

YOUNG OFFENDERS AMENDMENT BILL 2023

Second Reading

Resumed from 13 June.

HON PETER COLLIER (North Metropolitan) [3.08 pm]: I stand on behalf of the alliance as lead speaker to indicate that we will be supporting this bill. I explained to the minister at the outset that I will be using this bill to bring the government down.

Hon Sue Ellery: We're ready.

Hon PETER COLLIER: Cheers. If I do not quite get there with this bill, I will definitely strike while the iron is hot and inflict the fatal blow with the next bill. Although, I think we have changed now, have we not? Is it the Misuse of Drugs Amendment Bill?

Hon Sue Ellery: The next one will be the Mining Amendment Bill.

Hon PETER COLLIER: Well, it will have to wait. Anyway, I will get there.

The alliance will be supporting this bill. Having said that—as I will go through in my contribution—in reality, not much will change, even though this will provide an opportunity for a juvenile detainee who reaches the age of 18 to be transferred to an adult jail, or go to an adult jail. That can be done at the moment, so that will not change. It is cumbersome, and I appreciate that and will go through it in a moment, but it can actually be done. We are going from a situation in which it can be but is rarely done to a situation in which it must be done but does not have to be. I promise members that that is the way it is. That is what will happen under this bill. At the moment, it can be done, but it is rarely done; after this bill is passed, it has to be done but there will be exemptions. I want to make that perfectly clear. That is my only concern about this. I think it was a bit of a smokescreen for a bigger issue about Banksia Hill Detention Centre. I have spoken at length about Banksia Hill over the last 18 months, and I will continue to do so until we have change in that facility.

Briefly, the legislation itself will amend the Young Offenders Act 1994, essentially by transferring adult-age detainees at Banksia Hill Detention Centre to an adult prison. Similar conditions exist in the Northern Territory, Australian Capital Territory, New South Wales and Queensland, albeit with varied requirements. I would not mind, for the benefit of the house, if the minister could outline the conditions in those jurisdictions and the jurisdictions where such conditions do not exist. For the benefit of the house, could we have the situation in the jurisdictions I just mentioned and the others, which are Victoria, South Australia and Tasmania?

In addition to separating adult-age detainees from juveniles, this move will ensure that they will be provided with appropriate training and employment opportunities at adult prisons, as opposed to school-based programs at Banksia Hill. Again, I think that is eminently sensible. As a former educator, I think the programs at Banksia Hill are tailored to school-age children, particularly secondary school-age children. If we are going to rehabilitate those juveniles, whether they are up to the age of 18 or post-18 and in early adulthood, it is very important that we provide meaningful programs. That is the intent of the legislation.

Currently, as I mentioned, it is possible to transfer an adult detainee at Banksia Hill to an adult prison via an application made to a judge in the Children's Court; however, the processes involved are extremely cumbersome and serve as a deterrent to such applications. That is true. I asked this in the briefing and, as I understand it, only four applications have been made. I would not mind some clarification of that.

Hon Sue Ellery interjected.

Hon PETER COLLIER: I thank the minister. How many have used that current process to go to an adult prison? Thank you. The effect of the amendment, enshrined in principle and already contained in section 7 of the Young Offenders Act 1994, is that children shall be kept separate from adults. That is why I personally do not have a problem with it from that perspective. Having said that, circumstances will permit the chief executive officer to direct the relevant transfer provision, and this is what I said when I started my comments. That relevant transfer provision does not apply to particular offenders, such as those with some neurological conditions; however, this is the exception and for all intents and purposes, detainees of adult age will be transferred to an adult prison. Several consequential amendments provide for improved information sharing about the detainees. The subjectivity about the exceptions is something that I would like to drill down on. I would like a little bit more information on that. What neurological disorders, other conditions or criteria need to exist for a detainee to remain at Banksia Hill? Could we please have a bit more information on that? I would appreciate that.

It really is as simple as that. It is moving a detainee once they have reached the age of 18 to an adult prison, with exceptions. That is what we are dealing with. The Liberal–National alliance supports the intent of the legislation.

My concerns stem from the stimulus behind this legislation and my ongoing concerns with Banksia Hill. I was privileged to go to Banksia Hill about two months ago. I have to say that I was really grateful to former minister

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Hon Bill Johnston for providing me with that opportunity. I will say that he has always been very transparent and forthcoming with information, unlike a lot of ministers. He really was very forthcoming with what was some quite sensitive information about Banksia Hill and what has been a very traumatic time for the staff and juvenile detainees at Banksia Hill. It was a difficult time, but I grant that Hon Bill Johnston was always very, very transparent. We did not have the juvenile nonsense that we get with some ministers and their responses to questions. He was always straight down the line, and he always provided detailed information and information that could be quite sensitive to the government—for example, on the numbers of detainees who engaged in self-harm or attempted suicide, and staffing issues et cetera. Personally, I never had an issue with the information that was provided, and I really appreciated the opportunity to go to Banksia Hill.

I was really, really impressed with the staff at Banksia Hill. I was so impressed with their commitment to the detainees. I spoke to a number of the detainees. All I ever wanted in life was to be an educator and to be a minister, and I am pretty happy with the outcome of that. I genuinely feel that every child has his or her strengths. They all have strengths; they really do. How we nurture those strengths is our role. We are all part of the village, and it is our role to ensure that we do all that we possibly can to nurture the strengths of every single child. That is imperative. We do not live in a perfect world, and the challenges in the very complex world that we live in today mean that no matter how much pastoral care we provide to those children from a very early age, some—a significant number—will slip through the cracks and move into a life of crime. Some of them do. It is a very, very small proportion in a comparative sense, but some end up in Banksia Hill. From what I witnessed at Banksia Hill, the staff are genuine in their intent to do all they possibly can to assist those juveniles.

But things have shifted, particularly over the last two years. I will say it again: unfortunately, the demonising of juveniles for political purposes has not helped the process. It really has not. What has happened is that word gets out, and when word gets out that the government and the former Premier, in particular, think that they are terrorists, murderers or rapists, that filters through. As I said in my budget reply speech last week, I then get pilloried by the Premier, who says that I am soft on crime and that I say that it is the only thing the juveniles could do et cetera. I am saying that it is the only thing they could do because they felt helpless. Ultimately, if we can get it right in Banksia Hill, we will have a safer community because when they come out of Banksia Hill, they will be more resilient; have better skill sets; be able to deal with full-time employment, their families and their peers; and make a valuable contribution to society. When the chief political officer of the state consistently calls them terrorists, it will not work.

