



ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA (INC.)

ANNUAL REPORT 1995 - 1996



TRIBUTE TO ROB RILEY

Rob Riley was arguably this State's most widely recognised and respected Aboriginal leader.

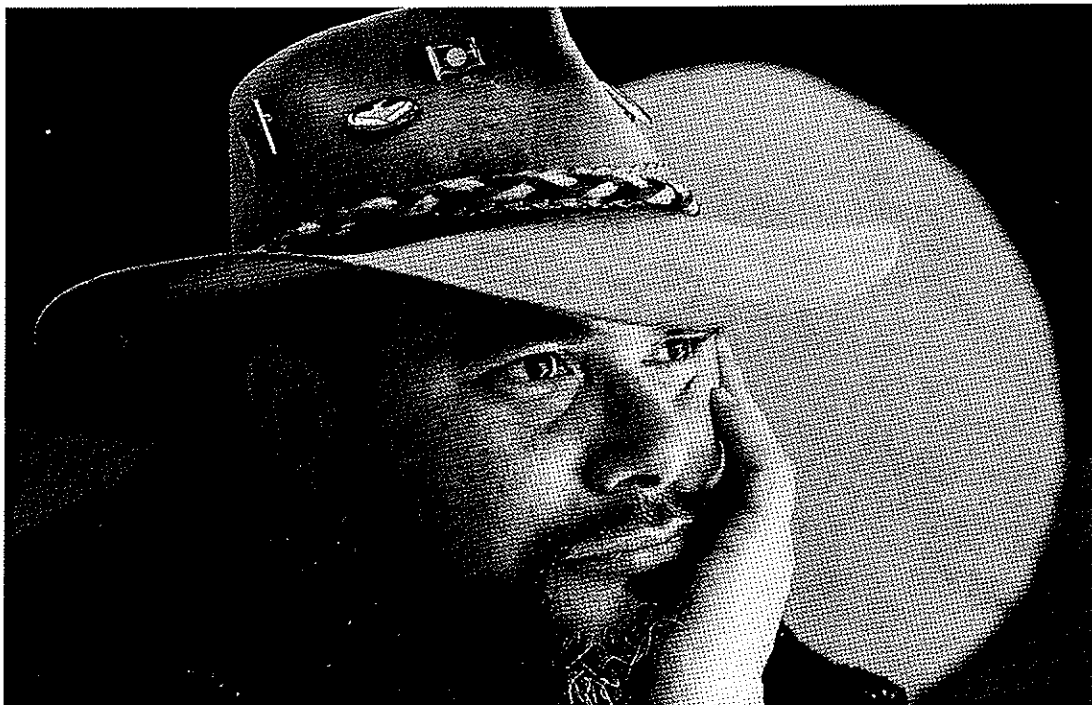
His regular public and media representations as Chief Executive Officer of the Aboriginal Legal Service of Western Australia, over a period of years, made his face a familiar face, and his voice a familiar voice, to both the Aboriginal and non-Aboriginal communities in Western Australia and throughout Australia. His ability to calmly, concisely and clearly discuss highly emotive, sensitive and complex political issues, with all audiences - from official government to informal community levels - was recognised and appreciated.

Rob had problems in his life, and he had faults that he himself acknowledged, but he was admired, respected and trusted by most. When he spoke, there was no doubting the sincerity of what he said, and why he said it. His primary, overwhelming, and unrelenting motivation was to effect changes that would enhance the quality of life of Aboriginal people.

Rob Riley did not see himself as a champion, or as a legend, or as anything extraordinary. He saw himself as one man dedicated to the political, social and cultural emancipation of a community to which he belonged, and which he loved.

Rob Riley as a friend and confidant will be missed by a privileged few. As a tireless advocate for the human dignity of his people he will be missed by the privileged many. As a peacemaker, even if they don't know it, he will be missed by all.

This 1995-96 edition of the Annual Report of the Aboriginal Legal Service of Western Australia (Inc.) is the last that will be able to acknowledge his direct impact on Aboriginal affairs in this State. Because of that it is a very special edition. And that's as it should be - for Rob Riley was a very special person.



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FOREWORD

In presenting this forward I pay my respects to the late Rob Riley. It is only fitting that this report is dedicated to him. His influence on our Organisation will remain. His struggle for our people will be carried on through the work of the ALS and through documentaries presented on his life and work. It is noteworthy that these documentaries have recently been awarded such prestigious awards as the Walkley Award and the United Nations Peace Prize.

The year has been a difficult one for the organisation with major staffing changes, reduced levels of funding, an ever increasing work load and a hostile political environment. These external influences have forced the organisation to look at what we do and how we do it. The Executive Committee has already done work towards structural changes and has endorsed an Aboriginalisation process. Changes to our service can also be expected with the Policy Framework document from ATSIC ready to be implemented by March 1997. Despite these factors I am proud of the efforts by the staff and Committee members in ensuring our community is provided with a quality service. I would also like to take this opportunity to thank all those who are no longer with the ALS but without whose commitment the struggle would have been much more difficult.

Court wins across several areas of the service, including our Land and Heritage Unit's Representative Body have had National implications for all our peoples. This has reflected well on the organisation. The report the ALS did for the National Inquiry into the Removal of Aboriginal Children was considered such a valuable report it was used as a benchmark for others wishing to report to the Inquiry. The ALS has also had a major role to play in trying to influence the Government and other stakeholders in the amendments to the Native Title Act. As well as these achievements the organisation has continued to have a high profile in the media, bringing issues that are of concern to the Aboriginal community to the attention of the general Public.

The ALS is one of our major Aboriginal organisations nationally and the biggest in WA. We must all ensure that it is up front in our fight for justice!

Ted Wilkes
PRESIDENT

AIMS AND OBJECTIVES

In summary, the aims and objectives of the Aboriginal Legal Service of Western Australia (Inc.) are as follows:

To provide direct relief to all Aboriginal people from poverty, suffering, destitution, misfortune, distress and helplessness caused directly or indirectly by their involvement with the laws of the Commonwealth or the States of Australia and all matters ancillary hereto including, but without limiting the generality of the foregoing by the provision of:

- a legal, advisory and consultative service to Aboriginal people in Western Australia
- cooperation and liaison with private legal aid services to ensure that Aboriginal people derive full benefit and advantage from such services
- operation of a central office and country offices
- provision of a legal service for Aboriginal people to supplement other services, and to avoid duplication
- collection of data and instigation and assistance with research concerning the relations of Aboriginal people with the law, the Police, the Courts, Prisons and Institutions involved in the administration of justice
- promotion or procuration of changes in law or practice in the interest of Aboriginal people
- receipt and expenditure of grants of money from the Commonwealth or State Governments or from other sources in the most efficient and cost effective manner which are consistent with the above-mentioned aims and objectives

BACKGROUND

Establishment of the Aboriginal Legal Service of Western Australia (Inc.) (ALS WA)

The ALS WA developed from the Justice Committee of the New Era Aboriginal Fellowship Inc. The Justice Committee was made up of a number of Aboriginal people, Lawyers and other interested people who commenced a Voluntary Advisory Legal Service in Perth. This group examined reasons for the position in which Aboriginal people found themselves when dealing with the Police, the Courts and the Legal System.

At the time, Practitioners undertook briefs free of charge for Aboriginal people who were otherwise unable to get legal assistance. The existence of the Law Society Aid Scheme was of little benefit because Aboriginal people felt uncomfortable in a non-Aboriginal agency. This lack of confidence was based on the assumption that the staff in these agencies would not understand their problems, ideas or their way of life. Hence, it was imperative that Aboriginal people be employed to act as a bridge between the client and the Solicitor bringing together and relaying or interpreting information. Generally, Aboriginal people feel more confident and can more successfully communicate with other Aboriginal people.

In 1973 a full-time office was established with two Solicitors, three Aboriginal Field Officers and a Secretary, within the premises of the Aboriginal Advancement Council, Beaufort Street, Perth. The need for independent premises was recognised and subsequently obtained later in 1973. The premises selected as the offices of the ALS was an old house, in an area within an environment which allowed Aboriginal people to have easy access and, more importantly, where Aboriginal people would gather and be likely to attend. The first grant from the Department of Aboriginal Affairs was in June, 1973.

The services provided to Aboriginal people was from the beginning, and continues to be, more extensive than the Law Society Scheme, which was largely limited to aid in superior court criminal cases. It was recognised that Aboriginal people had their most constant contact with the legal system in the Court of Petty Sessions and so the focus was on employing Solicitors who could provide cost effective representation in the full range of jurisdictions.

The Justice Committee decided to extend the Aboriginal Legal Service to both the South-West and North-West in early 1974. An office was opened in Narrogin and another in Port Hedland. At this stage, a Senior Solicitor was appointed as a Coordinator to continue the development of the Service throughout Western Australia. It was felt that as far as possible every person of Aboriginal descent should have access to representation in Court and legal assistance and advice when and where they required it.

In December, 1975, the ALS incorporated and became known as the Aboriginal Legal Service of Western Australia (Inc.) (ALS WA). The ALS Membership included Aboriginal people (with voting rights) and some Honorary Members (without voting rights).

