

---

**JURISDICTION** : CHILDREN'S COURT OF WESTERN AUSTRALIA  
IN CRIMINAL

**LOCATION** : PERTH

**CITATION** : THE DEPARTMENT OF CORRECTIVE SERVICES  
-v- RP [2012] WACC 5

**CORAM** : JUDGE REYNOLDS

**DELIVERED** : 22 MARCH 2012

**FILE NO/S** : CFR 846 of 2011  
CFR 848 of 2011  
CFR 849 of 2011  
CC 4619 of 2011  
CC 4620 of 2011  
CC 4621 of 2011

**BETWEEN** : THE DEPARTMENT OF CORRECTIVE SERVICES  
Applicant

AND

RP  
Respondent

---

*Catchwords:*

Young offender - Application for transfer from detention centre to an adult prison - Relevant factors - Significant risk - Detention management regimes - Prison suitability

*Legislation:*

*Young Offenders Act 1994 (WA)*

*Result:*

Application dismissed.

**Representation:**

*Counsel:*

Applicant : Ms B M A Van Reyk  
Respondent : Ms W C Hughes

*Solicitors:*

Applicant : State Solicitors Office (Western Australia)  
Respondent : Aboriginal Legal Service

**Case(s) referred to in judgment(s):**

Briginshaw v Briginshaw (1938) 60 CLR 336

**JUDGE REYNOLDS:**

**The application**

1           The respondent was born on 26 August 1994 and so he is now 17  
years 7 months of age. He is currently serving a total of 2 years 1 month  
detention. His earliest release date for a supervised release order is 6  
January 2013 and the expiry of his sentences is 13 February 2014. He is  
currently serving his sentences in a detention centre for young persons.

2           This is an application pursuant to section 178(1) of the *Young  
Offenders Act 1994* (the YO Act) seeking a direction from the Court for  
the respondent be transferred from a detention centre to an adult prison.

3           The application is opposed by the respondent.

**The Law**

4           Section 178 of the Act relevantly provides as follows:

178. Transfer of offender from detention centre to prison

- (1) If an offender is in a detention centre serving a sentence of detention or a sentence of imprisonment, the chief executive officer may apply to the Children's Court, constituted so as to consist of or include a judge, for a direction under subsection (3).
- (2) An application under subsection (1) cannot be made in respect of an offender who is under 16 years old.
- (3) On an application under subsection (1), the Court may direct that the offender be transferred to a prison under the *Prisons Act 1981* to serve the unserved portion of the sentence in a prison.
- (4) A direction under subsection (3) can only be made —
  - (a) in the case of an offender who is under 18 years old, if the Court is satisfied that the offender should be transferred to a prison because —
    - (i) the offender's behaviour in the detention centre (including when serving a previous sentence) is or has been a significant risk to the safety or welfare of other people in custody in, or of the staff of, the centre;
    - (ii) of the offender's antecedents; or
    - (iii) of any other reason the Court thinks is relevant;

5 In my view, on a proper interpretation of ss 178(3) and (4), making a direction is discretionary and a direction can only be made because of any one or more of the criteria set out in s 178(4)(a)(i)-(iii).

6 If a reason(s) exists under the criteria provided in s 178(4)(a)(i)-(iii) for making a direction then it is not mandatory for the Court to make one. If an applicant satisfies the Court that a reason exists, then that simply but importantly enlivens the power of the Court to exercise its discretion and make a direction. Therefore, if in this case the Court is satisfied that the respondent's behaviour in the detention centre (including when serving a previous sentence) is or has been a significant risk to the safety or welfare of other detainees, or of the staff of, the centre, then the Court may make a direction but it is not obliged to do so. Of course, if the applicant proves that or some other reason that would support a direction and the Court does not make a direction, then the Court should provide a reason(s) for not doing so.

7 The applicant bears the onus of proof to persuade the Court to the civil standard, i.e. on the balance of probabilities, that a direction should be made. When applying that level of satisfaction it is necessary to take into account the gravity of the allegation in question and its consequence. *See Briginshaw v Briginshaw (1938) 60 CLR 336*. In this case, a direction would result in a serious consequence for the respondent. On the material before the Court, he has been assessed as a maximum security prisoner in line with his initial security rating score and so upon a direction being made, he would be placed at Hakea Prison for development of an initial individualised management plan and then transferred to Casuarina Prison in line with his security rating.

8 The YO Act applies to the management and treatment of children in detention. Accordingly, the general principles set out in s 7 of the YO Act apply.

9 Subsection 7(i) and 7(j) of the YO Act provide as follows:

7. General principles of Juvenile Justice

The general principles that are to be observed in performing functions under this Act are that –

...

- (i) detention of a young person in custody for an offence, if required, is to be a facility that is suitable for a young person and at which the

young person is not exposed to contact with any adult detained in that facility, although a young person who has reached the age of 16 years may be held in a prison for adults but is not to share living quarters with an adult prisoner;

- (j) punishment of a young person for an offence should be designed so as to give the offender an opportunity to develop a sense of social responsibility and otherwise to develop in beneficial and socially acceptable ways;"

10 Australia is a signatory to the Convention On the Rights of a Child (CROC), General Assembly resolution 44/25 of 20 November 1989. Article 37 (c) of CROC provides as follows:

Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, in exceptional circumstances; (my emphasis)

11 Article 39 of CROC provides as follows:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child (my emphasis).

### **Reasons for application**

12 The applicant seeks a direction that the respondent serve the unserved portion of his sentences in an adult prison for the following reasons:

1. The respondent's behaviour at Banksia Hill Detention Centre (BHDC) during his current and prior periods of detention has posed a serious risk to the safety and welfare of other detainees and the staff at BHDC;
2. The respondent's behaviour at BHDC during his periods of detention has been such that he has been increasingly difficult for BHDC staff to manage;

3. The respondent's behaviour would be more effectively managed in a prison; and
4. The respondent's age is such that it may be appropriate that he be transferred to a prison.

**Sentences of detention imposed on the respondent**

13 The respondent first appeared before the Court on 8 February 2007 charged with two burglary offences which were committed in September and October 2006. He was referred to a Juvenile Justice Team. His next appearance before the Court was on 18 October 2007 when he was placed on an intensive youth supervision order (IYSO) for a term of 6 months for a multiple number of offences including burglaries on dwellings and places, and stealing motor vehicles. That Order was breached by reoffending, including burglaries on dwellings, and he was placed on another IYSO on 14 March 2008.

14 On 16 September 2008 the respondent was sentenced to a total of 1 year 3 months detention in relation to ten offences. On 8 May 2009 he was sentenced to a 1 year term of detention for one offence. On 13 December 2012 he was sentenced to a total of 12 months detention in relation to five offences. On 19 July 2011 he was sentenced to a term of 3 months detention for 1 offence. On 14 November 2011 he was sentenced to terms totalling 1 year 10 months for five offences. The offending by the respondent which resulted in all of those terms of detention, included offences of burglary on a dwelling, stealing a motor vehicle, assault occasioning bodily harm, armed robbery, aggravated armed robbery, aggravated armed assault with intent to rob, wilful damage and assaulting a public officer.

