



**2022-2023**

**ANNUAL REPORT**

**Youth Treatment Order Visitor**

*Report prepared by the Youth Treatment Order Visitor*

The Youth Treatment Order Visitor 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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The Hon. Kyam Maher MLC  
Attorney-General  
GPO Box 464  
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30 September 2023

Dear Attorney-General

I am pleased to present to you the annual report of the Youth Treatment Order Visitor for the year ended 30 June 2023, as required by section 54L(2) of the *Controlled Substances Act 1984*.

This report provides a summary of the work of the Youth Treatment Order Visitor for the 2022-23 financial year.

Given the lack of resourcing for the role in the Budget, the report notes that any real functionality with respect to implementing the Visitor role ceased at the end of the 2022-23 financial year.

With kind regards

A handwritten signature in black ink, appearing to be "Shona Reid". The signature is stylized with loops and a long tail.

**Shona Reid, Youth Treatment Order Visitor**

## Content Warning

This report contains information and case examples about youth detention that may be distressing to some readers. This includes discussion about self-harm and violence.

If you or someone you know is in danger, call **000** immediately.

If you experience distress or find the information in this report confronting, we encourage you to seek support from family, friends and community or contact services like:

**Kids Help Line** on **1800 551 800**

**Lifeline** on **13 11 14**.

## Request to the Media, Stakeholders and Politicians

This report contains descriptions, quotes and representations of the lives of children and young people. Behind each statistic, quote and anecdote is a child, whose whole life and self is more than the sum of one experience. When reporting or commenting on these matters we ask you do so in that context.

The YTO Visitor encourages reference to key best practice guidelines when reporting on information disclosed in this report, including Midframe's [Reporting suicide and mental ill-health: A Mindframe resource for media professionals](#) (2020).

## Acknowledgement of Young People's Stories

The YTO Visitor acknowledges the children and young people who shared their views and lived experience with herself and her Advocates – without your honesty, this would be a lesser report.

The language used throughout this report will be, as far as possible, faithful to the words of young people. This means the report may contain some swearing and confronting content. This is the language used by the young people with whom the YTO Visitor office works, who often may swear to express the intensity of their feelings. The YTO Visitor is committed to amplifying these voices.

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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 the Centre are referred to interchangeably as residents or detainees.

## Referencing

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

## Data

Much of the data referred to in this report has been collated and analysed by OGCYP staff. It is presented in good faith, acknowledging there may be unintentional discrepancies.

## Artwork

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

## Glossary

Act	Unless stated otherwise, this refers to the Controlled Substances Act 1984
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, Child and Young Person's Visitor and Guardian for Children and Young People.
The Centre	The 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/Centre 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 visiting program to establish and maintain contact with detainees at the Centre.
YTO	Youth Treatment Order/s

## Acknowledgements

Many people contributed to the process of developing this Annual Report. TCVU and OGCYP staff made major contributions and we also received assistance from DHS, the Centre and other agencies.

## From the Youth Treatment Order Visitor

I have to say upfront; it was difficult to write this Annual Report. I consider my role as an Oversight Body involves being measured and objective in my observations, assessment and recommendations to government and the community.

As I look back over the last 12 months and the operations of my Youth Treatment Orders mandate, I can't help but be bewildered by the capacity of our state's services system to disregard and be indifferent to human rights for the most vulnerable in our society.

Youth Treatment Order (YTO) processes in 2022-23 laid bare the lack of preparedness and often futile nature of South Australia's 'welfare' system when it comes to the most extremely vulnerable children in our state.

It is fundamental to my role that I comment on the systemic capacity of the South Australian Government to operationalise and oversee this legislation. A piece of legislation which, by its very existence, offends international human rights conventions, by forcing drug assessment and treatment on unwilling children and young people while in detention.

Despite a four-year lead up to commencement, there continues to be a notable absence of frameworks, procedures and practice guidance to appropriately and safely implement the YTO process. Existing service systems appeared not to operate in their 'usual manner', reducing access to voluntary drug assessment and treatment. This process can see vulnerable young people type-cast as young offenders, when the primary presenting issue should be concern for their safety and wellbeing, especially should they have been failed by support systems over many years. Incarceration exposes young people who need help to traumatic, isolating and harmful experiences in a non-therapeutic custodial environment.

What is most concerning about all of this is what I term 'losing sight of the child'. When the system becomes so overwhelmed with managing a health-related matter in a criminogenic context, these systems fail traumatised and frightened young people.

My sincere hope is that the Youth Treatment Orders Scheme will be repealed and that we get to wrapping quality child centred services around the most vulnerable people in our society, and ensuring access to them where they're needed, in the community.

It is unconscionable to allow this scheme to continue.



**Shona Reid, Youth Treatment Order Visitor**





# The YTO Scheme

## Activation and Review

Part 7A of the *Controlled Substances Act 1984* (the Act) allows the Youth Court to make, vary, or revoke mandatory Youth Treatment Orders (YTO) of three sorts: Assessment, Treatment and Detention.