In 1983, the ALS WA managed, after some years of discussion, to dramatically change their Constitution. These changes were necessary because the ALS WA was recognised as a Statewide organisation but, at the time, had an Executive Committee which was solely Perth-based and, as such, restricted input from Aboriginal people living outside Perth.

Essentially these changes enabled regional representation of Aboriginal people throughout the State.

Under the revised Constitution, the Executive Committee comprised two members elected by a ballot, which was organised and controlled by ALS WA staff, from each of the recognised National

Aboriginal Conference electorates for a term of two years, and the State Aboriginal Advisory Committee Delegates for each area.

Also on the Executive Committee were the Executive Officer, the Principal Legal Officer, the Office Manager and the Training Officer.

In 1979, the ALS WA was once again forced to seek larger premises due to a further increase in staff numbers. The office was relocated to the address, Piccadilly Suites, Nash Street, East Perth.

In the past ten years, there have been two major national inquiries into the operation of the Aboriginal Legal Services throughout Australia as well as the recent audits of some nominated Aboriginal Legal Services.

In 1981, the House of Representatives Standing Committee produced a report on Aboriginal Legal Aid.

In 1983, the Federal Government commissioned the Harkins Inquiry into Aboriginal Legal Aid.

Probably the most significant result of these separate inquiries was the recognition of the need and consequently their justification of the Aboriginal Legal Services throughout Australia. Importantly, this conclusion was drawn despite the fact that the Legal Aid Commission exists.

Both the inquiries recognised the value and distinction between a centralised organisation such as the ALS WA and the decentralised operation which exists in Queensland and New South Wales.

There has been little tangible evidence or action incorporated as a result of these inquiries apart from continued funding from the Federal Government, more recently through the Aboriginal and Torres Strait Islander Commission (ATSIC). The ALS WA was not the subject of the recent round of special audits directed by ATSIC.

STATEMENT OF PHILOSOPHY

The Aboriginal Legal Service of Western Australia (Inc.) (ALS WA) aims to empower Aboriginal people and advance the interests and aspirations of the Aboriginal community through the provision of a comprehensive range of legal and support services throughout Western Australia.

Every human being has a value, dignity and worth as is affirmed in the United Nations declarations on the rights of all peoples.

Aboriginal people, in particular, have rights, entitlements and responsibilities arising from their position as the Indigenous people of Australia. In Contemporary and Traditional society, it is important to recognise the significance of land, family relationships, language, Aboriginal values and customary law.

The ALS WA recognises the needs of Aboriginal people and is committed to protecting and advancing Aboriginal rights and aspirations. The Executive Committee comprises representatives from the Aboriginal community throughout the State, and determines the policy directions and objectives of the organisation.

The law and the legal system are utilised to bring about social justice for the Aboriginal community. This requires a range of strategies including legal advice, legal representation, legal education, research, policy development and law reform.

Particular attention is needed to redress the disadvantaged position faced by many Aboriginal people in the community. Legal advocacy, preventative services and action for social change to reduce the factors that lead to disadvantage is essential.

The ALS WA believes that responsibility goes hand in hand with rights. While recognising that many people are victims of unjust systems in the community, the ALS WA encourages groups and individuals to become more responsible.

The ALS WA is responsive to change and is committed to develop a Statewide network of services that is accessible to all Aboriginal people. Cooperation with other Aboriginal organisations and government agencies is an essential component of the work of the ALS WA.

The contributions of staff, Executive Committee members, the Aboriginal community, volunteers and supporters is valued highly by the ALS WA. This is encouraged through positive relations and the promotion of a unity of purpose in the organisation.

EXECUTIVE COMMITTEE MEMBERSHIP

as at 30 June 1996

CENTRAL:

Mr Ted Wilkes (President)
Ms Lorraine Whitby (Treasurer)

GOLDFIELDS:

Mr Delson Stokes
Mr Richard Evans

MURCHISON/GASCOYNE:

Mr Mervyn Councillor
Mr William Kyanga

SOUTHERN:

Mr Mark Ugle
Mr Glen Colbung

PILBARA:

Mr Brian Sampson
Vacant

WEST KIMBERLEY:

Mr Paul Sampi
Vacant

EAST KIMBERLEY:

Mr Reg Birch
Ms Coral Gore-Birch

ATSIC REGIONAL COUNCIL CHAIRPERSONS:

Mr Eric Hayward	(Chairperson, Kalkarniny Regional Council)
Ms Glenys Collard	(Proxy, Kaata-Wangkinyiny Regional Council)
Mr Ivan Forrest	(Chairperson, Wongi Regional Council)
Mr Ashley Taylor	(Chairperson, Yamatji Regional Council)
Mr Terry Whitby	(Proxy, Ngarda-Ngarli-Yarndu Regional Council)
Mr Ricky Roe	(Chairperson, Kullari Regional Council)
Mr Dickie Bedford	(Chairperson, Malarabah Regional Council)
Mr Ian Trust	(Chairperson, Wunan Regional Council)
Mr Bernard Newberry	(Chairperson, Western Desert Regional Council)

Additionally, four members of Senior Management are ex-officio members.

STAFF

as at 30 June 1996

LEGAL OFFICERS:

ANDREWS, Chris	Solicitor - Conveyancing	Perth
AYRES, Robyn	Solicitor - Test Cases	Perth
BENN, Greg	Senior Solicitor - Land and Heritage	Perth
BOURKE, Margie	Solicitor	Kununurra
BRAJCICH, Tonia	Solicitor - Family Law	Perth
BUTI, Tony	Solicitor - Human Rights	Perth
CAIN, Faelicity	Solicitor - Land and Heritage	Perth
COLLINS, Peter	Relief Solicitor	Perth
CONNOLLY, Tony	Solicitor - Land and Heritage	Perth
CROFTON, Steve	Solicitor	Kalgoorlie
DeSOYZA, Anne	Solicitor	Perth
DEVEREAUX, Brian	Counsel - Criminal	Perth
DIXON, Paul	Solicitor - Criminal	Perth
FORD, Juliette	Manager/Solicitor - Family Law	Perth
GREGORY, Mark	Solicitor - Land and Heritage	Kununurra
HAMILTON, Liz	Manager/Solicitor - Criminal	Perth
HAMMOND, Wendy	Solicitor - Land and Heritage	Perth
HOLMES, Marcus	Solicitor - Land and Heritage	Perth
HOUSE, Felicity	Solicitor - Criminal	Perth
HUNTER, Derek	Solicitor	Bunbury
HYAMS, David	Legal Officer - Land and Heritage	Perth
KEELEY, Rod	Solicitor	Port Hedland
KELLY, John	Solicitor	Broome
KETLEY, Harriet	Solicitor - Land and Heritage	Perth
MARTELLOTTA, Maxina	Manager - Representative Body	Perth
MIOCEVICH, Chris	Solicitor - Criminal	Perth
MUGAMBWA, Juliet	Solicitor - Civil	Perth
O'BRIEN, Monica	Solicitor - Civil	Perth
O'CONNOR, John	Solicitor - Criminal	Perth
PARKER, Andrew	Solicitor	Kalgoorlie
PATRICK, Gabriel	Solicitor - Civil	Perth
PIRIE, David	Solicitor	Albany
PIRIE, Catherine	Solicitor	Albany
SHAIN, Kathryn	Solicitor - Land and Heritage	Perth
SHARRATT, Steve	Solicitor	Geraldton
SHAW, Alex	Solicitor - Land and Heritage	Perth
SHEEHAN, Anne	Counsel - Land and Heritage	Perth
SHELLEY, Tony	Acting Principal Legal Officer	Perth
VANDER WAL, Jill	Solicitor - Family Law	Perth
VINCENT, Phillip	Solicitor	Carnarvon
WILLIAMS, Victoria	Solicitor - Children's Court	Perth

ALLIED PROFESSIONALS:

CAMPBELL-SMITH, Scott	Anthropologist - Representative Body	Perth
DRAYSON, Phillip	Geographic Information Officer	Perth
CHOO, Christine	Historian	Perth

COURT OFFICERS:

BLURTON, Kevin	Court Officer	Bunbury
BONSON, Robert	Court Officer	Perth
CARTER, Steven	Court Officer	Halls Creek
CHULUNG, Frank	Court Officer	Kununurra
COX, Margaret	Court Officer	Broome
FARBER, Suzette	Court Officer	Port Hedland
GRAY, Bevan	Court Officer	Geraldton
HAYES, Lesleigh	Court Officer	Perth
JOHNS, Glynis	Court Officer	Perth
KENNEDY, Margaret	Court Officer	Roebourne
McCARTHY, Phillip	Court Officer	Fitzroy Crossing
McGUIRE, Vaughn	Court Officer	Perth
McMAHON, Norm	Court Officer	Carnarvon
NELLY, Richard	Court Officer	Perth
OZIES, Glennis	Court Officer	Perth
RADOVANOVIC, Mark	Court Officer	Perth
ROBERTS, Carman	Court Officer	Albany
SHADFORTH, Brian	Court Officer	Derby
SMITH, Patrick	Senior Court Officer	Perth
SMITH, Carlene	Court Officer	Perth
STUBBS, Murray	Court Officer	Kalgoorlie
THOMAS, Dorothy	Court Officer	Laverton

