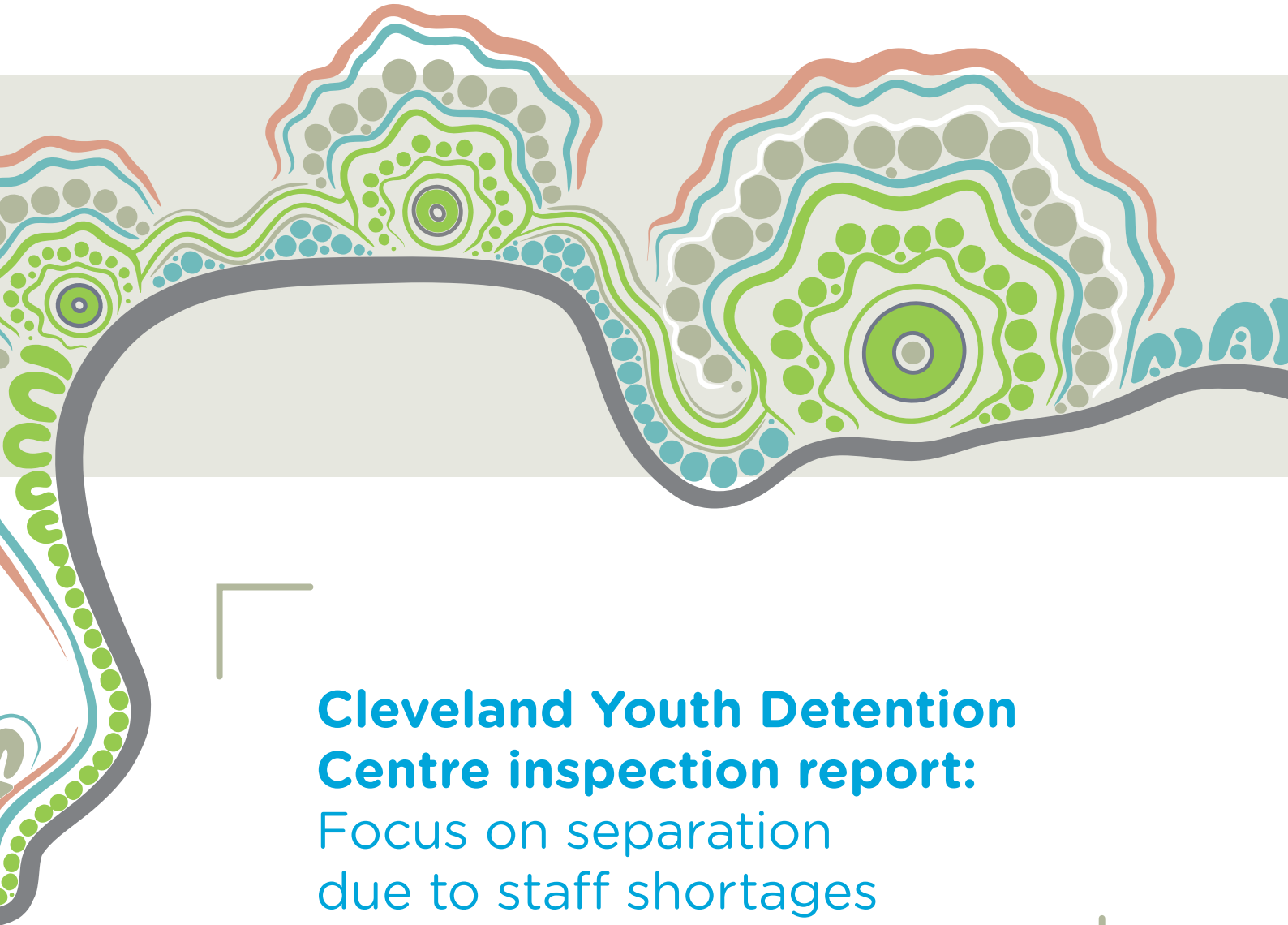


Inspector of Detention Services



**Cleveland Youth Detention
Centre inspection report:**
Focus on separation
due to staff shortages

August 2024



QUEENSLAND
OMBUDSMAN



Nathaniel Chapman

Leaving Our Mark, (2023).

Digital artwork (cover uses elements)

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Nathaniel Chapman is a Goenpul and Yuggera Man, also from the Wambia Tribe in Northern Territory and Waka Waka country in Eidsvold, Queensland.

We acknowledge the Traditional Owners of the land throughout Queensland and their continuing connection to land, culture and community. We pay our respects to Elders past, present and emerging.

Authority

The Inspector of Detention Services prepared this report for the Speaker under the *Inspector of Detention Services Act 2022*. The final report was given to the Speaker of the Queensland Parliament for tabling in the Legislative Assembly.

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Inspector of Detention Services
Office of the Queensland Ombudsman
Level 18, 53 Albert Street, Brisbane QLD 4000
GPO Box 3314, Brisbane QLD 4001

Phone: (07) 3005 7000
Email: inspector@ombudsman.qld.gov.au
Web: www.ombudsman.qld.gov.au

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Snapshot

The Cleveland Youth Detention Centre (the centre) is located in Townsville. It accommodates around 100 children and young people, almost all of whom are Aboriginal and Torres Strait Islander peoples. The focus of this report is on the use of separation due to staff shortages at the centre.

Our main concerns regarding separation due to staff shortages

For many years, the centre has experienced staff shortages. Under the terms of the relevant certified agreement, the safe supervision ratio within youth detention centres is a minimum of one detention youth worker to four children.

On many days, there are not enough staff to meet this ratio. As a result, the centre regularly locks children in their rooms alone. This practice is known as 'separation'.

Separation can affect children's psychological wellbeing and raises significant human rights issues. It can also make it difficult for children to access services at the centre.

These problems are compounded by the pressures under which the centre operates, workforce issues, ageing infrastructure and poor information systems.

During 2023, the centre's staffing numbers increased. This has enabled the centre to reduce its use of separations and give children better access to services such as education. We also saw examples of innovative practices that were enabling staff to improve services to children while they were separated. While the use of separation in response to staff shortages has reduced at the centre, it has not been eliminated.

We welcome the Queensland Government's acceptance in April 2024 of a recommendation by the Legislative Assembly's Youth Justice Reform Select Committee to ensure youth detention centres have enough staff to remove the need for these types of separations. Local labour market conditions in Townsville may, however, make it difficult for this goal to be achieved at the centre.

Until more staff are available, the centre needs to identify how it can improve the amount of meaningful contact and time out of rooms that children have while separated. The Department of Youth Justice also needs to undertake broader reform of the centre's workforce, infrastructure and systems.

The recommendations we directed to the Department of Youth Justice were accepted in principle by the Director-General. We will monitor the actions taken in response to the recommendations as part of our ongoing program of inspections of youth detention centres.

Our other concerns regarding the centre

We identified other issues of concern about the use of separation at the centre. When the centre uses separation in response to a behaviour incident, it often holds children in rooms with no basic facilities such as a toilet, running water, or bed. In contrast, Queensland adult prisons provide these basic facilities in their detention units. In recommendations 5–8, we have recommended changes regarding this. Also, we identified the need to improve the monitoring of staff who are tasked with observing children when they are separated.

Improvements needed to the *Youth Justice Act 1992*

Children who are under separation while detained in youth detention centres have fewer legislated safeguards than many of their counterparts interstate. In fact, they have fewer safeguards when separated than adults detained in prisons in Queensland do.

We recommend that the Queensland Government amends the *Youth Justice Act 1992* to address this inequity and protect children.

Cleveland Youth Detention Centre

The centre's operating capacity is 112. Safe capacity is 95 (safe capacity is standardised nationally at 85% of the capacity the centre was built for).

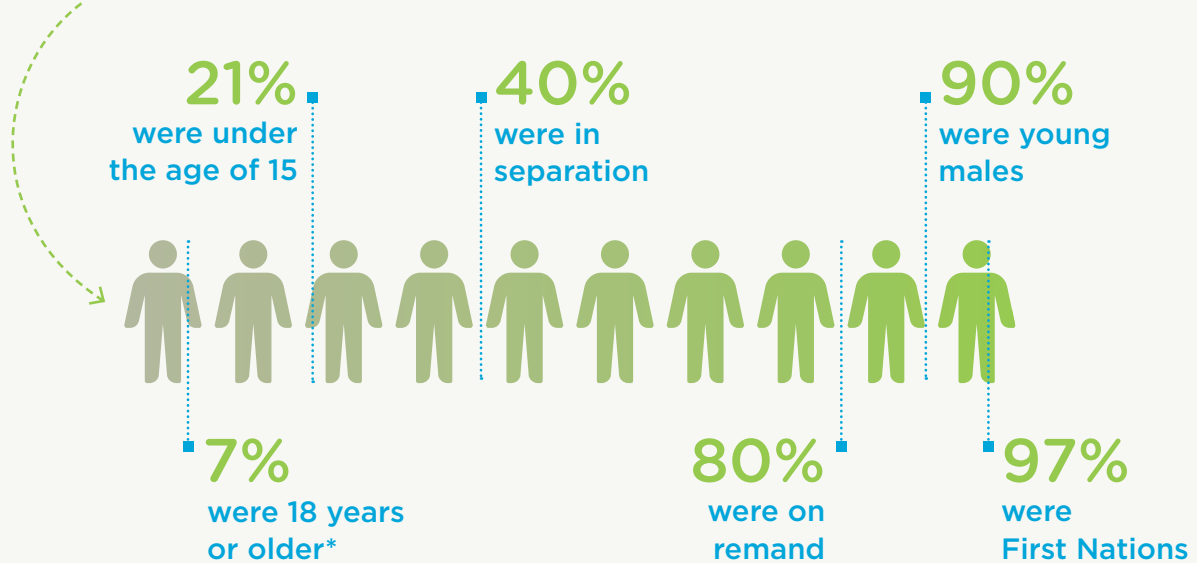
The 15 accommodation units are:

- 2 independent living units (Osprey for boys, Sandpiper for girls)
- 2 girls' units (Jacana and Magpie)
- 9 boys' units (Brolga, Cassowary, Corella, Heron, Ibis, Jabiru, Kestrel, Kingfisher and Kookaburra)
- 2 behavioural support units (Hawk and Lorikeet)



On 20 October 2023:

96 children were being held at Cleveland Youth Detention Centre



Catchment

The catchment is from Rockhampton and north, and out to the NT border



Location

The centre is located on Bindal and Wulgurukaba country in Townsville



Medical

Cleveland Youth Detention Medical Centre is managed by Townsville Hospital and Health Service



School

Cleveland Education and Training Centre is managed by Department of Education

*Some detainees who enter Queensland youth detention centres as children remain in the centre after the age of 18 under the *Youth Justice Act 1992*.

Recommendations

Recommendation 1

The Queensland Government and the Department of Youth Justice give priority to the Cleveland Youth Detention Centre when developing strategies to meet the government's April 2024 commitment to increase staff at youth detention centres.

Recommendation 2

The Department of Youth Justice works with staff of the Cleveland Youth Detention Centre to identify how to make improvements to the amount of time children spend out of their rooms and the meaningful contact they experience.

Recommendation 3

The Department of Youth Justice reviews the approval process for separations to ensure it is compliant with the Youth Justice Regulation 2016 and the *Human Rights Act 2019*.

Recommendation 4

The Department of Youth Justice ensures psychologists are consulted about the individual needs of children placed in separation, and their advice is considered and recorded when a period of separation beyond one day is requested.

Recommendation 5

The Department of Youth Justice recognises the importance of ensuring that children are not locked in rooms that do not have basic facilities, including a toilet, a basin with running water, and a bed or seat, for any length of time.

Recommendation 6

The Department of Youth Justice ensures that all separation rooms and holding cells in new youth detention centres (including those at Cairns and Woodford) have basic facilities in them, including a toilet, a basin with running water, and a bed or seat.

Recommendation 7

The Queensland Government and the Department of Youth Justice provide funding to improve the centre's separation rooms and holding cells to ensure that they have basic facilities in them, including a toilet, running water, and a bed or seat.

Recommendation 8

The Department of Youth Justice closely monitors the centre's use of its separation rooms and holding cells to ensure they are only being used as an option of last resort and for the shortest time possible.

Recommendation 9

The Department of Youth Justice ensures the centre immediately improves the condition of all separation rooms, including by removing graffiti, scheduling regular maintenance of the rooms, and adding appropriate soft furnishings.

Recommendation 10

The Department of Youth Justice ensures detention youth workers comply with requirements in the Youth Justice Regulation 2016 regarding the need to observe children who are subject to separation, including by conducting regular audits.

Recommendation 11

The Queensland Government amends the *Youth Justice Act 1992* to include mandatory prerequisites for the use of separation, and requirements for the humane treatment of children in separation. The amendments should include minimum conditions for separation, and external review rights.

Recommendation 12

The Department of Youth Justice reports publicly, including in its annual report, on the average number of hours children spend out of a locked room each day, for each youth detention centre.

Recommendation 13

The Department of Youth Justice review the Cleveland Youth Detention Centre's staffing model to ensure the centre has the skills and capacity needed to provide a therapeutic operating environment and to achieve the results planned for the Woodford and Cairns centres. The review should also:

- address the workload of the centre's therapeutic staff, including caseworkers and psychologists, to enable them to pursue more proactive work and have increased levels of meaningful contact with children in separation
- assess the adequacy of the current model for the delivery of cultural support to Aboriginal and Torres Strait Islander children
- assess the adequacy of the current model for the centre's behavioural support units
- support continuing workforce innovation in service delivery through initiatives such as training non-operational staff in the department's authorised intervention responses.

Recommendation 14

The Department of Youth Justice develops an infrastructure strategy for the Cleveland Youth Detention Centre to ensure its infrastructure supports a therapeutic operating environment. The strategy should address the following issues:

- improving the behavioural support unit environments to support their therapeutic goals
- adding rooms to accommodation units (as is the case at West Moreton Youth Detention Centre) to enable education and therapeutic programs to be delivered to children within accommodation units when necessary
- reviewing the design of accommodation rooms and doors to ensure they facilitate meaningful engagement between children and officers.

Recommendation 15

The Queensland Government supports the Department of Youth Justice in replacing its information system (Detention Centre Operational Information System - DCOIS) with one that enables comprehensive and real-time reporting capability for separation and other restrictive measures, and for reporting on out-of-room time.

1. Introduction

Our inspection focus

In this inspection of the Cleveland Youth Detention Centre (the centre), we focused on the use of the separations caused by staff shortages, because of the impact on children's wellbeing and human rights. In our future inspections of the centre, we will focus on all types of separations as well as other issues.

Separation occurs when a detention centre employee places a child in a locked room alone. It is also sometimes called isolation or segregation.

It can be appropriate in certain circumstances to separate a child. For example, it may be an appropriate short-term response to an incident where a child's behaviour threatens the safety of others. Also, the centre-wide lockdown that occurs each evening from 7.30pm to 7.30am is an appropriate separation, as it provides time for children to sleep in their own rooms.

It becomes a problem when children are separated for much of the day. It is also an issue when the main cause of separation during the day is staff shortages.

In recent years, the centre's use of separation in response to staff shortages has been persistent and frequent. The Queensland Audit Office report *Reducing serious youth crime – Report 15: 2023-24* identified the link between staff shortages and separations at youth detention centres. It found the centre had the highest number of staff shortages across the three youth detention centres in Queensland.

Impact of separation on children's psychological wellbeing

A number of reviews, commissions and courts in Queensland and across the country have considered the legal and psychological impact of separations on children. These include the following:

In 2017, the Australian Children's Commissioners and Guardians Statement on Youth Justice Detention declared that:

Children are particularly vulnerable because they are still in crucial stages of development – socially, psychologically, and neurologically. The experience of isolation can interfere with and damage these developmental processes. For children and young people with mental health problems or past experiences of trauma, isolation practices can have severely damaging psychological effects. Where children and young people are at risk of suicide or self-harm, isolation is likely to increase their distress and suicidal ideation and rumination. (p. 21)

The 2017 report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory heard from a range of experts about the harm caused by isolation (see pp. 285–287 Volume 2A). The Commission received evidence that isolating prisoners causes long-term psychological issues. In relation to children, it heard that

... isolation is inappropriate for children and young people due to the risk of psychological harm to their brains when they are still developing. The part of the brain that controls impulses, the prefrontal cortex, can be impaired permanently, limiting a child's or young person's impulse control.

The Commission considered that the psychological effects can be amplified for Aboriginal children and young people, particularly those from remote communities, due to specific cultural needs.

The Commission also cited the Royal Commission into Aboriginal Deaths in Custody: National Report which, twenty-five years earlier:

... noted the 'extreme anxiety suffered by Aboriginal prisoners committed to solitary confinement'. It noted, 'it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention'.

The final report of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) focused specifically on this issue (see p. 107 of Volume 8 (Criminal justice and people with disability)). It accepted the evidence of witnesses that isolation and solitary confinement exacerbates the difficulties experienced by children in detention who have cognitive impairment and brain injuries. It went on to make a recommendation (8.3) that all Australian jurisdictions should introduce legislation to prohibit solitary confinement in youth justice settings.

In its annual report for 2022–23, Queensland's Child Death Review Board published an in-depth exploration of the youth justice system, focusing on the stories of two boys who were Indigenous Australians.

The Board observed that both boys had experienced separation during their time in detention, in the year prior to their deaths. One of the boys was detained at the centre. The Board concluded that periods of separation can impact a child's health and wellbeing in severe, long-term and irreversible ways. It stated that:

Many of the children and young people in detention have experienced a life of significant disadvantage and marginalisation, with many being the victims of abuse and neglect. Being confined in a cell for extended periods of time, without interaction with peers, family, culture, and support networks creates an environment of re-traumatisation. Research has shown pre-existing mental health problems are likely exacerbated by experiences during incarceration, such as isolation, boredom and victimisation. As First Nations adolescents, separation and solitary confinement likely had additional and compounding impacts. (pp. 38–39)

The Board also explained that both boys experienced 'heightened emotions and behaviours as a direct result of extended periods of separations and the associated reduction in access to activities and programs'. (p. 39) This led to behavioural incidents that increased as the time they were locked in their cell per day increased.

The Board reported that the Department of Youth Justice (the department):

... acknowledged the flow on effects of extended separation in its report to the Board, including:

- escalated behaviours
- fractured relationships and breakdown of therapeutic alliances [work with psychologists and case workers]
- reduced compliance and commitment to programs
- additional workload placed on staff in a therapeutic position required to support young people
- lack of privacy due to speaking with young people through their doors. (p. 40)

Court decisions have highlighted the length of separations

In 2023, the Childrens Court of Queensland and the Childrens Court (two different courts) expressed concern about the duration and impacts of separation at the centre. The following examples of court decisions highlight the nature of staff shortage separations at the centre at the time.

1. On 24 January 2023, in the matter of *Commissioner of Police v David Taylor* (a pseudonym) the Childrens Court at Mt Isa conducted a sentencing proceeding. This was for a child who had been held at the centre on remand (awaiting sentencing) for 26 days between December 2022 and January 2023. A report was provided to the court that addressed the child's separation for 21 of those days. Referring to the report, the court highlighted that:
 - David's unit was only appropriately staffed on one of the 21 days.
 - On average, David was only out of his cell for 2 hours and 37 minutes per day.
 - It is likely that David only left his unit block on one of the 21 days.
 - David was allowed to make phone calls when he was out of his cell.
2. On 2 February 2023, in the matter of *Re JG (2023) QChC 3*, the Childrens Court of Queensland heard an application for bail. The child was a 16-year-old girl diagnosed with disabilities including foetal alcohol spectrum disorder (FASD). She had been subject to a long-term guardianship child protection order since she was four years old. The court heard that she was held in detention on remand for 94 days from May 2022 to early 2023, including 60 days from late November through to the date of the hearing. Referring to the authorised separation report, the court stated that:
 - For 30 of the 59 days dealt with in the report, the child had been locked up in her cell for 21 to 24 hours per day.
 - For three days, she was locked in her cell for 24 hours per day.
 - The child had less than five hours out of her cell for 40 of the 59 days.
3. On 21 February 2023, in the matter of *R v TA (2023) QChC 2*, the Childrens Court of Queensland heard a sentencing proceeding. The court noted that the child being sentenced had disabilities including FASD, and had been subject to abuse and neglect. As part of the proceeding, the court considered a separation report that contained information about the detention of the child for 87 days from 25 November 2022. Referring to the report, the court highlighted that:
 - For 78 of the 87 days of detention, the child was confined in their cell for 20 hours or more each day.
 - For 10 of those 87 days, the child was confined for 24 hours per day
 - The child developed behavioural problems on days when they were separated.
4. On 17 March 2023, in the matter of *R v Nathan (a pseudonym) (2023) QChC 4*, the Childrens Court of Queensland heard an application for bail. The court stated that:

... repeated separation for 11 hours and 59 minutes ... coupled with the 12-hour overnight lockdown, amounts to 24-hour solitary confinement, less one minute. (pp. 3-4)

Separation of children in terms of human rights

The separation of children is a significant human rights issue. The department's operational policy on separation acknowledges that its use has the potential to impact the following human rights:

- Protection from torture and cruel, inhuman or degrading treatment (s 17 of the *Human Rights Act 2019*)
- Humane treatment when deprived of liberty (s 30 of the Human Rights Act).

