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17th December 2024

Deputy Commissioner Cameron Harsley APM
Queensland Police Service
GPO Box 1440
Brisbane QLD 4001

By email: qpswhr@police.qld.gov.au

Dear Deputy Commissioner,

Re: Queensland Police Service Watch House Review

Thank you for the opportunity to provide comments on the Queensland Police Service Watch House Review (**Review**) which we understand has been initiated as a response to rising complaints and occupancy rates within watch houses throughout the State. In this submission, we have sought to provide feedback on the three main themes as outlined in the scope of the Review: People; Processes; and Places along with providing some introductory comments on our views on the drivers for increasing numbers of children on remand, our observations in relation to the detention of children in watch houses and our advocacy for the human rights of children in watch houses. In our view, whilst we might be approaching this topic from different pathways, there is much common ground. Reducing the numbers of those on remand, addressing infrastructural deficiencies that would enable detainees to be held separately from adults, separately from each other and separated by gender, recruitment and training of staff with appropriate qualifications to be equipped to confidently manage children with complex needs including mental health issues, cognitive impairments and/or disabilities in a custodial environment with dignity and consistent with their human rights, ensuring children are provided access to their regular medications and medical/health support where needed, will all support a healthier workplace for officers and watch house officers along with a healthier place for children to be detained.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil (including, child protection and domestic violence) and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Introductory comments

Statistics

Queensland currently has the highest proportion of children in detention on remand, at 92%, than any other state or territory in Australia. The statistics establish that remand rates have been increasing. Specifically, over a 4-year period from the December quarter of 2019 to the March quarter of 2023, the rate of young people aged 10–17 in unsentenced detention increased in Queensland from 2.8 per 10,000 to 4.9 per 10,000¹.

¹ Australian Institute of Health and Welfare – Youth Justice in Australia 2022-23, available at <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/fact-sheets/queensland>>.

Legislative contributors to increased numbers of children on remand

In our view, unprecedented amendments to youth justice legislation to reverse the presumption of bail ('show cause' provisions), expansion of the offences to which the bail 'show cause' provisions apply and the introduction of an offence for breach of bail conditions have, and continue to, contribute to more and more children being incarcerated. We are at the point that Queensland's youth detention centres are at or over capacity and children are being held in police adult watch houses as an overflow solution, in breach of their human rights.

Last year, this untenable situation came to a head when the sector became vocal about children being held for up to 30 consecutive days in police watch houses. There were regular reports amongst the sector of significant concerns regarding the human rights of these children noting that police watch houses are not a suitable place for children to be held at all, let alone for weeks and weeks at a time and often in overcrowded circumstances.

In response to concerns regarding the lawfulness of detention of a number of children, a Supreme Court action was instituted against the State – *Youth Empowered Towards Independence Inc v Commissioner of Queensland Police Service* [2023] QSC 174. Discussion of the salient features of this case is beyond the scope of the Review, however, suffice to say that the case was the precursor to the then Queensland government enacting a series of legislative amendments to try to 'legitimise' their detention of children in watch houses along with suspending the application of the *Human Rights Act 2019* (Qld) (**Human Rights Act**) in relation to children detained in police watch houses.

Specifically, on 16 March 2023, the Queensland government enacted the *Strengthening Community Safety Act 2023*, the provisions of which commenced on 22 March 2023. This Act re-introduced an offence for children who breach a condition of their bail undertaking and stated that the offence provision has effect in relation to defendant who is a child, despite being incompatible with the Human Rights Act (i.e., a Human Rights Act override). The reintroduction of an offence for breach of a condition of bail has been a driver for the numbers of children on remand. On 5 May 2024, Acting Assistant Police Commissioner, Andrew Massingham announced to the media that, according to Queensland Police Service data as at May 2024, there were

1144 children arrested on 8,464 breach of bail offence charges since the offence of breach of bail for children was reintroduced².

This was followed by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2022 (CPOLA Act)* which passed on 24 August 2023, the provisions of which commenced on 1 September 2023. The CPOLA Act brought in a suite of amendments in an endeavour to seek to legitimise the detention of children in police watch houses on the basis that youth detention centres in Queensland are at, or nearing, capacity. It also included express overrides of the Human Rights Act in relation to the operation of certain provisions in the CPOLA Act including relating to:

- decisions about holding children in watch houses when youth detention centres are at or over capacity;
- acts or decisions relating to a child in a relevant detention centre or the placing of a child in a relevant detention centre, noting that the CPOLA Act expressly empowers the Governor in Council to establish a place as a youth detention centre (including a police watch house) even if this would not be compatible with human rights; and
- decisions made by Queensland Police Service to transfer a child between watch houses or to holding cells.

