

# Training Centre Visitor Annual Report

2017-2018



Government of South Australia  
Training Centre Visitor

September 2018

**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 2018, as required under Section 18(1) of the *Youth Justice Administration Act 2016*.

This report provides a summary of activities and achievements for the 2017-18 financial year.

Yours sincerely

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

Penny Wright  
Training Centre Visitor

28 September 2018

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# Notes

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

When the term 'Aboriginal' is used in this report refers to both Aboriginal and Torres Strait Islander peoples.

## ***Glossary***

AYTC Adelaide Youth Training Centre

CYP Children and Young People (Child or Young Person)

NPM National Preventive Mechanism

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

TCV Training Centre Visitor

## 1. From the Training Centre Visitor

2017-2018 has been an eventful and exciting year as we have seen the role of Training Centre Visitor, envisaged in part 3 of the Youth Justice Administration Act 2016, take shape and start to come to life.

In a year in which we have also seen a number of inquiries and Royal Commissions, including Oakden, Don Dale and the Royal Commission into Institutional Responses to Childhood Sexual Abuse, highlighting the terrible harm that can occur when powerless and often voiceless people are subject to institutional control in a closed environment, the imperative of this role is even more apparent.

Most of the residents of the Adelaide Youth Training Centre are highly vulnerable. Some are as young as ten. More than 50 per cent of individual residents in 2017-18 were Aboriginal children, reflecting the ongoing and intergenerational disadvantage experienced by that community. Almost 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 and many having been exposed to domestic violence or abuse, parental abandonment, substance abuse and traumatic experiences such as the death of family members, in the course of their short lives. Overall, a high number of the residents have significant needs in relation to trauma, developmental disadvantage, and un- or under-diagnosed mental health and disability issues.

Against this backdrop the Training Centre Visitor functions: to visit, advocate, inspect, inquire, investigate and advise, are crucial to ensure that these children and young people are 'seen' and 'heard' and any systemic failings identified.

In every aspect of our work, my staff and I are committed to encouraging residents to express their views and to giving proper weight to those views. Not only is this a key requirement of our role, but we also believe that to be heard and respected is as necessary and beneficial for young human beings as for older ones.

In a secure environment, however, this is not always simple. We had to be creative to involve residents in the selection of staff who will be advocating for them. For the Principal Advocate position, members of the centre's two Youth Advisory Committees came up with insightful questions, ranging across educational, cultural and sporting opportunities and the fair provision of services for female residents. We used the questions in candidates' interviews, recorded their responses on audio files on a smart phone and sent them across to the centre. Feedback from the residents then helped inform our decision.

Second time around we improved our process by filming each candidate doing a short presentation. We attended both campuses to hear the residents' responses and, this time, their views were pivotal for our decision. Some weeks later we heard they were delighted (and a bit surprised) that their new Advocate was their first choice.

Building on these initial processes, we have consulted extensively with individual residents about our advocacy and visiting functions and their advice guided the design of the pilot visiting program. By listening carefully, we are seeking to build a system that is effective and trusted. All indications are that we are succeeding in this goal. By 30 June 2018, before our formal program had begun, twenty-two formal advocacy referrals were taken on behalf of twenty-four residents

As I look to consolidating our work in our second year, there are some challenges that will require resolution.

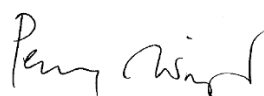
Advice from Crown Law has cast doubt on my capacity to delegate certain important functions (such as visiting and advocacy) to my staff, unlike my analogous position as Guardian for Children and Young People. As I do not have the capacity to fulfil all functions of the role personally, it is necessary to amend this aspect of the legislation to remove any ambiguity that exposes my staff to the risk of acting without sufficient authority. I have brought this matter to the Minister's attention.

Crown law has also advised that interpretation of the phrase, 'resident of a training centre', restricts the Training Centre Visitor's mandate to advocate, inquire and promote the best interests of residents to those times when a resident is physically located in the training centre. In practice, there are various reasons a resident may be temporarily outside the centre (eg in hospital, attending a funeral, participating in work experience) and this interpretation would severely limit my capacity to advocate consistently for residents and promote their best interests. I have brought this matter to the Minister's attention.

The current Training Centre Visitor budget was a preliminary, establishment budget negotiated in 2016 and was never intended or expected to be adequate for the ongoing and effective operation of the position. The implementation of a formal inspection program, a critical function for my role, and a second specialist Advocate position for Aboriginal residents are not funded. By June 2018, when the ongoing work program was mapped out, the increased level of funding necessary for a lean operational budget was clear and further funding sought. Although it is beyond this reporting period, I am now aware, post the State Budget, that the original, preliminary budget has not been increased. This has implications for my capacity to adequately fulfil the functions of the Training Centre Visitor required of me by the parliament. When those implications are clearer I will provide a supplementary report to the parliament. I have brought this matter to the Minister's attention.

It has been a busy and rewarding first year. I thank my dedicated and hardworking staff, Belinda Lorek, Alan Fairley and Travis Thomas, who have done a power of work to establish the Training Centre Visitor role with rigour and principle, starting as we intend to continue.

I look forward to continuing to work productively with the management and staff of the Adelaide Youth Training Centre, the Directorate of Youth Justice and our other valued stakeholders in the next year, as well, of course, as the children and young people who are residents of the centre.



