

ALSWA

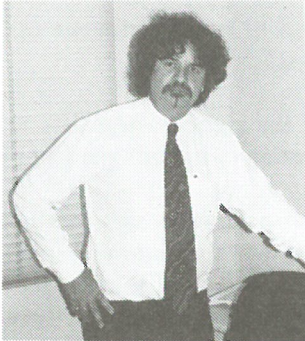
August 1997

ALS PUSHES FOR AMENDMENTS TO HOWARD'S 10 POINT PLAN

by Land and Heritage Exec. Officer Glen Shaw

Native Title in Western Australia and nationally is under serious threat from the Prime Minister's 10 point plan. The proposed legislation coming from the plan will see huge areas of the country having Native Title extinguished, with little or no ability for the traditional owners to stop the process from happening. In Western Australia the 10 point plan could extinguish Native Title over pastoral lease areas, which account for up to 40 per cent of the State, because of the change in activity that can happen on those lease areas.

Currently, pastoralists are restricted to the conditions of their leases, and there are many acts that cannot be undertaken - such as clear felling of land, planting of crops and tourist development. If the 10 point plan as it is currently written gets through the federal parliament they will be able to do these acts.

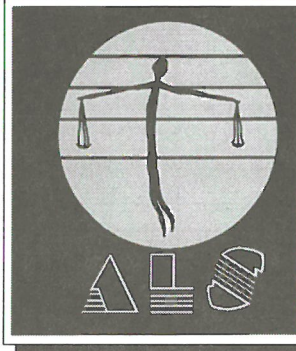


The 10 point plan also allows for the removal of the two rights to negotiate on such things as mining. They will be reduced to a single right to negotiate and this will only be able to happen if a mine is to be established. Currently traditional owners can negotiate with the mining industry on exploration and then enter into further negotiations when a mine is going to be established. The process as it stands allows for such things as site protection and environmental protection to be discussed during the first negotiation, with other issues to be negotiated during the second negotiation process.

If a single right to negotiate gets through parliament a regime of site destruction could follow, accompanied by huge environmental damage. Mining companies will be able to go on country and take bulk samples (of up to 2000 tons of earth) without a mechanism for checking site destruction or environmental impact.

(cont page 2)

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Early success for new PLO

The Aboriginal Legal Service successfully defended a woman in the District Court in Perth last week against a charge of assaulting a police officer. The woman had been charged with assaulting the officer and causing injury to his eye, during an incident in Northam earlier this year. The officer involved told the Court that the woman had hit him without cause, but it became clear to the Court that he had used his baton against the woman without reason for doing so, and she was defending herself.

The jury found the woman not guilty. The ALS case was argued by new ALS Principal Legal Officer David Imlah, before Judge Wisbey. David (pictured below) is the first Aboriginal solicitor to hold the position of Principal Legal Officer with the Aboriginal Legal Service in Western Australia. He commenced duties in May of this year.



Like father - Like son

The Premier Richard Court is using the same tactics to discredit and dispossess Aboriginal people as his father did in the early 1980's. In that era, Sir Charles Court destroyed a sacred site at Noonkanbah to show Aboriginal people 'who was the boss' and to portray Aboriginal people as an obstacle to economic progress.

Richard Court has declined to negotiate a consent agreement in respect to the Miriuwung-Gajerrong Native Title claim in the East Kimberley. In doing so he has cynically committed the State to the considerable costs of litigation in the Federal Court in the expectation that Aboriginal people will be blamed.

Yet it is the premier who, in rejecting the claimants approach, has to bear the blame for squandering the \$10m he claims it will cost the state.

Plan guts the Native Title Act

(from page 1)

The 10 point plan may open up in respect of regional and site-specific agreements being negotiated between traditional owners and government and developers, mining companies etc. This in itself is the only positive thing that can be seen within the 10 point plan, but it is not enough to convince the National Indigenous Working Group (NIWG) that the Howard government is keeping the rights and interests of the Aboriginal and Torres Strait Islander people in mind throughout the whole process.

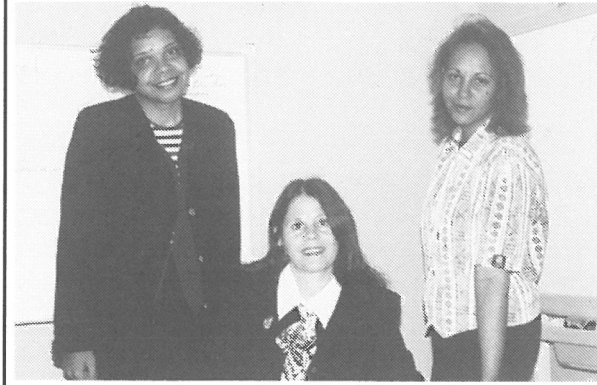
Up till now the NIWG has not had formal negotiations with the government because of the position it has taken on the 10 point plan, but it has sought support from the Labor Party, the Democrats, the Greens and independent members of parliament to secure amendments to the 10 point plan when it gets into parliament.

