

New NT Government scheme to cap future compensation claims

Last week, the NT Government tabled legislation which will severely limit the compensation paid to victims of abuse in the NT's youth detention centres and prisons. The intent of this legislation is to reduce the amount of money that the government would be required to pay to successful claims.

One of this government's favourite slogans is 'putting victims first'. Unfortunately, this does not refer to its own victims. In recent years, it has passed legislation to increasingly criminalise and institutionalise Aboriginal kids. This systemic oppression, combined with 'putting victims first' messaging, sets the parameters for who can be considered a victim. And Aboriginal kids are well and truly excluded.

The proposed legislation will deny victims of the NT's youth detention system adequate compensation for their abuse. Instead of fixing the broken system, the government wants to avoid being held accountable for its cruel treatment of children in its care.

The timeline of abuse in Don Dale goes back as early as 2006 and continues up to last week's proposed legislation.

2006–2017: mistreatment in NT youth detention centres

The period investigated by the Royal Commission into the Protection and Detention of Children in the Northern Territory spanned 2006–2017. Children who were mistreated in Don Dale and the Alice Springs detention centre during this period are now eligible for compensation under a \$35 million class action against the government.

2017: the Royal Commission's Final Report

From 2016 to 2017, the Royal Commission investigated the NT youth justice system, including the abuse of detainees in Don Dale and Alice Springs Youth Detention Centre. The Royal Commission's final report made 227 recommendations for reform, which the government accepted 'in principle' — including closing Don Dale.

2018–2021: progress stalls

In this period, the government began to make some legislative changes in line with the Royal Commission's recommendations. Plans were made to bulldoze Don Dale and replace it with a new facility. However, concerns soon mounted over the lack of progress towards closing the centre and an unwillingness from the government to carry out more substantial legislative reform, including raising the age of criminal responsibility, and failure to invest in programs and initiatives to keep kids out of jail.

May 2021: changes to bail laws

In May last year, the government passed changes to bail laws that made it harder for kids to access diversionary programs and get bail. Since the passing of this bill, the number of children in youth detention has doubled and there has been a steep rise in children aged 10–14 incarcerated in Don Dale and Alice Springs Youth Detention Facilities.

Don Dale (which still lacks a therapeutic framework and effective behaviour management model) was chronically understaffed and ill-equipped for this increase in numbers. Staff continued to rely on lockdowns, isolation and the use of force to manage behaviour.

July 2021: The NT Government reaches a \$35 million settlement with former detainees

The NT government agreed to pay \$35 million in damages to the children it mistreated over a period of more than ten years between 2006 and 2017.

May 2022 – NT Government proposes a scheme

Last week, the government proposed a scheme to cap the amount of compensation available to victims of mistreatment in prisons and detention centres. Much of the mistreatment still occurring in Don Dale, such as the use of excessive force and extended periods of isolation, is the subject of these limits on compensation.

A limit also applies to series of incidents that occur at approximately the same time, or over a period of time by the same group of people—such as correctional staff. This rules-out compensation for reoccurring and ongoing abuse, like that which was documented by the Royal Commission in the period covered by the \$35 million payout.

How the new laws will affect children mistreated in youth detention in 2022

The government claims that the scheme will not limit damages to those who are ‘genuinely injured’ or have suffered child abuse. A ‘genuine injury’ is defined as one which results in a permanent impairment. Many disabled people can attest that is no small feat to prove. ‘Genuine injury’ does not include, for example, harm inflicted by extended periods of isolation—though its risks of lasting harm, especially for children’s developing brains, are well known.

Likewise, ‘child abuse’ is defined as sexual abuse and serious physical abuse. It does not include false imprisonment, isolation, assault, or battery—such as the unlawful use of force, spit hoods and restraint chairs.

In short, the government plans to cap compensation for the abuses for which Don Dale is most notorious.

Civil claims add insult to injury

The government points out that, at the time of committing an offence and being imprisoned, offenders often have no assets or income for which plaintiffs can sue. Under the proposed legislation, when a detainee is abused in detention, any compensation to which they are entitled must first be offered to victims of their previous crimes. The payment will be frozen until all potential claimants have been tracked down, “made aware of the offender’s new circumstances” and given the opportunity to make claims on the funds.

Any of the victim’s outstanding payments, debts and fines will also be deducted from their compensation. This scheme will effectively prevent many victims of abuse in detention centres and prisons from ever receiving compensation for that abuse.

Get involved

To protest against this, and the ongoing incarceration of children as young as 10 in Don Dale, please join us at our weekly rallies on Fridays and at our upcoming events to let the government know that mistreating treating children won’t be tolerated.

Keep up to date with our actions and news on Instagram (@close.don.dale) and facebook (www.facebook.com/close.don.dale).

To learn more about Don Dale and youth detention in the NT visit our website (www.closedondale.au).