15 On 23 February 2012 the respondent was sentenced to a total of 5 months detention, cumulative to the detention that he was then serving, for two offences of assaulting public officers working at BHDC and one offence of wilful damage of property at BHDC. He was sentenced to two months cumulative for each assault and one month cumulative for the wilful damage. I will outline some of the material facts for those offences in a moment.

16 It can be seen from that brief history of the respondent's offending and the terms of detention imposed, that he has spent a considerable amount of his teenage years in detention.

17           The respondent was first remanded in custody in September 2007, shortly after his 13 birthday. In 2008 he spent approximately 8 of 12 months of the year in custody as a 13/14 year old. In 2009 he spent approximately 8 of 12 months of the year in custody as a 14/15 year old. In 2010 he spent approximately 4 of 12 months of the year in custody as a 15/16 year old. In 2011 he spent approximately 11 of 12 months of the year in custody as a 16/17 year old. He has continued to remain in custody throughout 2012 to the current time.

18           The respondent has spent a total of approximately 855 days in custody over about a 4 and a half year period. The longest period that he has spent in the community is 7 months. That was between 29 April 2010 and 23 November 2010.

19           The material filed on behalf of the applicant in support of the application, refers to the respondent having being in involved in about 52 reported incidents in detention since he was first detained about 4 and a half years ago. That total number of 52 incidents, includes 8 incidents involving violence towards detention officers, 4 incidents of going on to the roof or threatening to go on to the roof of the detention centre and causing damage, 9 incidents involving verbal abuse and aggressive or threatening behaviour towards detention staff, 5 incidents of refusing to follow instructions, 13 incidents of fighting or bullying another detainee, and 3 incidents involving inappropriate sexual behaviour. Other incidents include possession of tattooing equipment, causing minor damage, and possessing cannabis and taking another detainee's prescription medication.

20           Without wishing to detract from the seriousness of each incident and the combined seriousness of all of the incidents as a whole, the applicant has highlighted some of the incidents of the respondent's misbehaviour. The first of the incidents highlighted happened on 7 April 2010. Before I refer to them, I wish to set out some of the details of the earlier incidents.

21           On 13 September 2007 the respondent refused to accept staff direction and became aggressive towards staff. This resulted in the respondent being physically restrained and counselled in relation to his behaviour. On 28 September 2007 he refused to follow staff instructions and became verbally abusive and threatening. This resulted in him being physically restrained and then placed in a multi-purpose cell until he calmed down. On 4 October 2007 the respondent engaged in fighting with a fellow detainee. As a consequence he lost access to a privileged electrical item for 12 hours and an afternoon recreation period. All of those incidents occurred when the respondent was in custody on remand.

22 When the respondent was in custody on remand between 17 October 2007 and 23 December 2007, no incidents were recorded. The respondent was again remanded in custody between 29 January 2008 and 28 February 2008. During that time on 19 February 2008 he verbally abused staff and consequently lost an afternoon recreation period and was required to complete two hours work.

23 The respondent was again in custody on remand between 29 April 2008 and 16 September 2008. During that period a number of incidents were reported. On 8 May 2008 he was found to be in possession of items used for tattooing. On that same date he also engaged in fighting with a fellow detainee for which he lost an afternoon recreation period and regression back to the normal living units. On 9 May 2008 he again engaged in fighting with a fellow detainee and lost another recreation period. On 16 May 2008 the respondent was found smoking a green leafy substance, believed to be cannabis, for which he lost contact visits for a period of 7 days, electrical items for a period of 2 days and personal telephone calls for a period of 2 days.

24 On 8 June 2008 the respondent assaulted a fellow detainee for which he received counselling. On 11 June 2008 he verbally abused a member of staff. On 22 June 2008 the respondent accessed the detention centre roof and remained on it for about an hour before coming down. As a result, he was placed in the special purpose unit and made subject to a regression regime until his behaviour improved.

25 On 4 July 2008 the respondent refused to follow staff instructions and as a result lost an afternoon recreation period. On 16 July 2008 he damaged his cell window. He later paid restitution of \$20. On 19 July 2008 he refused to follow staff instructions and verbally abused and threatened to harm staff. On 18 August 2008 he threatened to access the detention centre roof for which he was placed in the special purpose unit and refused access to any outside activity until 20 August 2008.

26 On 7 September 2008 a fellow detainee complained that the respondent attempted to sexually assault him by attempting to penetrate him with a plastic bottle. No formal charge was preferred and the respondent was placed on a 'not to share register' to ensure that he could not intimidate any fellow detainees in such a manner in the future.

27 Between 16 September 2008 and 18 February 2009 the respondent was a sentenced detainee. On each of 29 September, 21 October, 4 November, and 17 November 2008 he engaged in fighting with a fellow

detainee. On 23 January 2009 he refused to follow staff instructions for which he lost an afternoon recreation period and was removed from his unit 'A' wing. On 5 February 2009 he damaged property in the detention centre by etching his name with a rock onto a rubbish bin.

28 The respondent was in custody on remand between 1 March 2009 and 18 March 2009. No incidents happened during that period.

29 The respondent was a sentenced detainee between 3 May 2009 and 18 November 2009. On 27 May 2009 he refused to follow the instruction of a staff member and approached a staff member in an aggressive manner and threatened to assault her. On 30 May 2009 he verbally abused staff. On 2 July 2009 he started a fight with a fellow detainee for which he was placed in the special purpose unit until he calmed down and was counselled. On 14 July 2009 he attempted to assault staff members. He approached a number of staff who were standing together and talking and attempted to push his way through them. He was instructed to stop and go around the group whereupon he swung his arm in an aggressive manner attempting to strike an officer. He was immediately restrained to the ground to prevent any injury to staff. He was consequently placed in the special purpose unit over night because he failed to respond to counselling.

30 On 9 August 2009 the respondent engaged in fighting with a fellow detainee, and when approached by staff he attempted to strike a staff member. He was physically restrained to prevent injury to staff members and placed in the special purpose unit upon a regression regime until 15 August 2009. On 9 November 2009 he assaulted a fellow detainee and was placed in the special purpose unit until he calmed down.

31 The respondent was in custody on remand between 26 March 2010 and 14 April 2010. On 26 March 2010 he refused to follow the instruction of a member of staff. On 29 March 2010 he was deemed to be bullying a younger detainee.

