Yuwaya Ngarra-li Research Report

Has criminal justice contact for young people in Walgett changed over time? Analysis of diversions, charges, court and custody outcomes 2016-2021

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Executive Summary

Reducing Aboriginal young people's contact with police and the youth justice system is a core priority for the Yuwaya Ngarra-li partnership. In March 2018, Yuwaya Ngarra-li held a Youth Justice Forum in Walgett, and the ideas for local evidence-based strategies to address the problems identified at the Forum were developed into an Action Plan for Children and Young People through collaboration with Aboriginal children and young people, key stakeholders and agency representatives. One of the goals of the Action Plan was that less than 10 percent of Aboriginal children and young people aged 10-17 from Walgett are appearing in the Children's Court (excluding appearances related to diversion).

Since 2018, Yuwaya Ngarra-li has developed its Youth Diversion Demonstration Model, known as *Baulaarr Bagay Warruwi Burranba-li-gu* (Gamilaraay), which translates to 'Two River Pathway to Change'. The model has 3 strategies:

1. Influence the practices and services and improve the accountability of responsible agencies to support better outcomes for Aboriginal children and young people
2. Support engagement and leadership by Aboriginal Community Controlled Organisations, parents and carers to support better outcomes for Aboriginal children and young people
3. Work intensively with Aboriginal children and young people in Walgett to increase their rates of belonging, safety and wellbeing and reduce or prevent ongoing contact with the criminal justice system

This Research Report is the first part of Yuwaya Ngarra-li's evaluation of youth justice outcomes in Walgett and how these have changed since 2018. Yuwaya Ngarra-li's Research and Evaluation team applied to the Bureau of Crime Statistics and Research (BOCSAR) to access the data on diversions, court finalisations and youth custody data for young people either residing in Walgett or appearing in court in Walgett, from 2016 to 2021 inclusive. The paper investigates:

- Diversions under the *Young Offenders Act*[1] (YOA; caution, warning or Youth Justice Conference)
- Charges
- Finalised court appearances
- Differences by Aboriginality, gender and age
- Differences by court, postcode of residence and plea type
- Court outcomes
- Youth custody episodes

[1] https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1997-054

The findings show:

- Most youth contact with the justice system in Walgett was for Aboriginal young people
- Following decreasing diversions from 2016 to 2018, there were overall increases in diversions in 2019 and 2020 but decreases again in 2021
- Increased diversions since 2018 for young Aboriginal women while diversions for young Aboriginal men remained fairly stable from 2018 to 2020 then fell substantially in 2021
- Decreased use of Youth Justice Conferencing (YJC) in 2020 and 2021. In 2021, only around 1 in 10 diversions were youth justice conferences, compared to 1 in 4 in 2017 to 2019
- More referrals to YJC from the courts than from police
- Police issuing more cautions than warnings
- Overall reductions in charges and court cases since 2018 (taking into consideration lag time from charge to court finalisation)
- A lot of non-violent offences (public order offences, property damage and theft) are being finalised in the Children's Court rather than receiving a diversion by police
- Longer court delays (time from first to final appearance) in Walgett, Bourke and Tamworth compared to other courts
- Overall since 2019, increased proportions of charges found not guilty in court or withdrawn
- Following increases from 2016 to 2019, decreased numbers of youth custody episodes since 2019
- Most custody episodes are remand (not sentenced)

Despite some improvements, the findings reveal further work that is needed to build on that progress and embed systemic change.

In addition to Yuwaya Ngarra-li's work since 2018, there have been a number of other factors that may have contributed to the above findings including:

- Local police leadership change
- Impact of the COVID-19 on institutional practice:
    - Court delays
    - Delays to finalisation of Youth Justice Conferences
    - Increase in fines

These external influences are elaborated further in the final discussion section of this report. The discussion also considers the opportunities for action and advocacy based on the findings and current context.

Access to further data, including diversions under the YOA and issuing of fines to young people, is being sought from Walgett Police to provide further evidence and will be analysed in 2022. Details of the BOCSAR data received and analysed to date are discussed below.

BOCSAR data

The Reoffending Database (ROD) of the NSW Bureau of Crime Statistics and Research (BOCSAR) contains unit record data (i.e., individual records) about finalised legal actions within the NSW criminal justice system (e.g., finalised criminal court appearances, juvenile warnings and cautions, youth justice conferences, custody entries and exits). To undertake detailed analysis of trends and changes over time in diversions, charges, court appearances and youth custody episodes for young people in Walgett, Yuwaya Ngarra-li's Research and Evaluation team requested deidentified unit record data for young people who either lived in Walgett at the time of their alleged offence (based on their postcode of residence) or appeared in court in Walgett, from 2016 to 2021.

Preliminary data for court finalisations data from January 2016 to October 2021 were analysed and presented in a previous Briefing Paper (BOCSAR court data, 2021). Further court data have since been provided by BOCSAR to December 2021. We have also now received finalised diversions and youth custody data.

These data have been analysed used to evaluate whether there has been a:

- Change in diversions issued to young Walgett residents
- Reduction in young people in Walgett charged with an offence
- Reduction in young people in Walgett appearing in the Children's Court
- Change in court outcomes for Walgett young people
- Change in youth custody episodes/time in custody

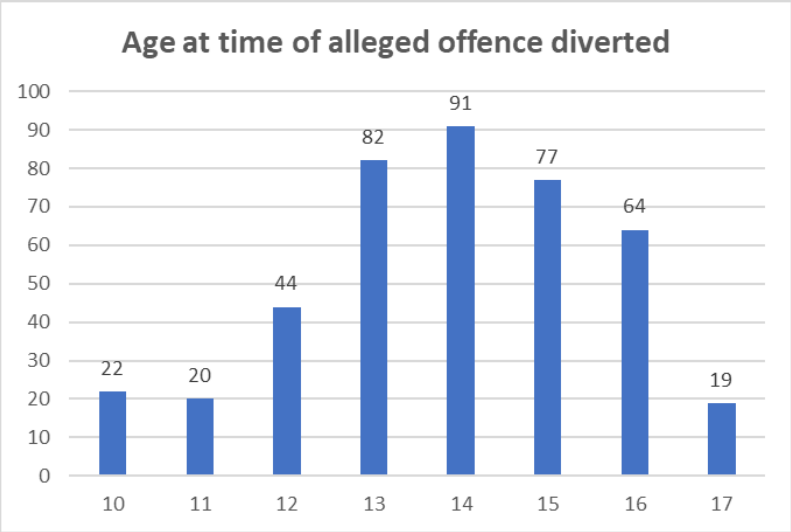
Throughout the report, cross tabulations and graphs with numbers between 1 and 5 are reported as "<5" to ensure confidentiality.

Diversions

Finalised diversions by age

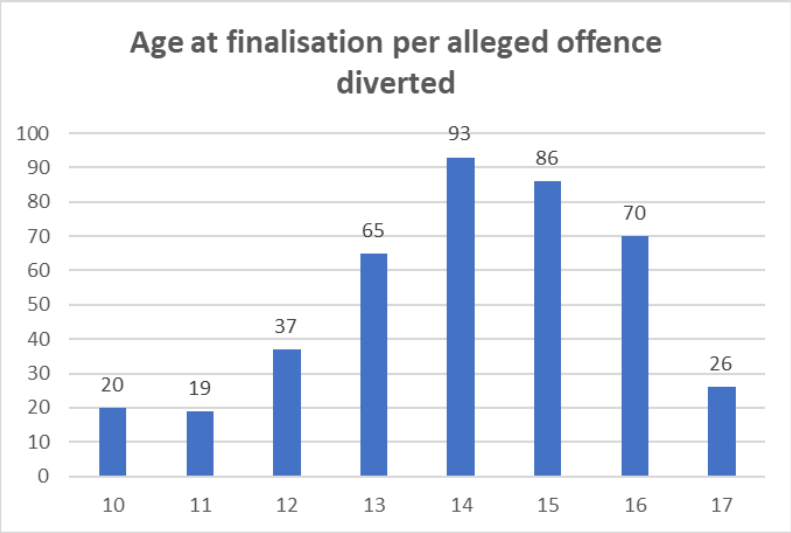
The diversions data are for young people, aged 10 to 17 residing in Walgett at the time of the alleged offence(s), who have a finalised diversion under the YOA (warning, caution or youth justice conference) from January 2016 to December 2021 inclusive.

Overall, between January 2016 and December 2021, there were 285 finalised diversions for 419 alleged offences for 140 young people from Walgett (postcode). The age at time of alleged offence ranges from 10 to 17, with more occurring at age 14 than at other ages, as shown in the graph below:

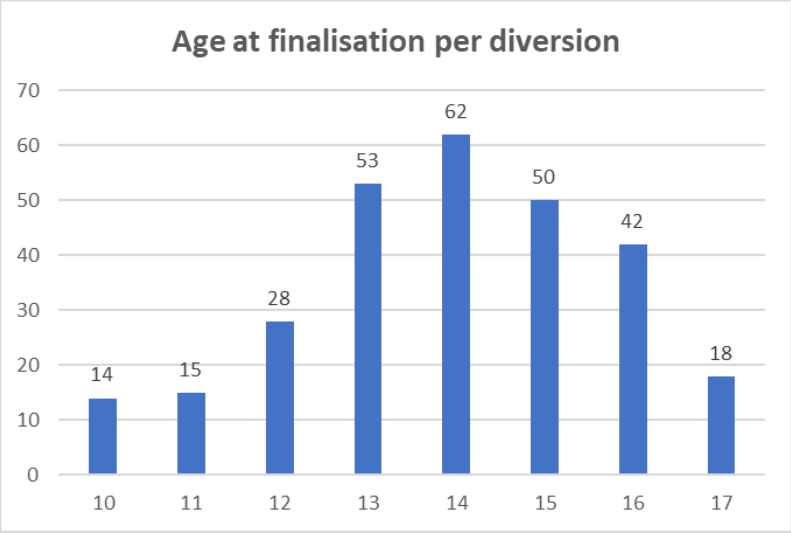


The average time from alleged offence to finalised diversion was 97 days (median 50 days, range from 0 to 1380 days),[2] with 97% of diversions finalised within a year of the offence. Of the 419 alleged juvenile offences that were diverted under the YOA, a small number were adults by the time the diversion was finalised (excluded from graph below).

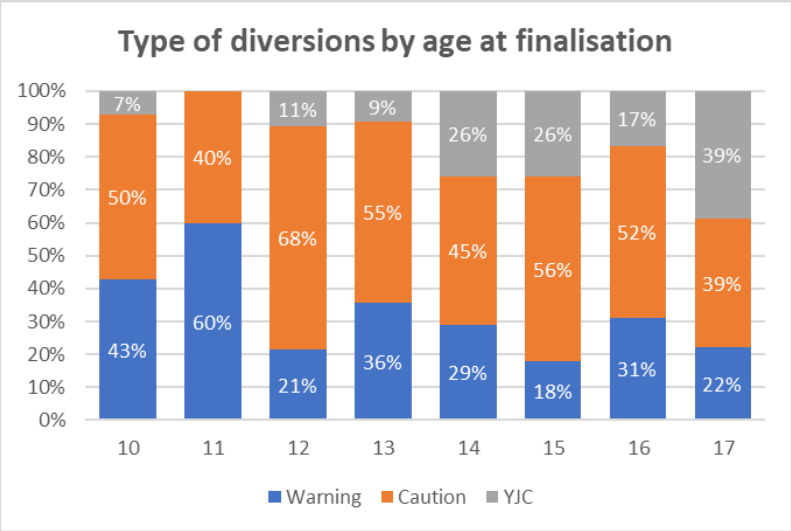
[2] This excludes 2 diverted offences where the finalisation date is before the alleged offence date indicating an error in the data



Looking at the data per finalised diversion (as opposed to per offence), the pattern is the same as above. A small number of diversions where the young people were adults by the time the diversion was finalised are excluded from the graph below.



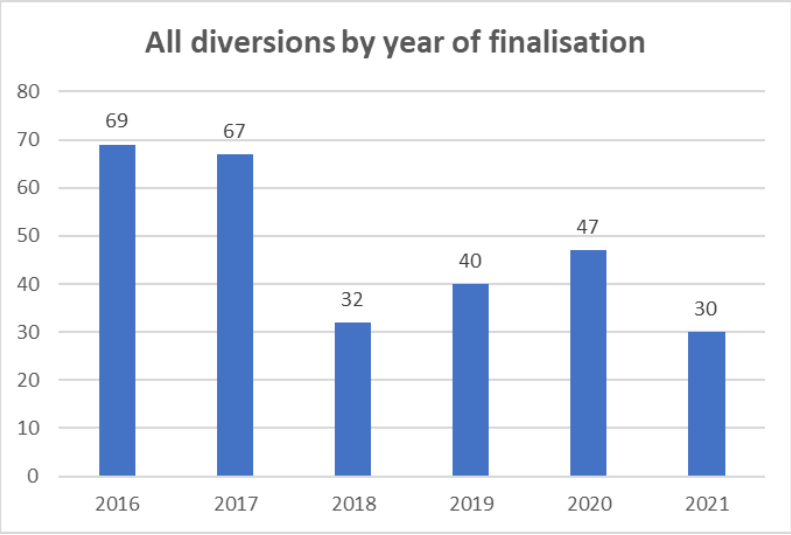
The graph below shows the types of youth diversions, as a percentage of all finalised diversions by age at finalisation. Overall, cautions are the most likely type of diversion (orange shading). The youngest ages (10 and 11 year-olds) are more likely to be issued a warning (blue shading) than other ages and youth justice conferences (grey shading) are more likely for young people aged between 14 and 17 than those under 14.



