

THE PRACTICE OF PLACING SERIOUS YOUNG INDIGENOUS OFFENDERS IN AN ALTERNATIVE ENVIRONMENT WITH NEW CARE PROVIDERS

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It is clearly evident that a number of young Indigenous offenders are failing to respond to standard forms of intervention.¹ Indeed, a number of studies have shown that detention and a number of pre and post-court community based programs and practices, actually contributed to an increase in offending behaviour.² Thus, there remains a pressing need for creating and implementing effective ways of dealing with the more difficult young Indigenous offender.

In August 1998, the author wrote a paper titled; *“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.”*³ This paper presented evidence that the practice referred to by the title was effective in reducing recidivism. It also provided the judiciary with an alternative to detention, whilst providing an opportunity to support a very effective Islander and Aboriginal custom, and a level of self-determination. The paper concluded by saying;

“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 receptive minds will prevail and the practice reassessed.”

Regrettably, this receptiveness to an examination of the practice did not prevail and the Department of Families, Cape / Torres Office continued using standard forms of intervention that had proven to be ineffective for many young Indigenous offenders. There are a number of effective alternatives to detention but the Cape / Torres Office often failed to present these alternatives to the Courts. As a result, a number of young people have been sent to detention unnecessarily.

In late 1999, the Mossman Community Justice Group became aware of the author’s work in placing young Islander offenders living in Cairns with their uncles in the Torres Strait. The author was particularly interested in the role of uncles in indigenous culture, and whether or not they had to be a biological uncle in order to achieve the same positive outcome. The Mossman Community Justice Group welcomed the opportunity to help seek an answer to this question. They directed four young Bumma offenders to reside with a particular family of Gudang / Kaurareg decent living on Horn Island.

One of these young people was at extreme risk of suicide having made three previous attempts to hang himself, which were thwarted only by chance. One of these four young people was aged 16, two aged 17, and one aged 19 years. They were all serious offenders suffering from chronic drug and alcohol abuse. They remained living on Horn Island for approximately 9 months. Although their carers were not biologically related to these young people they still called them 'Uncle' and 'Aunty'. Indigenous people customarily use these terms as a form of respect, for example, in the not uncommon situation where one family assists in the 'growing up' or even 'adoption' of a child of an associated family. During the time they were under the care of this uncle and aunty none of the boys re-offended, abused drugs or alcohol, or displayed any suicidal behaviour.

In late 2001, the 'Boys from the Bush' program was introduced to the Aurukun Community Justice Group by the author. A component of the program was the facilitation of placing young people with serious behavioural problems, particularly petrol sniffing, with Indigenous host families in the Torres Strait. The Aurukun Community Justice Group took this opportunity to place three young people, two aged 14, and one aged 17 with very difficult behaviours, with this man of Gudang descent and his new Torres Strait Islander partner on Yam Island. All three young people had an immediate and remarkable change in their behaviour. They stopped offending and sniffing and began to behave in a very responsible manner. After four months they were moved to another Torres Strait Islander family on Badu Island with the same positive outcome. This intervention replicated the previous placement combination of 1998 when a young Aboriginal boy from Umagico was placed with the same family. Confirming that a biologically related family or a family of the same racial background was not necessary to get the same positive outcome. Unfortunately, the Department of Families, Cape / Torres Office intervened into the Justice Group's placement of these young people on Badu, on the grounds that it was not culturally appropriate, and returned one of them to Aurukun which resulted in him re-engaging in petrol sniffing and influencing other young people in the community to also re-engage in petrol sniffing. This goes to confirm that petrol sniffing, like many behaviours, are greatly influenced by the environment, which includes the nature of the care and supervision the child receives.

The next question to be asked is: Could this result be achieved outside the Torres Strait? This question was answered when on the 24 April 2002, a 13-year-old Torres Strait Islander boy (child A) from Cairns was placed with an Aboriginal family in Aurukun. Child A's offending history involved some 73 offences over the preceding 24 months.

The Team Leader of the Cairns Youth Justice Team provided the following details of child A's behaviour prior to him being placed in Aurukun.

"When referred to the Boys from the Bush (BFTB) program this child was thirteen years old and subject to a dysfunctional family environment that was ear marked by domestic violence, alcohol abuse and transient male role models. His three older siblings were subject to youth justice orders. There were also several Child Protection Notifications regarding this family. This

child had become a recidivist offender who was habitually sniffing aerosols and other substances, not attending school and he had become entrenched in an offending peer group. He was sentenced to an Immediate Release Order and while subject to this order he was apprehended by the police while under the influence of a substance.

Rather than having the child returned to court he was referred to the BFTB program after consulting with his mother and the coordinator of the BFTB program. Subsequently he was removed from Cairns (with the consent of his mother) and placed with a family at Aurukun where he still remains. Since being placed with this family the child has not re-offended, he attends school regularly and he no longer engages in sniffing substances. The positive changes in his behaviour has been dramatic and quick due to the intervention strategies of the BFTB program. Prior to the child's referral to this program he was at high risk of being detained in a detention centre for several months."

