

Visiting Program and Review of Records:
Adelaide Youth Training Centre,
Term 1 2019
Training Centre Visitor

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1 Introduction

1.1 Purpose and context

This report describes the Training Centre Visitor's (TCV) Term 1¹ 2019 visiting program and associated review of records. It is the third such report.

The support of residents, staff and management through this process is again acknowledged.

DHS and the Adelaide Youth Training Centre (AYTC) have a duty of care to keep residents safe and must protect the human rights of detained children and young people.

Statutory mandate

The TCV's oversight functions are described in the *Youth justice Administration Act 2016* (the Act) -

- 14(1) The functions of the Training Centre Visitor include the following:
- (a) to conduct visits to training centres as required or authorised under this Part;
 - (b) to conduct inspections of training centres as required or authorised under this Part;
 - (c) to promote the best interests of the residents of a training centre;
 - (d) to act as an advocate for the residents of a training centre to promote the proper resolution of issues relating to the care, treatment or control of the residents;
 - (e) to inquire into, and provide advice to, the Minister in relation to any systemic reform necessary to improve—

¹ Note: the TCV Visiting Program matches formal visiting periods to education term times although a TCVU presence is also maintained in non-term times to ensure continuity of access for residents.

- (i) the quality of care, treatment or control of residents of a training centre; or
- (ii) the management of a training centre;
- (f) to inquire into and investigate any matter referred to the Visitor by the Minister;
- (g) any other functions assigned to the Visitor by this or any other Act.

The visiting program primarily addresses the s.14(1)(b) visiting function and reflects the requirements of s.16 of the Act, including that –

- 16(1) On a visit to a training centre under this Part, the Training Centre Visitor may—
- (a) so far as practicable, inspect all parts of the centre used for or relevant to the custody of youths; and
 - (b) so far as practicable, make any necessary inquiries about the care, treatment and control of each resident of the centre; and
 - (c) take any other action required to exercise the Visitor's functions.

The visiting program and associated reviews of records respond to the independent nature of the TCV's role, in which she "must act independently, impartially and in the public interest" (s.12(1)) and -

- pay particular attention to the needs and circumstances of residents who are under guardianship, or are Aboriginal or Torres Strait Islander young people, and those who have a physical, psychological or intellectual disability (section 14(2)(b))
- must encourage residents to express their own views and must give proper weight to those views (section 14(2)(a)), and
- have regard to the *Charter of Rights for Youths Detained in Training Centres* and try to implement its terms "to the fullest extent possible" (section 22).

1.2 Achievements/initiatives reported by the AYTC

The TCVU invited the AYTC to provide information during the Review of Records about achievements or new initiatives that should be identified in the context of this monitoring process. The advice subsequently provided for this reporting period referred to –

- Aboriginal cultural programs and support – see details in part 4.1 below
- other cultural programs and support – see details in part 4.2 below
- a resident secured access to education leave to pursue training
- a baseline multi-disciplinary screening assessment process.

1.3 Recommendations

Four new recommendations are proposed in this report. Discussions continue in relation to several raised in previous reports.

Recommendation 1

That the AYTC/DHS review the implementation of semi-naked search powers under section 30 of the *Youth Justice Administration Act 2016* and, in the meantime, place a moratorium on the routine semi-naked (or any other form of strip-) searching of children and young people in the Adelaide Youth Training Centre.

Recommendation 2

The design of and actions taken pursuant to Dynamic Risk Management Plans should be responsive to the needs of individual residents and managed to ensure compliance with relevant statutory and policy requirements.

Recommendation 3

That processes of responding to resident complaints that involve allegations about staff behaviour should be clarified.

Recommendation 4

That the AYTC/DHS consult with appropriate agencies/experts to establish how best to provide programs and individual support for residents who have sexuality or gender identity related developmental needs.

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2 Term 1 Visiting

2.1 Visiting Overview

Five visits were made to each AYTC campus by staff of the Training Centre Visitor Unit (TCVU) during Term 1 2019, a total of 10 scheduled attendances². Six of the visits were conducted by a single Advocate due to limited staff availability. The Principal Advocate participated in 4 visits (2 to each campus).

Visits by a single Advocate limit our capacity to meet the core objective of sighting and speaking individually with every resident (including those in their bedrooms at the time of the visit). Residents also cannot be guaranteed access to a female Advocate.

The problem is exacerbated by the continued non-funding of an Aboriginal Advocate position which compromises the TCV's ability to attend properly to the needs of Aboriginal and Torres Strait Islander young people as required by s.14 of the Act.

Most Term 1 visits were undertaken by Travis Thomas (Advocate) and Belinda Lorek (Principal Training Centre Advocate) with planning and reporting input from Penny Wright (TCV), and Alan Fairley (Principal Policy Officer and Principal Training Centre Advocate). The associated Review of Records was conducted by Travis Thomas, Belinda Lorek, Alan Fairley and Jess Flynn, Senior Policy Officer from the Guardian's Office.

Posters were developed this term as a post-visit feedback tool for residents in their units. They have been well received by residents who refer to them in subsequent discussions.

We also initiated a post-visit summary note to update AYTC staff on issues arising from the visits and adjusted the format based on feedback received.

TCVU staff continue to offer brief pre-visit briefings for AYTC management to allow exchange of information about recent events or issues that may be raised during, or impact upon a visit, especially those that may affect residents. AYTC management responded that resources may preclude AYTC participation in such scheduled exchanges.

Visiting generates many issues to follow up. The AYTC and TCVU agreed to develop a *common issues tracking register* to record and track progress in Term 2.

² Noting that the TCV and her staff attend the centre at other times for various reasons, including meetings with individual residents.

2.2 Goldsbrough Road

The TCVU requests resident profile data from the AYTC prior to each visit to inform planning and reporting. The data provided for Goldsbrough Road visits was incomplete on 2 occasions. The following summary therefore is incomplete.

Based on the data provided (with 2 units not accounted for), approximately 124 contacts were made with 52 individual residents aged 14 to 18 years.

- 30 identified as Aboriginal (58% compared to 59% during Term 4, 2018)
- 11 were under Guardianship orders (21% compared to 17% during Term 4, 2018)
- 6 residents were both Aboriginal and under Guardianship
- 6 young people identified as belonging to another cultural group.

2.3 Jonal Drive

The AYTC provided data for 4 of 5 Jonal Drive visits. This incomplete information relates to 34 contacts with 17 individual residents, of whom -

- 10 were female and 7 male
- 15 were Aboriginal (88% compared to 73% during Term 4, 2018)
- 8 were under Guardianship orders (47% compared to 33 % during Term 4, 2018)
- 7 were both Aboriginal and under Guardianship orders
- and, very concerningly, 6 were children aged 12 years or under.

