

ALSWA



August 1998 No.12

CRIMINAL UNIT GETS 'CREDIT CARD' CHARGES WITHDRAWN

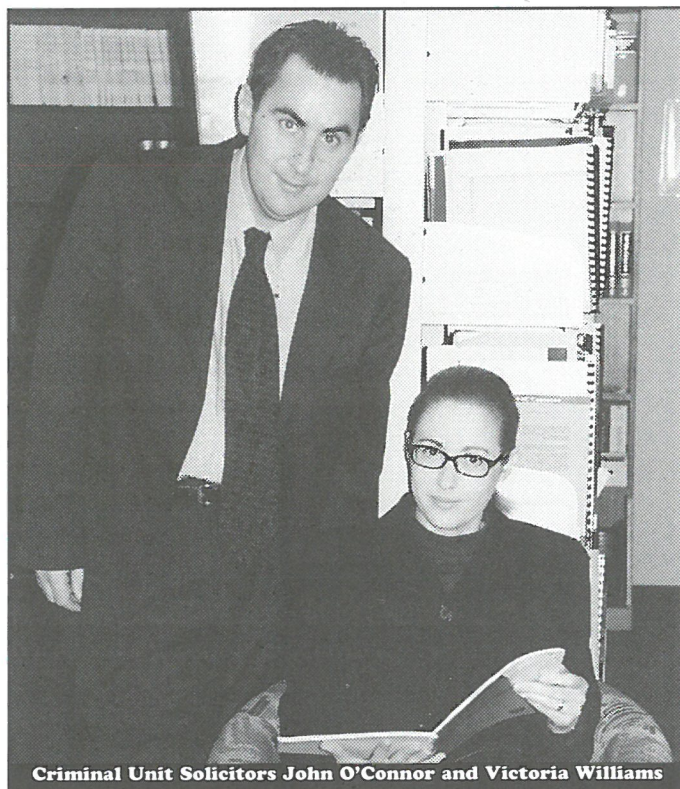
ALSWA Criminal Unit Solicitor Victoria Williams has successfully applied to the Director of Public Prosecutions for 'stealing as a servant' charges against two Aboriginal workers to be dismissed.

The defendants had been issued with credit cards to use for expenses incurred in relation to their employment. In both cases, though not connected, the defendants incurred expenses on the credit cards for other purposes.

In September last year they were charged by police from the Public Sector Investigation Unit with the 'stealing as a servant' offences. It was alleged that they had stolen sums of money (\$11,000 and \$15,000) from their employer by using the credit cards for personal purposes.

ALSWA's initial advice was that the offences were complicated and serious and that both matters should be set for hearing in order to obtain full disclosure of evidence from the police.

By March 1998, ALSWA had received full disclosure of evidence only to find that it was very one-sided. The prosecution had sought only to rely on the agreements between the defendants and their employer, and not on the agreements between the defendants and their credit card company. Ms Williams said that she had already established through correspondence with the credit card company that the agreements between the company and the defendants had the effect that any and all money owing on the credit cards was ultimately the responsibility of the individ-



Criminal Unit Solicitors John O'Connor and Victoria Williams

ual card holders. In essence the employer was only liable for those amounts that were authorised business expenses.

In June 1998 ALSWA sent a detailed written submission to the the Director of Public Prosecution asking that the charges be withdrawn. The submission

claimed that what had occurred was a civil matter and that neither defendant had committed any criminal offence.

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ALSWA offers help with conflict resolution

The Aboriginal Alternative Disputes Resolution Service (AADRS), operating within the Ministry of Justice, has been suspended since 9 April 1998, pending a decision about its future.

During a visit to ALSWA earlier this year, Attorney-General Peter Foss discussed the potential savings in both social and economic terms that could be achieved through having an effective and efficient mediation and resolution service intervene in disputes and 'feuds' between Aboriginal families and communities.

In a follow-up letter to Mr Foss, ALSWA CEO Dennis Eggington said the problems that had emerged, in respect to the service offered by the Ministry of Justice, while regrettable, provided an opportunity to rethink the nature and location of the service so that its efficiency and effectiveness were enhanced, and so that such problems did not reoccur.

He said "I would suggest, with respect, that ALSWA is ideally situated to relieve the Ministry of Justice of the responsibility for providing such a service, and that it could do so in a culturally appropriate manner that would achieve the economic and social outcomes that we both seek.

