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MEDIA RELEASE

Aboriginal and Torres Strait Islander Legal Services **Support Customary Law**

The Chairpersons, CEOs and Principal Legal Officers of all Aboriginal and Torres Strait Islander Legal Services across Australia are calling on the Australian Government to involve them in any discussion on changes in legal policy for Indigenous peoples.

The call comes after a Forum in Adelaide, 28 & 29 June and discussion of details of a Communiqué from the Indigenous Affairs Ministerial Summit in Canberra, 26 June.

Although commending Ministers on wanting to do something, on behalf of the Forum, Chairperson, Mr Frank Guivarra said there were specific concerns about a number of issues.

1. The proposal that section 16A of the *Commonwealth Crimes Act* be amended to delete mandatory consideration of cultural background of offenders and exclude it from sentencing discretion, is contrary to fundamental principles of equality as enunciated by the High Court and the *Racial Discrimination Act*;
2. In accordance with case law principles, in particular *Neal v R* 1982, equality before the law implies and requires recognition by Courts of cultural difference in relation to sentencing matters;
3. The Forum endorses the Law Council submission to the WA Law Reform Commission on Aboriginal Customary Law that removal of the court's power to consider all factors relevant to the state of mind of an accused is against the principles of Australian law.
4. The removal of cultural background from the codified list of sentencing factors in Section 16A would be inappropriate for all ethnic and racial minorities.
5. A significant issue within Customary law is double jeopardy – where, whilst Australian law applies, so may a perpetrator be dealt with under Customary Law.
6. Application of Customary Law restores harmonious relations within communities.

7. We support the Law Council's recognition that Customary Law is highly complex and cannot be simply categorised.
8. Recognition of Customary Law is consistent with the approach of the Australian Law Reform Commission in Report 31 and with the approach adopted by Superior Courts of Record for the last half century.
9. Judges have been to date highly circumspect and careful in their considered determinations in cases in which Customary law has risen with proper evidence from anthropologists and other experts.

The Forum noted that the important developments of Aboriginal courts in the criminal justice system and the proposed changes conflict with these developments.

We believe the application of Customary Law facilitates a reduction in crime in Aboriginal communities.

The Forum suggests that ill-informed and simplistic approaches should not be applied, nor should the Commonwealth rush into ill-considered legislation.

Further information contact:

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