

ALSWA

NOVEMBER 1997

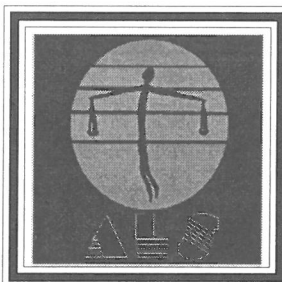
ATSIC CALLS FOR NIWG CRISIS MEETING IN WA

A crisis meeting of 'interested parties' in WA has been called by ATSIC for mid-November, following a threat by ALSWA CEO Dennis Eggington to pull ALSWA out of the National Indigenous Working Group (NIWG) on Native Title. He said this could occur unless more support was evident for ALSWA's proposal for Specialist Representative Body status under proposed amendments to the Native Title Act. Mr Eggington made the comment during a meeting of the

NIWG in Canberra where debate occurred over the right of ALSWA to continue providing Native Title support and assistance in WA.

ALSWA President, Ted Wilkes, said the role of ALSWA was vital given the administrative problems of some Land Councils in the State. He said poorly run Land Councils could result in Aboriginal groups losing their Native Title rights (continued on page 11)

A publication of the
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ANNUAL GENERAL MEETING

of the
**Aboriginal
Legal Service
of WA (Inc)**

will be held on

Nov 27, 1997

(7.30pm)
at the

**Maku Stadium
62 Lionel Street
Kalgoorlie**

Membership forms
available from ALSWA offices in Perth
and Kalgoorlie and at meeting venue

Anaconda claims disputed

Native Title claimants over an area that includes the proposed Murrin Murrin nickel and cobalt project, east of Leonora, are concerned at information that Prudential-Bache Securities, a member of the Australian Stock Exchange, has given investors about the state of negotiations with Anaconda Nickel Limited.

The claimants, represented by ALSWA, say information about the state of negotiations was included in a July/August report released by Prudential-Bache for information of investors. The report said that Native Title issues in relation to the proposed development had been resolved, (cont. pg 2)

Sharing information



Staff of ALSWA get together in the conference room for one of their regular meetings to share information.

ANOTHER LOSS FOR STATE GOVERNMENT

The High Court in Perth has refused the State Government leave to appeal a full Federal Court ruling on gender-specific evidence, in the Northern Territory proceedings associated with the Miriung-Gajerrong Native Title claim.

ALSWA argued against the appeal on behalf of the Miriung-Gajerrong people. Solicitor Anne Sheehan (pictured below) said she was pleased that the Court had taken the cultural concerns of Aboriginal people into account in reaching its decision.

She said the defeat for the State Government was the latest in a long list of failed appeals against the Miriung-Gajerrong claim in the Federal Court, and now the High Court. The State Government's tactics had seen it waste over \$10m of public funds - wastage that it tried to blame on the so-called 'unworkability' of the NT legislation. This was despite an early offer by the claimants to negotiate an agreement before the matter first got to Court.

Ms Sheehan said the Court had indicated that the matter of gender-specific evidence was typical of problems encountered in Courts daily, in terms of secret or confidential evidence.

She added that, unlike women represented by the Kimberley and Northern Land Councils, women represented by ALSWA had agreed to give such evidence at the recent trial in Kununurra and surrounding sites.

(cont. pg 8)



Anne Sheehan

Anaconda Concerns (from page 1)

when in fact claimants were still negotiating with Anaconda, and a final agreement had not yet been reached.

Murray Stubbs, spokesperson for the Bibila-Lungutjarra and Goolburthunoo claimants, who represent upwards of thirty families in the northeast Goldfields region, said they were concerned at the way negotiations were proceeding.

In April 1997 the claimants had signed a Memorandum of Understanding with Anaconda Nickel Limited, which gave limited consent to the company to put its plant and various associated infrastructure tenements upon the claimants' Native Title country at Murrin Murrin.

However, the agreement was incomplete as a number of matters still required finalisation, including the fact that outstanding mining lease applications and future mining tenement applications at Murrin Murrin and at Yundamindra and elsewhere had not been negotiated.

There were nine mining lease applications, on which negotiations were still underway, that it was estimated contained up to one-fifth of the ore body at the Murrin Murrin project.

Mr Stubbs said the claimants were concerned that Anaconda was trying to break its commitments that were agreed in the Memorandum of Understanding. Anaconda had promised \$1m per year to the northeast Goldfields Aboriginal community,

"In April 1997 we signed a Memorandum of Understanding with Anaconda which gave limited consent to put plant and infrastructure on our Native Title country at Murrin Murrin. However, the agreement is incomplete...there are nine mining lease applications that we are still negotiating, which we estimate to contain up to one-fifth of the ore body at the Murrin Murrin project."

