INTERIM REPORT

Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities

Inquiry Members

Mrs Sue Gordon AM – Chairperson
Hon Kay Hallahan
Mr Darrell Henry

26 April 2002
The Hon Dr G I Gallop MLA
Premier; Minister for Public Sector Management
Level 24, Governor Stirling Tower
197 St. George’s Terrace
PERTH WA 6000

Dear Premier,

In accordance with the formal direction issued pursuant to section 11(1) of the Public Sector Management Act 1994 to myself, the Hon Kay Hallahan and Mr Darrell Henry on 15 January 2002, we present to you an Interim Report of the Inquiry to this time.

Yours sincerely

Mrs Sue Gordon AM
Chairperson

The Hon Kay Hallahan
Inquiry Member

Mr Darrell Henry
Inquiry Member

26 April 2002
Table of Contents

1. Preliminary Matters ................................................................. 1
   1.1 Letter of Appointment ....................................................... 1
   1.2 Inquiry Personnel .......................................................... 2
   1.3 Terms of Reference ......................................................... 3
2. Introduction and Terms of Reference ...................................... 4
   2.1 Introduction ........................................................................ 4
   2.2 Terms of Reference .......................................................... 4
       2.2.1 Focus of the Terms of Reference ................................. 4
       2.2.2 Key definitions .......................................................... 5
   2.3 Interim Report ................................................................. 5
3. Establishment of the Inquiry .................................................... 6
   3.1 Inquiry methodology and consultation processes ................. 6
       3.1.1 Advertisements in National, State and Regional newspapers, and
               radio discussions ......................................................... 6
       3.1.2 Written Submissions .................................................... 7
       3.1.3 Documents and information provided by Government agencies.. 7
   3.2 Consultations with Aboriginal community groups ............... 7
       3.2.1 Consultation with Aboriginal communities outside the Perth
               metropolitan area ......................................................... 8
       3.2.2 Summary ................................................................. 9
       3.2.3 Consultations and visits to a range of Government and
               non-government agencies, facilities and individuals .......... 9
       3.2.4 Website .................................................................... 9
   3.3 Formal Hearings before the Inquiry .................................... 10
       3.3.1 Protection afforded to witnesses appearing before the Inquiry .. 10
       3.3.2 Selection of witnesses to appear before the Inquiry .......... 10
       3.3.3 Evidence adduced during Hearings to date .................... 11
       3.3.4 Examination of further cases ...................................... 11
   3.4 Reviews of relevant research ............................................. 11
   3.5 Confidentiality considerations ......................................... 12
   3.6 Documentation – Confidentiality and record keeping requirements. ................................................................. 13
   3.7 Cultural considerations .................................................... 14
   3.8 Challenges and supports in carrying out the Inquiry ............ 14
       3.8.1 Challenges ............................................................... 14
       3.8.2 Supports ................................................................. 14
       3.8.3 Summary ............................................................... 15
4. Responses to Terms of Reference .......................................... 16
   4.1 Overview .......................................................................... 16
   4.2 Term of Reference 1 ......................................................... 17
   4.3 Specific issues raised by the Coroner concerning Susan Taylor... 17
   4.4 Issues raised by the Coroner concerning access to the Swan Valley
               Nyoongar community .................................................. 20
1. Preliminary Matters

1.1 Letter of Appointment

15 January 2002

Mrs Susan Gordon
Chairperson
Inquiry Into The Response By Government Agencies To
Complaints Of Family Violence And Child Abuse
In Aboriginal Communities
Level 9, 214 St Georges Terrace
PERTH WA 6000

Dear Mrs Gordon

INQUIRY TERMS OF REFERENCE

Please find attached a formal direction to yourself, Mrs Hallahan and Mr Henry to
count an Inquiry Into the Response by Government Agencies to Complaints of
Family Violence and Child Abuse in Aboriginal Communities. The terms of reference
for the Inquiry are contained in the direction.

As you will be aware, the Inquiry is established under section 11 of the Public Sector
Management Act 1994 and, as such, the powers conferred on the Inquiry under that
statute are limited to an examination of matters relating to the Public Sector.

I wish you and your fellow members well in conducting this important Inquiry.

With best wishes.

Yours sincerely

ERIC RIPPER MLA
APREMIER AND MINISTER FOR PUBLIC SECTOR MANAGEMENT

Att.
1.2 Inquiry Personnel

Inquiry Members

Mrs Sue Gordon AM LL.B
Chairperson

The Hon Kay Hallahan BSW
Inquiry Member

Mr Darrell Henry BA (English), BA (Psychology), Grad.Dip.Psychology
Inquiry Member

Counsel Assisting

Mr Richard Hooker BJuris(Hons) LL.B

Instructing Solicitor

Ms Lynsey Warbey LL.B

Consultant/Expert Advisor

Ms Carol Peltola M.Phil(Dist), BA (Hons) Psychology

Executive Officer

Mr Neil Fong LL.B

Other Personnel

Ms Lai Loke B.AppSc, Grad.Dip.Marketing
Research Officer

Dr Jennifer Skerritt PhD
Research Officer

Ms Rosalyn Fitzpatrick
Finance/Administration/Associate

Mrs Veronica Wood
Administration/Secretary to Chairperson and Inquiry Members

Ms Corrine Saunders
Records Manager
1.3 Terms of Reference

INQUIRY INTO RESPONSE BY GOVERNMENT AGENCIES TO COMPLAINTS OF FAMILY VIOLENCE AND CHILD ABUSE IN ABORIGINAL COMMUNITIES

Pursuant to section 11(1) of the Public Sector Management Act 1994, I hereby direct Mrs Susan Gordon AM (Chair), the Hon Kay Hallahan, and Mr Darrell Henry as suitably qualified persons to hold a special inquiry to:

1. 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 Nyoongar community.
2. Examine how State Government agencies respond to evidence of family violence and child sexual abuse that may be occurring in Aboriginal communities generally.
3. Report to me with recommendations on practical solutions for addressing incidents of sexual abuse in Aboriginal communities, including any necessary legislative and administrative measures.

Specifically the Inquiry is to:
- Examine the activities of State Government agencies in addressing complaints and the reporting of sexual abuse in Aboriginal communities;
- Identify the barriers and capacity of Government agencies to address the issue of family violence and in particular child sexual abuse in Aboriginal communities;
- Comment and make recommendations on the mandatory reporting of sexually transmitted diseases occurring among children and juveniles;
- Comment on any limitations of DNA testing in the Aboriginal community; and
- Propose support measures for children reporting abuse.

The Inquiry is to consider current research into the prevalence, causes and solutions to Aboriginal family violence.

The Inquiry is also to liaise with the Interdepartmental Committee on Sexual Assault to avoid duplication and ensure complementary outcomes.

The Inquiry is to consult widely, including with representatives of Aboriginal communities, youth, health services and related organisations.

The Inquiry is to report to the Premier by 31 July 2002, with an interim report to be presented by 26 April 2002.

ERIC RIPPER MLA
APREMIER AND MINISTER FOR PUBLIC SECTOR MANAGEMENT
2. **Introduction and Terms of Reference**

2.1 **Introduction**

The Inquiry was established by a direction given by the Honourable Mr Eric Ripper MLA, Acting Premier and Minister for Public Sector Management at section 1.2 of this Report. The direction that established the Inquiry was made pursuant to section 11 of the *Public Sector Management Act 1994* ("the Act") and was given to the Inquiry members by way of letter dated 15 January 2002 which appears at section 1.1 of this Report.

The Act is concerned with the management and administration of the Public Sector of Western Australia and for the maintenance of the Public Service. Sections 11 to 14 of the Act, and Schedule 3 to the Act provide the legislative framework for the conduct of the Inquiry.

The primary consequence of the nature and purpose of this legislation is that, in conducting its investigations, considering evidence or other material, and otherwise pursuing the subject matter of its Terms of Reference, at section 1.3 of this Report, the Inquiry is concerned with how critical social issues of family violence and child abuse in Aboriginal communities have been dealt with, and how they may in the future be dealt with, by the Public Sector of Western Australia.

2.2 **Terms of Reference**

2.2.1 **Focus of the Terms of Reference**

Given the Terms of Reference and the scheme of the Act under which the direction to conduct the Inquiry has been issued, the Inquiry is clear that its function is to address "responses by Government agencies" and not to investigate claims of family violence and child abuse, let alone to recommend charges be laid against alleged perpetrators. Whilst the Inquiry has explained its Terms of References thoroughly to those who are being consulted, from time to time comments have been made to the Inquiry that indicate a misunderstanding of the Terms of Reference. The Inquiry has reinforced the Terms of Reference, against their statutory foundation, when any such misunderstanding has been perceived.

Direct disclosures of family violence and child abuse are being received by the Inquiry members and the Inquiry’s staff. The Inquiry views the receipt of such information to be incidental to the Inquiry’s pursuit of its Terms of Reference. The Inquiry has developed protocols for the appropriate management of the receipt of such information and the passing of information on alleged perpetrators to Government agencies as appropriate.
2.2.2 Key definitions

The direction received by the Inquiry members included specific Terms of Reference. Inquiry staff members have spent a significant period of time considering and interpreting the Terms of Reference.

The key terms “family violence”, “child abuse” and “child sexual abuse” used in the Inquiry’s Terms of Reference have been subject to ongoing interpretation through relevant Government agencies and other bodies.

It is worth noting that the definitions of such terms can vary between different agencies, peak bodies, communities and individuals. Not only is this a significant issue for the Inquiry, it is also a significant issue for service providers. The Inquiry, mindful of these various definitions, has not confined itself to forming a view on any “correct” definition of “family violence” or “child abuse” (Appendix 1).

Rather, the Inquiry has proceeded on the basis that “family violence” and “child abuse” are to be broadly and liberally construed, in particular so as to encompass intangible matters such as emotional or economic deprivation and significant denial of opportunity.

2.3 Interim Report

The Terms of Reference expressly require that the Inquiry provide an Interim Report on 26 April 2002. The Inquiry remains aware that, whilst it can provide some interim discussions of evidence received and themes it intends to explore, it is not within its purview to make findings and recommendations in this Interim Report.

The Inquiry is still actively seeking submissions on many matters, and cannot reiterate strongly enough that this Interim Report is intended only to reflect themes and does not reflect any conclusive findings.
3. Establishment of the Inquiry

3.1 Inquiry methodology and consultation processes

Section 13 of the *Public Sector Management Act 1994* ("the Act") is intrinsic to the processes and procedures of the Inquiry. This section provides, in part, that an Inquiry shall act on any matter at issue according to equity, good conscience and the substantial merits of the case without regard to the technicalities or legal forms, and is not bound by the rules of evidence, but may be informed on any such matter in such manner as the Inquiry considers appropriate.

The Terms of Reference provide that “the Inquiry is to consult widely.” This, along with the content of section 13 of the Act, has informed the manner in which the Inquiry has sought evidence and information.

This material has been obtained in six main ways:

1. Written submissions from Government, non-government agencies and individuals;
2. Documents and information provided by Government agencies pursuant to section 12 of the Act;
3. Consultations with Aboriginal communities;
4. Consultations and visits with Government, non-government agencies, facilities and individuals;
5. Formal hearings before the Inquiry members; and
6. Collection and analysis of relevant research material.

It is important to note at this stage that whilst the Inquiry relies on all these different sources of evidence to different degrees, each is considered valuable to the Inquiry. A lot of material that the Inquiry relies upon is not adduced by way of evidence through formal hearings, although it is the latter which draws the most public attention.

3.1.1 Advertisements in National, State and Regional newspapers, and radio discussions

The Inquiry placed advertisements in a range of National, State and Regional newspapers to invite submissions. A copy of that advertisement is at Appendix 2.

