

2023 Child Rights Progress Report on Child Justice

South Australia's progress on recommendations made
by the UN Committee on the Rights of the Child



About the CCYP

The [South Australian Commissioner for Children and Young People](#) is an independent position, established under the [Children and Young People \(Oversight and Advocacy Bodies\) Act 2016](#) (OAB Act). This legislation was introduced to the South Australian Parliament in response to the [Child Protection Systems Royal Commission 2014](#).

The Commissioner promotes and advocates for the rights, development and wellbeing of all children and young people in South Australia and seeks to change laws, policies, systems and practice to uphold children's rights.

The work of the Commissioner for Children and Young People is guided by the [United Nations Convention on the Rights of the Child](#) (UNCRC); the core international treaty established in 1989 to which Australia is a signatory. This important agreement sets out the civil, political, economic, social, and cultural rights of children around the world.

The Commissioner aims to ensure that as a part of the Australian Commonwealth, South Australia enacts its international obligations under this Convention.

Each year the Commissioner produces a series of Child Rights Progress reports measuring South Australia's progress against recommendations made by the UN Committee on the Rights of the Child (the Committee).

This year's progress reports comprise:

- Child Health
- Child Justice
- Child Protection
- Disability
- Education
- Environment
- Physical Punishment

Data reported in the data tables are the most accurate available at the time of writing.



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What the data says

Measure	Year: Data	1 year change	5 year trend	5 year assessment
Average daily number of children in SA Child Justice System: Detention	2022/23: Data not yet available 2021/22: 29 2020/21: 24 2019/20: 26 2018/19: 37 2017/18: 43	Not available	Fluctuating, decrease from base year	+ Favourable
Average daily number of children in SA Child Justice System: Community-based supervision ¹	2022/23: Data not yet available 2021/22: 151 2020/21: 139 2019/20: 181 2018/19: 144 2017/18: 165	Not available	Fluctuating, decrease from base year	+ Favourable
Number of individual children and young people admitted to Kurlana Tapa Youth Justice Centre (KTYJC) ²	2022/23: 324 2021/22: 292 2020/21: 256 2019/20: 328 2018/19: 299	Increased	Increasing	- Unfavourable
Number of Aboriginal children and young people admitted to KTYJC (% of all detainees) ³	2022/23: 179 (53.3%) 2021/22: 138 (47.3%) 2020/21: 111 (43.3%) 2019/20: 159 (48.4%) 2018/19: 151 (50.5%)	Increased	Fluctuating, increase from base year	+ Unfavourable
Number of children under a guardianship order at time of their admission to KTYJC (% of all detainees) ⁴	2022/23: 88 (27.2%) 2021/22: 83 (28.4%) 2020/21: 78 (30.4%) 2019/20: 93 (28.3%) 2018/19: 93 (31.1%) 2017/18: 77 (23.4%)	Slightly decreased	Fluctuating, increase from base year	- Unfavourable
Number of children aged 10-13 years (inclusive) at the time of their admission to KTYJC (% of all detainees) ⁵	2022/23: 39 (12.0%) 2021/22: 52 (17.8%) 2020/21: 43 (16.7%) Not reported in previous years.	Decreased	Fluctuating, decrease from base year	+ Favourable
Number of children with a known diagnosed disability in KTYJC (% of all detainees)*	2022/23: 85 (25.3%)	Not previously collected	Not previously collected	Not previously collected
Average daily no. of children with a known diagnosed disability in KTYJC (% of daily population of all detainees) ⁶	2022/23: No number provided (59.5%)			

* The Department of Human Services does not provide data on disability in relation to KTYJC. The Training Centre Visitor started collecting data on disability in 2022 which is used here, although it is likely to be an underestimate.⁷

Areas of concern include:

- High use of restraints and the use of the prone position, especially on children with a disability, girls, and children under 13 years of age
- Failure to implement and comply with the basic requirements of the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT).
- Failure to refresh the Young Offenders Act Regulations to make them consistent with international law and the latest child development and trauma-informed research.
- The overrepresentation of vulnerable children in the criminal justice system, including children with a disability, children in care and Aboriginal children.
- The significant proportion of children on remand being detained in Kurlana Tapa.
- Lack of commitment by the state government to develop a roadmap to raise the minimum age of criminal responsibility.
- Lack of long term, consistent resourcing into diversionary practices.
- Lowest level of police diversion in the last 10 years and reports of children being remanded in police cells alongside adults due to denial of police bail.