CLERICAL SUPPORT:

BALLARD, Joan	Secretary	Carnarvon
CAMPBELL, Sylvana	Secretary - Civil	Perth
FLOYD, Vivienne	Secretary	Port Hedland
JEFFREY, Kylie	Secretary - Representative Body	Perth
KHAN, Mandi	Secretary	Albany
LODER, Simone	Secretary	Northam
LUPTON, Tracey	Secretary	Kununurra
PARRAVACINI, Sophie	Secretary	Bunbury
RAHMAN, Merrilee	Secretary	Broome
RANDALL, Charmaine	Secretary - Criminal	Perth
RICHARDSON, Julie-Anne	Secretary	Geraldton
ROBERTSON, Veronica	Secretary - Family Law	Perth
RUTHERFORD, Denise	Secretary - Criminal	Perth
RUTHERFORD, Kerry	Secretary	Kalgoorlie
SMART, Aletta	Secretary - Civil	Perth
STEPHENS, Margaret	Secretary - Civil/Human Rights	Perth
THOMPSON, Lana	Secretary - Representative Body	Perth
ZARO, Leona	Secretary - Land and Heritage	Perth

ADMINISTRATIVE STAFF:

BEDFORD, Jenny	Assistant to Chief Executive Officer	Perth
BOUNDRY, Nelson	Mapping Clerk - Land and Heritage	Perth
BROMFIELD, Angela	Librarian	Perth
CHANDLER, Colleen	Records Clerk	Perth
DAVIS, Cheryl	Research Assistant - Land and Heritage	Perth
EADES, Joslyn	Accounts Clerk	Perth
EGGINGTON, Dennis	Chief Executive Officer	Perth
GRIFFITHS, Amanda	GSI Assistant - Land and Heritage	Perth
GRIGGS, Kenneth	Office Clerk	Perth
HAYWARD, Colleen	Special Projects Officer	Perth
HOLLBACH, Shawn	Research Off. - Land and Heritage	Perth
HOPKINS, Laura	Payroll Officer	Perth
HOURIGAN, Geraldine	Admin. Officer - Land and Heritage	Perth
JACKAMARRA, Duane	Receptionist	Perth
JENKINS, Lynette	Personnel Officer	Perth
JOHNSTON, Mark	Administration Officer	Perth
PICARDO, Roy	Accountant	Perth
ROUSE, Thomas	Leave Without Pay	Perth
SINGER-EDWARDS, Gayle	Acting Community Unit Officer	Perth
WILEY, Vaughan	Accounts Assistant	Perth
WINMAR, Isobel	Assistant to Principal Legal Officer	Perth
YARRAN, Damien	Courier	Perth

CHIEF EXECUTIVE OFFICER'S REPORT



Dennis Eggington
Chief Executive Officer

INTRODUCTION

This year has been a time of highs and lows. The sad loss of the former ALS Chief Executive Officer and brother was very hard to deal with. He was respected by all and will never be forgotten. This report is dedicated to his memory. Despite this tragedy, the year has also been a time of excitement and change. The Executive Committee, members of the community and staff have a lot to be proud of in the Aboriginal Legal Service. Building and maintaining a quality service like the ALS is dependent on two essential things - dedicated, experienced staff and continued community support. Past and present staff and Executive Committee Members are therefore acknowledged for their determination and vision. Many of the changes that have taken place during this year have been a culmination of that hard work and vision over many years. The important role of Aboriginal Legal Services was recognised by the ATSIC Commissioners when they maintained the bulk of funding for ALS's for 1995/96.

FUNDING THREATS

During 1996, the Federal Government announced cuts to ATSIC. While Aboriginal Legal Services did well overall the ALS WA has had a reduction in Royal Commission into Aboriginal Deaths in Custody funds during the fiscal years 1992 to 1996. This amounted to approximately \$240,000. The ALS has only been able to absorb this deficit by not replacing certain staff positions when they have become vacant and by freezing expenditure on areas of the budget. This has stretched the service and placed the staff under considerable pressure. Unfortunately, this situation will not be resolved unless the ALS can secure other funds, or the service is cut back under a process of re-assessing priorities.

ALS EXECUTIVE ELECTIONS

The ALS Executive Committee comprises ATSIC Regional Council Chairpersons and representatives elected in ALS general elections from the seven regions. During this reporting period the ALS saw new elections for both processes. A list of current members is found on page 8 of this Report. A dispute and consequent findings in the general ALS election resulted in the South West electorate having to go back to the poles for a re-vote.

As a result of this re-vote and a general membership drive, the ALS can now be proud of having one of the largest numbers of currently signed-up members of any community controlled Aboriginal Association in Australia. This leaves the ALS with two challenges:

1. How does the ALS office ensure these members are kept informed of ALS work and activities?
2. How do Executive Members ensure they bring input from the members in their region to the Executive Committee meetings?

These must be priorities for the ALS during this next financial year.

MEETINGS

The ALS is constantly meeting with various community, non-government and government groups. The following are the most significant of these:

- Police Commissioner Bob Falconer

Meeting with **Bob Falconer** and his **Deputy Bruce Brennan** to introduce the ALS Chief Executive Officer and build a personal working relationship with both men. Matters discussed included the ALS's role in Justice issues and some of the ways in which police and community relations could be improved. Both the President, Ted Wilkes, and the Chief Executive Officer were invited back to address the new intake of Superintendents.

- Federal and State Ministers other Members of Parliament

Federal

Federal Minister for Aboriginal Affairs **Minister Heron**. This meeting was to talk to the Minister regarding changes to the Native Title Act and the new ATSIC policy framework. Leader of the Democrats **Cheryl Kernot**. This meeting was to discuss changes to the Aboriginal Legal Services and changes to the Native Title Act.

Members of the Opposition **Kim Beasley, Martin Ferguson, Gareth Evans, Darryl Melam**. The meeting with the opposition was to gain support for the Indigenous response to the changes to the Native Title Act (NTA).

State

Kevin Prince This meeting was to talk to the Minister regarding police actions in high speed chases. Complaints against the police and funding for the ALS.

Kevin Minson This meeting was in response to the ALS's comments that the State Government was not making any real attempt to address the RCIADIC recommendations. As a consequence the ALS is having ongoing meetings with this Minister and the Ministry of Justice.

Graham Keirath The ALS met with this Minister over the long running dispute with Homeswest. As a consequence the ALS is having regular meetings with Homeswest.

Bob Wiess The meeting with Minister Wiess was in regard to high speed chases and complaints against the police.

- Equal Opportunity Commission

The ALS met with Commissioner **June Williams** regarding Homeswest complaints. These meetings continue involving **Greg Joyce**, Chief Executive Officer of Homeswest.

- Aboriginal Justice Council

These are ongoing meetings with various other groups. Coordinated by the Aboriginal Affairs Department dealing with Justice issues.

- Land Issues

Kimberley and Northern Land Councils These meetings were to work out land matters where the ALS has interests.

WA Native Title Working Group These meetings are ongoing and involve all Representative Bodies in WA.

National Working Party on the Amendments to the Native Title Act. The ALS is a member of the Working Party chosen to represent all Indigenous Representative Bodies in ongoing talks with major stakeholders and Government over proposed changes to the NTA.

- Council of Elders

The ALS has met with the Metropolitan, South West and Murchison Councils. The Councils have wanted to meet with the ALS regarding land issues and the role and services of the ALS.

COMMUNITY LINKS

In an attempt to have a direct link to the community, other than through providing legal representation, former employee Gayle Singer-Edwards was re-hired to develop and assist in the undertaking of a program of community links, mainly through educative talks.

COURT OFFICERS REPORT

OUTLINE OF ROLES

The Aboriginal Legal Service employs Court Officers to act as the front-liners for the organisation, within the Aboriginal and general communities.

The Court Officers perform various functions for the Aboriginal Legal Service. These functions include:

- Representing Aboriginal people in court on criminal matters on a daily basis.
- Liaising between Clients and Solicitors.
- Mediating between Clients and Commonwealth Departments.
- Liaising between Clients and the Police Department.
- Assisting Solicitors for civil matters by being the first point of reference for Clients.
- Performing after hours duties 24 hours a day and 7 days a week to assist ALS Clients when required.

Since the structure of the Aboriginal Legal Service's Management has changed, the Senior Court Officer has been on an even par with Middle Management and has therefore played an important and informed role in the day to day running of the organisation. This in turn has given the Court Officers greater directions as to what role they play within the organisation as they are now under the umbrella of the Criminal Unit. Under the new structure if a Court Officer has a complaint or grievance they can now raise the issue with the Senior Court Officer who has a direct avenue to raise the issue with Middle management.

At present the Aboriginal Legal Service employs eight metropolitan court officers and fourteen country court officers.

The court officers endeavour to provide an informative and the best possible service possible to ALS Clients so that the respect of the Community can be earned.