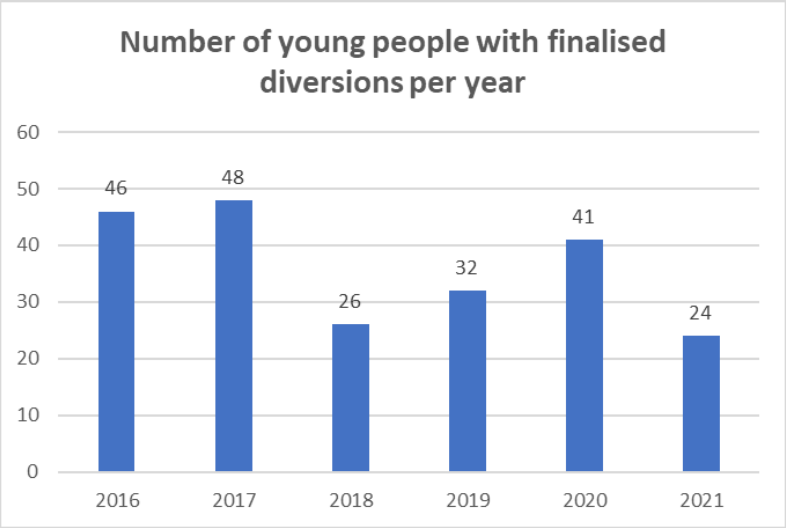
Finalised diversions over time

The graph below shows the overall number of finalised diversions under the YOA per year, including young people who were adults by the time the diversion was finalised.

The number of diversions halved in 2018 compared to the previous two years, then increased from 32 in 2018, to 40 in 2019, 47 in 2020 and fell again to 30 in 2021.



The pattern is similar when we look at the number of individuals with finalised diversions each year (as opposed to the number of diversions). Note that the numbers add to more than 140 (the total number of young people with finalised diversions) because some young people received diversions in multiple years.

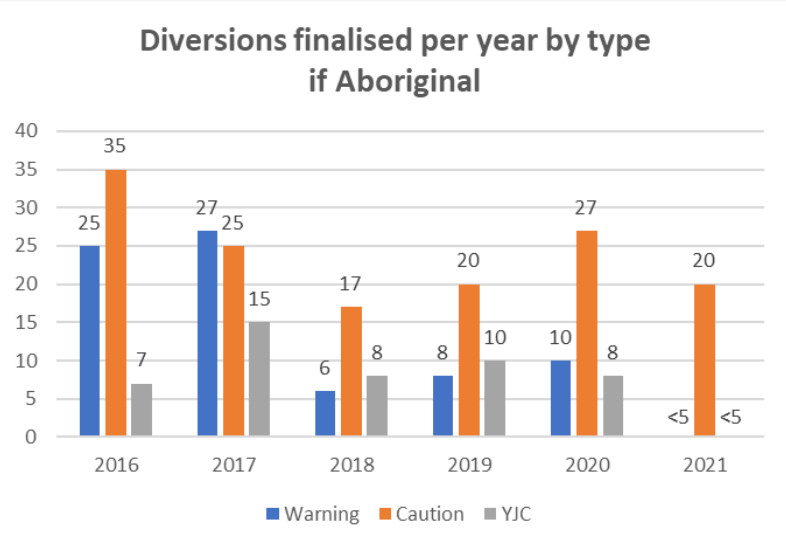


The data includes whether the young person was ever identified as being Aboriginal. Of the 285 finalised diversions, 275 were for Aboriginal young people, 10 were for non-Aboriginal/unknown young people. The remaining analysis of finalised diversions focuses on the 275 finalised diversions for Aboriginal young people.

Finalised diversions for Aboriginal young people over time

Differences by diversion type

The graph below splits diversions per year by type. The pattern from 2017 to 2021 is the same for warnings and cautions which decreased from 2017 to 2018, then gradually increased in 2019 and 2020 and fell again in 2021. In 2017, 2018 and 2019 approximately 1 in 4 diversions were youth justice conferences (YJCs). YJCs decreased in 2020 and 2021. In 2021 the majority of diversions were cautions, only around 1 in 10 diversions were YJCs.

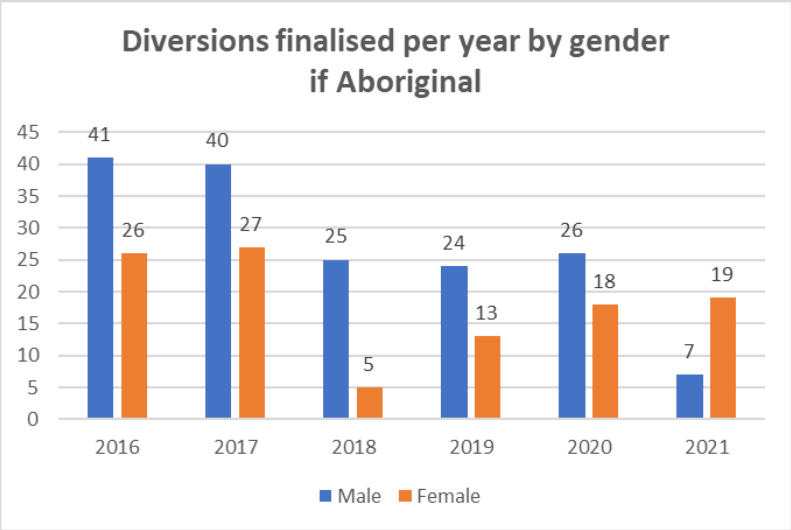


Referral to youth justice conferences can be made by the police or by the courts. The following table breaks down finalised youth justice conferences for Aboriginal young people by referral and year of finalisation. In most years, more finalised youth justice conferences were referred by the courts than the police. Ideally, referrals to youth justice conferencing should be issued by the police, to avoid the young person appearing unnecessary in court. However, only in 2020 were the majority of finalised youth justice conferences referred by the police.

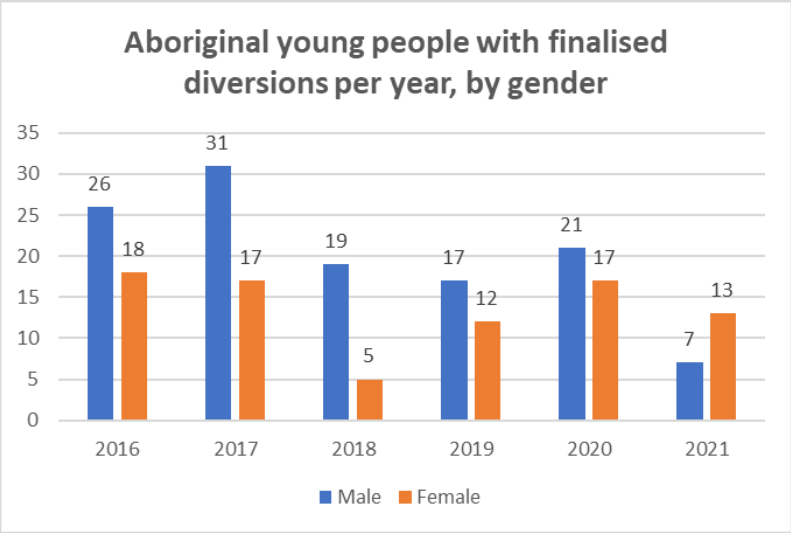
YJC finalisation year	Court referral	Police referral
2016	6	1
2017	12	3
2018	4	4
2019	6	4
2020	3	5
2021	2	1

Gender differences

When the data are broken down by gender, we see a greater reduction in finalised diversions from 2017 to 2018 for young Aboriginal females than males, but an increase for females in 2019 and each year thereafter. In contrast, the number of diversions for male Aboriginal young people remained fairly stable (between 24 and 26) each year from 2018 to 2020, then decreased substantially in 2021 to only 7 diversions.

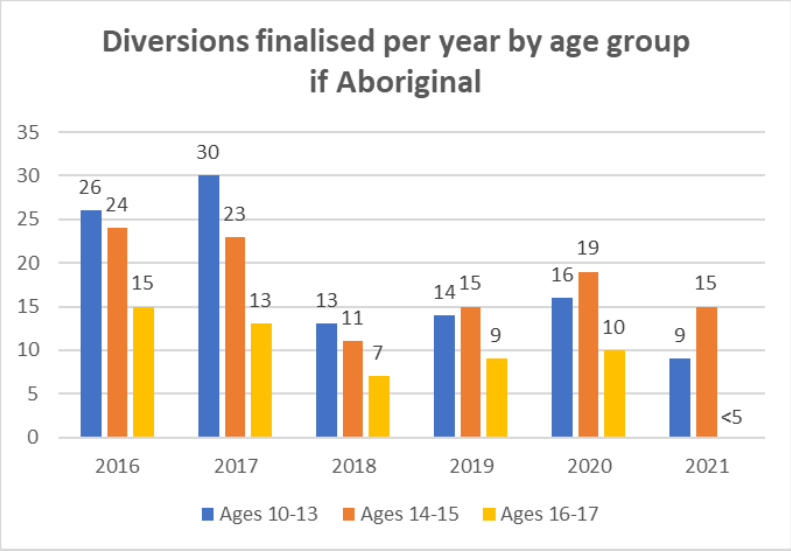


The pattern is similar when counting at the number of individuals with finalised diversions each year, as opposed to counting the number of diversions.

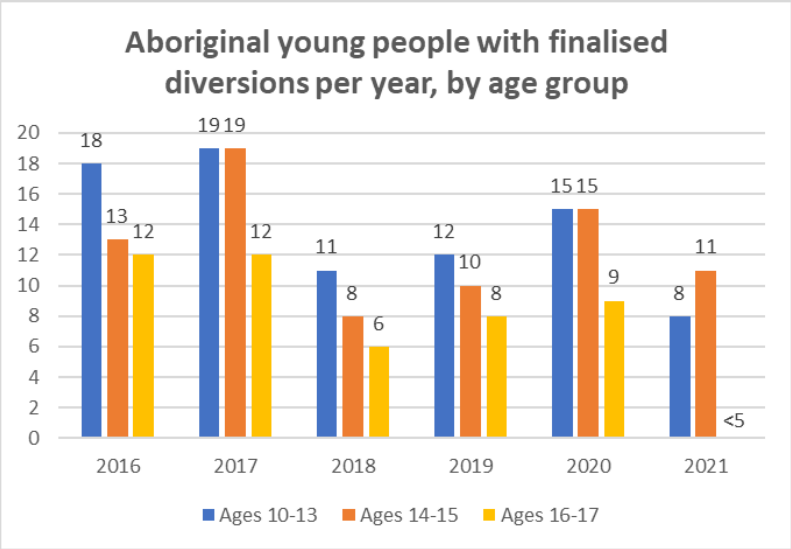


Differences by age group

The graph below shows the breakdown of finalised diversions over time by age group at the time of finalisation (excluding those who were 18+). The pattern is the same for each age group, with diversions decreasing from 2017 to 2018, then increasing in 2019 and 2020 and falling again in 2021. From 2016 to 2018, 10-13 year-olds received more diversions than other age groups. From 2019 to 2021 14-15 year-olds received more diversions than other age groups.



The overall pattern is similar when looking at the number of individuals with finalised diversions each year, by age group. The number of individuals with diversions in each age group decreases from 2017 to 2018, then increases in 2019 and 2020 and falls again in 2021.



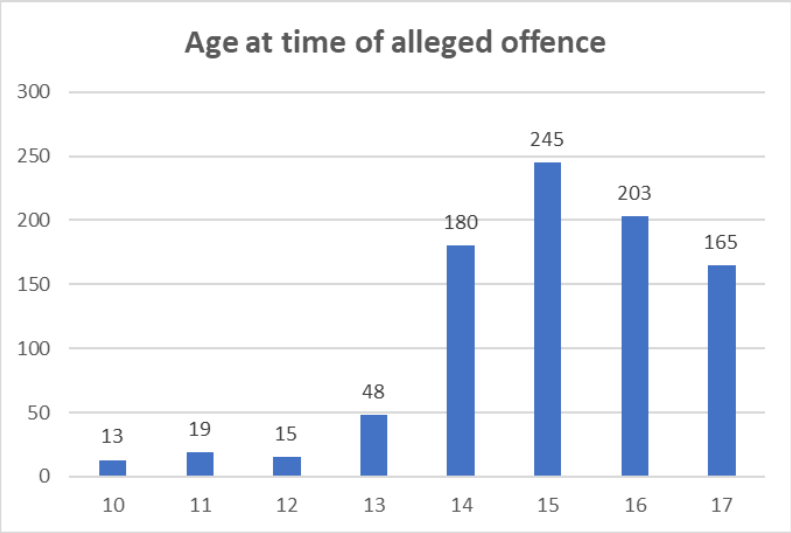
Patterns in diversions cannot be interpreted independently from patterns in charges. These are compared at the end of the next section.

