

SOLITARY CONFINEMENT OF UNSENTENCED CHILDREN IN QUEENSLAND WATCHHOUSES, AND WHY IT MIGHT BE UNLAWFUL

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Crackdowns on youth crime have led to severe overcrowding in Queensland's youth detention centres. Each month, hundreds of accused children are held in adult watchhouses while they wait for a detention centre bed to become available. Judicial officers have observed that children in watchhouses are effectively held in solitary confinement, however, the absence of a shared definition of 'solitary confinement' or 'isolation' allows politicians and public servants to deny this. This article presents the findings of a study involving interviews with people who work with children in watchhouses. The aim was to determine whether children in watchhouses are being held in isolation and to document the conditions of their confinement. Participants reported profound human rights violations, yet human rights law offers no effective protection. I argue that it may be unlawful to hold certain children under these conditions, and I suggest that redress may be available in tort or constitutional law.

CONTENTS

I	Introduction.....	2
II	'Solitary Confinement' in a Youth Justice Context	8
	A Defining Solitary Confinement	8
	B Duration of Confinement.....	11
	C Conditions of Confinement	13
III	The Queensland Study	14
	A Legal Context: Queensland's Youth Justice System.....	14
	B Methods and Approach	15
IV	Experiences of Children in Queensland Watchhouses	18
	A Are Children in Watchhouses Held in Isolation?.....	18
	B Conditions of Confinement Experienced by Children in Watchhouses.....	21
	1 Physical Conditions.....	21

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2 Social Contact 23

3 Activities and Stimulation 25

4 Privacy, Surveillance and Control 27

V Legal Analysis: Is Isolating Children in Watchhouses Unlawful?..... 29

 A Human Rights 31

 1 International Human Rights Law 31

 (a) Best Interests of the Child 31

 (b) Separation of Accused Children from Adults..... 33

 (c) Cruel, Inhuman and Degrading Treatment, and Inhumane
 Treatment When Deprived of Liberty 34

 2 Domestic Human Rights Law 37

 B Duty of Care..... 39

 C Punitive Detention 41

VI Conclusion 45

I INTRODUCTION

Queensland detains more children than any other state or territory.¹ Across Australia, an average of 884 children are in youth detention on any given night, and 300 of these children (34 per cent) are in Queensland.² Queensland also has one of the highest rates of unsentenced children in detention: 90 per cent of children in detention on an average day are unsentenced in Queensland, compared with a national average of 80 per cent.³ In most Australian states and territories, rates of youth detention are decreasing, but in Queensland they have been increasing rapidly since 2020 due to ‘crackdowns’ on youth crime.⁴ As a

¹ Australian Institute of Health and Welfare, *Youth Detention Population in Australia 2025* (Web Report, 10 December 2025) <<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2025/contents/summary>>, archived at <<https://perma.cc/8LU9-25SB>>.

² Ibid. Sadly, 40 per cent of children in court-ordered custody or detention in Queensland are Aboriginal and/or Torres Strait Islander: Childrens Court of Queensland, *Annual Report 2024–25* (Report, 2025) 48 <https://www.courts.qld.gov.au/__data/assets/pdf_file/0010/891640/cc-ar-2024-2025.pdf>, archived at <<https://perma.cc/3FD6-TLZW>>.

³ Australian Institute of Health and Welfare, *Youth Justice in Australia 2023–24* (Web Report, 28 March 2025) <<https://www.aihw.gov.au/getmedia/52c8911b-7258-4553-9e3c-fcdb021187f6/youth-justice-in-australia-2023-24.pdf?v=20250328042405&inline=true>>, archived at <<https://perma.cc/D9W6-3684>>.

⁴ Ben Smee, ‘How Queensland’s Youth Crime Crackdown Is Forcing Vulnerable Kids into “Brutal” Detention System’, *The Guardian* (online, 14 July 2024) <<https://www.theguardian.com/australia-news/article/2024/jul/15/queensland-youth-crime->

result, Queensland's youth detention centres have become severely overcrowded.⁵

Each month, around 500 children (most of whom are unsentenced) are being held in adult watchhouses, often for weeks at a time, while they wait for a detention centre bed to become available.⁶ Watchhouses are short-term holding facilities for people who have been arrested and are awaiting release or transfer to a court or corrections facility.⁷ They were not intended, or designed, to accommodate anyone for an extended period of time, let alone children.⁸ Watchhouses often have no amenities, and children generally have no access to education, outdoor exercise or visits whilst detained there.⁹ The President of the Childrens Court of Queensland has observed that watchhouses are 'not appro-

crackdown-watch-house-detention-system-law-changes-ntwnfb>, archived at <<https://perma.cc/9PW5-YR38>>. There was a 53 per cent increase in the Queensland youth detention population between 2020 and 2024: Australian Institute of Health and Welfare, *Youth Detention Population in Australia 2024* (Web Report, 13 December 2024) 33–4 <<https://www.aihw.gov.au/getmedia/db6b39a2-58d4-4572-beb8-fa16a0a88c88/youth-detention-population-in-australia-2024.pdf?v=20250103154401&inline=true>>, archived at <<https://perma.cc/QS9Y-2JTD>>. Notably, the increase in detained children does not reflect an increase in youth crime; indeed, the number of unique child offenders decreased by 13.5 per cent between 2014–15 and 2023–24: Queensland Government Statistician's Office, *Crime Report, Queensland, 2023–24* (Report, 2025) 47 <<https://www.qgso.qld.gov.au/issues/7856/crime-report-ql-2023-24.pdf>>, archived at <<https://perma.cc/86B2-9H77>>.

⁵ Childrens Court of Queensland, Annual Report 2023–24 (Report, 2024) 1 [4] <<https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5824t0283/5824t283.pdf>>, archived at <<https://perma.cc/QHQ4-FMWW>> ('*Childrens Court Annual Report 2023–24*').

⁶ Ibid 2–3 [6]–[7]. The case of *Certain Children* [No 2] (2017) 52 VR 441 ('*Certain Children* [No 2]') revealed that children in Victoria were similarly being held in isolation rooms and police cells due to a lack of alternative accommodation: at 531 [296] (Dixon J).

⁷ Queensland Police Service, Operational Procedures Manual: Issue 108 Public Edition (Manual, 1 October 2025) 1242 [16.1] <<https://www.police.qld.gov.au/qps-corporate-documents/operational-policies>>, archived at <<https://perma.cc/W66W-6SEE>> ('*Operational Procedures Manual*'); Queensland Family and Child Commission, *Who's Responsible: Understanding Why Young People Are Being Held Longer in Queensland Watch Houses* (Report, November 2023) 3 <<https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/young-people-in-youth-justice/who's-responsible>>, archived at <<https://perma.cc/9J7W-TM5U>> ('*Who's Responsible*').

⁸ *Operational Procedures Manual* (n 7) 1242 [16.1]; Julia L Crilly et al, 'Health Care in Police Watch-Houses: A Challenge and an Opportunity' (2022) 217(6) *Medical Journal of Australia* 287, 287.

⁹ *Who's Responsible* (n 7) 9; Queensland Ombudsman, *Cairns and Murgon Watch-Houses Inspection Report: Focus on Detention of Children* (Report, 11 September 2024) 21, 29, 58, 65 <<https://www.ombudsman.qld.gov.au/ArticleDocuments/591/Cairns%20and%20Murgon%20watch-houses%20inspection%20report%20-%20PUBLIC.PDF.aspx?embed=Y>>, archived at <<https://perma.cc/SYZ9-8PHW>> ('*Cairns and Murgon Watch-Houses Inspection Report*').

prate places for children to be housed'.¹⁰ Watchhouses are staffed by police officers who are not appropriately trained to care for children,¹¹ and conditions in watchhouses have been described as 'dehumanising',¹² 'distressing'¹³ and 'abominable'.¹⁴

Judicial officers have observed that children in watchhouses are effectively being held in solitary confinement.¹⁵ Solitary confinement is already used extensively to manage adult prisoners, particularly those with cognitive impairments and serious mental health disorders,¹⁶ and until recently, this practice has remained largely unchecked by the courts.¹⁷ However, the placement of children in solitary confinement has been condemned as a particularly pro-

¹⁰ See, eg, Childrens Court Annual Report 2023–24 (n 5) 3 [7].

¹¹ Australian Human Rights Commission, 'National Children's Commissioner Slams "Shocking" New Qld Youth Justice Laws' (Media Release, August 2023) <<https://humanrights.gov.au/about-us/media-centre/media-releases/media-releases/national-childrens-commissioner-slams-shocking-new-qld-youth-justice-laws>>, archived at <<https://perma.cc/PN68-9GKK>>.

¹² Ben Smee, 'Assaults, Isolation and Deprivation: What Life Is Like at Cairns Watch House for Children and Staff', *The Guardian* (online, 21 January 2024) <<https://www.theguardian.com/australia-news/2024/jan/21/queensland-police-watch-house-youth-juvenile-cairns>>, archived at <<https://perma.cc/AEZ5-P2XN>>.

¹³ Ben Smee, 'Sick and Suicidal Children Held in Queensland Police Watch Houses for Weeks without Healthcare, Watchdog Reveals', *The Guardian* (online, 11 September 2024) <<https://www.theguardian.com/australia-news/article/2024/sep/11/queensland-children-police-watch-houses-watchdog-report>>, archived at <<https://perma.cc/U488-63XC>> ('Sick and Suicidal Children').

¹⁴ Melissa Davey and Ben Smee, 'Disabled Children Kept "in Cages" in Police Watch Houses, Australia's Children's Commissioner Says', *The Guardian* (online, 23 July 2024) <<https://www.theguardian.com/australia-news/article/2024/jul/23/disabled-children-kept-in-cages-in-police-watch-houses-australias-childrens-commissioner-says>>, archived at <<https://perma.cc/92XE-G2E2>>.

¹⁵ *R v TA* (Childrens Court of Queensland, Fantin DCJ, 21 February 2023) 5 ('TA'); *R v SEG* (Supreme Court of Queensland, Morrison and Bond JJA and Brown J, 28 May 2024) 22 [78] ('SEG').

¹⁶ Tamara Walsh et al, *Legal Perspectives on Solitary Confinement in Queensland* (Report, 2020) 7, 13 <<https://law.uq.edu.au/files/55114/Solitary-Confinement-Report.pdf>>, archived at <<https://perma.cc/VS4C-4P9U>>.

¹⁷ Tamara Walsh and Helen Blaber, 'Solitary Confinement and Prisoners' Human Rights' (2023) 49(1) *Monash University Law Review* 232, 240–1. The Queensland and Australian Capital Territory ('ACT') Supreme Courts have recently held that adults have been unlawfully held in solitary confinement: *Owen D'Arcy v Chief Executive, Queensland Corrective Services* (2021) 9 QR 250, 328–9 [266] (Martin J) ('Owen D'Arcy'); *Davidson v Director-General, Justice and Community Safety Directorate* (2021) 18 ACTLR 1, 87–8 [439] (Loukas-Karlsson J) ('Davidson').

found breach of fundamental human rights.¹⁸ It is prohibited by United Nations ('UN') human rights agencies.¹⁹ Several Australian organisations, including the Australian and New Zealand Children's Commissioners, Guardians and Advocates²⁰ and the Australian Medical Association,²¹ have called for an end to the solitary confinement of children.

The term 'solitary confinement' is resisted by politicians and does not appear in legislation, most likely because it 'comes with certain pejorative associations'.²² Instead, 'euphemisms'²³ are used, like separation, segregation, containment and 'placement in a safe room'.²⁴ Such benign terms can obfuscate or 'cam-

¹⁸ See, eg, Yoorrook Justice Commission, *Report into Victoria's Child Protection and Criminal Justice Systems* (Report, 2023) 324 <<https://www.parliament.vic.gov.au/4a2933/globalassets/tailed-paper-documents/tailed-paper-7455/yoorrook-for-justice-report-into-victorias-child-protection-and-criminal-justice-systems.pdf>>, archived at <<https://perma.cc/2TU7-KA4B>>.

¹⁹ Committee against Torture, *Concluding Observations of the Committee against Torture: Macao Special Administrative Region*, 41st sess, UN Doc CAT/C/MAC/CO/4 (19 January 2009) 3 [8]; Committee on the Rights of the Child, *Concluding Observations on the Fifth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, 72nd sess, UN Doc CRC/C/GBR/CO/5 (12 July 2016) 22 [79]. See also Committee on the Rights of the Child, *General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment*, 42nd sess, UN Doc CRC/C/GC/8 (2 March 2007) 6 [18].

²⁰ Australian and New Zealand Children's Commissioners and Guardians, 'ANZCCGA Joint Statement on Isolation in Youth Detention' (Statement, 21 Feb 2024) <<https://ccyp.vic.gov.au/assets/Uploads/ANZCCG/ANZCCGA-Statement-Isolation-in-Youth-Detention-Feb2024.pdf>>, archived at <<https://perma.cc/B7UQ-C758>> ('ANZCCGA Joint Statement').

²¹ Australian Medical Association, 'Stop Putting Children in Jail Says AMA', AMA (Web Page, 24 November 2022) <<https://www.ama.com.au/ama-rounds/25-november-2022/articles/stop-putting-children-jail-says-ama>>, archived at <<https://perma.cc/G4UR-YD69>>. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability ('Disability Royal Commission') also recommended that solitary confinement be prohibited in youth detention facilities: *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Final Report, 29 September 2023) vol 8, 18 <<https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%208%2C%20Criminal%20justice%20and%20people%20with%20disability.pdf>>, archived at <<https://perma.cc/5Z68-3VV9>> ('Disability Royal Commission').

²² *SF v Director of Oberstown Children Detention Centre* [2018] 3 IR 466, 474–5 [11] (Ní Raifeartaigh J) ('SF').

²³ Laura Anne Gallagher, 'More than a Time Out: Juvenile Solitary Confinement' (2014) 18(2) *UC Davis Journal of Juvenile Law and Policy* 244, 247; *TA* (n 15) 4 (Fantin DCJ); *Brazeau v A-G (Canada)* (2019) 431 Canadian Rights Reporter (2d) 136, 143 [3] (Perell J) (Ontario Superior Court of Justice) ('Brazeau'). See also *SF* (n 22) 474 [10] (Ní Raifeartaigh J).

²⁴ See, eg, 'segregation' in ss 212–13 of the *Children and Young People Act 2008* (ACT) ('ACT Young People Act'); 'separation' at s 16 and 'segregation' at s 19 of the *Children (Detention Cen-*

ouflagé' the true nature of children's confinement.²⁵ The absence of a shared definition of 'solitary confinement' allows politicians and public servants to deny that they are holding children under these conditions.²⁶

Although inconsistent terminology is used, the law does limit the circumstances in which children in youth detention can be isolated.²⁷ In some jurisdictions, reasonable alternatives must have been considered, or tried and failed, before a child can be isolated,²⁸ and some states and territories impose minimum standards relating to the conditions of their confinement.²⁹ Most juris-

tres) Act 1987 (NSW) ('NSW Children (Detention) Act'); 'separation' in pt 8 div 2A of the *Youth Justice Act 2005* (NT) ('NT Youth Justice Act'); 'separation' in s 21 of the *Youth Justice Regulation 2016* (Qld) ('Qld Youth Justice Regulations'); 'safe room' in s 28 of the *Youth Justice Administration Act 2016* (SA) ('SA Youth Justice Act'); 'isolation' in s 133 of the *Youth Justice Act 1997* (Tas) ('Tas Youth Justice Act'); 'isolation' in s 488 of the *Children, Youth and Families Act 2005* (Vic) ('Vic Youth Act').

