

# Training Centre Visitor Annual Report

2018-2019



Government of South Australia

Training Centre Visitor

September 2019

**Training Centre Visitor**

***Office of the Guardian for Children and Young People***

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Government of South Australia  
Training Centre Visitor

The Hon. Michelle Lensink, MLC  
Minister for Human Services  
Level 12 South  
1 King William Street  
ADELAIDE SA 5000

Dear Minister

I am pleased to present to you the annual report of the Training Centre Visitor for the year ended 30 June 2019, as required under Section 18(1) of the *Youth Justice Administration Act 2016*.

This report provides a summary of activities and achievements for the 2018-2019 financial year.

Yours sincerely

A handwritten signature in black ink that reads 'Penny Wright'.

Penny Wright  
Training Centre Visitor

27 September 2019

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# Notes

## ***Language in this report***

Reflecting community preference, the term 'Aboriginal' is used in this report to refer to both Aboriginal and Torres Strait Islander people.

## ***Referencing***

Unless identified otherwise, references to statutory provisions should be taken as those in the *Youth Justice Administration Act 2016*.

## ***Glossary***

AYTC Adelaide Youth Training Centre

CYP Children and Young People (Child or Young Person)

DCP Department for Child Protection

DHS Department of Human Services

NPM National Preventive Mechanism (OPCAT)

OPCAT Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

TCV Training Centre Visitor

TCVU Training Centre Visitor Unit (comprising the TCV and three primary staff positions)

## 1. From the Training Centre Visitor

Every time I visit the Adelaide Youth Training Centre in my role as the Training Centre Visitor I am conscious of the responsibility entrusted in me by the South Australian community – to promote the rights and interests of the residents who are detained within its walls. This is a place in which few members of the public ever set foot but it is where children and young people, some as young as ten, spend days, weeks and even months and years, locked away from their families and community.

Most of the residents in the Training Centre are at risk and highly vulnerable. More than 50 per cent of the individual residents in 2018-19 were Aboriginal, reflecting a legacy of dispossession and intergenerational disadvantage. More than a quarter of residents were ‘dual-involved’ children and young people, coming from the out of home care system, with most coming from residential care. In the course of their short lives many have been exposed to family violence, substance abuse and traumatic experiences such as the death of family members. Overall, a high number of the residents have significant needs in relation to trauma, developmental disadvantage, and under-diagnosed mental ill-health and disability.

As Training Centre Visitor I want to ensure that these particular young South Australians are ‘seen’ and have a voice. If they can feel that they are valued and have some ability to influence the things that happen to them, despite the big systems which affect their lives, they will have the capacity to grow and develop. This is essential if we are to achieve one of the most important objects of the Youth Justice Administration Act: to see the residents become responsible members of the community and to realise their potential.

I hope this Annual Report enables the South Australian community to glimpse something of what life is like for residents in the centre, and to gain an understanding of how my Advocates and I visit them regularly, hear their concerns, advocate for their rights and interests and monitor their safety and wellbeing.

2018-19 has been a year of consolidation for the TCV Program and my tiny team. There has been much to do. We have continued to develop and trial our visiting systems and advocacy processes, establish reporting processes for residents, staff and the public, and work respectfully with the AYTC, Youth Justice personnel and other decision-makers so we can understand the constraints they work within but also push unashamedly to achieve the change we need to see.

Informed by the extensive consultation process with residents described in my last Annual Report, my staff and I have worked hard to stay true to their desire for regular, flexible and trustworthy visits and advocacy. The significant uptake of our visiting and advocacy program, and very positive feedback from the residents, suggests that we have achieved this.

In the course of the reporting year we have observed some encouraging developments and systems changes in the AYTC that directly enhance the wellbeing and safety of residents, including a reduction in the frequency and improvement in recording of semi-naked searches, the

introduction of a 'Yarning Circle' (cultural program) for Aboriginal female residents in March 2019, the institution of a Medical Locum Attendance Log at reception to enable the tracking of a medical incident from point of identification to the attendance of a locum, and work by AYTC to develop better understanding of the needs of African and Muslim residents through relationships with their communities.

There are, however, other serious and continuing issues that require reform. Some are discussed in detail in [Part 5](#) of this Report and include semi-naked searches, resident' right to privacy (CCTV footage of toilets and showers), the use of 'safe rooms', the use of isolation, incidents and the use of force, resident feedback and complaints, Aboriginal programs and cultural support, provision of female hygiene products, room standards and the availability of data.

In addition, a significant number of residents in the AYTC have not been convicted of a crime, but are on remand. Sometimes this is merely because there is no satisfactory alternative placement for them in the community. Some are never convicted. It is a major policy issue that these children or young people are subject to incarceration and deprived of their liberty yet may have no conviction recorded against them.

My staff and I will continue to highlight, monitor and advocate that these issues are rectified.

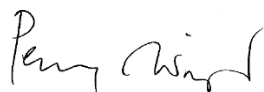
The future year will be challenging. Having now established the program, my staff and I are increasingly aware of the scope of the functions inherent in the TCV role and the many systems improvements required. This report will reflect that there are many things we would like to do more of, or better, that are not possible within the resources available to me.

In the face of these challenges, in the next year, we will need to reduce our visiting, we will not be able to ensure that the female residents have access to a female Advocate, we will have fewer visits with two Advocates and we will need to report less comprehensively.

In addition to the activities detailed in this report, I am also required to conduct an inspection of the AYTC and the first such inspection will take place in the latter part of 2019. As I do not have a dedicated budget for this operation, the scope and depth of this inspection will be necessarily limited.

Sincere thanks to my dedicated staff, Belinda Lorek, Alan Fairley and Travis Thomas, who continue to inspire me with their commitment to the residents and their capacity for hard and skilled work.

In the next year I look forward to continuing to work productively with the AYTC management and staff and the Directorate of Youth Justice and our other valued stakeholders. And I extend my particular thanks to the children and young people who are residents of the centre – for their willingness to work with my team and me to get things done!



**Training Centre Visitor**



## 2. Summary

The first annual report described the activities of the Training Centre Visitor (TCV) Program for its first eight months of operation, from November 2017. Before that, preparatory work had been done by the Office of the Guardian for Children and Young People. The first TCV Unit staff member started work in November 2017 and the third position commenced in early 2018.

The staffing complement remains at 2.5 Full Time Equivalent (FTE), as follows:

- *Principal Training Centre Advocate* – responsible for designing, developing and managing the TCV Program (commenced November 2017) – 1 FTE
- *Principal Policy Officer* – responsible for providing statutory, policy, communications and strategic advice to the Training Centre Visitor (part time, commenced May 2018) – .5 FTE
- *Advocate* – responsibility for visiting, advocacy on behalf of residents, and some community liaison (commenced February 2018) – 1 FTE.

Major second year activities included:

- implementing, reviewing and reporting on the Pilot Visiting Program
- commencing the rolling Visiting Program which offers residents face-to-face contact with advocate staff every two weeks
- establishing and conducting the quarterly Review of Records
- undertaking 48 advocacy referrals on behalf of 31 residents between 1 July 2018 and 30 June 2019
- further development of protocols for integrating TCV work within the existing administrative structure of the Office of the Guardian for Children and Young People, including establishing procedures and referrals in relation to children and young people who are in both care and detention
- the ongoing review of other models including visits to Cobham Juvenile Justice Centre, Bimberi Youth Justice Centre and Parkville Youth Justice Precinct
- developing a common issue register with the AYTC
- providing feedback on AYTC operational orders as they came up for review
- extensive liaison with the Youth Justice Directorate, AYTC management and staff, and other stakeholders
- researching and developing the model for undertaking the pilot TCV Inspection later in 2019

- continued review and highlighting of problems with the legislation that have a limiting and adverse impact on the TCV's mandate in key areas such as scope of application and exercise of clear delegations
- analysing the 2019 Productivity Commission Report on Government Services and other data sources in relation to Aboriginal young people in care and/or detention
- collaborating with the Office of the Commissioner for Children and Young People regarding common youth justice sector concerns
- promoting the TCV Program to children and young people residing in the training centre, and others, including the Youth Education Centre at AYTC, the Department for Child Protection, the Courts Administration Authority, CAMHS, the Departments of Health and Education and the broader community
- monitoring and assisting with preparatory processes for the implementation of the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT).

The most significant issues and themes in 2018-19 were:

- semi-naked searches
- complaint processes
- safe room use
- Aboriginal programs and cultural support
- resident right to privacy
- hygiene products
- use of force
- room standards
- availability of data.

These are discussed in detail in [Part 5 of this Report](#).

## 3. About the Training Centre Visitor Program

### 3.1 Who we are – the Training Centre Visitor and the TCV Unit

The Training Centre Visitor (TCV) is an independent officer who reports to Parliament through the Minister for Human Services.

The role of the TCV is to promote and protect the rights and interests of children and young people sentenced or remanded in custody in a youth training centre in South Australia.

The TCV is required to act independently, impartially and in the public interest, as provided for in s 12 of the *Youth Justice Administration Act 2016* (the Act):

#### **12—Independence**

(1) In exercising his or her functions and powers under this Act, the Training Centre Visitor must act independently, impartially and in the public interest.

(2) The Minister cannot control how the Visitor is to exercise the Visitor's statutory functions and powers and cannot give any direction with respect to the content of any report prepared by the Visitor.

