



November 2023

# Who's responsible:

## Understanding why young people are being held longer in Queensland watch houses



Queensland  
**Family & Child**  
Commission



The Queensland Family and Child Commission acknowledges Aboriginal and Torres Strait Islander peoples as the Traditional Custodians across the lands, seas and skies where we walk, live and work.

We recognise Aboriginal and Torres Strait Islander people as two unique peoples, with their own rich and distinct cultures, strengths, and knowledge. We celebrate the diversity of Aboriginal and Torres Strait Islander cultures across Queensland and pay our respects to Elders past, present and emerging.

We acknowledge the important role played by Aboriginal and Torres Strait Islander communities and recognise their right to self-determination, and the need for community-led approaches to support healing and strengthen resilience.



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### Contact for enquiries

Queensland Family and Child Commission  
Level 8, 63 George Street  
PO Box 15217, Brisbane City East QLD 4002

Email: [info@qfcc.qld.gov.au](mailto:info@qfcc.qld.gov.au)

Website: [www.qfcc.qld.gov.au](http://www.qfcc.qld.gov.au)

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## Commissioner's Introduction

Queensland detains children at a higher rate than any other state in Australia and has a history of concerns regarding how it uses watch houses to detain young people.

A watch house is designed to be a short-term holding facility for people, including young people, who have been arrested and are awaiting processing or transfer to a court or detention centre. In Queensland they are operated by the Queensland Police Service (QPS).

In May 2019 the ABC 4 Corners program *Inside the Watch house* revealed the inadequacy of the treatment of young people awaiting charge, court appearance and bail or remand decisions.<sup>1</sup> In the wake of that exposure, great effort was undertaken to reduce the numbers of young people in the watch house system. For a time, the numbers were reduced, but the infrastructure of the built facilities, and the infrastructure of the police and justice systems remained.

Watch houses are an inadequate place to keep young people overnight. They are not designed to be accommodation centres, and evidence shows that watch houses are harmful and traumatising. There is no evidence that shows the use of watch houses prevents reoffending.

The treatment and limited services for young people in Queensland watch houses is well known and documented. The 4 Corners episode referenced above is among a slew of evidence available to the public on this issue. Amnesty International, the Youth Advocacy Centre, the Australian Children's Commissioner, and the Queensland Human Rights Commissioner have all published evidence on the treatment of young people in Queensland watch houses.<sup>2</sup> Most recently, the Queensland Parliament was informed by both the Human Rights Commissioner and the National Children's Commissioner of their inspections of Queensland's watch houses and the inappropriate settings and treatment of young people.<sup>3</sup>

As the Principal Commissioner for Queensland families and children, I have had many conversations with parliamentarians, judicial members, department leaders, frontline workers, and policy advisors and I have not found a single person who thinks that children should spend multiple nights in a watch house.

***"No one wants to see young people in watch houses for an extended period of time."*** – Queensland Premier Anastacia Palaszczuk, 5 October 2023

***"I have been very, very clear that watch houses are not for children."*** – Queensland Police Commissioner Katarina Carroll, 5 October 2023

***"Wherever practicable children are not to be kept in custody in a watch house."*** – Queensland Police Service *Operational Procedures Manual*

<sup>1</sup> ABC Four Corners (2019, May 14). *Inside the watch house*. [Video]. ABC News. [Inside the Watch House - ABC News](https://www.abc.net.au/news/2019-05-14/inside-the-watch-house/5568484)

<sup>2</sup> See for example: 1) Youth Advocacy Centre (2019). *The use of Queensland watch houses to hold children*. <https://yac.net.au/use-of-police-watch-houses/>; 2) Amnesty International (n.d.). *Kids in watch houses: exposing the truth*. <https://www.amnesty.org.au/watch-houses/>; 3) The Guardian (2023, June 30). *Widespread locking of children in solitary lambasted by Australian children's commissioner*. <https://www.theguardian.com/australia-news/2023/jun/30/widespread-locking-of-children-in-solitary-lambasted-by-australian-childrens-commissioner>

<sup>3</sup> Youth Justice Reform Select Committee (2023, November 24). *Transcript of proceedings*. <https://documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/23%20Nov%202023%20Inquiry%20into%20Youth%20Justice%20Reform%20in%20Queensland.pdf>

Despite this sentiment the utilisation of watch houses has not changed and information provided to me in early 2023 showed that the daily numbers of young people being held in watch houses was averaging more than 50. This was far above what would be considered the norm and many oversight bodies, including the Queensland Family and Child Commission (QFCC), were raising concerns about the detainment of children in this context. At this same time we received annual court data showing that during 2021-22, there were 7,001 admissions of children to watch houses, with 1,356 admissions resulting in children spending more than 1 day in a watch house.<sup>4</sup> This data showed that over the five years from 2018, total youth admissions to watch houses increased by 452 per cent and children being held in a watch house for more than 1 day increased by 163 per cent.

Based on this new information, and drawing on their own data, the Office of the Public Guardian (OPG) raised concerns with me on 1 February 2023 highlighting that 13 children and young people had been detained in a watch house for a period between 25-32 days. By comparison during 2021-22, only 1 child was held in a watch house for more than 15 days.

Based on these details I formed the view that the issues contributing to the extended stays in watch houses needed review. If no one, including those in power, thought watch houses should be used in this way, then:

- 1) why was it occurring? and
- 2) who was empowered to monitor and address the issue?

This review aimed to identify what lies behind these statistics, particularly given the unanimous sentiment that watch houses are no place for children. The review has been conducted over a six-month period during which time the QFCC sought access to significant volumes of data, and where the Queensland Government made multiple changes to the laws and policies impacting on the use of watch houses.

This review has shown a mix of results. By combining court, police and youth justice data, a picture emerges of a complicated youth justice system where there is no easy answer to the reasons why Queensland young people are spending longer in watch houses than they did 12 months earlier. Our analysis shows:

- the total number of young people entering watch houses has been stable over several years;
- fewer young people are being arrested, but those who are, are being arrested more often;
- fewer young people are receiving bail and while total court lodgements have fallen, remand orders are more frequent;
- young people were refused bail and held in watch houses because of dysfunction within their family and home (noting in 7% of the 30 cases we reviewed, the young person was homeless, and in 20% of the cases we reviewed, the young person did not receive a visit from a family member during their time in the watch house);
- our youth detention centres have operated at or above their safe capacity for two years;
- overall court proceedings are increasing in speed, however young people on remand are spending an increasing number of nights on unsentenced detention;
- the Childrens Court has sentenced a similar proportion of young people to imprisonment between 2019 and 2022, with no direct link to the rising detainee population; and
- detention sentence lengths have not increased – but the time spent in detention on remand has. This extension of time on remand is at odds with faster court proceedings.

In light of these findings, it might be easy for some to suggest that the solution is building more youth detention centres. However our analysis shows that detention is not working, with high rates of recidivism following detention, and detention centre population largely comprised of ‘repeat offenders’. Addressing the demand on our

<sup>4</sup> Childrens Court of Queensland (2022). *Annual report 2021-22*. [5722T2094-21DD.pdf \(parliament.qld.gov.au\)](https://www.parliament.qld.gov.au/5722T2094-21DD.pdf)



watch house and detention system requires us to answer to the complex reasons why some young people continue to cycle through our criminal justice system.

The high rate of offending by a small cohort of young people who already have a history of detention is evidence that our current approach is not the solution to reducing and preventing crime. Like many others, I call on the community and government to focus on the reasons why young people are detained in watch houses and detention. To make a meaningful difference we must intervene earlier in the lives of these children to address why their path has led to offending.

This review has also further demonstrated the significant overrepresentation of First Nations young people in our justice system. Of the 30 case files we randomly selected and accessed, 93 per cent were First Nations young people, the remaining seven per cent were young people with Pacifica and African heritage. We know from data reports that First Nations young people are less likely to receive a diversion decision, and less likely to be granted bail. This report shows that they are disproportionately exposed to the Queensland watch house system.

Once a young person is taken into police custody, there is an opportunity to identify and take responsibility for addressing their behaviour by resolving the reasons that lead to their offending. Leaving a young person in a watch house is counterproductive to community safety, to restoration and to improving life outcomes and the wellbeing of Queensland.

This review identified limited evidence and transparency regarding the drivers of this issue. This limitation has impacted the ability for policy-makers to identify and implement potential solutions. Matching data across court, police and youth justice systems to try to understand what is occurring was incredibly difficult, and this combined with the discrete oversight roles held by the OPG, Queensland Ombudsman, Human Rights Commission and the Queensland Family and Child Commission (QFCC) create a system that is opaque. In our discussions, various reasons were offered as the cause of the extended stays, attributed to police, the courts, the youth justice department, and legal service providers. What is needed is for someone to take responsibility for addressing court delays; our ineffective detention services; and unstable accommodation and fractured family relationships, which impact and directly cause the increasing number of children who are held in unsentenced detention.

Ultimately this review has confirmed my initial concerns – that the separation of responsibilities across police, courts and youth justice means no one is directly responsible or accountable for how long a young person spends in a watch house, and while demand and capacity pressures occur across multiple systems it is the young people that are left without an effective response.



Luke Twyford  
Principal Commissioner  
Queensland Family and Child Commission

30 November 2023

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## At a glance – Youth crime and detention in Queensland

Youth offending in Queensland is at its lowest levels in over a decade.

Comparing FY2013 to FY2022, there were 22.1% fewer unique young offenders aged 10 to 17 years.

The decline was even higher when adjusted for population—the offending rate dropped by 32.6% from 2763 to 1863 offenders per 100,000 young people aged 10 to 17 years.

Number of unique young offenders and rate per 100,000 persons aged 10 to 17 years (FY2013 to 2022).<sup>a</sup>



### Arrests and Police Watchhouse Detentions<sup>b</sup>

	Total Young People Charged	Total Arrests	Arrests per Young Person	Unique Young People in Watchhouses
2022	50,888 ▲16%	48,083 ▲12%	4.7 ▲21%	3055 ▼11%
2019	44,009	43,109	3.9	3435

### Childrens Court Hearings<sup>c</sup> and Youth Detention<sup>d</sup>

	Court Bail Refusals	Remands in Custody	Avg. Daily Young People in Detention Centres	Proportion in Unsented Detention
2022	1138 ▲42%	7918 ▲17%	278 ▲34%	88% ▲7%
2019	801	6799	208	82%

a: Australian Bureau of Statistics, Recorded Crime – Youth Offenders 2021-22 dataset, version February 2023

b: Queensland Police Service, unpublished data request

c: Department of Justice and Attorney-General (QLD), unpublished data request

d: Department of Youth Justice (QLD), unpublished data request



## Section 1 - Background

### Purpose of this report



This report is a Queensland Family and Child Commission **Discovery Review**. A Discovery Review aims to identify the key issues and solutions about a systemic issue. It is intended to provide a scan and analysis on what is known about an issue and the broader system policy, program, practice and reform environment. It adopts a quantitative and qualitative mixed methods approach to discover what lies behind an issue of concern.

Watch houses in Queensland are intended to be used as a short-term holding facility for people, including young people, who have been arrested and are being processed, are awaiting transfer to a detention centre or court appearance. They are operated by the QPS and are usually attached to a police station.

Legally, and by design, watch houses temporarily hold a person who has been arrested until an appropriate place for their accommodation can be found. A person held at a watch house should either be:

- a) released;
- b) granted bail by a police officer and released for a future court appearance;
- c) taken to court and granted bail by the court; or
- d) taken to court and remanded to custody – where they are then taken from the court to a detention centre (for youth) or prison (for adults).

Due to their specific intended use for short periods, a watch house does not have facilities that make it appropriate for overnight, or multiple night accommodation. While the capacity, physical layout and design varies at each location, the majority appear like prison cells, with a fixed bed/seat and a sink/toilet. The Brisbane watch house is designed with a pod area, where two or three cells are grouped with a common area.<sup>5</sup> There is no direct sunlight, exercise yard, or scaled kitchen or bathroom facilities. There are no places for non-emergency medical assessment or education delivery.

The expectation is that a young person would be released from a watch house on bail to their parents within a short timeframe – however this is not the case in Queensland. In Queensland the use of watch houses has been broadened by laws and practice that enable watch houses to detain young people after their court appearance. Our research suggests that Queensland is the only jurisdiction where a young person is taken back to a watch house from a court, although this has been difficult to establish.

Concerns about the lack of capacity of detention centres and the use of watch houses for young people to manage overflow are not new. The inappropriateness of watch houses as a safe and appropriate environment for young people as an alternative to detention centres has been cited as a key reason for the establishment of new detention centres over recent years.<sup>6</sup>

Queensland has also received ongoing criticism from oversight organisations, advocacy groups and legal stakeholders regarding the use of watch houses for young people and their treatment while they are there.

<sup>5</sup> The Watch House Files: Detention centres full, children locked in Queensland's police watch houses - ABC News.

<sup>6</sup> Building Queensland (2020). [New Youth Detention Centre summary \(statedevelopment.qld.gov.au\)](https://www.statedevelopment.qld.gov.au)

***"The cells of the Brisbane City Watch house are very small. There is no direct sunlight. All a child has inside their cell is a wafer-thin mattress, and often no pillow."***<sup>7</sup>

***"At the end of the day, this is a concrete pen, designed to hold adults in an acute and dangerous state for up to 48 hours."***<sup>8</sup>

***"Children.... are sometimes living four to a cell, which is designed to hold only two people."***<sup>9</sup>

On 3 April 2023, the QFCC commenced a review into the extended stays of children in Queensland watch houses following its access to data showing the increasing lengths of time children spend in watch houses, the number of incidents and complaints being recorded and the apparent use of watch houses as quasi-detention centres. This included:

1. Childrens Court data showing that over the four years prior to the end of 2022, the number of admissions to watch houses increased by 452 per cent and the number with a length of stay of more than 1 day increased by 163 per cent. At the same time, the number of young people charged with offences decreased.
2. Several complaints and incidents had been raised about children in watch houses from the OPG. The OPG reported it recorded 256 instances of young people over the age of 14 being held in a watch house for longer than four consecutive days and children under the age of 14 being held in a watch house longer than overnight.
3. On 1 February 2023, the QFCC received information from the OPG regarding 13 children and young people being detained in a watch house for between 25-32 days.

The QFCC identified limited evidence and transparency regarding the drivers of this issue. These limitations were impacting the ability of policy-makers to identify and implement potential solutions. In our discussions, various reasons were offered as the cause of the extended stays, attributed to police, the courts, the youth justice department and legal service providers. These concerns and approach are outlined in a background paper at Appendix 1.

This report provides an overview of the legislation and policy regarding the use of watch houses, data gathered from agencies<sup>10</sup> about the prevalence of extended stays of children and factors that result in Queensland children entering and remaining in watch houses for extended lengths of time. Case data was gathered regarding 30 individual children who experienced an extended stay in a watch house, however copies of child case files were not provided by agencies or assessed by the QFCC. This has limited our ability to fully understand the circumstances of individual children.

<sup>7</sup> Amnesty International (n.d.). *Kids in watch houses: exposing the truth*. <https://www.amnesty.org.au/watch-houses/>

<sup>8</sup> ABC News (2019, May 13). The Watch House Files: Queensland children kept in isolation in maximum security adult watch houses – interview with Natalie Siegel-Brown, Former Public Guardian, Office of the Public Guardian. [The Watch House Files: Queensland children kept in isolation in maximum security adult watch houses - ABC News](#)

<sup>9</sup> The Guardian (2023, August 26). Strip searches and suicide attempts: the reality for children in Queensland watch houses – interview with Genevieve Sinclair, CEO YETI. [Strip searches and suicide attempts: the reality for children in Queensland watch houses | Queensland | The Guardian](#)

<sup>10</sup> Data was gathered from the Childrens Court of Queensland, Queensland Police Service, Youth Justice, Child Safety and the Office of the Public Guardian.

## Changes to the system during the course of this review

Since commencing this review, there have been significant shifts in the legal and policy landscape impacting the youth justice system and the use of watch houses. These are outlined below and follow a longer pattern of policy change that has characterised Queensland's approach to youth justice issues (detailed in Section 2).

Table 1: Policy shifts in the legal and policy landscape affecting youth justice and watch houses

Date	Event	Details
17 February 2023	Principal Commissioner announces QFCC review of reasons for extended stays in watch houses.	The QFCC initiates a systemic review of the drivers that cause children to enter and remain in Queensland watch houses. The review follows growing concerns about the number of children being held in Queensland watch houses for extended periods of time. <sup>11</sup>
22 March 2023	<i>Youth Justice Act 1992</i> (YJ Act) and <i>Bail Act 1980</i> amendments expand presumption against bail and make breach of bail an offence.	The Queensland Government makes legislative changes to expand the list of offences with a presumption against bail and changes to the <i>Bail Act 1980</i> to make it an offence for a child to breach a condition of their bail. <sup>12</sup>
18 May 2023	Ministerial reshuffle leading to a new Minister for Youth Justice being appointed.	The Palaszczuk Government announces a new Cabinet, seeing Minister Di Farmer assume responsibility for Youth Justice. <sup>13</sup>
18 May 2023	Machinery of government changes.	The new Cabinet sees Youth Justice included in the Department of Youth Justice, Employment, Small Business and Training. Bob Gee is appointed Director-General. <sup>14</sup>
13 June 2023	New funding for youth watch house and detention capacity.	The 2023-24 budget provides additional funding of \$462,000 over 2 years to assist education delivery for young people in watch houses. Further funding of up to \$2.5 million over 2 years to 2023-24 is held centrally to support strategies addressing capacity issues at youth detention centres. This forms part of total increased funding of \$89.7 million over 3 years (\$78.1 million new funding and \$11.6 million from existing resources) to address capacity issues for youth detention centres. <sup>15</sup>
	New funding for youth detention centre capacity - Addressing capacity issues at youth detention centres.	The 2023-24 budget provides increased funding of \$17.2 million over 3 years to address capacity issues at youth detention centres, with a further \$11.6 million reallocated from existing resources. Funding of \$11.8 million is being used to establish regional response teams and brokerage to

<sup>11</sup> Queensland Family and Child Commission (2023). [Queensland watch houses under review | Queensland Family and Child Commission \(qfcc.qld.gov.au\)](https://qfcc.qld.gov.au)

<sup>12</sup> Queensland Government (2023). [Changes to the Youth Justice Act 1992 | Department of Youth Justice, Employment, Small Business and Training \(desbt.qld.gov.au\)](https://desbt.qld.gov.au)

<sup>13</sup> Premier and Minister for the Olympic and Paralympic Games (2023). [Refreshed Cabinet to deliver for Queenslanders - Ministerial Media Statements](#)

<sup>14</sup> Premier and Minister for the Olympic and Paralympic Games (2023). [Refreshed Cabinet to deliver for Queenslanders - Ministerial Media Statements](#)

<sup>15</sup> Queensland Government (2023). *Budget Measures: Budget Paper no. 4*. [Budget 2023-24 BP4 Budget Measures.pdf](#) (p. 44).

		provide services and supports to young people detained in watch houses. \$2.1 million is being used to establish a watch house response co-ordination unit. \$1.4 million is being allocated to continue funding Murri Watch to provide advocacy and support services to young people detained in watch houses. \$4.7 million is being used for an operational implementation team, recruitment and training. \$8.8 million is provided for continued preliminary work and procurement activities, including sole sourcing options, on the new youth detention centres, to be located at the Woodford Corrections Precinct and near Cairns, and interim options. The Government is providing increased funding of a further \$11.7 million, held centrally, to provide services to support strategies addressing capacity issues at youth detention centres.
8 September 2023	Queensland Government announces a dedicated youth watch house will be established in Caboolture. <sup>16</sup>	A Queensland Government announcement outlines that a recently constructed watch house in Caboolture will be converted to a child-specific facility as early as October 2023 with capacity for up to 31 children. Funding of \$462,000 is announced in the budget for the Caboolture Watch house Education Support Hub.
4 August 2023	Decision by the Supreme Court that the holding of three children in police watch houses is unlawful.	A case launched by Caxton Legal Centre on behalf of Youth Empowered Towards Independence against the Queensland Police Commissioner and the Department of Youth Justice's chief executive finds the holding of three children in police watch houses is unlawful. The Supreme Court orders the urgent transfer of the three children to youth detention, and raises concerns about other children who may potentially be held unlawfully. <sup>17</sup>
24 August 2023	Rapid changes made to Queensland legislation to allow children to be held in watch houses while awaiting transfer to detention centres.	The Government makes changes to the YJ Act following the Supreme Court decision. Amendments made lawful the " <i>longstanding practice of holding children in watch houses until beds become available in youth detention centres</i> ", a practice that was suggested to have been used for the last 30 years. This required an override of the <i>Human Rights Act 2019</i> , effective until 2026. <sup>18</sup>
5 October 2023	Announcement of the construction of a new youth remand centre in Brisbane.	The Government announces a new youth remand facility will be built under a rapid build approach in Wacol to address the lack of detention capacity. The facility will be designed to accommodate approximately 50 young people and is set to open in 2024. <sup>19</sup>

<sup>16</sup> The Guardian (8 September 2023) [Queensland to create watch house for children amid fears of looming 'human rights disaster'](#)

<sup>17</sup> Kate McKenna, Australian Broadcasting Commission (2023). [Queensland Supreme Court judge orders urgent transfer of three children to youth detention from watch houses - ABC News](#)

<sup>18</sup> Queensland Government (2023). [Changes to the Youth Justice Act 1992 | Department of Youth Justice, Employment, Small Business and Training \(desbt.qld.gov.au\)](#)

<sup>19</sup> Queensland Government (2023). [New youth remand facility to be built at Wacol - Ministerial Media Statements](#)



## Methodology

The QFCC set three Terms of Reference for the conduct of this review:

1. Conduct a case file read on the cases of 30 young people identified by the OPG as having spent extended time in watch houses in 2022 and 2023, to understand and evidence:
  - a) the reasons contributing to the extended time; and
  - b) the steps taken to meet the legislative requirements relating to those young people during their remand.
2. Compare the legislative and practice differences between Queensland and other Australian jurisdictions to understand why Queensland is experiencing these challenges.
3. Build a statistical profile of key areas of the system to understand the drivers of the extended time (and, where possible identify the influential factors).

In February 2023, the Principal Commissioner wrote to the then:

- Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence;
  - Minister for Children and Youth Justice and Minister for Multicultural Affairs;
  - Police Commissioner;
  - Public Guardian; and
  - Directors-General responsible for Child Safety, Youth Justice and Justice and Attorney-General
- advising of the commencement of this review.

The Principal Commissioner also wrote to the Human Rights Commissioner and spoke with other entities regarding the commencement of this review and approach. Appendix 2 provides a copy of the Terms of Reference.

### Terms of Reference 1 - Case file read

The QFCC obtained information from the OPG regarding the children recorded as having spent extended time in a watch house between 2022 and 2023. A group of 30 children were selected from a larger list to enable QFCC to gather further information from agencies on:

- the reasons contributing to the extended time young people were spending in watch houses; and
- the steps taken to meet legislative obligations relating to those young people during their remand.

On 14 April 2023, the Principal Commissioner, QFCC, issued an information request to the Commissioner of Police and then Director-General, Department of Children, Youth Justice and Multicultural Affairs<sup>20</sup> (Youth Justice) under section 35 of the *Family and Child Commission Act 2014* (FCC Act). The request required the production of documentation by 14 May 2023 for the 30 children who spent an extended stay in a watch house showing:

1. the reasons for the child's entry to the watch house;
2. the reasons for the child's ongoing detention in the watch house;
3. the family situation at the time of child detainment;
4. the evidence of the steps taken to meet the legislative, policy and/or procedural requirements relating to those young people during their remand;
5. evidence that physical safety needs were met; and

<sup>20</sup> Following the Machinery of Government changes in 2023, the department responsible for Youth Justice changed from the Department of Children, Youth Justice and Multicultural Affairs to the Department of Youth Justice, Employment, Small Business and Training. The agency responsible for Child Safety is the Department of Child Safety, Seniors and Disability Services.

6. the oversight, advocacy and support provided in the watch houses.

The QPS provided the QFCC a spreadsheet with information on 17 May 2023.

The Department of Youth Justice, Employment, Small Business and Training (Youth Justice) provided information transcribed into a spreadsheet and documentation on point 6 listed above on 15 June 2023, but had no records to answer data points 1-5 above.

Following receipt, further information was requested from the Department of Child Safety, Seniors and Disability Services (Child Safety) to verify which of the 30 children were under the custody or guardianship of Child Safety, the order type and the child's recorded cultural status. This information was provided in a timely manner.

Findings from case information are detailed throughout this report. See Appendix 3 for further detail on the information requested from agencies.

## Terms of Reference 2 - Jurisdictional analysis

The intent of this component was to compare the legislative and practice differences between Queensland and other Australian jurisdictions to understand why Queensland is experiencing an increase in the number of young people who spend extended time in watch houses. The scan looked at:

- legislation in each jurisdiction with a specific focus on bail, remand and custody decision making to identify differences – with explicit reference to the rules and requirements relating to detaining children and young people in police watch houses; and
- recent strategies and annual reports of agencies responsible for youth justice to identify differences in the Queensland program and practice setting - specifically those that cover holding and caring for children and young people in police watch houses, and alternatives to the use of watch houses (such as bail support and bail housing services, remand centres, electronic monitoring, and other supportive programs including court technology, transport alternatives, etc).

Relevant findings are summarised in Section 3.

## Terms of Reference 3 - Data analysis

The intent of this Terms of Reference was to examine the connections and trends along the continuum of the youth justice system to identify the systemic drivers of extended lengths of stay in watch houses.

On 13 April 2023, the Principal Commissioner, QFCC, issued an information request to the Commissioner of Police, President of the Childrens Court Queensland and then Director-General of Youth Justice under section 35 of the FCC Act. The request required the production of a data set for a four-year period between 2019 and 2022 to capture key areas related to the decision-making about pathways into and out of a watch houses. Data was requested with a three-week deadline. The data requested included:

- apprehension and arrest rates;
- types of charges and offending patterns;
- distinction between total numbers of interactions and unique individuals;
- bail and diversion rates and any pattern of change in decision-making by police or the courts;
- reasons for remand;

- detention rates, including changes in sentence type and length;
- court timeframes;
- logistical/transport activities;
- detention centre and watch house capacity; and
- detention centre and watch house staffing numbers.

The Childrens Court (via the Department of Justice and Attorney-General) provided data on 26 May 2023. Youth Justice provided data on 15 June 2023 – two months after it was requested. The QPS provided data in part on 25 August 2023 – four months after it was requested. There were limitations in the data provided by all agencies. It should be noted that the COVID-19 pandemic may have had an impact on data trends, particularly during 2020-21.

Appendix 4 provides further detail on the data requested from agencies. Data analysis is presented in Section 3.

## Section 2 - Legislation and policy on the use of watch houses

### Queensland

A young person is taken to a watch house following an arrest by police and remains there if charged and the police make a decision to remand the child in custody (rather than grant them bail) ahead of their first court appearance.

The YJ Act provides that police must bring a child before the court *“as soon as possible and within 24 hours after arrest or ...as soon as practicable on the next day court can practically be constituted.”* Section 50 of the YJ Act provides consequences for failing to meet this timeframe, including that the young person must be released or granted bail. Of the 30 case studies we explored, this timeframe was met for 25 of the 30 children, with reasons provided for delay for the other 5 children (such as being arrested on the weekend).

Once a child appears before a court, the court can decide to bail or remand the child, among other matters. The considerations that a police officer or court can use to make a release or remand decision are outlined in section 48AA of the YJ Act. These provisions require a child to be held in custody if police or the court is satisfied that:

- if the child is released, there is an unacceptable risk they will commit an offence that endangers the safety of the community or the safety or welfare of a person; and
- it is not practicable to adequately mitigate that risk by imposing particular conditions of release on bail.

In addition, police or the court can decide to keep a child in custody if they are satisfied that, if the child is released, there is an unacceptable risk that:

- the child will not surrender into custody in accordance with a condition imposed on the release or a grant of bail to the child;
- the child will commit an offence, other than an offence that endangers the safety of the community or the safety or welfare of a person; or
- the child will interfere with a witness or otherwise obstruct the course of justice, whether for the child or another person.

The reasons for these decisions must be recorded in accordance with section 48B of the YJ Act.

Children held in a watch house for an extended time have been refused bail by a court and have returned to the watch house on remand rather than being transferred to a detention centre. Recently, this practice was subject to a judgement by the Supreme Court in which the urgent transfer of three children to youth detention was ordered following the determination that children were held unlawfully in a watch house. Following this judgement, on 24 August 2023 the Queensland Government made legislative amendments to section 56 of the YJ Act to make it lawful. A decision-making framework was also introduced with factors the Chief Executive (Youth Justice) considers in transferring a child into a detention centre following court remand (among other matters). As a result of these amendments, Queensland is one of the only jurisdictions where a young person can be held in a watch house for an extended period of time.

Figure 1 provides a flowchart depicting the movement of children and young people through the youth justice and child protection systems.



