



SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

**MINORITY REPORT OF
HON JON FORD MLC AND HON LOUISE PRATT MLC
SELECT COMMITTEE ON THE RESERVES (RESERVE
43131) BILL 2003
IN RELATION TO THE
RESERVES (RESERVE 43131) BILL 2003**

Report - Minority
November 2004

Minority Report of Hon Jon Ford MLC and Hon Louise Pratt MLC
in relation to the Reserves (Reserve 43131) Bill 2003

TERMS OF REFERENCE:

Select Committee on Reserves (Reserve 43131) Bill 2003

Order of Reference (June 25 2003)

- (1) That a Select Committee of five members, any three of whom constitute a quorum, is appointed to inquire into and report to this House the basis or grounds on which the Government introduced the *Reserves (Reserve 43131) Bill 2003* and the reasons underlying its passage through both Houses at such short notice.
 - (2) The Committee, and the proceedings of the Committee, are subject to Chapter XXII of Standing Orders and it is to be regarded for all purposes as a committee appointed under that Chapter.
- 1 This Minority Report addresses the underlying thrust of the Majority Report's Overview, Findings and Recommendations, which the committee in minority does not believe is presented with a balanced and objective view.

THE GOVERNMENT'S MOTIVATION

- 2 The Government has shown a history of acting decisively in its efforts to address concerns surrounding child abuse in aboriginal communities. This is evident by the:
- Gordon Inquiry 2001
 - Gordon Response 2002
 - Closure of the SVNC 2003
- 3 In announcing the Gordon Inquiry in 2001 the Premier said,
- “Most aboriginal leaders recognise that there is a desperate need for something to be done about these issues. They understand that this is not an attack on Aboriginal Communities – it is an attack on child abuse”.*¹
- 4 The Gordon Inquiry included a specific reference to the SVNC because of concerns raised in the coronial inquest into the death of 15-year-old Susan Taylor at the community in 1999.

Terms of Reference

1. *To examine the issues raised by the Coroner's inquiry into the death of Susan Taylor in relation to the way that Government agencies dealt with the issues of violence and child sexual abuse at the Swan Valley Nyungah community.*
2. *To examine how State Government agencies respond to evidence of family violence and child sexual abuse that may be occurring in Aboriginal communities generally.*
3. *To report to Cabinet with recommendations on practical solutions for addressing incidents of sexual abuse in Aboriginal communities, including any necessary legislative and administrative measures.*²

5 The gravity of concerns raised by the final report resulted in the Premier announcing \$75million of new initiatives aimed at combating child abuse and family violence in Aboriginal communities. This is the single biggest boost in child protection resources ever seen in Western Australia.³

6 It is not unreasonable then to understand the Government's frustration when the Premier found the intended level of commitment was not matched by outcomes at the SVNC. The Premier raised concerns regarding the SVNC at the Strategic Management Council and he was told, "nothing had changed." This sense of frustration is reflected on by the Director General of DIA, Mr Richard Curry in his evidence to the committee:

"You can well and truly appreciate the anxiety in the Premier's office about having a director general or all directors general basically saying we were very unsure about the safety of the women and children at that site." ⁴

7 Mr Curry also told the committee that the Directors General could not give assurances regarding the safety of women and children at the SVNC.

"My advice to the Premier was that the directors general had resolved to put advice to the cabinet standing committee on social policy reflecting our unanimous concerns that the safety of the women and children on that site was of concern to us. On that basis, I could not

¹ Hon. Dr Geoff Gallop, Media Statement, 28 December 2001.

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

³ Hon. Dr Geoff Gallop, Media Release 3 December 2002.

⁴ Mr Richard Curry, Transcript of Evidence, 14 October 2004, page 2.

give him the assurances that he would want - that anything really had changed - even though agencies were doing all they could within the limits they could in relation to access.”⁵

- 8 The calling of the Gordon Inquiry in 2001 highlights the Government’s established and ongoing concern about the welfare of women and children at the SVNC. The need for urgent action to tackle these issues, which the Government was advised remained unaddressed after all this effort, was compelling.
- 9 Indeed the Premier highlighted the Gordon Inquiry’s concern about the access of Government agencies to the SVNC and the tragic death of Susan Taylor as a clear motivation for the Bill in his second reading speech to Parliament.