Background

The UN Convention on the Rights of the Child (UNCRC) was the first international Convention to acknowledge that children have rights and that these rights should be protected. Australia ratified the UNCRC in 1990 and South Australia's *Children and Young People (Oversight and Advocacy Bodies) Act 2016* (OAB Act) states that all government authorities must seek to give effect to the UNCRC. The Convention sets minimum standards and obligations for the protection of children's and young people's rights, including their rights to have access to justice, education, health care and social services. All children have the right to have a say on all matters that affect them and for their views to be taken seriously. In making decisions about children their best interests should be the primary concern, as well as the right to be safe and to be free from discrimination.

Every five years, the Australian Government reports to the UNCRC Committee to explain how Australia is fulfilling its obligations in relation to child rights. In response to Australia's fifth and sixth periodic reports, the Committee highlighted key areas of concern and made recommendations to ensure governments at both the Federal and State levels fulfil their obligations under the Convention. One of the Committee's main areas of concern requiring urgent attention is child justice.

Children's rights in relation to Child Justice

According to the UNCRC, children who come into contact with the criminal justice system have the same rights as all children. This includes the right to be kept safe, to be heard, and to be treated in a way that promotes their dignity and worth.

The UNCRC also provides extra protections for children who enter the youth justice system. These include:

- an emphasis on prevention, rehabilitation and reintegration of young offenders over punishment;
- using detention as a measure of last resort and for the shortest possible period; and
- setting a minimum age of criminal responsibility to the recommended 14 years.⁸

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) state that non-institutional treatment should always be used in preference to institutional treatment as 'the many adverse influences on an individual that seem unavoidable within any institutional setting cannot be outbalanced by treatment efforts' (Rule 19).⁹ The minimum standards include:

- Proceedings being conducive to the best interests of the juvenile and being conducted in an atmosphere of understanding, to allow the juvenile to participate and to express themselves freely (Rule 14.2);

- The well-being of the juvenile should be the guiding factor in the consideration of their case (Rule 17.1);
- No child should be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Rule 17.2).
- Restrictions on the personal liberty of the juvenile should be imposed only after careful consideration (17.1(b)).

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (United Nation Rules) states:

- That detention should only be used as a last resort;
- Children under arrest or awaiting trial should be presumed innocent and treated as such. This includes making all efforts to prevent detention before trial;
- Children deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity; and
- There should be active efforts to ensure children in detention have adequate communication and connection with their family and community.¹⁰

The Child Justice System in South Australia

Children who are in contact with the law are treated differently to adults in the legal system with diversion being a key goal.

The Department of Human Services (DHS) oversees and manages children who are placed in detention or who are undertaking community service. It also manages diversionary services to keep children out of the justice system.

There is a separate criminal court for children (the Youth Court) and a separate facility for children who are detained (Kurlana Tapa Youth Justice Centre). Children who are on remand are often detained in the same facility with children who have been sentenced.

The *Young Offenders Act 1993* (SA) and the *Youth Justice Administration Act 2016* (SA) are the key pieces of legislation in relation to child justice. The *Young Offenders Act* outlines the three tiers of South Australia's child justice system, including two tiers of pre-court diversion: formal and informal police caution, and family conference. These apply where a young person is a first offender or relatively low-level offender and admits to the alleged offending.

The criminal jurisdiction of the Youth Court deals with charges against young people between the ages of 10 and 18 years at the time of the alleged offence. The Youth Court hears and determines matters when charges have been laid, including matters that are disputed or related to more serious offences.

The Youth Court has discretion to refer matters back to be dealt with by family conference or formal police caution.

The *Youth Justice Administration Act 2016* (SA) allows for the establishment of 'training centres' as 'necessary or desirable for the care, rehabilitation, detention, training or treatment of youths'. The objects and principles of the Act include:

- to provide for the safe, humane and secure management of youths held in training centres in the State;
- to provide for appropriate programs for youths who are in detention or under supervision in the community;
- to follow, where practicable, international and national requirements or guidelines relating to the detention of youths; and
- to promote the rehabilitation of youths by providing them with the care, correction and guidance necessary for their development into responsible members of the community and the proper realisation of their potential.