"It would be reasonable to suggest that for the same amount of State funding currently provided to the Ministry of Justice, for the purpose of providing a disputes resolution service, ALSWA would be able to greatly increase the social benefit, in terms of keeping Aboriginal disputes out of the Courts.

"ALSWA is invariably the 'first port of call' for Indigenous persons involved in family or community dispute situations.

"It has extensive experience in negotiation in a wide range of political and legal situations, but is hampered in that it lacks the economic and human resources to seriously provide resolution services in the area of greatest need - at individual and familial levels.

(Continued page eight)

IDENTITY CRISIS REAWAKENED BY ONE NATION

Pauline Hanson has reawakened Australia's national crisis of identity, according to ALSWA CEO Dennis Eggington.

Mr Eggington said until the demise of the Keating Labor Government, the resurrection of John Howard and the emergence of Pauline Hanson, Australians had been prepared to accept that, regardless of the extreme opinions of individuals, Governments were committed to a multicultural society and not prepared to tolerate religious, political, or racial persecution.

"Now, Pauline Hanson, with John Howard's acquiescence, has changed the rules, and politics in Australia will never be the same. Difference, potentially interesting and educational, has become something bad".

He said many Australians, liberated from the yoke of political correctness, now felt free to heap contempt on anyone who did not accord with their own narrow image of what a 'true-blue Aussie' should be.

Mr Eggington said politics in Australia would now find itself preoccupied with determining the true nature of the 'real' Australia. In a sense the country was locked into an identity crisis of major proportions that would subsume much else of what should legitimately be on the political agenda.

"Australia is at the crossroads. It will emerge either as a tolerant society, or a society in which ignorance and division run free. Aboriginal people, for their own sake and for the sake of other fairer-minded Australians, will fight Hanson relentlessly, until the issue is decided one way or the other".

Mr Eggington, responding to recent anti-Aboriginal sentiments expressed by Hanson, said Aboriginal people should be reassured, rather than hurt, by the fact that they were the targets of her vitriol. Hanson only attacked those who rejected her creed of intolerance, and Aboriginal people opposed *everything* she stood for. To be attacked by her was the greatest compliment anyone could be paid.

PREMIER COURT BELIEVES HIS OWN RHETORIC

ALSWA CEO Dennis Eggington said Premier Richard Court's defence of his Government's approach to Native Title suggests that he has come to actually believe the rhetoric.

In a recent letter to the Editor of *The Australian* Mr Eggington rejected Mr Court's comments saying it was true that the Western Australian Government bore much of the responsibility for the backlog of mining titles waiting to be processed.

He said Mr Court's Government delayed working under the Native Title Act for 15 months and then did an about-face, referring thousands of titles to the National Native Title Tribunal for mediation.

The WA Government also applied to fast-track the processing of every single exploration licence, regardless of their genuine urgency. This had the effect of triggering Indigenous objections and a hearing process, which slowed down the processing of licences.

Mr Eggington said the State Government orchestrated the so-called 'log jam' by understaffing its own agencies dealing with Native Title applications.

"Mr Court also describes the Native Title legislation as flawed because it creates a legal right to 'prevent land developments, unless money is paid over'.

"This conveniently overlooks the fact that the law does not provide Aboriginal people with a veto over developments, and that there is no obligation on mining companies to hand over money.

He said the companies had simply made a business decision to make a settlement rather than go through the time-limited negotiation process.

"Mr Court takes pride in the fact that in 1994 he said that 93 per cent of Western Australia was potentially claimable, and that his prediction has been partially borne out by the fact that 82 per cent of the State is now under claim. What he fails to mention is that this figure is grossly inflated by the inclusion of freehold

STAFF PROFILE



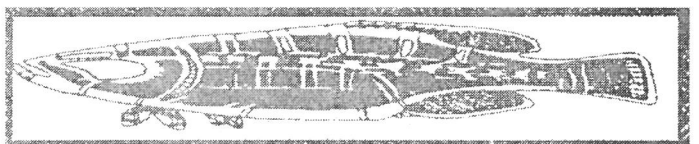
Margaret Stephens has returned as Secretary to the Land and Heritage Unit after a number of years in the Civil and Public Interest Units. Margaret joined ALSWA in 1989 and has seen considerable growth in all areas of the organisation.

and on which Native Title is extinguished.

"Back in 1994 Mr Court also claimed that suburban backyards were under threat, a claim that has since been thoroughly discredited. It is also curious that Mr Court refers to 300 Native Title claims log-jammed in the system, as if it is somebody else's fault.

