

Mentally impaired deserve a chance at redemption

■ Taryn Harvey



Fierce public debate about dangerous sex offender laws highlights the difficulties of detaining offenders without a conviction or a sentence on the presumption of the risk of future offences.

Preventive detention is considered to fundamentally challenge the principles of our legal system.

It is fiercely contested, and rightly so.

Given the Barnett Government's valid concerns about extending preventive detention why didn't

prioritise reform of WA's mental impaired accused law this year? Reform consultation closed 12 months ago and we still have no indication as to when the findings and response will be released.

People in WA can be detained indefinitely, without being convicted of a crime, if they are deemed too mentally impaired to face trial.

WA's mental impaired accused law breaches the basic tenets of our legal system by not allowing judicial discretion in imposing custody orders, detaining people indefinitely without a test of the evidence against them, not meeting standards of procedural fairness and not allowing for judicial review of decisions.

In her opinion piece last



No such safeguards exist.

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week, your legal affairs editor Amanda Banks described the safeguards in place to balance community safety and individual rights in decision-making in her commentary on the debate surrounding dangerous sex offender laws.

No such safeguards exist under WA's mental impaired law.

The result is preventive detention of people who are

found unfit to stand trial because of intellectual, cognitive or psychiatric disability. Legislating is a constant negotiation between the collective good and individual rights. In this task our parliamentarians are charged with upholding legal principles and the notion of natural justice.

How can the Parliament allow a law to have stood for so long when it clearly breaches these fundamentals? The only rationale is a belief that impairment itself is a reason for preventive detention.

This logic, if followed, is very dangerous.

Convicted offenders complete their sentences and are considered to have redeemed themselves. They regain their

individual rights and rejoin the community. The mental impaired accused don't get this chance. How are they then to be redeemed? What is it that they are supposed to do to be reconciled to our community?

The only conclusion I can draw is that Parliament believes they cannot.

If I am wrong, then I call on the Government to amend this Act next year. I challenge our MPs to explain this to "Jason", a 27-year-old man held in custody for 13 years with no date for release for causing the accidental death of his cousin as a 14-year-old boy.

When does he get to be redeemed?

■ Taryn Harvey is the chief executive of Developmental Disability WA