²⁵ Irish Penal Reform Trust, 'Behind the Door': Solitary Confinement in the Irish Penal System (Report, 2 February 2018) 19 ('Behind the Door') <https://www.iprt.ie/site/assets/files/6439/solitary_confinement_web.pdf>, archived at <<https://perma.cc/7YFH-P4Q3>>.

²⁶ In its response to the Disability Royal Commission's recommendation that solitary confinement in youth detention should be prohibited, the Queensland government insisted that its 'existing legislative framework around use of separation ... meets the intent of the recommendation': Queensland Government, *Queensland Government Response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Response, 31 July 2024) 93 <<https://www.health.gov.au/sites/default/files/2025-11/original-queensland-government-response-to-the-disability-royal-commission.pdf>>, archived at <<https://perma.cc/5YVV-LJXK>>. The government of the United Kingdom ('UK') has similarly engaged in a definitional debate to claim it does not hold children in solitary confinement: Joint Committee on Human Rights (UK), *Youth Detention: Solitary Confinement and Restraint* (House of Lords Paper No 343, House of Commons Paper No 994, Session 2017–19) 22–3 [52]–[53] <<https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/994/994.pdf>>, archived at <<https://perma.cc/T3RK-7DJN>> ('Youth Detention').

²⁷ In Queensland, children can be separated in a locked room only if they are ill, at their request, for routine security purposes, for the child's protection or the protection of another person or property or to restore order in the detention centre: *Qld Youth Justice Regulations* (n 24) s 21(1). In South Australia ('SA') and the ACT, children can only be isolated in a 'safe room' for a non-punitive purpose: *SA Youth Justice Act* (n 24) s 28(1); *ACT Young People Act* (n 24) s 209(1). The use of isolation as punishment is also prohibited in Victoria and NSW: *Vic Youth Act* (n 24) s 487(a); *NSW Children (Detention) Act* (n 24) s 19(2). See also *Tas Youth Justice Act* (n 24) s 133(2); *NT Youth Justice Act* (n 24) ss 158B, 158D–158F; *Operational Procedures Manual* (n 7) 1292 [16.17.1].

²⁸ *ACT Young People Act* (n 24) s 209(1)(b); *NT Youth Justice Act* (n 24) ss 158F(1)(b)–(c); *NSW Children (Detention) Act* (n 24) s 19(4); *Tas Youth Justice Act* (n 24) s 133(2)(a)(ii). Note that the *Operational Procedures Manual* (n 7) states that children should only be held in custody 'where all other reasonable alternatives have been exhausted' and 'for the least possible time': at 1292 [16.17.1].

²⁹ See *NSW Children (Detention) Act* (n 24) ss 19(1)(c)–(e); *NT Youth Justice Act 2005* (n 24) s 158E(5); *Young Offenders Regulations 1995* (WA) regs 76(2)–(3) ('WA Young Offenders Regulations').

dictions impose time limits on children's isolation, and sometimes age-related restrictions apply.³⁰ There are also reporting requirements and approval processes that must be followed before a child can be isolated.³¹ However, litigation has confirmed that legislatively prescribed procedures are not always followed and accurate records of isolation periods are not always kept.³²

Regardless, in Queensland the protections afforded to children in detention centres do not apply to children in watchhouses. There are no minimum standards relating to the conditions of their confinement, nor any legislative limits on the amount of time children can spend in isolation in a watchhouse.³³ The Queensland Police Service's *Operational Procedures Manual* specifically states that 'wherever practicable children are not to be kept in custody in a watchhouse'³⁴ and that holding a child in a watchhouse for 'two or more consecutive nights' would constitute 'an extraordinary circumstance'.³⁵ Yet within the last few years, it has become commonplace for children to be held in watchhouses for much longer periods of time.³⁶ In 2023–24, there were 7,806 watchhouse stays involving children, 1,081 of which were for five days or more.³⁷ In com-

³⁰ In SA, for example, only children aged 12 years or over can be isolated: *SA Youth Justice Act* (n 24)

s 28(2). As for time limits on isolation: *NSW Children (Detention) Act* (n 24) ss 19(1)(b), 21(1)(d); *NT Youth Justice Act* (n 24) ss 158F(3)–(4); *Qld Youth Justice Regulations* (n 24) s 21(2); *Young Offenders Act* 1994 (WA) s 173(2)(e) ('WA Young Offenders Act').

³¹ *ACT Young People Act* (n 24) s 222(1); *NSW Children (Detention) Act* (n 24) s 19(3); *NT Youth Justice Act* (n 24) ss 158E(2), 158F(2); *Qld Youth Justice Regulations* (n 24) s 22; *SA Youth Justice Act* (n 24) s 28(6); *Tas Youth Justice Act* (n 24) s 133(6); *Vic Youth Act* (n 24) s 488AA; *WA Young Offenders Regulations* (n 29) reg 79(1).

³² Llifen Palacios Nunez and Anna Copeland, 'Solitary Confinement within Juvenile Detention Centres in Western Australia' (2017) 25(3–4) *International Journal of Children's Rights* 716, 723–4; *CRU v CEO of the Department of Justice* (2023) A Crim R 262, 276 [57], 277 [60]–[63] (Tottle J) ('CRU').

³³ The *Qld Youth Justice Regulations* (n 24) govern the separation of children in detention centres: at ss 21–22; specifically, setting minimum standards related to behaviour management, telephone calls, property and access to medical treatment: at ss 16, 29, 33, 35. However, these provisions do not apply to watchhouses. The *Police Powers and Responsibilities Act 2000* (Qld) ch 21 pt 1 ('PPRA') governs the treatment of persons in custody in watchhouses, but does not set minimum standards relating to conditions in watchhouses, nor are there any provisions concerning children.

³⁴ *Operational Procedures Manual* (n 7) 1294 [16.17.5].

³⁵ *Ibid* 1295 [16.17.5].

³⁶ *Cairns and Murgon Watch-Houses Inspection Report* (n 9) 10; *Who's Responsible* (n 7) 4.

³⁷ *Childrens Court Annual Report 2023–24* (n 5) 47. Indeed, 447 children spent more than a week in a watchhouse and 259 spent more than two weeks in a watchhouse: at 3 [7].

parison, in 2017–18, there were only 1,267 watchhouse stays involving children, 97 of which were for five days or more.³⁸

In this article, I will first discuss definitions of ‘solitary confinement’ or ‘isolation’³⁹ in Australian and international law. Drawing upon the international body of scholarship on the solitary confinement of criminalised children, which is surprisingly limited, I will propose a uniform definition of solitary confinement, noting the legal importance of separating the ‘solitary’ nature of the confinement from the conditions in which children are held. I will then present the results of a study involving in-depth interviews with people who work with children in watchhouses in Queensland. The aim of the interviews was to ascertain the conditions in which children are being held and to determine whether they are in solitary confinement. Noting that human rights law offers very limited protection for criminalised children who are held in watchhouses, I will analyse whether the application of fundamental common law and constitutional law principles could support an argument that some children are being unlawfully detained.

II ‘SOLITARY CONFINEMENT’ IN A YOUTH JUSTICE CONTEXT

A *Defining Solitary Confinement*

It is often said that there is ‘no universally agreed upon definition of solitary confinement’.⁴⁰ However, the definition put forward in the *United Nations Standard*

Minimum Rules for the Treatment of Prisoners (‘Mandela Rules’) is widely cited and commonly applied across the globe.⁴¹ It states that solitary confinement is the ‘confinement of prisoners for 22 hours or more a day without meaningful

³⁸ Childrens Court of Queensland, *Annual Report 2017–18* (Report, 2018) 39 https://www.courts.qld.gov.au/__data/assets/pdf_file/0003/610077/cc-ar-2017-2018.pdf, archived at <<https://perma.cc/DYE6-36AU>>.

³⁹ In this article, the terms ‘solitary confinement’ and ‘isolation’ are used interchangeably.

⁴⁰ Juan E Méndez, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 66th sess, Agenda Item 69(b), UN Doc A/66/268 (5 August 2011) 8 [25]. See also *R (AB) v Secretary of State for Justice* [2022] AC 487, 504 [32] (Lord Reed PSC, Lords Lloyd-Jones, Sales, Hamblen and Stephens JJSC agreeing) (‘*R (AB)*’). See generally Ergun Cakal, ‘Isolating Children in Detention: Cautioning International Comparisons’ (2023) 48(3) *Alternative Law Journal* 166, 167.

⁴¹ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, GA Res 70/175, 70th sess, Agenda Item 106, UN Doc A/RES/70/175 (8 January 2016, adopted 17 December 2015) r 44 (‘*Mandela Rules*’).

human contact'.⁴² Courts often adopt this definition in the absence of an applicable alternative,⁴³ although the Supreme Court of the United Kingdom has observed that similar definitions are 'insufficiently precise to be used as a legal test'.⁴⁴

The definition of solitary confinement in the Istanbul Statement on the Use and Effects of Solitary Confinement, which predated the *Mandela Rules*, provides additional detail.⁴⁵ It states:

Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day. In many jurisdictions prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic.⁴⁶

It is important to avoid conflating isolation with conditions of confinement. The two should be considered separately. A person may be isolated in harsh and austere conditions or in more hospitable settings; there may be a complete lack of stimulation and social interaction; or the person may be able to usefully occupy themselves and may have meaningful contacts with staff throughout the day.⁴⁷ From a legal perspective, a person is isolated (or 'in solitary confinement') when they are placed in a locked room separate and apart from the 'normal routine' of the facility.⁴⁸ As White J of the Federal Court remarked in *Campbell v Northern Territory*:

⁴² Prolonged solitary confinement is defined as 'solitary confinement for a time period in excess of 15 consecutive days': *ibid*.

⁴³ See, eg, *R v CCN* (2018) 75 Alta LR (6th) 98, 112 [46] (Judge Ho) (Alberta Provincial Court); *Brazeau* (n 23) 202 [210], 206 [227], 212 [262] (Perrel J).

⁴⁴ *R (AB)* (n 40) 504 [34] (Lord Reed PSC, Lords Lloyd-Jones, Sales, Hamblen and Stephens JJSC agreeing).

⁴⁵ The Istanbul Statement was a product of a working group of 24 international experts who convened at the International Psychological Trauma Symposium, Istanbul, and adopted the statement on 9 December 2007: Symposium, 'The Istanbul Statement on the Use and Effects of Solitary Confinement' (2008) 18(1) *Journal on Rehabilitation of Torture Victims and Prevention of Torture* 63, 63.

⁴⁶ *Ibid*.

⁴⁷ *SF* (n 22) 476 [14] (Ni Raifeartaigh J).

⁴⁸ In Victoria and Tasmania, 'isolation' is defined as being in a locked room 'separate from others and from the normal routine' of the centre: *Children, Youth and Families Act 2005* (Vic) s 488(1); *Youth Justice Act 1997* (Tas) s 133(1). In *TA* (n 15), Fantin DCJ said that 'separations'

Isolation ... is the act of a superintendent which, by the manner of confinement of the detainee, keeps the detainee separate and apart from other detainees so as to preclude contact or interaction with other detainees ... [Isolation] will occur when the detainee is confined to a particular room or cell and thereby prevented from intermingling or interacting with other detainees in the general activities and routine of the detention centre.⁴⁹

Solitary confinement does not require a complete absence of human contact⁵⁰ or placement in a dismal cell with no amenities.⁵¹ Children who are accommodated in shared cells will still be 'in isolation' if they are separated in a locked room, unable to participate in group activities and prevented from freely associating with others.⁵² A child will still be in solitary confinement despite having access to telephone calls, visits by staff⁵³ and even '[s]ome degree of communication with other detainees'.⁵⁴

Isolation is harmful to children, irrespective of the conditions of their confinement. This was most clearly seen during the COVID-19 pandemic, when social isolation during lockdowns resulted in a significant increase in mental ill-health amongst school-aged children.⁵⁵ Isolation is damaging to a child's brain because 'for a juvenile brain to fully develop, it needs environmental stimuli and social interaction'.⁵⁶ Given their stage of brain development, children

are 'periods of time a child is locked in their cell, over and above the 12 hours they are locked down overnight for sleep': at 4. See also *Campbell v Northern Territory [No 3]* (2021) A Crim R 1, 29 [94] (White J) ('*Campbell*'); *Youth Detention* (n 26) 20 [44]; *Disability Royal Commission* (n 21) 107.

⁴⁹ *Campbell* (n 48) 29 [93]–[94] (White J). See also *SF* (n 22) 474 [11] where Ni Raifeartaigh J of the An Ard-Chúirt (High Court of Ireland) remarked, 'solitary confinement simply means the confinement of a prisoner or detainee alone'. See also, in the United States' context, the proposed Solitary Confinement Reform Act, S4121, 118th Congress (2024), where solitary confinement is defined as confinement 'that is separate from or in any way more restrictive than the general population of the facility in terms of hours out of cell, programming, services, congregate engagement with other people, visits, communications, items, or any other aspect of daily living': at § 2(a), inserting 18 USC § 303.4052(a)(15).

⁵⁰ *Campbell* (n 48) 73 [359] (White J). See *CRU* (n 32) 284 [88], 285–6 [92]–[93] (Tottle J).

⁵¹ *Campbell* (n 48) 29 [94] (White J).

⁵² *Ibid* 29 [95], 74 [361] (White J); Méndez (n 40) 8 [25].

⁵³ *SF* (n 22) 476 [14] (Ni Raifeartaigh J).

⁵⁴ *Campbell* (n 48) 29 [95] (White J).

⁵⁵ Donald E Brannen et al, 'Pandemic Isolation and Mental Health among Children' (2023) 17 *Disaster Medicine and Public Health Preparedness* 353:1–7, 3.

⁵⁶ Lauren M Coler, 'Isolated and Forgotten: End the Use and Practice of Solitary Confinement in the Juvenile Justice System' (2021) 45(2) *Thurgood Marshall Law Review* 93, 103. See also Hu-

are less able to cope with stressful situations and have lower impulse and emotional control.⁵⁷ As a result, even relatively short periods of isolation can cause high levels of psychological distress amongst children, and may result in psychosis, self-harm and suicide attempts.⁵⁸

B Duration of Confinement

The *Mandela Rules*' definition of solitary confinement requires a person to be isolated for at least 22 hours per day.⁵⁹ This is generally accepted as an appropriate and useful benchmark;⁶⁰ however, it has not been universally adopted. In the United States, for example, a 2024 Bill tabled in the 2nd session of the 118th United States' Congress defined solitary confinement as isolation with 'not less than 4 hours of out-of-cell time every day' (that is, isolation for 20 hours per day).⁶¹ Of course, any temporal limit that applies to adults may not translate well to a youth justice context. Children have 'inaccurate time perspective', so a

man Rights Watch and American Civil Liberties Union, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons across the United States* (Report, October 2012) 23–4 <<https://assets.aclu.org/live/uploads/publications/us1012webwcover.pdf>>, archived at <<https://perma.cc/4XXY-24ZT>> ('*Growing Up Locked Down*'); Jessica Lee, 'Lonely Too Long: Redefining and Reforming Juvenile Solitary Confinement' (2016) 85(2) *Fordham Law Review* 845, 856–7.

⁵⁷ Lee (n 56) 856–7.