The NIWG has produced an indigenous position paper entitled 'Co-existence - Negotiation and Certainty' which is available to interested parties. The group is hopeful that the 10 point plan will not survive parliament as it is, and that a far better document could emerge at the other end.

POLITICAL OPPOSITION

Queensland Premier Borbridge and WA Premier Court, have worked hard to make the NT Act 'unworkable' by refusing to take part in its processes unless forced to do so by the Full Federal Court or the High Court of Australia. PM Howard was reported in the *Sydney Morning Herald* on April 15 saying that his Government "never ruled out extinguishment of native title on fair terms, which does have the appeal of certainty and simplicity". Deputy PM Fischer was reported later as saying "extinguishment is in the 10 point plan, and a lot of people don't realise that" (*The West Australian* 3/5)

SECRETARIES TAKE REFRESHER COURSE



ALS secretaries Jenny Bedford, Lana Thompson and Charmaine Randall last week underwent a refresher training course on all aspects of secretarial work. Jenny and Lana are pictured here with SSTUWA trainer, Sherrol Baskerville.

What the 10 Point Plan includes

1. Validation of all invalid leases or other Acts granted or done since the Native Title Act (NTA) became effective in 1994. This is a reward to those States who refuse to comply with the NTA and have issued mining and other leases outside its processes. (In order to achieve agreement on the NTA with the previous Labor Government, Aboriginal representatives made significant concessions to allow validation of leases and interests granted between 1975 and the start of the NTA).
2. Confirmation of extinguishment of NT on freehold, residential and commercial leases.
3. Removal of the right to negotiate in most instances except when the future use is issuing of a mining lease or interest.
4. Upgrading of pastoral leases to allow activities not currently allowed under the terms of the pastoral lease. These additional activities prevail over native title rights and there is the removal of the right to negotiate over such changes in land use on pastoral land. (The Australian Conservation Foundation has expressed grave concern that upgrading of pastoral leases to enable any form of agriculture, horticulture, land clearing, the removal of timber, the taking of gravel and the like under the 10 point plan will cause environmental chaos).
5. Access rights onto pastoral lands only for Aboriginal people able to show 'continuous physical connection'.
6. No right to negotiate in respect to exploration, but only for the issue of a mining lease.
7. Extinguishment of any NT rights which may exist over water ways and coastal waters.
8. Prevention of NT claims being made after a period of six years. (The upgrading of pastoral leases to allow leaseholders to do acts never contemplated under previous leasehold regimes will have a severe effect on potential for co-existence. It will mean that no NT rights or interests can be exercised, and for those people forced off pastoral stations in earlier times the upgrading will allow pastoralists to lock the gates and remove opportunities for people to reestablish, and have acknowledged, traditional links to the land).

STRATEGIC PLANNING UNDERWAY

A Strategic Plan that will direct the operations of the Aboriginal Legal Service as it enters the new millenia is currently under consideration by a sub-committee of the ALS Executive Committee. The Sub-Committee comprises members Ted Wilkes (Chair), Glen Colbung (Deputy - pictured below) Clem Riley and Richard



The Sub-Committee (including a number of proxies) met at the ALS Perth on July 17 to review previous plans and lay the foundations of a revised document. The sub-committee is aware that their considerations need to take into account the changing political, economic and social environments within which the ALS operates.

Among other things discussed were timelines, staff and community input, monitoring and amendment strategies, access rights to the finished document and processes of review. The Sub-Committee will next examine redrafted materials based on their input before putting a final draft to the full executive committee of the ALS at a future meeting.

...and media strategy also under review

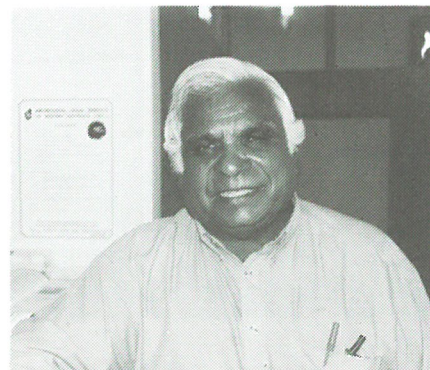
The ALS media and public relations strategies are to be updated as part of the redrafting of the organisation's strategic plan for the period 1997-2000. The strategies will be designed to promote a positive image of the ALS within the Aboriginal and the wider communities. The Executive will consider proposals soon.

