SENTENCE ADMINISTRATION AMENDMENT BILL 2017

Council's Amendments — Consideration in Detail

The following amendments made by the Council now considered —

No 1

Clause 9, page 3, after line 23 — To insert —

"(aa) manslaughter; or"

No 2

Clause 9, page 5, after line 32 — To insert —

(2A) The Board must, when deciding whether it is satisfied under subsection (1)(a), take into account any information the Board has about the prisoner's mental capacity to provide relevant information or evidence.

No 3

Clause 9, page 6, after line 30 — To insert —

(v) to the extent known to the Commissioner of Police, the prisoner's mental capacity to provide relevant information or evidence;

Mr J.R. QUIGLEY: I was going to seek leave of the opposition to deal with these three separate amendments cognately.

Mr P.A. KATSAMBANIS: I would prefer to deal with them individually. It should not take long.

Mr J.R. QUIGLEY: I move —

That amendment 1 made by the Council be agreed to.

Mr P.A. KATSAMBANIS: I do not want to drag this out for too long, but I think that certainly amendment 1 is different in nature from amendments 2 and 3. That is why I think it probably would be best to deal with them separately.

It is quite clear that the bill coming back to this place is different from the bill sent to the Council. I have a number of questions around this, but initially I seek an explanation from the Attorney General as to why manslaughter was not included in the original bill and why it is now. What difference will it make in practice to the bill now that manslaughter will be included?

Mr J.R. QUIGLEY: The answer to the member's question can be found, in part, in the speech in the other place given by the shadow Attorney General. It is a policy issue. As the shadow Attorney General noted in the other place, life is not given for manslaughter. I am not aware of any case in which a person has been sentenced to life for manslaughter. Therefore, a person is sentenced and is eligible for parole. That means that he or she will be eligible for parole consideration about two years before the end of their sentence. The effect of including manslaughter means that we have purchase on those persons who have been convicted of unlawfully killing someone and made eligible for parole for only four months. If that person had been given 14 years for manslaughter and they had not recovered the body, at the 12-year mark they would be entitled to parole consideration. If there was no body, they would be entitled to parole consideration so they would serve just another two years. As a policy consideration, it was thought that to keep quiet about the whereabouts of the body for 12 years—another two—we are looking at terms of life for a person who was under-sentenced for the rest of their life. So the purchase we had on a prisoner was that they would not be considered for parole if they did not disclose the whereabouts of the body, and they could stay in jail until they die, not just for another two years. We accept that that is a policy decision that has been made in this jurisdiction or that jurisdiction either way. The committee said that it would like parole with manslaughter included. We are not enamoured of that, but we are not going to argue about it. This legislation has been held up in this Parliament for so long and it is not going to do any harm as such. Also, quite frankly, I am not aware of any case in which there has been manslaughter and non-recovery of the body, because manslaughter usually involves an unlawful act that leads to a death, not someone setting themselves up to kill someone on prior notice. That is the reason. I think there might have been one case in which murder was brought down to manslaughter. We are happy to include it. I do not want to argue the toss. It is not at all a substantial part of the bill.

Mr P.A. KATSAMBANIS: I would like some clarification on the last point that was made by the Attorney General. Like the Attorney General, I recognise that convictions for manslaughter in situations in which the bodies have not been recovered are very rare. However, I seek an explanation about whether there has been any such case historically, or whether any person who is currently serving a jail term for manslaughter may be subject to these provisions in the future when they come up for parole.

Mr J.R. QUIGLEY: We are not sure, because a complete sentencing database is not kept. I am advised that there is one case in which on appeal the conviction was reduced from murder to manslaughter, but we are uncertain about the level of cooperation of the person.