- **Principle 2** – The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.
- **Principle 3** – A child being dealt with under this Act should be treated with respect and dignity, including while the child is in custody.
- **Principle 8** – The youth justice system should give priority to proceedings for children remanded in custody.
- **Principle 12** – A decision affecting a child should, if practicable, be made and implemented within a timeframe appropriate to the child’s sense of time.
- **Principle 13** – A person making a decision relating to a child under this Act should consider the child’s age, maturity and, where appropriate, cultural and religious beliefs and practices.

- **Principle 19** - A child detained in custody should only be held in a facility suitable for children.

A young person's human rights are also protected under the *Human Rights Act 2019* (Qld), in particular:

- **Section 26(2)** – The right of every child, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.
- **Sections 30(1) and (2)** – All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person, and an accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.
- **Section 33(1)** – An accused child who is detained, or a child that is detained without charge, must be segregated from all detained adults.
- **Section 36(1)** – Every child has the right to have access to primary and secondary education appropriate to the child's needs.

The QPS *Operational Procedures Manual* section 16.17 relates specifically to children in watch houses and outlines various requirements that must be adhered to. A summary of the relevant procedures is below:

#### **Admitting a child to a watch house**

*16.17.3 Care of children in custody: As soon as practicable upon admission, a child who is lodged in a watch house must be provided with information regarding their rights and responsibilities whilst in a watch house. A copy of the rights and responsibilities of children whilst in custody in a watch house is to be given to the child and any parent or adult guardian. Where the police officer or watch house officer suspects the child and/or adult carer cannot understand or read the document, the officer is to explain the document verbally. For this purpose, the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA) representative, independent person, authorised cell visitor or child's legal representative can be present.*

#### **Length of stay in watch houses.**

*16.17.5 Custody of children in watch houses: Custody in a watch house overnight means a continuous period of custody in a watch house of at least six hours, commencing after 9pm and ending at or before 6am. Wherever practicable children are not to be kept in custody in a watch house. Following the arrest of a child where the child remains in custody and the child's court appearance is delayed; or sentencing in detention or remanding of a child in custody, the relevant watch house manager should ensure, wherever practicable, the child is transferred to a detention centre nominated by a DCYJMA (Youth Justice) representative.*

*When a child is to be held in custody in a watch house overnight, the Officer in Charge (OIC) of the watch house is to record the reasons for the decision to hold the child in custody in the child's relevant QPRIME custody report.*

*A child should only be kept in custody in a watch house overnight where:*

- *it is not reasonably practicable to immediately transport the child to a youth detention centre; and*
- *there are no extenuating factors, such as:*
  - *a perceived need for the child to remain close to significant family members; and*
  - *subjecting the child to lengthy transportation to a youth detention centre only to return soon after to the same watch house to attend court.*

*If, following consultation with the nearest area office of Youth Justice (or the Child Safety After Hours Service Centre), in accordance with the provisions of the previous section, it is not reasonably practicable*

*to transfer the child to a detention centre, the watch house manager should notify the commissioned officer responsible for that watch house. The commissioned officer may authorise that the child continues to be kept in custody in a watch house. The commissioned officer should:*

- record the reasons for the decision in the officer's diary; and*
- ensure the reasons for the decisions are recorded in the child's relevant QPRIME custody report.*

*If a child is to be kept in custody in a watch house longer than overnight the commissioned officer is to ensure the relevant Manager, DCYJMA, Youth Justice is aware of the custody.*

See Appendix 5 for further details.

## Changing policy landscape relevant to use of watch houses

Patterns in the use of watch houses for young people have been affected by the policy landscape in Queensland, which has shifted significantly over recent years. Other than the more recent changes outlined in Table 1 above, some of the key changes relevant to the discussions in this report are outlined below.

### **Policy changes – inclusion of 17-year-olds in the youth justice system**

One of the most significant changes to the current youth justice system was the transition of 17-year-olds from the adult criminal justice system to the youth justice system from 12 February 2018. This had a significant effect on the capacity of detention centres.

*Queensland's youth detention capacity issues have been exacerbated by the introduction of 17-year-old offenders entering the youth justice system (since February 2018) resulting in a 45 per cent increase in youth justice custody numbers relative to the then 10 to 16-year-old cohort.<sup>22</sup>*

### **Major reform – the Youth Justice Strategy 2019–23**

On 8 June 2018, Mr Bob Atkinson AO APM delivered his *Report on Youth Justice* (Atkinson Report)<sup>23</sup> to Government recommending that the Queensland youth justice system be modelled on the following four pillars:

- Intervene Early;
- Keep children out of court;
- Keep children out of custody; and
- Reduce reoffending.

In response, the Queensland Government released the Youth Justice Strategy on 11 December 2018, which adopted the four pillars for youth justice policy.<sup>24</sup>

On 25 July 2019, the Youth Justice Strategy Action Plan 2019-21 (Action Plan) was released which set out practical steps to implement the Youth Justice Strategy, including a specific commitment to reduce the use of watch houses to accommodate children on remand. Strategies included: a new 32 bed youth detention centre at Wacol,

<sup>22</sup> Building Queensland (2020). [New Youth Detention Centre summary \(statedevelopment.qld.gov.au\)](https://statedevelopment.qld.gov.au)

<sup>23</sup> Atkinson AO, APM, B. (2018). *Report on youth justice*. [Atkinson Report on Youth Justice \(desbt.qld.gov.au\)](https://desbt.qld.gov.au)

<sup>24</sup> Queensland Government (2018). *Working together changing the story: Youth Justice Strategy 2019-2023*. [Youth justice strategy 2019-2023 - Working Together Changing the Story \(desbt.qld.gov.au\)](https://desbt.qld.gov.au)



an additional 16 beds for the Brisbane Youth Detention Centre, and additional resources at watch houses to provide appropriate support to children.<sup>25</sup>

### ***Policy changes – alternative bail options and presumption in favour of bail***

For some time, the importance of safe and appropriate accommodation for young people successfully applying for bail has been debated. In 1997, the *Seen and Heard: Priority for Children in the Legal Process* (1997) report highlighted that lack of accommodation should not be a sufficient reason to refuse bail to a young person.<sup>26</sup> In 2017, the then Department of Youth Justice report, *Predictors of Remand in Queensland Youth Justice*,<sup>27</sup> suggested that one of the most common reasons for refusing bail for children (from watch houses) continues to be on the grounds of an absence of suitable accommodation. This issue was also raised in the Report on Youth Justice.<sup>28</sup>

Supervised Community Accommodation services were introduced in late 2017 to address the need for alternative accommodation supports by ensuring that young people granted bail by a court, and who do not have a safe home to go to, are supervised and supported to reconnect with family and other services. This initiative was regarded as having the potential to reduce the number of young people held on remand. Three independent evaluations were conducted on the initiative. They found the program was too expensive and that similar outcomes could be achieved by other programs. Supervised Community Accommodation was subsequently discontinued in early 2021.<sup>29</sup> Since that time, no alternative bail support accommodation has been in place in Queensland.

On 22 August 2019, the *Youth Justice and Other Legislation Amendment Act 2019* was passed by the Queensland Parliament.<sup>30</sup> The Act introduced an explicit presumption in favour of a child being released on bail. A new bail decision-making framework<sup>31</sup> was also introduced to guide the police and courts in decisions about remand and bail. The decision-making framework was aimed at facilitating more grants of bail to appropriate children to reduce their number in detention on remand. The police and courts were able to impose conditions to mitigate unacceptable risk (that is, risk of re-offending, endangering the safety or welfare of a person, or interfering with a witness) in order to grant bail. The amendments clarified that unacceptable risk must not be determined solely on a lack of adequate accommodation or family support.

### ***Policy changes – presumption against bail***

On 17 June 2020, the Queensland Parliament passed bail amendments to the YJ Act to make it clear that if a young person is a danger to the community, they must be denied bail and remanded in custody. The changes commenced on 15 July 2020 and were aimed at a small proportion of repeat young offenders in Queensland. A

<sup>25</sup> Queensland Government (2018). *Working together changing the story: Youth Justice Strategy action plan 2019-2021*. [Youth Justice Strategy Action Plan 2019-2021 \(desbt.qld.gov.au\)](https://desbt.qld.gov.au/youth-justice-strategy-action-plan-2019-2021)

<sup>26</sup> Australian Law Reform Commission (1997). *Seen and heard: priority for children in the legal process* (ALRC Report 84). [Seen and heard: priority for children in the legal process \(ALRC Report 84\) | ALRC](https://www.alrc.gov.au/publications/seen-and-heard-priority-for-children-in-the-legal-process)

<sup>27</sup> Department of Child Safety, Youth and Women (2017). *Predictors of remand in Queensland*. (Unpublished).

<sup>28</sup> Atkinson AO, APM, B. (2018). *Report on youth justice*. [Atkinson Report on Youth Justice \(desbt.qld.gov.au\)](https://desbt.qld.gov.au/atkinson-report-on-youth-justice)

<sup>29</sup> Department of Youth Justice (2020). *Supervised community accommodation: evaluation, multi-criteria analysis and policy options report*. [Supervised community accommodation - Evaluation, multi-criteria analysis and policy options report \(desbt.qld.gov.au\)](https://desbt.qld.gov.au/supervised-community-accommodation-evaluation-multi-criteria-analysis-and-policy-options-report)

<sup>30</sup> Youth Justice and Other Legislation Amendment Act 2019 (Qld). [Youth Justice and Other Legislation Amendment Act 2019 - Queensland Legislation - Queensland Government](https://www.qld.gov.au/legislation/other-legislation/amendments/youth-justice-and-other-legislation-amendment-act-2019)

<sup>31</sup> Youth Justice and Other Legislation Amendment Act 2019 (Qld). [Youth Justice and Other Legislation Amendment Act 2019 - Queensland Legislation - Queensland Government](https://www.qld.gov.au/legislation/other-legislation/amendments/youth-justice-and-other-legislation-amendment-act-2019)



new section was inserted into the YJ Act (section 48AAA(2)) to ensure that any young person who is a danger to the community will not be released on bail, changing the remand test from one where a child 'may' be kept in custody to one where the child 'must' be kept in custody.<sup>32</sup>

#### **48AAA Releasing children in custody—risk assessment**

- (1) This section applies if a court or police officer is deciding whether to release a child in custody in connection with a charge of an offence or keep the child in custody.
- (2) The court or police officer must decide to keep the child in custody if satisfied—
  - (a) if the child is released, there is an unacceptable risk that the child will commit an offence that endangers the safety of the community or the safety or welfare of a person; and
  - (b) it is not practicable to adequately mitigate that risk by imposing particular conditions of release on bail.
- (3) Also, the court or police officer may decide to keep the child in custody if satisfied that, if the child is released, there is an unacceptable risk that—
  - (a) the child will not surrender into custody in accordance with a condition imposed on the release or a grant of bail to the child; or
  - (b) the child will commit an offence, other than an offence mentioned in subsection (2)(a); or
  - (c) the child will interfere with a witness or otherwise obstruct the course of justice, whether for the child or another person.

Further amendments came into effect on 30 April 2021 to strengthen accountability for serious repeat young offenders. These amendments included:

- a limited presumption against bail for children charged with particular offences while on bail for an indictable offence;
- time limited (2 years) provisions for electronic monitoring devices (EMD) as an available bail condition for young offenders aged 16 years and over charged with particular offences;
- an ability for bail decision-makers to consider the willingness of a parent, guardian or other person to support a young person on bail, and advise of any relevant change of circumstances or breach of bail;
- reinforcement of the existing youth justice principle to uphold community safety by adding an additional principle that the community should be protected from serious recidivist offenders;
- reinforcement that an offence committed on bail should be considered as an aggravating factor during sentencing; and
- clarity about the existing provision that a young person cannot be remanded in custody solely because they do not have adequate accommodation or family support.<sup>33</sup>

On 22 March 2023, the *Strengthening Community Safety Act 2023* came into effect, amending the YJ Act and other legislation. Relevant amendments included:

- extending and expanding the trial of EMDs as a condition of bail for a further two years to include eligible 15-year-olds;

<sup>32</sup> Department of Youth Justice, Employment, Small Business and Training (2023). [Changes to the Youth Justice Act 1992 | Department of Youth Justice, Employment, Small Business and Training \(desbt.qld.gov.au\)](https://desbt.qld.gov.au/changes-to-the-youth-justice-act-1992)

<sup>33</sup> Department of Youth Justice, Employment, Small Business and Training (2023). [Changes to the Youth Justice Act 1992 | Department of Youth Justice, Employment, Small Business and Training \(desbt.qld.gov.au\)](https://desbt.qld.gov.au/changes-to-the-youth-justice-act-1992)

- expanding the list of offences with a presumption against bail;
- confirming in legislation that a court is to take into account the young person's bail history when sentencing; and
- empowering a sentencing court to declare a child a 'serious repeat offender' (SRO) to enable considerations such as community safety to be paramount when sentencing.<sup>34</sup>

### **Policy changes – holding children in watch houses following court remand**

On 24 August 2023, urgent amendments to the YJ Act were passed by the Queensland Parliament. The amendments followed a decision by the Supreme Court that the holding of three children in police watch houses was unlawful.<sup>35</sup> The changes were reported to “reflect and validate what has been the understood and established practice for the last 30 years”.<sup>36</sup> The amendments included:

- making lawful the longstanding unlawful practice of holding children in watch houses until beds become available in youth detention centres;
- making that practice transparent by setting out criteria to be taken into account when deciding the prioritisation and timing of transfers;<sup>37</sup>
- providing a human rights declaration override that applies to this decision-making process until 31 December 2026;
- making a retrospective amendment to address past incidences of children being held in police custody in watch houses when section 56(4) of the YJ Act orders have not been made; and
- providing a human rights override declaration for the establishment of youth detention centres until December 2026, in extraordinary circumstances.<sup>38</sup>

### **Oversight and complaint mechanisms**

There are multiple bodies in Queensland with responsibility for overseeing youth detention, visiting children in custody and taking and resolving complaints. Within these oversight roles there are fragmented responsibilities and accountability for young people held in watch houses and detention centres. This includes:

- **The Youth Detention Inspectorate:** Established under section 263 (4) of the YJ Act, the Chief Executive responsible for youth justice is required to ‘monitor the operation of the detention centres and inspect each detention centre at least once every three months’. To give effect to this requirement, the Youth Detention Inspectorate (YDI) sits within Youth Justice and conducts quarterly inspections of the three detention centres against an expectations document. Youth Justice publishes summaries of the quarterly inspection reports. Previously, the full reports have been sent in confidence to the Principal Commissioner, QFCC. If this is not currently happening, it may be requested.
- **The Office of the Public Guardian (OPG):** The OPG has an oversight role of youth justice through its child advocacy functions, fulfilled by Child Advocates (legal officers) and Community Visitors. Both officers aim to advocate with, and on behalf of, children and young people. These services assist in the resolution of issues and disputes, make (and refer) complaints, and provide information where decisions are made about

<sup>34</sup> Department of Youth Justice, Employment, Small Business and Training (2023). [Changes to the Youth Justice Act 1992 | Department of Youth Justice, Employment, Small Business and Training \(desbt.qld.gov.au\)](#)

<sup>35</sup> Queensland Judgements (2023). *Youth Empowered Towards Independence Inc v Commissioner of Queensland Police Service* [2023] QSC 174. <https://www.queenslandjudgments.com.au/caselaw/qsc/2023/174>

<sup>36</sup> Department of Youth Justice, Employment, Small Business and Training (2023). [Changes to the Youth Justice Act 1992 | Department of Youth Justice, Employment, Small Business and Training \(desbt.qld.gov.au\)](#)

<sup>37</sup> *Youth Justice Act 1992*, s 56 Custody of child if not released by court.

<sup>38</sup> Department of Youth Justice, Employment, Small Business and Training (2023). [Changes to the Youth Justice Act 1992 | Department of Youth Justice, Employment, Small Business and Training \(desbt.qld.gov.au\)](#)

children. Youth Justice provides OPG with quarterly information about suspected harm, complaints and investigations in youth detention centres in accordance with its legislative obligations.

- **Queensland Ombudsman and the Inspector of Detention Services:** The Queensland Ombudsman investigates complaints about the actions and decisions of State Government departments and agencies, including with respect to youth detention centres and watch houses. In 2023 the Ombudsman also became the Inspector of Detention Services and is required to inspect youth detention centres to “promote the improvement of detention services and places of detention with a focus on promoting and upholding the humane treatment of detainees, including the conditions of their detention”.
- **QPS Ethical Standards Command:** The responsibility for investigating incidents at police watch houses is legally held by the Ethical Standards Command within QPS.
- **Queensland Human Rights Commission:** Established to receive and investigate complaints under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019*. These complaints can be made with respect to all public entities, which includes youth detention centres and police watch houses.
- **Crime and Corruption Commission (CCC):** The CCC is an independent statutory agency that has oversight responsibility for the police and the public sector, investigating complaints related to the most serious or systemic corruption affecting Queensland public sector agencies. This includes youth detention centres and police watch houses.
- **Office of the Health Ombudsman:** Under the *Health Ombudsman Act 2013*, the Health Ombudsman investigates health services provided within detention centres and police watch houses. It also includes any situation where a child detained in a youth detention centre or police watch house is transferred to a hospital for treatment.
- **Queensland Family and Child Commission:** Under section 9 of the FCC Act, the QFCC has responsibility “to promote and advocate for the safety and wellbeing of children and young people, particularly children in need of protection or in the youth justice system”; to “assist relevant agencies evaluate the efficacy of their programs and identify the most effective service models;” and “to analyse and evaluate, at a systemic level, policies and practices relevant to the child protection system and the performance of relevant agencies in delivering services”. The QFCC is not able to investigate the circumstances of an individual.
- **Child Death Review Board (CDRB):** The CDRB conducts systemic reviews following the death of a child connected to the child protection system under Part 3A of the FCC Act.
- **Queensland Audit Office (QAO):** Under the *Auditor-General Act 2009*, the QAO is the Queensland Parliament’s independent auditor of all state and local government public sector entities. Through their audit activities, the QAO aims to improve public sector and local government financial management and reporting, maintain confidence in financial accountability and transparency, improve the delivery of public services and assure the Parliament about the performance of the public sector. The QAO’s Forward work plan 2023–26 lists ‘diverting young offenders from crime’ as a report they anticipate to deliver in 2023–24.

Appendix 6 provides information about the relevant roles and functions of these external oversight entities. In addition, DYJESBT has a number of internal oversight, review and investigation functions, including matters investigated by the Professional Standards Unit, the work of the Quality and Improvement Unit (which includes the Systems and Practice Review Committee that investigates serious injuries or deaths, and which also undertakes complex case reviews), and the conduct of operational performance reviews.

## Use of watch houses for young people across Australia

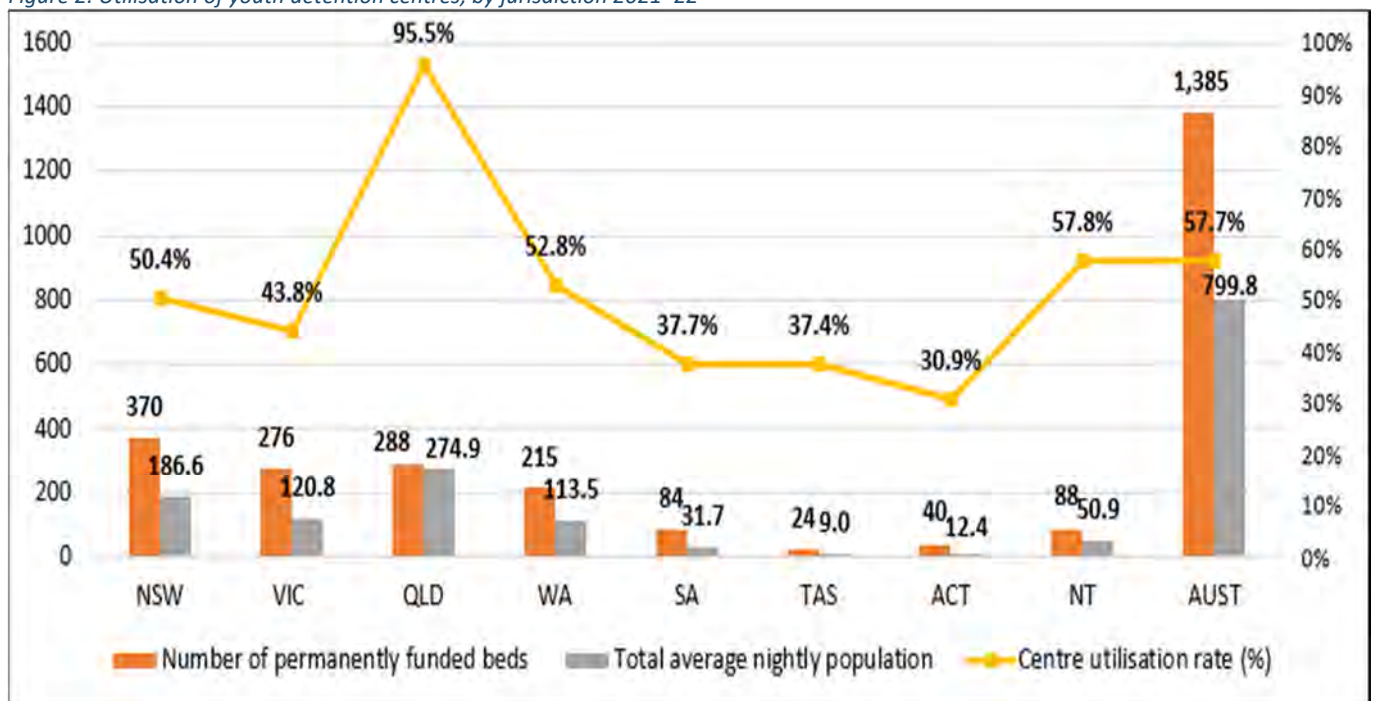
A component of this review was to undertake an environmental scan to compare legislative differences across all Australian jurisdictions to identify distinctions or gaps that contribute to Queensland detaining children in watch houses for extended periods. Table 2 provides an overview of this scan.

It should be noted that the legal use of watch houses, particularly for young people, requires assessment of a complex array of legislation in each jurisdiction. This includes Youth Justice Acts, Bail Acts, Police Administration Acts and others.

Through our research we could not find any other jurisdictions that report data on the extended stays of children in watch houses and it was difficult to locate specific information regarding initiatives to reduce the prevalence of the issue. We sought advice from the national network of Childrens Commissioners and Guardians, but the issue did not appear to be systemic in other jurisdictions in the same way as observed in Queensland.

While we were unable to identify data on the number of young people in watch houses across Australia, the review was able to access youth detention centre capacity numbers for all other states and territories. This shows Queensland's unique situation resulting from its high use of detention, and its built detention centre capacity.

Figure 2: Utilisation of youth detention centres, by jurisdiction 2021–22



Source: Productivity Commission's Report on Government Services<sup>39</sup>

<sup>39</sup> Australian Government Productivity Commission (2023). *Report on government services 2023: youth justice services*. [17 Youth justice services - Report on Government Services 2023 - Productivity Commission \(pc.gov.au\)](#)



From the information reviewed across jurisdictions, it appears that:

- Victoria is the only state to have a clear time limit on how long a child or young person may be kept in a watch house.
- In all jurisdictions except Queensland, the Australian Capital Territory and Tasmania, it is legislated that the police must contact the Aboriginal and Torres Strait Islander Legal Service if an Aboriginal or Torres Strait Islander young person is apprehended into custody (held in a watch house).
- The Northern Territory, South Australia, and Western Australia require a responsible adult to be notified if a child or young person is held in a watch house. Queensland has a legal requirement under section 392 of the *Police Powers and Responsibilities Act 2000* for an arresting officer to promptly advise a parent or guardian, and Youth Justice of the arrest and whereabouts of the child.
- Victorian children and young people must be held in a remand centre and must be held separately from adults, as well as separated by gender and age (children aged over 15 years must be held separately from those aged under 15 years).

Table 2: Summary of legislation for Australian jurisdictions relating to holding children and young people in watch houses

		QLD	VIC	NSW	TAS	NT	SA	WA	ACT
	Limit on time kept in police custody <sup>i</sup>	⊗	✓	⊗	⊗	⊖	⊗	⊗	⊖ <sup>ii</sup>
	Must contact Aboriginal and Torres Strait Islander Legal Service	⊗	✓	✓	⊗	✓	✓	✓	⊗
	Can be remanded in adult correctional facility	⊗	⊗	✓ <sup>iii</sup>	✓	✓ <sup>iv</sup>	✓ <sup>v</sup>	✓ <sup>vi</sup>	⊗
	Responsible adult must be notified	✓	⊗	⊗	⊗	✓	✓ <sup>vii</sup>	✓	⊗
Wellbeing of the child in police custody	Separated from adults	✓	✓	⊖ <sup>viii</sup>	⊖ <sup>ix</sup>	⊖ <sup>x</sup>	⊖ <sup>xi</sup>	✓	✓
	Separated by age	⊗	✓	⊗	⊗	⊗	⊗	⊗	⊗
	Separated by gender	⊗	✓	⊗	⊗	⊗	⊗	⊗	⊗
	Access to education	✓	⊗	✓	⊗	⊗	⊗	⊗	⊗
	Access to health care	✓	✓	✓	✓ <sup>xii</sup>	✓	⊗	⊗	✓
	Access to legal assistance	✓	✓	✓	✓	✓	✓	✓	✓
	Ability to make complaints	✓	✓	⊗	✓	⊗	⊗	⊗	✓

<sup>i</sup> Limit on time kept in police custody – The maximum time that children and young people can be kept in a watchhouse. For the jurisdictions in which a time limit is legislated, this limit ranges between 12 hours and 2 working days.

<sup>ii</sup> If a youth has been charged with an offence and is not admitted to bail, a police officer must, as soon as practicable, apply to the Court or a Local Court Judge for an order that the youth be detained at a detention centre or other place approved by the Minister for the purpose.

<sup>iii</sup> A young person lawfully required to be in police custody must not be detained continuously at a police cell for a period of longer than 12 hours. If the director-general believes, on reasonable grounds, that circumstances exist in relation to a detention centre that make it necessary or prudent for a young detainee admitted at the centre to be accommodated temporarily away from the centre, a detainee may be detained at a police cell or at a court cell. The period of detention is not limited.

<sup>iv</sup> A child of or above the age of 16 years may be remanded to a correctional centre if they are deemed not a suitable person for detention in a detention centre.

<sup>v</sup> (2) If the youth is remanded in custody, he or she can be detained in a detention centre or, if the youth has turned 15 years of age, in either a custodial correctional facility or detention centre as ordered by the Court.

<sup>vi</sup> If a youth is arrested outside an area specified in the regulations and it is not reasonably practicable to detain the youth as provided by subsection (1), the youth may be detained— (a) in a police prison; or (b) in a police station, watchhouse or lock-up approved by the Minister. (3) If a youth is detained in a police prison, police station, watch-house or lock-up in accordance with subsection (2), the person for the time being in charge of the police prison, police station, watch-house or lock-up must take such steps as are reasonably practicable to keep the youth from coming into contact with any adult person detained in that place.

<sup>vii</sup> Detention of a young person in custody, if required, is to be in 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 the 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.

<sup>viii</sup> (c) take all reasonable steps to inform— (i) the guardian of the youth; (ii) if a guardian is not available—an adult person nominated by the youth who has had a close association with the youth or has been counselling, advising or aiding the youth, of the arrest and invite him or her to be present during any interrogation or investigation to which the youth is subjected while in custody.

<sup>ix</sup> A child who is detained in a police station shall, so far as reasonably practicable, be detained separately from any adults detained there.

<sup>x</sup> If a youth who is less than 19 years old is detained in a prison or watch-house, the person for the time being in charge of the prison or watch-house must take such steps as are reasonably practicable to keep the youth from coming into contact with any adult detained in that place.

<sup>xi</sup> If a youth is taken from the place at which he or she is detained to a court, or from a court to the place of detention, he or she must, as far as practicable, be kept apart from other persons under detention who are not youths.

<sup>xii</sup> Where bail is not granted, the youth is detained separately from adult prisoners. They are to be held in a Training Centre until the matter can next be heard by the Youth Court. If it is not possible for the youth to be taken to a Training Centre, the youth may be detained in a police prison, or police station, watch-house or lock-up approved of by the Minister. However whilst being detained at one of those locations, steps must be taken as are reasonably practicable to keep the youth from coming into contact with any adult person detained in that location.