32 I will now set out the incidents of the respondent's behaviour highlighted by the applicant.

33 On 7 April 2010 the respondent assaulted a staff member of the Rangeview Remand Centre (RRC). The incident happened immediately after the particular staff member involved, went with other staff members to the respondent's cell to take him to the sallyport at RRC to be transported to hospital. The particular staff member involved completed an Incident Description Report in which he stated as follows:

Once the court detainee's were unloaded and secured in a Holding Cell we went to [the respondent's] cell to take him to the sallyport. He immediately became verbally abusive, stating 'I want the fucking toilet'. I informed him that he could go shortly. There was apple all over the cell floor, I instructed [the respondent] to pick up the apple first so that it could be disposed of. He kept repeating 'I want the fucking toilet', 'take me to the fucking toilet'. I instructed [the respondent] to calm down, and that as soon as the apple was picked up he could go to the toilet, and then board the escort vehicle. With that he stated 'fuck you I want the fucking toilet', and as he said it he grabbed my shirt front, and pushed my (sic) slightly off balance. I immediately raised my arms to resist the attack. [The respondent] continued his attempts to fight me. I pushed him back, but [the respondent] let go of my shirt with one hand and threw a punch that missed its intended target. He then grabbed me again with both hands as we wrestled, I managed to force him back and I then managed to restrain [the respondent], as other officers arrived to assist. The restraint was maintained until [the respondent] had calmed down. He was then moved to a more secure SPU Cell."

34 As a result of this incident the respondent was transferred to BHDC and placed in a special purpose unit on a regression regime until 21 April 2010. The respondent was not charged and dealt with by the Court in relation to this matter.

35 On 12 February 2011 the respondent was verbally abusive towards a staff member of BHDC.

36 The particular staff member concerned set out the following description of the incident in her Incident Description Report:

On 12 February 2011 detainee [the respondent] was angry because he did not get his juice. I spoke to detainees about sharing. [The respondent] remained angry and was swearing repeatedly. I warned [the respondent] that he will get cell time if he continues. He did I put him in cell for ten mins. Whilst in cell [the respondent] called me a 'dog c...' amongst other name calling. [The respondent] had to go to medical on the way out he spat near the exit door. I said when he gets back he will have to clean it up. On return I asked him to clean up where he spat. [The respondent] didn't follow instructions arguing that he didn't spit, started swearing again and threatening me punched the kitchen door. He cleaned up the spit reluctantly and said 'Open my fucking door' aggressively. I called a code 3 because his behaviour was escalating.

37 As a result of this incident, the respondent was taken to Harding and placed in a cell for some time to cool off and reflect on his behaviour. He was also demoted out of 'A' wing and into a normal living unit in 'C' wing. The senior officer at the time noted that the respondent appeared to be remorseful for his actions and apologised to the particular staff member

involved for his poor attitude towards her. The senior officer also noted that no further consequence was imposed because of the respondent's mental capacity to deal with certain issues.

38 On 10 October 2011 the respondent and another detainee got onto the roof of the education and shift managers' office. One of the staff members involved in trying to get them from the roof stated in his Incident Description Report as follows:

... upon arriving out the front of the shift managers office I witnessed detainees... and [the respondent] using large metallic pipes to smash satellite dishes and an aerial. [The respondent] then attempted to throw a large piece of metal at me, from which I had to move to avoid being hit.

39 The cost to repair the damage caused by the behaviour of the respondent and the other detainee amounted to about \$17,000.

40 In another Incident Description Report of the same incident, a staff member rostered on duty as a unit manager, stated that:

I engaged verbally with [the respondent] and asked him what he was trying to achieve. He did not talk much but I did engage him for a little while.

Later on I heard [the respondent] call out to me. He stated he would get down for me if I looked after him. I told [the respondent] that all staff wanted was him down and if he did this he would be treated well. [The respondent] agreed to get down.

[The respondent] came down and was escorted to Harding and the incident was contained.

41 In another Incident Description Report, a senior staff member present at the incident, stated that:

[The respondent] stated that he wanted to come down as he didn't want to be tasered by the Emergency Support Group (ESG). After about 4-5 minutes [the respondent] jumped down to the lower roof and then again onto the ground [before the ladder could be placed nearby for him to use] and lay face down with his hands behind his back.

He was handcuffed and escorted to Harding where he was strip searched and seen by the sister. [The respondent] had several cuts to his wrists, palm and lower arm.

Once showered he was seen by the sister who dressed his wounds.

42 As a result of this incident the respondent was charged with wilful damage. The Court, constituted by a Magistrate, sentenced the respondent

to 1 month detention to be served cumulatively. No criminal charge was laid in respect of him throwing the metal object at the staff member. The unit manager recommended time on regression as the penalty.

43 On 21 November 2011 the respondent committed a serious assault against a staff member at BHDC. The respondent punched the staff member to the face with his fists causing the officer to fall backwards onto a bench and then onto the ground. The respondent then continued to punch the officer causing him to lose consciousness for a short period of time. The officer sustained several lacerations to his face and bruising to his back.

44 After the respondent had assaulted the officer, he ran from the living unit and accessed one of the building sites in BHDC. He knocked over a wall of bricks and then armed himself with some of them and made his way to the roof space. He then commenced throwing bricks at staff members of the detention centre and members of the ESG. After a period of about two hours, he removed himself from the roof and was later placed in the special purpose unit. It seems that he was still in this unit when an affidavit in support of the application was sworn by the Director, Youth Custodial Services, Community and Youth Justice Division of the Department of Corrective Services, on 14 December 2011.

45 On 23 February 2012 the Court, constituted by a Magistrate, sentenced the respondent to a term of 2 months detention, cumulative, for the offence of assaulting a public officer arising from this incident.

46 On 14 December 2011 the respondent assaulted a staff member at BHDC.

47 Another staff member who was present at the time of the incident, completed an Incident Description Report in which he described the incident as follows:

... we got [the respondent] out of his cell and escorted him to the Harding B shower. After his shower he asked for a phone call in a surly manner and as officer L gave him the phone in Harding B TV room he spoke to him regarding his poor attitude and that it needs to improve.

After a few minutes [the respondent] knocked on the door to indicate he was done.

Officer L and myself escorted him out and Officer L asked him if he had problems getting through on the phone to which there was no response. Officer L asked him again to which [the respondent] responded with 'I don't have to fucking answer to you'.

Officer L again spoke to him about his poor attitude and reminded him that his regime stated that his TV privilege was based on behaviour and attitude which has been very poor this morning and as a result he will have no TV.

As we approached the Harding D entrance, Officer L was preparing to open the door when [the respondent] said something in an aggressive manner in a low tone towards Officer L (Officer L advised me later after the incident that this was 'I will flatten you'). Officer L moved his hand towards his radio which I did the same. [The respondent] then suddenly punched Officer L in the face and while Officer L was stumbling backwards towards SPU office, [the respondent] moved towards him continuing to hit him. I called a code 2 and Officer B, Harding B officer and I moved into the SPU office where I saw Officer L on the ground and [the respondent] kicking him repeatedly. Officer B and myself were yelling for [the respondent] to stop and Officer B came up behind [the respondent] and grabbed his arm which stopped him and I came in between him and Officer L grabbing his other arm and escorting him out of the SPU office and into the Harding B corridor.