Mr P.A. KATSAMBANIS: That raises the question of how this provision will operate in relation to manslaughter compared with murder. As I understand it, the role of the Prisoners Review Board is solely to make recommendations to the Attorney General in respect of people who have been sentenced to life or an indefinite term. The Attorney General will then, through the Governor in Executive Council, make the ultimate decision about whether to release that person on parole. As I understand the Attorney General, in the case of manslaughter, for which there is not a life sentence, it is extraordinarily rare. The Attorney General's recollection of criminal cases in Western Australia is more comprehensive than mine, so if he says he cannot recall it ever happening I will take his word for it. In the case of manslaughter, for which there is a lower sentence than life imprisonment, there is a non-parole period. When that non-parole period expires, the Prisoners Review Board does not make recommendations; it makes decisions. Does that mean that because of the nature of the convictions—one being manslaughter and the other being murder—there will be two separate systems under this regime? In the case of murder, the Prisoners Review Board is required to take into account all the evidence provided, the police reports and the like, and make a recommendation to the Attorney General, which after that will have a life of its own in the Office of the Attorney General at the time. In the case of manslaughter, the Prisoners Review Board will weigh up the evidence and will be the final arbiter on the decision on parole.

Mr J.R. QUIGLEY: There is one system, but there is a fork in the road. The member is right. In the case of a person who has been sentenced to life for murder, we are the only jurisdiction in Australia, and I think in the common law world, but I might be wrong —

Mr P.A. Katsambanis: Certainly in Australia.

Mr J.R. QUIGLEY: Certainly in Australia—certainly not in the United Kingdom or New Zealand—we are the only jurisdiction in which the executive, under the hand of the Attorney General, approves or disapproves parole for a person who has been sentenced to life. The member is right. A person who has been sentenced to a finite term for manslaughter has his or her parole approved or rejected at board level. However, this bill does not introduce two schemes, nor will it introduce any further layering of another scheme by reason of the inclusion of manslaughter. The board is tasked with the same thing; that is, before the board can make a recommendation to the Attorney General, or under its own hand grant parole, for a person who has been convicted of murder or infanticide, and now manslaughter, it must first contact the Commissioner of Police and inquire about the whereabouts of the remains of the deceased, the level of cooperation, and the timeliness of the cooperation, and obtain a commissioner's certificate. There is also a new consideration that we will get to in amendments 2 and 3. It is not a new system as such. It is just that the board is now required to undertake this task in respect of not only lifers but also those serving a finite term for the crime of manslaughter.

Mr P.A. KATSAMBANIS: As the Attorney General has pointed out, the genesis of this amendment was the inquiry conducted into this bill by the Legislative Council Standing Committee on Legislation. I have read through that report and its many findings and few recommendations, and I highly commend it. It was a bipartisan review by members of the government, members of the opposition and members of the crossbench. They delivered a unanimous report that recommended the inclusion of the amendments that we are considering today, including this amendment. It is interesting that the members of the other place, in exercising their prerogative as a chamber of this Parliament, decided to refer this bill to that committee. The Attorney General had a lot to say about that. We need to remember the genesis of that.

The bill was referred to the Standing Committee on Legislation on motion by upper house member Hon Aaron Stonehouse, a Liberal Democrat representative on the crossbench. The motion was supported by every single member of the other place who is not a government member—members of the Shooters, Fishers and Farmers Party, One Nation, the Greens, the National Party and the Liberal Party. Hon Aaron Stonehouse said that the reason he moved to refer the bill to a committee is that he wanted to find out how the bill would work, whether it would do what it said it would do and whether it could be improved. The Attorney General failed to point out that the motion had been moved by a member of the crossbench and that the entirety of the non-government members in the other place had agreed with that motion. On 16 August 2017, the Attorney General came into this place and abused and attacked Liberal and National Party members for delaying what he termed an urgent and extraordinarily important bill. He said also that Liberal and National Party members were offering comfort to murderers. I think in that particular case he was referring to the Liberal and National Party members in the other place, but it is no less offensive. On 17 August 2017, the Attorney General accused all of us in this place—including the Leader of the Opposition and the Deputy Leader of the Opposition, and other members of the Liberal Party, including myself, and members of the National Party—of being hypocrites for supposedly delaying the legislation. It needs to be put on the record that the Attorney General has used this place to unfairly smear members of this Parliament who have never at any point indicated opposition to the passage of this bill. In fact,

they have indicated support for passing this bill as quickly as possible, but with appropriate scrutiny. We get to today, whereby that legislation committee process in the other place has produced a report, and it was then considered by the house.