In the current 'Phase One' of the YTO Scheme, orders can only be sought with respect to young people already detained at the Kurlana Tapa Youth Justice Centre (the Centre). Possible extension of the Scheme is subject to review, with a report to be prepared and submitted to the Minister that "must be completed after the third, but before the fourth, anniversary of the commencement" of the Scheme.<sup>1</sup>

The Minister for Health and Wellbeing, while responsible for the Act, assigned ministerial responsibility for the YTO Scheme to the Attorney-General.<sup>2</sup>

## Funding and Expenditure

Government has made no provision for funding the YTO Visitor role from 1 July 2023 onwards. The YTO Visitor therefore has advised that she is unable to perform YTO Visitor functions as defined by the Act in 2023-24.

In 2022-23, the only specific funding allocated for the YTO Visitor role was \$121,960 to sustain the twelve-month YTO Visitor Establishment Project<sup>3</sup>.

## Mandate

The YTO Visitor role was assigned to the Training Centre Visitor (TCV), to commence at the initiation of the YTO Scheme in November 2021. The Act requires the YTO Visitor to monitor a child or young person's health, safety and wellbeing while held under a YTO detention order: s.54L(2).

Regulations enabled by s.54L(3) of the Act<sup>4</sup> conferred the following new responsibilities on the TCV in her capacity as YTO Visitor, to –

- a) visit and inspect facilities at which children and young people are detained under YTOs,
- b) monitor their health, safety and wellbeing, and,
- c) inquire into and investigate any matter referred by the Minister.<sup>5</sup>

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<sup>1</sup> Section 54P (Review of Part) of the CS Act – that is, the 12 months commencing 21 November 2024.

<sup>2</sup> Functions and powers under Part 7A of the Act were conferred pursuant to sections 6 and 8 of the *Administrative Arrangements Act 1994*.

<sup>3</sup> The YTO Visitor Establishment Project was conducted within the YTO Visitor's office from May 2022 to 30 June 2023 in accordance with a Memorandum of Administrative Arrangement (MoAA) funded by and signed with the Attorney-General's Department.

<sup>4</sup> See reg(4)(12) of the *Controlled Substances (Youth Treatment Orders) Regulations 2021*.

<sup>5</sup> *Controlled Substances (Youth Treatment Orders) Regulations 2021*, reg.4(1)

Mirroring the similar obligation as the TCV, the YTO Visitor must pay particular attention to the needs and circumstances of children who are in care, are Aboriginal, or have a physical, psychological or intellectual disability (reg.4(4)).

The YTO Visitor mandate is limited to monitoring a child or young person’s health, safety, and wellbeing *only* in relation to one of the three potential YTOs; namely, a *Detention* order.<sup>6</sup>

### Four roles in one office

During the reporting year, the YTO Visitor was one of four statutory appointments held by Shona Reid, in addition to Guardian for Children and Young People (the Guardian), Child and Young Person’s Visitor (CYP Visitor), and Training Centre Visitor (TCV).

The YTO Visitor is supported by staff who are situated within the office hosting these four mandates. These salaries were not funded and provided in-kind to this work (excluding the YTO Senior Project Officer who was designated to the Establishment Project).

Appointment	Description
Youth Treatment Orders Visitor	Monitor the health, safety and wellbeing of young people detained under mandatory treatment orders for drug dependency.
Training Centre Visitor	Promote the rights of young people sentenced or remanded to <b>detention in youth training centres</b> in South Australia, and to advocate for their best interests.
Guardian for Children and Young People	Promote the rights of all young people <b>under the guardianship, or in the custody, of the Chief Executive of the DCP</b> and to advocate for their best interests.
Child and Young Person’s Visitor	Promote the rights of young people who are under the guardianship, or in the custody, of the Chief Executive of the DCP and who are <b>living in residential care</b> , and to advocate for their best interests.

Annual reports have been prepared separately for each of these concurrent positions.<sup>7</sup>

### Statutory Independence and Accountability

Establishment of the YTO scheme did not displace 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 are reported against separately to Parliament through the relevant Ministers.

<sup>6</sup> s.54L(2) of the Act. 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 may be ameliorated by the fact that the TCV’s functions do apply to these detainees.

<sup>7</sup> More information about these roles, including relevant reports, is available on the Guardian’s website, at [www.gcyp.sa.gov.au](http://www.gcyp.sa.gov.au).

## YTO Scheme and TCV Program

In clarifying the complementary nature of the exercise of TCV and YTO Visitor functions, Crown Law advised that, in the interests of administrative efficiency and given the close relationship of the two roles it is reasonable to exercise the functions contemporaneously. In implementation terms, this means certain things, including that –

- YTO Visitor functions 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 advocacy on behalf of affected children and young people.
- The YTO Visitor role is operative between appointments that may be imposed by a YTO Order, with a "continuous" obligation to ensure monitoring of the health, safety and wellbeing of a child or young person even when they are not actively undergoing assessment or treatment.

## The Centre

Located in northern metropolitan Adelaide, the Centre is South Australia's only youth detention centre, accommodating children and young people aged primarily between 10 and 18 years.

In 2022-23<sup>8</sup>, 336 individuals were detained at the Youth Justice Centre, some multiple times. On an average day, 32.3 young people were detained, with 90.4% of the Centre population held on *remand*; in most circumstances, young people on remand have not been found guilty of alleged criminal charges.