DHS Youth Justice's current strategic agenda is focused on strengthening a therapeutic, trauma-informed and individualised approach to service delivery. This includes developing a Youth Justice Practice Framework, an Enhanced Support Unit service model for the new accommodation unit under construction at Kurlana Tapa, a youth engagement model, and undertaking a review of the case management model. There is also a focus on workforce development at Kurlana Tapa through its Recruitment, Training and Retention Strategy.

The Kurlana Tapa Youth Justice Centre (Kurlana Tapa) is the main place of detention for children in South Australia and is currently being extended to permanently consolidate the provision of youth custodial services in one campus. This will mean children and young people in custody are not segregated by sex.

The Training Centre Visitor (TCV) was legislated under the *Youth Justice Administration Act 2016*. The TCV's main function is to promote the safety and wellbeing of children detained in Kurlana Tapa by talking to them about their rights, promoting their best interests, advocating for children in the centre to resolve issues, inspecting the centre, and investigating systemic reforms or any other matter referred to by the Minister.

Some welcome developments in 2023 include:

- Selection of DHS Youth Justice Services as the inaugural Australian youth justice organisation to provide the Reframe Training program, an evidence-based program specifically designed to support young people in custody with Foetal Alcohol Spectrum Disorder (FASD) and other neuro disabilities.¹¹

- Implementation of the Enhanced Support Team as an ongoing service at Kurlana Tapa to provide behaviour support plans and clinical advice to support the care of young people exhibiting significant behaviours of concern.
- Establishment of the new Aboriginal Practice and Services Team to strengthen engagement and partnerships with Aboriginal people, communities and organisations to support culturally responsive services.
- Continuation of the child diversion program for Aboriginal children and young people aged 10 to 13 years in contact with the criminal justice system.
- Commencement of a two-year trial of the Youth Aboriginal Community Court Adelaide (YACCA), which aims to divert young Aboriginal children and young people.
- Extended mental health and health services for children in Kurlana Tapa.

South Australia’s progress on the latest recommendations made by the UN Committee in relation to child justice:



No evidence that the UN Committee’s recommendation is being addressed



Some evidence that the UN Committee’s recommendation is being addressed



Clear evidence that the UN Committee’s recommendation is being addressed

Current Status

Explicitly prohibit the use of isolation and force, including physical restraints, as a means of coercion/discipline of children under supervision.

The behaviour management scheme in Kurlana Tapa is based on a model where incentives are available as a child progresses (or regresses) through ‘phase’ levels. The rewards are based on staff assessments of a child’s personal interactions, hygiene, respect shown to staff, and compliance with rules. Low scores result in fewer privileges and more restrictions. Continual professional education in trauma informed practice and disability is needed to ensure that children are not punished for behaviour that arises from a child’s trauma, mental health or disability, and is misunderstood.

Isolation and solitary confinement

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (United Nation Rules) explicitly prohibit isolation and solitary confinement of children as a disciplinary measure.¹² Isolation and solitary confinement are issues repeatedly raised by children in Kurlana Tapa.¹³

The Commissioner remains concerned about:

- Conflicting reports of the length of time children normally spend in their rooms: DHS reports them spending between 10–14 hours out of their rooms, compared to the TCV review of routines data calculating that the average period was less than 10 hours. The TCV confirmed that there was a day where many children were locked in their rooms for 22 hours or more.¹⁴
- 61.2% of ‘incidents’ in 2022–23 were as a result of isolation or modified routines. Of these incidents, 47.3% involved children engaging in self-harming behaviours.¹⁵

Solitary confinement is inconsistent with international law as well as the principles and objects in South Australian legislation. It is the Commissioner's position that detention should only be used as a last resort and that active efforts should be made to keep children who have been arrested, but not sentenced out of detention and kept safely in their community, connected to family and education. If staff shortages result in children being routinely locked in their rooms in Kurlana Tapa, children on remand should be released, including those under the care and protection of the Chief Executive of the Department for Child Protection.