Mr J.E. McGrath: I am very engrossed by what the member is saying; I would like to hear some more.

The DEPUTY SPEAKER: Would you just like to take the floor again?

Mr J.E. McGRATH: I would like to hear more from the member for Hillarys, please.

The DEPUTY SPEAKER: Certainly.

Mr P.A. KATSAMBANIS: It has been through the process in the other place. The committee made a series of recommendations. The government, in its wisdom, has accepted those recommendations and brought the amendments in as its own amendments in the other place. It passed the other place without dissent, but with a bit of consideration—perhaps more consideration than was necessary. Nonetheless, it did not delay the bill too much, and the bill comes to this place with the government moving these amendments as well. Quite clearly, the process that we have gone through has improved the bill. It has improved it in the addition of manslaughter. We will get to amendments 2 and 3. It has made it a better bill. It is a significant improvement on the private member's bill—we discussed that the last time the bill was before us—that the Attorney General, who was then the shadow Attorney General, moved in this place a few years ago. I have seen all of this go through and read the transcripts of debate in the other place.

The Minister for Tourism walked in and said we had been unnecessarily delaying this urgent bill. What we found in debate in the other place is that even if this bill was passed today or tomorrow and it received royal assent, it would not commence. The Prisoners Review Board and perhaps the police—I think it was mainly the Prisoners Review Board that got blamed—may not be ready. Even if it was passed today and received royal assent tomorrow, it could not be in operation on Thursday because the mechanics of government do not have all the administration in place ready to go, which is why the government has chosen to make this bill not come into force the day after royal assent. It has chosen to reserve the determination of the proclamation date to itself in the future. I understand there are reasons around that. I also understand that the other place does not like that. I served four years in that place, so I know that it does not like governments reserving proclamation dates. I do not want to get into that debate. I just want to show how unreasonable and unfair the Attorney General was when he tried to accuse the Liberal and National Party members in this place and the other place of giving comfort to murderers and being hypocrites when a parliamentary process initiated by a crossbencher led to a committee review of this bill that has clearly improved the bill. I call on the Attorney General to apologise for his actions that were perhaps made in a bit of hyperbole and perhaps motivated out of good intention. But I call on him, even at this late stage, to withdraw those remarks, apologise and get us back to that bipartisanship shown by members of the opposition in this place and the standing committee when considering the bill, getting it through the committee stage quickly and making good recommendations that the government is accepting. I call on the Attorney General to withdraw and apologise for those comments that were clearly untrue, completely and utterly baseless and were a smear on the character of good people trying to pass good legislation to help the public of Western Australia and to move forward in a better and more bipartisan spirit than he showed in August last year.

Mr J.R. QUIGLEY: As I said, as a matter of policy, manslaughter was not included because the only extra time that a person would serve would be two years. It was not considered that that would give purchase over a prisoner who had held their own counsel for 10 or 12 years. The government is accepting this today because we have two alternatives. We accept it, although we say it does not give any extra purchase over the prisoners, which is the very point that the shadow Attorney General made in the other chamber during consideration as Committee of the Whole House. What is the alternative? We reject this and the whole thing gets held up further. Clearly, the community want to see this through. Although we think this is marginal, we will not oppose it—the same as the next two amendments. We do not want to hold this bill up.