The Queensland Human Rights Commission provided a detailed submission to us about human rights and separation (see Appendix C). The submission states that:

Depending on the circumstances, the ongoing involuntary separation of a child from others in a locked cell may amount to torture, cruel, inhuman or degrading treatment under s 17 of the HR [Human Rights] Act.

A number of human rights instruments relate to the rights of children who are separated and to the issue of solitary confinement.

The *United Nations Standard Minimum Rules for the Treatment of Prisoners* (Nelson Mandela Rules) apply to all prisoners (including children) and define solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact (Rule 44).

The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules) strictly prohibit solitary confinement of a child or young person as a disciplinary measure. They state that it constitutes cruel, inhuman or degrading treatment and is strictly prohibited (Rule 67).

The Nelson Mandela Rules prohibit the use of solitary confinement for any person with mental or physical disabilities if that confinement would exacerbate their conditions. They reiterate the strict prohibition on the use of solitary confinement for children (Rule 45).

The *Istanbul Statement on the Use and Effects of Solitary Confinement* (Istanbul Statement), prepared in response to the increasing use of isolation in prisons, states that solitary confinement should be absolutely prohibited for children under the age of 18.

The role of Inspector of Detention Services

The Inspector of Detention Services was established under the *Inspector of Detention Services Act 2022* (the Act) to provide independent oversight of detention services and places of detention in Queensland.

The purpose of the Act is to promote the improvement of detention services and places of detention, with a focus on humane treatment of detainees and on preventing them from being subjected to harm.

Key functions of the Act involve inspecting detention services and places of detention (once every year for youth detention centres and once every five years for adult prisons), and then reporting to the Legislative Assembly with advice and recommendations.

As required by the Act, in August 2023, the Inspector of Detention Services published the *Inspection standards for Queensland youth detention centres* (the standards). These are designed to provide consistent, transparent assessments of youth detention centres and are intended to protect the basic rights of children in these centres. We refer to relevant standards from this document throughout this report.

Our inspection process

The inspection process included:

- reviewing information from relevant inquiries, reports and court decisions
- reviewing relevant legislation and policies
- assessing data held on the department's information system (Detention Centre Operational Information System - DCOIS)
- obtaining information from the government departments responsible for providing detention services at the centre: Department of Youth Justice, Department of Education, and the Townsville Hospital and Health Service
- seeking submissions from a range of other government bodies, including agencies with oversight of youth detention centres
- engaging with government agencies and other services such as the Public Guardian's community visitor to the centre
- seeking submissions from community organisations
- engaging with community service providers including Aboriginal and Torres Strait Islander organisations
- interviewing and engaging with staff at the centre, including managers, operational staff, therapeutic staff, and teachers
- attending the centre to conduct an onsite inspection in October 2023 on weekdays and a weekend. The inspection included observing
 - accommodation units, including independent living units and behavioural support units
 - classrooms
 - health service facilities
 - casework and administration facilities
 - recreational facilities, including the sports field and undercover sports area
 - visits facilities on the weekend when most visits occur
- listening to the children who were detained at the centre.

We also benefitted from access to information and analysis from previous investigations conducted by the Office of the Queensland Ombudsman from 2021 to 2023.

As required by s 24 of the Inspector of Detention Services Act we provided a copy of the draft report to notifiable entities including:

- Hon Yvette D'Ath, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence
- Hon Di Farmer, Minister for Education and Minister for Youth Justice
- Mr Bob Gee, Director-General, Department of Youth Justice
- Mr Kieran Keyes, Chief Executive Officer, Townsville Hospital and Health Service
- Mr Michael De Ath, Director-General, Department of Education.

We received written responses from the Director-General, Department of Youth Justice; Director-General, Department of Education; and the Chief Executive Officer, Townsville Hospital and Health Service. Copies of the written submissions are attached to the report.

How we refer to the department

The department responsible for administering the Youth Justice Act has been subject to several name and organisational changes for the periods of time covered by this report.

As a result of machinery of government changes that came into effect on 18 May 2023, the youth justice function was removed from the former Department of Children,

Youth Justice, and Multicultural Affairs and transferred to the Department of Youth Justice, Employment, Small Business and Training.

Further changes on 18 December 2023 removed the youth justice function from the Department of Youth Justice, Employment, Small Business and Training and created a new department, the Department of Youth Justice.

To avoid confusion, we simply refer to the department that has responsibility for administering the Youth Justice Act by its current name or as 'the department' in this report.

A note about the data and terms we have used in this report

Some sections of this report rely on data obtained from the department's DCOIS. The department has expressed concern about the reliability of this data, so where possible, we have used alternative sources. However, where there were none, we have used the data in DCOIS.

The information contained in graphs 1, 2 and 3 in this report is derived from a separation 'matrix' provided to us by the department. The matrix documents the use of staff shortage separations at the centre during 2023 in terms of whether the type of separation was 'night mode' or 'continuous cell occupancy' (CCO). We explain these terms in Chapter 2.

We use the terms to explain the nature of staff shortage separations. This is particularly important in relation to night mode separations, which have caused us most concern. This is because, when combined with the usual evening lockdown, they can cause children to be locked in their rooms for more than 22 hours in a single day.

In relation to graphs 1, 2 and 3, we acknowledge the department's advice that they do not take account of incidents that may occur when young people are out of their rooms during a staff shortage separation. If an incident (for example, a young person assaulting another) occurs during these periods, a second separation is not recorded in the DCOIS, as young people are already subject to a separation. This is to ensure these events are not double counted.

To remove any doubt, the staff record the incident and link it to the existing separation event. An analysis of incidents occurring during these periods of separation would improve the interpretation of the data. While we acknowledge these concerns, we note that the number of night mode and CCO separations remains accurate.

Acknowledgements

We wish to acknowledge the support and assistance we received throughout the inspection process from the department and its staff at the centre.

We would also like to acknowledge the assistance of staff from the Department of Education and the Cleveland Education and Training Centre, and the staff from the Townsville Hospital and Health Service and the Cleveland Youth Detention Medical Centre.

A range of government and non-government stakeholders provided valuable information during the inspection process, and we thank them for their assistance. We particularly want to thank the staff of the Office of the Public Guardian who helped us by sharing valuable knowledge of the children's experiences.

Finally, we acknowledge and thank the children who took the time to speak to us and share information about their experiences with and perspectives on the use of separation at the centre.

2. How staff shortages lead to separation

Relevant standards

- 122** Staffing meets the needs of the youth detention centre to manage children safely and meet the centre's operating philosophy.
- 123** Recruitment, supervision and retention strategies are in place to ensure there are sufficient staff with experience to meet the needs of the youth detention centre and the population of children at all times.

How and when staff shortage separations occur

'Separation' is a term used in the Youth Justice Regulation 2016 (the regulation) to describe when a detention centre employee places a child in a locked room alone.

Under s 21 of the regulation, a detention centre employee may separate a child for one of the following reasons:

- a) if the child is ill; or
- b) at the child's request; or
- c) for routine security purposes under a direction issued by the chief executive; or
- d) for the child's protection or the protection of another person or property; or
- e) to restore order in the detention centre.

For example, separation may be used as a response to an incident if a child's behaviour threatens the safety of others. This is recorded as a separation under s 21(1)(d) of the regulation. One of the routine security purposes referred to in s 21(1)(c) of the regulation is the overnight lockdown that occurs each evening from 7.30pm to 7.30am.

During the day, youth detention centres aim to allow children out of their rooms from 7.30am to 7.30pm to participate in a structured daily routine that includes schooling, programs and activities.

A staff shortage separation, recorded under s 21(1)(d) of the Act, occurs when children are not able to be allowed out of their rooms (for part or all of the day) because there are not enough operational staff to maintain the safe supervision ratio. As specified by the *Youth Detention Centre Certified Agreement 2023*, this is a minimum of one detention youth worker to four children.

Detention youth workers are responsible for the day-to-day management, supervision, security and care of children detained at the centre. They perform roles such as supervising children within their accommodation units and escorting them from the units to school, programs (for example, therapeutic activities or programs aimed at addressing offending behaviour) and activities within the centre.

For a 12-bed accommodation unit, three youth detention workers need to be present for the whole day to achieve the safe supervision ratio that allows all the children in the unit to be out of their rooms and participating in the day's activities. The eight-bed units need two youth detention workers for this to occur.

Operationally, shift supervisors are generally not included in the safe supervision ratio. However, under the certified agreement, section supervisors can be included as short-term backfill for detention youth workers if, during a shift, there are emergent or extenuating circumstances.

Critically, on most days at the centre, there are not enough operational staff members to meet the safe supervision ratio. When this occurs, the department's policy on separation authorises the approval of an incident-related separation under s 21 of the regulation.

Each day, based on the number of staff available, shift supervisors recommend (to a delegated decision-maker) how many accommodation units can be fully opened and how many are subject to separation.

Types of staff shortage separations

Under the regulation and relevant youth justice policies, separation can be authorised by different officers for different periods of time. For example, a staff shortage that occurs for a single day will involve an initial authorisation for up to 2 hours, followed by a further authorisation for 2 to 12 hours.

For many years, staff at the centre have used local terms to describe two different modes of staff shortage separations that have very different features. These terms, which do not feature in any legislation or departmental policy documents, are 'night mode' and 'continuous cell occupancy' (CCO). They use these terms to describe the modes of separation that apply to all children in an accommodation unit. Each still requires authorisation.

Night mode is the most serious form of staff shortage separation. This is when all of the children in an accommodation unit are separated in their individual rooms during the day from 7.30am to 7.30pm. It is called night mode because it is similar to the type of separation that occurs during the overnight lockdown (between the hours of 7:30pm and 7:30am).

While children are predominantly locked in their rooms during a night mode separation, they may be escorted out of their accommodation unit to attend a visit, a medical appointment or a program. Also, they are usually provided with short periods of out-of-room time to make phone calls. Most of their other contact during night mode is conducted through their room's closed doors (with other children) or through the intercom (with staff).

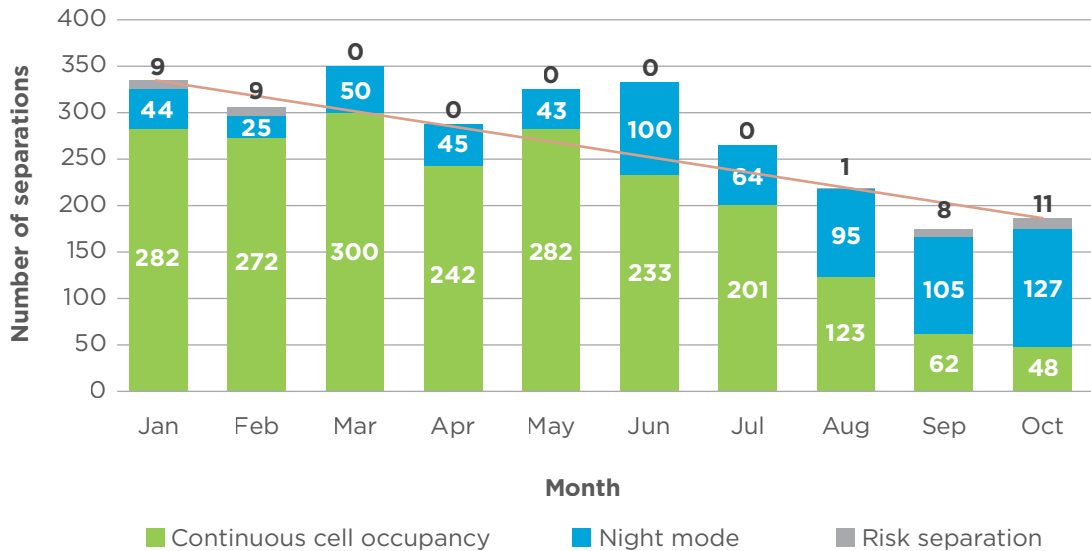
Continuous cell occupancy (CCO) is when all children in an accommodation unit are separated in their individual rooms for part of the day, but there are enough staff present in the unit to allow the children to come out of their rooms in small groups (of up to four children per detention youth worker to meet the 1:4 safe supervision ratio) into the common areas of the unit for longer periods of time.

There can be a lot of variation in the amount of time that children are out of their rooms during a CCO separation. A detention youth worker explained to us that during a CCO, the children will be 'rotated' (that is, released) out of their rooms into the accommodation units in groups of four at a time.

Reduced separations during 2023

Graph 1 shows the number and types of separations in accommodation units in response to staff shortage incidents each month at the centre over a 10-month period in 2023. It also shows the number of 'risk separations' (which, unlike the staff shortage separations, are imposed in response to behaviour) that occurred during the same time.

Graph 1: Total number of separations in accommodation units each month - 1 January to October 2023



Note: This does not include part-day separations.

Source: Compiled by the Inspector of Detention Services using information from the Department of Youth Justice's *Separation Approval Records Matrix CYDC 2023*.

It's clear that the overall number of separations across the centre declined during 2023, particularly from July onwards. From this time, the number of night mode separations began to significantly increase, as the centre sought to reduce the number of separations occurring on consecutive days.

The reason for the increase in night mode separations

During our onsite inspection from 18 to 21 October 2023, a shift supervisor explained to us that the centre started placing children in night mode about eight weeks earlier, so that they would not be locked in the units for days in a row. The supervisor explained that this enabled more children to be out of their accommodation units on a structured day, but also meant that more children were locked in a room all day and not out on rotation inside their accommodation units, as they would be if were under a CCO.

This matched what children in the Corella and Kestrel units told our officers. They said they are often alternated between night mode and regular, unlocked mode, but they have no days where they are considered in continuous cell occupancy.

Using night mode more frequently gives the centre a better chance of avoiding consecutive days of separation than using CCO. This is because fewer staff are required to supervise an accommodation unit while it is in night mode. The centre can ration out the available staff between units.

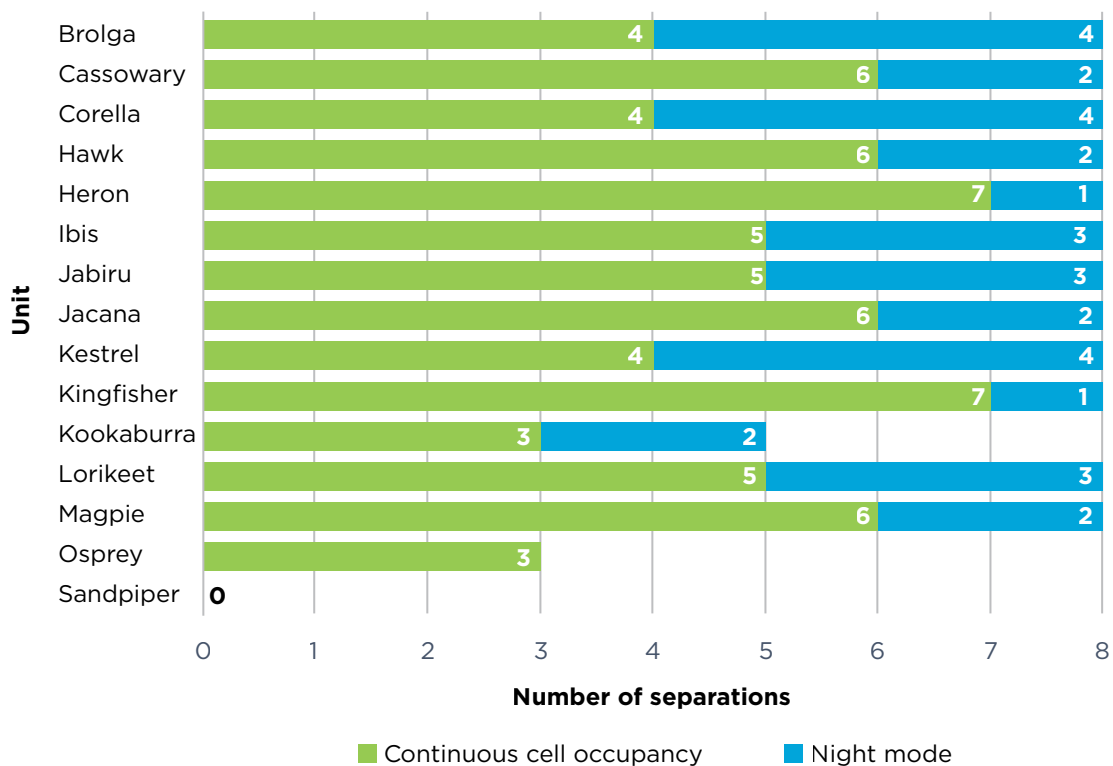
The upside is that children can have at least some days during the week out of their rooms for a full day. The downside is that on the days they are in night mode, they are kept in their rooms for the full day.

The following two graphs show the decrease in the centre’s use of separation during 2023 for each accommodation unit. We selected two periods of time for the graphs. The first, in Graph 2, is 8-15 January 2023, which was the first full operational week of January 2023 after the Christmas – New Year period. The second, in Graph 3, is 15-22 October 2023, which was the week we conducted our inspection.

Please note that children in the centre’s two four-bed independent living units – Osprey and Sandpiper – are not subjected to separation very often, because they each require only one officer for them to operate their structured day.

In the period from 8 to 15 January 2023, 104 (71 CCO and 33 night mode) separations occurred. This was not an unusual week at that time. Records show that similar levels of separation occurred in the week before and the week after.

Graph 2: Number of separations by unit from 8 January to 15 January 2023

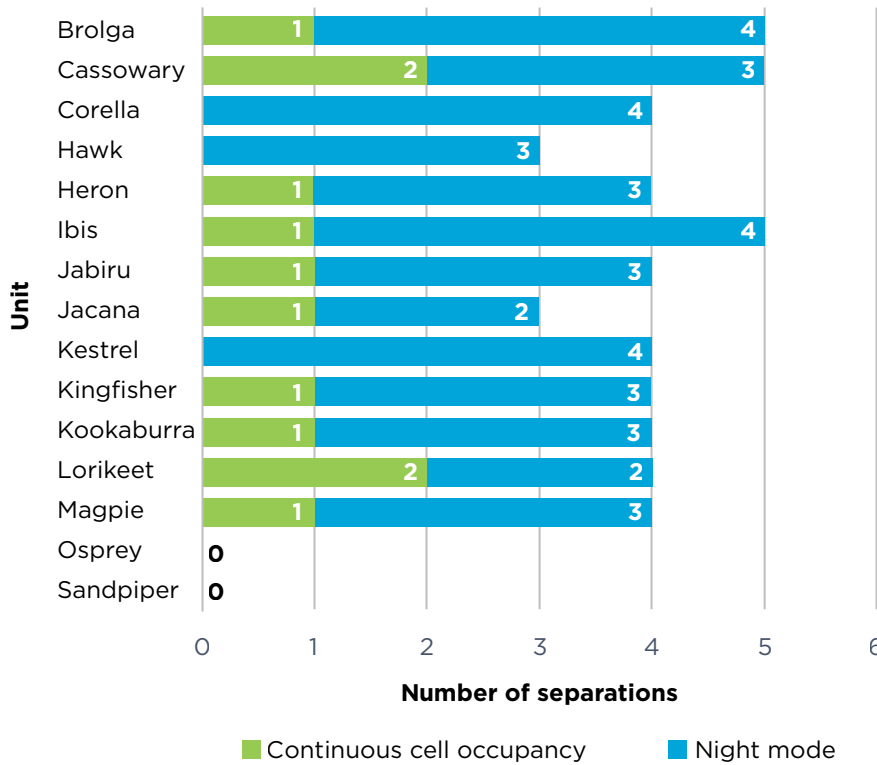


Source: Compiled by the Inspector of Detention Services using information from the Department of Youth Justice’s *Separation Approval Records Matrix CYDC 2023*.