The use of physical and mechanical restraints

The Commissioner commends the discontinuation of spit hoods but remains concerned about the use of other physical or mechanical restraints. The use of restraints is amongst the most common complaints made by children in Kurlana Tapa. Issues highlighted by the TCV:

- 72.4% of young people involved in incidents were physically restrained and 48% were restrained to prone (forcing a person into a face-down position). The prone position can cause serious injury and even suffocation. Despite legislative requirements that require children to be assessed by a medical practitioner following any use of force, records suggest health assessments took place in only a third (33.4%) of relevant incidents assessed.¹⁶
- Physical restraint was used in all 16 reported incidents involving 13-year-olds. This is despite the evidence that MAYBO Restraint techniques are not always effective on smaller bodies and could in fact cause harm, including increased risk of head injury and damage to growing bones.¹⁷
- The disproportionate use of the prone restraint on children with a disability, and girls and young women.¹⁸

Some welcome developments in 2023 include:

- DHS commencing a new data collection method on individual children's movements, indicating how long they are locked in their rooms. This is a step in the right direction to address issues of isolation. TCV collected and analysed the data between January and June 2023.
 - Reframe Training undertaken with all staff at Kurlana Tapa, which educates frontline professionals to recognise and understand neuro-disability in children and young people, reframe their behaviour, and respond appropriately to their needs.
 - Recruitment of new staff at Kurlana Tapa and implementation of a retention strategy, which has been successful in reducing 'lock down' periods.¹⁹
- The Commissioner will be monitoring any improvements in incidences and children's access to programs and services in subsequent progress reports.

■ **No evidence** that the UN Committee's recommendation is being addressed

■ **Some evidence** that the UN Committee's recommendation is being addressed

■ **Clear evidence** that the UN Committee's recommendation is being addressed

Promptly investigate all cases of abuse and maltreatment of children in detention, and adequately sanction the perpetrators.



In respect to preventing and reporting abuse and torture, Australia missed its deadline to fully implement the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT).²⁰ The Training Centre Visitor is the National Preventative Mechanism (NPM) for children in Kurlana Tapa, but this role has not been extended to other places of detention (contrary to OPCAT requirements). Australia has been criticised for not complying with basic OPCAT commitments and the UN Sub Committee on the Prevention of Torture (SPT) cancelled its visit to Australia in February 2023 as a result.²¹

It is critical that governments resource National Preventive Mechanisms (NPMs) so that they are able to fully and effectively carry out their functions and powers under OPCAT and prevent harm to children and young people.²² At the 28 April 2023 Standing Council on Attorneys General (SCAG) meeting, all participants affirmed their commitment to continue to work together towards full implementation of OPCAT obligations.²³ However, it is the South Australian government's position that funding to implement OPCAT is a matter for the Commonwealth Government.²⁴

As outlined in the previous sections, major concerns include children being restrained and locked in their rooms, and the overuse of restraint as a de-escalation technique.

The Charter of Rights for Children and Young People Detained in Youth Justice Facilities states that children have a right to make a complaint about their treatment to an independent person.²⁵ This could be the Training Centre Visitor, their lawyer or other advocate. However, children and young people in Kurlana Tapa are often not in a position to report abuse due to the power imbalance between children and adults.

From the data provided by TCV, there appears to be a lack of timely feedback and support for children who make a complaint, especially when it is made directly to Kurlana Tapa. Further, the TCV audit found inconsistent record keeping, including:

- 384 incidents where incident files should have been created in accordance with the Centre's operational orders, meaning the total number of incidents should be 791 rather than 407.²⁶
- Inconsistent use of body worn cameras during incidents.
- Medical records not being held on site, making it difficult to know whether children were receiving appropriate health services.
- Of the complaints/feedback forms to the Centre submitted by children, Kurlana Tapa responded to only 30% of these complaints and only through verbal feedback. This is despite the relevant procedure requiring all children lodging a complaint to have a response in writing.
- Resident Incident Comment Sheets (RICS) must be provided to children by Centre staff after a formal record of an incident. The TCV audit identified that RICS were only provided in 193 incidents, less than half (47.4%) of all incidents requiring a formal report. The average completion rate for these RICS was 9.5 days, and no children received responses about any concerns raised.²⁷

In 2022–23 the TCV was asked to assist in issues raised by children at the Centre on 163 different occasions, resulting in 110 opened files. This was an increase from the previous year of 63 inquiries. The top three issues raised by children were issues with staff (19.1%), cultural support needs and discrimination (12.2%), and access to/contact with community (8.7%).

