

# TOWARDS MUTUAL BENEFIT:

## AN INQUIRY INTO ABORIGINAL CUSTOMARY LAW IN THE NORTHERN TERRITORY

A sub-committee of the Northern Territory Law Reform Committee

### Preamble

There are many parts of the statutory and common law in Northern Territory, as well as in other State, Territory and Commonwealth jurisdictions, that incorporate or take into account elements of Aboriginal Customary Law<sup>1</sup>.

Aboriginal Law is commonly misunderstood as relating primarily to issues of punishment and payback and its interface with the Northern Territory Criminal Code. This is simply untrue. Aboriginal Law encompasses an extremely broad and complex set of rules and unwritten legislation governing social relationships, economic rights, land ownership, wildlife conservation, land management and intellectual property rights.

It is the view of the Northern Territory Government that, in accordance with Australian and international law, Aboriginal Customary Law should be recognised *consistent with universally recognised human rights and fundamental freedoms*.<sup>2</sup>

It is for this reason, that the Northern Territory Government affirms that the Northern Territory Criminal Code applies to all citizens of the Northern Territory without exception<sup>3</sup>. This means that the Northern Territory Government **does not condone** any of the crimes in that Code, including but not limited to murder, manslaughter, dangerous act, rape, incest, carnal knowledge, kidnap, assault and theft.<sup>4</sup>

The Northern Territory Government believes there is much value in supporting and sustaining Aboriginal Customary Law, and that the knowledge contained in Aboriginal Customary Law can be of mutual benefit to all citizens of the Northern Territory as well as its custodians.

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<sup>1</sup> For example, the Anunga rules from *R v. Anunga* (1976) 11 ALR 412 govern the questioning Aboriginal people in custody, particularly where English is not their first language. See also the Evidence Act, the Community Welfare Act, the Adoption of Children Act, the Crimes (Victims Assistance) Act, the Compensation (Fatal Injuries) Act, the Status of Children Act, the Administration and Probate Act, and the Mental Health and Related Services Act as well as various Community Government Schemes. Traditional punishment has long been taken into account in sentencing: *Jadurin v. R* (1982) 44 ALR 424 at 429.

<sup>2</sup> *Milirrpum v Nabalco* (1971) 17FLR at 266-267; *Yarmirr & Ors v The Northern Territory & Ors* (1998) 771 FCA (6 July 1998); *International Covenant on Civil and Political Rights*, Article 27; *Draft Universal Declaration on the Rights of Indigenous Peoples*, Article 24.

<sup>3</sup> Mason J on customary law and the criminal law, *Walker v NSW*, (1994) ALJR at 112

<sup>4</sup> Compare with the so-called *Seven Major Crimes Act 1885*, United States, Title 18, Part 1, Chapter 53, S.1153.

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Terms of Reference

To inquire into the strength of Aboriginal Customary Law in the Northern Territory.

To report and make recommendations on the capacity of Aboriginal Customary Law to provide benefits to the Northern Territory in areas including but not limited to governance, social well being, law and justice, economic independence, wildlife conservation, land management and scientific knowledge.

To report and make recommendations as to what extent Aboriginal Customary Law might achieve formal or informal recognition within the Northern Territory.

In conducting this Inquiry, the sub-Committee should have regard to the following:

- the views of Aboriginal people in the Northern Territory, particularly those who are custodians of Aboriginal Customary Law;
- the extent of existing arrangements accommodating Aboriginal Customary Law in the Northern Territory and other jurisdictions;
- previous reports and research into Aboriginal Customary Law, including the reports of the Statehood Committee (NT), the Australian Law Reform Commission (1986) and the Royal Commission into Aboriginal Deaths in Custody;
- other public submissions.

The Committee is to report to Government by 30 June 2003.