

2021/2022

ANNUAL REPORT

Youth Treatment Orders Visitor

PREPARED BY Office of the Guardian for Children
and Young People

The Office of the Guardian for Children and Young People respectfully acknowledges and celebrates the Traditional Owners of the lands throughout South Australia and pays its respects to their Elders, children and young people of past, present and future generations.

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30 September 2022

The Hon. Kyam Maher
Attorney General
GPO Box 464
ADELAIDE SA 5001

Dear Attorney General

I am pleased to present to you the annual report of the Youth Treatment Orders Visitor for the year ended 30 June 2022, in accordance with section 54L(2) of the *Controlled Substances Act 1984*.

This report provides a summary of mandate establishment activities since the Visitor role Commenced in November 2021.

with kind regards

A handwritten signature in blue ink, appearing to be "Shona Reid", with a long, sweeping underline.

Shona Reid
Youth Treatment Orders Visitor

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NOTES

Language in this report

Reflecting community preference, the term 'Aboriginal' is used in this report to refer to both Aboriginal and Torres Strait Islander people.

Children and young people incarcerated at Kurlana Tapa are referred to interchangeably as residents or detainees.

Referencing

Unless identified otherwise, all statutory references are to the *Controlled Substances Act 1984*.

Artwork

All Images used in this report were created or influenced by children and young people detained at the Kurlana Tapa when participating in TCVU activities.

Acknowledgements

Many people contributed to the process of compiling this Annual Report.

TCVU and OGCYP staff made major contributions and we also received assistance from DHS, KTYJC and other agencies.

We thank our Law Intern for Semester 1 2022, Jennifer Novak whose work focused on the YTO Program.

Abbreviations & Acronyms

AOD	Alcohol and other drugs
Charter/Youth Justice Charter	The Charter of Rights for Youths Detained in Detention Centres (provided as an Attachment to this report)
DASSA	Drug and Alcohol Services (SA)
Detainee	This report uses the terms detainee and resident interchangeably.
Dual involved / Dual status	Describes the status of detainees who are subject to orders within both the child protection and youth justice systems.
DCP	Department for Child Protection
DHS	Department of Human Services
Guardian	Shona Reid holds the separate statutory appointments of Training Centre Visitor, Youth Treatment Orders Visitor and Guardian for Children and Young People
Kurlana Tapa or KTYJC	Kurlana Tapa Youth Justice Centre – known as the Adelaide Youth Training Centre (AYTC) prior to mid-2020.
OGCYP	Office of the Guardian for Children and Young People (the administrative location of the TCVU and YTO Visitor)
Review(s) of Records	Quarterly reviews of DHS/KTYJC documents undertaken by the TCVU as part of the TCV's monitoring processes.
TCVU	The Training Centre Visitor Unit supports Shona Reid to undertake her responsibilities as TCV under the Act.
TCV Visiting Program	The TCVU conducts a rolling KTYJC visiting program to establish and maintain contact with detainees.
YTO	Youth Treatment Order/s

FROM THE YOUTH TREATMENT ORDERS VISITOR

In coming into this role as the newly appointment Youth Treatment Orders Visitor, it is imperative that I am able to ensure that rights and protections of young people being subjected to Youth Treatment Orders (YTOs) are not further violated or diminished.

In saying this we must acknowledge up front that this is an inherently complex area. Juxtaposed against the desire to force young people to undergo treatment against their will and ensuring their basic human rights are upheld.

Despite this conflicting state of affairs, I find comfort in my unease. That this constant state of tension between the withdrawal of rights and upholding of rights plays a significant part in ensuring every step we (the collective we) take in establishing and implementing a Youth Treatment Orders Scheme is done with careful and considered thought and action.

Whilst I was not in this role at its inception, I would like to pay my respects and acknowledge the work of my predecessor Penny Wright for her work in the Youth Treatment Order Visitor development process. This work has been pivotal in guiding my offices ongoing intersection with the scheme and the associated legislation.

I think it goes without saying, that mandated medical assessment and treatments are specialist area and one in which requires specific talents and skills of individuals experts and programs.

This initial annual report is not able to make direct commentary on the impact of this scheme on individual children and young people, primarily because since its nominal commencement in May 2022, there has been no instance where a child or young person has been subject to a YTO. However, I present to you the work my office has undertaken to establish an oversight system that compliments my existing functions as the Training Centre Visitor (TCV).

Shona Reid
Youth Treatment Orders Visitor



As we evolve this work, there will be critical opportunities to refine this legislation, policy and programmatic responses for participants under YTOs, particularly the care model that surrounds its intent, post-intervention support for children and young people and how the treatment model interacts (functionally and administratively) with courts, medical and secure care settings.

My goal is to ensure that children and young people detained at Kurlana Tapa receive the appropriate levels of support to address substance misuse issues in the context of the other social, health, cultural, disability or developmental factors that characterise their lives within and outside of detention.

As made clear in the legislation (s.54A of the *Controlled Substances Act 1984*) the best interests of the child shall be the paramount consideration in the administration, operation and enforcement of YTOs.

I would like to pay my respects and say thankyou to staff within the Training Centre Visitor Unit (to which the YTO function operates) for their work managing the expanding role of this office. The delicate balance of building a complimentary YTO function amongst many other mandates is one that demonstrate great skill and understanding of the complexity of this work and its place in upholding the rights and dignity of children and young people.

WHO ARE WE & WHAT WE DO

During the reporting year, the Office of the Guardian for Children and Young People was comprised of the activities and staff associated with three roles:

1. Guardian for Children and Young People
2. Training Centre Visitor
3. Youth Treatment Orders Visitor

All three roles were held by Penny Wright until end of July 2022.