The improvement in the situation by October 2023 can be seen in Graph 3, which shows the separation of accommodation units in an eight-day period. The centre had a total of 53 separations, which is just over half of those that occurred in January 2023.

Most accommodation units were separated for three to five days out of the eight-day period, rather than all eight days. However, the type of separation was predominantly night mode (41) rather than CCO (12).

Graph 3: Number of separations by unit from 15 October to 22 October 2023



Source: Compiled by the Inspector of Detention Services using information from the Department of Youth Justice's *Separation Approval Records Matrix CYDC 2023*.

Decrease in duration of separations

The Department of Youth Justice (the department) provided analysis about the duration of separations of individual young people at the centre. It shows the length of time young people have spent in separation significantly reduced in the first 9 months of 2023-24 compared to 2022-23.

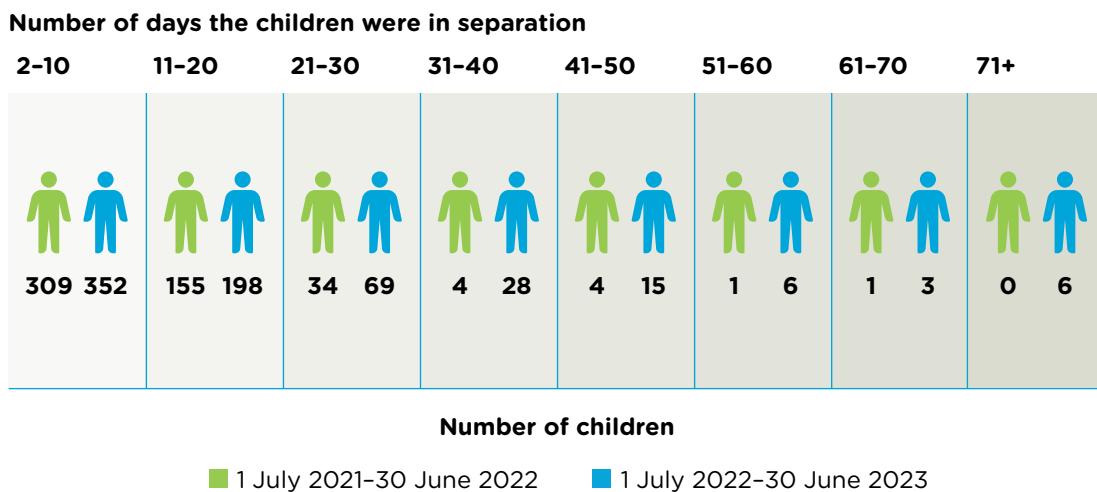
In 2023-24, almost two-thirds (65%) of separations lasted less than 2 hours compared to the previous year, when only a quarter (25%) of separations were under 2 hours. Further, the proportion of separations lasting between 2 and 12 hours decreased significantly from 75% in 2022-23 - now making up only a third of separations (33%).

Furthermore, the departments analysis showed that in 2022-23, the average length of a separation at the centre was 8 hours and 36 minutes. For July 2023 to March 2024, it was 4 hours and 24 minutes - a 47% reduction.

Separation on consecutive days

Figure 1 shows that, during 1 July 2021–30 June 2022 and 1 July 2022–30 June 2023, many children were often separated on consecutive days, including some for more than 70 days in row.

Figure 1: Children at the centre in separation for 20 or more hours on consecutive days in the 2021–22 and 2022–23 financial years



Source: Compiled by the Inspector of Detention Services using information from the Department of Youth Justice.

As discussed earlier, since the middle of 2023, the centre staff have sought to reduce the number of separations that occur on consecutive days. They have been able to do so by increasing their reliance on night mode, but also because of increased staffing levels (see below).

Consecutive staff shortage separations are most prevalent on weekends, which can result in children often being in night mode for up to three days in a row. The executive director of the centre confirmed that staffing is at its worst on the weekends.

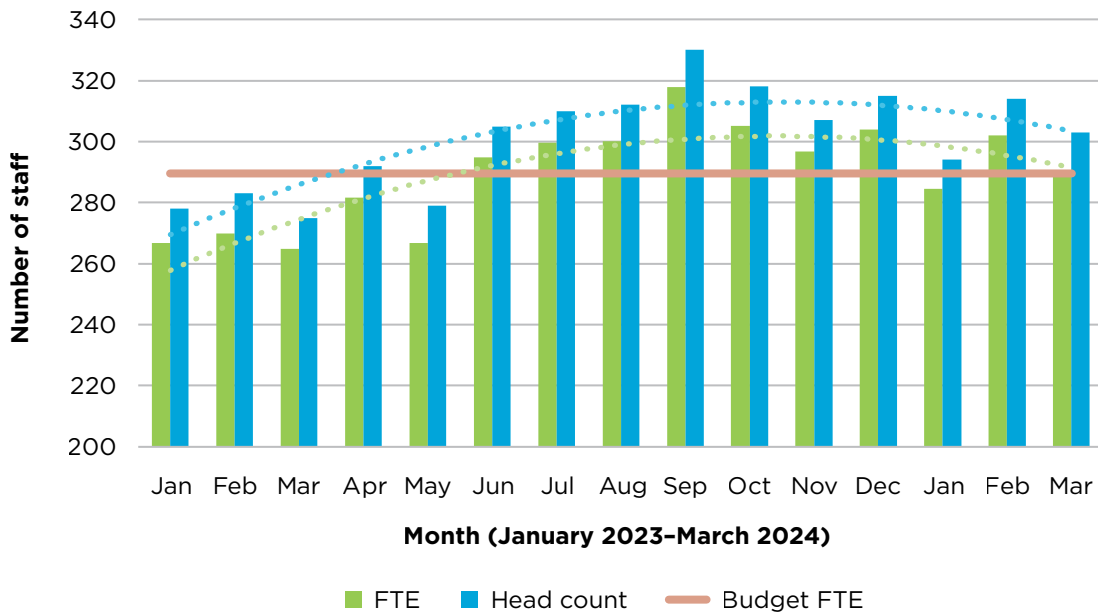
Increase in staffing numbers

The department increased staffing levels at the centre in 2023.

The centre’s total staffing levels from July 2021 to May 2023 were relatively consistent, with an average of 267 full-time equivalent (FTE) staff. Graph 4 shows that in the fortnight ending 30 June 2023, this increased to 295 FTE.

Staffing numbers continued to increase, peaking in September 2023 with 318 FTE. However, since that time, staffing numbers have dropped, with an average FTE of 297 between October 2023 and March 2024.

Graph 4: Staffing levels at the centre between January 2023 and March 2024



Source: Compiled by the Inspector of Detention Services using information from the Department of Youth Justice.

Graph 4 shows the overall number of staff, but a number of factors can affect staffing levels on a day-to-day basis (head count), including:

- high attrition rates at the centre (25.5% as at 30 June 2023 for all roles)
- unfilled vacant positions
- planned leave, including recreation and maternity leave
- absenteeism
- unplanned leave, including sick leave, Workcover-related leave and suspensions.

The department has been working to address these issues by:

- improving its recruitment and retention strategies, focusing on attraction, selection and workforce health and wellbeing, and long-term workforce sustainability
- providing temporary resources from other youth detention centres (which the department says also builds capability)
- having a central team of recruitment specialists continue to coordinate recruitment for youth detention centres. Throughout 2024, they have scheduled 11 inductions, including six for the centre
- implementing strategies to address the impacts on centre operations of high volumes of workers compensation claims and sick leave. These include introducing staff wellbeing initiatives, appointing staff wellness officers in each youth detention centre, and establishing larger safety teams
- reviewing rostering processes and absenteeism management
- implementing a significant improvement in wages and conditions for operational staff in December 2023 through the *Youth Detention Centre Certified Agreement 2023*. The deal was described by the Australian Workers Union on 23 November 2023 to a public hearing held by the Legislative Assembly’s Youth Justice Reform Select Committee as ‘the most significant pay increase any group of workers in the public service has seen in a very long time’
- conducting a training needs analysis.

Despite these initiatives, and the department's success in increasing staffing numbers at its centres in south-east Queensland, the number of staff at the centre dropped after September 2023.

A contributing factor may be that the Townsville labour market is simply unable to support the level of ongoing growth in the centre's workforce that is needed. The department advised us:

Notwithstanding these figures, the challenge of overcoming nationwide workforce shortages, particularly in a regional area such as Townsville cannot be overstated, nor should proposed solutions over-simplify these challenges. Accordingly, the department's recruitment and retention strategies continue to be refined.

Queensland Government commitment to improving staffing levels

In April 2024, the Queensland Government responded to the interim report of the Youth Justice Reform Select Committee's inquiry into ongoing reforms to the youth justice system and support for victims of crime. It accepted Recommendation 26, which is:

That the Queensland Government develop and implement workforce strategies that ensure the state's youth detention centres are staffed at levels sufficient to ensure the safety of workers and eliminate the need to use 'separations' or 'night mode' as a result of staff shortfalls and begin reporting, within three months, on when 'separations' or 'night mode' are used as a result of staff shortfalls.

In accepting the recommendation, the government stated that:

The Queensland Government Department of Youth Justice has engaged a professional service provider to provide strategic advice on the approach to workforce planning and is in the process of developing recruitment strategies for the Woodford Youth Detention Centre and Wacol Youth Remand Centre. The Queensland Government will also consider staffing levels and workforce planning for existing Youth Detention Centres.

Through the Community Safety Plan for Queensland, the Queensland Government is committing \$17.67M for youth detention centre readiness arrangements, including to continue work on establishing the new Woodford and Cairns Youth Detention Centres, including timely recruitment of staff.

While the government's commitment to staffing levels is welcome, it is important that the staffing needs of the centre be accorded the highest priority in the department's workforce planning. This is because, due to its location, it is facing greater difficulties than other centres in attracting additional staff.

Prioritising its needs also recognises the higher proportion of Aboriginal and Torres Strait Islander children who are detained at the centre relative to other youth detention centres.

Recommendation 1

The Queensland Government and the Department of Youth Justice give priority to the Cleveland Youth Detention Centre when developing strategies to meet the government's April 2024 commitment to increase staff at youth detention centres.

3. Experience of separation due to staff shortages

Relevant standards

- 13 Children are never subjected to solitary confinement, including a routine that amounts to solitary confinement.
- 31 Children have a minimum 10 hours outside their room each day, including at least two hours in the open and fresh air during daylight hours.

In our inspection, we considered the conditions children experience when they are subject to a staff shortage separation for some or all of the day, including:

- accommodation while separated
- how much time children spend out of their rooms when separated
- how much meaningful contact the children have with others while separated.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) apply to all prisoners (not only children) and define (in Rule 44) solitary confinement as the 'confinement of prisoners for 22 hours or more a day without meaningful human contact'.

Accommodation while children are separated due to staff shortages

Children who are subject to a staff shortage-based separation are locked in their own rooms, which are located within the accommodation units. The rooms have a window; a built-in bed base with mattress, pillow and bedding; bathroom facilities (shower, toilet and basin); shelves; desk and a stool. Access to the rooms is through a heavy steel door with a viewing window. Rooms we observed had clean bedding, but most had a lot of scratches and tagging all around them, including on the observation window in the door and the screen in front of the television.

When locked in their rooms, children can speak to operational staff through the door or via an intercom. When visitors or other staff come to see them, they also have to speak to them through the door, usually through the grill at the bottom of it. We discuss this later in the chapter. We observed that some children locked in their units had pulled their mattress onto the floor in front of the door so they could lie on it and talk through the grill, to be heard by other children also locked in their rooms.



Photos 1 and 2: A typical accommodation room

Most accommodation units (other than the two behavioural support units) have a common area that includes a kitchen benchtop and sink, a television, at least one phone on the wall, and some seats and tables. Some of those we visited had a lot of graffiti on the walls and windows but were otherwise clean, with no rubbish visible.



Photo 3: Kitchen area in Heron Unit



Photo 4: Common room in Corella Unit

During continuous cell occupancy (CCO) separation, children are often allowed out of their rooms into the accommodation unit's common area and exercise yard. An exercise area – known as a fernery – usually adjoins the common area. It is enclosed by metal screens.



Photos 5 and 6: Examples of exercise yards (known as 'ferneries')

Food is provided to the children regularly during the day – for breakfast, morning tea, lunch, afternoon tea and dinner. If the children are locked in the rooms at these times, the detention youth workers deliver the food to their rooms (by opening the door and giving the food to the child, not simply sliding it through a slot).

Time out of room

When an accommodation unit is not subject to a staff shortage separation (because it is fully staffed), and the day is not disrupted by other incidents, children are released to outside activities at 7.30am and they return for evening lockdown at 7.30pm. During this time, the aim is for them to participate in a structured daily routine of education, programs (for example, therapeutic programs run by psychologists) and recreational activities.

When CCO separation is used, children are released (or 'rotated out' to use the terminology of the Cleveland Youth Detention Centre – the centre) from their rooms to the accommodation unit for part of the day.

However, when children are separated in night mode, they spend almost all of the day in their room and have little, if any, time outside of it. They are often allowed out for a short time to make a phone call. Sometimes they are escorted out of the unit to attend a visit, go to a medical appointment or attend a program.

We considered whether children were being confined to their rooms for more than 22 hours a day.

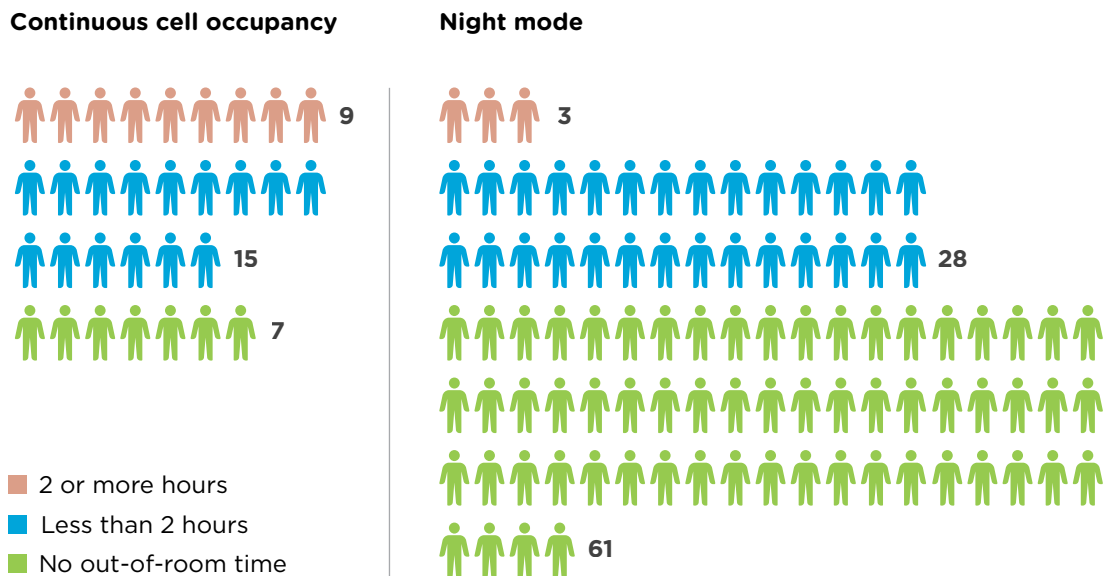
To do so, we reviewed the records from the department's information system (Detention Centre Operational Information System – DCOIS) of children who were separated in response to staff shortage incidents at the centre:

- from 19 to 21 October 2023 (while the inspection team was onsite)
- from 16 to 17 October 2023 for the three accommodation units that were in night mode separation on consecutive days.

Time out of room during staff shortage separations from 19 to 21 October 2023

The records, and Figure 2, show most children did not have any time out of their rooms during the separations. The records did not state why children were not provided with out-of-room time.

Figure 2: Out-of-room time for children in continuous cell occupancy and night mode separations from 19 October to 21 October 2023.

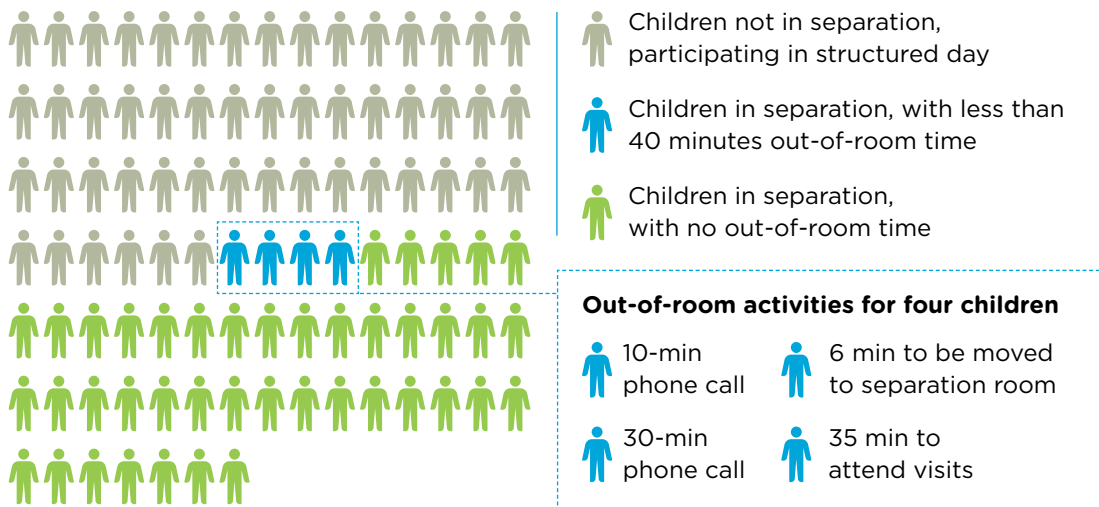


Source: Compiled by the Inspector of Detention Services using the Department of Youth Justice's separation group documents.

During our inspection, we spent time in accommodation units on Saturday 21 October 2023 as well as on the previous two weekdays. We observed that children appeared to spend less time out of room on the Saturday and decided to conduct further analysis. Figure 3 shows the results.

On that day, of the 97 children at the centre, 46 were in separation across six accommodation units. All six units were in night mode. According to separation records, of those 46 children, 42 received no out-of-room time, and the remaining four received less than 40 minutes out of their room. The 51 children who were not in separation on that day were released from their rooms for a structured weekend day.

Figure 3: Out-of-room time for 97 children at the centre on Saturday 21 October 2023









Source: Compiled by the Inspector of Detention Services using the Department of Youth Justice's separation group documents.

Time out of room during night mode separation on consecutive days on 16 and 17 October 2023

As noted in Chapter 2, in June 2023, the number of night mode separations began to increase, as the centre sought to reduce the number of separations occurring on consecutive days. It achieved its objective, but some separations on consecutive days do still occur. Figure 4 shows how children can be separated for 36 hours with the approval of night mode for one day and up to 60 hours of separation when consecutive separations are approved.

Figure 4: Example of total separation time when children are in night mode for consecutive days

Day 1	Day 2	Day 3		Day 4	
7.30pm	7.30am	7.30pm	7.30am	7.30pm	7.30am
					
Child locked in room for overnight lockdown	Child locked in room due to staff shortages	Child locked in room for overnight lockdown	Child locked in room due to staff shortages	Child locked in room for overnight lockdown	Child released from room
Total time separated	12 hours →	24 hours →	36 hours →	48 hours →	60 hours

Source: Compiled by the Inspector of Detention Services.

In the week prior to our inspection, three accommodation units (Ibis, Brolga and Cassowary) were in night mode separation for consecutive days on 16 and 17 October 2023.

We examined the separation reports in the department’s DCOIS information system, and identified the cumulative out-of-room time for each of the children over those two days. The results are set out in Table 1.

