

**SELECT COMMITTEE ON THE
RESERVES (RESERVE 43131) BILL 2003**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON THURSDAY, 21 AUGUST 2003**

SESSION 2

Members

**Hon Peter Foss (Chairman)
Hon Robin Chapple
Hon Jon Ford
Hon Louise Pratt
Hon Derrick Tomlinson**

WARBEY, MS LYNSEY
Senior Policy Officer,
Department of the Premier and Cabinet,
examined:

ECKERT, MS SANDRA
Legal Officer,
Legislative and Legal Services,
Department for Planning and Infrastructure,
examined:

The CHAIRMAN: You have signed a document entitled "Information for Witnesses". Have you read and understood it?

The Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard please quote the full title of any document you refer to during the course of this hearing for the record. Please be aware of the microphones and try to talk into them. They are actually for the purpose of recording, not amplification. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence has been finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

I will start with Ms Warbey. If there is a matter that you cannot answer and Ms Eckert can, we will move across to Ms Eckert. If on the other hand there is something that Ms Eckert believes she can elucidate anyway, she can indicate that. Perhaps there could be a little bit of cooperation between you to make sure we get through if possible.

I thank you very much for your statement, Ms Warbey, which has been extremely helpful indeed and hopefully will speed matters up considerably. Do you have your statement with you? I refer first to paragraph 5 of your statement in which you said -

I became aware of the allegations made against certain members of the community through reading the transcript of the Coroner's inquiry and relevant case files subpoenaed from the Department for Community Development, the Western Australia Police Service and the Department of Health.

Would you say that you were reasonably familiar with those cases?

Ms Warbey: I could not say I was any more, but certainly that is where my learning came from. I have not read those for a couple of years.

The CHAIRMAN: Were you aware of the degree of the hardness of the evidence or the somewhat gossipy nature of where they fell at that level?

Ms Warbey: Yes, from reading, particularly the Coroner's transcript, it became clear to a reasonable degree the types of evidence that were available of some of the allegations.

The CHAIRMAN: I will take you a bit further on in your statement, to paragraph 11: You said there -

... the minutes record that *'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 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 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 of what was currently being done 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.*

First, was that document prepared?

[8.45 pm]

Ms Warbey: Yes, it was, and I gave copies to your clerk as I arrived.

The CHAIRMAN: Is that the document that Ms Brazier was referring to? Do you know? She referred to a document, prepared by Lynsey Warbey, summarising the services..

Ms Warbey: That possibly was, if she referred to that. I know she did refer to a few documents possibly prepared by me.

The CHAIRMAN: We saw another document. It had attached to it a number of services but it did not mention in any particular manner a great deal of difficulty with access. Did your document deal with access to giving services in the community?

Ms Warbey: I think there was discussion of access issues. They obviously differed for different departments, but I believe it did canvass that at one point.

The CHAIRMAN: Did they measure significantly in that report?

Ms Warbey: Sorry?

The CHAIRMAN: Were they a significant part of that report?

Ms Warbey: Can I refer to that document just to clarify for myself?

The CHAIRMAN: Please. Feel free to refer to any document, as long you let us know what it is you are referring to.

Ms Warbey: In answer to your question, I am looking at the "Report on Service Provision to Swan Valley Nyungah Community" and an attached department-specific update. Those documents include some detail about the ability to access the camp and individual residents within that camp.

The CHAIRMAN: What is the date of that document?

Ms Warbey: It is attached to something called "Draft Notes from Meeting re Swan Valley Nyungah Community".

The CHAIRMAN: That is it, is it?

Ms Warbey: Yes. That is the one which was prepared at that time.

The CHAIRMAN: Would you have a look at the front page of the draft notes of the meeting, and the fourth dot point? Who wrote this, for a start?

Ms Warbey: I understand it was drafted by the officer from the Gordon implementation secretariat who attended that meeting.

The CHAIRMAN: Who was that?

Ms Warbey: Helen Phelan. She is one of the attendees at the top. She provided it to me. With regard to the fourth dot point, there was considerable concern that there was risk of something

happening at the other two camps. There was a consensus that there was more risk about that. I understood when I questioned Ms Phelan about that myself that that was particularly referring to the fact that service provision was starting to focus around Swan Valley and not so much elsewhere; but they still also acknowledged that the problem with the Swan Valley camp was considered to be about getting access to the management, whereas the management at the other communities were more keen to be involved in improving service provision. That is the two points.

The CHAIRMAN: I will read them aloud. The third one says -

- It is important in the Government's approach that there is a whole community focus, not just RB's camp - need to include Cullacubardi, Saunder's St and Gnangara.
- Consensus is there is more risk of something happening at other two camps - Cullacubardi, Saunders St - than at the camp.

Ms Warbey: Yes.

The CHAIRMAN: How did it go from being that Cullacabardee and Saunders Street were regarded as the more at-risk ones to concentrating on the Swan Valley camp?

Ms Warbey: The advice came from the directors general to the Premier during the strategic management council on 1 May. My understanding was that the primary difference between the Cullacabardee/Saunders Street situations was that the agencies were able to work with them and therefore knew the levels of risk and could deal with that risk, rather than the Swan Valley Nyungah Community, where they found it less able to. That was my understanding of the events.

[8.50 pm]

The CHAIRMAN: This is a meeting of the people who are involved in the implementation are they not?

Ms Warbey: Some of those members, yes.

The CHAIRMAN: They would have been the source of information given to the directors general would they not?

Ms Warbey: Some of them, yes.

The CHAIRMAN: Would the directors general have had any knowledge about what was happening in the camp, which did not come from people such as these.

Ms Warbey: I could not answer that question.

The CHAIRMAN: We have heard evidence from Ms Brazier and Mr Curry that they did not go to the camp to investigate these matters; they relied upon what other people told them. It seems strange that the directors general would be giving one set of information to the Premier while the people who were actually working there were saying that there was more risk at the other two camps.

Ms Warbey: The only possible assistance I can provide in that regard is that I know some of the officers who were involved with the service provision and with providing that advice are not included in this meeting.

The CHAIRMAN: I see. Do you know what happened to the recommendation that there should be a whole-of-community approach rather than just the Swan Valley Nyungah Community?

