



Speech by

John-Paul Langbroek

MEMBER FOR SURFERS PARADISE

Hansard Tuesday, 9 August 2005

CORRECTIVE SERVICES AMENDMENT BILL

Mr LANGBROEK (Surfers Paradise—Lib) (6.07 pm): Before speaking to the Corrective Services Amendment Bill, can I also congratulate the member for Mount Isa on his election by this parliament to the role of Speaker.

I am very pleased to rise to speak on the Corrective Services Amendment Bill, a bill that cleans up an area of law that has come under some scrutiny over the last six months. Many here have heard of the case which has led to this legislative tightening. *Psaila v the Department of Corrective Services*, of course, is the lead case that deals with the case of street time in the transition between the old legislation and the new legislation. In the first instance, it was held that *Psaila* was able to use his street time as part of his sentence as the learned trial judge noted—

The magistrate's power to issue the warrant under s 189 depended upon the continued operation of the cancellation order ...

At least in that way, the cancellation order had a continuing operation as at the commencement of the current Act. It was an order in the nature of a continuing 'authority', at least because it authorised an application to a magistrate pursuant to s 189 of the repealed Act ...

According to s 268(2) then, the cancellation order continued in force according to its terms, as if it had been made under s 150, with the changes necessary to make it consistent with the current Act and to adapt its operation to the Act's provisions.

This example indicates at least one reason why the parliament would have intended an order made under the repealed act for the cancellation of parole to have a continuing operation as if made under the current Act.

It is this very important point regarding the legislative intent that we are addressing today. So often these bills are placed before the House and the comments we make on them are used by decision makers to look at what was intended by the legislation. Obviously, in relation to this case it was not that clear, so much so that Chief Justice de Jersey saw fit to draw a difference of opinion on the intention of the legislature in saying—

If the legislature had intended to give all prisoners the benefit of 'street time' after 1 July 2001, it would have said so in clear and unambiguous terms. Such expression is entirely lacking. In my respectful view the learned Judge adopted a construction of s 268 which, with relation to the circumstances of this case, was impermissibly broad.

That is what is being done today. Obviously, in the first instance when this bill was introduced into the parliament the intention was not made clear enough. That is clear because there has been judicial disagreement over the interpretation of the act and the transitional provisions in the act. We support this bill to clear up this confusion in the original act.