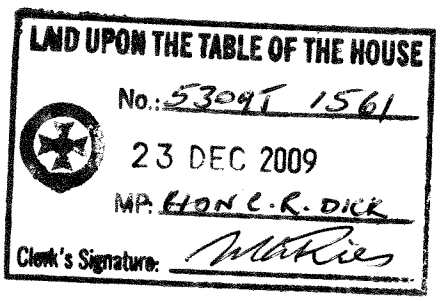
Hon Cameron Dick MP
Member for Greenslopes
In reply please quote: J/09/08159, 525407/1

Attorney-General
and Minister for Industrial Relations

22 DEC 2009



Mr Neil Laurie
Clerk of the Parliament
Parliament House
George Street
BRISBANE QLD 4000

Dear ~~Mr Laurie~~ Neil,

I am writing to provide my response to item 2 of petition number 1310-09 lodged by Mrs Rosemary Menkens MP, Member for Burdekin and received by the Legislative Assembly on 16 September 2009 which has been referred to me by the Honourable Neil Roberts MP, Minister for Police, Corrective Services and Emergency Services.

In Queensland the criminal justice system is based on the clear separation of powers between the Parliament that makes the laws, the Government departments that administer those laws and the courts that enforce the laws. Accordingly, given this separation, the Government does not dictate to the judiciary how they are to sentence an offender, other than by prescribing maximum penalties for offences, and by outlining in legislation the purposes of sentencing and principles to be considered by the court in passing sentence.

The task of structuring the appropriate sentence is complex and difficult; it requires the balancing of many competing considerations. The court must construct a sentence which not only reflects the seriousness of the crime, the need for punishment, deterrence and that the community denounces the sort of conduct engaged in by the offender but also one which provides conditions that will enable the rehabilitation of the offender.

Judicial discretion is an important element of the Queensland criminal justice system. It allows the court to consider the subjective features of each case in order to establish the appropriate penalty. When sentencing offenders, the court must do so according to established legal principles. Legislation requires the court to take into account a number of factors including the circumstances, seriousness and prevalence of the offence; any physical or emotional harm done to a victim; the presence of any aggravating or mitigating factors; the offender's character (including previous criminal convictions), age and intellectual capacity.

Level 18 State Law Building
50 Ann Street Brisbane
GPO Box 149 Brisbane
Queensland 4001 Australia
Telephone +61 7 3239 3478
Facsimile +61 7 3220 2475
Email attorney@ministerial.qld.gov.au
ABN 65 959 415 158

The system ensures that the court considers each case on its merits and tailors a sentence that appropriately reflects the nature and seriousness of the offending.

The only offence, for which judicial discretion has been removed in terms of setting the appropriate head sentence, is murder. Murder carries a mandatory term of life imprisonment to reflect that it is the most heinous offence. However, even with such an offence, it must be accepted that there may be subjective features particular to a case that warrants at least the prospect of parole eligibility. It is important to note that parole eligibility does not guarantee parole release.

In Queensland, significant changes were made to the parole regime in 2006 with the introduction of a system of court-ordered parole. The legislation ensures that if paroled, a prisoner remains under the supervision of the Department of Community Safety for the balance of the sentence; it therefore means that a prisoner serves the whole sentence either in custody or in the community under parole supervision thus ensuring truth in sentencing. For a "life prisoner" this means that, if granted parole, they are subject to supervision for the balance of their life.

It is noted that for all sexual offenders, serious violent offenders and other prisoners serving periods of imprisonment of more than three years, parole is granted on a case-by-case basis upon assessment of whether the particular offender is ready for release back into the community. An automatic entitlement to parole release for these types of offenders, irrespective of behaviour or participation in rehabilitation programs, is not the position in Queensland.

In addition, the *Penalties and Sentences Act 1992*, which sets the sentencing framework in Queensland and the sentencing options, makes provision for an offence to be declared a serious violent offence (Part 9A), which means that the offender must serve 80% of the sentence imposed before being eligible to apply for parole release. An offence is *automatically* declared to be a serious violent offence if it is a Schedule Offence, such as Robbery, Grievous Bodily Harm, and Burglary with violence and/or whilst armed, and the offender is sentenced to 10 years imprisonment or more for that offence.

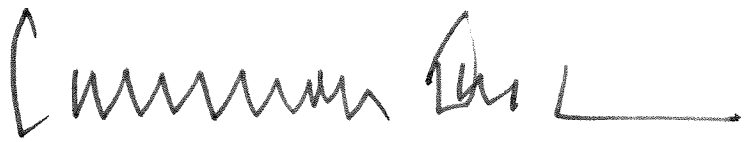
The Court also has the *discretion* to make such a declaration where the penalty imposed for a Schedule Offence is between five years but less than 10 years imprisonment, or if the offence involved serious violence against another person or resulted in serious harm to another person.

Furthermore, I, as the Attorney-General, may appeal to the Court of Appeal against any sentence; and thereafter the Court, in its unfettered discretion, may vary the sentence and impose any sentence it considers proper (s669A Criminal Code). This right of appeal is an essential means by which the community, through the Parliament, can inform the sentencing process. This right of appeal is one that has been exercised by me on a number of occasions resulting in the imposition of higher sentences for particular offenders.

In order to fully understand and appreciate why a judge imposes a particular sentence or makes a particular order, the sentencing remarks and judgements of the Queensland's courts are accessible to the public via the following website: www.courts.qld.gov.au.

I trust this information is of assistance.

Yours sincerely



Hon Cameron Dick MP
Attorney-General
and Minister for Industrial Relations