## Section 3 – Use of watch houses in Queensland: Summary of key findings

- Queensland is detaining young people in watch houses for longer:
  - There was a marked increase in medium-term detentions of 3 to 7 nights from 2019 to 2022; and
  - For detentions lasting 8 to 15-plus days, the half-year numbers for 2023 (January to June) surpassed the full-year numbers for 2022.
- Entries of young people into watch houses decreased from an average of 751.4 per month in 2019 to 670.8 per month in 2022.
- Fewer distinct children and young people are being arrested, but the arrest rate per young person has increased:
  - Unique arrests decreased from 11,1150 in 2019 to 10,266 in 2022; and
  - The arrest rate has risen from 3.9 arrests per young person in 2019 to 4.7 arrests in 2022.
- Children and young people are being refused bail more often:
  - Parent and family circumstances are a contributor to police decisions to refuse bail; and
  - Bail refusals by the Childrens Court have increased significantly from 12.8 per cent in 2019 to 20.3 per cent in 2022.
- In recent years, youth detention centres frequently exceeded their safe operating capacity, with Brisbane and West Moreton Youth Detention Centres exceeding the capacity for every month of 2022.
- Almost 9 in 10 young people in detention centres were awaiting sentencing, spending an average of 48 nights in custody awaiting a legal outcome.
- The Childrens Court has remanded more young people in custody in recent years (+16.5 per cent from 2019 to 2022), although the overall number of defendants has decreased.
- There has been an increase in the prevalence of three serious offence types, and some offences now come with a presumption against bail, contributing to a higher rate of remand for some young people.
- Two of Queensland's youth detention centres experience staff shortages, and incidents and lockdowns can delay admissions to youth detention centres.
- The overall efficiency of the Childrens Court to resolve cases stayed relatively steady above 90 per cent clearance rate, however the number of unsentenced nights in detention centres for young people increased, suggesting that the efficiency gain did not extend to finalising the cases of young people in custody.
- The Childrens Court has sentenced a similar proportion of young people to imprisonment between 2019 and 2022, with no direct link to the rising detainee population.
- The vast majority of young people released from detention centres are returning to custody within 12 months, demonstrating the failure of custodial options to address offending and reoffending.
- Despite the number of oversight and regulatory bodies in place to ensure the system is effective, there has been a lack of transparency about the reasons for the issues identified in this report.

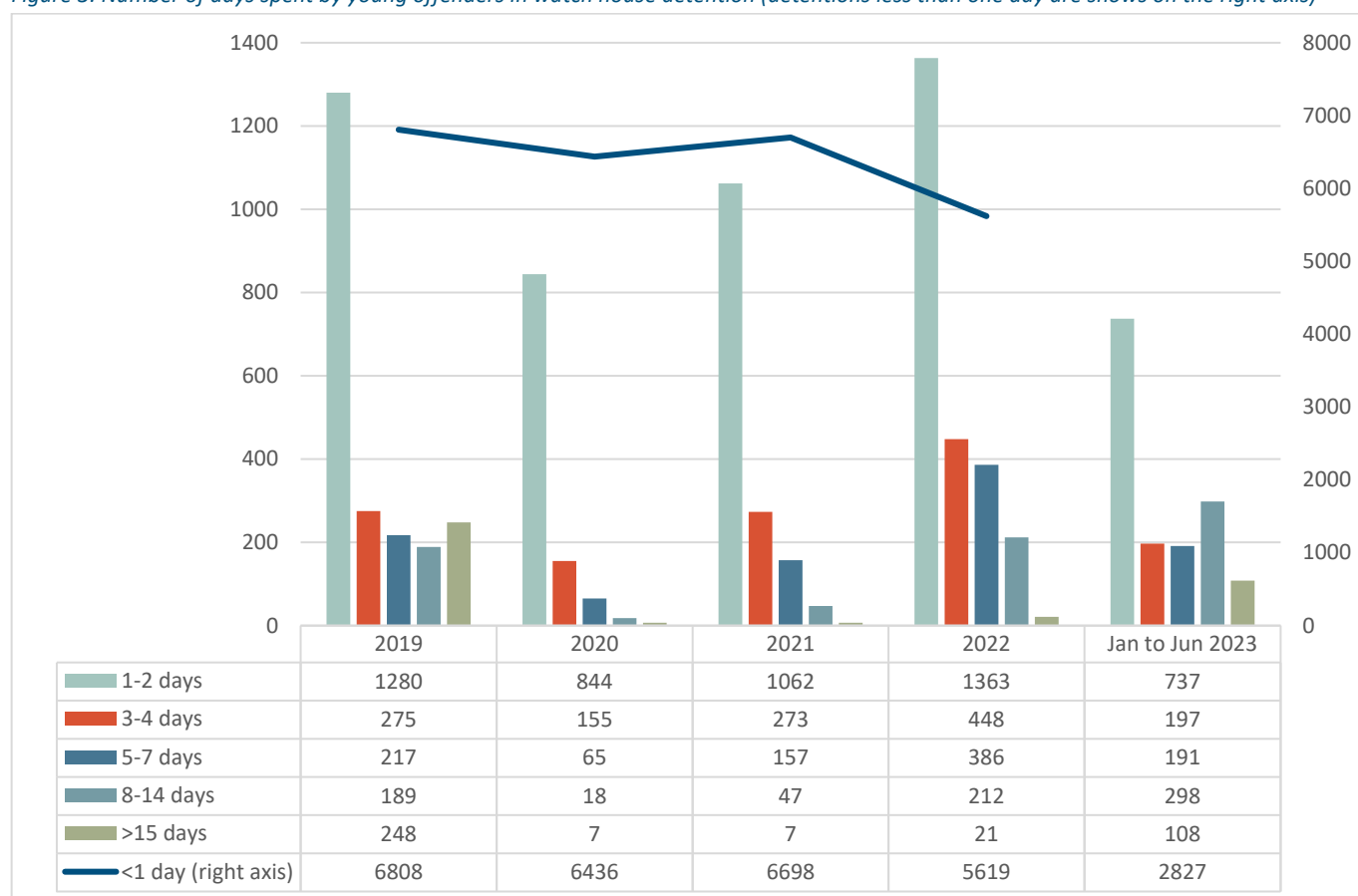
## Finding 1 – Young people held in watch houses are staying for longer

Data presented in Figure 3 demonstrates a trend of increasing lengths of stay by young people in watch houses. Between 2019 to 2022 there was a 17.5 per cent decrease in short-term detentions (less than 24 hours) of young people, and a substantial increase in medium-length stays of 3 to 7 nights.

Detentions lasting 5 to 7 days increased by 77.9 per cent between 2019 and 2022 (from 217 detentions to 386). Detentions lasting 8 to 14 days increased by 12.2 per cent, rising from 189 in 2019 to 212 in 2022.

Part-year data for 2023 (January to June) show a significant increase in detentions lasting between 8 to 14 days and those lasting 15 days or more. During this six-month period, there were 298 detentions in the 8 to 14-day category and 108 detentions of 15 days or longer—notably, the half-year numbers for 2023 have already surpassed the full-year figures for 2022. From January to June 2023, there were 86 more watch house detentions lasting 8 to 14 days (298 compared to 212 for the entirety of 2022) and 87 more detentions lasting 15 or more days (108 compared to 21).

Figure 3: Number of days spent by young offenders in watch house detention (detentions less than one day are shown on the right axis)



Source: Queensland Police Service unpublished data request





## CASE INFORMATION: Time in watch houses

Information regarding the 30 children in watch houses considered as part of this review showed that 17 children were held in a watch house for 10-29 days, including children aged under 14 years. Five children were held in a watch house for more than 29 days and 83 per cent of these 30 children had prior experience in a watch house. Half the children held in watch houses were aged 14 years or younger.

Time spent in watch house (days)	Number of children	Ages
➤ <5 days	5	10 years (2); 11 years (2); 12 years (1)
➤ 5-9 days	3	12 years (2); 15 years (1)
➤ 10-29 days	17	13 years (2); 14 years (6); 15 years (1); 16 years (8)
➤ >29 days	5	15 years (2); 16 years (2); 17 years (1)

## Finding 2 – The number of young people entering a watch house has remained relatively stable over recent years

Despite longer stays in watch houses, the number of watch house entries of young people have been relatively stable, aside from a notable decline between 2019 and 2020, likely due to the impact of the COVID-19 pandemic. Watch house entries decreased from an average of 751.4 entries per month in 2019 to 670.8 entries per month in 2022 (an individual young person can enter a watch house more than once in a given month). Correspondingly, there was a decrease in the number of unique young people held in watch house detention, dropping from a peak of 3,435 detainees in 2019 to 2,994 unique detainees in 2020. This decline was followed by a relatively flat trend, with 3,082 unique young people detained in 2021 and 3,055 in 2022. The monthly average decreased over time, with 552.3 unique young people detained each month in 2022 compared to 591.7 in 2019.

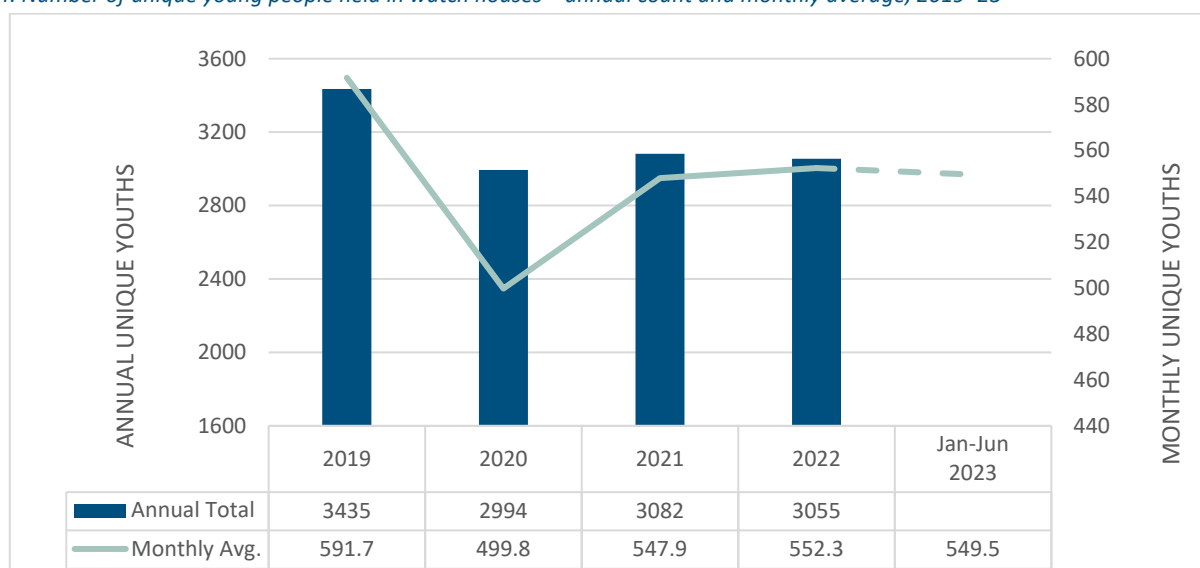
In the partial-year data for 2023 (January to June), the average continued to follow a stable trend, with 549.5 unique young people making 667 entries per month. Based on these findings, it is reasonable to conclude that the rapid increase in the length of time young people spend in a watch house is not driven by an increase in the number of young people being detained in a watch house.

Table 3: Average number of entries of young people to watch houses, per month, 2019–22

2019	2020	2021	2022	2023 (Jan-Jun)
751.4	627.1	687.0	670.8	667.0

Source: Queensland Police Service unpublished data request

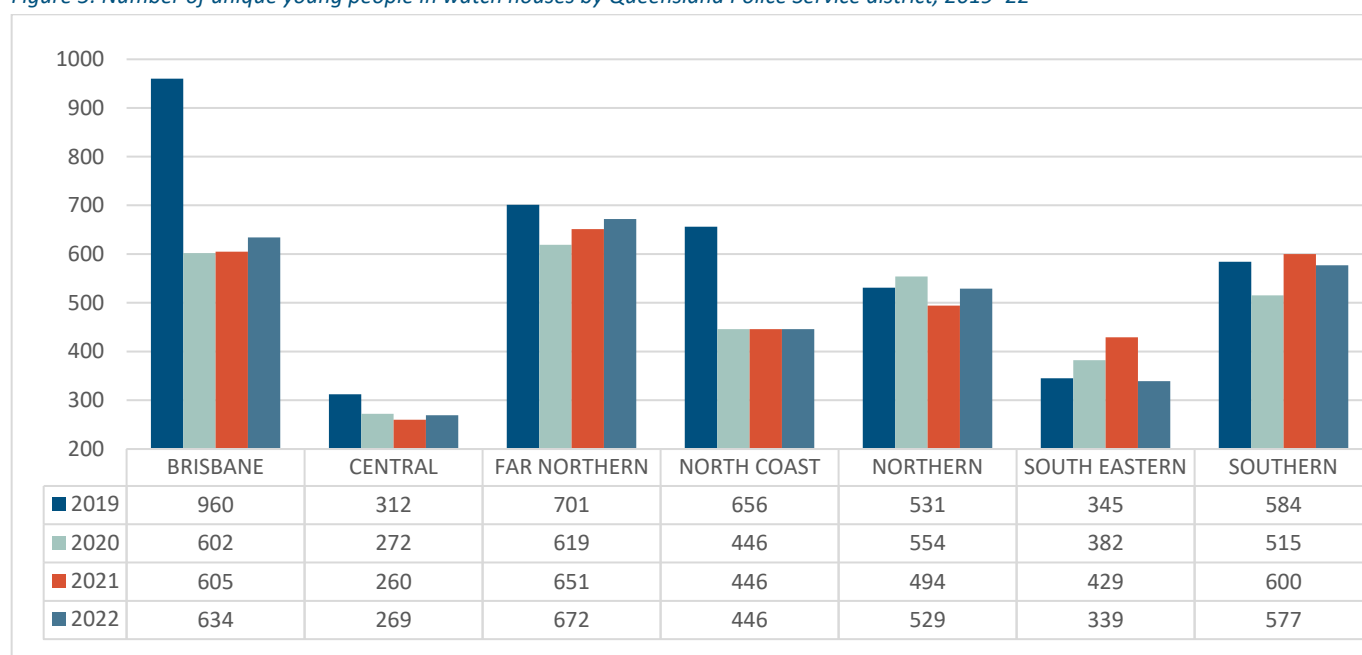
Figure 4: Number of unique young people held in watch houses – annual count and monthly average, 2019–23



Source: Queensland Police Service unpublished data request

While we have established that the overall number of young people in watch houses has been stable, there is evidence of some variation across Queensland regions. Brisbane, which previously had the largest number of young people in watch houses by a significant margin (960 in 2019), had a substantial 37.3 per cent decrease to an average of 613.7 unique young people per year from 2020 to 2022. Likewise, the North Coast and Central districts' numbers decreased by 32.1 per cent and 12.9 per cent respectively between 2019 and 2020, and have remained relatively flat. The Far Northern, Northern and Southern districts showed smaller adjustments from 2019 and 2020, with the number of unique young people remaining relatively consistent, albeit with minor fluctuations year-on-year. Conversely, the South-Eastern district trended upwards from 2019 to 2021 by 11.5 per cent, on average, before falling by 21 per cent in 2022.

Figure 5: Number of unique young people in watch houses by Queensland Police Service district, 2019–22

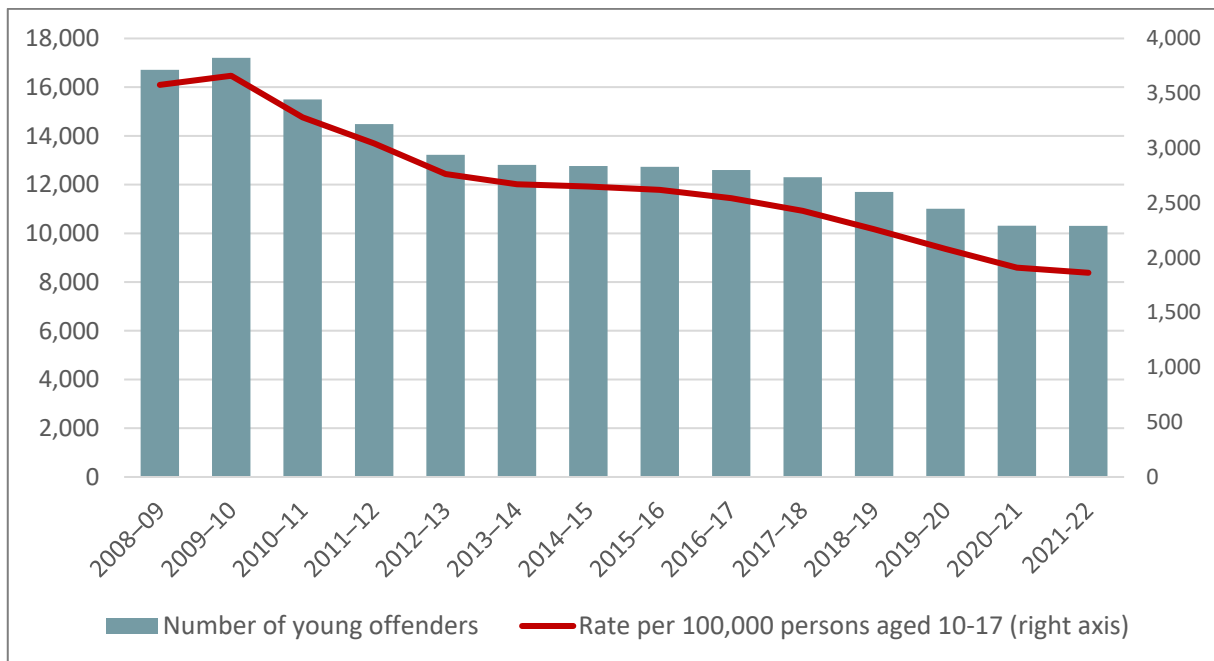


Source: Queensland Police Service unpublished data request

### Finding 3 – Arrests of a small group of young people have increased

The rate of youth offending in Queensland has been steadily decreasing since 2008. Between 2008–09 and 2021–22, the number of young offenders proceeded against by police aged 10–17 years decreased from 16,709 to 10,304. The rate per 100,000 persons aged 10–17 years dropped from 3,575.8 to 1,863 (see Figure 6).<sup>40</sup>

Figure 6: A comparison of the number of young offenders aged 10–17 years and the rate per 100,000 persons aged 10–17 years (FY2008–2021)



Source: Australian Bureau of Statistics, 2022<sup>41</sup>

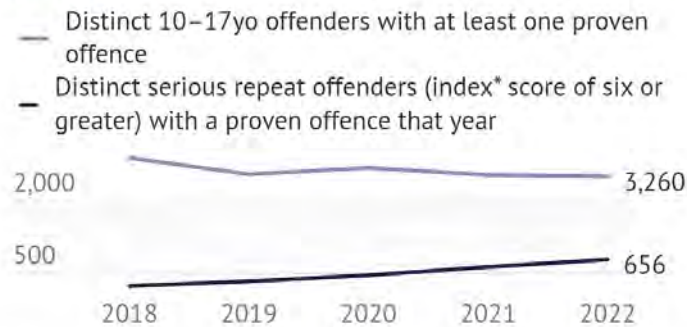
Against this overall reduction, information sourced from the Department of Youth Justice and published by the Brisbane Times demonstrates a pattern of increasing numbers of Serious Repeat Offenders (a cohort of young people whose offending appears entrenched).

<sup>40</sup> Australian Bureau of Statistics (2023). Recorded crime – Offenders 2021–22. <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release#queensland>

<sup>41</sup> Australian Bureau of Statistics (2022). Recorded Crime – Offenders 2020–21, Table 20 <https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release#queensland>



## How two key Queensland youth justice figures have changed over five financial years



\*Serious Repeat Offender Index scores take into account the young person's age, offending seriousness, frequency, and recency, along with custody nights.

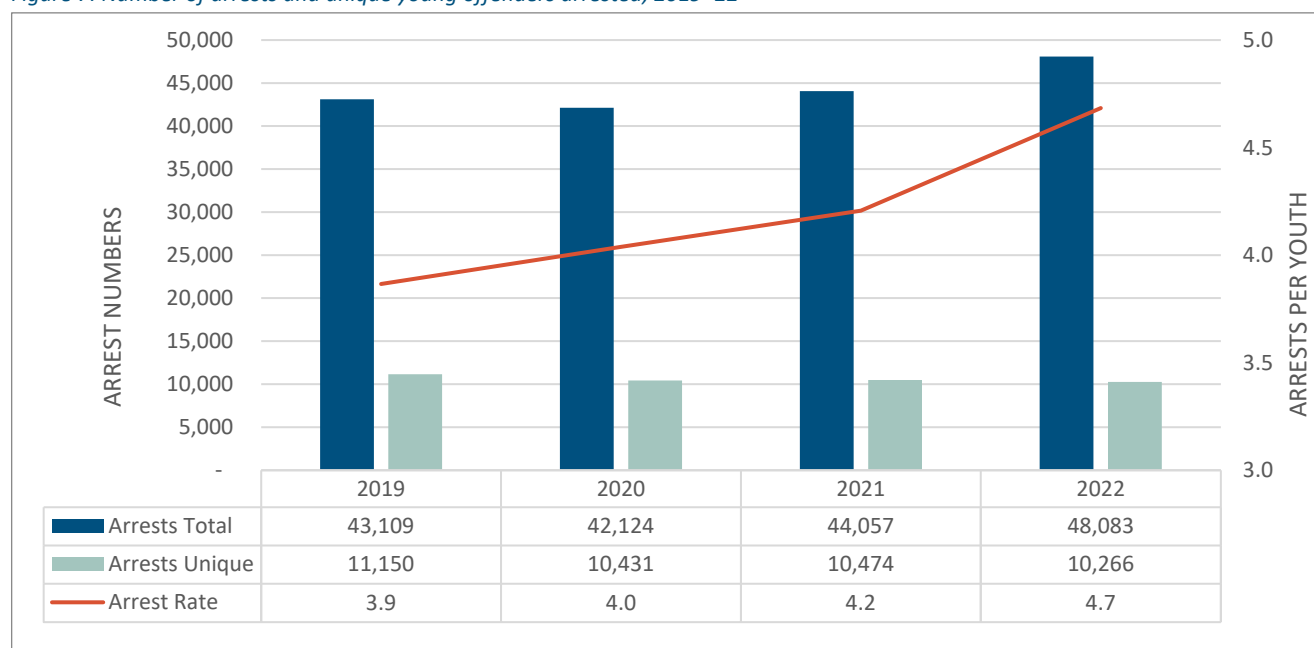
Source: Department of Youth Justice | CHART: BRISBANE TIMES

This is mirrored in our analysis, which showed that while arrests of young people increased modestly from 43,109 in 2019 to 44,057 in 2021, a substantial spike was observed in 2022, where total arrests rose to 48,083. Despite this uptrend in arrests, the number of distinct young people involved in these arrests has generally declined over the four-year period. Starting at 11,150 unique arrests in 2019, there was a 6.4 per cent decrease to 10,431 in 2020, which further declined to 10,266 unique arrests in 2022.

Correspondingly, the arrest rate per young person arrested has steadily increased, climbing from 3.9 arrests per young person in 2019 to 4.7 arrests in 2022. This higher rate over time suggests that a core group of young people were offending more often, and arrested more frequently year-on-year.<sup>42</sup> This likely explains why the increase in police activity did not correspond with a proportional increase in watch house numbers.

<sup>42</sup> The Australian Institute of Health and Welfare reported that, from Jul 2020 to Jun 2021, 91.3 per cent of Queensland youths aged 10-16 were re-incarcerated within 12 months of completing previous sentenced detention. This was a consistent annual increase from 2019-20 (87.3%) and 2018-19 (81.8%). Source: AIHW (2023). *Young people returning to sentenced youth justice supervision, 2021-22 supplementary data tables, Table s15*. <https://www.aihw.gov.au/reports/youth-justice/young-people-returning-to-sentenced-supervision/summary>

Figure 7: Number of arrests and unique young offenders arrested, 2019–22



Source: Queensland Police Service unpublished data request

Viewing arrest numbers through the prism of unique offenders reveals that the main change over the last four years is that Queensland is arresting the same young people at higher rates. Since the introduction of legislative amendments to the YJ Act in 2020, the focus on remanding repeat offenders has continued to be strengthened, shifting from presumption in favour of bail towards presumption against bail for repeat offenders. The *Youth Justice Reforms Review Final Report March 2022* found these changes resulted in an increase in young people on remand and longer remand periods.<sup>43</sup>

<sup>43</sup> Department of Youth Justice, Employment, Small Business and Training (2022). [Youth Justice Reforms Review final report \(p. 147\)](#).

## Finding 4 – Arrests for certain offences have increased and some young offenders are more likely to be detained than previously

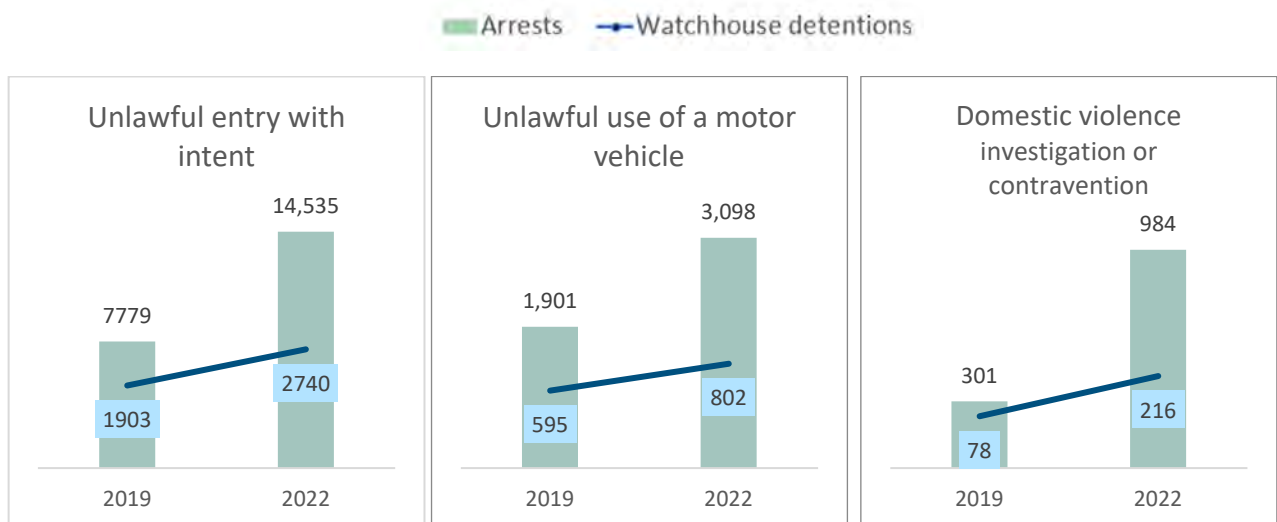
Several serious offence types have occurred more frequently in recent years. Annually, the rate of charges per unique young person in watch house detention has increased slightly, from 2.4 charges in 2019 to 2.7 in 2022. This means that, on average, the young people being held in watch houses are alleged to have committed more offences than previously. This is potentially leading to an increase in bail refusals.

Among young people detained in watch houses, there have been notable increases in three offence types when comparing 2019 to 2022:

- **Unlawful entry with intent:** the number of arrests for this offence increased by 86.9 per cent, from 7,779 arrests a year to 14,535 arrests. Watch house detentions for this offence increased by 837 counts, from 1,903 to 2,740.
- **Unlawful use of a motor vehicle:** arrests increased by 62.3 per cent, from 1,901 arrests to 3,098 arrests. Watch house detentions for this offence increased by 34.8 per cent, from 595 counts to 802 counts.
- **Domestic violence investigation/contravention:** arrests increased by 226.9 per cent, from 301 arrests a year to 984 arrests. Watch house detentions for this offence increased by 176.9 per cent, from 78 counts to 216 counts.

In 2022, together with Other Theft, Assault and Robbery, these offences accounted for 74.7 per cent of the charges facing young people detained in watch houses.

Figure 8: Increase in number of arrests and watch house detentions, for selected offences, 2019 and 2022



Source: Queensland Police Service unpublished data request

**CASE INFORMATION: Seriousness of offences**

Information regarding the 30 children in watch houses identified that all 30 children were charged with multiple offences at the time of their arrest. Half of the young people were charged with robbery or burglary among other offences and at least 18 of the 30 children were charged with unlawful use of motor vehicle. Five children were also charged with offences related to assault and violence.

In early 2023, the Queensland Government announced amendments for expanding the number of offences with a presumption against bail to include people who are passengers in stolen vehicles, commit burglary or enter a premise to commit an indictable offence.<sup>44</sup> The recent increases in the occurrence of these offences, coupled with bail refusal are likely to be factors contributing to the longer holding times in watch houses for young offenders.

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<sup>44</sup> Queensland Government (2023). *Stronger laws for community safety*, [www.qld.gov.au/strongerlaws](http://www.qld.gov.au/strongerlaws)



## Finding 5 – Family circumstances are influencing bail decision outcomes

Section 48AA of the YJ Act outlines the considerations that need to be made when deciding about releasing a child on bail. Chapter 16.17 of the *Queensland Police Service Operational Procedure Manual* relates to the arrest of children and is guided by the YJ Act and Principle 18 of the Youth Justice Principles in Schedule 1 of the YJ Act which states that “A child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstances”.

Officers must not release a child if they believe there is an unacceptable risk that the child will commit an offence endangering the community or someone’s safety or welfare, and it is not possible to impose suitable bail conditions to mitigate the risk.

