bropho would be re-arrested or that he advised the Premier of this matter before the meeting.⁶⁵⁹
- 12.33 Both Sean Walsh, the Premier's Chief of Staff and Mr Murphy stated in their evidence that the action taken in relation to the SVNC was not to prevent adverse media comment. They advised that the Government's action was motivated solely by the desire to protect the women and children residing at the Lord Street camp.⁶⁶⁰

⁶⁵³ Mr Robert Cock QC.

⁶⁵⁴ *Transcript of Evidence*, Egan, Session 2, , 12/11/03 p.16. See also "Elder's 'camp of misery' to be closed" by Collen Egan, *The Australian*, 14/05/03, p.17.

⁶⁵⁵ *Transcript of Evidence*, Murphy, Session 2, 17/09/03, p.15.

⁶⁵⁶ *Ibid.*

⁶⁵⁷ Handwritten notes Lynsey Warbey, Senior Policy Officer, DPC of meeting of senior bureaucrats on 2/05/03.

⁶⁵⁸ Letter Kieran Murphy, to Committee dated 20/10/03, p.1. Mr Murphy attended meetings on 1, 2 and 5/05/03.

⁶⁵⁹ There had been speculation since late 2001 that the DPP would re-instate the charges. "Bropho sex charges reconsidered" by Colleen Egan and Victoria Laurie, *The Australian*, 20/11/01, p.6.

⁶⁶⁰ *Transcript of Evidence*, Walsh, Session 1, 22/08/03, p.8. *Transcript of Evidence*, Session 2, 17/09/03, p.9.

AN OBSERVATION ON THE NEED FOR URGENT ACTION AGAINST THE SVNC

12.34 When questioned by the Premier on May 1 2003, the Directors General were prepared to say that there was an unacceptable risk to woman and children at the Reserve. They did not volunteer this information. Despite this view they were prepared to await the completion of the submission of DGGIG to the Cabinet Standing Committee on Social Policy on May 26 2003 and the Government's response. This response would require the Cabinet Standing Committee to refer the matter to the Cabinet for decision.

Observation 30. The majority of the Committee observes that if the opinion of the Directors General was that women and children were at unacceptable risk, then why was this matter not immediately communicated to Cabinet or the Premier? Such an assessment could also justify the use by DCD of its powers to remove children under the *Child Welfare Act 1947*. Until the Premier's questioning, the Directors General appeared to be satisfied with the process that they had put in place. This included a detailed and considered assessment of service delivery at the SVNC and the proposed presentation of its submission to the Cabinet Standing Committee on Social Policy on May 26 2003. The motivation to act urgently was the result of the Premier's intervention.

12.35 The Director's General were not provided with any warning that the Premier would question them regarding the matter. However, they were aware of the issues and allegations that led to the preparation of the DGGIG draft submission to the Cabinet Standing Committee. This Committee, unlike the Director's General, had adequate time to investigate many of the allegations that formed the basis of the concerns expressed in the draft submission and later were put forward as examples of why the SVNC should be closed. In the main these examples proved to be false or exaggerated and demonstrated a lack of adequate investigation by the relevant departments.

12.36 This is not to say that domestic violence, substance abuse and sexual abuse had not occurred at the SVNC; they clearly had. However, the risk of these occurrences at the SVNC was acknowledged by departmental service delivery officers as being no greater than at the other urban Aboriginal communities. This was a view held by service delivery officers in the best position to make this assessment.

12.37 The assessment of the level of risk by the Director Generals on DGGIG also seemed to change as a result of their meeting with the Premier and the allegations raised by the journalist. Prior to this they were prepared to follow a process commenced in March 2003 that would have resulted in a DGGIG submission being presented to a Cabinet Standing Committee on May 26 2003 and later to Cabinet for decision. Cabinet would not have considered the matter until its meeting on June 2 2003 at the earliest. This was over a month after they advised, only after questioning from the Premier, that there was an unacceptable risk to the women and children of the SVNC.

This indicates either the preparedness on the part of the Directors General to permit the unacceptable risk to continue or alternatively that the risk was not as acute as the members of the Council were led to believe. It appears that the SVNC only became a matter of the utmost urgency requiring immediate action, due to the Premier's direct intervention after he became aware of media questioning.

Justifying the Government's decision

- 12.38 Significant activity was coordinated by the Premier's Office to "pull together the justification argument"⁶⁶¹ after Cabinet gave approval for the Bill. This included obtaining details from DCD on the allegations that had been made against residents of the SVNC.⁶⁶² This resulted in an internal DCD e-mail from which a Briefing Note was prepared by DPC that listed a variety of serious allegations of sexual and physical abuse and suspicious deaths alleged to have occurred at the Lord Street camp. These documents listed the allegations as either substantiated or unsubstantiated.⁶⁶³
- 12.39 The Committee sought and received advice from WAPS on whether it had any records dealing with the 18 allegations set out in the Briefing Note.⁶⁶⁴ The police confirmed that three of the allegations had resulted in convictions. One for assault occasioning bodily harm in June 2000, one relating to the rape of a toddler in April 2000 and one conviction related to deprivation of liberty, aggravated sexual assault and damage arising from a complaint made in January 1989.
- 12.40 The Police advised that three of the unsubstantiated claims appeared to be repeats of other allegations that had been made in the DCD e-mail used in the DPC Briefing Note. One allegation states that an individual was "found deceased at the camp" when police advised the Committee that the person named in the e-mail was not dead.⁶⁶⁵ In another allegation, DCD claimed that the police had a record to substantiate an assault. This was one of the repeated allegations and although the police advised that they had a record in relation to the allegation, the charge of unlawful wounding against the perpetrator was dismissed.⁶⁶⁶

⁶⁶¹ Hand written notes of Mr Mal Wauchope, Director General, DPC of meeting of senior bureaucrats on 5/05/03.

⁶⁶² E-mail Dierdre Klippell to Irene Thomas dated 13/05/03.

⁶⁶³ Briefing Note, Swan Valley Nyungah Community - Incidences of Physical and Sexual Abuse, undated.

⁶⁶⁴ Letter Karl J O'Callaghan, Commissioner of Police to the Committee dated 28/07/04.

⁶⁶⁵ This may have resulted in confusion caused by DCD when it later identified the names that corresponded to the letters in the e-mail from Dierdre Klippell to Irene Thomas dated 13/05/03. Two of the named persons had the same initials.

⁶⁶⁶ Letter Karl J O'Callaghan, Commissioner of Police to the Committee dated 28/07/04.

- 12.41 The DCD e-mail and the DPC Briefing Note also make an allegation that there had been five “suspicious deaths” at the Lord Street camp.⁶⁶⁷ At least one did not occur at the SVNC as claimed.⁶⁶⁸ Two of the deaths at the SVNC, those of Susan Taylor and Spratt/Bropho, were investigated by the Coroner’s Office.
- 12.42 The Coroner made an open finding into Susan Taylor’s death. The Deputy Coroner found that Spratt/Bropho died as a result of acute toluene toxicity caused by “sniffing” solvents. Morgan Spratt/Bropho had a history of chronic substance abuse and related mental illness and usually resided in Northam with his mother. He was not a permanent resident of the SVNC. He was residing there on a temporary basis pending two further court hearings after being released from Hakea prison.⁶⁶⁹
- 12.43 Justification was also provided prior to Cabinet giving approval to draft the Bill. Mr Daube provided Ms Brazier with a letter critical of the SVNCAC management plan in her capacity as chair of DGGIG.⁶⁷⁰ The legal advice of DCD Legal Officer, Tara Gupta, dated May 5 2003 to Ms Brazier that the SVNCAC draft management plan was inconsistent with the management order was also produced subsequent to the May 1 2003 Strategic Management Council meeting with the Premier.
- 12.44 Other justification was presented to members of the Council during Government briefings in which the three “clear” examples of the failure of the October 2002 management order were given. Ms Warbey, who was one of the government officers who presented these examples to members told the Committee that the information had been compiled by DCD.

AN OBSERVATION ON APPARENT AUTHORITY

Public Sector Management Act 1994

- 12.45 The following provision was inserted into the *Public Sector Management Act 1994* as a response to the growth of Ministerial officers in the 1980s and to a number of incidents the subject of critical comment by the Royal Commission into WA Inc and the Burt Commission on Accountability:

74. Relationship between ministerial officers, etc. and employees employed in departments or organisations

(1)

⁶⁶⁷ Earlier newspaper reports indicated that 9 deaths were “linked” to the Lord Street camp. See “Camp Tragedy” by Tony Barrass, *The West Australian*, 5/03/02, p.1.

⁶⁶⁸ Two young males hung themselves, one at Kensington Primary School and the other in Bassendean. See document No. 28 being schedule provided by Sean Walsh, Chief of Staff, Premier’s Office, undated but provided under cover of letter to the Committee dated 28/11/03.

⁶⁶⁹ Deputy Coroner’s Report - Record of Investigation of Death of Morgan Spratt dated 2/04/04, p.3.

⁶⁷⁰ Letter by Mike Daube, Director General, Department for Health to Ms Brazier dated 7/05/03.

(2) Notwithstanding anything in subsection (1), a ministerial officer shall not, otherwise than with the agreement of the employing authority of the department or organisation concerned, direct an employee of that department or organisation in relation to the manner in which that employee is to perform the functions of his or her office, post or position in that department or organisation.

(3) In this section —

“**ministerial officer**” includes —

- (a) person occupying a special office created under section 36 as read with section 75(1); and
- (b) person engaged under a contract for services under section 100(1) to assist a political office holder.

12.46 Quite apart from this provision of the *Public Sector Management Act 1994*, it would appear to be a sound principle that Ministerial officers should not be able to direct public servants. There are a number of reasons for this:

- it is the role of the public service to provide independent, fearless advice to Ministers, who then make up their mind as to whether to accept it, whereas it is often the role of Ministerial officers to provide political advice. These are two separate, disparate and perfectly legitimate roles;
- when a Ministerial officer deals with public servants, he or she is often seen as clothed with the apparent authority of the Minister, but that authority is not constrained by the public and parliamentary responsibilities of the Minister which often temper the Minister’s actions; and
- it is a not uncommon trait of those charged with responsibility by a superior, to impose stricter and more urgent provisions as to response upon their inferiors, than the superior imposed upon them which can lead to an appearance, in the case of a Ministerial officer, that the pressure applied is at the instance of the Minister.

12.47 The terms of section 74 of the *Public Sector Management Act 1994* are relatively narrow and it is not clear how far it limits the interaction between Ministerial officers and public servants. The problem is that a Ministerial officer is assumed to be at all times keeping in touch with his or her Minister and to be expressing the views of the Minister. Such an expressed view by the Ministerial officer, even though not framed as a directive, may well be acted upon by public servants as if it were a directive from the Minister.

- 12.48 It is quite clear that the decision-making process, after the Premier's directive to his Chief of Staff, Mr Sean Walsh, was driven by Mr Walsh. The role of a Chief of Staff is to serve the Minister and to head up the staff in the Ministerial office. The term used for this office, prior to the term "Chief of Staff" was "Principal Private Secretary" (PPS) and this indicates the historical role of the person in heading the secretariat. Unfortunately, the public was not aware of the historical use of the word "secretary" and many thought the PPS typed the Minister's correspondence.
- 12.49 Mr Walsh's role went far beyond this. He chaired meetings involving Director Generals at which their Ministers were not present, although some chiefs of staff were.⁶⁷¹ Although Mr Mal Wauchope, Director General, DPC, was present at some of these meetings and took notes he was not the person co-ordinating the meetings, nor did he influence their outcome in the way that Mr Walsh did.
- 12.50 It was clear from accounts of these meetings that Mr Walsh was exercising some part of the authority of the Premier. If he had not been exercising that authority it would be hard to see why a person of Mr Walsh's status would chair the meeting. He was junior to all the Directors General present, and particularly to Mr Wauchope in matters involving the Premier's Department.
- 12.51 In this case, Mr Walsh chaired the meetings, exercising the authority of the Premier. His prime requirement was an early solution. Once he had obtained agreement on a course of conduct he reported back to the Premier, a Cabinet Minute was prepared and the various Ministers first became aware when the Cabinet Minute came to them.⁶⁷² It is quite clear that at least one Director General, Ms Jane Brazier, preferred another course of action. She saw engagement with the Community as the solution rather than closure. However, she was not on equal footing with Mr Walsh in the way that she would have been if there had only been Directors General present. The proceedings of DGGIG illustrate the different outcomes. The pace of the decision-making left her views behind.
- 12.52 In the more standard cross-departmental situation, each participant would be of equal status and a joint Cabinet Minute would have been prepared, signed by each Minister after being presented to each Minister with a Departmental Minute explaining the departmental view. Any reservations by the Directors General would have been taken up with the Minister and may have even delayed it going to Cabinet until resolved between Ministers.
- 12.53 Even if it went to Cabinet without full agreement, the Director General would have had the opportunity to prepare the Minister for the argument. At least it would have ensured a sound debate in Cabinet among a more equal group, where Ministers would

⁶⁷¹ The Committee has already mentioned that the participation, but not the presence, of Mr Murphy in these meetings was irregular, but it was of a totally different character from Mr Walsh's.

⁶⁷² See evidence to the Committee by Hon Kim Chance MLC.

not have to be concerned about the views of the Premier's Chief of Staff. Members of the Committee were not privy to the Cabinet process, only to the process beforehand and the result afterwards, and this does not indicate that all matters that should have been considered were properly before Cabinet.

OTHER OUTCOMES

- 12.54 As with most decisions by governments, the objective to be achieved by the closure of the SVNC had other consequences. These ranged from improving media and public perception of the Government's \$75 million response to the Gordon Inquiry to removing a resource controlled by the Bropho family and using it more equitably for the benefit of the wider Aboriginal community.
- 12.55 The Government's response to the Gordon Inquiry was a matter in the mind of Richard Curry, and according to him, also the Premier's, when progress with the SVNC was discussed at the Strategic Management Council meeting on May 1 2003. Mr Curry explained the reason why the SVNC suddenly became a priority when this was not even an agenda item for the meeting as follows:

I think the simplest way to put that is that it would cause me considerable anxiety if I were the Premier at a meeting of directors general and someone said to me, "You have just invested \$75 million in a response to the Gordon inquiry, yet the point that it has emanated from, the Swan Valley Nyungah Community, is still having sufficient difficulties to enable all those directors general to say that they cannot give a reasonable reassurance that things are under control in that community and that women and children are safe."⁶⁷³

- 12.56 A failure of the Government to act if the circumstances alleged by Ms Egan's sources proved correct might lead to a perception that there was a lack of resolve on the part of the Government in relation to implementing its response. The Government stating that it was addressing the issues of family violence, sexual abuse and substance abuse in Aboriginal communities but at the same time having allegations raised in the media of continuing problems at the SVNC could leave it open to criticism.⁶⁷⁴ Any responsibility the Government might be seen to have in relation to the SVNC could be removed simply by the closure of that Community.

Finding 20. The majority of the Committee finds that the actions of the Premier were primarily motivated by:

- **the desire to protect women and children living at the SVNC;**

⁶⁷³ *Transcript of Evidence, Curry, Session 1, 18/08/03, p.8.*

⁶⁷⁴ This has in fact proven correct. See "Pedophile claim ignored" by Grahame Armstrong, *The Sunday Times*, 23/05/04, p.3.

- the concern that despite the Premier's clearly expressed views, and having set up a high level bureaucratic mechanism for implementation, he was informed by those same bureaucrats eight months later that the circumstances in the Lord Street camp were much the same. He had been told this initially not by them but through a journalist who his Principal Media Adviser believed was going to publish a story criticising Government inaction on the SVNC;
- the need to remove a likely impediment (the SVNCAC and in particular Robert Bropho) to the successful implementation of the Government's \$75 million response to the Gordon Inquiry. This was because the public perceived that the Government's resolve in implementing the Gordon Report recommendations was linked to progressing improvements at the SVNC. This was despite the fact that the Gordon Inquiry was far broader than the specific issues at the SVNC and was predominantly concerned with how service delivery could be improved to deal with child abuse, domestic violence and substance abuse in the Aboriginal community; and
- the need to deal with the SVNC in a manner that would indicate the Government's earnest resolve to deal with the problem of child sex abuse, domestic violence, substance abuse and self-harm in the Aboriginal community.

Observation 31. The majority of the Committee observes that there were other consequences which flowed from the Government's action to close the SVNC:

It avoided the possibility of negative media that could flow from the publication of a newspaper story alleging continuing sexual abuse and intimidation originating from the SVNC and claiming that "nothing had changed" since the Gordon Inquiry:

- at a time that Robert Bropho was re-arrested on child sex charges;
- that could give an impression that the Government had not acted decisively against the SVNC in the eight months since the Minister for Indigenous Affairs had publicly expressed his wish in August 2002 to close the SVNC as "a place of misery";
- that could highlight a split in Cabinet between the view held by the Minister for Indigenous Affairs and his Cabinet colleagues over what should be done about the SVNC; and
- that would see any subsequent Government action as being reactive rather than pro-active in relation to dealing with the problem of domestic violence, sexual

abuse and substance abuse which had occurred, and allegedly continued to occur, at the SVNC.

It removed the SVNC as a focus of Robert Bropho's long standing agitation against Governments on Aboriginal issues;

It removed the SVNC as a focus for public apprehension about child abuse, family violence and substance abuse. Once the residents had been dispersed into the general community, the SVNC no longer provided a focus for negative media stories;

It avoided any public relations difficulties that could arise if Robert Bropho was convicted of sex charges whilst, with the Government's acquiescence, he was effectively in control of a Crown reserve where sexual abuse, substance abuse and domestic violence had occurred, and allegedly were continuing.

The Reserve could be used for the benefit of the wider Aboriginal community in accordance with views expressed by some ATSIC councillors rather than for the extended Bropho family.

The closure would send a strong message to Aboriginal groups that domestic violence, sexual abuse and substance abuse would not be tolerated, and would also demonstrate that the Government was prepared to take strong action against Aboriginal communities that did not cooperate with Government service delivery.

The closure would encourage other Aboriginal persons to come forward with claims of sexual or other abuse.

CHAPTER 13

THE ROLE OF ATSIC

PURPOSE, FUNCTION AND STRUCTURE

- 13.1 ATSIC was created in 1989 to give Aboriginal and Torres Strait Islander people a greater say in the running of their own affairs.⁶⁷⁵ The basis of ATSIC's representative structure was 35 Regional Councils across Australia. The Regional Council areas were grouped into 16 zones. The Councillors in each zone elected a Commissioner to represent them on the ATSIC Board. Another Commissioner was elected from the Torres Strait.⁶⁷⁶
- 13.2 In Western Australia there were nine regional councils grouped into four zones resulting in four ATSIC commissioners being elected to the national body.⁶⁷⁷
- 13.3 As a result of a review of the structure of ATSIC, the organisation was divided into a political arm and an executive arm. The executive arm is an agency of the Commonwealth. Established on July 1 2003 this agency is called the Aboriginal and Torres Strait Islander Service (ATSIS). ATSIS provided services to ATSIC and administers programs that were previously the responsibility of ATSIC.⁶⁷⁸ The object of this reform was to ensure a clear distinction between the political and administrative arms of the organisation.
- 13.4 On April 15 2004 the Commonwealth Government announced its intention to close down ATSIC and the associated agency, ATSIS. As from July 1 2004, the Commonwealth Government's indigenous programs are now administered by mainstream agencies.⁶⁷⁹

ATSIC INVOLVEMENT IN MEETINGS OF SENIOR BUREAUCRATS

- 13.5 Mr Curry, Director General, DIA explained to the Committee that ATSIC involvement in the meetings of Western Australian Government senior bureaucrats was a key to determining that a legislative response would be taken against the SVNC:

⁶⁷⁵ *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth). ATSIC commenced operation on 5/03/90.

⁶⁷⁶ ATSIC website, 16/12/03.

⁶⁷⁷ *Ibid.*

⁶⁷⁸ *Ibid.*

⁶⁷⁹ The Aboriginal and Torres Strait Islander Amendment Bill 2004, was introduced into the Commonwealth Parliament on 27/05/04 and referred by the Senate to a Select Committee on the Administration of Indigenous Affairs on 16/06/04. This Committee provided an interim report on 31/08/04.