ABORIGINALISATION POLICY

While it is not the normal practice to present in the Annual Report details of various policies endorsed by the Executive Committee to oversee the direction to be taken by the Association, the issue of Aboriginalisation is such a fundamental principle that the relevant policy has been reprinted here for the information of members:

"Aboriginal Empowerment and Self-Determination -

The ALS WA is committed to the empowerment and self-determination of Aboriginal people. All staff are expected to uphold this Policy.

The Senior Management Committee of the ALS WA has both responsibility for and authority over all aspects of the ALS WA's operations. At the same time the ALS WA is committed to

consultative decision-making and consultative work practices involving all Aboriginal and non-Aboriginal staff.

The long-term aim is to appoint Aboriginal people to as many ALS WA positions as possible, thus giving full force to the goal of Aboriginal empowerment and the primacy of Aboriginal perspectives, needs and goals.

Management Structures -

The **Executive Committee** (Governing Committee under the proposed new structure) advises and directs the ALS WA on all Policy matters.

The **Chief Executive Officer** is invested by the Executive/Governing Committee with the ultimate responsibility for all ALS WA operations.

The **Senior Management Committee** is the senior advisory and consultative body in the ALS WA comprising the Chief Executive Officer, the Deputy Chief Executive Officer, the Principal Legal Officer (Director Legal Services in the proposed new Constitution), and the Executive Officer of the Land and Heritage Unit. It deals with major operational management issues and makes recommendations to the Chief Executive Officer. It is responsible for ensuring the implementation of the decisions and directions of the Executive/Governing Committee.

Responsibilities of the Senior Management Committee -

1. Decision-Making - the ALS WA Senior Management Committee is responsible for overseeing all administrative and financial aspects of the ALS WA's operations and to represent the ALS WA within the Aboriginal and Legal Communities.

2. Accountability - the ALS WA Senior Management Committee should provide staff with the reasons for their actions and decisions in general terms. All staff are accountable to the Executive/Governing Committee through the Chief Executive Officer.

3. Consultation - the ALS WA Senior Management Committee is expected to consult with staff on relevant issues and to encourage collaborative work practices so that each Unit within the ALS WA operations are supportive of each other.

4. Delegation - the ALS WA Senior Management Committee may delegate duties within their responsibilities to individual staff or groups of staff for particular activities and functions. It is a joint responsibility of the staff and the Senior Management Committee to regularly consult on the progress of delegated duties.

5. Community and Political Involvement - the members of the ALS WA Senior Management committee are expected to participate in Aboriginal and Legal Community activities, in both a private and an official capacity. They should be aware of the complexity of issues and to analyse when, where and how to act in the best interests of the ALS WA and the Community it represents. These Community activities should not compromise their responsibilities as ALS WA Senior Management and employees.

Responsibilities of Staff -

Aboriginal and non-Aboriginal staff alike are highly valued employees and are encouraged to actively contribute to the Objects of the ALS WA and the goals and priorities set from time to time. However, staff should be aware that all major decisions rest with the Senior

Management Committee which acts to implement the decisions and directions of the Executive/Governing Committee. ALS WA staff are expected to behave in ways that affirm the authority of the Senior Management Committee and the Executive/Governing Committee as follows:

1. Decision-Making - Staff should not make decisions or act on behalf of the ALS WA without being specifically delegated this authority by the relevant member/s of the Senior Management Committee. The extent of this authority should be clearly established and understood in each situation.

2. Accountability and consultation - Staff should behave in a professional manner when dealing with Aboriginal clients or other members of the Aboriginal Community, remaining mindful of their responsibility as representatives of the ALS WA. Staff should consult the relevant member of the Senior Management Committee for ongoing direction and assistance in undertaking their delegated duties and should regularly report on their activities to the appropriate member of the Senior Management Committee. Staff should advise the Senior Management Committee of any information or events that may affect, either positively or negatively, the ALS WA's reputation and ability to achieve its Objects.

3. Community and Political Involvement - Staff members wishing to participate in Aboriginal or Legal Community activities (committees, projects, studies, etc.) as an ALS WA representative must seek the prior approval of the Chief Executive Officer or the appropriate member of the Senior Management Committee. Individual staff are free to participate in political or Aboriginal or Legal Community activities in their private capacity as long as this does not compromise their responsibilities as employees of the ALS WA or implicate the ALS WA without the appropriate permission.

ACTING PRINCIPAL LEGAL OFFICER'S REPORT



Tony Shelley
A/Principal Legal Officer

Significant success has been achieved in the past four years in improving the quality of representation and services provided by the ALS.

The past year had been a difficult one for the organisation with the departure of a number of senior staff including the Principal Legal Officer, the Deputy Principal Legal Officer/Senior Solicitor Civil, the Human Resources Manager and the former Chief Executive Officer. The death of the former Chief Executive Officer in May 1996 caused great distress to staff.

In addition there has been considerable uncertainty about the continued funding levels of the organisation, resulting in the non replacement of some vacant positions in order to make budgetary savings, and the total lack of funds for external briefings in the last quarter of the financial year.

Despite these difficult circumstances there has been consolidation of the improvements made in quality representations and service, due to the extraordinary efforts and extreme dedication of the staff in the face of these adverse circumstances.

High quality service and representation cannot, however, be maintained indefinitely in an environment where there is a continually increasing volume of work, and community expectation, without additional resources being made available to the organisation. The pressures on staff, particularly in some country areas, is acute.

There were significant achievements in all areas of practice during the past year and some of the highlights were:-

1. A number of Federal Court successes over the State Government on Native Title matters including enforcing the right to negotiate under the Native Title Act, a decision that the State Government was required to negotiate in good faith, and on other important aspects of how the Native Title Act should be interpreted;
2. The launch of the ALS Report to the National Inquiry into the Removal of Aboriginal Children from their Families, titled "After the Removal";
3. The launch of Striving for Justice Volume 3, which is the ALS Report on the State and Federal Governments' implementation of the Royal Commission into Aboriginal Deaths in Custody recommendations;
4. The successful appeal to the High Court of Australia from a conviction arising in the District Court trial at Kununurra;
5. The successful appeal to the Full Court of the Supreme Court resulting in a decision which required the disclosure by the police of documents in their possession which were relevant to the case. This significant decision has Australia-wide ramifications;
6. The development and ongoing implementation of a number of protocols with the police which result in the ALS getting statements of material facts relating to charges, and other vital information relevant to the case, well before the actual court date; and
7. The successful defence of clients from the Jiggalong Community in the District Court at Port Hedland in the "tribal punishment" trial. The not guilty verdict returned by the jury was important because it incorporated traditional Aboriginal customary law in the criminal law of Western Australia.

A short summary of the work of each of the legal units is as follows:-

1. Public Interest Unit

The Public Interest Unit (PIU) was established at ALS in late October 1993, and the broad objective of the Unit is to utilise legal strategies to challenge laws, policies and practices which are unjust, unfair, discriminatory or otherwise sufficient in their impact on Aboriginal people. This objective involved a number of approaches including:

- (a) The extensive research and development of comprehensive range of strategies
- (b) The identification of issues and situations which are unjust, unfair or discriminatory in the impact they have on Aboriginal people living in Western Australia
- (c) The application of relevant Human Rights law and principles
- (d) Continuing legal education within ALS to enable and increase the awareness in all staff of relevant human rights standards and anti-discrimination law.

The PIU has continued its involvement in a number of significant issues that have had, or continue to have a detrimental impact on the rights and well being of the Aboriginal community.

REMOVAL OF CHILDREN

The PIU finalised the ALS Report to the National Inquiry into the Removal of Aboriginal Children from their families, after compiling materials from over 800 people who came forward to give their story. The Report to the National Inquiry was titled "After the Removal". The National Inquiry has indicated the ALS submission is the most comprehensive and outstanding of any they received from around the country and it is being used as a benchmark in relation to the matters that should be addressed in every other State. Selection of clients for the preparation of test cases relating to the ability of people removed from their family to bring action against the State Government is progressing.

CONTINUING RESEARCH IN THE AREA OF ABORIGINAL MENTAL HEALTH

HUMAN RIGHTS

1. A report is being prepared for the Commonwealth Parliament in relation to its report on Human Rights Australia.
2. The preparation of an action and the conduct of a hearing before the Human Rights Commission over a number of weeks relating to discriminatory treatment handed out to HIV prisoners in the Prison System. A decision is pending.
3. A submission to the Human Rights and Equal Opportunity Commission and the Australian Law Reform Commission in relation to children and the legal process. The representation of the number of families at inquests related to deaths in custody.

TEST CASES AGAINST POLICE

Police liability test case is continued and a decision was reached in the Full Court of the Supreme Court of Western Australia requiring the State of Western Australia and the police to release documents relevant to the case. This is a major victory and a significant decision having Australia wide ramifications.

ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY

The launch of striving for Justice No 3, which is the ALS Report on the implementation by State and Federal Governments of recommendations of the Royal Commission into Aboriginal Deaths in Custody.

POLICE ACCORD

The continued development of a police accord (protocol) which has so far resulted in a standardised process of the ALS being faxed charges and summary facts in matters prior to the first court hearing. This is time saving for many Court Officers and Solicitors and enables the obtaining of instructions from clients prior to the day of hearing.