CEO rejects Herron's claims of wastage

The Chief Executive Officer of the ALS, Dennis Eggington, has rejected claims by Federal Aboriginal Affairs Minister Herron that Aboriginal Legal Services have wasted RCIADIC funds and contributed to the problem of continuing Aboriginal deaths in custody. Without ALS vigilance and involvement, he said, the disturbing increase in deaths due to government inaction on RCIADIC recommendations would be even greater. Mr Eggington also questioned Minister Herron's claim that the recent RCIADIC conference in Canberra was Australia's 'last chance' to fix the deaths in custody problem.

The implication of such a statement was that if a solution to the problem could not be found at the conference then the issue would be thrown into the 'too-hard' basket. Such a statement was disturbing and irresponsible. The enormous problem of deaths in custody could never be shelved simply because it was considered too hard to solve. Mr Eggington said the Minister's criticisms of ALS's missed the point that without the oppression and dispossession caused by white Australia there would be no need for such services. The fact that ALS's had to exist was not the fault of Aboriginal people.

Frank's involvement with ALS spans 21 years



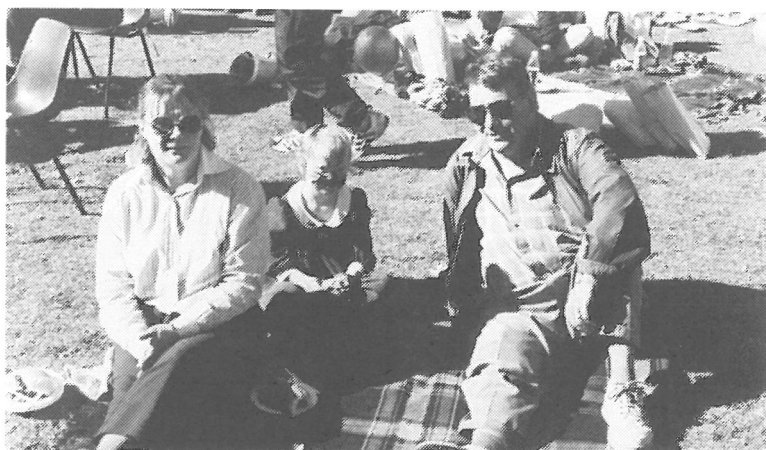
Frank Chulung's service with the Aboriginal Legal Service has spanned an impressive 21 years. Frank started assisting visiting ALS lawyers to Kununurra in 1976 on a voluntary basis.

On April 1, 1978, Frank became a full-time Field Officer with the ALS, based in his home town. At the time he was the only ALS staff member operating full-time in the East Kimberleys. On October 31, 1981, he left the ALS to take on the task of representing the East Kimberleys on the National Aboriginal Conference, a nationally-elected body formed to advise the Federal Government on Aboriginal policy and affairs.

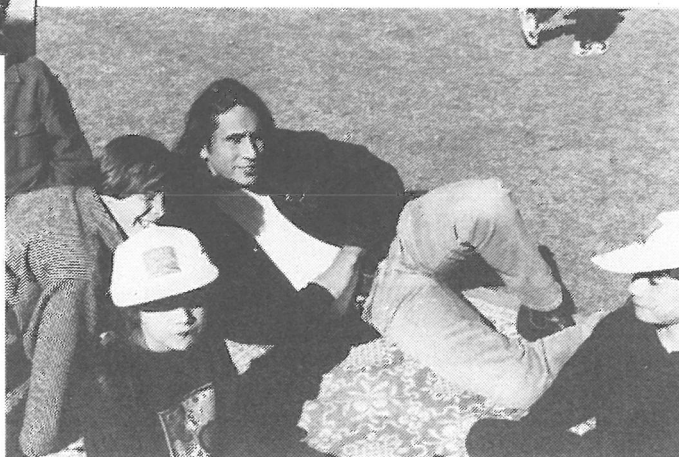
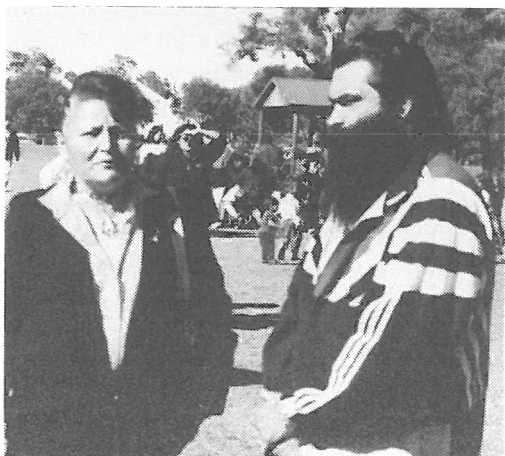
After the disbandment of the NAC, Frank returned to work for the ALS, as a Court Officer, on January 5, 1992. During the period of his absence he remained employed by the ALS on an honorary basis. Frank is a well-known and respected member of the community that he serves, and a valued staff member of the ALS.

This newsletter is printed on 115gsm gloss paper because of its greater durability. The difference in cost between gloss and matt paper was found to be negligible.