2.4 Formal Advocacy Matters

Ten matters met criteria to be opened as formal TCV advocacy matters³ and related to -

- health care
- lengthy remands and potential applicability of the *Doli Incapax* doctrine
- visits and phone calls
- mental health support
- cultural support.

Many other issues and concerns were resolved through informal discussions with the AYTC, referral to another service, resident self-advocacy or referral to the internal AYTC complaints process or discussion at the Youth Advisory Committee.

³ That is, as sanctioned by s.14(d) of the *Youth Justice Administration Act 2016*.

2.5 General Term 1 issues to note

Various matters identified during Term 1 (2019) visits that may not be covered in more detail elsewhere in this report are noted here:

- The ongoing lack of adequate cultural support and Aboriginal cultural programs within the AYTC. The Tracking Culture Program was yet to be implemented.
- Residents reporting diminished motivation and decreased interest in incentives that attract some young people to pursue higher phase levels through the Behaviour Support Framework (particularly at Goldsbrough Road).
- Feedback forms were not readily available in some units (particularly at Jonal Drive).
- Positive interactions were observed between centre staff and residents.
- Residents provided positive feedback about school support.
- A lack of information provided to residents about their rights prior to semi-naked searches.
- Routine information is not provided to residents about their right to privacy in bedrooms with respect to CCTV camera coverage.
- Concerns were raised about timely job club payments leading to unrest among numerous Goldsbrough residents. This was rectified by the AYTC.
- Some Goldsbrough residents expressed concern about unlock times. AYTC management offered to follow this up.
- The young people enjoyed a guest speaker and will welcome more opportunities to have guests at the centre.
- Police custody is now at Goldsbrough Road and this is being monitored for positives and challenges by both staff and residents.

3 Term 1 Review of Records

3.1 Introduction

The Term 1 2019 Review of Records examined documentation for the period from 8 December 2018 to 31 March 2019 relating to -

- the care, treatment and control of residents
- processes and practices that may impact on their rights, care and treatment
- good practices to acknowledge and promote in TCV reporting, and
- whether and how practices address the rights and protections guaranteed to residents under the *Youth Justice Administration Act (2016)* the *Aboriginal and Torres Strait Islander Youth Justice Principle* and the *Charter of Rights for Children and Young People Detained in Youth Justice Facilities*.

Information was requested for review at the AYTC on 10 and 11 April 2019 in the following categories (some for examination on those days, some to be taken away for later scrutiny).

1. Feedback/complaint forms
2. Incident Reporting
3. Searches
4. Safe Room Use
5. Isolation
6. Locum / Medical
7. Routines and Phases
8. Programs/Activities
9. Other
 - admissions and other data and associated 'authorities'
 - training undertaken by staff
 - Section 34 leave (i.e. approval of resident leave from the AYTC)
 - Operational Orders due for compliance review in the period (and outcome)
 - new initiatives or positive achievements during the review period.

3.2 Issues identified in the Review of Records

Six major issues were identified through the Term 1 Review of Records -

- semi-naked searches
- use of isolation
- incident reporting
- complaints and feedback
- locum visits and off-site medical treatment
- use of safe rooms.

3.2.1 Semi-naked searches⁴

Semi-naked searches of children and young people are permitted under s.30 of the Act and described in *AYTC Operational Order 6 (2016)* either as routine unclothed searches or as intelligence and/or risk informed interventions.

The rationale for semi-naked searches is that they detect contraband and thereby help ensure a safe environment for residents and staff. Contraband detection in the AYTC is extremely low and not documented in a way that can justify the extensive use of the practice⁵. Individualised risk assessments should inform specific decisions to unclothe and examine children and young people as this practice is intrusive, undignified, an affront to bodily autonomy and privacy and harms some young people.

The AYTC's 'routinised' system is inconsistent with the requirement that "due regard must be had to the particular needs and circumstances of the resident"⁶ being searched. Any person subject to a semi-naked search has the right to have the detection (or not) of contraband recorded, providing an accurate record about this invasive experience⁷.

As noted in a recent Victorian report, the reality for girls and young women is that "[t]he exceptionally high rates of sexual and family violence against women and girls in society means that the re-traumatising impact of strip searching is particularly acute for women and girls"⁸, especially young Aboriginal women and girls who generally have disproportionately

⁴ Section 30 of the Act

⁵ For example, 55% of entries in the Admissions/Return to Centre search log did not record whether contraband was found or not, despite log prompts to do so.

⁶ Section 30(5)(b) of the Act

⁷ In the Admissions/Return to Centre search log, 55% of entries did not record if contraband was found or not.

⁸ **HLRC 2017**, *Total Control – Ending the routine strip searching of women in Victoria's Prisons*, Human Rights Law Centre, 2017 (page 4)
<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5a287bb50d9297f066fd588d/1512602586016/TC+Report+Online.pdf>

common experiences of gendered violence and who are grossly over-represented in youth detention centres, including the AYTC.⁹

Attachment 1 to this report is a TCVU paper addressing the use of semi-naked searches of children and young people as a routinised practice. The TCV believes that this routine application should cease as it is not a trauma informed, rights-based practice nor is it a proportionate response to alleged risks.

Recommendation 1

That the AYTC/DHS review the implementation of semi-naked search powers under section 30 of the Youth Justice Administration Act 2016 and, in the meantime, place a moratorium on the routine semi-naked (or any other form of strip-) searching of children and young people in the Adelaide Youth Training Centre.

Goldsborough Road semi-naked searches

This reporting period was longer than the corresponding review period for Term 4, 2018.

Two primary logs record searches at Goldsborough Road: a *domestic/ personal visit log* and an *admissions/return to centre log*.

Two **domestic/ personal visit logs** were reviewed for Goldsborough Road which showed that 193 searches¹⁰ were conducted following such visits. A total of 136 (70%) were ion scanner and pat down searches and 44 (23%) were semi-naked, a reduced proportion from the last reporting period (39% in Term 4, 2018). This reduction is welcome. However, 10 entries failed to record the method of search (semi-naked or ion). If these 10 missing entries were semi-naked, the proportion of such searches will increase to 28%.

One log entry (of those completed) recorded the detection of contraband. There was no information about what the contraband was, or the method of the search undertaken.

AYTC *Operational Order 6*¹¹ directs that one randomly selected resident must be subject to a semi-naked search following each personal/domestic visit session. The review indicated that this randomly selected semi-naked search did not occur routinely. Some visit sessions recorded no semi-naked searches, whereas other sessions recorded that all searches were semi-naked.

⁹ HLRC 2017 at page 16

¹⁰ This includes ion, semi-naked and pat down methods.

¹¹ The operational order uses the term '*unclothed search*' rather than the statutory based term 'semi-naked'.