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

Require decision-makers operating within child justice to consider what is in the best interests of the child.



South Australia's *Youth Justice Administration Act 2016* requires those administering the Act to give consideration 'at all times to promoting the wellbeing and best interests' of children. The *Young Offenders Act 1993* (SA) does not refer to the best interests of the child and no amendments were made to the refreshed Young Offenders Act Regulations in 2023 – a lost opportunity to bring the regulations in line with international law and the latest research on child justice.

Despite the legislative mandate in the *Youth Justice Administration Act*, it does not appear in the best interests of vulnerable children to be overrepresented in the child justice system. Placing children who require a public health and trauma informed response in detention is not in their best interests.

The following issues and practices appear to be contrary to children's best interests and are of concern:

- Children facing extended periods of remand reportedly due to a lack of alternative accommodation options.
- Inconsistent and limited access to education in Kurlana Tapa. A TCV audit of records found that over the financial year, each unit spent an average of only two hours and 45 minutes in class each day.²⁸
- Lack of records indicating health assessments occur after incidents involving use of restraints or the safe room.
- Extended periods of isolation and time in cells due to staff shortages or modified routines.
- Aboriginal children overrepresented in the child justice system, both in community based supervision (86.9 per 10,000 Aboriginal children compared to 5.1 per 10,000 for non-Aboriginal children)²⁹ and in detention, with over half of the children in Kurlana Tapa identifying as Aboriginal.³⁰

Characteristics of the average daily detention population include:

- 35.6% were under guardianship in the care system;
- 59.5% had a known, diagnosed disability;
- 54.7% were Aboriginal; and
- 19.5% were girls or young women.

In 2022–23, 324 individuals were detained, some on multiple occasions. On an average day, there were 32.3 young people detained, with 90.4% of the Centre population held on remand.³¹ This proportion is concerning as young people on remand have not been found guilty of alleged any criminal charges.³²

Whilst new initiatives have progressed in 2023 to improve responses to young people with disability-related needs, there are significant barriers to diagnosis and supports for young people with disability in detention:

- Some NDIS supports are inaccessible when children are in detention due to issues relating to interactions between state and Commonwealth provision and access to the Centre for service providers.
- The overrepresentation of children with disability being admitted to the Protective Actions Unit (between 53.0% to 97.7% per day), which is significantly higher than the average daily population.³³

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

The Training Centre Visitor has a statutory function to promote the best interests of young people in detention. Considering a child's best interests requires respect for children's right to be heard. Consistent with the Charter of Rights for Youths Detained in Youth Justice Facilities, this includes ensuring mechanisms through which young people can advocate for themselves and others, make a complaint about their treatment and be told what happens with the complaint.

The Training Centre Visitor 2022–23 Annual Report notes the following concerns about the mechanisms in place for young people's voices to be heard in Kurlana Tapa:

- Formal feedback forms are underutilised and not prioritised or taken seriously.
- Limitations of the Youth Advisory Committee, including that it is dominated by adults. There are currently 5 children representing each unit in Kurlana Tapa on the Committee. This is contrasted with the adults on the committee, including the Accommodation Managers of each unit, Supervisor of Assessment, Case Coordinator, Senior Programs Practitioner, Training Compliance and Welfare Manager and Senior Aboriginal Advisor.
- Inadequate (if any) responses to young people who complete detailed Resident Incident Comment Sheets (RICS) after involvement in an incident.³⁴

There have been some positive developments. DHS is developing a Communities and Justice Youth Engagement Model, and that Kurlana Tapa is working with the TCV to implement a phone line to support those who face barriers to using feedback forms.

Since the Youth Justice State Plan 2020–2023 concluded in June 2022, there has been no public reporting or evaluation of the Plan's implementation. Nevertheless, the Communities and Justice directorate within DHS has indicated that it is prioritising the development and implementation of:

- The Youth Justice Practice Framework 'to support consistent and holistic practice across youth justice services';³⁵
- An Enhanced Support Unit service model for the new 12-bed accommodation unit that aims to improve responses to children and young people at Kurlana Tapa, including those with complex and disability related needs;
- Stronger partnerships to support culturally responsive services for Aboriginal children in the youth justice system, including through the work of the Aboriginal Practice and Services team; and
- A new Case Management Model to strengthen trauma informed approaches, developed in partnership with researchers from the University of Adelaide.³⁶

Other positive developments include a Child and Adolescent Mental Health Service commencing a Saturday service at Kurlana Tapa. This will include a Mental Health Clinician for 8 hours and Aboriginal Consultant for 4 hours. The Women's and Children's Hospital is also installing technology in the centre to allow for consultations with hospital-based staff after hours.