The advertisement was placed in the following newspapers:

- The Australian;
- The Kalgoorlie Miner;
- The Kimberley Echo;
- The Sunday Times; and
- The West Australian.
The Chairperson has also been interviewed on a number of radio programs, which has helped to advertise the Inquiry and encourage people to make submissions. During the Inquiry visits to the Kimberley Region the Chairperson spoke on the following Aboriginal radio stations:

- Goolari Radio, Broome;
- Puranyangu Rangka Kerrem Aboriginal Radio Aboriginal Corporation, Halls Creek;
- Wangki Radio, Fitzroy Crossing;
- Waringarri Media, Kununurra; and
- Wirrimanu Broadcasting for Remote Aboriginal Communities Scheme (BRACS).

Further, whilst in Kalgoorlie, the Chairperson spoke on Australian Broadcasting Commission (ABC) regional radio.

### 3.1.2 Written Submissions

A range of Government, non-government agencies and individuals have provided written submissions to the Inquiry both upon invitation and at their own volition. Many more have indicated an intention to provide submissions to the Inquiry.

Confidentiality is discussed below at section 3.5 of this Report. However it is important to note that where individuals and non-government agencies do not wish to be named, their confidentiality will be maintained. A number of submissions in that category have already been received by the Inquiry.

### 3.1.3 Documents and information provided by Government agencies

The Inquiry has issued to State Government agencies numerous “Notices to Produce” documentation under section 12 of the Act. Those Government agencies are in the process of providing what is, in most cases, a large volume of files and other documentation to the Inquiry. It is anticipated that the Inquiry will issue additional “Notices to Produce”, to obtain further documents.

The Inquiry has been encouraged by the responses to date of the relevant Government agencies to calls for documentation and their assistance when requested.

### 3.2 Consultations with Aboriginal community groups

At the commencement of the Inquiry, a mail out was arranged to ensure that Aboriginal groups and Aboriginal communities were made aware of the Inquiry’s Terms of Reference and that consultation would occur. The list of Aboriginal communities and organisations (Appendix 3) was provided by the Department of Indigenous Affairs (DIA) and is used extensively by the DIA and Aboriginal and Torres Strait Islander Commission (ATSIC).
3.2.1 Consultation with Aboriginal communities outside the Perth metropolitan area

The following towns and Aboriginal communities have been visited with surrounding Aboriginal groups and Aboriginal communities notified and invited to participate in meetings with the Inquiry:

- Beagle Bay
- Bidyadanga
- Broome
- Derby
- Djarindjin
- Esperance
- Halls Creek
- Jigalong
- Kalgoorlie
- Kalumburu
- Kununurra
- Laverton
- Leonora
- Lombadina
- Newman
- One Arm Point
- Onslow (Bindi Bindi)
- Oombulgurri
- Parnngurr (Cotton Creek)
- Port Hedland
- Roebourne
- Warburton
- Warmun
- Wirrimanu (Balgo Hills)
- Wyndham
- Yandeyarra (Mugarinya)

The Gascoyne Murchison, Southwest, Metropolitan and Central Lands will be visited during May and June 2002, and Inquiry members and staff will be available for consultations and discussions.

Aboriginal communities were selected for consultation based on the following criteria:

- Accessibility;
- Being of a reasonable size;
- Centrality to location of other communities;
- Number of Government and non-government agencies present or in close vicinity; and
- Advice provided to the Inquiry of high incidence of family violence and child sexual abuse.

Due to the six-month timeframe of the Inquiry, visits to Aboriginal communities have been brief. The Inquiry acknowledges that brief visits are not the best way of obtaining information from Aboriginal communities. It is also recognised that family violence and child abuse are difficult topic areas and communities, both Aboriginal and non-Aboriginal, have difficulty in discussing these matters freely. There is also concern that some Aboriginal community members may not have spoken freely because of fear of retribution. However, whilst the Inquiry is mindful of these barriers during that process, it believes the consultative process is fulfilling its purpose as required by the Terms of Reference. Further, the Inquiry was particularly encouraged to receive recommendations from the communities for “practical solutions” as required by the Terms of Reference.
3.2.2 Summary

The Inquiry is of the view that it has received extremely useful information on the problems facing Aboriginal communities. This information has opened up numerous lines of investigation, which the Inquiry is continuing to pursue. The results of the Inquiry consultations to date are consistent with significant literature reviews and other Inquiries of a similar nature.1

The Inquiry is also mindful of the criticism voiced by Aboriginal communities that they are over consulted, with little follow through by Government agencies on actions requested by the community. Whilst this Inquiry is limited in its role, which is to make recommendations to Government pursuant to the Terms of Reference, issues raised by Aboriginal communities are, with permission from the individual or community, passed on to relevant Government agencies. Aboriginal communities who requested information from the Inquiry were also provided with such information as soon as possible.

3.2.3 Consultations and visits to a range of Government and non-government agencies, facilities and individuals

The Inquiry has conducted visits to a range of Government and non-government agencies. These visits have both been at the Inquiry’s initiation and at the invitation of the relevant agency: These included:

- Aboriginal and Torres Strait Islander Commission (ATSIC);
- Department for Community Development (DCD);
- Department of Education (DOE);
- Department of Health (DOH);
- Department of Housing and Works (DH&W);
- Department of Indigenous Affairs (DIA);
- Department of Justice (DOJ);
- Kaata Wangkinyiny Regional Council;
- Nyoongar Aboriginal and Alcohol and Substance Abuse Service (NAASAS);
- Sexual Assault Referral Centre (SARC);
- Western Australia Police Service (WAPS);
- Western Australian Crime Research Centre (WAWACRC);
- Youth detention facilities – Rangeview Remand Centre and Banksia Hill Detention Centre; and
- A range of individuals.

3.2.4 Website

A website has been established at www.fvcainq.dpc.wa.gov.au containing the Terms of Reference, Opening Addresses by Chairperson and Counsel

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1 Royal Commission into Aboriginal Deaths in Custody 1991
Assisting, guidance for making submissions, and the questionnaire sent to Aboriginal communities and agencies.

3.3 **Formal Hearings before the Inquiry**

The Inquiry is also conducting hearings in which the Inquiry members receive oral evidence and written material in the form of exhibits. Under section 12 and Schedule 3 to the Act, the Inquiry has certain powers to compel the attendance of persons to give evidence. It is open to take that evidence, either in public hearings or in private “in-camera” hearings. The Inquiry to date has held only public hearings, but it is anticipated that a number of witnesses will be called to give evidence in private when hearings recommence in May 2002.

Formal hearings and the taking of evidence are not conducted through an adversarial process; the format is an inquisitorial one. Whilst the Inquiry observes the formalities of a court setting and takes evidence under oath, the examination of witnesses by Counsel Assisting is dissimilar to the taking of evidence in litigation; witnesses are encouraged to express their knowledge and views for the benefit of the Inquiry members.

The decision to take evidence in private will take into account a variety of factors sourced in the nature of the proposed evidence and the overall public interest. In particular, it is the view of Counsel Assisting, and indeed the Inquiry itself, that in the event that evidence is taken from a victim of family violence or child abuse, that evidence will be taken in private.

Similarly, where a witness would prefer to provide their evidence in the company of a chosen support person that will be facilitated. Indeed, in the informal consultations undertaken by Counsel Assisting and his Instructing Solicitor to date, the presence of appropriate support people has been accommodated.

3.3.1 **Protection afforded to witnesses appearing before the Inquiry**

Clause 6(2) of Schedule 3 to the Act provides that witnesses before a special inquiry under the Act, have the same protection and are subject to the same liabilities as witnesses who appear in any civil or criminal proceeding or as a witness in any case tried in the Supreme Court.

3.3.2 **Selection of witnesses to appear before the Inquiry**

Counsel Assisting makes decisions as to the nature of the evidence to be formally led, and the identity of witnesses accordingly. Generally, Counsel Assisting is seeking to present a picture of aspects of Governmental response to the issues of family violence and child abuse in Aboriginal communities that most effectively addresses the Terms of Reference in the time available.
It is not possible to adduce all the available evidence on relevant matters in the time available. As previously noted, the Inquiry must rely on the various sources of information listed above to get the best possible understanding of the matters raised in the Terms of Reference. This approach is in keeping with the legislative framework which requires the Inquiry to inform itself in such manner as the Inquiry considers appropriate.

3.3.3 Evidence adduced during Hearings to date

To date, the witnesses called to give evidence before the Inquiry have all been officers in Government agencies, and have predominantly addressed Term of Reference 1. Attached (Appendix 4) is a summary of the major themes emerging from that evidence which are not otherwise covered in the body of this Interim Report.

It is anticipated that, during hearings in May and June 2002, witnesses will be drawn from Government agencies and non-government agencies, including expert witnesses and other individuals.

3.3.4 Examination of further cases

Counsel Assisting will be selecting specific case studies to examine, from cases brought to the attention of the Inquiry. These cases have come from a variety of sources.

A variety of factors will be taken into account in deciding on the final list. The cases will assist the Inquiry understand the issues facing Government agencies and their responses to those issues.

3.4 Reviews of relevant research

- Significant reports on the topic areas covered by the Inquiry have been obtained. A list of the reports currently being considered by the Inquiry is included in the Bibliography.

- A review of relevant research has been commissioned from the Australian Institute of Family Studies which will cover:
  - Best practice in Government agency responses to sexual abuse and sexual exploitation of Aboriginal children;
  - Research findings regarding mandatory reporting with particular reference to sexually transmitted diseases;
  - Prevalence of family violence and child abuse particularly in Aboriginal communities;
Causal factors of family violence and child abuse particularly in Aboriginal communities, including the possible roles of:

a) Substance abuse; and

b) Economic, social and spiritual oppression.

Solutions to Aboriginal family violence and child abuse particularly relating to responses by Government agencies including funding and accreditation.

- It is proposed that a review of research be commissioned in the area of Traditional Aboriginal Customary Law and Sexual Practices.

- The PathCentre of the DOH in Western Australia has provided advice in relation to Deoxyribonucleic Acid (DNA) testing in Aboriginal communities, referred to in section 6.3 of this Report.

- The Inquiry is also considering the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC). The RCIADIC reported to the Commonwealth Government in 1991 and a Western Australian Interdepartmental Committee was established with responsibility for overseeing the implementation of the RCIADICs recommendations for this State. The DIA collates agency reports annually which are then tabled in Parliament. The Aboriginal Justice Council (AJC) provides a monitoring report in response to State Government agencies on the implementation of those recommendations. Whilst the Inquiry does not intend to revisit the progress of all 339 recommendations of the RCIADIC, it does see this as a valuable tool to evaluate the efficacy with which Government agencies implement recommendations. This research will include a review of the reporting mechanism between Government agencies, the DIA and the AJC. However, it has come to the attention of the Inquiry that the AJC will cease activities from 30 June 2002.

3.5 Confidentiality considerations

The Inquiry is mindful that the material it receives is highly sensitive and needs to be treated with a high level of confidentiality. In order to maintain the confidentiality of material received, the Inquiry has:

a) Required confidentiality undertakings to be provided by all persons who have access to any material provided to the Inquiry;

b) Put in place stringent record management protocols to ensure that material provided to the Inquiry is handled with the strictest confidentiality at all times; and

c) Clearly explained the confidentiality protocols used by the Inquiry to people considering giving information to the Inquiry.
More specifically, the Inquiry has made an order with regard to the confidentiality of exhibits tendered before the Inquiry. Upon an application made on behalf of the Western Australian Newspapers Pty Ltd (WAN) and the ABC (“the Applicants”), the Inquiry heard arguments as to whether exhibits tendered before the Inquiry should be available to the Applicants. The Applicants position was based on openness and a belief that access to the exhibits was necessary for fair and open reporting of the hearings. The submission also placed substantial weight upon a public interest in the fair and accurate reporting of the affairs and workings of Government.