I met with a group from Banksia Hill a month ago; it was a number of former detainees, their parents and relatives. It was an extraordinary meeting and very, very moving. There is a genuine desire on the part of the parents and relatives to assist in the process, but prior to the retirement of the former Premier, they were unanimously disappointed with the Premier's comments. It does not help the process. I think that was the stimulus for this legislation. As a standalone piece of legislation, I have no problems with it, but if the government honestly thinks that it is going to solve the problems at Banksia Hill, that is naive in the extreme, because it is not. The rhetoric has to start from the Premier and the minister and filter through. I know that the staff are genuine in their desire to assist those kids, but it does not help when this demonising filters out there in the community, because that Banksia Hill family is very big. A significant proportion of them are Aboriginal people. At the moment, the mobs out there are mortified by the rhetoric that is being generated towards their children. I ask the new Premier, the new minister and the Labor government as a whole, because they are all complicit in this, to please change their rhetoric on Banksia Hill. That will help the process much more than any piece of legislation that is going to shunt off the 18-year-old detainees to an adult jail. That will help more than anything.

It all started with this piece of legislation, because it had not been mentioned right up to the beginning of this year. I am sure it had been thought of, but it had not been mentioned. It was not an election commitment that the government would change Banksia Hill. That was not there. There had been no talk about it. We had had 11 crises, or riots, for want of a better term, or incidents at Banksia Hill in just over 12 months, and it was going on and on. Each time there was an incident, the former Premier came out and hardened his rhetoric, and it was not going to resolve the issue. The issue was still there. There was this entrenched mindset that, fundamentally, these juveniles are terrorists, murderers and rapists. That is not going to solve the problem. The former Premier and the former minister were big on saying, "I have to protect the community, I have to protect the staff, and then I have to look after the juveniles." If members of the government really genuinely want to solve the problem and do something to assist the juveniles, as I have said before, they should not put the cart before the horse. If they get the juveniles right, that will definitely protect the community and definitely protect the prison officers. I have said that over and again.

After one of the crises in Banksia Hill at the beginning of the year, the Premier first floated the notion of sending the adults off to an adult prison. I refer to a news article from March 2023, after one of the incidents. It states —

WA Premier Mark McGowan says young adults who are incarcerated at Banksia Hill Detention Centre should move to adult prison if they continue to misbehave.

Western Australia's juvenile crime remains a long-term challenge for the state government, following riots at Banksia Hill detention center and rampant law and order issues in regional towns.

The number of police officers assaulted in the regional areas also reached a record high according to the latest data.

Premier McGowan gave tough responses over juvenile and young adult detainees, saying those above 18 years old should go to adult prison over their behaviours.

“A person at work, a ... youth custodial officer has suffered a grievous injury because a group of detainees decided to break away from organized activity, outdoor activity, recreation activity, and climb up a fence and climb up a roof, and then start throwing things at the youth custodial officers who were there to support them, who are there to help them in rehabilitation,” he said.

“What those detainees did was shocking and appalling. People are charged now that well then that's a good thing, but I'm not pleased that it occurred.

“One of the people who climbed onto the roof was over the age of 18. There are 17 detainees in Banksia Hill who are over the age of 18, they may be 19, or they might be 20. Now, in my view, they're adults.

“If you're going to behave in that way, you've lost the privilege of going into juvenile detention. You should be in adult prison because you are an adult.

“If you're going to climb on the roof and throw things at people and behave in an appalling way, or it just sends a message to me that you're not appreciating the fact that you're a juvenile detention and you should be an adult protection.

“Now other states have done this. They've moved adults into adult prison and I think adults should be in adult prison barring some exceptional circumstances. We're gonna work on how to achieve this outcome.”

That is where it stems from. Because of another problem at Banksia Hill—another riot—the Premier has decided that one of the ways we can deal with it is to make an assumption that all the detainees involved in that riot were aged 18 years and above and move them all out of Banksia Hill. That is where it stems from.

Then, on Wednesday, 17 May, just three months later, the then Premier and then Minister for Corrective Services, Hon Bill Johnston, put out a media release titled “Reform mandates transfer of adults from youth detention to prison”. I will not read this media release into *Hansard*, but it states that this is what this legislation will do. The government is going to move those juveniles aged 18 years and above from Banksia Hill to an adult prison. There is therefore an assumption to the layman that all or a significant proportion of the detainees involved in those 11 incidents over the last 12 to 18 months were aged 18 years or above. In fact, that is not true. If that is a stimulus for this bill, it is a flawed stimulus. It is completely and absolutely avoiding the real issues that exist there.

I heard this and I asked a question. The word is out there. I tell members that the grapevine is alive and well out there at the moment. As members of the government know—I know; I have been on that side of the fence—the longer a government is in power, the larger that grapevine gets. There is a tsunami of grapes out there at the moment, let me tell you, Mr Acting President (Hon Dr Brian Walker), of people who want to tell me what is going on. I asked a question after the former Premier's comments back in March. On 14 March 2023, I said —

I refer to the incident at Banksia Hill Detention Centre on Monday, 27 February 2023 involving seven juveniles.

(1) How many juveniles were housed at Banksia Hill Detention Centre on that day?

The answer was that there were 91 distinct young people. I asked —

(2) How many of the juveniles referred to in (1) were aged —

- (a) 18 years;
- (b) 19 years; and
- (c) 20 years or above?

The answer was that there were 14 young people aged 18 years, one young person aged 19 years and one young person aged 20 years or above. I asked —

(3) How many of the juveniles referred to in (2) were part of the seven involved in the incident?

The answer was that there was one person involved who was aged 18 years or above. Remember that I have just read out the newspaper article and the comments of the former Premier. Someone who read that article could not help but think that all the people directly responsible were aged 18 years or above.

Recently, in May, there was another riot at Banksia Hill. I put a question in on 14 June, just last week. I asked how many of the detainees were involved in the riot, and I was told that 56 young people were involved. I asked how many of the detainees were aged 18 years or above, and the answer was nine. Nine of the 56 young people involved were aged over 18 years. From what I understand, the nine people over the age of 18 who were involved were not part of the stimulus for the riot, for want of a better term. I would like some confirmation of that, minister. Were any of those nine detainees aged 18 years or above directly involved in stimulating that riot?