“The tragic death of Susan Taylor at the Swan Valley Nyungah Community is but one terrible example of the systemic sexual and physical abuse, substance abuse, family violence and intimidation that has occurred, and continues to occur at this community. Susan’s death was the impetus for this Government to commission the Inquiry into Responses by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities, headed by Magistrate Sue Gordon. The Gordon inquiry raised a number of concerns about the Swan Valley community, particularly the difficulties experienced by government agencies in accessing the site and providing services to the residents due to such access being controlled by the management of the community. It is entirely unacceptable that residents’ rightful access to services and assistance be hindered in this way.”⁶

- 10 Given this history no reasonable person could find that in regards to the closure of the SVNC that the Premier or the Government had any other motivation other than the protection of women and children at the SVNC.
- 11 To infer that the Government’s motivation was for any other reason other than the protection of women and children at the community belittles the significance of these well-established concerns.

THE PARLIAMENT

- 12 The concerns of the Premier and Government were ultimately shared by Parliament, as demonstrated by the quick passage of the Reserves Bill through both Houses.

⁵ Mr Richard Curry, Transcript of Evidence, 14 October 2004, page 7.

⁶ Hon. Dr Geoff Gallop, Legislative Assembly Hansard, 15 May 2003, Page 7896.

THE ROLE OF THE MEDIA

- 13 The motivation to address issues at the SVNC given their weightiness, as attested to by the Gordon Inquiry, exists in its own right – without the need for reflection on media outcomes.

WHY THE SVNC?

- 14 Good Government has a responsibility to listen to its constituency and does this through various sources such as agencies, departments, the public, the media and MPs. Whether Government gets the right message is of course, a judgement made by the people at election time. It is too easy to make judgements on particular actions and decisions of Government after the fact without taking in to account the legitimate pressures of the day placed on Government by these sources. This, combined with personal reflections and attitudes constructed through observations and experience, some related and some not, all ultimately play a part in critical decision making processes.
- 15 The Lockridge SVNC had been the focus of much media and Government attention since its establishment. Its self styled leader, Mr Robert Bropho is known nationally and indeed internationally for his very public stands on issues he believes are central to wining justice and equity for aboriginal people in general but in particular Nynugah people. Mr Robert Bropho and some of his immediate family have also been at the centre of a number of past and ongoing accusations of child abuse and domestic violence. Mr Robert Bropho has also been charged with offences related to abuse and violence.
- 16 There was also a view held by some in the broader community that as some remote or urban aboriginal communities also have a high level of abuse and violence, if a high profile offender could be dealt with, this would encourage victims from affected communities to come forward.
- 17 *Evidence of Ms Colleen Egan (journalist- The Australian & Sunday Times)*

“Ms Egan: Yes, and I would say that you would find places in remote WA that are even worse than that because they have no law and order out there. The one thing that came out of the Gordon inquiry that I think is probably of some worth to those people is that some police stations will be opening in some of those places. The victims do not even have someone to report them to out there. Some of the stories are horrendous and horrific out there.”

“Hon DERRICK TOMLINSON: Focusing on the network of sources and the information that you have about the Swan Valley camp, do you get the impression that the Cullacabardee, Saunders Street and Sydney

Road communities are in any way different from the Swan Valley Nyungah Community?"

*"Ms Egan: I suppose to me as a journalist the difference between those camps, and the difference maybe between a lot of the people involved in the area, is Robert Bropho's standing in the community and the number of years that he has had a lot of power and respect in the community."*⁷

18 Ms Egan in her evidence also said.

*"Ms Egan: ~ A view has been put to me since before the Taylor inquest by a wide range of people that if you are going to do something about sexual abuse in Aboriginal communities, you have to go for the big people like Bropho because they are the ones who have the power, and if victims see that those ones are being brought down, they will have more confidence to come out against others."*⁸

19 The high profile and tragic suicide of Susan Taylor preceded by years of proven and unproven public allegations has made the SVNC the public focus of what is now known to be an all too common environment of domestic violence and child abuse within our society's most marginalised and disadvantaged people.