Table 1 - Cumulative out-of-room times for each child in Brolga, Ibis and Cassowary units - 16-17 October 2023

Unit	Room	Cumulative time out of room 16-17 October	Reason
Brolga	1	1 hour 32 minutes	Medical (14 min) + dental (54 min) + phone call (14)
	2	0	N/A
	3	45 minutes	Client services
	4	1 hour 27 minutes	Dental (1 hour and 5 min) + phone call (22 min)
	5	11 minutes	Phone call
	6	0	N/A
	7	0	N/A
	8	34 minutes	Medical (10 min) + phone call (10 min) + phone call (14 min)
Ibis	1	29 minutes	Phone call (29 min)
	2	1 hour 37 minutes	Visits (1 hour and 8 min) + phone call (29 min)
	3	1 hour 8 minutes	Visits (1 hour and 8 min)
	4	29 minutes	Phone call
	5	29 minutes	Phone call
	6	29 minutes	Phone call
	7	45 minutes	Visits (26 min) + phone call (19 min)
	8	35 minutes	Visits (16 min) + phone call (19 min)
Cassowary	1	0	N/A
	2	0	N/A
	3	10 minutes	Phone call
	4	0	N/A
	5	0	N/A
	6	2 hours 20 minutes	Visits (2 hours and 17 min) + phone call (3 min)
	7	6 minutes	Phone call
	8	33 minutes	Visits (23 min) + phone call (10 min)
	9	52 minutes	Visits (42 min) + phone call (10 min)
	10	50 minutes*	Medical (16 min) + visits (34 min) *The child was out of their room for an additional time, but no return time was recorded, so this has not been included in the total length of time
	11	1 hour 32 minutes	Medical (16 min) + Visits (1 hour and 8 min) + phone call (8 min)
	12	0	N/A

Source: Compiled by the Inspector of Detention Services using separation reports in the department's DCOIS information system.

Having children separated on consecutive days, particularly when it is night mode separation, is especially concerning. During our inspection, we spoke to the centre's psychologists about the psychological impact of separation. They told us that the timeframes in which they would see a decline in the mental health of children who were separated depended on each child. It can occur after a day for some but can take longer for others.

However, they also advised that the effect is usually noticeable by the second day of separation.

Meaningful human contact

While the Nelson Mandela Rules do not directly define ‘meaningful human contact’, other experts have done so, based on how it is referred to in the Rules. The Queensland Human Rights Commission included an interpretation in its submission to us (see Appendix C):

Meaningful interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.

(Source: Penal Reform International Head Office and Human Rights Centre University of Essex, *Essex Paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules*, 2017, 88–89.)

We reviewed separation reports from the department’s DCOIS to understand the type of contact that children have with others when under separation. The reports we reviewed were for units in CCO and night mode separation from Thursday 19 October to Saturday 21 October 2023 – the days of our onsite inspection.

The review showed that children have meaningful human contact when in CCO separation. For example, when they are released from their room into the common area of their accommodation unit, they can mix with other children (usually in groups of four, due to the safe supervision ratio) and an officer. Other opportunities for meaningful contact may also arise, such as attending visits, school or programs.

However, children who are in night mode separation have significantly less meaningful contact. Of particular concern is the minimal amount of contact that occurs in night mode separation on weekends.

Two daily routines that occur even during night mode separation that are consistently recorded in the records are:

- delivery of meals to accommodation rooms for breakfast, morning tea, lunch, afternoon tea and dinner
- visit by nurses to units, usually in the morning.

In most instances of night mode separation, children are also provided with out-of-room time to make a phone call (see Table 1).

Sometimes children have contact outside of the accommodation unit when they attend a visit from a family member or lawyer, or a medical appointment. Occasionally, they may also be escorted to a program. The records indicate that these types of contact are not regular or frequent.

Officers who run programs for children, including therapeutic and recreational programs, have responded to the use of prolonged separation by devising innovative unit-based models to provide programs and activities to children. The children come out of their locked rooms into the unit’s common areas to participate in the programs. Records the centre provided indicate that these are provided to children during CCO and night mode separations.

We also saw some children in accommodation units that were in either CCO or night mode separations leaving their unit to attend programs when detention youth workers were able to escort them.

Design of accommodation rooms

Much of the other contact that children have is through the locked door of their accommodation room when there are visitors to the unit (such as cultural liaison officers, psychologists or case workers). The records indicate that these types of visits are also occasional rather than regular or frequent.

Children are able to use the intercom in their rooms to speak to a detention youth worker. They may do this to ask to see their caseworker, or to request that a movie be played or activities be provided.

Giving children meaningful human contact is difficult when they are separated in a locked room, especially in night mode. Caseworkers and psychologists told us they often have to speak to them about sensitive matters through their locked doors. This provides little privacy, as other children and staff can hear the conversations.

The design of the doors of the accommodation rooms does not allow people to easily speak to a child who is locked in their room. We observed youth detention workers, client services staff (including the children's caseworkers and psychologists), and a visitor from the Office of the Public Guardian speaking to children locked in their rooms through the door grate, including by sitting on the floor.



Photos 7 and 8: Sitting on the floor to talk to children locked in their rooms

The level of meaningful contact reduces significantly on weekends, because most client services staff (which includes caseworkers, psychologists, sport and recreation officers, and cultural liaison officers) do not normally work on weekends.

This means the children in units subject to separation likely interact only with the unit's staff and have limited access to any recreational activities. We witnessed this, on a Saturday.

We did, however, see an officer from the client services team (who had volunteered to work on the weekend) sitting on the floor outside a child's locked door playing cards with him, passing cards under the door. That officer explained that if they were not sleeping, multiple children in a unit can participate in activities such as bingo or word search competitions that can be played through their doors.

Recommendation 2

The Department of Youth Justice works with staff of the Cleveland Youth Detention Centre to identify how to make improvements to the amount of time children spend out of their rooms and the meaningful contact they experience.

4. Impact of separation on access to services

We observed that the Cleveland Youth Detention Centre (the centre) has some great facilities including an excellent school, good library and outdoor recreation areas. We also met many staff members who have been frustrated at how staff shortage separations hamper their ability to provide services to the children.

There was a palpable sense of relief among many staff that the use of separation had recently reduced, and that the children were able to leave their accommodation units more often to participate in activities and programs.

In its submission, the Office of the Public Guardian noted that ‘once in detention, separation operates to limit their [children and young people’s] access to services and support, including education and reintegration services’.

In the following sections, we discuss the impacts of separation on children’s access to cultural support, health, education, psychological support, recreation, activities and visits.

Cultural support

Relevant standards

- 2 Aboriginal and Torres Strait Islander children in youth detention centres have fair and equitable access to services, activities and facilities, including services specifically relating to their cultural identity.
- 39 Children’s connections to the community are strengthened by participation in interventions and activities involving relevant government and non-government agencies, community organisations and Elders.

Of the children detained at the centre, 97% are Aboriginal and/or Torres Strait Islander peoples.

Staff at the centre spoke to us about the benefits (they have seen) of providing cultural support to children. One officer told us that when cultural support staff come to an accommodation unit and see the children, it creates a more relaxed atmosphere in the unit. We were told that, unfortunately, these interactions are infrequent.

Given the predominance of Aboriginal and Torres Strait Islander children at the centre, it was disappointing to hear from children, staff and community stakeholders that there was limited cultural engagement, interaction and support provided to children, especially to those subject to separation.

Some community organisations have expressed concerns about children’s cultural disconnection. We heard from children that they do not receive visits from cultural Elders groups anymore. While there were some cultural programs running at the time of our visit, yarning circles for both girls and boys were not in use. (Yarning circles allow for experiences, knowledge and stories to be shared in a respectful way.)

The Department of Youth Justice’s separation policy states that when a child is in separation for two consecutive days or longer, regular support ‘from cultural unit staff and/or cultural liaison officers must also be considered as a therapeutic intervention’. However, records we

reviewed show very limited or no cultural interaction with children while they were in separation, including with children who were separated on consecutive days.

We were told that staff vacancies in the cultural unit were the reason why the level of services to children was reduced. At the time we finalised this report, the centre had filled most of the positions.

Health services

Relevant standards

49
50

Children's health needs are addressed through accredited health services.

The youth detention centre has safe facilities, procedures and practices for the distribution of medication to children.

Youth justice principle 21 in the *Youth Justice Act 1992* states that a child who is detained in a detention centre should have access to dental and medical services. Health services are provided to the centre by the Townsville Hospital and Health Service.

Pleasingly, the provision of health services to children has not been interrupted by the centre's prolonged use of separation. Access to the onsite nurses and medical centre has been prioritised by the centre.

The Townsville Hospital and Health Service confirmed:

- Nurses visit children in the accommodation units for their medication rounds, health assessments and treatments when operational staff are present and they are advised that it is safe to do so. This occurs even when children are in night mode separations.
- The centre provides a dedicated escorting officer to ensure children can attend medical appointments. (We observed this occurring.) The availability of escorting officers ensures that separations rarely impact on the running of health clinics, including dental, visiting medical officer and nursing clinics.
- The visiting medical officer attends the accommodation units to provide health services to children if they are a priority and there are insufficient staff to escort children to the medical centre.

We support the continuing prioritisation of access to health services.

Education

Relevant standards

67

All children are engaged in education and personal development programs to meet their individual needs. The standard of education and programs is equivalent to that available within the community.

71

Children have access to a library which meets Australian standards and are encouraged to use it frequently.

Youth justice principle 21 of the *Youth Justice Act* states that a child in a youth detention centre should have access to education appropriate to the child's age and development.

The centre has a Department of Education school onsite to ensure children have access to a range of educational services, including school-based classes, art classes, hospitality, woodwork and mechanical programs. The school day is split into four sessions.

A 48-week school year has been introduced at all youth detention centres (compared to a 41-week school year in Queensland state schools in 2024) to provide more opportunity for education and programs to be delivered to children.



Photos 9: A classroom in the school



Photo 10: The centre's library

During our inspection, we saw some children attending school sessions. The Department of Education confirmed that children's attendance at school increased in the latter half of Term 3, 2023, following the centre's efforts from July 2023 to reduce the number of separations occurring on consecutive days.

However, on the days children can attend school, very few attend for a full day (that is, all four sessions). We reviewed records relating to children's attendance at school for one day in September 2023. As shown in Graph 5, 69 children attended either one or two sessions of school. Only four attended all four sessions.

Graph 5: School attendance on 12 September 2023



Source: Compiled by the Office of the Queensland Ombudsman from a Department of Education student subject class roll-marking summary.

The Department of Education entered into a service level agreement with the centre. It allows teachers to deliver school sessions to children in a small number of specific accommodation units (after a risk assessment is conducted) when prolonged separations occur.

While this is not a preferred method of teaching children, it enables teachers to deliver school sessions to at least some of the children while they are in separation. It is a good example of the innovation in practice that the centre and service providers are pursuing to address the impacts of separation.

The West Moreton Youth Detention Centre (which is a new centre) has a room attached to each accommodation unit that can be used for delivering education or programs. The Cleveland Youth Detention Centre would benefit from something similar.

The Department of Education advised us that, in addition to the impact of separations, the infrastructure at the centre does not allow all students to attend all four sessions a day. This is especially the case when the centre is operating at or near capacity.

The Department of Education also told us that children may have therapeutic support sessions and meetings with case workers, medical appointments, meetings with legal representatives and court attendance requirements, all of which may impact on their attendance at a school session.

Despite the efforts of the teachers and staff, most children who are separated on a school day are still unable to attend the school and participate in classes, or have a teacher attend their unit. Instead, they must rely on education packs being given to them to complete. They are a poor substitute for face-to-face education in a classroom with a teacher.

The Department of Education advised that the education packs were developed for independent learning due to operational staff not always being able to provide one-on-one education assistance to children in the units when they are separated.

Teachers rely on centre staff to distribute the packs, and usually on the individual commitment of each child to complete them. We were informed by accommodation unit staff that they do distribute the packs to children when they are separated. However, children told us the activities in the packs are usually either too easy or too difficult for them to complete on their own.

Therapeutic programs and support for children

Relevant standards

- 52** Children in a youth detention centre with actual or suspected mental health issues have access to age and culturally appropriate mental health services in a timely manner.
- 65** Children are supported to achieve the goals of their individual case plan by staff across all disciplines within the youth detention centre.

Youth justice principle 21 of the Youth Justice Act states that a child in a detention centre should have access to the therapeutic services necessary to meet their needs.

The centre has programs and support available to children to help them change their behaviour and make better choices. These are in line with trauma-informed practice principles, which encourage safety, trustworthiness, choice, collaboration, empowerment and respect for diversity through programs and services. They are run by therapeutic staff in the centre's client services team, including:

- psychologists
- speech-language pathologists
- caseworkers
- program officers, including Aboriginal and Torres Strait Islander program officers.

The department's separation policy states that, where resources permit, all children separated for two consecutive days or longer must be visited daily by a nurse and/or caseworker or other member of the multi-disciplinary team.

In the week of our visit, records showed that, during extended periods of separation, some children were visited by a caseworker or psychologist in their accommodation unit, and some children left their unit to attend a session with a speech pathologist or psychologist. However, we were also told that this did not always occur – particularly on weekends, when therapeutic staff do not work.

Caseworkers and operational staff spoke of large caseworker caseloads due to the number of children in the centre. In units that were separated, we heard several children using the intercom to ask to see their caseworkers.

Psychologists at the centre expressed concern that their work and that of caseworkers is predominantly reactive rather than proactive, and that the need to prioritise suicide risk assessments leaves them little time for undertaking proactive interventions with children to aid their rehabilitation.

The importance of privacy

When a unit is in continuous cell occupancy (CCO) separation, caseworkers and psychologists are usually able to have a more private conversation with children during the periods of time they are out of their rooms, for example, by finding a space in the unit's enclosed outdoor area. But that is not possible when a unit is in night mode.

Instead, they lean over or sit on the floor outside the door of the child's room, speaking with them through the grill at the bottom of the door without being able to see the child. We saw this occurring and were able to overhear parts of the conversations. Other children and centre staff would also have been able to hear them.

This clearly does not give privacy to a child being asked to provide clear and accurate information to those tasked with assessing their health and wellbeing. Nor does it allow the person conducting the assessment to physically observe the child and conduct a face-to-face assessment.

This does not comply with youth justice principle 21 in the Youth Justice Act, which states that a child in a detention centre:

... should be given privacy that is appropriate in the circumstances including, for example, privacy in relation to the child's personal information.

The centre has a dedicated therapy room for psychologists to use to conduct sessions with children, but this relies on operational staff being available to escort each child. When there are operational staff shortages, this is not always possible.



Photos 11-14: The therapy room

As mentioned earlier, recent designs for youth detention centres in Queensland include a room within accommodation units that can be used for educational and therapeutic programs. These rooms offer the added benefit during separation of ensuring children and staff can have more private conversations, such as for therapeutic assessments.

Children who are subject to separation should be receiving more proactive therapeutic services and access to meaningful daily conversations with therapeutic staff, including caseworkers and psychologists. They should be able to access these services outside of their rooms in suitably private spaces and not only through their locked room doors.

We have made recommendations about improving the centre's staffing model and ageing infrastructure in Chapter 7.

Restorative practice

Relevant standards

22

The youth detention centre embeds a restorative practice framework to address children's on-centre behavioural issues.

Restorative practice aims to support effective relationship management and conflict resolution for children, through both formal and informal means. Pleasingly, the centre is dedicating more resources to its restorative practice team.

We observed multiple 'couch time' sessions during the inspection. The sessions involved children and staff in a unit gathering in the morning – usually on the couches in the unit's

common area – to discuss how they feel and their goals for the day, and to reinforce the importance of respectful relationships. These sessions are not able to occur when children are separated in their rooms.

The Restorative Practice Coordinator attended some of the couch time sessions and was also observed having individual discussions with children about their behaviours towards staff and each other. This was in response to concerns from staff about conflict the previous evening that could have risked all children in the unit not being able to participate in a structured day, including attending school. That intervention meant all children were able to attend school.

Recreation and other activities

Relevant standards

- 31** Children have a minimum 10 hours outside their room each day, including at least two hours in the open and fresh air during daylight hours.
- 43** Children should have daily opportunities for physical and recreational activity, and a regular structured sport and recreation program.

Staff shortage separations severely limit the ability of children to engage in any physical and recreational activity. The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules) state children should have:

... a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided (Rule 47).

In the centre, children in separation, including in night mode, are provided with activities from a library of activity-based resources (for example, colouring-in activities) to complete in their rooms. Some accommodation units have additional activity-based resources in their staff rooms.

Program officers reported being able to deliver more sport and recreational activities to children when separations were reduced. During the inspection, we observed children attending programs and cultural activities. We also saw children participating in physical activity on the oval, basketball courts and undercover sports area.



Photo 15: The oval

We heard from children that they like going to programs and the gym and wanted to go more. The chance to get outside and kick a football around was clearly popular with the children involved. Access to programs is important for children's rehabilitation and their transition back to the community.

When children are let out of their rooms when their accommodation unit is separated, their time is usually spent in the unit's common area or its attached exercise yard – the fernery. Our inspection officers saw some children participating in activities when in a CCO separation, including playing basketball in the fernery and board games in the common area with the detention youth workers.

While the exercise yard provides an opportunity for children to get some natural light and fresh air, records from the department and anecdotal evidence from children and centre officers show the children are more likely to use any time they are out of their rooms during the day to make phone calls. This is particularly the case when they are separated in night mode. This choice further limits their opportunity to exercise and socially interact with other children in recreational activities.

As we mentioned earlier, centre staff provide children with activity-based resources to complete in their rooms, and the centre's school provides education packs. Children usually have to do these on their own. We saw some children in night mode separation completing some of these activities at their desks.

We also saw them sleeping, laying on their beds watching television or doing some form of exercise in their rooms.

Visits

Relevant standard

38

Support from a child's family and community is encouraged.

Youth justice principle 21 of the Youth Justice Act states that a child in a detention centre should be helped to maintain relationships with their family and community. Access to visits is an important part of achieving this goal.

The centre's visits team coordinates family and professional visits and court appearances for children. The team has a dedicated officer to escort children to the visits area, even when they are in separation.

The visits area is small for the number of children at the centre, which is a source of frustration for the visits team when they are managing a large number of professional visits and court appearances each week.

The required safe supervision ratio of one detention youth worker to four children still applies in the visits area, meaning it can contribute to the effects of operational staffing shortages on children in the units.

Children often must wait until all others in their accommodation unit have finished their visits or court appearances before being able to be escorted back together. This is because their detention youth worker is not able to leave to escort them back to their unit individually if there are not enough other staff to make up the safe supervision ratio.

As a result, children can wait in the visits area a long time, especially when professional visits or court appearances run late. We were given an example of 20 children being in the visits area at the same time, requiring at least five detention youth workers to be present.

We saw children attending family visits on a weekend, including a large family of visitors who arrived in a taxi organised by the centre. The family members we spoke to provided positive feedback on their engagement with the visits team, the process for booking visits and the assistance that is provided to families so they can visit children.

Innovative approaches

As mentioned, some centre staff have adapted their service offerings to cater for prolonged separations, including by developing unit-based services. While this is not the preferred method, it at least allows children in prolonged separation to continue to have access to services.

Also, some non-operational staff have been trained in the department's authorised intervention responses, allowing them to escort children around the centre and interact with them without the need for an operational staff member. This helps to ensure children's access to services can continue when operational staff escorts are not available, including because of staff shortages.

Despite the above, staff shortage separations continue to hamper the achievement of a regular structured daily routine for children. We also heard from staff that they do not have enough resources to undertake proactive work with children. We consider these issues further in Chapter 7.

5. Approval process for staff shortage separations

Relevant standards

- 14** Staff consider and strictly comply with the requirements of domestic legislation relevant to separation.
- 15** Children are separated only in accordance with the limited grounds prescribed by law, as a last resort, and where there is a demonstrated need to do so. The separation must be carried out in the least restrictive way and for the shortest possible time.

The Cleveland Youth Detention Centre (the centre) has specific processes and delegations for approving separations. However, it focuses on accommodation units rather than on individual children, and the centre does not maintain adequate records on its decisions about separations. Also, it does not currently involve psychologists when making these decisions about vulnerable children.

Decision-making process

Separating (segregating) children is authorised under the Youth Justice Regulation 2016 (the regulation). The department's separation policy provides further detailed information about it, including the requirements for delegated decision-makers.

Table 2: Delegated decision-making requirements in the department's separation policy

Time period	Requirements
Up to 2 hours	Must be approved by one of the following: shift supervisor, unit manager, assistant director, deputy director or executive director. If a staff member has to urgently place a young person in separation due to the serious nature of the risk, shift supervisor approval must be sought as soon as the young person is placed in separation.
2 hours up to 12 hours	Must be approved by the executive director or delegate.
12 hours up to 24 hours	Must be approved by the executive director or delegate. The executive director must also notify the senior executive director of the separation.
Greater than 24 hours	Must be approved by the senior executive director. A new approval is required every 24 hours thereafter.

Source: Youth detention centre operational policy, *YD-3-8 Youth Detention - Separation*, version 1.9, 2023.

It is worth noting that the time periods listed in Table 2 refer only to the daytime hours the child is separated. The total hours would be much higher if the evening lockdowns were added in.

Approval process

Shift supervisors are responsible for the operational roster at the centre. Each afternoon, they review it and identify how many units will likely be fully staffed for the following day and which units will not.