**Training Centre Visitor**

## 2. The first year – establishing the unit

Although this annual report spans July 2017 to June 2018, most of the described activities occurred over eight months from November 2017 to June 2018, once the first staff were employed. Between July and November 2017 preparatory work was conducted by the Office of the Guardian for Children and Young People.

This establishment year saw the creation, recruitment and induction of 3 initial positions:

- *Principal Training Centre Advocate* responsible for designing, developing and managing the TCV Program (commenced November 2017)
- *Principal Policy Officer* responsible for providing high level statutory, policy, and strategic advice to the Training Centre Visitor (commenced May 2018)
- *Advocate* responsible for visiting, advocacy on behalf of residents, and community liaison (the second requested *Advocate* position to focus on Aboriginal residents was not funded) (commenced February 2018).

To develop the Program, we have undertaken diverse activities, including;

- building relationships and awareness of the Program with residents (including a formal consultation process in May 2018)
- extensive liaison with the Directorate of Youth Justice, the management and staff of the AYTC, and professional and community stakeholders
- generation of protocols and procedures for managing work within the existing administrative structure of the Office of the Guardian for Children and Young People
- drafting initial program objectives and work plan
- designing the pilot Visiting Program
- developing interim advocacy documentation and management procedures
- obtaining formal Crown law advice on parameters/scope/function of Training Centre Visitor role
- providing feedback on AYTC operational orders as they came up for review
- drafting internal procedures (including Child Safe Environments)
- developing a data register (and relevant agreement with AYTC)
- designing an information management structure
- reviewing other models (nationally and internationally, including formal participation in a youth detention facility inspection in New Zealand)
- analysing the 2018 Productivity Commission Report on Government Services in relation to Aboriginal Young People in care and/or detention
- discussing complementary youth justice sector roles with the Office of the Commissioner for Children and Young People



- promoting and advising people about the TCV Program
- engaging 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)
- participating in an expert symposium on 'Preventing Abuse in Detention: Independent Monitoring within the OPCAT Framework' (RMIT Victoria) and other forums
- twenty-two formal advocacy referrals were taken on behalf of twenty-four residents prior to 30 June 2018.

## 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 statutory officer who reports to Parliament through the Minister for Human Services. The Training Centre Visitor's role is to promote and protect the interests and rights of children and young people sentenced or remanded to detention in a youth training centre in South Australia.

Penny Wright was appointed and commenced as Training Centre Visitor pursuant to section 11 of the *Youth Justice Administration Act 2016* (the Act) on 28 July 2017. Previously, the position was held from its inception in December 2016 by Amanda Shaw. Penny has been appointed for a period of five years and, in exercising her functions and powers must act independently, impartially and in the public interest.

The TCV Unit is made up of the Training Centre Visitor and three other staff: a Principal Training Centre Advocate, a part-time Principal Policy Officer and an Advocate (as at 30 June 2018 this comprised two Full Time Equivalent staff (FTE) divided among three staff but by 30 September 2018 this had increased to 2.4 FTE).

The Unit is located within the Office for the Guardian for Children and Young People as Penny Wright has also been appointed as the Guardian.

The Training Centre Visitor provides advice to the Minister for Human Services who is responsible for providing the Visitor "with the staff and other resources that the Visitor reasonably needs for exercising the Visitor's functions" [section 13 of the Act].

Section 12 of the Act provides for an independent statutory role:

#### **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.

## **3.2 What we do**

To fulfil the Training Centre Visitor’s functions under section 14 of the *Youth Justice Administration Act 2016* we:

- 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 Training Centre Visitor must pay particular attention to the needs and circumstances of residents who are under guardianship, or are Aboriginal or Torres Strait Islander young people, and those who have a physical, psychological or intellectual disability [section 14(2)(b)].

The Training Centre Visitor must encourage residents of a training centre to express their own views and must give proper weight to those views [section 14(2)(a)].

### ***Charter of Rights***

Section 22 of the Act also establishes that the Training Centre Visitor and others who are responsible for exercising functions or powers under relevant laws must have regard to the *Charter of Rights for Youths Detained in Training Centres* and try to implement its terms “to the fullest extent possible”.

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

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.

### **Other guiding principles**

The work of the TCV Unit is also guided by the objects and principles set out in section 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.

Associated principles include having regard to the rights of victims of crime and the need to promote community safety.

Although the Training Centre Visitor's functions are set out specifically in section 14 of the Act, that is not where the role ends. The Training Centre Visitor must also respond to, and be guided by, the requirements of other South Australian statutes and international instruments, as discussed in 5.3 below.

## **3.3 Who we work for**

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 campus (holding up to 36 children and young people who are boys from 10 to 14 years and girls aged 10 and older) and Goldsborough campus (holding up to 60 boys aged 15 and older).