DISCRIMINATION

Human Rights and Equal Opportunity Test Case Complaint on Homeswest policies and practices regarding eviction and the allocation of housing assistance, along with various other discrimination matters.

EDUCATION

Freedom Of Information applications relating to the policies practices and results of the Education Department in relation to the education of Aboriginal children.

CHEMICAL EXPOSURE

Freedom Of Information applications in relation to the history of spraying 2451024D (Agent Orange) to control noxious weeds in the Kimberley, to which Aboriginal workers were exposed.

AMNESTY INTERNATIONAL

The arrangement of a visit by Amnesty International to various parts of the State on various human rights issues.

LAW REFORM

Numerous submissions to Government on law reform, and proposed legislation.

The PIU continues to be involved in: the development of the Convention of the Rights of the Child, domestic violence, women's legal service, and Indigenous women's project, meeting with the Chief Executive Officer of the Ministry of Justice relating to the treatment of prisoners, the review of the work-camp at Laverton, various meetings with representatives of government agencies who from time to time want input from the ALS, submissions to the Senate Committee on proposed amendments to the ATSIC Act, the lodging of complaints where prisoners are refused permission to attend funerals, as well as other more specific prisoner complaints relating to the handling and use of restraints, as well as the investigation and prosecution by civil action in relation to racial discriminatory policing of juveniles at the Royal Perth Show in 1995.

2. *Civil Unit*

The Civil Unit continues to be involved in a wide range of issues including:-

- Wills and Probate
- Removal of disqualification of licences
- Tenancy problems
- Contracts and Consumer Credit problems
- Incorporation of Associations
- Employment issues
- Personal Injury Claims
- Criminal Injury Claims
- Discrimination
- Debts
- Conveyancing

The Perth Civil section provide a central resource for civil matters requiring advice and representation. It deals with all matters referred from country offices. Most of the files, especially personal injury matters, require significant amounts of preparation and ongoing work for a matter to be finalised. This is very time consuming work for practitioners. One position in the Civil Section which became vacant during the year has not been filled, and will not be filled due to budgetary constraints.

The extensive areas of law covered by the Civil Section, combined with the large number of files to be handled and the difficult matters which require extensive professional work on each case, means that the current practitioners are working under great strain and the members of the Unit are commended for their efforts during the year.

3. Criminal Unit

The Perth Criminal Unit currently has a full compliment of Solicitors, but there are a number of positions for Court Officers which have not been filled due to funding constraints.

A great volume of work is done by the Solicitors and Court Officers on a day to day basis in the Criminal Unit. For much of the year the Perth Criminal Unit provided staffing for the Northam Regional Office and also provided assistance to regional practitioners for major trials and other work as required.

In total, the ALS has advised clients in relation to some 33,468 criminal law matters in the past year. Statistics do not show the great deal of time and effort spent on some of the cases. There have been some outstanding results at all levels of the court jurisdictions for trials and pleas in mitigation. One of the highlights was the success of clients from the Jiggalong Community in a trial in the District Court at Port Hedland whereby 7 clients were charged with serious charges of assault occasioning bodily harm or unlawful wounding as a result of infliction of tribal punishment. These clients were found not guilty and the case is important because it involves the matching of traditional Aboriginal customary law with the criminal law of Western Australia.

There was a successful appeal to the High Court of Australia, against a conviction in the District Court at Kununurra which was confirmed by the Court of Criminal Appeal. The successful appeal to the High Court has significant ramifications for a future trial conduct by Judges.

Most of the lawyers in the Criminal Unit have been with the ALS for 2 years or more. As a result of this increase in experience the quality and quantity of the work undertaken has increased. The recognition of this in the Aboriginal community has meant increased superior court work, and recognition of our practitioners and quality representation amongst the legal community.

APPEALS

72 appeals

There were 72 current appeal matters of which 36 went to a final hearing - either before the Full Court (Court of Criminal Appeal) or a single judge of the Supreme Court. Appeal cases often involve the clarification of specific aspects of interpretation of the law or they test areas of uncertainty in relation to the application of the law. In these instances these cases would not have received a grant of aid if they had gone to the Legal Aid Commission but the ALS has sought to prove their merit because our client base is more often than not particularly discriminated against in relation to these matters, for example cases involving charges of Disorderly Conduct by swearing.

While on the face of it a Disorderly charge may not appear to be one of which the label "serious" could be applied, the consequences of a Disorderly charge are just that. In assessing whether the client should be considered suitable for a community based supervision order instead of imprisonment the Ministry of Justice uses what is called the Offender's Assessment Risk System.

In this system certain factors are given a numerical value. If a defendant scores 15 or more on this scale they are considered at high risk of re-offending and are not considered suitable for community supervision. A previous charge of "violence" carries an individual numerical value of 15. Listed as a "violent" offence is a charge of being Disorderly.

The Criminal Unit was instrumental in bringing to the attention of the Public Interest Unit the inherent dangers of this Risk Assessment System and in setting up and attending meetings with the Ministry of Justice to explain the inherent discrimination within the system in relation to our clients.

SUPREME COURT

6 trials

There were at least 6 trials in the metropolitan area handled internally by this office. More trials were briefed to senior counsel either due to lack of resources, conflict of interest or complexity of the matters.

DISTRICT COURT

19 trials were handled by the Perth Criminal Unit

This figure is no indication of the number of cases that go to the District and Supreme Courts by way of the expedited committal procedure for a plea in mitigation. In Perth alone the Criminal Law Unit would represent approximately 220 people per year in this manner in the superior courts.

PETTY SESSIONS - CENTRAL AND METROPOLITAN

431 trials were conducted. A very great number of additional matters were handled without need for a trial by way of plea in mitigation.

The figures do not include trials for clients in country areas which would ordinarily be handled by ALS Regional Solicitors.

During the first half of 1996 the Video-Link system was introduced at Central Law Courts. This means that defendants of remand but held in custody appear via video link between Canningvale Remand Centre and the Central Law Courts. This link up occurs before the other courts at Central Law Courts open and has meant that the Perth office has to staff this particular court in addition to other representation that normally is required.

4. *Family Law Unit*

During the year there were 2 solicitors and one secretary in the Family Law Unit in Perth. The Family Law Unit provided a central resource for family law matters throughout the State. Because of lack of resources and the need to attach priority to the extremely heavy workload, the Unit provided service in matters dealing almost entirely with custody, access and child protection.

The Unit has been involved in representing the ALS on the Family Court and Aboriginal Community Committee of the Family Court, and the Deputy Registrar Liaison Group for the Child Support Agency. The Unit also makes representations from time to time directly to the Court in relation to procedures which are inappropriate for Aboriginal people.

There was an increase in the area of the practice in relation to child maintenance and child support.

The Unit is also involved in care and protection proceedings or otherwise negotiating with the Department of Family and Children Services concerning the best interests of the children coming to the attention of the department.

The Unit maintains vibrant relationship with interstate Legal Aid Commissions, Northern Australian Aboriginal Legal Aid Service, and CAALAS in Alice Springs in order to assist our West Australian clients interstate matters.

5. *Land & Heritage Unit*

From the early 1980's until late in 1992, ALS resources in the land/heritage area consisted of a single "land and mining lawyer" responsible for the entire State. A large part of the work of this lawyer consisted of negotiations with mining companies, Warden's Court objections, site survey agreements and negotiations with the WA Government in relation to land grant/management proposals.

The decision by the High Court in *Mabo* was handed down in June 1992 and created a new avenue with tremendous potential for Aboriginal people to address their aspirations in relation to land.

As a result of special funding provided by the Commonwealth Government as part of its response to the findings of the Royal Commission into Aboriginal Deaths in Custody in 1992, it became possible for the ALS to expand its resources in the land area with the creation of the Land and Heritage Unit (LHU). Between October 1992 and April 1993, five new staff members were employed within the LHU creating a team of four solicitors, a research officer and a secretary.

Pursuant to a determination of the Federal Minister for Aboriginal Affairs dated 27 December 1994, the ALS was appointed as a Representative Aboriginal Body under Section 202 of the Native Title Act with responsibility for the entire State of Western Australia.

In the course of the 1994/95 financial year, ATSIC created two new funding programs - the Native Title Claims Program and the Representative Body Operational Support Program for the purpose of providing Aboriginal organisations with the necessary resources to fulfill the functions and responsibilities of a Representative Aboriginal Body under the Native Title Act.

A substantial increase in native title funding was made available to the ALS through these two programs towards the latter part of 1994.

In the few years since the High Court handed down its decision in Mabo the ALS has already established a considerable track record and broad acknowledgement within the Aboriginal community as well as legal circles as having substantial knowledge and expertise in the area of Native Title.

Even before the Native Title Act was passed the ALS had already commenced proceedings in the Supreme Court of WA claiming Native Title at common law on behalf of the Western Desert Martu people. The ALS achieved early success in relation to this claim by defeating a strike out application lodged by the WA Government.

The ALS was significantly involved in the drafting process of the Native Title Act and again achieved notable success shortly after the Federal Act was passed by defeating the WA (Land Titles and Traditional Usage) Act in an action before the High Court of Australia. This victory effectively established the continued existence of native title in Western Australia.

