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Please note...

This feedback was provided to the Attorney General in relation to the original draft of the OPCAT Implementation Bill, in June 2021. The Bill was changed slightly before it was introduced to parliament in its current form.

However, very few of the TCV's recommendations were taken up and, among other matters, the Training Centre Visitor remains concerned that:

- the bill does not include an object clause that refers to its purpose or guiding principles
- it does not define the terms 'deprivation of liberty' and 'place of detention'
- it does not indicate that the places of detention will be expanded over time
- the bill does not identify nor provide for a complete range of NPM functions and activities
- in particular, the bill does not articulate the NPM obligation to exchange information and engage with the SPT (Subcommittee on Prevention of Torture)
- there is no framework provided for an independent co-ordination and collaboration process or secretariat for SA NPMs
- the bill does not establish that the resourcing of the NPMs will reflect the range of OPCAT functions required (and does not include an amendment to the associated Youth Justice Administration Act 2016 to achieve the same purpose in relation to the specific resourcing of the TCV NPM)
- the TCV's OPCAT oversight remains restricted to children and young people physically located within the walls of the Kurlana Tapa Youth Justice Centre – and does not extend to children and young people detained in police cells, hospitals or mental health facilities.

Training Centre Visitor Comments on the 2021 Draft OPCAT Implementation Bill

June 2021



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Further information

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Please contact us for links to the sources cited in this commentary.

1. Introduction

I make these comments in my capacity as Training Centre Visitor (TCV) under the *Youth Justice Administration Act 2016* (YJA Act).

The Draft *OPCAT Implementation Bill 2021* (the draft bill) seeks to enable implementation of the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ('OPCAT' or 'the optional protocol'), by establishing three new National Preventive Mechanisms (NPMs). These will be new roles for entities which are already established under the *Mental Health Act 2009*, the *Police Act 1998* and the *Youth Justice Administration Act 2016* and will complement arrangements being made for adult detention.

I welcome the opportunity to assume an NPM role with respect to the detention of children and young people. However, I have significant reservations about the model proposed in the draft bill and associated matters.

The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (' Subcommittee on Prevention' of 'SPT') has described the standard required of enabling legislation -

*While the institutional format of the NPM is left to the State Party's discretion, it is imperative that the State Party enact NPM legislation which guarantees an NPM in full compliance with OPCAT and the NPM Guidelines. Indeed, the SPT deems the adoption of a separate NPM law as a crucial step to guaranteeing this compliance.*¹

It is my view that the draft bill is deficient as enabling legislation for the NPM in South Australia, for the reasons set out below.

2. General comments about the purpose and scope of the bill

2.1 Purpose or object

As the principal legislation to establish new human rights scheme based on *preventive* principles in South Australia the draft bill is inadequate without an objects clause. By simply allocating an NPM role to three existing entities, and assigning them a limited function to inspect, it provides no context for the scheme, and no expression of purpose or guiding principles.²

¹ **Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2016**, 5-6 para 24-26

² This approach contrasts with those taken in the *Youth Justice Administration Act 2016*² and the *Children and Young People (Safety) Act 2017* which include objects and guiding principles, and Chapter 2, respectively.

At the least, the bill should include a purpose that refers to the requirements described in Article 4 of OPCAT³.

Article 4

*1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). **These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.***

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

Recommendation 1:

Include an objects clause that refers to the purpose and/or guiding principles for the bill.

2.2 Scope

Article 4 of OPCAT makes clear that the optional protocol is intended to extend to ‘any place where persons are or may be deprived of their liberty’.

However, consistent with the absence of an objects clause in the bill, the draft bill fails to properly define the core OPCAT concepts of ‘deprivation of liberty’ and ‘places of detention’.

It is completely silent on what constitutes ‘deprivation of liberty’, which underpins an understanding of what is a ‘place of detention’, and defines ‘places of detention’ by merely listing exclusively three specific situations in South Australia that, together with others associated with adult corrections, will attract oversight arrangements: ‘a training centre’, ‘a prescribed mental health facility’ and ‘a custodial police station’.

This approach fails to acknowledge or envisage the other circumstances in South Australia where persons may be deprived of their liberty and unduly restricts the scope of operation. As such, it fails to engage faithfully with the purpose of OPCAT.