We observed the shift supervisors routinely arriving at work before their shifts started, to ensure they had time before the 7:30am accommodation unit unlock time – to further review and update the roster. They have to take into account staff who have called in sick or are otherwise unavailable for work, and staff who have failed to attend work.

As shown in Table 2, shift supervisors can make the decision to separate a child for up to two hours. As the accommodation units unlock at 7:30am, this means they have the authority to separate the children until 9:30am.

After 9:30am, the shift supervisors are required to have the approval of either the deputy director or the executive director to separate children for two to 12 hours (if it is the first day of separation) or 12 to 24 hours (if it is a second consecutive day of separation). Approval from the senior executive director is required to separate children on a third consecutive day (that is, for greater than 24 hours).

These approvals are given either in a telephone call or in a text message exchange in which the decision-maker is only provided with how many units in total will need to be separated. Neither the request nor the approval at that time identifies *which unit/s* or *which children* will be in separation. No file note of the telephone conversation or copy of the text message is saved in the department's recordkeeping system, as is required by the *Public Records Act 2002*.

An email is then sent to the decision-maker that includes details of the specific units that have been separated. The centre's 'bed state sheet' is attached to this, identifying the children who are in each unit.

The decision-maker replies to that email, including in the reply that an approval was made by either a telephone call or a text message and specifying the time that it was made. They also state that specific considerations were taken into account in making the decision to approve the separation. These emails are usually sent by the decision-maker outside the required time period for approvals, and in some instances, close to the overnight lockdown time.

The regulation specifically states that a child may be separated. The department's separation policy states that both the officer recommending separation and the delegated decision-maker must consider, on a case-by-case basis, the totality of the situation, the risks posed and the impacts on the child.

The decisions communicated by telephone or text message are made without information about the specific units and specific children being separated. This means decision-makers do not have all the data they need for an informed decision about separating each child, including:

- consideration of the child's human rights
- humane treatment
- any identified risks of harm to the child
- how long the child has already been in separation.

This is not intended as a criticism of the operational officers involved in the approval processes; in fact, the opposite applies. In making the above observations about the approval process, we acknowledge that shift supervisors do an extraordinary job each morning.

They manage an intense and, at times, hectic process. They have to devise the day's approach to rationing out the available operational officers to the accommodation units, and other vital tasks. They do this while coping with late-arriving information about staff availability and other factors.

However, given the importance of properly authorising all separation decisions, we recommend that the process be reviewed.

Recommendation 3

The Department of Youth Justice reviews the approval process for separations to ensure it is compliant with the Youth Justice Regulation 2016 and *Human Rights Act 2019*.

Considering psychological impacts when separating children

Therapeutic staff, specifically psychologists, should be included in decision-making about the continuous use of separation, to ensure the wellbeing of each child is considered. This is particularly important when considering the risk of physical or psychological harm that separation may pose.

In this regard, the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (Nelson Mandela Rules) state:

The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures (Rule 45(2)).

In 2023, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) made a recommendation (8.3) that all Australian jurisdictions should introduce legislation to prohibit solitary confinement in youth justice settings, including a requirement to take into account a child's disability needs before any isolation period is authorised.

We could not identify any evidence of communication between operational staff and therapeutic staff about continuous use of separation in response to staff shortages or the effect this may have on children's health and wellbeing. We confirmed this in our discussions with staff.

The executive director advised us that separations are operational decisions, and that it would be difficult to involve psychologists in the process.

While we acknowledge that it would be hard to involve them in the daily decisions made each morning about separations, it should be possible for their views to be sought in cases where a child has already been in separation for a full day, and there is a risk of a consecutive day of separation being required.

Recommendation 4

The Department of Youth Justice ensures psychologists are consulted about the individual needs of children placed in separation, and their advice is considered and recorded when a period of separation beyond one day is requested.

6. Other separation issues

During our inspection, we identified issues about the use of separation that are not limited to staff shortage separations. They relate to the:

- accommodation used for separation (other than staff shortage separation)
- need to conduct regular observations of children in separation
- separation of children in behavioural support units
- need for the *Youth Justice Act 1992* (the Act) and Youth Justice Regulation 2016 (the regulation) to better address separation
- need for more accountability about the use of separation.

Separation rooms and holding cells

Relevant standards

- 29** The treatment of children and the conditions in which they are held meet contemporary community standards to promote and uphold the humane treatment of children.
- 32** Youth detention centres are not oppressive environments and operate flexibly to allow children to feel safe and comfortable.
- 37** All children are provided with clean clothing and bedding appropriate to the climate, as well as necessary toiletries and sanitary products.

Children are locked in their accommodation rooms during staff shortage separations, and sometimes for other types of separations. However, other purpose-built rooms, known as separation rooms and holding cells, exist in the Cleveland Youth Detention Centre (the centre) to enable children to be separated for short periods.

Separation rooms

Separation rooms are located within accommodation units. Centre staff advised us that the rooms are only intended for short-term separations in response to behaviour incidents, to manage risk. They said they are used if a child cannot be safely separated in an accommodation room.

We saw the separation rooms, which are small rooms with bare cement floors and walls covered in graffiti. They are empty, with no toilet, running water, bed or seat.



Photos 16–20: Separation rooms

Holding cells

Holding cells are in the admissions area of the centre and are usually used to hold children for short periods of time as part of their admission to the centre. Like separation rooms, they do not have built-in bed bases or bathroom facilities. They do have a built-in bench for a child to sit on.

We found the holding cells at the centre to be much cleaner than the separation rooms.

What the separation rooms and holding cells are used for

The intended use for both separation rooms and holding cells is brief intervention. However, during the inspection, we observed instances of both types of rooms being used to accommodate children overnight. For example:

- On the second day of the inspection, we saw that children were in each of two separation rooms in an accommodation unit. Both had slept overnight there, with each having been given a mattress and bedding to put on the floor to sleep on. We heard one child screaming and bashing his fists on the door of the room, asking to be let out.

The reasons we were given for the centre separating the children in those rooms was that each of their accommodation rooms was uninhabitable. One child had flooded his room with water and the other's room had an infestation of ants. There were no spare accommodation rooms to place the children in.

- On the third day of the inspection, we observed a child sleeping on a mattress on the floor of a holding cell. Staff explained the child had arrived at the centre the night before and had refused to submit to a partially clothed search. This was deemed necessary

before he could be moved to an accommodation unit, due to his previous history of concealing dangerous items on arrival at the centre. As a result of his noncompliance, he remained in the holding cell overnight.

How does the centre compare to other youth detention centres on this issue?

Other Australian jurisdictions have legislated that the physical environment of the place where a child or young person is separated should be no less favourable than the physical environment of other places they occupy, such as their accommodation room.

Independent custodial inspectorates in both New South Wales and Western Australia told us that toilets and access to running water are provided in separation rooms or similar facilities in their respective jurisdictions.

In 2017, an inquiry into the use of isolation, separation and lockdowns in the Victorian Youth Justice system reported many isolation rooms lacked toilets, hand basins, benches and beds (Victoria State Government, Commission for Children and Young People, *The Same Four Walls; Inquiry into the use of isolation, separation and lockdowns in the Victorian Youth Justice system*, March 2017).

The inquiry report recommended that the Department of Families, Fairness and Housing immediately upgrade all youth justice isolation spaces to include sanitation (direct access to toilets) and ensure sanitation was included in the design of any new youth justice facility.

This recommendation was accepted and has since been implemented. Action has been taken to ensure the seclusion rooms are fitted, at minimum, with a washbasin and toilet. Therapeutic features have also been added to the seclusion rooms. They are now painted, have mattresses, and have therapeutic resources (such as stress balls and therapeutic pillows) to help young people to self-regulate.

Interestingly, adult prisons in Queensland also provide the basic facilities of a toilet, basin with running water and a bed in their detention units.

The following *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules) are relevant to this situation:

31. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.
32. The design of detention facilities for juveniles and the physical environment should be in keeping with the rehabilitative aim of residential treatment.
33. Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding.
34. Sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.
37. Clean drinking water should be available to every juvenile at any time.

Children should not be treated less favourably than adults. They should not be locked in rooms without a toilet, running water and bed, especially overnight. Even in the situation where rooms are only used for short-term separations, it is difficult to understand why they are designed without these facilities.

Implications for other Queensland youth detention centres

The Director-General of the Department of Youth Justice (the department) has advised us that separation rooms are included in the design plans for the new youth detention centres being built in Woodford and Cairns.

On 26 March 2024, we advised the Minister for Education and Minister for Youth Justice (the Minister) about our concerns under s 17(5)(b) of the *Inspector of Detention Services Act 2022*. We made four recommendations to the Minister, which are included in this report as recommendations 5 to 8.

On 18 April 2024, the Director-General of the department responded to the recommendations made to the Minister. He explained that the use of separation rooms has been an essential response option for the safety and security of staff, children and visitors in a youth detention centre, with a range of legislative, policy and practice safeguards in place that govern their use. The Director-General's response to each of the recommendations made to the Minister are detailed, in full, below.

On 13 May 2024, the Minister also responded, noting the Director-General's responses to our recommendations.

Recommendation 5

The Department of Youth Justice recognises the importance of ensuring that children are not locked in rooms that do not have basic facilities, including a toilet, a basin with running water, and a bed or seat, for any length of time.

The Director-General's response:

The Department acknowledges this advice and notes the legislative, policy and practice safeguards in place to ensure:

- separation rooms are used only when absolutely necessary and for the shortest possible period to ensure a young person's safety;
- separated young people always have access to staff via an intercom and can access fresh water and toilet facilities on request. Policy and procedure guidance reiterates these requests must be actioned without delay; and
- separated young people are observed frequently and, on some occasions, young people will have a dedicated staff member assigned to them to provide constant supervision.

Notwithstanding this, the Department commits to undertaking a jurisdictional and best practice review to explore whether, and how, these facilities can be provided in separation rooms whilst ensuring the safety and security of staff, young people and visitors in a youth detention centre.

Recommendation 6

The Department of Youth Justice ensures that all separation rooms and holding cells in new youth detention centres (including those at Cairns and Woodford) have basic facilities in them including a toilet, a basin with running water, and a bed or seat.

The Director-General's response:

The Department commits to considering the inclusion of these facilities in the design of the two new youth detention centres at Woodford and Cairns.

It is noted that these modifications will have significant cost implications that will need to be considered relevant to other build priorities.

The Department will also be required to consult with staff and industrial unions to address likely concerns regarding workplace health and safety.

Recommendation 7

The Queensland Government and Department of Youth Justice provide funding to improve the centre's separation rooms and holding cells to ensure that they have basic facilities in them including a toilet, running water, and a bed or seat.

The Director-General's response:

The Department commits to exploring the feasibility of infrastructure modifications to retrofit these facilities into existing separation rooms in the Brisbane, West Moreton and Cleveland youth detention centres.

These modifications may not be structurally possible or financially viable due to infrastructure or construction limitations. These modifications will have significant cost implications that will need to be considered and staged relevant to other capital expenditure priorities. The Department will also be required to consult with staff and industrial unions to address likely concerns regarding workplace health and safety.

Recommendation 8

The Department of Youth Justice closely monitors the centre's use of its separation rooms and holding cells to ensure they are only being used as an option of last resort and for the shortest time possible.

The Director-General's response:

The Department will continue to monitor the use of separation rooms to ensure they are used only when absolutely necessary and for the shortest possible period. Further enhancements to policy, training and information systems will be considered to reinforce this outcome.

While we appreciate the Director-General's response to the four recommendations we made to the Minister, the use of rooms without any basic facilities to separate children, sometimes overnight, is an issue fundamental to humane containment. Children cannot continue to be locked in these empty, concrete rooms, even for short periods of time.

It is especially difficult to reconcile building rooms without basic facilities at two new youth detention centres with government assurances that the centres will 'include therapeutic design elements aimed at supporting the rehabilitation of young people'. (Joint statement from the Premier and the Minister for Education and Minister for Youth Justice, *Construction starts on youth detention facility at Woodford*, February 2024).

We acknowledge that considerable time and cost is likely to be involved in undertaking the recommended infrastructure improvements. Recommendation 7 directed to the Queensland Government and Department of Youth Justice provides support for infrastructure improvements through additional funding.

In the meantime, if the centre intends to continue to use the rooms in their current form 'when absolutely necessary and for the shortest possible time', it must improve their condition and consider what soft furnishings (examples of which we have seen in adult prisons in Queensland) can be added.

Recommendation 9

The Department of Youth Justice ensures the centre immediately improves the condition of all separation rooms, including removing graffiti, scheduling regular maintenance of the rooms, and adding appropriate soft furnishings.

Regular observations of children in separation

Relevant standard

16

Where a child is separated from other children, they are treated with respect and dignity, and have meaningful opportunities to leave the unit, associate with other children and earn privileges.

Indicator

Staff closely observe and supervise children in separation and do not leave them for long periods of time with nothing to occupy them. All observations are recorded, and those records are monitored and reviewed by senior staff.

Locking a child in a room by themselves carries a high level of risk, so they must be checked (observed) regularly. Standard 16 indicates that care should be taken to reduce risks of self-harm and suicide, including through effective observations.

Section 21(4) of the Youth Justice Regulation requires detention centre employees to keep children who are in separation under observation. Staff must observe a child who is separated in a locked room at least once every 15 minutes. This includes when children are asleep in their rooms at night and when they have been separated for any reason during the day. The frequency of observations can be increased based on an individual risk assessment of a child.

At the centre, staff are required to physically observe a child through the window in their room door. They must physically identify each child and make sure the child is settled. Once they have confirmed this, the officer presses a button located outside the room to electronically record that they have completed the observation. The centre must be confident that staff are complying with these requirements.

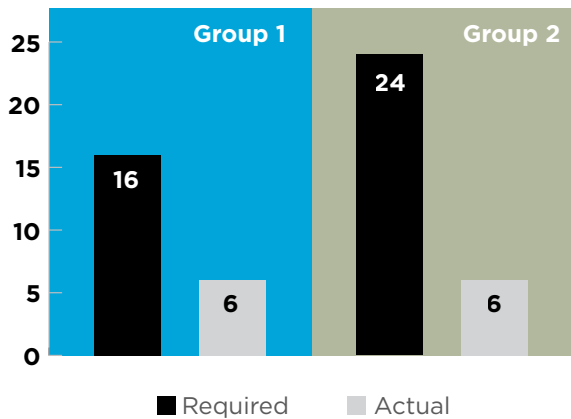
Compliance with observation requirements

An audit of compliance with observation requirements was conducted by centre staff on 20 October 2023 during the onsite component of our inspection. This showed non-compliance by staff with requirements to conduct observations of children in separation (see Figure 5).

This included a failure to observe a child who was assessed as requiring observation at the increased frequency of every 10 minutes.

Figure 5: Audit of observations conducted 20 October, 2023, between 11.00pm and 3.00am – actual versus required observations

Required observations vs actual observations



Eight children in a unit



Group 1:

Five children needed to be observed every 15 minutes.

16 observations were required in the timeframe for each child.

Group 2:

Three children needed to be observed every 10 minutes.

24 observations were required in the timeframe for each child.

Monitoring compliance with observation requirements

The audit of compliance conducted on 20 October 2023 was the first that had been conducted since November 2022.

We raised our concerns about the gap between audits with the department immediately after our onsite inspection. In response, all youth detention centres were directed to prepare a forward plan of proactive audits of observations.

The department’s Youth Detention Inspectorate also adjusted its inspection program to include reviewing compliance of observations of children at youth detention centres. It completed that review in its December 2023 inspections.

Recommendation 10

The Department of Youth Justice ensures detention youth workers comply with requirements in the Youth Justice Regulation 2016 regarding the need to observe children who are subject to separation, including by conducting regular audits.

Separation in behaviour support units

The centre has two behaviour support units (BSUs) called Lorikeet and Hawk. Each unit can accommodate four children. They are intended to be used to provide children with intervention and therapeutic care to address their behaviours.

The department's policy on behaviour support in youth detention centres states that it will be underpinned by principles of trauma-informed practice.

The policy also states that behaviour support will be multi-disciplinary, therapeutic and undertaken collaboratively with young people. It describes referral of a child to a behaviour support unit as being an appropriate consequence of high-level examples of challenging behaviour (such as assaulting other people or causing property damage).

The department advised us that the profile of the children in detention at the centre from 1 January 2023 to 31 December 2023 included:

- 72% who had some involvement in domestic and family violence (whether as victims or perpetrators)
- 42% who had experienced mental health issues
- 78% who had substance abuse issues
- 84% who were assessed as high or very high on the Youth Level of Service/Case Management Inventory (which estimates the level of risk for antisocial behaviours and indicates areas for intervention)
- 99% who were being detained for moderate or serious levels of the offences they had or were alleged to have committed.

While our focus was on the use of separation, our inspection has identified three issues about BSUs at the centre that do not appear to support the department's stated policy of trauma-informed, therapeutic practice, namely, the:

- state of the physical environment
- frequency of use of separation in the units
- limited access to services and activities.

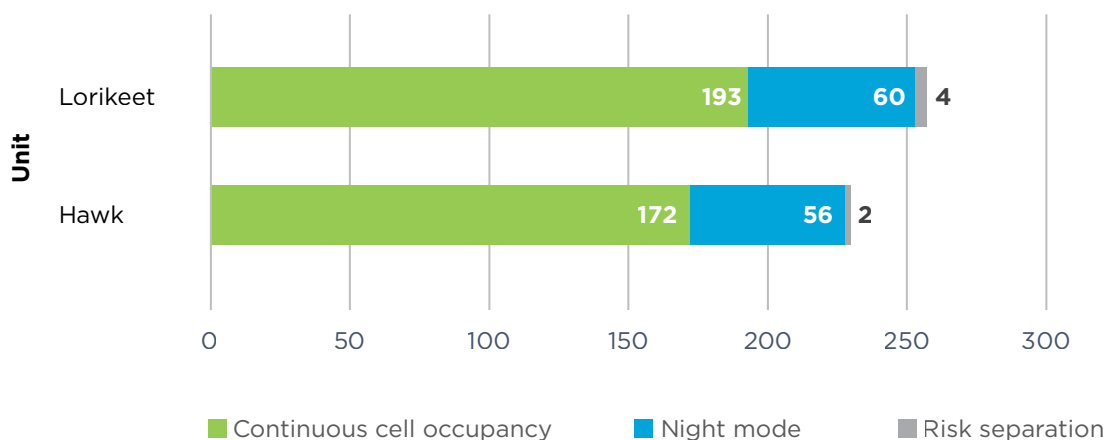
The physical environment in the BSUs does not appear to support their therapeutic intent. At the time we visited them, they were in separation mode. While the Lorikeet unit was clean, without any build-up of rubbish, it had a large amount of graffiti etched into the glass panels, painted on the walls, and scratched into the paint on the door frames and window frames. The common area did not have a kitchen bench or sink.

The children we spoke to in one BSU stated they would like to see the floors in their rooms fixed, as they were currently just concrete with leftover adhesive from the previous flooring.

Children accommodated in the centre's BSUs tend to spend a large proportion of their time in youth detention in them. Both BSUs experience large numbers of staff shortage-related separations.

Graph 1 (in Chapter 2) shows the number of separations for all accommodation units at the centre between January and October 2023. The graph does not break down the figures into individual units, but during this period, Lorikeet was subject to more separations caused by staff shortages (253) than any other accommodation unit. Hawk had the third highest number (228). Most of these were night mode separations, as shown in Graph 6.

Graph 6: Number and type of separations in the behaviour support units from 1 January to 31 October 2023



Notes: This information does not include part-day separations. Risk separations occur in response to behavioural risk as opposed to being related to staff shortages.

Source: Compiled by the Office of the Queensland Ombudsman using information from the Department of Youth Justice's *Separation Approval Records Matrix CYDC 2023*.

We reviewed the records of three children who had been held in the BSU for long periods. The cases all showed the children had limited contact with the non-operational staff, including programs, recreation and cultural teams. For example, one child who was in separation for 181 days in the BSU spent only 4% of that time outside his room. He only engaged in activities outside the BSU on 32 occasions in the 181 days, including attending school only three times.

Considered together, the combination of the poor physical environment of the BSU, the frequency of use of separation, and the limited access children have to services and activities casts doubt on the extent to which detention in the BSUs is likely to improve a detainee's behaviour.

But this is not to say that such improvement is not achievable. We were told of an example where collaboration between multi-disciplinary and operational teams at the centre resulted in a child accommodated in a BSU making significant progress in addressing his challenging behavioural issues.