This Annual Report specifically details the activities Youth Treatment Orders Visitor.

The Youth Treatment Orders Visitors Role

The role of Youth Treatment Orders Visitor was established by the *Controlled Substance Act 1984*, amended in 2021 to established the the YTO Scheme and consequently the YTO Visitor. The Visitor role has been assigned to the Training Centre Visitor (TCV) to monitor a child or young person's health, safety and wellbeing while under a YTO detention order.

Minister for Health and Wellbeing, while responsible for the CS Act, has assigned ministerial responsibility for the YTO scheme to the Attorney-General and Attorney-General's Department (AGD).

The Youth Treatment Orders Visitor is an independent position that reports to parliament through the Attorney General.

The Guardian's Role

The role of Guardian for Children and Young People (GCYP) was established by the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (the Act), to promote the rights all children and young people who are under the guardianship, or in the custody, of the Chief Executive of the Department for Child Protection and to advocate for their best interests.

The GCYP is an independent position that reports to parliament through the Minister for Child Protection.

Training Centre Visitor Role

Training Centre Visitor (TCV) is also an independent position, which reports to the parliament through the Minister for Human services.

This position was established by the *Youth Justice Administration Act 2016*, to promote the rights of children and young people sentenced or remanded to detention in youth training centres in South Australia and to advocate for their best interests.

Working for Change

Across all the work of this office, we champion the rights and best interests of children and young people in care and detention, ensuring their voices are heard and they are empowered to engage with, challenge and influence change in the systems that affect their lives.

We are committed to influencing change for the most vulnerable children and young people. Our role is to find ways to connect and hear from children and young people directly. To ask questions of service providers and their staff about how these services and decisions benefit these children and young people.

Our work is aimed at advocating for the little things, but also challenging old ways of doing things that no longer work. To contribute positively to systemic change so we make a difference for all children and young people in care or detention.

YTO SCHEME

“Being detained does not mean we relinquish or void our responsibilities in ensuring that human and child rights architecture is upheld, maintained and proactively enacted”

Formal Commencement

The *Controlled Substances Act 1984* (the CS Act) establishes the Youth Treatment Orders (YTO) scheme, providing the capacity to seek mandatory, court-ordered assessment and treatment for young people who are

1. detained at Kurlana Tapa Youth Justice Centre (Kurlana Tapa or KTYJC)
2. who are drug dependent and treatment resistant
3. causing harm to self/others

‘Phase One’ of the YTO Scheme applies solely to KTYJC detainees, with its possible extension subject to review of the YTO Scheme after three years of the Act’s commencement (s54P).

The Minister for Health and Wellbeing, while responsible for the CS Act, has assigned ministerial responsibility for the YTO scheme to the Attorney-General^[1] and Attorney-General’s Department (AGD).

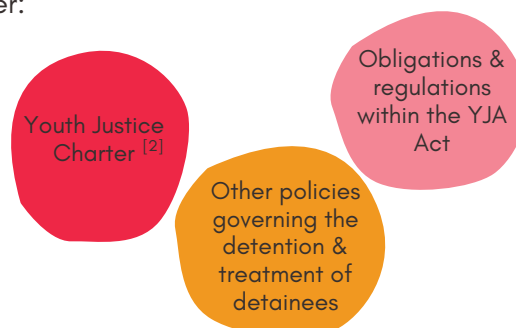
The YTO Visitor role, assigned to the Training Centre Visitor (TCV) as provided for in the legislation, nominally commenced at the initiation of the YTO Scheme in November 2021. Section 54L(2) of the CS Act requires the YTO Visitor to monitor a child or young person’s health, safety and wellbeing while under a YTO detention order.

No child or young person was assessed for or placed under a YTO in the period to 30 June 2022.

Fitting with Other Mandates

In February 2022, the previous TCV sought Crown Law advice about how the newly assigned YTO Visitor Mandate and functions that relate to the ongoing TCV functions.

Important aspects of that advice related to the rights and best interests of children and young people under a YTO and in detention. This advice highlighted that the responsible Minister, Chief Executive of the Department for Human Services and Kurlana Tapa must have regard for and exercise their responsibilities as per:



Importantly, under a YTO detention order, a child or young person cannot be detained in Kurlana Tapa beyond their existing term of detention.

Furthermore, any person placed under a YTO will have 'consumer' rights as set out in the "*Charter of Health and Community Services Rights*" under the responsibility of the Health and Community Services Complaints Commissioner.^[3]

[1] Functions and powers under Part 7A of the CS Act conferred pursuant to sections 6 and 8 of the Administrative Arrangements Act 1994.

[2] As established by s.22(4) of in the Youth Justice Administration Act 2016 (YJA Act).