Since then, other successful ALS actions have included defeating both the WA and Northern Territory Governments in actions before the Federal Court seeking to have the Miriwung Gajerrong claim struck out. Success in these actions effectively gave all Native Title claimants throughout Australia the right to negotiate with land use applications immediately upon filing a Native Title claim with the National Native Title Tribunal (NNTT).

The ALS now has a firmly established track record in the field of Native Title from its involvement in the drafting of the Native Title Act, to the successful High Court challenge of the WA (Land Titles and Traditional Usage) Act, and the conduct of the first Native Title claim to be heard and determined by the Federal Court.

In addition to this, the ALS has a long history of familiarity and involvement with the law in relation to Aboriginal land, heritage and mining prior to the High Court decision in Mabo going as far back as providing legal representation in the Noonkenbah dispute.

Over the past year the ALS has engaged in a number of strategic appeals to the Federal Court in relation to determinations made by the National Native Title Tribunal (NNTT). This has led to two major successes which have both had a substantial effect in improving the position of Native Title holders/claimants within the future use right to negotiate process:-

(a) Broadening the Aboriginal right to negotiate in relation to exploration licences:-

Under the Native Title Act (section 237) a Native Title claimant wishing to object to an exploration licence application must first establish that the likely impact of the licence will fall into one of three categories before a claimant can gain the right to negotiate the grant of the licence.

One of these categories is that the grant of the exploration licence must “directly interfere with the community life” of the claimant group. The NNTT had been taking a very narrow interpretation of this phrase making it very difficult to establish that an exploration licence could ever impact on community life.

On appeal against the NNTT by the ALS to the Federal Court, the interpretation of the Phrase “directly interfere with community life” was given a much wider interpretation which now means a Native Title claimant has a much greater chance of establishing such impact and therefore obtaining the right to negotiate the grant of an exploration licence.

(b) Negotiation in good faith by the WA State Government.

The ALS is presently engaged in 436 future use right to negotiate matters (387 of these are in the Goldfields).

These are matters where a Native Title claimant has successfully objected to the granting of a mining tenement application and has therefore gained a right to negotiate with the mining company and WA State Government in relation to the grant of these mining tenements.

Until recently, the WA Government has not only been refusing to engage in negotiations with Native Title claimants under the Native Title Act, it has also been actively discouraging mining companies from engaging in such negotiations. The strategy of the State Government is to wait for the minimum negotiation period to end (6 months in the case of mining lease applications) and then push the Native Title claimant into the next phase of the process in which the NNTT conducts an Inquiry into whether or not the mining tenement should be granted.

A recent appeal by the ALS to the Federal Court has resulted in a decision by the Federal Court that the NNTT cannot proceed to the Inquiry phase until it is satisfied that the WA Government has in fact conducted negotiations in good faith with the Native Title claimants.

On 7th August 1996 a landmark decision was handed down by the National Native Title Tribunal (NNTT) whereby the ALS won a case on the basis that the State Government had failed to conduct negotiations in good faith and could not therefore proceed under the Act. This forces the Government to come to the negotiating table and to conduct negotiations in good faith prior to being able to ram through future use determination applications in the Tribunal. This is an extremely significant victory given that the Court Government's policy to date has been to refuse to negotiate and to try and frustrate the requirement that are placed upon it under the Native Title Act.

Continued developments in the ALS Geographic Information System (GIS)

The ALS continues to devote its expertise into developing what is now an extremely advanced Geographic Information System (GIS), that is, a computerised mapping system. The latest development has been the addition of Aboriginal site information obtained from the Aboriginal Affairs Department for the whole of WA. A set of coordinates, such as the boundaries of a mining lease application, can now be put into the ALS GIS which will then give a print out of the recorded Aboriginal sites within that area.

In May 1996, the Federal Government released its paper "Towards a More Workable Native Title Act" which proposed a number of amendments to the Native Title Act. At the end of June the Federal Government tabled a Bill containing a number of these proposals.

In the course of a number of national Aboriginal meetings to discuss these proposals a national Aboriginal Negotiating Team (ANT) was appointed including Dennis Eggington as Chief Executive Officer of the ALS. A Technicians Team of lawyers working for Aboriginal organisations, including the ALS, was also appointed. The ALS has played an ongoing role within the national Aboriginal meetings held to consider and respond to the Federal Governments proposals.

CONCLUSION

Despite a difficult year there have been some outstanding successes, and a highly professional standard of service generally. The remarkable dedication and hard work of all staff during such a year deserves high praise and recognition. Further information is presented in the Executive Officer's Report.

COUNTRY OFFICE REPORT

SOUTH WEST REGION

ALBANY OFFICE

Albany is a busy office with a significant circuit to cover. The two solicitors in the Albany office work longer than their allotted job-share hours and therefore the workload achieved by the Albany office is much greater than one would reasonably expect a single solicitor to be able to achieve. The office covers the circuits of all superior courts and the family law litigation arising from the area, in addition to covering the regular courts of Petty Session and Local courts, both in Albany and on circuit. In the past year the Albany office provided legal assistance in 1,744 criminal matters and 693 civil matters.

The Albany office encompasses the region from Albany to Katanning/Kojonup in the north, and to Ravensthorpe in the east and to Denmark in the west.

MID SOUTH WEST REGION

BUNBURY OFFICE

The Bunbury office provided legal assistance in 1,029 criminal matters and 312 civil matters in the year. During the past year the Bunbury office has recorded a significant increase in workload and there is some difficulty in covering all the courts in circuit area. Supreme and District Court circuit sittings are becoming more frequent in the Bunbury region. The Bunbury office represents clients at Collie, Busselton, Harvey, Donnybrook, Manjimup, Bridgetown and Margaret River as well as Mandurah Children's Court and Petty Sessions.

NORTHAM OFFICE

The Northam office represents clients at the Northam Court of Petty Sessions and Children's Court and the local court at Northam and in the circuit courts at York, Moora, Toodyay, Tammin, Cunderdin through to Narrogin. Though the main focus of the practice at Northam is covering the criminal courts, there is an increasing amount of civil work which include family law, Homeswest matters and other general civil matters.

Solicitors from the Perth criminal and civil sections provide representation and assistance as required to clients requiring the same through the Northam office. During the past year legal assistance was provided in 654 criminal matters and 323 civil matters.

GOLDFIELDS REGION

KALGOORLIE AND LAVERTON OFFICES

The office undertakes regular circuits to Laverton/Leonora and to Norseman/Esperance. The office also visits Warburton. Day to Day court work is heavy, particularly in Children's Court where there are the most number of juveniles appearing in court for any area outside the Perth metropolitan region. Andrew Parker joined the Kalgoorlie office in June 1996 and for a substantial period of time prior to that the Senior solicitor handled the extremely busy and demanding office and the associated circuits on his own for a number of months, which required very long work and travelling hours.

The Kalgoorlie and Laverton offices provided legal assistance in 2,565 criminal matters and 311 civil matters.

MURCHISON/GASCOYNE REGION

GERALDTON, CARNARVON, MEEKATHARRA OFFICES

The Geraldton office supervises the Carnarvon office and between them they cover the entire Murchison and Gascoyne area involving significant travelling time to circuits which extend inland as far as Wiluna.

Unfortunately, due to lack of funding the ALS was unable to provide a court officer at Meekatharra and that office has been closed. During the past year the Geraldton office provided legal assistance in 2,449 criminal matters and 668 civil matters. The Carnarvon office provided legal assistance in 2,565 criminal matters and 311 civil matters.

PILBARA REGION

PORT HEDLAND AND ROEBOURNE OFFICES

The area serviced is a vast one and includes isolated western desert communities and the towns at Port Hedland, South Hedland, Marble Bar, Newman, Karratha and Roebourne. In addition to these courts of Petty Sessions regularly attended by the solicitor and court officers, Justice courts are held as required at Nulligan, Marble Bar and Newman without the opportunity for clients to be represented.

The Port Hedland office handles those matters which come up in the circuit sittings of the Supreme and District Court which often involves time consuming and complex matters. In the middle of this busy schedule the office visits as many as possible of the numerous communities throughout the Pilbara region.

In the past year the Pilbara staff provided legal assistance in 3,43 criminal matters and 3,624 civil matters.

WEST KIMBERLEY REGION

BROOME, DERBY AND FITZROY CROSSING OFFICES

The West Kimberley is an extremely busy area of the State and it requires another practitioner to assist in the workload of the existing solicitor at Broome, should the funding allow. Derby office operations and Fitzroy Crossing office operations are coordinated and overseen by the Broome solicitor.

In the past year the West Kimberley offices provided legal assistance in 5,128 criminal matters and 9,216 civil matters.

The Supreme and District Court circuits are very busy and the civil law areas in which instructions have been taken include family, criminal injuries compensation, civil debts, personal injuries, Homeswest issues, deceased estates and industrial law.

The office staff also maintained as much contact as possible with the communities north and south of Broome including One Arm Point, in and around Derby, and in the Fitzroy's valley region.

