

# REASONS FOR INCLUSION OR REDACTION OF CATEGORIES OF INFORMATION IN THE REPORT

## Background

Having regard to relevant legislation such as the *Commissions of Inquiry Act 1950* (Qld) and relevant information, the review to determine whether additional information could be released was approached by following three key steps:

1. Whether there is a legal obligation to disclose any of the information contained in the redacted parts of the report.
2. Whether there is a legal prohibition from disclosing any of the information contained in the redacted parts of the report.
3. How to exercise the discretion to release those items of the redacted parts of the report that do not fall under either step 1 or 2.

As there was no legal obligation to disclose any of the information contained in the report, the review of the original redacted parts of the report first focussed on identifying items prohibited from disclosure. Upon identification and redaction of these items, there was consideration of whether to release the remaining redacted parts of the report for which there was no legal prohibition from disclosure. The determination of the latter step involved consideration of multiple public interest factors ranging from but not limited to the importance of transparent and accountable government to the harm that can eventuate to young individuals, staff and security and good order if relevant parts of the report was made public.

Ultimately, a series of limited redactions have been proposed to the report to protect the following information:

- prohibited/confidential information;
- confidential information relating to individuals who have been named in the media and whose identities are therefore known to the public;
- information the disclosure of which could prove harmful to a vulnerable young person identified in the report;
- information concerning the good order and security of detention facilities;
- information about untested complaints not falling within the terms of reference that might have an unfair impact on the reputation of staff; and
- information subject to legal professional privilege protect

A more specific albeit non-exhaustive rationale for some of the conclusions is set out below.

## Information about adult and youth justice facilities

Agencies responsible for the management of both adult correctional facilities and youth detention facilities are under an obligation to ensure the safety and security of such facilities, including the maintenance of good order and the safeguarding of systems for the protection of staff and detainees. There is a public interest presumption against the release of any information which could prejudice the ability of Corrective Services or Youth Justice to safely and properly manage these facilities.

There is a significant amount of information in the report about the management of young persons in detention. It is not considered, however, that the release of information about a correctional or youth detention facility, or their management practices, of the kind included in the report is likely to have any adverse effect on the security or proper management of those facilities. This includes images of the exterior of the facilities, which are available either from the relevant agency websites or through a simple search on a site such as Google Earth; and statistics on the capacities of centres and information about facilities and programs at the centres, as such information is generally available on websites and in annual reports; policies and procedures used in centres insofar as those documents, or their relevant content, are already publicly available on agency websites or by other means.

A limited amount of information which has the potential to facilitate behaviour which could put a facility at risk is included in the Report, and has been redacted. It includes:

Category of information	Pages with redactions
Details of the operation of intercom systems.	327, 334
The existence – or non-existence – of monitoring or of CCTV footage of a facility	240, 241, 245, 248, 249, 358
A comment about a security vulnerability at a detention centre	263
Definitions of incidents in detention by risk levels, and categories of responses appropriate to each level	246, 378, 379

## Confidential information

Section 32B of the *Commissions of Inquiry Act 1950* (Qld) prohibits the disclosure of confidential information obtained for the purposes of a review under the Act. Confidential information is defined as information about a person's affairs, but does not include information which could not reasonably be expected to identify a person, even though it may concern the affairs of that person.

It should be noted that not all information in the report which concerns the personal affairs of young persons in detention, or of staff of agencies, could be considered personal information as it does not identify particular individuals. All young persons and staff are identified by codes, and the disclosure of the key which links names and codes has been prohibited by the commissioners. It has been redacted from the report. In certain cases, the identifying codes and some other information (document reference numbers and dates) have also been redacted to avoid "cross-matching" with other sections of the report concerning an identified individual and thus disclosing personal information about that person which would not otherwise be ascertainable.

It is acknowledged that unredacted information concerning individuals' personal affairs could enable a very small cohort of persons to identify the subjects of that information, but it would be limited to those persons who were present at the time of incidents or actions involving the persons to whom the information relates and who would therefore already be aware of at least the substance of that information.

Different approaches have been taken to the disclosure of personal information relating to young persons who have and have not been publicly identified. Considerably more information has been redacted from sections relating to young persons whose names and circumstances have been reported in the media, as that information can be associated with identifiable individuals and is therefore considered to be far more invasive of personal privacy.

In respect of a relevant young person, although the individual has not been identified and the individual's identity can be concealed by judicious redaction of the report, all information concerning this person is considered so sensitive that the entire chapter concerning the young person has been redacted. Given the information concerning the young person's health status and behaviour while in detention, it is reasonable to suppose that both physical and mental well-being could be compromised by the release, even heavily redacted, of that part of the report which concerns the individual. On the other hand, there is an identifiable public interest in the disclosure of the commissioners' views on the treatment which was afforded and in the public's 'being able to satisfy itself that prompt and appropriate action will be taken in response to the concerns raised in the report. It was therefore decided to prepare a summary of the chapter as opposed to releasing nothing at all (such was the level of concern regarding the young person), minimising the disclosure of information about the young person but presenting a coherent view of the actions, decisions and policies which were the subject of the commissioners' scrutiny. (A redacted version of the chapter which adequately protected a relevant young person's interests would not be clear and coherent.)

The following categories of information have been redacted from the report as it is considered that they fall within the definition of "confidential information":

<p><b>Category of information</b></p>	<p><b>Page containing redacted information</b> <i>(Pages redacted in full are in italics)</i></p>
<p>Information which the commissioners specifically identified as confidential information that was not to be disclosed</p> <p><i>This information was included in the report in identifiable sections which have been redacted from the report</i></p>	<p>262, 263, 307, 324, 331, 332, 356, 391, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 429, 435, 436, 456, 466, 470, 475, 479, 483, 487, 488, 490, 494, 498, 524, 529, 561, 562, 563, 564, 565, 566</p>
<p>Personal information about relevant young persons including – A3, A5, A6, A7 and A8 – whose treatment in correctional or detention facilities was considered during the review and whose identities have not been made public</p> <p><i>It should be noted that the behaviour which led to an incident involving young persons A5, A6 and A7 was investigated by the commissioners has been aired in the media, but the young persons were not identified</i></p> <p>This includes information about their management, their physical, mental and emotional health, and their behaviour other than the behaviour which was the subject of findings and recommendations by the commissioners</p>	<p>9, 17, 18, 19, 29, 295, 306, 355, 357, 358, 359, 360, 361, 362, 363, 365, 369, 371, 378, 379, 386, 389, 391, 458, 461, 472, 473, 477, 478, 479, 480, 481, 485, 486, 487, 488, 490, 492, 493, 494, 495, 497, 499</p>
<p>Information about the young persons who have already been publicly identified (YP A1 and YP A4) other than information which has already been made public by, or with the consent of, these young persons, including photographs of the young persons in a correctional facility</p> <p><i>This must be considered identifying information insofar as it discloses something about the personal affairs of persons whose identities are known to the public or can easily be ascertained</i></p>	<p>202, 286, 289, 290, 291, 292, 293, 308, 309, 311, 312, 313, 314, 315, 316, 317, 318, 320, 322, 323, 324, 325, 326, 327, 328, 329, 330, 332, 334, 336, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 422, 423, 424, 425, 526, 427, 428, 429, 430, 431, 432, 433, 434, 436, 437, 438, 439, 440, 441, 443, 444, 445, 446, 447, 448, 449, 450, 451, 453, 454, 455, 456</p>
<p>Information about a Young Person which is not identifying information but which is highly sensitive (e.g. health information; information about the young person's state of mind; photographs of the young person)</p>	<p>All of Chapter 19 501-552 <i>(see reasons below)</i></p>
<p>Information which could identify a member of the staff of Corrective Services or Youth Justice because of the functions performed by that person</p>	<p>32, 199, 369</p>

Category of information	Page containing redacted information <i>(Pages redacted in full are in italics)</i>
Information which reveals that a member of the staff of Corrective Services or Youth Justice (even though de-identified) has been mentioned as the subject of untested allegations of improper or unlawful conduct	18, 243, 261, 422, 423, 430, 431, 434, 437, 440, 441, 450, 451, 453, 454
Information which would identify a service provider (of guard dogs) and its personnel whose involvement in an incident at CYDC, if it became publicly known, could have a detrimental effect on the commercial affairs of that business	18, 256, 257, 258, 259, 260, 265, 266, 270, 272, 458, 460, 461
Information which could identify a person as the source of a confidential submission, or disclose the content of a confidential submission	495, 496, 497, 498
References to confidential submissions	262, 270, 271, 272, 307, 324, 332, 421, 430, 460, 461, 465, 470, 479, 483, 487, 488, 490, 498

*(Note that where information that has been redacted is the subject of a footnote, the corresponding footnote has also been redacted.)*

## Information about the processes and policies of government

Some of the young persons who are the subject of the report made complaints to various government bodies – either directly or through a legal representative – about aspects of their treatment while in a correctional or youth detention facility. The commissioners devoted a significant amount of space to describing how these complaints were managed, but the great majority of that material is “generic” insofar as it describes the processes of agencies and the legislation, policies and guidelines to which they have regard in performing their complaint management functions.

Although this material was redacted in the version of the report previously released, it does not appear to meet the definition of “confidential information” as, with some minor adjustments, it could not be used either to identify a young person or to disclose personal information about a young person whose identity has already been made public, other than information which has already been placed in the public domain by, or with the consent of, the young person to whom it relates. Nor is its disclosure considered likely to prejudice the security, good order or proper management of a correctional or youth detention facility.

A significant amount of the material redacted in chapters concerning the individual young persons comprises information about policies and procedures applicable to the management of young persons in custody or detention. While this is not personal information about the young persons, it is personal to the extent that it discloses that the young persons were being managed in certain ways – for example, as being at risk of suicide or self-harm. Where the young persons’ identities have not been made public, this is not identifying information. Where their identities have been

made public, the young persons themselves have disclosed behaviour of the kind that would have been managed by the application of such policies and procedures.

### **Legally privileged information**

There is a small amount of information in the report to which legal professional attaches (or, in the case of a legal opinion provided by the solicitors for one of the young persons, may still attach) and which should therefore not be released.

<b>Category of information</b>	<b>Page containing redacted information</b> <i>(Pages redacted in full are in italics)</i>
Legal advice sought by/provided to the Department	195, 198, 199, 239, 365 366, 367, 368, 369
References to a legal opinion provided by a third party	343, 350



## Independent Review of Youth Detention

# Confidential Report

December 2016

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# CONTENT

Content.....	2
Foreword .....	3
Executive summary .....	6
Chapter 1 Site Visits .....	32
Chapter 2 History of Youth Justice in Queensland.....	42
Chapter 3 International Framework.....	52
Chapter 4 National Framework .....	90
Chapter 5 Theories of Youth Justice .....	121
Chapter 6 National Sentencing Regimes .....	138
Chapter 7 17-year-olds – Transition Issues .....	149
Chapter 8 Oversight .....	183
Chapter 9 Programs and Services .....	210
Chapter 10 Creating and Retaining CCTV footage .....	239
Chapter 11 Use of Security Dogs at CYDC .....	254
Chapter 12 Behaviour Development Plans .....	276
Chapter 13 Left Intentionally Blank.....	307
Chapter 14 Young Person A1 .....	308
Chapter 15 Young Person A3 .....	355
Chapter 16 Young Person A4 .....	421
Chapter 17 Young Persons A5, A6, and A7 .....	458
Chapter 18 Young Person A8 .....	492
Chapter 19 Young Person A9 .....	501
Conclusion .....	553
Appendix 1 Identification Key .....	561
Appendix 2 Discussion Paper.....	567
Appendix 3 Comparative analysis of legislation applying in relation to the 7 incidents under investigation	568
Reference List.....	586
Glossary .....	607
The Independent Review of Youth Detention .....	620



## FOREWORD

We are pleased to present the final report of the Independent Review of Youth Detention and the treatment of 17-year-old prisoners in Queensland. This final report includes findings and recommendations in accordance with terms of reference as outlined in *Commissions of Inquiry Amendment Order (No. 1) 2016*.

**Warning** We would like to warn all readers that this report contains a number of confronting photographic images of young people that may be distressing.

All faces in the photographs have been blurred and all identities have been anonymised in the report. That was considered necessary to ensure that all individuals involved are protected whilst at the same time permitting the report's public release.

We respectfully suggest that anyone who reads this report who is experiencing any emotional distress and needs support to contact:

Lifeline Freecall (24 hours)	13 11 14
Kids Helpline	1800 55 1800
Headspace (12-25 years)	1800 659 388
Beyond Blue	1300 224 636
Bravehearts	1800 272 831

We have been assisted by the many individuals and entities that provided information by way of written statement, submissions and documents. We are especially indebted to the young people involved in the specific incidents included in this report. We were able to speak with many of them and it was our intention that their voices would be heard in concert with the many others relevant to this review.

The specific incidents reviewed, apart from one young person's treatment, were shown on the *ABC* and published in the *Courier Mail*. They were particularly distressing. That such events could happen in Queensland institutions responsible for the care of young people shocked many. It was grieving to note that the Forde Inquiry report of 1999 identified a number of similar issues. The fact that previously identified issues remained unresolved, in 2016, may have exacerbated publicly expressed concern.

It is not intended, nor would it be accurate, to suggest that all or even a majority of staff in detention centres or in youthful offender units within prisons generally respond to young people in ways that are abusive or otherwise not authorised by



legislation. There are many kind, skilled, dedicated staff working with young people in Queensland institutions. They are responsible for many positive contributions to young people's continued development and education and several young people spoken to in the course of this Review acknowledged this. Those staff are to be commended.

Without the dedicated efforts, friendship and support of the Inquiry staff this report could not have been completed within what was an extremely limited timeframe. We extend our sincere thanks to each of them led by Counsel Assisting Ms Janice Crawford and Director Mr Michael Drane.

In the Forde Inquiry report the Chairperson, Ms Leneen Forde, urged the reader to, "contemplate the experiences of children in institutions, how it came to pass that many of them were abused and mistreated."

The public were also reminded by Ms Forde that society had failed those children.

The issue of young people in youth detention centres and youthful offenders units within prisons poses similar problems. It is not a one-dimensional problem. Nor is it a problem that lends itself to a one-dimensional solution. Academic literature informs us that tougher sanctions are unlikely to yield positive results. Labelling young people as "difficult", "savages" or "hardened criminals" is particularly unhelpful.

We say this is unhelpful because by this type of labelling, attention is diverted from the institutions and agencies responsible for the care of young people to the young people themselves. These young people are then positioned as being 'to blame,' yet they are not viewed as adults by legal and social systems in other contexts.

Similarly relying on stock standard narratives that justify the disproportionate youth detention of Aboriginal and Torres Strait Islander young people as a 'rite of passage' means that attention is diverted away from understanding and addressing the underlying reasons why so many young Indigenous peoples find themselves in youth detention.

It is not our intention in this report to seek to blame any one person or entity for the identified failings within the youth justice system. This review has been conducted in a limited way, with limited resources and limited timeframes. Not every failing of the youth justice system and related systems has been included in this review. Where good practice or learnings have been identified, we trust that they have been appropriately acknowledged in the report.

We wish to remind all readers that many, if not all, of the young people currently in detention centres come from disadvantaged backgrounds. Many, if not all, have experienced significant trauma in their young lives. Many, if not all, come from families or family situations in crisis. Many have been or are subject to Child Protection orders. Many have been excluded from school. Many come from regional and remote areas of Queensland. None are beyond redemption and all are especially vulnerable to the approach that we, as a community, take in dealing with the multi-faceted and complex problems that affect them.



It is a time for courage and leadership within government. It is a time to design and implement a 21<sup>st</sup> century solution to a century old problem. We are comforted in the knowledge that there are many educated and dedicated people in this State who can assist with that.

To quote, "it is easier to build strong children than to repair broken men."

Frederick Douglass, Abolitionist and Statesman

Kathryn McMillan QC and Professor Megan Davis

Chairpersons



# EXECUTIVE SUMMARY

## INTRODUCTION

The Independent Review of Youth Detention ('the Review') was ordered by Queensland's Attorney-General and Minister for Justice the Honourable Yvette D'Ath ('the Attorney-General') on 19 August 2016. The Review was established as a Commission of Inquiry by an Order in Council, *Commissions of Inquiry Order (No. 1) 2016* which was gazetted 9 September 2016. The terms of reference were subsequently amended on 18 November 2016 *Commissions of Inquiry Amendment Order (No. 1) 2016*.

The Review was announced one month after a Royal Commission was ordered in the Northern Territory following the airing of footage and allegations concerning the treatment of children in youth detention in the Northern Territory.<sup>1</sup> Similarly, in Queensland, this Review was preceded by the airing of CCTV footage, first person accounts and allegations from young people and staff about excessive force at the Cleveland Youth Detention Centre (CYDC) on the Australian Broadcasting Corporation's (ABC's) 7:30<sup>2</sup> and Lateline<sup>3</sup> programs. This media coverage stemmed from an Amnesty International report<sup>4</sup> which detailed a range of concerns about the treatment of young people at the Brisbane Youth Detention Centre (BYDC) and CYDC. A further incident involving a 17-year-old prisoner was reported in *The Courier Mail* on 30 August 2016.<sup>5</sup>

On ordering the review, the Attorney-General stated that due to the complexities within youth justice, including constraints around confidentiality and need for those involved to consent to a departmental investigation, "an independent review is the appropriate mechanism to address all allegations that have been made and any additional allegations that may come forward".<sup>6</sup>

Commissioners Ms Kathryn McMillan QC and Professor Megan Davis were appointed on 7 September 2016. The Review commenced on 9 September 2016 with this report returnable, by virtue of a subsequent extension following the addition of further allegations not covered by the initial terms of reference, on 14 December 2016.

<sup>1</sup> ABC Broadcast, Four Corners, 26 July 2016, 'Australia's Shame', < <http://www.abc.net.au/4corners/stories/2016/07/25/4504895.htm>>

<sup>2</sup> ABC Broadcast, 7:30, 18 August 2016, 'CCTV shows alleged mistreatment at Townsville's Cleveland Youth Detention Centre' <<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>.

<sup>3</sup> ABC Broadcast, Lateline, 18 August 2016, 'The shocking revelations of alleged physical and mental abuse from within a Queensland youth detention centre', <<http://www.abc.net.au/lateline/content/2016/s4522569.htm>>.

<sup>4</sup> Amnesty International, "Heads Held High" Keeping Queensland kids out of detention, strong in culture and community', 2016 <[https://static.amnesty.org.au/wp-content/uploads/2016/09/Heads\\_Held\\_High\\_-\\_Queensland\\_report\\_by\\_Amnesty\\_International.pdf](https://static.amnesty.org.au/wp-content/uploads/2016/09/Heads_Held_High_-_Queensland_report_by_Amnesty_International.pdf)>.

<sup>5</sup> David Murray, *The Courier Mail*, 30 August 2016, 'Footage from inside Brisbane prison shows teen confronted by seven prison officers and put in spit mask', < <http://www.couriermail.com.au/news/queensland/footage-from-inside-brisbane-prison-shows-teen-confronted-by-seven-police-and-put-in-spit-mask/news-story/36723715c6226a32f5443177713b6967>>.

<sup>6</sup> Attorney-General and Minister for Justice and Minister for Training and Skills, The Honourable Yvette D'Ath, Media release, 19 August 2016, 'Attorney-General orders independent review of Queensland Youth Detention Centres', <<http://statements.qld.gov.au/Statement/2016/8/19/attorneygeneral-orders-independent-review-of-queensland-youth-detention-centres>>.



## TERMS OF REFERENCE

*The review will look into allegations levelled against the staff of youth detentions centres by former detainees and former employees in the media last month, and also specific allegations raised this month about the treatment of a 17-year-old in an adult prison three years ago. The review will also look at the practices, operation and oversight of Queensland's Youth Detention Centres...*

*Joint Statement, Queensland Premier, Attorney-General and Minister for Corrective Services, 7 September 2016<sup>7</sup>*

The terms of reference for the Review are set out in the *Commissions of Inquiry Order (No.1) 2016* and the *Commissions of Inquiry Amendment Order (No. 2) 2016*. Pursuant to these terms, the Review was to conduct an independent inquiry into:

- the operations at CYDC and BYDC with respect to:
  - specific allegations of the mistreatment of young people made by former staff members and former detainees ('the allegations') raised by the ABC, in other public commentary and in relation the management of Young Person A9 at CYDC;
  - existing policies and practices with respect to the use of force, separation, restraints, reporting, monitoring, complaint and investigation mechanisms;
  - existing oversight mechanisms, including any investigations that were undertaken with respect to the allegations;
  - current programs and services that address causational issues behind offending and the specific needs of Aboriginal and Torres Strait Islander young people in detention; and
- the operations of Queensland prisons (adult correctional facilities) with respect to:
  - specific allegations concerning a 17-year-old prisoner at the Brisbane Correctional Centre reported in The Courier Mail;
  - existing policies and practice for 17-year-old prisoners with respect to the use of force, separation, restraints, reporting, monitoring and complaint and investigation mechanisms.

Additionally, the Review was required to make recommendations on matters within the terms of reference and considering:

<sup>7</sup> Premier and Minister for the Arts, the Honourable Anastacia Palaszczuk, Attorney-General and Minister for Justice and Minister for Training and Skills, the Honourable Yvette D'Ath, Minister for Police, Fire and Emergency Services and Minister for Corrective Services, Bill Byrne, Joint Statement, 7 September 2016 '17-year-olds to be moved to youth justice', <<http://statements.qld.gov.au/Statement/2016/9/7/17yearolds-to-be-moved-to-youth-justice>>.



- whether the mistreatment of young people in youth detention centres is systemic in Queensland;
- a comparative assessment of the current policies, practices and programs relating to the terms of reference, delivered in youth detention centres in Queensland and other Australian jurisdictions;
- whether there are any issues with respect to the matters within the terms of reference that are of specific relevance to Aboriginal and Torres Strait Islander young people; and
- any interim measure that should be implemented prior to the transition of 17-year-olds from prisons to youth detention centres.

The findings and recommendations that have stemmed from inquiry into these terms of reference are summarised under 'Findings and Recommendations' below.

## OVERVIEW OF PROCESS

### INVESTIGATION POWERS

The scope of the Review's investigation powers under the *Commissions of Inquiry Act 1950* (Qld) ('Commissions of Inquiry Act') were set out in the *Commissions of Inquiry Order (No.1) 2016*, including:

- granting the Commissioners and deputies the same protection and immunities of judges of the Supreme Court;<sup>8</sup>
- power to summon any person (witness) to give evidence, answer questions and provide written information, including through the production of a range of materials;<sup>9</sup>
- powers to search and seize relevant evidence<sup>10</sup> and to inspect, retain (including for the purpose of preserving evidence for later legal proceedings) and copy materials produced;<sup>11</sup>
- broad powers to facilitate obtaining evidence and materials from witnesses, including:
  - the failure to respond to a summons being an offence punishable by summary proceedings;<sup>12</sup>
  - removal of the right to claim privilege against self-incrimination;<sup>13</sup>

<sup>8</sup> *Commissions of Inquiry Act 1950* (Qld), s20.

<sup>9</sup> *Commissions of Inquiry Act 1950* (Qld), s5.

<sup>10</sup> *Commissions of Inquiry Act 1950* (Qld), s19B.

<sup>11</sup> *Commissions of Inquiry Act 1950* (Qld), s19.

<sup>12</sup> *Commissions of Inquiry Act 1950* (Qld), ss 5, 25.

<sup>13</sup> *Commissions of Inquiry Act 1950* (Qld), s14(1A).



- application of the same liabilities on a witness as would arise in an action or trial in the Supreme Court;<sup>14</sup>
- provision for statements to be provided without fear of later being used in civil or criminal proceedings, except in limited circumstances;<sup>15</sup>
- protections on the disclosure of information obtained under the Act, including confidential information about a person's affairs;<sup>16</sup> and
- power to determine the scope of inquiry and report, including through the capacity to prohibit materials or evidence being published,<sup>17</sup> not being bound by rules as to procedure or evidence<sup>18</sup> and discretion to make separate (interim and final) reports and recommendations concerning matters of inquiry.<sup>19</sup>

### INQUIRY INTO ALLEGATIONS

Following a review of the relevant media, public commentary and materials obtained under the investigative ambit of the Review, the following incidents were identified as those requiring investigation under the terms of reference (the Review incidents):

- an incident involving Young Person A1 at Brisbane Correctional Centre on 13 February 2013;
- an incident involving Young Person A2 and Young Person A3 at CYDC on 21 October 2010. This incident was determined to be outside the terms of reference which limited the reported incidents under review since 1 January 2011;
- an incident involving Young Person A3 at CYDC on 20 January 2013;
- an incident involving Young Person A4 at CYDC on 22 January 2015;
- two incidents involving Young Person A4 at CYDC on 5 June 2015;
- an incident involving Young Person A5, Young Person A6 and Young Person A7 at CYDC on 25 August 2015; and
- an incident involving Young Person A8 at CYDC on 8 August 2016.

The Review was later expanded pursuant to the *Commissions of Inquiry Amendment Order (No. 2) 2016* to include the following allegations for investigation: the management of Young Person A9 at the CYDC from [redacted] including the incident on 27 May 2013 and all subsequent incidents.

The Review incidents were systematically reviewed with the full scope of the Review team's investigative powers and expertise, including by obtaining direct evidence from young people and detention and correctional centre staff, where possible, viewing CCTV evidence, incident reports, complaints and other documentary evidence first hand.

<sup>14</sup> *Commissions of Inquiry Act 1950* (Qld), s14B

<sup>15</sup> *Commissions of Inquiry Act 1950* (Qld), s14A.

<sup>16</sup> *Commissions of Inquiry Act 1950* (Qld), s32A, 32B.

<sup>17</sup> *Commissions of Inquiry Act 1950* (Qld), s16.

<sup>18</sup> *Commissions of Inquiry Act 1950* (Qld), s17.

<sup>19</sup> *Commissions of Inquiry Act 1950* (Qld), s31.



Additionally, pursuant to notices issued under the *Commissions of Inquiry Act* evidence was obtained from a wide range of stakeholders with oversight responsibilities in youth detention centres and correctional centres and within the youth justice and correctional sphere. A thorough review of applicable policy and legislation was undertaken to provide a comprehensive understanding of the framework within which the Review incidents occurred. This multifaceted approach ensured that the Review was equipped with the best possible evidence to make a full and informed assessment of the Review incidents.

#### *INQUIRY INTO OVERSIGHT, POLICY AND PRACTICE*

The Review commenced with the release of a discussion paper expanding upon the terms of reference, in response to which twenty-two public submissions were received. These submissions, from leaders in the field of youth justice, human rights and law informed the Review on a broad range of relevant topics. The Review also received a briefing and submission by the Australian Research Council Comparative Penalty Project.<sup>20</sup>

The Review also undertook extensive research including in relation to, the policy and legislative framework, youth justice theory and practices in other jurisdictions. The full scope of this research is summarised below. Additionally, site visits were undertaken to BYDC and CYDC and direct evidence was obtained from a number of young people and their families. Further, statements were obtained from a range of stakeholders, including from youth detention and correctional centre staff and management, senior Corrective Services and Youth Justice bureaucrats and members of existing oversight bodies within and external to the government, with a view to understanding the practical application of legislative and policy obligations.

Through this broad investigation the oversight, policy and practice framework that was in force at the time of these incidents was able to be understood in the context of historical, legal and comparative jurisdictional frameworks and the lived experience of young people and their families at the centre of incidents. This in turn provided a comprehensive and informed basis for findings and recommendations about oversight, policy and practice.

#### *RECOMMENDATIONS*

Recommendations that flowed from the investigative and research findings are interspersed throughout the report, and in chapters concerning the use of Security Dogs at CYDC (Chapter 11), Behaviour Development Plans (Chapter 12), Programs and Services (Chapter 9) and 17-Year-Old's Transition (Chapter 7).

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<sup>20</sup> Comparative Youth Penalty Project Principal investigator: Chris Cunneen, Chief investigators: Eileen Baldry, David Brown, Melanie Schwartz, Barry Goldson (University of Liverpool), ARC Discovery Project grant number: 130100184.



## COMMISSIONERS

### *MS KATHRYN MCMILLAN QC*

Ms Kathryn McMillan QC has been a Queensland barrister for 28 years and was appointed Queen's Counsel in 2013, having previously been a Senior Counsel since 2006. She practices primarily in the areas of administrative law, family law, child protection law and civil/human rights and discrimination.

Ms McMillan was appointed Counsel Assisting the Child Protection Commission of Inquiry, and she has appeared as Counsel in Queensland's Public Hospitals Commission of Inquiry, the Barrett Adolescent Centre Commission of Inquiry and the Royal Commission into Institutionalised Responses to Child Sexual Abuse.

Ms McMillan is a member of Dame Quentin Bryce's Domestic and Family Violence Prevention Council and the Child Death Case Review Panel.

### *PROFESSOR MEGAN DAVIS*

Megan Davis is a Professor of Law and Director of the Indigenous Law Centre, Faculty of Law at the University of New South Wales and a Commissioner of the New South Wales Land and Environment Court. She is also a member of the New South Wales Sentencing Council and a Fellow of the Australian Academy of Law.

Professor Davis is also an expert member on the United Nations Permanent Forum on Indigenous Issues, having had extensive experience as a United Nations lawyer and being a former Fellow of the United Nations High Commissioner for Human Rights in Geneva.

In 2011, Professor Davis was appointed to the Prime Minister's Expert Panel on the Recognition of Aboriginal and Torres Strait Islander Peoples in the Constitution and this year was appointed to the Referendum Council.

Professor Davis' current research focus is in the areas of sentencing laws, violence against Aboriginal women, and constitutional design and deliberation.

## PROCESS

The Review undertook a number of procedural steps to collate evidence and information during the inquiry, including by obtaining:

- submissions in response to the discussion paper;
- statements from individuals with knowledge of the incidents and those with broader knowledge of detention centres, adult correctional centres and within the youth justice and correctional sphere;
- documentary evidence relating to the allegations and the wider legislative and policy framework;
- direct evidence from a number of the young people through submissions and meetings with the Review team;



- conducting site visits to Brisbane Youth Detention Centre, Cleveland Youth Detention Centre and Brisbane Correctional Centre;
- direct consultation with a number of stakeholders and relevant organisations; and
- undertaking detailed research on a comprehensive range of areas, as set out below.

Previously provided draft findings and recommendations have been amended to reflect submissions received from parties. Relevant excerpts of submissions from the parties have been referred to throughout this report.

Identities of all individuals have been anonymised in the final report. All faces have been blurred in photographs. The Review has considered that to be a necessary precaution to protect individual identities. In addition some sections of the report have been redacted to protect confidential information.

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## SUBMISSIONS

On 30 September 2016, the Youth Detention Review released a discussion paper<sup>21</sup> expanding upon the terms of reference and inviting public submissions to the Review. Twenty-two submissions were received from the following organisations:

- Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd (ATSILS);
- Amnesty International;
- Australian Lawyers for Human Rights (ALHR);
- Change the Record Coalition;
- Human Rights Law Centre;
- Just Reinvest NSW;
- Mental Health and Statewide Services, Children's Health Queensland Hospital and Health Service (MHHS CHQHH);
- Mission Australia;
- Office of the Inspector of Custodial Services WA;
- Office of the Public Guardian, Queensland;
- Protect All Children Today (PACT);
- Queensland Council of Social Service;
- Queensland Network of Alcohol & Other Drug Agencies Ltd (QNADA);
- Queensland Ombudsman;
- Queensland University of Technology (QUT) – School of Psychology & Counselling;
- Sisters Inside;
- Together Union;
- Yourtown;
- Youth Advocacy Centre Inc;
- Youth Affairs Network of Queensland;

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<sup>21</sup>[https://www.youthdetentionreview.qld.gov.au/data/assets/pdf\\_file/0020/2369/DISCUSSION-PAPER\\_FINAL.pdf](https://www.youthdetentionreview.qld.gov.au/data/assets/pdf_file/0020/2369/DISCUSSION-PAPER_FINAL.pdf)



- Youth Empowered Towards Independence (YETI); and
- Cape York Institute<sup>22</sup>.

The research, views and recommendations from these submissions were gratefully received by the Review team. Where it was sought, an extension of time was granted, to ensure that no interested party had their opportunity to provide a submission denied. Submissions were considered in detail and incorporated in the report.

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## STATEMENTS, DOCUMENTS AND CONSULTATION

Pursuant to investigative powers bestowed under the *Commissions of Inquiry Order (No. 1) 2016* and subsequently *Commissions of Inquiry Amendment Order (No. 1) 2016*, notices to produce documents or provide information in a written statement were served on a range of stakeholders, including:

- youth detention centre staff;
- correctional centre staff, and
- representatives from a variety of Queensland government departments including:
  - Corrective Services;
  - Youth Justice;
  - Department of Community Safety's Ethical Standards Team;
  - Department of Justice and Attorney-General's Ethical Standards Unit;
  - Queensland Police Service;
  - Queensland Health;
  - Education Queensland;
  - Crime and Corruption Commission;
  - Office of the Queensland Ombudsman;
  - Children's Health Queensland;
  - Office of the Public Guardian; and the
  - former Commission for Children and Young People and the Child Guardian.

### STATEMENTS

In total, 91 individuals provided written statements in response to a requirement to produce information in a written statement, resulting in 106 statements including a number of supplementary statements. Each and every statement obtained has been read and considered by the Review team.

Crown Law assisted the majority of Queensland government employees to provide statements pursuant to the Queensland Government Indemnity Guidelines. Other individuals were represented by private solicitors, community legal centres or community groups.

In the interests of procedural fairness the Review team sent a draft of a number of report chapters to Crown Law and all individually represented parties where relevant

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<sup>22</sup><https://www.youthdetentionreview.qld.gov.au/submissions>



draft findings or comments had been made in advance of the provision of the final report.

#### *DOCUMENTS*

In addition, 43 separate notices were issued for documentary evidence yielding:

- 18,300 documents;
- 457 CCTV extracts; and
- 828 records of interview.

Of the documentary information obtained, every document provided in print form, CCTV record, email and record of interview audio file was examined for relevance and inclusion in the review. The only exception to this detailed and thorough examination was one provision of a vast volume of electronic material in response to a notice. This electronic file, containing a total of 36,000 discrete documents, could not be inspected in its entirety. The Review team is confident that all relevant materials requiring it to acquit the terms of reference were examined for inclusion in the report. The Review team is grateful to the legal representatives and to the various departments for their assistance, where appropriate, with the identification of relevant documents.

#### *CONSULTATION*

The Review team also undertook direct consultation with representatives from CYDC, BYDC, the Department of Corrective Services, the Queensland Ombudsman, the Office of the Public Guardian, the Office of the Inspector of Custodial Services Western Australia, the UNSW Comparative Youth Penalty Project, Stronger Smarter Institute, and, as outlined below, a number of the young people at the centre of the incidents under review and other young people spoken to in CYDC and BYDC when the site visits were undertaken.

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### **DIRECT EVIDENCE FROM YOUNG PEOPLE**

The Review team considered the need to hear personally from the young people at the centre of the Inquiry as a touchstone of the investigation. In addition to a number of confidential submissions that were provided to the Review, the Review team met with all but one of the young people at the centre of the incidents under review.

Rather than requiring information to be provided to the Review by serving notices, the young people and their families were contacted directly and the Review team travelled to meet with them. The Review team spoke with those young people on a broad range of topics, met with their families and loved ones, and sought to understand their lives beyond the discrete circumstances that formed the basis of each of the incidents under review. In this way, the Review team have come to better understand the gravity of the incidents and the impact on the young person's life. For the Review team, the CCTV footage that provoked this review has been given a human face. It is hoped that as a result, the incidents have been examined with a degree of



diligence, fairness and consideration befitting our shared humanity with these young people.

The importance of relying on direct evidence cannot be understated. For many of them, relaying their personal accounts to the Review team and in the form of their written submissions was their first opportunity to communicate about their experiences. All submissions received from the young people themselves have remained confidential, including in the publication of this report, and this provided young people with the freedom to express experiences they may have otherwise been too afraid to discuss, or too institutionalised to consider justified complaint. These written submissions of the young people remained with the Review, they were not provided to legal representatives however arrangements were made with legal representatives to view them where relevant. No copies were permitted to be made.

The Review team also talked with many young people while undertaking inspections at the BYDC and CYDC, collating a picture of the experience of young people in detention more generally.

It is the view of the Review team that young people should continue to inform and contribute to the shaping of youth detention policy, so that legislators and policy makers can be influenced by their perspectives and experiences. It is also hoped that central to any future oversight of youth detention are concepts of direct communication and consultation with young people.

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## OVERVIEW

The Review team undertook extensive research on the topics summarised below.

### *CHAPTER 1 – SITE VISITS*

The site visits were instructive. In BYDC, the campus appeared not dissimilar to a school campus, albeit with a large perimeter fence. There are trees and gardens. There is a yarning circle which is important to the Aboriginal and Torres Strait Islander community. Exercise equipment is visible and some young people were playing sport when the Review team attended.

### *CHAPTER 2 - HISTORY OF YOUTH JUSTICE IN QUEENSLAND*

The history of the Queensland youth justice system has been examined in Chapter 2, including the recommendations and legislative outcomes of the 1998 Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry) and the 2012 Queensland Child Protection Commission of Inquiry (the Carmody Inquiry).

### *CHAPTER 3 - INTERNATIONAL FRAMEWORK*

The application and content of relevant international law is set out in Chapter 3, including an examination of how standard international rules and guidelines apply in the area of youth detention.



#### CHAPTER 4 - NATIONAL FRAMEWORK

The procedural approaches between different Australian jurisdictions vary. This chapter notes those issues and, where appropriate, highlights other features of the juvenile justice system in the various States and Territories in Australia that, while not being a sentencing option, may be of interest.

#### CHAPTER 5 - THEORIES OF YOUTH JUSTICE

Chapter 4 reviews Australian youth justice literature in a number of areas relevant to the terms of reference, including best practice, assessment of youth detention programs, Aboriginal and Torres Strait Islander young people and institutional bias.

#### CHAPTER 6 – NATIONAL SENTENCING REGIMES

Relevant federal and Queensland legislation relevant to youth detention centres and the management of young people in Queensland youth detention centres has been summarised. Chapter 6 explores sentencing approaches in Australian including setting out the differing age ranges that youth sentencing provisions apply in each jurisdiction and a comparative analysis of sentencing options from dismissal through to detention.

Chapter 6 also sets out alternative detention options in Queensland and undertakes an analysis of custodial models in other jurisdictions. The chapter identifies inter alia, differing levels of custody for youth detention such as open custody in Canada, home detention in South Australia, youth attendance orders in Victoria, periodic detention in the Northern Territory, Singapore and Spain.

#### CHAPTER 7 – 17-YEAR-OLDS TRANSITION ISSUES

A summary of recent legislative change between 2010 – 2016 was also undertaken, including a schedule of future reform through the transition of 17-year-olds to the youth justice system introduced by the *Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Act 2016*.

#### CHAPTER 8 - OVERSIGHT

Chapter 8 defines and explores current complex multifaceted reporting, monitoring and complaint mechanisms in Queensland's youth detention sphere. This chapter also sets out existing legislative framework, policy and complaints processes for each departmental role and independent body with an oversight role over youth detention.

The chapter also explores oversight in Queensland Corrective Services facilities, including legislated oversight and complaint processes within the Department of Corrective Services and other government organisations. Chapter 12 contains an analysis of international and Australian approaches to detention centre and prison oversight.

#### CHAPTER 9 – PROGRAMS AND SERVICES

This chapter reviews programs and services provided to young people in youth detention. The Review was limited in respect of its ability to make meaningful findings and recommendations regarding programs and services offered at CYDC. When



evaluating the programs and services provided to young people in detention in Queensland, it is necessary to have regard to the objectives of the *Youth Justice Act 1992* ('the Act'). The most effective programs and services extend beyond individual offender behaviour modification, and acknowledge the need to strengthen communities and families.

#### CHAPTER 10 – CREATING AND RETAINING CCTV FOOTAGE

In this chapter the creation and retention of CCTV footage is discussed. In the course of the review a number of incidents were considered in which the CCTV record was incomplete. Several of the young people were placed in rooms without CCTV cameras or footage of incidents was not retained by CYDC.

#### CHAPTER 11 – USE OF SECURITY DOGS AT CYDC

As far as the Review is aware, dogs are not currently in use at BYDC or CYDC. This chapter considers whether the decisions made at CYDC and within DJAG to use a security dog were authorised.

#### CHAPTER 12 – BEHAVIOUR DEVELOPMENT PLANS

The scope of this chapter is limited to evaluating BDPs as they have been used in CYDC in relation to the young people involved in the incidents included in the Review's terms of reference. The Review is aware that there is significant work being undertaken in the development of behaviour development plans, behaviour management systems, interventions, rewards, consequences and incentives.

#### CHAPTER 14 - YOUNG PERSON A1

The incident involving Young Person A1 was reported in the Courier Mail on 30 August 2016. Full details of the incident are set out in Chapter 14 of the report. The incident involved Young Person A1, a 17-year-old who was \_\_\_\_\_ at the Brisbane Correctional Centre. Young Person A1 is alleged to have pressed the intercom button a number of times "without reason" after having made an unsuccessful request for toilet paper. Seven correctional centre staff attended and secured Young Person A1 in a body belt, handcuffs and head protector. He remained in the restraints for one hour and ten minutes.

#### CHAPTER 15 - YOUNG PERSON A3

This incident involving Young Person A3 was reported in ABC's 7:30 program on 18 August 2016. The incident occurred at CYDC and is examined in full in Chapter 15. Young Person A3 was sitting on a kitchen bench top and failed to comply with a direction by youth workers. It is alleged he made verbal threats and behaved in an aggressive manner. A high number of youth detention staff responded to a code yellow. Young Person A3 was ground stabilised, had leg and ankle cuffs applied and was held on the ground for approximately 23 minutes. He was then lifted and carried to a separation room where a Hoffman knife was used to cut off his clothing before the hand and leg cuffs were removed. Young Person A3 was left alone in the room with a pair of suicide shorts that did not fit, \_\_\_\_\_ and was held in separation for around two hours.



#### CHAPTER 16 - YOUNG PERSON A4

The Incidents involving Young Person A4 have been set out in full in Chapter 16. Both the incident on 23 January 2015 and 5 June 2015 were featured in the ABC's 7:30 and Lateline programs on 18 August 2016. The incident on 23 January 2015 concerned a handling of a complaint made by Young Person A4 that Individual [REDACTED] a correctional centre employee at CYDC, had repeatedly verbally abused him, including through harassment over the intercom, and had spat in his food.

The incident on 5 June 2015 concerned a takedown and ground stabilisation incident of Young Person A4. The incident occurred after a correctional centre staff member opened Young Person A4's cell during lock down. It is alleged that Young Person A4 grabbed the correctional centre staff member on the shirt. This staff member called a code yellow. At least eight staff members responded in addition to the two staff members present, with up to 13 staff members being present at some stage during the incident. Attempts were made to close Young Person A4's cell door. Young Person A4 was then subjected to a take down and ground stabilised. He was placed in handcuffs, walked to his cell and then ground stabilised again in his cell.

#### CHAPTER 17 - YOUNG PEOPLE A5, A6 AND A7

This incident was shown on ABC television's 7:30 program on 18 August 2016 and is examined in full in Chapter 17 of the report. The incident involved a group of three young people running from staff and jumping in the pool following a concert at the CYDC. Staff surrounded the pool, including Individual [REDACTED] with his security dog. The dog approached the pool aggressively on a number of occasions when the young people appeared to be attempting to get out. The young people negotiated not to be subject to ground stabilisation, the young people exited the pool. Handcuffs were applied when the young people got out and they were placed in separation for around an hour and on BDP's for a number of days.

#### CHAPTER 18 - YOUNG PERSON A8

The incident involving Young Person A8 occurred during NAIDOC Day Celebrations at CYDC in 2016. Full details of the incident are set out in Chapter 18 of the report. The incident concerned the ground stabilisation of Young Person A8 in front of NAIDOC celebration visitors. The ground stabilisation occurred after Young Person A8 was accused of touching the radio of a youth justice worker after being asked to stop. When he was asked to stand up so that he could be returned to his unit he began to run along a barrier where the visitors were located. A struggle ensued and Young Person A8 was eventually captured and two staff members began to escort him to a separation unit. Young Person A8 threatened to spit at them and they responded to the threat by ground stabilising them. He was handcuffed and escorted to separation.

#### CHAPTER 19 - YOUNG PERSON A9

The incidents involving Young Person A9 came to the attention of the Review [REDACTED] It was included in the Review following an expansion of the terms of reference. Several incidents involving



the management of Young Person A9 at CYDC during                      were examined, including a number of instances where Young Person A9 was hog-tied and where mechanical restraints were applied in response to self-harming behaviour.

#### LIMITATIONS OF THE INQUIRY

This Review was subject to a number of limitations as follows:

- the time constraints for the preparation and finalisation of the report was very short;
- there was insufficient time to conduct any hearings. There would have been 80-100 witnesses to be called in order to review the incidents and consider the program and transition issues;
- there was a high number of documents produced in response to notices;
- the examination of individual incidents was limited to a small number, yet the Review was tasked with identifying if there were systemic issues;
- the examination of those incidents was to review the investigations or oversight of them. Naturally, establishing the factual basis of the incidents was necessary to understand the latter processes. However, the ability to test the incidents through hearings or other forensic processes was beyond the time constraints of this Review;
- broader issues such as programs, their availability and effectiveness could not be examined exhaustively, within the limited time constraints, despite every attempt being made to ascertain and examine them;
- the submissions received by the Review upraised many widespread considerations that could not be examined in adequate detail nor necessarily were within the terms of reference. Where possible the Review has sought to examine and incorporate recommendations made in submissions received, taking as broad a view of the terms of reference possible with respect to ancillary issues, however this has not been possible in every case;
- the period of time available for submissions to be received was again curtailed so that the Review could utilise them. No submission or statement was rejected by the Review and extensions were granted when they were sought;
- statements from individuals and notices were afforded short timelines for compliance. We understand that this was difficult for some, particularly where resources were limited to respond;
- a number of stakeholders did not provide information to the Review. In total nine individuals staff members who did not provide information in a written statement, for reasons ranging from the review team not being able to locate them, failing to respond to a notice and in a number of cases because the person had left



Queensland. Those individuals encompassed correctional centre staff, Youth Justice employees, an ESU investigator and an MHATODS staff member;

- there was difficulty in obtaining clear statistical pictures of the detention and offending patterns of young people in the 17-year-old age bracket, as they have been historically grouped with adult offenders.

However, despite the above limitations, the Review team considers that the inquiry, findings and recommendations are based upon the best available evidence collated and examined.

## FINDINGS AND RECOMMENDATIONS

The Commissioner has made findings and recommendations on the matters investigated under the terms of reference. These findings and recommendations are summarised in the tables below.

### RECOMMENDATIONS

#### *Chapter 1 – General recommendations*

**Recommendation 1.R1** – The Review recommends that Youth Justice should create a consistent uniform standard to apply at both BYDC and CYDC. The uniform standard should not reflect a police style uniform.

**Recommendation 1.R2** – The Review recommends that Youth Justice should create a consistent standard regarding access to clocks to apply at both BYDC and CYDC.

#### *Chapter 7 – Recommendations for 17-year-olds transition issues*

**Recommendation 7.R1** – The Review recommends that the Principles set out 1 – 4, 6.3 and 6.4 of ‘Youth detention – Transfer of a young person policy’ should be applied to 17-year-olds transferring from prison to youth detention.

**Recommendation 7.R2** – The Review recommends that legal advice and support should be provided to individual 17-year-olds who are the subject of transfer orders.

**Recommendation 7.R3** – The Review recommends that the YJOLA Act regulations should include that 17-year-olds are able to review or appeal a transfer decision without undue delay.

**Recommendation 7.R4** – The Review recommends that information sharing between prisons and youth detention centres should include security classifications with supporting documentation, details of any existing support services and health needs of the 17-year-old to facilitate the re-implementation of these supports upon transfer.

**Recommendation 7.R5** – The Review recommends that ATSI organisations should play a key role in stakeholder consultation.



**Recommendation 7.R6** – The Review recommends that YJ should be provided with adequate funding and staffing levels to respond to the needs of 17-year-olds to be transferred in the next 12 months and 16-year-olds who form part of the future client cohort.

**Recommendation 7.R7** – The Review recommends that consideration should be given to the implementation of justice reinvestment collaborations between existing community-based services and YJ.

**Recommendation 7.R8** – The Review recommends that appropriate consideration should be given to investment in community-based wrap around services to support and co-ordinate with YJ. This is consistent with YJ objective to work, “in partnership with the community and other service providers to address the causes of the young person’s offending” and was recommended in a number of submissions.

**Recommendation 7.R9** – The Review recommends that the Tasmanian experience highlighted in the QNADA submission should be examined closely with a view to incorporating practices and concepts of social justice return in the YJ funding framework. In particular, in relation to reintegration support for young people exiting youth detention.

**Recommendation 7.R10** – The Review recommends that if Aboriginal and Torres Strait Islander young people are transferred from remote and regional areas of the State, appropriate cultural visits from the young person’s community should be arranged in person or with the use of video conferencing.

**Recommendation 7.R11** – The Review recommends that VET funding arrangements at BYETC and CETC should be re-examined with respect to the increased numbers of 17-year-olds. Factors relevant for consideration include the type of programming that will lead to employment options for young people and ensure that the service delivery is appropriate and engaging for an older cohort.

**Recommendation 7.R12** – The Review recommends that educational programs such as those successfully introduced in the Parkville College Victoria and the Whitelion program should be considered as models for service delivery in Queensland.

#### *Chapter 8 - Recommendations of Oversight of Youth Detention Centres and Brisbane Correctional Centres*

**Recommendation 8.R1** – The Review recommends that the Queensland Government replace the Youth Detention Inspectorate (ESU) and Office of the Chief Inspector (QCS) with an independent statutory Office of the Inspector of Custodial Services in a similar form to that of Western Australia.

**Recommendation 8.R2** – The Review recommends that the key features of the Queensland Inspector of Custodial Services should include:

- independence;
- transparency; and
- accountability.



### *Chapter 9: Recommendations for Programs and Services*

**Recommendation 9.R1** – The Review recommends that the program evaluations from SPEP should be published upon completion.

**Recommendation 9.R2** – The Review recommends that SPEP should be undertaken on an annual basis to ensure that programs provided to young people in youth detention centres and in the community remain effective in addressing their specific criminogenic needs. These evaluations should be recorded and should inform the criteria for the development of specific programs each year.

**Recommendation 9.R3** – The Review recommends that programs and services offered in detention centres should be flexible enough to allow effective implementation for, and participation of, young people on remand.

**Recommendation 9.R4** – The Review recommends that access to programs, particularly those which relate to education and culture, should not be restricted on a punitive, behaviour management basis.

**Recommendation 9.R5** – The Review recommends that consultation with external stakeholders should be undertaken in the development of programs for young people with disabilities and/or learning difficulties.

**Recommendation 9.R6** – The Review recommends that consultation with external stakeholders should be undertaken in the development of programs for young women. In respect of young women, this consultation should involve key stakeholders, such as Sisters Inside, and women's health organisations.

**Recommendation 9.R7** – The Review recommends that physical activity should be incorporated into school programs offered at BYDC and CYDC, and be otherwise accessible to young people at least once per day.

**Recommendation 9.R8** – The Review recommends that sports programs developed within youth detention centres should be linked to sports programs available in the community.

**Recommendation 9.R9** – The Review recommends that external stakeholders should be invited to join the FNAB.

**Recommendation 9.R10** – The Review recommends that consultation with external Aboriginal and Torres Strait Islander stakeholders to develop, design and implement cultural-specific programs should occur as a matter of priority.

In respect of Aboriginal and Torres Strait Islander young people, this should include consultation with community Elders.

### *Chapter 10: Recommendations for Creating and retaining CCTV footage*

**Recommendation 10.R1** – The Review recommends that the Manager, Monitoring and Compliance should review the CCTV footage of all incidents that this chapter recommends should be taken and retained.



**Recommendation 10.R2** – The Review recommends that security cameras should be placed in all areas where incidents involving use of force, violence, restraints or separation are known to have occurred.

**Recommendation 10.R3** – The Review recommends that CCTV should be utilised in a way that ensures that all relevant information is captured and retained to:

- facilitate the investigation of incidents without delay; and
- without unduly impacting on the mental health or personal privacy of young people.

**Recommendation 10.R4** – The Review recommends that CCTV footage should be retained in relation to all incidents including:

1. a use of force response that is classified as a level 2 to 4 PAC response;
2. a medical emergency;
3. where harm has occurred to a young person, staff or another person;
4. where property has been significantly damaged or where a criminal charge against the young person is contemplated;
5. a period of separation occurring immediately after an incident;
  - a. the first two hours of the separation period should be retained; or
  - b. the whole period of separation if the young person is released before the two hour period ends.

**Recommendation 10.R5** – The Review recommends that the CCTV footage should be retained:

1. for three years after a young person turns 18 or dies (whichever happens first) and is therefore no longer able to bring an action for personal injury within the meaning of the Limitations of Actions Act 1974;
2. otherwise until any investigation is finalised and any applicable appeal time limit period has passed.

**Recommendation 10.R6** – The Review recommends that the *Youth Justice Act 1992* should be amended in order to implement the requirement to retain CCTV footage in line with the above recommended timeframes.

#### *Chapter 11 – Recommendations for Use of Security Dogs at CYDC*

**Recommendation 11.R1** – The Review considers that security dogs should not be used in youth detention centres as a means of responding to incidents or disciplining young people.

#### *Chapter 12 – Recommendations for Behaviour Development Plans*

**Recommendation 12.R1** – The Review recommends that staff should seriously consider a range of options to address misbehaviour by young people, and consider whether a BDP, or a BDP imposing separation and isolation, is the best option for addressing misbehaviour for a particular young person.



**Recommendation 12.R2** – The Review recommends that BDPs should be a tool to address misbehaviour in an individualised way that attempts to redress and reduce individual misbehaviour and the underlying causes of it.

**Recommendation 12.R3** – The Review recommends that additional training should be provided to multi-disciplinary teams and staff creating interim BDPs to ensure that a BDP for a young person is personal and individually tailored to meet the needs identified in response to the young person's misbehaviour.

**Recommendation 12.R4** – The Review recommends that the imposition of periods of separation or isolation should not be a default condition on a BDP.

Staff should ensure that any decision to impose separation is in accordance with the law and policies and supported by evidence showing how the requirements of both are satisfied for each separation.

**Recommendation 12.R5** – The Review recommends that the chief executive or delegate should ensure that each young person at a youth detention centre has access to education appropriate to the child's age and must ensure that adequate training is provided to detention centre staff about their legal obligations to ensure a child receives education material in accordance with Youth Justice principle 20(g).

**Recommendation 12.R6** – The Review recommends that the Chief Executive should formulate a system with the Chief Executive (Education) and the Inspectorate to ensure that the educational facility and programs at the youth detention centres are informed of the absence of a young person, the reason for the absence and the lawful authority justifying the absence. The Review considers that the Inspectorate should remain aware of the statistics about the failure to attend educational classes and programs. Such a system should have the following features:

1. detention centre staff in a unit must notify the educational institution that a young person from the unit is unable to attend the educational institution. The notice must be in writing and must state the lawful reason why the child is not attending the educational institution and be delivered to the school principal or delegate.
2. Any child unable to attend the educational classes or programs must be delivered suitable educational materials for completion during their absence from the educational classes or programs.
3. that material is to be delivered to the person in charge of the child's unit.
4. the Principal or delegate of the educational institution must:
  - a. inform the teacher or instructor of the young person's absence; and
  - b. ensure that the young person who does not attend classes is provided with educational material that can be completed in the unit; and
  - c. ensure that a written record is kept on One School for each school day stating the name of each young person who was absent from school classes or programs, where the child was when they were absent, and what educational work was provided for the young person to complete; and
  - d. record whether the educational work was completed or record an explanation as to why the educational work was not completed.



5. the principal or delegate must ensure that the written record of all educational classes or programs absences is provided to the Inspectorate each quarter to ensure that the information is included in the Inspectorate's Quarterly reports.
6. the Inspectorate must liaise with Education Queensland to identify any concerning trends in the provision of education within detention centres and include any concerns and recommendations in the Inspectorate's quarterly reports.

#### *Chapter 14 - Recommendations for Young Person A1*

**Recommendation 14.R1** – The Review recommends that the current policy should be amended to ensure that it is consistent with, and reflects, applicable legislation.

**Recommendation 14.R2** – The Review recommends that, in considering whether or not to use restraints, regard should be had to whether there was any other way to stop the conduct.

**Recommendation 14.R3** – The Review recommends that corrective services officers should be counselled and re-trained on the specific situations in which it is appropriate to use force, in particular restraints, under the Corrective Services Act 2006.

- Such training to include de-escalation techniques and identification of alternative strategies to be employed before utilising physical restraint of a prisoner, for a discipline purpose, as a last resort.
- Such training to include appropriate documentation and record keeping to ensure that managers are kept informed of all incidents of physical restraint.

**Recommendation 14.R4** - The Queensland Government write to Young Person A1 and apologise for the unlawful segregation.

#### *Chapter 15 - Recommendations for Young Person A3*

**Recommendation 15.R1** – The Review recommends that there should be commonality between the definition of harm under the Child Protection Act 1999 and the Youth Justice Act 1992 and it should include an unacceptable risk of harm.

**Recommendation 15.R2** – The Review recommends that there should be specialised, ongoing training to youth detention staff to assist them in identifying signs of emotional and psychological harm of a young person, as well as how institutionalised practices can cause or trigger significant harm to a young person. The training should be provided by representatives from the Mental Health Alcohol, Tobacco, and Other Drugs Services (MHATODS). (It is understood there is currently no ongoing training on this issue).

**Recommendation 15.R3** - The Review recommends that harm reporting obligations should be subject to annual refresher training for all youth detention centre staff.

**Recommendation 15.R4** – The Review recommends that all records of SR1 in ICMS should provide detailed information on the specific management of suicide risk and behaviour, detailing specific pro-active interventions, as a means of ensuring transparency and accountability between relevant government departments.



**Recommendation 15.R5** – The Review recommends that the SR1 in ICMS should be relayed to CHQ Statewide MHS to ensure that appropriately skilled mental health practitioners are aware of the incident and risk alert and can assist where appropriate.

**Recommendation 15.R6** – The Review recommends that Queensland Health staff responsible for conducting mental health assessments on young people in response to a serious suicide attempt should be trained (if not qualified) in mental health assessment specific to young people (particularly those with complex needs).

**Recommendation 15.R7** – The Review recommends that parents and guardians should be advised of all significant incidents occurring in the centre for which children may have suffered harm as defined in the Youth Justice Act 1992, section 268 as soon as there is a recognition that harm has been suffered.

#### *Chapter 16 – Recommendations for Young Person A4*

**Recommendation 16.R1** – The Review recommends that ESU investigations of alleged staff misconduct by young people should include, where possible, an interview with the complainant in the company of a complainant's preferred support person.

**Recommendation 16.R2** – The Review recommends that staff who are no longer required to manage an incident should leave the area.

**Recommendation 16.R3** – The Review recommends that staff who are not directly involved in the management of an incident but may be required to remain should ensure they are not obscuring CCTV cameras and the occurring incident.

**Recommendation 16.R4** – The Review recommends that the inspectorate should consider including an ongoing record of all complaints made by young people at every inspection in order to consider whether or not a youth detention centre is appropriately handling, recording and resolving complaints lodged by young people.

**Recommendation 16.R5** – The Review recommends that appropriate and operationally effective measures to restrict contact between a staff member and a young person should be taken immediately following a complaint by the young person.

**Recommendation 16.R6** – The Review recommends that accurate records of measures taken to separate staff and young people as part of a complaints management process should be kept by the youth detention centre.

**Recommendation 16.R7** – The Review recommends that ESU should identify an expected end date for an investigation and provide details of the expected end date to the young person at the commencement of the investigation into the young person's complaint.

**Recommendation 16.R8** – The Review recommends that the review rights, if any, available to a young person should be included in any outcome letter to the young person, and these rights should be additionally explained to the young person by their caseworker or appropriate staff member.



**Recommendation 17.R1** – The Review recommends that the responses in relation to incidents under the Protective Actions Continuum should be revised in order to remove inconsistencies in response to varying categories of risk.

**Recommendation 17.R2** – The Review recommends that the relevant Policy and Operations Manual should be updated to state specific circumstances as to when handcuffs are to be applied to a young person's hands in front of their body or behind their back.

**Recommendation 17.R3** – The Review recommends that the inconsistency in the Policy and the Operations Manual regarding who is authorised to apply restraints should be resolved.

**Recommendation 17.R4** – The Review recommends that the CYDC management should require the recording of the classification of the force used along with a justification of the force used in accordance with the PAC:

1. to show that adequate justification for the use of force is included in the DCOIS report; and
2. to allow the Inspectorate to conduct a review into whether the use of force in an incident was justified.

**Recommendation 17.R5** – The Review recommends that all CYDC staff responsible for the classification of incidents in DCOIS at CYDC should undergo additional training in appropriate classification rating of incidents within six months of the date of this report.

Such additional training should be approved by both the ADG and ESU Inspectorate as being sufficient to address the concern that incident classification is accurately recorded in future.

Such training should satisfy both the ADG and ESU Inspectorate that the approved retraining will ensure that all external oversight bodies are informed of all higher level incidents as required in future.

**Recommendation 17.R6** – The Review recommends that the use of PAC level 3 and 4 responses should be reviewed by the Executive Director of the Centre and ESU Inspectorate to decide whether the response was appropriate in the circumstances (including whether, because of the nature of the incident, it may have been classified as a PAC level 1 or 2 risk).

**Recommendation 17.R7** – The Review recommends that the policy relating to the use of force, including ground stabilisation, should be amended to emphasise that ground stabilisation is to be used as a last resort, and only for an incident requiring a PAC level 4 response, and only if there is no other way of managing the situation and securing the young person's safety, cooperation or to ensure the safety of another person.

All staff involved in the care and management of young people should be made aware through training that the use of force, including ground stabilisation, is to be used as a last resort in cases where a PAC level 4 response is appropriate.

**Recommendation 17.R8** – The Review recommends that all staff should be trained in de-escalation techniques.



All use of force, which includes any actual physical contact with a young person, should be classified at a minimum of PAC level 3 response.

**Recommendation 17.R9** – The Review recommends that continuous separations based on factors in the Youth Justice Regulation 2016 should be supported by contemporaneous evidence justifying the separation.

**Recommendation 17.R10** – The Review recommends that the food provided to a young person whilst they are in a separation room or subject to a BDP should be accurately recorded. If adequate food or prescribed medication is not provided, the reason for the failure to provide either essential should be recorded and justified by evidence explaining why it was appropriate to withhold the provision of food or medication.

**Recommendation 17.R11** – The Review recommends that all records relating to the application of restraints should contain a sufficient basis for objective determination of the reasonable grounds upon which the decision to apply restraints to a young person was made.

**Recommendation 17.R12** – The Review recommends that additional training should be provided to people on multi-disciplinary teams and people creating interim BDPs to ensure that a BDP for a young person is personal and individually tailored to meet the needs identified in response to the young person's misbehaviour.

**Recommendation 17.R13** – The Review recommends that a communication liaison position should be created to manage individual complaints and incidents relating to use of force and separation within the detention centres, ensuring consistent and adequate communication with parents, families and guardians is provided.

**Recommendation 17.R14** – The Review recommends that parents and guardians should be advised of all incidents occurring in youth detention centres for which their children are subjected to use of force, restrained, separated or as a result of which they may have suffered harm as defined in the Youth Justice Act 1992, section 268.

**Recommendation 17.R15** – The Review recommends that staff should be counselled and trained on the legislation and policy outlined in this chapter of the report.

#### *Chapter 18 – Recommendations for Young Person A6*

**Recommendation 18.R1** – The Review recommends that the use of force at CYDC should be reviewed and staff be trained in de-escalation techniques and other alternatives to the use of force, including instruction that use of force (ground stabilisation) and mechanical restraints (handcuffs) are to be used only when all other measures have failed, and otherwise limited to use in emergency situations only. That training should include cultural sensitivity training regarding physical intervention and shame.

**Recommendation 18.R2** – The Review recommends that a communication liaison position should be created to manage individual incidents, use of force and separation within the detention centres, and should ensure that consistent and adequate communication with parents, families and guardians is provided.



**Recommendation 19.R1** – The Review recommends that further investigation should be undertaken as to the concerning allegation of the misuse of Individual electronic signature and accuracy of meeting minutes.

**Recommendation 19.R2** – Staff who authored the documentary records identified in this Chapter should be retrained in minimum standards of documentation requirements to provide accurate documentary entries reflecting all interventions (including methods of restraint) and incidents.

**Recommendation 19.R3** – The Review recommends that Youth Justice policies, procedures and manuals should be amended to positively preclude the use of restraints to ‘hog-tie’ (or restraint by means of a similar description) a young person. Alternatively, the Youth Justice legislation should be amended to reflect that where a number of restraints are used in combination (except transport restraints – i.e. approved handcuffs and ankle cuffs) each specific combined use should be approved by the Director-General of DJAG with concurrent approval from the Director-General of Queensland Health.

**Recommendation 19.R4** – The Review recommends that in addition to a list of approved restraints, Youth Justice policies should provide clear descriptions of how they are to be used (e.g. whether they may be used in combination, and if so the method by which this combination is achieved). This is particularly important given that, upon its commencement on 26 August 2016, the Youth Justice Regulation 2016 required individual staff members to hold the reasonable beliefs necessary to exercise the power pursuant to section 19(1). This is in contrast with sections 20(2) and (3) of the Youth Justice Regulation 2003 (repealed), which entrusted delegated managers only.

**Recommendation 19.R5** – The Review recommends that youth detention centre employees should receive more training in identification, treatment and management of young people with mental health issues.

**Recommendation 19.R6** – The Review recommends that Youth Justice policies and risk assessment tools should:

- distinguish between suicide risk and self-harm risk; and
- reflect the research undertaken by Youth Justice that physical restraints escalate self-harming behaviour.

**Recommendation 19.R7** – The Review recommends that consideration should be given to creating a 0.5 FTE consultant psychiatrist and a 1.0 FTE psychiatry registrar to be based at each youth detention centre.

**Recommendation 19.R8** – The Review recommends that a consultant psychiatrist should be available on call after hours and on weekends.



## SUMMARY

The Review has examined existing policies and practices with respect to the use of force, separation, restraints, at CYDC, BYDC and Brisbane Correctional Centre and made relevant findings and recommendations throughout the report, as summarised above.

The State submits that restraints, separation and denial of access to educational materials may be authorised even if not in accordance with specific provisions of the Regulation. The Review notes that, unlike the *Corrective Services Act 2006*, separation is dealt with in the *Youth Justice Regulation 2016* and not in the Act. The State has further submitted that, “the Regulation cannot be construed as cutting down the Chief Executive’s responsibility for maintaining security and order in a centre and, arguably, a Regulation could not lawfully be made with that effect; such a restriction on the Chief Executive’s responsibility could only be made in the Act itself.”<sup>23</sup>

The State has also submitted that the Youth Justice Principles do not confer absolute rights on young people and cannot be construed as cutting down the Chief Executive’s responsibility for maintaining security and order in a centre.<sup>24</sup> Section 263 provides that:

### **263 Management of detention centres**

- (1) *Subject to this Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.*
- (2) *The chief executive may carry out the responsibilities mentioned in subsection (1) by using any convenient form of direction, for example, rules, directions, codes, standards and guidelines relating to—*
  - (a) detention centre organisation; or*
  - (b) functions, conduct and responsibilities of detention centre employees; or*
  - (c) types of programs for children detained in a detention centre; or*
  - (d) contact between children detained in the detention centre and members of the public; or*
  - (e) arrangements for educational, recreational and social activities of children detained in detention centres.*
- (3) *In relation to each detention centre, the chief executive is responsible for—*

<sup>23</sup> Submissions on behalf of the State of Queensland – Chapter 4 - Behaviour Development and Behaviour Development Plans, dated 10 December 2016, paras 15 and 41, edocs 3554162.

<sup>24</sup> Submissions on behalf of the State of Queensland – Chapter 4 - Behaviour Development and Behaviour Development Plans, dated 10 December 2016, paras 35 and 36, edocs 3554162.



- (a) providing services that promote the health and wellbeing of children detained at the centre; and*
- (b) promoting the social, cultural and educational development of children detained at the centre; and*
- (c) maintaining discipline and good order in the centre; and*
- (d) maintaining the security and management of the centre.*
- (4) The chief executive must monitor the operation of the detention centres and inspect each detention centre at least once every 3 months.*
- (5) Also, as far as reasonably practicable, the chief executive must ensure principles 3, 15, 19 and 20 of the youth justice principles are complied with in relation to each child detained in a detention centre.*
- (6) Subsection (5) does not limit another provision of this Act.*

The Review considers that it is unnecessary to form a final view as to the State's position in respect of the overarching power of the Chief Executive. However, the Review notes the following:

- subsection (1) provides for the chief executive's general responsibility for the security and management of detention centres, and states that the power is 'subject to this Act';
- subsection (2) provides for, among other things, guidelines, standards and directions that allows the chief executive to carry out the responsibilities mentioned in subsection (1);
- subsection (5) currently specifically requires that the chief executive ensure youth justice principles 3, 15, 19 and 20 are complied with as far as reasonably practicable;
- subsection (6) provides that subsection (5) does not limit another provision of the Act.

The Review considers that if the position submitted by the State, as outlined above, is correct, then all provisions currently contained in the *Youth Justice Regulation 2016*, which both empower and protect, such as, separation, restraint, search, use of force, management of behaviour and discipline, ought to be transferred into the Act to ensure that the Chief Executive's overarching power is subject to parliamentary oversight and legislative restriction.

The Review team considered that the use of security dogs at CYDC required specific consideration, as contained in Chapter 11, and made a number of relevant findings and recommendations in relation to this issue.



## CHAPTER 1 SITE VISITS

### THE BRISBANE YOUTH DETENTION CENTRE

The Brisbane Youth Detention Centre (BYDC) is located at Wacol and situated on approximately 37 acres of semi cleared, undulating land. The centre comprises 116 beds and currently accommodates male and female young people aged between 10 and 17 years from south of Rockhampton. The centre is a secure facility and comprises six accommodation units, 2 independent living units, program and education buildings, roadways and infrastructure which occupy approximately 7 acres of the site. The remaining grounds encompass a full size rectangular sports field, 25 metre swimming pool, indoor sports centre, concrete netball court, several half size concrete basketball courts adjacent to each accommodations section, a dam, garden beds and expansive grassed and treed areas. The centre is surrounded by bushland on two of its borders. There is no visibility into the centre due to concrete perimeter walls. The centre was designed and built in response to the announcement of the closures of the Sir Leslie Wilson and John Oxley Youth Centres and construction was completed in 2001. The centre was originally designed to accommodate a maximum of 96 young people. Subsequent infrastructure upgrades to the centre have increased its bed capacity and program spaces since 2001.

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### OBSERVATIONS

On Wednesday 2 November 2016, Commissioners were accompanied by Counsel Assisting the Review and Review officers (the Review team) on a visit to the BYDC along with legal representatives of the State. Upon arrival at the centre the Review team met with the Executive Director, [REDACTED] and were provided with an overview of the physical layout of the centre followed by a tour of the facility. The Review team viewed the following physical areas and observed practices routinely undertaken during each phase of a young person's admission and management;

- admissions to the centre and an overview of admission and discharge procedures;
- health services including a briefing from the Nurse Unit Manager;
- briefing and presentation from a BYDC Psychologist regarding the centre's management of young people with complex needs, overview of risk assessments used, screening tools administered and suicide risk management processes;
- morning tea was provided to the Review team. Food was prepared by young people enrolled in the Certificate level Hospitality Program;
- program observations and interaction with young people participating in Mathematics, Ceramics and Woodwork classes;
- sporting activities on the Oval;
- female Independent Living Unit for young people transitioning from detention; and
- female young person's unit whilst lunch was being prepared.

The Review team met with a number of young people during the course of their visit. In small numbers, young people spoke to the Review team about their general experiences within BYDC. The Review team sought the views of young people relevant to their respective experiences with regard to matters directly within the terms of reference for the Review. This included discussion of general living and accommodation standards, safety



and well-being, food and diet, programming, health services, access to visits, phone contact with family, mail, restraints, use of force, separation and knowledge of complaint mechanisms.

Throughout the course of the visit the Review team spoke with and were provided briefings from a number of key staff at the centre. Those key staff included staff from Youth Justice, Health and Education. Youth Justice staff at BYDC were observed wearing uniforms which predominantly comprised shorts, polo shirts and sports shoes. The Review team noted the presence of a number of authorised murals and artwork painted on both the interior and exterior walls of accommodation sections and education buildings. The Review team observed large numbers of young people moving between programs and accommodation sections at the same time which appeared orderly and calm. The Review team also observed the permanent outdoor fitness equipment and cultural gardens available to the young people.

When visiting accommodation sections the Review team noted the cleanliness of rooms and common areas and also noted fridges were available for young people to use in each unit section which were stocked with food, milk and drinks. Fresh fruit and snacks were also available for young people in each unit section. Lunch was provided to young people whilst the Review team was present and the Review team noted that the meals were fresh and afforded young people a selection of options. Young people had a digital clock in their room.

The Review team noted a number of differences in the physical environment and visual aesthetics of the BYDC as compared to Cleveland Youth Detention Centre (CYDC).



The Brisbane Youth Detention Centre, Health centre and Education precinct. Photo taken during site visit 2 November 2016.



The Brisbane Youth Detention Centre, mural painted by young people. Photo taken during site visit 2 November 2016.

## THE CLEVELAND YOUTH DETENTION CENTRE

The Cleveland Youth Detention Centre (CYDC) is located at Belgian Gardens in Townsville and located on approximately 32 acres of flat, completely cleared, reclaimed land. The centre comprises 96 beds and currently accommodates male and female young people aged 10-17 from north of Rockhampton, as far north as Cape York and Torres Strait, Mount Isa to the west and the Northern Territory border. The centre undertook an expansion, doubling its size from 48 to 96 beds. That expansion was completed in early 2014. Prior to the expansion, the centre did not accommodate female young people who were solely accommodated at BYDC. CYDC is bordered by two main roads, one of which is the major thoroughfare to the city from the airport. The airport is in close proximity to the centre which is also bordered by low lying land subject to tidal flood surges. There is some visibility into the centre from outside due to external perimeter fencing comprising perforated metal.

CYDC has a large swimming pool, an undercover sports area, a sport field and a manual arts and horticulture shed.

## OBSERVATIONS

The Review team undertook site inspections to CYDC on 31 October and 1 November 2016. Review team members viewed the following physical areas and observed practices routinely undertaken during each phase of a young person's admission and management;

- admissions to the centre and an overview of admission and discharge procedures;
- remand and assessment accommodation unit including a briefing from the Unit Manager;



- education classrooms and briefing from teaching staff;
- program observations including, Music, Art, Library, Manual Arts and Hospitality;
- health services including a briefing from the Nurse Unit Manager;
- casework and Administration facilities;
- Independent Living Units for young people transitioning from detention;
- female young person's unit;
- assistance dog program demonstration; and
- recreational facilities including:
  - sports field;
  - under cover sports area;
  - manual arts and horticulture shed; and
  - pool.

On 1 November 2016 the Review team returned to the Cleveland Youth Detention Centre to meet with a number of young people. In small groups young people spoke to the Review team about their general experiences within CYDC. The Review team sought the views of young people relevant to their respective experiences with regard to matters directly within the terms of reference for the Review. This included discussion of general living and accommodation standards, safety and well-being, food and diet, programming, health services, access to visits, phone contact with family, mail, restraints, use of force, separation and knowledge of complaint mechanisms.

Throughout the course of the visit the Review spoke with and were provided briefings from a number of key staff at the centre.

At CYDC the Review team met with youth justice staff, health staff, program staff and education staff. The Review team were also provided with an opportunity to meet and speak with the Team Leader of the cultural programs team and the Team Leader of the behavioural support team.

During the two day visit to CYDC the Review team made a number of observations regarding the uniforms worn by youth justice staff which comprised black boots, navy blue cargo trousers and navy blue shirts. The uniform was not dissimilar to police uniforms. The Youth Detention Inspectorate raised concerns regarding the difference in uniforms between the Brisbane and Cleveland detention centres and accordingly made recommendations for a revised and consistent uniform standard across both centres.<sup>25</sup>

The submissions received on behalf of the State have indicated that there is significant work, taking account of staff feedback, occurring across both centres to update current uniforms. This is to ensure that the uniforms are similar, with consideration being given to the climate variations between Brisbane and Townsville.<sup>26</sup> The State submits that the Review should note that a direction has been given that the "epaulettes previously adorning the uniforms were to be removed."<sup>27</sup>

The Inspectorate had documented further practice divergence and differing approaches to the management of young people between BYDC and CYDC over a number of years and this was also evident to the Review team during site visits. In response to the Inspectorate's observations, Youth Justice internal documents dated June 2014 highlight a range of divergent practices between the two detention centres despite operating under the same Legislative, Policy and Procedural basis.<sup>28</sup> At CYDC the Review observed very restricted movements of young people around the centre at the commencement and conclusion of education classes and program activities. The Review team noted movements were limited to young people in one or two accommodation unit

<sup>25</sup> CYDC Inspection Report – September Quarter 2015, edocs #3811050

<sup>26</sup> Submissions on behalf of the State of Queensland dated 13 December 2016, paras 5 and 6, edocs 3558215.

<sup>27</sup> State's submissions received 13 December referring to CYDC Quarterly Performance Review 1 March 2016; also email from YJ25 to CYDC staff 4 March 2016.

<sup>28</sup> Comparison between Queensland's youth detention centres, June 2014, edocs 3458037.



sections at a time. This was in direct contrast to the collective and coordinated movements of young people observed at BYDC.

The Review team met with a number of young people whilst at the CYDC and discussed a range of matters relevant to their respective experiences whilst being held in detention. During the site visit the Review team noted that there were no clocks in any of the young people's rooms and none in the common area. Discussion on the topic of clocks was limited. The Review acknowledges that it has not undertaken any rigorous inquiry as to the effect of not having access to a clock. However, a number of young people indicated that they would prefer to have a clock in their room and to be aware of the time without asking staff.

The Review team noted the absence of gardens and trees in CYDC and noted the landscape appeared stark. The Review notes that there is a dry climate in Townsville and the youth detention centre is subject to water restrictions.

The Review team also observed the interior of accommodation sections to be very dirty despite the relatively young age of some of the accommodations sections. This may have been due to water restrictions but other public amenities were not in a similar state of cleanliness.

### BUILT CAPACITY

The total number of young people that can be accommodated in general accommodation units is the number used for public reporting regarding the capacity of each of the youth detention centres.

As at 30 June 2015, the built capacity of Queensland's youth detention centres is 226:

- 130 at Brisbane Youth Detention Centre, and
- 96 at Cleveland Youth Detention Centre.

A 'variable demand formula' is used for the allocation of additional funds when the centres are required to accommodate children in excess of built capacity.

### OPTIMUM CAPACITY

According to Youth Justice the accepted safe level of operations is 85% of built capacity. That is equivalent to 192 individual young people. Optimum operating capacity permits dynamic security by matching the population mix with available accommodation e.g. the girls' accommodation block may be fully occupied and another three girls are admitted. Boys need to be moved from an accommodation block so the three girls can be accommodated, however this reduces the capacity for additional boys.

- 110 at BYDC, and
- 82 at CYDC.<sup>29</sup>

Table 1 provides an overview of the built capacity at CYDC according to the Youth Detention Infrastructure Plan 2015-2035 produced by Youth Justice in 2015.

**Table 1:** CYDC built capacity by unit and type

Unit name	Type	No. of beds	No. of single rooms	No. of dual occupancy rooms	Security cameras
Brolga	Boys aged 10+	8	8	nil	4

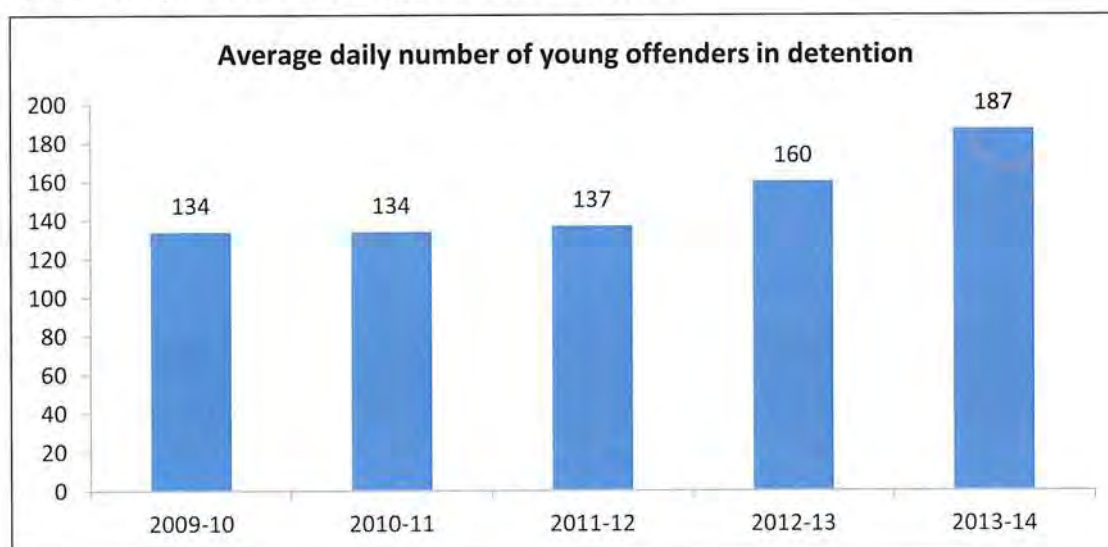
<sup>29</sup> Youth Detention Infrastructure Plan 2015-2035 version 18. edocs #3458723



Ibis	Boys aged 10+	8	8	nil	4
Heron	Boys aged 10 +	12	12	nil	6
Kingfisher	Boys aged 10 +	12	12	nil	6
Magpie	Girls	12	12	nil	6
Cassowary	Girls	12	12	nil	6
Corella	Boys aged 10 +	8	8	nil	4
Kestrel	Boys aged 10 +	8	8	nil	4
Jabiru	Boys aged 10 +	8	8	nil	4
Osprey	Independent living unit	4	4	nil	0
Sandpiper	Independent living unit	4	4	nil	0
<b>Built capacity:</b>		<b>96</b>	<b>96</b>		<b>44</b>

### QUEENSLAND DETENTION CENTRES – AVERAGE DAILY NUMBERS (2009-2014)

**Table 3:** Average daily numbers in Queensland detention centres



Source: Youth Detention Infrastructure Plan – 2015-2035, Youth Justice 2015.



The Cleveland Youth Detention Centre, Reception building.

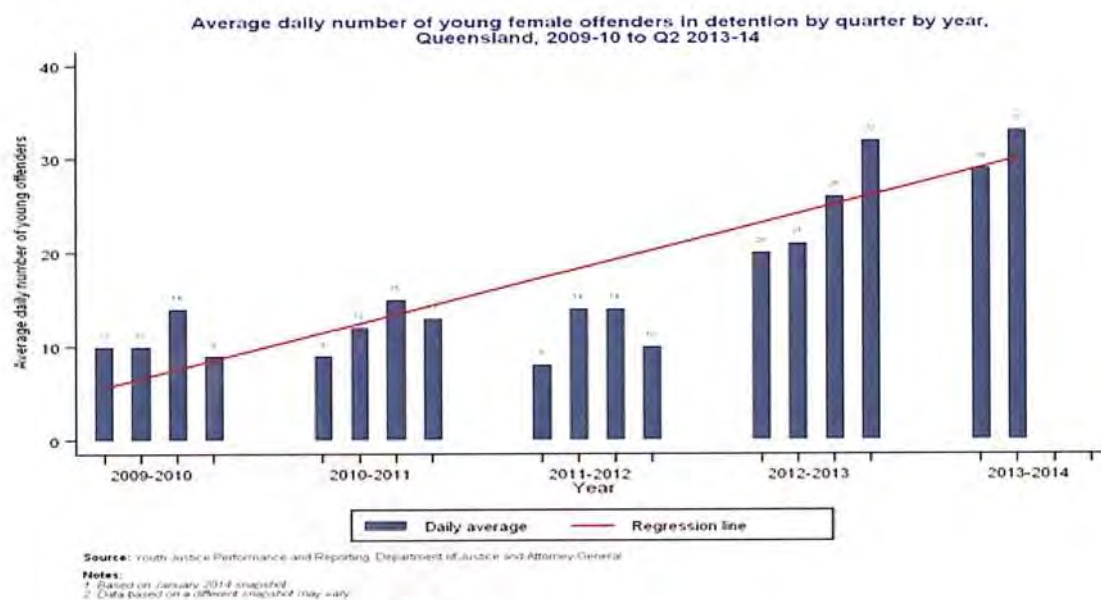


The Cleveland Youth Detention Centre and surrounds.



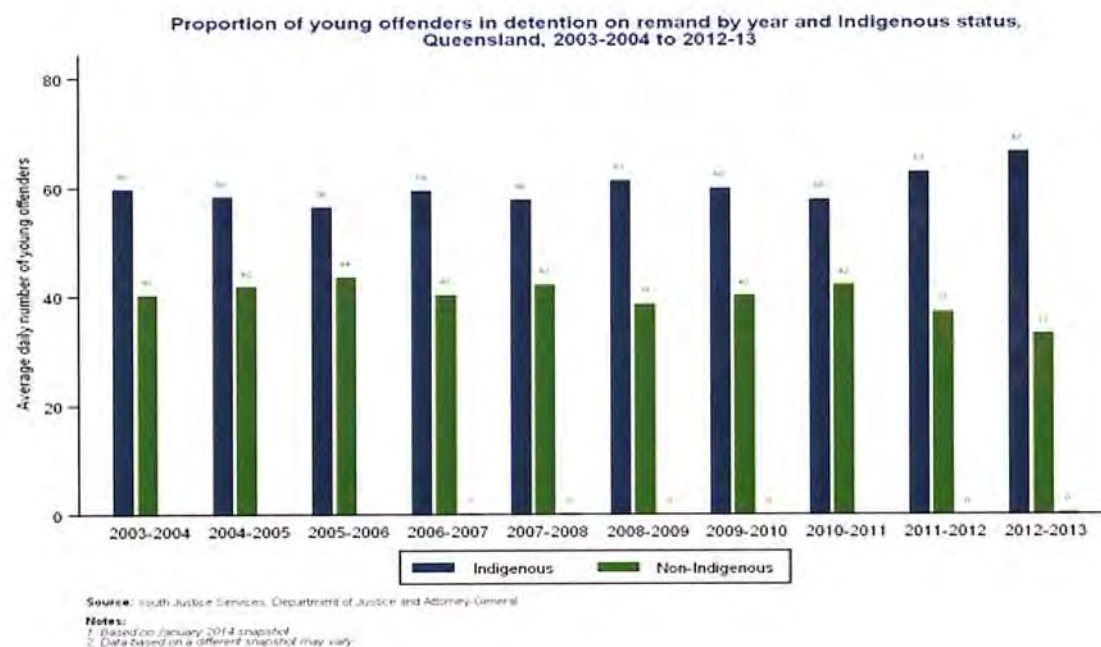
## CLIENT DEMOGRAPHICS

Table 4: Average daily number of young female offenders in detention



Source: Youth Detention Infrastructure Plan – 2015-2035, Youth Justice 2015.

Table 5: Proportion of young offenders in detention on remand by Indigenous status



Source: Youth Detention Infrastructure Plan – 2015-2035, Youth Justice 2015.



## SITE VISITS - GENERAL FINDINGS AND RECOMMENDATIONS

**Finding 1.F1** – Staff at BYDC predominantly wore shorts, polo shirts and sports shoes.

**Finding 1.F2** – Staff at CYDC wore long cargo style dark blue trousers, long sleeved dark blue shirts with pockets and epaulettes and heavy boots. This style of uniform was similar to a police uniform.

**Recommendation 1.R1** – The Review recommends that Youth Justice should create a consistent uniform standard to apply at both BYDC and CYDC. The uniform standard should not reflect a police style uniform.

**Finding 1.F3** – At BYDC young people had a digital clock in their room. At CYDC young people did not have a digital clock in their room.

**Finding 1.F4** – Young people at CYDC were not always aware of the time as there were no clocks in their rooms or in common areas.

**Finding 1.F5** – Young people not knowing the time caused frustration for them at CYDC.

**Recommendation 1.R2** – The Review recommends that Youth Justice should create a consistent standard regarding access to clocks to apply at both BYDC and CYDC.



## CHAPTER 2 HISTORY OF YOUTH JUSTICE IN QUEENSLAND

### INTRODUCTION

The youth justice system is the framework of laws, policies, institutions and practices which provides for the processing of children who have committed, or are suspected of having committed, an offence. The laws that criminalise behaviour, such as the *Criminal Code Act 1899* (Qld), apply to both adults and children. The laws and procedures for dealing with children who are suspected or found guilty of committing offences are primarily set out in the *Children's Court Act 1992* and the *Youth Justice Act 1992* (formerly the *Juvenile Justice Act 1992*).

For the past century, most Western societies have dealt with juvenile offenders and suspects separately from adults. This approach has varied over time, from the 'justice' model, which emphasised due process and accountability of offenders, to the 'welfare' model, which focused more on the rehabilitative needs of the offender. The Australian juvenile justice system has for many years comprised a combination of justice and welfare approaches.<sup>30</sup>

See Chapter 1 Appendix 1 for the history of oversight arrangements of Queensland's youth detention centres.

See Chapter Appendix 2 for a summary of current youth justice oversight arrangements.

### OVERVIEW OF QUEENSLAND'S YOUTH JUSTICE SYSTEM – 1865 TO 1992

#### REFORMATORY AND INDUSTRIAL SCHOOLS

Queensland's youth justice system has its foundations in the second half of the nineteenth century, when the government began to establish industrial and reformatory schools.<sup>31</sup> The *Industrial and Reformatory School Act 1865* (IRSA) provided that children under 15 years who were convicted of an offence were to be sent to reformatories,<sup>32</sup> while children who were categorised as 'neglected' were to be sent to industrial schools.<sup>33</sup> By definition, children with Aboriginal parentage were classified as neglected children.<sup>34</sup>

The IRSA remained in force until the enactment of the *State Children's Act 1911* (SCA), which established the State Children Department (the Department). The Department

<sup>30</sup> Adopted from the Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999) p 179.

<sup>31</sup> Department of Children's Services, *Centenary of Care of Children 1879 – 1979* (1979).

<sup>32</sup> *Industrial and Reformatory School Act 1865* (Qld) s 9.

<sup>33</sup> *Industrial and Reformatory School Act 1865* (Qld) s 8.

<sup>34</sup> *Industrial and Reformatory School Act 1865* (Qld) s 8.



was responsible for the administration of children who were in the care of the State due to either their personal circumstances or because they had been convicted of an offence.<sup>35</sup> The SCA maintained the broad classification of children in State care as either neglected or convicted children, and placed the children under the authority of the Director of the Department.<sup>36</sup> The six reformatory and industrial schools that existed in Queensland in 1911 became the responsibility of the Department under the SCA.<sup>37</sup> At that time, these institutions were responsible for 210 children.<sup>38</sup>

Under the SCA, the Childrens Court could direct that neglected children be sent to a reformatory. Neglected children residing in orphanages or industrial schools could be transferred to a reformatory for misconduct. Such children could remain in the care of the Director until they reached 18 years of age (or, with Ministerial approval, 21 years of age).<sup>39</sup>

The *Children's Court Act* was passed in 1907, but it was not until 1930 that an amendment provided for a special Children's Court Magistrate and also allowed the hearing of juvenile cases in a private room at the Department's offices.<sup>40</sup> Between 1930 and 1965, recidivist child offenders continued to be sent to reformatories or industrial schools.<sup>41</sup> After World War II, many of the former industrial schools were used partly as residential institutions for dependent children, as well as children who were minor offenders.

The *Children's Services Act 1965* (CSA) introduced a code for dealing with young offenders, emphasising the use of probation or supervision, and allowing children to be admitted to the care and protection of the Director either by application or court order.<sup>42</sup> 'Care and protection children' could be transferred to correctional facilities until they reached 18 years of age if it was considered that their behaviour warranted the imposition of some form of treatment program.<sup>43</sup> Similarly, children committed to care and control orders because they were considered to be in 'moral danger', 'uncontrollable', or 'likely to fall into a life of vice or crime or addiction to drugs', could remain in the care of the Director at a correctional institution until they reached 18 years of age.<sup>44</sup>

## COMMISSION OF INQUIRY INTO YOUTH (DEMACK REPORT) 1974 - 1975

On 3 October 1974, a Commission of Inquiry was established due to continuing community disquiet about juvenile offending.<sup>45</sup> The Inquiry ultimately culminated in a

<sup>35</sup> Criminal Justice Commission, *Youth, Crime and Justice in Queensland: an information and issues paper*, dated March 1992.

<sup>36</sup> *State Children Acts 1911* (Qld) ss 4, 11.

<sup>37</sup> Department of Children's Services, *Industrial Schools and Reformatories, Centenary of Care of Children 1879 – 1979* (1979).

<sup>38</sup> Department of Children's Services, *Industrial Schools and Reformatories, Centenary of Care of Children 1879 – 1979* (1979).

<sup>39</sup> Adopted from the Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999) p 121.

<sup>40</sup> *Children's Court Act 1907* (Qld) s 3A, as inserted by the *Children's Court Amendment Act of 1930* (Qld) s 4.

<sup>41</sup> Department of Children's Services, *Industrial Schools and Reformatories, Centenary of Care of Children 1879 – 1979* (1979).

<sup>42</sup> Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999) p 121.

<sup>43</sup> Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999) p 121.

<sup>44</sup> Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999) p 121.

<sup>45</sup> Comparative Youth Penalty Project, *Key moments in Penal Culture in Queensland 1970 – present* (11 January 2011)

<<http://cypp.unsw.edu.au/section-1-chronological-summary-1970-2008-1>>.



report titled '*The Nature and Extent of Problems Confronting Youth in Queensland*', known as the Demack Report.<sup>46</sup>

The broad terms of reference required the Commission to make an inquiry into the nature and extent of the problems confronting youth in Queensland in the domestic, educational, recreational, cultural, economic, civil, social and related fields.<sup>47</sup> Essential recommendations of the report included the establishment of permanent bodies with input into youth justice, to support the continued decentralisation of departmental services.<sup>48</sup>

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## INTRODUCTION OF THE JUVENILE JUSTICE ACT 1992 AND THE CHILDREN'S COURT ACT 1992

The introduction of the *Children's Court Act 1992* (CCA) and the *Juvenile Justice Act 1992* (JJA) brought about significant changes in the organisation and delivery of juvenile justice, and signified Queensland's move from a welfare model towards a justice model.<sup>49</sup>

The CCA established the Childrens Court of Queensland and created a two-tiered system of Childrens Courts, whereby one is presided over by Magistrates and the other by Judges appointed from the District Court.<sup>50</sup> The CCA also provided for the appointment of one of these Judges as President of the Childrens Court.<sup>51</sup>

The JJA established a range of community based sentencing options including reprimand, good behaviour orders, probation, and community service orders. The JJA provided a legislative basis for police to caution young people for first or minor offences, and implemented community conferencing as a means of resolving a matter. The maximum penalty was raised from 14 years to life imprisonment for offences which carried a maximum of life imprisonment for adults. For the first time, a set of principles to underpin the operation of the Act were set out in section 4.<sup>52</sup> Recognised principles included:

- the vulnerability of children in the investigatory stages of a proceeding;
- a preference for juveniles to be diverted from court;
- a child should only be detained in custody as a last resort and, if detained, should only be held in a facility suitable for children; and
- a child should be punished in a way that will give the child the opportunity to develop in a responsible, beneficial and socially acceptable way.

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<sup>46</sup> Comparative Youth Penalty Project, *Key moments in Penal Culture in Queensland 1970 – present* (11 January 2011) <<http://cyp.p.unsw.edu.au/section-1-chronological-summary-1970-2008-1>>.

<sup>47</sup> Queensland State Archives Agency ID581, *Commission Of Inquiry Into The Nature And Extent Of The Problems Confronting Youth In Queensland*, dated 28 November 1975.

<sup>48</sup> Queensland, *Commission of Inquiry into the Nature and Extent of the Problems Confronting Youth in Queensland*, Parl paper No 85 (1975).

<sup>49</sup> Criminal Justice Commission, 'Children, Crime and Justice in Queensland' (1995) 2 *Research Paper Series* 2, p 2.

<sup>50</sup> *Childrens Court Act 1992* (Qld) (No. 68/1992) s 5.

<sup>51</sup> *Childrens Court Act 1992* (Qld) (No. 68/1992) s 9.

<sup>52</sup> *Juvenile Justice Act 1992* (Qld) (No. 32/1993).



In 2003, these principles were incorporated into a Charter of Juvenile Justice Principles set out in Schedule 1 of the Act.<sup>53</sup> Recent changes to the JJA are discussed in more detail below.

## REFORM OF YOUTH DETENTION CENTRES: 1994 - 2014

### ENHANCEMENT PROGRAM FOR DETENTION CENTRES - 1994

A review of youth detention was initiated by the government in order to raise the existing youth detention centres to national standards. The review was completed in March 2004. As a result of the review, the government announced it would be closing Westbrook Youth Detention Centre (Toowoomba), and Sir Leslie Wilson Youth Detention Centre (Brisbane), and upgrading Cleveland Youth Detention Centre (Townsville) and John Oxley Youth Detention Centre (Brisbane).<sup>54</sup>

### COMMISSION OF INQUIRY INTO ABUSE OF CHILDREN IN QUEENSLAND INSTITUTIONS (THE FORDE INQUIRY)

In August 1998, the Minister for Families, Youth and Community Care established a Commission of Inquiry to examine whether there had been any abuse, mistreatment or neglect of children in Queensland institutions.<sup>55</sup> The Inquiry encompassed the period from 1911 to 1999 and examined more than 150 orphanages and detention centres.<sup>56</sup>

In June 1999, the report of the Commission of Inquiry into Abuse of Children in Queensland Institutions was tabled in the Queensland Parliament. The Forde Inquiry, as it was known, found significant evidence of abuse and neglect of children in Queensland institutions in the past and identified ongoing concerns about current practices.<sup>57</sup>

### RECOMMENDATIONS OF THE FORDE INQUIRY REGARDING YOUTH DETENTION CENTRES

In total, the Forde Inquiry made 42 recommendations, a number of which related to the operation and oversight of Queensland's youth detention centres. At the time, there were three youth detention centres in Queensland: Sir Leslie Wilson and John Oxley Youth Detention Centres in Brisbane, and Cleveland Youth Detention Centre in Townsville.

Relevant recommendations included:

- Recommendation 17: that requirements for the Department to conduct regular inspection and monitoring of residential care facilities and juvenile detention centres be specified in legislation; and

<sup>53</sup> *Juvenile Justice Act 1992* (Qld) (No. 37 and 39/2003) sch 1.

<sup>54</sup> Comparative Youth Penalty Project, *Key moments in Penal Culture in Queensland 1970 – present* (11 January 2011) <<http://cyp.p.unsw.edu.au/section-1-chronological-summary-1970-2008-1>>.

<sup>55</sup> Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999) p i.

<sup>56</sup> Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999) p i.

<sup>57</sup> The Forde Foundation, *The Forde Inquiry*, <<http://fordefoundation.org.au/resources/the-forde-inquiry>>.



- Recommendation 18: that the Department have a legislatively imposed responsibility to collect information relating to the abuse of children and young people in residential care facilities and juvenile detention centres.<sup>58</sup>

### LEGISLATIVE CHANGES FOLLOWING THE FORDE INQUIRY

The *Juvenile Justice Amendment Act 2002* made changes to the JJA in response to the recommendations of the Forde Inquiry. In response to Recommendation 17, a provision was inserted into the JJA which gave the chief executive further oversight responsibilities including that the chief executive must monitor the operation of youth detention centres and inspect each detention centre at least once every three months; and that the chief executive must ensure certain Charter of Juvenile Justice Principles are not breached, including the principle that a child should be treated with respect and dignity while in custody (Principle 3).<sup>59</sup>

In response to Recommendation 18, a provision was inserted into the Act which provided that the chief executive must collect and keep certain information, including information regarding breaches of the regulations concerning young people in detention.<sup>60</sup>

Other changes to the JJA included the increased use of diversionary options by police and courts, such as cautioning and conferencing, and making these options more culturally appropriate.<sup>61</sup>

### QUEENSLAND CHILD PROTECTION COMMISSION OF INQUIRY (CARMODY INQUIRY)

On 1 July 2012, the Queensland Government established the Queensland Child Protection Commission of Inquiry (the Carmody Inquiry) in response to a widespread perception that the existing child protection system in Queensland was failing vulnerable children and their families.<sup>62</sup>

### RECOMMENDATIONS OF THE CARMODY INQUIRY REGARDING YOUTH DETENTION CENTRES

On 1 July 2013, the Carmody Inquiry released its final report - *Taking Responsibility: A Roadmap for Queensland Child Protection*, which made 121 recommendations. A number of recommendations involved legislative reforms affecting the child protection system and oversight mechanisms for youth detention. However, the scope of the Carmody Inquiry specifically excluded the appropriateness or adequacy of the general operation of youth detention centres.<sup>63</sup>

<sup>58</sup> Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999) p xv.

<sup>59</sup> *Juvenile Justice Amendment Act 2002* (Qld) s 101.

<sup>60</sup> *Juvenile Justice Amendment Act 2002* (Qld) s 111.

<sup>61</sup> *Juvenile Justice Amendment Act 2002* (Qld) ss 10, 13-21.

<sup>62</sup> Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Queensland Government, Brisbane, dated June 2013, p xvii.

<sup>63</sup> Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Queensland Government, Brisbane, dated June 2013, p 13.



### LEGISLATIVE CHANGES FOLLOWING THE CARMODY INQUIRY

As part of implementing the recommendations of the Carmody Inquiry, the Government abolished the Commission for Children and Young People and Child Guardian (CCYPCG) and passed legislation creating two new independent statutory bodies with oversight of youth detention, namely:

- The *Public Guardian Act 2014*; and
- The *Family and Child Commission Act 2014*.

The *Public Guardian Act 2014* established the position of the Public Guardian and the new Office of the Public Guardian (OPG), an independent statutory body reporting to the Attorney-General and Minister for Justice. It combined similar functions previously undertaken by the CCYPCG with those of the Office of the Adult Guardian, an organisation already within the Justice portfolio.<sup>64</sup>

The OPG adopted the community visitor program previously undertaken by the CCYPCG and, in line with the recommendations contained in the Carmody Report, the program refocussed on the most vulnerable children and young people; young children in out-of-home care, those in mental health facilities and young people in detention.<sup>65</sup>

The OPG has powers in relation to inspecting youth detention sites and obtaining information from staff and young people, and must produce a report about each site visit. The OPG also offers a telephone complaint service for children in detention.

The *Family and Child Commission Act 2014* created the Queensland Family and Child Commission (QFCC), a statutory body reporting directly to the Premier. The function of the QFCC is to provide oversight for the whole child protection system, including some of the systemic oversight and research functions previously undertaken by the CCYPCG.<sup>66</sup>

### RECENT LEGISLATIVE CHANGES AND FUTURE DIRECTIONS FOR YOUTH JUSTICE

#### AMENDMENTS TO THE YOUTH JUSTICE ACT 1992

In 2010, amendments were made to the JJA, the most evident being that the Act's name changed to the *Youth Justice Act 1992*.<sup>67</sup>

In 2012, youth boot camps were implemented by the *Youth Justice (Boot Camp Orders) and Other Legislation Amendment Bill 2012*.

<sup>64</sup> Department of Justice and Attorney-General, *Child protection reforms: The Queensland Child Protection Commission of Inquiry* (20 July 2016) <<http://www.justice.qld.gov.au/corporate/justice-initiatives/carmody-report-recommendations>>.

<sup>65</sup> Department of Justice and Attorney-General, *Child protection reforms: The Queensland Child Protection Commission of Inquiry* (20 July 2016) <<http://www.justice.qld.gov.au/corporate/justice-initiatives/carmody-report-recommendations>>.

<sup>66</sup> Department of Justice and Attorney-General, *Child protection reforms: The Queensland Child Protection Commission of Inquiry* (20 July 2016) <<http://www.justice.qld.gov.au/corporate/justice-initiatives/carmody-report-recommendations>>.

<sup>67</sup> *Juvenile Justice and Other Acts Amendment Act 2009* (Qld) s 41.



In 2014, the *Youth Justice and Other Legislation Amendment Act 2014* made significant amendments to the *Youth Justice Act 1992*. The amendments included:

- removal of the principle that a sentence of imprisonment should be as a last resort and for the shortest appropriate time;
- allowing the names of repeat offenders to be published;
- opening the Children's Court to the public for repeat offenders;
- the admissibility of childhood findings of guilt in adult sentencing proceedings, despite convictions having not been recorded;
- automatically transferring 17-year-olds who have more than six months remaining on their sentence to adult imprisonment;
- mandatory boot camp orders for young offenders who commit three or more motor vehicle offences within the Townsville area in a 12 month period; and
- abolishing sentence reviews (review of a Childrens Court Magistrate's decision by a Childrens Court Judge).<sup>68</sup>

In September 2015, boot camps were ceased following the release of the Final Report for the Evaluation of Queensland Youth Boot Camps, which found that the boot camps had failed to decrease rates of reoffending when compared to other forms of youth detention.<sup>69</sup>

On 1 July 2016, the *Youth Justice and Other Legislation Amendment Act 2016* commenced, making changes to the *Youth Justice Act 1992*, which reversed some of the 2014 amendments. Changes included:

- reinstatement of the principle that detention should be as a last resort;
- reinstatement of sentence reviews; and
- removal of provisions allowing for the names of first-time and repeat offenders to be published.<sup>70</sup>

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## COMMITMENTS TO FUTURE REFORM

The *Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill 2016* was passed on 3 November 2016. The *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* was subsequently assented to on 11 November 2016. The *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* will commence on a day to be fixed by proclamation.<sup>71</sup> Relevantly, these amendments require that the definition of a child pursuant to the *Youth Justice Act 1992* be changed to refer to a person under 18 years of age, rather than the previously stipulated 17 years of age. The effect of these amendments will be for the transfer of 17-year-olds from the adult justice system into the juvenile justice system.

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<sup>68</sup> Youth Justice and Other Legislation Amendment Act 2014 (Qld).

<sup>69</sup> KPMG, Final Report for the evaluation of Queensland Youth Boot Camps: Department of Justice and Attorney-General, dated July 2015.

<sup>70</sup> Youth Justice and Other Legislation Amendment Act 2016 (Qld) ss 4, 14, 51.

<sup>71</sup> Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016, s 2.



These amendments will bring Queensland into line with the United Nations Convention on the Rights of the Child, as well as the analogous legislation in all other Australian jurisdictions. The Department of Justice and Attorney-General has advised that planning is now underway to include 17-year-olds in the youth justice system. This forms an important part of the government's broader youth justice agenda to implement developmentally appropriate, evidence-based reforms that reduce offending and reoffending. This is discussed in further detail in *Chapter 7 17-year-olds – Transition issues*.



## CHAPTER 1 APPENDIX 1 HISTORY OF OVERSIGHT ARRANGEMENTS OF YOUTH DETENTION CENTRES<sup>72</sup>

A number of changes to youth justice and in particular, youth detention oversight arrangements have been introduced over the past 50 years. Significant changes during this time include:

Year	Change
1965	The <i>Children's Services Act 1965</i> when introduced established the Department of Children's Services and included a scheme of 'visiting justices'.
1992	In 1992, following the introduction of the <i>Youth Justice Act 1992</i> , the visiting justices scheme became the official visitors' scheme for detention centres. Two official visitors were appointed to each centre and they were required to visit once a month.
2000	The official visitor scheme first became independent of the department when it was transferred to Children's Commissioner in 2000 under the <i>Commission for Children and Young People and Children's Guardian Act 2000</i> . Official visitors currently spend around four hours a week at each detention centre.
2002	Notwithstanding the presence of official visitors in detention centres, the Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry) found serious shortcomings in the detention centres meeting legislative and acceptable standards in the care and rehabilitation of children. Recommendation 17 of the Forde Inquiry was for a legislative requirement that the department conduct regular inspection and monitoring of residential care facilities and juvenile detention centres. This provision was inserted in <i>Youth Justice Act 1992</i> in 2002 with a specified requirement that these inspections occur once every three months.  In this, Section 263(4) of the YJ Act sets out that "The chief executive must monitor the operation of the detention centres and inspect each detention centre at least once every 3 months."  Since that time, the department has had two full time permanent inspectors appointed with the current incumbents holding these roles for a number of years. The community visitor scheme was formerly administered by the CCYPCG and entails appointed visitors attending YDCs, speaking with staff and children in detention to identify and help to resolve issues facing young people in detention.
2014	As of July 1 2014 administration of the community visitor program transferred to the Public Guardian under the <i>Public Guardian Act 2014</i> . The Public Guardian has indicated no change to the implementation of this program.

<sup>72</sup> Department of Justice and Attorney-General, *Youth Justice Oversight*, p 5, para 1.2.1.

CHAPTER 2 APPENDIX 2 CURRENT YOUTH JUSTICE OVERSIGHT ARRANGEMENTS<sup>73</sup>

Authority	Oversight Objective
<b>Crime &amp; Corruption Commission</b>	<ul style="list-style-type: none"> <li>• Assessment and investigation of individual and systemic misconduct and official misconduct.</li> </ul>
<b>Qld Ombudsman</b>	<ul style="list-style-type: none"> <li>• Complaints resolution</li> <li>• High level oversight</li> </ul>
<b>Public Guardian</b>	<ul style="list-style-type: none"> <li>• Community Visitor program – approx. 4 hours per week in YDCs               <ul style="list-style-type: none"> <li>○ Deal with issues on site</li> </ul> </li> <li>• Act as advocate for young people in more serious issues</li> <li>• Conduct investigations and publish reports               <ul style="list-style-type: none"> <li>○ 2014 report into use of separation</li> <li>○ 2011 Views of young people in detention</li> </ul> </li> <li>• Monitoring role</li> <li>• Audits and reviews of systems, policy and practices in child protection system.</li> </ul>
<b>DJAG Ethical Standards Unit</b>	<p><b>Ethical Standards Unit</b></p> <ul style="list-style-type: none"> <li>• Investigate official misconduct</li> </ul> <p><b>Youth Detention Inspectorate (within ESU)</b></p> <ul style="list-style-type: none"> <li>• Quarterly inspections               <ul style="list-style-type: none"> <li>○ Identify and assess issues raised by staff</li> <li>○ Reporting of findings and recommendations</li> </ul> </li> </ul>
<b>DJAG Internal Audit</b>	<ul style="list-style-type: none"> <li>• Charter of full systems and operational audit</li> <li>• High level and holistic oversight</li> </ul>
<b>Chief Inspector, Youth Justice</b>	<ul style="list-style-type: none"> <li>• Reporting for statutory obligations</li> <li>• Quarterly operational Service Reviews of Youth Detention Centres</li> <li>• Practice reviews of Youth Justice Service Centres</li> <li>• Quarterly Performance Reviews of Youth Detention Centres</li> <li>• Operational Performance Reviews of Youth Justice Service Centres; and</li> <li>• Reviews of critical incidents &amp; emergency response</li> </ul>

<sup>73</sup> Department of Justice and Attorney-General, *Youth Justice Oversight*, p 4, para 1.2.



## CHAPTER 3 INTERNATIONAL FRAMEWORK

### LEGALLY BINDING HUMAN RIGHTS INSTRUMENTS

International law regulates and informs many aspects of our lives in Australia including trade, the oceans and law of the sea, the airspace, outer space, health, aging and counter-terrorism. Youth justice and youth detention are areas that are the subject of international law. International law is a body of rules governing the relationship and conduct between states. Countries like Australia are known as 'States' at international law. International law belongs to a legal system that is separate from domestic legal systems. However this body of law can have direct application in the Australian legal system. This can be done by way of legislation or it may be used by way of statutory interpretation in cases of statutory ambiguity.

Most of the international law relevant to this Review have been developed since the end of World War Two, when the United Nations was created to maintain peace and security in the world. One way to maintain this peace and security in the world has been to develop rules and guidelines for the treatment of the people living within countries around the world. These are known as 'human rights'. Youth justice and youth detention are areas that are the subject of substantial international attention. In particular rules have been developed for the protection of those individuals, especially children and young people, who have been deprived of their liberty.

The rules are contained in treaties. A 'treaty' is a generic word for the main source of international law, a 'code', 'convention', 'covenant' or an 'international agreement'. Treaties can also have additional, ancillary agreements known as 'optional protocols'. The optional protocols are commonly agreements that States enter into, in order to permit a committee of experts to review member States' progress in implementing their international obligations. These committees make recommendations for how countries can improve their implementation as well as highlight good practices. These add-ons or additions to an agreement become necessary over the years as the times change.

However, these treaties and ancillary agreements known as 'optional protocols' are not automatically a part of the Australian legal system. Australia has a federal system of governance where the powers of the State and Commonwealth are distributed by the Australian Constitution. In Australia, the authority to enter into treaties is a Commonwealth power. It is a power of the Executive under the Australian Constitution. Treaties must be incorporated into domestic law before they can be effective. The first stage toward binding force of a treaty is signature, which is followed by the ratification stage. Ratification by the Executive does not automatically make a treaty law in Australia. In Australia, enabling legislation must be passed in order to translate the international standards into domestic law.



Australia has ratified a number of international conventions and optional protocols relating to youth detention.<sup>74</sup> These include:

- Convention on the Rights of the Child (CROC)<sup>75</sup>;
- Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT)<sup>76</sup>;
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>77</sup>;
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>78</sup>;
- International Covenant on Civil and Political Rights (ICCPR)<sup>79</sup>;
- International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>80</sup>;

Australia is also party to:

- First Optional Protocol to the International Covenant on Civil and Political Rights<sup>81</sup>;
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>82</sup>;
- Optional Protocol to the Convention against Torture (OPCAT)<sup>83</sup>; and
- Optional protocol to the Convention on the Rights of the Child on a communications procedure<sup>84</sup>.

Not all of Australia's international legal obligations are implemented into domestic legislation. Despite Australia's ratification record there are relatively few international human rights law instruments implemented into domestic legislation. The *International Covenant on the Elimination of All Forms of Racial Discrimination* (ICERD) is directly implemented in the *Racial Discrimination Act 1975* (Cth). The *Disability Discrimination Act 1992* (Cth) incorporates into Australian law some provisions of the ICCPR, the ICESCR and the *Convention on the Rights of the Child*. The *Sex Discrimination Act 1984* (Cth) incorporates into Australian law some of the treaty

<sup>74</sup> The obligation to give effect to those instruments once ratified is enshrined in the *Vienna Convention on the Law of Treaties*, the key international instrument regulating the interpretation of international treaties. *Vienna Convention on the Law of Treaties*, GA Res 2534/XXIV 24<sup>th</sup> sess, 1825<sup>th</sup> plen mtg, Agenda item 94c (8 December 1969) UN Doc A/RES/2534(XXIV).

<sup>75</sup> *The Convention on the Rights of the Child*, GA Res 44/26, 44<sup>th</sup> sess, 61<sup>st</sup> plen mtg, Agenda Item 108, UN Doc A/RES/44/25 (20 November 1990).

<sup>76</sup> *Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment*, GA Res 39/46, 46<sup>th</sup> sess, 93<sup>rd</sup> plen mtg, Agenda item 99, UN Doc A/RES/39/46 (10 December 1984).

<sup>77</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, GA Res 34/180, 34<sup>th</sup> sess, 107<sup>th</sup> plen mtg, agenda item 75, UN Doc A/RES/34/180 (18 December 1979).

<sup>78</sup> *International Convention on the Elimination of all Forms of Racial Discrimination*, GA Res 2106/XX, 20<sup>th</sup> sess, 1406<sup>th</sup> plen mtg Agenda item 58, UN Doc A/RES/2106(XX)A-B (21 December 1965).

<sup>79</sup> *International Covenant on Civil and Political Rights*, GA Res 2200A(XXI), 1796<sup>th</sup> plen mtg, Agenda Item 62, UN Doc A/RES/2200(XXI) A (16 December 1966).

<sup>80</sup> *International Covenant on Economic, Social and Cultural Rights*, GA Res 21/2200 21<sup>st</sup> sess, Agenda Item 62, 1496<sup>th</sup> plen mtg, UN Doc A/RES/2200(XXI) (16 December 1966).

<sup>81</sup> *First Optional Protocol to the International Covenant on Civil and Political Rights*, GA Res 2200A(XXI), 1796<sup>th</sup> plen mtg, Agenda Item 62, UN Doc A/RES/2200(XXI) A (16 December 1966).

<sup>82</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 62/88, UNGA, 61<sup>st</sup> sess, 107<sup>th</sup> plen mtg, Agenda Item 68, UN Doc A/Res/61/295 (2 October 2007).

<sup>83</sup> *First Optional Protocol to the International Convention against torture*, GA Res 57/199, 57<sup>th</sup> sess, 77<sup>th</sup> plen mtg, Agenda item 109(a), UN Doc A/RES/57/199 (9 January 2003).

<sup>84</sup> *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, GA Res 66/138, 66<sup>th</sup> sess, 89<sup>th</sup> plen mtg, Agenda item 64, UN Doc A/RES/66/138 (19 December 2011).



provisions of the *Convention on the Elimination of All Forms of Discrimination Against Women 1979* (CEDAW).

Most of Australia's international obligations are scheduled to the Australian Human Rights Commission Act 1986 (Cth). The AHRC was established in 1986 to implement the ICCPR. The AHRC has a complaints mechanism by which Australians can complain for violations of the Racial Discrimination Act 1975 (Cth), the Sex Discrimination Act 1984 (Cth), the Disability Discrimination Act 1992 (Cth), the Age Discrimination Act 2004 (Cth). The AHRC can investigate and conciliate complaints of alleged discrimination and human rights breaches under these laws. The International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment is not scheduled to the AHRC Act. The Optional Protocol to the Convention Against Torture (OPCAT) has not been ratified.

The State of Queensland in its submissions to the Review contends that section 263 (3) of the *Youth Justice Act 1992* confers upon the Chief Executive of DJAG a general and implied power for maintaining the good order and security of detention centres. The State of Queensland submits that the Youth Justice Regulations, Youth Justice Principles and attendant policies cannot be construed as cutting down the Chief Executive's broad unfettered responsibility for maintaining security and order in a centre. The authority the State relies upon is a Victorian Court of Appeal decision *Binse v Williams*<sup>85</sup>. In *Binse*, the Court of Appeal accepted that where uncertainty exists either in the common law or in statute then 'it is desirable for courts to refer to international law documents, especially those that concern fundamental human rights'.<sup>86</sup> The Court of Appeal concluded on the facts in *Binse* that where there is no ambiguity or uncertainty about the scope of the governor's administrative powers to apply restraints to prisoners, there is no need to draw upon international instruments concerning the treatment of prisoners.

This decision has not been cited in any significant case in Queensland but has been considered by academic comment as part of a trend toward 'expanding the reach of legislation by relying on the common law'<sup>87</sup> to support an argument for the powers of correctional authorities to be interpreted 'broadly' and that 'purely managerial decisions concerning prisoners are generally not reviewable'.<sup>88</sup> This favourable presumption would render review of the decisions of Chief Executive's otiose.<sup>89</sup>

If it is the case that the State of Queensland contends that a general power exists that overrides policy and specific legislation, and many of Australia's obligations under international law are contained therein, this legal position is particularly concerning in light of Australia's international obligations.

<sup>85</sup> [1998] 1 VR 381.

<sup>86</sup> *Binse v Williams* [1998] 1 VR 381, 391-4.

<sup>87</sup> Robin Creyke, 'Executive Power - New Wine in Old Bottles? Foreword', (2003) *Federal Law Review*, vol. 31, no. 3, p iii.

<sup>88</sup> Matthew Groves, 'International Law and Australian Prisoners' (2001) *University of New South Wales Law Journal* 55.

<sup>89</sup> Matthew Groves, 'International Law and Australian Prisoners' (2001) *University of New South Wales Law Journal* 55.



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## UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (CROC)

The Convention on the Rights of the Child is the primary international instrument governing the rights of children. Children are defined in the convention as people under the age of 18. State parties such as Australia must report to the Committee on the Rights of the Child, on the measures they have taken to implement the convention, every four years. Australia became a signatory to this in August 1990 and ratified it in December of the same year.

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## INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The ICCPR recognises and protects civil and political rights. Relevant to youth detention is that it provides for the rights of due process including protection from arbitrary arrest or detention. It states that the use of pre-trial detention or remand should be used only in exceptional circumstances and for the shortest possible time. The ICCPR provides that anyone deprived of their liberty or freedom should be treated with dignity and humanity and the right of claims of 'habeas corpus' or unlawful detention. Articles 9-11 of the ICCPR obligates parties to legislate for the protection of the liberty and security of persons and for effective remedy against any breach of those rights. It also reinforces elements of the Convention Against Torture by prohibiting torture, cruel, inhumane and/or degrading punishment and implementation of measures to prevent it. In addition, the ICCPR provides protections specific to detention including the separation of remand prisoners from convicted prisoners and the separation of children from adult detainees. This requires that prisons place an emphasis on reform and rehabilitation as opposed to punishment.

Australia signed this instrument in December 1972 and ratified it in August 1980. However, in signing, Australia reserved the right to progressively implement the prison standards of Article 10 that specifically refer to segregation, with the segregation of children and adults to be considered by the responsible authorities to be beneficial to the juveniles or adults concerned. States must report when requested, generally every four years.

### *FIRST OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS*

This was both signed and ratified by Australia in September 1991.

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## CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT (CAT)

This international instrument aims to prevent torture and other acts of cruel, inhumane or degrading treatment or punishment. The CAT specifically defines torture but does not define "other acts of cruel inhumane or degrading treatment or punishment". The CAT commits parties to prevent and criminalise such acts in addition to ensuring that allegations of torture must be promptly investigated. All persons involved in work where persons are detained, interrogated, arrested, etc, must be trained and educated regarding the prohibition against torture, and all policies, rules and instructions pertaining to custody must be systematically reviewed.



### *OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT (OPCAT)*

The OPCAT was adopted by the United Nations General Assembly in New York on 18 December 2002 and it entered into force on 22 June 2006. OPCAT is a treaty that supplements the 1984 United Nations Convention Against Torture. It establishes an international inspection system for places of detention. In May 2009, Australia signed this optional protocol. However, Australia has not ratified it, meaning that no external international monitoring can occur.

### UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)

Australia has also endorsed the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration is a resolution of the UN General Assembly. This means the rights enshrined in the Declaration were agreed to by all the members of the United Nations as minimum standards of treatment for Indigenous peoples. The Declaration is significant because unlike the conventions or treaties, it recognises the collective rights of Indigenous peoples. The recognition of Indigenous peoples' collective rights is familiar to Australia as legislative frameworks such as native title and land rights protect collective rights.

The Declaration contains provisions that are relevant to youth detention including Indigenous peoples' right to have access to a swift resolution through just and fair procedures for the resolution of conflicts and disputes with States or other parties. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the Indigenous peoples concerned and international human rights.<sup>90</sup> Also, Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures.<sup>91</sup> In addition, States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.<sup>92</sup> It is important to keep in mind these rights are collective rights meaning that Indigenous peoples enjoy these rights as a group. This explains why it is important for Indigenous stakeholders in youth detention and the wider Indigenous community to participate in decision-making about policies, programs and Aboriginal and Torres Strait Islander young people.

### STANDARD-SETTING RULES AND GUIDELINES: DETENTION

In addition to the Conventions, there are a variety of other standard-setting instruments that regulate detention, in particular the:

<sup>90</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 62/88, UNGA, 61<sup>st</sup> sess, 107th plen mtg, Agenda Item 68, UN Doc A/Res/61/295 (2 October 2007), Art. 40.

<sup>91</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 62/88, UNGA, 61<sup>st</sup> sess, 107th plen mtg, Agenda Item 68, UN Doc A/Res/61/295 (2 October 2007), Art. 18.

<sup>92</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 62/88, UNGA, 61<sup>st</sup> sess, 107th plen mtg, Agenda Item 68. UN Doc A/Res/61/295 (2 October 2007), Art. 19.



- standard Minimum Rules for the Treatment of Prisoners (Mandela rules);
- declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power;
- body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- basic Principles for the Treatment of Prisoners;
- United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);
- basic Principles on the Use of Restorative Justice Programmes in Criminal Matters; and
- United Nations Rules for the Treatment of Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

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#### UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (NELSON MANDELA RULES)<sup>93</sup>

The Mandela rules were updated in 2015, after originally being adopted in 1957 (2015 was the very first update). Substantial changes and updates have been made to the original rules across a few broad areas that are directly relevant to youth detention.

**Respect for prisoners' inherent dignity:** Changes spread throughout the document uphold human rights aspects with the inclusion of a principle statement in Rule 6 outlining these rights and embedding them in rules for example relating to searches.

**Medical and health services:** This was one of the major reforms and removes outdated language in terms of mental illness and brings to the forefront the obligation that health care in prisons should be equal to that of the community and that the state is responsible for the health of prisoners. Other inclusions revolve around staff and their roles.

**Discipline and sanctions:** This topic was one of the more comprehensively reviewed sections and has provided substantial guidance and more details pertaining to procedures surrounding the use of restraints and disciplinary procedures including isolation and segregation, with strict limitations placed on the use of solitary confinement. In addition, new sections have been introduced providing a framework where conflict prevention is nominated as the preferred method of conflict management.

**Investigations of death and torture:** Reporting, investigations and notifying family or friends and updates in terms of the recording of incidents and effective complaints options and providing for reports to independent authorities.

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<sup>93</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* GA Res 70/175, UN GA, 70<sup>th</sup> sess, 80<sup>th</sup> plen mtg, Agenda Item 106, UN Doc A/RES/70/175 (17 December 2015).



**Vulnerable groups:** Some changes were made for the need to take into account the individual needs of prisoners (there was no change in terms of juveniles).

**Legal representation:** Ensures access at pre-trial and criminal proceedings and to align with legal aid principles and guidelines.

**Complaints process and provision for independent inspection:** Complaints processes and protections have been strengthened and provision has been made for both internal and external reporting mechanisms.

**Training staff:** Provisions regarding staff training (initial and ongoing) have been strengthened and made more specific, with a focus on implementing evidence-based practice.

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#### UNITED NATIONS STANDARD MINIMUM RULES FOR NON-CUSTODIAL MEASURES (TOKYO RULES)<sup>94</sup>

The Tokyo Rules provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment. The rules call for greater flexibility in the application of criminal justice sanctions, taking into account an offender's personality and background, and emphasises that prison should only ever be used as a last resort.

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#### UNITED NATIONS RULES FOR THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS (BANGKOK RULES)<sup>95</sup>

The Bangkok Rules are the first set of internationally agreed-upon rules that recognise the special needs of women involved in the criminal justice system. Many elements of the Bangkok Rules are supplements to the rights and protections that are enshrined in other UN Standards and norms such as the Minimum Rules for the Treatment of Prisoners (Mandela rules) and the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) and provide for a gender-specific focus.

The criminal justice system and its various institutions are dominated by male participation, with females generally representing only a small proportion. As a result, the systems, structures, rules, policies and international standards and norms have tended to be formulated based on the majority. The Bangkok Rules have sought to address this issue.

**Section I** covers the general management of Institutions; **Section II** contains rules applicable only to the special categories dealt with in each subsection – in particular for juvenile female prisoners; **Section III** contains rules covering the application of non-custodial sanctions and measures for women and juvenile female offenders; and

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<sup>94</sup> United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) GA Res 45/110, 45<sup>th</sup> sess, 68<sup>th</sup> plen mtg, Agenda Item 100 (14 December 1990).

<sup>95</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) GA 65/229, 65<sup>th</sup> sess, 71<sup>st</sup> plen mtg, Agenda Item 105, UN Doc A/RES/65/230 (21 December 2010).



Section IV contains rules on research, planning, evaluation, public awareness-raising and sharing of information.

#### STANDARD RULES AND GUIDELINES: JUVENILE-SPECIFIC

Specific to the detention of children are the following guidelines:

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules);
- United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules); and
- Guidelines for Action on Children in the criminal justice system.

The Standard rules and guidelines operate as 'regulations' to the international legislation, and are intended to be utilised to implement and operationalise the legally binding conventions.

#### UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE (BEIJING RULES)<sup>96</sup>

The Beijing Rules are a set of rules to guide the implementation and administration of juvenile justice including detention. It encompasses rules such as the age of criminal responsibility (Article 4); that the aim of juvenile justice is for the wellbeing of the juvenile informed by the principle of proportionality (Article 5) and with a focus on diversion (Article 11). There are also sections that relate to ensuring juvenile justice workers are adequately trained and educated on the special needs of children (Article 22).

Article 13 of the rules are explicit in terms of pre-trial detention (remand), with clear stipulations that a child should only be detained pre-trial as a measure of last resort and for the shortest possible time, alternatives to detention should be utilised, all rights afforded to prisoners under the Mandela rules shall also apply, children should be separated from adults and that whilst in detention all care and assistance shall be provided, for example, education, mental health, medical need.

Commentary to the section also refers to the 'danger of criminal contamination' that may occur if young people are sent to detention and placing emphasis on all alternative measures that are in the interest and wellbeing of the child.

Article 27 makes specific reference to the *Standard Minimum Rules for the Treatment of Prisoners (Mandela rules)* stating that those rules are applicable to the detention of juveniles and must take in to account the varying needs of juveniles specific to their age, sex and personality.

<sup>96</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) GA Res 40/33, UN GA, 40<sup>th</sup> sess, 96<sup>th</sup> plen mtg, Agenda Item 98, UN Doc A/RES/40/33 (29 November 1985).



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#### UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY (HAVANA RULES)<sup>97</sup>

These rules establish a minimum standard for the protection of juveniles who are deprived of their liberty consistent with human rights and freedoms including dignity, self-respect and safety. It covers related topics such as detention as a last resort and only in exceptional circumstances; the requirement for external inspectors; a focus on reintegration and rehabilitation; training of staff; and limitations of use of force and restraints. There is a strong emphasis on maintaining the dignity and respect of the juvenile as a means to ensure effective reintegration and rehabilitation.

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#### UNITED NATIONS GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY (RIYADH GUIDELINES)<sup>98</sup>

The Riyadh Guidelines establish basic actions to prevent children and young people from engaging in criminal activities, as well as to protect the human rights of youth already found to have broken the law. In particular the rules take into account the vulnerabilities and risk factors that may expose a young person to criminogenic patterns including abandonment, neglect or abuse, exposure to drug and alcohol abuse and social marginalisation.

In addition, they recognise that non-conformity to societal norms is often part of the maturation and growth process and that the labelling of a child as 'deviant' may have detrimental effects.

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#### UNITED NATIONS GUIDELINES FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM<sup>99</sup>

These guidelines were developed as a means to implement elements of the Convention on the Rights of the Child that pertain to criminal justice and other UN standards and norms specific to juvenile justice and revolve around the following key elements: respect for human dignity; non-discrimination (including gender); upholding the best interests of the child; the right to life, survival and development and the respect for the views of the child.

In the guidelines there are specific references to youth in detention including encouraging the establishment of an independent inspector for correctional facilities, calls for the recognition of broader systemic issues that may impact children deprived of their liberty and the appropriate investigation of allegations. Section III (Articles 43–53) specifically deals with child victims and witnesses.

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<sup>97</sup> United Nations Rules for the Protection of Juveniles Deprived of Their Liberty GA Res 45/113, 45<sup>th</sup> sess, 68<sup>th</sup> plen mtg, Agenda Item 100 (14 December 1990).

<sup>98</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), GA Res 45/112, 45<sup>th</sup> sess, 68<sup>th</sup> plen mtg, Agenda Item 100 (14 December 1990).

<sup>99</sup> United Nations Guidelines for Action on Children in the Criminal Justice System, Economic and Social Council resolution 1997/30, Agenda Item 7(c), UN Doc E/1997/30 (21 July 1997).



## CHAPTER 3 APPENDIX 1 INTERNATIONAL INSTRUMENTS

### LEGALLY BINDING HUMAN RIGHTS INSTRUMENTS

The protection of human rights for children deprived of their liberty are enshrined in a series of international instruments that are legally binding to state parties and include: the Convention on the Rights of the Child; the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Elimination of All Forms of Racial Discrimination.

In addition to these instruments there are also a series of 'optional' protocols to various conventions that state parties may sign, designed to reinforce and extend further specific protections and relevant to this Review include: the Second Optional Protocol to the International Covenant on Civil and Political Rights; the Optional Protocol to the Convention against Torture; and the Optional protocol to the Convention on the Rights of the Child on a communications procedure.

### STANDARD SETTING RULES AND GUIDELINES: DETENTION IN GENERAL (NON-BINDING)

Although not legally binding to State parties, there are a variety of standards, norms and guidelines that have been agreed upon at the international level pertaining to detention and are viewed as reflective of 'best practice' and are used as models for the standards of treatment of detained persons.

Specifically relevant to the Review of Juvenile detention in Queensland are: the Standard Minimum Rules for the Treatment of Prisoners (Mandela rules)<sup>100</sup>; the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power<sup>101</sup>; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment<sup>102</sup>; the Basic Principles for the Treatment of Prisoners<sup>103</sup>; the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>104</sup>; the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters<sup>105</sup>; and the United Nations Rules for the Treatment of Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).<sup>106</sup>

<sup>100</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* GA Res 70/175, UN GA, 70<sup>th</sup> sess, 80<sup>th</sup> plen mtg, Agenda Item 106, UN Doc A/RES/70/175 (17 December 2015)

<sup>101</sup> *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* GA Res 40/34, UN GA, 40<sup>th</sup> sess, 96<sup>th</sup> plen. mtg, Agenda Item 98, UN Doc A/RES/43/173 (29 November, 1985)

<sup>102</sup> *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* GA Res 43/173, 43<sup>rd</sup> sess, 76<sup>th</sup> plen mtg, Agenda Item 138, UN Doc A/RES/43/173 (9 December 1988)

<sup>103</sup> *Basic Principles for the Treatment of Prisoners* GA Res 45/111, 45<sup>th</sup> sess, 68<sup>th</sup> plen. mtg, Agenda Item 100, UN Doc A/RES/45/111, (14 December, 1990)

<sup>104</sup> *United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)* GA Res 45/110, 45<sup>th</sup> sess 68<sup>th</sup> plen, mtg, Agenda Item 100, (14 December, 1990)

<sup>105</sup> *Basic principles on the use of restorative justice programmes in criminal matters* Economic and Social Council resolution 2002/12, Agenda Item 14(c) (24 July 2002)

<sup>106</sup> *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)* GA 65/229, 65<sup>th</sup> sess, 71 plen, mtg, Agenda Item 105, UN Doc A/RES/65/230 (21 December 2010)



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#### STANDARD SETTING RULES AND GUIDELINES: JUVENILE SPECIFIC (NON-BINDING)

Specific to the detention of children are the following guidelines: the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)<sup>107</sup>; the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)<sup>108</sup>; the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)<sup>109</sup>; the Guidelines for Action on Children in the criminal justice system.

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#### THE STANDARD MINIMUM RULES AND GUIDELINES OPERATE AS A 'REGULATIONS' ACT TO THE INTERNATIONAL LEGISLATION, AND SHOULD BE UTILISED AS A MEANS TO IMPLEMENT AND OPERATIONALISE THE LEGALLY BINDING CONVENTIONS.

In 2015, after a five year revision process, the United Nations General Assembly unanimously approved an updated set of *Standard Minimum Rules for the Treatment of Prisoners* to be known as the "Mandela Rules." A separate table is provided outlining the changes.

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<sup>107</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") GA Res 40/33, UN GA, 40<sup>th</sup> sess, 96<sup>th</sup> plen. mtg, Agenda Item 98, UN Doc A/RES/40/33 (29 November, 1985)

<sup>108</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) GA Res 45/112, 45<sup>th</sup> sess 68<sup>th</sup> plen, mtg, Agenda Item 100, (14 December, 1990)

<sup>109</sup> United Nations Rules for the Protection of Juveniles Deprived of Their Liberty GA Res 45/113, 45<sup>th</sup> sess 68<sup>th</sup> plen, mtg, Agenda Item 100, (14 December, 1990)



## CHAPTER 3 APPENDIX 2 UN STANDARD MINIMUM RULES AND RULE CHANGES/ADDITIONS THAT ARE RELEVANT TO YOUTH DETENTION REVIEW

Rule No. (2015)	Rule No. (1945) and text	2015 text	Comment
<b>Preliminary observations</b>			
Preliminary observation 4.1	The rules do not seek to regulate the management of institutions set aside for young persons such as juvenile detention facilities or correctional schools, but in general part I would be equally applicable in such institutions.	Same	<p>The Beijing rules have no real specific reference to youth detention (other than remand), instead referring to the SMR and suggesting that these are applicable.</p> <p>The SMR in response are worded the same – but don't make clear reference to the needs of young people outside the context of separation and some aspects of education and training</p>
Preliminary observation 4.2	The category of young prisoners should include at least all young persons who come within the jurisdiction of juvenile courts. As a rule, such young persons should not be sentenced to imprisonment	Same	General statement that young persons should not be sentenced to imprisonment
<b>Rules 1-5 focus on basic principles (previously there were only 2)</b>			
Rule 1	Did not exist	All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.	



Rule 2.2	Did not exist	In order for the principle of non-discrimination to be put into practice, prison administrations shall take account of <b>the individual needs of prisoners</b> , in particular the most <b>vulnerable categories</b> in prison settings. Measures to protect and promote the rights of prisoners with special needs are required and shall not be regarded as discriminatory.	There is no specification in the rules as to what is classed as 'vulnerable'. It is possible that young prisoners would fall under this category (as outlined by the need to separate them from the adult population)
Rule 4.1	Did not exist	The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the <b>reintegration</b> of such persons into society upon release so that they can lead a law-abiding and self-supporting life.	Emphasises and highlights the need for a rehabilitative and reintegrative approach
Rule 4.2	Did not exist	To this end, prison administrations and other competent authorities <b>should offer education, vocational training and work</b> , as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.	Under the basic principles that should govern prisons the emphasis on rehabilitation and reintegration should be implemented through skills and education among others.
<b>Prisoner file management</b>			
Rule 8	Did not exist	The following information shall be entered in the prisoner file management system in the course of imprisonment, where applicable:  (a) Information related to the judicial process, including dates of court hearings and legal representation;	New emphasis is placed on the importance of <b>ensuring records for prisoner files</b> including instances relating to complaints and incidents.



		<p>(b) Initial assessment and classification reports;</p> <p>(c) Information related to behaviour and discipline;</p> <p>(d) Requests and complaints, including allegations of torture or other cruel, inhuman or degrading treatment or punishment, unless they are of a confidential nature;</p> <p>(e) Information on the imposition of disciplinary sanctions;</p> <p>(f) Information on the circumstances and causes of any injuries or death and, in the case of the latter, the destination of the remains.</p>	
Rule 9	Did not exist	<p>All records referred to in rules 7 and 8 shall be kept confidential and made available only to those whose professional responsibilities require access to such records. Every prisoner shall be granted access to the records pertaining to him or her, subject to redactions authorised under domestic legislation, and shall be entitled to receive an official copy of such records upon his or her release.</p>	All records kept, prisoners access to them
<b>Separation of categories</b>			
Rule 11 (d)	Rule 8 (d) Young prisoners shall be kept separate from adults.	d) Young prisoners shall be kept separate from adults.	No change
Rule 24.1	Rule 22.1: ... the medical services should be organised in close relationship to the general health administration of the community or nation	The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status	Clearly highlighting that health and medical care of prisoners is state responsibility and it to be matched to those standards in the community
Rule 24.2	Rule 22(1): At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of	Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV,	Provides a new focus on a specified range of services extending beyond psychiatry to encompass health issues



	psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.	tuberculosis and other infectious diseases, as well as for drug dependence.	(HIV/dependence etc). Also places focus on 'through care'
Rule 25.1	Did not exist	Every prison shall have in place a health-care service tasked with evaluating, promoting, <b>protecting and improving the physical and mental health of prisoners</b> , paying particular attention to prisoners with special healthcare needs or with <b>health issues that hamper their rehabilitation</b> .	New focus on health rehabilitation. Relevant to drug and alcohol issues, mental illness
Rule 25.2	Did not exist (services of dentists did exist)	The health-care service shall consist of an interdisciplinary team with sufficient qualified personnel acting in <b>full clinical independence</b> and shall encompass sufficient expertise in psychology and psychiatry. The services of a qualified dentist shall be available to every prisoner.	Independent mental health clinical team
Rule 26.1	Did not exist	The health-care service shall prepare and maintain accurate, up-to-date and confidential individual medical files on all prisoners, and all prisoners should be granted <b>access to their files upon request</b> . A prisoner may appoint a third party to access his or her medical file.	Recording of all health care of prisoners
Rule 27. 1	<b>Rule 22.2</b> Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the	<b>All prisons shall ensure prompt access to medical attention in urgent cases</b> . Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners	Addition of requirement of prompt access to medical services.



	medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.	referred to them with appropriate treatment and care.	
Rule 30	<p><b>Rule 24</b> The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and</p> <p>the taking of all necessary measures; the segregation of prisoners suspected of infectious or</p> <p>contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and</p> <p>the determination of the physical capacity of every prisoner for work</p>	<p>A physician or other qualified health-care professionals, whether or not they are required to report to the physician, shall see, talk with and examine every prisoner as soon as possible following his or her admission and thereafter as necessary. <b>Particular attention shall be paid to:</b></p> <p>(a) Identifying health-care needs and taking all necessary measures for treatment;</p> <p>(b) Identifying any ill-treatment that arriving prisoners may have been subjected to prior to admission;</p> <p>(c) Identifying any signs of <b>psychological or other stress</b> brought on by the fact of imprisonment, including, but not limited to, <b>the risk of suicide or self-harm</b> and withdrawal symptoms resulting from the use of drugs, medication or alcohol; and <b>undertaking all appropriate individualized measures or treatment;</b></p> <p>(d) In cases where prisoners are suspected of having contagious diseases, providing for the clinical isolation and adequate treatment of those prisoners during the infectious period;</p> <p>(e) Determining the fitness of prisoners to work, to exercise and to participate in other activities, as appropriate.</p>	Highlights the focus on determining all medical and health needs at first instance and taking all necessary measures for treatment
<b>Restrictions, discipline and sanctions</b>			
Section title	Discipline and punishment	Restrictions discipline and sanctions	Rephrasing indicating shift in approach
Rule 36	<b>Rule 27</b> Discipline and order shall be maintained with <b>firmness</b> , but with no	Discipline and order shall be maintained with no more restriction than is necessary to	Removal of 'firmness' and insertion of



	more restrictions than is necessary for safe custody and well-ordered community life	ensure safe custody, the secure operation of the prison and a well-ordered community life.	
Rule 37	<p>The following shall always be determined by the law or by the regulation of the competent administrative authority:</p> <p>( a ) Conduct constituting a disciplinary offence;</p> <p>( b ) The types and duration of punishment which may be inflicted;</p> <p>( c ) The authority competent to impose such punishment.</p>	<p>The following shall always be subject to <b>authorisation</b> by law or by the regulation of the competent administrative authority:</p> <p>(a) Conduct constituting a disciplinary offence;</p> <p>(b) The types and duration of sanctions that may be imposed;</p> <p>(c) The authority competent to impose such sanctions;</p> <p>(d) Any form of involuntary separation from the general prison population, such as solitary confinement, isolation, segregation, special care units or <b>restricted housing, whether as a disciplinary sanction or for the maintenance of order and security, including promulgating policies and procedures governing the use and review of, admission to and release from any form of involuntary separation.</b></p>	The addition of new subsection D which focuses on the issue of segregation and isolation and stipulates that it must be in law for it to be in operational management
Rule 38.1	Did not exist	Prison administrations are encouraged to use, to the extent possible, <b>conflict prevention, mediation or any other alternative dispute resolution</b> mechanism to prevent disciplinary offences or to resolve conflicts.	Specific rule on prevention and alternative dispute resolution in response to conflict in the first instance
Rule 38.2	Did not exist	For prisoners who are, or have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison.	Recognition of the detrimental affects of separation/isolation and requirement to alleviate
Rule 39. 1	<b>Rule 30(1)</b> No prisoner shall be punished except in accordance with the terms of such law and or	No prisoner shall be sanctioned except in accordance with the terms of the law or regulation referred to in rule 37 and the <b>principles of fairness and due</b>	Addition of principles of fairness and due process



	regulation, and never twice for the same offence	process. A prisoner shall never be sanctioned twice for the same act or offence.	
Rule 39. 2	Did not exist	Prison administrations shall ensure <b>proportionality</b> between a disciplinary sanction and the offence for which it is established, and shall keep a <b>proper record of all disciplinary sanctions</b> imposed.	Sanctions must be proportional and must be recorded properly
Rule 39. 1	Did not exist	Before imposing disciplinary sanctions, prison administrations shall consider whether and how a <b>prisoner's mental illness or developmental disability</b> may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her <b>mental illness or intellectual disability</b>	Mental illness and developmental disability must be taken in to account and context of offending behaviour. Must not sanction if behaviour is direct result.
Rule 41.1 to 41.5	<p>(Rule 30.2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.</p> <p>Rule (30.3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter</p>	<p><b>41.1.</b> Any allegation of a disciplinary offence by a prisoner <b>shall be reported promptly</b> to the competent authority, which shall investigate it without undue delay.</p> <p><b>41.2.</b> Prisoners shall be informed, without delay and in a language that they understand, of the nature of the accusations against them and shall be given adequate time and facilities for the preparation of their defence.</p> <p><b>41.3.</b> Prisoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges. If the prisoners do not understand or speak the language used at a disciplinary hearing, they shall be assisted by a competent interpreter free of charge.</p> <p><b>41.4.</b> Prisoners shall have an opportunity to seek judicial review</p>	Strengthening of the procedures surrounding discipline specifying that reporting must occur and be investigated and the right for sanctions to be judicially reviewed.



		<p>of disciplinary sanctions imposed against them.</p> <p>41.5. In the event that a breach of discipline is prosecuted as a crime, prisoners shall be entitled to all due process guarantees applicable to criminal proceedings, including unimpeded access to a legal adviser.</p>	
Rule 43.1	<p>Rule 31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.</p>	<p>43.1 In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:</p> <p>(a) Indefinite solitary confinement;</p> <p>(b) Prolonged solitary confinement;</p> <p>(c) Placement of a prisoner in a dark or constantly lit cell;</p> <p>(d) Corporal punishment or the reduction of a prisoner's diet or drinking water;</p> <p>(e) Collective punishment.</p>	<p>Specifies the prohibition of solitary confinement (prolonged and indefinite), control of light in a cell</p>
Rule 43.2	<p>Rule 33 Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints.</p>	<p>Rule 43.2 instruments of restraint shall never be applied as a sanction for disciplinary offences.</p>	
Rule 43.3	<p>Did not exist</p>	<p>Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.</p>	<p>Specifies that family visitation and contact must not be used for disciplinary purposes</p>
Rule 44	<p>Rule 32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and</p>	<p>For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement</p>	<p>For the first time in international rules defines what solitary confinement is, and defines 'prolonged'</p>



	certified in writing that he is fit to sustain it.	shall refer to solitary confinement for a time period in excess of 15 consecutive days.	
Rule 45.1	Did not exist	Solitary confinement shall be used only in <b>exceptional cases</b> as a last resort, for as short a time as possible and subject to <b>independent review</b> , and only pursuant to the authorisation by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.	
Rule 45.2	Did not exist	The imposition of <b>solitary confinement</b> should be <b>prohibited</b> in the case of prisoners with <b>mental or physical disabilities</b> when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving <b>women and children</b> , as referred to in other United Nations standards and norms in crime prevention and criminal justice continues to apply.	
	<b>Rule 32 (2)</b> The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.		
Rule 46.1	<b>Rule 32 (3)</b> The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.	Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a <b>daily basis</b> and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.	



Rule 46.2		Health-care personnel shall <b>report to the prison director, without delay, any adverse effect</b> of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.	Strengthens the requirement of health staff to report any adverse effects including physical and mental health
Rule 46.3		Health-care personnel shall have the <b>authority to review and recommend changes</b> to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner	

#### Instruments of restraint

Rule 47	<p><b>Rule 33.</b> Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:</p> <p>( a ) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;</p> <p>( b ) On medical grounds by direction of the medical officer;</p> <p>( c ) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in</p>	<p><b>1. The use of chains, irons or other instruments of restraint which are inherently degrading or painful shall be prohibited.</b></p> <p><b>2. Other instruments of restraint shall only be used when authorised by law and in the following circumstances:</b></p> <p>(a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;</p> <p>(b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority.</p>	Removal of the conditional use of restraints on the basis of medical grounds
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	such instances the director shall at once consult the medical officer and report to the higher administrative authority.		
Rule 48	<p><b>Rule 34.</b> The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.</p>	<p>1. When the imposition of instruments of restraint is authorised in accordance with paragraph 2 of rule 47, the following principles shall apply:</p> <p>(a) Instruments of restraint are to be imposed only when <b>no lesser form of control would be effective</b> to address the risks posed by unrestricted movement;</p> <p>(b) The method of restraint shall be the <b>least intrusive method that is necessary</b> and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed;</p> <p>(c) Instruments of restraint shall be imposed only for the time period required, and they are to be <b>removed as soon as possible after the risks posed by unrestricted movement are no longer present.</b></p> <p>2. Instruments of restraint shall never be used on women during labour, during childbirth and immediately after childbirth.</p>	Specifies the conditions upon when and how restraints may be used when authorised and specifies that it must be used as a last resort only when necessary and reasonable based on risk and must only be applied for the shortest time possible. Addition sectional covering women during childbirth.
Rule 49	Did not exist	The prison administration should seek access to, and provide training in the use of, control techniques that would obviate the need for the imposition of instruments of restraint or reduce their intrusiveness	Specific provision requiring that training be provided for techniques that would alleviate the 'need' for any use of restraints
<b>Searches of prisoners and cells</b>			
Rule 50	Did not exist	The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be	Requirements to uphold principles of dignity and respect, proportionality legality and necessity



		conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.	
Rule 51	Did not exist	Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy. For the purpose of accountability, the prison administration shall keep appropriate records of searches, in particular strip and body cavity searches and searches of cells, as well as the reasons for the searches, the identities of those who conducted them and any results of the searches.	All searches must be recorded including the reasons for the search and the results.
Rule 52.1	Did not exist	Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Intrusive searches shall be conducted in private and by trained staff of the same sex as the prisoner.	Alternative measures to intrusive searches to be used where possible, intrusive searches only used when absolutely necessary, conducted in private and by trained staff of same sex
Rule 52.2	Did not exist	Body cavity searches shall be conducted <b>only by qualified health-care professionals</b> other than those primarily responsible for the care of the prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety.	Only qualified health professionals or appropriately trained staff may conduct body cavity search
Rule 53	Did not exist	Prisoners shall have access to, or be allowed to keep in their possession without access by the prison administration, documents relating to their legal proceedings.	
<b>Information to and complaint by prisoners</b>			
Rule 54	<b>Rule 35. (1)</b> Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of	Upon admission, every prisoner shall be promptly provided with written information about:	Strengthens and clarifies rights regarding access to mechanisms of



	his category, the disciplinary requirements of the institution, the authorised methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.	<p>(a) The prison law and applicable prison regulations;</p> <p>(b) His or her rights, including authorised methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;</p> <p>(c) His or her obligations, including applicable disciplinary sanctions; and</p> <p>(d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.</p>	complain, legal access and information
Rule 55.1	Did not exist	The information referred to in rule 54 shall be available in the most commonly used languages in accordance with the needs of the <b>prison population</b> . If a prisoner does not understand any of those languages, interpretation <b>assistance</b> should be provided.	Specifies that interpretation must be provided to ensure prisoner is aware of rights
Rule 55.2	<b>Rule 35 (2)</b> If a prisoner is illiterate, the information shall be conveyed to him or her orally. Prisoners with sensory disabilities should be provided with information in a manner appropriate to their needs	same	
Rule 53	Did not exist	The prison administration shall <b>prominently display summaries</b> of the information in common areas of the prison.	Such information should be prominently displayed
Rule 56.1	<b>Rule 36 (1)</b> Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorised to represent him.	Every prisoner shall have the opportunity each day to make requests or complaints to the prison director or the prison staff member authorised to represent him or her	Every day, instead of every week day
Rule 56.2	<b>Rule 36 (2)</b> It shall be possible to make requests or complaints to the inspector of prisons during	It shall be possible to make requests or complaints to the inspector of prisons during his or her inspections. The prisoner shall	same



	his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.	have the opportunity to talk to the inspector or any other inspecting officer freely and in full confidentiality, without the director or other members of the staff being present.	
Rule 56.3	Rule 36 (3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.	Every prisoner shall be allowed to make a request or complaint regarding his or her treatment, without censorship as to substance, to the central prison administration and to the judicial or other competent authorities, including those vested with reviewing or remedial power.	Addition of "including those vested with reviewing or remedial power."
Rule 57.1	Did not exist	Every request or complaint shall be <b>promptly dealt with and replied to without delay</b> . If the request or complaint is rejected, or in the event of undue delay, the complainant shall be entitled to <b>bring it before a judicial or other authority</b> .	All complaints must be dealt with promptly, with review of the decision permissible (and also when there is undue delay).  NB "Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay" was removed as a rule
Rule 57.2	Did not exist	Safeguards shall be in place to ensure that prisoners can make <b>requests or complaints</b> safely and, if so requested by the complainant, in a confidential manner. A prisoner or other person mentioned in paragraph 4 of rule 56 must not be exposed to any risk of retaliation, intimidation or other negative consequences as a result of having submitted a request or complaint.	A safe environment for complaints must be made, Complaints can be made confidentially
Rule 57.3	Did not exist	Allegations of torture or other cruel, inhuman or degrading treatment or punishment of prisoners shall be dealt with	Serious allegations such as torture, cruel and degrading etc must be dealt with



		immediately and shall result in a prompt and impartial investigation conducted by an <b>independent national authority</b> in accordance with paragraphs 1 and 2 of rule 71. (investigations)	immediately and subjected to review by an independent national authority
<b>Investigations</b>			
Rule 71.1	Did not exist	Notwithstanding the initiation of an internal investigation, the <b>prison director shall report, without delay, any custodial death, disappearance or serious injury to a judicial or other competent authority that is independent of the prison administration</b> and mandated to conduct prompt, impartial and effective investigations into the circumstances and causes of such cases. The prison administration shall fully cooperate with that authority and ensure that all <b>evidence</b> is preserved.	Regardless of internal investigations, incidents/allegations of serious injury are to be reported to independent authorities for investigation
Rule 71.2	Did not exist	The obligation in paragraph 1 of this rule <b>shall equally apply</b> whenever there are reasonable grounds to believe that an act of <b>torture or other cruel, inhuman or degrading treatment or punishment</b> has been committed in prison, irrespective of whether a formal complaint has been received,	This also applies to other forms of treatment
Rule 71.3	Did not exist	<b>Whenever there are reasonable grounds to believe that an act referred to in paragraph 2 of this rule has been committed, steps shall be taken immediately to ensure that all potentially implicated persons have no involvement in the investigation and no contact with the witnesses, the victim or the victim's family.</b>	
<b>Institutional personnel</b>			
Rule 75.1	<b>Rule 47. (1)</b> The personnel shall possess an adequate standard of education and intelligence.	All prison staff shall possess an adequate standard of education and shall be given the ability and	



		means to carry out their duties in a professional manner	
Rule 75.2	<b>Rule 47 (2)</b> Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.	Before entering on duty, all prison staff shall be provided with training tailored to their general and specific duties, which shall be <b>reflective of contemporary evidence-based best practice in penal sciences</b> . Only those candidates who successfully pass the theoretical and practical tests at the end of such training shall be allowed to enter the prison service.	Stipulates that education and training of staff should be based on contemporary evidence based best practice
Rule 75.3	<b>Rule 47 (3)</b> After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals	The prison administration shall ensure the continuous provision of in-service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.	
Rule 76.1	Did not exist	<p>Training referred to in paragraph 2 of rule 75 shall include, at a minimum, training on:</p> <p>(a) Relevant <b>national legislation, regulations and policies</b>, as well as applicable <b>international and regional instruments</b>, the provisions of which must guide the work and interactions of prison staff with inmates;</p> <p>(b) Rights and duties of prison staff in the exercise of their functions, including respecting the human dignity of all prisoners and the <b>prohibition of certain conduct</b>, in particular torture and other cruel, inhuman or degrading treatment or punishment;</p> <p>(c) Security and safety, including the concept of dynamic security, the use of force and instruments of restraint, and the management of violent offenders, with due consideration of preventive and</p>	Clearly stipulates the training to be implemented regarding contemporary evidence based best practice with a focus on human dignity for all prisoners, understanding of local national and international guidance and best practice, mental illness and training on diffusion techniques.



		defusing techniques, such as negotiation and mediation;  (d) First aid, the psychosocial needs of prisoners and the corresponding dynamics in prison settings, as well as social care and assistance, including early detection of mental health issues.	
Rule 76.2	Did not exist	Prison staff who are in charge of working with certain categories of prisoners, or who are assigned other specialized functions, shall receive training that has a corresponding focus.	
Rule 81.3	<b>Rule 53 (3) Women prisoners shall be attended and supervised only by women staff members. This does not, however, preclude male staff members, particularly doctors and teachers, from carrying out their professional duties in prisons or parts of prisons set aside for women.</b>	Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.	
Rule 82.1	<b>Rule 54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.</b>	<b>Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.</b>	Simple change in language (officers v. prison staff).  Upholds the requirement that force must not be used unless in self-defence, escape or resistance to regulated order with force no more than necessary and must be reported
Rule 82.2	<b>Rule 54 (2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners</b>	Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.	Upholds requirement that staff need to be trained to restrain aggressive prisoners



Rule 82.3	<p><b>Rule 54.3 (3)</b> Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.</p>	<p>Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.</p>	
Internal and external inspections			
Rule 84.1	<p><b>Rule 55.</b> There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services</p>	<p>1. Inspectors shall have the authority:</p> <p>(a) To access all information on the numbers of prisoners and places and locations of detention, as well as all information relevant to the treatment of prisoners, including their records and conditions of <b>detention</b>;</p> <p>(b) To freely choose which prisons to visit, including by making <b>unannounced visits</b> at their own initiative, and which prisoners to interview;</p> <p>(c) To conduct private and fully <b>confidential interviews</b> with prisoners and prison staff in the course of their visits;</p> <p>(d) To make <b>recommendations</b> to the prison administration and other competent authorities.</p>	<p>Explicitly outlines the authority of inspectors/inspections and the information that is to be made available to them including the power to make recommendations</p>
Rule 84.2		<p>2. External inspection teams shall be composed of qualified and experienced inspectors appointed by a competent authority and shall <b>encompass health-care professionals</b>. Due regard shall be given to balanced gender representation.</p>	<p>New specific provision for <b>external inspections</b> with a focus on inclusion of health care professionals and a gender balance</p>
Rule 85.1		<p>1. Every inspection shall be followed by a <b>written report</b> to be submitted to the competent authority. Due consideration shall be given to making the reports of <b>external inspections</b> publicly</p>	<p>New specific requirement for a written report of an inspection, with consideration to</p>



		available, excluding any personal data on prisoners unless they have given their explicit consent.	release a public version
Rule 85.2		2. The prison administration or other competent authorities, as appropriate, shall indicate, within a reasonable time, whether they will implement the recommendations resulting from the external inspection.	New requirement to indicate if recommendations will be implemented (or not)
Rules applicable to special categories: Prisoners under a sentence			
Rule 86	<b>Rule 56.</b> The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.	The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under preliminary observation 1 of these rules.	
	<b>Rule 57.</b> Imprisonment and other measures which result in cutting off an offender from the outside world  are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.		This has been removed
Rule 87	<b>Rule 60 (2)</b> Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure  for the prisoner a gradual return to life in society. This	Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organized in the same prison or in another appropriate institution, or by	



	<p>aim may be achieved, depending on the case,</p> <p>by a pre-release regime organized in the same institution or in another appropriate institution, or by</p> <p>release on trial under some kind of supervision which must not be entrusted to the police but should</p> <p>be combined with effective social aid</p>	<p>release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.</p>	
Rule 88.1	<p><b>Rule 61.</b> The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners.....</p>	<p>The treatment of prisoners should emphasize not their exclusion from the community but their continuing part in it. Community agencies should therefore be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners.</p>	<p>Same, but now split in to 2 part of 1 rule (see below)</p>
Rule 88.2	<p><b>Rule 61.</b> ..... There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to</p> <p>safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to</p> <p>civil interests, social security rights and other social benefits of prisoners.</p>	<p>There should be in connection with every prison social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his or her family and with valuable social agencies. Steps should be taken to safeguard, to the maximum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.</p>	<p>Same, but now split in to 2 part of 1 rule (see below)</p>
Rule 89.1	<p><b>Rule 63. (1)</b> The fulfilment of these principles requires individualization of treatment and for this purpose a</p>	<p>1. The fulfilment of these principles requires individualization of treatment and for this purpose a flexible system of classifying prisoners in groups. It is therefore</p>	<p>Reiterates individualisation of treatment and classification</p>



	flexible system of classifying prisoners in groups; it is therefore desirable that such groups should be distributed in separate institutions suitable for the treatment of each group.	desirable that such groups should be distributed in separate prisons suitable for the treatment of each group.	
Rule 90	<b>Rule 64.</b> The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him and towards his social rehabilitation.	The duty of society does not end with a prisoner's release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient aftercare directed towards the lessening of prejudice against him or her and towards his or her social rehabilitation	Reiterates importance of post-release support and care
<b>Sentenced prisoners: treatment</b>			
Rule 91	<b>Rule 65.</b> The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.	The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.	Same: Reiterates focus on rehabilitation
Rule 92.1	<b>Rule 66. (1)</b> To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and	To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his or her social and criminal history, physical and mental capacities and aptitudes, personal temperament, the length	Same: Reiterates focus on rehabilitation



	criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.	of his or her sentence and prospects after release.	
Rule 92.2	<b>Rule 66. (2)</b> For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.	For every prisoner with a sentence of suitable length, the prison director shall receive, as soon as possible after his or her admission, full reports on all the matters referred to in paragraph 1 of this rule. Such reports shall always include a report by the physician or other qualified health-care professionals on the physical and mental condition of the prisoner.	Same: Reiterates focus on rehabilitation
Rule 92.3	<b>Rule 66. (3)</b> The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.	The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.	Same: reiterates obligation for record keeping
<b>Sentenced prisoners: classification and individualization</b>			
Rule 93.1	<b>Rule 67.</b> The purposes of classification shall be:  ( a ) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;  ( b ) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.	The purposes of classification shall be:  (a) To separate from others those prisoners who, by reason of their criminal records or characters, are likely to exercise a bad influence;  (b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.	Same: reiterates separation to remove bad influence and to assist rehabilitation



Rule 93.2	Rule 68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.	So far as possible, separate prisons or separate sections of a prison shall be used for the treatment of different classes of prisoners.	Same: reiterates separation for effective treatment
Rule 94	Rule 69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.	As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him or her in the light of the knowledge obtained about his or her individual needs, capacities and dispositions.	Same: reiterates individualised treatment plans
Rule 98.1	Rule 71 (4)) So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.	So far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release.	
Rule 98.2	(5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.	Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.	
<b>Sentenced prisoners: education</b>			
Rule 104.1	Rule 77. (1) Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.	Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterate prisoners and of young prisoners shall be compulsory and special attention shall be paid to it by the prison administration.	Same: reiterates education to be compulsory for young prisoners
Rule 104.2	Rule 77 (2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release	So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release	Same: reiterates continuity of education comparable



	country so that after their release they may continue their education without difficulty	they may continue their education without difficulty.	to community standard
Rule 105	<b>Rule 78.</b> Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.	Recreational and <b>cultural activities</b> shall be provided in all prisons for the benefit of the mental and physical health of prisoners	Same: reiterates recreation and cultural activities to be provided
Rule 107	<b>Rule 80.</b> From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.	From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and <b>provided assistance</b> to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family.	Same: reiterates assistance to connect with services to assist in post-release
Rule 108.1	<b>Rule 81. (1)</b> Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.	<b>Services and agencies, governmental or otherwise,</b> which assist released prisoners in re-establishing themselves in society shall ensure, so far as is possible and necessary, that released prisoners are provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.	Same: reiterates post-release services (government or other) provide basic necessities on release (clothing, papers etc)
Rule 108.2	<b>Rule 81 (2)</b> The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into	The approved representatives of such agencies shall have all necessary access to the prison and to prisoners and shall be taken into consultation as to the future of a	Same: post-release support provided appropriate access and taken in to



	consultation as to the future of a prisoner from the beginning of his sentence	prisoner from the beginning of his or her sentence.	consideration from beginning of sentence
<b>Prisoners with mental disabilities and/or health conditions</b>			
Rule 109.1	<b>Rule 82. (1)</b> Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible	Persons who are found to be not criminally responsible, or who are <b>later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.</b>	New obligation to transfer prisoners to health facility as soon as possible if diagnosed with severe mental disability <u>or</u> health issue that is exacerbated by incarceration
Rule 109.2	<b>Rule 82 (2)</b> Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialized institutions under medical management.	If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities <b>under the supervision of qualified health-care professionals.</b>	
Rule 109.3	<b>Rule 82 (4)</b> The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.	<b>The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.</b>	
<b>Prisoners under arrest or awaiting trial</b>			
Rule 111.1	<b>Rule 84. (1)</b> Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.	Persons arrested or imprisoned by <b>reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules</b>	Same
Rule 111.2	<b>Rule 84. (2)</b> Unconvicted prisoners are presumed to be innocent and shall be treated as such.	Unconvicted prisoners are presumed to be innocent and shall be treated as such.	Same



Rule 111.3	<b>Rule 84. (3)</b> Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.	Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit from a special regime which is described in the following rules in its essential requirements only.	Same: reiterates that untried should be treated in a different manner
Rule 112.1	<b>Rule 85. (1)</b> Untried prisoners shall be kept separate from convicted prisoners.	Untried prisoners shall be kept separate from convicted prisoners.	Same: reiterates separation of convicted v unconvicted
Rule 112.2	<b>Rule 85 (2)</b> Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.	Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.	Same: reiterates separation of young prisoners from adults – in separate institutions
Rule 119.1	Did not exist	Every untried prisoner has the right to be promptly informed about the reasons for his or her detention and about any charges against him or her.	Creates the obligation that prisoner must be informed of reason for detention
Rule 119.2	<b>Rule 93.</b> For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.	If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.	Introduces obligation to have legal adviser assigned  Stipulates denial must be subjected to independent review
Persons arrested or detained without charge			
Rule 122	<b>Rule 95</b> Without prejudice to the provisions of article 9	Without prejudice to the provisions of article 9 of the International	Same



	<p>of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C. Relevant provisions of part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence</p>	<p>Covenant on Civil and Political Rights, 29 persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under part I and part II, section C, of these rules. Relevant provisions of part II, section A, of these rules shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provided that no measures shall be taken implying that re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.</p>	
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## CHAPTER 4 NATIONAL FRAMEWORK

### PRELIMINARY NOTES ON JURISDICTION

The procedural approaches between different Australian jurisdictions vary. There are a number of Acts that provide sentencing options which apply to children. Other relevant differences include when provisions concerning adult sentencing can apply to children, and when youth sentencing provisions can apply to adults.

