

**AN ASSESSMENT OF THE PRACTICE OF
THE CHILDREN'S COURT AND TORRES STRAIT ISLANDER
AND ABORIGINAL PARENTS IN THE TORRES STRAIT AND
NORTHERN CAPE YORK PENINSULA SENDING THEIR
OFFENDING CHILDREN TO LIVE WITH THEIR UNCLES TO
RECEIVE SUPERVISION**

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The Department of Families, Youth and Community Care (DFYCC) in its strategic plan outlines one of its priorities as being the “*concerted effort to address the over-representation of Aboriginal and Islander people in the Child Protection and Juvenile Justice System*” (Strategic Plan 1997-2000). This over-representation has been well documented, particularly in respect of youth detention centres.

Prior to 1997, the DFYCC and the Torres Strait and northern Cape York Peninsula communities had no effective diversionary program for local young offenders. As a consequence, young people were placed in programs well away from their families and communities or in youth detention centres, with little or no effect on the incidence of offending behaviour. The most recent example occurred in late 1996 when three young Islanders from Bamaga were ordered away from their families and community. Two were placed at Southwell Station near Kowanyama. The third was placed in Cairns and required to attend the Aboriginal Outreach Program. These two options were the only two possible options available to the Court at that time, apart from Petford Training Farm, in spite of the Court's desire to seek additional alternatives to ordering them away from their community or placing them in detention.

The new Torres Strait and northern Cape York Peninsula Juvenile Justice Program had previously developed a variety of community based strategies to divert young Islanders, Aboriginals and Papua New Guineans away from re-offending behaviour and placement in youth detention centres by utilising community resources and kinship systems. Initial indications were that these strategies were highly effective.

This paper seeks to elaborate on one of these highly effective strategies, the practice of the Children's Court and parents sending their children to live with their uncles on the islands. This strategy, like other effective strategies being developed in the Torres Strait, appear to have fallen victim to bureaucratic ignorance or indeed a lack of persistence from certain quarters. As a consequence, the rate of re-offending in the Torres Strait is on the increase, with a greater number of young people before the Thursday Island Children's Court than any other time over the last two years. (See attached copy of the front page of the Torres News dated 7-13 August 1998 and letter to the editor.)

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In August 1997, the Bamaga Island Community Council banned three youths from their community for two years due to their chronic offending behaviour. Two of these boys were the same boys who had earlier been placed at Southwell Station and Cairns and had recently returned home. The mothers of these boys decided to send their sons to live with their uncles on the islands and requested assistance from the Juvenile Justice Youth Workers (formally titled Adolescent Resource Workers) and myself, the Torres Strait and northern Cape York Peninsula Family Services Officer. The first boy was sent to live with his uncle on Warraber Island, the second boy was sent to live with his uncle on Saibai Island, and the third was sent to live with his mother on Horn Island.

The results of these court ordered strategies have proved to be very interesting. Child #1 was sent to Saibai Island remained there for 11 months without re-offending. Child #2 was sent to Warraber Island remained there for 9 months without re-offending. Child #3 was sent to his mother on Horn Island. He did re-offend shortly after he arrived, but his mother requested that he be sent to an uncle on Badu Island. This boy remained on Badu for 6 months without further offending. (See Appendix I for the number and time of offences committed by these three boys.)

In the meantime, another well known recidivist young offender from New Mapoon, with no fixed address or carer, had been apprehended for armed robbery and numerous other offences and was looking at a period in detention. However, the District Court Judge did indicate that he was open to a community based alternative. This boy's maternal family had heard about young people being sent to the islands and requested the same. In this situation, the boy's father was an Islander from Saibai and his mother an Aboriginal from New Mapoon. Consideration was given to placing the boy with his maternal family in Mapoon but the boy requested the opportunity to go out to the islands. Some months earlier, I had negotiated an agreement with the Manager of the Australian Pearl Farm on Badu to provide full-time employment and accommodation for a suitable young person in the Juvenile Justice program.

We decided to offer this position to this boy from New Mapoon on a trial basis under the supervision of the Badu Island Juvenile Justice Youth Worker. The young boy took up this opportunity with great enthusiasm. Here again, there was no further behavioural problem from this boy for several months. The main difference with this 'placement' from other 'placements' was that this boy was not living with his uncle. An issue arose when the boy requested to go home for a weekend to visit his family. His request was not refused but rather put off to a later date. Unfortunately, the boy's need to maintain contact with his immediate family was underestimated. One Friday evening he took his employer's dinghy and headed off back to New Mapoon. The boy later told me that his plan was to return to Badu early Monday morning before anyone realised he had gone. Things did not go as he planned and at sunrise on Monday morning he was only half way back to Badu. When he realised that he was going to get caught, he turned back to the mainland and hid out for a couple of days. This experience confirmed the need for structured visitation schedules for young Aboriginals and Torres Strait Islanders when placed outside their family.