*Clearly, my advice was strong in that process. What shifted our thinking - if you want to put it that way - was that at the first meeting, while there was a wide-ranging discussion on the issues, I was very clear that the discussion should not continue without input from the Aboriginal community via the Aboriginal and Torres Strait Islander Commission. It was decided that ATSIC would attend the next meeting to give advice on its views about what the options should be. Clearly, at that meeting the advice from ATSIC was that there should have been a very strong response from government, and the nature of that comment, I am quite clear, coloured the thinking towards the idea that, if we were to have a strong response, it should be formed in a legislative framework.*⁶⁸⁰

- 13.6 Mick Gooda, then State Manager of ATSIC and now State Manager of ATSIIS, attended two early meetings of senior bureaucrats charged with recommending a course of action to the Premier.⁶⁸¹ The first was on May 1 2003 and the second on May 2 2003.⁶⁸²
- 13.7 At these meetings the concerns of Ms Brazier relating to the issue of access and the safety of women and children at the Community were discussed together with at least one of the matters raised by the journalist, Colleen Egan with Mr Murphy.⁶⁸³ Mr Gooda advised the Committee that he was told that the management of the SVNC was not meeting the requirements of the management order in relation to access.⁶⁸⁴ He assumed, not unreasonably, that because the information was being provided to him by senior public servants that it was the best information available.⁶⁸⁵ Unlike other senior bureaucrats who attended these meetings, Mr Gooda also took the time to talk to two field officers involved in providing services to the SVNC. The Committee has determined that one of the persons to whom Mr Gooda spoke was also a witness before the Committee and had a tendency to exaggerate claims made against the SVNC and reach conclusions adverse to the SVNC and Robert Bropho where the evidence was equivocal.
- 13.8 Mr Gooda's intended role at the meetings of senior bureaucrats was to advise on the attitude of the ATSIC WA State Council to the Government's plan. The ATSIC WA State Council was made up of the nine Western Australian regional council chairs and

⁶⁸⁰ *Transcript of Evidence*, Curry, Session 1, 18/08/03, pp.3-4.

⁶⁸¹ *Transcript of Evidence*, Gooda, Session 1, 22/10/03, pp.4-5.

⁶⁸² Handwritten notes of Mal Wauchope, Director General DPC, of meetings of senior bureaucrats on 1/05/03 and 2/05/03.

⁶⁸³ This was the allegation relating to the woman having to be moved to a 'safehouse'.

⁶⁸⁴ *Transcript of Evidence*, Gooda, Session 1, 22/10/03, p.9.

⁶⁸⁵ *Ibid*, p.22.

four commissioners. It was this elected body that Mr Gooda, in his role as ATSIC State Manager, would normally deal with in relation to State matters.⁶⁸⁶

Conditions for ATSIC support

13.9 At the meeting of senior bureaucrats on May 1 2003, Mr Gooda raised the following points:

- that there should be a strategy to deal with people from the camp;
- that it be done quickly;
- that the ATSIC Regional Councils be consulted on their attitude to the proposed closure; and
- that ATSIC would be supportive as long as the women and children were looked after in the process.⁶⁸⁷

13.10 At the next meeting that Mr Gooda attended on May 2 2003, he outlined to the senior bureaucrats three conditions for ATSIC support for closure of the Reserve. These were:

- (1) that the interests of the women and children would be looked after,
- (2) that people would be provided with alternative accommodation; and
- (3) that the asset would stay for the benefit of Aboriginal people in Perth.⁶⁸⁸

13.11 Mr Gooda also advised the meeting that ATSIC was prepared to participate in a review of all urban Aboriginal communities.⁶⁸⁹ This was consistent with the view expressed in a letter from ATSIC to DIA,⁶⁹⁰ following a meeting with the Director Generals of DIA and DHW on March 11 2003, opposing what ATSIC viewed as a move by the Government to close all four urban Aboriginal communities. Amongst other things, ATSIC wanted this review to include:

- investigating the benefits of managing housing, including rent collection and repairs and maintenance in all settlements by a single organisation/agent; and
- alternative governance structures to improve management.

⁶⁸⁶ *Ibid*, p.18.

⁶⁸⁷ *Ibid*, pp.4 - 5.

⁶⁸⁸ *Ibid*, p.5.

⁶⁸⁹ Handwritten notes of Mal Walchope, Director General, DPI, of meeting of senior bureaucrats on 2/05/03.

⁶⁹⁰ Letter Gordon Cole, Chairperson, Perth Regional Council of ATSIC to Richard Curry, Director General, DIA dated 29/04/03.

- 13.12 Most significantly, Mr Gooda expressed at the meeting of senior bureaucrats the view that if the Government could not “guarantee” the safety of women and children in the SVNC camp then it should be closed.⁶⁹¹ This appeared to be contrary to the view expressed by ATSIC to DIA against closure of any of the urban Aboriginal communities only three days previously.⁶⁹²
- 13.13 Many witnesses before the Committee used Mr Gooda’s expression in relation to the Government not being able to guarantee the safety of women and children, or variations of it, as the justification for Government action. Members during the debate on the Bill in both Houses also used the expression.⁶⁹³ The expression is somewhat inaccurate and misleading but has the advantage of crystallising the Government’s concerns into a palatable mantra. Witnesses before the Committee acknowledged that no government anywhere can guarantee the safety of any person.⁶⁹⁴ As a precondition to allowing the SVNC or any Aboriginal community to remain, such a guarantee is impossible to satisfy. Ms Brazier, in evidence to the Committee, conceded that it was not an expression she would use.⁶⁹⁵ Her view was that there was an unacceptable risk to the safety of the women and children at the Community, not that the Government could not guarantee their safety. Nevertheless she was prepared to await the Cabinet Standing Committee’s deliberations on the draft submission before taking any action to remove children from this risk. This was because she did not have sufficient evidence to act.
- 13.14 It was clear to the Committee that Mr Gooda had a view toward Aboriginal communities that did not favour the autonomous model such as existed at SVNC, Cullacabardee, Saunders Street, and Sydney Road. Despite the view of the Gordon Inquiry that domestic violence, child sexual abuse and substance abuse was endemic in some Aboriginal communities, his view was that if the safety of women and children could not be “guaranteed” then they should also be closed down.⁶⁹⁶
- 13.15 Mr Curry saw Mr Gooda’s view as the turning point during the meetings of senior bureaucrats to agreeing on a course of action that led to the closure of the SVNC. He told the Committee that this turning point came when Mr Gooda urged the closure of the SVNC if the safety of woman and children could not be “guaranteed”. Mr Curry said:

⁶⁹¹ Handwritten notes of meeting on 2/05/03 by Mal Walchope, Director General, DPI.

⁶⁹² Letter Gordon Cole, Chairperson Perth Regional Council of ATSIC to Richard Curry, Director General, DIA dated 29/04/03.

⁶⁹³ *Parliamentary Debates (Hansard)*, 16/05/03, pp.7982, 7983.

⁶⁹⁴ *Transcript of Evidence*, Brazier, Session 3, 18/08/03,p.12; *Transcript of Evidence*, Daube, Session 1, 17/09/03, p.11; *Transcript of Evidence*, Joyce, Session 2, 25/09/03, p.4.

⁶⁹⁵ *Transcript of Evidence*, Brazier, Session 3, 18/08/03,p.21nece

⁶⁹⁶ *Transcript of Evidence*, Gooda, Session 1, 22/10/03, p.21.

*I am saying that is my recall - my clear recall. If you [are] looking for a turning point in my view, Mr Gooda - and I have read his evidence as well - indicates at that time that ATSIC had released its family violence policy. He believed he had the authority to give that advice given that it was a policy matter for ATSIC. My sense of it was that he was very keen to see that this advice - this policy - had some teeth and that ATSIC could influence decisions by State and Territory Governments, and that is what he said.*⁶⁹⁷

13.16 This turning point came on May 2 2003, very early in these series of meetings.

CONSISTENCY WITH NATIONAL FAMILY VIOLENCE POLICY

13.17 Mr Gooda saw the proposed closure as sending a strong message to Aboriginal communities everywhere that behaviour such as that he had been advised was occurring at the SVNC would not be tolerated.⁶⁹⁸ Mr Gooda had helped draft the ATSIC family violence policy and felt very strongly about the issue as a consequence of his personal experiences.⁶⁹⁹ He told the Committee that he would “advocate it at every opportunity”.⁷⁰⁰ The allegations being raised by the Government gave ATSIC this opportunity.

13.18 The allegations raised by the Directors General ran directly contrary to the family violence policy. ATSIC resolve in relation to its policy would be seen to be hollow in circumstances where it failed to act in support of the Government’s plan in light of the “evidence” presented by the senior bureaucrats. This was notwithstanding that the plan dispossessed an Aboriginal corporation of its management rights in relation to the Reserve. When the issue of dispossession was raised by the Chairman of the Committee, Mr Gooda responded:

*It is always a concern when Aboriginals are losing their land, but the board in March this year had implemented, developed, adopted or endorsed a family violence policy that said basically the protection of children is paramount. Even when it comes to a clash between lore and law, the rights of the child should be considered first.*⁷⁰¹

13.19 Despite the understanding that Mr Gooda was acting on and at the direction of the ATSIC WA State Council, he acknowledged that he had in fact made the decision to support the Government’s decision unilaterally. Mr Gooda claimed that the ATSIC

⁶⁹⁷ *Transcript of Evidence*, Curry, Session 1, 14/10/04, p.16.

⁶⁹⁸ *Transcript of Evidence*, Gooda, Session 1, 22/10/03, p.10.

⁶⁹⁹ *Ibid*, p.14.

⁷⁰⁰ *Ibid*.

⁷⁰¹ *Ibid*, p.7.

- WA State Council and ATSIC National Board would support the position he took.⁷⁰² He took the view that the Board had implemented and developed a family violence policy that has been endorsed by the ATSIC WA State Council. By providing support to the Government's plan, he believed ATSIC was abiding by its endorsed policy. As the Executive Officer of ATSIC, he was obliged to support and implement this policy.⁷⁰³
- 13.20 The ATSIC WA State Council was never asked to approve the action proposed against the SVNC. On the contrary, members of the ATSIC WA State Council told some members of the Council that they opposed the closure of the SVNC. This was because it set a precedent for other Aboriginal communities.⁷⁰⁴ Approval came after Mr Gooda had expressed ATSIC's support and later confirmed this in discussions with the ATSIC WA State Council Chairman Mr Gordon Cole and a Commissioner Mr Farley Garlett. Mr Gooda told the Committee that the issue of closure was considered to be a Nyoongar matter by the non-Nyoongar regional councillors⁷⁰⁵ so it was left to the Nyoongar representatives of ATSIC WA State Council to ratify Mr Gooda's then unilateral support for the Government's plan.
- 13.21 Mr Gooda also revealed that he had a personal friendship with the journalist Ms Egan.⁷⁰⁶ He had advised Mr Murphy to speak to Ms Egan regarding providing ATSIC legal support to a teenage child who had made an allegation against Robert Bropho that have resulted in a criminal charge.⁷⁰⁷ On May 14 2003, the day the Premier announced the intended closure of the SVNC, Mr Gooda met with Ms Egan over coffee and offered ATSIC funding to one of Ms Egan's contacts who was a victim, so the victim could obtain a lawyer of her choice.⁷⁰⁸ Mr Gooda's support in this regard is consistent with the ATSIC family violence policy and his view that for too long legal support has been directed toward the perpetrators of abuse rather than the victims.⁷⁰⁹
- 13.22 A view has been put to the Committee that if the prosecutions against Robert Bropho are successful, the incidence of reporting child abuse and domestic violence could be encouraged and the code of silence in relation to this issue in Aboriginal communities broken. As explained by Ms Egan in evidence before the Committee:

...A view has been put to me since before the Taylor inquest by a wide range of people that if you are going to do something about sexual

⁷⁰² *Ibid*, p.19.

⁷⁰³ *Ibid*, p.18.

⁷⁰⁴ Discussions with Hon Derrick Tomlinson MLC and Hon Peter Foss QC MLC.

⁷⁰⁵ *Transcript of Evidence*, Gooda, Session 1, 22/10/03, p.19.

⁷⁰⁶ *Ibid*, p.14.

⁷⁰⁷ *Ibid*, pp.14&23.

⁷⁰⁸ *Transcript of Evidence*, Egan, Session 2, 12/11/03, p.14.

⁷⁰⁹ *Private Transcript of Evidence*, Gooda, Session 2, 22/10/03, p.3.

*abuse in Aboriginal communities, you have to go for the big people like Bropho because they are the ones who have the power, and if victims see that those ones are being brought down, they will have more confidence to come out against others.*⁷¹⁰

FINANCIAL AND POLITICAL INCENTIVES

- 13.23 ATSIC had given significant financial grants to the SVNC of over \$1 million to develop the Reserve including the provision of wind and solar power and purpose build accommodation.⁷¹¹ There was therefore a considerable financial incentive to retain the use of the Reserve for Aboriginal purposes so that ATSIC's investment in infrastructure would not be wasted.
- 13.24 ATSIC also had to ensure that its support of the closure was managed in a way that assured Aboriginal constituents that this was not to be the first in a series of closures of Aboriginal communities in Western Australia.
- 13.25 A condition of support for the Government's action that it maintain the use of the Reserve for Aboriginal purposes had two advantages. Firstly, it minimised concern in other Aboriginal communities, and Aboriginal constituents in general, that the closure of the SVNC was to be the first in a series of closures that struck at the heart of self determination for Aboriginal people. Secondly, it avoided a potentially costly legal dispute with the Government regarding whether compensation was payable to ATSIC so it could recoup some or all of its financial investment.
- 13.26 Under the LAA, compensation is payable for loss of use of structures erected or improvements made by the management body on the land in accordance with the terms of the management order. Compensation is only payable to the management body in which the land has been vested.⁷¹² This was not ATSIC but the SVNC. The Bill did not affect the right of the SVNC to apply for compensation under the LAA, but it did not permit ATSIC to recover its funding for this infrastructure via the compensation provisions in the LAA.⁷¹³

⁷¹⁰ *Transcript of Evidence*, Egan, Session 2, 12/11/03, p.16.

⁷¹¹ Letter Colleen Hayward, Acting Manager ATSI State Office to the Committee dated 17/06/04.

⁷¹² Section 50(3), *Land Administration Act 1997*.

⁷¹³ Part 10, particularly section 204, *Land Administration Act 1997*. The management body is entitled to compensation from the acquiring authority for the depreciated value of those structures and improvements.

Observation 32. The Committee observes that Mr Mick Gooda, State Manager of ATSIAC, was probably inclined to support the solution proposed by the Government due to a number of factors:

- he was a campaigner against child abuse and domestic violence;
- he had just secured the release of the ATSIAC policy against child abuse and domestic violence;
- he had accepted that the method of tackling child abuse and domestic violence was to make an example of a high profile, powerful identity;
- ATSIAC itself was under pressure to do something given its recent policy release;
- he was concerned that if ATSIAC was not involved it would lose its investment of infrastructure at the Reserve; and
- because of his concern about what he had been told about what was happening at the Reserve, he had spoken with two field workers, one of whom was a major source of information concerning allegations of abuse at the SVNC.

13.27 Mr Gooda was the person who took on the task of identifying a person who could undertake the role of Administrator for the Reserve. He did this via contacting the director of investigations at the office of the Registrar of Aboriginal Corporations on May 7 2003 for a recommendation. That recommendation was Mr Barry Jameson, a Chartered Accountant who had experience in working with Aboriginal corporations. Mr Gooda spoke with Mr Jameson on May 9 2003 and provided the contact number for Richard Curry, the Director General of DIA.⁷¹⁴

EVIDENCE OF GORDON COLE

13.28 Gordon Cole is the ATSIAC WA State Council Chairman and Chairman of the Perth Noongar Regional Council, one of the nine Western Australian regional councils established under the *Aboriginal and Torres Strait Islander Commission Act 1989*(Cth). The position of Chairman of the WA State Council is a full time salaried position.

Meeting between SVNCAC and ATSIAC representatives on May 6 2003

13.29 The SVNCAC relied significantly on funding from ATSIAC. It would appear that ATSIAC financial support for the SVNCAC reflected Mr Gooda's views regarding urban settlements and whether they should be maintained. The Committee has received notes of a meeting between ATSIAC representatives, including Mr Cole, and

⁷¹⁴ *Transcript of Evidence, Jameson, Session 4, 22/10/03, p.2.*

the SVNCAC on May 6 2003, which revealed that ATSIC funding to the Corporation would be significantly reduced in the 2003/04 financial year from \$93 000 per annum to \$60 000.⁷¹⁵ This was at a time when the meetings of senior bureaucrats had obtained legal advice on the legislative option to close the SVNC and a week before the Premier announced its intended closure.

13.30 The notes reveal tensions between the national body and the SVNCAC. The SVNCAC saw the funding cuts as leading to the closure of Aboriginal communities and a means by which the Government could enforce an assimilation policy by housing Aboriginal people in the general community. The SVNCAC viewed DIA's Urban Settlements Project as a first step in this process and some of the matters to be included in the proposed review of urban settlements under that project by ATSIC and DIA as a direct attack on its autonomy. This was one reason for the SVNCAC not being willing to participate with DIA in its "cooperative initiatives" with other urban communities. It saw DIA as having an agenda completely at odds with the continuation of urban Aboriginal communities and what they stood for, that is, self-determination and self-management. The notes revealed that the SVNCAC were not alone in suffering funding cuts. Remote Aboriginal communities also were having funding reduced.⁷¹⁶ If the communities were forced to close due to financial pressures, the SVNCAC believed that this would lead to the abandonment of its traditional laws and customs.⁷¹⁷

13.31 The concerns of the SVNCAC in relation to funding were genuine. An examination of the affairs of the SVNCAC conducted at the request of the Registrar of Aboriginal Corporations in May 2003 stated:

*The income and expenditure position as at 23/05/2003 shows a nominal surplus of \$2,716 YTD and we note there are a number of expenses, which are yet to be paid eg accounting costs and accrued GST. After discussions with Mr B Miles, we consider that the Corporations ability to meet expenses is only marginal and it would be difficult to sustain any significant grant funding cuts, or unexpected losses such as Community bad debts.*⁷¹⁸

ABORIGINAL HOUSING AND URBAN COMMUNITIES

13.32 In addition to the Urban Settlements Project, ATSIC had established a housing plan called Nyungah Mia Mia. This project is intended to provide a centralised management for the housing of Nyungah people.

⁷¹⁵ ATSIC Meeting 6/05/03 held at SVNC corner Lord Street and Morley Drive, p.1.

⁷¹⁶ *Ibid*, p.2.

⁷¹⁷ *Ibid*, p.1.

⁷¹⁸ Letter Deloitte Touch Tohmatsu to Registrar of Aboriginal Corporations dated 16/06/03, p.2.

- 13.33 The major provider of Aboriginal housing in Western Australia is DHW. The new Aboriginal Housing and Infrastructure Council (AHIC) oversees DHW's Aboriginal Housing policy. The first meeting of the AHIC was held in March 2003. Consisting of four ATSIC members, a chairperson, two community members and the Executive Director of the Aboriginal Housing and Infrastructure Unit (AHIU), the AHIC oversees the development of policies and programs which are then implemented by the Aboriginal Housing and Infrastructure Directorate, which is staffed predominantly by Aboriginal people.⁷¹⁹
- 13.34 Despite these government programs, the Nyungah Circle of Elders, a group that has its administrative base at the SVNC has been critical of DHW housing policies. It claims that the representatives of the AHIU have no knowledge or ties with the Nyungah country or peoples and "are making decisions on funding for all Nyungah Metropolitan Communities with an eye towards pushing the Aboriginal People into 'mainstream' suburban houses."⁷²⁰ The Circle of Elders was of the view that ATSIC does not adequately represent the needs of 'mainstream' Aboriginal people. In its opinion, ATSIC people on high salaries have become content with their assimilated way of life, leaving their aboriginality behind to the detriment of Aboriginals who wish to lead their lives according to traditional laws and customs.⁷²¹
- 13.35 The handwritten notes provided to the Committee by the Premier's Principal Media Adviser, Kieran Murphy, indicate the tensions between ATSIC and leaders of the urban Aboriginal communities.⁷²² It could easily be interpreted that these notes indicated that an ATSIC Councillor wanted Ms Ivy Quartermaine, who administers Cullacabardee, and Robert Bropho, removed from their positions of influence. The Committee was unable to ascertain the reasons for this view, but is aware that Robert Bropho had rejected an ATSIC suggestion to initiate housing policies at the Reserve.
- 13.36 ATSIC had a considerable financial investment in the Reserve and the removal of the SVNC from the site would enable the resource to be used more efficiently instead of being used by one family group and those permitted by management to stay to the exclusion of all others. The Government's plan, together with its promise that the Reserve would remain for Aboriginal purposes, gave reassurance to ATSIC and left open the possibility that a housing resource would become available in which ATSIC's housing policies could be implemented. ATSIC would have been further encouraged in this regard with the knowledge that considerable expense was to be devoted to repairing and refurbishing the 13 houses located at the Reserve.⁷²³

⁷¹⁹ DHW website 16/12/03.