This chapter notes those issues and, where appropriate, highlights other features of the juvenile justice system in the various States and Territories in Australia that, while not being a sentencing option, may be of interest.

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#### QUEENSLAND

##### WHO THE PROVISIONS APPLY TO

A 'child' under the *Youth Justice Act 1992* is defined as a person who is under the age of 17 years.<sup>110</sup> The State government has recently passed the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016*, which will commence on a date to be fixed by proclamation. That Amendment Act amends the definition of 'child' in the *Youth Justice Act 1992* to be a person under the age of 18, in accordance with the definition of 'child' contained in the *Acts Interpretation Act 1954* (Qld), schedule 1.

A person who is 18 years and 6 months old is not to serve a period of detention at a youth detention centre in Queensland.<sup>111</sup>

Generally, any offender who has committed an offence as a child is to be dealt with pursuant to the *Youth Justice Act 1992*.<sup>112</sup>

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#### NEW SOUTH WALES

##### WHO THE PROVISIONS APPLY TO

The New South Wales provisions referred to in the tables below refer to different age groups in various ways. 'Child' means a person under the age of 18 years, but a person may receive a community service order under the *Children (Community Service Orders) Act 1987* (NSW) (CCSOA) if the person was a child at the time of the offending and was under 21 when charged before the court.<sup>113</sup> 'Child' is defined in the *Young Offenders Act 1997* (NSW) (YOA) to mean a child who is between 10 and 18 years old.<sup>114</sup>

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<sup>110</sup> *Youth Justice Act 1992* (Qld), schedule 4, definition of 'child'.

<sup>111</sup> *Youth Justice Act 1992*, s 276F.

<sup>112</sup> *Youth Justice Act 1992*, s 134.

<sup>113</sup> CCSOA, s 4.

<sup>114</sup> YOA, s 4, definition of 'child'.



### OTHER NOTES ABOUT THE JURISDICTION

The YOA provisions apply to a person who is convicted of an offence by the Children's Court and to any criminal proceedings before the Children's Court.<sup>115</sup> The provisions referred to in the tables below also apply to indictable offences that are not serious children's indictable offences if the court deals with the offence in accordance with part 3, division 4 of the *Children (Criminal Proceedings) Act 1987* (NSW) (CCPA).<sup>116</sup> A serious children's indictable offence includes offences such as homicide and offences punishable by imprisonment for life or for 25 years.<sup>117</sup>

### AUSTRALIAN CAPITAL TERRITORY

A young offender is a person who is convicted of an offence and was 18 years old when the offence was committed.<sup>118</sup> However, a young offender will be detained in a detention centre if the young offender is under 21 when the sentence is imposed.<sup>119</sup> If a sentencing option is available to an adult it will be able to be imposed on a child, subject to any modifications made to the adult sentencing option. The provisions generally applying to sentencing of all offenders are applied to young offenders with some modifications in the *Crimes (Sentencing) Act 2005* (ACT) (CSA), chapter 8A.<sup>120</sup>

### VICTORIA

The *Children, Youth and Families Act 2005* (VIC) (CYFA) conclusively presumes that children under the age of 10 cannot commit an offence.<sup>121</sup> A child is defined in the CYFA to be a person who, at the time of offence, was older than 10 and less than 18, but who at the time of the proceeding is less than 19 years old.<sup>122</sup>

There is a sentencing hierarchy in the available sentences listed in the CYFA, section 360(1), which provides that each sentencing option listed in that section may only be considered if the paragraphs that precede the sentencing option are not considered appropriate for the child.<sup>123</sup> This has the effect of making detention a sentence of last resort, with the first preference to detain a child in a youth residential centre and then to detain the child in the youth justice centre.<sup>124</sup>

### TASMANIA

<sup>115</sup> CCPA, s 26.

<sup>116</sup> CCPA, s 18.

<sup>117</sup> CCPA, s 3, definition of 'serious children's indictable offences'.

<sup>118</sup> CSA, s 133B.

<sup>119</sup> CSA, s 133H.

<sup>120</sup> CSA, s 133A.

<sup>121</sup> CYFA, s 344.

<sup>122</sup> CYFA, s 3(a), definition of 'child'.

<sup>123</sup> CYFA, s 361.

<sup>124</sup> CYFA, s 360(1)(i) and (j).



### WHO THE PROVISIONS APPLY TO

The *Youth Justice Act 1997* (Tas) (TYJA) provides for sentencing a 'youth'. A youth is a person 10 or more years old but less than 18 years old at the time the offence was committed.<sup>125</sup>

If a court is sentencing a youth who is more than 18 years old, the court may exercise the powers of a court of petty sessions under the *Sentencing Act 1997* (Tas) rather than exercising a power under the TYJA.<sup>126</sup>

## NORTHERN TERRITORY

### WHO THE PROVISIONS APPLY TO

The *Youth Justice Act 2005* (NT) (NTYJA) provisions apply generally to a 'youth', who is a person under 18 years of age or a person who committed an offence as a youth but has turned 18 years of age.<sup>127</sup> It does not appear that the definition of 'youth' is limited to a person above the age of 10 years as is the case in other jurisdictions. However, the limitations on criminal responsibility (a person under 10 years old is excused from criminal responsibility) suggest that such an order could not be made against a 10-year-old.<sup>128</sup>

### OTHER NOTES ABOUT THE JURISDICTION

Imprisonment may be ordered against youths over 15 years old.<sup>129</sup> A person is a prisoner if the person is under a sentence of imprisonment,<sup>130</sup> and a youth prisoner includes a prisoner who is under a sentence of imprisonment and is a youth within the meaning of the NTYJA, section 6.<sup>131</sup>

The court may order that the parents of a youth who has been detained at a detention centre pay an amount towards the cost of detaining the youth in the detention centre if:

- the parents have been given a right to be heard; and
- the court is satisfied that the parents have failed to "exercise reasonable supervision" and control of the youth;<sup>132</sup> and
- after taking into account all the circumstances, the court is satisfied it is reasonable to make the order.<sup>133</sup>

The amount must not exceed \$100 a week or, if a youth is in periodic detention, \$15 a day.<sup>134</sup>

<sup>125</sup> TYJA, s 3, definition of 'youth'.

<sup>126</sup> TYJA, s 161A.

<sup>127</sup> NTYJA, s 6.

<sup>128</sup> *Criminal Code* (NT), ss 38, 43AP and 43AQ; George Urbas, 'The Age of Criminal Responsibility' Australian Institute of Criminology <[www.aic.gov.au/media\\_library/publications/tandi\\_pdf/tandi181.pdf](http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi181.pdf)> (2000) 3.

<sup>129</sup> NTYJA, s 83(2).

<sup>130</sup> *Corrective Services Act* (NT), s 6.

<sup>131</sup> 'Youth' is defined as a person under 18 years of age or a person who committed an offence as a youth but has since turned 18 years of age.

<sup>132</sup> NTYJA, s 133(1).

<sup>133</sup> NTYJA, s 133(5).

<sup>134</sup> NTYJA, s 133(2).



## SOUTH AUSTRALIA

### WHO THE PROVISIONS APPLY TO

The *Young Offenders Act 1993* (SA) (SAYOA) defines a 'youth' as a person of or above the age of 10 years but under the age of 18 years and, in relation to proceedings for an offence or detention in a training centre, established under the *Community Welfare Act 1972* (SA),<sup>135</sup> includes a person who was under the age of 18 years on the date of the alleged offence.<sup>136</sup>

### OTHER NOTES ABOUT THE JURISDICTION

Similar to the ACT, the SAYOA confers the same powers to sentence a youth for an offence in the Magistrates Court for a summary offence, or the District Court for an indictable offence, subject to any modifications made in the SAYOA, part 4, division 3.<sup>137</sup> The *Criminal Law (Sentencing) Act 1988* (SA) (CLSA) applies to youths, but if there is an inconsistency between the CLSA and a provision of the SAYOA or the *Youth Court Act 1993* (SA), a provision of those Acts prevails over the CLSA.<sup>138</sup> Section 3A of the CLSA modifies the operation of the CLSA so that terms that would apply to adults refer to the equivalent concepts as they apply to children.<sup>139</sup>

While generally the Youth Court cannot sentence a youth to imprisonment, a youth can be sentenced to imprisonment in particular circumstances (see the below tables for further information).

The South Australian Supreme and District Courts may deal with a youth found guilty or committed to those courts for sentence as an adult, or make an order that the Youth Court could make, or remand the youth to the Youth Court for sentencing.<sup>140</sup> However, the Supreme or District Court:

- must deal with a youth found guilty of murder as an adult and sentence the child to imprisonment for life;<sup>141</sup>
- cannot deal with a youth as an adult if the youth was found guilty of a lesser offence than the offence they were charged with unless the offence is an indictable, but not a minor indictable<sup>142</sup>, offence and, because of the gravity of the offence or the history of offending, the youth should be dealt with as an adult;<sup>143</sup> and
- cannot deal with a youth as an adult if the youth is committed for trial or sentence in the Supreme or District Courts at the youth's request, unless, because of the gravity of the offence or the history of offending, the youth should be dealt with as an adult.<sup>144</sup>

<sup>135</sup> The *Community Welfare Act 1972* (SA) is now the *Family and Community Services Act 1972* (SA).

<sup>136</sup> SAYOA, s 4 (definition 'youth').

<sup>137</sup> SAYOA, s 22.

<sup>138</sup> *Criminal Law (Sentencing) Act 1988* (SA) (CLSA), ss 3A(1) and (2).

<sup>139</sup> For example, a reference to 'imprisonment' in the CLSA is taken to be a reference to detention under the CLSA, s 3A(3)(a).

<sup>140</sup> SAYOA, s 29(1).

<sup>141</sup> SAYOA, s 29(4).

<sup>142</sup> Minor indictable offence is defined in the *Summary Procedure Act 1921* (SA), s 5.

<sup>143</sup> SAYOA, s 29(2).

<sup>144</sup> SAYOA, s 29(3).



## WESTERN AUSTRALIA

### WHO THE PROVISIONS APPLY TO

A 'young person' is a person who has not reached the age of 18 years, or a person who commits an offence before they were 18 years old for purposes connected with that offence or an order made dealing with that offence.<sup>145</sup> However the legislation does not apply to a person who is under 10 years old as they are not criminally responsible for any act or omission.<sup>146</sup>

However, as discussed below, certain provisions of the *Sentencing Act 1995* (WA) (WASA) will apply to people who are 17 years old or who are 18 at the time of sentence. Only young people who are under the age of 17 can be dealt with under the *Young Offenders Act 1994* (WA) (WAYOA).<sup>147</sup>

### OTHER NOTES ABOUT THE JURISDICTION

The WASA applies in respect of a young person:

- if an offender is aged 18 or over at time of sentence;<sup>148</sup>
- only to the extent that a community order may be made if an offender is at least 17 years old but not 18 years old at the time of sentence in the particular way stated in WAYOA, section 50A;<sup>149</sup>
- if the court sentences an offender to imprisonment it may, if the offender is at least 16 and under 18 years old and having regard to the matters in section 178(4)(a), direct that the offender serve the sentence in a prison under the *Prisons Act 1981* (WA).<sup>150</sup> In particular circumstances WASA will apply to the sentencing of a young person.<sup>151</sup> However, the WASA, part 5, which deals with particular sentencing options, only applies to the extent that sections 50A and 50B of that Act require them to apply.<sup>152</sup>

The WAYOA prevails over the *Criminal Procedure Act 2004*, to the extent there is any inconsistency.<sup>153</sup>

## SUMMARY

The following comparative analysis identifies the similarities and differences between sentencing options in each of the Australian states and territories. Though terminology differs slightly between states and territories, the sentencing options are broadly as follows:

- dismissing the charge;
- reprimand or caution;

<sup>145</sup> *Young Offenders Act 1994* (WA) (WAYOA), s 3 (definition 'young person') and s 4.

<sup>146</sup> *Criminal Code* (WA), s 29.

<sup>147</sup> WAYOA, s 50.

<sup>148</sup> WAYOA, s 50B.

<sup>149</sup> WAYOA, s 50A(1).

<sup>150</sup> WAYOA, s 118(4).

<sup>151</sup> WAYOA, s 46A(1).

<sup>152</sup> WAYOA, s 46A(2).

<sup>153</sup> WAYOA, s 5.



- adjournment of proceedings;
- undertaking by the offender;
- a good behaviour bond;
- fines;
- probation;
- restorative justice proceedings;
- community service orders;
- supervision orders;
- detention or imprisonment;
- community detention;
- restitution or compensation orders; or
- a combination of two or more options.

## DISMISSING THE CHARGE

Jurisdiction	Information on dismissing the charge
Queensland	<p>The Children's Court may dismiss a charge made by a police officer instead of accepting the plea of guilty if:</p> <ul style="list-style-type: none"> <li>• the child should have been cautioned or no action should have been taken and an application was made by the child;<sup>154</sup> or</li> <li>• the child should have been referred to restorative justice and application for dismissal was made by the child.<sup>155</sup></li> </ul>

<sup>154</sup> Youth Justice Act 1992, s 21.

<sup>155</sup> Youth Justice Act 1992, s 24A.



Jurisdiction	Information on dismissing the charge
	A Children's Court magistrate, who has powers under the <i>Youth Justice Act 1992</i> , has the same powers and jurisdiction as a Magistrates Court under the <i>Justices Act 1886</i> (Qld), which includes the power to dismiss a complaint. <sup>156</sup>
New South Wales	Not available solely, but a court may dismiss the action if a caution is given. <sup>157</sup>
Australian Capital Territory	Available. <sup>158</sup>
Victoria	A court may dismiss the charge without conviction. <sup>159</sup>
Tasmania	Available with the court not imposing a further sentence. <sup>160</sup>
Northern Territory	A court may dismiss the charge for the offence <sup>161</sup> or discharge the youth without penalty. <sup>162</sup>
South Australia	A court may dismiss a charge with or without recording a conviction if the court considers that the offence is so trifling that it's not appropriate to impose any penalty. <sup>163</sup>
Western Australia	A court may refrain from punishing a child. <sup>164</sup>

## REPRIMAND/CAUTION

Jurisdiction	Information on reprimand/caution
Queensland	Available under the <i>Youth Justice Act 1992</i> (Qld), section 175(1)(a).
New South Wales	Available under the CCPA, section 33(1)(a)(i) while dismissing a charge. Cautions may also be given under the YOA if the child admits an offence for which a caution may be given under part 4, division 1 of the YOA <sup>165</sup> or is a graffiti offence. <sup>166</sup>
Australian Capital Territory	Does not appear to be available. Is not addressed in the chapter dealing with young offenders and does not appear to be provided for the adults under the CSA.
Victoria	Does not appear to be available.
Tasmania	Available. <sup>167</sup> <sup>168</sup>
Northern Territory	Does not appear to be available.
South Australia	Does not appear available for courts. <sup>169</sup>
Western Australia	Does not appear to be included in either the WASA or the WAYOA. <sup>170</sup>

<sup>156</sup> Justices Act 1886 (Qld), s 149.

<sup>157</sup> YOA, s 31.

<sup>158</sup> CSA, s 17.

<sup>159</sup> CYFA, s 360(1)(a).

<sup>160</sup> TYJA, s 47(1)(a).

<sup>161</sup> NTYJA, s 83(1)(a).

<sup>162</sup> NTYJA, s 83(1)(b).

<sup>163</sup> CLSA, s 15, which applies to the Youth Court because of SAYOA, s 22.

<sup>164</sup> WAYOA, s 66.

<sup>165</sup> YOA, s 31. Section 18 of the YOA provides that a caution may be given for an offence covered under this Act other than a graffiti offence (graffiti offences are covered separately in the YOA, s 31). Section 8 of the YOA provides that, generally, summary offences and indictable offences that may be dealt with summarily that are committed by children are covered by the Act. There are exclusions provided in s 8 and under the rest of the YOA.

<sup>166</sup> Graffiti offence means an offence committed under the Graffiti Control Act 2008 (NSW).

<sup>167</sup> TYJA, s 47(1)(b).

<sup>168</sup> Also available for police officers: TYJA section 10 - formal caution.

<sup>169</sup> For example, a police officer may caution a child under the SAYOA.

<sup>170</sup> However, a police officer may caution a child under s 22B WASA.



## ADJOURNING PROCEEDINGS

Jurisdiction	Information on adjourning proceedings
Queensland	Available under YJA section 75. The Childrens Court may adjourn to another place. Remand, bail and custody provisions apply to the adjournment. <sup>171</sup>
New South Wales	It appears that the Children's Court is able to adjourn those proceedings. <sup>172</sup>
Australian Capital Territory	Does not appear to be available.
Victoria	A court may adjourn a proceedings if a pre-sentence report is ordered <sup>173</sup>
Tasmania	The court may release the youth and adjourn the proceedings on conditions. <sup>174</sup> The maximum period is 12 months, and the release is subject to the conditions stated in the order. <sup>175</sup>  The court may also grant bail to a youth under the <i>Bail Act 1994</i> (Tas) and may defer sentencing for a number of reasons, including assessing the youth's rehabilitation capacity or prospects, to allow the youth to show that the youth has been rehabilitated, or for dealing with an intervention plan. <sup>176 177</sup>
Northern Territory	The court may adjourn for up to 6 months and if the youth does not commit a further offence, discharge the youth without further penalty. <sup>178</sup>  The court may also adjourn for up to 12 months and grant bail to the youth to assess the youth's capacity and prospects for rehabilitation, to demonstrate rehabilitation has occurred or for any other purpose. <sup>179</sup>  The court may also adjourn to participate in a program approved by the Minister in accordance with the NTYJA, part 6, division 3. <sup>180</sup>
South Australia	The court may defer a sentence for an adult under the CLSA, section 19B, which appears to apply to the exercise of a power of the Youth Court under SAYOA, section 22.
Western Australia	The court may refrain from imposing punishment and adjourn the proceeding until an undertaking has been carried out by the offender or responsible adult under WAYOA, section 67. <sup>181</sup>

## UNDERTAKING

Jurisdiction	Information on undertakings
Queensland	Does not appear to be available.
New South Wales	Does not appear to be available.

<sup>171</sup> YJA section 75.

<sup>172</sup> This appears possible on the face of the CCPA, s 30.

<sup>173</sup> CSA section 41; CYFA section 530; CYFA section 352; CYFA section 414.

<sup>174</sup> TYJA, s 47(1)(d).

<sup>175</sup> TYJA, s 54.

<sup>176</sup> An intervention plan is a plan for the activities or program that a youth is expected to undertake while on bail granted under the adjournment: TYJA, s 56A(4).

<sup>177</sup> TYJA, ss 47(1)(j) and 56A.

<sup>178</sup> NTYJA, s 83(1)(c).

<sup>179</sup> NTYJA, s 83(1)(d).

<sup>180</sup> NTYJA, ss 83(1)(e) and 90.

<sup>181</sup> WAYOA, s 68. For information about undertakings, see the text accompanying footnote 79.



Jurisdiction	Information on undertakings
Australian Capital Territory	Not separately available from a good behaviour order. <sup>182</sup>
Victoria	<p>Non-accountable undertaking: the Court may dismiss an offence and require that a child or the child's parent give an undertaking not to do particular acts for 6 months, or 12 months if there are exceptional circumstances.<sup>183</sup> A court must not take any action if an undertaking is breached.<sup>184</sup></p> <p>Accountable undertaking: the Court may dismiss the charge without conviction but order that the child will be held accountable for breach of an undertaking under section 366.<sup>185</sup></p>
Tasmania	Does not appear to be separately available from a good behaviour order.
Northern Territory	Does not appear to be available.
South Australia	The court may release a youth on an undertaking on the condition that the youth's guardians enter into a supplementary undertaking that the youth will comply with the youth's undertaking, to assist the youth's development and guard against further offending, and to report at intervals. <sup>186</sup>
Western Australia	The court may refrain from punishing if the offender or responsible adult has given undertakings required by the court, or the responsible adult has entered into an undertaking that some punishment will be inflicted on the offender. <sup>187</sup>

<sup>182</sup> See CSA, s 13.

<sup>183</sup> CYFA, s 363.

<sup>184</sup> CYFA, s 364.

<sup>185</sup> CYFA, s 365.

<sup>186</sup> SAYOA, s 27.

<sup>187</sup> WAYOA, s 67.



## GOOD BEHAVIOUR

Jurisdiction	Information on good behaviour
Queensland	Available for not longer than one year. <sup>188</sup>
New South Wales	Good behaviour bonds available for not longer than two years, which may also be imposed when a person is discharged. <sup>189</sup> A good behaviour bond can be issued in conjunction with a fine. <sup>190</sup>
Australian Capital Territory	Available for young offenders, but must not include a condition about giving security for compliance with an order. <sup>191</sup> Conditions for young offenders may include an education and training condition <sup>192</sup> and a supervision condition. <sup>193, 194</sup>  Requires the offender to sign an undertaking to comply with the good behaviour obligations under the <i>Crimes (Sentence Administration) Act 2005</i> for a period. <sup>195</sup>
Victoria	The court may adjourn the proceedings for a maximum period of 12 months (or 18 months if there are exceptional circumstances and a child is over 15 years) if the child enters a bond for less than one half the maximum fine that may be imposed on the child and agrees to abide by conditions, including that the child is of good behaviour, appears before the court when required to do so and obeys special conditions imposed. <sup>196</sup> The charge is to be dismissed if the court is satisfied the conditions of the bond have been satisfied. <sup>197</sup>
Tasmania	The court may dismiss the charge and if the youth agrees to enter into an undertaking to be of good behaviour. That is an undertaking by the youth to do or to refrain from doing the acts specified in the order. <sup>198</sup>
Northern Territory	The court may release a youth if the youth gives security the court considers appropriate and appear before the court during a period of not more than two years, be of good behaviour and observes conditions imposed by the court. <sup>199</sup> The court may impose conditions, including that the youth reside with people, obey reasonable directions of a person stated in the order, refrain from activities or associating with people that the youth be under the supervision of the Commissioner. <sup>200</sup>

<sup>188</sup> *Youth Justice Act 1992*, s 175(1)(b); and s 188.

<sup>189</sup> CCPA, s 33(1)(a)(ii) and (b).

<sup>190</sup> CCPA, s 33(1)(d).

<sup>191</sup> CSA, s 133M(1).

<sup>192</sup> Education and training conditions are provided for in CSA, chapter 8A, part 8A.2, division 8A.2.2. The condition may only be imposed if the young offender is found guilty, if the offender is suitable, if the education or training is suitable and appropriate for the offender and a place for the offender to undertake the education or training is, or will soon be, available: CSA, ss 133P, 133Q and 133R.

<sup>193</sup> Supervision conditions are provided for in CSA, chapter 8A, part 8A.2, division 8A.2.3. The condition requires the young offender to comply with all reasonable directions given by the director-general, and allows the director-general to require information from entities directly supervising the young offender: CSA, s 133U(1). The condition may be imposed if a good behaviour order is made, but must be imposed if a community service condition, rehabilitation program condition, or an education and training condition is imposed on a good behaviour order: CSA, s 133V. The condition must not apply for longer than 3 years: CSA, s 133W.

<sup>194</sup> CSA, s 133M(2).

<sup>195</sup> CSA, s 13(2).

<sup>196</sup> CYFA, s 367.

<sup>197</sup> CYFA, s 368.

<sup>198</sup> TYJA, ss 47(1)(c), 51 and 52.

<sup>199</sup> NTYJA, s 83(1)(f) and part 6, division 4.

<sup>200</sup> NTYJA, s 91(2).



Jurisdiction	Information on good behaviour
	The youth is required to sign the order to indicate acceptance of the order. <sup>201</sup>
South Australia	The Youth Court may not require a youth to enter into a bond, <sup>202</sup> but the court may impose an obligation of the kind that might otherwise have been imposed under a bond, including to participate in a specified program, to carry out specified work or to reside in a place directed by the court. <sup>203</sup>
Western Australia	The court may refrain from imposing punishment if the offender enters into a recognisance, with a surety in the amount the Court decides or without, to keep the peace and be of good behaviour. <sup>204</sup> A responsible adult may give security for the offender's good behaviour. <sup>205</sup> The maximum term is one year. <sup>206</sup>

## FINE

Jurisdiction	Information on fines
Queensland	Available, amount limited to amount stated in an Act for the offence. <sup>207</sup>
New South Wales	Available, amount limited to the lesser of the maximum amount prescribed by law or 10 penalty units. <sup>208</sup> A fine can be issued in conjunction with a good behaviour bond <sup>209</sup> and probation. <sup>210</sup>
Australian Capital Territory	Available. <sup>211</sup> The maximum amounts for fines for adults are the fine imposed for the offence, for if no fine is imposed, \$10,000 if the Supreme Court makes the fine, or \$2,000 if the Magistrates Court. <sup>212</sup> It appears that separate amounts are not included for young offenders.
Victoria	A fine may be imposed for conviction on a summary or indictable offence of the lesser of one penalty unit for a child under 15 years, or five penalty units for a child 15 years. <sup>213</sup> For more than one offence, the penalty must not exceed an aggregate of two penalty units for a child under 15 or 10 penalty units for a child over 15 years. <sup>214</sup>  The court must consider the financial circumstances of the child when deciding the fine. <sup>215</sup> The fine may also be paid in instalments or reduced. <sup>216</sup>
Tasmania	Available. <sup>217</sup> The maximum fine that can be imposed by the court is the lower of the maximum fine that can be imposed on an adult for the offence or two penalty units for a child who is less than 15 years old, five penalty units for a child that is 16 or 17

<sup>201</sup> NTYJC, s 91(3).

<sup>202</sup> A bond may be entered into by an adult offender under the CLSA that requires the offender be of good behaviour: CLSA, s 38.

<sup>203</sup> SAYOA, s 26(1) to (3).

<sup>204</sup> WAYOA, s 69.

<sup>205</sup> WAYOA, s 70.

<sup>206</sup> WAYOA, s 69.

<sup>207</sup> Youth Justice Act 1992, s 175(1)(c).

<sup>208</sup> CCPA, s 33(1)(c).

<sup>209</sup> CCPA, s 33(1)(d).

<sup>210</sup> CCPA, s 33(1)(e1).

<sup>211</sup> CSA, s 14.

<sup>212</sup> CSA, s 15.

<sup>213</sup> CYFA, s 373(a).

<sup>214</sup> CYFA, s 373(b).

<sup>215</sup> CYFA, s 374.

<sup>216</sup> CYFA, s 375 to 379.

<sup>217</sup> TYJA, s 47(1)(e).



Jurisdiction	Information on fines
	<p>years old), and the maximum offence for a youth 17 years old or more.<sup>218</sup> If there are two or more offences, the maximum amount is the total of the maximum penalty for the offences or 5 penalty units (for a child less than 15 years old), 10 penalty units (for a child of 15 or 16 years of age), or the maximum penalty for 17 years old or more.<sup>219</sup></p> <p>The court must consider the financial circumstances of the child when deciding the fine.<sup>220</sup></p> <p>Community service may be substituted for a fine.<sup>221</sup></p>
<b>Northern Territory</b>	Available, amount limited to amount stated in an Act for the offence. <sup>222</sup>
<b>South Australia</b>	<p>\$2,500 is the maximum fine that may be imposed on a youth for an offence.<sup>223</sup></p> <p>Under the CLSA, the order for a pecuniary sum must not be made or reduced if the defendant is unable to comply with the order, or it may unduly prejudice the welfare of the defendant's dependants.<sup>224</sup></p>
<b>Western Australia</b>	If the offence is punishable by imprisonment, the court may impose a fine of not more than \$2,000. <sup>225</sup>

## PROBATION

Jurisdiction	Information on probation
<b>Queensland</b>	<p>Available if a child has been found guilty of an offence for which an adult could be imprisoned.<sup>226</sup></p> <p>If the Court is not constituted by a judge, the probation order, the order cannot be longer than one year.<sup>227</sup></p> <p>If the Court is constituted by a judge and the offence is not a 'relevant offence' dealt with under section 176, the child can be sentenced to probation for a period not longer than two years.<sup>228</sup></p> <p>For a sentence for a 'relevant offence'<sup>229</sup> that is not a 'life offence'<sup>230</sup>, child may be placed on a probation order for not longer than three years.<sup>231</sup></p>

<sup>218</sup> TYJA, s 57(2).

<sup>219</sup> CYJA, s 57(3).

<sup>220</sup> TYJA, s 58.

<sup>221</sup> TYJA, s 63.

<sup>222</sup> NTYJA, s 83(1)(g) and part 6, division 5.

<sup>223</sup> SAYOA, s 24.

<sup>224</sup> CLSA, s 15, which applies to youth because of SAYOA, s 22.

<sup>225</sup> WAYOA, s 71.

<sup>226</sup> Youth Justice Act 1992, s 175(2).

<sup>227</sup> Youth Justice Act 1992, s 175(1)(d)(i).

<sup>228</sup> Youth Justice Act 1992, s 175(1)(d)(ii).

<sup>229</sup> Relevant offence is defined as a 'life offence' or an offence with a maximum penalty for an adult of 14 years or more, other than an offence of receiving if the value of the thing received is not more than \$5,000, an offence against the *Criminal Code Act 1899* (Qld), ss 419 and 421 in particular circumstances or an offence that could be dealt with summarily under the *Drugs Misuse Act 1986*, s 16: Youth Justice Act 1992, s 176(10), definition *relevant offence*.

<sup>230</sup> Life offence is defined as an offence for which an adult would be liable to life imprisonment: Youth Justice Act 1992, schedule 4, definition *life offence*.

<sup>231</sup> Youth Justice Act 1992, s 176(1)(a).



Jurisdiction	Information on probation
New South Wales	Available for no longer than two years. <sup>232</sup>  Probation can be issued in conjunction with a fine <sup>233</sup> and an order to perform community service work. <sup>234</sup>
Australian Capital Territory	Available as a condition on a good behaviour order. <sup>235</sup> It must be imposed if there is a rehabilitation program condition. <sup>236</sup>  A probation condition means that during the period of the order, the offender is to be on probation subject to the supervision of a person appointed under the order, and requires the offender to obey all reasonable directions of the appointed person. <sup>237</sup>
Victoria	Available when a child is found guilty of one or more summary or indictable offences. <sup>238</sup> The term of probation is limited to 12 months or 18 months if the offence is punishable by a maximum penalty of more than 10 years, but it is not to extend beyond the child's 21 <sup>st</sup> birthday. <sup>239</sup>  The conditions include a reporting requirement to a youth justice officer, a prohibition on re-offending and a requirement to obey the reasonable instructions of the youth justice officer. <sup>240</sup>  A court may consider deferring a sentence for the purpose of the child participating in a group conference if the court is considering placing the child on probation. <sup>241</sup>
Tasmania	Available. <sup>242</sup> The conditions include that the youth must report to the assigned youth justice worker, not commit another offence and obey the reasonable and lawful instructions of the assigned youth worker. <sup>243</sup> Special conditions that may be imposed include requiring the youth to attend school and abstain from drinking alcohol or taking drugs. <sup>244</sup>
Northern Territory	Probation appears to be related to non-custodial orders only. <sup>245</sup>
South Australia	A youth would be on probation under the CLSA if the Youth Court has imposed an order under the SAYOA, section 26. <sup>246</sup>
Western Australia	Does not appear to be available in the WASA or WAYOA.

## RESTORATIVE JUSTICE

Jurisdiction	Information on restorative justice
Queensland	Available. <sup>247</sup>

<sup>232</sup> CCPA, s 33(1)(e).

<sup>233</sup> CCPA, s 33(1)(e1).

<sup>234</sup> CCPA, s 33(1)(f1).

<sup>235</sup> CSA, s 13(3)(c).

<sup>236</sup> CSA, s 95; s133V

<sup>237</sup> CSA, dictionary, definition *probation condition*.

<sup>238</sup> CYFA, s 380.

<sup>239</sup> CYFA, s 380(1).

<sup>240</sup> CYFA, s 381.

<sup>241</sup> CYFA, s 415.

<sup>242</sup> TYJA, s 47(1)(f).

<sup>243</sup> TYJA, s 65(1).

<sup>244</sup> TYJA, s 65(4).

<sup>245</sup> See for example, NTYJA, s 10.

<sup>246</sup> See the text accompanying footnotes 202 and 203.

<sup>247</sup> *Youth Justice Act 1992*, ss 192A and 192B.



Jurisdiction	Information on restorative justice
	<p>If there is a restorative justice agreement<sup>248</sup>, an order can be made requiring compliance with the agreement.<sup>249</sup></p> <p>The court can also order that the child participate in a restorative justice process<sup>250</sup> as directed by the chief executive.<sup>251</sup></p>
New South Wales	<p>Available – the court may order the release on the condition that a person complies with an outcome plan under the YOA.<sup>252</sup></p> <p>A conference is convened under the YOA with the purpose of deciding an outcome plan in respect of a child the subject of the conference.<sup>253</sup></p>
Australian Capital Territory	<p>Restorative justice is available in the ACT for an offender who is at least 10 years old, who accepts responsibility for committing the offence and is capable and agrees to participate in restorative justice.<sup>254</sup></p> <p>The Act applies to less serious offences committed by a young offender, serious offences where the young offender has been found guilty or has plead guilty, and to less serious and serious domestic and family violence offences committed by a young offender in particular cases.<sup>255</sup></p> <p>Restorative justice occurs through a restorative justice conference being called along with a restorative justice agreement.<sup>256</sup> The agreement may include an apology, the a plan to address the offending behaviour, a work plan for the benefit of a victim, a parent of the victim or all or part of the community and financial reparation.<sup>257</sup></p> <p>Undertaking restorative justice is a relevant consideration when a person is sentenced.<sup>258</sup></p>
Victoria	<p>The court may defer sentencing in order to allow the child to participate in group conferencing if the court is considering placing the child on probation, a youth supervision order, a youth attendance order or detaining the child.<sup>259</sup> The purpose of the meeting is, among other things, to increase the child's understanding of the effect of offending on the community and the victim, to reduce the likelihood of reoffending and to negotiate an outcome plan agreed to by the child.<sup>260</sup></p>

<sup>248</sup> Restorative justice agreement is defined as a conference agreement or an alternative diversion program agreed by the chief executive and child who is to complete the program: *Youth Justice Act 1992*, schedule 4, definition *restorative justice agreement*. A conference agreement is an agreement made at a conference commenced under the restorative justice process contained in part 3 of the *Youth Justice Act 1992*. In the restorative justice agreement, the child admits to having committing the offence and where the child undertakes to address the harm caused by the commission of the offence: *Youth Justice Act 1992*, s 36.

<sup>249</sup> *Youth Justice Act 1992*, s 175(1)(da).

<sup>250</sup> Restorative justice process means a conference undertaken as a restorative justice process under the *Youth Justice Act 1992*, part 3, division 2 or an alternative diversion program, which is a program agreed to between the child executive and the child that has the child participate in remedial actions, activities designed to strengthen the relationship between the child's family and community or educational programs to address the child's behaviour: *Youth Justice Act 1992*, s 38 and schedule 4.

<sup>251</sup> *Youth Justice Act 1992*, s 175(1)(db).

<sup>252</sup> CCPA, s 33(1)(c1).

<sup>253</sup> YOA, s 34(2).

<sup>254</sup> *Crimes (Restorative Justice) Act 2004* (ACT) (CRJA), s 19.

<sup>255</sup> CRJA, ss 14 to 16.

<sup>256</sup> CRJA, part 8, divisions 8.3 and 8.4.

<sup>257</sup> CRJA, s 51.

<sup>258</sup> CSA, s 33(1)(y).

<sup>259</sup> CYFA, s 415.

<sup>260</sup> CYFA, s 415(4).



Jurisdiction	Information on restorative justice
Tasmania	Diverting youths from the court system is dealt with in part 2, division 4 of the TYJA. The court may order a community conference rather than sentencing a youth under the TYJA, section 47. <sup>261</sup>
Northern Territory	The Court may adjourn the proceedings and refer a youth to a diversion if the prosecution and youth consents. <sup>262</sup> The Court order is in the form of referring the youth to be re-assessed for inclusion in the diversion program or Youth Justice Conference in accordance with the NTYJA, part 3. <sup>263</sup>
South Australia	<p>A police officer may deal with the commission of a minor offence by, among other things, notify a Youth Justice Co-ordinator of the admission in order that a family conference may be convened to deal with the matter.<sup>264</sup></p> <p>The family conference consists of a Youth Justice Co-ordinator (who is a magistrate or another person appointed to be a Co-ordinator), the youth, a representative of the Police Commission and any invited persons who respond to the invitation.<sup>265</sup></p> <p>The family conference may administer a formal caution against further offending, require the youth to enter into an undertaking to pay compensation, to carry out a maximum of 300 hours' community service or to enter into an undertaking to apologise to the victim or do anything else appropriate.<sup>266</sup> The undertaking has a maximum duration of 12 months.<sup>267</sup></p> <p>The family conference should act by consensus of the youth and the other invited persons who respond to the invitation.<sup>268</sup></p>
Western Australia	Appears that restorative justice has a non-statutory basis. <sup>269</sup>

## COMMUNITY SERVICE

Jurisdiction	Information on community service
Queensland	Available for a child of 13 years of age at the time of sentencing for a maximum period of 100 hours if the child has not yet attained 15 years, or 200 hours if the child is over 15 years, to be completed in not more than 6 months. <sup>270</sup> However, it is only available if a child has been found guilty of an offence for which an adult could be imprisoned. <sup>271</sup>
New South Wales	<p>Available under the CCSOA, section 5 and the CCPA, section 33(1)(f) if the penalty for the offence is imprisonment.<sup>272</sup></p> <p>The CCSOA applies to persons who were a child at the time the offence was committed and who were under 21 when before the court.<sup>273</sup></p>

<sup>261</sup> TYJA, s 37.

<sup>262</sup> NTYJA, s 64.

<sup>263</sup> NTYJA, s 64.

<sup>264</sup> SAYOA, s 7(1)(b).

<sup>265</sup> SAYOA, s 11(1).

<sup>266</sup> SAYOA, s 12(1).

<sup>267</sup> SAYOA, s 12(4).

<sup>268</sup> SAYOA, s 11(2).

<sup>269</sup> Australian Institute of Criminology, 'Restorative Justice in Australia' (2015)

<[http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp127/05\\_restorative.html](http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp127/05_restorative.html)>.

<sup>270</sup> Youth Justice Act 1992, s 175(1)(e).

<sup>271</sup> Youth Justice Act 1992, s 175(2).

<sup>272</sup> CCPA, s 34(1).

<sup>273</sup> CCSOA, s 4.



Jurisdiction	Information on community service
	<p>The order may be issued instead of imposing imprisonment on a person or detention under the CCPA, section 33(1)(g).<sup>274</sup></p> <p>The hours that can be ordered vary from 100 hours if the person is under 16 years old and a maximum of 250 hours if the person is over the age of 16.<sup>275</sup></p> <p>An order to perform community service work may be issued in conjunction with probation.<sup>276</sup></p>
<b>Australian Capital Territory</b>	<p>A good behaviour order may include a community service condition<sup>277</sup> if the offender is convicted of the offence.<sup>278</sup></p> <p>Available generally under the CSA, but must be between 20 hours and 200 hours and not interfere with the young offender's access to education or training.<sup>279</sup> The period when the community services hours must be completed must not be longer than 12 months.<sup>280</sup></p>
Victoria	A youth attendance order directs that a person for whom a youth attendance order is in force must engage in community service. <sup>281</sup>
Tasmania	Available. <sup>282</sup> The order requires the youth to perform community service activity, report to the person and place stated in the order and comply with reasonable directions given by the assigned youth justice worker. <sup>283</sup>
Northern Territory	Available. The court may make a community work order with a maximum number of 480 hours. <sup>284</sup> The court may make the order if the youth consents to the making and terms of the order, if there is an approved project that the youth may participate in, a probation and parole officer indicates that the arrangements have or will be made for the youth to participate and the court is satisfied the youth is a suitable person to participate in the project. <sup>285</sup> A youth subject to a community work order must participate for the number of hours set out in the order to the satisfaction of a probation officer and in accordance with any other reasonable directions given by the probation officer or project supervisor. <sup>286</sup>
South Australia	The power to order a youth to carry out community service community service is limited to an aggregate requirement at any one time to 500 hours, and the period the community service is to be performed in must not exceed 18 months. <sup>287</sup>
Western Australia	Youth community based orders and intensive youth supervision orders include a community work condition.

<sup>274</sup> CCSOA, s 5(1).

<sup>275</sup> CCSOA, s 13(2).

<sup>276</sup> CCPA, s 33(1)(f1).

<sup>277</sup> A community service condition means a requirement that the offender perform community service work: CSA, s 85(1).

<sup>278</sup> CSA, s 13(3)(b).

<sup>279</sup> CSA, s 133L(1).

<sup>280</sup> CSA, s 133L(2).

<sup>281</sup> CYFA s 397; s 407.

<sup>282</sup> TYJA, s 47(1)(g).

<sup>283</sup> TYJA, s 69.

<sup>284</sup> NTYJA, s 83(1)(h) and part 6, division 6.

<sup>285</sup> NTYJA, s 94.

<sup>286</sup> NTYJA, s 95.

<sup>287</sup> SAYOA, s 25.



## SUPERVISION ORDER

Jurisdiction	Information on supervision order
Queensland	<p>An intensive supervision order is available for a child who is not 13 years old at the time of sentence for a maximum period of 6 months.<sup>288</sup></p> <p>However, it is only available if a child has been found guilty of an offence for which an adult could be imprisoned.<sup>289</sup></p> <p>An intensive supervision order may require that a person abstain from violating the law, comply with reasonable directions of, report to and be visited by, the chief executive.<sup>290</sup></p>
New South Wales	Does not appear to be available.
Australian Capital Territory	Does not appear to be separately available. Supervision conditions may be imposed in particular cases, including for intensive correction orders. <sup>291</sup>
Victoria	<p>Youth supervision order is available if a child is found guilty of a summary or indictable offence, with or without conviction.<sup>292</sup> The term of the order is limited to 12 months or 18 months if the offence is punishable by a maximum penalty of more than 10 years, but it is not to extend beyond the child's 21<sup>st</sup> birthday.<sup>293</sup></p> <p>The child must consent to the order being made.<sup>294</sup></p> <p>The order appears to be similar to probation, but includes conditions including that the person must attend a youth justice unit or other place specified in the order or participate in a community service program.<sup>295</sup></p>
Tasmania	Does not appear to be available.
Northern Territory	A youth may be subject to supervision in state and a transferee may be subject to supervision. <sup>296</sup>
South Australia	Does not appear to be separately available.
Western Australia	<p>Youth community based order: includes provisions about a requirement to attend courses for a period of not more than six months,<sup>297</sup> conditions requiring an offender to perform unpaid work as stated in the order<sup>298</sup> and supervision conditions.<sup>299</sup></p> <p>An intensive youth supervision order may be made by a court to impose conditions that may be imposed on a youth community based offer, but are not limited by the Regulation or the provisions of part 7, division 6 of the Act (as youth community based offers are).<sup>300</sup></p> <p>An intensive youth supervision order can be made with or without a detention order.<sup>301</sup> If it is made with a custodial sentence in detention, it is known as a conditional release order, which provides for immediate release from the sentence, and the</p>

<sup>288</sup> *Youth Justice Act 1992*, s 175(1)(f).

<sup>289</sup> *Youth Justice Act 1992*, s 175(2).

<sup>290</sup> *Youth Justice Act 1992*, s 204.

<sup>291</sup> CSA, s 133U.

<sup>292</sup> CYFA, s 387.

<sup>293</sup> CYFA, s 387(1).

<sup>294</sup> CYFA, s 387(2)(b).

<sup>295</sup> CYFA, s 389.

<sup>296</sup> NTYJA ss 191, 192.

<sup>297</sup> WAYOA, s 88.

<sup>298</sup> WAYOA, s 89.

<sup>299</sup> WAYOA, s 73.

<sup>300</sup> WAYOA, s 98.

<sup>301</sup> WAYOA, s 99.



Jurisdiction	Information on supervision order
	offender only will serve the sentence if the order is cancelled. <sup>302</sup> The orders include statutory conditions, including that the offender does not commit another offence and is to be of good behaviour. <sup>303</sup>

## DETENTION OR IMPRISONMENT

Jurisdiction	Information on detention or imprisonment
Queensland	<p>Available. Detention must be the only appropriate sentence after the court has considered all other available sentences and taken into account the desirability of not holding a child in detention.<sup>304</sup></p> <p>If the court is not constituted by a judge, the maximum period of detention is one year.<sup>305</sup> A conditional release order (considered below) is not required to be made under <i>Youth Justice Act 1992</i>, section 220.<sup>306</sup></p> <p>If the court is constituted by a judge and section 176 does not apply, the maximum period is half the maximum term of imprisonment an adult could have been imprisoned for or 5 years (whichever is shorter).<sup>307</sup> A conditional release order (considered below) is not required to be made under <i>Youth Justice Act 1992</i>, section 220.<sup>308</sup></p> <p>For a 'relevant offence'<sup>309</sup> that is not a life offence: the maximum detention period is seven years.<sup>310</sup></p> <p>For sentence with maximum penalty of life: if the court considers the offence is a heinous offence and it involves violence against a person: child may be detained for maximum period of life.<sup>311</sup> Otherwise, the child be may detained for a maximum period of 10 years.<sup>312</sup></p> <p>Mandatory sentences are inapplicable to a child being sentenced; they are to be taken to the maximum penalty for the offending for the <i>Youth Justice Act</i>.<sup>313</sup> However, the mandatory minimum sentences for murder apply under the <i>Criminal Code Act 1899</i>, sections 305(2), (3)<sup>314</sup> and (4).<sup>315, 316</sup></p>
New South Wales	Available

<sup>302</sup> WAYOA, s 101.

<sup>303</sup> WAYOA, s 109.

<sup>304</sup> *Youth Justice Act 1992*, s 208.

<sup>305</sup> *Youth Justice Act 1992*, s 175(1)(g)(i).

<sup>306</sup> *Youth Justice Act 1992*, s 175(3).

<sup>307</sup> *Youth Justice Act 1992*, s 175(1)(g)(ii).

<sup>308</sup> *Youth Justice Act 1992*, s 175(3).

<sup>309</sup> See footnote 229 for the definition of a 'relevant offence'.

<sup>310</sup> *Youth Justice Act 1992* (Qld), s 176(2).

<sup>311</sup> *Youth Justice Act 1992* (Qld), s 176(3)(b).

<sup>312</sup> *Youth Justice Act 1992* (Qld), s 176(3)(a).

<sup>313</sup> *Youth Justice Act 1992*, s 155.

<sup>314</sup> *Criminal Code 1899* (Qld), ss 305(2) and (3) provide a person must not be released from imprisonment until the person has served a minimum of 30 years if the person who is being sentenced on more than one conviction of murder, where one conviction of murder and another offence of murder is taken into account, or the person sentenced for murder has been sentenced for murder on a previous occasion.

<sup>315</sup> *Criminal Code 1899* (Qld) s 305(4) provides that a person who kills a police officer in particular circumstances, the court must make an order that the person not be released until the person has served a minimum of 25 years' imprisonment.

<sup>316</sup> *Youth Justice Act 1992*, s 176(6).



Jurisdiction	Information on detention or imprisonment
	<p>Court may make an order (a detention order) for a person who is under 21 years of age to be committed to the control of the Minister administering the <i>Children (Detention Centres) Act 1987</i> (NSW) (CDCA) for a maximum period of two years.<sup>317</sup></p> <p>If the person is 21 years or over, the person may be committed to the control of the Minister administering the <i>Crimes (Administration of Sentences) Act 1999</i> (NSW) for a maximum period of two years.<sup>318</sup></p> <p>However, despite the maximum period of two years, the period of detention is limited to the maximum penalty provided for the offence.<sup>319</sup></p> <p>A child who is 16 years or older may only be subject to an imprisonment<sup>320</sup> order in accordance with the CDCA, section 28B. Section 28B requires that a person be in detention, be the subject of a new detention order after committing a 'detention centre offence',<sup>321</sup> the secretary of the department administering the Act or a person commencing the proceedings apply for an order, and the court considers that the person is not suitable for detention in a detention centre.</p>
<b>Australian Capital Territory</b>	<p>Available. Imprisonment of young offenders occurs under the CSA, section 10, but the imprisonment term is to be served by full-time detention at a detention place under the young offender is released from full-time detention or is transferred to a correctional centre under the <i>Children and Young People Act 2008</i> (ACT).<sup>322</sup></p>
Victoria	<p>Detention in a youth residential centre<sup>323</sup> or a youth justice centre<sup>324</sup> is available. Detention in a youth residential centre order if, among other things, the child is 10 years or more but under 15 years on the day of sentencing, the offence is one for which an adult could be imprisoned and that no other sentence is appropriate.<sup>325</sup> The maximum term is one year for one offence.<sup>326</sup> If there are more than one offence being decided on the same day or proceeding, the aggregate period of detention must not exceed two years.<sup>327</sup></p> <p>Detention in a youth justice centre order may be made in similar circumstances as a youth residential centre order, but the age bracket is 15 to 21 years.<sup>328</sup> The maximum term is two years and must not exceed the term that could be imposed on an adult.<sup>329</sup> If two or more offences are decided on the same day or proceeding, the aggregate term of detention must not be longer than three years.<sup>330</sup></p>

<sup>317</sup> CCPA, s 33(1)(g)(i).

<sup>318</sup> CCPA, s 33(1)(g)(ii).

<sup>319</sup> CCPA, s 34(3).

<sup>320</sup> *Children (Detention Centres) Act 1987* (NSW) (CDCA), s 28B refers to 'committed to correctional centres' rather than imprisonment.

<sup>321</sup> A detention centre offence is an offence of escaping or attempting to escape, failure to comply with condition of leave or return after leaves expires or after medical treatment, or another offence (except misbehaviour) that is committed within a detention centre: CDCA, s 28C.

<sup>322</sup> CSA, s 133H.

<sup>323</sup> CYFA, s 410.

<sup>324</sup> CYFA, s 412.

<sup>325</sup> CYFA, s 410.

<sup>326</sup> CYFA, s 411(1).

<sup>327</sup> CYFA, s 411(2).

<sup>328</sup> CFYA, s 412.

<sup>329</sup> CFYA, s 413.

<sup>330</sup> CFYA, s 413(3).



Jurisdiction	Information on detention or imprisonment
Tasmania	<p>The court may make a detention order.<sup>331</sup> The court may only make a detention order if the court has considered all other available sentences and is satisfied that no other sentence is reasonably appropriate<sup>332</sup> and if an adult who committed the offence could not be sentenced to imprisonment.<sup>333</sup></p> <p>The maximum period is two years' detention.<sup>334</sup></p>
Northern Territory	<p>The court may order that the youth serve detention or imprisonment.<sup>335</sup> A court must not order imprisonment only of a youth who is less than 15 years old.<sup>336</sup> A youth may only be detained or imprisoned for the lesser of the maximum period an adult could be imprisoned or two years (for a youth 15 years old or more) or 12 months (for a youth less than 15 years or age).<sup>337</sup></p> <p>A non-parole period must be set if the youth is detained or imprisoned for more than 12 months.<sup>338</sup> For multiple offences, the non-parole period fixed is in relation to the aggregate period for all detention or imprisonment.<sup>339</sup> Non-parole period otherwise at the time of sentencing may not be set if the imprisonment term is 12 months or less or is wholly or partly suspended.<sup>340</sup></p> <p>The court may order that the youth service a term of detention or imprisonment under a periodic detention order.<sup>341</sup> The court may make a periodic detention order if youth consents to the order, there are appropriate facilities available and the court is satisfied that the youth is a suitable person for periodic detention.<sup>342</sup></p> <p>The order must specify the number of periods of detention or imprisonment the youth must serve, the length of each period, the detention centre or custodial correctional facility at which the youth must be detained or imprisoned, the date and time the youth must report and the day of the week and the time the youth must subsequently report during the time of the sentence.<sup>343</sup> The Commissioner may grant a leave of absence from a period of detention for health reasons, on compassionate grounds or any other reason the Commissioner considers sufficient.<sup>344</sup> If the Commissioner refuses to grant the leave, the youth may apply to the court for a direction that leave be granted.<sup>345</sup></p>
South Australia	<p>Detention is available, as well as imprisonment in particular circumstances. However, detention is only available where the offender is a recidivist young offender<sup>346</sup> or serious firearm offender<sup>347</sup>, or the court is satisfied that a non-custodial sentence</p>

<sup>331</sup> TYJA, s 47(1)(h).

<sup>332</sup> TYJA, s 80.

<sup>333</sup> TYJA, s 81(a).

<sup>334</sup> TYJA, s 81(b).

<sup>335</sup> NTYJA, s 83(1)(l) and part 6, division 5.

<sup>336</sup> NTYJA, s 83(2).

<sup>337</sup> NTYJA, s 83(2).

<sup>338</sup> NTYJA, s 85(1).

<sup>339</sup> NTYJA, s 85(2).

<sup>340</sup> NTYJA, s 86.

<sup>341</sup> NTYJA, s 83(1)(k).

<sup>342</sup> NTYJA, s 112.

<sup>343</sup> NTYJA, s 113.

<sup>344</sup> NTYJA, s 119.

<sup>345</sup> NTYJA, s 119.

<sup>346</sup> Recidivist young offender means an offender declared to be a recidivist young offender under the CLSA, part 2, division 2A. See the CLSA, s 20C.

<sup>347</sup> Serious firearm offender means a youth who is a serious firearm offender under the CLSA, s 20AAB because the offender has been convicted of a serious firearm offence as defined in the CLSA, s 20AA, definition *serious firearm offence*.



Jurisdiction	Information on detention or imprisonment
	<p>would be inadequate after having regard to the gravity or circumstances of the offence or because the offence is a part of a repeated behaviour of offending.<sup>348</sup></p> <p>Detention may be ordered if a youth is convicted, or found guilty, is punishable by imprisonment where committed by an adult.<sup>349</sup></p> <p>The Youth Court may order the youth serve the detention in a training centre<sup>350</sup> for a maximum of either three years or, if the maximum period of imprisonment for the offence is less than three years, no more than the maximum period.<sup>351</sup></p> <p>The Youth Court may also order the detention be served in home detention.<sup>352</sup></p> <p>The Youth Court may also order a combination of detention in a training centre for two years, followed by home detention for not longer than six months in one period or for period not more than six months in a one year period, or no more than the maximum period of imprisonment for the offence.<sup>353</sup></p> <p>The Youth Court may only sentence a youth to imprisonment if the youth is currently in a prison or has previously served the detention in a prison.<sup>354</sup> The <i>Corrective Services Act 1982</i> (SA) applies to a child serving detention in a prison.<sup>355</sup></p>
Western Australia	<p>Pursuant to the WASA, a custodial sentence is a sentence of last resort.<sup>356</sup> Imprisonment and detention are available sentencing options for offences.<sup>357</sup> An offender may be imprisoned indefinitely under WASA, part 14,<sup>358</sup> detained for a maximum term equal to the maximum term of imprisonment for the offence,<sup>359</sup> and may be imprisoned or detained for less than 6 months.<sup>360</sup></p> <p>The court may direct an offender at least 16 and under 18 years old to be imprisoned in a prison under the <i>Prisons Act 1981</i> (WA).<sup>361</sup> If no direction is made that the imprisonment is to be served in a prison, the imprisonment is to be served in a detention centre until the court directs that an offender be transferred from a detention centre to a prison.<sup>362</sup> The transfer to a prison:</p> <ul style="list-style-type: none"> <li>• must not happen unless the offender is over 16;<sup>363</sup></li> <li>• may happen for a person who is under 18 if the court is satisfied the offender should be transferred because the offender's behaviour in the detention centre means that there is a significant risk to the safety or welfare of other detainees or staff the offender's antecedents or another reason the court thinks is relevant;<sup>364</sup></li> </ul>

<sup>348</sup> SAYOA, s 23(4).

<sup>349</sup> SAYOA, s 23(2).

<sup>350</sup> 'Training centre' is defined as a training centre established under the *Community Welfare Act 1972* (SA) (now the *Family and Community Services Act 1972* (SA)): SAYOA, s 4.

<sup>351</sup> SAYOA, ss 23(2)(a) and (3).

<sup>352</sup> SAYOA, ss 23(2) and (5).

<sup>353</sup> SAYOA, ss 23(2)(b) and (3).

<sup>354</sup> SAYOA, s 23(6).

<sup>355</sup> SAYOA, s 23(7).

<sup>356</sup> WAYOA, s 120.

<sup>357</sup> WAYOA, s 118.

<sup>358</sup> WAYOA, s 118(3).

<sup>359</sup> WAYOA, s 118(1)(b).

<sup>360</sup> WAYOA, s 118(2).

<sup>361</sup> WAYOA, s 118(4).

<sup>362</sup> WAYOA, ss 118A and 178.

<sup>363</sup> WAYOA, s 178(2).

<sup>364</sup> WAYOA, s 178(4)(a).



Jurisdiction	Information on detention or imprisonment
	<ul style="list-style-type: none"> <li>for a person who has turned 18 who is serving a sentence of detention if the offender has a substantial period of detention to serve or because of the matters referred to in the preceding bullet point;<sup>365</sup></li> <li>for a person who has turned 18 and who is serving a sentence of imprisonment if the court thinks fit.<sup>366</sup></li> </ul>

## SUSPENDED DETENTION

Jurisdiction	Information on suspended detention
Queensland	A conditional release order appears to be the equivalent order. <sup>367</sup>
New South Wales	A person may also have the detention ordered suspended immediately on a good behaviour bond if there is no other order for detention or imprisonment. <sup>368</sup>
Australian Capital Territory	All or part of the sentence can also be suspended. <sup>369</sup> The section about suspension is subject to provisions about good behaviour orders and imprisonment. <sup>370</sup>
Victoria	Does not appear to be available for children.
Tasmania	<p>The court may suspend the whole or part of the detention order if it is appropriate to do so.<sup>371</sup> The order is subject to conditions including that the youth must not commit another offence for which an adult could be sentenced to imprisonment, work with an assigned youth justice worker, obey the reasonably lawful instructions of the youth justice worker, attend programs (including health and education programs) as decided by the Secretary, undergo controlled substance and alcohol testing and undergo treatment, including medical or psychiatric treatment, and any special reasonable conditions imposed.<sup>372</sup></p> <p>The maximum period of suspension is 12 months if the youth is less than 16 years old or two years if the youth is 16 years old or older.<sup>373</sup></p>
Northern Territory	The court may suspend the whole or part of detention or imprisonment. <sup>374</sup> If the court suspends the detention or imprisonment, the court must specify a period (not more than two years) during which the youth must not commit any further offences. <sup>375</sup>
South Australia	It appears that a sentence for imprisonment can only be suspended if a good behaviour bond is imposed. <sup>376</sup> Therefore, it appears a sentence for a youth is suspended when the Youth Court makes an order under the SAYOA, section 26. <sup>377</sup>
Western Australia	A conditional release order may be the equivalent of a suspended sentence – a person will only be in detention if the order is cancelled. <sup>378</sup>

<sup>365</sup> WAYOA, s 178(4)(b).

<sup>366</sup> WAYOA, s 178(4)(c).

<sup>367</sup> See the text accompanying footnote 379.

<sup>368</sup> CCPA, s 33(1B).

<sup>369</sup> CSA, s 12.

<sup>370</sup> CSA, s 12(6).

<sup>371</sup> TYJA, ss 90(1) and (2).

<sup>372</sup> TYJA, ss 90(3) and (4).

<sup>373</sup> TYJA, s 91.

<sup>374</sup> NTYJA, s 83(1)(i) and part 6, division 7.

<sup>375</sup> NTYJA, s 98.

<sup>376</sup> See the CLSA, part 5.

<sup>377</sup> See text accompanying footnotes 202 and 203.

<sup>378</sup> See text accompanying footnotes 301 and 302.



## DETENTION WITHIN THE COMMUNITY

Jurisdiction	Information on detention within the community
Queensland	<p>A conditional release order allows for an order to be made by a court immediately releasing the child into a structured program with conditions.<sup>379</sup></p> <p>The court would immediately suspend the detention order and make a conditional release order that the child be immediately released from detention.<sup>380</sup></p>
New South Wales	Not specifically available in addition to other matters (such as good behaviour bonds).
Australian Capital Territory	<p>An intensive correction order is available, which allows a court to order that a sentence of no more than two years' imprisonment be served by intensive correction in the community.<sup>381</sup></p> <p>An intensive correction order is available if a sentence is more than two years but no less than four years. An intensive correction order may be made if the Court considers it is appropriate to do so.<sup>382</sup></p> <p>The intensive correction order must be subject to conditions as stated in the <i>Crimes (Sentence Administration) Act 2005</i>,<sup>383</sup> and may include additional conditions including community service or rehabilitation program.<sup>384</sup></p>
Victoria	<p>The court may make a youth attendance order if the child would be sentenced to detention in a youth justice centre because of the gravity or habitual nature of the unlawful behaviour, and the child is 15 years or older.<sup>385</sup> However, an order may only be made if an offence the offender is charged with is punishable by imprisonment, the Secretary considers the child is a suitable person for the order, and the child has consented to the order being made.<sup>386</sup></p> <p>The term of the order must not exceed 12 months or extend beyond the offender's 21<sup>st</sup> birthday.<sup>387</sup></p> <p>The Court must impose particular requirements on the order, including that the person attend at a youth justice unit for a number of weeks (not being more than 52 weeks), comply with reporting obligations and carry out reasonable and lawful directions of the Secretary.<sup>388</sup></p>
Tasmania	Does not appear to be available.
Northern Territory	<p>The court may also order that imprisonment or detention is suspended on the youth entering an <b>alternative detention order</b>.<sup>389</sup> The court must order a place where the youth is to reside or remain at a premises or place, including a restricted area<sup>390</sup>, for a period not exceeding 12 months.<sup>391</sup> The alternative detention order may only be made if suitable arrangements have been made for the youth to reside at the premises, the premises or place in the report is suitable, the order will not inconvenience or put at</p>

<sup>379</sup> *Youth Justice Act 1992*, s 219.

<sup>380</sup> *Youth Justice Act 1992*, s 220.

<sup>381</sup> CSA, s 11(2).

<sup>382</sup> CSA, s 11(3).

<sup>383</sup> CSA, s 11(4).

<sup>384</sup> CSA, s 11(5).

<sup>385</sup> CYFA, s 397.

<sup>386</sup> CYFA, s 398.

<sup>387</sup> CYFA, s 397(1).

<sup>388</sup> CYFA, s 399.

<sup>389</sup> NTYJA, s 83(1)(j) and part 6, division 8.

<sup>390</sup> Restricted area is not defined in the NTYJA or in the *Interpretation Act* (NT). It may refer to a restricted area under the *Liquor Act* (NT).

<sup>391</sup> NTYJA, s 100.



Jurisdiction	Information on detention within the community
<b>South Australia</b>	<p data-bbox="395 275 1294 331">risk persons living at the place or the surrounding community, and the youth is suitable for alternative detention.<sup>392</sup></p> <p data-bbox="395 353 1294 443">The conditions require that the youth not leave the premises or place in the order except at the time prescribed or permitted by the Commissioner or a probation and parole officer and the person wears or has attached a monitoring device.<sup>393</sup></p> <p data-bbox="395 465 1294 521">The youth may be tested for alcohol and drugs, including by taking a sample of the youth's breath.<sup>394</sup></p> <p data-bbox="395 544 1294 667">The Youth Court may also order the detention be served in home detention in one maximum six-month period or for periods not exceeding six months aggregated over a period of one year or less, or no more than the maximum period of imprisonment for the offence.<sup>395</sup> Home detention can only be imposed if:</p> <ul data-bbox="443 689 1294 835" style="list-style-type: none"> <li>• the Court is satisfied that the residence where the youth is to be detained is suitable and available for detaining the youth and the youth will be properly maintained and cared for while in the place; and</li> <li>• the Court is satisfied there are adequate resources for the proper monitoring of the youth by a home detention officer.<sup>396</sup></li> </ul> <p data-bbox="395 846 1294 902">The Youth Court may also order a combination of detention in a training centre for two years, followed by home detention.<sup>397</sup></p>
<b>Western Australia</b>	Youth community based order available. <sup>398</sup>

<sup>392</sup> NTYJA, s 101(1).

<sup>393</sup> NTYJA, s 102.

<sup>394</sup> NTYJA, ss 105 and 106.

<sup>395</sup> SAYOA, ss 23(2)(c) and (3).

<sup>396</sup> SAYOA, s 23(5).

<sup>397</sup> SAYOA, s 23(2).

<sup>398</sup> WAYOU, s 73.



## COMBINING ORDERS

Jurisdiction	Information on combining orders
Queensland	Orders may be combined, subject to <i>Youth Justice Act 1992</i> , section 178 to 180A. <sup>399</sup>
New South Wales	See above for specific references to combining types of orders.
Australian Capital Territory	Some combination of conditions can occur in good behaviour orders.
Victoria	Does not appear to be specifically addressed.
Tasmania	The Court may do one or more of the sentence options listed in TYJA, section 47(1).
Northern Territory	The Court may do one or more of the sentence options listed in NTYJA, section 83(1).
South Australia	Does not appear to be specifically addressed.
Western Australia	Does not appear to be specifically addressed.

## RESTITUTION/COMPENSATION ORDERS

Jurisdiction	Information on restitution/compensation orders
Queensland	In addition to sentencing orders, other orders can also be made, including restitution, compensation for loss to property or as compensation for injury. <sup>400</sup>
New South Wales	In addition to sentencing offenders, the Court may direct that the person pay compensation under the <i>Victim's Rights and Support Act 2013</i> (NSW). <sup>401</sup>
Australian Capital Territory	<p>Reparation order may be made against the offender for loss or expense to a person suffering loss or incurring expense because of the commission of the offence.<sup>402</sup></p> <p>If the conviction concerns stolen property, the court may order that the property be restored to a person entitled to recover the property, or pay the value of the stolen property to the person.<sup>403</sup></p>
Victoria	<p>The court may order a child to make restitution or pay compensation<sup>404</sup> or to pay costs.<sup>405</sup></p> <p>Part 4 of the <i>Sentencing Act 1991</i> (Vic) applies to an order made to a criminal proceeding under the CYFA.<sup>406</sup> Part 4 of the <i>Sentencing Act 1991</i> deals with restitution and constitution orders.</p>
Tasmania	Restitution and compensation orders are available under the TYJA, divisions 13 and 14.
Northern Territory	Restitution may be ordered as either the payment of money (maximum of \$5000) or, if the victim and the youth agree, performing service. <sup>407</sup>

<sup>399</sup> *Youth Justice Act 1992*, s 177.

<sup>400</sup> *Youth Justice Act 1992*, s 181.

<sup>401</sup> CCPA, s 36.

<sup>402</sup> CSA, s 19.

<sup>403</sup> CSA, s 20.

<sup>404</sup> CYFA, s 417.

<sup>405</sup> CYFA, s 360(3).

<sup>406</sup> CYFA, s 417.

<sup>407</sup> NTYJA, s 89.



Jurisdiction	Information on restitution/compensation orders
South Australia	Restitution and compensation may be ordered under the CLSA, part 7, which appears to apply to youths because of the SAYOA, section 22. <sup>408</sup>
Western Australia	Available. <sup>409</sup>

## OTHER ORDERS

Jurisdiction	Information on other orders
Queensland	In addition to other sentencing orders, a graffiti removal order requiring a child to remove graffiti for a maximum number of hours may be made for a graffiti offence. <sup>410</sup>
New South Wales	Can adjourn proceedings to determine the person's capacity and rehabilitation prospects, to demonstrate rehabilitation or for another purpose. <sup>411</sup>
Australian Capital Territory	<p><b>Non-association</b><sup>412</sup> and place restriction orders<sup>413</sup> must not apply to young offenders unless the court was satisfied that the orders would not interfere with the offender's access to education or training, or disproportionately interfere with public transport or accommodation.<sup>414</sup></p> <p><b>Accommodation order</b> is an order made by a court requiring a young offender to live at a place or with a person, or persons, either within or outside of the ACT.<sup>415</sup> The order may be made if the offender has been found guilty of an offence, the court is satisfied the order would be suitable for the young offender, and the place is suitable or the person is suitable and agrees to have the offender live with the person.<sup>416</sup> The Court must consider a range of factors before making the order.<sup>417</sup> The order must not be for longer than 3 years.<sup>418</sup></p>
Victoria	Deferral of sentencing may occur if the Court considers if, among other things, it is in the best interests of the child and the child agrees to the deferral. <sup>419</sup>
Tasmania	Rehabilitation program order may be made in relation to a family violence offence. <sup>420</sup>
Northern Territory	Court may make any other order that another court could make in respect of an adult convicted of the offence, other than a community based order or community custody order under the <i>Sentencing Act</i> (NT). <sup>421</sup>
South Australia	Not found
Western Australia	Not found

<sup>408</sup> Note that SAYOA, s 22 refers to 'sentencing'. It appears from the terms of part 7 that an order concerning restitution and compensation would form part of the sentence: see CLSA, ss 52(1) and 53(1).

<sup>409</sup> WAYOA, s 56.

<sup>410</sup> *Youth Justice Act 1992*, s 176A.

<sup>411</sup> CCPA, s 33(1)(c2).

<sup>412</sup> A non-association order prohibits a person from being or communicating with, or attempting to communicate or be with, a person: CSA, s 21.

<sup>413</sup> A place restriction order prohibits a person from being in or within, or attempting to be in or within, a stated place or area: CSA, s 21.

<sup>414</sup> CSA, s 133H.

<sup>415</sup> CSA, s 133Y.

<sup>416</sup> CSA, s 133ZA.

<sup>417</sup> CSA, s 133ZB.

<sup>418</sup> CSA, s 133ZC.

<sup>419</sup> CFYA, s 414.

<sup>420</sup> TYJA, s 47(1)(i).

<sup>421</sup> NTYJA, s 83(1)(m).

## CHAPTER 4 APPENDIX 1 SUMMARY TABLE – REVIEW OF SENTENCING OPTIONS IN AUSTRALIA

Below is a summary of the sentencing options available in each of the Australian States and Territories. It does not include extensive detail of the requirements the court must consider when making these orders (for example, the provisions of part 7, division 6 of the *Youth Justice Act 1992* (Qld), which provides for requirements for fines).

Type of sentencing option	Queensland	New South Wales	Australian Capital Territory	Victoria	Tasmania	Northern Territory	South Australia	Western Australia
Dismissing the charge	Available.	Not available solely.	Available.	Available.	Available.	Available.	Available if the offence is so trifling that it's not appropriate to impose any penalty.	Court may refrain from punishing child.
Reprimand/caution	Reprimand available.	Reprimands and cautions available.	Does not appear to be available.	Does not appear to be available.	Available.	Does not appear to be available.	Does not appear available for courts.	Does not appear to be available.
Adjourn proceedings	Does not appear to be available.	It appears that the Children's Court is able to adjourn those proceedings.	Does not appear to be available.	Does not appear to be available.	Available.	Available.	Appears to be available.	Court may refrain from imposing punishment and adjourn the proceeding until an undertaking has been carried out
Undertaking	Does not appear to be available.	Does not appear to be available.	Not separately available from a good behaviour order.	Non-accountable undertaking and	Does not appear to be separately available from	Does not appear to be available.	Youth undertaking and a supplementary	Available.

Type of sentencing option	Queensland	New South Wales	Australian Capital Territory	Victoria	Tasmania	Northern Territory	South Australia	Western Australia
Good behaviour	Available.	Available.	Available.	accountable undertaking available. Available.	a good behaviour order. Available.	Available.	undertaking from guardian available. Order may be made in the nature of a good behaviour bond, but without the imposition of a bond.	Available.
Fine	Available.	Available.	Available.	Available.	Available.	Available.	Available.	Available.
Probation	Available.	Available.	Available.	Available.	Available.	Partially available.	Available.	Does not appear to be available.
Restorative justice	Available.	Available.	Available.	Available.	Available.	Available.	Available.	Non-statutorily available.
Community service	Available.	Available.	Available.	Does not appear to be available for children.	Available.	Available.	Available.	Available.
Supervision order	Available.	Does not appear to be available.	Does not appear to be separately available, but supervision conditions may be imposed.	Available.	Does not appear to be available.	Does not appear to be available.	Does not appear to be separately available.	Youth community based order and intensive youth supervision order available.
Detention or imprisonment	Detention available.	Detention available.	Imprisonment of young offenders	Detention available.	Detention available.	Detention or imprisonment	Detention is available, as	Detention or imprisonment

## Independent Review of Youth Detention REPORT

Type of sentencing option	Queensland	New South Wales	Australian Capital Territory	Victoria	Tasmania	Northern Territory	South Australia	Western Australia
			occurs, but the imprisonment term is to be served by full-time detention at a detention place.			generally available.	well as imprisonment in particular circumstances.	generally available.
Suspended detention	A conditional release order appears to be the equivalent order.	Available.	Available.	Does not appear to be available for children.	Available.	Available.	Suspension available on the imposition of a good behaviour bond.	A conditional release order appears to be the equivalent.
Detention within the community	A conditional release order available.	Not specifically available in addition to other matters.	An intensive correction order is available.	Youth attendance order appears to be the equivalent order.	Does not appear to be specifically available.	Alternative detention order available.	Home detention or a combination of a training centre and home detention available.	Youth community based order available.
Combination of orders	Orders may be combined, subject to YJA s 178 to 180A. <sup>422</sup>	Some orders may be combined.	Some combination of conditions can occur in good behaviour orders.	Does not appear to be specifically addressed.	The Court may do one or more of the sentence options listed in TYJA, section 47(1).	The Court may do one or more of the sentence options listed in NTYJA, section 83(1).	Does not appear to be specifically addressed.	Does not appear to be specifically addressed.
Restitution/compensation orders	Restitution, compensation for loss to property or	Compensation under the <i>Victims Rights</i>	Reparation order available.	Restitution and compensation available.	Restitution and compensation available.	Restitution may be ordered as either the	Restitution and compensation available.	Restitution and compensation available.

<sup>422</sup> YJA, s 177.

Type of sentencing option	Queensland	New South Wales	Australian Capital Territory	Victoria	Tasmania	Northern Territory	South Australia	Western Australia
	as compensation for injury available. <sup>423</sup>	<i>and Support Act 2013 (NSW)</i> available.	If the conviction concerns stolen property, the court may order that the property be restored to a person entitled to recover the property, or pay the value of the stolen property to the person.			payment of money (maximum of \$5000) or, if the victim and the youth agree, performing service.		
Other	A graffiti removal order available. <sup>423</sup>	Can adjourn proceedings to determine the person's capacity and rehabilitation prospects, to demonstrate rehabilitation or for another purpose. <sup>424</sup>	Non-association orders, place restriction orders and accommodation orders available.	Deferral of sentencing available.	Rehabilitation program order available in relation to a family violence offence.	Discharge the youth without penalty. <sup>425</sup>  Court may make any other order that another court could make in respect of an adult convicted of the offence, other than a community based order or community custody order		

<sup>423</sup> YJA, s 176A.

<sup>424</sup> CCPA, s 33(1)(c2).

<sup>425</sup> NTYJA, s 83(1)(b).



Independent Review of Youth Detention REPORT

Type of sentencing option	Queensland	New South Wales	Australian Capital Territory	Victoria	Tasmania	Northern Territory	South Australia	Western Australia
						under the <i>Sentencing Act</i> (NT). <sup>426</sup>		

<sup>426</sup> NTYJA, s 83(1)(m).



## CHAPTER 5 THEORIES OF YOUTH JUSTICE

### LITERATURE REVIEW

In order to address the terms of reference, it is necessary for the Review to survey the relevant literature in the field of youth justice in Australia as it relates to the terms. Much of the expansive literature in youth justice is beyond the scope of the terms of reference however literature that is relevant to the Review includes best practice, assessment of youth detention programs, Aboriginal and Torres Strait Islander young people and institutional bias. This literature review is limited to Australian youth justice literature including reports and academic papers except where international considerations are relevant such as best practice, programs and addressing causal factors.

### APPLICABLE THEORIES IN YOUTH JUSTICE

'Youth Justice' is the term given to the processes and practices created for managing young people who have allegedly committed or committed an offence.<sup>427</sup> There has been much written about youth justice over the past forty years.<sup>428</sup> Every jurisdiction in Australia has its own policies and procedures and legislation on youth justice. Many Australian jurisdictions have recently inquired into the youth justice system including the Northern Territory<sup>429</sup>, Tasmania<sup>430</sup>, New South Wales<sup>431</sup>, Victoria<sup>432</sup>, as well as the Australian Children's Commissioners<sup>433</sup> and the Australian Law Reform Commission.<sup>434</sup>

### MODELS OF YOUTH JUSTICE

There are competing ideas about youth justice and how to manage young people who come into contact with the criminal justice system. These ideas are influenced by various philosophies in criminal justice.<sup>435</sup> These competing ideas about how to manage young people in the youth justice system have led to the creation of different models of youth detention around the world. There is the 'justice' model, also known as the 'custodial' model, aimed at making young people accountable for their actions

<sup>427</sup> Australian Institute of Health and Welfare, *Youth justice in Australia 2014–15*, (2016) AIHW bulletin no. 133. Cat. no. AUS 198. Canberra, 3.

<sup>428</sup> Australian Institute of Health and Welfare, *Youth Justice Legislation* (2016); Australian Institute of Criminology, *'Sentencing Juveniles'* (2009); Chris Cunneen and Rob White, *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 4<sup>th</sup> edition, 2011); Chris Cunneen, Eileen Baldry, David Brown, Mark Brown, Melanie Schwartz and Alex Steel, *Penal Culture and Hyperincarceration: the Revival of the Prison* (Routledge 2003); K Richards, *Juveniles' contact with the criminal justice system in Australia* (2009) Australian Institute of Criminology.

<sup>429</sup> *Review of the Northern Territory Youth Detention System Report* (2015).

<sup>430</sup> Commissioner for Children Tasmania, *Alternatives to Secure Youth Detention in Tasmania* (2013).

<sup>431</sup> Noetic Solutions Pty Limited, *Review of Effective Practice in Juvenile Justice: Report for the Minister for Juvenile Justice [NSW]* (January 2010).

<sup>432</sup> Andrew Day, Kevin Howells and Debra Rickwood, *Current Trends in the Rehabilitation of Juvenile Offenders*, Research Paper no. 284, (Australian Institute of Criminology, 2004); *The Victorian Juvenile Justice Rehabilitation Review*, Prepared for the Department of Human Resources, Victoria (January 2003); *Whistleblowers Protection Act: Investigation into conditions at the Melbourne Youth Justice Precinct*, October 2010, Victorian Ombudsman.

<sup>433</sup> Australian Children's Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices* (2016).

<sup>434</sup> Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, (1997) Report No. 84.

<sup>435</sup> John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989); John Braithwaite and Philip Pettit, *Not Just Deserts: A Republican Theory of Criminal Justice* (Oxford University Press, 1990).



and taking a punitive approach to the consequences of those actions. This model is dominant in Australia and many other parts of the English speaking world. Another model is the 'welfare' model. This model is characterised by an informality of proceedings and is driven by the 'best interests of the child'. This model dominates in European countries such as Germany and France. There are also hybrid models that combine elements of both a welfare and a justice model as exist in countries like Scotland and Scandinavia.<sup>436</sup>

In Australia, there are broadly two models which operate in the youth justice setting across jurisdictions – the punitive model and, to some extent, the welfare model. The justice model takes as its overarching concern, 'deterrence'. Deterrence means the different ways a community can deter potential young offenders from committing crimes or offenders from reoffending. This can be done by way of actual punishment of offenders for their crimes or it can be done in an anticipatory way, by virtue of a threat of punishment if a crime is committed.<sup>437</sup> Deterrence is a primary objective in the sentencing of young people in Australia.<sup>438</sup> The Queensland legislation sentencing guidelines, for example, list as one of the purposes for which sentences may be imposed on an offender, "to deter the offender or other persons from committing the same or a similar offence".<sup>439</sup>

Conventional deterrence theory contends that custodial sanctions should have a specific and measurable deterrent effect. By definition it is a model based on correctional service guidelines and punishment of offenders. The effects of that model are said to be both general and specific. The specific deterrent effect is measurable by the assertion that the likelihood of reoffending is reduced by a term of actual detention when compared to the imposition of non-custodial measures. It is postulated that the risk of being caught, if a criminal offence is committed, and the risk of a custodial penalty, which would follow, has a general deterrent effect.

The principle of deterrence however has been the subject of considerable debate for decades because, as Edney and Bagaric state, "one of the most damaging criticisms of deterrence theory is that it does not work".<sup>440</sup> While deterrence is an 'article of faith' for courts, "punishment involves inflicting pain on offenders and thus it cannot be justified by deterrence theory unless there is an ascertainable benefit to the community".<sup>441</sup> Current statistical information regarding the offending of young people in Queensland supports the argument that deterrence does not work.<sup>442</sup> Equally, the substantial literature consulted by the Review disavows the notion that custodial sentences have any significant impact on reducing reoffending.<sup>443</sup> Indeed the

<sup>436</sup> Ian O'Connor, 'Models of Juvenile Justice' Paper presented at the Australian Institute of Criminology Conference (26-27 June 1997).

<sup>437</sup> Richard Edney and Mirko Bagaric, *Australian Sentencing* (2007), 54.

<sup>438</sup> *Penalties and Sentencing Act 1992* (Qld) s 9(1)(c).

<sup>439</sup> *Penalties and Sentencing Act 1992* (Qld) s 9(1)(c).

<sup>440</sup> Richard Edney and Mirko Bagaric, *Australian Sentencing* (2007), 55.

<sup>441</sup> Richard Edney and Mirko Bagaric, *Australian Sentencing* (2007), 55.

<sup>442</sup> Australian Government, Australian Institute of Health and Welfare, Queensland: Youth Justice Supervision in 2014-2015, Youth justice fact sheet no.59; Australian Government, Australian Institute of Health and Welfare, Queensland: Youth Justice Supervision in 2014-2015, Youth justice fact sheet no.59, p 4

<sup>443</sup> James McGuire, 'What Works' to reduce re-offending 18 years on', in Craig, Leam A., Gannon, Theresa A., and Dixon, Louise, eds. *What Works in Offender Rehabilitation: An Evidence-Based Approach to Assessment and Treatment* New York, GB: Wiley-Blackwell, 2013; Robert Hoge, *The Juvenile Offender: Theory, research and Applications*. Boston, MA: Kluwers Academic Press (2011); Noetic Solutions Pty



high rates of youth offending in Queensland, and the rates of offending within this population, do not appear to have reduced despite a recently repealed legislative requirement that detention was no longer to be considered a penalty of last resort.<sup>442</sup> An Australian Law Reform Commission inquiry found that “the ability of the current detention system to rehabilitate young offenders is increasingly in doubt” and “detention seems to criminalise young people further”.<sup>445</sup> In a study published by the Australian Institute of Criminology (AIC) a number of earlier reviews of the specific deterrent effect of custodial sanctions were considered.<sup>446</sup> That AIC study concluded that there was no reduction in the patterns of reoffending in those juvenile offenders subject to a custodial penalty but one study reviewed concluded that juveniles subject to a custodial penalty were actually more likely to reoffend.<sup>447</sup>

## UNDERLYING ISSUES

The limitations of the justice or custodial approach in reducing youth offending, as identified above, are reflected in the voluminous youth justice literature that emphasises a therapeutic or holistic approach to understanding youth crime causation and State responses to youth crime. It is also reflected in many of the public submissions to this Review.<sup>448</sup> In line with its terms of reference, the Review consulted literature relating to causational issues influencing young people’s behaviour and reoffending and how to address this through programs in detention. The Review considered the literature establishing that the actions and conduct of young offenders can be a symptom of underlying issues and received many submissions on this.<sup>449</sup>

Limited, Review of Effective Practice in Juvenile Justice: Report for the Minister for Juvenile Justice [NSW] (January 2010); Charles Bordoun, Alex Dopp, Erin Taylor, ‘Evidence-based interventions for serious and violent juvenile offenders’ in Craig, Leam A., Gannon, Theresa A., and Dixon, Louise, eds. *What Works in Offender Rehabilitation: An Evidence-Based Approach to Assessment and Treatment* New York, GB: Wiley-Blackwell, 2013.

<sup>444</sup> “Over this period, there were decreases in the detention population in most states and territories **except Queensland**, Victoria and the Northern Territory. In Queensland, the number in detention increased from 150 in the June quarter 2012 to 190 in the June quarter 2016” Australian Government, Australian Institute of Health and Welfare, *Youth Justice in Australia 2016*, p 12.

<sup>445</sup> Australian Law Reform Commission, ‘Seen and heard: priority for children in the legal process’, 20.1.4.

<sup>446</sup> Don Weatherburn, Sumitra Vignaendra, Andrew McGrath, The specific deterrent effect of custodial penalties on juvenile reoffending Australian Institute of Criminology report Technical and Background Paper No 33 (2009).

<sup>447</sup> Don Weatherburn, Sumitra Vignaendra, Andrew McGrath, The specific deterrent effect of custodial penalties on juvenile reoffending Australian Institute of Criminology report Technical and Background Paper No 33 (2009) 13; See also, Troy Allard, James Ogilvie and Anna Stewart, *The Efficacy of Strategies to Reduce Juvenile Offending*

<sup>448</sup> See Sisters Inside submission, Justice Reinvest submission, Queensland University of Technology submission.

<sup>449</sup> Eileen Baldry, Leanne Dowse, & Melissa Clarence, (2012), *People with intellectual and other cognitive disability in the criminal justice system*. Sydney, University of New South Wales; Leanne Dowse, Theresa Cumming, Iva Strnadova, Julian Trofimovs., ‘Young people with complex needs in the criminal justice system’, (2014), 1, *Research and Practice in Intellectual and Developmental Disabilities* 174; Ian Hall, ‘Young offenders with a learning disability’ (2000) 6 *Advances in Psychiatric Treatment*, 278; Judith Cockram, ‘Justice or differential treatment? Sentencing of offenders with an intellectual disability’ (2005), 30 *Journal of Intellectual and Developmental Disability*, 3; Tony Holland, Isabel Clare, and Tanni Mukhopadhyay, T. ‘Prevalence of “criminal offending” by men and women with intellectual disabilities and the characteristics of “offenders”: implications for research and service development’, (2002) 46 (1) *Journal of Intellectual Disability Research*, 6; Mark Lipsey and David Wilson, ‘Effective interventions for serious juvenile offenders: A synthesis of research’ in, Rolf, Loeber, David Farrington (eds), *Serious and Violent Juvenile Offenders*, (Sage, New York, 1998; Lipsey, M., Howell, J., Kelly, M., Chapman, G., Carver, *Improving the effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice*, (Center for Juvenile Justice Reform, Georgetown University, 2010); Mark Lipsey, Francis Cullen, ‘The effectiveness of correctional rehabilitation: a review of systematic reviews’ (2007), *Annual review of Law and Social Science*, 3, 297-320; Charles Bordoun, Alex Dopp, Erin Taylor, ‘Evidence-based interventions for serious and violent juvenile offenders’ in Craig, Leam A., Gannon, Theresa A., and Dixon, Louise, eds. *What Works in Offender Rehabilitation: An Evidence-Based Approach to Assessment and Treatment* New York, GB: Wiley-Blackwell, 2013; Carleen Thompson, Anna Stewart, *Review of empirically based/risk assessment tools for youth justice: amended report for public release*, (2006) Justice Modelling at Griffith, 39; Kelly Hannah-Moffat, ‘Gridlock or mutability: reconsidering “gender” and risk assessment’, (2009), *Criminology and Public Policy* 8(1), 213; Ivan Doolan et al., ‘Does child abuse and neglect explain the overrepresentation of Aboriginal and Torres Strait Islander young people in youth detention? Findings from a birth cohort study’, (2013) 37(5) *Child Abuse and Neglect*; 303-4; Sisters Inside Inc., Submission to the Independent Review of Youth Detention in Queensland, October 2016, edocs 3491213.; Queensland



The Royal Commission into Aboriginal Deaths in Custody, for example, was concerned with how inequality and disadvantage in many aspects of Aboriginal social life and social situation is “the most significant contributing factor” that brings Aboriginal people into conflict with the criminal justice system.<sup>450</sup> The Royal Commission found that it is a multitude of factors, both historical and contemporary, that interact to cause Aboriginal people to be seriously over-represented in custody and detention. The Royal Commission’s regional report of inquiry into Queensland provides a comprehensive historical background of underlying issues for Aboriginal and Torres Strait Islander young people in places such as Wujal Wujal, Aurukun, Coen, Yarrabah, Cherbourg and Doomadgee.<sup>451</sup>

Cunneen et al points to the creation of the label ‘complex needs’, frequently used in youth detention settings, as a way of obfuscating the reasons these complex needs were created.<sup>452</sup> This body of literature and many of the submissions eschew singular causal theories for offending and seek to develop explanatory models to account for the complexity of offending.<sup>453</sup> The literature argues that by developing a more holistic understanding of youth crime, the responses will be more effective in deterring young people from reoffending. These responses include restorative justice, restorative practices, and therapeutic jurisprudence. Such approaches, on the literature consulted, are more likely to address offending because they emphasise a tailored and personalised approach to addressing causational issues behind offending behaviour.<sup>454</sup>

Taking a more holistic approach to young people’s offending would, for example, consider the cognitive development of young people as a relevant factor. The Review surveyed literature on this and submissions were made by public stakeholders including the Queensland University of Technology and Cape York Institute. It is considered more likely that juvenile offenders do not and cannot fully appreciate the consequences of their actions or the stigmatisation that inevitably flows from criminal conduct and detention.<sup>455</sup> For this reason, children and young people should not be held to the same standards of personal responsibility for all of their poor choices or misfortunes. The justice system assumes that children and young people are limited in their understanding of consequences. It also assumes that they do not have the sophisticated or mature levels of cognition required for them to fully consider all of the choices and decisions that they are making, both legal and illegal. If that is the

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University of Technology, Submission to the Independent Review of Youth Detention in Queensland, October 2016, edocs 3480801; Queensland Network of Alcohol and Other Drug Agencies Ltd, submission to the Independent Review of Youth Detention, October 2016, edocs 3485340.

<sup>450</sup> Commissioner Elliott Johnston QC, *Royal Commission into Aboriginal Deaths in Custody* (1991), *National Report Volume 1*, 1.7.1, 15.

<sup>451</sup> Commissioner L.F. Wyvill QC, *Royal Commission into Aboriginal Deaths in Custody* (1991), *Regional Report of Inquiry in Queensland*

<sup>452</sup> Chris Cunneen, Eileen Baldry, David Brown, Mark Brown, Melanie Schwartz and Alex Steel, *Penal Culture and Hyperincarceration: the Revival of the Prison* (Routledge 2003) 99.

<sup>453</sup> Chris Cunneen, ‘Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues 4.

<sup>454</sup> Thalia Anthony, *Indigenous People, Crime and Punishment* (Routledge, 2013); Don Weatherburn, *Arresting Incarceration: Pathways Out of Indigenous Imprisonment* (Aboriginal Studies Press, 2013).

<sup>455</sup> Weiss Hawley, ‘A Multiyear Follow-Up Study Examining the Effectiveness of a Cognitive Behavioural Group Therapy Program on the Recidivism of Juveniles on Probation’, *International journal of offender therapy and comparative criminology*, (2015) 259-272; Andrew Day, Kevin Howells, Forensic and Applied Psychology Research group, University of South Australia, Debra Rickwood, Australian Institute of Criminology, *The Victorian Juvenile Justice Rehabilitation Review*, Prepared for the Department of Human Resources, Victoria (January 2003), 4;



accepted position here in Queensland, then we ought to not blame a child or young person for the choices that he or she has made.

To that end it is useful to understand why there is a tendency in Australia to blame and label young offenders in a way that ignores the research on cognitive development. Australia has generally followed the lead of the United States in developing models of youth justice. There is much research that traces the punitive approach of the United States in regard to youth detention.<sup>456</sup> Furthermore the United States penal system is one that is dominated by a vast private network of institutional service providers who have a financial interest in maintaining that punitive focus.<sup>457</sup> Braithwaite and others have theorised that criminologists in the United States were overly influenced by the punitive approach and that such an approach led to 'labelling' of deviant behaviour and consequent stigmatising of the young offender.<sup>458</sup>

## RESTORATIVE JUSTICE

Professor John Braithwaite pioneered a theory of restorative justice as a more effective approach to addressing reoffending than punitive measures such as detention. Braithwaite argues that detention is stigmatising, and therefore less likely to address reoffending. Braithwaite accepts that 'shaming' is a necessary feature of punishment for offending but argues that such shaming needs to be productive in order to encourage the young offender to view him or herself as a responsible citizen with responsibilities to the community.

To do this, Braithwaite argued that the ceremony of crime control, courtrooms, fail as a site of communication and problem-solving. Courtrooms involve displays by "prosecutors, judges and police who enjoy no intimate bond of care and mutual respect with the offender"; such an approach is liable to degrade and stigmatise.<sup>459</sup> Even worse, young people are then likely to find comfort in the world of a delinquent subculture.<sup>460</sup> For Braithwaite, institutions like the courtroom and the detention centre not only fail in preventing crime but "they cause it through the symbolic effects of stigmatisation".<sup>461</sup>

The philosophy of restorative justice has been embraced to an extent by the Queensland Government with the creation of the Murri Court to help Aboriginal and Torres Strait Islander defendants make changes in their lives and stop offending. The Murri Court involves "Elders or Respected Persons from the community...in the courtroom to guide and encourage defendants and to help magistrates understand more about defendants' personal and cultural circumstances". The Murri Court is less

<sup>456</sup> Chris Cunneen, Eileen Baldry, David Brown, Mark Brown, Melanie Schwartz and Alex Steel, *Penal Culture and Hyperincarceration: the Revival of the Prison* (Routledge 2003); Chris Cunneen and Rob White, *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 4<sup>th</sup> edition, 2011); John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989) 16-21..

<sup>457</sup> John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989) 16-21.

<sup>458</sup> John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, 1989) 16-21.

<sup>459</sup> John Braithwaite, 'Juvenile Offending: New Theory and Practice', in L. Atkinson and S. Gerull (eds), *National Conference on Juvenile Justice*. Canberra: Australian Institute of Criminology, (1993), 37.

<sup>460</sup> John Braithwaite, 'Juvenile Offending: New Theory and Practice', in L. Atkinson and S. Gerull (eds), *National Conference on Juvenile Justice*. Canberra: Australian Institute of Criminology, (1993), 38.

<sup>461</sup> John Braithwaite, 'Juvenile Offending: New Theory and Practice', in L. Atkinson and S. Gerull (eds), *National Conference on Juvenile Justice*. Canberra: Australian Institute of Criminology, (1993), 38.



formal than a regular court “but it is not a soft option, defendants are expected to work hard to make better choices”.

Consistent evaluations of the impact of restorative justice on reoffending show that it can have ‘positive impacts for both victims and offenders ... and may be more effective for more prolific offenders, more effective for more serious offenders and more effective post- rather than pre-sentence.’..<sup>462</sup> Restorative justice is not only about crime reduction but it is practical guidance for young offenders on how they can lead a better life as a democratic citizen.<sup>463</sup>

## ABORIGINAL AND TORRES STRAIT ISLANDER YOUNG PEOPLE

There is a preponderance of literature that studies and theorises the disproportionate number of Aboriginal and Torres Strait Islander young people subject to youth justice orders and in youth detention, as compared to the percentage of Aboriginal and Torres Strait Islander children and young people in the community as a whole. Among other things, this situation is said to be evidence of institutional racism and substantiate the ‘gap’ that exists between Indigenous and non-Indigenous Australians.<sup>464</sup>

Some criminologists have written about youth crime and youth detention as a rite of passage for young people, particularly Aboriginal and Torres Strait Islander young people.<sup>465</sup> The Review heard this view expressed by detention centre staff. Some scholars have said that incarceration serves “as an alternate initiation process for some young Indigenous males”.<sup>466</sup> ‘Rite of passage’ implies the committing of crime and incarceration is voluntary and that there is an element of choice. While it may be that some young people demonstrate such attitudes by way of ‘bravado’ in research projects that is no reason to interpret any such attitude by a young person as diminishing the responsibility of the parent, community or State. The adoption of stock standard narratives like rite of passage, particularly given the contested nature of this narrative in the literature, is unlikely to be an effective way to approach the design or development of new approaches to dealing with Aboriginal and Torres Strait Islander juvenile offenders. It is counterintuitive to the research that suggests incarceration is more likely to lead to reoffending and custodial settings are damaging for Aboriginal and Torres Strait Islander peoples. It also goes against the findings of the Royal Commission which was a comprehensive review of Aboriginal deaths in custody and was concerned with ways to get Aboriginal young people out of the criminal justice system.<sup>467</sup>

<sup>462</sup> Jacqueline Joudo Larsen, *Restorative justice in the Australian criminal justice system* Australian Institute of Criminology report Research and Public Policy Paper No 127 (2014);; Lawrence Sherman., Heather Strang., Evan Mayo-Wilson, Daniel Woods., Barak Ariel, ‘Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review’, *Journal of Quantitative Criminology*, 31, (2015) 1; See also Chris Cunneen and Carolyn Hoyle, *Debating Restorative Justice* (Hart Publishing, 2010).

<sup>463</sup> John Braithwaite, ‘Principles of Restorative Justice’ in A. von Hirsch, J.V. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (2003) 1.

<sup>464</sup> The Change the Record Coalition Steering Committee, ‘Change the Record Blueprint’, (2016).

<sup>465</sup> Emma Ogilvie and Allan Van Zyl, ‘Young Indigenous Males, Custody and the Rites of Passage’, Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice*, No.204, April 2001.

<sup>466</sup> Emma Ogilvie and Allan Van Zyl, ‘Young Indigenous Males, Custody and the Rites of Passage’, Australian Institute of Criminology, *Trends and Issues in Crime and Criminal Justice*, No.204, April 2001, 1.

<sup>467</sup> Royal Commission into Aboriginal Deaths in Custody (RCIADIC) 1991. *Final report* [1.7], p 15.



Indeed research demonstrates that Indigenous young people encounter significant community challenges on release from detention. Programs and services delivered in youth detention need to be addressing the obstacles to reintegration in the community for young Aboriginal and Torres Strait Islander people. These include “negative stigma, delinquent reputations, risk-taking norms among family and peers and multiple family and community stressors”.<sup>468</sup> According to Dawes, “Indigenous youth who re-offended reported that their ‘criminal reputations’ and delinquent peers had been barriers to successful community reintegration and contributed to their re-incarceration”.<sup>469</sup> This research found that “connecting with cultural practices, mentors and community elders is emphasised as a powerful factor in the successful community reintegration for these young people”.<sup>470</sup> Dawes found that “participants returned to remote communities to learn about hunting, fishing and painting and others joined an elder’s night patrol to engage at-risk young people. Those who were engaged in education, training and employment and being connected with family, culture and community activities were able to desist from crime”.<sup>471</sup> This suggests that culture and community is a significant protective factor. This approach is more likely to be crime-reducing, not crime-producing.

## INSTITUTIONAL CULTURE

One of the challenges for restorative justice or policies such as trauma informed practice is institutional culture. Youth justice is a heavily regulated environment because it involves the detention and protection of individuals who are regarded vulnerable in the community. The literature suggests that heavily regulated environments tend to encourage what is known as ‘ritualism’. This means that parliaments, politicians and senior bureaucrats endorse important regulatory goals through laws and policies and also pathways to achieve them however there can be resistance by the workforce, or ‘street level bureaucrats’ to achieving those goals. Ritualism is a normal behavioural response to highly regulated environments but it can prevent governments from fixing problems.<sup>472</sup>

It is clear to the Review that there is extensive documentation on legislation, policies, programs, behavioural management as well as the reporting and investigation of incidents. The oversight bodies such as the ESU have produced extensive documentation on incidents that occur in the detention environment. This is an example of ‘documentation ritualism’.<sup>473</sup> Documentation ritualism is “where the documentation is right but the actions towards fulfilment of the regulatory goals are

<sup>468</sup> Dawes, G.D., *The challenges of reintegrating Indigenous youth after their release from detention*. Journal of Youth Studies, 2011. 14(6): p. 693-707 cited in Queensland University Technology submission p 6-7.

<sup>469</sup> Dawes, G.D., *The challenges of reintegrating Indigenous youth after their release from detention*. Journal of Youth Studies, 2011. 14(6): p. 693-707 cited in Queensland University Technology submission p 6-7.

<sup>470</sup> Dawes, G.D., *The challenges of reintegrating Indigenous youth after their release from detention*. Journal of Youth Studies, 2011. 14(6): p. 693-707 cited in Queensland University Technology submission p 6-7.

<sup>471</sup> Dawes, G.D., *The challenges of reintegrating Indigenous youth after their release from detention*. Journal of Youth Studies, 2011. 14(6): p. 693-707 cited in Queensland University Technology submission p 6-7.

<sup>472</sup> John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (2007) 11.

<sup>473</sup> John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (2007) 221.



wrong.”<sup>474</sup> It can take many forms, often simultaneously. Examples of compliance ritualism are:

- rule ritualism, where a rule is produced instead of a solution to the problem;
- documentation ritualism, where the documentation is right but the actions towards fulfilment of the regulatory goals are wrong;
- legal ritualism, where the letter rather than the spirit of the law is followed; and
- participatory ritualism, where procedures are followed that purport to improve participation but instead alienate the intended participants.

Ritualism occurs where an individual abandons culturally prescribed aspirations but ‘almost compulsively’ abides by the socially structured avenues for realising those aspirations.<sup>475</sup> Those socially structured avenues in the youth justice setting involve paperwork for risk assessment, behaviour management plans, programs, recording of incidents in DCOIS, negotiation of recommendations in inspectorate reports etc.

Regulators also engage in ritualism. The extensive referencing of United Nations treaties and principles in youth justice is a good example of this. United Nations principles and guidelines, for example, are mentioned in policies and in many youth detention reports including compliance reports such as the Ethical Standards Unit Inspectorate reports. ‘Rights ritualism’ can be understood as a way of governments embracing the language of human rights precisely to deflect real human rights scrutiny and to avoid accountability for human rights violations.<sup>476</sup> One of the reasons that ritualism is able to thrive is because of a lack of institutionalised follow-up of recommendations. This is why Amnesty and many submissions to this Review argue for an independent monitor. An independent detention inspector is essential because, in the longer term, rights ritualism means that over time, issues remain unaddressed and the problems become more apparent to ordinary citizens. Arguably this is what is happening in youth detention with the Don Dale controversy, the media coverage that led to this Review, successive UN reports on Australia urging reform and the 2016 Joint Child Commissioners report singling out youth detention as “inconsistent with human rights standards”.<sup>477</sup>

This ritualism can be addressed in a number of ways. This can be done through staffing. The Beijing Rules, which we refer to in the Review, state that well-trained staff forms the foundation of any functioning and effective custodial institution. This is particularly important in facilities designed to accommodate children and young people. Detention centre staff should be demographically representative of the young people being detained; this includes recruitment of women and staff from minority groups. The majority of young people in detention at CYDC are Aboriginal or Torres

<sup>474</sup> John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (2007) 221.

<sup>475</sup> Robert K Merton, *Social Theory and Social Structure* (The Free Press, Enlarged ed, 1968) at 238.

<sup>476</sup> John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (2007) 221; On rights ritualism, see generally, Hilary Charlesworth and Emma Larking (eds), 2014, *Human Rights And The Universal Periodic Review: Rituals and Ritualism*, Cambridge University Press, Cambridge, United Kingdom.

<sup>477</sup> Australian Children’s Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices* (2016) 4.



Strait Islander from Far North Queensland, the staffing profile should reflect that to the greatest extent possible. The rules also hold that staff should be selected based on their professional capacity to deal with young people. Staff should be trained in child psychology, child welfare and international human rights standards, particularly with respect to the rights of the child. Recruitment of staff skilled in these areas and who share the values of the jurisdiction's youth justice system is integral however their ability to deliver an effective service relies heavily on the youth. This is consistent with the literature on institutional culture.

'Continuous improvement' is another way to address cultural problems. The literature suggests when the focus is on what an actor is good at, it "provides a point of entry to getting them engaged with projects of continuous improvement that regulator and regulatee can begin to see as shared projects".<sup>478</sup> This can also be susceptible to ritualism and the Review observed an already ritualised form of 'learning' or 'learnings' in detention centre culture and Inspectorate reports etc.

An important test of institutional culture in Queensland will be the continual rollout of Trauma Informed Practice in Youth Justice. Training on Trauma Informed Practice is provided because it is a regulatory goal of Youth Justice. However based on submissions to the Review and site visits, the workforce may, by way of example, question the veracity of the claim that Aboriginal young people have experienced trauma. Some might believe, as the Review was told, that Aboriginal people are inherently violent. These beliefs are ostensibly in direct opposition to the regulatory goals of Trauma Informed Practice. It will be some time before it can be judged that it has been operationalised in an effective way and that the policies and practices and, more importantly, the culture in youth detention centres begins to reflect this philosophy.<sup>479</sup>

## INSTITUTIONAL BIAS

The Review consulted the literature on institutional bias. Institutional bias is the tendency for procedures and organisations to operate in ways that discriminate positively or negatively against particular social groups.<sup>480</sup> Institutional bias occurs whether or not there is consciousness of the bias, and whether the group or organisation is following existing rules or norms.<sup>481</sup> Institutional racism and sexism are the two most commonly identified forms of institutional bias.<sup>482</sup>

The literature adopts different language to capture the tendency for institutions to discriminate against ethnic or racial groups, such as 'institutional racism', 'systemic bias' and 'systemic racism'. Generally, 'racism' and 'institutional racism' are terms

<sup>478</sup> John Braithwaite, Toni Makkai and Valerie Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid* (2007).

<sup>479</sup> Denise Elliott, Paula Bjelajac, Roger Fallot, Laurie Markoff, and Beth Glover Reed, 'Trauma-informed or trauma-denied: Principles and implementation of trauma-informed services for women', (2005) *Journal of Community Psychology*, 461-477.

<sup>480</sup> *A Dictionary of Media and Communication* (Oxford University Press, 2011) definition Institutional Bias. Available online at the Oxford Reference, *Institutional Bias* (2016) <<http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100005347>>.

<sup>481</sup> *A Dictionary of Media and Communication* (Oxford University Press, 2011) definition Institutional Bias. Available online at the Oxford Reference, *Institutional Bias* (2016) <<http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100005347>>.

<sup>482</sup> *A Dictionary of Media and Communication* (Oxford University Press, 2011) definition Institutional Bias. Available online at the Oxford Reference, *Institutional Bias* (2016) <<http://www.oxfordreference.com/view/10.1093/oi/authority.20110803100005347>>.



referring to broad social practice and 'bias' relates to individual decision-making.<sup>483</sup> Both of these are relevant to the terms of reference. 'Systemic bias' is used infrequently in Australian literature. It is commonly used in the United States.<sup>484</sup> Systemic bias is associated more with individual decision-making processes, and is cited in Australia in gender, sexuality and hate crime and the law contexts.<sup>485</sup> For example, judges in Australia may "display attitudinal prejudices which may lead to systematic error or bias", which can be corrected by open discussion of unconscious prejudice or the appointment of more women to the judiciary.<sup>486</sup> Blagg, Morgan, Cunneen and Ferrante suggest that systemic racism and institutional racism are synonymous, while systemic bias and systemic racism are different because they refer to different processes (although the authors acknowledge that they have been used interchangeably).<sup>487</sup>

The term 'institutional racism' is used more frequently than 'systemic bias' in the Australian context.<sup>488</sup> Institutional racism refers to a system in which social goods, such as power, are used discriminatorily, which advantages some ethnic and racial groups and disadvantages others.<sup>489</sup> Institutional racism exists when laws, policies and practices that do not appear to be discriminatory on their face operate in an unfair or uneven manner.<sup>490</sup> Institutional racism operates through key societal institutions, including the public service and legal systems.<sup>491</sup> Institutional racism is focused on outcomes rather than on intentions and attitudes, and the extent to which institutions fail to understand the impact of their policies and procedures on minority groups.<sup>492</sup> Institutional racism can operate in a number of different ways, including for example:<sup>493</sup>

- Aboriginal and Torres Strait Islander persons being less likely to be cautioned than non-Aboriginal persons; or

<sup>483</sup> Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual Explanatory Issues' (2006) 17(3) *Indigenous People in the Criminal Justice System* 329, 333.

<sup>484</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 21. See also Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual Explanatory Issues' (2006) 17(3) *Indigenous People in the Criminal Justice System* 329, 330.

<sup>485</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 22.

<sup>486</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 22, citing Keith Mason, "Unconscious Judicial Prejudice" (2001) 13(8) *Judicial Officers' Bulletin* 57.

<sup>487</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 12.

<sup>488</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 30. See also Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual Explanatory Issues' (2006) 17(3) *Indigenous People in the Criminal Justice System* 329, 332.

<sup>489</sup> B Chambers and J Pettman (eds.) *Anti-Racism: A Handbook for Adult Educators* (Australian Government Printing Service, 1986) <[https://www.humanrights.gov.au/sites/default/files/Anti\\_racism\\_handbook.doc](https://www.humanrights.gov.au/sites/default/files/Anti_racism_handbook.doc)>, quoted in Commonwealth, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania and Northern Territory, Royal Commission into Aboriginal Deaths in Custody, *National Report, Volume 2*, [12.1.23] (RCIADIC).

<sup>490</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 12.

<sup>491</sup> RCIADIC Volume 2, [12.1.23].

<sup>492</sup> Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (Hawkins Press, 2008) 9.

<sup>493</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 14 and 15.



- the use of move-on powers or the power to request a name and address being disproportionately directed at Aboriginal or Torres Strait Islander persons.

Many scholars consider that racism, colonialism, colonial discourse and systemic racism have a place in understanding the institutional relationships between Aboriginal people and the criminal justice system.<sup>494</sup>

'Indirect discrimination' is a legal concept that broadly equates to institutional racism.<sup>495</sup> Blagg, Morgan, Cunneen and Ferrante consider that indirect discrimination is reflected in section 9(1A) of the *Racial Discrimination Act 1975* (Cth) (RDA). Section 9 of the RDA provides that it is unlawful to do any act:

*involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.*

A person will do an unlawful act under section 9 if the person requires another person to do an act that is not reasonable, the other person cannot comply with it, and the act:

*has the effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.*<sup>496</sup>

Indirect discrimination is prohibited in Queensland.<sup>497</sup> Indirect discrimination on the basis of an attribute is defined in section 11 of the *Anti-Discrimination Act 1991* as when a person imposes, or proposes to impose a term on a person:

- with which a person with an attribute<sup>498</sup> does not or is not able to comply; and
- a high proportion of people without the attribute comply or are able to comply; and
- the term is not reasonable.

'Systemic discrimination' is linked to indirect discrimination and has been defined as the creation, perpetuation or reinforcement of particular patterns of inequality under particular groups.<sup>499</sup> As identified above, this may arise from documents and policies that are neutral on their face.<sup>500</sup> Systemic discrimination has also been linked by the Anti-Discrimination Commission of Queensland (ADCQ) with indirect discrimination under section 7 of the *Anti-Discrimination Act 1991*.<sup>501</sup> Government anti-

<sup>494</sup> Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (Hawkins Press, 2008) 15.

<sup>495</sup> Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual Explanatory Issues' (2006) 17(3) *Indigenous People in the Criminal Justice System* 329, 333.

<sup>496</sup> *Racial Discrimination Act 1975* (Cth), section 9(1A).

<sup>497</sup> *Anti-Discrimination Act 1991* (Qld), section 9.

<sup>498</sup> Attributes for the *Anti-Discrimination Act 1991* (Qld) are listed in section 7 of the Act and include sex, race and gender identity.

<sup>499</sup> Anti-Discrimination Commission Queensland, *Women in Prison* (2006) 27.

<sup>500</sup> Anti-Discrimination Commission Queensland, *Women in Prison* (2006) 27.

<sup>501</sup> Anti-Discrimination Commission Queensland, *Women in Prison* (2006) 27.



discrimination bodies such as HREOC may investigate matters of indirect and systemic discrimination and ADCQ may investigate systemic discrimination.<sup>502</sup> Below is a summary of some of the government reports and academic consideration on institutional racism after the Royal Commission into Aboriginal Deaths in Custody.

## INSTITUTIONAL RACISM AND THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) demonstrated the existence of inequality and disadvantage in relation to health, housing, education, employment and income and how Aboriginal people were adversely affected by “the attitudes of the dominant non-Aboriginal society, racism both overt and hidden and institutional racism”.<sup>503</sup> RCIADIC found that Aboriginal people were over-represented in police custody, which was the reason that so many more Aboriginal people were dying in police custody.<sup>504</sup>

RCIADIC identified race relations as being at the heart of the over-representation and of the deaths in custody of Aboriginal people.<sup>505</sup> The over-representation of Aboriginal people in custody could only be understood in the context of the “radically unequal relations” between Aboriginal and non-Aboriginal society.<sup>506</sup> Racism against Aboriginal people was institutionalised and systemic among individuals, institutions and in relationships between institutions.<sup>507</sup> While openly discriminatory legislation has been removed, institutional racism takes on a more subtle form which may not be obvious to those involved.<sup>508</sup> Ways of treating Aboriginal people may become entrenched in such a way as to be seen to be normal or necessary, without a desire to discriminate.<sup>509</sup>

RCIADIC considered that institutions are institutionally racist if they have significant dealings with Aboriginal people and do not consider it is necessary to train staff to allow them to provide the same level of service to Aboriginal people as other persons.<sup>510</sup> RCIADIC highlighted the necessity of this type of training to address institutional racism in its recommendations.<sup>511</sup> For example, RCIADIC recommended that judicial officers and persons who work in the court service and parole and probation services who come into contact with Aboriginal people should undertake training on contemporary Aboriginal culture, society and traditions.<sup>512</sup> The programs should emphasise the factors contributing to Aboriginal people.<sup>513</sup> RCIADIC also identified that at the time of RCIADIC, Aboriginal people were experiencing day-to-day police behaviour that RCIADIC regarded as racist, which had the effect of continuing

<sup>502</sup> See, for example, the *Anti-Discrimination Act 1991* (Qld), ss 155 and 235.

<sup>503</sup> RCIADIC Volume 1, [1.7.2].

<sup>504</sup> RCIADIC Volume 2, [1.3.2].

<sup>505</sup> RCIADIC Volume 2, [12.1.2].

<sup>506</sup> RCIADIC Volume 2, [12.1.2].

<sup>507</sup> RCIADIC Volume 2, [29.5.2].

<sup>508</sup> RCIADIC Volume 2, [12.1.28].

<sup>509</sup> RCIADIC Volume 2, [13.4.40].

<sup>510</sup> RCIADIC Volume 2, [12.1.30] and [12.1.33].

<sup>511</sup> RCIADIC Volume 2, [12.1.33].

<sup>512</sup> RCIADIC, Recommendation 96.

<sup>513</sup> RCIADIC, Recommendation 96.



the subordination of Aboriginal people and entrenching the racist views in the dominant society.<sup>514</sup> Much of the subsequent government reporting and academic literature on institutional racism in Australia refers to or cites RCIADIC<sup>515</sup>, suggesting the importance of RCIADIC in documenting institutional racism in Australia.

## GOVERNMENT REPORTS

The following is a survey of government reports after RCIADIC that consider institutional racism.

### *REPORT OF NATIONAL INQUIRY INTO RACIST VIOLENCE (1991)*

The Human Rights and Equal Opportunity Commission (HREOC) *Report of National Inquiry into Racist Violence 1991* considered institutional racism of police officers in the context of acts of racist violence against Aboriginal and Torres Strait Islander people. Like RCIADIC, the HREOC Report considered that racism permeates the day-to-day lives of Aboriginal people through violence, intimidation, racist abuse and the more insidious discrimination.<sup>516</sup> HREOC concluded that Aboriginal people have been the subject of racist violence, intimidation and harassment by police.<sup>517</sup>

HREOC described the 'Redfern Raid', in which Aboriginal people were subject to physical and psychological violence and property was damaged, as an act of racist violence and an example of institutionalised racism.<sup>518</sup> HREOC considered that the police officers, while not actually motivated by racism, thought the approach they took in the Redfern Raid was appropriate for dealing with members of the Aboriginal community.<sup>519</sup>

A witness to the HREOC Inquiry considered that the lack of understanding of Aboriginal culture caused discrimination, which led to racist violence.<sup>520</sup> Appropriate training would result in a positive step toward better police-Aboriginal relations.<sup>521</sup>

### *CRIMINAL JUSTICE COMMISSION'S "YOUTH, CRIME AND JUSTICE IN QUEENSLAND" REPORT (1992)*

This report cited RCIADIC's conclusions that an understanding of Aboriginal disadvantage is critical to understanding offending and that young Aboriginal people are unnecessarily or deliberately charged with trivial or multiple charges, which creates the appearance of a serious criminal record from an early age.<sup>522</sup> The report further considered that racial discrimination, the poor relations between police and Aboriginal youth and the use of public recreation spaces by Aboriginal youth increased the likelihood of conflict with the police.<sup>523</sup>

<sup>514</sup> RCIADIC Volume 2, [13.4.40] and [13.4.42].

<sup>515</sup> See, for example, Crime and Justice Commission, *Youth, Crime and Justice in Queensland: An Information and Issues Paper* (1992) 57; Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen and Unwin, 2001) 23.

<sup>516</sup> Human Rights and Equal Opportunity Commission, *Report of National Inquiry Into Racist Violence* (1991) 209.

<sup>517</sup> Human Rights and Equal Opportunity Commission, *Report of National Inquiry Into Racist Violence* (1991) 210.

<sup>518</sup> Human Rights and Equal Opportunity Commission, *Report of National Inquiry Into Racist Violence* (1991) 212.

<sup>519</sup> Human Rights and Equal Opportunity Commission, *Report of National Inquiry Into Racist Violence* (1991) 212.

<sup>520</sup> Human Rights and Equal Opportunity Commission, *Report of National Inquiry Into Racist Violence* (1991) 211.

<sup>521</sup> Human Rights and Equal Opportunity Commission, *Report of National Inquiry Into Racist Violence* (1991) 211.

<sup>522</sup> Crime and Justice Commission, *Youth, Crime and Justice in Queensland: An Information and Issues Paper* (1992) 57.

<sup>523</sup> Crime and Justice Commission, *Youth, Crime and Justice in Queensland: An Information and Issues Paper* (1992) 58.



The CJC considered the involvement of Aboriginal youth in juvenile justice as a “major concern”.<sup>524</sup> The CJC considered that there needed to be an extensive primary crime prevention program to address the local causes of crime. The report considered that the then new juvenile justice legislation needed to ensure that Aboriginal children were afforded the benefits of diversionary programs.<sup>525</sup>

#### *JUSTICE UNDER SCRUTINY (1994)*

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs considered the implementation of RCIADIC in the *Justice Under Scrutiny* report. The report recommended:

1. that the Prime Minister seek the cooperation of the Queensland Government for a review done by HREOC to assess the level of institutionalised racism in the senior levels of the Queensland Police Service;<sup>526</sup> and
2. that HREOC scrutinise the activities of the Queensland Police Service in inner Brisbane and in Cairns to gather information to decide whether to prosecute breaches of human rights and the RDA.<sup>527</sup>

The report’s recommendations reflected the Committee’s view that there was “clear evidence of a high degree of institutionalised racism” in evidence presented to the Committee about police actions when exercising police powers against Aboriginal persons, with a clear intention to remove Aboriginal people from the streets even in the absence of legal move-on powers.<sup>528</sup> The Committee considered that there was little knowledge about RCIADIC, and even an unwillingness to implement the recommendations.<sup>529</sup> The Committee considered that an internal police report on incidents outside police headquarters revealed “deeply entrenched racist attitudes existing at senior levels of the Queensland police service”<sup>530</sup> and that it was “a matter of extreme urgency that racism be addressed at all levels of the Queensland police service”.<sup>531</sup> The Committee also considered the implementation of the recommendations from RCIADIC was grossly inadequate.<sup>532</sup>

#### *VICTORIAN ABORIGINAL JUSTICE AGREEMENT (2000)*

The Victorian Aboriginal Justice Agreement was a joint initiative of the Departments of Justice and Human Services, the Aboriginal and Torres Strait Islander Commission and the Aboriginal Justice Advisory Committee that sought to address the over-

<sup>524</sup> Crime and Justice Commission, *Youth, Crime and Justice in Queensland: An Information and Issues Paper* (1992) 58.

<sup>525</sup> Crime and Justice Commission, *Youth, Crime and Justice in Queensland: An Information and Issues Paper* (1992) 58.

<sup>526</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, *Justice Under Scrutiny* (1994), recommendation 71.

<sup>527</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, *Justice Under Scrutiny* (1994) recommendations 70 and 72.

<sup>528</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, *Justice Under Scrutiny* (1994) 262 [10.35]. See the evidence as discussed on pages 262 and 263.

<sup>529</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, *Justice Under Scrutiny* (1994) 264 [10.41].

<sup>530</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, *Justice Under Scrutiny* (1994) 265 [10.49].

<sup>531</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, *Justice Under Scrutiny* (1994) 266 [10.49].

<sup>532</sup> House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, *Justice Under Scrutiny* (1994) 264 [10.41].



representation of Aboriginal persons in the criminal justice system, improve Aboriginal access to justice-related services and promote greater Aboriginal awareness of civil, legal and political rights.<sup>533</sup> The Agreement recognised the work of RCIADIC in stressing the importance of institutional racism and reducing, if not eliminating, these barriers was crucial to addressing the underlying issues impacting Aboriginal people's access to housing, health, education, employment and justice.<sup>534</sup>

#### HEADS HELD HIGH REPORT (2016)

While not specifically raising institutional racism *per se*, Amnesty International's consideration of different use of diversionary programs for non-Indigenous children when compared with Aboriginal and Torres Strait children raised concerns about institutional racism. Amnesty International highlighted the importance of diversionary programs, including 'restorative justice', as having a beneficial impact on recidivism and on the community.<sup>535</sup> However, Amnesty identified there was a lower participation rate for restorative justice programs for Aboriginal and Torres Strait Islander children, with non-Indigenous children receiving the benefit of the diversionary programs while Indigenous children are more likely to be subject to a custodial sentence.<sup>536</sup> Amnesty considered that, despite the lack of public data available to establish a racial bias, the use of diversionary programs raised concerns about possible racial discrimination.<sup>537</sup>

#### ACADEMIC PAPERS

There are competing explanations for the over-representation of Aboriginal and Torres Strait Islander people in detention. There is debate in the literature over whether or not institutional racism is responsible for the over-representation of Aboriginal and Torres Strait Islander people<sup>538</sup> in prison, or whether the over-representation is because people of Aboriginal and Torres Strait Islander heritage commit more offences than non-Aboriginal and Torres Strait Islander people.

Blagg, Morgan, Cunneen and Ferrante note there are many reasons why Aboriginal people are over-represented in custody, including consideration of the impacts of colonialization, social and economic marginalisation, systemic racism and the specific actions of criminal justice and associated agencies.<sup>539</sup> The authors identify a number of necessary factors to explain Aboriginal over-representation, including offending patterns (such as over-representation for offences that will often lead to

<sup>533</sup> Victorian Aboriginal Justice Agreement (2000) State Government of Victoria

<<http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/victorian+aboriginal+justice+agreement>> 8.

<sup>534</sup> Victorian Aboriginal Justice Agreement (2000) State Government of Victoria

<<http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/victorian+aboriginal+justice+agreement>> 14.

<sup>535</sup> Amnesty International, *Heads Held High: Keeping Queensland Kids Out of Detention, Strong in Culture and Community* (2016) 48-49.

<sup>536</sup> Amnesty International, *Heads Held High: Keeping Queensland Kids Out of Detention, Strong in Culture and Community* (2016) 49.

<sup>537</sup> Amnesty International, *Heads Held High: Keeping Queensland Kids Out of Detention, Strong in Culture and Community* (2016) 49.

<sup>538</sup> It is worth noting that the concept of over-representation of Indigenous persons in the criminal justice system is overly broad because it does not address at which stage of the criminal justice system is being discussed. The lack of specificity may cause problems in adequately describing the problem: Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 16-17.

<sup>539</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 36.



imprisonment), decisions made by the judiciary, cultural differences, socio-economic factors, and policies and practices which appear neutral on their face.<sup>540</sup>

Weatherburn, Fitzgerald and Hua are critical of the academic literature that over-identifies systemic bias rather than considering other factors associated with Aboriginal offending.<sup>541</sup> The authors argue that Aboriginal people are involved in more serious crimes than non-Aboriginal people, and therefore focus should be on addressing Aboriginal imprisonment through reducing crime in Aboriginal communities.<sup>542</sup>

The Weatherburn et al analysis has been the subject of criticism, including because the article:

1. refers to 'systemic bias', which is a term not generally used in Australia but rather used overseas;<sup>543</sup>
2. represents an explanation of over-representation as a simple and artificial binary between systemic bias and offending levels;<sup>544</sup>
3. misrepresents the literature by stating that it focuses simply on systemic bias, when the research material states that over-representation is a complex problem stemming from a number of factors;<sup>545</sup> and
4. ignores what Indigenous organisations have done in attempting to identify and address Indigenous over-representation, including through addressing the more general causes of over-representation in Aboriginal Justice Plans (such as the Victorian Aboriginal Justice Agreement mentioned above).<sup>546</sup>

Anthony<sup>547</sup> and the Aboriginal and Torres Strait Islander Legal Services (ATSILS)<sup>548</sup> have also responded to Weatherburn's thesis. Weatherburn and Fitzgerald have published a reply to some of the criticisms published.<sup>549</sup>

<sup>540</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 36.

<sup>541</sup> Don Weatherburn, Jackie Fitzgerald and Jiuzhao Hua, 'Reducing Aboriginal Over-representation in Prison' (2003) 62(3) *Australian Journal of Public Administration* 65, 66.

<sup>542</sup> Don Weatherburn, Jackie Fitzgerald and Jiuzhao Hua, 'Reducing Aboriginal Over-representation in Prison' (2003) 62(3) *Australian Journal of Public Administration* 65, 69.

<sup>543</sup> Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual Explanatory Issues' (2006) 17(3) *Indigenous People in the Criminal Justice System* 329, 333.

<sup>544</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 39. See also Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual Explanatory Issues' (2006) 17(3) *Indigenous People in the Criminal Justice System* 329.

<sup>545</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 40-41. See also Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual Explanatory Issues' (2006) 17(3) *Indigenous People in the Criminal Justice System* 329.

<sup>546</sup> Harry Blagg, Neil Morgan, Chris Cunneen, Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, Victoria, 2005) 42-44. See also Chris Cunneen, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual Explanatory Issues' (2006) 17(3) *Indigenous People in the Criminal Justice System* 329.

<sup>547</sup> Thalia Anthony, *Indigenous People, Crime and Punishment* (Routledge, 2013).

<sup>548</sup> Elise Klein, Michael Jones, Eddie Cubillo, 'Have Aboriginal and Torres Strait Islander legal services failed? A response to Weatherburn' (2016) 14 (1) *Australian Review of Public Affairs* 1-24.

<sup>549</sup> Don Weatherburn and Jackie Fitzgerald, 'Reducing Aboriginal Over-representation in Prison: A rejoinder to Chris Cunneen' (2006) 18 *Current Issues in Criminal Justice* 366. See also, for comparison and analysis of both Weatherburn and Anthony's approaches: Timothy Rowse, 'Historical reasoning about Indigenous imprisonment: a community of fate?' *Australian Review of Public Affairs* Volume 13, Number 1: April 2015, 1-21.



### OTHER DISCUSSION OF RACISM IN LITERATURE

Davis points out that Indigenous people are the subject of day-to-day institutional racism in a number of aspects of their lives, including in relation to housing, health care, employment, the inadequacy of complaints mechanisms in the legal system and interactions with the criminal justice system which show assumptions of Indigenous inferiority.<sup>550</sup>

Marchetti and Ransley point to the need to address underlying social and economic issues as well as institutional racism, systemic bias and racial discrimination. The authors cite bail laws as an example of institutionalised bias. These laws are said to have the tendency to disadvantage Indigenous people because they are more likely to have prior criminal histories, and less likely to have settled living arrangements, than non-Indigenous offenders.<sup>551</sup> Marchetti and Ransley consider the ways in which over-representation has been sought to be addressed, including by the creation of speciality courts and through the use of sentencing practices that incorporate cultural input.

Such approaches, specialist courts and cultural input in sentencing practice, are available in some areas in Queensland at present.

The examination of relevant theories and institutional bias as they apply to youth detention allows for a broader comprehension of systemic issues. It is important to understand that the law does not operate in a vacuum. It is influenced by a multitude of factors including bias and it is the application of that bias (intended or otherwise) that ultimately shapes the way we perceive and respond to young people in detention.

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<sup>550</sup> Megan Davis, 'A Culture of Disrespect: Indigenous Peoples and Australian Public Institutions' (2006) 8 *University of Technology Sydney Law Review* 135, 142-143.

<sup>551</sup> Elena Marchetti and Janet Ransley, 'Applying the Criminal Lens to Officers and Legal Practitioners Involved in Sentencing Indigenous Offenders: Will Anyone or Anything Do?' (2014) *University of New South Wales Law Journal* 1, 3.



## CHAPTER 6 NATIONAL SENTENCING REGIMES

### INTRODUCTION

This literature review considers alternatives in sentencing for juvenile offenders. The Review considers that this chapter is contained within Terms of Reference 3(a)(v) and 6(3)(b)-(d).

This literature review does not consider pre-trial or pre-sentencing detention, although there is some overlap between sentencing alternatives to detention before and after sentence.

Strictly speaking, all sentencing options available to a judge sentencing a juvenile offender are alternatives to detention. This literature review is directed specifically to alternative ways of detaining a child rather than sentencing options that are available (for example, reprimand or a fine).

### DETENTION IN QUEENSLAND

In Queensland, detention must be the only appropriate sentence after the court has considered all other available sentences and taken into account the desirability of not holding a juvenile offender in detention.<sup>552</sup> A juvenile offender serves a period of detention in a youth detention centre.<sup>553</sup>

A juvenile offender may be the subject of a conditional release order, which allows a court to order that the young person be immediately released into a structured program with conditions.<sup>554</sup> The court would immediately suspend the detention order and make a conditional release order that the young person be immediately released from detention.<sup>555</sup>

A young person may be released from detention after serving a maximum of 70% of the period of detention,<sup>556</sup> but, at the time of sentencing, the court may order the release of a child if the child has served more than 50% but less than 70% of the period of the detention order and there are special circumstances.<sup>557</sup>

### BOOT CAMPS

Until recently in Queensland a youth boot camp order could be made under the *Youth Justice Act 1992* (Qld) as an alternative to detention.<sup>558</sup> A court that made a detention order against a child could immediately suspend the order and make a boot camp

<sup>552</sup> *Youth Justice Act 1992* (Qld) (YJA), s 208.

<sup>553</sup> YJA, s 210.

<sup>554</sup> YJA, s 219.

<sup>555</sup> YJA, s 220.

<sup>556</sup> YJA, s 227(1).

<sup>557</sup> YJA, s 227(2).

<sup>558</sup> YJA, repealed s 226B.



order that released the child from detention and immediately sent the child into a boot camp program. A boot camp order could be for a period of between 3 and 6 months duration.

The youth boot camp program was reviewed by KPMG in its Final Report for the Evaluation of Queensland's Youth Boot Camps.<sup>559</sup>

The ability of a court to make a youth boot camp order was repealed on 1 July 2016.<sup>560</sup>

## DETENTION IN OTHER JURISDICTIONS

### MINORS IN BELGIUM NOT GENERALLY SUBJECT TO PUNISHMENT

The underlying principle of Belgian juvenile justice is that children are not to be punished, but are to be protected and educated (or re-educated).<sup>561</sup> Persons are not criminally responsible before their 18<sup>th</sup> birthday.<sup>562</sup> In particular cases the age can extend to 20 years old.<sup>563</sup> However, in exceptional circumstances a juvenile offender over 16 may be dealt with in an adult court.<sup>564</sup> A juvenile judge may not impose criminal sanctions or punishments on a minor, but instead imposes educational measures.<sup>565</sup> This may be a question of terminology, however, as noted by Van Dijk, neighbouring European States may impose similar measures as the Belgian system but label them as 'sanctions', 'punishments' and 'sentences'.<sup>566</sup> In practice however it appears that Belgian courts still may confine a person in a youth institution, but that institution may be half-open or closed.<sup>567</sup>

### PLACEMENT IN PRIVATE INSTITUTIONS

In Belgium, a juvenile judge can order a minor be placed in a private institution.<sup>568</sup> In the Flemish part of Belgium the private institutions include residential and ambulatory, such as social assistance at home, day centres and support for adolescents in independent living, foster care, and half-open and closed institutions.<sup>569</sup>

<sup>559</sup> See KPMG, *Final report for the evaluation of Queensland's youth boot camps* (21 August 2016) Queensland Government Publications <<https://publications.qld.gov.au/dataset/final-report-for-the-evaluation-of-queenslands-youth-boot-camps/resource/a654be83-cd7f-43b3-b6cd-cdf2c9c8b48d>>.

<sup>560</sup> See the Youth Justice and Other Legislation Amendment Act 2015 (Qld).

<sup>561</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August 2004) 12.

<sup>562</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August) 12. Van Dijk states this principle was reflected in the *Youth Protection Act of 1965* (Belgium).

<sup>563</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August 2004) 13.

<sup>564</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August) 12.

<sup>565</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August) 13.

<sup>566</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August) 13.

<sup>567</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August) 14.

<sup>568</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August) 14.

<sup>569</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August) 19.



## DETENTION IN DIFFERENT LEVELS OF CUSTODY

Many jurisdictions use different levels of custody for youth detention, including open custody, half-open custody and closed custody. Open custody has been defined in Canada to mean a facility that uses minimum security devices or perimeter security.<sup>570</sup> The repealed *Youth Offenders Act 1985* (Can) defines open custody as custody in a community residential centre, group home, child care institution, or forest or wilderness camp or a similar facility.<sup>571</sup>

In Belgium, a juvenile judge can order a minor be placed in a half-open or closed youth institution.<sup>572</sup> Placement in a closed facility cannot be ordered for a child under 12 years of age.<sup>573</sup> In Greece<sup>574</sup> and Poland<sup>575</sup> the range of facilities include open, semi-open and closed institutions. In Denmark and Sweden, detention in an open institution follows a period of secure accommodation.<sup>576</sup> This appears similar to the mixed approach of detention followed by home detention or periodic home detention in South Australia.<sup>577</sup> Switzerland had only open institutions but, as at 2008, was constructing closed institutions.<sup>578</sup>

In Spain, custody can be served in a closed centre, a half-open centre where the offenders live in the centre, an open centre where the offenders live in the centre but do all activities in the community or in therapeutic custody, including in a centre where an offender can complete treatment in relation to drug use or where a person has psychiatric problems.<sup>579</sup>

Bala and Roberts wrote in 2008 that Canada has a two-tiered detention system.<sup>580</sup> The *Federal Youth Criminal Justice Act 2002* (Can), section 85(1) provides that each Province must have at least two levels of custody for young persons, which are to be distinguished by the level of restraint on the person.<sup>581</sup> Each facility in the Province is to be designated as one of the levels of custody.<sup>582</sup>

<sup>570</sup> Statistics Canada, *Definitions* (30 November 2015) <<http://www.statcan.gc.ca/pub/85-002-x/2010002/definitions-eng.htm#o1>>.

<sup>571</sup> *Youth Offenders Act 1985* (Can) s 24.1.

<sup>572</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August) 14.

<sup>573</sup> European Commission, *Study on Children's Involvement in Judicial Proceedings: Contextual Overview for the Criminal Justice Phase – Belgium* (2013) <[www.childreninjudicialproceedings.eu/docs/ContextualOverview/Belgium.pdf](http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/Belgium.pdf)> [31].

<sup>574</sup> Calliope D. Spinellis and Aglaia Tsitsoura, 'The Emerging Juvenile Justice System in Greece' in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice* (2008) 322.

<sup>575</sup> Barbara Stando-Kawecka, 'Continuity in the Welfare Approach' in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice* (2008) 372.

<sup>576</sup> Josine Junger-Tas, 'Trends in International Juvenile Justice' in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice* (2008) 521.

<sup>577</sup> SAYOA, s 23(2)(b) and (3).

<sup>578</sup> Josine Junger-Tas, 'Trends in International Juvenile Justice' in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice* (2008) 518.

<sup>579</sup> Cristina Rechea Alberola and Esther Fernández Molina, 'Continuity and Change in the Spanish Juvenile Justice System' in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice* (2008) 343.

<sup>580</sup> Nicholas Bala and Julian V Roberts, 'Canada's Juvenile Justice System' in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice* (2008) 37, 56.

<sup>581</sup> For example, Ontario legislation provides for open custody and secure custody to operate by virtue of the continuing of the repealed *Youth Offenders Act 1985* (Can): see the *Child and Family Services Act 1990* (Ontario), s 3 (definition "place of open custody").

<sup>582</sup> *Youth Criminal Justice Act 2002* (Can) s 85(2).



## OPEN CUSTODY

Under the repealed *Youth Offenders Act 1985* (Can), the judge decided whether the custody was to be open or secure custody at the time of sentence.<sup>583</sup> However, unless the Lieutenant Governor in Council of a Province specifies the repealed *Youth Offenders Act 1985* applies<sup>584</sup>, the provincial director now decides what level of custody is appropriate for the person.<sup>585</sup>

Open custody facilities in Canada take a variety of forms, and include community-based open custody places such as:

- open custody group homes.<sup>586</sup> These homes may have few restraints and educational and treatment programs and employment opportunities.<sup>587</sup> Group homes may be run by community groups or non-government agencies;<sup>588</sup>
- smaller residences in the community, where the children must remain with staff at all times unless they have approved leave from the facility;<sup>589</sup> and
- private homes, which are designated as community custody homes.<sup>590</sup>

Open custody facilities in Canada generally have more programming and rehabilitative facilities than other levels of custody.<sup>591</sup>

There has been some experience in Australia with open custody. In Queensland, the John Oxley Youth Detention Centre was originally designed as an open centre.<sup>592</sup>

## HOME DETENTION

In South Australia the Youth Court may order that detention be served in home detention in one maximum six-month period or for periods not exceeding six months aggregated over a period of one year or less, or for no more than the maximum period of imprisonment for the offence.<sup>593</sup> Home detention can only be imposed if:

<sup>583</sup> Youth Offenders Act 1985 (Can) s 24.1(2).

<sup>584</sup> Youth Criminal Justice Act 2002 (Can) s 88(d).

<sup>585</sup> Youth Criminal Justice Act 2002 (Can) s 85(3).

<sup>586</sup> Open Custody, Newfoundland Labrador Department of Children, Seniors and Social Development (30 September 2016) <<http://www.cssd.gov.nl.ca/youthcorrections/opencustody.html>>; Young Offender Programs, Alberta Justice and Solicitor General <[https://www.solgps.alberta.ca/programs\\_and\\_services/correctional\\_services/young\\_offenders/Pages/young\\_offender\\_programs.aspx#community](https://www.solgps.alberta.ca/programs_and_services/correctional_services/young_offenders/Pages/young_offender_programs.aspx#community)>.

<sup>587</sup> Alberta Justice and Solicitor General, Young Offender Programs <[https://www.solgps.alberta.ca/programs\\_and\\_services/correctional\\_services/young\\_offenders/Pages/young\\_offender\\_programs.aspx#community](https://www.solgps.alberta.ca/programs_and_services/correctional_services/young_offenders/Pages/young_offender_programs.aspx#community)>.

<sup>588</sup> Open Custody, Newfoundland Labrador Department of Children, Seniors and Social Development (30 September 2016) <<http://www.cssd.gov.nl.ca/youthcorrections/opencustody.html>>.

<sup>589</sup> Custody-based sentencing, Ontario Ministry of Children and Youth Services (17 May 2016) <<http://www.children.gov.on.ca/htdocs/English/youthandthelaw/sentence/custody-sentence.aspx>>.

<sup>590</sup> Newfoundland Labrador Department of Children, Seniors and Social Development, Open Custody (30 September 2016) <<http://www.cssd.gov.nl.ca/youthcorrections/opencustody.html>>.

<sup>591</sup> Nicholas Bala and Julian V Roberts, 'Canada's Juvenile Justice System' in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice* (2008) 37, 57.

<sup>592</sup> Queensland, Report of the Commission of Inquiry into Abuse of Children in Queensland Institutions, Final Report, 170.

<sup>593</sup> *Young Offenders Act 1993* (SA) (SAYOA), s 23(2)(c) and (3).



- the court is satisfied that the residence where the youth is to be detained is suitable and available for detaining the youth and the youth will be properly maintained and cared for while in the place; and
- the court is satisfied there are adequate resources for the proper monitoring of the youth by a home detention officer.<sup>594</sup>

Gaynor states that the South Australian youth home detention program is characterised as a regime of strict curfews, electronic monitoring, supervision and participation in programs.<sup>595</sup>

Gaynor lists the following advantages of home detention:<sup>596</sup>

- allows the child to retain closer contacts with family and the community, to develop more positive relationships and to develop skills for overcoming offending behaviour in a more natural environment than a youth detention centre;
- offers the possibility of a penalty constituting a significant loss of freedom for the offenders while ensuring community protection;
- removes the damaging effects of incarceration on young people, providing them with a better chance at rehabilitation; and
- is flexible enough to accommodate special needs individuals.

New South Wales provides that a court may make an order that an offender's sentence may be served by home detention.<sup>597</sup> It is not immediately clear whether a home detention order could be made in respect of a child. There was no provision identified for home detention in the *Young Offenders Act 1997* (NSW).<sup>598</sup>

In the Northern Territory, the court may order that imprisonment or detention is suspended on the youth entering an alternative detention order,<sup>599</sup> which appears to be the equivalent of home detention. The court must order a place where the youth is to reside or remain at a premises or place, including a restricted area<sup>600</sup>, for a period not exceeding 12 months.<sup>601</sup> The alternative detention order may only be made if suitable arrangements have been made for the youth to reside at the premises, the premises or place in the report is suitable, the order will not inconvenience or put at risk persons living at the place or in the surrounding community, and the youth is suitable for alternative detention.<sup>602</sup> The conditions require that the youth not leave the premises or place in the order except at the time prescribed or permitted by the Commissioner or a probation and parole officer and the person wears or has attached

<sup>594</sup> SAYOA, s 23(5).

<sup>595</sup> Jeremy Gaynor, 'The Home Detention Program For Young Offenders' (Paper presented at Australian Institute of Criminology Conference Juvenile Crime and Juvenile Justice: Toward 2000 and Beyond, Adelaide, 26 & 27 June 1997) 4.

<sup>596</sup> Jeremy Gaynor, 'The Home Detention Program For Young Offenders' (Paper presented at Australian Institute of Criminology Conference Juvenile Crime and Juvenile Justice: Toward 2000 and Beyond, Adelaide, 26 & 27 June 1997) 3-4.

<sup>597</sup> CSPA, s 6.

<sup>598</sup> *Young Offenders Act 1997* (NSW) (YOA), s 11, which deals with the relationship between the YOA and other Acts, does not refer to the CSPA. Parts 3 and 4 of the CSPA apply to sentencing of children, but they do not relate to home detention: *Children (Criminal Proceedings) Act 1987* (NSW) (CCPA), s 33C.

<sup>599</sup> *Youth Justice Act* (NT) (NTYJA), s 83(1)(j) and part 6, division 8.

<sup>600</sup> Restricted area is not defined in the NTYJA or in the *Interpretation Act* (NT). It may refer to a restricted area under the *Liquor Act* (NT).

<sup>601</sup> NTYJA, s 100.

<sup>602</sup> NTYJA, s 101(1).



a monitoring device.<sup>603</sup> The youth may be tested for alcohol and drugs, including by taking a sample of the youth's breath.<sup>604</sup>

In Belgium, a juvenile judge can order that a minor be placed in confinement with an individual,<sup>605</sup> which may be similar to home detention.

## PERIODIC HOME DETENTION

In addition to home detention, the South Australian Youth Court may order a combination of detention in a training centre for two years, followed by home detention for not longer than six months in one period or for a period of not more than six months in a one-year period, or for no more than the maximum period of imprisonment for the offence.<sup>606</sup>

## YOUTH ATTENDANCE ORDERS

Youth attendance orders are a sentencing option in Victoria as a direct alternative to being detained.<sup>607</sup> In Victoria the court may make a youth attendance order if the child would be sentenced to detention in a youth justice centre because of the gravity or habitual nature of the unlawful behaviour, and the child is 15 years or older.<sup>608</sup> However, an order may only be made if an offence the offender is charged with is punishable by imprisonment, the Secretary considers the child is a suitable person for the order, and the child has consented to the order being made.<sup>609</sup>

The term of the order must not exceed 12 months or extend beyond the offender's 21<sup>st</sup> birthday.<sup>610</sup>

The court must impose particular requirements on the order, including that the person attend at a youth justice unit for a number of weeks (not being more than 52 weeks), comply with reporting obligations and carry out reasonable and lawful directions of the Secretary.<sup>611</sup>

## PERIODIC DETENTION

### PERIODIC DETENTION ORDERS

<sup>603</sup> NTYJA, s 102.

<sup>604</sup> NTYJA, ss 105 and 106.

<sup>605</sup> Catherine Van Dijk, 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August) 14.

<sup>606</sup> SAYOA, s 23(2)(b) and (3).

<sup>607</sup> Youth Attendance Order - Information for young people Victorian Department of Human Services (23 May 2013)

<<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/youth-justice/community-supervision/youth-attendance-order-information-for-young-people>>.

<sup>608</sup> Children, Youth and Families Act 2005 (Vic) (CYFA), s 397.

<sup>609</sup> CYFA, s 398.

<sup>610</sup> CYFA, s 397(1).

<sup>611</sup> CYFA, s 399.



Periodic detention is ordinarily served on the weekend, and may commence on Friday evening and end on Sunday afternoon.<sup>612</sup>

In the Northern Territory the court may order that the youth serve a term of detention or imprisonment under a periodic detention order.<sup>613</sup> The court may make a periodic detention order if the youth consents to the order, there are appropriate facilities available and the court is satisfied that the youth is a suitable person for periodic detention.<sup>614</sup>

The order must specify the number of periods of detention or imprisonment the person must serve, the length of each period, the detention centre or custodial correctional facility at which the youth must be detained or imprisoned, the date and time the youth must report and the day of the week and the time the youth must subsequently report during the time of the sentence.<sup>615</sup> The Commissioner may grant a leave of absence from a period of detention for health reasons, on compassionate grounds or for any other reason the Commissioner considers sufficient.<sup>616</sup> If the Commissioner refuses to grant the leave, the youth may apply to the court for a direction that leave be granted.<sup>617</sup>

In Spain, custody may be served on weekend detention, which can be served in the juvenile's home or in a centre.<sup>618</sup> Young offenders may also serve detention at a day centre, where the child continues to live at home but attend a centre in order to carry out education activities.<sup>619</sup>

In Singapore a weekend detention order may be imposed for a period not exceeding 52 weekends.<sup>620</sup>

## EFFECTIVENESS OF PERIODIC DETENTION ORDERS

There appears to be divergent views about whether periodic detention is an effective sentencing option that reduces recidivism. In New South Wales, periodic detention was available as a sentencing option until 2010. The Sentencing Advisory Council recommended that, given the lack of availability of periodic detention throughout the State and a lack of resources, a community supervision sentencing option should replace the periodic detention sentencing option.<sup>621</sup> Similarly, the ACT Government also announced that it was removing periodic detention as a sentencing option

<sup>612</sup> See for example, ACT Corrective Services, *Periodic Detention Centre* (1 September 2010) <<http://www.cs.act.gov.au/page/view/878/title/periodic-detention-centre>>. It should be noted that periodic detention is not a currently available sentencing option in the ACT.

<sup>613</sup> NTYJA, s 83(1)(k).

<sup>614</sup> NTYJA, s 112.

<sup>615</sup> NTYJA, s 113.

<sup>616</sup> NTYJA, s 119.

<sup>617</sup> NTYJA, s 119.

<sup>618</sup> Cristina Rechea Alberola and Esther Fernández Molina, 'Continuity and Change in the Spanish Juvenile Justice System' in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice* (2008) 343.

<sup>619</sup> Cristina Rechea Alberola and Esther Fernández Molina, 'Continuity and Change in the Spanish Juvenile Justice System' in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice* (2008) 344.

<sup>620</sup> *Weekend Detention Order*, Singapore Government (30 July 2014) <<https://app.msf.gov.sg/Policies/Children-Youth/Rehabilitation-of-Juvenile-Offenders/Community-based-Rehabilitation-of-Children-Youth/Court-Ordered-Options-for-Offenders/Weekend-Detention-Order>>.

<sup>621</sup> NSW Sentencing Advisory Council, *Review of Periodic Detention* (2007)

<[www.sentencingcouncil.justice.nsw.gov.au/...Detention/periodic\\_detention\\_report.pdf](http://www.sentencingcouncil.justice.nsw.gov.au/...Detention/periodic_detention_report.pdf)> [118].



because the option was not the most effective option for rehabilitating offenders, reducing recidivism and imprisonment and maintaining community safety.<sup>622</sup> The ACT Government expressed a view that community correction orders would be more effective and deliver enhanced outcomes.<sup>623</sup> However, the Commissioner for Tasmania recommended that the Tasmanian Government consider implementing weekend or night detention as an alternative to secure detention.<sup>624</sup>

In respect of adult offenders, Ringland and Weatherburn consider that, with some caveats, offenders who were on an intensive correction order had a lower risk of re-offending than an offender on periodic detention.<sup>625</sup>

## INTENSIVE CORRECTION ORDERS

An intensive correction order is an alternative order to full-time imprisonment, and allows for the offender to serve the period of imprisonment in the community so that the offender can continue or gain employment and keep in contact with the offender's family.<sup>626</sup>

In the ACT an intensive correction order is available if a sentence is more than two years but no less than four years, and may be made if the court considers it is appropriate.<sup>627</sup> An intensive correction order allows a court to order that a sentence of no more than two years imprisonment be served by intensive correction in the community.<sup>628</sup> The intensive correction order must be subject to conditions as stated in the *Crimes (Sentence Administration) Act 2005* (ACT),<sup>629</sup> and may include additional conditions including community service or a rehabilitation program.<sup>630</sup>

In New South Wales intensive correction orders appear to be available for adult offenders but not for child offenders.<sup>631</sup>

It appears that youth community based orders<sup>632</sup> and intensive youth supervision orders<sup>633</sup> in Western Australia and youth supervision orders<sup>634</sup> in Victoria are equivalent orders.

<sup>622</sup> 'Periodic detention to make way for alternate options' (Press Release, 16 April 2014).

<[http://www.cmd.act.gov.au/open\\_government/inform/act\\_government\\_media\\_releases/rattenbury/2014/periodic-detention-to-make-way-for-alternate-options](http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2014/periodic-detention-to-make-way-for-alternate-options)>.

<sup>623</sup> 'Periodic detention to make way for alternate options' (Press Release, 16 April 2014).

<[http://www.cmd.act.gov.au/open\\_government/inform/act\\_government\\_media\\_releases/rattenbury/2014/periodic-detention-to-make-way-for-alternate-options](http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2014/periodic-detention-to-make-way-for-alternate-options)>.

