

Indigenous 11-year-old released from Don Dale detention centre as lawyer slams incarceration of children

Lawyer calls for 'lawful, peaceful civil disobedience' in response to 'disgraceful' locking up of children around the country



The Indigenous child's barrister has called the incarceration of children around Australia and in Don Dale 'an absurdity and obscenity'.

Stephanie Convery
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An 11-year-old child has been granted bail after being held on remand in the Northern Territory's infamous Don Dale detention centre, sparking renewed calls to raise the age of criminal responsibility.

The Indigenous child was granted bail on Tuesday with his case adjourned to 12 and 13 April, where the issue of his criminal capacity is to be considered in view of his young age. He was one of 35 Indigenous children held in Don Dale, which is located in the former adult prison, Berrimah.

The 2017 Northern Territory royal commission into the protection and detention of children recommended that Don Dale be permanently closed. That did not happen and more children are incarcerated in the Darwin facility than there have ever been.

In an interview with Guardian Australia, the child's barrister, John B Lawrence SC, spoke out against the continued incarceration of children around the country, particularly in Don Dale.

"The racist component of Australia's history explains everything here, to be honest. We could talk to the cows come home about how abhorrent this is and how disgraceful it is, and both continue to get worse. But how do we fix it?" he said.

Lawrence, a former president of the Northern Territory Bar Association and former president of the Criminal Lawyers Association, said he believed "the only means available" to make positive change now was "lawful, peaceful civil disobedience".

"It's very clear to me now that the only way that any progress can be achieved is by people to now take direct action – to force the powers that be to change their policies in relation to this issue," he said.

"My suggestion is that prominent Aboriginal leaders, perhaps in the company of prominent other Australians, should band together and come up to the Northern Territory and picket, or vigil, or handcuff themselves to the very gates of this horrible place called Don Dale and say, enough's enough. This has to end right now."

The former adult prison was "derelict and dystopian", he said. "The country's got to look in the mirror and start growing up about this matter."

The appeal comes as Indigenous organisations around the country raise the alarm, again, about the dangers of youth incarceration.

The First Peoples' Assembly of Victoria has called for the Victorian state government to raise the age of criminal responsibility and "stop locking up our children".

The Indigenous body elected to negotiate a treaty in the state has written to the Victorian attorney general, Jaclyn Symes, to stress the need for immediate change, saying a treaty must not be used as an excuse to stall reform.

"This does not need to, nor should it, wait for treaty," reads the letter, signed by Aunty Geraldine Atkinson and Marcus Stewart.

"It is a much-needed, sensible, compassionate, evidence-based and simple reform that community overwhelmingly supports. We want the government to stop locking up our children."

Children as young as 10 across Australia can be arrested by police, remanded in custody, convicted by the courts and jailed.

Australia's attorneys general last month agreed to support a proposal to raise the minimum age from 10 to 12 after the federal government faced pressure from more than 30 UN countries.

But the independent Indigenous group has urged Symes to listen to the experts and legislate a change to 14 years, recommended by Victoria's Commission for Children and Young People in June.

There were nearly 600 children aged between 10 and 13 in custody in 2018-19, according to data from the Australian Institute of Health and Welfare. More than 60% were Aboriginal or Torres Strait Islander.

The ACT is now the only state or territory committed to changing the age of criminal responsibility to 14, while the WA government passed a similar motion in October.

The Northern Territory supports in-principle raising the age of criminal responsibility to 12.

Kate Worden, the Minister for Territory Families and Urban Housing and acting attorney general, said in a statement to Guardian Australia that services for at-risk children needed to be established and effective first.

"Work is underway to assess our current reforms to ensure they are meeting this objective."

She said over the past four years the NT government had "worked hard to ensure that the Territory's youth justice system is reformed".

"We have reformed our youth detention system and it is not what it was in 2016," Worden said.

Both Victorian Labor and the Liberal/Nationals in March rejected a Greens bill to raise the state's age of criminal responsibility from 10 to 14, and the minor party is urging the government to reconsider supporting its stance.

"This reform could happen tomorrow, we just need the political will," the Greens justice spokesperson, Tim Read, said on Tuesday.

A Victorian government spokesperson confirmed it was "working to develop and consider a proposal" to up the minimum age of criminal responsibility from 10 to 12.

"In the meantime, we're continuing to tackle the root causes of youth offending, because the best outcome for young people is to avoid contact with the justice system in the first place," she said.