After hearing submissions from Counsel Assisting and from Counsel for a number of Government departments, the Inquiry deliberated and concluded that:

“In weighing up those matters, the committee is of the view that the balance firmly favours the non-disclosure of documents that have become exhibits. To release those documents to any party external to the Inquiry would compromise the confidentiality through which persons have availed themselves of the services of government agencies, perhaps irreparably so. It would also run counter to the format and method of the taking of oral evidence and the balance that has been struck in that regard…”

The Inquiry members then made a direction under section 13(4) of the Act that documents made an exhibit to this Inquiry will not be provided or made available to any person beyond the Inquiry itself, its staff and Counsel representing the Government agencies themselves.

3.6 Documentation – Confidentiality and record keeping requirements

Two other pieces of legislation impact upon the operations of the Inquiry.

The Inquiry’s records are subject to the State Records Act 2000 which requires that a State Records Plan be created, registered and adhered to. This task is being undertaken with the assistance of the Department of Premier and Cabinet.

The potential effect of the Freedom of Information Act 1992 on the records of the Inquiry is also of some significance. Whilst the Inquiry should be mindful of the value of open and accountable Government, it is nonetheless clear that much of the material being sought and received by the Inquiry should be exempt from release if an application be made.

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2 Ms Kate McDonald, Assistant Crown Counsel, made submissions on behalf of the Commissioner of Police and the Director Generals of the Departments of Education, Justice and Community Development.
3.7 Cultural considerations

The timeframe and logistical issues faced by the Inquiry has necessitated a consultation process which does not always fit with culturally appropriate ways of gathering and giving information. The Inquiry has taken considerable care to acknowledge and respond to cultural sensitivities, issues of gender and other related matters.

On occasions, Aboriginal law and other community responsibilities minimised attendance at meetings with Inquiry members. Inquiry members met with a significant range of people in the various communities. Sometimes this involved only council members; in others it involved broad representation from community members as well as Government and non-government agencies providing services.

3.8 Challenges and supports in carrying out the Inquiry

3.8.1 Challenges

The time prescribed for the Inquiry’s work has required that the Inquiry members and staff be selective in the specific issues identified for examination and analysis. This is illustrated in section 3.3.4 of this Report which addresses the process currently being undertaken in the selection of specific case studies.

The Inquiry has spent considerable effort recruiting staff with the particular skills necessary to address the Terms of Reference. Given the subject matter of the Inquiry and its focus on a variety of agencies within Government, it has been difficult to recruit suitably qualified and independent staff. The Inquiry believes, however, that it has assembled an effective team with a range of complementary skills and experience.

3.8.2 Supports

All Government agencies have offered help and have provided significant information to the Inquiry. It is notable that the WAPS and the DIA have been very supportive with providing transport in remote parts of the State. Aboriginal communities and non-government agencies have also been generous in the time they have spent discussing matters with the Inquiry.

There has been a need for complainants and others to access Government services. Those Government services include counselling, health care, police investigation and the provision of housing. The Inquiry has initiated and developed strong and effective lines of communication with the relevant Government agencies to assist in meeting those needs.

The Inquiry also wishes to acknowledge the additional monies made available by Government to assist with the consultation and other processes continuing as per the Premier Dr Gallop’s statement in Parliament on 12 March 2002. (Appendix 5).
The Inquiry notes the assistance provided by individuals who have acted as facilitators, in a voluntary capacity, between the Inquiry and individuals in the community who wish to give information to the Inquiry.

3.8.3 Summary

The Inquiry believes that it is gaining a comprehensive insight into the problems being faced by communities and the challenges of Government agencies in delivering services to these communities. This understanding will form the basis of the Inquiry’s deliberation and consideration required by the Terms of Reference.
4. Responses to Terms of Reference

4.1 Overview

The Inquiry is still hearing evidence, receiving submissions and speaking with individuals, groups and Aboriginal communities. However it is possible to reach an assessment that family violence and child abuse are so widespread in Aboriginal communities that they present a crisis of frightening magnitude.

While communities and agencies have expressed considerable concern and distress about the problems, they are clearly struggling to develop and implement solutions.

It is apparent that many Aboriginal communities are focused on basics such as power, water, roads and other infrastructure to keep the communities functioning. In many cases staffing and other resources do not allow a focus on the social and welfare needs of the communities.

Aboriginal community, Government and non-government agency consultations indicate that family violence and child abuse are widespread. Many respondents said that this was now normalised in Aboriginal communities. Also normalised was an expectation that Government agencies were unable or unwilling to help. The Inquiry heard that when intervention is available it often only addresses the outcomes such as sexually transmitted diseases or broken bones.

The Inquiry is conscious that one example of poor service can prejudice a community or agency view of services provided. Nevertheless the criticisms have been consistent and concerning. The Inquiry will be using a three-tier model of service delivery, as described in section 5.1 of this Report to understand the range of response by Government agencies to family violence and child abuse. This will focus on:

- General prevention activities aimed at the whole community;
- Service delivery to vulnerable groups; and
- Services provided after the violence has occurred.

Evidence will be heard from Government agencies about their responses using this framework.

Over the next three months the focus of the Inquiry will move to developing practical solutions and ways forward. The Inquiry believes that Government agencies will be able to assist in the development of practical solutions to the problems of family violence and child abuse in Aboriginal communities.
4.2 Term of Reference 1

*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 Nyoongar community.*

The Report into the death of Susan Taylor (“Susan”) by the State Coroner, Mr Alistair Hope, of November 2001 revealed a number of issues of concern with respect to family violence and child sexual abuse at the Swan Valley Nyoongar community (SVNC). It is clear to the Inquiry particularly, from its ongoing consultations that many of the issues raised by the Coroner with respect to the SVNC are also relevant to other Aboriginal communities in Western Australia.

The Inquiry notes that Term of Reference 1 particularly refers to issues raised by the Coroner that relate to “the way that Government agencies dealt with the issue of violence and child sexual abuse at the Swan Valley Nyoongar community.” There are a number of issues that have been raised by the Coroner in his report that are not within the scope of this Inquiry.

The Inquiry sought and received a copy of the transcript of evidence given before the Coroner during the inquest into the death of Susan. It would be unnecessary and inefficient for the Inquiry to use its resources and time to duplicate the work undertaken and the evidence gathered by the Coroner. This transcript has been tendered into evidence before the Inquiry.

4.3 Specific issues raised by the Coroner concerning Susan Taylor

To date, the Inquiry has particularly concerned itself with the following issues raised by the Coroner with regard to the death of Susan at the SVNC:

a) The adequacy of the Western Australia Police Service investigations in relation to Susan’s death.

- The Coroner stated in his Report “the investigation conducted by police was not sufficiently thorough to determine with certainty the circumstances in which Susan was found and whether there was any significant delay, for example, in attempting to resuscitate her.”

- The Coroner added that concerns expressed by witnesses as to the state of Susan’s clothes were never adequately investigated. He also noted that the dispute between witnesses as to whether Richard Bropho was present when Susan was located hanged was of particular significance.

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3 The Inquiry shall refer to Susan Taylor as “Susan” in deference to her family’s wishes as expressed to the Coroner and to the Inquiry itself through an intermediary.

4 The Inquiry notes that the Swan Valley Nyoongar community prefers the alternate spelling “Nyungah”, however the Inquiry will continue to use the spelling used in the Terms of Reference.

because of the serious accusations made by Susan against him shortly before her death.\textsuperscript{6}

- Inspector John Hart gave evidence to the Inquiry concerning conduct by the WAPS of an Internal Review of the WAPS investigation of Susan’s death. That Review, which commenced before the delivery of the State Coroner’s findings and examined the perceived shortcomings in the investigation. The Review duly accepted, with a few qualifications, the findings made by the Coroner with regard to the WAPS investigation of Susan’s death.

- In particular, the Internal Review concluded that police officers should have:
  - Obtained statements from key witnesses regarding the discovery of Susan’s body and conflicting information at the scene;
  - Investigated the state of Susan’s attire; and
  - Examined any significant delay in resuscitation.

- Inspector John Hart also provided the Inquiry with evidence regarding:
  - A package that was developed and distributed throughout the Eastern Metropolitan Police District clearly setting out the actions required when responding to a Coronial Investigation. (These new procedures have been in place since 1 February 2002);
  - An overall tightening of procedures and standards in the investigation of sudden deaths in the Eastern Metropolitan Police District. The Coronial Inquiries Section has taken over the investigation of sudden deaths in the area; and
  - Other changes that have been implemented, particularly in the Eastern Metropolitan Police District, since Susan’s death and the subsequent Coronial Inquest.

- There is no evidence, either on the basis of analysis undertaken by the WAPS in its Internal Review or on material obtained by this Inquiry, to suggest any absence of good faith on the part of the investigating police officers, or the presence of any external forces influencing the investigation. Rather, the explanation for the shortcomings appears clearly to reside in:
  - Lack of communication between police officers;
  - Lack of case management principles;

\textsuperscript{6} WA Coroner’s report 2001, p28.
• Presumption by investigators that the circumstances surrounding the death of Susan were not suspicious due to her past history; and

• Lack of supervision of the overall investigation.

• Superintendent Steve Robbins gave evidence on a variety of matters relevant to the Terms of Reference concerning the structure, policies and procedures of the WAPS. Whilst he did not have any involvement himself in the investigation of issues relating to Susan’s death, nor did he actively participate in the Internal Review, Superintendent Robbins expressly endorsed the conclusions that were drawn by the WAPS in that Internal Review and the related findings by the State Coroner.

b) The adequacy of the Western Australia Police Service investigations of serious allegations made by Susan shortly before her death:

• The Coroner found that it was not possible to determine whether any particular offences had been committed against Susan.\(^7\) It is appropriate to highlight again that it is not a function of this Inquiry to make factual findings regarding the nature and extent of criminal offences committed by, or against, any person.

• The Inquiry also received evidence that the WAPS sought statements from other witnesses and the alleged perpetrator but that in the absence of Susan’s evidence there was not sufficient basis upon which to charge the alleged perpetrator.

• Whilst there were some unfortunate facets of the WAPS investigation into Susan’s allegations, the evidence does not suggest that these were the same shortcomings that characterised the distinct WAPS investigation into Susan’s death. WAPS witnesses and the Internal Review have reached a view that there was insufficient admissible evidence upon which to base charges after Susan’s death. The Inquiry has not received any evidence that would contradict this view.

c) The previous suicide attempts by Susan and other children at the Swan Valley Nyoongar community:

• The Coroner notes in his report a number of occasions where Susan had previously attempted suicide.\(^8\)

• The Coroner received evidence about the suicide of other young people who had significant contact with Susan and her peers. In particular, the death of a cousin to whom Susan was particularly close led to threats of self-harm by Susan and her friends.\(^9\)

\(^7\) WA Coroner’s report 2001, p29.
\(^8\) WA Coroner’s report 2001, p17-19.
\(^9\) WA Coroner’s report 2001, p17.
• Whilst the Inquiry does not intend directly to examine the incidence of suicide in the Aboriginal community or at the SVNC, it is mindful that suicide and suicide attempts are often closely linked to other issues of family violence and sexual abuse.

• The Inquiry will further examine issues associated with the assessment, diagnosis and treatment of Susan as well as the general issue of the availability of mental health services to the Aboriginal community.

4.4 Issues raised by the Coroner concerning access to the Swan Valley Nyoongar community

The Coroner heard evidence as to the access to the SVNC afforded to Government and non-government agencies, and the WAPS members. The Inquiry has, in turn, isolated the following particular issues.

a) The “ban” placed on the (now) Department for Community Development from entering the SVNC between mid-1997 and late 2000.

• The Coroner canvassed the purported “ban” on DCD in some depth in his Report.10

• The Inquiry heard from numerous witnesses, each of whom provided their own perspective on the reasons for the exclusion from access and the effect that exclusion had on service delivery to the residents of the SVNC. Witnesses before the Inquiry noted that members of the SVNC often had a deep mistrust of the DCD. Some expressed a view that, where possible, complying with the conditions placed upon access showed respect to the SVNC and improved the relationship between its residents and the DCD.

