

GENE GIBSON — EX GRATIA AWARD

422. Hon MICHAEL MISCHIN to the Leader of the House representing the Attorney General:

I refer to the answer of 8 May 2018 to my question without notice 310 regarding an ex gratia payment of \$1.5 million to Gene Gibson, wherein the Attorney General said —

The state’s decision to make the award reflected acknowledgement and recognition of the wrongs identified in the judgement of the Court of Appeal in Gibson v State of Western Australia ...

Given that the judgement reveals that Mr Gibson’s conviction for manslaughter resulted from an offer to the prosecution to plead guilty, while legally represented, before an experienced Supreme Court judge familiar with all the circumstances of his contested admissions to police, on the basis of an agreed set of facts submitted by his lawyer, and that Gibson did not appeal his conviction for two years and that the Court of Appeal attributed no blame to the prosecution or state for his conviction, will the Attorney General —

- (a) identify, by reference to paragraph numbers, precisely which passages of the judgement identify failings or wrongs on the part of the state that led to Mr Gibson’s conviction;
- (b) confirm that advice from the State Solicitor’s Office will have recommended against an ex gratia payment, as there are no identifiable failings on the part of the state or prosecution authorities responsible for Mr Gibson’s conviction;
- (c) set out the basis upon which the award of \$1.5 million was calculated; and
- (d) confirm that the government will also pay compensation to all other accused who are acquitted on appeal; and, if not, why not?

The PRESIDENT: I am not sure whether that fits the concise element of question time, shadow minister.

Hon SUE ELLERY replied:

I thank the honourable member for some notice of the question.

- (a) The Court of Appeal in Gibson v the State of Western Australia [2017] WASCA 141 concluded that all the proceedings upon the indictment charging Mr Gibson with manslaughter constituted such a serious miscarriage of justice as to warrant, in the judgement of the Court of Appeal, the vacation of the conviction on Mr Gibson’s plea of guilty and its substitution with a verdict of acquittal. The “failings or wrongs” upon which the court based its conclusion are that the conviction of Mr Gibson for manslaughter upon his own plea of guilty constituted such a serious miscarriage of justice to warrant the verdict of acquittal. These are set out by the Court of Appeal in paragraphs 158 through to 203 inclusive, which are to be found between pages 79 and 90 of the published judgement. This serious miscarriage of justice, in respect of which Mr Gibson was blameless, resulted in Mr Gibson being sentenced to seven years and six months, of which he served four years and eight months.
- (b) I do not confirm that —
 - ... that advice from the State Solicitor’s Office will have recommended against an ex gratia payment, ...
- (c) The basis upon which the award of \$1.5 million was calculated was that a cabinet decision was made to compensate him \$1.3 million for the time he had spent in prison as a result of a serious miscarriage of justice, in respect of which he bore no responsibility, together with a further \$200 000 being the sum that the Public Trustee identified as the fees payable to external providers for managing the estate.
- (d) No.