⁵⁸ Gallagher (n 23) 250–1; Sydney Ford, 'Alone and Afraid: The Need for Elimination of Solitary Confinement in South Carolina' (2024) 75(4) *South Carolina Law Review* 957, 960–1; *Behind the Door* (n 25) 19 [5.1]; *Youth Detention* (n 26) 19 [42].

⁵⁹ *Mandela Rules* (n 41) r 44.

⁶⁰ The European Court of Human Rights has described the *Mandela Rules* as 'the global key standards for the treatment of prisoners': *Schmidt v Estonia* (2023), 81 EHRR 10, 287–8 [78] (President Schukking, Judges Grozev, Serghides, Pavli, Roosma, Ktistakis, Arnardóttir). The benchmark of 22 hours has been applied in the *European Prison Rules*, adopted 11 January 2006, as amended by *Recommendation Rec(2006)2-rev of the Committee of Ministers to Member States on the European Prison Rules* (1 July 2020), r 60.6a. See also *Canadian Civil Liberties Association v A-G (Canada)* (2019) 433 DLR (4th) 157, 169 [23], 170 [28]–[29] (Benotto JA, Strathy CJO and Robert JA agreeing) (Court of Appeal of Ontario); Office of the Inspectorate, Department of Corrections (NZ), *Separation and Isolation: Prisoners Who Have Been Kept Apart from the Prison Population* (Thematic Report, March 2023) 20 [21] <https://inspectorate.corrections.govt.nz/_data/assets/pdf_file/0015/50172/Inspectorate_Separation_and_Isolation_FINAL.pdf>, archived at <<https://perma.cc/L5K3-3EA3>>; Judicial Inspectorate for Correctional Services (South Africa), *Report on Solitary Confinement* (Report, No IJ12/4/2, 23 September 2021) 7, 13 <https://groundup.org.za/media/uploads/documents/redacted_jics_solitary_confinement_report_-_23_september_2021.pdf>, archived at <<https://perma.cc/4KSB-6WGW>>.

⁶¹ Solitary Confinement Reform Act (n 49).

short period of isolation can seem much longer for a child.⁶² Children also have less well-developed coping strategies to deal with long periods of boredom, so a shorter period of time in isolation can have a greater adverse impact on children when compared with adults.⁶³

Australian laws that govern the isolation of children in detention centres evince a legislative intention that children only be isolated for a maximum period of around 24 hours. In Queensland, for example, children in detention centres cannot be separated in a locked room for more than 12 hours without informing the chief executive.⁶⁴ If a child is separated for more than 24 hours, the chief executive's approval must be obtained, and additional approvals must be obtained for each subsequent 24-hour period.⁶⁵ In New South Wales, ('NSW') children under 16 years of age can only be separated for a maximum of 12 hours, and children 16 years and over can only be separated for 24 hours.⁶⁶ In Western Australia, ('WA') children cannot be confined to their sleeping quarters by detention centre staff for more than 24 hours, although a visiting justice can order that a child be confined for up to 48 hours.⁶⁷

In practice, however, detained children are held in isolation for much longer periods. The Queensland Audit Office recently found that the children at one detention centre were held in 'lockdown' for 294 days of the 2022–23 financial year.⁶⁸ In the course of litigation brought against the WA government, it was conceded that children in detention were confined to their sleeping quarters on

⁶² Colby L Valentine, Emily Restivo and Kathy Wright, 'Prolonged Isolation as a Predictor of Mental Health for Waived Juveniles' (2019) 58(4) *Journal of Offender Rehabilitation* 352, 354.

⁶³ Claire Banks, 'From Isolation to Independence: A Comparison of Juvenile Solitary Confinement Practices in the United States and Germany' (2020) 8(2) *Penn State Journal of Law and International Affairs* 757, 763; *Growing Up Locked Down* (n 56) 23–4.

⁶⁴ *Qld Youth Justice Regulations* (n 24) s 21(2)(b).

⁶⁵ *Ibid* ss 21(2)(c), (3). A record must be kept of each period of separation: at s 22(1).

⁶⁶ *NSW Children (Detention) Act* (n 24) s 21(1)(d).

⁶⁷ *WA Young Offenders Act* (n 30) s 173(2)(e). In the Northern Territory, children cannot be separated for more than 12 hours without the approval of the chief executive officer, and children cannot be separated for more than 72 consecutive hours in total: *NT Youth Justice Act* (n 24) ss 158F(3)–(4).

⁶⁸ Queensland Audit Office, *Reducing Serious Youth Crime* (Performance Audit Report, No 15, 28 June 2024) 32 <<https://www.qao.qld.gov.au/sites/default/files/2024-06/Reducing%20serious%20youth%20crime%20%28Report%2015%20%E2%80%932023%E2%80%9324.pdf>>, archived at <<https://perma.cc/DR83-87LL>> ('*Reducing Serious Youth Crime*'). 'Lockdown' is where young people are held in the cell, or a breakout room within their unit, for 22 hours a day, or longer: at 31.

a 'regular basis'.⁶⁹ Indeed, the WA government argued before the Supreme Court that any change to this practice would cause 'practical problems' in light of 'chronic staff shortages'.⁷⁰

Importantly, research suggests that the severity of adverse psychological effects of isolation (including paranoia, hostility, anxiety, hypersensitivity to stimuli and psychosis) increases the longer a child is held in isolation.⁷¹ The American Academy of Child and Adolescent Psychiatry has said that children are at 'particular risk of such adverse reactions' and should be evaluated by a mental health professional if they are held in isolation for any longer than 24 hours.⁷²

C Conditions of Confinement

When children are isolated in particularly harsh conditions, the long-term effects on their physical and psychological development are exacerbated.⁷³ For example, research has found that children's physical development can be permanently impacted if they receive inadequate nutrition and insufficient exercise whilst in detention.⁷⁴ If they are severely deprived of social contact, the mental health impacts can be serious enough to cause permanent changes to their brain.⁷⁵ If they have no access to distraction or stimulation, their EEG patterns can change, mimicking those associated with stupor and delirium.⁷⁶

⁶⁹ *VYZ by Next Friend XYZ v Chief Executive Officer of the Department of Justice* (Supreme Court of Western Australia, Tottle J, 28 August 2022) 32 [72], 41 [88] ('VYZ'). The child plaintiffs in *Certain Children [No 2]* (n 6) had also been isolated in their cells for 'many of their waking hours' for 'several days without any time outdoors': at 528 [280] (Dixon J). The Disability Royal Commission reported that the WA provision is interpreted in a manner that allows for children to be held for 23 hours a day: children are locked down overnight for 12 hours and 45 minutes, so during their 11.25 'unlock hours' they are only entitled to be released for one hour: *Disability Royal Commission* (n 21) 91, discussing *WA Young Offender Regulations* (n 29) reg 76(3).

⁷⁰ *VYZ* (n 69) 40 [88] (Tottle J).

⁷¹ *Youth Detention* (n 26) 19 [42].

⁷² American Academy of Child and Adolescent Psychiatry, 'Policy Statement on Solitary Confinement in Juvenile Carceral Settings' (Statement, April 2025) <https://www.aacap.org/aacap/Policy_Statements/2025/Solitary_Confinement_Juvenile_Carceral_Settings.aspx>, archived at <<https://perma.cc/LV9V-ZRTK>> ('*Solitary Confinement of Juvenile Offenders*').

⁷³ See *SF* (n 22) 475–6 [13]–[14].

⁷⁴ *Growing Up Locked Down* (n 56) 37–40.

⁷⁵ Lee (n 56) 858; *Certain Children [No 2]* (n 6) 578–9 [463] (Dixon J). See, eg, Sue Burrell and Ji Seon Song, 'Ending Solitary Confinement of Youth in California' (2019) 39(1) *Children's Legal Rights Journal* 42, 67.

⁷⁶ Ford (n 58) 960.

Some jurisdictions provide substantive protections against harsh and inhumane treatment for isolated children. For example, in NSW detention centres separated children must be provided with means of usefully occupying themselves, their physical environment should be no less favourable than it would otherwise be, and they must have regular communication with a youth justice officer.⁷⁷ In the

Northern Territory ('NT') separated children must be permitted to see family if it is safe and reasonably practicable to do so, and maintain regular, ongoing contact with staff.⁷⁸ They must also be given access to 'basic human necessities' and educational and recreational materials where safe to do so.⁷⁹ In WA confined children are entitled to 30 minutes of 'fresh air, exercise and staff company' every three hours.⁸⁰

Even with these protections in place, children have complained in legal proceedings that the conditions of their confinement have been 'inhumane'.⁸¹ They have given evidence that their time in solitary confinement caused serious psychological harm, manifesting in self-harm, suicide attempts and psychosis.⁸² An important question for this research was — to what extent is this the experience of children being held in Queensland watchhouses?

III THE QUEENSLAND STUDY

A *Legal Context: Queensland's Youth Justice System*

Queensland's youth justice system is particularly punitive.⁸³ Amendments to the *Youth Justice Act 1992* (Qld) ('*Youth Justice Act*') since 2020 have resulted in higher rates of youth detention, more lengthy periods of youth detention,

⁷⁷ *NSW Children (Detention) Act* (n 24) ss 19(1)(c)–(e). The ACT also requires that minimum living conditions remain unaffected: *ACT Young People Act* (n 24) s 206(1).

⁷⁸ *NT Youth Justice Act* (n 24) ss 158E(5)(a)–(b), 158F(7)(a)–(b).

⁷⁹ *Ibid* ss 158E(5)(c), 158F(7)(c).

⁸⁰ *WA Young Offenders Regulations* (n 29) reg 76(3).

⁸¹ Jess Feyder, 'Supreme Court Challenge to Use of Solitary Confinement in NSW Youth Justice Centres Filed', *Lawyers Weekly* (online, 17 August 2022) <<https://www.lawyersweekly.com.au/the-bar/35221-supreme-court-challenge-to-use-of-solitary-confinement-in-nsw-youth-justice-centres-filed>>, archived at <<https://perma.cc/89DC-2749>>.

⁸² *CRU* (n 32) 282–3 [85] (Tottle J); *TA* (n 15) 5 (Fantin DCJ).

⁸³ Tamara Walsh, *Safety through Support: Building Safer Communities by Supporting Vulnerable Children in Queensland's Youth Justice System* (Report, April 2023) 4, 6, 60 <<https://espace.library.uq.edu.au/view/UQ:55d7b70>>, archived at <<https://perma.cc/8NTA-ABGW>>.

and higher numbers of children on remand.⁸⁴ Recent amendments to the *Youth Justice Act* in 2024 removed the presumption that detention should be a last resort for children and imposed a requirement on courts that they have ‘primary regard’ to the impact of the offence on victims when sentencing children.⁸⁵ It is telling that the *Charter of Youth Justice Principles*, included as a schedule to the Act, opens with Principle 1: ‘The community should be protected from offences and, in particular, recidivist high-risk offenders.’⁸⁶ The *Youth Justice Act* does not include any reference to the principle that the best interests of the child should be paramount;⁸⁷ rather, the guiding principle of the Act seems to be ‘community safety’.⁸⁸

There is significant overlap between children who are subject to child protection orders and children under youth justice supervision in Queensland; in fact, more than three quarters of children in youth detention are known to Child Safety.⁸⁹ Apart from imposing obligations related to the sharing of information,⁹⁰ both the *Youth Justice Act* and the *Child Protection Act 1999* (Qld) are silent on the status of ‘dual order’ children and neither Act provides them with any additional protections. Courts have reported that children in the care of the Department of Child Safety are particularly vulnerable to being placed in watchhouses; sometimes no other placement can be found for them.⁹¹

B Methods and Approach

The purpose of the qualitative aspect of this research was to determine whether children are being held in solitary confinement in Queensland watchhouses and what their conditions of confinement are like.

⁸⁴ Ibid; *Childrens Court Annual Report 2023–24* (n 5) 2, 9, 46.

⁸⁵ *Making Queensland Safer Act 2024* (Qld) ss 15(1), 37(2).

⁸⁶ *Youth Justice Act 1992* (Qld) sch 1 item 1 (‘Qld Youth Justice Act’).

⁸⁷ Cf other jurisdictions: see, eg, *Vic Youth Act* (n 24) s 10(1).

⁸⁸ This is apparent from the titles of the amendment Acts: *Queensland Community Safety Act 2024* (Qld); *Making Queensland Safer Act 2024* (Qld); *Strengthening Community Safety Act 2023* (Qld).

⁸⁹ Kathryn McMillan and Megan Davis, *Independent Review of Youth Detention* (Confidential Report, December 2016) 214 <<http://www.youthdetentionreview.qld.gov.au/review-of-youth-detention-centres-report-updated-28-june-2017-redacted.pdf>>, archived at <<https://perma.cc/2TEP-5KNS>>. See also Tamara Walsh, ‘From Child Protection to Youth Justice: Legal Responses to the Plight of “Crossover Kids”’ (2019) 46(1) *University of Western Australia Law Review* 90, 90–1, 95.

⁹⁰ See *Qld Youth Justice Act* (n 86) pt 9 div 2A.

⁹¹ See, eg, *Jackson v Commissioner of Police* (Magistrates Court of Queensland, Magistrate Mac Giolla Ri, 8 June 2023) 7 [42].

In late 2024, in-depth interviews were undertaken with individuals who worked with children in watchhouses or had done so within the last 12 months.⁹² Participants were recruited using a combination of targeted recruitment and snowball sampling methods.⁹³ Individuals and organisations that had the experience and knowledge required for this investigation were invited to participate, and they suggested other people to approach.

A total of 18 individuals participated in an interview: 13 identified as female, five identified as male and five identified as Aboriginal and/or Torres Strait Islander. Participants were interviewed in their personal capacity, however they all worked in the youth justice sector: eight were youth workers in the community sector, six were lawyers who represented children in criminal courts and four were members of the public service.⁹⁴ All interviews were conducted via video conferencing which meant location was no barrier to participation. Participants were located all over the state, as far north as Cairns and as far south as the Gold Coast. Participants were asked to complete an online consent form prior to the interview. Confidentiality was of paramount importance to participants, so individuals will be referred to using only a numeric identifier.

The interviews were semi-structured in nature. Participants were asked to describe the conditions of children's confinement in watchhouses: the built environment, physical infrastructure, amenities, activities, social interactions and services delivered to them. Participants were also asked whether children in watchhouses were being held in isolation, how long for, and to describe the impacts of any experiences of isolation on children's mental and physical well-being. Interviews were of 30 to 60 minutes' duration. All participants were interviewed individually, apart from one interview that had two participants from the same organisation.

⁹² The best source of information on children's experiences of watchhouses would have been the children themselves; however, I was unable to obtain ethical clearance to interview even young adults about their recent experiences in watchhouses. I was successful in gaining approval to interview individuals who work with children in Queensland watchhouses (2023/HE001879), so this is the form the study ultimately took. As to the 'chorus of complaint[s]' from academics about university ethics committees: Tamara Kohn and Cris Shore, 'The Ethics of University Ethics Committees: Risk Management and the Research Imagination' in Susan Wright and Cris Shore (eds), *Death of the Public University: Uncertain Futures for Higher Education in the Knowledge Economy* (Berghahn Books, 2017) 299, 299.

⁹³ As to the benefits of snowball sampling methods: Chalm Noy, 'Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research' (2008) 11(4) *International Journal of Social Research Methodology* 327, 340–1.

⁹⁴ Members of the public service included people who worked in watchhouses for a government department or who monitored children in watchhouses for a statutory authority.

