

Calls to scrap customary law misguided

By the Law Council of Australia.

The Law Council has labelled recent calls for Aboriginal customary law to be excluded from consideration by the courts as misguided, and urged governments to focus on more demanding social problems that require urgent attention.

The pleas came in the wake of Federal Indigenous Affairs Minister Mal Brough's calls for a national summit to "scrap" customary law as a mitigating factor in serious crimes.

But the President of the Law Council, John North, said that customary law was not being used as a means of avoiding criminal conviction.

"Customary law provides no lawful excuse for violent crimes or abusive behaviour," Mr North said.

He said courts had always taken into account any matter relating to the circumstances of an offender, whether it be cultural, religious or socio-economic.

"Courts should not be prevented from taking account of relevant matters affecting their sentencing decisions and Aboriginal behavioural customs are in no different category from the customs of the rest of Australia's multicultural community," he said.

Finger pointing ignores the issue cont...

government policy and neglect. This neglect has occurred in three ways: the failure to provide basic essential services to Aboriginal communities across the country; the failure to provide adequate infrastructure in those same communities; and the failure to invest in human capital. It is this neglect that has created profound cyclical poverty, despondency and hopelessness, and an unravelling of the social fabric that create an environment in which substance abuse and violence become normalised.

While the Federal Government claims that it has a commitment to end the cyclical violence and abuse, it has also said that it will not put more money into the problem. It has been estimated that basic Indigenous health needs are under-funded by \$450 million. Of the \$100 million spent on its new policy of shared responsibility agreements, three-quarters was spent on administration. It does not spend adequately and,



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"This country does not apply customary law as the law of the State and the Law Council is not aware of any case in which customary law has been used to determine guilt or innocence."

Customary laws have been recognised by the courts for decades as potentially relevant to the sentencing process in a variety of different matters.

However, domestic violence and abuse of children have never been recognised by the courts, or Aboriginal communities, as being justified by customary law.

"Limiting the discretion of the courts to consider customary law will not lead to equality – it will result in further disadvantage for one of the world's most disadvantaged minority groups," Mr North said.

"The Federal Government is demonising customary law, which is a sideshow to the real problems facing Indigenous communities in this country."

when it does, it spends ineffectively. It abrogates its own responsibility for these issues while it blames state and territory governments and the judiciary for the problem. With this as their position, there is little hope that the root causes of violence in Aboriginal communities will be addressed and judges will continue to be in the position of having to deal with the consequences of systemic and sustained government neglect.

The sad thing for many Aboriginal people faced with life in a dysfunctional Indigenous community is that, while this issue has captured the attention of Australians, the convenient finger-pointing at the judiciary and the blame shifting between governments does not bode well for the hope that something effective might be done to alter the situation.