Family Fun day at Whiteman Park on Thursday of NAIDOC Week attracted a large number of staff members including (Clockwise) Paul, with wife Wendy and daughter Megan; Margaret, Katrina, Silvana ,Veronica and Lynette; Alex, David and Marcus; Kevin; Dennis with international guest; and Colleen with sisters Sue and Gail.

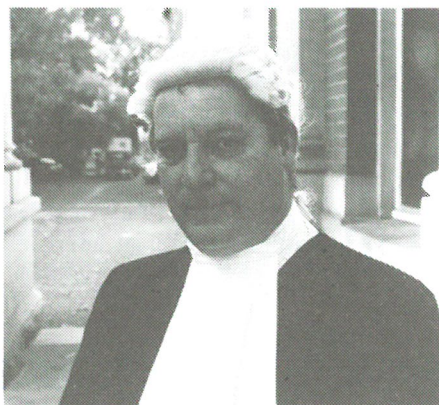


als/ams picnic pics



CIVIL UNIT MAKES MAJOR CHANGES

The past year has seen significant changes occurring in the ALS Civil Unit. From a staff of five (a section head and four solicitors, assisted by three solicitors in the associated Public Interest Unit [PIU]) the staff complement has reduced to three full time (a section head and two solicitors in the Civil Unit) assisted by a one/fifth solicitor in the PIU. However, things will pick up with the commencement of an additional solicitor from August 11.



Civil Unit section head Paul Kennard (pictured right) says the reduction of staff numbers has placed the unit under considerable strain, but the situation was about to improve and hopefully would continue to do so.

Paul says there have been changes also in the type of work that the unit carries out. The changes had come about as a result of directions from ATSIC on the case work that Civil solicitors should undertake in order to comply with the terms of funding grants by ATSIC.

ATSIC has issued a policy framework in which it states that, as a general rule, legal case-work assistance should not be provided in relation to certain matters such as commercial or business transactions; incorporation of associations; conveyancing, leases or the administration of deceased estates; disputes internal to organisations; land and sea right claims under the NT Act where the ALS Rep Body is separately funded for the pur-

pose; inquests other than representing family members in relation to an inquiry into a death in custody; defama-

tion; and in the case of respondents to a claim for criminal injuries compensation, where the persons are likely to be protected by the State.

The ALS has made its own submission to ATSIC setting out the policy framework which it wishes to see in place and has challenged some areas where ATSIC has indicated that they do not wish the work to be carried on.

They include disputes internal to organisations which involve unfair dismissal claims where a worker is unable to obtain legal representation and where the employer is able to call upon legal services provided by the Chamber of Industry and Commerce (if a need for representation at inquests generally is perceived; and a limited role in defamation actions has been proposed).

(cont page 11)

Matters in which the Civil Unit of the ALS is currently involved Include:

Inquests into deaths in custody.
Personal injury claims.
Debt disputes.
Property damage claims.
Consumer credit complaints.
Tenancy disputes.
Wills.
Powers of attorney.
Industrial Relations.
Discrimination complaints.
Police Complaints.
Government Agency complaints.
Extraordinary drivers' licence applications [country].
Referrals to agencies.
Test cases on important issues [of interest or benefit to a significant number of indigenous Australians].

ALSWA

ALS TO PROVIDE REP BODY SERVICE TO WEST PILBARA REGION

The West Pilbara Land Council has requested the ALS Representative Body to provide Rep Body services throughout the West Pilbara Representative Body region. The ALS has agreed to assist and successful negotiations have been conducted with ATSIC to provide the necessary funds for assistance to be provided over the next six months. The ALS will provide Rep Body functions, legal services and field officer support for the period or until such time as the regional Rep Body is in a position to resume those activities. The ALS was proclaimed a Representative Body under the Native Title Act for the whole of Western Australia in 1994. It now works as much as possible in conjunction with Rep Bodies that have come into existence since that time.

STATIONS CHARGE ENTRY FEE FOR TRADITIONAL CEREMONIES

The ALS is assisting in a media investigation of some 'questionable activities' being undertaken by pastoral stations in the Gasgoyne region of Western Australia. Three particular pastoral stations have started charging Aboriginal people up to \$8 a head to enter traditional lands for the purposes of conducting ceremonies. It is understood that ablution facilities are provided in one instance only. The Land Act (section 1062) provides for unrestricted entry by Aboriginal people only on unenclosed and unimproved leases, but there is argument over what constitutes a fence, and what the situation is if gates are left unlocked. Another interesting consideration is, if fees are being charged and/or facilities provided are the lessees in breach of their lease conditions by conducting 'tourist' activities?

Family Law client gets child support after 9 year battle

Family Law solicitor Jill Vander Wal has managed to secure child support for a client whose initiating application was dated October 1989.