Mrs L.M. HARVEY: To the comments of the Attorney General, it has never been the intention of the opposition to hold this bill up. I think the member for Hillarys articulated our position, the processes of this chamber and the operation of the other place very well. I thank him for clarifying all those facts. The fact that the Attorney General wanted to consider these three amendments cognately was rejected by people on this side of the house because generally clauses and amendments are considered cognately if they happen to be of the same nature. For example, I remember some legislation that I had in this place around the covert powers legislation in which there were 87 amendments that changed the definition of an individual from "officer" to "public officer". I requested at that time that those 87 amendments be considered cognately. Indeed, the opposition at the time rejected that, even though each one of those amendments that had come from the other place were to achieve the same end, which was basically inserting a similar definition and changing the name of, I think, "officer" to "public officer". These three clauses from the Legislative Council are very different. One is to insert manslaughter as a provision of the

legislation and consideration, and the other two relate to the mental health assessment of prisoners considered for review by the Prisoners Review Board.

We go back to the points made in debate in the other place. I am pleased to hear the Attorney General say that the government has agreed to accept these amendments, because the points made during debate and by the Standing Committee on Legislation in the other place were that this legislation will not make any meaningful difference to the families of the victims to whom it is being pitched as a way to ameliorate their grief and reacquaint them with the remains of their loved ones. During the standing committee consideration in the other place and the Committee of the Whole House stage it was discovered that there is no time imperative for a prisoner to reveal the remains of a victim. If they have a 20-year sentence, for example, and they are being considered by the Prisoners Review Board after 18 years for release, there is no compunction on that offender to reveal the whereabouts of the remains of his victim prior to his consideration after serving 18 years—or 12 years or whatever it may be. The Prisoners Review Board has to take into consideration when and if that offender has cooperated with police in identifying where the remains are, but it does not say that he or she should do that within a time frame, for example, close to the point of conviction or incarceration.

Our fear, and indeed the reason I would like to see this legislation in operation, is that those poor families who just want to know where their child's remains lay may still have a 12 or 18-year wait, because we have discovered through this legislation that there is no compunction whatsoever on the offender to reveal where the remains are early in their sentence. Although the Prisoners Review Board can take into consideration, for example, two years prior to the end of the prisoner's sentence whether it is going to release that individual, if they reveal where the victim's remains are at the eleventh hour, they may still be considered for release on parole by the Prisoners Review Board. The Prisoners Review Board needs to give consideration to those matters, but it still has the authority to release an offender if they reveal where remains are right at the eleventh hour of their consideration for parole. That is my understanding and that is what Hon Sue Ellery has informed the Legislative Council about the operations of the legislation. I seek the Attorney General's opinion on and answer to whether there is any definition of timeliness with the revelation of the information about where the remains of these victims are.

Mr J.R. QUIGLEY: May I first seek leave for my adviser to withdraw and seek him to be excused from the ministerial table, as he cannot be in two places at one time and the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017, which is a bit more complicated, is before the Council at the moment? Can my adviser withdraw, please?

The ACTING SPEAKER: Yes, he may withdraw.

Mr J.R. QUIGLEY: My opponents now have got me solo and they think they will push me over!

The situation described by the member for Scarborough is quite right. I am making an exception here. I am not going to do this all afternoon because this is not debating the amendment, this is debating something that has already been before the chamber and that its proposed section 66C(3)(a)(ii), which states that the board takes into consideration the timeliness of disclosure. A prisoner will know that he runs an awful risk if he does not disclose in a timely fashion. I am able to disclose to the chamber that this is already having an effect on the prison population. My office has received a very pleading letter from a prisoner, who I think is just two years into a life term. The letter pleads with me to approach the police to have them visit him in prison so that he can accompany them on a search for the remains of the deceased whom he was convicted of murdering. It is very relevant that I have received this letter during the publicity that attended the debate in the Council. The prisoners know they are under the hammer time line.

