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BURNSIDE COUNCIL

The Hon. A. BRESSINGTON (14:27): Can the minister indicate this time, when he sent the report to the police commissioner, had the original restrictions been lifted from the police commissioner to be able to forward that report to the Anti-Corruption Branch?

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:27): I will take that on notice.

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The Hon. A. BRESSINGTON (14:41): I seek leave to make a brief explanation before asking the Minister for State/Local Government Relations questions about Burnside council.

Leave granted.

The Hon. A. BRESSINGTON: Over the past few weeks there has been a focus by the majority of members in this place on what the Hon. John Darley has dubbed the 'Burnsidegate affair'. Firstly, the minister stated that he has not read the draft MacPherson report, nor has he spoken to Mr MacPherson himself. He made a political decision to terminate the Burnside inquiry. Then the minister tried to mask his incompetence, stating that he was going to refer the draft report to the DPP, which the rest of us know is a futile act, because the evidence relied upon by Mr MacPherson in reaching criminal findings is not admissible in court due to section 272(6) of the Local Government Act 1999.

Earlier this week I sought legal advice from prominent Queen's Counsel Mr Kevin Borick, which reveals that the minister in terminating the MacPherson inquiry has acted unlawfully. I sought this advice after looking to the Local Government Act 1999 and seeing no lawful authority for the minister to terminate the inquiry. The act is very clear on the process for establishing such an inquiry and states that once established the investigator must—must—report to the minister and that a report must be provided to the council concerned.

An honourable member interjecting:

The Hon. A. BRESSINGTON: You know better than a QC, do you? In the advice Mr Borick QC states:

In my opinion there is nothing in the legislation which permits the Minister to terminate the Inquiry. Once lawfully appointed (and I assume that is the case) the Investigator must conclude the investigation, he must then prepare a report and he then must supply the report to the Minister. The decision made by the Minister was unlawful.

Mr Borick QC also states that the minister's political decision is open to judicial review, suggesting that 'the investigator has the right, and perhaps a duty, to instigate judicial review proceedings'. Government ministers should be bound by the rule of law, just as the citizens of this state are. My questions are:

1. Did the minister bother to read the Local Government Act 1999 to ensure that the advice that he received was in fact lawful? If not, why not?
2. Will the minister now re-establish the inquiry, allow Mr MacPherson to conclude his investigation and report to the minister as the act specifies?
3. Will the minister now contact Mr MacPherson and get an estimate of how long it would take him to complete the report and report back to the council on his answer?
4. Or will the minister continue to show his arrogance and ignorance, dismissing all independent advice and further damaging the reputation of this Labor government?
5. In a last-ditch effort to attempt to save his reputation and restore some faith in the government, will the minister fund a judicial review if Mr MacPherson or others express an intention to pursue that course of action, which is their legal right?

The PRESIDENT: The honourable minister should disregard the personal opinion in that question when he attempts to answer.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:44): Thank you, Mr President. I will say that I have read the Local Government Act, and I did look at 272 quite thoroughly during my deliberations. I sought legal advice before terminating the investigation, and I am very comfortable with that decision.

I rely on crown law's legal advice in matters like this. I understand that the honourable member has sought her own legal advice, but that does not undermine my confidence in the Crown Solicitor's department. If someone wants to have a judicial review, it is their right under the law. I respect that right, but I will say this: you can put 10 QCs in a room and you will get 12 opinions.

The PRESIDENT: The Hon. Ms Bressington has another opinion?

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The Hon. A. BRESSINGTON (14:45): No, just a supplementary. Will the minister waive legal professional privilege and release the advice he received, so that the people of this state can be assured that the advice he received supported his decision to terminate the inquiry, and provide it to the council on the next sitting day?

Members interjecting:

The Hon. A. BRESSINGTON: If he can read it right, yes.

The Hon. R.P. WORTLEY (Minister for Industrial Relations, Minister for State/Local Government Relations) (14:46): Mr President, the advice I received—

The PRESIDENT: Order! The honourable member cannot seek crown law advice anyway.

The Hon. R.P. WORTLEY: That's what I was going to tell her.