Children in Police Watch Houses: A Nasty Queensland Experiment

By Dr. Binoy Kampmark
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They really are a brutal lot. While the Queensland Labor Government croons on matters regarding rights, liberties and, it should be said, the plight of the First Nations Peoples, its policy, notably on youth detention, is a contradictory abomination. This situation finds itself repeated across the country, though the Sunshine State, as it is sometimes called, does it better than most.

In Australia, jurisdictions have persistently refused to raise the age of criminal responsibility. Down under, troubled children are treated as threatening ogres, monsters to cage rather than educate. Legislatures and lawmakers have taken fiendish pleasure in using more stick than carrot in the penal process, the result being that errant ten-year-olds find themselves in facilities of supervised squalor. These are fecund grounds for future, full-fledged criminals, and they rarely fail to disappoint as teachers in that regard.

For the pure sake of electoral benefit, political parties continue to demonise and denigrate wayward, lawbreaking delinquents. Governments continue to detain children with varying degrees of severity, with officials scratching their heads on novel ways of keeping them off the streets and in the cells. Queensland has had a particularly insatiable appetite for the practice, having used it for decades. Between 2021 and 2022, thousands of children were detained for durations exceeding six hours; hundreds for 48 hours or more. The rough cost for this exercise over two years: A$35 million.

In early August, Queensland's Department of Youth Justice had to come clean to the state Supreme Court that it had been running a gruesome, unlawful experiment in penology. Remanded children were being held in police watch houses otherwise designed for adults instead of youth detention centres. This also entailed placing children alongside adult offenders. The practice was brought to light in a challenge by the Caxton Legal Centre acting for the non-government support agency Youth Empowered Towards Independence

Incorporated (YETI Cairns).

The applicant sought a writ of habeas corpus requiring the removal of eight children being held in various watch houses across the State controlled by the Commissioner of the Queensland Police Service. During proceedings, it became increasingly clear after initial investigations on the part of the government that something was brewing. Five of the original eight children had been transferred to youth detention centres, leaving the focus on the remaining three in police-controlled watch towers. It was duly found, as noted in the judgment, that the Queensland government "could not discharge the onus on them to establish the lawfulness of the detention of these children," requiring, therefore, their delivery to the youth detention centres.

Chastened but not deterred, the Palaszczuk government, as a matter of haste, introduced legislation permitting such imprisonment in watch houses. The legislation also contained a reproachful sneer to the Queensland Supreme Court: the practice of detaining children in watch houses was rendered retrospectively legal. Inquisitors and Medieval Church prosecutors would have been proud. Donald Trump, were he to know of that fact, would have sighed with envy.

Then came further changes introduced by the police minister, **Mark Ryan**, part of a package to an otherwise unrelated bill. To ensure the effectiveness of the measure, the State was effectively suspending its Human Rights Act. The minister put this callous move down to a matter of "immediate capacity issues" in the state's prison system, which is rather revealing in of itself. In the mangled language of administration, Ryan suggested that the measure was only temporary. "It is not intended to make acceptable the long-term use of watchhouse or corrective services facilities for young people."

A terse, accurate description of the proceedings was offered by the Queensland Greens MP, **Michael Berkman**. "At 3:30pm, they moved 57 pages of amendments to an unrelated bill w [sic] 30 mins for debate. They suspend the Human Rights Act to allow children to be kept in watch houses & adult prisons."

The suspension of the Human Rights Act was done with the calm, dismissive air of a desk clerk untroubled by the rule book. In a country where parliaments are regarded as awesomely, even tyrannically supreme, there are virtually no impediments on such monstrous conduct.

> "This is now the second time Queensland has suspended its Human Rights Act to criminalise and punish children in this state," Gunggari campaigner Maggie Munn told the National Indigenous Times. "Incarcerating children whether in prisons or watch houses is harmful, the government knows this and yet continues to enforce these conditions."

Child advocacy and support organisation SHINE for Kids was fittingly aghast. "Locking up children might make people feel safer, but it doesn't reduce crime or make them safer," stated the organisation's CEO, Julie Hourigan. "The government needs to address community safety with interventions that work, not just get headlines."

This attempt at retrospective self-exemption from liability will not go unchallenged. Peter O'Brien, a lawyer representing former youth detainee Dylan Voller in a class action against the Northern Territory's Don Dale youth detention centre, suggests the opportunity for

litigation is ripe. “If the circumstances of the detention were particularly decrepit, or unpleasant, or cruel, or inhumane, then that would go to aggravated damages,” he argues. “And then in addition to that, there would be damages of a punitive nature, exemplary damages.” In that case, the Queensland government could owe children unlawfully held in such watch houses up to A$5,000 for each day spent behind bars.

O’Brien’s bristling confidence in the matter may be misplaced. The principle does not lie in the horrific treatment and conditions facing the children, but the scope of parliamentary power. Australian courts have held that State and Federal Parliaments may validly pass retrospective legislation, thereby soiling that purportedly sacred principle known as the Rule of Law. Parliamentary power here verges on true despotism. The only argument that could be made is that the case law blessing such a deplorable state of affairs tends to apply to ex post facto *criminalisation* rather than a government’s efforts to exonerate its own unlawfulness or criminality. The wriggle room here, however, is barely worth mentioning.

With a hoary repetitiveness, the case for a commonwealth wide Bill of Human Rights is demonstrated by the appalling conduct of supposedly wise politicians who reject its value in the name of populist howls and administrative ineptitude. The conduct of the Queensland government is simply another one on the slagheap.

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Dr. Binoy Kampmark *was a Commonwealth Scholar at Selwyn College, Cambridge. He currently lectures at RMIT University. He is a regular contributor to Global Research and Asia-Pacific Research. Email: bkampmark@gmail.com*

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