³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>

If the intention is to take an incremental approach, the draft bill makes no provision for expansion of operation or scope over time, in contrast to recent Northern Territory (NT) OPCAT legislation⁴ which

- refers to the optional protocol to define key terms such as “deprivation of liberty”
- broadly defines “places of detention” as a class: “any place under the Territory’s jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence”: s.4(1), and
- only then names the specific places that will be subject to NPM oversight in a way that explicitly does not limit the core concept of “places of detention”: s.4(2).

By contrast, the draft bill leaps straight to the third level of this approach.

Recommendation 2:

The draft bill should properly define the terms ‘deprivation of liberty’ and ‘place of detention’ by specific reference to the relevant articles of OPCAT

Recommendation 3:

If the South Australian government intends to limit the initial application of OPCAT it should state explicitly that the identified places of detention will be expanded over time and identify a process

2.3 Add a legislative review clause

The significant and novel subject matter of the draft bill warrants a standard clause for legislative review of the final Act, two years after it comes into effect. This would enable an assessment of the efficacy and functionality of the first two years of operation and the extent to which the model and its operation has complied with the minimum requirements of OPCAT.

Recommendation 4:

Legislative review of the OPCAT Implementation Act should be undertaken two years after it comes into effect

Recommendation 5:

The legislative review should consider specified topics including: the extent and adequacy of NPM coverage of places of detention, the effectiveness of systemic and collaborative NPM arrangements across all sectors, the independence of NPMs, the adequacy of arrangements to ensure oversight of any place of detention in which a child or young person may be compulsorily deprived of liberty for any period of time, and the effectiveness of NPM coverage of places of detention operated or managed by non-government and private sector organisations.

⁴ *Monitoring Of Places Of Detention (Optional Protocol To The Convention Against Torture) Act 2018* (NT) s.3(1).

3. Structure, Co-ordination and Functions

The draft bill currently assigns separate NPM responsibilities to four separate entities – with four separate Ministers - and proposes a model in which each NPM will be resourced at the discretion of ‘their’ respective Minister, out of budgets managed by the same Minister and department that is subject to the NPM’s independent, and potentially critical, oversight.⁵ This arrangement risks compromising -

- strategic, coordinated and accountable OPCAT implementation, and
- NPM independence

3.1 Assign one responsible Minister

The identification of a single Minister, with clear functions and powers, who is responsible for overall OPCAT implementation in South Australia, would increase the coherence and accountability of the NPM system.

That Minister would ensure that government responds to all NPM recommendations and would oversee NPM budgetary arrangements, thereby buffering individual NPMs from the immediate purview of Ministers who are accountable for specific portfolios.

Recommendation 6:

Specific functions and powers to be assigned to a Minister responsible for the OPCAT Act and the operation of the overall OPCAT system, including government responses to all NPM recommendations and oversight of NPM budgetary arrangements.

3.2 Establish an independent OPCAT NPM secretariat

Recognising the need for some sector-specific features, there must still be consistency in relation to core detention principles and practices across South Australia, and nationally. Although it is presumed that NPMs will be willing to collaborate, the lack of a stated and structured cross-jurisdictional purpose in the legislation increases the probability that they will develop different core standards and practices in their separate operational areas.

Achieving consistency through successful collaboration requires time and effective processes. The model (in the draft bill) can promote this by prescribing an independent coordinating process with a modest secretariat capacity, and a resourced collaboration function for each of the NPM entities.

⁵ Noting the injunction in s.6(2) of the draft bill that an NPM “is not subject to the direction and control of a Minister ... in relation to the performance of functions, or the exercise of powers, under this Act (including in relation to the content of any report or recommendation made by the NPM)”.

Recommendation 7:

An independent, cross-sector NPM collaborative and secretariat process should be legislated and funded

3.3 Properly describe NPM functions

OPCAT legislation should be unambiguous about the functions that NPMs must undertake.

This is not the case for the TCV. The relevant clause of the draft bill (clause 3(1) of Schedule 1 in Part 4) describes the proposed NPM functions and powers as -

- a) *to carry out regular inspections of each training centre;*
- b) *to make such recommendations relating to the detention of people under this or any other Act as the NPM considers necessary or appropriate;*
- c) *to report as required under this Schedule or the OPCAT Implementation Act 2021;*
- d) *such other functions as may be assigned to the NPM, or to NPMs generally, under this or any other Act."*

While OPCAT does not require a specific NPM structure, there are some clear principles that must be satisfied, including capacity for an NPM to –

- regularly examine the treatment of people deprived of their liberty: Article 19(a)
- make recommendations to authorities to improve the treatment of people deprived of their liberty: Article 19(b)
- submit proposals and observations concerning existing or draft legislation: Article 19(c)
- conduct private interviews with detainees and any person they wish to interview: Article 20(d)
- choose the places they want to visit and the people they want to visit: Article 20(e), and
- share information with the Subcommittee on Prevention: Article 20(f).