<sup>624</sup> Commissioner for Children Tasmania, *Alternatives to Secure Youth Detention in Tasmania* (2013)

<<http://www.childcomm.tas.gov.au/wp-content/uploads/2015/07/Alternatives-to-Secure-Youth-Detention-FINAL-2013.pdf>> [Recommendation 7.4].

<sup>625</sup> Clare Ringland and Don Weatherburn, 'The Impact of Intensive Correction Orders on Re-offending' (2013) 176 *Contemporary Issues in Crime and Justice* 1, 12.

<sup>626</sup> Clare Ringland and Don Weatherburn, 'The Impact of Intensive Correction Orders on Re-offending' (2013) 176 *Contemporary Issues in Crime and Justice* 1, 1.

<sup>627</sup> *Crimes (Sentencing) Act 2005* (ACT) (CSA), s 11(3).

<sup>628</sup> CSA, s 11(2).

<sup>629</sup> CSA, s 11(4).

<sup>630</sup> CSA, s 11(5).

<sup>631</sup> There is no equivalent provision to the *Crimes (Sentencing Procedure) Act 1999* (NSW) (CSPA), s 7 in the YOA and it does not appear that the CSPA applies to children.

<sup>632</sup> *Young Offenders Act 1994* (WA) (WAYOA), ss 73, 88 and 89.

<sup>633</sup> WAYOA, ss 98, 101 and 109.

<sup>634</sup> CYFA, s 387.



## MISSOURI MODEL

The Missouri Model is an approach to juvenile justice that has been employed by the Division of Youth Services in Missouri that has been adopted by 27 States of the United States of America.<sup>635</sup>

The Missouri Model includes a number of options for detention, listed in order of facilities for the least serious offending children to the most serious.<sup>636</sup>

1. Non-residential community care. Many persons are placed on a 10-day treatment program;
2. Group homes, which house 10–12 less serious offenders at a time;
3. Moderate security facilities, which typically house 20 to 50 persons; and
4. Secure care programs, which are incarceration facilities located near the child's family. There are a small number of serious offenders who require incarceration. These facilities have a maximum of 36 or fewer children.

The model uses small supervised groups to run a group treatment process, where a small group of 10–12 children stay in a dorm room together and undertake treatment together.<sup>637</sup> Children who are confined are provided with academic, pre-vocation and communication skills to improve skills for when they are released.<sup>638</sup> Families are also involved in the rehabilitation process.<sup>639</sup>

The Commissioner for Children Tasmania identified some weaknesses of the model, including that the model operates for an indeterminate period, and that the data produced by the model and the model itself had not been evaluated.<sup>640</sup> However, the Commissioner still considered that the model could be adopted to Tasmania even in the absence of rigorous evaluation and that there were impressive rehabilitation outcomes.<sup>641</sup>

<sup>635</sup> Commissioner for Children Tasmania, *Alternatives to Secure Youth Detention in Tasmania* (2013)

<<http://www.childcomm.tas.gov.au/wp-content/uploads/2015/07/Alternatives-to-Secure-Youth-Detention-FINAL-2013.pdf>> [96].

<sup>636</sup> Richard Mendel, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders* (2010)

<<http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>> [6]; Commissioner for Children Tasmania, *Alternatives to Secure Youth Detention in Tasmania* (2013) <<http://www.childcomm.tas.gov.au/wp-content/uploads/2015/07/Alternatives-to-Secure-Youth-Detention-FINAL-2013.pdf>> [135].

<sup>637</sup> Richard Mendel, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders* (2010)

<<http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>> [7].

<sup>638</sup> Richard Mendel, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders* (2010)

<<http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>> [8].

<sup>639</sup> Richard Mendel, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders* (2010)

<<http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf>> [8].

<sup>640</sup> Commissioner for Children Tasmania, *Alternatives to Secure Youth Detention in Tasmania* (2013)

<<http://www.childcomm.tas.gov.au/wp-content/uploads/2015/07/Alternatives-to-Secure-Youth-Detention-FINAL-2013.pdf>> [139].

<sup>641</sup> Commissioner for Children Tasmania, *Alternatives to Secure Youth Detention in Tasmania* (2013)

<<http://www.childcomm.tas.gov.au/wp-content/uploads/2015/07/Alternatives-to-Secure-Youth-Detention-FINAL-2013.pdf>> [139].



## MULTISYSTEMIC THERAPY

Multisystemic therapy (MST) is designed to address multiple factors linked to juvenile and antisocial and illegal behaviours.<sup>642</sup> MST is appropriate for children with serious behavioural disorders, such as violent and chronic offenders who might otherwise be confined in detention.<sup>643</sup> A child who is on MST remains at home and receives treatment related to family, personal life and school.<sup>644</sup>

Austin, Johnson and Weitzer refer to studies showing that there is a 25–70% reduction in the number of re-arrests among children who do the MST program and that there are improvements in the mental health of these children.<sup>645</sup>

The Child and Adolescent Health Service, which is part of the Western Australian Department of Health, runs an MST program for children with behavioural problems. Unlike experience in the US,<sup>646</sup> it is unclear whether the program is run as part of the juvenile justice system or as an alternative to detention. It appears that the service is a mental health service based out of the Department of Health. The program is run in WA in order to address disorders which, if left untreated, could lead to juvenile offending.<sup>647</sup>

MST is available through NSW Juvenile Justice as an Intensive Supervision program.<sup>648</sup> The effectiveness of the Intensive Supervision Program on lowering recidivism has been questioned, although it has been noted that young people who complete the ISP spend significantly fewer days in custody during their treatment program.<sup>649</sup>

## JUVENILE DETENTION ALTERNATIVES INITIATIVE

The Juvenile Detention Alternatives Initiative (JDAI) is an approach to reducing the population of children in detention.<sup>650</sup> One part of the initiative is to create new or enhanced non-secure alternatives to detention, with a particular focus on housing

<sup>642</sup> James Austin, Kelly Dedel Johnson and Ronald Weitzer, *Juvenile Justice Bulletin: Alternatives to the Secure Detention and Confinement of Juvenile Offenders* (September 2005) United States Department of Justice, Office of Justice Programs <<https://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf>> [19].

<sup>643</sup> James Austin, Kelly Dedel Johnson and Ronald Weitzer, *Juvenile Justice Bulletin: Alternatives to the Secure Detention and Confinement of Juvenile Offenders* (September 2005) United States Department of Justice, Office of Justice Programs <<https://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf>> [19].

<sup>644</sup> James Austin, Kelly Dedel Johnson and Ronald Weitzer, *Juvenile Justice Bulletin: Alternatives to the Secure Detention and Confinement of Juvenile Offenders* (September 2005) United States Department of Justice, Office of Justice Programs <<https://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf>> [19].

<sup>645</sup> James Austin, Kelly Dedel Johnson and Ronald Weitzer, *Juvenile Justice Bulletin: Alternatives to the Secure Detention and Confinement of Juvenile Offenders* (September 2005) United States Department of Justice, Office of Justice Programs <<https://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf>> [19].

<sup>646</sup> James Austin, Kelly Dedel Johnson and Ronald Weitzer, *Juvenile Justice Bulletin: Alternatives to the Secure Detention and Confinement of Juvenile Offenders* (September 2005) United States Department of Justice, Office of Justice Programs <<https://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf>> [19–20].

<sup>647</sup> Specialised CAMHS, Child and Adolescent Health Service <<http://www.pmh.health.wa.gov.au/general/CAMHS/specialised.htm>>; Multi-Systemic Therapy (MST) program (2015) Australian Indigenous HealthInfoNet <<http://www.healthinfonet.ecu.edu.au/key-resources/programs-projects?pid=1165>>.

<sup>648</sup> His Honour Judge Mark Marien SC, 'Juvenile Justice and community-based sentencing for juveniles in New South Wales' (Paper presented at the China-Australia Human Rights Technical Cooperation Program, Shenzhen, China, May 2011) 12.

<sup>649</sup> Suzanne Poynton and Patricia Menéndez, 'The impact of the NSW Intensive Supervision Program on recidivism' (2015) 186 *Crime and Justice Bulletin* 1.

<sup>650</sup> Richard Mendel, *Juvenile Detention Alternatives Initiative Progress Report* (2014), The Annie E. Casey Foundation <<http://www.aecf.org/resources/2014-juvenile-detention-alternatives-initiative-progress-report>> [8].



those children in detention in neighbourhoods where the detention cases are concentrated.<sup>651</sup>

The JDAI lists three primary alternatives to detention which, it states, represent a continuum of detention:<sup>652</sup>

1. Home or community detention, with non-residential, non-facility supervision;
2. Day or evening reporting centres; and
3. Shelter or foster care.

The JDAI operates across 39 American States and the District of Columbia, and reports a reduction in the number of youth detained in the jurisdictions where it operates and a reduction in overall offending by 36%.<sup>653</sup>

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<sup>651</sup> Richard Mendel, *Juvenile Detention Alternatives Initiative Progress Report* (2014), The Annie E. Casey Foundation <<http://www.aecf.org/resources/2014-juvenile-detention-alternatives-initiative-progress-report>> [8].

<sup>652</sup> Paul DeMuro, *Pathways to Juvenile Detention Reform: Consider the Alternatives* (1999) The Anne E. Casey Foundation <<http://www.aecf.org/resources/consider-the-alternatives/>> [15].

<sup>653</sup> Commissioner for Children Tasmania, *Alternatives to Secure Youth Detention in Tasmania* (2013) <<http://www.childcomm.tas.gov.au/wp-content/uploads/2015/07/Alternatives-to-Secure-Youth-Detention-FINAL-2013.pdf>> [140], citing figures from the Anne E Casey Foundation, *Juvenile Detention Alternatives Initiative* 2012.



# CHAPTER 7 17-YEAR-OLDS – TRANSITION ISSUES

## LEGISLATIVE CHANGES IN QUEENSLAND

### DISCUSSION

The *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (the YJOLA Act) provides for the transition of 17-year-olds from prison to youth detention centres. The Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill was passed by Parliament on 3 November 2016 and received Royal Assent on 11 November 2016.

The YJOLA Act sets out transitional arrangements for young people aged 17 before commencement in different circumstances, as follows:

- those who have not yet been charged;<sup>654</sup>
- those 17-year-olds against whom proceedings were on foot at commencement;<sup>655</sup> and
- those 17-year-olds serving uncompleted sentences or community based orders at the date of commencement of the YJOLA Act.<sup>656</sup>

This section of the report is concerned with the latter of those three circumstances. In public briefings it was acknowledged that 'careful planning' would be required to manage the transitioning of this cohort.<sup>657</sup>

A number of submissions have been received which relate to 17-year-olds and broader matters pertaining to the overall constitution of detention centres. It is acknowledged that some fall outside of the terms of reference, but their inconsistency and the social and legal importance of the matters raised are considered issues worthy of further discussion in another forum.

The YJOLA Act creates a two-year period of regulation making power to 'direct the efficient and coordinated transfer of all 17-year olds (both sentenced and not yet sentenced) from the adult criminal justice system to the youth justice system'.<sup>658</sup> 17-year-olds will not begin transfer out of adult correctional centres until proclamation of the YJOLA Act.<sup>659</sup> It is

<sup>654</sup> Youth Justice Act 1992 (Qld) s 387, as inserted by Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016 (Qld), cl 5.

<sup>655</sup> Youth Justice Act 1992 (Qld) s 387, as inserted by Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016 (Qld), s 390.

<sup>656</sup> Youth Justice Act 1992 (Qld) s 387, as inserted by Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016 (Qld), s 389.

<sup>657</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 2 (Mark Lynch).

<sup>658</sup> Explanatory Memorandum, Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016 (Qld), page 2.

<sup>659</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 6 (Mark Lynch).



anticipated that will occur within 12 months of commencement of the YJOLA Act<sup>660</sup> and after consultation to address the increased demands of 17-year-olds in the youth justice system.<sup>661</sup>

The State in its submissions has advised as to the consultation and oversight process which includes the establishment of:

- a cabinet subcommittee, reported to by a whole-of-government panel to “champion cross-agency partnerships and ensuring...departments work cooperatively”<sup>662</sup>;
- a key agency group composed of directors-general from various departments to facilitate cross-agency work to meet on 12 December 2016;
- The Cabinet subcommittee will in turn be supported and advised by a stakeholder advisory group, which met on 29<sup>th</sup> November.<sup>663</sup>

#### SCOPE OF TRANSITIONAL ARRANGEMENTS

The content and scope of these transitional arrangements are currently unknown. It is anticipated that they will cover “operational arrangements and responsibilities necessary for effecting transfers from adult correctional facilities to youth detention centres”<sup>664</sup> and the “sensible and safe management of the transfer.”<sup>665</sup> In the public briefings, it was emphasised that the transition would be staged, including allowing for the transfer of cohorts at different times,<sup>666</sup> and overseen.<sup>667</sup> It was also emphasised that the transition process will take into account the individual needs of the 17-year-olds to be transferred, including any wrap around services already in place.<sup>668</sup>

The YJOLA Act also foreshadowed a framework within which there will be judicial oversight, information sharing between prisons and detention centres, and ongoing protective measures for 17-year-olds in prison during implementation.

#### JUDICIAL OVERSIGHT

Relevantly, the YJOLA Act gives power to a Court, upon application, to make orders or give directions considered necessary to facilitate the application of the YJOLA Act or another Act to 17-year-old transferees.<sup>669</sup>

<sup>660</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 6 (Mark Lynch).2.

<sup>661</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 6 (Mark Lynch).3.

<sup>662</sup> Submission from the State of Queensland, 5, edocs 3553990

<sup>663</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 6 (Mark Lynch)..

<sup>664</sup> Education, Tourism, Innovation and Small Business Committee, Parliament of Queensland, *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016*, 2016, 5; see also Explanatory Memoranda, *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016*, 6.

<sup>665</sup> Explanatory Memoranda, *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons Amendment Bill 2016*, 8.

<sup>666</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 6 (Phil Hall).

<sup>667</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016 (Mark Lynch);

Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016 (Phil Hall).

<sup>668</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016 (Phil Hall).

<sup>669</sup> *Youth Justice Act 1992* (Qld) s 389(4)(a), as inserted by *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016* (Qld), cl 5.



This oversight has been included to “ensure judicial oversight of the transition of 17-year-olds into the youth justice system, allowing the courts to provide guidance and to resolve issues.”<sup>670</sup> The scope is “deliberately broad” and may include when or how a 17-year-old is to be transported to a detention centre;<sup>671</sup> it may also include “discharging a sentence and replacing it with a youth justice sentence” in individual cases.<sup>672</sup> That discharging of sentence intervention is said not to be on the basis that the penalty would have been lower had the young person been sentenced as a child.<sup>673</sup> It is anticipated that this additional judicial discretion would be used when “the intention of the sentencing court will not be achieved following the transition of the 17-year-old to the youth justice system.”<sup>674</sup> Judicial discretion in this area is particularly welcome.

#### INFORMATION SHARING

The YJOLA Act also addresses information sharing<sup>675</sup> between prisons and youth detention centres to “assist in meeting the person’s needs, and the good management of the centre.”<sup>676</sup>

#### ONGOING PROTECTIVE MEASURES

In exceptional cases where a young person’s needs would be better managed within an adult corrective services facility<sup>677</sup> the *Youth Justice Act 1992* (Qld) (YJA) can be applied to a 17-year-old as if they were serving a period of detention in a youth detention centre.<sup>678</sup> Additionally, whilst the YJOLA Act repeals provisions under the *Corrective Services Act 2006* (Qld) (CSA) with regard to segregating 17-year-olds from the adult prison population, those measures are retained for 17-year-olds serving sentences and on remand after commencement.<sup>679</sup>

#### EXISTING POLICY

The YJA already allows for the transfer of young people in certain circumstances, including between youth detention centres, for capacity or disciplinary reasons. Existing policy<sup>680</sup> provides, relevantly:

##### *Principles*

- 1 *The young person must be afforded all possible contact with their legal representatives prior to the transfer.*
- 2 *Consultation about the transfer will occur with the young person, their parents or care providers, the youth justice service caseworker and other relevant stakeholders. This includes liaison with the Hospital and Health Service or*

<sup>670</sup> Explanatory Memoranda, Youth Justice and Other Legislation (Inclusion of 17-year-old Persons Amendment Bill 2016, 6.

<sup>671</sup> Explanatory Memoranda, Youth Justice and Other Legislation (Inclusion of 17-year-old Persons Amendment Bill 2016.

<sup>672</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 3 (Mark Lynch).

<sup>673</sup> Youth Justice Act 1992 (Qld) s 389(4) – (5) as inserted by Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016 (Qld), cl 5.

<sup>674</sup> Explanatory Memoranda, Youth Justice and Other Legislation (Inclusion of 17-year-old Persons Amendment Bill 2016 (Qld), 6.

<sup>675</sup> Youth Justice Act 1992 (Qld) s 391(2) as inserted by Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016 (Qld), cl 5.

<sup>676</sup> Explanatory Memoranda, Youth Justice and Other Legislation (Inclusion of 17-year-old Persons Amendment Bill 2016, 8.

<sup>677</sup> Explanatory Memoranda, Youth Justice and Other Legislation (Inclusion of 17-year-old Persons Amendment Bill 2016, 6.

<sup>678</sup> Youth Justice Act 1992 (Qld) s 389(3)(c)(ii) as inserted by Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016 (Qld), cl 5.

<sup>679</sup> Youth Justice Act 1992 (Qld) s 490L as inserted by Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016 (Qld), cl 5.

<sup>679</sup> Explanatory Memoranda, Youth Justice and Other Legislation (Inclusion of 17-year-old Persons Amendment Bill 2016, 6.

<sup>680</sup> YD-2-3 Youth Detention - Transfer of a young person policy, v1.1, date of operation 11 August 2014, p 2, edocs 3520717.



*interstate health authority for any continuing health treatment that the young person requires.*

3 *Discretionary transfers must be informed by an assessment of risk and suitability.*

4 *All case management documentation must be updated prior to enacting any transfer.*

5 ...

6 *For transfers between youth detention centres:*

6.1 ...

6.2 ...

6.3 *the young person will be provided with an opportunity to participate and have their views taken into account in planning processes to the fullest extent possible, having regard to age and ability to understand.*

6.4 *young people who have a court date within the following two weeks are not eligible to be transferred to another centre.*

## KEY FINDINGS – SUBMISSIONS TO THE REVIEW

The Youth Advocacy Centre (YAC) submission to the Review emphasised the following with respect to the needs of 17-year-olds facing transfer pursuant to the YJOLA Act:

- the need for certainty about where the young person is to be transferred;
- the need for transitions to occur gradually, for example where possible by 17-year-olds engaging in schooling or educational programs at detention centres whilst continuing to reside in prisons;
- the provision of orientation and access to caseworkers and support services, such as MHATODS, to be offered in the months leading up to the transfer, “so that a therapeutic relationship is established by the time of the transfer”; and
- that young people have any proposed transfer carefully explained to them along with any review or appeal rights and with access to legal advice and advocacy.<sup>681</sup>

YAC also noted that it had “long advocated for an effective interface between the youth detention and adult correction systems for those young people being transferred between the two systems so that security classifications can be determined prior to transfer.”<sup>682</sup>

YAC referred to potential issues around dislocation from home communities, as there are only two youth detention centres in Queensland. Queensland University of Technology (QUT) referred to the detrimental effects of segregating young people by detaining them away from families and community.<sup>683</sup> Youth Empowered Towards Independence (YETI) referred to the needs of ATSI young people and in particular that isolated and disconnected young people, “are most likely to form their own ‘family’ of peers on the street and in detention centres.”<sup>684</sup>

<sup>681</sup> Submission from the Youth Advocacy Centre to the Review, October 2016, p 5, edocs 3486157.

<sup>682</sup> Submission from the Youth Advocacy Centre to the Review, October 2016, p 5, edocs 3486157.

<sup>683</sup> Submission from Queensland University of Technology (QUT), 26 October 2016, p 4, edocs 3480801

<sup>684</sup> Submission from Youth Empowered Towards Independence (YETI), 2016, p 5, edocs 3498057.



**Recommendation 7.R1** – The Review recommends that the Principles set out 1 – 4, 6.3 and 6.4 of ‘Youth detention – Transfer of a young person policy’ should be applied to 17-year-olds transferring from prison to youth detention.

**Recommendation 7.R2** – The Review recommends that legal advice and support should be provided to individual 17-year-olds who are the subject of transfer orders.

**Recommendation 7.R3** – The Review recommends that the YJOLA Act regulations should include that 17-year-olds are able to review or appeal a transfer decision without undue delay.

**Recommendation 7.R4** – The Review recommends that information sharing between prisons and youth detention centres should include security classifications with supporting documentation, details of any existing support services and health needs of the 17-year-old to facilitate the re-implementation of these supports upon transfer.

**Recommendation 7.R5** – The Review recommends that ATSI organisations should play a key role in stakeholder consultation.

## IDENTIFIED ISSUES – CAPACITY OF DETENTION CENTRES TO ACCOMMODATE 17-YEAR-OLDS

### DISCUSSION

As at 21 September 2016 there were 55 detainees in the 17-year-old transfer cohort.<sup>685</sup> That number may now be closer to 50 according to statistical information released on 1 November 2016.<sup>686</sup>

According to a 2015 Department of Justice and Attorney General (DJAG) internal briefing, the Brisbane Youth Detention Centre (BYDC) has a 130-bed capacity and the Cleveland Youth Detention Centre (CYDC) has a 96-bed capacity with a combined optimal detention capacity of 192.<sup>687</sup> As at 20 September 2016 there were 52 young people in CYDC and 89 at BYDC.<sup>688</sup> Youth detention centre numbers fluctuate, therefore this report cannot reach a final conclusion as to the future capacity of either detention centre to accommodate 17-year-olds.

### THE 17-YEAR-OLD TRANSFER COHORT

As at September 2016 only 10 of the 55 individual 17-year-olds in adult prisons had been sentenced, with the remainder of those young people detained on remand.<sup>689</sup> Those young people on remand may transition out of prison during the next 12 months. With respect to the sentenced 17-year-olds, it was acknowledged in the public briefings that many would turn 18 or complete their sentence during the 12-month transition period of the Act.<sup>690</sup> Additionally, the effective implementation of remand reduction strategies explored below

<sup>685</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 8 (Mark Lynch).

<sup>686</sup> Custodial Offender Snapshot as at 1 November 2016.

<sup>687</sup> Department of Justice and Attorney-General, Briefing for Noting – Youth Infrastructure Plan, 4 March 2015, p 1, edocs 3458724.

<sup>688</sup> Department of Justice and Attorney-General, Strategic Plan for Youth Justice 2015 – 2018, p 57, edocs 3459316.

<sup>689</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 8 (Mark Lynch).

<sup>690</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016 (Mark Lynch)



and highlighted as a priority for Youth Justice<sup>691</sup> may further reduce the pool of potential 17-year-old transferees. We anticipate that the actual numbers of 17-year-old young people being transferred pursuant to the YJOLA Act is likely to be low.

### CAPACITY CONCERNS

Capacity of the detention centres has been highlighted as a concern in internal Youth Justice communications in recent years. The 2013–2023 Department of Justice and Attorney General draft *Youth Detention Demand Management Strategy* refers to both BYDC and CYDC as operating “almost permanently over accepted safe capacity” that being 85% of a detention centre’s built capacity.<sup>692</sup> In an internal briefing by Youth Justice in 2015 it was noted that even without the inclusion of the 17-year-old cohort, “there is a forecast need for an additional 20 beds by 2020 and for 50 beds every seven years after that.”<sup>693</sup>

That is a sobering statistical prediction.

It is clearly beyond the remit of this report to analyse the efficacy of the data underpinning that prediction. However, it could be inferred that there could not have been any significant consideration of the potential impact of the implementation of robust policies around alternatives to youth detention before concluding that more youth detention centre beds will be needed in the foreseeable future.

Elsewhere in this report the shortcomings of the interactions with the Child Protection system have been identified and discussed. The Review does not take issue with a number of submissions received<sup>694</sup> that it is a failure of Government that community care for young people subject to Child Protection Orders is in effect further criminalising vulnerable young people. To accept that the best response to this challenge is a greater bed-built capacity within youth detention centres is not addressing the underlying causation issues.

It may be that capacity issues have been addressed, with the Attorney-General stating in July 2016 that neither centre was operating at capacity.<sup>695</sup> However, that would be inconsistent with detention and remand data trends in recent years. The Children’s Court of Queensland 2014–2015 Annual Report recorded a 38% increase in the imposition of detention as a penalty between 2013–2014 and 2014–2015.<sup>696</sup> There was an average 10% increase in daily detention centre numbers in 2015–2016.<sup>697</sup> Remand numbers, considered in detail below, also continue to rise.<sup>698</sup> Additionally, 16-year-olds consistently comprise the largest group of offenders in youth detention,<sup>699</sup> and will necessarily impact on youth detention capacity in the future.

<sup>691</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 4, 5, 8 and 9 (Mark Lynch)

<sup>692</sup> Department of Justice and Attorney-General (DJAG), *Draft Youth Detention Centre Demand Management Strategy 2013-2023*, <<https://www.scribd.com/doc/240007412/Draft-Youth-Detention-Centre-Demand-Management-Strategy>> 8; Submission from Sisters Inside to the Review, October 2016, pp 3, 5, edocs 3491213.

<sup>693</sup> Department of Justice and Attorney-General, Briefing for Noting – Youth Infrastructure Plan, 4 March 2015, p 2, edocs 3458724.

<sup>694</sup> For example, submission from Sisters Inside to the Review, October 2016, edocs 3491213.

<sup>695</sup> Tony Moore, ‘Queensland will ‘co-operate fully’ with youth detention Royal Commission if asked: A-G’ Tony Moore, *Brisbane Times*, 26 July 2016 <<http://www.brisbanetimes.com.au/queensland/ag-says-youth-detention-royal-commission-not-needed-in-queensland-20160726-gqeb6n.html>>; Submission from Amnesty International to the Review, 26 October 2016, p 14, edocs 3486176.

<sup>696</sup> Shanahan, M. *Children’s Court of Queensland Annual Report 2014-2015*, p 20, edocs 3520735.

<sup>697</sup> Department of Justice and Attorney-General, *Strategic Plan for Youth Justice 2015 – 2018*, p 9, edocs 3459316.

<sup>698</sup> Shanahan, M. *Children’s Court Annual Report 2014-2015*, p 4, edocs 3520735.

<sup>699</sup> Department of Justice and Attorney General, Youth Justice, Daily Number of Young Offenders In Youth Detention By Age, 2010-11 To 2014-15 <<https://data.qld.gov.au/Dataset/Youth-Justice-Young-Offenders-In-Youth-Detention>>



Responding to the issue of youth detention centre capacity requires a long-term view of the issue beyond the transfer of those 17-year-olds who may be expected to be transferred during the next 12 months. Youth Justice within DJAG (YJ) concludes, "with forecast numbers above current built capacity, no land for development and a significantly changed profile of children, the youth detention model needs attention."<sup>700</sup>

#### COST

*Central to this bill and one of the reasons it is such a transformational initiative really is that it does envisage a change to the way in which youth justice operates, and that is why it needs to be a multiagency approach. The aim is to not have to build, not have to immediately go to a \$400 million build because you are doing things like the remand reduction strategies.*

Mark Lynch, Director Youth Justice Policy, Research and Partnerships<sup>701</sup>

It is not within the scope of this report to address the costs of incorporating 17-year-olds within youth detention centres, including by way of building any new facilities. However, the approach by DJAG to the remand issue as a long term cost preventative strategy avoiding capacity issues around housing 17-year-old detainees now and in the future is sensible.<sup>702</sup> Such an approach should also address those 16-year-olds who will age into this youth detention centre population in the coming year.

#### KEY FINDINGS – REVIEW SUBMISSIONS

Sisters Inside referred to the "exploding" youth detention prison population and that both the Brisbane and Cleveland Youth Detention Centres "now operate almost permanently over accepted safe capacity levels."<sup>703</sup> Relevantly, Sisters Inside recommended:

- providing all 17-year-olds on remand with the opportunity and legal support to apply for bail;
- funding bail support programs and services and making them available to 17-year-olds;
- supporting young people transitioning from State care at 18 years old in relation to the disproportionate representation of these young people in the adult criminal justice system.<sup>704</sup>

Sisters Inside and Youth Affairs Network of Queensland (YANQ) both explicitly rejected the need to build new detention facilities as a way of addressing projected capacity issues.<sup>705</sup>

Together Queensland, the union of workers including youth workers, administrative staff and other support staff in detention centres, recommended that ratios of staff to young people be updated and the creation of an emergency response team.<sup>706</sup> They recommended the need

<sup>700</sup> Department of Justice and Attorney-General, *Briefing for Noting – Youth Infrastructure Plan*, 4 March 2015, p 1, edocs 3458724.

<sup>701</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 2 (Mark Lynch).

<sup>702</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 3, 4, 5, 8, 9 (Mark Lynch).

<sup>703</sup> Submission from Sisters Inside to the Review, October 2016, pp 3, 5, edocs 3491213.

<sup>704</sup> Submission from Sisters Inside to the Review, October 2016, p 10, edocs 3491213.

<sup>705</sup> Submission from Sisters Inside to the Review, October 2016, p 10, edocs 3491213; Submission from Youth Affairs Network Queensland (YANQ) to the Review, 26 October 2013, pp 3-4, edocs 3485334.

<sup>706</sup> Submission from Together Union to the Review, 26 October 2016, p 1, edocs 3486149.



for additional front line staff on each shift to respond to “the expected increase in incidents and codes.”<sup>707</sup>

## IDENTIFIED ISSUES – CAPACITY OF YOUTH JUSTICE TO SUPERVISE 17-YEAR-OLDS

### DISCUSSION

During the public briefings it was estimated that the numbers of young people transitioning to YJ could be in the vicinity of 209, and that every 10 these would require a caseworker and administrative support.<sup>708</sup>

The 2016 Youth Justice Census figures confirmed that 16-year-olds represent the largest cohort among young people on detention and subject to other YJ supervisory orders.<sup>709</sup> Accordingly, whilst some 17-year-olds may complete their sentences over the next 12 months, consideration will need to be given to the large cohort of 16-year-olds that will now be included in future YJ operations.

The Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016 Explanatory Notes (‘the Explanatory Notes’) acknowledge that there will be a significant financial strain on the YJ system.<sup>710</sup> Despite this, during the public briefings, it was suggested that there is no expectation that YJ should meet the needs of young people alone.<sup>711</sup> It was anticipated that while YJ would administer YJ orders, government agencies (such as Department of Communities (Child Safety) and Queensland Police) would move to address “reducing offending, reoffending and remands in custody.”<sup>712</sup> This is consistent with the 2015–2018 Youth Justice strategic plan which emphasises partnerships with Health, Education, Child Safety, Disability Services, Housing, Police and the non-government sector organisations as important in identifying pro-social opportunities and to assist young people transitioning from youth justice.<sup>713</sup>

As highlighted in the Queensland Network of Alcohol and Other Drug Agencies (QNADA) submission,<sup>714</sup> recent experience in Tasmania may provide a model for collaboration between YJ community-based services in Queensland. Following a 2013 *Commissioner for Children Tasmania* report<sup>715</sup> justice reinvestment strategies were recommended to divert funding from prisons to community-based alternatives.

### TASMANIA’S IMPLEMENTATION OF JUSTICE REINVESTMENT

*Justice reinvestment is about shifting spending away from detention towards prevention; specifically, programs that identify and support young people who are in need or at-risk of offending. It involves the reallocation of money currently spent*

<sup>707</sup> Submission from Together Union to the Review, 26 October 2016, p 4, edocs 3486149.

<sup>708</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 5 (Mark Lynch).

<sup>709</sup> Department of Justice and Attorney-General, Strategic Plan for Youth Justice 2015 – 2018, p 13, edocs 3459316.

<sup>710</sup> Explanatory Memoranda, *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons Amendment Bill 2016)*, 2.

<sup>711</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 3 (Mark Lynch).

<sup>712</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 4 (Mark Lynch).

<sup>713</sup> Affidavit of Individual YJ 47 sworn 21 October 2016, exhibit Individual YJ 47-2, *Strategic Plan for Youth Justice 2015 – 2018*, p 30, edocs 3478182.

<sup>714</sup> Submission from Queensland Network of Alcohol and Other Drug Agencies Ltd (QNADA), 26 October 2016, p 6, edocs 3485340.

<sup>715</sup> Commissioner for Children Tasmania, *Alternatives to Secure Youth Detention in Tasmania*, 26 July 2013, <http://www.childcomm.tas.gov.au/publications/alternatives-to-secure-youth-detention-in-tasmania-report/>



*on detention to community-based projects targeted at the causes of criminal behaviour in young people.*

Queensland University of Technology (QUT)<sup>716</sup>

Two *Save the Children* programs were funded to address service gaps around supporting young people at Court and in the community in relation to bail and transitioning from detention.<sup>717</sup> A *Save the Children* report in the wake of the *Commissioner for Children* report showed a measurable social return on the investment.<sup>718</sup> Through the adoption of a similar model in Queensland, existing services that are identified to meet service gaps for YJ could be funded to both reduce the service demands on YJ and improve outcomes for young people.

## KEY FINDINGS - SUBMISSIONS

The QNADA submission<sup>719</sup> referred to the Tasmanian justice reinvestment program, concluding:

*In 2013 the Commissioner for Children Tasmania released a report on the inquiry into Alternatives to Secure Youth Detention in Tasmania. The report recommended justice reinvestment (i.e. redirecting funds allocated to incarceration to community-based alternatives) and stated:*

*'the cost effectiveness of custodial detention is further undermined by extensive research showing that not only does it not work to address the causes of offending, but it also tends to exacerbate factors that contribute to a young person's offending and has adverse impacts on their education, employment and other outcomes.'*

*Tasmania now invests in a range of community youth justice programs where young people may be either supervised by NGOs or Youth Justice staff. As of 2015, their social return on this investment is estimated at \$3.50 for every dollar invested in community based programs though a reduced number of young people in detention and improved management of young people under community based supervision.*

Justice reinvestment was also recommended by QUT<sup>720</sup>, Change the Record,<sup>721</sup> Mission Australia<sup>722</sup> Amnesty International<sup>723</sup> and Australian Lawyers for Human Rights (ALHR).<sup>724</sup> Just Reinvest NSW also provided a submission to the Review, referring to the success of the first major justice reinvestment trial in Australia<sup>725</sup> and defining the aim of Justice Reinvestment as to "redirect funding from the corrections system to the community to fund programs and services to support people in the community to reduce offending behaviours and build community capacity."<sup>726</sup>

<sup>716</sup> Submission from Queensland University of Technology (QUT), 26 October 2016, p 10, edocs 3480801.

<sup>717</sup> Save the Children Australia, Social Return on Investment of Tasmanian youth justice programs, June 2015, p 4, edocs 3520734.

<sup>718</sup> Save the Children Australia, Social Return on Investment of Tasmanian youth justice programs, June 2015, p 4, edocs 3520734.

<sup>719</sup> Submission from Queensland Network of Alcohol and Other Drug Agencies Ltd (QNADA), 26 October 2016, p 6, edocs 3485340.

<sup>720</sup> Submission from Queensland University of Technology (QUT), 26 October 2016, p 10, edocs 3480801.

<sup>721</sup> Submission from Change the Record to the Review, 4 November 2016, p 10, edocs 3498683.

<sup>722</sup> Submission from Mission Australia to the Review, October 2016, p 11, edocs 3491235.

<sup>723</sup> Submission from Amnesty International to the Review, 26 October 2016, p 3, edocs 3486176.

<sup>724</sup> Submission from Australian Lawyers for Human Rights to the Review, 31 October 2016, p 14, edocs 3491131.

<sup>725</sup> Submission from Justice Reinvest NSW to the Review, 3 November 2016, p 1, edocs 3496697.

<sup>726</sup> Submission from Justice Reinvest NSW to the Review, 3 November 2016, p 3, edocs 3496697.



A number of other submissions received by the Review emphasised the idea of funding community-based services generally to address the needs of young offenders as follows:

- Sisters Inside suggested the funding of independent, community based initiatives to 10–14 year olds;<sup>727</sup>
- Mission Australia suggested that services that supported young people in detention should also transition to post-release support “rather than attempting to build a new service relationship with the young person.”<sup>728</sup> A model pre-release support model was proposed, commencing 8–12 weeks prior to release, and following for two years;<sup>729</sup>
- Yourtown supported the need for integrated services “from the point where they arrive in detention, while they are incarcerated, on release and during the process of transition back into the community;”<sup>730</sup>
- QUT referred to the lack of rural and remote youth justice service centres providing transition support, referring to a Canadian model of constructing localised service centres in remote communities as a solution;<sup>731</sup>
- Change the Record recommended investment in Aboriginal and Torres Strait Islander community-led “prevention, early intervention and diversion programs”.<sup>732</sup>

## KEY FINDINGS – DEPARTMENTAL STATEMENTS

### YOUTH JUSTICE, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL

*I believe that a significant problem for young persons in detention is not so much that there may be programs available in the community that are not available in detention, but the opposite – that while there is a range of programs available to them while they are in detention, there are insufficient programs available to support and assist them once they are released from detention.*<sup>733</sup>

Information received from Youth Justice echoed many of the submissions received by the Review. Individual YJ-47 stated that strengthening of community based programming was important, given “sporadic and short” stays in detention, and that clinical responses for mental health and substance abuse were “best served in a community setting rather than a place of detention.”<sup>734</sup> In particular, it was submitted that “trauma and mental health issues cannot be entirely dealt with in a detention centre environment. Constant clinical care is needed and if it were available it may result in much better clinical outcomes.”<sup>735</sup>

<sup>727</sup> Submission from Sisters Inside to the Review, October 2016, p 13, edocs 3491213.

<sup>728</sup> Submission from Mission Australia to the Review, October 2016, p 4, edocs 3491235.

<sup>729</sup> Submission from Mission Australia to the Review, October 2016, p 7, edocs 3491235.

<sup>730</sup> Submission from Yourtown to the Review, 26 October 2016, p 2, edocs 3486171.

<sup>731</sup> Submission from Queensland University of Technology (QUT), 26 October 2016, pp 9-10, edocs 3480801.

<sup>732</sup> Submission from Change the Record to the Review, 4 November 2016, p 3, edocs 3498683.

<sup>733</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, para 70, edocs 3439519.

<sup>734</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, paras 72, 73, edocs 3439519.

<sup>735</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, para 145, edocs 3439519.



A 2016 Youth Justice service delivery report annexed to an affidavit acknowledged that Youth Justice were not always aware of the extent of community based services and that education and information sharing would assist Youth Justice to better support young clients.<sup>736</sup> The report identified a number of service gaps in the community sector, including:

- non-state Special Assistance schools; education, vocational training and work readiness programs and education re-engagement programs;
- rehabilitation programs which were currently “not effective north of the state” and which young people currently “exit too easily due to difficulties complying with the conditions of service”; and
- accommodation options for young people exiting detention, for those under 16 and those who cannot be co-located in shared accommodation due to offending behaviour.<sup>737</sup>

**Recommendation 7.R6** – The Review recommends that YJ should be provided with adequate funding and staffing levels to respond to the needs of 17-year-olds to be transferred in the next 12 months and 16-year-olds who form part of the future client cohort.

**Recommendation 7.R7** – The Review recommends that consideration should be given to the implementation of justice reinvestment collaborations between existing community-based services and YJ.

**Recommendation 7.R8** – The Review recommends that appropriate consideration should be given to investment in community-based wrap around services to support and co-ordinate with YJ. This is consistent with YJ objective to work, “in partnership with the community and other service providers to address the causes of the young person’s offending”<sup>738</sup> and was recommended in a number of submissions.

**Recommendation 7.R9** – The Review recommends that the Tasmanian experience highlighted in the QNADA submission should be examined closely with a view to incorporating practices and concepts of social justice return in the YJ funding framework. In particular, in relation to reintegration support for young people exiting youth detention.

## IDENTIFIED ISSUES – REDUCING HIGH RATES OF REMAND AMONG EXISTING DETENTION CENTRE POPULATIONS

### DISCUSSION

In 2014–15 78% of young people in youth detention were on remand. Of these ATSI young people were 26 times more likely to be remanded in custody and they spent an average of 42

<sup>736</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-11, *Youth Justice Supply Analysis: Report Summary*, p 351, edocs 3439519.

<sup>737</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-11, *Youth Justice Supply Analysis: Report Summary*, p 350, edocs 3439519.

<sup>738</sup> Department of Justice and Attorney-General, *Strategic Plan for Youth Justice 2015 – 2018*, p 5, edocs 3459316.



days on remand compared to 35 days for non-ATSI young people.<sup>739</sup> As aptly summarised in the 2014–2015 Children’s Court of Queensland Annual report:

*The average daily number of young people in youth detention on remand increased to 135 per day compared with 130 per day in the previous year. The majority of young people in youth detention are held on remand with the percentage increasing from 67% to 80% between 2010–11 and 2014–15. This is a major concern. In 36% of all detention orders made, the offender had served the full period at the date of sentence with no period of supervised release in the community.*<sup>740</sup>

YJ has acknowledged remand as a key reform area relevant to the introduction of 17-year-olds to the YJ system. In the Explanatory Notes the need to investigate remand reduction strategies was highlighted as necessary to avoid substantial costs of implementing the YJOLA Act.<sup>741</sup> During the public briefings reducing high levels of remand was highlighted as one of two key strategies for facilitating the transition of 17-year-olds into the youth detention system.<sup>742</sup> It was also specifically recommended that remand reduction strategies should be considered for the 10–13-year-old population.<sup>743</sup> Remand was also highlighted in the draft 2013–2023 Youth Detention Demand Management Strategy as a “significant contributor to detention demand.”<sup>744</sup>

#### 2013 NATIONAL RESEARCH PROJECT ON REMAND

A national research project, “*Bail and remand for young people in Australia*”, published in 2013,<sup>745</sup> made a number of relevant findings as follows:

- young people with complex needs are frequently excluded from services and programs. Lack of access to community-based services increases the likelihood of receiving custodial remand;<sup>746</sup>
- young people with complex needs are sometimes placed on custodial remand to solve their welfare needs or because services and programs exist in custody that are not available in the community;<sup>747</sup>
- young people in out of home care have an increased risk of being held on remand, both where child protection agencies fail to provide accommodation and due to children under the care of child protection being excluded from bail accommodation services.<sup>748</sup>

<sup>739</sup> Department of Justice and Attorney-General, *Strategic Plan for Youth Justice 2015 – 2018*, p 9, edocs 3459316.

<sup>740</sup> Shanahan, M. *Childrens Court Annual Report 2014-2015*, p 4, edocs 3520735.

<sup>741</sup> Explanatory Memoranda, *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons Amendment Bill 2016*, 2.

<sup>742</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 4 (Mark Lynch).

<sup>743</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016 (Mark Lynch)

<sup>744</sup> Department of Justice and Attorney-General (DJAG), *Draft Youth Detention Centre Demand Management Strategy 2013-2023*, <<https://www.scribd.com/doc/240007412/Draft-Youth-Detention-Centre-Demand-Management-Strategy>>

<sup>745</sup> Richards, Kelly et al, ‘*Bail and remand for young people in Australia: A national research project*’, (2013) 125 *Research and Public Policy series*, Australian Institute of Criminology.

<sup>746</sup> Richards, Kelly et al, ‘*Bail and remand for young people in Australia: A national research project*’, (2013) 125 *Research and Public Policy series*, Australian Institute of Criminology 99.

<sup>747</sup> Richards, Kelly et al, ‘*Bail and remand for young people in Australia: A national research project*’, (2013) 125 *Research and Public Policy series*, Australian Institute of Criminology 99.

<sup>748</sup> Richards, Kelly et al, ‘*Bail and remand for young people in Australia: A national research project*’, (2013) 125 *Research and Public Policy series*, Australian Institute of Criminology 99.



Relevant recommendations of the project included as follows:

- Consideration needs to be given to strategies beyond legislative change, including “better service provision, crime prevention measures, changes to policy and practice and training of relevant professionals”;<sup>749</sup>
- Increasing access to “age-appropriate accommodation, secure mental health, alcohol and other drug rehabilitation residential facilities”;<sup>750</sup>
- Evaluating bail programs regarding their “success in meeting the accommodation and supervisory needs of young people”, including access to bail support in regional areas;<sup>751</sup>
- Enhancing diversionary measures and reducing the use of arrest in response measures for young people who breach bail.<sup>752</sup>

## KEY FINDINGS – REVIEW SUBMISSIONS

*... [R]esearch from the Australian Institute of Health and Welfare has shown that children who are placed in detention are three times more likely to end up back in detention within 12 months than those who get a community-based sentence. Periods of detention represent missed opportunities to intervene in juveniles' lives with constructive programs.*

Australian Lawyers for Human Rights<sup>753</sup>

Many of the submissions received by the Review referred to reform of the remand system as a key issue for consideration. Sisters Inside referred to the bail system as “broken” with growing numbers of detainees on remand.<sup>754</sup> Australian Lawyers for Human Rights (ALHR) cited research that concludes that detention does not reduce crime rates among young offenders before concluding that remand actually increases the chance of recidivism.<sup>755</sup> YANQ supported the need to address the issue of young people on remand.<sup>756</sup>

*Data collected by Brisbane Youth Education and Training Centre in 2015 indicated that 54% of young people detained in Brisbane Youth Detention Centre were there for 14 days or less, with 55% only being admitted once.*

Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd<sup>757</sup>

The Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS) highlighted the issue of young people being on remand as not having access to programs until sentencing, and short custodial sentences as providing insufficient time for meaningful engagement in available programs.<sup>758</sup> Children’s Health Queensland (CHQ) cited issues around clinicians

<sup>749</sup> Richards, Kelly et al, ‘Bail and remand for young people in Australia: A national research project’, (2013) 125 Research and Public Policy series, Australian Institute of Criminology 105.

<sup>750</sup> Richards, Kelly et al, ‘Bail and remand for young people in Australia: A national research project’, (2013) 125 Research and Public Policy series, Australian Institute of Criminology 105.

<sup>751</sup> Richards, Kelly et al, ‘Bail and remand for young people in Australia: A national research project’, (2013) 125 Research and Public Policy series, Australian Institute of Criminology 105.

<sup>752</sup> Richards, Kelly et al, ‘Bail and remand for young people in Australia: A national research project’, (2013) 125 Research and Public Policy series, Australian Institute of Criminology 106.

<sup>753</sup> Submission from Australian Lawyers for Human Rights to the Review, 31 October 2016, p 9, edocs 3491131.

<sup>754</sup> Submission from Sisters Inside to the Review, October 2016, p 4, edocs 3491213.

<sup>755</sup> Submission from Australian Lawyers for Human Rights to the Review, 31 October 2016, p 9, edocs 3491131.

<sup>756</sup> Submission from Youth Affairs Network Queensland (YANQ) to the Review, 26 October 2013, p 3, edocs 3485334.

<sup>757</sup> Submission from Aboriginal and Torres Strait Islander Legal Service (ATSILS) to the Review, 26 October 2016, p 8, edocs 3485327.

<sup>758</sup> Submission from Aboriginal and Torres Strait Islander Legal Service (ATSILS) to the Review, 26 October 2016, p 5, edocs 3485327.



providing limited support to children on remand, due both to the potential risk that evidence could be contaminated and the short length of their stay.<sup>759</sup>

The submissions highlighted a range of possible solutions:

- Sisters Inside called for:
  - the removal of all children on remand from child prisons by the end of 2016;<sup>760</sup>
  - giving 17-year-olds on remand legal support to draft a bail application;<sup>761</sup> and
  - funding bail support services for 17-year-olds;<sup>762</sup>
  - more housing opportunities, ending the 'care-to-prison pipeline';<sup>763</sup> and
  - highlighted protective strategies identified by clients including greater financial support, family connections, accessing support, staying away from peers, work and study.<sup>764</sup>
- Change the Record suggested legislating a presumption in favour of bail, and that "bail take into account social and cultural factors that can be reasonably met by Aboriginal and Torres Strait Islander peoples";<sup>765</sup>
- ATSILS recommended that Prisoner ThroughCare assistance should be extended to young people on short term stays to "aid social and emotional wellbeing, address transitional issues and possibly help reduce recidivism."<sup>766</sup>
- Mission Australia cited the need for:
  - bail support programs;
  - consideration of the ways in which homelessness gives rise to contact with the criminal justice system;<sup>767</sup>
  - support services for young people, "as potentially contributing towards the high number of young people on custodial remand";<sup>768</sup> and
  - consideration of the high proportion of homelessness among Aboriginal and Torres Strait Islander people.<sup>769</sup>
- Together recommended the implementation of a transitional housing program trialled in Gatton. The program, staffed by Youth Workers from the detention centre who had established relationships with young people, facilitated consistency during the transition from detention. Together concluded that the pilot "demonstrated its effectiveness in significantly

<sup>759</sup> Submission from Child Health Queensland (CHQ) to the Review, 26 October 2016, p 1, edocs 3485344.

<sup>760</sup> Submission from Sisters Inside to the Review, October 2016, pp 13 – 14, edocs 3491213.

<sup>761</sup> Submission from Sisters Inside to the Review, October 2016, p 22, edocs 3491213.

<sup>762</sup> Submission from Sisters Inside to the Review, October 2016, p 22, edocs 3491213.

<sup>763</sup> Submission from Sisters Inside to the Review, October 2016, pp 13 – 14, edocs 3491213.

<sup>764</sup> Submission from Sisters Inside to the Review, October 2016, p 21, edocs 3491213.

<sup>765</sup> Submission from Change the Record to the Review, 4 November 2016, pp 2 -3, edocs 3498683.

<sup>766</sup> Submission from Aboriginal and Torres Strait Islander Legal Service (ATSILS) to the Review, 26 October 2016, pp 7-8, edocs 3485327.

<sup>767</sup> Submission from Mission Australia to the Review, October 2016, p 6, edocs 3491235.

<sup>768</sup> Submission from Mission Australia to the Review, October 2016, p 6, edocs 3491235.

<sup>769</sup> Submission from Mission Australia to the Review, October 2016, p 8, edocs 3491235.



reducing reoffending rates, for successful reintroduction of young people back into the community.”<sup>770</sup>

- QUT recommended holding young people on remand in separate facilities to those serving a sentence to avoid the risk of “iatrogenic criminal influences.”<sup>771</sup>
- ATSILS recommended that programs be available for young people in detention for less than six months.<sup>772</sup>

## KEY FINDINGS – DEPARTMENTAL STATEMENTS

### BRISBANE CORRECTIONAL CENTRE

Individual QCS 1 acknowledged that most 17-year-olds held at BCC were on remand and not eligible to enrol in programs to target offending behaviour as these can only be delivered post-conviction.<sup>773</sup>

## IDENTIFIED ISSUES – ACCOMMODATING 17-YEAR-OLDS WITH YOUNGER CHILDREN IN DETENTION CENTRES

## DISCUSSION

During the public briefings it was acknowledged that there are already 17-year-olds in detention centres with younger detainees<sup>774</sup> and that operational processes were in place to ensure that younger offenders were not routinely mixed with 17-year-olds.<sup>775</sup> It is notable that in most states in Australia it is not uncommon for young people aged 18 and over to be housed in youth detention centres.<sup>776</sup> In Victoria and New South Wales, for example, young offenders up to 21 years of age remain in juvenile detention centres.<sup>777</sup>

### RISK MANAGEMENT AND MIXING

Risk management and mixing strategies are contained in existing youth detention centre policy. Relevantly, appropriate contact is defined as being “age appropriate” and specific measures aimed at managing male and female young people in detention centres, which is transferable to the separation of older and younger detainees.<sup>778</sup>

Strategies include young people being allocated single bedroom accommodation, housing males and females separately, allowing co-mingling only in recreation, education and visiting areas under vigilant supervision and imposing consequences for inappropriate physical

<sup>770</sup> Submission from Together Union to the Review, 26 October 2016, pp 5-6, edocs 3486149.

<sup>771</sup> Submission from Queensland University of Technology (QUT), 26 October 2016, pp 4-5, edocs 3480801.

<sup>772</sup> Submission from Queensland University of Technology (QUT), 26 October 2016, p 8, edocs 3480801.

<sup>773</sup> Affidavit of Individual QCS 1 sworn 28 September 2016, p 7, edocs 3437664.

<sup>774</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 4 (Mark Lynch)

<sup>775</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016 (Mark Lynch)

<sup>776</sup> Atkinson, Lyn, ‘Juvenile corrective institutions’ in (1997) in Borowski, Alan and O’Connor, Ian (eds), *Juvenile Crime, Justice and Corrections*, (Addison Wesley Longman, 1997) 408–9.

<sup>777</sup> Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, Report 84, 1997, 20.104.

<sup>778</sup> YD-1-12 Youth Detention – Physical contact between young people policy, v1.0, date of operation 1 November 2013, pp 2-3, edocs 3520719.



contact.<sup>779</sup> There is no reason to suggest that existing policy and procedure would not also address concerns surrounding transitioning 17-year-olds into the system.

#### OFFENCE TYPES

It is likely that the types of offending committed by 17-year-olds is consistent with the offending committed by the younger prison population, although locating conclusive statistical information on this was elusive.

Generally speaking, the principal offence types for 10–19-year-olds between 2009 and 2014 were illicit drugs, theft and public order offences.<sup>780</sup> The Queensland Government Statistician noted that, “...there was minimal change in the distribution of the principal offence types across the offender population in Queensland between 2009–10 and 2013–14.”<sup>781</sup> In his submission to the Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill, Associate Professor Terry Hutchinson from QUT made reference to the following excerpt from a *Commission for Children and Young People and Child Guardian* (CCYPCG) report from 2010:

*Young people in adult prisons are predominantly incarcerated for breaking and entering, robbery or assault-related offences. The Queensland Police Service Statistical Reviews indicate that the majority of offences committed by 17 year olds between 2006 to 2009 were ‘other’ offences, which include, traffic-related, drug, weapons, trespassing or liquor offences.*<sup>782</sup>

Accordingly, it would seem most likely that 17-year-olds transferring into youth detention have similar offending patterns to existing detention centre populations.

#### INFLUENCE

With respect to concerns about negative influences on younger prison populations, it is arguable that concentrated offending behaviour is actually more prevalent among younger offenders. Data from 2013–2014 indicates that 36.6% of 10–14-year-olds were repeat offenders, despite making up only 4.2% of the offending population in that period.

Further, a period of imprisonment imposed on a 17-year-old should be perceived as having the same rehabilitation purposes as one imposed on a younger child. Viewing older detainees as “hardened criminals” fails to take into account common law and sentencing principles that apply to all detainees. 17-year-olds, like all children in detention, must be dealt with in a restorative way. Youth detention centre philosophy should affirm the belief that all young people in detention have the capacity to change their offending behaviour.

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#### KEY FINDINGS – REVIEW SUBMISSIONS

*One of the main concerns of the Government in transitioning 17-year-olds to youth detention is the safety of younger children in those facilities. Amnesty International notes that Queensland is the only Australian jurisdiction who places 17-year-olds*

<sup>779</sup> YD-1-12 Youth Detention – Physical contact between young people policy, v1.0, date of operation 1 November 2013, p 3, edocs 3520719.

<sup>780</sup> YD-1-12 Youth Detention – Physical contact between young people policy, v1.0, date of operation 1 November 2013, p 3, edocs 3520719.

<sup>781</sup> Queensland Governments Statistician’s Office, Recorded crime – offenders, Queensland, 2013–14, <<http://www.qgso.qld.gov.au/products/reports/recorded-crime-offenders/recorded-crime-offenders-2013-14.pdf>> 2.

<sup>782</sup> Terry Hutchinson, Submission to the Education, Tourism, Innovation and Small Business Committee, 4 October 2016, p 12, edocs 3520736.



*into adult correctional facilities, and that all other States and Territories are able to manage different age groups of children in detention. Professor Kerry Carrington, in her recent submission, argues that the trend data for serious offenders in Queensland youth detention shows that "...they are very few in number [and] most of them in the current system are aged 15 or 16 anyway." She notes that, "[a]dding 17 year olds presents no further risk in this sense." She concludes that, "...the evidence from all other jurisdictions attests that having 17 year olds in detention with younger detainees is not an insurmountable issue.*

Amnesty International<sup>783</sup>

Both QUT<sup>784</sup> and Protect All Children Today (PACT)<sup>785</sup> suggested that segregating prisoners effectively, including by separating older detainees, was necessary to protect the personal safety of all detainees (PACT) and in order to minimise the risks to more vulnerable detainees (QUT). ALHR recommended purpose built age-appropriate facilities,<sup>786</sup> designed to avoid overcrowding.<sup>787</sup>

Whilst supporting inclusion of 17-year-olds under the youth justice system, Together viewed the integration of 17-year-olds as posing "a significant risk to the safety and wellbeing of...young people in Queensland youth detention centres."<sup>788</sup> Together also recommended that 17-year-olds should be housed in a separate facility to the current population or not be allowed to mix with the younger detainees.<sup>789</sup> Alternatively, Together concluded that the "risks could be avoided altogether if the transition is managed by attrition, diverting new 17-year-old offenders to the Youth Justice system rather than prison, and continuing to appropriately support 17-year-old offenders who are currently in the adult correctional system to the age of 18."<sup>790</sup>

## IDENTIFIED ISSUES – THE APPROPRIATENESS OF CURRENT DETENTION CENTRE POLICIES, PROGRAMMING AND SERVICES FOR 17-YEAR-OLDS

### DISCUSSION

As detention centres are already accommodating 17-year-olds they are experienced in applying relevant policy to this age cohort. The YD-1-12, Physical contact between young people policy,<sup>791</sup> is one notable example. Recognition that 17-year-olds are children at law with respect to the application of all youth detention centre policies must be recognised by all detention centre staff.

Detention centre programming, with its focus on youthful offending, is likely to be far more effective for 17-year-olds. Examples of programs provided in BYDC include:

- a range of cultural programs including cultural visits, NAIDOC events in July, music and art programs;

<sup>783</sup> Submission from Amnesty International to the Review, 26 October 2016, p 13, edocs 3486176.

<sup>784</sup> Submission from Queensland University of Technology (QUT), 26 October 2016, p 11, edocs 3480801.

<sup>785</sup> Submission from Protect All Children Today (PACT) to the Review, 20 October 2016, p 2, edocs 3492230.

<sup>786</sup> Submission from Australian Lawyers for Human Rights to the Review, 31 October 2016, p 7, edocs 3491131.

<sup>787</sup> Submission from Australian Lawyers for Human Rights to the Review, 31 October 2016, p 7, edocs 3491131.

<sup>788</sup> Submission from Together Union to the Review, 26 October 2016, p 3, edocs 3486149.

<sup>789</sup> Submission from Together Union to the Review, 26 October 2016, p 4, edocs 3486149.

<sup>790</sup> Submission from Together Union to the Review, 26 October 2016, p 4, edocs 3486149.

<sup>791</sup> YD-1-12 Youth Detention – Physical contact between young people policy, v1.0, date of operation 1 November 2013, pp 2-3, edocs 3520719.



- school holiday and weekend programs aimed at the arts, sport and personal grooming;
- sports programs, including a transitional soccer program 'Kicking Goals 2 Transition';
- career planning programs; and
- external engagement with Youth Justice, Aboriginal and Torres Strait Islander elders, cultural organisations, legal services, universities and a range of community organisations.<sup>792</sup>

Similar programs are offered in CYDC, with a focus on development, sport, cultural and offender programs.<sup>793</sup> There is nothing to suggest that 17-year-olds cannot be accommodated in such programming, and they are likely to be far better off as compared to current adult prison centre programming.

However, it is suggested that future cultural programming take into account the diverse ATSI heritage of those 17-year-olds who will now be transferred from around the state to BYDC and CYDC. Additionally, the funding of Vocational Education Training (VET) programming, as discussed below, and the use of work experience placements should receive renewed consideration and attention.

A 2015 YJ publication indicated that the following services were provided in youth detention, all of which were considered appropriate for the 17-year-old cohort:

- Queensland Health provides a 24-hour health service comparable to an all hours GP service and in office hours includes mental health, alcohol, drug, oral health and sexual health clinics;
- Forensic Adolescent Mental Health, Alcohol and Other Drugs Services (FAMHAODS) rehabilitation programs and support;
- Department of Education and Training operated schools offering school to Certificate IV Adult Tertiary Preparation curriculum. Literacy and numeracy assessment, access to guidance officers, visual teachers, speech pathologists and occupational therapists.<sup>794</sup>

## KEY FINDINGS – SUBMISSIONS

### POLICIES

The use of punitive measures against young people is covered elsewhere in this report. Many of the submissions called for the repeal of measures including restraints, solitary confinement and strip searching.<sup>795</sup>

<sup>792</sup> Department of Justice and Attorney-General, List and Summary of Programs at Brisbane Youth Detention Centre, Summary Report August 2016, edocs 3470527.

<sup>793</sup> Department of Justice and Attorney-General, Cleveland Youth Detention Centre Program Information, edocs 3447181.

<sup>794</sup> Department of Justice and Attorney-General, Strategic Plan for Youth Justice 2015 – 2018, p 55, edocs 3459316.

<sup>795</sup> Submission from Australian Lawyers for Human Rights to the Review, 31 October 2016, p 8, edocs 3491131; Submission from Sisters Inside to the Review, October 2016, pp 16 – 19, edocs 3491213; Submission from Change the Record to the Review, 4 November 2016, p 2, edocs 3498683; Submission from the Human Rights Law Centre to the Review, 7 November 2016, pp 6-11, edocs 3498838.



The ALHR called for higher standards of training and skill for detention centre employees.<sup>796</sup> CHQ recommended staff receive ongoing training in trauma informed practice.<sup>797</sup>

Together recommended investigating transitional arrangements for young people to adult correctional facilities including an induction period and programs to build “appropriate expectations regarding adult prison.”<sup>798</sup>

ATSILS identified a need for identified positions for ATSI liaison officers, case managers, teaching staff and transitional officers, “to be consistent with the rate of ATSI youths incarcerated in Queensland youth detention centres.”<sup>799</sup>

### PROGRAMMING

Sisters Inside referred to the lack of publicly available information about detention centre programming and made reference to anecdotal accounts of the helpfulness of educational and cultural programs for their clients.<sup>800</sup> They made a number of suggestions including that programs should be:

- provided by independent NGO’s;
- linked with support networks; and
- focused on practical transition needs such as housing, health, income, legal issues (such as debt) and substance use.<sup>801</sup>

The ATSILS report suggested that offender programs and services in detention centres should address culturally specific criminogenic needs, and be delivered in a culturally appropriate and ‘safe’ way and be supported by the community.<sup>802</sup> Reference was made to a “chronic lack of cultural programs” in either BYDC or CYDC and concerns about the relevance and measurable outcomes of existing programs.<sup>803</sup> ATSILS submitted that ATSI led programs that addressed several key strategies would be beneficial, including recognising the “different needs of children at different stages.”<sup>804</sup>

In relation to addressing the issue of substance use disorders, Mission Australia emphasised the need for adequate intervention and treatment and referred to relapse prevention programs conducted within prisons as follows, “which focus on building coping skills and developing social skills in the community once released.”<sup>805</sup>

### SERVICES

Generally, there was an acknowledgement of the need for services to address the health needs of young people in custody, and for services to be maintained following release.

YETI recommended the need for young people entering detention to be properly assessed for physical and intellectual disabilities, and for the development of behaviour support plans.<sup>806</sup> The Human Rights Law Centre (HRLC) recommended early assessment and diagnosis of all

<sup>796</sup> Submission from Australian Lawyers for Human Rights to the Review, 31 October 2016, p 8, edocs 3491131.

<sup>797</sup> Submission from Child Health Queensland (CHQ) to the Review, 26 October 2016, p 3, edocs 3485344.

<sup>798</sup> Submission from Together Union to the Review, 26 October 2016, p 4, edocs 3486149.

<sup>799</sup> Submission from Aboriginal and Torres Strait Islander Legal Service (ATSILS) to the Review, 26 October 2016, p 7, edocs 3485327.

<sup>800</sup> Submission from Sisters Inside to the Review, October 2016, p 21, edocs 3491213.

<sup>801</sup> Submission from Sisters Inside to the Review, October 2016, pp 21-22, edocs 3491213.

<sup>802</sup> Submission from Aboriginal and Torres Strait Islander Legal Service (ATSILS) to the Review, 26 October 2016, pp 2-3, edocs 3485327.

<sup>803</sup> Submission from Aboriginal and Torres Strait Islander Legal Service (ATSILS) to the Review, 26 October 2016, p 4, edocs 3485327.

<sup>804</sup> Submission from Aboriginal and Torres Strait Islander Legal Service (ATSILS) to the Review, 26 October 2016, p 6, edocs 3485327.

<sup>805</sup> Submission from Mission Australia to the Review, October 2016, pp 5-6, edocs 3491235.

<sup>806</sup> Submission from Youth Empowered Towards Independence (YETI), 2016, p 9, edocs 3498057.



young people to enable proper care and treatment.<sup>807</sup> Mission Australia cited the need for “cognitive disability needs to be addressed for young people pre-custody, in detention and on release.”<sup>808</sup>

YETI pointed to the lack of targeted drug and alcohol treatment services for young people at CYDC and that this was “despite the detention centre environment being a relatively ‘useful’ place to undertake counselling and support work, integrate harm minimisation information and ‘plant seeds’ in relation to reducing and ceasing substance misuse.”<sup>809</sup>

CHQ referred to the likelihood of an “increase in the severity and frequency of mental health problems and in particular psychotic disorders”<sup>810</sup> among the older offender population. YAC referred to the need for referrals and pathways to enable young people to maintain counselling and therapeutic pathways after release.<sup>811</sup> CHQ referred to the Mental Health Transitions program run by Child and Youth Mental Health Service (CYMHS) with a focus on provision of post-release mental health follow up appointments. It was recommended that the program be extended to include non-ATSI people and other young people beyond the Brisbane catchment.<sup>812</sup>

YAC viewed delayed referrals and limited resourcing of Mental Health Alcohol Tobacco and Other Drugs (MHATODS) teams as constituting a missed opportunity for young people in detention.<sup>813</sup> Mission Australia emphasised the need for Drug and alcohol workers to be present during the transition to release.<sup>814</sup>

## KEY FINDINGS – DEPARTMENTAL STATEMENTS

### BRISBANE CORRECTIONAL CENTRE

Despite being the “only correctional facility in Queensland that operates a dedicated Youthful Offenders Unit”,<sup>815</sup> Brisbane Correctional Centre (BCC) “does not deliver programs specifically targeted the offending behaviour of youthful offenders” including any programs related to causational issues behind young offenders’ behaviour for those 17-year-olds incarcerated in that adult facility.<sup>816</sup> Neither Individual QCS 4<sup>817</sup> nor Individual QCS 1<sup>818</sup> had any knowledge of youthful offending programs offered in the local community that may assist those 17-year-olds transitioning from detention.

### YOUTH JUSTICE, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL

Youth Justice acknowledged that there had been “no consistent evaluation of programs” within detention centres<sup>819</sup> and that young people had “not generally been

<sup>807</sup> Submission from the Human Rights Law Centre to the Review, 7 November 2016, p 13, edocs 3498838.

<sup>808</sup> Submission from Mission Australia to the Review, October 2016, pp 3-4, edocs 3491235.

<sup>809</sup> Submission from Youth Empowered Towards Independence (YETI), 2016, p 8, edocs 3498057.

<sup>810</sup> Submission from Child Health Queensland (CHQ) to the Review, 26 October 2016, p 2, edocs 3485344.

<sup>811</sup> Submission from the Youth Advocacy Centre to the Review, October 2016, p 5, edocs 3486157.

<sup>812</sup> Submission from Child Health Queensland (CHQ) to the Review, 26 October 2016, p 2, edocs 3485344.

<sup>813</sup> Submission from the Youth Advocacy Centre to the Review, October 2016, p 5, edocs 3486157.

<sup>814</sup> Submission from Mission Australia to the Review, October 2016, p 6, edocs 3491235.

<sup>815</sup> Affidavit of Individual QCS 1 sworn 28 September 2016, p 6, edocs 3437664.

<sup>816</sup> Affidavit of Individual QCS 4 sworn 10 October 2016, pp 9-10, edocs 3488259.

<sup>817</sup> Affidavit of Individual QCS 4 sworn 10 October 2016, p 10, edocs 3488259.

<sup>818</sup> Affidavit of Individual QCS 1 sworn 28 September 2016, p 12, edocs 3437664.

<sup>819</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, p 11, edocs 3439519.



involved in the design of the programs<sup>820</sup>, including with respect to cultural programming.<sup>821</sup>

A 2016 review of the cultural programming in CYDC undertaken at the direction of DJAG made a number of critical findings, as follows:

- that whilst the CYDC Cultural Unit was established with good intent, it was done without proper consultation with local ATSI people.<sup>822</sup> In response to this feedback, and to criticism that staff were selected on the basis of race rather than skill diversity, the review concluded that it had been suggested that, “the very existence of this unit, allows CYDC the ability to simply tick a box”;<sup>823</sup>
- the review cited “divided opinion and misunderstanding” about the unit, including minimal promotion of the unit’s role in embedding “cultural capability within Youth Justice business” and that cultural engagement and consultation was described (by some) as inconsistent and without cultural sensitivity;<sup>824</sup>
- the review concluded that there was inconsistent consultation relating to the development of programs and services and that instead, “development and therapeutic-focused programs and services have mostly been developed and delivered by non-ATSI people” who may lack appropriate cultural knowledge and sensitivity;<sup>825</sup> and
- reference was made to staff reductions in February 2016, and the lack of a consultation with the unit over staffing changes.<sup>826</sup> The review identified that staffing positions “may not necessarily complement the overall objectives of the service delivery model expected by the unit.”<sup>827</sup>

The review made a number of relevant recommendations:

- increasing the Cultural Unit staffing<sup>828</sup> and engaging departmental support to achieve appropriate internal and external engagement to build the profile of the Cultural Unit;<sup>829</sup>
- increasing cultural programming and improving the program delivery structure;<sup>830</sup>

<sup>820</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, p 11, edocs 3439519.

<sup>821</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, p 15, edocs 3439519.

<sup>822</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, p 368, edocs 3439519.

<sup>823</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, p 368, edocs 3439519.

<sup>824</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, p 370, edocs 3439519.

<sup>825</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, p 380, edocs 3439519.

<sup>826</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, pp 366-367, edocs 3439519.

<sup>827</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, p 376, edocs 3439519.

<sup>828</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, p 367, edocs 3439519.

<sup>829</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, p 371, edocs 3439519.

<sup>830</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, pp 361, 363, 382-384, edocs 3439519.



- sourcing links with community based organisations, including the NGO sector, to support young people in detention;<sup>831</sup> and
- sourcing locally based culturally appropriate youth programs, with the acknowledgement that “the long term flow-on effect will decrease recidivism...and build resilience.”<sup>832</sup>

It is unclear how many of these recommendations have been implemented, although reference was made to the establishment of the First Nations Action Board in February 2016 as having input to all policies and programming and “changing the focus of Youth Justice towards better cultural understanding and capability.”<sup>833</sup>

**Recommendation 7.R10** – The Review recommends that if Aboriginal and Torres Strait Islander young people are transferred from remote and regional areas of the State, appropriate cultural visits from the young person’s community should be arranged in person or with the use of video conferencing.

## IDENTIFIED ISSUES – RAISING THE AGE OF CRIMINAL RESPONSIBILITY

### DISCUSSION

*The Committee on the Rights of the Child has concluded that 12 is the lowest internationally acceptable minimum age of criminal responsibility. In its Concluding Observations in 2005 the Committee said that the age of criminal responsibility in Australia is “too low” and recommended raising it to 12. This recommendation was reiterated in 2012.*

Amnesty International<sup>834</sup>

The UN Committee on the Rights of the Child has criticised jurisdictions where the minimum age of criminal responsibility is 12 or less.<sup>835</sup> In Queensland a person is not criminally responsible whilst they are under the age of 10 years. Children between the ages of 10 and 14 years are subject to a rebuttable presumption against criminal responsibility, known as the *doli incapax* principle, and contained in section 28(2) of the Criminal Code.<sup>836</sup>

In practice, this means that children under the age of 10 years cannot be charged with a criminal offence or face criminal prosecution. For those children aged between 10 and 14 years the prosecution must rebut the presumption that the child is incapable of committing a

<sup>831</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, pp 361, 363, edocs 3439519.

<sup>832</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, exhibit Individual YJ 47-12, *CYDC Cultural Unit/Cultural Programs Review and Evaluation*, p 361, edocs 3439519.

<sup>833</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, p 14, edocs 3439519.

<sup>834</sup> Submission from Amnesty International to the Review, 26 October 2016, p 13, edocs 3486176.

<sup>835</sup> Urbas George, ‘The age of criminal responsibility’ (2000), 181*Trends & issues in crime and criminal justice*, Australian Institute of Criminology, p 2, edocs 3520738.

<sup>836</sup> *Criminal Code Act, 1899 (Qld)*, s 29(1); Urbas George, ‘The age of criminal responsibility’ (2000), 181*Trends & issues in crime and criminal justice*, Australian Institute of Criminology, p 2, edocs 3520738.



criminal act by showing that the child, at the time of the alleged offending, had capacity to know that they should not do the act or omission.<sup>837</sup>

During the public briefings YJ highlighted the need to consider alternatives to detention for children aged between 10 and 13 years.<sup>838</sup>

The Review considers that raising the age of criminal responsibility to 12 would serve a number of ends, as follows:

- it would make Queensland a leader in the humane treatment of children in Australia by being the first state to align the age of criminal responsibility in this State with international standards;<sup>839</sup>
- it would alleviate strain on the youth detention system by freeing up beds;
- it would address some of the concerns regarding the 10 to 18-year-olds in the youth detention centre population;
- it would provide an increased time period for the Department of Communities, Child Safety and Disability Services (Child Safety) and other appropriately funded community services to address the causes of youthful offending without the addition of negative criminogenic influences associated with incarceration;
- it would address concerns about strain on QPS watch-housing and transportation requirements; and
- it would enable a greater focus on appropriate programming in detention centres towards those issues relevant to teenaged youthful offenders, including the provision of VET.

It is notable that the Queensland Police Service Operational Procedures Manual (OPM) allows a child under the age of criminal responsibility to be counselled with the aim of “diverting a child from future involvement with the criminal justice system.”<sup>840</sup> Therefore, even if the age of criminal responsibility were to be raised, options would still exist for police counselling as a diversionary strategy for the under 12-year-old age bracket.

## KEY FINDINGS – SUBMISSIONS

*Importantly, Australia is now out of step with comparative jurisdictions such as Canada, where the age of criminal responsibility is 12 years and New Zealand, where the age is staggered depending on the severity of the crime, but is 13 years for the majority of criminal offences.*

Human Rights Law Centre<sup>841</sup>

<sup>837</sup> *Criminal Code Act, 1899* (Qld), s 29(1).

<sup>838</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 8 (Mark Lynch). Urbas George, 'The age of criminal responsibility' (2000), 181*Trends & issues in crime and criminal justice*, Australian Institute of Criminology, p 2, edocs 3520738

<sup>840</sup> Queensland Police Service, Operational Procedures Manual Issue 54 Public Edition, Chapter 5, 5.3.18 13, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>

<sup>841</sup> Submission from the Human Rights Law Centre to the Review, 7 November 2016, p 12, edocs 3498838.



ALHR<sup>842</sup>, Change the Record<sup>843</sup>, Amnesty International<sup>844</sup>, and the Human Rights Law Centre<sup>845</sup> all recommended raising the age of criminal responsibility to 12.

Sisters Inside noted that Queensland imprisons “the most 10–13-year-olds of any jurisdiction in Australia”<sup>846</sup> and recommended increasing the age of criminal responsibility to a minimum of 12 years,<sup>847</sup> with a preferred 14 years,<sup>848</sup> and removing imprisonment (detention) as an option for all children under 18 years old.<sup>849</sup> YANQ recommended raising the age of criminal responsibility to 15, citing the approach in Scandinavian countries.<sup>850</sup>

Change the Record recommended that the presumption against legal capacity (*doli incapax*) should remain in place for 12–14-year-olds.<sup>851</sup>

YETI recommended the cessation of the use of adult watch houses for small children (10–12-year-olds), an outcome that would be achieved by raising the age of criminal responsibility.<sup>852</sup>

## IDENTIFIED ISSUES – ADDITIONAL VET AND TRANSITIONAL EDUCATION PROGRAMS FOR 17-YEAR-OLDS IN DETENTION

### DISCUSSION

In the Public Briefings it was acknowledged that, “children and young people who...are not participating in education, training and employment are at high risk of being remanded to custody and of reoffending.”<sup>853</sup> Whilst schooling is not compulsory for 17-year-olds, it is imperative that this age cohort be provided with vocational and educational opportunities. This need can be met with Vocational Education Training (VET) qualifications, which involve work-like activities, and the teaching of industry determined skill sets.<sup>854</sup> However, it is important that educational progress, assuming such progress is made, is not lost when young people transition from detention.

Both Brisbane Youth Education and Training Centre (BYETC) and Cleveland Education and Training Centre (CETC), located within the respective detention centres, are Registered Training Organisations capable of delivering VET qualifications to a Certificate I and II level.<sup>855</sup> BYETC offers a range of Certificate I and II courses including in horticulture, construction, arts, IT, engineering, furnishing and hospitality.<sup>856</sup> According to their 2015 Annual Report

<sup>842</sup> Submission from Australian Lawyers for Human Rights to the Review, 31 October 2016, p 8, edocs 3491131.

<sup>843</sup> Submission from Change the Record to the Review, 4 November 2016, p 2, edocs 3498683.

<sup>844</sup> Submission from Amnesty International to the Review, 26 October 2016, p 2, edocs 3486176.

<sup>845</sup> Submission from the Human Rights Law Centre to the Review, 7 November 2016, p 2, edocs 3498838.

<sup>846</sup> Submission from Sisters Inside to the Review, October 2016, p 5, edocs 3491213.

<sup>847</sup> Submission from Sisters Inside to the Review, October 2016, p 12, edocs 3491213.

<sup>848</sup> Submission from Sisters Inside to the Review, October 2016, p 12, edocs 3491213.

<sup>849</sup> Submission from Sisters Inside to the Review, October 2016, p 10, edocs 3491213.

<sup>850</sup> Submission from Sisters Inside to the Review, October 2016, p 4, edocs 3491213.

<sup>851</sup> Submission from Change the Record to the Review, 4 November 2016, p 2, edocs 3498683.

<sup>852</sup> Submission from Youth Empowered Towards Independence (YETI), 2016, p 13, edocs 3498057.

<sup>853</sup> Evidence to Education, Tourism, Innovation and Small Business Committee Public briefing – Inquiry into the Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Bill, Parliament of Queensland, Brisbane, 21 September 2016, 3 (Mark Lynch).

<sup>854</sup> Brisbane Youth Education and Training Centre, VET Student Handbook, January 2016, p 6.

<sup>855</sup> <https://brisbaneyouthedu.eq.edu.au/pages/search.aspx?k=handbook>

<sup>856</sup> RTO Report, Brisbane Youth Education Training Centre, edocs 3527181; RTO Report, Cleveland Education and Training Centre, edocs 3527182.

<sup>857</sup> Brisbane Youth Education and Training Centre, VET Qualifications

<https://brisbaneyouthedu.eq.edu.au/Curriculum/VocationalEducation/Pages/VocationalEducation.aspx>



CETC had “only just registered” to deliver a Certificate II in General Education for Adults and no specific mention is made of other courses being delivered currently.<sup>857</sup>

Historically, the BYETC and CETC subcontracted the delivery of VET programs to external providers. Recently, both centres have begun delivering Certificate I and II programs internally. A 2015 statement by the BYETC Deputy Principal indicated that this change was instituted in response to negative experiences with external service providers, stating that teaching staff were:

*defacto learning facilitators with all class materials provided externally. This led to lack of enthusiasm of delivery and assessment with material becoming dated, reduced understanding of delivery and assessment requirements with little contact with providers, problematic student engagement and a high level of school refusal and behaviour management issues.*<sup>858</sup>

Changes contained in the *Standards for Registered Training Organisations (RTO's) 2015* (Cth) are also likely to have prompted the move towards internal provision of VET training. The Queensland Government's application of these Standards in the “Pre-qualified Supplier Policy 2015–16” includes that course funding will be paid upon “validation of the student's submitted training data.”<sup>859</sup> It is understood that this means the Department of Education and Training will only fund VET providers upon the completion of courses. Due to the high turnover of young people in detention, and the associated difficulty in young people completing courses, it is understood that many external providers withdrew from offering VET programs in CETC and BYETC.

CETC cited the difficulties with detainees achieving VET qualification levels at CYDC noting, “[a]s the qualification level increases, so does the number of units the learner is required to complete to gain a full qualification. This is a rare event due to the high transient levels in our school population. We have several learners who are only one or two units short of a full qualification. However, they have now been released from CETC.”<sup>860</sup> This is also reflected in both the BYETC and CETC annual reports, which show extremely low VET attainment rates over the past six years.

The importance of creating transitional VET and education pathways for 17-year-olds in youth detention cannot be overstated. Research has shown that inmates undertaking secondary studies experience a significant reduction in recidivism rates.<sup>861</sup>

Online learning has been recommended as an alternative means of achieving educational outcomes,<sup>862</sup> with recent trials including a 2009 secure network trial in Tasmanian

<sup>857</sup> Cleveland Education and Training Centre, Queensland State School Reporting 2015 School Annual Report, p 11, <https://clevelandu.eq.edu.au/Supportandresources/Formsanddocuments/Pages/AnnualReports.aspx>.

<sup>858</sup> Henderson, Steve, Vocational Education and Training & Engagement of Young People in Detention, Australasian Corrections Education Association, April 2015 <<http://acea.org.au/wp-content/uploads/2015/04/Paper-Henderson.pdf>>

<sup>859</sup> Queensland Government, Pre-qualified Supplier Policy 2015-16 for Queensland Government subsidised training places, Department of Education and Training, p 2, <https://training.qld.gov.au/site/providers/Documents/funded/pqs-policy-2015-16.pdf>

<sup>860</sup> Henderson, Steve, Vocational Education and Training & Engagement of Young People in Detention, Australasian Corrections Education Association, April 2015 <<http://acea.org.au/wp-content/uploads/2015/04/Paper-Henderson.pdf>>

<sup>861</sup> Farley, Helen and Murphy, Angela and Bedford, Tasman ‘BRIDGING THE DIGITAL DIVIDE: BRINGING E-LITERACY SKILLS TO INCARCERATED STUDENTS’ (PAPER PRESENTED AT ASCILITE 2012: 29th Annual Conference of the Australasian Society for Computers in Learning in Tertiary Education: Future Challenges, Sustainable Futures, 25-28 Nov 2012).

<sup>862</sup> Farley, Helen and Murphy, Angela and Bedford, Tasman ‘BRIDGING THE DIGITAL DIVIDE: BRINGING E-LITERACY SKILLS TO INCARCERATED STUDENTS’ (PAPER PRESENTED AT ASCILITE 2012: 29th Annual Conference of the Australasian Society for Computers in Learning in Tertiary Education: Future Challenges, Sustainable Futures, 25-28 Nov 2012).



correctional facilities<sup>863</sup> and a University of Southern Queensland program within Queensland Detention Centres in 2012.<sup>864</sup>

## KEY FINDINGS – REVIEW SUBMISSIONS

*Funding for VET programs in BYDC was previously provided by Education Queensland for school holiday VET programs. This has been restricted in the recent few years since a policy change in Education Queensland restricted the funding of single modules or part-courses, preventing this funding from being spent as providers cannot deliver full courses to completion within the limited timeframes that staff have available to work with a young person. This funding was then effectively lost as it had not been able to be used for the purpose to which it was allocated.*

Together Queensland<sup>865</sup>

Together called for consideration to be given to “a selection of on-going and available programs for 17-year olds to build professional skills and to address underlying causes of offending.”<sup>866</sup> Education Queensland was encouraged to create an exemption for youth detention centres regarding funding single modules or part courses.<sup>867</sup> In light of the limited scope and number of programs, the need for “significant expansion” was recommended,<sup>868</sup> particularly during school holiday periods which “pose challenges in providing meaningful activities to young people in the form of programs.”<sup>869</sup>

*The most significant shortcoming in the current youth justice system is the lack of provision of adequate transition services to reconnect young people with positive experiences in their home communities.*

Queensland University of Technology (QUT)<sup>870</sup>

QUT referred to the poor turnaround of young people once they transition into the community who may otherwise make “substantial progress in their literacy, numeracy and vocational skills” in detention. This was attributed to “a lack of dedicated resourcing which is focussed on ensuring young people are enrolled in schools training programs or employment upon release.”<sup>871</sup>

Mission Australia cited the likelihood of educational disengagement amongst young offenders and suggested that the education system needed to take a “more trauma informed approach” to young people to prevent engagement with the criminal justice system. Evidence was cited of the high proportion of oral language disorders among young offenders, and that

<sup>863</sup> Koudstaal, Dirk, Cianchi, John, Knott, Matthew and Koudstaal, Michael ‘Creating Cooperatively with all Stakeholders and Advanced and Highly Secure ICT Learning Network for all Inmates within Existing Cultural Prison Practices.’ (Paper presented at ACEA/Reintegration Puzzle, 31 August – 2 September 2009).

<sup>864</sup> Farley, Helen and Murphy, Angela and Bedford, Tasman ‘Bridging the digital divide: bringing e-literacy skills to incarcerated students’ (Paper presented at ASCILITE 2012: 29th Annual Conference of the Australasian Society for Computers in Learning in Tertiary Education: Future Challenges, Sustainable Futures, 25–28 Nov 2012).

<sup>865</sup> Submission from Together Union to the Review, 26 October 2016, p 5, edocs 3486149.

<sup>866</sup> Submission from Together Union to the Review, 26 October 2016, p 5, edocs 3486149.

<sup>867</sup> Submission from Together Union to the Review, 26 October 2016, p 5, edocs 3486149.

<sup>868</sup> Submission from Together Union to the Review, 26 October 2016, p 5, edocs 3486149.

<sup>869</sup> Submission from Together Union to the Review, 26 October 2016, p 5, edocs 3486149.

<sup>870</sup> Submission from Queensland University of Technology (QUT), 26 October 2016, p 8, edocs 3480801.

<sup>871</sup> Submission from Queensland University of Technology (QUT), 26 October 2016, pp 8-9, edocs 3480801.



educational programs should take into account low literacy levels and that staff should take into account that they “lack understanding of the rules and consequences that apply.”<sup>872</sup>

A number of successful service models in other states were submitted:

- QUT cited a BYETC Parents and Citizens Association report that recommended transitional employment and training initiatives such as those successfully introduced in Victoria, New South Wales, Tasmania and South Australia through the Whitelion program;<sup>873</sup> and
- HRLC recommended the introduction of a similar system to the Parkville College in Victoria,<sup>874</sup> a school that has established a transitional learning centre that enables children to continue their studies until they are enrolled in mainstream schooling.<sup>875</sup>

## KEY FINDINGS – DEPARTMENTAL STATEMENTS

### YOUTH JUSTICE, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL

Youth Justice referred to the existing Department of Education and Training schools operating at each centre, “with standard school days and terms similar to those in the community. DET provides literacy and numeracy assessment, school curriculum to Certificate IV Adult Tertiary Preparation and a range of vocational education and training programs.”<sup>876</sup>

The recent implementation of the Transition to Success program was highlighted as a positive step towards addressing the need for transitional education programs for young people leaving detention. A survey of 68 participants showed that 85% of attendees transitioned onto further education or employment and 65% had no further offending. It was indicated that YJ was evaluating the program and that transitional pathways were being established with BYETC and between CETC and the Rural and Remote YJ Service Centre in Far North Queensland.<sup>877</sup>

**Recommendation 7.R11** – The Review recommends that VET funding arrangements at BYETC and CETC should be re-examined with respect to the increased numbers of 17-year-olds. Factors relevant for consideration include the type of programming that will lead to employment options for young people and ensure that the service delivery is appropriate and engaging for an older cohort.

**Recommendation 7.R12** – The Review recommends that educational programs such as those successfully introduced in the Parkville College Victoria and the Whitelion program should be considered as models for service delivery in Queensland.

<sup>872</sup> Submission from Mission Australia to the Review, October 2016, pp 4-5, edocs 3491235.

<sup>873</sup> Submission from Mission Australia to the Review, October 2016, p 5, edocs 3491235.

<sup>874</sup> Submission from the Human Rights Law Centre to the Review, 7 November 2016, pp 14-15, edocs 3498838.

<sup>875</sup> <[http://parkvillecollege.vic.edu.au/?page\\_id=45](http://parkvillecollege.vic.edu.au/?page_id=45)>

<sup>876</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, p 9, edocs 3439519.

<sup>877</sup> Affidavit of Individual YJ 47 sworn 21 October 2016, p 14, edocs 347818.



## IDENTIFIED ISSUES – THE APPROPRIATENESS OF YOUTH JUSTICE DIVERSION RESPONSES FOR 17-YEAR-OLDS

### DISCUSSION

There is nothing precluding a 17-year-old offender from being diverted through restorative justice processes under the YJA. The criteria for diverting a young person through cautioning<sup>878</sup> referral to a restorative justice conference<sup>879</sup> or alternative diversion program<sup>880</sup> does not include any consideration of the offender's age.

The OPM<sup>881</sup> reinforces the wide parameters in which a caution may be administered as including “first or subsequent offences” and contemplating serious offences up to and including sexual offences, robbery, property, drug and traffic offences.<sup>882</sup> There is no restriction on the type of offences that can be dealt with by way of a restorative justice conference. In the 2014–2015 Children's Court of Queensland Annual Report children were recorded as having been conferenced for a wide range of charges including sexual offences and acts of personal violence.<sup>883</sup>

It is notable that despite the widespread over-representation of ATSI young people in the criminal justice system those ATSI young people appear less likely to be offered restorative justice processes. In 2014–15 they made up 50% of the youth detention centre population but only 28% of youth justice referrals were made on behalf of ATSI young people.<sup>884</sup> The predominant types of offences (theft and property damage) were consistent between the ATSI cohort and other young people, indicating that ATSI young people are simply less likely to obtain the benefit of such a referral. There is no evidence that they are being precluded on the grounds of more serious offending behaviour.<sup>885</sup>

It is hoped that the recent reinstatement of court-referred conferencing and the recently broadened powers to dismiss charges where the Court is satisfied the offence should have been dealt with by a restorative justice process<sup>886</sup> may begin to increase referral numbers for ATSI young people.

### KEY FINDINGS – REVIEW SUBMISSIONS

*Periods of detention represent missed opportunities to intervene in juveniles' lives with constructive programs. A more responsible and cost effective approach would be the introduction of proven and effective early intervention and diversion programs and restorative justice approaches.*

Australian Lawyers for Human Rights (ALHR)<sup>887</sup>

<sup>878</sup> Youth Justice Act 1992 (Qld) s 16.

<sup>879</sup> Youth Justice Act 1992 (Qld) s 22 (police referrals), s163 (Court referrals).

<sup>880</sup> Youth Justice Act 1992 (Qld) s 38.

<sup>881</sup> Queensland Police Service, Operational Procedures Manual Issue 54 Public Edition, Chapter 5, 5.3, 5.4, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>

<sup>882</sup> Shanahan, M. Childrens Court Annual Report 2014-2015, p 21, edocs 3520735.

<sup>883</sup> Shanahan, M. Childrens Court Annual Report 2014-2015, p 22, edocs 3520735.

<sup>884</sup> Department of Justice and Attorney-General, Strategic Plan for Youth Justice 2015 – 2018, p 29, edocs 3459316.

<sup>885</sup> Department of Justice and Attorney-General, Strategic Plan for Youth Justice 2015 – 2018, p 29, edocs 3459316.

<sup>886</sup> Explanatory Memoranda, Youth Justice and Other Legislation (Inclusion of 17-year-old Persons Amendment Bill 2016, 10.

<sup>887</sup> Submission from Australian Lawyers for Human Rights to the Review, 31 October 2016, p 8, edocs 3491131.



Sisters Inside referred to a reduction in cautioning by police in recent years, concluding that “in exercising their discretions to charge or caution, police make significant decisions about which children are ‘funnelled’ into the youth justice system.”<sup>888</sup>

After citing the rates of disadvantage amongst young offenders, Queensland Council of Social Service (QCOSS) stated, “such statistics speak to the importance of prevention, early intervention, and rehabilitation programs, and call into question the logic underlying more punitive measures as a general response to youth crime” and the need to “de-emphasise the role of detention.”<sup>889</sup>

Mission Australia noted that much of the funding of juvenile justice is reactive, and the need for stronger engagement earlier in the community, stating, “we need to move away from populist rhetoric about clearing up crime and deal with the underlying issues.”<sup>890</sup>

ATSILS cited the need for early intervention “at both the individual and social level” as imperative to stop the rise of ATSI children “seeing prison as a rite of passage.”<sup>891</sup> Change the Record also strongly recommended the use of “early intervention, prevention and diversion initiatives”<sup>892</sup> as relevant to reducing the rates of ATSI imprisonment.

#### IDENTIFIED ISSUES – IMPACTS ON OPERATION AND RESOURCING OF THE CHILDRENS COURT, POLICE, CHILD SAFETY, HEALTH AND EDUCATION

#### DISCUSSION

*...there would be no appreciable impact on the workings of the Children's Court of Queensland on the basis that 17 year olds in relevant matters were already dealt with in the District Court of Queensland and that there would be a corresponding decrease in the workload of the District Court. As all Children's Court judges hold dual commissions as District Court judges, there would be no impact on the work of the two courts as a whole.*

Children's Court of Queensland Annual Report 2010–2011<sup>893</sup>

As outlined above, it is not anticipated that the inclusion of 17-year-olds will impact on the operation of Children's Court or District Court. The need for increased Legal Aid and Community Legal Centre funding to offer representation to 17-year-olds is unknown, and no submissions were received as to the cost implications for these services, although it appears that some legal services are already being provided to 17-year-olds.<sup>894</sup>

There will be resourcing implications for police around the training and availability of Child Protection Investigation Unit (CPIU) officers<sup>895</sup> and the need to implement watchhouse and transport measures, as outlined in the following section.

Child Safety is already mandated to work with vulnerable children under the *Child Protection Act 1999*, including 17-year-olds, and has well-established practices for working with young

<sup>888</sup> Submission from Sisters Inside to the Review, October 2016, p 22, edocs 3491213.

<sup>889</sup> Submission from Queensland Council of Social Service to the Review, 8 November 2016, p 2, edocs 3499667.

<sup>890</sup> Submission from Mission Australia to the Review, October 2016, p 12, edocs 3491235.

<sup>891</sup> Submission from Aboriginal and Torres Strait Islander Legal Service (ATSILS) to the Review, 26 October 2016, p 3, edocs 3485327.

<sup>892</sup> Submission from Change the Record to the Review, 4 November 2016, pp 1, 3, edocs 3498683.

<sup>893</sup> Shanahan, M. *Childrens Court Annual Report 2010 – 2011*, p 5, edocs 3520742.

<sup>894</sup> Submission from the Youth Advocacy Centre to the Review, October 2016, p 4, edocs 3486157.

<sup>895</sup> CPIU should ‘wherever possible’ be responsible for cautioning or counselling a child: Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 5, s5.3.2.



people in this age bracket. The requirement for Child Safety to work cooperatively with YJ for young people in detention is also outlined in existing policy.<sup>896</sup> This policy also prescribes ongoing participation and liaison between Child Safety and YJ for children in adult correctional facilities until the child's order expires (at 18) or the support service case is closed.<sup>897</sup> The existing framework of working with 17-year-olds in adult prisons and the established procedures for working with YJ are expected to reduce the impact on Child Safety operations and resourcing.

Similarly, Queensland Health provides services within prisons and youth detention centres and it is unlikely that there will be a significant impact on its operations or resourcing of services.<sup>898</sup>

The need for supplementing the work of Child Safety and Queensland Health with 17-year-olds through the funding of community-based transitional accommodation and health services has been considered above.

17-year-olds are not required to attend school. Therefore, the implications for Education Queensland will be limited to those 17-year-olds choosing to undertake study and training whilst detained in a youth detention centre. The 2016 Census figures confirm the level of educational disengagement among young people in youth detention, identifying that only 33% of those surveyed attended school or a modified education program on a regular basis.<sup>899</sup>

## KEY FINDINGS – REVIEW SUBMISSIONS

### THE NEED FOR CROSS-DEPARTMENTAL PARTNERSHIPS

*YETI believes that whilst it is easy to label young people with 'challenging' behaviours or 'complex' needs, too frequently it is the service system itself that is complex and challenging, whilst young people's needs remain basic, generally revolving around love and care, safety, appropriate housing, access to culture and spirituality, primary health needs, food and education etc.*

Youth Empowered Towards Independence (YETI)<sup>900</sup>

QUT cited the need for formal partnerships "between justice, health, education and 'communities' to support young people, their families and their community."<sup>901</sup> YETI supported this, with reference to the Coordinated Care for Vulnerable Young People program<sup>902</sup> concluding that "one of the most critical failings in relation to vulnerable young people in Queensland is the lack of coordination between government departments to address current issues."<sup>903</sup>

<sup>896</sup> Department of Child Safety and Disability Services, What if's, 10. What if a child is also subject to youth justice intervention <<https://www.communities.qld.gov.au/childsafety/child-safety-practice-manual/chapters/5-children-out-home-care/what-ifs>>.

<sup>897</sup> Department of Child Safety and Disability Services, What if's, 10. What if a child is also subject to youth justice intervention <<https://www.communities.qld.gov.au/childsafety/child-safety-practice-manual/chapters/5-children-out-home-care/what-ifs>>.

<sup>898</sup> Department of Justice and Attorney-General, *Strategic Plan for Youth Justice 2015 – 2018*, p 55, edocs 3459316; <<https://www.health.qld.gov.au/services/>>.

<sup>899</sup> 2016 Youth Justice Census, 'Strategic Plan for Youth Justice 2015-2018,' p 11, edocs 3459316.

<sup>900</sup> Submission from Youth Empowered Towards Independence (YETI), 2016, pp 9-10, edocs 3498057.

<sup>901</sup> Submission from Queensland University of Technology (QUT), 26 October 2016, p 12, edocs 3480801.

<sup>902</sup> Submission from Youth Empowered Towards Independence (YETI), 2016, pp 9-10, edocs 3498057.

<sup>903</sup> Submission from Youth Empowered Towards Independence (YETI), 2016, pp 9-10, 17, edocs 3498057.



### RESOURCING OF LEGAL SERVICES IN THE CHILDRENS COURT

ALHR suggested that greater funding of legal aid services was required to ensure access to legal representation.<sup>904</sup>

### EDUCATION

A number of the submissions to the review called for greater access to educational opportunities for 17-year-olds:

- Change the Record suggested that steps should be taken to ensure that exclusion from school was a last resort and called for the use of restorative justice initiatives within schools;<sup>905</sup>
- Mission Australia called for a review of suspension and expulsion procedures, and expressed a concern about the peer influence of higher-level offenders at flexible learning centres;<sup>906</sup>
- YETI supported the need for young people to be better accommodated in mainstream schools and suggested enrolling all young people of school age in detention in schools prior to release from detention;<sup>907</sup> and
- YAC referred to educational gains in detention being undermined when young people are refused enrolment upon release, and called upon Education Queensland to “work with Youth Justice Services to find ways to properly integrate young people back into mainstream education as a matter of priority.”<sup>908</sup>

## KEY FINDINGS – DEPARTMENTAL STATEMENTS

### DEPARTMENT OF COMMUNITIES, CHILD SAFETY AND DISABILITY SERVICES

Individual DCS 1 made reference to the obligations under the Child Safety practice manual<sup>909</sup> requiring Child Safety and Youth Justice to consult and coordinate service delivery for children in youth detention.

These include the following obligations that will now also apply to 17-year-olds:

- enabling YJ to participate in the development or review of the child’s case plan;
- providing information about the child to Youth Justice;
- where applicable, attending youth justice meetings, reviews, conferences and court proceedings;
- advising Youth Justice when a young person is held in watchhouse custody; and
- when a child is in detention, providing information and liaising with the detention centre caseworker, maintaining contact with the child and planning for transitioning of children from detention.<sup>910</sup>

<sup>904</sup> Submission from Australian Lawyers for Human Rights to the Review, 31 October 2016, p 3, edocs 3491131.

<sup>905</sup> Submission from Change the Record to the Review, 4 November 2016, p 3, edocs 3498683.

<sup>906</sup> Submission from Mission Australia to the Review, October 2016, p 5, edocs 3491235.

<sup>907</sup> Submission from Youth Empowered Towards Independence (YETI), 2016, p 11, edocs 3498057.

<sup>908</sup> Submission from the Youth Advocacy Centre to the Review, October 2016, p 5, edocs 3486157.

<sup>909</sup> Affidavit of Individual DCS 1 sworn 26 October 2016, p 6, edocs 3485405.

<sup>910</sup> Department of Child Safety and Disability Services, What if’s, 10. What if a child is also subject to youth justice intervention <<https://www.communities.qld.gov.au/childsafety/child-safety-practice-manual/chapters/5-children-out-home-care/what-ifs>>.



## YOUTH JUSTICE, DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL

Youth Justice stated that programs run by government agencies, such as the Department of Education and Training and Queensland Health, in detention “need to be flexible to address the needs of the particular young person or their particular cohort.”<sup>911</sup>

## IDENTIFIED ISSUES – WATCHHOUSE AND TRANSPORT ARRANGEMENTS FOR 17-YEAR-OLDS

### DISCUSSION

Both the YJA<sup>912</sup> and OPM impose responsibilities on police with respect to the custody and transportation of children.

#### WATCHHOUSE ARRANGEMENTS

The OPM obligations in relation to holding children in watchhouses include:

- children should only be held in custody as a last resort and for the least time justified;<sup>913</sup>
- when a child is arrested or issued a Notice to Appear, police must inform and consult with a Child Safety representative<sup>914</sup> and inform parents or caregivers;<sup>915</sup>
- within limits, police must allow parental or caregiver access to a child held in custody by their parents or caregivers;<sup>916</sup>
- police must inform children of their rights and responsibilities in custody;<sup>917</sup>
- police are prohibited from placing young people in the same cells as adult prisoners or other young people who are known to be violent or have a history of sexual assault offences;<sup>918</sup>
- where a child cannot be brought before a Children’s Court promptly, and the police decide to keep the child in custody, reasons for the decision must be recorded;<sup>919</sup>
- A young person may only be kept in custody overnight where:
  - it is not reasonably practical to immediately transfer the child to a youth detention centre;
  - there are no extenuating circumstances; and
  - the young person will be appearing before Court the next day;<sup>920</sup>

<sup>911</sup> Affidavit of Individual YJ 47 sworn 30 September 2016, p 10, edocs 3439519.

<sup>912</sup> *Youth Justice Act 1992* (Qld) ss 54, 56

<sup>913</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 16, 16.17.1 (i), <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>914</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 16, 16.17.1 (i).16.17.2, 16.17.3, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>915</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 16, 16.17.1 (i).5.6.4, 16.17.3, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>; *Police Powers and Responsibilities Act 2000* (Qld) s392.

<sup>916</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 16, 16.17.3, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>917</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 16, 16.17.3, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>918</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 16.16.12.1, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>919</sup> *Youth Justice Act 1992* (Qld) s50(4).

<sup>920</sup> Queensland Police Service, Operational Procedures Manual Issue 54 Public Edition, Chapter 16, 16.17.5, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.



- where possible, a child should be held in a youth detention centre rather than a watchhouse;<sup>921</sup> and
- police are prohibited from holding children overnight at a number of watchhouses.<sup>922</sup>

#### TRANSPORT ARRANGEMENTS

Police have a number of transport obligations in relation to young people, including:

- transporting young people to youth detention centres<sup>923</sup> and to and from Court;<sup>924</sup>
- transporting children and young people who have been arrested and had their bail refused, both to youth detention centres and to court for their first appearance;<sup>925</sup>
- transferring children and young people to youth detention centres under a Court ordered warrant;<sup>926</sup> and
- post-sentence transfers of young people.<sup>927</sup>

Constraints around transportation include that children and young people should not be transported with adults.<sup>928</sup> Where segregation between adults and children or young people isn't possible during QGAir transport, an escorting police officer will carry out the transfer.<sup>929</sup> Additionally, children and young people should not be taken to adult correctional centres whilst *en route* to a youth detention centre or court.<sup>930</sup>

#### WATCHHOUSE AND TRANSPORT ARRANGEMENTS 17-YEAR-OLDS

Given these obligations, the inclusion of 17-year-olds in the youth justice system will have implications for the watchhousing and transportation obligations of police. This will likely be compounded by the fact that 17-year-olds will need to be held overnight at either BYDC or CYDC where possible. Resolution of these matters will require consultation with police.

The application of principles under the YJA and OPM to 17-year-olds should serve to counteract some of the increased custody and transportation responsibilities for 17-year-olds. These include that:

<sup>921</sup> Queensland Police Service, Operational Procedures Manual Issue 54 Public Edition, Chapter 16.17.1 (iv). <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>922</sup> Queensland Police Service, Operational Procedures Manual Issue 54 Public Edition, Chapter 16 Appendix 16.8, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>923</sup> Youth Justice Act 1992 (Qld) s56(4); Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 16, 16.17.4, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>924</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 10, 10.4.23; Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 16, 16.17.4, 16.17.6, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>925</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 10, 10.22, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>926</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 10.10.22, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>927</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 10.10.22, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>928</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 10.10.4.10, 10.4.22, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>929</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 10.10.4.22, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>930</sup> Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 10.10.4.23, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.



- arrest should be a last resort;<sup>931</sup>
- the preferred way of starting proceedings is by way of a complaint and summons or notice to appear;<sup>932</sup> and
- an arrested child must be promptly brought before the Children's Court.<sup>933</sup>

Concerted implementation of these strategies and the use of cautioning and conferencing would be in keeping with the intention of the 2016 legislative changes,<sup>934</sup> and take into account recent research that indicates the recidivism reduction benefits of diversionary methods for youthful offenders.<sup>935</sup>

## KEY FINDINGS – REVIEW SUBMISSIONS

*YETI remains very concerned in relation to the use of the adult watchhouse in Cairns for detaining young people. YETI have supported young people 10 – 12 years old who have been detained in the adult watch house. Some young people in this age cohort are detained for a number of days. The adult watch house in Cairns is not suitable as a detention option for young people and an alternative arrangement needs to be quickly explored before there is a major incident.*

Youth Empowered Towards Independence (YETI)<sup>936</sup>

YETI recommended the cessation of the use of adult watchhouse facilities for small children (aged 10–12).<sup>937</sup>

<sup>931</sup> Youth Justice Act 1992 (Qld) Schedule 1.

<sup>932</sup> Youth Justice Act 1992 (Qld) s12; Queensland Police Service, Operational Procedures Manual, Issue 54 (Public Edition), Chapter 10, 10.4.3, <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/opm.htm>.

<sup>933</sup> Youth Justice Act 1992 (Qld)s49.

<sup>934</sup> 'While we have an efficient and effective adult corrective services system, we appreciate that 17-year-olds are still youths and not adults, and the youth justice system provides ...increased ability to be diverted from the court system...Moving 17-year-olds into the youth justice system is the right thing to do. It is the right thing for our young people and it is the right thing for community safety because improving rehabilitation outcomes for 17-year-olds will make our communities safer', Yvette D'Arth, Ministers Explanatory Speech, Youth Justice and Other Legislation (Inclusion of 17-year-old Person) Amendment Bill 2016, Queensland Parliament, 15 September 2016, 3579.

<sup>935</sup> Little, Simon, Allard, Troy, Chrzanowski, Stewart, Anna, 'Diverting Young Indigenous People from the Queensland Youth Justice System: The Use and Impact of Police Diversionary Practices and Alternatives for Reducing Indigenous Over-representation', Justice Modelling, Griffith University 2011, iii.

<sup>936</sup> Submission from Youth Empowered Towards Independence (YETI), 2016, pp 12-13, edocs 3498057.

<sup>937</sup> Submission from Youth Empowered Towards Independence (YETI), 2016, pp 12-13, edocs 3498057.



## CHAPTER 8 OVERSIGHT

### INTERNATIONAL APPROACHES TO OVERSIGHT OF PRISONS AND YOUTH DETENTION CENTRES

A brief search of international approaches to the oversight of prisons and youth detention centres has highlighted that there are a variety of approaches taken in different countries.<sup>938</sup> It is beyond the scope of the Review to exhaustively examine international models aside from the following notable examples.

In countries where the 'common law' tradition is found it is not unusual to find a statutorily independent position. However, the scope and powers of these oversight bodies vary. In England and Wales, the Chief Inspector of Prisons is a Royal Appointment with very little in the way of statutorily defined powers aside from the overarching responsibility to inspect and report on the treatment of prisoners and conditions of prisoners.<sup>939</sup> The complaint handling body in that jurisdiction, the Office of the Prisons and Probation Ombudsman (PPO), is designated as independent from the Ministry of Justice (MoJ), however the position is appointed by the Minister and operates within the MoJ. A recent report into deaths in custody reflected:

*The Review considers that giving the PPO independence from the MoJ and making it accountable through Parliament would enhance public confidence in the inspection and complaints procedure.*<sup>940</sup>

Further, that would enable the PPO to have the necessary investigation powers in compliance with international human rights obligations.<sup>941</sup>

In contrast, Northern Ireland has had an independent Prisoner Ombudsman since 2005 and has recently created a statutory framework bestowing wide ranging complaint handling powers including in relation to prisoners, visitors, facilities and investigating the adequacy of prison services.<sup>942</sup> The Prison Ombudsman can enter correctional facilities, require documentation and other information from relevant staff<sup>943</sup> and refer matters to the police.<sup>944</sup>

The Canadian Office of the Correctional Investigator ('the Correctional Investigator') is another independent statutory body that can undertake investigations in response to complaints, at the request of the Minister and of its own initiative.<sup>945</sup> The Correctional Investigator has the power to conduct public hearings in the course of investigations and make special reports to Parliament on urgent matters at any time. However, like many Ombudsman bodies, the Correctional Investigator does not appear to have

<sup>938</sup> Table of National and International Statutory Entities Responsible for Custodial Facilities, edocs 3543879.

<sup>939</sup> *Prison Act 1952* (UK), 15 & 16 Geo. 6 & 1 Eliz 2, c 52, s 5A.

<sup>940</sup> The Harris Review, *Changing Prisons, Saving Lives*, Report of the Independent Review into Self-Inflicted Deaths in Custody of 18–24 year olds, July 2015, p 182, edocs 3543849.

<sup>941</sup> The Harris Review, *Changing Prisons, Saving Lives*, Report of the Independent Review into Self-Inflicted Deaths in Custody of 18–24 year olds, July 2015, p 182, edocs 3543849.

<sup>942</sup> *Justice Act 2016* (NI), c 21, s 35.

<sup>943</sup> *Justice Act 2016* (NI), c 21, s 43.

<sup>944</sup> *Justice Act 2016* (NI), c 21, s 35.

<sup>945</sup> *Corrections and Conditional Release Act S.C. 1992* (Canada), c 20, s 167.



binding authority<sup>946</sup> and relies on publicity and political will to create legislative change.

In Scandinavian countries, like Sweden and Finland, a greater emphasis is placed on ensuring that statutory inspectorates monitor compliance with human rights obligations. In Sweden, the OPCAT Unit of the Parliamentary Ombudsman monitors compliance with the Optional Protocol on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including through inspections and making recommendations to Parliament about shortcomings in existing legislation.<sup>947</sup> In Finland, the Parliamentary Ombudsman monitors the Finland Prison Services' compliance with basic rights, liberties and human rights,<sup>948</sup> and can recommend specific legislative and regulatory change.<sup>949</sup> Additionally, inspectorates in these countries carry unique power in their capacity to reprimand, offer an opinion on criminal guilt (Finland)<sup>950</sup> and commence criminal prosecutions (Sweden).<sup>951</sup>

Key features of the inspectorate models in these international jurisdictions include:

- broad investigative powers;
- independence, ranging from those jurisdictions with direct Royal Appointments (England, Wales, Scotland) to established independent statutory bodies able to commence investigations on their own initiative (Northern Ireland, Canada) and Ombudsman bodies with extensive powers, including the capacity to recommend legislative change and commence prosecutions (Finland, Sweden); and
- transparency, through annual reports to Parliament (England, Wales, Scotland, Canada, Sweden and Finland) or directly to relevant Departments, complainants and other interested bodies at the conclusion of investigations (Northern Ireland).<sup>952</sup>

## NATIONAL APPROACHES TO OVERSIGHT OF PRISONS AND YOUTH DETENTION CENTRES IN AUSTRALIA

Western Australia, New South Wales and most recently Tasmania have statutorily created positions responsible for investigating state prisons and youth detention centres. The Western Australian Office of the Inspector of Custodial Services was established in 2000 as an independent statutory office, and has had responsibility for oversight of youth detention since 2003.<sup>953</sup> Tasmania recently adopted the West Australian code of inspection standards for adult custodial services in legislation that commenced on 16 November 2016.<sup>954</sup>

<sup>946</sup> Corrections and Conditional Release Act S.C. 1992 (Canada), c 20, ss 179, 192, 193.

<sup>947</sup> The Act with Instructions of the Parliamentary Ombudsman, 1986:765 (Sweden), ss 4, 5.

<sup>948</sup> The Constitution of Finland 731/1999, s 109.

<sup>949</sup> Parliamentary Ombudsman Act 197/2002 (Finland) ss 5, 10, 11; The Constitution of Finland 731/1999, ss 109, 110.

<sup>950</sup> Parliamentary Ombudsman Act 197/2002 (Finland) s 10.

<sup>951</sup> The Act with Instructions of the Parliamentary Ombudsman, 1986:765 (Sweden), s 5.

<sup>952</sup> Table of National and International Statutory Entities Responsible for Custodial Facilities, edocs 3543879.

<sup>953</sup> Inspector of Custodial Services Act 2003 (WA).

<sup>954</sup> Parliament of Tasmania, Fact Sheet – *Custodial Inspector Bill 2016*,

<[http://www.parliament.tas.gov.au/bills/Bills2016/pdf/notes/35\\_of\\_2016-Fact%20Sheet.pdf](http://www.parliament.tas.gov.au/bills/Bills2016/pdf/notes/35_of_2016-Fact%20Sheet.pdf)>, edocs 3543848.



The Western Australian model has much to commend it. The Office of the Custodial Inspector of Western Australia (the WA Inspector) is independent. An annual report is tabled in Parliament.<sup>955</sup> Other inspection reports and occasional reviews can also be tabled before Parliament.<sup>956</sup> Significantly, the Western Australian Inspector has the power to issue a 'show cause' notice to the chief executive of a correctional centre.<sup>957</sup>

The WA Inspector provided a submission to the Review, emphasising that direct reporting to Parliament provides for high level transparency and accountability.<sup>958</sup> It was submitted that internally accountable inspectorates, such as the current Queensland model, are distinguishable due to the lack of independence of the Inspectorate.<sup>959</sup>

Using the current Victorian system as an example, the WA Inspector referred to a 2014 Victorian Ombudsman report that highlighted the inadequacies of an internal correctional Inspectorate within the Victorian Department of Justice in 2003.<sup>960</sup> It was later amalgamated and rebranded as the Office of Correctional Services Review (OCSR), however problems persisted.<sup>961</sup> Criticisms in the report included that the unit:

*did not operate independently, taking directions from a range of stakeholders, acted without external accountability...demonstrated poor record-keeping, was not transparent, with none of its reports being published;*

and that it had limited influence over Corrections Victoria.<sup>962</sup> The WA Inspector submitted that without independence, external accountability, improved record keeping practices and transparency, problems in Victoria have persisted.<sup>963</sup>

The recent Children's Commissioner has made reference to the lack of Independence of the Victorian and Queensland model:<sup>964</sup>

*"Victoria and Queensland have detailed inspection regimes run from within internal government departments. However, the lack of independence from the departments responsible for administering the detention of children and young people means these arrangements would not fully meet the DPCAT requirements."*

<sup>955</sup> *Inspector of Custodial Services Act 2003* (WA) s 33.

<sup>956</sup> *Inspector of Custodial Services Act 2003* (WA) ss 34, 35.

<sup>957</sup> Section 33A *Inspector of Custodial Services Act 2003* (WA) s 33A.

<sup>958</sup> Office of the Custodial Inspector of Western Australia, submission to the Youth Detention Review, 25 October 2016, p 1, edocs 3481355.

<sup>959</sup> Office of the Custodial Inspector of Western Australia, submission to the Youth Detention Review, 25 October 2016, p 1, edocs 3481355.

<sup>960</sup> Victorian Ombudsman, 'Why it is important to have Independent Oversight of the Victorian Prison System', 6 November 2014, edocs 3543850.

<sup>961</sup> Victorian Ombudsman, 'Why it is important to have Independent Oversight of the Victorian Prison System', 6 November 2014, edocs 3543850.

<sup>962</sup> Victorian Ombudsman, 'Why it is important to have Independent Oversight of the Victorian Prison System', 6 November 2014, edocs 3543850.

<sup>963</sup> Office of the Custodial Inspector of Western Australia, submission to the Youth Detention Review, 25 October 2016, p 1, edocs 3481355.

<sup>964</sup> Australian Human Rights Commission, *In safe hands? Protecting the rights of children and young people in youth justice centres*, A summary of material contained in the 2016 Children's Rights Report, p 7 <<https://www.humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2016>>.



Like the international examples outlined above, key features of the successful custodial inspection models in Australia (Western Australia, New South Wales and Tasmania) include extensive and impartial investigative powers, independence and accountability through annual reporting and information sharing.<sup>965</sup>

## QUEENSLAND OVERSIGHT

### OVERVIEW OF CURRENT OVERSIGHT BODIES IN QUEENSLAND

The oversight of children in correctional facilities comprises a complaints system and entities with legislated oversight functions.

A system for dealing with complaints about DJAG as a department is legislatively required.<sup>966</sup>

Legislated oversight or external complaint functions are held by:

- the Queensland Ombudsman;
- the Queensland Family and Child Commission;
- the Crime and Corruption Commission;
- the Public Guardian;
- the Official Visitor;
- the Chief Inspector; and
- the Ethical Standards Unit Inspectorate.

### QUEENSLAND OMBUDSMAN

The Office of the Queensland Ombudsman is a statutory body in Queensland.

The *Ombudsman Act 2001* (the Act) was introduced on 4 December 2001 and signified a new era for the Queensland Ombudsman.

In summary, the Act:

- recognises a dual role for the Ombudsman to remedy complaints about administrative actions and to assist agencies to improve their decision-making and administrative practice;
- facilitates informal investigation and resolution of complaints;
- empowers the Ombudsman to use investigative powers if necessary; and
- provides for the independence of the Office.

The Act enhanced the basic vision of the former *Parliamentary Commissioner Act 1974*, which gave the Ombudsman responsibility to investigate complaints about the administration of public agencies and recommend remedial action if required. It also gave the Ombudsman a broader administrative improvement role. The Ombudsman reports annually to the Queensland Parliament. The Legal Affairs and

<sup>965</sup> Table of National and International Statutory Entities Responsible for Custodial Facilities, edocs 3543879.

<sup>966</sup> *Public Service Act 2008*, s 219A.



Community Safety Committee of the Queensland Parliament oversees and monitors the performance of the Ombudsman.

The Office of the Queensland Ombudsman also works with public sector agencies to improve their decision-making and administrative practices. It is also the oversight agency for the *Public Interest Disclosure Act 2010*.

The *Public Interest Disclosure Act 2010* (the PID Act) facilitates disclosure, in the public interest, of information about wrongdoing in the public sector.

The PID Act aims to:

- promote the public interest by facilitating public interest disclosures (PIDs) of wrongdoing in the public sector;
- ensure PIDs are properly assessed and, where appropriate, investigated and dealt with;
- ensure appropriate consideration is given to the interests of persons subject of a PID; and
- protect people making a PID from reprisal.

Complaints may also be made under the DJAG complaints management process set up for compliance with the requirement in section 219A of the *Public Service Act 2008* for each department to have in place a complaints system. This system is described above.

In 2014, section 219A(3) was added to the *Public Service Act 2008* requiring that each department publish the following information for the previous financial year on its website by 30 September each year:

- the number of complaints received by the department;
- the number of those complaints resulting in further action; and
- the number of those complaints resulting in no further action.

Individual QCS 2 provided information to the Review on complaint mechanisms for prisoners.<sup>967</sup>

The Complaints Management Procedure<sup>968</sup> governs management and investigation of complaints in prisons. Features of the Procedure are:

- It provides instructions to staff, e.g. to resolve issues verbally if possible<sup>969</sup>;
- If an issue is assessed as being suitable for local resolution and the complainant cannot demonstrate they have first attempted to resolve the issue locally, the complainant can be requested to refer the matter to local staff before the complaint is addressed via the complaint management system<sup>970</sup>;

<sup>967</sup> Affidavit of Individual QCS 2, sworn on 28 September 2016, edocs 3438812.

<sup>968</sup> Affidavit of Individual QCS 2, sworn on 28 September 2016, exhibit Individual QCS 2-9, *Complaints Management – QCS Intranet*, para 2.1, p 286, edocs 3438812.

<sup>969</sup> Affidavit of Individual QCS 2, sworn on 28 September 2016, exhibit Individual QCS 2-9, *Complaints Management – QCS Intranet*, para 2.1, p 286, edocs 3438812.

<sup>970</sup> Affidavit of Individual QCS 2, sworn on 28 September 2016, exhibit Individual QCS 2-9, *Complaints Management – QCS Intranet*, para 2.1, p 286, edocs 3438812.



- Level 1 and 2 complaints to be resolved within 30 days; level 3 complaint to be resolved within 60 days<sup>971</sup>; and
- ESB is to monitor to ensure timeframes are met<sup>972</sup>.

The system by which privileged mail (to persons such as the Ombudsman and the Public Guardian) is sent via a blue envelope is provided for in the *Corrective Services Regulation 2006*.<sup>973</sup> A corrective services officer must give a prisoner a blue envelope upon request.<sup>974</sup> Prisoners also have access to the privileged mail Blue Letter system to communicate directly and confidentially with the general manager.<sup>975</sup>

A *Fact sheet – A guide for offenders in custodial or community corrections*, dated February 2007, was also provided to the review.<sup>976</sup> Its aim is to help prisoners' understanding of the Complaints Management System. It states how to complain: verbally or by writing to the general manager, using complaint form or a letter (blue envelope if the prisoner wishes). It includes complaint timeframes. It does not apply to complaints about conduct of staff – for these, it states to write directly to the general manager of your correctional centre.

The Review was also provided with the Complaint form, which includes an address for sending the complaint to in relation to each prison, and invites the complainant to outline the nature of the complaint and what they would like to see happen.<sup>977</sup>

Individual QCS 2's affidavit lists the following agencies and persons that all prisoners can access (in addition to the general manager):

- Office of the Public Guardian;
- Office of the Chief Inspector;
- Ombudsman's Office;
- ESU;
- CCC;
- QPS and
- Prisoners' Legal Service.<sup>978</sup>

The Incident Oversight Committee, which reviews all significant and critical incidents, and the Internal Management Review process are additional internal mechanisms for review of complaints.<sup>979</sup> The Internal Management Review process is ordered by the Commissioner or Deputy Commissioner to review a specific incident.<sup>980</sup>

<sup>971</sup> Affidavit of Individual QCS 2, sworn on 28 September 2016, exhibit Individual QCS 2-9, *Complaints Management – QCS Intranet*, para 8, p 289, edocs 3438812.

<sup>972</sup> Affidavit of Individual QCS 2, sworn on 28 September 2016, exhibit Individual QCS 2-9, *Complaints Management – QCS Intranet*, para 8, p 289, edocs 3438812.

<sup>973</sup> *Corrective Services Regulation 2006*, s 18.

<sup>974</sup> *Corrective Services Regulation 2006*, s 18(3).

<sup>975</sup> Affidavit of Individual QCS-2 sworn on 28 September 2016, para 47, edocs 3438812.

<sup>976</sup> *Fact sheet, A guide for offenders in custodial or community corrections, Complaints Management System*, February 2007; edocs 3440714.

<sup>977</sup> Affidavit of Individual QCS 2, sworn on 28 September 2016, exhibit Individual QCS 2-9, QCS complaint form, p 318, edocs 3438812.

<sup>978</sup> Affidavit of Individual of Individual QCS-2 sworn on 28 September 2016, para 48, edocs 3438812.

<sup>979</sup> Affidavit of Individual QCS-2 sworn on 28 September 2016, para 49, edocs 3438812.

<sup>980</sup> Affidavit of Individual QCS-2 sworn on 28 September 2016, paras 50 and 52, edocs 3438812.



## QUEENSLAND FAMILY AND CHILD COMMISSION

The Queensland Family and Child Commission (QFCC) was established on 1 July 2014 as part of the Queensland Government's response to the 2013 Queensland Child Protection Commission of Inquiry (Carmody Inquiry) – *Taking Responsibility: A Roadmap for Queensland Child Protection 2013*.

The QFCC website states that the QFCC vision is “Queensland children and young people are cared for, protected, safe and able to reach their full potential”. The QFCC is committed to achieving this vision and supporting the delivery of the Child Protection Reform Roadmap.

Under the *Queensland Family and Child Commission Act 2014* the QFCC's purpose is to:

- promote the safety, wellbeing and best interests of children and young people;
- promote and advocate the responsibility of families and communities to protect and care for children and young people; and
- improve the child protection system.<sup>981</sup>

To do this the QFCC educates parents, families, communities and professionals about:

- how children and young people can be kept safe; and
- what services are available to strengthen and support Queensland families.<sup>982</sup>

The QFCC works with partners to strengthen the capacity and capability across the child protection workforce to deliver sustainable improvements in services<sup>983</sup>.

The QFCC provides oversight by monitoring, reviewing, evaluating and reporting on the performance of the child protection system and associated reform initiatives<sup>984</sup>.

The general themes identifiable for QFCC from the changes made to the legislation are as follows:

- the individual advocacy, investigation and oversight functions of the former Commission moving back into line with agencies, with oversight by the Office of the Public Guardian and Queensland Ombudsman; and
- a new approach by the QFCC to system level oversight, evaluation and advocacy in relation to the child protection system (but noting that the *Family and Child Commission Act 2014* now defines ‘child protection system’ to include preventative and family support services)<sup>985</sup>.

A new focus on the interests of Aboriginal and Torres Strait Islander people through:

<sup>981</sup> *Family and Child Commission Act 2014* (Qld), s 4.

<sup>982</sup> *Family and Child Commission Act 2014* (Qld), s 9.

<sup>983</sup> *Family and Child Commission Act 2014* (Qld), s 9(1)(h).

<sup>984</sup> *Family and Child Commission Act 2014* (Qld), s 9(1)(a)

<sup>985</sup> *Family and Child Commission Act 2014* (Qld), Schedule 2.



- the appointment of at least one Commissioner who is either an Aboriginal person or a Torres Strait Islander person<sup>986</sup>;
- a requirement to monitor and report annually on Queensland's progress in reducing the number of, and improving outcomes for, Aboriginal and Torres Strait Islander children and young people in the child protection system<sup>987</sup>; and
- a requirement to respect and promote the role of Aboriginal and Torres Strait Islander service providers in supporting families and communities to protect and care for their children and young people<sup>988</sup>.

Specification of the QFCC's broad promotion, educative and advocacy roles to highlight:

- the responsibility of families and communities in protecting and caring for children and young people<sup>989</sup>; and
- the safety and wellbeing of children and young people in need of protection or in the youth justice system<sup>990</sup>.

New partnership responsibilities relating to:

- building agency capacity to evaluate the efficacy of programs and service models<sup>991</sup>;
- collaborative development and review of strategies supporting the child protection workforce and non-government service capacity<sup>992</sup>;
- strategic child protection research opportunities<sup>993</sup>; and
- improving the delivery of child protection services, from the perspective of the children, young people and families who receive those services.<sup>994</sup>

The QFCC has a largely unchanged role in relation to maintenance of the Queensland Child Death Register. The QFCC will still classify and record the deaths according to cause and other relevant factors to identify themes, patterns and modifiable risk factors<sup>995</sup>. The QFCC will continue to make recommendations based on its data analysis and research and seek opportunities to support and partner with persons undertaking research into ways to reduce the likelihood of child deaths<sup>996</sup>.

#### CRIME AND CORRUPTION COMMISSION

The Crime and Corruption Commission (CCC) is a statutory body set up to combat and reduce the incidence of major crime and corruption in the public sector in

<sup>986</sup> *Family and Child Commission Act 2014* (Qld), s 11(5).

<sup>987</sup> *Family and Child Commission Act 2014* (Qld), s 40(1)(iii).

<sup>988</sup> *Family and Child Commission Act 2014* (Qld), s 23(1)(c).

<sup>989</sup> *Family and Child Commission Act 2014* (Qld), s 4(b).

<sup>990</sup> *Family and Child Commission Act 2014* (Qld), s 4(a).

<sup>991</sup> *Family and Child Commission Act 2014* (Qld), s 9(1)(f).

<sup>992</sup> *Family and Child Commission Act 2014* (Qld), s 9(1)(c).

<sup>993</sup> *Family and Child Commission Act 2014* (Qld), s 9(1)(e).

<sup>994</sup> *Family and Child Commission Act 2014* (Qld), s 4(c).

<sup>995</sup> *Family and Child Commission Act 2014* (Qld), s 26(a).

<sup>996</sup> *Family and Child Commission Act 2014* (Qld), ss 26(b)-(d).



Queensland. Its functions and powers are set out in the *Crime and Corruption Act 2001*.

In 1989, after the 1987–89 Fitzgerald Inquiry into police corruption in Queensland, the Criminal Justice Commission (CJC) was established to help restore confidence in public institutions. The Fitzgerald Inquiry also led to the creation of the Queensland witness protection service within the CJC.<sup>997</sup>

The CJC investigated police and public sector misconduct as well as working with the police to investigate organised and major crime. In 1997, the CJC's crime function was given to the newly formed Queensland Crime Commission (QCC), which was also tasked with investigating predatory sexual behaviour directed towards children.<sup>998</sup>

In 2001, the Queensland Government decided to form a single body to address crime and public sector misconduct – the Crime and Misconduct Commission, a statutory body created under the *Crime and Misconduct Act 2001*.<sup>999</sup>

Following extensive reviews and legislative changes, the *Crime and Misconduct Act 2001* changed to the *Crime and Corruption Act 2001*, and the CMC became the CCC. A new jurisdiction and framework for the CCC was developed, with a focus on serious and systemic corruption.<sup>1000</sup>

The CCC investigates both crime and corruption, has oversight of both the police and the public sector, and protects witnesses. It is the only integrity agency in Australia with this range of functions.<sup>1001</sup>

In brief, the CCC:

- investigates organised crime, paedophilia, terrorist activity and other serious crime referred to it for investigation;
- receives and investigates allegations of serious or systemic corrupt conduct;
- has a statutory function for crime and corruption prevention;
- helps recover the proceeds of crime;
- provides the witness protection service for the state of Queensland; and
- conducts research on crime, policing or other relevant matters.<sup>1002</sup>

A child in a correctional facility may complain to the QPS about alleged unlawful conduct or to the CCC about corrupt conduct.

<sup>997</sup> Crime and Corruption Commission Queensland, *About the CCC - History*, 11 August 2014 <<http://www.ccc.qld.gov.au/about-the-ccc/history>>.

<sup>998</sup> Crime and Corruption Commission Queensland, *About the CCC - History*, 11 August 2014.

<sup>999</sup> Crime and Corruption Commission Queensland, *About the CCC - History*, 11 August 2014.

<sup>1000</sup> Crime and Corruption Commission Queensland, *About the CCC - History*, 11 August 2014 <<http://www.ccc.qld.gov.au/about-the-ccc/history>>.

<sup>1001</sup> Crime and Corruption Commission Queensland, *About the CCC – Role of the CCC*, 9 May 2016 <<http://www.ccc.qld.gov.au/about-the-ccc/role-of-the-ccc>>.

<sup>1002</sup> Crime and Corruption Commission Queensland, *About the CCC – Role of the CCC*, 9 May 2016 <<http://www.ccc.qld.gov.au/about-the-ccc/role-of-the-ccc>>.



### OFFICE OF THE PUBLIC GUARDIAN

The Office of the Public Guardian (OPG) was established on 1 July 2014, combining functions previously undertaken by the Adult Guardian and the Child Guardian. The OPG is now responsible for the Community Visitor Program, as well as a new child advocacy program.<sup>1003</sup>

There are a variety of ways the OPG may become aware of an issue that may give rise to a complaint, including directly from a child, a communication box at a detention centre or an external source such as a member of the public, a service provider, carer or a family member.<sup>1004</sup>

A child for the purposes of the *Public Guardian Act 2014* is a person under the age of 18 years. The *Public Guardian Act 2014* as discussed above in relation to children in youth detention centres is equally applicable to children in corrective services facilities.<sup>1005</sup>

The *Public Guardian Act 2014* provides that the OPG, when exercising its child advocate functions, may help a child make a complaint about a matter pursuant to section 13(1)(h). The *Public Guardian Act 2014* also provides that the OPG may make a complaint on behalf of a child, and may make a complaint to a complaints agency about services provided to a child by a service provider or other government service provider.<sup>1006</sup>

Similar to the Protocol entered into between DJAG and the OPG in relation to visits to detention centres, the CCYPCG also entered into an agreement with Queensland Corrective Services.<sup>1007</sup> The agreement was signed in September 2013.

The agreement's aim is to facilitate visits by community visitors to 17-year-olds in correctional facilities. It states that visits will, where possible, be monthly, depending on various factors. Approval of a visit is at the General Manager's discretion. Any request for a visit will be passed to the General Manager who will pass it to the CCYPCG Zonal Manager. A 17-year-old can contact CCYPCG Complaints Resolution Team via post, free of charge, or via telephone.

### INSPECTIONS AND COMPLAINTS UNDER CORRECTIVE SERVICES ACT 2006

#### Official Visitor

Chapter 6, part 6 of the *Corrective Services Act 2006* provides for the appointment and functions of official visitors.

<sup>1003</sup> Office of the Public Guardian, *About the OPG* <<http://www.publicguardian.qld.gov.au/child-advocate/about-us>>.

<sup>1004</sup> Queensland Ombudsman, *Management of Child Safety Complaints*, July 2016 <[www.ombudsman.qld.gov.au](http://www.ombudsman.qld.gov.au)>.

<sup>1005</sup> See definition of *visitable site*, *Public Guardian Act 2014*, s 51.

<sup>1006</sup> *Public Guardian Act 2014*, s 144.

<sup>1007</sup> *Agreement between the Commissioner for Children and Young People and Child Guardian and Department of Community Safety (through Queensland Corrective Services) to facilitate visits by the Commission for Children and Young People and Child Guardian's Community Visitors to 17 year olds detained in Correctional Centres in Queensland*, September 2013, attached to Affidavit of Individual OPG 1, sworn on 18 November 2016, exhibit OPG 1-1; edocs 3522085.



Under section 290, an official visitor must investigate a complaint made by a prisoner if it is made by a prisoner at the corrective services facility to which the official visitor is assigned, and it is about an act or omission by:

- the chief executive;
- a person purportedly performing a function, or exercising a power, of the chief executive; or
- a corrective services officer.

If the official visitor reasonably suspects the complaint involves or may involve corrupt conduct, they are not to investigate it, unless the chief executive has advised the official visitor that the complaint has been referred to the CCC and the CCC chairperson has advised the chief executive that the CCC does not intend to investigate the complaint.

After investigating a complaint, an official visitor may make a recommendation to the chief executive. The official visitor must advise the prisoner whether the official visitor has made a recommendation to the chief executive and – if a recommendation has been made – the terms of the recommendation, without disclosing confidential information.<sup>1008</sup>

The chief executive is not bound by an official visitor's recommendation. An official visitor cannot overrule a decision about which a complaint has been made.<sup>1009</sup>

The official visitor has powers of entry to interview prisoners, and to inspect and copy documents.<sup>1010</sup>

An official visitor provides a written report to the chief executive monthly, summarising the number and type of complaints.<sup>1011</sup>

Queensland Corrective Services' brochure *Office of the Chief Inspector* provides that official visitors' "primary role is to investigate and resolve offender complaints and grievances."<sup>1012</sup>

### The Chief Inspector

The Office of the Chief Inspector was established in 2005.<sup>1013</sup> Inspectors,<sup>1014</sup> and a Chief Inspector,<sup>1015</sup> are appointed under the *Corrective Services Act 2006*. Chapter 6, part 8 provides for the appointment and functions of inspectors.

<sup>1008</sup> Corrective Services Act 2006 s 290(5).

<sup>1009</sup> Corrective Services Act 2006 s 290(6).

<sup>1010</sup> Corrective Services Act 2006 s 291.

<sup>1011</sup> Corrective Services Act 2006 s 292.

<sup>1012</sup> Queensland Corrective Services, Office of the Chief Inspector,

<[http://www.correctiveservices.qld.gov.au/Publications/Corporate\\_Publications/Miscellaneous\\_Documents/index.shtml](http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/index.shtml)>.

<sup>1013</sup> Queensland Corrective Services, Health Prison Report,

<[http://www.correctiveservices.qld.gov.au/Publications/Corporate\\_Publications/Reviews\\_and\\_Reports/2012\\_healthy\\_prison\\_report.shtml](http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Reviews_and_Reports/2012_healthy_prison_report.shtml)>.

<sup>1014</sup> Corrective Services Act 2006 s 294(1).

<sup>1015</sup> Corrective Services Act 2006 s 296.



Inspectors' functions are as follows:

- to investigate an incident;
- to inspect a corrective services facility or a probation and parole office;
- to review the operations of a corrective services facility or a probation and parole office; and
- to review services offered at a corrective services facility or a probation and parole office.<sup>1016</sup>

For an incident, the Chief Executive must appoint two inspectors. An incident includes:<sup>1017</sup>

- a death (other than by natural causes) or serious injury of a person in a corrective services facility;
- an escape or attempted escape from secure custody;
- a riot or mutiny involving prisons while in custody; and
- another event involving provisions the chief executive considers requires being investigated by inspectors.

Inspectors have powers of entry to interview prisoners or staff members, and to inspect and copy documents.<sup>1018</sup> Inspectors may also request information.<sup>1019</sup>

Inspectors must report in writing to the chief executive on incidents they are appointed to investigate.<sup>1020</sup> Written reports must also be provided to the chief executive on any inspection or review and recommendations.<sup>1021</sup> Both types of reports are to provide the results and any recommendations.

Queensland Corrective Services' brochure *Office of the Chief Inspector*<sup>1022</sup> provides that the main responsibility of the chief inspector is to provide:

*independent scrutiny regarding the treatment of offenders, and the application of standards and operational practices within the State's correctional centres. The independence of the role of the Chief Inspector is maintained through a direct reporting relationship with the Director-General.*

Inspectors are guided by the *Healthy Prisons Handbook*<sup>1023</sup> and measure prison standards prison against criteria as follows:<sup>1024</sup>

- there is a comprehensive system in place for managing prisoner complaints;
- information about prisoner requests and complaints is provided to prisoners in a way that is easily understood, including appeal mechanisms;

<sup>1016</sup> Corrective Services Act 2006 s 294(2).

<sup>1017</sup> Correct Services Act 2007 sch 4, definition incident.

<sup>1018</sup> Corrective Services Act 2006 s 303.

<sup>1019</sup> Corrective Services Act 2006 s 304.

<sup>1020</sup> Corrective Services Act 2006 s 305(1).

<sup>1021</sup> Corrective Services Act 2006 s 305(2).

<sup>1022</sup> Queensland Corrective Services, Office of the Chief Inspector, <[http://www.correctiveservices.qld.gov.au/Publications/Corporate\\_Publications/Miscellaneous\\_Documents/index.shtml](http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/index.shtml)>.

<sup>1023</sup> Queensland Corrective Services, Healthy Prisons Handbook, November 2007. Available at: [http://www.correctiveservices.qld.gov.au/Publications/Corporate\\_Publications/Miscellaneous\\_Documents/index.shtml](http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Miscellaneous_Documents/index.shtml)

<sup>1024</sup> Queensland Corrective Services, Healthy Prisons Handbook, November 2007, pp 44–45.



- prisoners are encouraged to resolve complaints informally at the lowest possible level before making official complaints;
- prisoners can easily and confidentially submit complaint forms;
- prisoners are not pressured to withdraw requests or complaints;
- prisoners feel able to ask for help in completing their application or complaint and in copying relevant documentation;
- prisoners who make complaints against staff and/or other prisoners are protected from possible recrimination;
- all prisoners know how to contact the Official Visitor and/or the Office of the Queensland Ombudsman and can do so with confidence;
- prisoners are not discouraged from pursuing grievances with external bodies if they need to; and
- centre management analyse complaints data regularly and if necessary take remedial action.

### Discrimination complaints

Chapter 6, part 12A of the *Corrective Services Act 2006* regulates discrimination complaints by offenders.

The provisions require offenders to utilise existing complaint mechanisms prior to making complaints to the Commissioner under the *Anti-Discrimination Act 2001*, and modify how that Act applies to the consideration of direct and indirect discrimination against offenders.

## DISCUSSION

This Review considers the current Youth Detention Inspectorate ('the Inspectorate') lacks the key requirements of properly independent youth detention centre oversight. The Review considers that the key requirements are broad investigative powers, independence and transparency. This is particularly evident when contrasted with the international and national models discussed above. The Review considers that the Queensland experience is similar to that of Victoria with respect to the influence of stakeholders, lack of accountability and a persistent inability to influence change in youth detention centres' practices.

The Inspectorate staff have detailed extensive limitations to their role with respect to investigative powers. The Review considers that in many of the individual incidents included in the terms of reference, the Inspectorate management appears to lack either the inclination or the power to conduct independent assessment and investigation of concerning events. The Review considers that a number of these individual events are indicative of systemic issues of which sufficient information reflects the Inspectorate was aware.

The Review considers that in the quarterly reports of March 2013 and June 2013 there was editing of the final content of those reports. It is not unusual for editing of final reports to occur. However, in respect of the March 2013 Inspectorate report the reference to the legal advice from SPLES in relation to [redacted] was removed and in respect of the June 2013 Inspectorate report the information pertaining to Young Person [redacted]



was not included, despite interviews with staff having been undertaken by the inspectors in the preparation of the report.<sup>1025</sup>

The edited nature of the final versions and summaries made publically available are symptoms of a process lacking in independence, perceived or real. The Review considers that without full and unfettered publication of the Inspectorate reports of identified systemic issues and conditions in youth detention centres, the Queensland public is being afforded no opportunity to develop genuine insight into what systemic issues are present youth detention. The Review considers that within the current system there has been little impetus for organisational change.

The State and Individual ESU-1 have submitted that an unspecified number of individual instances does not amount to a systemic problem.<sup>1026</sup> Individual ESU-1 points to the fact he has conducted 270 investigations. The Review directs the reader to the list of concerning issues identified in the Inspectorate reports between 2011 and 2016 in this chapter.

Submissions to the Review include concerns that the 'arms-length' Inspectorate is not sufficiently independent. These submissions have effectively been supported by a number of Inspectorate staff, with revelations that recommendations are reviewed by stakeholders such as the detention centres themselves and Youth Justice before being finalised in the quarterly reports.

The State and Individual ESU-1 submit that the Inspectorate's functions are not and are not intended to be independent or "arms-length". That submission is said to apply to both the youth detention Inspectorate and the Chief Inspector of prisons. The Review notes a draft letter prepared for the Attorney-General by Youth Justice to Amnesty International stated that, "if the complaint relates to alleged staff misconduct, the department will refer the matter to the department's arms-length Ethical Standards Unit..."<sup>1027</sup>

The Review has received a number of submissions from key stakeholders outlining concerns with the current oversight model, including the view that the current model has failed. The Review considers support can be found for those concerns with the current investigators identifying problem areas within their reports, but their recommendations not then being implemented as evidenced in the summary of the BYDC and CYDC Inspectorate Reports below.

The Review considers that the appropriate solution is to move from the current model and to take immediate steps to replace it with a truly independent, statutory authority, in line with national and international models.

<sup>1025</sup> Affidavit of Individual ESU 5, sworn 2 November 2016, para 13; exhibit Individual ESU5-24, p 248, edocs 3495059.

<sup>1026</sup> Submission to the Review on behalf of Individual ESU 1, dated 11 December 2016, para 31(a), edocs 3554116.

<sup>1027</sup> Youth Justice draft letter Attorney-General response to Amnesty International, edocs 3447172.



## KEY FINDINGS – STATEMENTS TO THE REVIEW

### YOUTH DETENTION INSPECTORATE TEAM

*The majority of CYDC inspection reports...contain the running theme that CYDC ought to reduce its use of force and separation with young people so as to more strongly align staff practice with the provisions of youth justice legislation and policies.<sup>1028</sup>*

Statements obtained from ESU staff members raise concerns about the lack of independence, influence and transparency of the Inspectorate. Submissions from key stakeholders echo these concerns.

The lack of transparency is discussed elsewhere in this chapter. The lack of influence is outlined by the recommendation to CYDC to review all incidents involving the use of force.<sup>1029</sup> That recommendation was unable to be actioned as CYDC considered it to be too time intensive to conduct such review of all use of force CCTV footage.<sup>1030</sup>

In the September 2015 quarterly report it is stated that, “generally there was an evidence emphasis on security practices at CYDC. There is sufficient evidence that a balance is required between security, safety and well-being for children and young people in youth detention. Concerns were raised about the security practices with CYDC staff as the practices were said not to be based on contemporary youth justice practices which focus on minimising the impact of institutionalisation of young people.

Individual ESU 5 stated that the majority of CYDC inspection reports had identified that CYDC ought to reduce its use of force and separation of young people to ensure alignment with youth justice legislation and policies.<sup>1031</sup> The Review considers that Individuals ESU-5 and ESU-6 have fulfilled their roles with tenacity and dedication.

The Review considers that it is likely that trauma informed practice training should, to some extent, mitigate the operational imperatives and security concerns.

Evidence of the lack of investigative and organisational authority of staff responsible for inspecting and reporting on the conditions, policies and practices in detention centres include:

- difficulties obtaining CCTV footage of incidents from detention centre management and, in one instance, an inability to have a correctional centre explain missing segments of CCTV footage;<sup>1032</sup>
- Inspectorate staff being confined to “raising issues” with DJAG officers, and unable to make decisions about whether there was an apparent breach of policy or legislation;<sup>1033</sup>

<sup>1028</sup> Affidavit of Individual ESU-5, sworn 2 November 2016, para 12, edocs 3495059.

<sup>1029</sup> Affidavit of Individual ESU 6, sworn 10 November 2016, Exhibit to Individual ESU 6-11 page 4, edocs 3509156.

<sup>1030</sup> Affidavit of Individual ESU 6, sworn 10 November 2016, Exhibit to Individual ESU 6-11 page 4, edocs 3509156.

<sup>1031</sup> Affidavit of Individual ESU 5, sworn 2 November 2016, para 12, edocs 3509156.

<sup>1032</sup> Affidavit of Individual ESU-6, sworn 10 November 2016, paras 18–21, edocs 3509156.

<sup>1033</sup> Affidavit of Individual ESU-6, sworn 10 November 2016, para 24, edocs 3509156.



- Inspectorate staff being limited in reporting matters directly to the QPS<sup>1034</sup> or in recommending that detention centre staff be investigated regarding apparent breaches;<sup>1035</sup>
- Inspectorate staff being unable to ensure that recommendations are implemented, and limited to providing progress reports on the progress of implementation of outstanding recommendations each December;
  - for example, a 2013 recommendation that CYDC review the incident involving the use of restraints on Young Person A3 was “never conducted by CYDC, ostensibly because it lacked the resources to do so.”<sup>1036</sup>
- Inspectorate staff being limited before being permitted to seek internal departmental legal advice;<sup>1037</sup> and
- Inspectorate staff raising concerns about detention centre practices, for example in relation to the use of dogs or mechanical restraints, over a number of years without the ability to influence change because they lacked the authority to make binding recommendations on detention centres.<sup>1038</sup>

Affidavits obtained from Inspectorate management are indicative of a cultural emphasis on monitoring rather than active oversight and involvement in complaints against detention centres. For example, the decision not to report the matter to the QPS was made,

by ESU where there was arguably an obligation to do so.<sup>1039</sup>

Individual ESU-1 contends that he specifically considered whether the matter should be referred to the police but decided against it for reasons as follows:

- a) Young Person A3 did not want to complain to the police;
- b) Individual ESU-1 considered it could be dealt with through the inspection process; and
- c) Individual ESU-1 did not consider there was an obligation to report.<sup>1040</sup>

The Review considers that the Inspectorate management also have no capacity to enforce recommendations that are accepted but not carried out. For example, the recommendation that an investigation occur into an incident involving Young Person A3, simply remained open until the action occurs, “or the Director-General authorises the recommendation be closed”.<sup>1041</sup> In that specific incident involving Young Person A3

<sup>1034</sup> Affidavit of Individual ESU-6, sworn 10 November 2016, para 41, edocs 3509156.

<sup>1035</sup> Affidavit of Individual ESU-6, sworn 10 November 2016, para 63, edocs 3509156; Affidavit of Individual ESU-5, sworn 2 November 2016, para 9, edocs 3495059.

<sup>1036</sup> Affidavit of Individual ESU-5, sworn 2 November 2016, para 8, edocs 3495059.

<sup>1037</sup> Affidavit of Individual ESU-6, sworn 10 November 2016, para 29, edocs 3509156; Affidavit of Individual ESU-5, sworn 2 November 2016, para 8, edocs 3495059.

<sup>1038</sup> Affidavit of Individual ESU-6, sworn 10 November 2016, paras 44–56, edocs 3509156; Affidavit of Individual ESU-5, sworn 2 November 2016, paras 6–7, edocs 3495059.

<sup>1039</sup> Affidavit of Individual ESU-1, sworn 1 November 2016, para 68, edocs 3492356.

<sup>1040</sup> Affidavit of Individual ESU 1 sworn 1 November 2016, para 68, edocs 3492356; Submission to the Review on behalf of Individual ESU 1 dated 1 December 2016, paras 2.9, 4.33–4.35, edocs 3540237.

<sup>1041</sup> Affidavit of Individual ESU-1, sworn 1 November 2016, paras 77–79, edocs 3492356.



the recommendation was in fact closed after a lengthy period of inaction because it was said CYDC lacked the resources to investigate the incident.

The Review considers that the quarterly reports lack rigour and transparency due to a many tiered review process, including by stakeholders such as BYDC and CYDC Executive Directors and Youth Justice, from which the Inspectorate should be independent. There should be feedback in relation to factual findings in the usual course of report preparation as necessary.

The review process was described by staff of the Inspectorate as follows:

- Inspection reports are first subject to editing by the [redacted], who had the power to veto recommendations with one staff member noting that if [redacted] disagreed with content in the report, they would not then be forwarded to the Director-General.<sup>1042</sup> Significant changes noted by staff included the removal of a reference to [redacted] and a discussion of [redacted] in relation to Young Person [redacted].<sup>1043</sup>
- The Inspectorate then consults with the Executive Director of the BYDC and CYDC and the Assistant Director-General of Youth Justice about the findings and recommendations before issuing the final reports to the Director-General.<sup>1044</sup>
- The Director-General has the power to approve recommendations from inspection reports, to then form part of the inspection framework of later reviews.<sup>1045</sup> The Director-General also has the power to close recommendations, even where they have been accepted but not implemented.<sup>1046</sup>

## KEY FINDINGS – QUARTERLY INSPECTION REPORTS

Audits of the CYDC and BYDC between 2011 and 2016 conducted by the Inspectorate were provided to the Review.

### CYDC INSPECTORATE REPORTS

The Review considers that the CYDC Inspectorate Reports provided do not include any trending data on complaints between 2011 and 2016.<sup>1047</sup> It is unclear whether this is due to a lack of record keeping or any other reason. Inspectorate staff indicated that young people are required to complete a complaint form after each event in a detention centre.<sup>1048</sup> It would be expected that there would be a register of completed complaint forms, whether or not the young person has indicated that they wish to proceed with a formal complaint.

<sup>1042</sup> Affidavit of Individual ESU-6, sworn 10 November 2016, para 9, edocs 3509156.

<sup>1043</sup> Affidavit of Individual ESU-6, sworn 10 November 2016, para 34, edocs 3509156; Affidavit of Individual ESU-5, sworn 2 November 2016, para 13, edocs 3495059.

<sup>1044</sup> Affidavit of Individual ESU-1, sworn 17 October 2016, para 18(e), edocs 3473091.

<sup>1045</sup> Affidavit of Individual ESU-1, sworn 17 October 2016, para 18(e), edocs 3473091.

<sup>1046</sup> Affidavit of Individual ESU-1, sworn 1 November 2016, para 78, edocs 3492356.

<sup>1047</sup> CYDC – Quarterly Inspection Summary, edocs 3536411.

<sup>1048</sup> Affidavit of Individual ESU-6, sworn 10 November 2016, para 41, edocs 3509156.



There are indications throughout the reports about concerns relating to the complaints process:

- in June 2011, it was noticed that a practice of asking young people whether they wish to withdraw their complaints soon after they are made was to be abolished.<sup>1049</sup>
- in December 2011, the Inspectorate expressed concerns that the complaint process was insufficiently robust and objective, and that it required revision to ensure that all potential harm to young people was detected and addressed.<sup>1050</sup>
- 'Complaints' and 'complaint management' are subsequently referred to as issues in the June 2012 and September 2012 reports.<sup>1051</sup> However, there is no subsequent indication that a complaints process has been implemented, or data to indicate that the Inspectorate was able to take an ongoing role in monitoring the management of complaints.<sup>1052</sup>

The CYDC Inspectorate Reports refer to concerning practices at the centre. For example:

- every quarterly report in 2011 refers to bullying of, inappropriate violence towards, and use of force against, young people.<sup>1053</sup> Reference was made to referrals to the ESU for "suspected misconduct by staff towards young people" in March 2011;<sup>1054</sup>
- in September 2011, recommendations included the need for the Centre Director to develop procedures to ensure sufficient documentation of allegations;<sup>1055</sup>
- in December 2011, a highest priority recommendation concerned the lawful use of force and that "force no longer be used solely for escorting unresisting young people or compelling compliance with staff directions";<sup>1056</sup>
- further recommendations about the use of force were made in the March 2013 report;<sup>1057</sup>
- in September 2013, it was reported that the CYDC had 313 instances of force in comparison with 215 at the BYDC;<sup>1058</sup>
- the December 2015 report referred to the need for a "strategy to reduce the number of incidents involving violence";<sup>1059</sup>

<sup>1049</sup> CYDC – Quarterly Inspection Summary, June 2011, edocs 3536411.

<sup>1050</sup> CYDC – Quarterly Inspection Summary, December 2011, edocs 3536411.

<sup>1051</sup> CYDC – Quarterly Inspection Summary, June 2012 and September 2012, edocs 3536411.

<sup>1052</sup> CYDC – Quarterly Inspection Summary, edocs 3536411.

<sup>1053</sup> CYDC – Quarterly Inspection Summary, March 2011, June 2011, September 2011, December 2011, edocs 3536411.

<sup>1054</sup> CYDC – Quarterly Inspection Summary, March 2011, edocs 3536411.

<sup>1055</sup> CYDC – Quarterly Inspection Summary, September 2011, edocs 3536411.

<sup>1056</sup> CYDC – Quarterly Inspection Summary, December 2011, edocs 3536411.

<sup>1057</sup> CYDC – Quarterly Inspection Summary, March 2013, edocs 3536411.

<sup>1058</sup> CYDC – Quarterly Inspection Summary, September 2013, edocs 3536411.

<sup>1059</sup> CYDC – Quarterly Inspection Summary, December 2015, edocs 3536411.



- force, restraint, searching and separation practices were highlighted as issues in the June 2012, September 2012, March 2013, September 2014, March 2015, June 2015 and December 2015 reports;<sup>1060</sup>
- the March 2012 report refers to confusion about the definition of harm under relevant legislation in the context of suicide risk and reporting of harm, with a conclusion that the Department response was insufficient to manage young people at risk of suicide and self-harm and the need for an Interim Suicide Plan to be developed by a Clinical Nurse;<sup>1061</sup>
- the policies and practices around suicide risk and harm were also highlighted in December 2012, March 2013, March 2015 and March 2016;<sup>1062</sup>
- the March 2015 report indicated that between 1 January 2014 and 30 December 2014, there were 30 incidents of self-harm or attempted self-harm;<sup>1063</sup> and
- concerns about the implementation of the behaviour management and reward system are referred to in the June 2011, June 2012, September 2012, June 2015, September 2015 and December 2015 reports.<sup>1064</sup>

#### BYDC INSPECTORATE REPORTS

The BYDC Inspectorate Reports highlight inadequacies in the complaints processes, in particular:

- the need for complaints to be recorded in a Complaints Register was raised in September 2011, March 2012 and again in September 2013;<sup>1065</sup>
- in September 2011, the reluctance of young people to complain was highlighted;<sup>1066</sup>
- in September 2011, it was noted that a confidential complaints system had still not been implemented;<sup>1067</sup>
- in December 2012, the need to improve the complaints management process was mentioned;<sup>1068</sup>
- in March 2013, a confidential 'blue envelope' complaints process was suggested;<sup>1069</sup> and
- in December 2014, it was noted that staff were unaware of the requirement to retain CCTV footage for all use of force incidents regardless of whether or not a complaint had been lodged.<sup>1070</sup>

<sup>1060</sup> CYDC – Quarterly Inspection Summary, June 2012, September 2012, March 2013, September 2014, March 2015, June 2015, December 2015, edocs 3536411.

<sup>1061</sup> CYDC – Quarterly Inspection Summary, March 2012, edocs 3536411.

<sup>1062</sup> CYDC – Quarterly Inspection Summary, December 2012, March 2013, March 2015, March 2016, edocs 3536411.

<sup>1063</sup> CYDC – Quarterly Inspection Summary, March 2015, edocs 3536411.

<sup>1064</sup> CYDC – Quarterly Inspection Summary, December 2014, edocs 3536411.

<sup>1065</sup> BYDC – Quarterly Inspection Summary, September 2011, March 2012, September 2013, edocs 3467506.

<sup>1066</sup> BYDC – Quarterly Inspection Summary, September 2011, edocs 3467506.

<sup>1067</sup> BYDC – Quarterly Inspection Summary, September 2011, March 2012, September 2013, edocs 3467506.

<sup>1068</sup> BYDC – Quarterly Inspection Summary, December 2012, edocs 3467506.

<sup>1069</sup> BYDC – Quarterly Inspection Summary, March 2013, edocs 3467506.

<sup>1070</sup> BYDC – Quarterly Inspection Summary, December 2014, edocs 3467506.



The Review considers that even where it appears that recommendations have been accepted, implementation is not routinely monitored and reported upon. For example, each end of year review lists recommendations that have not yet been implemented. The Review considers that this is indicative of a lack of authority or follow-through capacity of the Inspectorate.

Further, recommended processes that would improve the purview of the Inspectorate do not result in greater information sharing. For example, despite the repeated call for a Complaints Register, none of the inspection reports between 2011 and 2016 include data on the number of complaints by young people.<sup>1071</sup> Additionally, a March 2013 recommendation for the monthly monitoring of the use of force was accepted, but did not result in data on the use of restraints being included in subsequent reports by the Inspectorate.<sup>1072</sup>

Given the nature of the specific incidents included within the terms of reference and the ongoing concern of overuse of the 'use of force', the Review considers use of force to be an ongoing part of every quarterly inspection process.