Penny Wright was appointed as TCV for a period of five years pursuant to s 11 of the Act from 28 July 2017.

The TCV Unit (TCVU) is made up of the TCV and three primary positions:

- Principal Training Centre Advocate
- part-time Principal Policy Officer, and
- one Advocate

The program has also sourced assistance (one day a fortnight) from the GCYP Senior Policy Officer, primarily to assist with developing the pilot inspection.

The TCVU is located within the Office for the Guardian for Children and Young People as Penny Wright also holds that position.

The TCV provides advice to the Minister for Human Services.

### 3.2 What we do – Functions and Rights

#### **Functions**

Section 14 of the *Youth Justice Administration Act 2016* requires and empowers the TCV to:

- conduct visits to training centres
- conduct inspections of training centres
- promote the best interests of the residents of a training centre
- act as an advocate for the residents of a training centre – to promote the resolution of issues to do with their care, treatment and control

- inquire into and provide advice to the Minister in relation to any systemic reform needed to improve the care, treatment and control of residents or the management of a training centre
- inquire into and investigate any matter referred by the Minister.

When addressing these functions, the TCV must pay particular attention to the needs and circumstances of residents who are under guardianship, or are Aboriginal or Torres Strait Islander young people, or who have a physical, psychological or intellectual disability (s 14(2)(b)).

The TCV must encourage residents to express their own views and must give proper weight to those views (s 14(2)(a)).

The work of the TCV Unit is guided by objects and principles set out in s 3 of the Act:

- to provide for the safe, humane and secure management of youths held in training centres in the State
- to provide for appropriate programs for youths who are in detention
- to follow, to the extent practicable, international and national requirements or guidelines relating to the detention of youths
- to promote the rehabilitation of youths by providing them with the care, correction and guidance necessary for their development into responsible members of the community and the proper realisation of their potential
- to have regard to the particular needs and circumstances relevant to a youth's cultural identity and linguistic background
- to recognise the importance of family and community involvement and participation in administering youth justice
- to support the reintegration of youths with the community as part of their rehabilitation.

We are also mindful of associated principles including the rights of victims of crime and the need to promote community safety.

### **Rights**

Section 14 of the Act establishes the TCV's formal functions, in performing her functions and considering how to promote the rights and best interests of residents.

The TCV is subject to other domestic and international legal obligations including s 22 of the Act, which requires that the TCV – and others who are responsible for exercising functions or powers under relevant laws – have regard to the *Charter of Rights for Youths Detained in Training Centres* and to try to implement its terms “to the fullest extent possible”. (See Attachment 2.)

The TCV must be guided by the statutory requirements identified in the *Children and Young People (Safety) Act 2017* (Safety Act):

- [as a ‘State agency’] to safeguard and promote the welfare of children and young people (s 5)

- [as a 'State authority' "whose functions and powers include matters relating to the safety and welfare of children and young people"] to "have regard to the fact that early intervention in matters where children and young people may be at risk is a priority" (s 9), and
- for AYTC residents who are *also* under guardianship orders, the TCV must exercise her powers and functions to give effect to the *Charter of Rights for Children and Young People in Care* as well as the *Charter of Rights for Youths Detained in Training Centres* (s 13(9)).

These Safety Act provisions require the TCV to consider what might constitute the 'best interests' of detained children and young people beyond their immediate experiences as 'residents of a training centre'.

The TCV's work is also informed by human and child rights principles and commitments embodied in international instruments and their subsidiary protocols, rules and guidelines<sup>1</sup>.

In addition, the Safety Act dictates that "to the extent practicable" "international and national requirements or guidelines relating to the detention of youths" are to be followed (s 3(1)(d)). This extends to critical subsidiary documents directly related to youth justice detention, including:

- the *Beijing Rules* relating to youth justice administration (adopted by Australia in 1980)
- the *Havana Rules* for the protection of incarcerated young people (adopted in 1990), and
- the *Bangkok Rules* for the treatment of women prisoners, including girls (adopted in 2011).

The *Charter of Rights for Youths Detained in Training Centres* was developed from a model recommended by the Australian and New Zealand Children's Commissioners and Guardians group to incorporate essential measures from these Rules. Further critical guidance is contained in the *Standards for Juvenile Custodial Facilities* overseen by the Australasian Juvenile Justice Administrators (March 1999).

The TCV position was established to put in place an independent oversight mechanism for children and young people sentenced to or remanded in detention. The Act did so in anticipation of emerging demands, including the expected ratification of OPCAT ([see 7.2 below](#)).

### 3.3 Who we work for – the characteristics of the resident population

The Adelaide Youth Training Centre (AYTC) operates on two campuses and is the only youth training centre in South Australia. The TCV Unit therefore works with residents detained in Jonal

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<sup>1</sup> The *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (s 5) requires state authorities to "seek to give effect to the *United Nations Convention on the Rights of the Child* and any other relevant international human rights instruments affecting children and young people". This would include the *Declaration on the Rights of Indigenous Peoples* (UNDRIP), the *Convention on the Rights of Persons with Disabilities* (CRPD or Disability Convention) the *Universal Declaration of Human Rights* (UDHR) and the *Convention on the Elimination of Discrimination against Women* (CEDAW).

campus (holding up to 36 children and young people who are boys from 10 to 14 years and girls and young women aged 10 and older) and Goldsborough campus (holding up to 60 young men aged 14 and older).

Jonal Campus comprises two units that ensure male and female residents are housed separately.

Goldsborough campus has five units. One general unit is closed at any one time:

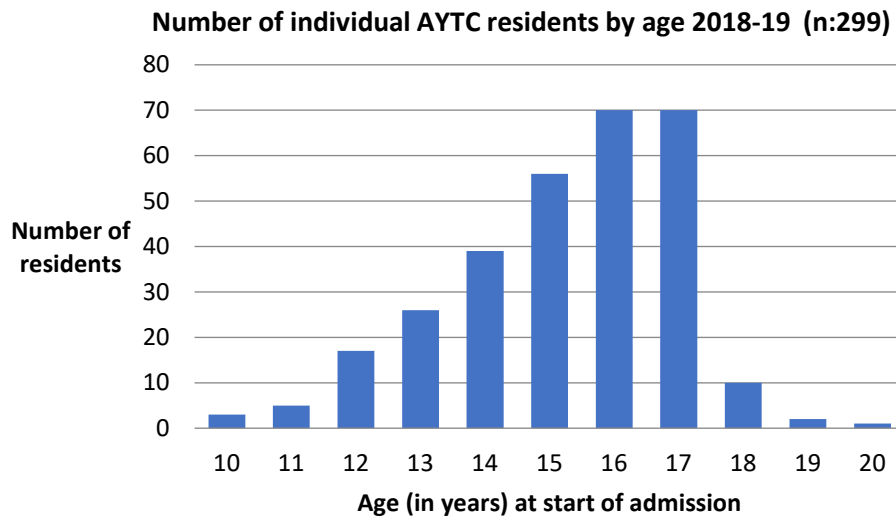
- Blue Gum (general)
- Wallaby Grass (general)
- Saltbush (intake and assessment)
- Frangipani (regression, protective actions and respite)
- Kangaroo Paw (general)

Data demonstrate that the numbers of children and young people being detained at the AYTC have decreased since last year. However, some groups continue to be over-represented.

Information provided by the DHS Youth Justice shows that AYTC residents had the following characteristics in 2018-19:

### Individual children and young people admitted to the AYTC, 2018-19

<b>Number of individuals admitted</b>	<b>Total</b>	<b>% of total</b>
Total individuals	299	100
Number of individuals who identified as Aboriginal	151	50.5
Number of individual females	58	19.3
Number of individuals under a guardianship order at the time of their admission	93	31.1



**Separate admissions to the AYTC 2018-19**

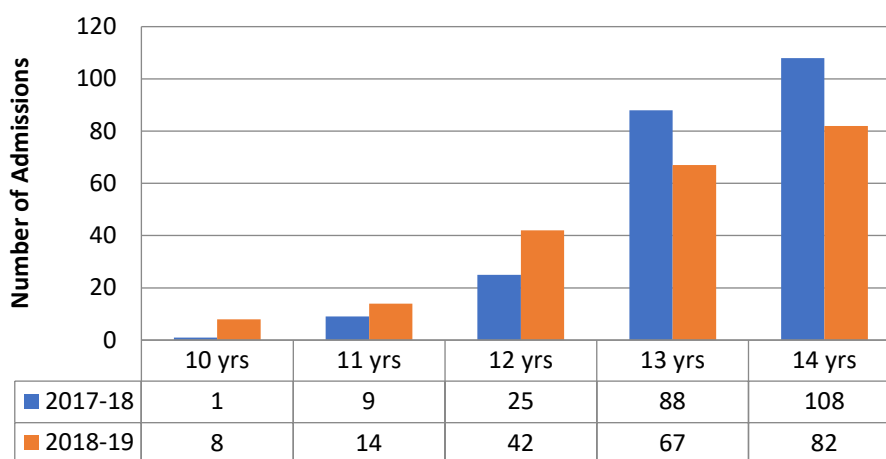
Separate admissions	Total	% of total
All admissions	608	100
Number of separate admissions of residents who identified as Aboriginal	297	48.8
Number of separate admissions of female residents	119	19.5
Number of separate admissions of residents under a guardianship order at the time of admission	206	33.8

**Average daily population, AYTC 2018-19**

Average daily population	Total	% of total
All residents	39.2	100
Average daily number of residents who identified as Aboriginal	23.0	58.7
Average daily number of female residents	3.2	8.2
Average daily number of residents under a guardianship order at the time of their admission	10.6	27.1%

In 2018-19, there was an increase in the numbers of 10-12-year-old children and young people being detained in the AYTC compared to the previous year, whereas the numbers of 13 and 14-year-olds decreased.