Hon Stephen Dawson: Just to be clear, sorry, what date?

Hon PETER COLLIER: That was on 14 June. This is from the most recent riot.

Hon Stephen Dawson: Sorry, what was the date of the riot?

Hon PETER COLLIER: It was the one in May. It might seem like a moot point, but it is not. We are supporting the bill—do not get me wrong—but I do not want the stimulus for the bill to be exclusively that all these adult detainees were purportedly responsible for all these riots when in fact they were not. We are avoiding the real issue at Banksia Hill. I know for a fact that the staff at Banksia Hill Detention Centre wanted to be supportive and do not want to have to deal with riots on a day-to-day basis. I know that the government is spending millions of dollars on Banksia Hill because we keep on hearing about it, but until we change the government’s mindset on Banksia Hill, things will not change. That is my point in raising this issue. In respect of the incidents that have occurred there over the last 12 to 18 months, from the beginning of 2022, I would like to know how many prisoners aged 18 years and above have been directly involved in initiating those incidents.

Multiple juvenile justice experts have come out and expressed their views on Banksia Hill and why they feel things need to change. These are people who, dare I say it, would not normally be remotely associated with my side of politics; you would hardly call them raging Tories. If anything, they are much more associated with the left of politics, but I have found myself in furious agreement with the comments that they have made. I have said this over and again: from a social perspective, I am a bit of a lefty, and I make no apology for that. I was Minister for Education and Minister for Aboriginal Affairs. We did so much for Aboriginal people in our government; certainly I, as education minister, did so much for Aboriginal people, including the KindiLink program; the cultural standards framework; the Training Together—Working Together program; and the Elders in Residence program for Aboriginal people. We changed the funding model to specifically give Aboriginal people a specific pool of funds, which had never been done before. I make no apology for that, but I did find myself in furious agreement with those social justice reformers with regard to Banksia Hill. A lot on my side of politics do not agree with me, but I can live with that. We can have a conscience in our party, and I have a conscience in this area. I know it is right. I know for a fact that if we can do something to assist those juveniles at Banksia Hill, it will ultimately assist them in living better, more resilient and productive lives, but it will also really assist the community. The safety issue that the former Premier kept banging on about will also be significantly resolved.

I said last week that some advisers in the Premier’s office obviously got wind of some comments I made back in January this year. They took part of those comments and the Premier then kept repeating them, over and again. In fact, the Leader of the House in this place also repeated those comments, but they took only a tiny little part of my comments, and I will read it again. This is a comment made by the former Premier in the Parliament on 16 May in response to a question from the Leader of the Opposition —

People thrash around trying to make excuses for behaviour: I am not doing that any more. Peter Collier excuses the behaviour. After the riot on New Year’s Day—after all the additional activities and better food that occurred at that time for the detainees—he said —

“The only vehicle that they’ve got is to riot,” ...

Peter Collier basically said that this was okay. That is what the Liberal Party has now gone to.

I remember that media conference vividly; I spoke for almost half an hour. I went through a whole raft of issues with regard to reform processes, increased funding and the role of government in assisting marginalised, disengaged youth. The Premier took one tiny little thing, but I make no apology for that, because it is true. Those juveniles get to the point where they feel the only possible thing they can do is riot. I stand by that. If all else fails, it is the only thing they can do. Ideally, they do not want to get to that point, but they have been pushed into a corner so many times that that is how they feel: that their only hope is to riot. So, good one, Premier, but he politically exploited this situation yet again. In reality, all he did was put kerosene on the fire and ensure that there would be further disruptions at Banksia Hill on a monthly basis. It is going to be a never-ending cycle; that is what is going to happen. That is why I keep saying that the opposition, beyond the shadow of a doubt, will support the Young Offenders Amendment Bill 2023, but it will not solve the issue.

A number of people have made public comments on this issue; I have been through this before. These included two former Labor Premiers, Brian Burke and Carmen Lawrence; former Australian of the Year Fiona Stanley; the

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President of the Children’s Court; a former President of the Children’s Court; the Inspector of Custodial Services; and a former Inspector of Custodial Services. You name it; a litany of experts in the field are all saying that the government is getting it wrong, but the Premier said, “No, we’re going with the ‘hang ’em high’ mentality. We’re going to politicise this thing all we can, because we’ve done some polling, and out there in voter land, they love it. We’re going to lock up these kids and make sure that they’re in their cells for 22 hours a day. We’re going to send them off to adult jails. That’s what we’re going to do.” The government knows that that sort of political expediency is worth volumes, but it is wrong.

I refer to an article that appeared on 30 November 2022 in WAtoday after some eminent Western Australians had the audacity to question the Premier’s motives. The article is an opinion piece by Gareth Parker titled “What McGowan’s Banksia Hill brawl says about his politics (and WA’s)”. It states —

It is the latest mark of how Mark McGowan dominates West Australian political culture that he can consign perhaps the state’s most respected woman—plus his own party’s feminist trailblazer to the category of mere “activists”.

That was the label he attached to Professor Fiona Stanley and Dr Carmen Lawrence, who disagree profoundly with his government’s hard line on youth justice.

Stanley is the 2003 Australian of the Year and was so admired that a former WA Labor government named the state’s largest and most technologically advanced tertiary hospital after her.

Lawrence was Australia’s first female premier, a federal minister too, and Labor’s first female national president (elected by the first ballot of ALP members for the position) holding portfolios including Aboriginal affairs and education along the journey.

Fundamentally, the pair believe the government’s response to allegations of excessive force and solitary confinement in the state’s juvenile custodial estate lacked compassion and humanity.

Lawrence—who is also at odds with the premier on the question of whether gas giant Woodside should sponsor their mutual favourite football team, the Fremantle Dockers—believes the age of criminal responsibility should be raised from 10 to 14 and has described the government’s response as “perfunctory”.

Stanley, who participated in the premier’s hastily convened 90-minute “stakeholder” meeting last week, believes it was a waste of time.

“My plan was to do what I have always done. Work with politicians and others in power, highlighting the best research in the world to influence policy. I hoped this might convince the government that their approach was not only failing but it was making the situation worse,” she wrote in an opinion piece in *The West Australian* on Tuesday.

