

Training Centre Visitor Annual Report

2019-2020



Government of South Australia
Training Centre Visitor

September 2020

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
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Dear Minister

I am pleased to present to you the annual report of the Training Centre Visitor for the year ended 30 June 2020, as required under Section 18(1) of the *Youth Justice Administration Act 2016*.

This report provides a summary of activities and achievements for the 2019-20 financial year.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Penny Wright'.

Penny Wright
Training Centre Visitor

29 September 2020

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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.

Kurlana Tapa Youth Justice Centre (KTYJC) replaced Adelaide Youth Training Centre (AYTC) as the official name in 2020.

Children and young people incarcerated at KTYJC are referred to interchangeably as residents or detainees in this report.

Referencing

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

Artwork

Images created by children and young people detained at the KTYJC during the 2019 Pilot Inspection feature in Part 4 of this Annual Report.

Glossary

Aboriginal and Torres Strait Islander Youth Justice Principle	This Principle is established in the Act and outlined in Part 2 of the <i>Youth Justice Administration Regulations 2016</i> . (provided as Attachment 2 to this report)
Act	The 'Act' referred to throughout this report, unless stated otherwise, is the <i>Youth Justice Administration Act 2016</i> (SA).
BSF – Behaviour Support Framework	The BSF is the behaviour support and incentive program implemented at the KTYJC. Its primary effect is the assignment of a detainee to one of three phase levels from time to time which have privileges attached and are regularly reviewed.
Charter / Youth Justice Charter	The <i>Charter of Rights for Youths Detained in Detention Centres</i> (provided as Attachment 3 to this report)
Detainee	While the Act refers to children and young people in custody as "residents" this report also interchangeably uses the term detainee

Dual status/Dual involved	This term refers to the status of children and young people who are subject to orders within both the child protection and youth detention systems.
DCP	Department for Child Protection
DHS	Department of Human Services
Dynamic Model	This term relates to the consolidation and undertaking of KTYJC operations on the Goldsborough campus in 2019, given effect by moving female detainees (10-18 years) and younger males (10-14 years) from Jonal campus.
Guardian	Penny Wright holds the separate statutory appointment of Guardian for Children and Young People. The TCVU operates from the Office of the Guardian.
KTYJC	Kurlana Tapa Youth Justice Centre (known as the Adelaide Youth Training Centre (AYTC) prior to mid-2020).
NPM	National Preventive Mechanism (under OPCAT, see below)
OPCAT	Optional Protocol to the (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Restrictive Practices	This term is used in this report to indicate any practice that restricts a detainee's movement or limits their physical freedom to a greater extent than simply holding them in custody.
Review(s) of Records	These are the quarterly reviews of requested DHS/KTYJC documents undertaken by the TCVU as part of the TCV's oversight processes.
TCVU	The Training Centre Visitor Unit supports Penny Wright, the TCV, to undertake her responsibilities under the Act.
Units	KTYJC currently operates with five 'home' accommodation units on Goldsborough campus (Blue Gum, Wallaby Grass, Saltbush, Frangipani (regression and respite) and Kangaroo Paw).
Visiting Program	The TCVU implements ongoing oversight of the KTYJC through a visiting program over 3 monthly cycles aligned with school terms.
Youth Justice State Plan	<i>Young People Connected, Communities Protected</i> is the SA Government's Youth Justice State Plan, 2020-2023, released in June 2020.

1. From the Training Centre Visitor

As always, it is my great privilege to hold the role of Training Centre Visitor and oversee the rights and interests of the children and young people who are detained in the Kurlana Tapa Youth Justice Centre. In 2016, when introducing the legislation to establish this role, the government noted that it is now a 'standard requirement', in Australia and nationally, to have an independent monitoring mechanism in places of detention, especially for young people. At that time, it was a 'first' for South Australia.

The TCV role is still quite unique in Australia – combining regular visiting and individual advocacy on one hand, with systemic advocacy and inspections, on the other. The unifying focus is the importance of “the voice” of the children and young people who are experiencing detention. My staff and I work to hear their voices, advance what they tell us and stand with them to make sure their views are considered and heard.

Some of these young people are as young as ten. They are detained on behalf of our community, but few of us venture behind the walls. In fulfilling my requirement to inquire into the quality of the 'care, treatment and control' of the residents I want to ensure that the South Australian community has an understanding of what is done in our collective name. This Annual Report is an opportunity to share the circumstances and conditions of these young people as well as the work of my office.

2019-2020 has been the biggest year yet. Three years ago, my staff and I set about consulting with young people in the centre, then designing and implementing the Training Centre Visitor Program. With the conclusion of the first official inspection in November and publication of the formal report in June, we completed the first full cycle of activities in the program.

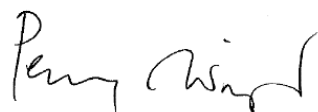
The year saw some reforms and achievements that have contributed to a more humane and respectful experience for the young detainees. On the back of sustained TCV advocacy, the purchase of ion scanners at the centre has done away with the vast majority of routine semi-naked searches. This is a significant reform to a practice that the young people (and some staff) had told us was degrading and intrusive. Privacy in bedrooms and toilets from CCTV surveillance was enhanced through the use of shower curtains, and sensible and respectful arrangements were made for access to sanitary products by girls and young women.

We also welcomed the prohibition on the use of spit hoods in the centre, as a result of SA Ombudsman recommendations arising from concerns originally raised with us by young

people. There are other areas of concern which are subject to review and development, including practices and prevalence around the use of isolation, segregation and force, and the requirement for an appropriate grievance process that has been included in the June 2020 Youth Justice State Plan.

To a large extent these initiatives reflect the willingness of DHS and Youth Justice Executive to respond thoughtfully to issues we have brought to their attention. I look forward to continuing to work respectfully and productively with them, and the staff and management of KTYJC, to make similar advances in the next year.

I extend my sincere thanks to my committed and skilled staff, Belinda Lorek, Alan Fairley and Travis Thomas, who work so hard and faithfully to advance the interests and rights of the young people in the centre. And I am very grateful to the children and young people detained in Kurlana Tapa who have enabled us to do our work by talking to us, sharing their concerns, fears, wishes and hopes, and trusting us to advocate with and for them.



Training Centre Visitor

2. A momentous year

2.1 Planned and unplanned

Three major factors distinguished work within the Training Centre Visitor Unit (TCVU) in 2019-20. One was foreseen; the other two were not. We had planned for our first official Pilot Inspection of the KTYJC in November 2019 but the movement of all detainees to the Goldsbrough campus, several weeks before the inspection, also had a significant impact. Then the COVID 19 pandemic struck and required the substantial reshaping of how we undertook program activities.

COVID 19

Fortunately, no children and young people or staff in the KTYJC were infected by COVID 19, and neither were any TCVU staff. But everyone was affected by the changed work arrangements that became necessary.

Unlike the situation in other jurisdictions, the TCV and the TCVU were able to maintain regular visiting over this time, ensuring that detainees had ongoing access to TCVU support. The commitment of DHS Youth Justice and KTYJC management to this arrangement and their support for our continued face to face contact with the young people is acknowledged and appreciated.

2.2 Continuity and new achievements

The establishment phase of the Training Centre Visitor Program concluded in 2019-20, with a focus on the implementation and reporting of the Pilot Inspection of the KTYJC (summarised below). While this task dominated much of the year, we maintained full visiting and advocacy programs.

This year featured some noteworthy reforms and developments, which are described below. Almost all of these were initiated as issues or concerns by one or more of the children and young people with whom we worked.

- The use of degrading and intrusive semi-naked searches of children and young people on a routine basis ceased.
- Concerns about practices that undermined the right of detainees to be treated with dignity led to responses that included the provision of shower curtains in

bedrooms/toilets as an interim measure, and a better process for girls and young women detainees to access and dispose of sanitary products.