Charges

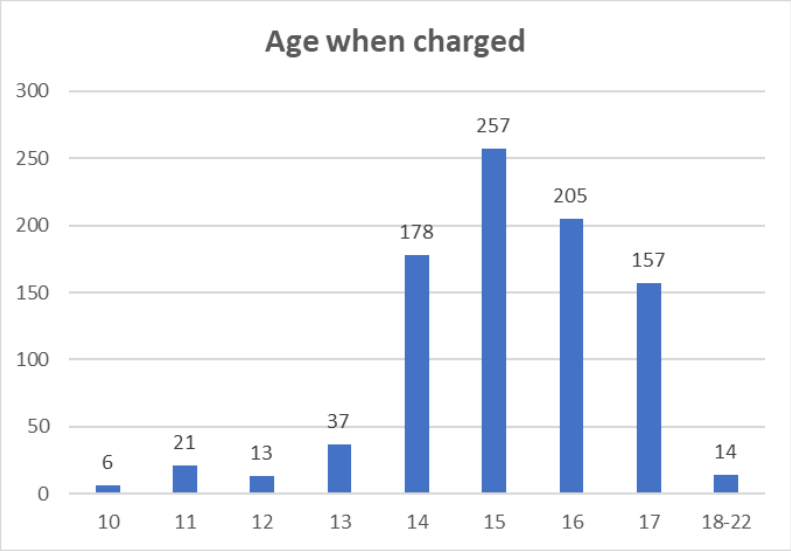
Finalised charges by age

The court data are for young people in Walgett, aged 10 to 17 at the time of alleged offence, who were charged by the police and have a finalised court appearance from January 2016 to December 2021 inclusive. The cohort includes young people who had a Walgett postcode at the time of the alleged offence or who appeared in court in Walgett.

Overall, there were 202 finalised court cases between January 2016 and December 2021 for 888 alleged offences charged, for 99 Walgett young people. The age at time of alleged offence ranges from 10 to 17, with more occurring at age 15 than at other ages, as shown in the graph below:

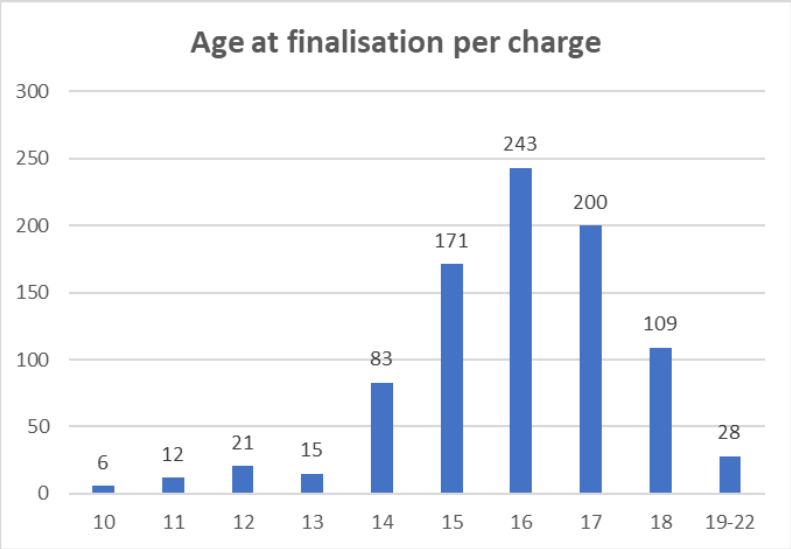


Of the 888 alleged juvenile offences, 14 were adults by the time they were charged (see graph below). The average time from alleged offence to charge was 44 days (median 1 day, range 0 to 2959 days).[3]



Due to the delay from alleged offence to court finalisation, for 137 of the 888 charges (15%) the alleged juvenile offenders were adults by the time the matter was finalised in court.

[3] Excludes 16 charges where the charge date is before the offence date indicating an error in the data.



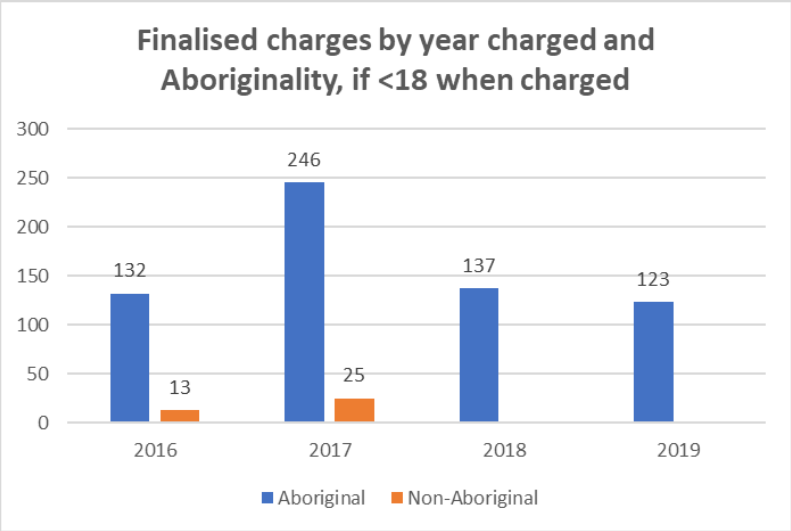
Charges over time

Because the court data only include finalised matters, and most charges are finalised within two years, we can only reliably report on the number of charges per year up to and including 2019. Charges in 2020 and 2021 are not likely to be fully observed in the court data and are therefore omitted from this analysis. Also, the charges reflected in the BOCSAR data are not limited to those made by Walgett Police.

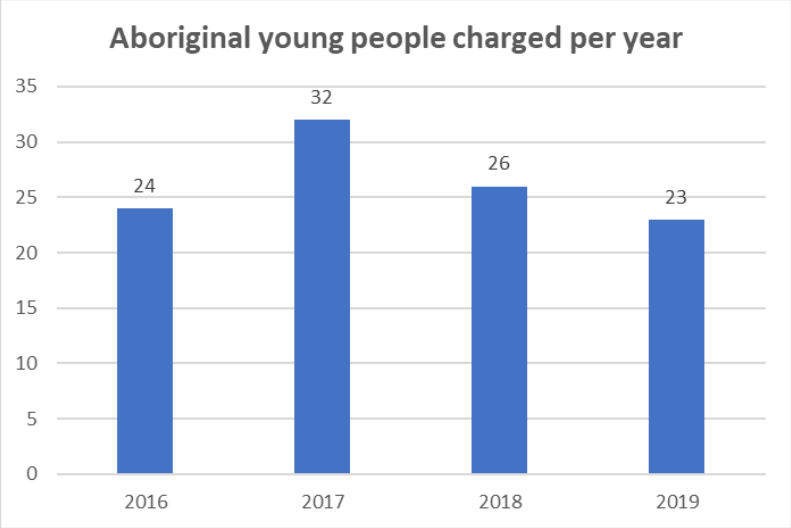
We are awaiting data from the Police which will enable us to analyse charges by Walgett Police specifically, from 2016 to 2021 inclusive. In the meantime, the data presented in this section of the report are a good indication of whether there have been any improvements from 2018.

The graph below shows the overall number of charges, by Aboriginality for young people who were under 18 at the time of the charge. The findings are presented based on charge date.

Most juvenile charges were for Aboriginal young people. The number of charges increased substantially from 2016 to 2017 then decreased from 2018. Overall, in 2016 and 2017 there were 416 charges issued to young people, which reduced to 260 in total in 2018 and 2019. In 2018 and 2019 no non-Aboriginal young people were charged, while for Aboriginal young people the number of charges dropped from 246 in 2017 to 137 in 2018 and decreased further to 123 in 2019.



The graph below shows the number of Aboriginal young people charged each year, as opposed to the total number of charges.

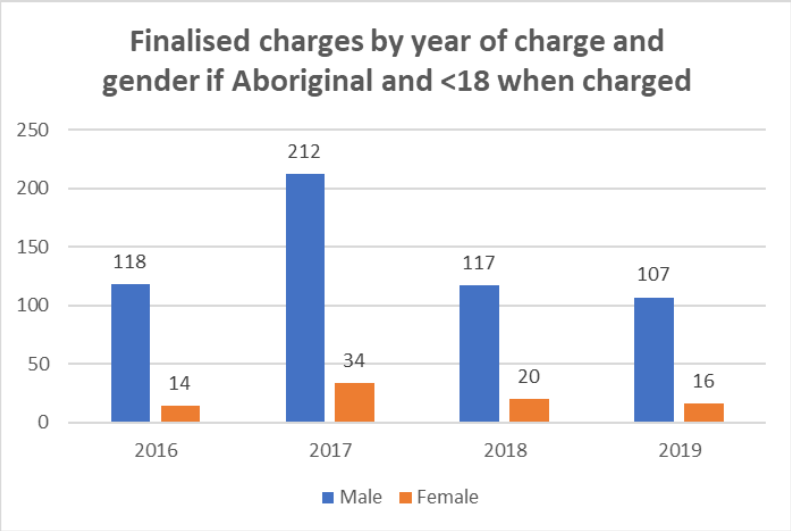


Comparing the number of charges with the number of individuals (in the two graphs above) shows that the average number of charges per Aboriginal young person was 5.5 in 2016, increased to 7.7 in 2017, and fell to 5.3 in 2018 and 2019.

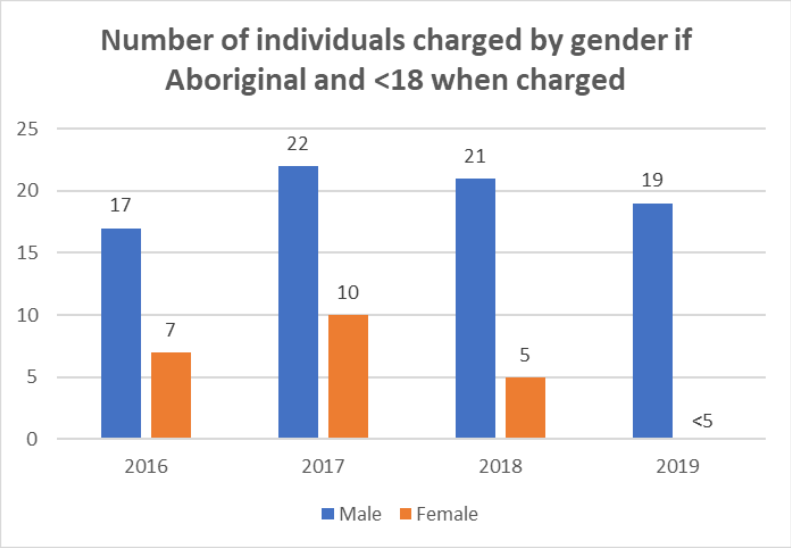
Charges for Aboriginal young people over time

Gender differences

When the data are broken down by gender, we see a similar pattern for charges issued to male and female Aboriginal young people, with both increasing prior to 2018 and decreasing in 2018 and 2019.



When looking at the number of individuals charged per year by gender, the decrease from 2017 to 2018 for males is far smaller. This shows that the number of charges per male young person fell more than the number of people being charged.

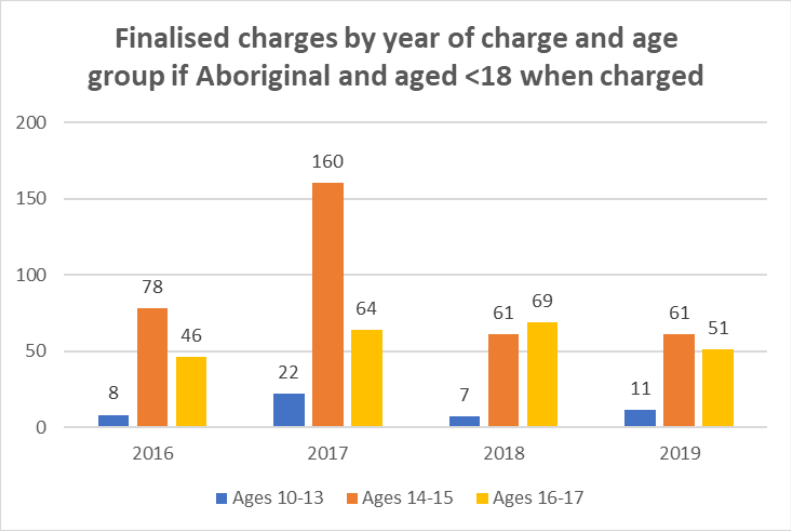


Comparing the number of charges with the number of individuals (in the two graphs above) shows that the average number of charges per male young person was 6.9 in 2016, increased to 9.6 in 2017, and fell to 5.6 in 2018 and 2019. The average number of charges per female young person was lower than for males each year.

