

**YOUNG OFFENDERS AMENDMENT BILL 2023**

*Second Reading*

Resumed from 17 May.

**DR D.J. HONEY (Cottesloe)** [4.35 pm]: I indicate at the outset that the opposition supports this legislation; however, we have a number of concerns, which I will go through.

**The ACTING SPEAKER (Mr D.A.E. Scaife)**: Member, can I ask whether you are the lead speaker?

**Dr D.J. HONEY**: I am the lead speaker.

**The ACTING SPEAKER**: Thank you.

**Dr D.J. HONEY**: I probably will not be threatening the record for that! As I said, the opposition supports this legislation but there are issues that I think are worth fleshing out in debate and a brief consideration in detail, which may be some relief to the minister's officers who are here tonight. I have no intention of drawing this out in any unnecessary way.

The bill amends the Young Offenders Act 1994 to mandate the transfer of young offenders from juvenile detention to adult prison at the age of 18. That mandatory transfer system will apply to all 18-year-old prisoners in juvenile detention, including those on remand, those committed for trial in a detention centre and those still serving time on their sentence. Members would know, certainly the minister would be aware, it is already standard that an 18-year-old offender must be sentenced under the Sentencing Act 1995 and serve their imprisonment in an adult prison, and therefore the concept of transferring 18-year-old prisoners to adult prisons would be in keeping with that. It is already the case that under the current system juvenile detention prisoners aged over 16 can be transferred to an adult prison. The current system requires the detention centre to apply to a judge of the Children's Court and lay out the reasons for the application. This seems to be the principal justification for the bill that has been given: that it is a cumbersome process. I understand that over the last period of time there has been one application to do that because it is seen to be too onerous. For reasons I will discuss as I progress with my contribution, if that is the barrier to removing those older prisoners who have gone from being a juvenile to an adult because they crossed the line on their eighteenth birthday, why not focus on simply removing that barrier? I am intrigued as to why the government would mandate it. We know that the genesis of this bill was back in February this year, with a riot in the Banksia Hill Detention Centre. There were seven juveniles involved and, terribly, a prison officer sustained serious injuries. The Premier at the time, Hon Mark McGowan, came out and, I think, made a kneejerk response to this.

The former Premier had a habit of portraying himself as having a centre-right "tough on crime" approach. He said he was going to make it mandatory to get the older kids out of the detention centre. The former Premier made that statement about transferring them out back in February of this year. If we have a look back then, Hon Peter Collier asked a very good question on notice about this in the upper house. He asked how many of the juveniles referred to in that incident were 18, 19 and 20 years old and above and how many of the juveniles in the numbers above were part of the seven involved in that incident. The answer to the question was that 91 distinct young people were in custody at that stage, on 27 February 2023, and 14 young people were involved—one young person of 19 years and above and one young person of 20 years and above. He then asked how many of those children—or I should say adults, to use the correct definition—were involved in that incident. He was told there was one. This was not a riot led by a group of older youths.

Subsequent information has come back about the most disturbing riot in which the students were on the roof of the facility. Although a larger number of what one would call adults were involved in the incident, the information states that they were not the instigators of the riots. That was true of the incident on 27 February. It was not an older child or children instigating it; it was young children, the actual juveniles, who instigated that event. Only one older person involved themselves in that process. Of the most serious riot with the most extensive damage, my information is that, again, it was not instigated by the adult prisoners. Some adult prisoners became involved in the incident, but it was initiated by the juveniles.

My concern with this kneejerk response to things is that we have legislation here that will essentially mandate, outside of a few special circumstances, that any person in prison, by virtue of their birthday, will cross the magic line to become an adult. As many members know, I have three boys and three girls in my family. I am not sure I would have classified my boys as being fully formed adults at the age of 18. That is no reflection on them; I think that is true of most boys. In fact, I think most boys do not grow up until they are about 25. I am not recommending that as a date, but it is a seminal matter.

My concern is that the premise of this legislation seems to be somewhat flawed. It does not appear that we have evidence that the adults are the instigators of this behaviour. I ask the minister: if the issue is that it is difficult to remove older adults from juvenile prison because of the administratively cumbersome impediment of having to get a judge from the Children's Court to deal with the matter, why not just change that? Why not just change it so

that the CEO can transfer any adult who is causing trouble, or words to that effect? Why not do that instead of mandating it? I will go through some of the concerns.