After a series of violent incidents of damage at the Banksia Hill detention centre, a group of about 20 detainees was transferred to a specified juvenile-only unit at the state’s maximum-security adult prison Casuarina.

Lawrence wants the juveniles out of there by Christmas.

The issue, Stanley believes, is becoming an international stain on WA’s reputation.

Eye-opening research by the Telethon Kids Institute in 2018 found that 89 per cent of detainees at Banksia Hill had at least one neurodevelopmental impairment, while one in three suffered Fetal Alcohol Spectrum Disorder.

Professor Stanley said the best evidence showed punitive lock-ups exacerbated aggression and culturally appropriate therapeutic approaches delivered superior outcomes (eight in 10 detainees at Banksia Hill are juvenile.)

“What more can we do? What is the block? Where is the premier who led us through COVID, with all the data and evidence informing his actions?” she asked. He is in the same place he has been for a long while now: with the voting public well and truly on side.

“At the end of the day, I think I have a fundamental difference of opinion with some people,” McGowan said on Monday.

“That is, if you commit very serious crimes, serious assaults, grievous bodily harms, homicides, sexual assaults—you’re going to end up in detention. I actually think that’s where some people should be, whereas others don’t think they should ever end up in detention.”

It goes on. That was when we came across an extraordinary situation in which they had the audacity to point to the fact that a number of the detainees had been diagnosed with foetal alcohol spectrum disorder. The former Premier said that was just an excuse from the activists. It is not, as members know, and I mentioned this in the past. I asked whether the government recognised FASD as a condition. The answer from the Minister for Health was yes, and

she outlined all the conditions for FASD that fall very clearly and neatly into the conditions that a lot of these juveniles are experiencing. By revolving the issue and calling social reformists, for want of a better term, or eminent Western Australians “activists” was so inappropriate. Banksia Hill Detention Centre is an institution at the moment with some serious issues. It has had 11 incidents over the last 12 to 18 months; over 600 detainees have attempted self-harm or suicide over the last three years; there are chronic staff shortages; we have had the establishment of unit 18 at Casuarina Prison; there are hygiene issues within the facility, as has been identified through the Inspector of Custodial Services; and one in four detainees go straight from Banksia Hill into an adult prison when they leave. We are doing something wrong. Do we want to commit these juveniles to a life of incarceration? Of course we do not.

One area that I forget to mention was the work that the former Liberal–National government and I, particularly as Minister for Education, did with the Curriculum and Reengagement in Education schools. They are fantastic facilities that deal with a lot of kids who have previously been in juvenile detention. I spent so much time in those schools to work with the kids. They are good kids, they just need some direction with tailored programs and to be sent in the right direction, not demonised on a day-to-day basis.

Some time ago, Fiona Stanley wrote an opinion piece out of frustration. I got it; I really got it, because I can understand from her perspective why I should feel frustrated. She pretty much nails it. I will read part of what she wrote. She said —

It has been five months since the Government decided, without any warning, to move children from Banksia Hill detention centre to Casuarina Prison—a maximum security adult prison. We were told it was temporary and the least bad option. We are no closer to an end date of this practice than we were when they announced it.

I feel sad and disappointed that I am writing this today. Initially, I made a conscious decision not to talk to the media. Instead, I wanted to work alongside Government to fix things. I would have loved to write saying how pleased I was that the Aboriginal leaders and organisations had been listened to and that we had had a genuine dialogue with Government. However, now I feel as if I don’t have a choice. I feel the only way I can attempt to prevent children dying in custody, is to write the story of these past five frustrating months.

Over this time, I have met regularly with committed Aboriginal leaders, experts in Aboriginal cultural solutions, child advocacy, child development and human rights, as well as non-Indigenous experts across the WA juvenile justice system. Most importantly, we all know that most of these detained children have significant, irreversible brain damage from foetal alcohol spectrum disorder, ADHD, other developmental disorders, and early life trauma. Punitive locking up has shown to exacerbate aggressive behaviours, and many studies show that therapeutic approaches help put these children on healthier developmental pathways.

Collectively, we have discussed the evidence-based solutions to the unacceptable situation that is youth justice in WA.

Collectively, they have spoken up against the unacceptable treatment of Aboriginal and non-Aboriginal children in custody.

My plan was to do what I have always done. Work with politicians and others in power, highlighting the best research in the world to influence policy. I hoped this might convince the Government that their approach was not only failing, it was also making the situation worse.

Some people refused to speak to me, but I managed to talk to several politicians, some bureaucrats and some highly regarded West Australians.

I could not understand how, with all the evidence, the Premier and his ministers were not willing to act—even if not humanely then at least cost-effectively. All I spoke with agreed about the data, and the approaches that were detailed in the Social Reinvestment Blueprint, but none were prepared to speak out. It seemed to me that they were all too scared to follow their instinct to protect these children.

That is not how a healthy democracy should work.

Undeterred, I requested a meeting with the Premier directly to discuss these matters. However, instead of a personal response, I was left to read that I had been invited to a “summit” via *The West Australian*.

I was alarmed the relevant Aboriginal leaders had been excluded—those who had been working on solutions for years. I stated clearly that I would boycott the meeting unless this was rectified. The afternoon before the summit, Daniel Morrison, co-chair of Social Reinvestment WA, and Gail Beck, co-chair of the Government’s own Aboriginal Advisory Council were invited.

We agreed with the Premier’s concern that a royal commission was not a good idea. However, we pushed for an inquiry into what is happening at Banksia. At no time did we agree the Government was “on the right track”. We all in fact agreed that they were on a very expensive, inhumane, ineffective path. One that is likely to not only damage children in detention, but also the public who they are most keen to protect.

We asked the questions.

Neither the Premier nor any of the Government people did. The responses from ministers Simone McGurk and Bill Johnston were, I thought surprisingly, alarming. Mr Johnston, responding to my question about employing Aboriginal people in Banksia Hill (there are so many outstanding First Nations professionals in WA), said that they didn't want to employ Aboriginal people as they might be upset and that instead they were recruiting Africans!

Ms McGurk encouraged us to be more balanced in the media. The Premier thanked us for attending and made comment about all the notes he had taken. We decided to wait. To hold on to hope.

Then a few hours later, comments from Government were circulated to the media without the opportunity for us to respond. Of course, the media wanted to interview us. I had to say that my recollections were very different from the picture painted by Government.

