

**Submission by
YOUTH ADVOCACY CENTRE INC**

to the

QUEENSLAND OMBUDSMAN

regarding the

**Investigation into the Accommodation of
Young People in Watch Houses**



OCTOBER 2018

The Youth Advocacy Centre Inc (YAC) is a community legal and social welfare agency for young people across the greater Brisbane area who are involved in, or at risk of involvement in, the youth justice and/or child protection systems (10-18 years) and/or are homeless or at risk of homelessness (10-25 years). Our clients are some of the most marginalised young people in Queensland and often have multiple challenges but little ability to influence their life and environment.

YAC is unique in its legal and social welfare multidisciplinary model with a focus on the youth justice age group. It was the first specialist legal service for children in Queensland, and one of the first in Australia. As such, it has developed significant expertise over the 37 years it has been responding to children who find themselves becoming enmeshed in the youth justice system.

A pervasive problem with regard to the detention of young people in Queensland generally is the large disparity in numbers of young people in custody waiting for their matters to be dealt with by the courts as compared to those serving a sentence. Consistently up to 80% of young people in detention are on remand. For many decades YAC has strongly advocated against the detention young people in watch houses.

The Queensland Police Service “Agreed Policy and Procedure for the Detention of Children in Watch houses” dated 11 December 1991 (the Policy) and the “Memorandum of Understanding between the Queensland Police Service and the Department of Communities Regarding the Detention of Children in Watch houses” dated 25 October 2004 (the MOU) are underpinned by the principle that all children in detention should be held in a detention centre as opposed to a watch house.

Historical context

Towards the end of 1998 the situation was that large numbers of children were being held in police watch houses. YAC took an active role in advocating on this issue which included establishing a cross community watch house advocacy group which in turn held a forum at which the guest speaker was Elizabeth Evatt AC who spoke about the breach of young people’s human rights.

The government formulated a number of responses to this situation:

- In January 1999 the Department of Families, Youth and Community Care (DFYCC) established a register of all incidents of children being detained in watch houses;
- Interim arrangements for the transport of young people from watch houses to the detention centre were put in place by police (at that time over half of young people held in watch houses were being held in regional Queensland watch houses);
- An Interdepartmental working group (including police, DFYCC, Department of Aboriginal and Islander Policy and Department of Justice representatives) was established;
- A government arranged “Workshop to identify strategies to minimise the detention of children in watch houses” on 24 March 1999 (the workshop) took place.

In August 1999 DFYCC produced “Detention of Children in Watch houses: a report on the outcome of the process to identify issues and recommend strategies to reduce the incidence and duration of children in watch houses.” That report noted with support a recommendation from the workshop “That alternative placement options be developed for young people on remand in order to reduce the number placed in juvenile detention centres. “

Whilst it is encouraging to see the current actions of the Queensland government in providing support for young people to assist them to secure bail in circumstances where they would otherwise would be held in detention as a result of refusal of bail (owing to lack of safe and

appropriate accommodation) it is clear more can and should be done. Many of the young people involved in the youth justice system have histories of childhood abuse and the social systems in place to protect children have often failed to do so. Detaining young people rather than responding to their needs is likely to exacerbate rather than relieve the circumstances resulting in their offending.

Despite the stated commitment to the principles embedded in the Policy and MOU, young people in Queensland are being held in watch houses for significant periods and in significant numbers and without having their needs met. The changes to practice and oversight mechanisms which were intended to prevent young people falling again into this regrettable situation have seemingly failed.

Legal issues

With respect to the question of the lawfulness of the use of watch houses to accommodate young people YAC has been advised previously, in raising this issue with Youth Justice, that advice has been sought from Crown Law in relation to the legality of detaining young people in watch houses. YAC has not been provided a copy of the advice but suggest that the Ombudsman seek this out.

In any event YAC is of the view that the practice clearly runs contrary to the United Nations Convention on the Rights of the Child.

Article 37 of which states:

State Parties shall ensure that:

(c) Every child deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age¹. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance."