[3] Section 19(1) of the Health and Community Services Complaints Act 2004

YTOs & Rights Focus

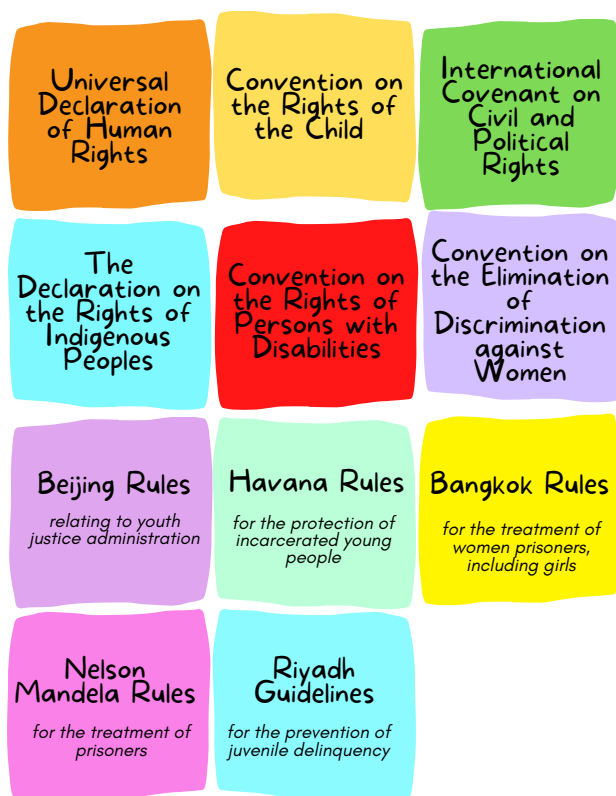
When a society determines through its legal systems to not only deprive individuals (in this instance a child or young person) of their liberty and then legally require them to undertake medical treatment or intervention it is of the upmost importance that any agency and/or officer implement and embody a rights based focus....

"TO THE FULLEST EXTENT POSSIBLE"^[4]

This is just part of the human and child rights architecture that must be considered.

The Children and Young People (Safety) Act 2017 (Safety Act) stipulates that "to the extent practicable" "international and national requirements or guidelines relating to the detention of youths" **are to be followed**.

With this, we put forward that the following international treaties, conventions, declarations and rules need to be considered in service design, delivery and accountability:



Local legislation that must also be considered include:

- *Controlled Substances Act 1984 (SA)*
- *Mental Health Act 2009 (SA)*
- *Consent to Medical Treatment and Palliative Care Act 1995 (SA)*
- *Youth Justice Administration Act 2016 (SA)*
- *Young Offenders Act 1993 (SA)*
- *Children and Young People (Oversight and Advocacy Bodies) Act 2016 (SA)*
- *Children and Young People (Safety) Act 2017*

Other sectoral guidelines^[5] relating to the detention of children and young people also may be instructive.

Statutory Independence

Establishment of the YTO scheme has not impacted upon or displaced the TCV's functions under the Youth Justice Administration Act 2016 (YJA Act). As with the TCV, a Minister cannot control how the YTO Visitor, or a person conferred with a function of the YTO Visitor, exercises relevant statutory functions and powers.

While TCV and YTO Visitor functions are closely related and can be implemented in concert, they must be and are reported against separately to Parliament through the relevant Ministers.

Complementary Operation

Part 7A of the CS Act establishes the YTO scheme and provides for the making, variation, and revocation of YTOs, with the Youth Court able to make three types of orders: Assessment, Treatment and Detention.^[6]

The Crown advice clarifies the complementary nature of the exercise of functions under the YJA Act (TCV) and CS Act (YTO Visitor). In the interests of administrative efficiency and, noting the close relationship of these two roles, it is reasonable to exercise the functions of both visitor roles contemporaneously.

[4] s.22(3) Youth Justice Administration Act 2016: "A person exercising functions or powers under a relevant law must, in any dealings with, or in relation to, a youth who is in detention, have regard to, and seek to implement to the fullest extent possible, the terms of the Charter."

[5] For example, the Standards for Juvenile Custodial Facilities developed by the Australasian Youth Justice Administrators Group (1999, but a new iteration is expected shortly). Two other important groups for the TCV in this context are the Australian and New Zealand Children's Commissioners and Guardians Group (ANZCCG) and the National Custodial Inspectors Network.

[6] Crown Law advice suggests that under Part 7A of the YTO Scheme the YTO Visitor role may not apply to a child or young person subject to an assessment or a treatment order but is not subject to a detention order. In practice, this difficulty will be ameliorated by the fact that the TCV's YJA Act functions do apply to these detainees.

In implementation terms, this means certain things, including

YTO Visitor functions under the visitor scheme **do not** displace or modify the TCV's functions but **are additional functions** to those already conferred on the TCV.

While the YTO role is described in terms of monitoring and reporting functions this inherently **may include** some degree of advocacy on behalf of affected children and young people.

YTO Visitor role is **operative between appointments** that may be imposed by a YTO Order. The obligation is "**continuous**" to ensure that the health, safety and wellbeing of a child or young person are monitored even when they are **not actively** undergoing assessment or treatment.

Expenditure 2021 – 2022

All costs associated with the TCV/Guardian's involvement in YTO Scheme development processes prior to the commencement of the YTO Visitor Establishment Project in May 2022 (see Part 2 below) were accommodated within existing budgets.

The Project Officer for the Establishment Project commenced in early May 2022, with total expenditure during this reporting period being \$11,000.

YTO VISITOR ESTABLISHMENT PROJECT

Any mandated treatment program or scheme should be approached with careful and considered thought for its ongoing impact on the safety and wellbeing of those individuals whose rights and liberties are restricted.

The Scheme & The Visitor

Section 54L(2) in Part 7A of the *Controlled Substances Act* establishes the Youth Treatment Orders scheme, allowing applications to be made for Court-ordered assessment and treatment of young people subject to detention in Kurlana Tapa who are drug dependent and treatment resistant.

Conferral of the YTO Visitor role on the TCV assigns specific functions to –

1. visit and inspect facilities at which children and young people are detained under YTOs
2. monitor health, safety and wellbeing
3. inquire into and investigate any matter referred by the Minister

The YTO Visitor **must monitor** the health, safety and wellbeing of any child or young person subject to a detention order under Part 7A. The *Controlled Substances (Youth Treatment Orders) Regulations 2021* (the Regulations) provide detail about the Visitor's powers and responsibilities.

