

MR JEFF PALMER, HIGH COURT APPEAL CASE

312. Mr R.N. SWEETMAN to the Attorney General:

I refer to the well-publicised case of Carnarvon crayfisherman Jeff Palmer who was taken to court by the Department of Fisheries, convicted and fined for breaching regulations even though he was acting on incorrect information given to him by the department.

- (1) Given that the Full Court of the Supreme Court later set aside this conviction, why is the Government now appealing this decision in the High Court?
- (2) Will the Attorney General provide an estimate of the total cost to the Western Australian taxpayer of pursuing this matter in the High Court, and does this include Mr Palmer's costs?
- (3) Does the Attorney General agree with today's editorial in *The West Australian* on this matter that -

There appears to be a mindless bureaucratic obduracy at work here, with no sign of even a cursory nod in the direction of decency and fair play.

Mr J.A. McGINTY replied:

- (1) Mr Palmer was convicted, as the member for Ningaloo has said, of illegal fishing in an area to the north of the State. The Full Court of the Supreme Court subsequently overturned that conviction on appeal by a two to one majority. It is not correct to say - as the member said in his question - that Mr Palmer was given incorrect information. Mr Palmer drew a conclusion from the information with which he was provided; that information was correct. He thought he was entitled to fish in the area; however, had he obtained a copy of the fisheries Act regulations or made further inquiry, he would have ascertained that he was not entitled to fish in that area. The information given to him was correct. Probably he should have received a copy of the regulations that spelt out in which areas people were allowed to fish. From memory, he was given a copy of the management plan under the Fish Resources Management Act rather than a copy of the regulations. That is an important point to note. If he had been given information that said he was entitled to fish in the area and that information was not correct, there would be considerably more justification for Mr Palmer's case.
- (2) This question relates to cost. I have not inquired into that matter. I did not anticipate being asked a question about this matter today and I have not made an inquiry. The reason I did not anticipate the matter being raised today is that the Department of Fisheries' inspector - I think his name is Mr Ostrowski - is appealing the decision by the Supreme Court. In other words, it is being appealed by the Department of Fisheries. The case is being handled by the Crown Solicitor's Office, but the responsibility for that matter rests with the Department of Fisheries.
- (3) As to whether I agree with the editorial in this morning's *The West Australian*, two matters must be weighed up. I would agree with the sentiments being expressed in the case if it were a simple case of someone who is provided with false information being convicted because he relied on that information, the result of which was an appeal to the High Court. I presume the member is expressing those sentiments. Unfortunately, the matter is greyer than that. I have some sympathy for Mr Palmer's plight. Hon Kim Chance, the Minister for Fisheries, has corresponded with me and we have discussed this matter. I intend to look further into this matter to see whether Mr Palmer's position can be accommodated. The matter has been appealed on the basis that someone making a mistake of law is no excuse at law. It is being argued that this was a mistake of law. However, a mistake of fact is a defence to criminal prosecution. This matter revolves around whether a mistake of law or fact is involved in this case. This case could have quite significant ramifications for government departments other than the Department of Fisheries that provide information to the public. It is a matter of broader public consideration. I would have thought that the matter required whole-of-government consideration before a decision was made on whether to act in this case. I assure the member that I will discuss the matter with the Minister for Fisheries and the Premier. The way in which the matter has been portrayed publicly justifies a considerable amount of sympathy for the plight of Mr Palmer.