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## KEY FINDINGS – CHRONOLOGIES OF INCIDENTS

A number of allegations under review identify the inadequacies of current complaint systems. Significantly, only three of the nine young people who had incidents investigated by this Review had complaints externally reviewed. Of those who did complain, not one investigative process resulted in a substantiated complaint prior to media involvement through the airing of allegations that led to this Review.

Individual ESU 1 submits that this should be caveated by the fact that ESU investigate a significant number of complaints, some of which have been substantiated.<sup>1073</sup> The sample number size is acknowledged by the Review, however other submissions received highlight flaws in the oversight process and have been available on the Review's website.

The experiences of Young Person A1 are particularly salient. Young Person A1 complained to the community visitor, the Prisoners Legal Service and the QPS about his treatment at CYDC between 17 January 2013 and 8 June 2014. The outcomes and inadequacies of the responding complaint processes have been expanded in full in each of the relevant chapters below.<sup>1075</sup> Relevant criticisms include:

- the complaint by the community visitor was referred to the CCYPCG and included obtaining a written response by the BCC. The BCC response showed a

<sup>1071</sup> BYDC – Quarterly Inspection Summary, edocs 3467506.

<sup>1072</sup> BYDC – Quarterly Inspection Summary, March 2013, edocs 3467506.

<sup>1073</sup> Submission to the Review on behalf of Individual ESU 1 dated 1 December 2016, para 1.6, edocs 3540237; Submission to the Review on behalf of Individual ESU 1, dated 11 December 2016, para 5.64 edocs 3554116.

<sup>1074</sup> see Chapter 20 Incident involving Young Person A4.

<sup>1075</sup> see Chapter 18 Incident involving Young Person A1.



lack of understanding of the *Corrective Services Act 2006* which obstructed the appreciation of the validity of the complaint;

- the complaint forwarded by the Prisoners Legal Service to the Queensland Corrective Services Ethical Standards Team was ultimately investigated by a number of officers from the QPS and Queensland Corrective Services who, erroneously, drew conclusions about the legality of restraint practices and treatment of Young Person 1 and failed to properly consider the requirements under the *Corrective Services Regulation 2006*, thereby silencing the complaint;
- similarly, complaints about the use of separate confinement were investigated and found unsubstantiated by Queensland Corrective Services and the QPS; and
- a subsequent investigation by the Office of the Chief Inspector found that the use of restraint practices, restrictions and isolation of Young Person A1 were inappropriate and that the practices were not “fair, just and reasonable”.<sup>1076</sup>

Individual ESU 1 submits that the Chief Inspector Report is much different to the process undertaken by ESU. Secondly that the legality or propriety of most procedures is not relevant to the assessment by ESU.<sup>1077</sup>

## KEY FINDINGS – SUBMISSIONS TO THE REVIEW

### CRITICISM OF THE CURRENT SYSTEM

*The net result of these different bodies with different, but at times overlapping responsibility and functions, makes a coordinated response to a particular issue within the youth detention sphere more difficult.*<sup>1078</sup>

Queensland Ombudsman, Submission to the Youth Detention Review

The Queensland Ombudsman noted that while there are

*at least four bodies with some role in oversight of namely the Crime and Corruption Commission (CCC), Queensland Family and Child Commission (QFCC), Office of the Public Guardian (OPG) and the OQO [Office of the Queensland Ombudsman], none of those bodies has a complete picture of the operation of youth detention and its potential failings.*<sup>1079</sup>

In particular, the CCC and OQO operate within their “respective complaints and investigation frameworks” relating to corruption and maladministration, and the QFCC and OPG are “not complaint bodies and have limited powers to undertake investigations of individual cases.”<sup>1080</sup>

The State submitted that editing of reports in youth justice is analogous to the Office of the Queensland Ombudsman and the West Australian Inspector of Custodial

<sup>1076</sup> Office of the Chief Inspector, Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Managements as a Youthful Offender – Brisbane Correctional Centre, 2016, edocs 3458671.

<sup>1077</sup> Submission to the Review on behalf of Individual ESU 1 dated 1 December 2016, paras 5.23 – 5.26, edocs 3540237.

<sup>1078</sup> Queensland Ombudsman, Submission to the Independent Review of Youth Detention Discussion Paper, 26 October 2016, p 3, edocs 3485331.

<sup>1079</sup> Queensland Ombudsman, Submission to the Independent Review of Youth Detention Discussion Paper, 26 October 2016, p 3, edocs 3485331.

<sup>1080</sup> Queensland Ombudsman, Submission to the Independent Review of Youth Detention Discussion Paper, 26 October 2016, p 3, edocs 3485331.



Services.<sup>1081</sup> Individual ESU-1 submitted that there should be engagement with the stakeholders to ensure effective and workable submissions.<sup>1082</sup> The Review considers that analogy is limited in that those independent oversight bodies afford an opportunity to provide submissions in response to draft adverse comments against a person or information critical of the department or a contractor but is not editorial in nature.

The OPG criticised the current multifaceted complaint system, submitting that:

*Each oversight body plays a different role in the process of managing child complaints and issues; the investigation and referral processes between each can result in delays, incoherence and confusion for clients. This could be seen to dilute responsibility to the point that there is no real locus of accountability.*<sup>1083</sup>

The OPG also submitted on key principles of oversight, including the rationalisation of the number of levels of oversight.<sup>1084</sup>

The Children's rights report also comments:

*"Some jurisdictions have multiple government departments and statutory bodies with responsibilities in the youth justice context. Often, these departments and bodies appear somewhat uncoordinated in their approach. This is concerning because it indicates, that in some jurisdictions, there is no overall mechanism acting in the best interests of children and young people who are in detention. This may also impede the ability for young people to readily identify the key sources of external support and advice."*<sup>1085</sup>

Amnesty International referred to the limitations of each of the existing oversight mechanisms and noted that the jurisdiction of many of the current oversight mechanisms is dependent upon a complaint being made.<sup>1086</sup> It queried the accessibility and adequacy of the current complaints processes with reference to the number of instances where recommendations in the ESU Quarterly Inspection Reports were ignored or not otherwise implemented.<sup>1087</sup>

The Aboriginal and Torres Strait Islander Legal Service (ATSILS) reported concerns about the requirement that a request for a review of a complaint be in writing, noting that writing was a "significant barrier" for many young people and that for those young people serving sentences who no longer had access to a lawyer the complaint

<sup>1081</sup> The Ombudsman Act 2001, section 55. The Inspector of Custodial Services Act (WA) 2003, section 37.

<sup>1082</sup> Submission to the Review on behalf of Individual ESU 1, dated 11 December 2016, para 5.57, edocs 3554116.

<sup>1083</sup> Public Guardian, Submission to the Independent Review of Youth Detention Discussion Paper, October 2016, p 8, edocs 3489239.

<sup>1084</sup> Public Guardian, Submission to the Independent Review of Youth Detention Discussion Paper, October 2016, p 8, edocs 3489239.

<sup>1085</sup> Children's Right Report 2016, Human Rights Commission: executive summary p5

<sup>1086</sup> Amnesty International, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016, p 15, edocs 3486167.

<sup>1087</sup> Amnesty International, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016, p 15, edocs 3486167.



system became inaccessible.<sup>1088</sup> The Review was informed during a visit to CYDC that the average reading age was seven, supporting ATSILS' concern.

It was also noted that for Aboriginal and Torres Strait Islander young people there existed:

*significant cultural barriers to utilising the complaints system, and will be affected by the power imbalance that exists between them as individuals and the corrective system.*

*ATSILS is also concerned that anecdotal evidence suggests that Aboriginal and Torres Strait Islander youths are scared to make a complaint internally or to get someone on their behalf to make a complaint, as they lack confidence that it will be resolved fairly in an environment free of reprisal or retribution.*

...

*It is problematic having to rely on the goodwill of youth justice employee's working for the Department of Justice and Attorney-General and the Minister of this department to assess complaints appropriately.*<sup>1089</sup>

ATSILS also expressed concerns about the internal self-reviewing nature of the current complaints system, with reference to:

- complaint management in youth detention resting with the detention centre and reporting to the Minister as being "like the department investigating itself"<sup>1090</sup>;
- certain complaints to the OPG and the QPS being referred back to the youth detention centre<sup>1091</sup>; and
- the inspection of corrective service facilities as being undertaken by the Office of the Chief Inspector, an office that rests within Queensland Corrective Services under DJAG, with many ATSIL clients seeing the official visitor as "part of the system."<sup>1092</sup>

#### THE NEED FOR AN INDEPENDENT INSPECTOR OF CUSTODIAL SERVICES

*Amnesty International recommends Queensland establish an Inspector of Custodial Services, similar to that in Western Australia, to have access to all places of detention including youth detention centres, prisons and police watch [sic] houses for the purpose of monitoring and reporting on conditions of detention.*

<sup>1088</sup> Aboriginal and Torres Strait Islander Legal Service, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016, p 9, edocs 3485327.

<sup>1089</sup> Aboriginal and Torres Strait Islander Legal Service, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016, pp 9-10, edocs 3485327.

<sup>1090</sup> Aboriginal and Torres Strait Islander Legal Service, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016, p 10, edocs 3485327.

<sup>1091</sup> Aboriginal and Torres Strait Islander Legal Service, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016, p 10, edocs 3485327.

<sup>1092</sup> Aboriginal and Torres Strait Islander Legal Service, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016, p 11, edocs 3485327.



*The Inspector of Custodial Services would carry out regular, thorough, independent and impartial investigations into all allegations of mistreatment, torture or other ill-treatment of children in detention and ensure that conditions of detention are adequate and in accordance with international standards.*<sup>1093</sup>

Amnesty International, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016

The appointment of an independent Inspector of Custodial Services was supported by the ALHR<sup>1094</sup>, Human Rights Law Centre<sup>1095</sup>, Amnesty International<sup>1096</sup> and Sisters Inside.<sup>1097</sup>

The Human Rights Law Centre recommended the Western Australian model be adopted with the inclusion of oversight of police custody, noting:

*The WA Inspector's work has included reporting and providing recommendations following serious incidents in youth detention, such as a riot at Banksia Hill Juvenile Detention Centre in 2013. To this end, the Inspector's work has been critical in ensuring subsequent positive developments in youth detention practices in Western Australia.*

*The WA Inspector reports to Parliament about its inspections and those reports are publically [sic] available...*

*It is noteworthy that this year, the West Australian model has been replicated in Tasmania, and to some extent NSW, and could be appropriately adapted for Queensland.*

*As noted above, a limitation of the WA model is that the inspector's mandate does not cover oversight of police custody. If a similar body is established in Queensland, its mandate should include oversight of police custody.*<sup>1098</sup>

ASTILS also considered that an Independent Statutory Office of the Inspector of Custodial Services based on the Western Australian model was required.<sup>1099</sup>

#### KEY FEATURES OF EFFECTIVE OVERSIGHT

*A fundamental principle of effective oversight must be that any consequences or actions taken must be proximate to the issues arising or being disclosed. Time is of the essence when actioning a child's complaint; if a timely response*

<sup>1093</sup> Amnesty International, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016, pp 3, 14, edocs 3486167.

<sup>1094</sup> Human Rights Law Centre, Submission to the Youth Detention and Young Prisoner Review, Queensland, 7 November 2016, p 16–17, edocs 3498838.

<sup>1095</sup> Human Rights Law Centre, Submission to the Youth Detention and Young Prisoner Review, Queensland, 7 November 2016, p 16–17, edocs 3498838.

<sup>1096</sup> Amnesty International, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016, pp 3, 14, edocs 3486167.

<sup>1097</sup> Sisters Inside, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 20, edocs 3491213.

<sup>1098</sup> Human Rights Law Centre, Submission to the Youth Detention and Young Prisoner Review, Queensland, 7 November 2016, pp 16–17, edocs 3498838.

<sup>1099</sup> Aboriginal and Torres Strait Islander Legal Service, Submission to the Independent Review of Youth Detention in Queensland, 26 October 2016, p 11, edocs 3485327.



*or resolution is not provided, the child loses trust in the system. In the OPG's experience, issue resolution, investigations and inquiries progress very slowly. It is critical that all children and young people, particularly those at greatest vulnerability, and where the allegations or complaints are most serious, are provided with a timely and informed response that is rights based and young person centred.*<sup>1100</sup>

Office of the Public Guardian, Submission to the Independent Review of Youth Detention Discussion Paper, October 2016

The Office of the Public Guardian submitted on key principles of oversight,<sup>1101</sup> including:

- the rationalisation of the number of levels of oversight;<sup>1102</sup>
- the timeliness of response to complaints including consequences for delays and incentives for timely resolutions.<sup>1103</sup> Particular emphasis was placed on the current short term retention of CCTV footage, and the need for complaints to be actioned quickly to "ensure the availability, quality and integrity of evidence"; and
- the need to keep young people informed about the progress and outcome as being "critical".<sup>1104</sup>

It supports the recommendations of this chapter in principle and support the the establishment of an independent statutory Office of the Inspector of Custodial Services (OICS) to replace the youth detention and corrective services inspectorates.

*"the Office of the Public Guardian (OPG) considers that there is great potential for the OICS to benefit both children and young people in detention, and adults with impaired capacity in corrective services facilities, in relation to the investigation of complaints and other matters affecting the complaint"*

In a submission received from the chairperson of the CCC, supports in principle that complaints be dealt with in an appropriate way and concurs with the recommendation that an Office of the Inspector of Custodial Services in consultation with key stakeholders including the CCC.<sup>1105</sup>

The Queensland Ombudsman submitted an independent body responsible for publishing overview of youth detention addressing, "performance and service delivery analysis, including publishing a regular...statistical collection of young people in custody" could improve inter-agency relationships and analyse the picture of complaints in the youth detention sphere "with a view to illuminating system failures and informing policy and practice."<sup>1106</sup>

<sup>1100</sup> Public Guardian, Submission to the Independent Review of Youth Detention Discussion Paper, October 2016, p 8, edocs 3489239

<sup>1101</sup> Submission of Public Guardian to the Independent Review of Youth Detention, 9 December 2016

<sup>1102</sup> Public Guardian, Submission to the Independent Review of Youth Detention Discussion Paper, October 2016, p 8, edocs 3489239.

<sup>1103</sup> Public Guardian, Submission to the Independent Review of Youth Detention Discussion Paper, October 2016, p 9, edocs 3489239.

<sup>1104</sup> Public Guardian, Submission to the Independent Review of Youth Detention Discussion Paper, October 2016, p 9, edocs 3489239.

<sup>1105</sup> Submission received from the Crime and Corruption Commission 9 December 2016

<sup>1106</sup> Queensland Ombudsman, Submission to the Independent Review of Youth Detention Discussion Paper, 26 October 2016, p 3, edocs 3485331.



Sisters Inside recommended that the Inspectorate should be independent from the DJAG, “or embedded within existing mechanisms such as the Ombudsman” and that “meaningful accountability” should be ensured through quarterly reports to Parliament.<sup>1107</sup>

Individual ESU-1 submissions have been considered but what they tend to support is that there are indeed deficiencies between the varying layers of oversight.<sup>1108</sup>

**Finding 8.F1** – The current oversight mechanisms in respect of Youth Detention Centres and Queensland Prisons reveal deficiencies.

**Finding 8.F2** – The current Inspectorate is unable to fulfil its oversight function with independence.

**Recommendation 8.R1** – The Review recommends that the Queensland Government replace the Youth Detention Inspectorate (ESU) and Office of the Chief Inspector (QCS) with an independent statutory Office of the Inspector of Custodial Services in a similar form to that of Western Australia.

**Recommendation 8.R2** – The Review recommends that the key features of the Queensland Inspector of Custodial Services should include:

- independence;
- transparency; and
- accountability.

The precise nature of the Office of the Inspector of Custodial Services should to be developed by the Queensland Government in consultation with key stakeholders, but may include the following:

- provision to endorse co-operative work and optimal use of resources between the Inspector and other entities such as the CCC.
- investigative functions of the Office of the Inspector of Custodial Services that reference international instruments to which Australia is a signatory, such as the Optional Protocol to the Convention against Torture, and guidance should be drawn from the Finnish and Swedish models as to how compliance with human rights obligations can form part of a custodial inspection role.
- the capacity to investigate complaints.
- a mandate to undertake regular systematic inspections of all custodial facilities and the power to undertake inspections, investigations or reviews at its own instigation.
- investigative powers covering all correctional facilities, detention centres and police watchhouses.

<sup>1107</sup> Sisters Inside, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 20, edocs 3491213.

<sup>1108</sup> Submission to the Review on behalf of Individual ESU 1, dated 11 December 2016, edocs 3554116.



- investigative powers in relation to prisoners, visitors, facilities, the adequacy of prison services, and deaths in prison, with reference to the Northern Ireland model.
- the power to recommend criminal investigation where appropriate, to refer matters to professional disciplinary bodies and to make recommendations to Parliament about the shortcomings of legislation.
- ensuring complaint processes are accessible for young people, including those of culturally diverse and non-English speaking backgrounds. For example, alternatives to the requirement for a written complaint should be emphasised, such as by way of a telephone complaint system and the regular presence of Inspectorate officers in correctional facilities and youth detention centres.

The Public Guardian recommends that the following also be included:<sup>1109</sup>

*The Office of the Inspector of Custodial Services (OICS) should be established in a way that elevates the voice of the person subject of the complaint as the foundation of the new model. As an observation, this would need to account for the current role of the Community Visitor in representing and advocating the views of the individual child or young person.*

*Following on from this, the OICS complaint management and intake processes need to be established in such a way that builds confidence, empowers and supports detainees to make complaints themselves (as opposed to the current situation where a significant number of complaints are generated by staff). This specifically means addressing the fears of retribution and labelling that detainees associate with making a complaint, and concerns further expressed that a complaint rarely results in timely action.*

*Particular attention should be given to addressing issues of timeliness, minimisation of administrative process, keeping the complainant informed about progress, and meaningful feedback to the complainant.*

*The importance of a 'no wrong door' approach to making complains and raising issues with the OICS and other oversight bodies.*

*Following on from the point above, therefore in establishing the OICS, there should be clearly defined and refined roles for the other oversight bodies and their interaction with the OICS, to minimise administrative double handling of complains and interdependency.*

*The OICS should be established with ongoing stakeholder advisory input in the operation and effectiveness of the OICS.*

<sup>1109</sup> Office of the Public Guardian, Submission to the Youth Detention Review, dated 9 December 2016.



## CHAPTER 9 PROGRAMS AND SERVICES

### INTRODUCTION

In preparation for this chapter, the Review requested various information from DJAG regarding the programs and services provided at BYDC and CYDC, from approximately 2011 to present.

The Review met with program staff at CYDC on 1 November 2016 during a site visit that included a tour of the facility and meetings with other staff and young people. During the visit the Review team met with key staff and discussed the programs and services provided at CYDC. A similar site visit was conducted at BYDC on 1 November 2016.

At CYDC the conversation between the Review and program staff reflected that the programs offered at CYDC, including cultural programs, were reinstated on or about the announcement of the Review. Many programs discussed were said to have recommenced on or about the date of the discussion. During the inspection, the Review team was informed by program staff that a program tailored specifically for young women was in place, and had been delivered that day. In that regard, the Review notes that it spoke with four of the six female young people in detention at CYDC on that day and none of them mentioned participating in a program that day.

Since the site visit no additional evidence has been provided to the Review in relation to CYDC program continuation, participation or evaluation. To date, there remains a paucity of information available to the Review regarding specific programs actually being delivered at CYDC.

Information that was requested and remains outstanding includes:

- details of the specific programs offered by CYDC and BYDC;
- when these programs were offered;
- the frequency with which the programs were delivered;
- the attendance rates of these programs; and
- any evaluation in respect of the effectiveness of these programs.

The Review is limited in respect of its ability to make meaningful findings and recommendations regarding programs and services offered at CYDC. Nevertheless, there is some evidence available to the Review, on which some findings and recommendations can be proposed.

When evaluating the programs and services provided to young people in detention in Queensland, it is particularly prudent to have regard to the objectives of the *Youth Justice Act 1992* ('the Act'). Relevantly, section 2 of the Act provides:

#### 2 Objectives of Act



*The principal objectives of this Act are—*

*...*

*(e) to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to—*

*(i) rehabilitate children who commit offences; and*

*(ii) reintegrate children who commit offences into the community.*

Section 302 of the Act is also relevant:

**302** *Programs and services for children*

*(1) The chief executive must establish—*

*(a) programs and services necessary to give effect to any order or direction under this Act; and*

*(b) programs and services to support, help, and reintegrate into the community children who have committed offences.*

*...*

*(3) The chief executive may establish any other programs and services for children who have committed offences.*

*(4) The chief executive must monitor the operation of each program and service to ensure it achieves the purpose for which it was established in a way that complies with the youth justice principles*

*...*

The youth justice principles, referred to in section 302(4) of the Act, are outlined in schedule 1, section 3 of the Act. Clauses 13 and 14 are relevant, and respectively provide:

**13** *If practicable, a child of Aboriginal or Torres Strait Islander background should be dealt with in a way that involves the child's community.*

**14** *Programs and services established under this Act for children should—*

*(a) be culturally appropriate; and*

*(b) promote their health and self respect; and*

*(c) foster their sense of responsibility; and*

*(d) encourage attitudes and the development of skills that will help the children to develop their potential as members of society.*



As highlighted by the youth justice principles, young people in detention require support across all areas of functioning, not only in respect of 'criminal reform'.<sup>1110</sup> An effective way of providing this multifaceted support is through the delivery of relevant programs and services.

The most effective programs and services extend beyond individual offender behaviour modification, and acknowledge the need to strengthen communities and families.<sup>1111</sup> These programs and services should address the specific needs of young people in detention. This includes the provision of programs and services that are culturally specific, gender-oriented, and modifiable to the needs of young people with disabilities and learning difficulties.

The provision of cultural programs within youth detention centres is an area of ongoing concern. There is currently a lack of programs and services which adequately address the needs of young women, Aboriginal and Torres Strait Islander young people, and young people with disabilities. While Aboriginal and Torres Strait Islander young people are significantly over-represented in youth detention,<sup>1112</sup> there appear to be few culturally specific programs that operate on a regular basis.

Further, the programs and services currently offered do not often extend beyond the detention environment into the community. Additionally, restriction of access to programs as a punitive measure reduces any positive effect these programs might otherwise have upon the rehabilitation of young people.

The Review considers that programs designed to rehabilitate and reintegrate young people in detention should:

- address the specific needs of all young people, including minority groups;
- be accessible and not restricted on a punitive basis; and
- ensure continuity between detention and the community. In that regard, priority should be given to ensuring this continuity extends to rural or remote communities.

The Review acknowledges the following initiatives developed by Youth Justice to address some of these issues:

- the Aboriginal and Torres Strait Islander Cultural Capability Action Plan 2015–2018;
- establishment of the 'First Nations Action Board' (FNAB);
- establishment of the Cultural Unit at CYDC; and
- Standardised Program Evaluation Protocol (SPEP).

The Review considers the introduction of the SPEP to be an important element in improving the programs and services offered by Youth Justice in Queensland. It is understood that current SPEP processes are underway and due for completion in

<sup>1110</sup> Andrew Day, Kevin Howells and Debra Rickwood, 'Current Trends in the Rehabilitation of Juvenile Offenders' (Research Paper No 284, Australian Institute of Criminology, October 2004), edocs 3462129.

<sup>1111</sup> Andrew Day, Kevin Howells and Debra Rickwood, 'Current Trends in the Rehabilitation of Juvenile Offenders' (Research Paper No 284, Australian Institute of Criminology, October 2004) 2, edocs 3462129.

<sup>1112</sup> Sisters Inside submission October 2016, edocs 3491213.



February 2017. There have been three SPEP evaluations of programs in youth detention centres, discussed in 'evaluation of programs' below'.

**Recommendation 9.R1** – The Review recommends that the program evaluations from SPEP should be published upon completion.

**Recommendation 9.R2** – The Review recommends that SPEP should be undertaken on an annual basis to ensure that programs provided to young people in youth detention centres and in the community remain effective in addressing their specific criminogenic needs. These evaluations should be recorded and should inform the criteria for the development of specific programs each year.

#### PREVIOUS INQUIRIES IN AUSTRALIA HIGHLIGHTING PROGRAMS AND SERVICES

##### **The Royal Commission into Aboriginal Deaths in Custody: 1987–1991**

The Royal Commission into Aboriginal Deaths in Custody investigated and subsequently reported on the various underlying cultural, societal and legal issues that underpinned the high level of Aboriginal and Torres Strait Islander people dying in custody. Relevantly, the Royal Commission recommended:

*That at all levels of the juvenile welfare and justice systems there is a need for the employment and training of Aboriginal people as youth workers in roles such as recreation officers, welfare officers, counsellors, probation and parole officers, and street workers in both government and community organisations. Governments, after consultation with appropriate Aboriginal organisations, should increase funding in this area and pursue a more vigorous recruitment and training strategy.<sup>1113</sup>*

##### **Commission of Inquiry into Abuse of Children in Queensland Institutions (the Forde Inquiry): 1998–1999**

The Forde Inquiry focused on the systematic abuse of children in Queensland institutions. In relation to youth detention centres, the Inquiry found that:

*Detention centres house large numbers of troubled children and young people. An important part of their role should be rehabilitative and diversionary, to prevent young people graduating to the adult prison system. They are failing in that role. The Inquiry found that in a number of ways they offer less to the young people incarcerated than the adult prison system does, in terms of privacy, facilities, safety and programs. The detention centres suffer from inadequate physical facilities, a lack of staff training and supervision, a paucity of programs for detainees and an over-emphasis on security.<sup>1114</sup>*

<sup>1113</sup> Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) Volume 4, Chapter 30.1.41, edocs 3431819.

<sup>1114</sup> Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999) p ix, edocs 3431822.



It was recommended that children and young people in care receive adequate education, vocational training, physical and mental health care, leisure and recreation, contact with the community and family, and a range of programs that prepare them to function independently and risk-free upon discharge.<sup>1115</sup> The report found that throughout the last century, many children had not received a basic education, let alone the range of developmental programs that would be desirable.<sup>1116</sup>

### **Queensland Child Protection Commission of Inquiry (the Carmody Inquiry): 2012–2013**

The Carmody Inquiry focused on the child protection system in Queensland. Criminal offending by children and the operation of youth detention centres was outside the scope of the Inquiry's work.<sup>1117</sup> However, the recommendations and findings of the Inquiry are relevant to contemporary youth detention, as approximately 76% of young people in the youth justice system are also known to child safety.

The Carmody Inquiry was the third executive review of Queensland's child protection system, following the Forde Inquiry of 1998–1999, and the Crime and Misconduct Commission Inquiry into the abuse of children in foster care in 2003–2004.<sup>1118</sup> One of the terms of reference of the Carmody Inquiry was to examine the progress of the implementation of the recommendations of those inquiries.<sup>1119</sup> The Carmody Inquiry found that:

*The enduring net effect of the implementation of recommendations from previous inquiries has been a systemic shift towards statutory child protection. This shift has been reinforced by a growing risk-averse culture in the department that promotes a forensic, rather than therapeutic, approach to child protection. Instead of investing in family support and other secondary services, departmental funds since 2000 have been directed to meeting the ever-increasing demand on the tertiary system. Consequently, early intervention and prevention programs continue to be underdeveloped and underfunded in Queensland.<sup>1120</sup>*

The Carmody Inquiry also noted the importance of the non-government sector in delivering programs to the community in order to address social issues. In Queensland, the non-government sector plays an important role in the delivery of family support and child protection services.<sup>1121</sup>

<sup>1115</sup> Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999), p v, edocs 3431822.

<sup>1116</sup> Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999), p v, edocs 3431822.

<sup>1117</sup> The Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Queensland Government, Brisbane (June 2013) 3, 13, edocs 3431823.

<sup>1118</sup> The Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Queensland Government, Brisbane (June 2013) 2, edocs 3431823.

<sup>1119</sup> The Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Queensland Government, Brisbane (June 2013) 2, edocs 3431823.

<sup>1120</sup> The Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Queensland Government, Brisbane (June 2013) 2, 3, edocs 3431823.

<sup>1121</sup> The Queensland Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection*, Queensland Government, Brisbane (June 2013) xix-xx, edocs 3431823.



The State has made submissions that it has supplied a list of programs offered at BYDC and CYDC. It specifically refers to a review and evaluation on the CYDC Cultural Unit /Cultural Programs.<sup>1122</sup> The significant rider on this, must be that all programs offered at CYDC had only commenced that day or to commence the following day.

In answer to specific questions on the site visit no staff were able to indicate when the last time any type of cultural program had been offered.

It also comments that it would find of assistance recommendations for improvements to programs for delivery in the community, in respect of substance abuse and mental health.

**Finding 9.F1** – The need to consult with cultural stakeholders about the detention of Aboriginal and Torres Strait Islander young people has been known for at least 25 years.

**Finding 9.F2** - The Review received no evidence of any minutes from CYDC on consultation with external cultural stakeholders on programs. Consultation with cultural stakeholders, while acknowledged as important, has not been adequately implemented in the Queensland youth detention system.

**Finding 9.F3** – The issues with adequate training and employment of Aboriginal and Torres Strait Islander staff has been known for at least 25 years. Despite employment statistics provided by Youth Justice, there was insufficient evidence to conclude training had been adequately implemented in the Queensland youth detention system.

**Finding 9.F4** – The benefit of a therapeutic, as opposed to a custodial, approach to the rehabilitation and reintegration of young people in the youth detention system is well-established. However, there remains an over-emphasis on security rather than rehabilitation within youth detention centres and this is discussed further in Chapter 8 on Oversight.

**Finding 9.F5** – The need for more educational and cultural programs for young people in youth detention centres has been an identified concern for decades. The Review acknowledges that Youth Justice has been working on this to improve the education and cultural programs in youth detention.

#### CHALLENGES TO THE IMPLEMENTATION OF PROGRAMS

There are several challenges to the effective implementation of programs in detention centres, including:

- short periods of detention as a result of young people being on remand;
- the restriction of access to programs as a means of punishment for misbehaviour; and
- circumstances where a young person poses a risk to the safety and security of the detention centre.

<sup>1122</sup> State's submissions in relation to programs p 10.



## REMAND

One of the major challenges facing youth detention in terms of developing effective programs and services to address underlying causes of criminality is the fact that the majority of young people detained in Queensland are on remand.<sup>1123</sup>

The literature surrounding best practice is predominantly based on programs that form part of a young person's sentence management, rather than whilst they are remanded awaiting trial or sentence. The difficulty in successfully rehabilitating young people on remand is an issue that has been raised by community stakeholders<sup>1124</sup> and employees of Youth Justice.

There are no clear Youth Justice policies regarding the differences between sentenced and remanded young people.

Although young people on remand are not subjected to the same intensive assessment processes as their sentenced counterparts, they do have access to programs. This difference in assessment may, however, impact on referrals to other services and programs. This has been identified by the Review and also by community stakeholders, and may impact upon the development of effective responses to youth crime with the aim of reducing rates of recidivism.

As such, the development of programs for young people in detention should be capable of effective delivery not only to sentenced young people but also to those on remand. Programs should be capable of extending beyond the youth detention centre into the community. Such an extension would provide opportunities for young people and may mitigate the risk of reoffending.

**Finding 9.F6** – Short periods of detention for most young people, due to being on remand as opposed to serving a sentence, present a significant challenge to program and service delivery.

**Finding 9.F7** – Restricted access to programs and services, including those which relate to education and culture, is punitive and an ineffective behaviour management tool.

**Recommendation 9.R3** – The Review recommends that programs and services offered in detention centres should be flexible enough to allow effective implementation for, and participation of, young people on remand.

**Recommendation 9.R4** – The Review recommends that access to programs, particularly those which relate to education and culture, should not be restricted on a punitive, behaviour management basis.

<sup>1123</sup> The average daily proportion of youth detainees in Queensland on remand in 2014-2015 was 84%, with this figure at a much greater proportion than the national average which stood at 54%: Australian Institute of Health and Welfare, Australian Government, *Queensland: Youth Justice Supervisions in 2014-2015, Youth Justice Fact Sheet No. 59* <[www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554893](http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554893)> p 4.

<sup>1124</sup> Queensland Network of Alcohol and Other Drug Agencies Ltd submission October 2016, edocs 3485340.



## BEHAVIOUR MANAGEMENT

Policy YD-1-3 Structured Day and Program delivery outlines that, although programs are voluntary, it is expected that all young people participate in the programs that are offered to them.<sup>1125</sup> However, if a young person refuses participation, this may be classified as a 'misbehaviour' and the young person may be placed on a Behavioural Development Plan (BDP).<sup>1126</sup> The aim of a BDP is to "facilitate an individualised, focused, multi-disciplinary approach to the management of the young person's misbehaviour".<sup>1127</sup> As part of the BDP, a risk management strategy may impact or restrict a young person's access to programs, including those which relate to education and training.

## SPECIAL INTEREST YOUNG PERSON

A young person may be placed on a "Special Interest Young Person List" if a risk assessment determines that they are a risk to the safety and security of the centre.<sup>1128</sup>

The management strategies outlined for such young people include:

*reduced access to certain programs, school subjects, non-essential leaves of absence; a not to share status; one-on-one escort during movements; and section based access to programs and school subjects.*<sup>1129</sup>

## PROGRAM DEVELOPMENT IN YOUTH DETENTION CENTRES

### INTERNAL DESIGN

According to information provided to the Review by Individual YJ-47, current programs at BYDC and CYDC are predominantly designed by a variety of detention centre staff.<sup>1130</sup> Individual YJ-47 informed the Review that there are some differences between the types of staff involved in the development of programs at each centre, which include:

- in BYDC, members of programs and transition management team and the behaviours support team being responsible for designing the programs; and
- in CYDC, programs are designed by the development sport and recreation team, the behaviour support team and the cultural unit.<sup>1131</sup>
- He considered that the development of programs should consider and include information such as:
  - the expected outcomes for the young people;

<sup>1125</sup> YD-1-3 Structured day and program delivery, 5.1 Engagement and participation in programs, edocs 3473058.

<sup>1126</sup> See Behavioural Management and Behaviour Development Plans – Chapter 12.

<sup>1127</sup> YD-1-3 Structured day and program delivery, 5.2 Engagement and participation in programs, edocs 3473058.

<sup>1128</sup> Youth Justice Detention Centre Operations Manual, Chapter 1, 5 'Special Interest Young People, edocs 3447209.

<sup>1129</sup> Youth Justice Detention Centre Operations Manual, Chapter 1, 5 'Special Interest Young People, edocs 3447209.

<sup>1130</sup> Affidavit of Individual YJ-47 paras 45 & 46, sworn 30 September 2016, edocs 3439519; Affidavit of Individual YJ-49, sworn 27 October 2016, edocs 3496612.

<sup>1131</sup> Affidavit of Individual YJ-47 sworn 30 September 2016, para 52, edocs 3439519.



- how it is culturally appropriate;<sup>1132</sup>
- proposed lesson plan; and
- if the program can be continued in the community.

Individual YJ-47 also noted that programs approval and finalisation processes may also include consultation with stakeholders such as Aboriginal and Torres Strait Islander community and reference groups, relatives of young people and other multi-cultural organisations.<sup>1133</sup>

Youth Justice have created a workforce plan which identifies planning priorities for 2015–2016. This plan includes the intention to:

- design and develop new evidence based practice approaches and programs;
- build on the evidence base to improve knowledge of clients; and
- consider how best to address offending.<sup>1134</sup>

As noted above, while the Review agrees that these factors are of importance when developing programs for young people in youth detention, there is no evidence available to the Review regarding the application of these factors in program development and delivery at either CYDC or BYDC.

Similarly, it is unclear what qualifications the program design team must have in order to develop programs. It has been acknowledged by departmental staff that:

*...it would be beneficial for Youth Justice staff responsible for designing programs to have additional training and support in relation to designing programs, including the setting of objectives.*<sup>1135</sup>

**Finding 9.F8** – There is a lack of consistency in the way programs are developed between BYDC and CYDC.

**Finding 9.F9** – There is no formal requirement for staff involved in program development to undertake specific training to assist in the efficient development of programs in youth detention centres. The Review acknowledges the ongoing work of Youth Justice in relation to SPEP which should enhance the capacity of Youth Justice staff to design and deliver programs.

## EXTERNAL DESIGN

Individual YJ-47 advised the Review that, in addition to the programs developed internally, programs are also developed in consultation with external organisations who also provide programs to young persons.<sup>1136</sup> While the extent to which this occurs in practice is unclear, the Review has been provided with some information as to the way in which this consultation process is supposed to occur.

<sup>1132</sup> Youth Detention Centre Operations Manual, Chapter 1, s 4.2.1, 'Program Development and Implementation', p 35 edocs 3447209.

<sup>1133</sup> Youth Detention Centre Operations Manual, Chapter 1, s 4.2.1, 'Program Development and Implementation', p 36 edocs 3447209.

<sup>1134</sup> Youth Justice, *Youth Justice Workforce Plan*, Department of Justice and Attorney-General, Queensland (5 August 2015), edocs 3550405.

<sup>1135</sup> Affidavit of Individual YJ-47 sworn 30 September 2016, para 52, edocs 3439519.

<sup>1136</sup> Affidavit of Individual YJ-47, sworn 30 September 2016 para 47, edocs 3439519; Affidavit of Individual YJ-49, sworn 27 October 2016, para 8, edocs 3496612.



In BYDC, external programs and services must submit an 'Expression of Interest' form to be assessed by reference to an outline of clear objectives, outcomes and timeframes of the program.<sup>1137</sup> Individual YJ-49 has advised that the BYDC Indigenous Reference Group is then consulted, along with a multi-disciplinary team,<sup>1138</sup> before it is decided whether final approval will be granted.

In CYDC there is an 'Interdepartmental Programs Advisory Committee' comprising staff from CYDC, Townsville Youth Justice Service Centre, Queensland Health, EQ and NQAFMH. This committee is responsible for approving all long term 'new initiatives' and programs.<sup>1139</sup> Individual YJ-49 informed the Review that this committee is also intended to oversee program proposals developed by internal staff.

YJ-47 advised that young people within youth detention centres are not usually involved in the design of programs, although "some programs do involve direct planning and delivery by young person under the guidance of a program deliverer"<sup>1140</sup> Individual YJ-47 did not elaborate upon, or specify, the context in which this occurs, or at which of the centres it occurs. Similarly, while Individual YJ-47 noted that programs are, in some instances, adapted in accordance with the needs and interests of the specific target group, he did not specify how or when this occurs.<sup>1141</sup>

## CONTINUITY OF PROGRAMS AND SERVICES

Currently in Queensland, there are two key offence focused programs that operate within youth justice that can be delivered in detention and in the community:

- ART: The Aggression Replacement Training (ART) program targets medium-to-high-risk young people who exhibit aggressive and violent behaviour, and aims to reduce their risk of committing violent offences by teaching them social skills, anger management techniques and moral reasoning;<sup>1142</sup> and
- CHART: 'Changing Habits and Reaching Targets' is a moderate to high intensity cognitive intervention delivered by caseworkers which aims to reduce the risk of reoffending by young people. The program consists of six core modules and six discretionary modules which are selected on the basis of the young person's particular needs.

Individual YJ-49 has noted that the majority of programs and services within youth justice "lend themselves to being delivered in both detention and community settings."<sup>1143</sup> However, he also informed the Review that there are several challenges to providing continuity in program delivery from detention to the community, including:

<sup>1137</sup> Supplementary Statement of Individual YJ-47, sworn 21 October 2016, para 356, edocs 3478182; Affidavit of Individual YJ-49, sworn 27 October 2016, para 47(a), edocs 3496612.

<sup>1138</sup> Affidavit of Individual YJ-49, sworn 27 October 2016, para 47 (a) – (c), edocs 3496612.

<sup>1139</sup> Affidavit of Individual YJ-49, sworn 27 October 2016, para 46 (a) edocs 3496612.

<sup>1140</sup> Affidavit of Individual YJ-47, sworn 30 September 2016 para 66, edocs 3439519.

<sup>1141</sup> Affidavit of Individual YJ-47 sworn 30 September 2016 paras 63 and 64, edocs 3439519.

<sup>1142</sup> Australian Institute of Health and Welfare, Youth justice supervision in Queensland; Youth justice systems policies and programs <<http://www.aihw.gov.au/youth-justice/states-territories/qld/>>.

<sup>1143</sup> Affidavit of Individual YJ-49, sworn 27 October 2016, para 38, edocs 3496612.



- the quality of implementation of these programs varies between the centres in which they are delivered;<sup>1144</sup>
- a lack of consistency between programs and services available in detention and those available in the community. This is particularly the case for young people who are returning to rural and remote communities; and
- the sporadic and short stays that most young people experience, which result in the young person not receiving the amount of service needed to affect the likelihood of recidivism (as provided by the SPEP evidence base).<sup>1145</sup>

**Finding 9.F10** – There is a lack of continuity between programs offered in youth detention centres and those available in the community.

**Finding 9.F11** – There is a lack of consistency in program delivery between BYDC and CYDC.

## EVALUATION OF PROGRAMS

Youth Justice Policy stipulates that program evaluations are to be conducted as a means to determine whether the program objectives were met.<sup>1146</sup> However, from the information available to the Review, it appears there is a distinct lack of rigorous monitoring, evaluation, and analysis of programs at either of the detention centres:

There has been no consistent evaluation of programs. Monitoring and evaluation has occurred at varying degrees at both BYDC and CYDC. Methods generally include pre and post program questionnaires with participants and *data analysis*.<sup>1147</sup>

In 2015 Youth Justice conducted an audit of the 115 programs that were delivered by youth justice in both the community and detention centres that produced the following results:<sup>1148</sup>

- only 42 programs (36%) were based on a therapeutic approach that was supported by the evidence base;
- 43 programs (37%) were based on extensions of modules from Youth Justice's core modules of ART and CHART; and
- 30 programs (26%) would be best described as 'engagement' activities.

As noted above, Youth Justice has commenced implementation of SPEP in order to evaluate the programs provided in CYDC and BYDC.

<sup>1144</sup> Affidavit of Individual YJ-49, sworn 27 October 2016, para 36, edocs 3496612.

<sup>1145</sup> Affidavit of Individual YJ-49, sworn 27 October 2016, para 41 (a) (b), edocs 3496612.

<sup>1146</sup> YD-1-3 *Structured Day and Program Activities* s2.7, edocs 3447098.

<sup>1147</sup> Affidavit of Individual YJ-47, sworn 30 September 2016, paras 54, 55 edocs 3439519.

<sup>1148</sup> Affidavit of Individual YJ-49, sworn 27 October 2016, para 9, edocs 3496612.



## SPEP EVALUATION

Currently within Queensland youth detention centres, three programs have been evaluated through the SPEP Framework: one in BYDC and two in CYDC.<sup>1149</sup>

In BYDC, "Learning and Growth through Adventure on the Inside"<sup>1150</sup> was rated 'high' and likely to have an impact on reducing recidivism due to its strong alignment with evidence based practice and methods of implementation and reporting. This program was developed and implemented by external stakeholders. The main challenge for the program was reaching the target duration of hours for effective impact on recidivism.

In CYDC both of the programs that were offered were designed, developed and implemented by CYDC staff. The Drug and Alcohol Awareness Program<sup>1151</sup> was not able to receive a SPEP score or be evaluated, due to not falling in to any type of service that could be classified on the basis of existing scientific evidence.<sup>1152</sup> In addition, the SPEP evaluators were not provided with any specified aim, objective or outcomes. The evaluation recommended that CYDC develop a program that aligns with the SPEP framework in partnership with North Queensland Forensic Adolescent Mental Health Alcohol and Other Drugs Service.

The second CYDC program "On Track"<sup>1153</sup> assessed was with the SPEP framework as limited in its adherence to evidence-based practice and an alternative program was recommended.<sup>1154</sup> Similar to the other CYDC program, SPEP evaluators were not provided with specified any aims, objectives or outcomes.<sup>1155</sup>

The adoption of SPEP in the Queensland context is a positive sign of progress should assist Youth Justice in the identification of effective programs and help to create a more robust and evidence-based set of programs for young people.

Challenges facing the implementation of SPEP in Queensland include small cohorts of young people and short average stays in detention centres. Programs will need to be adapted in the light of these challenges to fill gaps in the Queensland context. It is important to note however, that the evidence base relied upon (Lipsey's meta-analysis)<sup>1156</sup> cannot be assumed to be representative of the Queensland cohort and special consideration must be given to considering the needs of Aboriginal and Torres

<sup>1149</sup> Department of Justice and Attorney General, 'Program Evaluation Report: Learning and Growth through Adventure on the Inside,' (2016) Exhibit Individual YJ-47-3 Supplementary Statement of Individual YJ-47, Sworn 21 October 2016, Edocs 3478182.

<sup>1150</sup> The program involved 5 outdoor experiences which encouraged young people to take responsibility for positive and negative consequences of their behaviour. Young people were trained in how to plan, set goals, make constructive choices, and actively review their decisions and actions. The objectives of the program included forming a positive relationship with staff through a working agreement, allowing the young people to take ownership, autonomy, and responsibility for their actions, growing confidence and developing teamwork skills. In the short term, the program focused on developing transitional skills, and encouraging young people to contemplate changing their offending behaviour. In the long term, the program aimed to reduce offending behaviour.

<sup>1151</sup> The DAA is a program based on "harm minimisation" which aims to improve understanding of the impacts and consequences of drugs and alcohol, as well as empowering young people to make healthy and proactive decisions.

<sup>1152</sup> In the 'Skills building' section types include: behaviour management; cognitive behavioural therapy; social skills training; challenge programs (such as Adventure on the inside at BYDC); remedial academic program and job related training.

<sup>1153</sup> Department of Justice and Attorney General, 'Program Evaluation Report: 'On Track' Program,' (2016) Exhibit Individual YJ-47-3 Supplementary Statement of Individual YJ-47, Sworn 21 October 2016, edocs 3478182

<sup>1154</sup> "On Track" is offered as 6 one-hour sessions delivered over two weeks. Sessions included the effects of crime, moral reasoning, substance abuse and preventing offending.

<sup>1155</sup> Department of Justice and Attorney General, 'Program Evaluation Report: 'On Track' Program,' (2016) Exhibit Individual YJ-47-3 Supplementary Statement of Individual YJ-47, Sworn 21 October 2016, edocs 3478182

<sup>1156</sup> Lipsey, M., Howell, J., Kelly, M., Chapman, G., Carver, *Improving the effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice*, (Center for Juvenile Justice Reform, Georgetown University, 2010)



Strait Islander young people, young women and those with disabilities (discussed in more detail below).

## SPECIFIC FACTORS FOR CONSIDERATION IN THE DEVELOPMENT OF PROGRAMS AND SERVICES IN DETENTION CENTRES

### AGE

The age and developmental stage of the young person will have an impact on the effectiveness of any intervention program.<sup>1157</sup> A recent internal review<sup>1158</sup> conducted by Youth Justice of incidents<sup>1159</sup> recorded in the period 2011–2014 has indicated that there are differences in terms of age brackets and behavioural incidents.

The report identified that young people in both youth detention centres aged 10–13 were responsible for the greatest daily rate of incidents per 100 young people when compared to all other age brackets, and this also held true for violent incidents.

The internal review noted there was a large divergence between the two youth detention centres, with CYDC recording incident rates that were at times double those of BYDC, and noted that:

*It is unknown if this finding reflects a population of more challenging young people at CYDC compared to those at BYDC or whether it reflects better practices and management of young people at BYDC in general. Regardless it is acknowledged that this is a concerning finding which requires further in-depth investigation.*<sup>1160</sup>

In acknowledgement of the challenges that are associated with younger people in detention and the social needs that should be taken in to account (behavioural response and also applicability to cognition and programs) the review recommended that: “Age specific management strategies are developed to ensure that age is a key consideration in all decision making and risk assessment procedures.”<sup>1161</sup>

Youth Justice responded to this recommendation by reporting that they had included age specific strategies in the “Protective Actions Continuum Plus Strategy”, which is the strategy for responding to incidents. It remains unclear whether this has been implemented or embedded within policy.

<sup>1157</sup> Andrew Day, Kevin Howells and Debra Rickwood, *Current Trends in the Rehabilitation of Juvenile Offenders*, Research Paper no. 284, (Australian Institute of Criminology, 2004), p 4, edocs 3462129.

<sup>1158</sup> DJAG, Youth Justice, ‘Final Report: An analysis of incidents at Brisbane and Cleveland Youth Detention Centres 2011–2014’, (2015), edocs 3458735.

<sup>1159</sup> DJAG, Youth Justice, ‘Final Report: An analysis of incidents at Brisbane and Cleveland Youth Detention Centres 2011–2014’, (2015), p 13, edocs 3458735.

<sup>1160</sup> DJAG, Youth Justice, ‘Final Report: An analysis of incidents at Brisbane and Cleveland Youth Detention Centres 2011–2014’, (2015), p 44, edocs 3458735.

<sup>1161</sup> DJAG, Youth Justice, ‘Final Report: An analysis of incidents at Brisbane and Cleveland Youth Detention Centres 2011–2014’, (2015), p 45, edocs 3458735.



## INTELLECTUAL DISABILITY, DISABILITY AND COMMUNICATION DEFICITS WITHIN QUEENSLAND YOUTH DETENTION CENTRES

The 2016 Youth Justice Census<sup>1162</sup> reported on a number of disabilities as they related to young people who were detained in youth detention centres or under Youth Justice Community Supervision:

- 11.5% had an assessed disability
- 16% had a suspected disability
- 1.1% had a physical disability
- 1.4% had a sensory disability
- 6.8% had an intellectual disability
- 3.9% had a cognitive disability
- 1.7% had a neurological disability
- 1.8 had a psychiatric disability.

A recent review of disability practice and service improvement was conducted by the DCCSDS in both BYDC and CYDC. Of the 36 young people with identified existing disabilities:

- 42% had an intellectual disability;
- 25% had Attention Deficit Hyper Activity Disorder;
- 22% had a hearing impairment; and
- over half had varying levels of language deficiencies.<sup>1163</sup>

The 2016 Census noted that while 11.5% of young people had an identified disability, there was a further 16% who had a suspected disability, or suspected additional condition.<sup>1164</sup> Of those with an identified disability, 37.4% experienced significant impairment of functioning due to the disability.<sup>1165</sup>

### INTELLECTUAL DISABILITY AND COMMUNICATION DEFICITS

A growing body of research literature has indicated that young people with a disability and complex support needs are not only at a greater risk of interaction with the criminal justice system, but are also over-represented within detention environments.<sup>1166</sup>

Cognitive disability and impairment have been noted as significant issues when it comes to Aboriginal and Torres Strait Islander people involved in the criminal justice

<sup>1162</sup> DJAG, Youth Justice, *Youth Justice Census March 2016*, edocs 3459316.

<sup>1163</sup> Stela Martin, Stela Martin, *SLP Youth Justice Summary Report June 2016 Disability Practice & Service Improvement*, Centre of Excellence for Clinical Innovation and Behaviour Support, Department of Communities, Child Safety Services and Disability Services (Disability Services) (2016), p 2, edocs 3446846.

<sup>1164</sup> DJAG, Youth Justice, 'Youth Justice Census March 2016, p 24, edocs 3459316.

<sup>1165</sup> DJAG, Youth Justice, 'Youth Justice Census March 2016, p 24, edocs 3459316.

<sup>1166</sup> Eileen Baldry, Leanne Dowse, & Melissa Clarence, (2012), *People with intellectual and other cognitive disability in the criminal justice system*. Sydney, University of New South Wales, edocs 3555270; Leanne Dowse, Theresa Cumming, Iva Strnadova, Julian Trofimovs., 'Young people with complex needs in the criminal justice system', (2014), 1, *Research and Practice in Intellectual and Developmental Disabilities* 174, edocs 3555271; Ian Hall, 'Young offenders with a learning disability' (2000) 6 *Advances in Psychiatric Treatment*, 278, edocs 3555266; Judith Cockram, 'Justice or differential treatment? Sentencing of offenders with an intellectual disability' (2005), 30 *Journal of Intellectual and Developmental Disability*, 3, edocs 3555268; Tony Holland, Isabel Clare, and Tanni Mukhopadhyay, T. 'Prevalence of "criminal offending" by men and women with intellectual disabilities and the characteristics of "offenders": implications for research and service development', (2002) 46 (1) *Journal of Intellectual Disability Research*, 6, edocs 3555267.



system.<sup>1167</sup> While Aboriginal and Torres Strait Islander people are over-represented in the criminal justice system in general, this is compounded when an individual has mental or cognitive impairment, with research suggesting that they are exposed to earlier and more frequent contact with the system.<sup>1168</sup>

#### IDENTIFICATION AND ASSESSMENT OF DISABILITY

Although research has indicated that the proportion of people with a disability in detention is high, the identification of persons with disability upon admission and throughout their detention stay has been noted as lacking, with assessments inconsistent and the provision of services for assistance and management limited.<sup>1169</sup>

The development of a comprehensive and consistent assessment, identification and intervention framework for disability within detention 'has the potential to not only uphold basic human rights but also positively impact all aspects of the service system.'<sup>1170</sup>

From the information provided to the Review, it is not clear whether there are any specific methods of assessments used to identify young people with disabilities upon entry to the detention system.

#### IDENTIFICATION AND ASSESSMENT OF DISABILITY

High prevalence of intellectual disability and severe communication deficits have also been noted to exist within Queensland youth detention centres. The evidence outlined above is reflected in a recent review<sup>1171</sup> conducted by the Department of Communities, Child Safety and Disability Services in both of Queensland's youth detention centres on speech and language pathology. The review conducted a 'communication assessment' on 36 young people in detention who had been identified as having existing disabilities (14 in BYDC and 22 in CYDC).

At BYDC the majority of young people assessed had severe delays in:

- core language (50%);
- receptive language (36%);
- expressive language (50%); and
- language memory (36%) skills.<sup>1172</sup>

<sup>1167</sup> Amnesty International, *Heads Held High: Keeping Queensland kids out of detention, strong in culture and community*, August 31 2016, Edocs 3433815; Eileen Baldry, Leanne Dowse, and Melissa Clarence, *People with mental and cognitive disabilities: Pathways into Prison*, Background Paper for Outlaws to Inclusion Conference (2012), p 16, edocs 3555279; Nick Rushworth, *Out of Sight, Out of Mind: People with ABI and the Criminal Justice System* (2011) Brain Injury Australia, edocs 3555280; Eileen Baldry, Ruth McCausland, Leanne Dowse and Elizabeth McEntyre, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system* (2015) p 19, edocs 3555281.

<sup>1168</sup> Eileen Baldry, Ruth McCausland, Leanne Dowse and Elizabeth McEntyre, *A predictable and preventable path: Aboriginal people with mental and cognitive disabilities in the criminal justice system* (2015) p 19, edocs 3555281.

<sup>1169</sup> Australian Human Rights Commission (2014) *Equal Before the Law: towards disability justice strategies*, 28, edocs 3555282.

<sup>1170</sup> Statewide Behaviour Intervention Service (2015), *Communications equality in the criminal justice system: a practice guide for speech pathologists supporting people with disability*, Parramatta, Australia: Clinical Innovation and Governance, Ageing, Disability and Home Care, Department of Family and Community Services, edocs 3555283.

<sup>1171</sup> Stela Martin, Stela Martin, *SLP Youth Justice Summary Report June 2016 Disability Practice & Service Improvement*, Centre of Excellence for Clinical Innovation and Behaviour Support, Department of Communities, Child Safety Services and Disability Services (Disability Services) (2016), pp 4-5, edocs 3446846.

<sup>1172</sup> Stela Martin, Stela Martin, *SLP Youth Justice Summary Report June 2016 Disability Practice & Service Improvement*, Centre of Excellence for Clinical Innovation and Behaviour Support, Department of Communities, Child Safety Services and Disability Services (Disability Services) (2016), p 1 edocs 3446846.



At CYDC the majority of young people assessed had severe delays in:

- core language (59%);
- receptive language (55%);
- expressive language (68%); and
- language memory (55%) skills.<sup>1173</sup>

The most common disabilities identified among those who were assessed across both centres were intellectual disability (42%), Attention Deficit Hyper Activity Disorder (ADHD) (25%) and hearing impairment (22%).

Similar to findings in other research at both an Australian and international level, the review of 36 young people in youth detention centres highlighted the following key findings:

- most young people had comorbid diagnoses;
- Aboriginal and Torres Strait Islander young people were represented at higher levels of those with disabilities;
- 83% had experienced traumatic events or attachment difficulties;
- of those with disability, most had severe impairments in general language development and in higher order language skills;
- speech pathology support within detention centres was insufficient and inconsistent; and
- assessment for hearing and vision was different (or absent), inconsistent and without adequate follow up, with differences between the two centres.

Community stakeholders noted the prevalence of disabilities among young people in youth detention and recommended that measures be taken to ensure early diagnosis and proper care.<sup>1174</sup> Stakeholders also noted that young people with complex cognitive disabilities are more likely to have early contact with police and a large number of encounters with the police and justice system throughout their lives.<sup>1175</sup> In addition, disabilities impact on education, as well as the young person's ability to comprehend and obey instructions.

**Finding 9.F12** – There is a lack of specific programs which address the needs of young people with disabilities and/or learning difficulties.

**Recommendation 9.R5** – The Review recommends that consultation with external stakeholders should be undertaken in the development of programs for young people with disabilities and/or learning difficulties.

<sup>1173</sup> Stela Martin, Stela Martin, *SLP Youth Justice Summary Report June 2016* Disability Practice & Service Improvement, Centre of Excellence for Clinical Innovation and Behaviour Support, Department of Communities, Child Safety Services and Disability Services (Disability Services) (2016), p 4 edocs 3446846.

<sup>1174</sup> Human Rights Law Centre submission 7 November 2016, 3, edocs 3498683.

<sup>1175</sup> Mission Australia, Submission to the Independent Review of Youth Detention in Queensland, October 2016, 3, edocs 3491235.



## SPECIFIC NEEDS OF YOUNG WOMEN IN DETENTION

Data from the AIHW have there has been a substantial increase in the numbers of females in juvenile detention in the last five years, rising from 13 in 2010–2011 to 31 on an average day in 2014–2015.<sup>1176</sup>

At least one community stakeholder raised concerns about the lack of gender specific programs.<sup>1177</sup> This was considered inconsistent with international best practice. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) mandate that decision-makers take into account the 'gender-based vulnerability of juvenile female offenders'.<sup>1178</sup> This relates particularly to the high instances of prior abuse and special health needs among females in youth detention.<sup>1179</sup> Another community stakeholder noted that female young people may be overlooked due to their making up only a small proportion of youths in detention.<sup>1180</sup>

## YOUTH JUSTICE QUEENSLAND

The relevant Youth Justice Policy on Programs, YD-1-3 Structured Day and program delivery, is silent on the consideration of the special needs for female detainees. Gender is mentioned, however it is only in reference to considering that the gender of program instructors is relevant.<sup>1181</sup>

The Youth Detention Centre Operations Manual does have some inclusive language regarding the design of programs based on individual needs and characteristics inclusive of gender considerations. Specifically, the operations manual outlines that youth detention centres will provide programs designed and/or customised to the needs of young women that:

- recognise the value young women place on relationships, especially with peers, by building on young women's capacity to relate to each other in a healthy way;
- educate about sexual harassment and domestic violence by promoting healthy relationships;
- inform young women about protecting themselves from physical, sexual and emotional harm;
- recognise the value of introducing positive female role models who can guide young women through the challenges of adolescence; and

<sup>1176</sup> Australian Institute of Health and Welfare, Australian Government, Youth Justice in Australia 2014-2015 Supplementary Table s90a Young people in detention on an average day by age, sex and Indigenous status, states and territories, 2010-11 to 2014-15, edocs 3555285.

<sup>1177</sup> Sisters Inside Inc., Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 21, edocs 3491213.

<sup>1178</sup> Please note that although the rule refer to women prisoners, they also refer to juvenile female prisoners United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) GA 65/229, 65<sup>th</sup> sess, 71<sup>st</sup> plen mtg, Agenda Item 105, UN Doc A/RES/65/230 (21 December 2010), edocs 3555286.

<sup>1179</sup> Human Rights Law Centre, Submission to the Independent Review of Youth Detention in Queensland, 7 November 2016, p 18 edocs 3498683; Sisters Inside Inc., Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 8, edocs 3491213.

<sup>1180</sup> Human Rights Law Centre, Submission to the Independent Review of Youth Detention in Queensland, 7 November 2016, p 18 edocs 3498683.

<sup>1181</sup> YD-1-3 Structured day and program delivery, s 2. 'General Principles of program delivery' p 2, edocs 3473058.



- strengthen social and emotional wellbeing by providing programs that address self-esteem, confidence, communication and interpersonal skills.

Information that was made available to the Review indicates that there are some gender-specific programs on offer at CYDC, however it is not clear how often these programs are offered, what their impact is, or how they are evaluated for effectiveness. There appear to be limited gender-specific programs in operation in BYDC. This information was also confirmed by Sisters Inside.<sup>1182</sup>

It is concerning that there is a lack of programs available specifically for young women. It is not clear how, or if, the needs of young women are taken into account in program design and development.

In 2015–2016 Youth Justice adopted and began to implement the “Trauma Informed Practice” framework that recognises the vulnerability of young people.

**Finding 9.F13** – There is a lack of programs and services addressing the needs of young women in youth detention centres. The Review acknowledges Youth Justice is currently attempting to address this.

**Finding 9.F14** – There has been a marked increase in the number of young women admitted to youth detention centres in recent years.

**Recommendation 9.R6** – The Review recommends that consultation with external stakeholders should be undertaken in the development of programs for young women.

In respect of young women, this consultation should involve key stakeholders, such as Sisters Inside, and women’s health organisations.

#### PROGRAMS IDENTIFIED BY THE COMMUNITY, IN COMMUNITY

Amnesty International listed a number of Indigenous-led, early intervention, prevention and diversion programs in Queensland ‘which may assist to reduce the numbers of Indigenous children entering into the justice system, as well as recidivism’. These include Red Dust Healing in Townsville, Uncle Alfred’s Men’s Group, the ATSILS Service Throughcare program, Wayne Parker’s backyard boxing program, Leann Shaw and Stephanie King’s Community Yarning Circle in Mount Isa, Aunty Joan and Uncle Alec Marshall’s cultural activities and bush tucker garden, Logan Elder’s Culture in the Park, Murri Watch, Cathy Freeman Foundation’s early intervention programs on Palm Island, and across Queensland, Bahloo Women’s Shelter, Townsville

<sup>1182</sup> Sisters Inside Inc., Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 21, edocs 3491213.



Aboriginal and Islander Health Service and the Mona Aboriginal Corporation's Cultural Horsemanship program.<sup>1183</sup>

A number of programs centred on cultural healing have been identified by the relevant community stakeholders in Queensland, and other community groups offer their own specific programs.<sup>1184</sup> These programs, while valuable, are limited in size and operation by a lack of funding, resources, and training. Many are dependent on the work of volunteers and Aboriginal and Torres Strait Islander Elders. Elders play a vital role in ensuring cultural services are successful, however too much reliance on Elders risks placing serious financial and personal burden upon the individuals.<sup>1185</sup> Elders already play a significant role among their communities, and participate in the court system, thus it may not be advisable for them to be the sole providers of cultural services to youth detention centres. Notwithstanding these programs, Aboriginal and Torres Strait Islander Legal Service (ATSILS) reported a chronic lack of cultural programs and culturally competent staff.<sup>1186</sup>

The funding of community led programs and services that specifically deal with Aboriginal and Torres Strait Islander young people has also been raised as an issue of concern. Research has indicated that cultural services that tailor their work to specifically meet the needs of Aboriginal and Torres Strait Islander people are consistently underfunded.<sup>1187</sup>

A number of stakeholders recommended implementing a justice reinvestment model which focuses on restorative justice.<sup>1188</sup> Restorative justice and justice reinvestment models emphasise non-punitive methods, such as youth conferencing, police warnings, and specialist diversion in courts.<sup>1189</sup> This model should focus on community connectedness, and be formed in consultation with Aboriginal and Torres Strait Islander groups.

ATSILS have highlighted that the use of Aboriginal and Torres Strait Islander Queenslanders, who have direct links with Aboriginal and Torres Strait Islander youths in detention, has been suggested to be greatly beneficial in establishing a sense of

<sup>1183</sup> Amnesty International, Submission to the Independent Review of Youth Detention in Queensland, October 2016, pp 16-17, edocs 3486176.

<sup>1184</sup> Amnesty International, Submission to the Independent Review of Youth Detention in Queensland, October 2016, pp 16-17, edocs 348617; Mission Australia, Submission to the Independent Review of Youth Detention in Queensland, October 2016, 14, edocs 3491235.

<sup>1185</sup> Mission Australia, Submission to the Independent Review of Youth Detention in Queensland, October 2016, 12, edocs 3491235.

<sup>1186</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, (ATSILS) Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 4 edocs 3485327.

<sup>1187</sup> Committee on the Elimination of Racial Discrimination, *Concluding Observations – Australia*, CERD/C/AUS/CO/15-17, p 19, edocs 3555287.

<sup>1188</sup> Queensland University of Technology, Submission to the Independent Review of Youth Detention in Queensland, October 2016, para 7, edocs 3480801; Amnesty International, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 19, edocs 348617; Mission Australia, Submission to the Independent Review of Youth Detention in Queensland, October 2016, 12, edocs 3491235.

<sup>1189</sup> Queensland University of Technology, Submission to the Independent Review of Youth Detention in Queensland, October 2016, para 7, edocs 3480801.



identity and enhancing a sense of belonging. Understanding the historical context of where these youths come from and having insight into their parents and grandparents' struggles can lead to healing. Individualised plans, starting with kin identification and following on with input from family and community, will assist the youths social and emotional healing.<sup>1190</sup>

## SUBSTANCE ABUSE

Despite the high prevalence of substance use among young people in detention, there seems to be a lack of corresponding programs offered in youth detention centres. The 2016 Census of young people under youth justice supervision (detention and community) found that 79.3% of people were *known* to be using at least one substance.<sup>1191</sup> Marijuana was the most commonly used substance at 61.2%, followed by alcohol (60%) and tobacco (58.3%). Between 2015 and 2016, there was a marked increase in known use of methamphetamine among juvenile detainees from 8.7% in 2015 to 16.7% in 2016. In BYDC during site visits, it was reported that 9/10 admissions reported use of amphetamines.

Substance misuse is believed to have contributed to the risk of offending for 62% of offenders. Despite these figures, there appear to be very few targeted programs. Conflicting reports have been offered as to the availability of appropriate substance misuse treatment programs. Community stakeholders have reported that drug rehabilitation programs that are offered currently have extremely long waiting lists, and raised concerns about the possible escalation of drug use.<sup>1192</sup> On the other hand, 2016 Census data indicated that substance abuse treatment options were available for 91.4% of young people requiring specialist treatment.<sup>1193</sup> The Census data noted that there were reasonably low engagement levels among young people. Of those attending a service, 27.7% were actively engaged, with only 1.9% unwilling to engage. However, 51% of young people had been referred to a service but were not attending. Stakeholders have recommended a holistic approach to substance use, physical and mental health, and family relationships.<sup>1194</sup>

Significant concerns have been raised about the provision of health services in youth detention centres, mainly relating to the lack of cohesion between the detention centres and the community and the lack of resources available. QNADA highlighted concerns that young people on remand received less access to therapeutic programs than those who were sentenced and submitted that a "comprehensive risk and needs assessment (including neuropsychological) is integral for all young people entering the youth justice system".<sup>1195</sup> This is because young people benefit when their care services are consistent and well resourced. QNADA points out that studies show "an

<sup>1190</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, (ATSILS) Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 4 edocs 3485327.

<sup>1191</sup> DJAG, Youth Justice, 'Youth Justice Census March 2016, p 11, edocs 3459316.

<sup>1192</sup> Mission Australia, Submission to the Independent Review of Youth Detention in Queensland, October 2016, pp 5-6, edocs 3491235.

<sup>1193</sup> DJAG, Youth Justice, 'Youth Justice Census March 2016, p 12, edocs 3459316.

<sup>1194</sup> Queensland University of Technology, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 5, edocs 3480801.

<sup>1195</sup> Queensland Network of Alcohol and Other Drug Agencies Ltd, submission to the Independent Review of Youth Detention, October 2016, p 3, edocs 3485340.



estimated 50% of young people in detention met the criteria for one or more substance use disorders” and knowing what type of support is required to address substance abuse is more likely to reduce their reoffending.

The intersection between health and reoffending has been highlighted by various submissions.

The Cape York Institute argues that while the true individual and social burden of intellectual impairment remains hidden for Queensland’s Aboriginal and Torres Strait Islander population, “each of the many cause (pre-natal stress, poor nutrition, poverty, ABI, FASD, substance misuse, and early childhood trauma) and effect (mental illness, social disengagement, incarceration, and homelessness) variables” leads to disproportionately higher prevalence in Australia’s Indigenous populations relative to their non-Indigenous counterparts.

## MENTAL HEALTH

Mental health is reportedly one of the largest costs for youth detention centres.<sup>1196</sup> The 2016 Census of young people under youth justice supervision (community and detention) found that 13.7% of the young people have been diagnosed with at least one mental health disorder, with a further 37.7% suspected to have an undiagnosed mental health condition.<sup>1197</sup> The most prevalent mental health disorders were anxiety (7.4%), depression (6.9%), and post-traumatic distress disorder (4.9%). Additionally, 16.7% of young people were reported to have at least one diagnosed behavioural disorder, with a further 24.8% suspected to have an undiagnosed behavioural disorder.<sup>1198</sup> The most common behavioural disorders were attention deficit hyperactivity disorder (12.8%), conduct disorder (4.3%), and oppositional defiance disorder (4.1%).

All young people are screened on admission for mental health, alcohol and drug use, and abuse trauma.<sup>1199</sup> This assessment involves a Raven’s intelligence test and an Indigenous-specific one.<sup>1200</sup> Following the assessment, interventions are recommended.<sup>1201</sup> Factors which may contribute to a young person’s acceptance to a therapy program include the length of stay in detention and dynamic issues with other young people.<sup>1202</sup> According to a 2013 interview with mental health staff at CYDC, most young people who require intervention are seen weekly and over 50% of the young people were engaged with the Mental Health Alcohol Tobacco and Other Drugs Service.<sup>1203</sup>

Stakeholders reported that a recent increase in the number of mental health issues has led to the introduction of a ‘triage’ model of care. A triage model focuses on young people with the highest level of need for intervention. This system, while

<sup>1196</sup> Youth Affairs Network Queensland, Submission to the Independent Review of Youth Detention, October 2016, p 2 edocs 3485334.

<sup>1197</sup> DJAG, Youth Justice, ‘Youth Justice Census March 2016, p 23, edocs 3459316.

<sup>1198</sup> DJAG, Youth Justice, ‘Youth Justice Census March 2016, p 11, edocs 3459316.

<sup>1199</sup> Statement of Individual ESU 5, sworn 2 November 2016, 22, edocs 3495059.

<sup>1200</sup> Statement of Individual ESU 5, sworn 2 November 2016, 22, edocs 3495059.

<sup>1201</sup> Statement of Individual ESU 5, sworn 2 November 2016, 22, edocs 3495059.

<sup>1202</sup> Affidavit of Individual YJ-48 sworn 22 November 2016, para 99, edocs 3531533.

<sup>1203</sup> Statement of Individual ESU 5, sworn 2 November 2016, 22, edocs 3495059.



efficient, means a proportion of young people may receive no intervention.<sup>1204</sup> Some stakeholders reported the positive effects of group programs, however, therapy sessions are reportedly failing to ensure early interventions due to lack of resources and coordination.<sup>1205</sup> Specifically, there is a lack of psychologists. Recommendations from community stakeholders encourage a holistic approach to substance misuse, mental health, physical health, and social and family functioning.<sup>1206</sup> There are also recommendations for a greater emphasis on rehabilitation to facilitate successful transitions back to the community.<sup>1207</sup>

## SPORT

There appears to be a number of sport and recreational programs offered at both BYDC and CYDC. No information has been provided regarding the effectiveness of these programs, or their attendance records.

The Review was concerned with the disparity that appeared to exist between the two centres in terms of sport, exercise and physical activity.

During site visits to the detention centres, the Review was informed that at BYDC physical education formed a part of the school curriculum for EQ, with young people participating in sport activities during class hours at least four times per week. In addition, there were opportunities for after school activities, such as playing football or using the pool.

However, at CYDC sport was confined to after school hours only. Of note are the interschool sporting competitions where local schools compete against CYDC young people in touch football. A number of young people spoken to at CYDC complained that there was insufficient opportunity to participate in sport. It was noted by the Review that some of these young people had significant achievements in various sporting disciplines prior to their entry into CYDC.

**Finding 9.F15** – There is a disparity between the type and frequency of sports programs offered at BYDC and CYDC.

**Recommendation 9.R7** – The Review recommends that physical activity should be incorporated into school programs offered at BYDC and CYDC, and be otherwise accessible to young people at least once per day.

<sup>1204</sup> Mental Health and Statewide Services, Children's Health Queensland Hospital and Health Service (MHHS CHQHH), Submission to the Independent Review of Youth Detention, October 2016, p 1, edocs 3485344.

<sup>1205</sup> Mental Health and Statewide Services, Children's Health Queensland Hospital and Health Service (MHHS CHQHH), Submission to the Independent Review of Youth Detention, October 2016, edocs 3485344; Queensland University of Technology, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 4, edocs 3480801.

<sup>1206</sup> Mental Health and Statewide Services, Children's Health Queensland Hospital and Health Service (MHHS CHQHH), Submission to the Independent Review of Youth Detention, October 2016, edocs 3485344; Queensland University of Technology, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 5, edocs 3480801.

<sup>1207</sup> Mission Australia, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 3, edocs 3491235.



**Recommendation 9.R8** – The Review recommends that sports programs developed within youth detention centres should be linked to sports programs available in the community.

## ABORIGINAL AND TORRES STRAIT ISLANDER CULTURAL PROGRAMS AND SERVICES

CYDC did not provide the Review with information relating to the frequency of cultural programs provided. Site visits to CYDC and conversations with staff indicated that the provision of cultural programs had only recently started. This is of particular concern when approximately 85% of the young people in CYDC are Aboriginal or Torres Strait Islander.<sup>1208</sup>

From the limited information provided by BYDC, it appears that the majority of programs are offered on an ad-hoc or sessional basis.

Submissions received by the Review have identified a gap in the availability/provision of cultural programs within youth detention centres. Aboriginal and Torres Strait Islander Legal Services' submission cited cultural programs and services available to assist young people subject to detention as including: mentoring program, chaplaincy/pastoral support, Prison ThroughCare and Aboriginal and Torres Strait Islander events (e.g. Reconciliation Day, NAIDOC Week, Mabo Day, Coming of the Light). However, on the effectiveness of cultural programs in addressing the specific needs of Aboriginal and Torres Strait Islander young people, the Together Union<sup>1209</sup> submission raised concerns that this was limited because the focus of cultural programs was currently restricted to single events such as NAIDOC week programs, rather than ongoing cultural programs. This view was shared by the Aboriginal and Torres Strait Islander Legal Services who stated in their submission that there was a chronic lack of cultural programs and appropriately culturally competent program staff to provide the programs and services. Importantly, it was identified that there should be an emphasis on ongoing programs, rather than event-based activities.<sup>1210</sup>

## DISCUSSION

From the information provided to the Review, it seems that there is a distinct disparity between the high proportion of Aboriginal and Torres Strait Islander young people and the provision of cultural services to them in detention. In 2014–2015 it was estimated that Aboriginal and Torres Strait Islander Young people made up 56% of the youth detention population<sup>1211</sup>, yet there are only a small proportion of programs that are specifically dedicated as cultural.

Aboriginal and Torres Strait Islander young people are over-represented in the youth detention system both at a State and National level.<sup>1212</sup> Despite representing a relatively small proportion of young people within Queensland (8%), Aboriginal and

<sup>1208</sup> Youth Detention Inspectorate, *CYDC Inspection reports December 2015* p3, edocs 3447114.

<sup>1209</sup> Together Union, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 6, edocs 3486149.

<sup>1210</sup> Together Union, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 6, edocs 3486149.

<sup>1211</sup> Australian Institute of Health and Welfare, Australian Government, *Queensland: Youth Justice Supervisions in 2014-2015*, Youth Justice Fact Sheet No. 59 <[www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554893](http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554893)>

<sup>1212</sup> Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2016* (2016), p 62, available <<http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016#thereport>>



Torres Strait Islander young people are heavily over-represented in terms of interaction with the criminal justice system and in particular within juvenile detention. In 2014–2015 it was estimated that Indigenous young people in Queensland were 22 times more likely than non-Indigenous young people to be incarcerated,<sup>1213</sup> with detention rates of 30 per 10,000 population compared with 1.4 per 10,000 for non-Indigenous young people.<sup>1214</sup>

This disparity becomes even more apparent in relation to Aboriginal and Torres Strait Islander young women. Proportionally, Indigenous females represent almost ¾ of the female population in detention in Queensland (73% compared to 26% non-Indigenous females). Indigenous males also represent the largest proportion at 63% compared to 37% non-Indigenous.<sup>1215</sup>

Of the young people who were on remand, 61% were Aboriginal or Torres Strait Islander young people. There have been recent increases in relation to Aboriginal and Torres Strait Islander females, with the daily average being held in detention increasing from 5 in 2011 to 16 in 2014–2015. Males also experienced an increase over the same time period rising from 44 to 64. Non-Indigenous young people also increased however at much slower rates (females 4 to 8; males 34 to 44).<sup>1216</sup>

It has been noted that challenges associated with effective program development for Aboriginal and Torres Strait Islander moderate to high risk offenders include:

*There are inherent difficulties in custodial environments in the development and implementation of programmes for Indigenous offenders. These include, but are not limited to, short custodial sentences, serving sentences away from family and community support networks, mental health and prevalence use co-morbidity, language barriers and low level of English literacy, educational – difficulty, grief and loss issues, trans-generational trauma, kinship difficulty with group composition, and the lack of Indigenous facilitators.*<sup>1217</sup>

## YOUTH JUSTICE QUEENSLAND

In recognition of the special needs of Aboriginal and Torres Strait Islander young people, the youth justice principles highlight that young people should be dealt with in a way that involves their community, and that programs and services should be culturally appropriate.<sup>1218</sup> Queensland policy pertaining to 'structured day activities'<sup>1219</sup> that includes development and implementation of programs and services in detention,

<sup>1213</sup> Australian Institute of Health and Welfare, Australian Government, *Queensland: Youth Justice Supervisions in 2014-2015, Youth Justice Fact Sheet No. 59* <[www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554893](http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554893)>

<sup>1214</sup> Australian Institute of Health and Welfare, Australian Government, *Youth Justice in Australia 2014-2015, Table S133c: Young people aged 10–17 in detention on an average day by Indigenous status and age, Queensland, 2014–15 (rate)*, edocs 3555284.

<sup>1215</sup> Australian Institute of Health and Welfare, Australian Government, *Youth Justice in Australia 2014-2015 Supplementary Table s90a Young people in detention on an average day by age, sex and Indigenous status, states and territories, 2010-11 to 2014-15*, edocs 3555285.

<sup>1216</sup> DJAG, Youth Justice, 'Young Aboriginal and/or Torres Strait Islander Young People in the youth justice system' (2016), pp 39-40, edocs 3459316

<sup>1217</sup> Karen Heseltine, Rick Sarre and Andrew Day, *Prison-based correctional offender rehabilitation programs: The 2009 national picture in Australia*. Australian Institute of Criminology, Research and Public Policy Series 112 (2009), p 48, edocs 3555290.

<sup>1218</sup> Youth Justice Act 1992 Schedule 1, Youth Justice Principles 13, 14(a).

<sup>1219</sup> YD-1-3 Structured day and program delivery, edocs 3473058.



stipulates that programs must be designed and tailored to be culturally appropriate<sup>1220</sup> in addition to being designed to meet individual needs including gender and cultural background.

The Youth Detention Centre Operations Manual outlines that youth detention centres must ensure programs and interventions are developed to support connection to culture and identity that:

- strengthen and maintain knowledge of cultural beliefs, values, traditions, lore, language and connection to culture and community;
- include ancestor and family tracing;
- recognise and celebrate significant cultural days such as Coming of the Light and Mabo Day and NAIDOC week;
- provide young people mentoring support through Elders, Cultural Resource Educators and other respected persons; and
- develop skills for coping with and responding to racism, grief and loss, trans-generational trauma, suicide, sexual and physical abuse, sex offending, violence and domestic violence.

Although there are cultural considerations in various policies and included in the above section of the manual, the implementation of these remains somewhat unclear. Within both CYDC and BYDC there are provisions for relevant Aboriginal and Torres Strait Islander groups to be consulted in the process of program development and approval.

In February 2016, the “First Nations Advisory Board” (FNAB) was developed to provide input into policies and programs affecting Aboriginal and Torres Strait Islander young people. The FNAB is comprised of people from within DJAG.<sup>1221</sup>

The State of Queensland in its submissions contend that Youth Justice has been proactive in developing and implementing the “First Nations Action Board” and “Youth Justice Cultural Unit”.<sup>1222</sup>

The FNAB may benefit from engagement with external community stakeholders who are involved in assisting young people to ensure that all views are being considered and communicated effectively. The State of Queensland in its submissions state that Aboriginal and Torres Strait Islander representatives from community organisations, as well as members of the wide Aboriginal and Torres Strait Islander community, will be invited to participate in sub-groups and attend meetings on an agenda basis’.<sup>1223</sup>

**Recommendation 9.R9** – The Review recommends that external stakeholders should be invited to join the FNAB.

<sup>1220</sup> YD-1-3 *Structured day and program delivery*, edocs 3473058; Statement of ESU-5 sworn 2 November 2016, para 22, edocs 3495059.

<sup>1221</sup> Affidavit of Individual YJ-47, sworn 30 September 2016, paras 81-85, edocs 3439519.

<sup>1222</sup> Submission on behalf of the State of Queensland – Chapter 10 – Programs and Services, dated 10 December 2016 in relation to Draft Chapter 10, p 4 edocs 3554143.

<sup>1223</sup> Submission on behalf of the State of Queensland – Chapter 10 – Programs and Services, dated 10 December 2016 in relation to Draft Chapter 10, p 9 edocs 3554143.



## CYDC CULTURAL UNIT

In 2014 CYDC established a 'cultural unit' with the aim of working with community stakeholders to improve the experiences of Aboriginal and Torres Strait Islander young people and staff.<sup>1224</sup> In June 2016 an internal review of the Unit noted that there was a lack of understanding as to the function of the cultural unit in addition to a paucity of resources to develop its programs. It noted a need to strengthen community ties, the cultural capability of staff, and partnerships and procedures at CYDC. The review also identified barriers for the cultural productivity of Aboriginal and Torres Strait Islander young people including the limited numbers of culturally specific program facilitators and developers, the risk-averse and inflexible organisational culture, and the 'one-size-fits-all' approach which ignored diversity within the Aboriginal and Torres Strait islander population.

### THE IMPORTANCE OF STAFF AND TRAINING

A variety of submissions have highlighted the importance of ensuring that staff who deal with young people in detention are culturally competent. Mission Australia noted that training to increase cultural competence regarding Aboriginal and Torres Strait Islander history, cultural distinctiveness and diversity should be provided to youth justice staff, noting that staff with a greater depth of cultural understanding will improve outcomes for Aboriginal and Torres Strait Islander young people.<sup>1225</sup> The Youth Advocacy Centre has also highlighted a need for culturally appropriate programs for Aboriginal and Torres Strait Islander young people and stated that the evidence indicated that these programs and services were likely to be most effective if delivered by Aboriginal and Torres Strait Islander led services or staff and these agencies are best placed to comment on the current programs and what else is required.<sup>1226</sup>

ATSILS have suggested that both youth detention centres should increase their numbers of identified positions for Aboriginal and Torres Strait Islander liaison officers, case managers, teaching staff and transitional officers, to be proportionate to the rate of Aboriginal and Torres Strait Islander youths incarcerated in youth detention centres. This is in line with findings of the Youth Detention Inspectorate during an inspection at CYDC in June 2016 that:

*Aboriginal or Torres Strait Islander staff are employed in operational roles as Youth Workers, and are represented in the centre within the Cultural Unit, Program Support, Case Work and Developmental Sport and Recreation. There are no Aboriginal or Torres Strait Islander staff represented in the operational management team or administration functions of the centre. This has been raised by staff as well as young people on a regular basis, and the Inspectors would suggest that the Executive Director introduces a formal*

<sup>1224</sup> 'Cleveland Youth Detention Centre – Program Information,' (2016) DH-5 Statement of Individual YJ-49, Sworn 27 October 2016, 53, edocs 3496612.

<sup>1225</sup> Mission Australia, Submission to the Independent Review of Youth Detention in Queensland, October 2016, pp 5-6, edocs 3491235.

<sup>1226</sup> Youth Advocacy Centre, Submission to the Independent Review of Youth Detention in Queensland, October 2016, edocs 3486157.



*mentoring and coaching program to assist Aboriginal or Torres Strait Islander staff in administrative and operational management positions*<sup>1227</sup>

Together Union in their submission also recognised the importance of strengthening the Aboriginal and Torres Strait Islander workforce and leadership within youth detention, as a means to improve the cultural capacity and to place the organisation in a better place to be able to address the cultural needs of young people. The creation of leadership programs works to build both Aboriginal and Torres Strait Islander leadership capability and to provide greater representations in leadership.

The Review recognises that DJAG has designed and is implementing the *Aboriginal and Torres Strait Islander Cultural Capability Action plan 2015–2019*. Under this Framework agencies are required to develop their own agency-specific cultural capability plan. Specifically, the plan has five guiding principles of:

- valuing culture; leadership and accountability;
- building cultural capability to improve economic participation;
- Aboriginal and Torres Strait Islander engagement and stronger partnership; and
- culturally responsive systems and services.

Specifically relevant to the issue at hand is 'building capability' Strategic Outcome 3.1 "Increased Aboriginal and Torres Strait Islander employment participation across all classifications and business units". This outcome states that the strategic action for this outcome would be completed in July 2016 and includes action such as:

- develop a Workforce Plan for the attraction, recruitment, leadership development and retention of Aboriginal and Torres Strait Islander people;
- develop or enhance already existing cultural mentoring programs for Aboriginal and Torres Strait Islander DJAG staff.  
*This may include professional development with a cultural mentor, volunteering within an Aboriginal and Torres Strait Islander organisation, lunch time sessions, which could include conversations with Elders.*
- implement a rotation of staff strategy where Aboriginal and Torres Strait Islander Staff have the opportunity to work in different business units, different regions and communities.  
*(These opportunities are dependent on the availability of staff and whether or not staff would like to be involved).*
- DJAG will endeavour to increase the intake of Aboriginal and Torres Strait Islander graduates, cadets and trainees across DJAG by accessing the Queensland Government Graduate Program and the Indigenous Cadetship Support Program as well as partner with universities and TAFE colleges.

Staff in youth detention centres are required to complete a suite of mandatory training competencies<sup>1228</sup> including first aid, fire safety, emergency management, protective actions continuum, suicide response, and any other practice skill that the

<sup>1227</sup> Queensland Youth Detention Inspectorate, CYDC Quarterly report, June 2016, p 9, edocs 3458216.

<sup>1228</sup> YD-3-11 Policy Mandatory competencies for youth detention operational staff, edocs 3447086.



department endorses as part of Mandatory Competencies curriculum for a designated training year.

Aboriginal and Torres Strait Islander 'Cultural Capability' refers to the skills, knowledge and behaviors that are required to plan, support, improve and deliver services in a culturally respectful and appropriate manner.<sup>1229</sup>

The *Youth Justice Act 2002* section 14(a) outlines that programs and services under the Act should be culturally appropriate and this requirement is included in the policies<sup>1230</sup> and the operations manual.

#### CHALLENGES: DISCONNECT AND DISTANCE FROM COMMUNITY, FUNDING

The geographically disparate nature of Queensland presents a challenge in ensuring that young people are able to remain engaged in programs and services post release.

The QUT submission also expressed concern regarding Aboriginal and Torres Strait Islander youth from areas of Queensland that are remote and isolated and "lack of specialised local youth justice services". For this reason, in relation to the provision of youth detention services, there needs to be "an integrated multiple service system response with increased coordination and intensive intervention at the family/community level".<sup>1231</sup>

Relevantly QNADA submitted that for these programs to be effective, there needed to be community-based support services from the young person's place of origin and this was essential given the geographically disparate nature of Queensland, "living outside a capital city should not preclude young people from receiving the appropriate levels of support".<sup>1232</sup>

**Recommendation 9.R10** – The Review recommends that consultation with external Aboriginal and Torres Strait Islander stakeholders to develop, design and implement cultural-specific programs should occur as a matter of priority.

In respect of Aboriginal and Torres Strait Islander young people, this should include consultation with community Elders.

#### COMMUNITY PROGRAMS

A number of stakeholders recommended implementing a justice reinvestment model which focuses on restorative justice.<sup>1233</sup> Restorative justice and justice reinvestment models emphasise non-punitive methods, such as youth conferencing, police

<sup>1229</sup> DJAG Aboriginal and Torres Strait Islander Cultural Capability Action Plan 2015-2019, edocs 3555291.

<sup>1230</sup> YD-1-3 Structured day and program delivery, edocs 3473058.

<sup>1231</sup> Queensland University of Technology, Submission to the Independent Review of Youth Detention in Queensland, October 2016, pp 4, 6-7 edocs 3480801.

<sup>1232</sup> Queensland Network of Alcohol and Other Drug Agencies Ltd, submission to the Independent Review of Youth Detention, October 2016, p 4, edocs 3485340.

<sup>1233</sup> Queensland University of Technology, Submission to the Independent Review of Youth Detention in Queensland, October 2016, edocs 3480801; Amnesty International, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 19, edocs 3486176; Mission Australia, Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 11, edocs 3491235.



warnings, and specialist diversion in courts.<sup>1234</sup> This model should focus on community connectedness, and be formed in consultation with Aboriginal and Torres Strait Islander groups.

Submissions received have raised concerns that many of the programs that are altered to accommodate Aboriginal and Torres Strait Islander young people “do not provide any particular benefits to youths attending the programs, lack continuity and consistency of services”.<sup>1235</sup> ATSILS submitted that there was a ‘tick the box’ practice that cultural programs were being provided when in fact they were not.

ATSILS has submitted that feedback from young Aboriginal and Torres Strait Islander Young people indicated that:

*...the programs available are not helping them, and the programs that gain some traction soon become inaccessible due to staff changes, alterations to programs, lack of continuance and limited or no follow up. It is also noted that when young people return to their community the programs access in detention are not available”<sup>1236</sup>*

ATSILS highlighted that the use of Aboriginal and Torres Strait Islander Elders, who have direct links with Aboriginal and Torres Strait Islander youths in detention was greatly beneficial in establishing a sense of identity and enhancing a sense of belonging. Understanding the historical context of where young people came from and having insight into their parents and grandparents’ struggles could lead to healing. Individualised plans starting with kin identification and following on with input from family and community will assist the youths social and emotional healing.<sup>1237</sup>

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## SUMMARY

The Review considers that programs designed to rehabilitate and reintegrate young people in youth detention should address the specific needs of all young people. Those needs include culture, gender, accessibility and continuity between the youth detention system and the community.

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<sup>1234</sup> Queensland University of Technology, Submission to the Independent Review of Youth Detention in Queensland, October 2016, edocs 3480801.

<sup>1235</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, (ATSILS) Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 4 edocs 3485327.

<sup>1236</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, (ATSILS) Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 4 edocs 3485327.

<sup>1237</sup> Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd, (ATSILS) Submission to the Independent Review of Youth Detention in Queensland, October 2016, p 4 edocs 3485327.



## CHAPTER 10 CREATING AND RETAINING CCTV FOOTAGE

Closed-circuit television (CCTV) footage provides recorded evidence that is of a different quality than a written report. CCTV records provide an impartial account of events and extra details.<sup>1238</sup>

The Review has considered a number of incidents in which the CCTV record was incomplete. Several of the young people were placed in rooms without CCTV cameras or footage of incidents was not retained by CYDC. The Review considers that:

- in relation to the Young Person A3, 20 January 2013, incident, one hour of CCTV footage concerning his separation is missing.<sup>1239</sup> CCTV footage shows the period:
  - before the code yellow was called;
  - when A3 was ground stabilised, restrained, carried to the separation room, and had his clothes removed; and
  - a short time of the period while he was in separation.

The CCTV footage for the missing time period has been permanently deleted. The ESU said there were substantial parts of the footage missing, about which Individual YJ-25 was unable to provide an explanation:<sup>1240</sup>

- in relation to Young Person A9, of the 13 incidents reviewed between only three have CCTV footage that was produced to the Review;<sup>1241</sup>
- in particular, there is different CCTV footage retained for two incidents occurring on the same day in the same place with similar uses of force against Young Person A9. There is no stated reason for the difference between the time capture and incident type of CCTV footage for these two incidents when the footage should have been available for both incidents equally;<sup>1242</sup>
- an incident involving Young Person A3 occurred in a room that did not have a camera in the room;<sup>1243</sup> and
- there is no available CCTV footage of the three young people in separation following the pool incident.<sup>1244</sup>

<sup>1238</sup> BYDC Inspection Report March 2012, dated 10 December 2012, p 16, edocs 3447151.

<sup>1240</sup> Affidavit of Individual ESU 6 sworn on 10 November 2016, para 20, edocs 3509156.

<sup>1241</sup> See 'Summary of Self-harm incidents' which is attachment 5 to Memorandum Individual ESU 7 to Individual ESU 4 dated 11 July, edocs 3516353.

<sup>1242</sup> See CCTV records for DCOIS incident 1729613, edocs 3516389, compared with the limited CCTV record for DCOIS incident 1729185, edocs 3516379.

<sup>1243</sup> Individual YJ-83, DCOIS Occurrence report 1321897, Incident 1320310, incident date 19 May 2013, edocs 3446560.

<sup>1244</sup> Letter from Crown Law to Youth Detention Review dated 11 November 2016, p 1, edocs 3512416



## CREATING CCTV FOOTAGE

On 30 June 2015, there were:

The issue relating to the lack of CCTV footage in youth detention centres is not a recent one. In the BYDC June quarter 2011 Inspectorate report, ESU recommended improvements to CCTV coverage and retention of footage in order to enhance the effectiveness of, and confidence in, processes to identify and address harm as follows:<sup>1245</sup>

- *prioritise the planned expansion of CCTV coverage throughout accommodation units;*
- *clarify the department's legal obligations in relation to electronic recordkeeping generally, and particularly as to retention duration;*
- *back up all CCTV footage for incidents involving force (as occurs at CYDC), all alleged assaults and any other incidents of a potentially criminal nature or that involve any indication of misconduct.*

ESU expressed concern in the December quarter 2011 Inspectorate report that at BYDC there was

It has been submitted on behalf of the State that the CCTV footage that is taken and recorded

<sup>1245</sup> The Youth Detention Infrastructure Plan 2015–2035 version 18, pp 42–43, edocs 3458723.

<sup>1246</sup> Inspection report, Brisbane Youth Detention Centre, June quarter 2011 dated 16 November 2011, pp 1 and 6, edocs 3458222.

<sup>1247</sup> Inspection report, Brisbane Youth Detention Centre, December quarter 2011 dated 6 March 2012, p 15, edocs 3458231.

<sup>1248</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 14, edocs 3554163.

<sup>1249</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 18, edocs 3554163.



- there is a need to balance security with the mental health and privacy concerns of young people.<sup>1250</sup>

The Review acknowledges that there are operational issues with obtaining all CCTV footage in relation to all incidents. However, the Review's inability to see the complete CCTV footage of all relevant aspects of the incident impeded the Review's ability to examine the incidents under consideration by the Review.

**Finding 10.F1** – CCTV footage was not retained for particular incidents under consideration by the Review, which hindered investigating those incidents.

It has also been submitted on behalf of the State that a body camera trial is currently underway, with positive anecdotal findings that there will be increased and improved coverage with sound recordings if the body cameras are broadly implemented.<sup>1251</sup> The Review considers this a positive development in relation to capturing audio and video of incidents involving staff or where staff are present.

It has also been submitted on behalf of the State that:

- there are systems currently in place at the centres allowing for CCTV footage involving the use of force to be reviewed, and that significant CCTV footage relating to compliance or performance management is downloaded;<sup>1252</sup>
- all level 3 and 4 incidents are reviewed at CYDC;<sup>1253</sup>
- CYDC retains all footage for a \_\_\_\_\_ and
- \_\_\_\_\_

The Review considers that the "level 3 and 4 incidents" referred to in dot point two above relates to the level of response as contained in the PAC policy.

## LEGISLATION AND POLICIES RELATING TO CCTV FOOTAGE

The *Public Records Act 2002* requires a public authority to "make and keep full and accurate records of its activities" and have regard to a policy, standard or guideline made by the archivist about the making and keeping of public records.<sup>1256</sup> The chief executive of a department is required to ensure that the public authority complies with that requirement.<sup>1257</sup> A public record is defined as any record made for use by, a

<sup>1250</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 16, edocs 3554163.

<sup>1251</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 17, edocs 3554163.

<sup>1252</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 20, edocs 3554163.

<sup>1253</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 21, edocs 3554163.

<sup>1254</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 22, edocs 3554163.

<sup>1255</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, paras 23 and 24, edocs 3554163.

<sup>1256</sup> *Public Records Act 2002* (Qld) s 7(1).

<sup>1257</sup> *Public Records Act 2002* (Qld) s 7(2) and (3).



purpose of, received by or kept by a public authority, a Ministerial record or a record of an Assistant Minister.<sup>1258</sup> This includes copies and partial records.<sup>1259</sup> Records include any recorded information created or received in the transaction of business or conduct of affairs that provides evidence of the business or affairs, from which sounds, images or writings can be reproduced with or without the aid of anything.<sup>1260</sup> Public authorities must make and keep full records of their activities in accordance with relevant policy, standards and guidelines made by the State Archivist.<sup>1261</sup>

Principle 7 of Information Standard 40 states that “[f]ull and accurate records must be made and kept for as long as they are required for business, legislative, accountability and cultural purposes.”<sup>1262</sup> Full and accurate records are described as “created”, “retained”, “preserved”, “adequate”, “complete”, “accessible” and “meaningful”.<sup>1263</sup> The Office of the Queensland Ombudsman considered that the records for breach decisions made in Queensland prisons would be detailed enough for internal and external review bodies and for prisoners to decide whether there are grounds for challenging the breach decision.<sup>1264</sup>

The *Youth Justice Act 1992* (Qld) and *Youth Justice Regulation 2016* (Qld) are both silent on the subject of capturing CCTV footage. Youth Justice policy provides that any article, object or thing (including CCTV footage) was concerned generally with ensuring that evidence is recorded and kept as appropriate.<sup>1265</sup>

Comparable law enforcement and corrective services legislation does not heavily regulate the taking of CCTV or other security camera footage. For example:

- the *Police Powers and Responsibilities Act 2000* (Qld) makes the wearing of body cameras lawful for police officers in the performance of their duties;<sup>1266</sup> and
- requiring video cameras monitoring a place where a person is being searched, in circumstances where the person viewing the monitor is a person of the opposite sex, is turned off or done out of the view of the camera.<sup>1267</sup>

The police have also implemented a policy concerning how body cameras are to be used. The policy requires the officer to use the body camera while the officer is performing their duties and, in particular, before and after exercising a police power under legislation or applying a use of force unless it is impractical to do so.<sup>1268</sup>

<sup>1258</sup> Public Records Act 2002 (Qld) s 6(1).

<sup>1259</sup> Public Records Act 2002 (Qld) s 6(2).

<sup>1260</sup> Public Records Act 2002 (Qld) sch 2 (definition of “record”).

<sup>1261</sup> Public Records Act 2002 (Qld) s 7.

<sup>1262</sup> Queensland Government Chief Information Office, Recordkeeping – IS40 <<http://www.qgcio.qld.gov.au/products/electronic-document-and-records-management/548-qgea/products/qgea-documents/information/2357-recordkeeping-is40>>, principle 7.

<sup>1263</sup> Queensland Government Chief Information Office, Recordkeeping – IS40 <<http://www.qgcio.qld.gov.au/products/electronic-document-and-records-management/548-qgea/products/qgea-documents/information/2357-recordkeeping-is40>>, principle 7.

<sup>1264</sup> Queensland Ombudsman, Justice on the Inside Report (October 2009)

<<http://www.austlii.edu.au/au/other/QldOmbIRp/2009/2.pdf?stem=0&synonyms=0&query=pra2002153%20s7>>, p 45.

<sup>1265</sup> Youth Detention Operations Manual, Chapter 4: Security Management, 18 July 2016, s 6.1, edocs 3447204; YD-4-4 Policy Retention and disposal of evidence relevant to an incident, date of operation 17 March 2015, s 1.3, edocs 3447082.

<sup>1266</sup> Police Powers and Responsibilities Act 2000 (Qld) s 609A(1) and (4).

<sup>1267</sup> Police Powers and Responsibilities Act 2000 (Qld) s 632; Corrective Services Regulation 2006 (Qld) s 11.

<sup>1268</sup> Queensland Police, *Body Worn Cameras* (19 September 2016) <<https://www.police.qld.gov.au/programs/bodyworncamera.htm>>.



## CCTV FOOTAGE SHOULD BE CAPTURED AND RETAINED WHERE APPROPRIATE

DJAG and the chief executive have an obligation pursuant to the *Public Records Act 2002* to make and keep full and accurate records that are “created”, “adequate”, “complete”, “accessible” and “meaningful”.<sup>1269</sup> The Review considers identification and retention of CCTV footage is an important part of ensuring that full and accurate records are made by DJAG.

The retention of CCTV footage has become an effective mechanism for the accurate review of incidents to be undertaken. It is one of a number of pieces of evidence necessary to be examined in relation to any review or investigation of an incident. It is also relevant to ensuring the safety of young people and staff. In the police context, police policy states that wearing body worn cameras provides for improved collection of evidence, reduces complaints against police officers and improves police officer conduct and professionalism.<sup>1270</sup> ESU recommended that all serious incidents captured on CCTV be reviewed as soon as practically possible by the Manager, Monitoring and Compliance.<sup>1271</sup> The Manager, Monitoring and Compliance reviews the CCTV footage of six randomly-selected incidents only because the process of reviewing the CCTV footage “takes him too long”.<sup>1272</sup>

The Review has already noted the importance of CCTV footage in evidence-gathering to decide whether actions by staff were authorised by the policies and legislation. The Review considers that the importance of CCTV footage in deciding whether there is compliance with the law and policies means that the Manager, Monitoring and Compliance should review the CCTV footage of incidents that are taken and retained in accordance with the recommendations at the end of this chapter.

**Recommendation 10.R1** – The Review recommends that the Manager, Monitoring and Compliance should review the CCTV footage of all incidents that this chapter recommends should be taken and retained.

In the September quarter 2013 Inspectorate report, a recommendation was accepted requiring all available CCTV footage to be reviewed in incidents involving restricted physical holds.<sup>1273</sup> There was a further recommendation in the September quarter 2014 Inspectorate report for BYDC that they explore options to place CCTV in the secure van used to transport young people.<sup>1274</sup>

<sup>1269</sup> *Public Records Act 2002* (Qld) s 7; Queensland Government Chief Information Office, *Recordkeeping – IS40* <<http://www.qgcio.qld.gov.au/products/electronic-document-and-records-management/548-qgea/products/qgea-documents/information/2357-recordkeeping-is40>>, principle 7; Queensland Government Chief Information Office, *Recordkeeping – IS40* <<http://www.qgcio.qld.gov.au/products/electronic-document-and-records-management/548-qgea/products/qgea-documents/information/2357-recordkeeping-is40>>, principle 7.

<sup>1270</sup> Queensland Police, *Body Worn Cameras* (19 September 2016) <<https://www.police.qld.gov.au/programs/bodyworncamera.htm>>.

<sup>1271</sup> BYDC Inspection Report March 2012, dated 10 December 2012, p 16, edocs 3447151.

<sup>1272</sup> Inspection Notes: Cleveland Youth Detention Centre dated 11–15 March 2013, p 4, edocs 3457983.

<sup>1273</sup> BYDC Inspection Report September 2013, dated 13 February 2014, p 31, edocs 3447135.

<sup>1274</sup> BYDC Inspection Report September 2014, dated 5 January 2015, p 16, edocs 3447125.



There are published research findings that indicate that the presence of CCTV reduces both non-violent and violent prisoner assaults in adult prisons.<sup>1275</sup>

It is beyond the scope of this Review to express any view about the appropriateness of the use of CCTV in youth detention centres.

The Review considers that in a number of specific incidents under review, the lack of CCTV footage has made the assessment of the actions of staff and young people more difficult. The submission received from the Public Guardian has emphasised the importance of collecting CCTV footage as evidence and for preventing incidents.<sup>1276</sup> ESU noted in 2013 that there would be a rollout of additional CCTV cameras at BYDC to “enhance the safety of young people and staff.”<sup>1277</sup> The Review considers that if security cameras are being used, their use ought to be applied consistently to ensure that there is evidence available of all incidents involving use of force, restraint, separation and violence for investigation and review.

As noted above, it has been submitted on behalf of the State that CCTV coverage at CYDC is already substantial and the CCTV coverage at BYDC is scheduled for a substantial upgrade.

**Recommendation 10.R2** – The Review recommends that security cameras should be placed in all areas where incidents involving use of force, violence, restraints or separation are known to have occurred.

The Review understands that there is an upgrade to the number of locations of CCTV cameras at BYDC already underway. The June quarter 2015 Inspectorate report noted that a security upgrade would involve installing CCTV in accommodation units and a number of rooms to enhance the “ability to undertake compliance checking.”<sup>1278</sup>

## PRIVACY

The Review understands that there are competing views about the appropriateness of using CCTV in relation to young people (and in other contexts), including concerns about privacy.

There are privacy concerns regarding the intrusion into a young person’s private space. Such privacy concerns were noted in the Forde Inquiry, particularly in relation to young people who are depressed, however, no recommendation or finding was made on that point.<sup>1279</sup>

In the June quarter 2013 Inspectorate report for BYDC, ESU noted the psychological impact of CCTV cameras, and accordingly one of the criteria is that “surveillance

<sup>1275</sup> Troy J Allard, Richard K Wortley and Anna L Stewart, ‘The Effect of CCTV on Prisoner Misbehaviour’ (2008) 88 *The Prison Journal* 404, pp 417–418.

<sup>1276</sup> Office of the Public Guardian, Submission to the Independent Review of Youth Detention Discussion Paper, dated October 2016, p 9, edocs 3489239.

<sup>1277</sup> BYDC Inspection Report December 2013, dated 24 March 2014, p 3, edocs 3471374.

<sup>1278</sup> BYDC Inspection Report June 2015, dated 11 September 2015, p 4, edocs 3447119.

<sup>1279</sup> Forde Inquiry, *Commission of Inquiry into Abuse of Children in Queensland Institutions*, Queensland Government, Brisbane (1999), p 219, edocs 3431822.



systems are installed in a discreet manner keeping in mind the psychological impact that the use of such equipment may have on the young person.<sup>1280</sup>

On the other hand, as noted above, CCTV cameras provide a critical evidentiary record of incidents within youth detention centres.

The Review appreciates that there are important privacy issues associated with capturing CCTV footage in particular situations including, for example, during a

Any use of CCTV cameras must consider the privacy of young people in these situations and others in which young people have a legitimate and reasonable expectation of privacy.

<sup>1281</sup> The

Inspectorate recommended that a specific policy be developed to outline appropriate behaviour and require staff in the vicinity of CCTV monitors displaying images of young people to use discretion.<sup>1282</sup>

This issue was raised again by ESU in 2013, noting that there was no specific policy governing this area. It was noted to be an area of practice which was “covered by mandatory training in relation to privacy, professional boundaries, workplace ethics and code of conduct”.<sup>1283</sup> Consequently, any inappropriate actions, including recording or commenting by youth detention workers would constitute a breach of the code of conduct and the appropriate consequences would follow.<sup>1284</sup>

The Review considers that privacy considerations should be taken into account to the fullest extent possible when deciding when and how security cameras are to be employed and, if it is decided that they should be employed, how they are to be used.

**Recommendation 10.R3** – The Review recommends that CCTV should be utilised in a way that ensures that all relevant information is captured and retained to:

- facilitate the investigation of incidents without delay; and
- without unduly impacting on the mental health or personal privacy of young people.

## RETENTION OF CCTV FOOTAGE OF INCIDENTS

In relation to a number of incidents, complete footage was not available to the Review.

There is no CCTV footage of the placement into separation for each of the young people immediately after the pool incident.<sup>1285</sup>

<sup>1280</sup> BYDC Inspection Report June 2013, dated 26 August 2013, p 22, edocs 3471361.

<sup>1281</sup> BYDC Inspection Report June 2011, dated 16 November 2011, p 10, edocs 3447126.

<sup>1282</sup> BYDC Inspection Report June 2011, dated 16 November 2011, p 10, edocs 3447126.

<sup>1283</sup> BYDC Inspection Report December 2013, dated 24 March 2014, p 6, edocs 3471374.

<sup>1284</sup> BYDC Inspection Report December 2013, dated 24 March 2014, p 6, edocs 3471374.

<sup>1285</sup> Letter from Crown Law to Youth Detention Review dated 11 November 2016, p 1, edocs 3512416.



## LEGISLATIVE AND POLICY RETENTION REQUIREMENTS

### *PUBLIC RECORDS ACT 2002 (QLD)*

The *Public Records Act 2002* creates a framework for managing public records and establishes the Queensland State Archives.<sup>1286</sup> Pursuant to section 13 of the *Public Records Act 2002*, it is an offence to dispose of public records unless under authority given by the State Archivist or other legal authority.<sup>1287</sup> The maximum penalty is 165 penalty units.<sup>1288</sup> Authorisation may be given by the State Archivist to dispose of public records under section 26 of the *Public Records Act 2002*.

## POLICY REQUIREMENTS FOR CCTV FOOTAGE

### *CCTV AND YOUTH JUSTICE POLICY*

CCTV footage that provides evidence for a decision or action of the department will become a public record.<sup>1289</sup> This includes, but is not limited to, CCTV footage which is used as evidence in an investigation by the QPS or ESU, a client complaint or a workers' compensation claim.<sup>1290</sup> CCTV footage is required to be extracted in a number of instances as follows:<sup>1291</sup>

- an incident<sup>1292</sup> involving a Level 4 Youth Detention Protective Actions Continuum technique;<sup>1293</sup>
- an incident involving a non-approved physical intervention technique;
- a reportable incident (including critical incidents and emergencies);<sup>1294</sup>
- an incident that may involve the QPS;
- an incident that may be referred to the department's Ethical Standards Unit; and
- any other incident or event that the shift supervisor or centre director determines.

The Review considers that the policy does not provide clear guidelines. For example, the term 'incident' does not refer to a clear timeframe. It is not clear when an 'incident' begins and ends. It is not clear whether 'incident' encapsulates a specific period of time before and/or after the 'incident'. For example, would separation of a young person in a locked room immediately following an incident be considered to be part of the incident? The Review considers that the lack of complete CCTV footage in

<sup>1286</sup> Queensland State Archives, *Public Records Act 2002: A Plain English Guide* (2009, version 2) <[www.archives.qld.gov.au/Recordkeeping/GRKDownloads/.../PRAplainenglishguide.pdf](http://www.archives.qld.gov.au/Recordkeeping/GRKDownloads/.../PRAplainenglishguide.pdf)> 4.

<sup>1287</sup> *Public Records Act 2002* (Qld) ss 13, 26.

<sup>1288</sup> *Public Records Act 2002* (Qld) s 13.

<sup>1289</sup> YD-4-4 Policy Retention and disposal of evidence relevant to an incident, date of operation 17 March 2015, definitions, edocs 3447082.

<sup>1290</sup> YD-4-4 Policy Retention Policy Retention and disposal of evidence relevant to an incident, date of operation 17 March 2015, definitions, edocs 3447082.

<sup>1291</sup> YD-4-4 Policy Retention and disposal of evidence relevant to an incident, date of operation 17 March 2015, definitions, s 3, edocs 3447082; Youth Detention Operations Manual, Chapter 4: Security Management, 18 July 2016, s 6.3.1.11, edocs 3447204.

<sup>1292</sup> Incident is defined in the policy to refer to an incident reported on DCOIS in accordance with Youth Detention Centre Operations Manual, Chapter 3: Incident Management: YD-4-4 Policy Retention and disposal of evidence relevant to an incident, definitions (date of operation 17 March 2015).

<sup>1293</sup> Under s 268 Youth Justice Act 1992 there is an obligation to report harm to children in detention centres. Should a report not be made, the maximum penalty is 20 penalty units. See also ss 37–39 Youth Justice Regulation 2016.



relation to Young Person A3's time in separation immediately following the incident and the lack of any CCTV footage for the period of separation immediately following the pool incident reflects that this period is not currently regarded as part of the incident.

The Review considers that the policy is unclear as to:

- if a matter was reported when the retained CCTV footage can be deleted after review. It has been submitted on behalf of the State that all matters related to ESU and QPS are retained;<sup>1295</sup> and
- how long the material should be retained for in relation to a client complaint, a workers' compensation claim or a civil claim. It has been submitted on behalf of the State that it is current practice for CCTV footage to be retained in relation to the claims.<sup>1296</sup>

The Review considers that uncertainty remains regarding whether a proceeding needs to be on foot at the end of the 30 days where otherwise the CCTV footage would be overwritten.

Where CCTV footage becomes a public record, it must be recorded on the evidence register with a number of additional records.<sup>1297</sup>

Records kept by public authorities are subject to a number of recordkeeping standards. Recordkeeping must be compliant and accountable, monitored and audited, assigned and implemented, managed, reliable and secure, systematic and comprehensive, and full and accurate.<sup>1298</sup>

### RETENTION AND DISPOSAL SCHEDULES

In accordance with the objectives of the *Public Records Act 2002*, public records of decisions made and actions taken must not be disposed of unless in accordance with an authority given by the State Archivist or other legal authority. The retention and disposal schedules are authorisations given by the State Archivist, for the disposal of public records, pursuant to section 26 of the *Public Records Act 2002*.<sup>1299</sup>

#### General Retention and Disposal Schedule

As there is no specific Youth Justice retention and disposal schedule,<sup>1300</sup> the Review considers that the general schedule applies. Under the general schedule,<sup>1301</sup> CCTV footage may fall within one of three categories:

<sup>1295</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 27, edocs 3554163.

<sup>1296</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 28, edocs 3554163.

<sup>1297</sup> *Youth Detention Centre Operations Manual Chapter 4 Security Management* (last reviewed 18 July 2016) section 6.3.1.11. (i.e. date extracted, name of officer extracted, purpose, details of copies made, particulars about its retention and disposal, officers who have cited the footage), edocs 3447204.

<sup>1298</sup> Queensland Chief Executive Information Office, *Information Standard 40: Recordkeeping*.

<sup>1299</sup> Email from the Office of the State Archivist to the Review dated 30 November 2016, p 1, edocs 3539890.

<sup>1300</sup> Email from the Office of the State Archivist to the Review dated 30 November 2016, p 1, edocs 3539890.

<sup>1301</sup> Department of Science, Information Technology and Innovation, *General retention and disposal schedule* (2016).



1. Surveillance footage provided to investigative and law enforcement agencies, which must be retained for a minimum of \_\_\_\_\_ after the recordings are sent to the relevant law enforcement agency.<sup>1302</sup>
2. Surveillance footage captured for a specific purpose that is not required for investigative purposes or as evidence, which must be retained for a minimum of \_\_\_\_\_ after the record is created.<sup>1303</sup>
  - a) Footage captured for a specific purpose, not required for an investigative purpose is footage captured as part of the “primary operations of the business unit” rather than continuous rolling footage.<sup>1304</sup>
  - b) The Review considers that specifically, the capture of an incident is likely to amount to a specific purpose under this category.
  - c) An investigative purpose is examining “a situation by observation or study and systematic inquiry” and could include an internal departmental investigation.<sup>1305</sup>
3. Continuous surveillance not required as evidence or requested by investigative or law enforcement agencies, which must be retained until the business action is completed.<sup>1306</sup> The Review considers that an internal investigation could also be included under this category.<sup>1307</sup>

All timeframes noted in retention and disposal schedules are mandatory *minimum* periods to retain records.<sup>1308</sup> According to Information Standard 31, public authorities must ensure that public records are always retained for as long as they are required, even if the minimum period for retention has passed.<sup>1309</sup> More generally, records must be kept for as long as they are required for business, legislation, accountability or cultural purposes.<sup>1310</sup>

It has been submitted on behalf of the State that the \_\_\_\_\_ minimum period for retaining CCTV footage referred to earlier in this chapter is in accordance with the General Retention and Disposal Schedule.<sup>1311</sup> This requirement was followed in relation to the period of separation for the three young people immediately following the pool incident.<sup>1312</sup>

### Youth Justice policy

Permission must be obtained from the Centre Director to dispose of any CCTV records in accordance with the Queensland State Archives approved Retention and Disposal

<sup>1302</sup> Department of Science, Information Technology and Innovation, *General retention and disposal schedule* (2016) disposal authorisation 1202.

<sup>1303</sup> Department of Science, Information Technology and Innovation, *General retention and disposal schedule* (2016) disposal authorisation 1284.

<sup>1304</sup> Email from the Office of the State Archivist to the Review dated 30 November 2016, p 2, edocs 3539890.

<sup>1305</sup> Email from the Office of the State Archivist to the Review dated 30 November 2016, p 2, edocs 3539890.

<sup>1306</sup> Department of Science, Information Technology and Innovation, *General retention and disposal schedule* (2016) disposal authorisation 1277.

<sup>1307</sup> Email from the Office of the State Archivist to the Review dated 30 November 2016, p 2, edocs 3539890.

<sup>1308</sup> Queensland Chief Executive Information Office, *Information Standard 31: Retention and Disposal of Public Records*.

<sup>1309</sup> Queensland Chief Executive Information Office, *Information Standard 31: Retention and Disposal of Public Records*.

<sup>1310</sup> Queensland Chief Executive Information Office, *Information Standard 40: Recordkeeping*.

<sup>1311</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 29, edocs 3554163.

<sup>1312</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 32, edocs 3554163.



Schedules.<sup>1313</sup> There is no Retention and Disposal Schedule specifically concerning youth justice.<sup>1314</sup> There is, however, a general duty of care to ensure that records are not disposed of where they may be needed in evidence in a judicial proceeding (including legal action or a Commission of Inquiry).<sup>1315</sup>

#### Queensland Corrective Services Retention and Disposal Schedule

The Corrective Services Retention and Disposal Schedule makes no specific reference to CCTV footage although 'audio-visual recordings' must be retained for after recording.<sup>1316</sup>

#### CONSIDERATION

There are a number of parts of the CCTV record for incidents under review that were not retained. The inability to examine this missing CCTV footage has inhibited attempts to review the incidents and to decide whether there were identifiable issues of mistreatment of young people in detention centres or whether the conduct engaged in by staff in each of the incidents was authorised. The difficulty regarding incomplete CCTV footage is not limited to this Review; ESU has also had difficulty obtaining CCTV footage in relation to individual incidents involving young people under consideration by this Review.

The Review considers that, in order to ensure that there is capacity to perform an adequate review of an incident, CCTV footage should be retained in relation to an incident which involves any of the following:

- a use of force (which includes a use of force response that is defined as a level 2 to 4 PAC response);
- a medical emergency;
- harm to a young person, staff or another person;
- damage to property;
- the contemplation of a criminal charge against a young person;
- a period of separation occurring immediately after an incident (the first two hours of the separation period should be retained, or the whole separation period if the young person is released before the end of the first two hours).

<sup>1313</sup> Youth Detention Centre Operations Manual Chapter 4 Security Management, last reviewed 18 July 2016, section 6.3.1.11, edocs 3447204

<sup>1314</sup> Email from the Office of the State Archivist to the Review dated 30 November 2016, p 1, edocs 3539890.

<sup>1315</sup> Criminal Code, s 129; Department of Science, Information Technology and Innovation, General retention and disposal schedule (2016).

<sup>1316</sup> Department of Community Safety (Queensland Corrective Services), Retention and Disposal Schedule (QDAN 638 V 2) reference 8.1.2, <http://www.archives.qld.gov.au/Recordkeeping/GRKDownloads/Documents/QDAN00638version2.pdf>.



In respect of the above list it has been submitted on behalf of the State that:

- there would be limited benefit (when compared with the increased impact of downloading the CCTV footage) to downloading CCTV footage of level 2 and 3 PAC responses in addition to level 4 responses;<sup>1317</sup>
- CCTV footage of a medical emergency, harm to a young person, staff or another person and significant damage to property is already routinely downloaded and retained;<sup>1318</sup>
- all 2 hour incidents of separation are reviewed at first instance by the manager of monitoring and compliance.<sup>1319</sup>

In relation to the first bullet point, the Review considers that it is necessary to download and retain level 2 and level 3 PAC responses because there have been instances of inaccurate PAC classification, where some level 3 PAC responses have been classified as a level 2 PAC response.<sup>1320</sup> In order to ensure that all relevant PAC responses are reviewed and retained where necessary the Review considers it is necessary to download and retain levels 2 and 3 PAC responses in addition to level 4 PAC responses.

In relation to the second bullet point, it appears that this retention of CCTV footage would accord with current Government policy and could continue to be implemented.

In relation to the third bullet point, concern was expressed about the level of review at footnote 1272 and the accompanying text. Further, in order to ensure that there is proper review, including by independent inspectors, the Review considers that the footage concerning separation should be retained.

**Recommendation 10.R4** – The Review recommends that CCTV footage should be retained in relation to all incidents including:

6. a use of force response that is classified as a level 2 to 4 PAC response;
7. a medical emergency;
8. where harm has occurred to a young person, staff or another person;
9. where property has been significantly damaged or where a criminal charge against the young person is contemplated;
10. a period of separation occurring immediately after an incident;
  - a. the first two hours of the separation period should be retained; or

<sup>1317</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 33, edocs 3554163.

<sup>1318</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 34, edocs 3554163.

<sup>1319</sup> Submissions on Behalf of the State of Queensland – Chapter 3 – Creating and Retaining CCTV footage, dated 10 December 2016, para 35, edocs 3554163.

<sup>1320</sup> For example, in relation to the pool incident the use of restraints and hand guidance was used to take the 3 young people involved in the incident to separation: Affidavit of Individual YJ 47 sworn on 30 September 2016, exhibit 3, p 56, edocs 3439519. The PAC level was classified as a level 2. However, escorting while handcuffed in a level 3 PAC response: Youth Detention Operations Manual, Appendix 3-1 Protective Actions Continuum Technique Library, date of operation 6 June 2014, table 4, edocs 3447583.



- b. the whole period of separation if the young person is released before the two hour period ends.

### RETENTION AND TIMEFRAME

The Review considers that retention of CCTV footage for a sufficient period of time is essential in order to ensure that the CCTV footage is available to be used for investigation, complaint and review purposes. In relation to retention times for CCTV footage, the Public Guardian stated as follows:

*...OPG understand the youth detention centres and adult corrective services facilities do not have capacity to retain CCTV footage after a 30-day period, due in part to the costs of digital storage. Many children and young people are unaware of this, and may raise conduct issues after footage has already been destroyed. CCTV footage often makes a big difference to validating and acting more expeditiously on complaints. To ensure the availability, quality and integrity of evidence, the complaint or issue needs to be actioned in proximity to the incident in question.*<sup>1321</sup>

Queensland State Archives has indicated to the Review that a detention and disposal schedule existed for the Sir Leslie Wilson Youth Detention Centre (QDAN 298). That schedule required that surveillance tapes were to be retained for six months without incident, but for 10 years if there were reported incidents relating to medical or judicial matters.<sup>1322</sup>

The Review understands that storage of CCTV footage may be expensive and may be difficult with respect to the large volume of CCTV footage that may be created at youth detention centres. However, the difficulty of creating and retaining large volumes of CCTV must be balanced with ensuring that Youth Justice has full and accurate records that are “retained”, “preserved”, “adequate”, “complete”, “accessible” and “meaningful”.<sup>1323</sup>

Further, the Review considers that the footage should be available for all proceedings that may arise out of the incident, and should be available while the young person or a staff member is able to bring civil proceedings (particularly, it is assumed, personal injury proceedings) in respect of the incident. The capacity to bring personal injuries proceedings is limited by the *Limitations of Actions Act 1974* (Qld), which provides that a personal injuries claim must be commenced three years after the day the cause of action arose,<sup>1324</sup> subject to any relevant extension of the period under part 3 of the *Limitations of Actions Act 1974* (Qld).<sup>1325</sup> Of particular relevance is the provision concerning disability in part 3, which provides that the limitation does not extend

<sup>1321</sup> Office of the Public Guardian, submission to the Independent Review of Youth Detention Discussion Paper, dated October 2016, p 9, edocs 3489239.

<sup>1322</sup> Email from the Office of the State Archivist to the Review dated 30 November 2016, p 1, edocs 3539890.

<sup>1323</sup> Queensland Government Chief Information Office, *Recordkeeping – IS40* <<http://www.qgcio.qld.gov.au/products/electronic-document-and-records-management/548-qgea/products/qgea-documents/information/2357-recordkeeping-is40>>, principle 7.

<sup>1324</sup> *Limitations of Actions Act 1974* (Qld) s 11(1).

<sup>1325</sup> *Limitations of Actions Act 1974* (Qld) s 9.



until a person is no longer suffering the disability or the person dies (whichever happens first).<sup>1326</sup> Being a child is a disability for the *Limitations of Actions Act 1974* (Qld).<sup>1327</sup>

As noted above, at least some of the CCTV footage is retained by the State. Any other CCTV footage is retained for 30 days.

The Review considers the CCTV footage should be retained for the following minimum periods of time and considers that this recommended timeframe strikes a balance between the identified competing concerns:

- the CCTV footage should be retained until three years after a young person turns 18 or dies (whichever happens first) and is therefore no longer able to bring an action for personal injury within the meaning of *Limitations of Actions Act 1974*. This is longer than the 90 days contained in the general retention and disposal schedule, but the GDRS states that there can be a longer mandated period in the departmental policy.<sup>1328</sup> The Review considers that the additional time allows for a young person and staff involved in an incident to consider whether to initiate proceedings in accordance with their legal rights, while also allowing a proper capacity for the review of CCTV footage to occur in accordance with any later Commission of Inquiry, systemic review or investigation. Ninety days would not be sufficient, particularly as ESU conducts quarterly visits to centres and therefore may only become aware of an incident during site visits; and
- if the CCTV footage evidence is necessary to resolve a complaint, an internal investigation or pending court action, the information should be retained until the investigation is finalised and any applicable appeal time limit period has passed (irrespective of whether the time is longer than the three years referred to above).

**Recommendation 10.R5** – The Review recommends that the CCTV footage should be retained:

1. for three years after a young person turns 18 or dies (whichever happens first) and is therefore no longer able to bring an action for personal injury within the meaning of the *Limitations of Actions Act 1974*;
2. otherwise until any investigation is finalised and any applicable appeal time limit period has passed.

The above retention policy could be implemented by a youth justice-specific disposal and retention policy pursuant to the *Public Records Act 2002* or it could be implemented directly by legislative amendment of Youth Justice legislation.

Having regard to the importance of the CCTV footage in ensuring that adequate investigation and review can occur of Youth Justice actions, the Review considers that

<sup>1326</sup> *Limitations of Actions Act 1974* (Qld) s 29.

<sup>1327</sup> See *Flemming v Gibson & Nominal Defendant* [1997] QCA 446, 2; Queensland Law Reform Commission, *A Review of the Limitation of Actions Act 1974* (1998)

<<http://www.austlii.edu.au/au/other/lawreform/QLRC/1998/53.pdf?stem=0&synonyms=0&query=loaa1974226%20s29>> p 139.

<sup>1328</sup> Email from the Office of the State Archivist to the Review dated 30 November 2016, p 2, edocs 3539890.



the requirement to retain CCTV footage should be reflected in legislation. This would ensure that any change to the time periods and the type of matters for which CCTV footage was to be retained would be subject to parliamentary scrutiny. In order to avoid any conflicts with the requirements of the *Public Records Act 2002*, it may be appropriate to include such a provision in the *Youth Justice Act 1992* rather than in the *Youth Justice Regulation 2016*.

**Recommendation 10.R6** – The Review recommends that the *Youth Justice Act 1992* should be amended in order to implement the requirement to retain CCTV footage in line with the above recommended timeframes.



## CHAPTER 11 USE OF SECURITY DOGS AT CYDC

### INTRODUCTION

The ABC's 7:30 program on 18 August 2016<sup>1329</sup> included the use of the security dog during the pool incident.<sup>1330</sup> The 7:30 program referred to "a 2015 Youth Detention Inspectorate Report critical of the centre's use of guard dogs."<sup>1331</sup> The Amnesty International report "*Heads Held High*" referred to the use of security dogs in a number of incidents included in the CYDC Inspectorate reports for the March Quarter 2015 and September Quarter 2015. References to the pool incident were recorded in the September 2015 Quarter report.<sup>1332</sup> As noted below, the dog was removed from CYDC pursuant to a decision of Individual YJ-47, which took effect on 16 October 2015.

As far as the Review is aware, dogs are not currently in use at BYDC or CYDC.

This chapter considers whether the decisions made at CYDC and within DJAG to use a security dog were authorised.

### DECISION TO USE SECURITY DOG AT CYDC

ESU reported that young people raised the use of security dogs with ESU in June/July 2014.<sup>1333</sup> DJAG began to consider the use of security dogs in February 2014.<sup>1334</sup>

Preliminary discussions relating to the use of the security dog occurred following an incident where young people within CYDC gained access to roof areas in the Watpac construction compound.<sup>1335</sup>

### INTENDED SCOPE OF SECURITY DOG USE

The Review considers that the initial purpose of the use of the security dog was to prevent young people from getting onto the roofs of buildings during a construction phase at CYDC.<sup>1336</sup> There was an incident involving young people getting onto the roof.<sup>1337</sup> The initial approval for the use of security dogs was in response to that

<sup>1329</sup> Commission of Inquiry Order (No. 1) 2016, section 3(a)(i).

<sup>1330</sup> 'CCTV shows alleged mistreatment at Townsville's Cleveland Youth Detention Centre' ABC 7:30, 18 August 2016 <<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>.

<sup>1331</sup> 'CCTV shows alleged mistreatment at Townsville's Cleveland Youth Detention Centre' ABC 7:30, 18 August 2016 <<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>.

<sup>1332</sup> Amnesty International, *Heads Held High: Keeping Queensland Kids Out of Detention, Strong in Culture and Community* (2016) p 25 <[https://static.amnesty.org.au/wp-content/uploads/2016/09/Heads\\_Held\\_High\\_-\\_Queensland\\_report\\_by\\_Amnesty\\_International.pdf](https://static.amnesty.org.au/wp-content/uploads/2016/09/Heads_Held_High_-_Queensland_report_by_Amnesty_International.pdf)>.

<sup>1333</sup> Affidavit of Individual ESU 6 sworn on 10 November 2016, para 51, edocs 3509156.

<sup>1334</sup> Email from Individual YJ-123 to Individual YJ-124 and Individual YJ-49 dated 18 February 2014, which forms part of exhibit "ESU-5-14" to the affidavit of Individual ESU-5 sworn 2 November 2016, p 145, edocs 3495059.

<sup>1335</sup> Email from Individual YJ-123 to Individual YJ-124 and Individual YJ-49 dated 18 February 2014, which forms part of exhibit "ESU-5-14" to the affidavit of Individual ESU-5 sworn 2 November 2016, p 145, edocs 3495059.

<sup>1336</sup> Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, p 12 edocs 3458035.

<sup>1337</sup> Email from Individual YJ-123 to Individual YJ-49 dated 18 February 2014, which forms part of exhibit Individual ESU-5-14 to the affidavit of Individual ESU-5 sworn 2 November 2016, p 144, edocs 3495059.



Incident and the ongoing construction phase.<sup>1338</sup> It was submitted on behalf of the State that there was a need to respond to security issues arising in relation to young people accessing the roof and use of construction debris to assault staff.<sup>1339</sup>

On 18 February 2014 the use of uniformed security guards at peak times (1–6pm) was considered to be an option available and enquiries were to be undertaken to identify if there were any legal or other constraints around the use of security guards operating within youth detention centres and whether the security dogs may act as a deterrent.<sup>1340</sup> Individual YJ-123 asked Individual YJ-49 on 19 February 2014 whether security guards could chase, tackle and restrain young people who break rules at CYDC, and whether security dogs could be used and could chase, bite or hold young people who break away from escorts.<sup>1341</sup> Individual YJ-49 responded on 20 February 2014<sup>1342</sup> that because the guards and the security dog should be a deterrent, he would not want a security guard to deter a young person unless they [the security guard] were being personally attacked and there was a danger of injury or death. The security dogs should only be a physical deterrent [by presence] and he would not want to see the security dog chasing, biting or holding any young person.<sup>1343</sup>

That limited scope of physical deterrent by presence was not translated into the CFT's summary overview of services provided that the CYDC gave to local CFT Security Patrol Staff.<sup>1344</sup> The summary document stated that CFT "is a direct response to repeated on centre incidents involving violence and aggressive young people [that result] in both substantial property damage and personal injury."<sup>1345</sup> The "primary goal" was to act as a "visual deterrent" to detained young people accessing building sites or climbing on the roofs.<sup>1346</sup>

A static guard was to be placed at the pool and fitness centre zone, providing a mobile service along Watpac fence lines. The dog handler and security dog were to be positioned outside a particular unit complex, to provide a mobile patrol along the road and down to the visits/Court complex.<sup>1347</sup>

CFT officers could not physically engage young people except as allowed under the *Criminal Code* (the document lists that the Code allows for physical engagement when a CFT officer's personal safety is placed at risk or they provide aid to others in a crisis situation.)<sup>1348</sup> CFT dog handlers must not let the dog off the leash and must do

<sup>1338</sup> Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, p 12 edocs 3458035.

<sup>1339</sup> Submissions on Behalf of the State of Queensland – Chapter 2 – Use of Security Dogs as CYDC, dated 10 December 2016, para 8, edocs 3554165.

<sup>1340</sup> Email from Individual YJ-123 to Individual YJ-124 and Individual YJ-49 dated 18 February 2014, which forms part of exhibit ESU-5-14 to the affidavit of Individual ESU-5 sworn 2 November 2016, p 145, edocs 3495059.

<sup>1341</sup> Email from Individual YJ-123 to Individual YJ-49 dated 19 February 2014, which forms part of exhibit "ESU-5-14" to the affidavit of Individual ESU-5 sworn 2 November 2016, p 144, edocs 3495059.

<sup>1342</sup> Individual YJ-49 has written his responses in red in Individual YJ-123's email, see page 144 of Individual ESU-5's affidavit, see also email from Individual YJ-49 to Individual YJ-123 dated 20 February 2014, edocs 34801027.

<sup>1343</sup> Text appears to be written by Individual YJ-49 contained in email from Individual YJ-123 to Individual YJ-49 dated 18 February 2014, which forms part of exhibit "ESU-5-14" to the affidavit of Individual ESU-5 sworn 2 November 2016, p 144, edocs 3495059.

<sup>1344</sup> Email from Individual YJ-25 to Individual ESU 5 dated 5 June 2014, edocs 3457991.

<sup>1345</sup> Attachment 'CFT Security patrol 21 02 14', p 1, attached to email from Individual YJ-25 and Individual ESU-5, edocs 3457991.

<sup>1346</sup> Attachment 'CFT Security patrol 21 02 14', p 1, attached to email from Individual YJ-25 and Individual ESU-5, edocs 3457991.

<sup>1347</sup> Attachment 'CFT Security patrol 21 02 14', p 2, attached to email from Individual YJ-25 and Individual ESU-5, edocs 3457991.

<sup>1348</sup> Attachment 'CFT Security patrol 21 02 14', p 2, attached to email from Individual YJ-25 and Individual ESU-5, edocs 3457991.



everything possible to ensure that no one is bitten.<sup>1349</sup> CYDC were said to have primary responsibility (which is emphasised) in dealing with young people and incidents, but if CFT officers do engage with young people engaging in inappropriate or illegal behaviour, they are to provide clear, loud and direct verbal commands.<sup>1350</sup>

A particular staff member at CYDC was authorised to direct a CFT officer to move to alternate areas; no one else was authorised to direct the CFT Officer to move to an alternative area unless it was directly related to the safety of an individual, security dog or property.<sup>1351</sup>

At some point \_\_\_\_\_ was engaged to provide a security dog and security dog handler. It appears that CFT<sup>1353</sup> (or CBA<sup>1354</sup>) was the security company that was subcontracted to provide the security dogs before \_\_\_\_\_ became involved.<sup>1355</sup>

The Review has not received copies of the contracts that governed the employment of the security dog handler. The Review considers that the statement of service to CFT provided by CYDC is indicative of the nature of the services to be provided by the security dog handler.

The Review is concerned that the scope of the services outlined in the statement of services did not sufficiently limit the obligations of the dog handlers under the contract to incidents involving the building sites or the roofs of detention centre buildings. The overview of services stated that the primary goal was to act as a visual deterrent, but there was no limiting of that function in any meaningful way and it was obviously contemplated in the service agreement that the security dog may be used for matters other than as a visual deterrent. The Review considers that it was foreseen and accepted that there may be situations in which the security guard and the security dog would be used in responding to incidents within CYDC as needed. The Summary of Services document indicated that the security guard did not have powers

<sup>1349</sup> Attachment 'CFT Security patrol 21 02 14', p 3, attached to email from Individual YJ-25 and Individual ESU-5, edocs 3457991.

<sup>1350</sup> Attachment 'CFT Security patrol 21 02 14', p 3, attached to email from Individual YJ-25 and Individual ESU-5, edocs 3457991.

<sup>1351</sup> Attachment 'CFT Security patrol 21 02 14', p 3, attached to email from Individual YJ-25 and Individual ESU-5, pp 140–141, edocs 3457991.

<sup>1352</sup> \_\_\_\_\_ is a business name that appears to be currently held by \_\_\_\_\_ which was registered from 1 February 2016. It appears that Individual \_\_\_\_\_ at the time was trading under the trading name \_\_\_\_\_ [sic] from 21 October 2010 and there is a reference to \_\_\_\_\_ as a cancelled business name (the name was cancelled on 7 May 2016): *View Details – Business Names –*

<[https://connectonline.asic.gov.au/RegistrySearch/faces/landing/bn/SearchBnRegisters.jspx?\\_adf.ctrl-state=mvvibk6po\\_4](https://connectonline.asic.gov.au/RegistrySearch/faces/landing/bn/SearchBnRegisters.jspx?_adf.ctrl-state=mvvibk6po_4)>; ABN Lookup search for \_\_\_\_\_ Australian Government – Australian Business Register

<<http://abr.business.gov.au/SearchByAbn.aspx?SearchText=30+610+479+528+>>; *View Details – Organisations Details –*

<[https://connectonline.asic.gov.au/RegistrySearch/faces/landing/panelSearch.jspx?searchText=610479528&searchType=OrgAndBusNm&\\_adf.ctrl-state=mvvibk6po\\_34](https://connectonline.asic.gov.au/RegistrySearch/faces/landing/panelSearch.jspx?searchText=610479528&searchType=OrgAndBusNm&_adf.ctrl-state=mvvibk6po_34)>; ABN Lookup search for \_\_\_\_\_ Australian Government – Australian Business Register

<<http://abr.business.gov.au/SearchByAbn.aspx?abn=42673057132>>; *View Details – Business Names –* ASIC

<[https://connectonline.asic.gov.au/RegistrySearch/faces/landing/bn/SearchBnRegisters.jspx?\\_adf.ctrl-state=mvvibk6po\\_51](https://connectonline.asic.gov.au/RegistrySearch/faces/landing/bn/SearchBnRegisters.jspx?_adf.ctrl-state=mvvibk6po_51)>.

<sup>1353</sup> Email from Individual YJ-25 to Individual ESU-5, edocs 3457991.

<sup>1354</sup> Affidavit of Individual ESU-5 sworn on 2 November 2016, para 6, edocs 349509.

<sup>1355</sup> Affidavit of Individual ESU-5 sworn on 2 November 2016, para 6, edocs 349509.



under the *Youth Justice Regulation 2003*; in fact, the security guard was only entitled to use force in accordance with the *Criminal Code* defences.<sup>1356</sup>

The Review considers that the security dog was used more extensively than the CFT summary of services suggested.

## HOW SECURITY DOG WAS USED

Amnesty International queried the use of the security dog at CYDC with Individual YJ-47 and received a letter stating that security dogs were not used as a general security measure and that once the security dog had been used in an inappropriate manner the use of the dog handler and the security dog were discontinued.<sup>1357</sup>

However, and despite the initial purpose of the security guard and security dogs being employed to patrol the internal building site, it appears that the dogs were used as a general security measure on a number of occasions. Individual YJ-25 authorised the private security guard to respond to codes throughout the youth detention centre sector.<sup>1358</sup> The security guards and the security dogs were permitted to respond to other incidents involving young people in other locations that the Review considers could not be regarded as building sites.<sup>1359</sup>

Individual considered that the scope of his contract was to use a trained security dog “to protect the area of construction within the CYDC, ensuring that the young persons did not access the construction equipment or use construction site materials as weapons, and **to respond as requested by CYDC staff.**”<sup>1360</sup> (emphasis added)

Individual YJ-45 said it was her understanding that a senior staff member provided the security dog handler with direction when the contract was commenced.<sup>1361</sup> Individual YJ-45 said that the security dog handler would commonly, and of his own accord, position himself in locations where a young person could access the roof.<sup>1362</sup>

The continued use of the dog handler and the security dog is corroborated by a testimonial included on the website attributing the following quote to CYDC staff (and is shown in image 1 below):

*Cleveland Youth Detention Centre wishes to thank you and your handlers for the professionalism and assistance in reducing an untold number of situations.*<sup>1363</sup>

<sup>1356</sup> The CFT summary of services document lists that the Criminal Code allows for physical engagement when a CFT officer’s personal safety is placed at risk or they provide aid to others in a crisis situation: Attachment ‘CFT Security patrol 21 02 14’, p 2, attached to email from Individual YJ-25 and Individual ESU-5, edocs 3457991.

<sup>1357</sup> Amnesty International, para 6.5.6, edocs 3458728.

<sup>1358</sup> *Cleveland Youth Detention Centre Inspection Report March Quarter 2015*, p 24, which is exhibit ESU-6-16 to the Affidavit of Individual ESU 6 sworn 10 November 2016, edocs 3509156.

<sup>1359</sup> Affidavit of Individual ESU 6 sworn 10 November 2016, para 74, edocs 3509156.

<sup>1360</sup> Statement of Individual dated 28 October 2016, edocs 3488946.

<sup>1361</sup> Affidavit of Individual YJ-45 sworn 23 November 2016, para 6, edocs 3527628.

<sup>1362</sup> Affidavit of Individual YJ-45 sworn 23 November 2016, para 6, edocs 3527628.

<sup>1363</sup>



ESU reported that the use of private security guards and security dogs continued after the construction was complete.<sup>1364</sup> Individual YJ-77 sent an email outlining matters related to security dog use on 4 April 2014. He indicated that young people were not to approach the security dogs when they were in their harness unless the handler indicated it was safe to do so, young people and staff were to stay three metres away from the security dogs as they moved around their patrol zones, and that the dog handlers would attend external codes as necessary and outlined in their contract.<sup>1365</sup>

In September 2014 staff from ESU were told that the use of the security dog was restricted to 1–5pm on weekdays.<sup>1366</sup> The security dog had previously been working on the weekend.<sup>1367</sup>

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<sup>1364</sup> Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, p 12, edocs 3458035.

<sup>1365</sup> Exhibit “Individual ESU-5 5-12” to the Affidavit of Individual ESU-5 sworn 2 November 2016, edocs 3495059.

<sup>1366</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, exhibit ESU-6-14, p 5, edocs 3509156.

<sup>1367</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, exhibit ESU-6-14, p 5, edocs 3509156.



## SECURITY DOG HANDLER

It appears both Individual [redacted] and Individual [redacted] were contracted to work at CYDC.

It is unclear whether Individual [redacted] or [redacted] held a Blue Card.<sup>1368</sup>

Individual [redacted] stated that [redacted] is currently retired.<sup>1369</sup> However, [redacted] remains listed as

Individual [redacted] stated that he had not seen the 7:30 or *Lateline* August 2016 programs and could not comment on what was aired.<sup>1371</sup> However on the [redacted] Individual [redacted] is tagged by Individual [redacted] in an ABC story addressing the pool incident.<sup>1372</sup>

<sup>1368</sup> Letter from Crown Law to Youth Detention Review dated 11 November 2016, p 1, edocs 3512416.

<sup>1369</sup> Statement of Individual [redacted] dated 28 October 2016, edocs 3488946.

<sup>1371</sup> Statement of Individual [redacted] dated 28 October 2016, p 1, edocs 3488946.

<sup>1372</sup> Exhibit Individual ESU 5-13 to the affidavit of Individual ESU-5 sworn on 2 November 2016, p 142, edocs 3495059; Facebook post of



### CCTV shows alleged mistreatment in Townsville detention centre

There are calls for the royal commission into Northern Territory juvenile detention to be extended to Queensland.

ABC NET AU

Like Comment Share

and 5 others like this.

: screen capture from

Facebook page

It does not appear that individual [redacted] was reprimanded in relation to his involvement in the pool incident.<sup>1373</sup>

Individual [redacted] stated that he ceased working at CYDC, "[o]n review or [sic] security requirements for construction completion".<sup>1374</sup>

## INCIDENTS INVOLVING THE POOL DOG

A number of reports and evidence received by the Review indicated that the pool incident was not an isolated use of the security dog. The Review considers that, on the basis of the following summary of incidents involving the dog, the use of the security dog was pervasive:

<sup>1373</sup> See generally statement of Individual [redacted] dated 28 October 2016, edocs 3488946 and the emails dated 2 February 2015 between [redacted] and Individual [redacted], attached to the statement.

<sup>1374</sup> Statement of Individual [redacted] dated 28 October 2016, p 2, edocs 3488946.



- the Minutes of the Accommodation team meeting on 18 March 2014 record that a staff member was concerned that the dog handler brought the dog to within two metres from the young people while they were lining up in the pool basketball area. The staff member said that the young people were frightened. The staff member asked the dog handler to move away from the young people, but the dog handler said the “UMA of operations asked him to be in the position and is to follow the unit for her protection and for the protection of property”, and he proceeded to follow the unit;<sup>1375</sup>
- the security dogs patrolled the grounds and roamed and responded throughout the centre, not only on the workplace boundary.<sup>1376</sup> Individual ESU 6 saw guards and the security dogs in areas of the centre that were not building sites, including on the football field, at the undercover basketball court, patrolling the centre or at the swimming pool;<sup>1377</sup>
- on 12 December 2014 a security dog was used in response to two young people getting on the roof and causing damage with unsecured items and tools.<sup>1378</sup> In the incident the security dog and dog handler were called in by a staff member referred to as ‘Ops 1’ in order to discourage the young people from obtaining potential weapons in the scaffolding.<sup>1379</sup> ESU considered the use of the security dog led to an escalation of the young people’s behaviour and anxiety because the young people began throwing items at the security dog and security personnel, requiring riot shields to be used.<sup>1380</sup> ESU said that the security dog and dog handler were not able to prevent young people from getting on the roof in their March 2015 Inspection report, particularly given that the young people were in fact able to get on the roof in an incident discussed in that report;<sup>1381</sup>
- a staff member raised with members of ESU a concern that there was a threat to place the dog on the roof with the young people in 2014.<sup>1382</sup> The staff member was concerned that, whether or not there was an intention to use the dog, there was a risk of injury to the young people who may have jumped or fallen off and sustained serious injury;<sup>1383</sup>
- the ESU Inspectorate report for the September 2015 quarter stated that the dogs were used in non-violent incidents;<sup>1384</sup>
- the preliminary findings for the September 2015 inspection referred to concerns about the use of the security dog and private security guard,

<sup>1375</sup> Minutes of Meeting, Accommodation Team Meeting dated 18 March 2014, p 2, edocs 3528153.

<sup>1376</sup> *Cleveland Youth Detention Centre Inspection Report September Quarter 2014*, p 6, which is attached as exhibit Individual ESU-5 -15 to the affidavit of Individual ESU-5 sworn on 2 November 2016, p 152, edocs 3495059.

<sup>1377</sup> Affidavit of Individual ESU 6 sworn on 10 November 2016, para 75, edocs 3509156.

<sup>1378</sup> Affidavit of Individual ESU 6 sworn on 10 November 2016, exhibit ESU-6-16, pp 13–15, edocs 3509156.

<sup>1379</sup> Affidavit of Individual ESU 6 sworn on 10 November 2016, exhibit ESU-6-16, p 15, edocs 3509156.

<sup>1380</sup> Affidavit of Individual ESU 6 sworn on 10 November 2016, exhibit ESU-6-16, p 15, edocs 3509156.

<sup>1381</sup> Affidavit of Individual ESU 6 sworn on 10 November 2016, exhibit ESU-6-16, pp 13–15, 24, edocs 3509156; *CYDC Inspection Report, March 2015*, finding 6, edocs 3458191.

<sup>1382</sup> Affidavit of Individual ESU 6 sworn on 10 November 2016, exhibit ESU-6-14, p 5, edocs 3509156.

<sup>1383</sup> Affidavit of Individual ESU 6 sworn on 10 November 2016, exhibit ESU-6-14, p 5, edocs 3509156.

<sup>1384</sup> Youth Detention Inspectorate Ethical Standards Unit in the *Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015*, 12 edocs 3458035. There were allegations that security dogs were encouraged to bark at young people and that Individual ESU 9a staff member at ESU saw the dog barking at young people escorted by staff along a walkway: Preliminary Findings from CYDC Inspection 13–18 September 2015, p 2, edocs 3458039.



including that the security dog was allowed to bark at young people, to be aggressively barking and straining towards young people walking along a walkway when accompanied by staff.<sup>1385</sup> The preliminary findings noted that while the security dogs were not allowed off the leash, the dog had a very long leash and strained against the leash;<sup>1386</sup>

- the September 2015 Inspectorate Report states, “an Inspector witnessed the security dog in close proximity to the children and young people **being allowed to aggressively bark and strain its leash towards the young people for no apparent reason. Such intimidation is not in line with contemporary custodial practices involving children, young people, or even adult offenders;**”<sup>1387</sup> (emphasis added)
- it was alleged that the security dogs were encouraged to bark at young people and that a staff member saw the security dog barking at young people escorted by staff along a walkway;<sup>1388</sup>
- other incidents were reported to the Inspectors from ESU in September 2015. An educational staff member reported that he had seen the private security guard and the dog in close proximity to young people; others had seen the dog harassing young people while they were being escorted to a structured activity.<sup>1389</sup> The private security guard was also seen letting the dog bark and strain its leash toward other young people who were going to a structured activity.<sup>1390</sup>



<sup>1385</sup> Attachment Preliminary findings September 2015, p 3, attached to email from Individual ESU-6 to Individual ESU-1 dated Wednesday 23 September 2015, edocs 3457993.

<sup>1386</sup> Attachment Preliminary findings September 2015, p 3, attached to email from Individual ESU-6 to Individual ESU-1 dated Wednesday 23 September 2015, edocs 3457993.

<sup>1387</sup> Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, 13 edocs 3458035.

<sup>1388</sup> Preliminary Findings from CYDC inspection 13–18 September 2015, p 2, edocs 3458039.

<sup>1389</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 53, edocs 3509156.

<sup>1390</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 53, edocs 3509156.



## ESU RESPONSE TO THE USE OF THE SECURITY DOG

ESU had raised concerns about the use of the security dog with Individual YJ-47 from as early as July 2014,<sup>1395</sup> in a comparison between conditions at the BYDC and CYDC,<sup>1396</sup> which was 13 months before the pool incident in August 2015 and 15 months before the security dog was removed from the centre. The ESU comparison report noted that private security guards patrolled the centre, and in particular the worksite and responded to codes outside the accommodation units.<sup>1397</sup> The report stated that the while the security guards were responding to the codes.<sup>1398</sup> The report stated that the need for the security dog may be obviated if strategies were developed to tighten the management of young people while also keeping them positively occupied.<sup>1399</sup>

The security dogs issue was raised again with Individual YJ-47 in September 2014 in the draft preliminary findings of the CYDC September 2014 inspection by ESU.<sup>1400</sup>

The security dogs issue was raised again with Individual YJ-47 in March 2015 and the issue was included in the March 2015 Inspection Report.<sup>1401</sup> At a meeting in March 2015, Individual YJ-47 said the dog was to be kept at the centre until September 2015. It seems that ESU staff asked why it was necessary to keep the dog until September 2015, what the authority to use dogs on young people was and who was liable if a dog bit a young person.<sup>1402</sup> In that report the ESU recommended that:

*the department gives consideration to ceasing the practice of a private security contractors and dogs being utilised at CYDC.*<sup>1403</sup>

This recommendation was accepted in part, to be actioned by Individual YJ-47, when the roofline drum roll was completed which was due to occur by 31 December 2015.<sup>1404</sup>

<sup>1395</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 78, edocs 3509156.

<sup>1396</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 50, edocs 3509156.

<sup>1397</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, exhibit ESU-6-13, p 8, edocs 3509156.

<sup>1398</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, exhibit ESU-6-13, p 8, edocs 3509156.

<sup>1399</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, exhibit ESU-6-13, p 8, edocs 3509156.

<sup>1400</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 51, edocs 3509156.

<sup>1401</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 52, edocs 3509156.

<sup>1402</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, exhibit ESU-6-15, p 1, edocs 3509156.

<sup>1403</sup> CYDC Inspection Report, March 2015, p 28, recommendation 6, edocs 3458191.

<sup>1404</sup> CYDC Inspection Report, March 2015, p 28, edocs 3458191.



The security dogs issue was again raised with Individual YJ-47 in September 2015 in a briefing and in the September 2015 Quarterly Inspectorate report.<sup>1405</sup>

## POOL INCIDENT

The Inspectorate Quarterly Report of September 2015 indicated that a female young person had expressed concern about the use of private security dogs in relation to the non-violent pool incident.<sup>1406</sup> Reference was made to the long leash and allowing the dog to come closer to a young person as she was attempting to leave the pool. The report described that as possibly being perceived as, “an aggressive manner” which, “stopped her from withdrawing from the swimming pool.”<sup>1407</sup> Reference was also made in the preliminary findings from CYDC inspection 13–18 September 2015 about whether there was a justification for the security dog to respond to non-violent codes involving female young people.<sup>1408</sup>

The report stated, “This type of response is concerning as the security officers have no legal authority to physically touch or restrain a young person who is in the legal custody of the department (unless in situations of self-defence, or defence of others)”<sup>1409</sup> The Inspectorate Report also noted that these incidents would have an adverse effect on building rapport with children and young people in detention.<sup>1410</sup>

## SECURITY DOG REMOVED FROM CYDC IN OCTOBER 2015

The pool incident was reported to Individual YJ-47 via ESU. It appears that because the security dog was used to prevent the young people from exiting the pool as instructed, and the aggressive way the dog behaved when staff and young people moved near it,<sup>1411</sup> it was decided to remove the security dogs.<sup>1412</sup>

Individual YJ-47 indicated in the meeting between himself and ESU that using the security dog to keep the girls in the pool was not the intended use of the security dog.<sup>1413</sup> Inspectors questioned Individual YJ-47 about the use of security dogs in the centre at a post-inspection meeting on 1 October 2015. It was at that meeting that

<sup>1405</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 53, edocs 3509156.

<sup>1406</sup> Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, p 13, edocs 3458035.

<sup>1407</sup> Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, p 13, edocs 3458035.

<sup>1408</sup> Preliminary Findings from CYDC inspection 13–18 September 2015, p 2, edocs 3458039.

<sup>1409</sup> Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, p 13, edocs 3458035.

<sup>1410</sup> Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, p 13, edocs 3458035.

<sup>1411</sup> For an example of the CCTV footage showing the security dog straining, see edocs 3458012 and in relation to the pool incident, see edocs 3458016, #3458017 and #3458018. See also the pool incident CCTV notes, edocs 3491634.

<sup>1412</sup> Email from Individual YJ-47 to Individual ESU-1 dated 9 October 2015, edocs 3457995 which is also exhibit Individual ESU-5-18 to the affidavit of Individual ESU-5 sworn 2 November 2016, p 173, edocs 3495059.

<sup>1413</sup> September Inspection Findings briefing with Individual YJ-47, attended by Individual ESU-1 Individual ESU-9 and Individual ESU-6, edocs 3458040.



Individual YJ-47 indicated that the use of security dogs and private security would cease at CYDC on 16 October 2015.<sup>1414</sup> This was later confirmed by email.<sup>1415</sup>

### WAS THE USE OF SECURITY DOGS AT CYDC INAPPROPRIATE?

The Review considers that if the dog handler and security dog was used at CYDC only in relation to guarding the construction site in the way contemplated under the original documents outlining the use of dogs at CYDC, that use would not be a “use of force”.

As noted above, it has been submitted on behalf of the State that there is a need to respond to security issues arising in relation to young people accessing roof areas, the construction site and using construction debris to assault staff.<sup>1416</sup> It was also submitted on behalf of the State that reasonable minds may differ about how to discharge the responsibility for security and order in the detention centre and that difficult judgments are to be made in deciding what action should be taken.<sup>1417</sup>

The Review accepts this submission.

However, as noted above, there was additional use of the security dogs at a number of incidents that indicated that the dog was being used to respond to incidents other than those in relation to the construction compound or roof areas.

In order to be granted a licence under the *Security Providers Act 1993* (Qld) (SP Act), an individual must be carrying out the functions of a security provider,<sup>1418</sup> which relevantly includes a ‘security officer.’<sup>1419</sup> A security officer is defined in section 7 of the SP Act as a person who, for reward, guards, patrols, or watches another person’s property. One of the categories of functions of a security officer is the ‘dog patrol category’.<sup>1420</sup> The ‘dog patrol category’ is defined as “the carrying out of the activities of personally guarding, patrolling or watching another person’s property with a dog.”<sup>1421</sup>

The Review considers that the two dog handlers were appropriately licensed under the SP Act. Individual <sup>1422</sup> has a security adviser licence and a licence as a crowd controller, bodyguard, security officer (cash in transit), security officer (monitoring), security officer (unarmed), security officer (cash in transit) and security officer (patrol

<sup>1414</sup> Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, 15, edocs 3458035; Affidavit of Individual ESU-6 sworn 10 November 2016, paras 75 and 79, edocs 3509156.

<sup>1415</sup> Email from Individual YJ-47 to Individual ESU-1 dated 9 October 2015, which forms part of exhibit Individual ESU-5-18 to the affidavit of Individual ESU-5 sworn 2 November 2016, p 173, edocs 349509. See also generally affidavit of Individual ESU-5 sworn 2 November 2016, para 6, edocs 349509.

<sup>1416</sup> Submissions on Behalf of the State of Queensland – Chapter 2 – Use of Security Dogs as CYDC, dated 10 December 2016, para 8, edocs 3554165.

<sup>1417</sup> Submissions on Behalf of the State of Queensland – Chapter 2 – Use of Security Dogs as CYDC, dated 10 December 2016, paras 8 and 9, edocs 3554165.

<sup>1418</sup> *Security Providers Act 1993*, s 10(4)(f).