Officer B instructed him to get on the floor to which he complied. Officer B restrained his arms and I restrained his legs in a figure four and called a code to medical.

48 As a result of the assault the BHDC staff member was left dazed and had a bloodied face. He sustained large swelling on the side of his face near the eye socket. Later when another staff member was cleaning up the area he found pieces of Officer L's teeth.

49 In another Incident Description Report of the same incident another officer stated as follows:

Once [the respondent] was placed into an Obs cell I was asked to man HB console. During this time [the respondent] was verbally abusive towards me, stating 'you're all fucked', 'I've been down here for 22 days and he fucking deserved it' and began laughing.

50 On 23 February 2012 the Court, constituted by a Magistrate, sentenced the respondent to a term of 2 months detention, cumulative, for this offence of assaulting the staff officer.

51 I have taken the time to set out all of these incidents in chronological order and their circumstances, to show that over time the level of seriousness of the incidents increased and so too did the frequency of incidents of actual violence towards detention staff. The evidence also shows that after 10 October 2011 the respondent was removed from the general population for most of the time. There can be no doubt that the

respondent's behaviour deteriorated to the point where he had become a significant risk to staff.

**Management regimes for detainees in detention**

52 The evidence given in support of the application refers to a number of different kinds of management regimes for detainees with challenging behaviours. Three management regimes referred to in the evidence are a regression management regime, an individual management regime and a special management regime.

53 The then acting director of Youth Custodial Services, gave oral evidence at the hearing of the application.

54 He described a regression management regime as follows:

A regression regime manages behaviour and as a young person, for want of a better word, complies, within our system we actually trade freedom for compliance. The more compliant you are the more freedom you get. An individual management plan manages risk. So if a young person presents a risk to themselves, to other detainees or to staff, then we would put in place an individual management plan. As you would with any risk assessment, you would do an assessment, then you would actually put in place what controls you perceived were reasonable to manage that risk.

55 Regression management plans are reassessed on a daily and weekly basis.

56 The then acting director described an individual management plan as follows:

The individual management plan is to address the issues around risk and it's really important for us that we have a way forward with that and there would be a phase approach where- not based on time but based on assessment and activity where there would be the opportunity for any young person on that plan to actually move towards some agreed outcomes.

57 An individual management plan is reassessed on a daily basis and again more formally on a weekly basis after receiving input from all support staff.

58 On 24 February 2012 the respondent was shifted from BHDC to RRC. He was on an individual management regime at BHDC leading up to the shift. The evidence before the Court includes a document which sets out the details of the individual management regime for the respondent at BHDC. It shows that the regime started on 24 January 2012.

59 The programme component of the regime provides as follows:

[P] is to be segregated from the normal population at all time and reside in the SPU cell HD01. Education work and reading materials is to be assigned on a daily basis and is to be completed in cell.

Exercise is to be provided in the HB yard every 3 hours provided 2 suitable staff members are available to monitor him and the security and the good order of the centre is not compromised.

[P] will be given the opportunity to make 2 phone calls a day provided suitable staff members are available to facilitate.

[P] will have access to normal canteen purchases by order given to and facilitated by Harding officers.

60 The following requirements are set out under the heading 'Special concerns' in the individual management regime document:

3. For movement to and from the shower [P] must be mechanically restrained from behind.

4. For all other movements that require [P] to have the use of his hands he must be mechanically restrained from the front using handcuffs, leg chain and a security link chain.

5. When showering [P] is to have handcuffs removed. The removal is to take place when he located in the shower area. Handcuffs are to be re-applied in the shower area prior to moving back to his cell.

61 It was decided to place the respondent on an Individual Management Regime for the purpose of risk management in relation to the risk that he posed to himself, other detainees and staff. The regime was developed taking into consideration the extensive building re-development project currently taking place at BHDC in combination with the respondent having previously accessed the building site and roof areas. One of the reasons for shifting the respondent to RRC was that the risk associated with the current building re-development project at BHDC restricted the opportunity for the respondent to reside in an alternative cell placement and participate in general population programs.

62 I consider it useful to note some of the observations by staff members of the respondent when he was under the individual management regime at BHDC before being shifted to RRC.

63 On 25 and 26 January he declined offers for yard time preferring to stay in his cell. On 30 January he spent extended time in the yard

handcuffed due to building works. On 31 January he received two exercise breaks without any restraints. He was noted to still, at times, display a questionable manner to custodial staff. On 4 February he could not engage in any exercise because of a general lockdown at BHDC. On 5 February he declined time in the exercise yard. He also tried to telephone family and gave up trying. On 8 February it was noted that he was quiet and seemed to avoid attempts to engage. On 10 February he did not receive any yard time because of staff shortages and other movements at BHDC. On 13 February it was noted that he had not initiated any conversation or interaction with staff and that he needed to make an effort to communicate more than he was currently showing. On 17 February it was noted that the respondent was clearly upset and said 'this is F----d' 'I'm sick of this shit' at being handcuffed and escorted. Finally, on 18 February it was noted that he did not willingly enter into conversation with officers.

64 On 27 February 2012 the respondent was placed on a special management regime at RRC. The regime was reviewed weekly. A document in evidence which contains details of the regime sets out the following under the heading of program participation:

- In the event of negative behaviour/misconduct, counselling should be provided instantaneously by the supervising officers.
- If detainee P is unreceptive to counsel he is to be secured in cell."

65 The respondent was positive about his shift to RRC. On 8 March 2012 he progressed to the general population programs which include attending the classroom to participate in educational activities and participation in recreational activities. He has been noted as displaying compliant behaviours in relation to acceptance of staff direction and to have demonstrated an increased level of voluntary interaction with the supervising officers. Since the respondent has been at RRC there has been only one Incident Description Report. It was made on 14 March 2012 and sets out the following:

At approximately 17:40 I went to see [P] with the assistance of Recovery, to inform him that he would have to remain in his cell for dinner as we did not have the available staff to facilitate his return to program. [P] reacted by pacing around his cell and saying 'this is f----d' 'I don't give a f---k anymore, I can't put up with this shit'. I told him that based on his behaviour he could either have dinner in his cell or be removed to the MPU. [P] chose to receive dinner in his cell but continued to pace around his cell in an agitated and angry state.

**Evidence of the respondent**

66 In an affidavit sworn on 2 February 2012 and filed in opposition to the application, the respondent has stated as follows:

7. Since the incident on 14 December 2011 I have been in regression or D wing.

8. I spent most of my day in my room. My room is small and contains a bed, toilet and sink. Recently I got a TV put in my room.

9. There is a light in my room but I prefer to keep the room dark.

10. It gets hot in my room. I think there is air conditioning in the hall but not in my room.

11. Sometimes I can talk to other guys if they are sent down to regression through my cell. But they usually only come for a short time and then leave again.