Ms Warbey: I do not believe that was pursued.

The CHAIRMAN: I refer to the last part of paragraph 11. What was done to engage ATSIC? Do you know what happened about that?

Ms Warbey: The document you have - the attachment to the draft notes from the meeting - were tabled at the senior officers' group for the Gordon implementation, which is co-chaired by the state manager for ATSIC.

The CHAIRMAN: Mr Gooda

Ms Warbey: Yes.

The CHAIRMAN: We have dealt with point 14. I am interested in point 16, because Mr Bropho made a statement that the school attendance levels from the camp were good. Did you carry out an investigation on school attendance levels?

Ms Warbey: I cannot answer that fulsomely. I understand that the issue was initially trying to get access to the records of the independent school that the children attended to determine their school attendance levels. I believe that was the primary issue.

Hon DERRICK TOMLINSON: What was the school they attended?

Ms Warbey: The Culunga Aboriginal School.

The CHAIRMAN: Did you eventually find out what the attendance figures were?

Ms Warbey: They did eventually get access to those records.

The CHAIRMAN: Do you know what they are?

Ms Warbey: I cannot provide those figures to you.

The CHAIRMAN: Can you ascertain those for the committee?

Ms Warbey: I can get them provided.

The CHAIRMAN: Did it ever come up again as to whether the school attendance by the Swan Valley Nyungah Community children was good or bad?

Ms Warbey: I know at one point that that was discussed, but that was later on.

The CHAIRMAN: It seems that the tempo and perhaps the emphasis of your report changes on or about paragraph 18.

Ms Warbey: Yes.

The CHAIRMAN: Is that correct? Was that a critical time in terms of the process?

Ms Warbey: Probably the process itself in terms of the director generals was progressing until 1 May when the Premier asked a question at the strategic management council. When you start to get the types of allegations that were being made by the journalist and which were obviously causing concern to the Department for Community Development, it drew attention - from my perspective - to make sure that the right people in the Department of the Premier and Cabinet were aware of that.

The CHAIRMAN: Were the allegations from the journalist different from the allegations you were aware of prior to that, or might have been made with regard to the other camps, or was the critical difference that the journalist knew of them?

Ms Warbey: It was that she had the three very specific claims made in points A, B and C of paragraph 19. The general allegations were similar to what I had heard at the beginning, but the specifics were significant in the fact that they were referring to particular instances.

The CHAIRMAN: There were instances on file and recorded in the Gordon report, which were also specific.

Ms Warbey: Yes.

The CHAIRMAN: To that extent, it was not different; it was just different that a journalist had it, was it not?

Ms Warbey: From my perspective they were different because they occurred at the end of the Gordon inquiry, which in my mind had dealt with those matters to that point.

The CHAIRMAN: As you said, they were the same matters on which you had briefed the Opposition.

Ms Warbey: They were mentioned in the briefing, yes

The CHAIRMAN: Were they considered to be critical?

Ms Warbey: I think they were probably considered to be clear examples that the changes put in place through the management order had been ineffective.

The CHAIRMAN: Has anything happened to cause you to wonder whether those allegations were correct?

Ms Warbey: Questions were raised about one or two of them in Parliament when I was assisting the minister at the time. Beyond that, I probably have not looked into them in any depth. It has not been my role to do so.

The CHAIRMAN: Was any inquiry carried out at that time to see whether they were correct?

Ms Warbey: Yes. At the time they were made, the Department for Community Development inquired into who they referred to, because they were anonymous at the time, and whether DCD had any open case files or could pursue that in any way.

The CHAIRMAN: Did it find anything?

Ms Warbey: I recall point C, which concerns a young lady who was removed from the community. The DCD was obviously involved with that. With regard to A and B, I do not recall whether the department had any specific information, although perhaps it had some information on B, but the DCD should probably answer that.

The CHAIRMAN: Was there any knowledge at the time you briefed the Opposition as to the circumstances under which C took place? In other words, the allegation is that it was not against the will of the community but at the request of the community?

Ms Warbey: Different views were expressed about that - sorry, my mistake. There was a request from one member of the community. Again, the committee will probably need to clarify with them because I am a bit uncertain about it.

The CHAIRMAN: Was there any qualification in your mind when this was put to the members of the Opposition whether this information was unverified, verified or capable of verification?

Ms Warbey: I assumed that C definitely was. I think A and B fit into the general pattern of allegations that have been made in the past, which sometimes are difficult to verify and sometimes can be verified.

The CHAIRMAN: Can you understand from the point of view of members of the Legislative Council that we had reasonably good evidence put to us that C was related to a person who was not living in the camp and who was removed at the suggestion of Mr Bropho? Case B was a totally incorrect misunderstanding about somebody who, again, was not a resident of the camp and had not been injured in the camp. I am not sure what A was.

Hon DERRICK TOMLINSON: Case A related to a young lady who had not lived in the camp since 1990 but who complained that she had been harassed by two people from the camp. That was subsequently verified.

The CHAIRMAN: That case does not even refer to things happening in the camp. The two cases, supposedly at the camp, appear to have fairly innocent explanations. Can you see that there was some concern that if these were the two precipitating incidents - one which did not occur at the camp and two which appear not to be correct - and that is what caused the sudden change in policy and action, it is a little bit of a worry that perhaps there was an overhasty response to what turns out to be a not very sound, factual basis of the complaints.

Ms Warbey: I understand very much what you have said. The only assistance I can provide is that it is best for the appropriate departments to respond to the specific instances. However, I guess I

can say that it was not necessarily my complete understanding of that either. Probably they are the best people to address that issue for you.

The CHAIRMAN: Do you understand that when you are seeking to persuade members of Parliament to exercise a fairly unusual power in legislation that a degree of disclosure is required as to the nature of the facts that are put in support of that request?

Ms Warbey: Yes

The CHAIRMAN: Did you think those facts had been adequately investigated so as to justify them being put forward as grounds for implementing the legislation?

Ms Warbey: My understanding was that with regard to cases B and C there had been a level of investigation by the Department for Community Development subsequent to them being made. In fact, all three cases had been investigated. My understanding was that they had presented that information in that manner. That is the best I can tell you.