Thus, after nine months, significant positive changes in child A's behaviour had occurred. This dramatic turnaround in the child's behaviour was replicated on the 14 November 2002, with the placement of a second child (B) of similar characteristics and also of Islander decent, with another Aboriginal family in Aurukun. On this occasion the Aurukun Justice Group chose the host family. Child B's offending history involved some 18 offences over the preceding 18 months.

Again the Team Leader of the Cairns Youth Justice Team provided the following details of child B's behaviour, prior to being placed.

"This child is a thirteen-year-old Torres Strait Islander who would not attend school and who was a chronic petrol and substance abuse sniffer. He refused to respond to parental/guardian influence. He is a recidivist offender who is subject to a juvenile justice order and a Long Term Care and Protection order. This child has been referred to the BFTB program by his Family Services Officer, to enable the intervention strategies of this program to address his dependency on substances whilst simultaneously addressing his offending behaviour.

This child has been placed with a family away from Cairns and his offending/sniffing peer group. There are a number of parallels in relation to the causal/contextual factors corresponding to his dysfunctional behaviour, when comparing his past and current life style with that of the first child placed in Aurukun. Once again the early positive gains being made with this child after his referral to BFTB program, is in stark contrast with his reluctance to respond positively to other previous intervention strategies."

Here, after three months significant changes in his behaviour had already occurred.

The results of these case studies confirm that a great deal of social and personal behaviour, including offending and substance abuse behaviour is the product of our immediate environment. The modelling, support and supervision provided by the host

family is presumed to be the primary change agent. The secondary change agents are presumed to be the influence of extended family members and other members of the community.

There is a strong correlation that exists between these change agents to the size and ethnic composition of the community. Indigenous communities are relatively small and intimate. This enables inhabitants to effectively supervise the behaviour of these young people while providing ongoing reports to their host family. Other members of the community also provide valuable supplementary modelling, support and supervision. This mode of collective social control is a powerful tool. It can positively reinforce correct behaviour through effective rewards, positive reinforcements and modelling while simultaneously reducing misbehaviour through effective punishments and negative reinforcements. Where opportunities are maximised by the host family for the young person to occupy their time usefully through work, or by recreational and traditional cultural activities, such as in fishing, hunting, gardening or caring for country, self esteem and therefore positive behaviour is further reinforced.

An argument put forward by the Department of Families office bound bureaucrats against this practice of the 'Boys from the Bush' program is that it was not consistent with the Aboriginal Placement Principle, which states that children removed from their parents should be placed – in descending order of preference – with members of their own immediate or extended family, or with members of their community, or with other Aboriginal people. Only if none of these placements can be made should they be placed in the care of non-Aboriginal people.⁴

There are two major problems with this argument, both of which relate to the two components of the Aboriginal Placement Principle. The first component of the Principle consists of the above guideline for the placement of children. The second component is about the necessity of Aboriginal participation in the decision-making process. In this situation, it is the child's family and Community Justice Group, which is made up of Aboriginal Elders who decides the practice, not the 'Boys from the Bush' program. The reason why the Indigenous communities accept the practice is because they know that the Aboriginal people of Cape York Peninsula and Torres Strait Islanders have for time memorial been ethnically, culturally, socially and economically tied to their neighbours. These ties have been well documented in a number of historical and contemporary texts, including those of anthropologist Nonie Sharp, who refers to connections between Aboriginal and Islander peoples as including, for example:

- ancient links through Dreamings and other stories;
- a history of intermarriage and trade;
- intermixing of groups through their movement by missionary and colonial authorities;
- a common sense of oppression through the loss of country and culture;
- similarity of cultures (though their cultures are distinct, they are much more similar to each other than to mainstream Australian culture).^{5 6}

Sharp quotes Snowy Woosup at Cowal Creek on 2 August 1980 who talks about the movements and ethno-cultural links of Aboriginal people who came to Injinoo.

“... the Yadhaigana and the Wuthathi - began in the Chatungun-Temple Bay, Macan-Margaret Bay area ‘right up to Sumerset before these white fellows come in’; that they were related to the Kaurareg through intermarriage with the Muri people of Mt Adolphus; and that they travelled westwards by canoe: ‘That’s how they travelled and that was part of the whole sort of cycle of activities, depending on the time of the year. This lot [the east coast Aborigines] married girls from Seven Rivers on the other side of the Jardine River to Batavia and Musgrave - that’s where the Mapoon people are - so that’s how they are related.’”⁷

With regard to historical trade links, historian Steven Mullins notes that:

“A fairly high proportion of the Islanders’ material wealth was imported from beyond the Strait. Masks, feather headdresses, pigments and other personal ornaments were traded for on the New Guinea coast, as were bows, arrows, stone clubs and, most importantly, canoes. Trade with the Aborigines of Cape York was mainly in spears, spear-throwers and red ochre, but these things were required in considerable quantities. The Islanders preferred Aboriginal spears to the ones they manufactured themselves, and multi-pronged fishing spears made at Cape York were used throughout the islands.”⁸

Historian John Singe speaks of historical ethno-technical knowledge and skills.