• They also noted that, short of exercising a statutory power of entry, officers from the DCD were limited to negotiating entry to the SVNC through its elders.

• Whilst the Inquiry has not heard direct evidence from Mr Robert Bropho on the issue of the so-called “ban” it has had the benefit of reading his evidence from the Coronial Inquest. His evidence was that he could not recall any time when he “banned” the DCD or its officers from the camp. He does suggest that he may have issued such a ban if his permission had not been sought to enter the SVNC. He also states that he would have allowed their entrance to the SVNC if he had been fully informed of the nature of the allegations.

• Officers of the DCD and other service-providers have expressed concern about this lack of access and the impact it had on the safety of children at the camp. The Inquiry may further explore the issue of establishing contact with children where there appears to be

insufficient grounds for intervention under the relevant legislation and informal means of contact are not available.

- The Inquiry does not, as yet, make any findings as to these factual matters. It will assess the totality of evidence and other material, including any further submissions received on behalf of the SVNC, before doing so.

b) The Western Australia Police Service ability to enter the Swan Valley Nyoongar community and associated protocols.

- The Coroner heard evidence that previously problems had existed in relation to the WAPS entering the SVNC.\textsuperscript{11}

- Robert Bropho gave evidence to the Coroner that his relationship with the WAPS, in particular specific officers at the Lockridge Police Station, had dramatically improved. He also stated that the WAPS now contacted him before entering the camp as a matter of politeness and respect.\textsuperscript{12}

- Senior Sergeant James Clarysse gave evidence to the Inquiry that there were now protocols in place between the WAPS and the SVNC in relation to police access. Further, he considered that a good rapport had developed between himself and Robert Bropho. This view was reiterated by Robert Bropho during a consultation with the Inquiry.

- Inspector John Hart’s evidence on this issue, as a senior policeman in the Lockridge area since July 2001, was that he had experienced no barriers himself personally accessing, or arranging access to, the SVNC premises. His view, based on the entirety of his experience in police work involving Aboriginal communities, was that Police Officers of the rank of Sergeant or above (at least where such officers are male) are naturally accorded such respect that issues of accessing premises present no difficulties.

c) The absence of Derbal Yerrigan Health Service (DYHS) from the Swan Valley Nyoongar community and the availability of health services within the Swan Valley Nyoongar community.

- The role played by the DYHS is not directly within this Inquiry’s Terms of Reference because that Health Service is not a State Government agency. However, the efficiency and effectiveness of health services, whatever their source, can, in the Inquiry’s view, impact on service delivery by State Government agencies.

- Mr Wilkes, the former Director of the DYHS (formerly the Perth Aboriginal Medical Service(AMS)), gave evidence to the Coroner that

\textsuperscript{11} WA Coroner’s report 2001, p22.
\textsuperscript{12} WA Coroner’s report 2001, p23.
over a considerable period of time the DYHS had not been able to have any adequate access to the SVNC. 13

- Mr Robert Bropho told the Coroner that he, as an Elder of the SVNC, did not want the AMS or, the DYHS to provide services at the SVNC. The Coroner was of the view that this approach was “unfortunate”.14

- Mr Bropho has expressed a view to the Inquiry that better health services need to be provided to the SVNC.

- The Inquiry will continue to explore the provision of services to the SVNC in the context of a broader examination of health services available to Aboriginal communities.

d) The legal right of members of the Swan Valley Nyoongar community to exclude Government officers from their property.

- The essence of the SVNC position is that the SVNC, which has responsibility for the care, control and management of the land, generally has the power to exclude members of the public from its property in a similar manner to freehold property owners.

- The Inquiry does not, for present purposes, express a concluded view on the issue. It has received a number of legal opinions. These opinions have been provided to the Inquiry with a waiver of associated legal professional privilege to any extent necessary.

- Counsel Assisting will make a submission in due course for the purposes of the Final Report, such submission taking into account the entirety of the legal opinions, submissions and factual material on the subject.

4.5 The Inquiry’s consultation with the Swan Valley Nyoongar community

The Chairperson, Inquiry members and staff met with representatives of the SVNC at their invitation on Monday, 4 March 2002. The SVNC believed that it is being unfairly targeted and refuted allegations that have been made. The SVNC members and representatives were also keen to make submissions to the Inquiry about practical solutions. Of particular concern to the SVNC members was the use of solvents by their children. There was debate about legislating to prevent solvents and paint being sold to children, however it was noted that this may not stop people from giving solvents and paint to the children. The SVNC was also keen to provide the Inquiry with recommendations it had previously made to Government. In particular the SVNC expressed an interest in establishing a safe house and a sobering up facility for young people which would allow them to be rehabilitated without

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having to leave their family structure. A view was also expressed that the children in the SVNC needed to be taught more about their culture which SVNC members believed would help to raise their self-esteem and make them less vulnerable to exploitation and drug addiction. A further meeting has been arranged between the Inquiry and the SVNC.

4.6 General issues raised in Term of Reference 1

The Coronial Inquiry into Susan’s death and information received by the Inquiry can be distilled into the following issues:

a) The widespread rape and other sexual abuse committed against young Aboriginals by members of the Aboriginal community and others;

b) The widespread sexual and physical abuse committed against women in the Aboriginal community;

c) The relatively small number of reported instances of sexual abuse in the Aboriginal community;

d) The availability of Government services to members of the Aboriginal community;

e) The success, or otherwise, of the WAPS investigations into allegations made by, and against, members of the Aboriginal community;

f) The high proportion of Aboriginal children (relative to non-Aboriginal children) who suffer from sexually transmissible diseases;

g) The recommendation by the Coroner that sexually transmissible diseases in children be mandatory reported to the DCD and to the WAPS;

h) A perceived need for more service providers to be specifically trained to respond to child sexual abuse in Aboriginal families;

i) Widespread and ongoing problems with alcohol, paint, solvent and other drug abuse in Aboriginal communities and the ability of Government and non-government agencies to significantly impact upon this issue; and

j) The Coroner’s opinion that Government services should not be excluded from Aboriginal communities in any circumstances.

These matters are the subject of ongoing investigation by the Inquiry. Some significant aspects of the evidence touching upon these issues are summarised in Appendix 4.
5. Term of Reference 2

Examine how State Government agencies respond to evidence of family violence and child sexual abuse that may be occurring in Aboriginal communities generally;

Including the requirements to:

- Examine the activities of State Government agencies in addressing complaints and the reporting of sexual abuse in Aboriginal communities;

- Identify the barriers and capacity of Government agencies to address the issue of family violence and in particular child sexual abuse in Aboriginal communities;

In addition

- The Inquiry is to consider current research into the prevalence, causes and solutions to Aboriginal family violence;

- The Inquiry is also to liaise with the Interdepartmental Committee on Sexual Assault to avoid duplication and ensure complementary outcomes.

5.1 Overview

It is clear that Government agencies face extraordinary problems in providing services to Aboriginal communities. Communities themselves are struggling to tackle the social problems as envisaged in the move to self-determination.

Service delivery to Aboriginal communities raises complex problems for all Government and non-government agencies. Significant inquiries into the problems facing Aboriginal communities have all found that these problems are entrenched and reaching epidemic proportions. Solutions are not easy to discover or implement. Since colonisation many interventions in Aboriginal communities have been damaging and caused more fundamental problems.

Aboriginal communities are acutely sensitive to the intrusions and mistakes of the past by Governments. Aboriginal communities welcome the emphasis on self-determination, however it must take into account the strengths, skills and traditions of Aboriginal communities. The differences in values, beliefs and structures create challenges in Aboriginal community and Government working relationships.

A useful model employed in the fields of medicine and other community based service delivery such as child protection is the model of primary, secondary and tertiary prevention, where:

- **Primary** refers to the provision of services to the community generally to educate and raise awareness of the dangers;
• **Secondary** refers to the provision of support services to those who are vulnerable; and

• **Tertiary** refers to the provision of services after the problem has occurred.

Communities and agencies have consistently told the Inquiry that the activities of Government agencies are not achieving outcomes at all three levels. Their concerns are:

• **Primary prevention** activities are sporadic, project based, and have not impacted significantly on a depressing acceptance that violence and abuse are part of life in many Aboriginal communities.

• **Secondary prevention** services are also not readily available and many families and communities have expressed extreme concern that they have been unable to obtain services for problems such as solvent, drug and alcohol abuse that place women and children (as well as men) at extreme risk of abuse and even death.

• **Tertiary prevention** activities which involve treatment and intervention after the violence and abuse have happened, are also in many cases insufficient or inappropriate. Serious concerns were raised about failure to fully investigate cases of child sexual abuse, and of failure to provide counselling and other support services after the abuse has happened.

Problems of service provision and prevention activities relating to family violence were also raised frequently. Concern was expressed that many women continue to remain vulnerable because of the remoteness of communities, the payback system, and the lack of ongoing services which would enable them to extricate themselves from violent relationships. Men, both victims and perpetrators also need ongoing services to enable them to make changes.

The Inquiry will be examining these criticisms in the next three months. Nevertheless the criticisms have been consistent and of concern. The Inquiry is of the view that the three tier model of prevention and service delivery is useful in understanding the range of response by Government agencies to family violence and child abuse. Evidence will be heard from Government agencies about their responses using this framework.

### 5.2 Activities of State Government agencies

The Inquiry is examining the actions of seven agencies. The major focus thus far has been the DCD. It is also apparent that many Aboriginal communities when asked about the problems of family violence and child abuse only think of the WAPS and the DCD. The Inquiry is not yet in a position to fully discuss the activities of all Government agencies. It is emphasised again that no findings have yet been made on any expressed complaints or criticisms.
Some general concerns have been raised about the service delivery of Government agencies to Aboriginal communities. These include:

- Attitudes of some staff to Aboriginal people;
- The values of some staff members;
- The capacity and willingness of Government agencies to plan and deliver services according to the communities wishes rather than according to policies and procedures set by Government agencies without the benefit of community input;
- An acceptance of the reality and imperviousness of Aboriginal family violence;
- Ensuring client safety when reports of family violence and child abuse are received and during legal proceedings;
- Consultation processes;
- Whether there is sufficient focus on the needs of children;
- Coordination within and between Government and non-government agency service delivery to communities;
- How well individual programs respond to the holistic needs of the Aboriginal community; and
- Relocation of Government offices out of smaller centres.

The Inquiry will also be exploring the perceived lack of reporting of child abuse by some Government agencies.

5.2.1 Department for Community Development

Some particular concerns were raised by Aboriginal communities, Government and non-government agencies about service delivery by DCD. These include:

- The response when allegations of child abuse, particularly child sexual abuse are made;
- Frequency of visits to Aboriginal communities;
- Feedback to notifiers;
- Engagement with family members to solve problems;
• Engagement with other Government agencies;
• Short-term contract workers;
• Staff mobility generally;
• Caseload size; and
• The implications of unsuccessful prosecutions.

5.2.2 Western Australia Police Service

During the Inquiry’s consultations in remote areas, the issue of policing was discussed in relation to the WAPS members, Aboriginal Police Liaison Officers (APLOs) and individual wardens. The effectiveness of the Aboriginal Communities Act 1979 and how it impacted on the issues of family violence and child abuse was also raised.

Concerns regarding the WAPS which were raised by Aboriginal people included:

• Short-term postings for the WAPS members in country towns and remote areas which have both positive and negative effects on Aboriginal communities. (This concern was also shared by the WAPS members);

• Effective WAPS projects being discontinued upon change of key WAPS personnel;

• Pockets of racism amongst the WAPS members; and

• Quality of service, which varied between Police Stations appeared dependant upon the Officer-in-Charge.