In early 1998, three other young boys at risk of being placed in detention were also sent to their uncles on the islands with very encouraging results. One of these was a young Islander on several court orders and had effectively evaded the Department in Weipa and Cairns. Shortly after his arrival on Horn Island, he committed a spate of offences, including the near spearing of local State and Community Police Officers at Umagico. This child #5 was sent to his uncle on Boigu Island in February 1998 and since that time he had committed one minor offence. Child #6 from Bamaga was also sent to an uncle on Saibai Island in April 1998 without re-offending, and another young boy from New Mapoon, child #7, was sent to Badu Island in February 1998 without re-offending. (See Appendix II for the number and time of offences committed by these three boys.)

In total, 7 young boys at risk of being placed in detention were diverted to live with their uncles on islands between August 1997 and June 1998. Out of these 7 boys, 5 ceased their offending behaviour while in the care of their uncles on the islands. Two boys did commit relatively minor offences; one boy stole a six pack of beer from the local store and the other boy took his employer's dinghy to go and visit his family without permission. It is important that more trials be carried out to fully appreciate the effectiveness and limitations of this strategy, as early indications were that this was a highly effective strategy.

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In July 1998, officers of the Department of Families, Youth and Community Care put a stop to assisting the Children's Court and parents sending their offending children to live with their uncles on the islands. Two reasons were given; 1) this practice violated the young person's right to reside with their parents, and 2) the cost of the air flights to the islands were prohibitive.

With regard to the first reason; the right of the child to live with their parents, in the absence of any legal opinion from Council, some officers of the Department have expressed concern about aiding and abetting the violation of the young person's rights. As it stands, there is no Australian law that says a child has a right to live with his or her parents. There is, however, a common law right of parents to care and control their children until they reach eighteen; the 'age of majority'. However, this common law right was overturned in the *Gillick v. West Norfolk and Wisbech Area Health Authority* ([1986] A.C. 112) when the majority in the House of Lords hearing this case declared that "*parents rights are dwindling rights; parents powers start with a right of control and end with little more than advice*" (Children's Legal Centre, 1988). This judgement has been accepted in Australia. This means that if a competent Aboriginal or Islander youth gives consent to reside with his uncle then no law or legal principle has been violated. It also means that a competent youth can not be forced to reside with his uncle, except when court ordered. This is supported by Article 9 of *The Convention On The Rights Of The Child 1989*, which states:

“State Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interest of the child. ...”

On the other hand, Mr Ephraim Bani, Technical Linguist and Traditional Consultant for the TRAWQ Community Council on Thursday island, claims that this issue is not so much a question of legal rights, but rather cultural rights. He states;

“This is a question of cultural rights and moral obligation – young people submitting to discipline imposed by their uncles through cultural means”.

Mr Bani goes on to say;

“The practice (of placing young people with their uncles) is quite effective because in Torres Strait culture a child is more open to his uncle rather than his parents. In other words, he can discuss things that he can not communicate to his parents. Uncles have always been like that. The name given to uncles is ‘Mawai’, it means ‘traditional teacher’. In the early days boys aged 14 years and up were taught by their uncles. Today it’s any age.”

The important role of uncles in Torres Strait Island culture has been noted in several texts, including the *Report of the Cambridge Anthropological Expedition to Torres Strait 1904-1935*, by A.C. Haddon, who noted that it is the boy’s uncle that gives the instructions in the initiation process. A Mabuiag man gave him the following account of the type of instructions given:

*“We tell you and you think every year and every day. What word we speak out, you must put it along your heart. ...
If you hear another man call out for your father or call out for your mother, you no speak out, you keep him inside (i.e. keep your words inside and not utter them).
If any man meets you walking along the road and you are carrying sweet-potato, coco-nuts or other food. You offer it to him without his having to ask you for some, he will then call you a good boy; but if you do not do it he will call you a bad boy.
Suppose a man send you for something, you must do it quickly – you no too much run about.
When all the men stay at the Kwod, you no walk upright, you stoop down as you walk.
When you want to speak some word, you speak true, no tell lie, to tell lies is no good.
S’pose you’re a bad boy, by and by you dead quick – maidelaig kill you – same too s’pose you speak too much word or you play in Kwod.
You must take cold heart (i.e. you must have a quite temper).
You must not touch anything belonging to another man. S’pose you take anything and you lose it, he will call you bad boy. You must ask him first then if you lose it then the man will say, Oh! It’s my fault, I gave it to you.*

If you walk in the bush and you see a garden belonging to other people and you spit, you no let go your heart, that bad fashion. S'pose you let go your heart and swallow your spit, you bad boy."