In-depth interviews were appropriate for this study because the aim was to obtain a detailed account of the conditions experienced by children in watchhouses from those who had observed them.⁹⁵ However, the limitations of relying solely on interviews as a data source are conceded. Robert Dingwall insists that interview data should be supplemented by observational research for the most reliable results,⁹⁶ and the researcher did not personally observe children in watchhouses for the purpose of this study. However, important information was obtained from these interviews. By virtue of their professional experiences, the participants were able to provide rich information about the conditions in many of the 63 watchhouses across the state.

That interviews were not conducted with children or young adults themselves could be viewed as a limitation of this research.⁹⁷ However, speaking to professionals did avoid the potential for re-traumatisation of children with lived experience.⁹⁸ It is also acknowledged that interviews import a risk of unintentional bias: responses of participants are strongly influenced by the interviewer's questions and the manner in which they are asked.⁹⁹ Participants may tell the researcher what they '[want] to hear', and their personal desire for conditions to improve for children may have influenced their answers to interview questions.¹⁰⁰ To address these risks, questions primarily sought 'facts' rather than opinions.¹⁰¹

A transcript was generated after each interview and a reflexive thematic analysis of the interview transcripts was conducted based on Virginia Braun and Victoria Clarke's methods.¹⁰² I generated themes based on two broad topics: experiences of isolation and conditions of confinement. In the following Part of this article, I discuss the themes generated in respect of each of these

⁹⁵ Robert Dingwall, 'Accounts, Interviews and Observations' in Gale Miller and Robert Dingwall (eds), *Context and Method in Qualitative Research* (SAGE Publications, 2011) 51, 58–9.

⁹⁶ Ibid 61.

⁹⁷ Ethical clearance could not be obtained to interview children, or young adults: see above n 92 and accompanying text.

⁹⁸ Jasmine B MacDonald et al, *How To Do Trauma-Informed Research and Evaluation* (Practice Guide, August 2024) 9 <https://aifs.gov.au/sites/default/files/2024-08/2408_How%20to%20do%20trauma-informed%20research%20and%20evaluation.pdf>, archived at <<https://perma.cc/LN4V-FS3K>>.

⁹⁹ Steinar Kvale, 'Ten Standard Objections to Qualitative Research Interviews' (1994) 25(2) *Journal of Phenomenological Psychology* 147, 154–5.

¹⁰⁰ Costa Hofisi, Miriam Hofisi and Stephen Mago, 'Critiquing Interviewing as a Data Collection Method' (2014) 5(16) *Mediterranean Journal of Social Sciences* 60, 62.

¹⁰¹ See Hamza Alshenqeeti, 'Interviewing as a Data Collection Method: A Critical Review' (2014) 3(1) *English Linguistics Research* 39, 43–4; Kvale (n 99) 160.

¹⁰² See generally Virginia Braun and Victoria Clarke, *Thematic Analysis: A Practical Guide* (SAGE Publications, 2022).

topics. I present supporting quotes from participants by reference to their numeric identifier, and I use quantifying language to indicate the prevalence of the themes across the dataset.¹⁰³

IV EXPERIENCES OF CHILDREN IN QUEENSLAND WATCHHOUSES

A Are Children in Watchhouses Held in Isolation?

There was unanimous agreement amongst participants that children are being held in isolation in Queensland's watchhouses. Many participants said that children in watchhouses are 'restricted to their cell', 'all day', and often 'aren't seeing the outside world for days'.¹⁰⁴ Participants said children 'are absolutely held in isolation ... they are often in cells by themselves ... they're spending whole days in their cells' including mealtimes, when 'their food is passed through the cell door, like a little hatch thing'.¹⁰⁵ One participant said:

I think every watchhouse is isolation by virtue of what it is. The very fact that a young person can't get out into a general recreation area where they can be interacting with other young people puts them into an isolation environment ... the very fact that you're on your own and you have no one to speak to means that you are in isolation.¹⁰⁶

Participants said that, most often, children are alone in their cells 'by themselves': 'they're just sitting there' with 'no one to speak to'.¹⁰⁷ Participant 11 remarked:

They're kept completely by themselves a lot of the time. They may have some adults through the wall screaming, swearing, kicking off. I mean if you want to call that non-isolation ... There's nothing, they can't communicate with their family. Youth Justice may come down and see them once a day or maybe twice a day if they're lucky.

¹⁰³ Ibid 141–2. Braun and Clarke are 'against the use of frequency counting in reporting themes'; they argue that since qualitative data are collected 'in an interactive way, they are subjective and situational' which 'makes drawing absolute interpretations around presence or absence of a meaning circumspect at best': at 141.

¹⁰⁴ These direct quotes are from Participants 3, 4, 17. Participants 14, 15, 16 said children are held in their cells for '23 hours a day'. Participant 15 added that this was 'for hundreds of days of the year'.

¹⁰⁵ Participants 4, 17.

¹⁰⁶ Participant 13.

¹⁰⁷ Participants 10, 13, 16.

The *Operational Procedures Manual* states that watchhouse staff should, ‘where practicable, allow a prisoner one hour of exercise daily under supervision’¹⁰⁸ (colloquially known as ‘yard time’). However, several participants said children are often ‘flat out refused any yard time. And, you know, that could be for a day period, or a five-day period or, you know, for kids really playing up, maybe a week period.’¹⁰⁹

According to participants, children in watchhouses spend around 23 hours in their cell each day. Further, when children are out of their cell, they have no access to fresh air, natural light or grass. Time out of their cell is spent in another ‘concrete holding space’.¹¹⁰ Participant 2 explained:

There’s this area that’s like a communal area but the area is only probably — I don’t know, it’s no bigger than my office, which is not massive — maybe three by six metres at most. It’s still inside. It’s still behind big doors. It’s just outside of the cells.

Participant 17 said:

There’s no opportunities for exercise or fresh air in most of those watchhouses, at all. There’s not enough resources for them to be supervised, but there’s actually no physical place for them to do exercise. There is nowhere. And they can’t get out to have fresh air at all.

Several participants said this was equally true of the Caboolture watchhouse, which was established in 2023 as a purpose-built facility for children.¹¹¹ Participants said that even at that watchhouse, there is still ‘no access to an outside area, no access to natural light’ and ‘no real provision for any communal activities to be undertaken’.¹¹² One participant said: ‘[T]here was supposed to be this

¹⁰⁸ *Operational Procedures Manual* (n 7) 1317 [16.21.15].

¹⁰⁹ Participant 16.

¹¹⁰ Participant 2.

¹¹¹ To address ‘capacity issues’, an adult facility was repurposed to create a children’s watchhouse in Caboolture (outer Brisbane) in 2023. It was said that the Caboolture watchhouse would be ‘the best possible environment’ for children who needed to be held in a watchhouse, and that ‘all services’ would come to such a watchhouse to ‘address the needs of those children’: Eden Gillespie and Ben Smee, ‘Queensland To Create Watch House for Children amid Fears of Looming “Human Rights Disaster”’, *The Guardian* (online, 8 September 2023) <<https://www.theguardian.com/australia-news/2023/sep/08/queensland-police-watch-houses-caboolture-child-facility>>, archived at <<https://perma.cc/4Z2B-K65P>> (‘*Queensland To Create Watch House for Children*’).

¹¹² Participants 6, 13.

exercise area. From my understanding, it's just a slightly bigger communal area — there's no facilitated exercise area.¹¹³

All participants said that being held in isolation impacted adversely on children in watchhouses. Many said their 'mental health just spirals downhill every day, every hour' and that 'the longer obviously they are in a watchhouse, the worse it is'.¹¹⁴ Participants said that 'impacts of isolation play out in many different forms': some children 'sleep through the day because there's nothing to do', whilst others 'will act out in ways that are disruptive'.¹¹⁵ Participant 14 said that children 'tend to not look after their wellbeing, like hygienically, mentally, spiritually. They tend to just become quite disconnected'. Participant 15 said they 'start expressing hopelessness and that can lead to suicidal ideation, attempts, and so on'. Participant 9 said they had observed children

[s]creaming. Distressed for hours. Taking off their clothes, throwing toilet paper on the cameras. Yelling at officers, abusing officers, yelling at each other, crying often ... [others] go really withdrawn and wrapped up in their blankets and won't get up for days ... withdrawal really worries me.

Several participants observed that isolation was particularly difficult for children with ADHD, because 'boredom itself will absolutely lead to them acting out'; children with autism, because of the 'sensory overload'; and children with a history of trauma, because they are 'in their little brains all the time' and 'they've got nothing, really, to distract [them]'.¹¹⁶

When asked what period of time children could safely be held in a watchhouse, participants agreed that 'in an ideal world, no child would ever go into a watchhouse', and that 'there is probably no ideal time really for a child to be there'.¹¹⁷ However, 'pragmatically speaking', some participants said a child should spend no more than 'a few hours' in a watchhouse or 'a maximum of 24 hours'.¹¹⁸ This, they said, was consistent with their intended use as a 'processing facility', not 'accommodation'.¹¹⁹ Participant 8 summarised the views of many: 'Watchhouses were built to house adults for 24 hours ... It's not a place that I think children should be kept in at all, let alone for more than 24 hours.'

¹¹³ Participant 11.

¹¹⁴ Participants 4, 11.

¹¹⁵ Participants 6, 15.

¹¹⁶ Participants 10, 15, 16.

¹¹⁷ Participant 13.

¹¹⁸ Participant 13.

¹¹⁹ Participant 3.

B Conditions of Confinement Experienced by Children in Watchhouses

Participants' comments on children's conditions of confinement can be grouped under four broad headings: physical conditions; social contact; activities and stimulation; and privacy, surveillance and control.

1 Physical Conditions

Participants expressed profound concern about the physical conditions in which children were being held. They repeatedly emphasised that watchhouses were 'not appropriate for children'.¹²⁰ They said the cells have 'no windows, no fresh air, no natural light [and are] completely enclosed'.¹²¹ Participant 8 remarked: 'Having been in watchhouses, it's a concrete cell. It smells. It is cold. It's a scary place. Even as a solicitor ... it is not a nice place.' Participant 10 said:

[T]here's nothing in the cells. It's a metal environment with a very uncomfortable slat bed and a toilet that's very metal, very harsh, very institutional ... I, as an adult, I would really struggle to be in a space like that.

All participants described the cells as 'completely concrete', 'metal', 'harsh' and 'loud'.¹²² They described 'dirty' floors, 'scratched' walls and 'ugly colourings' throughout.¹²³ Several participants said the cells were 'gritty', 'filthy' and 'yuck'.¹²⁴ Participant 4 said:

[T]he cells are usually quite horrible and dirty ... some have used their towel to, like, clean the cell and then they're not given a new towel. So they then can't shower because they have no towels. So it's kinda gross and yuck.

Watchhouses were described by participants as 'brutal', 'harmful' environments.¹²⁵ Some watchhouses were said to be 'particularly archaic', and several participants compared them to 'a dungeon' or 'a cage'.¹²⁶ Participant 6 described a particular watchhouse as 'more like a chicken pen ... it's effectively a concrete block on the floor surrounded by four walls, some of which are see-through'. Some participants said that watchhouses reminded them of 'old movies, where

¹²⁰ Participants 2, 3, 9, 16.

¹²¹ Participant 5.

¹²² Participants 2, 5, 6, 8, 10, 12, 13, 14, 15.

¹²³ Participants 4, 14, 16.

¹²⁴ Participants 2, 4, 14.

¹²⁵ Participant 2.

¹²⁶ Participants 2, 5, 14.

they're just, they're literally concrete boxes and the bars are thick'.¹²⁷ Participant 5 described entering a particular watchhouse for the first time:

I had no point of reference other than movies that I had seen of Southeast Asian prisons. You know, where they're crowded and there's people lying on thin mattresses on the floor.

Several participants described the 'thin mattresses' placed on 'slabs of cement' for sleeping.¹²⁸ Some said the mattresses were more like 'exercise mats', which were 'not big enough to be suitable for a bed, so children will ... push them together to make a makeshift bed to sleep on'.¹²⁹ Participant 11 said they had a client who had 'no mattress for two nights'.

Participants also said that children are exposed to temperature extremes in watchhouses. Participant 9 spoke of a client who 'had to wrap herself in toilet paper because she was so cold, and they wouldn't give her a blanket'. Meanwhile, in arid parts of the state, conditions were described as 'exceptionally hot'; Participant 6 described a particular remote watchhouse as a 'concrete bunker in the sun'.

In most watchhouses, children had access to a shower once a day, however, this was only offered early in the morning. If children missed the call, they were denied a shower until the next day. Participants said this posed problems for girls who were menstruating. Some watchhouses do not have showers at all. Indeed, some cells have no amenities. Participants said that children are often placed in 'isolation cells' which are 'just a concrete box, basically, sometimes with the drain in the floor. There's no way to go to the bathroom or wash your hands'.¹³⁰ Most watchhouse cells were described as having a combined toilet and washbasin, where the toilet 'is sort of next to the bed' and 'drinking water is usually over the toilet'.¹³¹ Participants said that 'young people think it's disgusting and struggle to even like drink out of [the tap] because of where it's located'.¹³²

Participants said that basic necessities such as soap, toothbrushes and clean clothes are often not available so 'cleanliness and hygiene is a big issue'.¹³³ Participant 7 said one of their young clients 'wasn't given clean clothes for nine days'. Participants said children were sometimes placed in suicide smocks,

¹²⁷ Participant 2.

¹²⁸ Participants 4, 8.

¹²⁹ Participant 6.

¹³⁰ Participant 15. Participant 7 also described cells as a 'concrete box'.

¹³¹ Participants 3, 4.

¹³² Participant 4.

¹³³ Participant 8.

which caused particular distress to children with ‘sensory’ issues.¹³⁴ Participant 16 said:

[T]o have to sit on the phone and hear a 12 year old cry to his mum because he wants his underwear back and to have to try and support him through that ... and then to have to try and support his mum through that, it’s absolutely horrendous.

Most participants said that children are chronically undernourished in watchhouses. Participants said that in some watchhouses children eat only fast food; indeed, many participants said the children ate only Red Rooster for their entire watchhouse stay.¹³⁵ In other watchhouses, children are fed ‘takeaway’ food of ‘substandard’ quality, ‘mostly microwavable meals or pies and sausage rolls.’¹³⁶ Participant 13 said: ‘I had a young client who spent 30 days in the watchhouse and had takeaway food every day’. Participants said that children ‘get hungry’ because the ‘meals are very meagre’, or because ‘the food is underwhelming, and repetitive, so because of that, lots of kids will decide not to eat.’¹³⁷ Participant 8 remarked: ‘it’s not nutritional food — it’s certainly not what I’ve been giving my children.’

Many participants said that they found visiting watchhouses very distressing. They said they ‘hate going down there myself [even] for an hour’ and could not imagine ‘spending days if not weeks there.’¹³⁸ Participant 16 said: ‘Even visiting, I’m constantly mindful of like, where’s the sanitiser and how long until I can get out of here?’. Others reflected on how their own children would cope; Participant 2 concluded, ‘Oh my God, I mean, that would destroy him.’

2 *Social Contact*

Participants said that most children in watchhouses had ‘[p]retty much no interaction with anybody. They can’t see anybody. And they can only hear people — other mentally unwell people who are banging constantly or yelling out, so it’s actually quite a traumatising time for those young people.’¹³⁹ Some participants said that children can ‘sometimes talk to each other through the wall’, or ‘they can sometimes be in an area where they can communicate with people in

¹³⁴ Participants 15, 16.