On Saturday night, we each received a letter outlining proposed solutions. There was no recognition of what had been discussed. There was no commitment to change. All we received was a press release in a letter that was also sent simultaneously to the media.

These were not the solutions that were discussed at the meeting. I have been inspired by Social Reinvestment WA, which spent two years collecting data, consulting, and has developed a sophisticated piece of policy work in their document titled *Blueprint for a Better Future: Paving the way for Youth Justice Reform in WA*.

Sadly, WA's reputation is becoming badly damaged by this situation, locally, nationally and internationally including from the United Nations. What more can we do? What is the block? Where is the Premier who led us through COVID, with all the data and evidence informing his actions? Where is the care for the lives of Aboriginal children?

That took a fair amount of time to read, but I could not have put it better. That is such a pertinent opinion piece from the former Western Australian of the Year, the same former Western Australian of the Year whom the Labor Party named a hospital after. We are not talking about someone with a political agenda; we are talking about someone who has genuine regard for the goodwill of some of most marginalised members of our community, particularly Aboriginal juveniles.

I opened up *The Post* the other day. I was not at the Cambridge Library, where apparently we cannot get it anymore, but in my local paper was an article titled, "Banksia Hill crisis starts in the womb". This is a comment that medical researcher Dr Carol Bower made out of the blue. Again, we find that there are dozens of such comments from experts in the field. This part of this article states —

Banksia Hill is just one place where results of Emeritus Professor Carol Bower's 40-year medical career will have profound implications for the health of children everywhere for generations to come.

This week Dr Bower was named Companion of the Order of Australia (AC) in the King's Birthday Honours, for her service to medical research in birth defects and early childhood development. Her work was based at the Telethon Kids Institute in Nedlands, and the University of Western Australia in Crawley.

Dr Bower, formerly a longtime resident of Shenton Park, spent years studying the effects on a child's health of exposure to alcohol in the womb, known as Fetal Alcohol Spectrum Disorder (FASD). The results of her work were unequivocal: No amount of alcohol during pregnancy is safe for unborn babies. It changed the advice doctors gave women, and sparked public health campaigns.

Dr Bower's FASD research led to her working with detainees at the Banksia Hill ... Detention Centre. Overseas studies had indicated that getting into trouble with the law wasn't uncommon among kids with FASD.

"We applied for some funding and got it, to do a prevalence study to see how common FASD was among young people in detention," she said. "That's when we found 36% of them (at Banksia Hill) had FASD." And 89% had a neurodevelopmental impairment such as an intellectual disability. "We were a bit surprised it was so high," she said about the FASD. "If these kids had been picked up early and had the right services around them, I suspect many of them wouldn't have engaged with the justice system."

She said Banksia was not supposed to be punitive. Detainees needed to be supported in their difficulties. But so far the research findings hadn't brought about any dramatic changes at Banksia Hill.

"I acknowledge it's difficult. You've got to have staff, and the will," she said. "The situation at Banksia has gone from bad to worse and I think there needs to be a radical change in approach. "We'd like to see fewer kids getting into detention."

That is just one more example. I do not know how many experts in the field the government is going to have to hear from and listen to before it appreciates and acknowledges that there is an issue here beyond the political will of a government. FASD and neurological disorders are not an excuse. They need to be treated with respect.

I have gone on a bit longer than I anticipated, but I will conclude on another compelling piece of evidence from another report by the Inspector of Custodial Services. It has done multiple reports. This one was handed down just two weeks ago. It is compelling stuff. It is not from someone with a political agenda. I urge members that if they want further evidence, they should read this report. It is readily available to all members. In the executive summary, the Inspector of Custodial Services stated —

The experience for young people in custody has deteriorated since our last full inspection of Banksia Hill in 2020. This is despite the opening of Unit 18 at Casuarina Prison as a circuit-breaker initiative. Ongoing lockdowns and decreased time out of cell has increased the ‘temperature’ within both facilities, leading to regular critical incidents such as staff assaults, roof ascents and riotous behaviour.

Lockdowns have also negatively impacted mental health. The rates of self-harm and attempted suicides have remained high since we inspected the Intensive Support Unit at Banksia Hill in December 2021. However, mental health care services were stretched. The mental health team were managing up to 30 young people on the At-Risk Management System on any given day, limiting the availability of offence-specific counselling for rehabilitative purposes.

...

Staff at Banksia Hill and Unit 18 were burnt out, demoralised and felt unsafe. Staff reported feeling more stressed and having a poorer quality of working life in comparison to our previous inspection. And, many were suffering the impacts of trauma and compassion fatigue. Still, many remained optimistic, displayed courage and resilience, and were learning to do more with less.

With recruitment efforts struggling to keep pace with high attrition rates, staffing shortages will continue to be an issue. Reforms to the existing staffing model need to be explored to help address shortages and to transform the care and engagement offered to young people in custody.

A little later, it continues to state —

Environmental hygiene and living conditions had been neglected as staffing numbers reached critically low levels. This was causing a health and safety issue for the young people and staff. Much of the physical infrastructure at Banksia Hill had also declined into a state of disrepair.

I could read the whole report in, but I will leave it to members to have a look at it in their own time. Further on, it continues to state —

Why this report?

It cannot be denied that in conducting this inspection, we found an emergency. Every element of Banksia Hill was failing, often through no fault of its own or the efforts of staff. But, on most days, the centre was insufficiently staffed to ensure the safe and secure management of, and service delivery to, the young people placed there.

The irony was then, and is now, that the commitment to the current staffing model (the 1:8 custodial staff-to-young people ratio and 12-hour shifts) appears so inflexible that it further risks the safety and security of the centre with continued lockdowns. It is a self-perpetuating cycle. Providing safety for young people when there are not enough staff means more time locked in cell. This isolation increases the young people’s anxieties, anger and frustration and some respond negatively towards themselves, others, and infrastructure/property. Staff must respond, which often leads to more or longer lockdowns. And the cycle repeats.

Ultimately, this inspection found young people, staff, and a physical environment in acute crisis.

I could not agree more with that. It is exactly what I have been saying for the last three-quarters of an hour. The problem is not a political issue and cannot be flippantly passed away because of a political comment from myself. The problem cannot be dismissed because of the views of a raft of experts—insultingly referred to by the former Premier as “activists”. The problem will simply not go away by calling the detainees terrorists, rapists and murderers. Banksia Hill Detention Centre has the framework to be an extraordinarily positive facility. I repeat that my respect and admiration for the staff at Banksia Hill has no bounds. I was absolutely in awe of the staff at Banksia Hill. When I was there, I also met with Tim Marney. He is a very good appointment. I think he will make a significant, valuable and positive contribution to that facility.