"As the Western Australian Government is one of the parties to Native Title mediations, it reflects poorly on them that after five years there has not been one successful settlement of a Native Title claim in Western Australia.

"To give him his due, Mr Court is correct in suggesting that Native Title has become a 'lawyers dream' – largely because his Government embarked on foolhardy multi-million dollar legal challenges at great expense to the taxpayer".



Difference once again a source of hatred and division in 'Aussie' society

Address by ALSWA CEO Dennis Eggington to the Lawson Institute

Race is a concept constructed by powerbrokers of the past as a justification for stealing land that belongs to others. Today, social engineers, despite the lack of scientific evidence, use the term to explain biological, social, cultural and environmental differences between human beings, all of whom are members of the only race - and that's the human race.

While these differences do impact on the way that particular groups think and act, they do not, or *should* not, determine the right of access of these groups to basic human rights.

Unfortunately, in practice, the opposite is true. Groups of human beings, because of their difference, are not only often denied their basic rights - but are oppressed and vilified because of their difference.

Let's look at Australia. Australia contains basically three groups of people which are different from each other in culture and custom. Indigenous Australians; those descended from the original European settlers; and those who have come after - from many countries of the world - to make this their home.

In an enlightened society the differences of these groups would be celebrated and taken account of, to achieve and maintain a society free from 'racial' tension and acrimony. Australian society has never been enlightened. Rather than being a cause for celebration, difference has most often been a source of division. The bloody colonial wars between Indigenous peoples and the colonisers; the 'race riots' that occurred in the Australian goldfields; the 'white Australia' policy; the vilification of European migrants in the early part of this century; the fear of the 'red peril' and of the 'yellow hordes' of Asia; are some examples.

Differences of religion, political persuasion, ethnic background and of course 'race' have been a part of our shared history as they have been part of the history of the world.

Nevertheless, in recent times, until the demise of the

Keating Labor Government, the resurrection of John Howard and the emergence of Pauline Hanson, Australians have accepted that, regardless of the extreme opinions of individuals, Governments have needed (to be seen at least) to be committed to a multicultural society, and not prepared to tolerate religious, political, or racial persecution.

Thanks to Pauline and John, difference is again openly a source of hatred and division. Many Australians, liberated from the yoke of political correctness, feel free once more to heap contempt on those who do not accord with their own narrow image of what a 'true-blue Aussie' should be.

'Pauline and John have made difference a source of division and hatred'

The Northern Europeans have copped it in the past, the Asians are copping it now, and the Aboriginal people have copped it all along.

Politics in Australia now finds itself refocused intently on determining the true nature of the 'real' Australia. The country is submerged yet again in the search for a national identity that, from time to time over the past 210 years, has preoccupied the national consciousness. It is again a country in disarray with its populace awash in a sea of indecision.

The era of majority Governments has ended. In several States, lower house Governments do not control their upper houses - as indeed is the situation in Canberra. Increasingly, independents and minor parties will determine the nature of our Government. And I fear that some of those independents and minor parties will make even Hanson look good.

The loyalty to particular political persuasions, passed down through generations, no longer applies. Single issue zealots can usually find enough support to win a seat - on behalf of a recognised party or in their own right. Look at what has crawled out of the woodwork since Pauline came on the scene.

The long search for a unified identity has been terminally corrupted by those who serve to seek self-interest alone. (continued on page nine)

Women's Council reassured on Homeswest policy

Professor Leonie Still, President of the Women's Advisory Council of Western Australia, wrote recently to ALSWA seeking clarification of its policy in terms of exchanging information with Homeswest.

Professor Still said concern had been expressed by Aboriginal women at an Advisory Council meeting that confidential information was being provided to Homeswest in cases where disputes were in progress.

ALSWA has told Professor Still that until recently it had occasionally been asked by Aboriginal clients of Homeswest to mediate between themselves and Homeswest in dispute situations.