Despite the number of females charged having decreased since 2017, the average number of charges increased per person. The average number of charges per female charged was 2.0 in 2016, increased to 3.4 in 2017 and increased to around 4 in 2018 and 2019.

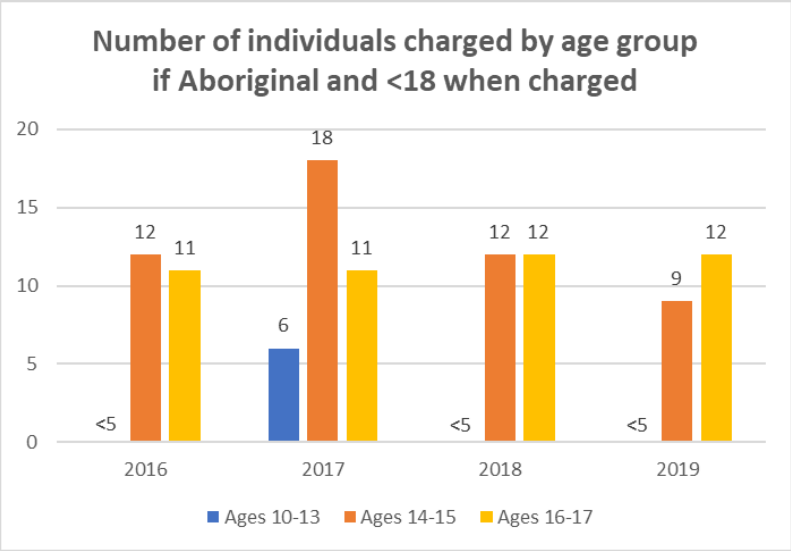
Differences by age group

The graph below shows the breakdown of finalised charges for Aboriginal young people by age group at the time of charge.[4] This shows that, despite the overall decreases from 2018 observed above, charges for the youngest age group (10-13) began to increase again in 2019, those for 14-15 year-olds fell substantially in 2018 then remained stable, while those for young people aged 16-17 increased in 2018 and decreased in 2019.



The graph below shows the number of individual young people charged per year in each age group.[5] For the 10-13 age group, the number of young people charged remained stable from 2018 to 2019 while the number of charges increased (above graph). For the 14-15 age group, the number of young people charged fell from 2018 to 2019 while the number of charges remained stable. In contrast, for 16-17 year-olds the number of young people charged remained stable while the number of charges decreased from 2018 to 2019.

[4] Less than 5 people were aged 18+ at the time of charge and have been excluded from the graph
[5] Note that 6 people were charged in two different age groups within the same calendar year and therefore appear twice in this graph.

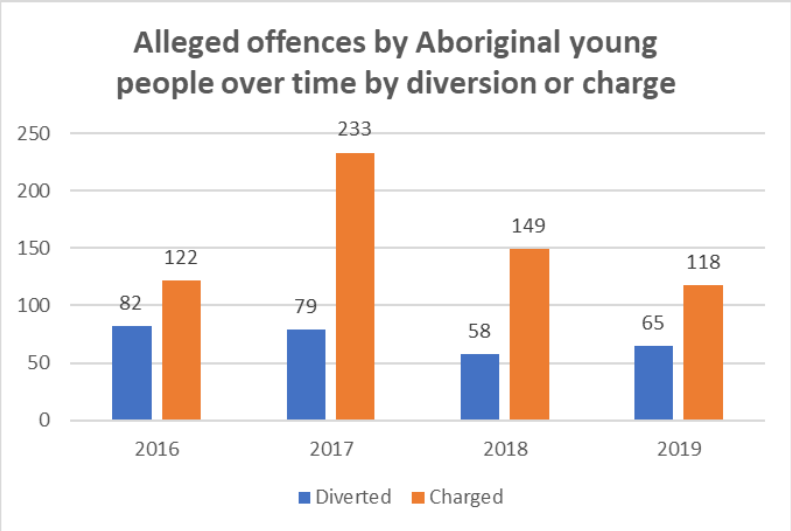


Comparing the number of charges with the number of individuals (in the two graphs above) shows the average number of charges per individual. For the 10-13 year-old group, the number of charges per individual decreased from 2016 to 2017, decreased further in 2018 and then increased again in 2019 (figures not provided due to small numbers). For 14-15 year-olds, the number of charges per person increased from 6.5 in 2016 to 8.9 in 2017 then decreased to 5.1 in 2018 and increased to 6.8 in 2019. For 16-17 year-olds, the number of charges per person increased from 4.2 in 2016 to 5.8 in 2017 and 2018 then decreased to 4.3 in 2019.

Comparing offences charged and diverted from 2016 to 2019

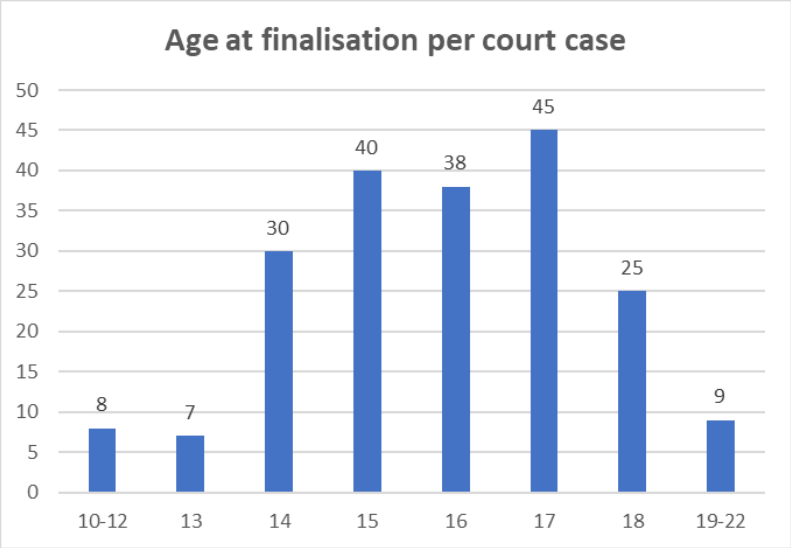
The graph below compares alleged offences by Aboriginal young people that received diversions and those that received a charge, from 2016 to 2019 inclusive (noting that we do not fully observe charged offences in 2020 and 2021 as not all of these will have been finalised yet).

From 2016 to 2017, the number of alleged offences that received diversions fell slightly (from 82 to 79) while those that were charged almost doubled (from 122 to 233). In 2018 the number of offences that were diverted and charged both fell. Charges continued to fall in 2019 while diversions increased.



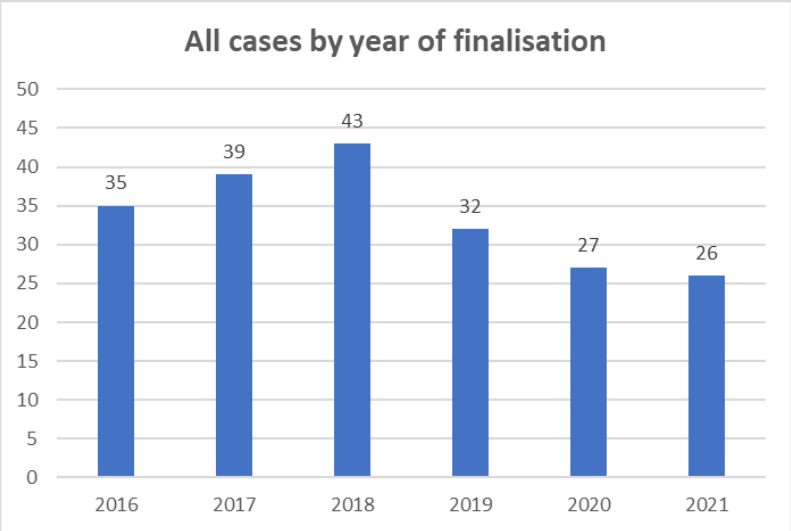
Court cases

This section of the report investigates the court data per finalised court case (as opposed to per charge). Each finalised court case includes one or more alleged juvenile offences. In 34 out of 202 cases (17%) the young people were adults by the time their case was finalised (see the graph below).



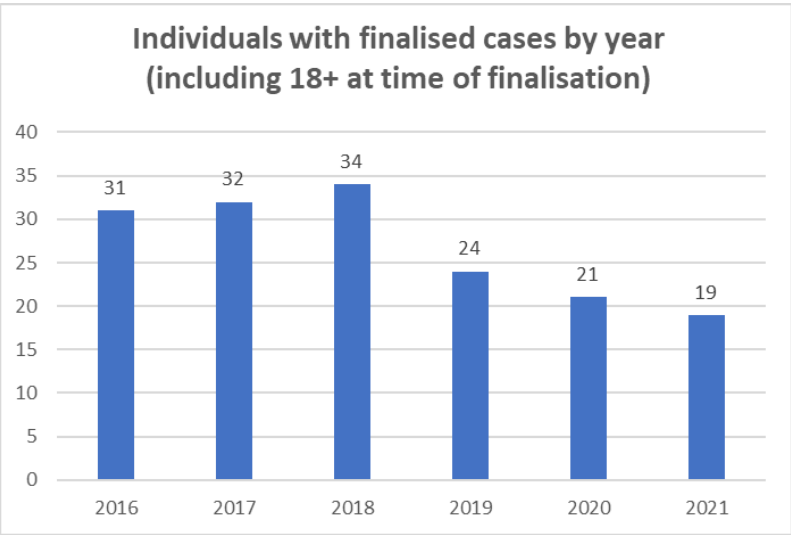
Finalised court cases over time

The graph below shows the overall number of finalised cases for alleged juvenile offences per year, including those who were adults by the time the case was finalised.

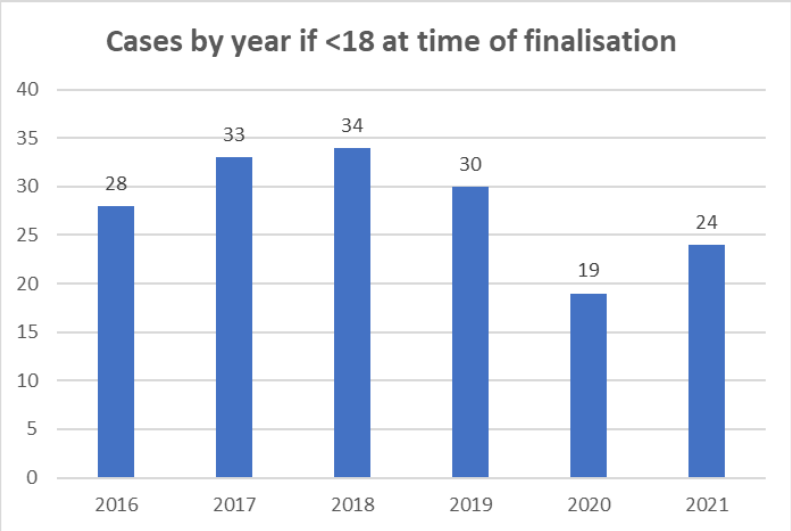


Bearing in mind the lag time from the alleged offence to court finalisation, we would expect to see a reduction in finalised court appearances after 2018. This is reflected in the numbers above, which show that finalised court appearances which were increasing up to 2018 subsequently decreased.

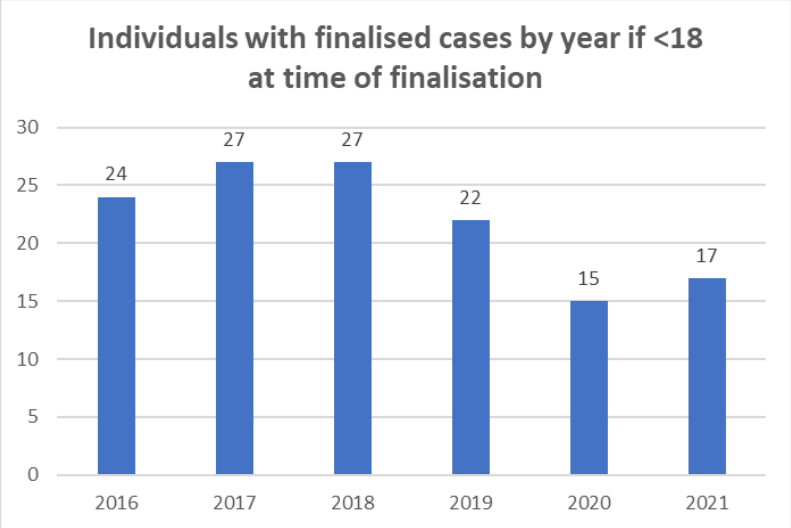
The pattern is similar when we look at the number of individuals with finalised cases each year (as opposed to the number of cases).



When we look solely at the cases for which the person was still aged under 18 at the time of finalisation there is a more dramatic decrease in 2020 and a small increase in 2021. This may reflect delays in cases due to covid but the overall numbers per year remain lower than in 2018.



Again, there is a similar pattern when looking at individuals with finalised cases each year (as opposed to the number of cases).