- Following ongoing discussion and a recommendation in the Pilot Inspection Report, DHS undertook to review detainee complaint and feedback procedures and included a project to establish an appropriate grievance process in the Youth Justice State Plan¹.
- Responding to concerns raised by the Ombudsman SA and TCV, DHS initiated an independent review on the use of isolation, segregation and the use of force in the training centre in February 2020. The resulting report in May 2020 identified areas for development in relation to isolation/segregation practices as well as staff training, clinical response and client feedback. DHS has agreed to progress these developments/improvements and the TCVU will continue to advocate for the best interests of young people to be considered in this work.
- DHS accepted the recommendations from two Ombudsman SA Reports (September 2019 and November 2019) that resulted in the prohibition of spit hoods and required changes in relation to the use of segregation and isolation in the KTYJC.
- A review of processes and practices to minimise the amount of time detainees are isolated under Admission, Restricted and Structured Routines.
- KTYJC created a register to record all locum visits for improved monitoring of medical interventions
- The TCVU started an engagement process with detainees to renew the Youth Justice Charter. This will continue through the 2020-21 year and, among other things, will see the release of a logo and branding for the TCV Program, and artwork to be used to promote the Charter.
- The TCVU Review of Records process was enhanced through improvements to documentation and the review of critical incidents, including the use of RICs (Resident Incident Comment sheets).

¹ *Young People Connected, Communities Protected 2020-2023* (SA Government, June 2020).

- DHS took steps to clearly identify and enable a better response to the needs of detained children and young people who are also under guardianship orders (i.e. Dual Involved detainees). Understanding and attending to the needs of these 'dual status' children and young people should be a priority while they are in custody and when they return to the child protection system outside the KTYJC.

The TCVU also responded to day to day detainee concerns identified during visits and through (unmonitored) phone calls. In 2019-20 these included matters identified in Part 4.1 of this report relating to –

- access to interpreters
- arrangements for young people with disabilities (a major ongoing concern)
- the impact of KTYJC wide lockdowns (exacerbated by the campus consolidation at Goldsborough campus)
- issues associated with use of Frangipani unit and the perceptions of detainees
- bullying between young people
- YAC (Youth Advisory Committee) and unit meetings
- uniform (clothing) requirements; and
- concerns about complaint/grievance processes.

Advisory role

Through public reporting and dialogue with the Minister, DHS and the KTYJC we drew attention to strategic issues that needed to (or still need to) be resolved. In 2019-20 these included -

- the detrimental impact of the consolidation of KTYJC operations (under the Dynamic Model) on Goldsborough campus
- the needs of younger detainees (10 to 14 year olds) including the TCV's public support for raising the minimum age of criminal responsibility (MACR)
- improved access to education and training, including the negative impact of KTYJC operational arrangements that hinder access to schooling
- improved provision of programs and activities
- the need to better understand and respond to the situation and behaviour of detainees with disability and/or psychosocial related needs.

Most of these matters also featured in the November 2019 Pilot Inspection.

Strategic environment and initiatives

The TCV's work has contributed to raising awareness about various systemic matters and proposing ways of improving them. We have seen some positive momentum and, in particular the –

- release in June 2020 of the Youth Justice State Plan and the reform agenda it contains, and
- the appointment in 2020 of highly regarded Aboriginal staff to leadership positions in the youth justice portfolio.

Broader influence - Courts' Project

Travis Thomas and Conrad Morris, two Advocates from the TCVU and Guardian's office, had leading roles in developing and implementing the youth component of an "Indigenous cultural awareness training project" being overseen by the (then) Chief Justice Martin Hinton. The project also canvassed the men's and women's prisons, remote communities (APY Lands) and members of the Stolen Generation.

Funded through the National Judicial College, Travis and Conrad were pivotal to developing the proposal (funding was secured before we were involved) through recruiting and supporting young people with 'lived experience' of the Youth Justice and Child Protection systems, as well as featuring in the subsequent video production, along with two young people.

The context of the project can be appreciated through the words of Justice Hinton -

"As judges we are acutely aware of over-representation. We know that we cannot deal with the issues that the RCIADIC identified as contributing to over-representation directly, but through a program like this we can hopefully avoid compounding things, we can call other agencies to account and we can divert Aboriginal people from the criminal justice system wherever possible." Moreover, he said that the project "would help us to overcome things like systemic racism and ethnocentrism, and to better understand what we needed to do to deliver justice to Aboriginal people appearing in our courts."

Asked what he thought the key messages were from the children and young people who were interviewed about their experiences of the youth justice system, Justice Hinton said that -

"Four things stand out for me in particular. First, things started going wrong for the two young people we spoke to when they were taken into care and away from family. Second, over-representation leads in a sense to a second stolen generation of which these kids are fast becoming members. Third, and perhaps an elaboration on the second, they know they are Aboriginal and are rightly proud of that fact, but when you drill down they struggle with their identity. Being taken into care and into custody separates them from family, many family members are also in custody. The effect on culture, identity and self-esteem is devastating. They struggle to know who they are. Fourth, despite having lawyers and social workers, they felt that they had never been listened to. That last theme we have heard frequently."

Both young participants were positive about the process. Guaranteed that their identities would be protected by their interviews only being viewed in specific, controlled circumstances, they valued the opportunity to share their experiences. They are not used to being listened to.

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 role that reports to Parliament through the Minister for Human Services about the rights and interests of children and young people sentenced or remanded to detention in a youth ‘training centre’ in South Australia.

In exercising her functions and powers, the TCV must act independently, impartially and in the public interest.

Penny Wright was appointed TCV for a period of five years pursuant to s.11 of the *Youth Justice Administration Act 2016* (the Act) from 28 July 2017.

The TCV’s work is supported by the TCV Unit, with three positions, comprising 2.4 FTE:

- a Principal Training Centre Advocate,
- a part-time Principal Policy Officer and
- an Advocate

The Unit is located within the Office for the Guardian for Children and Young People (Guardian), a position also held by Penny Wright pursuant to the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

The TCV 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” (s.13).

The work in this third year of the TCV Program continued in the context of an establishment, not operational, budget, as discussed in Part 5.6 below. In the course of the year it has been necessary to supplement the work of the unit with support from the Guardian’s team, namely three days per fortnight for policy, and regular dedicated visiting time from an Advocate with the Guardian’s Advocacy Team).

Section 12 of the Act underpins the independence of the 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 – Functions and Rights

Functions

Section 14 of the *Youth Justice Administration Act 2016* requires 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.

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 TCVU 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.

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

Rights

The Act provides guidance about the TCV's role in protecting the rights of children and young people in detention. Section 22, for example, requires that the TCV (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". The Charter is provided as Attachment 3.

At the time it was passed in 2016, the Act established the TCV as an independent oversight mechanism for children and young people in detention and anticipated emerging demands including the expected ratification of OPCAT (the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or punishment) (discussed below).

While s.14 of the Act establishes formal functions, the TCV is also subject to the requirements of other legislation including 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 KTYJC 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 mean that the 'best interests' of detained children and young people must be considered beyond their experiences as 'residents of a training centre'.

The TCV's work is also informed by human/child rights principles and commitments in international instruments and their associated protocols and rules. For example, 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 obligation extends to instruments such as 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).

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 (s.3(1)(d)). This extends to 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 Youth Justice Administrators (March 1999).

The facility

The KTYJC is the only youth detention centre in South Australia, for children and young people aged between 10 and 18.

It has previously operated on two campuses, both located in northern metropolitan Adelaide. Jonal campus can accommodate up to 36 children and young people (boys from 10-14 years and girls and young women aged 10 and older), while Goldsborough campus can hold up to 60 detainees (usually boys and young men aged 15 and older).

In 2019-20, operations were consolidated on the single Goldsborough campus under what was described as the Dynamic Model, with all detainees held in five twelve-bed units: Blue Gum, Wallaby Grass, Saltbush, Frangipani (regression and respite) and Kangaroo Paw.

3.3 Who we work for – Children and Young People in Custody

DHS provided the summary data used here to characterise the 2019-20 detainee population (*Attachment 4* provides illustrative charts).

Overview

Compared to the previous reporting year, the figures for 2019-20 show that -

- the total number of individual children and young people admitted to the KTYJC increased
- 328 separate individuals were admitted, while there were 664 separate admissions
- the number of individual Aboriginal children and young people increased slightly (by 8)
- the number of individual girls grew significantly (by 17) but as a proportion of the average daily population has more than doubled since the previous year
- the number of dual involved children and young people (i.e. those who were in care in the child protection system at the time of their admission) remained the same (93), and
- the number of individuals aged between 10 and 14 at the time of admission fell significantly (by 21) but made up 37.8 per cent of all admissions.

No data was provided about children and young people who do not identify within the standard male/female gender binary or who identify contrary to their biologically assigned sex.

No data was provided about detainees with disabilities, although DHS Youth Justice recently released a report indicating that nine out of every 10 children and young people assessed had a disability or disability related need², highlighting the overrepresentation of this cohort within the detainee population.