5.3 Barriers to addressing family violence and child abuse

5.3.1 Underlying issues

The Inquiry is mindful of the complexity and long standing nature of the problems that face Aboriginal communities. Research, Government and non-government agencies and Aboriginal community views suggest that family violence and child abuse are related to underlying problems such as:

• Drug, alcohol and substance abuse;

• Diminution of culture and spirituality;

• Leadership within Aboriginal communities;

• Lack of economic opportunities;
• Housing issues; and

• Insufficient infrastructure.

These underlying issues, which are co-related, make it difficult for individual Government agencies to respond to family violence and child abuse unless these fundamental problems are being tackled concurrently in a comprehensive manner.

The Report by Memmott et al; Violence in Indigenous communities, also underlines these broader aspects:

“...The problem of indigenous violence is thus both longitudinal and interconnected with many spheres of life. The holistic approach to tackling the violence problem involves providing land, housing, health services, education, employment, substance abuse services etc as well as violence programs. Matthews asserts that, in Victoria, most of the action that can be taken to redress Koori crime is outside the arena of the justice system and is rather to be found in the spheres of health, education, housing and employment (Matthews 1997:8).”

While service delivery in many of these areas falls outside the ambit of this Inquiry’s Terms of Reference, the impact of service delivery by the Commonwealth Government, Local Government, non-government agencies and Aboriginal community councils is relevant in considering the barriers to Government agency response to the problems under review.

5.3.2 Aboriginal culture

The impact of ongoing assaults on Aboriginal culture has affected the capacity of Aboriginal communities to both lead and be actively engaged in the responses to the social problems including family violence and child abuse. This presents significant problems for Government agencies.

Some young Aboriginal people spoke of their sadness, anger and grief at their loss of culture. They spoke of the apparent unwillingness of Aboriginal elders to reach out to them, understand their issues and help them breach the gulf between “traditional” culture and the issues facing young Aboriginal people in the 21st century.

Some older Aboriginal people also spoke of the difficulties in understanding young people and involving them in community life. They expressed fear for the future of their communities unless the problems impacting on young people are addressed. They were particularly concerned about suicide, drug, alcohol and substance abuse, unemployment, violence and an unwillingness to listen to elders.

5.3.3 Aboriginal community resources

Aboriginal communities are like small Local Government Authorities (LGAs). LGAs employ many people skilled in management and with technical expertise. Most Aboriginal communities understandably do not have people with these skills. They also do not have the resources to employ people with this expertise. In some cases outsiders have been employed and have exploited communities. The lack of skills and experience in these types of roles make it difficult for many communities to relate effectively to Government agencies.

These comments are not made to be critical of Aboriginal communities, but rather to highlight the difficulties faced by both Government agencies and Aboriginal communities in working together to solve the problems of family violence and child abuse. The Inquiry was deeply affected by many Aboriginal communities’ difficulties in responding to the epidemic of family violence, child abuse and associated problems.

If Aboriginal communities are to accept more responsibility for dealing with these issues, it is clear that additional support will need to be given. The role of Government agencies in providing that support is yet to be examined.

5.3.4 Misrepresentation of culture

A significant barrier is the assertion by some Aboriginal and non-Aboriginal people that child abuse is cultural. The Inquiry was told of instances where men being prosecuted for child sexual abuse used a “defence” that their activities were “cultural”.

The comments from members of the Kimberley Aboriginal Law and Culture Centre (KALACC), the ATSIC - Kullarri Regional Council (KRC) and some other communities are useful and differentiate between early promised marriages and child abuse today.

The ATSIC - KRC stated in its submission to the Inquiry:

“Aboriginal Law and Culture do not sanction child abuse. It is an abuse of our custom to make claims that is otherwise.”

16 Submission from ATSIC - Kullari Regional Council
5.3.5 Training and qualifications

Aboriginal communities, Government and non-government agencies indicated that staff need to have appropriate qualifications and training so that they are able to:

- Understand cultural issues generally and more specifically local cultural issues;
- Have a depth of knowledge of child abuse;
- Report child abuse appropriately;
- Respond to disclosure of abuse;
- Appropriately involve Aboriginal staff; and
- Appropriately involve Aboriginal family members in decision-making.

5.3.6 Resources

Some Government agencies, particularly the DCD appear to be unable to visit Aboriginal communities due to lack of resources. In some instances there did not appear to be sufficient staff available to respond to and manage cases of child abuse.

5.3.7 Summary

It should be emphasised that Government agencies have yet to be given the opportunity to respond to these issues which have been raised in consultations or in submissions to the Inquiry. It is envisaged that findings and conclusions with respect to barriers in addressing family violence and child abuse will form a significant part of the Final Report.

5.4 Research themes

The research reviews commissioned by the Inquiry have yet to be received. However the Inquiry has examined the reports of significant other Inquiries that address prevalence, causes and solutions to Aboriginal family violence.

5.4.1 Cause of family violence

The Violence in Indigenous communities Report (p 11)\(^\text{17}\) also proposes a useful model of understanding the causes of violence. Three categories are proposed:

a) **Precipitating causes**

Precipitating the causes are seen as actions that trigger violence. Many of the precipitating causes may seem insignificant to an outsider but need to be understood in the context of the situational and underlying factors. Precipitating causes include:

- making a pass at a defacto;
- quarrelling between husband and wife;
- children fighting at school;
- accidentally knocking someone over at sport; and
- arguing over a game of cards.

b) **Situational factors**

Situational factors relate to the immediate situation such as alcohol abuse, or encouragement by others to behave violently. Other situational factors include:

- interracial tension;
- over zealous policing;
- cohabitation between distinct tribal groups in Aboriginal communities;
- interfamily feuds;
- poverty;
- unemployment; and
- boredom.

c) **Underlying factors**

Underlying factors relate to the history and circumstances of indigenous peoples. Of particular note in the underlying factors is the violent dispossession of land that occurred during colonisation. The deliberate disempowerment of elders and the undermining of authority of Aboriginal elders and community leaders have seriously damaged control and structural supports for appropriate ways to behave in communities. The deliberate undermining of religion, culture and language is seen as fundamental to the violence that is endemic in Aboriginal communities.
5.4.2 Concepts of family violence

The Western Australian Crime Research Centre Report (p 3)\(^{18}\) also suggests:

“...

- *Less reliance on an explicitly feminist analysis and explanation of violence within intimate relationships;*

- *A view which sees male violence less as an expression of patriarchal power than as a compensation for lack of status, esteem and value;*

- *Greater stress on the impact of family violence on the family as a whole, rather than just on women and children;*

- *Emphasis on a range of potential perpetrators, rather than just husbands, including sons, grandsons and other male kin.***

Aboriginal family violence:

- Is fed by and feeds broader community conflict;

- Impacts on a wide range of kin and community members;

- Includes a range of abuse, degrading and violent behaviours; and

- Is within the context of community violence, feuds and conflicts.

5.4.3 Women and family violence

Recent *Partnerships*\(^{19}\) consultations support project findings that indigenous women:

- Are more likely to fight back and so experience more injury, or cause the perpetrator harm themselves;

- Do not use support services for fear of what will happen to the perpetrator once in custody;

- Are more likely to use refuges as respite and then return to their violent partners, rather than as a place from which to move on;

- Lack information about legal process and are unwilling to seek legal advice; and

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\(^{18}\) Crisis Intervention in Aboriginal Family Violence Report 2000

\(^{19}\) Key Findings of Projects with Indigenous Communities – Partnerships Against Domestic Violence June 2000
• Fear payback from families and communities, particularly in traditional marriages if they take action against an offender without support of community elders and Council.

5.4.4 Prevalence of family violence

Evidence for the widespread prevalence of violence in Aboriginal communities is contained in the Violence in Indigenous communities Report (p 6)\(^{20}\). The review of literature on indigenous violence makes the point that the statistics are not perfect, but that:

“…

1. violence is perceived by many people, both indigenous and non-indigenous, as a major problem in Indigenous communities;

2. the incidence of violence in Indigenous communities and among Indigenous people is disproportionately high in comparison to the rates of the same types of violence in the Australian population as a whole; and

3. it is apparent that rates of violence are increasing, and the types of violence are worsening in some indigenous communities and regions.”

5.4.5 Solutions

The reports from other Inquiries indicate that there are no quick fix solutions to the complex issues surrounding family violence in Aboriginal communities.

The Partnerships Against Domestic Violence has developed strategies and models for Crisis Intervention in Aboriginal Family Violence for Western Australia.\(^{21}\) The responses outlined by Harry Blagg in this document include:

• The use of existing community structures;

• A focus on the community aspect of family violence rather than just a criminal justice response;

• Adding specific initiatives on family violence to existing programs;

• Regional coordination of service delivery;

• Responding to temporary movements of Aboriginal people, particularly when alcohol then becomes available, and the consequent problems such as overcrowding and demands on service delivery; and

• An acknowledgement and response to local needs and issues.

\(^{20}\) Violence in Indigenous communities Report 2001

\(^{21}\) Crisis Intervention in Aboriginal Family Violence for Western Australia
The key elements proposed in the draft State Action Plan on Family and Domestic Violence May 2001 \(^\text{22}\) by the Domestic Violence Prevention Unit of the Women’s Policy Office also provides useful elements within an overall strategy. They are as follows:

“...

- **Key Element 1**
  Meet the needs of diverse regions and develop responses through local planning, delivery and evaluation.

- **Key Element 2**
  Adopt a community development approach which builds the capacities of community organisations and utilises existing knowledge and skills.

- **Key Element 3**
  Increase respect for culture in ways appropriate to each region thus challenging negative stereotypes and increase the appropriateness of services.

- **Key Element 4**
  Promote the message that violence is not sanctioned by culture and enable those experiencing violence to speak out.

- **Key Element 5**
  Provide services which keep the family together and address needs in holistic ways including protecting families from violence.

- **Key Element 6**
  Explore and develop further options in the criminal justice system, especially in the early phases of intervention, including traditional practices and aspects of customary law where relevant.

- **Key Element 7**
  Adopt a broad approach as opposed to a criminal justice perspective only and link initiatives in justice, education, health and welfare with economic development.

- **Key Element 8**
  Develop partnerships between government and community and increase participation of Aboriginal people in government at all levels of decision-making and service delivery.”

5.5 **Interdepartmental Committee (IDC) on Sexual Assault**

The Chairperson of the Inquiry met with the Chairperson and some members of the IDC on Sexual Assault on 5 February 2002 to discuss the approaches each planned to take regarding both Inquiries. The Chairperson and Inquiry member, the Hon Kay Hallahan, attended a meeting of the IDC on Sexual Assault on 2 April 2002 and an outline of the Inquiry’s consultations and progress was conveyed.

Given that the Inquiry must remain independent and cover its Terms of Reference fully, it may not be able to avoid duplication or ensure complementary outcomes. Nevertheless the Inquiry is cognisant of the activities of the IDC on Sexual Assault and will remain mindful of them as it continues its enquiries.

An undertaking has been given to meet again with the IDC on Sexual Assault in May 2002.

5.6 **Summary**

The material accumulated and considered to date by the Inquiry reveals some significant themes underlying complex problems of service delivery to Aboriginal communities. It would be premature to attempt any meaningful classification or analysis of those themes, but of paramount concern are:

a) The need for identification and evaluation of an appropriate overarching model of service delivery which takes account of the breadth of issues raised in consultations; and

b) The specification of an efficient and cohesive means of service co-ordination within such a model.

Those themes remain foremost in the Inquiry’s mind as it proceeds with its ongoing examination of Government response within the framework of the second Term of Reference. The Inquiry’s ultimate findings and conclusions on those broad-ranging issues of Government response will provide the framework for fulfilment of the complementary third Term of Reference.
6. **Term of Reference 3**

*Report to me with recommendations on practical solutions for addressing incidents of sexual abuse in Aboriginal community, including any necessary legislative and administrative measures.*

The Inquiry is to:

- *Comment and make recommendations on the mandatory reporting of sexually transmitted diseases occurring among children and juveniles;*

- *Comment on any limitations of DNA testing in the Aboriginal community;* and

- *Propose support measures for children reporting abuse.*

6.1 **Overview**

Over the next three months the Inquiry will be exploring practical solutions based on:

- Aboriginal community views;

- Government agency proposals;

- Advice from individuals;

- Expert advice;

- National and international responses;

- Research findings; and

- The expertise and experience of Inquiry members and staff.