Goldsborough Road Searches following Domestic/Personal Visits	
Total number of searches (ion, pat down and semi-naked) recorded in log	193
Total number of semi-naked searches recorded in log	44 (23% of total)
Goldsborough Road semi-naked search specific data	
Log entry does not provide name or age of resident search record log entry	9 (20%) (6 entries in the previous log format and 3 in new format)
Log entry does not provide reason for the search	10 (23%) (6 entries in the previous log format and 4 in the new format)
Log entry is missing time or date	7 (16%) (6 entries in the previous log format and 1 in the new format)
Log entry has missing/incorrect employee details or authorisations	9 (20%)
Log entry does not record if contraband was detected	16 (36%)

The TCVU reviewed 4 **Admissions or Return to Centre search logs** that recorded 201 resident searches.

AYTC *Operational Order* 6 directs that residents are to be 'unclothed searched in accordance with section 3.9 (which refers to the unclothed search process) when the resident is admitted into the AYTC or returns after an absence from the AYTC'.

Despite 53 search method entries being incomplete, due to the acknowledged routine practice of semi-naked searching of residents on admission or when returning to the AYTC, the TCVU concludes that *all* of these searches were semi-naked.

One entry recorded that contraband was detected following a return to the centre. Unfortunately, neither the search method nor the nature of the contraband was indicated in the entry. No other completed log entry showed that contraband was detected.

Goldsborough Road Searches following Admission or Return to the Centre	
Total number of searches (ion, pat down and semi-naked)	201
Total number semi-naked searches	201 (100 % of total)
Goldsborough Road semi-naked search specific data	
Log entry does not provide name or age of resident search record log entry	16 (8%) (6 entries in the previous log format and 3 in new format)
Log entry does not provide reason for the search	38 (19%) (6 entries in the previous log format and 4 in the new format)
Log entry is missing time or date	30 (15%) (6 entries in the previous log format and 1 in the new format)
Log entry has missing/incorrect employee details or authorisations	48 (24%)
Log entry does not record if contraband was detected	110 (55%)

Jonal Drive semi-naked searches

Two logs record personal searches at Jonal Drive: a *Visit/School Log* for domestic/personal visit related searches and the *Admissions/Police Custody/Return to Centre log* for all admissions or returns to the centre.

The TCVU reviewed 2 **Visit/School Logs** that primarily record searches following personal visits. These recorded a total of 22 searches¹² following personal/domestic visits, 15 of which were recorded as ion scans while 7 did not indicate the method at all.

As noted previously, AYTC Operational Order 6 requires that a randomly selected resident be 'unclothed searched' following each visit session. Review of the logs indicates that this random semi-naked search did not routinely occur. Some visit sessions recorded no semi-naked searches.

¹² This includes ion, semi-naked and pat down methods.

Jonal Drive Searches following Domestic/Personal Visits	
Total number of searches (ion, pat down and semi-naked) recorded in log	22
Total number of semi-naked searches recorded in log	Nil semi-naked search entries. Unable to ascertain. (the method of search for 7 entries not recorded)
Jonal Drive semi-naked search specific data	
Log entry does not provide name or age of resident search record log entry	Nil semi-naked search recorded.
Log entry does not provide reason for the search	Nil semi-naked search recorded.
Log entry is missing time or date	Nil semi-naked search recorded.
Log entry has missing/incorrect employee details or authorisations	Nil semi-naked search recorded.
Log entry does not record if contraband was detected	Nil semi-naked search recorded.

The TCVU reviewed 3 Jonal Drive **Admissions/Police Custody/Return to Centre logs** that recorded 78 personal searches of residents. Despite 12 log entries not recording the method used, given routine AYTC practice, the TCVU concludes that all of these searches were semi-naked.

Jonal Drive Searches following Admissions/Police Custody/Return to Centre	
Total number of searches (ion, pat down and semi-naked) recorded in log	78
Total number of semi-naked searches recorded in log	78 (100 % of total)
Jonal Drive semi-naked search specific data	
Log entry does not provide name or age of resident search record log entry	19 (24%) (18 entries in the previous log format and 1 in new format)
Log entry does not provide reason for the search	29 (37 %) (18 entries in the previous log format and 11 in the new format)
Log entry is missing time or date	21 (27%) (18 entries in the previous log format and 3 in the new format)
Log entry has missing/incorrect employee details or authorisations	0 (0%)
Log entry does not record if contraband was detected	33 (42%)

Logs have commencement and completion dates. Search records were not provided for periods between the completion of one log and commencement of another. For example, a Jonal Drive log showed a 16 March completion date, yet a new log only commenced 12 days later, on 28 March. The AYTC response to the TCVU inquiry about this missing period was that searches did occur but were not recorded and that this matter will be addressed.

Summary of missing search records

23 March 2019	3 female residents had personal/domestic visits. No record of the search conducted is available (including the method adopted and name of the staff member who conducted the search).
26 March 2019	1 female resident had a scheduled personal/domestic visit. No record is available about whether this visit occurred nor are any details about the search (including the method adopted and name of the staff member who conducted the search).
28 March 2019	1 female resident had a personal/domestic visit. There is no record of the search being conducted (including the method adopted and name of the staff member who conducted the search).
29 March 2019	4 male and female residents were admitted to Jonal Drive campus. There is no record of the searches conducted including the method adopted or the names of staff members who conducted searches. Note: all admission searches are semi-naked.

Poor or absent recording of personal searches creates risk for residents and staff and is particularly unacceptable in relation to semi-naked searches, not least because it is breach of the law.

Summary - Goldsborough Road and Jonal Drive

Personal searches¹³ were conducted at least 494¹⁴ times between 8 December 2018 and 31 March 2019 at the AYTC, which amounts to just over four searches per day. These applied to 58 individual children and young people (over 90 admissions) in that 114 day period.

One suspected contraband item was found in the 494 searches. No details were available about what this item was or any related circumstances.

Data provided to the TCVU shows that approximately 56% (or 279) of these were semi-naked searches¹⁵, of which 56% were 'routine'.

¹³ Including semi-naked and ion (which may also include pat down)

¹⁴ An additional 9 are assumed to have taken place but not recorded in logs.

¹⁵ Without being definitive as the applied method of search was not recorded for 17 searches.

The search experiences of 4 residents were reviewed from the log data, indicating that -

- 1 resident had 3 unclothed searches over a 5 day period in association with admission/returns to the AYTC
- 2 residents underwent semi-naked searches twice on one day (following admission and then court return)
- one 13 year old resident had 11 semi-naked searches when detained for 2 separate 3 week admissions during the review period.

The new logs provide a good basis for accurately recording personal searches and compliance with legislative requirements if completed accurately and in full.

The search log template contains written instructions for staff about search processes and recording requirements. These instructions could be improved by -

- using the phrase 'same sex or gender identity of the resident'¹⁶
- using the correct statutory term semi-naked search in preference to the current wording 'unclothed search'¹⁷
- requiring that residents be verbally advised about their right to never be fully naked
- including all legislative requirements that bear upon requirements for completion of search log entries.

