

PREMIER'S BRIEFING NOTE

Policy

Tracking Folder No. TF/18/14346

Document No. DOC/18/191035

To: THE PREMIER

Date:

Subject: Biannual Meeting of the Australian and New Zealand Children's Commissioners and Guardians Communique

Approved / Not Approved / Noted

Premier / CoS.....

Date 12/12/18

Date Action Required by:/...../.....

Requested by:
(if appropriate)

RECOMMENDATION

It is recommended that you note the Australian and New Zealand Children's Commissioner and Guardians (ANZCCG) Communique at Attachment 1 publicly released in mid-November 2018.

KEY ISSUES

- The biannual meeting of the ANZCCG held on 12-13 November 2018 was attended by Ms Natalie Siegel-Brown, Queensland Public Guardian, and Ms Cheryl Vardon, Queensland Family and Child Commissioner. At the meeting, various (but not all) attendees agreed to release a Communique highlighting a range of concerns.
- It is understood that Ms Vardon raised concerns that the language in the Communique concerning various jurisdictions was unhelpful given the reforms underway in Queensland and declined to approve the statement.
- Most significantly, the ANZCCG highlights that detention practices in Queensland and New Zealand are breaching the fundamental rights of the child under the *Convention on the Rights of the Child* and the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules).
- In particular, the Communique notes that inappropriate use of police watch houses to hold children and young people for extended periods can lead to physical, emotional and mental harm as well as a real risk of self-harm.
- The Communique also notes the denial of basic rights with respect to practices such as solitary confinement, poor hygiene facilities, inadequate food, and no access to outside air and appropriate support.

Children in watch houses in Queensland

- It has long been normal practice for a young person who has been arrested to spend time in a police watch house before appearing in court, and sometimes for a short time afterwards. Long-established practice is that children are only held in watch houses in unavoidable situations, ideally for short-term periods of less than 48 hours, and with strict protocols in place.
- From 12 February this year, 17-year-olds began transitioning into the youth justice system. Since 14 March 2018, due to capacity issues in youth detention centres and industrial action, more young people have been held in watch houses awaiting admission to a detention centre for longer periods of time.
- The monthly averages in the graph at **Attachment 2** demonstrates the growth in numbers. As at 6 am on 26 November 2018, there were 59 young people held in watch houses (40 remanded and 19 fresh arrests).

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Duration of stay in watch houses

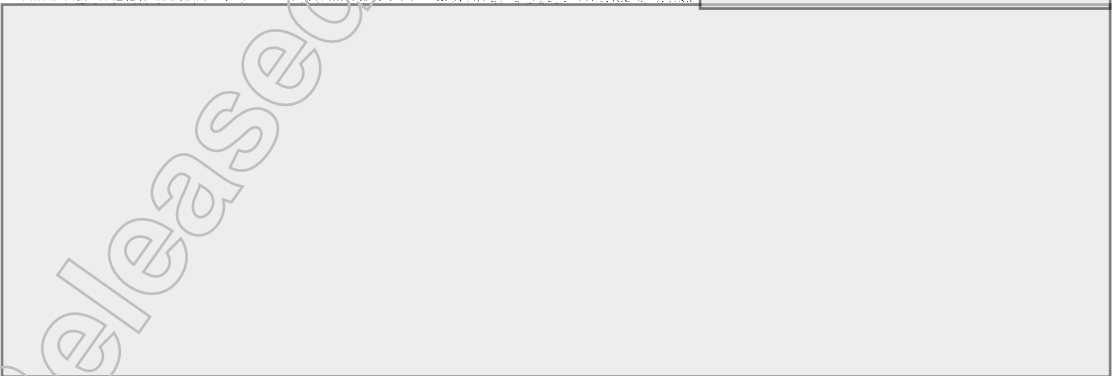
- Between 12 February 2018 and 31 October 2018, police detained 7311 young people in a watch house. More than three quarters (76 per cent) of all young people were released within one day (23 hours), with almost half (47 per cent) of all young people released within five hours.
- The remaining 24 per cent of young people were in custody for more than one full day:
 - 17 per cent for between two and three days
 - 3.6 per cent for four to five days
 - 1.5 per cent for six to seven days
 - 1.9 per cent for more than seven days.
- The longest period a child 12 years or under has been held is seven days. The longest period a 14–15-year-old has been held is 17 days, while a 16-year-old has been held for 16 days.
- Police have provided the above data on a confidential basis, it has not been centrally verified by Queensland Police Service Statistical Services and is sensitive information.

Youth detention centre forecasts

- Recent forecasts by the Department of Child Safety, Youth and Women projected, the overall detention population would experience a monthly peak between 278 and 315 by December 2018.
- This is expected to increase to between 302 and 343 by May 2019; between 339 and 385 by April 2020 and between 366 and 416 by April 2021.

Next steps

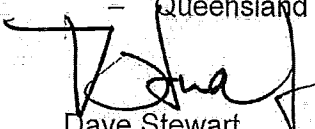
- Funding for a range of immediate actions to reduce the number of children in watch houses and alleviate pressure on youth detention centres is being sought through Mid-Year Fiscal and Economic Review consideration



- Please see **Attachment 3** for the complete list of initiatives and funding sought.
- The full range of solutions should be addressed through the actions underpinning the forthcoming Youth Justice Strategy (publicly committed to be released this year).