EAST KIMBERLEY REGION

KUNUNURRA AND HALLS CREEK OFFICES

Petty Sessions courts in this region are held in Kununurra, Wyndham, Halls Creek, and occasionally at the remote desert communities including Balgo to the south of Halls Creek. The offices in the East Kimberley also maintain regular visits to remote communities from Kalumburu and Oombulgurrie north west of Wyndham, through to Balgo and Billaluna to the south of Halls Creek.

During the year the West Kimberley offices provided legal assistance in 1,871 criminal matters and 1,667 civil matters.

CONCLUSION

All staff in the ALS country offices deserve great praise for their dedication and hard work, in often difficult circumstances, through the past year.

EXECUTIVE OFFICER'S REPORT



Glenn Shaw
Executive Officer

Summary

This Report outlines the issues relating to the Land & Heritage Unit (LHU) and the Representative Body of the ALS, and the actions taken by the LHU and Representative Body in the 1995-1996 year. It also outlines future action for the 1996-1997 year.

The Land & Heritage Unit/Representative Body, is now firmly entrenched, as an additional role to the historic one of the ALS.

The Land & Heritage Unit/Representative Body, although separate within the organisation, works hand in hand in achieving positive outcomes for the Aboriginal community of Western Australia, on any/all issues relating to land.

The LHU/Representative Body, has a great deal of involvement, in gauging the legal merit of Native Title claims, and subsequently providing legal assistance, if requested, to claimants. It should be pointed out that, because of the Audit of the ALS, the LHU/Representative Body, has not been providing any additional legal assistance for claimants, due to the fact that a full year's funding from ATSIC has not been received. However, the legal merit of individual cases has been assessed and when funding becomes available the claimants will receive the assistance required.

Over the last year, the LHU/Representative Body, has been inundated with Future Act Notices [Section 29] and these have been forwarded to the relevant Native Title claimants, for their information, and also to see if they want to object to the notice, and start negotiations with Government, petroleum companies and mining companies.

This type of coordination role by the LHU/Representative Body is an extremely important one, particularly when you look at the attitude of Government, when it comes to addressing the issue of Native Title. This role will continue to be undertaken, if for no other reason than the other Representative Bodies throughout the State do not have the resources to handle the sheer number of notices that are generated.

Protocols with other Representative Bodies:

The ALS currently has Working Agreements and Protocols with all Land Councils and Representative Bodies throughout the State, these having been in place for approximately a year. As the various Representative Bodies develop within their own regions, it is becoming evident that the current Working Agreements need to be reviewed and this will be taking place over the next 2 to 3 months. While the review of the Working Agreements is being undertaken consideration will also be given to renegotiating the current Protocols with the various Land Councils and Representative Bodies.

The Working Agreements will be of ever-increasing importance to the ALS in view of the fact the Native Title Act is going to be amended in the first quarter of 1997. The ALS needs to solidify its position, as it relates to Native Title, with the view to keeping its Representative Body status. The ALS is also a member of the Western Australian Native Title Working Group (WAANTWG), which is another forum where the ALS has the ability to bring issues of concern to the table, not necessarily ones that relate to Working Agreements with individual Land Councils and Representative Bodies, but rather ones that affect Native Title at Statewide and/or National levels.

The State Government and Native Title

The State Government's Land [Titles and Traditional Usage] Act, was found to be in breach of the Racial Discrimination Act [1975], but the State Government is still of the opinion that their legislation is far better than the Native Title Act (NTA), and that the NTA is unworkable.

The ALS has had ongoing confrontation with the State Government over Native Title, particularly with the way the Government deals with the issuing of exploration and mining leases. The practice of Government is to try and force them into the Expedited Procedure process, with the view to reducing the level of negotiation between the State, mining companies and Native Title claimants. Generally this has been unsuccessful but the Government is still persisting with this process.

When the Government is unsuccessful in getting exploration and mining leases to the Expedited Process, because of determinations of the National Native Title Tribunal (NNTT), they automatically appeal to the Federal Court to have the decision of the NNTT overturned. This has a dual effect; firstly, it stops the process of negotiation being started and, secondly, it becomes an expensive and lengthy process over something that could have been settled much more quickly, with less cost if they had negotiated in good faith with the claimants.

The State Government generally works on the principal of litigation before negotiation, and in the long run they spend enormous amounts of money, and waste a great deal of time, only to have their appeal dismissed in the Federal Court. The ALS has had several victories in the High Court, and will continue to defend the rights and interests of Native Title holders, against the extremely obvious attacks upon Native Title holders throughout the State.

Amendments to the Native Title Act (NTA)

The Native Title Act (NTA) is due to undergo the amendment process following a second reading of the Bill in December, 1996, and onto the Debate in the Senate in February/March 1997.

The amendments are too numerous to try and outline in this report, but the upshot of them is that the roles and responsibilities of Representative Bodies will change, the Right to Negotiate will change, the Federal Minister will have a greater ability to intervene, particularly if the granting of Native Title is not in the "best interests" of the country, the Minister will be selecting Representative Bodies for specific areas of the country, and the State Government will be able to establish its own Tribunal.

It is difficult to guess which amendments will get through the Parliament, but the ALS will be advising the Aboriginal community as to the outcomes and the possible effects the amendments will have on Native Title in Western Australia.

ACCOUNTANT'S REPORT AND AUDITED ACCOUNTS



Roy Picardo
Accountant

Highlights

1995/96 has been a challenging year for the Aboriginal Legal Service as there was a carry-forward deficit of \$327,228 from the previous year and a clear message from ATSIC that there would be no "top up" grants available. The ALS is pleased with the successful reduction of that deficit to \$44,888 by the end of the year. The budget deficit was able to be contained for two reasons:

- The receipt of an amount of \$430,000 from the Western Australian State Government in relation to costs awarded by the High Court on Martu's challenge to the validity of WA Land (Titles and Traditional Usage) Act; and
- Savings achieved by delaying the recruitment of staff, non-replacement of some staff and deferring/cutting expenditure. However, in achieving these savings, several staff were placed under tremendous pressure and regrettably some services to the community were affected.

The Land and Heritage Unit showed a deficit for the year of \$350,595. However, as there were unexpended funds brought forward from the previous year, there was a carry-forward surplus of \$731,512 at the end of the year.

Background information on ALS accounting operations/statements

ATSIC is the principal source of ALS funding, providing grants to cover the two main ALS activities which are Legal Services and Native Title Operations. Separate sets of accounts are maintained for these activities styled "Aboriginal Legal Service" and "Land and Heritage Unit" respectively. Grants for Legal Services are provided from Ongoing Operational and Royal Commission into Aboriginal Deaths in Custody (RCIADIC) funding programs. Grants for the Land and Heritage Unit are offered from Operational and Implementation funding programs and separate accounts are kept for each of these funding programs.

Last year the ALS changed the basis of its accounting from "cash" to full "accrual" accounting, and accounts (statutory) are prepared to comply with all applicable Accounting Standards and other mandatory reporting requirements.

However, for acquittal of ATSIC grants adjustments must be made to ALS statutory accounts. The adjustments include reversal of depreciation and long service leave provisions and inclusion of capital expenditure as an expense rather than an asset. Hence, while ALS statutory accounts for the Aboriginal Legal Service for 1995/96 show a carry-forward deficit of \$449,754 the carry-forward deficit for ATSIC grant purposes is \$44,888. Similarly, the retained earnings for the statutory accounts for the Land and Heritage Unit for 1995/96 is \$971,149, while for ATSIC grant purposes it is \$731,512.

Grants Received

During the year the ALS received the following grants from ATSIC.

Aboriginal Legal Service

Date Grant Received	Amount	Funding Program
16 August 1995	\$ 850,000	Ongoing Operational
27 September 1995	\$1,461,000	Ongoing Operational & RCIADIC
2 November 1995	\$ 81,000	Capital
3 January 1996	\$1,200,000	Ongoing Operational & RCIADIC
11 April 1996	\$1,111,716	Ongoing Operational & RCIADIC
Total	<u>\$4,703,716</u>	

Land & Heritage

Date Grant Received	Amount	Funding Program
16 August 1995	\$165,000	Operational
16 August 1995	\$125,000	Implementation
6 October 1995	\$165,000	Operational
6 October 1995	\$100,000	Implementation
2 November 1995	\$ 90,000	Capital
3 November 1995	\$150,000	Implementation
14 December 1995	\$330,000	Operational
14 December 1995	\$325,000	Implementation
20 May 1996	\$ 60,000	Operational
20 May 1996	\$ 60,000	Implementation
Total	<u>\$1,570,000</u>	

Audit Reports for the Year Ended 30th June 1996

The audited reports for the Aboriginal Legal Service and the Land and Heritage Unit were documented by ALS auditors "Pannell Kerr Forster" and have been signed and delivered.

Copies of the reports are available from the ALS WA on request.

Financial Accounts for the Year Ended 30th June 1996

Copies of the audited financial accounts of the Aboriginal Legal Service and the Land and Heritage Unit for the year ended 30th June 1996 are available from the ALS WA on request.

The Balance Sheet, summary Income and Expenditure statement and Cash Flow statement for the Aboriginal Legal Service and the Land and Heritage Unit for the year ended 30th June 1996 are attached.