Other key characteristics of the average daily detention population included that:

- 35.6% were under guardianship in the care system ('dual involved')
- 59.5% had a known, diagnosed disability<sup>9</sup>
- 54.7% were Aboriginal
- 19.5% were girls or young women.

These children and young people were the potential subjects for Phase 1 of the YTO Scheme. On multiple occasions the YTO Visitor, and her predecessor, informed government that this is contrary to the prohibition against trialling treatment programs on incarcerated people under international law.<sup>10</sup>

Under a YTO Detention Order, a child or young person cannot be detained in the Centre beyond their existing term of detention.

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<sup>8</sup> See the *Training Centre Visitor Annual Report 2022-23* for more details and discussion.

<sup>9</sup> There are significant challenges with sourcing accurate and reliable information about the number of young people in detention with disabilities, and it is likely this figure is a significant underestimate. The TCV approach for monitoring the population of young people with disability is discussed in that 2022-23 Annual Report.

<sup>10</sup> Rule 55 of the *Havana Rules* stipulates in relation to children and young people that – "Juveniles shall never be testees in the experimental use of drugs and treatment".<sup>10</sup> 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.

## Children & Young People's Rights

All young people have fundamental human rights. These rights do not have to be earned, and they cannot be lost.

### Mechanisms of Protection

Several mechanisms can protect the rights of children and young people subject to the YTO process.

- The *Charter of Rights for Youths Detained in Training Centres* (the Youth Justice Charter) as established by s.22(4) of the YJA Act applies in relation to YTOs (see *Attachment 1*), with involved officers and agencies required to implement its terms "to the fullest extent possible".<sup>11</sup>
- YJA Act duties of the Minister for Human Services, Chief Executive of the Department for Human Services (DHS), and The Centre continue to apply to a child or young person who also is detained for YTO purposes, as do other policies governing the detention and treatment of detainees.
- Detainees who also are under child protection guardianship orders also have rights under the *Charter of Rights for Children and Young People in Care*<sup>12</sup>.
- The Health and Community Services Complaints Commissioner has responsibility under s.19(1) of the *Health and Community Services Complaints Act 2004* for the "Charter of Health and Community Services Rights". A person placed on a YTO has 'consumer' rights in the context of this charter.

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) obliges the TCV to safeguard and promote the welfare of children and young people (s.5) and prioritise early intervention in matters where they may be at risk (s.9). It also stipulates that, "to the extent practicable ... international and national requirements or guidelines relating to the detention of youths" are to be followed.

Section 5 of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016* also requires State authorities to seek to give effect to "the United Nations Convention on the Rights of the Child, the United Nations Declaration on the Rights of Indigenous Peoples and any other relevant international human rights instruments affecting children and young people".<sup>13</sup>

Other relevant South Australian legislation includes the *Mental Health Act 2009*, the *Consent to Medical Treatment and Palliative Care Act 1995*, the *Health and Community Services Complaints Act 2004*, the *Youth Justice Administration Act 2016*, and the *Young Offenders Act 1993*.

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<sup>11</sup> 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."

<sup>12</sup> <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2021/04/Charter-of-Rights-FULL.pdf>

<sup>13</sup> Other relevant international instruments include the Universal Declaration of Human Rights / International Covenant on Civil and Political Rights / Convention on the Rights of Persons with Disabilities / Convention on the Elimination of Discrimination against Women / Beijing Rules, relating to youth justice administration / Havana Rules, for the protection of incarcerated young people / Bangkok Rules, for the treatment of women prisoners, including girls / Nelson Mandela Rules, for the treatment of prisoners / and the Riyadh Guidelines, for the prevention of juvenile delinquency.

We acknowledge the contribution of our then Law Intern, *Jennifer Novak*, who developed our initial scope for understanding the broader human rights context for the YTO Scheme early in 2022.

Other sectoral guidelines<sup>14</sup> relating to the detention of children and young people also may be instructive.

## Trialling the Scheme

The Act targets young people detained in the Centre as **test subjects** for the YTO Scheme. This was described to Parliament in the following terms by the (then) Health Minister –

*“We want the interagency working group to have time to do its task and further consultation with the community and stakeholders. This will allow the government an opportunity to commence the legislation in two phases: in the first instance applying assessment and treatment orders to young people subject to detention and, in the latter phase, extending to young people with substance dependency problems more generally.”* (HANSARD, Legislative Council, 14 May 2019)

Children and young people detained at the Centre are the *only* pool of potential ‘Phase 1’ subjects for the YTO Scheme. The potential human rights breach this entails in relation to the prohibition of medical experimentation, including the piloting of treatment programs, still has not been addressed.<sup>15</sup>

<sup>16</sup>

## Conceptualising & Resourcing YTO Visitor Role

As highlighted above, the YTO Visitor currently hold three other statutory appointments. The Guardian role was the first to be established in 2005, followed by the TCV in 2017, CYP Visitor in 2018 and YTO Visitor in 2021.

Historically, the Guardian necessarily has blended funding inputs that ostensibly are provided to meet these several and discrete statutory oversight and advocacy responsibilities. This is because successive governments have tolerated the difficulties created by underfunding ‘core organisational functions’ in this multi-mandate context, despite these being raised explicitly in recurrent budgetary rounds. Operations under separate statutory mandates are only possible due to cross-subsidising across funding streams<sup>17</sup>.