CONSULTATION

- Queensland Police Service.


Dave Stewart
Director-General

Comments (Premier or DG)

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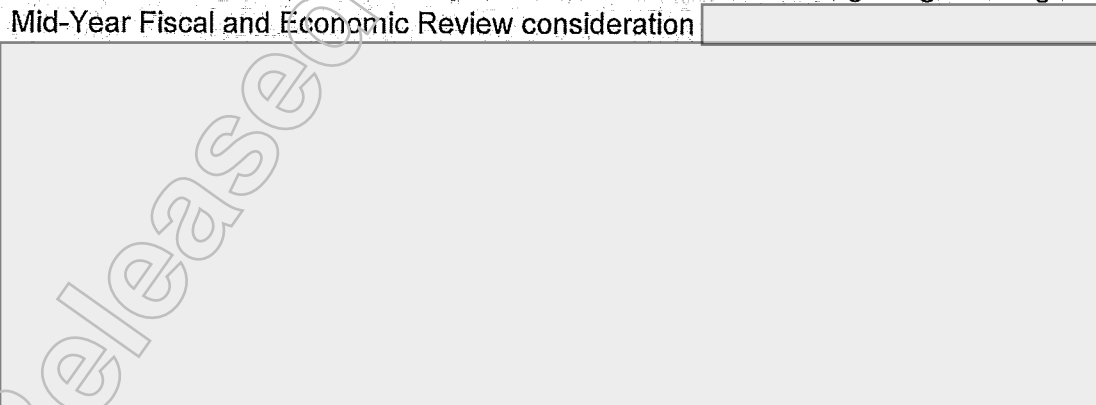
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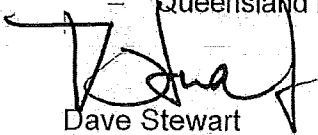
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CONSULTATION

- Queensland Police Service.



Dave Stewart
Director-General

Comments (Premier or DG)

Communique of the Australian and New Zealand Children's Commissioners and Guardians meeting 12 and 13 November 2018

The biannual meeting of the Australian and New Zealand Children's Commissioners and Guardians (ANZCCG) has been held in Adelaide.

These independent statutory officers are mandated to promote the best interests of children and young people and ensure that their views and interests are heard and influential, noting that Aboriginal and Torres Strait Islander and Maori children and young people often experience disproportionate disadvantage.

The following Commissioners and Guardians:

- Commissioner for Children and Young People Helen Connolly (SA)
- Guardian for Children and Young People Penny Wright (SA)
- Children's Commissioner Colleen Gwynne (NT)
- Interim Commissioner for Children and Young People David Clements (TAS)
- Principal Commissioner for Children and Young People Liana Buchanan (VIC)
- Public Advocate and Children & Young People Commissioner Jodie Griffiths-Cook (ACT)
- Public Guardian Natalie Siegel-Brown (QLD)
- Commissioner for Aboriginal Children and Young People Justin Mohamed (VIC)
- Commissioner for Children and Young People Colin Pettit (WA)
- Advocate for Children and Young People Andrew Johnson (NSW)
- NSW Children's Guardian Janet Schorer (NSW)
- National Children's Commissioner Megan Mitchell (CMLTH)
- Children's Commissioner Judge Andrew Becroft (NZ)

of the ANZCCG highlight the following matters:

Responding to the overrepresentation of Indigenous children and young people in disadvantage

ANZCCG calls for the appointment of Commissioners in each jurisdiction who are Indigenous and can provide particular leadership on issues disproportionately affecting Aboriginal and Torres Strait Islander, or Maori, children and young people (respectively).

Child focussed oversight (Optional Protocol to the Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment)

As a matter of principle, the oversight bodies charged under the OPCAT with inspecting and visiting facilities detaining children and young people should have a specialist focus on children and children's rights and be appropriately resourced. Where this is not possible, they should be informed by child-centred expertise and adopt a child-rights framework.

Age of criminal responsibility

Currently, the age of criminal responsibility across Australia and New Zealand is 10. The ANZCCG recommends the age of criminal responsibility should be no lower than the internationally acceptable minimum age of 12, and should ultimately be raised to at least 14 years.

Children and young people needing greater attention

The Commissioners, Advocates and Guardians are concerned that some children and young people living in highly vulnerable circumstances require much greater policy attention and access to specialist and mainstream program support.

These include children and young people who:

- are unaccompanied and homeless;
- have been involved with the child protection system but not subject to an order;
- have a disability that falls outside current service planning/provision; and/or

- have neuropsychological issues such as intellectual disabilities, FASD or trauma-related disability and behaviours of concern.

Detention of children and young people in police facilities, in breach of minimum acceptable standards

ANZCCG notes that the fundamental rights of the child under the *Convention on the Rights of the Child* and the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) are being breached in relation to detention practices in some jurisdictions, particularly in Queensland and New Zealand. These include:

- inappropriate use of police watch houses/police cells to hold children and young people, including for extended periods; and
- denial of basic rights with respect to practices such as solitary confinement, poor hygiene facilities, inadequate food, no access to outside air, and appropriate support.

Being held in police watch houses/police cells for extended periods can quickly lead to physical, mental, and emotional harm, and a real risk of self-harm.