The net income including the abnormal item for the Aboriginal Legal Service for the year ended 30th June 1996 was \$108,764 while the Land and Heritage Unit showed a deficit for the year of \$350,595.

The abnormal item refers to the \$430,000 which was received from the Western Australian State Government for costs awarded by the High Court.

Future Funding

The uncertainty of future funding levels continues to be of grave concern to the ALS as corporate and strategic plans are not able to be developed with any predictability. Unless adequate funding is guaranteed, the ALS will not be able to deliver the services required of it by the Community. The ALS continues to request ATSIC to introduce triennial funding arrangements so that it will be in a position to plan, manage its resources effectively and provide better services to the Community.

ABORIGINAL LEGAL SERVICE OF WA (INC.)
BALANCE SHEET AS AT 30 JUNE 1996

	1996	1995
	\$	\$
Current Assets		
Cash	421,932	86,155
Receivables	23,716	13,166
Other	64,140	98,776
Total Current Assets	509,788	198,097
Non-Current Assets		
Property, furniture and equipment	190,885	233,205
Leasehold improvements	181,882	303,137
Total Non-Current Assets	372,767	536,342
Total Assets	882,555	734,439
Current Liabilities		
Creditors and accruals	347,676	298,324
Provisions	216,230	227,000
Total Current Liabilities	563,906	525,324
Non-Current Liabilities		
Provisions	76,770	76,000
Total Non-Current Liabilities	76,770	76,000
Total Liabilities	640,676	601,324
NET ASSETS	\$241,879	\$133,115
Accumulated Funds:		
Reserves	741,633	741,633
Retained surplus (deficit)	(499,754)	(608,518)
TOTAL FUNDS	\$241,879	\$133,115

ABORIGINAL LEGAL SERVICE OF WA (INC)
INCOME & EXPENDITURE STATEMENT FOR THE YEAR ENDING 30 JUNE 1996

	30/6/96	30/6/95
	\$	\$
INCOME		
Grants Received	4,703,716	4,823,898
Interest Income	36,019	31,080
Other Income	96,199	92,180
Administration expenses recovered	200,000	130,000
	5,035,934	5,077,158
EXPENDITURE		
Salaries	3,465,163	3,599,312
Repairs and maintenance	24,004	15,527
Audit fees	17,282	20,331
Depreciation	213,114	205,290
Services	628,782	628,157
Supplies	102,525	97,250
Travel and accommodation	153,298	186,802
Insurances	22,893	30,267
Motor vehicle expenses	264,443	286,331
Training	63,336	35,384
Briefings and disbursements	346,091	438,777
Executive Committee expenses	56,239	53,823
Sundry expenses		2,569
	5,357,170	5,599,820
Net deficit for year before abnormal item	(321,236)	(522,662)
Abnormal item	430,000	—
Net income/(deficit) after abnormal item	108,764	(522,662)
Retained surplus/(deficit) at beginning of financial year	(608,518)	885,537
Transfer to Land and Heritage Unit		(971,393)
Retained surplus/deficit at end of financial year	(499,754)	(608,518)
Retained (deficit) for ATSIC Grant purposes		
Balance per Statutory accounts	(499,754)	(608,518)
Adjustments for capital expenditure, depreciation and long service leave provision	454,866	281,290
Retained (deficit) at end of year for ATSIC Grant purposes	(44,888)	(327,228)

ABORIGINAL LEGAL SERVICE OF WA (INC)
CASH FLOW STATEMENT
FOR THE YEAR ENDED 30TH JUNE 1996

	1996 Inflows (Outflows) \$	1995 Inflows (Outflows) \$
Cash flows from operating activities:		
Receipts from ATSIC	4,703,716	4,823,898
Interest received	36,019	31,080
Other receipts	291,919	222,179
Abnormal Item	430,000	-
Payments to suppliers and employees	(5,080,619)	(5,188,658)
Net cash from/(used) in operating activities	<u>381,035</u>	<u>(111,501)</u>
Cash flows from investing activities:		
Payments for property, plant and equipment	(49,538)	—
Proceeds from Insurance claim	4,280	—
Net cash (used) in investing activities	<u>(45,258)</u>	<u>—</u>
Cash flows from/(to) financing activities:		
Transfer of grants to Land and Heritage	-	(971,393)
Net cash from/(to) financing activities	<u>-</u>	<u>(971,393)</u>
Net (decrease)/increase in cash held	<u>335,777</u>	<u>(1,082,894)</u>
Opening balance of cash held	86,155	1,169,049
Cash balance at the end of the year	<u>\$421,932</u>	<u>\$86,155</u>

A **RECONCILIATION OF NET CASH PROVIDED BY/(TO) OPERATING
ACTIVITIES TO NET INCOME/(DEFICIT) FOR YEAR.**

Net income/(deficit) for year including abnormal item	108,764	(522,662)
Depreciation	213,114	205,290
Proceeds from insurance claims	(4,280)	-
Increase in receivables	(10,550)	(2,971)
(Increase)/decrease in other current assets	34,636	(97,925)
Increase in creditors and provisions	39,351	306,767
Net cash (used in)/from operating activities	<u>\$381,035</u>	<u>\$(111,501)</u>

LAND AND HERITAGE UNIT
BALANCE SHEET AS AT 30 JUNE 1996

	1996	1995
	\$	\$
Current Assets		
Cash	917,282	1,209,200
Receivables	2,621	18,926
Other	4,798	3,535
Total Current Assets	924,701	1,231,661
Non-Current Assets		
Property, furniture and equipment	245,684	151,471
Total Non-Current Assets	245,684	151,471
Total Assets	1,170,385	1,383,132
Current Liabilities		
Creditors and accruals	131,236	16,637
Provisions	51,000	33,796
Total Current Liabilities	182,236	50,433
Non-Current Liabilities		
Provisions	17,000	10,955
Total Non-Current Liabilities	17,000	10,955
Total Liabilities	199,236	61,388
NET ASSETS	\$971,149	\$1,321,744
Accumulated Funds:		
Retained surplus	971,149	\$1,321,744
TOTAL FUNDS	\$971,149	\$1,321,744

LAND AND HERITAGE UNIT

(Consolidated Native Title Operational and Implementation Grants)

INCOME & EXPENDITURE STATEMENT FOR THE YEAR ENDED 30 JUNE 1996

	30/6/96	30/6/95
	\$	\$
INCOME		
ATSIC Grants	1,570,000	2,687,393
Interest Income	77,152	22,762
Other Income	6,000	731
	1,653,152	2,710,886
EXPENDITURE		
Salaries	807,545	512,024
Repairs and maintenance	3,830	1,094
Audit fees	2,733	4,000
Depreciation	94,922	58,098
Services	176,175	166,583
Supplies	54,340	45,431
Travel and accommodation	153,220	61,792
Insurances	9,811	13,127
Motor vehicle expenses	62,898	30,305
Training	22,700	18,051
Briefings and disbursements	183,774	324,627
Executive Committee expenses	23,977	24,010
Administration fee	200,000	130,000
Special Grant ("Future Use" notices)	207,822	
	2,003,747	1,389,142
Net Income/(deficit) for year	(350,595)	1,321,744
Retained earnings at beginning of financial year	1,321,744	
Retained earnings at end of financial year	\$971,149	\$1,321,744
Retained surplus for ATSIC Grant purposes		
Balance per Statutory accounts	971,149	1,321,744
Adjustments for capital expenditure, depreciation and long service leave provision	(239,637)	(151,469)
Retained surplus at end of year for ATSIC Grant purposes	\$731,512	\$1,170,275

LAND AND HERITAGE UNIT
CASH FLOW STATEMENT
FOR THE YEAR ENDED 30 JUNE 1996

	1996 \$	1995 \$
Cash flows from operating activities		
Receipts from ATSIC	1,570,000	1,716,000
Transfer of grants from ALS general account	-	971,392
Interest received	77,152	22,762
Other receipts	6,000	729
Payments to suppliers and employees	(1,755,935)	(1,292,116)
Net cash from/(to) operating activities A	<u>(102,783)</u>	<u>1,418,767</u>
Cash flow from investing activities		
Payment for property plant and equipment	(189,135)	(209,567)
Net cash used in investing activities	<u>(189,135)</u>	<u>(209,567)</u>
Net increase/(decrease) in cash held	<u>(291,918)</u>	<u>1,209,200</u>
Opening balance of cash held	1,209,200	—
Cash balance at the end of the year	<u><u>\$917,282</u></u>	<u><u>\$1,209,200</u></u>

A RECONCILIATION OF NET CASH PROVIDED BY/(TO) OPERATING
ACTIVITIES TO NET INCOME FOR YEAR

Net income/(deficit) for year	(350,595)	1,321,744
Depreciation	94,922	58,098
Increase in provisions	23,250	44,750
Decrease/(increase) in receivables	16,306	(18,927)
Increase in other current assets	(1,265)	(3,535)
Increase in creditors and accruals	<u>114,599</u>	<u>16,637</u>
Net cash from operating activities	<u><u>\$(102,783)</u></u>	<u><u>\$1,418,767</u></u>