The message that is coming from the Labor government has to change. I will say this again, and I have said it at least a dozen times in the last 18 months: these statements are not political. I wish I could just walk out of this chamber

and put on my teacher's hat again and say that I am a lifelong educator and the Labor government is not going to change the shape and behaviour of marginalised disengaged youth by demonising them. That will not solve the problem. For goodness sake, can the Labor government, the new Premier and minister please take their heads out of the sand? They do not know everything in this space. Stop treating these juveniles and the staff as political footballs and make some meaningful changes.

By moving the 18-plus detainees at Banksia Hill, this bill may marginally solve the problem. However, I have not seen any evidence of that. I implore the new Premier to change his rhetoric. Having said that, I noticed the other day that when he was asked about this issue, he supported the former Premier's views on Banksia Hill, which really disappointed me. The other day, on 13 June 2023, I heard a question to the new Premier from the Leader of the Opposition. It was on another issue, but I hope that this is not replicated in his views on Banksia Hill. It stated —

I refer to the impending commencement of the Aboriginal Cultural Heritage Act and its implementation process that is causing widespread concern across the state due to a lack of awareness in the community and the lack of preparedness of the government for 1 July. Will the Premier postpone the implementation of the act to ensure that the community is adequately informed and that the government is properly prepared to oversee the new system?

The Premier gave a very long response, so I will just read part of it. He stated —

Members, listen for a second. Do you hear that? That is the same dog whistle that has been blown in this Parliament by that side of politics for decades, whether in the mid-1980s when the then Burke government was interested in introducing Aboriginal land rights legislation; the early 1990s when the federal government was implementing native title legislation, which was vigorously opposed and legislated against by the Court Liberal government; or now, as we make these modest modern changes to the Aboriginal Heritage Act. Every time, like a dog returning to its vomit, these guys trot out their straw man arguments to simply distract members of the community and raise these issues in people's minds.

A dog returning to its vomit because people have the audacity to have a view that might be different from the government's? I am gobsmacked that the Premier would say something like that. That brings me back to this: I am not a dog returning to its vomit by espousing a view that is contrary to that of the Labor Party. If I am a dog returning to its vomit, so are Fiona Stanley, Carmen Lawrence and the Inspector of Custodial Services. What we are saying is eminently sensible. We on this side of the chamber are not the enemy; we are the opposition. It is the role of the opposition to highlight issues to the government. The government can give us the single finger salute all it likes, and I do not mind that. I can wear that, but it is not just me. I am not a "Nigel no friends" in this space. It is not the gospel according to Pete. As I said, I have articulated the views of dozens of people and I have met with dozens of people from Banksia Hill. I have been to Banksia Hill. We have the capacity at Banksia Hill to make it an extraordinarily positive and productive rehabilitation facility for some of our most marginalised youths, and everyone would benefit from that. Although we support the bill, I say to the government in closing, please do not naively assume for one moment that this will solve the problem at Banksia Hill, because it will not.

HON DR BRAD PETTITT (South Metropolitan) [4.00 pm]: I also rise to speak on the Young Offenders Amendment Bill 2023. I make it clear that I will speak against the bill. There are two key reasons for that. The first is that this bill is counterproductive in terms of improving the conditions at Banksia Hill Detention Centre and unit 18 at Casuarina Prison. It is counterproductive and it is not the way we need to be going. The second reason is that, in many ways, the mechanisms for that already exist in other parts of the Young Offenders Act.

I will start with the second point. There is an effective mechanism in place now to transfer young people to adult detention when required. Under section 178 of the Young Offenders Act, the Department of Justice can apply to a magistrate to have a kid moved to an adult prison. That provision can be used when the older kids are being disruptive and the like. Importantly, when that happens, the judge can look at the whole picture. The judge will look at the kid's behaviour in detention, their offences and at any disabilities or health conditions the kid might have and at their family and community situation and so on. By looking at all those things together, the magistrate or judge can make a holistic decision. That is a really good process. Ultimately, we are seeing kids who have just turned 18 properly assessed before they go to adult detention. In many ways, just because a child turns 18 does not mean that they are an adult in the full sense of the word. Often, we can look at their history and the like. That is a key point, which came up when I was given a briefing on this bill. I get the optics of this legislation whereby it is easy for the government to say that children who have just turned 18 should not mix in detention with children who are under 18. I appreciate that makes sense at first glance to most people. But, importantly, that does not consider the reality of many of the children who are at Banksia Hill and unit 18 who have severe neurological disabilities, which many children in Western Australia have. I have seen figures that show it may be as many as 90 per cent. These are children who have foetal alcohol spectrum disorder or autism. They might be 19 years or older on paper, but they have the cognitive capacity of a 10-year-old child without those disabilities. That is really important. Often these are vulnerable young people. Just because they have turned 18 does not mean that they have the cognitive

capacity of an adult. Many of these kids are physically quite small due to the impact of their disabilities and, often, the challenging lives they have had. We are sending small, young people with both physical and neurological disabilities into an adult jail where they can be very vulnerable and will clearly struggle.

As I said at the beginning, that does not mean they cannot go there, but there should be a proper process to go through. The decision should be made by a judge rather than moving to what will largely be a blanket rule whereby the decision will be taken away from the courts and the experts who deal with these things and will be given to the government or the department. I raise this because members need to be aware that this is the same government that has been taken to the Supreme Court for the second time in nine months for its ongoing and unlawful lockdown of children in detention. They are in unlawful solitary confinement conditions that are used against children who are extremely vulnerable and often disabled and who need trauma support, not lockdowns because the government has failed to hire enough staff. I do not think much has changed since those Supreme Court rulings. At the heart of my concern is that the government seems to be disregarding those rulings and not listening to what the Supreme Court has said in this case. That gives me no confidence that the state government can decide what is best for these kids. The courts are clearly saying that it is not good for them, but those important rulings have been largely ignored.