For example, core administrative functions are funded primarily through allocations associated with the Guardian mandate, while ‘communications’ are solely funded from this source. It is not clear that

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<sup>14</sup> 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.

<sup>15</sup> Rule 32 United Nations Standard Minimum Rules for the Treatment of Prisoners; Article 7 International Covenant on Civil and Political Rights; Rule 55 of the Havana Rules stipulates that “Juveniles shall never be testees in the experimental use of drugs and treatment  
<https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-rules-protection-juveniles-deprived-their-liberty>

<sup>16</sup> The extent of such human rights breaches was signalled to Parliament early in the YTO legislative process; for a succinct discussion of relevant matters, see Jenkin E, Castan Centre for Human Rights Law, *Submission on the Controlled Substances (Youth Treatment Orders) Amendment Bill 2018*, Faculty of Law, Monash University, 7 February 2019.

<sup>17</sup> A dimension of this situation that has not been addressed: that the five statutory roles are held by a single person, the Guardian/TCV. This is not conducive to optimal performance and its implications for appropriate accountability to Parliament (and affected children and young people) should be addressed.

this approach meets the government's statutory obligation to properly resource relevant oversight and advocacy responsibilities.<sup>18</sup>

The situation is ongoing and even more acute since the 2019 Report of the *Review of the Children and Young People (Oversight and Advocacy Bodies) Act*<sup>19</sup> which recommended that –

*44. If an additional or expanded role or responsibility is conferred on an entity under the Act, it is essential that the entity has, or is given, the funds or other resources necessary to ensure that the role or responsibility can be reasonably performed or undertaken.*

This recommendation has been ignored with respect to the YTO Visitor role.

De facto administrative interconnectivity between mandates resonates with the fact that many children and young people do or could relate to my office through separate mandates at any one time. This was discussed in some detail in the Guardian/TCV's 2022 *South Australian Dual Involved Project (SADI) Final Report*.<sup>20</sup>

The lodging of a YTO application may demand reconciliation of accountability and engagement obligations between several of my mandates to ensure that integrity is maintained for each. For example, this could include –

- i. maintaining an ongoing advocacy relationship in accordance with my Guardian's statutory obligations
- ii. reactivating a TCV advocacy role in the Youth Justice Centre
- iii. addressing the role of the YTO Visitor for a young person detained at the Youth Justice Centre, during a process that may or may not involve a relevant YTO Detention order to 'activate' the YTO Visitor's mandate<sup>21</sup>, and
- iv. potentially engaging with a young person in a residential care house as part of the Child and Young Person's Visitor.

## YTO Visitor activities in 2022-23

### Establishment Project

The twelve-month Establishment Project commenced in May 2022 with the appointment of a Project Officer responsible for developing the TCV's new YTO Visitor mandate. Initial work focussed on meeting project stakeholders, including potentially affected children and young people, and staff at the AGD, the Youth Justice Centre, and other service providers and otherwise involved agencies.

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<sup>18</sup> Implicit across all mandates, but specific in s.24 of the Children and Young People (Oversight and Advocacy Bodies) Act 2016 and s.13 of the Youth Justice Administration Act 2016.

<sup>19</sup> Dennis R (October 2019) The Children and Young People (Oversight and Advocacy Bodies) Act 2016 – South Australia Section 70 – Review of Act Report. See Part 4.4 at page 47.

<sup>20</sup> Guardian/TCV, Final Report of the South Australian Dual Involved Project: Children and young people in South Australia's child protection and youth justice systems (June 2022) <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2022/07/OGCYP-Final-Report-of-the-South-Australian-Dual-Involved-Project.pdf>

<sup>21</sup> Part 7A of the *Controlled Substances Act 1984* identifies that aspects of the YTO Visitor role may not apply to a child or young person who is only subject to an assessment or a treatment YTO (i.e. not a YTO specific detention order).

The project was integrated with existing structures within the YTO Visitor's office, primarily through participation in the TCV's ongoing Centre Visiting Program as a mechanism for engaging with detained young people (the prospective subjects of a Phase 1 YTO application). This developed an appreciation of the current detainee cohort, despite disruptions due to COVID and constraints arising from severe staffing shortages in the Centre throughout 2022-23. Participation in the TCV quarterly Review of Records process built familiarisation with Centre documentation regarding reportable incidents, complaints from young people, and access to activities and programs.

More broadly, the Project Officer developed program/service mapping across service domains including health and mental health, youth-oriented substance misuse programs, and Court and youth justice processes. Research addressed topics such as substance misuse and youth justice programs and 'secure therapeutic care' and 'safeguarding' models.

Considerable work was undertaken to understand and engage with agencies that held responsibilities under or with respect to the YTO Scheme. This occurred in two main stages in 2022-23; at the Establishment Project's developmental stage and then in circumstances associated with the activation of the YTO application process during this reporting period. A key observation made in both is that agencies generally were unprepared for their roles in the YTO Scheme, with any person subject to the scheme then becoming a 'test case'.