The apparent reduction in semi-naked searches at the Goldsborough Road campus following visits (with still little or no contraband detected) is a positive development. So too is the AYTC assurance that there will be continuing dates (with no gap periods) for all search log reporting processes at the AYTC.

Matters for further consideration – semi-naked searches

Consideration of the semi-naked policy and practice suggests that further thought should be given to the impact of such searches on specific groups of children and young people, including with respect to -

- cultural implications for Aboriginal residents and those from culturally and linguistically diverse background
- girls and young women
- individuals with trauma backgrounds and
- those with gender related or sexuality issues.

The impact on Aboriginal residents who are Initiated is complex. Rights and responsibilities given to some of them as initiated Aboriginal men, for example, should be acknowledged in

¹⁶ Section 30 (2) of the Act

¹⁷ Section 30 (2)(b) of the Act and thereafter

AYTC admission and other operational processes. This includes but is not limited to who can conduct a personal search, how the young men are informed of the process and who handles their belongings such as clothing and especially any cultural articles they may have in their possession.

The TCVU has long stated that young people should be informed of their rights prior to searches as well as their right to make a complaint. Semi-naked poster pictorials such as those adopted by New South Wales youth justice centres would assist in communicating processes with residents. In some jurisdictions, alternative body scanners have been procured to reduce the need for invasive searches.

3.2.2 Use of isolation and Dynamic Risk Management Plans

Dynamic Risk Management Plans (DRMP) that sometimes prescribe periods of isolation were a focus of this Review. The TCVU examined 21 DRMPs relating to residents aged between 11 years and 18 years. DRMPs tend to prescribe periods of time that a resident may spend in their room following an incident.

Nineteen plans recommended that the initial time the resident should be placed in their bedroom was 2.5 hours. This same 2.5 hour time frame was applied to an 11 year old resident with a diagnosed disability and traumatic background and an 18 year old resident. This routine use of the 2.5 hour period did not seem to vary to reflect the individual developmental needs of residents. While the AYTC uses plans to manage broader risk as well as the situation of an individual resident, they should still be tailored to address the mental wellbeing and developmental capacity of individual children and young people and ensure that they do not experience this plan as punishment.

Plans reviewed for Aboriginal residents simply contained a phrase that indicated they identified as Aboriginal with no other cultural considerations identified or recommended.

In one exceptional situation, a 10 year old resident who is under a guardianship order and known to have a 'traumatic' background was isolated for a period of over five hours, without the necessary legislatively prescribed approvals being sought. This occurred in a situation where the child refused to be patted down following a school lesson. Other mitigation strategies were not employed to manage the risk. The AYTC Incident Review Committee noted that multiple shift demands were given as the reason for failure to seek the prescribed approval for the isolation. From the review of documents, this was assessed to be a unique circumstance and not a standard practice. However, due to the practice employed, it would be reasonable to view this treatment as Prohibited Treatment as prescribed by Section 28 of the *Youth Justice Administration Act (2016)*. As such, the child's

guardian should have been informed of this practice and provided with the opportunity to make a complaint to an appropriate complaints body about this treatment.

Recommendation 2

The design of and actions taken pursuant to Dynamic Risk Management Plans should be responsive to the needs of individual residents and managed to ensure compliance with relevant statutory and policy requirements.

3.2.3 Incident Reporting

The AYTC is undertaking a review of Operational Order 33 – *Incident Reporting*. This may result in an increase in raw numbers of reportable incidents as the threshold for reportable incidents is lowered in the interest of transparency and good recording and review practices.

All 53 Term 1 incident reports were examined. Of the examined reports, 23 related to Jonal campus (only 3 of which involved young women) and 30 arose for Goldsborough Road.

Incident numbers varied considerably across the four review months – 10 in December (partial month); 15 in January; 5 in February; and 23 in March.

Most reviewed incidents reports had adequate detail about the actual incident and its lead up process. They would better serve their function if they also evidenced how incident management was informed or affected by factors such as –

- applicable resident behaviour support plans
- accommodation of or responsiveness to the specific disability, neurodevelopmental or emotional needs of involved residents, and
- post incident care and the (re)development of routines.

Incident themes

Incident themes were consistently recorded. Noting that the AYTC incident report allows more than one theme to be selected, the majority were classified as ‘behavioural’, including threats made against or attempted assaults of staff. Approximately one quarter described resident to resident assault. AYTC procedures must reflect the obligation of staff to inform residents of their right to report all assaults to SAPOL. While this practice is undertaken by

staff and prompted in the Resident Comment Sheet, this should be supported by an operational procedure.

Property damage (2), inappropriate sexualised behaviour (1) and illness and injury (3) constituted a small percentage of incidents. The inappropriate sexualised behaviour was promptly reported to the Child Abuse Report Line by the AYTC.

Thirty one of the 53 incidents (58%) recorded the use of mechanical or other restraint (note: the TCVU monitors all uses of restraint and records per resident, not per incident). Resident worn spit protection was applied in anticipation (not in response) to actual spitting by a resident during the month of December 2018. The TCV has previously advised the AYTC to reconsider current practices in relation to the use of spit protection as an anticipatory operational practice (noting that alternative protective wear is available).

Half Wrap	17
Full wrap	4
Restraint to Ground (including prone)	15 prone and 1 not named
Hand cuffs	9
Leg Wraps	1
Escort	15
Seated hold/restrain	4
Non Maybo	2
Arm hold	4
Other (supine/wall/bridge)	4
Spit protection	3

Seventy-five Resident Comment Sheets (RICS) should have been offered to and/or completed by residents involved in the 53 incidents. Only thirty-three (44%) of RICS were recorded as offered and/or completed. The majority of the completed RICS were completed within 7 days. There were exceptional circumstances on approximately 6 occasions where it took over a week (and on two occasions up to 8 weeks) for the RIC to be completed.

The TCVU understands that RICS are used to fulfil section 33 (3) of the *Youth Justice Administration Act* (2016). Nineteen incidents that involved the use of force did not have a completed RIC and there was not a clear record of offer. Additionally, some young people are released before a RIC can be completed. The timing of a RIC needs also to be informed by the readiness of the young person to engage and discuss the incident. This may vary considerably. Young people who are going to be released should be offered (at least) the option to complete an RIC and be made aware of their right to nominate another party to complete the RIC, as set out in section 33(4).

The AYTC may find it beneficial to review whether and how the RIC design and process may be impacting on resident interest and engagement (and involve young people in that review).

None of the 53 incident reports had been signed by the Assistant General Manager. Reports are not signed for approval until the incident has been reviewed by the Incident Review Committee (IRC). The Centre has advised that this may be delayed during periods of complex or multiple incidents because of the resources required to complete a thorough IRC process. This does not explain how reports dating back to December 2018 did not have the signed approval of the Assistant General Manager.