In contrast, the draft bill focuses on conducting inspections, suggesting that this is the totality of what an NPM needs to do. This is inaccurate and risks overlooking the other functions that are required to comply with OPCAT principles. It also risks underestimating the resourcing that is reasonably required to enable an NPM to properly fulfil its functions.

The enabling legislation (and the respective Schedules linking to the relevant existing legislation) should identify a differentiated range of functions, including -

- formal inspections
- visiting
- advisory capacity in relation to preventive priorities and action
- engagement with civil society organisations
- engagement with government organisations
- information exchange and engagement with the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ('SPT')
- cross-NPM coordination in South Australia and with broader NPM networks
- promotion of the NPM preventive agenda

It is notable that some of these functions are different for NPM and (at least in the case of the TCV) existing purposes. For example, *preventive* focused visiting is not the same as the TCV's current visiting role.⁶

Engagement with civil society organisations is a particularly important function for an NPM. Participation by civil society is a "key for the NPM's legitimacy and for enhancing the impact of its preventive work".⁷ This usually involves a formalised Advisory Group comprised of appropriate stakeholders⁸, which the Subcommittee on Prevention identifies as best practice⁹. The Commonwealth Ombudsman recently affirmed "the very important role for civil society organisations in providing advice and input to NPMs".¹⁰

Civil society is the essential source of input based on specific areas of expertise and experience, including lived experience relating to the justice system, mental health, disability, Aboriginal cultural expertise, knowledge from culturally and linguistically diverse communities, experience as LGBTQIA+ and gender diverse people in detention, among others.

Similarly, engagement with the SPT is a clear requirement, in Article 20(f). The draft bill should clearly articulate these important functions.

Recommendation 8:

- a. The draft bill should identify a complete and differentiated range of NPM functions required for OPCAT compliance, including: inspections, visiting, reporting, advice, engagement (with government officials, non-government organisations and the SPT), promotion and collaboration and co-ordination with SA and national NPMs; and**
- b. This should be done in the context of a statement of general NPM functions and powers in the bill itself (rather than relegating details to specific NPM Schedules as currently proposed).**

Recommendation 9:

The draft bill should specifically recognise the NPM obligation to exchange information and have dialogue with the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

⁶ NPM visiting is necessarily at a remove from focussed individual engagement (with detainees and/or staff). It operates at a distance from the daily operations of places of detention and does not undertake direct advocacy for individual detainees but is 'preventive' in nature. The *Youth Justice Administration Act 2016* role is different

⁷ *Association for the Prevention of Torture 2016*, p 38.

⁸ *Victorian Ombudsman 2019* (p24-25) "The Advisory Group should be composed of oversight bodies and civil society members with expertise in mental health, disability, human rights, culturally and linguistically diverse communities and the wellbeing and interests of First Nations peoples, and children and young people."

⁹ *Caruana S 2019*

¹⁰ *Manthorpe M 2021*

4. Accountability and Independence

4.1 Tabling of reports before the parliament

Clause 11(4) states that the relevant Minister must lay an NPM's Annual Report before both Houses of Parliament within 6 sitting days of its receipt.

This is in contrast to clause 12(1), which sets out the tabling requirements in relation to other reports ('additional reports') that may be prepared and provided to the Minister by the NPM 'on any matter arising out of the performance of its functions under this Act'. The Minister does not have an obligation to lay these 'additional reports' before parliament, although any recommendations made in an NPM report must be included in the Annual Report pursuant to s.11(2)(a).

It is foreseeable that an NPM will generate several or more reports in the course of a year, which are likely to contain information that is of import and interest to the parliament and community regarding conditions of detention. In the interests of independence, transparency and accountability all formal 'additional' reports provided to the relevant Minister should be required to be laid before parliament within 6 sitting days.

Recommendation 10:

All formal NPM reports provided to the relevant Minister should be tabled in Parliament, not just Annual Reports.

4.2 Government should be required to respond to NPM recommendations

OPCAT Article 22 requires authorities to examine NPM recommendations and enter into dialogue about possible implementation. There are no measures in the draft bill or the *Youth Justice Administration Act 2016* to ensure this will happen. Their absence significantly weakens accountability.

