

STATEMENT OF REASONS FOR *EX GRATIA* PAYMENT TO MR SCOTT AUSTIC

Tragically, on 9 December 2007, Ms Stacey Thorne was brutally stabbed to death in her own home.

Mr Scott Austic was charged with the wilful murder of Ms Thorne on 14 December 2007. He was convicted on 6 April 2009. Mr Austic subsequently appealed his sentence and conviction. That appeal was dismissed by the Court of Appeal on 11 June 2010.

In January 2012, Mr Austic petitioned then Attorney General, Mr Christian Porter MLA, to exercise the Royal Prerogative of Mercy and refer his case back to the Court of Appeal.

One of the main arguments in the petition concerned whether certain evidence relied on at the trial had been planted.

The current Attorney General, then in opposition, referred the matter to the Corruption and Crime Commission (CCC). After conducting an investigation the CCC issued a confidential report in which it did not make any findings of misconduct against police or prosecutors.

Mr Austic's 2012 petition was subsequently rejected by then Attorney General, Mr Michael Mischin MLC, in September 2013.

Following a change in government, in February 2018 Mr Austic presented substantively the same petition to the current Attorney General seeking the exercise of the Royal Prerogative of Mercy to refer his case back to the Court of Appeal. The current Attorney General granted the petition, referring the case back to the Court of Appeal.

The new appeal was successful. In May 2020, the Court of Appeal allowed the appeal, set aside the conviction and ordered a retrial.

Mr Austic was released on bail on 9 June 2020. By that time Mr Austic had spent approximately 12 1/2 years in prison.

The Court of Appeal concluded that a miscarriage of justice had occurred principally because it considered that there was credible, cogent and plausible evidence that the knife found by police was not the murder weapon and had been planted by someone after the initial search by the State Emergency Service; and that the cigarette packet was not on the table on the veranda initially and someone subsequently planted it there. In all the circumstances the Court concluded that there was a real risk that the evidence about those items compromised the integrity of the police investigation and, in turn, adversely affected the fairness of the trial. In all the circumstances it found there was a real risk that Mr Austic's trial was unfair and real doubt as to whether his conviction for wilful murder was safe or just.

The Court of Appeal nevertheless considered that, despite the miscarriage of justice which had occurred, the State had at trial and continued to have a strongly arguable circumstantial case against Mr Austic, even if the knife and cigarette packet in question had been planted.

It considered, after making its own independent assessment of the sufficiency and quality of the evidence given at trial and in that appeal, that it would be open to a reasonable and properly directed tribunal of fact to be satisfied beyond reasonable doubt, upon the whole of the evidence, that Mr Austic was guilty. It formed that opinion after disregarding the knife and cigarette packet on the assumption, favourable to Mr Austic, that those items were planted, and after taking into account the effect upon the credibility of some of the State's witnesses that would probably follow upon any findings to that effect.

Following a re-trial in the Supreme Court held between 27 October and 20 November 2020 Mr Austic was rapidly acquitted.

Mr Scott Austic requested an *ex gratia* payment in the sum of \$8.5 million in recognition of the serious injustice he suffered as a result of his wrongful conviction and subsequent incarceration for a period of approximately 12 ½ years.

The Attorney General authorised the making of an interim payment of \$250,000 to Mr Austic. A final decision in relation to the request for an *ex gratia* payment was deferred pending further consideration of aspects of the matter by the CCC.

On 27 March 2023 the CCC provided a confidential report to the Attorney General. That report, together with the annexed copy of the earlier CCC report and the report of Mr Tony Power, the independent barrister engaged by the CCC (with redactions) (**Independent Report**), has been tabled in Parliament today in accordance with the authority of the CCC.

The recent CCC report notes that on 5 December 2022 Mr Power reported to the CCC and concluded that there was presently no new information or material, which had not already been carefully considered, analysed and tested, which would further or better inform any further investigation by the CCC. He recommended that the CCC decide to take no action under *Corruption, Crime and Misconduct Act 2003* s 33(1)(d).

The CCC also received certain other external and internal reports including from Cottman Investigation Services.

The CCC ultimately accepted the assessment and recommendation in the Independent Report. It noted, amongst other things, that it was simply not possible to make a finding one way or another about serious misconduct. It was not able to be satisfied in either the affirmative or the negative.