These figures need to be examined carefully, including in relation to children and young people with multiple admissions and with respect to average daily populations, both of which help us understand the situation of over-represented groups.

² Department for Human Services 2020, *Disability Screening Assessment Project Report: Identification of Population Needs at the Adelaide Youth Training Centre (Kurlana Tapa)*. Adelaide, Australia: Youth Justice Assessment and Intervention Services.

Individual children and young people admitted to KTYJC, 2019-20

Number of individuals admitted	Total	% of total
Total individuals	328	100%
Number of individuals who identified as Aboriginal	159	48.4%
Number of individual females	75	22.8%
Number of individuals under a guardianship order at the time of their admission	93	28.3%

Aboriginal children and young people

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. 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”.

Key characteristics of Aboriginal children and young people in detention in 2019-20 are that they comprised 48.4 per cent of individual detainees, accounted for 48.0 per cent of admissions (compared to 50.54 per cent in 2018-19), and made up 52.1 per cent of all residents on an average day (compared to 62.3 per cent in 2018-19).

The TCV published an overview of the situation of Aboriginal children in care and/or detention in April 2020³.

It is not clear what underpins these slightly improved (although still seriously over-represented) figures at the detention stage of the youth justice system. They may relate to the impact of intervention programs, changes in police practices and/or patterns of offending, to court practices, or perhaps all of these. We do know that approximately one third of Aboriginal children and young people in South Australia receive diversions for offending compared to about half of non-Aboriginal children and young people who receive diversions.⁴ Aboriginal children and young people therefore continue to be at higher risk of entering detention.

Girls and young women

Female detainees made up some 22.8 per cent of individual KTYJC residents in 2019-20. They comprised 25.4 per cent of admissions and 18.0 per cent of all residents on an average day.

The higher proportion of admissions probably points to the presence of a small group of girls and young women who frequently enter and exit the centre. The lower proportion of girls on an average day may indicate that they are being released on bail quickly.

It is clear from the TCVU visiting program that most of these girls and young women are Aboriginal, are in the care of the Chief Executive of the Department for Child Protection and were living in residential care homes at the time of their offending (often returning to residential care after release from the KTYJC). This is evidence of significant systemic failure that continues to put extremely vulnerable children and young people at risk.

³ *Snapshot of South Australian Aboriginal Children and Young People in Care and/or Detention from the Report on Government Services 20209* (GCYP & TCV, May 2020)
<http://www.gcyp.sa.gov.au/wp-content/uploads/2020/05/2020-05-06-GCYP-TCV-ROGS-2020-Report-Snapshot-of-Aboriginal-CYP-in-Care-and-YJ-Detention-v2.pdf>

⁴ Report on Government Services 2020, Part C, Section 6A, Police services, Table 6A.20 Youth diversions as a proportion of offenders, by Indigenous status (2018-19 data not available for SA, 2017-18 data referred to above).

Children and young people also in care - the dual involved

In November 2019, the TCV released the report *A Perfect Storm*⁵ which provided an introduction to the situation of 'dual status' children and young people who are caught in both the child protection and youth justice systems.

In 2019-20, 28.3 per cent of all individuals admitted to the KTYJC were also in care at the time of their admission. They comprised 39.4 per cent of all admissions, however, and made up 33.1 per cent of all residents on an average day (compared to 23.4 per cent in 2018-19).

The distinctly higher proportion of total admissions (39.4%) compared to individuals admitted (28.3%), demonstrates a higher rate of multiple admissions of children and young people who are in care: an average of 2.8 admissions per individual in care compared to 1.7 admissions per individual for those not in care.

This is indicative of systemic failure within the child protection system. The Department for Child Protection has been unable or unwilling, when approached, to provide data to the TCV relating to children and young people in care who also are in youth justice detention.

Very young detainees (10-14 years inclusive)

Very young detainees, those aged between the ages of 10-14, made up 21 per cent of individual children and young people admitted to the KTYJC in 2019-20 and 19.7 per cent of all residents on an average day.

It is a stark fact, however, that this cohort comprised 37.8 per cent of all admissions, with the average number of admissions per individual in this age range being 3.6, compared to the average for all those admitted of 2.02.

This suggests that detention is not a particularly effective tool for promoting rehabilitation or deterrence in younger children. This is a relevant consideration in the context of the current debate about what is an appropriate minimum age for criminal responsibility (MACR).

⁵ A PERFECT STORM? Dual status children and young people in South Australia's child protection and youth justice systems - Report 1
<http://www.gcyp.sa.gov.au/wp-content/uploads/2019/12/Dual-Status-CYP-in-SA-A-Perfect-Storm.pdf>

One contributing factor to this situation is the way bail practices impact upon this cohort. Very young offenders often struggle to comprehend the nature and implications of their alleged offending and find the bail process and associated bail conditions confusing, leading to breaches. In addition, being detained contributes to, or exacerbates, distress and disruption in their lives, with flow-on effects for their education and the ability to form trusting relationships in their homes and communities.

It is highly concerning that many of the very young 'frequent flyers' in the training centre have disabilities, are in care, and are Aboriginal. We are not aware of any program operating in South Australia that directly addresses these concerns and supports these children to address underlying reasons that lead to their incarceration.

While acknowledging the relatively low number of individual children and young people who are detained, in comparison to figures in the previous year, we can note that overall admission numbers in 2019-20 remained steady for 10 year olds, slightly increased for 11 year olds and decreased for 12 year olds. Admission numbers increased for those aged 13 and 14.

Explanatory charts

Attachment 4 to this report provides the following charts -

- Individual children and young people admitted to KTYJC
- Separate admissions to KTYJC
- Number of individual KTYJC residents by age
- Number of admissions at KTYJC by age
- Average daily population KTYJC
- Number of admissions to KTYJC by age (in years at start of admission) – 2017-18 to 2019-20
- Proportion of average daily population of KTYJC by sex
- Proportion of average daily population of KTYJC by Aboriginal status
- Proportion of average daily population of KTYJC by Guardianship of the Chief Executive status.

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 TCVU operates within the broader Office of the Guardian for Children and Young People, we 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. The third year – what we did

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, when visiting, 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.



This piece and illustrations that follow were produced by children and young people at the KTYJC during the November 2019 Pilot Inspection.

The Visiting Program

The 2019-2020 TCVU visiting program was able to sustain fortnightly visits to the KTYJC, usually by at least two Advocates (the preferred model)⁶. The program is designed to coincide with the four school terms, with visits scheduled at different times of the day and on different days of the week. This allows TCVU Advocates to observe and engage with residents wherever they may be, including at school, participating in sport or in an accommodation unit space. Some visiting contact is also maintained in the non-term periods.

In response to the preference of detainees, visits are 'young person-led' which means that an Advocate does not usually visit with the intention of seeking information about specific matters of interest to the TCVU. Instead, the young people are educated about their rights in custody and encouraged to consider the kinds of issues they might want to raise; they are free to raise any matters of concern or interest to them. From time to time, Advocates may seek specific feedback about initiatives or events in the KTYJC such as the impact of site amalgamation or their opinions about the body worn camera trial that commenced in 2020.

Following visits, the TCVU writes a summary that presents the views or concerns of residents and identifies areas for follow up. A post-visit debriefing session with centre management helps to resolve some matters immediately while identifying others for ongoing work, potentially with the aim of promoting systemic change.

Findings from the Pilot Visiting Report (2019)⁷ remain relevant, including that -

- fortnightly visits to the KTYJC by TCVU staff continue to be necessary
- a second Advocate with a specific focus on Aboriginal children and young people continues to be an urgent requirement, especially noting the persistent and gross over-representation of Aboriginal young people in youth justice detention
- all detainees must have the opportunity to speak directly with TCVU staff during a visit

⁶ For part of 2019-2020, the TCVU received some in-kind visiting support from an Advocate from the Guardian's Child Protection Advocacy Team. This support could not continue due to the ongoing and increasing work demands on the Child Protection Advocacy Team.