**Number of admissions to AYTC by age (in years at start of admission) 2017-18 compared to 2018-19**



Change in the average daily population indicates that numbers of children and young people detained are decreasing across all categories for which there is data. The average daily population of Aboriginal children and young people has decreased significantly by 4.6, whereas the decrease for those in care was only 0.2.



<b>Average daily population</b>	<b>2017-18</b>	<b>2018-19</b>	<b>Increase/decrease</b>
Yearly average	44.3	39.2	Decrease by 5.1
Boys	40.3	35.9	Decrease by 4.4
Girls	4.1	3.2	Decrease by 0.9
Aboriginal	27.6	23.0	Decrease by 4.6
Non-Aboriginal	17.9	16.6	Decrease by 1.3
Not in care	33.6	28.5	Decrease by 5.1
In care	10.8	10.6	Decrease by 0.2

There were only small changes in the average number of admissions for individuals across all categories when comparing 2018-19 with 2017-18 data. Overall, there is no change. There was a slight increase in the average number of admissions for girls, and a decrease in numbers of admissions for both Aboriginal children and young people, and those in care. Despite a significant decrease in the number of admissions of children and young people in care, those in care still have the highest average number of admissions, averaging 2.2 admissions per year.

<b>Average number of admissions per individual</b>	<b>2017-18</b>	<b>2018-19</b>	<b>Increase/decrease</b>
Yearly average	2.03	2.03	No change
Boys	2.1	2.0	Decrease by 0.1
Girls	1.8	2.0	Increase by 0.2
Aboriginal	2.1	1.9	Decrease by 0.2
Non-Aboriginal	1.8	2.1	Increase by 0.3
Not in care	1.8	1.9	Increase by 0.1
In care	2.6	2.2	Decrease by 0.4

**Current over-representation of some groups***Aboriginal children and young people*

Aboriginal children and young people are seriously over-represented as residents of the AYTC (50.5 per cent of the total number of individuals admitted to AYTC, and 58.7 per cent of the average daily population). The TCV published an overview of the situation of Aboriginal children in care and/or detention in April 2019.<sup>2</sup>

The Act identifies principles in s 3(3) with which “a person or body exercising a function or power under this Act in relation to an Aboriginal or Torres Strait Islander youth” must comply. Those persons or bodies include the Training Centre Visitor, the Department of Youth Justice and the management and staff of the Adelaide Youth Training Centre.

The s 3(3) principles are as follows:

- “observe the Aboriginal and Torres Strait Islander Youth Justice Principle”
- “have regard to the particular needs and circumstances of Aboriginal or Torres Strait Islander youths who are residents of training centres or are under supervision in the community”, and
- “recognise the diversity of cultures within Aboriginal and Torres Strait Islander communities”.

Since commencing her role in 2017, the TCV has been concerned about the lack of cultural programs provided for the young male residents (10-14) and the female residents, who are located at Jonal Campus. This is discussed further in [5.4 below](#).

*Children and young people in care*

DHS data show that children and young people “in care” (i.e. under the guardianship of the Chief Executive of the Department for Child Protection) made up 31.1 per cent of the total number of individuals admitted to AYTC, and 27.1 per cent of the average daily population, in 2018-19. This is highly troubling given that children and young people in care made up only 1 per cent of the State’s population of those who were 0-17 years old at 30 June 2019.

The dual involvement of children and young people in the child protection and youth justice systems is therefore very marked. It is even more concerning that, although reliable data is difficult to come by<sup>3</sup>, it is clear that the majority of these children and young people come from a subset of care, namely residential care<sup>4</sup>, and particularly from the larger congregate units. In 2018-19 children and young people living in residential care comprised approximately 10.5 per cent of

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<sup>2</sup> *Snapshot of South Australian Aboriginal and Torres Strait Islander Children and Young People in Care and/or Detention from the Report on Government Services 2019* (GCYP & TCV, April 2019)  
<http://www.gcyp.sa.gov.au/aboriginal-children-and-young-people-in-care-and-juvenile-detention-2017-18/>

<sup>3</sup> See discussion about the availability of data at 5.9, below.

<sup>4</sup> Residential care denotes a form of care where children and young people live with others in facilities staffed by paid carers, as distinct from family-based care such as foster or kinship care

those in out of home care and 0.15 per cent of all children and young people living in South Australia.

Because of this significant overlap of children and young people who experience both care and detention, the functions of the TCV and the Guardian for Children and Young People within the Office of the Guardian were reviewed in 2017-18 to ensure that advocacy procedures are complementary and consistent. In addition, the Office has been undertaking a major internal project about the circumstances of these 'dual involved' children and young people with a report to be released later in 2019.

#### *Children and young people with a physical, psychological or intellectual disability*

The high prevalence of disabilities among children and young people in training centres in Australia is becoming increasingly well documented. DHS Youth Justice is unable to provide the TCV with data pertaining to disability. This limitation implies incapacity to adequately provide for the needs of children and young people in their care who have a diagnosed or undiagnosed disability. It also suggests there are significant limitations in understanding trends amongst particular populations and responding to systemic concerns.

The TCV will continue to advocate that comprehensive, reliable data is collected and made available so that she and her staff can accurately report on and address the circumstances of residents with disabilities in the AYTC, as is required under s 14(2)(b) of the Act.

Data issues are further discussed in [5.9](#), below.

The TCV is conscious of the need to undertake further work in relation to the disability needs of residents and their significant relationship to care and treatment in custody. Due to capacity constraints this work has been unable to be progressed in 2018-19.

### 3.4 The values we bring to our work

All children and young people have basic rights which include the right to be treated equally, to be treated with respect and dignity, to get the help they want or need, to continue their education and to understand and have a say in decisions that affect them. For children and young people who are detained, these and other core expectations are set out in the *Charter of Rights for Youths Detained in Training Centres*.

As the TCV Unit operates within the broader Office of the Guardian for Children and Young People, we have adopted the values of that office in the establishment phase. These are:

- we are caring, brave and tenacious in our advocacy for children and young people
- we are mindful of the responsibility, independence and reach of our office
- we seek others' perspectives and take decisive action to do the right thing. We are optimistic that through this commitment change will happen

- we are committed to ensuring the voice of children and young people informs our work and are active in pursuing their best interests. We encourage others to do the same
- we are respectful of the challenges facing children and young people and our colleagues in pursuing their best interests
- we act ethically, with understanding and take responsibility to create confidential, safe spaces that facilitate honest and robust interactions
- we are playful and creative in our work and encourage innovation.

## 4. What we did in our second year

### 4.1 Visit

The TCV has a mandate under s 14(1)(a) of the Act “to conduct visits to training centres as required or authorised under this Part”. Section 16(1) then provides that on a visit the TCV may:

- so far as practicable, inspect all parts of the centre used for or relevant to the custody of youths; and
- so far as practicable, make any necessary inquiries about the care, treatment and control of each resident of the centre; and
- take any other action required to exercise the Visitor's functions.

Other aspects of s 16 cover the initiation of visits, when they can occur and their duration, notice requirements (noting that “exceptional circumstances” may obviate these) and safety arrangements.

#### ***The Pilot Visiting Program***

In 2017-18 the TCV and staff initially undertook a Pilot Visiting Program to trial this function. The relevant report was tabled in Parliament in April 2019<sup>5</sup>. The design, review and development of the TCV’s subsequent Visiting Program have been strongly influenced by the views of residents.

There were many useful findings from the pilot report including implications for the ongoing development of the TCV Program and the resources needed to run an effective and successful visiting regime:

- fortnightly visits by two TCVU staff are necessary
- a second Advocate with a specific focus on Aboriginal residents continues to be an urgent requirement, especially noting the persistent and gross over-representation of Aboriginal young people in youth justice detention
- *all* residents must have the opportunity to speak directly with TCVU staff during a visit  
some residents require specific and specialised attention (e.g. Aboriginal residents, members of other culturally and linguistically diverse communities, young women, residents with disabilities and/or neurodevelopmental needs and the very young) (The lack of AYTC targeted programs is a concern for these specific resident groups.)
- visiting needs to be flexible and responsive to resident needs and AYTC circumstances
- the pilot review of records provided valuable insight into the AYTC’s current data capabilities and clarified some ongoing data needs of the TCV Program

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<sup>5</sup> Report on Pilot Visiting Program and Review of Records for the Adelaide Youth Training Centre (Feb. 2019)  
<http://www.gcyp.sa.gov.au/wp-content/uploads/2019/04/Report-of-Training-Centre-Visitors-2018-Pilot-Visiting-Program-Review-of-Records.pdf>

- a complementary review of centre records assists the visiting process by providing the TCVU with a more in-depth impression of the care, treatment and control of residents.