By way of contrast, the (now passed) *Correctional Services (Accountability and Other Measures) Amendment Bill 2020* provides, in s.20G(4), that if a report laid before Parliament includes recommendations to improve the care, treatment or control of prisoners then '*the Minister must, within 8 sitting days of the expiration of 6 months after the report was laid before Parliament, cause a report to be laid before each House of Parliament giving details of any action taken or proposed to be taken in consequence of those recommendations.*'

A public accountability measure of this sort would significantly enhance arrangements affecting detained children and young people.

Recommendation 11:

The draft bill should include a clause to require authorities to consider NPM recommendations and formally respond in relation to action or proposed action.

4.3 Independence

An effective preventive NPM system is underpinned by independence, which is determined by two aspects in particular – functional independence (OPCAT Article 18(1)) and adequate resourcing (OPCAT Article 18(3)).

These should be guaranteed in the body of the draft bill.

However, the resourcing ‘guarantees’ for each of the NPMs named in the draft bill are relegated to proposed schedules that will be attached to the three associated Acts. Each is expressed as follows:

‘The NPM must be provided with the resources reasonably required for exercising their functions under this Schedule and the OPCAT Implementation Act 2021’

The legislative injunction to provide an NPM with resources that are ‘reasonably required’ must be informed by an acknowledgement of the full range of functions required to be exercised by an NPM, as discussed in 3.3, above.

The concept of ‘resources reasonably required’ must also be informed by the requirement in OPCAT Article 18.2 that NPMs employ ‘experts’ who have the required capabilities and professional knowledge but also strive for a gender balance and the adequate representation of ethnic and minority groups. The resourcing implications of ensuring such diversity within very small NPM teams is not, but should be, addressed in the draft bill, including in relation to the potentially costly engagement of independent specialist expertise for inspection visiting or analytical purposes.

(It is notable that the *Correctional Services (Accountability and Other Measures) Amendment Bill 2020* partly addressed this obligation by stipulating that at least one visitor for each inspected institution must be Aboriginal, one must be a legal practitioner, and one must be a woman (s20).)

Recommendation 12:

The guarantee of resources reasonably required to carry out an NPM’s functions should refer, and apply, to the full range of NPM functions.

As discussed in 1.3 above, the draft bill proposes a model whereby each NPM will be resourced at the discretion of ‘their’ respective Minister, out of budgets managed by the same Minister and department that is subject to the NPM’s independent, and potentially critical, oversight. Although clause 6(2) of the bill provides for the independence of an NPM from overt direction and control, this does not guarantee ‘effective’ independence where insufficient resources are allocated.

Recommendation 13:

In order to ensure their required independence, NPM funding should not be managed by departments with respect to which NPMs have oversight responsibilities.

5. Comments - specifically pertaining to the TCV

5.1 Ambit or scope of NPM operations affecting the TCV

Article 4 of OPCAT makes clear that the optional protocol is intended to extend to ‘any place where persons are or may be deprived of their liberty’.

The Australian Human Rights Commission (AHRC) has suggested a pragmatic delineation between primary and secondary places of detention for NPM implementation purposes, recognising a likely restricted initial scope of operation in most jurisdictions.¹¹ It has also referred to acceptance of a shortlist of core ‘places of detention and closed environments’ that should come within NPM scope¹².

The scope proposed in the draft bill does not reflect this perspective, as is shown in the table on page 15 of these comments. Further, the model provides no strategic context in which to situate other OPCAT eligible places of detention over time.

Under the draft bill the only specialist OPCAT NPM preventive oversight available to children and young people in South Australia definitely applies to children and young people under youth justice orders being held in formal, ongoing custody, in Kurlana Tapa Youth Justice Centre. Other places of detention in which children or young people are commonly deprived of their liberty will be excluded from scrutiny.

Clause 5(3) of the draft bill limits NPM coverage under the *Police Act 1968* to ‘custodial police stations’ thus apparently precluding other places such as police cells, other police prisoner holding facilities and police cars.

Recommendation 14:

The definition of places where people are held in custody by the SA Police should be expanded from ‘custodial police station’ to include a ‘designated police facility’

Court holding cells are not included. Private custodial transport is not included.

There is ambiguity around other areas of oversight in relation to closed health facilities or units where people may be involuntarily detained by law for mental health or drug and alcohol assessment or treatment (i.e. broader than designated psychiatric facilities), closed forensic disability facilities or units where people may be involuntarily detained by law for care and places where children and young people may be detained for less than 24 hours.