<sup>1419</sup> *Security Providers Act 1993*, s 4(f).

<sup>1420</sup> *Security Providers Act 1993*, sch 2 (definition “category”).

<sup>1421</sup> *Security Providers Act 1993*, sch 2 (definition “dog patrol category”).

<sup>1422</sup> There is no other person holding security licences with the same name in Queensland.



dog).<sup>1423</sup> Individual <sup>1424</sup> has security officer (cash in transit), crowd controller, bodyguard, security officer (unarmed) and security officer (patrol dog) licences.<sup>1425</sup>

However, the question over the appropriateness of the use of the security dogs at CYDC is raised by the Review because the security dogs were used to respond to codes and would bark and strain towards young people involved in codes.

#### USING THE SECURITY DOG WAS A USE OF FORCE THAT REQUIRED LAWFUL AUTHORITY

The Review considers that instances of security dogs attending codes and barking and straining against leashes towards young people as described in this chapter may amount to a use of force.

The Review considers that using a security dog to attack, or threaten to attack, someone is a use of force that, without justification, may be regarded as an assault.<sup>1426</sup> The Queensland Police Service's (QPS) 2006 Handbook on the use of dogs considers that the use of a dog is a use of force in the same way that using a gun is a use of force.<sup>1427</sup> In the corrective services context, use of force (non-lethal force) may involve the use of a gas gun, chemical agent, riot control equipment, restraining device and a corrective services dog.<sup>1428</sup> The Queensland Court of Criminal Appeal considered that a dog used "as a weapon" may be regarded as an example of applying force indirectly, or attempting or threatening to apply force.<sup>1429</sup>

Individual ESU 6 considered that the private security guards did not have the authority to use force on a young person in detention.<sup>1430</sup>

The contract between the State and the providers of the security dog could not authorise the use of force against young people and, as referred to above, did not purport to do so because it referred to use of force in relation to the *Criminal Code*.<sup>1431</sup>

<sup>1423</sup> The information was contained on a *Check a licence* search for 'Individual' conducted on 7 November 2016 and available from <<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/check-a-licence-association-charity-or-register/check-a-licence/>>.

<sup>1424</sup> There is no other person of that name with security licences in Queensland.

<sup>1425</sup> The information was contained on a *Check a licence* search for 'Individual' conducted on 7 November 2016 and available from <<https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/check-a-licence-association-charity-or-register/check-a-licence/>>.

<sup>1426</sup> *Criminal Code* (Qld), s 245.

<sup>1427</sup> *Police Dog Squad Handbook*, Queensland Police Service (2006) 58.

<<https://www.police.qld.gov.au/rtd/disclog/2011/Documents/RTI5727.pdf>>; see also the Crime and Misconduct Commission, *The Queensland Police Dog Squad: A CMC Review of Complaints and Bite Incidents* page 8 <<http://www.cmc.qld.gov.au/research-and-publications/publications/police/the-queensland-police-dog-squad-a-cmc-review-of-complaints-and-bite-incidents.pdf>>.

<sup>1428</sup> *Corrective Services Act 2006*, s 143(4).

<sup>1429</sup> *Carter's Criminal Law of Queensland* (as at 19 July 2002), [s 245.10], citing *Croft v Blair* [1989] CCA 296 (Queensland Court of Criminal Appeal).

<sup>1430</sup> Affidavit of Individual ESU-6 sworn 10 November 2016, para 77, edocs 3509156.

<sup>1431</sup> See the text accompanying footnote 1348.



## YOUTH JUSTICE LEGISLATION AND POLICIES

### No specific authorisation for the use of the dog in youth justice legislation

The *Youth Justice Act 1992*, the *Youth Justice Regulation 2003* and the *Youth Justice Regulation 2016* do not specifically authorise the use of security dogs in relation to management of a youth detention centre.

By contrast, legislation authorising the use of force in Queensland and interstate provides a statutory basis for the use of dogs for security purposes. In Queensland the *Corrective Services Act 2006* regulates the use of dogs in corrective services facilities. Using a dog pursuant to the *Corrective Services Act 2006* is characterised by that Act as a use of force.<sup>1432</sup> The chief executive of the department administering the *Corrective Services Act 2006* may certify that a dog is a corrective services dog.<sup>1433</sup> The dog may be used for the security or good order of a corrective services facility, but a use of force may only be used in accordance with the requirements of chapter 3, part 5 of the *Corrective Services Act 2006*.<sup>1434</sup>

New South Wales has specific legislation authorising the use of dogs in respect of good order and security of adult prisons.<sup>1435</sup> As noted below, NSW legislation also provides that corrective services dogs may be used in relation to a disturbance or riot in limited circumstances. Using dogs to search for drugs has also been authorised by legislation in relation to detained young people in other jurisdictions.<sup>1436</sup>

The use of dogs in the police service context is governed by the *Police Powers and Responsibilities Act 2000*. Pursuant to section 614 officers are permitted to use “reasonably necessary force” when exercising police powers. Police officers can also use reasonably necessary force against individuals to prevent them from escaping from custody.<sup>1437</sup> In “critical situations” the power extends to force likely to cause grievous bodily harm or death.<sup>1438</sup>

The Review considers that these provisions have applicability to the use of dogs. The QPS also has operational procedures and policies relevant to the use of dogs.

As noted above, there is no express legislative basis in the *Youth Justice Act 1992* or the *Youth Justice Regulation 2003* (in force at the time) authorising the use of the dogs. When compared with the provisions of the *Corrective Services Act 2006* regarding the use of dogs in adult prisons, it is unlikely that Parliament, or the Governor in Council in respect of the regulation, would have intended that the use of the dog at CYDC would be authorised under the youth justice legislation.

The Review considers that if the *Youth Justice Act 1992* or the *Youth Justice Regulation 2003* and 2016 were intended to authorise a security dog to use force on young people in youth detention centres, the legislation would expressly authorise

<sup>1432</sup> *Corrective Services Act 2006*, s 143(4).

<sup>1433</sup> *Corrective Services Act 2006*, s 279.

<sup>1434</sup> *Corrective Services Act 2006*, s 280(1)(c) and (d) and (2).

<sup>1435</sup> *Crimes (Administration of Sentences) Act 1999* (NSW) s 78.

<sup>1436</sup> See, for example, *Young Offenders Regulations 1995* (WA) s 94.

<sup>1437</sup> *Police Powers and Responsibilities Act 2000* (Qld), s 615.

<sup>1438</sup> *Police Powers and Responsibilities Act 2000* (Qld), s 616.



such use of force (as has occurred in relation to the police and corrective service contexts).

### Policies

The Youth Detention policy *YD-3-4 Protective Actions Continuum* states that there are approved techniques set out in appendix A to the policy,<sup>1439</sup> which also appear to be extracted into the approved techniques library. Youth detention operational staff must not improvise or alter the approved techniques. Using a dog to respond to an incident is not an authorised PAC technique.<sup>1440</sup>

### Chief executive's responsibility for security and order in detention centres

It was submitted on behalf of the State that the chief executive has a power to respond to security issues because of the chief executive's responsibility for security and order in the detention centre.<sup>1441</sup> The State's submissions note the security issues involved in having an active construction site at CYDC.<sup>1442</sup> The State outlines the duty in relation to the use of the security dogs in the following way:

*There was clearly a need to respond to the security issues that were arising in relation to children in detention accessing roof areas, accessing the construction compound and using construction debris to assault staff. This was required pursuant to the Chief Executive's responsibility for security and order in the Detention Centres. The Chief Executive's responsibility required maintenance of security, protection of staff and construction employees, protection of property and the safety of children detained.*<sup>1443</sup>

The Review considers that it was not the intention for the security dog to be used to actively engage in incidents with young people. Individual YJ-47 said in relation to the pool incident:

*The photographs shown to me by inspectors were alarming concerning the use of the dog with three young females in the pool. The situation was completely under control with 12 staff positioned around the pool. The dog at one point lunges at the girls in the pool and their reaction was to back away from the edge of the pool. Under no circumstances is the dog to be used in that way. Security and control of young people is the responsibility of CYDC management and staff.... [The dog] is not to be used in any way to subdue young people. Its role is to act as a deterrent.*<sup>1444</sup>

<sup>1439</sup> *YD-3-4 Protective Actions Continuum*, version 1.2, date of operation 6 June 2014, 5.2, edocs 3447101. See also *Youth Detention Centre Operations Manual Chapter 3 Incident management*, version 1.3 dated 22 May 2015, section 5, edocs 3447206.

<sup>1440</sup> *YD-3-4 Protective Actions Continuum*, version 1.2, date of operation 6 June 2014, appendix A; *Youth Detention Centre Operations Manual: Appendix 3-1 Protective Actions Continuum Technique Library* dated 6 June 2014, v 1.1, edocs 3447190.

<sup>1441</sup> Submissions on Behalf of the State of Queensland – Chapter 2 – Use of Security Dogs as CYDC, dated 10 December 2016, para 8, edocs 3554165.

<sup>1442</sup> Submissions on Behalf of the State of Queensland – Chapter 2 – Use of Security Dogs as CYDC, dated 10 December 2016, para 8, edocs 3554165.

<sup>1443</sup> Submissions on Behalf of the State of Queensland – Chapter 2 – Use of Security Dogs as CYDC, dated 10 December 2016, para 8, edocs 3554165.

<sup>1444</sup> Email from Individual YJ-47 to Individual YJ-43 dated 2 October 2015, edocs 3529707.



Individual YJ-47 also said on 9 October 2015 that, “the dog be removed altogether based on the fact that I believe the dog was used inappropriately and after reviewing the agreement with the security organisation”.<sup>1445</sup>

The State has submitted that any use of the security dogs would be within the authority of the Chief Executive for security and order in youth detention centres without any express legislative authority.<sup>1446</sup> The State has contended that this authority is not inconsistent with the view expressed by Individual YJ-47.<sup>1447</sup>

### General use of force powers

It is possible that using security dogs would otherwise be authorised pursuant to the use of reasonable force provisions contained in the *Youth Justice Regulation 2003* or *2016*.

However, the relevant powers to use reasonable force are only in relation to:

- misbehaviour, but in order to protect a child, another person or property in the youth detention centre and the detention centre employee, who is to use reasonable force, reasonably believes the child, person or property cannot be protected in any other way;<sup>1448</sup> and
- in relation to carrying out a search, if the detention centre employee reasonably believes the search cannot be carried out in any other way.<sup>1449</sup>

In the *Youth Justice Regulation 2016* there is an additional requirement for the person to have completed the physical intervention training approved by the chief executive pursuant to section 43 of the *Youth Justice Regulation 2016*.<sup>1450</sup>

The Review considers it is unlikely that the use of the security dog in any of the incidents highlighted in the material provided to the Review would have met the necessary threshold. It is unlikely, for example, that a reasonable person would regard the use of the security dog as a reasonable use of force designed to protect a child, another person or property that could not be carried out in any other way. There are a number of uses of force that are contemplated to be used as contained in the PAC Techniques Library that the Review considers would have considerably less psychological impact on young people.

At all relevant times when the use of the security dog was in operation at CYDC, and currently, a detention centre employee means a public service employee who performs any of their functions ordinarily in a detention centre.<sup>1451</sup> A public service employee is defined as a person employed under the *Public Service Act 2008* as a

<sup>1445</sup> Affidavit of Individual ESU 5 sworn on 2 November 2016, exhibit Individual ESU 5-18, p 173, edocs 3495059.

<sup>1446</sup> Submissions on behalf of the State of Queensland – Legal Framework applying to youth justice incidents, 10 December 2016, paras 28-30, edocs 3554181.

<sup>1447</sup> Submissions on behalf of the State of Queensland – Legal Framework applying to youth justice incidents, 10 December 2016, para 30, edocs 3554181.

<sup>1448</sup> *Youth Justice Regulation 2016* s 16(5); *Youth Justice Regulation 2003* s 17(5) and (6).

<sup>1449</sup> *Youth Justice Regulation 2003* ss 25(4) and (5) and 27.

<sup>1450</sup> *Youth Justice Regulation 2016* ss 16(5) and 24(4).

<sup>1451</sup> *Youth Justice Act 1992*, schedule 4 (definition of ‘detention centre employee’).



public service officer, a general employee or temporary employee.<sup>1452</sup> Information that has been provided to the Review indicates that Individual [redacted] and Individual [redacted] were not employed at CYDC in any capacity related to the *Public Service Act 2008*, and would not be considered to be public service employees or public service officers.

No power contained in the Youth Justice Regulation could have been delegated to Individual [redacted] and Individual [redacted] because the power of delegation, pursuant to section 312 of the *Youth Justice Act 1992*, only provides for delegations of powers to a public service officer.

#### LICENCE UNDER THE SECURITY PROVIDERS ACT 1993 (QLD)

A person licensed by the *Security Providers Act 1993* is only empowered to carry out the functions of a security provider<sup>1453</sup> and no further powers are conferred on a licensed person to use force against an individual under that Act.

The Review considers that the use of force against young people could not have been authorised by the *Security Providers Act 1993*.

#### CRIMINAL CODE DEFENCES

As noted above, the contracting documents indicated that the security dog handler could only rely on the general powers included in the *Criminal Code* in order to use force.<sup>1454</sup>

The Review considers that there is no information upon which it could be considered that a use of force by security dog was justified or excused under a defence contained in the *Criminal Code* in any of the incidents under review.

#### CONCLUSION

The Review considers that the security guard and security dog attended codes and the dog was permitted to bark and strain in close proximity to young people. As noted above, it has been submitted on behalf of the State that there is a general authority pursuant to the chief executive's obligation to ensure the safety and security of the centre, staff, construction employees and young people. As noted above, the Review has not come to a conclusive view about the nature and extent of the power and whether that would justify the use of the security dog. However it appears that the dog was used in a number of incidents beyond the roof, including when young people were accompanied by staff. However, it is not possible for the Review to make specific findings about any particular incident referred to in this chapter, and whether there was lawful authority to use the dog in each of these circumstances.

<sup>1452</sup> *Acts Interpretation Act 1954*, schedule 1 (definition of 'public service employee')

<sup>1453</sup> *Security Providers Act 1993*, s 9(1).

<sup>1454</sup> Attachment 'CFT Security patrol 21 02 14', p 2, attached to email from Individual YJ-25 and Individual ESU-5, edocs 3457991.

<sup>1455</sup> dated 1 December 2016, edocs 3539874.

<sup>1456</sup> dated 28 November 2016, p 6, edocs 3536193.



However, as noted from the multiple incidents involving the security dog, the use of the security dog did not deter young people from accessing the roof, and indeed exacerbated incidents in which young people were on the roof. Young people were threatened with the dog while on the roof, which the Review considers suggests that the use of the dog amounted to more than the purportedly approved deterrent effect.

Further, there was evidence provided by the ESU reports that supported the view that the security dogs were not being used solely for deterrent effect, and in fact were being called in after young people had climbed onto a roof<sup>1462</sup> and were also used in relation to non-violent incidents.<sup>1463</sup>

The dog was also observed on a number of occasions barking and straining at its leash when young people were walking past the dog, even when they were accompanied by staff.<sup>1464</sup>

The Review has received

<sup>1457</sup> dated 28 November 2016, p 6, edocs 3536193.

<sup>1458</sup> dated 28 November 2016, p 6, edocs 3536193.

<sup>1459</sup> dated 28 November 2016, pp 6–7, edocs 3536193.

<sup>1460</sup> dated 28 November 2016, p 7, edocs 3536193.

<sup>1461</sup> dated 28 November 2016, p 7, edocs 3536193.

<sup>1462</sup> See footnote 1378 to 1381 and the text accompanying them.

<sup>1463</sup> See footnote 1384 and the text accompanying it.

<sup>1464</sup> See footnotes 1387, 1388, 1389 and 1390 and the text accompanying them.



contradictory evidence that the security dogs were encouraged to bark at the young people.<sup>1465</sup> However, it would suggest that the security dogs were not under the control of their handlers, which would be more concerning as the security dogs may act in other ways contrary to a handler's instructions, including by threatening staff or young people.

The ESU reports that form the basis of many of the incidents referred to in this chapter were communicated to DJAG from July 2014 until the security dog was finally removed from CYDC in October 2015. That was months after these incidents and long after ESU reports of concerns regarding the security dogs were first provided to DJAG.

It is unclear who authorised the dog handler and security dog to attend specific codes on the information provided to the Review. In relation to the pool incident, for example, Individual YJ-45 said that the dog handler was not under her direction at the time of the incident,<sup>1466</sup> but Individual indicated that a senior staff member asked him to enter the pool area with his security dog as a strategy to assist in the removal of the young people from the pool.<sup>1467</sup> Individual then indicated that a manager assessed the situation and he was requested to guard and monitor the deep end of the pool in order to contain the young people to the shallow end of the pool thereby preventing the young people from gaining access to the roof area via the pool fence.<sup>1468</sup>

**Finding 11.F1** – The security guard and security dog attended codes and the security dog was allowed to bark and strain in close proximity to young people, including when it was not immediately possible for a young person to get on a roof.

**Finding 11.F2** – DJAG was aware from July 2014 that there were issues raised as to the behaviour and use of the security dogs at CYDC.

#### APPROPRIATENESS OF USING SECURITY DOGS IN RELATION TO YOUNG PEOPLE

The Review considers that it was not appropriate to use security dogs in youth detention centres.

Using security dogs in youth detention centres is not consistent with contemporary practice in most of the other jurisdictions in Australia. ESU reported that the use of security dogs in youth detention at CYDC was an “anomaly” and that ESU could not identify any other jurisdiction that used private security contractors and security dogs for similar purposes as used at CYDC.<sup>1470</sup> ESU reported that BYDC did not use the dogs,

<sup>1465</sup> See the text accompanying footnote 1388.

<sup>1466</sup> Affidavit of Individual YJ-45 sworn 23 November 2016, para 6, edocs 3527628.

<sup>1467</sup> ‘Information Report’, attached to Statement of Individual

dated 28 October 2016, edocs 3488946.

<sup>1468</sup> ‘Information Report’, attached to Statement of Individual

dated 28 October 2016, edocs 3488946.

<sup>1469</sup> , dated 1 December 2016, edocs 3539874.

<sup>1470</sup> *Cleveland Youth Detention Centre Inspection Report March Quarter 2015*, p 24, which is exhibit ESU-6-16 to the affidavit of Individual ESU-6 sworn on 10 November 2016, edocs 3509156.



and that dogs were not used at the Banksia Hill Youth Detention in Western Australia after a riot occurred in 2013.<sup>1471</sup> Individual ESU 6 stated that:

*In my experience in youth justice (approx.. 20 years) I have not witnessed the use of private security guards and security dogs being permitted to patrol within the secure perimeter of a youth detention centre and respond to incidents involving children and/or young people.*<sup>1472</sup>

Individual ESU 6 did note that private security guards with security dogs were used to patrol the perimeter of the former John Oxley Youth Detention Centre in the mid-1990s to conduct patrols to prevent young people escaping the centre until a wall could be built.<sup>1473</sup>

The Review conducted a brief review of practice in other jurisdictions to consider whether dogs were used in detention centres in other jurisdictions. In the time provided it has not been possible to definitively state that other jurisdictions do not use, and have never used, dogs as part of a security function. Other jurisdictions generally seem to provide for dogs, including drug detection dogs,<sup>1474</sup> to be used in detention centres to search individuals.<sup>1475</sup>

New South Wales does however allow limited use of a dog in a detention centre. Section 26 of the *Children (Detention Centres) Act 1987* (NSW) states that the secretary of the department administering that Act may enter into a memorandum of understanding with the Commissioner of Corrective Services in respect of handling riots and disturbances at detention centres. The provision provides that the secretary of the department may request the assistance of the Commissioner of Corrective Services to assist in dealing with a current or imminent riot or disturbance.<sup>1476</sup>

Corrective Services then take control of the centre, and dogs may be used "to assist in the maintenance of good order and security in a detention centre in the same way as dogs may be used to assist in the maintenance of good order and security in a correctional centre".<sup>1477</sup> Dogs may be used in maintaining good order and security of a correctional centre under section 78 of the *Crimes (Administration of Sentences) Act 1999* (NSW).

The Review notes that the use of dogs in the New South Wales legislation is very different from the way in which dogs were used at CYDC. In particular:

- the Act specifically provides for the use of dogs;
- the way the dogs may be used is extremely limited and directed to dealing with riots and disturbances only; and
- Corrective Services takes control of the centre and uses the dogs in a way that is authorised under their Act to deal with a riot or disturbance.

<sup>1471</sup> *Cleveland Youth Detention Centre Inspection Report March Quarter 2015*, p 24, which is exhibit ESU-6-16 to the affidavit of Individual ESU-6 sworn on 10 November 2016, edocs 3509156.

<sup>1472</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 76, edocs 3509156.

<sup>1473</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 76, edocs 3509156.

<sup>1474</sup> *Children (Detention Centres) Regulation 2015* (NSW) reg 64.

<sup>1475</sup> *Young Offenders Act 1994* (WA) s 196(3)(d); *Young Offenders Regulations 1995* (WA) s 83 and part 10, division 5.

<sup>1476</sup> *Children (Detention Centres) Act 1987* (NSW) s 26(2).

<sup>1477</sup> *Children (Detention Centres) Act 1987* (NSW) s 26(3) and (4).



There was no reference to the use of dogs for security purposes on Western Australia's Banksia Hill Detention Centre webpage.<sup>1478</sup>

There also appears to be limited evidence that the use of a security dog at CYDC was an effective means of dealing with young people's misbehaviour. On the evidence provided, the presence of the security dog intimidated and harassed the young people.

The Review considers that the presence of the security dog exacerbated and inflamed incidents when there were other means of dealing with the misbehaviour. Individual ESU 6 expressed concerns about the use of the security guards and unmuzzled security dogs stating that using them has a potential to have a detrimental effect on the wellbeing of young people and escalates an incident, especially where a child has experienced trauma or has mental health issues.<sup>1479</sup>

ESU commented in its CYDC Inspection Report March Quarter 2015 as follows:

*The Inspectorate is obliged to record its concern that the use of private security guards and dogs appears to attract more cost than benefit and has the potential to inflame incidents and cause unnecessary harm to young people and even staff.*<sup>1480</sup>

The report concluded:

*The practice of engaging private security guards and dogs as contractors to conduct a security response within the secure perimeter of the centre should be reviewed with priority, with an aim of removing it from the youth detention environment.*<sup>1481</sup>

Amnesty International has said torture may include the use of dogs,<sup>1482</sup> and specifically that the practice of using dogs at CYDC, "may amount to torture and ill-treatment, and is of special concern when used in cases involving children."<sup>1483</sup> The Review echoes that concern. The Australian Lawyers for Human Rights said in its submission to the Review that the use of the dog in particular situations may intimidate, increase anxiety and instil fear in the young people.<sup>1484</sup>

<sup>1478</sup> Banksia Hill Detention Centre, Government of Western Australia: Department of Corrective Services <<http://www.correctiveservices.wa.gov.au/youth-justice/youth-detention/banksia-hill.aspx>>.

<sup>1479</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 77, edocs 3509156.

<sup>1480</sup> Cleveland Youth Detention Centre Inspection Report March Quarter 2015, pp 24–25, which is exhibit Individual ESU-6-16 to the affidavit of Individual ESU 6 sworn on 10 November 2016, edocs 3509156.

<sup>1481</sup> Cleveland Youth Detention Centre Inspection Report March Quarter 2015, pp 26, which is exhibit Individual ESU 6-16 to the affidavit of Individual ESU 6 sworn on 10 November 2016, edocs 3509156.

<sup>1482</sup> Amnesty International, *Torture in 2014: 30 Years of Broken Promises* (2014) 25 <<http://www.amnestyusa.org/sites/default/files/act400042014en.pdf>>.

<sup>1483</sup> Amnesty International, "Heads Held High": Keeping Queensland kids out of detention, strong in culture and community (2016) 26 <[https://static.amnesty.org.au/wp-content/uploads/2016/09/Heads\\_Held\\_High\\_-\\_Queensland\\_report\\_by\\_Amnesty\\_International.pdf](https://static.amnesty.org.au/wp-content/uploads/2016/09/Heads_Held_High_-_Queensland_report_by_Amnesty_International.pdf)>.

<sup>1484</sup> Australian Lawyers for Human Rights, Submission to the Independent Review of Youth Detention in Queensland dated 31 October 2016, p 3, edocs 3491131.



Further, and as noted above, Individual ESU 6 considered that using the dogs had the potential to limit the capacity to build a rapport with young people, which would assist in avoiding incidents.<sup>1485</sup>

The Review considers that young people in youth detention centres have not reached a level of maturity that allows them to make many autonomous decisions and they are in a position of vulnerability when dealing with adults. The Universal Declaration of Human Rights states that young people are entitled to special care and assistance.<sup>1486</sup> A staff member at CYDC commented that youth detention centre staff forget that young people are children who may have mental problems that others outside the centre do not have, and that staff sometimes place adult expectations on the young people.<sup>1487</sup>

The Review considers that young people are in a position of special vulnerability in youth detention centres. This vulnerability requires those young people to be looked after with particular care, especially in youth detention, and is recognised by the charter of youth justice principles<sup>1488</sup> which underpins the *Youth Justice Act 1992*.

Further, many, if not all, of the young people who are detained in youth detention centres in Queensland come from a disadvantaged or dysfunctional background. Violence is a part of many detainee's lives, including being directly or indirectly affected by domestic violence.

The Review considers that having a security dog threatening, growling, snapping and barking at a young person may cause trauma to the young person or add to pre-existing trauma experienced by the young person.

The Review considers that the practice of using security dogs is not in accordance with contemporary practice in the youth justice context; it is ineffective in:

- addressing misbehaviour;
- inflames already challenging situation;
- was used in relation to vulnerable young people;
- was likely to cause trauma; and
- may have amounted to torture.

The Review considers that security dogs should not be used in youth detention centres as a means of responding to incidents or disciplining young people.

**Recommendation 11.R1** – The Review considers that security dogs should not be used in youth detention centres as a means of responding to incidents or disciplining young people.

<sup>1485</sup> Affidavit of Individual ESU-6 sworn on 10 November 2016, para 77, edocs 3509156; Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, 13 edocs 3458035.

<sup>1486</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3rd session, 183 plen mtg, UN Doc A/810 (10 December 1948), art 25(2).

<sup>1487</sup> Affidavit of Individual YJ-6 affirmed on 11 October 2016, para 18, edocs 3470961.

<sup>1488</sup> *Youth Justice Act 1992*, Schedule 1 Charter of youth justice principles.



## CHAPTER 12 BEHAVIOUR DEVELOPMENT PLANS

### INTRODUCTION

The scope of this chapter is limited to evaluating BDPs as they have been used in CYDC in relation to the young people involved in the incidents included in the Review's terms of reference.

The State submits that there are a number of ways of addressing misbehaviour in the youth detention context, including Behaviour Support Plans (BSPs). This chapter does not address those types of support systems and focuses on the use of BDPs at CYDC.

The Review accepts that BDPs are a subset of a range of strategies that can be employed singly or in combination in the development of individually tailored behavioural strategies for a young person.

The Review is aware that Youth Justice has expressed commitment to working with young people in accordance with a trauma informed philosophy. The Review is also aware that additional training and supervision of staff is ongoing. It is anticipated that this trauma informed approach will assist in the individualised responses to challenging behaviours and understanding the causes of the challenging behaviours.

The State has advised that there is significant work being undertaken in the development of behaviour development plans, behaviour management systems, interventions, rewards, consequences and incentives.

The State advised the Review that while Youth Justice accepts the behaviour development system needs to be reviewed, it should be noted that 'young people display learned behaviour and are adept at exploiting opportunities to manipulate and avoid natural and logical consequences'<sup>1489</sup>.

The Review has been advised that education is viewed as a foundation for successful outcomes in reducing recidivism and identifying pathways out of youth justice. The Review is aware that Education Queensland is working with Youth Justice and other key stakeholders to deliver appropriate educational programs to young people in youth detention centres. The recommendations contained in this chapter are designed to assist in the review and development of behaviour development plans.

There were no issues raised as to BYDC on evidence received by the Review, including Inspectorate reports.

A young person who has demonstrated persistent minor, moderate or serious misbehaviour may be placed on an intervention plan that can include a Behaviour Development Plan (BDP). The superseded BDPs will be implemented when

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<sup>1489</sup> Submissions on behalf of the State of Queensland, 10 December 2016, p 14, edocs 3554162.



*young people demonstrate persistent and continued poor behaviour that causes disruption and is unsettling to other young people in the accommodation section or behaviour that is serious or constitutes an offence.*<sup>1490</sup>

The aim of the BDP is to facilitate an individualised, “focused, multi-disciplinary approach to the management of a young person’s behaviour”,<sup>1491</sup> with the length of time that a BDP is in effect able to vary between a few hours for a simple BDP to a few weeks for a complex incident.

A number of young people who are the subject of incidents that have been considered by the Review have been placed on BDPs in order to address misbehaviour. Some of the young people were also placed on BSPs as well as BDPs.

The substance of the BDPs that applies to the young people during the period in the incident is generally addressed in the incident chapter.

This chapter, however, considers the BDPs as a whole in order to consider how BDPs are generally used at CYDC, using the BDPs imposed on the young people involved in the incidents under consideration by the Review as a sample of BDPs that were imposed on young people.

There have been changes to the policies and operations manual about behaviour development over the period the subject of review. This chapter considers the policy and operations manual as it currently is in force, with some references to previous policies as appropriate. Generally, the policies and operations manual have addressed similar matters.

Either way, the change in the policies over time has not had substantial effect on the content of the BDPs, which are remarkably consistent despite when the misbehaviour occurred and the type of misbehaviour. This is further considered below.

The chapter:

- summarises the policies concerning behaviour development and BDPs that applied at the time of the incidents under consideration by the Review;
- considers similarities in the BDPs among the young people involved in incidents under consideration by the Review;
- considers the appropriateness of the standard BDP conditions imposed on young people; and
- makes conclusions about the use of BDPs considered by the Review.

<sup>1490</sup> Youth Detention Centre Operations Manual, Chapter 9: Behaviour Development, April 2011, p 4, edocs 3447736.

<sup>1491</sup> Youth Detention Centre Operations Manual, Chapter 9: Behaviour Development, April 2011, p 4, edocs 3447736; CYDC’s Behaviour Development Model (August 2015) s 4, which is attached as exhibit Individual YJ-48-3 to the affidavit of Individual YJ-48 sworn 22 November 2016, edocs 3531533.



## BEHAVIOUR DEVELOPMENT – POLICY AND OPERATIONS MANUAL

The Youth Detention Centre Operations Manual and policy YD-1-2 are to be read together.<sup>1492</sup>

Behaviour development responses are to assist people to become aware of their misbehaviour and encourage them to make good decisions by promoting positive behaviour.<sup>1493</sup> Misbehaviour is to be addressed appropriately and consistently and discipline will occur without revoking the fundamental rights of young people.<sup>1494</sup>

Youth detention staff are required to model appropriate and positive behaviours when interacting with young people and contribute to a culture at a detention centre that is safe, calm and respectful of others.<sup>1495</sup>

The objective of the behaviour development framework is to promote the safety, wellbeing and rehabilitation of young people and to contribute to centre safety and security.<sup>1496</sup> The behaviour development policy and behaviour management responses (including the Protective Actions Continuum) protect staff and young people from violent behaviours, reducing injuries.<sup>1497</sup>

The policy aims to meet the department's obligations under the *Youth Justice Act 1992*, section 263(2)<sup>1498</sup> and (3)<sup>1499</sup> and the *Youth Justice Regulation 2003*, sections 16<sup>1500</sup>, 17<sup>1501</sup> and 18<sup>1502</sup> (now *Youth Justice Regulation 2016*, sections 15, 16 and 17 respectively).

<sup>1492</sup> Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.3, 7 June 2016, s 2. <<http://intranet.justice.govnet.qld.gov.au/divisions-and-branches/youth-justice/youth-justice-in-detention/youth-detention-centre-operations-manual/ydcom-chapter-1-care-and-management-of-young-people>> (*Youth Detention Centre Operations Manual*, chapter 1 v 1.3).

<sup>1493</sup> Youth Justice, Department of Justice and Attorney-General, *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, date of operation 22 July 2015, p 2, edocs 3447110; (*YD-1-2 Youth Detention – Behaviour Development*, v 1.1); Youth Detention Centre Operations Manual, Chapter 9: Behaviour Development, p 4, edocs 3447736.

<sup>1494</sup> *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, p 2, edocs 3447110; *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s 2.1.

<sup>1495</sup> *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, p 2, edocs 3447110; *YD-1-2 Youth Detention – Behaviour Development*, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1496</sup> *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, p 5, edocs 3447110; *YD-1-2 Youth Detention – Behaviour Development*, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1497</sup> *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, p 5, edocs 3447110; *YD-1-2 Youth Detention – Behaviour Development*, v 1.0 dated 23 September 2013, p 5, edocs 3447386.

<sup>1498</sup> s 263(2) provides that the chief executive may carry out the responsibilities of security and management of detention centres by rules, directions, codes, standards and guidelines for detention centre organisation, functions, conduct and responsibilities of detention centre employees, the types of programs, contact between children detained in the detention centre, and arrangements for education, recreational and social activities of detained children.

<sup>1499</sup> s 263(3) provides the chief executive's responsibilities for each detention centre, including maintaining discipline and good order in the centre and the security and management of the centre.

<sup>1500</sup> s 16 relates to informing child about behaviour for which they could be disciplined.

<sup>1501</sup> s 17 relates to the management of misbehaviour.

<sup>1502</sup> s 18 relates to informing the court of actions taken to discipline for a child after misbehaviour if the child has also been convicted of an offence arising out of the misbehaviour.



## GENERAL PRINCIPLES

Behaviour development is to:

- promote the safety and wellbeing of young people and staff,<sup>1503</sup> including by promoting a calm and stable environment without threats or bullying;<sup>1504</sup>
- respect the young person's dignity, cultural background and beliefs;<sup>1505</sup>
- respect the young person's fundamental rights and entitlements.<sup>1506</sup>

Fundamental rights must never be revoked for disciplinary or consequence purposes.<sup>1507</sup> Fundamental rights and entitlements are defined in the policy as the following entitlements that ensure a young person's physical and mental wellbeing:<sup>1508</sup>

- clothing and hygiene items;
- items of personal significance that are safe within a youth detention centre environment;
- stable accommodation;
- regular meals, and access to food and drink outside the regular meal times;
- recreation time;
- visits;
- cultural and religious needs;
- complaints mechanisms;
- medical care.

The policy also refers to 'Fundamental rights and entitlements for young people', which is Appendix 3 to the Youth Detention Centre Operations Manual;

- promote positive behaviour through incentives and consequences that are applied consistently, timely and reasonable way;<sup>1509</sup>
- provide specific, targeted and timely feedback to young people about their behaviour;<sup>1510</sup>
- acknowledge the rights of young people who have experienced, or who are experiencing, trauma, loss, grief or poor attachments to receive individual needs;<sup>1511</sup>

<sup>1503</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 2, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1504</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.2; Youth Detention Centre Operations Manual, Chapter 9: Behaviour Development, Attachment 1: Effective Behaviour development models, p 16, edocs 3447736.

<sup>1505</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1 2 edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1506</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1 2, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1507</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, section 2; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1508</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 8, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 7, edocs 3447386.

<sup>1509</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1 2 edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1510</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.2, edocs 3447736.

<sup>1511</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.2, edocs 3447736.



- ensure behavioural support services meet a young person's needs by considering their personal circumstances, age, gender and developmental level;<sup>1512</sup>
- ensure behavioural expectations are clearly defined, understandable, explained at induction and frequently reiterated;<sup>1513</sup>
- provide opportunities for young people to participate, consent and have their views taken into account during behavioural support processes as much as possible;<sup>1514</sup>
- provide an appeals process for young people against unreasonable staff decisions.<sup>1515</sup>

In the Operations Manual dated 2011, which applied during 2011–2013, BDPs were to be modelled on 'effective behaviour development' that outlined the following principles:<sup>1516</sup>

- establishing a calm and relaxed environment for young people free from threats, bullying, and fighting;
- ensure that all staff utilise the BDP model consistently and set clear behavioural expectations that are applied and observed consistently;
- acknowledge and reward positive pro-social and age appropriate behaviour;
- ensure young people are aware of the behaviours that they may be disciplined for;
- have a minimal amount of rules that are perceived by the young people as being logical, important and fair;
- provide feedback to the young people on their progress;
- breaches of rules to be dealt with swiftly to ensure young people see the connection between their behaviour and the consequences;
- swiftly impose and dispense consequences so that young people may restore their standing and resume their progress;
- address inappropriate behaviours by working with the young person to work on other ways to behave or react in the future;
- allow young people to reap benefits that are meaningful to them when they display responsible behaviours; and
- allow young people to challenge decisions made a part of the behavioural development model – through an appeals process.

<sup>1512</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1 2 edocs 3447110; Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.2; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1513</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1 2 edocs 3447110; Youth Detention Centre Operations Manual, chapter 1 v 1.3, section 2.1; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1514</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 2, edocs 3447110; Youth Detention Centre Operations Manual, chapter 1 v 1.3, section 2.2; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1515</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 2, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1516</sup> Youth Detention Centre Operations Manual, Chapter 9: Behaviour Development, Attachment 1: Effective Behaviour development models, April 2011, p 16, edocs 3447736.



## MANAGING MISBEHAVIOUR

A system for managing misbehaviour seeks to:

- attempt to minimise and deter misbehaviour;
- respond proportionately to the misbehaviour;
- consider the young person's age, developmental level and needs;
- implement consequences in a consistent and specific way; and
- provide a way to challenge decisions under the scheme.<sup>1517</sup>

The Youth Detention Centre Operations Manual describes the system for managing misbehaviour as the 'consequence scheme'.<sup>1518</sup>

Misbehaviour is classified into three categories.<sup>1519</sup>

1. minor misbehaviour, which is behaviour that distracts or unsettles others but has no serious implications and negative outcomes, which can be quickly addressed and resolved with no further action.<sup>1520</sup> Examples include non-directed swearing or spitting, poor table manners and play fighting with peers.<sup>1521</sup> The consequences include feedback that such behaviour is not acceptable or, for persistent minor misbehaviour, a behaviour development plan;<sup>1522</sup>
2. moderate misbehaviour, which is behaviour having a reasonable impact on others or centre operations that may be harmful to others, but not as harmful as serious misbehaviour.<sup>1523</sup> Examples include directed swearing, refusing to go to programs and refusing to follow directions.<sup>1524</sup> A consequence will likely be required, and may include feedback that the behaviour is not acceptable, additional chores, apologies, repairing damaged property, time out in a quiet area, restorative justice, mediation or a behaviour development plan;<sup>1525</sup>
3. serious misbehaviour, which is behaviour that has a serious impact on others and/or the centre's operation.<sup>1526</sup> Examples include physical, verbal or sexual assaults, causing serious property damage and possessing restricted, prohibited and illegal articles.<sup>1527</sup> A consequence of the

<sup>1517</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 3, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.

<sup>1518</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.5, edocs 3447736.

<sup>1519</sup> The Operations Manual refers to the 3 misbehaviour categories and appropriate consequences in s 2.5.2.

<sup>1520</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 4, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 3, edocs 3447836.

<sup>1521</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 9 edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 9, edocs 3447836.

<sup>1522</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 9, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 9, edocs 3447836.

<sup>1523</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 4, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 3, edocs 3447836.

<sup>1524</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 9, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 9, edocs 3447836.

<sup>1525</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, pp 4 and 9, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, pp 4 and 9, edocs 3447836.

<sup>1526</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 4, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 3, edocs 3447836.

<sup>1527</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 9, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, pp 3 and 9, edocs 3447836.



behaviour may include additional chores, apologies, repairing damaged property, time out in a quiet area, restorative justice, mediation, report to law enforcement, criminal charges and internal restitution.<sup>1528</sup>

#### *PROCESS FOR IMPLEMENTING CONSEQUENCES FOR MISBEHAVIOUR*

The Youth Detention Centre Operations Manual sets out three steps for implementing consequences as a result of misbehaviour:<sup>1529</sup>

1. after the staff has identified the misbehaviour, the staff member is to explain to the young person why the behaviour is inappropriate and the consequences<sup>1530</sup> for the misbehaviour, and then record the behaviour;
2. if the misbehaviour continues, the staff member is to say to the young person that they have been already asked to stop the behaviour, and reiterate to the young person the consequences for misbehaviour; and
3. if the misbehaviour continues, the staff member then is to explain to the young person that they will face consequences because of the continuing misbehaviour and implement those consequences.

#### *ADDRESSING PROVOCATIVE AND MANIPULATIVE BEHAVIOUR*

The Youth Detention Centre Operations Manual indicates that when addressing provocative (including sexually provocative) or manipulative behaviour, the staff member must:<sup>1531</sup>

- remember they are in a position of power and the young person is relatively powerless;
- stop the interaction firmly and sensitively by asking the young person to stop the behaviour and explaining the consequences of such behaviour; and
- complete an intelligence report about the behaviour.

#### *APPEAL FROM DECISIONS MADE UNDER CONSEQUENCE SCHEME*

While the Youth Detention Centre Operations Manual states that young people are entitled to appeal decisions made under the consequences scheme,<sup>1532</sup> the way an appeal can be made is not included in the Operations Manual.

The State has advised that section 3 of the CYDC behaviour development model sets out an appeal process.

<sup>1528</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, pp 3 and 9, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 9, edocs 3447386.

<sup>1529</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.5.3, edocs 3447736.

<sup>1530</sup> Examples of appropriate consequences are referred to in respect of each of the 3 levels of misbehaviour at the text accompanying footnotes 1522, 1525 and 1528.

<sup>1531</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.5.4.

<sup>1532</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.5.6.



### MISBEHAVIOUR AMOUNTING TO AN OFFENCE

A detention centre must report behaviour amounting to a criminal offence to another person to the police. If there is no victim, the detention centre may report the offence to the police.<sup>1533</sup>

### RESTORATIVE PRACTICES

Restorative practices are to bring the victim and perpetrator together with a focus on the interests of the victim and so that the perpetrator is aware of the impact of their offending on the victim.<sup>1534</sup> Restorative justice can either be an informal process or a formal process that results in a restorative practice agreement.<sup>1535</sup>

Restorative practice will be appropriate where the conduct is not a criminal offence, the perpetrator accepts that the behaviour was inappropriate, the perpetrator and the victim want to participate, ambiguity in who is responsible for the offending is acceptable and the perpetrator has a support person who will assist the perpetrator in carrying out the agreement.<sup>1536</sup>

The formal agreement requires a number of people to be involved in the agreement's creation, including the caseworker, section supervisor, team leader and psychologist.<sup>1537</sup>

If relevant, the outcome of a restorative action must be uploaded onto DCOIS.<sup>1538</sup>

### CYDC'S BEHAVIOURAL DEVELOPMENT MODEL

The CYDC behavioural developmental model (August 2015) is informed by the relevant Act and regulation, *Youth Detention Centre Operations Manual: Chapter 1 Section 2: Behaviour development*, and *Policy YD-1-2: Youth detention – Behaviour management*.<sup>1539</sup> The theoretical framework of Positive Behaviour Support (PBS) and Trauma Informed Care practice form the basis of the CYDC behavioural developmental model.<sup>1540</sup> The approach is best when implemented by an interdisciplinary team. PBS focuses on the *individual* rather than their misbehaviour.<sup>1541</sup>

<sup>1533</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 4, edocs 3447110; Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.5.5, edocs 3447736.

<sup>1534</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.6, edocs 3447736.

<sup>1535</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.6, edocs 3447736.

<sup>1536</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.6, edocs 3447736.

<sup>1537</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.6.1, edocs 3447736.

<sup>1538</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.6.2, edocs 3447736.

<sup>1539</sup> CYDC's Behaviour Development Model (August 2015) section 1, which is attached as exhibit Individual YJ-48-3 to the affidavit of Individual YJ-48 sworn on 22 November 2016, edocs 3531533.

<sup>1540</sup> CYDC's Behaviour Development Model (August 2015) s 2, which is attached as exhibit Individual YJ-48-3 to the affidavit of Individual YJ-48 sworn on 22 November 2016, edocs 3531533.

<sup>1541</sup> CYDC's Behaviour Development Model (August 2015) s 2, which is attached as exhibit Individual YJ-48-3 to the affidavit of Individual YJ-48 sworn on 22 November 2016, edocs 3531533.



## PROHIBITED DISCIPLINARY STRATEGIES

The following disciplinary actions are prohibited by the policy and operations manual:<sup>1542</sup>

- separation<sup>1543</sup> (although that may be authorised to protect a person or property or to restore order to the centre);
- corporal punishment;<sup>1544</sup>
- physical contact;
- an act involving humiliation, physical abuse, emotional abuse or sustained verbal abuse;
- depriving sleep, food, visitors or bedding items;
- withholding mail or access to phones or other means of communication;
- exclusion from cultural, education or vocational programs;
- medication or depriving a child of medication;
- a strategy that deprives a young person of their fundamental rights and entitlements.

Items ☐ to ☐ above are prohibited by the regulation.<sup>1545</sup>

In addition to the above list, the Operations Manual also prohibits chores not linked to section-based responsibilities and withholding access to finances or a financial punishment.<sup>1546</sup>

In addition to the above list, the 2011 policy includes:

- the use of challenging or physically threatening actions by staff directed towards a young person;
- punitive chores that are not linked to either reparative or section based daily chores;
- the use of restraint methods that involve the constriction of air supply or the carotid artery, e.g., chokeholds or head locks.<sup>1547</sup>

## BEHAVIOUR DEVELOPMENT PLAN (BDP)

A BDP “documents a specific intervention plan in response to misbehaviour. It facilitates an individualised, focused, multi-disciplinary approach to the management

<sup>1542</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, pp 4–5, edocs 3447110; Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.5.1; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 4, edocs 3447386.

<sup>1543</sup> Defined in the policy as placing a young person alone in a room for a reason prescribed under the Youth Justice Regulation 2003, s 22 (now Youth Justice Regulation 2016, s 21); YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 8, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 4, edocs 3447386.

<sup>1544</sup> Defined in the policy as physical force is used and intended to cause some degree of pain or discomfort: YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 4, edocs 3447110 or any action which inflicts, or is intended to inflict physical pain or discomfort, on the person as punishment: Youth Detention Centre Operations Manual, Chapter 9: Behaviour Development, edocs 3447736, 6; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 4, edocs 3447386.

<sup>1545</sup> See Youth Justice Regulation 2003, s 17(4) for the regulation at the time of any of the incidents and Youth Justice Regulation 2016, s 16(4) for the current regulation.

<sup>1546</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, pp 4–5, edocs 3447110; Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.5.1, edocs 3447736.

<sup>1547</sup> Youth Detention Centre Operations Manual, Chapter 9: Behaviour Development, April 2011, p 6, edocs 3447736.



of a young person's behaviour".<sup>1548</sup> The BDP may prevent a young person from accessing the incentive scheme.<sup>1549</sup>

The YD-1-2 Youth Detention – Behaviour Development policy contemplates using a Behaviour Development Plan for persistent minor misbehaviour or moderate or serious misbehaviour.<sup>1550</sup> However, the operations manual indicates that BDPs are a specific intervention plan in response to moderate or serious misbehaviour and does not refer to persistent minor misbehaviour.<sup>1551</sup> This replaces the 2013 policy, which allowed BDPs for repeated minor misbehaviour.<sup>1552</sup> A superseded version of the *Operations Manual* allowed BDPs when "young people demonstrate persistent and continued poor behaviour that causes disruption and is unsettling to other young people in the accommodation section or behaviour that is serious or constitutes an offence".<sup>1553</sup>

The length of time a BDP is in effect can vary between a few hours for a simple BDP to a complex BDP for days or weeks.<sup>1554</sup>

#### CONSIDERING WHETHER A BDP IS NECESSARY

A BDP is one of a number of options in relation to disciplining a young person for misbehaviour. As discussed below, if a BDP is used the samples the Review has considered commonly contain a standard set of initial provisions that include almost total isolation from other young people and separation in the young person's cell.

Staff have raised concerns about whether BDPs are necessary in relation to particular incidents. For example, after the 5 June 2015 ground stabilisation incident with Young Person A4, Individual YJ-44 said at an Incident Debrief on 10 June 2015 that a BDP process would not serve a purpose and that Young Person A4 would be better managed in the unit.<sup>1555</sup> The notes state:

*[YJ-44] suggested that the BDP process be adapted to a different management system in that YPs attend programs specifically aimed to target their behavioural issues. [YJ-44] spoke of individualising the process, YPs not only attending a program to address their behaviours but also completing a*

<sup>1548</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 7, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 7, edocs 3447386.

<sup>1549</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 4, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 3, edocs 3447386.

<sup>1550</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 9, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 3, edocs 3447386.

<sup>1551</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.7; Youth Justice, Department of Justice and Attorney-General, Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People, v 1.2, 22 June 2015, s 2.7, edocs 3447313; compare YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 9, edocs 3447386.

<sup>1552</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 9, edocs 3447386.

<sup>1553</sup> Youth Detention Centre Operations Manual, Chapter 9: Behaviour Development, p 4, edocs 3447736.

<sup>1554</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s 2.7; Youth Justice, Department of Justice and Attorney-General, Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People, v 1.2, 22 June 2015, s 2.7, edocs 3447313.

<sup>1555</sup> Minutes from the staff incident debrief on 10 June 2015, which is attached as exhibit YJ-3-3 to the affidavit of Individual YJ-3 sworn on 13 October 2016, p 9, edocs 3470958.



*form of restorative justice if appropriate. [YJ-44] commented that this would be beneficial as staff would see a follow up for their behaviours.*<sup>1556</sup>

Similarly, other pool incidents have been managed differently and without creating a BDP for the young people. Young Person A5's caseworker, Individual YJ-42, concedes that in previous incidents where YPs were in the pool for short periods of time, they were managed in the units rather than placed on BDPs.<sup>1557</sup>

There are also incidents which suggest that BDPs have a detrimental effect on young people, particularly those that are already at risk for other reasons. was on a BDP which required his separation and limited interaction with other young people.<sup>1558</sup> On the same day, behaviour triggered a<sup>1559</sup> where he threatened to self-harm. When the nurse attended him, stated that he felt like the walls were closing in around him and that he would kill himself.<sup>1560</sup> He also stated that he could not handle being locked in his room any longer and that he just wanted to die.<sup>1561</sup>

These incidents, coupled with the clear statements in the policies supporting alternative ways of dealing with misbehaviour, suggest that staff should consider a number of options before imposing a BDP. If a BDP is imposed, consideration should be given to not imposing separation and isolation, particularly in respect of people who are already at risk or otherwise vulnerable. Consideration should be given to whether another option for addressing misbehaviour can satisfactorily address a young person's behaviour before a BDP is imposed.

**Recommendation 12.R1** – The Review recommends that staff should seriously consider a range of options to address misbehaviour by young people, and consider whether a BDP, or a BDP imposing separation and isolation, is the best option for addressing misbehaviour for a particular young person.

#### COMMENCING A BDP OR INTERIM BDP IF INCIDENT IS AFTER HOURS

The team leader or their delegate is to become the author of the BDP and is responsible for opening a BDP in DCOIS.<sup>1562</sup> After hours, the shift supervisor may commence an interim BDP with the approval of the on-call manager.<sup>1563</sup> The interim BDP must be reviewed by the team leader or delegate with the multidisciplinary team the next business day.<sup>1564</sup> Initial BDPs are to consider the best interests of young

<sup>1556</sup> Minutes from the staff incident debrief on 10 June 2015, which is attached as exhibit YJ-3-3 to the affidavit of Individual YJ-3 sworn on 13 October 2016, p 10, edocs 3470958.

<sup>1557</sup> Affidavit of Individual YJ-42 sworn on 27 October 2016, para 40(b), edocs 3488263.

<sup>1562</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s 2.7.1, edocs 3447736.

<sup>1563</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s 2.7.1, edocs 3447736.

<sup>1564</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s 2.7.1, edocs 3447736.



people, be individualised, and take into account a young person's needs at the time.<sup>1565</sup>

## STAFF/YOUNG PERSON INVOLVEMENT

The Policy provides that the youth detention centre caseworker, psychologist and the unit manager, accommodation are to actively participate in behaviour development planning.<sup>1566</sup> The team leader – behaviour support is to guide the development, implementation and review of BDPs;<sup>1567</sup> the Operations Manual indicates the team leader or delegate is to lead the development of the BDP with the young person.<sup>1568</sup> The policy does not state that youth detention staff are to have a role in developing BDPs; the policy states that the youth detention centre staff acknowledge, assess and reward positive behaviour and identify, reprimand and apply consequences for misbehaviour.<sup>1569</sup> The Operations Manual states that the team leader or delegate is to lead the development of the BDP, but with multidisciplinary team members, which includes a caseworker, psychologist, section supervisor, shift supervisor, unit manager and Aboriginal and Torres Strait Islander staff (if the child is Aboriginal or a Torres Strait Islander).<sup>1570</sup>

Once a young person is placed on a BDP the young person's management is to be escalated to the unit manager (accommodation) in conjunction with the multidisciplinary team.<sup>1571</sup>

The Review has received evidence showing that a young person has been involved in developing their own BDP on a particular date.<sup>1572</sup> However, the weight of the records indicates that it is unlikely, at least in the cases of the BDPs considered within the scope of this chapter, that the young people subject to the BDPs were involved in their development, especially given the amount of duplication and standard conditions referred to above that have been applied to the young people under those BDPs.

<sup>1565</sup> CYDC, *Behaviour Development Plan (BDP) Review* (2012), p 2, which is attached to an email from Individual YJ-25 to all CYDC staff dated 19 November 2012, edocs 3538936.

<sup>1566</sup> YD-1-2 *Youth Detention – Behaviour Development*, v 1.1 5–6 edocs 3447110; YD-1-2 *Youth Detention – Behaviour Development*, v 1.0 dated 23 September 2013, pp 5–6, edocs 3447386.

<sup>1567</sup> Youth Justice, Department of Justice and Attorney-General, YD-1-2 *Youth Detention – Behaviour Development*, v 1.1, date of operation 22 July 2015, p 5, edocs 3447110; YD-1-2 *Youth Detention – Behaviour Development*, v 1.0 dated 23 September 2013, pp 5–6, edocs 3447386.

<sup>1568</sup> Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.3, 7 June 2016, para 2.7.1. <<http://intranet.justice.govnet.qld.gov.au/divisions-and-branches/youth-justice/youth-justice-in-detention/youth-detention-centre-operations-manual/ydcom-chapter-1-care-and-management-of-young-people>>

<sup>1569</sup> YD-1-2 *Youth Detention – Behaviour Development*, v 1.1, p 6, edocs 3447110.

<sup>1570</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s 2.7.1; Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, s 2.7.1, edocs 3447313.

<sup>1571</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s 2.7.1.

<sup>1572</sup> Email from Individual YJ-71 to Individual YJ-4 et al dated 2 June 2012, which forms part of an email chain contained in edocs 3460225.



## MONITORING THE BDP

Section supervisors and youth workers must conduct a daily review and note a review comment on the BDP.<sup>1573</sup> Relevantly, those staff members must inform further development of the BDP by including information such as underpinning factors and triggers for inappropriate behaviour and effective strategies for the young person and providing specific and targeted feedback about the young person's progress in developing skills to address the behaviour.<sup>1574</sup>

It appears the practice at CYDC is to send comments from each of the persons who have discussed the BDP with the young person and then send the information in an attachment to an email. A summary is then included in DCOIS.

Previously, young persons on BDPs were also placed on a schedule of behavioural observations, where they were monitored at 10-minute intervals (or more frequently if needed).<sup>1575</sup>

## REVIEWING AND CLOSING BDP<sup>1576</sup>

In addition to the daily reviews referred to above, the team leader or delegate is to conduct a periodic review to consider whether it is appropriate to continue the BDP. The team leader or delegate may update the BDP with any new management strategies and advise the staff of them.

Reviewing and updating the BDP is to continue until the 'review committee' decides to cease a BDP. The review committee is not defined or further explained in the Operations Manual. It may mean the multidisciplinary team referred to above. Once the review committee decides to cease a BDP, the team leader, unit manager, or delegate will close the BDP.

## CONSIDERATION OF BDPS

### TAILORING BDPS TO MEET INDIVIDUAL INCIDENTS OF MISBEHAVIOUR

BDPs are required to be individualised<sup>1577</sup> and have tailored responses to misbehaviour and are to be created with some input from the young person and from a team of staff. When the BDP template is completed in DCOIS, the staff member must ensure the content of the BDP is "tailored to the individual young person and the nature of their misbehaviour".<sup>1578</sup>

<sup>1573</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s 2.7.2; Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, s 2.7.2, edocs 3447313.

<sup>1574</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, section 2.7.2; Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, s 2.7.2, edocs 3447313.

<sup>1575</sup> *Youth Detention Centre Operations Manual*, Chapter 9: *Behaviour Development*, p 10, edocs 3447736.

<sup>1576</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s 2.7.3; Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, s 2.7, edocs 3447313.

<sup>1577</sup> CYDC's *Behaviour Development Model* (August 2015) section 4.2.2, which is attached as exhibit Individual YJ-48-3 to the affidavit of Individual YJ-48 sworn on 22 November 2016, edocs 3531533.

<sup>1578</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s 2.7.1.1.



Many of the goals set by the BDPs are similar, but they are not always identical. The following is a brief statement of the goals the BDPs were designed to achieve:

- provide the young person with the opportunity to reflect on their behaviour;<sup>1579</sup>
- support and assist the young person to develop appropriate strategies to manage the young person's behaviour;<sup>1580</sup>
- ensure the young person accepts the seriousness of their actions;<sup>1581</sup>
- support the young person in the development of strategies to manage their level of aggressive outbursts and assaulting behaviour;<sup>1582</sup>
- ensure the young person's behaviour is stabilised and the risk of harm to themselves and others is minimised.<sup>1583</sup>

Not all of these goals are on every BDP examined, but usually three or four of the goals are included in combination.

The Review considers that the initial conditions placed on the young people the subject of the BDPs under review by the Commission do not support the objectives outlined above. The conditions generally imposed appear restrictive in nature and with no apparent intervention designed to stimulate positive behavioural change. Further, the Review notes that in general almost all the conditions imposed in BDPs are uniform, with little variation even though the nature of the misbehaviour can be very different. The misbehaviour for which the young people were placed on BDPs varies significantly, from the pool incident referred to in Chapter 17, fighting<sup>1584</sup>, an attempt to abscond<sup>1585</sup> and to making a comment that the young person would abscond.<sup>1586</sup> In each of these cases however there is a statement preventing the young person from having hot drinks due to the violent nature of offending.

Initial conditions are essentially standardised for many of the BDPs for the young people the subject of incidents investigated by the Review. The standard provisions invariably included almost all of the following matters, regardless of the nature of the misbehaviour that the BDP was to address:

- confined to the young person's room;<sup>1587</sup>

<sup>1579</sup> Young Person A3, *Behavioural Development Plan*, 25 August 2012, Version 1, edocs 3443275; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 1, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, p 1, edocs 3442883; BDP for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 1, edocs 3443087; BDP for Young Person number version 1, edocs See also BDP for Young person number version 1, p 1, edocs

<sup>1580</sup> BDP for Young person A7 number 4092550, version 1 dated 25 August 2015, p 1, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, p 1, edocs 3442883; BDP for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 1, edocs 3443087; BDP for Young Person number version 1 edocs BDP for Young Person number version 1, p 1, edocs

<sup>1581</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 1, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, p 1, edocs 3442883; BDP for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 1, edocs 3443087; BDP for Young Person number version 1, edocs

<sup>1582</sup> Young Person A3, *BDP 25 August 2012, Version 1*, edocs 3443275; BDP for Young Person number version 1, edocs

<sup>1583</sup> Young Person A3, *BDP, 25 August 2012, Version 1*, edocs 3443275; BDP for Young Person number version 1 dated p 1, edocs BDP for Young Person number version 1, p 1, edocs

<sup>1584</sup> BDP for Young Person A3 number 226398 version 1 dated 10 July 2011, edocs 3443364.

<sup>1585</sup> BDP for Young Person number version 1, edocs

<sup>1586</sup> BDP for Young Person version 1 dated p 2, edocs

<sup>1587</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP Plan for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 2, edocs 3443087.



- daily room search;<sup>1588</sup>
- personal search on suspicion;<sup>1589</sup>
- no socialising with the general population;<sup>1590</sup>
- removing the mattress,<sup>1591</sup> bedding and curtains from the young person's room at the beginning of the day only to be returned at night;<sup>1592</sup>
- removing personal items so that only basic entitlements are available such as one set of bedding, one change of clothes and one curtain.<sup>1593</sup> The necessity for removing these items may be described as "YP has shown that she is a risk to staff and other YP in the centre by her refusal to follow basic directions and incite peers to participate in negative behaviours";<sup>1594</sup>
- limited access to letters (including allowing access only in the kitchen area);<sup>1595</sup>
- not permitted to attend school (i.e. EQ);<sup>1596</sup>
- young person allowed to have educational material, but only in common area and not in their own room;<sup>1597</sup>
- young person not allowed to attend structured day activities, after 3pm activities or weekend activities;<sup>1598</sup>

<sup>1588</sup> Young Person A3, BDP, 25 August 2012, Version 1, edocs 3443275; BDP of Young Person number dated p 2, edocs

<sup>1589</sup> Young Person A3, BDP, 25 August 2012, Version 1, edocs 3443275; BDP of Young Person number dated p 2, edocs

<sup>1590</sup> See BDPs Young Person A3: BDP ID 226398, edocs 3443364; BDP ID381902, edocs 3443345; BDP ID 744866, edocs 3443319; BDP ID 758943, edocs 3443306; BDP ID 872778, edocs 3443294; BDP ID 910172, edocs 3443285; BDP ID 1100585, edocs 3443275; BDP ID 1258998, edocs 3443268; BDP ID 1484234, edocs 3443225; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP for Young Person number version 1, edocs BDP of Young Person number dated p 2, edocs

<sup>1591</sup> Young Person A3, BDP, 25 August 2012, Version 1, edocs 3443275.

<sup>1592</sup> See: Behaviour Development Plans Young Person A3: BDP ID 226398, edocs 3443364; BDP ID381902, edocs 3443345; BDP ID 744866, edocs 3443319; BDP ID 758943, edocs 3443306; BDP ID 872778, edocs 3443294; BDP ID 910172, edocs 3443285; BDP ID 1100585, edocs 3443275; BDP ID 1258998, edocs 3443268; BDP ID 1484234, edocs 3443225. In relation to curtains removed only during the day see BDP for Young Person A7 number 4095304, version 2 dated 26 August 2015, p 3, edocs 3442841.

<sup>1593</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP of Young Person version 1 dated p 2, edocs Compare BDP for Young Person number version 1, edocs BDP of Young Person number dated p 2, edocs

<sup>1594</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843.

<sup>1595</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person number version 1, edocs BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP of Young Person number dated p 2, edocs

<sup>1596</sup> See: BDPs Young Person A3: BDP ID 226398, edocs 3443364; BDP ID381902, edocs 3443345; BDP ID 744866, edocs 3443319; BDP ID 758943, edocs 3443306; BDP ID 872778, edocs 3443294; BDP ID 910172, edocs 3443285; BDP ID 1100585, edocs 3443275; BDP ID 1258998, edocs 3443268; BDP ID 1484234, edocs 3443225; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP for Young Person number version 1, edocs BDP of Young Person number dated p 2, edocs

<sup>1597</sup> See BDP Young person A3: BDP ID 226398, edocs 3443364; BDP ID381902, edocs 3443345; BDP ID 744866, edocs 3443319; BDP ID 758943, edocs 3443306; BDP ID 872778, edocs 3443294; BDP ID 910172, edocs 3443285; BDP ID 1100585, edocs 3443275; BDP ID 1258998, edocs 3443268; BDP ID 1484234, edocs 3443225; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person A7 number 4095304, version 2 dated 26 August 2015, p 3, edocs 3442841; BDP for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 2, edocs 3443087; BDP for Young Person number version 1, edocs BDP of Young Person version 1 dated p 2, edocs

<sup>1598</sup> See BDPs Young Person A3: BDP ID 226398, edocs 3443364; BDP ID381902, edocs 3443345; BDP ID 744866, edocs 3443319; BDP ID 758943, edocs 3443306; BDP ID 872778, edocs 3443294; BDP ID 910172, edocs 3443285; BDP ID 1100585, edocs 3443275; BDP ID 1258998, edocs 3443268; BDP ID 1484234, edocs 3443225; See: Behaviour Development Plans Young person A3: BDP ID 226398, edocs 3443364; BDP ID381902, edocs 3443345; BDP ID 744866, edocs 3443319; BDP ID 758943, edocs 3443306; BDP ID 872778, edocs 3443294; BDP ID 910172, edocs 3443285; BDP ID 1100585, edocs 3443275; BDP ID 1258998, edocs 3443268; BDP ID 1484234, edocs 3443225; BDP for Young person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP of Young Person number dated p 2, edocs



- no TV;<sup>1599</sup>
- visits from people outside the Centre may be conducted as normal, with an emphasis that the visits are not to occur from young people in the centre;<sup>1600</sup>
- eating meals alone in young person's room;<sup>1601</sup>
- apparent restrictions on the ability to make phone calls;<sup>1602</sup>
- plastic cutlery, plates and dinnerware only;<sup>1603</sup>
- restrictions on giving the young person hot liquids;<sup>1604</sup>
- access to the fernery<sup>1605</sup> whilst other young people are not using the unit (e.g. because they are undertaking hygiene or at structured activities);<sup>1606</sup>
- ensuring limited interaction between the young person and their peers;<sup>1607</sup>
- giving the young people writing implements in the common areas only.<sup>1608</sup>

In some cases, there is a variation without apparent purpose – for example, in some cases coloured pencils are not allowed under a BDP;<sup>1609</sup> in other cases, coloured pencils may be used.<sup>1610</sup>

<sup>1599</sup> Young person A3, BDP, 25 August 2012, Version 1, edocs 3443275; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP for Young Person number version 1, edocs BDP of Young Person , version 1 dated p 2, edocs

<sup>1600</sup> BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP for Young Person number version 1, edocs BDP for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 2, edocs 3443087; BDP of Young Person version 1 dated p 2, edocs BDP of Young Person number dated p 2, edocs

<sup>1601</sup> Young Person A3, BDP, 25 August 2012, Version 1, edocs 3443275; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 2, edocs 3443087; BDP of Young Person version 1 dated p 2, edocs BDP for Young Person number version 1, edocs

<sup>1602</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP Young Person A5 number 4092530, version 1, p 2, edocs 3442883 and BDP for Young Person A6 number 40952557, version 1, p 2, edocs 3443087; BDP for Young Person number version 1, edocs BDP of Young Person , version 1 dated p 2, edocs BDP of Young Person number number dated p 2, edocs

<sup>1603</sup> Young Person A3, BDP, 25 August 2012, Version 1, edocs 3443275; BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 2, edocs 3443087; BDP for Young Person number version 1, edocs BDP of Young Person A4, version 1 dated p 2, edocs BDP of Young Person number number dated p 2, edocs

<sup>1604</sup> Young Person A3, BDP, 25 August 2012, Version 1, edocs 3443275; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 2, edocs 3443087; BDP of Young Person version 1 dated p 2, edocs BDP of Young Person number number dated p 2, edocs

<sup>1605</sup> A separated outside area of the unit.

<sup>1606</sup> See BDPs Young Person A3: BDP ID 226398, edocs 3443364; BDP ID381902, edocs 3443345; BDP ID 744866, edocs 3443319; BDP ID 758943, edocs 3443306; BDP ID 872778, edocs 3443294; BDP ID 910172, edocs 3443285; BDP ID 1100585, edocs 3443275; BDP ID 1258998, edocs 3443268; BDP ID 1484234, edocs 3443225; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person A7 number 4095304, version 2 dated 26 August 2015, p 3, edocs 3442841; BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP for Young Person number 3794015, version 1, edocs 3442406; BDP of Young Person version 1 dated p 2, edocs BDP of Young Person number dated p 2, edocs

<sup>1607</sup> Young Person A3, BDP, 25 August 2012, Version 1, edocs 3443275

<sup>1608</sup> See BDPs Young Person A3: BDP ID 226398, edocs 3443364; BDP ID381902, edocs 3443345; BDP ID 744866, edocs 3443319; BDP ID 758943, edocs 3443306; BDP ID 872778, edocs 3443294; BDP ID 910172, edocs 3443285; BDP ID 1100585, edocs 3443275; BDP ID 1258998, edocs 3443268; BDP ID 1484234, edocs 3443225; BDP for Young person A5 number 40952953, version 1, pp 2–3, edocs 3442883; BDP for Young Person number version 1, edocs BDP Plan for Young Person number version 1, edocs BDP of Young Person number dated p 2, edocs

<sup>1609</sup> See BDPs Young Person A3: BDP ID 226398, edocs 3443364; BDP ID381902, edocs 3443345; BDP ID 744866, edocs 3443319; BDP ID 758943, edocs 3443306; BDP ID 872778, edocs 3443294; BDP ID 910172, edocs 3443285; BDP ID 1100585, edocs 3443275; BDP ID 1258998, edocs 3443268; BDP ID 1484234, edocs 3443225; BDP of Young Person number dated p 2, edocs

<sup>1610</sup> Behaviour Development Plan for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883; Behaviour Development Plan for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 2, edocs 3443087; Behaviour Development Plan for Young person A7 number 4092550, version 1 dated 25 August 2015, p 3, edocs 3442843.



The Review open to consider that a high percentage of the content of these BDPs was copied between the BDPs. There were also a number of examples of the content being copied and pasted from other sources, including the Operations Manual, and obviously from other BDPs. For example:

- each of the BDPs copied almost exactly from the purposes listed in the Operations Manual;<sup>1611</sup>
- risk factors were identical between each of the BDPs;<sup>1612</sup>
- a number of conditions imposed as part of the three BDPs were identical or very similar.<sup>1613</sup> For example, there was a condition limiting visits to persons outside the centre in the following terms: “NOTE: This pertains to outside visitors only, not Young People currently detained in this Centre”;<sup>1614</sup>
- there were incorrect references to other young people in place of the correct young person in the BDP – for example, references to young person A5 in Young Person A7’s BDP suggested this content was directly copied and pasted from Young Person A5’s BDP into Young Person A7’s BDP;<sup>1615</sup>
- there is also some indication of template BDPs including, for example, using the incorrect gender pronoun,<sup>1616</sup> such as:
  - “[p]hone calls may be placed by his [sic] Case Worker between 9:00am and 4:00pm Monday to Friday at the case workers [sic] discretion.” (emphasis added);<sup>1617</sup>
  - YP may access phone in Young Person section while being supervised by a staff member, and is able to use her PIN. Phone calls are to be logged on the BDP shift notes. Also, “[p]hone calls may be placed by his [sic] Case Worker between 9:00am and 4:00pm Monday to Friday at the case workers [sic] discretion.” (emphasis added);<sup>1618</sup>

<sup>1611</sup> Compare the purposes listed in Youth Justice, Department of Justice and Attorney-General, Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People, v 1.3, 7 June 2016, para 2.7.1.1 <<http://intranet.justice.qld.gov.au/divisions-and-branches/youth-justice/youth-justice-in-detention/youth-detention-centre-operations-manual/ydcom-chapter-1-care-and-management-of-young-people>>; Youth Justice, Department of Justice and Attorney-General, Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People, v 1.2, 22 June 2015, para 2.7.1.1, edocs 3447313; and the purposes on pp 1 of the Behaviour Development Plan for Young Person A7 number 4092550, version 1 dated 25 August 2015, edocs 3442843.

<sup>1612</sup> See, for example, Behaviour Development Plan for Young Person A5 number 40952953, version 1, p 1, edocs 3442883; and Behaviour Development Plan for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 1, edocs 3442843.

<sup>1613</sup> See, for example, the identical list of the basic entitlements in the cell, which were a mattress, 1 set of bedding, 1 change of clothes and curtains, with all other times to be removed: Behaviour Development Plan for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; and Behaviour Development Plan for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883.

<sup>1614</sup> See, for example, the Behaviour Development Plan for Young person A5 number 40952953, version 1, pp 2–3, edocs 3442883; Behaviour Development Plan for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 2, edocs 3443087; Behaviour Development Plan for Young person number , version 1, edocs

<sup>1615</sup> Behaviour Development Plan for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 1, edocs 3442843.

<sup>1616</sup> See for example, the Behaviour Development Plan for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843.

<sup>1617</sup> Behaviour Development Plan for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; Behaviour Development Plan for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 2, edocs 3443087.

<sup>1618</sup> Behaviour Development Plan for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; Behaviour Development Plan for Young Person A5 number 4092530, version 1, p 2, edocs 3442883; and Behaviour Development Plan for Young Person A6 number 40952557, version 1, p 2, edocs 3443087.



- hot liquids prohibited “due to the assaultive nature of his behaviour resulting in the BDP” (emphasis added), even when the misbehaviour was not described as being violent in nature.<sup>1619</sup>

The examples of errors and duplication in the BDPs indicated to the Review that much of the content of the BDPs was copied and pasted from previous documents relating to other young people. The copying of the conditions suggests that there is little individual consultation with the young person to allow them to be involved in addressing their own misbehaviour.

In the absence of evidence that the BDPs were individually tailored to the three young people involved in the pool incident, the Review considers that there is insufficient attention paid to the development of an individually tailored BDP with the emphasis on rehabilitation.

Further, there appears to be little, if any, positive reinforcement within the conditions set in the various BDPs, with most appearing to be punitive in nature, operating as a form of punishment with an emphasis on depriving young people of entitlements and privileges. The BDPs appear not to follow the ‘best practice model’ as outlined above, with an apparent disconnect between the behaviour that resulted in placement on a BDP and the subsequent conditions making it difficult for a young person to comprehend the connection between their behaviour and consequences.

In addition, to be effective, BDPs should have minimal amount of rules, and those rules should be perceived by the young people as logical, important and fair. In order to address behaviour, the conditions should be connected to the misbehaviour in order to specifically address that misbehaviour.

The Review considers that insufficient attention is paid to the need to develop an individually tailored BDP specifically designed to address the concerning behaviour, rehabilitate the young person and to assist the young person to make good decisions by promoting positive behaviour as required by the relevant policy.<sup>1620</sup>

**Recommendation 12.R2** – The Review recommends that BDPs should be a tool to address misbehaviour in an individualised way that attempts to redress and reduce individual misbehaviour and the underlying causes of it.

In the absence of evidence that the BDPs were individually tailored to the young people referred to in the incident and their particular misbehaviour, the Review considers that there is insufficient attention paid to the development of an individually tailored BDP with an emphasis on rehabilitation. Such a failure should be remedied through additional training to ensure that staff are able to seek to address misbehaviour through BDPs.

<sup>1619</sup> Behaviour Development Plan for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; Behaviour Development Plan for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 2, edocs 3443087. This was also contained directly in the Behaviour Development Plan of Young Person version 1 dated , p 2, edocs

<sup>1620</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1 2, edocs 3447110; Youth Detention Centre Operations Manual, chapter 1 v 1.3, § 2.2; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 2, edocs 3447386.



**Recommendation 12.R3** – The Review recommends that additional training should be provided to multi-disciplinary teams and staff creating interim BDPs to ensure that a BDP for a young person is personal and individually tailored to meet the needs identified in response to the young person's misbehaviour.

#### *POSITIVE EXAMPLE OF TAILORED RESPONSE TO MISBEHAVIOUR*

Young Person A3's shortest time spent on a BDP (three days) was the result of one of the more serious events – an incident for which Young Person A3 may have faced a criminal charge of assault (and have been charged as an adult, as he was 17 at the time).<sup>1621</sup> An altercation had broken out between two young people and all young persons in the unit were directed to return to their rooms whilst the altercation was addressed.<sup>1622</sup> Young Person A3 ignored this direction and walked towards the other young people and Individual YJ-93 again directed him to return to his room and blocked his path.<sup>1623</sup> Young Person A3 then pushed Individual YJ-93 hard in the chest. As a result he was ground stabilised and taken to separation.<sup>1624</sup> Despite the seriousness of the event, approaches taken by staff post-incident, particularly by Individual YJ-93 himself, demonstrated an appropriate response that resulted in positive behaviour change with Young Person A3.

Individual YJ-93 decided not to press criminal charges and proposed to undertake a 'teaching and coaching' approach with Young Person A3 as a means to help him understand what happened, so that he may learn from the experience and may think about better options when reacting to directions in the future.<sup>1625</sup> He was reported as anxious and stressed regarding upcoming court matters where he would be dealt with as an adult for the first time.<sup>1626</sup> Individual YJ-93 approached Young Person A3 and informed him that he would not be pressing charges and that he was willing to help Young Person A3 address his actions and move forward.<sup>1627</sup> During this discussion initiated by Individual YJ-93 Young Person A3 reportedly started to cry and acknowledged that he should have followed the direction to move to his room. The relationship with Individual YJ-93 was noted as being repaired with this extremely positive outcome. Young Person A3's behaviour directly after this intervention demonstrated immediate positive behaviour change with Young Person A3 subsequently volunteering to scrub out his room, as there was a lot of blood smeared

<sup>1621</sup> Young Person A3, *Behavioural Development Plan, 25 August 2012, Version 1*, edocs 3443275; Young Person A3, DCOIS Record of separation ID 2976, p 1, edocs 3443276.

<sup>1622</sup> Young Person A3, *Behavioural Development Plan, 25 August 2012, Version 1*, edocs 3443275; Young Person A3, DCOIS Record of separation ID 2976, p 1, edocs 3443276.

<sup>1623</sup> Young Person A3, *Behavioural Development Plan, 25 August 2012, Version 1*, edocs 3443275; Young Person A3, DCOIS Record of separation ID 2976, p 1, edocs 3443276.

<sup>1624</sup> Young Person A3, *Behavioural Development Plan, 25 August 2012, Version 1*, edocs 3443275; Young Person A3, DCOIS Record of separation ID 2976, edocs 3443276.

<sup>1625</sup> Young Person A3, *Behavioural Development Plan, 25 August 2012, Version 3*, edocs 3443274.

<sup>1626</sup> Young Person A3, *Behavioural Development Plan, 25 August 2012, Version 3*, p 5, edocs 3443274.

<sup>1627</sup> Young Person A3, *Behavioural Development Plan, 25 August 2012, Version 3*, pp 4–5, edocs 3443274.



on the walls from the previous day<sup>1628</sup> where he had been punching and head-butting the walls (and he had subsequently reopened his wounds).<sup>1629</sup>

The positive and proactive approach taken by Individual YJ-93 and the immediate positive behaviour change in Young Person A3 resulted in his reintegration with other young people within one day<sup>1630</sup> and closure of this BDP within three days<sup>1631</sup> – the shortest for Young Person A3 in his 22-month final period of detention.

The positive response taken by Individual YJ-93 possibly resulted in the prevention of further escalating behaviours and self-harm that have characterised Young Person A3's other periods on BDPs. In addition, a concerted effort appears to have been made during the short period of the BDP to understand the causes of Young Person A3's behaviours and to work with a multi-disciplinary team,<sup>1632</sup> the result being that he was able to respond with positive behaviour change in a short timeframe and to direct further case work.

The Review considers that this case study is an excellent example of how BDPs and a relationship between a staff member and a young person can ensure that behaviour issues are dealt with in a constructive way that addresses misbehaviour with a mutually beneficial outcome.

Without sufficient tailoring of BDPs however, BDPs only amount in practice to a punitive response to any misbehaviour, which fails to address the underlying causes of misbehaviour.

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#### CONTENT INCLUDED IN A BDP

The BDP must outline:

1. the purpose for the BDP, outlining the incident and what is trying to be achieved. The Operations Manual listed three examples for the purpose of the BDP:
  - *stabilise the young person's behaviour while minimising safety risks to other young people in his section and staff*
  - *encourage the young person to reflect on his misbehaviour and the impacts it has had on others (including both the psychological and physical)*
  - *assist the young person develop appropriate strategies and skills to manage aggressive outbursts.*<sup>1633</sup>
2. the actions taken in response to the incident and post-incident actions to resolve the situation, including actions the young person has agreed to such as

<sup>1628</sup> DCOIS Incident/Behaviour Report, No. 1098791, edocs 3446598.

<sup>1629</sup> Young Person A3, Behavioural Development Plan, 25 August 2012, Version 2, p 5, edocs 3443274.

<sup>1630</sup> Young Person A3, Behavioural Development Plan, 25 August 2012, Version 2, edocs 3443274.

<sup>1631</sup> Young Person A3, Behavioural Development Plan, 25 August 2012, Version 3, edocs 3443274.

<sup>1632</sup> Young Person A3, Behavioural Development Plan, 25 August 2012, Version 3, edocs 3443274.

<sup>1633</sup> Youth Detention Centre Operations Manual, chapter 1 v 1.3, s2.7.1.1; Youth Justice, Department of Justice and Attorney-General, Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People, v 1.2, 22 June 2015, section 2.7.1.1, edocs 3447313.



apologising, mediation, restorative justice, incentive scheme restrictions or agreement to attend counselling or programs;<sup>1634</sup>

3. describe the risks, such as risk factors, management strategies and changes to section routine as a result of the risk factors, such as how programs and reading materials will be accessed if the young person is unable to attend structured day activities, how the young person will access their case worker, phone calls and visits, meal restrictions (including hot liquid restrictions) and, if separation is part of the BDP, time out of the separation room and recreation time.<sup>1635</sup>

Previously, the *Operations Manual* stated that a BDP must outline the following:<sup>1636</sup>

- interventions that will address that individual's behaviour including counselling, programs;
- the duration of the plan;
- the daily living schedule, including section based chores;
- activities in which the young person may participate (e.g. access to tooled programs); and
- community contact guidelines (e.g. additional contact with support people or additional/special arrangements for visits).

The interim BDPs relevantly contained conditions as follows:<sup>1637</sup>

- provisions dealing with separation and prohibiting the young people from interacting with other young people as far as possible<sup>1638</sup> as outlined elsewhere in this chapter;<sup>1639</sup>
- a limitation on items in the young person's cell, including bedding<sup>1640</sup> and personal items.<sup>1641</sup> During the first phase, the cell was limited to basic entitlements, including a mattress, one set of bedding, one change of clothes and curtains. The need to remove all other items was said to be necessary because, "YP has shown that she is a risk to staff and other YP in the centre by her refusal to follow basic directions and incite peers to participate in negative behaviours.";

<sup>1634</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s2.7.1.1; Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, section 2.7.1.1, edocs 3447313.

<sup>1635</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s2.7.1.1; Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, section 2.7.1.1, edocs 3447313.

<sup>1636</sup> *Youth Detention Centre Operations Manual*, Chapter 9: *Behaviour Development*, p 5, edocs 3447736.

<sup>1637</sup> Behaviour Development Plan for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; Behaviour Development Plan for Young Person A5 number 4092530, version 1, p 2, edocs 3442883 and Behaviour Development Plan for Young Person A6 number 40952557, version 1, p 2, edocs 3443087.

<sup>1638</sup> See text accompanying footnote 1587.

<sup>1639</sup> See text accompanying under the

Isolation, separation heading.

<sup>1640</sup> See text accompanying footnote 1593.

<sup>1641</sup> See text accompanying footnote 1591 and 1592.



- apparent restrictions on the ability to make phone calls – YP may access phone in Young Person section while being supervised by a staff member, and is able to use her PIN. Phone calls are to be logged on the BDP shift notes;<sup>1642</sup>
- apparent restrictions on the access to correspondence, as correspondence could only be accessed in the kitchen area;<sup>1643</sup>
- restrictions on access to educational material<sup>1644</sup> and programs<sup>1645</sup> as outlined elsewhere in this chapter.<sup>1646</sup>

The regulation in force at the time of this incident provided that the chief executive must not use any of the following as a form of discipline for misbehaviour:<sup>1647</sup>

- corporal punishment or physical contact;
- an act involving humiliation or physical, emotional or sustained verbal abuse;
- depriving the child of food, visitors or sleep;
- withholding letters, other mail, telephone or other communication;
- excluding a young person from cultural, educational or vocational programs or medication or deprivation of medication.

Further, the regulation provided that a child had the right to make and receive telephone calls at all reasonable times, and to speak to the person without being overheard.<sup>1648</sup> The regulation also provided a restriction on access to phone calls by stating the chief executive may require a detention centre employee and employee to listen to the conversation and terminate it on reasonable grounds if the chief executive considered on reasonable grounds that there would be information disclosed that was, or was likely to be, detrimental to the good order and management of the centre.<sup>1649</sup>

Further, the regulation also provided that a child in a detention centre had the right to send and receive letters and other mail,<sup>1650</sup> subject to the powers to examine and withhold, delete or return mail if it disclosed information or contained property that was, or was likely to be, detrimental to the good order and management of the centre.<sup>1651</sup>

The relevant policy provided that misbehaviour was to be addressed appropriately and consistently and that discipline would occur without revoking the fundamental rights of young people.<sup>1652</sup> The fundamental rights of young people were defined in the

<sup>1642</sup> See text accompanying footnote 1602.

<sup>1643</sup> See text accompanying footnote 1595.

<sup>1644</sup> See text accompanying footnote 1597.

<sup>1645</sup> See text accompanying footnote 1596.

<sup>1646</sup> See text accompanying under heading "Restricting access to education" below.

<sup>1647</sup> *Youth Justice Regulation 2003* s 17(4) (see the version current as at 28 October 2015).

<sup>1648</sup> *Youth Justice Regulation 2003* s 30(1) and (2) (as at 1 July 2014).

<sup>1649</sup> *Youth Justice Regulation 2003* s 30(3) (as at 1 July 2014).

<sup>1650</sup> *Youth Justice Regulation 2003* s 31(1) (as at 1 July 2014).

<sup>1651</sup> *Youth Justice Regulation 2003* s 31(2) and (3) (as at 1 July 2014).

<sup>1652</sup> *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, p 2, edocs 3447110; *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, s 2.1; *YD-1-2 Youth Detention – Behaviour Development*, v 1.0 dated 23 September 2013, p 2, edocs 3447386.



policy as entitlements that were said to ensure a young person's physical and mental wellbeing as follows:<sup>1653</sup>

- clothing and hygiene items;
- items of personal significance that were safe within a youth detention centre environment;
- stable accommodation;
- regular meals, and access to food and drink outside the regular meal times;
- recreation time;
- visits;
- cultural and religious needs;
- complaints mechanisms; and
- medical care.

The Review finds that the BDPs operated as a punishment with an emphasis on depriving young people of entitlements and privileges. Further, the Review finds that, in addition to a number of other conditions of the BDPs addressed elsewhere, a number of the terms of the BDPs of the three young people deprived the young people of fundamental and legal rights and also breached the Youth Justice Principles, including:

- conditions that appeared to restrict access to the telephone by providing the detention centre staff with discretion to allow or not allow the young person to call someone;
- removing all personal items from the young person's room;
- restrictions on access to correspondence;
- restrictions on access to educational programs and cultural programs.

The Review considers that these conditions were inconsistent with the relevant legislation or the policy.

The State has submitted that the Chief Executive's responsibility for maintaining security and order in a centre is a sufficient authorisation, and the specific restrictions in the Regulation do not limit that responsibility.<sup>1654</sup> Further, that there is a necessary restriction on a young person's rights and freedoms that flows from the fact of the detention. Such matters, are submitted to be, subject to the Chief Executive's responsibility for maintaining order in a youth detention centre.<sup>1655</sup>

This submission has been addressed elsewhere in this report.

<sup>1653</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.1, p 8, edocs 3447110; YD-1-2 Youth Detention – Behaviour Development, v 1.0 dated 23 September 2013, p 7, edocs 3447386.

<sup>1654</sup> Submissions on behalf of the State of Queensland – Chapter 4 – Behaviour Development and Behaviour Development Plans, dated 10 December 2016, para 15, edocs 3554162.

<sup>1655</sup> Submissions on behalf of the State of Queensland – Chapter 4 – Behaviour Development and Behaviour Development Plans, dated 10 December 2016, paras 9,33 and 34, edocs 3554162.



## ISOLATION, SEPARATION AND INTERMITTENT SEPARATION

It is common in the incidents considered by the Review to have extensive separation to be authorised in respect of the young person the subject of the BDP. As shown above, many of the BDPs under consideration in the review required that the young people be confined in their room. Such confinement amounted to separation that required approval in at least three of the cases.<sup>1656</sup>

Separation is only authorised if it is pursuant to the regulation and the policies. Currently, the *Youth Justice Regulation 2016* states a detention centre employee may separate a child in a locked room in a detention only if the child is ill, the child requests to be separated, for routine security purposes under a direction issued by the chief executive, protecting the child, another person or property, or to restore order in the detention centre.<sup>1657</sup> If the child is separated in a locked room at the request of the child, the child must be allowed to leave the room immediately if the child asks to do so.<sup>1658</sup> If a child is detained to protect the child, another person or property or to restore order in the detention centre, the detention centre employee must not separate a child for more than two hours without the approval of the detention centre's executive director, for more than 12 hours without informing the chief executive, or for more than 24 hours without the approval of the chief executive.<sup>1659</sup> with approval required from the chief executive for each subsequent 24-hour period.<sup>1660</sup>

The Policy states an example where the continued use of separation may be used as follows:

*For example, the continued use of separation may be used when managing an extremely violent young person or two or more young people who cannot interact (because of their violent behaviours towards each other) and when it is not possible to locate them in separate accommodation units. Given the nature of the youth detention environment, there will be instances where a young person poses an ongoing threat to (harm) other people even after an immediate response has been actioned to resolve the incident. The continued use of separation in this instance effectively keeps people safe while still providing the young person the opportunity to participate in section activities and programs.<sup>1661</sup>*

Continued separation may be used in accordance with a policy as part of a Behaviour Development Plan if there is a risk that a child, another person or property is to be

<sup>1656</sup> See the email from Individual YJ-25 to Individual YJ-53 dated 25 August 2015; email from Individual YJ-85 to Individual YJ-25 dated 26 August 2015, edocs 3528682; email from Individual YJ-25 to Individual YJ-43, Individual YJ-45, Individual YJ-71, Individual YJ-70, Individual YJ-35 dated 27 August 2015, p 1, edocs 3528688.

<sup>1657</sup> *Youth Justice Regulation 2016* s 21(1). See also *Youth Justice Regulation 2003* s 22(1).

<sup>1658</sup> *Youth Justice Regulation 2016* s 21(5). See also *Youth Justice Regulation 2003* s 22(4).

<sup>1659</sup> *Youth Justice Regulation 2016* s 21(2). See also *Youth Justice Regulation 2003* s 22(2).

<sup>1660</sup> *Youth Justice Regulation 2016* s 21(3).

<sup>1661</sup> YD-3-8 Use of Separation Policy (v1.1, date of operation 24 June 2015) para 3.2.



protected from the child or there is a risk that order in a detention centre would not be maintained.<sup>1662</sup>

In April 2011 a superseded version of the Operations Manual outlined that young people in detention must be allowed out of their room for a minimum period of 12 hours during the structured day unless (relevantly)<sup>1663</sup>:

- they are under authorised conditions of separation
- Behaviour Development Plans approved by the Unit Manager recommend young people stay in their rooms for the safety of others.

Separation is defined as the separation of a child in a locked room<sup>1664</sup> and 'separate' means to separate a child from all other children in the detention centre.<sup>1665</sup>

#### PLANNED SEPARATION

A prior version of the relevant policy stated that separation that alternates a young person between a locked room to a common area (a planned separation) must be:

- for a reason mentioned in section 21(1)(d) and (e) of the *Youth Justice Regulation 2003*; and
- authorised under a BDP.<sup>1666</sup>

A planned separation may be used, for example, with an extremely violent young person or when two or more young people cannot interact because they are violent toward each other and they could not be located in separate units.<sup>1667</sup>

A superseded policy states that time that is spent outside of a locked room under planned separation is to be considered as still part of the separation and therefore must be the subject of approval.<sup>1668</sup> Similarly, the current policy states that separation continues for as long as the separation is active, and time spent external to a locked room will still count towards separation.<sup>1669</sup> Rotational separation is prohibited.<sup>1670</sup>

The State submits that separation may be authorised even if it is not in accordance with the specific provisions of the Regulation. The Review notes that, unlike the *Corrective Services Act 2006*, separation is only dealt with in the *Youth Justice Regulation 2016* and not in the Act. The State has further submitted that, "the Regulation cannot be construed as cutting down the Chief Executive's responsibility for maintaining security and order in a centre and, arguably, a Regulation could not

<sup>1662</sup> YD-3-8 Use of Separation Policy (v1.1, date of operation 24 June 2015).

<sup>1663</sup> Youth Detention Centre Operations Manual, Chapter 14, *The structured day*, p 4, edocs 3447731.

<sup>1664</sup> *Youth Justice Regulation 2013*, s 22 (version as at 13 May 2011, reprint No. 2B); *Youth Justice Regulation 2013*, s 22 (version as at 01 January 2013, reprint No. 2C).

<sup>1665</sup> *Youth Justice Regulation 2013*, schedule 2 Dictionary.

<sup>1666</sup> YD-3-8 *Youth Detention – Use of Separation in Response to an Incident* (February 2013) p 3, which is attached as exhibit SH-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 400, edocs 3439519.

<sup>1667</sup> YD-3-8 *Youth Detention – Use of Separation in Response to an Incident* (February 2013) p 3, which is attached as exhibit SH-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 400, edocs 3439519.

<sup>1668</sup> YD-3-8 *Youth Detention – Use of Separation in Response to an Incident* (February 2013) p 3, which is attached as exhibit SH-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 400, edocs 3439519.

<sup>1669</sup> YD-3-8 *Policy Use of separation in response to an incident*, version 1.1 dated 24 June 2015, paras 4.1 and 4.3.

<sup>1670</sup> YD-3-8 *Youth Detention – Use of Separation in Response to an Incident* (February 2013) p 4, which is attached as exhibit SH-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 401, edocs 3439519.



lawfully be made with that effect; such a restriction on the Chief Executive's responsibility could only be made in the Act itself."<sup>1671</sup>

The State has also submitted that the Youth Justice Principles do not confer absolute rights and cannot be construed as cutting down the Chief Executive's responsibility for maintaining security and order in a centre.<sup>1672</sup> Section 263 provides that:

**263 Management of detention centres**

*(7) Subject to this Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres.*

*(8) The chief executive may carry out the responsibilities mentioned in subsection (1) by using any convenient form of direction, for example, rules, directions, codes, standards and guidelines relating to—*

*(f) detention centre organisation; or*

*(g) functions, conduct and responsibilities of detention centre employees;  
or*

*(h) types of programs for children detained in a detention centre; or*

*(i) contact between children detained in the detention centre and members of the public; or*

*(j) arrangements for educational, recreational and social activities of children detained in detention centres.*

*(9) In relation to each detention centre, the chief executive is responsible for—*

*(e) providing services that promote the health and wellbeing of children detained at the centre; and*

*(f) promoting the social, cultural and educational development of children detained at the centre; and*

*(g) maintaining discipline and good order in the centre; and*

*(h) maintaining the security and management of the centre.*

*(10) The chief executive must monitor the operation of the detention centres and inspect each detention centre at least once every 3 months.*

*(11) Also, as far as reasonably practicable, the chief executive must ensure principles 3, 15, 19 and 20 of the youth justice principles are complied with in relation to each child detained in a detention centre.*

*(12) Subsection (5) does not limit another provision of this Act.*

<sup>1671</sup> Submissions on behalf of the State of Queensland – Chapter 4 – Behaviour Development and Behaviour Development Plans, dated 10 December 2016, para 15, edocs 3554162.

<sup>1672</sup> Submissions on behalf of the State of Queensland – Chapter 4 – Behaviour Development and Behaviour Development Plans, dated 10 December 2016, paras 35 and 36, edocs 3554162.



The Review considers that it is unnecessary to form a final view as to the State's position in respect of the overarching power of the Chief Executive. However, the Review notes the following:

- subsection (1) provides for the chief executive's general responsibility for the security and management of detention centres, and states that the power is 'subject to this Act';
- subsection (2) provides for, among other things, guidelines, standards and directions that allows the chief executive to carry out the responsibilities mentioned in subsection (1);
- subsection (5) currently specifically requires that the chief executive ensure youth justice principles 3, 15, 19 and 20 are complied with as far as reasonably practicable;
- subsection (6) provides that subsection (5) does not limit another provision of the Act.

**Comment:** The Review considers if that position submitted by the State is correct, then all provisions currently contained in the *Youth Justice Regulation 2016*, which both empower and protect, such as, separation, restraint, search, use of force, management of behaviour and discipline, ought to be transferred into the Act to ensure that the Chief Executive's overarching power is subject to parliamentary oversight and legislative restriction.

### CONCLUSION

In the time provided the Review has not been able to definitively consider whether in each case the separation under a BDP was authorised by legislation and policy (although that has been done in relation to the pool incident<sup>1673</sup>).

However the Review considers that it is unlikely that in each case it was appropriate to create a BDP authorising continuous separation of the young people the subject of the BDPs, particularly in light of the apparent copying and pasting of many of the conditions placed on the BDPs from one BDP to the next, without particularisation of the conditions in relation to the nature of the misbehaviour.

The Review considers the continual use of separation is concerning. Continuous separation should not be a standard condition on a BDP, and should only be used in relation to a BDP where it can clearly be justified in accordance with the relevant legislation and policies. Evidence should be provided that sufficiently justifies the separation in the DCOIS record in order to allow appropriate review of the imposition of continuous separation.

The Review draws comfort from the State submitting that it does not endorse separation as a standing condition of a BDP.<sup>1674</sup>

<sup>1673</sup> See chapter 21.

<sup>1674</sup> Submissions on behalf of the State of Queensland – Chapter 4 - Behaviour Development and Behaviour Development Plans, dated 10 December 2016, para 19, edocs 3554162.



**Recommendation 12.R4** – The Review recommends that the imposition of periods of separation or isolation should not be a default condition on a BDP.

Staff should ensure that any decision to impose separation is in accordance with the law and policies and supported by evidence showing how the requirements of both are satisfied for each separation.

## RESTRICTING ACCESS TO EDUCATION

The BDPs prohibited each young person from attending 'EQ' (i.e. Education Queensland schooling).<sup>1675</sup> The young people were to be offered educational activities, but these were only to be undertaken while in the kitchen area of the unit and the young people could only have writing implements in the common area.<sup>1676</sup>

The Review did not find any document that indicated that school work was being provided to Young Person A5, Young Person A7 and Young Person A6 while they were on their BDPs immediately after the pool incident. There are indications in documents provided to the Review that, in fact, children do not receive their education material. For example, Young Person A7 indicated that while on the BDP she wanted to return to programs as she missed attending school.<sup>1677</sup> Indeed, during the site visits information from school staff was that school work is, at times, provided to youth workers for young people when they are confined to their unit. However, there is no formal mechanism for recording or tracking what school work was provided and to whom. Nor is there any record of whether or not such school work was completed by the young person or, if not completed, what the reason for that non-completion might be.

Individual YJ-48 stated it was common for a BDP to include a requirement that a young person be prevented from attending education and structured day activities,<sup>1678</sup> but it is a usual practice that the young person be provided with school work when they are on their BDP.<sup>1679</sup> Individual YJ-48 said that educational staff would receive a copy of review comments and would make sure that educational material was provided to the young person.<sup>1680</sup> Individual YJ-48 stated that it was the responsibility of the SHACC to ensure educational material was provided to a young person while they are in their unit.<sup>1681</sup>

## EDUCATION FOR YOUNG PEOPLE UNDER 17

The chief executive is required to ensure that, relevantly, Youth Justice principle 20 was complied with in relation to each young person detained in the centre.<sup>1682</sup> Youth Justice principle 20(g) states that children should have access to education

<sup>1675</sup> See footnote 1596.

<sup>1676</sup> See footnote 1597.

<sup>1677</sup> Behaviour Development Plan for Young Person A7 number 4099222, version 3 dated 28 August 2015, p 4, edocs 3442842.

<sup>1678</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, para 116, edocs 3531533.

<sup>1679</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, paras 117 and 118, edocs 3531533.

<sup>1680</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, para 120, edocs 3531533.

<sup>1681</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, para 120, edocs 3531533.

<sup>1682</sup> Youth Justice Act 1992, s 263(5).



appropriate to the child's age and development.<sup>1683</sup> As stated above, a condition was placed on the BDPs of a number of young people the subject of the Review's terms of the reference with the effect of restricting access to education.

The chief executive or delegate was required to keep details regarding any report of, and any investigation into, whether harm or suspected harm was caused to a child in the youth detention centre or a contravention, or claimed contravention, of youth justice principle 3, 15, 19 or 20.<sup>1684</sup> The chief executive was also required to give the Public Guardian a report on a regular basis about the information, if requested, pursuant to the *Public Guardian Act 2014*.<sup>1685</sup>

As noted above, the State submits that the youth justice principles and regulation cannot cut down the general power of the chief executive to maintain security and order in a centre.

The BDP prevented these young people from attending school (or, in the case of [the 16 year old], an eligible option).

The submissions on behalf of the State acknowledged that education and programming should be provided to young people "in section" and that education should not be restricted as a prescriptive condition of a BDP.<sup>1686</sup>

The failure to provide access to education (whether through attending the onsite school program or by the provision of educational material to the young people while on separation) was a breach of the obligation to provide each child with access to education. Each of the BDPs provided that the educational activities provided were to be done in the kitchen area of the section.<sup>1687</sup> There is no evidence from the BDPs that any educational materials were in fact provided or completed in the kitchen. The Review has received evidence of informal and incomplete records from the State attached to their submissions stating that:

- on 8 separate days between 3 February 2014 and 16 July 2015, young person A4 was provided with an education pack; and
- on 4 March 2015, Young Persons A5 and A6 were provided with an education pack.<sup>1688</sup>

In relation to the dates provided above, the Review notes that Young Person A5 and A6 were not on a BDP in relation to the pool incident.

It has been accepted on behalf of the State that these records are not complete and are not retained in any formal way.<sup>1689</sup> It has also been acknowledge that there is no

<sup>1683</sup> Youth Justice Act 1992, schedule 1.

<sup>1684</sup> Youth Justice Act 1992, s 303; Youth Justice Regulation 2003 s 36(1).

<sup>1685</sup> Youth Justice Regulation 2003, s 37(2).

<sup>1686</sup> Submissions on behalf of the State of Queensland – Chapter 4 - Behaviour Development and Behaviour Development Plans, dated 10 December 2016, para 52, edocs 3554162.

<sup>1687</sup> See, for example, Behaviour Development Plan for Young Person A5 number 40952953, version 1, p 2, edocs 3442883 and Behaviour Development Plan for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843.

<sup>1688</sup> Submissions on behalf of the State of Queensland – Chapter 4 - Behaviour Development and Behaviour Development Plans, dated 10 December 2016, paras 56 and 57, edocs 3554162.

<sup>1689</sup> Submissions on behalf of the State of Queensland – Chapter 4 - Behaviour Development and Behaviour Development Plans, dated 10 December 2016, para 58, edocs 3554162.



formal record of school work being provided or the reasons why the work is not completed.<sup>1690</sup>

The Review has received an email from staff of CYDC to EQ staff stating that persons on BDPs did not receive any education work to complete.<sup>1691</sup> However it is unclear whether these types of emails were sent regularly or if they were a part of a concerted effort to ensure young people on BDPs were provided with education.

**Finding 12.F1** – As a result of BDP conditions young people were prevented from attending school or similar.

**Finding 12.F2** – In the absence of a lawful excuse or authorisation BDPs preventing access to education as a disciplinary mechanism for misbehaviour were not authorised.

**Finding 12.F3** – Educational material was not always provided to young people on a school day.

**Recommendation 12.R5** – The Review recommends that the chief executive or delegate should ensure that each young person at a youth detention centre has access to education appropriate to the child's age and must ensure that adequate training is provided to detention centre staff about their legal obligations to ensure a child receives education material in accordance with Youth Justice principle 20(g).

**Recommendation 12.R6** – The Review recommends that the Chief Executive should formulate a system with the Chief Executive (Education) and the Inspectorate to ensure that the educational facility and programs at the youth detention centres are informed of the absence of a young person, the reason for the absence and the lawful authority justifying the absence. The Review considers that the Inspectorate should remain aware of the statistics about the failure to attend educational classes and programs. Such a system should have the following features:

7. detention centre staff in a unit must notify the educational institution that a young person from the unit is unable to attend the educational institution. The notice must be in writing and must state the lawful reason why the child is not attending the educational institution and be delivered to the school principal or delegate.
8. Any child unable to attend the educational classes or programs must be delivered suitable educational materials for completion during their absence from the educational classes or programs.
9. that material is to be delivered to the person in charge of the child's unit.
10. the Principal or delegate of the educational institution must:
  - a. inform the teacher or instructor of the young person's absence; and
  - b. ensure that the young person who does not attend classes is provided with educational material that can be completed in the unit; and
  - c. ensure that a written record is kept on One School for each school day stating the name of each young person who was absent from school classes or programs,

<sup>1690</sup> Submissions on behalf of the State of Queensland – Chapter 4 - Behaviour Development and Behaviour Development Plans, dated 10 December 2016, para 56, edocs 3554162.

<sup>1691</sup> Email from THHS-11 to Individual EQ-1 et al dated 6 February 2013, edocs 3538110.



- where the child was when they were absent, and what educational work was provided for the young person to complete; and
- d. record whether the educational work was completed or record an explanation as to why the educational work was not completed.
11. the principal or delegate must ensure that the written record of all educational classes or programs absences is provided to the Inspectorate each quarter to ensure that the information is included in the Inspectorate's Quarterly reports.

the Inspectorate must liaise with Education Queensland to identify any concerning trends in the provision of education within detention centres and include any concerns and recommendations in the Inspectorate's quarterly reports.

#### EDUCATION FOR YOUNG PEOPLE OVER 17

There are some young people who are currently 17 and are in youth detention centres. As a result of the passage of the *Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Act 2016*, 17-year-olds will be placed into youth detention. No statutory requirement applies to 17-year-olds requiring them to be attending school or an eligible option under the *Education (General Provisions) Act 2006*.<sup>1692</sup> However, the chief executive of the department administering the *Youth Justice Act 1992* is required to ensure that youth justice principle 20(g) is complied with in relation to each child detained in the centre, which states that children should have access to education appropriate to the child's age and development.<sup>1693</sup> The regulation that was in force throughout the time that Young Person A3 was in CYDC relevantly provided that the chief executive must not use exclusion from cultural, educational or vocational programs, or medication or deprivation of medication, as a form of discipline for misbehaviour.<sup>1694</sup>

In addition to the chief executive's statutory obligations, there are obvious benefits for young people detained in youth detention to have access to education and eligible options. For example, while [redacted] and as a result [redacted] was no longer obliged to attend education, [redacted] was enrolled in [redacted] and was likely to benefit from additional education if that was able to be provided to him.

As the Review has been informed many of the young people in YD have disengaged or excluded from school, any opportunity to avail themselves of that should be supported by youth justice.

<sup>1692</sup> See, for example, the *Education (General Provisions) Act 2006*, s 176(1).

<sup>1693</sup> *Youth Justice Act 1992*, s 263(5) and schedule 1.

<sup>1694</sup> *Youth Justice Regulation 2003*, s 17(4).



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## CHAPTER 14 YOUNG PERSON A1

### INTRODUCTION

This incident was reported in *The Courier Mail* on 30 August 2016 and is one of the specific incidents referred for review by the *Commission of Inquiry Order (No 1) 2016*.

Young Person A1 is an Indigenous man<sup>1702</sup> who was incarcerated at the Youthful Offenders Unit at Brisbane Correctional Centre when he was 17 years old. The YOU is a dedicated unit within the BCC specifically designed to accommodate 17-year-old prisoners.<sup>1703</sup> The YOU is situated in an area within BCC.<sup>1704</sup>

On 13 February 2013 while Young Person A1 was at the YOU at the BCC Young Person A1 was secured in a body belt<sup>1710</sup>, handcuffs and a head covering identified as a head protector.<sup>1711 1712</sup> Individual QCS 5 recorded in the Integrated Offender Management System that Young Person A1 was secured in a body belt because he continually pressed the intercom button "without reason".<sup>1713</sup> Prior to the incident Young Person A1 complained that he required more toilet paper as he did not

<sup>1702</sup> Affidavit of Individual QCS 1 sworn 28 September 2016, exhibit Individual QCS 1-4, p 53, edocs 3491336; Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre (2016)* p 3, edocs 3458671.

<sup>1703</sup> Affidavit of Individual QCS 1 sworn 28 September 2016, para 9, edocs 3491336.

<sup>1710</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn 28 September 2016, p 42, edocs 3437664.

<sup>1711</sup> While not reported in the IOMS entry, Young Person A1 was also placed in a head covering, which *The Courier Mail* described as a 'spit mask' while the Prisoners' Legal Service described the head covering as a 'face mask' but which was described in a memorandum from Individual ESU 1 as a 'head protector to prevent injury to Prisoner Young Person A1's face whilst he was restrained': David Murray, 'Footage from inside Brisbane prison shows teen confronted by seven prison officers and put in spit mask', *The Courier Mail* (online), 30 August 2016 <<http://www.couriermail.com.au/news/queensland/footage-from-inside-brisbane-prison-shows-teen-confronted-by-seven-police-and-put-in-spit-mask/news-story/36723715c6226a32f5443177713b6967>>; Exhibit Individual QCS 2-11 to the affidavit of Individual QCS 2 sworn on 29 September 2016, p 364, edocs 3438812; para 49 of attachment 2 to the letter from the Prisoners' Legal Service Inc. to Individual EST 1 from the EST dated 24 September 2013, which forms part of file CMS22379, edocs 3457724.

<sup>1712</sup> Affidavit of Individual QCS 1 sworn 28 September 2016, para 20, edocs 3437664; Affidavit of Individual QCS 3 sworn 27 October 2016, para 16, edocs 3488259.

<sup>1713</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn 28 September 2016, p 42, edocs 3437664.



have enough<sup>1714</sup> (presumably this request was communicated via the intercom system although that is not specifically stated). Individual QCS 5 indicated that he thought Young Person A1 was given “ample amounts” of toilet paper.<sup>1715</sup> Individual QCS 5 indicated in the IOMS entry that Young Person A1

No CCTV

footage of that conduct has been provided to the Review. Young Person A1 was placed in the body belt at 2:20pm. Individual QCS 7 observed Young Person and the body belt and mask were removed at 3:30pm.<sup>1718</sup>

The incident was the subject of a number of reviews in the following year in which no action was taken as a result of the incident.<sup>1719</sup> The incident was also the subject of a police report that was subsequently withdrawn by Young Person A1.<sup>1720</sup> However, as a result of the media coverage the Office of the Chief Inspector investigated the incident<sup>1721</sup> and considered that the revocation of the privilege restrictions in Young Person A1’s case, “were not fair, just and reasonable”<sup>1722</sup> and that placing Young Person A1 in a head, face protector and body belt during the 13 February 2013 incident “does not appear to be fair, just and reasonable”.<sup>1723</sup>

In conducting the review of this 13 February 2013 incident, the use of the BMPs and IMPs and the complaints and oversight mechanisms, regard has been had to:

<sup>1714</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn 28 September 2016, p 42, edocs 3437664.

<sup>1715</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn 28 September 2016, p 43, edocs 3437664.

<sup>1716</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn 28 September 2016, pp 41-42, edocs 3437664.

<sup>1717</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn 28 September 2016, p 42, edocs 3437664.

<sup>1719</sup> Investigations by Ethical Standards Team, Department of Community Safety (see e.g. Affidavit of Individual EST 1 sworn on 20 October 2016, edocs 3478412); Ethical Standards Unit, Department of Justice and Attorney-General (see e.g. Affidavit of Individual ESU 1 sworn on 17 October 2016, edocs 3473091); investigations by Corrective Services Investigation Unit, Queensland Police Service (see e.g. Affidavit of Individual CSIU 3 sworn on 26 October 2016, edocs 3488256); investigation by CCYPCG (see e.g. Affidavit of Individual OPG 1 sworn on 18 November 2016, edocs 3522085).

<sup>1720</sup> Affidavit of Individual CSIU 2, sworn on 26 October 2016, para 10, edocs 3485408.

<sup>1721</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016) pp 3-4, edocs 3458671.

<sup>1722</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016) p 12, edocs 3458671.

<sup>1723</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016) p 14, edocs 3458671.



- affidavits (and exhibits) from staff employed by Queensland Corrective Services and the Department of Justice and Attorney-General, including corrective services officers involved in the incident;<sup>1724</sup>
- affidavits from Ethical Standards Team staff when Queensland Corrective Services was a part of the Department of Community Safety;<sup>1725</sup>
- affidavits from Ethical Standards Unit staff (Queensland Corrective Services is a part of the Department of Justice and Attorney-General);<sup>1726</sup>
- affidavits from police officers employed at the Corrective Services Investigation Unit, Queensland Police Service;<sup>1727</sup>
- an affidavit from the Office of the Public Guardian;<sup>1728</sup>
- documents from the former Commission for Children and Young People and Child Guardian (CCYPCG);<sup>1729</sup>
- CCTV footage of the incident;<sup>1730</sup>
- IOMS Offender Case File of Young Person A1;<sup>1731</sup>
- other documents relevant to the investigations and assessments;<sup>1732</sup>
- Office of the Chief Inspector reports;<sup>1733</sup>
- legislation including the *Corrective Services Act 2006* and *Corrective Services Regulation 2006*;
- Queensland Corrective Services policies;<sup>1734</sup>
- Queensland Corrective Services training material;<sup>1735</sup>

<sup>1724</sup> Affidavit of Individual QCS 3 sworn on 18 October 2016, edocs 3475200; affidavit of Individual QCS 15 sworn on 18 October 2016, edocs 3475205; affidavit of Individual QCS 6 sworn on 28 September 2016, edocs 3475201; affidavit of Individual QCS 3 sworn on 27 October 2016, edocs 3488259; affidavit of Individual QCS 7 sworn on 18 October 2016, edocs 3475199; affidavit of Individual QCS 16 sworn on 18 October 2016, edocs 3475203; affidavit of Individual QCS 5 sworn on 18 October 2016, edocs 3475203; affidavit of Individual QCS 2 sworn on 29 September 2016, edocs 3438812; affidavit of Individual QCS 1 sworn on 28 September 2016, edocs 3437664; affidavit of Individual QCS 1 sworn on 28 October 2016, para 24, edocs 3491336; affidavit of Individual QCS 8 sworn on 18 October 2016, edocs 3475202; Affidavit of Individual QCS 9 sworn on 18 October 2016, edocs 3475198.

<sup>1725</sup> Affidavit of Individual EST 1 sworn on 20 October 2016, edocs 3478412; Affidavit of Individual EST 2 sworn on 20 October 2016, paras 4 and 22, edocs 3478395.

<sup>1726</sup> Affidavit of Individual ESU 1 sworn on 17 October 2016, edocs 3473091; Affidavit of Individual ESU 3 sworn on 28 October 2016, edocs 3491313.

<sup>1727</sup> Affidavit of Individual CSIU 2 sworn on 26 October 2016, edocs 3485408; Affidavit of Individual CSIU 3 sworn on 26 October 2016, edocs 3488256.

<sup>1728</sup> Affidavit of Individual OPG 1 sworn on 18 November 2016, edocs 3522085.

<sup>1729</sup> Including, for example, Commission for Children and Young People and Child Guardian, *Issue Report: Emotional Harm to Young Person A1 due to Extended Confinement of Young Person in Isolation Unit*, Issue Number CG-1213041512, page 17, edocs 3475435; "Young Person A1 Response for CCYPCG" p 4, attached to an email from Individual QCS 21 to Individual CCYPCG 1, Commission for Children Young People and Child Guardian dated 30 January 2013, edocs 3440823.

<sup>1730</sup> CCTV footage, edocs 3437426; CCTV times as noted by the Review, edocs 3532306.

<sup>1731</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn on 28 September 2016, pp 19-52, edocs 3491336.

<sup>1732</sup> Including the letter from the Prisoners' Legal Service Inc. to Individual EST 1 from the EST dated 24 September 2013, which forms part of file CMS22379, edocs 3457724; CMC Outcome Advice for outcome Young Person A1 attached to email from Individual ESU 2 (Ethical Standards Unit) to <complaints@cmc.qld.gov.au> dated 20 January 2014, edocs 3459123; Memorandum from Individual CSIU 1 to ESU ref no 22379 dated 24 June 2014, p 1, para 5, edocs 3437508.

<sup>1733</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016), edocs 3458671; Office of the Chief Inspector, *Brisbane Correctional Centre – Management Practices in the Boys Unit*, April 2016, edocs 3458708; Office of the Chief Inspector, *Brisbane Correctional Centre Inspection Report 23<sup>rd</sup> – 27<sup>th</sup> February 2015*, edocs 3458698.

<sup>1734</sup> *Custodial Operations Practice Directive – Facility Security*, edocs 3440806; Queensland Corrective Services Appendix – Restraints Schedule, implementation date of 6 June 2013, which is attached to the email from Individual QCS 17 to Individual EST 2 dated 30 September 2013, edocs 3457761; Queensland Corrective Services' *Control & Restraint Manual*, September 2014, edocs 3493018; Queensland Corrective Services' *Control & Restraint Manual*, February 2010, edocs 3534650.

<sup>1735</sup> Training material provided in response to YDR-DJAG-DG-002, edocs 3489193; summarised in Review document, edocs 3481527.



- submissions provided to the Review, by stakeholders and staff, some of which have been published on the website;<sup>1736</sup> and
- submissions provided to the Review by the State and other parties in response to draft findings and recommendations.<sup>1737</sup>

#### USE OF BEHAVIOUR MANAGEMENT PLANS AND INTENSIVE MANAGEMENT PLANS FOR YOUNG PERSON A1

Prisoners housed within the YOU are subject to the Behaviour Management System.<sup>1738</sup> There are four different levels within the system' red, green, white, and gold.<sup>1739</sup> The prisoners are graded against desired behaviours and their grading determines their Behaviour Management System level.<sup>1740</sup> That level of the behaviour management system then determines the level of privileges available to the individual.<sup>1741</sup>

<sup>1736</sup> Submission on behalf of Individual QCS 4, dated 29 November 2016, edocs 3539940; Submission on behalf of Individual ESU 1, dated 1 December 2016, edocs 3540237; Submission on behalf of Individual EST 2, dated 28 November 2016, edocs 3536179; Submission on behalf of Individual QCS 8, dated 11 December 2016, edocs 3536182; Submission on behalf of Individual ESU 3, dated 28 November 2016, edocs 3535777; <https://www.youthdetentionreview.qld.gov.au/submissions> for publicly available submissions from community stakeholders.

<sup>1737</sup> Submission from the State of Queensland to the Review, Young Person A1 incident, 8 December 2016, edocs 3553996; Submission on behalf of Individual ESU 3 in relation to Draft Chapter (YP A1), edocs 3554067.

<sup>1738</sup> Affidavit of Individual QCS 1 sworn on 28 September 2016, exhibit Individual QCS 1-2, pp 11-12, edocs 3437664.

<sup>1739</sup> Affidavit of Individual QCS 1 sworn on 28 September 2016, exhibit Individual QCS 1-2, p 13, edocs 3437664.

<sup>1740</sup> Affidavit of Individual QCS 1 sworn on 28 September 2016, exhibit Individual QCS 1-2, pp 12-13, edocs 3437664.

<sup>1741</sup> Affidavit of Individual QCS 1 sworn on 28 September 2016, exhibit Individual QCS 1-2, pp 6-18, edocs 3437664.











It has been submitted on behalf of the State that apparently minor issues can escalate quickly in the prison environment.

<sup>1800</sup> Submission from the State of Queensland to the Review, Young Person A1 incident, 8 December 2016, para 176, edocs 3553996.





Young Person A1 was confined to his cell for at least 22 hours per day with no interaction and one weekly phone call for the vast majority of his period of incarceration in the YOU.



## SEPARATE CONFINEMENT

Separate confinement of a prisoner means that the prisoner is separated from other prisoners.<sup>1817</sup>

At all relevant times during Young Person A1's incarceration at the YOU (and also when this report was published)<sup>1818</sup>, separate confinement was permitted under the *Corrective Services Act 2006* only if the prisoner was:

- found to have committed a minor or major breach of discipline following proceedings for a breach of discipline.<sup>1819</sup> The separate confinement must be carried out in accordance with section 121 (Separate confinement) and cannot be for more than seven days;
- subject to a safety order. Such an order would be in place because there is a risk of the prisoner being harmed or harming another prisoner;<sup>1820</sup> or
- subject to a maximum security order.<sup>1821</sup>

At all relevant times during Young Person A1's incarceration (including when this report was published), the chief executive was relevantly required to ensure that a prisoner undergoing separate confinement:

- is given the same type of mattress, sheets, blankets and pillow as the prisoner would have received had the prisoner not been in separate confinement;<sup>1822</sup> and
- be given two hours exercise in fresh air per day.<sup>1823</sup>

The BCC practice was that separate confinement was to be approved by the authorised delegate, who is the Deputy General Manager or the General Manager.<sup>1824</sup>

<sup>1817</sup> *Corrective Services Act 2006* schedule 4, definition *separate confinement*.

<sup>1818</sup> Section 65B of the *Corrective Services Act 2006* was inserted on 27 November 2013 to allow for separate confinement of a prisoner if the prisoner was subject of a Criminal Organisation Segregation Order. The provision was inserted by the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*, which commenced on 27 November 2013.

<sup>1819</sup> *Corrective Services Act 2006* s 118(2)(c). The provision has never been amended.

<sup>1820</sup> *Corrective Services Act 2006* s 53. The provision was amended in 2009.

<sup>1821</sup> *Corrective Services Act 2006* s 60. The provision has never been amended.

<sup>1822</sup> *Corrective Services Regulation 2006*, s 5(b).

<sup>1823</sup> *Corrective Services Regulation 2006*, s 5(d).

<sup>1824</sup> Affidavit of Individual QCS 8 sworn on 18 October 2016, paras 39-42, edocs 3475202; Affidavit of Individual QCS 3 sworn on 27 October 2016, para 37, edocs 3488259.



The breach of discipline process under section 113 of the *Corrective Services Act 2006* is not used for young people imprisoned in the YOU at BCC.<sup>1825</sup> Instead the centre adopts a Behaviour Management System for 17-year-olds incarcerated at BCC,<sup>1826</sup> which is required to be designed to recognise individual needs and abilities, and takes into account physical ability, maturity, cultural and religious beliefs.<sup>1827</sup> It focuses on effective use of communication, promotes and reinforces appropriate behaviours, seeks to prevent and does not approve of inappropriate behaviour.<sup>1828</sup>

In September 2016 the Chief Inspector prepared the report *Individual Case Review Young Person A1*, which made the following comments about Young Person A1's separate confinement:

*...the unlawful practices deficits [in segregating on a plan] would have been in place during the period of Young Person A1's segregation conditions in the Youthful Offenders Unit.*

*Young Person A1 was subject to These results in periods of up to seven (7) days separate confinement for Young Person A1 whereby he was segregated in his accommodation cell for up to 23 hours a day (noting his statutory two (2) hours out of cell time as not always provided).<sup>1830</sup> (emphasis added)*

*The offender management responses during this period ( and the IMP) appear disproportionate to the behaviour and attitude recorded for this prisoner for this period of time.<sup>1831</sup> (emphasis added)*

*Further, the plans implemented and the conditions included in those plans appear to be generic, wholly punitive in nature and in some instances have the potential to result in significant sensory deprivation for this youthful*

<sup>1825</sup> Affidavit of Individual QCS 3 sworn on 27 October 2016, para 30, edocs 3488259.

<sup>1826</sup> Affidavit of Individual QCS 3 sworn on 27 October 2016, paras 30-31, edocs 3488259.

<sup>1827</sup> Affidavit of Individual QCS 1 sworn on 28 September 2016, exhibit Individual QCS 1-2, p 12, edocs 3437664.

<sup>1828</sup> Affidavit of Individual QCS 1 sworn on 28 September 2016, exhibit Individual QCS 1-2, p 12, edocs 3437664.

<sup>1830</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016) p 12, edocs 3458671.

<sup>1831</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016) p 12, edocs 3458671.



*offender (eg. no association for 7 days, no reading material except legal material for 7 days),<sup>1832</sup> (emphasis added)*

*...it is highly unlikely that an adolescent in this situation would demonstrate improvement. In fact, the case notes reflect that*

The policy *Custodial Operations Practice Directive – Risk Management* provided to the Review and dated 15 June 2015, reflected the legislation and provides in relation to IMPs:<sup>1834</sup>

*An IMP may be used to authorise a restriction out of cell access time for a prisoner placed in an accommodation unit. However, an IMP cannot be used to significantly restrict a prisoner's out of cell time, nor be used as a means of separate confinement, refer Facility Security Practice Directive.*

*A prisoner must not be subject to a significant restriction in relation to their out of cell hours or their ability to interact with other prisoners unless the prisoner is the subject of a maximum Security Order, a Safety Order, a Criminal Organisation Segregation Order or a Separate Confinement Order for breach of discipline.*

An earlier version of that directive in place at the time of the incident provided:

*An IMP may be used to authorise a restriction of out of cell access time for a prisoner placed in an accommodation unit, refer standard operating procedure – Unlock and Lock-away of Prisoners. Any restriction of out of out of cell time must not impact on the prisoners opportunity to exercise, in the fresh air, for at least 2 daylight hours a day, refer s.5(d) – Corrective Services Regulations 2006.<sup>1835</sup>*

The staff at BCC who were responsible for Young Person A1's separation under the IMP and BMP at BCC failed to have regard to the *Corrective Services Act 2006* which provided authority to separate a prisoner pursuant to a safety order,<sup>1836</sup> a maximum security order<sup>1837</sup> or consequences of breach of discipline<sup>1838</sup> but not otherwise.

<sup>1832</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016) p 12, edocs 3458671.

<sup>1834</sup> *Custodial Operations Practice Directive: Risk Management* (date of implementation 15 June 2015), pp 43-44, edocs 3440807.

<sup>1835</sup> *Intensive Management Plans, Custodial Operations – Standard Operating Procedures*, 7 August 2012, edocs 3537777.

<sup>1836</sup> *Corrective Services Act 2006*, s 53.

<sup>1837</sup> *Corrective Services Act 2006*, s 60.

<sup>1838</sup> *Corrective Services Act 2006*, s 118.



Although a policy may provide guidance for individuals, it cannot and does not overcome legislation.

**Finding 14.F1** – Young Person A1’s separate confinement in the time leading up to the incident of 13 February 2013, at the time of the incident, and subsequent to the incident was not authorised. The relevant policies and procedures in place at the time were not consistent with the legislation.

The Review acknowledges and accepts the submission provided on behalf of the State of Queensland that the practice was ceased upon the unlawfulness of the practice being drawn to the State’s attention by the Office of the Queensland Ombudsman in October 2013.<sup>1839 1840</sup>

The Review considers that the staff who previously engaged in the practice are likely to have been unaware that it was unlawful at the time of this incident. The Review accepts the submission that the practice of IMPs to restrict out of cell time was consistent with QCS policies at the time of the incident.<sup>1841</sup>

Further the Review acknowledges that Individual QCS 4 was unaware of the incident on the date that it occurred as it was unreported.

#### WITHHOLDING OF MAIL DURING SEPARATE CONFINEMENT

The Review acknowledges that the submissions of the State of Queensland reflect a general practice that prisoners on IMP’s are given access to read their mail as it is delivered.<sup>1842</sup> Whilst acknowledging that there is some tension between those positions, the Review is not in a position to make a finding on this issue.

Legal issues regarding separate confinement and mail withholding continued to be of concern to the Chief Inspector as at April 2016. The *Brisbane Correctional Centre – Management Practices in the Boys Unit* report, April 2016 following a full announced inspection of the Youthful Offenders Unit, referred to:

*The identified practice deficit raised during this individual case review process by the Office of the Chief Inspector in relation to the restriction of mail (including legal mail) to youthful prisoners on segregation has been reviewed and addressed by centre management with prisoners undergoing separate confinement being able to send and receive mail.*<sup>1843</sup>

The report also quoted a senior staff member as stating:

*As our investigation into the mail issue, I can advise that the practice of handing mail to prisoners and then not allowing them to store this in their cell has occurred in the past at a unit level. Now that this is known, I have instructed that clear directions to not impede the storage of mail in cell*

<sup>1839</sup> Submission from the State of Queensland to the Review, Young Person A1 incident, 8 December 2016, para 20(d), edocs 3553996; Submission of Individual QCS 4 dated 29 November 2016, paras 6.10 to 6.11, edocs 3539940.

<sup>1840</sup> Submission on behalf of Individual QCS 4 dated 29 November 2016, Annexure 10, Confidential Proposed Report of the Queensland Ombudsman, *An investigation into the separate confinement of prisoners*, 18 October 2013, p 64, edocs 3539940.

<sup>1841</sup> Submissions on behalf of Individual QCS 8, 11 December 2016, para 4.12, edocs 3536182.

<sup>1842</sup> Submission from the State of Queensland to the Review, Young Person A1 incident, 8 December 2016, para 108, edocs 3553996.

<sup>1843</sup> Office of the Chief Inspector, *Brisbane Correctional Centre – Management Practices in the Boys Unit*, April 2016, p 9, edocs 3458708.



*is to occur effective immediately and for the removal of any advice in the document that support this unsupported practice.*<sup>1844</sup>

## REMOVAL OF ALL ITEMS FROM YOUNG PERSON A1'S CELL

Young Person A1 complained that staff members removed his mattress from his cell

The chief executive was relevantly required to ensure that a prisoner undergoing separate confinement was given the same type of mattress, sheets, blankets and pillow as the prisoner would have received had the prisoner not been in separate confinement.<sup>1847</sup>

In the absence of a lawful authorisation, the removal of the mattress and bedding while Young Person A1 was in separate confinement was inappropriate by virtue of section 5(b) of the *Corrective Services Regulation 2006*, which states as follows:

### *5 Separate confinement*

*The chief executive must ensure a prisoner undergoing separate confinement—*

*...*

*(b) is given the same type of mattress, sheets, blankets and pillow as the prisoner would have were the prisoner not in separate confinement; and*

*...*

The definition of 'given' is a past participle of 'give' and 'give' is to furnish or provide.<sup>1848</sup>

<sup>1844</sup> Office of the Chief Inspector, Brisbane Correctional Centre - Management Practices in the Boys Unit, April 2016, p 8, edocs 3458708.

<sup>1847</sup> Corrective Services Regulation 2006, s 5(b).

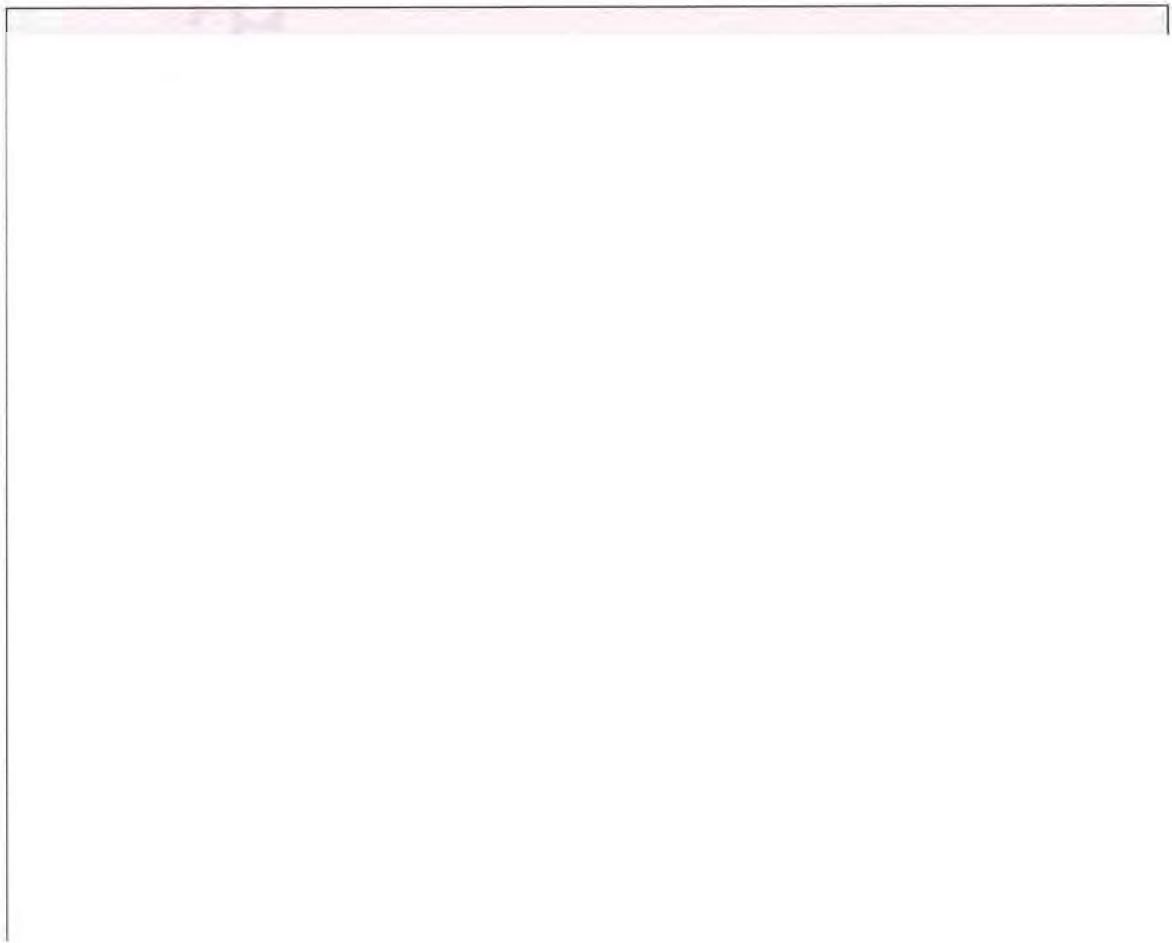
<sup>1848</sup> Definition of given and give, Macquarie Dictionary Fifth Edition (Macquarie Dictionary Publishers Pty Ltd, 2009) p 705.



There has been no other evidence provided to the Review that Young Person A1 placed items over the camera in his cell. The Review notes that there are no case notes to that effect in IOMS.

**Finding 14.F2** – The mattress was not in Young Person A1’s cell at the time of the incident.

**Finding 14.F3** – There was no contemporaneous note entered in IOMS that day or in the preceding days identifying any justification for the removal of the mattress.





13 FEBRUARY 2013 INCIDENT

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CONTEXTUAL INFORMATION FOR THE 13 FEBRUARY 2013 INCIDENT



## THE INCIDENT

Before the incident Young Person A1 had made complaints that he needed more toilet paper and required further amounts.<sup>1865</sup> As noted above, the Review was not provided with the CCTV for the period before the incident and so it is unclear how much toilet paper was given to Young Person A1. Individual QCS 5 (who made the report) stated that he considered Young Person A1 had been given enough toilet paper.<sup>1866</sup> CCTV shows toilet paper in the cell. The IOMS report states that Young Person A1 was<sup>1867</sup> Young Person A1 was using the intercom system in order to request more toilet paper.<sup>1868</sup>

The IOMS entry indicated that Young Person A1 had been asked to stop pressing the cell intercom button for non-medical reasons because the button was intended for use in medical emergencies only.<sup>1869</sup>

Limited CCTV footage of Young Person A1's prior conduct has been provided to the review which shows him pressing an area near his desk a few times.<sup>1870</sup> The footage depicts Young Person A1 being physically restrained and during the period thereafter that he is physically restrained inside his cell.

<sup>1865</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn on 28 September 2016, p 42, edocs 3437664.

<sup>1866</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn on 28 September 2016, p 42, edocs 3437664.

<sup>1867</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn on 28 September 2016, p 42, edocs 3437664.

<sup>1868</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn on 28 September 2016, p 42, edocs 3437664.

<sup>1869</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn on 28 September 2016, p 42, edocs 3437664. See also the affidavit of Individual QCS 8 sworn on 18 October 2016, para 14, edocs 3475202.

<sup>1870</sup> CCTV footage; edocs 3237426.



Individual QCS 5 informed Individual QCS 8 that Young Person A1 was not complying with the orders, and Individual QCS 8 went to Young Person A1's cell and asked him to stop using the intercom, which he refused to do.<sup>1875</sup> This accords with what Individual QCS 8 considered would have happened. Individual QCS 8 stated that while they do not specifically recall what happened on 13 February 2013, they expect that they would have been approached by an officer to discuss Young Person A1's behaviour and that they would have spoken to Young Person A1 and would have explained the consequences of "his choices" on 13 February 2013 as they had on 12 February 2013.<sup>1876</sup> The staff stated that it was necessary to restrain Young Person A1 in order to prevent him from using the intercom after he had been warned that his behaviour would result in action being taken.<sup>1877</sup>

Restraints were applied when it was necessary to prevent a prisoner from hurting themselves or others.<sup>1879</sup> The Chief Inspectorate stated that it is doubtful that the restraints would have prevented Young Person A1 from pressing the button.<sup>1880</sup> Officers from the Review observed that Young Person A1, even as restrained, would have been able to stand on his bed and still press the button. Further, no attempt was made to provide Young Person A1 with toilet paper before the restraints were applied as it was considered he had a sufficient amount of toilet paper.<sup>1881</sup>

The CCTV footage depicted seven officers entering Young Person A1's cell.<sup>1882</sup> Young Person A1 was then secured in a waist belt, handcuffs which were attached to the waist belt and a protective head and face helmet.<sup>1883</sup> Individual QCS 15 was a backup officer and not one of the restraining officers, and he was asked by Individual QCS 8 to get the body belt and helmet and provide them to the officer who was to place the restraints on Young Person A1.<sup>1884</sup> Individual QCS 6 was carrying the restraints, the body belt and the safety helmet but did not apply the restraints to Young Person A1.<sup>1885</sup> Individual QCS 3 assisted other staff to restrain Young Person A1 while the

<sup>1875</sup> Affidavit of Individual QCS 5 sworn on 18 October 2016, para 10(i) and (j), edocs 3475203.

<sup>1876</sup> Affidavit of Individual QCS 8 sworn on 18 October 2016, paras 20-21, edocs 3475202.

<sup>1877</sup> See, for example, the Affidavit of Individual QCS 15 sworn on 18 October 2016, para 17, edocs 3475205.

<sup>1879</sup> Affidavit of Individual QCS 15 sworn on 18 October 2016, para 21, edocs 3475205.

<sup>1880</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016) p 14, edocs 3458671.

<sup>1881</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn on 28 September 2016, p 42, edocs 3491336.

<sup>1882</sup> At 2.13pm on CCTV footage, edocs 3437426; CCTV times as noted by Commission, edocs 3532306. The officers involved in the incident are: Individual QCS 3, Individual QCS 15, Individual QCS 6, Individual QCS 16, Individual QCS 5, Individual QCS 9, and Correctional Supervisor Individual QCS 8; Affidavit of Individual QCS 3 sworn on 18 October 2016, para 7, edocs 3475200; Affidavit of Individual QCS 15 sworn on 18 October 2016, para 10, edocs 3475205; Affidavit of Individual QCS 6 sworn on 28 September 2016, para 15, edocs 3475201; Affidavit of Individual QCS 16 sworn on 18 October 2016, para 6, edocs 3475203; Affidavit of Individual QCS 5 sworn on 18 October 2016, para 8, edocs 3475203; Affidavit of Individual QCS 9 sworn on 18 October 2016, para 9, edocs 3475198. Individual QCS 7 was outside of the cell while the restraints were being applied: affidavit of Individual QCS 7 sworn on 18 October 2016, para 12(e), edocs 3475199.

<sup>1883</sup> The entry by Individual QCS 5 in the IOMS Offender Case File of Young Person A1 refers only to a body belt: see exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn on 28 September 2016, p 42, edocs 3491336. The CCTV footage shows a helmet, handcuffs and body belt placed on Young Person A1 at 2.17pm to 2.21pm. However, Individual ESU 1 referred to the helmet as a 'head protector to prevent injury to Prisoner Young Person A1's face whilst he was restrained': Affidavit of Individual QCS 2 sworn on 29 September 2016, exhibit Individual QCS 2-11, p 364, edocs 3438812.

<sup>1884</sup> Affidavit of Individual QCS 15 sworn on 18 October 2016, para 13, edocs 3475205.

<sup>1885</sup> Affidavit of Individual QCS 6 sworn on 28 September 2016, para 15(b), edocs 3475201. Individual QCS 6 secured Young Person A1's elbow while restraints were applied: Affidavit of Individual QCS 6 sworn on 28 September 2016, para 15(e) and (f), edocs 3475201.



restraints were applied.<sup>1886</sup> Individual QCS 9 indicated that he placed the handcuffs on Young Person A1, raised his hands above his head in order to allow the body belt to be placed on him, lowered Young Person A1's arms so the body belt could be secured and then placed the helmet on Young Person A1 and ensured it was secured correctly.<sup>1887</sup> Individual QCS 16 stood by the door during the incident to prevent Young Person A1 from leaving the cell.<sup>1888</sup> Individual QCS 5 was present but did not believe he was physically involved in the restraint of Young Person A1.<sup>1889</sup>

Individual QCS 8 said the usual practice was to use a restraint as a last resort, when all other avenues to de-escalate or communicate with the prisoner had failed.<sup>1890</sup>

According to IOMS records and CCTV, Young Person A1 fully complied with the directions of the officers.

CCTV footage shows that Young Person A1 remained in a submissive position while Individual QCS 8 spoke to him.<sup>1892</sup>

According to the CCTV footage Young Person A1 was secured in handcuffs and a body belt at approximately 2.17pm and then a head and face protector at approximately 2:21pm. While Individual QCS 8 did not specifically recall, they stated that it would be likely that they would have made the decision that the prisoner should be restrained "for the safety and security of the Centre and other prisoners" and then directed that the restraints be applied to Young Person A1.<sup>1893</sup> Taking directions from the supervisor is standard procedure.<sup>1894</sup> The decision to apply restraints is a decision made by managers and supervisors, which is delegated from the General Manager of the Centre.<sup>1895</sup>

Young Person A1 complained about being slapped on the head and kicked.<sup>1896</sup> He further alleged that when officers entered the cell they "stormed over, kicked him and stood on his legs."<sup>1897</sup> He also alleged corrections officers "were laughing and attacking him" when applying the restraints and when the helmet was placed on they "backhanded him across the head".<sup>1898</sup> He stated the officers laughed at him and left him in the room for a few hours until they returned and removed the restraints.

<sup>1886</sup> Affidavit of Individual QCS 3 sworn on 18 October 2016, para 10, edocs 3475200.

<sup>1887</sup> Affidavit of Individual QCS 9 sworn on 18 October 2016, para 11(b) and (d), edocs 3475198.

<sup>1888</sup> Affidavit of Individual QCS 16 sworn on 18 October 2016, para 10, edocs 3475203.

<sup>1889</sup> Affidavit of Individual QCS 5 sworn on 18 October 2016, para 10(l), edocs 3475203.

<sup>1890</sup> Affidavit of Individual QCS 8 sworn on 18 October 2016, para 30, edocs 3475202.

<sup>1892</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016), p 10, edocs 3458671; CCTV 1.13pm to 1.17pm, edocs 3237426.

<sup>1893</sup> Affidavit of Individual QCS 8 sworn on 18 October 2016, para 23, edocs 3475202.

<sup>1894</sup> Affidavit of Individual QCS 3 sworn on 18 October 2016, para 11, edocs 3475200.

<sup>1895</sup> Affidavit of Individual QCS 15 sworn on 18 October 2016, para 16, edocs 3475205.

<sup>1896</sup> Notes from QPS Interview dated 1 July 2014 (Individual CSIU 3), p 1, edocs 3457686.

<sup>1897</sup> Notes from QPS Interview dated 1 July 2014 (Individual CSIU 3), p 1, edocs 3457686.

<sup>1898</sup> Notes from QPS Interview dated 1 July 2014 (Individual CSIU 3), p 1, edocs 3457686.



The Review notes that the CCTV footage provided of the incident does not depict officers storming into the cell, kicking or standing on Young Person A1's legs. The Review notes that there was a tap to the helmet by an officer after it had been applied. There is no audio of the incident therefore the review is unable to make a factual finding as to what was said.

Despite not being able to recall what occurred on 13 February 2013,<sup>1899</sup> Individual QCS 8 said that the restraints were applied in accordance with the Control and Restraint manual.<sup>1900</sup> The Control and Restraint Manual extract attached to Individual QCS 8's affidavit is the current version 7.<sup>1901</sup> The Control and Restraint Manual of the date of the incident, version 5, contains no entry in relation to helmets.<sup>1902</sup>

Figure 2 below shows Young Person A1 in the restraints.



Figure 2 Screen capture of CCTV footage of Young Person A1 on 13 February 2013.<sup>1903</sup>

<sup>1899</sup> Affidavit of Individual QCS 8 sworn on 18 October 2016, para 20, edocs 3475202.

<sup>1900</sup> Affidavit of Individual QCS 8 sworn on 18 October 2016, para 25, edocs 3475202.

<sup>1901</sup> Affidavit of Individual QCS 8 sworn on 18 October 2016, exhibit Individual QCS 8 4, edocs 3475202.

<sup>1902</sup> *Control and Restraint Manual*, version 5, February 2010, edocs 3534650.

<sup>1903</sup> Screen capture from CCTV footage dated 13 February 2013, which is attached to the email from Individual QCS 17 to Individual EST 2 dated 30 September 2013, edocs 3457761.



Young Person A1 was then informed he would be re-interviewed in one hour to assess whether his behaviour was appropriate and he could be taken out of the restraints.<sup>1904</sup> The officers left Young Person A1's cell at approximately 2:22pm.

It does not appear that any steps were taken to address staff conduct as a result of the incident. Individual QCS 1 states that he was not aware if any steps were identified as being necessary to be taken as a result of the incident.<sup>1914</sup>

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<sup>1904</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn on 28 September 2016, p 42, edocs 3437664.

<sup>1914</sup> Affidavit of Individual QCS 1 sworn on 28 September 2016, para 40, edocs 3437664.





## RESPONSES TO INCIDENT

QCS Individual 3 stated that, “he was satisfied that the incident was managed appropriately. The incident was managed in accordance with requirements”<sup>1932</sup> and the incident was handled appropriately.<sup>1933</sup>

However the Review considers that at all relevant times the corrective services staff misconceived their legal obligations under the *Corrective Services Act 2006* and their obligations under the policies concerning the use of the restraints. That misconception was the basis of the inappropriate application of the body belt, handcuffs and helmet to Young Person A1.

### USE OF BODY BELT, HANDCUFFS AND HELMET UNDER LEGISLATION

A corrective services officer may use force that is reasonably necessary (other than lethal force) to:

- compel compliance with an order;
- restrain a prisoner attempting to commit, or is committing, an offence or breach of discipline;
- compel a person to leave a corrective services facility; or
- restrain a prisoner from harming themselves.<sup>1934</sup>

However, the officer may only use force if the officer:

- reasonably believes the act cannot be stopped in another way;
- warns of the officer’s intention to use force (unless there is risk of injury to any person); or
- gives sufficient time for the warning to be observed and uses force in way unlikely to cause death or grievous bodily harm, (unless there is risk of injury to any person) unless it would create a risk of injury to the officer, a prisoner attempting to or actually harming themselves or another person.<sup>1935</sup>

Use of force (non-lethal force) may involve the use of a gas gun, chemical agent, riot control equipment, restraining device and a corrective services dog.<sup>1936</sup>

The *Custodial Operations Practice Directive – Facility Security*, 15 August 2014 states that officers must utilise tactical communications and situation response

<sup>1932</sup> Affidavit of Individual QCS 4 sworn 27 October 2016, paras 42-43, edocs 3488259.

<sup>1933</sup> Email from Individual QCS 4 to Individual ESU 2 dated 21 January 2014, edocs 3457742.

<sup>1934</sup> *Corrective Services Act 2006*, s 143(1).

<sup>1935</sup> *Corrective Services Act 2006*, s 143(2) and (3).

<sup>1936</sup> *Corrective Services Act 2006*, s 143(4).



considerations for the safe and effective outcome to ensure only a reasonable amount of force is justified.<sup>1937</sup> It states:

*Reasonable force may be used to:*

- *compel compliance with an order given or applying to a prisoner*
- *restrain a prisoner who is attempting or preparing to commit an offence or a breach of discipline*
- *restrain a prisoner who is committing an offence or a breach of discipline*
- *compel any person who has been lawfully ordered to leave a corrective services facility, and who refuses to do so, to leave the facility*
- *restrain a prisoner who is harming himself/herself or attempting or preparing to harm himself/herself; or*
- *any other situation which may reasonably warrant the use of reasonable force.*<sup>1938</sup>

The first five bullet points reflect the uses of force permitted under section 143(1) of the *Corrective Services Act 2006*; the sixth bullet point however does not reflect the provision. The legal basis for the additional matter in the policy is unclear. In the absence of another source of law authorising the use of non-lethal force in a situation other than those mentioned in section 143(1), the policy should be amended in order to reflect the basis upon which non-lethal force may be used.

It has been submitted on behalf of the State that:

*it is open to interpret the Chief Executive's general responsibility under section 263 of the Act as an independent source of authority where:*

- *use of force is reasonably necessary to discharge the chief executive's responsibility; and*
- *it is not otherwise authorised by s 143 of the Act.*<sup>1939</sup>

The Review has not considered whether section 263 of the Act is an additional source of power to use force under the *Corrective Services Act 2006*, other than noting that there is already a specific power to use force contained in section 143 of the Act and that there is a general statutory interpretation principle that a specific provision prevails over a general provision.<sup>1940</sup>

**Recommendation 14.R1** – The Review recommends that the current policy should be amended to ensure that it is consistent with, and reflects, applicable legislation.

<sup>1937</sup> Custodial Operations Practice Directive – Facility Security, p 11, edocs 3440806.

<sup>1938</sup> Custodial Operations Practice Directive – Facility Security, p 11, edocs 3440806.

<sup>1939</sup> Submission from the State of Queensland to the Review, Young Person A1 incident, 8 December 2016, para 133, edocs 3553996.

<sup>1940</sup> Pearce, Geddes, *Statutory Interpretation in Australia*, Eighth Edition (LexisNexis Butterworths, 2011) para 4.40.



Individual QCS 8 justified using restraints by stating the restraints were necessary for the safety and security of the centre.<sup>1941</sup> Individual ESU 3 inferred that, because of Individual QCS 4's statement that Young Person A1 was using the intercom

it was necessary to use force to compel compliance with an order (to cease misusing the intercom), in accordance with section 143(1) of the *Corrective Services Act 2006*.<sup>1942</sup>

Under section 143(2) and (3), which provides that an officer may only use force if they reasonably believe the act or omission cannot be stopped in another way, if they issued a clear warning of intention to use force if the act or omission does not stop and allowed time for the warning to be observed. The use of the helmet was justified by stating that it was necessary in order to protect Young Person A1's head because he could not protect his head with his hands because they were in handcuffs affixed to a body belt.<sup>1943</sup>

The officers involved therefore suggest that they were justified in their decision to use the body belt, handcuffs and protective helmet as it would be the only means available to them to prevent Young Person A1 from unnecessarily activating the intercom. The intercom is referred to as an "emergency intercom".

The YOU Induction booklet (provided to youthful prisoners on induction) emphasises that the call button intercom system should be used for emergencies only.<sup>1944</sup> Further to this, Individual QCS 1 provides information regarding the technical operation of the intercom that, if activated, a signal/alarm is sent to a control operator who will answer the call.<sup>1945</sup>

The Chief Inspector said the following in relation to the use of the head protector:

*Generally these devices are applied to offenders who present with at-risk management behaviour in accordance with the Queensland Corrective Services administrative procedure Risk of Harm to Self – Self Harm/Suicide. There is no record of a Notification of Concern being raised at the time of the decision to place this device on Young Person A1 and he was not subject to an at-risk management plan at this time. There are no case notes or other records to reflect that at this time Young Person A1 was considered to pose*

<sup>1941</sup> Affidavit of Individual QCS 8 sworn on 18 October 2016, para 23, edocs 3475202.

<sup>1942</sup> Affidavit of Individual ESU 3 sworn on 28 October 2016, para 25(a)(ii) and (iii), edocs 3491313.

<sup>1943</sup> Affidavit of Individual QCS 1 sworn on 28 September 2016, para 21, edocs 3437664.

<sup>1944</sup> Affidavit of Individual QCS 1 sworn on 28 October 2016, exhibit 2, p 9, edocs 3491336.

<sup>1945</sup> Affidavit of Individual QCS 1 sworn on 28 October 2016, para 10, edocs 3491336.



*a level of risk of suicide/self harm that required him to be restrained in these devices.*<sup>1948</sup>

In relation to the use of restraints, these are key extracts from the report *Individual Case Review Young Person A1* by the Chief Inspector (emphasis added):

*As identified, the case notes and CCTV footage revealed that Young Person A1 was compliant when staff entered his cell and spoke to him immediately prior to the application of the restraints and he remained compliant and passive throughout the process of applying the restraints.*

***It is doubtful the reasons on which the decision to place the Head and Face Protector and Body Belt on Young Person A1 on 13 February 2013 had either statutory or procedural authority.***<sup>1949</sup>

*The incident involving the use of the Head and Face Protector and Body Belt restraints on Young Person A1 on 13 February 2013 have been previously reviewed internally and externally with no operational practice deficit identified.*

*It is agreed that the actual application of the restraints was conducted in accordance with procedural requirements. However, in reviewing the actual decision to use these devices on Young Person A1, the evidence suggests that there was no statutory or procedural authority to use these restraints on this prisoner, under these conditions.*

*In the context of all the relevant information, the decision to place the Head and Face Protector and Body Belt on Young Person A1 on 13 February 2013 does not appear to be fair, just and reasonable. The case note record of the direction to place the restraining devices on Young Person A1 identified it was based on preventing him from inappropriately accessing a cell intercom. It is doubtful the restraining device would have prevented Young Person A1 from doing this and therefore undermined the efficacy of the practice.*

*The extreme measures implemented also appeared disproportionate to the risk presented. There may have also been a failure in not placing sufficient weight on the emotional resilience of the youthful offenders to cope with the debilitating effect of the application of head and face protector and body belt.*<sup>1950</sup>

As stated above, officers from the Review observed during their BCC site visit that Young Person A1 could have continued to press the emergency button by standing on his bed. The State contends in essence that as the Chief Inspector's review was a "desk top" review, it should be weighted accordingly.<sup>1951</sup>

<sup>1948</sup> Office of the Chief Inspector, Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre (2016) pp 13-14, edocs 3458671.

<sup>1949</sup> Office of the Chief Inspector, Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre (2016) p 14, edocs 3458671.

<sup>1950</sup> Office of the Chief Inspector, Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre (2016) p 14, edocs 3458671.

<sup>1951</sup> Submission of the State of Queensland on 8 December 2016, edocs 3553996.



It is not clear that, aside from cautioning Young Person A1, the corrective services officers did anything other than tell Young Person A1 to stop pressing the intercom and warning him that he would be restrained. It does not appear that any other option was canvassed and accepted or rejected by the staff, including considering whether to isolate the intercom in Young Person A1's cell.<sup>1952</sup> There was a staff member outside the room who could have called for assistance should any emergency situation have arisen. There was also the option of giving Young Person A1 additional toilet paper.<sup>1953</sup>

It has been submitted on behalf of the State that the "important fact that the restraints were successful in stopping the conduct" has been overlooked.<sup>1954</sup> It has been further submitted on behalf of the State that it is clear, on the information available, that Individual QCS 8 believed that the conduct could not be stopped in another way.

A submission in similar terms was also received from Individual QCS 4.<sup>1955</sup>

The Review cannot ascertain with the benefit of hindsight whether the two alternate approaches suggested above would have succeeded in stopping the conduct. However, there is no evidence that those two available options were considered. The Review considers that it was necessary to exhaust all reasonable options before applying restraints.

As stated above, use of restraints under section 143 must be *reasonably necessary* and where the officer reasonably believes the conduct *cannot be stopped in another way*.

Had the corrective services officers and those authorising their actions had proper regard, as they were required to do, to the requirements of section 143 of the *Corrective Services Act 2006*, they would have concluded that they were required to consider another way of preventing or stopping Young Person A1 from pressing the button.

One of the purposes of corrective services is (and was at the time of the incident) "community safety and crime prevention through the humane containment,

<sup>1952</sup> Affidavit of Individual QCS 1 sworn on 28 October 2016, para 24, edocs 3491336.

<sup>1953</sup> IOMS Offender Case File of Young Person A1, which is attached as exhibit Individual QCS 1-3 to the Affidavit of Individual QCS 1 sworn on 28 September 2016, p 42, edocs 3437664.

<sup>1954</sup> State of Queensland submissions to Independent Review of Youth Detention in Queensland, Young Person A1 incident, 8 December 2016, para 168, edocs 3553996.

<sup>1955</sup> Submission of Individual QCS 4 dated 28 November 2016, p 10, edocs 3539940.



supervision and rehabilitation of offenders".<sup>1958</sup> The *Corrective Services Act 2006* also recognises the need to "respect an offender's dignity" and the special needs of some offenders, including because of the offender's age.<sup>1959</sup> A person exercising a power under the Act is required to have regard to the matters referred to above.<sup>1960</sup>

**Recommendation 14.R2** – The Review recommends that, in considering whether or not to use restraints, regard should be had to whether there was any other way to stop the conduct.

#### *POLICIES ABOUT THE USE OF BODY BELT, HANDCUFFS AND HELMET*

The current *Custodial Operations Practice Directive – Facility Security*, 15 August 2014<sup>1961</sup> does not specifically discuss the use of the helmet. The Custodial Operations Practice Directive does refer to spit hoods.

A "Head and Face Protector" is listed in Appendix 1, to the Facility Security Directive, "restraints schedule".<sup>1962</sup> Its "Purpose & Restriction" is recorded as:

*Approved Humane Restraints hard and soft shell helmet – only to be used to protect prisoners and staff from injury or further injury and must be worn with a body belt to prevent removal.*

This instruction also appears in the June 2013 version of the Directive.<sup>1963</sup> According to the Chief Inspector's Individual Case Review Young Person A1,<sup>1964</sup> the Directive at the time of the incident provided likewise.

The Queensland Corrective Services' *Control & Restraint Manual*, September 2014<sup>1965</sup> provides further instruction regarding the use of the head and face protector for corrections officers. The manual provides that:

*Head and face protection are to be deployed to protect prisoners who are attempting to self-harm by banging their head against an object such as a wall or floor.*

Where the prisoner is required to be placed in head and face protection they are to be restrained to the rear (i.e. handcuffs are applied with the hands behind the back, not in front) and the head and face protection to be applied and removed in the same manner

The Manual does not show a body belt being employed.

<sup>1958</sup> *Corrective Services Act 2006*, s 3(1).

<sup>1959</sup> *Corrective Services Act 2006*, s 3(3).

<sup>1960</sup> *Corrective Services Regulation 2006*, s 3.

<sup>1961</sup> *Custodial Operations Practice Directive – Facility Security*, version 2, 15 August 2014, p 14, edocs 3440806.

<sup>1962</sup> Appendix 1, page 2, edocs 3458622; the Queensland Corrective Services Appendix – Restraints Schedule, implementation date of 6 June 2013, is attached to the email from Individual QCS 17 to Individual EST 2 dated 30 September 2013, edocs 3457761.

<sup>1963</sup> Attached to Affidavit of Individual EST 2 sworn on 20 October 2016, Individual EST 2-9, edocs 3478395.