¹³⁵ Participants 4, 5, 7, 8 all mentioned ‘Red Rooster’.

¹³⁶ Participants 4, 6, 7, 11, 13.

¹³⁷ Participants 1, 6, 7, 9, 16.

¹³⁸ Participant 11.

¹³⁹ Participant 4.

other cells, by visually being able to see them, but otherwise they have no contact with them.¹⁴⁰

Whilst most children in watchhouses ‘don’t have anyone else in that room’ and ‘don’t have anyone to talk to’,¹⁴¹ some children are placed in shared cells due to overcrowding. In some locations, this was considered beneficial for the children. However, being in a shared cell posed an increased risk to particularly vulnerable children: some participants said their clients had been ‘sexually interfered with’ or even ‘raped’ by children they had been ‘doubled up’ with in watchhouse cells.¹⁴² Participant 6 said:

When it’s busy, kids will often have to share rooms, and on one hand, that seems, I don’t know claustrophobic and suffocating, but on the other hand, others that are by themselves just, you know, discuss feelings of complete isolation and aloneness. It’s hard to see what’s preferred out of those two.

Young people are visited by Youth Justice staff ‘ideally once a day’, and some children receive visits from external service providers.¹⁴³ In some areas, the services coordinate with one another, so ‘if Youth Justice have been in the morning, we’ll try and do a night-time visit, so at least they’ve sort of had two little touch points of seeing people’.¹⁴⁴ However, participants said these visits usually only last 15 minutes. Some participants said that some ‘nicer’ watchhouse officers ‘might have a little bit of a chat with them, but [otherwise] there’s nothing at all’.¹⁴⁵

What concerned many participants was that, even when children in watchhouses had contact with other people, such as youth workers or lawyers, this was often ‘on the other side of the screen’ — ‘there’s absolutely no form of physical contact’.¹⁴⁶ Participant 17 said: ‘The only time I have any physical access to a client is when I get them to sign something.’ Participant 16 said:

There have been times where I’ve literally like, just to try and provide some sort of connection, literally just put my hand on the plexiglass. To show them like, hey mate, I’m here, like I’m here in the best possible way I can be.

Participants said that even children’s access to phone calls was severely restricted, although there was some variation between watchhouses. Some par-

¹⁴⁰ Participants 11, 13.

¹⁴¹ Participant 13.

¹⁴² Participants 7, 9.

¹⁴³ Participant 13.

¹⁴⁴ Participant 10.

¹⁴⁵ Participant 11.

¹⁴⁶ Participants 3, 16.

ticipants said that watchhouse staff ‘let kids make phone calls from time to time, to speak to their parents or family members’ but only ‘with the guard standing with them, or at least observing them’ at the phone.¹⁴⁷ Others said their clients had no access to phone calls at all. Participant 11 said:

Just as an example, I have a young Aboriginal 16-year-old who has [a] significant intellectual impairment ... when I’ve gone to see him, he hasn’t been able to talk to any family for five days ... I have some kids that just haven’t spoken to anyone.

Family visits were described as non-existent; even at the Caboolture watchhouse, they were very uncommon. Participants said that, most often, ‘the only contact they have with family is when Youth Justice or [an external service provider] support a young person to call family’.¹⁴⁸ Participant 16 remarked: ‘If they’re stressing out, they’ve got no capacity to call their mum or their dad or a loved one.’

3 *Activities and Stimulation*

In addition to the harsh conditions and the absence of social interaction, participants said that children in watchhouses often had nothing to do during the day. Participant 16 said:

There’s nothing for them to do. There’s no stimulation for young people. You know, you’re literally sitting in a cell for, you know, 23 hours a day apart from when, you know, you have a shower or when Youth Justice or [external service providers] visit. They don’t know what the time is.

Children as young as 10 years of age can be held in watchhouses, sometimes for weeks at a time, yet most participants said that the children have ‘no access to any education’ whilst they are in watchhouses.¹⁴⁹ Indeed, some watchhouses do not allow children to have any books or writing materials. Participants explained:

A lot of the time, they won’t allow pencils. There was a time where they had these rubber pencils that they could use. But then they were like, ‘no, you can’t use them because the kids are graffitiing the walls.’¹⁵⁰

¹⁴⁷ Participant 6.

¹⁴⁸ Participant 16.

¹⁴⁹ Participants 5, 10, 11, 17.

¹⁵⁰ Participant 4.

[W]e used to take in things like books ... And they were all soft cover books. We have had to put a stop to that. We're not really allowed to do that anymore just because they deemed them to be a safety risk.¹⁵¹

When the Caboolture watchhouse was established, it was said that children would receive educational services.¹⁵² However, participants said that the education children receive there is 'very brief' and 'not reflective of a usual educational environment'.¹⁵³ Participants said 'each of the kids might get one session ... usually that equates to about 20 minutes'.¹⁵⁴ Often, children are provided with education packs, which is a 'booklet to work on', but they 'complete their workbooks in their own cells' — 'it's not set up like a classroom'.¹⁵⁵ Participants said this was inappropriate considering how many children in watchhouses 'have been diagnosed with a vast array of intellectual disabilities and disorders' or have been 'disengaged from school', often 'for a number of years'.¹⁵⁶ Whilst participants accepted that a few minutes of education a day was 'better than anywhere else' — 'in other watchhouses, it doesn't happen at all' — they were concerned that 'the bar's dropped so low that we would say that that's acceptable'.¹⁵⁷ Participant 6 said:

I am aware of one matter where a child had started to read the Bible because that was the book they had access to. [Whilst] an argument could be made that they might take something from a spiritual text, that seems terrible that what we have to offer is one book for a kid that wants to learn or wants to read.

Children's opportunities for recreation, or even distraction, were also described as 'inadequate'.¹⁵⁸ In some watchhouses, children were able to watch television some of the time, however, this was at the discretion of individual officers. Some participants said children were allowed to have playing cards, and at one watchhouse external service providers brought in iPads for children to use. However, at other watchhouses cards were not permitted 'because of the locks',¹⁵⁹ and iPads were unheard of. Most often, children had 'nothing to do in there at all'.¹⁶⁰

¹⁵¹ Participant 10.

¹⁵² *Queensland To Create Watch House for Children* (n 111).

¹⁵³ Participant 13.

¹⁵⁴ Participant 2.

¹⁵⁵ Participants 6, 11.

¹⁵⁶ Participants 6, 15, 16.

¹⁵⁷ Participants 2, 6.

¹⁵⁸ Participants 11, 13.

¹⁵⁹ Participant 9.

¹⁶⁰ Participant 11.

Participants said they had observed children ‘literally curled up in balls on the floor crying because they just need something to do.’¹⁶¹ Participant 8 said:

one police officer himself was so concerned about the lack of stimulation in this particular watchhouse ... so this particular police officer actually went out and bought a packet of cards himself to give to the children because he was a father himself and he could see that the lack of stimulation was really affecting the children and again affecting the behaviour as well.

Participant 2 described the ‘creative’ lengths children went to entertain themselves at the Caboolture watchhouse:

[T]hey’ve actually — they make a handball court out of their jumpers. So they extend the arms of the jumpers and they make that the line for the handball court ... why can’t we put some tape on the ground [for them]?

Opportunities for physical exercise were described as ‘virtually non-existent’, so some participants said they encouraged children to do push-ups and sit-ups in their cell ‘to try and tire yourself out and release some of those positive endorphins.’¹⁶² Exercise or sports equipment, including balls, are not routinely provided, as Participant 11 explained:

[W]hen workers are out during the day, the child might get a bouncy ball so they can bounce against the wall. But the bouncy ball gets taken off them when the worker has to leave. So, I’ve had my kids call, ‘can you please let them know, could I please have the bouncy ball back?’

4 *Privacy, Surveillance and Control*

Several participants were concerned about the lack of privacy experienced by children in watchhouses. Many said the children could be seen by officers ‘at all times’ and, in some watchhouses, they could also be seen by other detainees.¹⁶³ Participants said children became distressed about the lack of privacy when toileting, saying whilst ‘they might have their bottom half covered by the head of the bed or something’, they could otherwise be seen.¹⁶⁴ Participant 9 had observed children ‘putting mattresses around their toilet’ for privacy. Participant 13 said:

¹⁶¹ Participant 16.

¹⁶² Participants 6, 16.

¹⁶³ Participants 3, 5, 13, 14.

¹⁶⁴ Participant 3.

[T]he idea that they have this sort of toilet in their room with no privacy is really to them, quite an extraordinary instance ... quite often, young people will tell you 'the toilet in my room is behind a shelf, and they're all looking at me'.

Participants said that there was often 24-hour lighting in watchhouses and even if the lights were dimmed at night, 'there's constant light; there might be a light in your cell that comes off, but then there's all the other light that comes through anyway'.¹⁶⁵ Participants said that the lack of privacy was particularly damaging given the children's stage of social and emotional development:

It's very exposing ... and young people are so aware of people's eyes on them, you know, and I think that's where that kind of mental health impact comes a lot from, just that sense of being watched and being seen and having that exposure all the time.¹⁶⁶

Participants also discussed the high degree of control individual officers exercised over every aspect of the children's circumstances. There was often 'no consistency': one officer might allow children to have books in their cell, but then another officer 'comes in that's got a very different response'.¹⁶⁷ This was described as 'unsettling' for children, as Participant 13 explained:

So they think that 'oh yes I can have this'. And then, of course, the next person comes in, or they go to court, they come back, there's [a] different person on; 'can I have this?' 'no, you can't have this.' And, of course, then they think they're entitled. Then their behaviour kicks off. Then they're being punished ... but the reason they're being difficult is because there is no consistency.

Participants said it was common for police officers to use access to television and phone calls as a form of punishment, and that 'police withdraw access to snacks or books' based on 'behaviour issues'.¹⁶⁸ Participant 13 said that if 'their behaviour is inappropriate ... they're not entitled to privileges. And when they talk about privileges, the things are [what] we would think about as being basic rights, like the ability to phone their family'. Some participants said that children were sometimes punished for the behaviour of others; Participant 7 described a child who was

denied access to the phone system due to unsettled behaviour in the pod next to him, so he was not actually involved in that, but because of that, everyone was

¹⁶⁵ Participant 4.

¹⁶⁶ Participant 3.

¹⁶⁷ Participants 10, 13.

¹⁶⁸ Participants 4, 8, 9.

denied access to the phones and then they were locked down for that for the whole day, due to that unsettled behaviour.

Several participants expressed concern that children had limited access to nurses and other medical staff. Participants said that children's health was at risk as a result. Participants raised concerns about 'access to medication', 'injuries sustained during arrest and then left', 'skin conditions' and 'COVID and the spread of infection'.¹⁶⁹ Participants insisted that children 'need access to nursing staff. They need health workers in watchhouses if they're going to detain kids who are that unwell'.¹⁷⁰

V LEGAL ANALYSIS: IS ISOLATING CHILDREN IN WATCHHOUSES UNLAWFUL?

The profound adverse impacts on children's wellbeing and development do not, in themselves, render the practice of isolating accused children unlawful. However, they do provide evidentiary support for legal arguments that may be available to complainant children who have been held in watchhouses.

For example, judges and magistrates can and do take into account the fact that a person has spent time in custody in 'unusually harsh conditions', including in watchhouses, when making decisions about sentencing.¹⁷¹ Furthermore, when making bail determinations, judicial notice can be taken of the fact that a child who is remanded in custody will likely be held in a watchhouse for an extended period of time because the detention centres are full.¹⁷² One participant in this study expressed concern that not all judges and magistrates were aware of, or making decisions based on the fact that, isolation and lack of programs for children had become 'operational norms'.¹⁷³

Legal avenues to challenge children's placement in watchhouses are limited. A recent application by eight children in Queensland watchhouses for a writ in the nature of habeas corpus was successful, but only because of a legal technicality: the remanding court had not ordered the children to be delivered into the custody of the Department as soon as practicable, as required under the

¹⁶⁹ Participants 9, 12, 13, 16, 17.

¹⁷⁰ Participant 9.

¹⁷¹ See, eg, *Callanan v Attendee X* (Supreme Court of Queensland, Applegarth J, 12 December 2013) 7 [25]. It is well-established that sentencing discounts can be applied: at 7–8 [25]–[27]. See also *R v TA* (n 15) 5–6 (Fantin DCJ); *Commissioner of Police v David Taylor (a pseudonym)* (Magistrates Court of Queensland, Magistrate Mac Giolla Ri, 24 January 2023) 6 [33], 7–8 [36].

¹⁷² See, eg, *Johnson v Commissioner of Police* (Magistrates Court of Queensland, Magistrate Mac Giolla Ri, 6 February 2023) 4 [19].

¹⁷³ Participant 2.

legislation.¹⁷⁴ Immediately afterwards, the legislation was amended to specifically authorise the indefinite detention of children in watchhouses pending their transfer to a detention centre.¹⁷⁵

The most effective avenue of redress for children in solitary confinement has been through judicial review applications challenging administrative decisions to separate them.¹⁷⁶ Two cases, *VYZ v CEO of the Department of Justice* ('VYZ') and

CRU v CEO of the Department of Justice ('CRU') were successfully brought against the WA government by children challenging the legality of 'rolling lockdowns' in WA detention centres.¹⁷⁷ The effect of rolling lockdowns is that children are confined to their sleeping quarters for at least 22 hours a day, often for weeks at a time.¹⁷⁸ In the case of *CRU*, one child alleged they had been confined in their cell for 133 days.¹⁷⁹ The WA government claimed that the lockdowns were necessary due to staff shortages and inadequate infrastructure.¹⁸⁰ The Court emphasised that 'operational difficulties' did not preclude the granting of relief¹⁸¹ and that matters related to the administration and management of prisons were not exempt from judicial review.¹⁸² The WA Supreme Court issued declaratory relief in *CRU* and an injunction in *VYZ* to ensure that, in future, the Act was administered 'in accordance with its terms'.¹⁸³

¹⁷⁴ *Youth Empowered towards Independence Inc v Commissioner of Police Service* [2023] QSC 174, 6 [11]–[16] (Burns J).

¹⁷⁵ See *Qld Youth Justice Act* (n 86) ss 56(2)–(3), as amended by *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld) s 70; Explanatory Notes, *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022* (Qld) 10. See also *PPRA* (n 33) ss 640(2)–(4), as inserted by *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld) s 50M; Explanatory Notes, *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022* (Qld) 35–6.

¹⁷⁶ The same is true of adult prisoners: see, eg, *Owen D'Arcy* (n 17) 287 [92] (Martin J); *Davidson* (n 17) 87–9 [439] (Loukas-Karlsson J); *McLaren v Rallings* [2015] 1 Qd R 438, 461 [126] (Jackson J); *Kidd v Chief Executive, Department of Corrective Services* [2001] 2 Qd R 393, 402 [33] (White J); *Fyfe v Bordoni* (1998) 199 LSJS 401, 419 (Olsson J). In 2022, a child in NSW lodged a judicial review application arguing that they had been isolated for a disciplinary purpose which was not authorised under the legislation; the case is listed for trial in 2025: *Feyder* (n 81).

¹⁷⁷ *CRU* (n 32) 310 [182] (Tottle J); *VYZ* (n 69) 41 [90] (Tottle J).

¹⁷⁸ *CRU* (n 32) 264 [4] (Tottle J); *VYZ* (n 69) 7 [16]–[18] (Tottle J).

¹⁷⁹ *CRU* (n 32) 266 [11] (Tottle J).

