

Ms Marina Bowshall
State Director
Drug and Alcohol Services South Australia
75 Magill Road
Stepney SA 5069

By email only: DASSAHealthPolicy@sa.gov.au

18 December 2020

Dear Ms Bowshall

Feedback on the Draft Model of Care for Phase 1 of Youth Treatment Orders

I am writing to provide feedback on the *Draft Model of Care for Phase 1 Youth Treatment Orders 2020* which seeks to provide a framework for a scheme to enable mandatory drug treatment for children and young people. Phase 1 of the scheme will only apply to those detained at Kurlana Tapa Youth Justice Centre (KTYJC) who are assessed as having a drug dependency, have refused or failed to engage with drug treatment voluntarily and are considered to be a risk to themselves or others.


The written feedback appended below is intended to be in addition and complementary to matters discussed in person between you and members of my staff on Monday 23 November 2020.


If you require any further information about this feedback, your staff may contact my Senior Policy Officer, Ms Jessica Flynn for this purpose on 8226 8570 or at jessica.flynn@gcyp.sa.gov.au.

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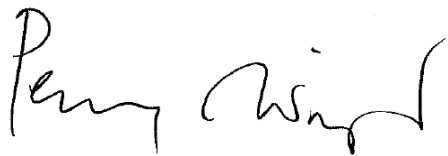
 08 8226 8570



As is commonly my practice, it is my intention to publish an edited version of this submission on my office's website. Please contact Ms Flynn by 11 January 2021 if you identify any specific concerns about this. I am happy to have my feedback included in the public consultation report.

Thank you for the opportunity to provide feedback.

Yours sincerely,

A handwritten signature in black ink that reads "Penny Wright". The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

Penny Wright

**Guardian |Child and Young Person's Visitor |Training Centre Visitor
Office of the Guardian for Children and Young People**

Comments on the Draft Model of Care for Phase 1 of Youth Treatment Orders

From Penny Wright, Guardian for Children and Young People and Training Centre Visitor

18 December 2020

This note provides comment on the Draft Model of Care for Phase 1 of the Youth Treatment Orders program (YTO) within Kurlana Tapa Youth Justice Centre, which was downloaded from the YourSAy website on Monday 9 November 2020. YTOs are provided for in the *Controlled Substances Act 1984*.

My comments in this addendum reflect my responsibilities as Guardian for Children and Young People (GCYP) under the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* and Training Centre Visitor (TCV) under the *Youth Justice Administration Act 2016*.

I note that many of the processes and interventions mentioned as part of the draft model of care appear to be both useful and necessary in a general sense. It is my view that their availability to KTYJC residents should not be reliant on or limited to children and young people being subject to the new, mandatory YTO regime.

In this discussion, children and young people detained in the KTYJC are referred to interchangeably as residents or detainees.

Comments relating to the Draft Model of Care (DMOC)

At a meeting convened on 23 November 2020, TCV Unit (TCVU) staff advised DASSA representatives that the draft DMOC does not adequately describe a model of care for mandatory treatment of children and young people suffering from a drug dependency who are detained in the KTYJC.

I note that of the 300 individuals admitted to the KTYJC each year, approximately -

- 50% are Aboriginal
- 30% are in care
- 20% are girls
- and most have a disability or disability-related need.

For many of these young people, drug use is closely associated with their experiences of trauma, as well as unmet mental health needs. Their lives in the community can be chaotic and, once released from detention, they usually return to the same social and familial environment in which their offending and drug-taking behaviours began. Often these settings provide little to no pro-social role modelling, particularly regarding substance use. In some cases, these settings actively promote substance use due to normalisation and influence or pressure from peers.

The KTYJC currently has limited capacity to separate detainees who are experiencing severe mental ill-health or illness from their peers, in order to provide an appropriate therapeutic environment. This will also be the case for young people who are under a YTO regime and any endeavour to provide such young people with a suitably therapeutic environment will exacerbate existing pressures.

There is no specific forensic or high-needs youth mental health facility in South Australia. This means that some young people with significant mental health issues, including drug-induced or related psychosis, can be incarcerated (and frequently isolated) within the KTYJC for extended periods. KTYJC staff have raised concerns about this with the TCVU, some asserting that they cannot adequately support children or young people with severe mental ill-health issues in detention and that the nature and interrelationship of treatment provided at the KTYJC and Boylan Ward can be problematic.¹

The Training Centre Visitor's report, *Great Responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre)*² identifies KTYJC staff concerns about their limited access to training relating to the impact of drug and alcohol misuse,³ the issuing and monitoring of medications,⁴ and identifying drug withdrawal symptoms.⁵ It describes drug and alcohol supports available to detainees as "very minimal"⁶ and notes that there is "nothing in place"⁷ in terms of specialist support for drug or alcohol withdrawal. Operational limitations or security issues can impact on the ability of residents to access medical care.

The Pilot Inspection Report specifically raised concerns about the forthcoming YTO Scheme in the custodial KTYJC (then AYTC) environment that can be restated here.