Further, the collective voice of the Australian members of the ANZCCG highlighted the following matters:

Royal Commission into Institutional Responses to Child Sexual Abuse

Australian Children's Commissioners and Guardians (ACCG) acknowledges the National Apology to Victims and Survivors of Institutional Child Sexual Abuse and notes that significant and sustained effort is required to implement all of the recommendations from the Royal Commission.

As child abuse in institutions is not just an historical phenomenon but continues today, a strong focus on prevention is needed to protect children and young people from harm now and in the future. The group will convene a special meeting to monitor progress on the recommendations in February 2020.

Children and young people in immigration detention

ACCG notes that all children and young people, irrespective of immigration status, are entitled to the protections identified in the *Convention on the Rights of the Child*.

Notably, no child or young person should be held in detention or separated from their family as a result of their immigration status.

Children and young people who are criminalised for behaviours related to disability or trauma

The ACCG notes that many children and young people in residential care face criminal charges and detention in the youth justice system due to minor incidents or behaviours that are related to the presence of disability or their previous exposure to trauma.

ACCG members recommend that, where this has not already occurred, jurisdictions develop and implement protocols between residential care providers, child protection agencies and the police to ensure that children and young people are not unnecessarily brought into contact with the youth justice system, detained, or remanded in custody.

Pages 7 through 10 redacted for the following reasons:

Exempt Sch.3(2)(1)(a) Submitted to Cabinet
Exempt Sch.3(2)(1)(b) Cabinet considerations

Released under RTI - DPC

AGENDA

Premier's Policy Meeting

March 5, 2019

2:00 pm

Place: Premier's Boardroom, Level 40

1. Policy Matters

1.1 Young people and children in watch houses

1.2 s.73 Not Relevant

1.3

1.4

2.

2.

3.

3.

4.

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Doc 19/44426

Department of the Premier and Cabinet

Premier's Policy Meeting

5 March 2019

Premier's Boardroom, Level 40, 1WS

Released under RTI - DPC



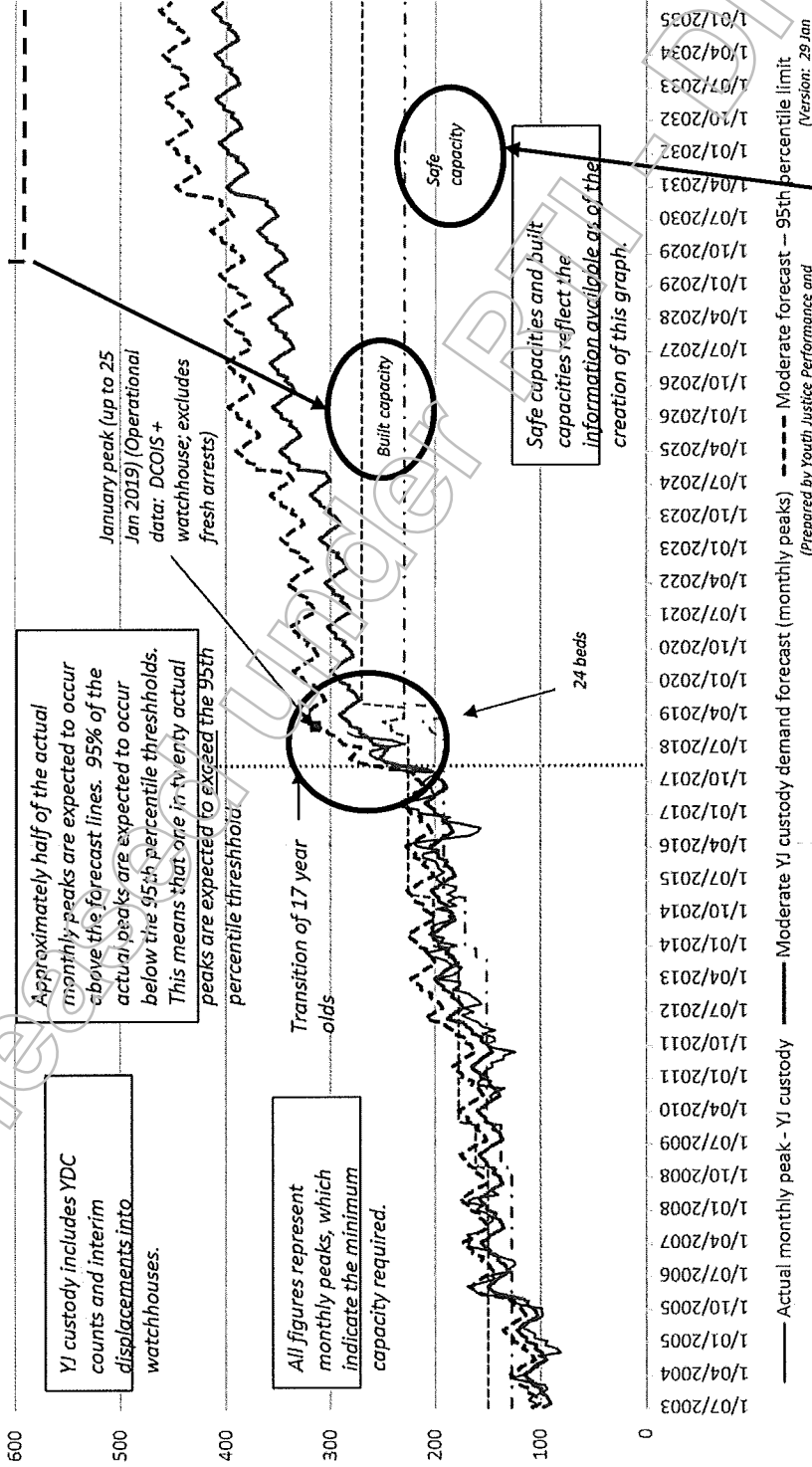
1.1 Young people in watch houses

- Issues:
 - In February 2019, the number of young people held in watch houses spiked to a high of **84**
 - Oversight bodies showing strong interest (OPG; HRC; Ombudsman; CCC & QFCC)
 - QPS impacts
 - Time for new Youth Detention Centre capacity to be built