⁷ *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>

- some children and young people 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)
- visiting needs to be flexible and responsive to current needs and KTYJC circumstances
- 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 visiting program this year drew attention to several areas of concern, some of which continue to be a focus for the ongoing work of the TCVU -

- routinised semi-naked searches (now largely resolved)
- access to interpreters at various times (which remains unresolved)
- the care, treatment and control for young people with disabilities
- the impact of lockdowns applied centre wide despite an incident only affecting one unit (exacerbated by the campus consolidation at Goldsborough campus)
- the use of Frangipani unit and the mixed understanding of the purpose (from the young people's perspective)
- bullying between young people
- inconsistent implementation of Youth Advisory Committee (YAC) and unit-based meetings across the campus
- access to colour t-shirts (remains unresolved for over 8 months)
- resident feedback and complaints (which will be addressed by the DHS State Plan)

Reviews of Records

The TCVU undertakes a process of regularly reviewing records at the end of each quarterly visiting cycle. In 2019-20 the records scrutinised included those relating to all critical incidents, use of safe rooms, semi-naked search logs, complaints, programs, training and medical interventions. This process is resource-intensive (in staff time) but essential to develop a robust understanding of the KTYJC environment. In 2019-20 it was specifically integrated with the Pilot Inspection process.

As a result of the Review of Records process, various matters which would not otherwise have come to the attention of the TCVU were subsequently raised and addressed with the KTYJC and DHS. Some relate to specific critical incidents, including matters raised by detainees in resident incident comment sheets or compliance with the requirement that these be provided. Several areas were also identified where legislative formalities were not met, for example in relation to the recording the use of safe rooms and recording inconsistencies in semi-naked search logs.

The TCVU's Review of Records practice will be reviewed in 2020-21 to see what can feasibly be sustained in the longer term with available resources.

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

4.2.1 The Inspection Function

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. 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. Detainees 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 2019

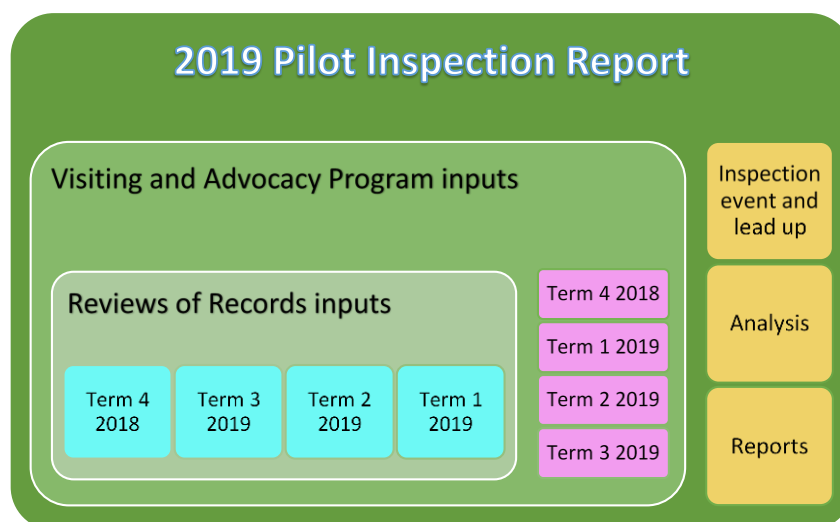
The model developed for the 2019 Pilot Inspection responded to the Act and associated drivers such as the *Aboriginal and Torres Strait Islander Youth Justice Principle*⁸, international covenants and the *Charter of Rights for Youths Detained in Detention Centres*. Inspections are part of an integrated TCV oversight model that also accommodates the Visiting and Advocacy functions. Pilot Inspection Standards drew on relevant statutory reference points and the Charter and Aboriginal and Torres Strait Islander Youth Justice Principle.

⁸ As set out in Part 2 of the *Youth Justice Administration Regulations 2016* (see Attachment 2).

This integrated approach spreads ‘inspection’ activities throughout the year rather than concentrating them within a single intensive Inspection event. For example, reviews of records are conducted at three monthly intervals to monitor KTYJC operations. This allows targeted review of selected documentation within the formal Inspection.

The model was informed by 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.

2019 Pilot Inspection Process and Reporting



4.2.2 November 2019 Inspection and Report

The report on the Pilot Inspection of KTYJC (then AYTC) was tabled in Parliament in June 2020 and can be seen as the culmination of the two year establishment phase of the Training Centre Visitor Program.⁹ A highlight is degree to which we were able to reflect detainees’ views.

⁹ Training Centre Visitor (June 2020), *GREAT RESPONSIBILITY: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre)*
<http://www.gcyp.sa.gov.au/wp-content/uploads/2020/07/TCVU-inspection-report-2020-web.pdf>

Findings and recommendations

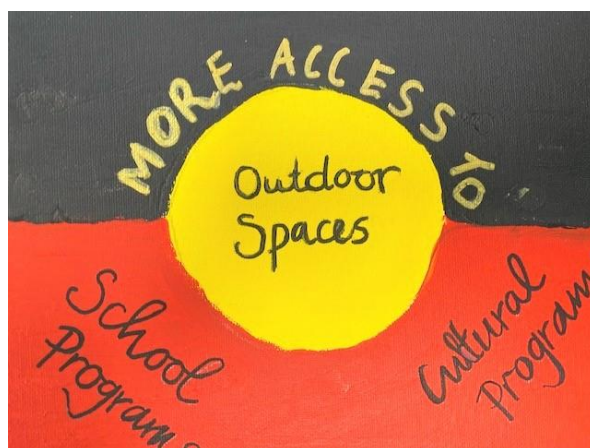
The essence of the Inspection findings was that it is time to revisit some 'fundamentals' of the youth justice centre's philosophy and operations. What is it doing and why? Reflecting this, the report made the following recommendations (see *Attachment 1*) -

- review the model underpinning the centre's operations (Recommendation 1)
- evaluate the effectiveness of the Behaviour Support Framework (BSF) (Recommendation 2)
- report annually on implementation of the Aboriginal and Torres Strait Islander Youth Justice Principle (Recommendation 6)
- improve the assessment and diagnosis, of and support for, children and young people with diagnosed or suspected disabilities and unmet psychosocial or developmental needs (Recommendation 8).

Other recommendations focus on the practical implications of operating the facility (including the implications of operating the KTYJC on one or two sites) -

- meeting the needs for specific detainee sub-groups (Recommendation 7)
- appropriate access to grievance procedures (Recommendation 3)
- case management (Recommendation 9)
- improving data/information and reporting systems (Recommendation 5).

To honour the TCV's obligation to hear and be influenced by the views of affected children and young people, we developed a booklet summarising the report in an accessible form (including the recommendations) for all detainees. This enables us to continue to discuss the issues they raised with us and their progress.



Staff voice

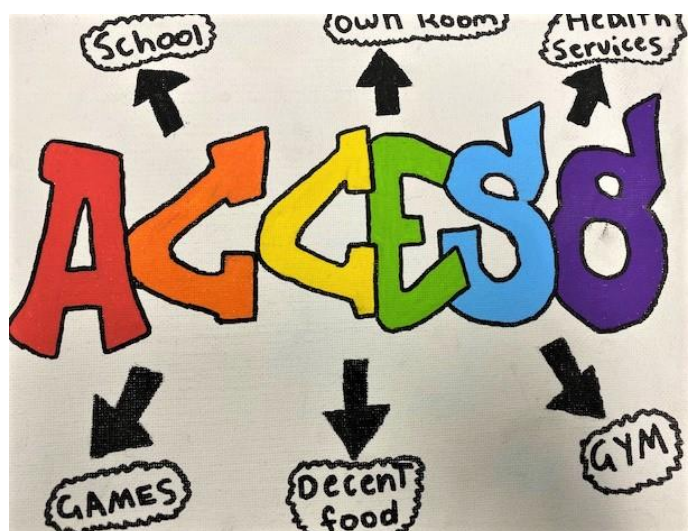
The report also extensively covered the views of individuals and groups of staff. Despite the potentially difficult nature of some issues and conversations, and some intrinsic challenges described in the report (especially those arising from the tension between custodial and rehabilitative responsibilities in an under-resourced environment), the Inspection process was met with good grace and active support by staff, and management.

Effective Inspections?

Part 2.2.1 of the Pilot Inspection Report identified four main factors that will determine how the TCV will perform the Inspection function under s.14(1)(b) of the Act in coming years. These require -

- continued implementation of the **Integrated Inspection Model** (see part 1.3 of that report)
- an **emphasis on engagement**, particularly with detained children and young people
- formal inspection standards and methodology that are consistent with future **OPCAT requirements** (part 2.1 and 2.2.2 of the report), and
- having a realistic **capacity** to implement relevant tasks (part 2.2.3 of the report).