The CHAIRMAN: Would you be concerned, being one of the conveyors of that information to members of the Opposition, if that information turned out not to be correct?

Ms Warbey: Yes.

[9.00 pm.]

The CHAIRMAN: At paragraph 20 of your statement you said that you told Mr Murphy about it. What was the nature of your conversation?

Ms Warbey: As I said there, it is our practice when we receive media queries not to directly respond to anything ourselves but to refer them to the Premier's office. I called Kieran Murphy and explained to him the nature of the inquiry that I outlined there. He said, "Right, okay. Well, if it comes to me I will know about it and I will ask some questions." That was about the depth of it.

The CHAIRMAN: You refer to a conversation with Mr Walsh at paragraph 21.

Ms Warbey: The queries started to come in from a number of ministers' officers. Prior to that I spoke to Shawn Boyle at the social policy unit. He was on leave. He suggested I make sure that Mr Walsh was aware of it. I called Mr Walsh and said to him something along the lines of what I had said to Mr Murphy; that the queries had come in from a number of cases, and the basic outline of the queries. He said that Mr Murphy had advised him of those.

The CHAIRMAN: There was nothing more in that conversation?

Ms Warbey: No.

The CHAIRMAN: The phrase at paragraph 22 that the safety of women and children could not be guaranteed seems to have become almost a catch phrase or a mantra. Ms Brazier said that one could never guarantee the safety of women and children. I think she even said that it was not a phrase that she would have used. Do you know where it came from?

Ms Warbey: No, I cannot say that I do. I know it is what I was told at that discussion with the director general, but I would have to agree with Ms Brazier - it is really about levels of risk, and there is risk to anyone anywhere. It is about the level of that risk that is significant.

The CHAIRMAN: Only a little earlier the notes from the people on the ground said that there was a greater risk at two other communities. Are you still involved with the implementation of the Gordon report?

Ms Warbey: I am.

The CHAIRMAN: Is it still your understanding that there is a level of risk at those two other communities?

Ms Warbey: Yes.

The CHAIRMAN: Is it being addressed?

Ms Warbey: I understand that there is a working group to do with urban redevelopment through the Department of Indigenous Affairs. It is not an area I work in specifically.

The CHAIRMAN: The same sort of approach is not being contemplated for those two other communities.

Ms Warbey: No, I understand not.

The CHAIRMAN: Do you understand why the same approach is not being considered for those other two communities?

Ms Warbey: I guess I can only reiterate that my understanding is that the approach was taken with the Swan Valley community particularly because of the difficulty of dealing with it.

The CHAIRMAN: Do you know whose decision that was?

Ms Warbey: It came out of the strategic management council for a start that there was a risk.

The CHAIRMAN: You were not present at that?

Ms Warbey: No.

The CHAIRMAN: I will not ask about that then. At paragraph 23 you say that the Premier required action to reduce the risk to the women and children of that community as a matter of urgency. Where did you gain that information?

Ms Warbey: I understood that as a result of my conversation with Sean Walsh.

The CHAIRMAN: Why did you particularly write down that the Premier required it? Did you understand it to be something that had been directed by the Premier as a matter of urgency?

Ms Warbey: Yes.

The CHAIRMAN: Is that what gave it the urgency?

Ms Warbey: From my perspective as a Department of the Premier and Cabinet employee, yes.

The CHAIRMAN: Possibly from the perspective of anybody who is employed by the State of Western Australia! What the Premier thinks is urgent is urgent, is it not? That is the usual way that things happen in government, is it not?

Ms Warbey: It certainly happens in my area.

The CHAIRMAN: Paragraph 24 states that the issues of the community were discussed and tasks were assigned. You write, "My tasks were to liaise with the Department Of Land Administration . . . and the Crown Solicitor's Office . . . to get advice on the status of the Management Order over the Reserve, and to look for a 'way forward'." What did the management order have to do with that?

Ms Warbey: That was based on the previous decision by government to amend the management order and to get an understanding as to what powers the Government may or may not have with regard to that management order.

The CHAIRMAN: Was it to see whether you could do something under the management order?

Ms Warbey: Yes.

The CHAIRMAN: At that stage was consideration being given to cancelling the management order?

Ms Warbey: I believe that was one of a broad range of things that could be done with regard to the management order.

The CHAIRMAN: At a subsequent meeting on Friday, 2 May were you present?

Ms Warbey: Yes.

The CHAIRMAN: At another meeting on 5 May were you present?

Ms Warbey: Yes.

The CHAIRMAN: A number of options were identified at that meeting. What were they?

Ms Warbey: They ranged from continuing under the existing management order to amending the management order further to revoking the management order under the Land Administration Act. At the Friday, 2 May meeting the option of legislative amendment was identified.

The CHAIRMAN: Do you have notes of that meeting?

Ms Warbey: I would do, yes.

The CHAIRMAN: I have already asked this of Mr Walsh and every other person who has participated to provide any document that they may have to assist us in ascertaining the processes by which the decision was arrived at. Whatever they are, even if they be e-mails.

Ms Warbey: Yes.

The CHAIRMAN: Mr Walsh met with Mick Gooda. Were you present at that meeting?

Ms Warbey: Yes.

The CHAIRMAN: How was it put to Mr Gooda?

Ms Warbey: Initially it was quite general. It was said that consideration was being given to what further action needed to be taken with regard to that reserve and that community, given that there were ongoing allegations of family violence and child abuse and that the directors general had advised the Premier and his office that they were unable to lower the risk or deal with the risk appropriately.

The CHAIRMAN: Was he given the same examples that you gave to members of the Opposition?

Ms Warbey: My understanding is that he had already received those same examples from the same source that we received them from.

Hon ROBIN CHAPPLE: Was that the media person?

Ms Warbey: Yes.

The CHAIRMAN: Paragraph 28 does not mention anywhere the commonwealth Racial Discrimination Act. Was that ever discussed?

Ms Warbey: It was, yes.

The CHAIRMAN: When?

Ms Warbey: I might just look to Sandra.