Sub-regulation 4(12) affirms that functions under Part 7A and the Regulations have been conferred on the Training Centre Visitor appointed under the YJA Act. Sub-regulation 4(4) requires the YTO Visitor to **pay particular attention** to the needs and circumstances of children who are in care, are Aboriginal, or have a physical, psychological or intellectual disability, mirroring the TCV's similar obligation.

The Establishment Project

TCV Unit & the Office of the Guardian for Children and Young People

Assignment of the YTO Visitor role to the TCV led to the commencement in May 2022 of an **Establishment Project** attached to the TCV Unit within the Office of the Guardian for Children and Young People. This occurred under the stewardship of the then Guardian for Children and Young People (the Guardian) and TCV Penny Wright.

In August 2022, Shona Reid became the Guardian along with the Training Centre Visitor, YTO Visitor and the Children and Young Person's Visitor. The relevant legislations for each function are outlined below:

Guardian for Children and Young People

Children and Young People (Oversight and Advocacy Bodies) Act 2016

Child and Young Person's Visitor

Children and Young People (Safety) Act 2017

Training Centre Visitor

Youth Justice Administration Act 2016

Youth Treatment Order Visitor

Controlled substances Act 1984

Memorandum of Administrative Arrangement with AGD

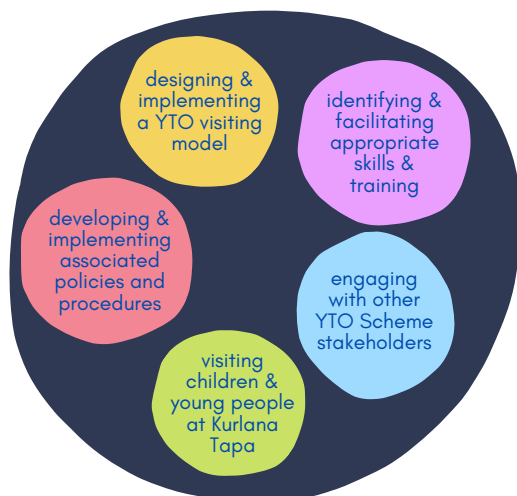
The YTO Visitor Establishment Project is being conducted in accordance with a Memorandum of Administrative Arrangement (MoAA) funded by and signed with the AGD for the period through to 30 June 2023.

Under this agreement, the TCV will provide information to the AGD to assist with the legislative review required by s54P of the CS Act, including –

- the **number of visits** conducted to children and young people detained pursuant to Part 7A detention orders, and
- an estimate of the **increase (if any) of TCV's regular work** arising from the operation of Part 7A, and the nature of any such additional work.

Establishment Project Work Program

The TCV's proposal for the Establishment Project flagged several areas of work –



The project, as initiated, is cognisant of the TCV's statutory obligation to encourage detainees to express their own views and give proper weight to those views (noting that no children or young person was assessed for or placed under a YTO in 2021–22).

Work program directions for 2022–23 are outlined on page 16.

Building Knowledge

Each Semester, the TCVU hosts a 22-day University of Adelaide Law and Justice Internship.

Under this program, Jennifer Novak examined the implications of the YTO Scheme for the rights of children and young people in detention in Semester 1 2022. Jennifer prepared a Literature Review about the effectiveness of mandatory drug treatment programs when applied to children and young people and a paper that explored legislative and human rights requirements relevant to the imposition of mandatory drug treatment orders on youth justice detainees.

The TCV and Office of the Guardian for Children and Young People, wishes to thank Jennifer for her work in this area.



Jennifer Novak,
University of Adelaide Law and Justice Internship

The Scheme & The Visitor

Children and young people detained at Kurlana Tapa are the **only** pool of potential subjects for Phase 1 of the YTO Scheme. As such, the implementation of Phase 1 **potentially** denies human rights for prisoners in relation to patient autonomy and the prohibition of medical experimentation, including the piloting of treatment programs.^[7]

“JUVENILES SHALL NEVER BE TESTEES IN THE EXPERIMENTAL USE OF DRUGS AND TREATMENT”

Rule 55 of the Havana Rules^[7]

In the development stage of the YTO proposal, the previous TCV/Guardian made the case for responses based on the holistic needs of this vulnerable cohort, noting that

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

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

There is no specific forensic or high-needs youth mental health facility in South Australia. This means that some young people with significant mental health issues, including drug-induced or related psychosis, can be incarcerated (and

frequently isolated) within the KTYJC for extended periods. KTYJC staff have raised concerns about this with the TCVU, some asserting that they cannot adequately support children or young people with severe mental ill-health issues in detention and that the nature and interrelationship of treatment provided at the KTYJC and Boylan [now Mallee] Ward can be problematic.^[9]

Penny Wright, previous TCV
18/12/2020

Kurlana Tapa population 2021 – 2022

Phase 1 of the YTO Scheme targets children and young people detained at Kurlana Tapa.

In 2021-22 this population comprised 292 individuals, with an over-representation of:

1. Aboriginal children and young people
2. Children and young people under guardianship orders.

The below table that provides a more detailed understanding of the population qualities at Kurlana Tapa during this reporting period.

Number of individuals admitted	Total	% of total
Total individuals	292	100%
Identified as Aboriginal and or Torres Strait Islander	138	47.3%
Identified as females	70	24.0%
Under a guardianship order at the time of their admission	83	28.4%
Aged 10 to 13 (inclusive)	52	17.8%

[7] Rule 32 United Nations Standard Minimum Rules for the Treatment of Prisoners; Article 7 International Covenant on Civil and Political Rights; Rule 55 United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

[8] Rule 55 United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-protection-juveniles-deprived-their-liberty>

[9] Submission to DASSA (18 December 2020), Comments on the Draft Model of Care for Phase 1 of Youth Treatment Orders (Guardian for Children and Young People and Training Centre Visitor).