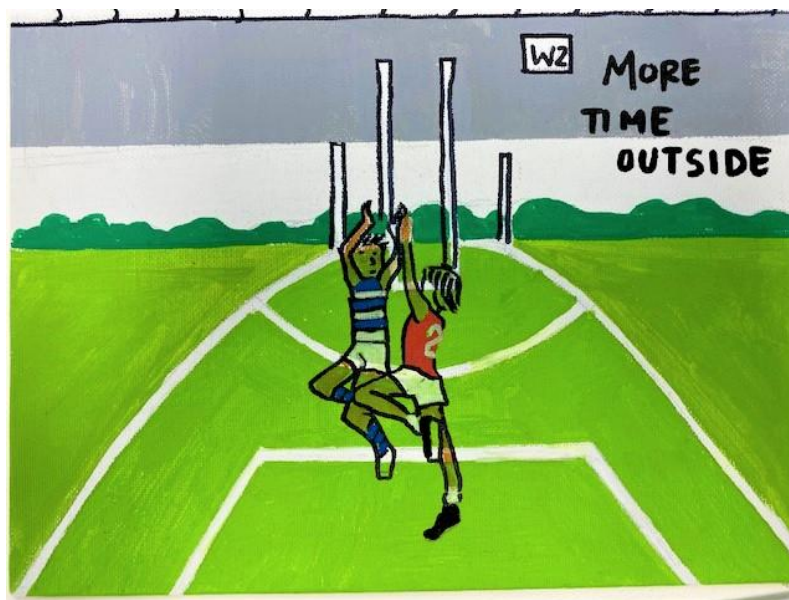
Other factors that will affect future implementation of inspections will include collaboration with the Commissioner for Aboriginal Children and Young People once that position is legislated, and broader developments associated with support for children and young people in need of secure care or, preferably, better community based services.



Developments since the Inspection

Some matters identified in the Pilot Inspection Report's recommendations had already been discussed with DHS/KTYJC prior to November 2019 and have continued to develop since, including -

- DHS is pursuing reform in several areas through commitments identified in the June 2020 *Youth Justice State Plan* including in relation to -
 - grievance/complaint procedures
 - improved responses for Aboriginal and Torres Strait Islander children and young people
 - a focussed Aboriginal Engagement Plan and Elders Visiting program
 - meeting the needs of “dual clients” of the child protection and youth justice systems
 - agreed outcome measures with other agencies, including DCP, Health and Education
 - throughcare as well as transitions in areas such as school (re)engagement
 - ‘section 34’ leave applications for participation in various off-site activities
 - digital logging and case management capacity, and
 - delivering evidence-based therapeutic care models.
- DHS initiated a review of the impact of the ‘Dynamic Model’ on KTYJC operations (report pending)
- DHS appointed Senior Aboriginal staff (in the central Youth Justice Directorate) to provide leadership and improve system responses for Aboriginal children and young people
- DHS completed a report with recommendations about possible improvements to the care and treatment of children and young people with disability or disability related needs.



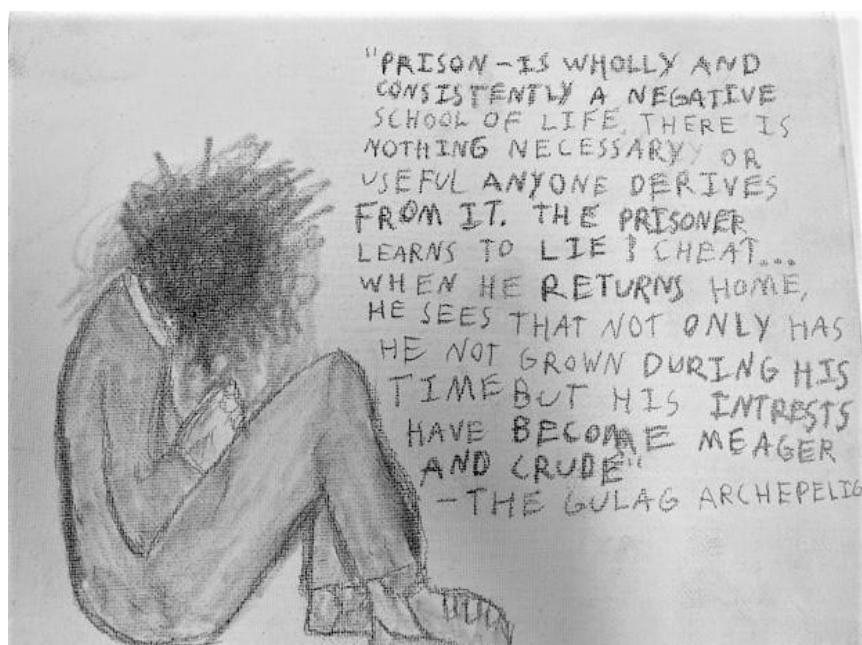
4.3 Promote residents' best interests

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 function is consistent with the direction in s.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”.

Promoting the best interests of detainees means the TCV must be in a position to identify problematic systemic issues and promote the interests of children and young people in detention (or prospectively in detention) to the broader community.

This requires meaningful engagement with broader developments in the youth justice and related sectors, to understand issues and influence outcomes. Promoting detainee best interests has also included publishing information about their circumstances through the website and blog managed by the Office of the Guardian, speaking with journalists, liaising with other agencies, addressing expert forums and contributing to workshops and training.

The development of a constructive and cooperative relationship with the DHS Youth Justice Directorate, particularly the staff and management of the KTYJC, has been a priority. As well as day to day engagement arising from the TCV's mandated functions, the TCVU has contributed in broader ways such as providing comments in response to reviews of individual KTYJC Operational Orders or with respect to other matters brought to the TCV's attention.



4.4 Advocate

TCVU Advocacy model

The TCV must advocate on behalf of detainees “to promote the proper resolution of issues relating to their care, treatment or control” as prescribed by s 14(1)(d) of the Act.

Our Advocacy model, as illustrated below, characterises such “issues” in three ways -

- matters for immediate resolution
- enquiries
- formal advocacy matters.

Matters for Immediate Resolution

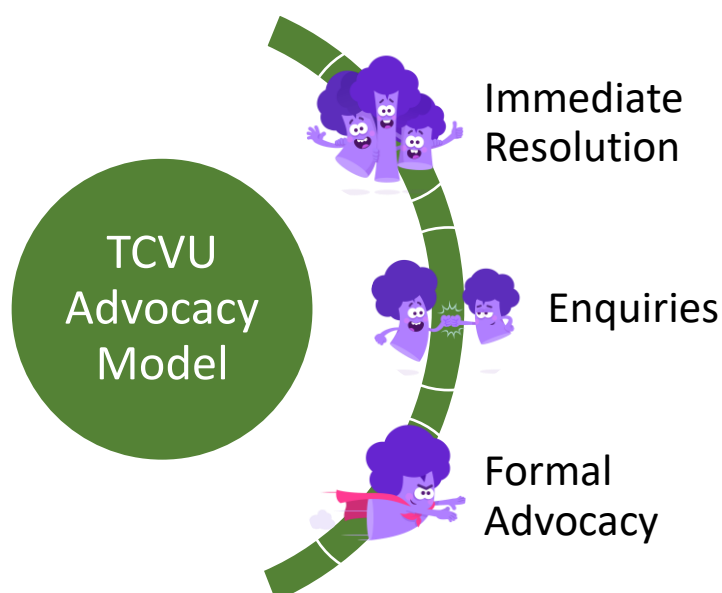
Some issues that arise through the visiting program (or in other ways such as a phone call from a detainee) may be able to be resolved quickly. These are matters which are dealt with relatively informally as ‘enquiries’ and can be resolved directly with centre management or specific KTYJC or other agency work units.

These sorts of matters arise frequently, may involve several children and young people and can re-emerge over time. They are not recorded for reporting purposes.

Enquiries

Some issues are more substantive “enquiries” that require more intensive work. As with all issues raised, TCVU Advocates seek to develop a young person’s capacity to advocate on their own behalf, including through recourse to KTYJC processes such as the Youth Advisory Committee or feedback/complaints processes (both internal and external). An outcome may relate specifically to an individual child or young person or have broader implications: it can be both young person focussed and lead to system improvement.

From 1 July 2019 to 30 June 2020, the TCVU worked with young people on 31 enquiries (on behalf of 29 individuals and one entire unit group) that were able to be resolved at an early stage. These were addressed in various ways without progressing to the stage of being designated as ‘formal’ advocacy matters. Responses to enquiries included referring detainee concerns or complaints to centre management, assisting them to have their views expressed to case management or coordination staff, addressing education-related concern, and resolving diverse matters associated with the conduct of an individual young person’s care.