The Pilot Visiting Report drew attention to five main areas of concern. These continue to be a focus for the ongoing work of the TCVU.

- Semi-naked searches
- The use of 'safe rooms'
- The use of isolation
- Incidents and the use of force
- Resident feedback and complaints

These are discussed in more detail in [Part 5](#).

### ***Ongoing Visiting Program – ensuring the residents have a voice***

In the past 12 months at least one Advocate has visited each campus on a fortnightly basis.

The Visiting Program is designed to coincide with school terms and scheduled to enable visiting across different times of the day and on different days of the week. This allows the Advocate to engage with residents wherever they may be, including at school, participating in sport or relaxing in the unit space.

As suggested by the initial resident consultation, visits are 'resident-led'. This means that an Advocate does not visit with the intention of seeking information about specific matters driven by the TCVU. Instead, residents are educated about the kinds of issues they can raise with us, their rights in custody and are free to raise any matters of concern or interest to them.

The young people have responded to this model well and over time they have built trust in the Visiting Program and appear confident that TCVU staff will regularly attend, be accessible and listen to their views.

Following visits, the TCVU provides written summaries, reflecting the voice and views of the residents, to the AYTC for staff information, and posters for the young people to communicate what the TCVU has heard from them and what issues are being raised on their behalf.

These are some of the issues that residents have raised with the TCVU over the last year. (The most significant are discussed in more detail in [Part 5](#).)

1. Resident right to privacy due to constant CCTV surveillance of their bedroom space.
2. Routine semi-naked searches.
3. Access for Aboriginal children and young people to cultural programs and supports including leave for funeral attendance particularly in rural areas of South Australia.
4. Access to cultural programs for African residents.
5. Regular access to support for residents of Islamic faith.

6. Periods of long remand.
7. Situations where residents have been remanded in the centre pending a suitable community placement.
8. Lack of trust in the internal AYTC complaint system.
9. Bedrooms that do not meet their needs as there are no desks, chairs or shelving.
10. Challenges in their relationships with other residents which has included themes of racial discrimination.

### **Review of Records**

In order to achieve a robust picture of the training centre environment and the care, treatment and control of residents, and to complement the visiting function, the TCVU undertook a review of AYTC records at the conclusion of each school term over the course of 2018-19.

These records include all critical incidents, safe room records, search logs, complaints, programs and training.

This practice will continue in the next year.

In the course of visiting and reviewing the records, the TCV identified some issues of particular concern, which were raised with AYTC management and the Department for Youth Justice. These issues are discussed in [Part 5](#).

Experience gained through the visiting and review of records process informed the 'integrated' Inspection model that is discussed in the next section.

## **4.2 Inspect**

The TCV is required "to conduct inspections of training centres as required or authorised under this Part" under s 14(1)(b) of the Act. A pilot inspection will be conducted in November this year.

Inspections need to consider all dimensions of the lives of children and young people in detention and the systems that determine the quality of their care, treatment and control. Residents must also have a voice in the process. Special consideration is needed for the circumstances of residents who are Aboriginal, are under guardianship, are girls or young women and those who have disabilities.

### **The Pilot Inspection Model**

The TCVU has developed a model for a pilot inspection to take place later in 2019, which responds to the Act and associated considerations such as the *Aboriginal and Torres Strait Islander Youth Justice Principle*<sup>6</sup>, international covenants and the *Charter of Rights for Youths Detained in Detention Centres*.

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<sup>6</sup> As set out in Part 2 of the *Youth Justice Administration Regulations 2016* (see Attachment 3).

The Inspection is consistent with an integrated oversight approach taken by the TCV. The design and content of the inspection has been informed by information gained through Visiting and Advocacy functions during the preceding year which will also be reflected in the inspection report.

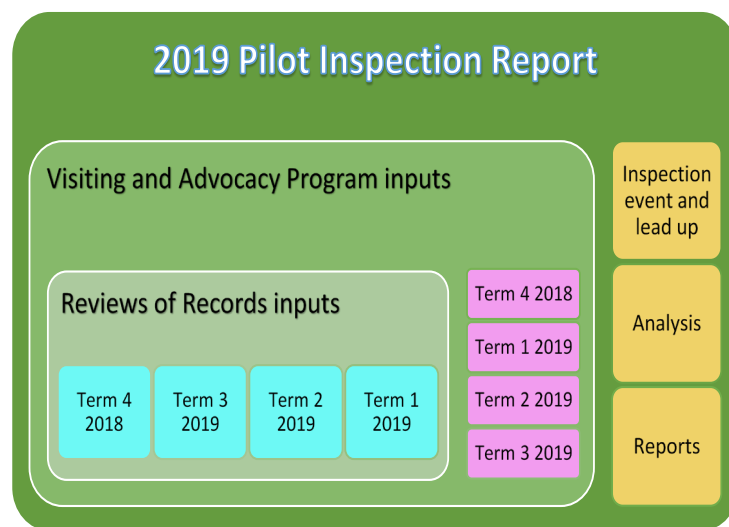
This integrated approach spreads ‘inspection’ activities throughout the year rather than concentrating them within a single intensive Inspection event. For example, Reviews of Records monitor core AYTC practices and operations and are conducted in conjunction with visiting phases, at three monthly intervals. This will allow a more targeted review of selected documentation for the formal Inspection.

Inspection standards will be linked to clear statutory reference points including the *Charter of Rights* and the *Aboriginal Youth Justice Principle*.

In designing the model, the TCVU has considered policy and practice in analogous jurisdictions in Australia and elsewhere, reports from recent inquiries and Royal Commissions and good practice guidelines identified by the Australian Youth Justice Administrators Group and others.

The pilot inspection report will consolidate and analyse information gleaned through the full range of TCV Program activities.

2019 Pilot Inspection Process and Reporting





### 4.3 Promote residents' best interests

The TCV is required by s 14(1)(c) of the Act "to promote the best interests of the residents of a training centre".

This is consistent with s 3(2)(a) of the Act which requires all those involved in the administration of the Act to be guided by the principle that "in exercising powers under this Act, consideration should at all times be given to promoting the wellbeing and best interests of youths".

Promotion of the best interests of residents requires the TCV to highlight relevant systemic issues and promote the interests of children and young people in detention to the broader community. This function complements the other specific functions in s 14 and means that the TCV must consider and engage meaningfully with broader developments in the youth justice and related sectors.

Development of a constructive and cooperative relationship with the DHS Youth Justice Directorate, and particularly the staff and management of the AYTC, continues to be a priority for the TCVU.

Promoting the residents' best interests has also included publishing information about their circumstances through the website and newsletter of the Office of the Guardian for Children and Young People, speaking with journalists, addressing expert forums and contributing to workshops and training.

### 4.4 Advocate

The TCV must act as an advocate for residents "to promote the proper resolution of issues relating to their care, treatment or control", as set out in s 14(1)(d) of the Act.

#### ***Advocacy model***

An interim advocacy procedure was adopted in 2018. Since then the TCVU has refined the approach in conjunction with discussions with young people and the AYTC. The TCV is now satisfied the current advocacy approach meets the requirements that were identified by the residents in the 2018 consultations, namely –

- Self-referral is possible and this is now the most common method used by young people during visits. Residents do not frequently use the phone line to the TCVU but prefer to approach the TCVU staff face to face.
- The residents have built rapport and connection with TCVU staff.
- The TCV will assess all requests to ascertain the best steps to progress the resident's concerns. On some occasions, this has resulted in the TCVU staff assisting residents to make a complaint.
- All advocacy, except one case of best interests, was undertaken with the consent of the young person and their views were obtained and taken into account.

Approximately 20-22 per cent of the young people visited in the AYTC are also under the Guardianship of the Chief Executive of DCP so the TCVU also provides a liaison referral process to the Guardian’s advocacy team, who have a mandate for children in care. This arrangement has enabled co-working of cases across the Guardian’s office to meet the needs of dual-involved children and young people who require both advocacy about their care and treatment within the AYTC and Guardianship care plans while in the community.

**Referrals**

From 1 July 2018 to 30 June 2019, the TCVU received 48 requests for advocacy. Of those, 40 were assessed as suitable for TCVU advocacy on behalf of 31 young people. Two requests for advocacy involved groups of young people (and are not represented in the 31 young people).