In recognition of the government's stated commitment to enacting UNCROC, the *Youth Justice Act (1992)* (the YJ Act) states that:

Schedule 1 - Charter of Youth Justice Principles:

17 A child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.

18 A child detained in custody should only be held in a facility suitable for children.

19 While a child is in detention, contacts should be fostered between the child and the community.

20 A child who is detained in a detention centre under this Act—

(a) should be provided with a safe and stable living environment; and

(b) should be helped to maintain relationships with the child's family and community; and

(c) should be consulted about, and allowed to take part in making, decisions affecting the child's life (having regard to the child's age or ability to understand), particularly decisions about—

(i) the child's participation in programs at the detention centre; and

¹ All emphasis in this document is YAC's

(ii) contact with the child's family; and

(iii) the child's health; and

(iv) the child's schooling; and

(d) should be given information about decisions and plans about the child's future while in the chief executive's custody (having regard to the child's age or ability to understand and the security and safety of the child, other persons and property); and

(e) should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information; and

(f) should have access to dental, medical and therapeutic services necessary to meet the child's needs; and

(g) should have access to education appropriate to the child's age and development

The relevant legislation concerning the detention of young people in watch houses is the YJ Act. Section 50(2)(c) of the YJ Act provides that police can decide to keep child in custody following arrest. Keeping a child in custody would involve holding them in a watch house – the Queensland Police Service “Agreed Policy and Procedure for the Detention of Children in Watch houses” (the Policy) speaks to this. It is noted that this Policy emphasises that a child should be held in police custody *as a last resort and for the shortest possible time*. Section 54(2) of the YJ Act provides that pending their first appearance at court, police must make arrangements with the Chief Executive Department of Child safety, Youth and Women (the CE) for the young person to go to a Youth Detention Centre *wherever practicable*.

Further s56(1) of the YJ Act directs that a court that **remands a child** in custody **must** remand the child into the custody of the CE and per s56(4) **must order the Commissioner of Police to deliver the child as soon as is practicable into the custody of the CE**. YAC is aware that currently there are young people detained in the Brisbane watch house who have been sentenced and are serving a sentence of “detention” in the watch house. This is entirely contrary to the provisions of the YJ Act. Section 210 of the YJ Act provides that a child who is sentenced to serve a period of detention **must serve the period of detention in a detention centre**. Subsection (2) states that on making a detention order against a child, **a court must issue its warrant** in the prescribed form (if any) directing the commissioner of the police service to take the child into custody and deliver the child to a detention centre decided by the chief executive. Of course if the young person is already in police custody eg in watch house a warrant would not be required. That being said the provisions cannot be read down as providing only authority to police to take the child into custody. They also impose a positive obligation on the CE to provide a place for the young person in a detention centre to serve their sentence. The plain meaning of both section 56 and section 120 is that any young person held on remand or sentenced to detention must be accommodated in a detention centre – as opposed to an adult prison or a watch house.

The expectation laid by s56 and s210 is that the physical delivery of the young person, as “custody” denotes, will occur without delay. Specifically the legislation contemplates that at this juncture the young person would be in custody of the CE and therefore responsibility for the child's welfare rests with the CE not the police. Clearly this reflects the entirely different nature of watch house accommodation as opposed to centre based accommodation.

The principles of sentencing as embed in the relevant YJ Act provisions dictate that any time spent on remand is a factor to be taken into account on determination of sentence. Customarily, again in recognition of the conditions a person in custody in a watch house endures, courts will consider time spent in a watch house as having a greater weight in determining punishment. Some courts consider 1 day spent by an adult in a watch house would equate to 2 days in a prison. The added complication is that the courts will not necessarily be apprised on the length of time a young person spent in a watch house awaiting

sentence. Young people will not be able to instruct with any specificity their legal representatives about the duration of stay in a watch house so as to enable the court to apply a consideration of lessening (discounting) the period of detention (if appropriate) which is proposed by way of sentence. Further, if a court sentences a young person to detention it is the courts expectation that the young person will serve that sentence in a detention centre. The court will therefore not take into consideration the harsher impact of serving all or even a portion of a sentence of detention in a watch house – a circumstance which otherwise would attract significant mitigation on penalty.