Formal Advocacy Matters

A total of 21 issues progressed to the point of being deemed a formal advocacy matter that required additional and, on occasions, extensive assessment and ongoing advocacy. These 21 formal advocacy matters were advanced on behalf of 18 individual children and young people and one unit group in relation to the following themes -

- support to make a complaint (5)
- approval of phone numbers/visits/contact with others (3)
- unit move or transition to a mainstream unit (2)
- care/treatment for young people with disabilities (2)
- funeral attendance (1)
- *doli incapax* issues (1)
- restrictive practices/use of force (4)
- COVID-19 related practices (1)
- transition to an adult correctional facility (1)
- lockdowns/time in rooms (1)

With respect to these 21 advocacy matters -

- 17 were detainee self-referrals
- 4 were from alternative services or parents
- 1 was a 'best interest' matter identified through the TCVU Review of Records process.

With respect to the children and young people who were the subject of these advocacy matters -

- 2 of those for whom individual advocacy was undertaken identified as female and 16 as male
- 1 matter was argued on behalf of a group (unit) of young people.
- 8 of the 18 individuals for whom we advocated identified as Aboriginal or Torres Strait Islander (as did about half of those in the unit group).

We estimate that about 30-40 per cent of the young people we visited in the KTYJC this year were under the Guardianship of the Chief Executive of DCP. The TCVU liaises with the Guardian's Advocacy Team (which has a mandate for children in care) about these children and young people, enabling cross-referral or co-working of cases to meet the needs of the 'dual-involved'.

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 2019-20. This reflects the reality that insufficient resources are available to undertake a formal Inquiry in addition to carrying out the TCV’s other functions.

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 2019-20.

5. The Future – a changing landscape

5.1 Unresolved strategic matters

The TCV's first Annual Report (2017-18) identified matters that needed to be resolved that went to the heart of the TCV's capacity to meet obligations prescribed by the Act. Some of these remain unresolved.¹⁰

It is still necessary and appropriate to consider the scope of TCV powers and functions as limitations that have previously been noted have continued to be of concern. Given the expectation that the TCV will assume some responsibilities with respect to OPCAT, it may be that the Act will be opened up for review in any case, providing an opportunity to rectify these limitations.

5.1.1 Scope and Limitation of Powers

Places of detention that are not a 'training centre' in South Australia.

Children and young people continue to be detained in some places not subject to the requirements of the Act and thus not within the scope of TCV oversight and support. 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.

There is no oversight of what happens to children and young people in these spaces equivalent to that available through the TCV's role to detainees in the KTYJC, yet the TCVU addressed matters relating to the treatment of children and young people in all these contexts in 2019-20.

¹⁰ One was addressed by administrative action in 2019-20, in relation to the TCV's lack of a statutory power to delegate her functions and powers to TCVU staff. Although the intervention was of assistance, it will be appropriate, in the interests of observing the TCV's independence, to attend to this through an amendment in the Act in due course. It has previously been proposed that the TCV be empowered to delegate at least -

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

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. Groups identified in s.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).

It is to be hoped that the implementation of OPCAT from 2022 will rectify these omissions.

A restrictive interpretation of “resident of the training centre”

In 2018 Crown Law provided advice that the term “resident of a training centre” is to be interpreted restrictively, with concerning implications that compromise the TCV’s capacity to properly implement the s.14(1)(d) Advocacy function. These issues were raised with the Minister and DHS in 2018 and subsequently

The advice concluded that, except in highly limited circumstances, KTYJC detainees come within the TCV’s area of responsibility or oversight (mandate) only when they are *physically* within the precincts of the centre.

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 TCV’s mandate frequently while they are a resident of the KTYJC.

If this interpretation is correct, it is not congruent with the ambit of s.24 of the Act which describes the Minister’s responsibilities more broadly as applying to children and young people in custody both within and outside the centre.

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 KTYJC precincts, it is difficult to understand why parliament would have intended the TCV’s brief would only apply to parts of that custodial arrangement. It seems more likely the intention was that the TCV 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.

Figure 1 below illustrates what happens to the TCV's capacity for oversight where there is a highly restricted mandate.

Figure 1 – the interrupted Training Centre Visitor mandate

Police arrest a Child or Young Person (CYP) and are taking them to the KTYJC	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 KTYJC	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 KTYJC	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 KTYJC	In mandate
The CYP is transported to and from a Youth Court hearing	Not in mandate
The CYP returns and is held in the KTYJC	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 KTYJC 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 TCV may only fulfil the functions of the role (e.g. advocate or promote their best interests) when they relate to circumstances when the resident was physically within the centre. So, when 'promoting the best interests of residents of the training centre' in relation to a particular incident, the TCV 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 (psychiatric facility at the Women's and Children's Hospital) or receiving treatment in that ward (even if it relates to their care, treatment or control as a resident of the centre) the advice suggests that the TCV may not have a mandate to act to promote their best interests or advocate for their rights.

This position has immediate and concerning implication for the TCV's capacity to adequately fulfil the Advocacy function.

A compromised advocacy function

The rights of detained children and young people are seriously undermined if a restricted reading of the term 'resident of the training centre' creates an artificial barrier preventing them from receiving responsive advocacy at the time it is needed.

The TCVU's experience demonstrates children and young people need access to direct advocacy from the time they are sentenced or remanded to the time they are released. In some cases, post-release advocacy also should be available to ensure through-care.

This is consistent with the views we heard from detainees during our consultations in May 2018, when they told us they wanted:

- consistency of TCVU 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.

In 2020-21 the TCVU will consult with detainees again to revisit these views and secure feedback about how visiting and advocacy have worked in practice.

Various inquiries and commissions have identified responsive advocacy as an essential goal. The national *Royal Commission into Institutional Response to Child Sexual Abuse* (2017) 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 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.

How to fix this? Proposed legislative change to enable flexible support for children and young people in custody

Given the above, parliament is urged to consider amending the *Youth Justice Administration Act 2016* to ensure that a child or young person resident in the KTYJC has access to the support of the TCV Program from the time they are sentenced or remanded to the time of their release.

An amendment to s.14(1) of the Act would allow a simple, flexible and ongoing resolution. 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 ...

The use of Regulations under the Act will provide for clarity while allowing for responsiveness to changing circumstances.

It is also noted that the name *Training Centre Visitor* itself may soon be redundant given the current move away from the designation of the KTYJC as a 'youth justice centre' rather than a 'training centre'. The TCV is happy to consider a suitable new title, in consultation with children and young people.

5.2 Other legislative drivers - what are 'best interests'?

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

Section 14 of the Act establishes formal TCV roles and functions, but the TCV also has 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 s.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 s.9

- and, with respect to KTYJC residents who are *also* under guardianship orders the TCV 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 s.13(9).

These Safety Act provisions require the TCV to have regard to the best interests of children and young people detained in the KTYJC in ways that go beyond their immediate experiences as ‘residents of a training centre’ (and thereby suggest the broader scope of what is meant by the promotion of “best interests” required by s.14(1)(c) of the *Youth Justice Administration Act 2016*).

5.3 Changing oversight demands for children and young people in detention

As noted above, the TCV position was established to provide an independent oversight mechanism for children and young people sentenced to or remanded in detention. The 2016 Act did so in anticipation of emerging demands, including the expected ratification of OPCAT.

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 negotiating to establish an NPM based on a ‘diffuse’ model operating in State and Territory jurisdictions rather than as centralised body. In South Australia, the TCV has been 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. The 2019 Pilot Inspection was designed to be as OPCAT compliant as possible, given its pilot context.

TCV functions under s.14 of the Act are complementary to OPCAT NPM responsibilities but probably not as extensive. Notably, the TCV's current responsibilities apply only to residents of the KTYJC, 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 (KTYJC), 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.¹¹ It is unlikely this full list will be subject to the first iteration of NPM arrangements in Australia.

New secure facilities/programs

Depriving children and young people of liberty should only ever be a measure of last resort¹². 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. Any new model, service or program that may compulsorily detain children and young people therefore should adhere to fundamental human/child rights principles and protections, have service and systemic coherence, and be resourced adequately. All such services also should be recognised as places of detention for OPCAT purposes.