3.2.4 Complaints and Feedback

Continuity of TCV concerns

The TCV has previously suggested that the AYTC/DHS complaints/feedback process could be improved by “distinguishing the general feedback process (which may be positive) from a clearly defined complaints process and pathways”.

This position was reiterated in the report tabled in Parliament in April 2019 which noted that the TCV “is not convinced that a combined feedback and complaints process is the best model for managing grievances for this complex client group and will pursue this matter further with the Department”¹⁸.

The *Royal Commission into Institutional Responses to Child Sexual Abuse Report* (2017) provided some guidance about how to improve child focused complaint handling systems by recommending¹⁹ processes in which –

- children can easily access child-appropriate information about internal complaint processes and external oversight bodies that may receive or refer children’s complaints, such as visitor’s schemes, ombudsmen, inspectors of custodial services, and children’s commissioners or guardians
- children have confidential and unrestricted access to external oversight bodies

¹⁸ **Training Centre Visitor 2018, Report on Pilot Visiting Program and Review of Records for the Adelaide Youth Training Centre 2018** (February 2019) (part 2.3.2)
<http://www.gcyp.sa.gov.au/wp-content/uploads/2019/04/Report-of-Training-Centre-Visitors-2018-Pilot-Visiting-Program-Review-of-Records.pdf>

¹⁹ *Royal Commission into Institutional Responses to Child Sexual Abuse* (2017) - *Final Report: Volume 15, Contemporary detention environments* (Recommendation 15.9 is at page 135)
https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_15_contemporary_detention_environments.pdf

- staff involved in managing complaints both internally and externally include Aboriginal and Torres Strait Islander peoples and professionals qualified to provide trauma-informed care
- complaint handling systems are accessible for children with literacy difficulties or who speak English as a second language, and that
- children are regularly consulted about the effectiveness of complaint handling systems and systems are continually improved.

Details for Term 1 2019

Forty three feedback and complaints were examined in Term 1, 2019, probably reflecting the longer review period than in the two previous reviews which examined 23 (Term 3 2018) and 34 (Term 4 2018) matters.

Two document types were provided by the AYTC for the Term 1 2019 review -

- all original resident feedback forms and subsequent centre responses (written and/or verbal)
- *RiskMan* journal entries that provided some evidence about how each feedback form was responded to, progressed and resolved.

The nature and seriousness of matters varied considerably, with one of the 43 being a strong endorsement of staff.

Elements of an adequate grievance process

As noted in previous reports, the feedback/complaints system has no independent input/review mechanism other than the recently commenced TCVU oversight.

A complaints/grievance process is better served by separating a formal 'complaints' process from the collection of general 'feedback'. This would allow better promotion to residents of their right to lodge and pursue grievances and for the AYTC/DHS to establish and implement a graduated and properly articulated complaints process that has clear support, escalation and appeal mechanisms.

In the review period, only one matter was identified as having been 'escalated' (to the AYTC General Manager in this case).

Resident perceptions

Some residents use the feedback process routinely while others do not use it at all, despite having been resident in the AYTC for significant periods of time. Some residents do not think the existing process is helpful in addressing their issues or concerns. This suggests that unless the process is revamped it is unlikely to be a system used much by residents.

Systemic implications of individual complaints

It still is not clear how the AYTC or DHS monitors, addresses and records actions taken with respect to feedback/complaints matters that relate to a systemic issue that may not solely apply to the affected resident.

Individual allegations relating to staff behaviour have broader implications. For example, records provided did not allow examination of two examples where resident allegations suggested culturally inappropriate behaviour by staff. Records do not indicate if or how potential implications for the systematic management of individual complaints relating to a young person's culture are generated from that individual complaints process.

Other examples from Term 1 dealt with issues with case coordinators, access to medical treatment/support, and resident perception of discriminatory or targeted treatment.

Staff related complaints

Feedback/complaints documentation that referred to the behaviour of AYTC staff did not indicate if and how staff-related matters were assessed, investigated and resolved. They simply did not establish what happened when a child or young person made a complaint or allegations about staff.

Staff behaviour was a key element in 19 of the 43 matters examined. This identification was assisted by DHS/AYTC *RiskMan* records that classified matters in various ways, including through use of categorising terms such as 'staff behaviour', 'professional behaviour', 'staff complaint', as well as generic categories such as 'programs' and 'service delivery'.

Of the 19 staff relevant complaints, two were lodged by female Jonal residents (who made a total of 5 complaints) and 6 by male Goldsborough residents (14 complaints: 6 lodged by a single resident, 4 by another).

What they have in common is that the material provided for the April Review did not allow scrutiny of whether, and how appropriately, relevant staff behaviour was assessed and addressed. This is important as this opacity makes it impossible for the TCV to consider

these processes properly, either in relation to the best interests of the children and young people or the management of their care, treatment and control while in custody.

Given the *prima facie* seriousness of some allegations, documents provided for the April Review did allow an opinion to be formed about whether a transparent and adequate grievance system operated appropriately in specific situations or generally.

Severity Assessment Codes

AYTC/DHS forms provided for the April Review (usually) allocated a *Severity Assessment Code* (SAC) 'score' to each complaint. Associated Departmental information describes the SAC as "a standardised assessment tool to measure the seriousness of a complaint and assist with the appropriate management of the complaint". This 'severity' score should be applied through an assessment process described in either of two tables: a DCSI Severity Assessment Code (SAC) table and a Severity Assessment Code (SAC) table relating to Staff misconduct.

This bifurcated treatment appears to be based on whether a complaint involves allegations of 'staff misconduct', suggesting that the system treats such matters discreetly. The basis for and implications of a matter being classed as one involving "staff misconduct" are not clear.

It is not clear for any of the reviewed complaints which of these tools was applied and what the allocated score meant in terms of managing and resolving that complaint. This raises the question as to what practical effect they have.

SAC 'scores' allocated to the 19 'staff' related complaints from the April Review are problematic. None is identified as category 1 ("extreme") or category 2 ("high"), while –

- 5 had no score attributed
- 13 were shown as category 4 ("low"), and
- 1 was identified as category 3 ("moderate").

On the face of it, too many have not been scored or have been placed in SAC category 4 ("low").

Additionally, it appears as though the two assessment tables could deliver different scores for the same incident/concern. For example, the same complaint might warrant category 2 ("high") if assessed against the DCSI Severity Assessment Code (SAC) table, yet only category 3 ("moderate") if assessed against the Severity Assessment Code (SAC) table relating to staff misconduct.

The classification of most complaints reviewed in April as category 4, probably makes this categorisation of little practical use. For example, a resident complaint that they were

pushed by a staff member was allocated the same “low” score of 4 as a complaint that a staff member would not give a resident toast.