⁷²⁰ Nyungah Circle of Elders Press Release dated 9/05/03, p.1.

⁷²¹ *Ibid*, p.2.

⁷²² Handwritten Notes of Kieran Murphy, Premier's Principal Media Adviser.

⁷²³ Swan Valley Nyungah Community - Summary of Costs as at 21/08/03 listing expected cost of repairs at approximately \$350,000.

CHAPTER 14

THE ADMINISTRATOR

EVIDENCE OF THE ADMINISTRATOR

- 14.1 The Committee's purpose in examining Barry Jameson⁷²⁴, who was appointed as the Administrator of the Reserve, was to determine whether his discussions with the Government revealed its motive for introducing the Bill.
- 14.2 Mr Jameson confirmed that he spoke with Richard Curry on May 12 2003 regarding the "difficult job" described by Mick Gooda in his earlier telephone conversation on May 9 2003.⁷²⁵ Mr Curry told him that a job was available in which the Government had identified a series of issues of concern. There was a concern of safety for children and Mr Curry referred to the Coronial and Gordon Inquiries and the fact that despite these the problems had not gone away.

*Mr Curry explained that despite the Government's best attempts to try to remediate them, things were just getting worse with the publicity that the Government was getting and the issues in The West Australian. He sent some of those clippings to me to give me some background after that. He said that I might like to consider whether I wanted to take on the job. I indicated at the time that I was flat strapped and would not have the time to do it but that I would want to have some background to it, so he sent me across some information on the fax. I think I spoke to him again the same day after I had read the clippings from The West Australian. I think there were some clippings from The Australian as well.*⁷²⁶

- 14.3 Mr Jameson subsequently provided the press clippings and other background material to the Committee. The press clippings included a report dealing with the reinstatement of charges against Robert Bropho for sexual assault of his niece⁷²⁷ and the report of a meeting between Mick Gooda and Hon Derrick Tomlinson MLC.⁷²⁸

⁷²⁴ Chartered Accountant, Partner, Thomas Noble and Russell.

⁷²⁵ Letter Thomas Noble and Russell to Chairman, 26/11/03, p.1.

⁷²⁶ *Transcript of Evidence*, Jameson, Session 4, 22/10/03, p.3.

⁷²⁷ "Bropho charged with rape of niece" by Colleen Egan, *The Weekend Australian*, 17 to 18/05/03, p.9.

⁷²⁸ "Opposition studies camp closure plan" by Charlie Wilson-Clark, *The West Australian* (2nd Edition), 28/05/03, p.49.

Two media statements from the Premier dealing with the introduction of the Bill and the amendments made to the Bill in the Council were also sent.⁷²⁹

14.4 The Committee notes that despite the conversation occurring on May 12 2003, the day Cabinet had approved the submission to proceed with the Bill, the press clipping sent to Mr Jameson postdated the Bills introduction on May 15 2003.

14.5 Mr Jameson noted the unusual nature of the job in light of his past experience. He said:

...Normally my job is to manage people and finances and to get a corporation that is on the rocks back up and running again. I see it through that process and exit when it is an appropriate time and return it back to its committee. That is the normal process of administration. This one was a little different. I was required to manage people out of a place rather than retain them, and then I had to devise an alternative appropriate use for it.⁷³⁰

14.6 Mr Jameson later expressed the view that the SVNCAC was in breach of the management order put in place on October 11 2002 in relation to several matters. These included creating a refuse dump at the rear of the Reserve, permitting environmental degradation and failing to provide the Minister for Indigenous Affairs with details of the administration of the SVNCAC such as membership, financial statements and annual reports, minutes of meetings and examiners reports when received.⁷³¹

14.7 The Committee notes that these alleged breaches of the management order, if established, could have supported ministerial action under section 50 of the LAA to remove the management order vesting the Reserve in the SVNCAC.

⁷²⁹ “Premier introduced legislation to close down Swan Valley Nyungah camp”, 15/05/03 and “Premier condemns Liberal Party efforts to block bill to close Swan Valley Nyungah camp” 17/05/03.

⁷³⁰ *Transcript of Evidence*, Jameson, Session 4, 22/10/03, .p.8.

⁷³¹ Letter Thomas, Noble & Russell to the Chairman dated 26/11/03, pp.2-3.

CHAPTER 15

BRIEFINGS TO NON-GOVERNMENT MEMBERS

NOTE

The Account of what happened in the briefings of non-government members is known to the three non-government members of this Committee and not known to the two government members.

It would be unfair to ask the two government members who were not present at these briefings to make a judgment as to the veracity of the account by the other three members.

Accordingly so far as this Chapter explores what occurred in these briefings, it is the account of the three non-government members, and the government members have not expressed nor have they been asked to express any view.

GOVERNMENT BRIEFINGS

- 15.1 To garner cross party support for the Bill the Government offered non-government members⁷³² briefings on the Bill that included justification for its speedy introduction and passage. The justification was by way of examples of what was occurring at the SVNC that placed women and children at unacceptable levels of risk of domestic violence, substance abuse and sexual abuse. The Government used these examples because they were considered to be clear examples that the changes put in place through the October 2002 management order intended to guarantee access had been ineffective.⁷³³
- 15.2 Some members of the Council were of the view that the information upon which the Government acted was merely anecdotal and had not been verified. The lack of notice of the Bill's introduction was also a cause for concern, leaving members with limited time to satisfy themselves of the accuracy of the allegations. The Committee therefore investigated the allegations used as examples during the briefings to determine what steps were taken to verify the facts (if they existed) upon which the allegations had been made.
- 15.3 None of the Director Generals who gave evidence to the Committee had first hand experience upon which to act but relied upon the information supplied to them from

⁷³² The expression "non-government members" indicates those members who are not members of the Labor Party rather than merely to members who are not part of the Executive Government.

⁷³³ *Transcript of Evidence*, Warbey, Session 2, 21/08/03, p.5.

their officers, public servants from other departments or sources outside government. These included service delivery officers with direct experience with the SVNC. The Committee accepts that senior bureaucrats must rely upon information from their officers when making decisions. It is therefore incumbent on Directors General to be satisfied with the accuracy of the information supplied when this information is to be the basis of decisions that may have significant consequences for individuals or a community.

- 15.4 The Directors General, middle level and service delivery public servants obtained information from various sources, both primary and secondary. There were two sources of primary or first hand information. Firstly, allegations that were contained in statements made by two complainants to the police that formed the basis of the criminal charges against Robert Bropho.⁷³⁴ At the time the decision was made to close the SVNC, the allegations made by the two complainants that led to charges against Robert Bropho were not related to recent events.⁷³⁵ Secondly, uncorroborated allegations contained in statements to the police or DCD that claimed abuse was being perpetrated against third parties which of themselves were not sufficient to support a criminal prosecution or action by DCD under the *Child Welfare Act 1947*. One of these allegations was that 10 children at the SVNC had been or were are risk of being sexually or physically abused.⁷³⁶
- 15.5 This information required the authorities to interview those persons alleged to have been abused to obtain primary evidence of the abuse so as to corroborate other evidence. This was proving problematic for DCD and was one of the concerns that prompted Ms Brazier to advise the Premier that in her opinion there was an unacceptable level of risk to those children.
- 15.6 The other sources of information to these officers were hearsay, rumour and anecdotal accounts of what was occurring at the SVNC that had been passed onto social workers, police officers, health workers and the Premier's Office by persons who claimed they had contacts within the SVNC.⁷³⁷ The hearsay evidence included the allegations passed on by the journalist Colleen Egan that triggered the Premier's questioning of his Directors General at the Strategic Management Council meeting. It was the allegations from Ms Egan's sources that formed the basis of the examples given during the Government briefings on the Bill.

⁷³⁴ Charges of indecent dealing were preferred against Robert Bropho on May 2 2003 relating to an alleged incident involving a third complainant at the SVNC.

⁷³⁵ The first charges related to events that allegedly occurred between 1975 and 1977. The second charges related to events that allegedly occurred between 1989 and 1991.

⁷³⁶ See paragraphs 6.62-6.70.

⁷³⁷ Two Department of Justice Officers.

THE THREE ALLEGATIONS

15.7 The three allegations used in the Government briefings were:

- that a 13 year old girl had been forcibly taken to the SVNC by a resident and had to be removed by police and DCD due to the risk of sexual abuse at the Community;
- that a 16 year old youth residing at the SVNC had both of his legs broken by a resident of the SVNC in August 2002; and
- that a young woman and her child, living outside the Reserve, were relocated to other accommodation due to constant harassment and intimidation perpetrated by SVNC residents.

15.8 The three allegations had originated from the journalist Colleen Egan and had been passed on to the Premier's Principal Medial Officer, Mr Murphy,⁷³⁸ and his Chief of Staff, Mr Walsh.⁷³⁹ Another witness told the Committee that she had passed onto government departments the same allegations.⁷⁴⁰

Thirteen year old girl taken to Community by SVNC resident and had to be removed by police and DCD.

15.9 On May 2 2003 Roley Bayman, the Acting Manager of the Midland DCD, and a child abuse social worker were accompanied by Sergeant Clarysse of the WAPS to the SVNC at the request of Bella Bropho. Whilst at the camp they had a conversation with a 13 year old female and later left with the girl.

15.10 This allegation was given to members as an example of the type of moral danger young girls risked at the SVNC. The facts presented during the briefing were that a resident forcibly took this girl to the SVNC, the clear inference being that she was or would be sexually abused, and was removed by police and DCD for her own protection. The impression given was that in removing the child, DCD were acting under the powers of removal contained in the *Child Welfare Act 1947*.

15.11 This was far from the case. In fact, the journalist Colleen Egan had specifically advised Kieran Murphy on or about May 2 2003 that her sources had told her that the girl's fears were in respect of her father.⁷⁴¹ The father did not live at the SVNC.

⁷³⁸ *Transcript of Evidence*, Murphy, Session 2, 17/09/03, p.10.

⁷³⁹ The notes of Mr Murphy's conversation with Colleen Egan and the notes of Mr Mal Wauchope taken at the meetings of Directors General and senior bureaucrats indicate that Ms Egan also raised a further allegation from her sources relating to a 10 year old boy "living" with a woman being taken to the SVNC. This allegation was not raised during government briefings on the Bill.

⁷⁴⁰ *Private Transcript of Evidence*, Session1, 31/03/04, pp.43&45.

⁷⁴¹ *Transcript of Evidence*, Egan, Session 2, 12/11/03, p.10.

These facts were not presented during the Government briefings on the Bill. The Committee has heard evidence from the DCD officers who attended the SVNC and interviewed the teenager. They have confirmed that:

- the 13year old girl went to the camp because she feared her father, who was not a resident at the camp;
- she went there of her own volition and had done so previously to escape her father and other family members as she had a girlfriend at the camp, and was not taken there by the resident identified by Ms Egan's sources;
- one of Robert Bropho's daughters, Bella Bropho, had contacted DCD and requested that the 13 year old be taken from the camp. The reason being that she feared there would be trouble between the girl's father and at least one of the camp residents. The father had found out where his daughter was and had also requested that DCD remove her;
- DCD officers were not exercising any power under the *Child Welfare Act 1947* in taking the child from the SVNC. The child went voluntarily at the request of the SVNC;
- whilst at the camp DCD interviewed the child who said that she was in fear of physical abuse by her father. No allegation was made of sexual abuse against her father as alleged by Ms Egan's sources or any other person at that time; and
- after leaving the SVNC the girl moved in with one of her sisters who had left the SVNC.

15.12 Colleen Egan's evidence was that the clear inference from her sources was that the father of the 13 year old was sexually abusing her and this was what she told Mr Murphy.⁷⁴² The portrayal to members of the Council on May 16 2003 did not reflect the information given by Ms Egan to Mr Murphy or the facts known to DCD as at May 2 2003 that the Committee has since discovered.

15.13 In addressing some of the concerns raised by members in the Council the Government produced a document setting out the Government's response to the issues raised. Under the heading "Urgency with which the matter has been brought before Parliament" the document states:

The Department of Community Development advised that several incidents have been reported to its staff and DCD has removed a teenage girl at the request of her father since the new MO and

⁷⁴² *Ibid*, p.9.

*Management Plan were introduced at the SVNC, indicating that these mechanisms have not been sufficient to address the problems within the Community and within the management of the Corporation.*⁷⁴³

- 15.14 No mention was made in the Government's response of the fact that Bella Bropho had telephoned DCD to request that the girl be removed as a result of her fear that trouble was likely between the girl's father and at least one of the Community's residents if the girl remained. In addition, reference was made in the above quoted document to the SVNCAC management plan. This plan had yet to be endorsed by the Minister for Lands and the process for its approval had not been completed. This information was omitted.
- 15.15 On June 4 2003,⁷⁴⁴ over four weeks after the teenage girl left the SVNC and after being relocated to her sister's house, she first made an allegation to a DCD officer against Robert Bropho that has become the subject of further criminal charges against him.⁷⁴⁵ The child made a formal complaint to the Child Abuse Investigation Unit on June 9 2003.⁷⁴⁶ The Committee understands that the girl's other sister had earlier made allegations that have also resulted in charges against Robert Bropho and that she made the allegation after first speaking to her sister. However, the facts at the time of the Government briefings on May 16 2003 portrayed the incident as far more sinister and were used as an example of the failure of the October 2002 management order, and the as yet to be approved SVNC management plan, and to justify closure.
- 15.16 The incident was in fact an indication of a positive step made by the Community to avoid violence. It was not at the time an example of sexual abuse occurring or perpetrated by a resident of the SVNC as alleged by the Government. Such issues emerged weeks later after the allegation was made against Robert Bropho, the veracity of which is yet to be tested in the courts. Neither was it an example of a failure of the October 2002 management order. Access to DCD officers and police was not obstructed or hindered and nor was the interview that DCD officers conducted with the 13 year old girl. A conversation initially took place in the presence of Bella Bropho who was there to make it clear that the girl could not stay. The interview in relation to confidential matters then took place without the presence of third parties.⁷⁴⁷

⁷⁴³ Reserves (Reserve 43131) Bill 2003 Issues Raised in the Legislative Council, undated.

⁷⁴⁴ Police Memorandum by Acting Detective Sergeant Leo Ricciardi to Acting Detective Senior Sergeant Gangin dated 14/01/04, p.3.

⁷⁴⁵ Two counts of indecently dealing with a child aged 13 years or over but under 16 years. Section 321(4), *The Criminal Code*.

⁷⁴⁶ Police Memorandum by Acting Detective Sergeant Leo Ricciardi to Acting Detective Senior Sergeant Gangin dated 14/01/04, p.4.

⁷⁴⁷ *Private Transcript of Evidence*, Bayman, Session 3, 22/10/03, p.11.

- 15.17 This was not to say that the treatment of the girl at the SVNC was exemplary. A DCD officer told the Committee that the girl boasted at a later interview⁷⁴⁸ that whilst at the camp, she was allowed to stay up all night, drink alcohol and play cards and win lots of money. She said that there was plenty of alcohol available to the kids at the campsite and seemed to think that was a good thing.⁷⁴⁹ Neither of these matters was related to these Council members during briefings on the Bill, but unfortunately these are not incidents that are unique to the SVNC or Aboriginal communities. It would not be a matter that on its own would justify a decision to close the SVNC.
- 15.18 The other DCD officer claimed in evidence that it was what occurred when DCD was trying to secure accommodation for the 13 year old girl outside the SVNC that justified the Government's action to close the SVNC. After unsuccessfully attempting to place the girl with an aunt, DCD found it extremely difficult to place the girl through its funded accommodation services. He claimed that when these services became aware it was a child coming from the SVNC, they were not prepared to provide care for the child. He said this was relevant to the issue of fear and intimidation perpetrated by residents of the camp against persons who leave.⁷⁵⁰
- 15.19 The Committee notes that the girl had only been at the SVNC for a few days and was not a permanent resident there. The Community requested that she leave. It is difficult to believe that when these matters were explained to the accommodation providers that there should be resistance to her being placed there. The girl was eventually placed with Anglicare,⁷⁵¹ but later returned to live with one of her sisters.⁷⁵²
- 15.20 The Committee's investigation has determined that DCD, who had interviewed the girl, was satisfied that she had "self-selected", that is she went to the camp voluntarily to escape her father and because she was friends with another girl who lived there.⁷⁵³ The resident as alleged by the witness had not taken the 13 year old girl to the SVNC, forcibly or otherwise.
- 15.21 The Government's claim during briefings that the girl was being sexually abused at the SVNC was not supported by the facts known to Government regarding the incident on May 2 2003 that later became the subject of criminal charges against Robert Bropho. At the time of the briefings to non-government members on May 16 2003, the girl had not made a disclosure to DCD or the police. There is no evidence to

⁷⁴⁸ See e-mail Diedre Klippel to Irene Thomas dated 13/05/03, p.1 and Briefing Note Swan Valley Nyungah Community Incidences of Physical and Sexual Abuse, undated, p.1.

⁷⁴⁹ *Private Transcript of Evidence*, Session 1, 12/11/03, p.12.

⁷⁵⁰ *Private Transcript of Evidence*, Bayman, Session 3, 22/10/03, p.12.

⁷⁵¹ *Private Transcript of Evidence*, Thomas, Session 3, 22/10/03, p.13.

⁷⁵² *Private Transcript of Evidence*, Session 1, 12/11/03, p.12.

⁷⁵³ *Private Transcript of Evidence*, Bayman, Session 3, 22/10/03, p.10 and *Private Transcript of Evidence*, Session 1, 12/11/03, p.3. The "friend" was in fact the girl's cousin.

suggest that the Government was aware of this allegation prior to the disclosure made by the girl to DCD on June 4 2003. This was well after the Premier and Cabinet had determined that the SVNC should be closed and that this objective be achieved by a Reserves Bill.

Source of the allegation

15.22 A witness has told the Committee that in February 2003 the 13 year old girl's sister alleged that she was being "terrorised" by a resident of the SVNC.⁷⁵⁴ The sister had also told her that the SVNC resident kept taking her sister, the 13 year old girl, back to the camp and believed that she was being abused there.⁷⁵⁵ The witness told the Committee that she passed this information on to DCD at Midland and Homeswest.⁷⁵⁶ Although the witness had known the journalist Colleen Egan for some years, she did not believe that she had spoken to her regarding this allegation.⁷⁵⁷

15.23 The Committee finds that this witness was one of the sources of the allegation about the 13 year old girl being forced by a resident to return to the SVNC and the claim that she was being sexually abused at the camp. Whether or not the witness was the journalist's direct source is unknown and not necessarily relevant. The allegation may have been passed onto others who were in contact with Ms Egan.

15.24 The witness claimed that she had contacted DCD Midland and DHW and passed on the allegation regarding the 13 year old girl. This was prior to the Strategic Management Council Meeting on May 1 2003. At that time and when the allegations were passed onto members of the Council during briefings on May 16 2003:

- the claim that the 13 year old had been sexually abused at the SVNC; and
- the claim that a resident of the SVNC had forcibly taken the girl to the SVNC;

were based on the belief of the girl's sister who told the witness of her concerns.⁷⁵⁸

15.25 The facts at the time were that other than for this "belief", which amounted to hearsay, there was no evidence of the girl being forcibly taken to and abused at the SVNC. There is in fact clear evidence to the contrary. The claim that the girl had been forcibly taken to the SVNC by a resident could have easily been checked (and proven false) on May 2 2003 by speaking with the DCD officers who had interviewed the girl.

