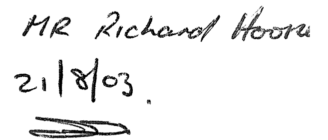

SELECT COMMITTEE ON THE RESERVES (RESERVE 43131) BILL 2003

PUBLIC

OPENING STATEMENT

I am a barrister practising at Wickham Chambers in Perth, Western Australia. My practice covers a range of civil litigation, with a particular emphasis on public law and government advisings.

From January-July 2002 I was Counsel Assisting the Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities. The Inquiry, which comprised Mrs Sue Gordon (Chair) Ms Kay Hallahan and Mr Darrell Henry, was widely known as the "Gordon Inquiry".

Although the Inquiry was not a Royal Commission, it had similar coercive powers. It was sourced in the issue of a direction from the Minister for Public Sector Management under section 11 of the *Public Sector Management Act 1994*. It accordingly had the power to compel the production of documentation and the attendance of witnesses to give sworn evidence.

The Committee will no doubt be broadly familiar with the Terms of Reference of the Gordon Inquiry and I will not for present purposes quote them. I shall return to some aspects of the first Term of Reference, which concerned the Swan Valley Noongar Community, shortly. Before doing that, it is appropriate, in my view, to make some observations as to the relative size and scale of the Inquiry. Its initial budget was $1 million, which was subsequently increased to $1.25 million. The total costs of the Inquiry ultimately came in under budget. In terms of staffing, I was assisted by one instructing solicitor. There was a research staff of 3 to 4 (some people were not employed for the duration of the Inquiry) and there was,

additionally, an Executive Officer who was assisted by an associate/judicial support officer, a secretary/receptionist and 1-2 records staff.

Hence relative to other recent inquiries in this State, and at a national level, the resourcing and staffing of the Gordon Inquiry were not large. Yet the Terms of Reference, particularly the second and third paragraphs thereof, were broad in scope and encompassed a range of complex issues concerning Government response to the terrible social ills of child abuse and family violence in Aboriginal communities.

One paragraph expressly required the Inquiry to "consult widely, including with representatives of Aboriginal communities, youth, health services and related organisations". In compliance with that obligation, various combinations of Inquiry members and its staff undertook numerous trips to Aboriginal communities themselves and other interested bodies in all parts of the State of Western Australia. Those visits, whilst time-consuming, were enormously beneficial for the information obtained and the perspectives gleaned from Aboriginal people and those providing services to them.

My tasks as Counsel Assisting can be summarised into the following:

(a) The conceptualisation of the evidence that needed to be accumulated and led to inform the Inquiry members of matters relevant to the Terms of Reference. (I use the term "evidence" here in a broad sense to encompass not only sworn evidence on oath led in a formal courtroom-type setting, but other information and documentation provided less formally.)

(b) The leading of examinations when the Inquiry undertook formal hearings.

(c) The preparation and delivery of submissions on the import and significance of the evidence, as well as on interlocutory (or procedural) issues from time to time during the life of the Inquiry.

(d) Ongoing provision of legal advice on various issues, as well as general advice as to the preparation and drafting of the Inquiry's final report.

From the inception of the Inquiry, many interested parties made contact with the Inquiry with representations, submissions, or queries on various issues, a number of them beyond the scope of the Terms of Reference. For example, some people had complaints or concerns about specific allegations of child abuse or family violence and the way those allegations had or had not been dealt with by the criminal justice system and otherwise. The Inquiry was not empowered to make any findings of criminal conduct, yet it could (and did at times in its final report) make findings as to the quality and appropriateness of service delivery by various government agencies. Fortunately, the Inquiry developed strong networks with other service providers that were able to assist those complainants who had concerns about the treatment of specific allegations.

By way of another example, some complainants registered concerns about the operations or staffing of certain Aboriginal agencies. Some of those agencies were not constituents of the Public Sector of Western Australia. Even where agencies *were* such constituents of the Public Sector, sometimes the nature of the complaint either remained outside the scope of the Terms of Reference, or else could not sensibly be accommodated within the timeframe and resourcing of the Inquiry.

That observation leads me to a more general point. The ambit of the Inquiry's task, taking into account its resourcing, required decisions to regularly be taken as to the issues to be pursued and examined. We simply had to be selective, sometimes brutally so. It was a very considerable task to satisfy the Terms of Reference and

meet the final reporting date of 31 July 2002, and that was only achieved because of that necessarily selective approach.