When I saw this legislation and read through it, I was a bit surprised. I reckon that if, hypothetically, we were in government and introduced this legislation, a majority of the members in this place—particularly those on the left of the Labor Party—would use pretty pejorative terms about our side to describe this legislation as extreme and the like. If the current Premier had been the Premier when this legislation was promulgated, I wonder whether he would have progressed down this path. The government has gone down a path where it has committed to it. The former Premier was a very strong personality and clearly ascendant in the party. He said that he was going to make this happen, but I am concerned that there could be unintended consequences from this process. As I have said, I am interested in why the government did not consider just going down the path of having the CEO being able to direct anyone over the age of 18 who is causing strife to be removed, but otherwise leaving the other adults there. It concerns me that this response to a rhetoric of being tough on crime will cause unintended consequences.

There is another issue that has arisen in response to the riots, the problems in the area and the idea that magically moving these adults out will make any difference. I have already indicated that I am not aware of any evidence that these issues were instigated by the adults. Even if they participated, the information I have is that the adults joined in, not that they instigated. It was not a group of adults leading the charge: it was a group of juveniles. I am concerned that this is not going to change anything. One of the issues that the government, the former Premier and his former ministers had was that there was not effective action taken by the government to deal with bad behaviour. I am going to read a couple of sections from the *2023 Inspection of Banksia Hill Detention Centre and unit 18 at Casuarina Prison (part one)*. It is report number 148 from May 2023. I just want to read a couple of passages.

**Mr P. Papalia:** What page?

**Dr D.J. HONEY:** It is on page 7, entitled “2.3 The perceived removal of behaviour management tools has undermined staff’s ability to set boundaries with young people”. I will read it out, because I am sure most members probably have not read it. That is not pejorative; I know members are busy doing other things, so I will read it out for their benefit. The second paragraph states —

However, staff repeatedly told us that one of the main drivers of the current crisis was a lack of consequences and boundaries for the young people. Staff felt stripped of their tools to manage the young people’s behaviours, starting with minor infractions.

They explained that minor infractions were not, and in some cases, could not be dealt with immediately. In part, this was due to staffing pressures and lockdowns, as well as the inexperience of many of their colleagues. But we also heard about inconsistent practice, which meant some staff, including managers and senior management, would override a consequence, leaving those who initiated it feeling disempowered and undermined.

Experience has shown that when minor infractions are not dealt with immediately, they are likely to be repeated and escalate. A lack of response leads young people, both those involved and those observing, to believe that the behaviour is acceptable. This fails to set boundaries for young people, and staff felt it was contributing to an increasing resistance to instructions.

Somewhat surprisingly, we also heard a similar story from a group of young people. They said there were no consequences for poor behaviour, citing the example that if someone smashed their television, it would be replaced, and this sends the wrong message to them and others.

As I said, I am concerned that the justification for the initiation of this bill will do nothing about that. The report from the Inspector of Custodial Services suggests that although tools were available, they were not being used. A culture is being built up of children misbehaving and that is leading to the situation in the detention centre, not adults in the centre misleading younger people. I think that is a really seminal matter. I know, as do a good number of members in this house, that if we do not have certain consequences for actions, children will misbehave. If there are no consequences for actions, that poor behaviour is likely to escalate because children think it is acceptable. In my previous life as a manager, one of the things that was drummed into us is that the standard that we walk by is the standard we accept. If youths are committing offences, smashing things, breaking things, being disrespectful to the guards and the like and that is not dealt with, that becomes the norm. We then build a culture of poor behaviour in the juvenile detention centre.

I will quote from another part of the report. For the minister’s reference, it is page 8, which states —

#### **Recommendation 2**

Empower staff to use all of the behaviour management tools that are available to them under relevant policy and legislation.

That section states —

Despite the increase in incidents and critical incidents over the last three years, no detention centre charges had been laid since late 2020. In November 2022, the President of the Children's Court, Hon. Judge Quail heavily criticised this approach. He raised concerns about the Department operating outside of its jurisdiction by not using detention centre charges in response to behavioural incidents (Shine, 2022).

During the inspection we heard that there was an intention to reintroduce detention centre charges, but this had been delayed because of ongoing staffing issues.

However, there was some contention regarding which charges should be progressed through a reintroduced process. Some staff did not feel a detention centre charge was sufficient for staff assaults or significant damage incidents. But not all agreed, highlighting that there was no guarantee that police would lay criminal charges. And even if the offences were proven in court, concurrent sentencing was common.

Another important consideration was that, for young people, timeliness of response is critical. This is due to their ability to associate the infraction with the consequence, and also due to the generally short time young people stay in custody (detention centre charges must be imposed during a young person's current time in detention). Regardless, timely and meaningful use of detention centre charges is an essential behaviour management tool that should be reinstated.