Ms Eckert: I think it was discussed at the meeting of 13 May at parliamentary counsel's office. A number of officers were there from parliamentary counsel's office and the Crown Solicitor's Office - Ms Warbey and myself. Some advice was given by one of the solicitors from the Crown Solicitor's Office on that.

The CHAIRMAN: What was the nature of that advice?

Ms Warbey: I guess we are getting into the area of legal professional privilege.

The CHAIRMAN: There is none before a parliamentary committee, of course. What I want to know is whether you considered that any action you might have taken was a matter which could fall foul of the commonwealth Racial Discrimination Act.

Ms Eckert: That issue was certainly considered. The advice was that the Bill could proceed.

The CHAIRMAN: I will get back to the question of legal professional privilege later, because if there is any document that you do not want to give me on the basis of executive privilege or legal professional privilege, in the same way as with an affidavit of discovery, you are to identify it and claim that privilege. It will then be up to the committee as to whether you are allowed to assert it. In fact, there is no such privilege before a parliamentary committee, but often it will be respected as a matter of restraint on the part of the committee rather than a right on the part of the person claiming it.

I should have asked this right at the beginning, and I apologise for not having done it. I am working on the basis of your statement, but I have not got you to confirm your statement on the record, that it is your evidence and that the statements in it are true and correct.

Ms Warbey: Yes, I confirm that.

The CHAIRMAN: Paragraph 30 states that on 6 May a meeting was held with local service providers and during the course of that meeting the families residing at that community were identified and the services to be made available to them clarified. Who was present at that meeting?

Ms Warbey: I do not have a complete list of the attendees, but it was the service providing nominees from the people who attended the other meetings.

The CHAIRMAN: These are the people who actually dealt with the community, are they?

Ms Warbey: Yes.

The CHAIRMAN: Did anyone ask at that time what their views were?

Ms Warbey: I do not believe it was discussed particularly; it was certainly not the direct purpose of the meeting, no.

The CHAIRMAN: I think it is probably fair to say that you were carrying out what you understood were the requirements of government at that stage.

Ms Warbey: Yes, and relying I guess on the advice of the directors general that came through the other process.

The CHAIRMAN: Were you present at the meeting on 7 May?

Ms Warbey: Yes.

The CHAIRMAN: Again, if you have any minutes and so on we would be grateful for them. The paragraph states that options for responding to the situation at the reserve were discussed. What were those options?

Ms Warbey: They were the ones we discussed before. There was a range from amending the management order to revoking the management order to the legislative option. Certainly by that time the focus was moving towards the legislative option.

The CHAIRMAN: Did anyone consider using the powers under the Child Welfare Act?

[9.10 pm]

Ms Warbey: I think they were looking at a more holistic response to all the issues rather than the child welfare issues -

The CHAIRMAN: I see - closing the camp was seen as holistic, was it?

Ms Warbey: To deal more broadly, I guess.

The CHAIRMAN: Some people might call it draconian or drastic rather than holistic. At paragraph 32, you refer to a number of informal meetings that happened in working through things. Was that in the Premier's office?

Ms Warbey: And in the course of the normal day, as you would know.

The CHAIRMAN: Then you were involved in a cabinet briefing.

Ms Warbey: Yes.

The CHAIRMAN: Did you speak on the merits of the legislation, or only about how it worked?

Ms Warbey: I spoke about how it worked.

The CHAIRMAN: You did not deal with whether it was draconian, unusual, impinged on human civil rights or anything like that?

Ms Warbey: Not particularly, no.

The CHAIRMAN: No. Paragraph 34 reads -

My role at that meeting was to convey the urgency with which the Premier wanted this legislation drafted.

Did you manage to convey that urgency?

Ms Warbey: Yes. I believe so.

The CHAIRMAN: That urgency has been conveyed regularly throughout this whole thing, has it not?

Ms Warbey: Yes.

The CHAIRMAN: Paragraph 36 reads -

It was on that day that the Premier made a brief ministerial statement regarding the Reserve and the Government's intent to 'close the camp'.

Did you understand that that was going to happen?

Ms Warbey: Certainly, I am not sure what you would like me to say, but, yes, that was my understanding: at some point the camp would be closed.

The CHAIRMAN: It seemed to move from a lengthy and progressive process by which certain people were to be removed and then the women were to be spoken to and maybe relocated, to something to happen considerably more rapidly. Is that your understanding?

Ms Warbey: There were different views at different times on that. There was certainly that range of views.

The CHAIRMAN: Do you now how that change occurred?

Ms Warbey: I guess it was initially the plan you were talking about in terms of removing troublemakers and dealing with the women and children there. It was just, I think, that some people had a different idea about how long that was going to take.

The CHAIRMAN: Who are some people? Ms Brazier, for instance, said she would like to deal with the women in situ.

Ms Warbey: Yes.

The CHAIRMAN: Who was it who did not have that view?

Ms Warbey: For example, my understanding is that, given the land issues that would have resulted, the Director General of Indigenous Affairs, from his perspective, would have preferred it to happen a lot quicker because his concern, in part, was about the land and managing that. That is an example. I do not think there was any great conflict -

The CHAIRMAN: So, it became a land issue rather than a women and children issue.

Ms Warbey: Yes, and I think the process envisaged by Ms Brazier would have been the one that eventuated.

The CHAIRMAN: We know about the meeting. You spoke about agreements about the future of the residents. Perhaps I will leave that to Mr Chapple to speak on. You pick it up in paragraph 42 -

Different officers had differing views about how quickly to move the families from the Reserve based on their own agencies experiences . . .

You may not be able to do it now, but can you refer to your notes and find out who it was who had differing views?

Ms Warbey: I will. I am not sure how many I would have noted down.

The CHAIRMAN: I realise that; I am asking if you can find out. We come to the amendments that took place, and Ms Eckert might like to comment on them as well. What were the concerns with the amendments made in the upper House - either or both of you?

Ms Warbey: From my perspective, as outlined in paragraph 43, the first actual amendments made, after discussing it with Ms Eckert, Ms O'Dwyer and Mr Lyon, the general tenor of their views was that the draft of the amendments could create a level of uncertainty about the authority of the administrator that would leave the administrator in an untenable position. Further, the removal of the protection against legal actions would reduce the efficacy with which the administrator could act. That was the advice.

