

In reply please quote: 2002/09463

Your reference:

Ms F Deen
PO Box 878
GORDONVALE QLD 4865

Dear Ms Deen

Your petition, received in the Legislative Assembly on 27 November 2002 requesting the House to establish a system of minimum sentencing of offenders has been forwarded to me.

Let me emphasise that I share your concern that the sentence imposed on an offender should reflect the seriousness of the crime. However, sentencing of offenders is a complicated process. In sentencing an offender, the judge, or magistrate, must take into account all the particular circumstances of the case and balance several competing issues.

The *Penalties and Sentences Act 1992* sets out the factors that a magistrate, or a judge, must consider when sentencing an offender. Factors that must be taken into account include the type of offence, the harm done to the victim, the damage caused by the offence, the offender's age and character, the prevalence of the offence and the offender's compliance with previous orders. Consideration of these factors helps promote a consistent approach to the sentencing of offenders by the judiciary.

With respect, it is very easy to criticise the judiciary for imposing lenient sentences. However, media reports of sentences that the courts hand down do not necessarily give the full story of the case. In many cases there are factors that are not reported that can lead to a reduction of sentence, such as efforts by an offender to repay stolen money or any early plea of guilty that spares witnesses the ordeal of testifying in court.

I can assure you that our law does allow, for the appropriate case, very serious penalties to be imposed. If a person is declared a "serious violent offender", special provisions apply to ensure that the offender must serve 80% of his or her sentence before being eligible for parole. The Queensland Community Corrections Board cannot abridge this time. When the facts of the crime are so serious that the judge is

satisfied that the offender is a serious danger to the community then the judge can impose an indefinite sentence.

The doctrine of separation of powers means that I, as Attorney-General, cannot dictate to the judiciary how they sentence. Laws are passed by Parliament. Judges and magistrates are sworn to apply that law. Our system of democracy is dependent on judicial independence. However, if I am of the view that a particular sentence is manifestly inadequate I have a right of appeal against the sentence to the Court of Appeal.

Accordingly, I am reluctant to support the idea that there should be mandatory minimum sentences for offenders convicted of certain crimes. Even for violent crimes committed against children and the elderly there are many variations of factual circumstances that make some cases more serious than other cases. The sentencing judge is in the best position to sort through all the legal complexities, consider the wider implications and come to a just decision. A mandatory sentence regime cannot deliver this type of justice.

Mandatory sentencing regimes in the Northern Territory and Western Australia have demonstrated that mandatory sentencing, by perpetrating individual miscarriages of justice, bring the justice system into disrepute.

I do appreciate the constructive comments you have made about possible initiatives that would protect the community from offenders. Thank you for taking the time to sign a petition to the Legislative Assembly.

I trust this information is of assistance.

Yours sincerely

Rod Welford MP

Prepared by: Jo Hughes
Telephone Number: 3239 3143
Submitted through: Terry Ryan
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