Murray Stubbs, spokesperson for Bibila-Lungutjarra and Goolburthunoo Native Title claimants.

for the life of the project. They were now, however, seeking to at-

tach new conditions that could mean that the payments would never be received by the Aboriginal people. He said Anaconda was trying to say that the April agreement gave Anaconda consent to use of the claimants' country for separate projects such as the company's Yundamindra joint venture operations. This has not even been discussed let alone agreed to in the negotiations leading up to the April agreement. Mr Stubbs said the claimants were keen to negotiate one agreement now which would allow Anaconda to establish mines beyond Murrin Murrin on their country, but the terms had yet to be negotiated.

Mr Stubbs said the Prudential-Bache report had publicly talked about the existence of a 'Murrin Murrin Foundation' for the benefit of the Goldfields Aboriginal Community. As far as the claimants were aware, no such 'foundation' existed. Aboriginal claimants had, however, set up their own trust.

Anaconda said that the necessary Native Title agreements had been granted covering 80 percent of the Murrin Murrin resource, but negotiations were continuing over the remaining 20 percent of the Murrin Murrin resource.

VISIT BY ATTORNEY-GENERAL



The Federal Attorney-General Hon Darryl Williams visited ALSWA recently to have a look at the organisation's operations and meet with management and staff. He is pictured here chatting with (from left) Chief Executive Officer Dennis Eggington, Criminal Unit Solicitor Brian Devereaux, Solicitor Paul Anthony of Family Law and Solicitor Toni Cuss (back to camera)

ALSWA ACTS IN SCHOOL DISPUTE

A number of meetings were recently held between ALSWA chief Dennis Eggington and Education Department head Cheryl Varden in an attempt to find a solution to widely-publicised problems being experienced at a suburban primary school. The situation involved two Aboriginal children who had been barred from the school following allegations of anti-social behaviour. The mother of the boys wanted them returned to the school to continue their education, after an exclusion of over three months.

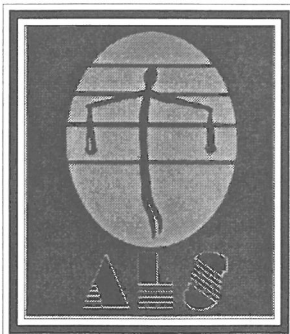
Following an appeal by the mother, Mr Eggington contacted the Department offering to assist in finding an answer to the dilemma, that protected the interests of all persons involved. A series of meetings was

held and various strategies considered.

Mr Eggington publicly criticised the Department, and the Minister for Education, Colin Barnett, for allowing the situation to deteriorate to the extent that it did. He said the bottom line was that all children were entitled

to an education and if the system could not deliver, then it was the system that needed to change.

ALSWA offered assistance to the mother in the event that she decided to take legal action against the Department and/or Minister. It was recently announced that the children had been relocated, but a later report indicated the matter is still under discussion. (see story pg 12)



Family Law critical of 'care and protection' system

The Family Law Unit of ALSWA has expressed concerns about the power of the Department of Family and Children Services to take children taken away from their parents and place them into foster care. The Department's Care and Protection system gives the Department power to apprehend children and place them in foster care on the decision of one social worker.

If the decision is not properly thought out and the evidence is not properly researched, it means that children are removed from their parents and kept in foster care (in the care of relatives if possible) until the matter reaches a trial. This period, at best, is two to three months. Due to the limited resources of the Department, contact between parents and child is usually limited to an hour or two each week.

An example of this was the case where a family with seven children had all children apprehended by the Department on the basis that the second child made disclosures alleging that her step-father had sexually and physically abused her.

ALSWA represented the mother and step-father, who maintained his innocence at all times. David Childs from Paterson and Dowding was briefed to appear as Counsel at the trial.

Unfortunately for the Department, the allegations were not well investigated and, as the evidence unfolded at the trial, it became apparent that the child had been questioned many times by a number of different people about the allegations. At one time she had also been present when her aunts (from her natural father's side of the family) discussed their opinions of what had happened. Even the psychiatrist called to give evidence for the Department agreed that with so much questioning, the child's disclosure could not be relied upon,

(cont. pg 5)

REPARATION DEMAND TO CONTINUE DESPITE HIGH COURT DECISIONS

ALSWA Human Rights Solicitor Tony Buti has indicated that Common Law actions for reparation will continue despite the outcome of the Kruger and Bray High Court cases.

Mr Buti, editor of *Telling Our Story* and *After the Removal*, ALSWA's submissions to the Inquiry into Separation of Aboriginal and Torres Strait Islanders from their families, said the cases would not hinder demand for reparation.

Mr Buti was speaking at the first of four information and professional development seminars held at Legal Aid (WA) in August and September.

The cases of Bray and Kruger involved challenges to the constitutional validity of the Aboriginal Ordinance 1918 (NT).

Mr Buti said the legal basis of the actions concerned the constitutional validity of the impugned provisions and not "whether the actions complained of were authorised by those provisions".