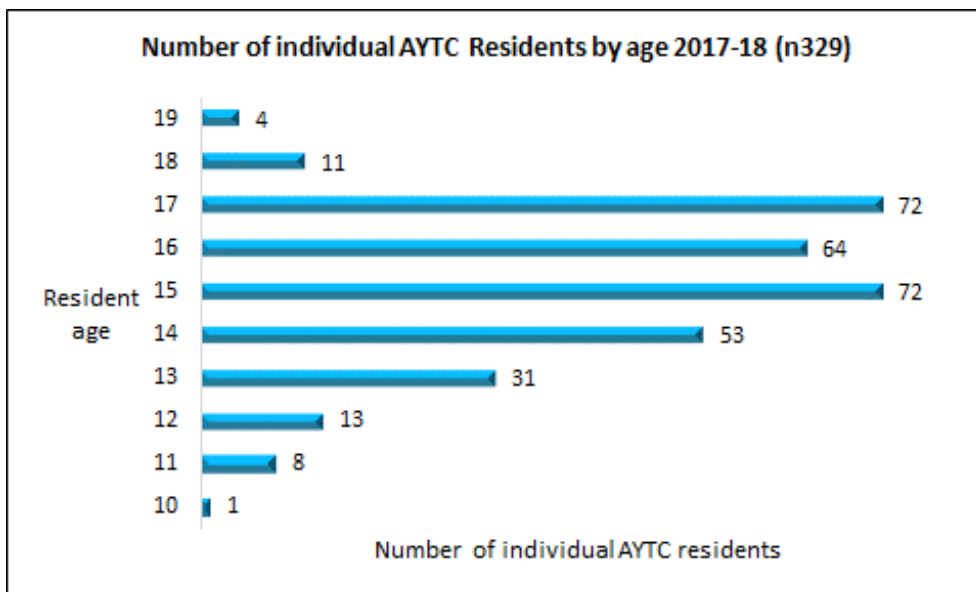
Jonal Campus comprises two units: Jonal A houses girls and young women and Jonal B is for the younger boys.

Residents of Goldsborough campus are housed in five units:

- Blue Gum (general)
- Wallaby Grass (general)
- Saltbush (intake and assessment)
- Frangipani (regression and respite)
- Kangaroo Paw (currently not in use).

In 2017-18 AYTC residents had the following broad characteristics, based on information provided by the Department of Human Services.

<b>Individual children and young people admitted to the AYTC, 2017-18</b>		
<b>Number of individuals admitted</b>	<b>Total</b>	<b>% of total</b>
Total individuals	329	100
Number of individuals who identified as Aboriginal	166	50.45
Number of individual females	69	20.1
Number of individuals under a guardianship order at the time of their admission	77	23.4



<b>Separate admissions to the AYTC 2017-18</b>		
<b>Separate admissions</b>	<b>Total</b>	<b>% of total</b>
All admissions	671	100
Number of separate admissions of residents who identified as Aboriginal	363	54.1%
Number of separate admissions of female residents	128	19.1%
Number of separate admissions of residents under a guardianship order at the time of admission	207	31%

<b>Average daily population, AYTC 2017-18</b>		
<b>Average daily population</b>	<b>Total number</b>	<b>% of total</b>
All residents	44.31	100%
Average daily number of residents who identified as Aboriginal	27.62	62.3%
Average daily number of female residents	4.13	9.3%
Average daily number of residents under a guardianship order at the time of their admission	10.81	24.3%

### **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 (50.54 per cent of the total number of individuals admitted to AYTC, and 62.3 per cent of the average daily population). The Training Centre Visitor published an overview of the situation of Aboriginal children in care and/or detention in April 2018<sup>1</sup>.

The Act identifies principles in section 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. They must:

- “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”.

#### *Children and young people in care*

Children and young people under guardianship orders made up 23.4 per cent of the total number of individuals admitted to AYTC, and 24.3 per cent of the average daily population. This is a high degree of over-representation given that there were only 3,484 children in out of home care in South Australia at 30 June 2017 (some 1 per cent of the State’s population of 0-17 year olds).

Dual involvement of children and young people in the child protection and youth justice systems is marked, especially those who move between residency in the AYTC and placements in residential care prior to and following detention.

The overlap between Training Centre Visitor and Guardian functions influenced the development of complementary and consistent advocacy procedures within the Office of the Guardian for Children and Young People in 2017-18.

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

The high prevalence of disabilities among children and young people resident in training centres in Australia is becoming increasingly well documented. In future years the TCV Unit will be seeking to

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<sup>1</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 2018* (GCYP & TCV, April 2018) <http://www.gcyp.sa.gov.au/aboriginal-children-and-young-people-in-care-and-juvenile-detention-2016-17/>



ensure that comprehensive, reliable data is available so that we can accurately report on the circumstances of residents with disabilities in the AYTC.

We will also undertake work to ensure consistency with other disability rights oversight mechanisms, at a time when “exactly what the quality, safeguarding and oversight landscape will look like at full roll-out of the [NDIS] Safeguarding Framework remains unknown”<sup>2</sup>.

### 3.4 What we value

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 Training Centre Visitor 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.