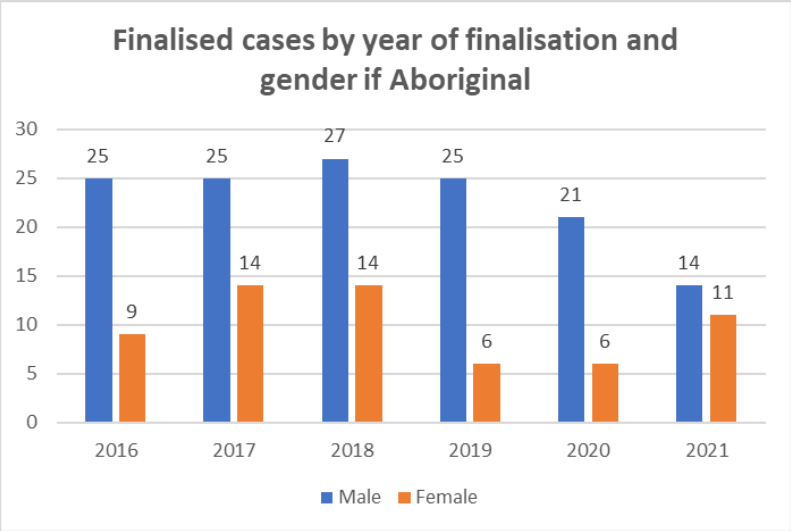


The data includes whether the young person charged was ever identified as being Aboriginal. Of the 202 total cases only 5 were for non-Aboriginal/unknown young people . The remaining analysis by finalised court case focuses on the 197 cases for Aboriginal young people.

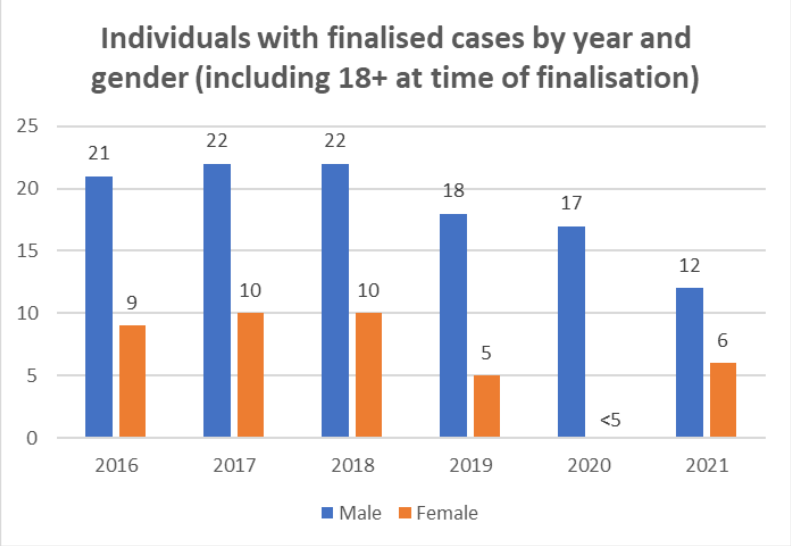
Finalised court cases for Aboriginal young people over time

Gender differences

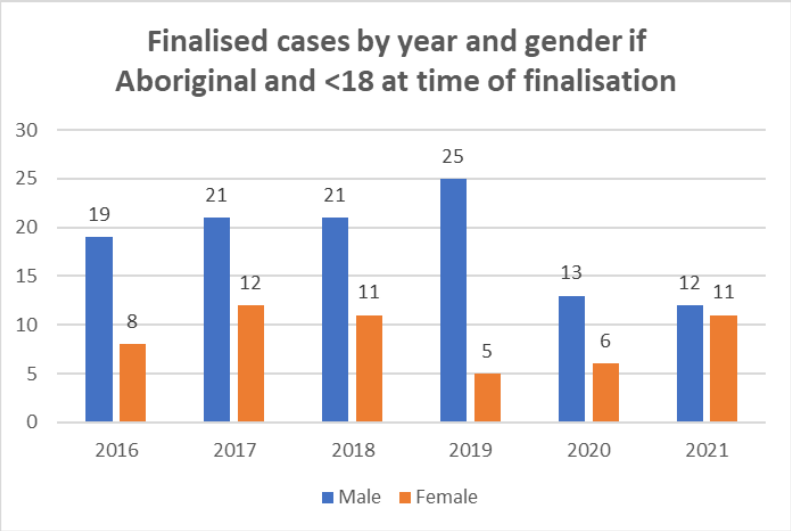
When the data are broken down by gender, we see a greater reduction in finalised cases since 2018 for young Aboriginal females than males, but an increase for females in 2021 compared to 2019 and 2020.



The pattern is similar when looking at the number of individuals with finalised cases each year.



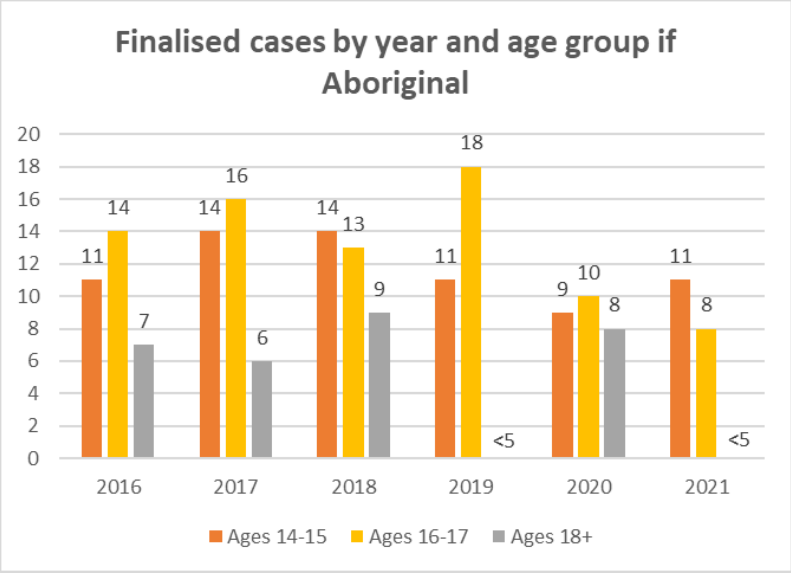
When only looking at young people who were under 18 at the time of finalisation, we still see an overall reduction in the numbers of finalised cases for males and females after 2018 but a much greater decrease in cases for young males in 2020. Again, this may reflect the impact of covid on delays in court appearances.



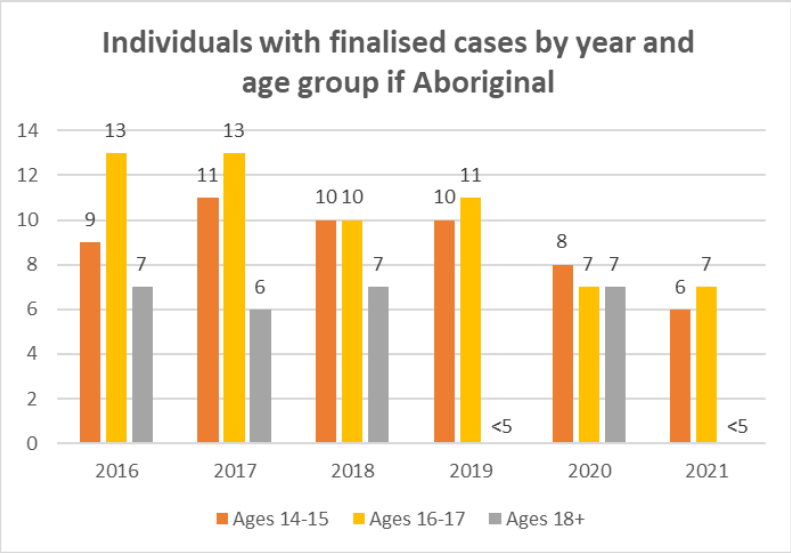
The pattern is similar when looking at the number of individuals with finalised cases each year (graph not provided due to small numbers).

Differences by age group

The graph below shows the breakdown of finalised court cases by age group at the time of finalisation. This shows that, despite the overall decreases since 2018, cases for 16-17 year-olds initially increased (in 2019) and cases for the youngest age groups increased in 2021. (Figures not provided for ages 10-13 due to small numbers but the pattern is similar to ages 14-15).

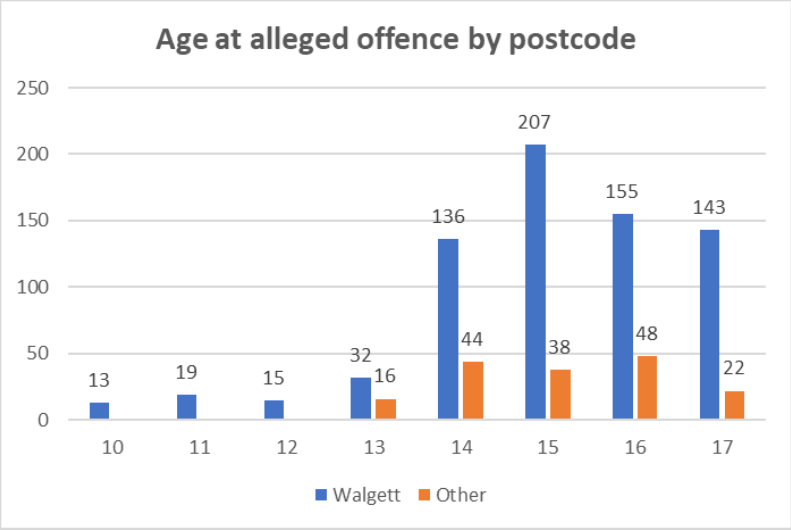


The pattern for the number of individuals with finalised cases per year in each age group[6] is consistent with the pattern for the total number of cases by age group.



Differences by court, postcode of residence and plea type

The data include young people who appeared in court in Walgett (irrespective of their residential address) and young people with a Walgett residential address (postcode) at the time of the alleged offence who appeared in court (in Walgett or elsewhere). Of the 888 alleged offences charged in the data, 168 were for non-Walgett residents who appeared in Walgett Children's Court and 720 were for Walgett residents, of which 498 were finalised in the Walgett court and 222 elsewhere. As shown in the graph below, the youngest alleged offenders (ages 10-12) were all Walgett residents.



[6] A few young people are counted in two age groups in the same year (for example they had matters finalised when age 17 and after turning 18 in the same calendar year).

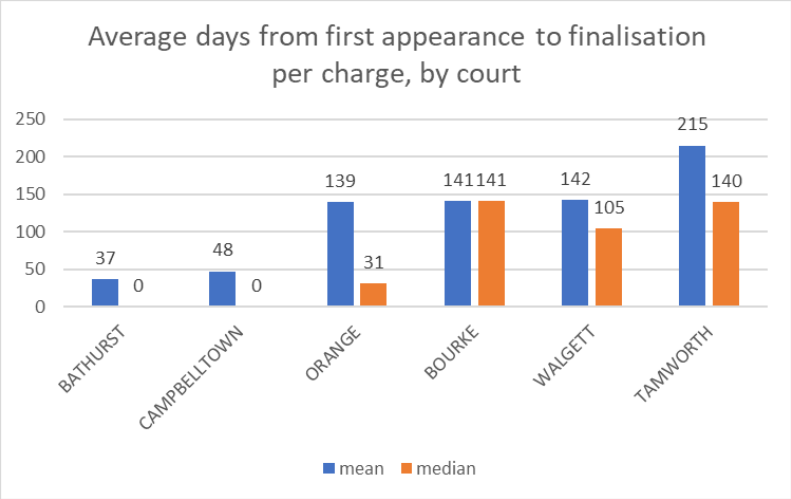
Duration of court proceedings

We investigated whether there are differences in the time from first appearance to finalisation, by court (Walgett or other), postcode of residence (Walgett or other), and by plea type. The young person may be more likely to have adverse outcomes (such as stress associated with the lack of certainty and greater likelihood of breaching conditions) the longer a matter takes to be finalised.

This analysis focuses on the years 2016 to 2019, as all but one finalisation occurred within 2 years of the first appearance. Finalised charges with first appearances in these years are likely to be fully observed in the data.

For charges that were finalised in the Walgett Children's Court, the overall number of days from first appearance to finalisation ranged from 0 to 573 days, with an average of 142 days (median 105). For charges finalised elsewhere, the overall number of days from first appearance to finalisation ranged from 0 to 570 days, with an average of 92 days (median 22).

Detailed breakdown by court (excluding those with only one observation) is shown in the graph below. Walgett, Bourke and Tamworth courts have the longest delays (men and median).