While the Kruger and Bray decisions were negative for the plaintiffs, this was not decisive to actions based on common law rights.

The Kruger case held that the Northern Territory Aboriginal Ordinance, which provided the legal base for removal in the Northern Territory, was not unconstitutional.

Mr Buti predicted most common law actions would be based on breach of duty of care. ALSWA's submission to the inquiry was based on a model for reparation. This included restitution, compensation, rehabilitation, guarantee of non-repetition and an apology.

He said the much-touted notion that an apology would infer legal culpability was a myth.

Criminal workload grows but morale stays high

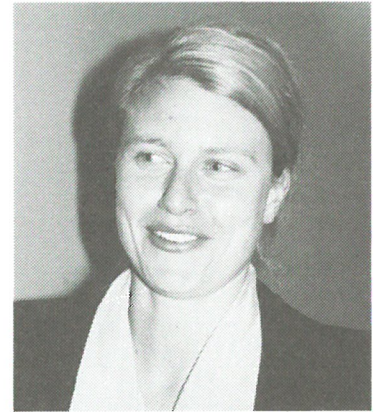
An increasing workload has failed to dent the high morale amongst staff of the Criminal Unit according to head Solicitor John O'Connor. He says the increased workload is due to funding constraints placed upon the Legal Aid Commission and to the community's recognition of the professionalism of Solicitors in the unit.

Mr O'Connor said there had been a number of successes in Court in recent weeks. Principal Legal Officer David Imlah successfully defended a client on a charge of armed robbery in the Supreme Court and Senior Counsel Brian Devereaux had a good win in the Court of Criminal Appeal, having a conviction for deprivation of liberty and assault occasioning bodily harm overturned on appeal. Solicitor Chris Miocevic, also in the Court of Criminal Appeal, succeeded in having a fine, that had been imposed by a District Court Judge for a charge of stealing, reduced.

The increased workload meant that Solicitors were not only maintaining their practice in general areas but were also practising in higher jurisdictions.

Children Court's Solicitor Amanda McGow (pictured top right) had fitted in smoothly and together with Solicitor David Saylor was working well in the Children's Court jurisdictions. Solicitor Victoria Williams who normally manages the Perth Court of Petty Sessions had recently appeared in the Supreme Court doing single Judge appeals.

Paul Dixon had recently moved from the Children's Court and was currently doing matters in the District Court. Paul had his first trial in the District Court on Wednesday October 22.



Amanda McGow

Mr O'Connor said all country offices were busy but operating very effectively. Solicitor Margie Bourke of the Kununurra Office has successfully defended a charge of grievous bodily harm in the District Court.

As well as Solicitors, Court Officers were working hard. John Delphin had recently been made a permanent Court Officer. Katrina Carlisle, apart from her normal duties, was involved in training Court Officers and had recently completed a training manual for that purpose. Katrina was currently involved with training new Meekatharra Court Officer Rod Williams.

He said a new Solicitor, Ruth Di-neen, had started work with the Unit in early November. Ruth had joined ALSWA to increase her skills in the Criminal Law area and, in doing so, assist the Aboriginal community.

THANK YOU

To all staff, city and country, who contributed information for this edition of ALSWA. Deadline for the December edition is November 21. We would especially like to hear more from our valued country staff.

NO INJURY DAMAGES FROM ACCIDENT IN STOLEN CAR

The Full Court of the Supreme Court has unanimously dismissed an Appeal by an ALSWA client against a District Court rejection of a claim for damages for injuries sustained in a motor vehicle accident.

The District Court Judge ruled that the driver of the vehicle in which the client was a passenger did not owe the client a duty because he was driving a stolen vehicle on an illegal enterprise.

In his judgement in the Full Court Appeal, the Judge said "..... the appellant must be taken to have appreciated that he would be encountering serious risks in travelling in a stolen vehicle, an illegal activity, when it was being driven by a young person, too young to be licensed to drive, and who had, according to the appellant, been drinking.....In the circumstances the appellant could not have had any reasonable basis for expecting that (the driver) would drive the vehicle according to ordinary standards of competence and care"

There was some suggestion that the driver was on his way to steal another car and was not merely out for a joyride. The Judge thought this made little difference. Once it was established that the driver was unlicensed, under-age, inexperienced and involved in an illegal activity to which the client was a party, it did not matter very much where the activity was destined to end. Mere joyriding in a stolen vehicle in these circumstances was sufficiently serious in itself for finding that no duty of care existed.

There will be a strict merit test on such cases from now on. Under the terms of ALSWA's funding grant from ATSIC, it will not be allowed to provide casework assistance in cases which lack legal merit.

In another case, the ALSWA Civil Unit successfully appealed a decision of the Assessor of Criminal Injuries Compensation.

(cont. pg 6)

Concerns over Care and Protection System

(from page 3)

and given the fact that the Department had not looked into the possibility of there being other perpetrators, the evidence was not strong enough to convince the Court that the children were at risk of sexual or physical abuse at the hands of the client.