The Establishment Project commenced YTO Visitor policy work, but the departure of the Project Officer early in 2023 meant that this work was developmental only. As canvassed with the AGD, the Project Officer position was not filled for the remaining few months of the project and work subsumed within existing activities within the office, complemented by some contracted input. This dialogue also addressed the question of the ongoing YTO Visitor resourcing requirements.

The reality is that the YTO Visitor therefore was not resourced to produce this Annual Report.

## Observations & Commentary

A confidential briefing has been provided to the AGD Chief Executive (copied to the Attorney-General) with the YTO Visitor's observations about implementation of the YTO Scheme following its commencement in November 2021. This focusses on the **rights and best interests** of young people affected by the YTO process, including as these were affected by the **actions of various stakeholders**.<sup>22</sup>

This observational analysis, necessarily confidential due to potential identification of individual actors, responds to the YTO Visitor mandate under the Act and informed by the Guardian<sup>23</sup>, TCV<sup>24</sup>, and CYP Visitor<sup>25</sup> mandates.

The YTO Visitor makes the following observations about 2022-23 implementation of the YTO scheme based on document reviews, interviews with stakeholders, the direct views and experiences of young people at the Centre and observation of YTO processes.

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<sup>22</sup> Under s 54A of the Act, the paramount consideration in the administration, operation and enforcement of this Part must always be the best interests of the child that is, or is proposed to be, subject to an order under this Part.

<sup>23</sup> Children and Young People (Oversight and Advocacy Bodies) Act (2016), s.26

<sup>24</sup> Youth Justice Administration Act (2016), s.14

<sup>25</sup> Children and Young People (Safety) Act 2017.

## A problematic model

The YTO Visitor was mindful of the need to provide child focused support and advocacy to young people affected by the YTO scheme and minimise potential cross-mandate complexities or inhibitors.

This raises significant challenges in terms of how best to provide advocacy support for someone at the centre of the complex legal and 'wellbeing' processes associated with the YTO scheme. Unfortunately, this reflects an ongoing reality for many children and young people who are captured simultaneously under more than one of the Guardian/Training Centre Visitor/Child and Young Person Visitor/Youth Treatment Order Visitor oversight and advocacy mandates. Various staff within her office may be directly involved during the activation of a YTO proceeding.

In 2022-23, the YTO Visitor observed poor systemic and operational preparation for the YTO Scheme, with associated impacts on core procedural fairness for young people. As a new, and highly intrusive, legal initiative, the YTO process can operate as a distraction from the more substantive issue of *'what preferable options should first be pursued to assist them to address 'assumed' drug dependence'*.

As flagged by most informed stakeholders in earlier critiques of the YTO approach, youth justice criminal and custodial mechanisms are highly unlikely to address fundamental, health related issues: they certainly do not resonate with core human rights standards<sup>26</sup>.

The YTO Visitor is not convinced that earlier health/therapeutic intervention options are being exhausted before a YTO is contemplated<sup>27</sup>

The provision of drug treatment options that promote "non-stigmatising attitudes ... encouraging the voluntary participation of individuals with drug use disorders in treatment programmes, with informed consent ..." is a preferable public policy approach. The continuing failure to provide suitable options to vulnerable children and young people is an indictment, especially when the YTO process itself can be seen as another, and unnecessary, adverse childhood experience.

Last year's introductory YTO Visitor Annual Report flagged some alternative options to consider in preference to the legislated YTO model, notably:

- **non-mandatory, child focused voluntary programs** - a broad category of approaches that eschew mandatory 'secure' treatment for other than specifically medically prescribed purposes (e.g. detoxification).<sup>29</sup>
- **a detoxification facility** - SA has no dedicated detoxification facility for those aged under 18<sup>30</sup>.
- appropriate voluntary residential rehabilitation places.

<sup>26</sup> The 2022 YTO process invites reflection on the proposition that "[c]riminal law actors and other actors may have shared regulatory interests and may choose to coordinate enforcement actions to their mutual benefit" without appreciating the impact this had on the child at the centre of the process - Jain E, *Arrests as Regulation*, 67 *Stanford Law Review* 809-867 (2015) (p845)

<sup>27</sup> This, of course, raises the question of whether all necessary services even are available in SA, specifically to respond to substance misuse and associated psychosocial or neurodevelopmental issues.

<sup>28</sup> UN Human Rights Council, 52<sup>nd</sup> session, April 2023, Contribution of the Human Rights Council with regard to the human rights implications of drug policy (p3).

<sup>29</sup> With supporting views offered about the acute need for increased service provision in the SA's voluntary Alcohol/drugs sector offered by agencies with relevant expertise, including this office, Mission Australia, SA Network of Drug and Alcohol Services, Law Society SA, Child Development Council, and the Commissioner for Aboriginal Children and Young People.

<sup>30</sup> Noting some minor related capacity through Centacare and the Women's and Children's Hospital Mallee Ward.



## Parameters of the YTO

The stated purpose of the YTO scheme is strictly limited to drug dependency and treatment and does not authorise deprivation of a young person's liberty due to other behaviours that may be a risk to their personal safety. The YTO Visitor observes potential vulnerabilities of the YTO process with regards to 'actors' seeking use of a YTO without the full exploration of voluntary engagement of young people in drug and alcohol assessment or services.