Police are required to consider a range of information when deciding whether bail is possible or whether the child must be held in a watch house. The QPS was asked for information about the reasons bail was opposed for the 30 children we reviewed (i.e. why bail conditions were not possible to mitigate risk). The responses included:

- “Parents have struggled to assist the child with adhering to bail conditions (there was inconsistent information provided regarding whether parents were willing to support the child’s bail conditions)”;
- “Parent is often intoxicated and unaware of where the child is”;
- “Parent identifies as not having control over the child”;
- “Parents have separated and reside in two different regions within the state”;
- “Ongoing family and community fighting”;
- “Both parents have criminal history (nine children had families with criminal history one child had a family who is anti-police and three children were arrested at the same time as the parent)”;
- “Child refuses to attend school despite attempts by the parent”;
- “Child is left at home without supervision or child is nomadic, couch surfing”;
- “Child continues to breach or ignore bail condition”; and
- “Child has no fixed place of address (two children were homeless at the time of arrest)”.

A lack of accommodation or family functioning must not be the sole reason for keeping the child in custody and the assessment needs to be on the risk of reoffending and risk to the community or someone’s safety. In Queensland, there remains no supervised bail accommodation options for young people to support decisions in favour of bail. The *Youth Justice Reforms Review Final Report March 2022* found that while the clarification in legislation was important, it was unlikely to have significant impact given the absence of suitable, supervised accommodation for some high-risk young people.<sup>45</sup>

There has been recent investment in bail initiatives that include intensive work with families and kin and practical assistance to improve stability, safety and healing. For example, in July 2019, the Community Youth Response (CYR) was extended to provide a culturally appropriate, alternative intervention to police charging and remanding young people to reduce the number of young people in watch houses or detention.<sup>46</sup> In 2023, the intensive bail initiative (IBI) was funded an additional \$25.4 million over four years and On Country trial received an additional

<sup>45</sup> Department of Youth Justice, Employment, Small Business and Training (2022). [Youth Justice Reforms Review final report \(p. 147\)](#).

<sup>46</sup> Visit For further information on Youth Justice bail initiatives.

\$4.2 million over two years.<sup>47</sup> These initiatives are intended to uphold community safety by providing suitable options for police and courts to impose conditions to mitigate bail risks and release young people.

Case information provided by the QPS shows family circumstances were often cited as the reason for not imposing suitable conditions to support bail for the child. Decisions to oppose bail weighted family-community relationships, the parent's willingness, the home environment, parental factors and accommodation.



### CASE INFORMATION: Reasons for opposing bail

For the 30 children held in watch houses considered during this review, police recorded the reason for the decision to keep the child in custody in accordance with sections 48B(2) and 48AAA of the YJ Act. The recorded reasons included:

- "Numerous outstanding offences across a number of courts";
- "Child did not comply with bail";
- "Child poses an unacceptable risk of reoffending in a manner that endangers the safety of community/ risk of engaging in life endangering / high risk offences (15 of the 30 children assessed as high risk of re-offending and 8 children assessed as being a risk to their own safety)";
- "No conditions that could be imposed which would reduce the risk to an acceptable level";
- "No other reasonably practicable way of ensuring their safety";
- "The child poses an unacceptable risk of failing to appear and surrender into custody (9 of the 30 children)";
- "Objection to bail due to the seriousness of offence involving a personal violence to a victim, child already on bail for serious criminal offences and only partially compliant (1 of the 30 children due to serious offence)";
- "Child has demonstrated disregard for the law, particularly peoples property and personal security"; and
- "Child is in a show cause position as they committed an indictable offence while on bail for attempted robbery with violence in company".

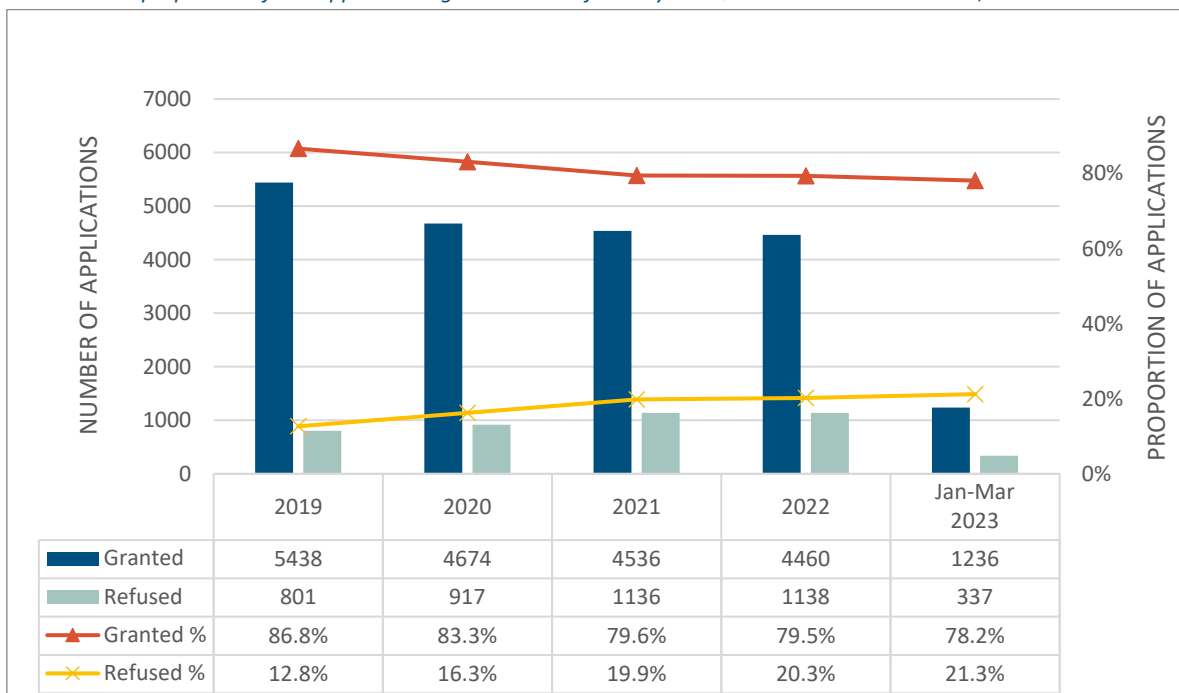
For two children, bail was not opposed and they were released.

<sup>47</sup> Queensland Government (2023). *Record Youth Justice budget puts community safety first*.  
<https://statements.qld.gov.au/statements/97933>

## Finding 6 – Court bail refusals have increased and bail granted has decreased

From 2019 to 2022, both the total number and rate of bail refusals by the Queensland Childrens Court increased substantially. In 2019, 801 (12.8 per cent) bail applications were refused. This rose to 1138 (20.3 per cent) in 2022. Partial year data from January to March 2023 indicates a similar rate of refusal, at 21.3 per cent.

Figure 9: Number and proportion of bail applications granted and refused by the Queensland Childrens Court, 2019–23



Source: Department of Justice and Attorney-General (QLD) unpublished data request. Chart excludes bail Withdrawals and Variations due to very low counts



### CASE INFORMATION: Bail decisions for young people

The QPS was asked to provide the reasons for court refusal of bail for the 30 children, however did not have copies of the official court outcome document – the Verdict and Judgement Record (VJR) – or the VJR did not list the reasons for the bail decision.

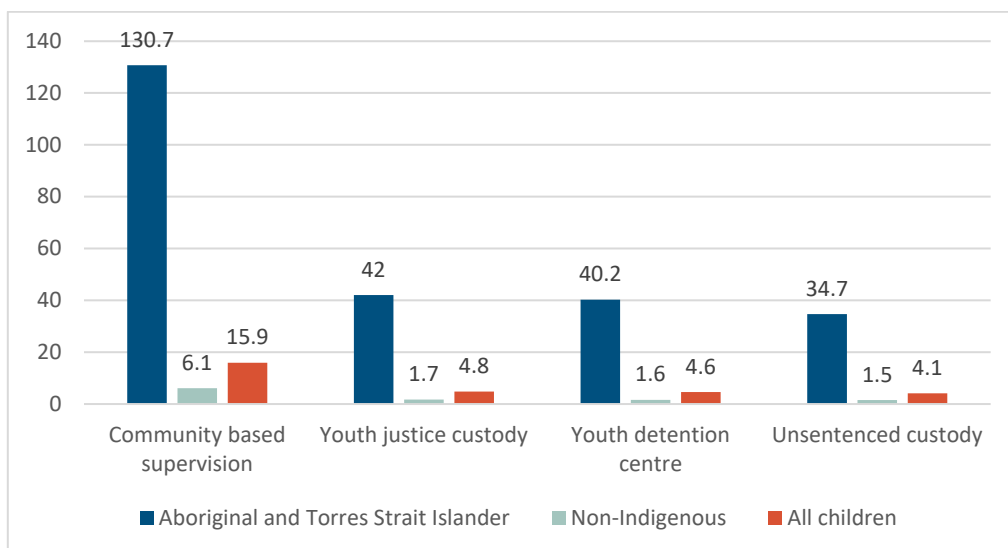
## Finding 7 – Extended watch house use disproportionately impacts Aboriginal and Torres Strait Islander young people

Our analysis shows that increasing lengths of stay in watch houses is disproportionately impacting Aboriginal and Torres Strait Islander young people. The fact that 93 per cent of our case studies were Aboriginal and Torres Strait Islander young people is a particularly significant level of over-representation, given the overall proportion of Aboriginal and Torres Strait Islanders in the Queensland population is roughly 4.6 per cent. The use of watch houses to detain any child is inappropriate, and the stark figures demonstrating the impact on First Nations children requires attention and action.

Aboriginal and Torres Strait Islander children and young people account for 65–72 per cent of young people in youth detention on an average day. In 2021–22, Aboriginal and Torres Strait Islander young people were 21.4 times more likely to be in youth detention than non-Indigenous children and young people.<sup>48</sup>

The disproportionate representation of Aboriginal and Torres Strait Islander children and young people in the Queensland youth justice system is pervasive throughout the justice system and is ongoing. Despite comprising around 8.2 per cent of all children and young people aged 10–17 years in Queensland, Aboriginal and Torres Strait Islander children accounted for 50.1 per cent of all child defendants who had a charge finalised in a Queensland court in 2021–22.<sup>49</sup> Figure 10 shows the disproportionate representation of Aboriginal and Torres Strait Islander children within the Queensland youth justice system.

Figure 10: Rates per 10,000 young people involved with the Queensland youth justice system on an average day, by Aboriginal and Torres Strait Islander status (2022)



Source: Department of Youth Justice, Employment, Small Business and Training, 2023<sup>50</sup>

<sup>48</sup> Queensland Family and Child Commission (2023). *Queensland Child Rights report, 2023: Spotlight on youth justice in Queensland* (p. 23). [Queensland Child Rights Report | Queensland Family and Child Commission \(qfcc.qld.gov.au\)](https://www.qfcc.qld.gov.au/Queensland-Child-Rights-Report)

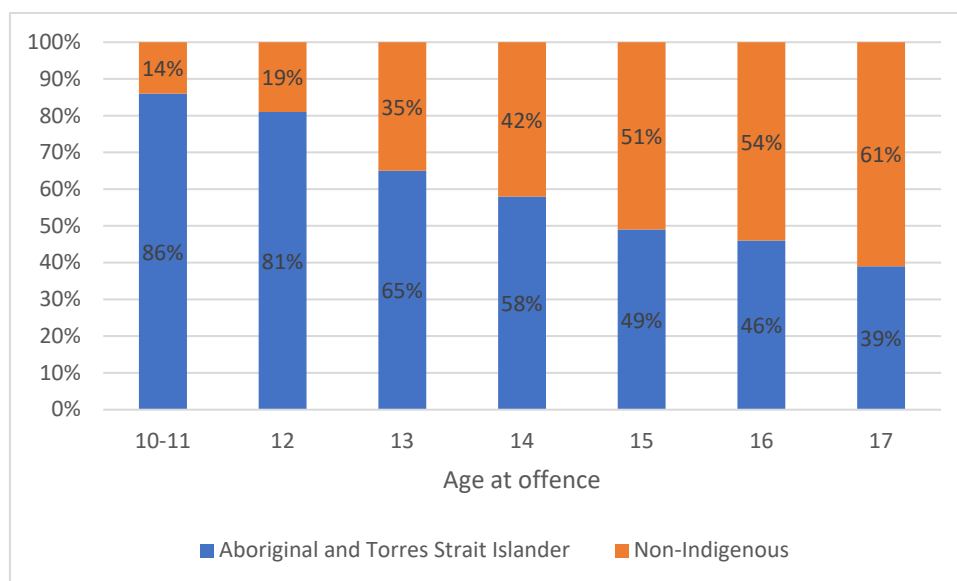
<sup>49</sup> Childrens Court of Queensland (2022). Annual Report 2021–22. [https://www.courts.qld.gov.au/data/assets/pdf\\_file/0010/756649/cc-ar-2021-2022.pdf](https://www.courts.qld.gov.au/data/assets/pdf_file/0010/756649/cc-ar-2021-2022.pdf)

<sup>50</sup> Department of Youth Justice, Employment, Small Business and Training (2023). Community supervision, unsentenced custody and all custody. Unpublished data request.



In 2021–22, 86.0 per cent of 10 and 11-year-old defendants, 81.0 per cent of 12-year-old defendants and 65.0 per cent of 13-year-old defendants were Aboriginal and Torres Strait Islander children.<sup>51</sup> In comparison with non-Indigenous children, 10 to 13-year-old Aboriginal and Torres Strait Islander children are nearly 50 times more likely to be under community-based supervision and 38 times more likely to be in detention.<sup>52</sup> Of children who spent time in detention, on average, Aboriginal and Torres Strait Islander children were detained for 178.8 nights versus 96.2 nights for non-Indigenous children.<sup>53</sup>

Figure 11: A comparison of the Aboriginal and Torres Strait Islander status of distinct child defendants, by age at offence (2021–2022)



Source: Childrens Court of Queensland, 2022<sup>54</sup>

In relation to Aboriginal and Torres Strait Islander children held in watch houses, the *Youth Justice Reforms Review Final Report March 2022* reported Aboriginal and Torres Strait Islander young people are held in watch houses for much longer periods of time than non-Indigenous young people.<sup>55</sup> Since this report, more recent data from the QPS shows a strong increase in the number of medium and long-term watch house detentions:

- The number of detentions lasting 3 to 7 days increased from 348 in 2019 to 517 in 2022. On average, Aboriginal and Torres Strait Islander young people comprised 71.7 per cent of these detentions;
- Detentions lasting 8 to 14 days increased from 106 in 2019 to 140 in 2022. Concerningly, the half-year count for 2023—182 detentions—is already 30 per cent higher than the full year count for 2022. On average, Aboriginal and Torres Strait Islander young people comprised 62.3 per cent of these detentions; and

<sup>51</sup> Childrens Court of Queensland (2022). Annual Report 2021–22. [https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0010/756649/cc-ar-2021-2022.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0010/756649/cc-ar-2021-2022.pdf)

<sup>52</sup> Productivity Commission (2023). Report on government services: Youth justice services Table 17A.9. <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice>

<sup>53</sup> Productivity Commission (2023). Report on government services: Youth justice services Table 17A.9. <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice>

<sup>54</sup> Childrens Court of Queensland (2022). Annual Report 2021–22. [https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0010/756649/cc-ar-2021-2022.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0010/756649/cc-ar-2021-2022.pdf)

<sup>55</sup> Department of Youth Justice, Employment, Small Business and Training (2022). *Youth Justice Reforms Review final report (p. 147)*.

- Detentions lasting 15 days or more decreased substantially between 2019 and 2022, from 150 detention down to 15 detentions. However, the half-year count for 2023 has already risen sharply to 68 detentions. On average, Aboriginal and Torres Strait Islander young people comprised 53.3 per cent of these detentions.

Figure 12: Comparison of length of stay in watch house detention, by Aboriginal and Torres Strait Islander and non-Indigenous status



Source: Queensland Police Service unpublished data request



## CASE INFORMATION: Cultural background

Of the 30 children with extended stays in watch houses considered as part of this review, 93 per cent were of First Nations identity, 3 per cent were of Pacific Island heritage and 3 per cent were of African heritage.

## Finding 8 – Watch houses are not meeting rights and needs of young people

The QFCC sought evidence from agencies to show legislative and policy compliance with their obligations to meet the needs and rights of children (the review did not seek to examine the treatment of young people while in a watch house). Information was requested about:

- segregation from adults;
- access to family and other visits;
- educational needs;
- mental and physical health assessments;
- dietary needs;
- sanitary needs;
- physical activity/exercise needs;
- cultural needs; and
- other information (for example, isolation, medication and suicide attempts).

The information received confirmed that watch houses are not suitable places to detain young people for extended periods due to their design (for example, no access to natural light), lack of trained staff, and lack of youth-focused policies, services and programs designed to uphold the rights of children while detained.<sup>56</sup> Under the YJ Act, a child detained in custody should only be held in a facility suitable for children (Schedule 1, Principle 19). Findings are summarised below based on information provided by the QPS.



### CASE INFORMATION: Spread of watch houses across Queensland

When children were first held in a watch house for extended stays, arrangements were made for children to stay in the Brisbane city watch house and action was taken to implement programs and supports to provide for the rights and needs of children to the extent possible. Children are now held in watch houses all over Queensland without access to those additional programs and safeguards.

Information regarding the 30 children considered as part of this review identified extended stays were occurring in watch houses across Queensland in addition to Brisbane including: Cairns, Caboolture, Gladstone, Hervey Bay, Maroochydore, Mt Isa, Murgon, Rockhampton, Southport, Toowoomba, Townsville, Aurukun, Beenleigh, Inala, Richlands, Innisfail, Redcliffe and Ipswich District.

<sup>56</sup> For example: Amnesty International (n.d.). *Kids in watch houses: exposing the truth*. <https://www.amnesty.org.au/watch-houses/>; ABC News (2019, May 13). The Watch House Files: Queensland children kept in isolation in maximum security adult watch houses – interview with Natalie Siegel-Brown, Former Public Guardian, Office of the Public Guardian. [The Watch House Files: Queensland children kept in isolation in maximum security adult watch houses - ABC News](#)



### CASE INFORMATION: Cultural needs

The QPS reported that the cultural needs of 27 of the 30 children were met.<sup>57</sup> There was limited information provided to the QFCC about how this was evidenced beyond a visit or a phone call to a family member or organisation. As part of this review Youth Justice advised that it works with the QPS to organise cultural supports and visits including from:

- Police Liaison Officers;
- Murri Watch;
- Funded bail support services, particularly Aboriginal and Torres Strait Islander Community Controlled Organisations; and
- Respected Elders.

Murri Watch provides scheduled daily visits (including weekends) and provides support in relation to critical incidents or crises, including after-hours call-outs. In South East Queensland, the Sisters Inside YANGAH program offers support to female young people aged 10 to 17 who are remanded in custody.<sup>58</sup>



### CASE INFORMATION: Segregation from adults

Information regarding the 30 children identified multiple occurrences of adults and children being held in watch houses at the same time. Cairns Station held 80 per cent adults and 20 per cent children at one time. Caboolture Watch house was at 50 per cent capacity when it held 40 per cent adults and 10 per cent children at the same time. Gladstone Watch house was at half capacity when it held 8 adults and 1 child at the same time.

When providing data to the QFCC, the QPS acknowledged the risk associated with detaining young people and adults in the same facility. It stated all efforts are made to isolate young people from adults while in a watch house but there are situations where this is unavoidable, and action is taken immediately to ensure that Youth Justice is aware so the young person can be transferred to a youth detention facility as soon as possible.

<sup>57</sup> As evidence that the cultural needs of children had been met, the QPS stated the contact that children had with various organisations such as Murri watch, Sisters Inside, Youth Justice, Youth Empowered Towards Independence, the Aboriginal and Torres Strait Islander Legal Service, Goolburri and family members.

<sup>58</sup> Information received from Youth Justice 24 November 2023.

## CASE INFORMATION: Contact with family, oversight entities and other

Daily visits by family members, legal representatives, and other appropriate adults to children in watch houses are supported in the best interest of the child to sustain their wellbeing. This access includes the OPG Community Visitor program.

### Family/carer:

Of the 30 children, 16 received a visit from a guardian or kin. For three children this was a visit from a Child Safety representative as the child was under Child Safety custody or guardianship. Eight of the children made phone calls to a guardian while detained and six had no visits or phone call from their responsible adult (kin or parent).

The QPS reported 16 of the 30 children had no contact (phone call or visit) with the OPG while held in a watch house. Data provided by the OPG showed that 26 of the 30 children were recorded to have been contacted by Assisted Technology Inquiry (ATI), face to face or telephone and 6 of those children were contacted on more than one occasion. There was no information recorded for 4 of the 30 children. Significantly, 2 of the 4 children who had not been contacted were under the custody or guardianship of Child Safety.

### Other entities:

Visiting support organisations or program organisers for the 30 children included:

Community Controlled Organisations	Non-government other	Government
<ul style="list-style-type: none"> <li>— Murri Watch</li> <li>— Goolburri</li> <li>— ATSILS</li> </ul>	<ul style="list-style-type: none"> <li>— Redcross</li> <li>— Youth Empowered Towards Independence</li> <li>— Southern Cross Support Services</li> <li>— 2 x other entities (unable to be established)</li> <li>— Sister's Inside</li> <li>— CatholicCare</li> </ul>	<ul style="list-style-type: none"> <li>— Co-responder</li> <li>— QPS</li> <li>— Youth Justice</li> <li>— Child Safety</li> </ul>

Note: The QPS did not record how many contacts a child had while in a watch house, just that there was a contact.





### CASE INFORMATION: Education, health assessments, nutrition, sanitary and physical activity needs

When asked whether the educational needs of the 30 young people were being met in the watch house, the QPS responded either “no”, “none recorded”, or “our records currently don’t record this type of information”. It was noted in some cases that the young person was not “at school”. The QPS was able to report that three of the children were provided with books and cards, although one of these children was unable to read.

Two-thirds of the 30 children received a mental and physical health assessment.<sup>59</sup> Records show that the remaining children declined the offer of an assessment.

The QPS reported 29 of the 30 children had their dietary needs met, with one child refusing breakfast on multiple occasions. This child was provided with fruit and crackers at their request. Records provided by the QPS were insufficient to determine whether meals were nutritionally adequate for children and young people.

28 of the 30 children were reported to have their sanitary needs met. There was no information for one child and for another it was reported a shower could not be provided on one occasion due to staff shortages.

28 of the 30 children were reported to have participated in physical activity,<sup>60</sup> with no information available about the remaining two children.

In the General Comment No. 24 (2019) on children’s rights in the child justice system, the United Nations Committee stated: *“Every child deprived of liberty is to be separated from adults, including in police cells. A child deprived of liberty is not to be placed in a centre or prison for adults, as there is abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate ... States parties should establish separate facilities for children deprived of their liberty that are staffed by appropriately trained personnel and that operate according to child-friendly policies and practices.”*<sup>61</sup>

The *Human Rights Act 2019* enshrines several rights in Queensland legislation for young people detained in addition to the YJ Act. The Queensland Human Rights Commissioner referred to children in watch houses for extended periods as a ‘human rights crisis’. *“Further, there have been no reforms proposed to address the ongoing human rights crisis of children being remanded for prolonged periods in adult watch houses”.*<sup>62</sup>

<sup>59</sup> A medical checklist is completed for all persons held in a watch house. The Queensland Ambulance Service can be requested to perform the assessment, but it is generally undertaken by a watch house officer.

<sup>60</sup> The Operational Procedures Manual states that one hour of daily exercise is to be provided to all prisoners under supervision, where practicable.

<sup>61</sup> United Nations (2019). *General comment No. 4 (2019) on children’s rights in the child justice system*.

<https://www.ohchr.org/en/documents/general-comments-andrecommendations/general-comment-no-24-2019-childrens-rights-child>

<sup>62</sup> Queensland Human Rights Commission (2023). *Submission of the Strengthening Community Safety Bill 2023 Economics and Governance Committee*, <https://www.qhrc.qld.gov.au/resources/submissions>

## Finding 9 – No evidence was provided to suggest capacity to transport children to court and detention centres impacted time spent in watch houses

At the commencement of this review, the QFCC heard concerns from stakeholders regarding the lack of capacity in the system to transport children to court and detention centres. The QFCC also heard from police that resources are impacted by transferring children multiple times between watch houses, although the QPS did not provide information to support this.



### CASE INFORMATION: Transportation and logistics

Information on initial transportation to the watch house was not available for the 30 children considered in this review.

Seven of the 30 children were transported from a watch house to another watch house location. One child was transported to three watch house locations during their 9-day stay in watch house custody.

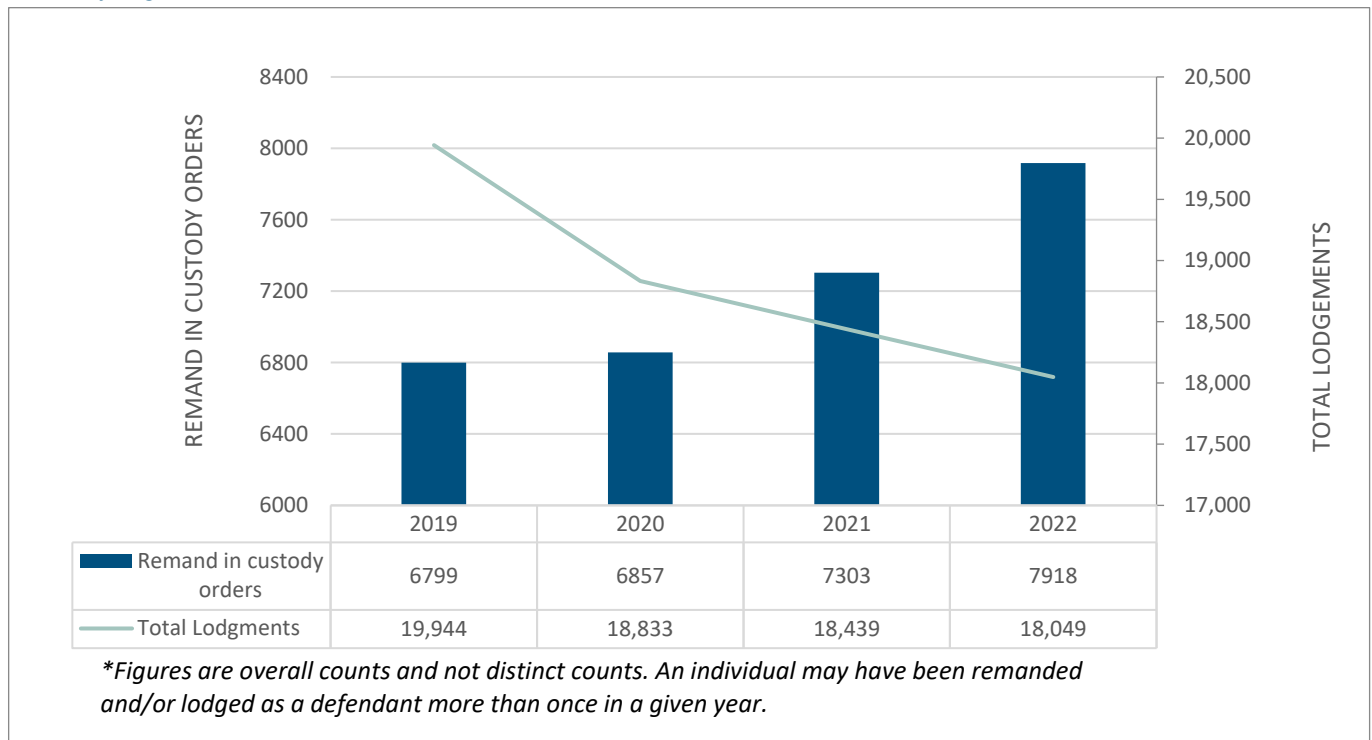
The QPS was asked if there were any transport issues that impacted timeliness of children appearing before court or being transferred to a detention centre but did not provide information to substantiate this concern.

## Finding 10 – While court lodgements have fallen, young offenders are being remanded in custody more frequently

The data shows a consistent increase in the instances of young people being remanded in custody at least once between 2019 and 2022, rising from 6,799 in 2019 to 7,918 in 2022 – an increase of 16.5 per cent. This increase may negatively impact the capacity and resource management of both watch houses and detention centres.

Despite the increasing number of remands in custody, the total number of lodgements has dropped by 9.5 per cent, from 19,944 lodgements in 2019 to 18,049 lodgements in 2022. In line with the arrest rate data reported above, this pattern suggests that a cohort of repeat offenders was moving through the system year-on-year, with incremental penalties being applied. While this is an emerging pattern within the youth justice system, we do not have sufficient data to directly examine the impact of this on time spent in watch houses by individual detainees.

