

The Sydney Morning Herald

Tough-on-crime talk led to cruel abuse in NT

By Peter O'Brian
Sydney Morning Herald
1 August 2016

Peter O'Brien, of O'Brien Solicitors, is Dylan Voller's lawyer.

To do a great right, do a little wrong. The Northern Territory government has already perpetrated a great wrong. When stories of horrific abuse within Northern Territory youth detention centres began to emerge years ago - stories of children being assaulted in their cells and forcibly stripped naked - the NT government chose to ignore them.

When six detainees were kept in windowless solitary confinement for weeks before being tear-gassed, the NT government obfuscated the facts in order to justify their actions. When reports of Dylan Voller being hooded and strapped to a chair for close to two hours became public knowledge in October last year, the abuse became impossible to ignore and impossible to lie about. Instead, the Northern Territory government legislated to condone it.

Within 11 hours of Four Corners exposing the chronic and abhorrent abuse of children at the hands of their jailers, Malcolm Turnbull rightly announced a royal commission into the matter. We now know that the royal commission will be conducted jointly with the Northern Territory government. This involvement is obviously troubling: the culpability of the Territory government is so manifest that any leadership role within the royal commission is an insult to the victims.

The only proper role for the members of the NT government is as witnesses, producing the evidence - the documents, the footage.

One thing that the Northern Territory government needs to answer for is the creation of a political atmosphere in which this kind of abuse became normalised. Come election time, politicians (from both sides) engaged in a despicable law and order auction. Politicians competed to demonise youth delinquency and to drive a focus upon being as merciless as possible, with promises of tougher sentences, police powers and bail laws. It is the gutless politics of fear. Leaders in the community should know that youth crime is caused by complex socio-economic factors, and cannot be fixed by myopic retribution.

Hooded and strapped to his chair, Dylan is the faceless symbol of all the other children who are victims of this tough-on-crime rhetoric. Once you start using individual lives as bargaining chips for political gain - and talking about throwing criminals into a "big concrete hole" - then the treatment of Dylan becomes inevitable. The guards who brutalise these kids have taken their cues from the politicians; treating children like animals is the logical end point of talking about children like animals. As such, all politicians who promote zero-tolerance attitudes to juvenile crime are, to some extent, morally culpable for Dylan's treatment.

On the legal side of things, the royal commission needs to urgently examine the ability for youth detainees to bring legal action against abuse. Northern Territory civil law sets a 28-day limitation period on bringing most actions for intentional wrongdoing - such as assault, battery, and false imprisonment. To give some idea of how unfairly short that limitation period, everywhere else in Australia the limitation is either three years or six years. This limitation period needs to be lengthened in the NT so that victims of abuse can pursue compensation; and at the same time, Northern Territory Corrections needs to make it easier for youth detainees to access lawyers, and make complaints against the system.

Like all injustices, this one has a disproportionate impact on a minority group: 95 per cent of youth detainees in the Northern Territory are Indigenous. With no specific mention of Indigenous issues in the terms of reference, there needs to be some discretion to allow the Commissioner to look further into this line of inquiry.

The Northern Territory government has committed a grotesque injustice. This royal commission is the federal government's chance to do a great right. My concern is that - by involving the Northern Territory and casting the terms of reference narrowly - the federal government risks perpetuating a great wrong.