“A feature of northern Cape York Peninsula Aboriginal society was its contact with Papuan society via the Torres Strait. Two significant Papuan importations were the dugout canoe and the wooden drum using a reptilian skin. At first the canoes were traded across by Islanders in the Torres Strait but eventually Australian craftsmen began constructing their own, employing fire and an adze with a hard shell as a cutting edge. Dug-out canoes with outriggers were found as far south as the Endeavour River where, during Cook’s visit, the group apparently possessed only one, a little over four metres long and able to seat four people.”⁹

On the subject of mythology, Singe, notes that:

“Contact between the Western Islanders, particularly those in the south, and the Aborigines of the Australian mainland was fairly consistent, and in some cases had enormous impact. The Upanati (or Yupungatti) group of Aborigines living between the Coen and Batavia Rivers in western Cape York Peninsula told of a hardy sorcerer who left them to travel northward in his canoe. This is important because they claim that he took the first wongai seeds to the Torres Strait Islands and also because he married an Island women from Mabuiag. The Upanati called their hero Chiberie. The Djonggandji (or Tjungundji or Tchunginge) who lived around Mapoon called him Siveri...”¹⁰

“The Badu legend explained the origins of the mating turtles involving another Aboriginal hero named Bia, who journeyed north from his home at Cowal Creek eventually visiting Muralug, Badu, Moa, Gebar, Iama, Masig and Erub.

He then returned to his home and traditionally the first pair of mating turtles each season should appear off Cowal Creek.”¹¹

Again in Sharp:

“In the myth of Kwoiam [legendary Aboriginal warrior hero] the might of the Aboriginal spear follows a path from the sandbeach people of Cape York into the heart of Western Torres Strait at Mabuiag even as far south as Lockhart River the people may show you Kwoiam’s footprint.”¹²

Most Department of Families bureaucrats would be unaware that the practice of sending young Aboriginals from Cape York to Badu and other island communities in the Torres Strait and for young Torres Strait Islanders to be sent down to Cape York and other southern communities for their misbehaviour has been a long standing practice carried out by a number organisations and communities, and therefore is quite culturally appropriate. Elder Walter Nona claims that Aboriginal people were coming to Badu in the 1920s.¹³

Jimmi Jacko from Hopevale was one of those directed to the Torres Strait by the missionaries in the 1960’s and has provided the following statement on his experience.

“I remember one time when I was in my teenage years, it was the early 60’s. I got in trouble at Hopevale. I was flogged in front of the community, then the Lutheran missionaries sent me away. I remember thinking, well what will happen to me, because they were telling me they were going to send me a long way away to the Torres Strait. Yeh, I remember feeling a bit frightened.

Well when they sent me, I arrived at the Port at T.I. First thing I got a big surprise, because there were so many aboriginal men that I knew from all over Cape York, even my own brother and close relations. In my time up there I was taken in and made to feel very welcome by families around the Torres Strait. They are like my family still today, at a lot of the islands in the Straits I know a lot of people. Me and all the other aboriginals worked for some years diving up there. The pay was no good, but we learnt how to dive, we learnt how to work and look after ourselves. You could say this is when I became a man.

I like it when I bump into my island families, we talk about those days. I have a lot of friends up there.”¹⁴

Ebenezer Law of Roma on the other hand was given a choice of going home or to work in the Torres Strait and has provided the following statement on his experience.

“It was 1969, I was a hard case and was sent to Westbrook boys home for 3 months. When they let me out they gave me a choice to go home to Woorabinda or go to work in the Torres Strait. I didn’t know anything about the Torres Strait but I was interested. I was 14 years old at the time.

There were three of us sent up and they had others up there. I stayed with Morris and Elma Nona on Badu Island. They took me into their family like one of their own. The people were great, they knew who I was and I had no problems. I stayed until 1977. They offered to send me to school but I wanted to go to work. I worked on the only tractor in the Torres Strait. I build the airstrip on Badu and looked after it for about a year. I then asked my foster father if I could do pearl diving. They let me do crayfish diving first for two years then I did pearl diving for 5 years. We worked hard in those days. It was good strong healthy living. I got to do what I wanted to do and was free to go where I wanted to go.