Figure 13: Number of times young people were remanded in custody by the Queensland Childrens Court, 2019–22, compared with the number of lodgements\*



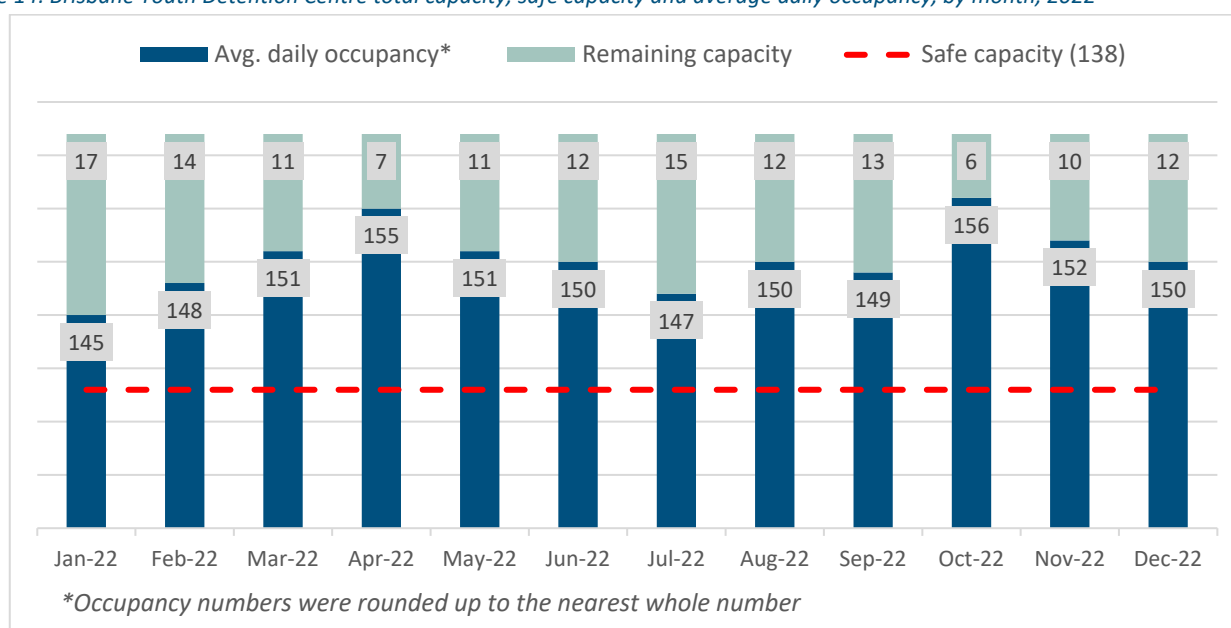
Source: Department of Justice and Attorney-General (QLD) unpublished data request

## Finding 11 – Youth detention centres are routinely operating above ‘safe capacity’

Queensland operates its detention centres on a principle of ‘ideal’ or ‘safe’ operating capacity which is set at 85 per cent occupancy of the built capacity.<sup>63</sup> This is consistent with a 1996 recommendation by the Australian Youth Justice Administrators in their ‘Design guidelines for youth justice facilities in Australia and New Zealand’. This recommendation states: “Each juvenile justice facility should have an authorised operating capacity. The ideal operational capacity of a juvenile justice facility is considered to be 10 to 15 per cent below authorised capacity to allow management flexibility in the placement of detainees”. The safe capacity limit is intended to ensure that staff have options available to effectively separate detainees based on their age, gender and risk profiles. It also allows for maintenance and repairs across the infrastructure.

In 2022, there was a daily average of 277.7 detainees across Queensland’s three detention centres compared to a combined safe capacity of 260 detainees. In 2022, Brisbane Youth Detention Centre (BYDC) and West Moreton Youth Detention Centre (WMYDC) exceeded their respective safe capacity thresholds every month of the year, while Cleveland Youth Detention Centre (CYDC) was over its safe capacity in 9 out of 12 months.

Figure 14: Brisbane Youth Detention Centre total capacity, safe capacity and average daily occupancy, by month, 2022

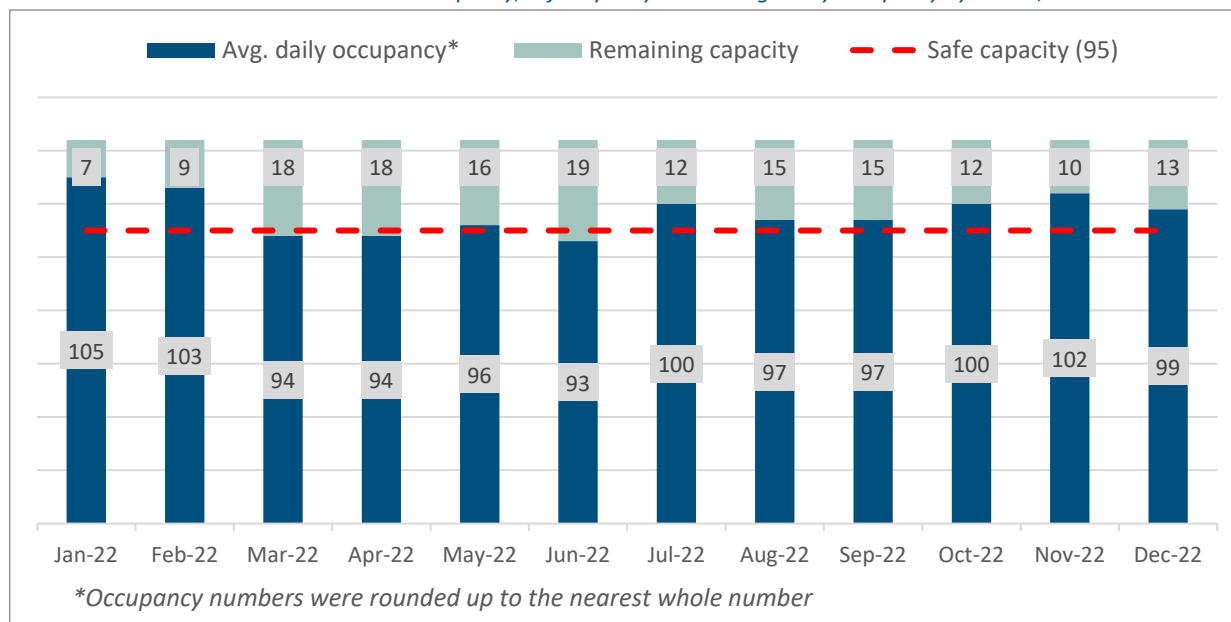


Source: Department of Youth Justice (QLD) unpublished data request

<sup>63</sup> Department of Children, Youth Justice and Multicultural Affairs (2022). *Annual Report 2021-22*, p. 27.

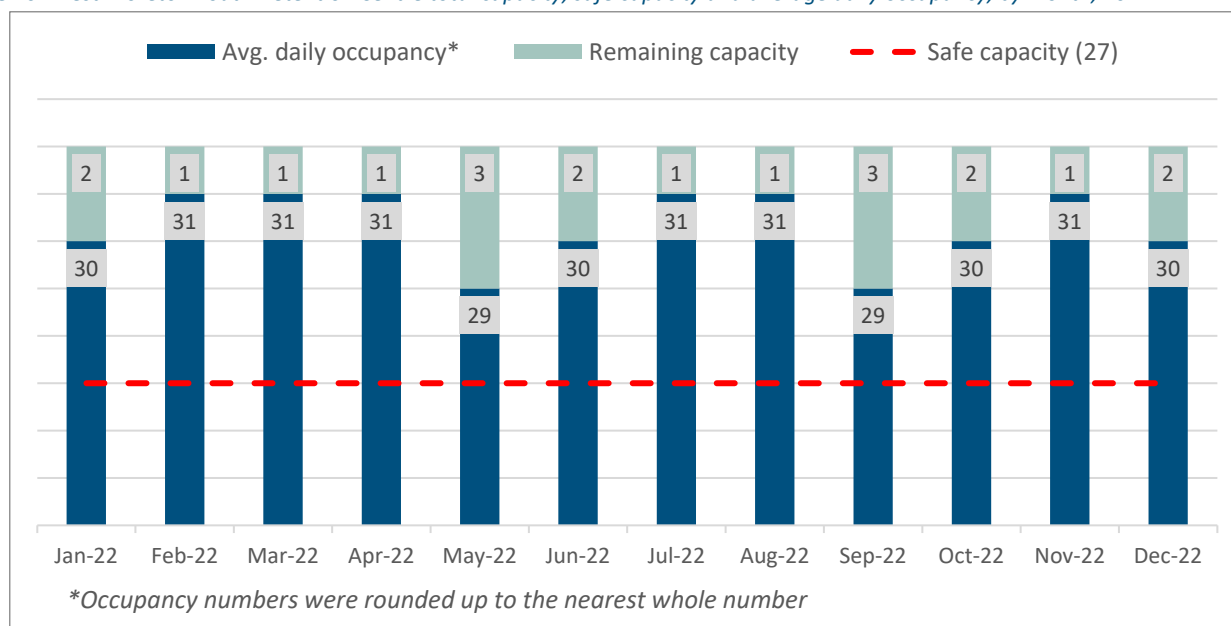
[https://www.publications.qld.gov.au/dataset/dcyjma-annual-reports/refYouth justice act/9da7cbf7-4b7d-4d9e-94ab-331d19212473](https://www.publications.qld.gov.au/dataset/dcyjma-annual-reports/refYouth%20justice%20act/9da7cbf7-4b7d-4d9e-94ab-331d19212473) and section 3.09 of the Australasian Youth Justice Administrators *Design guidelines for juvenile justice facilities in Australia and New Zealand* <https://www.avja.org.au/ajja-documents/>

Figure 15: Cleveland Youth Detention Centre total capacity, safe capacity and average daily occupancy by month, 2022



Source: Department of Youth Justice (QLD) unpublished data request

Figure 16: West Moreton Youth Detention Centre total capacity, safe capacity and average daily occupancy, by month, 2022



Source: Department of Youth Justice (QLD) unpublished data request

Note: Youth Justice has advised that the monthly daily averages it supplied for Figures 14 to 16 may not fully describe the day-to-day occupancy levels of its detention facilities. Youth Justice advised that West Moreton Youth Detention Centre often operates at maximum built capacity, and that Brisbane and Cleveland operate at higher levels than indicated.



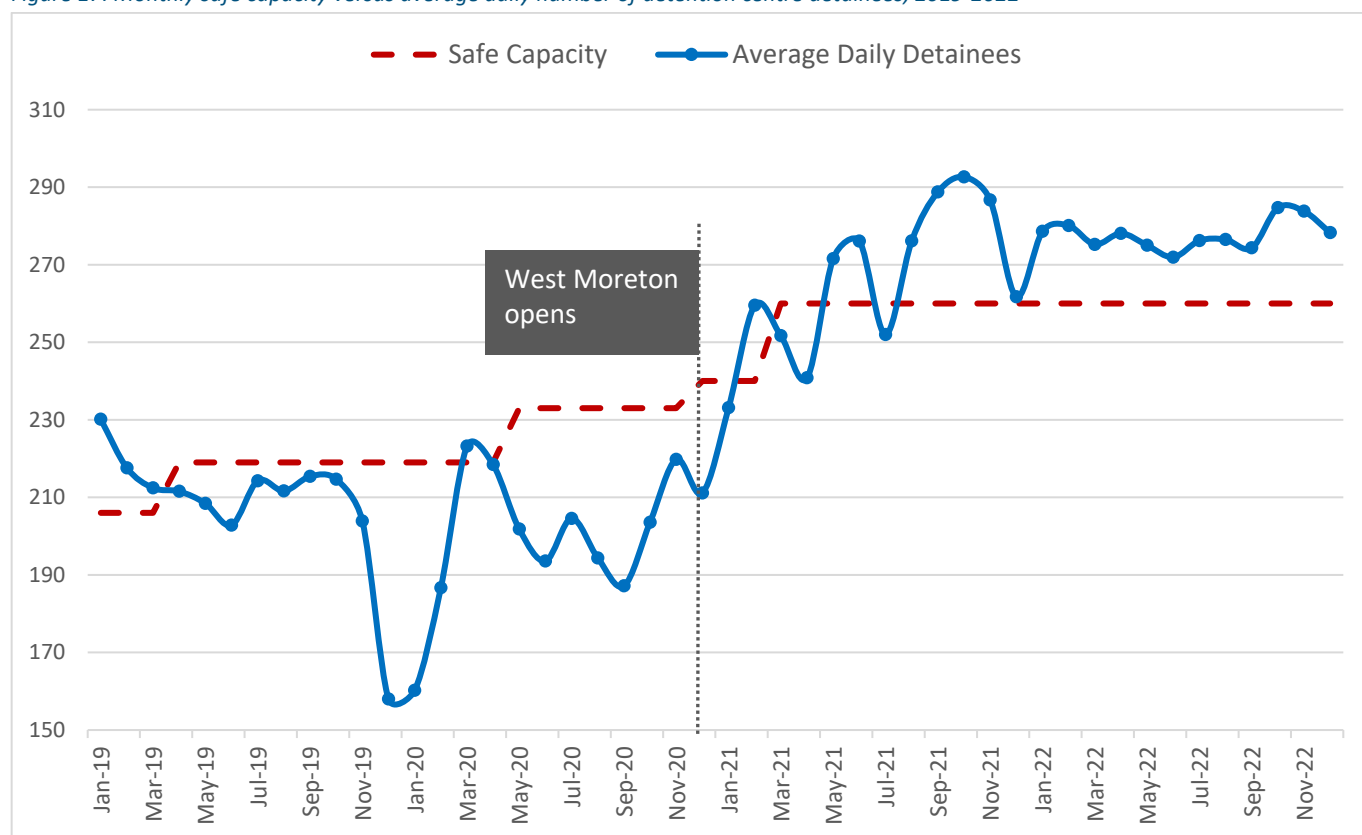
Queensland does not operate youth detention centres at maximum capacity. According to Figures 14–16, the average unused built capacity for each Queensland detention centre for 2022 was:

- Cleveland (maximum capacity 112 beds): 14 beds
- West Morton (maximum capacity 32 beds): 2 beds
- Brisbane (maximum capacity 162 beds): 12 beds

The QFCC accepts that detention centre operations are both dynamic and complex, and decisions to take additional detainees need to be made throughout the course of the day. Youth detention centre under-utilisation is attributable to beds becoming available for specific cohorts of young people, for example, males or females under 15 years of age are required to be separated under human rights principles and for their own safety. It is not clear however, that the person making the decision to not transfer a child to a detention centre, and consequently to keep the child in a watch house, has any insight into the individual impact of this decision on the specific young person. There is no documented accountability to the young person who is otherwise required to spend more days in a watch house. It is unclear whether the risks of holding the young person in a watch house are weighed against the detention centre operating risks on a case-by-case basis – including where or how this decision would be recorded.

The addition of WMYDC has not been sufficient to alleviate demand pressures across Queensland's youth detention centres. The average number of daily detainees has continued to increase at a faster rate than the growth in the detention system's safe capacity. WMYDC opened on 14 December 2020 in limited capacity and was fully operation by March 2021. Prior to this, the combined safe capacity of BYDC and CYDC was 228.3 detainees. With the combined operations of BYDC, CYDC and WMYDC in 2022, the total safe capacity had increased to 260 detainees, but the total average daily detainees increased to 277.7 — 17.7 detainees per day on average above the safe capacity, which had outpaced the added capacity provided by WMYDC.

Figure 17: Monthly safe capacity versus average daily number of detention centre detainees, 2019-2022



Source: Department of Youth Justice (QLD) unpublished data request



### CASE INFORMATION: Lack of detention capacity driving children to remain in watch houses

Information regarding the 30 children in watch houses considered as part of this review showed that at the time they were taken into custody, detention centres were either at or over safe capacity for 25 of the 30 children following court remand. Three children were released on bail and two remained in a watch house for other reasons.

Watch house personnel contacted Youth Justice staff to check bed capacity to transfer the children to a detention centre on multiple occasions. The transfer requests were declined by Youth Justice staff due to bed shortages. One child was transferred from one watch house to another due to the lack of bed capacity. On one occasion Youth Justice reported having a waiting list of 30 children for BYDC.

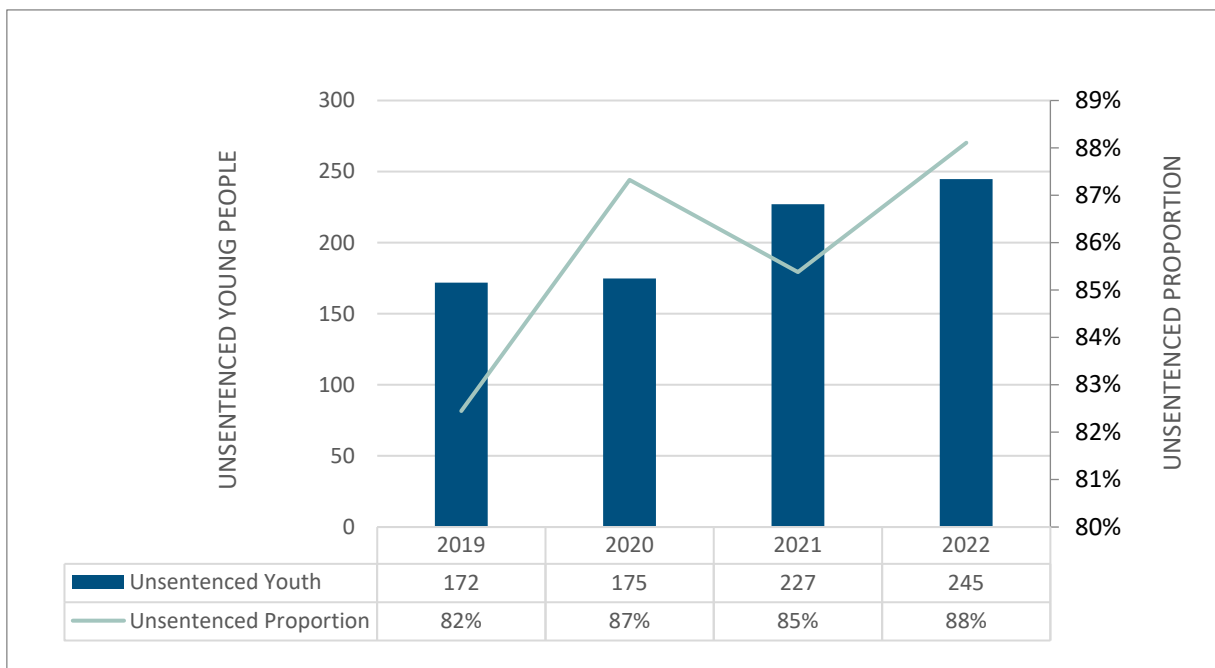
On one occasion, police sought to keep a child in the watch house despite a bed being available in a detention centre. This was due to the child's planned court date being in two days' time. Youth Justice approved the request.

## Finding 12 – Detention centres have been holding an increasing number of unsentenced young people

The proportion of unsentenced young people, relative to the total population in detention, has consistently remained high from 2019 to 2022. The unsentenced proportion ranged from 82 per cent in 2019 to 88 per cent in 2022—with the average young person spending 48 nights awaiting sentencing, up from 40 nights in 2021 and 33 nights in 2020.

This growth in time spent on remand awaiting court is significant – representing a 47.9 per cent growth over two years. Based on these figures, the time taken to move youth justice matters through the court is a key factor that has changed over the review period and is likely to have a direct causal link to the time Queensland children spend in watch houses. As an increasing majority of young people were spending more nights in the detention system while awaiting court outcomes, this would have incrementally reduced the centres' overall capacity to accept detainees from watch houses.

Figure 18: Average daily number of unsentenced young people in Queensland detention centres, 2019–22



Source: Department of Youth Justice (QLD) unpublished data request

Table 4: Average number of unsentenced nights: all detention centres, 2019–22

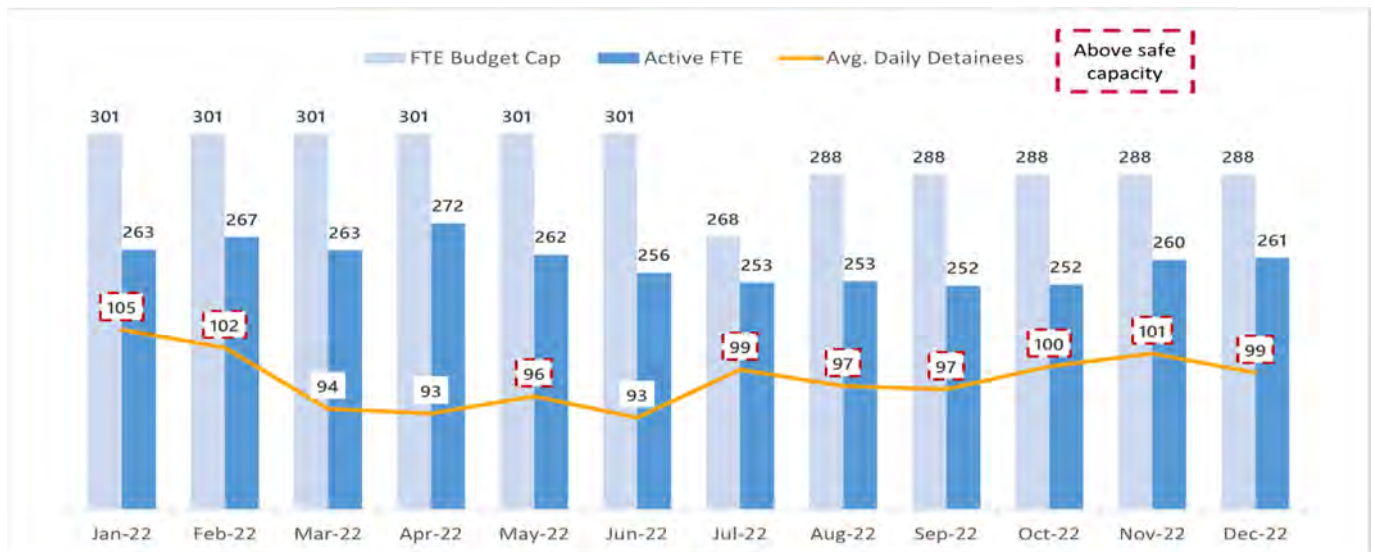
2019	2020	2021	2022
52	33	40	48.8

Source: Department of Youth Justice (QLD) unpublished data request

## Finding 13 – Detention centres have been understaffed

Across recent years, CYDC had consistent shortfalls in active staff compared to the FTE budget. In 2020, on average, the centre exceeded its monthly FTE cap by 12.5 FTE staff members. Then in 2021, there was a significant decrease in staffing levels below the budget cap, with an average monthly deficit of 26.8 FTE staff members. In 2022, staffing levels worsened, with an average monthly deficit of 32.2 FTE staff members.

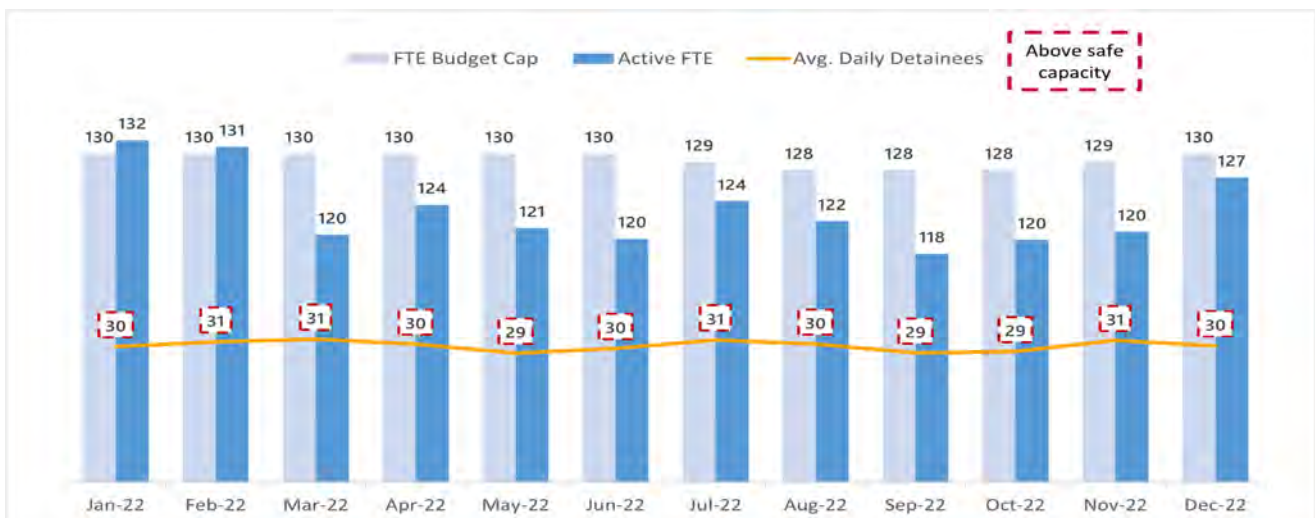
Figure 19: Cleveland Youth Detention Centre – monthly comparison of FTE budget cap, active FTE and daily average number of detainees, 2022



Source: Department of Youth Justice (QLD) unpublished data request

In 2022, WMYDC was understaffed for 10 out of 12 months. This was similar to the centre's first year of full operation—from March to December 2021, the centre was short on average 17.5 FTE per month (129.6 budgeted; 112.1 active).

Figure 20: West Moreton Youth Detention Centre – monthly comparison of FTE budget cap, active FTE and daily average number of detainees

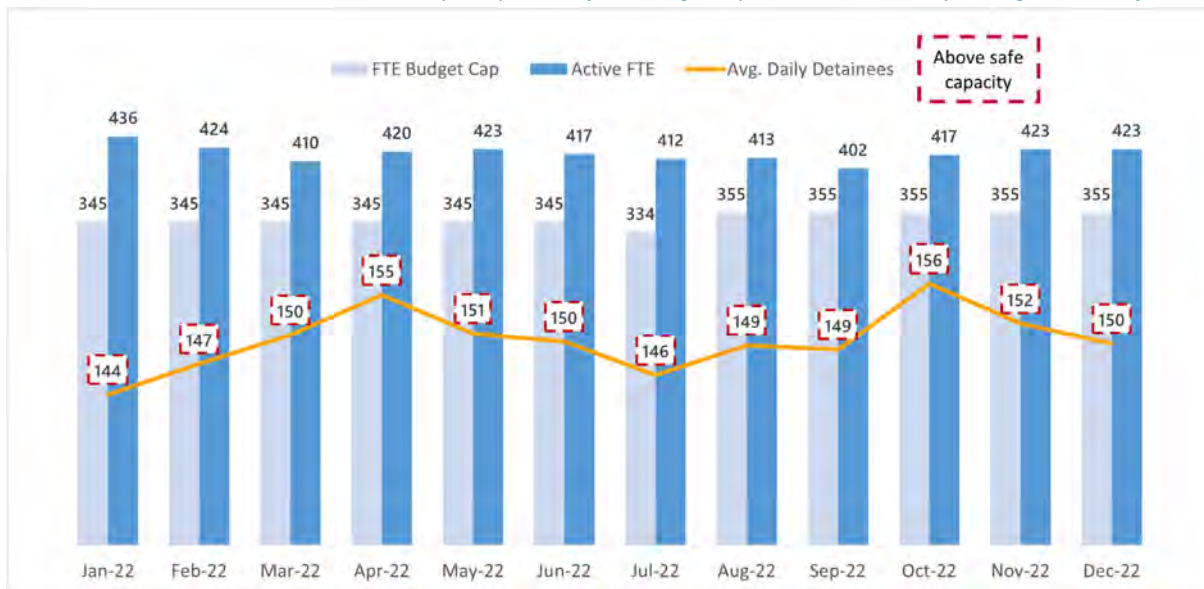


Source: Department of Youth Justice (QLD) unpublished data request



BYDC has significantly ramped up staffing in recent years above its budgeted FTE cap. In 2020, on average, the centre exceeded its monthly FTE cap by 16.6 FTE staff members. In 2021, there was a significant increase in staffing levels beyond the budget cap, with an average monthly surplus of 45.9 FTE staff members. In 2022, the trend of increased staffing continued, with an average monthly surplus of 70.3 FTE staff members.

Figure 21: Brisbane Youth Detention Centre – monthly comparison of FTE budget cap, active FTE and daily average number of detainees



Source: Department of Youth Justice (QLD) unpublished data request

Note: Youth Justice reports that the FTE vacancies do not reference the casual employee headcounts or use of overtime to meet demand. The over-establishment at BYDC was also utilised to supply staff on a rotational basis to both WMYCD and CYDC where attraction and recruitment proved to be difficult for the department post the pandemic and as the labour market proved challenging, particularly in regional locations like Townsville.

The QFCC notes the FTE staffing differences between West Moreton and Brisbane Youth Detention Centres, with active FTEs beyond budgeted needs at Brisbane while West Moreton continually has FTEs below budget.



## Finding 14 – Detention centre incidents and lockdowns can delay admissions to youth detention centres

Figures 22–23 demonstrate that WMYDC experienced a disproportionate number of incidents<sup>64</sup> and lockdowns.<sup>65</sup> Since it opened in December 2020, the number of incidents per month has steadily increased—averaging 44.5 incidents per month in 2021 up to 65.75 incidents per month in 2022. The centre has also experienced 45 lockdowns—although not directly comparable, this is almost four times as many lockdowns recorded by BYDC (14) and CYDC (10) during the same period. As outlined above, WMYDC has been understaffed for most of the time it has been fully operational, with an average monthly deficit of 17.5 FTE in 2021 and 6.3 FTE in 2022. The centre has consistently exceeded its safe capacity threshold, for 19 of the 22 months it was fully operational.