The TCV has argued this position over the past two years in relation to proposals for new compulsory secure care options. In 2019-20, this included advocacy to the Minister for Child Protection that all residential care facilities should be appropriately resourced, based on a model that ensures intensive therapeutic services are available to the children and young people who need them. In August 2020 the Minister confirmed, based on overwhelming sector feedback, that the Government would not be pursuing a new model of secure therapeutic care at this time.

¹¹ **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

¹² Article 37(b) of the UN *Convention on the Rights of the Child*, for example, stipulates that - "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time".
<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

The same expectations should apply to the forthcoming Youth Treatment Orders (YTO) program through which applications can be made to the Youth Court for an order compelling a child or young person to be assessed for, and undergo, mandatory treatment for a drug dependency for a period of up to 12 months. As this order would be enforced in the absence of a child or young person's consent, mandated treatment may occur in a secure facility. While the first phase of orders are expected to only apply to KTYJC detainees, this is a matter of some interest to the TCV. We have been advised that the expected release for consultation of the draft model of care for this program earlier in 2020 has been delayed due to the impact of the COVID pandemic.

5.4 Budget /Program - resources and capacity

The TCV role continues to operate under an 'establishment' budget that does not reflect the operational budget that was indicated and sought in 2016 for the full and adequate implementation of all functions required by the role.

The main impact of this reduced level of funding has been the capacity to employ only one, rather than two Advocates, and particularly a dedicated Aboriginal Advocate position. As well as imposing demands on the TCV and other staff in the TCVU to take on additional visiting duties, to the detriment of other work, and recourse to temporary 'in kind' support from the Guardian's Advocates Team, the main impact has been the TCVU's incapacity to undertake adequate outreach and consultation with the Aboriginal community.

A business review of the three roles, functions and capabilities undertaken by the Office of the Guardian for Children and Young People, including the role of Training Centre Visitor, has identified that a minimum of one additional staff member (Advocate) is required to fulfil the current statutory functions of the TCV, together with dedicated funding to support one full inspection every three years and two themed inspections in intervening years. The outcomes of the review have been notified to the Minister.

6. The Training Centre Visitor Unit

The TCV 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 KTYJC.

6.1 Staff profile

Principal Training Centre Advocate – 1FTE

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 - .4 FTE

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 – 1 FTE

Travis Thomas (from February 2018)

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

In addition, Conrad Morris, an Advocate from the Guardian's Advocacy Team, provided important support (.2 FTE) to the TCV visiting and advocacy role for several months. Throughout the reporting year, Jessica Flynn, Senior Policy Officer the Guardian, has provided support (.1 FTE) in assisting with reviews of records, policy development and the conduct of the 2019 Pilot Inspection.

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

6.2 Participation in external committees

The TCV participated in the following ongoing committees (all impacted to a greater or lesser extent by the impact of COVID restrictions):

- 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, DHS Youth Justice Directorate and management of KTYJC.

6.3 Strategic and organisational planning

Our work in 2019-20 focussed on developing, implementing and reporting on the Pilot Inspection of the KTYJC. Our program model continued to be informed by engagement with detained children and young people and other stakeholders.

Advocating for a realistic TCV Program budget and associated staffing capacity continued to be important, with a business case prepared for this purpose. As has been the case previously, however, planning for and implementation of TCVU work was predicated on a bottom line determined by available resources. This applied to the design and conduct of the Pilot Inspection.

TCVU staff participated in joint planning and policy processes with colleagues from the Office of the Guardian for Children and Young People, including in relation to joint clients.

6.4 Finances 2019-20

Financial Summary of expenditure 2019-20			
Project 973: Training Centre Visitor			
Item	Actual	Budget	Variation
Salaries and wages	289	322	33
Goods and services	72	47	-25
Total	361	369	8
Revenue	-369	-369	0
Net	-8	0	8

6.5 Workplace Health and Safety

In 2019-20 no incidents resulted in workplace injury.

6.6 Complaints

The TCV Unit uses the grievances and complaints policy available on the Guardian's website. No complaints were received in 2019-20.

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

6.7 Freedom of information

No freedom of information requests were received in 2019-20.

ATTACHMENT 1

Recommendations

Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Training Centre Visitor, June 2020)

Recommendation 1

That the model and associated custodial, protective and developmental policies and practices applied at the AYTC be reviewed to:

- a. assess their application and effectiveness in:
 - i. meeting the objects of the *Youth Justice Administration Act 2016* (SA), with particular regard to those objects that seek to promote the rehabilitation and reintegration of youths with the community; and
 - ii. providing detainees with the capacity to enjoy the rights expressed in section 22 of the Charter; and
- b. develop recommendations to ensure a balance between meeting the objects of security and correction on one hand and rehabilitation and reintegration on the other.

Recommendation 2

a. That DHS conduct an independent evaluation of the effectiveness of the AYTC Behaviour Support Framework (BSF) since its inauguration, including the extent to which it:

- i. supports the optimal achievement of the objects of the *Youth Justice Administration Act 2016* (SA); and
- ii. responds to the needs of children and young people with varying cognitive abilities.

b. That the reviewer should consult directly with detainees, staff and appropriate community members as a core review activity.

Recommendation 3

That AYTC take immediate action to provide detainees, including those with specific communication support needs, with the following processes to seek formal responses to matters of concern to them:

- i. a formal grievance procedure supported by independent advocacy and oversight; and
- ii. a separate feedback mechanism through which detained children and young people can initiate consideration of general concerns and make suggestions about their lives in detention.

Recommendation 4

a. That DHS conduct an assessment of the ongoing consolidated AYTC operations at the Goldsborough Road Campus, in order to-

a. establish clear expectations with respect to the following:

- i. operational demands and resources;
- ii. necessary staffing across work and functional competency areas;
- iii. the capacity of the facility and associated amenities to meet current and anticipated demands;
- iv. accommodation and facilities that meet the needs of individual and specific groups of detainees (including those identified in this report such as girls and young women);
- v. access to core services at all times;
- vi. minimal impediments to enjoyment of rights [under the Charter], including through access to appropriate recreational, health, educational and socialising opportunities;
- vii. the suitability of the current blanket gender 'no-mix' rule for detainees;

b. consider the impact of facility deficiencies identified in this report, including the following:

- i. the need for a second accommodation unit for girls and young women that –
 - allows for separate living environments for detainees by age, as is currently the case for males;
 - provides access to operational features, such as regression space
- ii. educational/training spaces and opportunities;
- iii. recreational and outdoor spaces and opportunities;
- iv. cultural safety and appropriateness;
- v. Visitor Centre spaces;
- vi. appropriateness for different status detainees: for example, those in police custody; those on remand (and presumptively innocent); and potentially new classes of children and young people being placed in secure care (such as those detained under Youth Treatment Orders);
- vii. provision of a step-down transition unit for long-term residents scheduled to return to the community; and

c. obtain the views of detainees and staff through a consultation process.

Recommendation 5

That data and information collection, analysis, sharing and public reporting about children and young people in youth justice detention be improved, through –

- a. DHS seeking advice from the Office of Data Analytics to identify relevant information held across government agencies and the best way to develop a child-focused, quality information system that enables extraction, analysis and exchange of information (with appropriate safeguards, particularly with respect to privacy); and
- b. DHS initiating a collaborative process across government agencies to improve the collection, sharing, analysis and public reporting about children and young people in youth justice detention.

Recommendation 6

a. That DHS publish an annual public report on its implementation of the *Aboriginal and Torres Strait Islander Youth Justice Principle* (reg.5 of the *Youth Justice Administration Regulations 2016* (SA));

and

- b. That the first such report pay specific attention to:
 - the views of detained Aboriginal children and young people and the broader Aboriginal community;
 - the needs of detained Aboriginal girls and young women at the AYTC;
 - the roles of Aboriginal staff at all levels of the AYTC and DHS Youth Justice;
 - how detainees' access to Aboriginal staff (DHS) is ensured;
 - whether and how detainees are enabled to maintain meaningful connection with families and community.

Recommendation 7

That AYTC (and other government agencies with a responsibility for detainees including Education, Child Protection and Health) provide a broader range of programs and services to meet detainees' needs and aspirations, taking account of their individual capacities, developmental age, disabilities and/or psychosocial characteristics, including in the following areas:

- i. opportunities for girls and young women;

- ii. engagement with culture and community (including as provided for through the *Aboriginal and Torres Strait Islander Youth Justice Principle*);
- iii. personal development and self-identification across life domains [including “SOGIE”¹³]
- iv. drug and alcohol misuse and rehabilitation;
- v. independent living skills, including cooking and budgeting;
- vi. increased access to on and off-site educational, community and cultural opportunities;
- vii. anti-bullying and peer support
- viii. planned transition to post-detention life.