Solutions to family violence and child abuse are not easy to discover. The Inquiry is mindful of other reports and reviews that have suggested ways forward.

6.1.1 **Report reviews**

The Inquiry has been particularly impressed by Justice Fitzgerald’s Report addressing issues in Queensland Cape York communities.

*The Fitzgerald Report*[^24] has examined in depth the issue of violence in North Queensland Aboriginal Communities. The consultations carried out by the Gordon Inquiry as well as data on the Western Australian situation for

[^24]: The Fitzgerald Report Cape York Justice Study 2002
Indigenous communities supports the relevance of the findings of the Cape York Justice Study Report. Justice Fitzgerald in particular outlined:

- The need for community action plans which focus on the needs of women, children and the elderly and address the complexity of alcohol, family dysfunc tionality and inter-related threats in child abuse, sexual assault, neglect, retribution, self-harm and suicide as well as general safety in the community;

- The need to help men to take leadership and speak out against alcohol and violence;

- A serious lack of coordination and integration of departments and agencies;

- The need for resources and for authority to be provided locally; and

- The need to input a comprehensive range of strategies that address the issues of funding, education, health, law and justice, economic development, governance, and the evaluation of community progress and Government activities.

6.2 Mandatory reporting of sexually transmitted diseases (STDs)

During the consultations the question of mandatory reporting of STDs was discussed separately with Aboriginal males and females, non-Aboriginal individuals, non-government agencies and some medical practitioners. The Inquiry has heard conflicting views on the desirability of mandatory reporting of STDs.

Many professional workers believe that there should be mandatory reporting and that the failure to do so leaves children unprotected. Other professionals, particularly medical professionals, believe that people may not access treatment if mandatory reporting were legislated because of concerns with confidentiality. Further evidence and information is being gathered on this matter.

6.3 Limitations of Deoxyribonucleic Acid (DNA) testing in the Aboriginal community

Forensic Biology has evolved significantly over the past decade and, with the advent of new DNA testing procedures, has become an important component of the WAPS investigations.

The PathCentre Forensic Biology (PCFB) Laboratory employs techniques that have been subjected to peer reviews as part of the National Association of Testing Authorities (NATA) accreditation procedure. The DNA profiling methods used by this laboratory are adopted by all Australian Forensic Biology laboratories and accepted in Courts worldwide.
According to the PCFB review summary (Appendix 6), forensic DNA profiling of Australian Aboriginal people is no different to the profiling of any other population group in the world. It was further stated that in isolated populations or populations where there are strong traditions of marriages within a particular group in accordance with custom or law, or unions of blood relations, forensic DNA profiling is still valid and for accuracy of results, is supported with additional statistical considerations. “The statistical formulae employed by the PathCentre Forensic Biology laboratory assume that population substructure exists and use a very conservative correction factor to compensate for it.” (p 9)

6.4 Support measures for children reporting abuse

Whilst the evidence taken for the purpose of the first Term of Reference has, of its nature, touched on the question of support measures in only the most peripheral way, some relevant material has been obtained through other sources.

The pursuit of the second and third Terms of Reference through the calling of evidence, together with an ongoing assessment of the materials accumulated, will facilitate the making of specific proposals on this important issue in the Final Report.

- At present the Inquiry is examining the internationally endorsed framework for all such interventions and measures, the United Nations Convention on the Rights of the Child (UNCROC)26, which states:

“Article 19(1) reads:

State parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 19(2) reads:

Such protective measures, should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

Moreover the United Nations Committee on the Rights of the Child urges all levels of Government to use the terms of the Convention to act as a guide in

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25 PathCentre Review Summary
the development and implementation of policy concerning the protection of children.

It is appreciated that care must be taken in applying the terms and any associated policy guidelines, of an international convention which, as is the case here, have not been subject to domestic legislative enactment. Particular complications can arise where competing norms or standards, often arising from different areas of human discourse, generate tensions that are not capable of easy resolution.

Nevertheless the Inquiry proposes to give ongoing consideration to these applicable principles in arriving at its final conclusions and recommendations.

6.5 Legislative and administrative measures

The Inquiry has received suggestions on legislative and administrative measures, which will be further explored.

An example of legislation which impacts on both family violence and child abuse in remote communities can be found in the Shire of Ngaanyatjarraku and the Warburton Community Incorporated discussion paper which examined a range of law, order and justice issues which affected the Shire of Ngaanyatjarraku and their electors. 27 This discussion paper was presented to the Goldfields Esperance Zone of the Western Australian Local Government Association on 29 January 2002.

It is envisaged that the recommendations made in due course will encompass a variety of proposed initiatives to be addressed either “administratively”, through the executive arm of government, or by means of legislation. Some particular initiatives already put to the Inquiry through one or more of the six general sources referred to at section 3.1 of this Report, specify a particular legislative change or administrative measure. All will be considered against a background of the entirety of the material the Inquiry accumulates.

27 Shire of Ngaanyatjarraku and the Warburton Community Incorporated 2002 ‘Discussion paper on a range of law, order and justice issues that affect the Shire of Ngaanyatjarraku and their electors’. Submission to the Western Australian Attorney General (unpublished).
7. CONCLUSION

This Interim Report has summarised the sources, methods and processes undertaken to date by the Inquiry in accumulating material to fulfil its Terms of Reference. That material has highlighted the widespread, endemic nature of the grave social problems of family violence and child abuse in Aboriginal communities. The complexity of interrelated issues underlying those problems plainly creates enormous challenges for the difficult task of effective service delivery by Government to Aboriginal communities.

The ongoing tasks of undertaking further and final informal consultations, examining particular case studies by the adducing of evidence (see 3.3.4 of this Report), and analysing the entirety of the material before the Inquiry remain to be undertaken. The Inquiry looks forward to the delivery of its Final Report which will draw conclusions and findings as to the nature and sufficiency of governmental response, and address any shortcomings or limitations with meaningful and practical recommendations for change.
List of Appendices

Appendix 1

Definition of “family violence”:

In the Report entitled *Tjunparni: Family Violence in Indigenous Australia* by the Aboriginal and Torres Strait Islander Commission (1992).

The term “family violence” has been defined as:

“Beating of a wife or other family members, homicide, suicide and other self-inflicted injury, rape, child abuse”

Alternatively, the Department of Community Development refers to “domestic violence” rather than “family violence” and defines it as follows:

“Generally the term refers to abuse of one person by another who has, or has had a(n) intimate relationship with them. This includes spouses, de facto, ex-boyfriends and other family members.”

Definition of “child abuse”:

In section 4(1) of the *Child Welfare Act 1947* the term “child” is defined as meaning:

“Any boy or girl under the age of 18 years; and, in the absence of positive evidence as to age, means any boy or girl apparently under the age of 18 years but also includes any boy or girl dealt with under the Children's Court of Western Australia Act 1988 by virtue of section 19(2) of that Act.”

This is substantially the same as the definition contained in the United Nations Convention on the Rights of the Child (UNCROC).28

However, the *Child Welfare Act 1947* does not provide a definition of “child abuse”, neither does any other Western Australian legislation.

A definition of “child abuse” considered by the Inquiry is that “child abuse” means:

“Anything which individuals, institutions or processes do, or fail to do, which directly or indirectly harms children or damages their prospects of a safe and happy development into childhood.”

This definition is promulgated by the National Association for Prevention of Child Abuse and Neglect (NAPCAN).

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28 Australia is a signatory to the UNCROC which came into force on 2 September 1990 pursuant to Article 49 of that Convention. For the purposes of the UNCROC, Article 1 of the Convention defines a "child" as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier."
The Department for Community Development also does not define “child abuse” rather it refers to child abuse as “child maltreatment” and defines that in the following way:

“Child maltreatment occurs when a child has been subjected to sexual, emotional or physical actions or inactions, the severity and/or persistence of which has resulted in significant harm or injury to the child; or where a child has been exposed or subjected to exploitative or inappropriate sexual acts.”
Appendix 2

Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities

In accordance with Section 11(1) of the Public Sector Management Act 1994, the A/Premier, Hon Eric Ripper MLA has appointed Mrs Sue Gordon AM (Chairperson), Mrs Kay Hallahan and Mr Darrell Henry to hold a special inquiry to:

1. Examine issues raised by the Coroner into the death of Susan Taylor in relation to the way that government agencies dealt with the issues of violence and child sexual abuse in the Swan Valley Nyoongar Community.
2. Examine how State Government agencies respond to evidence of family violence and child sexual abuse that may be occurring in Aboriginal communities generally.
3. Report to Government with recommendations that are practical solutions for addressing incidents of sexual abuse in Aboriginal communities, including any necessary legislative and administrative measures.

Specifically, the Inquiry is to:
- Examine the activities of the State Government agencies in addressing complaints and the reporting of sexual abuse in Aboriginal communities;
- Identify the barriers and capacity of Government agencies to address the issues of family violence and in particular child sexual abuse in Aboriginal communities;
- Comment and make recommendations on mandatory reporting of sexually transmitted diseases occurring among children and juveniles;
- Comment on any limitations of DNA testing in the Aboriginal community; and
- Propose support measures for children reporting abuse.

The Inquiry is to consider current research into the prevalence, causes and solutions to Aboriginal family violence.

The Inquiry is also to liaise with the Interdepartmental Committee on Sexual Assault to avoid duplication and ensure complementary outcomes.

The Inquiry is to consult widely, including with representatives of Aboriginal communities, youth, health services and related organisations.

The Inquiry is to report to the Premier by 31 July 2002.

The Chairperson invites individuals, non-government organisations and Government agencies that may have an interest to lodge submissions in writing to:

Mrs Sue Gordon AM
Chairperson
“Gordon Inquiry”
PO Box 7333
Cloisters Square
PERTH WA 6850

Contact Details: Telephone (08) 9215 4700
Facsimile (08) 9215 4701
Freecall 1800 199 135
### Appendix 3

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Appendix 4

Departmental submissions and evidence

1. A number of agencies have made submissions to the Inquiry. Submissions have been received from:

   (a) Department for Community Development (DCD);
   (b) Department of Education (DOE);
   (c) Western Australia Police Service (WAPS);
   (d) Department of Health (DOH); and
   (e) Department of Justice (DOJ).

2. Of those submissions received all bar the submission from the DOH and the DOJ, have formally been tendered into evidence before the Inquiry during a hearing and have been spoken to in evidence by a member of the applicable agency’s senior management. The Inquiry also anticipates receiving submissions from the Department of Indigenous Affairs (DIA) and the Department of Housing and Works (DH&W).

3. The submissions are in the nature of detailed summaries of the structure, procedures and policies of the applicable agencies insofar as those agencies’ functions are encompassed by the Terms of Reference. The Final Report will consider those matters against the entirety of the available material. For present purposes, some salient features of that evidence are noted.

Department for Community Development

4. The DCD has a budget of $197 million for the 2001/02 financial year. It is also directly responsible for administering seven Acts and Regulations which range from the Adoption Act 1995 to the Child Welfare Act 1947.

5. The DCD has been significantly affected by recent changes resulting from recommendations of the Machinery of Government Taskforce. Apart from the DCD being formed after the merging of five different bodies, it has also signalled a change in its own ethos. The DCD describes it as a shift from “a predominant focus on the problems of individuals, families and communities to one that has as its starting point an acknowledgement of the strengths and resources of people and their environments, will have impact on the current structure of the Department”.