The long-standing practice of the courts is to pronounce that the young person is remanded in custody without reference to the CE. Until such time as a formal transfer of custody to the CE takes place the position is that young people are reliant on police to provide them with appropriate care. Clearly this is a situation which the legislature sought to avoid whilst recognising as a matter of practicality that it does occur. The Policy and MOU attempted to go some way towards filling the gap left by the legislation by making references to time limited stays in watch houses. The MOU specifically states clause 5.7(d) – that “In general” a child under 14 “shall not be accommodated in a police watch house for more than one overnight stay” but that a child over 14 may be held for “up to two consecutive nights” following consultation with the Department of Communities (now Department of Child Safety, Youth and Women). Whilst the documents do not and cannot operate to place iron clad restrictions on the duration of stay the premise of their operation is however that stays will be time limited. The references to the relatively short duration of stay are testament to the intention of government that detention in watch houses should be severely curtailed.

Police watch houses are not designed for the detention of children – the longer the period of detention the more deleterious the impacts of such detention become for the young person. Both the MOU and Policy put in place mechanisms which recognise and are designed to minimise those negative impacts such as family contact (including face to face visits). In any event, regardless of the duration of stay, the obligation on police to provide appropriate care in line with the UNCROC, the Charter of Youth Justice Principles and the MOU and Policy for whatever period of time a young person is in a watch house is inarguable.

YAC is unable to speculate about, pursuant to the operation of these provisions, whether a standing agreement has been entered into between police and the CE to the effect that young people remanded in custody by the court can be kept in a watch house or whether such determinations are made on a case by case basis by the CE absent any consultation with police as to the particular young persons circumstances. YAC understands that CSYW has a designated team liaising with the police at the watch house in Brisbane.

It is YAC’s position that the scheme of the youth justice legislation which is intended to ensure protections and minimum standards of care for young people in detention is being thwarted by the current practice. Whilst the Policy and the MOU have been drafted to take into account the legislative framework for the detention of young people and cannot operate as an over-ride their impact and the safeguards they mean to import are also being neutralised. This leaves young people in a wholly untenable situation where there are not sufficiently robust processes to rebalance the equation.

The Corrective Services Act 2006 provides that adults are generally required to be kept at the watch house for no more than 21 days. The section is subject to the *Youth Justice Act 1992* and it may therefore be arguable that time restriction does not technically apply to children. Such an interpretation is however, contrary to the obvious intention of the *Youth Justice Act 1992* as identified by the current President of the Court of Appeal Sofronoff P when discussing the application of that Act in the decision of *R v SCU R v SCU* [2017] QCA 198 at para 67

“the Act does not “permit” a judge to treat a child more leniently than an adult; it requires the judge to do so. Consistently with that requirement, the Act extends the

range of sentencing options in the case of children beyond what is available to a court sentencing an adult. It also reduces the maximum sentences for offences and conditions the exercise of sentencing powers in a way unknown when sentencing adults.

It is perverse that the legal requirements in relation to time thresholds for adults to be held in the watch house would not therefore be applied to young people. YAC is aware of at least one young person being held in the watch house for up to 18 days with no indication that they will be required to be transferred within the timeframe that would apply to adults.

Current processes regarding transfer of young people from a watch house to a youth detention centre

YAC does not have information about the process by which young people are selected to be moved from watch houses to 1 of the 2 youth detention centres. It is unclear what criteria are applied in determining which young person is moved from a watch house to youth detention upon a placement being available. YAC can speculate that the following issues would be taken into account in determining priority:

- age
- sex
- ethnicity
- legal status (whether a young person is on remand as opposed to serving a sentenced),
- health status (including mental health)
- need for access to therapeutic counselling, behaviour modification interventions and education
- views and wishes of the young person.

This lack of transparency concerning the process is in and of itself a source of major concern. Decisions which do not arise out of a clear framework are difficult to assail.

YAC is aware of a number of instances where despite the Brisbane Youth Detention Centre not being at capacity that young people have not been transferred to the detention centre.

YAC is aware of instances that young people are not transferred due

- to “dynamics” within units where it is proposed to transfer them;
- young people are not within the stipulated age block for particular units e.g a bed may be available for the young person 10-14 however, a 15-year-old is denied access to that bed;
- errors in communication between police and Youth Justice in relation to availability of beds;
- unavailability of police to transfer young people to the detention centre at night.

Resources for transport and issues of dynamics have been a constant in the youth justice system since the inception of the Act. Youth Justice and Police have previously exhibited a capacity to resolve these issues. It is acknowledged that the admission of some young people will create issues in relation to unit dynamics. The refusal to admit young people to detention on these grounds fails to recognise the significantly worse and dangerous position which young people are held at the watch house.