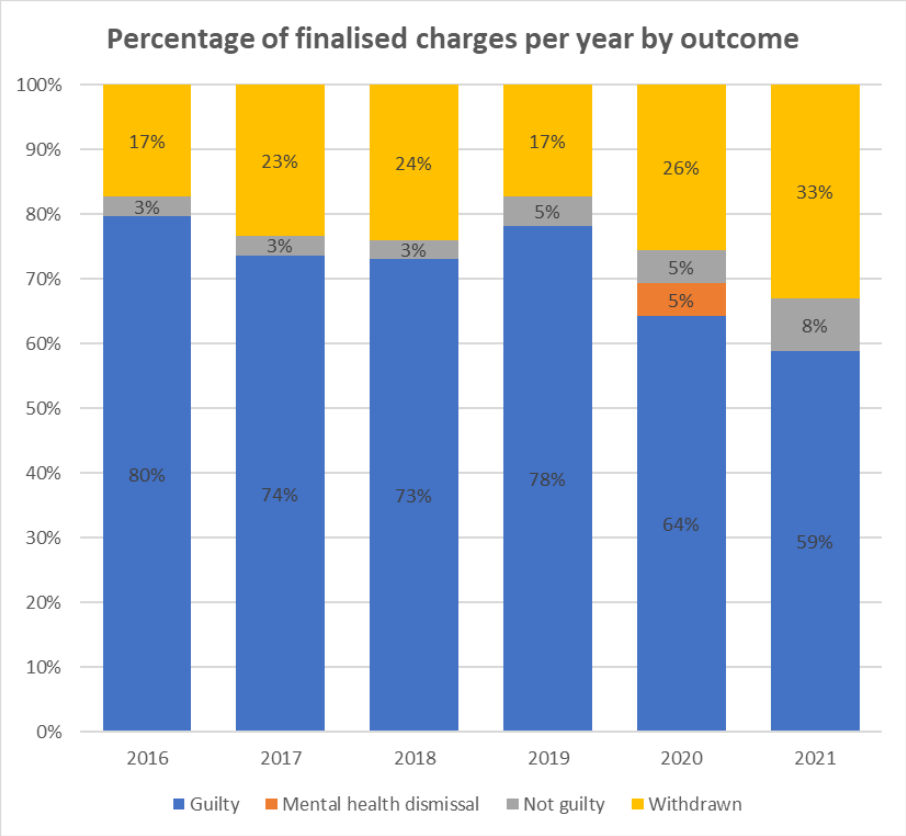
When looking time to finalisation by residence, there is little difference between the average days from appearance to finalisation (129 days for Walgett residents and 134 days for young people resident elsewhere but appearing in court in Walgett). We did, however, find differences by plea type.

For young people with no plea entered/other, the average days from appearance to finalisation was the lowest at 37 days (median 0, range 0 to 518). Most of these were found guilty (81%) and 18% were withdrawn. For those who entered a guilty plea, the number of days to finalisation was 147, on average (median 103, range 0 to 573) and 98% of these were found guilty. The longest duration of court proceedings was for young people who entered a plea of not guilty, which was 223 days, on average (median 182, range 34 to 570). Most of these (67%) were withdrawn.

Court Outcomes

This section of the report looks at court outcomes over time. The graph below shows the outcomes per charge, as a percentage of all charges finalised that year, for offences allegedly committed when the person was under 18. This graph includes all 888 charges in the data (including those finalised in court when the person was aged 18 or over).

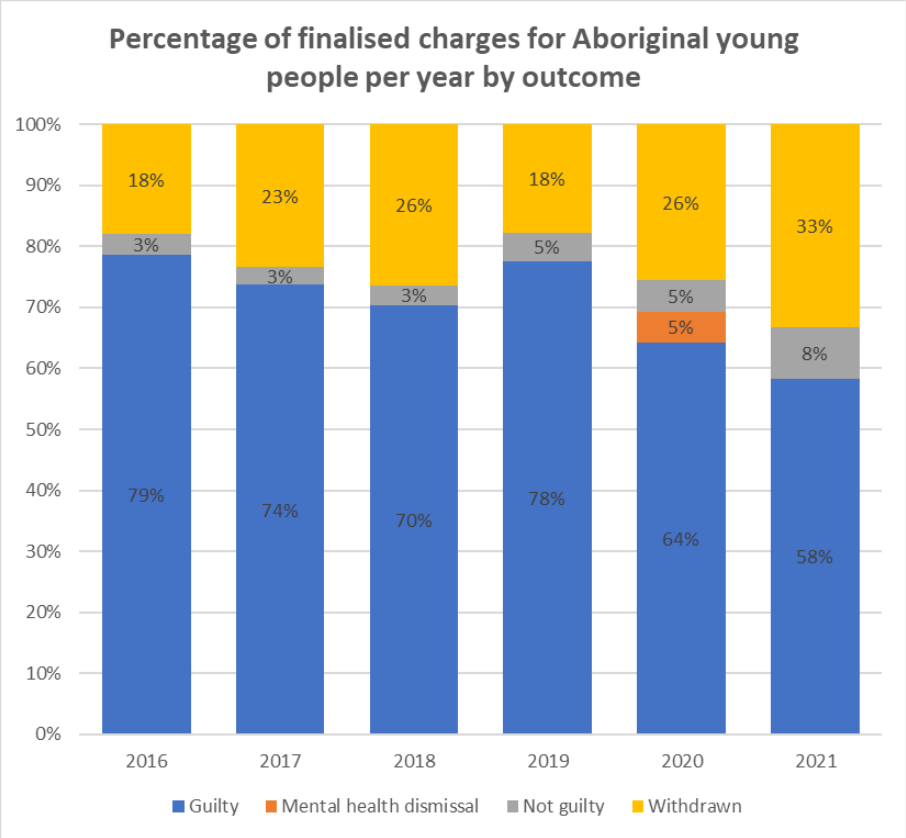
The proportion of finalised charges where the young person charged was found guilty (shaded blue), is lower in 2020 and 2021 than in previous years. The proportion not guilty (shaded grey) was 3% per year in 2016, 2017 and 2018, and has increased year on year from 2019 to 2021. The proportion withdrawn (yellow shading) also increased since 2019 to 2021. In 2021 8% of all finalised charges were not guilty and 33% were withdrawn. In all of the six years of data, there were only 7 charges (5% of charges in 2020) that resulted in a mental health dismissal.



Differences by Aboriginality

Only 39 of the 888 charges finalised between 2016 and 2021 were for non-Aboriginal young people (including where Indigenous status is unknown). Of these the vast majority were found guilty. The remainder of this section looks at outcomes for the 849 finalised charges for Aboriginal young people.

The proportions of court outcomes Aboriginal young people are shown in the graph below. These are approximately the same as for all young people in the previous graph, reflecting the very small number of charges for non-Aboriginal young people included above.

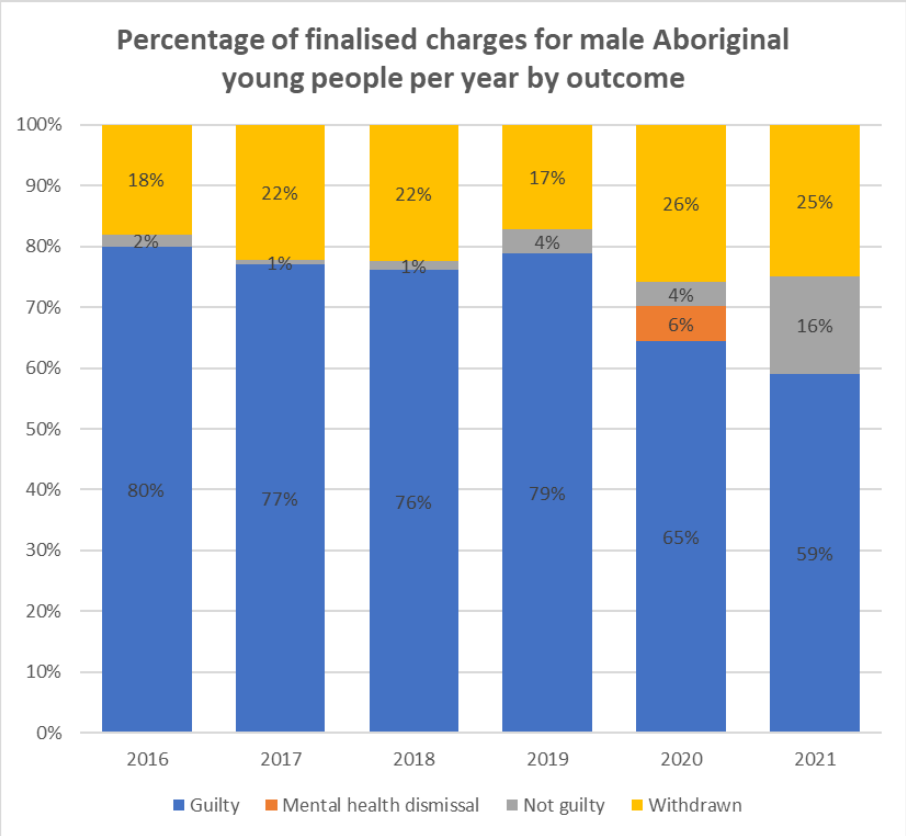


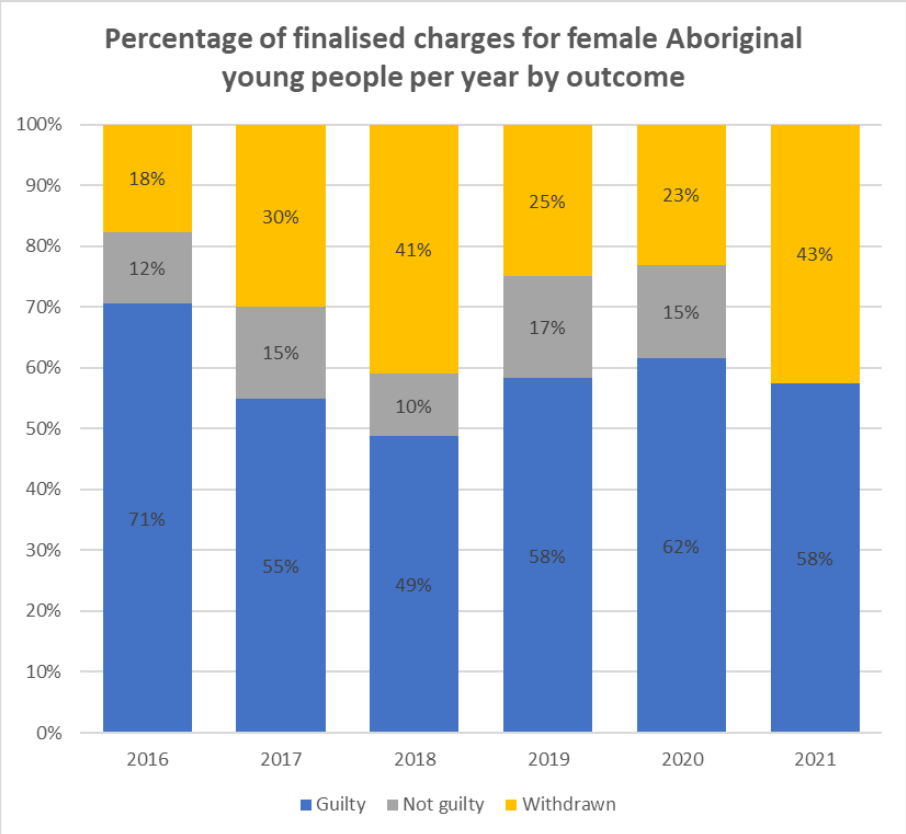
Differences by gender

There are differences in court outcomes by gender as seen in the two graphs below. In particular, guilty outcomes have decreased for males in 2020 and 2021 compared to previous years, with approximately 6 out of 10 charges for young Aboriginal males being found guilty in 2021 compared to around 8 in 10 from 2016 to 2019. In contrast, guilty outcomes for females decreased annually from 7 in 10 in 2016 to around 5 in 10 in 2018, then increased to around 6 in 10 in 2019 to 2021.

In 2021, 58% of charges for young Aboriginal women were found guilty and the remaining 43%[7] were withdrawn. Whist a similar proportion of charges for young Aboriginal males were found guilty in 2021 (59%), 25.0% were withdrawn and 16% were found not guilty.

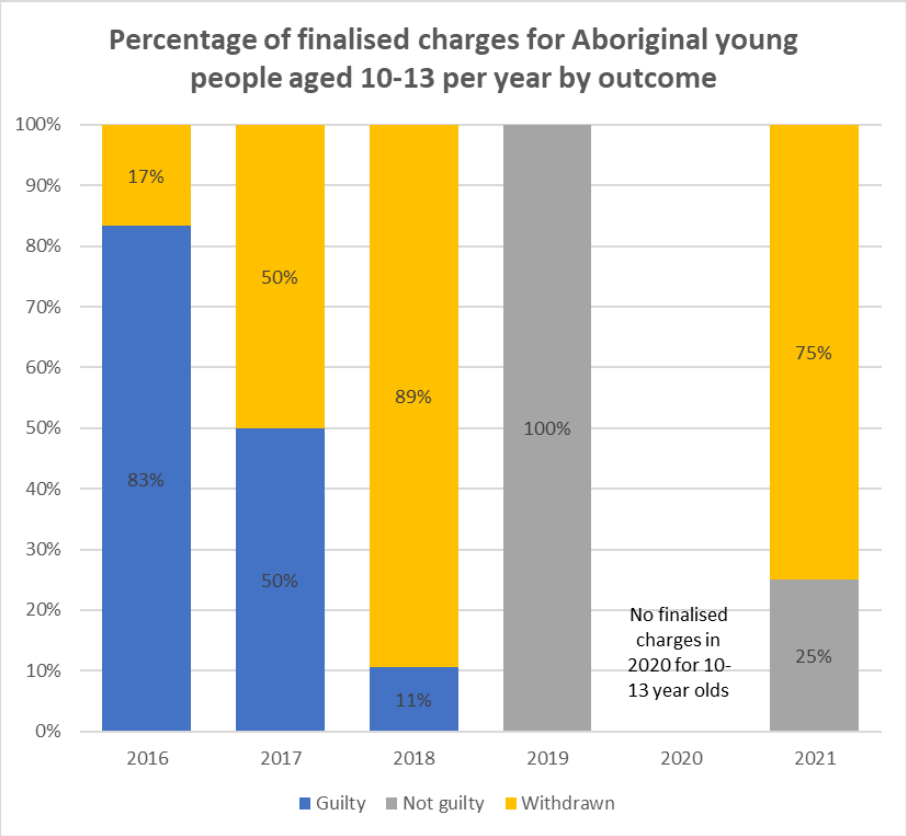
[7] Note that figures do not add exactly to 100% due to rounding.