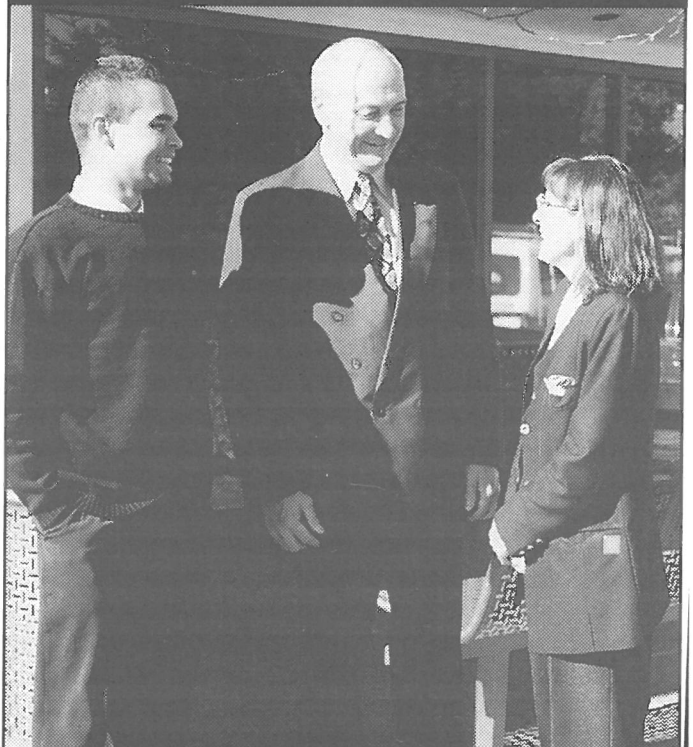
She was reassured that in each and every instance of this nature the client's written permission was obtained before any contact was initiated. Likewise, in instances whereby client information needed to be shared, the client's written approval was first obtained.

As was the practice with all ALSWA-client relationships, the information was kept absolutely confidential. It was also a requirement of ALSWA's involvement with Homeswest that that organisation provide a similar assurance, even though client permission to pass on information had been obtained.

Professor Still was told that, at any event, funding restrictions had recently obliged ALSWA to decline involvement in Homeswest matters. Enquiries from Aboriginal tenants were now referred to other agencies.

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STAFF PROFILE



Solicitor Leighton Jones (centre) was recently admitted to the bar in Perth. He is pictured here with ALSWA staff Ashley Truscott (right) and Lynette Jenkins. Leighton will work in ALSWA's Port Hedland office.

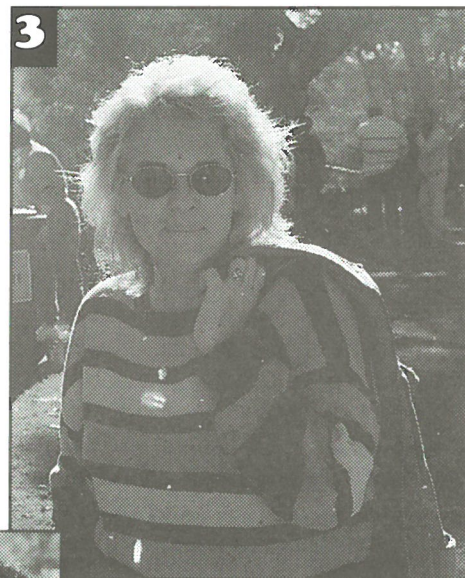
ACCIDENT VICTIMS SHOULD CONTACT ALSWA

ALSWA Civil Unit Solicitors have come across a Workers Compensation matter that would have gone unnoticed if the person had not contacted the Civil Unit on an unrelated matter.