I think that is very clear. Again, there is nothing about older adults misleading the youth in the detention centre. This is purely about the way the centre is managed. We all know that there is no point yelling at our children six months later about the fact that their room was messy. They will just look at us blankly and go, "So what?" Firstly, any consequence has to be immediate; it has to be associated with the incident that has occurred. We are hearing that that is not happening at all. Those charges are not used, even though the tool is available. Secondly, there has to be a consequence. Even if a charge was proven and used, if there is any penalty, it is served concurrently with the existing term, so there is no extension of the term. If it is served concurrently, there is no consequence, so maybe the child will not have to go through that process. We might say that that discourages them. The fact is that there is no real consequence to it. If the child or the adult is out of detention by the time that process occurs and because it is not timely, it cannot apply at all. Again, there is no consequence because it cannot possibly happen.

As I said, we support this bill, but I just wonder, upon reflection, whether it will do anything about the real cause of the issues. Based on that Office of the Inspector of Custodial Services report, this will not make any difference to the issues we are seeing in that centre, including the lack of staffing, the lack of consistent application of rules, the lack of any consequences for action and the lack of timely application, which is causing the issues. Obviously, other issues are dealt with in that report.

This makes for a good headline. The Premier obviously got a grab and had a kneejerk response after the riot on 27 February. I think there have been 11 riots in Casuarina over the last period. The Premier wants to be seen to be doing something. He told his minister of the day to do something, saying he wants something done. He already made a public statement about what he wants done because he thinks he knows the cause, but there is no objective evidence to support that. This will make no difference, and I think all members know why.

The CEO has discretion to continue to hold some prisoners. We have to think about this in the context of our own children. Whether someone is 17 years and 11 months or 18 years and one month, when we move them out of a place where they have friends and with which they are familiar—it is their home—problems arise. For a lot of the kids in that place, it is probably the most consistent and safest home they have had. They are away from family dysfunction, they are fed regularly, they have a proper bed to sleep in and the like. That is their home. At a very human level for that period of time, that is their place. If we take that person out, whether they are 17 years and 11 months or 18 years and one month, they are put into another place with another group of people.

When I look around this chamber, I know many members have children. For those members who have had to do it, they know the disruption and in some cases the trauma it causes to their child, who is most likely a very loved, cared and nurtured for child, unlike a lot of the kids in detention centres. They know that is a big disruption in their life and having to move can have major effects. That is what happens when we have forced removal. Someone may be in detention until they are 18 years and six months. They are a kid who has taken the opportunity that has been offered. I know that the officers in the detention centre really work hard. They try to work with difficulties, constrained resources and the like. I am certain that they want to try to put these kids on the straight and narrow. A number of programs are available to do that. If a young person is really participating well, they are getting on with it and it looks like they are going to turn their life around, bang, when they turn 18 and because they have a significant period of time to go, not a month or two, but six months, I understand that they would have to go into that adult facility. That disruption could really set a person back and cause all sorts of problems. As I said, as members in this chamber know, even within a loving, nurturing, caring household, when a child is not moving home, changing schools can be very traumatic for some. At the end of the day, children and adults are in these detention centres and it disrupts their lives.

I am intrigued why this has to be a case of sudden death. I appreciate that the CEO has discretion within the bill, but I am interested in exploring the limits of that discretion because I think there is a real risk for some of those young people. Whether they are over 18 or under 18, this could derail their rehabilitation. I know there are a range of rehabilitation options in the adult prisons. Once they turn 18, the focus is on skilling them to get a job and the like. But despite all that, why move someone who is well and truly on the path to becoming a good citizen and then cause that disruption? I think given that it is generally a highly traumatised cohort in the first place, it will set them back.

They are my concerns with this. Will this really make a difference? We had a Premier with a “tough on crime” mantra, but it appears from the executive evidence that I have that this will not make any difference. Removing barriers to moving children who have become adults and are causing trouble to an adult prison makes a lot of sense, but has this gone too far? Otherwise, I think the minister can understand my argument in relation to it, but, as I said at the outset, we will support the legislation the government has put up.

**MR P. PAPALIA (Warnbro — Minister for Corrective Services)** [5.01 pm] — in reply: I thank the member for his contribution. I will briefly address the matters the member has raised generally, and then I understand the member wants to go into consideration in detail to cover on those points again with some input from advisers. I say from the outset that the justification is fundamentally about fairness and the principle that 18-year-olds, adults, should not be incarcerated or detained in the same location as juveniles.