6. Apart from the elements of the DCDs submission which addressed the death of Susan, the DCD, in evidence given by Lex McCulloch, also provided a chronology of the contact between Susan and the DCD. The chronology showed that in 1993 and at Susan’s death the DCD and its officers had perhaps more than 100 contacts with Susan or members of her family. As such it would be fair to say that the DCD, of all Government agencies, had the most significant level of contact with the family although perhaps not Susan herself (and see further, in the context of DCDs “Case Audit”, paragraphs 49 to 53 below).
7. The DCDs submission to the Inquiry also incorporates the DCDs Case Practice Manual and supporting practices and guidelines. These documents have assisted the Inquiry in its evaluation to date of the DCDs practices, as to both their content and their application.

**Western Australia Police Service**

8. The WAPS was established in 1829. It provides its service to the community through some 162 police stations throughout the State, and is often the main “Government representative” in remote areas.

9. The WAPS has an express policy on family and domestic violence which forms part of the Commissioner’s Orders and Procedures Manual. That policy involves the concept of “zero tolerance” in combating family violence, encompassing a pro-active arrest of offenders, evidence-based charging where a crime has been committed, and a perspective that seeks to remove any notion of “responsibility” on the part of a victim. A variety of specific programs and initiatives are either currently in place, or in the course of contemplation, to further give effect to this overall policy. The Final Report will give consideration to those initiatives.

10. The WAPS has undergone significant structural change since 1994 which is intended to improve the agency’s style, standards, structures and systems to ensure that the WAPS meet the safety and security needs of the community by providing quality police services. These changes are central to what are known as the “Delta Reforms”.

11. The WAPS has particular units directed to child abuse and Aboriginal affairs. These are the Child Abuse Investigation Unit and the Aboriginal Affairs Directorate. Evidence will be led from appropriate officers to explore the nature of those units and their operations.

12. Of particular interest is the WAPSs employment of some 114 Aboriginal Police Liaison Officers (APLOs). The program under which these officers are employed is aimed to improve service delivery to remote Aboriginal communities and to assist the WAPS in providing services to the Aboriginal community.

13. Of particular interest to the Inquiry is the effectiveness of the services delivered by APLOs. More specific evidence will be led in that regard in due course.

14. Similarly, a WAPS, “Services to Remote Aboriginal Communities” review being conducted within the WAPS will be further examined in the course of evidence.

15. The WAPS submission makes specific mention of interagency collaboration regarding family violence and child abuse. It notes that a major barrier to effecting that collaboration is the exchange of material of a confidential nature. The Inquiry is particularly keen to explore this further.
Department of Education

16. The DOE accounts for one quarter of the State Government budget, which represents a budget in excess of $2b in the 2001/02 financial year. The DOE employs 16,114 employees and has the daily care of 258,000 students of which 16,736 are Aboriginal.

17. In a very real sense, the DOE often represents the main point of contact between the Government and children. As such it is of particular interest to the Inquiry how the DOE deals with suspicions that a child has been abused.

18. The DOE runs numerous programs to engage truant children in school; it also runs a variety of programs intended to engage Aboriginal children in the education system.

19. Of particular interest to the Inquiry are programs under the auspices of the Aboriginal Education Strategy and the National Indigenous English Literacy and Numeracy Strategy.

20. The DOEs submission was covered relatively briefly during the course of the hearings in March 2002. It is anticipated that those witnesses will be recalled during May 2002 to complete their evidence. Specific themes, including those just mentioned, will be pursued.

Department of Justice

21. The DOJ has made a lengthy submission to the Inquiry, however this submission has yet to be orally addressed in evidence.

22. The DOJ submission focuses mostly on the services provided by the DOJ specifically to Aboriginal people, and which may affect Aboriginal people, in so far as they relate to family violence and child abuse. Of particular interest to the Inquiry is the Aboriginal Cyclical Offenders Program and the Domestic Violence Court. Both are pilot programs which are of particular relevance to the Inquiry’s Terms of Reference.

23. The DOJ submission contains an outline of the contact between the DOJ and Susan Taylor. Of particular interest to the Inquiry is Susan’s participation in a mentoring scheme provided by DOJ. Susan’s own mentor has not yet been available (by reason of ill-health) to be called to give evidence. In those circumstances, the Inquiry proposes to address the entirety of the DOJ evidence and submission in the Final Report.

Department of Health

24. The DOH has provided an initial draft submission to the Inquiry. This has assisted the Inquiry in pursuing potential witnesses for the hearings scheduled for May 2002.
25. It is anticipated that a final submission will be received from the DOH before May 2002.

**Particular features of Department for Community Development evidence concerning contact with Susan**

26. Evidence heard to date from DCD witnesses has fallen into the following broad categories:

   a) An overview of the structure, policies and procedures of the DCD, with particular focus on responses to child protection, family violence and related strategic initiatives;

   b) Detail as to the nature of the DCDs response to Child Maltreatment Allegations, together with certain concepts and themes that can complicate that process;

   c) The extent of employees’ specific contact with Susan and her family; and

   d) A Case Audit of 18 January 2002 which assessed the DCDs involvement and management of Susan’s circumstances and issues associated with access to the Swan Valley Nyoongar community (SVNC).

27. For the purposes of reporting on an interim basis, particular emphasis is placed on the issues identified at sub-paragraphs (c) and (d) above.

**Mr Lex McCulloch**

28. Lex McCulloch holds the position of Executive Director, Metropolitan Service Delivery with DCD. After obtaining a Degree in Social Work he commenced work with DCD almost immediately, and has since occupied a variety of positions encompassing fieldwork, social work, supervision and senior management.

29. Mr McCulloch prepared, and endorsed on behalf of DCD, a lengthy and detailed submission dated 28 February 2002, together with a variety of attachments detailing such matters as funding, applicable procedures, and specific projects and initiatives.

30. Mr McCulloch did not meet Susan at any time, nor did he have any direct dealings with Susan or her family. He nonetheless had responsibility for directing and overseeing the preparation of the Case Audit. The detail of that document is canvassed more specifically at paragraphs 49-53 below. On 8 February 2002, Mr McCulloch conveyed the Case Audit to the Acting Director General of DCD and the responsible Minister with a short covering note which endorsed the findings of the authors of the report.
Mr Gordon Cole

31. Gordon Cole is presently employed by DCD as Senior Service Design Officer in the Industry Service Design Office in the Industry Development Service Specifications Directorate. He commenced his employment with DCD in March 1998 on a 12 month Aboriginal Service Delivery Officer traineeship program in the Northeast Metropolitan Zone. That Zone was based at DCDs Midland office.

32. Six months into his traineeship, Mr Cole was directed to the Lifeskills Team to become a case manager. Around October/November 1998 he was allocated the Mairu/Spratt case. The family consisted of the two grandparents of Susan who were caring for 8 grandchildren, ranging from 10 to 21 years. The family resided at 119 Scrivener Road, Herne Hill. It needs to be interpolated here, however, that there was considerable evidence led of the transience and mobility of the grandchildren of the family, including Susan herself.

33. Certain occurrences preceding Susan’s death on 12 February 1999 are of particular significance:

   a) On 19 January 1999 Mr Cole received a facsimile from the Crisis Care Unit of DCD advising that Susan was in Northam and that she had been picked up by police because she was sniffing solvents;

   b) Mr Cole discussed Susan’s circumstances with her DOJ mentor, Michele Poland on 22 January 1999, and with both Ms Poland and Mrs Mairu on 28 January 1999. The full detail of those discussions is recorded in Mr Cole’s notes, which are in evidence. He became aware, through Ms Poland, of Susan’s allegations of having been sexually assaulted at the SVNC. However he did not become aware of the detail of those allegations. Nor did he consider it necessary to attempt to find out for himself that level of detail;

   c) The discussions of 28 January 1999 encompassed most of the grandchildren, not just Susan. Mr Cole’s evidence is that Ms Poland told him that Susan needed counselling and was suicidal, placing her at risk. Mr Cole asked Ms Poland for a report both about the family and Susan specifically, but did not ever receive such a report;

   d) On 4 February 1999 Mr Cole received a facsimile from Ms Rhona Haining, who was Susan’s Juvenile Justice Officer at the Midland branch of the then Ministry of Justice. (MOJ) That facsimile had a cover sheet, the message on which said:

   “To the duty officer, please find referral for Susan Taylor. Please call if you have any queries. Gordon Cole knows the family history. Regards, Rhona.”

   The second and final page of the facsimile was a typed memorandum on the MOJ letterhead addressed to “The Duty Officer, Family and Children’s Services.” It referred to:
- The welfare of Susan being of “some concern” to Ms Haining;
- Ms Haining being made “aware of a number of circumstances in Susan’s life which place her in a situation of some risk;”
- Ms Haining having been informed by Ms Poland as to the recent allegations of sexual assault, following which Susan ran away to Northam and did not return for some time;
- An allegation, through Ms Poland, that Susan was scared to remain at her home after that alleged incident; and
- An unconfirmed report, through Ms Poland, that Susan may have been pregnant at that time.

e) Mr Cole’s evidence is that he did not do anything in particular in response to the facsimile of 4 February 1999. It confirmed information he already knew. On 11 February 1999, Mr Cole had a telephone conversation with Ms Cecily Johnson, a Clinical Nurse at the Derbarl Yerrigan Health Service (DYHS). Ms Johnson then advised Mr Cole that Susan was impossible to locate. Ms Johnson has been in contact with the Inquiry and is likely to be called to give evidence in May 2002.

f) Late in the afternoon of 11 February 1999 a single page facsimile message was received by the Duty Officer at the Midland office of DCD, from Ms Haining. The text of that facsimile message was:

“Can the Duty Officer or Officer responsible for Susan Anne Taylor Date of Birth 30.07.84, contact me as soon as possible in response to the fax I sent on 4.02.99 to which I have had no reply.

Regards,
Rhona Haining.”

g) The full extent of the oral evidence given concerning the receipt of the facsimile of 11 February 1999, and Mr Cole’s characterisation of it, has been considered by the Inquiry and need not be fully recited here. In particular, Mr Cole noted on 12 February 1999 that the facsimile was in his pigeonhole, and thereby telephoned Ms Haining and was told by a receptionist that she was out of the office and would be returning at 4.45 pm on that day. He asked the receptionist to let Ms Haining know that he had called, and that he would call again on 15 January 1999.

34. Although Mr Cole provided services and assistance to the Mairu/Spratt family in a number of different ways at varying times, he did not ever meet Susan. The detail of his involvement with the family was fully canvassed in evidence.

35. It was on 15 February 1999 that Mr Cole was advised by a colleague of Susan’s death.
36. Mr Cole’s ongoing assistance to the Mairu/Spratt family (subsequent to Susan’s death) was significant. The full detail of that assistance was provided in evidence, but need not be explored for present purposes.

37. Mr Cole presented as a thoughtful, sensitive and intelligent person with insight into the complex problems confronting Aboriginal people. He is committed to helping Aboriginal people to improve their quality of life. That commitment stays with him constantly, even, at times, when he is not “at work” in any conventional sense.

38. The Inquiry has not yet heard evidence from Ms Haining or Ms Poland. In those circumstances, no more specific observations, let alone findings, are warranted in this Interim Report.

Ms Ann Leishman

39. Ann Leishman is employed by DCD as Team Leader for the Lifeskills and Community Development Teams in the Southeast Metropolitan Zone. She previously worked as a Team Leader in the Northeast Metropolitan Zone from 1998, and in that capacity had knowledge of, and limited dealings, with the Mairu/Spratt family.

40. Ms Leishman was the Line Manager for Gordon Cole, a member of that Lifeskills team.

41. Ms Leishman did not ever meet Susan. She met Miriam on several occasions after July 1998 when Miriam came into the Midland office concerned with particular difficulties about her grandchildren, financial issues, and threatened homelessness.

