



# Northern Land Council

## MEDIA RELEASE

### **Traditional marriage: the Chief Minister must act**

**10 December 2003**

NLC Chairman Galarwuy Yunupingu AM today welcomed Opposition leader Terry Mills' announcement that the CLP would consider revoking Government legislation which removes traditional marriage as a defence when a man has sexual relations with a girl under 16.

"Terry Mills has shown that he is prepared to consult and look carefully at complex issues as part of delivering effective opposition and persuading Territorians – all Territorians – that the CLP could deliver good government," Mr Yunupingu said.

"Mr Mills is taking the same approach as that of former Chief Minister Paul Everingham who included the defence in the Criminal Code in 1983 after extensive consultations, and who told Parliament in 1983 that the Government should not interfere unduly in Aboriginal customs."

"This stands in stark contrast to the position adopted by Attorney General Dr Peter Toyne throughout this debate and re-emphasised at a press conference this morning – that the choice was between allowing child sex abuse or having a one-size-fits-all piece of legislation."

"Dr Toyne did not consult with anyone - instead passing the law in the dead of night hidden in an Act about homosexual law reform. Dr Toyne's claim on last Friday's ABC Television *Stateline* program that the issue was raised during the NT Customary Law inquiry - which was released on 11 November 2003 - is not correct."

"In fact the inquiry made no mention of removing the traditional marriage defence, instead recommending community consultation. And the report noted that Aboriginal inquiry members had serious concerns regarding Government interference in traditional marriages."

Dr Toyne ignored the report of his own inquiry and told Parliament that the defence must be removed because it was "defunct" and the "government does not condone child sexual abuse in any circumstances".

"This statement is deeply offensive", Mr Yunupingu said. "Our traditional systems of promised marriage have nothing to do with abuse in any form. Marriage systems which have existed for thousands of years must be dealt with separately to serious issues like child abuse or violence."

"Dr Toyne's mistakes mean that Aboriginal husbands in a bone fide traditional marriage who have sex with a consenting wife under the age of 16 face a mandatory gaol sentence, with no defence possible – as do Aboriginal women from the wife's family who arrange the marriage because they have aided and abetted the crime," Mr Yunupingu said.

"Moreover existing traditional marriages with a wife under 16 which were legal last week are now against the law - but Dr Toyne did not bother to tell anyone."

"Dr Toyne's serious mishandling of this issue poses the first major test for Clare Martin's Government. She became Chief Minister claiming that she would seek a relationship based on respect and trust regarding Aboriginal custom - but she has been badly let down by her Attorney-General," Mr Yunupingu said.

"The Chief Minister must now give this issue her personal attention with a view to restoring the defence but also requiring a defendant to prove on the balance of probabilities that the sexual relations occurred in a bona fide traditional marriage – thus ensuring that the rights of women and children are paramount."

"This was the carefully considered recommendation of the Australian Law Reform Commission in 1986, after a comprehensive 8 year inquiry commissioned by Commonwealth Attorney-General Robert Ellicott QC and chaired by Justices Michael Kirby and Murray Wilcox," Mr Yunupingu said.

"The importance of resolving this issue in a sensible and consultative way cannot be overemphasised. The Government needs to remember that Aboriginal communities will vote No. 1 for protecting culture and tradition every time."

The legislation amended the Criminal Code and was passed at 3am on Wednesday 26 November 2003.