Recommendation 8

That the AYTC and other responsible government agencies improve the assessment/diagnosis and support for detainees with diagnosed or suspected disabilities and unmet psychosocial or developmental needs, with specific consideration of:

- regular and ongoing staff training;
- providing a physical environment that accommodates differing sensory needs;
- greater access to disability supports across life domains;
- collaboration and information-sharing across systems to enable a more consistent and therapeutic environment for detainees in and out of the Centre;
- collection and analysis of appropriate disability-related data for public reporting.

Recommendation 9

That DHS review end-to-end case management to consider the post-custody needs of detainees in order to reduce reoffending and maximise opportunities for post-release success and community reintegration.

Recommendation 10

That DHS and DCP liaise to maintain an accurate record of ‘dual-involved’ detainees who are under the Guardianship of the Chief Executive of DCP and that their status is recorded in the Daily Population Spreadsheet.

¹³ Sexual Orientation, Gender Identity and Expression

ATTACHMENT 2

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 3

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.

ATTACHMENT 4

KTYJC Detainee Population 2019-20

This attachment is based on summary data provided by the Department of Human Services (DHS) to characterise the KTYJC detainee population in 2019-20.

These charts relate to discussion in Part 3.3 (*Who we work for – Children and Young People in Custody*) of the TCV Annual Report 2019-20.

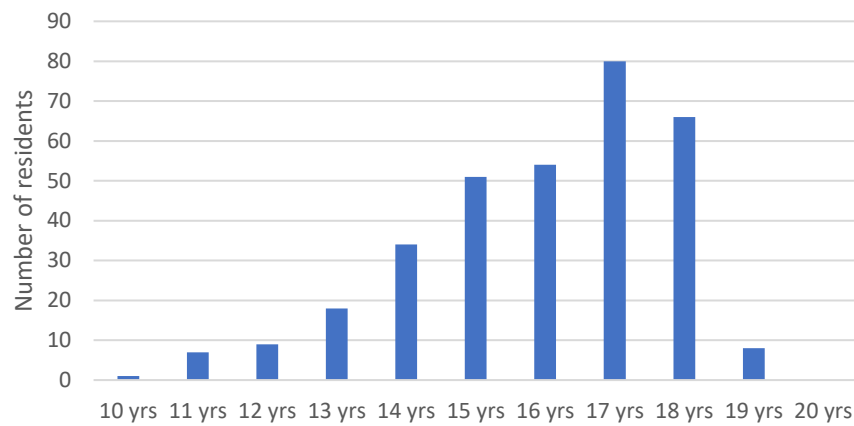
Individual children and young people admitted to KTYJC, 2019-20

Number of individuals admitted	Total	% of total
Total individuals	328	100%
Number of individuals who identified as Aboriginal	159	48.4%
Number of individual females	75	22.8%
Number of individuals under a guardianship order at the time of their admission	93	28.3%

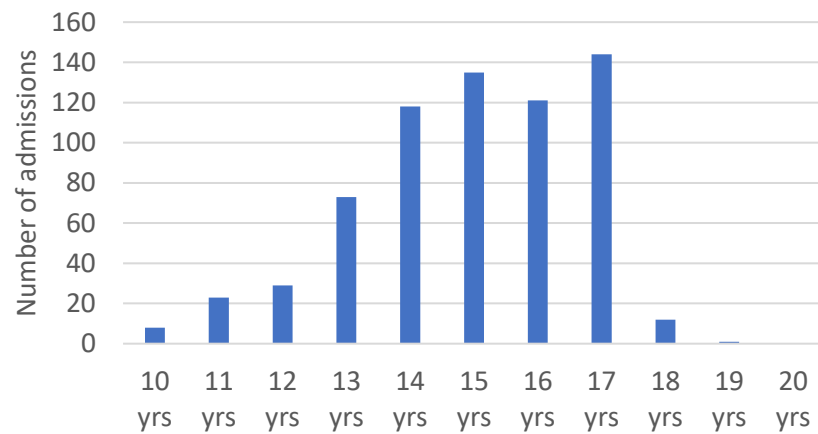
Separate admissions to KTYJC, 2019-20

	Total	% of total
All admissions	664	100%
Number of separate admissions of residents who identified as Aboriginal	319	48.0%
Number of separate admissions of female residents	169	25.4%
Number of separate admissions of residents under a guardianship order at the time of admission	262	39.4%

Number of individual KTYJC residents during 2019-20 by age

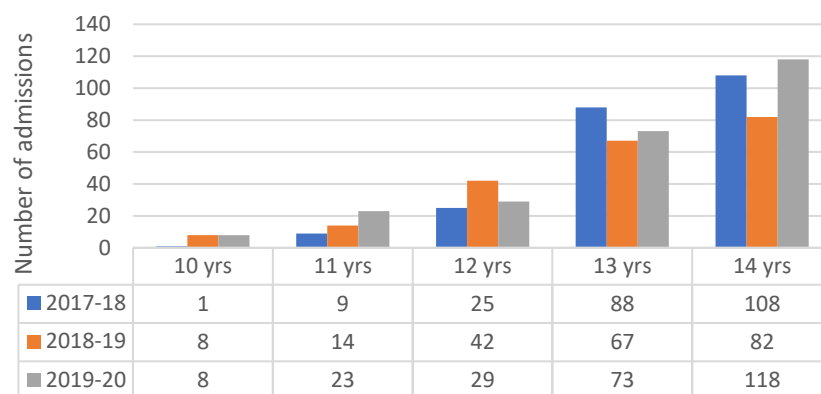


Number of admissions at KTYJC during 2019-20 by age*



** Note: one individual young person is counted twice in this data, as they were admitted and released from the centre, had a birthday and then detained again within the same reporting period.*

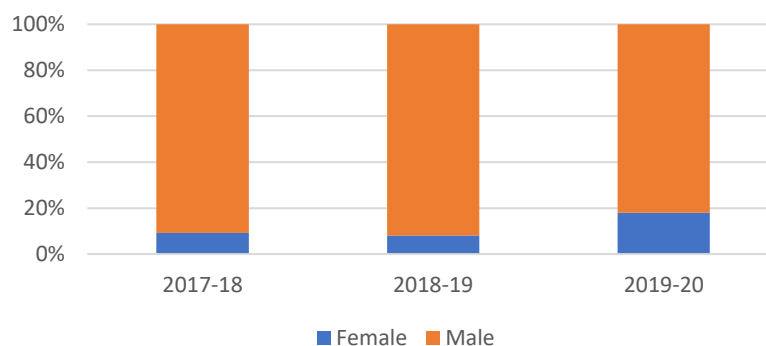
Number of admissions to KTYJC by age (in years at start of admission) 2017-18 to 2019-20



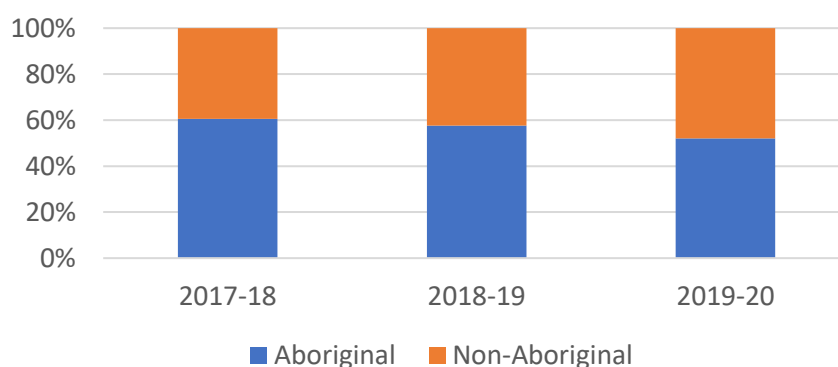
Average daily population KTYJC, 2019-20

	Total	% of total
All residents	34.5	100%
Average daily number of residents who identified as Aboriginal	18.0	52.1%
Average daily number of female residents	6.2	18.0%
Average daily number of residents under a guardianship order at the time of their admission	11.4	33.1%

**Proportion of Average Daily Population of
KTYJC by Sex 2019-20**



**Proportion of Average Daily Population of KTYJC by
Aboriginal Status 2019-20**



**Proportion of Average Daily Population of KTYJC by
Guardianship of the Chief Executive Status 2019-20**