The issue the member mentioned was debated earlier, and I do not want to take it any further. It was debated at the proper time and we have moved past that clause. What we have before the chamber today is the inclusion of manslaughter. As I have said before, it is a policy thing. As the shadow Attorney General said in the other place, this amendment will add, at worse, only two years to a prisoner's term. Does that give them enough purchase to reveal what they have not revealed in years of incarceration? It probably does not, but we are not here to hold this legislation up. Including this provision is not going to do any harm. It does not diminish the legislation in any way, so we are not going to oppose any of this; we just want to see legislation through. We know that there are parents out there in anguish at the moment. They contact my office and I know they have contacted other people. I say, "Don't look to me; look to the people in the Council." That is what I say to Mr Spiers, to Mrs Dodd, to Mrs Edge and to all of those grieving families who have never been able to resolve or move on from the circumstances that led to the death.

Mr P.A. KATSAMBANIS: I reiterate that the opposition certainly does not oppose this amendment; in fact, we support and welcome it. We think it demonstrates once more the value of participating in a parliamentary process rather than running roughshod over it or using the bully pulpit to shut members of Parliament down and not let them properly consider legislation or any other form of information that should be provided to members of Parliament. I hope it is a lesson to not only the Attorney General, but also ministers generally and future ministers

of any political persuasion, that none of us is the font of all knowledge, particularly not me, but that collectively and by working through the parliamentary processes we can improve good legislation. That is what is being done with the inclusion of the manslaughter provision, particularly, as the Attorney General said, that despite the lack of information and clarity there appears to be one person in Western Australia today who would be subject to the inclusion of manslaughter in this provision. I accept the point made by the Attorney General that perhaps a further two-year delay on release may not necessarily act as much of an incentive for people convicted of manslaughter to release the information they are holding and give comfort to the families of victims, but it will act as some incentive, I think, and that is a good thing. I stress that I am disappointed that the Attorney General continues to attack not only the process, but also the people who are part players in that process and who did not initiate it. They simply supported it as good parliamentary practice. The example here today is as stark as it possibly can be; that is, there has not been undue and unnecessary delay. We have not been told of anyone who is coming up for parole in the near future to whom one week or two weeks or a couple of months is going to cause problems because they may end up being released without cooperating in the discovery of a body. It is not really no body, no parole; it is no cooperation in the discovery of the body, no parole. That is all well and good, but I hope the Attorney General is at the very least chastened. If he is not prepared to offer an apology for the quite frankly disgraceful description that he gave members of both this place and the other place for supposedly unnecessarily delaying the bill, he should at least accept that that is not the standard that we accept of the Attorney General of Western Australia.

Question to be Put

Mr J.R. QUIGLEY: I move —

That the question be now put.

Question put and passed.

Consideration in Detail Resumed

Question put and passed; the Council's amendment agreed to.

Mr J.R. QUIGLEY — by leave: I move —

That amendments 2 and 3 made by the Council be agreed to.

Mr P.A. KATSAMBANIS: The opposition supports these amendments. They arose out of the process that was undertaken in the other place. I think they are dear to the heart of Hon Alison Xamon, a member of the Greens in the other place, but also generally to members of Parliament and to members of the Western Australian public. It is quite clear that the examination of the bill by a bipartisan committee, which led to unanimous recommendations to introduce amendments 2 and 3, highlighted a failing in the bill. Although there may be some general acceptance that the Prisoners Review Board may take into account a prisoner's mental capacity, it was not clarified in this legislation when it is applied to this specific area that relates to proper, active and full cooperation by a person convicted of a homicide offence to enable the authorities to locate the body of a deceased to give finality, a little bit of closure and some comfort—not a lot of comfort, unfortunately, but some comfort—to the family of the victims. Quite clearly, it was unclear. It has been an axiom of our criminal justice system even before the state of Western Australia existed that people with a mental impairment, who do not have the mental capacity to either commit crimes or otherwise to provide certain forms of information, should not be punished because of that lack of mental capacity. This could have been introduced in different ways but having read the committee report and all the details that led up to its findings and recommendations, I think that this is about as good a way as any. As I understand it, the Prisoners Review Board ordinarily—the Attorney General can correct me if I am wrong—collects reports about prisoners' wellbeing, behaviour and cooperation. Included in that are mental health assessments and reviews so the PRB has that on foot. This amendment makes it very clear that the board needs to take it into account. The last thing we want is for someone to be punished because they do not have the capacity to provide information. The opposition has no objection to amendment 2; we welcome it.