12. I try and sleep-in. I get given breakfast around 8am or 10am. Dinner is usually at 5:30pm. I get a shower each day, but at a different time each day.

13. I am not allowed to go to school. I get given books to read in my cell. The trouble is I can only read a little bit.

14. Whenever I am allowed to go outside or am moved around the centre I am handcuffed and there is usually four or five staff supervising me.

15. I get time outside each day but how long depends on how many staff they have. Sometimes it can be as little as 1 hour.

16. I try and call my Mum and sister each day. They tell me about what is happening on the outside with the family. However they both have their own issues and are not that interested in me.

...

19. I feel lonely because I don't have many people to talk to.

20. I feel stressed out in my head because I don't know if this is ever going to end.

21. I know I have to be punished but I don't know how much more I can take. I know I have to behave.

67 No issue has been taken with anything that the respondent has set out in his affidavit. However, the evidence as a whole does disclose an issue on the time that the respondent was under each of a regression

management regime and an individual management regime at BHDC. I will comment on that later.

### **The respondent's personal background and psychological makeup**

68 In my view it is important to know and take into consideration the respondent's personal history and psychological makeup to arrive at a decision in this matter.

69 P was born in a country town south-west of Perth. He was exposed to family violence from a young age. His parents separated in 1998 when he was about 4 years of age. Thereafter he remained in his father's care with 3 older siblings until he was about 7 years of age. His father had substance abuse issues and was sentenced to a period of imprisonment. When living with his father he had minimal contact with his mother. After his father was imprisoned he lived with his paternal grandmother for about 5 years. He developed a strong attachment to his grandmother who sadly passed away. He then returned to live with his father and step-mother. He left this residence because he did not get on with his step-mother. He then moved around and lived with various relatives from time to time. During this time he was not cared for by any family member and was exposed to substance abuse.

70 When P was about 13 he resumed living with his mother and her then partner. This did not last because his mother had a history of alcohol abuse and her partner allegedly sexually abused him. With a history of such instability and neglect it is not surprising that he has a very poor school attendance and poor literacy and numeracy skills. Over the last few years he has spent a considerable amount of time in custody.

71 P's compliance on Orders within the community, including supervised release, has been adversely affected by limited family support, amphetamine and other substance use, lack of stable accommodation, cognitive learning difficulties, concrete thinking style, limited consequential thinking and normalisation of offending within his peer group and extended family.

72 The respondent was assessed by Dr Wojnarowska, consultant child and adolescent psychiatrist, on 14 September 2007 because of general concerns regarding his mental health. Dr Wojnarowska noted that, while he evidenced high impulsivity, there was no evidence of psychiatric conditions and thus he did not warrant any psychiatric intervention. In a report dated 11 July 2008, Dr Wojnarowska noted that the respondent presented with conduct disorder, alcohol and cannabis use, and evolving

anti-social personality disorder. She recommended that the most appropriate intervention was multi-systemic therapy which should include intervention with the family unit in careful consideration of the accommodation in which he was placed.

73 The respondent commenced seeing Dr Angela Cooney, senior forensic psychologist of the Youth Justice Psychological Services at BHDC, in May 2008 when he was in custody. Between then and December 2011 the respondent was seen by Dr Cooney on 104 occasions. Since 12 December 2011 the respondent has seen Dr Cooney on at least 10 other occasions. The purpose of the sessions, at least before 12 December 2011, was to monitor the respondent's coping and risk of self harm or suicide in custody, addressing behavioural issues in custody and addressing the factors underlying his offending behaviour. Dr Cooney is well qualified and well placed to comment on the respondent.

74 In a report dated 12 December 2011 Dr Cooney stated:

While he has consistently presented as a friendly and personable youth, he has demonstrated limited reflective capacity, has a concrete cognitive style and has remained guarded about discussing sensitive issues.'

[and,]

Through the course of counselling, [P] has expressed significant cognitive distortions which support the engagement in offending behaviour. In addition, he has consistently expressed the view the he does not have the capacity to make meaningful changes to his lifestyle, and as such views himself on a trajectory towards adult offending. Based on this, the predominant focus of counselling has been on addressing his confidence, self-identity and motivation to change.

[and,]

[P]'s behaviour in the custodial environment has been varied. At times, he has appeared settled and demonstrated positive behaviour, resulting in his progression to the long-term self-care unit. However, at other times he has demonstrated disruptive, sexualised or highly aggressive behaviour.

[and,]

[P]'s engagement in negative behaviour also reflects poor emotional regulation and limited coping strategies. It appears that [P] becomes easily overwhelmed when experiencing negative emotions. As stated previously, when in the community, [P] engages in avoidant behaviours as a means of coping (such as substance misuse or absconding from home). However, such strategies are not typically available to him in custody, resulting in him externalising his difficulties through engaging in disruptive or

aggressive behaviour. Finally, [P]'s engagement in aggressive behaviour in custody is often reflective of the cognitions which he has support of such behaviour. [P] has fixed and fairly entrenched views on the use of aggression in some situations, such as this being a means of gaining compliance from others, as a means of handling conflict situations, and a form of rehabilitation.

[and,]

His behaviour appears to be largely motivationally based, reflective of poor emotional regulation skills and based on cognitive distortions which support such behaviour. Thus, he is likely to continue to experience difficulties in managing his behaviour should he be transferred to the adult custodial system. His young age, physical stature and emotional immaturity may result in [P] being vulnerable in the adult custodial system.

[and,]

To date, [P] has denied experiencing any thoughts of self-harm/suicide since being informed of the possibility of transfer to an adult facility. However, it is noted in scientific literature that inter-facility transfer can elevate an individual's risk of self-harm, with individuals who are involuntarily transferred and juveniles placed in adult custodial facilities considered to be at a particularly high risk. Specific to [P], his engagement in self-harm and suicidal behaviour appears to reflect a pattern of emotional instability, reactivity and poor coping strategies. There has typically been a discrete trigger, such as his placement in custody, the death of his grandmother, or becoming angry with a custodial staff member. At such times, [P] appears to become overwhelmed by his emotions, culminating in him impulsively attempting suicide or engaging in self-harm. Based on this, coupled with his guardedness and reticence to disclose such information due to concern about the consequences, it is recommended that consideration be given to placing [P] in the Crisis Care Unit should he be transferred to an adult facility.