Complaints and the Pilot TCV Inspection of the AYTC

Specific attention will be paid to aspects of the complaints process in the TCV’s pilot Inspection under s.14(1)(b) of the Act in late 2019.

Recommendation 3

That processes for responding to resident complaints that involve allegations about staff behaviour should be clarified.

3.2.5 Locum Visits and off-site medical treatment

On-site treatment

In response to issues raised in the Term 3, 2018 TCV Report, the AYTC developed a dedicated Medical Locum Attendance Log to be held at reception. Use commenced in December 2018 and flagged for availability for the Term 1, 2019 review.

A medical locum attendance log was not made available for **Jonah Drive** at this review, with AYTC management noting that there was “no explanation” available. A log was provided for **Goldsborough Road** which showed 13 locum attendances at that site for the reporting period, 1 of which was for two residents. Of the 10 attendances that record *time called* and *time arrived*, the waiting period ranged from 19 minutes to 8 hours and 55 minutes²⁰.

The AYTC note provided with these medical details said that some of the information requested by the TCVU, but not provided, will be captured in the logs after they are amended “when resourcing allows”. It is expected that this matter will be discussed in the regular TCVU/AYTC meetings in the lead up to the Term 2 review.

Off-site treatment

Documentation provided for Term 1, 2019 included an overview of the number of training centre absences for medical reasons (a total of 47, with 39 shown as medical non-emergency and 8 as medical emergency). A separate note indicated that s.34 records show that 6 absences involved ambulance transport to hospital.

²⁰ The full list being (hours/minutes) 1:08, 6:03, 3:00, 4:10, 4:05, 2:47, 0:19, 1:04, 4:13, and 8:55.

3.2.6 Safe Room Use

The TCVU reviewed documents that related to all safe room admissions in the review period. The TCVU requested all original safe room running sheets and the associated C3MS safe room record for each occasion on which the safe room was used. Seven safe room admissions were provided for review involving six individuals. All running sheets were provided for review. Three C3MS records were provided and four were not provided.

In summary -

- 3 admissions were for Goldsborough Road and 4 for Jonal Drive
- Residents were aged from 11 to 18 years
- 6 were male and 1 female
- duration of use ranged from 7 to 65 minutes.

Section 28 of the *Youth Justice Administration Act (2016)* outlines requirements for safe room use, including that residents must be supervised at intervals not longer than 5 minutes. Records indicate that all 7 admissions met this requirement.

The Act also requires that a cultural advisor and health professional be notified. Information provided for review indicates that the health team was notified only 3 times from these 7 admissions. There was no evidence that the cultural advisor had been notified about the 3 safe room admissions of Aboriginal residents.

Breach of the Act?

Despite the prohibition in the Act²¹, an 11 year old resident was placed in a safe room on at least one occasion. The AYTC responded to the TCVU's request for additional information about this incident by reporting that staff had decided to place that resident in a safe room as it was deemed the safest room in which to safely remove hand cuffs. The advice noted that the door had been left open and that the boy had been supported actively by staff during his time in that room. The TCVU then requested to review the CCTV footage of this incident, an opportunity subsequently provided and taken up.

Following this review, the TCVU wrote to the Chief Executive to raise this practice concern. Section 28(2) of the Act states that a training centre resident who is under the age of 12 years must not be detained in a safe room. The TCV understands that it is AYTC's contention that the 11 year old child was not 'detained' in the safe room as the door was left ajar. The TCV does not agree with this position and is of the view that the decision to place the child in the safe room should have, but did not, comply with the requirement of s.28(2) of the

²¹ Section 28(2) states that "a resident of a training centre who is under the age of 12 years must not be detained in a safe room".

Act. Detainment was effected through the positioning of a staff member at the safe room door and the prevention of the child from voluntarily leaving the room²².

In light of the above, the TCV sought information from AYTC in relation to -

- a) the nature and extent of training provided to all AYTC staff in relation to trauma including the training provider, the frequency of training (including refresher) and details about relevant training package(s)
- b) how AYTC/DHS procedures and practices apply to the identification and management of a child's disability including how these translate to relevant care plans and the daily management of a resident (including safe room use)
- c) how the AYTC seeks and incorporates information from other agencies and departments about a resident's care needs following their admission (including from residential carers where applicable), especially in relation to their trauma backgrounds and strategies to work effectively with the child
- d) a blind CCTV spot at the Jonal drive campus and how it can be immediately rectified
- e) the practices in relation to informing parents, guardian or carer of the resident about any segregation and use of a safe room²³ as soon as reasonably practicable.

The TCVU will continue to monitor the use of the safe room for children under 12 years of age.

²² Collins Dictionary Definition of Detain: '*When people such as the police detain someone, they keep them in a place under their control*'. <https://www.collinsdictionary.com/dictionary/english/detain>

²³ While a notification to a parent or guardian about the detainment of a resident in a safe room is not required under the Act, the TCVU is of the view that this is good practice.

4 Opportunities and Responsiveness

4.1 Obligations and performance - Programs and Activities

Section 21 of the Act obliges the Chief Executive to “ensure that adequate arrangements are in place” in the training centre, among other things, “to maintain the physical, psychological and emotional well-being of the residents of the centre” and “to promote the[ir] social, cultural, educational and vocational development”.

These obligations are partly met by the provision of programs and activities but, while these two terms are commonly used, there does not appear to be an agreed definition of what they denote. Both are referred to in the Youth Justice Charter and should be differentiated from “courses of instruction or training” as sanctioned by s.27 of the Act (relating to Education).

The following definitions have been applied for oversight purposes,—

Programs are purposeful initiatives with a clear set of objectives and associated processes to help achieve defined outcomes as part of the AYTC’s responsibility to enable residents to develop and rehabilitate across relevant life domains. Programs are systematic initiatives offered by internal or external providers additional to basic accommodation, education and health services.

Activities are routine or occasional opportunities provided to young people primarily for recreational purposes.

Detailed information about programs and activities was requested for the April 2019 review of records. Negligible information was provided, probably reflecting limited program provision at the AYTC. The requested information included details of all programs/activities run for residents by AYTC staff or external providers (other than those provided as part of the YEC’s formal curriculum) that includes the following information –

- the name and object of the program/activity
- who delivers the program/activity
- program/activity objectives
- the dates programs/activities were delivered at each site (or were cancelled and the reason why)
- details of the numbers and profile of participating residents
- copies of any reviews or evaluations of such programs, and
- minutes or other documentation that records the considerations and decisions of the Program Review Committee.

In addition to the overall scarcity of programs, specific attention is drawn to the lack of program and/or activity opportunities for residents within some key groups, all of which were raised in the review period as individual or common resident concerns

- Aboriginal children and young people
- children and young people with other cultural support needs
- girls and young women
- LGBTQI children and young people
- residents with special needs.