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<sup>2</sup> **Australian Human Rights Commission 2018**, *A Future Without Violence: Quality, safeguarding and oversight to prevent and address violence against people with disability in institutional settings* (June 2018), page 26

[https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC\\_report\\_VAPWD\\_2018.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_report_VAPWD_2018.pdf)

## 4. The first year – what we did

### 4.1 Visit

The Training Centre Visitor has a mandate under section 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 Training Centre Visitor 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 section 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 different types of visits undertaken by oversight bodies in other jurisdictions were taken into consideration in the design of a ten-week pilot visiting program (which subsequently commenced in July 2018). This relied on some important elements:

- connecting with residents and listening to their views or concerns (while also obtaining self-referrals for individual advocacy matters)
- observing and asking about AYTC processes and systems and their likely impact on residents (e.g. unit routines or behaviour management approaches), and
- testing options for scheduling visits and engaging the residents

The TCV Unit undertook a comprehensive consultation with AYTC residents in May 2018 as a critical preparatory step. Thirty of the thirty-four residents who could participate chose to do so. Interviews were of thirty to sixty minutes duration during which residents were asked a series of questions, with cards and other activities also used to elicit their views. The feedback contained some important messages that have informed subsequent TCV Program development, including that:

- TCV Unit visits should be at least fortnightly from the same staff, to make sure we do not ‘miss’ anything and to allow us to build trust and rapport with residents
- the predominant visiting activity should be talking to residents
- visiting Advocates should also;
  - attend the Youth Education Centre to view its work
  - inspect their bedrooms to ensure they were well maintained, and
  - visit the kitchen
- the most frequent issues raised by residents as matters they would want to discuss with us included the AYTC complaints process, material conditions (such as bedding and clothing) and discrimination.

The pilot visiting program was also designed to review and report on the physical environment such as the quality of bedding, state of the bedrooms and privacy options within the search/admissions area of the centre.

A formal review of records was incorporated as an essential element of the visiting process to allow scrutiny of documentation relating to the care, treatment and control of residents for that reporting period. Relevant documents include the search register, unit log books, incident forms and safe-room logs.

This initial review of records will inform decisions about what will form part of regular oversight and base-line data for ongoing visiting, advocacy and inspection programs.

## 4.2 Inspect

The Training Centre Visitor is required “to conduct inspections of training centres as required or authorised under this Part” under section 14(1)(b) of the Act.

The TCV Unit has undertaken preparatory and planning work for a pilot inspection in the coming financial/reporting year. The process will reflect good practice in analogous jurisdictions and incorporate learning from earlier stage activities such as our consultation with residents, the outcomes of the pilot visiting program and analysis of accountability and monitoring processes already undertaken by the Department of Human Services and other agencies.

Early planning has identified that the nature and extent of future inspections will be influenced by factors such as the availability of resources (to purchase specialist input, for instance), the frequency of visits and inspections and the need to complement other applicable standards and requirements (e.g. those prescribed through applicable health or education standards).

Inspections need to consider all dimensions of the lives of children and young people in custody and the systems that determine the quality of their care, treatment and control. Residents must also have a voice in the process.

As well as special consideration of the circumstances of Aboriginal residents, those under guardianship, girls and residents with disabilities, some other factors to consider are:

- wellbeing and safety
- treatment (including behaviour management, use of isolation, regression; personal searches; use of force and mechanical restraints, etc.)
- access to family, community, culture
- education and training
- operational rules and processes
- complaints and grievance processes
- communication (with young people/ between professionals/with family)
- staff competencies and training
- various assessments
- mental and physical health (including medication)
- support for those with disabilities
- interventions and supports
- AYTC facilities and amenities
- food
- social life and recreation
- transition from/to the community.

A helpful development opportunity was provided by the participation of the Principal Training Centre Advocate in a formal inspection of the *Te Au Rere* youth detention centre in Palmerston, North, New Zealand in March 2018. The support of the New Zealand Children's Commissioner, Judge Andrew Becroft, through the formal appointment of Belinda Lorek as an Inspector for that process was invaluable.

### 4.3 Promote residents' best interests

The Training Centre Visitor is required by section 14(1)(c) of the Act "to promote the best interests of the residents of a training centre". This is consistent with the direction in section 3(2)(a) that all those involved in the administration of the Act should 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 Training Centre Visitor to highlight relevant systemic issues and promote the interests of children and young people in detention (or prospectively in detention) to the broader community. This function is complementary to the other specific tasks set out in section 14 of the Act and means that the Training Centre Visitor must engage meaningfully with broader developments in the youth justice and related sectors.

Development of a constructive and cooperative relationship with the Department of Human Services Youth Justice Directorate, particularly the staff and management of the AYTC, has been a priority for the TCV Unit. For example, as well as day to day engagement arising from the mandated functions, the Unit has contributed in broader ways such as providing comments in response to reviews of individual AYTC Operational Orders.

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 Training Centre Visitor 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 section 14(1)(d) of the Act.

### ***Interim advocacy model***

In this establishment phase, the TCV Unit adopted an *interim* advocacy procedure, informed by our consultation with AYTC residents in May 2018, which conveyed the following important messages:

- residents want to be able to seek advocacy through self-referral when speaking to Advocates face-to-face and through an unmonitored phone line
- most would be more likely to raise concerns with us if they had an existing rapport and connection with TCV Advocates
- confidentiality is critical, as is “being believed” by their Advocates
- it was very important to residents that advocacy should not be a function of last resort; it should not depend on other prior steps being taken, such as a formal complaint being made within the AYTC structure.

The interim model is underpinned by the following principles:

- there must be no unnecessary barriers preventing a resident from accessing our independent advocacy support at a time they choose
- advocacy will be based on a resident’s consent and their active participation; and
- support will also be offered for self-advocacy.