75 The respondent attended on Julie Hasson, a forensic psychologist on 14 February 2012. This consultation was conducted at the request of the respondent's solicitors for the purpose of Ms Hasson providing a report to the Court. Ms Hasson conducted psychometric tests covering a variety of categories including depression. In her report dated 18 February 2012 she set out the following in relation to depression:

His scores on the depression inventory (BDI-Y) show elevated levels of depressive symptoms which according to [P] have been present for as long as he can recall. Such a score may suggest the possibility of dysthymic disorder. Dysthymia is a chronic mood disorder with at least one year duration in adolescents and children. It is manifested as depressed mood for most of the day, occurring more days than not, and is accompanied by

at least two of the following symptoms: Poor appetite or overeating; insomnia or hypersomnia; low energy or fatigue; low self esteem; poor concentration; difficulty making decisions and feelings of hopelessness. Dysthymic disorder in adolescents can contribute to disruptive behaviour due to feelings of anger and pervasive irritability."

### **The respondent's participation in educational and vocational programs at BHDC**

76 The following information is contained in the education report dated 22 December 2011 of a teacher based at BHDC. Before the respondent was placed in the Harding unit he spent one week in class 3 and engaged in two sessions in the horticultural program. He was at the certificate 1 introductory level for literacy and the certificate 1 level for numeracy. His attitude and behaviour was described as polite, respectful, and demonstrating maturity and motivation.

77 During the two sessions that the respondent engaged in the horticultural program he participated on constructing a small footing for a limestone retaining wall. He was assessed as having sound team working skills. His attitude and behaviour was described as well behaved both on and off the work site and always following instructions and being a supportive team member. His team work was assessed as very good.

### **Management and placement checklist for the respondent in a prison**

78 The following information is contained in a prisoner assessment conducted by an officer at Hakea Prison in relation to the respondent.

79 The respondent was assessed as needing maximum security.

80 The respondent presented with basic oral communication skills and the results of the screening assessment completed by him indicated poor literacy and basic numeracy skills. It was recommended that he attend education and complete literacy and numeracy courses to improve his skills. It was also recommended that he enrol in a horticultural program for future job prospects.

81 In relation to violence the respondent was assessed as being most suited to a high intensity violence offending program which uses cognitive behavioural methods to challenge aggression and anti-social behaviour. However the officer making the assessment expressed the view that the respondent may not be suitable for this intervention program because of his age. The officer also expressed the view that if the respondent engaged in this course there was a danger of contamination

because of him being with hardened adult offenders and due to his youth and immaturity.

### **Commentary and analysis**

82 Deciding whether to direct that the CEO can transfer a young detainee to an adult prison requires an overall consideration of a variety of factors which by reference to s 178(4)(a) include whether the detainee is or has been a significant risk to the safety and welfare of other detainees or staff, whether there is something about the detainee's antecedents that would require it, or some other factor. In my view, in this particular case, other factors that need to be weighed into the overall consideration include, if there is such a significant risk, then whether there is good reason to conclude that the respondent could reasonably be managed differently in the detention centre, and that if managed differently, the risk he posed could be significantly reduced, and whether his rehabilitation, safety, welfare, health including mental health, self respect and dignity would be properly catered for in a prison.

83 In any particular case, what weight should be attached to each relevant factor in the overall consideration will depend on the particular circumstances of the case.

84 Before I go any further, I wish to make the point that BHDC and RRC are the only two detention centres for young people in the State. BHDC is essentially for young people sentenced to detention and RRC is essentially for young people on remand and for young females sentenced to detention. The population of young people sentenced to detention and held at BHDC are all males and about 75 percent of them are young aboriginal males. They can generally be described as coming from dysfunctional families and having mental health issues and behavioural problems. Managing a relatively large number of these highly damaged young children in a detention centre is a very difficult job. The work of detention staff, who are required to interact with these young detainees, is a very difficult job which carries an amount of personal risk. All of that needs to be taken into account when considering their conditions of employment, their workplace security, and also the necessary training that needs to be given to them to work with damaged young people. I now turn to consider the grounds of the application.

**Ground 1. The respondent's behaviour at Banksia Hill Detention Centre (BHDC) during his current and prior periods of detention has posed a serious risk to the safety and welfare of other detainees and the staff at BHDC.**

85 Having made that important acknowledgement of the difficulty of the work of detention staff, I now wish to comment on the respondent's behaviour and his management in custody. At the outset I wish to say that I am satisfied on the evidence that the respondent is a significant risk to staff. That said, I note that his behaviour has improved at RRC. Having made that finding I now turn to consider whether the risk he poses could be significantly reduced if he was managed differently.

86 It seems that for about three weeks before the incident on 14 December 2011, when the respondent assaulted a member of the detention staff, that he had been removed from the general population and placed in the special purpose unit. From the time of that incident on 14 December 2011 and to 24 January 2012, he was made subject to a regression management regime in the Harding Wing at BHDC and then from 24 January 2012 to 24 February 2012 he was placed under an individual management regime in the Harding Wing at BHDC. These are all relatively lengthy periods of time for a young person to be made subject to such harsh regimes.

87 I note that the respondent stated in his affidavit sworn on 2 February 2012 that he had been in regression since the incident on 14 December 2011. I accept the evidence that the respondent was actually on an individual management regime from 24 January 2012 and so that statement by the respondent in his affidavit is not correct. He would have actually been on the individual management regime from 24 January 2012 to when he swore his affidavit on 2 February 2012.

88 I do not think that the respondent was attempting to mislead me in any way at all when he stated that he had been on regression all of that time. Rather, I think that the likely reason for this inconsistency is that the respondent did not discern any practical difference between the regression management regime and the individual management regime that he was under.

89 I must say, that on my assessment of the evidence, I found the distinction between a regression management regime and an individual management regime to be somewhat blurred. The reason for that is because the individual management regime for the respondent was in my view very oppressive and did not seem to contain any program component

individually tailored to address his particular behaviours, his psychological needs, and his social development, as I think it should have and as the name of the regime would suggest.

90 I also note that while the program component of the individual management regime provides that the respondent be given education and reading materials, he was not on a high level for literacy at the school at BHDC and his literacy level in the prison screening process was assessed as poor and needing improvement. It therefore seems to me that it is likely that he would not have been able to make good use of such materials without any accompanying tuition, however that may have been provided. In my view, education and vocational skilling are keys to a young persons beneficial development and so this individual management regime for the respondent would arguably be in breach of the principle set out in s 7(j) of the YO Act. Of course, the longer the time period for which that situation continued to exist then the stronger the argument that it was in breach of that principle. It would also arguably breach article 39 of CROC because it did not promote the respondent's social reintegration, something that would require the respondent to be assisted with his education and vocational skills. Having said all of that, I should add that very good educational programs are delivered to detainees at BHDC. The point is that the respondent should be included in some way.

91 I have set out details of incidents concerning the respondent's behaviour, primarily at BHDC and one incident at RRC, to show that the frequency and seriousness of incidents concerning the respondent's behaviour have increased in more recent times, i.e. in the last three months of 2011, compared to previously. This raises serious questions about the worth and negative effects of the management regimes that were imposed against the respondent both before and after 14 December 2011.