**Dr D.J. Honey:** Sorry, minister; I think I gave my bill away.

**Mr P. PAPALIA:** I will wait to make sure that the member does not miss my incredibly erudite and appropriate pearls of wisdom.

**Mr J.R. Quigley:** It is like throwing pearls at the swine.

**Mr P. PAPALIA:** No, member; I would never say that!

The fundamental principle and the justification is that the practice really should be—in other jurisdictions around the nation it is mostly the case—that once someone turns 18, they are an adult and adults should not be incarcerated in the same facility as juveniles. That is a fairness and security matter. That is the reason. Nothing has changed. That has not changed just because the Premier changed. I guarantee the member that just because the minister has changed, that has not changed. I hold that view, too.

I say with respect to the member for Cottesloe’s observation or his suggestion that nothing will be achieved through this in terms of benefit for Banksia Hill Detention Centre, I totally disagree. I am still reading myself in, being briefed and re-familiarising myself with the corrective services portfolio. I have a degree of familiarity with the portfolio, but it is a little dated. In opposition, the member is probably aware, I held that shadow portfolio for six or seven years. I have been in and out of every prison in the state probably at least two or three times. They let me go each time, which is reassuring! I do not know how many times I have been to Banksia Hill. But I also was not just going through the practice of being familiar with the people and the facilities. I researched and published papers on corrective services and proposed different policy. I can tell the member that we in this government are implementing policies that I drafted, some of them as far back as 2012 when the member for Cottesloe’s colleagues were in office.

I can tell the member, for instance, there are things that we do not do now that we did then that were incredibly detrimental to many disadvantaged members of our community, particularly Indigenous people. One, for instance, was a practice at the time, and throughout his colleagues’ time in office, of incarcerating people for the purposes of paying off fines. We ended that. My colleague the Attorney General—on advice from me, I think, at the time—acted to ensure that we do not do that as a practice now. People do not get incarcerated solely for the purpose of paying off fines. People certainly do not get locked up in police lockups for that purpose, which is the practice that led to the tragic death of Ms Dhu in a lockup in the Pilbara. That illustrated the rank stupidity of the practice of locking someone up for the purpose of paying off a fine, which was far less than the cost of locking them up and the impost on police and corrective services facilities and staff for conducting that task.

Another thing my colleague the Attorney General has done is implement a custody notification service. I think that came from a paper I wrote. I researched and wrote a paper called *Locking in poverty: How Western Australia drives the poor, women and Aboriginal people to prison*, which referred to the disproportionate impact of incarcerating people for paying off fines on Aboriginal women in particular. I remember bringing to the attention of the Attorney General, who was then in opposition like me, the fact that New South Wales had not done that for decades, and part of the reason behind that was it had a custody notification service. The Attorney General, all credit to him, in his portfolio has pursued that matter and we now have a custody notification service in Western Australia whereby the Aboriginal Legal Service is notified at the time of any Aboriginal person coming into custody, which goes a long way towards ameliorating the potential for or mitigating the likelihood of any negative outcome when people are arrested and incarcerated for whatever reason.

Other policies that I drafted have been implemented. We often hear people in this place refer to Target 120. I wrote that policy. It is called Target 120 because at the time I wrote it, there were 120 juveniles who had offended at a significant rate in Western Australia. Therefore, were we to focus on those 120 prior to them proceeding into the detention system, we could have a significant impact and reduce not only the rate of offending, but also the rate of harm in the community that they were committing. It is about multi-systemic therapy. It is based on that principle whereby we wrap services around the family home of juveniles who are just sub-detention levels of offending in the hope that we prevent or divert them from that task. I drafted that policy. The research showed that it was working throughout the world and our government implemented it. The former government could have implemented it because I published the paper when the Liberals were in government, but I do not think anyone on that side read the things I wrote.

Another one that I am quite proud of, particularly in light of me taking this portfolio, is the creation of the first and, as far as I am aware, only drug and alcohol rehabilitation prison in the country, which was based on a paper that I researched and wrote. I looked around the world at what was effective in changing the behaviour of addicts. Some really good studies done in the UK indicated the actual best thing that could be done is group-based therapy in a secure residential facility. A secure residential facility is something in the community with a fence around it so they cannot run away, but group-based therapy is essentially the process that works above all else. They studied all the different initiatives that were employed in not only the UK but also most advanced western countries and determined that that was the most likely to succeed.

