

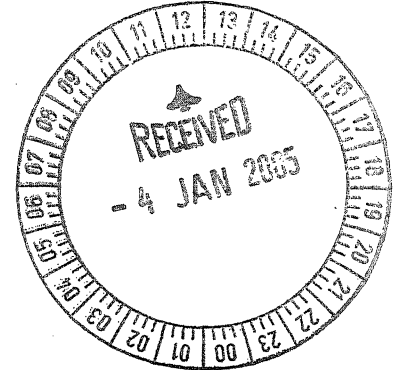


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24 December 2004

Ms Mia Betjeman  
Clerk Assistant (Committees)  
Parliament House  
PERTH WA 6000



Dear Ms Betjeman

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

I refer to the Report of the Select Committee on the Reserves (Reserve 43131) Bill 2003 (the Committee) entitled *Report of the Select Committee on Reserves (Reserve 43131) Bill 2003 in Relation to the Reserves (Reserve 43131) Bill 2003* (the Report) which made a number of findings and observations that culminated in five recommendations.

I also note your correspondence dated 22 November 2004 regarding the application of Legislative Council Standing Order 337.

I do not propose to address the findings and observations made by the Committee, many of which I consider partially or wholly without basis, as these have to a large extent been addressed in the Minority Report of Hon Jon Ford MLC and Hon Louise Pratt MLC. Rather this response addresses recommendations 1 to 4 in the Report. Recommendation 5 concerns the Standing Orders of the Legislative Council, this is a matter for the Presiding Officer and I do not propose to make any comment in that regard.

**Recommendations 1 and 2**

**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 the Premier and Cabinet address this structural problem.

Part 4 of the *Public Sector Management Act 1994* (the PSM Act) sets out the statutory basis for the engagement and functions of officers who assist political officeholders. Section 74 of the PSM Act, which falls within Part 4, is entitled "Relationship between ministerial officers, etc. and employees employed in departments or organisations".

Section 74(1) of the PSM Act, which was not quoted in the Report, provides for a written arrangement to outline the manner and circumstances in which dealings and communications occur between ministerial officers and employees in a department within the Minister's responsibility. Section 74(2) of the PSM Act provides that a ministerial officer shall not, otherwise than with the *agreement of the employing authority* (emphasis added) of the department or organisation concerned, direct an employee of that department "in relation to the manner in which that employee is to perform the functions of his office, post or position...".

Indeed, it is clear that section 74 of the PSM Act does not prohibit interaction between the Minister's staff, including his Chief of Staff, and public officers nor, more particularly, does it prohibit a ministerial officer chairing a meeting of public officers as seems to be contemplated by Recommendation 2. On the contrary, the section contemplates that there will both "communication" and "dealings" and simply requires that such interaction be guided by agreements and written arrangements.

It is through the normal business of Government that Ministerial officers, from time to time, will chair meetings which include both public service and Ministerial officers. This type of interaction is contemplated by the PSM Act, and section 74 of that Act stipulates how those arrangements are to be made, rather than *prohibiting* them as is the Committee's view.

I also note that Recommendation 1 recommends that ministerial officers be briefed on the effects of section 74 of the PSM Act. This already occurs as part of the induction process for ministerial officers and is contained in the ministerial office handbook.

### **Recommendation 3**

**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 affected departments should be present.

Section 10 of the PSM Act describes the functions of the Minister for Public Sector Management as *to promote the overall effectiveness and efficiency of the Public Sector*. In the dual roles of Premier and Minister for Public Sector Management, I have a direct role in working with Directors General to ensure the overall effectiveness and efficiency of the Public Sector (section 10 of the PSM Act).

More particularly the Strategic Management Council was formed on the basis of recommendation 20 of the Machinery of Government Taskforce to specifically:

- work with the Government to develop and communicate strategic policy and planning priorities for the State;

- consider and propose actions to improve the operations of the public sector and;
- assist in coordinating and integrating services provision across portfolios (Machinery of Government Taskforce, *Government Structure for Better Results*, p v).

This recommendation recognizes that the resolution of intractable problems, such as those concerning the Swan Valley Nyungah Community (SVNC), often requires multi-agency solutions and provides a forum to discuss such matters. Indeed, in the circumstances surrounding the SVNC, the Strategic Management Council operated as envisaged by the Machinery of Government Taskforce.

In addition, I refer to the Committee's own timeline and note that the matter was discussed at Strategic Management Council, then no less than four meetings were held where it was discussed between Chief Executive Officers, senior officers, and some Ministerial staff and finally the matter was brought before Cabinet for resolution. It is unclear what 'decisions' were made prior to the matter being considered by Cabinet, nor is it clear upon what basis the Committee makes its recommendations.

Again, the Committee seems to have demonstrated a lack of understanding about the management of a whole of Government agenda, by recommending a lengthy and time consuming process for communication between the Premier and his Chief Executive Officers, and suggesting that the Premier, as the employing authority of the Directors General, is acting inappropriately by convening a group such as the Strategic Management Council without other Ministers being present.

#### **Recommendation 4**

**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 the Premier and Cabinet consider a similar process relating to late business items at Strategic Management Council meetings.

Recommendation 4 refers to the 10-day rule used by Cabinet to *prevent* late business (emphasis added) which, in the Committee's view should be adopted the Strategic Management Council. It should be noted that the Cabinet "10 day rule" is to *limit* late business brought before Cabinet, not to stifle discussion between members of Cabinet, nor to prevent urgent business being raised at Cabinet.

Like Cabinet, the Strategic Management Council issues an agenda with papers approximately 5 days prior to the meeting. This, like the Cabinet "10 day rule", provides appropriate process for the orderly management of the Council's agenda but does not prevent late business, which is appropriate in all the circumstances.

I also note that the factual matter being considered by the Committee was not an item of late business for *decision* but a request for information as part of general business. It seems to show a lack of understanding of current governance practices on the part of

the Committee that it should form a view that I, as Premier and Minister for Public Sector Management, cannot request information in a forum such as Strategic Management Council from Chief Executive Officers employed by me under the PSM Act without giving them 10 days notice.

I believe that addresses the relevant recommendations made by the Committee, I do not propose to take any further action in this regard.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Geoff Gallop', with a long horizontal flourish extending to the right.

DR GEOFF GALLOP MLA  
**PREMIER**