Due to the substantial presence in the AYTC of children and young people under guardianship orders our interim procedures were developed to complement those of the existing advocacy team within the Office of the Guardian for Children and Young People. A TCV Advocate will advocate for a resident about matters related primarily to their care, treatment or control within the AYTC. Where additional child protection issues are raised, advocacy will be co-worked between the two teams. The teams will work together to ensure through-care for children and young people under guardianship who return to community residential care from detention in the AYTC.

### ***Referrals***

We received our first referral for advocacy within two weeks of the commencement of the Principal Advocate position in November 2017. We operated with an agreement with the AYTC about how to handle the advocacy process while the program is being established and pending the formal consultation with residents in May 2018.

From November 2018 until end June 2018, advocacy was undertaken in response to **22 referrals** on behalf of **24 residents**. That is, of all matters raised by residents, these met the threshold for being taken on as formal advocacy matters and identified to the AYTC as such.

Characteristics that can be identified with respect to these referrals were:

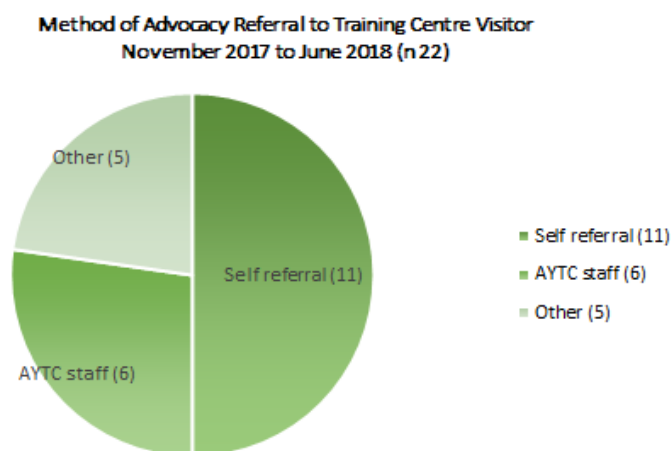
- 6 females were named in 10 individual referrals (one young woman was the subject of 4 separate referrals and 1 of two separate referrals)
- 63 per cent were aged seventeen years or above, 20 per cent were aged fifteen years and 17 per cent aged eleven to fourteen years
- 62 per cent were under guardianship of the Minister
- 67 per cent were on remand.
- 79 per cent identified as Aboriginal or Torres Strait Islander.

For the 22 referred matters:

- half related to residents of the Goldsborough Road site and half to Jonal Drive
- for the Goldsborough matters, 6 were raised by residents in Wallaby Grass Unit, 3 from Frangipani Unit and 1 from Saltbush Unit
- for Jonal Drive, 9 referrals related to Jonal A (the girls and young women) and 2 from Jonal B (the younger boys)
- of individual advocacy matters pursued, those that occurred more than once were relationships/staffing (4); Visit/telephone/contact (2); Cultural support (2); Behaviour plans (4); and Court/legal (2).

With respect to these matters:

- 11 young people self-referred
- AYTC staff referred on 6 occasions and
- 5 initial contacts were made by family, health staff or others.



## 4.5 Inquire and advise (own motion)

The Training Centre Visitor 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” [section 14(1)(e) of the Act].

### ***Ongoing advice***

In the course of the reporting year the Training Centre Visitor did not attend any meetings with the Minister for Communities and Social Inclusion and attended one meeting with the Minister for Human Services.

### ***Formal Inquiries***

The Training Centre Visitor initiated no formal inquiries pursuant to section 14(1)(e) in 2017-18.

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

The Training Centre Visitor must “inquire into and investigate any matter referred to the Visitor by the Minister” [section 14(1)(f) of the Act].

No matter was referred by the relevant Minister for investigation in 2017-18

## 5. The Future – challenges in a changing landscape

### 5.1 Increasing oversight demands

Children and young people are currently detained in some places which are not subject to the requirements of the Act and thus not within the scope of Training Centre Visitor responsibilities. These places include custody in police cells or in the Youth Court, secure medical facilities and when under the control of private security firms while in transit.

We should be concerned that such places of detention are not subject to independent statutory oversight, especially if they are locations in which adults may also be detained. Some groups identified in section 14(2)(b) of the Act may be at particular risk (Aboriginal and Torres Strait Islander children and young people, those under guardianship, and those who have a physical, psychological or intellectual disability).

The findings of the *Royal Commission into Institutional Responses to Childhood Sexual Abuse*, the report of the *Royal Commission into the Protection and Detention of Children in the Northern Territory* and ICAC Commissioner Lander's February 2018 report into the Oakden aged care facility, together with the imminence of OPCAT requirements discussed in Part 5.4 below, make it inevitable there will be, and should be, increased scrutiny of such places of detention.

It is prudent to consider the scope of the powers and functions of the Training Centre Visitor in this emerging environment.

### 5.2 Scope and limitations of powers

Crown law advice about the Training Centre Visitor's powers and functions identified various issues which remained unresolved as at 30 June 2018. These issues have been raised with the Minister and include the following -

- the implications of a restricted interpretation of the term "resident of a training centre", including a compromised Advocacy function [section 14(1)(d) of the Act]
- incapacity to delegate certain important functions and powers



***A restricted interpretation of “resident of the training centre”***

Crown Law advice concluded that, except in highly limited circumstances, residents only come within the Training Centre Visitor’s mandate when they are physically within the precincts of the training centre.