More recently, on 22 August 2024, the *Queensland Community Safety Act 2024 (QCS Act)* was passed. The QCS Act contained amendments to the YJ Act which commenced on 30 August 2024 and included amendments to remove that ‘detention should be a last resort’ in the Youth Justice Principles in the YJ Act.

The impact of the Making Queensland Safer Bill 2024, if enacted

In our view, the Making Queensland Safer Bill 2024 (**MQS Bill**), introduced into Parliament on 28 November 2024, proposes to make a number of legislative amendments that will put further strain on watch houses.

The proposed ‘adult crime, adult time’ framework will result in more children incarcerated and for longer periods of time. The Statement of Compatibility for the MQS Bill states, at page 4:

² Sharma, Yashee, ‘Queensland youth offenders caught breaching bail 8400 times as crime rates drop’ (5 May 2024), available at <<https://www.9news.com.au/national/queensland-youth-offenders-caught-breaching-bail-8400-times-as-crime-rates-drop/d8222e05-c664-4c5f-ab4d-9f7f88d05402>>.

“it is likely at least in the short term that the increase in custodial sentences will further strain capacity in youth detention centres in Queensland, and may result in children being held in watchhouses for extended periods of time. This impact results in limitations to the protection from cruel, inhuman or degrading treatment (section 17(b) of the HR Act) and the right to humane treatment when deprived of liberty (section 30 of the HR Act), having regard to the fact that it is widely accepted that watchhouses are not appropriate or humane places in which to detain children (particularly for any lengthy period of time).”

The MQS Bill proposes to omit Principle 18 of the Charter of Youth Justice Principles in the YJ Act (formerly the ‘detention as a last resort’ principle) which currently provides as follows:

*18. A child should be detained in custody—
(a) where necessary, including to ensure community safety, and where other non-custodial measures of prevention and intervention would not be sufficient; and
(b) for no longer than necessary to meet the purpose of detention.*

This, in conjunction with:

- proposed amendments to make cautions, restorative justice agreements and contraventions of a supervised release order part of a child’s criminal history (including as an adult) fundamentally change the incentivising of diversions; and
- the proposed omission of the special sentencing consideration in section 150(2)(b) which provides that non-custodial orders are better than detention in promoting a child’s ability to reintegrate,

will result in fewer pleas of guilty from daunted children and thus more matters proceeding to trial. This will inevitably result in longer delays, longer periods on remand and consequently more overcrowding in watch houses and youth detention centres.

The proposed amendments in the MQS Bill will place more pressure on the courts, police (including on police officers, watch house officers and watch house infrastructure) and youth detention centres (including on staff and youth detention centre infrastructure). Furthermore, the financial burden on the State will be immense.

A note about the children

AIHW data also shows that in 2022–23, 71% of those in youth detention in Queensland were Aboriginal and Torres Strait Islander youth and Aboriginal and Torres Strait

Islander youth were 24 times more likely as non-Indigenous youth to be under youth justice supervision³.

Aboriginal and Torres Strait Islander children are grossly overrepresented in custody, whether it be in watch houses or youth detention.

The children in contact with, or at risk of being contact with, the criminal justice system almost invariably present with complex needs and many carry trauma.

Factors that influence a child's likelihood of having contact with the criminal justice system include, but are not limited to:

- intergenerational trauma⁴, which has been proven to affect a child's DNA (i.e., trauma is passed down, including in utero) and that can manifest in the behaviour of a child⁵;
- domestic and/or family violence, sexual abuse and/or neglect⁶;
- exposure to alcohol and/or drugs in utero and the health effects thereof, including potentially Foetal Alcohol Spectrum Disorder (**FASD**) which impacts an individual's learning, memory attention span, communication, vision and hearing;
- disability and/or cognitive impairment⁷;
- being removed from the child's family, kin and culture and placed in out-of-home care⁸;
- identity confusion (not understanding where and how you fit in);
- trauma-related mental illness⁹, risk of suicide or suicidal ideations¹⁰;

³ Australian Institute of Health and Welfare – Youth Justice in Australia 2022-23, available at <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/fact-sheets/queensland>>.