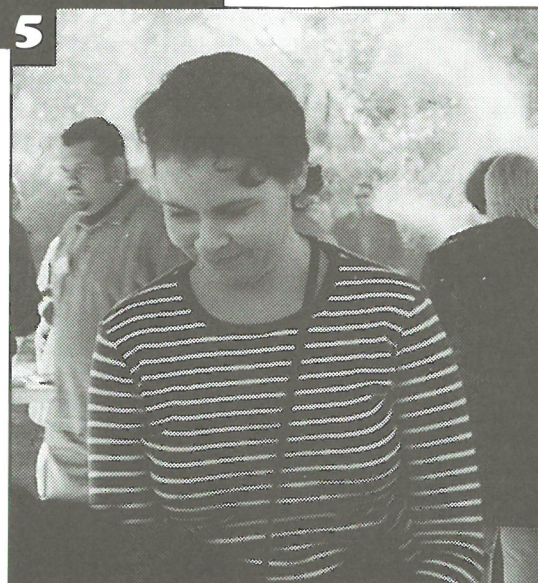
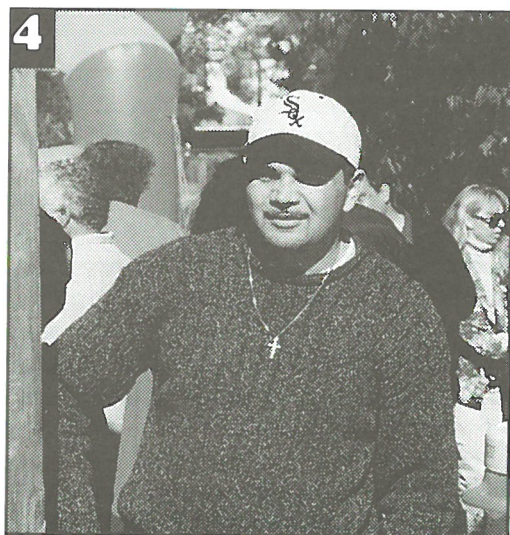
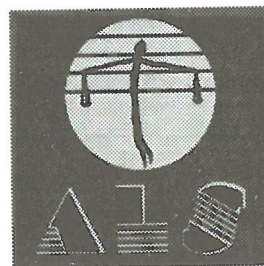
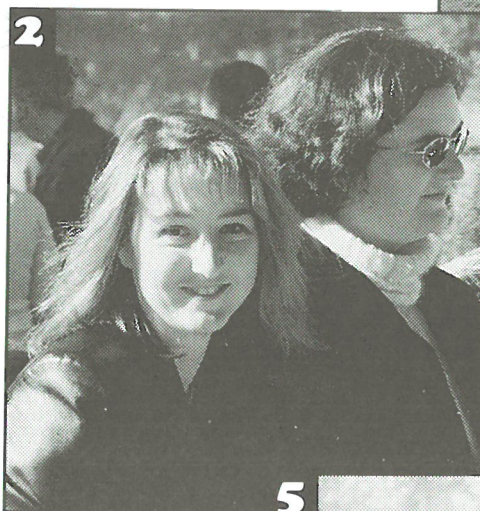
The client, who came to ALSWA about a motor vehicle property damage claim, was employed by an organisation that predominantly uses motorbikes for the transportation of its employees, in the course of their duties.

It was common knowledge within the organisation that the motorbikes had an inherent design flaw which involved the throttle jamming at inopportune times. This had caused the client's accident. After discussions, it became clear that the client's accident could give rise to a common law cause of action in product liability arising against the manufacturer of the motorbikes, for general damages, in addition to the client's Workers Compensation claim.

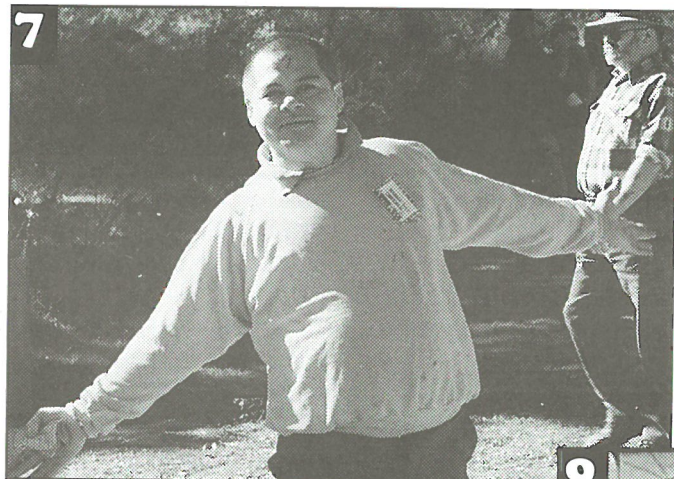
ALSWA AND PAMS'