If this is correct, it appears to be at odds with the logic of section 24 of the Act which describes the Minister’s responsibilities as follows:

***24 Minister has custody of youths in detention***

*The Minister has the custody of a resident of a training centre, 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.*

If the Minister continues to have ‘custody’ of a resident whether a resident is within or outside the AYTC precincts, it is difficult to understand why parliament would have intended that the Training Centre Visitor’s brief would only apply to parts of that custodial arrangement.

It seems more likely that the intention of parliament was that the Training Centre Visitor would exercise relevant functions from the time that a child or young person passed from the custody of the Youth Court to the custody of the training centre and continue to do so until the child or young person is finally released.

There are numerous reasons why a detained child or young person may have to leave the physical precincts of the training centre temporarily (noting that ‘section 34 leave’ can be granted for a variety of purposes). If this is the test, a sentenced or remanded child or young person could pass in and out of the Training Centre Visitor’s mandate frequently while they are a resident of the AYTC.

Figure 1 below illustrates what happens to the Training Centre Visitor’s capacity for oversight where there is a highly constrained mandate.

**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 Training Centre	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 <i>Young Offenders Act 1993</i> 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?

It is clearly not in the best interests of a child or young person in youth justice detention to be subject to this kind of disjointed oversight.

The implications of this interpretation are that the Training Centre Visitor may only fulfil the functions of the role when they relate to the resident being physically within the centre. For instance, when ‘promoting the best interests of residents of the training centre’ in relation to a particular incident, the Training Centre Visitor must think about where the issue arose. If an incident were to arise when a child or young person is en route to Boylan Ward or receiving treatment in that ward (even if it relates to their care, treatment or control as a resident of the training centre) the advice suggests that the Training Centre Visitor may not have a mandate to promote their best interests.

The most immediate and concerning implication is for the Training Centre Visitor’s capacity to adequately fulfil the advocacy function, as discussed below.

### ***A compromised advocacy function***

As can be seen in the discussion about the 'Advocate' function in Part 4.4 above, and as borne out by actual casework in 2018, the rights of detained children and young people will be seriously undermined if a restricted reading of the term 'resident of the training centre' creates an artificial barrier which prevents access to responsive advocacy at the time it is needed.

Our experience in direct advocacy in the establishment year of the Program demonstrates that we must be accessible to individual children and young people from the point at which they are sentenced or remanded to the point at which they are released. In some cases, post-release advocacy also should be available to ensure through-care.

This is consistent with the views residents expressed during the May 2018 consultations when they told us they wanted:

- consistency of TCV Unit staff with whom they can build a relationship
- an Advocate with whom they can build trust and confidence
- accessibility when they need support (without delay), and
- confidential, simple self-referral opportunities.

Various inquiries and commissions have identified responsive advocacy as an essential goal. The national *Royal Commission into Institutional Response to Child Sexual Abuse (2017)*, for example, noted the importance of access to trusted adults for children in detention and improved access to support, including advocacy. The Northern Territory Royal Commission noted that the separation of functions across multiple bodies can make it challenging for children and young people to have confidence and build trust with staff from independent oversight bodies. Consistency of support can help avoid confusion and empower children and young people to better understand and navigate the various systems that control their lives.

Parliament is urged to consider amending the *Youth Justice Administration Act 2016* to ensure that a child or young person resident in the AYTC has access to the support of the TCV Program from the point at which they are sentenced or remanded to the time of their release. A proposal for a legislative amendment is discussed in 5.5 below.

### ***Lack of capacity for the Training Centre Visitor to delegate functions***

Crown Law advice has indicated that the Training Centre Visitor has no formal power under the Act to delegate powers and functions to staff to implement the TCV Program, including core requirements such as the capacity to conduct visits to, or inspect, the training centre.

In contrast, analogous legislation such as the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (CYPOAB Act) does include such a provision (section 23) to allow the Guardian to delegate a function or power.

The Training Centre Visitor does not have the capacity to carry out the functions of the role personally. Most of the Training Centre Visitor's activities in 2017-18 were necessarily undertaken by the staff of the TCV Unit. This has been possible due to the goodwill of the Department of Human Services and the management of the AYTC. However, in light of the Training Centre Visitor's independent oversight role and responsibilities, goodwill is not sufficient. It is necessary to remove any ambiguity about the exercise of these functions by TCV Unit staff. Proposed legislative amendments to rectify this situation are discussed in 5.5 below.

### 5.3 Other aspects of the mandate – broader than it looks?

When the South Australian Parliament established the Training Centre Visitor role it intended to put in place an effective independent oversight mechanism for children and young people sentenced or remanded to detention in the training centres in South Australia.

Section 14 of the Act clearly asserts the primary role and functions of the Training Centre Visitor. But they are not the sole responsibilities of the role. The Training Centre Visitor is also subject to other domestic statutory requirements including those identified in the *Children and Young People (Safety) Act 2017* (Safety Act):

- to safeguard and promote the welfare of children and young people, as a 'State agency' under section 5
- to "have regard to the fact that early intervention in matters where children and young people may be at risk is a priority", as a 'State authority' "whose functions and powers include matters relating to the safety and welfare of children and young people" under section 9
- in respect of training centre residents who are *also* under guardianship orders the Training Centre Visitor must exercise powers and perform 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*, under section 13(9).