ESTABLISHMENT PROJECT ACTIVITIES

Understanding and working with young people that could be directly impacted by YTOs has been essential in shaping this model and ensuring appropriate care is taken when considering any forced assessments or treatments.

In the beginning

The YTO Establishment Project commenced in May 2022, with prior preparatory work and negotiations conducted by the Training Centre Visitor Unit.

A YTO Project Officer commenced to build on this work in May 2022, initially focussing on:

- Meeting key project stakeholders, including potentially affected **children and young people, as well as workers in the AGD, Kurlana Tapa, and other service providers.**
- **Establishing the project** within the TCV Unit, primarily through participation in –
 - a. the TCV's ongoing Kurlana Tapa **Visiting Program**^[10], a convenient engagement mechanism with which detainees are familiar and comfortable, and
 - b. the TCVU's quarterly **Review of Records** process to examine documentation about all Kurlana Tapa critical incidents, detainee complaints, and access to activities and programs.
- Initial **program/service mapping** across relevant service domains, including health and mental health, youth-oriented substance misuse programs, and Court and youth justice processes.
- Commencing **research** about the genesis of the YTO Scheme; substance misuse and youth justice program rationales and relationships (conceptually, locally and in other jurisdictions); and 'secure therapeutic care' contexts.

YTO Commencements

Between the formal commencement in May 2022 and June 30 2022 there were **no children or young people** placed under a YTO.

The Project Officer could not work with a directly affected child or young person. This position was utilised for the Establishment Project work and participation in the TCVU Visiting Program allowing engagement with the relevant target population at Kurlana Tapa.

Issues & Themes

Initial Establishment Project work affirmed or identified themes or issues that will affect the YTO scheme and its potential impact on children and young people. It is important to note that some derive from concerns previously expressed by the TCV and others in the YTO development context.

This work is somewhat speculative in parts as information about YTO program policies and service models remains sparse. These include:

1. the YTO model
2. delivering treatment
3. evaluation
4. program alternatives

The YTO Model

Informed stakeholders raised concerns about aspects of the initially proposed YTO model, including some that made their way into the

[10] The TCV must visit the KTYJC and can "inspect all parts of the centre used for or relevant to the custody of youths". In doing so, she may inquire about the care, treatment and control of detainees and take any other necessary action to exercise her functions

CS Act. These concerns remain current and consistent themes that have extended to current day, these include the following:

- mandatory treatment often is expensive, stigmatising, inefficient and, in some circumstances *may* be counterproductive
- the treatment model *lacks* family involvement (noting that family-based therapy is known to be an effective alcohol and other drug (AOD) model of care)
- there is a need to explore a more comprehensive and contemporary model of health care in Kurlana Tapa
- the approach *risks* criminalising a health issue
- the approach *breaches* human/child rights
- ongoing support post-intervention is *left wanting*
- as is the necessity to *address the systemic need* for increased resources to the voluntary youth AOD sector, particularly in rural and remote areas.

Further to this, the following factors have also been considered in unpacking the YTO scheme:

Allocation of scarce resources

There are limited resources to deliver the mandatory YTO scheme. These limited resources could be better spent on targeted, voluntary programs, whether alcohol and other drug (AOD) focussed or responsive to the range of other factors that also impact upon the lives of affected children and young people

Exclusion of alcohol

In its current state this model does not include alcohol. It is known that alcohol contributes to all the leading causes of death for young people: suicide, land transport accidents, accidental poisoning,^[11] and assaults.^[12]

Inclusion of inhalants & other

It is not clear whether inhalants (petroleum products, paint thinners, deodorants etc) and certain benzodiazepines (Diazepam) are considered controlled substances under the CS Act Regulations.

Burdensome requirements

A major factor contributing to the lack of YTO applications is the necessarily high administrative burden associated with court forms, preparing affidavits, serving notices, and appearing at court to secure an order.

By the time these administrative functions are completed, the child or young person may have completed their detention order (under the YJA Act) or they are no longer dependent on illicit substance. See *Attachment 1*.

Establishing 'dependence'

There is inherent difficulty in being able to establish 'dependence'.

Physiological withdrawal from most^[13] drugs used habitually ordinarily takes between 3 and 10 days (which means that **detention may facilitate detoxification**).

As the YTO application process **can only begin once** a young person is in custody, by the time assessment has been arranged and occurred, evidence of pre-admission dependence may have waned (or at least be a contestable allegation at law; it is unclear if the Court would look at patterns of behaviour, or history of dependence).

Assessment

The appointed service provider, PsychMed, informed this office that assessments to establish eligibility for the YTO scheme will range in duration from 3 to 6 hours.

This length of assessment may be too onerous to complete even in multiple sittings with some Kurlana Tapa detainees.

After Care

The YTO approach optimistically assumes that drug dependent and treatment-resistant young people will engage constructively with the mandatory program. If it does happen, not funding its continuation post-release would seem to be counterproductive and violate the therapeutic purpose.^[14]

It appears that no provisions have been made for the funded continuation of YTO care from the psychologist responsible for a treatment plan while in detention.

Breaking the therapeutic relationship potentially forgoes any progress that may have been made, noting that the most critical time for someone with AOD issues is when they transition back to an old environment with access to AOD, familiar peers and networks. Exit from a custodial facility can be a time of relapse, and in some instances overdose.

[11] Australian Institute of Health and Welfare, "Impact of alcohol and illicit drug use on the burden of disease and injury in Australia: Australian Burden of Disease Study 2011," Australian Government, Canberra, 2018.

[12] AIHW, "Deaths in Australia," Australian Government, Online, 2018.