¹¹ Australian Human Rights Commission 2016, p91/2

¹² Australian Human Rights Commission 2016, p80 (including State jurisdiction areas: youth justice centres; police lock-ups and police stations; psychiatric units; court custody centres and holding cells; transport vehicles for detainees or arrestees and, secure care facilities in statutory out-of-home care).

Mallee Ward in the Women’s and Children’s Hospital is a location where children and young people under both care and detention orders may be, and are, detained from time to time. It is my experience that deprivation of liberty occurs for some of our society’s most vulnerable children and young people in the health system (or when being held in the Kurlana Tapa Youth Justice Centre which is expected to function as a de facto secure health facility¹³). By any reasonable test, Mallee Ward is a primary place of detention. Notwithstanding the possibility that this facility may be nominated ‘a place of detention’ through regulation, as anticipated by clause 18 of the draft bill, this site should be explicitly named as subject to guaranteed NPM oversight, with specialist child and youth focussed input.

Recommendation 15:

Mallee Ward of the Women’s and Children’s Hospital should be identified as a place of detention for OPCAT NPM purposes.

5.2 Dual Involved children and young people

Clause 3(3) of Schedule 1, Part 4 of the draft bill identifies two groups of residents for whom the TCV acting as NPM must pay particular attention: “Aboriginal or Torres Strait Islander youths” and those who “have a physical, psychological or intellectual disability” but omits the third group who are identified for similar particular attention in s.14(2) of the *Youth Justice Administration Act*: children and young people ‘who are under the guardianship, or in the custody, of the Chief Executive under the *Children and Young People (Safety) Act 2017*’.

It is unintelligible that this clause essentially replicates the wording of s.14(2) but then removes a focus on precisely the ‘dual-involved’ cohort of children and young people for whom the State has the most direct responsibility and among whom some of the greatest vulnerability and risk exists.¹⁴

Recommendation 16:

Clause 3(3) of Schedule 1, Part 4 should be amended to include ‘detainees who are under the guardianship, or in the custody, of the Chief Executive under the *Children and Young People (Safety) Act 2017*’.

¹³ Training Centre Visitor (June 2020)

¹⁴ Training Centre Visitor 2021, Blog - *New project to explore growing numbers of dual involved young people* [New project to explore growing numbers of dual involved young people](https://www.gcyp.sa.gov.au/news/new-project-to-explore-growing-numbers-of-dual-involved-young-people) - ([gcyp.sa.gov.au](https://www.gcyp.sa.gov.au))

5.3 Repair the TCV's Mandate

As has previously been reported, the Training Centre Visitor has an interrupted mandate under the *Youth Justice Administration Act 2016*. In the absence of amendments to the *YJA Act*¹⁵ there will be implications for the new NPM role. The main amendment needed is to allow the TCV to have oversight of children and young people under detention orders when they are not physically within the Kurlana Tapa Youth Justice Centre.

Recommendation 17:

Amend the *Youth Justice Administration Act 2016* to ensure that the TCV has a mandate in respect of residents of the Training Centre from the time they are sentenced to, or remanded in, custody to the time of their release from custody.

6. Recommendations

➤ **Recommendation 1:**

Include an objects clause that refers to the purpose and/or guiding principles for the bill.

➤ **Recommendation 2:**

The draft bill should properly define the terms 'deprivation of liberty' and 'place of detention' by specific reference to the relevant articles of OPCAT

➤ **Recommendation 3:**

If the South Australian government intends to limit the initial application of OPCAT it should state explicitly that the identified places of detention will be expanded over time and identify a process

➤ **Recommendation 4:**

Legislative review of the OPCAT Implementation Act should be undertaken two years after it comes into effect

➤ **Recommendation 5:**

The legislative review should consider specified topics including: the extent and adequacy of NPM coverage of places of detention, the effectiveness of systemic and collaborative NPM arrangements across all sectors, the independence of NPMs, the adequacy of arrangements to ensure oversight of any place of detention in which a child or young person may be compulsorily deprived of liberty for any period of time, and the effectiveness of NPM coverage of places of detention operated or managed by non-government and private sector organisations.