92 The evidence shows that a purpose for removing the respondent from the general population and putting him in a cell alone and with little or nothing for mental stimulation, is to enable him to reflect on his poor behaviour and decide to change or improve it. This approach ignores the professional opinion of Dr Cooney that the respondent has demonstrated limited reflective capacity, has a concrete cognitive style, and has poor emotional regulation skills. In my view it also ignores the respondent's background of exposure to neglect, rejection, abuse and violence. As a result of that history, the respondent has no personal experience of positive behaviours that he would need to have in order to meaningfully reflect on his poor behaviour. The oppressive conditions of both the regression management regime and the individual management regime

have the real potential to exacerbate already serious existing mental health problems for many young detainees. That is particularly so when the detainee is subjected to such conditions for a lengthy period of time. It seems to me that this has likely happened in the respondent's case.

93 On this point, I think that it is relevant to note the opinion of Ms Hasson that the respondent has elevated levels of depressive symptoms and possibly has dysthymic disorder. Some of the respondent's behaviours consistent with that diagnosis include him preferring to sit in the dark, not exercising in the yard when he could do so, and his ongoing disruptive behaviour due to feelings of anger and pervasive irritability.

94 In my view, the oppressive conditions of the regression management regime and the individual management regime imposed on the respondent at BHDC really amount to psychological punishment. Indeed, the lengthy time of both of them, singularly and in combination, really amounts to psychological subjugation. In my view they seek compliance at too high a cost. When imposed too frequently and over lengthy periods of time they are cruel and inhumane. Further, in a detention setting where positive relationships and trust between detainees and staff are important, they would be counter productive.

95 Seeking real behavioural change is more than just seeking compliance and creating fear of punishment. There is no evidence that psychologists at BHDC have been given a brief to use their professional expertise to design and deliver a behavioural program with practical learning for the respondent. I have in mind a behavioural program specifically tailored to the respondent's psychological profile to achieve real behavioural change with an understanding of why some behaviours are acceptable and why some are not. There is no evidence that he is incapable of responding to such a program. With respect, it seems to me that a lot of psychological sessions with the respondent have been for the purpose of assessing and reporting on how he has been coping psychologically within his detention settings.

96 On the evidence, the respondent has settled in well at RRC. I am not sure of much of the detail of the special management regime that the respondent is on at RRC. However, it is clearly better for the respondent. He mixes with the general population and participates in schooling in the classroom and also in recreational activities. He was looking forward to going to RRC. That may well be partly because the move meant that he would exit the regimes and scenery that he had been confined in for several months at BHDC. On the evidence it is clear that management

feels better able to be less restrictive on the respondent at RRC because there are no building works there that need to be taken into account to decide what type of regime to impose and the conditions of it.

97 The one incident reported on at RRC is of interest. It was properly made the subject of a report and only noted and no action taken. Given that the respondent had been isolated for so long at BHDC and that he was no doubt just starting to enjoy his interaction with other detainees at RRC, it is understandable that he was upset at being told that he would not be able to join other detainees for dinner for a reason that had nothing to do with any misbehaviour by him. The respondent pacing about his cell and carrying on with a bit of verbiage was actually an improved response and rightly not something that warranted any sanction.

98 Detainees in a detention centre really live under a microscope. By that I mean that much of what they do and say is seen and heard by staff and can involve staff. Given that and the psychological profiles and life experiences of many of them, no useful purpose would be achieved by frequently trying to counsel them for relatively minor instances of verbiage or failures to verbally respond. That type of behaviour would not be unusual for some teenagers outside of a detention setting and they would not be confined for it. I would hope that securing the respondent in a cell for being unreceptive to counselling, as provided in his special management regime at RRC, would be reserved for only very serious instances of misbehaviour or misconduct.

99 In my view, a consideration of the incident on 14 December 2011 against the evidence as a whole highlights and supports the comments just made.

100 Before setting out my reasons for saying that, I wish to emphasise that they in no way excuse or diminish the seriousness of the respondent's behaviour. No one would want a repeat of that kind of serious incident or anything like it. Rather, the reasoning is set out to identify the need for changes of approach to improve the behaviour of detainees and thereby prevent such incidents and protect staff.

101 The incident on 14 December 2011 involved the respondent violently assaulting Officer L. It is the last of the serious incidents involving the respondent at BHDC before he was transferred to RRC. At the time of the incident on 14 December 2011, the respondent had been segregated from the general population for just over three weeks following the earlier incident on 21 November 2011. That is a long time to have been

continuously subjected to a harsh regime. The respondent's psychological profile includes limited consequential thinking, limited reflective capacity, poor emotional regulation skills, reactivity, and poor coping skills. Accordingly, a continuous lengthy period of time alone in harsh conditions was not going to materially improve the respondent's behaviour because he was simply not equipped to be able to usefully reflect on how he had behaved. Rather, it likely exacerbated his mental health problems. It also likely made him regard detention staff negatively.

102 Even staff being friendly to the respondent would likely be outweighed by the harshness of the conditions of the regime he was under over such a lengthy period of time.

103 For the reasons just given, by 14 December 2011 the respondent was likely very depressed, and also frustrated and angry, including with staff no matter how friendly they were to him. If he was surly and had a poor attitude on 14 December 2011, then that would have been and is understandable given his dysfunctional neglected family history in conjunction with the fact that he had just spent the last three weeks or so in segregation under a harsh regime. Against that background, being told that he had a poor attitude and that he had to improve his behaviour would likely have aggravated him rather than result in him usefully reflecting on his behaviour. Anyway, by 14 December 2011 the situation was such that the respondent and staff had been rendered vulnerable.

104 The respondent obviously wanted to make a telephone call to communicate with someone. Without knowing who he wanted to phone and what he wanted to talk about, I think that it is open and reasonable to conclude that the telephone call was important to him. It does not matter that I do not know if anyone answered his telephone call or what if anything was said during the telephone call. The point is that nor did Officer L when he asked the respondent if he got through and also shortly after when he told the respondent, after the respondent told him that he did not have to answer him, that his TV access would be removed because of his poor attitude.

105 The respondent's failure to answer and then his abusive response to Officer L that he did not have to answer him, could well have been because he could not get through to someone when he desperately wanted to or because someone said something to him during the telephone call that upset him, e.g. his mum said that she was not going to visit him. With great respect, the possibility of the telephone call being a negative experience for the respondent should not have been excluded from the

consideration of whether his failure to answer and then his abusive response should be taken any further or just left alone.

106 If the telephone call was a negative experience for the respondent and that was immediately followed by his TV access being removed, then his anger and frustration would have further increased and become focused on Officer L. The removal of TV access would have had a greater significance for the respondent than for a detainee in the general population given the regime that the respondent had been living under for a lengthy period of time. A vulnerable situation had now been made even more vulnerable. With that background just outlined, it was not going to take much to tip the respondent over the edge. Regrettably, that is what happened. As Officer L and the respondent then walked towards the entrance of Harding, the respondent was obviously festering about his situation and what had just happened and he exploded and assaulted Officer L.