⁷⁵⁴ *Private Transcript of Evidence, Session 1, 31/03/04, p.43.*

⁷⁵⁵ *Ibid, p.44.*

⁷⁵⁶ *Ibid, p.45.*

⁷⁵⁷ *Ibid, p.40.*

⁷⁵⁸ *Ibid, pp.43 & 44.*

Youth having both legs broken by a resident of the SVNC

- 15.26 Another incident passed on by Colleen Egan and used during Government briefings on the Bill was that one of Robert Bropho's 'lieutenants' had broken the legs of a teenage boy residing at the camp. This was portrayed as an example of the physical violence and intimidation that was perpetrated by the management body and why non-government members should support the Bill. Hand written notes from a meeting of the senior bureaucrats indicated that this alleged incident had occurred in August 2002 and provided the name of the teenage boy who was the supposed victim.⁷⁵⁹
- 15.27 The police had investigated this allegation. They could not establish that a member of the SVNC perpetrated this assault. Further inquiries revealed the incident that had been related to Ms Egan by her sources in fact involved a 15 or 16-year-old who had fallen from a tree at his normal place of residence in Ashfield and broken one of his legs. This juvenile had visited the Lord Street camp on various days in a wheelchair.⁷⁶⁰
- 15.28 Sergeant Jim Clarysse described this and other incidents attributed to the SVNC in evidence before the Committee as follows:

*some of those actual incidents were about people who had previously resided at the campsite, were not residing there at the time, and the incidents occurred away from the campsite. I do not think it was a broken leg; I think it was a broken arm. It is a bit like Chinese whispers; it was a broken leg one day and a broken arm the next. I think we were battling to establish what the break was.*⁷⁶¹

- 15.29 Jane Brazier told the Committee that DCD had later investigated the allegation and could not find any evidence to support the claim.⁷⁶² Her investigation revealed that what were two broken legs was in fact a broken arm.⁷⁶³ DCD's difficulty may have been related to the age of the allegation. The Committee has received written evidence that reveals that an identical allegation other than in respect of the name of the victim had been made in 1999. If this was the incident being referred to by

⁷⁵⁹ Handwritten Notes of Lynsey Warbey, Senior Policy Officer, DPC, and Mal Wauchope, Director General, DPC, of meeting of senior bureaucrats on 5/05/03.

⁷⁶⁰ Briefing Note, Assistant Commissioner T J Atherton, Commander Metropolitan Region dated 23/05/03, p.2.

⁷⁶¹ *Transcript of Evidence*, Clarysse, Session 1, 10/09/03, p.17.

⁷⁶² *Transcript of Evidence*, Brazier, Session 3, 18/08/03, p.25.

⁷⁶³ *Private Transcript of Evidence*, Brazier, Session 4, 18/08/03, p.2.

Government advisers, it was not a current or substantiated example of child abuse at the SVNC.⁷⁶⁴

Source of the allegation

15.30 The Committee heard evidence from a witness who stated that the victim's brother and girlfriend had told her of the 2002 broken leg allegation.⁷⁶⁵ The name of the alleged victim was different to the person named in the notes of the senior bureaucrats but otherwise the facts appeared to correlate with these notes. The witness told the Committee that the incident had been reported to two Police Stations and that nothing had been done about it.⁷⁶⁶ This witness claimed that she was a direct source of information to Jane Brazier in relation to this allegation⁷⁶⁷ and had spoken to a number of people about this incident.⁷⁶⁸ This was the same witness who claimed she was the source of information to DCD and DHW in relation to the allegations regarding the 13 year old girl.⁷⁶⁹ The witness claimed that the police would have a statement on this incident given by one or both of her informants. The Committee sought confirmation from the WAPS on whether it had received a complaint in relation to either the alleged 1999 or 2002 assaults.

Police Investigation

15.31 The police advised that there had been a report of the alleged assault in 1999 perpetrated against a 10-year-old boy. This did not involve broken legs but severe bruising to both knees, allegedly the result of the boy being struck with a torch. However, the injuries could not be confirmed due to the youth's carer not permitting authorities to access medical records. The complaint could not be pursued as the victim refused to provide a statement to police.⁷⁷⁰ In relation to the August 2002 allegation, the police advised that there were no references or reports contained on the police computer system regarding a youth having his legs broken at the SVNC.⁷⁷¹

15.32 Minor and more serious assaults have occurred at the SVNC. The Government has provided the Committee with two documents that list a series of allegations of sexual

⁷⁶⁴ E-mail Deirdre Kippel A/team leader Midland Response Team, Midland District Office to Irene Thomas 13/05/03, p.2 and Briefing Note Swan Valley Nyungah Community - Incidences of Physical and Sexual Abuse, undated, p.2.

⁷⁶⁵ *Private Transcript of Evidence*, Session 1, 31/03/04, p.42.

⁷⁶⁶ *Ibid*, p.43.

⁷⁶⁷ *Ibid*, p.43. Ms Brazier has denied this.

⁷⁶⁸ *Ibid*, 31/03/04, p.40.

⁷⁶⁹ *Ibid*, p.45. The witness says that she informed Midland DCD regarding this matter rather than Jane Brazier directly.

⁷⁷⁰ Letter Barry Matthews, Commissioner of Police to Chairman of Committee dated 16/04/04.

⁷⁷¹ *Ibid*.

- and physical abuse occurring at the SVNC, both substantiated and unsubstantiated.⁷⁷²
- The first of these documents is an e-mail dated May 13 2003. The second is a Briefing Note prepared by DPC based on the information contained in the e-mail for use by Government during the debate on the Bill.
- 15.33 The 1999 broken legs incident was one identified in the documents as not substantiated. On the basis of the WAPS response to the Committee, this allegation has been significantly exaggerated and calls into question the other unsubstantiated allegations.
- 15.34 The Committee has heard evidence that a resident of the Community adamantly against solvent abuse perpetrated his own form of summary justice against juveniles who abused solvents at the SVNC. One DCD social worker gave evidence that this resident had admitted to her that he chased “sniffers” (people who sniff solvents such as paint and glue) with a koondi stick. This was a crude attempt by one member of the Community to stamp out glue and paint sniffing which is a chronic problem in some Aboriginal communities.⁷⁷³ The 1999 incident involved a youth who was a known “sniffer”.
- 15.35 The evidence of police at the coronial inquiry into the death of Susan Taylor revealed the difficulties police faced in dealing with solvent sniffing due to the inability to charge the providers of solvents with criminal offences.⁷⁷⁴ The SVNC had requested assistance on this issue from Government but claimed that it had received none.⁷⁷⁵ Sergeant Clarysse told the Committee that solvent abusers were taken to the Community because they had no other place to go and no program to assist them with dealing with their addiction.⁷⁷⁶
- 15.36 One member of the SVNC, in the face of police impotence and an absence of services for solvent abusers determined his own means to control the incidence of solvent abuse at the SVNC. Sergeant Clarysse had to deal with the resident on several occasions on these matters and he was charged with offences as a result of these assaults. However, despite the unlawful manner of disciplining sniffers Sergeant Clarysse was in no doubt that the resident had a genuine concern for the Community and the health and welfare of the people at the Lord Street camp.⁷⁷⁷

⁷⁷² E-mail Deirdre Kippel A/team leader Midland Response Team, Midland District Office to Irene Thomas 13/05/03, p.2 and Briefing Note Swan Valley Nyungah Community - Incidences of Physical and Sexual Abuse, undated, p.2.

⁷⁷³ *Private Transcript of Evidence*, Session 4, 25/09/03 p.17.

⁷⁷⁴ Coroner’s Report, p.27.

⁷⁷⁵ Submission No 10 from SVNCAC, 3/08/03, p.11.

⁷⁷⁶ *Transcript of Evidence*, Clarysse, Session 1, 10/09/03, p.9.

⁷⁷⁷ *Ibid*, p.14.

15.37 The Committee in no way condones the summary discipline perpetrated by this resident of the SVNC. However, it provides a context that was absent during the Government briefings on the Bill.

Former resident intimidated by a resident of the SVNC and placed in a ‘safe house’

15.38 Mr Murphy told the Committee that this was one of the allegations passed on by Colleen Egan. It was used during Government briefings on the Bill as an example of the fear and intimidation allegedly being perpetrated by residents of the SVNC against persons who had left the Community. This allegation was a more current example of the incident related by Ms Egan to Mr Murphy regarding the alleged fire bombing of a former SVNC resident’s Homeswest accommodation in 2000. Although the police determined that the fire was deliberately lit, it could not establish that a member of the SVNC perpetrated the arson.

15.39 Notwithstanding this lack of proof, Ms Egan explained to Mr Murphy that the incident was representative of a pattern of behaviour by which the Community’s ‘enforcers’ harassed and intimidated former residents and caused damage to their rental accommodation. The object of this behaviour was to have them evicted by DHW or become homeless and force their return to the SVNC.⁷⁷⁸

15.40 As indicated earlier, DHW has provided information to the Committee that confirms that in late May 2003 a young woman and her family were relocated to alternative accommodation. This was motivated by the woman’s fears arising from alleged intimidation, threats and violence by two members of the SVNC that commenced in February 2003.⁷⁷⁹

Source of the allegation

15.41 The same witness who was the source of the allegations to DCD regarding the 13 year old girl and the youth having his legs broken also claimed she was the source of the information to DCD and DHW regarding this allegation.⁷⁸⁰ She claims to have arranged for a housing advocate to complete the necessary Homeswest application to effect the transfer.⁷⁸¹

15.42 As with the other examples that were used during briefings to members of the Council, the witness who passed on the allegation had not witnessed the harassment or any of the other incidents. She merely believed what she had been told. She accepted it as true given her long association with advocating on behalf of Aboriginal persons

⁷⁷⁸ *Private Transcript of Evidence*, Egan, Session 2, 12/11/03, p.7.

⁷⁷⁹ Confidential Supplementary Information provided under cover of letter from Greg Joyce, Director General, DHW dated 9/10/03, p.4-5.

⁷⁸⁰ *Private Transcript of Evidence*, Session 1, 31/03/04, p.45.

⁷⁸¹ Witness’s letter to the Committee dated 22/04/04.

claiming they had been abused, and her belief from her contacts in the Aboriginal community that many young children had been subject to physical and sexual abuse at the SVNC.⁷⁸²

- 15.43 Mr Gooda was present during some of the Government briefings, and in evidence before the Committee referred to the urgent transfer of the young woman and her family by DCD as having her placed in a “safe house” for her protection.⁷⁸³ The Committee is satisfied that, as a result of the woman’s concerns, DCD moved her to temporary accommodation. She was then placed in DHW accommodation.
- 15.44 Although the Committee accepts that it was quite probable that SVNC residents were intimidating the woman, it is difficult to determine that the alleged incidents of harassment and intimidation were a calculated plan to force the woman and her family to return to the SVNC. Robert Bropho says that the woman had not lived at the SVNC since 1990. A more likely explanation was that she was the sister of one of the women who had made allegations against Robert Bropho that resulted in him being charged with sex offences.⁷⁸⁴ The woman is also the sister of the 13 year old girl removed from the Community who later also made allegations against Robert Bropho that resulted in further criminal charges.
- 15.45 DCD was aware of the alleged intimidation and if this were because of pending criminal charges then such behaviour would constitute harassment of a witness. This is a criminal offence.⁷⁸⁵ If this was known or suspected by DCD then the police should have become involved.

OTHER ALLEGATIONS

Control over interviews exercised by Robert Bropho

- 15.46 Another allegation raised during Government briefings and by witnesses to the Committee was that Robert Bropho or persons under his direction insisted on being present during interviews with government service providers, and thereby reduced the likelihood that disclosures would be made. The presence of third parties would be a problem in many cases of alleged child abuse. One of the parents or guardians is commonly the abuser and can wield considerable influence by threat or intimidation to prevent or inhibit disclosures or even prevent access for an interview to be conducted.

⁷⁸² *Private Transcript of Evidence*, Session 1, 31/03/04, p.36 and letter to the Committee dated 22/04/04.

⁷⁸³ *Private Transcript of Evidence*, Gooda, Session 2, 22/10/03 p.6.

⁷⁸⁴ The second complainant first made the allegations in January 2000 and then made a further allegation to a Department of Justice worker on May 27 2003. The third complainant made her allegations on 4 and 9 June 2003.

⁷⁸⁵ Section 133, *The Criminal Code*.

- 15.47 DCD could not object to a parent or guardian insisting on being present despite its suspicions that the person's presence was inhibiting disclosure. On one occasion DCD removed a child living at the SVNC from his school without his carer's consent in an effort to obtain disclosures sufficient to act.⁷⁸⁶ The risk that a disclosure will not be made because the abuser is present during the interview is one of the many difficulties confronting social workers in obtaining evidence sufficient for them to exercise their statutory powers of protection. Concerns of this nature are universal.
- 15.48 There is evidence to verify that Robert Bropho exercised considerable control over access to the SVNC. He expected to be notified of intended visits by agency staff. This expectation was to some degree encouraged by DCD Midland in directing its officers to call prior to visiting as a matter of courtesy other than in cases of suspected child abuse.⁷⁸⁷
- 15.49 The specific example given by Jane Brazier of unacceptable presence of third parties at interviews, was the child maltreatment allegation relating to an eight year old girl. Sharon Davies, the SVNC voluntary worker who was present during this interview gave evidence that she was requested to be present by the girl's aunt⁷⁸⁸ who was fearful of welfare agency involvement given her experience as one of the 'stolen generation'. The Committee also notes that the removal of the 13 year old girl from the SVNC on May 2 2003 followed an interview of the girl by two DCD workers without the presence of third parties. Another social worker gave evidence that she spoke to two women at the SVNC in late May 2003 without the presence of third parties, but nevertheless was of the view that these women would have been asked later about the particulars of the conversations.⁷⁸⁹
- 15.50 Robert Bropho attended the interview of his grandson in relation to a police interview inquiring into the death of Spratt/Bropho at the SVNC on September 20 2001.⁷⁹⁰ No evidence was presented to the Committee to indicate that Robert Bropho's presence influenced what was said. Indeed, the presence of a minor's parent or guardian during an interview is a requirement under the police manual.⁷⁹¹
- 15.51 The Committee accepts that Robert Bropho has considerable influence and power within the SVNCAC and the Lord Street camp. He is an elder and the Community is essentially comprised of the extended Bropho family. The post October 2002

⁷⁸⁶ E-mail Dawn Lamperd A/Manager, DCD, Wheatbelt to Roley Bayman dated 27/02/03 regarding the child.

⁷⁸⁷ E-mail Roley Bayman, Acting Manager Midland DCD to Bill Currie et al dated 9/12/02, p.1.

⁷⁸⁸ *Transcript of Evidence*, Davies, Session 2, 11/12/03, p.7.

⁷⁸⁹ *Private Transcript of Evidence*, Session 4, 25/09/03, p.20.

⁷⁹⁰ Deputy Coroner's Record of Investigation of Death of Morgan Spratt dated 2/04/04, p.19.

⁷⁹¹ Commissioner's Orders and Procedures Manual ('Cops Manual'). See also Commissioner's Guidelines for interviewing suspects and section 20, *Young Offenders Act 1994*.

examples provided by witnesses are equivocal, and in one of the examples DCD acknowledged that the person's presence did not hinder the interview.⁷⁹² Not all contacts with residents by government workers were in situations where third parties were present.⁷⁹³ The examples provided during this inquiry have not established to the Committee's satisfaction that, since the October 2002 management order, Robert Bropho or persons under his direction attended interviews so as to prevent or hinder disclosures of sexual abuse, domestic violence or solvent abuse allegedly occurring at the SVNC.

SOURCES OF ALLEGATIONS

15.52 Evidence establishes that one witness was the likely source of allegations in relation to:

- a 13 year old girl being forcibly taken to the Community by a SVNC resident and had to be removed by police and DCD due to the risk of sexual abuse;
- a 16 year old youth having both legs broken by a resident of the SVNC; and
- a former resident of the Community being intimidated by a resident of the SVNC and as a result had to be placed in a "safe house".

15.53 The witness was not a source of primary evidence. She had not witnessed any of the incidents that formed the basis of the above allegations. She was merely passing on allegations that she believed to be true. The witness was a source of hearsay evidence.

15.54 It was perhaps not surprising that the Government gave the above allegations some credence. The witness had a long history of advocating on behalf of Aboriginal people⁷⁹⁴ and many sources that were perhaps not available to government officers. In giving her evidence before the Committee, the witness was intelligent and articulate and her allegations appeared credible at first instance in light of the recent history of the SVNC.

15.55 However, given what the Committee's investigations have revealed about the facts surrounding the examples given during Government briefings, and assessments made by other witnesses, the Committee has come to the conclusion that the evidence of this witness was unreliable and not credible.

15.56 This is not to say the Committee is of the view that this witness is deliberately telling lies. She, like another witness who appeared before the Committee has a passionate

⁷⁹² Roley Bayman's interview with the girl subject to the child maltreatment allegation.

⁷⁹³ A DCD social worker gave evidence that she spoke to two women on 21/05/03. Interview with the 13 year old girl at the SVNC by two DCD officers accompanied by police on May 2 2003.

⁷⁹⁴ The witness had performed voluntary work, mainly in housing advocacy, since 1978.

belief in what she is doing. As a result both of these witnesses were prepared to accept allegations on face value without adequate corroboration or investigation. The Committee observed that these witnesses had a tendency to interpret facts by “reading between the lines”.⁷⁹⁵ This resulted in facts being interpreted in a manner that would suggest a more sinister motivation when an innocent explanation may be equally available to a dispassionate observer.

- 15.57 An example was one of these witnesses describing the assault allegation Susan Taylor had made against Richard Bropho as an attempted rape. The facts contained in the Coroner’s Report of Susan Taylor’s statement to police was that she alleged that he had touched her in an indecent manner on her breast and the inside of her leg and subsequently kicked the back of her legs, causing her to fall to the ground.⁷⁹⁶ There was no suggestion in the Coroner’s Report that her statement indicated that she was going to be raped.⁷⁹⁷
- 15.58 Another example was the allegation that Susan Taylor always had lots of money after going to the SVNC to visit her ‘Poppy’. The witness interpreted this as Susan being paid by Robert Bropho for sexual services.⁷⁹⁸ The 13 year old girl the subject of the first example also had lots of money after going to the SVNC. During her interview she claimed that she won this whilst gambling.
- 15.59 This latter example was put to Magistrate Sue Gordon. Her Worship told the Committee that it was unlikely that the girl would reveal to a public servant the true source of the money if this would result in someone being charged with a criminal offence. She also said that girls affected by solvents or merely to be mischievous could make up stories:

*given the nature of young girls, if the young girl had been sniffing or under the influence of drugs or something, it might be a throwaway line, because young people especially are not averse to making a joke about something just to get a reaction from a public servant.*⁷⁹⁹

- 15.60 The witness, whom the Committee considers was the source of the three allegations used during Government briefings also raised further allegations during her testimony and in a submission provided to the Committee after her oral evidence. These included that:

⁷⁹⁵ *Private Transcript of Evidence, Session 1, 31/03/04, p.21.*

⁷⁹⁶ Coroner’s Report, p.9.

⁷⁹⁷ Clarysse.

⁷⁹⁸ *Private Transcript of Evidence, Session 1, 31/03/04, p.21.*

⁷⁹⁹ *Transcript of Evidence, Gordon, Session 1, 30/06/04, p.11.*

- “medical letter after medical letter was provided to Homeswest” from Doctors at Derbarl Yerrigan about a young woman, whose child was subsequently raped at the SVNC, documenting how she had been abused at the SVNC from her earliest years and how she was in fear that this abuse would be visited on her then unborn child.⁸⁰⁰ These allegations formed the basis of an application for independent housing; and
- to get priority housing through Homeswest, applicants must document sexual abuse and this will be contained on the relevant Homeswest accommodation file. The witness encouraged the Committee to obtain these files because she was confident that allegations of sexual abuse would be documented.⁸⁰¹

15.61 The Committee requested and received from Homeswest the accommodation files for the three women mentioned by the witness in private evidence. A thorough examination of the contents of the files revealed letters dated March 22 1999, April 27 2000, May 8 2000 and March 21 2001 from Derbarl Yerrigan Health Service Inc. which were sent to the Mirrabooka branch of Homeswest. These all related to one applicant, whose two and a half year old child had been raped in 2000 at the SVNC by two young males affected by alcohol and solvents. A doctor wrote the first three. The witness wrote the final letter.