At this point in the trial, the Magistrate suggested to the parties that settlement discussions take place. The result was that five of the seven children were returned immediately with procedures in place for the other two to be returned in the near future. The clients were very pleased with the result.

Father and Children Reunited

A Family Law Unit client had not seen one of his children since 1991, when he separated from his wife. The wife had moved many times in the post-separation period seemingly to thwart the father's efforts to see his children. Proceedings were commenced in the Family Court late last year in relation to the custody of and access to the children. One of the children came to live with ALSWA's client at this point, but the father has spent the time since then trying to make contact with his other two boys. Solicitors from the Family Law Unit have been into Court several times, seeking orders for the location and recovery of the children.

Finally, in September, the wife and the children were tracked to Halls Creek and the police apprehended the children from school and placed them on a plane to Perth, where they are now with their father. Melissa Woolcock from the Derby office provided invaluable support by caring for the children during a four hour layover in Derby, and Tina Rahman from the Broome office met the boys at the airport during their short time in Broome.

The children are still with their father and the trial in relation to custody is due to start on 11 November 1997.

POLICE LIAISON VISIT



ALSWA CEO Dennis Eggington meets with members of the Police Aboriginal Liaison team (Officers Garlett, Quartermaine and Councillor) during a social get-together at the ALSWA office in Perth. ALSWA works closely with the Police Aboriginal Liaison team in seeking solutions to common problems.

No injury damages

(from page 5)

The Assessor awarded \$15,000 to a police officer on the grounds that the client's assault on him caused significant injuries.

On appeal to a Judge of the District Court this decision was overturned. The police officer was awarded nothing. There was insufficient evidence to link his alleged physical disabilities with the assault.

Staff matters

The month had its disappointments with Juliet Mugambwa leaving after two and half years of service. Nevertheless the Unit achieved settlement in a number of her cases including three which exceeded \$100,000 in personal injury claims.

Tom Cannon (pictured below) and Lara Yeremich have joined the Civil Unit and have demonstrated an aptitude for the work and an ability to carry it out under pressure. Top priority will be given to bringing Juliet's files under new management and control before the Unit can begin taking instructions in new matters.

The Unit can offer referrals to appropriate agencies in many matters involving civil disputes and potential clients should contact ALSWA for advice in that regard. This does *not* mean that ALSWA will grant aid for a client to consult a private Solicitor, since there are insufficient funds available for that purpose.

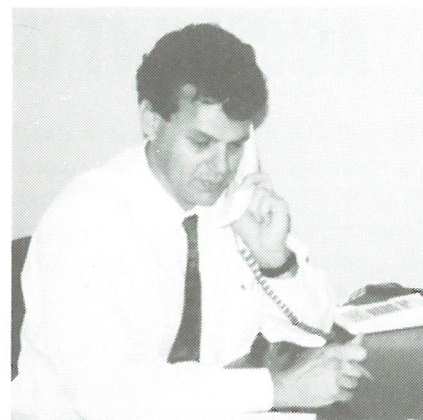


Tom Cannon

CALL FOR ACTION ON SNIFFERS

ALSWA Children's Court Solicitor David Saylor (pictured right) has called for establishment of a substantive rehabilitation program to address the needs of juvenile offenders between the ages of 10 and 15 years.

Mr Saylor said that recently there had been a number of Aboriginal juvenile offenders in that age group receiving a term of detention and being placed on strict Court Orders due to their problems with inhaling substances such as glue and paint. It was a major juvenile crime issue.



David Saylor

A substantive rehabilitation program was needed so that offenders could be directed to such a facility for purposes of rehabilitation.

Mr Saylor said he had discussed the matter with a number of key agencies including NAASAS; the Police/Aboriginal Liaison Group; the North-East Regional Youth Group; the Ministry of Justice; and the Commonwealth and State Health Departments. There were doubtless other parties, including parent groups, that would be concerned.

He said it was time to call a meeting of all parties to discuss what type of rehabilitation program would be suitable and how it could be established.

Earlier this year, ALSWA's Chief Executive Officer Dennis Eggington said that ALSWA was keen to conduct a series of summits dealing with major social issues, such as the one identified by Mr Saylor. It was likely that the problem of juvenile substance abusers would be the first in the series, beginning in the new year.

"a substantive rehabilitation program is needed for young Aboriginal people (particularly those aged 10 - 15 years) who have a problem with inhaling substances such as glue and paint."

- ALSWA Solicitor David Saylor

In his original statement, Mr Eggington said a major focus of the summits would be problems affecting Aboriginal young people. Lifelong experience of racism and rejection had caused a significant number of Aboriginal young people to develop a sense of deep isolation from mainstream society, accompanied by feelings of frustration, resentment and rage.