1.1 Young people in watch houses

Youth Justice custody 15 year demand forecast

Combined Built Capacity: 242



Cleveland Youth Detention Centre

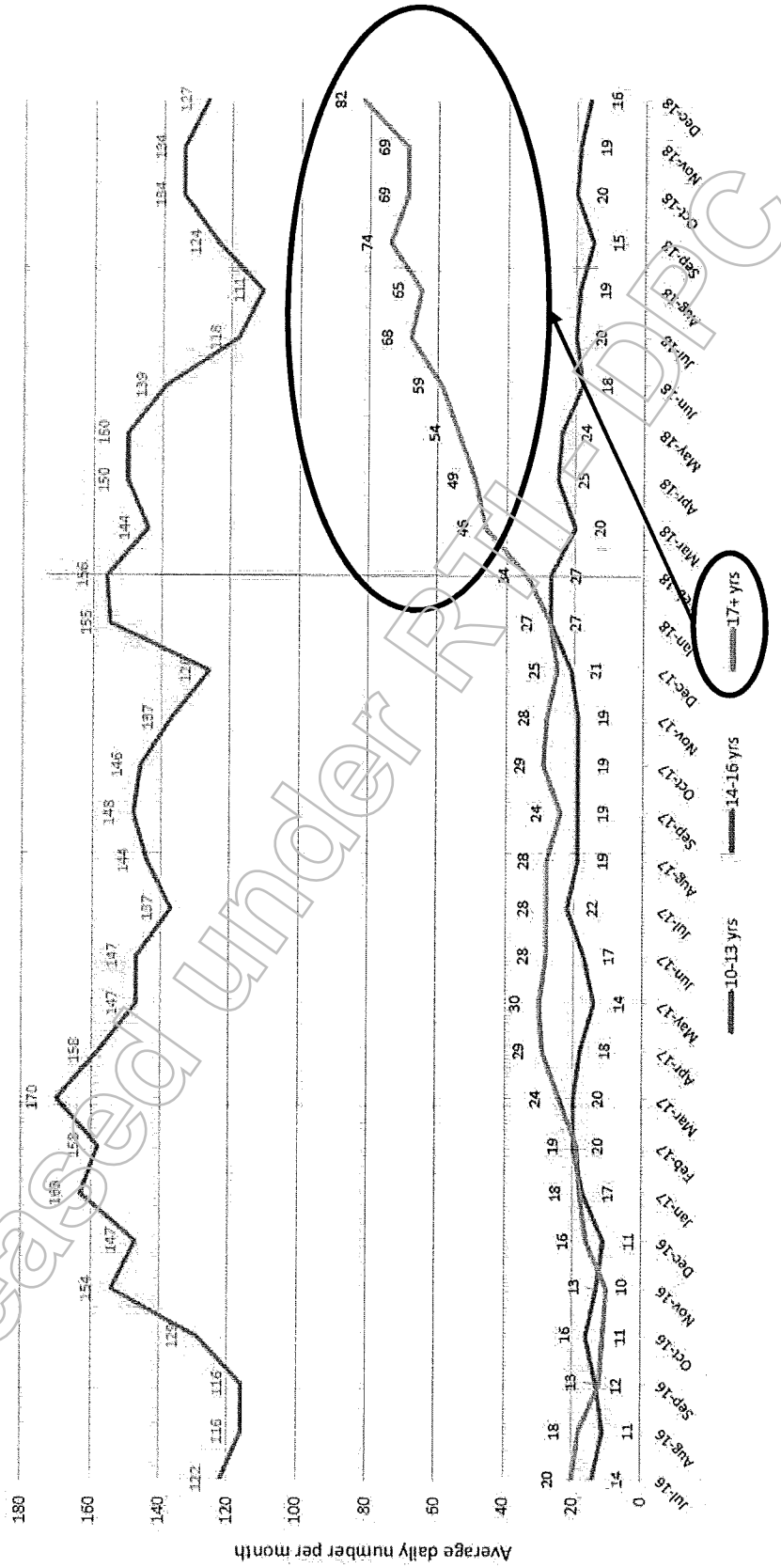
Brisbane Youth Detention Centre

Combined Safe Capacity: 205.70



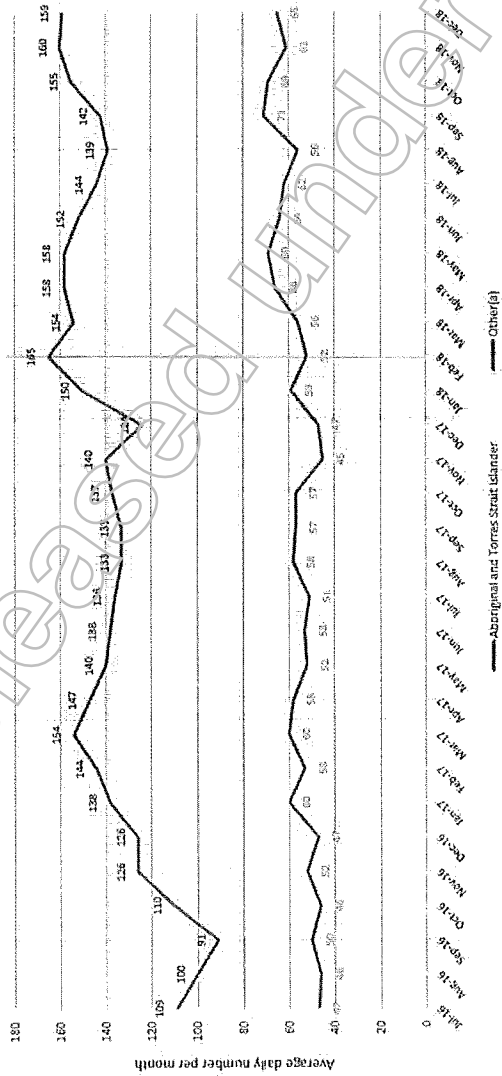
1.1 Young people in watch houses