My point of view is that it was a good experience, it opened my eyes and changed my life completely. I recommend it to young fellows like me, they will love it. When I left I got a job on the railways and I am still working on the railways. My children live on Badu Island and when I went home last September they said I could build my house at the back of the island.”¹⁵

It is significant that both men proclaim to have benefited from the experience even though one of them was not given a choice about going to the Torres Strait.

An important difference between this past practice by missionaries and government officials and the present practice of the Aboriginal Community Justice Groups is that members of the family and community are acknowledging their inability to deal with the young person's misbehaviour for various reasons. It is a key point of the author's argument that their decision to send such troubled young people to new care providers in an alternative environment outside the mainstream youth justice system is based both on what *they* believe to be in the best interests of the child, as well as consistent with their historical movements and their ethno-cultural links.

The second major problem with the Department's argument that this practice is inconsistent with the Aboriginal Placement Principle is that the Principle was primarily developed for children and young people who are removed from their primary care providers for their own protection. The Principle does not easily apply itself to young people placed on detention orders, although it can be applied to community-based Youth Justice orders with a residential requirement. As already argued, this practice by the Aboriginal Community Justice Groups is based on recognising the importance of kinship and the ethno-cultural links of Aboriginal and Torres Strait Islander children, their families and community. This is in accordance with Section 3 (e) of the *Juvenile Justice Act 1992* which talks about recognising the importance of families and Aboriginal and Torres Strait Islander communities, and Section 6 (3) (c) of the *Child Protection Act 1999* which talks about the general principle of Indigenous children should be cared for within an Indigenous community.

These same Department of Families office bound bureaucrats have on a number of occasions supported the unwarranted detention of a child rather than see him referred to the Community Justice Group and placement in a family and community with historical ethno-cultural links. This is in conflict with Section 4 (c) (i) of the *Juvenile*

Justice Act 1992, which states that a child should be detained in custody for an offence only as a last resort.

Historical and contemporary practice by these bureaucrats reveals an external mode of operation based on the premise that they know what is best for, and know how to achieve what is best for Indigenous people and their communities. The end result of their intervention has all too often been an abysmal and costly failure that perpetuates disempowerment of Indigenous people while maintaining the cycle of crime and passive welfare dependency from generation to generation which is not in line with present government policies.

The 'Boys from the Bush' program, in stark contrast to Department of Families intervention, provides a means by which local Indigenous communities, through their Community Justice Group can initiate the decision-making process. These Justice Groups accept full responsibility for and have total control over where these young people are placed, who will be caring for them, and for how long these young people remain with their host family and community, or if they are to be placed elsewhere. This is in line with the Cape York Justice Study (2001) which recognised the importance of the Community Justice Groups as best placed to implement effective justice strategies and that government should support effective community-based crime prevention strategies to stop, wherever practical, Indigenous people coming into contact with the mainstream justice system.¹⁶

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¹ Royal Commission into Aboriginal Deaths in Custody by Commissioner Elliott Johnston QC, *Nation Report*, (1991), Vol.4, p. 165-206.

² Roeger, L.S. (1994) 'The Effectiveness of Criminal Justice Sanctions for Aboriginal Offenders', *Australian and New Zealand Journal of Criminology*, No.27.

³ Paper presented to the Queensland Department of Families and Community Care titled, '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, August 1998.

⁴ Chisholm, R. (1988) 'Aboriginal Children & The Placement Principle', *Aboriginal Law Bulletin*, Vol.2, No.31, p.4.

⁵ Sharp, N. (1992) *Footprints Along the Cape York Sandbeaches*, Aboriginal Studies Press: Canberra.

⁶ Sharp, N. (1993) *Stars of Tagai – The Torres Strait Islanders*, Aboriginal Studies Press: Canberra.

⁷ Sharp, N. (1992) *Footprints Along the Cape York Sandbeaches*, Aboriginal Studies Press: Canberra, p.14.

⁸ Mullins, S. (1995) *Torres Strait: A History of Colonial Occupation and Cultural Contact 1864-1897*, Central Queensland University Press, p.13.

⁹ Singe, J. (1989) *The Torres Strait: People and History*, University of Queensland Press, St Lucia: Queensland, p.37.

¹⁰ Singe, J. (1989) *The Torres Strait: People and History*, University of Queensland Press, St Lucia: Queensland, p.3.

¹¹ Singe, J. (1989) *The Torres Strait: People and History*, University of Queensland Press, St Lucia: Queensland, p.3.

¹² Sharp, N. (1992) *Footprints Along the Cape York Sandbeaches*, Aboriginal Studies Press: Canberra, p.14.

¹³ Interview with Walter Nona of Badu Island on 7 February 2003.

¹⁴ Interview with Jimmi Jacko of Hopevale on September 1993 by Tim Jaffer.

¹⁵ Interview with Ebenezer Law of Brisbane on 12 February 2003.

¹⁶ Cape York Justice Study, November 2001, Vol.1, p.68-69.