This was manifesting itself in serious anti-social, criminal and self-destructive behaviour. Many Aboriginal youngsters

saw mainstream society as uncaring, unfriendly and over-critical. Their feeling of 'being on the outside' had been compounded by the recent rise in overt racism.

Mr Eggington said it was time for the community to take control and act together. The proposed summits would provide a vehicle for community discussion and identification of solutions to these and other social problems.

ALSWA to investigate status and processes of Customary Law

In a submission for funding to conduct an investigation into the status and processes of Aboriginal Customary Law, the Executive Committee of ALSWA has indicated that it will push for greater recognition of Aboriginal Customary Law within the dominant legal system.

The proposed project will obtain 'raw data' evidence from Aboriginal communities in Western Australia in order to more accurately reflect the views of those most affected by any intended recognition.

The funding submission acknowledges Professor Marcia Langton's views on Aboriginal Customary Law as an appropriate starting point.

Professor Langton says: "What our people mean when they talk about their Law is a cosmology, a world view which is a religious, philosophic, poetic and normative explanation of how the natural, human and supernatural domains work. Aboriginal Law ties each individual to kin, to 'country' (particular estates of land) and to Dreamings. One is born with the responsibilities and obligations which these inheritances carry. There are many onerous duties, and they are not considered to be optional. One is

seen to be lazy and neglectful if these duties are ignoredas many of our people observe, Aboriginal Law is hard work".

The submission cites the Australian

Law Reform Commission's definition of Customary Law: "A body of rules, values and traditions which were accepted as establishing standards or procedures to be followed and upheld. Despite many changes, such rules, values and traditions continue to exist in various forms. These rules, values and traditions can properly be described as Aboriginal Customary Laws".

In terms of the necessity for recognising Aboriginal Customary Law, the submission says: "The basic premise of any argument in favour of recognition is the simple assertion that Customary Laws influence and shape the lives of many traditionally-oriented Aboriginal people. Their cultural identities are in part formed and maintained by their adherence to customary practice, which includes Customary Law. Thus

recognition of Customary Law will assist Aboriginal communities to maintain order and unity within the community. In this respect, recognition is definitely a positive step towards Aboriginal self-determination". (Cont. pg 11)

"... Aboriginal people appear to be very supportive of attempts to reconcile the differences between the two systems of law. However, there are areas of great concern for Aboriginal people in regard to recognition of their Laws. This may stem from a general distrust of Australian law that has, in the past, given little if any respect to their customs and traditions".

*Words so many words
So many reports
so much paper
Are they all intertwined?
Stretching back to Invasion
Paper with words found this shore
Ink like blood flowing on pages
"Savages", "Untamed", "Wild"
Often written -
easier to slay a dog
These pages cry of a history
To Blackfellas it ain't
no mystery
Look to the words
They cry of a past
Alas they sit idle
gathering dust
Reports on Land rights
and communities out of sight
All taken flight in death,
the pages closed
Perhaps frozen -
a picture of a time
So many reports
so much paper
Can we build houses with them?
Feed and clothe give proper sanitation?
What are they in reality -
inspiration?
No they stand for
what we fall for
time and time again
Consultation -
we talk they walk,
a report is born
to gather dust
if it was metal it would rust
Whilst in dust
a thousand miles away
a young life fades away
Politicians and Bureaucrats
promising a new day
holding a new report
Can we eat these reports
do they give us land?
Aren't they like
a handful of sand?
Ready to slip away
to nothingness.*

'Reports' by Tom Cannon (1995)

STATE GOVERNMENT LOSES APPEAL (from page 2)

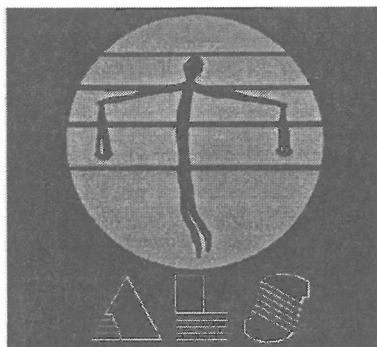
On each occasion the State had a legal team present and was given the opportunity to cross-examine. The evidence was tested in a way that it would have been in any other Court case, but restricted parts of the evidence had not been released.

As a previous Federal Court hearing, Justice Lee had devised a protocol that ensured that such proceedings would be dealt with fairly, taking into account cultural concerns of traditional owners in terms of secret men's and women's evidence.

When the State Government unsuccessfully appealed to the Full Federal Court, the three Judges unanimously said the Order was fair and in the interests of the overall administration of justice. They added that such orders were commonplace in cases involving commercial secrets.

The High Court agreed with the earlier decision of the Full Federal Court and in doing so vindicated ALSWA's principled protection of Aboriginal cultural rights through valid legal process.

It is ironic, given ALSWA's expert performance in such matters, that the Federal Government's proposed amendments to the NT Act, if fully implemented, could remove ALSWA's Representative Body status, thus disqualifying it from further representing Aboriginal claimants in Native Title cases.