⁴ Darwin L, Vervoort S, Vollert E and Blustein S, 2023. *Intergenerational trauma and mental health*. Catalogue number IMH 18, Australian Institute of Health and Welfare, Australian Government.

⁵ R Yehuda, A Lehrner, 'Intergenerational transmission of trauma effects: putative role of epigenetic mechanisms' (2018) Oct 17 (3) *World Psychiatry* 243-257 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6127768/>> .

⁶ G Morgan, C Butler, R French, T Creamer, L Hillan, E Ruggiero, J Parsons, G Prior, L Idagi, R Bruce, T Gray, T Jia, M Hostalek, J Gibson, B Mitchell, T Lea, K Clancy, U Barber, D Higgins, A Cahill and S Trew, 'New Ways for Our Families: Designing an Aboriginal and Torres Strait Islander cultural practice framework and system responses to address the impacts of domestic and family violence on children and young people' (ANROWS Research Report, June 2022) 9.

⁷ Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework*, Summary Report (2023), National Indigenous Australians Agency, Tier 1 – Health status and outcomes, 1.14 Disability, available at <<https://www.indigenoushpf.gov.au/measures/1-14-disability>>.

⁸ SNAICC, *Family Matters Data Snapshot 2023*, <https://www.familymatters.org.au/wp-content/uploads/2022/11/1533_2022-F.M.-Snapshot-2pp_option-1.pdf>.

⁹ Darwin L, Vervoort S, Vollert E and Blustein S, *Intergenerational Trauma and Mental Health*, Australian Institute of Health and Welfare Report (2023) vi.

¹⁰ Closing the Gap Information Repository, Socioeconomic Outcome Area 14, available at <[https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area14#:~:text=In%202021%2C%20the%20suicide%20age,25.1%20per%20100%20000%20people\).](https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area14#:~:text=In%202021%2C%20the%20suicide%20age,25.1%20per%20100%20000%20people).>)>

- disengagement from education or interrupted engagement in education¹¹;
- ADHD, which has been linked to low birthweight (Aboriginal and Torres Strait Islander babies have a higher risk of having a low birthweight)¹²;
- substance abuse/misuse¹³;
- residing in over-crowded housing or homelessness¹⁴;
- unemployment of parent/s including generational unemployment;
- complex health needs; and
- literacy and numeracy challenges.

Furthermore, despite there being frameworks in place to facilitate very young children to be diverted away from the criminal justice system, in records as recent as at the day of writing, there are children aged between 11 and 13 years of age that are in police custody in watch houses in Queensland.

Below are some examples of the human rights concerns in relation to children detained in watch houses that we are aware of including those that have been reported to us internally by our practitioners and clients (we note that these incidents have been in relation to particular watch houses throughout the State and we are not purporting that they apply to all watch houses):

- lack of light (surrounded by concrete, windowless);
- lack of ability to exercise;
- deprivation of access to showers, clean clothes, soap, toothpaste;
- exposure to traumatic things, for example, adults coming down from drugs/substances, detoxing;
- being locked down in cells;
- sleeping in shower stalls on mats;
- denied visitation by family;
- denial of access to support from support agencies;
- denial of provision of sanitary products for females going through menstruation;
- excessive use of force;
- assaults by cellmate/s (note overcrowding, e.g., Cairns watch house has been known to house 4 – 6 children to a watch house cell);
- being subjected to racial slurs;
- children being held for extended periods of time;
- children with disability detained with little to no support;

¹¹ Queensland Advocacy Incorporated and Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd with support from Minter Ellison, *The Need for an Inquiry into School Disciplinary Absences in Queensland State Schools*, Submission to the Queensland Human Commissioner (Feb 2022) 4.

¹² Note 8.

¹³ Note 7.

¹⁴ Note 6.