¹⁸⁰ *Ibid* 265–6 [9], 280–1 [78]–[81] (Tottle J); *VYZ* (n 69) 7–9 [18], 13–14 [34]–[35] (Tottle J).

¹⁸¹ *CRU* (n 32) 310 [181]–[182] (Tottle J).

¹⁸² *VYZ* (n 69) 33 [73] (Tottle J).

¹⁸³ *Ibid* 40–1 [88] (Tottle J); *CRU* (n 32) 265 [191] (Tottle J).

Equivalent arguments are not available to children in Queensland watchhouses. Legislation expressly authorises the detention of remanded children in watchhouses,¹⁸⁴ and there are no legislated minimum standards related to their isolation or conditions of confinement.¹⁸⁵ However, there may be other legal arguments available to children who have been held in isolation in watchhouses. It might be assumed that since Queensland has a human rights Act,¹⁸⁶ remedies are available. However, as will be seen, tort and constitutional law provide the most promising avenues for redress.

A Human Rights

1 International Human Rights Law

Several participants in this research described holding children in watchhouses as ‘a gross human rights violation’. Their comments indicated that the best interests of accused children are not a primary consideration despite the requirements under the UN *Convention on the Rights of the Child* (‘CRC’).¹⁸⁷ Participants’ comments also suggested that rights under the *International Covenant on Civil and Political Rights* (‘ICCPR’) were being breached, including the right of accused children to be held separately from adults,¹⁸⁸ the right of persons deprived of their liberty to be treated with humanity¹⁸⁹ and the right to be free from cruel, inhuman and degrading treatment.¹⁹⁰

(a) Best Interests of the Child

Article 3(1) of the CRC states that ‘[i]n all actions concerning children ... the best interests of the child shall be a primary consideration.’¹⁹¹ The CRC is the most widely ratified human rights treaty,¹⁹² and several Australian enactments

¹⁸⁴ *Qld Youth Justice Act* (n 86) ss 56, 262. See also Explanatory Notes, Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022 (Qld) 10–11.

¹⁸⁵ *PPRA* (n 33) ch 21 pt 1.

¹⁸⁶ *Human Rights Act 2019* (Qld) (‘*Qld Human Rights Act*’).

¹⁸⁷ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 3 (‘CRC’).

¹⁸⁸ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 10(2)(b) (‘ICCPR’).

¹⁸⁹ *Ibid* art 10(1).

¹⁹⁰ *Ibid* art 7.

¹⁹¹ *CRC* (n 187) art 3(1).

¹⁹² High Commissioner for Human Rights, *Strengthening a Child Rights-Based Approach in the Work of the United Nations*, 55th sess, Agenda Items 2 and 3, UN Doc A/HRC/55/36 (1 February 2024) 3 [5].

have incorporated its terms.¹⁹³ The CRC assumes ‘special significance’ in Australian law; indeed, it has been suggested that ‘citizenship carries with it a common law right on the part of children ... to have a child’s best interests taken into account, at least as a primary consideration, in all discretionary decisions ... which directly affect that child’s individual welfare’.¹⁹⁴

There is no doubt that holding children in isolation in watchhouses is contrary to their best interests. Indeed, many participants in this study observed that in any other context, subjecting a child to such conditions would likely result in child protection intervention.¹⁹⁵ Andrew B Clark argues that solitary confinement of children is child abuse and suggests, in an American context, that medical practitioners visiting detention facilities are legally obliged to make child protection notifications if they observe children ‘manifest[ing] signs of ... deterioration’.¹⁹⁶ Participants in this study made similar observations. In particular, they highlighted the plight of children with disabilities in watchhouses. Participant 9 provided some distressing examples of vulnerable children they had observed who were clearly in need of protection:

I remember one 16-year-old girl who was in [the watchhouse] for about three weeks. She had foetal alcohol [syndrome], and a developmental age of a five or six year old — the police just used to put her in to watch ABC Kids the whole time — she’d be dancing to The Wiggles. [...]

There’s a little boy, little 11-year-old. He’s in Children’s Health Queensland in the mental health facility in now. He’d been in the watchhouse, oh I don’t know, 20, 30 times from 10 years old. He’s got really complex mental health diagnoses,

¹⁹³ Particularly the *Family Law Act 1975* (Cth) and state and territory child protection legislation: see, eg, the *Children, Young Persons and Their Families Act 1997* (Tas) s 8; less so in youth justice Acts: Stephen Monterosso, ‘The United Nations Convention on the Rights of the Child in Australia: Are Human Rights Protected in the Domestic Juvenile Justice Domain?’ (2021) 48(2) *University of Western Australia Law Review* 389, 395, 424.

¹⁹⁴ *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 304 (Gaudron J) (*‘Teoh’*). See also Kim Rubenstein and Jacqueline Field, ‘Conceptualising Australian Citizenship for Children: A Human Rights Perspective’ (2013) 20(1) *Australian International Law Journal* 77, 80.

¹⁹⁵ Under the *Child Protection Act 1999* (Qld), a child is considered to be ‘in need of protection’ if they have suffered significant harm (‘harm’ being ‘any detrimental effect of a significant nature on the child’s physical, psychological or emotional wellbeing’) and have no parent who is able or willing to protect them: at ss 9(1), 10.

¹⁹⁶ Andrew B Clark, ‘Juvenile Solitary Confinement as a Form of Child Abuse’ (2017) 45(3) *Journal of the American Academy of Psychiatry and the Law* 350, 355. Several scholars have made similar points: Laura Janes, ‘The Isolation of Children in Prison’ [2018] (236) *Prison Service Journal* 43, 47; Sandra Simkins, Marty Beyer and Lisa M Geis, ‘The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation’ (2012) 38(1) *Washington University Journal of Law and Policy* 241, 251.

he was on antipsychotics at 10. Highest risk kid I've ever seen, I was seeing over and over and over again in the watchhouse.

One participant pointed out that if these same children were being managed by disability services, their treatment would be very different. Participant 15 said:

[I]f you're in the community and you have a diagnosed disability, all of these things that are happening to them in detention, such as isolation or being contained or detained, are restrictive practices and that needs to be authorised. They need clinical assessments to understand their disability and how to apply those restrictive practices, and they should only be used as a last resort.

Several participants remarked that accused children are treated 'like animals' instead of being protected as children when in fact (as Participant 15 said) 'every one of those children [should] have a positive behaviour support plan' in place because of their disabilities.

(b) Separation of Accused Children from Adults

Article 10(2)(b) of the ICCPR states that '[a]ccused juvenile persons shall be separated from adults.' Yet several participants in this research said that children and adults are not, and cannot effectively be, separated in watchhouses. Most participants said that children can at least hear adults even if they cannot always see them: 'while they do separate children and adults, you're only a few metres away and so, you know, if someone's having an episode and is going off, you've got a front row seat'.¹⁹⁷ Many said that children and adults also 'walk past' each other in watchhouses and use the same waiting areas, so they 'inevitably' end up seeing each other.¹⁹⁸ One participant said it was 'remarkably common to hear stories of adults shouting at children, confronting children or swearing at them'.¹⁹⁹ Participants said that the adults in watchhouses were often 'intoxicated' or 'coming down from drugs' and could be heard 'screaming and banging' which was frightening for children.²⁰⁰ They said several children had seen adults 'taking their clothes off',²⁰¹ and two participants said they knew of children who had been threatened with rape by adults in the watchhouse. They said that 'girls kept in adult watchhouses have described being placed opposite the cells of males who have made lewd gestures towards them and leered at

¹⁹⁷ Participant 2.

¹⁹⁸ Participant 13.

¹⁹⁹ Participant 6.

²⁰⁰ Participants 7, 11, 16.

²⁰¹ Participant 13.

them’;²⁰² one said they knew a girl who had been ‘flushed’ and ‘propositioned by a male while she was in there.’²⁰³

(c) *Cruel, Inhuman and Degrading Treatment, and Inhumane Treatment When Deprived of Liberty*

Article 7 of the ICCPR states that ‘no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment’ and article 10(1) states that ‘all persons deprived of their liberty shall be treated with humanity’. For conditions of confinement to be ‘inhumane’ or ‘cruel, inhuman and degrading’, they ‘must attain a minimum level of severity.’²⁰⁴ Assessment of this ‘depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical or mental effects and, in some instances, the sex, age, state of health or other status of the victim.’²⁰⁵

Courts around the world have found that conditions analogous to those experienced by children in watchhouses amount to inhumane treatment of persons deprived of liberty, and cruel, inhuman and degrading treatment. In respect of adults, the European Court of Human Rights has observed that ‘complete sensory isolation coupled with total social isolation ... constitute[s] a form of inhuman treatment which cannot be justified by the requirements of security.’²⁰⁶ Being confined to a cell ‘almost the entire day and night ... without any recreational and education activity’ and with only occasional conversations with other prisoners and staff has also been considered to amount to ‘inhuman and degrading treatment.’²⁰⁷

Canadian courts have also concluded that being locked down for 23 hours a day in a windowless, dirty cell with 24-hour lighting, almost no human contact, limited privacy and no access to ‘greenery’ or exercise equipment is ‘cruel’ and ‘unusual treatment.’²⁰⁸ In *McCann v Canada*, prisoners were placed in sep-

²⁰² Participant 6.

²⁰³ Participant 7.

²⁰⁴ *Enea v Italy* [2010] IV Eur Court HR 163, 191 [64] (‘Enea’).

²⁰⁵ Human Rights Committee, *Views: Communication No. 1184/2003*, 86th sess, UN Doc CCPR/C/86/D/1184/2003 (27 April 2006) 18 [9.2] (‘*Brough v Australia*’). See also *Enea* (n 204) 188 [55]; *Ireland v United Kingdom* (1978) 25 Eur Court HR (ser A) [162].

²⁰⁶ *Mathew v Netherlands* [2005] IX Eur Court HR 57, 99–100 [199] (‘Mathew’).

²⁰⁷ *Rzakhanov v Azerbaijan* (European Court of Human Rights, Chamber, Application No 4242/07, 4 July 2013) 20 [72], 20–1 [76] (‘Rzakhanov’).

²⁰⁸ *Bacon v Surrey Pretrial Services Centre* (2010) 11 Administrative Law Reports (5th) 1, 24 [49]–[50], 26 [59], 50–1 [139], 131–2 [316] (McEwan J) (Supreme Court of British Columbia) (‘Bacon’).

Justice McEwan noted that the petitioner’s treatment was ‘deplorable in any civilized society’:

arate windowless cells with a combination toilet/washbasin and a thin mattress on a concrete slab for sleeping.²⁰⁹ This is very similar to watchhouse conditions, although unlike some children in watchhouses these prisoners were supplied with adequate bedding and pillows.²¹⁰ Visits were allowed but only from behind a screen, and prisoners had no access to fresh air.²¹¹ The court determined that these conditions were ‘cruel and unusual’.²¹²

Conditions described in the Aotearoa New Zealand case of *Taunoa v Attorney-General (NZ)* are also similar to those experienced by children in watchhouses. In her dissenting judgement, Elias CJ found they could ‘properly be characterised as inhuman’ and amounting to ‘cruel, degrading’ treatment.²¹³ Detainees were held in a cell for 23 hours a day with no socialisation, limited telephone calls, no rehabilitative programs, no personal clothing, minimal natural light and inadequate ventilation.²¹⁴ All meals were eaten in cells, bedding was often not changed, and there was no modesty screen for the toilet.²¹⁵ Importantly, Elias CJ concluded that there was ‘no penological justification’ for such conditions.²¹⁶

Few cases alleging unlawful solitary confinement have been brought in respect of children.²¹⁷ One example is *Brough v Australia* which was heard by the

at 121 [292]. In *Reddock v Canada (A-G)* (2019) ONSC 5053 (Superior Court of Ontario), it was held that placement of an adult in isolation for more than 15 days, with only short interactions with staff through the food-slot, rare interactions with other inmates and limited privacy, amounted to ‘cruel and unusual treatment’: at 23 [92]–[93], [96]–[97], 58 [225], 96–97 [414] (Perell J) (*Reddock*). See also *British Columbia Civil Liberties Association v A-G (Canada)* [2018] BCSC 62 (Supreme Court of British Columbia) where being held in a filthy cell was held to have posed a ‘significant risk of serious psychological harm’ and violated the right to life, liberty and security of person: at 35 [114], 36 [116]–[117], 74 [247] (Leask J).

²⁰⁹ [1976] 1 FC 570, 581 (Heald J) (*McCann*).

²¹⁰ Ibid.

²¹¹ Ibid 582–3 (Heald J).

²¹² Ibid 605, 607.

²¹³ *Taunoa v A-G (NZ)* [2008] NZLR 429, 479 [101].

²¹⁴ Ibid 451–2 [19], 461 [44], 504 [191] (Blanchard J).

²¹⁵ Ibid 451 [19], 461 [48] (Elias CJ), 504 [190] (Blanchard J).

²¹⁶ Ibid 477 [96]. Note also that arbitrary treatment and ‘unreasonable and petty deprivations’ by guards have contributed to the courts’ findings that treatment was cruel and unusual, or ‘punitive’ in nature: *Bacon* (n 208) 121 [292], 131 [319], 135 [336] (McEwan J); *SF* (n 22) 522–3 [120] (Ní Raifeartaigh J).

²¹⁷ Indeed, the UK Supreme Court observed that ‘[t]here do not appear to have been any cases in Strasbourg concerned with the application of article 3 [torture, inhuman and degrading treatment] to the removal from association of detainees aged under 18’: *R (AB)* (n 40) 508 [46] (Lord Reed PSC, Lords Lloyd-Jones, Sales, Hamblen and Stephens J)SC agreeing). In that case,

UN Human Rights Committee in 2003.²¹⁸ In that case, a young Aboriginal male alleged the conditions of his detention in a NSW youth detention centre amounted to cruel, inhuman and degrading treatment, and inhumane treatment when deprived of liberty under the *ICCPR*.²¹⁹ Among the allegations was that he was held in solitary confinement in an isolation cell with continued exposure to artificial light without his clothes or a blanket for two to three days.²²⁰ The UN Human Rights Committee found that his confinement in isolation was 'incompatible with his age, disability and status as an Aboriginal' and amounted to a breach of his right to humane treatment when deprived of liberty.²²¹ The *An Ard-Chúirt* (High Court of Ireland) has also considered the case of children isolated in detention. These children had been separated in a locked room with a mattress but no linen, and limited or no access to visits, phone calls, outdoor exercise or fresh air.²²² The court concluded that the children's constitutional rights were breached because they were deprived of daily exercise and contact with their families during the period of separation.²²³

By international standards, the treatment of children in Queensland's watchhouses would likely be judged 'inhumane' or 'cruel, unusual or degrading'. Indeed, the Childrens Court of Queensland has itself remarked that leaving a child with no stimulation for 20 hours or more a day is 'cruel'.²²⁴ However, in the absence of effective human rights protections, this is of little legal benefit to children in Queensland watchhouses. International law is not binding domestically, and although it should be looked at when interpreting legislation, if there is no ambiguity in the terms of the legislation, or no applicable provisions at all, then international law provides little assistance.²²⁵ The only (quasi-)legal option available to a child complainant alleging a breach of the *ICCPR* or the *CRC* would be to lodge a complaint with the Australian Human Rights Com-

the Supreme Court found that a 15-year-old boy had been unlawfully isolated, but did not conclude that his treatment was cruel and inhuman: at 517–8 [74]–[76] (Lord Reed PSC, Lords Lloyd-Jones, Sales, Hamblen and Stephens JJSC agreeing).