If the department is serious in its aim of using BSUs to improve the behaviour of children in youth detention centres, it needs to ensure sufficient and dedicated resources are available to prevent staff shortage separations and provide children with intervention and therapeutic care.

A multi-disciplinary team needs to be responsible for the day-to-day management of the children in a BSU and for developing plans for their progression back to (non-BSU) accommodation. The children need to have access to support services to address their challenging behaviours, including health staff, caseworkers, psychologists, program officers and teachers.

Better addressing separation in the Youth Justice Act and regulation

The Youth Justice Act gives the Director-General of the Department of Youth Justice general powers for managing detention centres. While the Act includes a charter of youth justice principles, it contains no specific sections setting out the preconditions and safeguards for the use of separation. Instead, these are left to regulation and departmental policy.

By way of contrast, the *Corrective Services Act 2006* specifically addresses the use of separation for adults in Queensland prisons, including preconditions for its use, the period of separation, access to review, and the need for regular health examinations.

In other Australian jurisdictions, conditions for separating a child in detention are also included in primary legislation. In New South Wales, s 19 of the *Children (Detention Centres) Act 1987* No 57 requires:

- the nature and duration of the separation to be reasonable and have regard to age, maturity, mental health and development stage
- the physical environment of the place the child is separated to be no less favourable than the physical environment of other places the child is detained in the detention centre
- the duration of separation to be for the shortest time possible
- children and young people to be provided with some means of usefully occupying themselves.

In Queensland, the Youth Justice Regulation contains two sections about separation:

- Section 21 sets out the circumstances in which separation may occur, who may approve the separation, the requirements to conduct observations, and when a child must be allowed to leave the locked room.
- Section 22 requires a record to be kept for each child who is separated.

There are no specific sections setting out the minimum conditions of separation.

Again, this stands in contrast to s 4 of the *Corrective Services Regulation 2017*, which addresses the minimum conditions of separate confinement. It states that Queensland Corrective Services must ensure a prisoner undergoing separate confinement:

- a) can access reticulated water, a toilet and shower facilities that, as far as practicable, are constructed in a way to prevent the prisoner from associating with other prisoners; and
- 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
- c) is given clothing appropriate for the prevailing conditions; and
- d) is given the opportunity to exercise, in the fresh air, for at least 2 daylight hours a day, unless a health practitioner advises that it would not be in the interests of the prisoner's health to exercise for a stated period or indefinitely.

Another difference between the regulation of separation in Queensland's adult prisons and youth detention centres is that the *Corrective Services Act* provides for external review of safety orders (which authorise separation of a prisoner) after certain periods. There is no such right provided for children under the Youth Justice Act or its regulation.

The separation of children in youth detention centres is an important matter of policy, with significant human rights impacts. As a matter of good legislative practice, significant matters of this type should be addressed in primary legislation – as is the case in the *Corrective Services Act* – with additional detail included in the relevant regulation.

In 2023, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) recommended (in Recommendation 8.3) that all Australian jurisdictions introduce legislation to prohibit solitary confinement (which they defined as being the enforced isolation or segregation for any purpose of a child or young person for 22 or more hours in any day) in youth justice settings.

Amending the Youth Justice Act as recommended aligns with the Queensland Government's acceptance in April 2024 of Recommendation 27 of the Youth Justice Reform Select Committee's interim report. This said that the Queensland Government should set clear and enforceable limits on the use of 'separations' at youth detention centres. In accepting the recommendation, the Queensland Government stated that it:

... commits to setting clear and enforceable limits on separations. Separations are subject to strict approvals, supervision protocols, time limits and record keeping, ensuring they are reasonable and justified, in keeping with the legislative requirements of the Youth Justice Regulation 2016.

Recommendation 11

The Queensland Government amends the *Youth Justice Act 1992* to include mandatory prerequisites for the use of separation, and requirements for the humane treatment of children in separation. The amendments should include minimum conditions for separation and external review rights.

Performance reporting on separation

The department does not publicly report on the use of separation.

The Australian Government Productivity Commission's Report on Government Services has a 'Time out-of-cells (average hours per day)' performance indicator for adult prisons. It describes this as an indicator of success in meeting governments' objective of providing a safe, secure and humane custodial environment. This indicator is reported on by Queensland Corrective Services for adult prisons.

In February 2023, the department accepted a recommendation made by the Office of the Queensland Ombudsman to introduce a performance indicator on the average number of hours a child spends out of a locked room each day for each youth detention centre. The department is yet to implement the recommendation.

Recently, the Queensland Child Death Review Board made a similar recommendation to the Queensland Government in its *Annual Report 2022-23*, namely, to improve reporting on youth detainees' time out of cells.

In April 2024, the Queensland Government also accepted Recommendation 26 of the Youth Justice Reform's report. This included that the government should 'begin reporting, within three months, on when 'separations' or 'night mode' are used as a result of staff shortfalls.'

The department advised us that it is supportive of improving reporting on restrictive practices (such as separation), including a specific measure for out-of-room time. This is being developed through inter-jurisdictional working groups to support the Youth Justice National Minimum Data Set (an annual collection of information on young people under youth justice supervision in Australia) and annual reporting in the Report on Government Services.

Recommendation 12

The Department of Youth Justice reports publicly, including in its annual report, on the average number of hours children spend out of a locked room each day, for each youth detention centre.

7. Necessary systemic reform

As noted in earlier chapters, the Cleveland Youth Detention Centre (the centre) has reduced its use of staff shortage separations since 2023. However, this is still a serious problem that continues to have a range of impacts on the wellbeing of children, the services that they can access, and the broader operations of the centre.

During our inspection, we identified a range of reforms that are needed to improve the centre's workforce capacity and infrastructure, and more broadly the information systems of all youth detention centres.

Operational pressures on youth detention centres

Queensland youth detention centres are currently operating under extreme pressure due to high demand for detention places.

According to the Australian Productivity Commission's *Report on Government Services 2024*, in 2022–23, Queensland had the highest average daily rate of young people in detention in Australia. This high demand has led to a utilisation rate of 98% in 2022–23 for its youth detention centres. This rate is also the highest in Australia, with the national average utilisation rate being 56%.

The Department of Youth Justice (the department) provided us with information showing that since 2018 (except for the years of the pandemic), the demand for youth detention centre beds in Queensland has seen the system operating above safe capacity. For Cleveland Youth Detention Centre, that is 85 per cent (95 detainees). The Queensland Audit Office report *Reducing serious youth crime – Report 15: 2023–24* reported the centre operated at an average rate of 88 per cent utilisation between April 2022 and March 2023. Operating at (or near) 100 per cent capacity limits the centre's ability to manage operational risks including:

- safety concerns
- issues where children cannot associate with other children or remain in their unit
- management of self-harm and suicide risk
- medical conditions, disabilities and cognitive functioning
- assisting children to stay in cultural groups
- gender and age
- routine and unplanned room maintenance or property damage.

Workforce review

We have previously mentioned the strategies the department is using to increase the centre's staffing numbers, particularly for detention youth workers.

However, our inspection also identified a range of other workforce issues at the centre, such as the need to:

- address the workload of the centre's therapeutic staff, including caseworkers and psychologists, to enable them to pursue more proactive work
- assess the adequacy of the current model for the delivery of cultural support to Aboriginal and Torres Strait Islander children
- support continuing workforce innovation in service delivery through initiatives such as

training non-operational staff in the department's authorised intervention responses

- consider how to improve the capacity of therapeutic and support staff to have regular meaningful contact with children who are in separation.

In its 2022-23 annual report, Queensland's Child Death Review Board recommended that the department develop a workforce strategy for Queensland youth detention centres. In making this recommendation, the Board observed (at p. 41) that:

It is important for the system to consider how staffing issues will be overcome to ensure young people receive youth detention services that are vastly improved from their current quality. The Board considers that a clearer articulation of the role and purpose of the youth justice workforce is required to ensure Queensland attracts, supports and retains valued employees that can make tangible positive differences to the lives of young people. Workforce reform is needed that values key capabilities likely to drive behaviour change in young people.

The department has advised us it has developed a recommended operational model for the proposed new youth detention centre at Woodford. The model is based on research that highlights the critical role of professional staff in the provision of treatment and interventions to support young people in addressing their offending behaviours.

According to the department, an element of the model particularly relevant to issues identified in this report is that it will include:

... professional staff based in accommodation units, who will be responsible for the provision of intensive therapeutic interventions. These staff will work with detention youth workers and section supervisors in responding to the needs of young people. Building on current approaches, professional staff will upskill operational staff in communicating and responding to the needs of young people, resulting in a significant capacity uplift in working with young people, through practically implementing therapeutic approaches that focus on child development, trauma-informed practice, behaviour management, and restorative practice.

The model will provide an opportunity to enhance rehabilitative outcomes for young people through structural, workforce and practice innovations – all of which incorporate respect for culture and respect for the community. This also includes:

- new operational and professional roles to provide a range of therapeutic interventions, including Occupational Therapists, Social Workers/Family Therapists, and NDIS Team Leaders
- diversity of staff roles responsible for facilitating evidence-based programs and structured activities to young people.

We welcome the work being done to develop the proposed model for the Woodford centre. However, given the workforce issues we identified during this inspection, it is important that Cleveland Youth Detention Centre's staffing model also be reviewed.

The aim of the review should be to develop a new staffing model that provides the centre with the skills, capabilities and capacity needed to provide a therapeutic operating environment and to achieve the results planned for the Woodford centre and for the other new centre near Cairns.

Recommendation 13

The Department of Youth Justice review the Cleveland Youth Detention Centre's staffing model to ensure the centre has the skills and capacity needed to provide a therapeutic operating environment and to achieve the results planned for the Woodford and Cairns centres. The review should also:

- address the workload of the centre's therapeutic staff, including caseworkers and psychologists, to enable them to pursue more proactive work and have increased levels of meaningful contact with children in separation
- assess the adequacy of the current model for the delivery of cultural support to Aboriginal and Torres Strait Islander children
- assess the adequacy of the current model for the centre's behavioural support units
- support continuing workforce innovation in service delivery through initiatives such as training non-operational staff in the department's authorised intervention responses.

Infrastructure review

During our inspection, we identified a range of infrastructure issues including the need to:

- provide basic facilities such as a toilet, drinking water and a bed or seat in all rooms used for separation
- improve the behavioural support unit environments to help them meet their therapeutic goals
- add rooms to accommodation units (as is the case at West Moreton Youth Detention Centre) to enable the delivery of education and therapeutic programs to children from within accommodation units when necessary
- review the design of accommodation rooms and doors to ensure they facilitate meaningful engagement between children and staff.

The department is currently focused on the Queensland Government's investment in the two new detention centres to be built at Woodford and near Cairns, and the youth remand facility at Wacol. While these new facilities are being built, it is important that existing older facilities also receive investment to improve their ageing infrastructure.

Proposals for the new youth detention centres include therapeutic design elements that aim to support rehabilitation for young people and improve community safety. As the Cleveland Youth Detention Centre will continue to be required to detain children for many years, its infrastructure should also support a therapeutic operating environment.

In pursuance of this goal, we recommend that the department develops an infrastructure strategy for the centre that includes a comprehensive, long-term capital improvement program.

This would align with the Queensland Government's April 2024 acceptance of Recommendation 33 in the interim report of the Youth Justice Reform Select Committee.

Recommendation 14

The Department of Youth Justice develops an infrastructure strategy for the Cleveland Youth Detention Centre to ensure its infrastructure supports a therapeutic operating environment. The strategy should address the following issues:

- improving the behavioural support unit environments to support their therapeutic goals
- adding rooms to accommodation units (as is the case at West Moreton Youth Detention Centre) to enable education and therapeutic programs to be delivered to children from within accommodation units when necessary.
- reviewing the design of accommodation rooms and doors to ensure they facilitate meaningful engagement between children and officers.

Information systems upgrade

The department has advised us that it recognises the importance of transparent and accurate performance reporting, particularly in relation to restrictive practices such as separation. Further, it recognises that this information is critical to both separation decision-makers and oversight agencies in promoting legislative compliance and robust scrutiny of the use of these practices.

However, over recent years this has become increasingly problematic. The department's existing information system (Detention Centre Operational Information System - DCOIS) was introduced in 2011 and is now classified as a legacy system. Its reporting functionality is limited and, despite regular upgrades, its design has not enabled the system to keep up with growing service complexity and reporting requirements.

These challenges were highlighted in early 2023, when several courts started requesting information about separation to inform sentencing decisions. At the time, DCOIS was unable to produce reports of sufficient detail and quality to ensure the court had a full appreciation of the way youth detention centres manage separations.

System upgrades delivered in November 2023 capture more accurate reporting of separations, better meet the needs of courts and enable the review of separation incidents; however, this is only an interim solution.

As part of the department's youth detention infrastructure expansion projects, a replacement system for DCOIS is being scoped to ensure comprehensive, real-time reporting capability for separation and other restrictive practices within youth detention centres. As part of this process, the department is also seeking input from other agencies, such as Queensland Corrective Services, which uses a similar system and other jurisdictions.

The department is also committed to improving reporting on restrictive practices, including introducing a distinct measure on out-of-room time, as per the recommendations made by the Disability Royal Commission and the Queensland Child Death Review Board.

This is occurring via inter-jurisdictional working groups established to support the Youth Justice National Minimum Data Set (an annual collection of information on young people under youth justice supervision in Australia) and annual reporting for the Productivity Commission's Report on Government Services.

Upgrading DCOIS also aligns with the Queensland Government's April 2024 acceptance of Recommendation 3 in the interim report of the Youth Justice Reform Select Committee.

Recommendation 15

The Queensland Government supports the Department of Youth Justice in replacing its information system (Detention Centre Operational Information System – DCOIS) with one that enables comprehensive and real-time reporting capability for separation and other restrictive measures, and reporting on out-of-room time.

Appendix

Appendix A: Department of Youth Justice response



Department of
Youth Justice

Our ref: 03098-2024
Your ref: 2024-00091(P1)

Mr Anthony Reilly
Queensland Ombudsman and Inspector of Detention Services
Email: Inspector@ombudsman.qld.gov.au

Dear Mr Reilly

Thank you for your letter dated 4 July 2024 providing your revised inspection report 'Cleveland Youth Detention Centre: Focus on separation (segregation) due to staff shortages'.

The draft report highlights some of the operational complexities and the significant efforts made by the Cleveland Youth Detention Centre to maximise service continuity during periods of separation. It also highlights the reduction in the use of staff shortage separations throughout 2023-24 compared to 2022-23, and the considerable efforts made by the Department of Youth Justice (the Department) to improve recruitment and retention.

Queensland has continued to maintain the highest youth detention centre utilisation rates across the nation over the past eight years. Staff shortages can be impacted by volatile and variable demands, including taking young people to and from court, hospital and other medical appointments, as well as staff absenteeism – all of which can be spontaneous or unplanned.

Separations are subject to strict approvals, supervision protocols, time limits and record keeping, ensuring they are reasonable and justified, in keeping with the legislative requirements of the *Youth Justice Regulation 2016* and the *Human Rights Act 2019*.

Some recommendations are to Government and are of course issues for Government. The Department accepts the recommendations related to its administrative functions in principle. I note that the recommendations focus on the following areas:

- workforce sustainability and capability;
- infrastructure planning and enhancements to existing facilities;
- legislation, policy and practice; and
- information systems and reporting.

The Department has achieved growth in the YDC FTE since June 2022, when there were approximately 56 FTE net vacancies in YDCs compared to 118 FTE over strength in June 2024.

The time spent in separations due to staff shortages has reduced at the Cleveland Youth Detention Centre by about 50 per cent.

1 William Street Brisbane
Queensland 4000 Australia
PO Box 15033 City East
Queensland 4002 Australia

ABN 22 579 084 055

Notwithstanding these figures, the challenge of overcoming nationwide workforce shortages, particularly in a regional area, such as Townsville cannot be overstated, in addition the systemic challenges that exist with recruiting and retaining staff in all fields of human services across the state.

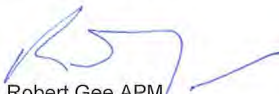
A comprehensive response to the proposed recommendations is enclosed. The response refers to a range of initiatives that collectively support improvements to workforce, infrastructure and service delivery outcomes, including:

- recruitment and retention strategies that focus on attraction and selection, health and wellbeing, renewal and workforce sustainability;
- long-term infrastructure capacity initiatives;
- legislative review of separation powers; and
- reporting capability enhancements.

The Department remains fully committed to minimising the use of separation and the continuous improvement of the administration of these powers.

Should your officers require any further information, please contact Mr Joel Moat, Acting Senior Executive Director, Youth Detention Operations and Reform on 07 3097 7528 or at Joel.Moat@cyjma.qld.gov.au.

Yours sincerely



Robert Gee APM
Director-General
... 1.1.8.24

Enc: Comprehensive response to the proposed recommendations

Attachment 1 – Response to proposed recommendations

The Department accepts the recommendations related to its administrative functions in principle.

Focus area	Recommendations	Response
Workforce sustainability and capability	1, 13	<p>The Department has achieved growth in the YDC FTE since June 2022, when there were approximately 56 FTE net vacancies in YDCs compared to 113 FTE over strength in June 2024:</p> <ul style="list-style-type: none"> FTE numbers as of 28 June 2024 were 901 FTE Active and Paid FTE. <p>Notwithstanding these figures, the challenge of overcoming nationwide workforce shortages, particularly in a regional area, such as Townsville cannot be overstated, in addition to noting of the systemic challenges that exist with recruiting and retaining human resources in all fields of human services across the state.</p> <p>Recruitment and retention of frontline YDC roles remains a paramount priority for the Department. Several critical attraction, recruitment and retention strategies have been implemented by the Department in the last two years, yielding strong recruitment outcomes across the state and a strong growth in frontline FTE. Youth detention centres (YDCs) have evidenced significant improvements in the use of separation relating to staff shortages and will continue to implement strategies to fully operationalise youth detention service delivery.</p> <p>A strategic workforce plan to promote sustainability, diversity, capacity and capability is being finalised, inclusive of:</p> <ul style="list-style-type: none"> finalisation of an Employee Value Proposition ongoing use of recruitment and retention analytics to refine processes and strengthen applicant and employee supports increased investment to strengthen statewide recruitment processes industry partnerships to build a long-term applicant pool for scheduled recruitment cycles increased investment in staff training and implementation of recommendations from the Training Needs Analysis for YDCs improved workforce structural supports, compensation and benefits to promote staff development, wellbeing and retention. <p>The development of a strategic workforce plan aligns with sector advocacy and recent Queensland Audit Office and Community Safety Plan recommendations in relation to workforce sustainability, which recognise staffing shortages as both a national and international issue across human service</p>