It is possible that other factors contributed to the containment of offending behaviour by young people placed on the islands, apart from the supervision and teaching by their uncles. Geoff Guest, founder of Petford Training Farm for 'at-risk' young Aboriginal people throughout the Far North, considers that remoteness and reduced opportunities contributed significantly to Petford's high rate of success. This is a matter for further study at a later date, for what is of concern at the moment is the issue of rights.

There are officers of DFYCC who are confused into believing that children's rights are being violated if the Children's Court and their parents sent their offending children to live with their uncles on the islands. Whereas, Mr Ephraim Bani, a Torres Strait Islander elder, and acclaimed authority on Torres Strait Islander culture, asserts that it is a "*cultural right and moral obligation*" for the child to receive teaching from their uncle.

The second reason for certain officers of DFYCC putting a stop to assisting the Children's Court and parents sending their children to live with their uncles, is the cost of the air-flights to the islands. This argument is based on false economics.

Cape York Air Service informs me that the cost of a return flight for a young person from the Bamaga Children's Court to the Cleveland Youth Detention Centre via Townsville (which is the closest youth detention centre) is between \$5,600 and \$6,000. This flight must include the cost of a police escort. A contracted flight can only carry a maximum of two prisoners and there must be an escort for each prisoner. Cape York Air Service believes that a police flight would cost the same, although the escort ratio is one officer to three prisoners, or two officers to five prisoners. The cost of a flight from the Thursday Island Children's Court is higher. Added to this is the cost of being detained in Cleveland Youth Detention Centre which is around \$1,500 per week. Thus, a conservative estimate of the cost to sending a young person from the Torres Strait or northern Cape York Peninsula to Cleveland for one month will be between \$11,600 and \$12,000. Compare this to the cost of a return flight for a young person from the Thursday Island Children's Court to the furthest island of Murray Island which is \$340. To fly from the Bamaga Children's Court to Murray Island is \$405. Unlike Cleveland, there is no added accommodation cost. In other words, in an effort to try and save a few hundred dollars, officers of DFYCC are risking paying thousands of dollars, and forcing the Queensland Police Department to pay thousands of dollars. Not to mention the social costs involved in placing a child in detention.

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All indications were that this practice of the Children's Court and Islander and Aboriginal parents sending their offending youths to live with their uncles on the islands to receive supervision was quite effective in reducing recidivism, and provided the judiciary with an alternative to detention, whilst providing an opportunity to

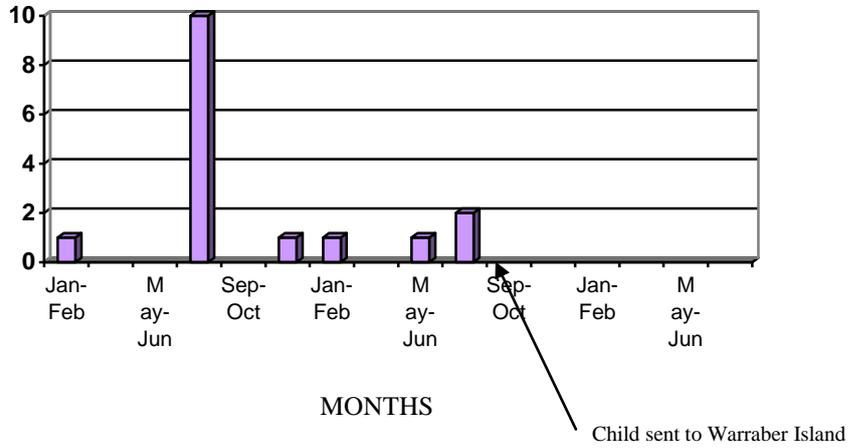
support the preservation of island customs and a level of self-determination. Regrettably, the practice appears to have fallen victim to bureaucratic ignorance or indeed a lack of persistence from certain quarters within the Department of Families, Youth and Community Care. It is hoped that by providing the above information that more sober minds will prevail and the practice reassessed.