The respondent father's first excuse was unemployment. For the second application in 1991 he expressed doubt that he was really the father, so parentage testing was conducted and a declaration of paternity was made. The applicant, accepting that the father was without income, did not further press the issue of child support.

At the next attempt, in 1994, the magistrate found that there was a 'history of the father being an untruthful witness'. However, because the father had insufficient income the Court was not convinced that an order for periodic maintenance should be made.

The next application, for lump sum maintenance, was filed in 1995 and heard in August 1996. The application for a lump sum payment was declined by the Court, but an order was made for periodic maintenance. The father was again found to be an incredible witness.

The Court stipulated that failure to pay could result in a lump sum order being made, and the father's house being sold. The father failed to pay.

In January 1997, armed with an opinion by Dr Dickey QC, our solicitor filed a further application for lump sum payment and an enforcement application. The father tried to appeal the 1996 order but was outside of the 30-day limit. The appeal failed and he did not oppose the rest of the applications.

The house has now been sold and the client should receive her money soon.

ALS success in first and last foray into migration matters

The story of how the ALS became involved in immigration matters begins a century ago, with an influx of Afghan immigrants into Australia - most of them camel drivers who settled in the Kimberleys.



Civil Lawyer Gabriel Patrick

One such person married into the Aboriginal community and fathered a son. Fearful that the boy would be forcibly taken away under the laws that prevailed at the time father and son fled overseas.

The boy was then registered as an Australian citizen in the Australian High Commission in his father's country of birth.

When the son grew up he married a woman from his father's tribe and had seven children - five males and two females. The males were registered as Australians, but the females were not - probably because of the customs and traditions of the tribe. Between 1967 and 1971, the son and his five male children entered Australia without difficulty and took up residence in various parts of WA. The two females were left behind.

In 1989 one of the five brothers lost two of his own children (twins) in a car crash. The two sisters came to Australia on a tourist visa to attend the funeral. Shortly after, they approached the ALS seeking permanent residence. Australia's migration law stipulates that all applications for emigration to Australia must be made from.....(cont page 9)

First prize in the NAIDOC family day raffle (a huge hamper) went to Taylah (3 years) pictured here with her mum Lana.



Derby office gears up for the wet

Derby ALS court officer Melissa Woolcock anticipates that the coming wet season will be a busy time for herself and secretary Nikkie Drummond. The 'silly season', it seems, is always a time when the more serious charges occur.

Melissa has been with the ALS since March 1993, first as secretary and then as court officer in the Northam office until August 1995, and currently as court officer in Derby.

She reveals that the office has been receiving quite a few complaints from clients, about the local police. She has held meetings with the Acting Superintendent in Broome to try to overcome the problems at local level, but is prepared to take matters directly to the Commissioner if the problems are not resolved.

Melissa said a significant event recently was the trial, in the Derby Supreme Court, of a woman charged with murder. ALS solicitor Brian Devereaux, accompanied by a Melbourne QC, secured an acquittal for the defendant, a result that Melissa sees as a great victory for justice.



Melissa Woolcock

An ongoing feud between two Aboriginal communities in Derby also helps to keep things 'interesting'.

However, it's not all work. Melissa said the recent two-week Boab Festival was enjoyable for all, with few arrests. The festival ended with a three-day rodeo, the highlight of which was an eight-second ride, on a showcase bull that had never been ridden before, by a 16 year-old lad.

Melissa acknowledges that during the 'dry' when things are cooler, Derby can be quiet. But things 'come alive' in the warmer months.

HERITAGE PROTECTION ACT UNDER THREAT

A new proposal from the Department of Minerals and Energy and AAD, recommending changes to the Heritage Protection Act (WA) represents a danger for all those concerned with land and heritage protection.

The ALS has long advocated that the Act needs to be completely overhauled, as it has proved very inadequate in ensuring the protection of sacred sites.

The Government, in response to concerns from individuals and organisations about the inadequacies and deficiencies of the Act, commissioned an

independent report, now known as the Senior Report, on what should be done to address them.

The Senior Report took up many of the suggestions put by the ALS, and while it did not go as far as the ALS would have liked in ensuring heritage and site protection, it did recommend substantial changes which would have represented a vast improvement.

Regretably, the Government did not like the report, and tried to shelve it. Calls within the report for urgent changes to the Act were ignored.

(continued pg 11)

Civil Unit secures \$185,000 damages for injured client

Civil Unit solicitor Juliet Mugambwa (pictured below) reports that the Civil Unit has secured \$185,000 damages for a client who sustained leg fractures and a head injury and who has a residual intellectual incapacity.

The ALS pleaded loss of income in the first instance and loss of the client's services to the community. An initial offer of \$165,000 was made, but this was increased to \$185,000 (including ALS costs and disbursements) after an anthropological report was obtained.