With respect to the 31 individuals who sought advocacy:

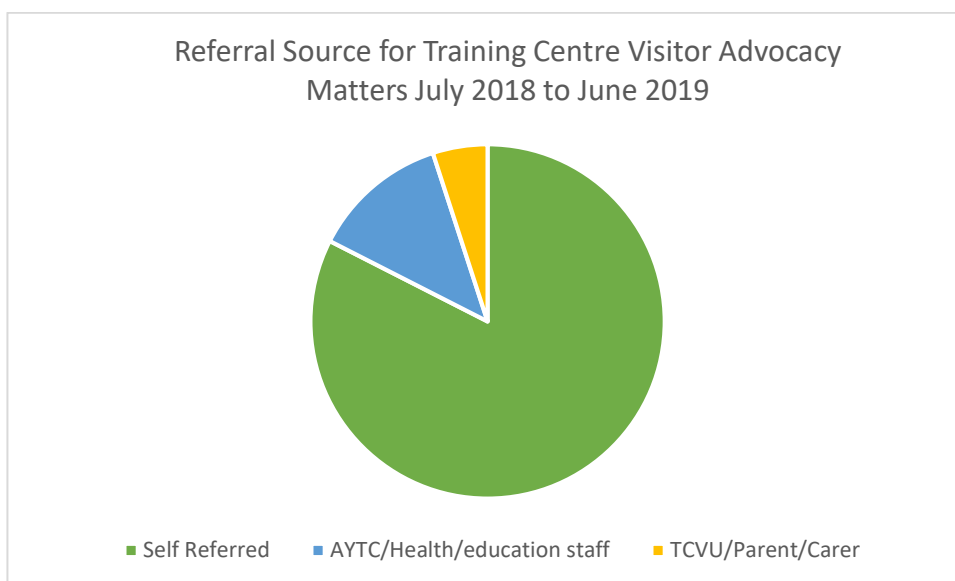
- Four females were named in five individual referrals, the remainder were males
- Nine young people were under guardianship of the Chief Executive of DCP
- 18 identified as Aboriginal or Torres Strait Islander.

For the 40 advocacy matters:

- 28 were raised by residents at the Goldsbrough Road campus
- 10 were raised by residents at the Jonal Drive campus
- Two were in relation to issues that affected residents at both sites.

The 40 advocacy matters were referred as follows:

- TCVU initiated one ‘best interest’ advocacy matter
- A parent/carer made one referral
- AYTC staff (including health and education) referred five advocacy matters
- 33 matters were self-referred by the young person.



Themes for individual advocacy matters	Number of matters
CCTV/searches	2
Use of the safe room and isolation and lockdowns	5
Interactions and access to staff	5
Unit transitions and routines	6
Placement within the centre and lengthy remand	6
Cultural practices and faith	3
Personal care	2
Access to education	1
Food and health (including mental health)	4
Visits and phone calls	3
Other	3

#### 4.5 Inquire and advise (own motion)

The TCV must “inquire into, and provide advice to the Minister in relation to, systemic reform necessary to improve the quality of care, treatment or control of residents of a training centre and/or the management of a training centre” (s 14(1)(e)).

##### ***Ongoing advice***

In the course of the reporting year the TCV had two meetings with the Minister for Human Services.

##### ***Formal Inquiries***

The TCV initiated no formal inquiries pursuant to s 14(1)(e) in 2018-19.

#### 4.6 Inquire and investigate (at Minister’s request)

The TCV must “inquire into and investigate any matter referred to the Visitor by the Minister” (s 14(1)(f)).

No matter was referred by the Minister for investigation in 2018-19.

## 5. Issues and themes in 2018-2019

The TCV noted and reported on a number of issues of concern in the 2018-2019 year.

### 5.1 Semi-naked searches

Section 30 of the Act allows for 'semi-naked' searches (although DHS prefers to use terms such as 'personal' or 'partially-clothed' searches). Semi-naked searches require children and young people aged 10 to over 18 years to remove their clothing in order to be searched. This results in them being naked either above the waist, or below the waist, at the time of searching. Semi-naked searches can be distressing and re-traumatising for children and young people, particularly those with trauma backgrounds who make up a significant percentage of residents in the AYTC.

Semi-naked searches are routinely used for every new resident admission and every time a resident returns to the AYTC from Court or other forms of leave. Routine semi-naked searches have also been undertaken following resident domestic or personal visits with family and friends, with at least one resident chosen randomly from each visit session. This remained the practice as at 30 June 2019.

This issue first came to light during the Pilot Visiting Program in mid-2018, when the TCV became aware that some young people were experiencing an excessive number of searches and recommended a reduction in their use. In the Term 4 Visiting Report of 2018 the TCV reported that the frequency of searches had continued and noted that two residents had been subject to three semi-naked searches each over a two-day period.<sup>7</sup>

It is noteworthy that other jurisdictions nationally have abolished the use of semi-naked searches due to their impact on children and young people. The ACT has reduced 'strip searches' from 50 per cent (in 2016-2017) to just 7 per cent in 2017-2018. Recently, the ACT Government has indicated that it has stopped strip searching children<sup>8</sup>. The ACT Human Rights Commission also had this to say in a March 2019 report -

*Personal searches, and in particular, intrusive searches such as strip searches, can seriously limit human rights of young people, including the right to privacy, the protections against being treated or punished in a cruel, inhuman or degrading way, the right to humane treatment when deprived of liberty, and the rights of children to the protection needed because of being children, without distinction or discrimination of any kind.*

*Strip searching is a potentially humiliating and degrading practice, and is likely to be re-traumatising for young people who have experienced physical or sexual abuse. Conducting strip searches of young people on a routine basis is not consistent with international human rights law. Rule 52 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) provides that strip searches of detainees*

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<sup>7</sup> [TCV Term 4 Report and Review of Records, p.16](#)

<sup>8</sup> See **Canberra Times** article at, <https://www.canberratimes.com.au/story/6004890/sharp-rise-in-serious-incidents-at-bimberi/>

*should be undertaken only if absolutely necessary and that administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Even greater caution and care is required in relation to strip searching of young people in detention due to their greater vulnerability.*<sup>9</sup>

Western Australia also reports a reduction in strip searches in three prison facilities<sup>10</sup>.

During Term 1 in 2019, the TCV welcomed a slight reduction in the use of semi-naked searches<sup>11</sup> following domestic/personal visits due to AYTC increasing their use of an ion scanner, which has the ability to detect certain substances.

**The TCV continues to recommend that semi-naked searches be kept to an absolute minimum and always implemented with due regard for the personal needs of the child or young person involved.**

#### *Recording of semi-naked searches*

During the pilot visiting phase in term 3 2018, AYTC search logs did not meet the legislated recording requirements outlined in s 30 of the Act. This led to advocacy from the TCV, with AYTC management implementing a log template which now reflects the legislation. It remains a concern that the logs are not always fully completed and the TCVU continues to monitor practice and advocate as required.

**The TCV continues to recommend that the reason for personal and semi-naked searches should be recorded in the search log on every occasion.**

#### *Advising residents of their rights*

In addition to seeking a reduction in semi-naked searches, the TCV has advocated for young people to be fully advised of their rights prior to a semi-naked search in accordance with Recommendation 15.4.d from the Royal Commission into Institutional Responses to Child Sexual Abuse<sup>12</sup>, particularly about their right to never be fully naked.

**The TCV has recommended that a pictorial representation is developed to inform residents of the process, having regard to the fact that many residents are not able to read. This recommendation remains relevant but unresolved.**

#### *Squat and Cough*

**The TCV has recommended that the practice of requiring residents to 'squat and cough' during semi-naked searches should cease immediately and be removed from Security Order 6, because**

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<sup>9</sup> **ACT Human Rights Commission 2019**, *Commission Initiated Review of Allegations Regarding Bimberi Youth Justice Centre: Report of the ACT Disability and Community Services Commissioner and ACT Human Rights Commissioner*, at page 71

<sup>10</sup> <https://www.oics.wa.gov.au/reports/strip-searching-practices-in-western-australian-prisons/key-findings/>

<sup>11</sup> Following domestic and personal visits, 23% of searches undertaken in the first quarter of 2019 were semi-naked as opposed to 39% in Term 4, 2018 (a decrease of 16%).

<sup>12</sup> [Royal Commission into Institutional Responses to Child Sexual Abuse Report \(2017\)](#) at p.149

it constitutes both undignified treatment and a safety risk if a young person has a sharp object concealed. The AYTC management has not yet provided a response to this recommendation.

## 5.2 Complaint processes

A core right and safety protection for children and young people in custody is to have access to a well-designed grievance system. Residents have consistently told the TCVU that they do not consider the AYTC internal complaint process to be reliable or useful.

**In each quarterly report, the TCV has consistently recommended that ATYC review the internal complaint process, to ensure it:**

- a) provides more detail in case notes or recordings to reflect the work undertaken by staff to resolve the issue of concern;**
- b) involve a review by an independent person; and**
- c) is child/young person focussed in terms of timely resolution, explanations and tone of letters**

On two occasions this year, AYTC management has met with young people (together with a TCVU Advocate) to resolve their complaint. Both residents reported that this was a very positive experience and they welcomed this approach to complaint resolution.

The internal complaint (feedback) process is designed and led by the wider DHS systems. AYTC has advised that review of the complaint process is inhibited because it is resource-intensive but they welcome feedback on improving the process. It is noteworthy that the National Office of Child Safety has recently released the [Complaint Handling Guide: Upholding the rights of children and young people](#)<sup>13</sup> which was developed by the NSW Ombudsman in consultation with the Office of the e-Safety Commissioner, Australian Human Rights Commission and children's guardians, commissioners and ombudsman's offices across Australia, to support organisations to build their capacity in handling complaints involving children and creating child safe cultures.

## 5.3 Isolation and the use of safe rooms

The TCV and her staff monitor and review the use of isolation and each use of the safe room, from records (but not necessarily CCTV footage).

### *Isolation*

The requirements for isolation are outlined in the Act. The TCV notes there are also occasions when residents spend periods of time alone that does not constitute isolation as outlined in the Regulations but can be significant. For example, centre lockdowns and early bedtime routines can result in a young person remaining secured in their bedroom from 7.30pm to 7.30am.