With respect to the Swan Valley Noongar Community, the first Term of Reference expressly required the Inquiry to "examine issues raised by the Coroner into the death of Susan Taylor in relation to the way that government agencies dealt with the issues of violence and child abuse in the Swan Valley Noongar Community". Hence the foundation for that Term of Reference was the earlier report of Mr Alastair Hope into Susan's death. The issues raised by the Coroner – to be further examined by the Gordon Inquiry – were, consistently with the overall scope of the Gordon Inquiry, confined to "the way that government agencies dealt with" the relevant issues.

Very broadly, the Inquiry deliberated on, and reached findings regarding, the following subjects arising from the first Term of Reference:

(i) The Inquiry found that the Police investigation of the circumstances of Susan's death was most unsatisfactory, attributable to factors which included a lack of application of proper investigative principles, a lack of proper communication between police officers and a lack of overall supervision of the investigation. However the Inquiry was satisfied that appropriate steps had been subsequently implemented to address those shortcomings.

A distinct issue arose concerning the Police investigation of allegations of criminal conduct made by Susan. Whilst there was some unfortunate aspects of that investigation, it was not concluded that those kinds of inadequacies relating to the investigation of the death were applicable in this regard. Notably, however, the Coroner expressly stated that he was "convinced" on various aspects of the evidence before him, that Susan had

been sexually abused and that that prior sexual abuse played a large part in the circumstances of her death. The Gordon Inquiry did not examine this in any formal way – it was unnecessary to do so under the first Term of Reference. Some information, informally received, did reinforce the Coroner's conclusion. I would be pleased to provide some elaboration on this point in private session should the Committee consider it appropriate.

(ii) The role of the Department of Community Development was examined in some detail, particularly concerning the role played by Susan's case officer relative to the role of a Juvenile Justice officer employed by the Department of Justice. The Inquiry concluded that no finding adverse to any individual ought be made. However a range of recommendations was advanced concerning the monitoring of caseloads by DCD trainees and other case officers, and the means by which difficult or complex cases ought be addressed through effective, whole of government collaboration. (Indeed, a discrete chapter of the final report dealt with the subject of collaboration and coordination of government services.)

(iii) The issue of substance abuse, and particularly the sniffing of solvents, had been identified by the Coroner as a phenomenon in the Midland area which created a considerable vulnerability for young people to sexual abuse. There was an abundance of evidence before the Gordon Inquiry that supported Mr Hope's conclusion in that regard. The Inquiry recognised that a suitable range of government responses to the complex subject of substance abuse was vital as one means in the armoury of addressing child sexual abuse and, to a lesser extent, family violence. In a discrete chapter concerning particular services provided by the Department of Health, the Inquiry developed a recommendation concerning the need for urgent strategic action to be taken to address substance abuse, identifying it primarily as a health-related issue.

(iv) Finally with respect to the first Term of Reference, the Inquiry examined the issue of access of government officers to the Swan Valley Noongar Community. It identified that the relevant land was vested in the Swan Valley Noongar Community Aboriginal Corporation, incorporated pursuant to the *Aboriginal Councils & Associations Act 1976*. The rules of the corporation provided for certain objects for which the corporation was established, all of which related to the overall concept of the land being designated for the "use and benefit of Aboriginal inhabitants". The Inquiry recognised that, for a person to enter on the land without a licence, express or implied, would constitute a trespass unless a right of entry was given by statute or at common law. It was recognised that police officers have an implied licence to go onto land in the conduct of their lawful enquiries, and that provisions such as section 146A of the *Child Welfare Act 1947* enact statutory sources for such entitlements.

It was the Inquiry's view that the guiding principle to resolve difficulties of access to the Swan Valley Noongar Community lay in negotiation, understanding and mutual respect and trust. It drew on evidence given by certain government officers of some progress made towards the progressing of a Memorandum of Understanding between government representatives and the community to deal with issues of access. It concluded that urgent steps ought be taken to develop that Memorandum of Understanding and that such a process should take into account distinct conclusions of the Inquiry as to the good faith of service providers and their legitimate exercise of government function.

These issues are addressed in fuller detail in chapter 14 of the Inquiry's final report.

Whilst the Inquiry did obtain a variety of material concerning the extent of the phenomena of child abuse and family violence in Aboriginal communities across Western Australia, it made no specific findings on particular cases or allegations. It was not empowered to do so and it would have been, in any event, impractical to attempt such an enormous task. As alluded to, it did acquire some informal information concerning the extent of child abuse at the Swan Valley Noongar Community (and indeed for various other of the 290-odd Aboriginal communities in this State). I was personally privy to some of those representations. I reiterate that I can provide some further detail on those representations, but given the circumstances of confidentiality with which they were imparted, I would wish to be circumspect about the provision of specific names and, in any event, to do so in private session.

Richard Hooker

21 August 2003

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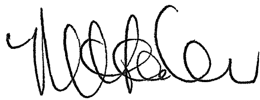

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