The second one after that was an environment inside a prison whereby the same group-based therapy was provided but it had to be clean. Clearly, a residential facility in the community is better. Again, it has to be clean; there is no opportunity for people to use drugs or alcohol and they are constantly monitored to ensure that they retain that status.

The next best thing is a prison adopting all the same measures and applying them in a prison setting. A report by the Inspector of Custodial Services was tabled today. I will correct him because he was not entirely correct about the way he views the therapy that is applied in that facility and what led to it. It is not based on other processes elsewhere in Australia; it is based on the paper I wrote. That was the policy we took to the 2017 election. I am very proud of it and I am proud that the government has implemented a range of measures that we advocated for in opposition. They are primarily focused, as much as possible, on changing people's behaviour and diverting people from initially entering the prison or juvenile detention system or, alternatively, preventing them from returning. I think that is a principle we should adopt at all times.

The member spoke about the justification for that. The justification for that is keeping adults away from kids. I think that is a reasonable principle. The CEO has discretion. At the discretion of the CEO, an individual may be allowed to remain in juvenile detention, but the principle is that adults should be moved away from kids. I know that the member is a dad and I understand his feelings and everything he said about kids not being grown up, and all those things are true, but there are reasons other than that. The primary reason is that we must consider the other children, and I do not resile from that. I think that overriding principle is justifiable and reasonable.

The next thing the member said was that not many 18-year-olds were involved in the riot. Sadly, there have been other disruptions at Banksia Hill and at unit 18 since then. I can tell the member that there have been five major disturbances in youth detention since 31 December last year, which was not long ago. One incident at Banksia Hill involved six 18-year-olds and one who was aged 19, and the second incident at Banksia Hill involved eight 18-year-olds and three detainees aged 19. Of the three incidents at unit 18 in Casuarina, one involved an 18-year-old—I think that is where the member got the “one” from—and the second incident involved two 18-year-olds. On 9 June, which was not long ago, 14 adults were held in detention. There is another reason apart from the adults being among kids. This is my judgement based on my observation. I have said this a number of times since I got the portfolio last week. My view is that the number one priority for us right now is to make Banksia Hill and unit 18 safe. We cannot do all the good things the member referred to that Banksia Hill was renowned for being able to deliver in the current environment, which the Inspector of Custodial Services has called a crisis. We cannot do that. We have to establish a safe environment as our number one priority. The first thing that moving adults away from the detention facility will do—if nothing else—is segregate the adults from the kids, and that is a good principle. Second, as of 9 June, 14 adults were removed. I can tell the member that when I was there yesterday, there were only 88 detainees in the Banksia Hill detention facility.

**Dr D.J. Honey:** Can I ask a question?

**Mr P. PAPALIA:** Hang on. Even if we take away that number, which the member might think is a relatively small number, they are older, generally bigger and they are removed from an environment that is heated, challenging and complex. That reduces the heat and the challenges, and it makes the task a little less complex. They alone are reasons enough to do it, regardless of whether I think the principle of removing adults from kids is a good one, which I stand by. What is the member's question?

**Dr D.J. Honey:** Minister, the information I have received is that whilst adults may have been involved, they were not the instigators of those incidents.

**Mr P. PAPALIA:** No, they were not, but here is the thing: it does not matter who starts it. If people are running around throwing things at officers, disrupting the space, breaking the law and threatening staff and other juveniles, I do not care whether or not they started it. We will stop them from doing that. Do not excuse it. I am not suggesting that the member would. This is a message to everyone else out there. There is no end to people offering advice. Actually, they are not offering advice; the vast majority of them are offering only criticism about Banksia Hill. I will listen to them all and I will meet with almost everybody. I can guarantee the member one thing: if people do things that threaten or harm other people, it will not be tolerated. It is not acceptable and there is no excuse for that. That is not about whether someone has a disability or perhaps an intellectual incapacity; it is a simple observation that it is not fair or right for an individual to threaten or harm someone else. When they are in our care, we have a responsibility to ensure they do not have the opportunity to do that. The first thing to do is to establish a safe environment, and that is what we will do. That is the motivator. In the near term, that is the primary motivator and it will continue to drive me and my team.