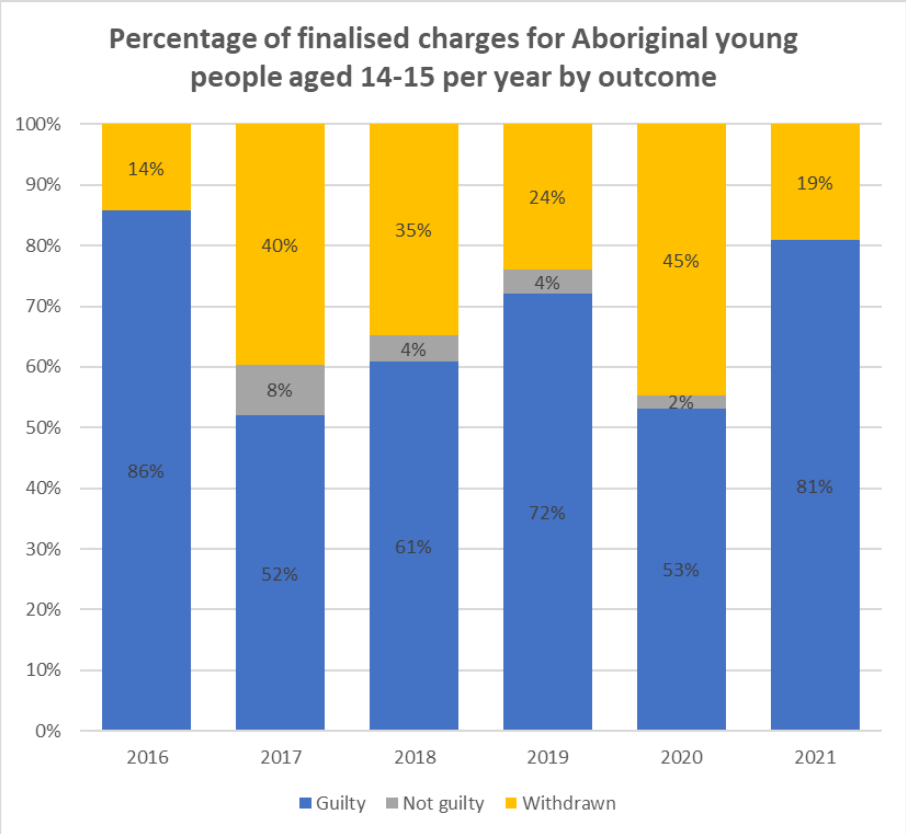

Percentage of finalised charges for male Aboriginal young people per year by outcome
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
18%
2%
80%
22%
1%
77%
22%
1%
76%
17%
4%
79%
26%
4%
6%
65%
25%
16%
59%
2016
2017
2018
2019
2020
2021
Guilty
Mental health dismissal
Not guilty
Withdrawn

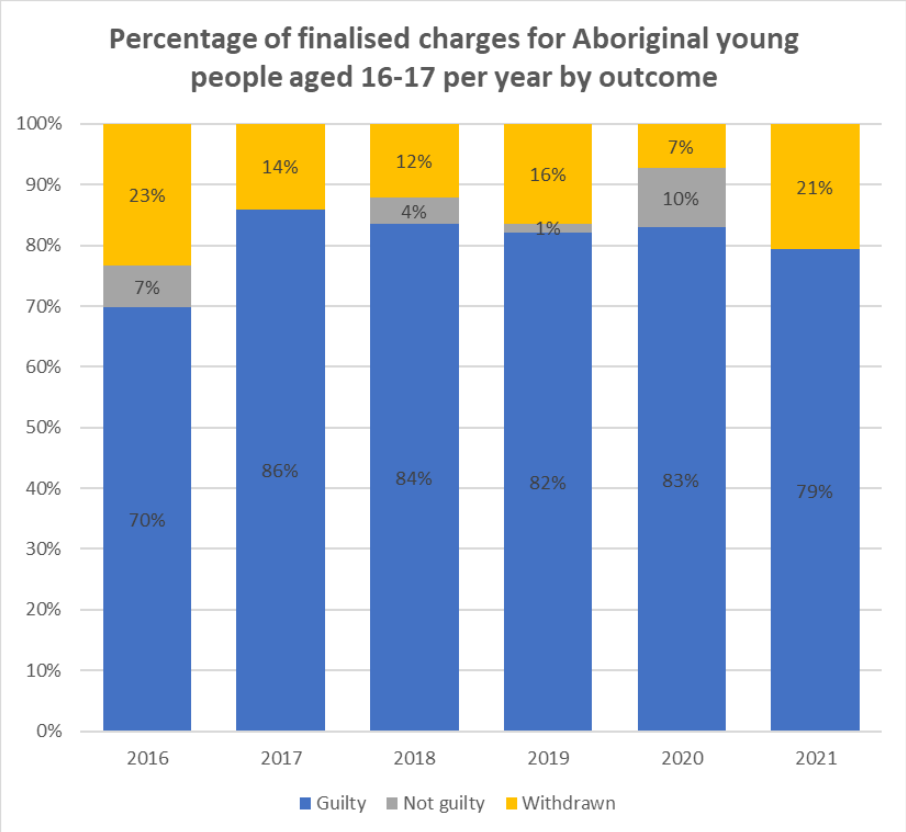

Percentage of finalised charges for female Aboriginal young people per year by outcome
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
18%
12%
71%
30%
15%
55%
41%
10%
49%
25%
17%
58%
23%
15%
62%
43%
58%
2016
2017
2018
2019
2020
2021
Guilty
Not guilty
Withdrawn

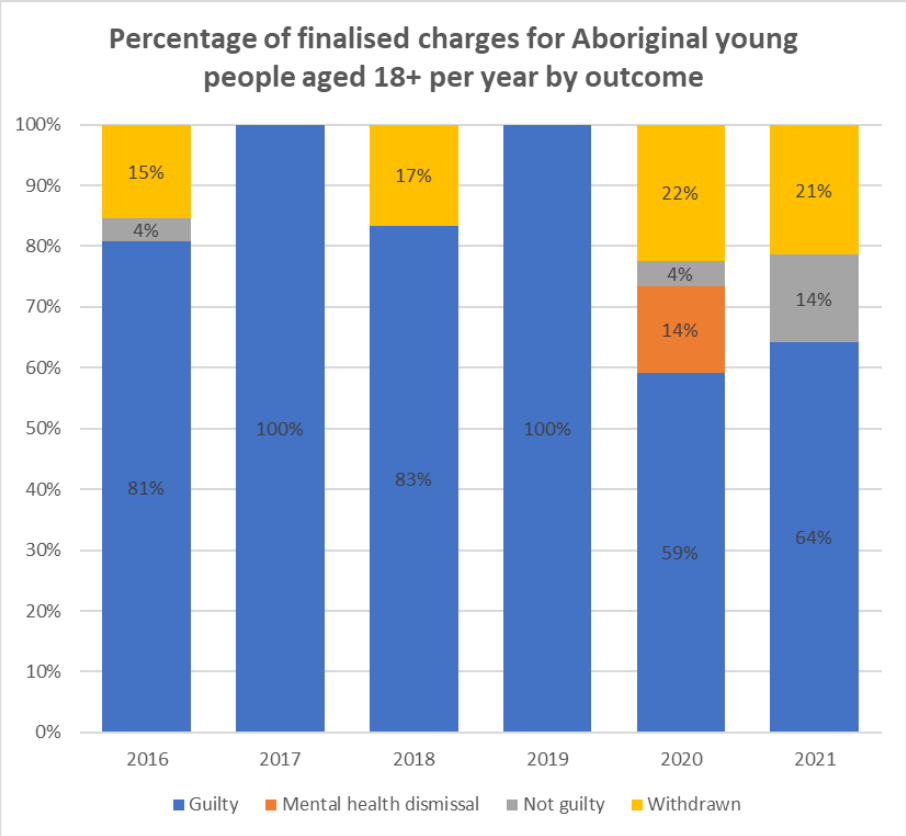
Differences by age group

The three graphs below show differences in court outcomes for finalised charges, by age group at the time of finalisation. Outcomes for 10-13 year-olds have changed the most over time (but there are fewer finalised charges per year for this group). For 10-13 year-olds the proportion of guilty charges fell substantially from 83% in 2016 to 50% in 2017, 11% in 2018 and zero in each year since. For other age groups, the majority of charges are found guilty, but a substantial proportion (around 20% in 2021) were withdrawn.




Percentage of finalised charges for Aboriginal young people aged 14-15 per year by outcome
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
14%
86%
40%
8%
52%
35%
4%
61%
24%
4%
72%
45%
2%
53%
19%
81%
2016
2017
2018
2019
2020
2021
Guilty
Not guilty
Withdrawn


Percentage of finalised charges for Aboriginal young people aged 16-17 per year by outcome
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
23%
7%
70%
14%
86%
12%
4%
84%
16%
1%
82%
7%
10%
83%
21%
79%
2016
2017
2018
2019
2020
2021
Guilty
Not guilty
Withdrawn



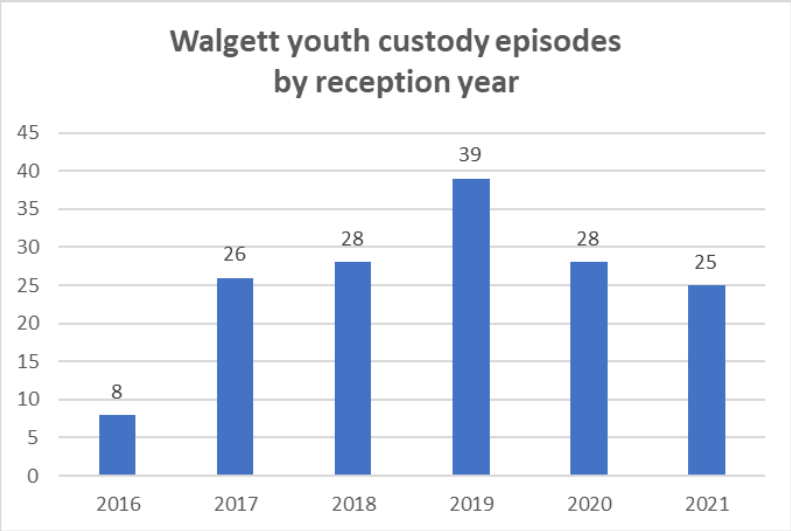
Youth custody

The final data analysed and presented in this report are for youth custody episodes for young people in Walgett who had finalised court appearances from 2016 to 2021. This includes young people who lived in Walgett at the time of alleged offence or who appeared in court in Walgett.

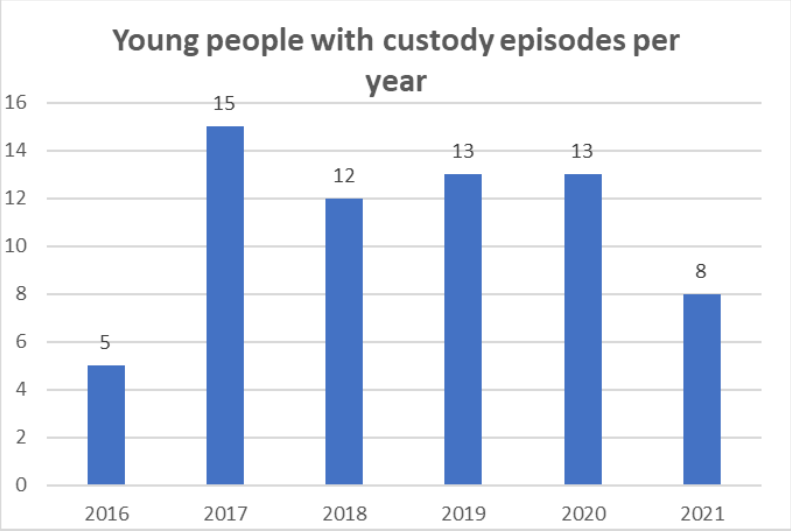
Youth custody episodes over time

From January 2016 to December 2021, 31 young people who either resided in or appeared in court in Walgett commenced 154 youth custody episodes. These are broken down by the year of reception (custody commencement) in the graph below.