This invites scrutiny of the relationship of the YTO process to any preceding relevant case management approaches or service engagements. What also invites scrutiny is the consideration (or initiation) of YTO proceedings potentially affecting the duration for which a young person may be detained in the Centre on remand.

Royal Commissioner Nyland's cautioned in her 2016 Report that "*youth custody should never be used as a placement option for young people under Guardianship orders when their incarceration is not otherwise properly justified*".<sup>31</sup>

The best policy is to privilege the rights of young people and invest necessary preventative resources, funds (and at times creativity) to ensure there are appropriate wraparound supports.

## Rehabilitative Environment?

Substance misuse often is strongly associated with 'Adverse Childhood Experiences' and useful interventions should seek to "divert young people with these experiences away from the justice system"<sup>32</sup>. Trauma work and interventions around childhood experiences can only occur when a young person feels safe to work through the issues<sup>33</sup>. **A person cannot be mandated to feel safe.**<sup>34</sup>

The YTO Visitor and her office held ongoing concerns in 2022-23 about the physical, emotional and psychological safety of young people detained at the Centre. These concerns are detailed in the TCV's Annual Report, and include:

- extended periods in isolation
- insufficient access to education and rehabilitation
- compromised medical care, including monitoring of ongoing conditions by non-medically qualified staff
- inadequate mental health supports, including lack of therapeutic responses.

This situation corroborates the concern raised by informed stakeholders prior to the Scheme's commencement; that is, that the YTO process will most likely be applied to and impact upon children and young people who are already vulnerable and have extensive experience of trauma.

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<sup>31</sup> *Child Protection System Royal Commission Report: The Life They Deserve*, Nyland, 2016, Volume 2, pg. 55

<sup>32</sup> Malvaso, C., Day, A., Delfabbro, P., Cale, J., Hackett, L, Ross, S., 'Adverse childhood experiences and trauma among young people in the youth justice system', Criminology Research Grant (CRG12/18-19); June 2022.

<sup>33</sup> Ibid.

<sup>34</sup> Noting the SANDAS *Submission to the Youth Treatment Model of Care Public Consultation, 2021* which stressed that: "there is limited evidence that mandatory treatment meets the best available evidence-based treatment for young people. In fact, mandatory treatment is, according to the evidence, expensive, stigmatising and often counterproductive."

YTO Visitor holds the view that the Centre is not designed or operationalised to provide safe and effective, trauma informed care in a properly therapeutic environment, especially when young people with known vulnerabilities (such as those subjected to a YTO) are required to be located in that facility.

## Needing care but treated like a criminal

The YTO process is linked to a criminal justice model that focusses on a young person as an alleged or proven offender rather than being a victim-focussed exercise driven by a health/wellbeing paradigm. This can take a heavy emotional and stressful toll on young people potentially subject to YTO orders, due to -

- a predominantly correctional model of care within the Centre
- exposure to restrictive practices, such as isolation, use of handcuffs and recourse to the 'safe room' in response to trauma-related behaviour
- the impact of staffing crises, such as that of 2022-23 which seriously undermined the Centre's functionality.

Critically, young people under YTO Orders do not have immediate access to trauma informed medical care. For young people who are (or are alleged to be) substance dependent, the acceptable treatment standard is specialised, 24 hour, on-site medical care as is provided in withdrawal or rehabilitation services.

In fact, despite a presumptive need for '*urgent treatment to prevent harm*' to themselves or others,<sup>35</sup> they are not guaranteed access to specialised medical assessment and care at all.

The Centre **does not** function to a minimal acceptable standard as a withdrawal, detoxification or treatment facility for children and adolescents.

The Centre is not legislated or otherwise mandated, equipped or delegated to meet this expectation.

The YTO Visitor raised concerns about court-ordered treatment and its likelihood of success, with these concerns reinforced by observations of the YTO Scheme's operation in 2022-23.

Representatives of both contracted YTO service providers (OARS Community Transitions and PsychMed), indicated that little can be done should a young person refuse to engage with assessment or treatment, other than encourage them, yet the YTO Regulations anticipate the use of force, including to: " physically restrain the child for the purpose of conveying the child to a place within, or preventing the child from leaving, or returning the child to [the Youth Justice Centre]".<sup>36</sup>

Through the TCV mandate, the YTO Visitor consistently expressed concern about the human rights implications of a mandatory enforcement model in a place of detention<sup>37</sup> that does not provide a therapeutic environment. This was raised as far back as the TCV Pilot Inspection Report -

*It is unclear how a therapeutic drug treatment program would be accommodated by or sit alongside current AYTC [now Youth Justice Centre] behaviour management processes and procedures, given*

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<sup>35</sup>Government of South Australia, Attorney-General's Department, *Youth Treatment Orders* < [Youth Treatment Orders | Attorney-General's Department \(agd.sa.gov.au\)](https://www.agd.sa.gov.au/about-us/data-reports/crime-and-justice-data/youth-treatment-orders) <https://www.agd.sa.gov.au/about-us/data-reports/crime-and-justice-data/youth-treatment-orders>>.