These Safety Act provisions require the Training Centre Visitor to have regard to the best interests of children and young people detained in the AYTC in ways that go beyond their immediate experiences as 'residents of a training centre'.

#### ***Associated International instruments***

The Training Centre Visitor's work is also informed by human/child rights principles and commitments embodied in international instruments and their subsidiary protocols, rules and guidelines.

The *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (section 5) requires the Training Centre Visitor (among others) to “seek to give effect to the and other relevant international human rights instruments affecting children and young people”, including the:

- United Nations Convention on the Rights of the Child (UNCRC)
- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)
- Convention on the Rights of Persons with Disabilities (CRPD or Disability Convention)
- Universal Declaration of Human Rights (UDHR)

The *Children and Young People (Safety) Act 2017* dictates that “to the extent practicable” “international and national requirements or guidelines relating to the detention of youths” are to be followed (section 3(1)(d)). This extends to critical subsidiary documents that relate directly youth justice detention, including:

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

The *Charter of Rights for Youths Detained in Training Centres* was developed from a model recommended by the Australian 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).

### ***New secure facilities?***

Emerging initiatives involving the detention of children and young people, such as that envisaged in the *Controlled Substances (Youth Treatment Orders) Amendment Bill 2018* currently before parliament, will require oversight. As introduced in June 2018, the bill proposes access to orders that could include periods of detention for the treatment of substance misuse issues for periods of up to one year. Unfortunately, it is silent about mechanisms to protect basic rights.

An officer such as the Training Centre Visitor could provide crucial independent oversight to affected children and young people in such circumstances.

Depriving children and young people of liberty should only ever be a measure of last resort. Whether for forensic, therapeutic, rehabilitative, ‘safekeeping’ or other purposes, any option that incarcerates children and young people should be subject to rigorous program, resourcing and oversight requirements.

The Training Centre Visitor will continue to respond to any proposed new models or services that involve detention of children and young people by asserting that they must adhere to fundamental human/child rights principles and protections, have service and systemic coherence, and are resourced adequately to achieve their stated ends.

All such services should be recognised as places of detention for OPCAT purposes.

## 5.4 OPCAT

Australia 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 optional protocol is to prevent the mistreatment of people in detention and requires the establishment of an independent National Preventive Mechanism (NPM) to conduct inspections of all places of detention and closed environments.

The Commonwealth and States/Territories governments are currently negotiating to have an NPM in place by December 2020 based on a 'diffuse' model operating in State and Territory jurisdictions rather than as centralised body. In South Australia the Training Centre Visitor is involved in intra-governmental discussions about the application of OPCAT to places of detention for children and young people.

The *Youth Justice Administration Act 2016* was developed to ensure consistency with OPCAT requirements, as has the TCV Program to date.

Training Centre Visitor functions under section 14 of the Act are complementary to OPCAT NPM responsibilities but not as extensive. Notably, the Training Centre Visitor's current responsibilities apply only to residents of the AYTC, so significant questions of mandate and capacity will arise in relation to meeting NPM operational requirements.

"Places of detention and closed environments" of particular relevance to children and young people that come within the ambit of OPCAT include youth justice centres, police lock-ups and police stations, psychiatric units, immigration detention centres, court custody centres and holding cells, transport vehicles for detainees or arrestees and, secure care facilities for children and young people in statutory out-of-home care.<sup>3</sup> It is unlikely that this full list will be subject to the first iteration of NPM arrangements in Australia.

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<sup>3</sup> **Australian Human Rights Commission 2016**, *Children's Rights Report 2016* (p78)  
[https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC\\_CRR\\_2016.pdf](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_CRR_2016.pdf)

## 5.5 Proposed legislative amendments

### **Mandate**

As discussed in 5.2 above, a restrictive interpretation of the Training Centre Visitor's current mandate based on the meaning of 'resident of a training centre':

- compromises the Visitor's current ability to fulfil the functions of the role (particularly advocacy)
- risks artificially limiting the Visitor's oversight activities in relation to children and young people held in detention despite many other provisions and responsibilities under domestic and international instruments

In addition, the Training Centre Visitor does not currently have a mandate in respect of emerging and future developments such as secure treatment facilities and other places of detention subject to OPCAT.

Creating flexibility to address changing needs through Regulations is an appropriate mechanism accountable to the parliamentary process.

The Training Centre Visitor therefore recommends an amendment to section 14(1) of the Act to allow a simple, flexible and permanent resolution with appropriate safeguards, as set out below.

The section currently reads:

#### **14—Training Centre Visitor's functions**

*(1) The functions of the Training Centre Visitor include the following:*

A more flexible, amended provision could read:

#### **14—Training Centre Visitor's functions**

*(1) The functions of the Training Centre Visitor with respect to training centres, and such other places of youth detention or custody as are identified in the regulations, include the following ...*

### **Delegations**

In response to the Training Centre Visitor's lack of capacity to delegate functions and powers to staff, as discussed in 5.2 above, the Visitor has requested that the government amend the Act to enable the Training Centre Visitor to delegate at least:

- visiting functions (with likely implications for at least section 14(1)(a), and section 16 of the Act)
- advocacy functions (section 14(1)(d), and section 15)
- inspection functions (section 14(1)(b))
- and any related delegations necessary to allow other functions to occur e.g. section 14(1)(e), to provide advice to the minister in relation to systemic reform and section 14(1)(f), to inquire into and investigate any matter referred by the Minister).