It is fair to say that we can all see in the Inspector of Custodial Services report that Hon Peter Collier read that it highlights a system that is already in extreme crisis mode. These kids are not getting the rehabilitation support that they need. That is why I think it is important for the decision to transfer vulnerable young people to an adult prison should be left to the discretion of a judge. I will be asking a question without notice on this shortly and on what problem this legislation is trying to fix. I suspect that the legislation is not trying to fix the real problem. In many ways, to be brutally honest about the bill, it looks like a bill that a government puts out there when it wants to look like it is doing something about a crisis in youth justice rather than getting to the heart of what needs to be done. There is no evidence that young people over 18 are at the heart of the crisis at Banksia Hill, but this bill makes out that it is. Apparently, that is the most important thing the bill is looking at. Frankly, it is a distraction from the real crisis that we need real solutions to and that we should be putting real effort into in this place rather than something else.

At the heart of it, we all know what the solution is, and it is not complicated, despite a lot of people arguing that it is complicated. The solution is quite simply around getting more staff. To get those staff, they must be paid proper wages to attract people to what is a difficult job. I reiterate Hon Peter Collier's comments that the staff are doing an extraordinary job, but we need more of them because we do not have enough staff, resulting in more and more lockdowns. As someone who has been to Banksia Hill and seen those cells, I would get pretty grumpy if I was in lockdown there for two or three hours, let alone 22 or more hours a day. Frankly, that is horrific. Remember that these young people are often in what we can only call solitary confinement with nothing to do. This is where we are creating the problem. I will come back to the solutions. This bill is not the solution. Mandating that a small number of kids go to adult prison is not a solution. We need to hire enough staff, pay real wages and make sure that when we get staff in, they have the right mix of skills as social workers and youth workers, and have a really strong focus on rehabilitation. Ultimately, we need to make sure those kids are not locked down in solitary confinement for 20-plus hours a day and are out of their cells as much as possible, getting the education and supports they need so that when they leave that place, they are in a much better position to make sure they do not end up in an adult jail in the future. I think that is something we could agree on across all parts of this chamber. Ultimately, that is it. The solution I am talking about is not my solution. As I have spoken about before, that is a solution of Professor Fiona Stanley, Dr Carmen Lawrence and the Inspector of Custodial Services. We all know exactly what needs to happen. I cannot help but feel frustrated about this bill. Why are we debating this when we know exactly what needs to happen? Simply mandating that older kids get moved on is, frankly, not going to get us there. It is hard not to see it largely as a distraction.

I hope we are at a point where we can all recognise that some major changes are needed to what is happening at Banksia Hill Detention Centre and unit 18. I hope we can be frank and realise that this bill is going to make pretty well no difference to that. In fact, my theory is that it will make some of those things worse. That is why, ultimately, I will not support the bill today. I will add one more thing. I fear the outcome when we start to mandate these things, take discretion away from judges and start to give more and more of these things to governments and departments. I am a little bit surprised that is coming from the Labor Party. We have seen plenty of what happens around mandatory sentencing and that kind of thing, which I really do not think works. We have a really good judicial system for a reason. I fear there will be unintended consequences of this bill as we send away a group of vulnerable and often disabled teenagers, who are really struggling significantly. They are going to potentially suffer further harm as a result of what I hope will not happen but I fear will be an ill-considered attempt to appear as though the government is addressing issues at Banksia Hill. For these reasons, I will not support the bill.

HON NEIL THOMSON (Mining and Pastoral) [4.12 pm]: I also rise to follow on from the comments made by Hon Peter Collier and many of the comments made by Hon Dr Brad Pettitt. I want to put a bit of a local focus on the Young Offenders Amendment Bill 2023 and I will refer to the broader situation at Banksia Hill Detention Centre.

When juveniles come out of the system, a system that is not really working for them and not doing the job of rehabilitation that it should do, the problem is that a lot of them end up going back into a situation with a level of dysfunction out in the community that is just as bad as the situation from which they came, which led to their life of crime in the first place. People in the community, certainly in the Kimberley, have been talking about this for a very long time. They have been talking about community-led solutions and youth diversion on country residential services and a range of other mechanisms for the provision of safe houses and better intervention on the ground. I know a lot of hard work has gone on and I am not criticising the work that people have put in on the ground. Many of the groups up there have worked very hard to try to get solutions in some very difficult circumstances. I asked a question in Parliament a little while back. The reality is that of the 85 children in Banksia Hill, 21 of them come from either the Kimberley or the Pilbara so we know that a disproportionate number of them come from the north of our state. It is a very long way down here to be put into a situation, which I will describe from some of the reports from the Inspector of Custodial Services. I am sure that is part of our problem. The environment these young people are going into is creating what we are seeing, including the riots, restlessness and the dysfunction in that facility. People have been asking about this for a long time.

People in this place will know that well over a year ago I ran forums and talked to people in the community. About 200 people from the town of Derby came together to provide very positive input with some of the ideas that they had about resolving some of the challenges of youth crime. Youth crime is a very serious issue. Some of the things that these juveniles do are very harmful to the community. As sad as it is, a lot of these juveniles need to be taken out of the community. They have to be taken away as a circuit breaker. However, there is no point putting them somewhere where they are not going to get the psychological services, training and opportunities to amend their ways and come out to be more ready to live within the community in a positive way. We could go into a very long discussion about how a juvenile ends up in the facility at Banksia Hill. We can all talk about it. We all know about and see the sorts of family dysfunction. For example, we know that family violence in the Kimberley region is 18 times the rate of family violence in metropolitan Perth. That has an impact on those little children who are exposed to that family violence. We know that there are a whole lot of social breakdowns. They are related to a whole range of factors over history and time, but also the issue of remoteness has an impact. The idea is to resolve the problems in the regions and to find a better solution in which these young kids are not taken out of the environment they are comfortable with and put into a place where we hear horror stories from the Inspector of Custodial Services and we have read the reports. We know that there are alternatives such as the Marlamanu project that was proposed for Myroodah station. The project has been around for two or three years now. In fact, before I came into this place, I did a little bit of work with KRED Enterprises to put together a proposal as part of trying to get interest from the development commission. Finally, the former Minister for Regional Development, Hon Alannah MacTiernan, took this up and the proposal announcement was made. It is a very important project but we suddenly saw everything undone, and it is now potentially going to Mt Anderson station. I lack confidence that the government is actually serious about this because of the time it is taking to get there. I asked a question on 11 May —

- (1) What was the status of this facility in December 2022 prior to the flooding event?