The CHAIRMAN: Were you aware that we made a later offer to make a number of changes, one of which was to say that except for things relating to the obligation under the management order to run the corporation, any direction by the administrator would supplant those of the Swan Valley community; that the only reason they had to assign for a person being ordered to leave the camp was that it was better for the peace and good order of the camp to do so; and thirdly, that it would rule out any interlocutory injunction while still permitting the matter to go to final trial? No interlocutory injunction could be given to prevent the exercise of those powers of removal. A general offer was made to say that if any other problem got in the way, we were prepared to consider amendments. Were you aware that the offer of changes was made?

Ms Warbey: Yes, I was. There was a discussion between Ms Eckert, Mr Walsh and myself with regard to the amendments suggested. A period of time later - I assume a couple of days - we were advised that that was not to be pursued at this time.

The CHAIRMAN: What was the nature of your discussions? Did you think they addressed the question?

Ms Warbey: From my perspective, it is not necessarily an area of law I am particularly familiar with. I understand they in some ways met some of the concerns, and in some ways did not.

The CHAIRMAN: Did you ever go back to the concerns that they did not meet?

Ms Warbey: No. To clarify, do you mean to yourself? No, certainly not.

The CHAIRMAN: What concerns did they not meet?

Ms Warbey: I am trying to recall.

Ms Eckert: In the context of the two land-related amendments, if I remember correctly, clauses 3 and 4, one of the issues was that the community would remain in there as the management body. At that stage, certainly the instructions coming through to me were that the Swan Valley community was not to remain as the management body. That would make it too difficult and open it up to potential claims by the body - that is, to claims of conflict between the body's right as a management body and the exercise of rights by the administrator.

The CHAIRMAN: That was one of the things addressed in the amendment. If there was a conflict, the rights of the body were to be supplanted.

Ms Eckert: There was still a concern that the whole matter might get embroiled in court.

The CHAIRMAN: Was the concern that it might be in interlocutory applications?

Ms Eckert: There were discussions. Certainly at one of the meetings - I think the one Ms Warbey and I had with Mr Walsh - we discussed that matter. We might even have been concerned, even though there was a provision that said you could not have an interlocutory application, there might be court proceedings arguing whether it was an interlocutory or a final application.

The CHAIRMAN: That was the same with the legislation as it stood, was it not?

Ms Eckert: I think the view was taken was that the way the legislation had been drafted forestalled that possibility the best way it could. Whether it was successful or would have been successful, time would only have told, but the way it was originally drafted was considered the best way to forestall any court action.

The CHAIRMAN: Were these concerns mainly related to litigation?

Ms Eckert: Yes. From my perspective, I would answer that question yes, in respect of the natural justice - that was with the backend of the Bill from clause 8 onwards. Yes, in respect of having the community in there as the management body. There were also concerns about how the powers and the functions of the administrator would operate in the context of there being an existing management body with an existing management order, which was not necessarily about litigation but how it would function legally.

The CHAIRMAN: You were invited to suggest those functions which should not be capably exercised by the Swan Valley Nyungah Community and those which would remain their function. Did you ever make such a list and submit it to anybody?

Ms Warbey: Perhaps if I could answer that question. From my perspective, and I assume from Ms Eckert's, our role was to provide that advice in the course of the meeting with Mr Walsh, and the direction came back was the conclusion from my perspective.

The CHAIRMAN: So, really, the decision was made outside your involvement. It was a matter of policy as much as anything else what the view should be rather than a matter of "You cannot or can do this."

Ms Warbey: Certainly from my perspective we were not involved in that discussion. Whether there was a discussion on the legal merits or otherwise is not something I could answer particularly.

Ms Eckert: What happened was, after my meeting with yourself and Mr Tomlinson, I prepared a summary of what we had discussed at the meeting and the proposals you had put forward at the meeting. That was one of the things discussed at the meeting with Mr Walsh and Ms Warbey later that day, which I recall was a Friday.

[9.20 pm]

Also the other matters that were discussed were the amendments that had actually been passed in the Council, and as I recall I believe Mr Walsh was going to speak with the Premier over the weekend about the matter.

The CHAIRMAN: And then the next thing you got was a decision?

Ms Eckert: Yes.

The CHAIRMAN: Thank you very much indeed. I do not have any more questions, but other members of the committee may very well have.

Hon ROBIN CHAPPLE: Thank you both for coming in. I have a few questions, if I may, and they are slightly different. At some stage during this whole debate we have heard the words "a failed experiment". Were you ever made aware of that term at any of the meetings you had?

Ms Warbey: If I can answer that question. The only time I particularly heard that kind of expression used was probably very early on, prior to the urgent part of it. I have a vague recollection of that kind of matter being discussed at the director generals' meeting on 14 March,

but I really could not say any more than that. It certainly was not a term that was regularly used or applied.

Hon ROBIN CHAPPLE: It certainly at that stage was used by the minister in relation to DIA. In item 11 you refer to ATSIC as being engaged in discussions to get their support for alternatives. Who came from ATSIC, and was it the ATSIC regional council, or administrative people within ATSIC?

Ms Warbey: Certainly. Referring to paragraph 11, the director generals asked that ATSIC be involved. Initially that was through the senior officers group, which has an administrative representative, Mr Gooda, who is the regional manager of ATSIC. However, I do understand, or I know that Mr Cole, who is the ATSIC regional councillor for that zone, attended a meeting with Mr Gooda in regard to it, which was the meeting I think I referred to -

Hon ROBIN CHAPPLE: That was subsequently?

Ms Warbey: Yes, a paragraph later on. As to the discussion within ATSIC and ATSI about those positions, it is not something I can comment on.

Hon ROBIN CHAPPLE: Within those discussions what inferences did you get from Mr Gooda or Mr Cole in relation to these issues? Were they different or were they a similar position?

Ms Warbey: I understood they were a similar position, based around the ATSIC family violence policy, which had been released at a very similar time. I do not recall the exact date of that, but that document was released on or about that time, and was the key focus of most of our dealings with ATSIC at that time, because it was their big strong statement on the issue.

Hon ROBIN CHAPPLE: In 16 and when commenting to the chair, you mentioned the journalist who made the allegations. Do you know who that was?