In the absence of such an amendment, the Training Centre Visitor and staff operate at the risk of being challenged about their capacity to act and the basis of the powers and functions they are seeking to exercise.

## **5.6 Budget /Program - resources and capacity**

An indicative annual operational budget was proposed in 2016 for the TCV Program's establishment year. Ultimately, a lesser amount was provided. The main impact of the reduction in funding at the establishment stage was the capacity to employ only one, rather than two Advocates (meaning that the designated Aboriginal Advocate position was not funded).

The decision to provide reduced funding was clearly predicated on some important assumptions, namely:

- the Office of the Guardian would carry certain costs while the new program was established (noting that previously all (limited) activities associated with the interests of residents of the AYTC had been resourced through the child protection, not youth justice, budget)
- in the longer term, a proper operational budget would be developed once work was underway within the program and reliable costs could be discerned, reflecting the fact that some critical functions were not costed or funded in the establishment phase (e.g. costs associated with a formal inspection program)

Prior to the 2018/2019 State Budget, based on knowledge gleaned from the establishment year, the Training Centre Visitor submitted a realistic operational budget necessary to adequately implement the role and functions into the future.

The amount requested maintained the need for a second Advocate position (with a specialist role with respect to Aboriginal residents) as well as funding core program operational costs not covered



in the establishment budget (e.g. for practical items such as office rental, consumables and fleet car hire, as well as identified project and activity costs, including an inspection capacity).

The Training Centre Visitor has been advised that the 2018-19 State Budget did not provide this amount. As such the TCV Program will continue to function on the basis of what was proposed in 2016 as a partial, establishment year budget.

Concerns about the implications of this for the TCV Program and the Training Centre Visitor's capacity to implement the Visitor's statutory functions have been brought to the Minister's attention.

When those implications have been clarified the Visitor will provide a supplementary report to the Parliament.

## 6. The Training Centre Visitor Unit

The Training Centre Visitor is appointed by the Governor under the *Youth Justice Administration Act 2016* with functions and reporting requirements as discussed elsewhere in this report. The functions serve to promote and protect the rights of children and young people sentenced or remanded to detention in the Adelaide Youth Training Centre.

### 6.1 Staff profile

Staffing for the Training Centre Visitor Program has occurred incrementally from November 2017, with relevant work 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.

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

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

The Principal Training Centre Advocate provides 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 Training Centre Visitor, conducts research, prepares policy papers, briefings and reports.

#### ***Advocate***

Travis Thomas (from February 2018)

The Training Centre Advocate has a key role in the visiting 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.

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.

## 6.2 Participation in external committees

The Training Centre Visitor 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 TCV Unit, Directorate of Youth Justice and Management of AYTC.

## 6.3 Learning and development

The Training Centre Visitor or staff participated in the following structured events.

- 'Preventing Abuse in Detention' – Expert symposium on Independent Monitoring within the OPCAT Framework', Melbourne, 11/12/17 RMIT
- Just Reinvest NSW Presentation on Maranguka (Bourke) Justice Reinvestment Project 7/2/18
- Enhancing Bi-cultural Awareness Training, Rosemary Wanganeen 1/3/18
- Youth Justice in SA Partnership Collaboration Workshop 1/5/18
- Presentation of the TCV Program to the Judiciary of Adelaide Youth Court 5/6/18.

## 6.4 Strategic and organisational planning

Work in 2017-18 necessarily focussed on inducting staff and commencement planning for this new program. The developmental model for the program is informed by engagement with residents and other stakeholders, and learning derived from pilot processes conducted in the training centre itself.

Clarification of the Training Centre Visitor Program's budget and associated staffing, along with lessons from pilot and other establishment activities, will set the terms for ongoing strategic and organisational planning.

A Training Centre Visitor web site is being planned, with consultation with AYTC residents hopefully to occur in 2018/19 (but this is resource contingent). In the interim, relevant material is being hosted and distributed through the Guardian's website.

## 6.5 Finances 2017-18

<b>Financial Summary of expenditure 2017-18 (x\$100s)</b>			
Project 973: Training Centre Visitor			
<b>Item</b>	<b>Actual</b>	<b>Budget</b>	<b>Variation</b>
Salaries and wages	111	123	12
Goods and services	26	14	-12
<b>Total</b>	<b>137</b>	<b>137</b>	<b>0</b>
Revenue	-313	-313	0
<b>Net</b>	<b>-176</b>	<b>-176</b>	<b>0</b>

## 6.6 Workplace Health and Safety

In 2017-18 no incidents resulted in workplace injury.

## 6.7 Complaints

The Training Centre Visitor Unit uses the grievances and complaints policy available on the Guardian's website. No complaints were received in 2017-18.

Legislation exempts information about individual cases from disclosure under s.20 of the Youth Justice Administration Act 2016. The Training Centre Visitor exemption is not listed with the Guardian for Children and Young People under Schedule 2 of the Freedom of Information Act 1991.

## 6.8 Freedom of information

No freedom of information requests were received in 2017-18.