

## Legislative Council

Tuesday, 7 June 2011, Page 2971

### PETITION FOR MERCY PROCESS

**The Hon. A. BRESSINGTON** (15:01): I seek leave to make a brief explanation before asking the minister representing the Attorney-General questions about the impartiality and transparency of the petition for mercy process under section 369 of the Criminal Law Consolidation Act 1935.

Leave granted.

**The Hon. A. BRESSINGTON**: As members would be aware from the debate on the Criminal Cases Review Commission Bill 2010, those convicted of a crime which they allege they did not commit and who have exercised their limited appeal rights are required to petition the Attorney-General for their case to be referred to the Supreme Court for an appeal.

As I have argued previously, the Attorney-General, as the chief law officer of this state, when acting to determine an application by way of a petition, is acting in a quasi-judicial capacity and, as such, must act in accordance with the relevant legal principles and only in accordance with those principles. This is clearly the intention of the petition process.

However, many have long complained that this petition process is politicised, that petitions are not considered on their legal merits and that, given that a petition's consideration is entirely at the Attorney-General's discretion, it lacks impartiality and fails to provide a legal right of review per se. Such critics cite the fact that the Criminal Law Consolidation Act 1935 provides the Attorney-General with the opportunity to seek the input of the Supreme Court in the consideration of a petition. However, as I understand it, this has not occurred once under this Labor government.

Many have also complained that the current petition procedure lacks not only impartiality but also transparency, in that the Attorney-General fails to provide detailed reasoning of his determination in writing, with those whose petitions are rejected having to extrapolate his rationale from the associated media releases and sound bites. Further, those who submit petitions under section 369 also experience a protracted and, in some cases, undue delay in the consideration of their claims.

One such example is Henry Keogh, who submitted a petition for mercy over 18 months ago and has yet to receive a response. While one could understand some delay if a petition was complex or had been referred to the Supreme Court for advice, this does not apply here, as Mr Keogh's petition sets out very clearly, and in accordance with several legal principles established by the High Court, that he experienced a mistrial.

As I have detailed previously, Mr Keogh's key contentions about the unsatisfactory nature of the evidence presented at his trial have been corroborated by a sworn affidavit and the testimony of pathologists who presented that evidence at his trial. My questions to the Attorney-General are:

1. Will the Attorney-General assure this parliament that he will consider all petitions for mercy on their merits and in accordance with established legal principle?

2. Why has Henry Keogh not received a response to his petition submitted over 18 months ago?
3. Does the Attorney-General concede that, due to the entirely discretionary nature of the petition procedure under section 369—meaning that it is not subject to judicial review—those alleging they are wrongfully convicted do not have a legal right per se to a review of their conviction?
4. Why has the Attorney-General failed to exercise his power under section 369(2) to refer questions of merit to the Supreme Court for advice and, in doing so, bring some level of impartiality to the consideration of a petition for mercy?
5. Does the Attorney-General agree that, by failing to publicly publish in writing detailed reasoning for refusing a petition of mercy, the petition process under section 369 lacks transparency?
6. Will the Attorney-General commit to publicly publishing his reasoning for any future refusal of a petition for mercy?