<sup>1964</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016) p 5, edocs 3458671

<sup>1965</sup> Queensland Corrective Services' *Control & Restraint Manual*, September 2014, p 86, edocs 3493018.



It is noted that this is the current Manual and was not operational at the time of the incident (the Manual of the time is silent in relation to the head and face protector),<sup>1966</sup> although Individual QCS 8 does refer to having applied the helmet in accordance with the current Manual.<sup>1967</sup> The Manual supports the instruction in the Appendix to the Facility Security Directive, that is, that the head and face protector is only to prevent injury to a prisoner (or staff). The application of restraints is a secondary factor after the decision has been made to use the protector.

The decision to place Young Person A1 in the body belt, handcuffs and head and face protector in these circumstances appear to be outside the scope of these items intended uses and not within the procedural authority.

These issues are also raised in the Chief Inspector's report *Individual Case Review Young Person A1*, as quoted above under the heading "Use of body belt, helmet and handcuffs under legislation".<sup>1968</sup>

#### *NO INCIDENT REPORT RAISED IN IOMS*

According to the *Custodial Operations Practice Directive – Facility Security*,<sup>1969</sup> if an officer has applied physical force to a prisoner in the performance of their duty, the officer must as soon as practicable notify the General Manager of the facility. Where more than one officer is involved in an incident where physical force was applied to the prisoner the officers involved must determine which officer will report the use of force. A corrective services supervisor or manager should determine which officers are to provide an officer report about the incident. The report of the incident must be recorded in IOMS as an incident report.

Where a use of force has been utilised to resolve an incident the *Custodial Operations Practice Directive – Facility Security*<sup>1970</sup> also suggests that a process will be undertaken to review these incidents. Factors to be considered in the review include the prisoners profile, behaviour leading to the incident, and environmental factors in addition to whether the use of force was appropriate to the situation or unjustified.

With regard to this incident, the officers involved, whilst recording actions in IOMS, did not complete a use of force incident report through IOMS.<sup>1971</sup> This was noted by

<sup>1966</sup> Queensland Corrective Services', *Control & Restraint Manual*, February 2010, edocs 3534650.

<sup>1967</sup> Affidavit of Individual QCS 8 sworn on 18 October 2016, para 25, edocs 3475202.

<sup>1968</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016), edocs 3458671.

<sup>1969</sup> *Custodial Operations Practice Directive – Facility Security*, version 2, 15 August 2014, p 18, edocs 3440806.

<sup>1970</sup> *Custodial Operations Practice Directive – Facility Security*, version 2, 15 August 2014, p 18, edocs 3440806.

<sup>1971</sup> Affidavit of Individual QCS 1 sworn on 28 September 2016, para 15, edocs 3437664. No incident report was provided to the Review as part of the Affidavit of Individual QCS 1 sworn on 28 September 2016, exhibit Individual QCS 1-6, edocs 3491336, which lists incidents involving Young Person A1.



ESU.<sup>1972</sup> Also, the officers involved suggested that there was no review of the use of force.<sup>1973</sup>

**Finding 14.F4** – Corrective Services Officers failed to complete the IOMS incident report.

The Review accepts the submission of the State that this error was acknowledged and remedial action was taken.<sup>1974</sup>

#### GOING FORWARD

In each of the affidavits provided to the Review, each of the persons involved in the incident had not received any additional training and did not consider that there was a need to change the approach or to receive additional training.<sup>1975</sup>

Given the Review's view and the view of the Office of the Chief Inspector that the use of force was not authorised by the *Corrective Services Act 2006*, there ought to be a requirement that staff are counselled and re-trained about the proper instances in which force may be applied in correctional facilities, to any prisoner including youthful prisoners.

**Recommendation 14.R3** – The Review recommends that corrective services officers should be counselled and re-trained on the specific situations in which it is appropriate to use force, in particular restraints, under the *Corrective Services Act 2006*.

- Such training to include de-escalation techniques and identification of alternative strategies to be employed before utilising physical restraint of a prisoner, for a discipline purpose, as a last resort.
- Such training to include appropriate documentation and record keeping to ensure that managers are kept informed of all incidents of physical restraint.

#### CONSIDERATION OF COMPLAINTS AND OVERSIGHT REGARDING YOUNG PERSON A1

Young Person A1 complained about his treatment to the following entities:

- the community visitor on 17 January 2013 about extended isolation;
- the Prisoners' Legal Service in September 2013 about the 13 February 2013 incident; and
- the Queensland Police Service on 8 June 2014 about the 13 February 2013 incident.

The Chief Inspector also investigated this incident in 2016 following public revelation of the incident. A summary and an analysis of what happened after the incident are set out below.

<sup>1972</sup> Email from Individual EST 2 to Individual QCS 3, 18 October 2013, attached to Affidavit of Individual EST 2 sworn on 20 October 2016, exhibit Individual EST 2 8, edocs 3478395.

<sup>1973</sup> See for example Affidavit of Individual QCS 8 sworn on 18 October 2016, para 31, edocs 3475202.

<sup>1974</sup> Submission from the State of Queensland to the Review, Young Person A1 incident, 8 December 2016, para 215, edocs 3553996.

<sup>1975</sup> See for example Affidavit of Individual QCS 8 sworn on 18 October 2016, paras 32-3, edocs 3475202.



## COMPLAINT TO COMMUNITY VISITOR

### WHAT HAPPENED

On 17 January 2013, Young Person A1 complained to a community visitor of extended isolation.<sup>1976</sup>

At the time, the community visitor provisions of the *Commission for Children and Young People and Child Guardian Act 2000*, did not include children in corrective services facilities.<sup>1981</sup> However, pursuant to an Agreement<sup>1982</sup> between the Commissioner for Children and Young People and Child Guardian and the Department of Community Safety, through Queensland Corrective Services, visits to 17-year-olds in corrective services facilities were undertaken by community visitors. As stated in the Agreement, "CCYPCG's commitment to visiting 17-year-olds detained in Correctional Centres is consistent with the legislative duties outlined in the *Commission for Children and Young People and Child Guardian Act 2000*".<sup>1983</sup>

On 18 January 2013, a phone call was made to Individual QCS 21 by the community visitor to confirm it would be referred to the CCYPCG's complaints resolution team for further assessment.<sup>1984</sup> The matter was forwarded and referred to CCYPCG's Complaints Resolution Team for further assessment.<sup>1985</sup>

On 24 January 2013, Individual CCYPCG 1 emailed Individual QCS 21, with a community visitor response table stating, "Some additional advice is sought, including policy documents, to support decision making in regard to the isolation of young offenders".<sup>1986</sup>

<sup>1976</sup> Commission for Children and Young People and Child Guardian, *Issue Report: Emotional Harm to Young Person A1 due to Extended Confinement of Young Person in Isolation Unit*, Issue Number CG-1213041512, p 17, edocs 3475435.

<sup>1981</sup> *Commission for Children and Young People and Child Guardian Act 2000* s 86(a); Affidavit of Individual OPG 1 sworn 18 November 2016, para 2(b), edocs 3522085.

<sup>1982</sup> Affidavit of Individual OPG 1 sworn 18 November 2016, exhibit Individual OPG 1-1, p 5, edocs 3522085.

<sup>1983</sup> Affidavit of Individual OPG 1 sworn 18 November 2016, exhibit Individual OPG 1-1, p 5, edocs 3522085.

<sup>1984</sup> Commission for Children and Young People and Child Guardian, *Issue Report: Emotional Harm to Young Person A1 due to Extended Confinement of Young Person in Isolation Unit*, Issue Number CG-1213041512, p 11, edocs 3475435.

<sup>1985</sup> Commission for Children and Young People and Child Guardian, *Issue Report: Emotional Harm to Young Person A1 due to Extended Confinement of Young Person in Isolation Unit*, Issue Number CG-1213041512, p 5, edocs 3475435.

<sup>1986</sup> Commission for Children and Young People and Child Guardian Issue Report, email from Individual CCYPCG 1 to Individual QCS 21, 24 January 2013, p 17, edocs 3475440.



The request was forwarded to Individual QCS 3. A response email on 24 January 2013 from Individual QCS 14, to Individual QCS 21 and Individual QCS 3 provides further information regarding the community visitor's inquiry as follows:

On 30 January 2013, Individual QCS 21 emailed the completed community visitor response table to the CCYPCG in relation to the community visitor visit of 17 January 2013.<sup>1988</sup> The email includes the IMP and a five-page document entitled "[t]he basis for the placement of young person in continued isolation".<sup>1989</sup> The document gives an overview of behaviour management plans and then discusses Young Person A1's behaviour and his management on various plans.

CCYPCG records<sup>1990</sup> for 30 January 2013 state, "Manager... has advised that this issue is to be closed based on the allocated Complaints Team member's assessment that the issue has been appropriately addressed and no further action is required. No QA checking process undertaken." The "Issue Referred" note states, "CVP identified that the allegations required formal referral under s25 legislation. The allegations have been referred to Manager Offender Development of BCC." The "Reason for Closure" is, "CT has not reviewed or assessed the information as this has been completed by the Zonal Manager. Referrals made are based on information contained in the description field to meet s25 requirements."

The affidavit of Individual OPG 1 stated the matter was referred to the CCYPCG Complaints Team who advised that the referrals to the relevant authorities were made.<sup>1991</sup> No records could be located by the Office of the Public Guardian as to what those referrals were.<sup>1992</sup> The records show that CCYPCG did not conduct a separate investigation into the matter.<sup>1993</sup>

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<sup>1988</sup> See the email from Individual QCS 21 to Individual CCYPCG 1 dated 30 January 2013, edocs 3440823.

<sup>1989</sup> CV Response Table 30 January 2013, p 3, which is attached to an email from Individual QCS 21 to Individual CCYPCG 1 dated 30 January 2013, edocs 3440823.

<sup>1990</sup> Issue Report CG-1213-41512-26, p 29, edocs 3475435.

<sup>1991</sup> Affidavit of Individual OPG 1 sworn on 18 November 2016, para11, edocs 3522085.

<sup>1992</sup> Affidavit of Individual OPG 1 sworn on 18 November 2016, para 11, edocs 3522085.

<sup>1993</sup> Affidavit of Individual OPG 1 sworn on 18 November 2016, para 13, edocs 3522085.



In any event, Young Person A1 remained in isolation until his transfer to Arthur Gorrie Correctional Centre.<sup>1994</sup>

### ISSUES

The fact that Young Person A1 complained of his treatment and the complaint was then carried through by the CCYPCG was appropriate, as was the detailed written response by the BCC to the CCYPCG.

Unfortunately the BCC response demonstrated a lack of understanding of the legislation. The substance of the complaint was in fact correct but this was not detected at the time.

The document entitled, “The basis for the placement of young person in continued isolation” provided by BCC to CCYPCG, is particularly concerning.

Firstly, it articulated a lack of understanding of the *Corrective Services Act 2006* under which separate confinement is only possible pursuant to an order under that Act.

Secondly, it asserted that the use of a behavioural management plan as opposed to a breach proceeding under which or an IMP involves separate confinement, no contact with other offenders, and only two hours per day exercise can occur – “is one of the important benefits” of the system. This statement shows a lack of understanding that the same punitive consequences can flow from a breach proceeding, but only after natural justice is afforded to a prisoner, including an opportunity to be heard and a full video-taped hearing for major breaches, as set out in chapter 3, part 1 of the *Corrective Services Act 2006*.

Thirdly, for

It has been submitted on behalf of the State that the general power contained in section 263 of the *Corrective Services Act 2006* allows the General Manager to limit out of cell time for operational reasons. The Review considers that there should be a justification for each instance of reduced out of cell time apparent on the face of the record.

The State has accepted that the former practice of segregating prisoners without a specific order under the Act (“the former practice”) was not authorised.

The Review accepts the State’s submission that this is a difficult and complex area of the law and that the former practice was discontinued when the issues concerning its lawfulness were drawn to its attention by the Ombudsman.

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### COMPLAINT BY PRISONERS’ LEGAL SERVICE

<sup>1994</sup> Affidavit of Individual QCS 1 sworn on 28 September 2016, exhibit Individual QCS 1-3, edocs 3437664.



# ETHICAL STANDARDS TEAM AND CORRECTIVE SERVICES INVESTIGATION UNIT INVESTIGATIONS BEFORE 1 NOVEMBER 2013

In September 2013 Young Person A1 complained to the Prisoners' Legal Service about the incident of 12 February 2013.

On 24 September 2013 the Prisoners' Legal Service sent a letter of complaint to the Ethical Standards Team.<sup>1996</sup> The letter enclosed the CCTV footage and

The letter requested that the matter be sent to the Queensland Police Service, Corrective Services Investigation Unit.<sup>1998</sup> After receiving the letter on 30 September 2013, Individual EST 1 allocated the complaint to Individual EST 2 and referred the matter to the CSIU by memorandum.<sup>1999</sup>

The Review has been advised by Individual EST 2 that an assessment of the complaint was then undertaken by him. A number of preliminary enquiries were made and he reviewed the CCTV footage, Young Person A1's case notes and liaised with BCC management.<sup>2000</sup>

On 30 September 2013 Individual QCS 17 advised the EST by email that use of a "head gear" was in accordance with restraints schedule and applied for the prisoner's safety, protecting him should he fall and hit his head.<sup>2001</sup>

Individual QCS 17, in an email on of 4 October 2013<sup>2002</sup> entitled "Hand-Over" to Individual QCS 19, and Individual QCS 18, with copies to other persons including Individual QCS 3 that:

*Individual EST 2 from Ethical Standards received a complaint from PLS claiming excessive use of force on youthful offender [A1]. PLS have made a complaint to QPS. Ethical Standards' advice was not to take any internal action at this point in time. In particular PLS were concerned with the use of the helmet and that the offender was left for a little over an hour. I have explained to Ethical Standards that the use of the helmet was for the safety of the offender in case he was to fall.*

*it could be argued that the force used was appropriate, however we are slightly exposed due to there being no Incident Report submitted. I have emphasised this point to staff.*

<sup>1996</sup> The EST was a part of the Department of Community Safety, which had responsibility for Queensland Corrective Services until it was transferred to the Department of Justice and Attorney-General on 1 November 2013: Affidavit of Individual EST 2 sworn on 20 October 2016, paras 4 and 22, edocs 3478395.

<sup>1999</sup> Affidavit of Individual EST 1 sworn on 20 October 2016, paras 3 and 8, edocs 3478412.

<sup>2000</sup> Affidavit of Individual EST 2 sworn 20 October 2016, para 9, edocs 3478395; Submission on behalf of Individual EST 2, 28 November 2016, edocs 3536179.

<sup>2001</sup> Email from Individual QCS 17 to Individual EST 2 dated 30 September 2013, edocs 3457761.

<sup>2002</sup> Email from Individual QCS 17, 4 October 2013, edocs 3535759.



On 4 October 2013 EST responded to the Prisoners' Legal Service and suggested that this was a matter for Queensland Corrective Services rather than the Queensland Police Service.<sup>2003</sup> Individual EST 2 also referred the matter to the then Crime and Misconduct Commission.<sup>2004</sup>

The Prisoners' Legal Service confirmed that it was the preference of Young Person A1 that the matter be referred to the Queensland Police Service and Individual EST 2 referred the matter to the CSIU on 18 October 2013.<sup>2005</sup> The Memorandum from EST to the CSIU stated that it was, "apparent" that the application of restraints to Young Person A1 to prevent Young Person A1 from pressing the intercom button and, in relation to the head protector, was to prevent injury if Young Person A1 fell.<sup>2006</sup> The EST stated to the CSIU that it considered the "pat" on the head by a corrective services officer was "trivial in nature".<sup>2007</sup> It was noted, however, that the use of force should have been recorded in IOMS.<sup>2008</sup> Individual CSIU 2 received the matter on 18 October 2013 after it had been referred by the EST.<sup>2009</sup>

Individual EST 2 considered that the failure to prepare an incident report could be dealt with by BCC management.<sup>2010</sup> Individual EST 2 brought the apparent failure of the staff to furnish an incident report to the attention of BCC, and was no longer involved in any further assessment or management of the complaint.

On 18 October 2013, the EST received correspondence from Individual QCS 4 stating that the CCTV footage was reviewed and no problems found with the officers' conduct.

Individual EST 2 considered that the matter did not warrant any further investigative action by the EST as the EST did not have concerns about the force used.<sup>2011</sup> Individual EST 2 considered that:

- the restraints were used for safety and security reasons;
- the face mask was to protect Young Person A1; and
- the pat on the head did not appear to be of significance.<sup>2012</sup>

The EST file was essentially on hold until 1 November 2013 as EST's open files were transferred to ESU when Queensland Corrective Services was transferred from the Department of Community Safety to the Department of Justice and Attorney-General.<sup>2013</sup> As a result of that change, Individual EST 2 had no further involvement in assessing the complaint.<sup>2014</sup> Individual CSIU 2 continued the assessment before the

<sup>2003</sup> Email Individual EST 2, EST to Prisoners' Legal Service, edocs 3457759.

<sup>2004</sup> Summary of section 40 CMC Referrals – October 2013, p 1, edocs 3459122.

<sup>2005</sup> Memorandum from Individual EST 1, EST, to Individual CSIU 1, 18 October 2013, edocs 3437409; see also the Affidavit of Individual EST 1 sworn on 20 October 2016, exhibit Individual EST 1 3, edocs 3478412; Affidavit of Individual EST 2 sworn on 20 October 2016, exhibit Individual EST 2 7, edocs 3478395.

<sup>2006</sup> Affidavit of Individual EST 1 sworn on 20 October 2016, exhibit Individual EST 1-3, p 9, edocs 3478412.

<sup>2007</sup> Affidavit of Individual EST 1 sworn on 20 October 2016, exhibit Individual EST 1-3, p 10, edocs 3478412.

<sup>2008</sup> Affidavit of Individual EST 2 sworn on 20 October 2016, exhibit Individual EST 2-8, edocs 3478395.

<sup>2009</sup> Affidavit of Individual CSIU 2 sworn on 26 October 2016, para 7, edocs 3485408.

<sup>2010</sup> Affidavit of Individual EST 2 sworn on 20 October 2016, para 20, edocs 3478395.

<sup>2011</sup> Affidavit of Individual EST 2 sworn on 20 October 2016, para 11 and exhibit Individual EST 2-8 p 19, edocs 3478395.

<sup>2012</sup> Affidavit of Individual EST 2 sworn on 20 October 2016, paras 11-15, edocs 3478395.

<sup>2013</sup> Affidavit of Individual EST 2 sworn on 20 October 2016, para 22, edocs 3478395.

<sup>2014</sup> Affidavit of Individual EST 2 sworn on 20 October 2016, para 22, edocs 3478395.



transfer of Corrective Services to the Department of Justice and Attorney-General and reported to ESU regarding the investigation.

#### ETHICAL STANDARDS UNIT AND CORRECTIVE SERVICES INVESTIGATION UNIT – INVESTIGATIONS AFTER 1 NOVEMBER 2013

The ESU received the EST files after the Queensland Corrective Services became a part of the Department of Justice and Attorney-General.<sup>2015</sup> The file was given to Individual ESU 2, who was employed as a casual employee to assist with the workload inherited from the EST.<sup>2016</sup>

On 6 November 2013, Individual CSIU 2 interviewed Young Person A1 at whereupon Young Person A1 withdrew his complaint.<sup>2017</sup> Individual CSIU 2's report to the CSIU on 10 November 2013 was that:

*All force applied to the complainant (which was minimal) appeared to be justified and appropriate given the circumstances. In correspondence the complainant stated he was tapped on the head by a Correctional Officer. Whilst viewing the footage, it appears that this was in order to confirm that a safety helmet placed on the complaint [sic] was fitted correctly. No behaviour or actions by Correctional Officers on the CCTV footage appeared to be unlawful or unjustified.*<sup>2018</sup>

This view was confirmed in Individual CSIU 2's affidavit provided to the Review.<sup>2019</sup> Individual CSIU 2 considered that the CCTV footage and the IOMS material did not indicate that there was an unlawful assault on behalf of the correctives services officers, and he decided, "that all force applied to the complainant appeared to be justified and appropriate given the circumstances".<sup>2020</sup> Individual CSIU 2 considered the investigation returned to ESU for an investigation of possible internal breaches of discipline.<sup>2021</sup>

On 4 December 2013, the CSIU sent its advice to the ESU, advising that matter had been finalised as there was no evidence of assault and the complaint was withdrawn.<sup>2022</sup> The CSIU advised the ESU that "In the absence of a criminal complaint this investigation is now finalised and the allegations are found to be unsubstantiated".<sup>2023</sup> Individual CSIU 2 reviewed the CCTV, "which revealed appropriate use of force and no evidence of assault".<sup>2024</sup> Individual CSIU 2 described the force as minimal and justified in the circumstances.<sup>2025</sup> In relation to being tapped on the head

<sup>2015</sup> Affidavit of Individual ESU 1 sworn on 17 October 2016, para 3, edocs 3473091; Affidavit of Individual ESU 3 sworn on 28 October 2016, para 7, edocs 3491313.

<sup>2016</sup> Affidavit of Individual ESU 1 sworn 17 October 2016, para 20, edocs 3473091.

<sup>2017</sup> Affidavit of Individual CSIU 2 sworn on 26 October 2016, para 10, edocs 3485408.

<sup>2018</sup> Memorandum from Individual CSIU 1, Corrective Services Investigation Unit, 4 December 2013, edocs 3437546.

<sup>2019</sup> Affidavit of Individual CSIU 2 sworn on 26 October 2016, paras 22-24, edocs 3485408.

<sup>2020</sup> Affidavit of Individual CSIU 2 sworn on 26 October 2016, para 22, edocs 3485408.

<sup>2021</sup> Affidavit of Individual CSIU 2 sworn on 26 October 2016, para 27, edocs 3485408.

<sup>2022</sup> Affidavit of Individual ESU 1 sworn 17 October 2016, paras 20 and 21, edocs 3473091.

<sup>2023</sup> Memorandum from Individual CSIU 1, 4 December 2013, edocs 3437546.

<sup>2024</sup> Queensland Corrective Services memorandum from Individual CSIU, ESU Ref No. 22379, 4 December 2013, edocs 3437546.

<sup>2025</sup> Memorandum from Individual CSIU 2 to Individual CSIU 1, Complaint by Young Person A1, 10 November 2013, which was annexed to the Queensland Corrective Services memorandum from Individual CSIU 1, ESU Ref No. 22379, 4 December 2013, edocs 3437546. The document is also attached as exhibit 6 to the affidavit of Individual CSIU 2 sworn on 26 October 2016, edocs 3485408.



by staff, Individual CSIU 2 considered that it looked like it was an attempt to ensure the safety helmet was placed correctly.<sup>2026</sup>

On 4 December 2013, Individual ESU 1 directed Individual ESU 2 by email to prepare an advice to the Crime and Misconduct Commission and the Prisoners' Legal Service on the basis of the advice from the CSIU.<sup>2027</sup>

On 6 January 2014 Individual ESU 2 emailed Individual QCS 3 to question whether BCC took any further action.<sup>2028</sup> Individual QCS 4 responded by email<sup>2029</sup> on 8 January 2014 by forwarding advice from Individual QCS 19 that:

*There was no substance to his claim of excessive force. Case notes on the days leading up to the 13<sup>th</sup> Feb 2013 (attached) reflect that he was a behavioural issue within the unit...Case notes reflect that*

*No further action was required at the time and there was no requirement for a change in management of the prisoner.*

After Individual ESU 2 followed up with a further email on 21 January 2014, Individual QCS 4 replied on the day that:

*The management of the prisoners [sic] behaviour is consistent with responding to matters of this type.*<sup>2030</sup>

On 20 January 2014 Individual ESU 2 emailed the Crime and Misconduct Commission with an Outcome Advice<sup>2031</sup> which stated:

*No action required. Complainant notified by way of his solicitor...During the initial inquires [sic] the EST found that no Incident Report had been raised by staff (the incident was noted in prisoner Young Person A1's Case Notes). This oversight was brought to the attention of the General Manager, Brisbane Correctional Centre to deal with at a local level.*

On the same day, the ESU advised the Prisoners' Legal Service of the outcome, namely that the complainant withdrew his complaint and the matter was considered finalised and the file closed.<sup>2032</sup>

On 12 February 2014 Individual ESU 2 emailed Individual CSIU 1 to advise that Young Person A1's solicitor had advised him that Young Person A1 wished to withdraw his withdrawal of the complaint, and that the solicitor had contacted the CSIU directly. Individual ESU 2 asked who he can liaise with in the Unit.<sup>2033</sup>

<sup>2026</sup> CSIU Memorandum from Individual CSIU 2 to Individual CSIU 1, Complaint by Young Person A1, 10 November 2013, which was annexed to the Queensland Corrective Services memorandum from Individual CSIU 1 ESU Ref No. 22379, 4 December 2013, edocs 3437546. The document is also attached as exhibit Individual CSIU 2-6 to the affidavit of Individual CSIU 2 sworn on 26 October 2016, p 28, edocs 3485408.

<sup>2027</sup> Email from Individual ESU 1 to Individual ESU 2 dated 4 December 2013, edocs 3457728.

<sup>2028</sup> Email from Individual ESU 2 to Individual QCS 3 dated 6 January 2014, edocs 3457734.

<sup>2029</sup> Email from Individual QCS 4 to Individual ESU 2, edocs 3535761.

<sup>2030</sup> Email from Individual QCS 3 to Individual ESU 2 dated 21 January 2014, edocs 3437557.

<sup>2031</sup> CMC Outcome Advice for outcome with Young Person A1 attached to email from Individual ESU 2 to [complaints@cmc.qld.gov.au](mailto:complaints@cmc.qld.gov.au) dated 20 January 2014, edocs 3459123.

<sup>2032</sup> Letter Individual ESU 1 to the Prisoners' Legal Service, 20 January 2014, edocs 3437430.

<sup>2033</sup> Email from Individual ESU 2 to Individual CSIU 1 dated 12 February 2014, edocs 3457743.



On 5 March 2014 Individual ESU 2 was advised by Individual CSIU 1 by email that the Young Person A1 matter had been re-detailed for investigation and would be attended to in due course.<sup>2034</sup>

In April 2014 Individual ESU 2 ceased working for the ESU and the file was given to Individual ESU 3.<sup>2035</sup>

Young Person A1 reinitiated his complaint against corrective service officers.<sup>2036</sup> The complaint was allocated to Individual CSIU 3 at the CSIU for reinvestigation and a follow up review.<sup>2037</sup> On 8 June 2014 Individual CSIU 3 visited Young Person A1 at <sup>2038</sup> Young Person A1 confirmed his belief that he was unlawfully assaulted on 13 February 2013. Young Person A1 complained of his treatment and placement on IMPs for no reason.

Individual CSIU 3 reviewed the initial material used by Individual CSIU 2 as part of his investigation, Individual CSIU 3's interview with Young Person A1 along with the initial written complaint and documented material to decide if an offence had occurred and whether a complaint could be substantiated.<sup>2039</sup> After reviewing the material Individual CSIU 3 decided that no offences were committed and considered that the actions of corrective service officers were justified in the circumstances.<sup>2040</sup> Individual CSIU 3 could find no fresh evidence or footage to cause him to alter Individual CSIU 2's finding that allegations were unsubstantiated.<sup>2041</sup> Individual CSIU 3 considered that the body belt and helmet applied due to inappropriate behaviour.<sup>2042</sup> Individual CSIU 3 recommended that the corrections officers involved in the incident be exonerated.<sup>2043</sup> The second complaint of procedural unfairness was referred back to ESU.<sup>2044</sup>

On 24 June 2014 Individual CSIU 1 wrote a memorandum to the ESU stating that Individual CSIU 3 had reviewed the material from the original investigation by Individual CSIU 2 and found no new evidence to substantiate the complaint of assault.<sup>2045</sup> Young Person A1 also complained about being placed on an IMP for "no reason", but CSIU considered the issue of procedural fairness was not for CSIU to address.<sup>2046</sup>

<sup>2034</sup> Email from Individual CSIU 1 to Individual ESU 2 dated 5 March 2015, edocs 3457746.

<sup>2035</sup> Affidavit of Individual ESU 3 sworn on 28 October 2016, para 7, edocs 3491313.

<sup>2036</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, para 8, edocs 3488256.

<sup>2037</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, paras 8 and 9, edocs 3488256.

<sup>2038</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, para 12, edocs 3488256.

<sup>2039</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, paras 10 and 13, edocs 3488256; CSIU report from Individual CSIU 3, *Complaint by Prisoner Young Person A1* dated 8 June 2014, p 1, which is attached to the Queensland Corrective Services Memorandum ESU Ref. No. 22379 dated 24 June 2014, edocs 3437508.

<sup>2040</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, para 19, edocs 3488256.

<sup>2041</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, para 19, edocs 3488256.

<sup>2042</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, para 20, edocs 3488256.

<sup>2043</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, para 20, edocs 3488256. CSIU report from DCS Individual CSIU 3 to CSIU, *Complaint by Prisoner Young Person A1* dated 8 June 2014, p 3, which is attached to the Queensland Corrective Services Memorandum ESU Ref. No. 22379 dated 24 June 2014, edocs 3437508.

<sup>2044</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, para 21, edocs 3488256.

<sup>2045</sup> Memorandum from Individual CSIU 1 to Ethical Standards Unit ESU ref no 22379 dated 24 June 2014, p 1, para 5, edocs 3437508.

<sup>2046</sup> Memorandum from Individual CSIU 1 to ESU ref no 22379 dated 24 June 2014, p 1, paras 5 and 6, edocs 3437508. See also CSIU report from DCS Individual CSIU 3 to CSIU, *Complaint by Prisoner Young Person A1* dated 8 June 2014, p 2, which is attached to the Queensland Corrective Services Memorandum ESU Ref. No. 22379 dated 24 June 2014, edocs 3437508.



On 23 September 2014 Individual ESU 3 assessed the complaint as giving rise to a suspicion of corrupt conduct under the *Crime and Corruption Act 2001*.<sup>2047</sup>

Following receipt of the advice from the CSIU, Individual ESU 3<sup>2048</sup> listened to the record of interview Individual CSIU 3 undertook with Young Person A1 and read the IOMS entries.<sup>2049</sup> On 24 September 2014 Individual ESU 3 emailed Individual QCS 20 about removal of the mattress for which they can find no mention in IOMS, stating:

*Young Person A1 complains that everything was removed from his cell.*

*The CCTV footage of the 13/2/13 incident does show no mattress and there are case notes referring to items (non-specific) being taken out of the cell during the day.*

*Is removal of mattress a practice generally used at BCC? Do you have any records showing the circumstances around the mattress being removed from Prisoner Young Person A1's cell (how long for, why, etc)?<sup>2050</sup>*

Individual ESU 3 emailed Individual QCS 4 twice more. Individual QCS 4 responded on 27 November 2014 by forwarding information from Individual QCS 14:

*[Individual QCS 4], your response to [Individual ESU 2] 21 January 2014 is accurate.*

*incident in the visits section, his continual threats towards staff, acting out violently*

*The mattress was returned to the prisoner at lock away. He would have had the mattress for that night and thereafter.*

Individual ESU 3 considered the requirements of section 143 of the *Corrective Services Act 2006* were satisfied as:

<sup>2047</sup> Affidavit of Individual ESU 3 sworn on 28 October 2016, para 23, edocs 3491313; Ethical Standards Unit, Complaint Assessment – Quick Checklist, date received 12 February 2014, CMS22379, p 2, edocs 3457691.

<sup>2048</sup> See affidavit of Individual ESU 3 sworn on 28 October 2016, edocs 3491313.

<sup>2049</sup> Affidavit of Individual ESU 3 sworn on 28 October 2016, paras 16-18, edocs 3491313.

<sup>2050</sup> Email from Individual ESU 3 to Individual QCS 20 dated 24 September 2014, which is exhibit Individual ESU 3 10 to the Affidavit of Individual ESU 3 sworn 28 October 2016, edocs 3491313.



- Individual ESU 3 inferred that the continued non-compliant misuse of the emergency intercom meant that the reason for the use of force was to compel compliance with an order under section 143(1)(a) of the *Corrective Services Act 2006*;<sup>2052</sup> and
- the officers had warned Young Person A1 that force would be used if Young Person A1 did not stop using the intercom, and time was allowed for the warning to be observed.<sup>2053</sup> Individual ESU 3 said sections 143(2) and (3) of the Act were satisfied by inferring that, because the officers said to Young Person A1 that if he did not stop using the intercom that force would be used that they did not reasonably believe there was another way to stop Young Person A1 from pressing the button.<sup>2054</sup>

The briefing note says the force used on Young Person A1 in the segregation unit was relatively minor and that “[m]any case notes records” that he received two hours out of cell time, noting that on two occasions this was cut short.<sup>2055</sup> Individual QCS 4’s advice about the removal of items is reiterated although it is noted that “[r]emoval of mattresses is not standard practice.”<sup>2058</sup>

The briefing note’s conclusion is that, “The evidence does not support prisoner Young Person A1’s allegations. Further investigation is unlikely to identify sufficient evidence to substantiate the allegations, therefore it is considered an unjustifiable use of resources to deal with the allegation further.”<sup>2061</sup>

<sup>2052</sup> Affidavit of Individual ESU 3 sworn on 28 October 2016, para 25(a)(ii) and (iii), edocs 3491313.

<sup>2053</sup> Affidavit of Individual ESU 3 sworn on 28 October 2016, para 25(a)(v), edocs 3491313.

<sup>2054</sup> Affidavit of Individual ESU 3 sworn on 28 October 2016, para 25(a)(v), edocs 3491313.

<sup>2055</sup> Memorandum from Individual ESU 1 to Individual QCS 2, ESU ref CMS22379 dated 23 December 2014, p 2, edocs 3457702.

<sup>2057</sup> Memorandum from Individual ESU 1 to Individual QCS 2, ESU ref CMS22379 dated 23 December 2014, p 3, edocs 3457702.

<sup>2058</sup> Memorandum from Individual ESU 1 to Individual QCS 2, ESU ref CMS22379 dated 23 December 2014, p 3, edocs 3457702.

<sup>2059</sup> Memorandum from Individual ESU 1 to Individual QCS 2, ESU ref CMS22379 dated 23 December 2014, p 4, edocs 3457702.



Individual QCS 2 signed the briefing note and indicated he agreed the allegations were unsubstantiated.<sup>2062</sup> There were no non-compliance issues identified other than the staff's failure to prepare an incident report.<sup>2063</sup>

The Review accepts the submission that as Young Person A1 was incarcerated in an adult facility any assessment of the legality or propriety of Queensland Corrective Services was not relevant to the assessment conducted by ESU.<sup>2064</sup>

In February 2015 the ESU advised the Prisoners' Legal Service of the outcome by way of a letter to PLS from Individual ESU 4 which stated that:

*Officers of the CSIU attended on 8 June 2014 and conducted an interview with Young Person A1. The CSIU considered there was no new evidence to change their finding that the assault allegation was unsubstantiated. The CSIU referred to the ESU additional complaints raised by Young Person A1 during his interview that he was treated unfairly in relation to his time out of his cell, removal of items and Intensive Management Plans.*

*The ESU reviewed CCTV footage and other documentary evidence which did not support Prisoner Young Person A1's allegations that unreasonable force was used on him, or his further allegations raised during his interview with the CSIU.*

*The resultant report was considered by [Individual QCS 2] ...[Individual QCS 2] considered the evidence adducted and found that, on the balance of probabilities, the allegation were not capable of being substantiated.<sup>2065</sup>*

#### OVERSIGHT OF USE OF HELMET, BODY BELT AND HANDCUFFS

Young Person A1's initial complaint via the Prisoners' Legal Service was about the use of handcuffs, belt and helmet on 13 February 2013.

along with the original complaint to the Department of Justice and Attorney-General.<sup>2066</sup> It is reasonable to assume that such an opinion would ordinarily alert an investigating or assessing officer of DJAG that this incident was worthy of thorough investigation. However, the only matter identified as problematic was that the incident was not recorded in IOMS.

The Review, having viewed the CCTV, considers that there are identifiable issues with the use of the restraints as shown in the CCTV. This has been discussed above in full.

<sup>2062</sup> Signed Memorandum from Individual ESU 1 to Individual QCS 2, ESU ref CMS22379 dated 23 December 2014, p 4, edocs 3457709.

<sup>2063</sup> Affidavit of Individual ESU 1 sworn on 17 October 2016, para 50, edocs 3473091.

<sup>2064</sup> Submission on behalf of Individual ESU 1, 1 December 2016, para 5.25, edocs 3540237.

<sup>2065</sup> Letter from Individual ESU 4 to PLS dated 10 February 2015, p 1, edocs 3457716.



The Queensland Police Service, the Department of Community Safety and the Department of Justice and Attorney-General found Young Person A1's complaints in this regard to be unsubstantiated.<sup>2067</sup>

It has been submitted on behalf of the State that it is open to find that the application of all restraints was in accordance with the statutory provisions.

In the limited time that the Review has had to consider this matter it is not possible to reach such a conclusion. There are questions as to reasonableness of beliefs and alternative options to curtail the conduct that, on the evidence provided, cannot be resolved.

**Finding 14.F5** – The analysis of oversight mechanisms in relation to the complaint by Young Person A1 about the use of restraints on 13 February 2013 reveals deficiencies.

#### OVERSIGHT OF SEPARATE CONFINEMENT

Young Person A1 also complained on 8 June 2014 to Individual CSIU 3 about his general treatment whilst in the YOU.<sup>2068</sup>

The Review, having completed its analysis of the IOMS records and the relevant policies and legislation considers that there were concerning issues with Young Person A1's general treatment at the YOU including:

- inappropriate separate confinement;
- limited exercise in fresh air during separate confinement as required by the *Corrective Services Regulation 2006*, section 5(d); and
- no notes in IOMS justifying the removal of the mattress from Young Person A1's cell (items which are otherwise required to be provided under the *Corrective Services Regulation 2006*, section 5(b)).

Young Person A1 was wrongfully segregated in the Office of the Chief Inspector visited BCC between 23 and 27 February 2015. That Office noted in its report *Brisbane Correctional Centre Inspection Report* as follows:

*The Inspectors observed a highly structured and well supervised unit for 17-year-olds (Youthful Offenders Unit) at BCC that ensured the safety and security of young people held at BCC. Staff seemed committed and well engaged in their duties. Inspectors however noted that the behavioural management system operating within the unit may require further legal and chief inspectorate review to ensure that sound operating practices are being applied to the locking down of 17 years [sic] old. Specifically, no legislative order is used to lock down the 17 years [sic] old, as part of the behavioural management system.*<sup>2069</sup> (emphasis added)

<sup>2067</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, para 28, edocs 3488256.

<sup>2068</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, para 24, edocs 3488256.

<sup>2069</sup> Office of the Chief Inspector, *Brisbane Correctional Centre Inspection Report 23<sup>rd</sup>-27<sup>th</sup> February 2015*, p 4, edocs 3458698.



Again, in April 2016 the Chief Inspector noted in the Office of the Chief Inspector's fully announced visit report<sup>2070</sup> to the boys yard at BCC that boys were being separated without authority under local plans and not pursuant to orders under the *Corrective Services Act 2006* as required by that Act. Mail was also not being allowed to be held in segregation cells.<sup>2071</sup>

The response of the one correctional manager in relation to the April 2016 report is concerning as it reflects a lack of self-monitoring/self-awareness and a dependence upon others bringing legislative compliance to the prison's attention:

*BCC would have expected by now with the advocacy stance that these roles inherently take and the frequency of their visits that any legal or fairness issue would have been highlighted and thoroughly addressed.*<sup>2072</sup>

The Queensland Police Service was of the view that it was not for them to inquire into prisoner management practices.<sup>2073</sup> The Review accepts that submission. In relation to Young Person A1's separate confinement, ethics consultants of the Department of Community Safety or the Department of Justice and Attorney-General did not turn their minds to the question of whether the separate confinement of Young Person A1 accorded with legislative and regulation provisions:

- sections 53, 60 or 118 of the *Corrective Services Act 2006*, which permit segregation; and
- section 5 of the *Corrective Services Regulation 2006*.<sup>2074</sup>

Individual EST 2 stated that the complaint that he was tasked to assess did not include any mention of Young Person A1's separate confinement. In the usual course of an assessment of a complaint he stated that if additional concerns were identified these matters would typically be assessed and dealt with. He further stated that it was not EST's role when assessing a complaint about a discrete incident to embark upon a broader review of a prisoner's management. The Review accepts those submissions.<sup>2075</sup>

Individual ESU 3 stated that the ESU role was to assess whether a matter could potentially be substantiated as alleged misconduct or official misconduct/corrupt conduct before proceeding to any investigation or other action. The question of the authority for the separation was not referred to Individual ESU 3. Further it was not part of Individual ESU 3's role in assessing a complaint to generally consider the practices and procedures in place within the relevant area and/or whether authorised policies in that business area are lawful.<sup>2076</sup>

Although the initial complaint from the Prisoners' Legal Service did not raise his separate confinement, Young Person A1 subsequently complained generally to Individual CSIU 3 about his treatment at BCC, including being placed on IMPs.

<sup>2070</sup> Office of the Chief Inspector, *Brisbane Correctional Centre - Management of Boys Unit Report*, April 2016, edocs 3458708.

<sup>2071</sup> Office of the Chief Inspector, *Brisbane Correctional Centre - Management of Boys Unit Report*, April 2016, edocs 3458708.

<sup>2072</sup> Office of the Chief Inspector, *Brisbane Correctional Centre - Management of Boys Unit Report*, April 2016, page 6, edocs 3458708.

<sup>2073</sup> Affidavit of Individual CSIU 3 sworn on 26 October 2016, para 29, edocs 3488256.

<sup>2074</sup> *Corrective Services Regulation 2006*, s 19.

<sup>2075</sup> Submission on behalf of Individual EST 2, 28 November 2016, p 4, edocs 3536179.

<sup>2076</sup> Submission on behalf of Individual ESU 3, 28 November 2016, edocs 3535777.



In a "Proposed Report of the Queensland Ombudsman"<sup>2077</sup> it was found that the separation practices in place at BCC YOU at the time of this incident were outlined as, "The restriction on out of cell access and association under an IMP in circumstances where it amounts to separate confinement is unlawful within the meaning of section 49(2)(a) of the *Ombudsman Act 2001*."

The Review considers that complaints and oversight mechanisms failed to identify that actions taken by the corrective services officers in separately confining Young Person A1 were not authorised under the relevant legislation and policies.

#### INVESTIGATION BY OFFICE OF THE CHIEF INSPECTOR

In September 2016, following public revelation of the Young Person A1 incident, the Chief Inspector prepared the report *Individual Case Review Young Person A1*.<sup>2078</sup> The report sets out the inappropriate and questionable conduct involved in Young Person A1's treatment. Relevant extracts in relation to the segregation and application of restraints are set out earlier in this chapter.

The Office of the Chief Inspector considered that the revocation of the privilege restrictions in Young Person A1's case, "were not fair, just and reasonable",<sup>2079</sup> and that placing Young Person A1 in a head, face protector and body belt during the 13 February 2013 incident "does not appear to be fair, just and reasonable".<sup>2080</sup>

It is not necessary to repeat the findings of the Office of the Chief Inspector here, as that has been previously done in relation to the use of BMPs and IMPs and in relation to the 13 February 2013 incident.

The Office of the Chief Inspector's September 2016 report on Young Person A1 accurately identified the problems with Young Person A1's treatment. However the investigation and report was undertaken four years after the incident occurred and only after the treatment of Young Person A1 had been published in *The Courier Mail*.

The functions of the Chief Inspector are limited. The functions of the Chief Inspector are to investigate an incident, to inspect or review services or the operations of a corrective services facility or a probation and parole office.<sup>2081</sup> However the Chief Inspector may only investigate an event involving a prisoner if the chief executive considers the event requires investigation unless the incident involves:

- the death of someone who is in custody or on a community-based order or parole order who was directly under the supervision of a corrective services officer;

<sup>2077</sup> Submission on behalf of Individual QCS 4 dated 29 November 2016, Annexure 10, Confidential Proposed Report of the Queensland Ombudsman, *An investigation into the separate confinement of prisoners*, 18 October 2013, p 64, edocs 3539940; Submission from the State of Queensland to the Review, Young Person A1 incident, 8 December 2016, edocs 3553996.

<sup>2078</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016), edocs 3458671.

<sup>2079</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016) p 12, edocs 3458671.

<sup>2080</sup> Office of the Chief Inspector, *Chief Inspector Individual Case Review: Young Person A1 (E05605) – Previous Management as a Youthful Offender – Brisbane Correctional Centre* (2016) p 14, edocs 3458671.

<sup>2081</sup> *Corrective Services Act 2006*, s 294(2).



- an escape or attempted escape from secure custody; or
- a riot or mutiny involving prisoners in custody.<sup>2082</sup>

Therefore incidents that do not involve one of the above matters may only be initiated by the chief executive.

#### CONSIDERATION OF COMPLAINTS AND OVERSIGHTS MECHANISM

All of the oversight and investigation mechanisms that operated prior to the Office of the Chief Inspector systematically failed to consider whether the actions taken by the correctional services staff in relation to Young Person A1's separate confinement and the 13 February 2013 incident were in fact authorised.

Young Person A1 was a 17 year old in an adult prison and was in a position of personal vulnerability because he was a youthful prisoner and was not easily able to decide for himself the lawfulness or appropriateness of those actions. Young Person A1 complained to a number of organisations with responsibility for handling complaints and oversight mechanism.

Young Person A1 relied on, and was entitled to rely on, each of the investigative bodies to approach the question raised by his complaint, that is, of whether Young Person A1's separate confinement and the actions taken by the corrective services officers in the 13 February 2013 incident were authorised with an independent mind. However, at each stage of the investigative process the work of the previous reviewer was largely replicated. It appeared that the previous opinion was replicated without a reconsideration of all steps by the subsequent investigator.

The Review considers that there were compounding errors in the investigative system and process.

The Review considers that it is necessary for incidents involving the use of force to be independently considered to ensure that the legislation and policies authorise the use of force, regardless of whether or not there is a complaint. The investigative body ought to be independent and engage in a fully independent consideration of the relevant facts and legislation in order to reach its own conclusions.

**Recommendation 14.R4** - The Queensland Government write to Young Person A1 and apologise for the unlawful segregation.

<sup>2082</sup> *Corrective Services Act 2006*, s 294(2) and schedule 4, definition *incident*.



## CHAPTER 15 YOUNG PERSON A3

### INTRODUCTION

This incident was shown on ABC television *7:30 Report* on 18 August 2016,<sup>2083</sup> and is one of the specific incidents referred for review by the *Commissions of Inquiry Order (No 1) 2016*.

The incident involved Young Person A3,

In conducting the review of this incident, pursuant to the terms of reference, regard has been had to statements and exhibits from youth justice staff as follows:

- statements from the Ethical Standards Unit Inspectorate;<sup>2084</sup>
- DCOIS records;<sup>2085</sup>
- health records for Young Person A3;<sup>2086</sup>
- behaviour development plans (BDPs) developed for Young Person A3;<sup>2087</sup>
- case reviews for Young Person A3;<sup>2088</sup>
- CCTV footage of the incident;<sup>2089</sup>
- information relating to the incident outlined during the broadcast of the ABC's *7.30 Report*;<sup>2090</sup>
- policy documents in place at the time relating to incident management; use of force; use of mechanical restrains; use of separation; suicide and self-harm risk management; and reporting of harm;<sup>2091</sup>
- Legislation in relation to the incident as outlined below:
  - *Youth Justice Act 1992*, version 10D as in force as at 1 January 2013;

<sup>2083</sup> *CCTV shows alleged mistreatment at Townsville's Cleveland Youth Detention Centre* (18 August 2016) ABC News <<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>.

<sup>2084</sup> Affidavit of ESU 5, sworn 2 November 2016, edocs 3495059; Affidavit of ESU 6, sworn 10 November 2016 edocs 3509156.

<sup>2085</sup> DCOIS Incident 1450405 edocs 3446519.

<sup>2086</sup> Health records for Young Person A3 edocs 3446552.

<sup>2087</sup> Behaviour Development Plans of Young Person A3: BDP ID 226398, edocs 3443364; BDP ID 381902, edocs 3443345; BDP ID 744866 edocs, 3443319; BDP ID 758943, edocs 3443306; BDP ID 872778, edocs 3443294; BDP ID 910172, edocs 3443285; BDP ID 1100585, edocs 3443275; BDP ID 1258998, edocs 3443268; BDP ID 1484234, edocs 3443225.

<sup>2088</sup> Integrated Case Management System Assessment, edocs 3445708.

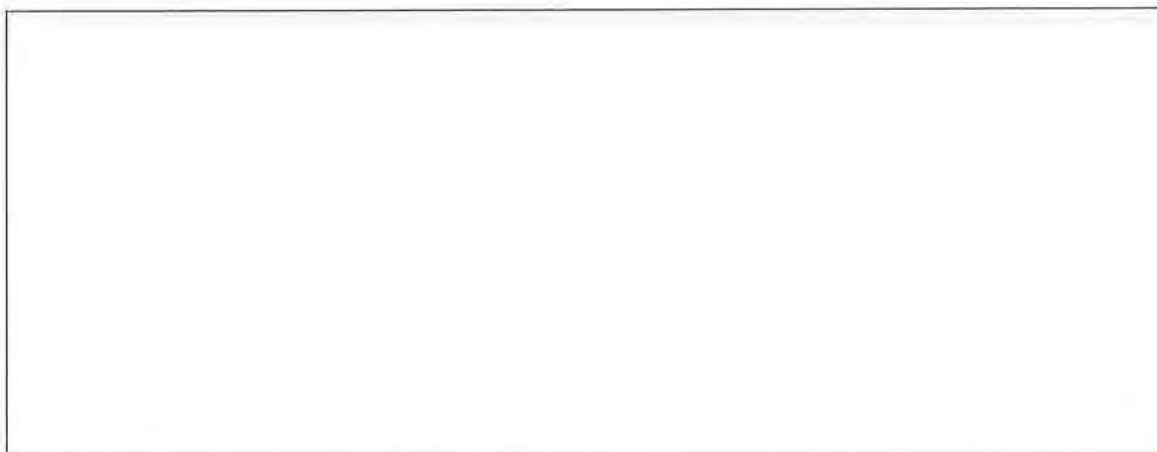
<sup>2089</sup> CCTV footage of Incident 1450405, edocs 3543746.

<sup>2090</sup> *CCTV shows alleged mistreatment at Townsville's Cleveland Youth Detention Centre* (18 August 2016) ABC News <<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>.

<sup>2091</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011), edocs 3447316; *Youth Detention Centre Operations Manual Chapter 8 'Recording and responding to suicide risk and self-harming behaviour'* (April 2011), edocs 3447737; *Youth Detention Centre Operations Manual Chapter 19 'Identifying and Reporting Incidents'* (April 2011), edocs 3447316; *YD-3-4 Protective Actions Continuum*, v 1, edocs 3447811.



- *Youth Justice Regulation 2003*, version 2C in force at 1 January 2013; and
  - *Child Protection Act 1999*;
- information provided by staff and young people to the Review team during the visit to CYDC on 31 October and 1 November 2016.



## INCIDENT

The incident occurred in the early evening of 20 January 2013 in the Heron Unit of CYDC. Young Person A3 was the subject of a code yellow in response to non-compliance and alleged aggression on his part.<sup>2092</sup> Young Person A3 was sitting on a kitchen bench top and failed to comply with a direction given to him by youth workers, at which point a code yellow was called. The description of Young Person A3's non-compliance varies across reports. Some staff reported that Young Person A3 refused to have a shower, others stated Young Person A3 refused to change in to suicide-prevention clothing (tear-resistant clothing).<sup>2093</sup> The alleged aggression by Young Person A3 was said to include verbal threats and behaving in an aggressive manner.<sup>2094</sup> Fourteen youth detention staff responded to the code yellow.

The staff responded to the code yellow and ground stabilised Young Person A3, using force and physical holds then applying leg cuffs and ankle cuffs to him. Young Person A3 was restrained on the ground in this manner for approximately 23 minutes.<sup>2095</sup> He was then lifted by a group of male youth workers and carried to a separation room.

<sup>2092</sup> DCOIS Incident 1450405, edocs 3446519.

<sup>2093</sup> DCOIS Incident 1450405, edocs 3446519; Affidavit of YJ-28 sworn 9 October 2016, para 19(a), edocs 3470972; Affidavit of YJ-39, sworn 17 October 2016, para 24, edocs 3473082.

<sup>2094</sup> DCOIS Incident 1450405, edocs 3446519; Affidavit of YJ-28 sworn 9 October 2016, paras 19(a)-(h), edocs 3470972.

<sup>2095</sup> CCTV footage of Incident 1450405.



*Image 1: Young Person A3 ground stabilised in response to code yellow*

Young Person A3 was placed on the floor in the separation room. Whilst Young Person A3 was still restrained with leg cuffs and handcuffs Young Person A3's clothes were forcibly cut off by a staff member using a "Hoffman knife." A Hoffman knife is approved for use in emergencies to cut free ligatures where a young person has attempted suicide. Once Young Person A3's clothing was removed, the handcuffs and leg cuffs were then removed. The staff exited the room and left Young Person A3 naked with a pair of suicide shorts, which were slipped into the room under the closed door. The suicide shorts did not fit Young Person A3. He remained and remained in the separation room for at least 2 hours.



*Image 2: Hoffman knife*



CCTV footage shows the period before the code yellow was called, and the period of Young Person A3's ground stabilisation, restraint, being carried to the separation room, clothes being cut off and a short time of the period of separation. The CCTV footage for the whole of the separation time of Young Person A3 is incomplete. There is a portion of missing CCTV footage.

The CCTV footage does not include audio of the incident. There is no objective record of what was said between staff and Young Person A3.

The incident came to the attention of the Ethical Standards Unit Inspectorate as part of the March 2013 quarterly inspection of CYDC. External oversight bodies were subsequently notified about the incident, but no formal investigation was ever undertaken.

Staff involved in the incident had a debrief session in the Heron unit once Young Person A3 had been placed in the separation room. Matters discussed during the debriefing session included how the incident started, why it started, how it was managed, and what could have been done better.<sup>2097</sup> Staff were reminded during that debriefing session that they could use the employee assistance program (EAP), which is a free counselling service available to staff.<sup>2098</sup>

#### RECORDS OF INCIDENT

There are discrepancies between the staff's accounts of the incident as follows:

The State submits that the fact that there are inconsistencies is unremarkable as each person may recall the incident in the same way.<sup>2099</sup> That is so, however the DCOIS records all indicate the accounts were logged at 6.07 and 6.08 pm that day and the inconsistencies are quite significant, but more to the point they were relied upon by the management at CYDC when reviewing the incident.

There are also consistencies between staff accounts of the incident including:

<sup>2097</sup> Affidavit of Individual YJ-32, sworn 11 October 2016, p 4 para 17, edocs 3470965.

<sup>2098</sup> Affidavit of Individual YJ-32, sworn 11 October 2016, p 4 para 17, edocs 3470965.

<sup>2099</sup> Submission on behalf of the State in relation to chapter 6 and 6a, edocs 3554157



The Review considers that the CCTV footage provided depicts as follows:

- Individual YJ-28 did not approach or touch Young Person A3 prior to the code yellow being called; <sup>2100</sup>
- Young Person A3 was sitting still on the bench until the moment he was ground stabilised; and
- Young Person A3 was immobile as soon as he was ground stabilised.

The Review considers that the CCTV footage provided does not depict as follows:

- Young Person A3 struggling or kicking out; <sup>2101</sup>
- any resistance by Young Person A3 to staff while he was ground stabilised; <sup>2102</sup> and
- Young Person A3 <sup>2103</sup>

The State submits that the CCTV footage is unclear at critical points. The Review accepts that there are periods of time in the CCTV footage where the view of the incident is obscured by the number of staff in attendance but does not accept that this is at critical points.

The Review considers that the periods of time throughout the CCTV footage that Young Person A3 does not appear to be moving and the length of time that he was on the ground are sufficiently clear.

#### INTERNAL REVIEW OF INCIDENT

On 21 January 2013 Individual YJ-28 noted in DCOIS, "COM 1 completed. Nil complaints recorded." <sup>2104</sup>

The incident was recorded in DCOIS as a non-reportable incident, in the category, "assaults and risk causing behaviours", with the sub-category, "non-physical violence." <sup>2105</sup> It was recorded that PAC was used, including the techniques of ground stabilisation; straight arm bar; two and three person take-down; and room extraction and insertion. The level of PAC was not recorded.

On 5 February 2013, Individual YJ-39 reviewed the incident in DCOIS, by that date the staff involved in the incident had completed their reports. Reports by staff included

<sup>2100</sup> Affidavit of Individual YJ-28 sworn 9 October 2016, pg 4 para 19(d)-(g), edocs 3470972.

<sup>2101</sup> DCOIS Incident 1450405, completed by Individual YJ-31 on 20 January 2013, edocs 3443236, Affidavit of Individual YJ-31, sworn 11 October 2016, pg 4, para 14(c), edocs 3470964.

<sup>2102</sup> DCOIS Incident 1450405, completed by Individual YJ-56 on 20 January 2013, 9.05pm, docs 3443236; affidavit of Individual YJ-32 sworn 11 October 2016, pg 4, para 14(c), edocs 3470965.

<sup>2103</sup> DCOIS Incident 1450405, completed by Individual YJ-31 on 20 January 2013, edocs 3443236)

<sup>2104</sup> *Youth Detention Operations Manual – Chapter 23: Managing and responding to complaints*, pg 11, para 9, edocs 3447316.

<sup>2105</sup> DCOIS Incident 1450405, edocs 3446519.



numerous mentions of the use of the Hoffman knife to cut Young Person A3's clothes off.<sup>2106</sup> Individual YJ-39 approved the incident in DCOIS, and commented as follows:

*This matter was appropriately managed and followed up by staff. [Young Person A3]*

*I was contacted as the On Call Manager and gave approval for his clothing to be removed and for him to be placed in separation with a pair of SR shorts.<sup>2107</sup>*

Individual YJ-39 did not refer to the use of the Hoffman knife, nor to viewing the CCTV of the incident. In Individual YJ-39's affidavit material provided to the Review he stated, "The only time I recall actually seeing the CCTV footage extract shown on the ABC's 7:30 report."<sup>2108</sup> Individual YJ-39 stated that the only time he viewed the CCTV footage of an incident was if there was a complaint by the young person, a complaint to police, or there was a question around misconduct of staff.<sup>2109</sup>

As the incident was recorded as a non-reportable incident, there was no requirement to report it beyond CYDC management, including to the Assistant Director-General of Youth Justice, or to ESU.

Individual YJ-25 added a comment to this incident in DCOIS on 8 February 2013 "When reviewing this incident, please refer back to Incident 1438771 (15 Jan), as both need to be considered collectively."<sup>2110</sup>

That State has submitted that the Review has not considered these incidents collectively. That submission is not accepted because by considering these incidents collectively the Review has highlighted a number of relevant considerations that were known to staff at the time of 20 January 2013 incident. Much of that detail is contained in the confidential section of this report.

The Review considers that the reports completed by staff for this incident overstate the level of aggression and resistance displayed by Young Person A3. According to Individual ESU 6 the management of this incident was inappropriate as there was fourteen staff restraining a young person who, prior to that time, was not showing any signs of aggression, he was engaged in a non-violent protest.<sup>2111</sup> The incident on 20 January 2013 involving Young Person A3 raised issues as to whether there was:

- inappropriate use of leg cuffs;
- inappropriate demand to change into suicide prevention clothing;
- inappropriate and inappropriate management of use of force – ground stabilisation involving restrictive holds with a high number of staff for an extended period of time;

<sup>2106</sup> DCOIS Incident 1450405 edocs 3446519.

<sup>2107</sup> DCOIS Incident 1450405 (Edocs 3446519).

<sup>2108</sup> Affidavit of Individual YJ-39, sworn on 21 November 2016, pg 2, para 4, edoc 3523920.

<sup>2109</sup> Affidavit of Individual YJ-39, sworn on 21 November 2016, pg 2, para 5, edoc 3523920.

<sup>2110</sup> DCOIS Incident 1450405, entry by Individual YJ-25, 8 February 2013, 3.22pm, edocs 3446519.

<sup>2111</sup> Affidavit of Individual ESU 6, sworn on 10 November 2016, para 65, edocs 3509156.



- inappropriate and inappropriate management of use of force – inappropriate use of Hoffman knife;
  - inappropriate and inappropriate management of use of force – forcible cutting off of the young person's clothing with Hoffman knife;
  - incorrect classification of the level of force utilised upon the young person;
  - incorrect classification of the incident as a non-reportable incident;
  - failure to follow the young person's support plan when there had been a previous direction to do so;
  - failure to report harm to the relevant statutory authority , namely the Department of Child Safety; and
  - failure to uphold Principles of the Youth Justice Act 1992 – 2, 3(a), 15,19 ,20(e) and (f).
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#### REVIEW OF INCIDENT 1450405

Individual YJ-39 was responsible for reviewing the management of incident 1450405. On 5 February 2013, Individual YJ-39 completed a review of the incident within DCOIS. The incident was recorded as a non-reportable level 2 incident, and classified as, "disruptive behaviour."<sup>2116</sup> Individual YJ-39 found no issues with the management of the incident.

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<sup>2116</sup> DCOIS Incident 1450405, pg 1, edocs 3446519.



Individual YJ-39 has advised the Review that he accepts, with the benefit of hindsight, that the leg cuffs and Hoffman knife were used in a way that did not accord with the policy or procedure at that time. He also accepts that when he reviewed the occurrence reports containing the description of the use of the leg cuffs and the Hoffman knife he failed to identify and respond to the fact that they were not specifically authorised.<sup>2117</sup>

#### ETHICAL STANDARD UNIT INSPECTORATE REVIEW OF INCIDENT 1450405

Incident 1450405 came to the attention of the Inspectorate as part of the March 2013 quarterly inspection of CYDC, which took place at CYDC, 11 - 15 March 2013. The primary inspection focus area was, "medical and health service provision for young people in custody."<sup>2118</sup> Pursuant to section 263(3) of the Youth Justice Act 1992, the Chief Executive was responsible to provide services that promote the health and wellbeing of young people detained at the Centre.

The monitored areas included in the inspection of CYDC were the use of physical force and the use of mechanical restraints, as the CCYPCG recommended that the Youth Detention Inspectorate conduct particular monitoring of those areas.<sup>2119</sup> The reporting of harm to young people in detention centres was also monitored as Inspectors had previously raised concerns in relation to inconsistencies and failures to identify and report harm adequately.<sup>2120</sup> The requirement to report harm is a statutory obligation pursuant to section 268 of the *Youth Justice Act 1992*.

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#### IDENTIFICATION OF INCIDENT 1450405

As part of the inspection process, Individual ESU 5 conducted an external audit of incidents reported within DCOIS. It was during this audit that Individual ESU 5 discovered Incident 1450405 involving Young Person A3. Individual ESU 5 had no prior knowledge of the incident,

<sup>2121</sup> Individual ESU 5 notified Individual ESU 6 about the incident.<sup>2122</sup>

On 6 February 2013, Individual ESU 6 emailed Individual YJ-25 requesting CCTV footage of Incident 1450405.<sup>2123</sup> On 7 February 2013, having not received a response, Individual ESU 6 sent another email to Individual YJ-25 requesting the CCTV footage of

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<sup>2117</sup> Submission on behalf of Individual YJ-39, dated 30 November 2016, page 1, edocs 3539284.

<sup>2118</sup> Final Report: Inspection of Cleveland Youth Detention Centre, March Quarter 2013, dated 29 July 2013, pg 5, edocs 3447138.

<sup>2119</sup> The Commission for Children Young People and Child Guardian, *Investigation into the Use of Force in Queensland Youth Detention Centres*, October 2012, pg 5 <[www.ccypcg.qld.gov.au](http://www.ccypcg.qld.gov.au)>.

<sup>2120</sup> Final Report: Inspection of Cleveland Youth Detention Centre, March Quarter 2013, dated 29 July 2013, pg 5, edocs 3447138.

<sup>2121</sup> Email from Individual ESU 5 to Individual ESU 1, 16 May 2013, 11.00am, edocs 3457930.

<sup>2122</sup> Individual ESU 5 e-mails Individual ESU 1 16 May 2013, 11.00am, edocs 3457930.

<sup>2123</sup> Individual ESU 6 email to Individual YJ-25 6 February 2013, 5.04pm, edocs 3457913.



the incident.<sup>2124</sup> Later that day, Individual YJ-25 responded to Individual ESU 6 and advised, “currently arranging footage for you.”<sup>2125</sup>

On 8 February 2013, Individual ESU 6 emailed Individual YJ-25 for the third time requesting the CCTV footage of the incident.<sup>2126</sup> Individual YJ-25 replied to Individual ESU 6’s email, “there are many competing priorities at present, we will provide the footage in due course.”<sup>2127</sup> The DCOIS incident report indicated the available CCTV footage had been downloaded to hard drive on 25 January 2013, two weeks prior to Individual ESU 6’s initial request for the footage.<sup>2128</sup>

Individual ESU 6, still awaiting the CCTV footage, forwarded his final email request to Individual YJ-25 to Individual ESU 1. In this email, Individual ESU 6 outlined his concerns to Individual ESU 1 about Incident 1450405, which were based on the information available on DCOIS.<sup>2129</sup> Individual ESU 6 stated as follows:

*“The concerns are that staff used physical force on a young person to remove his clothing and to place him in a SR gown. Of a more particular concern is that staff used a centre-issued rescue knife to cut the clothes from the young person while the young person was being restrained with handcuffs and leg cuffs.”<sup>2130</sup>*

Sometime after 8 February 2013, Individual ESU 6, Individual ESU 5 and Individual ESU 1 obtained and viewed the CCTV footage of the incident.<sup>2131</sup> It was apparent when viewing the CCTV footage that portions of the CCTV footage were missing. The missing CCTV footage related to some of the time when Young Person A3 and held in a separation cell.<sup>2132</sup> Individual ESU 6 queried the missing CCTV footage with Individual YJ-25, and was not provided with an explanation for the missing CCTV footage.<sup>2133</sup>

On 21 February 2013, Individual YJ-77 made an entry in DCOIS regarding the missing CCTV footage, which said, “Request for additional footage of total time spent in separation, checked footage system had commenced rewrite due to and [sic] images removed two days prior, so request for additional images not provided.”<sup>2134</sup>

After reviewing the available CCTV footage and the DCOIS incident reports from CYDC staff involved in the incident, Individual ESU 6 formed the preliminary view that the incident involving Young Person A3 was not appropriately managed by CYDC. In his affidavit provided to the Youth Detention Review, Individual ESU 6 outlined his initial concerns as follows:

<sup>2124</sup> Individual ESU 6 email to Individual YJ-25 7 February 2013, 3.40pm, edocs 3457914.

<sup>2125</sup> Individual YJ-25 email to Individual ESU 6 7 February 2013, 4.28pm, edocs 3457914.

<sup>2126</sup> Individual ESU 6 email to Individual YJ-25 8 February 2013, 11.31am, edocs 3457916.

<sup>2127</sup> Individual YJ-25 email to Individual ESU 6 7 February 2013, 1.23pm, edocs 3457917.

<sup>2128</sup> DCOIS Incident 1450405, pg 11, edocs 3446519.

<sup>2129</sup> Individual ESU 6 email to Individual ESU 1, 8 February 2013, 3.57pm, edocs 3457917.

<sup>2130</sup> Individual ESU 6 email to Individual ESU 1, 8 February 2013, 3.57pm, edocs 3457917.

<sup>2131</sup> Affidavit of Individual ESU 5 sworn 2 November 2016, p 3, para 6, edocs 3495059.

<sup>2132</sup> Affidavit of Individual ESU 6 sworn 10 November 2016, pg 6 para 20, edocs 3509156.

<sup>2133</sup> Affidavit of Individual ESU 6 sworn 10 November 2016, pg 6 para 20, edocs 3509156.

<sup>2134</sup> DCOIS Incident 1450405, pg 11, edocs 3446519.



*"in relation to the use of force for [Young Person A3], the management of the incident was inappropriate because there were fourteen staff restraining a young person who was not showing any signs of aggression at that time. At that time he [A3] was doing a nonviolent protest which was sitting on a bench with his arms folded."*<sup>2135</sup>

*"the facts as presented from my inspections reveal that it was a non-violent situation that was met with an overuse of force which was unnecessary, i.e., the application of restraints, leg cuffs and hand cuffs behind the back. Whilst he was restrained they were still applying pressure to the young person. The removal of his clothing to prevent self-harm was not necessary at that time".*<sup>2136</sup>

### MARCH 2013 INSPECTION OF CLEVELAND YOUTH DETENTION CENTRE

Between 11 and 15 March 2013, Individual ESU 6 and Individual ESU 5 attended CYDC to undertake a physical inspection of the centre and to conduct interviews with staff. Individual ESU 6 and Individual ESU 5 met with staff across different sections of the centre including youth workers, shift supervisors, the Centre Director, and the Manager of Monitoring and Compliance. Both Individual ESU 6 and Individual ESU 5 made detailed notes of the inquiries conducted by them during their inspections.

The inspection notes demonstrated that both Inspectors canvassed issues with staff surrounding the incident involving Young Person A3 on 20 January 2013. Individual ESU 6 spoke with Individual YJ-43, about how the use of force and use of restraints is monitored at CYDC. Individual YJ-43 said he picked six random incidents each month to view, and if he had any concerns he would raise them with training staff.<sup>2137</sup> Individual ESU 6 also met with Individual YJ-42, and discussed the 20 January 2013 incident. Individual YJ-42 said she held concerns regarding some practices at CYDC, and she had been contacted to attend CYDC on occasions previously when Young Person A3 was involved in an incident, but had not been contacted that night.<sup>2138</sup>

Individual ESU 5 interviewed staff from the Mental Health Alcohol Tobacco and Other Drugs Service (MHATODS) team. Individual THHS 13 stated that behaviour management at CYDC could be better.<sup>2139</sup> A clinical nurse stated that basic psychological knowledge is lacking in some staff, for example, understanding that the reason a young person is standing up to them may be a "flight or fight" response driven by the young person's own fearfulness of the situation.<sup>2140</sup>

On the final day of the inspection, Individual ESU 6 spoke with Individual YJ-25. Individual ESU 6 raised concerns about Incident 1450405, including that the occurrence had not been recorded as a reportable incident, and that there were

<sup>2135</sup> Affidavit of Individual ESU 6 sworn 10 November 2016, pg 21 para 65, edocs 3509156.

<sup>2136</sup> Affidavit of Individual ESU 6 sworn 10 November 2016, pg 21 para 66, edocs 3509156.

<sup>2137</sup> Individual ESU 6 Inspection Notes, CYDC 11 – 15 March 2013, pg 4-5, edocs 3457983.

<sup>2138</sup> Individual ESU 6 Inspection Notes, CYDC 11 – 15 March 2013, 8, edocs 3457983.

<sup>2139</sup> Affidavit of Individual ESU 5 sworn 2 November 2016, Exhibit ESU 5-5, pg 23, edocs 3495059.

<sup>2140</sup> Affidavit of Individual ESU 5 sworn 2 November 2016, Exhibit ESU 5-5, pg 23, edocs 3495059.



potential breaches of policy and legislation.<sup>2141</sup> Individual ESU 6 also questioned the appropriateness of cutting the clothes off Young Person A3. Individual YJ-25's response was that Young Person A3 might have been able to smash the window of the separation room if he was left with handcuffs on.<sup>2142</sup> Individual ESU 6 noted that the windows in the room are made from Lexan (a durable material) and it seemed unlikely they could be broken in the manner described by Individual YJ-25.<sup>2143</sup>

In the final paragraph of Individual ESU 6's inspection notes he stated, "I asked [YJ-25] if there were any learning's [sic] from this incident ... [YJ-25] responded no....no I can't think of any learning's [sic] from the incident." In concluding the interview, Individual ESU 6 advised Individual YJ-25 that the Inspectorate would need to investigate this matter further.<sup>2144</sup>

On 20 March 2013, Individual ESU 6 emailed, Individual ESU 1, briefing him on the outcome of the March 2013 CYDC inspection.<sup>2145</sup> Individual ESU 6 stated;

*We raised with [YJ-25] and [YJ-43] the incident involving Young Person A3, as it directly relates to the inspection focus areas. In particular the use of leg cuffs within the centre and the practice of forcibly removing a persons [sic] clothes for the reason of placing them into a tear resistant gown.*

*We also discussed this practice with the [THHS-13] who also had concerns about this practice and that it could be seriously detrimental to person's wellbeing, particularly if they have already been identified as being at risk....*<sup>2146</sup>

Upon completing the physical inspection of CYDC, Individual ESU 6 and Individual ESU 5 commenced drafting the quarterly report, which was ultimately titled, 'Inspection of Cleveland Youth Detention Centre March Quarter 2013'. In the report, the Inspectorate profiled Incident 1450405 involving Young Person A3 in the form of a case study.<sup>2147</sup> Annexed to the report were four photographs depicting the Young Person A3 being ground stabilised and restrained, and a photograph of a Hoffman knife, which was used to cut Young Person A3's clothes off while he was restrained.<sup>2148</sup>

<sup>2141</sup> Individual ESU 6 Inspection Notes, CYDC 11 – 15 March 2013, pg 10, edocs 3457983.

<sup>2142</sup> Individual ESU 6 Inspection Notes, CYDC 11 – 15 March 2013, pg 10, edocs 3457983.

<sup>2143</sup> Individual ESU 6 Inspection Notes, CYDC 11 – 15 March 2013, pg 10, edocs 3457983.

<sup>2144</sup> Individual ESU 6 Inspection Notes, CYDC 11 – 15 March 2013, pg 10, edocs 3457983.

<sup>2145</sup> Individual ESU 6 e-mail to Individual ESU 1, 20 March 2013, 1.10pm, edocs 3457921.

<sup>2146</sup> Individual ESU 6 e-mail to Individual ESU 1, 20 March 2013, 1.10pm, edocs 3457921.

<sup>2147</sup> Final Report: Inspection of Cleveland Youth Detention Centre, March Quarter 2013, dated 29 June 2013, pg 9 – 14, edocs 3447138.

<sup>2148</sup> Final Report: Inspection of Cleveland Youth Detention Centre, March Quarter 2013, dated 29 June 2013, pg 21- 31, edocs 3447138.









#### DRAFTING OF CYDC MARCH 2013 INSPECTORATE REPORT

Individual ESU 1 reviewed Individual ESU 6's draft of the CYDC March 2013 Inspectorate Report and marked up edits and comments using the 'track changes' function in MS Word. On 15 May 2013 Individual ESU 1 sent an edited version of the report to Individual ESU 6 by email.<sup>2173</sup>

Individual ESU 1 stated that he had concerns relating to this incident. Those concerns included the number of staff responding, the use of leg cuffs and lack of availability of suicide clothing that fitted the young person.<sup>2173</sup> He submitted that he did not have a concern regarding mass misconduct.<sup>2174</sup> The Review accepts that there was no evidence to suggest mass misconduct.

Individual ESU 1 has provided a submission which stated that it is and was his usual practice to ensure that investigation reports and memoranda contain the available and relevant evidence. The Review accepts that submission.

On 16 May 2013, Individual ESU 6 responded to Individual ESU 1's email about the edited report. Individual ESU 6 outlined his concerns regarding Incident 1450405 and explained why the Inspectorate had chosen to investigate the incident.<sup>2175</sup>

On 16 May 2013, Individual ESU 5 emailed Individual ESU 1 in reference to a meeting held between them the day before. Individual ESU 5 explained how Incident 1450405 came to the attention of the inspectorate.<sup>2176</sup>

The final report determined that the criteria for medical and health service provisions were met, and there were no recommendations relating to this focus area.<sup>2177</sup> In relation to the monitored focus area of reporting harm to children in youth detention centres, the Inspectorate recommended that further development of this area was

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<sup>2173</sup> Affidavit of Individual ESU 1, sworn 1 November 2016, pg 21 para 87, edocs 3492356.

<sup>2174</sup> Submissions on behalf of Individual ESU 1, 1 December 2016, para 4.18, edocs 3540224.

<sup>2175</sup> Email from Individual ESU 6 to Individual ESU 1, 16 May 2013, 5.28pm, edocs 3457931.

<sup>2176</sup> Email from Individual ESU 5 to Individual ESU 1, 16 May 2013, 11.00am, edocs 3457930.

<sup>2177</sup> Final Report: Inspection of Cleveland Youth Detention Centre, March Quarter 2013, dated 29 July 2013, 5, edocs 3447138.



required, based on the case study of Young Person A3 contained within the report.<sup>2178</sup> It was considered that particular attention should be placed on the causes and risks of emotional and psychological harm to young people in detention.<sup>2179</sup>

The Inspectorate made a total of five recommendations intended to assist in ensuring the Director-General's statutory obligations are met; including a recommendation that the Centre Director of CYDC conduct a review of Incident 1450405 involving Young Person A3.<sup>2180</sup>

Individual ESU 1 stated that the relevant decision makers (the Assistant Director-General, Youth Justice, and the Director-General), as well as the Centre Director, all accepted the recommendation that the way forward was to conduct an internal review.<sup>2181</sup>

Individual ESU 1 stated that he drew the CCTV footage to the attention of Individual YJ-54.<sup>2182</sup> The Review accepts that Individual ESU 1 brought the existence of the footage to the attention of individual YJ-54. The information provided is unclear as to whether or not Individual YJ-54 actually viewed the CCTV footage.

The Review considers that, upon viewing the CCTV footage, there does not appear to be a basis to say that Young Person A3, "violently resisted" and "needed to be mechanically restrained." In his affidavit provided to the Review on this point, Individual YJ-25 said, "It was my view that any review should have been undertaken by a body external to the CYDC."<sup>2183</sup>

What ultimately eventuated from the March 2013 CYDC Inspectorate Report, in relation to this incident, was a recommendation that the matter be reviewed by CYDC, and that CYDC management staff be trained in recognising and responding to psychological harm forthwith.<sup>2184</sup>

As demonstrated in the December 2013 quarter inspection reports (which provided progress checks on the implementation of outstanding recommendations), the review of incident 1450405 was never conducted by CYDC, ostensibly because it lacked the resources to do so.<sup>2185</sup> The review finds this is curious as whilst Individual YJ-25 contends he and another senior management staff member were involved in the incident and had the level of experience needed to undertake the review, Individual YJ-25 does not explain why the Manager of Compliance or an external body, for instance, could not have undertaken the review.

## OVERSIGHT MECHANISMS

The Review has found no evidence that the treatment of Young Person A3 on 20 January 2013 in the Heron Unit of CYDC was formally investigated or reviewed to determine if any person/s was liable for any breach of legislation and policies.

<sup>2178</sup> Final Report: Inspection of Cleveland Youth Detention Centre, March Quarter 2013, dated 29 July 2013, 5 edocs 3447138.

<sup>2179</sup> Final Report: Inspection of Cleveland Youth Detention Centre, March Quarter 2013, dated 29 July 2013, 6 edocs 3447138.

<sup>2180</sup> Final Report: Inspection of Cleveland Youth Detention Centre, March Quarter 2013, dated 29 July 2013, 6, 15 edocs 3447138.

<sup>2181</sup> Affidavit of Individual ESU 1, sworn 1 November 2016, pg 16 para 67, edocs 3492356.

<sup>2182</sup> Affidavit of Individual ESU 1, sworn 1 November 2016, pg 22 para 88, edocs 3492356.

<sup>2183</sup> Affidavit of Individual YJ-25, sworn 12 October 2016, pg 7 para 29, edocs 3470969.

<sup>2184</sup> Affidavit of Individual ESU 5, sworn 2 November 2016, pg 7-8, para 8, edocs 3495059.

<sup>2185</sup> Affidavit of Individual ESU 5, sworn 2 November 2016, pg 7-8, para 8, edocs 3495059.



## EXTERNAL OVERSIGHT BODIES

## CCYPCG

On 29 July 2013, Individual YJ-91 forwarded the March 2013 CYDC Inspectorate Report to the Acting CCYPCG.<sup>2186</sup> On 16 January 2014, Individual YJ-54 took over the role of the CCYPCG.<sup>2187</sup>

On 11 March 2014, a briefing note was prepared by staff within CCYPCG and forwarded to Individual YJ-54. This briefing note outlined issues raised by the March 2013 CYDC Inspectorate Report, including Incident 1450405 involving Young Person A3, and issues relating to reporting harm to children in youth detention.<sup>2188</sup> Individual YJ-54 had previously been briefed on the March 2013 CYDC Inspectorate Report in his previous capacity and he had endorsed the report and its recommendations.<sup>2189</sup> It was noted in the CCYPCG briefing report that the Director-General had accepted a recommendation that an internal review be conducted into Incident 1450405, but the status of any review was unknown.<sup>2190</sup>

On 17 March 2014, Individual YJ-54 sent a letter to Individual YJ-91 outlining his concerns about CYDC's response to and management of Young Person A3's behaviour, and general concerns about the reporting of harm in detention centres under Section 268 of the Youth Justice Act 1992. Individual YJ-54 advised Individual YJ-91 that he was considering whether CCYPCG would conduct a review into Incident 1450405. Individual YJ-54 requested the following information from Individual YJ-91 to assist him in making this determination:

- *the actions taken to implement each of the five recommendations contained in the March 2013 Inspection report;*
- *whether the Department of Child Safety was advised of each of the incidents regarding Young Person A3; and*
- *whether a referral was made to the Department's Ethical Standards Unit and/or the Crime and Misconduct Commission due to potential concerns and conduct related matters arising from incident 1450405, and if so the outcome of those referrals.*<sup>2191</sup>

On 5 May 2014, Individual YJ-91 sent correspondence to Individual YJ-54 advising that Incident 1450405 was not reported to the Department of Child Safety because the incident was not classified as reportable.<sup>2192</sup> The letter stated that at the time of the incident there was an absence of prescriptive guidance available to youth detention workers in circumstances where a young person did not want to change into suicide prevention garments, and the actions of staff involved were not precluded by Departmental policies and procedures. Accordingly, the matter was not referred to ESU or CMC.<sup>2193</sup>

<sup>2186</sup> Letter from Individual YJ-91 to Individual YJ-54, dated 29 July 2013, edocs 3457962.

<sup>2187</sup> Commission for Children and Young People and Child Guardian Annual Report 2013 – 2014, p 2 <

<https://publications.qld.gov.au/dataset/annual-report-2013-14-commission-for-children-and-young-people-and-child-guardian>.

<sup>2188</sup> Briefing note to Individual YJ-54, Commissioner for Children and Young People and Child Guardian, 11 March 2014, pg 5, edocs 3471413.

<sup>2189</sup> Email from Individual YJ-54 to Individual ESU-4, 22 July 2013, 10.03am, edocs3457951.

<sup>2190</sup> Briefing note to Individual YJ-54, Commissioner for Children and Young People and Child Guardian, 11 March 2013, edocs 3471413.

<sup>2191</sup> Letter from Individual YJ-54 to Individual YJ-91, 17 March 2014, pg 6-7, edocs3471414.

<sup>2192</sup> Letter from Individual YJ-91 to Individual YJ-54, 5 May 2014, pg 5, edocs 3471415.

<sup>2193</sup> Letter from Individual YJ-91 to Individual YJ-54, 5 May 2014, pg 5, edocs 3471415.



Attached to the letter was a document outlining the status of the implementation of recommendations made in the March 2013 CYDC Inspectorate Report. The status of Recommendation CYDC 2013-03-03 was recorded as, "to be actioned."<sup>2194</sup> In the concluding sentence of the letter, Individual YJ-91 nominated Individual YJ-49 as the officer to assist Individual YJ-54 with further enquiries about the review of Incident 1450405.<sup>2195</sup>

#### CRIME AND CORRUPTION COMMISSION (CCC)

The Crime and Corruption Commission did not supply any material to the Review in relation to Incident 1450405.<sup>2196</sup>

The Review considers that in the absence of such material, the incident was never referred to the CCC.

#### QUEENSLAND OMBUDSMAN (OQO)

On 24 June 2014, CCYPCG forwarded their files and correspondence relating to Incident 1450405 to OQO.<sup>2197</sup> On 1 September 2014, staff from the Ombudsman's office prepared a memorandum for consideration by Individual OQO 1, which included the outstanding Recommendation CYDC 2013-03-03 from the March 2013 CYDC Inspectorate Report. The memorandum recommended the OQO consider investigating the matter under section 18(1)(b) of the *Ombudsman Act 2001*.<sup>2198</sup>

The Review has received no material indicating there was any investigation conducted into Incident 1450405 by OQO. It is noted, however, that the receipt of the relevant information by the OQO was more than 12 months after the date of the incident.

## INTERNAL OVERSIGHT MECHANISMS

### YOUTH DETENTION OPERATIONS

Youth Detention Operations (YDO), Youth Justice, did not conduct a review into Incident 1450405. Individual YJ-49 provided an affidavit to the Review outlining his involvement in the review of Incident 1450405. He stated that he initially did not understand that the implementation of Recommendation CYDC 2013-03-03 was his responsibility, as the wording of the recommendation was directed to the Director of CYDC.<sup>2199</sup>

Individual YJ-49 stated he had nominated himself as a contact person in the letter to Individual YJ-54 because he had previously worked on amending policies on the use of force in youth detention.<sup>2200</sup> Individual YJ-49 does not recall the responsibility for actioning Recommendation CYDC 2013-03-03 being formally transferred from the Inspectorate to his responsibilities at YDO.<sup>2201</sup>

<sup>2194</sup> Letter from Individual YJ-91 to Individual YJ-54, 5 May 2014, pg 7, edocs 3471415.

<sup>2195</sup> Letter from Individual YJ-91 to Individual YJ-54, 5 May 2014, pg 7, edocs 3471415.

<sup>2196</sup> Letter from Crime and Corruption Commission to the Review, 7 October 2016, edocs 3459312.

<sup>2197</sup> This was done in accordance with ss106-108 of the *Ombudsman Act 2001*. Memorandum to Individual OQO 1, Queensland Ombudsman, dated 1 September 2014, edocs 3471421.

<sup>2198</sup> Memorandum to Individual OQO1, Queensland Ombudsman, dated 1 September 2014, pg 4 – 5, edocs 3471421.

<sup>2199</sup> Affidavit of Individual YJ-49, sworn, 3 November 2016, p 16 para 68, edocs 3496612.

<sup>2200</sup> Affidavit of Individual YJ-49, sworn, 3 November 2016, p 16 para 71, edocs 3496612.

<sup>2201</sup> Affidavit of Individual YJ-49, sworn, 3 November 2016, p 16 para 70, edocs 3496612.



### ETHICAL STANDARDS UNIT

ESU is responsible for updating the status of outstanding recommendations from youth detention inspections. The CYDC December 2014 Inspectorate Report provided an update on all outstanding recommendations for CYDC, including Recommendation CYDC 2013-03-03.<sup>2202</sup>

The December 2014 Report stated that Recommendation CYDC 2013-03-03 had not been implemented as of November 2014, and accordingly would be closed. There were other outstanding recommendations in the December 2014 Report from 2013 which remained open and to be actioned.<sup>2203</sup> The report noted as follows:

*The Centre Executive Director has not conducted a review of this incident and did not indicate that there would be a review of the incident referred to. The Inspectorate will cease monitoring the outcome of this review.*<sup>2204</sup>

### COMPLAINTS AND REVIEW MECHANISM

On 21 January 2013, Young Person A3 signed a complaint form (COM1) indicating that he did not wish to make a complaint about Incident 1450405.<sup>2205</sup> The form was co-signed by two detention centre staff who were not involved in the incident, as per detention centre procedure.<sup>2206</sup>

If Young Person A3 had proceeded with a complaint, formal processes would have been initiated, possibly including an ESU Investigation, which may have served to preserve evidence such as the complete CCTV footage. To be clear the Review is not criticising any CYDC staff member in relation to Young Person A3's decision not to proceed with a formal complaint.

Without Young Person A3 making a complaint, monitoring of this incident relied upon CYDC staff appropriately classifying the incident as a reportable incident due to the level of force used.

The CYDC staff involved in this matter failed to accurately classify it as a reportable incident. The Review considers that accounts of the level of aggression and resistance displayed by Young Person A3 appear to have been overstated as compared to the CCTV footage. The Review considers that this demonstrates that CYDC management were not reading accurate reports when they were reviewing this incident in DCOIS,<sup>2207</sup> and could erroneously form a view that the level of force used against the young person was proportionate in the circumstances.

Individual YJ-39 stated that the only time he viewed footage of an incident when reviewing incidents in DCOIS was if there was a complaint by the young person, a complaint to police, or there was a question around misconduct of staff. Queensland Police also have a policy of not investigating matters in youth detention centres unless the complaint comes from a young person directly.<sup>2208</sup>

<sup>2202</sup> Cleveland Youth Detention Centre December 2014 Inspectorate Report, pg 17, edocs 3458187.

<sup>2203</sup> Cleveland Youth Detention Centre December 2014 Inspectorate Report, pg 11, edocs 3458187.

<sup>2204</sup> Cleveland Youth Detention Centre December 2014 Inspectorate Report, pg 17, edocs 3458187.

<sup>2205</sup> Affidavit of Individual ESU 1, sworn 1 November 2016, Exhibit ESU 1-49, pg 697.

<sup>2206</sup> Youth Detention Operations Manual, Chapter 23, Managing and Responding to Complaints, pg 11, para 9 edocs 3447316.

<sup>2207</sup> Youth Detention Operations Manual – Chapter 19: Identifying and Reporting Incidents, pg 7-8, para 3.6 edocs 3447316.

<sup>2208</sup> Affidavit of Individual ESU 6, sworn 10 November 2016, pg 11, para 41, edocs 3509156



In reviewing this incident involving Young Person A3, the Review has considered that there is potential for oversight mechanisms to fail in circumstances where a young person decides not to make a complaint, even when they have been subjected to a high level of force.

Young people may not wish to make a complaint within a youth detention centre for a variety of reasons, including the difficulties associated with complaining about staff whilst still being managed by those same staff within the youth detention centre.

A young person in a youth detention centre also does not routinely have access to a support person when deciding whether or not to make a complaint about their treatment within a youth detention centre. The Review considers that because the young person's parent or guardian is not automatically notified about incidents, they are then not able to provide support for the young person in considering whether or not to make a complaint.

When no complaint is made, a review of the incident and the appropriateness of staff actions relies on accurate reporting in DCOIS.

If a reportable incident is incorrectly classified as a non-reportable incident by staff involved in it, the DCOIS system relies on such incidents being identified by the Manager of Monitoring and Compliance, or the Ethical Standards Unit Inspectorate, who employ random 'spot checking' techniques.

The Review considers that it was fortunate that the Inspectorate identified this concerning incident.

In submissions provided by the State<sup>2209</sup> the Review has been advised that:

*"The inaccurate classification of incidents has now been addressed through the development of the new incident classification model. In the new model, an incident cannot be classified as 'behavioural' if there is any harm, separation or a level 3 or level 4 force used (according to the PAC).*

*Consequently, under the new classification model this incident would be classified as either a Level 1 or Level 2 incident. Under the new classification system, this incident would have been subject to internal review (by the Managers Monitoring and Compliance and numerous levels of managers and supervisory positions).*

Whilst it is unclear to the Review what impact this recent change has had in practice, the Review is hopeful that the change will ensure that significant incidents, such as this incident, will be promptly identified in future.

**Finding 15.F1** - In circumstances where a young person does not make a complaint about an incident, the reporting mechanisms in place may fail to identify an incident involving a high level use of force against a young person that has been incorrectly classified.

<sup>2209</sup> Submissions on behalf of the State of Queensland, 10 December 2016, para 33, edocs 3554157



## LEGISLATIVE AND POLICY FRAMEWORK

Legislation and Policies referred to were in force as at 20 January 2013.

### GENERAL MANAGEMENT OF THE CENTRE

The chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres,<sup>2210</sup> which included maintaining discipline and good order in the centre<sup>2211</sup> and the security and management of the centre.<sup>2212</sup>

The chief executive may carry out the responsibilities of security and management of detention centres by rules, directions, codes, standards and guidelines for a number of matters, including detention centre organisation and functions, conduct and responsibilities of detention centre employees.<sup>2213</sup>

The charter of youth justice principles contained in schedule 1 of the *Youth Justice Act 1992* underpin the operation of the Act.<sup>2214</sup> At the time of the incident the chief executive was required to ensure that youth justice principles 3, 15, 19 and 20 were complied with in relation to each child detained in a youth detention centre.<sup>2215</sup>

The relevant youth justice principles to the Young Person A3 incident are as follows:<sup>2216</sup>

- Youth Justice Principle 2, *the youth justice system should uphold the rights of children, keep them safe and promote their physical and mental wellbeing;*<sup>2217</sup>
- Youth Justice Principle 3, *A child must be treated with respect and dignity, including while in custody, and must be encouraged to treat others with respect and dignity;*
- Youth Justice Principle 15, *A child being dealt with under the Act should have access to legal and other support services;*
- Youth Justice Principle 19, *While a child is in detention, contacts should be fostered with the child and community;*
- Youth Justice Principle 20, *A child in detention should:*
  - *be provided with a safe and stable living environment;*
  - *be helped to maintain relationships with family and the community;*
  - *be consulted about and make decisions about participating in programs, contact with the child's family, health and schooling;*
  - *be given information about the decisions and plans for the child's future, should be given privacy (for example about the child's personal information);*

<sup>2210</sup> Youth Justice Act 1992 s 263(1).

<sup>2211</sup> Youth Justice Act 1992 s 263(3)(c).

<sup>2212</sup> Youth Justice Act 1992 s 263(3)(d).

<sup>2213</sup> Youth Justice Act 1992 s 263(2)(a) and (b).

<sup>2214</sup> Youth Justice Act 1992 s 3.

<sup>2215</sup> Youth Justice Act 1992 s 263(5).

<sup>2216</sup> Youth Justice Act 1992 schedule 1.

<sup>2217</sup> Youth Justice Act 1992 schedule 1.



- have access to dental, medical and therapeutic services;
- have access to education appropriate for the child's development and age; and
- receive appropriate help transitioning from detention to independence.

## MANAGEMENT OF MISBEHAVIOUR

A child detained in a detention centre must obey a reasonable instruction lawfully given to the child by a detention centre employee.<sup>2218</sup>

The chief executive may discipline the child for failing to comply with the direction or for other misbehaviour.<sup>2219</sup> The chief executive must ensure that the disciplinary action respects the child's dignity and has regard to the nature of the misbehaviour, the child's age and maturity and cultural background and beliefs.<sup>2220</sup>

The chief executive must not use corporal punishment, physical contact, an act involving humiliation or physical, emotional or sustained verbal abuse, deprivation of food, visitors or sleep, withholding letters, other mail, telephone or other communication, exclusion from cultural, educational or vocational programs or medication or deprivation of medication.<sup>2221</sup> In addition, the Operations Manual prohibits the following in relation to behaviour development:

- separation;
- staff using challenging or physically threatening actions directed towards a young person;
- punitive chores that are not linked to either reparative or section-based daily chores; or
- restraining the young person in a way involves the constriction of air supply or the carotid artery, e.g., chokeholds or head locks.

## USE OF FORCE

The authority to use force is given individually, and staff are required to observe guidelines and instructions issued to them during training and apply those learnings.<sup>2222</sup> Staff are required to use their judgment in order to lawfully act in accordance with the *Youth Justice Act 1992*, the *Youth Justice Act 2003* and the *Criminal Code*.<sup>2223</sup>

<sup>2218</sup> Youth Justice Regulation 2003 s 17(1).

<sup>2219</sup> Youth Justice Regulation 2003 s 17(2).

<sup>2220</sup> Youth Justice Regulation 2003 s 17(3).

<sup>2221</sup> Youth Justice Regulation 2003 s 17(4); Youth Detention Centre Operations Manual Chapter 9 'Behaviour Development and Restorative Justice' (April 2011) p 6, edocs 3447736.

<sup>2222</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 12, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47sworn on 30 September 2016, p 418, edocs 3439519.

<sup>2223</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 12, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47sworn on 30 September 2016, p 418, edocs 3439519.



### WHEN TO USE FORCE

In order to manage misbehaviour, a detention centre employee may use reasonable force to protect a child, another person or property in the detention centre from misbehaviour if the employee reasonably believes the child, person or property cannot be protected in any other way.<sup>2224</sup> Reasonable force is defined as the minimum force necessary for the effective protection of the person using the force, another person or property.<sup>2225</sup> If force is used the force used must not be more than is reasonably necessary and the chief executive must ensure a record is made of the force used in a document kept at the detention centre.<sup>2226</sup>

In order to carry out a fully-clothed, partially clothed or unclothed search, a detention centre employee may use reasonable force only if the employee reasonably believes the search cannot be carried out in another way.<sup>2227</sup>

Before using force, it is necessary to use intervention strategies to diffuse situations in which force may need to be used, including by:

- withdrawing from the situation;
- use of appropriate communication and negotiation skills;
- anticipate a volatile situation and pro-actively intervene.<sup>2228</sup>

The Operations Manual prohibits staff from:

- interacting with the young people in a way that provokes them;
- taking a verbal attack made by a young person personally.<sup>2229</sup>

Use of force is to be limited to what is essential to bring the situation under control and to protect staff and young people.<sup>2230</sup> The decision whether to use force in a particular situation is determined by assessing:<sup>2231</sup>

- the nature of the misbehaviour;
- the young person's age and maturity;
- the physical stature of the young person and the staff member using the force;
- the young person's mood;
- the effect of the use of force on the young people on the immediate area;
- the volatility of the situation, including whether:

<sup>2224</sup> Youth Justice Regulation 2003 s 17(5) and (6).

<sup>2225</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 11, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 417, edocs 3439519.

<sup>2226</sup> Youth Justice Regulation 2003 s 17(7).

<sup>2227</sup> Youth Justice Regulation 2003 ss 25(4) and (5) and 26(7) and (8).

<sup>2228</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 4, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 410, edocs 3439519.

<sup>2229</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) pp 4-5, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, pp 410-411, edocs 3439519.

<sup>2230</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 5, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 411, edocs 3439519.

<sup>2231</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 5, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 411, edocs 3439519.



- there have been threats of violence or attempts to incite other young people;
- there is an immediate risk to other people;
- the personal safety of other people in the vicinity; and
- parity-disparity in relation to the use of force.

#### PROTECTIVE ACTIONS CONTINUUM

The Youth Detention Protective Actions Continuum policy was approved on 22 November 2012.<sup>2232</sup>

The policy states that assessing the risks present in any incident is the most critical step in the incident management process.<sup>2233</sup> Assessing risk arising from an incident is to be done continually until the incident is resolved.<sup>2234</sup>

The protective actions continuum is a framework for staff to ensure that the responses to incidents are safe and in accordance with the level of risk that arises.<sup>2235</sup> The YD-3-4 Protective Actions Continuum

<sup>2232</sup> YD-3-4 Protective Actions Continuum, v 1, edocs 3447811.

<sup>2233</sup> YD-3-4 Protective Actions Continuum, v 1, p 2, edocs 3447811.

<sup>2234</sup> YD-3-4 Protective Actions Continuum, v 1, pp 2-3, edocs 3447811.

<sup>2235</sup> YD-3-4 Protective Actions Continuum, v 1, p 3, edocs 3447811.

<sup>2236</sup> YD-3-4 Protective Actions Continuum, v 1, p 4, edocs 3447811.

<sup>2237</sup> YD-3-4 Protective Actions Continuum, v 1, p 4, edocs 3447811.

<sup>2238</sup> YD-3-4 Protective Actions Continuum, v 1, p 5, edocs 3447811.

<sup>2239</sup> YD-3-4 Protective Actions Continuum, v 1, p 4, edocs 3447811.

<sup>2240</sup> YD-3-4 Protective Actions Continuum, v 1, p 5, edocs 3447811.

<sup>2241</sup> YD-3-4 Protective Actions Continuum, v 1, p 4, edocs 3447811.

<sup>2242</sup> YD-3-4 Protective Actions Continuum, v 1, pp 5-6, edocs 3447811.



**Finding 15.F2** – The level of force used in this incident was the highest level of the Protective Actions Continuum (PAC), which is a level 4 PAC response involving ground stabilisation. The incident was sufficiently serious to require a review by the Centre Director of the use of restricted physical holds and the use of force, which not did occur.

#### HOW FORCE MAY BE USED

Types of force that may be used are defined in the Operations Manual.<sup>2246</sup>

Before using force, staff are required to give a clear warning to cease inappropriate behaviour, time to comply with the warning (unless giving the warning would “significantly increase the likelihood of serious injury to any party”) and to wait to apply force until more than one staff member is present.<sup>2247</sup>

After using force the Shift or Section Supervisor is required to:

- have the young person assessed by a Queensland Health professional;
- complete an occurrence report;
- record the use of force in the Section Log in DCOIS stating the information contained in 2.6 of the Operations Manual;
- carry out debriefing activities if required.<sup>2248</sup>

The force used against Young Person A3 on 20 January 2013 involved ground stabilisation for an extended period of time, by a high number of staff and the removal of his clothing by force.

<sup>2243</sup> YD-3-4 Protective Actions Continuum, v 1, p 6, edocs 3447811.

<sup>2244</sup> YD-3-4 Protective Actions Continuum, v 1, p 6, edocs 3447811.

<sup>2245</sup> YD-3-4 Protective Actions Continuum, v 1, pp 7-8, edocs 3447811.

<sup>2246</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) pp 6-7, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, pp 412-413, edocs 3439519.

<sup>2247</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 7, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 413, edocs 3439519.

<sup>2248</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 7, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 413, edocs 3439519.



### USE OF FORCE – GROUND STABILISATION

Young Person A3 disobeyed the instruction to go to his room and shower, which was a lawful instruction. The Review considers that was misbehaviour on his part.

The Review considers that the level of force used on Young Person A3 in response to that misbehaviour was not reasonable. The Review considers that staff could not have formed a reasonable belief that the level of force in the form of ground stabilisation was an appropriate way to protect Young Person A3, other people, or the centre from that misbehaviour, because there was no actual or immediate physical threat from Young Person A3 as viewed on the CCTV footage.

The Review accepts that Young Person A3 was given the required direction to comply and that the staff in the immediate vicinity waited for additional staff before using force.

The Review considers that the high number of staff involved added to the level of force and that the force used was excessive and not, “no more than reasonable necessary” as was required.

**Finding 15.F3** - In the absence of a justification for the use of force to ground stabilise Young Person A3 and the removal of his clothing, the use of force was excessive.

### USE OF FORCE – REMOVAL OF CLOTHING

The Review considers that the force used against Young Person A3 to forcibly remove his clothing was inappropriate as follows:

- there was no lawful authority to require Young Person A3 to change his clothing at that time;
- section 17 of the Regulation provides that the chief executive must not use, as a way of disciplining a young person, physical contact or an act that involves humiliation, physical abuse or emotional abuse;
- forceful removal of his clothing did not respect Young Person A3’s dignity;
- the Hoffman knife was not authorised for the purpose of removing Young Person’s A3 clothing in these circumstances as the removal of the clothing was not an emergency.

There is an inconsistency in the evidence as to how the authority to cut the clothing was communicated and understood. The Review is not in a position to reconcile that factual dispute. There is no dispute that the clothing was forcibly removed.

The Review acknowledges that there has been, since the time of this incident, significant amendment to youth justice policies and procedures. The changes include a direction in the Youth Detention – Suicide and Self-Harm risk management policy YD-1-6 and Youth Detention Centre Operations Manual that force must never be used to change a young person into suicide prevention garments.



The State submits that the policy with regard to the use of the knife does not fetter the Chief Executive's general obligation as set out in section 263 of the *Youth Justice Act 1992*. The Review considers that the implication contained in that submission is that the Chief Executive can authorise the use of the knife for a purpose not specified in the policy. That may be so, however, it would be unusual and would require clearer evidence in support of the decision than that produced to the Review.

The State also submits:

*"80. The CCTV footage evokes natural feelings of sympathy towards the young person. The part of the footage showing staff removing Young Person A3's clothing, and soon after when he is naked in the cell might also be described as distressing. It is undoubtedly an indignity to be left naked in a monitored cell.*

*81. Such subjective feelings, however, must be tested against the reality of the detention environment and the need, sometimes to use force, restraints and other measures to discharge the chief executive's general obligations."*<sup>2249</sup>

If the State is asserting that the detention centre "environment" mitigates the actions described in paragraph 80 of the submissions, then that is not accepted. The fact that the incident occurred in a detention centre, which by virtue of that detention, young persons are deprived of certain rights, make it more imperative to respect a young person's dignity not less.

**Finding 15.F4** – The force used against Young Person A3 did not respect his dignity and was a breach of the Principles of the *Youth Justice Act 1992*.

## RESTRAINTS

Restraint is defined in the Operations Manual as controlling within bounds, checking, confining or repressing an action by a person or group of young person or persons.<sup>2250</sup>

The chief executive may approve types of restraints a staff member may place on a child in the chief executive's custody.<sup>2251</sup> The Operations Manual states that the following types are approved restraints:<sup>2252</sup>

- safety escort cable;
- a soft forearm restraint – Velcro;
- zip ties – B cuff;

<sup>2249</sup> Submission on behalf of the State of Queensland, Draft Chapter 6 and 6a, p 22, edocs 3554157.

<sup>2250</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 11, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 417, edocs 3439519.

<sup>2251</sup> *Youth Justice Regulation 2003* s 19.

<sup>2252</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 7, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 413, edocs 3439519.



- body belt;
- handcuffs; and
- leg cuffs (although the Operations Manual indicates these restraints are for “hospital use only”).

In relation to restraints used in a detention centre, restraints may be used by a staff member approved to use them only if the chief executive considers on reasonable grounds that the child is likely to attempt to escape, to seriously harm themselves or someone else, to seriously disrupt order and security at the centre, and the staff member reasonably believes there is no other way of stopping the child from engaging in the behaviour.<sup>2253</sup> Restraints must be used in a way that respects the child’s dignity and are used for no longer than is reasonably necessary in the circumstances.<sup>2254</sup> Restraints must be used only as follows:<sup>2255</sup>

- as a last resort and when it is necessary to use pre-placed force to control a young person or persons;
- in exceptional circumstances when all other intervention methods have failed;
- if a person is to be transported within the centre for more than 100m and wrist lock techniques would cause harm to the young person; and
- in a way that does not cause humiliation, degradation or harm and for the shortest possible time.

A young person is to be restrained with their hands in front of them unless applying restraints to the front of the young person is likely to cause harm to staff or the young person (for example, if the young person is ground stabilised when the restraints are to be applied).<sup>2256</sup>

The chief executive must keep a register containing the particulars of the approved restraints, and if restraints are used on a child, the child’s name, the day on which the restraints were used, and the circumstances in which the restraints were used.<sup>2257</sup> The Operations Manual requires that the restraint equipment be recorded on DCOIS, stating the young person’s name and a description of how and when they were applied and removed.<sup>2258</sup>

<sup>2253</sup> Youth Justice Regulation 2003 s 20(2)(b) and (3).

<sup>2254</sup> Youth Justice Regulation 2003 s 20(4).

<sup>2255</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 8, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 414, edocs 3439519.

<sup>2256</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 9, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 415, edocs 3439519.

<sup>2257</sup> Youth Justice Regulation 2003 s 21.

<sup>2258</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 8, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 414, edocs 3439519.



**POLICY: USE OF MECHANICAL RESTRAINTS IN A YOUTH DETENTION CENTRE (YD-3-7)**<sup>2259</sup>

The application of restraints must be in strict compliance with the *Youth Justice Regulation 2003*.<sup>2260</sup>

Examples of situations in which it is appropriate to use restraints include an assault on a person resulting in serious injury, a self-harming incident that has resulted in serious injury to the young person, a siege or riot situation or an incident where a young person is threatening other people with a dangerous item and likely to carry through with the threat.<sup>2261</sup>

In accordance with section 21 of the *Youth Justice Regulation 2003*, the authorised officer must record on DCOIS the name of person, the time and date restraints were applied and removed, the reasons why restraints had to be used and why there was no other way to resolve the situation.<sup>2262</sup>

The policy outlines the responsibilities of staff.<sup>2263</sup>

The Review considers that:

- at the time of this incident, ankle cuffs were not an approved restraint for use inside the centre;
- regardless of whether the justification given for the force used against Young Person A3 was to protect him from himself or to protect staff and/or the order of the centre from Young Person A3's behaviour, there is no evidence that restraints were the only way to prevent either of these eventualities from occurring;
- the use of restraints in these circumstances did not respect Young Person A3's dignity.

**Finding 15.F5** – The use of leg cuffs in this incident was an inappropriate use of restraints.

**Finding 15.F6** – The use of restraints on Young Person A3 did not respect his dignity, as he had his clothing removed whilst still bound by wrist and ankle cuffs. This conduct was a breach of the Principles of the Youth Justice Act 1992.

The State acknowledges the importance of the youth justice principles. The State submits that the youth justice principles do not confer absolute rights and cannot be construed as “cutting down” the Chief Executive’s responsibility for maintaining security and good order in a centre.

<sup>2259</sup> Affidavit of Individual YJ-47 sworn on 30 September 2016, exhibit Individual YJ-47-14, pp 434-440, edocs 3439519.

<sup>2260</sup> YD-3-7 *Youth Detention – Use of Mechanical Restraints*, v 1, date of operation to be advised, p 2, which is attached as exhibit Individual YJ-47-16 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 435, edocs 3439519.

<sup>2261</sup> YD-3-7 *Youth Detention – Use of Mechanical Restraints*, v 1, date of operation to be advised, p 2, which is attached as exhibit Individual YJ-47-16 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 435, edocs 3439519.

<sup>2262</sup> YD-3-7 *Youth Detention – Use of Mechanical Restraints*, v 1, date of operation to be advised, p 3, which is attached as exhibit Individual YJ-47-16 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 436, edocs 3439519.

<sup>2263</sup> YD-3-7 *Youth Detention – Use of Mechanical Restraints*, v 1, date of operation to be advised, p 4, which is attached as exhibit Individual YJ-47-16 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 437, edocs 3439519.



The Review accepts that the youth justice principles do not confer absolute rights. However, the youth justice principles provide guidance as to the ways that the Act should be applied and interpreted. The Review considers that the Chief Executive will exercise the powers conferred by the Act in accordance with the youth justice principles.

## SEPARATION

### *WHEN A YOUNG PERSON MAY BE SEPARATED*

A youth detention centre employee may separate a young person in a locked room in a detention centre only if:

- the young person is ill, the young person requests to be separated or for routine security purposes under a direction issued by the chief executive;<sup>2264</sup> and
- the separation is for protecting the young person, another person or property, or to restore order in the detention centre.<sup>2265</sup>

The Operations Manual prescribes these as the only permissible reasons for separation to occur in response to an incident.<sup>2266</sup>

The Operations Manual provides that the director, Youth Detention Centre, Deputy Director, Unit Manager (Accommodation) and Unit Manager (Operations) may authorise separation.<sup>2267</sup> A section supervisor who must urgently place a young person in separation is required to get the subsequent approval of the Shift Supervisor as soon as operationally possible.<sup>2268</sup>

If the child is separated in a locked room at the request of the child, the child must be allowed to leave the room immediately if the child asks to do so.<sup>2269</sup> If a child is detained to protect the child, another person or property or to restore order in the detention centre, the detention centre employee must not separate a child for more than 2 hours without the approval of the manager of the detention centre, for more than 12 hours without informing the chief executive, or for more than 24 hours without the approval of the chief executive.<sup>2270</sup> The Operations Manual specifically

<sup>2264</sup> Youth Justice Regulation 2003 s 22(1)(a) to (c); Youth Detention Centre Operations Manual Chapter 9 'Behaviour Development and Restorative Justice' (April 2011) p 7, edocs 3447736.

<sup>2265</sup> Youth Justice Regulation 2003 s 22(1); Youth Detention Centre Operations Manual Chapter 9 'Behaviour Development and Restorative Justice' (April 2011) p 7, edocs 3447736.

<sup>2266</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 8, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 414, edocs 3439519.

<sup>2267</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 9, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 415, edocs 3439519.

<sup>2268</sup> Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 9, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 415, edocs 3439519.

<sup>2269</sup> Youth Justice Regulation 2003 s 22(4).

<sup>2270</sup> Youth Justice Regulation 2003 s 22(2). This is also reflected in the Operations Manual, except the Operations Manual reflects the delegations: Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles (April 2011) p 8, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 414, edocs 3439519. See also Youth Detention Centre Operations Manual Chapter 9 'Behaviour Development and Restorative Justice' (April 2011) p 7, edocs 3447736.



prohibits rotational separation<sup>2271</sup>, which is a continuous period of separation that the Operations Manual states is in conflict with section 22 of the *Youth Justice Regulation 2003* as it then applied.<sup>2272</sup>

If a young person is separated for longer than two hours, a BDP must be developed for the young person by the multidisciplinary team in accordance with chapter 10 of the Operations Manual.<sup>2273</sup> Once the period of separation has been completed, the BDP process must be complied with in respect of the young person.<sup>2274</sup> However, separation for more than 2 hours without a BDP may occur for operational security purposes at the approval of the Director, Youth Detention Centre.<sup>2275</sup>

If a child is separated to protect the child, another person or property or to restore order in the detention centre under s 22(1) (d) or (e) of the 2003 regulation, the chief executive must keep a register stating the child's name, the reason for the separation, the name of the detention centre employee who supervised the child, the day and the length of time for which the child was separated.<sup>2276</sup>

The Operations Manual states that it is preferable to conduct a clothed search of a young person to be placed in separation, but acknowledges this may not be possible in emergent situations (e.g. where there is difficult or violent behaviour).<sup>2277</sup> A partially-clothed search of the young person may be appropriate if the young person is at risk of self-harm following a disruptive incident, the young person is being separated because they have self-harmed or staff have reason to suspect that a young person possesses restricted, prohibited or illegal items.<sup>2278</sup> However a search is only to occur if the appropriate approval has been given.<sup>2279</sup>

<sup>2271</sup> Rotational separation is described in the Operations Manual as continually separating a young person and releasing them over a pre-determined period of time: *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 10, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 416, edocs 3439519.

<sup>2272</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 10, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 416, edocs 3439519.

<sup>2273</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 11, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 417, edocs 3439519.

<sup>2274</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 11, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 417, edocs 3439519.

<sup>2275</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 11, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 417, edocs 3439519.

<sup>2276</sup> *Youth Justice Regulation 2003* s 23.

<sup>2277</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) pp 9-10, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, pp 415-416, edocs 3439519.

<sup>2278</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 10, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 416, edocs 3439519.

<sup>2279</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 10, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 416, edocs 3439519.



A young person who has been separated must be under continuous CCTV and personal observation (i.e. through the door) during the period of separation.<sup>2280</sup> If the separated young person is an Aboriginal person or a Torres Strait Islander, consideration was to be given to the availability of ATSI staff to visit with the young person as soon as possible.<sup>2281</sup>

#### *POST-INCIDENT POLICY - YD-3-8 – USE OF SEPARATION IN RESPONSE TO AN INCIDENT*

The YD-3-8 – Use of separation in response to an incident was approved on 22 November 2012, it appears that the policy became operational on 18 February 2013.<sup>2282</sup> The Review considers that the policy was not in operation at the time of this incident.

#### *ISSUES REGARDING THE USE OF SEPARATION*

Individual YJ-39 stated that he directed Young Person A3 be placed in a separation room and would spend the night there.<sup>2283</sup> The justification recorded in DCOIS for the separation of Young Person A3 was,<sup>2284</sup> It is unknown precisely how long Young Person A3 was in separation. Normal lockdown time for the centre is 7.30pm, so any time spent in the separation room after that time ought to have been record as separation.

**Finding 15.F7 – Youth detention centres are required to record and report all time a young person is confined to a separation room. The Review considers that was not done in this incident.**

#### **REPORTING OF HARM**

Harm is defined as any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing.<sup>2285</sup>

There is an obligation to immediately report harm or suspected harm to the chief executive however the harm is caused (subject to reasonable excuses, including that the information might tend to incriminate the person) and in accordance with the regulation.<sup>2286</sup>

Any report pursuant to section 268(3) of the Act must include the child's name, age and sex, details of the basis for the employee becoming aware, or reasonably suspecting, that the child has suffered harm, details of the harm and the particulars of

<sup>2280</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 10, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 416, edocs 3439519.

<sup>2281</sup> *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 10, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 416, edocs 3439519.

<sup>2282</sup> *YD-3-8 Youth Detention – Use of Separation in Response to an Incident* (February 2013) p 9, which is attached as exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 406, edocs 3439519.

<sup>2283</sup> Affidavit of Individual YJ-39, sworn 17 October 2016, pg 6 para 24, edocs 3473082.

<sup>2284</sup> DCOIS Incident 1450405, completed by Individual YJ-9, edocs 3443236.

<sup>2285</sup> *Youth Justice Act 1992* s 268(6).

<sup>2286</sup> *Youth Justice Act 1992* s 268(1).



a person who the employee knows or reasonably suspects caused the harm or can give information about the harm.<sup>2287</sup>

The chief executive is required to keep details about a report about, and any investigation into, whether harm or suspected harm has been caused to a child in the youth detention centre or a contravention, or claimed contravention, of youth justice principle 3, 15, 19 or 20.<sup>2288</sup>

The information must be given in a way allowing information to be ascertained for a particular child or to analyse trends across all information kept.<sup>2289</sup> The information must be kept for 70 years after the date of birth of the child to whom the information relates.<sup>2290</sup>

### Reporting harm factsheet

After the Young Person A3 incident Youth Detention Operations within Youth Justice prepared a reporting harm factsheet.<sup>2291</sup> In relation to harm, the fact sheet considered "significant" as meaning, "a substantial and evident adverse impact on the young person."<sup>2292</sup> The factsheet identified a number of examples of harm in a youth detention centre, including self-harming that resulted in significant injury, an accident, sustained verbal abuse, or an assault on a young person.<sup>2293</sup>

Deciding whether harm has been suffered is a case by case decision, the factsheet stated that staff should consider:

- if there is an obvious mental, emotional or physical impact on the young person?
- If the harm is considered to be significant, is the harm measurable and observable on the young person's body or in the way they function or their behaviour?<sup>2294</sup>

If staff remain undecided about whether harm has been suffered, after consulting with a member of detention centre management, the staff should report the harm.<sup>2295</sup>

After the harm is reported, the staff need to consider whether further steps are required to address the harm and prevent the harm from reoccurring, including:

- deciding the safety needs of the person;
- ensuring the young person's caseworker is informed;
- considering the ongoing risk to the young person.<sup>2296</sup>

<sup>2287</sup> Youth Justice Regulation 2003 s 35.

<sup>2288</sup> Youth Justice Act 1992 s 303; Youth Justice Regulation 2003 s 36(1).

<sup>2289</sup> Youth Justice Regulation 2003 s 36(2).

<sup>2290</sup> Youth Justice Regulation 2003 s 36(3).

<sup>2291</sup> Email from Individual YJ-49 to Individual ESU 6 dated 11 July 2013, p 2, edocs 3457944.

<sup>2292</sup> Youth Detention – Reporting Harm Face Sheet, p 1,

<[http://search.justice.govnet.qld.gov.au/s/redirect?rank=2&collection=JAGnetV2&url=http%3A%2F%2Fintranet.justice.govnet.qld.gov.au%2F\\_data%2Fassets%2Fpdf\\_file%2F0003%2F129378%2FYouth-detention-reporting-harm-fact-sheet.pdf&index\\_url=http%3A%2F%2Fintranet.justice.govnet.qld.gov.au%2F\\_data%2Fassets%2Fpdf\\_file%2F0003%2F129378%2FYouth-detention-reporting-harm-fact-sheet.pdf&auth=MhJk3jcO7M0b%2F4qCft0urQ&query=reporting+harm&profile=\\_default](http://search.justice.govnet.qld.gov.au/s/redirect?rank=2&collection=JAGnetV2&url=http%3A%2F%2Fintranet.justice.govnet.qld.gov.au%2F_data%2Fassets%2Fpdf_file%2F0003%2F129378%2FYouth-detention-reporting-harm-fact-sheet.pdf&index_url=http%3A%2F%2Fintranet.justice.govnet.qld.gov.au%2F_data%2Fassets%2Fpdf_file%2F0003%2F129378%2FYouth-detention-reporting-harm-fact-sheet.pdf&auth=MhJk3jcO7M0b%2F4qCft0urQ&query=reporting+harm&profile=_default)>.

<sup>2293</sup> Youth Detention – Reporting Harm Face Sheet, p 1.

<sup>2294</sup> Youth Detention – Reporting Harm Face Sheet, p 1.

<sup>2295</sup> Youth Detention – Reporting Harm Face Sheet, p 1.

<sup>2296</sup> Youth Detention – Reporting Harm Face Sheet, p 1.



## HARM - THE CHILD PROTECTION ACT 1999

At all relevant times, harm to a child was defined under the *Child Protection Act 1999* to be, “any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing.”<sup>2297</sup> It is immaterial how the harm was caused.<sup>2298</sup> Harm may be caused by physical, psychological or emotional abuse or neglect or by sexual abuse or exploitation.<sup>2299</sup> Harm may be caused by a single, series or combination of acts, omissions or circumstances.<sup>2300</sup>

In relation to risk management:

*Risk management (planning ahead to reduce risk and having processes to respond) and harm minimisation (accepting that dangerous activity will occur and planning responses to contain and/or reduce its impact) must translate into actual plans when working with ‘high-risk’ young people whose behaviour is extreme.*<sup>2301</sup>

Section 13E(3) of the *Child Protection Act 1999* directs that if a relevant person forms a reportable suspicion about a child in the course of the person’s engagement as a relevant person, the person must give a written report to the chief executive, child safety. A relevant person is:

- a doctor;
- a registered nurse;
- a teacher;
- a police officer who, under direction of the commission under the *Police Service Administration Act 1990*, is responsible for reporting under the section; and
- a person engaged to perform a child advocate function under the *Public Guardian Act 2014*.<sup>2302</sup>

A reportable suspicion about a child is a reasonable suspicion that the child:

- has suffered, is suffering, or is at unacceptable risk of suffering, significant harm caused by physical or sexual abuse; and
- may not have a parent able and willing to protect the child from harm.<sup>2303</sup>

## FAILURE TO REPORT HARM

All of the employees who were involved in the incident had an obligation to report actual or suspected harm to the chief executive. The identity of employees who report harm is protected.

<sup>2297</sup> Child Protection Act 1999 s 9(1).

<sup>2298</sup> Child Protection Act 1999 s 9(2).

<sup>2299</sup> Child Protection Act 1999 s 9(3).

<sup>2300</sup> Child Protection Act 1999 s 9(4).

<sup>2301</sup> A Framework for Practice with ‘High-Risk’ Young People (12-17 years) Department of Communities (December 2008)

<<https://www.communities.qld.gov.au/resources/childsafety/practice-manual/prac-paper-framework-high-risk-young-people.pdf>> 10.

<sup>2302</sup> Child Protection Act 1999 s 13E(1).

<sup>2303</sup> Child Protection Act 1999 s 13E(2).



Young Person A3 suffered physical harm in the form of grazes from carpet burns. In addition to the physical injuries, the Review considers that it can be reasonably inferred that the incident would have had a detrimental effect on his psychological and emotional wellbeing.

The State's submissions at 90-93<sup>2304</sup> that Young Person A3 had not suffered harm, is not accepted.

The incident was not brought to the attention of the chief executive until Individual ESU 6 became involved; nor is there any evidence that it was brought to the attention of the Chief Executive of the Department of Communities, Child Safety and Disability Services.

The Review considers the definitions of harm and the reporting thresholds to be confusing – one obligation potentially pursuant to *Youth Justice Act 1992* and the other to the *Child Protection Act 1999*.

**Finding 15.F8** – What happened to Young Person A3 during this incident fulfilled the definition of harm and should have been reported to the Chief Executive, Youth Justice and the Chief Executive, Child Safety.

**Recommendation 15.R1** – The Review recommends that there should be commonality between the definition of harm under the *Child Protection Act 1999* and the *Youth Justice Act 1992* and it should include an unacceptable risk of harm.

**Recommendation 15.R2** – The Review recommends that there should be specialised, ongoing training to youth detention staff to assist them in identifying signs of emotional and psychological harm of a young person, as well as how institutionalised practices can cause or trigger significant harm to a young person. The training should be provided by representatives from the Mental Health Alcohol, Tobacco, and Other Drugs Services (MHATODS). (It is understood there is currently no ongoing training on this issue).

**Recommendation 15.R3** - The Review recommends that harm reporting obligations should be subject to annual refresher training for all youth detention centre staff.

## REPORTABLE INCIDENTS

The Operations Manual at the time prescribed what incidents were reportable, and what codes should be attributed to those incidents.

Incident reporting classifies incidents in the following way:

<sup>2304</sup> Submissions supra p24



- events considered to be notable poor behaviour or “non-reportable incidents”, which are “minor, low cost events”; and
- events considered to be “reportable incidents”, which are incidents of a more serious nature.<sup>2305</sup>

A level 1, 2 or 3 reportable incident was required to be reported to the Assistant Director-General of Youth Justice.<sup>2306</sup>

#### *ISSUES WITH THE CLASSIFICATION OF REPORTABLE INCIDENTS*

The Review considers that despite the seriousness of the 20 January 2013 incident, the incident was recorded as non-reportable.

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#### USING THE HOFFMAN KNIFE

While uses are not prescribed in relation to emergency equipment, the Operations Manual suggests that cut down knives (such as the Hoffman knife) would be used in response to particular self-harm situations. In the event of a code pink relating to hanging, the primary response team are required to respond to the incident with the necessary equipment, including a cut down knife and a first aid kit.<sup>2307</sup>

Chapter 24 of the Operations Manual sets out approves the Spyderco C140S and Hoffman 911 Rescue Knife as approved emergency response equipment.<sup>2308</sup>

The Operations Manual also required that the Unit Manager Operations ensured that guidelines for the use of the cut down knives were observed.

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#### RESPONDING TO SUICIDE RISK AND SELF-HARMING BEHAVIOUR

The Operations Manual stated that young people who are deemed low and medium risk observation levels may wear normal clothing day and night.<sup>2309</sup> However, if the SRAT members decided that a young person should be issued with suicide prevention garments when a child is in their cell or in a separation room, SRAT must record that fact on the young person’s Suicide Prevention Plan.<sup>2310</sup> A failure to record the suicide clothing on the plan meant that the young person was permitted to wear normal clothing and have normal bedding.<sup>2311</sup>

A young person on high risk observation levels may wear normal clothing. However, when the young person was secured in their room the Section Supervisor or Youth

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<sup>2305</sup> Youth Detention Centre Operations Manual Chapter 19 ‘Identifying and Reporting Incidents’ (April 2011) p 3, edocs 3447316.

<sup>2306</sup> Youth Detention Centre Operations Manual Chapter 19 ‘Identifying and Reporting Incidents’ (April 2011) p 4, edocs 3447316.

<sup>2307</sup> Youth Detention Centre Operations Manual Chapter 24 ‘Emergency management’ (April 2011) p 10, edocs 3447721.

<sup>2308</sup> Youth Detention Centre Operations Manual Chapter 24 ‘Emergency management’ (April 2011) p 21, edocs 3447721.

<sup>2309</sup> Youth Detention Centre Operations Manual Chapter 8 ‘Recording and responding to suicide risk and self harming behaviour’ (April 2011) p 18, edocs 3447737.

<sup>2310</sup> Youth Detention Centre Operations Manual Chapter 8 ‘Recording and responding to suicide risk and self harming behaviour’ (April 2011) p 18, edocs 3447737.

<sup>2311</sup> Youth Detention Centre Operations Manual Chapter 8 ‘Recording and responding to suicide risk and self harming behaviour’ (April 2011) p 18, edocs 3447737.



Worker must ensure that the young person is given a mattress, suicide prevention bedding and suicide prevention sleep garments.<sup>2312</sup>



Information available to the Review does not include that at any stage on 20 January 2013, attempts were made to contact other identified staff in an effort to assist in the de-escalation of Young Person A3's behaviour

The Review is mindful that there is provision and facilitation of access to families by way of visits, Skype, videolink, telephone contact and correspondence. There is also funding for visits, accommodation and transport for young people detained for 3 months or more.

The Review considers that stronger support ought be provided to young people and their families to maintain meaningful, contact and visits where a young person is detained for less than 3 months.

**Recommendation 15.R4** – The Review recommends that all records of SR1 in ICMS should provide detailed information on the specific management of suicide risk and behaviour, detailing specific pro-active interventions, as a means of ensuring transparency and accountability between relevant government departments.

**Recommendation 15.R5** – The Review recommends that the SR1 in ICMS should be relayed to CHQ Statewide MHS to ensure that appropriately skilled mental health practitioners are aware of the incident and risk alert and can assist where appropriate.

**Finding 15.F9** – There was a failure to call an ambulance in response to the code blue medical emergency, as was required.

**Recommendation 15.R6** – The Review recommends that Queensland Health staff responsible for conducting mental health assessments on young people in response to a serious suicide attempt

<sup>2312</sup> Youth Detention Centre Operations Manual Chapter 8 'Recording and responding to suicide risk and self harming behaviour' (April 2011) p 17, edocs 3447737.



should be trained (if not qualified) in mental health assessment specific to young people (particularly those with complex needs).

**Recommendation 15.R7** – The Review recommends that parents and guardians should be advised of all significant incidents occurring in the centre for which children may have suffered harm as defined in the Youth Justice Act 1992, section 268 as soon as there is a recognition that harm has been suffered.



























































## CHAPTER 16 YOUNG PERSON A4

### INTRODUCTION

Young Person A4 is an Indigenous young man, who featured in a story aired by the ABC's *7:30* and *Lateline* programs on 18 August 2016. Those programs contained allegations of mistreatment at Cleveland Youth Detention Centre (CYDC) in Townsville. The ABC followed up with a more substantive story<sup>2517</sup> which detailed a number of Young Person A4's allegations and complaints. This was broadcast on ABC's *Lateline* program on Friday 19 August 2016.

Young Person A4 asserts<sup>2518</sup> that during his time in CYDC he was repeatedly mistreated by staff, resulting in him lodging numerous complaints. Allegations raised on *Lateline* included being spat on, having his food spat in, being verbally abused, threatened, and assaulted, and experiencing periods of separation for no apparent reason. Other issues raised included injuries suffered as a result of ground stabilisations and the application of mechanical restraints.

<sup>2517</sup> *Lateline*, ABC – 19 August 2016 <<https://www.dropbox.com/scl/fi/d9n5naeawnqxcwbz0rqlh?oref=e&sm=1>>.



The Review has examined two specific incidents relating to Young Person A4.

#### FIRST INCIDENT – 23 JANUARY 2015

Young Person A4 was [redacted] at the time of the first incident on 22 January 2015, whilst he was accommodated in a separation room in CYDC's Heron Unit. The allegations of mistreatment include a complaint that Individual [redacted] repeatedly verbally abused him and spat in his food. Young Person A4 made a verbal complaint regarding this matter on 23 January 2015 to Individual YJ-30, which was then escalated to Individual YJ-35. This subsequently resulted in the complaint being formalised in writing on 24 January 2015. The final DCOIS report indicated that the incident was recorded as alleged misconduct by a staff member and was subsequently sent to ESU for review and investigation on 24 January 2015. Ultimately this review determined that the claim could not be substantiated.

The Review was unable to obtain evidence from Individual [redacted]. The Review notes that Individual [redacted] is no longer employed at CYDC.

In conducting an assessment of this incident, the Review has examined the events leading up to the incident, the management of the incident, the management of Young Person A4's complaint and the investigations that followed.

Regard has been had to:

- DCOIS records;<sup>2520</sup>
- COM1 complaint form;<sup>2521</sup>
- statements (and exhibits) from YJ staff;<sup>2522</sup>

<sup>2520</sup> DCOIS reportable incident – misconduct Level 3 – edocs 3437213; Occurrence Report of Individual [redacted] edocs 3437214; SIYP register for Young Person A4, edocs 3443993; BDP 3408092 edocs 3442755; BDP 3395629 edocs 3442764; BDP 3410955 – edocs 3442749; BDP 3398221 – edocs 3442761.

<sup>2521</sup> Initial complaint made by Young Person A4 - COM1 attached to email from Individual YJ-22, CYDC to Individual ESU 1, dated 8 February 2015 – edocs 3437206.

<sup>2522</sup> Affidavit of Individual YJ-30, sworn 8 October 2016, edocs 3470963; Affidavit of Individual YJ-12, sworn 7 October 2016, edocs 3470955; Statement of Individual YJ 51, edocs 3486179; Affidavit of Individual ESU 6, sworn 10 November 2016, edocs 3509156; Affidavit of Individual YJ-22 sworn 12 October 2016, edocs 3470985; Affidavit of Individual YJ-41 sworn 25 October 2016, edocs 3485049; Affidavit of Individual YJ-45 sworn 23 October 2016, edocs 3491554; Affidavit of Individual YJ-45 sworn 23 November 2016 (Supplementary



- behaviour support plans;<sup>2523</sup>
- behavioural development plans;<sup>2574</sup>
- case review records;<sup>2527</sup>
- CCYPCG documents;<sup>2528</sup>
- CYDC observation records;<sup>2529</sup>
- emails;<sup>2530</sup>
- ESU records;<sup>2531</sup>
- health records;<sup>2532</sup>
- HR and training records of CYDC staff involved in the incident its management and subsequent investigation;<sup>2533</sup>
- Information from the Inspectorate reports;<sup>2534</sup>
- QPS statements of witnesses;<sup>2535</sup>
- complaints management policy documents<sup>2536</sup>, complaints to external agencies, behaviour development, duty of care obligations to staff and detained young people,

statement), edocs 3527628; Affidavit of Individual YJ-42 sworn 27 October 2016, edocs 3488263; Affidavit of Individual YJ-40 sworn 24 October 2016, edocs 3485407; Affidavit of Individual YJ-35 sworn 10 October 2016, edocs 3470968; Affidavit of Individual YJ-38 sworn 11 October 2016, edocs 3473083; Affidavit of Individual YJ-21 sworn 8 October 2016, edocs 3470984; Affidavit of Individual YJ 48 sworn 22 November 2016, edocs 3531533; Affidavit of Individual YJ-25 sworn 12 October 2016, edocs 3470969; Affidavit of Individual ESU 5 sworn 2 November 2016, edocs 3495059; Affidavit of Individual ESU 1 sworn 17 October 2016, edocs 3473091; Affidavit of Individual ESU 1 sworn 1 November 2016 (Supplementary Statement), edocs 3492356; Affidavit of Individual YJ-3 sworn 13 October 2016, edocs 3470958. 2523 BSP dated 6 January 2015, edocs 3460343; BSP dated 20 February 2015, edocs 3468388; BSP dated 2 March 2015, edocs 3469126; BSP dated 27 April 2015, edocs 3468386.

2527 Case notes and emails, edocs 3471280; Case review YDC, edocs 3485589; Case review YDC, edocs 3485590; Release from custody form, edocs 3469114.

2528 Issue Report in relation to Young Person A4 dated 20 March 2015, edocs 3475463; Issue Report in relation to Young Person A4 dated 1 February 2015, edocs 3475457.

2529 Observation record (SR2) for Young Person A4, edocs 3446961.

2530 Email chain between Individual YJ-43, Individual YJ-25 and Individual YJ-39 of CYDC, edocs 3437209.

2531 01 File cover-sheet - Individual , edocs 3437204; Complaint assessment form for Young Person A4's complaint, edocs 3437212; Email chain between Individual ESU 7 and Individual YJ-22, CYDC with CCs in to Individual ESU 4 and Individual YJ-39 for the period 21 January 2015 – 9 February 2015, edocs 3460142; Letter from Individual ESU 4 to Individual , edocs 3437217; File note of Individual ESU 7 dated 30 March 2015, edocs 3437230; Memo from Individual ESU 1 to Individual YJ 47 dated 1 June 2015, edocs 3437245; ESU run sheet in relation to the particulars of the complaint, edocs 3437205; ESU interview with Individual , edocs 3437229; Memo from Individual ESU 7 Individual ESU 1 dated 28 May 2015, edocs 3437241; File note of ESU interview with Individual YJ-30 dated 31 March 2015, edocs 3437234; Email from Individual YJ-22 CYDC to Individual ESU 1 dated 8 February 2015, edocs 3460142; Letter of complaint outcome to Young Person A4, edocs 3437202.

2534 Inspection report of Cleveland Youth Detention Centre – March quarter 2015, edocs 3458031.

2535 Individual YJ 60's statement of witness to QPS dated 24 February 2015, edocs 343722.

2536 YD-1-9 Complaints management; YD-1-10 Complaints to external agencies; Complaints management guide Appendix 1-1, edocs 3447199; Youth Justice, Department of Justice and Attorney-General, YD-1-2 Youth Detention – Behaviour Development, v 1.1, date of operation 22 July 2015, p 9, edocs 3447110; YD-3-1 Youth detention – Duty of care obligations to staff and detained young people, edocs 3447112; YD-1-1 Youth detention – Casework, edocs 3447387; YD-1-7 Youth detention – food provision and nutrition services, edocs 3447099; YD 3-9 Identifying and reporting harm in a youth detention centre, edocs 3473065; YD-3-3 Reporting critical incidents that relate to youth detention centre service delivery, edocs 3447111; Youth detention –



- youth detention operations manual;<sup>2537</sup>
- Code of Conduct For the Queensland Public Service;<sup>2538</sup>
- Legislation, including the *Youth Justice Act 1992*<sup>2539</sup>, *Youth Justice Regulation 2003*, *Youth Justice Regulation 2016*, *Public Service Act 2008*, and *Food Act 2006*;<sup>2540</sup>
- Amnesty Report – “Heads Held High”,<sup>2541</sup>

## PRE-CONTEXTUAL INFORMATION

<sup>2537</sup> Youth Justice, *Youth Justice Detention Centre Operations Manual*, Chapter 1, 5 ‘Special Interest Young People’; Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.3, 7 June 2016, paragraph 2.7.1; Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.3, 7 June 2016, paragraph 2.7 <<http://intranet.justice.govnet.qld.gov.au/divisions-and-branches/youth-justice/youth-justice-in-detention/youth-detention-centre-operations-manual/ydcom-chapter-1-care-and-management-of-young-people>>; Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, paragraph 2.7.1, edocs 3447313; *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.3, 7 June 2016, paragraph 2.7; *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, paragraph 2.7, edocs 3447313; *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, date of operation 22 July 2015, 5-6, edocs 3447110; *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.3, 7 June 2016, paragraph 2.7.1; *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, paragraph 2.7.1, edocs 3447313; *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, date of operation 22 July 2015, p 6, edocs 3447110.

<sup>2538</sup> Queensland Government, *Code of Conduct for the Queensland Public Service*, edocs 3530224.

<sup>2539</sup> *Youth Justice Act 1992*, s 263(1) (version as at 28 March 2014); *Youth Justice Act 1992*, s 263(3)(c) (version as at 28 March 2014); *Youth Justice Act 1992*, s 263(3)(d) (current version as at 28 March 2014); *Youth Justice Act 1992*, s 263(2) (version as at 28 March 2014); Youth Justice Principle 19, contained in *Youth Justice Act 1992*, schedule 1 (as at 28 March 2014); *Youth Justice Act 1992*, s 268(1)(b) (as at 1 July 2016); *Youth Justice Act 1992*, s 268(6) (as at 1 July 2016); *Youth Justice Regulation 2003*, s 22(1) (at 15 October 2015); *Youth Justice Regulation 2003*, s 17(4) (as at 28 October 2015); *Youth Justice Act 1992*, s 277 (1) (as at 1 July 2016); *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, date of operation 22 July 2015, 4-5, edocs 3447110; *Youth Justice Regulation 2003*, s 17(4).

<sup>2540</sup> Suspected intentional contamination of food: Industry Protocol – produced by the Queensland Government edocs 3513492.

<sup>2541</sup> Amnesty International, “Heads Held High” – Keeping Queensland kids out of detention, strong in culture and community (2016), edocs 3419598.



It is beyond the scope of this Review to conduct a detailed analysis of all management plans that Young Person A4 was subjected to throughout his detention. Examination of plans and strategies that are proximate in time to the incident under review is suggestive of a correlation between the various restrictive conditions in the each of the plans and their compounding negative effect on Young Person A4.

The Review considers that any determined correlation between a young person's behaviour management plans and behaviour would require the opinion of a suitably qualified expert. The Review has not sought such an opinion due to time constraints.

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#### THE CORRELATION OF BDPS AND

Of particular concern to the Review in the management of Young Person A4 at CYDC is the potential link between [REDACTED] and BDPS that enforce conditions of separation and isolation.



The conditions applied pursuant to BDP's negatively affected Young Person A4, with isolation in a sterile room reportedly triggering incidents



When Young Person A4 was to venture outside he was to be double-escorted and

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placed in handcuffs.<sup>2569</sup> The compounding effect of the three different management strategies (BDP, SYIP and SR observations) restricted Young Person A4's movement and activities in many ways.

Behaviour development policy at the time stipulated that such interventions were designed to assist young people to become aware of their misbehaviour and encourage them to make good decisions by promoting positive behaviour.<sup>2570</sup> In addition, the objective of the behaviour development framework was to promote the safety, wellbeing and rehabilitation of young people and to contribute to centre safety and security.<sup>2571</sup> There was concurrent application of multiple behavioural and risk management strategies.

## THE USE OF RESTRAINTS

At least one member of staff who worked at CYDC at the time of the incident has provided information to the Review expressing concerns regarding the use of restraints on Young Person A4 during his detention at CYDC as follows:<sup>2572</sup>

*"What used to happen was [Young Person A4] would be escorted around the centre, while handcuffed (he is only a little short boy) and he would have one big fella on one side and another big fella on the other side and they would double handcuff him and escort him around for his exercise around the centre."*

Legislation at the time stipulated that restraints may be used by a staff member approved to use them in specific circumstances.<sup>2574</sup> Restraints must be used in a way that respects the child's dignity and are to be used for no longer than is reasonably necessary in the circumstances.<sup>2575</sup>

Youth Justice Policy YD-3-7 *Use of mechanical restraints* recognises both handcuffs and ankle cuffs as approved restraints. However, the use of leg cuffs was permissible only in emergency situations and requires that the centre director be notified prior to use.<sup>2576</sup>

<sup>2569</sup> Young Person A4, BDP 3398221, Version 3 dated 30 January 2015, p 4, edocs 3442761.

<sup>2570</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.0, edocs 3447386.

<sup>2571</sup> YD-1-2 Youth Detention – Behaviour Development, v 1.0, edocs 3447386.

<sup>2572</sup> SD10, paragraphs 19-21, edocs 3486179.

<sup>2574</sup> *Youth Justice Regulation 2003* s 20(2)(b) and (3) (version as at 28 October 2015).

<sup>2575</sup> *Youth Justice Regulation 2003* s 20(4) (version as at 28 October 2015).

<sup>2576</sup> YD-3-7 Use of Mechanical Restraints, Appendix A – Approved Mechanical Restraints, edocs 3443730.



On 13 March 2015, a request was made to the Centre Director for approval to use leg cuffs *and* handcuffs on Young Person A4 in escorting him to and from his daily activity if a 'risk of harm' existed,<sup>2578</sup> and at the same time he was also required to have a double escort. DCOIS records, dated 16 March 2015 indicated that approval for the use of restraint appears to have been granted, with an entry on the SIYP record for Young Person A4 noting:

*"Double escorted and YW to remain with young person whenever external to secure buildings and in mechanical restrained (Handcuffs). The application of restraints (Handcuffs) are to be applied to the front – if deemed necessary to apply to rear a formal risk assessment must occur and be fully documented. Leg cuffs are only to be used in extreme cases and for the shortest duration possible. The person providing the authorisation is required to undertake a formal risk assessment and record the outcomes justifying action with in DCOIS Leg cuffs are only to be used in extreme cases and for the shortest duration possible. The person providing the authorisation is required to undertake formal risk assessment and record the outcomes justifying action with in [sic] DCOIS"*<sup>2579</sup>

The Review considers that approval for the use of leg cuffs does not fulfil the requirement pertaining to use in emergency situations only and appears to have been approved on the basis of a form of preventative measure.

The *Youth Justice Regulation 2003*<sup>2580</sup> also requires that there must be no other way of stopping the child from the engaging in the behaviour.<sup>2581</sup> Young Person A4 was subjected to double escorts at the same time that mechanical restraints were approved to be used.

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<sup>2580</sup> *Youth Justice Regulation 2003* s 20(4).

<sup>2581</sup> *Youth Justice Regulation 2003* s 20(4).



INCIDENT 3382679<sup>2585</sup> 23 JANUARY 2015.

In the lead-up to this incident,<sup>2587</sup> Individual had been rostered to work in Kingfisher unit, not Heron unit where Young Person A4 was located<sup>2588</sup>. Heron and Kingfisher units are separated by a shared office.<sup>2589 2590</sup>

On 23 January 2015, Individual YJ-30 attended Young Person A4's separation room and found him sitting on the floor near the grille<sup>2591</sup> When asked what was wrong, Young Person A4 said: "Can you please go and talk to Individual and tell him to stop calling me on my intercom?"<sup>2592</sup> She asked him to elaborate. Young Person A4 said he was about to take a shower when the music stopped playing on his intercom. Thinking [Individual YJ-30] wished to speak to him, he responded with, "Yes, Miss?" Young Person A4 explained that rather than hear Individual YJ-30, Young Person A4 heard the voice of Individual over the intercom, Young Person A4 claimed this was followed moments later or words to that effect.<sup>2593</sup>

During her conversation with Young Person A4 to document his complaint, Individual YJ-30 noted that

Individual YJ-30 moved Young Person A4 outside of the room into the hallway for privacy while they continued to speak.

Young Person A4 continued by saying that on the previous morning, 22 January 2015, he was eating breakfast in his room<sup>2595</sup> when Individual had come on the

<sup>2583</sup> CSD 4, p 3, paragraph 13, edocs 3508611.

<sup>2585</sup> Incident/Behaviour details report – DCOIS 3382679, edocs 3437213.

<sup>2587</sup> DCOIS: Incident/Behaviour details report – Incident 3382679, edocs 3437213.

<sup>2588</sup> File note of ESU interview with Individual YJ-30, dated 31 March 2015, edocs 3437234.

<sup>2589</sup> File note of ESU interview with Individual YJ-30, dated 31 March 2015, edocs 3437234.

<sup>2590</sup> Map of CYDC, edocs 3501825.

<sup>2591</sup> Exhibit 2, Email from Individual YJ-89 to Individual YJ-30 dated 7 October 2016, attached to the affidavit of Individual YJ-30 sworn 8 October 2016, edocs 3470963.

<sup>2592</sup> Exhibit 2, Email from Individual YJ-89 to Individual YJ-30 dated 7 October 2016, attached to the affidavit of Individual YJ-30 sworn 8 October 2016, edocs 3470963.

<sup>2593</sup> Exhibit 2, contained in the affidavit of Individual YJ-30 sworn 8 October 2016, edocs 3470963.

<sup>2595</sup> Exhibit 2, affidavit of Individual YJ-30 sworn 8 October 2016, edocs 3470963.



intercom and asked him if he liked the taste of his spit. Young Person A4 asked what he meant by that and was told, "I made your breakfast this morning and I spat in it."<sup>2596</sup>

Young Person A4 then stopped eating his breakfast.<sup>2597</sup> His partially-eaten breakfast, and the reasons Young Person A4 provided for it at the time, are corroborated by the DCOIS report provided by Individual YJ-12:

*"I took him his cereal first and then left him to eat it while I got his toast ready. When I returned with his toast I noticed that he had only eaten half his cereal. I asked him why he had not eaten all of it and he said words to the effect of just called me up on the intercom and said how do you like my spit?"<sup>2598</sup>*

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<sup>2596</sup> Exhibit 2, affidavit of Individual YJ-30 sworn 8 October 2016, edocs 3470963.

<sup>2597</sup> Exhibit 2, affidavit of Individual YJ-30 sworn 8 October 2016, edocs 3470963.

<sup>2598</sup> Exhibit 2, affidavit of Individual YJ-12 sworn 7 October 2016, edocs 3470955.



## POST-INCIDENT RESPONSES

### THE COMPLAINT PROCESS

Legislation states that a child may complain about a matter that may affect a child.<sup>2615</sup> The chief executive must issue written directions on how a complaint must be made and dealt with, including by directing the complaint to a community visitor (child), child advocacy officer or other appropriate authority.<sup>2616</sup> The chief executive must tell the child how the complaint will be dealt with<sup>2617</sup> and does not have to deal with complaints the chief executive reasonably believes to be trivial or made only to cause annoyance.<sup>2618</sup>

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<sup>2615</sup> *Youth Justice Act 1992* s 277(1).

<sup>2616</sup> *Youth Justice Act 1992* s 277(2).

<sup>2617</sup> *Youth Justice Act 1992* s 277(4).

<sup>2618</sup> *Youth Justice Act 1992* s 277(5).



A child may complain directly to a community visitor (child) or child advocacy officer,<sup>2619</sup> and nothing in the provision affects the powers of the community visitor (child) or child advocacy officer.<sup>2620</sup>

Complaints may generally be made by a child who is in a centre or is being admitted to a centre using form COM1.<sup>2621</sup> The completed DCOIS incident report indicates that the final categorisation of the incident was a Level 3 reportable incident: alleged misconduct by a member of staff.<sup>2622</sup>

The Youth Justice *Detention Centre Operations Manual* provides that a complaint involving official misconduct or suspected official misconduct should be raised directly with the Manager, Monitoring and Compliance (MMC) or the executive director for referral to the ESU.<sup>2623</sup> Complaints assessed as being CaPE<sup>2624</sup> category 3 are referred to ESU.<sup>2625</sup>

This process was accurately followed with Individual YJ-22 ensuring that the COM1 was signed, the form and summary of the issue was sent to ESU on 21 January 2015.<sup>2626</sup>

#### INVESTIGATION UNDERTAKEN BY ETHICAL STANDARDS UNIT

Individual YJ-22 referred the complaint to ESU for review. As part of its investigation into the complaint, ESU interviewed a number of staff members of CYDC about the incident.

<sup>2619</sup> *Youth Justice Act 1992* s 277(3).

<sup>2620</sup> *Youth Justice Act 1992* s 277(6).

<sup>2621</sup> Youth Detention Centre Operations Manual, Chapter 1, s 11.1.1, edocs 3447209.

<sup>2622</sup> DCOIS: Incident/Behaviour details report – Incident 3382679, “Incident Details” section, edocs 3437213.

<sup>2623</sup> Youth Detention Centre Operations Manual, Chapter 1, s 11.1.4, edocs 3447209.

<sup>2624</sup> The Conduct and Performance Framework (CaPE) <https://www.qld.gov.au/gov/conduct-and-performance-exroomence-cape-service>

<sup>2625</sup> Department of Justice and Attorney-General, *YD-1-9 Complaints management*, 18 July 2016, edocs 3447104.

<sup>2626</sup> Email with COM1 complaint form (PDF) attached, edocs 3437206.



The finding from the ESU investigation was that the claim from Young Person A4 could not be substantiated on the basis of the information available.

In its conclusions ESU stated that, “In the absence of audio recordings of conversations over the intercom or other corroborative records, there is no basis to prefer the evidence of [Young Person A4] over the evidence of [Individual <sup>2632</sup>”

There was no attempt, during this ESU investigation, to interview Young Person A4. Interviews were conducted with all other relevant parties. The reasons outlined by ESU for failing to interview Young Person A4 included that Young Person A4 was no longer in CYDC and that, “it was considered unlikely that he would have been able to provide any additional information that he had not already provided.” <sup>2633</sup>

The Review notes that Young Person A4 was not interviewed by ESU during the investigation. This may have assisted with the assessment of the complaint. However, the Review accepts that there are competing resource considerations to be balanced when making decisions in relation to complaint investigation.

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<sup>2629</sup> Private and confidential memorandum from Individual ESU-7 to Individual ESU-1, dated 28 May 2015, p 5, edocs 3437241.

<sup>2630</sup> Private and confidential memorandum from Individual ESU-7 to Individual ESU-1, dated 28 May 2015, p 5, edocs 3437241.

<sup>2631</sup> Private and confidential memorandum from Individual ESU-7 to Individual ESU-1, dated 28 May 2015, p 5 edocs 3437241

<sup>2632</sup> Private and confidential memorandum from Individual ESU-7 to Individual ESU-1, dated 28 May 2015, p 6, edocs 3437241.

<sup>2633</sup> Private and confidential memorandum from Individual ESU-7 to Individual ESU-1 dated 28 May 2015, p 2 edocs 3437241.



**Recommendation 16.R1** – The Review recommends that ESU investigations of alleged staff misconduct by young people should include, where possible, an interview with the complainant in the company of a complainant’s preferred support person.

## MANAGEMENT CONCERNS

In the various statements provided to the Review CYDC staff expressed very little, if any concern about the management of the incident involving Young Person A4.

In relation to this particular incident:

- Individual YJ-3 stated that, “...not all concerns are being reported, or not reported appropriately.”<sup>2634</sup>
- Individual YJ-12 believed the incident with Young Person A4 was managed appropriately, and that he had no concerns about the treatment of young people more broadly.<sup>2635</sup>
- Individual YJ-30 believed the incident was managed appropriately and stated she had no concerns about the treatment of young people in general.<sup>2636</sup>
- Individual YJ-35 said: “I do not have any concerns. This is because I believe that any issues that arise are investigated and appropriate actions are taken.”<sup>2637</sup>
- Individual YJ-22 said he considered the incident was managed appropriately.<sup>2638</sup>

## SECOND INCIDENT – 5 JUNE 2015

On the *Lateline* program, Young Person A4 states:

*“...as they got me at the door they started punching me in the ribs and kneeing me in the head. Then they threw me on the floor... and I was crying. They was [sic] like, ‘Shut the f\*\*k up, monkey. You’re in your cage. Shut up.’ And they just kept doing what they was [sic] doing until I stopped crying.”*<sup>2639</sup>

These words refer to a specific takedown and ground stabilisation incident of Young Person A4 that occurred on the evening of 5 June 2015 in CYDC’s Kingfisher Unit.<sup>2640</sup>

That ground stabilisation episode lasted for 17 minutes.<sup>2641</sup>



<sup>2634</sup> Affidavit of Individual YJ-30 sworn 8 October 2016, paragraph 16 (f), edocs 3470963; Exhibit 2, contained in the affidavit of Individual YJ-30 sworn 8 October 2016, edocs 3470963.

<sup>2635</sup> Affidavit of Individual YJ-12, sworn 7 October 2016, paragraphs 18, 19, edocs 3470955.

<sup>2636</sup> Affidavit of Individual YJ-30, sworn 8 October 2016, paragraphs 22, 23, edocs 3470963.

<sup>2637</sup> Affidavit of Individual YJ-35, sworn 10 October 2016, paragraphs 36, 37, edocs 3470968.

<sup>2638</sup> Affidavit of Individual YJ-22, sworn 12 October 2016, paragraph 31, edocs 3470985.

<sup>2639</sup> *Lateline* transcript, [www.abc.net.au/lateline/content/2016/s4522569.htm](http://www.abc.net.au/lateline/content/2016/s4522569.htm), page 2.

<sup>2640</sup> Affidavit of Individual YJ-45 sworn 30 September 2016, edocs 3439519.

<sup>2641</sup> Incident Debrief Meeting Minutes dated 10 June 2015, Exhibit 3-3, affidavit of Individual YJ-3 sworn 13 October 2016, edocs 3470958.



In conducting a review of Young Person A4's second incident, the Review has had regard to relevant legislation and regulations and the following documents:

- Young Person A4's COM1 complaint form;<sup>2645</sup>
- DCOIS records;<sup>2646</sup>
- Behaviour Development Plans;<sup>2647</sup>
- CYDC records;<sup>2648</sup>
- Statements (and exhibits) from staff;<sup>2649</sup>
- ESU records<sup>2650</sup> – including file notes, interview recordings, emails;
- Case review documents;<sup>2651</sup>
- Health records;<sup>2652</sup>
- Queensland Police Service (QPS) records;<sup>2653</sup>
- CCTV footage<sup>2654</sup> and stills taken from the CCTV;

<sup>2645</sup> COM1 complaint form, dated 7 June 2015 by Young Person A4, Exhibit 5, affidavit of Individual YJ-47 sworn 30 September 2016, edocs 3439519.

<sup>2646</sup> DCOIS Record, Occurrence Report submitted by Individual YJ-44, ID 3791798, edocs 3520603; DCOIS Record, Occurrence Report submitted by Individual YJ-8, ID 3791799, edocs 3520604; DCOIS Record, Incident/Behaviour Report submitted by Individual YJ-22, ID 3791808, edocs 3520613; DCOIS Record, Occurrence Report submitted by Individual YJ-65, ID 3791800, edocs 3520605; DCOIS Record, Occurrence Report submitted by Individual YJ-5, ID 3791803, edocs 3520608; DCOIS Record, Occurrence Report submitted by Individual YJ-17, ID 3791801, edocs 3520606; DCOIS Record, Occurrence Report submitted by Individual YJ-10, ID 3791807, edocs 3520612; DCOIS Record, Occurrence Report submitted by Individual YJ-28, ID 3791802, edocs 3520607; DCOIS Record, Occurrence Report submitted by Individual YJ-13, ID 3791806, edocs 3520611; DCOIS Record, Occurrence Report submitted by Individual YJ-7, ID 3791804 (edocs #3520609); DCOIS Record, Occurrence Report submitted by Individual YJ-15, ID 3791805, edocs 3520610; DCOIS Record edocs 3443993 review dated 8 July 2015, edocs 3441947.

<sup>2647</sup> DCOIS BDP 3794015, Version 1, edocs 3442406; DCOIS BDP 3575606, Version 5, edocs 3529916; DCOIS BDP 3794015, Version 2, edocs 3442406; DCOIS BDP 3802820, Version 3, edocs 3529917; DCOIS INC020 Incident/Behaviour: 3791808, edocs 3520613.

<sup>2648</sup> Incident Debrief minutes – meeting held on 10 June 2015 – Exhibit 3-3, affidavit of Individual YJ-3 sworn 13 October 2016, edocs 3470958.

<sup>2649</sup> Affidavit of Individual YJ-47 sworn 30 September 2016, edocs 3439519; Affidavit of Individual YJ-22 sworn 12 October 2016, edocs 3470985; Affidavit of Individual YJ-15 sworn 8 October 2016, edocs 3470990; Affidavit of Individual YJ-44 sworn 27 October 2016, edocs 3491559; Affidavit of Individual YJ-28 sworn 9 October 2016 edocs 3470972; Affidavit of Individual YJ-17 sworn 10 October 2016, edocs 3470992; Affidavit of Individual YJ-43 sworn 28 October 2016, edocs 3491592; Affidavit of Individual YJ-42 (Supplementary Statement) sworn 28 November 2016, edocs 3535256; Affidavit of Individual YJ-42 sworn 27 October 2016, edocs 3488263; Affidavit of Individual YJ-13 sworn 8 October 2016, edocs 3470988; Affidavit of Individual YJ-8 sworn 7 October 2016 edocs 3470950; Affidavit of Individual YJ-5 sworn 10 October 2016, edocs 3470960; Affidavit of Individual YJ-3 sworn 13 October 2016 edocs 3470958; Affidavit of Individual YJ-22 sworn 12 October 2016 edocs #3470985; Affidavit of Individual YJ-7 sworn 11 October 2016, paras 33-35, edocs 3470948.