		<p>professions. Further, it aligns with the QFCC review of 'Capacity and capability of the youth justice and child safety workforces', recognising that service delivery objectives cannot be met without an adequate, skilled and capable workforce.</p> <p>The centralised team of recruitment specialists continue to coordinate YDC recruitment for the three YDCs and the Wacol Youth Remand Centre (WYRC). The team continues to action several system improvements in partnership with the YDCs to improve recruitment and retention outcomes, including:</p> <ul style="list-style-type: none"> • embedding a renewed, sustainable, and streamlined state-wide recruitment model • enhancing application, shortlisting, selection and onboarding processes • supporting workforce health, safety and wellbeing • inclusion of a behavioural indicator framework to improve the selection process • promotion of transfer opportunities between YDCs • specific initiatives and strategies to attract and recruit Aboriginal and/or Torres Strait Islander staff • regionally focused strategies to promote and support CYDC recruitment. <p>The Youth Detention Centre Certified Agreement 2023 was certified by the Queensland Industrial Relations Commission in December 2023, and includes a wage increase of 4%, 4% and 3% over three years from 1 August 2023 and a cost-of-living adjustment (COLA) payment each year (capped at 3%). The YDC Operational Employee Allowance and Youth Detention Skilled Worker (Retention Allowances) have also very significantly increased remuneration for YDC staff (from \$50 to \$350 per fortnight indexed with wage increases).</p> <p>Remuneration benefits have led to increased attraction of suitable applicants and improved retention rates which has alleviated workforce shortage pressures. Throughout 2024, there are 11 inductions scheduled (six for CYDC and five for BYDC/WYDC/WYRC) with a further 71 staff about to commence inductions.</p> <p>Individual YDC Workforce Plans were also developed in June 2023 highlighting key workforce development priorities, inclusive of attraction, recruitment, retention, professional development and supervision strategies. The workforce plans are tailored to the unique needs of each YDC and are informed by an environment scan and centre profile information to develop a range of strategies to address workforce challenges.</p> <p>The 2023-24 Detention Youth Worker Recruitment Strategy highlights targeted recruitment processes for detention youth workers across Queensland YDCs, with key focus areas including candidate care, advertising, community partnerships, feedback and clear, expedited application processes.</p> <p>A specialist recruitment agency was onboarded for CYDC in August 2022 to attract frontline staff, with specific strategies to support sustained workforce growth in that region. This work aims to improve</p>
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<p>attraction, retention, and progression opportunities for skilled staff, tailored to the needs of CYDC, noting the acute recruitment challenges specific to the region, including the need to increase Aboriginal and/or Torres Strait Islander applicants. Townsville-based positions at CYDC are filled through continuous advertisement.</p> <p>Ongoing promotion and community engagement to attract frontline CYDC staff continues. This has included:</p> <ul style="list-style-type: none"> • a CYDC microsite hosted by Hudson recruitment • tailoring local advertisements and promotion to better reflect the CYDC role and its clients • seek ads in all major metropolitan locations, plus additional regional locations including Mt Isa, Doomadgee, Mackay, Rockhampton, Bundaberg and Torres Strait Islands • reimbursement of relocation costs for successful permanent applicants • exploring transferable skills from other professions, including PO streams • promotion of employment opportunities across a range of government and non-government agencies, including career fairs. <p>Strategies to strengthen CYDC workforce retention include:</p> <ul style="list-style-type: none"> • undertaking an evidence-based analysis of local and systemic issues that contribute to attrition, identifying both strengths and opportunities • reviewing relevant role profiles, staffing and supervision structures to identify resource efficiencies and alleviate demand pressures • developing learning and professional development pathways and increase opportunities to expose staff to different roles and responsibilities • developing local on-boarding processes, integrated into existing corporate and DYW induction processes • regularly celebrating team successes and organising other similar team building activities • providing staff improved skills to give and receive feedback and mentoring support • improving stakeholder understanding of CYDC operations and service delivery to strengthen local partnerships with stakeholders and create opportunities for innovation and efficiencies. • Increased operational support with ongoing Youth Worker secondments from YDCs in south-east Queensland • This work is ongoing and significant investment in promotion, communication and engagement activities continue as part of the Department's business as usual operations. 			
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<p>Infrastructure planning and enhancements to existing facilities</p>	<p>5, 6, 7, 9, 14</p>	<p>The Department is also committed to supporting the health, wellbeing and resilience of the YDC workforce, as well as strengthening learning, behaviour support and cultural considerations and practices.</p> <p>Enhancing the capability of onboarded and existing YDC staff through professional development and training is critical to the long-term workforce and operating framework reform. Research highlights the critical role of a skilled and capable workforce to deliver effective management of young people. The Department notes that the recommended operating model for the new YDC at Woodford provides for a therapeutic approach and as such, an increased ratio of professional staff has been explored to support young people to address offending behaviours.</p> <p>This work aligns with the recently commenced QFCC review of 'Capacity and capability of the youth justice and child safety workforces', which aims to identify innovative and sustainable structural approaches to enhance capability and capacity systems. The review will consider evaluations, recommendations and sector insights regarding issues, strengths and opportunities for change.</p> <p>To ensure existing YDCs can incorporate elements of contemporary, therapeutic approaches, the Department will review caseloads and associated activities of client services' teams, as well as the operation and intent of behaviour support units and the level of resourcing required to achieve their intended purpose.</p> <p>Further consideration will be required in relation to additional resourcing, budget implications and staff and union consultation. The Department will also continue the delivery of CART Lite training to non-operational staff. As previously noted, the report would benefit from a comprehensive representation of the cultural supports available at the centre.</p> <p>In summary, the Department will continue to improve and refine attraction, recruitment and retention strategies throughout 2024/25. The overall strategies include ongoing investment in staff training, utilising recruitment and retention analytics to refine processes and improve supports, defining the Department's Employee Value Proposition, improving staff compensation, building a diverse workforce and redeploying staff as required.</p> <p>The Department acknowledges infrastructure issues identified in this report; and agrees that fit-for-purpose infrastructure is critical to the safe and secure management of YDCs.</p> <p>The Department also acknowledges that it is essential to address the underlying causes that result in young people being placed in separation due to staffing issues. As mentioned above, the Department is focused on recruitment and improving the retention and wellbeing of youth detention staff in order to reduce the occurrence of staff shortage separations. The impact of improved staffing across the YDCs has resulted in young people spending significantly less time in staff shortage separations.</p>
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	<p>There are existing legislative, policy and practice safeguards in place to ensure that when young people do need separated:</p> <ul style="list-style-type: none"> • separation rooms are only used when absolutely necessary and for the shortest possible period to ensure a young person's safety • young people always have access to staff via an intercom and can access fresh water and toilet facilities on request. Policy and procedure reiterates these requests must be actioned without delay • young people are observed frequently and, on some occasions, will have a dedicated staff member assigned to them to provide constant supervision. <p>The Department will also explore the feasibility of existing infrastructure modifications, noting these may not be structurally possible or financially viable due to infrastructure or construction limitations. These modifications will have significant cost implications that will need to be considered and staged relevant to other capital expenditure priorities. The Department will also be required to consult with staff and industrial unions to address likely concerns regarding workplace health and safety. However, it is important to acknowledge that the primary focus for the Department is around improving staffing retention and recruitment to ensure that young people are not being separated due to staff shortages.</p> <p>The Department has commenced a long-term infrastructure strategic plan that will be finalised in late 2024, that aims to deliver the following outcomes:</p> <ul style="list-style-type: none"> • transition to a diverse youth detention asset portfolio • increase the efficiency of existing YDC infrastructure • alleviate current and projected capacity stresses on the asset portfolio and provide sufficient capacity to support safe operations • maximise opportunities for rehabilitative outcomes for young people through infrastructure which supports a targeted, evidence-based and culturally responsive approach to operations. <p>Comprehensive condition assessments of the three existing YDCs will be made to inform the plan that takes into account the expanded YDC portfolio (including a predictive 10-year outlook based on lifecycle assessment and other criteria) and implications for the design, siting and operations required to transition to a more diverse youth detention asset portfolio and support an integrated statewide service system.</p> <p>This work includes an analysis of demand factors (such as geographic location and the risk/need profiles of different cohorts) and service model options that address community, geographic and system needs. It will also examine contemporary design responses to the increasing complexities of Serious Repeat Offenders and learnings from recent infrastructure projects. This work aims to implement best practice, evidence-based operating models including accommodation management, tailored to specific</p>
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	<p>cohort and/or risk profiles, including supporting Aboriginal and Torres Strait Islander young people, culturally and linguistically diverse (CALD) young people, and young people who identify as non-binary.</p> <p>Importantly, all YDCs have routine and regular cleaning and maintenance schedules to ensure all rooms and facilities are in good, clean order. These protocols include regular checks to identify required maintenance, including the removal of graffiti. As part of restorative activities (as per the restorative practice and behaviour support policies), young people may also be required to clean up or paint over graffiti. This is documented in YDC local operating procedure and includes cleaning requirements for separation rooms. Further, new facilities maintenance agreements for BYDC and CYDC includes provision for a full-time painter to maintain the standard and aesthetic of YDCs.</p> <p>The Department will also explore whether soft furnishings can be utilised safely, noting separation rooms are only utilised in response to unsafe behaviours. Any soft furnishings would also need to be robust enough to withstand intentional attempts to use these items to cause harm. Otherwise, these items may end up posing a safety risk to young people. This will also likely result in significant property damage costs for the Department.</p> <p>The infrastructure design of the two new YDCs at Woodford and Cairns will incorporate best practice, including therapeutic and purpose-built design principles, on-site training facility requirements, and improved facilities for managing dynamic risk and separations. For example, innovative design solutions are being explored at the newly developed YDCs including the placement of telephones in young people's accommodation rooms and accommodation unit designs that incorporate a range of multi-use spaces that can be utilised for programs, video-links and other activities.</p>
<p>Legislation, policy and practice</p>	<p>2, 3, 4, 8, 10, 11</p>
	<p>The Department takes its obligations under the <i>Youth Justice Act 1992</i> and <i>Human Rights Act 2019</i> seriously, while also balancing workplace health and safety obligations to employees.</p> <p>Staff shortage separation occurrences were more prevalent during 2022-23 due to workforce shortages associated with the post pandemic recovery and general labour market shortages, particularly in regional areas such as Townsville.</p> <p>In response, the Department has made significant investments in attraction and recruitment activities and implemented enhanced retention and safety initiatives for staff. YDCs have seen significant improvements in the use of staff shortage related separations, with significant decreases in the number of young people separated as a result of a staff shortages occurring in 2023-24. The Department will continue to improve attraction and retention strategies with ongoing recruitment throughout 2024-25.</p> <p>The large majority of separations within a YDC are essential, risk-based response options to ensure the safety, security and good order of YDCs and ensure the safety and welfare of all young people, staff and</p>

	<p>visitors. Consequently, separations will only occur where there is a risk to the safety, security or good order of the centre.</p> <p>The Department takes its workplace health and safety and industrial obligations to staff and the need to maintain the supervision ratio of one staff member to four young people seriously. Where this ratio is not able to be met, separations are required to ensure the safety and security of the YDCs. There are many variables that can impact on the day-to-day operations and ability to adequately staff the YDCs on any given day. This includes ongoing demand pressures, noting Queensland has maintained the highest YDC utilisation rates across the nation over the past eight years. Staff shortages can also be impacted by volatile and variable often spontaneous operational factors, including taking young people to and from court, hospital and other medical appointments, as well as unplanned staff absenteeism, which can be impacted by seasonal factors such as such as sickness and unscheduled leave.</p> <p>Regular meaningful contact between staff and young people during separations is supported by existing legislation and policy that requires regular observations of young people while separated. At a minimum, these observations must occur every 15 minutes, and are more frequent depending on assessed risk. This could result in a dedicated staff member constantly supervising and interacting with a young person while separated.</p> <p>Compared to other Australian jurisdictions, Queensland YDCs have the most frequent observation protocols and one of the lowest staff to young person ratios, ensuring that young people are provided robust and meaningful supervision, with routine engagement and interaction occurring.</p> <p>The observation directive issued under section 21(4) of the Youth Justice Regulation 2016 was also recently updated to require YDCs to audit, on a minimum monthly basis, compliance with observations protocols. Any non-compliance with these requirements is referred to the Professional Standards Unit.</p> <p>The Department has maintained these safeguards to ensure young person and staff safety, and in recognition of the increasing complexity and frequency of unsafe and volatile behaviours prevalent in young people detained in custody. This is particularly relevant for those young people accommodated in a behaviour support unit.</p> <p>The Department exercises its duty of care to young people to ensure their safety, the safety of staff and the good order of large and complex YDC environments extremely seriously. Separation for risk related purposes is one means by which young people's risk-taking behaviour can be utilised to prevent them from harming themselves, other young people and staff. Accordingly, for 2022-23, Queensland had the second lowest rate of young person on young person assaults in the nation which was almost ten times less than the highest rate.</p>
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<p>Having more staff has had a positive impact on staff shortage related separations incidents, separations due to staff shortages decreased throughout 2023-24, as the Department's continued recruitment and enhanced retention strategies resulted in additional frontline staff to meet demand.</p> <p>The Department is committed to ensuring that separation is used in strict compliance with the requirements outlined in sections 21 and 22 of the <i>Youth Justice Regulation 2016</i> and the associated directives issued under sections 21(1)(c) and 21(4) of the <i>Youth Justice Regulation 2016</i>. All separations are recorded, approved by the relevant delegated officer, and are used for the minimum amount of time necessary as prescribed in the legislation.</p> <p>Separation is inherently complex and for its impact on young people to be appropriately contextualised and analysed, a number of factors must be taken into consideration, including:</p>	<ul style="list-style-type: none"> • the duration of both the separation event and time spent in and out of room • overall separation trends, across both the centre and accommodation units, and any cumulative impacts • staffing levels, deployments and agile rostering to maximise out of room time in a fair and equitable manner on a daily basis • young person complexity and cohort management, which is dynamic and differs across accommodation units • operational impacts which require staffing agility on a daily basis, including emergency codes, leaves of absence, court requirements, admissions and releases • observation levels, and other risks that may inform this, including suicide or security risks • separation supports provided to young people while in separation, noting the recording of this information prior to system enhancements in November 2023 is likely to be incomplete • supports provided by a range of operational and non-operational staff, including nurses, psychologists and cultural staff. <p>Existing legislation and policy align with the intent of these recommendations and ensures separations:</p> <ul style="list-style-type: none"> • are subject to strict approvals, frequent supervision protocols, time limits, record keeping requirements and complaints management processes • fully consider human rights obligations and are informed by advice from multi-disciplinary staff, including psychologists to ensure therapeutic supports are in place throughout separations • provide out of room time and promote service continuity in relation to education, programs and other activities that support young people's wellbeing • reflect standards enshrined in international conventions.

	<p>The Department will continue to monitor the use of separation rooms to ensure they are used only when absolutely necessary and for the shortest possible period. Further enhancements to policy, training and information systems will be considered to reinforce this outcome.</p> <p>Review rights are supported via section 277 of the <i>Youth Justice Act 1992</i>, and the Queensland Ombudsman's complaints management processes. Young people are informed of their right to make a complaint as part of admission to a YDC and are regularly informed of this right during their period in custody. Young people are advised that they can make a complaint at any time, to any staff member.</p> <p>Easy English guides on how to make a complaint (developed by Youth Justice Speech and Language Pathologists) support young people's understanding of the process, with consideration to their age, development, cultural and linguistic backgrounds, and literacy capabilities.</p> <p>Young people can directly access several complaints and advocacy agencies, including the Queensland Ombudsman^(GH2), Queensland Human Rights Commission and the Office of the Public Guardian (OPG) from their accommodation unit phones. OPG Community Visitors visit all YDCs on a weekly basis to speak directly to young people, and young people who have been separated are prioritised during these visits. OPG also maintain confidential mailboxes in each accommodation section, allowing young people to write to the OPG either anonymously or by identifying themselves, to raise any issues or concerns they may have. These processes are comprehensively covered in staff training.</p> <p>The existing separation policy supports consultation with the multi-disciplinary team, inclusive of psychologists, in relation to separation supports. This recommendation, however, fails to comprehend that regardless of the advice of a psychologist, if the staffing ratio cannot be met to safely operate an accommodation unit/s, a separation will be required if all other alternatives have been considered. The Department reiterates the focus of addressing the root cause of staff shortages in YDCs through improved recruitment and retention processes and investing in the capability and skill development of our new and existing workforce.</p> <p>Young people who are separated are supported by the provision of therapeutic, educational and cultural supports, which are coordinated by the YDC multi-disciplinary teams and other key staff. During separation, all young people have access to:</p> <ul style="list-style-type: none"> • multi-disciplinary team members, including clinicians (psychologists and speech language pathologists), caseworkers, program officers and cultural liaison officers • a range of health services provided by Queensland Health and nursing staff. This includes young people attending the onsite medical centre for routine health appointments, assessments and treatment • phone services and visits • education packs provided by the Department of Education, activities and music
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Information systems and reporting	12, 15	<p>staff at any time either in person or via the intercom.</p> <p>The Department recognises the importance of transparent and responsive performance reporting, particularly in relation to restricted practices, such as separation. This information is critical to both separation decision makers and oversight agencies to promote legislative compliance and robust scrutiny of the use of these practices.</p> <p>The Department is committed to improving reporting on restrictive practices, including introducing a distinct measure on out of room time, as per similar recommendations made by the Disability Royal Commission and the (Queensland) Child Death Review Board. This is occurring via the inter-jurisdictional working groups established to support the Youth Justice National Minimum Data set and annual reporting to the Productivity Commission's Report on Government Services (ROGS).</p> <p>Transparent and accountable reporting also supports the Department's commitment to the Child Safe Standards, the <i>Human Rights Act 2019</i> and other inquiries and reviews with enduring importance such as the Royal Commission into Aboriginal Deaths in Custody and the Forde Inquiry.</p> <p>The existing DCOIS was introduced in 2011 and is now classified as a legacy system. Its reporting functionality is limited and despite regular upgrades, its design has not enabled the system to keep up with growing service complexity and reporting requirements.</p> <p>Considerable steps were taken to improve the Department's separation records and capability to readily produce contextual reports that demonstrate the Department's ongoing commitment to respect and uphold the human rights of young people and meet its legislative obligations. System upgrades to DCOIS delivered in November 2023 enabled capturing more accurate reporting of separations and live operational review of separation incidents.</p> <p>The Department continues to develop and embed processes to ensure that separations are being used reasonably, lawfully, with sufficient justification and with the required approvals and documentation.</p> <p>As part of the Department's youth detention infrastructure expansion projects, a replacement system is being scoped to ensure comprehensive, real time reporting capability for separation and other restrictive practices within YDCs. Importantly, recording time out of cells will be a core capability requirement. Input from other jurisdictions is also being sought as part of this process, including from Queensland Corrective Services who use a similar system.</p>
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Appendix B: Department of Education submission

20 MAY 2024

Mr Anthony Reilly
Queensland Ombudsman and
Inspection of Detention Services
Email: inspector@ombudsman.qld.gov.au



Office of the
Director-General

Department of
Education

Dear Mr Reilly

Thank you for your letter dated 24 April 2024 providing the Department of Education (DoE) with the opportunity to comment on the Draft Cleveland Youth Detention Centre inspection report: the use and effects of separation.

I appreciate the work you and your team have undertaken during the inspection and preparation of the draft report, particularly your efforts to ensure the rights of children in detention centres to access education services are upheld.

DoE suggests the following clarifications be considered to more accurately reflect existing operational processes:

- At page 35, the draft report currently states that: *A 48-week school year has been introduced at all youth detention centres (compared to a 41-week school year in Queensland state schools) to provide more opportunity for education and programs to be delivered to children.*
 - It is suggested the report notes that Queensland state schools generally operate across a 40-week school year. While the 2024 school year extends to 41 weeks, this represents an exception due to the scheduling of school terms and holidays across the 2024 calendar.
- The discussion of school attendance at page 35 notes that: *However, on the days children can attend school, very few attend for a full day (that is, all four sessions of school).*
 - It is suggested the report acknowledges that in addition to the impact of separations and segregations, existing physical infrastructure at the Cleveland Youth Detention Centre is not sufficient to enable all students to attend four sessions a day, particularly when the Centre is operating at or near the extent of its physical capacity. Students may also be unable to attend education sessions due to a range of competing demands, such as the provision of therapeutic support, medical treatment, meetings with case workers, court attendance or meetings with legal representatives.
- The report also notes at page 36 that: *We were advised by school staff that the Department of Education is willing and able to fund an officer to help with escorting children to the school, to reduce the impact of separation on their education.* Recommendation 19 subsequently states that: *The department identifies (with the centre's school) how best to use a Department of Education funded officer to improve children's access to support from teachers in their education activities.*

1 William Street Brisbane
Queensland 4000 Australia
PO Box 15033 City East
Queensland 4002 Australia
Telephone +61 7 3034 4764
Website www.qed.qld.gov.au
ABN 76 337 613 647

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- DoE will continue to work with the Department of Youth Justice (DYJ) to support improved access to the education program; however, notes that responsibility for escorting young persons to and from the education program would be expected to remain as the responsibility of officers from DYJ. This is consistent with the existing interdepartmental *Memorandum of Understanding for Education Delivery in Queensland Youth Detention Centres 2021–26*, in which Youth Justice officers are responsible for ensuring that each young person held in the detention centre has access to the education program.

If you require further information of assistance, please contact Ms Kathy Morrison, School Supervisor, Alternative Learning and Detention Centres, on 0451 152 523 or by email at kathy.morrison@ged.qld.gov.au.

I trust this information is of assistance and look forward to working with you to ensure that children in youth detention have the opportunity to achieve their potential.