²¹⁸ *Brough v Australia* (n 205) 1.

²¹⁹ *Ibid* 19 [10].

²²⁰ *Ibid* 5 [3.3].

²²¹ *Ibid* 17 [9.1], 18 [9.4]; *ICCPR* (n 188) art 10(1).

²²² *SF* (n 22) 482–3 [32]–[34], 487 [48], 490 [55] (Ní Raifeartaigh J).

²²³ *Ibid* 527–8 [129]–[131] (Ní Raifeartaigh J).

²²⁴ *TA* (n 15) 5 (Fantin DCJ).

²²⁵ *Dietrich v The Queen* (1992) 177 CLR 292, 305 (Mason CJ and McHugh J); *Teoh* (n 194) 286–7 (Mason CJ and Deane J).

mission. However, the most the Commission could do in response would be to attempt conciliation and make recommendations in a written report.²²⁶

2 Domestic Human Rights Law

There is no federal human rights Act in Australia; however, three states and territories, including Queensland, have human rights legislation.²²⁷ All three of those Acts protect the right to humane treatment when deprived of liberty²²⁸ and the right to protection from cruel, inhuman and degrading treatment.²²⁹ Criminalised children also have the benefit of some specific rights that pertain to them: each of the state and territory Acts includes a right of all children to protection,²³⁰ as well as a right to a criminal procedure that ‘takes account of the child’s age and the desirability of promoting the child’s rehabilitation.’²³¹ The Acts also include a section protecting children in the criminal process which states that accused children must be segregated from detained adults and brought to trial as quickly as possible, and that convicted children must be treated in a way that is ‘appropriate’ for the child’s age.²³²

Some adults have successfully relied on domestic human rights law to challenge their placement in solitary confinement.²³³ For example, in the Queensland case of *Owen D’Arcy v Chief Executive, Queensland Corrective Services* and the ACT case of *Davidson v Director-General, Justice and Community Safety*

²²⁶ Section 11(1)(f) of the *Australian Human Rights Commission Act 1986* (Cth) allows the Commission to ‘inquire into any act or practice that may be inconsistent with or contrary to any human right’ and to ‘endeavour’ to resolve it by conciliation. The Commission must prepare a report with recommendations for the Minister if it concludes the act or practice is inconsistent with or contrary to human rights: at ss 20A, 29(1).

²²⁷ Parliamentary Joint Committee on Human Rights, Parliament of Australia, *Inquiry into Australia’s Human Rights Framework* (Report, May 2024) 5 [2.2] <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia’sHumanRightsFramework.pdf>, archived at <<https://perma.cc/F36F-8JY9>>; *Human Rights Act 2004* (ACT) (‘ACT Human Rights Act’); *Qld Human Rights Act* (n 186); *Charter of Human Rights and Responsibilities Act 2006* (Vic) (‘Victorian Charter’).

²²⁸ *Qld Human Rights Act* (n 186) s 30(1); *Victorian Charter* (n 227) s 22(1).

²²⁹ *ACT Human Rights Act* (n 227) s 10; *Qld Human Rights Act* (n 186) s 17(b); *Victorian Charter* (n 227) s 10.

²³⁰ *ACT Human Rights Act* (n 227) s 11(2); *Qld Human Rights Act* (n 186) s 26(2); *Victorian Charter* (n 227) s 17(2).

²³¹ *ACT Human Rights Act* (n 227) s 22(3); *Qld Human Rights Act* (n 186) s 32(3); *Victorian Charter* (n 227) s 25(3).

²³² *ACT Human Rights Act* (n 227); *Qld Human Rights Act* (n 186) s 33(3); *Victorian Charter* (n 227) s 23(3).

²³³ Walsh and Blaber (n 17) 251–4.

Directorate ('*Davidson*'), the Supreme Courts found that proper consideration had not been given to those prisoners' rights when placing them in solitary confinement, particularly their right to humane treatment when deprived of liberty.²³⁴ The ACT Supreme Court remarked in *Davidson* that holding an adult prisoner in their cell for 23 hours a day and denying them open air and exercise constituted a 'failure to treat a detained person with humanity and dignity'.²³⁵ Mr Davidson was held for 63 days with access only to a small exercise yard with four block walls covered by metal mesh; there was no breeze, no sunlight and no exercise equipment provided.²³⁶ The court said that having access to 'open air and an adequate space to exercise' were 'minimum human needs'.²³⁷

In the Victorian case of *Certain Children [No 1]*,²³⁸ human rights arguments were successfully raised in respect of detained children. A group of children brought proceedings against the Victorian government claiming that they had been unlawfully detained in an adult prison, a unit of which had been repurposed as a youth detention facility by order in council.²³⁹ The children, most of whom were on remand, alleged that they had been held in lockdown for at least 20 hours per day and exposed to noisy, cold and frightening conditions with insufficient food, limited education and no family visits.²⁴⁰ In two separate decisions, the Supreme Court of Victoria found that proper consideration had not been given to the children's human rights when the orders in council were made.²⁴¹

The difficulty for children in Queensland watchhouses is that the Queensland Parliament has used its override power²⁴² to declare that the laws authorising children's indefinite detention in watchhouses have effect 'despite being incompatible with human rights'.²⁴³ Therefore, the act of holding a child in a

²³⁴ *Owen D'Arcy* (n 17) 285 [80]–[81] (Martin J); *Davidson* (n 17) 82–3 [414] (Loukas-Karlsson J).

²³⁵ *Davidson* (n 17) 77 [386] (Loukas-Karlsson J).

²³⁶ *Ibid* 6 [8]–[9], 15 [44] (Loukas-Karlsson J).

²³⁷ *Ibid* 78 [386] (Loukas Karlsson J).

²³⁸ (2016) 51 VR 473, 537 [321] (Garde J) ('*Certain Children [No 1]*'); *Certain Children [No 2]* (n 6) 603–4 [569] (Dixon J).

²³⁹ *Certain Children [No 1]* (n 238) 475–6 [1]–[5], 478 [16]–[17] (Garde J).

²⁴⁰ *Ibid* 484–5 [64]–[65], 486 [71], 487 [76] (Garde J).

²⁴¹ *Ibid* 510–1 [202]–[203] (Garde J); *Certain Children [No 2]* (n 6) 590 [515]–[516] (Dixon J).

²⁴² *Qld Human Rights Act* (n 186) s 43(1).

²⁴³ *Qld Youth Justice Act* (n 86) s 56(12); *PPRA* (n 33) s 640(3).

watchhouse until they can be ‘delivered’ to a detention centre cannot be challenged on human rights grounds.²⁴⁴

B Duty of Care

The state and its officers owe a common law duty to exercise reasonable care for the safety of detained persons during detention.²⁴⁵ This duty extends to police officers, corrective services officers and youth detention centre staff.²⁴⁶ However, there is only one published Australian case that has considered breach of duty of care in a youth justice context: *Campbell v Northern Territory* (‘*Campbell*’).²⁴⁷

In that case, an Aboriginal boy was held at Don Dale Youth Detention Centre (‘Don Dale’) instead of being transferred closer to home, to Alice Springs Youth Detention Centre, over Christmas.²⁴⁸ He alleged that this amounted to a breach of duty of care and caused him ‘mental harm.’²⁴⁹ The Court noted that he had no entitlement to ‘be held in the place which he considered more congenial’ and that ‘[h]is entitlement at best was to be held ... in accordance with the law.’²⁵⁰ Whilst the best interests of the child in question was ‘an important matter’, it was ‘not the sole consideration’ of the superintendent when deciding where to hold him.²⁵¹ Given the various operational constraints, including the fact that the Alice Springs Youth Detention Centre was overcrowded at the time, the Court was unable to conclude that there was a breach of duty of care,

²⁴⁴ The effect of the override power is that a child could not argue (under s 58(1) of the *Qld Human Rights Act* (n 186)) that a relevant public entity acted in a way that was not compatible with human rights or failed to give proper consideration to human rights when making a decision to hold them in a watchhouse. It is unclear whether the override would prevent a child from ‘piggy-backing’ human rights arguments onto another claim, such as one in tort or constitutional law, under s 59 of the *Qld Human Rights Act* (n 186).

²⁴⁵ See especially *Howard v Jarvis* (1958) 98 CLR 177, 183 (Dixon CJ, Fullagar and Taylor JJ) (‘*Howard*’); *NSW v Bujdoso* (2005) 227 CLR 1, 14 [46] (Gleeson CJ, Gummow, Kirby, Hayne, Callinan and Heydon JJ) (‘*Bujdoso*’). In *Queensland: Coffey v Queensland* (Supreme Court of Queensland, Henry J, 22 June 2012) 22 [118] (‘*Coffey*’).

²⁴⁶ See Andrew Morrison, ‘The Duty of Care to Prisoners’ [2007] (81) *Precedent* 8, 9–10; Laura Griffin, ‘Sue the Police: The Role of Civil Liability in Addressing Indigenous Harms in Custody’ (2024) 47(2) *University of New South Wales Law Journal* 589, 596; Chris Charles, ‘The Royal Commission into Aboriginal Deaths in Custody and the Duty Owed to Prisoners in South Australia’ (2011) 15(1) *Australian Indigenous Law Review* 110, 112–13.

²⁴⁷ *Campbell* (n 48) 14–15 [13] (White J).

²⁴⁸ *Ibid* 39 [162] (White J).

²⁴⁹ *Ibid* 40 [165]–[166] (White J).

²⁵⁰ *Ibid* 50 [230] (White J).

²⁵¹ *Ibid* 55 [252] (White J).

even though it was reasonably foreseeable that the boy ‘would develop a psychiatric illness’ if he was held at Don Dale.²⁵²

Comments of participants in this study suggest that it is reasonably foreseeable that isolating children in watchhouses could cause them psychiatric harm.²⁵³ Indeed, many participants related incidents of actual harm. Many participants described children who had engaged in self-harm and attempted suicide, and two said they feared that deaths in custody were likely to occur due to inadequate risk assessments and lack of supervision of children in watchhouses. Three participants said they had clients who had been sexually assaulted by other children in a watchhouse, and several others said they knew of children who had been physically assaulted by other children or police officers in a watchhouse.²⁵⁴

Participants in this research were of the view that police officers charged with supervising children in watchhouses were ‘not equipped’ to ‘look after children’.²⁵⁵ Several participants said ‘you’ve got to feel for the police officers’ because ‘they are being put in a situation that is often difficult for them to manage and they’re not trained to manage’.²⁵⁶ Participants said that this made the staff ‘vulnerable’, ‘burdened’, ‘stressed’ and ‘unhappy’ and noted that this created an unsafe situation for children, especially those with serious mental illness or intellectual disability.²⁵⁷ Whilst some said they had witnessed ‘some really beautiful attempts to work with the cohort’, there was general agreement that watchhouse officers are ‘really out of their depth’ and ‘just as frustrated by the system as everyone else’.²⁵⁸

Of course, the civil liability Acts limit the circumstances in which public authorities, including police, prisons and youth detention centres, can be found

²⁵² Ibid 61 [284], 63 [288] (White J).

²⁵³ Indeed, this was the conclusion of the Queensland Ombudsman: *Cairns and Murgon Watch-Houses Inspection Report* (n 9) 50.

²⁵⁴ Media outlets have obtained footage of children being assaulted by police officers in watchhouses: Alexandra Blucher, “‘Jason’ Was Beaten Repeatedly with a Baton in a Watch House: An Investigation Found the Use of Force was “Reasonable””, *ABC News* (online, 10 July 2024) <<https://www.abc.net.au/news/2024-07-10/indigenous-teenager-beaten-brisbane-police-watch-house-cctv/104070840>>, archived at <<https://perma.cc/PY9G-BM6H>>.

²⁵⁵ Participants 2, 5, 11, 12, 15.

²⁵⁶ Participants 8, 10.

²⁵⁷ Participant 1.

²⁵⁸ See Ben Smee, ‘Queensland Police Launch Review after Revelations of “Abominable” Treatment of Children in Watch Houses’, *The Guardian* (online, 6 August 2024) <<https://www.theguardian.com/australia-news/article/2024/aug/06/queensland-police-announce-review-qld-watch-houses-ntwnfb>>, archived at <<https://perma.cc/3AHN-TDVA>>.

to have a duty of care to detained individuals or to have breached that duty.²⁵⁹ In Queensland, s 35(a) of the *Civil Liability Act 2003* (Qld) states that the functions exercised by public authorities are ‘limited by the financial and other resources that are reasonably available’ to them.²⁶⁰ On this basis, it could be argued that the state had no choice but to hold children in watchhouses given the shortage of beds in detention centres. *Campbell* confirms that ‘operational considerations’ such as overcrowding, the obligation to ‘maintain order’ and the need to ‘ensure the safe custody of *all* persons’ will influence a judge’s determination on whether holding a child at a particular facility amounts to a breach of duty of care.²⁶¹ Once a child is in a watchhouse, staff have a duty to exercise reasonable care for their safety.²⁶² However, the duty does not require staff to ‘ensure the health and safety of the applicant, only to exercise reasonable care to that end.’²⁶³ A complainant child alleging a breach of this duty would need to prove that staff did not take reasonable steps to ensure their health and safety. In making such a determination, a court would consider the need to ‘ensure [their] effective detention in accordance with the law.’²⁶⁴ This could justify isolating them from other detainees for their own protection, for example.

C Punitive Detention

Most children in watchhouses are being held on remand — they have not been found guilty of a crime by a court.²⁶⁵ Detention on remand is a form of administrative detention; it is ‘not seen by the law as punitive’ because it has a legitimate non-punitive purpose, that of ensuring the person ‘is available to be dealt with by the courts.’²⁶⁶ But what if children’s detention in watchhouses is disproportionate to the achievement of this legitimate purpose? Could their detention be considered punitive? If so, holding children in watchhouses could offend the

²⁵⁹ See also Griffin (n 246) 599.

²⁶⁰ There are equivalents in the other Acts: see, eg, *Civil Liability Act 2022* (NSW) s 42(a); *Wrongs Act 1958* (Vic) s 83(a).

²⁶¹ *Campbell* (n 48) 53 [246], 61–2 [286]–[287] (White J) (emphasis in original).

²⁶² *Ibid* 51 [234]–[235] (White J).

²⁶³ *Ibid* 51 [235] (White J) (emphasis added).

²⁶⁴ *Ibid*.

²⁶⁵ *Childrens Court Annual Report 2023–24* (n 5) 9 [25]. A substantial proportion of children’s matters will ultimately end in an acquittal (15 per cent) or withdrawal or dismissal of charges (17 per cent): at 20.

²⁶⁶ *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1, 28 (Brennan, Deane and Dawson JJ) (*‘Chu Kheng Lim’*). It is, of course, ‘ordinarily subject to the supervisory jurisdiction of the courts’; courts retain the power to order a person’s release on bail: at 28.

doctrine of the separation of judicial and executive power enshrined in the *Australian Constitution*.²⁶⁷

The ‘right to personal liberty’ is considered ‘the most elementary and important of all common law rights’,²⁶⁸ and is protected ‘jealously’ by the courts.²⁶⁹ Ordinarily, the involuntary detention of a person is an incident of the judicial function of adjudging criminal guilt.²⁷⁰ There is a strict separation of executive and judicial power under the *Australian Constitution*, so judicial functions cannot be vested in the executive.²⁷¹ This means that, ‘putting to one side the exceptional cases’, only judges can order that a person be involuntarily detained.²⁷² Detention of a person is punitive in nature, and ‘the imposition of punishment is a judicial function, not an administrative one.’²⁷³

An exception to this general rule is the detention of an accused person on remand.²⁷⁴ Ensuring that children are available to appear before a court is a legitimate non-punitive purpose which is compatible with the constitutionally prescribed system of government.²⁷⁵ However, courts have insisted that for administrative detention to be lawful, it must be ‘reasonably capable of being seen as necessary’ to achieve its legitimate and non-punitive purpose.²⁷⁶ If ‘it em-

²⁶⁷ Ibid 27–8 (Brennan, Deane and Dawson JJ).