20 Public opinion also seemed to be of the view that any story or accusation of abuse associated with the SVNC was probably based in truth. This view can be demonstrated by Ms Colleen Egan (Journalist with "The Australian" and "Sunday Times") in her evidence:

*"~ Having been to the Susan Taylor inquest and having heard stuff out of the mouths of these people themselves, for me they are the allegations that I have placed stock in. Anything else is just not difficult to believe, I suppose."*⁹

21 Further urgency was placed on executive Government with agencies reporting that access was difficult and that protection of women and children could not be guaranteed.

22 In his evidence Mr Walsh (the Premier's Chief of Staff) stated:

"~When the issue of concerns about the safety and welfare of women and children at the camp was raised in the strategic management council meeting by the Premier, and when it was indicated by the directors general of the Department for Community Development and

⁷ Ms Colleen Egan, Transcript of Evidence, 12 November 2003, Page 16.

⁸ Ms Colleen Egan, Transcript of Evidence, 12 November 2003, Page 16.

⁹ Ms Colleen Egan, Transcript of Evidence, 12 November 2003, Page 16.

the Department of Indigenous Affairs that they had concerns and were not in a position to guarantee the safety of women and children at the camp. The Premier, having been given that advice, wanted urgent action taken to address that issue,~”¹⁰

- 23 Deservedly or not the SVNC had, as previously stated, become the focus of the issues surrounding common and widespread abuse of women and children in aboriginal communities within the state. The Gordon Inquiry, a number of tragic and violent events as well as Mr Robert Bropho’s own notoriety for confrontation and political activism had firmly focused the public’s and also the Government’s eye on this reserve.

ACCESS - A BROADER PERSPECTIVE

- 24 Both supporters and opponents of the Governments decision to close the SVNC have used arguments about whether access by Government Agencies to people at risk or potentially at risk was adequate or effective.
- 25 The Majority report attempts to undermine issues raised by Government regarding the access of service providers to the community by attempting to establish that no significant impediment to access existed at the SVNC. The minority’s concern is that access must be viewed in the context of not just the physical access of service providers to clients, but also for those victims who wish to contact service providers and their access to information contained in the broader community.
- 26 In this particular case access issues are suspected of being further complicated by an environment enveloped by the complex processes of power, intimidation and fear used by perpetrators over victims of domestic violence and child abuse. In addition a cultural and historic mistrust of Government authority can also come into play. For example in his evidence to the committee Mr Robert Bropho said:

“Your white society is different to ours. Your white society makes rules and regulations. Your white society breaks them and your white society uses those. Let us not forget the White Australia policy; it is still there now and it always has been.”¹¹

- 27 Mr. Robert Bropho was also very critical of many Aboriginal people that did not fit into his definition of any person black or white that did not follow or agree to his view of society in general.

“The danger to us, the real Aboriginal people, is the halfcastes, quarter-castes and quadroons that are put into state government

¹⁰ Mr Sean Walsh, Transcript of Evidence, 21 August 2003, Page 1.

¹¹ Mr Robert Bropho, Transcript of Evidence, 11 December 2003, Page 2.

positions and federal government positions. These are the buggers that frighten us off. If it does not stop, it is going to kill us.”¹²

28 In this environment where access was controlled closely by Mr Robert Bropho and his immediate family, fueled by mistrust, it is no wonder access was perceived as an impediment by some agencies.

29 This was evidenced before the committee by Jane Brazier, Director General DCD:

“I think, Chair, the critical issue for us was that we were not free and unfettered in our access to the individuals - neither the women nor the children - who lived in the camp. For whatever reason, the corporation was not comfortable with us walking in without reporting to the office and being able to talk to whoever we needed to talk to. The other dimension for us was that we did not believe that people in the camp were free to come to us as and when they needed to do so if they had concerns or even if they needed services.”¹³

30 The argument of the majority report that access was not an issue, because some agency officers gave evidence stating that provided they called into the SVNC Administration Office prior to carrying out their business there was no objection, is too simplistic. In many cases this included identifying who was to be visited. From a victim’s perspective this could be seen as “gate keeping” as well as an affirmation of power by perpetrators over their victims should the administration be dominated by perpetrators or their allies.

31 In the complex and sometimes subtle power relationships that exist between domestic violence and child abuse victims and their perpetrators even relatively innocent contacts by service providers with people seen to be supporting the abusers can “lock the door” in regards to accessing important disclosures from victims.

32 Similarly marginalized from support are victims who have been conditioned through their experiences that to resist abuse or seek disclosure will have the very real potential of having more violence and abuse directed towards them or other family members.