15.62 The 1999 letter supports an application based on the applicant’s medical condition which included “chronic depression and anxiety, anaemia, ‘arthritis’ with sometimes disabling pain in fingers and knees, and a history of past substance abuse related to her depression and anxiety.”⁸⁰² There is no mention of sexual abuse.

15.63 The second letter dated April 27 2000, written after the rape of the applicant’s child, refers to the applicant being “a previous victim of abuse in childhood” but does not specify the nature of this “abuse. Her medical problems are again mentioned and a suggestion is made that the rape of the applicant’s child could have been prevented if she had been earlier granted secure housing.”⁸⁰³

15.64 The third letter dated May 8 2000 refers to the applicant’s abuse being of a sexual nature and that it occurred when she was under five years of age. The letter alleges that the applicant had “applied repeatedly to Homeswest for housing to prevent such an occurrence.”⁸⁰⁴ The Committee notes that her earlier applications make no mention of sexual abuse.

⁸⁰⁰ Submission from witness to the Committee, 22/04/04, pp.8-9.

⁸⁰¹ *Private Transcript of Evidence*, Session 1, 31/03/04, pp.44-45.

⁸⁰² Letter Dr Diane Faulkner-Hill, Derbarl Yerrigan Health Service, to Homeswest dated 22/03/99.

⁸⁰³ Letter Dr Diane Faulkner-Hill, Derbarl Yerrigan Health Service, to Homeswest dated 27/04/00.

⁸⁰⁴ Letter Dr Diane Faulkner-Hill, Derbarl Yerrigan Health Service, to Homeswest dated 8/05/00.

15.65 The final letter dated March 21 2001, written by the witness,⁸⁰⁵ supports a housing application following the suspected arson attack on the applicant's home which destroyed it and left the woman homeless.⁸⁰⁶

Record of Homeswest applications

15.66 This applicant had previously been provided with Homeswest accommodation and occupied a property from October 1995 to May 1996. The applicant had abandoned the property after Homeswest had received numerous serious complaints of ongoing anti-social behaviour at the tenancy.⁸⁰⁷ The 1999 letter from Derbarl Yerrigan wrongly claimed that the applicant had been homeless for the past five years when the applicant had received housing assistance up to May 1996.⁸⁰⁸

15.67 An application for further housing assistance in December 1997 was withdrawn when the applicant failed to respond to requests to enter into a repayment arrangement for an outstanding tenant liability.⁸⁰⁹

15.68 The woman based her December 1998 application for priority housing assistance on a claim that her uncle was bashing her⁸¹⁰ and not on fears that her child would be sexually abused. The application was rejected in January 1999 due to the applicant not providing sufficient supporting documentation⁸¹¹ and that "her situation was not unlike many other applicants on the waiting list".⁸¹² This rejection appears to have prompted the first letter from Derbarl Yerrigan Health Service, dated March 22 1999. This letter refers to the applicant's medical conditions but makes no mention of fears of sexual abuse or even the alleged physical abuse which was the reason supporting the applicant's December 1998 priority application. Two attempts by Homeswest to contact the applicant to arrange a priority housing interview in response to the letter from Derbarl Yerrigan Health Service were unsuccessful.⁸¹³

⁸⁰⁵ Letter, Derbarl Yerrigan Health Service, to Ministry of Housing dated 21/03/01.

⁸⁰⁶ The applicant obtained Homeswest accommodation in April 2002 but as a result of continual rent arrears Homeswest sought and obtained a court order in April 2003 to evict the applicant. See Homeswest Accommodation File F16260Y95A-02 folio 167. Rent arrears and repairs totalled almost \$5,000.

⁸⁰⁷ Homeswest Memorandum Shane Edmonds, Regional Manager dated 21/05/01, p.1

⁸⁰⁸ *Ibid*, p.1.

⁸⁰⁹ *Ibid*.

⁸¹⁰ Homeswest Accommodation File F16260Y95A-01 folio 166.

⁸¹¹ *Ibid*, folio 178.

⁸¹² Homeswest Accommodation File F16260Y95A-02 folio 90.

⁸¹³ Homeswest Memorandum Shane Edmonds, Regional Manager dated 21/05/01, p.2 and Homeswest Accommodation File F16260Y95A-02 folio 89. Messages were left at the SVNC for the applicant to contact Homeswest but the applicant did not respond. The applicant did not attend a scheduled appointment for the interview in April 1999.

- 15.69 The April and May 2000 letters from Derbarl Yerrigan supporting a housing application relate to the period after the rape of the applicant's child and this is when mention is first made of the applicant suffering sexual abuse as a child.
- 15.70 The housing applications made by the other two women referred to by the witness made no mention of sexual abuse. The second, woman also based her application on the grounds of physical assault and supplied supporting documentation. Her application for priority housing was approved. The other woman was not living at the SVNC but based her application on being intimidated and harassed by two residents.⁸¹⁴ Again, no allegation of sexual abuse was on the Homeswest file.
- 15.71 The Committee also examined the Homeswest files of another seven SVNC residents. The Committee could not find any evidence to substantiate the witness's claims of sexual abuse being documented on Homeswest files other than in relation to the one applicant following the rape of her child at the SVNC. Prior to this event the applicant had received housing assistance and had made a priority application on the grounds of a claim that she was being "bashed" by a relative.
- 15.72 The Committee's investigation correlates with the experience of Magistrate Sue Gordon with the witness when Ms Gordon was a Homeswest Commissioner. Her Worship told the Committee:

...When I was a commissioner on the board of Homeswest, [x] was continually wanting to ring up and demand, mostly demand, that people be housed or this, this and this was not true. However, as you are aware, Homeswest keeps a file on every tenant and everything is thoroughly documented, because that is the way Greg Joyce operates - the director, executive officer, chief executive officer or whatever his title is now. He is a very thorough but also a very caring man. Those things would be discussed and often [x] would make a lot of noise but there was not a lot of fact to follow through. Aboriginal people always knew they could go and utilise [x's] services, so to speak. ... She used to ring me as a commissioner to tell me that things were not correct, but then I would just explain that the processes for eviction were followed, because I had the file in front of me for a start.⁸¹⁵

and

I just found that ...she never presented the facts. There were never any facts provided.⁸¹⁶

⁸¹⁴ Homeswest Accommodation File 2003/04535 folios 2-14.

⁸¹⁵ *Private Transcript of Evidence*, Gordon, Session 1, 30/06/04, p.4.

⁸¹⁶ *Ibid*, p.4.

- 15.73 Sue Gordon's assessment of the witness who was the source of three of the allegations used in the Government briefings to members was that she was "perhaps depressed or not quite home".⁸¹⁷
- 15.74 Robert Bropho suggested the name of a person who he believed was the source of the allegations against him. This witness is not that person.
- 15.75 The name of this witness who appears to have been the source of the three allegations used in Government briefings was given to the Committee by the DPC senior policy officer, Lynsey Warbey, as a person who would be able to assist the Committee in ascertaining the source of the allegations raised by Colleen Egan.⁸¹⁸ Ms Warbey believed that this witness was the source of the allegations raised by Ms Egan.⁸¹⁹ Even a cursory investigation by DPC would have revealed that two of the three allegations this witness had made, and which became examples used during briefings on the Bill, were unfounded. In addition, a witness that the Committee considers credible, Sue Gordon, had an opinion that this witness had a history of making baseless claims. This view was in large part made out by the Committee's inquiries.

FINDING

Finding 21. The majority of the Committee finds that:

- **one witness was the likely source of information regarding the three allegations used during Government briefings on the Bill on May 16 2003;**
- **this witness had no primary evidence to substantiate these allegations when she passed them on to government departments; and**
- **as a result of its investigations into the three allegations used during Government briefings and other allegations made by this witness, the Committee has concluded that this person was unreliable and not a credible witness.**

15.76 The investigations by this Committee have revealed a culture that supports the communication of rumour and innuendo as fact, particularly if the information is passed among agencies or is reported in the media. The Committee is of the view that this serious failure to check the veracity of allegations raised by Ms Egan and others relating to the SVNC contributed to the action against the SVNC.

15.77 This failure to verify information also was evident in a submission from Ms Jane Brazier, the Director General of DCD, and repeated in evidence to the Committee by her Executive Director of Statewide Services. This evidence led the Committee to

⁸¹⁷ *Ibid*, p.4.

⁸¹⁸ *Private Transcript of Evidence*, Warbey, Session 3, p.1.

⁸¹⁹ *Ibid*, p.1.

believe that a social worker had to go on stress leave after being intimidated by Robert Bropho at the SVNC. The social worker and her manager later denied this. The social worker did not take stress leave, and at the relevant time was attending a professional development course.⁸²⁰ The same misinformation was given by the Minister for Community Development in her answer to a question without notice in the Assembly on June 3 2003.⁸²¹ Her incorrect answer was reported in the press.⁸²²

Finding 22. The Committee finds that at the time of her leaving the SVNC on May 2 2003, there was no credible evidence that :

- a 13 year old girl was forcibly taken to the SVNC by a resident of that Community;
- the girl was removed from the SVNC by the police or DCD due to a risk of physical or sexual abuse at the SVNC; or
- the girl was removed by DCD officers exercising powers under the *Child Welfare Act 1947*.

Finding 23. The Committee finds that DPC, which prepared the Cabinet Minute, and DIA which took responsibility for it, relied upon DCD to provide the facts relating to the 13 year old girl. DCD failed to check with its officers regarding the events surrounding the 13 year old girl leaving the SVNC. This would have quickly confirmed the true situation.

Finding 24. The three non government Committee members who attended the Government briefings find that the Government's allegation made during briefings given on May 16 2003 that a 16 year old youth had both of his legs broken by a resident of the SVNC in August 2002 could not be verified. One person was identified as the victim by Ms Egan's sources and a witness before the Committee identified this person's brother as the victim. Both DCD and WAPS advised the Committee that they could not establish that this incident had occurred.

⁸²⁰ See paragraph 6.19.

⁸²¹ Question without notice No. 734 asked by Mr M McGowan MLA to the Minister for Community Development, Women's Interests, Seniors and Youth, *Parliamentary Debates (Hansard)*, 3/06/03, p.8001.

⁸²² "Liberals agree to shut camp" by Cian Manton, *The West Australian*, 4/06/03, p.4 and "Libs back Bropho camp closure", by Roger Martin, *The Australian*, 4/06/03, p.10.

Finding 25. The Committee finds that departments failed to check with police to determine the known facts surrounding the allegation that a 16 year old resident of the Lord Street camp had both of his legs broken by a resident of the SVNC during August 2002.

Observation 33. The Committee observes that the related allegation contained in a Departmental e-mail that a youth had his legs broken in 1999 by a SVNC resident had not been adequately checked by DCD against police records. These revealed that the allegation was that the youth had been assaulted with a torch and suffered severe bruising to the knees. From evidence it has received the Committee has concluded that this allegation was significantly exaggerated and may have become confused with the more recent allegation.

Finding 26. The three non government Committee members who attended Government briefings on the Bill on May 16 2003 find that DCD relocated a former resident of the SVNC from her Homeswest home as a result of the former resident's assertion that she was the subject of intimidation or harassment by two residents of the SVNC. However, the Committee has not been able to establish whether this alleged intimidation or harassment occurred and there is no evidence to suggest that, if it did, this was to force the resident to return to the SVNC.

Finding 27. The Committee finds that had the three allegations been thoroughly checked, departments would have quickly realised that two of the three allegations were false and would not have used these examples in Government briefings to non-government members on May 16 2003 to justify the Government's proposed action against the SVNC.

Finding 28. The majority of the Committee finds that Robert Bropho exercised control over access to the SVNC both prior to and after the change in management order in October 2002. However no compelling evidence was presented to the Committee that, since the introduction of the October 2002 management order, Robert Bropho or persons under his

direction hindered interviews and reduced the likelihood that disclosures would be made.⁸²³

Finding 29. The majority of the Committee finds that the behaviour of SVNC residents who requested third parties to be present during interviews was indicative of a longstanding mistrust by Aboriginal persons of Government agencies (particularly 'welfare' agencies). It was not a calculated attempt by SVNC management to prevent disclosure of child sexual abuse, substance abuse or domestic violence.

Observation 34. The Committee observes that there was mutual mistrust between government agencies and the SVNC. The SVNCAC and residents of the Lord Street camp were cautious of government initiatives intended to assist them because past experience had indicated that bureaucratic assistance was usually paternalistic, controlling or anathema to their desire for self-determination. Government agencies and their service delivery officers were similarly distrusting of the SVNCAC due to a belief that the political activism of Robert Bropho was diverting the focus from what they saw as the immediate personal needs of women and children at that Community. Robert Bropho's strong leadership, his numerous disputes with Government over Aboriginal heritage issues and his prior actions in rejecting government and other assistance, or accepting assistance only on his terms, reinforced this view.

15.78 Parliamentarians rely upon accurate information on which to make decisions on legislation that comes before them. In the case of the Reserves Bill, as with every other Bill, there was an obligation on Government to make every effort to present facts accurately and truthfully, not coloured by exaggeration or substantive omission. This view is reflected in the sanctions available to each House of Parliament against members who deliberately mislead the House. In the case of the Reserves Bill, the Government asked non-government members to take what was said 'on trust'. This included the allegations that were used for their persuasive value during the Government briefings on the Bill. The Committee's investigation has revealed that only one allegation, in part, was supported by evidence.

SCRUTINY FUNCTION

15.79 One of the principal functions of the Council is to scrutinise legislation put before it by the Government of the day. The Reserves Bill was no ordinary Bill. It removed rights usually available to all, in particular the right to natural justice and to the

⁸²³ However, see findings 3 and 4.

protection of the courts. Members of the Council were placed under considerable pressure to pass the Bill as it was introduced without the scrutiny that such a Bill would usually invoke by reason of its denial of these rights. Indeed, the clear implication from the Government's urgency was that if the Council did not pass the Bill in a form acceptable to the Government, then members who did not support the Bill would be responsible for any resulting adverse consequences.⁸²⁴

- 15.80 Bills that erode or deny rights that are considered fundamental to the egalitarian and democratic principles embraced by Australians should receive more, rather than less, scrutiny. If Parliament is to be called on by the Government to remove from one sector of the community fundamental rights that otherwise continue to apply to all others, then Parliament must be properly and accurately informed of the reasons for doing so. As a minimum, all members of Parliament must be provided with accurate information and be given time to consider that information and to consult with those persons who will be affected by the legislation.

Finding 30. The Committee finds that the Parliament did not receive accurate and complete information in order to assist members to reach a decision on whether or not to support the Bill.

Observation 35. The Committee observes that it is impossible to establish what would have occurred if the Parliament had been provided with accurate and complete information. However, one consequence of the information provided was it may have lead to some members being provided with a misleading impression of the situation at the SVNC.

⁸²⁴ *Parliamentary Debates (Hansard)*, 16/05/03, p.7982 and 25/06/03, p.9172.

CHAPTER 16

VALIDITY ISSUES

- 16.1 One of the issues raised in debate in the Council was whether the Bill was contrary to the *Racial Discrimination Act 1975* (Cth) (RDA).⁸²⁵
- 16.2 In anticipation that such action would occur the Government, prior to proceeding with the Bill, obtained legal advice on whether the Bill transgressed the RDA.⁸²⁶
- 16.3 The Committee has requested a copy of this advice from the Government, but the request has been denied on the grounds of legal professional privilege. Although this privilege does not apply to parliamentary proceedings the Committee has not pressed this request. However, witnesses before the Committee confirmed that this was a matter considered by the Government when exploring and ultimately proceeding with the Bill.⁸²⁷
- 16.4 As the legal issues surrounding the validity of the Bill were relevant to the Government's decision to proceed with the Bill, the Committee explored the legal arguments for and against validity.

FEDERAL COURT ACTION BY BELLA BROPHO

- 16.5 Given the previous court actions that have been instigated by Robert Bropho and a notable success in the High Court of Australia⁸²⁸ it was not surprising that court action would follow the passage of the Bill.
- 16.6 On July 22 2003, Bella Bropho, a daughter of Robert Bropho, commenced an action in the Federal Court of Australia on behalf of the residents of SVNC challenging the validity of the *Reserves (Reserve 43131) Act 2003*.⁸²⁹ The defendants in the action are the State of Western Australia, the AAPA and the Administrator, Barry Jameson. The basis of the challenge is that the *Reserves (Reserve 43131) Act 2003* contravenes sections 9, 10 and 12 of the RDA. If this were the case those parts of the Act that are

⁸²⁵ *Parliamentary Debates (Hansard)*, 16/05/03, p.7971.

⁸²⁶ *Transcript of Evidence*, Eckert, Session 2, 21/08/03, p.8.

⁸²⁷ *Ibid*, p.9; *Transcript of Evidence*, Walsh, Session 1, 21/08/03, p.8.

⁸²⁸ *Bropho v Western Australia* (1990) 171 CLR 1.

⁸²⁹ Federal Court Action W157/2003.

inconsistent with the RDA would be invalid under section 109 of the Federal Constitution.⁸³⁰

SECTIONS 9, 10 AND 12 OF THE RACIAL DISCRIMINATION ACT 1975 (CTH)

- 16.7 The RDA imports into Australian law the International Convention on the Elimination of all Forms of Racial Discrimination (Convention) to which Australia is a signatory.
- 16.8 Section 9 of the RDA prevents discrimination based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of fundamental rights or freedoms.
- 16.9 Section 10 imports article 5 of the Convention, in which parties undertake to guarantee the right to, amongst other things, equal treatment before tribunals and all other organs administering justice.
- 16.10 Section 12 deals with land, housing and accommodation. It prohibits a person from discriminating against a person or class of persons who may be the occupier of any land.
- 16.11 Bella Bropho, on behalf of residents of the Lord Street camp claims that the *Reserves (Reserve 43131) Act 2003* discriminates against the Aboriginal inhabitants of the Reserve by removing from them a property right held in trust for them by the corporation managing the Reserve, the SVNAC.⁸³¹ This right is to manage the Reserve for the benefit of its Aboriginal inhabitants. This beneficial interest was removed by section 4 of the Bill when it was proclaimed on June 12 2004. This revoked the management order that granted management rights to the SVNAC. The residents claim, as the beneficiaries of this trust, that they have been discriminated against because the scheme of the legislation was to target the whole group of Aboriginals living at Reserve 43131, rather than specifically the alleged perpetrators of abuse.
- 16.12 The plaintiff's counsel, Mr Greg McIntyre SC, described the Bill as a classic piece of discrimination by choosing a class that is much broader class than that which is affected by the mischief the Government was seeking to eliminate.⁸³²

⁸³⁰ The *Racial Discrimination Act 1975* (Cth) thwarted the previous Liberal-Coalition Government's attempts to establish a native title regime separate from the Commonwealth scheme. This legislation was found to be in breach of the Act and invalid on the grounds of inconsistency under section 109 of the Constitution. See, *The State of Western Australia v. The Commonwealth*, Matter No. P4 of 1994 *The Wororra Peoples and Anor. v. The State of Western Australia*, Matter No. 147 of 1993 *Teddy Biljabu And Ors v. The State of Western Australia* Matter No. P45 of 1993 F.C. No. 95/010 (1995) EOC 92-687 (extracts), (1995) 69 ALJR 309, (1995) 183 CLR 373 - Collectively known as the Western Australian Native Title Case.

⁸³¹ *Western Australia v Ward; Attorney-General (NT) v Ward; Ningarmara v Northern Territory* [2002] HCA 28, 8/08/02.

⁸³² *Transcript of Evidence*, McIntyre, Session 1, 23/06/04, p.11.

