

COURTS — CONFIDENTIAL AFFIDAVITS

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

May I first thank the Leader of the House, albeit as an afterthought to seeing some STEM program, for finally opening the Doubleview Primary School.

The PRESIDENT: Member, was that a statement or a preamble to your question?

Hon MICHAEL MISCHIN: It was sort of a preamble to my question.

The PRESIDENT: You might want to quickly get to the question.

Hon MICHAEL MISCHIN: I refer to the advice from the government during the course of consideration of the Bail Amendment (Persons Linked to Terrorism) Bill 2018 that in criminal trials and proceedings in Western Australia —

... courts from time to time in exceptional cases receive information by way of confidential affidavit, with the person who is the subject of the information and their legal representative being unaware of the ex parte procedure.

We were also told that this could be so in “any matter and at any point within that matter”, not limited to terrorism cases.

- (1) How widespread is this practice and for how long has the Attorney General been aware of it?
- (2) Under what legislative sanction does this practice take place?
- (3) How many cases and convictions is the Attorney General aware of that were tried on evidence secretly received by a court but not disclosed to the accused, when did they occur, in which court did they occur, and under what circumstances?

Hon SUE ELLERY replied:

By way of response to the preamble, I note that the honourable member’s relationship with the school he referred to is so strong that it did not invite him, but let us get on with the answer.

The PRESIDENT: I look forward to your answer, Leader of the House.

Hon SUE ELLERY: Thank you, Madam President.

- (1) Under common law and statute, the courts can consider certain matters ex parte, including during the course of criminal proceedings. There is no available data to indicate the frequency of such matters, but I understand them to be infrequent.
- (2) Ex parte applications and confidential affidavits in support of such applications may be used in proceedings under various pieces of legislation, including the Surveillance Devices Act 1998, the Criminal Investigation (Covert Powers) Act 2012 and the Criminal Procedure Act 2004.
- (3) This data is not available.