ALSWA STATES OPPOSITION TO NATIVE TITLE AMENDMENT BILL

ALSWA made submissions to two Parliamentary Committees during October in which it explained its strong opposition to the Federal Government's Native Title Amendment Bill.

ALSWA Solicitor Bill de Mars reports that many of the proposed amendments in the Bill relate to the Prime Minister's "10 point plan" announced earlier this year.

The Bill was introduced into Federal Parliament in September. It was then referred to the Parliamentary Joint Committee on Native Title for consideration and report by 27 October 1997.

ALSWA presented its submission to the Committee when it visited Broome on 6 October. The submission contains considerable detail highlighting the manner in which the Bill, if passed, will severely reduce the level of protection on Native Title.

This includes the Government's misleading attempts to "confirm" the type of Crown land on which Native Title has been extinguished (the Bill in fact goes much further than confirming extinguishment

and will result in the extinguishment of Native Title in many areas where, under established legal principles, it is likely to still exist); greatly reducing opportunities for Native Title holders to negotiate over mining and other development on their land; and validating many land interests that were granted by State Governments from 1994 to 1996 without paying regard to the rights of Native Title holders under the Native Title Act.

ALSWA pointed out that these and other aspects of the Bill are likely to backfire on the Government and result in State and Federal Governments being exposed to huge and as yet unquantifiable compensation claims; the breach of a number of Australia's international human rights obligations; and increased uncertainty and expense as Native Title holders are forced to take Court action challenging various aspects of the amendments.

ALSWA also made a submission to the WA Government's Legislative Council Select Committee on Native Title in Western Australia.

The terms of reference of the Select Committee included the impact of the

Federal Government's proposed amendments in Western Australia; alternative and improved methods for dealing with Native Title issues; and the role that the State Government should play in the resolution of these issues.

ALSWA made a number of suggestions to the WA Government including: that it become involved in supporting and negotiating co-existence agreements between pastoralists and Native Title holders; that it promote understanding and respect for Native Title rights in the community generally; and that it ensure that its processes adapt to take account of any cultural differences when negotiating with Native Title holders.

The Native Title Amendment Bill will be back in Federal Parliament following the Parliamentary Joint Committee's report. The Bill is likely to be the subject of much debate over the remainder of the year. ALSWA will continue to voice its concerns about the impact of the amendments on Native Title holders and make constructive suggestions to Government about how Native Title can be fully respected and protected.

CEO - Crime the 'Meeting Point' of Black and White Australia

ALSWA CEO Dennis Eggington has told a national crime prevention conference that, historically, crime has been the meeting point between Aboriginal and white Australia.

At a conference in Fremantle in October, Mr Eggington said nothing much had changed. He told delegates that the colonisation process had set the scene for a relationship that had endured to the present day.

In his address, Mr Eggington said that it took settlers and Aboriginal people just a few weeks to reach a state of antagonism in 1788.

"Settlers, desperate to survive, prepared land for crops and grazing and in doing so excluded Aborigines from sacred ceremonial grounds and hunting tracks that had been in use for millennia.

"Deprived of sustenance, the Aboriginal people fought back by stealing stock and burning crops. Within months battle lines had been drawn to keep black and white apart. Contact resulted in massacre or incarceration of Aborigines. In the undeclared war the whites, with their superior numbers and technology, had won.

"Colonial and early State governments, experimenting with policies of protection and control, gathered remnants of tribal groups onto reserves where it was expected, some say hoped, that they would simply fade away.

"Children born of illegal unions, so-called 'half-castes', were taken from their families and communities to institutions where they were to be deculturated and 'made suitable' for white society.

"Government Acts controlled every aspect of the lives of those left behind, with the paternalistic intent of 'smoothing the dying pillow'.

"Aboriginal frustration could be expressed only through acts of civil disobedience, and the police, so often appointed as Protectors of Aborigines, responded in the only way they knew - by locking people up. This approach has become endemic in Australian criminal justice policy. The story of these terrible times is told convincingly in two reports that ALSWA has published: *Telling our Story* and *After the Removal*.

"In terms of our future relationship, the die had been cast - Aboriginal people were systematically excluded from country, excluded from community, excluded from family, and excluded from society.

"The story of how Aboriginal people fought against extinguishment, despite these overwhelming odds, is one of the greatest stories of human physical survival ever to be told.

"But the emotional cost has been terrible. It has left, for myself, and many of my people, a preoccupying resentment of white Australia and of all that it stands for.

"This anger that we feel is passed on to our children, not because we want it to be, but because it must be.

"The anger must persist until the justice that we seek and that we are entitled to, is delivered. It is burden we bear and that our children must also bear until white Australia acknowledges our rightful position in society".