*The way I put it is that, let me assume that there are problems with domestic violence and child molestation within that community. You do not solve that by hitting the whole community. It is the same as saying there is a high incidence of domestic violence in the suburb of Dalkeith; therefore, we will close down the suburb of Dalkeith and move out all the residents.*⁸³³

- 16.13 The Government's answer to the claim is that its actions were objectively reasonable and therefore did not discriminate against the residents of the Community on the basis of race.⁸³⁴ The argument is essentially that the race of the inhabitants is irrelevant to the Government's action and that the Government would have acted in a similar way if the same facts were presented in relation to a community of Chinese, Afghans or Pygmies. The argument requires the Government to present evidence of the alleged abuse to justify its actions, something that the provisions in the Bill expressly avoided in the State jurisdiction by removing the supervisory jurisdiction of the civil courts.
- 16.14 Existing case law indicates that the intention of the legislation is a matter that in the main is not relevant to whether a finding of racial discrimination is made, what is important is the legislation's operative and practical effect.⁸³⁵ The question at law is whether the legislation discriminates against a race in a manner that contravenes sections 9, 10 or 12 of the RDA and not whether the racial discrimination is objectively reasonable. If the court accepts the argument that members of the SVNAC have a beneficial interest in the management of the Reserve and that members are not perpetrators of abuse, it is not difficult to reach a conclusion that these members have been discriminated against. The issue is then whether the Bill's practical effect is discrimination based on race.

WAS THE RESERVES BILL THE 'LEGALLY SAFEST ROUTE'?

- 16.15 It would be somewhat ironic if what was seen as the legally safest route of enacting the Bill may, in the even of a successful legal challenge, turn out to be one that was more fraught than executive action available to the Minister for Lands under the LAA. That Act provided the Minister with a power to revoke a management order if the Minister was of the opinion that it was in the 'public interest' to do so.
- 16.16 Legal authorities indicate that it is extremely difficult to challenge such a ministerial decision other than in circumstances where an improper purpose⁸³⁶ can be proved or where the decision-maker has made a decision that no reasonable decision-maker

⁸³³ *Ibid.*

⁸³⁴ *Ibid.*, p.14.

⁸³⁵ *Mabo v Queensland* (1988) 166 CLR 186 at 230-1 and *Western Australia v Commonwealth (Native Title Act Case)* (1995) 183 CLR 373 at 436-7.

⁸³⁶ *R v Toohey; Ex Parte Northern Land Council* (1981) 56 ALJR 164.

could have made.⁸³⁷ On the assessment of Mr McIntyre SC, if the Minister for Lands had made a decision on the grounds of ‘public interest’ it would have been extremely difficult for the SVNCAC to obtain an interim injunction preventing the removal of residents from the Reserve. The SVNCAC would first have to establish that a serious question needed to be tried by presenting *prima facie* evidence of improper purpose or unreasonableness. The SVNCAC would then also have had to convince the Supreme Court that the balance of convenience favoured the granting of an interim injunction prior to the hearing the substantive merits of the case.⁸³⁸

- 16.17 Injunctions are a discretionary remedy with considerable latitude given to judges to balance various competing interests. In cases of land, if there is little likelihood that the subject matter of the dispute would be destroyed, altered or rights in relation to the land granted to third parties, the balance of convenience would generally not favour the granting of an interim injunction. This view would be strengthened in circumstances where undertakings were given to the court by Government to preserve the property until any legal dispute was concluded.

⁸³⁷ *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223.

⁸³⁸ *Transcript of Evidence, McIntyre, Session 1, 23/06/04, pp.5-6.*

CHAPTER 17

CONCLUSIONS

WAS THE GOVERNMENT'S JUSTIFICATION FOR THE BILL SUPPORTED BY THE EVIDENCE?

17.1 The Government portrayed the SVNC as worse than other urban Aboriginal communities. It argued that the Bill was justified on the following grounds:

- the danger to the women and children living at the Reserve from sexual abuse or substance abuse or domestic violence;
- the difficulties experienced by government departments in gaining access to women and children at the Reserve requiring their services; and
- the failure of the SVNCAC to manage the Reserve in a manner whereby the dangers to women and children could be addressed and so the Reserve could fulfil its role of being “for the use and benefit of the aboriginal inhabitants”.

17.2 The Bill was presented as the only option to bring to an end “...this terrible litany of abuse and violence”,⁸³⁹ and to prevent a repeat of the tragic hanging death that occurred in the case of Susan Taylor.⁸⁴⁰ The Government saw the Bill as the only solution to the perceived problems at the SVNC:

*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.*⁸⁴¹

Danger from sexual or substance abuse or domestic violence

17.3 The evidence provided to the Committee indicates that in some respects the SVNC was not worse than other urban Aboriginal communities, and was in many ways

⁸³⁹ Hon Graham Giffard MLC, *Parliamentary Debates (Hansard)*, 16/05/03, p.7967.

⁸⁴⁰ *Ibid.*

⁸⁴¹ *Ibid.*

better. DCD workers that were in contact with urban Aboriginal communities gave evidence to the Committee that their perception of the incidence of child abuse at the SVNC was no greater than at any other urban Aboriginal community in the metropolitan area.⁸⁴² Local police, in relation to domestic violence and serious assaults, expressed a similar view.⁸⁴³ Solvent abuse was acknowledged by these police to be a problem at the SVNC, as with other Aboriginal communities, and police indicated that the problem was more identified with Midland.⁸⁴⁴ They also gave evidence that SVNC management did not tolerate solvent abuse, provided information to police on suppliers and attempted to engage government assistance to combat the problem. Other than for three truants, Culunga Aboriginal School records indicated that attendance by SVNC children was better than other Aboriginal children.⁸⁴⁵

Access

- 17.4 Access to the Lord Street camp was perceived by government departments to be difficult. The Gordon Inquiry recommended that this be resolved through the negotiation of memoranda of understanding between the SVNCAC and relevant departments.⁸⁴⁶ The Government rejected this recommendation and negotiated a new management order with the SVNCAC. From October 2002, when the management order came into effect, to the date of the Premier's announcement to close the Lord Street camp, SVNC management did not impede physical access to the Reserve. The Directors General acknowledged that the management order had not been in place for a sufficient period to show clear results.⁸⁴⁷
- 17.5 The claim that Robert Bropho controlled interviews of residents was highlighted by one example. This was when a child maltreatment investigation was conducted in the presence of a third party who was requested to be there by the child's aunt. No evidence was presented that indicated that Robert Bropho directed any other person to be present when interviews occurred. In fact the contrary was the case, with the third party claiming that the child's aunt had requested that she be present because of the aunt's fear of 'welfare' agencies.
- 17.6 Access may have been a considerable impediment in the past, as it had been with other metropolitan Aboriginal camps,⁸⁴⁸ but the agency primarily involved with child

⁸⁴² *Private Transcript of Evidence*, Session 1, 12/11/03, p.9.

⁸⁴³ *Transcript of Evidence*, Clarysse, Session 1, 10/09/03, p.8.

⁸⁴⁴ *Transcript of Evidence*, Mumme, Session 1, 3/12/03, p.9.

⁸⁴⁵ Department of Education Services Briefing Note for the Minister for Education and Training - Enrolment and Attendance of Students from SVNC at Culunga Aboriginal Community Independent School dated 20/05/03, p.2.

⁸⁴⁶ Gordon Report, recommendation No.141.

⁸⁴⁷ Draft submission of DGGIG to Cabinet Standing Committee on Social Policy.

⁸⁴⁸ *Transcript of Evidence*, Clarysse, Session 1, 10/09/03, p.4.

protection in that area, DCD Midland Office, had not visited the SVNC for over a year prior to December 2004. Thereafter, on those occasions when DCD did visit, there were a variety of different officers attending. The manner in which these visits commenced with the Community Inspection Audit on December 4 2002 was not conducive to fostering trust to enable successful 'engagement' with the Community. In fact it probably had the opposite effect.

- 17.7 The Committee agrees with the view expressed in the Gordon Report that the "guiding principle, in the interest of sensible relations between government service providers and Aboriginal communities, lies in negotiation, understanding and mutual respect and trust."⁸⁴⁹ These principles were not followed in government dealings with the SVNCAC or residents of the Lord Street camp.
- 17.8 The evidence is that at the time of the closure there was proper access to the Lord Street camp to those government officers who sought access. The request for visitors to the Reserve to attend at the SVNCAC administration office was to facilitate access to residents who tended to move from house to house at the Reserve. The complaints of lack of access came from those agencies that had made no attempt to go there.

Management by the SVNCAC

- 17.9 The SVNCAC cooperated with DOLA and the Minister for Planning and Infrastructure in negotiating the October 2002 management order and in the formulation of its management plan required as part of the management order. Contrary to the evidence given to the Committee and the legal advice to Jane Brazier, the SVNCAC management plan did not require permission to be granted to departmental officers by the Corporation as a precondition to entry onto the Reserve. It was therefore not inconsistent with the management order, but merely expressed long-standing practice in Aboriginal communities. The SVNCAC did not deny physical access to the Reserve by departmental staff from October 2002.
- 17.10 The SVNCAC management plan was criticised by Government for amongst other things, not dealing with the issues of sexual abuse of children, substance abuse or domestic violence. However, the management plan was drafted with the assistance of four senior government officer and the SVNCAC, at its request, was provided with example management plans to follow.⁸⁵⁰ If this omission was identified as a deficiency then it also existed in the precedents given to the Corporation by the Government and could have been rectified if the process had been permitted to continue as planned. It was not rectified because the decision to close the SVNC prematurely ended the process put in place to finalise the management plan. The

⁸⁴⁹ Gordon Report, p.379.

⁸⁵⁰ Mooranoppin Aboriginal Heritage, Culture and Conservation Reserve, Draft Management Plan 2001 and Galena Mining Heritage Area Management Plan, Galena Management Plan Steering Committee, December 2000.

SVNCAC was not made aware of or given any opportunity to comment on any perceived deficiency in its management plan.

- 17.11 In September 2002 the Registrar of Aboriginal Councils and Associations identified the SVNCAC for possible examination after the State Government brought to her attention that an annual general meeting of the members of the Corporation had resolved that all members present be included as members of the Corporation's Governing Committee.⁸⁵¹ This action appears to be contrary to the allegation made by DIA that management of the SVNCAC was characterised by a lack of power sharing.⁸⁵² The Registrar conducted an examination of the SVNCAC in May 2003.
- 17.12 The report of the examination⁸⁵³ identified minor breaches by the Governing Committee of the SVNCAC in respect to its Constitution and the *Aboriginal Councils and Associations Act 1996* (Cth). The Registrar took no action in relation to these minor breaches and the examiner found no evidence of fraud or criminal activity. The examiner received "a high level of cooperation" from the Corporation's accountant and public officer.⁸⁵⁴
- 17.13 The SVNCAC had made great achievements in relation to the provision of culturally acceptable housing, electricity and other infrastructure. Whilst the Committee acknowledges that the Lord Street camp suffered from problems similar to other Aboriginal communities, administratively, it was well run.

Distinguishing feature of SVNC

- 17.14 So what distinguished the SVNC from other urban Aboriginal communities with similar problems? The evidence before the Committee indicates that the SVNC was seen publicly as the litmus test of the Government's resolve in progressing improvements arising from its response to the Gordon Report. The Government's view was that Robert Bropho, as the *de facto* leader of that Community, was an obstacle to Government efforts that it saw as being essential to reduce the incidence of domestic violence, sexual abuse of children and solvent abuse that characterise so many Aboriginal communities.
- 17.15 The SVNC was distinguished from other Aboriginal communities because of:
- the political activism of Mr Robert Bropho;

⁸⁵¹ Minutes of AGM, SVNCAC dated 9/12/01 and letter Office of the Registrar of Aboriginal Corporations to SVNCA dated 16/09/02.

⁸⁵² Submission No 30 from DIA, 8/08/03.

⁸⁵³ Report by Deloitte Touch Tohmatsu dated 16/06/03.

⁸⁵⁴ Letter Deloitte Touch Tohmatsu to Registrar of Aboriginal Corporations dated 16/06/03

- the media publicity given to incidents that occurred at the SVNC, most significantly the death of Susan Taylor, and the subsequent Coronial inquiry into her death;
- the publicising of sex charges against Robert Bropho;
- the allegations raised against Robert Bropho and others during the coronial inquest and the Gordon Inquiry;
- the findings of endemic sexual abuse, substance abuse and domestic violence in many Aboriginal communities by the Gordon Inquiry, an inquiry that was prompted by Susan Taylor's death and the subsequent Coronial inquest;
- the unpopular profile Robert Bropho (and the SVNC) had attracted in the public's mind; and
- the perception of it being a closed community.

17.16 As a result there was a public perception that the Lord Street camp was the focus of the issues of child sex abuse, domestic violence and substance abuse canvassed in the coronial inquest into Susan Taylor's death and the Gordon Inquiry.

17.17 This perception was reflected before the Committee by a number of witnesses with influential positions within government and media, in particular the Director General of DIA, who was inclined to accept unproven allegations and draw inferences adverse to Robert Bropho and the SVNAC.⁸⁵⁵ The public also appeared to have had this inclination. This perception posed a political problem because adverse events at the Lord Street camp were always seen as a failure by Government to address the problem.

CATALYSTS FOR GOVERNMENT ACTION

17.18 The Premier had announced in December 2002 a \$75 million program to combat child abuse and family violence in Aboriginal communities in response to the Gordon Inquiry.⁸⁵⁶ However, the SVNC, the point from which the Gordon Inquiry had emanated, was seen to be still having difficulties sufficient to enable the Directors General of DCD, DIA and the Department of Health to advise the Premier that there was an unacceptable risk to women and children at the SVNC. Their advice was that "nothing had changed".

17.19 The view that there was an unacceptable risk in part arose from unsubstantiated allegations passed on by the journalist Ms Egan. These were identical to those given

⁸⁵⁵ *Transcript of Evidence*, Curry, Session 1, 14/10/04, p.36.

⁸⁵⁶ Premier's Media Statement, 3/12/02.

to the Committee by a witness who said that she had also passed these on to the relevant departments. The allegations raised by Ms Egan and the witness made up the three allegations used as examples presented to non-government members during briefings on the Bill on May 16 2003. The allegations were used because they were seen as the clearest examples of the failure of the management order, management plan and the SVNAC to deal with the supposed danger to women and children residing at the Reserve and as proving that “nothing had changed”. The Committee has concluded that two of the allegations were false and arose from the hearsay of an unreliable source.

- 17.20 These allegations reinforced concerns that had arisen as a result of disclosures made to DCD and/or police in 1999, early 2000, mid 2001 and in February 2003. Three of these disclosures have led to criminal charges against Robert Bropho. The first disclosure referred to incidents that allegedly occurred in the 1970s. Robert Bropho subsequently was acquitted of these charges. The second disclosure referred to incidents that allegedly occurred in the late 1980s. The only contemporary allegation arose from an incident in May 2003, but where the facts on which the charge was based did not surface until well after the Government had made its decision to close the SVNC.
- 17.21 These events were viewed in the context of other events that had occurred at the Lord Street camp. These included the deaths of Susan Taylor in 1999 and Morgan Spratt/Bropho in 2001, each of which resulted in Coronial investigations, and the rape in 2000 of a two and a half year old toddler by two young males affected by alcohol and solvents. Given the recent history of the Lord Street camp, the allegations conveyed by the journalist and the view of her sources that “nothing had changed” there, despite the Gordon Inquiry, appear to have been given considerable weight in the decision-making process leading to the introduction of the Bill.
- 17.22 Another issue that appears to have been given considerable weight by DPC was the concern that the publication of a story by the journalist of fresh allegations of sexual abuse would damage public perception of the Government’s resolve in implementing its \$75 million response to the Gordon Report.⁸⁵⁷
- 17.23 The political decision-making process commenced with a directive by the Premier to his Chief of Staff to chair meetings of Directors General and other senior bureaucrats to find a solution to the problem presented by the SVNC. Many of the participants in these meetings were also involved with DGGIG, which had already deliberated on a draft submission to the Cabinet Standing Committee on Social Policy that was critical of SVNC management. The process from there was predicated and focused on a “solution” rather than determining whether the allegations that had prompted the high level meetings and resulted in the decision to close the SVNC were in fact true.

⁸⁵⁷

Draft submission of DGGIG to Cabinet Standing Committee on Social Policy.

- 17.24 Not only was correct advice not given to the Premier by the Directors General but they failed to investigate or failed to investigate adequately the allegations raised by the journalist. Instead, the priority was to find a political solution to the problem presented by the SVNC. Part of this process involved gathering information on the SVNC to provide to DPC in order to justify Cabinet's decision to proceed with the Bill. This information included "evidence" that has been shown by this Committee's investigation to be either false or significantly exaggerated.
- 17.25 Mr Daube and Ms Brazier in evidence to the Committee were critical of the SVNCAC management plan. This criticism was despite the management plan being based on a template provided by Government and being drafted with the assistance of four senior government officers and did not take into account the fact that the process for finalising the management plan had yet to completed. The SVNCAC cooperated and followed this advice in producing its management plan. The SVNCAC was not given any opportunity to know of or address these criticisms. Yet these deficiencies, whether real or imagined, were used to support an argument that the SVNCAC was not placing sufficient emphasis on the issues of sexual abuse, substance abuse and domestic violence, and as such were used to justify the passage of the Bill.

MEDIA CONSIDERATIONS AND PUBLIC PERCEPTION

- 17.26 The Premier's principal media adviser took a lead role in the discussion of senior bureaucrats to determine the most effective way to achieve the Premier's objective. Despite Mr Murphy's evidence to the contrary, this role was inappropriate. He also liaised with the journalist whose allegations had prompted the action to have her delay publication of her story in exchange for an exclusive story involving the Premier and the SVNC. Mr Murphy expected that the original story would raise new allegations of sexual abuse at the SVNC with a theme that "nothing had changed" despite the Gordon Inquiry.
- 17.27 In many respects Mr Murphy's perception of the SVNC mirrored the perception of the general public. Although the Gordon Inquiry dealt with the broad issue of the adequacy or otherwise of government departments' response to the issue of child abuse, substance abuse and domestic violence in the Aboriginal community generally, it was the SVNC which the public saw as the embodiment of these problems. This perception was perhaps understandable given that the Gordon Inquiry had emanated from the death of Susan Taylor at the SVNC, the remarks of the Coroner in his inquest into her death, the sex charges faced by Robert Bropho and the media reporting of these events.
- 17.28 The reality was, however, that the SVNC was merely a microcosm of the broader Aboriginal community and from the Committee's investigations perhaps better in many ways than other Aboriginal communities. Sue Gordon acknowledged this in her evidence to the Committee. She said:

I would not single out the Swan Valley Nyungah Community. I have just come back from two days in Broome at a Kimberley Aboriginal service health summit. Child sexual abuse is endemic in the Dampier Peninsula. The women were very openly speaking about it. People are speaking about it more now because of the inquiry and because they have taken a stand. However, I would not single out the Swan Valley Nyungah Community. That was just in the media the most because of Mr Bropho and the allegations made against him. There are allegations against a lot of other so-called leaders but they do not get as much publicity. It seems that Robert - or Mr Bropho as I should keep calling him - gets the most publicity.⁸⁵⁸

STRUCTURAL ISSUES - POLITICAL APPOINTEES, PUBLIC SERVANTS, CABINET PROCESS AND MINISTERIAL RESPONSIBILITY

Chief of Staff

- 17.29 The Premier's Chief of staff, Mr Walsh, chaired the meetings of senior bureaucrats who devised and recommended the use of a Reserves Bill and planned for the removal and rehousing of residents. The fact that Mr Wauchope, the Director General of DPC had only a minor involvement, even though DPC was plainly the lead agency, points to an evolving problem.
- 17.30 The Director General of DPC has for some years played little part when the Department takes a coordinating role where action is being taken across departments. He does not take a strategic role for the 'Whole of Government'.
- 17.31 By default, this tends to be done by a political appointee – often a ministerial officer. In the case of the SVNC issue, this was controlled and coordinated by Mr Walsh, who was ostensibly exercising some part of the authority of the Premier. The undertaking of this role is not a new development, and certainly occurred under previous Governments.
- 17.32 The circumstances that led to the introduction and passage of the Bill through the Parliament was a case study in how not to make decisions in Government. The process followed involved a political appointee exercising executive power, or at the least having the ostensible authority to do so, and bypassed the usual departmental and Cabinet procedures designed to enable the relevant Ministers to consider decisions properly, particularly those decisions requiring cross departmental coordination.