Future progress reports will monitor the extent to which these developments lead to greater consideration of children's best interests.

■ **No evidence** that the UN Committee's recommendation is being addressed

■ **Some evidence** that the UN Committee's recommendation is being addressed

■ **Clear evidence** that the UN Committee's recommendation is being addressed

Raise the minimum age of criminal responsibility to an internationally accepted level and make it conform with the recommended minimum age of 14 years.



Research shows that the earlier children enter the justice system the higher the risk that they will become entrenched in the criminal justice system and have continued interaction with the system.³⁷ South Australian research using the SA Better Evidence Outcomes Linked data found that children with early contact with the justice system, compared to children with late contact, experienced more serious and extended periods in the justice system, were more disadvantaged, had more serious child protection contact by age 10, and experienced mental health related hospitalisations from ages 12–18.³⁸

In 2022–23, there were 39 children under the age of 14 years admitted to the Training Centre. The average daily population for this group was 0.8 young people (2.5% of the total population). Two of these children were only 10 and in primary school, though both were there for no longer than a day.³⁹

The rate of 10 to 13 year olds undertaking community service is lower than the rate of 10 to 13 year olds in detention. In 2021–22 there were 4.9 children aged 10–13 years per 10,000 undertaking community service compared to 5.8 per 10,000 in detention.⁴⁰ More should be done to ensure this age group is kept out of detention and either given community service or diverted.

There continues to be little movement on raising the minimum age of criminal responsibility in South Australia or nationally. On 30 November 2023 an open letter was sent to all Attorneys-General calling for them to urgently raise the age to 14 years with no exceptions. It was signed by over 100 Aboriginal and Torres Strait Islander, health and medical, legal, social and community services providers, and their respective peak bodies, from every state and territory in Australia. There has been no public response.⁴¹

Australian states and territories do not have a unified position on raising the minimum age of criminal responsibility across states and territories.⁴² The Australian Capital Territory is the only jurisdiction that has committed to raising the age to 14 years in law, with Northern Territory increasing it to 12 years of age.

In 2023, SCAG released the Age of Criminal Responsibility Working Group's Report which sets out principles to help guide jurisdictions when considering reforms. It includes options to build on systems and services, as well as alternative pathways. This report is intended to 'provide public confidence that community safety and victims' rights will continue to be protected under a raised MACR'.⁴³

A public health approach is required to keep children safe, connected to school, extended families and community, and to prevent children moving into the justice system. This should include more intensive and active efforts and supports for children who do breach the law, so they have access to diversionary and restorative programs, re-engaging them with community and learning prosocial behaviours.

- **No evidence** that the UN Committee's recommendation is being addressed
- **Some evidence** that the UN Committee's recommendation is being addressed
- **Clear evidence** that the UN Committee's recommendation is being addressed

Actively promote non-judicial measures, such as diversion, mediation and counselling for children accused of criminal offences, and where possible the use of non-custodial sentences, such as probation or community service.



The Commissioner remains concerned about resourcing, and evaluation of alternative approaches to diversionary services in South Australia for children and young people, and recommends that it be guided by the latest report from the Age of Criminal Responsibility Working Group.⁴⁴

Child diversions by police in South Australia are at their lowest rate in 10 years, with 28.7% of alleged child 'offenders' being diverted in 2021/22 compared to 42.8% in 2012/13.⁴⁵ The rates are higher for Aboriginal children and young people who are alleged to have offended, with only 19.6% of alleged Aboriginal offenders being diverted away from court in 2021/22 (compared to 32.6% for non-Aboriginal children), compared to 29.9% (49.1% for non-Aboriginal children) in 2012/13.