4.2 Areas of current concern

4.2.1 Cultural issues for Aboriginal children and young people

Lack of access to cultural programs for Jonal Drive Aboriginal residents was noted as a matter requiring further action in the TCV's April report to Parliament -

“access to programs, particularly cultural programs (both Aboriginal and for residents from other cultural and linguistic backgrounds), including as these are available to and suitable for residents aged fourteen years and under as well as young women”²⁴

A note provided for the current review²⁵ indicated that the AYTC was developing some initiatives in this context and that a meeting with Metropolitan Aboriginal Youth and Family Services (MAYFS) in March discussed implementing a Yarning Circle for the female Aboriginal population. There was also mention of “targeted cultural service delivery to the young ladies at Jonal Drive” in the context of a commitment to “facilitate a safe, gender specific, culturally appropriate service for this higher need cohort”.

The TCV remains seriously concerned about this issue. The SA parliament has agreed to an unequivocal commitment to Aboriginal children and young people through the *Aboriginal and Torres Strait Islander Youth Justice Principle*²⁶ parts of which state -

r.5(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; and

r.5(a) in acknowledging the diversity of Aboriginal and Torres Strait Islander communities, the individual cultural identity of Aboriginal and Torres Strait Islander

²⁴ TCV, *Report on Pilot Visiting Program and Review of Records for the Adelaide Youth Training Centre 2018* (February 2019, at page 18)

²⁵ AYTC, *positive achievements/new initiatives – Review of Records period; 8/12/2018 – 31/3/2019*

²⁶ Regulation 5, *Youth Justice Administration Regulations 2016*

youths be recognised and their beliefs and practices be supported, respected and valued.

This commitment is reinforced in the *Youth Justice Charter* which identifies rights –

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

and

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.

Recommendation 15.5 of the *Royal Commission into Institutional Responses to Child Sexual Abuse Report* (2017) proposed that state governments should consider further strategies for the cultural safety of Aboriginal children in youth detention, including by “ensuring that all youth detention facilities have culturally appropriate policies and procedures that facilitate connection with family, community and culture, and reflect an understanding of, and respect for, cultural practices in different clan groups”.

The *DHS Youth Justice Aboriginal Cultural Inclusion Strategy 2015-18* envisages that DHS “Youth Justice service responses and collaborative arrangements embrace diversity in culture and the values of reconciliation to address re-offending and the over-representation of Aboriginal children and young people in the justice system”.²⁷

There is a commitment to *Build Cultural Needs into Service Responsiveness* through ensuring that “Youth Justice programs are culturally inclusive and appropriate” and that “Youth Justice service responses address the cultural needs of young people”. Similar positive commitments are made to “[s]trengthen connections between Aboriginal communities and Youth Justice” and “[s]upport Aboriginal young people to maintain connection to their family, culture and community”.

4.2.2 Children and young people with other cultural support needs

The AYTC also advised in its *Positive achievement/new initiatives* note that action also was being taken in relation to residents from other cultural groups through -

- development of a relationship with community groups about understanding and meeting the needs of African background residents while also engaging with the young people themselves

²⁷ https://dhs.sa.gov.au/_data/assets/pdf_file/0020/40187/Youth-Justice-Aboriginal-Cultural-Inclusion-Strategy-2015-2018.pdf at page 127

- and continued contact with the UniSA Centre for Islamic Thought and Education to better understand and meet the needs of Muslim residents.

These are important and constructive initiatives that have the potential to begin to address the concerns raised by residents with the TCVU in these contexts. Again, a reference point is the commitment in the Youth Justice Charter to enjoyment of the right -

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

The TCVU has raised individual advocacy as well as systemic concerns about access to cultural support over the past 12 months and sees this as a matter in urgent need of proper analysis, policy development and resolution.

4.2.3 Girls and young women

This group of residents has raised concerns that there is only one female unit and the impact of this. At times when this unit has become full, dynamics between females can only be managed by splitting the unit, rather than moving units (which is available at Goldsborough Road for young men).

Some female residents expressed frustration about the age range of residents at Jonal Drive (from 10 to 18 years) which has implications for the provision of an age and developmentally relevant and responsive living environment.

4.2.4 LGBTQI children and young people

The AYTC does not provide residents with systematic access to 'programs' or proactive support about LGBTQI issues. While we are confident that the AYTC would respond positively should a resident identify an individual need or interest of this sort, we do not think that a resident would be likely or willing to do so in the highly gendered and institutionalised centre environment (which is compounded by the awareness and state of mind of other individual residents).

Adolescence can be difficult for many children and young people as they develop their sexuality or gender identification. Youth Justice is responsible for their development in this space while they are in custody.

The AYTC should have a plan and resources related to the issues and needs of LGBTQI residents and more broadly with respect to developing sexuality and gender roles.²⁸

All program and service providers within the AYTC should be competent to relate to and provide support to LGBTQI residents.

Recommendation 4

That the AYTC/DHS consult with appropriate agencies/experts to establish how best to provide programs and individual support for residents who have sexuality or gender identity related developmental needs.

4.2.5 Residents with special needs

The phrase 'special needs' is recognized in the Youth Justice Charter. Most residents have challenging developmental, experiential or other characteristics that will affect their behavior in the AYTC and their experience of detention. The AYTC should recognise and plan for their care, treatment and control in this context.

Some of these characteristics are the physical, psychological or intellectual disabilities referred to s.14(2)(b)(iii) of the Act. Some may not fall within narrow or programmatic understandings of these terms but should nevertheless be recognized. This would accommodate a range of other neurodevelopmental needs.

The term 'special needs' also covers characteristics such as being under the guardianship of the Chief Executive, often with histories of significant trauma, abuse and problematic experiences within the child protection system, especially residential care.

Relevant Youth Justice Charter provisions include the rights to -

- receive help for your mental health if you need it, and to be transferred to a mental health facility for treatment if required
- get help if you have problems with drugs or alcohol, and to
- have special care and protection if you are vulnerable or have special needs

²⁸ Washburn M and Menart R 2019, *UNMET PROMISES Continued Violence & Neglect in California's Division of Juvenile Justice*, Center on Juvenile and Criminal Justice (Feb 2019).

4.2.6 Residents held on remand

A significant number of residents have not been convicted of a crime and are being held on remand. Some are never convicted.

It is a major concern that these children or young people are deprived of their liberty and held in an institution designed for and operating as a detention facility for children and young people who have been *convicted* of a crime. Many ultimately return to the community with no conviction recorded against them.

ATTACHMENT 1

POSITION PAPER Semi-naked searches of children and young people (Training Centre Visitor, May 2019)

Between 8 December 2018 and 31 March 2019, 501 personal searches were conducted at the AYTC campuses, just over four searches per day. These applied to 58 individual children and young people (over 90 admissions) in that 114 day period.

