

# Australian High Court rules tear-gassed youth detainees entitled to damages

By Martin Scott  
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The High Court of Australia ruled early this month that four young men who were tear gassed at Darwin's Don Dale youth detention centre in 2014 are entitled to compensation.

The decision overturned Northern Territory Supreme Court rulings that the use of CS gas (commonly referred to as tear gas) on detained youths did not constitute "unlawful battery."

While CS gas was banned in war by the Chemical Weapons Convention of 1997, it is commonly used to suppress dissent, both in prisons and on the streets. It causes a strong burning sensation in the eyes and on the skin, restricted breathing, and in high doses, severe coughing and vomiting. In some cases, symptoms can persist for months, or result in permanent scarring.

While one of the five judges found that the use of tear gas on children was within the powers of corrections officers, he agreed that the four victims bringing the appeal were entitled to damages.

The High Court also ordered the Northern Territory (NT) government to pay the appellants' court costs for all related proceedings over the years since the incident.

The four former inmates were previously awarded damages of between \$12,000 and \$17,000 for their treatment subsequent to the gassing, but were ordered to pay the government's legal costs, which would have exceeded the compensation they were to be paid.

The young men were sprayed with tear gas while confined in tiny cells inside Don Dale's Behavioural Management Unit (BMU) during a "violent incident" on August 21, 2014. Two of the four boys were playing cards at the time.

The target of the gas was a 14-year-old boy who had slipped out of his cell after 15 days of solitary confinement. The boy had pleaded with guards to be allowed outside, before attempting to beat down another door with a broken light fitting.

An officer from the neighbouring adult prison sprayed ten bursts of tear gas from behind the locked door, filling the cell block with the toxic gas for almost eight minutes. The

boys were then handcuffed, hauled outside and washed down with firehoses.

After the incident, the Don Dale centre was relocated to a former adult prison, which had been abandoned because it was riddled with asbestos and "only fit for the bulldozer."

The incident was the subject of a 2016 report on the Australian Broadcasting Corporation's (ABC) "Four Corners" program, which exposed the brutal treatment of child detainees at the facility.

In addition to the use of tear gas, the program featured footage of other assaults carried out at Don Dale, including the use of leg shackles and "spit hoods" that covered a detainee's entire head.

In an effort to shut down public outrage over the footage, a federal Royal Commission was hastily ordered into the treatment of detained children in the NT. Such inquiries are customarily employed to suppress dissent and disguise political responsibility.

Authorities at every level of government feigned ignorance of the horrific conditions at Don Dale, but a 2015 report by former NT Children's Commissioner Dr Howard Bath showed that the use of restraints at the facility had been widely known since at least August 2012.

The Royal Commission's final report, released in March 2018, called for the relocated Don Dale facility to be closed within three months. More than two years later, construction of a new youth detention centre has not begun.

The site for the new facility selected by the NT Labor government is just 300 metres away from the Darwin Correctional Precinct, despite the Royal Commission's specific recommendation that the new centre should not be built near an adult prison.

The chosen site is 30 kilometres from Darwin, and, unlike the present facility, is not accessible by public transport, making family visits impractical and increasing the isolation of the young detainees.

An earlier plan to build the new youth detention centre near the current Don Dale site was scrapped after a developer complained that it would lower the value of a new

residential and commercial precinct nearby.

While more than \$70 million will be spent on the new facility and renovations to another in Alice Springs, the Labor government's program "to divert young people from crime and stop future offending" receives less than \$2.5 million per year.

The Royal Commission also recommended increasing the age of criminal responsibility to 12, and the minimum age of detention to 14. Australian governments have so far refused to do so, meaning children as young as 10 can still be detained.

Each year, around 600 children under 14 are incarcerated in Australia. More than half are indigenous.

Any suggestion that minor reforms introduced since the Royal Commission have changed the situation for detained youth in the NT has been proven false.

In November 2018, "Territory Response Group" riot police stormed Don Dale with an armoured vehicle after an alleged riot.

CCTV footage obtained months later by the ABC revealed the aggressive character of the response. Police dressed in military fatigues aimed assault rifles at unarmed children, and tear gas was again deployed.

A relative of one of the detainees told reporters at the time: "We're born poor, we die poor. These kids are institutionalised from birth... We need industry out there, we need jobs and opportunities for these young kids. We don't need to be locking them away here.

"We should be building TAFE centres and things like that so kids can get educated. And what are we doing? Nothing. Because the CLP [Country Liberal Party], the ALP [Australian Labor Party], and every other political party are just the same."

These comments help place the horrific treatment of the NT's detained children in the context of much broader class oppression.

These child prisoners are almost exclusively Aboriginal, the most incarcerated indigenous population in the world. Across Australia, 2.48 percent of Aboriginal people are held in custody, higher even than the 2.3 percent figure for African Americans in the US.

This cannot be explained merely as a matter of racism within the judicial system. The incarceration rate for all Australians has increased rapidly since the mid-1980s, despite a fall in the serious crime rate over the same period.

This coincides with the slashing of jobs, wages, and social services carried out by the Hawke and Keating Labor governments, and the closure of mental health facilities by Labor and Liberal state administrations around the country. Mental illness, drug addiction, unemployment, homelessness, and low levels of education are all

disproportionately common among people in custody.

Aboriginal people are among the most oppressed layers in Australian society. Many live in abject poverty, with high unemployment, limited access to health, education, and other basic services.

The response of Labor and Liberal governments over decades has been to target the symptoms of these conditions—addiction, truancy, family breakdown, and crimes of desperation—with welfare quarantining, criminalisation of alcohol, excessive policing, and mandatory sentencing.

The children currently in detention in the NT are the product of Canberra's infamous "Northern Territory Intervention," having lived their entire conscious lives since it was introduced by the Howard Coalition government in 2007, and extended by the following Labor government.

Welfare quarantining and mandatory sentencing have since been extended to poor working-class areas throughout the country.

In recent weeks, more than 100,000 Australian workers and young people have defied government and police suppression to protest the 432 Aboriginal deaths in custody since 1991.

Despite the multi-ethnic character of these rallies, organisers have sought to present the issue as solely one of race. The refusal to discuss the class questions at play ultimately serves the ruling elite by dividing the only force capable of bringing about equality and justice for Aboriginal people, the working class.

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