Yours sincerely



MICHAEL DE'ATH
Director-General

Ref: 24/256303

Your Ref: 2024-0009(P1)

Appendix C: Queensland Human Rights Commission submission



Use of separation involving children

Submission to Queensland Inspector of Detention Services

22 September 2023

Background

1. This submission will outline the international and Queensland human rights law principles regarding the use of separation involving children in detention.
2. 'Separation', which involves a young person being held in a separate locked room away from other detainees, can have a profound impact on individuals particularly when separation occurs for prolonged periods.
3. Under the Youth Justice Regulation (YJ Regulation), a child in a youth detention centre may be held in a separate, locked room when the child is ill, at their request, for routine security purposes under the direction of the chief executive, for the child's protection or the protection of another person or property, or to restore order in the detention centre.¹ Observations of a child must occur when they are kept separately.²
4. The YJ Regulation however places time limits on the use of separation. An executive director must approve separation of more than 2 hours, the chief executive must be informed of the separation after 12 consecutive hours, and approvals separations of more than 24 hours, and then after each 24 hour period elapses.³
5. The Commission is aware of the 2019 report of the Queensland Ombudsman which identified several issues with this regime, including how time in separation is calculated, the lack of an external review process and that there is no upper limit on the total time separated.⁴

Terminology

6. While Queensland youth justice laws and the Department of Youth Justice⁵ exclusively use the term 'separation', other terms used both in Australia and overseas for a person being held alone in a locked cell include 'solitary confinement', 'segregation' and 'seclusion'.

¹ *Youth Detention Regulation 2016* s 21(1).

² *Youth Detention Regulation 2016* s 21(4).

³ *Youth Detention Regulation 2016* s 21(2)-(3).

⁴ Queensland Ombudsman, *The Brisbane Youth Detention Centre Report*, March 2019, https://www.ombudsman.qld.gov.au/ArticleDocuments/217/The_Brisbane_Youth_Detention_Centre_report.pdf.aspx

⁵ We use the shortened title Department of Youth Justice to refer to the Queensland Department of Youth Justice, Employment, Small Business and Training.

7. Solitary confinement is the terminology used in the Mandela Rules, to refer to a situation where a person is involuntarily locked in a cell for at least 22 hours a day with limited or no association with other detainees.⁶
8. *Prolonged* solitary confinement is defined as a period longer than 15 consecutive days. This has been set as the limit between 'solitary confinement' and 'prolonged solitary confinement' because at that point '... some of the harmful psychological effects of isolation can become irreversible'.⁷
9. We use the broader term 'separation' to include all circumstances where children are held separately from others, and will refer to the term 'solitary confinement' to mean any involuntary separation for more than 22 hours per day. We acknowledge that not all forms of separation may be solitary confinement, particularly when the child has freely chosen to be kept separately.

Meaningful human contact

10. The Mandela Rules refer to 'meaningful human contact' being a relevant factor in determining whether a person is in solitary confinement. A group of academics in their guidance on the Mandela Rules suggest that:

Meaningful interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity.⁸

11. *Meaningful* human contact therefore requires more than being escorted to a yard for solitary exercise or being provided with a food tray.

Protected human rights

12. The Department of Justice and its officers are public entities under the *Human Rights Act 2019* with obligations to:
 - a. act and make decisions in a way that is compatible with human rights; and

⁶ United Nations Standard Minimum Rules for the Treatment of Prisoners ('Nelson Mandela Rules'), UN Doc A/RES/70/175, rule 44.

⁷ Mandela Rules 43 and 44. Also UN General Assembly, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment* UNDOC A/66/268 (August 2011), 9.

⁸ Penal Reform International Head Office and Human Rights Centre University of Essex, *Essex Paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules*, 2017, 88-89.

b. give proper consideration to human rights when making the decision.⁹

13. A decision or action is compatible with human rights if it does not limit any human rights, or limits a human right only to the extent that is reasonably and demonstrably justifiable.¹⁰ If a limitation on a right is established, section 13 of the HR Act sets out criteria a public entity must use to establish that limitation is justified.
14. The following sections set out the rights engaged where children are subject to separation and solitary confinement, but is not an exhaustive list. The other rights that may apply depending on the circumstances and the profile of the individual detainee could include:
 - Right to equality before the law (s 15)
 - Cultural rights, including the rights of Aboriginal and Torres Strait Islander peoples (s 27, 28)
 - Right to protection of family (s 26(1))
 - Right to health treatment without discrimination (s 37)
 - Right to education (s 36).

Torture, cruel, inhuman or degrading treatment

15. Depending on the circumstances, the ongoing involuntary separation of a child from others in a locked cell may amount to torture or cruel, inhuman or degrading treatment or punishment under s 17 of the HR Act.
16. Torture involves the intentional infliction of severe physical or mental pain or suffering for a prohibited purpose, while cruel, inhuman or degrading treatment ('other ill-treatment') do not require intention or purpose. While all rights under the HR Act are subject to reasonable limitation under s 13, the prohibition against torture and other ill-treatment internationally is considered a non-derogable right that cannot be limited.¹¹
17. At international law, indefinite solitary confinement and prolonged solitary confinement are prohibited for any prisoner and are considered to amount to torture or other ill-treatment.¹² International standards also prohibit the imposition of any period of solitary confinement on prisoners with mental or physical

⁹ *Human Rights Act 2019* (Qld) s 58(1).

¹⁰ *Human Rights Act 2019* (Qld) ss 8 and 13.

¹¹ UN Committee Against Torture, General Comment 2. See also UN Human Rights Committee, General Comment 20.

¹² Mandela Rules, Rule 43; UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (UN Doc A/HRC/43/49, 20 March 2020) [57].

disabilities when it would exacerbate their conditions, or the imposition of solitary confinement on children as a disciplinary measure.¹³

18. The United Nations Special Rapporteur on Torture has noted that the 'threshold at which treatment or punishment may be classified as torture or other ill-treatment is lower in the case of children', because they experience pain and suffering differently to adults 'owing to their physical and emotional development and their specific needs'. In the Special Rapporteur's view, the imposition of solitary confinement of any duration on children will always constitute other ill-treatment or even torture.¹⁴
19. In *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273, the adult applicant challenged a decision of the respondent to continue a six monthly order which would mean his continued solitary confinement more than seven years. The applicant had been initially placed in solitary confinement due to the significant risk of violence he posed. The Court found that the applicant had led insufficient expert evidence in relation to his own experience to demonstrate that the right to torture, cruel, inhuman or degrading treatment was engaged. However, a different conclusion may be reached for children, given the different impact of prolonged solitary confinement on growing, developing minds. The reason for solitary confinement in *Owen-D'Arcy* is also distinguishing, given a common reasons for separation in youth detention centres is lack of sufficient staffing.

Humane treatment when deprived of liberty

20. Section 30(1) HR Act requires that all persons deprived of liberty be treated 'with humanity and with respect for the inherent dignity of the human person.' The right recognises the particular vulnerability of persons in detention.¹⁵
21. Modelled on Article 10(1) ICCPR, the right to humane treatment places a positive obligation on the State to ensure that persons detained by it do not suffer any hardship or constraint more than that which is a consequence of the imprisonment itself.¹⁶ The Explanatory Notes refer to this right as providing 'certain minimum standards of treatment' for incarcerated persons.¹⁷ It is the 'starting point' for consideration of detainee rights.¹⁸

¹³ Mandela Rules, Rule 44; United Nations Rules for the Protection of Juveniles Deprived of their Liberty ('Havana Rules'), Rule 67.

¹⁴ UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment* (UN Doc A/HRC/28/68, 5 March 2015) [33], [44].

¹⁵ *Castles v Secretary of the Department of Justice* (2010) 28 VR 141 (**Castles**), [93], [108].

¹⁶ See also rule 57 Mandela Rules - 'the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.'

¹⁷ *Human Rights Bill 2018*, Explanatory Notes, p25.

¹⁸ *Castles* at [108].

22. The right to humane treatment protects against treatment that lacks humanity or is demeaning, which falls short of being cruel or grossly derogatory.¹⁹ It mandates 'good conduct' where s 17 of the HR Act (as described in the above section) prohibits 'bad conduct'.²⁰
23. Solitary confinement, particularly of children, is likely to be found to limit the right to humane treatment when deprived of liberty, requiring justification by the authority imposing that care. However, any length of separation may amount to inhumane treatment, depending on the specific circumstances in which the detainee is confined, including:
 - a. Detainees in solitary confinement must still be provided sufficiently clean accommodation including sanitary fixtures such as a lavatory and wash-basin.
 - b. All detainees should live in accommodation with sufficient light to enable the detainee to work or read, and reasonable airflow.²¹
 - c. Whether the person has access to at least one hour of suitable exercise in the open air daily, and access to physical and recreational training during the period of exercise.²²
 - d. Solitary confinement should not be used as a substitute for proper medical or psychiatric care, and those with mental illness may have their condition exacerbated by solitary confinement.
24. In addition, whether separation constitutes inhumane treatment when deprived of liberty would require consideration of the specific rights and needs of children because they are children. This would include, for example, access to education and connection with family. The specific rights of children and young people are discussed in more detail below.
25. In *Taunoa v AG*,²³ the New Zealand Court of Appeal considered the separate confinement of prisoners under a behaviour management regime introduced after prisoner protests. Prisoners were subject to significant restrictions which were only progressively lifted based on behaviour. The 'cumulative conditions' of those subject to the greatest restrictions was found to breach the equivalent right to humane treatment when deprived of liberty. These included spending 22-23 hours confined to their cells, limited contact with other prisoners, limited access to natural light and no ability to exercise in the yard.²⁴
26. In Queensland, the court in *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 held that a prisoner who had been subject

¹⁹ *Owen-D'Arcy* at 323 [236].

²⁰ *AG v Grant* at [121].

²¹ Mandela Rules 14, 15 and 16.

²² Mandela Rule 23.

²³ [2008] 1 NZLR 429

²⁴ See also *British Columbia Civil Liberties Association v Canada (Attorney-General)* [2018] BCSC 62 in which the Supreme Court of British Columbia found the safeguards around the use of segregation were inadequate to protect the rights of prisoners.

to many years of solitary confinement had been subject to inhumane treatment when deprived of liberty, and that treatment was not justified by corrective services. More detail on that case is discussed below.

Rights of children and young people

27. The right in s 26 of the HR Act, encompasses the protection of families as a fundamental unit, and the protection of children in their best interests, and is modelled on Articles 23(1), 24(1) and 24(2) of the *International Covenant on Civil and Political Rights* (ICCPR).
28. While in custody, children and young people should 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 and in the interest of their development.²⁵ Where frequent or prolonged separation interferes with the provision of this care, protection and assistance it may amount to an unreasonable limitation of a child's right to protection in their best interests.
29. The UN Committee on the Rights of the Child has called for disciplinary matters that constitute torture or other cruel, inhuman or degrading treatment to be strictly forbidden including '... closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned'.²⁶ The Royal Commission into the Protection and Detention of Children in the Northern Territory similarly suggested that the isolation for the purposes of behaviour management or punishment be prohibited.²⁷
30. In one case involving a 16-year-old Aboriginal man heard by the UN Human Rights Committee, despite his separate confinement in a 'safe cell' which was intended to provide a less stressful, more supervised environment, this was negated by his psychological development worsening.²⁸ Key issues with his confinement included the lack of possibility of communication, combined with his exposure to artificial light for prolonged periods and the removal of his clothes and blanket.
31. In the Victorian case of *Certain Children*, the court observed that 'with a markedly reduced ability for children to socially mix with their peers, and instead limited to infrequent communication with youth justice staff, their social needs could not be met'. Further, that the:

...use of isolation by lockdown and handcuffing detrimentally affects the inherent dignity of children and the fundamental rehabilitative objectives of care

²⁵ Beijing Rules, Rule 26.

²⁶ UN Committee on the Rights of the Child, *General Comment 10: Children's Rights in Juvenile Justice*, UNDOC CRC/C/GC/10 (25 April 2007).

²⁷ Royal Commission into the Detention and Protection of Children in the Northern Territory, Final Report, Findings and Recommendations, Recommendation 14.1

²⁸ *Brough v Australia*, HRC, Communication No 1184/2003 (17 March 2006)

in detention under the CYF Act. Such measures may compromise the physical or mental health or well-being of detainees.

32. In *Certain Children* the court heard medical evidence about the negative consequences for children from prolonged periods of separation including risk of 'profound psychological damage.'²⁹

Adverse impacts of separation

33. The use of separation on children has been widely criticised by human rights organisations, legal experts, and child advocacy groups due to its potential for causing severe psychological and emotional harm. Regular or prolonged separation is known to create both immediate and long-term negative effects including psychological distress, self-harm and suicidal ideation, sleep disturbances, reduced physical activity, feelings of social isolation, and emotional detachment.
34. The Istanbul Statement on the Use of Solitary Confinement³⁰ is a statement of 24 international experts adopted in 2007 which calls on States to limit the use of solitary confinement to 'very exceptional' cases, for a short time and as a last resort. The Statement quotes research that between 1 in 3 and 90% of people detained in solitary confinement experience adverse symptoms, and that harms are caused to even those who have not been previously mentally ill.
35. The Statement includes that when a person is placed in isolation even for a few days this 'may cause serious psychological and sometimes physiological ill effects' including psychosis. On this basis, the Istanbul Statement calls for an absolute prohibition on the use of solitary confinement on children under the age of 18.
36. Some further reasons why prolonged separation, should not be used on children are as follows:
- **Developmental considerations:** Children's brains and emotional development are still maturing, making them more vulnerable to the adverse effects of isolation and extreme confinement. Solitary confinement can have lasting negative impacts on their mental health and emotional wellbeing.
 - **Counter to rehabilitation:** Solitary confinement does not provide opportunities for rehabilitation or addressing the underlying issues that may have led to a child's problematic behaviour. When the mental health of children is adversely affected and they become habituated to being

²⁹ See *Certain Children v Minister for Families and Children (No 2)* [2017] VSC 251, [253] and [453] (John Dixon J).

³⁰ International Psychological Trauma Symposium, The Istanbul Statement on the Use and Effects of Solitary Confinement (December 2007) 2 ('The Istanbul Statement').

isolated and anti-social, the less likely that a young person will be able to successfully reintegrate back into society. Therefore, keeping children separated for prolonged periods ultimately reduces the safety of the general community once the young person is released.

- **Not the least restrictive option:** There are alternative methods for managing and rehabilitating young offenders that focus on education, counselling, therapeutic and family-based interventions, restorative justice programs which are likely to be more effective in addressing the underlying behaviours while minimising harm to children.

Is the use of separation reasonable and justifiable?

37. The Committee for the Prevention of Torture, a European-based organisation, has developed five tests for assessing whether solitary confinement is reasonable:
- Proportionate (is the harm/potential harm caused by, or to, the prisoner sufficiently serious to warrant solitary?)
 - Lawful (competent authority? procedures followed? prisoner able to make representations?)
 - Accountable (are there full records of the decision process and the daily regime?)
 - Necessary (are only the least restrictive measures applied? are these individualised and flexible?)
 - Non-discriminatory (is solitary confinement used disproportionately with a specific group of prisoners?)³¹

Discrimination

38. The use of separation involving minors may also raise issues under the *Anti-*

³¹ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Solitary Confinement of Prisoners: Extract from the 21st General Report of the CPT, published in 2011*, CPT/Inf(2011)28-part 2, <<https://rm.coe.int/16806cccc6>> as summarised by Dr Sharon Shalev, *Shining a light on the prison's darkest corner: a human rights-centred approach to monitoring solitary confinement units*, Penal Reform International (10 December 2019) <https://www.penalreform.org/blog/shining-a-light-on-the-prisons-darkestcorner/#_ftn1>.

Discrimination 1991, when the complainant has a protected attribute. Depending on the particular profile of the individual relevant attributes may include, for example, sex, race, impairment, gender identity or sexuality.

39. As all detainees are children, a case could be made that the use of frequent or prolonged separation or solitary confinement could be indirect discrimination on the basis of age. That is, a child may be less equipped to comply with a condition imposed on them that they must be kept separately, if it could be established that an adult person was able to cope with the situation.
40. Where a young person has particular vulnerabilities and needs that are not addressed, these instances may also amount to indirect discrimination. For example, a failure to provide period products to girls (sex discrimination), or adequate mental health services to a detainee (impairment discrimination).

Queensland case law

41. Prior to the *Human Rights Act 2019*, courts in Queensland have sometimes grappled with the lawfulness of the use of solitary confinement involving adults.
42. In *Callanan v Attendee X* [2013] QSC 340, the Queensland Supreme Court reduced the sentences of three accused members of Queensland Criminal Motorcycle Gangs because their imprisonment would include prolonged periods of solitary confinement. The relevant QCS policy for motorcycle gang members limited 'out of cell time' to a minimum of only two hours a day, equating to up to 22 hours per day in solitary confinement for the duration of their sentence.
43. The Court cited several international law authorities, including those detailed above, and noted that such confinement can have profound, adverse impact on the health of prisoners, particularly their mental health.³²
44. The Queensland Supreme Court and Court of Appeal also considered the then UN Standard Minimum Rules as well as the Standard Guidelines for Corrections in Australia in *Garland v Chief Executive, Department of Corrective Services*³³. This case involved a judicial review by a prisoner on consecutive maximum security orders. However, the court did not find that his treatment was inhumane or in breach of international or national guidelines.
45. The case of *Owen-D'Arcy v Chief Executive, Queensland Corrective Services* [2021] QSC 273 is the first major decision reviewing the use of solitary confinement on an adult prisoner since the HR Act passed into law. A prisoner applied for judicial review of two related decisions to continue his separation from

³² It should be noted that the Mandela Rules were updated in 2015 after this decision was made, including changes to the rules concerning solitary confinement. See also Canadian Court of Appeal decision in *British Columbia Civil Liberties Association v Canada (Attorney-General)* [2019] BCCA 228

³³ [2004] QSC 450; [2006] QCA 568. The requirements of procedural fairness in making such orders was also considered in *McLaren v Rallings & Ors* [2015] 1 Qd R 438.

others, after being held in solitary confinement for more than 7 years. While the court determined that the applicant adduced insufficient expert evidence to show the effects of solitary confinement in order to engage s 17, the court accepted that the effect of the confinement on the applicant was 'stultifying'.

46. The court found that the right to humane treatment in s 30 was limited because the prisoner was subject to hardship beyond that experienced by virtue of detention. In applying the criteria for assessing proportionality under s 13, the court accepted there was a legitimate aim in making a maximum security order and that there was a rationale connection to that purpose. However, the respondents did not discharge the onus on it to demonstrate the limitation was reasonable as it did not provide evidence that there were no less restrictive alternatives available. The decision maker also failed to satisfy the procedural limb of s 58, including because a decision to not allow him to associate with any others did not sufficiently consider his right to humane treatment.
47. While the above Queensland cases relate to adults, not children, the same principles apply. While Queensland courts have yet to consider this issue in relation to children, the HR Act likely requires even greater consideration of the human rights of children separated from others, as was the case in the Victorian case of *Certain Children* referred to earlier in this submission.

Appendix D: Townsville Hospital and Health Service submission

Townsville
Hospital
and Health
Service

Mr Anthony Reilly
Queensland Ombudsman and
Inspector of Detention Services

Dear Mr Reilly,

Inspection of Cleveland Youth Detention Centre

I am writing to acknowledge receipt of the draft report on your inspection of Cleveland Youth Detention Centre (CYDC) in October 2023.

The focus of the inspection was to review the use of separation and its impacts on children whilst in CYDC, which the Townsville Hospital and Health Service (THHS) provides medical and nursing healthcare services within the CYDC Medical Centre.

The draft report recommendations have been reviewed and the THHS supports all recommendations for government agencies that ensures the health and wellbeing of young people in detentions.

The THHS acknowledge the health services relevant *Inspection Standards 49 and 50* were assessed (p34) and that it was determined that:

- Children's health needs are addressed through accredited health services.
- The youth detention centre has safe facilities, procedures, and practices for the distribution of medication to children.
- Youth justice principle 21 (*Youth Justice Act 1992*) adherence in that a child who is detained in a detention centre should have access to dental and medical service.

The THHS is pleased that the inspection found that healthcare services are in place and not interrupted by the CYDC prolonged use of separation. The THHS is committed to prioritising healthcare services and access to service whilst in detention. Furthermore, the THHS supports recommendation 18 in that the department continues to prioritise children's access to health services, including providing enough operational officers to ensure access.

The THHS looks forward to the finalisation of the Inspections Report. If you have any further enquiry into the provision of healthcare service within CYDC and the remit of the THHS please contact Ms Katrina Roberts, Nursing Director, on (07) 4433 1827 or email Katrina.Roberts@health.qld.gov.au.

Yours sincerely



Digitally signed by Kieran Keyes,
Townsville HHS Chief Executive
Officer
Date: 2024.05.21 09:11:36 +10'00'

Kieran Keyes
Health Services Chief Executive
Townsville Hospital and Health Service



QUEENSLAND
OMBUDSMAN

Inspector of
Detention Services