This report dealt with the description of the community of which the client was part, a description of his participation in the community, his status and traditional status in the community, and the manner in which he benefited the community before the accident, e.g. through hunting and gathering.

In another case, a client living in a remote area near Kununurra was injured while travelling in the back of a truck. The State Government Insurance Commission denied liability and pleaded contributory negligence for failing to wear a seatbelt, and was prepared to pay only one-third of the claim. The ALS ascertained that the main means of transport in the area was truck, and successfully negotiated a payment of 90 percent of the claim.



LIZ HAMILTON NEW PLO FOR WOMEN'S LEGAL SERVICE

After two years as manager of the ALS Criminal Law Unit, Liz Hamilton (pictured right) has left to become Principal Legal Officer of the Women's Legal Service of WA (Inc).

Liz had this to say on the eve of her departure: "I leave the ALS with regret that I will no longer be working with some very fine and dedicated solicitors and court officers and with anticipation of the opportunity to play a significant role in building and shaping of the WLS.

"Since 1995 I have seen much change and challenge to the ALS and to the Criminal Unit in particular. The reputation and profile of the unit has grown and it has demonstrated what hard work can achieve. The standards maintained are high and the ALS can be proud of the representation given to clients.

"Over two years the criminal law practice has moved from reaction to proaction and is now consulted by more interested parties in the criminal justice system than ever before. As cuts to the Legal Aid Commission continue the demands on the ALS have increased, e.g. in the first half of 1996 there were 126 hearings listed in the Central Law Courts, compared with 211 in the first half of this year.

"Unfortunately these increased demands, throughout the State, are being made on a unit in which staffing levels have not increased.

"During my time with the ALS I have also worked in some country offices and am in awe of the capacity of solicitors and court officers to cope with the pressures placed on them. They deserve to know that quality and effort will be rewarded in tangible terms"



FAMILY LAW USES TIME WISELY

The Family Law Unit has assisted a mother seeking custody of her child who is in the father's care in Melbourne. After carefully adjourning the matter in various stages from April, agreement was reached on July 17 for the father to return to Perth for three weeks to allow the mother time with the child and to explore the possibility of reconciling the relationship.

ALS win in footy racism row

The ALS has played a major role in what is believed to be the first conviction in junior football in Australia under the AFL's Racial and Religious Vilification Procedures. In July a 16 yr-old player was found guilty of racially vilifying an Aboriginal opponent during a game. The South Fremantle Club's Protests and Disputes Committee found the player guilty and suspended him for two weeks.

ALS employee Kevin Dolman, assisted by former Dockers player Clinton Wolf, said the family of the player were elated by the decision, despite the boy being found guilty of retaliation by striking. Committee members Gary Taylor and Terry Deane said it was a hard decision, and criticised the lack of direction given within the procedures adopted for junior football in WA by the WA Football Commission.

Peter Collins on a winning streak



Peter Collins

(Photo courtesy of Kerry Edwards *The West Australian*)

ALS Criminal Unit solicitor Peter Collins has all but abandoned road running and cricket to concentrate on his favourite sport - cycling. Peter had a surprise win in the State 100km road title in Bunbury recently and this has cemented his place as one of Western Australia's most consistent riders. He will ride in the Collie to Donnybrook handicap in late August before taking leave to compete in a series of events in Melbourne. Peter studied law at Melbourne University from 1980-84 and took up a position with the ALS in Perth in 1995.

Rep. Body handles growing tide of future-use notices

The ALS Representative Body is currently receiving an average of 200 future-use notices and five native title notifications per week. Solicitor Scotty Hammond says notices that used to trickle in once a fortnight from the Department of Minerals and Energy are now arriving constantly.

The ALS Rep Body, under the Native Title Act, has the responsibility of notifying Aboriginal organisations of future acts proposed by the State Government. Notices are received from Minerals and Energy about proposed grants of prospecting and exploration licences, mining leases and miscellaneous leases; the Department of Land Administration advising of public works; the Fisheries Department advising of pearling licences, pearling farms and licences related to fishing, and other government bodies such as CALM which advises of proposed acts in National parks.

These Government departments must send notices of intention to the relevant Representative Bodies. These Bodies then notify the Aboriginal organisations which are likely to be affected by the proposed act. Aboriginal organisations then have a limited time in which to respond, which may entail lodging a

native title claim over the area, thus securing the right to negotiate. With each notice, an internal procedure for notification is put into place. Entry is made on data base of tenement number and notice number, date received, and date of expiry. The mapping clerk is responsible for identifying communities that may be affected. This is done by plotting longitude and latitude of the area to identify Aboriginal communities within a radius of 100 kilometres.