ALSWA AGM IN KALGOORLIE ON NOV. 27

The Annual General Meeting of the Aboriginal Legal Service of Western Australia (Incorporated) will be held in Kalgoorlie on Thursday November 27, 1997.

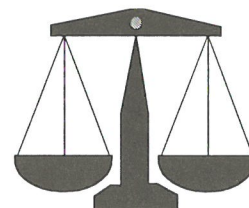
The meeting, which will start at 7.30pm, is to be held in the Eastern Goldfields Aboriginal Advancement Council's Maku Stadium at 62 Lionel Street in Kalgoorlie.

Membership forms for Aboriginal persons wishing to become members of the Aboriginal Legal Service are available from ALSWA offices in Kalgoorlie and Perth, and will be available at the venue on the night.

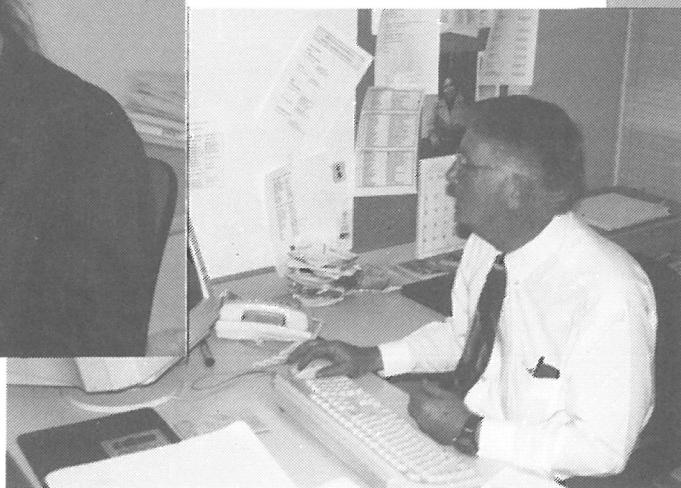
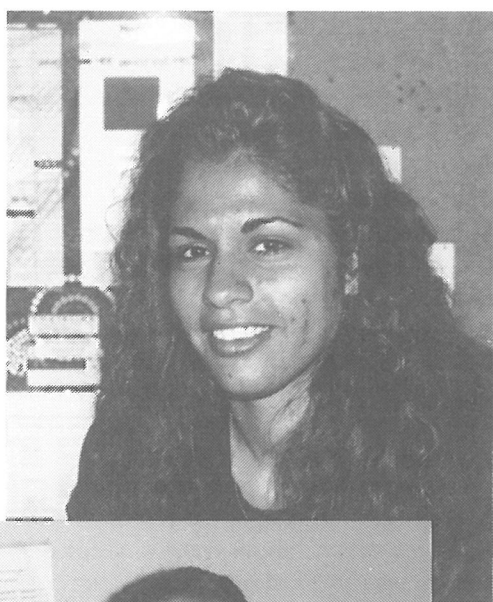
The AGM will be held during the week of ALSWA's quarterly Executive Committee meeting. The Executive Committee is comprised of elected representatives from around the State, and ATSIC regional chairpersons.

For further details about the Annual General Meeting, or the Executive Committee meeting, please contact ALSWA in Perth on (08) 9265 6666.

**ALSWA
ANNUAL REPORT
1996-97
NOW AVAILABLE
FROM
ALL ALSWA OFFICES**



STAFF PICS



From top left:
Solicitor Greg Benn,
Solicitor Christine Halls,
Secretary Margaret Stephens,
Solicitor Harriet Ketley,
Coordinator Community
Unit Peter O'Brien,
Secretary Kristy Burgess,
Accounts Clerk Joslyn Eades
and Court Officer
Rod Williams.

COURT OFFICER NEWS

ALSWA Court Officer John Delphin has been appointed permanently to his position and has been recommended by management to undertake an Articled Clerkship. Rod Williams is currently undertaking training as Court Officer to fill the vacancy in the Meekatharra office. Glynis Ozies is on a well-earned two weeks leave. Beverley Burns celebrated a birthday on October 20 but is not telling anybody which one! Pat Smith, Katrina Carlisle, Mark Radovanovic and Carlene Smith are all coping well and Charmaine Randall continues to provide much appreciated secretarial assistance. (At right, Carlene and Katrina share a private joke)



ALSWA TAKES ON THE EPA

Following an appeal by ALSWA on behalf of a client the Minister for the Environment has undertaken to advise the Environmental Protection Authority (EPA) that it failed to identify all relevant environmental factors in considering and addressing Aboriginal concerns in relation to a mining project.

ALSWA Land and Heritage Solicitor Marcus Holmes reports that the ALSWA submission was in relation to a Consultative Environmental Review that a mining company was required to undertake.