[13] Heroin, benzodiazepines, and alcohol are the exceptions that can take longer to withdraw from when subject to heavy use (<https://www.addictioncenter.com/rehab-questions/how-long-does-detox/>)

[14] Treatment breakdowns are known to negatively affect improvement outcomes: Bickman L, de Andrade AR, Athay MM, Chen JI, De Nadai AS, Jordan-Arthur BL, Karver MS. The relationship between change in therapeutic alliance ratings and improvement in youth symptom severity: whose ratings matter the most? *Adm Policy Ment Health*. 2012 Mar;39(1-2):78-89. doi: 10.1007/s10488-011-0398-0. PMID: 22407555; PMCID: PMC3350805.

Delivering Treatment

The key open question is whether mandatory, Court-ordered treatment will work.

Representatives of both contracted YTO service providers, OARS Community Transitions and PsychMed, indicated to this office that little can be done should a young person refuse to engage with assessment or treatment other than encouragement.

Duration

Most young people held in Kurlana Tapa are on remand, which means they could be released at their next court appearance.

Given that a young person's treatment under the YTO scheme will cease upon release, it will be difficult to develop a treatment plan with a clear duration or any sense of when transition back to community may occur.

Use of Force

Ultimately, the YTO model assumes that force may be used by Kurlana Tapa staff to compel attendance at a therapy session (see Part 8, Regulations). It is not evident that this is conducive either to a therapeutic process or maintenance of a therapeutic environment. Nor is it clear what the attitude of practitioners will be to ethical service delivery in these circumstances.

The previous TCV flagged concerns about the implications of a mandatory enforcement model, noting the human rights implications which may arise with respect to mandatory drug treatment for children and young people in a place of detention.^[15]

The incongruity of delivering the YTO program in a non-therapeutic custodial facility also was noted in the TCV's Pilot Inspection Report

It is unclear how a therapeutic drug treatment program would be accommodated by or sit alongside current AYTC [now KTYJC] behaviour management processes and procedures, given that the AYTC is not a therapeutic environment. Practical issues will need to be addressed, such as the need for on-site access (24 hours a day, seven days a week) to specialist medical and other staff.

Currently, most AYTC staff are not trained across multiple necessary discipline areas, let alone in potentially new drug rehabilitation competencies within a mandatory program.^[16]

At a practical level, those charged with the responsibility for the day to day care of children and young people at Kurlana Tapa have advised that they are not comfortable with the use of force to escort a young person to a treatment appointment should that be necessary. Handcuffs are often used when escorting a young person against their will in a custodial setting. This generally is seen as a highly traumatic intervention, normally reserved only for the most extreme situations such as conveyance to a Safe Room when a young person is at extreme risk to themselves or others.

Threatening the use of force to encourage compliance does not foster safety, choice, collaboration or empowerment and is not in-line with trauma-informed care principles.

Stigmatising the AOD discussion

Young people involved in the Youth Justice system usually are open with nurses and case managers about their drug use, building trust between young people and clinicians. This hopefully contributes to an environment in which substance misuse and associated offending behaviour can be more readily addressed. Once detainees realise that recourse to mandatory court orders is an option, especially one that allows the use of force, they may become more guarded about sharing information, jeopardising thereby the potential for therapeutic engagement.

Evaluation of Phase 1 and potential Phase 2

Parliament resolved that a review of the YTO Scheme be conducted with a report prepared and submitted to the Minister that "must be completed after the third, but before the fourth, anniversary of the commencement"^[17] of the Scheme in November 2021.

[15] Penny Wright, TCV, Submission to the Attorney General: Comments on the draft Controlled Substances (Youth Treatment Orders) Regulations 2021, Guardian and Training Centre Visitor (21 October 2021). She noted in this context the TCV/Guardian's need to ensure that "advocacy and reporting will reflect the needs, voices and experiences of children and young people subjected to these orders".

[16] Training Centre Visitor, Great Responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre), June 2020, p10

[17] Section 54P (Review of Part) of the CS Act

It is not apparent what evaluative information will be compiled and analysed through Phase 1 of the YTO Scheme. Raw numbers of applications for assessment, treatment and detention orders and related matters can be anticipated, but we are not aware that a credible, formal qualitative and quantitative basis for evaluation is in place.

It is also important to note that, we do not know how service providers will be assessed with respect to achievement of the standards set out in the Regulations 7(1). As the YTO approach is unique in Australia, identifying suitable benchmarks against which to assess the scheme will be a challenge. As a new and highly interventionist approach, it will be subject to keen scrutiny at all stages – including post-intervention.

Alternatives

Several alternative approaches are available to address the needs of children and young people who misuse controlled substances. Through the YTO Establishment Project we will continue to attend to the best interests of Kurlana Tapa detainees with these as reference points for individual and systemic efficacy.

For discussion and project developmental purposes we have noted the following indicative (and partly overlapping) exploration opportunities:

Non-mandatory, child focused voluntary Programs

This broad category involves approaches that eschew mandatory 'secure' treatment.

Consultation feedback about the mooted YTO Scheme from this office, Mission Australia, South Australian Network of Drug and Alcohol Services, Law Society SA, Child Development Council, and the Commissioner for Aboriginal Children and Young People, focused on the acute need for increased service provision in the state's voluntary AOD sector.

All these stakeholders know the issues and what may work for the predicted YTO cohort.

The most glaring such need appears to be provision of more highly qualified clinician services (e.g., clinical psychologists); AOD services in general in rural, regional and remote settings; increased detoxification options; and increased rehabilitation options.

Given the YTO scheme is promoted as an option of last resort, increased investment in earlier intervention may redefine whether YTO's are necessary.