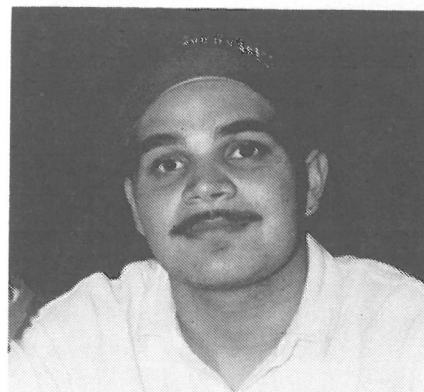
Once the communities are identified the organisation's ID numbers are added to the data base for statistical purposes and the production of form letters notifying the communities of the future use act. Notices are enclosed with letters and mailed out. If the future use notice prompts an ALS client to apply for legal assistance to, for example, object to the application of the expedited procedure to the proposed grant of an exploration licence, the tenement is plotted exactly.

This enables specific advice to be obtained on the legal merit of the application from the solicitor responsible for the client. On advice from the solicitor, an assessment of legal merit is made and the application is granted or refused.

Migration Story (from page 6)

the country of the applicant's residence. Nevertheless, the ALS considered the plight of the two women and lodged their applications. Since they had overstayed their tourist visas the ALS was contacted by the immigration authorities for their address, but was only able to supply a box number. By the time officials had been sent out to arrest them they had 'gone underground'. Their applications, however, were seriously considered by the Minister for Immigration and Ethnic Affairs, and in 1991 the ALS was advised that the women had been granted Permanent Resident visas. This was the first time ever that such a visa (under class 105) had been granted to a person(s) living in Australia.

A dream come true



Kenny Griggs

ALS clerical officer Kenny Griggs was inspired to stick with basketball, after a shaky start, by watching Cal Bruton play for the Perth Wildcats. At 15 he joined a team called Airforce to play in the Nyoongah basketball tournament at South Lakes. After a year, and many wins, Kenny and four other players joined Mirrabooka Magic, another Aboriginal team, which had consistent success in local carnivals and in Broome, Carnarvon and Geraldton. They were determined to be the best Aboriginal team in WA. A game against the US Navy, despite the size of the opposition, resulted in a narrow defeat.

Last year Kenny played division one basketball for the Swan City Mustangs and is currently playing for Mandurah Magic in the State Basketball League (SBL). After his first game for the league he flew straight to Sydney to play in the Salvation Army National Basketball tournament as a member of the Challis Kings (Armada). The team didn't do so well, but Kenny was chosen in the All-Australian Five Team of the tournament.

Kenny is now back with the SBL (for Mandurah Magic) and hopes to cement himself into the squad for next season. Making the SBL is for Ken a dream come true. But he wants to see many more Aboriginal players in the league.



**Deputy CEO
Colleen Hayward**



**Court Officers Rob Bonson
and Brian Shadforth**



**Civil Unit Secretary
Silvana Campbell**



**Mgr Administration
Mark Johnston**

ALS staff pics



**Senior Court Officer
Pat Smith**



**Travel and Records
Clerk Sarah Baker**

Heritage Protection in danger (from page 7)

A little more recently, the Commonwealth Government has been effectively trying to distance itself from a Commonwealth Report (known as the Evatt Report) into improvements to be made to the Aboriginal and Torres Strait Islander Heritage Protection Act (Cwealth).

In addition, the removal of the right to negotiate over many areas of future land use by amendments to the Native Title Act will again further reduce the ability of Aboriginal people to be consulted in site surveys and site clearances to ensure (without having to specifically identify the site or the significance of the area to a mining company - due to mining companies accepting that a closed and an open report be prepared by an independent consultant after a site clearance with the people responsible for the area and the mining company only gets the open report) that areas of cultural significance and sensitivity are properly protected in an area before future use activities such as mining take place.

The new proposal from the Department of Minerals and Energy and the Aboriginal Affairs Department is a potential disaster for heritage protection in WA. The latest taskforce recommendations are an attempt to get around the recommendations of the Senior Report which the Government has shelved. The taskforce recommendations seek an increase in paternalistic government involvement in the heritage protec-

tion process and this is combined with a corresponding decrease in Aboriginal involvement and control over these processes. The current recommendations subordinate heritage protection quite comprehensively to development and mining

interests. Recommendations one, two and three seek the compulsory registration of all site and custodian information with the State. As such all information is to be given to the State to hold onto on behalf of Aboriginal people, and the primary responsibility for management and protection will lie with it, rather than with Aboriginal people. Unless sites are registered they will not be protected.

Further, those Aboriginal custodians and others who do not hand over their knowledge of sites to the State will be prosecuted, fined or imprisoned.

Also, following registration, the location and boundaries of sites will be made publicly available on request to developers and others whose activities are a threat, whether custodians have consented or not.

The recommendations are based on an argument that the registration of heritage information with the State is the sole means of protecting such heritage. These recommendations assume that the State is better equipped to deal with Aboriginal heritage information and protection than Aboriginal people themselves.