BYDC has seen a moderate uptrend in incidents over time, increasing from an average of 229 per month in 2019 to 287.3 per month in 2022. There was a notable spike in incidents between August and November 2021, ranging between 301 and 362 incidents per month. From late-2020, BYDC significantly ramped up its intake of detainees, increasing its average from 120.3 detainees per day (January 2019 to September 2020) to an average of 146.9 detainees per day (October 2020 to December 2022, with a safe capacity of 138 detainees). There was also a noticeable increase in surplus staff—from January 2019 to September 2020, BYDC exceeded its budgeted FTE cap on average by 9.67 staff per month, which significantly increased to an average of 55.35 staff per month above the budgeted cap from October 2020 to December 2022.

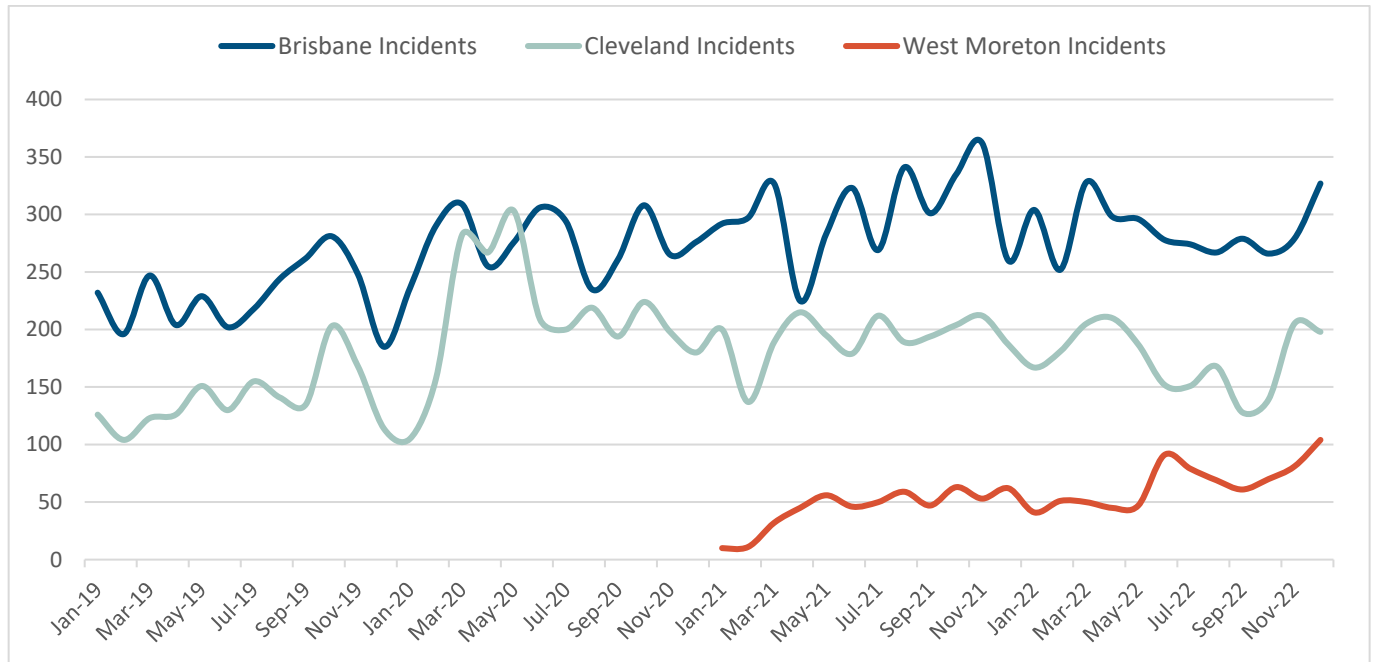
At CYDC there was a substantial spike in incidents between March and May 2020. On average, there were 284 incidents per month—more than double the average from the previous 14 months (138.4 incidents per month). While this decreased moderately from June 2020, the rate of incidents was still 42 per cent higher per month, on average, following the spike. This period of unrest corresponds to a time when CYDC was moderately overstaffed, with 10.6 extra staff above its budgeted FTE cap. This was followed by a persistent decline in the number of staff. From November 2020 to December 2022, the centre has operated with an average deficit each month of 28.2 FTE.

In presenting our findings in this section, it is important to note that the three youth detention centres in Queensland differ substantially in their detainee profiles, average daily number of detainees and staffing levels. This means that the patterns of incidents and lockdowns are not directly comparable across centres. When provided with a draft of this report for feedback, Youth Justice stated that incidents and lockdowns might only delay admissions to youth detention centres on rare occasions, and that the only reason preventing admissions is bed availability.

<sup>64</sup> Incidents in youth detention centres are classified according to their severity, running a spectrum from minor infractions to critical situations (Department of Youth Justice Incident Classifications, 27 October 2022, v2.6). Examples of low-grade incidents include minor property damage and disruptive behaviour that distracts other detainees; critical-level incidents include riots, escapes and hunger strikes.

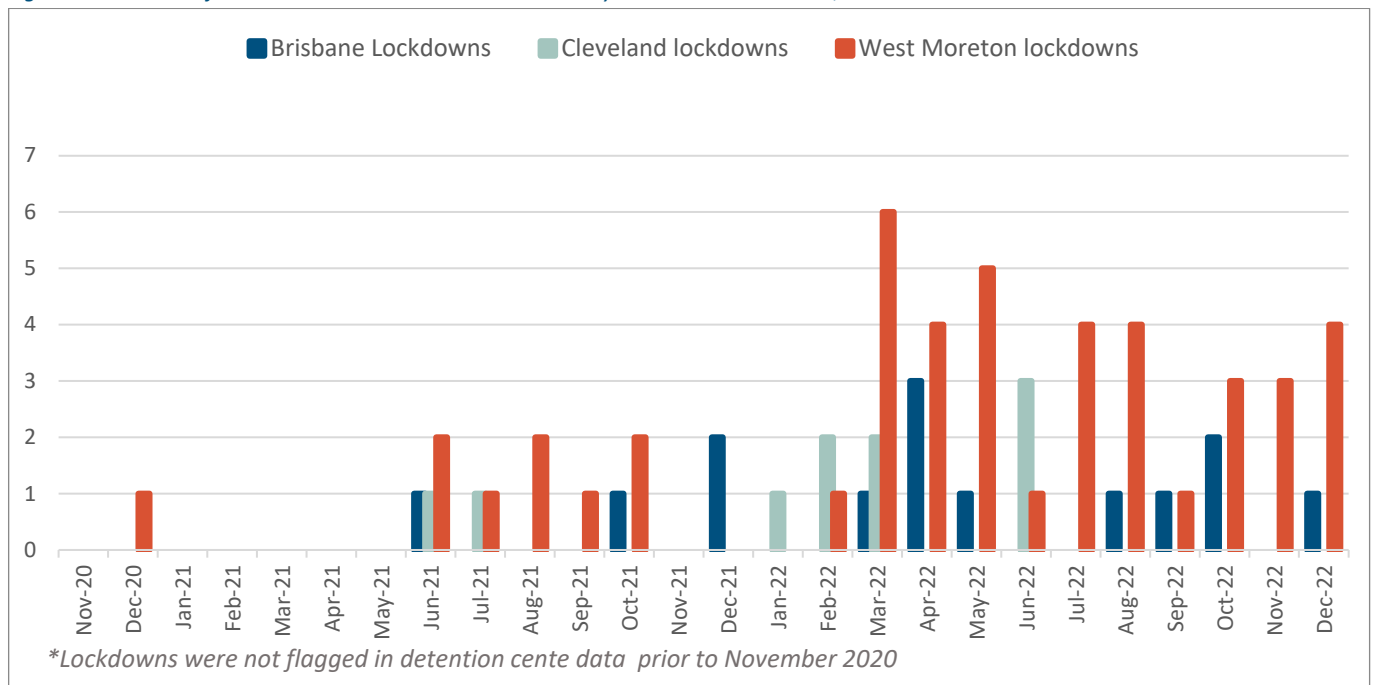
<sup>65</sup> In this report, ‘lockdowns’ refers to the number of times a whole-of-centre lockdown was recorded. When a complete lockdown occurs, the detention centre may stagger the re-opening of different detention units across a span of several hours or longer.

Figure 22: Number of incidents each month at Queensland youth detention centres, 2019–2022



Source: Department of Youth Justice (QLD) unpublished data request

Figure 23: Number of lockdowns\* each month at Queensland youth detention centres, November 2020–December 2022



Source: Department of Youth Justice (QLD) unpublished data request

## Finding 15 – Court delays contribute to increasing stays in watch houses



### CASE INFORMATION: Timely first court appearances

While delays in finalising court matters has an overall impact on number of children detained, case information showed most children were brought before the court within 24 hours in accordance with the YJ Act.

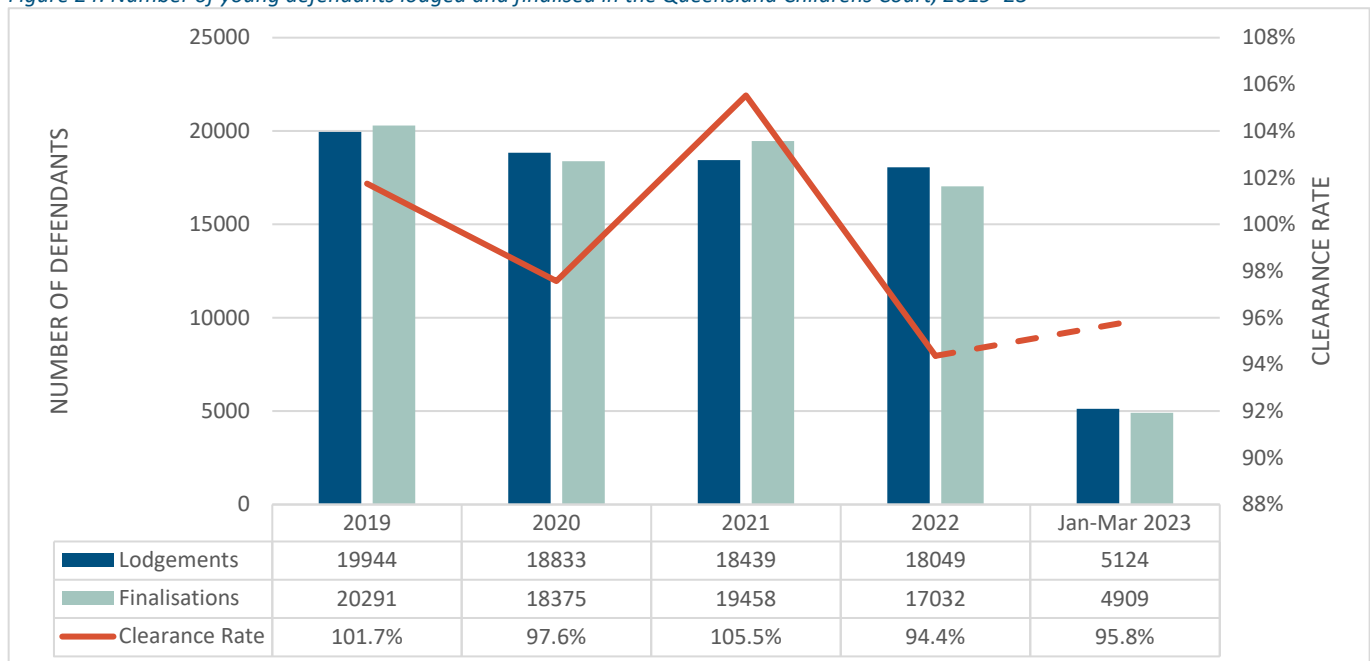
Of the 30 children considered:

- 25 young people appeared before court within 24 hours; and
- 5 young people appeared before court after 24 hours but within 72 hours. For most of this group (4 of the 5 young people) this was because they had come into police custody on a weekend and no reason was recorded for the other child.

The increase in the average number of unsentenced nights spent in a detention centre has grown 20 per cent from 40 nights per young person in 2021 to 48 nights in 2022. This is despite overall court clearance rates remaining steady and above 90 per cent (see Figure 24 below) and the average number of days to finalise a youth justice matter trending down, from a high of 125.9 days in 2020 to 94 days in 2022. This suggests that, despite some overall efficiency gains for all cases, the courts are taking longer to finalise the cases of young people remanded in custody.

The average number of events required to finalise young defendants remained relatively steady during 2019 to 2023, ranging between 4.8 and 5.5 events on average per young person.

Figure 24: Number of young defendants lodged and finalised in the Queensland Childrens Court, 2019–23



*Source: Department of Justice and Attorney-General (QLD) unpublished data request*



## CASE INFORMATION: Use of video link for court appearances

Queensland courts are equipped with videoconferencing facilities to allow remote parties to participate in court proceedings. Concerns reported to QFCC were that videoconferencing was not being utilised, meaning children held in a watch house may remain in a watch house close to their allocated court, rather than being transferred to a detention centre to appear via video. We also heard anecdotes of police and Youth Justice arranging transfers between watch houses to organise a young person's appearance and multiple court locations.

Information was requested from agencies regarding the use of videoconferencing. Of the 30 children, 13 appeared before court via a video link and 7 of the children physically appeared before the court. There was no information available for 9 of the 30 children.

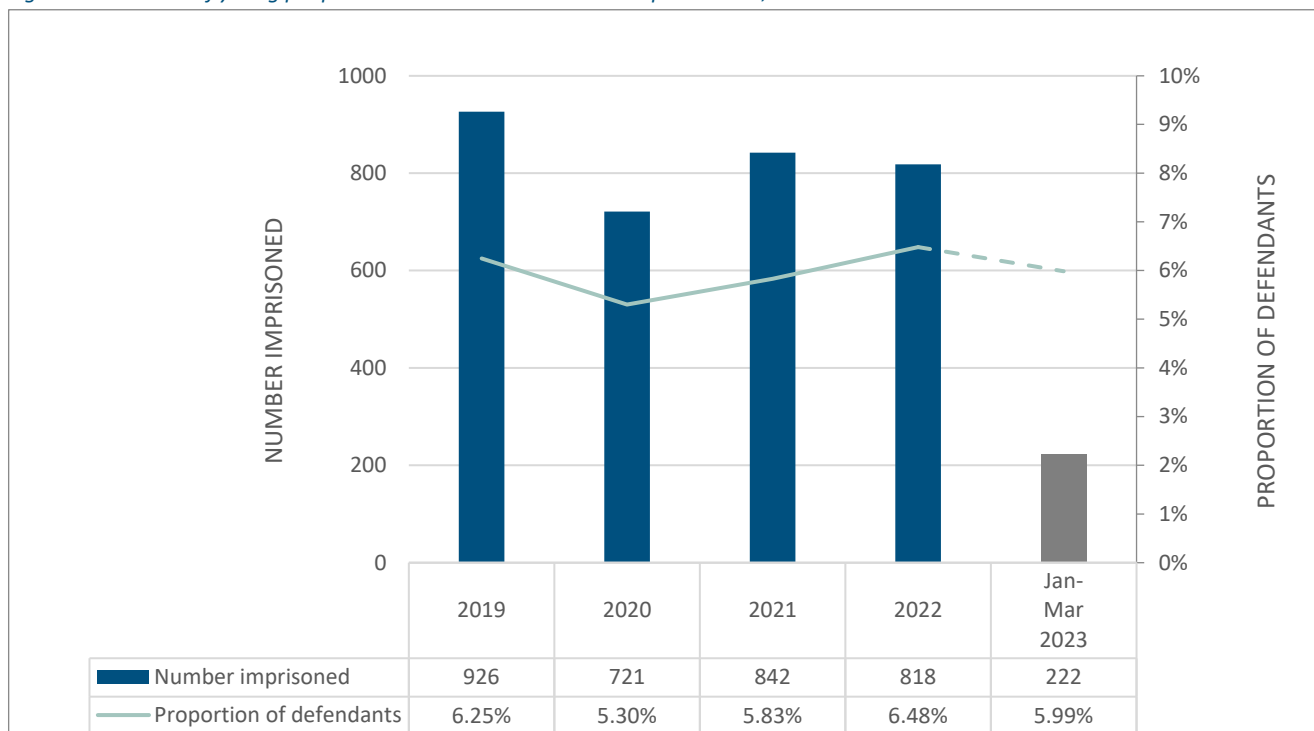
The QFCC could not determine whether the channel used for children to appear before court caused delays in their scheduled appearance. However, the information suggests videoconferencing is being used.

## Finding 16 – Sentences of detention have not increased

The Childrens Court has been consistent in the number and proportion of young people sentenced to imprisonment, with only minor fluctuations year-on-year. There has not been a significant uptrend in the number of young people sentenced to imprisonment between 2019 and 2022. Despite the growing population in detention centres, there is no apparent direct relationship between this trend and the court's rate of imprisonment.

Overall, the proportion of young people sentenced to imprisonment has tracked at around 6 per cent of all sentencing decisions. This indicates that the Childrens Court has maintained a reasonably consistent approach to imposing imprisonment. From 2020 to 2022, an average of 793.7 defendants were sentenced to imprisonment—which, as a proportion, represented about 5.9 per cent of all defendants sentenced by the Childrens Court. Partial year data from 2023 (January to March) showed 5.99 per cent of defendants sentenced to imprisonment, in line with the imprisonment rates between 2019 and 2022.

Figure 25: Number of young people convicted and sentenced to imprisonment, 2019–23



Source: Department of Justice and Attorney-General (QLD) unpublished data request

Overall, the application of other sentencing orders has shown some variation over time (See Table 5). Custody in the Community (which includes Conditional Release Orders and Intensive Supervision Orders) was ordered more often, increasing slightly from 5.0 per cent of orders in 2019 to 6.7 per cent in 2022. There was a higher proportion of Probation Orders imposed in 2022 (34.6 per cent) compared to 2019 (26.6 per cent), as well as Referral to Conference (16.1 per cent in 2022, up from 14.2 per cent in 2019). The rate of Good Behaviour Orders almost halved, dropping from 12.9 per cent in 2019 to 6.7 per cent of all orders in 2022.



Table 5: Number of young defendants convicted by primary sentence order, 2019–22

Primary Order	2019 Defendants	2019 Proportion	2020 Defendants	2020 Proportion	2021 Defendants	2021 Proportion	2022 Defendants	2022 Proportion
<b>Imprisonment</b>	926	6.3%	721	5.3%	842	5.8%	818	6.5%
<b>Community Service Order</b>	1,680	11.3%	1,145	8.4%	993	6.9%	738	5.9%
<b>Custody in the Community*</b>	747	5.0%	908	6.7%	995	6.9%	843	6.7%
<b>Monetary Order</b>	142	1.0%	78	0.6%	70	0.5%	63	0.5%
<b>Other**</b>	3,370	22.7%	2,925	21.5%	3,010	20.8%	2,916	23.1%
<b>Probation Order</b>	3,934	26.6%	4,295	31.6%	5,106	35.4%	4,361	34.6%
<b>Recognisance/Good Behaviour Order</b>	1,910	12.9%	1,559	11.5%	1,325	9.2%	845	6.7%
<b>Referral to Conference</b>	2,111	14.2%	1,965	14.5%	2,100	14.5%	2,036	16.1%

Source: Department of Justice and Attorney-General (QLD) unpublished data request

\* This category includes Conditional Release Orders and Intensive Supervision Orders

\*\* This category includes nominal penalties, such as 'convicted and not further punished'. In some instances, a court may sentence a defendant to a term of imprisonment on one offence and convict and not further punish them on a lesser offence

## Finding 17 – Custody is ineffective in responding to a cycle of reoffending and rearrest

Youth detention is having little rehabilitative impact for repeat offenders.<sup>66</sup> Data released in 2022 indicates that for the 12-month period ending 30 June 2021, 585 distinct young people completed a detention period in BYDC. Of those young people, 92 per cent were alleged to have committed another offence in the 12 months following their release. For the 12-month period ending 30 June 2021, 19 distinct young people completed a detention period in WMYDC. Of those, 84 per cent were alleged to have committed another offence in the 12 months following their release. For the 12-month period ending 30 June 2021, 310 distinct young people completed a detention period in CYDC. Of those, 96 per cent were alleged to have committed another offence in the 12 months following their release.<sup>67</sup>



### CASE INFORMATION: Repeat offending

Information regarding the 30 children in watch houses identified that 83 per cent of the children had prior experience in a watch house and 21 of the 30 children were on bail at the time of arrest.

<sup>66</sup> Queensland Family and Child Commission (2023). *2022-23 Annual Report*. [Queensland Family and Child Commission : Annual Report 2022-23 \(qfcc.qld.gov.au\)](https://qfcc.qld.gov.au/2022-23)

<sup>67</sup> Queensland Parliament (2022). Question on Notice No. 1270. <https://documents.parliament.qld.gov.au/tableoffice/questionsanswers/2022/1270-2022.pdf>

## Section 4 – Conclusions and recommendations

Through this review the QFCC was able to gather enough evidence to determine a set of key drivers of extended stays in watch houses by children and young people. These key drivers are:

### 1. Child and family circumstances and lack of bail and bail support options

Case information provided by the QPS showed that family circumstances were often cited as the reason for not being able to impose suitable conditions to support bail for the child. Decisions to oppose bail weighted family-community relationships, the parent's willingness, the home environment, parental factors and accommodation. A number of children staying in watch houses for lengthy periods did not have stable accommodation or family support to facilitate their compliance with bail. Bail support options providing supervision and/or accommodation may help mitigate the immediate risks from family circumstances preventing bail. See Section 3 - Finding 5 for further detail.

### 2. The changed policy landscape to presumption against bail for repeat offenders

From 2019 to 2022, both the total number and rate of bail refusals by the Queensland Childrens Court increased substantially. In 2019, 12.8 per cent of bail applications were refused, rising to 20.3 per cent in 2022. Partial year data from January to March 2023 indicates a similar rate of refusal, at 21.3 per cent. The *Youth Justice Reforms Review Final Report March 2022* reported that the legislative and policy change has resulted in longer remand periods and an increase in young people on remand. Minimal change in the percentage of Aboriginal and Torres Strait Islander young people on remand was also reported. At the time, 59 per cent of stakeholders reported they did not believe this to be an effective reform.<sup>68</sup> See Section 2 and Section 3 - Finding 6 for further detail.

### 3. The reduced efficiency rate of courts for children on remand

The proportion of unsentenced young people, relative to the total population in detention, has consistently remained high between 2019 and 2022. The proportion of unsentenced young people ranged from 82 per cent in 2019 to 88 per cent in 2022—with the average young person spending 48 nights awaiting sentencing, up from 40 nights in 2021 and 33 nights in 2020. This growth in time spent on remand awaiting court is significant – representing a 47.9 per cent growth over two years. Based on these figures, the time taken to move youth justice matters for children on remand through the court is a key factor that has changed and is likely to have a direct causal link to the time Queensland children spend in watch houses. See Section 3 – Finding 15 for further detail.

### 4. The capacity of Queensland youth detention centres has not met demand, despite policy decisions that increase future demand

The average number of daily detainees has continued to increase at a faster rate than the growth in the detention system's safe operating capacity. Since the combined operations of BYDC, CYDC and WMYDC in 2022, the total safe capacity has increased to 260 detainees, but the total average daily detainees increased to 277.7—this was 17.7 detainees per day on average above safe capacity, which had outpaced the additional capacity delivered by WMYDC.

<sup>68</sup> Department of Youth Justice, Employment, Small Business and Training (2022). [Youth Justice Reforms Review final report](#).

Case information provided by the QPS regarding 30 children who had extended stays in watch houses showed that at the time they were taken into custody, detention centres were either at or over safe capacity for 25 of the 30 children following court remand and would not accept transfers from watch houses. In 2022, there was a daily average of 277.7 detainees across Queensland's three detention centres compared to a combined safe capacity of 260 detainees, with total built capacity remaining between 6-18 beds each month.

Two of Queensland's youth detention centres appear to be understaffed. We examined staffing levels at all three youth detention centres, with a focus on the alignment of active FTE staff with the budgeted FTE cap. The number of lockdowns each month also substantially increased in 2022 in comparison to previous years.

Issues with the capacity in detention centre and increasing remand rate for a small cohort of young people was initially forecast following the transition of 17-year-olds into the youth justice system in February 2018. Since then, and despite the crime rate decreasing, data has shown a steady increase across several points, including that the use of watch houses for extended stays has been significantly increasing from 2020. Policy changes affecting an increase in remand for a small cohort were made before capacity issues were addressed. See Section 3 – Findings 11, 12, 13 and 14 for further detail.

#### **5. Detaining young people in custody, in its current form, is not effective in preventing future offending, leading to a high rate of churn through watch houses and the detention system**

Custodial services are not demonstrating the ability to address offending and reoffending. Young people cycle through watch houses and detention centres and appear, on the whole, to be back in custody within 12 months of their release. It is incumbent on us to reconsider our model of detention in the face of clear evidence of its ineffectiveness. Given access to education or other programs and interventions in watch houses is not consistent, and the serious challenges in delivering effective interventions in detention centres (particularly given our findings of understaffing, high number of young people in detention and increasing lockdowns and incidents) action needs to be taken to reconsider when and how young people are reengaged in pro-social activities. See Section 3 – Findings 3, 4 and 17 for further detail.

#### **6. Lack of specific accountability or transparency for young people subject to extended stays in watch houses**

Across Government, action has been slow to address the issue of children remanded in watch houses for extended periods. We heard from courts, police, youth justice, and legal providers about how each other was responsible for the causes of and solutions to this issue. Even despite the complex and layered regulatory and oversight framework in place, there is still little transparency about the day-to-day numbers of young people being held in watch houses, how long they are being held and why, reasons for their bail refusal, and information about how their needs and rights are being upheld.

As outlined in this report:

- there was a forecast increase in remand of 45 per cent at the time of transitioning 17-year-olds from the adult criminal justice system to the youth justice system (12 February 2018);
- since 2019, arrest rates for a small group of serious offenders have steadily increased;
- since 2020, the use of watch houses for extended stays has steadily increased;
- since 2020, the average number of young people in detention centres has steadily increased;

- no bail accommodation options have been implemented to mitigate bail risks following the Supervised Community Accommodation services being discontinued in January 2021;<sup>69</sup>
- legislative changes have been made, leading to more young people being remanded;
- appropriate arrangements were not put in place for youth detention oversight entities and community visitors to oversee and visit watch houses when children experiencing extended stays started to increase;<sup>70</sup> and
- there is little evidence to suggest accountability to young people for requirements under the YJ Act is weighted to the same degree as the reasons for holding a young person in a detention centre.<sup>71</sup>

As stated, changes to legislation were introduced to the YJ Act on 24 August 2023 which suspended the operation of the *Human Rights Act 2019* for children in watch houses and for the establishment of youth detention centres in extraordinary circumstances (for example, designating a watch house to be a youth detention centre).<sup>72</sup> With these arrangements in place until 2026, the QFCC expects to see swift implementation of action to deliver on the responsibilities of the YJ Act for children in detention; arrangements with oversight agencies for inspection, visitation and response to complaints; and Youth Justice case management beginning from when a child is remanded by court to a watch house (regardless of whether this is determined to be a detention centre or not).

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<sup>69</sup> Minister for Children and Youth Justice and Minister for Multicultural Affairs (2020). *Supervised Community Accommodation service to end*. <https://statements.qld.gov.au/statements/91168>

<sup>70</sup> Arrangements were made with OPG and the Youth Justice Youth Detention Inspectorate to visit the Brisbane city watch house when it was intended children requiring extended stays would be sent there. At the time, an amendment was made to the *Public Guardian Act 2014* so watch houses fell within the definition of a 'visitable site' for community visitors. Children are now being held in watch houses across Queensland and the workload – and spread of visitable sites – has grown exponentially without additional funding or resourcing.

<sup>71</sup> For example, coordinating arrangements for appropriate oversight and maintaining records of individual children and evidence of their basic needs being met.

<sup>72</sup> Department of Youth Justice, Employment, Small Business and Training (2023). [Changes to the Youth Justice Act 1992 | Department of Youth Justice, Employment, Small Business and Training \(desbt.qld.gov.au\)](https://desbt.qld.gov.au/changes-to-the-youth-justice-act-1992)



## Recommendations

Ultimately, no one wants young people to spend multiple nights in a watch house, however it is occurring at frequency and for significant times with significant impact. While children in watch houses are in QPS custody, but also receive services from Youth Justice, it appears that responsibility for this cohort is split. The system in Queensland requires strong leadership that prioritises transparency and alternative solutions. To this end this review recommends that:

- 1) Youth Justice, the courts and the QPS collaborate to monitor the drivers identified in this report and report back to the QFCC with a proposed action plan to reduce the length of time young people spend in watch houses
- 2) Youth Justice immediately amend the reporting it provides to oversight bodies on the number of young people held in watch houses to also include the time they have spent in the watch house;
- 3) the Queensland Government establishes a single point of accountability for producing regular (at least quarterly) public reports on the number and circumstances of young people held in watch houses (including age, Aboriginal and Torres Strait Islander status, location and time spent in watch houses);
- 4) the QPS and Youth Justice improve the information they record about the circumstances of a young person's detainment, the full context behind bail and remand decisions, and the extent to which their needs and rights are being addressed while in custody; and
- 5) the Department of Justice and Attorney-General identifies strategies for courts to reduce the length of time young people are in unsentenced custody.