Ms Warbey: I was aware who the journalist was who had made those specific inquiries.

Hon ROBIN CHAPPLE: Can you name that journalist?

Ms Warbey: I do not have any particular concerns about doing that. It was Ms Egan, from *The Australian*.

The CHAIRMAN: I think, somehow, we knew that.

Hon ROBIN CHAPPLE: We just needed to clarify it. Do you know where Ms Egan was getting her information?

Ms Warbey: I have an idea. If you would like me address that I will do so later.

The CHAIRMAN: We might do that in private session, so can we just make a note to come back to that and deal with it in private session.

Hon ROBIN CHAPPLE: You said you were not at the strategic meeting on 1 May.

Ms Warbey: Yes.

Hon ROBIN CHAPPLE: But there were two meetings on 1 May.

Ms Warbey: Yes, at the second meeting I attended -

Hon ROBIN CHAPPLE: You attended the second meeting?

Ms Warbey: Yes.

Hon ROBIN CHAPPLE: So you must have gleaned at the second meeting what had gone on at the first meeting.

Ms Warbey: Yes. To be honest, I gleaned what went on at the first meeting immediately subsequent to the first meeting. It was strategic management council, a meeting between the Premier and all of his directors general. At that meeting my director general was present. He came

out of that meeting and talked to me straightaway about what had occurred there in terms of the statements made by directors general and the questions the Premier asked.

Hon ROBIN CHAPPLE: Thank you. At the 2 May meeting, have you any idea who suggested the legal action?

Ms Warbey: Certainly - it was the senior officer from what was then the Department of Land Administration and is now the Department for Planning and Infrastructure.

Ms Eckert: If I might actually clarify that. I think it is actually now the Department of Land Information. The former Department of Land Administration, for which I was working at the time of the Bill, on 1 July effectively ceased to exist and was split. The crown land administration function is now with the Department for Planning and Infrastructure, for which I now also work, but the acting chief executive officer of DOLA is now the acting CEO of the Department of Land Information.

Hon ROBIN CHAPPLE: In item 14 - I think this is the same sort of question again - the ATSIC councillor and representatives were the same two people involved that you talked about earlier?

Ms Warbey: There was also an additional lady, Ms Colleen Hayward, present as well.

Hon ROBIN CHAPPLE: So Colleen Hayward was present at that meeting as well?

Ms Warbey: Yes.

Hon ROBIN CHAPPLE: This is a question for both of you. What was your understanding of the role of the administrator, the determination of how he or she was going to work, and who made the selection?

Ms Warbey: Certainly. I will let Ms Eckert address the issue of the role of the administrator, if you are happy with that, but I can certainly say that the administrator was selected on the advice of ATSIC.

Hon ROBIN CHAPPLE: The regional council or the officers?

Ms Warbey: The officers, and they worked with the Aboriginal corporations registrar, who had experience in engaging administrators, and that kind of work.

The CHAIRMAN: He was almost like a liquidator or receiver of Aboriginal corporations, it sounds like.

Ms Warbey: He certainly had experience in that area, yes.

Ms Eckert: As I understood it, and the way that the instructions for the Bill were originally prepared, was that the administrator would really stand as a management body in respect of the management of the reserve from a land point of view.

Hon ROBIN CHAPPLE: And not from a social point of view?

Ms Eckert: I cannot really comment on that, simply because that is not an area that was within my knowledge, but the way that we tried to structure the Bill was effectively that the administrator would stand in there as the management body of the reserve. As I understood, the way that the Bill was drafted was not for the administrator to be like an administrator as we otherwise understand in the context perhaps of corporations law and that sort of thing, and in fact a comment was made later on that perhaps the term administrator was a poor selection of word, because it perhaps confused the issue a little bit more. It was not a stand-outside-directing-in approach; the administrator was intended to be in there and managing the reserve as a management body would.

Hon ROBIN CHAPPLE: Okay. It might not be a question you can answer, but, in relation to the administrator having been appointed and operating basically out of the eastern States, spending little time here in Western Australia, do you think he is fulfilling his function?

Ms Eckert: I have no knowledge on which to comment on that.

Hon ROBIN CHAPPLE: No worries.

Hon LOUISE PRATT: With respect to point 30 of your statement which states that on 6 May a meeting was held with local service providers to clarify what services could be provided to the community, what was the nature of those services?

Ms Warbey: I will just go roughly through the different agencies. In the Department for Community Development there was particular discussion around using the indigenous families program and the strong families program, which is about building strength within families to support them. There was also talk about the housing support, and accessing programs like the supported housing assistance program, or SHAP.

[9.30 pm]

There was also talk about financial aid that might be required and about getting access to furniture and things like that. We had a representative from the Department of Health there. She talked about its interest in doing more fulsome medical checks on the children and providing vaccinations and things like that. The Police Service's comments were particularly with regard to avoiding trouble at the time that any evictions might occur. That is roughly what they went through at the time.

Hon LOUISE PRATT: I guess to draw a distinction some of those services would have related to the new circumstances and the need to find new accommodation and some would have related to the lack of services they received while they were living at the camp?

Ms Warbey: It covered both, yes.

Hon JON FORD: Did either of you participate in or were you aware of any meeting or discussion that placed this response with any other aim or outcome other than the stated aim of protecting women and children from risk? For example, was it a stand-alone response or was it part of a strategy to close other similar camps?

Ms Warbey: No is the short answer.

Ms Eckert: Mine is purely anecdotal and about third-hand evidence, but the answer would be no as well, for what it is worth.

Hon ROBIN CHAPPLE: I want to ask about the Department of Indigenous Affairs. The minister, Hon Kim Chance, has indicated that the DIA had liaised with ATSIC with a view to developing a position and strategy to address the issue of future metropolitan communities, and they identified four communities in terms of the need for an overall review: Cullacabardee, Henley Brook, the Nyoongah community at Gngangara and the Swan Valley community. Were you ever aware of any of that?

Ms Warbey: Yes.

Hon ROBIN CHAPPLE: So in terms of the overall approach of looking at whether those camps should continue, that was a fairly broad understanding among you at that time?