¹⁵ See Part 5.1 - **Training Centre Visitor Annual Report** [2019-2020-Training-Centre-Visitor-Annual-Report-.pdf](https://www.gcyp.sa.gov.au/2019-2020-Training-Centre-Visitor-Annual-Report-.pdf) ([gcyp.sa.gov.au](https://www.gcyp.sa.gov.au))

- **Recommendation 6:**

Specific functions and powers to be assigned to a Minister responsible for the OPCAT Act and the operation of the overall OPCAT system, including government responses to all NPM recommendations and oversight of NPM budgetary arrangements.
- **Recommendation 7:**

An independent, cross-sector NPM collaborative and secretariat process should be legislated and funded
- **Recommendation 8:**
 - a. The draft bill should identify a complete and differentiated range of NPM functions required for OPCAT compliance, including: inspections, visiting, reporting, advice, engagement (with government officials, non-government organisations and the SPT), promotion and collaboration and co-ordination with SA and national NPMs; and
 - b. This should be done in the context of a statement of general NPM functions and powers in the bill itself (rather than relegating details to specific NPM Schedules as currently proposed).
- **Recommendation 9:**

The draft bill should specifically recognise the NPM obligation to exchange information and have dialogue with the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
- **Recommendation 10:**

All formal NPM reports provided to the relevant Minister should be tabled in Parliament, not just Annual Reports.
- **Recommendation 11:**

The draft bill should include a clause to require authorities to consider NPM recommendations and formally respond in relation to action or proposed action.
- **Recommendation 12:**

The guarantee of resources reasonably required to carry out an NPM's functions should refer, and apply, to the full range of NPM functions.
- **Recommendation 13:**

In order to ensure their required independence, NPM funding should not be managed by departments with respect to which NPMs have oversight responsibilities.
- **Recommendation 14:**

The definition of places where people are held in custody by the SA Police should be expanded from 'custodial police station' to include a 'designated police facility'

➤ **Recommendation 15:**

Mallee Ward of the Women’s and Children’s Hospital should be identified as a place of detention for OPCAT NPM purposes.

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➤ **Recommendation 17:**

Amend the *Youth Justice Administration Act 2016* to extend the TCV’s mandate in respect of residents of the Training Centre from the time they are sentenced to, or remanded in, custody to the time of their release from custody.

PROBLEMATIC SCOPE OF NPM OPERATION PROPOSED IN THE DRAFT BILL

This table tests proposed TCV NPM coverage against the ‘primary places of detention’ list advocated by the Australian Human Rights Commission (among others).

AHRC recommended places of detention	Included in the Draft Bill?	TCV Comment
Youth justice centres	Yes	The Kurlana Tapa Youth Justice Centre is the only child/youth specific facility covered by the draft bill. But this has limitations given the TCV’s existing preclusion from oversight of detainee off-site activities. This should be remedied.
Police lock-ups / police stations	Only Partial	The draft bill is silent about ensuring a child and youth focussed NPM capacity. In any case, only one type of police custody is covered (‘custodial police stations’ ¹⁶) in the draft bill. NPM oversight should extend also to the more numerous SAPOL ‘prisoner holding facilities’.
Psychiatric units	unclear	The draft bill definition of a prescribed mental health facility refers to a facility prescribed by the regulations for the purposes of this Act (not available).

¹⁶ A custodial police station is defined in s.78(10) of the *Summary Offences Act 1953*.

Court custody centres and holding cells	No	The draft bill is silent about ensuring a child and youth focussed NPM capacity. Children and young people may appear in 4 metropolitan Adelaide and 12 regional criminal courts, and therefore may be detained in associated court cells.
Transport vehicles	No	Involuntary containment within a vehicle clearly comes within the concept of a place of detention (e.g. as provided by private contractors, SAPOL or the ambulance service)
Secure care facilities for statutory out-of-home care	No	This category can/should be broadened to also accommodate other, non-psychiatric services that have a capacity to compulsorily detain children and young people (for example, for drug and alcohol, disability, and other special needs groups).

Main References

Training Centre Visitor

Training Centre Visitor 2020, *GREAT RESPONSIBILITY: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre)* esp. Parts 6.6 and 6.7
<http://www.gcyp.sa.gov.au/wp-content/uploads/2020/07/TCVU-inspection-report-2020-web.pdf>

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Training Centre Visitor 2021, Blog - *New project to explore growing numbers of dual involved young people*
[New project to explore growing numbers of dual involved young people - \(gcyp.sa.gov.au\)](http://www.gcyp.sa.gov.au)

United Nations

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 2016, *Ninth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Annex Compilation of advice provided by the Subcommittee in response to requests from national preventive mechanisms* (UN Doc CAT/C/57/4 March 22 2016).

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