<sup>36</sup> reg.8(1)(b), Controlled Substances (Youth Treatment Orders) Regulations 2021

<sup>37</sup> Penny Wright, TCV, *Submission to the Attorney General: Comments on the draft Controlled Substances (Youth Treatment Orders) Regulations 2021*, Guardian and TCV (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*".

*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.<sup>38</sup>*

## The system is unprepared

The YTO Visitor observed during 2022-23 that the complex nature of the YTO process, especially when dealing concurrently with a criminal matter, did not seem to be well planned for or adequately anticipated. Appropriate (or indeed child or care-centred) frameworks or jurisdictional alignments were not in evidence, contributing to a piecemeal approach to operationalisation of the YTO process and the care and wellbeing of young people.

How 2022-23 YTO proceedings were monitored or affected by the Attorney General's Department (AGD) in the context of its responsibility for operationalising the YTO process is not something about which the YTO Visitor has a capacity to speak.

The YTO Visitor did not bear witness to active monitoring (other than her own office) of the interests of an affected citizen subject to a new intrusive legal regime that ultimately could deprive them of liberty, this is worrying considering subjects for the YTO Scheme are children

Further, the YTO Visitor does not believe that adequate cross-agency, YTO specific agreements or frameworks were or are in place to assess and address the risk of additional trauma or re-traumatisation, despite considerable discussion since 2018 of the potential of the model to compromise the wellbeing and rights of children and young people.

## Mismatched Frameworks

It was well known prior to 2022 that the children and young people most likely to be captured by the YTO parameters would have complex personal, social, and criminogenic characteristics. It therefore was reasonable to expect that an enabling and sophisticated operational and legal framework would be in place to address multi-agency and multi-jurisdictional implications.

A concerning aspect is the implications of whether and how YTO proceedings and other court processes/orders (including for young people under guardianship and those held on remand while proceedings for alleged criminal charges progress) intersect. Further, whether and how these accommodate or are congruent with a young person's prior (or ongoing) engagement with welfare and health services.

Concerns arise in relation to core legislative expectations; for example, was it Parliament's intention that a YTO could be imposed on a vulnerable young person being held **unsentenced** in custody? Other factors warranting careful consideration include:

- In an adversarial legal context, what threshold should determine whether a young person has had the opportunity to, but rejected, voluntary participation in drug treatment or assessment<sup>39</sup>, and what is the essential or minimum evidence that agencies must adduce to substantiate such an evaluation?

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<sup>38</sup> 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

<sup>39</sup> The *Controlled Substances Act (1984)* s.54D

- A young person's right to participate in relevant processes with supportive advocacy.
- What systemic standards or expectations need to be met when preparing to make a YTO applications, especially to ensure that it is a measure of last resort?
- Where does the primary duty lie for coordinating and informing young people about the complex legal processes initiated, and the associated responsibility for responding to their concerns? This includes supporting a young person when faced with distressing news.
- Ensuring that YTO proceedings do not inadvertently extend a period of detention.
- Advising about and facilitating access to appropriate complaints/grievance processes.
- Implications of YTO applications and operation for access to and conditions of bail.
- Identification of 'Screening Report' standards sufficient to establish a basis for proceeding to mandatory YTO assessment or treatment.

Further analysis is required about the legislative relationship and interplay between criminal matters, *The Bail Act* (1985) and *The Controlled Substances Act* (1984).

## Lack of accessible services

The *Final Report of the South Australian Dual Involved (SADI) Project* (GCYP, June 2022) examined the experience of children and young people involved in both the child protection and youth justice systems. It identified that situations in which systemic interests took precedence over the needs of children and young people can be seen as 'system's abuse', that is, when harm is done to a young person through policies and procedures ostensibly designed to keep them safe<sup>40</sup>.

The SADI Report pointed to the significant proportion of children in detention who come from the out-of-home care sector and who often face charges associated with their placements. The report recommended development of protocols to *minimise* unnecessary contact of young people in care with the youth justice system, reduce charging young people with property offences and avoid placing them in criminogenic environments.

The YTO Visitor firmly challenges any suggestion that subjecting a young person to youth detention is in their best interests or an appropriate 'safety' option. Recourse to the YTO option simply highlights ongoing gaps in access to appropriate alcohol and drug intervention services, inadequate child safety resourcing, and in adequate availability of consistent and holistic assessments and therapeutic care options.

Throughout the earlier YTO consultation process, concerns were shared about South Australia's lack of a systemic response to drug and alcohol service support to young people that focuses on prevention, early intervention, and timely treatment<sup>41</sup>. These sectors need to be resourced and developed to ensure the system does not draw on punitive and restrictive approaches.

Just because a child is struggling in the community does not mean that we should criminalise them, incarcerate them, isolate them, and inflict further harm because adults and systems are unable to cope.

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<sup>40</sup> The Final Report of the South Australian Dual Involved (SADI) Project (June 2022), Guardian for Children and Young People & Training Centre Visitor <https://gcyp.sa.gov.au/wordpress/wp-content/uploads/2022/07/OGCYP-Final-Report-of-the-South-Australian-Dual-Involved-Project.pdf>

<sup>41</sup> (SANDAS Submission to the Youth Treatment Model of Care Public Consultation, 2021; South Australian Council of Social Services, 2019; and Youth Affairs Council of South Australia, 2021).