## Appendix 1 – QFCC review of extended stays in watch houses: Background Briefing

### Introduction<sup>73</sup>

Queensland detains children at a higher rate than any other State in Australia, and has struggled for many years with the length of time it keeps children in watch houses and issues with capacity and staffing in its detention facilities.

In 2022 the Office of the Public Guardian (OPG) raised concerns with the QFCC about the systemic issues occurring in watch houses, and the Queensland Family and Child Commission (QFCC) requested details and was provided the details of 16 complaints and data and 256 incidents of young people over the age of 14 being held in a watch house for longer than four consecutive days and children under the age of 14 being held in a watch house longer than overnight.

The QFCC liaised with the OPG, Human Rights Commission and Ombudsman regarding the gaps in oversight of youth justice detention.

In 2022 and 2023 the QFCC received correspondence from the OPG providing a copy of complaints raised on behalf of children. The QFCC reviewed complaints relating to **16 children** who were held in custody in **eight watch house locations** across Queensland.

The OPG suggests the extended custody in a watch house may be inconsistent with the young people's rights and interests and youth justice principles under the *Youth Justice Act 1992* (QLD):

- **Principle 2** - *The youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing.*
- **Principle 13** - *A person making a decision relating to a child under this Act should consider the child's age, maturity and, where appropriate, cultural and religious beliefs and practices.*
- **Principle 19** - *A child detained in custody should only be held in a facility suitable for children.*

The *Youth Justice Act 1992* Schedule 1 Charter of youth justice principles highlights that children being dealt with under the Act should be treated with respect and dignity, including while the child is in custody. They should also be treated in a way that diverts the child from the courts' criminal justice system, unless the nature of the offence and the child's criminal history indicates that a proceeding for the offence should be started.

OPG also suggests, the extended custody in a watch house may be an unreasonable and unjustifiable limitation of a young person's human rights under the *Human Rights Act 2019* (Qld), including:

- **Section 26(2)** - *The right of every child, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child.*
- **Section 30(1) and (2)** - *All persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person, and an accused person who is detained or a person detained without charge must be treated in a way that is appropriate for a person who has not been convicted.*

<sup>73</sup> Information in this background briefing paper was current as of February 2023. Amendments to the YJ Act made after this date are not reflected in this paper. See Section 2 for an overview of 2023 amendments to the YJ Act.

- **Section 33(1)** - An accused child who is detained, or a child that is detained without charge, must be segregated from all detained adults.
- **Section 36(1)** – Every child has the right to have access to primary and secondary education appropriate to the child's needs.

Further information is necessary regarding the incidences of detainment and the treatment of young people when within the watch house, including the reason and duration of watch house stays and access to services and safeguards.


### The cohort of children subject to the complaints

The 16 young people subject of the complaints reviewed at the time of writing were held in Toowoomba, Ipswich, Logan, Cairns, Caboolture, Townsville, Hervey Bay and Brisbane watch houses during the period between 23 September to 24 October 2022. At the time of custody, the children ranged between the ages of 12 and 17 years.

	Toowoomba	Ipswich	Logan	Cairns	Caboolture	Townsville	Hervey Bay	Brisbane
NO. OF CHILDREN	3	2	1	3	2	1	2	2

- The sample group is made up of eight male and eight female children. Eight of the children are of First Nations background and one of the young people is of Torres Strait Islander heritage, information on ethnicity for the remaining seven children was not provided.
- The young people's time in the watch house varied from 5 to 13 days, averaging eight and a half days. Five of the children were held in the watch house for more than 11 days and are female.
- Eight of the 16 children were held in the watch house during the school holiday period. These eight children were female and were held for a longer than the average period in the watch house.

### Cohort of children in watch houses in Queensland

 During 2021-22, there were 7001 admissions of children to watch houses, with 1356 admissions resulting in children spending more than 1 day in the watch house.<sup>74</sup> Comparatively, in 2017-18, there were 1267 admissions to a watch house with 515 children spending more than 1 day in a watch house.<sup>75</sup> Over this period, total admissions to watch houses increased by 452% and children being held in a watch house for more than 1 day increased by 163%.

During 2021-22, there were 7001 distinct admissions to watch houses.<sup>76</sup>

Length of watch house stay (days)	Distinct admissions
1 or less	5,645

<sup>74</sup> Childrens Court of Queensland, Annual Report 2021-22, [5722T2094-21DD.pdf \(parliament.qld.gov.au\)](https://www.parliament.qld.gov.au/5722T2094-21DD.pdf)

<sup>75</sup> Childrens Court of Queensland, Annual Report 2017-18, [https://www.courts.qld.gov.au/data/assets/pdf\\_file/0003/610077/cc-ar-2017-2018.pdf](https://www.courts.qld.gov.au/data/assets/pdf_file/0003/610077/cc-ar-2017-2018.pdf)

<sup>76</sup> Childrens Court of Queensland, Annual Report 2021-22, [5722T2094-21DD.pdf \(parliament.qld.gov.au\)](https://www.parliament.qld.gov.au/5722T2094-21DD.pdf)

2	461
3-4	423
5-7	305
8-14	166
15 or more	1
<b>Total</b>	<b>7,001</b>

The Department Children, Youth Justice and Multicultural Affairs provides watch house statistics to the QFCC and other stakeholders. The following unpublished data provides an indication of the total cohort impacted over a 5-week reporting period:

Week ending	Total in watch house	Total admitted to detention	Awaiting admission & transport to detention	Awaiting court outcome	# of detention centre beds (of 259 total safe capacity)
13 January 2023	76	4	72	0	296
20 January 2023	78	4	73	1	294
27 January 2023	77	3	74	0	291
03 February 2023	78	6	72	0	294
10 February 2023	62	6	56	0	290



On 1 February 2023, the QFCC was notified that over 80 children were being held in watch houses across Queensland and more than 13 children and young people were held between 25-32 days. During 2021-22, only 1 child was held in a watch house for more than 15 days.

### The QFCC's concerns

The QFCC is concerned about the number of children held in watch houses and the number of days they are held in watch houses:

1. Data suggests number of admissions to watch houses has increased by 452% and length of stay in watch houses has increased by 163% over four years, while the number of young people charged with offences has decreased. There is little public and verified information on the drivers and risk mitigations being applied to this issue.

2. Several complaints and incidents have been raised about children in watch houses and it is unclear what is being done to ensure safeguards and actions to meet the legislative and rights requirements for children being detained. The QFCC has received a series of correspondence relating to complaints and incidents recorded about children being held in watch houses. Additionally, on 1 February 2023, the QFCC received further information from the OPG highlighting that 13 children and young people have been detained in a watch house for a period between 25-32 days.

## Policy and procedure scan

Legally, and by design, watch houses temporarily hold children and young people for processing the child's charges following arrest. This applies from the point of their arrest at a police station to their first court appearance where the court should release or remand the child to a detention facility. By design it is intended that young people should be released from the watch house on bail to their parents within a short timeframe – however this is not the case in Queensland.

In Queensland the use of watch houses has been broadened by laws that remove bail as an option and in practice it now includes the remanding of young people after court appearances (because of delays and deferrals in their transportation to a youth detention centre) and as a network of accommodation options that young people are transported between for their schedule of court appearances (because the court system has not enabled remote appearance from the detention facility).

## Legality

Children held in watch houses for extended periods are those that have had a decision made by a police officer or court not to grant Bail. The reasons for this decision must be recorded in accordance with section 48B of the *Youth Justice Act 1992* (the Act). The criteria for this decision are outlined in section 48AA *Matters to be considered in making particular decisions about release and bail* and include:

### **48AA Matters to be considered in making particular decisions about release and bail**

#### **(4) In making a decision mentioned in subsection (1) —**

##### **(a) the court or police officer may have regard to any of the following matters of which the court or police officer is aware—**

- (i) the nature and seriousness of the alleged offence;
- (ii) the child's criminal history and other relevant history, associations, home environment, employment and background;
- (iii) the history of a previous grant of bail to the child;
- (iv) the strength of the evidence against the child relating to the alleged offence;
- (v) the child's age, maturity level, cognitive ability and developmental needs;
- (vi) whether a parent of the child, or another person, has indicated a willingness to the court or police officer that the parent or other person will do any of the following things—

(A) support the child to comply with the conditions imposed on a grant of bail;

(B) notify the chief executive or a police officer of a change in the child's personal circumstances that may affect the child's ability to comply with the conditions imposed on a grant of bail;

(C) notify the chief executive or a police officer of a breach of the conditions imposed on a grant of bail;

##### **(vii) if the child is an Aboriginal person or Torres Strait Islander—a submission made by a representative of the community justice group in the child's community, including, for example, a submission about—**

(A) the child's connection with the child's community, family or kin; or

(B) cultural considerations; or

(C) considerations relating to programs and services established for offenders in which the community justice group participates;

##### **(viii) any other relevant matter; and**

##### **(b) for a decision mentioned in subsection (1) (d) —the court or police officer may have regard to any of the following—**

(i) principle 18 of the youth justice principles;

(ii) the desirability of strengthening and preserving the relationship between the child and the child's parents and family;

(iii) the desirability of not interrupting or disturbing the child's living arrangements, education, training or employment;

(iv) the desirability of minimising adverse effects on the child's reputation that may arise from being kept in custody;

(v) the child's exposure to, experience of and reaction to trauma;

(vi) the child's health, including the child's need for medical assessment or medical treatment;

(vii) for a child with a disability—the disability and the child's need for services and supports in relation to the disability;



- (viii) if the child is an Aboriginal person or Torres Strait Islander—the desirability of maintaining the child’s connection with the child’s community, family and kin;
- (ix) if the child is under 14 years—the particular desirability of releasing children under 14 years from custody due to their vulnerability and community expectations that children under 14 years are entitled to special care and protection.

The Act provides rules around timing, including that a child must be brought before a court *“as soon as possible and within 24 hours after arrest or ...as soon as practicable on the next day court can practically be constituted.”* Section 50 provides consequences for failing to meet this timeframe.

When a child appears before the court it must make a decision to bail, remand or release the child. Section 56 provides that *“a court that remands a child in custody must remand the child into the custody of the Chief Executive [of Youth Justice] despite provisions of any other act to the contrary.”* It is therefore not possible for a court to remand a child to a watch house. In addition, section 56(4) provides that the police must *“deliver the child as soon as practicable into the custody of the chief executive”* following the remand order being made.



The Queensland Police Service’s *Operational Procedures Manual* appears to give effect to policy that extends the ability to hold children in watch houses beyond the provisions of the legislation.

The Queensland Police Service’s *Operational Procedures Manual* section 16.17 relates specifically to children in watch houses. A summary of the relevant procedures is below:

### Admitting a child to a watch house

#### 16.17.3 Care of children in custody

As soon as practicable upon admission, a child who is lodged in a watch house must be provided with information regarding their rights and responsibilities whilst in a watch house. A copy of the rights and responsibilities of children whilst in custody in a watch house is to be given to the child and any parent or adult guardian. Where the police officer or watch house officer suspects the child and/or adult carer cannot understand or read the document, the officer is to explain the document verbally. For this purpose, the Department of Children, Youth Justice and Multicultural Affairs (DCYJMA)<sup>77</sup> representative, independent person, authorised cell visitor or child’s legal representative can be present.

#### 16.10.2 Unclothed searches of persons

Where there is a need to search a child, the search must be conducted in the presence of a support person, unless the responsible officer reasonably suspects:

- (i) Delaying the search is likely to result in evidence being concealed or destroyed; or
- (ii) An immediate search is necessary to protect the safety of any person

### Length of stay in watch houses

#### 16.17.5 Custody of children in watch houses

<sup>77</sup> Following the Machinery of Government changes in 2023, the department responsible for Child Safety changed from the Department of Children, Youth Justice and Multicultural Affairs to the Department of Child Safety, Seniors and Disability Services. At the time of writing, the QPS Operational Procedures Manual has not been updated to reflect the name change.

Custody in a watch house overnight means a continuous period of custody in a watch house of at least six hours, commencing after 9pm and ending at or before 6am. Wherever practicable children are not to be kept in custody in a watch house.

Following the arrest of a child where the child remains in custody and the child's court appearance is delayed; or sentencing in detention or remanding of a child in custody, the relevant watch house manager should ensure, wherever practicable, the child is transferred to a detention centre nominated by a DCYJMA (Youth Justice) representative.



When a child is to be held in custody in a watch house overnight, the Officer in Charge (OIC) of the watch house is to record the reasons for the decision to hold the child in custody in the child's relevant QPRIME custody report.

A child should only be kept in custody in a watch house overnight where:

- it is not reasonably practicable to immediately transport the child to a youth detention centre; and
- there are no extenuating factors, such as:
  - a perceived need for the child to remain close to significant family members; and
  - subjecting the child to lengthy transportation to a youth detention centre only to return soon after to the same watch house to attend court.

If, following consultation with the nearest area office of Youth Justice (or the Child Safety After Hours Service Centre), in accordance with the provisions of the previous section, it is not reasonably practicable to transfer the child to a detention centre, the watch house manager should notify the commissioned officer responsible for that watch house.

The commissioned officer may authorise that the child continues to be kept in custody in a watch house. The commissioned officer should:

- record the reasons for the decision in the officer's diary; and
- ensure the reasons for the decisions are recorded in the child's relevant QPRIME custody report.

If a child is to be kept in custody in a watch house longer than overnight the commissioned officer is to ensure the relevant Manager, DCYJMA, Youth Justice is aware of the custody.

The *Operational Procedures Manual* also states it may be necessary for the child to be kept in custody in a watch house for two or more consecutive nights where a child of any age:

- (i) is appearing in extended proceedings; and
- (ii) it has been determined no suitable alternative exists; and
- (iii) the child is required to be kept in custody in a watch house during the court's sittings; or
- (iv) there are exceptional circumstances that prevent the transportation of a child to a youth detention centre.

It is however noted that this constitutes an "extraordinary circumstance".

### **Transportation to a youth detention or medical centre from watch house**

#### **16.17.5 Custody of children in watch houses**

Where appropriate or necessary, a child may be transported to a youth detention centre or watch house outside of the designated catchment area by Queensland Government Air (QGAir). QGAir availability is limited to the

condition where the aircraft is on a scheduled flight on a scheduled route, unless there are compelling reasons or extraordinary circumstances. This would include where commercial or charter flights are either not appropriate or unavailable.

If QGAir is not available a child may be transported to a detention centre by commercial flight or charter flight (if a commercial flight is not available). Payment of airfares for the child and escorting officer(s) and payment of overtime, travel allowance and meal allowances to be incurred by the escorting officer(s) are to be approved by the: (i) commissioned officer responsible for the watch house; and (ii) Inspector, State Watch house Coordinator (Email: Inspector Brisbane Watch house), prior to arranging commercial or charter flights.

The commissioned officer responsible for a watch house will determine, in consultation with the delegated officer, DCYJMA, Youth Justice, the need for special transport arrangements.

### ***Transfer to medical centres***

#### ***16.17.3 Care of children in custody***

Officers or watch house officers are to advise, as soon as possible, the child's parent(s) or adult caregiver, where practicable and an officer from the DCYJMA (when the child is under the care of DCYJMA), when a child is transferred from a watch house to a hospital or to other medical facility for medical attention.

The watch house manager is to allow access visits by parents or an authorised cell visitor subject to operational and/or security needs of the watch house and the consent of the child. An officer from the DCYJMA is to, whenever practicable, be permitted access to children in the watch houses.

## Appendix 2 – Terms of Reference

### Terms of Reference

System review into the drivers that result in Queensland children entering and remaining in watchhouses  
March 2023

#### Review Background

The Queensland Family and Child Commission (QFCC) is concerned about the number of children held in watchhouses and the length of time children are held in watchhouses:

1. Childrens Court data suggests that over four years, the number of admissions to watchhouses has increased by 452% and the number with a length of stay of more than 1 day has increased by 163%, while the number of young people charged with offences has decreased.
2. Several complaints and incidents have been raised about children in watchhouses. The QFCC has received a series of correspondence from the Office of the Public Guardian (OPG) in relation to complaints concerning children who were held in watchhouses. The OPG reported it recorded 256 instances of young people over the age of 14 being held in a watchhouse for longer than four consecutive days and children under the age of 14 being held in a watchhouse longer than overnight. On 1 February 2023, the QFCC received further information from the OPG highlighting that 13 children and young people have been detained in a watchhouse for a period between 25-32 days. It is unclear what is being done to ensure safeguards and actions to meet the legislative requirements for these children whilst being detained for these periods.

Following the receipt of this information, the Principal Commissioner requested the commencement of a systemic review into the drivers that result in Queensland children entering and remaining in watchhouses.

According to the Queensland Children's Court, during 2021-22, there were 7001 admissions of children to watchhouses, with 1356 admissions resulting in children spending more than 1 day in the watchhouse.<sup>1</sup> Comparatively, in 2017-18, there were 1267 admissions to a watchhouse with 515 children spending more than 1 day in a watchhouse.<sup>2</sup> Over this period, total admissions to watchhouses increased by 452% and children being held in a watchhouse for more than 1 day increased by 163%. There is little public and verified information on the drivers and risk mitigations being applied to the issue of extended stays in watchhouses.

#### Review Purpose

The intent of this review is to identify and evidence the systemic drivers that result in Queensland children entering and remaining in watchhouses for extended lengths of time.

The QFCC is committed to understanding the drivers of disproportionality of Aboriginal and Torres Strait Islander children in the statutory youth justice system. This review will contribute to the QFCC's

<sup>1</sup> Childrens Court of Queensland (2022), *Annual Report 2021-22*, 5722T2094-21DD.pdf (parliament.qld.gov.au)

<sup>2</sup> Childrens Court of Queensland (2018), *Annual Report 2017-18*,

[https://www.courts.qld.gov.au/\\_data/assets/pdf\\_file/0003/610077/cc-ar-2017-2018.pdf](https://www.courts.qld.gov.au/_data/assets/pdf_file/0003/610077/cc-ar-2017-2018.pdf)



commitment to Aboriginal and Torres Strait Islander children and their families.

### Review Terms of Reference

The terms of reference of this review are to:

1. Conduct a case file read on the cases of 30 young people identified by the OPG as having spent extended time in watchhouses in 2022 and 2023, to understand and evidence:
  - a) the reasons contributing to the extended time; and
  - b) the steps taken to meet the legislative requirements relating to those young people during their remand.
2. Compare the legislative and practice differences between Queensland and other Australian jurisdictions to understand why Queensland is experiencing these challenges.
3. Build a statistical profile of key areas of the system to understand (and where possible apportion cause and effect) to the drivers of the extended time. This statistical profile will consider key areas related to the decision-making regarding remand in watchhouses including:
  - apprehension and arrest rates;
  - types of charges;
  - bail and diversion rates;
  - reasons for remand;
  - family contexts;
  - detention rates;
  - judicial timeframes;
  - logistical/transport activities; and
  - detention centre and watchhouse capacity.

### Out of scope

Section 9(2) of the *Family and Child Commission Act 2014* states it is not a function of the QFCC to investigate the circumstances of a particular child, young person or family.

### Review process and management

1. The review will be undertaken in a timely, and objective manner and will proceed in accordance with the principles of natural justice.
2. The review is to be contained to the scope outlined in these terms of reference with a

succinct findings report to be produced in the fourth quarter of 2022-23.

3. The QFCC will request information under section 35 of the *Family and Child Commission Act 2014*. The QFCC System Reviews Team is delegated the authority to access information obtained by the Principal Commissioner for the purpose of this review.
4. Strict confidentiality will be maintained under the provisions of sections 36 and 37 of the *Family and Child Commission Act 2014*. Confidential information obtained in the course of this review will not be disclosed, communicated, published or permitted to be disclosed, published or communicated except as necessary for the proper conduct of the review, preparation of the report and as required or permitted by law.
5. The Principal Commissioner will provide a copy of the draft report including its findings and recommendations to agencies involved in the conduct of the review for comment.
6. The Principal Commissioner will provide a final report including its findings and recommendations to the Attorney-General, and Minister for Children, Youth Justice and Multicultural Affairs.



**Luke Twyford**

Principal Commissioner

Queensland Family and Child Commission

3 / 4 / 2023



## Appendix 3 – Information requested about 30 children with an extended watch house stay

### 1. Reasons for the child's entry to the watch house

- 1.1. Duration of watch house stay?
- 1.2. From where did the child enter the watch house from (i.e., community or detention)?
- 1.3. Time of arrest
- 1.4. Apprehension / charge / offense type
- 1.5. Documented reason for entering the child in the watch house?
  - The record of Police Bail Decision making in accordance with section 48B(2) of the Youth Justice Act, and the associated risk assessment conducting in line with section 48AAA
  - The record of court remand decision making in accordance with section 48B(1) of the Youth Justice Act and the associated risk assessment conducting in line with section 48AAA.
- 1.6. Was the child on bail at time of being arrested?
- 1.7. What is the child's criminal history? Is this the child's first time in a watch house? If not, what do we know about their prior stays?
- 1.8. Were multiple or single watch houses used in this episode? What were the movement logistics?
- 1.9. For each day in the watch house for this young person, how many other adults and how many other young people were also in the watch house?

### 2. Reasons for child's ongoing detention in the watch house:

#### *Court appearances*

- 2.1. What was the child's first court appearance date?
- 2.2. Is there evidence the Commissioner of police made arrangements for the child in accordance with section 54(2) of the Youth Justice Act following their first court appearance?
- 2.3. Did the Chief Executive take necessary action in accordance with section 54(3) of the Youth Justice Act following their first court appearance?
- 2.4. What were the court dates relevant for this child during their watch house stay?
- 2.5. What were the contributing factors driving the court date/s?
- 2.6. Did the YP attend court face to face or via video link (digital)?
- 2.7. Was the child brought before the court within 24 hours? If not was action taken to release or bail the child in accordance with section 50 of the Youth Justice Act?
- 2.8. What was the court decision remand (see 1.5.2 above)?
- 2.9. Is there evidence that the court complied and enforced section 56 of the Youth Justice Act?
- 2.10. Did the child go straight from court to detention facility or back to a watch house? For what recorded reasons?

#### *Transport issues and detention centre capacity?*

- 2.11. How long did the YP wait to be transported to the detention centre post detention order being made?
- 2.12. What was the reason for the timing (transport/detention centre capacity/other)?
- 2.13. Any other extenuating circumstances?

**3. Family situation at the time of child detainment?**

- 3.1. Who are/is the child's guardians? (Parent, CEO -DCJYMA, CPO-Other)
- 3.2. Time guardian was contacted following the child's detainment?
- 3.3. Attempts made to contact the guardian.
- 3.4. Guardian's ability to provide bail appropriate alternative to watch house detention.
- 3.5. Stable housing/environment for child to be released to?
- 3.6. Adult carer agrees and/or supports bail as an alternative to watch house?
- 3.7. Did the guardian visit the child? How often, for what time, and how supported?

**4. Is there evidence of the steps taken to meet the legislative, policy and/or procedural requirements relating to those young people during their remand:**

- 4.1. Educational needs being met? (DoE inclusive policy & Inter-agency collaboration guide)
- 4.2. Mental and physical health assessments performed (QPS OPM Appendix 16.2 Rights and responsibilities whilst in custody in a watch house):
  - 4.2.1.1. Evidence of the dietary needs being met.
  - 4.2.1.2. Evidence of the sanitary needs being met.
  - 4.2.1.3. Evidence of physical activity/exercise needs being met.
- 4.3. Physical safety needs met (QPS OPM Appendix 16.2 Rights and responsibilities whilst in custody in a watch house):
  - 4.3.1.1. Support person for the YP where a body search was warranted? (Police powers and responsibilities Act (PPRA) s631 and QPS OPM 16.10 - Special requirements for searching children and persons with impaired capacity.)
  - 4.3.1.2. Any incidents relevant to the YP – with focus on health emergency/requirement for external support?
  - 4.3.1.3. Not detained with adults; (QPS OPM 16.12.1 (iii, iv));
  - 4.3.1.4. Was there any suicide attempts while young person was held in watch house.
  - 4.3.1.5. Was this or any other children and young people on suicide watch while in watch house.
  - 4.3.1.6. Was this young person placed in isolation while held in watch house. For what time and what reason, and what records were kept?
  - 4.3.1.7. Was this or other young people requiring medication administered while this young person was held in watch house, and if this was administered including frequency.
  - 4.3.1.8. Evidence of Cultural needs met (Participation; Placement; Prevention; Partnership; Connection)

**5. Oversight, Advocacy and Support**

- 5.1. Time of OPG inspections/support to young person?
- 5.2. Any and type of complaints made? Who to? How Resolved? (OPG, Youth Justice, QPS and HRC data request)

## Appendix 4 – Data requested from agencies

### Data analysis methodology

**Data sources:** data was sourced from various places, primarily from government agencies under section 35 of the *Family and child Commission Act 2014* on key areas related to the decision-making regarding remand in watch houses against the following queries.

#### Data queries:

#### 1. What is the correlation between numbers and rates of apprehension, bail, remand in watch house, remand in detention and sentenced detention and detention centre capacity over the last several years?

*To build a visual profile answering this question the QFCC will collect the monthly data (both point-in-time for last day of month and cumulative end-of-month total) for the time period 2019, 2020, 2021, 2022, 2023 for the following elements (including gender, and Aboriginal and Torres Strait Islander Status proportions where possible):*

- 1.1 Number of youth apprehensions
- 1.2 Number of unique youth apprehensions
- 1.3 Number of youth charged
- 1.4 Number of unique youth charged
- 1.5 Number of youth provided warnings, cautions and no further action
- 1.6 Number of unique youth provided warnings
- 1.7 Number of youth offending in company
- 1.8 Number of unique youth offending in company
- 1.9 Number of youth on bail
- 1.10 Number of youth court matters commenced
- 1.11 Number of youth court matters completed
- 1.12 Number of youth in watch house
- 1.13 Number of unique youth in watch house
- 1.14 Number of youth in detention – remand
- 1.15 Number of unique youth in detention – remand
- 1.16 Number of youth in detention – sentenced
- 1.17 Number of unique youth in detention – sentenced
- 1.18 Total detention centre capacity

#### 2. Have changes in arrest and apprehension numbers or rates increased the number of young people requiring to be held in watch houses for an extended period?

See Q1 and Q3 indicators

#### 3. Have changes in young offender criminal behaviour (i.e., types or frequency of offending) increased the number of young offenders requiring to be held in watch houses for an extended period?

*To build a data profile answering these questions the QFCC will collect the annual data (cumulative end-of-year total) for the time period 2020, 2021, 2022, 2023 for the following elements:*

- 3.1. Number of youth apprehensions each year:
  - By unique offenders
    - By age
    - By region
    - By gender

- By Aboriginal and Torres Strait Islander status
- By charge/offence type (Homicide and related offences, Acts intended to cause injury, Sexual assault and related offences, Robbery and extortion, Unlawful entry with intent, Theft and related offences (motor vehicle theft, other theft, receiving and handling), Deception and related offences, Illicit drug offences, Property damage, Road traffic offences, Other offences):
  - By age
  - By region
  - By gender
  - By Aboriginal and Torres Strait Islander status

### 3.2. Number of youth entries into watch houses each year:

- By charge/offence type
  - By age
  - By region
  - By gender
  - By Aboriginal and Torres Strait Islander status
- By number of unique young offenders held in watch house
  - By duration in watch house (one day or less, two days, three to four days, five to seven days, eight to 14 days, 15 or more days)

## 4. Have changes in bail/diversion and remand decision making increased the number of young people requiring to be held in watch houses for an extended period?

### a. Police bail decisions

### b. Court bail decisions

*To build a data profile answering these questions the QFCC will collect the annual data (cumulative end-of-year total) for the time period 2018, 2019, 2020, 2021, 2022 for the following elements:*

### 4.1. Number of young people for whom police granted bail

- By age
- By Offence type (Homicide and related offences, Acts intended to cause injury, Sexual assault and related offences, Robbery and extortion, Unlawful entry with intent, Theft and related offences (motor vehicle theft, other theft, receiving and handling), Deception and related offences, Illicit drug offences, Property damage, Road traffic offences, Other offences)
- By Gender
- By Aboriginal and Torres Strait Islander Status

### 4.2. Number of young people for whom police refused bail

- By age
- By Offence type (Homicide and related offences, Acts intended to cause injury, Sexual assault and related offences, Robbery and extortion, Unlawful entry with intent, Theft and related offences (motor vehicle theft, other theft, receiving and handling), Deception and related offences, Illicit drug offences, Property damage, Road traffic offences, Other offences)
- By Gender
- By Aboriginal and Torres Strait Islander Status

### 4.3. Number of young people for whom court granted bail

- By age

- By Offence type (Homicide and related offences, Acts intended to cause injury, Sexual assault and related offences, Robbery and extortion, Unlawful entry with intent, Theft and related offences (motor vehicle theft, other theft, receiving and handling), Deception and related offences, Illicit drug offences, Property damage, Road traffic offences, Other offences)
- By gender
- By Aboriginal and Torres Strait Islander Status

#### 4.4. Number of young people granted court bail following police refused bail

- By age
- By Offence type (Homicide and related offences, Acts intended to cause injury, Sexual assault and related offences, Robbery and extortion, Unlawful entry with intent, Theft and related offences (motor vehicle theft, other theft, receiving and handling), Deception and related offences, Illicit drug offences, Property damage, Road traffic offences, Other offences)
- By gender
- By Aboriginal and Torres Strait Islander Status

#### 4.5. Number of young people refused bail by court

- By age
- By Offence type (Homicide and related offences, Acts intended to cause injury, Sexual assault and related offences, Robbery and extortion, Unlawful entry with intent, Theft and related offences (motor vehicle theft, other theft, receiving and handling), Deception and related offences, Illicit drug offences, Property damage, Road traffic offences, Other offences)
- By gender
- By Aboriginal and Torres Strait Islander Status

#### 4.6. Number of young people sentenced by court

- By age
- By Offence type (Homicide and related offences, Acts intended to cause injury, Sexual assault and related offences, Robbery and extortion, Unlawful entry with intent, Theft and related offences (motor vehicle theft, other theft, receiving and handling), Deception and related offences, Illicit drug offences, Property damage, Road traffic offences, Other offences)
- By sentencing outcome
- By gender
- By Aboriginal and Torres Strait Islander Status

### 5. Has the number, proportion or rate of young people held on remand increased the number of young people requiring to be held in watch houses for an extended period?