Similarly it would appear that there has been an increase in police indicating they are unable to transport young people from the watch house to the detention centre. YAC is aware of a 12-year-old girl held at the Beenleigh watch house over a weekend apparently due to a lack of adequate resources to transport her to the detention centre and back for a court appearance.

YAC recommends that each night that the young person is held in the watch house and there is a vacant bed at the detention centre that this information should be given to an independent body to review the reason the young person was not transferred to fill the vacant bed and to identify how this vacancy may be avoided in the future.

The care and support services provided to young people while they are in a watch house

YAC has acted for numerous young people who have been detained in the watch house. Some of these young people are being held as indicated for up to 18 days. Consistently these young people are reporting lack of access to:

- **family** (visits or phone calls):
 - one young person reports having no phone access and only one visitor in nine days.
 - the parent of another young person was denied telephone access to her son as she was advised that there was a domestic violence order that restricted her contact with him. The parent was alarmed and distressed as they are unaware of the existence of this order. Although this was at night the parent attends at the local police station to confirm there was no domestic violence order in place however was still unable to speak with her son, by telephone until the following day.
 - another young person advised they had spent two days in the watch house with no advice that they could either have phone contact or family visits
 - all our clients indicate that the police have not provided them with information in relation to their ability to have access to visitors and that this information has only been provided by Youth Justice Services subsequent to admission.
- **food and nutrition:** most young people report that the quantity of food provided in the watch house is inadequate and that the provision of food in the detention centre is significantly better. A number of young people reported requesting more food from police but being advised “no mate”
- **information about their rights:** no YAC client recalled being given any written information regarding their rights or standard of care whilst in the watch house nor could they recall this being provided orally to them.
- **health care**, including provision of medication which the young person brought with them into the watch house:
 - Parents indicate that they provided sealed medication required for their children that was required to be taken consistently only to have the medication returned at the time of release of their child still unsealed.
 - one young person advise they observed another young person pass out in the watch house due to their lack of access to prescribed medication
 - some young people report being held in a “suicide gown” without underwear based on historical assessments of mental health despite later information regarding mental health stability and being available. One 15-year-old male in the care of Child Safety advised that they were concerned their genitals could be observed when they sat in the gown.
- **General care:**
 - **Exercise:** A number of clients advised that that they would not be allowed out into the exercise area for days at a time with no explanation.
 - **daily change of clothing:** young people consistently report that they had access to a change of clothes at best every second day.

- **Toiletries:** young people advised there was no shampoo, no deodorant only soap. A young person who had spent nearly 48 hours in a watch house in the Brisbane metropolitan area was unaware there was shower. Whilst some young people reported that they received a clean towel others indicated they were required to use the same towel for their entire stay - including one young person who had spent nine (9) days in the watch house.
- **activities** (such as are designed to relieve boredom and therefore reduce anxiety): most young people advised that they were bored with nothing to do. One young person learned to play cards in the watch house and they now consider themselves a professional!
- **education services:** young people advised that there was no educational facility and the only access they had to any writing material was charcoal, which was impossible to use in any meaningful way.

Young people reported a significant variance in the care provided to them by the police. Young people advised that requests for food, exercise, blankets, access to activities or television were refused without reason or completely ignored with no response. Young people describe a generally negative engagement with officers in the watch house or that they hardly saw them: “there was just some guy in a box”.

Whether young people accommodated in watch houses have adequate access to complaint and over sight mechanisms

It would be logical to expect that lawyers representing young people would be apprised of formal over-sight and complaint mechanisms so as to be able to monitor a young person’s treatment in a watch house and escalate issues of concern. It is YAC’s experience that such processes are not in place. Further, young people have reported that they are not made aware by police upon being received at the watch house what their rights are and /or information is not provided in such a form as to be accessible to young people (eg if the police hand them written information they do not question the young person as to their literacy). Some young people remanded in the watch house will be the subject of Child Protection proceedings. Those young people will not have the benefit of community visitor oversight of the conditions of their accommodation as watch houses are not designated a “visitable site” as defined in section 51 of the *Public Guardian Act 2014*. This leaves these especially vulnerable young people at serious disadvantage. Whilst it is understood that the Public Guardian does visit the Brisbane Watch house young people detained in other watch houses indicate they have not been spoken to by any external person.

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