Ms Warbey: To be fair, when I said yes, I was aware that it had occurred and there had been a resolution of the ATSIC council at around that time to proceed with that process, I believe, but I cannot say that I had much more knowledge of it than that.

Hon ROBIN CHAPPLE: Just on that, for your information the ATSIC council had written back and said basically go away, but certainly DIA was pursuing that. In terms of the Racial Discrimination Act did you look specifically at how the Bill might or might not affect sections 10 and 15 of that Act?

Ms Warbey: Probably again the best answer I can give is to repeat Ms Eckert's comment that the issue of the Racial Discrimination Act was raised during the meeting on 13 May, and the advice that

we received at that time was that it did not seem to be an issue that would prevent the passage of the Bill or should prevent the passage of the Bill.

Hon ROBIN CHAPPLE: You were obviously present with Hon Kim Chance at the previous meeting and you would be aware that Mr Chance said that he saw no problem with the community returning to that reserve. Was there ever an understanding at any of the meetings that you had or that were had that the community could return?

Ms Warbey: Probably the only thing I can say to that is that I understand there is no legal impediment to the community returning. I also believe that the land will continue to be used for Nyoongah purposes, so the community in one way or another may return to the land, but perhaps not in the same use as it was used for before.

Hon ROBIN CHAPPLE: The other point that we raised in those questions was the legal right to the property that exists on that land. Was the ownership of the property on that land ever discussed in any of the discussions that went on?

Ms Eckert: The nature of a management order under the Land Administration Act and what rights or powers and obligations are entailed with that was discussed. I would probably be hard pressed to say at which meetings, but it was raised and discussed in general terms at various meetings.

Hon ROBIN CHAPPLE: Is it your understanding, after those meetings or discussions, that property rights still exist over the property on that community to the Swan Valley Nyungah Community?

Ms Eckert: Not of my own knowledge, but I believe that there is, for example, a native title claim over that land, plus other land, and that claim is not affected by what happened with the management order.

Hon ROBIN CHAPPLE: I am talking about the actual property on the land - the buildings.

Ms Eckert: Sorry.

Ms Warbey: Do you mean the buildings and that kind of property on the land?

Hon DERRICK TOMLINSON: The infrastructure.

Ms Warbey: I understand that some kind of proprietary right may exist in that, but I assume that would be a matter that would be dealt with elsewhere. It is not something we particularly dealt with.

Hon ROBIN CHAPPLE: I just did not know whether that had been discussed.

Ms Eckert: There was some discussion about how, under the Land Administration Act, if a management order is revoked the management body has certain rights to compensation for buildings or infrastructure put on the reserve by the management body. That was discussed as part of the drafting of the Bill. Essentially the Bill was in the form that those rights were not taken away, tampered with or affected in any way by the Bill. Whatever rights the body would have under the Land Administration Act by reason of the revocation of the management order would remain.

Hon ROBIN CHAPPLE: I will ask one hypothetical question, if I may. Assuming that the land went on to have some other indigenous usage, as has been stated, would there then be legal recourse to the Swan Valley Nyungah Community for reparation of the property that has basically been handed over to other bodies?

Ms Eckert: There is a right to claim compensation, but there are conditions that need to be met to obtain compensation. I do not know off the top of my head whether the claim would be successful. There is certainly a right to claim, and it is then a matter of sitting down and working through the conditions to see whether they are met in order for there to be an entitlement.

Hon DERRICK TOMLINSON: Ms Warby, you state in your statement of evidence -

In 2002 I was seconded to the Inquiry into the Government's Response to Family Violence and Child Abuse in the Aboriginal Community ('the Gordon Inquiry') . . .

You state also -

Upon completion of the Gordon inquiry I returned to the Department and participated in the preparation of the Government's Response to the Gordon Inquiry.

Is that correct?

Ms Warbey: Yes.

Hon DERRICK TOMLINSON: I am trying to find out when the decision was made, and by whom, not to accept recommendation 141 of the Gordon inquiry that memoranda of understanding between the Swan Valley Nyungah Community and those government agencies responsible for providing services should be developed.

Ms Warbey: I am afraid I have absolutely no knowledge of that. If I can clarify that for you, my role in the preparation of the response came after I returned from leave, and that decision had already been made prior to my return; I am not sure by whom.

Hon DERRICK TOMLINSON: The Government's response in its "Putting People First" document was that the State Government has acted quickly to register a new management order over the land to ensure it is managed in the best interests of the residents. That decision was made before your involvement?

Ms Warbey: The decision to do that, yes.

Hon DERRICK TOMLINSON: The Government's response was also that the agreement reached will allow the Government to monitor the corporation to ensure it is run in an open and democratic way in compliance with its rules and relevant commonwealth legislation, and the corporation is required to prepare a management plan within six months for ministerial approval.

[9.40 pm]

Did the corporation prepare a management plan?

Ms Warbey: Yes, I understand it did.

Hon DERRICK TOMLINSON: Was it given ministerial approval?

Ms Warbey: No, I understand it was not. It did not reach that point.

Ms Eckert: From my recollection, a draft management plan was presented and I believe that it was sent to the department fairly close to, if not at the end of, the six-month period when it had to be presented. It was lodged very close to the end. It was sent out by our department to the relevant agencies for their comments, and those comments were still coming in at about the time that other events started to overtake it. So, no, it was not given ministerial approval, because other events overtook it.

Hon DERRICK TOMLINSON: The responses that we have seen came from the Department for Community Development, which indicated it did not honour the spirit of the management order, and from the Department of Health, which indicated that it would inhibit the provision of health services.

Ms Eckert: I do not know which agencies responded, so I could not comment on that.

Hon DERRICK TOMLINSON: So, there was no opportunity to take those responses back to the Swan Valley Nyungah Community to suggest amendments or changes to the management plan to make it consistent?

Ms Eckert: No, it did not reach that stage.

Hon DERRICK TOMLINSON: Ms Warbey, you indicated in response to a question in paragraph 36 that the Premier made a brief ministerial statement regarding the reserve. Incidentally, was that a brief ministerial statement made in the House?

Ms Warbey: Yes, I believe so.