I will try to encapsulate what I seek about amendment 3 into one submission for the Attorney General to reply to. We know that the Prisoners Review Board has the information referred to in amendment 2 readily at its disposal. That is all fine and good, but amendment 3 is different. It relates to reports provided to the Prisoners Review Board by the Commissioner of Police and is worded differently. It states —

> to the extent known to the Commissioner of Police, the prisoner's mental capacity to provide relevant information or evidence;

Mr A. KRSTICEVIC: I would like to hear a little bit more of what the member for Hillarys has to say.

Mr P.A. KATSAMBANIS: I seek clarification about the obligations the Commissioner of Police has to seek out information about a prisoner's mental capacity. Who would they seek that information from? Would the commissioner or his delegate have the capacity to seek that information from the Prisoners Review Board? Is there

any obligation upon them to actively look for this information? I am not suggesting that it is the correct construction, but on one construction it could be argued that if the commissioner had no information, had not sought any information, and had decided not to worry about seeking that information, they have ticked that. Unfortunately, if that were the case, a prisoner with a mental incapacity may well be disadvantaged. I seek clarity from the Attorney General about how far this provision obliges the Commissioner of Police to look into a prisoner's mental capacities. What information can the Commissioner of Police seek and from whom, and how will it work in practice in conjunction with the information held by the Prisoners Review Board?

Mr J.R. QUIGLEY: Can I just correct where the shadow Attorney General misspoke? I am sure he did not mean it, but he said that it was an axiom of criminal law that people with mental incapacity are not punished for their incapacity. The misspeaking entered the frame when he dealt with clause 9 of the bill, which regulates the circumstances under which a prisoner who has been convicted can or cannot be considered for parole. Such a person, having been convicted, is not a person who is bearing a mental capacity that would excuse him or her from the crime. Two pieces of law are in play there. Firstly, it is the defence of insanity, when a person is found not guilty by reason of insanity and therefore their mental capacity was so insufficient that they did not understand what they were doing, the nature of what they were doing or the fact that what they were doing was against the law. That was a very short summation of the defence of insanity. The Criminal Law (Mentally Impaired Accused) Act is the area of the law that impacts upon this whereby the accused is shown to be so mentally impaired as to be unfit to plead. In either of these circumstances, the person is not being punished because of mental incapacity. In fact, they do not suffer a conviction. Those people who are up for parole consideration have amply sufficient mental capacity to understand the nature of the acts that they have undertaken and understand the quality of those actions in the sense that they are against the law or wrong, or they have such mental capacity to take part in the trial and not come within the provisions of the Criminal Law (Mentally Impaired Accused) Act. These are persons who are compos mentis in every sense of the term. They have been convicted at law of murder, or now manslaughter, and are properly punished.

I raised concerns like those of the member opposite. These amendments come from the Legislative Council. We do not want to hold up the bill. As I said, we will accept what the Council says. Turning to the third amendment, there is no obligation on the Commissioner of Police to go and get anything from anyone. It states that it is "to the extent known to the Commissioner of Police". He may not be in a good position to assess a prisoner's mental capacity or otherwise. He is under no obligation to do anything. This amendment came from the Legislative Council. We do not want to send it back to the Council and hold up all this. Similarly, it is the report of the commissioner. When the board plays its substantive role in weighing whether to admit to parole someone who is convicted of manslaughter or make a recommendation to the Attorney General in the case of a lifer convicted of murder, the board has to take the certificate into consideration.

Mr P.C. TINLEY: Mr Acting Speaker, I would like to hear further from the Attorney General.