The CCC noted that it had to work with the baseline evidence of the WA Police Force Investigation, which suffered from certain limitations. It did not comprehensively document or show the state of the street verge, the back veranda and table or the vacant land on certain relevant dates. Without that evidence the CCC could not determine with any accuracy what evidence was there or not on those days in comparison to when the evidence was found or seized.

In accordance with Treasurer's Instruction 319 the circumstances and reasonableness of Mr Austic's request have been carefully assessed prior to a recommendation being made to, and decision being made by, the Government.

In considering all the circumstances of the case, the matters raised on behalf of Mr Austic in support of his request have been taken into account, including submissions and evidence about the profound effect on his life of his incarceration.

Comprehensive legal advice analysing the circumstances of the matter has also obtained from the highest levels within the State Solicitor's Office. That advice will be made available to the Auditor General in confidence should she wish to review it and the decision that has been made to make a significant *ex gratia* payment.

The McGowan Government has ultimately decided that it is appropriate to make an *ex gratia* payment to Mr Scott Austic in the sum of \$1.35 million.

This will bring the total payment to Mr Austic, inclusive of \$250,000 already paid, to \$1.6 million.

The McGowan Government further supports making an additional payment for reasonable legal costs incurred by Mr Austic in relation to preparing and advancing his 2012 and 2018 petitions to the Attorney General to exercise the Royal Prerogative of Mercy, his 2020 appeal and his retrial. It is intended that this sum would be finalised subject to further advice following conferral with Mr Austic's legal representative/s.

Any payment will be made subject to the following conditions:

First, should Mr Austic be found by a court to be in any way responsible for, or complicit in (or in relation to), the death of Ms Stacey Thorne, whether criminally or civilly, he immediately repay the payment to the State in full.

Secondly, in the event that any legal action is pursued by Mr Austic against the State or its current or former officers, the payment may, at the State's request, be offset against any award of damages.

It is the McGowan Government's view that it is appropriate to make such a discretionary payment in recognition of all the circumstances of this case, including the miscarriage of justice that Mr Austic has suffered, the significant impact on him and the desirability of assisting him to reintegrate into society after his substantial period of imprisonment.

In particular, it is acknowledged that Mr Austic's 2012 petition to exercise the Royal Prerogative of Mercy was rejected by the then Attorney General, Mr Michael Mischin MLC, in 2013. Had Mr Austic's 2012 petition been accepted, his matter would have been referred to the Court of Appeal approximately 4 1/2 years earlier than the current Attorney General's referral of his 2018 petition to the Court of Appeal in April 2018.

In making this decision it is noted that the Court of Appeal considered that there was credible, cogent and plausible evidence that certain evidence may have been planted. Further, despite the miscarriage of justice which the Court found had occurred, it nevertheless considered that the State had at trial and continued to have a strongly arguable circumstantial case against Mr Austic, even if the knife and cigarette packet in question had been planted. The matter accordingly proceeded to a retrial following which Mr Austic was acquitted.

It is also noted that the Corruption and Crime Commission has not made any finding of misconduct against any police officer involved in the investigation of Ms Thorne's murder, whether in relation to the alleged planting of evidence or otherwise. It most recently concluded that the evidence of the WA Police Force Investigation suffered from certain limitations and that it cannot form an opinion that serious misconduct has or may have occurred, or not. It has decided to take no action pursuant to s 33(1)(d) of the *Corruption, Crime and Misconduct Act 2003* (WA).

The proposed payment is a discretionary payment in the nature of an *ex gratia* gift by the State. As such it is not intended to reflect full monetary compensation such as a person might seek if they were to successfully pursue a civil action for damages for alleged torts.

The McGowan Government is satisfied that exercising its discretion to make a total *ex gratia* payment of \$1.6 million, plus certain reasonable legal costs, provides meaningful recognition of the injustice suffered by Mr Austic as a result of the miscarriage of justice and imprisonment that occurred in relation to his conviction for the murder of Ms Thorne which was later overturned. The payment will provide substantial assistance to Mr Austic in his continued reintegration into society and assist address his immediate and long term needs.