We get every excuse under the sun, including the floods and, before that, COVID was the problem. The question continues —

- (2) What is the current status of this project?
- (3) What is the estimated date this facility will become operational?
- (4) Has the state government offered or provided further assistance to ensure that this facility is available for use as soon as practicable?

We do not get transparency in the answer. We do not see the government setting meaningful targets for itself and then holding itself to account on those targets. I echo the points made by my colleagues on this side that, instead, we get a kneejerk response such as this sort of legislation. As I say, we are supporting it, but the problem is that it will not solve the problem. It might look good in a press release, but it will not solve the problem. It will hardly make a jot of difference to the issues that we face. This government is great on rhetoric but really bad on delivery. We see that with the Aboriginal Cultural Heritage Act. The government emphasises the spin and does not focus on the details and the things that can make a difference. The response to my question about when the on-country residential facility will be operational states —

The WA government has committed \$15 million to the Marlamanu on-country residential youth justice program. In December 2022, the project was proceeding to the next stage of planning, utilising an initial \$300 000 made available for that purpose. Intensive development work is continuing with a dedicated team at KRED Enterprises, supported by the Kimberley Development Commission and a range of government agencies. This includes site planning, program design, policies and procedures, and other operational components. All parties are aiming for commencement of the Marlamanu program as soon as possible.

It sounds like nice words, but the community and I would appreciate the government setting some targets for itself and holding itself to account on that. We know that the government can do whatever it wants in the current environment, but cracks are appearing in what people see. They see the government constantly talking and throwing up the next diversion and distraction, but not actually delivering on the date that the facility will be open. When will kids not be coming down to Perth but be put on country where they will be close to their elders and leaders and in an environment very different from the environment down in Perth? I am not necessarily talking about the worst offenders; I am talking about those who might need to be diverted away from a life of crime, you could say, so they actually have a chance of rehabilitation. When will that happen? I wish the government would just answer the question and say. If the government said that it would open Marlamanu on 1 January 2024 but it came to 1 January 2024 and the government then said, “Look, we had all these challenges, but we will have to give you 1 June 2024”, I would be the first person in this place to say, “Okay. Fair enough”, if the government could hold itself to its own deadlines and be up-front. Instead, we just get “as soon as possible”. It drags on for another two years, and a bit more money is given to a planning study or whatever. We cannot tell. This has been going on for a while.

We see the headlines. Again, I think that the government should spend less time on all the media spin doctors in the minister’s office, pumping out those press releases. I do not have to read them all out, but if we go back over the last two years, there have been so many media statements on this, running the story about how it will be. On 22 November 2022, an article stated —

WA government says long-awaited Kimberley youth rehabilitation facility will provide ‘alternative’ to Banksia Hill

That article included a beautiful photo of a stockman standing beside a grazing horse. Here we are, almost a year out, and nothing has yet been delivered. This is the problem with this government. Ultimately, people will see through this strategy. Does the government think this bill will change the impact of what is going on in Banksia Hill? I really hope so.

I have heard just today that Tim Marney has taken on the reform program. I worked with Tim in Treasury; he was the Under Treasurer when I was there. I know from my role in Aboriginal affairs that he was at the Mental Health Commission as well. He is a very knowledgeable person who understands the public service and finances, and has been involved in the delivery of a whole range of services for the government. I hope that he can really look at the issues here because I think it really comes down to how those procedures work and staffing. Hon Dr Brad Pettitt made some comments about how we ensure that we attract and retain staff. There have been comments there. I am hoping that we have some smart people behind the scenes to make up for the very shallow rhetoric that we have seen pushed out at the top.

I will not go into any depth about the comments made by the former Premier, other than to say that they were very hurtful and hard for many people. Yes, some of those young people have done some pretty terrible things, and we want to make sure that they are not just running loose on the streets and causing havoc, pain and suffering for the community. We also want to hope for a future for these young people so that they can come out of detention, be part of our great society and be contributors in a positive way.

I will close my points here. All I can say is that people should avail themselves of the comments of the Inspector of Custodial Services in the May 2023 report. I believe that report was published on 8 June and is labelled May 2023. It is damning reading. I hope that people spend the time and examine that report for the rates of self-harm and for the issues and challenges with delivering psychological and clinical services. I hope people take the time and look at this, and I hope the government and the new minister take the time and get serious about setting some targets for the government and ensuring the delivery of both diversion and corrective services. The name is “corrections”; it is about correcting behaviours and changing them so young people have a future.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Emergency Services) [4.27 pm] — in reply: I thank the honourable members who have made a contribution to the debate this afternoon. I thank Hon Peter Collier, as the lead speaker of the Liberal–National alliance, for his acknowledgement of its support for this legislation. I thank Hon Neil Thomson for his contribution, and I also acknowledge the contribution of Hon Dr Brad Pettitt, who indicated that he will not be supporting the bill.

A range of questions have been asked, and it is my intention to answer those as best I can in my second reading reply. We had a question from Hon Peter Collier about other jurisdictions and how they deal with detainees who turn 18. There is not a consistent approach across jurisdictions about how adults are transferred from detention to prison; however, only one other jurisdiction, South Australia, requires the approval of a court to effect a transfer.

Explaining some broad similarities and differences may assist. In the Northern Territory and Queensland, transfers are mandatory once detainees reach 18 years of age, and they are undertaken by the custodial authority. In the Australian Capital Territory and New South Wales, the CEO or minister respectively is empowered to transfer a person to a prison once they reach 18 years of age. In New South Wales, the youth justice board has the power

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Hon Peter Collier; Hon Dr Brad Pettitt; Hon Neil Thomson; Hon Stephen Dawson

to transfer a prisoner once they reach 18 years of age. South Australia is the only other Australian jurisdiction that requires the approval of the Youth Court for the transfer of those aged 18 years and above to prison.

A question was asked about how many applications have been made to transfer in the last five years, between 2018 and 2022, and how many have been refused. Since 2018, six applications have been made under section 178 of the Young Offenders Act 1994. Of those, five were approved, and one was withdrawn as the detainee was facing serious charges as an adult and, if convicted, would be sentenced to imprisonment. In 2018, there were three; in 2019, zero; 2020, one; 2021, one; 2022, one. That totals six.

Debate interrupted, pursuant to standing orders.

[Continued on page 2993.]