Mr J.R. QUIGLEY: It takes into account the matters set forth in the commissioner's certificate. One of the things that the commissioner must touch upon is the mental capacity as "known to the commissioner". There is no obligation at law for the commissioner to approach doctors or anyone like that. It is quite true what the member says that when the board has a file on a prisoner, it usually has notes from the prison that may or may not impact on, or give insight into, the prisoner's mental capacity at the time. We know that the prisoners are not mentally ill to the extent of being insane. We know that the prisoners are not mentally ill to the extent of being unfit to plead. They are convicted prisoners. This amendment does not require the board to obtain a mental diagnosis of everyone who comes before it. It simply refers to any information that the board has about the mental incapacity of a prisoner. We do not think that this amendment diminishes or detrimentally affects the bill. We do not think it really adds anything to the bill, quite frankly, but we are happy to put up the amendment as a government amendment because we do not want the legislation to be held up any longer. I do not know how it is said to extend consideration in proposed section 66C(3)(a)(iii), which refers to —

> the truthfulness, completeness and reliability of any information or evidence provided by the prisoner …

If the Commissioner of Police knew something about a prisoner's mental capacity, that would probably be reflected in his judgement as to reliability. How can he say that it is reliable if the person is not fully bonkers because they were convicted but half-bonkers?

I do not want to take up the chamber's time all afternoon. We know that these amendments are the concerns of Hon Alison Xamon. We are not going to oppose them. We are happy to bring them forward. We want to see the passage of the bill through this chamber this evening. We do not think it diminishes the bill in any way. If it diminished the bill one iota, the government would not bring forward the amendments. We would take on the Legislative Council, if I can be forgiven for saying that, but we do not want to hold up the legislation. For my own part, I do not think that it really, to a practical extent, extends the criteria of reliability. It does not involve a diagnosis of the prisoner by either the board or the police.

Mr P.A. KATSAMBANIS: I thank the Attorney General for his explanation, which is fine and good, but I did not misspeak. I will try to clarify by using some of the words that he used. He said "we know" these particular prisoners are not criminally insane and "we know" that they have the mental capacity for their charges to be heard and for them to have been found guilty of the crime—convicted. Where I take issue is, it is not that "we know", it is that "we knew at the time of the trial" or "we knew at the time of the incident" or "we knew at the time of the conviction". As the Attorney General would know, perhaps better than most, between the time of conviction and the time of parole in these cases, it can be a long, long time. Perhaps we are playing with potentialities but I do not think they are red herrings. We know that some prisoners react to prison conditions differently from others. Some have onset issues in which something may have been underlying that onset during their life and if they are incarcerated, they are no different from anyone else who might have a mental impairment that has onset over their lives. There might be an incident. Unfortunately, we have seen many prisoners who have been attacked by other prisoners in prisons; some of them have been murdered. There were some quite infamous ones in the state that I used to live in. Other prisoners have been badly injured. So, yes, I understand the genesis of our criminal law relating to conviction. In some ways, this is new territory that deals with people who have been incarcerated for a long time, and I believe that they should be incarcerated for a long time. In rhetorical flourishes, I have occasionally spoken about throwing away the key.

Mr J.R. Quigley: It is not rhetorical because they can be indeterminate.

Mr P.A. KATSAMBANIS: Yes, they can be, and this bill covers the regime of indefinite sentencing as well. That was the genesis of my questioning in that area. We do not need to belabour the point. I think the Attorney General has answered the operational part of it, and some of it will be suck it and see. Let us not assume that the mental capacity held by somebody at the time of their conviction and sentence will remain their mental capacity during their extraordinarily long prison term. I cannot second-guess the motivation of the Legislative Council Standing Committee on Legislation or the strong proponent, Alison Xamon, but I think in this particular instance, that is where they are coming from with this amendment. I think it is valid. I commend them for bringing it up. Clearly, it does not diminish the legislation. I think it only enhances it.

Question put and passed; the Council's amendments agreed to.

The Council acquainted accordingly.