He said even though the appeal was later withdrawn before determination, as a result of agreement on environmental protection, it resulted in the Minister giving

an undertaking that she would advise the EPA, in order that it could adequately fulfil its role in future assessments, to consider:

- the relationships of Aboriginal groups with the environment;
- that the provisions of the Aboriginal Heritage Act and other legislation were not adequate to deal with protection of the environment as it related to Aboriginal cultural, social and spiritual matters; and
- that a greater level of consultation with Aboriginal groups was required during the environmental assessment process.

ATSIC CALLS NIWG CRISIS MEETING (from pg 1)

if they could not turn to ALSWA for assistance. The planned meeting will be likely to involve members of the Western Australian Native Title Working Group (WANTWG) and State ATSIC Commissioners.

Mr Eggington said many delegates at the meeting thought that NIWG representatives in WA had a united front, and were surprised at the differences in opinion as to ALSWA's Representative Body status, that had emerged.

A majority of delegates had indicated firm support for ALSWA's position and expressed understanding that ALSWA was interested solely in ensuring a situation that provided the best representation for all Aboriginal people in the State.

CUSTOMARY LAW (from pg 7)

The Criminal Justice System is an area where Customary Law can have a profound effect, since it is the area of general law that most affects Aboriginal people. As illustrated by many Australian sociologists of law, criminal law defines the relationship between indigenous persons and imposed colonial rule. The historian CD Rowley summarises this relationship as "the progress of Aboriginal from tribesman to inmate".

From time of settlement Aboriginal people became subject to British laws. These imposed new laws were significantly different in form and substance from indigenous systems of social structure. British law is based on Western liberal notions of the individual and the State. Aboriginal laws tie each individual to kin and to 'country'. The extreme ideological differences between these two systems of law meant that most Aboriginal people could not comprehend 'white man's law', and consequently were left out of the new social order.

The colonial relationship had continued in Australia, as Aboriginal persons never participated in the colonial settler States that evolved after settlement (with the exception of being used for labour). They were never given the opportunity to participate in the structuring of the States.

Classifieds

ANNUAL GENERAL MEETING

The Annual General Meeting of ALSWA will be held in Kalgoorlie on Thursday November 27, 1997, starting at 7.30pm. The meeting will be held in the Eastern Goldfields Aboriginal Advancement Council (Maku) Stadium at 62 Lionel Street, Kalgoorlie. Membership forms are available at ALSWA offices in Perth and Kalgoorlie and will be available at the meeting venue.

PUBLICATIONS AVAILABLE

ALSWA currently has available copies of *Striving for Justice* (an information booklet); Educational brochures on *Criminal Records*, *Going Surety*, *Criminal Injuries Compensation*, and *What to do if you are Arrested*; and ALSWA's *Annual Report 1996-97* (limited stocks). To order copies please contact Damien Yarran on 9265 6676

WANTED TO BUY

The book *Noonkanbah* by Steven Hawke. Please contact ALSWA librarian Angela Bromfield on 9265 6630.

A six-seater outdoor setting. Please contact ALSWA secretary Jenny Bedford on 9265 6605

CIVIL UNIT ACTS FOR SUSPENDED STUDENT

ALSWA's Civil Law Unit recently acted on behalf of a 12 year-old student who was suspended from school for allegedly assaulting a teacher in the classroom.

Civil Unit Solicitor Paul Kennard said that ALSWA, as a policy, did not delve into disputes in schools. However, as the dispute had moved into the legal arena, an exception had been made in this one instance.

He said the incident resulted in the student being suspended from school for a period of five days, but at the end of the suspension the school had refused to allow him back into the classroom.

The Education Department and Teacher's Union became involved in the dispute after the parent of the student approached ALSWA for assistance, and the case became public. The suspension had then been in force over three months.

On September 15, the Education Department ordered that the student be allowed back in school, but when he returned the school refused to accept him. Negotiations between the Department, the Union and the parent brought about a settlement, as a result of which the student was sent for psychological counselling in order to address perceived behavioural problems. The student completed the counselling and was certified as fit to attend school by the psychologist.

However, when he returned to the school in mid-October the teacher whom he had allegedly struck took out an interim Violence Restraining Order against him. The Order specified that he could not hold or obtain a

firearm; that he should not behave in a provocative or offensive manner towards the teacher; and that he should not go within 100 metres of the school. (Unfortunately the student's home was within 30 metres of the school boundary).

ALSWA filed an objection to the Order on behalf of the student and the matter was set down for hearing before the Children's Court on October 20. On that day the teacher reported sick and through her lawyer moved to withdraw her application for the original Order. The Judge dismissed the application and expressed grave dissatisfaction at the manner in which the student had been deprived of his continuing education.

A JOB FOR EMILIA



Emilia Biemi who recently undertook a period of voluntary work with ALSWA's media office has been appointed editor of the Geraldton-based Yamaji news. The community newspaper is published monthly, but with Emilia's arrival plans are afoot to bring out a fortnightly edition. Copies of the newspaper are available from ALSWA in Perth and Geraldton.