*To build a visual profile answering this question the QFCC will collect the monthly data (both point-in-time for last day of month and cumulative end-of-month total) for the time period 2019, 2020, 2021, 2022, 2023 for the following elements (including gender, and Aboriginal and Torres Strait Islander Status proportions where possible):*

- 5.1. Number of young offenders on remand during month
- 5.2. Number of unique young offenders on remand during month
- 5.3. Average length of time on remand per young person during month



**6. Has the physical location of young people apprehended increased the number of young people requiring to be held in watch houses for an extended period?**

*To build a data profile answering these questions the QFCC will collect the annual data (cumulative end-of-year total) for the time period 2019, 2020, 2021, 2022, 2023 for the following elements:*

- 6.1. Number of apprehensions of unique youth, by region
- 6.2. Number of unique youth on bail, by region
- 6.3. Total unique youth held in watch house, by region

**7. How have detention centre numbers and rates impacted detention Centre capacity – and how has this increased the number of young people requiring to be held in watch houses for an extended period?**

See Q1 and Q8 indicators

**8. How has detention centre staffing increased the number of young people requiring to be held in watch houses for an extended period?**

*To build a visual profile answering this question the QFCC will collect the monthly data (both point-in-time for last day of month and cumulative end-of-month total) for the time period 2019, 2020, 2021, 2022, 2023 for the following elements:*

- 8.1. Number of young people in detention centre, by detention centre
- 8.2. Total safe operating capacity of detention centre, by detention centre
- 8.3. Number of unique young people entering detention centre, by detention centre
- 8.4. Number of unique young people exiting detention centre, by detention centre
- 8.5. Number of actual detention centre workforce (FTE), by detention centre
- 8.6. Number of vacant detention centre workforce (FTE), by detention centre

**9. How has the incidence of lockdowns, and incidents in detention increased the number of young offenders requiring to be held in watch houses for an extended period?**

*To build a visual profile answering this question the QFCC will collect the monthly data (both point-in-time for last day of month and cumulative end-of-month total) for the time period 2019, 2020, 2021, 2022, 2023 for the following elements (including gender, and Aboriginal and Torres Strait Islander Status proportions where possible):*

- 9.1. Number of detention centre lockdowns, by centre
- 9.2. Number of reported/recorded incidents in detention centre, by centre
- 9.3. Average duration of lockdown, by centre

**10. How has court decision-making timeliness increased the number of young people requiring to be held in watch houses for an extended period?**

*To build a visual profile answering this question the QFCC will collect the quarterly data (both point-in-time for last day of quarter and cumulative end-of-quarter total) for the time period 2019, 2020, 2021, 2022, 2023 for the following elements:*

- 10.1 Average number of days to finalise youth justice proceedings
  - By court jurisdiction - Disaggregate by children held in watch house, child held in detention centre, or other

- By region or location if possible - Disaggregate by children held in watch house, child held in detention centre, or other
- Number and proportion of court appearances where a proven offence is finalised and where the young person arrived at court on remand but was released from custody following their court appearance -
- Backlog indicator pending and non-pending cases >6 months, >12 months, >24 months, by court jurisdiction if possible
- On-time processing indicator cases finalised ≤6 months, ≤12 months, ≤24 months, by court if possible

*To build a data profile answering these questions the QFCC will collect the annual data (cumulative end-of-year total) for the time period, 2019, 2020, 2021, 2022, 2023 for the following elements: Disaggregate by children held in watch house, child held in detention centre, or other*

10.2 Average number of:

- mentions per finalisation, by court jurisdiction
- attendances per finalisation, by court jurisdiction
- attendances per unique offender per finalisation, by court jurisdiction

10.3 Number of court sitting days, by court jurisdiction or by location

10.4 Total funding for Childrens Court criminal justice matters

10.5 Number of courts enabled for virtual attendance by court jurisdiction

10.6 Number of matters involving virtual attendance by court jurisdiction

**11. How did court shutdowns (i.e., Christmas) contribute to the increased the number of young people requiring to be held in watch houses for an extended period?**

11.1 The dates for court closures for each year from 2018 to 2023 inclusive, by court jurisdiction or by location

11.2 Number of unfinalised youth justice matters open during the dates of court closure by court jurisdiction or by location

11.3 Number of young people in watch houses on each day during these closure period and the subsequent 2 weeks – and as a ratio against the average number of young people held in watch houses outside of closure period.

**12. How has changes in sentencing impacted on detention centre capacity and increased the number of young people requiring to be held in watch houses for an extended period?**

*To build a data profile answering these questions the QFCC will collect the annual data (cumulative end-of-year total) for the time period 2018, 2019, 2020, 2021, 2022, 2023 for the following elements:*

12.1 The total number of unique persons with detention sentences

12.2 The average length of sentenced periods of detention for young people with sentences

12.3 Total number and proportion of cases where a proven offence is finalised and where the young person arrived at court on remand but was released from custody following their court appearance

**13. What proportion of young people held in watch houses were being moved between watch house or kept in watch house for court appearances:**

**a. As part of their initial stay in the watch house?**

**b. Post being moved to detention and then back to a watch house?**

*To build a visual profile answering this question the QFCC will collect the monthly data (both point-in-time for last day of month and/or cumulative end-of-month total) for the time period, 2021, 2022, 2023 for the following elements (including gender, and Aboriginal and Torres Strait Islander Status proportions where possible):*

13.1 Number of young people in watch houses who appear in court in person and returned to watch house

- By location of detention centre and watch house

13.2 Number of young people in watch houses who appear in court remotely

13.3 Number of times police air, or other means used to move young people

- from watch house to court
- Court to watch house
- from watch house to watch house
- from detention centre to watch house
- Court to detention

**14. Where a young person is moved between watch houses or from detention to a watch house – please outline the logistical movements that were put in place and the roles and responsibilities for decision making regarding these movements?**

14.1 Please provide any tracking sheet or travel booking log for transporting young people in watch houses for the months of January, April, July, October, December for 2020, 2021, 2022 and for the months January, April, July, September, October, November, and December 2022, and for January and February 2023.

14.2 Please provide the costs budgeted and expended for transporting young people between watch houses, between courts to watch houses, and detention centres to watch house for the last 3 financial years – 2020, 2021, 2022.

**15. What is the correlation between young people in watch house (pre-court); young people in watch house (post-court) and detention centre capacity over the last 2 years?**

15.1 For each week in 2022 please provide the number of young people in watch houses on Friday (i.e. the current D-G reporting) and provide the number that had not yet appeared before court and the number that had a remand to detention order.

**16. What is the correlation between family circumstance and watch house stays?**

16.1 For the 2022 year, please provide any data or information showing the proportion of children in watch houses that received a visit during their stay, broken down by family or not family, and number of visits during their stay.

**17. What is the correlation between OPG visits and watch house stays?**

17.1 Please provide any data or information showing the proportion of children in watch houses that received an OPG visit during their stay number of visits during their stay.

**18. What is the correlation between watch house capacity and watch house stays?**

18.1 For 2022, please provide a list of any watch house that was at fully capacity, detailing the dates it was at capacity and the number of young people in watch house at that time, by specific watch house.

## Appendix 5 - Legislation and Procedures

The following summary provides an overview of the key legal and procedural requirements relevant to detaining children in watch houses.

### Bail decision considerations

Children held in watch houses for extended periods are those that have had a decision made by a police officer or court not to grant bail. The reasons for this decision must be recorded in accordance with section 48B of the *Youth Justice Act 1992* (the Act). The criteria for this decision are outlined in section 48AA *Matters to be considered in making particular decisions about release and bail* and include:

- criminal history, associations, home environment, employment and background,
- history of previous grant of bail,
- strength of evidence relating to alleged offence,
- age, maturity level, cognitive ability and developmental needs,
- whether a responsible adult has indicated willingness to support the child's bail and comply with conditions,
- for Aboriginal or Torres Strait Islander children, connection with community, family and kin, and cultural considerations.

The decision may also consider the youth justice principles, and the needs of the individual child, including not interrupting education or employment, the child's health, and culture.

The Act provides rules around timing, including that a child must be brought before a court *"as soon as possible and within 24 hours after arrest or ...as soon as practicable on the next day court can practically be constituted."* Section 50 provides consequences for failing to meet this timeframe.

### Court remand

When a child appears before the court the court must make a decision to bail, remand or release the child. Previously, and for the duration of time that the 30 young people sampled for the case study were held in watch houses across Queensland, Section 56 of the Act provided that *"a court that remands a child in custody must remand the child into the custody of the Chief Executive [of Youth Justice] despite provisions of any other act to the contrary."* It was therefore not legally possible for a court to remand a child to a watch house.

During the course of this review, changes to legislation in August 2023 made lawful the *"longstanding practice of holding children in watch houses until beds become available in youth detention centres"*.<sup>78</sup> This required an override of the *Human Rights Act 2019*, effective until 2026. Section 56 of the YJ Act (current as of 1 September 2023) includes a decision-making framework for detaining children in watch houses following court remand (among other matters).

### Section 56 Custody of child if not released by court

- (1) This section applies if—
- (a) a court remands a child in custody; and
  - (b) the child does not remain the prisoner of the court; and

<sup>78</sup> [Changes to the Youth Justice Act 1992 | Department of Youth Justice, Employment, Small Business and Training \(desbt.qld.gov.au\)](https://www.desbt.qld.gov.au/changes-to-the-youth-justice-act-1992)

- (c) the child is not already in the custody of the chief executive.
- (2) The commissioner of the police service must—
  - (a) take immediate custody of the child; and
  - (b) deliver the child into the custody of the chief executive as soon as reasonably practicable after the date the chief executive notifies to the commissioner under subsection (3).
- (3) The chief executive must—
  - (a) notify the commissioner of the police service of the date from which delivery of the child into the chief executive's custody will be accepted; and
  - (b) fulfil the duty under paragraph (a) as soon as reasonably practicable in all the circumstances, including, for example, the number of children held by the commissioner and the capacity of detention centres.
- (4) In deciding the date, the chief executive must have regard to the information available to the chief executive about the following matters—
  - (a) the child's needs, having regard to—
    - (i) the child's age and sex; and
    - (ii) the child's cultural background; and
    - (iii) the child's historic and current self-harm risk and suicide risk; and
    - (iv) the child's medical conditions, if any; and
    - (iv) the child's physical health and mental health issues, if any; and
    - (v) the child's substance misuse and withdrawal issues, if any; and
    - (vi) the child's cognitive capacity; and
    - (viii) the location and date of the child's next court appearance; and
    - (ix) any other issue the chief executive considers may affect the child's health or wellbeing in a watch-house environment; and
    - (x) any other issue the chief executive considers may affect the child's health or wellbeing while the child is being transported between a watch-house and a detention centre;
  - (b) if 1 or more other children are being held by the commissioner of the police service—the relative needs of the child and the other children having regard to the matters mentioned in paragraph (a);
  - (c) the effect the delivery of the child is likely to have on—
    - (i) the chief executive's ability to comply with section 263; and
    - (ii) the chief executive's ability to fulfil the chief executive's duties as an employer; and
    - (iii) the commissioner of the police service's ability to fulfil the commissioner's duties as an employer; and
    - (iv) the commissioner of the police service's ability to fulfil the commissioner's responsibility for—
      - (A) the security and management of watch-houses; and
      - (B) the safety and wellbeing of people detained in watch-houses.
- (5) A failure of the chief executive to provide procedural fairness to the child in deciding the date under subsection (4) does not affect the validity of the decision.
- (6) Subsection (2) does not apply to a person who is an adult being dealt with for an offence committed by the person as a child if, under section 136, 137 or 138, the person must be held in a corrective services facility.
- (7) Subsection (8) applies to jurisdiction conferred by an Act on a court—
  - (a) to commit a person to a place of detention (other than a detention centre) pending appearance before a court; and
  - (b) to give directions to the person in charge of the place.



- (8) The jurisdiction is taken, if the person is a child and this section applies, instead to confer jurisdiction on the court to remand the child into the custody of the chief executive and to give directions to the chief executive.
- (9) If a court remands a child into the custody of the chief executive under subsection (8), subsection (2) applies to the child.
- (10) Subject to subsection (11), the chief executive may keep a child mentioned in subsection (1) who is in the chief executive's custody in places that the chief executive determines from time to time.
- (11) The chief executive can not determine under subsection (10) that a child is to be kept in a prison.
- (12) For the purposes of the Human Rights Act 2019, section 43(1), it is declared that this section has effect—
  - (a) despite being incompatible with human rights; and
  - (b) despite anything else in the Human Rights Act 2019.
- (13) This subsection and subsections (12) and (14) expire on 31 December 2026.
- (14) A regulation may postpone the expiry of this subsection and subsections (12) and (13) but can not postpone the expiry for more than 1 year after 31 December 2026.

## Queensland Police Service procedures

The Queensland Police Service's *Operational Procedures Manual* section 16.17 relates specifically to children in watch houses. A summary of the relevant procedures is below:

### Admitting a child to a watch house

#### 16.17.3 Care of children in custody

As soon as practicable upon admission, a child who is lodged in a watch house must be provided with information regarding their rights and responsibilities whilst in a watch house. A copy of the rights and responsibilities of children whilst in custody in a watch house is to be given to the child and any parent or adult guardian. Where the police officer or watch house officer suspects the child and/or adult carer cannot understand or read the document, the officer is to explain the document verbally. For this purpose, the Department of Children, Youth Justice and Multicultural Affairs<sup>79</sup> (Youth Justice) representative, independent person, authorised cell visitor or child's legal representative can be present.

#### 16.10.2 Unclothed searches of persons

Where there is a need to search a child, the search must be conducted in the presence of a support person, unless the responsible officer reasonably suspects:

- (vii) Delaying the search is likely to result in evidence being concealed or destroyed; or
- (viii) An immediate search is necessary to protect the safety of any person.

### Length of stay in watch houses

#### 16.17.5 Custody of children in watch houses

Custody in a watch house overnight means a continuous period of custody in a watch house of at least six hours, commencing after 9pm and ending at or before 6am. Wherever practicable children are not to be kept in custody in a watch house.

Following the arrest of a child where the child remains in custody and the child's court appearance is delayed; or sentencing in detention or remanding of a child in custody, the relevant watch house manager should ensure, wherever practicable, the child is transferred to a detention centre nominated by a Youth Justice representative.

<sup>79</sup> N.B. Department of Children, Youth Justice and Multicultural Affairs is the previous name for this department. Youth Justice is now governed under the Department for Youth Justice, Employment, Small Business and Training.



When a child is to be held in custody in a watch house overnight, the Officer in Charge (OIC) of the watch house is to record the reasons for the decision to hold the child in custody in the child's relevant QPRIME custody report.

A child should only be kept in custody in a watch house overnight where:

- it is not reasonably practicable to immediately transport the child to a youth detention centre; and
- there are no extenuating factors, such as:
  - a perceived need for the child to remain close to significant family members; and
  - subjecting the child to lengthy transportation to a youth detention centre only to return soon after to the same watch house to attend court.

If, following consultation with the nearest area office of Youth Justice (or the Child Safety After Hours Service Centre), in accordance with the provisions of the previous section, it is not reasonably practicable to transfer the child to a detention centre, the watch house manager should notify the commissioned officer responsible for that watch house.

The commissioned officer may authorise that the child continues to be kept in custody in a watch house. The commissioned officer should:

- record the reasons for the decision in the officer's diary; and
- ensure the reasons for the decisions are recorded in the child's relevant QPRIME custody report.

If a child is to be kept in custody in a watch house longer than overnight the commissioned officer is to ensure the relevant Manager, Youth Justice is aware of the custody.

The *Operational Procedures Manual* also states it may be necessary for the child to be kept in custody in a watch house for two or more consecutive nights where a child of any age:

- (v) is appearing in extended proceedings; and
- (vi) it has been determined no suitable alternative exists; and
- (vii) the child is required to be kept in custody in a watch house during the court's sittings; or
- (viii) there are exceptional circumstances that prevent the transportation of a child to a youth detention centre.

It is however noted that this constitutes an "extraordinary circumstance".

### **Transportation to a youth detention or medical centre from watch house**

#### *16.17.5 Custody of children in watch houses*

Where appropriate or necessary, a child may be transported to a youth detention centre or watch house outside of the designated catchment area by Queensland Government Air (QGAir). QGAir availability is limited to the condition where the aircraft is on a scheduled flight on a scheduled route, unless there are compelling reasons or extraordinary circumstances. This would include where commercial or charter flights are either not appropriate or unavailable.

If QGAir is not available a child may be transported to a detention centre by commercial flight or charter flight (if a commercial flight is not available). The commissioned officer responsible for a watch house will determine, in consultation with the delegated officer, DCYJMA, Youth Justice, the need for special transport arrangements.

***Transfer to medical centres******16.17.3 Care of children in custody***

Officers or watch house officers are to advise, as soon as possible, the child's parent(s) or adult caregiver, where practicable and an officer from Youth Justice (when the child is under the care of Youth Justice), when a child is transferred from a watch house to a hospital or to other medical facility for medical attention.

**Visits to children in the watch house**

The watch house manager is to allow access visits by parents or an authorised cell visitor subject to operational and/or security needs of the watch house and the consent of the child. An officer from the Youth Justice is to, whenever practicable, be permitted access to children in the watch houses.

## Appendix 6 – Oversight and complaints mechanisms

### Oversight Bodies

There are multiple oversight bodies in Queensland with responsibility for oversight of youth detention and police watch houses.

#### Youth Detention Inspectorate

Under section 263 (4) of the *Youth Justice Act 1992*, the Chief Executive responsible for youth justice is required to 'monitor the operation of the detention centres and inspect each detention centre at least once every three months'.

To give effect to this requirement, the Youth Detention Inspectorate (YDI) sits within Youth Justice and reports to the Chief Executive. It conducts quarterly inspections of the three detention centres against an expectations document. Youth Justice publishes summaries of the quarterly inspection reports. Previously, the full reports have been sent in confidence to the Principal Commissioner, Queensland Family and Child Commission (QFCC) – if this is not currently happening, it may be requested.

While the QFCC understands the Youth Detention Inspectorate has visited the Brisbane City Watch house, it has no formal legislative requirement to inspect or report on activities in watch houses.

#### Office of the Public Guardian

The Office of the Public Guardian (OPG) has an oversight role of youth justice through its child advocacy functions, fulfilled by child advocates (legal officers) and community visitors. Both officers aim to advocate with, and on behalf of, children and young people. The services assist in the resolution of issues and disputes, make (and refer) complaints, and provide information where decisions are made about children.

Community visitors visit children to monitor their safety and wellbeing, and the standard of care provided, in 'visitable sites' as defined under s. 39 of the *Public Guardian Act 2014*. These sites include youth detention centres and watch houses where children are held. Section 56 of the *Public Guardian Act 2014* states that if a community visitor reasonably considers that the visitor can discharge their functions or a particular function by contacting a child or someone else at a visitable home or visitable site by using relevant technology, the visitor may discharge the function in that way. Examples of relevant technology include telephone, video conferencing, text messaging and email. As it is not always logistically possible for a community visitor to visit remote regional police watch houses in person whenever a child or young person is detained, visits will be conducted by using relevant technology.

It has an individual and client-based, rather than systemic, advocacy and oversight role.

#### Queensland Ombudsman

The Queensland Ombudsman investigates complaints about the actions or decisions of state government departments and agencies, including with respect to youth detention centres and watch houses. The majority of the Ombudsman's investigations are based on complaints, however the Ombudsman can initiate investigations into serious systemic issues.

If a young person, their family or advocate have concerns about treatment in detention centres or watch houses, they may make a complaint to the Queensland Ombudsman.

In 2017, the Queensland Ombudsman released *The Brisbane Youth Detention Centre report: an investigation into the management of young people at Brisbane Youth Detention Centre between November 2016 and February 2017*, in response to incidents leading up to a 'violent and destructive riot' at the centre in January 2017.

While the Ombudsman monitors compliance with the recommendations it makes following an investigation, it has no powers to enforce implementation of its recommendations.

### **Inspector of Detention Services**

In 2021, the Queensland Government introduced the Inspector of Detention Services Bill 2021. The *Inspector of Detention Services Act 2022* was assented to on 7 September 2022. This Act established a new function, the Inspector of Detention Services, to be undertaken by the Queensland Ombudsman.

The purpose of the Inspector of Detention Services is to promote the improvement of detention services and places of detention with a focus on promoting and upholding the humane treatment of detainees, including the conditions of their detention, and preventing detainees being subjected to harm, including torture and cruel, inhuman or degrading treatment.

The Inspector will have powers to inspect places of detention in Queensland, including youth detention centres and watch houses. The Bill requires the Inspector to visit each youth detention centre once per year.

The Inspector will not investigate specific incidents within youth detention centres, as this will remain an internal function of the department through the YDI. The YDI also retains the statutory requirement to visit each youth detention centre every three months.

The responsibility for investigating incidents at police watch houses will continue to be carried out by the Ethical Standards Command within Queensland Police Service.

While the Inspector will not investigate specific incidents or complaints, the Inspector's reviews may consider systemic themes that arise from the individual experience of detained individuals.

### **Queensland Human Rights Commission**

The Queensland Human Rights Commission is an independent statutory body handling complaints and training under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019*. These complaints can be made with respect to all public entities, which includes youth detention centres and police watch houses.

A young person, or someone acting on their behalf, can make a complaint to the Queensland Human Rights Commission about their treatment in youth detention. However, they must first make an internal complaint to the detention centre and wait nine weeks to see whether the centre resolves the internal complaint to their satisfaction, unless the situation is urgent (i.e. if someone is at risk of immediate or significant harm).

### **Crime and Corruption Commission**

The Crime and Corruption Commission (CCC) is an independent statutory agency that has oversight responsibility for the police and the public sector, investigating complaints related to the most serious or systemic corruption affecting Queensland public sector agencies. This includes youth detention centres and police watch houses.



### Office of the Health Ombudsman

Under the *Health Ombudsman Act 2013*, a person may make a complaint to the Health Ombudsman about a service provided by a health practitioner or health service organisation. This includes health services provided within detention centres and police watch houses. It also includes any situation where a child detained in a youth detention centre or police watch house is transferred to a hospital for treatment.

### Queensland Family and Child Commission

Under s. 9 of the *Family and Child Commission Act 2014*, the QFCC has responsibility to provide oversight of the broad child protection system, and to promote and advocate the safety and wellbeing of children and young people, particularly children in need of protection or in the youth justice system.

In 2017, the QFCC delivered *Options for Youth Detention Oversight* in response to a request from David Mackie, Director-General, Department of Justice and Attorney-General. This options paper provided options to implement an OPCAT-compliant model of independent inspection for youth detention centres, which was considered in the process of developing the current Inspector of Detention Services Bill 2021.

The QFCC has also delivered oversight of the youth justice system, including the 2021 release of *Changing the Sentence: Overseeing Queensland's youth justice reforms*, which examined the implementation of reforms under *Working together changing the story: Youth Justice Strategy 2019-23*.

The QFCC is committed to undertaking further oversight of the youth justice system and is commencing a range of reviews including a systemic review into the use of Watch houses in Queensland.

### Child Death Review Board (CDRB)

The CDRB conducts systemic reviews following the death of a child connected to the child protection system under Part 3A of the FCC Act.

### Queensland Audit Office (QAO)

Under the *Auditor-General Act 2009*, the QAO is the Queensland Parliament's independent auditor of all state and local government public sector entities. Through their audit activities, the QAO aims to improve public sector and local government financial management and reporting, maintain confidence in financial accountability and transparency, improve the delivery of public services and assure the Parliament about the performance of the public sector. The QAO's Forward work plan 2023–26 lists 'diverting young offenders from crime' as a report they anticipate to deliver in 2023–24.

## Complaint mechanisms

Children are to be provided information on their rights upon admission to a Queensland watch house.

Children have the right to give their opinion freely on issues that affect them. Adults who make decisions or work to support children need to listen and take the children seriously. It is uncertain how much information a child is provided upon entering a watch house. The OPG community visitors can ask questions to gather an understanding of their well-being and treatment in the watch house, however the watch house environment to allow a child to speak freely may limit the feeling of safety to raise concerns. There may also be other barriers such as the use of technology rather than a face-to-face meeting with the child. Without the work of the OPG through the community visitor program, it is unknown where a child and or their families are provided the means, opportunity or the confidence to lodge a complaint if they deem necessary.

The OPG has an advocacy function which includes helping a child resolve issues or disputes with others, along with working with government agencies that provide a service or facility to the child and other non-government providers. The OPG help children to make an official complaint about a matter to someone.

The OPG may also use information obtained under their function or another law to help the public guardian discharge the Public Guardian's child advocate functions in relation to a child. This may include using information to link a child with someone who is in a position to help the child with a particular matter, or work with another entity to meet the child's needs and support the child in the resolution of an issue the child may have with a particular entity.

Children can make a complaint to the CCC against the police for serious allegations such as assault/excessive use of force or failure to perform their duty to the standard expected of them. A complaint can be made by using an online form (report a police officer to the CCC) via the Crime and Corruption website. A complaint can also be lodged directly to the Queensland Police Service (QPS), who are legally obliged to notify the CCC of corruption allegations against police.<sup>80</sup>

Where a child feels they have been discriminated against or a human rights breach has happened, a complaint may be lodged with the Queensland Human Rights Commission. Complaints must be made in writing (this includes through the online complaint form) with reasonably sufficient details to indicate that a person complained about may have breached the Anti-Discrimination Act or the Human Rights Act. It then must be lodged with or sent to the Queensland Human Rights Commission. A complaint can be made to the Commission within one year of the incident complained about. A Human Rights Act complaint can only be considered by the Queensland Human Rights Commission after the complaint has been made to the public entity the child is complaining about and wait at least 45 business days after making the complaint.<sup>81</sup>

Children can lodge a complaint regarding with the Queensland Ombudsman who are able to investigate some complaints about administrative actions taken by the QPS, for example purchasing decisions or delays in processing applications. However, the Ombudsman may not consider the complaint until attempts have been made to resolve directly with the QPS.<sup>82</sup> This may apply during entry processing to a watch house or where a child has requested sanitary or hygiene products.

### Complaints initiated by the OPG

Complaints initiated by the OPG to external agencies, where at all possible this is via the OPG community visiting and advocacy program. OPG will attempt to provide and discuss the outcome of a complaint with the child or young person. This is contingent upon the young person being placed in a youth detention centre, a departmental placement that is visitable and where contact details are available for a child or young person who is not in a departmental placement.

For children or young people who are not subject to child protection orders and returning to their family, in most cases the OPG are unable to provide the outcome as they are outside the OPG jurisdiction and are limited by the information available on the child or young person. The exception to this is where complaints are referred to the CCC, the CCC will provide correspondence of the complaint outcome directly to the child or young person directly

<sup>80</sup> <https://www.ccc.qld.gov.au/corruption/police-oversight/complaints-against-police-officers>

<sup>81</sup> [https://www.qhrc.qld.gov.au/data/assets/pdf\\_file/0007/19816/QHRC\\_factsheet\\_Complaints\\_ComplaintsProcess.pdf](https://www.qhrc.qld.gov.au/data/assets/pdf_file/0007/19816/QHRC_factsheet_Complaints_ComplaintsProcess.pdf)

<sup>82</sup> <https://www.ombudsman.qld.gov.au/how-to-complain/complaints-process/common-complaints/police-misconduct-operational-and-administrative-actions>

identified in the lodged complaint. The OPG use advocacy measures such as the complaint process for children and young people who have extended stays in a Queensland watch house.

The OPG will close complaints upon receipt of a satisfactory response from the referring agency. For the OPG initiated complaints to external agencies, the complaint is considered closed upon the receipt of the responses from the referring agency and the OPG's assessment of the adequacy of the response and consideration for alternate OPG advocacy options.