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APPENDIX I

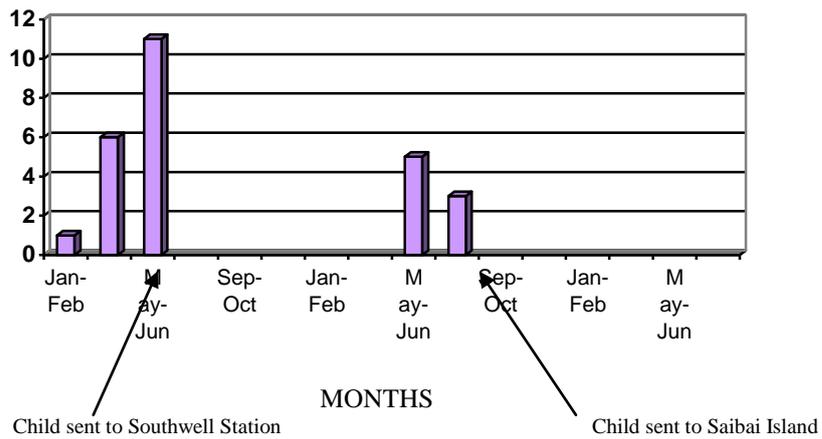
CHILD #1

NUMBER AND TIME OF OFFENCES 1996-98



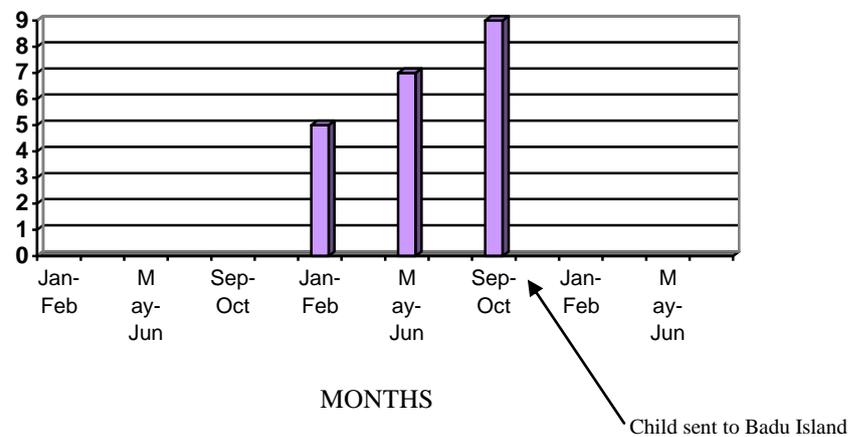
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NUMBER AND TIME OF OFFENCES 1996-98



CHILD #3

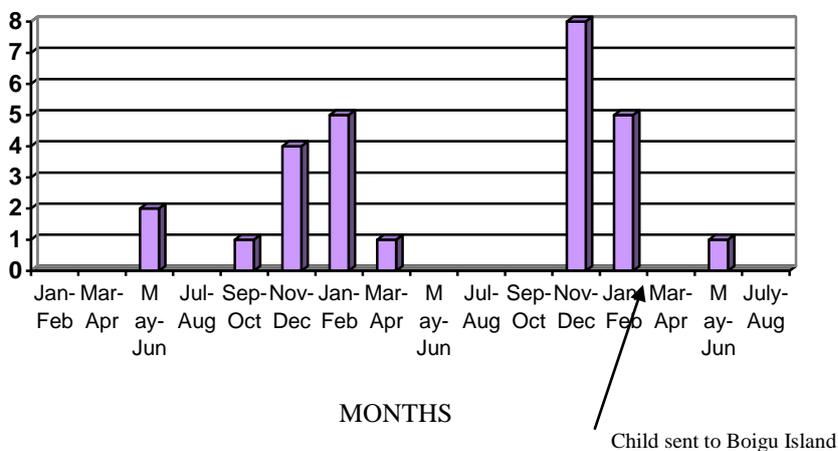
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APPENDIX II

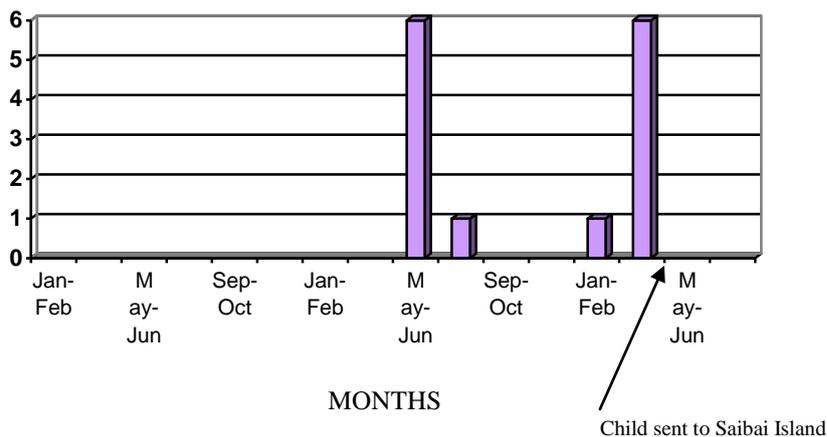
CHILD #5

NUMBER AND TIME OF OFFENCES 1996-98



CHILD #6

NUMBER AND TIME OF OFFENCES 1996-98



CHILD #7

NUMBER AND TIME OF OFFENCES 1996-98