I know the member went through the inspector's observations. One of the things the member said—I have read the inspector's words—was that there was a sense that the staff were not able to employ disciplinary techniques. I will meet with the inspector and ask him more about that. My observation is that that is not the case. That is what I have been informed. But I will listen to what he has to say. There has been no directive to people to not do things. There is no indication from what I can see that the leadership has indicated that staff are not to employ approved disciplinary practices. As far as I can tell—it is early days—that is not the case, but I will listen to the inspector and talk to him about that. I can guarantee the member that that will not change this. It has been suggested to me that the detention centre charges are generally appropriate for lower level offences. Some of the stuff we have seen is not at the lower level; it is at a way higher level than that. I expect and want proper criminal charges to be laid. The member is right that there need to be consequences for bad behaviour. If the detention centre charge is a tool of value—I understand it has been reintroduced for higher level offences—I expect that after a police investigation, proper criminal charges would be laid against the individuals who committed the types of offences that I have become aware of.

The member asked what the benefit was. I understand that because I am a dad too. We think about whether our boys, and boys in particular, were emotionally or cognitively fully developed at that age. They probably were not. Science suggests that their impulse control is not fully developed at that age. Putting that aside, there are benefits to moving the adults, apart from separating them from the younger people and assisting in the environment of Banksia Hill. There are a lot more opportunities for adults to develop and prepare for their post-release life at adult prisons than at Banksia Hill. That is a fact. There are good educators at Banksia Hill. In the past, I witnessed some of the good programs that the member referred to. I have to tell the member that right now their delivery is constantly being interrupted or prevented by the bad, violent and aggressive behaviour of a small group of individuals. That hurts everybody else there.

Only a small number of offenders are at Banksia Hill Detention Centre now, compared with when you guys were in government; it is about half the total number that were there in 2011. I remember going into that place in 2011 and it was nothing like it is now. When I was there yesterday, I saw some great things going on; young people were out of their cells doing things and the like. It is undeniable that, by necessity, there has been a restriction on the time that detainees spend out of their accommodation. That is not a good thing. It means that all those good things that the member referred to are not being delivered. If they went to an adult prison, the vocational type of training that people think would be afforded to an adult would be available. There are also other opportunities for people as they transition towards the end of their sentence. Most juveniles do not get really long sentences because they are sentenced as a juvenile. As they get near the end of their sentence, they could go into programs that have pre-release activities. We have pre-release centres, prison farms and opportunities for section 95 day release—I think that is what it is called; it has been a long time. They will prepare people and get them ready. People are far less likely to reoffend and be a recidivist if we prepare them properly and support them as they leave prison. The current environment at Banksia Hill is tough. We are trying to get Banksia Hill back to being safe and then we will work towards delivering care and opportunities for detainees. Right now, it is a bit unpredictable. When detainees complete their sentences, they go back out into the community. However, the likelihood of recidivism is escalated for them because they are not necessarily being prepared as well as they could be. We had those opportunities under Banksia Hill's past regime, but there are some issues now. It is not simple. Another detention facility closed in 2012; that undeniably started something. The situation has eroded over time; it has deteriorated.

Another thing is that we are now confronted with much more complex juveniles. I am still learning about this, but I think the nature of some of the individuals whom we are confronting is a lot more difficult to deal with in a collective environment than it was only about a decade ago. That may or may not be true; I am still learning.

The other reason for doing this is that we might be able to move an adult closer to home prior to their release, so that they could get family visits. I met a young man only yesterday who was from the Pilbara. He is nearing the end of his sentence. He is in his 20s. I suspect that his family is very unlikely to visit him in Banksia Hill. If we moved him up to, say, Roebourne, or somewhere closer at least, subject to other security measures, he might get visits

and re-engage with his family supports. There might be a better outcome if he were able to enter the other pathways that we have in adult prisons that we do not have in Banksia Hill. He could be far better off all round than staying as an adult in Banksia Hill. There are a whole lot of reasons. The primary principal that we are trying to adopt, which I think is a reasonable one that has been adopted by most jurisdictions around the country, is that we should not have adults with children.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

*Consideration in Detail*

**Clause 1: Short title —**

**Dr D.J. HONEY:** I should have congratulated the minister at the outset on moving into his new role. I will perhaps ask one or two questions of a general nature under the short title. I should have said in my substantive contribution that I recognise that we are dealing with children who have done very serious things and that the public should be protected. That is an overriding imperative of government, as the minister properly commented in his reply to the second reading debate. The minister mentioned, I think by way of an interjection, whether the government had considered an approach of removing the barriers to the CEO moving out troublemakers if they thought someone was a disruptive influence. If they could move them out, that would obviate the need for a force majeure approach. Could the minister please outline whether that was the case and what the barriers to that were?

