

## 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. <sup>1</sup>
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

<sup>1</sup> *The West Australian*, 15/08/02.

	Minister for Lands by SVNCAAC.
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 ATASIC, and at the request of Leader of Opposition in Council, wrote to confirm ATASIC support for the Bill because of ATASIC's view that Government could not guarantee the safety of women and children at the SVNC.
May 16 2003	(58) Robert Bropho, spokesperson for SVNAC, 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 <sup>th</sup> 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 Report<sup>2</sup> 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.<sup>3</sup>
- 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.

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

<sup>3</sup> 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;<sup>4</sup>
- 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 officers<sup>5</sup> and a curious media contingent, all residents were assembled in an open area

---

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

<sup>5</sup> 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.<sup>6</sup> 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)<sup>7</sup> 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.**

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

<sup>7</sup> *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.

---

Page 37

**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.

Page 73

**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.

Page 73

**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.

Page 77

**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.

Page 77

**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 Pyrtton 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.

Page 194

**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.

Page 212

**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.”