ALS SUBMISSION

The ALS has made a submission to AAD objecting to:

The process to date which has resulted in their ideas being developed in secret;

The totally inadequate consultation process which has failed to address the issue of consultation with Aboriginal people at grass roots level who have a responsibility for protection; and

AAD's continued involvement with the process due to the fact that the current recommendations are the opposite of what is desirable and effective in Aboriginal heritage protection and Aboriginal empowerment.

Northam police on notice

Northam police have been told to watch how they respond to incidents involving Aboriginal people in the town. A recent meeting of the ALS, police, and the local Member, heard allegations of police racism, harassment, and neglect of duty-of-care. ALS Chief Dennis Eggington said the ALS stood squarely behind the people in their pursuit of justice.

A senior police officer agreed to investigate specific complaints and report back to the community. The meeting decided to form an Aboriginal-Police liaison committee and to meet montly. ALS court officer Murray Jones supported the move but indicated he may suggest a 'crisis group' be formed to deal with incidents as they happened.

CIVIL UNIT CHANGES

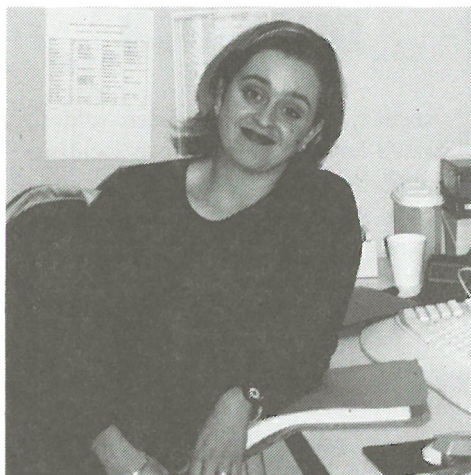
(from pg 5)

It has also been submitted that there are certain circumstances in which conveyancing or the administration of deceased estates should be undertaken. These matters are currently under discussion with ATSIC and a final decision on the content of the policy should be known shortly.

It is common ground between the ALS and ATSIC that the Civil Unit should not undertake cases where it does not have the human resources available to do the job at the required professional standard. Such matters include medical negligence claims which require a high degree of legal expertise and which are also expensive to fund.

It has been resolved by the ALS Executive Committee that the Civil Unit be no longer involved in cases of that nature. The same applies to complicated areas of commercial litigation.

BACK PAGE PICS



PLO Secretary Veronica Robertson



Receptionist Duane Jackamarra

CONTRIBUTIONS

ALS staff are invited to contribute articles and photographs for the next edition of the ALSWA newsletter. Please send them to Peter O'Brien at the ALS office in Perth.

Mirriuwung - Gajerrong hearing in the 'eye of the cyclone'

The hearing of the evidence of the Miriuwung and Gajerrong peoples, in relation to their native title claim in the East Kimberleys, began in the Federal Court in Kununurra on Monday July 21, 1997.

Legal staff associated with the claim suggest that while things are calm at the moment (at the time of writing) it could be the 'eye of the cyclone' with more exciting times to come.

The application for determination of native title, on behalf of the Miriuwung and Gajerrong peoples, was lodged with the National Native Title Tribunal in April 1994.

The application was accepted by the Registrar in May 1994, with the WA and NT Governments challenging that acceptance in November.

The Federal Court disagreed with their position and determined, in August 1994 in favour of the claimants with costs to the ALS.

The accepted claim went through the mediation processes of the NNTT but the WA Government would not participate.

In January 1995 the NNTT referred the claim to the Federal Court for resolution, and the first directions hearing happened in March of that year before Justice Lee.

Litany of State Government Losses

□ **1995 WA and NT Governments dispute NNTT Registrar's decision to accept claim - They lose.**

□ **1995 WA Government argues pastoral lease issues should be addressed before Native Title Interests - It loses.**

□ **1996 WA Government seeks leave to appeal decisions before Full Federal Court - It loses.**

□ **1997 WA Government argues against gender-restricted courtrooms for men's/women's evidence - It loses.**

□ **1997 WA Government appeals to the Full Federal Court against gender decision - It loses.**

After numerous other hearings, meetings and wrangles, the matter finally opened in the Federal Court in Perth in February 1997. Along the way, the ALS successfully defended two challenges to the directions of Justice Lee from the WA and NT Governments.

The first went to the Full Federal Court in Perth and challenged the decision not to hear the pastoral lease issue before he had heard the evidence of the traditional owners. Costs again were awarded to the ALS.

The second matter was heard in Melbourne and related to a decision on gender evidence.

On that occasion the State sent a legal team of five to Melbourne including two QC's, two juniors and an instructing solicitor. The decision by the Full Federal Court unanimously dismissed the State's appeal.