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<sup>13</sup> <https://pmc.gov.au/resource-centre/domestic-policy/complaint-handling-guide-upholding-rights-children-and-young-people>

*Safe rooms*

Safe rooms are isolation cells, often padded, within which residents may be constrained, on the basis of compliance with legislative requirements. The term ‘safe room’ is defined in s 4 of the Act as: “a room (other than a resident's bedroom) in a training centre that is set aside for the safe detention of residents of the centre”.



A young person sitting in a safe room (Photo credit: Ombudsman SA *Investigation concerning the use of spit hoods in the Adelaide Youth Training Centre*, September 2019, p.4)

Section 28(2) of the Act prohibits the use of a ‘safe room’ for a resident who is under the age of 12 years.

Detention in a safe room can be necessary and useful in some circumstances, for a limited period of time, to keep a young person safe while they regulate their emotions or behaviour. In other cases it can be harmful and reinforce trauma-related behaviours and a child or young person’s sense of isolation. In the case of younger children there is evidence that isolation and the use of a safe room is developmentally inappropriate and they are best assisted to regulate their emotions in the presence of a caring adult. Hence the restriction in s 28(2).

Over the past 12 months, the TCV has raised the following concerns:

- a) The use of the safe room on one occasion for a child under 12 years of age.
- b) Consideration of the particular needs of children with a disability and/or presentation of trauma behaviours.
- c) A requirement for safe room procedure to outline the right for residents to access food and water while in the safe room.

- d) The need for the cultural advisor to be notified and provide support for Aboriginal young people.

These concerns will become a particular focus for TCV advocacy in 2020.

## 5.4 Aboriginal programs and cultural support

The TCV has consistently supported and advocated for Aboriginal children and young people in their expressed desire for more cultural programs and supports. The AYTC has only one cultural advisor position to cover the two campuses. Aboriginal children and young people are grossly over-represented in custody and this staffing is insufficient to scope, plan and respond to their needs. For most of the year there was no cultural program available to residents at the Jonal Drive campus at all.

The TCV and staff welcomed the news that a female 'Yarning Circle' commenced at Jonal Drive earlier in 2019. This ensures that young women now have the same access to the Circle as the young men at Goldsborough Road have had for some time.

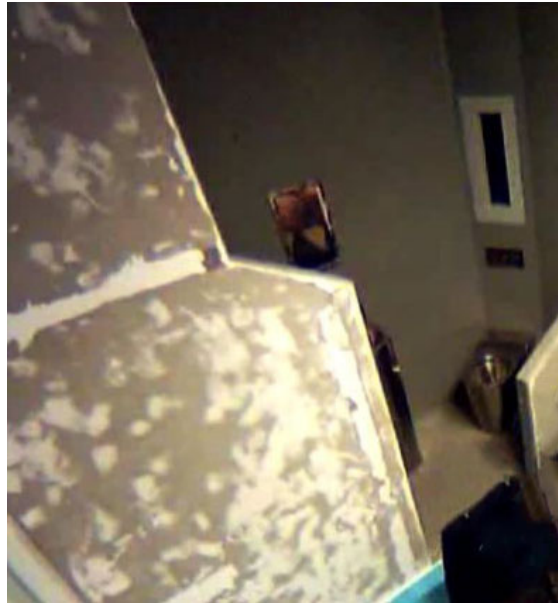
There are other opportunities to build the variety and nature of cultural programs across the AYTC but this requires resources. Young people are seeking the advice and support of the Aboriginal community and Elders during their time in custody and have raised this with the AYTC. AYTC management has informed the TCV that this is a focus of development for late 2019-20.

The TCV is also noting and monitoring instances where children and young people have requested leave for attendance at funerals. While this can be a complex decision, weighing up the needs of the residents with the safety of the community and the management of risk, the TCV advocates that the need and right of residents to be connected to family, community and culture and the evidence in favour of the positive and protective influence of these connections must be at the forefront of system design and decision making.

## 5.5 Resident right to privacy

The TCV has serious and ongoing concerns about resident privacy and safety relating to the use of CCTV cameras in residents' rooms. During the Pilot Visiting Program in July 2018, residents at Jonal Drive were worried about their privacy while using the shower and toilet in their rooms, as their rooms were fitted with CCTV cameras that displayed these wet areas. Since then all rooms have now been fitted with CCTV cameras, across both campuses, and children as young as 10 years and up to 19 years have raised concerns with the TCV about their right to privacy particularly when using the toilet.





CCTV view of the toilet area (Photo credit: Ombudsman SA *Investigation concerning the use of spit hoods in the Adelaide Youth Training Centre*, September 2019, p.14)

The camera footage from each room is displayed on a monitor in the main office area of each AYTC unit. These monitors are visible to AYTC staff and others who frequent the offices from outside the training centre, including TCVU staff and visitors from health, mental health and education services.

**The TCVU has advocated strongly for 12 months for the resolution of this serious breach of resident privacy but it has not yet been resolved. Resolution of this issue is urgently required to ensure the safety and wellbeing of the children and young women and men at AYTC as well as that of staff.**



CCTV view of the toilet area (Photo credit: Ombudsman SA *Investigation concerning the use of spit hoods in the Adelaide Youth Training Centre*, September 2019, p.16)

## 5.6 Hygiene products

During the reporting year, residents raised concerns about having to use a flexible infant toothbrush (a rubber tube which fitted over a finger) which was adopted in some situations to manage risk but was ineffective in cleaning their teeth. Following TCVU advocacy, the AYTC have adopted a safe but improved standard of toothbrushes for residents.

During visits at Jonal Drive, the TCV was concerned to learn that young women were required to request sanitary products frequently from staff in order to manage their menstruation, rather than being issued with supplies on admission or having access to a ready supply when needed as in other jurisdictions such as New Zealand. Although the AYTC seeks always to have a female staff member at Jonal Drive, in some cases this is not possible and there are only males.

The TCV has advocated strongly that young women have the right to easy and *private* access to sanitary products which should be routinely provided with toilet paper, soap and shampoo. Although AYTC management has indicated that there has been some change to procedures it is not clear to the TCV that this has rectified the situation and further clarification and monitoring is required.

## 5.7 Incidents and use of force

The TCV monitors use of force through the quarterly review of incident records, focussing on incidents involving the:

- use of mechanical restraint
- use of physical restraint
- experience and 'voice' of the young person involved
- nature/cause of incidents
- internal AYTC review process
- safety, rights and wellbeing of children and young people.

On occasion, residents request a discussion with the TCVU about their involvement in an incident which is assessed and may lead to advocacy.

Over the course of the year, the TCV has raised concerns with the AYTC in relation to:

- a) The use of prone restraint on multiple occasions, when not used as last resort and for extended periods. The prone restraint is associated with physical safety risks for young people including asphyxiation. The TCV is not confident that the use of prone restraint is always a restraint of last resort in AYTC. The TCV has noted the policy of the Office of the Chief Psychiatrist that "at no time should a child be held in a prone position."<sup>14</sup>

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<sup>14</sup> [Office of the Chief Psychiatrist, Restraint and Seclusion in Mental Health Services Policy Guidelines \(7 May 2015\)](#)

- b) The use of resident worn spit protection or spit mask, particularly as an anticipatory practice. The use of this mechanical restraint has reduced over time and the TCV advocates this practice to be abolished.
- c) The need to monitor the potential routine use of handcuffs in incidents. This will be monitored by the TCVU in the next year.

## 5.8 Room standards

The TCVU undertakes reviews of each campus facility and environment during each visiting term. Some bedrooms in the AYTC do not meet the national *Quality of Care Standards and Design Guidelines for Juvenile Justice Facilities in Australia and New Zealand* which were endorsed by all States and Territories in 1996. These *Design Guidelines*<sup>15</sup> aim to “maxim[ise] young people’s chances of rehabilitation and reintegration to society” and recommend that each bedroom should include a bed, desk, chair, clothes storage, shelving and a secure cupboard.

Not all bedrooms contain these items and resemble cells. The TCV notes that furniture has been ordered for one Jonal Drive unit in order to meet the guidelines. However, some rooms at Goldsborough Road remain without desks or chairs. This means that when residents are confined to their rooms, they must eat their meals on their beds.

The TCV advocates that AYTC meet this very basic set of guidelines for room designs. During 2018, some very damaged rooms were repainted in several units, with a very positive outcome for children and young people.

## 5.9 Availability of data

The collection and analysis of data is vital for informed policy planning and monitoring of trends. As discussed in [3.2 above](#), s 14(2)(b) of the Act requires the TCV to pay particular attention to the circumstances of Aboriginal children and young people, those in care, and children and young people who have a physical, psychological or intellectual disability.

A particular theme throughout the 2018-19 year was the difficulty experienced by the TCV in obtaining the data necessary to fulfil her functions. As discussed in [3.3 above](#), DHS Youth Justice cannot extract data relating to the disability status of the residents of the AYTC. Rates of intellectual disability have been found to be as high as 89 per cent of the population of detainees in interstate studies.<sup>16</sup> This limitation seriously inhibits the DHS’s ability to plan for and design the

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<sup>15</sup> See discussion at [https://www.alrc.gov.au/publications/20-detention/existing-national-standards-juvenile-detention-centres#\\_ftn45](https://www.alrc.gov.au/publications/20-detention/existing-national-standards-juvenile-detention-centres#_ftn45)

<sup>16</sup> Bower C, Watkins RE, Mutch RC, et al. Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia. *BMJ Open* 2018; 8:e019605. doi:10.1136/bmjopen-2017-019605.

physical and therapeutic environment to support the rehabilitation of those with a disability.