**Mr P. PAPALIA:** Essentially, it is a slow and onerous process. I have been told repeatedly by everybody, including the Inspector of Custodial Services, that the situation is critical. I do not want to take time and deliberate over a process that we know takes time. By its very nature, an application to the court takes time. It would take time and resources from the agency to make such an application. If it got into the process of being considered by the courts, that would take time. All of that is time that we do not have. This is a critical situation. It is urgent that we do everything we can right now to make Banksia Hill Detention Centre and unit 18 as safe as possible. Having said that, I think the fact that no application has been made is a reflection of the difficulty associated with the whole process and the view within the facility and the agency of its value. It does not worry me. I am ultimately motivated to get the best outcome right now. The priority is to make it safe. That means we are not going to pursue that. We are going to align ourselves with other jurisdictions as well, as that is normal practice. I think South Australia is the only one that involves the courts in that process. There are a couple of other nuanced versions in Victoria and New South Wales, but other places do not do that; they are doing things more like what we are proposing.

**Dr D.J. HONEY:** I appreciate that the existing process is onerous and that that is probably the reason it is rarely used, but my question was more: why not just amend the current legislation to do the equivalent of what is being done for CEOs in situations in which a CEO can keep a person there if they think it is going to be of benefit and is not going to cause issues? That is not subject to review; the equivalent of that could be done in the sense that the CEO could simply remove someone without being subject to appeal and without having to go to a court, so it is a different philosophical approach.

**Mr P. PAPALIA:** Yes, essentially it just goes back to the driving principle of not housing adults with children. That is the motivation; there is no great conspiracy or anything. That is the motivation. The member asked whether I had considered the court process. My observation is that this is urgent and we want to get on with it, and anything we can do to make it safe, we are going to do.

**Clause put and passed.**

**Clauses 2 and 3 put and passed.**

**Clause 4: Section 15A amended —**

**Dr D.J. HONEY:** I do not have any great contention with this clause, but I do not quite understand the effect of proposed section 15A(7A). Would the minister mind explaining the effect of that, please?

**Mr P. PAPALIA:** Under the current legislation there are limitations on the sharing of information with regard to detainees, noting that they are coming from a detention facility to a prison. This provision will enable the CEO to share relevant information with the receiving facility so that it can be aware of any particular matters that are relevant to the individual and their management.

**Clause put and passed.**

**Clause 5 put and passed.**

**Clause 6: Section 21 amended —**

**Dr D.J. HONEY:** I refer to clause 6(3). I am wondering about this process. The minister empathised with the issue of adults transferring and disruption and so on. When adults are moved to the other facility, is there any particular

process for that transfer? Is the person effectively just removed from the juvenile facility, which I suspect is probably a gentler environment than the adult prison? Is there provision to make sure that the adult who has been in a juvenile facility goes through a transition process rather than a sudden-death situation in which they just go in and have to start complying with all the conditions and processes in the adult prison?

**Mr P. PAPALIA:** To put this in context, if an offender is 18 years of age and one day or less and is sentenced, they will go straight to an adult prison. That is where the consideration around fairness is worth thinking about. That aside, this process will be done in a structured way. A multidisciplinary team will meet to assess the person and provide a plan for them. In advance of the offender turning 18, a multidisciplinary team will be convened that will include the relevant leadership at the facility; security representatives; psychiatrists; other health services; and Aboriginal youth support. All the relevant people in the multidisciplinary team will consider that person's case and will prepare a management plan that will drive the move of the now-adult to an adult facility. They can prepare in advance and do so in a structured fashion. Again, vulnerable individuals coming into adult prisons at a young age are cared for anyway, but this is a more comprehensive package than those people will get, because they are already in the care of the detention facility and the department.

**Clause put and passed.**

**Clause 7: Section 21A inserted —**

**Dr D.J. HONEY:** Clause 7 will insert proposed section 21A, “Chief executive officer may direct that mandatory transfer does not apply”. As I indicated at the outset, I do not wish to go through some excoriating exploration of this legislation, but in respect of the chief executive officer directing that mandatory transfer does not apply, are there any compulsory boundaries or limits? For example, are there limits on age? There might be 20-year-old adults but the CEO thinks that they are really quite immature and their behaviour is juvenile so they would really benefit from being in a juvenile facility. Are there boundaries on that? I understand there are particular medical conditions, for example. Can the minister outline what boundaries there are on the discretion of the CEO to apply for someone to stay?

**Mr P. PAPALIA:** In giving the direction, the CEO must have regard to the interests of the young person and the interests of other persons detained in the detention centre, and may have regard to any other matters the CEO considers appropriate.