It is unclear how a therapeutic drug treatment program would be accommodated by or sit alongside current AYTC behaviour management processes and procedures, given that the AYTC is not a therapeutic environment. Practical issues will need to be addressed, such as the need for on-site access (24 hours a day, seven days a week) to specialist medical and other staff. Currently, most AYTC staff are not trained across multiple necessary discipline areas, let alone in potentially new drug rehabilitation competencies within a mandatory program.⁸

The DMOC as currently drafted, does not allay these concerns.

The DMOC does not specify support that will be made available to detainees who are assessed under the YTO scheme but who do not meet the criteria for a Treatment Order, or what community treatment options referred to in the DMOC will *actually* be available upon release from detention.

The DMOC does not outline how day to day routines for the child or young person will be varied and directed in a way that is consistent with a therapeutic medical model (in which they would be treated as a 'patient') as opposed to being subject to care and treatment options, as experienced by any other detainee, that are restrictive and/or perceived to be punitive by the child or young person. Delineating the application of these various practices will be critical to the child or young person's experience and any chance they may have to be rehabilitated and recover from a dependency on substances.

¹ Training Centre Visitor, *Great Responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre)*, June 2020, p 113.

² Training Centre Visitor's report, *Great Responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre)*.

³ Ibid pp 68-69.

⁴ Ibid pp 108-109.

⁵ Ibid p 111.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid p 110.

Further, the DMOC does not address how a therapeutic approach to treating drug dependency⁹ will impact on the operational practices and institutional culture of the KTYJC. The role of the Health and Community Services Complaints Commissioner is also unnamed in the DMOC.

Human rights instruments ban medical or treatment experimentation on prisoners,¹⁰ suggesting that extreme caution should be taken about the application of an exploratory mandatory drug treatment scheme to detainees, especially children and young people. The DMOC itself states that, as the "Youth Treatment Orders program is the first of its kind in Australia, there is limited evidence available to support mandatory drug treatment for children." It then states that Phase 2 of YTOs (which will allow YTOs to be applied to all children and young people), will be subject to an evaluation by a research institution, to "inform the evidence-base and determine the expansion of the program to children in the community".¹¹ Given the potential human rights implications, research institutions may face challenges when applying appropriate ethics approval for such an evaluation, particularly noting that it is likely that a disproportionate number of children and young people are likely to be affected by YTOs in the KTYJC will be Aboriginal.

An added concern arising from discussion at 23 November meeting between TCVU and DASSA representatives is the apparent expectation that applications for orders are likely to be lodged for about a seventh of all children and young people admitted to the Centre in the first year of operation, with only a handful expected to be granted. If so, it would not be conscionable to expose so many young people to the stress of a mandatory assessment and court process without the likelihood of an order being made.

Plans to consult with detainees at KTYJC

If the scheme is to proceed as envisaged, consulting with children and young people detained at KTYJC is critical. I am not aware that any detainee has yet been informed that YTOs are being contemplated.

TCVU staff provided DASSA representatives with informed advice about the most important considerations associated with consulting the residents. They noted that that any such consultation should build on a prior discussion about problematic drug use from the child and young person's point of view in the context of their current custodial/rehabilitative environment.

Talking to children and young people about potentially becoming subject to an order in addition to the one under which they already are detained is likely to cause further anxiety for some individuals who deal daily with the impact of complex psychosocial issues. I anticipate that the young people will have many detailed questions about how YTOs may affect them and I do not believe the current DMOC establishes a sufficiently detailed and developed framework to adequately address such concerns, particularly in relation to the application of an experimental model of care in a tightly managed, risk-based custodial environment.

⁹ In relation to the necessary diagnostic criteria available through the World Health Organization Tenth Revision of the International Classification of Diseases and Health Problems (ICD-10).

¹⁰ Rule 32.1(d) United Nations Standard Minimum Rules for the Treatment of Prisoners; Article 7 International Covenant on Civil and Political Rights; Rule 55 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, part of which states that "Juveniles shall never be testees in the experimental use of drugs and treatment".

¹¹ p 9 Draft Model of Care for Phase 1 of Youth Treatment Orders.

The role of the Guardian for Children and Young People and Training Centre Visitor

The TCV promotes and protects the rights and best interests of children and young people sentenced or remanded in custody at the KTYJC. The TCV also advocates for the residents of a training centre to promote the proper resolution of issues relating to their care, treatment or control.

The GCYP/TCV is named in the DMOC as a prospective member of a governance committee that will facilitate the imposition of youth treatment orders.

I appreciate the collaborative intention of this suggestion but advise that the GCYP/TCV's independent oversight and advocacy functions render me unable to take up a position on a governance committee that is subject to the direction of a Chief Executive or Minister.

In addition, being seen by children and young people to have a facilitative or governance role with respect to the YTO process that will subject them to compulsory orders would undermine my capacity to engender their trust, and the confidence of the community in my office's independence.