Hon DERRICK TOMLINSON: In response to a question by Hon Peter Foss on the Government's intent to close the camp, you added in your answer the phrase "at some point". What did you mean by that?

Ms Warbey: I guess the intention to close the camp, which was being discussed at the time, was to do with exactly at what point the legislation was to pass and was everyone to leave, or was there going to be a period of time. I did not necessarily recall the brief ministerial statement committing to a particular time.

Hon DERRICK TOMLINSON: But it was your understanding that there would be a progressive relocation of the families after there had been some work to meet their needs?

Ms Warbey: Yes.

Hon DERRICK TOMLINSON: It was not an immediate notice?

Ms Warbey: No.

Hon DERRICK TOMLINSON: I note in the last bullet of your document headed "Meeting re Swan Valley Nyungah Community: 21 March 2003 at 10.30am: DIA Conference Room" the words "they recognised". I assume "they" means the group.

Ms Warbey: Yes, I assume so.

Hon DERRICK TOMLINSON: It states -

They recognise that there needs to be actions beyond service delivery. However, there is some concern that the way this is approached is important. E.g. They recommend slow but firm progress.

Ms Warbey: Yes.

Hon DERRICK TOMLINSON: The decision that appears to have been taken after the journalist contacted various government agencies was to not proceed in a manner that was slow but firm, but to act hastily.

Ms Warbey: Yes, certainly I think it is correct to say that there was an urgency put on it.

Hon DERRICK TOMLINSON: There was therefore a difference between the administrative proposition, which was to progress firmly but slowly, and the political decision, which was to act quickly.

Ms Warbey: And if I can just confirm that the minutes of this meeting did include some but not all the service providers, and certainly not the directors general. So, it was certainly a summary of the view of the attendees at that meeting, yes.

Hon DERRICK TOMLINSON: And those were the people who had the responsibility for the provision of services at the Swan Valley Nyungah Community?

Ms Warbey: Some of them, yes. There are probably some absences that you would know from your own knowledge of names, but some of them, yes.

The CHAIRMAN: I have just one question before we go into private session. You were told about the strategic management meeting by the Director General of the Department of the Premier and Cabinet. Did he also indicate to you that the Premier had put a degree of urgency on it?

Ms Warbey: I have to be honest with you - my recall is not exact. He either did, or he did when I spoke to Sean Walsh. I did understand from my director general that there was a need to act urgently, but that urgency was clarified when I spoke to Mr Walsh.

The CHAIRMAN: Thank you very much. I think you have done pretty well.

Hon LOUISE PRATT: I want to ask a follow-up question to a question by Hon Derrick Tomlinson on the recommendation to make slow but firm progress. What techniques would be employed behind the notion of slow but firm progress? Was there a view as to what that might be and whether they would be successful?

Ms Warbey: It is a difficult question to answer, given that I did not attend that meeting. I guess the best I can say is that there were differing views, even among the service providers. I understand now, reading that statement, "slow but firm" to mean ensuring that there was a knowledge that something would happen if cooperation was not provided, but not necessarily to go in straight away and do things quickly; but, honestly, not being at the meeting and not having taken these notes myself, it is difficult to tell exactly what that meant.

Hon DERRICK TOMLINSON: You were present at a meeting that I attended with the Director General of the Department for Community Development, Ms Jane Brazier and the manager of service provision -

Ms Warbey: Mr McCulloch.

Hon DERRICK TOMLINSON: Lex McCulloch.

Ms Warbey: Yes.

Hon DERRICK TOMLINSON: Do you recall the tenor of the discussion was that the department did not know the extent to which people in that community might be damaged?

Ms Warbey: Yes.

Hon DERRICK TOMLINSON: It was an unknown quantity and the department was not even sure as to how it would proceed and that it did not know how long it would be required for particular families, women and children, to be relocated?

Ms Warbey: Yes.

Hon DERRICK TOMLINSON: Am I correct in characterising that as slow but firm?

Ms Warbey: Just to clarify, these notes were not taken at any time when legislation was even a contemplated thing; it was very much more about service providers trying to do what they had been directed, which was to make real change and to implement the management order. However, I guess the answer to your question is, depending on what actual time frames you apply to that as to whether that was slow but firm or too fast, that it would be difficult until such time as you had a realistic application.

Hon DERRICK TOMLINSON: It certainly was the preference of the Department for Community Development to work with the women particularly. I think the term used was "to engage with the women". It was to work through the women with the children; but this would be a gradual process and structured according to the needs of particular individuals.

Ms Warbey: Yes, without doubt.

The CHAIRMAN: I have one more question I was asked to ask you. Were you aware of letters from Mr Bropho to the Premier asking for recommendation 141 to be honoured by a memorandum of understanding to be entered into with the Swan Valley Nyungah Community?

Ms Warbey: Yes, I am.

The CHAIRMAN: When did you become aware of them?

Ms Warbey: They came through my office at one time.

The CHAIRMAN: So, you became aware of them when they came in?

Ms Warbey: Yes.

The CHAIRMAN: What did you do with them?

Ms Warbey: I understand one was responded directly to.

The CHAIRMAN: By whom?

Ms Warbey: I believe either by the Premier or by the director general. The subsequent one, being on the same issue with the same statements, was either noted or acknowledged. I can find that out for you.

The CHAIRMAN: Was any response given that would give them any hope to think that there was going to be a memorandum of understanding?

Ms Warbey: I would have to read the actual correspondence that was sent out. I believe it was along the lines of working within the management order with the service providers; but that is only -

The CHAIRMAN: Essentially it was no?

Ms Warbey: It was certainly along the lines of reiterating the Government's position on the management order.

[9.50 pm]

The CHAIRMAN: We will now move into private session. For the benefit of those who must now leave, this will be a short session during which you will not be present. Another witness is to follow who will give evidence in an open session, at least to start with. If you wish to come back, you can. However, for the time being the committee will go into private session, so would those not giving evidence please leave?

Ms Eckert: Mr Chairman, do you require my attendance at this session or may I be excused?

The CHAIRMAN: I do not think you have any information to give us.

Ms Eckert: Certainly not in the question that was posed.

The CHAIRMAN: Thank you very much.

[The committee took evidence in private]