107 Clearly there needs to be a response to try and ensure that such a serious outcome does not occur again. The question is whether that response should be to transfer the respondent to an adult prison or for systemic changes to be made in the detention centre that could significantly reduce the risk. In my view, given the circumstances of this case, the second of those two responses is the proper one. With respect, I think that there needs to be a review of the effectiveness and appropriateness of the internal regimes and the conditions of them used in detention centres. Such reviews should extend to staff training and support, including staff briefings by psychologists on how to best manage particular detainees. The professional expertise of psychiatrists and psychologists should be utilised in the review.

108 The building works being carried out at BHDC have created security issues. There are incidents of the respondent accessing the building works and climbing on to the roof of an existing building at BHDC. The ongoing building works and these incidents have weighed heavily in the consideration of what management regimes and conditions are imposed on the respondent. The building works have impacted on the detainees by way of occasional movement restrictions and lockdowns. That is undesirable for everyone, including in particular the detainees.

109 It seems to me that two key issues relating to roof access are architectural design and security. In the context of considering this application to allow the respondent to be transferred from a detention centre to an adult prison in circumstances where he has a history of

accessing the building works and the roof of the detention centre, I think that preference should be given to the need to ensure that such access is not possible rather than to remove the respondent from the detention centre to an adult prison in order to remove the risk of such access.

110 Finally on this issue of building works and roof access, I wish to note that there is no evidence of any inquiry or research on why the respondent has chosen to access the roof. Is it for attention? Is it because he feels that he has been controlled by detention staff and so he wants to feel a sense of control over them? Is it to seek status amongst the detainees? Is it because he has no self esteem and self worth and seeks punishment being imposed on himself?

111 The respondent may not be able to articulate why he does it. Anyway, it would be interesting and very useful if the reason or reasons could be identified and a behavioural program designed and delivered to the respondent to deal with this issue.

112 The material presented to the Court by the applicant in support of the application does not contain any detail on how the respondent was able to access the building works and the roof and what security measures were in place to prevent it. There is also no evidence of what would be required if anything, to remove the risk. Therefore I am not persuaded that there are no reasonable measures that could be put in place to satisfactorily deal with this risk beyond what is currently in place.

113 For all these reasons, I think that the respondent does pose a significant risk to staff. However, I also think that the risk could be significantly reduced if there were changes to how the behavioural issues of detainees were dealt with in the detention setting, and increased training and support for staff on behavioural issues. That said, it should also be noted that the respondent's behaviour has improved at RRC.

**Ground 2. The respondent's behaviour at BHDC during his periods of detention has been such that he has been increasingly difficult for BHDC staff to manage.**

114 The applicant's second ground in support of the application is that the respondent has been increasingly difficult for BHDC staff to manage. I repeat everything that I have already stated in these reasons in answer to that. Further, being 'increasingly difficult to manage' is not a good reason to make a direction for a detainee to be transferred to an adult prison.

115 Those words simply invite a relative comparison rather than create  
an objective standard. This ground as expressed, is really not a ground in  
its own right but rather an issue that forms part of ground 1.

116 I wish to add that it is in the best interests of the detainees who  
represent the hardest cases and also the community, that the detainees be  
managed in detention by applying the principles in the YO Act and CROC  
to maximise the prospects of their rehabilitation and reintegration back  
into the community. Their rehabilitation is the best means of protecting  
the community.

**Ground 3. The respondent's behaviour would be more effectively managed  
in a prison.**

117 In answering this ground I wish to state at the outset that while s 178  
of the YO Act enables the transfer of a young person from a detention  
centre to an adult prison, the section when read as a whole, shows that  
parliament recognises that generally it would be undesirable for a young  
person to be held in an adult prison.

118 While there is evidence that the respondent would be assessed for  
programs and would have access to services in the prison setting, I am not  
satisfied on balance on the evidence presented that he would be more  
effectively managed in an adult prison than a detention centre.

119 The respondent has been given favourable reports for his  
participation in educational and vocational programs at BHDC. I note that  
it was recommended that he engage in an educational and horticultural  
program in prison. They are the very kind of programs that are available  
at BHDC and that he has positively engaged in there. Accordingly, an  
adult prison does not provide any advantage over a detention centre for  
those kinds of programs. Further, he would be with his peers in a  
detention centre. He was assessed as having sound team working skills  
when he participated in the horticultural course at BHDC.

120 Given the respondent's psychological profile and his behavioural  
issues, perhaps one of the most important kinds of intervention programs  
for him would be one that addressed his aggression and antisocial  
behaviour. The prison assessment expressed the view that he would not be  
suitable for the relevant program in prison because of his age and the  
danger of him engaging with hardened adult offenders. That is a very  
important point. In a prison, the respondent would be mixing with adult  
recidivists with entrenched and hardened levels of aggression and  
antisocial attitudes. This point is particularly relevant to the respondent

because he has been assessed as maximum security. It is highly undesirable for him, at only about 17 years 7 months of age, to be placed into such an environment.

121 The respondent lacks maturity for his age. It is highly desirable for him to receive supports in a juvenile detention centre with his peers and detention staff trained to work with young people, to maximise the prospects of his rehabilitation before he becomes an adult and is released back into the community.

122 I refer to the research and opinions expressed by Dr Cooney set out earlier in these reasons, which I accept, on the vulnerability of the respondent and the high personal risk associated with transferring him to an adult prison.

123 Finally, it seems to me that the respondent would also likely pose difficult management issues for prison management. The respondent will pose difficult management issues wherever he is. This is not a case where management difficulties for the Department of Corrective Services will go away if he is transferred from a detention centre to an adult prison.

124 For all these reasons I am not satisfied that this ground has merit.

**Ground 4: The respondent's age is such that prison may be appropriate**

125 The first point I wish to make is that this ground is expressed as a possibility rather than a probability. Nothing turns on that in this case.

126 As already mentioned, the respondent is about 17 years 7 months of age. It is usually the case that children who appear in the Children's Court for serious offences and who are sentenced to detention have a biological age that is beyond their level of maturity, literacy and numeracy. They also usually have serious underlying mental health issues. All of those apply to the respondent. It is therefore superficial and would be an error to simply rely on the respondent's biological age to arrive at a decision to allow him to be transferred to an adult prison.

127 For all these reasons I am not satisfied this ground has merit.

**Conclusion**

128 For all these reasons:

1. On ground 1, I am satisfied that the respondent is a significant risk to staff but find that such risk could be significantly reduced with

behavioural management changes and note that his behaviour has improved at RRC, and

2. I am not satisfied that each of grounds 2, 3 and 4 has merit, and
3. I am not satisfied that grounds 1, 2, 3 and 4 considered in combination support the respondent being transferred to an adult prison, and
4. I am not satisfied that there is any other reason(s) for the respondent to be transferred to an adult prison.

129 The application is dismissed.