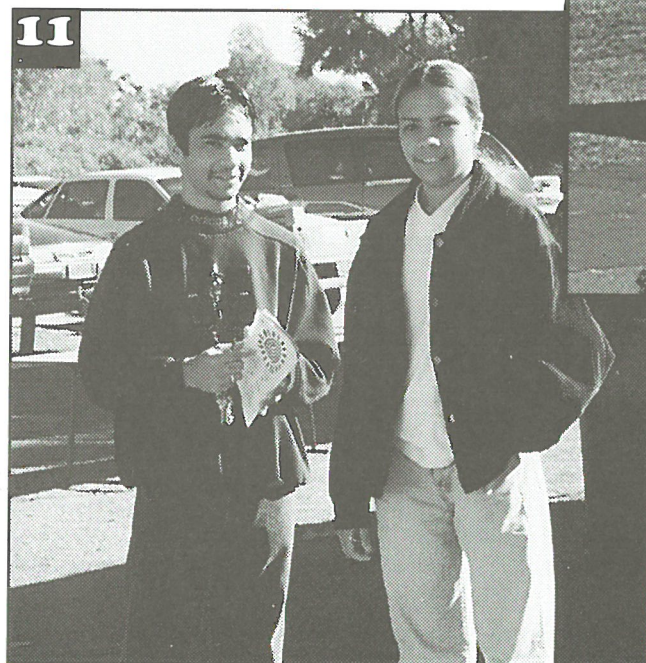
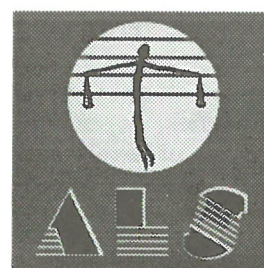
ALSWA and PAMS held a Family Day at Whiteman Park on 9 July to celebrate NAIDOC week. (1) Eva Fernandez, Dianne Jones and Kim Farmer check out the scenery; (2) Christine Halls and Alison Murphy look on; (3) Scotty Hammond enjoys herself; (4) Kenny Griggs - never without the hat; (5) Kim Farmer checks out the food.



NAIDOC FAMILY DAY



(7) Vaughan Wiley does his balancing act; (8) Pat Smith protects Silvana Campbell from the cold; (9) Dennis Eggington addresses the crowd; (10) Lynette Jenkins enjoys the sunshine; (11) Dennis Jnr. and Leashay Eggington watch the proceedings.



NEWSWATCH

Bonson excels in law studies

ALSWA Perth Court Officer Robert Bonson is proud of his son Matthew, a law student, who was recently awarded the 1998 Morning Star Scholarship at the Northern Territory University for determination and potential in his studies.

'It makes me very happy to see someone of Matt's generation doing well in their studies, especially in the area of Law', said Mr Bonson.

He said Matthew had a good mind 'just like his old man' and therefore would continue to do well in Law studies.

Mr Bonson said he hoped Matt would use his skills to assist the Aboriginal community.

**ALSWA
ELECTION
1998**

OCTOBER 7

**For details
see back page**

AIATSIS Submissions

The Australian Institute of Aboriginal and Torres Strait Islander Studies has commissioned a review of its research functions.

Its terms of reference include the Institute's functions as a body which both funds and conducts research, disseminates the results of research, and acts as a repository of research materials.

The review committee is particularly interested in assessments of the effectiveness of the institute's research program and the accessibility and usefulness of the Institute's research resources.

Views on research priorities and suggestions regarding collaborative research are also of interest to the Committee.

Comments will be kept in confidence and will be summarised as part of the committee's final report. Responses must be forwarded by 15 August to George Boeck, GPO Box 553, Canberra, ACT 2601 or emailed to (gab@AIATSIS.gov.au).

Stolen Children Display at Perth Museum

The West Australian Museum had been given approval by ALSWA to use excerpts from its report *Telling Our Story* in a new display to be mounted soon.

The display will be housed in a quiet room wherein members of the public will be able to contemplate the atrocities that occurred under past Government removal policies, without excessive interference. ALSWA's Senior Management Committee raised no objection to the use of the material

for the purpose proposed provided the display was sensitively presented.

Persons whose stories appeared in the report were protected by the use of pseudonyms and the Committee could foresee no offence or discomfort occurring to any particular individual.

The Committee agreed that the story of the Stolen Generations needed to be widely told and that the display proposed by the Museum would assist this purpose.

ALSWA OFFERS HELP WITH CONFLICT RESOLUTION (from page two)

"We are constantly pressured by the Aboriginal community to provide services in this regard.

"Of course, without appropriate resolution of disputes at this end of the spectrum, many situations do end up in Court, costing the State and the Aboriginal community heavily, in economic and social terms. As added assurance you would be aware that ALSWA operates under the strictest financial scrutinisation, and this would apply to State-provided funding for this purpose".

Mr Eggington, who was intending to address meetings of the State Aboriginal Justice Council, and the Ministry of Justice, said the offer by ALSWA to assume the task of disputes resolution within the Aboriginal community would be canvassed.