In respect of those who are under guardianship or the custody of the Chief Executive of DCP,<sup>17</sup> both the TCV and Guardian for Children and Young People have the power to require the provision of information.<sup>18</sup> During 2018-19, the TCV became aware of significant limitations in the capability of DHS Youth Justice to collect and extract data relating to this cohort. These limitations suggest that DHS is affected by errors in data entry, and inconsistencies in recording and extraction of basic data. These limitations were highlighted upon requesting similar data from DCP, who do not keep accessible data relating to the youth justice involvement of those under their care. This is despite the ongoing over-representation of those in care in the youth justice system.

DHS Youth Justice and DCP are working to address these shortfalls in data capability, but while these limitations continue, they restrict the TCV and the Guardian's ability to fully exercise and satisfy her oversight functions.

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<sup>17</sup> Youth Justice Administration Act 2016 s 14(2)(b)(i).

<sup>18</sup> s 61 *Children and Young People (Oversight and Advocacy Bodies) Act 2016*, and s 15 *Youth Justice Administration Act 2016*.

## 6. Unresolved matters from the 2017-18 Annual Report

The 2017-18 Annual Report highlighted some areas limiting the TCV's capacity to promote the best interests of residents and otherwise meet her obligations under the Act. These matters remain unresolved.

### 6.1 Budget/Program – resources and capacity

Section 14 of the Act provides for an extensive range of functions for the TCV. Section 13 of the Act provides that 'the Minister must provide the Training Centre Visitor with the staff and other resources that the Visitor reasonably needs for exercising the Visitor's functions'.

As noted in the 2017-18 Annual Report, an annual budget was proposed in 2016 to enable the TCV Program to be established and fulfil the TCV's statutory functions. At that time a lesser amount was provided, with the rationale that it was an initial budget, towards the establishment of the role.

Since then there has been no real increase in the allocated budget.

The TCV Program is now established and operational.

The staffing remains at 2.5 FTE, together with a proportion of the Guardian's working week now additionally dedicated to the role of TCV.

The current TCV budget allocation allows for one Principal Advocate to develop, manage, and supervise the TCV Program and liaise with senior AYTC management and departmental officials.

The current TCV Budget allows for one Advocate to fulfil all visiting, advocacy and community outreach responsibilities.

There is an urgent need for a designated Aboriginal Advocate position, in light of the disproportionate representation of Aboriginal residents in the training centre, and the consequent demand on the Advocate to liaise effectively and respectfully with the Aboriginal community. (As noted in this Annual Report, at page 12, 58.7 per cent of the average daily number of residents in the AYTC, identified as Aboriginal in 2017-18.)

The current staffing is not sufficient to maintain the TCV's commitment to visit both campuses on a fortnightly basis, and to provide a choice of Advocates (including a female) which was made as a response to the outcome of the resident consultation and the Pilot Visiting Program in the first year. The frequency of visiting and the capacity to ensure face-to-face contact with every resident will be reduced in 2019-20.

As there has been no funding allocation for an Inspection in the next year, the scope and breadth of the pilot inspection scheduled for November 2019 will necessarily reflect the resources available.

## 6.2 Limited scope, and restrictions, affecting the TCV's powers

Advice from Crown law has identified issues relating to the TCV's powers and functions, including the following:

- the term "resident of a training centre" is interpreted as referring only to residents within the training centre, restricting the scope of the Advocacy function under s 14(1)(d)
- incapacity to delegate certain important functions and powers.

### ***Limitations on advocacy and oversight for young people detained to the AYTC – due to the term "resident of the training centre"***

Advice from Crown Law has concluded that, except in highly limited circumstances, interpretation of the term, "resident of the training centre" means that residents only come within the TCV's mandate when they are physically within the precincts of the training centre. By contrast, under s 24 of the Act the Minister has responsibility for youths in 'custody' "*whether the resident is within, or outside, the precincts of a training centre in which he or she is being detained, or is to be detained*".

On the basis of the legal advice from Crown, the TCV's mandate does not extend beyond the walls of the AYTC.

This casts doubt on the TCV's ability to advocate and assist residents with issues related to care, treatment or control that arise during transport to and from the centre, when attending events or places outside the training centre (such as being restrained in hospital) or while on temporary leave (s 34).

A sentenced or remanded child or young person may therefore pass in and out of the TCV's mandate frequently while remaining subject to detention in the AYTC, as illustrated below:

**Figure 1 – an interrupted Training Centre Visitor mandate**

Police arrest a child or young person (CYP) and are taking them to the AYTC	Not in mandate
The CYP is admitted to custody in the ATYC on remand pending appearance at court	In mandate
A private contractor transports the CYP to the Youth Court	Not in mandate
CYP is in the Youth Court for sentencing	Not in mandate
A private contractor transports the CYP to the AYTC	Not in mandate
The CYP is admitted to the AYTC	In mandate
The CYP is transported to and from Boylan Ward (Women and Children’s Hospital) for mental health treatment	Not in mandate
The CYP is held and treated in Boylan Ward	Not in mandate
The CYP returns and is held in the AYTC	In mandate
The CYP is granted s 34 leave of absence for hours or days (e.g. to attend a funeral)	Not in mandate
The CYP returns and is held in the AYTC	In mandate
The CYP is transported to and from a Youth Court hearing	Not in mandate
The CYP returns and is held in the AYTC	In mandate
A CYP is granted conditional release or home detention under Part 5 of the Young Offenders Act 1993 and does not return to the AYTC prior to their ultimate release	Not in mandate
CYP is released or is on conditional release (but has an advocacy matter in train)	Not in mandate?

In 2018-19 there has been various cases where residents have sought advocacy and assistance from the TCV in circumstances that have occurred outside the physical precincts of the AYTC. For example, two, de-identified, matters arose as follows:

**Case Study One – James**

Fifteen-year-old James suffers from multiple physical health ailments. While he was a resident of the AYTC he needed to be admitted to the hospital for care and surgery on many occasions. During these admissions, James was under the escort and supervision of AYTC staff.

James contacted the TCVU to raise concerns and request advocacy about his care and treatment during the hospital admissions. He noted that he was not able to make the phone calls that he was normally entitled to make while in the centre, was not allowed to visit the courtyard for fresh air and was cuffed to the hospital bed for long periods without exercise.

**Case Study Two – Rachel**

Rachel was a resident on remand at the AYTC, who was transported to a Youth Court hearing by the private company, G4S (which is contracted by Youth Justice to provide secure transport for residents). Rachel raised concerns with the TCV Unit about her care and treatment during her escort and court appearance.

Rachel alleged that G4S placed her in shackles and made her wear spit protection for her court appearance, despite the AYTC not endorsing the use of shackles in the centre. Rachel also said that she was not provided with water upon request during her wait in the Youth Court cells.

These events occurred within the context of, and as a result of, these young persons' detention. If the TCV's mandate is limited, residents should have identified and raised their concerns with some other agency. It is not efficient, practical nor fair to require young people to navigate various complaint and oversight bodies during their time in custody. They have also told us, in consultation with them, that if they do not have a relationship fostered through visiting and contact, this will not happen.

If Parliament's intention was for the TCV to provide oversight of the care, treatment and control of residents from the time a child or young person passed from the custody of the Youth Court to the custody of the AYTC and continue to do so until the child or young person is finally released, there is real doubt that such an intention can currently be met.

It is the TCV's view that this restriction on oversight is not in the child or young person's best interests.

An amendment to the Act could ensure that a child or young person in the AYTC has access to the ongoing support and oversight of the TCV from the point at which they are sentenced or remanded to the time of their release.

***Lack of capacity for the TCV to delegate functions***

As identified by Crown law advice in March 2017, and confirmed in April 2018, the TCV does not have a formal power to delegate her powers and functions to her staff to implement the TCV Program, including visiting and conducting an inspection of the training centre.

The TCV has previously recommended a legislative amendment to the Act to rectify this situation. To date, this incapacity remains unresolved.



## 7.The future - changing oversight demands for children and young people in detention

### 7.1 Controlled Substances (Youth Treatment Orders) Amendment Bill 2018

This bill, which was introduced in June 2018 and is currently before the parliament, provides for the making of orders in relation to the mandatory treatment of drug dependency in children and young people that could include periods of detention for up to 12 months.

If passed, it is likely that the first phase of implementation of the bill will apply to children and young people who are already detained in the AYTC, and therefore already within the mandate of the TCV (at least while they are physically within the precincts of the AYTC).

An amendment to the bill in the Legislative Council provides for an oversight role for the Guardian for Children and Young People in relation to young people who have been detained under the provisions of bill. However, the Office of the Guardian has advised that it should be the TCV, rather than the Guardian, who should have this oversight responsibility because the Guardian's mandate applies exclusively to children who are under the Guardianship of the Chief Executive of DCP, so some of the children who may be detained under this bill will fall outside that mandate.

It is also the TCVU staff who possess the relevant expertise to oversee and monitor environments where children and young people are detained.