<sup>2650</sup> Recording of ESU Interview with Individual YJ-44 dated 12 August 2015, edocs 3520552; ESU Investigation Report prepared by Individual ESU-7 dated 17 December 2015, edocs 3520570; File Note on ESU Interview with Individual YJ-8 dated 12 August 2015, edocs 3520668; File Note on ESU Interview with Individual YJ-17 dated 12 August 2015, edocs 3520674; File Note on ESU Interview with Individual YJ-13 dated 12 August 2015, edocs 3520672; File Note on ESU Interview with Individual YJ-44 dated 12 August 2015, edocs 3520670; File Note on ESU Interview with Young Person A4 dated 12 August 2015, edocs 3520676; Email from Individual YJ-22 to Individual ESU-7, dated 30 July 2015, edocs 3520619; Email from Individual ESU-6 to Individual ESU-4 dated 2 July 2015 at 5:37 pm, edocs 3520587.

<sup>2651</sup> Case Review YDC, dated 19 May 2015, Initial case plan review, Attendees: Individual YJ-42 and Individual YJ-75, Individual DCS-2, edocs 3446958.

<sup>2653</sup> QPS Report QP1500814679 (edocs #3475240); Email from Individual YJ-43 to Individual QPS-2, sent on 11 June 2015, edocs 3472984.

<sup>2654</sup> CCTV footage of the 5 June 2015 incident from CYDC Kingfisher Unit cameras, edocs 3526769.



- Education documents;<sup>2655</sup>
- Policy documents;<sup>2656</sup>
- Legislation, including the *Youth Justice Act 1992*, and *Youth Justice Regulation 2003*;<sup>2657</sup> and
- Other miscellaneous documents.<sup>2658</sup>

The Review was unable to obtain evidence from Individual YJ-65, one of the staff involved in the second incident, for medical reasons.

## PRE-CONTEXTUAL INFORMATION

### CLASSIFICATION OF THE INCIDENT 3791808<sup>2663</sup> – 5 JUNE 2015

The incident was recorded by Individual YJ-22<sup>2664</sup> on DCOIS as a Level 2 incident.<sup>2665</sup>

Later in the same DCOIS record, reference is made to a classification, “Level 3” Reportable Incident; code: assault; sub-code: 204 – alleged assault on a staff member by a young person.

Young Person A4 lodged an official COM1 complaint form about the incident signed 7 June 2015. In it, he stated:

*“As I came out of my cell I grabbed [redacted] by the shirt with my left arm. [Individual [redacted]] then punched me in the ribs on my left side. I was also kicked and kneed in the head.”* <sup>2666</sup>

## INCIDENT

<sup>2655</sup> Student report, edocs 3442224; Student report, edocs 3442223.

<sup>2656</sup> YD-1-2 *Youth Detention – Behaviour Development*, v 1.1, date of operation 22 July 2015, edocs 3447110. YD-1-2 *Youth Detention – Behaviour Development*, v 1.0 Edocs 3447386; YJ Operations Manual, Chapter 1, care and management of young people; YD-3-7 Use of mechanical restraints policy, Edocs 3443730; Youth Detention Centre Operations Manual, Chapter 3, s 2.3; YD-3-4 Protective Action Continuum policy, edocs 3447101.

<sup>2657</sup> *Youth Justice Regulation 2003* ss 17(1)-(3); 17(5)-(7); 20(2)(b).

<sup>2658</sup> Verdict and Judgment Record, Case file:CCM-00011108/15(6) – CAIR – CCM-00000972/15, edocs 3528019.

<sup>2663</sup> DCOIS Record, Incident/Behaviour Report submitted by YJ-22, ID 3791808, edocs 3520613.

<sup>2664</sup> Affidavit of YJ-22 sworn on 12 October 2016 edocs 3470985.

<sup>2665</sup> DCOIS Record, Occurrence Report submitted by YJ-22, ID 3791808, edocs 3520613.

<sup>2666</sup> COM1 complaint form, dated 7 June 2015 by Young Person A4, which is attached as Exhibit 5 to the affidavit of YJ-47 sworn on 30 September 2016, edocs 3439519.



The Review has had some difficulty in establishing a detailed and accurate chronology for the events that unfolded as part of the second incident. This is in part due to a number of discrepancies, inconsistencies and contradictions in some accounts of staff, their DCOIS records and the lack of clear CCTV footage.

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Individual YJ-44 claimed that after a conversation took place with Young Person A4, Young Person A4 “rushed at the door” causing him and Individual YJ-8 to stand in the door area to block the young person from leaving the cell. Individual YJ-44 claims that Young Person A4 then grabbed the collar of his shirt and verbally abused him.<sup>2680</sup>

Individual YJ-8 says he released Young Person A4’s grip on his colleague’s shirt “only to be grabbed [himself]”.<sup>2681</sup>

Individual YJ-44 called a code yellow on the radio at this point, but stated he did not think it was heard by staff due to the lack of response from them,<sup>2682</sup> although it is apparent that staff did respond,<sup>2683</sup> very quickly and in significant numbers. In the incident recorded on CCTV footage and according to DCOIS records, at least eight staff members responded to the code yellow. This was in addition to the two staff who were already present. DCOIS records indicate that 11 Occurrence reports were entered.<sup>2684</sup>

<sup>2680</sup> Affidavit of Individual YJ-44 sworn on 27 October 2016, para 15(c), edocs 3491559.

<sup>2681</sup> DCOIS Record, Occurrence Report submitted by Individual YJ-8, ID 3791799 edocs 3520604.

<sup>2682</sup> Affidavit of Individual YJ-44 sworn on 27 October 2016, para 15 (e), edocs 3491559.

<sup>2683</sup> DCOIS Record, Occurrence Report submitted by Individual YJ-8, ID 3791799, edocs 3520604.

<sup>2684</sup> DCOIS Record, Occurrence Report submitted by Individual YJ-8, ID 3791799 edocs 3520604; DCOIS Record, Occurrence Report submitted by Individual YJ-7, ID 3791804 edocs 3520609; DCOIS Record, Occurrence Report submitted by Individual YJ-15, ID 3791805, edocs 3520610; DCOIS Record, Occurrence Report submitted by Individual YJ-44, ID 3791798 edocs 3520603; DCOIS Record, Occurrence Report submitted by Individual YJ-5, ID 3791803, edocs 3520608; DCOIS Record, Occurrence Report submitted by Individual YJ-65, ID



One of the first to arrive in response to the code was Individual YJ-65. He joined Individual YJ-44 and Individual YJ-8 at the cell doorway. In his Occurrence report<sup>2685</sup> Individual YJ-65 stated:

*"When I arrived at cell 7, [Young Person A4] was attempting to rush out of the cell with [Individual YJ-44] and [Individual YJ-8] trying to secure the cell door.*

*I had seen that the YP had taken control of [Individual YJ-8's] shirt and would not let go after being instructed to release his hand from the YW [sic] shirt and to go inside his cell. I attempted to move the YP hand from the shirt but was grabbed by the YP with his right hand.*

*At some time the cell door of the cell opened and the YP with his right hand punched me in the face two or more times. I attempted to conduct an inside takedown but was pulled down by the YP as he was stabilised on the ground.*

*I took control of the YP [sic] head as at that time the YP*

*After the YP was stabilised and other responding staff arrived I removed myself from the area as my left side of my face started to become sore and irritated."*

Young Person A4 was taken to the ground by Individual YJ-44 and three other staff members who responded to the code.

Young Person A4 let go of Individual YJ-8's shirt, grabbed hold of Individual YJ-65's shirt and punched Individual YJ-65 two or more times to the face.<sup>2687</sup> The punches are not clear from the CCTV footage the Review was provided with, however, Young Person A4 later pleaded guilty to three counts of unlawful assault of a public officer<sup>2688</sup> in relation to this incident.

In an attempt to release Young Person A4's grip on Individual YJ-8, Individual used a technique called a 'palm heel strike'<sup>2689</sup> and repeatedly struck Young Person A4 using this strike.<sup>2690</sup> Young Person A4 did not release his grip and was, "half in half out the cell door" at this point.<sup>2691</sup> Then, Individual instructed Young Person A4 to "let go" before using the strike technique<sup>2692</sup> several more times.

3791800, edocs 3520605; DCOIS Record, Occurrence Report submitted by Individual YJ-28, ID 3791802, edocs 3520607; DCOIS Record, Occurrence Report submitted by Individual YJ-10, ID 3791807, edocs 3520612; DCOIS Record, Occurrence Report submitted by Individual YJ-17, ID 3791801, edocs 3520606; DCOIS Record, Occurrence Report submitted by Individual YJ-13, ID 3791806, edocs 3520611; DCOIS Record, Incident/Behaviour Report submitted by Individual YJ-22, ID 3791808, edocs 3520613.

<sup>2685</sup> DCOIS Record, Occurrence Report submitted by Individual YJ-65, ID 3791800, edocs 3520605.

<sup>2687</sup> DCOIS Record, Occurrence Report submitted by Individual YJ-65, ID 3791800, edocs 3520605.

<sup>2688</sup> Verdict and Judgment Record, Case file:CCM-00011108/15 (6) – CAIR – CCM-00000972/15, edocs 3528019.

<sup>2689</sup> A technique from YD-3-4 Protective Actions Continuum policy, edocs 3447101.

<sup>2690</sup> DCOIS Record, Occurrence Report submitted by Individual , ID 3791798, edocs 3520603.

<sup>2691</sup> Affidavit of Individual sworn on 27 October 2016, para 15 (f), edocs 3491559.

<sup>2692</sup> YD-3-4 Protective Actions Continuum policy, edocs 3447101.



In his later interview with ESU Individual YJ-44 estimated he used approximately 70% force in the palm heel strikes he delivered.<sup>2693</sup>

After the decision was made to take Young Person A4 from his cell out into the hallway<sup>2694</sup>, the cell door was allowed to open. Young Person A4 and the staff members moved as a group away from his cell doorway and appeared to fall to the floor on the other side of the hallway.

From the CCTV footage, the take down and ground stabilisation happened suddenly, quickly and forcefully. The staff members were in a tight tussle with Young Person A4 in the middle of the group of staff. It is difficult, if not impossible, to discern from the sea of blue CYDC uniforms who did what as the bodies of staff members between Young Person A4 and the CCTV camera obscured a significant portion of what was occurring. One staff member appeared to grab hold of one of Young Person A4's feet and tried to pull his feet out from underneath him.<sup>2695</sup> It was at this point that the whole group fell to the ground.

It was noted in CYDC's incident debrief meeting minutes<sup>2696</sup> that, "...when the ground stabilisation took place no one landed on Young Person A4, this process was conducted correctly." The Review considers that in some ground stabilisations staff members do land on the young people being ground stabilised.

From the CCTV footage, it is apparent that when Young Person A4 was taken to the ground, his head landed very close to, if not against the cell door opposite his own cell. On the *Lateline* program Young Person A4 states, "... then they threw me on the floor and I landed onto my mate's door."

It is not clear to the Review on analysing the CCTV footage whether or not Young Person A4's head came into contact with the other cell door, or the wall of the hallway. There is no mention of Young Person A4's head coming into contact with the cell door opposite Young Person A4's cell in any of the staff members' DCOIS Occurrence reports.

Young Person A4 was held on the ground until he stopped moving.

After the ground stabilisation additional staff members continued to arrive in the hallway. The staff members holding Young Person A4 in the ground stabilisation position appeared to be talking to Young Person A4. In the incident debrief meeting

<sup>2693</sup> File Note on ESU Interview with Individual - dated 12 August 2015, edocs 3520670.

<sup>2694</sup> DCOIS Record, Occurrence Report submitted by Individual YJ-44, ID 3791798, edocs 3520603.

<sup>2695</sup> DCOIS Record, Occurrence Report submitted by Individual YJ-17, ID 3791801, edocs 3520606.

<sup>2696</sup> Incident Debrief Meeting Minutes dated 10 June 2015, which is attached as Exhibit 3 to the affidavit of Individual YJ-3 sworn on 13 October 2016, edocs 3470958.



minutes<sup>2699</sup>, Individual YJ-44 said that the staff were trying to calm Young Person A4 down.

Individual YJ-10<sup>2700</sup> directed staff not directly involved in the incident to move away from the immediate area.

At this stage, four staff members were holding Young Person A4 on the ground on his stomach with one leg bent inwards and the other leg hooked around the first leg in a leg lock.

#### IMAGES CAPTURED FROM CCTV

The CCTV footage reveals that there were six stages to the ground stabilisation incident.

Stage 1: Individual YJ-44 and Individual YJ-8 are talking to Young Person A4 through the open door to his cell at 5:38:21 PM (as seen in image 1). The time stamp is 5:38:21 PM.

Stage 2: Six seconds later, Individual YJ-44 makes the first push on the door (image 2). The time stamp is 5:38:27 PM.

Stage 3: Individual YJ-44 and Individual YJ-8 are both seen pushing on the door to Young Person A4's cell at 5:39:06 PM (as seen in image 3).

Stage 4: 14 seconds later, at 5:39:20 PM, additional staff arrive to assist Individual YJ-44 and Individual YJ-8 (as seen in image 4). There are seven staff visible in this image.

Stage 5: The staff perform the ground stabilisation (as seen in images 5–9.) These images are not time-stamped.

Stage 6: The ground stabilisation was performed at 5:42:08 PM. Young Person A4's legs are in the leg lock position. There are nine staff visible. (Image 10).

Stage 7: The ground stabilisation continued at 5:48:48 PM. (Image 11). The status of Young Person A4 is not clear as there is a staff member standing between Young Person A4 and the CCTV camera. There are between 12 and 13 staff visible.

The incident is short and escalated quickly.

There was a lapse of only 45 seconds between image 1, which depicted Individual YJ-44 and Individual YJ-8 having a conversation with Young Person A4, and image 2, which depicts Individual YJ-44 and Individual YJ-8 pushing the door to Young Person A4's cell closed.

There is a lapse of just 14 seconds where the number of staff increases from two to seven (as seen in images 3 and 4).

<sup>2699</sup> Incident Debrief Meeting Minutes dated 10 June 2015, Exhibit 3 to the affidavit of YJ-3 sworn on 13 October 2016, edocs 3470958.

<sup>2700</sup> DCOIS Record, Occurrence Report submitted by YJ-10, ID 3791807, edocs 3520612.



It is also significant that two factors inhibit the development of a detailed chronology from this CCTV footage:

- there was a high number of individual staff involved; and
- a staff member was blocking the CCTV camera while Young Person A4 was being ground stabilised.













**Finding 16.F1** – Clear CCTV footage of an incident serves to assist with substantiating or unsubstantiating complaints from young people against staff, and also complaints by staff against young people. Staff members who were between the CCTV camera and the incident obscured potentially valuable CCTV footage.

**Recommendation 16.R2** – The Review recommends that staff who are no longer required to manage an incident should leave the area.

**Recommendation 16.R3** – The Review recommends that staff who are not directly involved in the management of an incident but may be required to remain should ensure they are not obscuring CCTV cameras and the occurring incident.

## CCTV FOOTAGE – ISSUES

There is CCTV footage<sup>2706</sup> of the incident from the hallway camera near Young Person A4's cell in the CYDC Kingfisher Unit which lasts approximately 10 minutes. Much of what took place in the hallway can be seen. There is separate footage taken from another camera angle outside the hallway looking in. No footage of the events from inside Young Person A4's cell before, or at the beginning of this incident, was provided to the Review. Neither is there any CCTV footage of Young Person A4 after he was returned to his cell towards the end of the incident, providing an incomplete overall picture of what unfolded. There was no CCTV footage provided of the additional staff transiting to the incident after the code was called.

From the hallway CCTV footage, it cannot be determined precisely where Individual YJ-44's palm heel strikes landed on Young Person A4's body. On the *Lateline* program, Young Person A4 alleged that he was punched in the ribs during the incident. Young

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<sup>2706</sup> CCTV footage of the 5 June 2015 incident from CYDC Kingfisher Unit cameras, edocs 3526769.



Person A4 repeated that allegation during his ESU interview.<sup>2707</sup> From the CCTV footage, it appears that Individual [redacted] was using an open hand to strike Young Person A4, although this was denied in his ESU interview.<sup>2708</sup>

This incident involved a high number of staff attempting to physically restrain a young person in a small space.

The Review considers that Young Person A4's placement in a cell without a camera, and the lack of footage for some parts of this incident, inhibited the Review from determining precisely what occurred.

The lack of a camera in Young Person A4's cell has meant the Review has relied on statements from staff, other documentary records and the versions provided by Young Person A4 in order to achieve an understanding of this incident. No explanation has been provided for the decision to place Young Person A4 in a cell without a CCTV camera.

The Review considers that the subsequent ESU investigation, and the resolution of Young Person A4's complaint were hampered as a result of him being placed in a cell with no CCTV camera.

#### INVESTIGATION OF YOUNG PERSON A4'S COMPLAINT

Individual YJ-22 reported<sup>2709</sup> that Child Protection Investigation Unit (CPIU) Officers from the QPS attended the CYDC on 18 June 2015 and interviewed Young Person A4 in his presence. Individual YJ-22 provided the CCTV footage of the incident to the CPIU officers.

Individual YJ-22 stated:<sup>2710</sup>

*and there appeared to be no grounds to his complaint*

Individual YJ-22 further stated, "I am not aware if that decision has yet been formally advised directly to Young Person A4."

In relation to Young Person A4's complaint to CYDC, Individual ESU-6 was visiting CDYC during an inspection week. During this visit, he spoke to Young Person A4 about another incident.

In a July 2015 email<sup>2711</sup> to Individual ESU-4, Individual ESU-6 stated:

<sup>2707</sup> Young Person A4 was interviewed by the ESU on 12/8/2015 after he lodged a complaint about being assaulted by Individual YJ-44: File Note on ESU Interview with Young Person A4 dated 12 August 2015, edocs 3520676.

<sup>2708</sup> File Note of ESU Interview with Individual [redacted] dated 12 August 2015, edocs 3520670.

<sup>2709</sup> Email from Individual YJ-22 to Individual ESU-7 on 30 July 2015, edocs 3520619.

<sup>2710</sup> Email from Individual YJ-22 to Individual ESU-7 on 30 July 2015, edocs 3520619.

<sup>2711</sup> Email from Individual ESU-6 to Individual ESU-4 dated 2 July 2015, edocs 3520587



...  
 We spoke with [Young Person A4] two days after the incident and he informed us that he had issues with a staff member called ... [Young Person A4] stated that he has previously made a complaint to the QPS in relation to the manner in which he was restrained by

We raised this point with [Individual YJ-25]<sup>2713</sup> at the exit interview and asked [Individual YJ-25] if [Young Person A4] had made a complaint and if so why hadn't the staff member been moved to another unit until a decision is made by the QPS whether to proceed with the complaint or not. [Individual YJ-25] was unaware if [Young Person A4] had made a complaint, but he did concur that it is usual practice to move the young person or the staff member to another accommodation unit if there has been a complaint made. ...

[Young Person A4] made also made (sic) a complaint to the centre as well as the QPS on 9 June, my understanding is that it was not forwarded to ESU."

Although the CYDC facilitated Young Person A4's complaint to the QPS, the CYDC did not refer Young Person A4's complaint to ESU at the same time (i.e. on 11 June 2015).

YD-1-9 Complaints management policy requires that complaints are acknowledged and responded to as soon as practicable. There was no evidence available to the Review to show that CYDC acknowledged and responded to Young Person A4's complaint. Further, section 2.4 of YD-1-9 states that complaints will be managed in a way that ensures the complainant is provided regular updates regarding the progress of their complaint. Again, there was no evidence provided that Young Person A4 was provided with regular updates in regards to his complaint. According to the DCOIS 3791808<sup>2714</sup> there is no evidence of any finalisation of Young Person A4's complaint being actioned.

The policy in section 3.3 states that complaints which are assessed as CaPE category 3<sup>2715</sup> must be referred to ESU for consideration.

Given that Young Person A4's complaint alleged assault by a staff member, it should have been categorised as a CaPE 3 complaint and referred to ESU.

To be clear about the requirements for a referral to ESU, section 6.6 of the YD-1-9 policy states:

*"If the complaint relates to alleged staff misconduct, the centre director must refer the matter to the Department's Ethical Standards Unit..."*<sup>2715</sup>

The YD-1-9 policy states in section 3.3 that reasonable steps must be taken for all CaPE 3 category complaints to ensure, as far as practically possible and appropriate, that contact is restricted between the complainant and subject officer. The Review considers that there is no evidence of reasonable steps taken.

<sup>2713</sup> DCOIS Record, Incident/Behaviour Report submitted by Individual YJ-22, ID 3791808, edocs 3520613.

<sup>2714</sup> YD-1-9 Complaints management, Appendix A –Risk rating and category, edocs 3447109/

<sup>2715</sup> A definition of 'misconduct' can be found in s 187(4)(a) of the Public Service Act 2008.



Policy *YD-1-10 Complaints to external agencies*, section 2 states that in the event a complaint is made about a staff member, steps are to be taken by detention centre management to prevent (as far as reasonably possible) the victimisation of either party, while the matter is being investigated. Further, section 2 of the *YD-1-10* policy also echoes section 3.3 of the *YD-1-9* policy whereby, advice should have been provided to the CYDC unit manager or the Centre Director about whether contact restrictions should be considered (between the complainant, Young Person A4, and the subject officer Individual YJ-44).

**Finding 16.F2** – By failing to refer Young Person A4’s complaint to ESU, CYDC did not follow the procedure outlined in the *YD-1-9* Complaints management policy.

**Recommendation 16.R4** – The Review recommends that the inspectorate should consider including an ongoing record of all complaints made by young people at every inspection in order to consider whether or not a youth detention centre is appropriately handling, recording and resolving complaints lodged by young people.

**Recommendation 16.R5** – The Review recommends that appropriate and operationally effective measures to restrict contact between a staff member and a young person should be taken immediately following a complaint by the young person.

**Recommendation 16.R6** – The Review recommends that accurate records of measures taken to separate staff and young people as part of a complaints management process should be kept by the youth detention centre.

Additionally, there is no evidence to suggest that Young Person A4 was shown the CCTV footage of the incident, and unlike the staff involved, it is unlikely that Young Person A4 himself had any written notes of the incident to refer to, in order to refresh his memory.

It is apparent from the incident debrief meeting minutes of 10 June 2015 that the staff members at least, had viewed the CCTV footage. It is not apparent whether or not they had the ability to view the footage for a second time, before ESU interviews were conducted.

**Finding 16.F3** – The lack of prompt response by CYDC after the lodgement of Young Person A4’s complaint led to an unnecessary and avoidable delay in interviews being conducted by ESU. This in turn led to a prolonging of the complaint investigation period.

## QPS INVESTIGATION OF THE COMPLAINT

CYDC referred Young Person A4’s complaint to the CPIU of the QPS on 11 June 2015<sup>2716</sup> in an email sent by Individual YJ-43.

<sup>2716</sup> Email from Individual YJ-43 to Individual QPS 2, 11 June 2015 (re: Incident 3791808), edocs 3528267.



## ESU INVESTIGATION OF THE COMPLAINT

Young Person A4's complaint against Individual [REDACTED] lodged with CYDC on 7 June 2015, was eventually referred to DJAG's ESU for investigation.

Individual ESU-6 spoke with Young Person A4 during an inspectorate visit to CYDC and discovered that Young Person A4 had completed a COM1 complaint form and wished to lodge a complaint to both CYDC and the QPS about the incident on 5 June 2015. Enquiries were made with Individual YJ-25, and Young Person A4's complaint was then referred to ESU for investigation.

ESU conducted an investigation into the alleged conduct of Individual [REDACTED] and summarised the allegation as follows:

*It is alleged that on 5 June 2015 at the CYDC [Individual YJ-44] used force on young person [Young Person A4] that was not authorised, justified and reasonable in the circumstances by punching him in the chest, and kicking and kneeling him in the head.<sup>2718</sup>*

It is unclear whether ESU gave Young Person A4 regular updates, or any updates in relation to the status of his complaint. Additionally, there was no information included in the ESU outcome letter outlining whether Young Person A4 had any review rights to an external agency.

No evidence was available to the Review that Young Person A4 was provided with investigation status updates relating to his complaint. No evidence was available to the Review to demonstrate that Young Person A4 was provided with any review rights that he may have access to if he was dissatisfied with the investigation outcome. The outcome of the investigation into the complaint took seven months.

**Recommendation 16.R7** – The Review recommends that ESU should identify an expected end date for an investigation and provide details of the expected end date to the young person at the commencement of the investigation into the young person's complaint.

**Recommendation 16.R8** - The Review recommends that the review rights, if any, available to a young person should be included in any outcome letter to the young person, and these rights should be additionally explained to the young person by their caseworker or appropriate staff member.

<sup>2718</sup> ESU Investigation Report, JAG Ref No:2015/2016-002 17 December 2015, pg. 4/16, edocs 3520570.



The interviews undertaken by ESU were conducted as follows:

- Young Person A4 – at 12:11pm on 12 August 2015 – interviewed by Individual ESU-8 at CYDC with Individual YJ-42 present as a support person;<sup>2719</sup>
- Individual YJ-17 – at 1:45pm on 12 August 2016 – interviewed by Individual ESU-3 at CYDC with no support person present;<sup>2720</sup>
- Individual YJ-8 – at 2:04pm on 12 August 2016 – interviewed by Individual ESU-3 by telephone with no support person present;<sup>2721</sup>
- Individual YJ-13 – at 3:10pm on 12 August 2015 – interviewed by Individual ESU-8 at CYDC with no support person present; and<sup>2722</sup>
- Individual – at 3:55pm on 12 August 2015 - interviewed by Individual ESU-3 at CYDC

In Young Person A4's ESU interview, when asked by Individual ESU-8 if he remembered the incident, Young Person A4 replied that there had been a lot of incidents and asked, "Which one was it?"

After Individual ESU-8 reminded him of the incident, Young Person A4 said that Individual came to his room and he grabbed him by the shirt because Individual

He said Individual punched him in the ribs. He said, "Check the camera, it's all on camera...I got on the ground and was kneed in the head and kicked while I was standing up before I was punched in the ribs...I fell to the floor and that's when I got kneed in the head". The ESU interview file note<sup>2724</sup> states that, "He stated that when this happened he was in the hallway outside the cell."

Young Person A4 also mentioned he was kicked in the thigh, "something like that. I can't remember. I was involved a lot of incidents over this month and last month."

## MEDICAL ASSESSMENT AFTER THE INCIDENT

After the incident, Young Person

a health assessment was carried out on

Young Person A4 in his cell

<sup>2719</sup> ESU file note, edocs 3520676.

<sup>2720</sup> ESU file note, edocs 3520674.

<sup>2721</sup> ESU file note, edocs 3520668.

<sup>2722</sup> ESU file note, edocs 3520672.

<sup>2723</sup> ESU file note, edocs 3520670.

<sup>2724</sup> Young Person A4 – ESU File Note, File Ref No:2015/2016-002 dated 12 August 2015, edocs 3520676.







**Finding 16.F4** – Young Person A4’s BDP and SIYP restrictions adversely impacted his attendance at the Cleveland Education and Training Centre.



## CHAPTER 17 YOUNG PERSONS A5, A6, AND A7

### INTRODUCTION

This incident was shown on ABC television on 7:30 on 18 August 2016<sup>2737</sup> and is one of the specific incidents referred for review by *Commissions of Inquiry Order (No. 1) 2016*.

Three female young people were involved in the incident in the afternoon and early evening of 25 August 2015. The incident occurred within the grounds of CYDC. It involved the three young people (at the time two of the young people were aged 15 and one was aged 16) running off from accompanying staff and the remainder of their unit group as they were all being escorted back to their unit after an afternoon concert.

The three young people ran to the pool and jumped in. They were in the pool for around three hours. On emerging from the pool all three young people were handcuffed by CYDC staff and each was taken to a separation room and placed onto a Behaviour Development Plan (BDP). This incident is referred to in this report as 'the pool incident.' There is CCTV footage of the period of time at the pool. There is no CCTV footage of the placement into separation for each of the three young people.

The three young people involved in the pool incident were Young Person A6, Young Person A5 and Young Person A7.

The pool incident was noted by the Inspectorate as a concerning incident in its quarterly report in September 2015. The main concern noted by the Inspectorate related to the use of an unmuzzled security dog during the incident.

In conducting a review of this incident, regard has been had to:

- affidavits and statements from a number of staff;<sup>2739</sup>
- statement from Individual <sup>2740, 2741</sup>

<sup>2737</sup> CCTV shows alleged mistreatment at Townsville's Cleveland Youth Detention Centre (18 August 2016) ABC News <<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>.

<sup>2738</sup> Case Review YJSC of Young Person A7, dated 23 July 2015, p 1, edocs 3445070; case review YJSC of Young Person A5 dated 29 October 2015 (ICMS), p 1, edocs 3444419.

<sup>2739</sup> Affidavit of Individual ESU-5 sworn on 2 November 2016, edocs 3495059; Affidavit of Individual YJ-6 affirmed on 11 October 2016, edocs 3470961; Affidavit of Individual YJ-61 sworn on 27 October 2016, edocs 3492328; Affidavit of Individual YJ-45 sworn 23 October 2016, edocs 3491554; Affidavit of Individual YJ-9 sworn on 12 October 2016, edoc 3470951; affidavit of Individual YJ-47 sworn on 30 September 2016, edocs 3439519; Affidavit of Individual YJ-15 sworn on 8 October 2016, edocs 3470990; Affidavit of Individual YJ-16 sworn on 10 October 2016, edocs 3470991; Affidavit of Individual YJ-18 sworn on 9 October 2016, edocs 3470980; Affidavit of Individual THHS-1 sworn on 13 October 2016, edocs 3473072; Affidavit of Individual YJ-20 sworn on 9 October 2016, edocs 3470983; Affidavit of Individual YJ-26 sworn on 11 October 2016, edocs 3470970; Affidavit of Individual YJ-48 sworn on 22 November 2016, edocs 3531533; Affidavit of Individual YJ-22 sworn on 12 October 2016, edocs 3470985; Affidavit of Individual ESU-6 sworn on 10 November 2016, edocs 3509156; Affidavit of Individual YJ-42 sworn on 27 October 2016, edocs 3488263; Affidavit of Individual YJ-24 sworn on 10 October 2016, edocs 3470987; Affidavit of Individual YJ-25, edocs 3470969; Affidavit of Individual YJ-38, edocs 347308; Affidavit of Individual YJ-35 sworn on 10 October 2016, edocs 3470968; Affidavit of Individual YJ-34 sworn on 10 October 2016, edocs 3470967.

<sup>2740</sup> Individual Co-Director and Safety Manager/Risk Adviser

<sup>2741</sup> Statement of Individual dated 28 October 2016, edocs 3488946.



- HR and training records;<sup>2742</sup>
- DCOIS records;<sup>2743</sup>
- health records for each of the young people;
- case reviews for each of the young people;<sup>2744</sup>
- BDPs in place for each of the young people following the incident;<sup>2745</sup>
- CCTV footage of the pool during the incident;
- information relating to the incident outlined during the ABC broadcast;<sup>2746</sup>
- information relating to the incident contained in the Amnesty Report – ‘Heads Held High’<sup>2747</sup> and other Amnesty Reports;<sup>2748</sup>
- policy documents, in particular those relating to incident management, use of force, use of mechanical restraint, separation and BDPs;
- Legislation, including the *Youth Justice Act 1992*, *Youth Justice Regulation 2003* and the *Youth Justice Regulation 2016*;<sup>2749</sup>
- other relevant documents provided to the Review, such as the external contractual agreement for the use of the security dog at CYDC;<sup>2750</sup>
- information provided by staff and young people to the Review during the site visit to CYDC on 31 October 2016 and 1 November 2016; and
- information from the Inspectorate reports.<sup>2751</sup>
- Submissions on behalf of the State;<sup>2752</sup>

## INCIDENT

A concert had finished and the young people involved in this incident were lined up with others to be walked back to their unit.<sup>2753</sup> All young people from the Magpie Unit were moving from their line towards the gym entrance and toilet area.<sup>2754</sup> Individual YJ-24 yelled out to some of the young people to stop and come back.<sup>2755</sup> The three young people involved in this incident did not comply with that direction to stop, but others in the group did.<sup>2756</sup>

<sup>2742</sup> Document titled CYDC as at May 2015, edocs 3462950, MC Stats database, edocs 3462952, Blue Card audit 2016, edocs 3485703 and HR file of Individual YJ-61 – Minutes of Meeting document, dated 2 February 2016, edocs 3485481.

<sup>2743</sup> Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, edocs 3439519.

<sup>2744</sup> See, for example, Case review YDC for Young Person A5 dated 10 June 2015 (ICMS), edocs 3444530, Case review YJSC of Young Person A5, not dated, (ICMS), p 1, edocs 3485544.

<sup>2745</sup> BDP for Young Person A5 number 40952953, version 1, edocs 3442883; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, edocs 3442843; BDP for Young Person A6 number 4092557, version 1 dated 25 August 2015, edocs 3443087.

<sup>2746</sup> CCTV shows alleged mistreatment at Townsville's Cleveland Youth Detention Centre (18 August 2016) ABC News <<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>.

<sup>2747</sup> Amnesty International, ‘Heads Held High’ – Keeping Queensland kids out of detention, strong in culture and community (2016) 26 <[https://static.amnesty.org.au/wp-content/uploads/2016/09/Heads\\_Held\\_High\\_-\\_Queensland\\_report\\_by\\_Amnesty\\_International.pdf](https://static.amnesty.org.au/wp-content/uploads/2016/09/Heads_Held_High_-_Queensland_report_by_Amnesty_International.pdf)>.

<sup>2748</sup> Amnesty International, *Torture in 2014: 30 Years of Broken Promises* (2014) 25. <<http://www.amnestyusa.org/sites/default/files/act400042014en.pdf>>.

<sup>2749</sup> *Youth Justice Act 1992* as in force at 15 August 2014, *Youth Justice Regulation 2003* as in force at 24 October 2014, *Youth Justice Regulation 2016* and the *Education (General Provisions) Act 2006* as in force at 27 January 2015.

<sup>2750</sup> Attachment ‘CFT Security patrol 21 02 14’, p 3, attached to email from Individual YJ-25 and Individual ESU-5, edocs 3457991.

<sup>2751</sup> Preliminary findings from CYDC inspection 13-18 September 2015, edocs 3458039; Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, edocs 3458035.

<sup>2752</sup> Submission of the State relating to draft chapter 8, edocs 3554150.

<sup>2753</sup> Affidavit of Individual YJ-24 sworn on 10 October 2016, para 17, edocs 3470987.

<sup>2754</sup> Occurrence report of Individual YJ-24, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 89, edocs 3439519. Affidavit of Individual YJ-24 sworn on 10 October 2016, para 17, edocs 3470987.

<sup>2755</sup> Occurrence report of Individual YJ-9, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 85, edocs 3439519.

<sup>2756</sup> Affidavit of Individual YJ-24 sworn on 10 October 2016, para 17, edocs 3470987.



Young Persons A6, A5 and A7 did not stop after being directed to do so and ran towards the pool area.<sup>2757</sup> Individual YJ-24 called a code yellow.<sup>2758</sup> Young Persons A6, A5 and A7 jumped into the pool. Individual [redacted], and a trained security dog that responded to Individual [redacted] commands, saw the young people run along the pathway to the fitness area and gave chase, following them to the pool area.<sup>2759</sup> Individual [redacted] indicated that he arrived outside the pool as the three young people were in the pool.<sup>2760</sup>

Staff then surrounded the pool and Individual [redacted] with his dog, was also in the pool area.<sup>2761</sup> Individual YJ-45 directed staff to points around the pool to stop the young people running and directed staff not to engage with the young people.<sup>2762</sup> Staff were told only to take action should a young person get out of the pool area.<sup>2763</sup>

Individual [redacted] indicated that a senior staff member asked him to enter the pool area with his security dog as a strategy to assist in the removal of the young people.<sup>2764</sup> Individual [redacted] then indicated that a manager assessed the situation and he was requested to guard and monitor the deep end of the pool in order to contain the young people to the shallow end of the pool to prevent them from gaining access to the roof area via the pool fence.<sup>2765</sup> Individual [redacted] role in the incident is corroborated by Individual YJ-45, who indicated that the security guard dog handler and canine were inside the pool area as a deterrent to stop the three young people getting onto the roof from the pool area.<sup>2766</sup>

However, given the young people were in the pool, it seems that the young people were not in imminent proximity to the roof or indeed even at ground level, this does give rise to the necessity for the dog and his handler. The Review also notes that the young people got out of the pool down at the deep end of the pool, which was closest to the roof.

Individual YJ-45 did not appear to seek to remove Individual [redacted] or the dog from the pool area at any time. However, Individual YJ-45 said that the dog handler was not under her direction at the time of the incident.<sup>2768</sup>

<sup>2757</sup> Occurrence report of Individual YJ-24, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 89, edocs 3439519.

<sup>2758</sup> Occurrence report of Individual YJ-9, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 85, edocs 343951; Occurrence report of Individual YJ-24, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 89, edocs 3439519; Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 51, edocs 3439519; Affidavit of Individual YJ-20 sworn on 9 October 2016, para 15, edocs 3470983.

<sup>2759</sup> Information Report', attached to Statement of Individual [redacted] dated 28 October 2016, edocs 3488946.

<sup>2760</sup> Information Report', attached to Statement of Individual [redacted] dated 28 October 2016, edocs 3488946.

<sup>2761</sup> Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 51, edocs 3439519.

<sup>2762</sup> Individual YJ-16 Occurrence report, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 75, edocs 3439519; Individual YJ-6 Occurrence report, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 91, edocs 3439519.

<sup>2763</sup> Exhibit "YJ-6-2" to the affidavit of Individual YJ-6 affirmed on 11 October 2016, edocs 3470961.

<sup>2764</sup> Information Report', attached to statement of Individual [redacted] dated 28 October 2016, edocs 3488946,

<sup>2765</sup> Information Report', attached to statement of Individual [redacted] dated 28 October 2016, edocs 3488946.

<sup>2766</sup> Affidavit of Individual YJ-45 sworn 23 October 2016, para 15(c), edocs 3491554.

<sup>2768</sup> Affidavit of Individual YJ-45 sworn 23 November 2016, para 6, edocs 3491554.



Individual YJ-45 said that the security dog handler would commonly and of his own accord position himself in locations where a young person could access the roof.<sup>2770</sup> Individual stated that it was when the operations manager arrived that he was directed to guard and monitor the deep end of the pool.<sup>2771</sup>

All three young people got out of the pool at approximately 7pm.<sup>2772</sup>

Individual YJ-6 indicated that the young people had “feigned” getting out of the pool several times.<sup>2774</sup> However, the report on the ABC’s 7:30 program indicated that when one of the young people was attempting to get out of the pool she was confronted by an angry dog.<sup>2775</sup> The ABC report stated that the dog was allowed to close in on the young person.<sup>2776</sup> The CCTV footage indicates that there were a number of times when the dog approached the edge of the pool aggressively when the young people appeared to be attempting to get out of the pool.<sup>2777</sup>

The young people negotiated with staff not to be ground stabilised when they left the pool.<sup>2779</sup>

On getting out of the pool all three of the young people were handcuffed and escorted back to their unit.<sup>2780</sup> Restraints (specifically handcuffs) were applied to Young Person A6, Young Person A5 and Young Person A7, and all three were escorted to units.<sup>2781</sup> Individual YJ-65 states that he applied mechanical restraints to Young Person A7.<sup>2782</sup> Individual YJ-45 applied handcuffs to Young Persons A5<sup>2783</sup> and A6.<sup>2784</sup> Individual YJ-45 said she authorised the application of handcuffs to allow the staff to escort the young people to their unit.<sup>2785</sup>

She said that she

<sup>2770</sup> Affidavit of Individual YJ-45 sworn 23 November 2016, para 6, edocs 3491554.

<sup>2771</sup> Information Report’, attached to Statement of Individual dated 28 October 2016, edocs 3488946.

<sup>2772</sup> Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 51, edocs 3439519.

<sup>2774</sup> Individual YJ-6 Occurrence report, which forms part of exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 91, edocs 3439519.

<sup>2775</sup> CCTV shows alleged mistreatment at Townsville’s Cleveland Youth Detention Centre (18 August 2016) ABC News <<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>, p 4 of printout.

<sup>2776</sup> CCTV shows alleged mistreatment at Townsville’s Cleveland Youth Detention Centre (18 August 2016) ABC News <<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>, p 4 of printout.

<sup>2777</sup> From 5:30pm on 25 August 2015: CCTV notes – YP at ladder at 5:31pm – and dog goes for her clearly, so they get back in the water: Pool incident CCTV notes (edocs 3491634).

<sup>2779</sup> Affidavit of Individual YJ-20 sworn on 9 October 2016, para 15(f), edocs 3470983; Affidavit of Individual YJ-16 sworn on 10 October 2016, para 15, edocs 3470991.

<sup>2780</sup> Affidavit of Individual YJ-20 sworn on 9 October 2016, para 15(f), edocs 3470983.

<sup>2781</sup> Individual YJ-16 Occurrence report, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 51, edocs 3439519; Draft statement of Young Person A7, para 18.

<sup>2782</sup> DCOIS record exhibit Individual YJ-47-3 to the affidavit of Individual YJ-47 sworn on 30 September 2016, edocs 3439519.

<sup>2783</sup> Exhibit Individual YJ-47-3 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 95, edocs 3439519.

<sup>2784</sup> Exhibit Individual YJ-47-3 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 93, edocs 3439519.

<sup>2785</sup> Affidavit of Individual YJ-45 sworn 23 November 2016, para 7, edocs 3491554.



had the delegated authority to approve the use of restraints.<sup>2788</sup> She did not recall whether she personally applied the handcuffs or authorised Individual YJ-65 to do so.<sup>2789</sup>

Staff escorted the three young people from the pool area to separation using hand guidance. Individual YJ-20's occurrence report indicated that he took Young Person A6's left arm, and Individual YJ-66 took Young Person A6's right arm and escorted her to the Magpie West separation room.<sup>2790</sup> Young Person A5 was escorted using hand guidance to escort by Individual YJ-67 on her left arm and Individual YJ-15 on her right arm.<sup>2791</sup> Hand guidance was used by Individual YJ-90 and Individual YJ-65 to escort Young Person A7.<sup>2792</sup> Appendix 3-1 (PAC technique library) and policy YD-3-4 PAC, table 4, states that escort holds are appropriate when a young person is not handcuffed during escort.<sup>2793</sup>

The three young people were moved to units and into separation, where the handcuffs were removed. They remained in separation for about an hour. As a result of the pool incident they were placed on BDPs, which remained in place for a number of days.

## RESPONSES TO INCIDENT

### CLASSIFICATION OF INCIDENT ON PROTECTIVE ACTIONS CONTINUUM

The DCOIS records indicated that the pool incident was classified as a level 2 PAC response.<sup>2794</sup> The three young people involved in the incident were hand guided to separation (level 2 PAC response) with restraints (level 3 PAC response-escorting young person while handcuffed) due to a security breach and restraints were applied and removed (level 4 PAC response).<sup>2795</sup> The Policy YD-3-4 Protective Actions Continuum stated that a staff member may escort a young person while handcuffed in relation to a level 3 incident,<sup>2796</sup> and may apply and remove handcuffs in relation to a level 4 incident.<sup>2797</sup> These levels appear to be internally inconsistent – it is difficult to see how a person may be escorted while handcuffed in response to a level 3 incident when they may only apply or remove handcuffs for a level 4 incident.

<sup>2788</sup> Affidavit of Individual YJ-45 sworn 23 November 2016, para 7, edocs 3491554.

<sup>2789</sup> Affidavit of Individual YJ-45 sworn 23 November 2016, paras 7 and 8, edocs 3491554.

<sup>2790</sup> Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 67, edocs 3439519; Individual YJ-66 Occurrence report, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 93, edocs 3439519.

<sup>2791</sup> Individual YJ-67 Occurrence report, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 95, edocs 3439519. Note inconsistency with Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 55, edocs 3439519, which refers to Individual YJ-20 also escorting Young Person A5.

<sup>2792</sup> Individual YJ-90 Occurrence report, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 99, edocs 3439519.

<sup>2793</sup> YD-3-4 Youth detention – Protective Actions Continuum policy, v1.2, date of operation 22 July 2014, Table 4: Handcuffing and escort techniques, p 15, edocs 3447101; Appendix 3-2 – Protective Actions Continuum technique library, v1.1, date of operation 6 June 2014, edocs 3447530.

<sup>2794</sup> Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, pp 55-56, edocs 3439519.

<sup>2795</sup> Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, pp 55-56, edocs 3439519. Youth Detention Centre Operations Manual, Appendix 3-1 Protective Actions Continuum Technique Library, table 4, date of operation 6 June 2014.

<sup>2796</sup> YD-3-4 Protective Actions Continuum Policy, date of operation 6 June 2014, section 6.3, edocs 3447101.

<sup>2797</sup> YD-3-4 Protective Actions Continuum Policy, date of operation 6 June 2014, section 7.5, edocs 3447101.



**Recommendation 17.R1** – The Review recommends that the responses in relation to incidents under the Protective Actions Continuum should be revised in order to remove inconsistencies in response to varying categories of risk.

In order to classify an incident as a level 1 to 4 on the PAC, a staff member must assess the risk associated with the incident before intervening.<sup>2798</sup> Once the staff member has assessed the risks, they may then use an intervention that is authorised in respect of the assessed risk level.<sup>2799</sup> The YD-3-4 Protective Actions Continuum defines incidents by risk levels as follows:<sup>2800</sup>

- a level 1 PAC response involves a low risk incident that may involve a very low to nil risk of harm or injury with time to de-escalate;
- a level 2 PAC response involves a moderate risk incident that may involve verbal and physical threats of violence and time to attempt level 1 and 2 options;
- a level 3 PAC response involves a high risk incident that may involve the risk of physical harm or injury, with time to attempt physical interventions and with risks to the security and order of the detention centre; and
- a level 4 PAC response involves a very high risk level that may involve aggressive physical contact posing very high risks of serious harm or injury and highly volatile situations creating serious risks to the security and order of the detention centre.

The Review considers that as the young people involved in this incident were in the pool, there was no tangible risk of harm to the staff or themselves and the time spent in the pool was sufficient time to de-escalate the situation. Negotiation occurred which ultimately led to the young people voluntarily leaving the pool without resisting staff, and therefore the incident should properly have been classified as an incident where a level 1 PAC response was most appropriate. Individual YJ-42 stated that in previous incidents where young people were in the pool for short periods of time, they were managed in the units rather than placed on BDPs.<sup>2801</sup> The Review notes that some staff reported there was abusive language used,<sup>2802</sup> items were thrown at staff<sup>2803</sup> and one staff member reported that the young people talked about getting out of the pool area and which staff member they would “have a ‘shot’ at.”<sup>2804</sup>

<sup>2798</sup> Youth Detention Centre Operations Manual Chapter 3, Incident management, date of approval 22 May 2015 section 3, edocs 3447206; YD-3-4 Protective Actions Continuum Policy, date of operation 6 June 2014, section 1.1, edocs 3447101.

<sup>2799</sup> Youth Detention Centre Operations Manual Chapter 3 Incident management, date of approval 22 May 2015, section 1.2, edocs 3447206.

<sup>2800</sup> YD-3-4 Protective Actions Continuum Policy, date of operation 6 June 2014, section 3, edocs 3447101.

<sup>2801</sup> Affidavit of Individual YJ-42 sworn on 27 October 2016, para 40(b), edocs 3488263.

<sup>2802</sup> Individual YJ-34 Occurrence report, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 87, edocs 3439519; exhibit Individual YJ-34-2 to affidavit of Individual YJ-34 sworn on 10 October 2016, edocs 3470967; Exhibit Individual YJ-20-2 to the affidavit of Individual YJ-20 sworn on 9 October 2016, edocs 3470983.

<sup>2803</sup> Exhibit Individual YJ-20-2 to the affidavit of Individual YJ-20 sworn on 9 October 2016, edocs 3470983.

<sup>2804</sup> Exhibit Individual YJ-6-2 to the affidavit of Individual YJ-6 affirmed on 11 October 2016, edocs 3470961.



The Review accepts that the young people may well have sworn at staff, were verbally abusive and uncooperative, threw shoes and socks in the general direction of staff and splashed at the security dog.<sup>2805</sup>

The Review has analysed the CCTV footage and considers that:

- at 4:58pm one young person moves to exit the pool and splashed the dog when she was at the pool ladder, the dog was allowed to approach and she retreated back from the ladder;
- at 5:32pm the security dog was clearly barking and moving toward one of the young people when she splashed at the security dog in response;
- at 5:48pm one young person was at the side of the pool and threw her shoes and socks, the CCTV footage does not capture where those items landed.

However, given the extended period in which there was a lack of any physical violence and the negotiated resolution regarding use of ground stabilisation, the Review considers that there was a very low risk of harm or injury.

The Review notes that the staff considered that the incident caused serious risk to the safety and security of the centre<sup>2806</sup> and that the centre was required to be on lockdown<sup>2807</sup> because of the incident.

The relevance of that error is that any incident that is classified as a PAC level 4 response is to be reviewed by the Centre Director and information about the incident is to be provided to the Youth Detention Governance Committee for review. The Review has received minutes of the Governance Committee meetings which indicate that this has not occurred for a number of years.<sup>2808</sup>

Level 1 PAC response options are limited to verbal and non-physical de-escalation, such as negotiation, active listening, removing young people from the situation, verbally directing that the young person cease misbehaviour and seeking assistance from other staff members to diffuse the situation.<sup>2809</sup>

Staff did engage in negotiating, which was a level 1 PAC response and was an appropriate response to the incident.

However, the Review considers that the use of the security dog<sup>2810</sup> and the handcuffs were not appropriate responses to this incident.

There was no evidence that this incident was reviewed internally to consider whether or not the incident warranted the response that was applied to the three young people. The information about the use of security dogs in this incident was subject to further review by the ESU but only it seems because the incident was raised with

<sup>2805</sup> The point concerning the dog being called over and splashed was made in, for example, CSD 12.

<sup>2806</sup> BDP for Young Person A7 number 4092550, V 1 dated 25 August 2015, p 1, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, p 1, edocs 3442883; BDP for Young Person A6 number 40952557, version 1, p 1, edocs 3443087.

<sup>2807</sup> DCOIS Incident 4092066, p 1 which is part of Exhibit Individual YJ-47-3 to the Affidavit of sworn on 30 September 2016, p 51, edocs 3439519.

<sup>2808</sup> YD 3-4 Protective Actions Continuum Policy (date of operation 6 June 2014), section roles and responsibilities, edocs 3447101.

The Review has received the minutes of the Committee meetings that indicate that it has considered PAC level 4 incidents twice.

<sup>2809</sup> YD-3-4 Protective Actions Continuum Policy, date of operation 6 June 2014, section 4.2, edocs 3447101.

<sup>2810</sup> The use of the security dog is the subject of a separate chapter within this report.



them. The reference to the use of dogs in the September 2015 Inspectorate Report is discussed further below.

**Finding 17.F1** – The classification of the pool incident as a level 2 PAC response was incorrect.

**Finding 17.F2** – The responses should have been limited to those responses as authorised in accordance with a PAC level 1 incident in accordance with the YD-3-4 Protective Actions Continuum Policy in force at the time.

**Finding 17.F3** – At no time after that classification had occurred was the error corrected by any CYDC staff member.

**Finding 17.F4** – The error in classification resulted in no immediate review of the incident's management by any external oversight provider.

**Finding 17.F5** – The failure to correctly re-classify the incident by any staff member at CYDC resulted in no contemporaneous remedial action to respond to the error and prevent such errors from occurring in future.

## HANDCUFFS

It seems reasonable to describe the three young people as cooperative by the time they exited the pool. No staff statement contradicts that description and the CCTV footage showed the young people voluntarily moving to the ladder and being assisted out of the pool by staff.<sup>2813</sup> There was no indication that any of the three young people were resisting staff at that time. Further, the young people were hand escorted as well as restrained with handcuffs, where the PAC Techniques library states that a condition on using an escort hold is that a young person is not handcuffed during escort.<sup>2814</sup>

Reasonable minds may differ about whether the application of handcuffs was necessary in this instance.

The Review is unable to say clearly that the application of handcuffs was not necessary in order to ensure the young people went to separation without further incident.

However it should be noted that as the Review considers that the incident involved a PAC risk level 1, it appears that the restraints would not in accordance with the PAC

<sup>2813</sup> See Appendix C (CCTV notes) at 6:52pm.

<sup>2814</sup> Youth Detention Centre Operations Manual Appendix 3-1 Protective Actions Continuum Technique Library, date of operation, version 1.1 6 June 2014, table 4, edocs 3447190.



policy and Operations Manual (as the application of handcuffs is a level 4 PAC response and escorting a young person while handcuffed is a level 3 response).

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## LEGALITY AND CONSISTENCY WITH POLICY

The chief executive may approve types of restraints that a staff member may place on a young person in the chief executive's custody.<sup>2815</sup> The use of hinged handcuffs is approved by the YD-3-7 Use of Mechanical Restraints as in force at the time of the incident<sup>2816</sup> and Appendix 3-6 to the Youth Detention Centre Operations Manual.<sup>2817</sup> There is a record that SAFLOC hinged handcuffs were applied to the young people<sup>2818</sup> which, in the absence of information to the contrary, is assumed to be a type of hinged handcuff that is approved by the Policy and Appendix.

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<sup>2815</sup> *Youth Justice Regulation 2003* s 19.

<sup>2816</sup> YD-3-7 Use of Mechanical Restraints, v1.3, date of operation on 22 May 2015, Appendix A, edocs 3447397.

<sup>2817</sup> YDCOM Chapter 3 Incident management, appendix 3-6, v 1.2, date of operation on 23 July 2015.

<sup>2818</sup> For Young Person A7 see DCOIS record 'Restraints', Activity ID 3269, 1, edocs 3442844; for Young Person A5, see DCOIS Record 'Restraints', Activity ID 3267, 1, edocs 3442886; for Young Person A6, Activity ID 3268, 1, edocs 3444085.



There does not appear to be any reference in the Policy or Operations Manual to the appropriateness of placing the handcuffs on the arms of the young person in front of their body or behind the back of the young person. This was not always the case. The *Youth Detention Centre Operations Manual Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles*, dated April 2011, provided that a young person was to be restrained with their hands in front of them unless applying restraints to the front of the young person was likely to cause harm to staff or to the young person (for example, if the young person was ground stabilised when the restraints were to be applied).<sup>2819</sup> Consideration should be given to including when it is appropriate for handcuffs to be applied to a young person's hands in front of their body or behind their back.

**Recommendation 17.R2** – The Review recommends that the relevant Policy and Operations Manual should be updated to state specific circumstances as to when handcuffs are to be applied to a young person's hands in front of their body or behind their back.

A staff member may be approved to use handcuffs or other restraints by the chief executive<sup>2820</sup> or the chief executive's delegate.<sup>2821</sup> The Operations Manual appears to indicate that the list of delegations provides the list of staff that "have the delegated authority to use the restraints."<sup>2822</sup> Despite what is contained in the Operations Manual, it appears that the intended effect of the *Youth Justice Regulation 2003* was to allow staff listed in the delegation to authorise another staff member to apply restraints, and that such a decision would be made on a case by case basis.<sup>2823</sup> A delegate who is exercising the chief executive's power to authorise a staff member is able to authorise themselves to apply restraints.<sup>2824</sup> However, it appears in practice, pursuant to the *Youth Justice Regulation 2016*, it is intended that only those staff who have been listed in the delegation will be authorised (whether by themselves or others) to apply restraints.<sup>2825</sup> The Policy requires the youth detention operational staff members ("authorised persons" under the Policy) who have a delegated authority, pursuant to section 20(1) of the *Youth Justice Regulation 2003*, to authorise the use of mechanical restraints, to participate in all training relevant to the use of mechanical restraints and to maintain competency in the use of mechanical restraints.<sup>2826</sup>

**Recommendation 17.R3** – The Review recommends that the inconsistency in the Policy and the Operations Manual regarding who is authorised to apply restraints should be resolved.

<sup>2819</sup> *Youth Detention Centre Operations Manual, Chapter 20: Responding to Incidents and Prohibited, Illegal and Restricted Articles* (April 2011) p 9, which is attached as Exhibit Individual YJ-47-14 to the affidavit of Individual YJ-47 sworn on 30 September 2016, p 415, edocs 3439519.

<sup>2820</sup> *Youth Justice Regulation 2003* s 20(1).

<sup>2821</sup> Instrument of Delegation 23 June, edocs 3480042.

<sup>2822</sup> *Youth Detention Centre Operations Manual*, v 1.3, date of operation 22 May 2015, section 5.1.4, edocs 3447397.

<sup>2823</sup> *Submissions on Behalf of the State of Queensland: Use of Restraints* dated 28 November 2016, para 18; YD-3-7 Use of Mechanical Restraints (v 1.4, date of operation 30 April 2015), definition *authorised officer*, edocs 3447325.

<sup>2824</sup> *Submissions on Behalf of the State of Queensland: Use of Restraints* dated 28 November 2016, para 20, edocs 3536216.

<sup>2825</sup> *Submissions on Behalf of the State of Queensland: Use of Restraints* dated 28 November 2016, para 20, edocs 3536216.

<sup>2826</sup> YD-3-7 Use of Mechanical Restraints, v 1.4, date of operation 30 April 2015, Roles and responsibilities section, edocs 3447325.



The policy does not appear to require staff who may be authorised by the delegated officer to undertake that specific training, but states that those who decide whether mechanical restraints are appropriate are limited to supervisory position holders who have specific training in the use of mechanical restraints.<sup>2827</sup> Individual YJ-65,<sup>2828</sup> Individual YJ-45 and possibly another staff member applied the handcuffs to the three young people involved in the incident.

Restraints may be used by a staff member approved to use them only if they are approved restraints in a detention centre,<sup>2829</sup> if the chief executive considers on reasonable grounds that the young person is likely to attempt to escape, to seriously harm themselves or someone else, or to seriously disrupt order and security at the centre, and the staff member reasonably believes there is no other way of stopping the young person from engaging in the behaviour.<sup>2830</sup> The Regulation<sup>2831</sup> accords generally with the obligations contained to the Havana rules, rule 64.<sup>2832</sup> The Policy lists a number of examples of situations where it may be appropriate to use restraints, which include an assault on a person resulting in a serious injury, a siege or riot or when a young person is threatening others with a dangerous item and is reasonably likely to carry through on the threat.<sup>2833</sup> The Policy links the Restraints Policy with other policies concerning the safe resolution of incidents, including the PAC policy.<sup>2834</sup>

Restraints must be used in a way that respects the young person's dignity and are to be used for no longer than is reasonably necessary in the circumstances.<sup>2835</sup>

It seems unlikely that a staff member could have formed the requisite views allowing for the use of restraints in accordance with the Regulation<sup>2836</sup> because it is difficult to see how the chief executive (or delegate) could consider on reasonable grounds that the young people in this circumstance were likely to attempt to escape, to seriously harm themselves or someone else, or to seriously disrupt order and security at the centre, or that the staff members reasonably believed there was no other way of stopping the young people from engaging in the behaviour.<sup>2837</sup>

This incident ended in a negotiated fashion with no opportunity for the three young people to leave the pool area and seek to escape, and there appeared to be no intention to harm anyone displayed. None of those factual matters are alleged, much less established. It may be argued that the young people would be disrupting order

<sup>2827</sup> See also YD-3-7 Use of Mechanical Restraints, v 1.4, date of operation 30 April 2015, Principle 1, p 3, edocs 3447325.

<sup>2828</sup> On 11 August 2015, Individual YJ-65 was listed in the 'My Conversation Record' document. It is assumed at the time of the incident, 25 August 2015 he remained in that position: See 'My Conversation Record' dated 11 August 2015, edocs 3485459.

<sup>2829</sup> Provisions dealing with the application of approved restraints outside the centre are contained in the *Youth Justice Regulation 2003* s 20(2)(a) and (5).

<sup>2830</sup> *Youth Justice Regulation 2003* s 20(2)(b) and (3). See also YD-3-7 Use of Mechanical Restraints (v 1.4, date of operation 30 April 2015), Section Scope, edocs 3447325.

<sup>2831</sup> *Youth Justice Regulation 2003*.

<sup>2832</sup> *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty* GA Res 45/113, 45th sess 68th plen, mtg, Agenda Item 100, (14 December, 1990), rule 64.

<sup>2833</sup> See also YD-3-7 Use of Mechanical Restraints, v 1.4, date of operation 30 April 2015, Section Principles, edocs 3447325.

<sup>2834</sup> YD-3-7 Use of Mechanical Restraints, v 1.4, date of operation 30 April 2015, p 3, edocs 3447325.

<sup>2835</sup> *Youth Justice Regulation 2003* s 20(4). See also YD-3-7 Use of Mechanical Restraints, v 1.4, date of operation 30 April 2015, Principle 2, p 3, edocs 3447325.

<sup>2836</sup> *Youth Justice Regulation 2003*.

<sup>2837</sup> *Youth Justice Regulation 2003*, s 20(2)(b) and (3).



within the centre because of the lock down, but as that had already occurred due to the pool incident, the need came to an end at the time the restraints were applied.

Even if it was accepted that the serious disruption of the order of the centre was established, the second limb of the test (i.e. that it was necessary to stop the behaviour) could not be satisfied in these circumstances. It was not necessary at the time the handcuffs were applied to apply them as the young people were cooperative, not threatening and, it would seem, able to be readily restrained by hand guidance and escorted to the units. The Review has no records to suggest otherwise. In these circumstances the Review considers that it was unnecessary to apply mechanical restraints.

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### THE SECURITY DOG

It is apparent that the security dog was used to prevent two of the young people from exiting the pool at an earlier point in time. The CCTV footage clearly shows the young people at different times moving toward the pool ladder and attempting to get out of the water or coming to the side of the pool and beginning to climb out of the pool but being prevented from exiting the pool by the security dog being given a longer leash, which allowed the dog to get closer to the young people and snap and snarl at them.





*Images 1 and 2: use of the dog in relation to the pool incident*

The precise reasons for the use of the security dog in the management of this incident are unclear. There was a widespread concern regarding use of the security dog at CYDC.<sup>2838</sup> It seems unlikely that the presence of a security dog at the edge of the pool, as is seen on the CCTV footage, would be of any use in encouraging the three young people who were in the pool to get out.

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## CONSIDERATION OF RESPONSE TO INCIDENT

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<sup>2838</sup> See Chapter 11 – Use of Security Dogs at CYDC.



The need to ensure that incidents are correctly classified is of significance because it is the trigger by which CYDC 'front-line' staff indicate to managerial staff and external oversight providers that a significant incident has occurred.

All incidents involving young people are significant. However, only serious incidents classified as a level 4 allow for applying and removing mechanical restraints.

**Finding 17.F6** – The use of the dog and the mechanical restraints (the handcuffs) were an inappropriate and unnecessary PAC level 4 response to this low risk incident.

There is a need for responses to incidents to be more closely reviewed. As a result of the nature of the interventions at CYDC and the apparent habitual use of techniques such as ground stabilisation and use of mechanical restraints in response to many incidents, the Review considers that it is necessary for the level of force to be classified and the justification for the use of force to be included in the DCOIS records so that the staff member is required to show why the chosen use of force was justified in the circumstances of the incident. This will assist in facilitating adequate monitoring of the use of force at CYDC.

**Recommendation 17.R4** – The Review recommends that the CYDC management should require the recording of the classification of the force used along with a justification of the force used in accordance with the PAC:

3. to show that adequate justification for the use of force is included in the DCOIS report; and
4. to allow the Inspectorate to conduct a review into whether the use of force in an incident was justified.

There are many reasons for the need for close review in settings such as youth detention centres. The most significant of the reasons is that the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of all young people detained in detention centres.<sup>2841</sup> The young people detained in Youth Detention Centres retain a number of individual rights which are not abrogated by being in detention.<sup>2842</sup>

Managers ought to be aware of the number of individual occasions on which mechanical restraints are used on young people by Detention Centre staff and in what circumstances. That awareness provides protection to both Detention Centre staff and young people in that proper adherence to legislative requirements as reflected in policies and by local practice documents is assured.

**Recommendation 17.R5** – The Review recommends that all CYDC staff responsible for the classification of incidents in DCOIS at CYDC should undergo additional training in appropriate classification rating of incidents within six months of the date of this report.

<sup>2841</sup> Youth Justice Act 1992 s 263(1).

<sup>2842</sup> Youth Justice Principles 2, 3 and 19; Youth Justice Act 1992, Schedule 1.



Such additional training should be approved by both the ADG and ESU Inspectorate as being sufficient to address the concern that incident classification is accurately recorded in future.

Such training should satisfy both the ADG and ESU Inspectorate that the approved retraining will ensure that all external oversight bodies are informed of all higher level incidents as required in future.

In the pool incident, there was negotiation between the three young people and the staff with respect to the young people exiting the pool and not then being subjected to ground stabilisation.<sup>2843</sup> This negotiation involved an agreement by staff that the young people would not be ground stabilised.<sup>2844</sup>

A positive outcome of this incident is that it was managed without ground stabilisation and the staff member leading the management of the incident negotiated with the young people to exit from the pool without that additional distress. However, it remains concerning that there was any negotiation of the use of ground stabilisation in these circumstances.

There are a number of reasons why this negotiation regarding the use of ground stabilisation is concerning:

- first, when the three young people ran off to the pool all of the other young people were escorted back to their units and the centre was placed in lockdown. Although operationally inconvenient, the units were appropriately staffed and there was no additional operational disruption that was likely to occur thereafter;
- second, the negotiation entered into by the three young people and the staff, regarding ground stabilisation, indicates to the Review that the young people expected to be ground stabilised even in circumstances where they were cooperating with staff and were posing no immediate threat to staff or the security of the centre.<sup>2845</sup> It appears that was the case by the time the young people were getting out of the pool;
- third, when the three young people got out of the pool it was relatively late, it was dark and they had been in the water for around three hours. There was a high number of staff in attendance at the incident and the pool area is fully fenced. The young people had not threatened to run off again and given the negotiation and the high number of staff in the area it seems highly unlikely that the young people were about to pose any additional security threat;

<sup>2843</sup> Affidavit of Individual YJ-20 sworn on 9 October 2016, p 4, edocs 3470983.

<sup>2844</sup> Affidavit of Individual YJ-20 sworn on 9 October 2016, p 4, edocs 3470983.

<sup>2845</sup> Section 17(5) and (6) the *Youth Justice Regulation 2003*; YD-3-4 Protective Actions Continuum Policy, edocs 3447101. The review concluded that the pool incident could properly have been characterised as a level 1 incident. It is difficult to see how the pool incident could have formed the basis of a reasonable belief that ground stabilisation would have been appropriate.



The CYDC staff have not provided any contrary information or statement that indicated to the Review that they were not in fact planning to ground stabilise the young people when they exited the pool. The Review considers that is reflective of a use of ground stabilisation, at least at that time, that was not proportionate to the immediate threat and indicates that ground stabilisation was not used as a last resort when other de-escalation and show of force type interventions had been tried and failed.

It is, of course, not considered that the use of force by ground stabilisation should not be used in any circumstances. It is accepted that there will be emergent situations where ground stabilisation is the best and only available option, necessary in response to the immediacy of the threat posed. It is to be hoped that such events are few in number.

**Recommendation 17.R7** – The Review recommends that the policy relating to the use of force, including ground stabilisation, should be amended to emphasise that ground stabilisation is to be used as a last resort, and only for an incident requiring a PAC level 4 response, and only if there is no other way of managing the situation and securing the young person's safety, cooperation or to ensure the safety of another person.

All staff involved in the care and management of young people should be made aware through training that the use of force, including ground stabilisation, is to be used as a last resort in cases where a PAC level 4 response is appropriate.

**Recommendation 17.R8** – The Review recommends that all staff should be trained in de-escalation techniques.

All use of force, which includes any actual physical contact with a young person, should be classified at a minimum of PAC level 3 response.

## POST-INCIDENT RESPONSES

In order to provide context, it should be noted that the staff complained that the young people misbehaved in the post-incident responses, including by being unwilling



to engage with staff while on their BDP,<sup>2850</sup> threatening and abusing staff,<sup>2851</sup> and in relation to one young person, keeping a plastic knife when she was asked to give it to staff.<sup>2852</sup> Some of this misbehaviour is outlined below. It should also be noted however that none of the misbehaviour caused a significant response, use of force or use of restraints. The misbehaviour was referred to in the BDPs for each of the young people, and was used as a basis for considering whether to end separation for certain periods or altogether. This is also addressed below.

For analysis of BDPs please see the separate discussion in the chapter on BDPs.

## SEPARATION

There are two instances of separation that occurred as part of the post-incident responses to the pool incident.

### *IMMEDIATELY AFTER THE INCIDENT*

The DCOIS records indicate that the young people were taken to separation immediately after the incident.<sup>2853</sup> There is no record that any towels or dry clothes were provided at that time, but Individual YJ-45 indicated that Young Person A7 complained while she was in separation immediately after the incident that she was cold and wanted to go to her room.<sup>2854</sup> The young people remained in separation for approximately one hour.

There is a disparity between the versions of young people and the versions of staff as recorded in DCOIS as to which young person was placed in which separation room and unit. The DCOIS records state that Young Person A5<sup>2855</sup> was placed in Cassowary separation, while Young Person A7<sup>2856</sup> and Young Person A6<sup>2857</sup> were taken to Magpie separation. The notes taken by Individual THHS-1 stated Young Person A5's assessment occurred at 7:40pm; Young Person A6's assessment occurred at 7:30pm and Young Person A7's assessment occurred at 7:40pm,<sup>2858</sup> the timing of those entries suggests that Young Person A5 and Young Person A7 were next to each other given the assessments occurred at the same time. That anomaly is not able to be finally resolved in this report. However, it is possible that the DCOIS records do not accurately record where each young person was in fact placed following the pool incident.

<sup>2850</sup> See, for example, Behaviour Development Plan for Young Person A7 number 4095304, version 2 dated 26 August 2015, pp 2 and 3, edocs 3442841; email from Individual YJ-43 to Individual YJ-25 dated 27 August 2015, p 1, which forms part of the email from Individual YJ-25 to Individual YJ-47 dated 27 August 2015, edocs 3528686.

<sup>2851</sup> Email Individual YJ-43 to Individual YJ-25 dated 27 August 2015, p 1, which forms part of the email from Individual YJ-25 to Individual YJ-47 dated 27 August 2015, edocs 3528686.

<sup>2852</sup> Email from Individual YJ-43 to Individual YJ-25 dated 27 August 2015, p 1, which forms part of the email from Individual YJ-25 to Individual YJ-47 dated 27 August 2015, edocs 3528686.

<sup>2853</sup> Affidavit of Individual YJ-47 sworn on 30 September 2016, Exhibit Individual YJ-47-3, p 56, edocs 3439519.

<sup>2854</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, exhibit Individual YJ-48-12, p 2, edocs 3531533.

<sup>2855</sup> Occurrence report, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 95, edocs 3439519.

<sup>2856</sup> Occurrence report, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 99, edocs 3439519.

<sup>2857</sup> Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 67, edocs 343951; Individual YJ-66 Occurrence report, which forms part of Exhibit Individual YJ-47-3 to affidavit of Individual YJ-47 sworn on 30 September 2016, p 93, edocs 343951.

<sup>2858</sup> See exhibit "Individual THHS-1-6" to the affidavit of Individual THHS-1 sworn on 13 October 2016, edocs 3473072.



### SEPARATION UNDER BDP

The interim BDPs relevantly provided that each of the three young people were:<sup>2859</sup>

- to be confined to their room, with no socialising and no attending of programs;
- prevented from attending EQ, structured day activities, after 3:00pm programs/activities or weekend activities;
- to eat breakfast and dinner in their room because other people were using the dining area;
- to return to their room prior to other young people coming out after personal hygiene and completion of chores, without a right to exit their room after 7:30pm lock down unless it is an emergency;
- permitted access to the fernery while other young people are completing their nightly chores; and

<sup>2859</sup> BDP for Young Person A7 number 4092550, V 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person A5 number 4092530, V 1, p 2, edocs 3442883 and BDP for Young Person A6 number 40952557, version 1, p 2, edocs 3443087.



- permitted access to the section general area and fernery while young people are at programs.

When the interim BDP was approved as a non-interim BDP by Individual YJ-48 on 26 August 2015, all of the interim BDP conditions were retained, with an additional statement that the young person was to have access to the fernery when operationally viable.<sup>2860</sup>

Over the course of additional BDPs, the restrictions were relaxed to allow the young people to interact with other young people including, for example, at meal times.<sup>2861</sup>

#### CONSIDERATION OF WHETHER SEPARATION WAS AUTHORISED AND COMPLIED WITH POLICY

The *Youth Justice Regulation 2003* provided that a Youth Detention Centre employee may separate a young person in a locked room in a Youth Detention Centre only if the young person is ill, the young person requests to be separated, for routine security purposes under a direction issued by the chief executive to protect the young person, another person or property, or to restore order in the detention centre.<sup>2862</sup> If the young person is separated in a locked room at the request of the young person, the young person must be allowed to leave the room immediately if the young person asks to do so.<sup>2863</sup> If a young person is detained to protect the young person, another person or property or to restore order in the Detention Centre, the Detention Centre staff must not separate a young person for more than two hours without the approval of the manager of the Detention Centre, for more than 12 hours without informing the chief executive, or for more than 24 hours without the approval of the chief executive.<sup>2864</sup>

Without limiting the ways a young person may be kept under continuous observation,<sup>2865</sup> a Detention Centre employee must keep the young person under observation in compliance with the way stated in a direction issued by the chief executive.<sup>2866</sup>

#### APPLICATION OF LEGISLATION AND POLICY TO THE BDP

In relation to the longer period of separation while the BDP was in effect, the Policy stated that,

*[a]ny use of separation that alternates a young person from a locked room to a common area over a period of time linked to the one event is only lawful in circumstances where risks exist in accordance with section 22(1)(d) or (e) of the Youth Justice Regulation 2003.*<sup>2867</sup>

<sup>2860</sup> BDP for Young Person A7 number 4095304, V 2 dated 26 August 2015, p 2, edocs 3442841; BDP for Young Person A5 number 40952953, V 2, p 4 dated 26 August 2015, edocs 3442884; BDP for Young Person A6 number 4095290, V 2 dated 26 August 2015, p 4, edocs 3443083.

<sup>2861</sup> BDP for Young Person A7 number 4099222, V 3 dated 27 August 2015, p 2, edocs 3442842; BDP for Young Person A5 number 4103170, V 4, p 4 dated 28 August 2015, edocs 3442879.

<sup>2862</sup> *Youth Justice Regulation 2003* s 22(1).

<sup>2863</sup> *Youth Justice Regulation 2003* s 22(4).

<sup>2864</sup> *Youth Justice Regulation 2003* s 22(2).

<sup>2865</sup> *Youth Justice Regulation 2003* s 22(5).

<sup>2866</sup> *Youth Justice Regulation 2003* s 22(3).

<sup>2867</sup> YD-3-8 Use of Separation Policy (v 1.1, date of operation 24 June 2015) para 3.1.



A young person may be separated in order to protect themselves, another person or property, or to restore order in the detention centre.<sup>2868</sup> The Policy states an example where the continued use of separation may be used as follows:

*For example, the continued use of separation may be used when managing an extremely violent young person or two or more young people who cannot interact (because of their violent behaviours towards each other) and when it is not possible to locate them in separate accommodation units. Given the nature of the youth detention environment, there will be instances where a young person poses an ongoing threat to (harm) other people even after an immediate response has been actioned to resolve the incident. The continued use of separation in this instance effectively keeps people safe while still providing the young person the opportunity to participate in section activities and programs.<sup>2869</sup>*

Continued separation may be used in accordance with a policy as part of a BDP if there is a risk that a young person, another person or property is to be protected from the young person or there is a risk that order in a Detention Centre would not be maintained.

Individual YJ-25 approved the separation of Young Persons A7, A6 and A5 for between two and 12 hours on 25 August 2015.<sup>2870</sup> The email approving the separation was sent at 5:44pm on 25 August 2015, which was before the end of the incident. The basis of the separation is stated in an email from Individual YJ-53 to Individual YJ-25:

*The three females ran from staff whilst moving the unit back from a program at undercover and jumped into the pool. They incited peers to join in and this presented serious risk as all units were at undercover for the concert.*

The Review considers that the risk identified in the above extract would not satisfy the statutory requirement for separation as stated in section 22(1)(d) or (e) of the *Youth Justice Regulation 2003*. As stated above, the risk to the order of the centre had passed by the time the incident ended because the Centre was placed in lockdown and there was no suggestion that the young people were attempting to harm themselves, another person or property. The Review considers that the separation of the three young people after the incident was a disproportionate response.

**Finding 17.F8** – The separation of the three young people for the reasons stated above was a disproportionate response.

<sup>2868</sup> *Youth Justice Regulation 2003* s 22(1)(d) and (e).

<sup>2869</sup> YD-3-8 Use of Separation Policy (v1.1, date of operation 24 June 2015) para 3.2, edocs 3447089.

<sup>2870</sup> Email from Individual YJ-25 to Individual YJ-53 dated 25 August 2015, edocs 3528678.

<sup>2871</sup> Email from Individual YJ-53 to Individual YJ-25 dated 25 August 2015, which forms part of the email from Individual YJ-25 to Individual YJ-53, p 1, edocs 3528678.



A subsequent approval of a two to 12 hour period was approved for the three young people at 4:17pm on 26 August 2015 for the incident.<sup>2872</sup> As a period of 12 hours had already been approved and had passed by the time this approval was sought, it appears that the chief executive or the chief executive's delegate were to be notified.<sup>2873</sup> The Review was not provided with any information reflecting that such a notification occurred, or whether the subsequent 12-hour period was approved by Individual YJ-25. The only justification for the separation in the email was that the three young people involved in the pool incident were on BDPs. No risks that might attract the application of section 21(1)(d) or (e) of the *Youth Justice Regulation 2003* were identified in the email.

Individual YJ-47 approved the separation of Young Person A6 and Young Person A5 for more than 24 hours on 27 August 2015.<sup>2874</sup> No reference is made to Young Person A7 in the email. Young Person A7's separation appeared to be intermittent from 5:15pm on 27 August 2015,<sup>2875</sup> with full reintegration to her unit occurring on 28 August 2015.<sup>2876</sup> It is unclear to what extent Young Person A7 was in separation during this period of time, or whether the separation met the legal threshold requirements. No risks were identified in Young Person A7's BDP; on the contrary, Young Person A7's behaviour was regarded as positive in the notes on the BDP dated 27 August 2015.<sup>2877</sup>

Individual YJ-43 sought to extend the separation in respect of Young Person A5 on the following basis:

In respect of Young Person A6:

<sup>2872</sup> Email from Individual YJ-86 to Individual YJ-25 dated 26 August 2015, edocs 3528682.

<sup>2873</sup> *Youth Justice Regulation 2003*, s 20(2)(b).

<sup>2874</sup> Email from Individual YJ-25 to Individual YJ-43, Individual YJ-45, Individual YJ-71, Individual YJ-70 and Individual YJ-35 dated 27 August 2015, p 1, edocs 3528688.

<sup>2875</sup> BDP for Young Person A7 number 4099222, version 3 dated 27 August 2015, p 4, edocs 3442842.

<sup>2876</sup> BDP for Young Person A7 number 4103173, version 4 dated 28 August 2015, p 4, edocs 3442839.

<sup>2877</sup> BDP for Young Person A7 number 4099222, version 3 dated 27 August 2015, pp 3–4, edocs 3442842.



The relevant risks identified in the above extracts refer to threatening behaviour, . It is unclear on the evidence provided to the Review to what extent the two young people were acting in anything other than a verbally threatening manner. In the absence of contrary evidence, the Review considers that this is a valid justification for holding a young person in a locked room under section 22(1)(d) of the *Youth Justice Regulation 2003*. However, the Review considers that the justification for continued separation needs to be ongoing, and the onus is on CYDC to record that the threats to staff continued throughout the separation period. In respect of Young Person A5, she had begun to be reintegrated by 28 August 2015 despite a suggestion in the BDP that there was an ongoing concern.<sup>2880</sup> It is difficult to see how ongoing threats justified continual separation if Young Person A5 was at the same time continuing to be partially reintegrated. The Review considers that there is insufficient evidence to show that there was a real risk to other persons or property that would justify the continual separation of the young person at this time.

**Recommendation 17.R9** – The Review recommends that continuous separations based on factors in the Youth Justice Regulation 2016 should be supported by contemporaneous evidence justifying the separation.

The Review was not provided with any additional approvals of separations in relation to the three young people. It is unclear whether approval from the chief executive or delegate was required for additional 24-hour periods pursuant to the *Youth Justice Regulation 2003*. The requirement to have an approval for each subsequent 24-hour period has now been expressly included in the *Youth Justice Regulation 2016*, section 21(3).

<sup>2880</sup> Behaviour Development Plan for Young Person A5 number 4103170, version 4, p 4, dated 28 August 2015, edocs 3442879.



There are a number of references in the material received to the Review in relation to the failure to provide medication and food to the young people in separation immediately after the pool incident. The BDP Review Notes of Individual YJ-45 stated:

Individual YJ-35 emailed Individual YJ-45, and Individual YJ-85 about providing “adequate nourishment even though the behaviour of a [young person] has disrupted the routine and good order to extend resources past the scheduled meal time.”<sup>2893</sup> Individual YJ-35 then said the following about the young people not being given food:

*The evening period is a long time for a [young person] to manage on a small portion of food especially after an escalated episode which drains energy. The risk factor is taken into consideration and the food is provided with strategies and precautions in place.*<sup>2894</sup>

It is unclear whether the last sentence is a recommendation about how to address the issue in the future, or whether the practice at the time of the pool incident already

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<sup>2893</sup> Memorandum from Individual YJ-35 to Individual YJ-25, *Discussions with Young Person A5 and YP Young Person A6*, p 2, attached to email from Individual YJ-25 to Individual YJ-43 dated 27 August 2015, edocs 3528691.

<sup>2894</sup> Memorandum from Individual YJ-35 to Individual YJ- attached to email from Individual YJ-25 to Individual YJ-43 dated 27 August 2015, edocs 3528691.



required the risk factor of a disrupted routine and good order to be taken into account in the provision of food to the young people.

These are highly concerning accusations. Access to food and drink outside of regular meal times is a fundamental right. That right is not able to be revoked for disciplinary or operational purposes.<sup>2903</sup> The Regulation prohibits depriving a young person of food and medication as a form of punishment.<sup>2904</sup> More generally, “the youth justice system should uphold the rights of children, keep them safe and promote their physical and

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<sup>2903</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, section 2; *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, p 8, edocs 3447110.

<sup>2904</sup> *Youth Justice Regulation 2003* s 17(4).



mental wellbeing.<sup>2905</sup> That is a youth justice principle that underpins the operation of the Act.<sup>2906</sup> The chief executive has responsibilities under the Act to ensure the safe custody and wellbeing of young people detained in detention centres and to ensure that a young person is treated with respect and dignity while in custody.<sup>2907</sup> Young people should not be deprived of food and medication for any reason whilst they are detained in a Youth Detention Centre whether or not they are subject to separation or a BDP.

It is beyond the scope of this Review to consider whether the failure to provide medication and sufficient food persisted after the pool incident or has occurred following incidents involving other young people in detention centres. However, based on the information provided in relation to the young people involved in the pool incident, the Review considers that additional information should be reported to ensure that medication and sufficient food are provided to all young people involved in incidents. If there is ever a failure to provide what are fundamental rights, recognised under the *Youth Justice Regulation 2003* and *2016* and departmental policy, that should be explained with supporting evidence to ensure that any withholding of medication or sufficient food is not as a result of misbehaviour or as some form of punishment.

The State has submitted that the issue of adequate food provision and administration of medication is outside the scope of the terms of reference of this Review. That submission is rejected. Adequate food and prescribed medication being denied or withheld is relevant to the allegations of mistreatment of these young people in this incident and is squarely within the terms of reference.

**Finding 17.F9** – There is evidence that indicates the three young people were not provided with adequate food while they were in separation immediately after the pool incident. Two of the young people were not provided with prescribed medication when they were in separation immediately after the pool incident.

**Recommendation 17.R10** – The Review recommends that the food provided to a young person whilst they are in a separation room or subject to a BDP should be accurately recorded. If adequate food or prescribed medication is not provided, the reason for the failure to provide either essential should be recorded and justified by evidence explaining why it was appropriate to withhold the provision of food or medication.

<sup>2905</sup> *Youth Justice Act 1992* Sch 2.

<sup>2906</sup> *Youth Justice Act 1992* s 3.

<sup>2907</sup> *Youth Justice Act 1992*, s 263(1) and (5) and Youth Justice Principle 3, contained in schedule 1 of the Act.



## POSSIBLE PARTIALLY CLOTHED SEARCH

Each of the BDPs indicated that the three young people were taken to a separation room for a partially clothed search.<sup>2908</sup> However, there does not appear to be any further information that such a search was conducted.

The Regulation provided at the time of the incident that the chief executive may order a young person to partly or completely undress if the chief executive considers on reasonable grounds that it is necessary for the security of detention centre employees or young people in the detention centre.<sup>2909</sup> It is difficult to conceive how a staff member could have formed a basis on reasonable grounds that any search of these young people was necessary in the circumstances of the incident.

Given there are a number of examples in each of the BDPs that appear to be directly copied from other BDPs, the Review considers that this is an example of copying of content from another BDP. In the absence of any further indication that a partially clothed search was conducted after the pool incident, the Review cannot confirm that a partially clothed search was in fact conducted. The Review considers that no partially clothed search was warranted after the pool incident.

## BEHAVIOUR DEVELOPMENT PLAN

After the pool incident the three young people involved were placed on BDPs.<sup>2910</sup> A BDP “documents a specific intervention plan in response to misbehaviour. It facilitates an individualised, focused, multi-disciplinary approach to the management of a young person’s behaviour.”<sup>2911</sup> The *YD-1-2 Youth Detention – Behaviour Development* policy contemplates using a BDP for persistent minor misbehaviour or moderate or serious misbehaviour.<sup>2912</sup> The incident was classified as a level 2 incident because of a refusal to leave the pool area.<sup>2913</sup> The BDPs stated that the behaviour presented a “serious risk to the safety and the security of the centre.”<sup>2914</sup> It is noted that Individual YJ-42 stated that when other young people were in the pool for short periods of time the behaviour was managed in the units rather than young people being placed on

<sup>2908</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 1, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, p 1, edocs 3442883; BDP for Young Person A6 number 40952557, version 1, p 1, edocs 3443087.

<sup>2909</sup> *Youth Justice Regulation 2003* s 26(1).

<sup>2910</sup> Exhibit “Individual YJ-35-4” to the Affidavit of Individual YJ-35 sworn on 10 October 2016, p 1 of exhibit, edocs 3470968.

<sup>2911</sup> *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, p 7, edocs 3447110.

<sup>2912</sup> *YD-1-2 Youth Detention – Behaviour Development*, v 1.1, p 9, edocs 3447110; *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, section 2.7, edocs 344731.

<sup>2913</sup> Classified under the incident level framework under the *Youth Detention Centre Operations Manual* Appendix 3-2 – Classifying an Incident. See BDP for Young Person A5 number 40952953, version 1, p 3, edocs 3442883 and BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 3, edocs 3442843.

<sup>2914</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 1, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, p 1, edocs 3442883; BDP for Young Person A6 number 40952557, version 1, p 1, edocs 3443087.



BDPs.<sup>2917</sup> To place the young people on BDPs as a result of the pool incident does not appear, to the Review, to be an inappropriate response in order to address the young people's behaviour *per se*. Whether the content of the BDPs was appropriate to address the specific behaviour in the circumstances is addressed below.

### CREATING THE BDP

All three BDPs were commenced after hours, so all had to be commenced as interim BDPs by senior staff.<sup>2918</sup> Each of the interim BDPs was commenced by Individual YJ-53,<sup>2919</sup> at the direction of Individual YJ-45.<sup>2920</sup> Individual YJ-53 completed the BDPs with the information Individual YJ-45 had provided to her.<sup>2921</sup> The Operations Manual indicates the team leader or delegate is to lead the development of the BDP with the young person.<sup>2922</sup>

There is no indication that the BDPs were made with the approval of the on-call manager or with any input from either of the young people at the time that each interim BDP was made, although it appears to be usual practice for a shift supervisor for a particular unit to contact the unit manager or on-call manager for approval to place a young person on a BDP.<sup>2923</sup> Each of the BDPs indicated that the young people were told that they would be placed on that plan effective immediately.<sup>2924</sup> There was an automatic notification in DCOIS of the existence of each BDP to the shift supervisor.<sup>2925</sup> The young people's views were discussed after the interim BDP was made on 26 August, however the continuing BDP stated that they (the young people) did not want to engage.<sup>2926</sup>

The interim BDP was required to be reviewed by the team leader or delegate with the multidisciplinary team the next business day.<sup>2927</sup> These BDP reviews were carried out by Individual YJ-87 on 26 August 2015.<sup>2928</sup> Individual YJ-48 uploaded the review of the BDPs to the DCOIS system.<sup>2929</sup>

It is not clear whether or not the multi-disciplinary team met when any of the continuing, non-interim BDPs were put in place by Individual YJ-48 for each of the three young people. The BDPs for Young Persons A5 and A7 stated that the

<sup>2917</sup> Affidavit of Individual YJ-42 sworn on 27 October 2016, para 40(b), edocs 3488263.

<sup>2918</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, section 2.7.1. See also Affidavit of Individual YJ-48 sworn on 22 November 2016, para 111, edocs 3531533.

<sup>2919</sup> Affidavit of Individual YJ-53 sworn 14 November 2016, paras 4, 7, 10, edocs 3514302.

<sup>2920</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, p 2, edocs 3442883; BDP for Young Person A6 number 40952557, version 1, p 2, edocs 3443087; Affidavit of Individual YJ-53 sworn on 14 November 2016, paras 3 and 6, edocs 3514302.

<sup>2921</sup> Affidavit of Individual YJ-53 sworn on 14 November 2016, paras 3 and 6, edocs 3514302.

<sup>2922</sup> Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.3, 7 June 2016, para 2.7.1.

<sup>2923</sup> Affidavit of Individual YJ-53 sworn on 14 November 2016, para 5, edocs 3514302.

<sup>2924</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 1, edocs 3442843; BDP for Young Person A5 number 40952953, version 1, p 1, edocs 3442883; BDP for Young Person A6 number 40952557, version 1, p 1, edocs 3443087.

<sup>2925</sup> BDP for Young Person A5 number 40952953, version 1, p 3, edocs 3442883 and BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 4, edocs 3442843.

<sup>2926</sup> BDP for Young Person A7 number 4095304, version 2 dated 26 August 2015, pp 2–3, edocs 3442841.

<sup>2927</sup> Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.3, 7 June 2016, para 2.7.1.

<sup>2928</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, para 112, edocs 3531533.

<sup>2929</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, paras 113–114, edocs 3531533; BDP for Young Person A5 number 40952953, version 1, p 5, edocs 3442883; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 5, edocs 3442843.



"[m]ultidisciplinary team may also be contacted with regards to progress of the BDP if required."<sup>2930</sup> Individual members of the multi-disciplinary team consulted with the young people the subject of the BDP,<sup>2931</sup> but as the interim BDPs were continued with the same conditions in each case, the Review considers on the evidence the multi-disciplinary team did not meet or, if they did meet, they did not actively contribute to the ongoing development of the BDP as required by the policy and operations manual.

Once a young person is placed onto a BDP, the young person's management is to be escalated to the unit manager (accommodation) in conjunction with the multidisciplinary team.<sup>2933</sup>

#### CONTENT OF THE BDP

A BDP "documents a specific intervention plan in response to misbehaviour. It facilitates an individualised, focused, multi-disciplinary approach to the management of a young person's behaviour".<sup>2934</sup>

#### USE OF RESTRAINTS WHILE ON A BDP

Restraints were applied while the young people were on their BDPs.

<sup>2930</sup> BDP for Young Person A5 number 40952953, version 1, p 3, edocs 3442883; BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 3, edocs 3442843; BDP for Young Person A6 number 4092557, version 1 dated 25 August 2015, p 3, edocs 3443087.

<sup>2931</sup> BDP for Young Person A7 number 4095290, version 2 dated 26 August 2015, pp 2–3, edocs 3443083.

*Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, para 2.7.1, edocs 3447313.

<sup>2933</sup> *Youth Detention Centre Operations Manual*, chapter 1 v 1.3, section 2.7.1.

<sup>2934</sup> *YD-1-2 Youth Detention – Behaviour Development*, v 1.1 7, edocs 3447110.



The *Youth Justice Regulation 2003*, section 20(2)(b)(iii) requires that the chief executive (or the delegate) may use restraints only if the chief executive considers on reasonable grounds that the young person is likely to attempt to seriously disrupt order and security at the centre, and the staff member reasonably believes there is no other way of stopping the young person from engaging in the behaviour.<sup>2938</sup>

No justification for the use of the mechanical restraints was included in the document that recorded the application of the restraints and there was limited detail recorded in Young Person A5's BDP indicating that there was a risk to staff.

**Recommendation 17.R11** – The Review recommends that all records relating to the application of restraints should contain a sufficient basis for objective determination of the reasonable grounds upon which the decision to apply restraints to a young person was made.

#### *COPYING OF OTHER BDPS*

The Review considers that the records suggest a high percentage of the content of these three BDPs was copied between the BDPs prepared for these three young people as a result of the pool incident. There were also a number of examples of the content being copied from other sources, including the Operations Manual and obviously from other BDPs. For example:

- each of the BDPs copied almost exactly from the purposes listed in the Operations Manual;<sup>2939</sup>
- risk factors were identical between each of the BDPs;<sup>2940</sup>
- a number of conditions imposed as part of the BDPs were identical or very similar to those for the other two young people on BDPs;<sup>2941</sup>
- references to [Young Person A5] in Young Person A7's BDP suggested this content was directly copied and pasted from Young Person A5's BDP into Young Person A7's BDP;<sup>2942</sup>
- references to 'his' a number of times in the BDPs despite these young people all being female;<sup>2943</sup> and
- references to conditions that are not relevant to this incident – for example, hot liquids were prohibited "due to the assaultive nature of his behaviour resulting in the BDP" (emphasis added).<sup>2944</sup>

<sup>2938</sup> *Youth Justice Regulation 2003* s 20(2)(b)(iii) and (3).

<sup>2939</sup> Compare the purposes listed in Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.3, 7 June 2016; Youth Justice, Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual – Chapter 1: Care and Management of Young People*, v 1.2, 22 June 2015, para 2.7.1.1, edocs 3447313; and the purposes on p 1 of the BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, edocs 3442843.

<sup>2940</sup> BDP for Young Person A5 number 40952953, version 1, p 1, edocs 3442883 and BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 1, edocs 3442843.

<sup>2941</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843 and BDP for Young Person A5 number 40952953, version 1, pp 2–3, edocs 3442883.

<sup>2942</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 1, edocs 3442843.

<sup>2943</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843.

<sup>2944</sup> BDP for Young Person A7 number 4092550, version 1 dated 25 August 2015, p 2, edocs 3442843.



The examples of errors in the BDPs indicated to the Review that much of the content of the BDPs was copied and pasted from previous documents relating to other young people. In the absence of evidence that the BDPs were individually tailored to the three young people involved in the pool incident, the Review considers that there is insufficient attention paid to the development of an individually tailored BDP with the emphasis on rehabilitation.

The BDPs are required to be tailored responses to misbehaviour and are to be created with some input from the young person and from a team of staff. Instead it appears that the conditions were imposed without regard to the circumstances relevant to the individual young person's misbehaviour.

There is no available record of any school work being provided to any of the young people during this time. Indeed, during the site visits information from school staff was that school work is, at times, provided to youth workers for young people when they are confined to their unit. However, there is no formal mechanism for recording or tracking what school work was provided and to whom. Nor is there any record of whether or not such school work was completed by the young person or, if not completed, what the reason for that non-completion might be.

**Recommendation 17.R12** – The Review recommends that additional training should be provided to people on multi-disciplinary teams and people creating interim BDPs to ensure that a BDP for a young person is personal and individually tailored to meet the needs identified in response to the young person's misbehaviour.



## COMPLAINTS AND REVIEW MECHANISM

It is clear that all three young people were concerned about the use of the security dog during the pool incident. The ESU Inspectorate report for the September 2015 Quarter indicated that a female young person involved in the pool incident had expressed concern about the use of security dogs in relation to the incident.<sup>2957</sup>

It is unknown why the concern was expressed to officers from the ESU rather than the staff members in relation to the COM1 form.

In relation to complaints, Individual YJ-6 said it is often easy to persuade young people to make, or not make, a complaint, and a potential solution is to have a process where there is less opportunity for the young person to be

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sworn on 30 September 2016, p 83, edocs 3439519; See also exhibit "THHS-1-7" to the affidavit of Individual THHS-1 sworn on 13 October

<sup>2957</sup> Youth Detention Inspectorate Ethical Standards Unit in the Cleveland Youth Detention Centre Inspection Report for the September Quarter 2015, 13, edocs 3458035.



persuaded one way or the other.<sup>2959</sup> Individual YJ-48 also expressed concern about the effectiveness of the complaints mechanism.<sup>2960</sup>

Individual YJ-48 said that young people would make complaints but Individual YJ-48 and staff were not able to investigate or establish the complaint, and were only allowed to bring the complaint to Individual YJ-43.<sup>2961</sup> Staff have told Individual YJ-48 that the young people express frustration and disappointment that the complaints mechanisms are ineffective and that their complaints are rarely accepted as being justified or proven.<sup>2962</sup> Young people reported that the system was ineffective and they considered that it rarely achieved anything.<sup>2963</sup> Individual YJ-48 considered the policies and procedures meant that the person investigating the complaint was:

*usually very well-known and closely connected against whom the complaint is being made. This raises questions about the perceived independence of the investigation.*<sup>2964</sup>

The Review acknowledges that these assertions have not been tested by cross-examination.

In any event the young people involved in the pool incident did not express concerns about the formal COM1 form complaints process.

Individual YJ-48 stated that she could see the benefits of having complaint reviews undertaken by an independent assessor, stating that measures like these would “restore confidence” in the complaints system.<sup>2965</sup>

Individual YJ-43 considered that the incident was appropriately managed.<sup>2966</sup>

**Recommendation 17.R13** – The Review recommends that a communication liaison position should be created to manage individual complaints and incidents relating to use of force and separation within the detention centres, ensuring consistent and adequate communication with parents, families and guardians is provided.

## NOTIFYING PARENTS/GUARDIANS OF HARM

When harm is suffered by a young person in a Detention Centre, the Manager, Monitoring and Compliance is required to decide if the young person’s parents and guardians should be notified of the harm.<sup>2967</sup> Harm, to a young person, is defined in the policy in the same way as it was defined in section 268(6) of the *Youth Justice Act*

<sup>2959</sup> Affidavit of Individual YJ-6 affirmed on 11 October 2016, para 21, edocs 3470961.

<sup>2960</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, para 101, edocs 3531533.

<sup>2961</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, para 102, edocs 3531533.

<sup>2962</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, para 103, edocs 3531533.

<sup>2963</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, para 103, edocs 3531533.

<sup>2964</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, para 103, edocs 3531533.

<sup>2965</sup> Affidavit of Individual YJ-48 sworn on 22 November 2016, paras 107–8, edocs 3531533.

<sup>2966</sup> Exhibit “YJ-22-3” to the affidavit of Individual YJ-22 sworn on 12 October 2016, edocs 3470985.

<sup>2967</sup> YD-3-9 Policy Youth Detention, *Identifying and reporting harm in a youth detention centre*, version 1.0, dated of operation 18 February 2013, Roles and responsibilities, edocs 3447088.



1992. Therefore, harm is any detrimental effect of a significant nature on the young person's physical, psychological or emotional wellbeing.<sup>1968</sup>

Without deciding whether the use of the security dog at CYDC caused physical harm in the pool incident, the Review considers that it is possible that the use of the security dog caused a detrimental effect of a significant nature on the young peoples' psychological or emotional wellbeing. In the absence of expert evidence it is difficult to say whether the young people suffered actual harm.

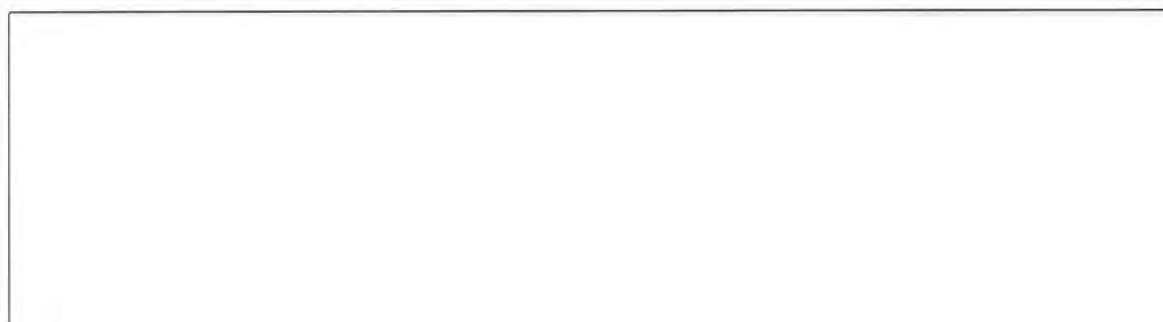
The use of restraints and separation may also be matters that parents and guardians ought to have been made aware of. The Review considers that to be especially so in circumstances where the incident was considered significant and resulted in the young people being separated for periods of time from the general population at the Detention Centre and placed onto BDPs.

Where a young person is subject to a child protection order with the Department of Communities, Child Safety and Disability Services, the chief executive should be notified of any harm to that young person whilst in detention.

Given the limited time available to review this incident, the Review could not determine definitively whether the Manager, Monitoring and Compliance had decided whether to contact the parents or guardians of the young people involved in the incident about the potential harm or any other matter.

As a general observation however, parents and guardians have a right to be made aware of significant incidents that involve their children.

The Review considers that parents provide important oversight of the treatment of young people in detention centres and should be immediately informed of all significant events involving their child.



<sup>1968</sup> YD-3-9 Policy Youth Detention, Identifying and reporting harm in a youth detention centre, version 1.0, dated of operation 18 February 2013, definition of 'harm', edocs 3447088.



**Recommendation 17.R14** – The Review recommends that parents and guardians should be advised of all incidents occurring in youth detention centres for which their children are subjected to use of force, restrained, separated or as a result of which they may have suffered harm as defined in the Youth Justice Act 1992, section 268.

## CONCLUSIONS

A number of staff indicated that they considered that the incident was managed appropriately.<sup>2973</sup>

In light of a number of concerning issues outlined in this chapter, the Review considers that Detention Centre staff ought be trained and counselled on the aspects of the legislation and policies referred to in this chapter.

**Recommendation 17.R15** – The Review recommends that staff should be counselled and trained on the legislation and policy outlined in this chapter of the report.

As outlined above, this incident was not the subject of a COM1 and only came to the attention of the media, and the Review, as a result of a complaint made to staff of the ESU Inspectorate on a routine inspection.

In relation to the lack of appropriate food and medication, the persistent complaints of the young people involved in the pool incident were the only way that those concerning aspects of this matter were addressed.

Also, several staff have identified concerns about the complaints process that currently exists.

The Review considers that complaints and the process of investigating or considering them are important. It is not reasonable that the current complaints mechanism remains in place. Neither is it reasonable that the current mechanism is complaints driven. The Review considers that all incidents ought to be reviewed to ensure continuous improvements to practice in Detention Centres. The entity conducting external reviews and inspections should have access to departmental record-keeping in order to separately examine records in relation to all incidents.

<sup>2973</sup> Affidavit of Individual YJ-6 affirmed on 11 October 2016, para 17, edocs 3470961; Affidavit of Individual YJ-15 sworn on 8 October 2016, para 22, edocs 3470990; Affidavit of Individual YJ-16 sworn on 10 October 2016, para 19, edocs 3470991; Affidavit of Individual YJ-18 sworn on 9 October 2016 para 22, edocs 3470980; affidavit of Individual YJ-20 sworn on 9 October 2016, para 20, edocs 3470983; Affidavit of Individual YJ-26 sworn on 11 October 2016, para 25, edocs 3470970; Affidavit of Individual YJ-22 sworn on 12 October 2016, para 31, edocs 3470985; affidavit of Individual YJ-24 sworn on 10 October 2016, para 23, edocs 3470987; Affidavit of Individual YJ-25 sworn on 12 October 2016, para 25, edocs 3470969; Affidavit of Individual YJ-35 sworn on 10 October 2016, para 20, edocs 3470968; Affidavit of Individual YJ-34 sworn on 10 October 2016, para 35, edocs 3470967.



## CHAPTER 18 YOUNG PERSON A8

### INTRODUCTION

The ABC's 7:30 program broadcast on 18 August 2016 depicted images of the mistreatment of young people at CYDC.

The Review has received a written submission in which details of an incident involving the use of force on Young Person A8 during NAIDOC celebrations on 8 August 2016 at CYDC have been provided.<sup>2975</sup>

On 8 August 2016, NAIDOC celebrations were held at CYDC. Present for these celebrations were a number of dignitaries and elders from Indigenous communities. At about 12:55pm in the undercover area of the basketball court, Young Person A8 was involved in an incident which resulted in him being ground stabilised and having mechanical restraints (handcuffs) applied to his wrists. This incident occurred in full view of the visitors at CYDC attending the NAIDOC celebrations.

In conducting a review of this incident<sup>2976</sup>, consideration has been afforded to:

- affidavits from a number of YJ staff;
- DCOIS incident reports; and
- DJAG ethical standards files.<sup>2978</sup>

### INCIDENT

<sup>2974</sup> CCTV shows alleged mistreatment at Townsville's Cleveland Youth Detention Centre (18 August 2016) ABC News <<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>

<sup>2976</sup> DCOIS incident report 5380114, edocs 3447060.

<sup>2978</sup> Affidavit of Individual YJ-43 sworn 28 October 2016, edocs 3491592, Affidavit of Individual YJ-25, sworn 12 October 2016, edocs 3470969, Affidavit of Individual YJ-27 sworn 8 October 2016, edocs 3470971, Affidavit of Individual YJ-29, sworn 8 October 2016, edocs 3470962, Affidavit of Individual YJ-20, sworn 9 October 2016, edocs 3470983, Affidavit of Individual YJ-2, sworn 13 October 2016, edocs 3470957, Affidavit of Individual YJ-3, sworn 13 October 2016, edocs 3470958, Affidavit of Individual YJ-11, sworn 12 October 2016, edocs 3470953, Affidavit of Individual YJ-41, sworn 25 October 2016, edocs 3485409, Affidavit of Individual THHS-4, sworn 13 October 2016, edocs 3470371, Affidavit of Individual YJ-48, sworn 22 November 2016, edocs 3531533, Memorandum to Individual YJ-47 from Ethical Standards dated 27 September 2016 edocs 3466831, Email chain including email by Individual YJ-64 to Individual YJ-25 dated 19 August 2016, edocs 3466822.



The incident began at the undercover basketball area within CYDC. Individual YJ-41 observed Young Person A8 touching the radio of Individual YJ-11<sup>2982</sup>, which resulted in Young Person A8 being spoken to by Individual YJ-41 and given a direction to stop the behaviour or be returned to his unit.

At that time, Individual YJ-11 was sitting watching the NAIDOC proceedings. Individual YJ-11 overheard staff who were behind him talk to young people about them touching his radio.<sup>2983</sup> Individual YJ-41 indicated that Young Person A8 had ignored the direction to stop touching Individual YJ-11's radio. Individual YJ-41 also indicated that she then attempted to gain the attention of Young Person A8 by hitting a table top in order to get his attention and encourage him to stop touching the radio.

Individual YJ-41 stated Young Person A8 swore at staff and continued to touch Individual YJ-11's radio.<sup>2984</sup> Individual YJ-41 then instructed Young Person A8 to stand up so he could be returned to his unit.<sup>2985</sup> Young Person A8 stood up and began to run along the barrier where the visitors were located at the basketball court.<sup>2986</sup> Individual YJ-41 sought assistance from other staff to assist her to stop Young Person A8.

Individual YJ-20 responded to this request by catching hold of Young Person A8 executing a rear harness hold technique.<sup>2987</sup> Individual YJ-20 became involved in a struggle with Young Person A8 resulting in a nearby bin being knocked over.<sup>2988</sup> Another youth worker came to the aid of Individual YJ-20. The two staff then began the escort of Young Person A8 to a separation unit.

Whilst escorting Young Person A8 to a separation unit, Individual YJ-20 and Individual YJ-27 stated that Young Person A8 threatened to spit at them.<sup>2989</sup> Individual YJ-20 decided in response to that threat to ground stabilise Young Person A8 when it appeared to him that Young Person A8 was preparing to spit at staff.<sup>2990</sup>

<sup>2982</sup> Affidavit Individual YJ-41, sworn 25 October 2016, Exhibit YJ-41-2 email, edocs 3485409.

<sup>2983</sup> Affidavit Individual YJ-11, sworn 12 October 2016, Exhibit YJ-11-2, edocs 347093.

<sup>2984</sup> Affidavit Individual YJ-41, sworn 25 October 2016, Exhibit YJ-41-2 email, edocs 3485409.

<sup>2985</sup> Affidavit Individual YJ-41, sworn 25 October 2016, Exhibit YJ-41-2 email, edocs 3485409.

<sup>2986</sup> Affidavit Individual YJ-41, sworn 25 October 2016, Exhibit YJ-41-2 email, edocs 3485409.

<sup>2987</sup> Affidavit Individual YJ-20, sworn 9 October 2016, Exhibit YJ-20-3 email, edocs 3470983.

<sup>2988</sup> Affidavit Individual YJ-20, sworn 9 October 2016, Exhibit YJ-20-3 email, edocs 3470983.

<sup>2989</sup> Affidavit of Individual YJ-27, sworn 8 October 2016, Exhibit YJ-27-2 DCOIS Occurrence Report, edocs 3470971.

<sup>2990</sup> Affidavit of Individual YJ-27, sworn 8 October 2016, Exhibit YJ-27-2 DCOIS Occurrence Report, edocs 3470971.



When Young Person A8 was ground stabilised, Individual YJ-41 attended and applied handcuffs to Young Person A8's wrists<sup>2994</sup> positioned behind his back. Young Person A8 was then escorted to the separation section of the Kingfisher unit. Whilst being escorted to separation, Young Person A8 told staff that he was joking and indicated that staff don't know how to take a joke.<sup>2995</sup>

#### POST-INCIDENT

On 9 August 2016 staff offered a (COM1) complaint form to Young Person A8. DCOIS indicates that the offer of the complaint form to Young Person A8 was declined.<sup>2998</sup> On 10 August 2016, Individual YJ-48 made a DCOIS entry and stated as follows:

*BST review – reviewed incident with YP [A8] he reported that other YP was touching [YJ-11's] radio and acknowledged that he did touch it as well. YP [A8] acknowledged that [YJ-63] had previously asked him to stop and when other YP continued he claimed he laughed about it.*

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<sup>2994</sup> Affidavit of Individual YJ-27, sworn 8 October 2016, Exhibit Individual YJ-27-2 DCOIS Occurrence Report, edocs 3470971.

<sup>2995</sup> DCOIS incident report 5380114, edocs 3447060.

<sup>2996</sup> DCOIS Incident 5380114 Review, edocs 3447060.

<sup>2998</sup> DCOIS Incident 5380114 Review, edocs 3447060.



## COMPLAINT BY

On 9 August 2016, [redacted] forwarded an email to Individual YJ-25.<sup>3000</sup> In this email [redacted] outlined concerns regarding the incident involving Young Person A8.

*...The recent media attention of youth detention centres and the treatment of young people and seeing first hand [Young Person A8] being ground stabilised has had a devastating impact on our elders*

*[redacted] seeing [Young Person A8] be mechanically restrained after being ground stabilised added further trauma for our elders. I would like to request that this incident be looked into further and a formal apology made to [redacted] and elders on behalf of the centre.<sup>3001</sup>*

Later that day Individual YJ-25 replied to [redacted] email and advised that he was aware of the matter as concerns were raised on 8 August 2016 with Individual YJ-47 and that Individual YJ-47 requested to view the footage and staff reports. Individual YJ-25 stated that he had already reviewed the footage from the incident.<sup>3002</sup>

The staff involved in this incident completed DCOIS occurrence reports. Individual YJ-43's role involved reviewing incidents that occur at CYDC involving the use of force to determine the appropriateness of actions and to assist with oversight. That position was also expected to provide findings in the review section of the DCOIS incident report, to assist the incident manager in making a determination about the appropriateness of the force used in the incident. On 11 August 2016, Individual YJ-43 made a review entry in the DCOIS incident report that related to the ground stabilisation and handcuffing of Young Person A8. Individual YJ-43 stated to the Review, "I observed the use of force on the young person and have no issues with the techniques used."<sup>3003</sup>

The submitted DCOIS staff occurrence reports and review comments by Individual YJ-43 were then reviewed by Individual YJ-2, who indicated that Young Person A8 was

<sup>3000</sup>Email chain including email by Individual YJ-64 to Individual YJ-25 dated 19 August 2016, edocs 3466822.

<sup>3001</sup>Email chain including email by Individual YJ-64 to Individual YJ-25 dated 19 August 2016, edocs 3466822.

<sup>3002</sup>Email chain including email by Individual YJ-64 to Individual YJ-25 dated 19 August 2016, edocs 3466822.

<sup>3003</sup>Affidavit Individual YJ-43 sworn 28 October 2016, Exhibit YJ-43-9, edocs 3491592.



handcuffed because “mechanical restraints were applied to his back by [Individual YJ-41] so he could be quickly escorted to the nearest unit.”<sup>3004</sup>

On 18 August 2016, Individual YJ-2 completed the DCOIS incident report, and made the final entry in the review section of DCOIS as follows:

*Incident management processes appear to have been actioned in line with approved Departmental procedures – no further actions required at this time. Appropriate Authorisation for separation less than 2hr.*<sup>3005</sup>

On 19 August 2016 Individual YJ-25 emailed Individual ESU-8. Included in the email to Individual ESU-8 is the complaint raised by \_\_\_\_\_, dated 9 August 2016.<sup>3006</sup>

That same day Individual ESU-8 completed a DJAG Complaint Assessment Form and recommended an ESU investigation into the incident. On 22 August 2016 Individual ESU-1 signed and reviewed this Complaint Assessment Form and recommended an ESU investigation into the incident.<sup>3007</sup>

#### ETHICAL STANDARDS UNIT INVESTIGATION

The approval by Individual ESU-1 of an investigation instigated preliminary inquiries to be undertaken into the incident. These preliminary investigative inquiries were conducted by Individual ESU-8.<sup>3008</sup> Individual ESU-8 commenced the investigation into the incident on 19 August 2016 and was required to report back to Individual ESU-1 on or before 27 September 2016.

On 27 September 2016, Individual ESU-1 submitted a memorandum to Individual YJ-47. The memorandum contained an overview of the investigation conducted by Individual ESU-8 into the incident. This memorandum contained summaries from DCOIS reports of Individual YJ-11 and Individual YJ-27<sup>3009</sup>, overview of footage from CCTV cameras at five locations<sup>3010</sup>, a file note of Individual YJ-43’s observations of the incident<sup>3011</sup>, and the email complaint by \_\_\_\_\_. The conclusion of this memorandum stated as follows:

The evidence available does not support the allegation that [Young Person A8] was subjected to a use of force by staff that was not authorised, justified and reasonable in the circumstances. The available evidence for the incident indicates that staff responded appropriately and used force that was authorised, justified and reasonable in the circumstances given the YP’s non-compliance and aggression towards staff. CCTV footage of the occurrence corroborates the evidence of staff and YJ-43. While the incident was clearly confronting and emotional to \_\_\_\_\_ and other elders

<sup>3004</sup> DCOIS Incident 5380114, edocs 3447060.

<sup>3005</sup> DCOIS Incident 5380114, edocs 3447060.

<sup>3006</sup> Email chain including email from Individual ESU-1 to Individual ESU-8 dated 19 August 2016, edocs 3466822.

<sup>3007</sup> Complaint Assessment Form 2016/2017, edocs 3466826.

<sup>3008</sup> DJAG memorandum Individual ESU-1 to Individual YJ-47, dated 27 August 2016, p 2, edocs 3466831.

<sup>3009</sup> DJAG memorandum Individual ESU-1 to Individual YJ-47, dated 27 August 2016, p 2, edocs 3466831.

<sup>3010</sup> DJAG memorandum Individual ESU-1 to Individual YJ-47, dated 27 August 2016, pp 3–4, edocs 3466831.

<sup>3011</sup> DJAG memorandum Individual ESU-1 to Individual YJ-47, dated 27 August 2016, p 4, edocs 3466831.

<sup>3012</sup> DJAG memorandum Individual ESU-1 to Individual YJ-47, dated 27 August 2016, p 4, edocs 3466831.



*present, this in itself does not substantiate the allegation. The ESU does not consider further investigation on this matter to be a justifiable use of resources.*<sup>3013</sup>

The final paragraph of the memorandum is directed to Individual YJ-47 to determine on the evidence gathered, on the balance of probabilities recommendations as follows:

1. Find the allegation to be unsubstantiated – Yes
2. Determine an alternative path – No

On 29 September 2016, Individual YJ-47 approved the recommendations, determining that the allegation was unsubstantiated and signed the matter as finalised.<sup>3014</sup>

#### REVIEW BY THE OPG

The incident also came to the attention of the OPG, community visitor. Correspondence provided to the Review indicates that the community visitor met with Young Person A8 at some point to discuss this matter. On 20 September 2016, the community visitor emailed Individual YJ-43 regarding Young Person A8's incident in order to finalise an OPG – Issues Report.<sup>3015</sup> The community visitor commented in the email as follows:

*...CV met with [Young Person A8]*

On 27 September 2016, the OPG completed inquiries into the incident with the reason: "Issue: False – Enquiry made – no further action required. All information provided. CV spoke to [Young Person A8] who did not want to make a complaint."<sup>3017</sup>

#### REVIEW

The incident was witnessed by visitors including Indigenous elders attending CYDC for the NAIDOC ceremony. Individual YJ-20 and Individual YJ-27 indicated that Young Person A8 was ground stabilised and mechanically restrained due to the threat of being spat on by Young Person A8.

The Review has received a submission from

who submitted that

- has been aware of issues of mistreatment of children by staff in CYDC for years;

<sup>3013</sup> DJAG memorandum Individual ESU-1 to Individual YJ-47, dated 27 August 2016, p 5, edocs 3466831.

<sup>3014</sup> DJAG memorandum from Individual ESU-1 to Individual YJ-47, dated 27 September 2016, p 5, edocs 3466831.

<sup>3015</sup> Office of Public Guardian – Issue Report Young Person A8 9 August 2016 Ground Stabilisation, edocs 3475495.

<sup>3016</sup> Community Visitor emails to Individual YJ-43 dated 20 August 2016, edocs 3475495.

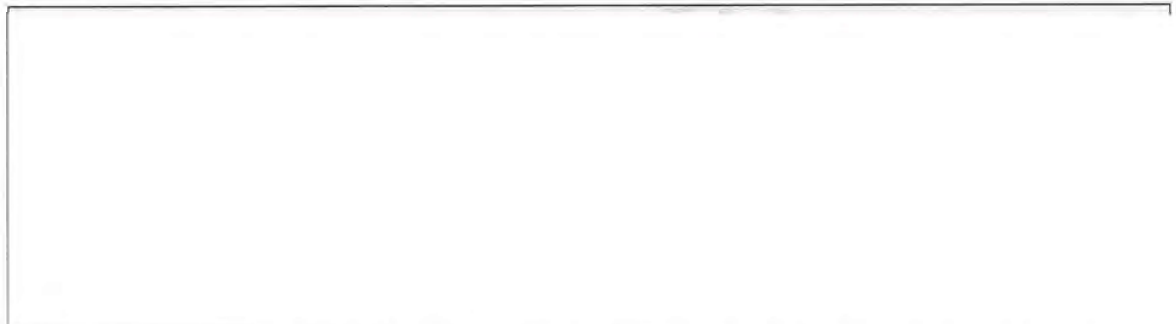
<sup>3017</sup> Office of Public Guardian – Issue report, Young Person A8 9 August 2016 Ground stabilisation, edocs 3475495.



- witnessed a young FIRST NATIONS child being forcefully taken to the ground by CYDC staff during NAIDOC week celebrations;
- was shocked, disappointed and deeply saddened by the incident;
- was aware that other FIRST NATIONS elders who were in attendance who also witnessed the incident were deeply affected by it;
- has raised concerns about the very low number of FIRST NATIONS staff at CYDC for quite some time;
- considers that there is a lack of cultural sensitivity displayed by the health staff;
- would like to see both FIRST NATIONS grass roots nurses and also FIRST NATIONS nursing supervisors;
- is most concerned about the lack of collaboration and communication with the FIRST NATIONS community;
- considered that a board of elders and community leaders to assist with the management of CYDC was needed; and
- was concerned that there are many incidents which are not being investigated by this Review as the terms of reference were so narrow.

The Review respectfully agrees with many of \_\_\_\_\_ views and encourages the reader to refer to the findings and recommendations in this report which address a number of them.

The email by the community visitor indicated Young Person A8 told them he did spit at the staff and this led to him being ground stabilised. After Young Person A8 was ground stabilised, he was escorted and placed into separation for less than two hours. Young Person A8 made no complaint about this incident.



The legitimacy of this use of force has been examined by the ESU, DJAG and to a lesser extent by the OPG. The use of force was deemed authorised and justified and the matter was finalised as unsubstantiated by Individual YJ-47.

Staff at CYDC are responsible for the management of young people with complex histories and who often engage in challenging behaviours. Staff are also susceptible to the threat of assault in exercising their management of young people in youth detention centres. The staff are authorised to protect themselves and each other from assault by using an appropriate level of force.

If it was the case that Young Person A8 had threatened to spit at the youth workers prior to being ground stabilised, the use of ground stabilisation appears to the Review to have been justified. According to the staff, Young Person A8 had begun to struggle with both staff when they were escorting him to a nearby separation unit. The struggle resulted in the ground stabilisation to bring Young Person A8 under control. The threat of spitting was managed by the use of Young Person A8's tee-shirt being pulled over his mouth not by the ground stabilisation.

Young Person A8 had, by the time the handcuffs were applied, been brought under control. There was little prospect of Young Person A8 breaking free from staff who at the time had hold of him. Even if that had occurred it seems at least arguable that the use of handcuffs was not a measure that was reasonably responding to that risk.

Young Person A8

The use of force, by way of application of mechanical restraint, was a component of this complaint that received little attention by the reviewers of this incident.

Young Person A8 is Indigenous and was attending a cultural event. The Review considers that, by the application of handcuffs, Young Person A8 was not subjected to the minimum use of force necessary to bring the situation under control.

Following this incident no CYDC staff member contacted Young Person A8's mother. There is an absence of documentation relating to contact with Young Person A8's family following this incident.

3023 *Youth Justice Act 1992, Schedule 1 – Charter of Youth Justice Principles.*



The Review has been concerned more generally at the lack of communication with young people's parents, families and guardians. The Review has spoken with a number of family members of the young people included in the terms of reference. The Review considers that this incident is an example of a failure to communicate concerning issues to a parent by CYDC.

The Review acknowledges that this incident was distressing to observers including Indigenous elders who had attended CYDC for the NAIDOC celebrations.

**Finding 18.F1** – There is insufficient communication with parents, families and guardians of young people particularly in relation to incidents, use of force and separation.

**Recommendation 18.R1** – The Review recommends that the use of force at CYDC should be reviewed and staff be trained in de-escalation techniques and other alternatives to the use of force, including instruction that use of force (ground stabilisation) and mechanical restraints (handcuffs) are to be used only when all other measures have failed, and otherwise limited to use in emergency situations only. That training should include cultural sensitivity training regarding physical intervention and shame.

**Recommendation 18.R2** – The Review recommends that a communication liaison position should be created to manage individual incidents, use of force and separation within the detention centres, and should ensure that consistent and adequate communication with parents, families and guardians is provided.









































































































## SUMMARY OF CHAPTER 19 – THE USE OF MECHANICAL RESTRAINTS

The Chief Inspector of Queensland Corrective Services who was asked to review whether additional content of this Youth Detention Review could be publicly released has drawn a distinction between the redaction of chapters 14 - 18 and the approach taken in relation to chapter 19. Unlike chapters 14-18, a 16 page summary of chapter 19 has been drafted and included by the Chief Inspector instead of a redacted version of the chapter itself. The summarised chapter 19 largely contains extracts from the Youth Detention Review while also containing some minor additions which have been included:

1. to maintain confidentiality (and avoid significant harm to specific young individual/s - which was a real and major concern), yet still ensure accuracy in line with the emphasis and findings contained in the report;
2. to nevertheless provide a context and a continuity which a conventional redaction process would not have achieved; and
3. to permit its public release.

Special consideration was given to ensure that the summarised chapter 19 was aligned in terms of emphasis and all key findings of fact by the commissioners.

## INTRODUCTION

Certain incidents which raised concerning issues came to the attention of the Review during its examination of other matters at the Cleveland Youth Detention Centre. On 17 November 2016, the terms of reference of the Review were expanded by the *Commissions of Inquiry Amendment Order (No. 1) 2016* to include review of these incidents ('the amended terms of reference').

Accordingly, the Review has been tasked with conducting an inquiry in relation to the management of certain difficult behaviours at CYDC in 2013.

A large volume of information was provided to the Review. In conducting an analysis of these incidents, the Review has had regard to:

- affidavits (and exhibits) from staff employed by Queensland Health and the Department of Justice and Attorney-General ("DJAG"), including youth justice employees involved in the identified incidents;
- affidavits from Ethical Standards Unit staff;
- an affidavit from the Office of the Public Guardian ("OPG");
- material from the former Commission for Children and Young People and Child Guardian ("CCYPCG");
- CCTV footage of two incidents in 2013;
- Relevant Detention Centre Operational Information System ("DCOIS") records;
- other documents relevant to the investigations and assessments of the incidents;

- relevant legislation, including the *Youth Justice Act 1992* ('the Act'), the *Youth Justice Regulation 2003* (repealed) ("the Regulation (repealed)") (both as in force during May 2013) and the *Youth Justice Regulation 2016* ("the Regulation"); and
- Youth Justice Policies.

Of particular interest to the Review are incidents involving the use of mechanical restraints:

- responses to self-harming behaviours involving the use of restraints by way of a hog-tie (the 'hog-tying incidents') within the separation room in his unit at CYDC; and
- incidents which involved the use of mechanical restraints, using methods other than hog-tying (the "other mechanical restraint incidents").

### **ANALYSIS OF THE MENTAL HEALTH MANAGEMENT OF YOUNG PERSONS AT CYDC**

It is apparent from the material that has been provided to the Review, that the use of mechanical restraints was not appropriate in the cases documented therein, and is not appropriate in general for such cases.

As a result of the incidents involving mechanical restraints, Youth Justice produced the *Report on Best Practice Approaches to the Use of Suicide and Self-Harm Restraints*. In summary, the research findings were:

- restraining young people who self-harm is likely to increase rather than decrease incidences of self-harm; it also has a high potential to be traumatising (or re-traumatising); particularly in relation to a person whose mental health has degraded to the extent that they make a serious and dramatic effort to self-harm;
- the use of restraints or seclusion have no value in the treatment of self-harm;
- the use of restraints devices may decrease staff attendance in applying approaches such as positive behaviour support in order to decrease target behaviours;
- there is growing movement towards promoting evidence-based alternatives such as the use of Positive Behaviour Support (PBS) to reduce the use of restrictive practices including in the disability sector where there is some argument for the use of restraints; and
- one of the greatest concerns associated with the use of restrictive practices is that it can place both the person subject to the restrictive practice and those implementing the practice at serious risk of harm; in fact restrictive practices have caused serious trauma and even death.

The above quote is an excerpt from "version 1.0 consultation" of the report (last modified: 27 June 2014). The Review requested a copy of the final Report but was informed that there was no final copy available, and that further research was continuing.

**Finding 19.F3** – Incidents of deliberate escalating self-harm were inadequately managed by CYDC.

### **CONSISTENCY OF MENTAL HEALTH MANAGEMENT WITH RELEVANT LEGISLATION AND POLICIES**

#### **LEGISLATION**

## *A RIGHT TO MEDICAL TREATMENT*

Pursuant to the youth justice principles contained at ss.20(a) and (f) of Schedule 1 of the *Youth Justice Act 1992* (QLD) ('the Act'), a child who is detained in a detention centre under the Act:

- should be provided with a safe and stable living environment; and
- should have access to dental, medical and therapeutic services necessary to meet the child's needs.

Section 33 of the *Youth Justice Regulation 2003* (now repealed) ('the Regulation (repealed)') holds that a child detained in a detention centre has the right to health services and medical treatment. Pursuant to s.34, the chief executive must ensure a record of medical examinations and treatment for each child are kept at the detention centre.

## *USE OF RESTRAINTS*

The chief executive may approve types of restraints a staff member may use to restrain a child. This power has been delegated by the chief executive. The chief executive may authorise a staff member to use approved restraints to restrain a child.

Restraints may only be used in certain circumstances. These circumstances include that the child is in a detention centre and the chief executive believes on reasonable grounds that the child could seriously harm himself. The formation of this belief has been delegated. Further, restraints can only be used if the chief executive considers there is no other way to stop child serious harming himself. This power has been delegated as part of the delegation of s 20(2)(b).

The chief executive must ensure the restraints are used for no longer than reasonably necessary; and all reasonable steps are taken to use the restraints in a way that respect the child's dignity. These requirements on the chief executive have been delegated. The chief executive must keep a register of information containing particulars of approved restraints and particulars about actual use of approved restraints.

## *SEPARATION*

Section 22 of the Regulation (repealed) authorises the separation of a child in a locked room in a detention centre, including at the child's request and for the child's protection. If done for the child's protection the following approvals are required:

- separation for more than 2 hours: detention centre manager approval;
- separation for more than 12 hours: inform chief executive;
- separation for more than 24 hours: chief executive approval.

A separated child must remain under observation in a way complying with the directions of the chief executive. A register of particulars of each child who is in separation must be retained.

## ***POLICIES***

### *YD-1-6 SUICIDE AND SELF-HARM RISK MANAGEMENT POLICY*

The Youth Justice policy YD-1-6 Suicide and Self Harm Risk Management<sup>3276</sup> provides:

*4.3 Interventions and management strategies must meet the individual needs of the young person and be provided in a timely manner.*

*4.5 All other less restrictive means of addressing the self-harm must be attempted before the use of mechanical restraints are applied.*

The Review notes that the implementation date of approval of this policy was 23 September 2013 and the date of operation was 1 November 2013. The Review notes that prior to the final effective implementation of this policy there was a policy statement that was complemented by the operations manual.

*YD-3-7 USE OF MECHANICAL RESTRAINTS POLICY*

Appendix A to Youth Justice Policy *YD-3-7 Use of Mechanical Restraints* lists approved mechanical restraints including:

- handcuffs;
- nylon body belt (for self-harming incidents only; requires director notification);
- protective helmet (for self-harming incidents only; requires director notification);
- restraint sleeve (for self-harming incidents only; requires director notification);
- lockable zip ties (when no handcuffs; requires director notification); and
- ankle cuffs (only in emergency; requires director notification).

The Review notes that the implementation date of this policy commenced on 13 May 2013 but the policy was not approved until 24 July 2013. The final effective implementation date for CYDC was 1 September 2013.

*YD-3-8 USE OF SEPARATION IN RESPONSE TO AN INCIDENT POLICY*

Youth Justice Policy *YD-3-8 Use of Separation in Response to an Incident* provides the time limits and approvals required to meet the legislative requirements concerning separation mentioned above. It allows for planned separations which are rare and to be set as part of behaviour development plans. The policy also refers to the requirement to keep a separation register.

*YD-3-4 PROTECTIVE ACTIONS CONTINUUM*

Youth Justice Policy *YD-3-4 Protective Actions Continuum* covers the use of force including the conditions and limitations on use of force under section 17 of the Regulation (repealed). The continuum comprises four escalating levels of intervention. Following physical intervention at levels two, three and four, the young person must be seen by a nurse. The policy states that staff cannot improvise or alter approved techniques.

The appendix to the policy details the approved techniques. These do not include hog-tying or using restraints in any particular combination.

*YOUTH DETENTION CENTRE OPERATIONS MANUAL, CH 1 CARE AND MANAGEMENT; SECTION 8 SUICIDE AND SELF-HARM MANAGEMENT*

This chapter contains no information on the use of restraints in circumstances involving suicide or self-harm.

*YOUTH DETENTION CENTRE OPERATIONS MANUAL, CH 24 EMERGENCY MANAGEMENT*

This chapter provides that the centre director must approve the use of a suicide risk head protector, restraint sleeves, and body belt.

## **ANALYSIS OF THE WHETHER MENTAL HEALTH ISSUES WERE MANAGED IN ACCORDANCE WITH THE APPLICABLE LEGISLATION AND POLICIES**

### *WHETHER USE OF THESE RESTRAINTS WERE AUTHORISED - "HOG-TYING NOT PRECLUDED"*

To be authorised under the Regulation (repealed):

- the chief executive or their delegate must consider on reasonable grounds that a child could seriously harm himself or herself;
- the chief executive or their delegate must consider there is no other way to stop a child seriously harming himself or herself; and
- the restraints are to be used for no longer than is reasonably necessary.

The policies provide variously:

- that all other less restrictive means of addressing self-harm are to be attempted before use of restraints;
- silence in the Manual as to use of restraints involving self-harm;
- approved force techniques that do not include hog-tying. Staff are not permitted to alter or improvise approved techniques; and
- approved mechanical restraints but silence in relation to their combined use.

Seven documents provided to the Review indicate that the legislation and youth justice policies do not specifically prohibit the use of the hog-tying method of restraint, and therefore such a method of restraint is permissible.

It has been submitted that the action fell within the authorisation of the legislation because there is no "carve out" in the legislation which precludes restraining a person in the method adopted. One officer concluded that, "there was legislative authority for the use of the restraints and as such the use of force ... was excused." Investigations conducted by the ESU did not determine that the use of the restraints was such that it did not respect the young person's dignity or that the restraints were used longer than reasonably necessary.

It has been submitted to the Review that there are no words of limitation in the regulation that prohibit the restraints being used in combination in a 'hog tie' configuration.

In respect of the requirements under section 20 the Regulation (repealed), there are two primary issues that must be considered:

1. did the chief executive's delegate consider on reasonable grounds that a young person could seriously harm him/herself?
2. did the chief executive's delegate consider there was no other way to stop a young person seriously harming him/herself?

The use of restraints during the relevant period in 2013 by youth workers was at the direction of their managers. Managers were relying upon the contents support strategy documents which contained a misconception that restraints as opposed to containment and observation were suitable techniques. For example, CYDC staff were experiencing high levels of anxiety in relation to the perceived risk to a young person engaging in deliberate and persistent self-harm. There was insufficient expert intervention and advice to allay those anxieties from documents provided.

The self-harm was not life threatening. Had it been life threatening it would have constituted a medical emergency requiring immediate medical intervention by a doctor. The Review considers that the managers were not of the view that there was a medical emergency, although they may have believed that the emergency was a psychiatric emergency. If that is so, that belief ought to have been reversed upon receipt of certain advice from health staff.

The Review considers that statements that a young person was at acute risk are not supported by the factual circumstances. There were no reasonable grounds upon which to base a view that a young person was at serious risk (other than the risk of positional asphyxia through the use of restraints).

As to the second issue, the Review considers that at the time, management of the self-harming behaviours involved physically intervening to prevent the self-harming actions.

In line with the Youth Justice research paper, *Report on Best Practice Approaches to the Use of Suicide and Self-Harm Restraints*, it is apparent that such intervention, involving mechanical restraint, was ineffective.

Until CYDC staff were presented with appropriate guidance and expert instruction regarding the best way to manage and respond to deliberate self-harming behaviour, they were proceeding with interventions that were not legally authorised. The material provided to the Review clearly indicates that the CYDC staff were ill-equipped, in terms of training and on-site expertise, to respond to and manage such behaviour in 2013.

**Finding 19.F4** - CYDC staff were not properly equipped, in terms of expert advice or training, to respond to, or manage, deliberate self-harming behaviour during 2013.

## **HARM REPORTING - YOUTH JUSTICE LEGISLATION**

### **REPORTING BY STAFF**

If a detention centre employee becomes aware, or reasonably aware, that a child has suffered harm while detained in a detention centre, the employee must, unless the employee has a reasonable excuse, report the harm or suspected harm to the chief executive immediately and if applicable in accordance with the regulation. The section includes that it is immaterial how the harm was caused. Reportable harm is also provided to the CCYPCG.

A 'Harm reporting schedule' provided by DJAG to CCYPCG contains a number of incidents involving self-harm, although earlier hog-tying incidents are not mentioned. Instead, these incidents were recorded in DCOIS as non-reportable.

There were nursing staff involved in the care of at-risk young persons at CYDC. They expressed concern regarding incidents of self-harming behaviour. The Review considers that the threshold was crossed, requiring that 'harm' be reported to the Department of Child Safety.

**Finding 19.F5** – Incidents involving restraints in a hog-tie manner should have been formally reported to the CCYPCG as harm pursuant to the Regulation (repealed).

**Finding 19.F6** – DJAG should have notified the Department of the Child Safety of incidents.

**Finding 19.F7** – Nursing staff should have notified the harm of a young person to the Department of Child Safety.

## OVERSIGHT

### BACKGROUND

In 2013, incidents involving self-harming behaviour and the CYDC's response to those incidents, which included the use of hog-tying, were referred to the CMC and the QPS.

The ESU subsequently conducted an initial assessment of the referral, which found that, on review of the relevant policies, the, "use of handcuffs, leg cuff, restraint belt and head mask are approved mechanical restraints," and that while the policy does not prohibit hog-tying, it doesn't expressly permit it either. It was noted, however, that, "the listing of handcuffs, and then restraint belt, and leg cuffs would give support their combined use, as why else would a belt be needed."

The initial assessment concluded that, if the use of these mechanical restraints was permitted, there was unlikely to be any misconduct by staff. However, it noted that there may be procedural issues with respect to a young person being left restrained in a room with a staff member outside the door. It was also identified that, "the staff involved were inexperienced in dealing with this issue," and that this "may result in a further training program for staff being held." It was further noted that staff involved in responding to deliberate self-harm would not have experienced such behaviour before and, as a result, may have been under misconceptions about the risk involved. A full review of the documentation and the video footage was completed, but at that stage no official misconduct was identified.

In 2013, the CMC had decided to monitor the matter, and to review interim reports received from DJAG, before any further action was to be taken by DJAG. The following information was sent to the CMC:

- CCTV footage;
- incident reports;
- medical reports;
- policies; and
- advice on how DJAG intended to progress the matter.

The CMC advised that, having reviewed relevant documentation and the Youth Justice policy *YD-3-7 Use of mechanical restraints*, it was, "unable to accept, at this point in time, the ESU's conclusion that such use of restraints was appropriate and in accordance with the Youth Justice Act 2003 [sic]."

This letter also requested that DJAG undertake six tasks:

- a review of an incident to determine whether occurrence reports were consistent with CCTV;
- advice as to whether this type of restraint was used in other instances;
- advice as to whether this restraint is common practice and complies with policies;
- interviews with officers involved in the incident under investigation, including health workers who may have raised concerns regarding the restraint;
- information as to who approved the restraints and whether that approval included; and
- an update on review of policies and procedures.

Internal investigations were subsequently undertaken with the ESU. As part of these investigations, a request was made for a “detailed report on the events leading up to that approval and also what took place afterwards”, as well as the approval to use mechanical restraints, and whether this approval included, “the use of hand and leg restraints and the tying together of limbs.”

Advice was provided that CYDC had “approved a young person to be secured by handcuffs and leg cuffs because of their continued serious harm. While this restraint meant that their hands were handcuffed to their back and linked up with their feet, it lasted for no more than 20 minutes whilst medication was administered to sedate them.” Importantly, the ESU was not informed of earlier hog-tying incidents (prior to the incident of 27 May 2013 which was included in the inquiry’s terms of reference).

A briefing note was provided, in which it was noted that CCYPCG was concerned about the use of hog-tying and wrist locks in respect of a young person. In addition, the briefing note made the following findings:

- management was significantly challenged and it caused distress to DJAG and QH nursing staff;
- CYDC attempted to manage using internal and external input and expertise;
- attempts were made to have an at-risk young person transferred to secure mental health facility were unsuccessful;
- the management of difficult mental health issues was outside expertise of staff and beyond the scope of detention centre policy;
- policy and procedures at the time regarding suicide and self-harm were correctly observed;
- there is no technique of hogtying used in detention centres;
  - the technique is not referred to in policy, procedure or legislation;
  - the practice is not specifically forbidden;
  - while restraint is possible, the policy is silent on the levels and types of restraints that can be applied;
- restraint occurs in centres as required but hogtying has not been endorsed nor have staff been trained to apply such a technique;
- legislative provision exists for restraint where, on reasonable grounds, it seems a child may seriously harm themselves. There appears to be little doubt that it was lawful for a young person to be restrained pursuant to s.20 of the Regulation (repealed);
- legislative provision delegated the use of restraints, and it appeared that the restraint occurred within the correct delegation level;
- a relevant consideration is whether the action that was taken was the only way to stop him from seriously harming himself, as well as whether the approach respected his dignity and was used for no longer than reasonably necessary.

An internal ESU memorandum noted:

- Occurrence Reports were reviewed. The recollection of staff appears reasonably consistent with the CCTV footage;

- the hog-tie restraint was not recognised by the department;
- the hog-tie method had not been used at CYDC before;
- there was no evidence that that use of mechanical restraints, other than handcuffs, was commonplace. The restraints were a last resort option in an attempt to safeguard a young person perceived to be at risk. There was nothing in the policy or legislation that precluded the use of mechanical restraints. The use of restraints appeared to be in accordance with the Act, departmental policies and individual support plans;
- interviews were conducted with staff. External health providers and health staff from agencies other than the Department of Health declined to be interviewed. The concern of medical staff as raised by the CCYPCG was clarified as relating to the fact there was no key to the handcuffs in case of a young person having a medical emergency;
- in relation to the approval given to use restraints, including the hog-tying, it was noted that internal and external medical staff, and the CYDC management, provided approval to use mechanical restraints. These mechanical restraints included handcuffs, leg cuffs, a protective helmet, and a body belt. As it was able to manoeuvre out of these restraints, approval was given for the securing of the hand and leg cuffs to the body belt (i.e. the hog-tie position). A helmet was also approved to protect against injuries to the head when a young person attempted to bang their head on the concrete floor or walls;
- chemical restraint was authorised by medical stakeholders.

ESU concluded that, “[a]ll staff that approved the use of mechanical restraints or chemical restraint were authorised to do so by legislation or policy.” Further, it was found that the allegation, regarding the possibility that the use of mechanical restraints constituted improper treatment, was not capable of being substantiated.

ESU also identified five procedural and systemic issues:

1. medical staff identified that while a young person was secured to a bed in medical that if there was an emergency he could not be released as there was no key for the hand cuffs in medical. This was brought to the attention of management who immediately arranged for hand cuff keys to be made available to staff supervising in medical. [Resolved]
2. it was identified that most of the resource stakeholders work 9am – 5pm Monday to Friday and are not on call over a weekend or public holidays to provide detention centre staff with information and assistance in the event of a serious incident taking place. Consideration should be given to having a support network capable of responding outside of normal working hours. [Requires consideration]
3. during the inspection of the mechanical restraints and suicide risk clothing it was observed that the equipment was old and ineffective. The protective helmet appeared to be similar to an old style football helmet. It is clear from the evidence that the belt used did not perform the function it was intended for. The suicide risk clothing/bedding was dirty and appeared old. Consideration should be given to updating both the mechanical restraints and the suicide risk equipment used in detention centres. [Requires consideration]
4. it was identified that staff were trained in the use of hand cuffs as part of the “Protective Actions Continuum” training, however there appeared to be no training provided in the use

of other types of mechanical restraints approved for use within the detention centre. Considerations should be given to including training in mechanical restraints as part of the “Protective Actions Continuum” given there is an expectation that staff will use the mechanical restraints. [Requires consideration]

5. staff appeared to have received minimal training in dealing with young people with mental health issues or severe behavioural issues and, given the increase in young people displaying these issues, consideration should be given to provide staff with a higher level of training in responding to young people displaying these issues, MHATODS [Mental Health Alcohol Tobacco and Other Drugs Service] have indicated that they are prepared to provide training in this particular area. [Requires consideration]

In 2014, ESU provided a briefing note, requesting whether, subject to the CMC’s concurrence, allegations of improper treatment between ought to be found to be substantiated. The briefing note provided a summary of ESU’s investigation in which it was noted that there were genuine concerns for the safety of a young person] and staff took steps which progressed gradually from the use of hand cuffs to use of all mechanical restraints permitted within the legislation and policy (hand cuffs, leg cuffs, belt, and the protective helmet) in an attempt to reduce self-harming, and at all times the young person’s safety was their key motivation. Staff had not previously been confronted with the continuous self-harming behaviour of a young person. It was identified that this behaviour was extremely difficult to manage and the balance between preventing serious self-harm and maintaining individual rights was very challenging. The CYDC attempted to manage such behaviour using internal and external input and expertise, but managing such difficult mental health issues was outside the expertise of youth detention centre staff and beyond the scope of detention centre policy.

Early in 2014, ESU wrote to the CMC, providing the Investigation Report and Corresponding Brief, together with the information of, and advice to, the CMC. -The CMC subsequently advised that the CMC considered the ESU’s interim report had adequately addressed the relevant matters for investigation and was therefore to be a final report. -the CMC agreed with the finding that the allegations were unsubstantiated, and, “strongly endorsed [the] recommendations,” contained therein, namely that:

- access be available outside of normal business hours to resource stakeholders capable of responding to a serious incident;
- mechanical restraints and suicide risk equipment be renewed in the detention centres; and
- Protective Action Continuum training be broadened to incorporate all forms of mechanical restraint; and
- further training for staff in dealing with young people with mental health issues.

The CCYPCG was concerned about the appropriateness of the actions by CYDC and, as a result, the following information was requested by the CCYPCG to ascertain whether any investigation or review ought to be undertaken by the Review:

- whether the use of mechanical restraints applied to the wrists and ankles (described as “hog tying”) is considered an appropriate method of suicide and self-harm management and whether it is authorised under the Act and the Regulation (repealed); and
- whether the Department of Child Safety was advised of each of the incidents involving mechanical restraint at the relevant times.

DJAG advised the CCYPCG's that the CMC agreed with the ESU's findings, on the basis that:

- the use of the method of restraint referred to above is not common practice – this was the first time this practice had occurred;
- that particular method of restraint was adopted as a last resort to try and safeguard the young person during a period of chronic and pervasive self-harming;
- the use of restraint in this manner was not precluded in legislation, policy or procedure; and
- some incidents had been added into the Department of Child Safety's computer system, and some were not. It was explained that the latter incidents were not added as they were not classified as reportable incidents.

The Queensland Ombudsman inherited the file in relation to this matter from the CCYPCG as a result of the abolition of that latter entity. The OQO wrote to DJAG, advising that it did not intend to "investigate the incidents nor review the lawfulness of the action taken," and that the OQO's focus was instead on, "the systems and processes the department has in place for managing young people at risk of self-harm". The OQO requested material from DJAG, including ESU's investigation report, relevant policies, details of training and details of the last three of uses of force at CYDC in response to incidents of self-harming. This information was provided by DJAG.

In 2015, the Ombudsman advised DJAG that it was, "satisfied as to the actions being taken by the department in relation to this issue and do not intend to further investigate at this time."

DJAG subsequently advised the OQO that significant work had been undertaken in relation to DJAG's review of the suicide and self-harm intervention framework, as well as further actions by Youth Justice to strengthen this process. Relevantly, the letter advised:

*...the Youth Detention Governance Committee made a determination that the use of suicide risk restraints was not best practice. However, the use of specially manufactured helmet, handcuffs and body belt (which is used to secure the handcuffs close to the young person's body) may still be necessary in very extreme situations. It is important to note that if such a situation was to occur, emergency medical services may also be called to attend the centre. The young person would be subject to constant supervision. This requires that at least one (often two) staff member be physically present with them at all times to offer emotional support and ensure their physical safety.*

## **ANALYSIS OF THE ADEQUACY OF THE OVERSIGHT BY THE RELEVANT STAKEHOLDERS**

### **POOR RECORD KEEPING**

There were several instances of a young person being restrained in a hog-tie position. The level of detail contained in the descriptions of these instances vary. The Review considers that most descriptions were vague, while others omitted reference to the use of restraints entirely. Only rarely was the use of restraints described accurately.

The Review considers that a sufficiently detailed description of an incident involving the use of mechanical restraints should include, at the very least, specific reference to the particular restraints used (i.e. handcuffs, body belt), and how these restraints were applied to the young person (i.e. handcuffs applied to young person behind his back, and joined to the body belt).

**Finding 19.F8** – The documentary records kept by health and CYDC staff in relation to incidents in which a young person was restrained in a hog-tie position lacked accurate descriptions of the restraint mechanism used.

**Finding 19.F9** – Accurate descriptions of restraints and narratives of incidents in which a young person was restrained in a hog-tie position were not included in the investigation material provided to either ESU or CMC.

**Recommendation 19.R2** – Staff who authored the documentary records identified in this Chapter should be retrained in minimum standards of documentation requirements to provide accurate documentary entries reflecting all interventions (including methods of restraint) and incidents.

#### *LACK OF AVAILABLE CCTV FOOTAGE*

There were a number of separate incidents that were recorded on DCOIS system involving the use of mechanical restraints during the relevant period in 2013. Of these incidents, only three had CCTV footage available to the Review.

There are anomalous CCTV records for two incidents. In relation to the first incident, there is no footage of the events which occurred inside the room. Instead, the only footage available depicts the doorway outside the entrance to the room. However, the second incident, which occurred in the same unit, was fully captured by CCTV cameras.

CCTV footage of all incidents was requested. On receipt of the available CCTV footage no explanation was provided as to why there was footage for the second incident and not the first. Due to time constraints no further enquires were made by the Review regarding the CCTV footage. The Review considers that CCTV recordings of restraints being applied on both occasions ought to have occurred. No CCTV footage was supplied to the Review for one incident and the ESU report states that none exists.

Without CCTV footage, a reviewer of an incident involving restraint of a young person often relies solely on the accuracy and detail provided by staff as to the method of restraint/s used. DCOIS records varied in the level of detail provided. That created difficulty in determining with accuracy what occurred.

For further discussion on retention of CCTV footage see the CCTV chapter of this report.

**Finding 19.F10** – CCTV footage of the interior of the separation room was either not recorded or not retained for the incidents in which a young person was restrained in a hog-tie position.

#### **ISSUES WITH ESU INVESTIGATION**

##### *OMISSIONS IN REPORTING OF EVIDENCE FROM WITNESSES INTERVIEWED*

In addition to examining the contents of the DCOIS entries by CYDC staff and health workers, the Review has listened to the tape recorded interviews conducted with the CYDC staff and health workers by ESU as part of their investigation, and as directed by the CMC. The Review has also

considered the summaries of those interviews that were prepared by ESU and annexed to the report provided to the CMC.

On reviewing this information, the Review considers that there are omissions between the reporting of evidence from witnesses interviewed by the ESU.

**Finding 19.F11** – ESU’s investigation report, relied upon by the CMC, omitted opinions of and information from staff who were interviewed in the ESU investigation of the incident.

#### *NO SUBSEQUENT ACTION TAKEN TO PRECLUDE HOG-TYING IN POLICIES*

The risks involved in managing deliberate self-harm by mechanical restraints were clearly identified in the *Report on Best Practice Approaches to the Use of Suicide and Self-Harm Restraints*. Further, the Queensland Corrective Services Control and Restraint Manual (for prisons), holds:

*Positional Asphyxia occurs in a situation where a subject is placed in a position where the free action (bellows action) of the diaphragm and intercostal muscles is compromised, thereby causing hypoxia, disturbed heart rhythm and potentially, death. Simply put – the subject’s body position obstructs their breathing which ultimately may lead to suffocation then death.*

*Much of the early controversy, and therefore research, focused on the world wide restraint technique of ‘Hog-Tying’. Hog-tying requires a subject’s hands and ankles to be bound and then secured together behind the subjects back. Once restrained in this manner the subject lies face down or on their side. This technique is an extremely effective method of restraining subjects but it is not one used by any Australian law enforcement agencies.*

The evidence provided to the Review indicates that at least some staff at the CYDC, namely consider the mechanical restraints policy ought to be upgraded to, “depict those methods of mechanical restraint that are acceptable and the clear circumstances in which a particular type of mechanical restraint can be used.”

However, from the information provided to the Review, it appears that no action has been taken to ensure that hog-tying is prohibited from being used as a method of restraint for young people in youth detention centres. Alternatively, the Regulation ought to be amended to reflect that where a number of restraints are used in combination (except transport restraints, i.e. approved handcuffs and ankle cuffs) each specific combined use must be approved by the Director-General of DJAG with concurrent approval from the Director-General of Queensland Health.

In that regard, reference is made comments in a letter to the OQO which stated:

*Following research to determine contemporary best practice approaches to restraining young people who are exhibiting extreme self-harming behaviours, the Youth Detention Governance Committee made a determination that the use of suicide risk restraints was not best practice. However, the use of specially manufactured helmet, handcuffs and body belt (which is used to secure the handcuffs close to the young person’s body) may still be necessary in very extreme situations.*

This Review considers that this statement does little to clarify the formal position of the department in respect of hog-tying.

**Recommendation 19.R3** – The Review recommends that Youth Justice policies, procedures and manuals should be amended to positively preclude the use of restraints to ‘hog-tie’ (or restraint by means of a similar description) a young person. Alternatively, the Youth Justice legislation should be amended to reflect that where a number of restraints are used in combination (except transport restraints – i.e. approved handcuffs and ankle cuffs) each specific combined use should be approved by the Director-General of DJAG with concurrent approval from the Director-General of Queensland Health.

**Recommendation 19.R4** - The Review recommends that in addition to a list of approved restraints, Youth Justice policies should provide clear descriptions of how they are to be used (e.g. whether they may be used in combination, and if so the method by which this combination is achieved). This is particularly important given that, upon its commencement on 26 August 2016, the *Youth Justice Regulation 2016* required individual staff members to hold the reasonable beliefs necessary to exercise the power pursuant to section 19(1). This is in contrast with sections 20(2) and (3) of the *Youth Justice Regulation 2003* (repealed), which entrusted delegated managers only.

#### IMPLEMENTATION OF RECOMMENDATIONS OF ESU INVESTIGATION

The Review has not been provided with information of the extent to which the general recommendations made by ESU and endorsed by the CMC, have been implemented. The Review strongly supports the first recommendation, that access to medical stakeholders capable of responding to a serious incident be available outside of normal business hours.

As to recommendation 2, no current information could be located by the Review about the renewal of mechanical restraints and suicide risk equipment. In respect of recommendation 3, the PAC policy makes no mention of self-harm restraints. The current Youth Justice policy YD-1-6 Policy Suicide and self-harm risk management provides:

*4.5 All other less restrictive means of addressing the self-harm must be attempted before the use of mechanical restraints are applied.*

*4.6 If mechanical restraints are required:*

- staff must comply with sections 20 and 21 of the Youth Justice Regulation 2003 and Policy YD-3-7: Use of mechanical restraints. This includes notifying the centre director prior to their use;*
- they must be used in a way that ensures that all reasonable steps are taken to respect the young person’s dignity;*
- the young person must not be restrained for any longer than is reasonably necessary given the circumstances.*

The Review is concerned that hog-tying has not been clearly prohibited in the Youth Justice policies. The Review is also concerned that the policies do not adequately distinguish between young people at risk of suicide, and young people who are engaging in deliberate self-harming behaviours. In particular, despite evidence to the contrary, the Youth Justice policy YD-1-6 Policy Suicide and self-

harm risk management, as extracted above, continues to support the use of restraints in relation to deliberate self-harming behaviour.

In relation to the fourth recommendation, the Review strongly supports the provision of further training to youth detention workers in the areas of young people at risk of suicide and young people who self-harm.

**Finding 19.F12** – Many young people detained in youth detention centres suffer from mental health issues including, but not limited to:

- deliberate self-harm;
- suicidal ideation;
- complex trauma;
- developmental trauma; and
- substance abuse and dependence.

**Recommendation 19.R5** – The Review recommends that youth detention centre employees should receive more training in identification, treatment and management of young people with mental health issues.

**Recommendation 19.R6** – The Review recommends that youth Justice policies and risk assessment tools should:

- distinguish between suicide risk and self-harm risk; and
- reflect the research undertaken by Youth Justice that physical restraints escalate self-harming behaviour.

The incidents considered highlight deficiencies at both Youth Detention Centres. The submission received from Children's Health Queensland HHS outlined the mental health services available to young people in Queensland, including those in youth detention centres. That included forensic CYMHS. BYDC operates a triage system as a result of the increased demand for forensic CYMHS services; information relating to CYDC was not included in that submission. BYDC also has an on-call psychiatrist after hours. It is not apparent to the Review that CYDC has such an arrangement with THHS. The Review considers that a young person would have been better treated and managed had such an on-call psychiatry facility after hours service been available. The Review notes that a member of the medical staff did provide advice that s/he could be contacted after hours but was not so contacted. BYDC reported no difficulty with achieving transfer to inpatient mental health facilities where appropriate. However, that does not seem to have been the case at CYDC. The reports from CYDC staff reflect that concern.

The CHQHHS submission also reflects that there is an anticipated increase in the demand<sup>3358</sup> for Forensic CYMHS services when young people aged 17 years are detained at youth detention centres. The Review considers that such an increase may lead to a demand for inpatient secure services for young people. The Review is aware that there are no adolescent forensic inpatient facilities in Queensland at present.

The Review has received an addendum submission from Children's Health Queensland HHS which notes that young people detained in a detention centre who require intensive clinical care do not have access to multi-disciplinary treatment in a secure clinical inpatient environment at present. In that submission it is stated that these young people are often difficult to manage in existing

inpatient adolescent mental health units. There is a specific concern raised in respect of female young people as it was considered that,

*“the safety of female consumers in Medium Secure and High Secure Units poses multiple challenges at present; these issues are even more problematic in the case of female consumers under eighteen years of age.”*

CHQHHS submit that the demand for an adolescent forensic facility is growing rapidly.

**Recommendation 19.R7** – The Review recommends that consideration should be given to creating a 0.5 FTE consultant psychiatrist and a 1.0 FTE psychiatry registrar to be based at each youth detention centre.

**Recommendation 19.R8** – The Review recommends that a consultant psychiatrist should be available on call after hours and on weekends.



## CONCLUSION

The Review's terms of reference seek consideration of the following matters:

- whether the mistreatment of young people in youth detention centres is systemic in Queensland;
- a comparative assessment of the current policies, practices and programs relating to the terms of references, delivered in youth detention centres in Queensland and other Australian jurisdictions;
- whether there are any issues with respect to the matters within the terms of reference that are of specific relevant to Aboriginal and Torres Strait Islander young people;
- any interim measure that should be implemented prior to the transition of 17-year-olds from prisons to youth detention centres.

As outlined earlier in this report, the Review was subject to a number of limitations, the most significant of which has been time. The Review was staffed by a small team of people, their combined experience and effort has permitted a considerable amount of documentary information, international and national literature, national and state legislation, state regulation and youth justice policies to be collated and understood.