42. Ms Leishman would undertake relatively frequent supervision of Mr Cole, largely on an ad hoc basis. Together with Mr Cole she decided in January 1999 to focus on the grandparents to assist them to make decisions about returning the grandchildren to their mothers. “Stolen Generation issues” were taken into account in that decision. Those issues were of some difficulty and complexity.

43. About three days before Susan’s death, Ms Leishman and Mr Cole had a planning discussion at which they discussed numerous difficult issues that were presently facing Susan.

44. Ms Leishman did not know of the facsimile messages of 4 February and 11 February 1999 until she was informed of them by Mr Peter Ward after Susan’s death. Ms Leishman was informed of Susan’s death on 15 February 1999, the first working day thereafter.

Mr Peter Ward

45. Peter Ward is employed by DCD as Zone Manager for the Southwest Metropolitan Zone. During the period of November 1997 – January 2000 he was Zone Manager for the Northeast Metropolitan Zone.
46. In his capacity as Zone Manager, Mr Ward had no direct involvement in the provision of assistance to Susan, nor her family until he was notified of Susan’s death. Upon that notification, he reviewed the departmental involvement to that time and instructed a senior casework staff member to attend the next Interagency Meeting in March 1999 to clarify the appropriate role for DCD and to determine the necessary supports for the family. At that time Mr Ward emphasised that child protection concerns should be highlighted as a focus for intervention.

Ms Gail Laing

47. Gail Laing currently works as a Project Officer on contract to DCD, working with retrenched timber workers in the southwest of Western Australia. She was an employee of DCD from 1981 to 2000. Upon ceasing her employment she was a Team Leader, Lifeskills and Community Development, based in the Southwest Metropolitan Zone. She worked at the Midland office of the DCD between February 1989 and February 1998.

48. Ms Laing’s involvement with the Mairu/Spratt family between April 1995 and February 1998 was substantial and significant. Her oral evidence canvassed the full extent of that involvement. She had a specific involvement with Susan to the extent that Susan was one of five of Miriam’s grandchildren whom Mrs Laing was attempting to help. She could not recall any significant incident where she actually saw her. However she had no involvement with any of the events of early 1999, to which reference has been made, that preceded Susan’s death.

Case Audit

49. As a consequence of the findings of the State Coroner at his inquest into Susan’s death, and at the request of the Minister for Community Development, Women’s Interests, Seniors and Youth, the Acting Director General of DCD convened a Case Audit in November 2001. The full detail of the process by which the Case Audit was convened, organised and undertaken was explored in evidence. In essence, however, Mr McCulloch, in early December 2001, directed Mr Neville Grimson the Manager, Goldfields Zone and Mr Mitchell Drage, the Area Manager, Newman office, to assess the involvement and management of DCD in Susan’s case, together with the issues associated with access to the SVNC.

50. The auditors depicted a genogram, or family tree, for key parts of the Mairu/Spratt family, and outlined a brief family history. That history was sourced in Departmental files, and the outcome of interviews with seven Departmental staff that were undertaken in mid December 2001. Those staff were Gail Laing, Lee Peters, Gordon Cole, Theresa Tagliaferi and Donna Birch, together with Sue Galbraith (the applicable Team Leader from April 1995 to May 1997) and Carolyn Jones (the applicable Casework Supervisor from June 1997 to June 2000). Further detail as to the nature and extent of the involvement of DCD with the Mairu/Spratt family is contained in a Departmental Chronology submitted through counsel for DCD.
51. Without purporting to canvass the entirety of the issues explored and the conclusions arrived at, it is particularly noteworthy that the Case Audit found:

a) There were a number of contributing factors to the focus of DCD in providing assistance to the Mairu/Spratt family, namely:

i) Miriam’s determination to care for her grandchildren, when her health was declining and she was clearly struggling to do so; factors that were compounded by particular experiences of Miriam and the grandchildren’s mothers.

ii) Strong connections with the then Aboriginal Medical Service (AMS), (now DYHS), which organisation assumed a lead role at times in the delivery and coordination of services.

iii) The multiplicity of agencies with the family, many of whom by the time of Susan’s death employed Aboriginal staff who were engaged with the family.

iv) The absence of specific referrals to the DCD of abuse or neglect of the children, apart from concerns and requests for services for each child when reaching adolescence beginning to truant and misuse solvents, in several instances indicating suicidal ideation.

b) Cultural factors impacting upon the Mairu/Spratt family, together with historical aspects of DCD (and its predecessors) in engaging with Aboriginal families generally, combined to make engagement in these particular circumstances a difficult task. Certain aspects of the requesting and acceptance of services by Miriam compounded those complications.

c) Due to the multiplicity of other agencies involved in assisting the family, and the nature of the support role identified in particular by DCD, the Department’s services tended to be in response to a particular crisis and to be task-orientated. A primary role was to link the family into other services and to assess and facilitate alternative care options for the children and to finance those options.

d) DCD did not have a “lead role” in the provision of assistance to the Mairu/Spratt family. That function seems, at least on the analysis undertaken in the course of the case audit, to have informally been adopted by the then AMS. Nonetheless subsequent to Susan’s death the DCD did take a more active leadership role with other agencies by initiating meetings with Mr Ted Wilkes and Miriam to address the needs of the children.

52. Importantly, the Case Audit concluded that:

“It is highly likely that even if the Department had attempted to respond to (the facsimile of 4 February 1999) from the Ministry of Justice in a more direct manner that
Susan’s tragic death would not have been avoided due to her high mobility and the fact that her pattern of solvent misuse was by then well established”.

It also expressly concluded that there was no evidence of negligence on the part of any staff involved with the case.

53. In formally forwarding the Case Audit to the Acting Director General and the responsible Minister, Mr McCulloch, as indicated, endorsed the conclusions of Messrs Grimson and Drage. He made a number of specific observations which adopted those conclusions, in some cases expressly and in other cases substantially. Furthermore observations in the memorandum of the Acting Director General, Ms Jane Brazier, to the Minister included:

a) While the Auditors did not find evidence of neglect on the part of DCD staff, there must nonetheless be “serious concerns about the Department’s failure to respond to two facsimiles from a MOJ officer in the last days of Susan’s life.” Further, Ms Brazier observed that the question did remain “whether action(s) could have been taken which would have prevented” Susan’s death.

b) The DCD intervention appeared not to have been child focussed, that is one that specifically involved the protection of children or in fact the needs of children over and above the requirements identified by adults. Family support services appear to have been provided without a clear assessment of the effects of these services upon the children.

c) Whilst a number of agencies (13) were involved providing various supports to the family, no agency took a clear and continuous role. Coordination between agencies was an issue, as was the sharing of information about the family and family members.
GORDON INQUIRY

Statement by Premier

DR GALLOP (Victoria Park - Premier) [2.02 pm]: I inform the House that the Government has committed a further $250 000 to fund the Gordon inquiry into family violence and child abuse in Aboriginal communities. The Government originally allocated $1 million to fund the conduct of this inquiry. However, the preparation of budget estimates by the inquiry has revealed that some additional funding would be of assistance to the inquiry in thoroughly executing its terms of reference. The additional funding will assist the inquiry in carrying out its broad consultation program, which includes visiting remote Aboriginal communities.

This Government is keen to ensure that commissions of inquiry make every effort to be cost efficient and not run severely over budget in the way that the Douglas inquiry did. To date, the Gordon inquiry has assisted in operating in a cost-efficient manner by electing to make use of appropriate accommodation, facilities and staff that the Department of the Premier and Cabinet has made available to it.

I also take this opportunity to clarify a misconception that has been reported in some sections of the media that the inquiry has already spent the $1 million that had been allocated to it. Although the inquiry has identified uses to which every cent allocated to it is likely to be put over the duration of the inquiry, to date the inquiry has spent only a very modest amount. In fact, as at 5 March 2002, the expenditure incurred by the inquiry totalled only $46 482. It is my expectation that the inquiry will continue to use every effort to conduct its operations in a cost-efficient manner and within the funding allocated to it.

Another important issue relating to the operation of this inquiry relates to the reports of intimidation of persons who have information that should be reported to the inquiry. This type of conduct must not be tolerated. The Government has urged people who have been subjected to any such threats or intimidation to report it to the police. The Government expects that complaints about this type of conduct will be fully investigated and that appropriate action will be taken against any offenders.
Appendix 6

Extract from “Submission by PathCentre Forensic Biology Laboratory to the Inquiry’s Term of Reference ‘Comment on any limitations of DNA testing in the Aboriginal community’”

SUMMARY AND CONCLUSIONS

1. The PathCentre Forensic Biology (PCFB) laboratory is National Association of Testing Authorities (NATA) accredited for forensic Deoxyribonucleic Acid (DNA) profiling. The laboratory uses the same methods and the same DNA profiling system that is employed in all other Australian Forensic Biology laboratories. The laboratory undertakes numerous quality assurance activities and participates in an external International Proficiency testing program.

2. The DNA profiling methods used by the PCFB laboratory are accepted in Courts around the world.

3. The PFCB laboratory has developed three statistical DNA databases (Caucasians, Aboriginals and South East Asians). All individuals on these databases have been de-identified. These databases have been examined by expert statisticians and are acceptable for the interpretation of DNA-based forensic evidence in matters of human identity and disputed paternity.

4. A forensic DNA profile CANNOT be used to determine ethnicity or racial background, nor can it tell anything about an individual’s health (past, present or future).

5. The statistical formulae employed by the PCFB laboratory assume that population substructure exists and use a very conservative correction factor to compensate for it.

6. In terms of the ability to perform forensic DNA profiling, Australian Aboriginals are no different to any other population group in the world.

7. Forensic DNA profiling is still valid for use in isolated populations or populations where there are strong traditions of endogamy and a preference for consanguineous unions. Interpretation of the DNA profiles in these cases may require additional statistical consideration, and staff of the PCFB laboratory are aware of this.

8. It is always important that forensic statistics relating to DNA profiles are understood so that they may be interpreted correctly.

9. An inherent feature of Parentage testing is that it will carry less statistical weight than human identity testing methods. The PCFB laboratory has additional DNA tests available to provide greater exclusionary power and to give more statistical weight to the parentage result.
It is important to ensure that adequate forensic samples are collected in the first place. It is also important that once collected, samples must be protected from contamination and degradation. Adequate training and resources must be available to the Western Australia Police Forensic Division, as well as to any medical practitioners who may be involved in the collection of forensic specimens from victims of sexual assault.
Glossary

ABC       Australian Broadcasting Corporation
AJC       Aboriginal Justice Council
AMS       Aboriginal Medical Service
APLO      Aboriginal Police Liaison Officer
ATSIC     Aboriginal and Torres Strait Islander Commission
BRACS     Broadcasting for Remote Aboriginal Communities Scheme
DCD       Department for Community Development
DH&W      Department of Housing and Works
DIA       Department of Indigenous Affairs
DNA       Deoxyribonucleic Acid
DOE       Department of Education
DOH       Department of Health
DOJ       Department of Justice
DYHS      Derbal Yerrigan Health Service
IDC       Interdepartmental Committee (on Sexual Assault)
KALACC    Kimberley Aboriginal Law and Culture Centre
KRC       Kullarri Regional Council
LGA       Local Government Authorities
NAASAS    Nyoongar Aboriginal and Alcohol and Substance Abuse Service
NAPCAN    National Association for Prevention of Child Abuse and Neglect
NATA      National Association of Testing Authorities
PCFB      PathCentre Forensic Biology
RCIADIC    Royal Commission into Aboriginal Deaths in Custody
SARC      Sexual Assault Referral Centre
STD       Sexually transmitted diseases
SVNC      Swan Valley Nyoongar Community
UNCROC    United Nations Convention on the Rights of the Child
WAWACRC   Western Australian Crime Research Centre
WAN       Western Australian Newspapers Pty Ltd
WAPS      Western Australia Police Service
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