- children being relocated to other parts of Queensland away from their family and community due to capacity issues;
- children not separated from adults;
- genders not being separated from each other;
- children under-stimulated in the watch house;
- delaying or denying facilitating calls to the child's lawyer;
- cleanliness issues within the watch house cells themselves;
- insufficient food and/or food that does not meet nutritional needs;
- freezing conditions and children not being provided with a blanket at all or adequate blankets;
- the use of lock downs, as a means of 'behaviour control', even where some children affected were not involved in any precipitating incident;
- deterioration of mental health;
- children being strip searched in an undignified/humiliating way;
- children that have expressed suicidal ideations being stripped in an undignified/humiliating way (one example was of a female child who had been stripped with unnecessary force and placed in a suicide smock).

We continue to hold significant concerns for these children and we are hopeful that the Review will bring about changes which will improve the current state of affairs.

People

We acknowledge that managing children with complex needs in a custodial environment that is not designed for this purpose is a particularly challenging task. Issues of overcrowding and understaffing compound this issue.

Based on our observations, improvements to training of staff who deal with/manage/take care of children in watch houses is critical.

In particular, we recommend that training be strengthened and, possibly formal qualifications required, to properly equip officers and watch house officers to:

- confidently undertake their duties when dealing with children with complex needs in a custodial environment in a trauma-informed way and in a manner that preserves the dignity and human rights of those in custody (including the provision of ongoing and regular training to maintain this standard);
- understand how to take care of/manage individuals that might have literacy challenges, cognitive impairments and/or disability including, relevantly, how to effectively communicate with appropriate language (including interpreters where appropriate), de-escalate interactions and avoid the use of force and separation;

- deliver and/or facilitate better health and safety outcomes for those in custody, particularly, with respect to dignity when receiving health care, noting that:
 - we are aware of clients that avoid medical treatment due to the shame and discomfort associated with having to walk through the children's hospital handcuffed which has resulted in an exacerbation of their health concerns such that they become acute and more serious;
 - we are aware circumstances where children have not been provided with access to their regular medications leading to missed doses, which is dangerous in the context of the health and safety of the detainee and watch house officers also;
 - from an access to justice point of view, the denial of access to regular medications also impedes with the ability of a legal practitioner representing the detainee to obtain clear instructions and is particularly problematic in effective representation of the detainee in court; and
 - the food provided in watch houses is often significantly lacking in nutritional value and is often just not enough in order to keep children full (noting that this in and of itself can result in negative behaviours).

Places

Watch houses are intended to be for detaining adults into custody for short periods of time. They are not meant, nor are they purpose built, to house children and especially not for long periods of time.

Watch house infrastructure

Any consideration relating to the infrastructure to be used for holding children in custody necessitates consideration of the following United Nations international human rights law instruments:

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**Beijing Rules**)¹⁵;
- the United Nations Guidelines for the Prevention of Juvenile Delinquency (**Riyadh Guidelines**)¹⁶; and
- United Nations Standard Minimum Rules for the Treatment of Prisoners (**Nelson Mandela Rules**)¹⁷, which apply to juveniles (see Rule 13.3 of the Beijing Rules).

¹⁵ Adopted by General Assembly Resolution 40/33 of 29 November 1985.

¹⁶ Adopted by General Assembly resolution 45/112 of 14 December 1990.

¹⁷ Adopted by General Assembly resolution 70/175, annex, of December 2015.

First and foremost, holding a child in any institution must be a measure of last resort and for the minimum necessary period (Rule 19.1 of the Beijing Rules).

In the event that children are to be held in custodial circumstances, the infrastructure used must meet the minimum requirements for custody at international law, including that:

- emphasis must be on the well-being of the juvenile (Rule 5.1, Beijing Rules);
- children must be kept separate from adults and detained in a separate institution or separate part thereof in an institution that holds adults (Rule 13.4, Beijing Rules);
- female and male inmates must be detained separately (Rule 11(a), Nelson Mandela Rules);
- untried children are to be kept separate from convicted prisoners (Rule 11(b), Nelson Mandela Rules);
- accommodation must meet the requirements of health with due regard to climatic conditions and cubic content of air, minimum floor space, lighting, heating and ventilation (Rule 13, Nelson Mandela Rules);
- there are windows that are large enough to enable the child to read or work by natural light and constructed such that the windows can allow fresh air (regardless of whether there is artificial ventilation) (Rule 14, Nelson Mandela Rules);
- sanitary installations are to be adequate, clean and decent (Rule 15, Nelson Mandela Rules);
- adequate bathing and shower installations are to be provided and children should be able to shower, at minimum, once a week in a temperate climate (Rule 16, Nelson Mandela Rules);
- the custodial environment must be properly maintained and “kept scrupulously clean at all times” (Rule 17, Nelson Mandela Rules);
- education, vocational training and work should be made available to the child;
- remedial, moral, spiritual, social and health and sports-based assistance that is appropriate should be provided to the child in line with the individual treatment needs of the child (Rule 4, Nelson Mandela Rules);
- children with physical, mental or other disabilities must have full and equitable access to custodial life (Rule 5.2, Nelson Mandela Rules);
- there should be space, relevant installations and equipment available and allocated for each child to exercise for one hour a day in the open air, including that children should receive physical and recreational training during the period of exercise (Rule 24, Nelson Mandela Rules);
- while in custody, children are to receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality (Rule 13.5, Beijing Rules).