**Dr D.J. HONEY:** Does that mean, for example, that if the CEO determined that there was a 21-year-old who they genuinely believed, for a range of reasons, should be there and did not pose a risk to other children, that 21-year-old could stay in the facility on the application of the CEO? I have heard from discussions with others—I may have misheard what they said—that they could not stay past an age limit that the CEO could not override, and that particular medical conditions were grounds for an adult to stay in the juvenile facility. I want some clarity on that to understand the boundaries on the CEO's discretion.

**Mr P. PAPALIA:** There are no age limits and no medical condition barriers.

**Dr D.J. HONEY:** Thanks, minister. That is really clear. I refer to page 5 and proposed section 21A(4), which states —  
The rules known as the rules of natural justice (including any duty of procedural fairness) do not apply to or in relation to ...

I will not read the whole clause. The minister can read it just as well as I can, or maybe better! Was there any discussion with the Aboriginal Legal Service or other agencies on the application of that provision? I appreciate that when legislation is subject to review, it confounds what the minister has said; that is, he wants to act quickly on this and does not want it drawn out and the like. Were any comments received from ALS or other relevant community groups on that provision and whether there should be some option for external review?

**Mr P. PAPALIA:** I am not aware of any advocacy or responses from other parties on this matter directly to the agency or my office or my predecessor's office. The intent is not to enliven another process around consideration of a case. The individual has been convicted and sentenced, and this provision is to enable them to be transferred to an adult prison in order to separate adults and children. That is a fundamental principle. We are not re-enlivening or re-engaging in another process around matters on which natural justice might be considered.

**Clause put and passed.**

**Clauses 8 to 10 put and passed.**

**Clause 11: Section 178 amended —**

**Dr D.J. HONEY:** I refer to page 8 and subclause (5). Could the minister outline the application of that provision? When will it apply and what impact will it have? I assume that it relates to younger people aged 16 to 18 years, but can the minister please clarify to what the provision will apply?



**Mr P. PAPALIA:** This provision replicates conditions in the current act. It will apply to juveniles aged 16 to 18 years. Under the current act, those cases require the court to be satisfied that the offender should be transferred. This provision retains that. It does not change it in any way.

**Clause put and passed.**

**Clauses 12 to 14 put and passed.**

**Title put and passed.**

[Leave granted to proceed forthwith to third reading.]

*Third Reading*

**MR P. PAPALIA (Warnbro — Minister for Corrective Services) [5.47 pm]:** I move —

That the bill be now read a third time.

**DR D.J. HONEY (Cottesloe) [5.47 pm]:** I thank the minister and the advisers for their very clear responses. As I said at the outset, the opposition supports this bill. I will not repeat all my concerns. Clearly, the priority of government and the opposition is that we keep the community safe. We recognise that youths who go to Banksia Hill Detention Centre have committed very serious crimes. I recognise that the minister outlined a number of government initiatives in this space to reduce the number of youths in the centre. I think the overall concern is that as this process is applied we do not have a situation in which youths who, by virtue of a birthday, have become adults having their outcomes made worse by this legislation, and we see a significant issue with these adults, whose lives have been turned around in Banksia Hill, suddenly turning the other way. I was reassured when the minister outlined that there will be a structured transition process. I think that is critically important. As I say, it is easy looking from the outside—I am not saying from within this chamber—for people to say that they are bad people and they should be punished. The focus has to be on rehabilitation, even if it is only a small percentage of people. I hope it is more than that. If that is achieved and at least a few lives are turned around, that will help the community because we do not have those individuals out reoffending. As I said, I was reassured that there will be a transition process. I am also reassured by the fact that there will be no boundaries on the CEO's discretion. That is really important because it will come down to all the individuals. I have a concern that a CEO's decision could be influenced by staffing levels. As part of the government's response—I am sure it is trying—I hope we see adequate staffing levels in those juvenile detention facilities. Yes, bad behaviour of youths is a real issue, but equally if there are not adequate staff in those facilities, that will contribute to problems in the facilities. Otherwise, I recommend the bill to the house.

**MR P. PAPALIA (Warnbro — Minister for Corrective Services) [5.50 pm] — in reply:** I thank the member for his contribution. I think we covered everything during consideration in detail and in my response to the member's second reading contribution. In advance, I thank members from the other side of Parliament in the other place for their anticipated support. I look forward to getting this legislation passed and giving these powers to the CEO as rapidly as possible.

**Question put and passed.**

**Bill read a third time and transmitted to the Council.**