Average daily number of young people in youth detention centres per month by age, July 2016 to Dec 2018



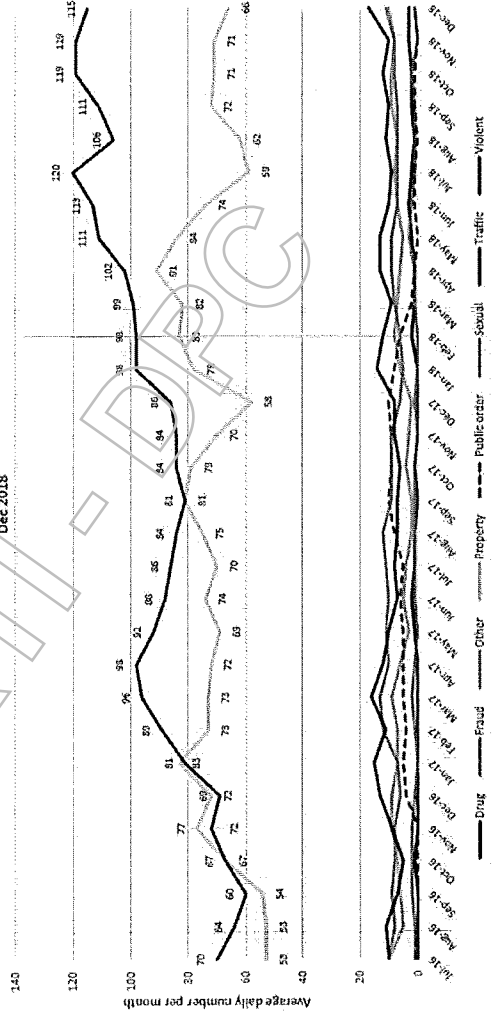
1.1 Young people in watch houses

Average daily number of young people in youth detention centres per month by Aboriginal and Torres Strait Islander status, Jul 2016 to Dec 2018