This regime or any other proposed new model or service that will result in detention of children and young people, must adhere to fundamental human/child rights principles and protections, be designed on the basis of the best available evidence, and be resourced adequately to achieve its stated purpose.

Any such service should also be recognised as a 'place of detention' for OPCAT purposes, as discussed below.

### 7.2 OPCAT

The Australian government ratified the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT) in December 2017. The main aim of this voluntary, additional agreement to the main convention is to prevent the mistreatment of people in detention. Ratification requires the Australian government to establish an independent National Preventive Mechanism (NPM) to conduct inspections of all places where people are held in detention or in closed environments in Australia.

Commonwealth and State/Territory governments continue to negotiate to have an NPM in place by December 2020 based on a 'diffuse' model which will operate in each State and Territory jurisdiction rather than as a single centralised body. The discussions are being overseen and co-

ordinated by the Commonwealth Ombudsman, who is expected to report in September 2019 on the existing detention oversight bodies and their consistency with OPCAT and NPM requirements.

The Act was drafted to ensure consistency with OPCAT requirements and all the aspects of the TCV Program (visiting, advocacy and inspection) have been designed to be as OPCAT-compliant as possible, subject to resourcing.

The 'places of detention and closed environments' of particular relevance to children and young people in South Australia include youth justice centres, police lock-ups and police stations, court custody centres and holding cells, vehicles that transport children who are detained or arrested, closed psychiatric units, immigration detention centres and secure care facilities for children and young people in statutory out-of-home care.

Currently the TCV does not have a mandate to visit, advocate or inquire into these forms of detention although the TCVU is aware that children and young people are sometimes held in such places and is concerned whether the conditions and their treatment are safe and appropriate.

In South Australia, the TCV is involved in intra-governmental discussions about the application of OPCAT to places of detention for children and young people and is awaiting the finalisation of the form and nature of the South Australian NPM.

## 8. The Training Centre Visitor Unit - Administration

### 8.1 Staff profile

Staff have been progressively employed in the TCV Program over a period of time, since November 2017. Work has been undertaken contingent on the commencement of specific officers. (For example, intensive consultation with AYTC residents could only be done properly following the induction of Travis Thomas as Advocate in February 2018.)

The unit has functioned on 2.5 full time equivalent staff members for the last year.

#### ***Principal Training Centre Advocate***

Belinda Lorek and Alan Fairley (job share from November 2017)

The Principal Training Centre Advocate provides development and design, management and leadership for the TCV Program.

#### ***Principal Policy Officer***

Alan Fairley (from May 2018)

The Principal Policy Officer provides high level policy and strategic advice to the TCV, conducts research, prepares policy papers, briefings and reports.

#### ***Advocate***

Travis Thomas (from February 2018)

The Advocate has a key role in the TCV Program, maintains effective dialogue with and advocates for AYTC residents, and develops relationships with AYTC management and staff and other government and non-government stakeholders.

#### ***Senior Policy Officer ('borrowed' from the Guardian for Children and Young People)***

Jessica Flynn (from January 2019 – 1 day per fortnight)

The Senior Policy Officer provides critical policy advice, prepares policy papers, briefings and reports.

Administrative and communications support in the TCV Program's establishment period was provided by staff of the Office of the Guardian for Children and Young People.

## 8.2 Participation in external committees

The TCV has participated in the following committees:

- Australian and New Zealand Children's Commissioners and Guardians group (ANZCCG)
- National Inspectors' Teleconference
- Youth Court Stakeholders Forum
- Children and the Law Committee, Law Society of South Australia
- Meetings between TCVU, Directorate of Youth Justice and Management of AYTC.

## 8.3 Learning and development

The TCV or staff participated in the following events:

- Attendance at the Australasian Juvenile Justice Conference (April 2019)
- Visits to Cobham Juvenile Justice Centre (April 2019), Parkville Youth Justice Precinct (June 2019) and Bimberi Youth Justice Centre (May 2019)
- Courts Administration Authority Cultural Awareness Project (May 2019).

## 8.4 Strategic and organisational planning

The past year has focussed on transitioning the TCV Program from establishment to ongoing. The TCVU staff have also participated in ongoing development of a Common Engagement Framework across the Office of the Guardian to unify the focus and procedures across the entire workforce.

In 2019-20, resources permitting, the TCVU will seek to develop and promote the Charter of Rights for Children in Youth Justice Facilities, with input from the residents within the AYTC.

## 8.5 Freedom of Information

No freedom of information requests were received in 2018-19.

## 8.6 Finances 2018-19

The costs of implementing the TCV Program in 2018-19 ran over budget by \$5000 due to over expenditure on goods and services. This shortfall was subsidised by the budget for the Guardian for Children and Young People.

### Financial Summary of expenditure 2018-19

Project 973: Training Centre Visitor ('000)			
Item	Actual	Budget	Variation
Salaries and wages	311	311	0
Goods and services	54	49	-5
<b>Total</b>	<b>365</b>	<b>360</b>	<b>-5</b>
Revenue	-360	-360	0
<b>Net</b>	<b>-5</b>	<b>0</b>	<b>-5</b>

## 8.7 Workplace Health and Safety

In 2018-19 no incidents resulted in workplace injury.

## 8.8 Complaints

The TCVU uses the grievances and complaints policy available on the Office of the Guardian's website. No complaints were received in 2018-19.

Legislation exempts information about individual cases from disclosure under s 20 of the Act. The TCV exemption is not listed with the Guardian for Children and Young People under Schedule 2 of the *Freedom of Information Act 1991*.

## Youth Justice Administration Regulations 2016

### 5—Aboriginal and Torres Strait Islander Youth Justice Principle

For the purposes of the Act, the Aboriginal and Torres Strait Islander Youth Justice Principle is as follows:

- (a) that, in acknowledging the diversity of Aboriginal and Torres Strait Islander communities, the individual cultural identity of Aboriginal and Torres Strait Islander youths be recognised and their beliefs and practices be supported, respected and valued;
- (b) that Aboriginal and Torres Strait Islander youths will be supported to uphold their cultural responsibilities and have access to, and participation in, cultural ceremonies, funerals and cultural practices, relevant to their individual cultural identity;
- (c) that assessment, case planning and decision-making in respect of an Aboriginal or Torres Strait Islander youth includes consultation with relevant Aboriginal and Torres Strait Islander people or organisations to assist the youth;
- (d) that, where it is appropriate to do so, the identified family, significant person and community of an Aboriginal or Torres Strait Islander youth are participants in assessment, case planning and decision-making for the youth;
- (e) that Aboriginal and Torres Strait Islander youths are provided with programs, services and supports that have regard to their age, maturity and individual cultural identity;
- (f) that the assessment of appropriate accommodation in a training centre will consider the individual cultural identity of Aboriginal and Torres Strait Islander youths;
- (g) that, where necessary, Aboriginal and Torres Strait Islander youths will be provided with interpreters and, where possible, translated documents;
- (h) that the particular health, education and wellbeing needs of Aboriginal and Torres Strait Islander youths are considered and, where practicable, met;
- (i) that officers of the Department actively participate in cultural training and demonstrate culturally respectful engagement;
- (j) that the Department actively recruits and supports the retention of Aboriginal and Torres Strait Islander staff.

ATTACHMENT 2

***Charter of Rights for Youths Detained in Detention Centres***

under s 22 of the Youth Justice Administration Act 2016

You have the right:

To be treated equally, and not treated unfairly because of your sex, sexuality, race, religion, disability or other status.

To be treated with respect and dignity by staff and to be kept safe while you are in the youth justice centre.

To be given a copy of and have explained to you the rules of the centre, and rights and responsibilities, in a language that you can understand.

To see a doctor or nurse whenever you need to, have your health assessed soon after you arrive, and to receive proper healthcare.

To receive help for your mental health if you need it, and to be transferred to a mental health facility for treatment if required.

To get help if you have problems with drugs or alcohol.

To have special care and protection if you are vulnerable or have special needs.

To have regular contact with your family and friends through visits and phone calls.

To get help to see a lawyer, and to talk to them privately.

To have an interpreter for formal meetings or medical examinations if you are not fluent in English.

To get information and news about what is happening in the world.

To have a say in decisions about your rehabilitation and other issues that affect you.

To participate in activities and programs that help

your rehabilitation.

To continue your education, or to do training to learn useful skills for work.

To get exercise every day, and to go outside every day except in bad weather.

To have enough good food (including food that is suitable for your culture or religion, or dietary requirements), and to have drinking water available whenever you need it.

To have clean clothes, and to wear your own clothes if you go out of the centre.

Not to be punished unfairly, and only in accordance with the rules of the centre or the law.

Not to have force used against you, or restraints used on you, unless absolutely necessary, and never as a punishment.

Not to be isolated from other young people unless necessary to keep you or others safe, and never as a punishment.

To practice your religion or express your culture and, whenever possible, to participate in cultural celebrations and see religious or spiritual advisors.

If you are Aboriginal or Torres Strait Islander, whenever possible, to participate in cultural activities and celebrations with other Aboriginal or Torres Strait Islander people.

To make a complaint about your treatment to an independent person (like an official visitor) and to be told what happens with your complaint.

Before you leave the centre, to get help with somewhere safe to live and ongoing support.