33 In an environment of abuse, intimidation and violence it would not be unreasonable to assume that a victim who is resident at the SVNC and who sees for example, that Police and or DCD officers visit the SVNC Administration prior to proceeding to other places within the community, especially if they are perceived to have a cordial relationship with those that they fear, will conclude that this is not an act of courtesy or respect but an indication that these same Officers are biased towards the perpetrators and are not there for the victims assistance.

¹² Mr Robert Bropho, Transcript of Evidence, 11 December 2003, Page 9.

¹³ Ms Jane Brazier, Transcript of Evidence, 18 August 2003, Page 4.

- 34 Within the small resident population that existed at the SVNC access to an environment where a victim or person at risk could feel secure to disclose issues of abuse and violence would seem impossible, especially given the insistence of the SVNC administration that they be informed and notified of visits by government agencies seeking to extend support to victims.

EVIDENCE

- 35 There is no doubt that residents of the SVNC have been subject to occasional and systematic abuse over many years. Doubt as to the current situation at the SVNC could only serve to drive the Government to seek a remedy that could, at the very least have certainty.
- 36 The majority report focuses on a small number of accusations used as some justification in briefings to a number MPs that are not supported by the evidence presented to the committee. However, this alone however does not provide a valid argument that the Government did not act properly.
- 37 The majority report rightly states that some witnesses or submissions are not named due to the Committee's decision to keep certain evidence confidential either due to the nature of the evidence or to protect witnesses or persons named by them. The Committee has taken great care to avoid naming persons in this report that could, as a result of them being identified, risk retribution or intimidation or prejudice ongoing investigations.
- 38 The minority clearly supports the above. However, it should be highlighted that significant evidence regarding the history of sexual abuse and violence did come before the committee.
- 39 The committee was not able to hear evidence first hand from any person identified as a victim nor did any person claiming to be a victim come forward.
- 40 The difficulties in reporting and investigating accusations of abuse were demonstrated by a Police briefing note to the Gordon Implementation Group:

“Whilst not receiving any concrete evidence of sexual abuse at the three aboriginal communities in the East Metropolitan Police District, the amount of whispers and the rumours being circulated, are an indication that these offences are occurring, however, the “Cone of Silence” and the “Aura of Fear” are compelling reasons why they are not being reported to Police.”¹⁴

¹⁴ Briefing Note, Superintendent Parkinson APM, East Metropolitan Police District to Gordon Implementation Group Secretariat dated 27/03/03, page.5.

41 There are of course lessons to be learned after any event, and particularly in this case as to how agencies should effectively communicate internally and work collaboratively together to best serve the public and in particularly the most vulnerable in our community. These issues are addressed in further detail in the Majority Report.

WAS THE BILL JUSTIFIED?

42 It is also important to understand that in the case of child protection, the philosophy of applying what on the face of it appears to be a contentious and draconian intervention, that is removing a suspected victim or perpetrator from his or her environment without first proving a case, is based on the premise that the victim’s rights to protection should override any other party’s rights.

43 Had the Government taken any other action, it was faced with the potential of protracted litigation focussed on points of law. It chose an action that while draconian in form was designed to intervene against a cycle of violent abuse, which it reasonably believed on the advice of its agencies, was continuing to occur or had a high risk of occurring. This was not a risk the Government was prepared to take. Had it not taken this action and another tragedy occurred the Government would have been deservedly criticised, as the community rightly abhors any violence perpetrated against women and children.

FINDINGS OBSERVATIONS AND RECOMMENDATIONS

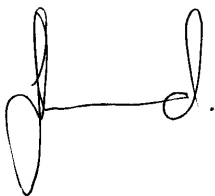
44 The committee as a minority disagreed with a number of paragraphs of the report, observations, findings, and recommendations.

Paragraphs: 11-19, 21-37, 39-41, 11.22, 12.56, 17.5, 17.13, 17.22-17.24, 17.26, 17.29, 17.30-17.39, 17.44, 17.47, 17.52, 17.53.

Observations: 13, 18, 19 and 23-31.

Findings: 2, 11, 14, 19-21, 28 and 29.

The minority of the Committee disagrees with all recommendations.



Hon Jon Ford MLC
November 18 2004



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