²⁶⁸ *Williams v The Queen* (1986) 161 CLR 278, 292 (Mason and Brennan JJ), quoting *Trobridge v Hardy* (1955) 94 CLR 147, 152 (Fullagar J).

²⁶⁹ Ibid 299 (Mason and Brennan JJ).

²⁷⁰ *Chu Kheng Lim* (n 266) 27 (Brennan, Deane and Dawson JJ); *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137, 153 [28] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ) (‘NZYQ’).

²⁷¹ *Chu Kheng Lim* (n 266) 27 (Brennan, Deane and Dawson JJ). The High Court has determined that these rules apply to state courts because legislation that ‘compromises the institutional integrity of State courts ... affects their capacity to exercise federal jurisdiction invested under Ch III impartially and competently’: see *Fardon v A-G (Qld)* (2004) 223 CLR 575, 598–9 [37] (McHugh J) (‘Fardon’). Furthermore, the separation of powers principle does not rely exclusively on the *Australian Constitution*; ‘[t]hese rules explain a fundamental principle that lies deep in our law’: at 632 [151] (Kirby J).

²⁷² *Chu Kheng Lim* (n 266) 27 (Brennan, Deane and Dawson JJ).

²⁷³ *Re Woolley; Ex parte Applicants M276/2003* (2004) 225 CLR 1, 65 [181] (Kirby J) (‘Re Woolley’).

²⁷⁴ *Chu Kheng Lim* (n 266) 28 (Brennan, Deane and Dawson JJ).

²⁷⁵ *NZYQ* (n 270) 157 [40] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ).

²⁷⁶ *Chu Kheng Lim* (n 266) 33 (Brennan, Deane and Dawson JJ). See also *NZYQ* (n 270) 157 [39] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ); *Re Woolley* (n 273) 14 [25] (Gleeson CJ); *Fardon* (n 271) 653–4 [215] (Callinan and Heydon JJ), quoting *Kruger v Commonwealth* (1997) 190 CLR 1, 162 (Gummow J) (‘Kruger’).

plays means that are disproportionate to its legitimate purpose, the detention may be 'treated as punitive'.²⁷⁷

By way of example, the High Court recently held in the case of *NZYQ v Minister for Immigration* ('NZYQ') that detaining a non-citizen for the purpose of processing their immigration application or removing them from the country was a legitimate non-punitive purpose.²⁷⁸ However, once a detainee's claim had been processed and there was no real prospect of them being removed from the country, it could no longer be said that their detention was 'reasonably capable of being seen to be necessary to effectuate an identified statutory purpose'.²⁷⁹ Furthermore, the High Court noted that the purpose of administrative detention, 'in order to be legitimate, must be something distinct from detention itself'.²⁸⁰ In *NZYQ*, the Court remarked that 'separation from the Australian community' would be an impermissible purpose because it 'conflates detention with the purpose of detention'.²⁸¹

It could be argued that detaining children in isolation for lengthy periods of time in harsh conditions is similarly 'disproportionate' to,²⁸² or not reasonably capable of being seen as necessary for, the achievement of a legitimate non-punitive purpose. It is not necessary to subject children to solitary confinement in a watchhouse to ensure they appear before a court. Judges and magistrates have observed that children in watchhouses have 'suffered harm' as a result of the conditions under which they are being held.²⁸³ Indeed, some have observed that children in watchhouses are treated 'like animals'.²⁸⁴ In *Re Woolley; Ex parte Applicants M276/2003*, Gummow J remarked that whilst 'harsh, inhumane and degrading conditions' of detention do not in themselves render detention unlawful, such conditions could 'indicate that the purpose of that detention went beyond the range of purposes that are permissible, consistently with Ch III'.²⁸⁵

²⁷⁷ See Edelman J's approach in *NZYQ* (n 270) 161 [52] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ).

²⁷⁸ *Ibid* 154–5 [31], 158–9 [46] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ).

²⁷⁹ *Ibid* 157 [41], 158–9 [46] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ). See also *Fardon* (n 271) 653–4 [215] (Callinan and Heydon JJ), quoting Kruger (n 276) 162 (Gummow J).

²⁸⁰ *NZYQ* (n 270) 159 [49] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ).

²⁸¹ *Ibid*.

²⁸² *Ibid* 161 [52] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ).

²⁸³ *TA* (n 15) 5 (Fantin DCJ).

²⁸⁴ *Ibid* 4 (Fantin DCJ).

²⁸⁵ *Re Woolley* (n 273) 61 [167] (Gummow J). Recall, again, that these principles are applicable to the states: see above n 271.

Furthermore, within the parliamentary debates, there is some evidence that the legislative purpose for holding children in watchhouses may actually be a punitive one. When debating the amendment that authorised the indefinite detention of remanded children in watchhouses,²⁸⁶ one member of the Queensland government stated: '[the members of my electorate] want them to be held responsible and put in custody. They really could not give one iota about where they are as long as they are off the streets and our community is safe.'²⁸⁷ Another government member remarked:

For every child sitting in the Brisbane watchhouse right now — as confronting and as uncomfortable as that is — there is a victim of crime, most likely a victim of violent and personal crime, connected to that story ... [do not] ask me to forget about what these young people did to end up where they are today.²⁸⁸

Yet another Member of Parliament said: it is 'practically impossible to protect the community whilst allowing offenders to return to the streets ... I say that what we do is lock them up'.²⁸⁹ These comments ignore the fact that children on remand have not been found guilty of an offence.²⁹⁰ They tend to suggest that the purpose of the amendment was actually punitive in nature. They also impermissibly conflate detention with the purpose of detention.

Regardless of the legislative intention these comments seem to belie, once a child's detention is no longer consistent with the achievement of a legitimate non-punitive purpose a writ of habeas corpus should be issued, as it was in *NZYQ*.²⁹¹ This is so regardless of any operational issues that have contributed to their unlawful detention. The High Court noted in *NZYQ* that '[w]hilst considerations of ... administrative convenience are appropriately treated as considerations having weight', they are not determinative.²⁹² Officers undoubtedly 'serve the community in very difficult circumstances', but it is well-accepted

²⁸⁶ *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld).

²⁸⁷ Queensland, *Parliamentary Debates*, Legislative Assembly, 24 August 2023, 2445 (Aaron Harper).

²⁸⁸ *Ibid* 2438–9 (Jonty Bush).

²⁸⁹ Queensland, *Parliamentary Debates*, Legislative Assembly, 23 August 2023, 2356 (James Lister).

²⁹⁰ Indeed, the then Member for Thuringowa referred to children in watchhouses as 'criminals': Queensland, *Parliamentary Debates*, Legislative Assembly, 23 August 2023, 2339 (Aaron Harper). He was reminded by another Member of Parliament that '[w]e are talking about kids who are being remanded, kids who have not been found guilty': at 2339 (Michael Berkman).

²⁹¹ *NZYQ* (n 270) 168 [74] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ).

²⁹² *Ibid* 156 [36] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ).

that ‘the courts may intervene when the actions of prison authorities are unlawful and beyond power’.²⁹³

VI CONCLUSION

Solitary confinement is harmful to adults²⁹⁴ and it is likely to do even greater harm to children. Research suggests it can cause or exacerbate mental illness and adversely affect children’s physical and social development,²⁹⁵ perhaps irreparably.²⁹⁶ Detaining children in ‘inhumane’ conditions has been justified by operational issues such as ‘inadequate infrastructure’ and staff shortages.²⁹⁷ However, isolation is associated with higher levels of aggression, hostility and self-harm, so it does not curb violence or promote good order.²⁹⁸

Participants in this study said that children in Queensland’s watchhouses are being held in solitary confinement. Although the conditions of their confinement vary, some children in watchhouses experience complete sensory and social deprivation, inadequate nutrition and no exercise. In other jurisdictions,

²⁹³ VYZ (n 69) 33 [73], 36 [81] (Tottle J).

²⁹⁴ Sharon Shalev, *A Sourcebook on Solitary Confinement* (Sourcebook, October 2008) 9–10 <<http://eprints.lse.ac.uk/24557/1/SolitaryConfinementSourcebookPrint.pdf>>, archived at <<https://perma.cc/WZ4P-6VKB>>; Stuart Grassian, ‘Psychiatric Effects of Solitary Confinement’ (2006) 22(1) *Washington University Journal of Law and Policy* 325, 332–3; Craig Haney, ‘Prison Effects in the Age of Mass Incarceration’ (2012) 92(3) *The Prison Journal* 1, 11.

²⁹⁵ *Growing Up Locked Down* (n 56) 23–4, 37–47; Jane Lindahl et al, ‘Adverse Psychiatric and Health Impacts of Restrictive Housing for Adolescents in Juvenile Correctional Settings’ (2022) 61(1) *Journal of the American Academy of Child and Adolescent Psychiatry* 23, 23; Mikah Owen and Jeffrey Goldhagen, ‘Children and Solitary Confinement: A Call to Action’ (2020) 137(5) *Pediatrics* 1, 2; Carly B Dierkhising, Andrea Lane and Misaki N Natsuaki, ‘Victims behind Bars: A Preliminary Study of Abuse during Juvenile Incarceration and Post-Release Social and Economic Functioning’ (2014) 20(2) *Psychology, Public Policy and Law* 181, 186; Burrell and Song, ‘Ending Youth Solitary in California’ (n 75) 49; Simkins, Beyer and Geis (n 196) 257–61; Ford (n 58) 959–60; *Behind the Door* (n 25) 19; Lee (n 56) 853–4; Jennifer Lutz, Jason Szanyi and Mark Soler, ‘Stop Solitary for Kids: The Path Forward To End Solitary Confinement of Children’ in *Protecting Children against Torture in Detention: Global Solutions for a Global Problem* (American University Washington College of Law, 2017) 165, 167.

²⁹⁶ Coler (n 56) 103; Nada L Stotland, ‘Incarcerated Juveniles Belong in Juvenile Facilities’ (News Release 09–12, American Psychiatric Association, 27 February 2009) <https://stopsolitaryforkids.org/uploads/digital-library/resource_1050.pdf>, archived at <<https://perma.cc/4VVH-Z5DP>>; *Disability Royal Commission* (n 21) 107.

²⁹⁷ CRU (n 32) 265–6 [9] (Tottle J); VYZ (n 69) 40–1 [88] (Tottle J); R v SEG (n 15) 22 [78] (Morrison and Bond JJA and Brown J); *Reducing Serious Youth Crime* (n 68) 3–4.

²⁹⁸ Lee (n 56) 858; Jack Merritt, ‘Is There a GOoD Justification for the Segregation of Young People?’ (2018) 236 *Prison Service Journal* 1, 28–30.

this would be considered cruel, inhuman and degrading treatment, and therefore unlawful.²⁹⁹ In any other setting, it would be considered child abuse.³⁰⁰

Children in custody are amongst the most vulnerable children in our communities: most have been assessed as in need of protection by child safety services, many have experienced homelessness and many have disabilities.³⁰¹ Most children in watchhouses have not been found guilty of a crime; indeed, some will be acquitted or have their charges withdrawn.³⁰² Whilst there are no effective remedies available to these children under human rights law, they are owed a duty of care by the state.³⁰³ Furthermore, they can only be lawfully held in administrative detention if this is reasonably capable of being seen as necessary for the achievement of a legitimate non-punitive purpose.³⁰⁴ Holding children in harsh, inhumane and degrading conditions could indicate that they are being held for an impermissible, punitive purpose, offending the doctrine of the separation of powers.³⁰⁵

It is not naïve to recommend that solitary confinement be prohibited for children. Such have been the calls of Australian advocates, consistent with the recommendations of international human rights agencies.³⁰⁶ Several jurisdictions in the United States have prohibited solitary confinement of children, including the District of Columbia, the Commonwealth of Massachusetts and the State of New York.³⁰⁷ Yet participants in this research expressed feelings of hopelessness, despair and depression, and predicted that increasingly punitive

²⁹⁹ *Reddock* (n 208) 70 [286] (Perell J); *Bacon* (n 208) 143 [316] (McEwan J); *McCann* (n 209) 605 (Heald J); *Mathew* (n 206) 38 [199]; *Rzakhanov* (n 207) 21 [76].

³⁰⁰ *Clark* (n 196) 355. See also *Janes* (n 196) 47; *Simkins, Beyer and Geis* (n 196) 251.

³⁰¹ Department of Youth Justice (Qld), *Youth Justice Pocket Stats 2023–2024* (Statistics, 31 July 2024) <<https://www.youthjustice.qld.gov.au/our-department/data>>, archived at <<https://perma.cc/T7U2-69GG>>; *McMillan and Davis* (n 89) 214.

³⁰² *Childrens Court Annual Report 2023–24* (n 5) 46.

³⁰³ See especially *Howard* (n 245) 183 (Dixon CJ, Fullagar and Taylor JJ); *Bujdoso* (n 245) 14 [46] (Gleeson CJ, Gummow, Kirby, Hayne, Callinan and Heydon JJ). In Queensland: *Coffey* (n 245) 22 [118] (Henry J).

³⁰⁴ *Chu Kheng Lim* (n 266) 33 (Brennan, Deane and Dawson JJ); *NZYQ* (n 270) 157 [39] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ).

³⁰⁵ *Re Woolley* (n 273) 61 [167] (Gummow J).

³⁰⁶ *ANZCCGA Joint Statement* (n 20).

³⁰⁷ DC Code § 24–912(a) (2025); Mass Gen Laws ch 120 § 10B (2025); NY Corrections Law § 137 (McKinney 2025). See also ‘The Use of Solitary Confinement on Youth’, National Conference of State Legislatures (Web Page, 30 April 2025) <<https://www.ncsl.org/civil-and-criminal-justice/the-use-of-solitary-confinement-on-youth>>, archived at <<https://perma.cc/F48K-2A5H>>; *Gallagher* (n 23) 262–3; *Lee* (n 56) 848.

youth justice laws would be passed.³⁰⁸ With this in mind, they recommended, at the very least, that minimum standards be legislated for children in watchhouses. They said that the legal protections that apply to children in detention centres should extend to children in watchhouses, and that the treatment of children in watchhouses should comply with child protection laws. They were ‘appalled’ and ‘distressed’ at what they saw, and felt that Australia should be ‘ashamed.’³⁰⁹ As a researcher, and a parent, I found their stories to be profoundly disturbing. As a lawyer, and a teacher, I am hopeful that whilst the law has created this problem, it may also hold the solution.

³⁰⁸ Breach of bail was reinstated as an offence in March 2023: Strengthening Community Safety Act 2023 (Qld) s 5, amending *Bail Act 1980* (Qld) s 29. The Liberal–National Coalition government’s ‘Adult Time, Adult Crime’ laws were passed in December 2024: see *Making Queensland Safer Act 2024* (Qld).

³⁰⁹ Participants 13, 17, 18.