There are reports of children being remanded in police cells alongside adults due to denial of police bail. Although there was an opportunity for the Young Offenders Regulations to be amended to ensure children and young people across the state are not remanded alongside adults and feedback from stakeholders supported this, no amendments were made. All children remanded in police cells in Whyalla, Murpurija, Yalata, Mimili and Ceduna were Aboriginal.⁴⁶

The overrepresentation of children in care in Kurlana Tapa and the justice system is also a concern with a lack of progress by DCP, SAPOL and the courts to address the criminalisation of children in care for behaviour that would not result in police intervention within a home environment. This is supported by the Guardian for Children and Young People through Final Report of the South Australian Dual Involved Project.

Some welcome developments during the year include:

- The Youth Court received funding to pilot the Youth Aboriginal Community Court Adelaide (YACCA) for two years. It includes funding for an additional Aboriginal Youth Justice Officer, payments to Elders and Respected persons, audio transcription, ECMS enhancements, program evaluation and the engagement of a service provider. Expenditure of up to \$716,250 for a culturally responsive program that aims to disrupt escalation points in a young person's offending, address trauma and criminogenic needs, implement protective factors and divert young people from further offending. The first sitting of the court was held in November 2023.
- The Child Diversion Program was expanded and funded for a further two years. This program seeks to divert Aboriginal children ages 10–13 years charged with a minor offence through providing short-term accommodation for the child to be placed back with family/kin alongside wrap around case management services. The aim is to keep children on remand out of the custodial environment.⁴⁷

There has been a steady increase in the number of children being diverted to family conferencing, from 1,404 in 2020/21 to 1,889 in 2022/23. The family conferencing team works with the young person, their parents, guardians, family and friends, the victim of the offence and their supporters and a police youth officer to divert the young person out of the justice system. It usually requires the young people to undertake, such as pay compensation, carry out community services, apologise to the victim or anything else that is appropriate. Although the number has increased, the real recurrent expenditure for these services has remained steady from \$1.9 million in 2014/15 to \$1.8 million in 2021/22 meaning more has to be done with less resources.⁴⁸

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Provide children in conflict with the law, with information about their rights and how to report abuses.



During the year, there was a lost opportunity to refresh the Young Offenders Act Regulations to ensure it was up to date with international law and latest research. Despite feedback from many stakeholders, the Regulations continue to stipulate that children's rights can only be given to them in writing. This does not recognise that children in the child justice system have many learning challenges and may find it difficult to read these rights, let alone understand what is being said, even if it is simple language.

Children have the same rights as adults within the justice system. This includes the right to a lawyer and not being required to answer questions. When children are arrested before questioning police should do their best to ensure a parent or guardian is present.⁴⁹ However, many children do not understand these rights and often do not have the capacity to ensure these rights are being upheld.

Children in Kurlana Tapa have rights relevant to their particular circumstances. These are set out in the Charter of Rights for Youths Detained in Training Centres (Charter of Rights). Core rights in the Charter of Rights include being treated with dignity, being able to make a complaint, to have access to key services such as health and education, to spend time outside and to have contact with family and community members.⁵⁰

Children in detention can provide feedback to Kurlana Tapa in two ways:

- Through an internal feedback/complaint form: The Training Centre Visitor's audit of these complaints found that 59.4% of these complaints related to staff, 31.7% related to the quality or choice of food and 23.3% related to the conditions of their unit. Kurlana Tapa responded to 30% of these complaints and only through verbal feedback. This is despite the relevant procedure requiring all children lodging a complaint to have a response in writing.
- Resident Incident Comment Sheets (RICS), which the staff at the Centre must provide to children after a formal record of an incident. The TCV audit identified that RICS were only completed in 193 incidents, less than half of all incidents requiring a formal report. The average completion rate for these RICS was 9.5 days and the children involved did not receive a response about any of the concerns raised.

During the year the following has been implemented to assist children within in the system, including:

- The provision of a telephone service for children in custody, enabling children to talk to their lawyers, both before and after any hearing.
- The Youth Court developing a draft practice direction to transfer all overnight arrests of children throughout the state away from adult courts to the Adelaide Youth Court.
- Publishing a range of easy-English, child friendly documents to improve accessibility for children and young people in Kurlana Tapa.⁵¹

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- **Clear evidence** that the UN Committee's recommendation is being addressed

Endnotes

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