Increased AOD programs in Kurlana Tapa

At present, one DASSA clinician attends Kurlana Tapa on a fortnightly basis to provide individual AOD counselling. This individualised service **does not** follow a detainee when they are released from detention (*they might switch to an alternative AOD service provider such as Streetlink (Uniting Communities), Centacare or Mission Australia should they wish to continue to receive such support*).

It is unclear how many Kurlana Tapa detainees actively have AOD treatment needs. Some Kurlana Tapa based staff suggest there is more demand than the 1 day per fortnight that is currently being provided. Conversely, DASSA staff advise that they have capacity to increase service provision but that there currently is insufficient demand.

This misalignment of views suggests that it may be helpful to review Kurlana Tapa's AOD intervention model, with possible options being:

- increasing AOD harm minimisation/general awareness programs^[18]
- arranging for appropriate clinicians to meet with relevant young people before the mandatory referral option is floated (making the prospect of meeting a new worker less daunting for children and young people)
- integrate an AOD specialist position within the in-house Youth Justice Assessment and Intervention Service team.

Such options raise the question of whether the YTO Scheme is, in fact, justifiable as an option of last resort, which should always be the test for deprivation of liberty.

[18] See discussion in Part 6.11.5 of the TCV Pilot Inspection Report (at page 111) which notes that "neither DASSA nor any other specialist agency offers regular broad drug and alcohol misuse program in the Centre". Recommendation 7 of that report applies.

[16] Training Centre Visitor, Great Responsibility: Report on the 2019 Pilot Inspection of the Adelaide Youth Training Centre (Kurlana Tapa Youth Justice Centre), June 2020, p110

[17] Section 54P (Review of Part) of the CS Act

Detoxification Facility

South Australia has no dedicated detoxification facility for those aged under 18. This is problematic as in-patient residential rehabilitation facilities require detoxification prior to admission, and not all detoxifications would require as acute a response as being held as an in-patient at the Mallee Ward.

Centacare currently operates a one-bed sobering up unit for young people affected by alcohol or other drugs but only 'low to moderate' cases. Cases that are high need or require medicated detoxification are referred to the Women's and Children's hospital in-patient Mallee Ward.

Voluntary Residential Rehab

There are very few residential rehabilitation options for children and young people in South Australia: Tumbelin Farm operates a 4-bed program for males aged 16-21 and Centacare has a 5-bed program for males and females aged 12-24.

Improving flexibility and engagement strategies are understood to increase numbers entering and completing treatment.^[19]

However, when there simply are insufficient options to begin with (due to low bed numbers, gender restrictions, service models, prohibitive waitlists, or other reasons) then admission and retention issues are not relevant factors.

[19] Kristy Johns, Amanda Baker, Rosemary A. Webster & Terry J. Lewin (2009) Factors associated with retention in a long-term residential rehabilitation programme for women with substance use problems, *Mental Health and Substance Use*, 2:1, 40-51, DOI: 10.1080/17523280802593285

NEXT STEPS

“I urge careful consideration to the rights of young people who enter this scheme, ensuring adequate education and sufficient resourcing to uphold these rights.”

Establishment Project Work

The YTO Project Officer is employed to the end of June 2023 to develop the TCV’s YTO Visitor mandate and undertake visiting and other direct tasks in the context of the Scheme. It remains to be seen whether this will be necessary in relation to any (and if so, how many) Kurlana Tapa detainees who will be subject to Orders.

Noting this uncertainty, the Establishment Project will continue to –

- build and maintain relationships with other key stakeholders (see Attachment 3)
- develop and consolidating a visiting framework, processes, and policies for the TCV as YTO Visitor (including through direct engagement with children and young people at Kurlana Tapa through participation in the ongoing TCVU visiting program and periodic reviews of records processes)
- research models of care for the target cohort including in the context of the broader dialogue about the potential role of secure care facilities
- participate in projects that assist in the identification of AOD treatment need, treatment options, pathways, early intervention options, and evaluation methods
- be a source of information for stakeholders seeking information about the YTO scheme, and
- assist the Attorney General’s Department to build their Evaluation Framework ahead of the YTO scheme’s review in 2025.