The number of youth custody episodes increased each year from 2016 to 2019 then decreased in 2020 and 2021. Given the lag time (up to 2 years) from charge to court finalisation, this pattern is consistent with expectations based on the charges data, which showed charges increasing to 2017 then decreasing in 2018 and 2019.



The number of young people with youth custody episodes per year (as opposed to the number of custody episodes) was relatively stable from 2018 to 2020 but fell in 2021 as shown below.



The legal status of most youth custody episodes on commencement is bail refused (either by the police or the court). Less than five young people had their legal status on reception “sentenced” across all years from 2016 to 2021. Graph not provided due to small numbers of observations.

If we look at the legal status on discharge (excluding episodes where the young person was still in custody at the end of December 2021) only a small number of episodes (12 in total across all years) were sentenced. The majority were remand episodes.

The majority (83%) of youth custody episodes were released on bail. A further 10% were not proven or released with a non-custodial order and 7% were released on parole.

Of the 154 youth custody episodes that commenced in 2016 to 2021, only 6 were for non-Aboriginal young people (in 2016 and 2017). Since 2017 there have been no youth custody episodes for non-Aboriginal Walgett young people. The remaining sections focus on the 148 youth custody episodes for 28 Aboriginal young people.

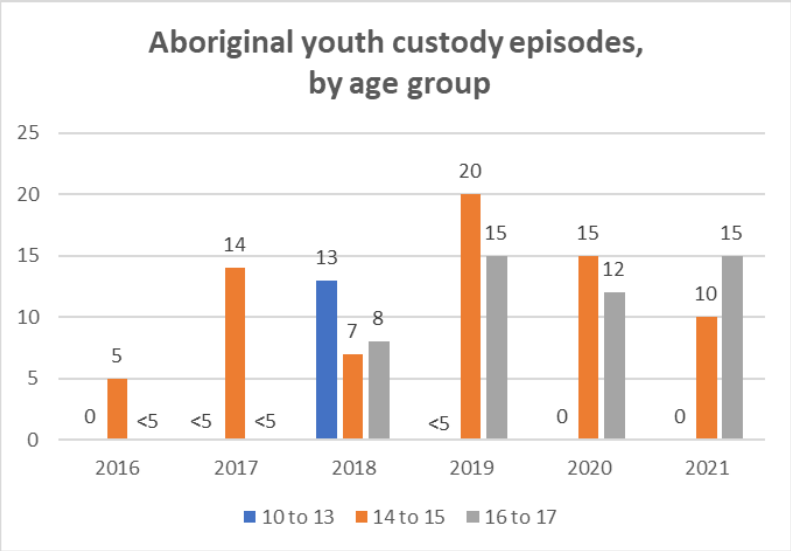
Aboriginal youth custody episodes

The table below shows the duration and number of youth custody episodes for Walgett Aboriginal young people from 2016 to 2021. Episodes ranged in length from 1 day to 234 days. The fewest episodes (7) commenced in 2016 and had an average duration of 9 days in custody. In 2021 there were 23 youth custody episodes for Walgett Aboriginal young people with an average duration of 18 days (median 1 day, range 1 to 146 days).

Reception year	Number of days in custody per episode				Number of episodes
	Mean	Median	Min	Max	
2016	9	2	1	47	7
2017	21	4	1	122	21
2018	30	1	1	244	28
2019	23	4	1	212	39
2020	27	2	1	234	28
2021	18	1	1	146	23

Very few of the youth custody episodes from 2016 to 2021 were for young Aboriginal women. The graph below breaks down the 148 custody episodes for Aboriginal young people by year and age group.

After a peak of 13 episodes in 2018, the number of youth custody episodes for 10-13 year-olds fell to less than 5 in 2019 and zero in 2020 and 2021. For 14-15 year-olds, youth custody episodes peaked at 20 in 2019 and have since declined in 2020 and 2021. Young people aged 16-17 also commenced more custody episodes in 2019 than in previous years, decreasing to 12 in 2020 but then increasing again in 2021.



The average number of custody episodes per young person in custody fluctuated most for 10-13 year-olds, ranging from 1.3 to 4.3, with no-one in the 10-13 age group in custody in 2020 or 2021. For 14-15 year-olds, the number of episodes per young person in custody ranged between 1.2 and 3.3. The average number of episodes per year for 16-17 year-olds in custody ranged from 1.0 to 2.4.

Discussion

This report is one component of Yuwaya Ngarra-li's evaluation of youth justice outcomes in Walgett and how these have changed since 2018. The analyses presented used court finalisations data for young people either residing in Walgett or appearing in court in Walgett, from January 2016 to December 2021 inclusive, to investigate:

- Diversions under the Young Offenders Act
- Charges
- Finalised court appearances
- Differences by Aboriginality, gender and age
- Differences by court, postcode of residence and plea type
- Court outcomes
- Youth custody episodes

In addition to the work as part of the Two River Pathway to Change model, the following factors may have had an impact on the findings reported in this report:

Local police leadership

Greg Moore became the Commander for Walgett in February 2018, after almost a decade of working in Bourke with Aboriginal community leaders. He demonstrated a new approach to local policing in Walgett including an emphasis on diversion of young people.

Greg Moore left the role in August 2019, and Trent Swinton took over as Commander and continued many of those initiatives.

Walgett Police data will help us to investigate whether this correlates with changes in diversions and other charges and outcomes.

COVID-19

Courts

- Young people were not required to appear in court for certain periods due to public health restrictions, and lawyers were taking instructions and appearing on behalf of young people via Audio Visual Link. This slowed down progress of matters being finalised.
- Defended hearings and sentencing matters likely to result in a custodial penalty were postponed.
- First listings of summary matters involving no bail considerations were postponed.

Most of these measures were lifted by the end of June 2020, and together led to a general decline in the number of finalisations across lower and higher courts in July 2019-June 2020.

Youth Justice Conferencing

- No new Youth Justice Conferences took place during COVID-related restriction periods in 2020 and 2021. Activities for completion under existing Youth Justice Conference Outcome Plans were suspended, delaying their finalisation.
- DEG continued to connect young people with Youth Justice NSW via phone to ensure the continuation of court-ordered Youth Justice supervision was able to take place.

Police

- Walgett had the highest number of COVID-19 penalty notices issued by Police, adjusted for population, issued between 1 July 2020 and 10 October 2021: 168 COVID-19 fines worth $148,480.
- Revenue NSW data indicates that for 1 July 2020 to 30 June 2021 there were 106 fines issued to young people in Walgett aged under 25 worth $43,755, of which 14 were to young people aged under 18 worth $6985.[8]

[8] https://www.apps09.revenue.nsw.gov.au/customer_service/forms/dashboard/fines

Key findings

- Almost all justice system interactions for young people in Walgett were for Aboriginal young people

Police charges

- The total number of charges per year increased substantially from 2016 to 2017 then decreased in 2018 and 2019
- There is a similar pattern for charges issued to male and female Aboriginal young people, with both increasing prior to 2018 and decreasing in 2018 and 2019
- The average number of charges per Aboriginal young person charged, increased from 2016 to 2017 then fell in 2018 and remained at the lower level in 2019
- Despite the number of young people charged having decreased since 2017, the average number of charges per person charged increased for females
- Following a decrease in 2018, charges for the youngest age group (10-13) began to increase again in 2019

Police use of diversion

- Following decreasing use of diversions by police from 2016 to 2018, there were overall increases in use of diversions in 2019 and 2020 but decreases again in 2021
- Increased diversions since 2018 for young Aboriginal women while the number of diversions for young Aboriginal men remained fairly stable from 2018 to 2020 then fell substantially in 2021

Youth Justice Conferencing

- Overall, more referrals to youth justice conferencing were issued by the courts than the police
- Only in 2020 were the majority of finalised youth justice conferences referred by the police
- From 2017 to 2019, Youth Justice Conferences made up one in four of all finalised diversions. They then began to fall and, in 2021, Youth Justice Conferences only made up one in ten finalised diversions.

Court cases

- Of the 202 total finalised court cases in the data, from 2016 to 2021, 197 (98%) were for Aboriginal young people
- Finalised cases were increasing up to 2018 and subsequently decreased each year thereafter
- There was a greater reduction in finalised cases after 2018 for young Aboriginal females than males, but an increase for females in 2021 compared to 2019 and 2020
- Despite the overall decreases since 2018, the number of finalised cases for the youngest age groups (10-13 and 14-15 year-olds) increased from 2020 to 2021

Court delays

- For young people who with no plea entered/other, the average days from appearance to finalisation was the lowest (37 days), followed by those who entered a guilty plea (147 days) and highest for young people who entered a plea of not guilty (223 days)
- Charges that were finalised in the Walgett, Bourke and Tamworth Children's Courts had a longer typical (mean and median) duration from first appearance to finalisation than those finalised in Bathurst, Campbeltown and Orange

Court outcomes

- Guilty outcomes have decreased substantially for males, with approximately 6 out of 10 charges for young Aboriginal males found guilty in 2021 compared to around 8 in 10 from 2016 to 2019
- Guilty outcomes for females decreased annually from 7 in 10 in 2016 to around 5 in 10 in 2018, then increased to around 6 in 10 from 2019 to 2021 inclusive
- Mental health diversions occurred in 2020 but not in other years
- For 10-13 year-olds the proportion of charges found guilty fell substantially from 83% in 2016 to 50% in 2017, 11% in 2018 and zero in each year since

Custody

- From January 2016 to December 2021, 31 young people who either resided in or appeared in court in Walgett commenced 154 youth custody episodes, 148 of these were for Aboriginal young people
- Only a small number of episodes were sentenced (less than 10%), the majority were remand episodes
- Youth custody episodes increased each year from 2016 to 2019 then decreased in 2020 and 2021, which (given the time from charge to court finalisation) is consistent with the findings for charges which increased from 2016 to 2017 then decreased in 2018 and 2019

Systemic issues and possible actions

The findings in this report were discussed with the DEG in three YN Research and Evaluation Morning Tea sessions. Questions raised by the DEG and interpretation of the findings in the context of the various systemic changes that have taken place since 2018 led to the following conclusions and recommendations for action:

Court delays

While court delays due to COVID-19 may help to explain the reduction in finalised court appearances, the longer delays in Walgett, Bourke and Tamworth compared to other courts are concerning.

- Court delays can have negative impacts on the young person including unnecessarily long periods of time on bail conditions, for example: overall stress on young person and family of

having police surveilling and doing bail checks, and ongoing need to attend court and be in contact with a young person's lawyer can interrupt school and life

- Delays in finalising a young person's court matters where it is not an adjournment for diversion purposes can be considered abuse of process. This is an access to justice issue for young people. In more serious cases delays could amount to malicious prosecution.
    - This issue should be investigated with relevant stakeholders, including the ALS and Legal Aid.

Missed opportunities for diversion

- There is evidence of missed opportunities for diversion including fewer police referrals than court referrals to youth justice conferencing. We need to:
    - build understanding of why those referrals aren't happening by the police
    - build understanding of why police are issuing more cautions than warnings and whether this is appropriate
    - improve use of mental health diversion (section 32) by lawyers
- Further analysis of the alleged offences data indicates that a lot of non-violent offences (public order offences, property damage and theft) are being finalised in the Children's Court rather than receiving a diversion by police where appropriate. This requires that the young person gets legal advice to make use of admissions scheme.
    - It is important that ALS are coordinating with police to get young person legal advice before Court Attendance Notice is issued.
- Advocacy, education and service development is needed to increase information available to the court to divert where police fail to divert; Increased coordination with stakeholders (ALS, WAMS) to achieve meaningful diversion

Low and decreasing use of Youth Justice Conferencing

- The very low and decreasing use of Youth Justice Conferences may be positive or negative depending on various factors and further data from Walgett Police and analysis is required to understand this, for example:
    - Whether this decrease is because instead of youth justice conferences less harsh diversionary options are being used (e.g. cautions) or more harsh (charged).
    - Are there delays to completion of YJC plans because of COVID, or young people not completing YJC plans
- Lack of local Aboriginal Youth Justice Conference convenors is an ongoing issue:

Young people being remanded in custody

- There is a need for suitable short-term respite accommodation for young people in crisis.

Further work being undertaken through Yuwaya Ngarra-li to address systemic issues

Access to further data on diversions under the Young Offenders Act, fines and AVOs has been sought from Walgett Police. Analysis of these data, when received, will provide further evidence of changes over time to youth justice outcomes in Walgett.

YN WDO Project

- DEG is establishing and implementing a Work and Development Order (WDO) Project which is supporting Aboriginal people in Walgett to deal with their fine debt.

YN Housing Project

- YN is scoping accommodation options that could support the diversion of Aboriginal young people from contact with police and the youth justice system, undertaken by Wiradjuri architect Samantha Rich.