⁸⁵⁸ Transcript of Evidence, Gordon, Session 1, 30/06/04, p.7.

The relationship between the Premier and Directors General

- 17.33 The Premier's Strategic Management Council is another mechanism that was popularised in other States before being adopted in Western Australia. It is a very convenient mechanism for a Premier to keep abreast of developments across the Whole of Government. Unlike most Ministerial Councils where Directors General attend, the only Minister present is the Premier.
- 17.34 If such a meeting reaches decisions, it has effectively bypassed the responsible Minister. This is contrary to the principle of responsible government which is based on the proposition that a Minister has both authority and responsibility for what happens within his or her portfolio. There have been other examples of this which have been promoted by the public service, where Bills are presented to Parliament that assign considerable power to administer a proposed Act to the departmental head, without even a power of direction in the Minister. It is hard to see how a Minister can be held responsible when these powers are exercised, without the Minister's having participated in the decision making process.⁸⁵⁹
- 17.35 Processes that circumvent the arguments between equals that takes place in Cabinet, or before Cabinet in the settling of a Cabinet Minute can lead to flawed decisions. In Cabinet each Minister has an area of interest to represent, and an informed view from his or her portfolio's perspective. The pros and cons of a proposition are thoroughly debated in Cabinet before a decision is reached. Anything that shortcuts or bypasses this process undermines it.
- 17.36 There was a further undermining of the process in this case because the Premier raised the position of the SVNC in 'Other Business' at the end of the Strategic Management Council meeting. It would take a degree of courage for a Director General, in front of his or her assembled peers, to tell the Premier that he or she was not able to answer the Premier and needed to check the facts.
- 17.37 The Directors General failed to admit they did not know, but instead advised the Premier that "nothing had changed". Relying on that advice, the Premier then handed over the devising of a solution to another process whose purpose was not to find out the true facts, but to provide a solution to the perceived problem.
- 17.38 From the evidence the Committee has taken, such investigation would have revealed that:
- some of the unsubstantiated anecdotal evidence of incidents attributed to the SVNC or its management had not occurred;

⁸⁵⁹ Burt Commission on Accountability.

- those public servants who sought access to the SVNC were able to engage with the Community; and
- those public servants who failed to engage saw no reason to go there.

17.39 The only obstacle to gaining better relations with the SVNC and its management was the failure of certain departments to attend the Lord Street camp or to seek to engage with its residents. This had not occurred because the relevant departments had not seen the SVNC as having any priority over any other Aboriginal community or interest in their area of responsibility.

The role of the Premier's Department (DPC)

17.40 Premiers have little direct ministerial responsibility compared with other Ministers. They do hold portfolios in their own right, but these usually have a Whole of Government focus or are considered more minor. Even when DPC takes a lead agency role, it is just another department, and action in the various areas has to be carried out by the relevant department that provides the service. Despite this, the public holds the Premier responsible for the portfolios of all his Ministers. While the Premier bears political responsibility for their performance, his principal constitutional power is through Cabinet and through the power to remove and replace Ministers.

17.41 The Premier had the primary policy and coordinating role but little direct responsibility for the implementation of the Gordon Report, even though he had taken a public lead in the matter and was obviously strongly committed to it. His concern therefore, that despite his public commitment to the implementation, the departments had made no progress, is understandable. So too is his concern that the process had achieved so little.

17.42 That was even more understandable from the relevant departments' point of view. On their reading of the Gordon Report, the SVNC was not the focus of the identified problems. In fact, to the extent that Aboriginal problems stemmed from lack of social justice, it can be argued that the SVNC residents had achieved more than most – they had better housing, their children attended school, they achieved a degree of autonomy and self sufficiency and their financial management was sound. With the departments' limited resources, their own views, and the Gordon Report, they could hardly justify starting with the SVNC.

17.43 This was, of course, not the public's view. The public saw the SVNC as the epitome, the litmus test, or the focus of the matters raised in the Gordon Report. They saw the Gordon Report as a response to the Susan Taylor and other SVNC incidents which had attracted media attention. Until the SVNC was 'solved', the problem was seen by many in the public, and in the media, as not having been addressed. DPC was aware

of this perception, as were the departmental heads on DGIGG.⁸⁶⁰ However, this focus on the SVNC at the political and senior management level does not appear to have carried over into action at the local management level.

- 17.44 The role taken by DPC in setting revised priorities and revised timetables for action bypassed normal decision-making processes. It solved the political problem, but, contrary to the public perception, it did not solve the deep-seated human problems exposed in the Gordon Report as afflicting Aboriginal communities around the State, including the SVNC. Those problems will require long-term commitment to programs of the kind initiated in the Government's response to the Gordon Report.
- 17.45 From evidence that the Committee received, the problems of some former residents of the SVNC continue; they just do not receive media attention nor are they identified as originating from the SVNC. The accommodation of some former SVNC residents is of a lesser standard; some are culturally isolated; others are not able to function to a standard of social behaviour expected in the general community; some of their children no longer attend school or have experienced racism in the new schools in which they are now enrolled. This was something that they did not experience in the Aboriginal school that they attended whilst living at the SVNC. Yet the general public appears to believe that the problem has been addressed. Despite the relocation of the former SVNC residents, the question that the Committee put to the Director General of DCD, "Can you guarantee the safety of the women anywhere?" would still get the answer "No".⁸⁶¹
- 17.46 Since the SVNC has been closed, DCD has engaged with several of the former residents, but on a short-term case basis. In some instances cases have been terminated by clients, others by DCD because short-term objectives have been met. Other cases remain open. The need for continuity and long term engagement to improve the lives of all former SVNC residents, or other Aboriginal communities for that matter, have yet to be addressed. This should be a priority of Government.

Recommendations for change

- 17.47 The Committee recommends changes in the structure and procedure for decision making at the highest level of Government. The following suggestions are put forward in light of the flawed decision-making that lead to the decision to close the SVNC.

⁸⁶⁰ DGGIG draft submission to the Cabinet Standing Committee on Social Policy.

⁸⁶¹ *Transcript of Evidence*, Brazier, Session 3, 18/08/03, p.12.

Recommendation 1: The majority of the Committee recommends that the Ministerial Chiefs of Staff and other Ministerial staff not chair meetings of public servants or be placed in a position where their views may be interpreted as the views of their Minister – to be acted on as if the Minister were present and had made that direction. Chiefs of Staff should be briefed as to the effect of Section 74 of the *Public Sector Management Act 1994* and on the dangers of by-passing the normal constitutional processes of a responsible government.

Recommendation 2: The majority of the Committee recommends that it is not satisfactory, in light of the prohibition contained in section 74 of the *Public Sector Management Act 1994*, for the management of the Whole of Government role of the Premier to fall by default to a Ministerial Officer. The Committee recommends that the Department of Premier and Cabinet address this structural problem.

Recommendation 3: The majority of the Committee recommends that, if the Premier holds meetings with Directors General in the absence of their Ministers, such meetings be confined to the provision of information. If the Premier intends that decisions are to be made during meetings with Directors General, the relevant Ministers responsible for the administration of the affected departments should be present.

Recommendation 4: The Committee notes that Cabinet has a 10-day rule that is intended to prevent late business being considered but that the Strategic Management Council meetings do not. The majority of the Committee recommends that the Department of Premier and Cabinet consider a similar process relating to late business items at Strategic Management Council meetings.

The role of Parliament

17.48 The manner in which the Bill was passed could leave both Houses of Parliament open to criticism that they abrogated their responsibilities to scrutinise the Bill. The Leader of the Opposition in the Assembly was given a copy of the Bill only two and a half-hours before the Bill was debated. No time was allowed to test the Government's justification for its proposed action or to consider the legal and moral implications of the Bill's provisions. Debate in the Assembly was curtailed in an attempt to have the Bill considered by the Council that same day. The Opposition in the Assembly acquiesced on grounds that the Bill would be properly scrutinised in the Council.

- 17.49 As it turned out, the Bill was not debated in the Council until the next day. In the interim, members of the non-government parties were briefed on the Bill and prepared amendments to eliminate some of what they saw as the more controversial and extraordinary provisions denying the SVNAC and residents natural justice and access to the courts for redress of grievances. When those amendments were passed in the Council, media publicity focused upon an apparent disagreement between Opposition members in the Assembly who had agreed to the Bill without amendment and their colleagues in the Council who passed it only with amendment.
- 17.50 The acquiescence by the Opposition in the Assembly that the Bill be declared an urgent Bill meant that the second reading debate could proceed immediately and without the usual three week adjournment required under the Assembly's Standing Orders.⁸⁶² The Opposition in the Assembly did not dissent when the Government sought the leave of the Assembly to third read the Bill and pass it that afternoon.⁸⁶³ In the Council, there is no mechanism to deal with Bills declared by the Government to be 'urgent'. In this case the Council's Standing Orders⁸⁶⁴ were suspended on three occasions to enable the Bill and the proposed amendments to be dealt with on one day - May 16 2003.⁸⁶⁵
- 17.51 In the Council, the Greens (WA) stood alone in opposing these suspensions. Had the usual three week adjournment in the Assembly applied and the Council's Standing Orders not been suspended, members of both Houses and of all political parties would have had time to perform their duty to carefully scrutinise the Bill. This delay would have provided an opportunity to gather information, test the Government's unsubstantiated evidence that there was imminent danger of a repeat of the Susan Taylor tragedy, and to consider the consequences of the more draconian provisions in the Bill. By altering their usual processes in dealing with proposed legislation, the two Houses of Parliament bypassed the principles and practices of the legislative process that have evolved to ensure that any law passed meets the constitutional obligation "to make laws for the peace, order and good Government of the" State.⁸⁶⁶ In this respect it could be argued that Parliament abrogated its lawful responsibilities.
- 17.52 In the light of the last observation the Committee considers that there should be some amendment to Council's Standing Orders that might put some brake on their suspension. There are precedents for this. No measure would provide an absolute assurance, and it may not have resulted in a different result in this instance, but such checks and balances in the legislative process may cause members to pause and

⁸⁶² Standing Order 168(1).

⁸⁶³ One dissenting voice would have resulted in the Bill not being Third read that day.

⁸⁶⁴ In this context this also includes the Council's Sessional Orders in place on 16/05/03.

⁸⁶⁵ This requires an absolute majority of the 34 Council Members - 18 votes.

⁸⁶⁶ Section 2, *Constitution Act 1889*.

consider the matters they should be considering when a suspension of standing orders is proposed.

- 17.53 The Committee recommends that there be an amendment to the Council Standing Orders to ensure that, before a suspension of Standing Orders in order to pass a Bill of this nature in the one day is permitted, there be a process involving a decision by the President. The Committee recommends an amendment in the following terms:

Recommendation 5: The majority of the Committee recommends that the Legislative Council Standing Orders be amended as follows:

“Any motion to suspend Standing Orders to enable passage of a Bill shall be subject to the provision that any such suspension is only until such time as a member shall raise an objection under this Standing Order. Where pursuant to this Standing Order a member raises an objection that the Bill by its provisions–

- (a) imposes a restriction on the rights of the individual that is excessive and unusual;**
- (b) deprives people of rights without compensation; or**
- (c) decides a factual matter against an individual without that individual having an opportunity to be heard,**

such order shall terminate and cease to have effect and the President shall consider whether the Bill does any of those things, and if the President forms that opinion shall not permit any further motion for suspension except by leave of the House.”

PERFORMANCE OF SENIOR BUREAUCRATS

- 17.54 The Committee is very concerned about the performance of two departments in these events, DCD and DIA. There appears to have been a serious disjunction between what local service delivery officers knew and what their senior executives assumed. Lines of communication and coordination at all levels appear to have been seriously flawed, both within departments and among agencies.
- 17.55 The result was that in respect to the SVNC, these two departments failed to give proper advice to the Government. This inquiry has demonstrated, in this particular case, that the public could have little confidence in the performance of these two departments.

- 17.56 The public rightly expects that advice given at the most senior level is based on a proper process of reporting and information-gathering and gives faith to any pronouncements in the belief such process exists. This inquiry has demonstrated that, in this particular case, this process did not exist. This is clearly the responsibility of the Directors General especially given their role as direct advisers to ministers and Cabinet. It is also essential if they are to lead their departments.
- 17.57 The Committee is also concerned about the performance of the Director General of Health, who showed from his evidence that he appeared to have no knowledge of what was happening at the SVNC or at the local level.
- 17.58 The Committee is concerned that the communication problems outlined above may be widespread.

SUMMARY

- 17.59 This legislation came about, as with many events, as a result of the concatenation of events, many of which may have occurred before without serious consequence. It is only when they have come together that they lead to a significant result.
- 17.60 In this case, the series of events arose against a background of many years of departments being locked into dealing with problems on a day-to-day basis, acting in response to incidents as they arose, rather than seeking to step outside and plan strategically and act pro-actively. It is not the role of the Committee to seek to explain why that is the case, nor to suggest remedies for the lethargy that is often found in bureaucracies, nor to try to ascertain who or what is to blame for this lethargy.
- 17.61 However, this lethargy is an essential factor, without which the particular events would not have occurred. What the Committee has sought to do is to ascertain the steps in the decision-making process and the facts which were the basis for these decisions, to determine whether that process could have been conducted better and whether there were mistakes along the way.
- 17.62 It is always easier to identify mistakes in hindsight, and the Committee recognises that these can occur with even the best of intentions, the highest of skills and the greatest of care. However, this process took place with considerable haste, in which normal processes were bypassed. This haste was an invitation for error to occur. One lesson that can be learned from this is that the by-passing of standard procedures which are put in place to avoid error, no matter how well intentioned it might be, is more than likely to lead to the sorts of errors that occurred in this case.
- 17.63 As it has turned out, two of the three examples used by the Government to justify the departure from these procedures were false and came from a persistently false origin which even a minor inquiry would have disclosed as unreliable. In addition, there were a number of people who had axes to grind who seized the opportunity, and

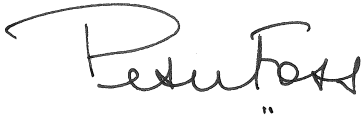
others who failed to show strength when they should have done so. Add this to the errors that occurred and a flawed case was put to Parliament.

- 17.64 In saying that, the Committee does not intend to play down the tragedy of family and child abuse that the Gordon Report identified as endemic among Aboriginal people. The Committee agrees with the assessment of the police that the SVNC was no worse than any other, and that there are probably worse Aboriginal communities. Other evidence given to the Committee supported this view.⁸⁶⁷
- 17.65 As a consequence of the matters that distinguished the SVNC from other Aboriginal communities discussed above, the public perceived that the Lord Street camp was the focus of the issues of child sex abuse, domestic violence and substance abuse. Media publication of adverse incidents that occurred at the SVNC were a political problem because they were seen by the public as a failure by Government to address these issues not only at the SVNC but in the broader Aboriginal community. A significant suicide rate in other Aboriginal communities is described in the media as “an epidemic”, but does not attract the same public attention as a single incident at the SVNC.
- 17.66 The allegations conveyed by Colleen Egan to the effect that “nothing had changed” since the Gordon Report and the mistaken belief that she would publish a story raising specific allegations would have perpetuated this perception. What is clear from the Committee’s inquiry is that what was needed was a far more fundamental and State-wide approach addressing all of the socio-economic disadvantages of Aboriginal people.
- 17.67 By removing the residents of the Lord Street camp, this perception of Government failure was addressed and the Government was seen to have been taking firm action against a principal ‘offender’. However, the closure action did not resolve the problems for the former residents of the SVNC. If events occur now, they do not lead to media headlines, but they result in a victim nonetheless. If anything, their problems are worse.
- 17.68 It can be argued that SVNC residents were more fortunate than many fringe-dwellers in our society. They had housing of a significantly better standard than most. The majority of their children had a good record of school attendance, they had other facilities that were better than generally available, they had sound financial management and they had better access to many government services such as transport and medical care. These they have lost. Their children have lost their school attendance record, they no longer have a place to go when they fail in the wider society and as a group they have been scattered. No matter that there were

⁸⁶⁷ Service delivery officers said the risk of child abuse etc was no greater at SVNC than at the other three urban Aboriginal communities. Sue Gordon told the Committee that child sex abuse was endemic in the Dampier Peninsula.

dysfunctional aspects to their community, they remain dysfunctional, but now are separated from a very important element of Aboriginal culture - communal living and its associated support structures.

- 17.69 They have also been dispossessed of their land and it is historically obvious that much of the dysfunction in Aboriginal society has occurred through this displacement and the dispatch of Aboriginal people to the margins of our society.



Hon Peter Foss QC MLC
Chairman
November 18 2004



"Of course our only thought is for them, living in some draughty old tent!"

APPENDIX 1
STAKEHOLDERS TO WHOM THE COMMITTEE WROTE

APPENDIX 1

STAKEHOLDERS TO WHOM THE COMMITTEE WROTE

NAME	ORGANISATION	DATE
Mr Barry Matthews Commissioner	Western Australian Police Service	July 9 2003
Mr Geoff Clarke Chairman	Aboriginal and Torres Strait Islander Commission (ATSIC)	July 9 2003
Mr Richard Curry Director General	Department of Indigenous Affairs	July 9 2003
Mr Dennis Eggington Chief Executive Officer	Aboriginal Legal Service of Western Australia	July 9 2003
Ms Jane Brazier Director General	Department for Community Development	July 9 2003
Mr Mike Daube Director General	Department of Health	July 9 2003
Mr Greg Joyce Director General	Department of Housing and Works	July 9 2003
Mr Graham Searle Acting Chief Executive	Department of Land Information	July 9 2003
Ms Tina Klein Mayor	Town of Bassendean	July 9 2003
Mr Bevan Carter	Citizen	July 9 2003
Mr Charlie Gregorini OAM JP Mayor	City of Swan	July 9 2003
Mr David Hatt Chief Policy Advisor	Department of the Premier and Cabinet	July 9 2003
Mr Gordon Cole Chairperson	ATSIC Perth Noongar Regional Council	July 9 2003
Mr Farley Garlett ATSIC Regional Councillor for the Metro and South West	ATSIC	July 9 2003
Mr Darren Farmer ATSIC Regional Councillor for the South East Zone	ATSIC	July 9 2003
Mr Terry Whitby ATSIC Regional Councillor for the Central Zone	ATSIC	July 9 July 9 20032003
Mr Ian Trust ATSIC Western Australian	ATSIC	July 9 2003

NAME	ORGANISATION	DATE
Commissioner		
Ms Gail Beck Perth Noongar Regional Councillor	ATSIC	July 9 2003
Ms Vicki Bluton Perth Noongar Regional Councillor	ATSIC	July 9 2003
Mr Warren Davis Perth Noongar Regional Councillor	ATSIC	July 9 2003
Mr Terry Garlett Perth Noongar Regional Councillor	ATSIC	July 9 2003
Mr Charles Kickett Perth Noongar Regional Councillor	ATSIC	July 9 2003
Ms Donna Kickett Perth Noongar Regional Councillor	ATSIC	July 9 2003
Mr John Perry Perth Noongar Regional Councillor	ATSIC	July 9 2003
Mr Spencer Riley Perth Noongar Regional Councillor	ATSIC	July 9 2003
Mr Adrian Ugle Perth Noongar Regional Councillor	ATSIC	July 9 2003
Mr Eric Wynne Perth Noongar Regional Councillor	ATSIC	July 9 2003
Mr Murray Yarran Perth Noongar Regional Councillor	ATSIC	July 9 2003
Her Worship Mrs Susan Gordon AM Magistrate	Children's Court of Western Australia	July 9 2003
Hon Kay Hallahan AM		July 9 2003
Mr Darrell Henry	Yorgum Aboriginal Counselling Service	July 9 2003
Swan Valley Noongar Community		July 9 2003