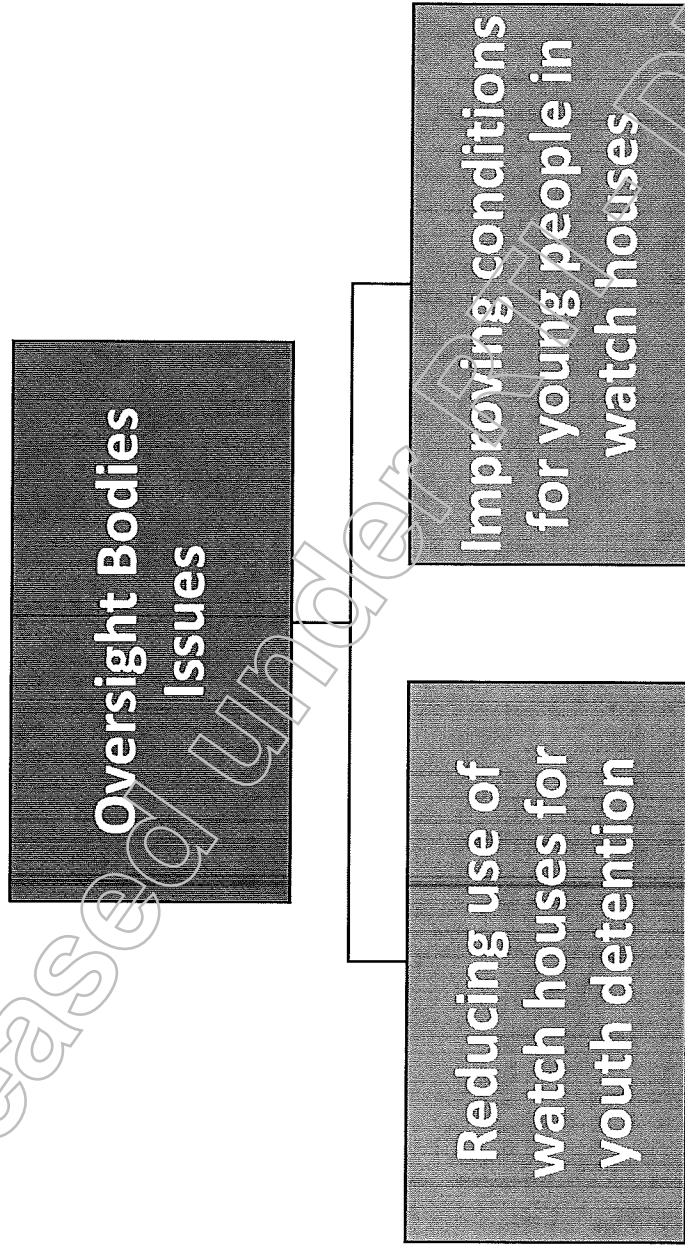
Indigenous Status

Average daily number of young people in youth detention centres per month by most serious offence category, Jul 2016 to Dec 2018



Offence Type

1.1 Young people in watch houses



Released under DPC

1.1 Young people in watch houses

Actions agreed to commence

Reducing use of watch houses

- Increase contact and legal support provided by LAQ, including a dedicated onsite space
- Extending funding for LAQ Youth Legal Services line
- Met with Chief Magistrate, Chief Judge of the District Court, and presented to Magistrate's Conference
- Improve pre-charge contact with ATSILS
- Work with courts on identifying factors to improve bail conditions
- **Explore modular builds and use of GPS**
- **Consider designation of watch house as youth justice space**

Improving conditions

- Immediately develop service need model and engage practitioners accordingly
- Immediately increase services provided under existing Aboriginal and Torres Strait Islander health service contracts for youth detention into the Watch House, pending consideration of service-need model
- Evaluate effectiveness of staffing levels and access hours of youth justice staff in watch houses outside south east Queensland
- **Consider footwear and food options**
- **QFCC to engage with DoE on models for educational support**



1.1 Young people in watch houses

Policy Issues

- Additional youth detention capacity is needed
- New capacity may take 1–3 years
- Action Plan will help in interim
- There will be seasonal fluctuations
- QPS issues need resolution
- Need to fast-track decision on expanding BYDC
- Youth Justice Strategy and KCS – budget bids

HOT ISSUE BRIEF

YOUNG PEOPLE IN WATCH HOUSES

Update as at **11 March 2019**

- The Government has taken on the long overdue challenge of moving 17-year-olds out of the adult justice system.
- Moving 17-year-olds was always going to take time and we have been completely transparent about the pressure on youth detention centres and our work to alleviate this.
- The Department of Child Safety, Youth and Women keeps records of numbers of young people in watch houses and is keeping Minister Farmer informed of the situation including ongoing efforts to balance young people's wellbeing with community safety.
- Staff from the Department of Child Safety, Youth and Women are working closely with the Queensland Police Service and Queensland Health to monitor the health and wellbeing of young people held in watch houses, and ensure they are properly supported and have access to services.
- In 2017–18, we allocated nearly \$200 million over four years in funding for detention alternatives, additional court, youth justice and police prosecution resources and extra-legal support for young people on court orders.
- We have established the Youth Legal Telephone Advice Line, including after-hours, to support lawyers and young people and assist police considering bail or other diversionary options.
- We have opened four Supervised Community Accommodation houses to support young people assessed as suitable for bail rather than remanding into detention.
- And we are investing \$17 million in a range of new initiatives including new bail support and legal advocacy services which commenced at several locations in February this year.
- Further bail support services will be rolled out to Townsville, Cairns, Mt Isa, Bundaberg, Rockhampton, Mackay, Toowoomba and remote South West areas, the South West Brisbane Corridor, Beenleigh and across South East Queensland. Support in other locations will be supplied on a case by case basis as the need arises.

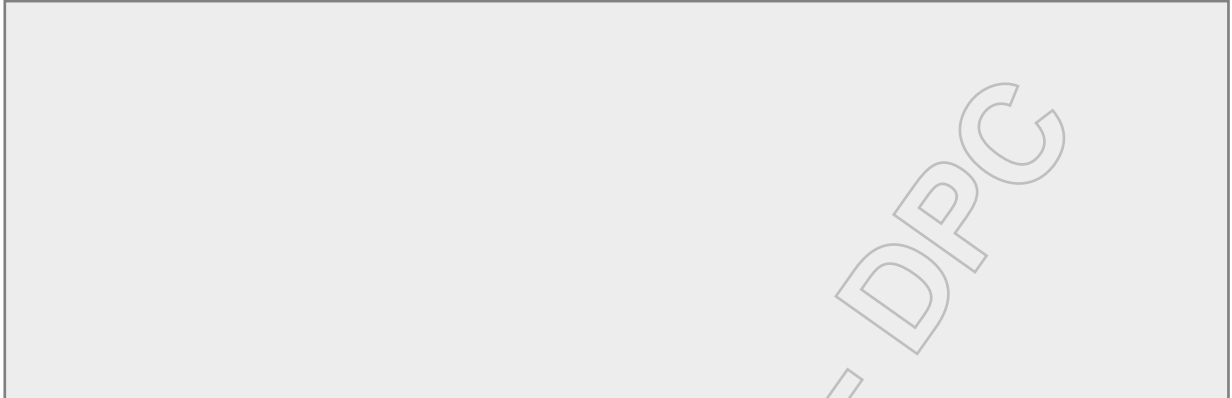
Contact:	Marilyn Ooi, Policy Officer	Authorised by:	Rebecca McGarrity, Executive Director
Agency:	Department of Premier and Cabinet	Agency:	Department of Premier and Cabinet
Phone:	300 39374	Phone:	300 39156 / 0409 063 084
Reference:	DOC/19/50469		