One suspected contraband item was found in the 501 searches. No details have been made available about what this item was or any related circumstances.

Data provided to the TCVU shows that 64% (or 279) of these were semi-naked searches²⁹ and 56% of those were routine.

Semi-naked search practices are prescribed by s.30 of the Act and described in AYTC *Operational Order 6* either as routine unclothed searches or as intelligence and/or risk informed interventions. They apply for all admissions to the centre and when residents return from an external event.

The rationale for semi-naked searches is that they detect contraband and thereby help ensure a safe environment for residents and staff. Contraband detection in the AYTC is extremely low.

Recommendation

That the AYTC/DHS review the implementation of semi-naked search powers under section 30 of the Youth Justice Administration Act 2016 and, in the meanwhile, place a moratorium on the routine semi-naked (or any other form of strip-) searching of children and young people in the Adelaide Youth Training Centre.

An inappropriate mechanism?

Routine semi-naked searches of children and young people is not a trauma informed, rights-based practice. Routine semi-naked searches are not intelligence- based. A balance needs to be struck between security and dignity. It is not clear that a 'routine' based system

²⁹ The TCVU cannot confidently provide actual numbers given the lack of semi-naked search data arising from Jonal Visits register.

complies with the statutory requirement that “due regard must be had to the particular needs and circumstances of the resident”³⁰ being searched.

Individualised risk assessments should inform specific decisions to undress children and young people as this practice is intrusive, undignified and an affront to bodily autonomy and privacy. The lack of contraband detected in current AYTC searches, along with the failure to consistently record whether contraband is found in the relevant log, suggests that routinised semi-naked searches are not justified, purposeful or driven by risk. Any person subject to a semi-naked search has the right to have the detection (or not) of contraband recorded, providing an accurate record about this invasive experience³¹.

The Australian and New Zealand Commissioners and Guardians group asserts that any search must be lawful, reasonable and proportionate to a legitimate aim. There are broader national concerns that unclothed searches are inherently harmful for children’s mental health. Searches can be humiliating and distressing, particularly for victims of sexual abuse (which is an experience for many young people in custody). A 2006 British inquiry argued that unclothed searches of children in custody involves more than the removal of clothing, describing it as a “manifestation of power relations” that is both “demeaning and de-humanising” and in which the “power is compounded by the threat, or actual use of, force to those showing any reluctance” to comply³².

As noted in a recent Victorian report, the reality for girls and young women is that “[t]he exceptionally high rates of sexual and family violence against women and girls in society means that the re-traumatising impact of strip searching is particularly acute for women and girls”³³, while -

“The rationale given for the current routine use of strip searches is that they are necessary to maintain safety and security in prisons. However, evidence shows that routine strip searches are not a reasonable nor proportionate response to achieving this aim, particularly in light of the serious harm they cause women. Overseas, courts have said that strip searches will constitute inhuman or degrading treatment and violate the right to bodily integrity unless they are absolutely necessary and required

³⁰ Section 30(5)(b) of the Act.

³¹ In the Admissions/Return to Centre search log, 55% of entries did not record if contraband was found or not.

³² Lord Carlile of Berriew QC, *An Independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority children’s homes*, The Howard League for Penal Reform, 2006, 58, www.howardleague.org

³³ **HLRC 2017**, *Total Control – Ending the routine strip searching of women in Victoria’s Prisons*, Human Rights Law Centre, 2017 (page 4).
<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5a287bb50d9297f066fd588d/1512602586016/TC+Report+Online.pdf>

for good reason, such as a serious suspicion that a person is hiding contraband.” (at page 2)

Particular attention can be drawn to implications for young Aboriginal women and girls who generally have disproportionate experiences of gendered violence and who are grossly over-represented in youth detention centres, including the AYTC.³⁴

Semi-naked searches should occur at the high end of risk management continuum and be based on an actual, informed assessment of high risk prior to their use. Routine searches are not risk informed.

Other jurisdictions have reported reduced unclothed searches. The ACT has reduced “strip searches” from 50 per cent (in 2016-2017) to just 7 per cent in 2017-2018. Recently, the ACT Government has indicated that it has stopped strip searching children³⁵. The ACT Human Rights Commission also had this to say in a March 2019 report -

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

Strip searching is a potentially humiliating and degrading practice, and is likely to be re-traumatising for young people who have experienced physical or sexual abuse. Conducting strip searches of young people on a routine basis is not consistent with international human rights law. Rule 52 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) provides that strip searches of detainees should be undertaken only if absolutely necessary and that administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches. Even greater caution and care is required in relation to strip searching of young people in detention due to their greater vulnerability.³⁶

Western Australia also reports a reduction in strip searches in three prison facilities³⁷.

³⁴ HLRC 2017 at page 16.

³⁵ See **Canberra Times** article at, <https://www.canberratimes.com.au/story/6004890/sharp-rise-in-serious-incidents-at-bimberi/>

³⁶ **ACT Human Rights Commission 2019**, *Commission Initiated Review of Allegations Regarding Bimberi Youth Justice Centre: Report of the ACT Disability and Community Services Commissioner and ACT Human Rights Commissioner*, at page 71.

³⁷ <https://www.oics.wa.gov.au/reports/strip-searching-practices-in-western-australian-prisons/key-findings/>

The Tasmanian Children's Commissioner has recently recommended that routine strip searching of children and young people in detention cease.³⁸ Her first recommendation has two parts that also should be considered by South Australian authorities, firstly, that "the practice of routine strip searching of children and young people in custody cannot be justified and should cease" and that -

"Legislation authorising searches of children and young people in custody in all custodial premises in Tasmania should reflect the fundamental human right standard that searches of children and young people in custody should be conducted only when reasonable, necessary and proportionate to a legitimate aim."

The *Royal Commission into Institutional Responses to Child Sexual Abuse Report* (2017) recommended a review of all state legislation policy and procedures to ensure safe practice for children and young people in detention. Specifically, Recommendation 15 requires best practice be adopted for "strip searches" that includes;

- i. *Adequate communication between staff and the child before, during and after a search is conducted or other physical contact occurs*
- ii. *Clear protocols detailing when such practices are permitted and how they should be performed. The key elements of these protocols should be provided to children in an accessible format.*
- iii. *Staff training that highlights the potential for strip searching to re-traumatise children who have been sexually abuse and how the misuse of search powers can lead to sexual humiliation or abuse.*

Further, it states that 'state or territory governments should consider implementing strategies for detecting contraband, such as risk assessments or body scanners to minimise the need for strip searching children'.

³⁸ CCYP Tasmania May 2019, *Searches of children and young people in custody in Tasmania*, May 2019 <https://www.childcomm.tas.gov.au/wp-content/uploads/Media-Release-Strip-Search-FINAL-0519.pdf>