APPENDIX 2
WRITTEN SUBMISSIONS RECEIVED

APPENDIX 2

WRITTEN SUBMISSIONS RECEIVED

NAME	ORGANISATION	DATE	No.
Mr Bevan Carter	Citizen	July 23 2003	1
Ms Lesley Barker	Citizen	July 24 2003	2
Mrs Mary Blair	Citizen	July 24 2003	3
Intentionally left blank			4
Mr Stuart Sherlock	Citizen	July 27 2003	5
Ms Lynda Nutter	Citizen	July 28 2003	6
Sir Ronald Wilson	Citizen	July 31 2003	7
Sister Veronica Brady	Citizen	Undated	8
Mr Bevan Carter	Citizen	August 3 2003	9
Mr Robert Bropho and Ms Bella Bropho	Swan Valley Nyungah Community	August 3 2003	10
Ms Jennifer Catalano	Citizen	August 4 2003	11
Mr Stan Pelczynski	Action for Aboriginal Rights	August 4 2003	12
Ms Sharon Davies	Citizen	August 5 2003	13
Ms Joy Thom	Indigenous Concerns Committee, The Religious Society of Friends	August 5 2003	14
Mr Robert Bropho	Swan Valley Nyungah Community	August 5 2003	15
Mr Peter David Chief Executive Officer	Noongar Land Council	August 6 2003	16
Ms Carolyn Tan	Citizen	August 6 2003	17

NAME	ORGANISATION	DATE	No.
Mr Neil Gray	Citizen	August 6 2003	18
Ms Astrid Herlihy	Citizen	August 6 2003	19
Mr Yaluritja - Clarrie Isaacs JP	Citizen	August 7 2003	20
Mr Mike Daube Director General	Department of Health	August 7 2003	21
Mr Greg Joyce Director General	Department of Housing and Works	August 7 2003	22
Sister Bernardine Daly AM and Ms Bernadette Kennedy	Sister of Mercy and Voluntary Housing Advocate	August 8 2003	23
Sister Eileen Tinning	Lockridge Centre, Society of St. Vincent de Paul	August 8 2003	24
Ms Sophie Davidson	Citizen	August 8 2003	25
Mr Greg Stratton	Citizen	August 8 2003	26
Ms Elena Jeffreys Convenor	Perth Greens Regional Council	August 8 2003	27
Mr Murray Anderson	Authorized Representative of the Swan Valley Nyungah Community	August 8 2003	28
Ms Jane Brazier Director General	Department for Community Development	August 8 2003	29
Ms Carolyn Petroboni Legal Officer	Department of Indigenous Affairs	August 8 2003	30
Mrs Margaret Jeffery	Citizen	August 8 2003	31
Mr Geoff Clark Chairman	Aboriginal and Torres Strait Islander Commission	August 12 2003	32

APPENDIX 3

WITNESSES WHO APPEARED BEFORE THE COMMITTEE IN PUBLIC

APPENDIX 3
WITNESSES WHO APPEARED BEFORE THE COMMITTEE IN
PUBLIC

Name	Organisation	Date
Hon Kim Chance MLC	Leader of the Government in the Legislative Council	July 30 2003
Mr Richard Curry Director General	Department of Indigenous Affairs	August 18 2003
Ms Jane Brazier Director General	Department for Community Development	August 18 2003
Mr Lex McCulloch Executive Director Community Development and Statewide Services	Department for Community Development	August 18 2003
Mr Sean Walsh Chief of Staff	Premier's Office	August 21 2003
Ms Lynsey Warbey Senior Policy Officer	Department of the Premier and Cabinet	August 21 2003
Ms Sandra Eckert Legal Officer	Department for Planning and Infrastructure, Legislative and Legal Services	August 21 2003
Mr Richard Hooker Legal Counsel	Barrister, (formerly) Counsel Assisting the Gordon Inquiry	August 21 2003
Mr Jim Clarysse, Sergeant	Supervisor, Kiara Police Station, Western Australian Police Service	September 10 2003
Mr David Pedler A/Assistant Director Regional Management	Department of Indigenous Affairs	September 10 2003

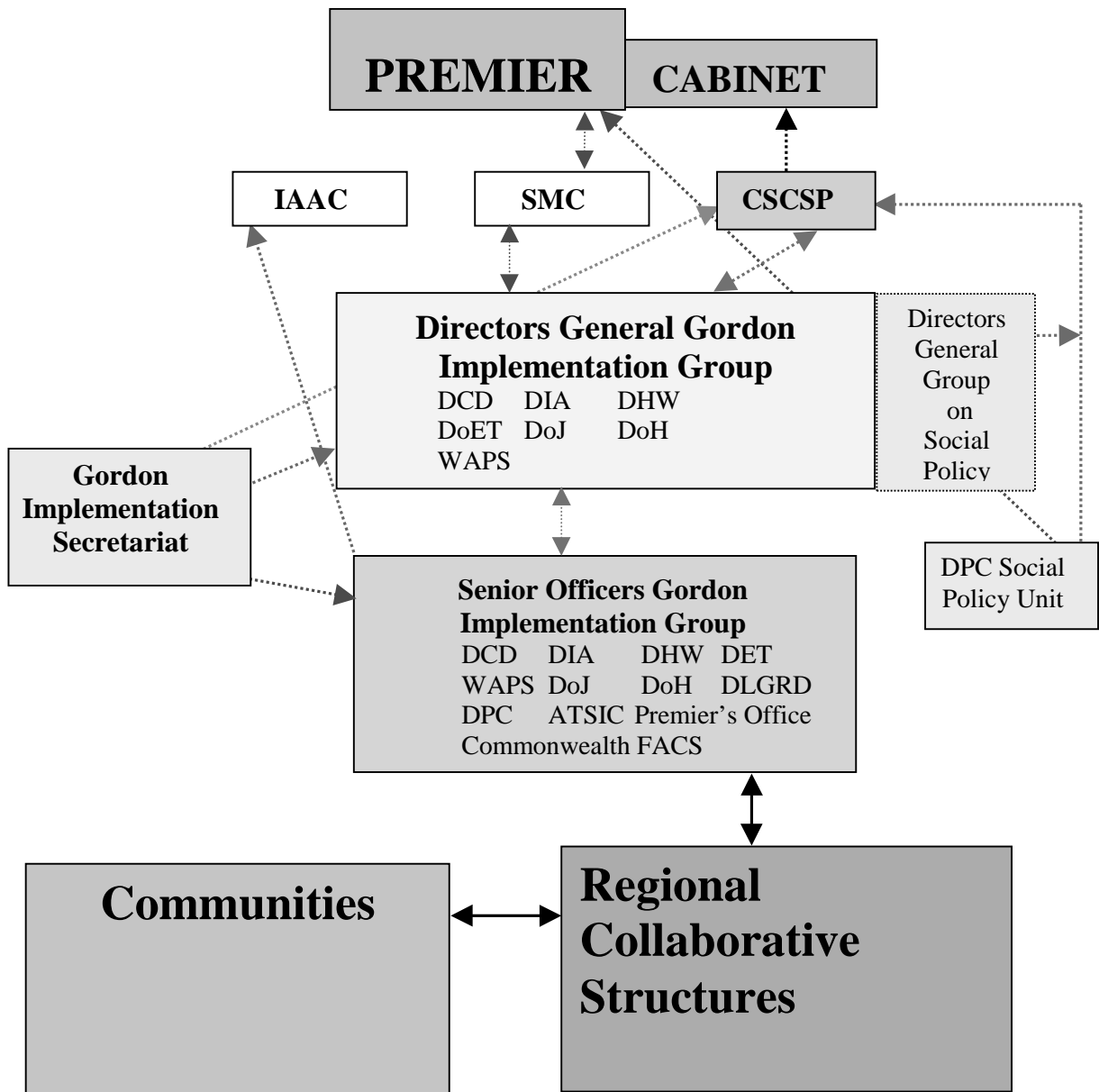
Mr Mike Daube Director General	Department of Health	September 17 2003
Dr Charles Douglas Director	East Metropolitan Population Health Unit, Department of Health	September 17 2003
Ms Angela Corrigan Manager	East Metropolitan Population Health Unit, Department of Health	September 17 2003
Mr Kieran Murphy Strategic Management Adviser	Premier's Office	September 17 2003
Mr Grahame Searle Acting Chief Executive Officer	Department of Land Information	September 25 2003
Mr Greg Joyce Director General	Department of Housing and Works	September 25 2003
Mr Robert Thomas General Manager Housing and Facilities Management	Department of Housing and Works	September 25 2003
Mr Michael Gooda State Manager	Aboriginal and Torres Strait Islander Services, Western Australia	October 22 2003
Mr Barry Jameson Chartered Accountant	Partner, Thomas Noble and Russell	October 22 2003
Ms Colleen Egan Journalist	<i>The Australian</i> and <i>Sunday Times</i>	November 12 2003
Mr Robert Mumme Inspector	Western Australian Police Service	December 3 2003
Mr Robert Bropho Spokesperson	Swan Valley Nyungah Community	December 11 2003
Mrs Margaret Jeffery Secretary and Office Manager	Swan Valley Nyungah Community	December 11 2003
Ms Sharon Davies	Swan Valley Nyungah Community	December 11 2003

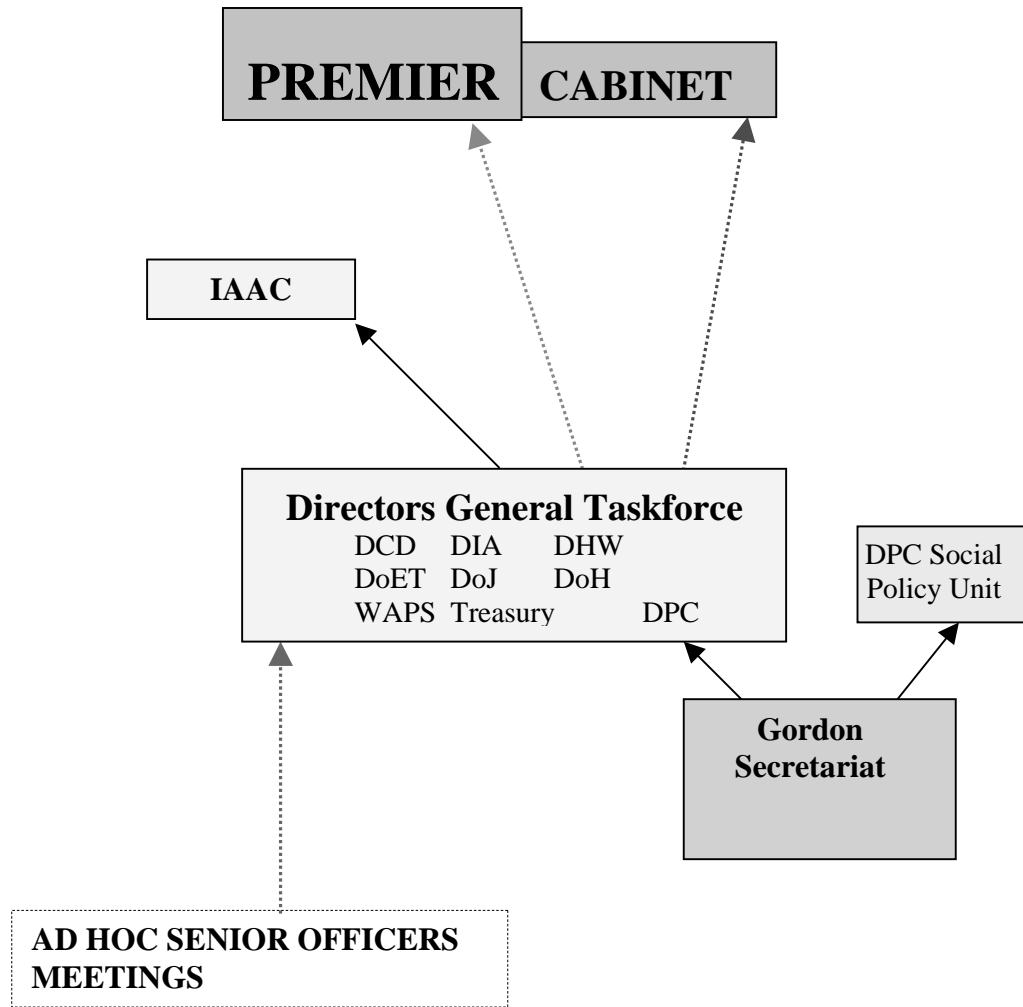
Researcher, Assistant to Land and Culture Worker		
Mr Greg McIntyre Legal Practitioner	John Toohey Chambers	June 23 2004
Her Worship Mrs Susan Gordon, Magistrate	Perth's Children's Court	June 30 2004

APPENDIX 4
ACROSS GOVERNMENT COLLABORATIVE MODEL AND REPORTING
STRUCTURE AND DIRECTORS GENERAL TASKFORCE RESPONSE
PREPARATION STRUCTURE

APPENDIX 4

ACROSS GOVERNMENT COLLABORATIVE MODEL AND REPORTING STRUCTURE AND DIRECTORS GENERAL TASKFORCE RESPONSE PREPARATION STRUCTURE





APPENDIX 5
RESERVES (RESERVE 43131) BILL 2003 AS AMENDED BY THE
LEGISLATIVE COUNCIL

APPENDIX 5
RESERVES (RESERVE 43131) BILL 2003 AS AMENDED BY THE
LEGISLATIVE COUNCIL

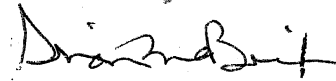
Western Australia

Reserves (Reserve 43131) Bill 2003

CONTENTS

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3.	Definitions	2
4.	Revocation of management order no. I262262 and effect	2
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I certify that this fair print is in accordance with the Bill, as agreed to by the Committee of the Whole Council and reported.



Chairman of Committee
16/5/2003

Western Australia

LEGISLATIVE ASSEMBLY

Reserves (Reserve 43131) Bill 2003

A Bill for

An Act to provide for the care, control and management of Reserve 43131 in the Swan Valley and for related matters.

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Reserves (Reserve 43131) Act 2003*.

1/2

(2) This Act expires 12 months after it comes into operation.

Reserves (Reserve 43131) Bill 2003

s. 2

2. Commencement

This Act comes into operation on the day on which it receives the Royal Assent.

3. Definitions

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In this Act —

“**administrator**” has the meaning given to that term in section 7(1);

10

“**Authority**” means The Aboriginal Affairs Planning Authority referred to in the *Aboriginal Affairs Planning Authority Act 1972* section 8;

“**LAA**” means *Land Administration Act 1997*;

15

“**LAA Minister**” has the meaning given to that term in the LAA section 3(1);

“**management order no. I262262**” means the management order by which, under the LAA section 46(1), the care, control and management of the reserve were placed with the Swan Valley Nyungah Community Aboriginal Corporation on 11 October 2002;

20

“**police officer**” means a person appointed under Part I of the *Police Act 1892* to be a member of the Police Force of Western Australia;

25

“**the reserve**” means class C reserve no. 43131 comprising 8.8767 ha of Crown land in the Swan Valley that is reserved under the LAA section 41 for the use and benefit of Aboriginal inhabitants.

4. Revocation of management order no. I262262 and effect

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(1) Management order no. I262262 is revoked by force of this Act. 3/4

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(2) The revocation, under subsection (1), of management order no. I262262 has effect as if it were a revocation of a management order under the LAA section 50(2).

page 2

In addition to the circumstances set out in section 50(2) of the LAA,

3/4
floor

may be amended by the Minister from time to time as the Minister considers appropriate

LAA

Reserves (Reserve 43131) Bill 2003**s. 5****5. ~~Placing of care, control and management of the reserve and effect~~** 5/5

- 5 (1) The care, control and management of the reserve are, by force of this Act, placed with the Authority for the same purpose as that for which the relevant Crown land is reserved and for purposes ancillary or beneficial to that purpose.
- (2) The placing, under subsection (1), of the care, control and management of the reserve has effect as if it were done under the LAA section 46(1).
- 10 (3) The LAA Minister may by order subject the care, control and management of the reserve to such conditions as the LAA Minister specifies and such an order has effect as if it were an order as defined in the LAA section 3(1).
- 15 (4) A reference in the LAA to a management order is, in relation to the reserve during such time as the care, control and management of the reserve remain placed with the Authority (either solely or jointly), a reference to the effect of subsection (1) and any order under subsection (3).
- (5) To avoid doubt, nothing in this Act prevents —
- 20 (a) the revocation, under the LAA section 50, of the effect of subsection (1); or
- (b) the taking of any other action under the LAA or any other written law in relation to the reserve, or the care, control and management of the reserve,
- 25 without the need for a further Act.

6. ~~Registrar to record certain matters~~ 6/6

~~The Registrar of Titles is to take such measures as are necessary to record the effects of sections 4(1) and 5(1) in the Register as defined in the *Transfer of Land Act 1893*.~~

page 3

- 7/7 floor (1) The powers conferred by this section may be exercised by the Minister in addition to any other powers that the Minister may exercise.
- (2) The Minister may in writing appoint the Authority as administrator of the reserve in order to secure compliance with the terms of the management order.

Reserves (Reserve 43131) Bill 2003

s. 7

7. Additional powers in relation to care, control and management

7/7 floor

(1) In this section —

“administrator” means —

8/7

5

- (a) a person engaged under subsection (2)(a); or
- (b) an officer nominated under subsection (2)(b).

(2) The Authority may —

- (a) engage a person under a contract for services; or
- (b) nominate an officer referred to in the *Aboriginal Affairs Planning Authority Act 1972* section 15(1),

10

to enable the Authority to perform effectively its functions in relation to the reserve.

(3) The administrator may —

15

- (a) direct a person not to enter the reserve during a period of time specified in the direction or until such time as the direction is revoked;
- (b) direct a person to leave the reserve;
- (c) with such assistants as the administrator thinks are necessary —
 - (i) prevent a person from entering the reserve contrary to a direction under paragraph (a);
 - (ii) remove a person from the reserve if the person does not comply with a direction under paragraph (a) or (b).

20

25

(4) A direction under subsection (3)(a) or (b) may be oral or in writing and must be given to the person who is the subject of the direction before the exercise of a power under subsection (3)(c) or (7).

30

(5) 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,

page 4

8/7
clerical

(a) the Authority and except for the purposes of subsection (4)

Reserves (Reserve 43131) Bill 2003**s. 8**

or the holder of an office, specified in the order, to exercise any power set out in subsection (3).

(6) If —

- 5 (a) there is no administrator and a person has not been authorised under subsection (5); or
- (b) the land that is the subject of the reserve at the commencement of this Act is no longer a reserve as defined in the LAA section 3(1),

10 the LAA Minister may exercise, in relation to the land, any power set out in subsection (3).

(7) A police officer may —

- 15 (a) prevent a person from entering the reserve contrary to a direction under subsection (3)(a);
- (b) remove a person from the reserve if the person does not comply with a direction under subsection (3)(a) or (b).

(8) The powers that a person may exercise under this section are in addition to, and do not derogate from, the powers that the person has under any other law.

20 (9) A person who may exercise a power under subsection (3)(c) or (7) may use such reasonable force as is necessary for the purpose of exercising the power.

25 (10) A power may be exercised under this section in relation to the land that is the subject of the reserve even though a person has a legal or equitable right or interest in the land and whether or not the land is a reserve as defined in the LAA section 3(1) at any particular time.

~~8. Exclusion of rules of natural justice~~

30 ~~The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to a direction under section 7(3)(a) or (b).~~

9/8

page 5

Reserves (Reserve 43131) Bill 2003

s. 9

10 | 9

9. Nature of discretion

- (1) A discretion that a person has for the purposes of section 7(3) is absolute and the person is not required to give reasons for how the discretion is exercised.
- 5 (2) A person is not entitled, because of anything in this Act or anything done by another person, to expect that a discretion referred to in subsection (1) will be exercised in a particular way.

11 | 10

10. Reasons

10 A person who gives a direction under section 7(3)(a) or (b) is not required to give reasons in relation to the direction, but if the person thinks that it would be in the public interest to disclose any or all of the reasons, the person may do so.

12 | 11

11. Immunity from judicial supervision

15 No writ of certiorari, mandamus, or prohibition, or other prerogative writ, is to issue and no declaratory judgment or injunction is to be given or granted, in respect of —

- (a) any decision made or purporting to be made under section 7; or
- 20 (b) anything else done or purporting to have been done under section 7.

12. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith in the performance or purported performance of a function under this Act.
- 25 (2) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).

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final

page 6

- (3) In the event that any —
 - (a) amendment of the management order; or
 - (b) appointment of any administrator,

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is declared invalid, then all acts carried out prior to the declaration shall be deemed to be valid and effectual as if the amendment or appointment had been validly made.

Reserves (Reserve 43131) Bill 2003

s. 12

- 5
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
 - (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.
-