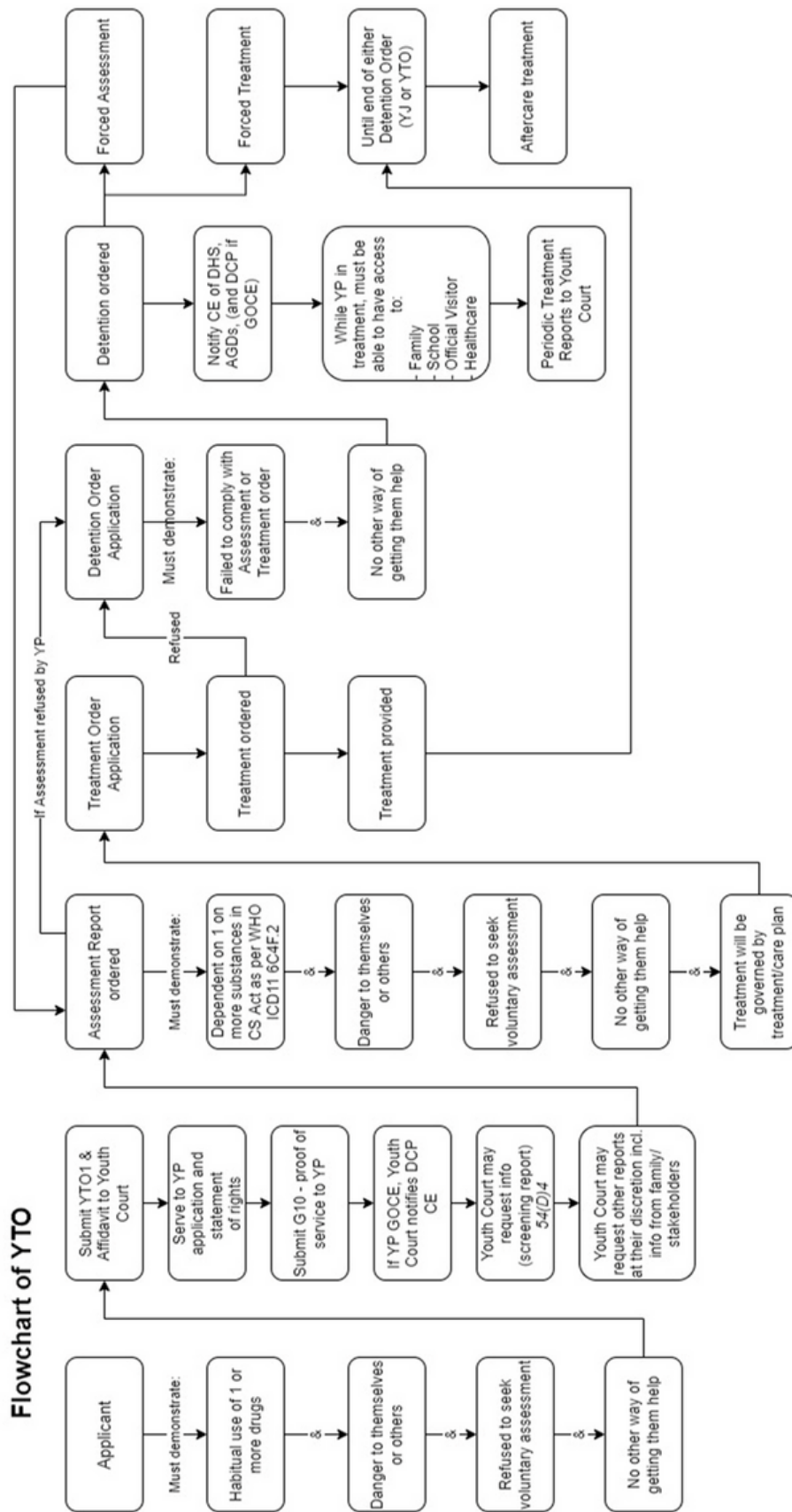
Ongoing YTO Visitor Role

The YTO Visitor Establishment Project is funded for 12 months and the capacity for the YTO Visitor to undertake its assigned function will occur for this period.

Confirmation of ongoing resources will need to be resolved during 2022–2023 for this function to be functionally ongoing and operational.

Any legislated function assigned to this office will need adequate and ongoing resourcing.

Attachment 1 Process Flowchart: Establishment Project DRAFT



Attachment 2 Charter of Rights for Youths Detained in Detention Centres

- To be treated equally, and not treated unfairly because of your sex, sexuality, race, religion, disability or other status.
- To be treated with respect and dignity by staff and to be kept safe while you are in the youth justice centre.
- To be given a copy of and have explained to you the rules of the centre, and rights and responsibilities, in a language that you can understand.
- To see a doctor or nurse whenever you need to, have your health assessed soon after you arrive, and to receive proper healthcare.
- To receive help for your mental health if you need it, and to be transferred to a mental health facility for treatment if required.
- To get help if you have problems with drugs or alcohol.
- To have special care and protection if you are vulnerable or have special needs.
- To have regular contact with your family and friends through visits and phone calls.
- To get help to see a lawyer, and to talk to them privately.
- To have an interpreter for formal meetings or medical examinations if you are not fluent in English.
- To get information and news about what is happening in the world.
- To have a say in decisions about your rehabilitation and other issues that affect you.
- To participate in activities and programs that help your rehabilitation.
- To continue your education, or to do training to learn useful skills for work.
- To get exercise every day, and to go outside every day except in bad weather.
- To have enough good food (including food that is suitable for your culture or religion, or dietary requirements), and to have drinking water available when ever you need it.
- To have clean clothes, and to wear your own clothes if you go out of the centre.
- Not to be punished unfairly, and only in accordance with the rules of the centre or the law.
- Not to have force used against you, or restraints used on you, unless absolutely necessary, and never as a punishment.
- Not to be isolated from other young people unless necessary to keep you or others safe, and never as a punishment.
- To practice your religion or express your culture and, whenever possible, to participate in cultural celebrations and see religious or spiritual advisors.
- If you are Aboriginal or Torres Strait Islander, whenever possible, to participate in cultural activities and celebrations with other Aboriginal or Torres Strait Islander people.
- To make a complaint about your treatment to an independent person (like an official visitor) and to be told what happens with your complaint.
- Before you leave the centre, to get help with somewhere safe to live and ongoing support.

Attachment 3 YTO Stakeholders

- 1.Young Person
- 2.Applicant
- 3.Youth Court/Courts Administration Authority
- 4.Solicitor/s
- 5.Legal Services Commission
- 6.Police Prosecutions
- 7.Youth Justice Case Coordinators/Case Managers
- 8.Dept for Child protection Social Workers/Case Managers
- 9.Metropolitan Youth Health
10. Kurlana Tapa Management
11. Kurlana Tapa Youth Workers
12. PsychMed Medical staff
13. PsychMed Psychology staff
14. DASSA
15. Attorney Generals Dept
16. Department for Human Services Chief Executive
17. Department for Child Protection Chief Executive
18. OARS Community Transitions
19. Aftercare treatment provider/s
20. Youth Treatment Order Visitor
21. Family of Young Person
22. Youth Education Centre