- Other new investments to boost support for young offenders to get back on track include:
 - an extra \$2.28 million over two years for intensive case management of young people in three locations – Cairns, Rockhampton and Logan. By referring a young person to the right people who can help with things like mental health or drug and alcohol support, housing assistance, and staying in education, we will help address issues that might be preventing a young person from complying with their bail conditions;
 - an additional \$1.34 million has been allocated to help young people meet the conditions of their bail; and
 - a further, almost \$1.3 million will go to enhancing family group meetings for high risk Aboriginal and Torres Strait Islander young people to help prevent them re-offending.
- Change will take time but we are determined to keep working hard and keep our eye on what we want to achieve – supporting our young people and reducing offending while helping keep our communities safer.

Background

- Currently, the Brisbane and Cleveland Youth Detention Centres (YDCs) have a combined safe operating capacity of 205.7 (built capacity of 242). This includes the additional 16 beds at Brisbane YDC which came online in December 2018.
- An additional 12 beds under construction in the Cleveland YDC are expected to come online in the last week of March. However, just prior to these beds being commissioned, it will be necessary to take approximately 16 beds in Brisbane YDC offline until July this year to facilitate essential security upgrades at Brisbane YDC.
- Effectively this will reduce total built capacity to 238, noting that the impact of this on capacity at Brisbane YDC is likely to exceed 16 beds as the security upgrades proceed as some of the units being upgraded contain more than 16 beds.
- Demand forecasts by the Department of Child Safety, Youth and Women (DCSYW) indicate that YDC demand will exceed available capacity for the foreseeable future.
- A Strategic Business case prepared by DCSYW indicates the main drivers of this demand include:
 - Natural and long-term periodic growth - historical data shows youth detention centre populations follow a seven-year cycle of increases and plateaus
 - Young people (10-12-year-olds) in YDCs – represent a cohort of early onset offenders who tend to remain in the system over the long-term
 - Rate and proportion of young people on remand in detention – there has been substantial growth in the number of young people remanded in custody, with young people being remanded more often and for longer
 - Court backlogs
 - Limited accommodation options

- Lack of services and responses to the factors that cause youth offending.
- From 12 February 2018, 17-year-olds began transitioning into the youth justice system, which has placed additional pressure on YDCs.
- To address the demand on infrastructure:



- It has long been normal practice for a young person who has been arrested to spend time in a police watch house before appearing in court, and sometimes for a short time afterwards. Long-established practice is that children are only held in watch houses in unavoidable situations, ideally for short-term periods of less than 48 hours, and with strict protocols in place.
- However, since 14 March 2018, due to capacity issues in youth detention centres and industrial action, the use of watch houses to detain young people until a YDC bed becomes available has increased, along with increasing lengths of stay.
- As at **11 March 2019**, there were:
 - 50 young people in watch houses (32 remanded and 18 fresh arrests);
 - a total of 10 young people in Supervised Community Accommodation; and
 - a total of 215 young people in YDCs (131 in Brisbane YDC and 84 in Cleveland YDC); 65 of the 215 are 17 years old (38 are in BYDC; and 27 are in CYDC).

Released Under RPA - DPC

PREMIER'S BRIEFING NOTE

Policy

Tracking Folder No. TF/19/2341
Document No. DOC/19/46377

To: THE PREMIER
Date:
Subject: Addressing the use of watch houses for youth detention

Approved / Not Approved / Noted
Premier / CoS.....
Date/...../.....
Date Action Required by:/...../.....

• RECOMMENDATION

It is recommended that you **note** the advice provided in this brief regarding current and planned actions to reduce the use of watch houses for youth detention purposes and improve the conditions for young people currently in watch houses.

• KEY ISSUES

- In February 2019, the number of young people held in watch houses hit a record peak of 84, with most held in the Brisbane City Watch House (BCWH).
- In response to this, and concerns raised by stakeholders, the Department of the Premier and Cabinet (DPC), recently led meetings with relevant agencies and key stakeholders (including oversight entities such as the Queensland Public Guardian), to identify immediate actions to reduce detention demand and improve conditions.
- A draft action plan has been developed from these stakeholder meetings, in consultation with relevant agencies (**Attachment 1**). The draft action plan is being circulated to relevant Directors-General to finalise. The Director-General of the Department of Child Safety, Youth and Women (DCSYW), Mr Michael Hogan, will then lead updates and reporting to DPC on implementation progress.
- Immediate actions agreed to commence include: increasing legal support provided by Legal Aid Queensland (LAQ) in BCWH; extending funding for LAQ Youth Legal Services phone line; reminding police of the policy for facilitating contact with legal representation prior to charging; and improving pre-charge contact with the Aboriginal and Torres Strait Islander Legal Service.
- DPC and DCSYW have consulted with the courts to understand the factors contributing to the rising rate of detention. Actions arising from this consultation include: improving bail processes; developing rapid response, multi-disciplinary teams for immediate assessment of offenders to inform bail applications; and identifying further opportunities to improve system efficiency.
- These actions are intended to have a positive impact on the demand for detention, and on conditions within watch houses. All stakeholders agree the actions are unlikely to reduce the need for increased youth detention capacity.