## Conclusion

Australian research<sup>42</sup> indicates that mandated drug treatment is ineffective for most young people. In her submission about the *Controlled Substances (Youth Treatment Orders) Amendment Bill, 2018*, the South Australian Commissioner for Children and Young People referred to a systemic review of nine studies that assessed compulsory treatment models for drug use which concluded that there was no evidence of improved outcomes and that several suggested that compulsory intervention can be 'harmful'.

The then Guardian/Training Centre Visitor, Ms Penny Wright, also drew the government's attention in early 2019 to the fact that international convention commitments and recognised good practice were being placed in jeopardy, noting that twelve United Nations entities had issued a joint statement calling on States to close compulsory drug detention and rehabilitation facilities<sup>43</sup>. She reiterated her position that the proposed Bill "does not meet international human rights standards, and international legal consensus is that compulsory drug treatment poses unjustifiable risks to the rights of those subjected to it". With some prescience, she urged that the government "give careful consideration as to how to safeguard the human rights of those young people who will be subject to its provisions".

The YTO Visitor believes that the roll out of the YTO process from November 2021 put detained young people at risk of further trauma and harm, with poor preparation for the scheme's implementation and a distinct lack of child-centred practices and policies, and a rights-based approach.

Surrounded by dozens of professionals and services – yet with no counselling treatment and trauma-informed care – it is entirely foreseeable (and a likely reality) that young people affected by this scheme will feel alone, unheard and traumatised.

As someone responsible for upholding child and human rights, it is incumbent upon me to assert that the YTO Scheme inherently, and as rolled out in 2022-23, offends core South Australian and international human rights guarantees.

It is unconscionable to allow this scheme to continue.

### The YTO Visitor recommends that

1. Part 7A (Youth Treatment Orders) of *The Controlled Substances Act* (1984) be repealed.
2. Government develop and resource adequate trauma responsive child-centred, community and evidence-based drug and alcohol initiatives based upon a through care model.

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<sup>42</sup> Pritchard. E. et. al., 'Compulsory Treatment in Australia', Australian National Council on Drugs (2007), 13 February 2008, accessed at <http://apo.org.au/node/8087> on 26 November 2018.

<sup>43</sup> Penny Wright to Minister for Health and Wellbeing, 23 April 2019: International Labour Organisation; Office of the High Commissioner for Human Rights; United Nations Development Programme; United Nations Educational, Scientific and Cultural Organisation; United Nations Population Fund; United Nations High Commissioner for Refugees; United Nations Children's Fund; United Nations Office on Drugs and Crime; United Nations Entity for Gender Equality and the Empowerment of Women; World Food Programme; World Health Organisation; and Joint United Nations Programme on HIV/AIDS. Joint Statement: Compulsory drug detention and rehabilitation centres. Geneva: UNAIDS; 2012. Available [here](#).

3. The Kurlana Tapa Youth Justice Centre is not used as a secure holding facility for children and young people who primarily have therapeutic needs for which it does not have a real and resourced capacity to address those needs, notably with respect to –
  - a. an appropriate, medically based approach to addressing drug and alcohol misuse
  - b. an appropriate, medically based approach to addressing mental health and other psychosocial or developmental issues in a trauma informed manner, and
  - c. addressing the needs of children and young people with disabilities or other developmental or psychosocial needs.

# Attachment 1

## Charter of Rights for Youths Detained in Detention Centres

### **You have the right:**

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

To be treated with respect and dignity by staff and to be kept safe while you are in the youth justice centre.

To be given a copy of and have explained to you the rules of the centre, and rights and responsibilities, in a language that you can understand.

To see a doctor or nurse whenever you need to, have your health assessed soon after you arrive, and to receive proper healthcare.

To receive help for your mental health if you need it, and to be transferred to a mental health facility for treatment if required.

To get help if you have problems with drugs or alcohol.

To have special care and protection if you are vulnerable or have special needs.

To have regular contact with your family and friends through visits and phone calls.

To get help to see a lawyer, and to talk to them privately.

To have an interpreter for formal meetings or medical examinations if you are not fluent in English.

To get information and news about what is happening in the world.

To have a say in decisions about your rehabilitation and other issues that affect you.

To participate in activities and programs that help your rehabilitation.

To continue your education, or to do training to learn useful skills for work.

To get exercise every day, and to go outside every day except in bad weather.

To have enough good food (including food that is suitable for your culture or religion, or dietary requirements), and to have drinking water available whenever you need it.

To have clean clothes, and to wear your own clothes if you go out of the centre.

Not to be punished unfairly, and only in accordance with the rules of the centre or the law.

Not to have force used against you, or restraints used on you, unless absolutely necessary, and never as a punishment.

Not to be isolated from other young people unless necessary to keep you or others safe, and never as a punishment.

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

If you are Aboriginal or Torres Strait Islander, whenever possible, to participate in cultural activities and celebrations with other Aboriginal or Torres Strait Islander people.

To make a complaint about your treatment to an independent person (like an official visitor) and to be told what happens with your complaint.

Before you leave the centre, to get help with somewhere safe to live and ongoing support.