Public submissions from a variety of community, legal and health organisations and experts have added rigour to the Review's work. That these groups and individuals were prepared at short notice to provide quite comprehensive submissions speaks of their commitment to this area.

Our inquiry included site visits to two youth detention centres and a number of adult correctional facilities. The value of these site visits cannot be overstated nor can the importance of our discussions with young people. We are grateful to the relevant detention staff for organising these site visits and to the parents of the young people who gave their consent for us to speak with them.

The young people are to be commended for speaking with us so candidly about their personal histories, experiences and the incidents under review. They were for many of the young people traumatic experiences which are now painful memories.

It is important to note that all of the young people spoken to were candid as to their choices and behaviour which had led them to being in detention. Likewise all accepted that at times their behaviour, whilst in youth detention, could be challenging, difficult and at times disrespectful.

Many young people in detention are from disadvantaged backgrounds, and in the case of CYDC, many are geographically distant from their homes.

It is not unusual for young people to form attachments, both positive and negative, with staff at detention centres. Some staff have mentored young people and in the examination of the allegations, some staff had clearly fulfilled that role positively.



Tutors and teachers in subjects such as art and music were also very encouraging of young people and nurtured obvious talent, a fact acknowledged by the young people. Some of the work we were shown in ceramics, painting, beading, woodwork and sewing to name a few were sophisticated and reflective of the young person's experiences. It was also recognised at times by staff in their behavioural plans, that these artistic expressions were a calming and focussed activity. It is encouraging that the Review was informed that attachments to staff are being utilised at times in transitioning young people back into the community. As these young people have often been disengaged from school, community and importantly their peers the transition is a challenging time.

Whilst those are positive attributes for staff and youth interaction, the incidents that were the subject of the Review's Terms of Reference centre upon allegations of mistreatment of young people.

### IS THERE SYSTEMIC MISTREATMENT OF YOUNG PEOPLE IN YOUTH DETENTION CENTRES IN QUEENSLAND?

The Review is unable to form any concluded view as to whether there is or is not systemic mistreatment of young people in Queensland youth detention centres due to:

- the time limits of this Review;
- the relatively small number of incidents included in the Review's terms of reference;
- the systems of oversight mechanisms in youth detention are currently complaint based;
- only one of the 8 young people involved in the review incidents actually made a complaint;
- on discussing young people's experiences and lack of complaints with them, there appeared to be a degree of acceptance that the use of force, restraints and separation was routine;
- the failure to properly categorise and record use of force, restraints and separation at CYDC, in the incidents reviewed, resulted in no external oversight. The incident was confined to the centre.

The Review finds that the incidents reviewed are not sufficient to support a finding that there is systemic mistreatment of young people in CYDC.

However, the Review is unable to conclude that there is no systemic mistreatment of young people in Queensland youth detention centres.

There are a number of indicators that systemic mistreatment may exist in Queensland youth detention centres. A number of these mistreatment indicators were identified by the Review when reviewing documents for relevant information relating to the specific incidents under review. For example in the course of reviewing health records it became apparent that there were numerous occasions when medication was not given as youth justice staff would not permit a registered nurse to go into a locked



room to administer medication. When reviewing education records it became apparent that young people did not always attend education classes. When reviewing DCCSDS records incidents of harm had not been reported. While it is accepted that some of those issues may reflect poor record keeping it remains a concern that they may be indicative of broader systemic mistreatment issues.

In addition other concerning systemic mistreatment indicators were identified as follows:

- there were similarities in the ways that the young people's conduct was dealt with by CYDC, including use of force, mechanical restraints, separation and BDP's;
- those responses appeared to be consistently engaged regardless of the nature of the conduct of the young person;
- those similarities spanned the timeframe under review, 2012 – 2016;
- the use of BDP's in response to misbehaviour included a high number of conditions that were not individualised;
- high numbers of incidents of use of force, restraint and separation reported in the quarterly Inspectorate reports;
- low numbers of complaints from young people;
- medication being withheld when a young person was in separation.

In a number of the incidents under review it was considered that there appeared to be a reliance on the use of mechanical restraints in response to incidents. The identification of use of force and use of mechanical restraints in CYDC as an issue of concern is not confined to investigations of this Review and has been raised elsewhere. Use of force practices were highlighted as issues in the June 2012, September 2012, March 2013, September 2014, March 2015, June 2015, December 2015 reports.<sup>3359</sup> Restraint practices were highlighted as issues in the June 2012, September 2012, March 2013, September 2014, March 2015, June 2015, December 2015 reports.<sup>3360</sup>

In the course of its investigations, the Review devoted a chapter to Behavioural Development Plans in CYDC due to the identified similarities between the incidents and young people's experiences. Of particular concern was that the use of BDP's appeared to be punitive in nature and imposed conditions including separation from peers and restrictions on access to education and programs.

There was a lack of notification to parents or guardians of young people of issues or incidents of concern.

<sup>3359</sup> CYDC – Quarterly Inspection Summary, June 2012, September 2012, March 2013, September 2014, March 2015, June 2015, December 2015, edocs 3536411.

<sup>3360</sup> CYDC – Quarterly Inspection Summary, June 2012, September 2012, March 2013, September 2014, March 2015, June 2015, December 2015, edocs 3536411.



## COMPARATIVE ASSESSMENT OF CYDC AND BYDC

All of the youth detention centre incidents reviewed occurred at CYDC. There were no reported incidents included in the terms of reference at BYDC. That does not indicate there are no issues of concern at BYDC.

The site visits were instructive. In BYDC, the campus appeared not dissimilar to a school campus, albeit with a large perimeter fence. There are trees and gardens. There is a yarning circle which is important to the Aboriginal and Torres Strait Islander community. Exercise equipment is visible and some young people were playing sport when the Review team attended.

At both centres, we observed young people involved in educational and vocational activities. Young people involved in hospitality provided morning tea at BYDC of which they were justifiably proud.

At CYDC, the dry climate creates a challenging environment, but the difference in the surrounds was striking. At CYDC there was a single tree and most of the outside areas were without any shade.

Criticism of the uniforms was contained in submissions to the Review from community stakeholders. One submission stated that:

*... CYDC staff wear a police style uniform. That is unnecessary, they look like an army. In my view this style of uniform should be removed. CYDC is supposed to be a place of care. I am well aware that the children in CYDC have been put there for a "reason", but there is no reason or excuse for CYDC staff to act without any therapeutic regard for the children's wellbeing. In my view, the uniform encourages a heavy handed approach by CYDC staff. I accept, of course, that not all staff are abusive to the children; some staff are very good to them.*<sup>3361</sup>

It has since has been acknowledged within CYDC that the uniforms do not align with Trauma Informed Practice.<sup>3362</sup> A review of cultural services and programs at CYDC recommended a plan to discontinue the current uniforms be implemented for that reason.<sup>3363</sup>

## ABORIGINAL AND TORRES STRAIT ISLANDER YOUNG PEOPLE

The Review was asked to consider whether there are any issues with respect to the matters within the terms of reference that are relevant to Aboriginal and Torres Strait Islander young people. There were a number of issues outside of the Terms of Reference that were raised by stakeholders in their submissions to the Review.

The Review acknowledges that there should not be a myopic or 'single issue' focus to the needs of Aboriginal and Torres Strait Islander young people in youth detention. It

<sup>3361</sup> Submission to the Review from Professor Gracelyn Smallwood, 23 November 2016, para 10, p 2, edocs 3544834.

<sup>3362</sup> Affidavit of Individual YJ-47, sworn 1 November 2016, Exhibit 2-5, Minutes of Quarterly Performance Reviews, 1 March 2016, p 324, edocs 34781812.

<sup>3363</sup> CYDC Cultural Unit /Cultural Programs Review and Evaluation Report, 17 June 2016, edocs 3447055.



has been noted that vulnerabilities such as cultural background, care status and socio-economic status should not be pathologised or used as the sole basis for labelling a child as a 'risk'.<sup>3364</sup> The overrepresentation of Aboriginal and Torres Strait Islander young people in youth detention centres is a complex, nuanced issue linked to multiple specific criminogenic issues. These issues include physical and mental health problems, over-representation in the child protection system, stress related to lack of cultural identity, significant life skills deficiencies, over-crowded housing and high rates of homelessness.<sup>3365</sup> All of these issues can contribute to the levels of representation of Aboriginal and Torres Strait Islander young people in youth detention. They may also contribute to rates of recidivism.

The assessment of risk in youth detention has been critiqued for its generic application to racialised populations in youth detention. It has also been criticised for failing to recognise that different cultural groups have different self-reported needs, experience victimization and criminalization differently.

Of particular note to Aboriginal and Torres Strait Islander young people, is the impact of trauma and intergenerational trauma on underlying causes of criminality. This is inclusive of mental health, substance use, violence and challenges associated with remote and rural communities. Intergenerational trauma is one recognised type of trauma.<sup>3366</sup>

It has been recognised by the State, that Aboriginal and Torres Strait Islander young people are likely to have suffered inter-generational and historical trauma.<sup>3367</sup> This is significant especially when Queensland's geographical attributes are considered. The Royal Commission into Aboriginal Deaths in Custody identified specific needs of 'ex-reserve' communities in Northern Queensland,<sup>3368</sup> mostly to be found in the Cape York and Torres Strait Island regions.<sup>3369</sup>

Many Aboriginal and Torres Strait Islander young people detained at CYDC are from Cape York communities and the transition pre- and post-detention is made more difficult by the geographic factor. This geographic isolation presents a number of problems for young people in youth detention; in particular, it results in diminished community connection.<sup>3370</sup>

It has been noted that there are high rates of suicide among young Aboriginal and Torres Strait Islander men in particular<sup>3371</sup> and also among Aboriginal and Torres Strait Islander children in the Cape York and Torres Strait communities.<sup>3372</sup> A 2014-2015 study in certain Cape York communities recorded high cognitive developmental

<sup>3364</sup> Sisters Inside Inc., Submission to Independent Review of Youth Detention in Queensland, October 2016, p 19.

<sup>3365</sup> Aboriginal and Torres Strait Islander Legal Services (Qld) Ltd., Submission to Independent Review of Youth Detention in Queensland, October 2016, p 2.

<sup>3366</sup> *Youth Justice in Queensland – Trauma-Informed Practice Practice Model*, v 2.0, date of operation 1 July 2016, p 2, edocs 3433858.

<sup>3367</sup> *Youth Justice in Queensland – Trauma-Informed Practice Practice Model*, v 2.0, date of operation 1 July 2016, p 2, edocs 3433858.

<sup>3368</sup> Royal Commission into Aboriginal Deaths in Custody, Regional Report of Inquiry in Queensland (1991), p 41.

<sup>3369</sup> Royal Commission into Aboriginal Deaths in Custody, Regional Report of Inquiry in Queensland (1991), p 195.

<sup>3370</sup> Mary Sheehan, Consuelo Reed, Mike Hobbs, Submission No 15 to Independent Review of Youth Detention, 26 October 2016, p 4.

<sup>3371</sup> Cape York Institute, Submission to the Deloitte Access Economics review into disability policy in Queensland state schools being conducted for the Queensland Government, October 2016, p 5.

<sup>3372</sup> Cape York Institute, Submission to the Deloitte Access Economics review into disability policy in Queensland state schools being conducted for the Queensland Government, October 2016, p 6.



delay<sup>3373</sup> and high rates of social and emotional disorders.<sup>3374</sup> Intellectual impairment is correlated with mental illness, incarceration, spectrum disorders, and early childhood trauma,<sup>3375</sup> which are all disproportionately prevalent in the Aboriginal and Torres Strait Islander population.<sup>3376</sup>

A further important consideration is the intersection between placement in child protection and youth detention.

As a result of this complex interaction of factors, Aboriginal and Torres Strait Islander young people tend to experience detention and in particular sentenced detention at disproportionate rates. In the 2014-2015 year, 83% of children held in Queensland youth detention, on an average day, were being held on remand.<sup>3377</sup> Aboriginal and Torres Strait Islander young people are overrepresented (61%) amongst those held on remand.<sup>3378</sup> These figures are higher than the national averages for children on remand (60% and 57%, respectively).<sup>3379</sup>

Submissions to the Review suggested that there were major challenges associated with Aboriginal and Torres Strait Islander young people and bail, including:

- failure to lodge a bail application;
- perceived risk of re-offending;
- the absence of a parent at the bail hearing;
- previous breach of bail; and
- lack of a suitable bail address.<sup>3380</sup>

Another issue raised in submissions was insufficient consideration of the intersection of Aboriginal and Torres Strait Islander issues with gender, mental health issues, and placement in residential care. It has been recognised that child protection placements increase girls' risk of contact with the criminal justice system.<sup>3381</sup> Aboriginal and Torres Strait Islander young people as a population, are highly over-represented in detention, young women, with longer stays in detention and higher rates of detention are exposed at a greater rate to systemic and racial bias and represent a more vulnerable population in need of special consideration.<sup>3382</sup>

Sisters Inside in their submission to the Review highlighted the importance of recognising that young women in detention centres often have a history of sexual

<sup>3373</sup> Cape York Institute, Submission to the Deloitte Access Economics review into disability policy in Queensland state schools being conducted for the Queensland Government, October 2016, p 21.

<sup>3374</sup> Cape York Institute, Submission to the Deloitte Access Economics review into disability policy in Queensland state schools being conducted for the Queensland Government, October 2016, p 22.

<sup>3375</sup> Cape York Institute, Submission to the Deloitte Access Economics review into disability policy in Queensland state schools being conducted for the Queensland Government, October 2016, p 9.

<sup>3376</sup> Cape York Institute, Submission to the Deloitte Access Economics review into disability police in Queensland state schools being conducted for the Queensland Government, October 2016, p 9.

<sup>3377</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2014-2015* (2016), Table S110a.

<sup>3378</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2014-2015* (2016), Table S110a.

<sup>3379</sup> Australian Institute of Health and Welfare, *Youth Justice in Australia 2014-2015* (2016), Table S110a.

<sup>3380</sup> Amnesty International Australia, Submission to Independent Review of Youth Detention in Queensland, Appendix A: 'Heads Held High: Keeping Queensland kids out of detention, strong in culture and community,' October 2016, pp 37-38; Youth Empowered Toward Independence (YETI) Submission to Independent Review of Youth Detention in Queensland, October 2016, 13; Sisters Inside Inc., Submission to Independent Review of Youth Detention in Queensland, October 2016, p 13.

<sup>3381</sup> Sisters Inside Inc., Submission to Independent Review of Youth Detention in Queensland, October 2016, p 8.

<sup>3382</sup> Sisters Inside Inc., Submission to Independent Review of Youth Detention in Queensland, October 2016, p 4.



assault and suffer post-traumatic stress disorder<sup>3383</sup> This poses a risk that even where policies are developed to promote the protection of the detainees' relationship with their culture, they may still fail to address the intersection of the detainee's Aboriginal and Torres Strait Islander and gender identities.

Aboriginal and Torres Strait islander young people represent some of the most vulnerable young people in Australia. That is prior to any exposure to the climate and institutions of youth detention. It is vital for any institution to take in to account the unique histories of such young people and effectively respond to them to ensure that they are not exposed to further trauma. At present, there are policies in place in youth detention centres which address, separately, Aboriginal and Torres Strait Islander identity issues and mental health issues.

The Review recognises the work of DJAG in establishing in Queensland detention centres "Trauma informed practice (TIP)." TIP is a strengths-based framework that emphasises physical, psychological and emotional safety, while allowing survivors of trauma to rebuild a sense of control and empowerment.<sup>3384</sup> It creates an organisational culture that acknowledges past trauma and works towards rehabilitation.<sup>3385</sup> It involves a specific recognition of the historical trauma experienced by Aboriginal and Torres Strait Islander young people, and offers cultural healing practices.<sup>3386</sup>

Youth Justice in Queensland adopted TIP as standard practice in 2015, with staff training beginning in February 2016.<sup>3387</sup> Queensland adopted the practice following its success in other government agencies.<sup>3388</sup> All staff, including health and education staff, will receive TIP training.<sup>3389</sup> Currently, 68% of staff at Brisbane Youth Detention Centre, and 78% of staff at Cleveland Youth Detention Centre are trained in TIP.<sup>3390</sup>

#### ANY INTERIM MEASURE THAT SHOULD BE IMPLEMENTED PRIOR TO THE TRANSITION OF 17-YEAR-OLDS FROM PRISONS TO YOUTH DETENTION CENTRES.

Various submissions were received from stakeholders which were relevant to the 17-year-old transition of young people from adult correctional services to youth justice services. Although these submissions raise issues outside the scope of this Review they are included here to assist with the next 12 months transition planning.

Each submission has, in its own way, some impact on the demand for youth detention centre beds for young people in the near future.

This table is a list of submissions from external stakeholders. It is not a list of recommendations from the Review.

<sup>3383</sup> Department of Justice and Attorney-General, *Youth Detention Centre Demand Management Strategy 2013-2023* (undated draft), 4.

<sup>3384</sup> *Youth Justice in Queensland – Trauma-Informed Practice Practice Model*, v 2.0, date of operation 1 July 2016, p 1, edocs 3433858.

<sup>3385</sup> *Youth Justice in Queensland – Trauma-Informed Practice Practice Model*, v 2.0, date of operation 1 July 2016, p 2, edocs 3433858.

<sup>3386</sup> *Youth Justice in Queensland – Trauma-Informed Practice Practice Model*, v 2.0, date of operation 1 July 2016, p 2, edocs 3433858.

<sup>3387</sup> Affidavit of YJ-47 sworn 30 September 2016, para 32, edocs 3439519.

<sup>3388</sup> Affidavit of YJ-47 sworn 30 September 2016, para 33, edocs 3439519.

<sup>3389</sup> Affidavit of YJ-47 sworn 30 September 2016, para 37, edocs 3439519.

<sup>3390</sup> Affidavit of YJ-47 sworn 30 September 2016, para 42, edocs 3439519.



External stakeholder submissions
<ul style="list-style-type: none"> <li>• A review of identified barriers to bail being undertaken to reduce the percentage of young people subject to remand within youth detention centres.</li> </ul>
<ul style="list-style-type: none"> <li>• The implementation of remand reduction strategies for 17-year-olds being progressed.</li> </ul>
<ul style="list-style-type: none"> <li>• An independent review of remand being undertaken, including by way of consultation with relevant stakeholders and investigation of local, national and international programs and remand reduction strategies.</li> </ul>
<ul style="list-style-type: none"> <li>• The age of criminal responsibility being raised to 12 years.</li> </ul>
<ul style="list-style-type: none"> <li>• The presumption against legal capacity contained in section 29(2) of the Criminal Code Act 1899 (doli incapax) remaining in place for children aged between 12 and 14 years old.</li> </ul>
<ul style="list-style-type: none"> <li>• Children under the age of 12 currently in detention could be transitioned out of detention through a co-ordinated Youth Justice and Child Safety response.</li> </ul>
<ul style="list-style-type: none"> <li>• Policing referral and cautioning rates being regularly reviewed as part of a wider restorative justice approach to youth offending. Queensland Police to receive additional training on recent legislative amendments and utilising diversion responses for 17-year-olds.</li> </ul>
<ul style="list-style-type: none"> <li>• Particular emphasis being placed on reviewing the rates of ATSI young people being referred through restorative justice processes. Strategies should be considered and implemented to increase the referral of ATSI young people to restorative justice processes where possible.</li> </ul>
<ul style="list-style-type: none"> <li>• Consideration of a review of exclusion and suspension practices by the Education Queensland and how these practices impact on youthful offenders.</li> </ul>

The Review has made a number of findings and recommendations and trusts that these will be of benefit in planning contemporary, best practice youth justice services in Queensland that will positively influence the lives of young people in this State.















## APPENDIX 2 DISCUSSION PAPER

Discussion Paper – published 30 September 2016

<https://www.youthdetentionreview.qld.gov.au/discussion-paper>

## APPENDIX 3 COMPARATIVE ANALYSIS OF LEGISLATION APPLYING IN RELATION TO THE 7 INCIDENTS UNDER INVESTIGATION

The table reflects changes in the way the provisions work in the following way:

- **Bold**: additions to the provision from its previous version of provision
- ~~Strikethrough~~: subtractions from previous version of provision

Version numbers of the Act/regulation or dates that the Act/regulation is in force. Superseded versions are available from:

1. For the *Youth Justice Act 1992*: <https://www.legislation.gov.uk/ukpga/1992/24/acts> - <https://www.legislation.gov.uk/ukpga/1992/24/acts/1992-24-24/1>
2. For the *Youth Justice Regulation 2003*: <https://www.legislation.gov.uk/si/2003/1040/regulation/2003-1040-1040/1>

As the *Youth Justice Regulation 2016* has not been amended, there are no superseded versions.

### YOUTH JUSTICE ACT 1992 - RELEVANT PROVISIONS OVER TIME

	20 January 2013 Young Person A3 Version 100 of the Act as in force 1 January 2013 applied	May 2013 Young person A9 The Act in force as at 5 April 2013 applied	21 January 2015 Young person A4 – verbal incident (CYDC) The Act in force as at 15 August 2014 applied	5 June 2015 Young person A4 – physical incident (CYDC) The Act in force as at 15 August 2014 applied	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC) The Act in force as at 15 August 2014 applied	8 August 2016 Young person A8 – NAIDOC week incident (CYDC) The Act in force as at 1 July 2016 applied	Current (current as at 23 September 2016)
<b>Youth Justice principles – s 3</b>	Schedule 1 of the Act sets out a charter of principles, which underlie the operation of the <i>Youth Justice Act 1992</i> . <sup>338</sup> The provision has been unchanged since the <i>Juvenile Justice and Other Acts Amendment Act 2009</i> No 34.						
<b>Management of detention centres – Youth Justice Act 1992, s 263 (in particular subsection (1) and (3)(b) and (c))</b>	Subject to the Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres <sup>339</sup> , which include maintaining discipline and good order in the centre <sup>340</sup> and the security and management of the centre. <sup>341</sup>  The chief executive may carry out the responsibilities of security and management of detention centres by rules, directions, codes, standards and guidelines for detention centre organisation, functions, conduct and responsibilities of detention centre employees, the types of programs, contact between children detained in the detention centre, and	Subject to the Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres <sup>339</sup> , which include maintaining discipline and good order in the centre <sup>340</sup> and the security and management of the centre. <sup>341</sup>  The chief executive may carry out the responsibilities of security and management of detention centres by rules, directions, codes, standards and guidelines for detention centre organisation, functions, conduct and responsibilities of detention centre employees, the types of programs, contact between children detained in the detention centre, and	Subject to the Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres <sup>339</sup> , which include maintaining discipline and good order in the centre <sup>340</sup> and the security and management of the centre. <sup>341</sup>  The chief executive may carry out the responsibilities of security and management of detention centres by rules, directions, codes, standards and guidelines for detention centre organisation, functions, conduct and responsibilities of detention centre employees, the types of programs, contact between children detained in the detention centre, and	Subject to the Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres <sup>339</sup> , which include maintaining discipline and good order in the centre <sup>340</sup> and the security and management of the centre. <sup>341</sup>  The chief executive may carry out the responsibilities of security and management of detention centres by rules, directions, codes, standards and guidelines for detention centre organisation, functions, conduct and responsibilities of detention centre employees, the types of programs, contact between children detained in the detention centre, and	Subject to the Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres <sup>339</sup> , which include maintaining discipline and good order in the centre <sup>340</sup> and the security and management of the centre. <sup>341</sup>  The chief executive may carry out the responsibilities of security and management of detention centres by rules, directions, codes, standards and guidelines for detention centre organisation, functions, conduct and responsibilities of detention centre employees, the types of programs, contact between children detained in the detention centre, and	Subject to the Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres <sup>339</sup> , which include maintaining discipline and good order in the centre <sup>340</sup> and the security and management of the centre. <sup>341</sup>  The chief executive may carry out the responsibilities of security and management of detention centres by rules, directions, codes, standards and guidelines for detention centre organisation, functions, conduct and responsibilities of detention centre employees, the types of programs, contact between children detained in the detention centre, and	Subject to the Act, the chief executive is responsible for the security and management of detention centres and the safe custody and wellbeing of children detained in detention centres <sup>339</sup> , which include maintaining discipline and good order in the centre <sup>340</sup> and the security and management of the centre. <sup>341</sup>  The chief executive may carry out the responsibilities of security and management of detention centres by rules, directions, codes, standards and guidelines for detention centre organisation, functions, conduct and responsibilities of detention centre employees, the types of programs, contact between children detained in the detention centre, and

<sup>338</sup> Youth Justice Act 1992, s 3.

<sup>339</sup> Youth Justice Act 1992, s 263(1).

<sup>340</sup> Youth Justice Act 1992, s 263(3)(a).

<sup>341</sup> Youth Justice Act 1992, s 263(3)(b).

<sup>342</sup> Youth Justice Act 1992, s 263(3)(c).

<sup>343</sup> Youth Justice Act 1992, s 263(3)(d).

<sup>344</sup> Youth Justice Act 1992, s 263(3)(e).

<sup>345</sup> Youth Justice Act 1992, s 263(3)(f).

<sup>346</sup> Youth Justice Act 1992, s 263(3)(g).

	20 January 2013 Young Person A3 Version 100 of the Act as in force 1 January 2013 applied	May 2013 Young person A9 The Act in force as at 5 April 2013 applied	21 January 2015 Young person A4 – verbal incident (CYDC) The Act in force as at 15 August 2014 applied	5 June 2015 Young person A4 – physical incident (CYDC) The Act in force as at 15 August 2014 applied	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC) The Act in force as at 15 August 2014 applied	8 August 2016 Young person A8 – NAIDOC week incident (CYDC) The Act in force as at 1 July 2016 applied	Current (current as at 23 September 2016)
	arrangements for education, recreational and social activities of detained children. <sup>340</sup> The chief executive must ensure that youth justice principles 3, 15, 19 and 20 are complied with in relation to each child detained in the centre. <sup>341</sup> Subsection (5) to limit another provision of this Act. <sup>342</sup> As amended by <i>Youth Justice and Other Legislation Amendment Act (No. 1) 2016</i> No. 38 s 48 (commenced 1 July 2016) to reflect a cross-reference to a youth justice principle. The cross-reference was necessary to add in a youth justice principle about sentencing a child to detention being a matter of last resort and for the least time in the circumstances. <sup>343</sup> In force from 29 March 2010. This provision was amended by <i>Juvenile Justice and Other Acts Amendment Act 2009</i> No. 34 s 45(3) sch pt 3 amendment 38 (commenced 29 March 2010).	between children detained in the detention centre, and arrangements for education, recreational and social activities of detained children. <sup>344</sup> The chief executive must ensure that youth justice principles 3, 15, 18 and 19 are complied with in relation to each child detained in the centre. <sup>345</sup> Subsection (5) to limit another provision of this Act. <sup>346</sup> As amended by <i>Youth Justice and Other Legislation Amendment Act (No. 9) s 19</i> (commenced 28 March 2014), which changed the youth justice principles referred to from 19 and 20 to 18 and 19, which reflected the removal of a youth justice principle that detention was the last resort and for the shortest period.	education, recreational and social activities of detained children. <sup>347</sup> The chief executive must ensure that youth justice principles 3, 15, 18 and 19 are complied with in relation to each child detained in the centre. <sup>348</sup> Subsection (5) to limit another provision of this Act. <sup>349</sup> As amended by <i>Youth Justice and Other Legislation Amendment Act 2014</i> No. 9 s 19 (commenced 28 March 2014), which changed the youth justice principles referred to from 19 and 20 to 18 and 19, which reflected the removal of a youth justice principle that detention was the last resort and for the shortest period.	centre, and arrangements for education, recreational and social activities of detained children. <sup>350</sup> The chief executive must ensure that youth justice principles 3, 15, 19 and 20 are complied with in relation to each child detained in the centre. <sup>351</sup> Subsection (5) to limit another provision of this Act. <sup>352</sup> As amended by <i>Youth Justice and Other Legislation Amendment Act (No. 1) 2016</i> No. 38 s 48 (commenced 1 July 2016) to reflect a cross-reference to a youth justice principle. The cross-reference was necessary to add in a youth justice principle about sentencing a child to detention being a matter of last resort and for the least time in the circumstances. <sup>353</sup>			
Obligation to report harm to children in detention centres - <i>Youth Justice Act 1992</i> , s 268 (in particular (1)(b))	There is an obligation to report harm or suspected harm to the chief executive, however the harm is caused (subject to reasonable excuses, including that the information might tend to incriminate the person). <sup>354</sup> Harm is defined as any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing. <sup>355</sup> Inserted in <i>Juvenile Justice Amendment Act 2002</i> No. 39 s 102 and unamended as commenced on 1 July 2003. For information about what the report is to contain, see the <i>Youth Justice Regulation 2003/2016</i> entry about reporting harm to a child.						
Complaints - <i>Youth Justice Act 1992</i> , s 277	A child may complain about a matter that may affect a child. <sup>356</sup> The chief executive must issue written directions on how a complaint must be made and dealt with, including by directing the complainant to a <b>community justice community visitor (child)</b> , <b>child advocacy officer</b> or other appropriate						

<sup>340</sup> *Youth Justice Act 1992*, s 263(2).

<sup>341</sup> *Youth Justice Act 1992*, s 263(5).

<sup>342</sup> *Youth Justice Act 1992*, s 263(6).

<sup>343</sup> *Youth Justice and Other Legislation Amendment Act (No. 1) 2016* s 56.

<sup>344</sup> *Youth Justice Act 1992*, s 263(2).

<sup>345</sup> *Youth Justice Act 1992*, s 263(5).

<sup>346</sup> *Youth Justice Act 1992*, s 263(6).

<sup>347</sup> *Youth Justice Act 1992*, s 263(2).

<sup>348</sup> *Youth Justice Act 1992*, s 263(5).

<sup>349</sup> *Youth Justice Act 1992*, s 263(6).

<sup>350</sup> *Youth Justice and Other Legislation Amendment Act (No. 1) 2016* s 56.

<sup>351</sup> *Youth Justice Act 1992*, s 268(1)(b).

<sup>352</sup> *Youth Justice Act 1992*, s 268(6).

<sup>353</sup> *Youth Justice Act 1992*, s 277(1).

<sup>354</sup> *Youth Justice Act 1992*, s 277(1).

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	community visitor or other appropriate authority. <sup>3415</sup> The chief executive must tell the child how the complaint will be dealt with <sup>3416</sup> and does not have to deal with complaints the chief executive reasonably believes to be trivial or made only to cause annoyance. <sup>3417</sup>  A child may complain directly to a community visitor, <sup>3418</sup> and nothing in the provision affects the powers of the community visitor. <sup>3419</sup>  In force as at 2 February 2001. As amended by <i>Commission for Children and Young People Act 2000</i> No. 60 s 175 schedule 3.		authority. <sup>3421</sup> The chief executive must tell the child how the complaint will be dealt with <sup>3422</sup> and does not have to deal with complaints the chief executive reasonably believes to be trivial or made only to cause annoyance. <sup>3423</sup>  A child may complain directly to a community visitor, community visitor (child) or child advocacy officer, <sup>3424</sup> and nothing in the provision affects the powers of the community visitor, community visitor (child) or child advocacy officer. <sup>3425</sup>  In force as at 1 July 2014. As amended by <i>Public Guardian Act 2014</i> No. 26 s 285 (commenced 1 July 2014), which altered the reference from 'community visitor' to community visitor (child) or child advocacy officer.				
Reports about children – <i>Youth Justice Act 1992</i> s 303	The chief executive is required to collect and keep the information prescribed under a regulation about children dealt with under the Act. <sup>3426</sup> The regulation may also provide for the requirements about giving reports about the information or publishing the information, subject to the requirements of section 301 of the Act (which contains a prohibition on publishing identifying information about a child). <sup>3427</sup>  Section 303 was amended by the <i>Youth Justice and Other Legislation Amendment Act 2014</i> and <i>Youth Justice and Other Legislation Amendment Act (No. 1) 2016</i> in a way that is not material to the Review.						
Regulation-making power – <i>Youth Justice Act 1992</i> s 314	The Governor in Council has the power to make regulations for the Act, including (and without limiting the general power to make regulations), on the subject matters referred to in schedule 2. <sup>3428</sup>  As amended by <i>Juvenile Justice Amendment Act 2002</i> No. 39 s 113 (commenced 1 July 2003)						
Regulation-making power (schedule 2) – <i>Youth Justice Act 1992</i> , schedule 2 (in particular items 6, 7 and 10)	The Governor in Council has the power to make regulations with respect to, among other things, standards, management, control and supervision of detention centres, the maintenance of good order and discipline within detention centres and search children and their possessions in detention centres. <sup>3429</sup>  As in force from 1 July 2003.		Amendments were made commencing 31 January 2013 <sup>3430</sup> to allow matters to be prescribed for boot camp (vehicle offences) orders. The particular items 6, 7 and 10 were amended to empower the Governor in Council to make regulations with respect to standards, management, control and supervision of detention centres and boot camps, the maintenance of good order and discipline within detention centres and boot camps and search children and their possessions in detention centres, and boot camps. <sup>3431</sup>				The Governor in Council has the power to make regulations with respect to standards, management, control and supervision of detention centres and boot camps, the maintenance of good order and discipline within detention centres and boot camps and search children and their possessions in detention centres and boot camps. <sup>3432</sup>

<sup>3415</sup> *Youth Justice Act 1992* s 27(2).

<sup>3416</sup> *Youth Justice Act 1992* s 27(4).

<sup>3417</sup> *Youth Justice Act 1992* s 27(5).

<sup>3418</sup> *Youth Justice Act 1992* s 27(3).

<sup>3419</sup> *Youth Justice Act 1992* s 27(6).

<sup>3420</sup> *Youth Justice Act 1992* s 27(1).

<sup>3421</sup> *Youth Justice Act 1992* s 27(1).

<sup>3422</sup> *Youth Justice Act 1992* s 27(5).

<sup>3423</sup> *Youth Justice Act 1992* s 27(6).

<sup>3424</sup> *Youth Justice Act 1992* s 303(1).

<sup>3425</sup> *Youth Justice Act 1992* s 303(2) and (3).

<sup>3426</sup> *Youth Justice Act 1992* s 314(3) and (2).

<sup>3427</sup> *Youth Justice Act 1992* s 314(3) and (2).

<sup>3428</sup> *Youth Justice Act 1992* s 314(3) and (2).

<sup>3429</sup> *Youth Justice Act 1992* s 314(3) and (2).

<sup>3430</sup> *Youth Justice Act 1992* s 314(3) and (2).

<sup>3431</sup> *Youth Justice Act 1992* s 314(3) and (2).

<sup>3432</sup> *Youth Justice Act 1992* s 314(3) and (2).

	20 January 2013 Young Person A3 Version 100 of the Act as in force 1 January 2013 - applied	May 2013 Young person A9 The Act in force as at 5 April 2013 applied	21 January 2015 Young person A4 – verbal incident (CYDC) The Act in force as at 15 August 2014 applied	5 June 2015 Young person A4 – physical incident (CYDC) The Act in force as at 15 August 2014 applied	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC) The Act in force as at 15 August 2014 applied	8 August 2016 Young person A8 – NADOC week incident (CYDC) The Act in force as at 1 July 2016 applied	Current (current as at 23 September 2016)
			In 2013 an amendment was made to item 5 and to insert a new item 14, in particular in relation to boot camp (vehicle offences orders). Items 6, 7 and 10 were not affected and were the same as in the previous column (i.e. the same as at 31 January 2013).			Youth Justice and Other Legislation Amendment Act (No. 1) 2016 No. 38 s 56. The amendments remove the Governor-in-Council's capacity to make a regulation providing for boot camps.	
Youth Justice principles – Youth Justice Act 1992, schedule 1, (in particular youth justice principles 3, 15, 19 and 20)	<p><b>Youth Justice Principle 3:</b> A child should be treated with respect and dignity, including while in custody, and should be encouraged to treat other with respect and dignity.<sup>343</sup></p> <p><b>Youth Justice Principle 15:</b> A child being dealt with under the Act should have access to legal and other support services.<sup>344</sup></p> <p><b>Youth Justice Principle 19:</b> While a child is in detention, contacts should be fostered between the child and community.<sup>345</sup></p> <p><b>Youth Justice Principle 20:</b> A child in detention should be provided with a safe and stable living environment, should be helped to maintain relationships with family and the community, should be consulted about and make decisions about, participating in programs, contact with the child's family, health and schooling, should be given information about the decisions and plans for the child's future, should be given privacy (for example about the child's personal information), should have access to dental, medical and therapeutic services, should have access to education appropriate for the child's development and age and should receive appropriate help transitioning from detention to independence.<sup>346</sup></p> <p>In force since 20 March 2010, when it was amended by the <i>Juvenile Justice and Other Acts Amendment Act 2009</i> No 34, s 45(3) and the schedule, part 3, amendment 38.</p>	<p><b>Youth Justice Principle 3:</b> A child should be treated with respect and dignity, including while in custody, and should be encouraged to treat other with respect and dignity.<sup>341</sup></p> <p><b>Youth Justice Principle 15:</b> A child being dealt with under the Act should have access to legal and other support services.<sup>343a</sup></p> <p><b>Youth Justice Principle 19 18:</b> While a child is in detention, contacts should be fostered between the child and community.<sup>341b</sup></p> <p><b>Youth Justice Principle 20 19:</b> A child in detention should be provided with a safe and stable living environment, should be helped to maintain relationships with family and the community, should be consulted about and make decisions about, participating in programs, contact with the child's family, health and schooling, should be given information about the decisions and plans for the child's future, should be given privacy (for example about the child's personal information), should have access to dental, medical and therapeutic services, should have access to education appropriate for the child's development and age and should receive appropriate help transitioning from detention to independence.<sup>342</sup></p> <p>Content same as current, but renumbering of youth justice principles 18 and 19 occurred. The change was due to the removal of a youth justice principle providing that detention was the last resort and for the shortest period (former Youth Justice Principle 19). A renumbering occurred, which meant that current Youth Justice Principle 19 became youth justice principle 18 and Youth Justice Principle 20 became Youth Justice Principle 19.<sup>341c</sup></p>	<p>In 2013 an amendment was made to item 5 and to insert a new item 14, in particular in relation to boot camp (vehicle offences orders). Items 6, 7 and 10 were not affected and were the same as in the previous column (i.e. the same as at 31 January 2013).</p> <p><b>Youth Justice Principle 3:</b> A child should be treated with respect and dignity, including while in custody, and should be encouraged to treat other with respect and dignity.<sup>342</sup></p> <p><b>Youth Justice Principle 15:</b> A child being dealt with under the Act should have access to legal and other support services.<sup>342</sup></p> <p><b>Youth Justice Principle 19:</b> While a child is in detention, contacts should be fostered between the child and community.<sup>342a</sup></p> <p><b>Youth Justice Principle 20:</b> A child in detention should be provided with a safe and stable living environment, should be helped to maintain relationships with family and the community, should be consulted about and make decisions about, participating in programs, contact with the child's family, health and schooling, should be given information about the decisions and plans for the child's future, should be given privacy (for example about the child's personal information), should have access to dental, medical and therapeutic services, should have access to education appropriate for the child's development and age and should receive appropriate help transitioning from detention to independence.<sup>342b</sup></p> <p>As amended by <i>Youth Justice and Other Legislation Amendment Act (No. 1) 2016</i> No. 38 s 56 (commenced 1 July 2016) to reflect a cross-reference to a youth justice principle. The cross-reference was necessary to add in a youth justice principle about sentencing a child</p>				

<sup>341</sup> Youth Justice Act 1992, schedule 1.

<sup>341a</sup> Youth Justice Act 1992, schedule 1.

<sup>341b</sup> Youth Justice Act 1992, schedule 1.

<sup>341c</sup> Youth Justice Act 1992, schedule 1.

<sup>342</sup> Youth Justice Act 1992, schedule 1.

<sup>342a</sup> Youth Justice Act 1992, schedule 1.

<sup>342b</sup> Youth Justice Act 1992, schedule 1.

<sup>342c</sup> Youth Justice Act 1992, schedule 1.

<sup>343</sup> Youth Justice Act 1992, schedule 1.

<sup>343a</sup> Youth Justice Act 1992, schedule 1.

<sup>343b</sup> Youth Justice Act 1992, schedule 1.

<sup>343c</sup> Youth Justice Act 1992, schedule 1.

<sup>344</sup> Youth Justice Act 1992, schedule 1.

	20 January 2013 Young Person A3 Version 10D of the Act as in force 1 January 2013 applied	May 2013 Young person A9 The Act in force as at 5 April 2013 applied	21 January 2013 Young person A4 – verbal incident (CYDC) The Act in force as at 15 August 2014 applied	5 June 2015 Young person A4 – physical incident (CYDC) The Act in force as at 15 August 2014 applied	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC) The Act in force as at 15 August 2014 applied	8 August 2016 Young person A8 – NAIDOC week incident (CYDC) The Act in force as at 1 July 2016 applied	Current (current as at 23 September 2016)
			In force 28 March 2014. As amended by <i>Youth Justice and Other Legislation Amendment Act 2014</i> No. 9 s 25 (commenced 28 March 2014), which changed the youth justice principles referred to from 19 and 20 to 18 and 19, which reflected the removal of a youth justice principle that detention was the last resort and for the shortest period.			to detention being a matter of last resort and for the least time in the circumstances. <sup>1426</sup>	

#### YOUTH JUSTICE REGULATION 2003/2016 - RELEVANT PROVISIONS OVER TIME

	20 January 2013 Young Person A3 Version 2C of the regulation as in force on 1 January 2003 applied	May 2013 Young person A9 The regulation in force as at 4 April 2014 applied	21 January 2013 Young person A4 – verbal incident (CYDC) The regulation as in force as at 1 July 2014 applied	5 June 2015 Young person A4 – physical incident (CYDC) The regulation as in force as at 1 July 2014 applied	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC) The regulation as in force as at 1 July 2014 applied	8 August 2016 Young person A8 – NAIDOC week incident (CYDC) The regulation as in force as at 28 October 2015 applied	Current (commenced on 26 August 2016)
Informing child about behaviour - <i>Youth Justice Regulation 2003/2016</i>	The chief executive must give a child admitted to a detention centre a written notice of the types of behaviour for which the chief executive will discipline a child, and explain the notice orally in a way and to the extent that is reasonable, having regard to the child's age and ability to understand. <sup>1427</sup> In force from 1 July 2003 without amendment.						The chief executive must give a child admitted to a detention centre a written notice of the types of behaviour for which the chief executive will discipline a child, and explain the notice orally in a way and to the extent that is reasonable, having regard to the child's age and ability to understand. <sup>1428</sup>
Management of misbehaviour/ managing child's behaviour (respectively) - <i>Youth Justice Regulation 2003/2016</i> <sup>1429</sup>	A child detained in a detention centre must obey a reasonable instruction lawfully given to the child by a detention centre employee. <sup>1430</sup> The chief executive may discipline the child for failing to comply with the direction or for other misbehaviour. <sup>1431</sup> The chief executive must ensure that the disciplinary action respects the child's dignity and has regard to the nature of the misbehaviour, the child's age and maturity and cultural backgrounds and beliefs. <sup>1432</sup>						Heading has changed from referring to misbehaviour to managing the child's behaviour in keeping with the trauma informed practice network implemented throughout youth justice. <sup>1433</sup> A child detained in a detention centre must comply with a reasonable instruction given by a detention

<sup>1426</sup> Youth Justice and Other Legislation Amendment Act (No. 1) 2016 s 56.

<sup>1427</sup> Youth Justice Regulation 2003 s 16.

<sup>1428</sup> Youth Justice Regulation 2016 s 15.

<sup>1429</sup> The Youth Justice Regulation 2003 was repealed by the Youth Justice Regulation 2016 s 50, in accordance with the Statutory Instruments Act 1992 part 7.

<sup>1430</sup> Youth Justice Regulation 2003 s 17(1).

<sup>1431</sup> Youth Justice Regulation 2003 s 17(2).

<sup>1432</sup> Youth Justice Regulation 2003 s 17(3).

<sup>1433</sup> Explanatory Notes, Youth Justice Regulation 2016:4.

	20 January 2013 Young Person A3	May 2013 Young person A9	21 January 2015 Young person A4 – verbal incident (CYDC)	5 June 2015 Young person A4 – physical incident (CYDC)	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2016 Young person A8 – NAIDOC week incident (CYDC)	Current (commenced on 26 August 2016)
	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	centre employee for maintaining the security or good order of the centre or ensuring the safety of a child in the centre. <sup>345.3</sup>  The chief executive may discipline the child for failing to comply with the direction or for other misbehaviour. <sup>345.6</sup> The chief executive must ensure that the disciplinary action respects the child's dignity and have regard to the nature of, and reason for, the misbehaviour, the child's age and maturity and cultural backgrounds and beliefs, any trauma and vulnerability the chief executive knows about. <sup>345.7</sup>  The chief executive must not use corporal punishment, physical contact, an act involving humiliation or physical, emotional or sustained verbal abuse, depriving the child of food, visitors or sleep, withholding letters, other mail, telephone or other communication, exclusion from cultural, educational or vocational programs or medication or deprivation of medication. <sup>345.8</sup>  In force 26 August 2016.
Management of misbehaviour/managing child's behaviour (respectively) - using reasonable force - Youth Justice Regulation 2003/2016	A detention centre employee may use reasonable force to protect a child, another person or property in the detention centre from misbehaviour if the employee reasonably believes the child, person or property cannot be protected in any other way. <sup>345.9</sup>  If force is used the force used must not be more than is reasonably necessary and chief executive must ensure a	A detention centre employee may use reasonable force to protect a child, another person or property in the detention centre from misbehaviour if the employee reasonably believes the child, person or property cannot be protected in any other way. <sup>345.9</sup>  If force is used the force used must not be more than is reasonably necessary and chief executive must ensure a	A detention centre employee may use reasonable force to protect a child, another person or property in the detention centre from misbehaviour if the employee reasonably believes the child, person or property cannot be protected in any other way. <sup>345.9</sup>  If force is used the force used must not be more than is reasonably necessary and chief executive must ensure a record is made of the force used as documented kept at the detention centre. <sup>345.9</sup>	A detention centre employee may use reasonable force to protect a child, another person or property in the detention centre from misbehaviour if the employee reasonably believes the child, person or property cannot be protected in any other way. <sup>345.9</sup>  If force is used the force used must not be more than is reasonably necessary and chief executive must ensure a record is made of the force used as documented kept at the detention centre. <sup>345.9</sup>	A detention centre employee may use reasonable force to protect a child, another person or property in the detention centre from misbehaviour if the employee reasonably believes the child, person or property cannot be protected in any other way. <sup>345.9</sup>  If force is used the force used must not be more than is reasonably necessary and chief executive must ensure a record is made of the force used as documented kept at the detention centre. <sup>345.9</sup>	A detention centre employee may use reasonable force to protect a child, another person or property in the detention centre from misbehaviour if the employee reasonably believes the child, person or property cannot be protected in any other way. <sup>345.9</sup>  If force is used the force used must not be more than is reasonably necessary and chief executive must ensure a record is made of the force used as documented kept at the detention centre. <sup>345.9</sup>	A detention centre employee may use reasonable force to protect a child, another person or property in the detention centre from misbehaviour if the employee reasonably believes the child, person or property cannot be protected in any other way. <sup>345.9</sup>  If force is used the force used must not be more than is reasonably necessary and chief executive must ensure a record is made of the force used as documented kept at the detention centre. <sup>345.9</sup>

<sup>345.1</sup> Youth Justice Regulation 2003 s. 17(4).

<sup>345.2</sup> Youth Justice Regulation 2003 s. 17(5).

<sup>345.3</sup> Youth Justice Regulation 2016 s. 1(2).

<sup>345.4</sup> Youth Justice Regulation 2016 s. 1(3).

<sup>345.5</sup> Youth Justice Regulation 2016 s. 1(4).

<sup>345.6</sup> Youth Justice Regulation 2016 s. 1(5).

<sup>345.7</sup> Youth Justice Regulation 2016 s. 1(6).

<sup>345.8</sup> Youth Justice Regulation 2016 s. 1(7).

<sup>345.9</sup> Physical intervention training is approved by the chief executive under the Youth Justice Regulation 2016 s. 43.

	20 January 2013 Young Person A3	May 2013 Young person A9	21 January 2015 Young person A4 – verbal incident (CYDC)	5 June 2015 Young person A4 – physical incident (CYDC)	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2016 Young person A8 – NAIDOC week incident (CYDC)	Current (commenced on 26 August 2016)
	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	
	record is made of the force in a document kept at the detention centre. <sup>346</sup> Section 17(7) in force as at 1 July 2003.		Version after amendments made by Youth Justice Amendment Regulation (No. 2) 2014 s 4 (commenced 5 September 2014). Amendment concerned the place where the record made of the force is kept (removing the requirement to make the record in a document kept at the detention centre). Section 17(7) in force as at 5 September 2014. Amended by the Youth Justice Amendment Regulation (No. 2) 2014, s 4.				or property cannot be protected in any other way. <sup>344</sup> If force is used the force used must not be more than is reasonably necessary and the chief executive must ensure a record is made of the force. <sup>345</sup> In force 26 August 2016.
Information to be given to court about disciplining child for misbehaviour if child is also convicted for an offence for the misbehaviour - Youth Justice Regulation 2003/2016		If a child is convicted of an offence arising out of the child's misbehaviour, the chief executive must ensure information about disciplining the child for the misbehaviour is given to the court before the child is sentenced. <sup>346</sup>					If a child is convicted of an offence arising out of the child's misbehaviour, the chief executive must ensure information about disciplining the child for the misbehaviour is given to the court before the child is sentenced. <sup>346,7</sup>
Approving restraints for use - Youth Justice Regulation 2003/2016		The chief executive may approve types of restraints a staff member may place on a child in the chief executive's custody. <sup>348</sup> In force as at 1 July 2003.					The chief executive may, by written notice, approve types of restraints a staff member may place on a child in the chief executive's custody. <sup>349</sup> A staff member may be approved by the chief executive to use restraints if they have completed the approved physical intervention training. <sup>349,351</sup> In force 26 August 2016.
Using approving restraints - Youth Justice Regulation 2003/2016		Restraints may be used in relation to a child in a detention centre <sup>347</sup> by a staff member approved to use them only if they are approved restraints if the chief executive considers on reasonable grounds that the child is likely to attempt to escape, to seriously harm themselves or someone else, to seriously disrupt order and security at the centre, and the staff member reasonably believes there is no other way of stopping the child from engaging in the behaviour. <sup>347</sup>					Restraints may be used in relation to a child in a detention centre <sup>347</sup> by a staff member approved to use them only if they are approved restraints if the

<sup>344</sup> Youth Justice Regulation 2003 s 17(7)

<sup>345</sup> Youth Justice Regulation 2016 s 16(5)

<sup>346</sup> Youth Justice Regulation 2003 s 18(1)

<sup>347</sup> Youth Justice Regulation 2003 s 18

<sup>348</sup> Youth Justice Regulation 2016 s 17

<sup>349</sup> Youth Justice Regulation 2016 s 19

<sup>350</sup> Youth Justice Regulation 2016 s 18(1)

<sup>351</sup> Physical Intervention Training as approved by the chief executive under the Youth Justice Regulation 2016 s 43.

<sup>352</sup> Youth Justice Regulation 2016 s 18(2)

<sup>353</sup> Provisions dealing with the application of approved restraints outside the centre are contained in the Youth Justice Regulation 2003 s 20(2)(a) and (5)

<sup>354</sup> Youth Justice Regulation 2003 s 20(2)(b) and (3)

<sup>355</sup> Provisions dealing with the application of approved restraints outside the centre are contained in the Youth Justice Regulation 2016 s 19(3)(a) to (c).

	20 January 2013 Young person A3	May 2013 Young person A9	21 January 2015 Young person A4 – verbal incident (CYDC)	5 June 2015 Young person A4 – physical incident (CYDC)	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2016 Young person A8 – NAIDOC week incident (CYDC)	Current (commenced on 26 August 2016)
	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	
	Restraints must be used in a way that respects the child's dignity and are used for no longer than is reasonably necessary in the circumstances. <sup>3474</sup> In force as at 1 July 2003.						
Register/Records about approved restraints – Youth Justice Regulation 2003/2016	The chief executive must keep a register containing the particulars of the approved restraints, and if restraints are used on a child, the child's name, the day on which the restraints were used, and the circumstances in which the restraints were used. <sup>3478</sup> In force as at 1 July 2003.	The chief executive must keep a register record containing the particulars of the approved restraints, and if restraints are used on a child, the child's name, the day on which the restraints were used, and the circumstances in which the restraints were used. <sup>3479</sup> In force as at 5 September 2014. Version after amendments made by Youth Justice Amendment Regulation (No. 2/2014 SL 2014 No. 202 s 5 (commenced 5 September 2014). Amendment changed the word "register" to "record" (i.e. so that there was now a record about approved restraints rather than a register of them).					The chief executive must keep a record containing the particulars of the approved restraints, and if restraints are used on a child, the child's name, the day on which the restraints were used, and the circumstances in which the restraints were used. <sup>3480</sup> In force 26 August 2016.
Separation – Youth Justice Regulation 2003/2016	A detention centre employee may separate a child in a locked room in a detention only if the child is ill, the child requests to be separated, for routine security purposes under a direction issued by the chief executive, protecting the child, another person or property, or to restore order in the detention centre. <sup>3481</sup> If the child is separated in a locked room at the request of the child, the child must be allowed to leave the room immediately if the child asks to do so. <sup>3482</sup> If a child is detained to protect the child, another person or property or to restore order in the detention centre, the detention centre employee must not separate a child for more than 2 hours without the approval of the manager of the detention centre, for more than 12 hours without informing the chief executive, or for more than 24 hours without the approval of the chief executive. <sup>3483</sup>						A detention centre employee may separate a child in a locked room in a detention only if the child is ill, the child requests to be separated, for routine security purposes under a direction issued by the chief executive, protecting the child, another person or property, or to restore order in the detention centre. <sup>3484</sup> If the child is separated in a locked room at the request of the child, the child must be allowed to leave the room immediately if the child asks to do so. <sup>3485</sup> If the child is detained to protect the child, another person or property, or to restore order in the detention centre, <sup>3486</sup> if the child is separated in a locked room at the request of the child, the child must be allowed to leave the room immediately if the child

<sup>3474</sup> Youth Justice Regulation 2003 s 20(4)

<sup>3475</sup> Youth Justice Regulation 2016 s 19(4)

<sup>3476</sup> Youth Justice Regulation 2016 s 19(2)

<sup>3477</sup> Youth Justice Regulation 2016 s 21

<sup>3478</sup> Youth Justice Regulation 2003 s 21

<sup>3479</sup> Youth Justice Regulation 2016 s 20

<sup>3480</sup> Youth Justice Regulation 2016 s 20

<sup>3481</sup> Youth Justice Regulation 2003 s 22(1)

<sup>3482</sup> Youth Justice Regulation 2003 s 22(4)

<sup>3483</sup> Youth Justice Regulation 2003 s 22(2)

<sup>3484</sup> Youth Justice Regulation 2016 s 21(1)

	20 January 2013 Young Person A3	May 2013 Young person A9	21 January 2013 Young person A4 – verbal incident (CYDC)	5 June 2013 Young person A4 – physical incident (CYDC)	21 August 2013 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2013 Young person A8 – NADOC week incident (CYDC)	Current (commenced on 26 August 2016)
	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	
	Without limiting the ways a child may be kept under continuous observation, <sup>348</sup> a detention centre employee must keep the child under observation in compliance with the way stated in a direction issued by the chief executive. <sup>349</sup>						asks to do so. <sup>347</sup> If a child is detained to protect the child, another person or property or to restore order in the detention centre, the detention centre employee must not separate a child for more than 2 hours without the approval of the <del>manager of the detention-centre detention centre's executive director</del> , for more than 12 hours without informing the chief executive, or for more than 24 hours, without the approval of the chief executive. <sup>348</sup> - with approval required from the chief executive for each subsequent 24 hour period. <sup>349</sup>
	In force as at 1 July 2003.						Without limiting the ways a child may be kept under continuous observation, <sup>349</sup> a detention centre employee must keep the child under observation in compliance with the way stated in a direction issued by the chief executive. <sup>349</sup>
	In force 26 August 2016.						
Register/Record of separation - Youth Justice Regulation 2003/2016	For each child separated in a locked room if a child is detained to protect the child, another person or property or to restore order in the detention centre (i.e. under s 22(1)(d) or (e) of the 2003 regulation), the chief executive must keep a register stating the child's name, the reason for the separation, the name of the detention centre employee who supervised the child and the day and the length of time for which the child was separated. <sup>349</sup>	For each child separated in a locked room if a child is detained to protect the child, another person or property or to restore order in the detention centre (i.e. under s 22(1)(d) or (e) of the 2003 regulation), the chief executive must keep a register stating the child's name, the reason for the separation, the name of the detention centre employee who supervised the child and the day and the length of time for which the child was separated. <sup>349</sup>	For each child separated in a locked room if a child is detained to protect the child, another person or property or to restore order in the detention centre (i.e. under s 22(1)(d) or (e) of the 2003 regulation), the chief executive must keep a register stating the child's name, the reason for the separation, the name of the detention centre employee who supervised the child and the day and the length of time for which the child was separated. <sup>349</sup>				For each child separated in a locked room if a child is detained to protect the child, another person or property or to restore order in the detention centre (i.e. under s 22(1)(d) or (e)), the chief executive must keep a record stating the child's name, the reason for the separation, the name of the detention centre employee who supervised the child and the day and the length of time for which the child was separated. <sup>349</sup>
	In force as at 1 July 2003.	In force as at 5 September 2014. Version after amendments made by Youth Justice Amendment Regulation (No. 2) 2014 SL 2014 No. 20's 6 (commenced 5 September 2014). Amendment changed the word 'register' to 'record' (i.e. so that there was now a record about separation rather than a register of them).	In force as at 26 August 2016.				

<sup>348</sup> Youth Justice Regulation 2003 s 23(6).  
<sup>349</sup> Youth Justice Regulation 2003 s 23(1).  
<sup>350</sup> Youth Justice Regulation 2016 s 23(1).  
<sup>351</sup> Youth Justice Regulation 2016 s 23(1).  
<sup>352</sup> Youth Justice Regulation 2016 s 23(1).  
<sup>353</sup> Youth Justice Regulation 2016 s 23(1).  
<sup>354</sup> Youth Justice Regulation 2016 s 23(1).  
<sup>355</sup> Youth Justice Regulation 2016 s 23(1).  
<sup>356</sup> Youth Justice Regulation 2016 s 23(1).

	20 January 2013 Young Person A3	May 2013 Young person A9	21 January 2015 Young person A4 – verbal incident (CYDC)	5 June 2015 Young person A4 – physical incident (CYDC)	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2016 Young person A8 – NAIDOC week incident (CYDC)	Current (commenced on 26 August 2016)
<b>Power to search - Youth Justice Regulation 2003/2016</b>	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	The chief executive may authorise a detention centre employee to search a child detained in a detention centre at any time the chief executive considers, on reasonable grounds, that the child should be searched. <sup>1429(i)</sup> In force 26 August 2016.
<b>Search not involving removing clothes - Youth Justice Regulation 2003/2016</b>	<p>The chief executive may authorise a detention centre employee to search a child detained in a detention centre at any time the chief executive considers, on reasonable grounds, that the child should be searched.<sup>1430</sup></p> <p>Provision has not been amended. in force 1 July 2003.</p>						<p>A search is not to involve removing clothes, subject to section 26 of the regulation.<sup>1431</sup></p> <p>If the search involves touching the child, the search must be conducted by a detention centre employee of the same sex as the child.<sup>1438</sup></p> <p>Before conducting the search, the detention centre employee must inform the child the search is about to be conducted, and ask for the child's cooperation.<sup>1439</sup></p> <p>The detention centre employee may use reasonable force to carry out the search only if the employee reasonably believes the search cannot be carried out in another way.<sup>143a</sup></p> <p>Provision has not been amended. in force 1 July 2003.</p>
	<p>A search is not to involve removing clothes, subject to section 26 of the regulation.<sup>1431</sup></p> <p>If the search involves touching the child, the search must be conducted by a detention centre employee of the same sex as the child.<sup>1438</sup></p> <p>Before conducting the search, the detention centre employee must inform the child the search is about to be conducted, and ask for the child's cooperation.<sup>1439</sup></p> <p>The detention centre employee may use reasonable force to carry out the search only if the employee reasonably believes the search cannot be carried out in another way.<sup>143a</sup></p> <p>Provision has not been amended. in force 1 July 2003.</p>						<p>The detention centre employee may use reasonable force to carry out the search only if the employee reasonably believes the search cannot be carried out in another way and the employee has successfully completed physical intervention training approved by the chief executive.<sup>143a</sup></p> <p>In force 26 August 2016.</p>

<sup>1429</sup> Youth Justice Regulation 2003 s 24  
<sup>1430</sup> Youth Justice Regulation 2016 s 23  
<sup>1431</sup> Youth Justice Regulation 2003 s 25(1)  
<sup>1432</sup> Youth Justice Regulation 2003 s 25(1)  
<sup>1433</sup> Youth Justice Regulation 2003 s 25(1)  
<sup>1434</sup> Youth Justice Regulation 2003 s 25(1)  
<sup>1435</sup> Youth Justice Regulation 2003 s 25(1) and (5)  
<sup>1436</sup> Youth Justice Regulation 2016 s 24(1)  
<sup>1437</sup> Youth Justice Regulation 2016 s 24(2)  
<sup>1438</sup> Youth Justice Regulation 2016 s 24(3)  
<sup>1439</sup> Youth Justice Regulation 2016 s 24(4)

Search involving removing clothes – Youth Justice Regulation 2003/2016	20 January 2013 Young Person A3  Version 2C of the regulation in force on 1 January 2003 applied	May 2013 Young person A9  The regulation in force as at 4 April 2014 applied	21 January 2015 Young person A4 – verbal incident (CYDC)  The regulation as in force as at 1 July 2014 applied	5 June 2015 Young person A4 – physical incident (CYDC)  The regulation as in force as at 1 July 2014 applied	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)  The regulation as in force as at 1 July 2014 applied	8 August 2016 Young person A8 – NAODOC week incident (CYDC)  The regulation as in force as at 28 October 2015 applied	Current (commenced on 26 August 2016)
	<p>The chief executive may order a child to partly or completely undress in front of a person of the opposite sex.<sup>3529</sup></p> <p>The chief executive must not order a child to undress in front of a person of the opposite sex.<sup>3530</sup></p> <p>The child must comply with the order, and a detention staff member may use reasonable force only if the employee reasonably believes the search cannot be carried out in another way.<sup>3537</sup></p> <p>If reasonably practicable, a detention centre employee conducting the search must tell the child they will be required to remove the clothes and why and ask for the child's cooperation.<sup>3538</sup> The child must be given the opportunity to remain partly clothed during the search, including by remaining partly clothed while another part of the body is being searched.<sup>3539</sup></p> <p>The search must be conducted in a way that provides reasonable privacy for the child,<sup>3540</sup> quickly, and the child must be allowed to dress as soon as the search is finished.<sup>3541</sup></p> <p>A person must not touch a child who is required to undress more than is reasonably necessary to obtain compliance with the order.<sup>3542</sup></p> <p>Provision has not been amended, in force 1 July 2003.</p>					<p>The chief executive may order direct a child to partly or completely undress if the chief executive considers on reasonable grounds that it is necessary for the security of the detention centre.<sup>3543</sup></p> <p>The chief executive must not order direct a child to undress in front of a person of the opposite sex or, if the child identifies as transgender or intersex, an employee not of the gender requested by the child.<sup>3545</sup></p> <p>The child must comply with the order and a detention staff member may use reasonable force to carry out the search only if the child does not comply with a direction given for the purpose of the search, the employee reasonably believes the search cannot be carried out in another way and the employee has successfully completed physical intervention training approved by the chief executive.<sup>3546</sup></p> <p>If reasonably practicable, a detention centre employee conducting the search must tell the child they will be required to remove the clothes and why and ask for the child's cooperation.<sup>3547</sup> The child must be given the opportunity to remain partly clothed during the search, including by remaining</p>	

<sup>3529</sup> Youth Justice Regulation 2003 s 2(61).

<sup>3530</sup> Youth Justice Regulation 2003 s 2(62).

<sup>3531</sup> Youth Justice Regulation 2003 s 2(66)(m)(8).

<sup>3532</sup> Youth Justice Regulation 2003 s 2(3)(a).

<sup>3533</sup> Youth Justice Regulation 2003 s 2(3)(b).

<sup>3534</sup> Youth Justice Regulation 2003 s 2(4).

<sup>3535</sup> Youth Justice Regulation 2003 s 2(5).

<sup>3536</sup> Youth Justice Regulation 2003 s 2(9).

<sup>3537</sup> The Explanatory Notes state that the change from allowing the chief executive to order a child to completely undress to only allowing for a partially undressed search is best practice in detention centres and ensures the welfare of the child remains paramount, taking into account any trauma or abuse suffered by the young person. Explanatory Notes to the Youth Justice Regulation 2016 s.

<sup>3538</sup> Youth Justice Regulation 2016 s 2(4).

<sup>3539</sup> Youth Justice Regulation 2016 s 2(4).

<sup>3540</sup> Youth Justice Regulation 2016 s 2(5).

<sup>3541</sup> Youth Justice Regulation 2016 s 2(3)(a).



	20 January 2013 Young Person A3	May 2013 Young person A9	21 January 2015 Young person A4 – verbal incident (CYDC)	5 June 2015 Young person A4 – physical incident (CYDC)	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2016 Young person A8 – NAIDOC week incident (CYDC)	Current (commenced on 26 August 2016)
	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	transgender or intersex, a doctor of the gender requested by the child. <sup>33,34</sup>  If reasonably practicable, the doctor must tell the child they will be required to remove some clothes and why, ask for the child's cooperation, and the child must be given the opportunity to remain partly clothed during the search, including by remaining partly clothed while another part of the body is being searched. <sup>33,35</sup>  The search must be conducted in a way that provides reasonably privacy for the child, quickly, and the child must be allowed to dress as soon as the search is finished. <sup>35,36</sup>  The doctor may ask for the assistance of a detention centre employee if the doctor needs help carrying out the search (including if the child refuses to cooperate with the search). <sup>33,37</sup> The detention centre employee must be the same sex as the child or, if the child identifies as transgender or intersex, the employee of the gender requested by the child. <sup>33,38</sup> and may use reasonable force to assist with the search if the employee has completed the physical intervention training and the employee reasonably believes the search cannot be carried out in any other way. <sup>33,39</sup>
Records/register of searches – Youth Justice Regulation 2003/2016	The Chief executive must keep a register of searches for a search. <sup>33,40</sup>		The chief executive must keep a register record of searches for a search. <sup>33,42</sup>  1. where the child did not remove any clothes under section 25 only if a detention centre employee used reasonably force to carry out the search;				The chief executive must keep a record of searches for a search. <sup>33,43</sup>

<sup>33,34</sup> Youth Justice Regulation 2016 s 262 (3a).

<sup>33,35</sup> Youth Justice Regulation 2016 s 262 (3b) and (c).

<sup>33,36</sup> Youth Justice Regulation 2016 s 263 (1) and (4).

<sup>33,37</sup> Youth Justice Regulation 2016 s 260.

<sup>33,38</sup> Youth Justice Regulation 2016 s 261.

<sup>33,39</sup> Youth Justice Regulation 2016 s 268.

<sup>33,40</sup> Youth Justice Regulation 2003 s 281 (1) and (2).

<sup>33,41</sup> Youth Justice Regulation 2003 s 281 (1) and (2).

<sup>33,42</sup> Youth Justice Regulation 2016 s 271.

	20 January 2013 Young Person A3	May 2013 Young person A9	21 January 2015 Young person A4 – verbal incident (CYDC)	5 June 2015 Young person A4 – physical incident (CYDC)	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2016 Young person A8 – NAIDOC week incident (CYDC)	Current (commenced on 26 August 2016)
	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	
	1. where the child did not remove any clothes under section 25 only if a detention centre employee used reasonably force to carry out the search; 2. search involving the removal of any clothes under section 26; 3. body search under section 27.  The register must state the name of the child, the reason for the search, the name of the persons who carried out, or helped carry out, the search and any force used. <sup>1541</sup>  In force from 1 July 2003 to 4 September 2014.	1. where the child did not remove any clothes under section 25 only if a detention centre employee used reasonably force to carry out the search; 2. search involving the removal of any clothes under section 26; 3. body search under section 27.  The register must state the name of the child, the reason for the search, the name of the persons who carried out, or helped carry out, the search and any force used. <sup>1541</sup>  In force from 1 July 2003 to 4 September 2014.	2. search involving the removal of any clothes under section 26; 3. body search under section 27.  The register must state the name of the child, the reason for the search, the name of the persons who carried out, or helped carry out, the search and any force used. <sup>1541</sup>  In force from 5 September 2014 until repeal of regulation. Commenced <i>Youth Justice Amendment Regulation (No. 2) 2014</i> SL No. 202.	2. search involving the removal of any clothes under section 26; 3. body search under section 27.  The register must state the name of the child, the reason for the search, the name of the persons who carried out, or helped carry out, the search and any force used. <sup>1541</sup>  In force from 5 September 2014 until repeal of regulation. Commenced <i>Youth Justice Amendment Regulation (No. 2) 2014</i> SL No. 202.	2. search involving the removal of any clothes under section 26; 3. body search under section 27.  The register must state the name of the child, the reason for the search, the name of the persons who carried out, or helped carry out, the search and any force used. <sup>1541</sup>  In force from 5 September 2014 until repeal of regulation. Commenced <i>Youth Justice Amendment Regulation (No. 2) 2014</i> SL No. 202.	2. search involving the removal of any clothes under section 26; 3. body search under section 27.  The register must state the name of the child, the reason for the search, the name of the persons who carried out, or helped carry out, the search and any force used. <sup>1541</sup>  In force from 5 September 2014 until repeal of regulation. Commenced <i>Youth Justice Amendment Regulation (No. 2) 2014</i> SL No. 202.	1. where the child did not remove any clothes under section 24 only if a detention centre employee used reasonably force to carry out the search; 2. search involving the removal of any clothes under section 25; 3. body search under section 26.  The record must state the name of the child, the reason for the search, the name of the persons who carried out, or helped carry out, the search and any force used. <sup>1545</sup>
Dealing with articles during the search – <i>Youth Justice Regulation 2003/2016</i>	Procedures about restricted or prohibited articles found during search are contained in the <i>Youth Justice Regulation 2003</i> , s. 29 and the <i>Youth Justice Regulation 2016</i> , s. 28. The provision does not appear to be relevant to the incidents under consideration by the Review.						
Telephone calls – <i>Youth Justice Regulation 2003/2016</i>	A child has the right to make and receive telephone calls at all reasonable times, and to speak to the person without being overheard. <sup>1546</sup>  However, the chief executive may require a detention centre employee and employee to listen to the conversation and terminate it on reasonable grounds if the chief executive considers on reasonable grounds that there would be information disclosed that is, or is likely to be, detrimental to the good order and management of the centre. <sup>1547</sup> The chief executive must inform the child and other person before the conversation takes place that the	A child has the right to make and receive telephone calls at all reasonable times, and to speak to the person without being overheard. <sup>1546</sup>  However, the chief executive may require a detention centre employee and employee to listen to the conversation and terminate it on reasonable grounds if the chief executive considers on reasonable grounds that there would be information disclosed that is, or is likely to be, detrimental to the good order and management of the centre. <sup>1547</sup> The chief executive must inform the child and other person before the conversation takes place that the	A child has the right to make and receive telephone calls at all reasonable times, and to speak to the person without being overheard. <sup>1546</sup>  However, the chief executive may require a detention centre employee and employee to listen to the conversation and terminate it on reasonable grounds if the chief executive considers on reasonable grounds that there would be information disclosed that is, or is likely to be, detrimental to the good order and management of the centre. <sup>1547</sup> The chief executive must inform the child and other person before the conversation takes place that the	A child has the right to make and receive telephone calls at all reasonable times, and to speak to the person without being overheard. <sup>1546</sup>  However, the chief executive may require a detention centre employee and employee to listen to the conversation and terminate it on reasonable grounds if the chief executive considers on reasonable grounds that there would be information disclosed that is, or is likely to be, detrimental to the good order and management of the centre. <sup>1547</sup> The chief executive must inform the child and other person before the conversation takes place that the	A child has the right to make and receive telephone calls at all reasonable times, and to speak to the person without being overheard. <sup>1546</sup>  However, the chief executive may require a detention centre employee and employee to listen to the conversation and terminate it on reasonable grounds if the chief executive considers on reasonable grounds that there would be information disclosed that is, or is likely to be, detrimental to the good order and management of the centre. <sup>1547</sup> The chief executive must inform the child and other person before the conversation takes place that the	A child has the right to make and receive telephone calls at all reasonable times, and to speak to the person without being overheard. <sup>1546</sup>  However, the chief executive may require a detention centre employee and employee to listen to the conversation and terminate it on reasonable grounds if the chief executive considers on reasonable grounds that there would be information disclosed that is, or is likely to be, detrimental to the good order and management of the centre. <sup>1547</sup> The chief executive must inform the child and other person before the conversation takes place that the	A child has the right to make and receive telephone calls at all reasonable times, and to speak to the person without being overheard. <sup>1546</sup>  However, the chief executive may require a detention centre employee and employee to listen to the conversation and terminate it on reasonable grounds if the chief executive considers on reasonable grounds that there would be information disclosed that is, or is likely to be, detrimental to the good order and management of the centre. <sup>1547</sup> The chief executive must inform the child and other person before the conversation takes place that the

<sup>1546</sup> *Youth Justice Regulation 2003/2016*, s. 28(1).  
<sup>1547</sup> *Youth Justice Regulation 2003/2016*, s. 28(3).  
<sup>1548</sup> *Youth Justice Regulation 2016/2021*, s. 28(1).  
<sup>1549</sup> *Youth Justice Regulation 2016/2021*, s. 30(1) and (2).  
<sup>1550</sup> *Youth Justice Regulation 2003/2016*, s. 30(1) and (2).  
<sup>1551</sup> *Youth Justice Regulation 2003/2016*, s. 30(1).  
<sup>1552</sup> *Youth Justice Regulation 2003/2016*, s. 30(4).  
<sup>1553</sup> *Youth Justice Regulation 2003/2016*, s. 30(5).  
<sup>1554</sup> *Youth Justice Regulation 2016/2021*, s. 30(1) and (2).  
<sup>1555</sup> *Youth Justice Regulation 2016/2021*, s. 30(1).

	20 January 2013 Young Person A3	May 2013 Young person A9	21 January 2015 Young person A4 – verbal incident (CYDC)	5 June 2015 Young person A4 – physical incident (CYDC)	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2016 Young person A8 – MAIDOC week incident (CYDC)	Current (commenced on 26 August 2016)
	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	
	employee will be listening and may terminate the conversation on reasonable grounds, <sup>3548</sup> and must keep a record of the requirement and the reasons for making it. <sup>3549</sup> The chief executive cannot listen to a conversation between the child and the Commissioner for Children and Young People under the <i>Commission for Children and Young People Act 2000</i> , a community visitor, or a legal practitioner representing the child. <sup>3550</sup>		<i>Public Guardian Act 2014</i> , a community visitor (child), a child advocacy officer, or a legal practitioner representing the child. <sup>3555</sup>				the child and other person before the conversation takes place that the employee will be listening and may terminate the conversation on reasonable grounds. <sup>3556</sup> and must keep a record of the requirement and the reasons for making it. <sup>3558</sup> Subsection (3) does not apply to a conversation between the child and the public guardian under the <i>Public Guardian Act 2014</i> , a community visitor (child), a child advocacy officer, or a legal practitioner representing the child. <sup>3560</sup>
	In force from 1 July 2003 to 30 June 2014.		In force from 1 July 2014 until repeal of regulation. Amended by <i>Public Guardian Regulation 2014</i> SI No. 105 s 28.				
<b>Sending and receiving correspondence – Youth Justice Regulation 2003/2016</b>							
			A child in a detention centre has the right to send and receive letters and other mail. <sup>3561</sup> subject to the powers to examine and withhold, delete or return mail if it discloses information or contains property that is, or is likely to be, detrimental to the good order and management of the centre. <sup>3562</sup> A record must be made for correspondence that is withheld, deleted or returned. <sup>3563</sup>				A child in a detention centre has the right to send and receive letters and other mail. <sup>3569</sup> subject to the powers to examine and withhold, delete or return mail if it discloses information or contains property that is, or is likely to be, detrimental to the good order and management of the centre. <sup>3570</sup> A record must be made for correspondence that is withheld, deleted or returned. <sup>3571</sup>
			The chief executive cannot review correspondence between the child and the Commissioner for Children and Young People under the <i>Commission for Children and Young People Act 2000</i> , a public guardian, under the <i>Public Guardian Act 2014</i> , a community visitor (child), a child advocacy officer, or a legal practitioner representing the child. <sup>3588</sup>				The chief executive cannot review correspondence between the child and the public guardian under the <i>Public Guardian Act 2014</i> , a community visitor
			In force from 1 July 2014 until repeal of regulation. Amended by <i>Public Guardian Regulation 2014</i> SI No. 105 s 29.				

<sup>3548</sup> Youth Justice Regulation 2003 s 30(4).

<sup>3549</sup> Youth Justice Regulation 2003 s 30(5).

<sup>3550</sup> Youth Justice Regulation 2003 s 30(6).

<sup>3551</sup> Youth Justice Regulation 2003 s 30(6).

<sup>3552</sup> Youth Justice Regulation 2003 s 29(4).

<sup>3553</sup> Youth Justice Regulation 2016 s 28(6).

<sup>3554</sup> Youth Justice Regulation 2016 s 28(6).

<sup>3555</sup> Youth Justice Regulation 2003 s 31(1).

<sup>3556</sup> Youth Justice Regulation 2003 s 31(2) and (3).

<sup>3557</sup> Youth Justice Regulation 2003 s 31(4).

<sup>3558</sup> Youth Justice Regulation 2003 s 31(5).

<sup>3559</sup> Youth Justice Regulation 2003 s 31(1).

<sup>3560</sup> Youth Justice Regulation 2003 s 31(2) and (3).

<sup>3561</sup> Youth Justice Regulation 2003 s 31(4).

<sup>3562</sup> Youth Justice Regulation 2003 s 31(4).

<sup>3563</sup> Youth Justice Regulation 2003 s 31(4).

<sup>3564</sup> Youth Justice Regulation 2016 s 30(1).

<sup>3565</sup> Youth Justice Regulation 2016 s 30(2) and (3).

<sup>3566</sup> Youth Justice Regulation 2016 s 30(4).

	20 January 2013 Young Person A3	May 2013 Young person A9	21 January 2015 Young person A4 – verbal incident (CYDC)	5 June 2015 Young person A4 – physical incident (CYDC)	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2016 Young person A8 – NAIDOC week incident (CYDC)	Current (commenced on 26 August 2016)
	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	(child), a child advocacy officer, or a legal practitioner representing the child. <sup>3372</sup>
	In force from 1 July 2003 to 30 June 2014.						
Child's right to health services and medical treatment – Youth Justice Regulation 2003/2016	<p>A child in a detention centre "has the right to health services and medical treatment"<sup>3373</sup></p> <p>The chief executive must ensure that a child is to be asked if the child wants to be examined by a medical practitioner of the same sex as the child.<sup>3374</sup> A child may ask that a medical practitioner of the same sex as the child examine the child.<sup>3375</sup> The chief executive must take reasonable steps to comply with the request.<sup>3376</sup></p> <p>The chief executive must, if practicable, inform the child before examined by a medical practitioner that records are kept about the child's medical treatment and the child has the right to examine those records.<sup>3377</sup></p> <p>The provision was in force until the repeal of the regulation.</p>						<p>A child in a detention centre "has the right to health services and medical treatment": "has a right to medical treatment and other health services"<sup>3378</sup></p> <p>The chief executive must ensure that a child is to be asked if the child wants to be examined by a medical health practitioner (which is defined for the section and includes a counsellor and a social worker<sup>3379</sup>) of the same sex as the child.<sup>3380</sup> A child may ask that a medical health practitioner of the same sex as the child examine the child.<sup>3381</sup> The chief executive must take reasonable steps to comply with the request.<sup>3382</sup></p> <p>The chief executive must, if practicable, inform the child before examined by a medical health practitioner that records are kept about the child's medical treatment and the child has the right to examine those records.<sup>3383</sup></p>
Reports of medical examination or treatment – Youth Justice Regulation 2003/2016	<p>The chief executive may ask the medical practitioner who examined or treated a child in detention for a report of the examination or treatment.<sup>3384</sup></p>						<p>The chief executive may ask the medical practitioner who examined or treated a child in detention for a report of the examination or treatment.<sup>3385</sup></p>

3372 Youth Justice Regulation 2016 s. 10(5).  
3373 Youth Justice Regulation 2003 s. 3(4).  
3374 Youth Justice Regulation 2003 s. 3(2).  
3375 Youth Justice Regulation 2003 s. 3(2).  
3376 Youth Justice Regulation 2003 s. 3(4).  
3377 Youth Justice Regulation 2003 s. 3(5).  
3378 Youth Justice Regulation 2016 s. 15(1).  
3379 Youth Justice Regulation 2016 s. 15(2).  
3380 Youth Justice Regulation 2016 s. 15(2).  
3381 Youth Justice Regulation 2016 s. 15(3).  
3382 Youth Justice Regulation 2016 s. 15(4).  
3383 Youth Justice Regulation 2003 s. 3(4).  
3384 Youth Justice Regulation 2003 s. 3(4).  
3385 Youth Justice Regulation 2016 s. 10(1).

	20 January 2013 Young Person A3	May 2013 Young person A9	21 January 2015 Young person A4 – verbal incident (CYDC)	5 June 2013 Young person A4 – physical incident (CYDC)	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2016 Young person A8 – MAIDOC week incident (CYDC)	Current (commenced on 26 August 2016)
	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	
	The chief executive must ensure that the records of the medical practitioner are kept confidentially and separate from the administration records and at the detention centre. <sup>3355</sup>  The records may only be inspected by the child named in the record, the child's parent (with the child's written consent), the Commissioner for Children and Young People (with the child's written consent), the public guardian (with the child's written consent), the community visitor (with the child's written consent) and a child advocacy officer (with the child's written consent), a legal practitioner representing the child on production of a subpoena or court order, the chief executive or another person authorised in writing by the chief executive. <sup>3356</sup>  In force from 1 July 2003 to 30 June 2014.	The chief executive must ensure that the records of the medical practitioner are kept confidentially and separate from the administration records and at the detention centre. <sup>3358</sup>  The records may only be inspected by the child named in the record, the child's parent (with the child's written consent), the Commissioner for Children and Young People (with the child's written consent), the public guardian (with the child's written consent), the community visitor (with the child's written consent) and a child advocacy officer (with the child's written consent), the chief executive or another person authorised in writing by the chief executive. <sup>3359</sup>  In force from 1 July 2014 until repeal of regulation. Amended by Public Guardian Regulation 2014 SL No. 105 s 30.	The chief executive must ensure that the records of the medical practitioner are kept confidentially and separate from the administration records and at the detention centre. <sup>3358</sup>  The records may only be inspected by the child named in the record, the child's parent (with the child's written consent), the Commissioner for Children and Young People (with the child's written consent), the public guardian (with the child's written consent), the community visitor (with the child's written consent) and a child advocacy officer (with the child's written consent), the chief executive or another person authorised in writing by the chief executive. <sup>3359</sup>  In force from 1 July 2014 until repeal of regulation. Amended by Public Guardian Regulation 2014 SL No. 105 s 30.	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	The chief executive must ensure that the records of the medical practitioner are kept confidentially and separate from the administration records and at the detention centre. <sup>3361</sup>  The records may only be inspected by the child named in the record, the child's parent (with the child's written consent), the Commissioner for Children and Young People (with the child's written consent), the public guardian (with the child's written consent), the community visitor (with the child's written consent), the chief executive or another person authorised in writing by the chief executive. <sup>3362</sup>  In force from 1 July 2014 until repeal of regulation. Amended by Public Guardian Regulation 2014 SL No. 105 s 30.
Requirements for a report that reports harm to a child under the Act, s 268 – Youth Justice Regulations 2003/2016		The report made under section 268(3) of the Act must include the child's name, age and sex, details of the harm the child has suffered, details of the harm and the particulars of a person who the employee knows or reasonably suspects caused the harm or can give information about the harm. <sup>3364</sup>  In force from 1 July 2003 until repeal of regulation.					The report made under section 268(3) of the Act must include the child's name, age and sex, details of the harm the child has suffered, details of the harm and the particulars of a person who the employee knows or reasonably suspects caused the harm or can give information about the harm. <sup>3364</sup>
Reports about children – Youth Justice Act 1992, s 303 and Regulations 2003/2016		The chief executive is required to keep details about a report about, and any investigation into, whether harm or suspected harm has been caused to a child in the youth detention centre or a contravention, or claimed contravention, of youth justice principle 3, 15, 19 or 20. <sup>3365</sup>  The information must be given in a way allowing for information to be ascertained for a particular child or to analyse trends across all information kept <sup>3366</sup> and be kept for 70 years after the date of birth of the child to whom the information relates. <sup>3367</sup>					The chief executive is required to keep details about a report about, and any investigation into, whether harm or suspected harm has been caused to a child in the youth detention centre or a contravention, or claimed contravention, of youth justice principle 3, 15, 19 or 20. <sup>3365</sup>  The information must be given in a way allowing for information to be ascertained for a particular child or to analyse trends across all information kept <sup>3366</sup> and be kept for 70 years after the date of birth of the child to whom the information relates. <sup>3367</sup>

<sup>3355</sup> Youth Justice Regulation 2003 s 362(2) and (3).

<sup>3356</sup> Youth Justice Regulation 2003 s 364.

<sup>3357</sup> Youth Justice Regulation 2003 s 362(2) and (3).

<sup>3358</sup> Youth Justice Regulation 2003 s 362(2) and (3).

<sup>3359</sup> Youth Justice Regulation 2003 s 364.

<sup>3360</sup> Youth Justice Regulation 2003 s 362(2) and (3).

<sup>3361</sup> Youth Justice Regulation 2003 s 364.

<sup>3362</sup> Youth Justice Regulation 2003 s 362(2) and (3).

<sup>3363</sup> Youth Justice Regulation 2003 s 364.

<sup>3364</sup> Youth Justice Regulation 2003 s 362(2) and (3).

<sup>3365</sup> Youth Justice Regulation 2003 s 362(2) and (3).

<sup>3366</sup> Youth Justice Regulation 2003 s 362(2) and (3).

<sup>3367</sup> Youth Justice Regulation 2003 s 362(2) and (3).

	20 January 2013 Young Person A3	May 2013 Young person A9	21 January 2015 Young person A4 – verbal incident (CYDC)	5 June 2015 Young person A4 – physical incident (CYDC)	21 August 2015 Young persons A5, A6 and A7 – pool incident (CYDC)	8 August 2016 Young person A8 – NAODOC week incident (CYDC)	Current (commenced on 26 August 2016)
	Version 2C of the regulation as in force on 1 January 2003 applied	The regulation in force as at 4 April 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 1 July 2014 applied	The regulation as in force as at 28 October 2015 applied	
	In force from 29 March 2010 until repeal of regulation. Amended by the <i>Juvenile Justice and Other Acts Amendment Act 2009</i> Act No. 34.						claimed contravention, of youth justice principle 3, 15, 19 or 20 <sup>(34)</sup>  The information must be given in a way allowing for information to be ascertained for a particular child or to analyse trends across all information kept <sup>(35)</sup> and be kept for 70 years after the date of birth of the child to whom the information relates. <sup>(36)</sup>
Giving Information to Commissioner for Children and Young People/public guardian – <i>Youth Justice Regulation 2003/2016</i>	The chief executive must give the Commissioner for Children and Young People under the <i>Commission for Children and Young People Act 2000</i> a report on a regular basis about the information kept in section 36 (i.e. whether harm or suspected harm has been caused to a child in the youth detention centre or a contravention, or claimed contravention, of youth justice principle 3, 15, 19 or 20). <sup>(37)</sup>  The chief executive must give particular information under section 36 the commissioner if the commissioner requests. <sup>(38)</sup>	The chief executive must give the Commissioner for Children and Young People under the <i>Commission for Children and Young People Act 2000</i> public guardian under the <i>Public Guardian Act 2014</i> a report on a regular basis about the information kept in section 36 (i.e. whether harm or suspected harm has been caused to a child in the youth detention centre or a contravention, or claimed contravention, of youth justice principle 3, 15, 19 or 20). <sup>(39)</sup> The chief executive must give particular information under section 36 to the commissioner public guardian under the <i>Public Guardian Act 2014</i> if the commissioner public guardian requests. <sup>(40)</sup>  In force from 1 July 2014 until repeal of regulation. Amended by <i>Public Guardian Regulation 2014</i> SL No. 105.	The chief executive must give the Commissioner for Children and Young People under the <i>Commission for Children and Young People Act 2000</i> public guardian under the <i>Public Guardian Act 2014</i> a report on a regular basis about the information kept in section 36 (i.e. whether harm or suspected harm has been caused to a child in the youth detention centre or a contravention, or claimed contravention, of youth justice principle 3, 15, 19 or 20). <sup>(41)</sup> The chief executive must give particular information under section 36 to the commissioner public guardian under the <i>Public Guardian Act 2014</i> if the commissioner public guardian requests. <sup>(42)</sup>				The chief executive must give the public guardian under the <i>Public Guardian Act 2014</i> a report on a regular basis as soon as practicable at the end of each quarter about the information kept in section 38 (i.e. whether harm or suspected harm has been caused to a child in the youth detention centre or a contravention, or claimed contravention, of youth justice principle 3, 15, 19 or 20). <sup>(43)</sup> The chief executive must give particular information under section 38 to the public guardian if the public guardian requests. <sup>(44)</sup>

- Youth Justice Act 1997 s. 103; Youth Justice Regulation 2016 s. 38(1)
- Youth Justice Act 1997 s. 103(5); Youth Justice Regulation 2016 s. 38(1)
- Youth Justice Regulation 2016 s. 38(1)
- Youth Justice Regulation 2003 s. 37(1)
- Youth Justice Regulation 2003 s. 37(1)
- Youth Justice Regulation 2003 s. 37(1)
- Youth Justice Regulation 2003 s. 37(1)
- Youth Justice Regulation 2016 s. 39(1)
- Youth Justice Regulation 2016 s. 39(1)

## REFERENCE LIST

### ARTICLES/BOOKS/REPORTS

Alberola Rechea, Christina and Esther Fernández Molina, 'Continuity and Change in the Spanish Juvenile Justice System' in Josine Junger-Tas and Scott Decker (eds), *International Handbook of Juvenile Justice* (Springer, 2008) 325

Allard, Troy, James Ogilvie and Anna Stewart, *The Efficacy of Strategies to Reduce Juvenile Offending* (produced for the Department of Communities by Justice Modelling @ Griffith, Griffith University, August 2007)

Allard, Troy, Richard K. Wortley and Anna L. Stewart, 'The Effect of CCTV on Prisoner Misbehaviour' (2008) 88 *The Prison Journal* 404

Amnesty International, *Torture in 2014: 30 years of Broken Promises* (2014) <<http://www.amnestyusa.org/research/reports/torture-in-2014-30-years-of-broken-promises>>

Amnesty International, *A Brighter Tomorrow: Keeping Indigenous Kids in the Community and Out of Detention* (2015) < <https://www.amnesty.org.au/report-brighter-tomorrow/>>

Amnesty International, *Heads Held High: Keeping Queensland Kids Out of Detention, Strong in Culture and Community* (2016) <<https://www.amnesty.org.au/report-heads-held-high/>>

Anthony, Thalia, *Indigenous People, Crime and Punishment* (Routledge, 2013)

Armstrong, Kat, Eileen Baldry and Vicki Chartrand, 'Human Rights Abuses and Discrimination Against Women in the Criminal Justice System in New South Wales' (2007) 12(2) *Australian Journal of Human Rights* 203

Austin, James, Kelly Dedel Johnson and Ronald Weitzer, *Juvenile Justice Bulletin: Alternatives to the Secure Detention and Confinement of Juvenile Offenders* (September 2005) United States Department of Justice, Office of Justice Programs <[www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf](http://www.ncjrs.gov/pdffiles1/ojjdp/208804.pdf)>

Australian Children's Commissioners and Guardians, *Human Rights Standards in Youth Detention Facilities in Australia: The Use of Restraint, Disciplinary Regimes and Other Specified Practices* (2016)

Australian Human Rights Commission, *Equal Before the Law: Towards Disability Justice Strategies* (2014) < [https://www.humanrights.gov.au/sites/default/files/document/publication/2014\\_Equal\\_Before\\_the\\_Law.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/2014_Equal_Before_the_Law.pdf)>

Australasian Juvenile Justice Administrators, *Juvenile Justice Standards* (2009)

Australian Law Reform Commission, *Seen and Heard: Priority for Children in the Legal Process*, Report No. 84 (1997)

Australian Law Reform Commission, *Equality, Capacity and Disability in Commonwealth Laws*, Report No. 81 (2014)

Bala, Nicholas and Julian V Roberts, 'Canada's Juvenile Justice System: Promoting Community-Based Responses to Youth Crime' in Josine Junger-Tas and Scott Decker (eds), *International Handbook of Juvenile Justice* (Springer, 2008) 37

Baldry, Eileen et al, 'Imprisoning Rationalities' (2011) 44 *Australian and New Zealand Journal of Criminology* 1  
<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1744448](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1744448)>

Baldry, Eileen, Leanne Dowse and Melissa Clarence, *People with Intellectual and Other Cognitive Disability in the Criminal Justice System* (Department of Families and Community Services, 2012)  
<[https://www.adhc.nsw.gov.au/\\_\\_data/assets/file/0003/264054/Intellectual\\_and\\_cognitive\\_disability\\_in\\_criminal\\_justice\\_system.pdf](https://www.adhc.nsw.gov.au/__data/assets/file/0003/264054/Intellectual_and_cognitive_disability_in_criminal_justice_system.pdf)>

Baldry, Eileen et al, *A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System* (Indigenous Australians with Mental Health Disorders and Cognitive Disabilities in the Criminal Justice System, 2015) <<https://www.mhdcd.unsw.edu.au>>

Barrett, Margaret S and Jane S Baker, 'Developing Learning Identities in and through Music: A Case Study of the Outcomes of a Music Programme in an Australian Juvenile Detention Centre' (2012) 30(3) *International Journal of Music Education* 244

Bevan, David, *Justice on the Inside: A Review of Queensland Corrective Services' Management of Breaches of Discipline by Prisoners* (Queensland Ombudsman, October 2009)  
<[http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Inv\\_reports/Justice\\_on\\_Inside/Justice%20on%20the%20inside\\_WEB1.pdf](http://www.ombudsman.qld.gov.au/Portals/0/docs/Publications/Inv_reports/Justice_on_Inside/Justice%20on%20the%20inside_WEB1.pdf)>

Blagg, Harry et al, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Victorian Criminal Justice System* (Equal Opportunity Commission, 2005)

Blagg, Harry, *Crime, Aboriginality and the Decolonisation of Justice* (Hawkins Press, 2008)

Borduin, Charles, Alex Dopp and Erin Taylor, 'Evidence-based Interventions for Serious and Violent Juvenile Offenders' in Leam A Craig, Theresa A Gannon and Louise Dixon (eds), *What Works in Offender Rehabilitation: An Evidence-Based Approach to Assessment and Treatment* (Wiley-Blackwell, 2013)

Braithwaite, John, *Crime, Shame and Reintegration* (Cambridge University Press, 1989)

Braithwaite, Jon and Phillip Pettit, *Not Just Desserts: A Republican Theory of Criminal Justice* (Oxford University Press, 1990)

Braithwaite, John, 'Juvenile Offending: New Theory and Practice' in Lynn Atkinson and Sally-Anne Gerull (eds), *National Conference on Juvenile Justice: Proceedings of a Conference held 22-24 September 1992* (National Conference on Juvenile Justice, 1993) 35

Braithwaite, Jon, 'Principles of Restorative Justice' in Andrew von Hirsch et al (eds), *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (Hart Publishing, 2003) 13

Braithwaite, Jon, Toni Makkai and Valerie Braithwaite, 'Regulating Aged Care: Ritualism and the New Pyramid' (2008) 28 *Ageing and Society* 740

Central Australian Aboriginal Legal Aid Service, the North Australian Aboriginal Justice Agency and the Northern Territory Legal Aid Commission, Submission to Northern Territory Government, *Review of Youth Detention in the Northern Territory* (November 2014)

Chambers, Barbara and Jan Pettman (eds), *Anti-Racism: A Handbook for Adult Educators* (Australian Government Printing Service, 1986)

<[https://www.humanrights.gov.au/sites/default/files/Anti\\_racism\\_handbook.doc](https://www.humanrights.gov.au/sites/default/files/Anti_racism_handbook.doc)>

Charlesworth, H and Larking E (eds), *Human Rights And The Universal Periodic Review: Rituals and Ritualism*, (Cambridge University Press, 2014).

Cipriani, Don, *Children's Rights and the Minimum Age of Criminal Responsibility: A Global Perspective* (Ashgate Publishing, 2013)

Coalition against Inappropriate Remand, *Rethinking Youth Remand & Enhancing Community Safety: A Discussion Paper* (5 May 2008)

<[http://www.yanq.org.au/uploads/1/4/1/7/14174316/cair\\_-11mar08.pdf](http://www.yanq.org.au/uploads/1/4/1/7/14174316/cair_-11mar08.pdf)>

Cockram, Judith, 'Justice or Differential Treatment? Sentencing of Offenders with an Intellectual Disability' (2005) 30 *Journal of Intellectual and Developmental Disability* 3  
<<http://ro.ecu.edu.au/ecuworks/2816/>>

Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 1

Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 2

Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 3

Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 4

Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 5

Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *Regional Report* (1991)

CREATE Foundation, Submissions to the Queensland Department of Justice and Attorney General, *Queensland Child Protection Commission of Inquiry*, September 2012

Creyke, Robin, 'Executive Power - New Wine in Old Bottles? Foreword' (2003) 31 *Federal Law Review* vii

Cunneen, Chris, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen & Unwin, 2001)

Cunneen, Chris, et al, *Penal Culture and Hyperincarceration: The Revival of the Prison* (Routledge, 2003)

Cunneen, Chris, 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual Explanatory Issues' (2006) 17(3) *Indigenous People in the Criminal Justice System* 329

Cunneen, Chris and Rob White, *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 4<sup>th</sup> ed, 2011)

Davis, Megan, 'A Culture of Disrespect: Indigenous Peoples and Australian Public Institutions' (2006) 8 *University of Technology Sydney Law Review* 135

Dawes, Glenn Desmond, 'The Challenges of Reintegrating Indigenous Youth after Their Release from Detention' (2011) 14 *Journal of Youth Studies* 693

Day, Andrew, Kevin Howells and Debra Rickwood, *Current Trends in the Rehabilitation of Juvenile Offenders* (Research Paper No 284, Australian Institute of Criminology, October 2004)

Defence for Children International - Belgium, *Practical Guide: Monitoring Places Where Children Are Deprived of Liberty* (2014-2016) <  
<http://www.defenceforchildren.org/wp-content/uploads/2016/02/DCI-Practical-GuideEN.pdf>>

DeMuro, Paul, *Pathways to Juvenile Detention Reform: Consider the Alternatives* (The Anne E Casey Foundation, 1999)

Doolan, Ivan et al, 'Does Child Abuse and Neglect Explain the Overrepresentation of Aboriginal and Torres Strait Islander Young People in Youth Detention? Findings from a Birth Cohort Study' (2012) 37 *Child Abuse & Neglect: The International Journal* 303

Doolan, Ivan, Jakob M Najman and Adrian Cherney, 'Health Needs of Australian Indigenous Young People Entering Detention' (2012) 48 *Journal of Paediatrics and Child Health* 896

Dowse, Leanne et al, 'Young People with Complex Needs in the Criminal Justice System' (2014) 1 *Research and Practice in Intellectual and Developmental Disabilities* 174

Edney, Richard and Mirko Bagaric, *Australian Sentencing: Principles and Practice* (Cambridge University, 2007)

- Elliot, Denise et al, 'Trauma-Informed or Trauma-Denied: Principles and Implementation of Trauma-Informed Services for Women' (2005) 33 *Journal of Community Psychology* 4
- Elwick, Alex et al, *Improving Outcomes for Young Offenders: An International Perspective* (2013) <<https://www.educationdevelopmenttrust.com/en-GB/our-research/our-research-library/2013/r-improving-outcomes-2013>>
- European Commission, *Study on Children's Involvement in Judicial Proceedings: Contextual Overview for the Criminal Justice Phase – Belgium* (June 2013) <[www.childreninjudicialproceedings.eu/docs/ContextualOverview/Belgium.pdf](http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/Belgium.pdf)>
- European Commission, *Study on Children's Involvement in Judicial Proceedings: Contextual Overview for the Criminal Justice Phase – Sweden* (June 2013) <<http://www.childreninjudicialproceedings.eu/docs/ContextualOverview/Sweden.pdf>>
- Franzén, Anna G and Rolf Holmqvist, 'From Punishment to Rewards? Treatment Dilemmas at a Youth Detention Home' (2014) 16 *Punishment & Society* 5
- Gaynor, Jeremy, 'The Home Detention Program for Young Offenders' (Paper presented at Australian Institute of Criminology Conference Juvenile Crime and Juvenile Justice: Toward 2000 and Beyond, Adelaide, 26-27 June 1997)
- Ginner Hau, Hanna, *Swedish Young Offenders in Community-Based Rehabilitative Programmes: Patterns of Antisocial Behaviour, Mental Health And Recidivism* (Doctoral Thesis, Stockholm University, 2010)
- Goddard, Tim and Randolph R Myers, 'Against Evidence-Based Oppression: Marginalized Youth and the Politics of Risk-Based Assessment and Intervention' (2016) *Theoretical Criminology* 1
- Groves, Matthew, 'International Law and Australian Prisoners' (2001) *University of New South Wales Law Journal* 55
- Hall, Ian, 'Young Offenders with a Learning Disability' (2000) 6 *Advances in Psychiatric Treatment* 278
- Hamilton, Carolyn, *Guidance for Legislative Reform on Juvenile Justice* (Children's Legal Centre and United Nations Children's Fund, 2011)
- Harrie, Roger P and Paul Christopher Harrie, 'The Prevalence of Uncorrected Refractive Errors in Adolescents Incarcerated in a Youth Detention Centre' (2016) 33 *Child Adolescent Social Work Journal* 273
- Heffernan, Edward, Kimina Andersen and Stuart Kinner, 'The Insidious Problem Inside: Mental Health Problems of Aboriginal and Torres Strait Islander People in Custody' (2009) *The Royal Australian and New Zealand College of Psychiatrists* 541
- Heseltine, Karen, Rick Sarre and Andrew Day, 'Prison-Based Correctional Offender Rehabilitation Programs: The 2009 National Picture in Australia' (Australian Institute of Criminology, Research and Public Policy Series, No. 112, 2010)

Hoge, Robert, *The Juvenile Offender: Theory, Research and Applications* (Kluwers Academic Press, 2011)

Holland, Tony, Isabel Clare, and Tanni Mukhopadhyay, 'Prevalence of "Criminal Offending" By Men and Women with Intellectual Disabilities and the Characteristics Of 'Offenders': Implications for Research and Service Development' (2002) 46 *Journal of Intellectual Disability Research* 6

Human Rights and Equal Opportunity Commission, *Report of National Inquiry into Racist Violence in Australia* (Australian Government Publishing Service, 1991)

Interagency Panel on Juvenile Justice, *Criteria for the Design and Evaluation of Juvenile Justice Reform Programmes* (United Nations Office on Drugs and Crime, 2010)

<

[https://www.unodc.org/pdf/criminal\\_justice/Criteria\\_for\\_the\\_Design\\_and\\_Evaluation\\_of\\_Juvenile\\_Justice\\_Reform\\_Programmes.pdf](https://www.unodc.org/pdf/criminal_justice/Criteria_for_the_Design_and_Evaluation_of_Juvenile_Justice_Reform_Programmes.pdf)>

Jewell, Jeremy D et al, 'A Multiyear Follow-Up Study Examining the Effectiveness of a Cognitive Behavioural Group Therapy Program on the Recidivism of Juveniles on Probation' (2015) *International Journal of Offender Therapy and Comparative Criminology* 259

Junger-Tas, Josine, 'Trends in International Juvenile Justice' (2008) in Josine Junger-Tas and Scott Decker (eds), *International Handbook of Juvenile Justice* (Springer, 2006) 37

Keyzer, Patrick and Darren O'Donovan, 'Imprisonment of Indigenous People with Cognitive Impairment: What Do Professional Stakeholders Think? What Might Human Rights-Compliant Legislation Look Like?' (2016) 8(22) *Indigenous Law Bulletin* 17

Klein, Elise et al 'Have Aboriginal and Torres Strait Islander legal services failed? A response to Weatherburn (2016) 14 (1) *Australian Review of Public Affairs* 1-24.

Lipsey, Mark, David B Wilson, and Lynn Cothorn, 'Effective Interventions for Serious Juvenile Offenders: A Synthesis of Research' in Rolf Loeber and David Farrington (eds), *Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions* (SAGE Publications, 1999) 313

Lipsey, Mark and Francis Cullen, 'The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews' (2007) 3 *Annual Review of Law and Social Science* 297

Lipsey, Mark et al, *Improving the effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice* (Centre for Juvenile Justice Reform, 2010)

Mackey, Hollie J, 'Youth Detention Facilities and Restorative Justice: Lesson for Public Education' in Anthony H Normore and Brian D Fitch (eds), *Leadership in Education Corrections and Law Enforcement: A Commitment to Ethics, Equity and Excellence* (Emerald Group Publishing Limited, 2011) 229

Marchetti, Elena and Janet Ransley, 'Applying the Criminal Lens to Officers and Legal Practitioners Involved in Sentencing Indigenous Offenders: Will Anyone or Anything Do?' (2014) 37 *University of New South Wales Law Journal* 1

Marien, Mark, '*Juvenile Justice and community-based sentencing for juveniles in New South Wales*' (Paper presented at the China-Australia Human Rights Technical Cooperation Program, Shenzhen, May 2011)

Martin, Stela, *Youth Justice Summary Report June 2016 Disability Practice and Service Improvement* (Centre of Excellence for Clinical Innovation and Behaviour Support, Department of Communities, Department of Child Safety Services and Disability Services, 2016)

Martinson, Robert, 'What Works? Questions and Answers about Prison Reform', (1974) 35 *Public Interest* 22

McGuire, James, "'What Works" to Reduce Re-Offending 18 Years On', in Leam A Craig, Theresa A Gannon, and Louise Dixon (eds), *What Works in Offender Rehabilitation: An Evidence-Based Approach to Assessment and Treatment* (Wiley-Blackwell, 2013)

McLean, Dr Sara, *Report on Secure Care Models for Young People at Risk of Harm: Report to the SA Child Protection Systems Royal Commission* (Australian Centre for Child Protection, 2016)

Mendel, Richard, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders* (The Annie E Casey Foundation, 2010)  
<[www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf](http://www.aecf.org/m/resourcedoc/aecf-MissouriModelFullreport-2010.pdf)>

Merton, Robert, *Social Theory and Social Structure* (The Free Press, Enlarged ed, 1968)

Moore, Tim, Morag McArthur and Vicky Saunders, 'Young People Talk about Transitioning from Youth Detention to the Community: Making Good' (2013) 66 *Australian Social Work* 328

Muncie, John, 'International Juvenile (In)Justice: Penal Severity and Rights Compliance' (2013) 2 *International Journal for Crime, Justice and Social Democracy* 43

Noetic Solutions Pty Limited, *Review of Effective Practice in Juvenile Justice: Report for the Minister for Juvenile Justice [NSW]* (January 2010)

Northern Territory, Review of the Northern Territory Youth Detention System, *Report* (January 2015) <[https://www.nt.gov.au/\\_\\_data/assets/pdf\\_file/0004/238198/Review-of-the-Northern-Territory-Youth-Detention-System-January-2015.pdf](https://www.nt.gov.au/__data/assets/pdf_file/0004/238198/Review-of-the-Northern-Territory-Youth-Detention-System-January-2015.pdf)>

O'Connor, Ian, 'Models of Juvenile Justice' (Paper presented at the Australian Institute of Criminology Conference, Adelaide, 26-27 June 1997)

Ogilvie, Emma and Alan Van Zyl, *Young Indigenous Males, Custody and Rites of Passage* (Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice No. 204, April 2001) <[http://www.aic.gov.au/media\\_library/publications/tandi\\_pdf/tandi204.pdf](http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi204.pdf)>

Pearce, Dennis C, and R S Geddes, *Statutory Interpretation in Australia* (Lexis Nexis, 8<sup>th</sup> ed, 2014)

Pearce, Dennis and Stephen Argument, *Delegated Legislation in Australia* (Butterworths, 4<sup>th</sup> ed, 2012)

Poynton, Suzanne and Patricia Menéndez, 'The Impact of the NSW Intensive Supervision Program on Recidivism' (2015) 186 *Crime and Justice Bulletin* 1

Power, Peter, *Chapter 11: Criminal Division – Sentencing*, Childrens Court of Victoria (21 July 2016)

<[www.childrenscourt.vic.gov.au/sites/default/files/Research%20Materials%20-%201%20-%20Criminal%20Division%20-%20Sentencing\\_0.pdf](http://www.childrenscourt.vic.gov.au/sites/default/files/Research%20Materials%20-%201%20-%20Criminal%20Division%20-%20Sentencing_0.pdf)>

Queensland Commission for Children and Young People and Child Guardian, *Child Guardian Report: Investigation into the Use of Force in Queensland Youth Detention Centres* (October 2012) <[http://apo.org.au/files/Resource/ccypcg\\_use-of-force-investigation-report\\_2012.pdf](http://apo.org.au/files/Resource/ccypcg_use-of-force-investigation-report_2012.pdf)>

Queensland Commission for Children and Young People and Child Guardian: *Summary Investigation Report: The use of Separation at a Queensland Youth Detention Centre* (January 2014)

Queensland Commission for Children and Young People and Child Guardian, *Annual Report 2013-14* (2014) <<https://publications.qld.gov.au/dataset/annual-report-2013-14-commission-for-children-and-young-people-and-child-guardian/resource/982130ab-a84a-4866-be30-61e51521828a>>

Queensland Criminal Justice Commission, *Youth, Crime and Justice in Queensland: An Information and Issues Paper* (March 1992) <<http://www.ccc.qld.gov.au/research-and-publications/publications/cjc/youth-crime-and-justice-in-queensland.pdf>>

Queensland Criminal Justice Commission, *Children, Crime and Justice in Queensland* (Research Paper Series vol 2 no. 2, 1995)

Queensland, Child Protection Commission of Inquiry, *Taking Responsibility: A Roadmap for Queensland Child Protection* (June 2013)

Queensland, Child Protection Commission of Inquiry, *Discussion Paper* (2013)

Queensland, Commission of Inquiry into Abuse of Children in Queensland Institutions, *Final Report* (1999)

Queensland, Commission of Inquiry into the Nature and Extent of the Problems Confronting Youth in Queensland, *Final Report* (1975)

Queensland Department of Child Safety, *Practice Paper: A Framework for Practice with 'High-Risk' Young People (12-17 years)* (December 2008) <<http://www.communities.qld.gov.au/resources/childsafety/practice-manual/prac-paper-framework-high-risk-young-people.pdf>>

- Queensland Department of Justice and Attorney-General, *Final Report for the Evaluation of Queensland Youth Boot Camps*, Queensland (July 2015) Publications <<https://publications.qld.gov.au/dataset/final-report-for-the-evaluation-of-queenslands-youth-boot-camps/resource/a654be83-cd7f-43b3-b6cd-cdf2c9c8b48d>>.
- Queensland Department of Justice and Attorney-General, *Annual Report (2015-16)* <<http://www.justice.qld.gov.au/corporate/publications/annual-report>>
- Queensland Department of Justice and Attorney-General, *Program Evaluation Report: Learning and Growth through Adventure on the Inside* (2016)
- Queensland Department of Justice and Attorney-General, *Program Evaluation Report: 'On Track' Program* (2016)
- Review of Effective Practice in Juvenile Justice: Report for the Minister for Juvenile Justice (January 2010) Noetic Solutions Pty Ltd <<http://www.juvenile.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Effective%20Practice%20Review%20FINAL.pdf>>
- Richards, Kelly, *What Makes Juvenile Offenders Different from Adult Offenders?* Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice No. 409, February 2011) <[http://www.aic.gov.au/media\\_library/publications/tandi\\_pdf/tandi409.pdf](http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi409.pdf)>
- Ringland, Clare and Don Weatherburn, 'The Impact of Intensive Correction Orders on Re-offending' (2013) 176 *Crime and Justice Bulletin* 1
- Rowse, T, 'Historical reasoning about Indigenous imprisonment: a community of fate?' *Australian Review of Public Affairs* Volume 13, Number 1: April 2015, 1-21.
- Rushworth, Nick, *Out of Sight, Out of Mind: People with an Acquired Brain Injury and the Criminal Justice System* (Brain Injury Australia, 2011) <<http://www.aija.org.au/Criminal%20Justice%202011/Papers/Rushworth%20PPT.pdf>>
- Sammut, Jeremy, *The Kinship Conundrum: The Impact of Aboriginal Self-Determination on Indigenous Child Protection* (The Centre for Independent Studies, 2014) <<http://apo.org.au/resource/kinship-conundrum-impact-aboriginal-self-determination-indigenous-child-protection>>
- Simpson, Jim and Mindy Sotiri, *Criminal Justice and Indigenous People with Cognitive Disabilities* (Discussion paper prepared for Aboriginal and Torres Strait Islander Services, 2004)
- Smith, David J, 'The Effectiveness of the Juvenile Justice System' (2005) 5. *Criminal Justice* 181
- Spinellis, Calliope D and Aglaia Tsitsoura, 'The Emerging Juvenile Justice System in Greece' (2008) in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice* (Springer, 2008) 309

Stando-Kawecka, Barbara, 'Continuity in the Welfare Approach' (2008) in Josine Junger-Tas and Scott Decker (eds) *International Handbook of Juvenile Justice*. (Springer, 2008) 351

Stanley, Elizabeth, *Human Rights and Prisons: A Review to the Human Rights Commission* (2011)

Statewide Behaviour Intervention Service, *Communications Equality in the Criminal Justice System: A Practice Guide for Speech Pathologists Supporting People with Disability* (Department of Family and Community Services, 2015)

Stathis, Stephen et al, 'Challenges in Establishing Adolescent Forensic Mental Health Services within Australian Youth Detention Centres' (2013) 20 *Psychiatry, Psychology and Law* 899

Stathis, Stephen et al, 'The Role of an Indigenous Health Worker in Contributing to Equity of Access to a Mental Health and Substance Abuse Service for Indigenous Young People in a Youth Detention Centre (2007) 6 *Australian e-Journal for the Advancement of Mental Health* 26

Stathis, Stephen et al, Use of the Massachusetts Youth Screening Instrument to Assess Mental Health Problems in Young People Within an Australian Youth Detention Centre (2008) 44 *Journal of Paediatrics and Child Health* 438

Steering Committee for the Review of Government Service Provision, Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2011* (2011) <<http://apo.org.au/sites/all/modules/pubdnt/pubdnt.php?nid=26112&file=http://apo.org.au/files/Resource/key-indicators-2011-report.pdf>>

Tasmanian Commissioner for Children, *Alternatives to Secure Youth Detention in Tasmania* (26 July 2013) <<http://www.childcomm.tas.gov.au/publications/alternatives-to-secure-youth-detention-in-tasmania-report/>>

United Kingdom, *The Harris Review: Changing Prisons, Saving Lives, Report of the Independent Review into Self-inflicted Deaths in Custody of 18-24 Year Olds* (July 2015)

Urbas, George, *The Age of Criminal Responsibility* (Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice No. 181, November 2000) <[www.aic.gov.au/media\\_library/publications/tandi\\_pdf/tandi181.pdf](http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi181.pdf)>

Van Dijk, Catherine 'Juvenile Delinquency and Juvenile Justice in Belgium' (Paper presented at the conference of the European Society of Criminology, Amsterdam, 25-28 August 2004)

Van Dijk, Catherine, Els Dumortier, and Christian Eliaerts in Josine Junger-Tas and Scott Decker (eds), 'Survival of the Protection Model? Competing Goals in Belgian Juvenile Justice' (2008) (eds) *International Handbook of Juvenile Justice* (Springer, 2008) 187

Weatherburn, Don, *Arresting Incarceration, Pathways out of Indigenous Imprisonment* (Aboriginal Studies Press, 2014)

Weatherburn, Don, Jackie Fitzgerald and Jiuzhao Hua, 'Reducing Aboriginal Over-Representation in Prison' (2003) 62(3) *Australian Journal of Public Administration* 65

Weatherburn, Don, Sumitra Vignaendra and Andrew McGrath, *The Specific Deterrent Effect of Custodial Penalties on Juvenile Re-Offending* (Australian Institute of Criminology Report, Technical and Background Paper No. 33, 2009)

White, Rob, 'Indigenous Young People and Hyperincarceration in Australia' (2015) 15 *Youth Justice* 3

Youth Detention Inspectorate, Internal Audit & Compliance Services, *Criteria for Assessing the Security and Management of Queensland's Youth Detention Centres and the Safe Custody and Wellbeing of Children Detained with Them* (18 October 2011)

#### CASES

*Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564

*Air New Zealand Ltd v Mahon* [1984] AC 808

*Attorney-General for the Northern Territory v Minister for Aboriginal Affairs* (1986) 67 ALR 282

*Bartz v Department of Corrective Services* [2002] 2 Qd R 114

*Barreto v McMullan* [2014] WASCA 152 (22 August 2014)

*Binse v Williams* [1998] 1 VR 381

*Briginshaw v Briginshaw* (1938) 60 CLR 336

*Bromley v Dawes* (1983) 10 A Crim R 98

*Cain v Doyle* [1946] 72 CLR 409

*C & J Clark Ltd v Inland Revenue Commissioners* [1973] 1 WLR 905

*Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560

*Commonwealth v Tasmania* (1983) 158 CLR 1

*Croft v Blair* [1989] CCA 296

*Egan v Willis* (1998) 195 CLR 424

*Flemming v Gibson* [1997] QCA 446 (19 December 1997)

*George v Rockett* (1990) 170 CLR 104

*Harding v Coburn* [1976] 2 NZLR 577

*Hot Holdings Pty Ltd v Creasy* (1996) 185 CLR 149 (27 February 1996)

Hyder v Commonwealth (2012) 217 A Crim R 571

ID, PF and DV v Director General, Department of Juvenile Justice [2008] NSWSC 965 (19 September 2008)

Industrial Equity Ltd v Deputy Commissioner of Taxation (1990) 170 CLR 649

Mahon v Air New Zealand Ltd & Ors (1938) 50 ALR 193

McEvoy v Lobban [1990] 2 Qd R 235

McKinnon v Secretary, Department of Treasury (2006) 228 CLR 423

Morris v Kanssen [1946] AC 459

O'Reilly v Commissioners of the State Bank of Victoria (1982) 44 ALR 27

Palmer v Chief Executive, Qld Corrective Services [2010] QCA 316 (12 November 2010)

Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355

R v Ensbey; Ex parte A-G (Qld) [2004] QCA 335 (17 September 2004)

R v Home Secretary; Ex parte Simms [2000] 2 AC 115

R v Langdon (1876) 2 QBD 296

Re Bland Bros and the Council of the Borough of Inglewood (No 2) [1920] VLR 522

Renton v Bradbury [2011] QSC 167 (22 May 2001)

Ruddock v Taylor (2005) 222 CLR 612

Schirmer v Queensland Health & Anor [2005] QSC 353 (5 December 2005)

Smith v Advanced Electrics P/L [2002] QSC 211 (26 July 2002)

The Queen v Carter and the Attorney-General (Unreported, Supreme Court of Tasmania, Full Court)

Trolly, Draymen and Carters Union of Sydney and Suburbs v Master Carriers Assoc of NSW (1905) 2 CLR 509

Wallaby Grip Ltd v QBE Insurance (Australia) Ltd; Stewart v QBE Insurance (Australia) Ltd (2010) 240 CLR 444

Western Stores Ltd v Orange County Council [1971] 2 NSWLR 36

Whitelaw v Sullivan [2010] QCA 336 (21 November 2010)

Wilover Nominees Ltd v IRC [1973] 2 All ER 977

## LEGISLATION

*Acts Interpretation Act 1915 (SA)*

*Acts Interpretation Act 1954 (Qld)*

*Anti-Discrimination Act 1991* (Qld)  
*Child and Family Services Act, R.S.O. 1990, c. C.11* (Ontario)  
*Child Protection Act 1999* (Qld)  
*Children (Community Service Orders) Act 1987* (NSW)  
*Children's Court Act 1907* (Qld)  
*Childrens Court Act 1992* (Qld)  
*Children's Court Amendment Act 1930* (Qld)  
*Children (Criminal Proceedings) Act 1987* (NSW)  
*Children (Detention Centres) Act 1987* (NSW)  
*Children (Detention Centres) Regulation 2015* (NSW)  
*Children, Youth and Families Act 2005* (Vic)  
*Commissions of Inquiry Act 1950* (Qld)  
*Community Welfare Act 1972* (SA)  
*Constitution Act of Finland* (Finland)  
*Corrections and Conditional Release Act, SC 1992, c. 20*  
*Corrective Services Act* (NT)  
*Corrective Services Act 2006* (Qld)  
*Corrective Services Regulation 2006* (Qld)  
*Crime and Corruption Act 2001* (Qld)  
*Crimes (Administration of Sentences) Act 1999* (NSW)  
*Crimes (Restorative Justice) Act 2004* (ACT)  
*Crimes (Sentencing) Act 2005* (ACT)  
*Crimes (Sentencing Procedure) Act 1999* (NSW)  
*Criminal Code* (NT)  
*Criminal Code* (Qld)  
*Criminal Code* (WA)  
*Criminal Law (Sentencing) Act 1988* (SA)

*Education (General Provisions) Act 2006* (Qld)  
*Family and Community Services Act 1972* (SA)  
*Graffiti Control Act 2008* (NSW)  
*Health Practitioner Regulation National Law Act 2009* (Qld)  
*Industrial and Reformatory School Act 1865* (Qld)  
*Interpretation Act* (NT)  
*Justices Act 1886* (Qld)  
*Justice Act 2016* (NI)  
*Juvenile Justice Act 1992* (Qld)  
*Juvenile Justice Amendment Act 2002* (Qld)  
*Juvenile Justice and Other Acts Amendment Act 2009* (Qld)  
*Liquor Act* (NT)  
*Ombudsman Act 2001* (Qld)  
*Parliamentary Ombudsman Act 2002* (Finland)  
*Penalties and Sentences Act 1992* (Qld)  
*Police Powers and Responsibilities Act 2000* (Qld)  
*Prison Act 1952* (UK)  
*Public Guardian Act 2014* (Qld)  
*Public Records Act 2002* (Qld)  
*Public Sector Ethics Act 1994* (Qld)  
*Public Service Act 2008* (Qld)  
*Racial Discrimination Act 1975* (Cth)  
*Security Providers Act 1993* (Qld)  
*Sentencing Act 1991* (Vic)  
*Sex Discrimination Act 1984* (Cth)  
*State Children Acts 1911 to 155* (Qld)  
*Summary Procedure Act 1921* (SA)

*Youth Criminal Justice Act 2002 (Can)*

*Youth Justice Act 1992 (Qld)*

*Youth Justice Act 1997 (Tas)*

*Youth Justice Act 2005 (NT)*

*Youth Justice Amendment Regulation (No. 2) 2014 (Qld)*

*Youth Justice and Other Legislation Amendment Act 2015 (Qld)*

*Youth Justice and Other Legislation (Inclusion of 17-year-old Persons) Amendment Bill 2016 (Qld)*

*Youth Justice and Other Legislation Amendment Act 2014 (Qld)*

*Youth Justice and Other Legislation Amendment Act (No. 1) 2016 (Qld)*

*Youth Justice (Boot Camp Orders) and Other Legislation Amendment Act 2012 (Qld)*

*Youth Justice Regulation 2003 (Qld)*

*Youth Justice Regulation 2016 (Qld)*

*Youth Offenders Act 1985 (Can)*

*Young Offenders Act 1993 (SA)*

*Young Offenders Act 1994 (WA)*

*Young Offenders Act 1997 (NSW)*

*Young Offenders Regulations 1995 (WA)*

#### TREATIES

Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987)

Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981)

Convention on the Rights of the Child, opened for signature 20 November 1980, 1577 UNTS 3 (entered into force 2 September 1990)

Optional Protocol to the International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

Optional Protocol to the International Convention against Torture, opened for signature 4 February 2003, 2375 UNTS 237 (entered into force 22 June 2006)

International Convention on the Elimination of all Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976)

International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)

Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980)

#### UNITED NATIONS DOCUMENTS

*Basic Principles for the Treatment of Prisoners*, GA Res 45/111, 45th sess, 68th plen mtg, Agenda Item 100, UN Doc A/RES/45/111 (14 December 1990)

*Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, 40<sup>th</sup> sess, 96<sup>th</sup> plen, mtg, Agenda Item 98, UN Doc A/RES/43/173 (29 November 1985)

*Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters*, ECOSOC Res 2002/12, Agenda Item 14(c) (24 July 2002)

*Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, GA Res 43/173, 43rd sess, 76th plen mtg, Agenda Item 138, UN Doc A/RES/43/173 (9 December 1988)

Committee against Torture, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Australia*, 53<sup>rd</sup> sess, UN Doc CAT/C/AUS/CO/4-5 (23 December 2014)

Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Fifteenth Periodic Report of Australia*, 77th Sess, UN Doc CERD/C/AUS/CO/15 (27 August 2010)

Committee on the Rights of the Child, *Concluding Observations on the Fourth Periodic Report of Australia*, 77<sup>th</sup> sess, UN Doc CRC/AUS/CO/4

*Declaration on the Rights of Indigenous Peoples*, GA Res 62/88, UNGA, 61<sup>st</sup> sess, 107<sup>th</sup> plen mtg, Agenda Item 68, UN Doc A/Res/61/295 (2 October 2007)

*Guidelines for Action on Children in the Criminal Justice System*, ECOSOC Res 1997/30, Agenda Item 7(c), UN Doc E/1997/30, (21 July 1997)

*Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*, GA Res 45/112, 45<sup>th</sup> sess 68<sup>th</sup> plen mtg, Agenda Item 100 (14 December 1990)

*Guidelines on Matters involving Child Victims and Witnesses of Crime*, ECOSOC Res 2005/20, annex, 36th plen. mtg (22 July 2005)

*Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, GA Res 66/138, 66th Session, 89th plen. mtg, UN Doc A/RES/66/138, (19 December 2011)

*Rules for the Protection of Juveniles Deprived of Their Liberty*, GA Res 45/113, 45<sup>th</sup> sess 68<sup>th</sup> plen mtg, Agenda Item 100 (14 December 1990)

*Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (The Bangkok Rules)*, GA Res 65/229, 65<sup>th</sup> sess, 71<sup>st</sup> plen. mtg, Agenda Item 105, UN Doc A/RES/65/230 (21 December 2010)

*Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World*, GA Res 65/230, 71st sess, plen. mtg 65, Agenda item 105, UN Doc A/RES/65/230, (21 December 2010)

*Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)*, GA Res 45/110, 45<sup>th</sup> sess, 68 plen, mtg, Agenda item 100, (14<sup>th</sup> December 1990)

*Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, GA Res 40/33, UN GA, 40<sup>th</sup> sess, 96<sup>th</sup> plen mtg, Agenda Item 98, UN Doc A/RES/40/33 (29 November 1985)

*Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules)*, GA Res 70/175, UN GA, 70<sup>th</sup> sess, 80<sup>th</sup> plen mtg, Agenda Item 106, UN Doc A/RES/70/175 (17 December 2015)

*Universal Declaration of Human Rights*, GA Res 217A (iii), UN GAOR, 3<sup>rd</sup> session, 183 plen mtg, UN Doc A/180 (10 December 1948)

#### OTHER

ACT Corrective Services, *Periodic Detention Centre* (1 September 2010)  
<<http://www.cs.act.gov.au/page/view/878/title/periodic-detention-centre>>

Alberta Justice and Solicitor General, *Young Offender Programs* (2016)  
<[https://solgps.alberta.ca/programs\\_and\\_services/correctional\\_services/young\\_offenders/Pages/young\\_offender\\_programs.aspx?WT.svl=programs](https://solgps.alberta.ca/programs_and_services/correctional_services/young_offenders/Pages/young_offender_programs.aspx?WT.svl=programs)>

Australian Broadcasting Corporation, *CCTV shows alleged mistreatment at Townsville's Cleveland Youth Detention Centre* (18 August 2016) ABC News  
<<http://www.abc.net.au/7.30/content/2016/s4522547.htm>>

Australian Broadcasting Corporation, *The Shocking Revelations of Alleged Physical and Mental Abuse from within a Queensland Youth Detention Centre* (18 August 2016) Lateline <<http://www.abc.net.au/lateline/content/2016/s4522569.htm>>

Australian Indigenous HealthInfoNet, *Multi-Systemic Therapy (MST) program* (15 October 2015) <[www.healthinfo.net.ecu.edu.au/key-resources/programs-projects?pid=1165](http://www.healthinfo.net.ecu.edu.au/key-resources/programs-projects?pid=1165)>

Australian Institute of Criminology, *Sentencing Juveniles* (2009)  
<[www.aic.gov.au/crime\\_community/demographicgroup/youngpeople/sentencing.html](http://www.aic.gov.au/crime_community/demographicgroup/youngpeople/sentencing.html)>

Australian Institute of Health and Welfare, *Youth Justice Supervision in 2014-2015: Youth Justice Fact Sheet No.59*  
<[www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554893](http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554893)>

Australian Institute of Health and Welfare, *Youth Justice Legislation* (2016)  
<[www.aihw.gov.au/youth-justice/legislation/](http://www.aihw.gov.au/youth-justice/legislation/)>

Australian Institute of Health and Welfare, *Youth Justice in Australia 2014-15* (AIHW Bulletin No. 133, 2016) <<http://www.aihw.gov.au/youth-justice>>

Australian Institute of Health and Welfare, *Youth Justice Supervision in Queensland: Youth Justice Systems Policies and Programs* (2016)  
<<http://www.aihw.gov.au/youth-justice/states-territories/qld>>

Australian Institute of Health and Welfare, *Youth Justice Supervision in Tasmania* (2016) <[www.aihw.gov.au/youth-justice/states-territories/tas](http://www.aihw.gov.au/youth-justice/states-territories/tas)>

Australian Lawyers for Human Rights, *Leading Human Rights Lawyers Urge PM to Safeguard Aussie Kids* (July 2016) <<https://alhr.org.au/leading-human-rights-lawyers-urge-pm-safeguard-aussie-kids/>>

Chambers, Barbara and Jan Pettman (eds), *Anti-Racism: A Handbook for Adult Educators* (Australian Government Printing Service, 1986)  
<[www.humanrights.gov.au/sites/default/files/Anti\\_racism\\_handbook.doc](http://www.humanrights.gov.au/sites/default/files/Anti_racism_handbook.doc)>

Child and Adolescent Health Service, *Specialised Services*,  
<<http://ww2.health.wa.gov.au/About-us/Child-and-Adolescent-Health-Service/Child-and-Adolescent-Mental-Health-Service/Our-services/Specialised-services>>

Comparative Youth Penalty Project, *Key Moments in Penal Culture in Queensland 1970-Present* (2011) <<http://cyp.p.unsw.edu.au/section-1-chronological-summary-1970-2008-1>>

Director-General, Department of Justice and Attorney-General, *Instrument of Delegation* (27 September 2016)

Explanatory Notes, Corrective Services Bill 2000

Explanatory Notes, Corrective Services Bill 2006

Explanatory Notes, Juvenile Justice Amendment Bill 2002

Explanatory Notes, *Youth Justice Regulation 2016*

House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Commonwealth of Australia, *Justice Under Scrutiny* (1994) <[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=reports/1994/1994\\_pp423.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=reports/1994/1994_pp423.htm)>

Justice Policy Institute, *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense* (2009) <[http://www.justicepolicy.org/images/upload/09\\_05\\_REP\\_CostsOfConfinement\\_JI\\_PS.pdf](http://www.justicepolicy.org/images/upload/09_05_REP_CostsOfConfinement_JI_PS.pdf)>

Larsen, Jacqueline Joudo, Australian Institute of Criminology, *Restorative Justice in Australia* (24 April 2015) <[www.aic.gov.au/publications/current%20series/rpp/121-140/rpp127/05\\_restorative.html](http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp127/05_restorative.html)>

Legal Services Commission of South Australia, *Sentencing by the Youth Court*, <[www.lawhandbook.sa.gov.au/ch06s02s03s05.php](http://www.lawhandbook.sa.gov.au/ch06s02s03s05.php)> (last updated 7 July 2010)

Legal Services Commission of South Australia, *State Offences*, <[www.lsc.sa.gov.au/dsh/ch06s04.php](http://www.lsc.sa.gov.au/dsh/ch06s04.php)> (last updated 21 May 2012)

Minister for Corrections, 'Periodic Detention to Make Way for Alternate Options' (Press Release, 16 April 2014) <[http://www.cmd.act.gov.au/open\\_government/inform/act\\_government\\_media\\_releases/rattenbury/2014/periodic-detention-to-make-way-for-alternate-options](http://www.cmd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2014/periodic-detention-to-make-way-for-alternate-options)> (last updated 9 April 2015)

Ministry of Social and Family Development, *Weekend Detention Order* (30 July 2014) <<https://app.msf.gov.sg/Policies/Children-Youth/Rehabilitation-of-Juvenile-Offenders/Community-based-Rehabilitation-of-Children-Youth/Court-Ordered-Options-for-Offenders/Weekend-Detention-Order>>

Murray, David 'Footage from inside Brisbane prison shows teen confronted by seven prison officers and put in spit mask', *The Courier Mail* (online), 30 August 2016, <[www.couriermail.com.au/news/queensland/footage-from-inside-brisbane-prison-shows-teen-confronted-by-seven-police-and-put-in-spit-mask/news-story/36723715c6226a32f5443177713b6967](http://www.couriermail.com.au/news/queensland/footage-from-inside-brisbane-prison-shows-teen-confronted-by-seven-police-and-put-in-spit-mask/news-story/36723715c6226a32f5443177713b6967)>

Newfoundland Labrador Department of Children, Seniors and Social Development, *Open Custody* <<http://www.cssd.gov.nl.ca/youthcorrections/opencustody.html>> (last updated 30 September 2016)

New South Wales Sentencing Advisory Council, *Review of Periodic Detention* (2007) <[http://www.sentencingcouncil.justice.nsw.gov.au/documents/projects\\_complete/periodic\\_detention/periodic\\_detention\\_report.pdf](http://www.sentencingcouncil.justice.nsw.gov.au/documents/projects_complete/periodic_detention/periodic_detention_report.pdf)>

Office of the Public Guardian, *Annual Report 2014-15* (2016)

Ontario Ministry of Children and Youth Services, *Custody-based sentencing* (17 May 2016) <[www.children.gov.on.ca/htdocs/English/youthandthelaw/sentence/custody-sentence.aspx](http://www.children.gov.on.ca/htdocs/English/youthandthelaw/sentence/custody-sentence.aspx)>

Oxford Reference, *Institutional Bias* (2016) <<http://www.oxfordreference.com/view/10.1093/acref/9780191800986.001.0001/acref-9780191800986-e-1358>>

Parliament of Tasmania, *Fact Sheet – Custodial Inspector Bill 2016* (2016)  
<[http://www.parliament.tas.gov.au/bills/Bills2016/pdf/notes/35\\_of\\_2016-Fact%20Sheet.pdf](http://www.parliament.tas.gov.au/bills/Bills2016/pdf/notes/35_of_2016-Fact%20Sheet.pdf)>

Penal Reform International, *A Training Manual for Independent Monitors of Juvenile Detention Facilities* (November 2011)  
<<https://www.penalreform.org/resource/training-manual-independent-monitors-juvenile-detention-facilities/>>

Queensland Anti-Discrimination Commission, *Women in Prison* (2006)  
<<http://www.adcq.qld.gov.au/human-rights/women-in-prison-report/women-in-prison-contents/women-qld#Link5>>

Queensland Corrective Services, *Healthy Prison Report* (2007) (18 February 2014)  
<[http://www.correctiveservices.qld.gov.au/Publications/Corporate\\_Publications/Reviews](http://www.correctiveservices.qld.gov.au/Publications/Corporate_Publications/Reviews)>

Queensland Department of Children's Services, *Centenary of Care of Children 1879-1979* (1979)

Queensland Department of Communities, *Youth Detention Centres Inspection Charter* (2011)

Queensland Department of Communities, *Youth Detention Centres Inspection Framework* (2011)

Queensland Department of Communities, Child Safety and Disability Service, *Respectfully Journey Together: Aboriginal and Torres Strait Islander Cultural Capability Action Plan* (2015)

Queensland Department of Justice and Attorney-General, *Youth Detention Centre Operations Manual* (2011)

Queensland Department of Justice and Attorney-General, *Workplace Policy* (December 2014)

Queensland Department of Justice and Attorney-General, *Office of the Public Guardian Protocol* (August 2016)

Queensland Department of Justice and Attorney-General, *Youth Justice First Nations Action Board* (2016)

Queensland Department of Justice and Attorney-General, *Child Protection Reforms* (20 July 2016) <<http://www.justice.qld.gov.au/corporate/justice-initiatives/carmody-report-recommendations>>

Queensland Department of Justice and Attorney-General, *Youth Justice and Other Legislation (Inclusion of 17-year-old persons) Amendment Act 2016* (18 November 2016) <<http://www.justice.qld.gov.au/corporate/about-us/business-areas/youth-justice/youth-justice-and-other-legislation-inclusion-of-17-year-old-persons-amendment-act-2016>>

Queensland Department of Justice and Attorney-General, *Aboriginal and Torres Strait Islander Cultural Capability Action Plan 2015-2019*

Queensland Government, *Code of Conduct for the Queensland Public Service* (2011)

Queensland Government Chief Information Office, *Recordkeeping – IS40*

<<https://www.qgcio.qld.gov.au/products/qgea-documents/548-Information/2357-recordkeeping-is40>>

Queensland Police Service, *Police Dog Squad Handbook* (2006)

Queensland Police Service, *Body Worn Cameras* (19 September 2016)

<<http://www.police.qld.gov.au/programs/bodyworncamera.htm>>

Queensland State Archives, *Public Records Act 2002: A Plain English Guide* (version 2, 2009)

Statistics Canada *Definitions* (30 November 2015) <[www.statcan.gc.ca/pub/85-002-x/2010002/definitions-eng.htm#o1](http://www.statcan.gc.ca/pub/85-002-x/2010002/definitions-eng.htm#o1)>

Victorian Department of Human Services, *Youth Attendance Order - Information for young people* (23 May 2013) <<http://www.dhs.vic.gov.au/for-individuals/children,-families-and-young-people/youth-justice/community-supervision/youth-attendance-order-information-for-young-people>>

Victorian Government, *Victorian Aboriginal Justice Agreement* (2000) (24 March 2015) <[www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/victorian+aboriginal+justice+agreement](http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/victorian+aboriginal+justice+agreement)>

Western Australian Department of Corrective Services, *Banksia Hill Detention Centre*, (17 October 2016) <<http://www.correctiveservices.wa.gov.au/youth-justice/youth-detention/banksia-hill.aspx>>

## GLOSSARY

ABC	Australian Broadcasting Corporation
ABI	Acquired brain injury
ABL	Adventure based learning
Accompanied leave	A supervision level for a leave of absence. This means that a detained young person will remain accompanied, during their leave, by a youth detention staff member (including a caseworker, program or medical staff member).
Accredited visitor	A visitor to a youth detention centre who is either: <ul style="list-style-type: none"> <li>- the Minister</li> <li>- a Member of the Legislative Assembly</li> <li>- the Director-General</li> <li>- the Assistant Director-General, Youth Justice</li> <li>- the Principal Inspector and any other officer with a delegated authority under S263(4) of the Youth Justice Act 1992</li> <li>- a departmental staff member from Youth Justice.</li> </ul>
ADCQ	Anti-Discrimination Commission of Queensland
ADG YJ	Assistant Director-General, Youth Justice
AG	Attorney-General
AHRC	Australian Human Rights Commission
AIC	Australian Institute of Criminology
AIHW	Australian Institute of Health and Welfare
AJJA	Australasian Juvenile Justice Administrators
ALHR	Australian Lawyers for Human Rights
Antecedent	An antecedent report provides the young person's history of orders and proven offences.
ART	Aggression replacement training
ATSI	Aboriginal and Torres Strait Islander
ATSILS	Aboriginal and Torres Strait Islander Legal Service
Audio link	Facilities, including telephone, that enable continuous audio communication between people in difference places.
Audio-visual link	Facilities, including closed-circuit television, that enable audio and visual communication between people in difference places.

Authorised officer	A staff member who has delegated authority under the <i>Youth Justice Act 1992</i> or <i>Youth Justice Regulation 2003</i> .
Bail	When a person has been arrested they may be released from custody on bail, pending their court appearance.
Balance displacement	Balance displacement techniques are part of the Youth Detention Protective Actions Continuum.
BCC	Brisbane Correctional Centre
BDP	Behaviour development plan
BMP	Behaviour management plans
BSP	Behaviour support plan
BST	Behaviour support team
BSU	Behavioural support unit
Buy up scheme	Buy ups are available to young people in youth detention based on the Commonwealth-issued weekly allowance. Young people can purchase a range of items using this allowance; however, they may be denied access to the buy-ups system if they do not demonstrate satisfactory behaviours.
BYDC	Brisbane Youth Detention Centre
BYETC	Brisbane Youth Education and Training Centre
CaPE	Conduct and Performance Framework
CAT	Convention against Torture and Other Cruel, In humane or degrading Treatment or Punishment
CCA	<i>Children's Court Act 1992</i>
CCC	Crime and Corruption Commission
CCPA	<i>Children (Criminal Proceedings) Act 1987 (NSW)</i>
CCSOA	<i>Community Service Order Act 1987 (NSW)</i>
CCTV	Closed-circuit television
CCYPCG	Commission for Children and Young People and Child Guardian
CDCA	<i>Children (Detention Centres) Act 1987 (NSW)</i>
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
Centre Director	Executive Director in charge of the youth detention centre.
CETC	Cleveland Education and Training Centre

CFT	CFT Security Townsville
Charge	When a person is formally accused of having committed a crime.
CHART	Changing habits and reaching targets
CHQ	Children's Health Queensland
CJC	Criminal Justice Commission
CLS	Capability, Learning and Systems unit
CLSA	<i>Criminal Law (Sentencing) Act 1988 (SA)</i>
CMC	Crime and Misconduct Commission
CN	Clinical Nurse
Code Black	<p>A Code Black is called when:  a potentially violent incident is unfolding involving a number of young people physically assaulting other young people and/or staff, and the staff present are not able to contain or readily resolve the situation.</p> <p>If staff are unable to resolve the incident and it continues to escalate, the Queensland Police Service (QPS) should be called to assist.</p>
Code Blue	A code blue is a medical emergency, which is defined as any incident where a young person, staff member or visitor requires immediate assistance by a medical professional.
Code Brown	<p>A code brown is called when a person (or people) have been taken hostage.</p> <p>QPS may need to be called to assist in the incident resolution.</p>
Code Green	A code green is called when a young person is attempting to escape/abscond or has escaped/absconded from the detention centre.
Code Olive	A code olive is called when a young person/s has climbed onto a roof (or other type of structure) within the centre.
Code Pink	A code pink is called when a young person has or is attempting to cut off the flow of blood and/or oxygen to the brain by any means that constricts the neck.
Code Purple	<p>A code purple is called when an incident involves a breach of the perimeter security, such as a break-in.</p> <p>The QPS may need to be called to assist in the incident resolution.</p>
Code Red	A code red is a response to fire or smoke that a staff member considers may be associated with a fire.

Code Yellow	A code yellow is called when a staff member requires immediate assistance.
COM1	Complaint form
CP	Child Protection
CPIU	Child Protection Investigation Unit
CRJA	Crimes (Restorative Justice) Act 2004 (ACT)
CROC	Convention on the Rights of the Child
CSA	<i>Crimes (Sentencing) Act 2005 (ACT) or Children's Service Act 1965</i>
CSD	Confidential Submission Document
CSIU	Corrective Services Investigation Unit
CSO	Corrective Services Officer
CV	Community Visitor
CYDC	Cleveland Youth Detention Centre
CYFA	<i>Children, Youth and Families Act 2005 (Vic)</i>
DCCSDS	Department of Communities, Child Safety and Disability Services
DCOIS	Detention centre operational information system
DJAG	Department of Justice and Attorney-General
Edocs	Electronic document management system
EQ	Education Queensland
Escorted leave	A supervision level for a leave of absence. It means that a young person will be escorted off centre by youth detention staff, at least one of whom must be trained in escorting procedures (see also leave of absence).
Escorted visitor	A visitor to a youth detention centre who must be escorted at all times by youth detention staff while on centre.
ESU	Ethical Standards Unit
Evidence	Any number of articles or items that can be used to determine the facts associated with a particular matter, or to prove or disprove or disprove a fact in a court of law.
Evidence register	A hard-copy book maintained by the unit manager (operations) that records all evidence kept or provided to another party. The evidence register is kept in the evidence safe.
FASD	Foetal alcohol spectrum disorder

First officer response	The first officer arriving at the scene of an emergency situation.
FNAB	First Nations Action Boards
Forde inquiry	Commission of Inquiry into Abuse of Children in Queensland Institutions
Franchise	The Queensland Government website is divided into sections that are managed by various departments. The franchise that YJ content is on is - Your rights, crime and the law. The term franchise is generally used interchangeably with Queensland Government website.
Frivolous complaint	A complaint lacking in substance, that is trivial or superficial. An example of a frivolous complaint is one made about the quality of the toilet paper provided to young people in youth detention.
GA	General Assembly
General Manager	General Manager in charge of an adult correctional centre.
Guilty	A plea or finding that the allegations made against a person are proven by evidence before the court.
Hearsay evidence	Evidence presented by a person other than the person in question, that is not in the first person.
Hoffman Knife	A type of authorised restricted article permitted in youth detention centres to be used in the event a young person is attempting to take their own life via a hanging mechanism or by strangulation.
HR	Human Resources
HREOC	Human Rights and Equal Opportunity Commission
HRLC	Human Rights Law Centre
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	Integrated criminal justice system
ICMS	Integrated case management system
ICT	Information communication and technology
ID	Identification
IFPAT	Info path print automation tool
IJIS	Integrated justice information system

IMP	Intensive Management Plan
Incident controller	The officer leading the response at the physical location of the incident
Injury	An injury that needs medical attention and intervention.
Inter alia	Among other things
IOMS	Integrated Offender Management System
IRSA	Industrial and Reformatory School Act 1865
IWRL	ICMS work request list
JDAI	Juvenile Detention Alternative Initiatives
JJA	Juvenile Justice Act 1992
Judgement	The decision of the judge/magistrate and an explanation of why that decision was reached.
KPMG	Professional service company (auditors)
LOA	Leave of absence
Lockdown	Locking young people in their rooms due to an emergency event or other type of incident where there are risks to people, property or the order of the detention centre. A lockdown is a form of separation.
Magistrate	Referring to a stipendiary magistrate. A magistrate is a judicial officer with summary jurisdiction (power to hear a case alone, without a jury) in minor criminal and civil matters.
Mechanical restraint	Actual restraint equipment such as handcuffs, to restrict a young person's movement.
MHATODS	Mental Health Alcohol Tobacco and Other Drugs Service
MHS	Multi-health systems inc.
Minor misbehaviour	In a youth detention centre this refers to a young person's behaviour which may create a distraction or unsettle others but has no serious implications and negative outcomes for anyone or for centre operations.
Mitigating circumstance	Regarding the commission of an offence, this is a circumstance that may persuade a court to impose a lesser punishment than the otherwise would, e.g. a young offender being influenced and led astray by older children is a mitigating circumstance.
Moderate misbehaviour	In a youth detention centre this refers to a young person's behaviour that has a reasonable impact on others and/or centre operations. It may be hurtful to others, but not as harmful as serious misbehaviour will be. It will usually require a consequence to be implemented.
MOU	Memorandum of understanding

MST	Multisystemic therapy
NAIDOC	National Aboriginal and Islander Day Organising Committee
NDIS	National Disability Insurance Scheme
NTYJA	<i>Youth Justice Act 2005 (NT)</i>
OADG/OADGYJ	Office of the Assistant Director-General, Youth Justice
Oath	This is a religious assertion by which the part calls their God to witness that what they say is the truth (see affirmation).
Occurrence report	Part of the DCOIS reporting suite, it is a factual account of a staff member's version of events as part of an incident.
OCSR	Office of Correctional Service Review
Offence	An act or omission that renders the person doing the act or making the omission liable to punishment (see guilty).
OPCAT	Optional Protocol to the Convention against Torture
OPG	Office of the Public Guardian
OQO	Officer of the Queensland Ombudsman
OR	Operational Review unit
Order	A direction or command. It describes a certain type of decision. In general use it is often used to refer to the document on which a decision is recorded.
PAC	Protective actions continuum. A continuum of intervention response options to manage incidents involving aggressive and/or non-compliant behaviour.
PACT	Protect all Children Today
PBS	Positive Behaviour Support
Plea	A reply to a complaint. In a criminal case, an accused person may enter a plea of guilty or not guilty (see guilty).
PPD	Practice, Program and Design unit
Prohibited articles	Items that are strictly prohibited in a youth detention centre. This includes (but is not limited to): <ul style="list-style-type: none"> <li>- weapons (except those carried by QPS officers or by transport/escort staff)</li> <li>- items that are illegal in the community (e.g. drugs and associated implements of use)</li> <li>- pornographic material</li> <li>- items that may be offensive to others (posters, drawings &amp; etc)</li> </ul>

- alcohol and other flammable substances
- anything that could be used to scale a wall or fence
- anything that could be used to damage or destroy equipment designed to secure young people
- a key, card or any other item that could open a mechanical or electronic lock
- soap or any other item that could contain an impression of a key
- any substance that could be of an intoxicating nature
- syringes
- unauthorised computer or telecommunication equipment
- an objectionable computer game under the *Classification of Computer Games and Images Act 1995*
- any film with a classification rating greater than M under the *Classification of Films Act 1991*
- a prohibited publication under the *Classification of Publications Act 1991*
- anything modified from its usual form to enable something to be concealed in it
- any other item that poses a risk to the safety of people or property and/or the security or order of the centre.

PRP	Policy, Research and Partnerships unit
QFCC	Queensland Family and Child Commission
QNADA	Queensland Network of Alcohol and other Drug Agencies
QP9	A formal Queensland Police Service record of charge
Qprime	QPS IT system
QPS	Queensland Police Service
Quash	To discharge or set aside, e.g. a wrongful conviction.
Queen's counsel	The status conferred on senior barristers in recognition of their competence.
QUT	Queensland University of Technology
QWIC	Queensland wide integrated courts
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RD	Regional director
RDA	Racial Discrimination Act
RDM	Reference data management
Reasonable use of force	Can only occur when all of the following are completed/complied with: <ul style="list-style-type: none"> <li>- the young person's age, maturity and the nature of their misbehaviour has been considered</li> <li>- any further actions taken respect the young person's dignity, cultural beliefs and background</li> </ul>

- use no more force than is reasonably necessary to protect the young person, other people or property
- the young person, other people or property cannot be protected any other way a record is made about the use of force.

Record of interview	The written or taped particulars of what took place during the questioning of an accused person.
Recording of conviction	When a conviction is recorded against a person who has been found guilty of an offence (see also finding of guilt/conviction).
Remand	A person is placed on remand between court appearances. A person on remand may be released on bail or held in custody during an adjournment or pending sentence.
Removable media	Includes an external device that can be connected to, or inserted into and removed from, a computer and is used to create, store, transmit and/or transport data in electronic form. This includes floppy disks, CD-ROMs, DVDs, zip drives, portable hard drives, portable music players (e.g. iPods), mobile telephones, laptops, notebooks, tablet PCs, smart cards, digital cameras, videos, voice recorders and USB storage devices such as thumb drives, USB flash drives and memory keys. Removable media are defined as restricted articles in youth detention centres.
Reprimand	A warning given by the court if a person is found guilty or pleads guilty to an offence.
Rescue knife	A type of authorised restricted article permitted in youth detention centres to be used in the event a young person is attempting to take their own life via a hanging mechanism or by strangulation.
RJ	Restorative Justice
S/S	Shift supervisor
SAYOA	<i>The Young Offenders Act 1993 (SA)</i>
SCA	<i>State Children's Act 1911</i>
Serious injury	Relevant to reporting a critical incident and certain types of reportable incidents. A serious injury will usually require off-site medical attention and treatment and/or be an injury that requires ongoing treatment and assessment.
Serious misbehaviour	In a youth detention centre this refers to a young person's behaviour that has serious impacts on others and/or the operations of the centre. It includes assaults, serious property damage and possession of a restricted, prohibited or illegal article.
SHACC	Shift Accommodation Supervisor
SHOP	Shift Operations Supervisor
SIYP	Special interest young person

SIYP list	The list of young people who have been identified as special interest young people.
SPEP	Standardised Program Evaluation Protocol
SR1	Suicide risk alert - this is recorded under circumstances prescribed by the ICMS SR1 document.
SRAT	Suicide risk assessment team
SRO	Supervised release order
Statement	Includes any representation of fact, whether in words or otherwise.
Sterile room	A room that does not contain any potentially harmful items. This may mean that a young person's clothes (that they are not wearing), personal items, and hygiene items such as deodorant, are removed from their possession and provided as needed. Young people who are at risk of suicide or self-harm, or have been placed in separation, may be located in a sterile room. If a young person is assessed as being at risk of suicide or self-harm, SRAT will determine what items they can safely have in their room.
Structured day	The daily timetable of activities that young people in detention participate in each day. Structured day begins at 7am and ends around 7:30-7:45pm, after which overnight lockdown commences.
Summary offence	A minor criminal act that can be taken to trial without using a jury.
Summary proceedings	A court action in which a magistrate, sitting alone, decides a case as opposed to a judge and jury.
Summons	A document issued by a court that orders a person to appear in court.
Supervised orders	Includes community-based orders and detention orders made by the courts under the <i>Youth Justice Act 1992</i> , and conditional bail programs.
Surety	A person who binds themselves to satisfy the obligation of another person, if the latter fails to do so (similar to a guarantor). If a surety is required to satisfy the obligation, such as by paying a debt, they can sue the other for money.
The Review	Independent Review into Youth Detention 2016 (Qld)
TIP	Trauma Informed Practice
Transcript	An official copy of proceedings in a court
TYJA	<i>The Youth Justice Act 1997 (TAS)</i>
UN	United Nations
Undertaking	A promise in writing regarding bail. It is signed by a defendant and, if applicable, their surety or sureties. It promises that the defendant will

appear at a hearing, an adjourned hearing, their trial or an appeal and surrender into custody and comply with such other conditions as are imposed for their release on bail.

UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
Unescorted leave	Happens as part of an organised and approved program, preparing a young person for release from detention. Young people travel unescorted to the approved activity and a responsible adult (other than a youth detention staff member) supervises the young person for the duration of the activity (either for the entire time or by regular checks of the young person's whereabouts).
Unescorted visitor	A visitor to a youth detention centre who has been suitably trained in safety and security procedures and who does not need to be escorted by youth detention staff.
Vexatious complaint	A complaint that is made solely to harass, subdue or victimise a person. A complaint may be considered vexatious if it has been made primarily to embarrass, annoy or place an unreasonable burden on the respondent.
Visitor	Any person going to a youth detention centre who is not a detained young person or an on-duty staff member.
VMO	Visiting medical officer - VMOs regularly visit each youth detention centre to provide health services to young people.
Voluntary statement	A statement that has not been made as a result of any fear or prejudice, or hope of advantage exercised or held out by a person in authority (i.e. obtained without threat or inducement).
Wand search	A search where a young person remains clothed and is searched with a hand-held metal detector. Wand searches are authorised under S25 of the <i>Youth Justice Regulation 2003</i> .
Warrant	A document authorising the person to whom it is addressed to perform whatever tasks are set out in the warrant. The power to arrest, search or seize goods could be set out in a warrant.
WASA	<i>The Sentencing Act 1995 (WA)</i>
WAYOA	<i>Young Offenders Act 1994 (WA)</i>
YAC	Youth Advocacy Centre
YANQ	Youth Affairs Network Queensland
YD	Youth Detention
YDC	Youth Detention Centre
YETI	Youth Empowered Towards Independence
YFSS	Youth and family support service

YJ	Youth Justice
YJA	<i>Youth Justice Act 1992</i>
YJC	Youth justice conferencing
YOA	<i>Young Offenders Act 1997 (NSW)</i>
YOU	Youthful Offender Unit
Youth detention operational staff	A staff member who has direct care responsibility for young people e.g. a detention youth worker or section supervisor.
Youth detention protective actions continuum (PAC)	An incident intervention response framework based on using the proportionate level of response.
Youth Worker	A staff member who has direct care responsibility for young people.
YP	Young People



# THE INDEPENDENT REVIEW OF YOUTH DETENTION

## KATHRYN MCMILLAN QC, COMMISSIONER

Ms Kathryn McMillan QC has been a Queensland barrister for 28 years and was appointed Queen's Counsel in 2013, having previously been a Senior Counsel since 2006. She practices primarily in the areas of administrative law, family law, child protection law and civil/human rights and discrimination.

Ms McMillan was appointed Counsel Assisting the Child Protection Commission of Inquiry, and she has appeared as Counsel in Queensland's Public Hospitals Commission of Inquiry, the Barrett Adolescent Centre Commission of Inquiry and the Royal Commission into Institutionalised Responses to Child Sexual Abuse.

Ms McMillan is a member of Dame Quentin Bryce's Domestic and Family Violence Prevention Council and the Child Death Case Review Panel.

## PROFESSOR MEGAN DAVIS, COMMISSIONER

Megan Davis is a Professor of Law and Director of the Indigenous Law Centre, Faculty of Law at the University of New South Wales and a Commissioner of the New South Wales Land and Environment Court. She is also a member of the New South Wales Sentencing Council and a Fellow of the Australian Academy of Law.

Professor Davis is also an expert member on the United Nations Permanent Forum on Indigenous Issues, having had extensive experience as a United Nations lawyer and being a former Fellow of the United Nations High Commissioner for Human Rights in Geneva.

In 2011, Professor Davis was appointed to the Prime Minister's Expert Panel on the Recognition of Aboriginal and Torres Strait Islander Peoples in the Constitution and this year was appointed to the Referendum Council.

Professor Davis' current research focus is in the areas of sentencing laws, violence against Aboriginal women, and constitutional design and deliberation.

## JANICE CRAWFORD, COUNSEL ASSISTING

Janice Crawford is a practising barrister at the private bar in Brisbane. She holds Masters level qualifications in nursing and law. Janice's nursing background included many years working in adult mental health both clinically and managerially. Main areas of legal interest are criminal law, inquests, professional regulation and medical negligence/personal injuries law. Janice has a particular interest in children's legal issues including juvenile justice and the child witness.

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