We appreciate that infrastructural improvements are not an immediate reality, however, with the increasing numbers of children on remand, the demand for watch houses continues to increase. The question is: where will these children go? Overcrowding is a very serious concern as holding multiple children to a cell can result (and has in the past) in incidents, including very serious incidents, between cellmates. Infrastructural improvements must be prioritised to meet demand and in the interim, there needs to be sufficient staff in order to provide an adequate level of supervision of the children to ensure that incidents such as these do not occur or, at minimum, are promptly stopped. This, in our view, is essential for the State to properly discharge its duty of care over these children.

Additionally, we make the following comments with respect to infrastructure:

- There is a need for improvements to ensure unimpeded access to family and legal visits in person and via phone.
- We have observed that there is often a lack of privacy for clients to speak confidentially with legal representatives in watch houses which makes taking instructions difficult.
- We are aware that for a time at Brisbane City Watch House, young people were issued with a blanket ban on phone use for a time because the phone had been damaged previously. Children that are unable to connect with family tend to experience deterioration in their mental wellbeing and outlook. This can also result in potential unwanted behaviours.
- Better video link facilities - there are echoes and reflections impeding crucial communication with those in custody. Further, at Brisbane City Watch House, the common area for the pod is visible behind the client. It is preferable if video link facilities could be positioned in a place to promote confidentiality and a good clear connection which is preferably free from distractions.
- Watch houses must have sufficient capacity to be able to separate (i.e. out of eyeline and earshot of adults) adults from children and cellmates from each other, so that one child is held per cell (to avoid incidents that can occur due to overcrowding). We are aware of instances in the Brisbane City Watch House where young females have been kept in the observation cells next to adults. One was flashed and propositioned numerous times by an adult male. The reason provided for not separating the female child from the adult male was that the detention of one female child was not enough to justify the opening of a separate pod.

Processes

Recent amendments to the *Anti-Discrimination Act 1992* which were enacted by the *Respect at Work and Other Matters Amendment Act 2024* and which will come into force from 1 July 2025 expand existing protections against discrimination and vilification and also include a legal requirement on government agencies (amongst others) to prevent discrimination with respect to protected attributes (including age, impairment, race, etc.), referred to as a ‘positive duty’.

As noted by the Queensland Human Rights Commission in their supporting materials relating to these amendments, proactive steps that government agencies could take include ‘developing clear policies, improving workplace culture, providing training and education for employees on how to recognise and address discrimination, and having a robust complaint process.’¹⁸.

In our view, there are improvements that will need to be made to QPS’ Operational Procedures Manual (OPM) in order to strengthen its service provision accordingly.

Of particular concern to us is that we are aware of several incidents where Aboriginal and/or Torres Strait Islander children detained in watch houses who are suffering from mental health conditions, impairments and/or disabilities have been treated in a way that is not consistent with respecting the dignity of the individual in consideration of their particular vulnerabilities and which has involved the unnecessary use of force causing physical and emotional harm. Whilst we are aware that there are existing obligations within QPS’ Operational Procedures Manual (OPM) these procedures are, in our view, insufficient and need to be strengthened in particular with respect to prioritising de-escalation of interactions with vulnerable individuals.

We thank you for the opportunity to provide feedback on the Review.

Yours faithfully,

Gregory M. Shadbolt
Principal Legal Officer and Acting Chief Executive Officer

¹⁸ <https://www.qhrc.qld.gov.au/about-us/news/stronger-anti-discrimination-act-for-queensland>.