Existing Queensland Government activities

- DCSYW has undertaken significant work over the past six months to reduce the use of watch houses by improving flow through the youth justice system through: enhancing capacity and intensity of bail programs; providing additional Children's Court services; trialling integrated case management; and designing a trial for working with high risk Indigenous youth in enhanced family group meetings.
- DCSYW has also been working with Queensland Health (QH) and the Queensland Police Service (QPS), to improve conditions for young people in watch houses by: providing additional DCSYW staff in watch houses; arranging cultural support services for Indigenous youth; providing additional nursing services, including culturally appropriate services; and installing additional phone lines in BCWH.

- Notably, anecdotal evidence from the courts and QPS is that while the rate of arrests has remained stable, the severity of the offences committed, along with increased use of drugs and alcohol, are having a detrimental impact on success of bail applications, and an increased likelihood of custodial sentences.
- The police and courts report they are increasingly seeing: offences that result in significant injury to victims; offences committed by groups of offenders (particularly young women) resulting in multiple arrests for one offence; and more rapid escalation of severity of crime.

Infrastructure business case

- DCSYW modelling of future demand predicts increases beyond current built capability despite the diversionary measures and actions that are being progressed.
- Consequently, DCSYW has finalised a Strategic Business Case (to be provided shortly by way of letter) and is preparing a Detailed Business Case (DBC) for additional youth detention centre (YDC) infrastructure.
- A two-stage DBC is proposed:
 - o Stage 1 – to be considered at the 2019–20 Budget, exploring short-term additional accommodation within existing YDCs, as well as construction of a new facility of up to 40 beds on land adjacent to the Brisbane YDC.
 - o Stage 2 – proposed for consideration before the end of 2019, will outline a proposal for construction of a second 40-bed facility elsewhere in the State.
- DCSYW modelling of future demand predicts increases beyond current built capability despite the diversionary measures and actions that are being progressed.

Current state

- As at 14 March 2019, there were 48 young people in watch houses (37 on remand and 11 fresh arrests). There were 207 young people in youth detention (128 in Brisbane YDC and 79 in Cleveland YDC).
- Further, there were 11 young people in Supported Community Accommodation (SCAs – with a total bed capacity of 21). SCAs offer eligible children a residence while on bail, providing school or vocational education and rehabilitation programs.

Exempt Sch.3(2)(1)(b) Cabinet considerations

-

Interim Bed Solution

- Currently, the Brisbane and Cleveland YDCs have a combined safe operating capacity of 205.7 (built capacity of 242). This includes the additional 16 beds at Brisbane YDC which came online in December 2018.
- An additional 12 beds are under construction in the Cleveland YDC and are expected to come online in the last week of March 2019.
- However, just prior to these beds being commissioned, it will be necessary to take approximately 16 beds in Brisbane YDC offline until July this year to facilitate essential security upgrades at Brisbane YDC.

- Effectively this will reduce total built capacity to 238, noting that the impact of this on capacity at Brisbane YDC is likely to exceed 16 beds as the security upgrades proceed, as some of the units being upgraded contain more than 16 beds.

• **CONSULTATION**

- DPC has convened meetings with all responsible agencies to identify actions to address demand and conditions comprising DCSYW; Department of Justice and Attorney-General; QH; QPS and LAQ.
- Consultation has also occurred with the Chief and Deputy Chief Magistrates; Children's Court Magistrates; the Queensland Ombudsman; the Queensland Public Guardian; the Queensland Human Rights Commissioner; the Queensland Family and Child Commission; the Crime and Corruption Commission; the Chief Judge of the District Court; the President of the Children's Court; and the Aboriginal and Torres Strait Islander Legal Service.

• **BACKGROUND**

- YDCs have been operating above current safe operating capacity (205.7 beds), and often above current built capacity (242 beds) for some time.
- The transition of 17-year-olds into the youth justice system has placed additional pressure on Queensland's YDCs. In response to the increased pressure, the use of watch houses to detain young people until a YDC bed becomes available is increasing, along with increasing lengths of stay.
- The general practice is that young people are only held in regional watch houses for a minimal period of no more than three days awaiting first appearance in the Magistrates Court. If a young person is to be detained for longer they will be transferred to BCWH unless it is in the young person's best interest to remain for an additional short period in the region (e.g., it would be detrimental to fly the young person to Brisbane only to return the young person a day later to appear in court).
- BCWH is better equipped to support detention of young people than in regional watch houses.
- Ideally, no young person would be held for extended periods in BCWH. Time in BCWH is determined by remand decisions and detention bed availability.
- As per the usual pattern of seasonal variation for watch house detention, the number of young people held in watch houses has nearly halved over the month of February.

Comments (*Premier or DG*)

Rachel Hunter
Acting Director-General

Pages 26 through 34 redacted for the following reasons:

Exempt Sch.3(2)(1)(a) Submitted to Cabinet

Released under RTI - DPC