CROKER SEABED CLAIM SUCCEEDS

By ALSWA Solicitor Jacqueline Brienne

On July 6, 1998, Justice Olney of the Federal Court handed down his decision on the Croker Island Native Title claim. This represented the fourth determination of Native Title in Australia and the third under the Native Title Act. Previous cases, and the Native Title Act, left open the question of whether Native Title in respect of sea and seabed would be recognised by Common Law.

The Croker Island claim represented the first significant opportunity for the Courts to clarify the above issue and the relationship between Native Title and statutory fishing interests and the public right to fish. It was a decision with ramifications for commercial and recreational fishing, gas and petroleum ventures.

Croker Island is situated north-east of Darwin in the Arafura sea. The claimants sought a determination that their Native Title rights conferred ownership or exclusive possession and occupation, plus the use and enjoyment of over approximately 2000 square kilometres of sea and seabed adjoining the island and surrounding islands.

The claim was successful in that the Federal Court recognised that Native Title did exist. However, the Court rejected the claim that Native Title rights conferred ownership or a right to exclude others. The claimants' Native Title rights were held to be limited to rights to travel throughout the area, fish and hunt for personal or noncommercial uses, to visit and protect places of cultural and spiritual importance and to safeguard their cultural and spiritual knowledge.

All rights exercised by the Native Title holders were further held to be subject to the laws of the Commonwealth and the Northern Territory in the event of inconsistency.

The importance of the decision lies in its recognition that Native Title can exist over areas of sea and seabed.

However, the extent of the Native Title is of limited assistance to the Native Title holders, conferring on them little significant control over use of waters for fishing or by resource companies.

Police asked to state attitude to "One Nation" cops

Police Commissioner Bob Falconer has been asked to state the Police Service's attitude to serving officers being members of the One Nation Party.

In a letter to the Commissioner, ALSWA CEO Dennis Eggington said he was concerned to learn, from a report in *The West Australian* (14/7), that the State President of One Nation in Western Australia was a police officer.

"As a member, and especially a senior officer holder, of One Nation, it can be assumed that the officer concerned supports the views espoused by the party's leader and membership.

"I understand fully that employers can and should have no control over the right of employees to belong to particular parties or to hold particular political views.

"Nevertheless, I have been alerted to community concern that the police officer's political affiliation could be seen by some as tolerance, if not endorsement, of One Nation's political views, by the WA Police Service. I write anticipating reassurance from yourself that this is not the case. I would be obliged if you could, as well, give me some idea of how the Police Service intends to publicly address the issue, to assuage the concern of others".

Difference again a source of division

(from page four)

Aboriginal people, on the other hand have no identity crisis. We know, more than anyone does, the effects of 210 years of marginalisation. We, more than anyone, know about prejudice and discrimination.

Confusion in White Australia has caused a certain cohesion within the Aboriginal community. Although we may disagree on issues we agree on one thing: the time has come for the 'race' battle to be fought out once and for all.

Australian Democrats make promises on Aboriginal Affairs issues.

Natasha Stott Despoja, Senator for South Australia, responds to ALSWA's election '98 political survey

1. What was your attitude to the current Government's proposed amendments to the Native Title Act 1993?

The Australian Democrats were opposed to the discriminatory elements of the Native Title Amendment Bill 1997 (1998). We supported only those elements of the Bill which the National Indigenous Working Group (NIWG) endorsed. The Australian Democrats supported in total the position of the NIWG during the debate in the Senate in 1997 and again in 1998.

2. Do you agree that Indigenous people, unable to make a claim to traditional country, should be financially compensated, and to what extent?

The Australian Democrats support the existence of the Indigenous Land Fund (ILF) and the continued commitment to ensure that monies will be available through the ILF to compensate Indigenous people in the purchase of lands that are available to their cultural, spiritual and economic needs.

3. Do you support provision of financial compensation to Indigenous persons affected by past Government policies that resulted in removal of children from their families?

The Australian Democrats support a national compensation scheme that will compensate survivors of the stolen generations. To that end we support the opening of Government archives; mainly held by State Governments - to facilitate the reunion (where possible) of stolen generation children with their families and clans. We support in total the recommendations of *Human Rights and Equal Opportunity Commission* as detailed in the report of the *National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*.

4. Would you support an official Federal Government apology to those above, as has recently been provided by the Canadian Government to Indigenous peoples in that country?

Yes! The Australian Democrats support an official apology by the Commonwealth Government. The Australian Democrat party members and Senators as well as State MP's have signed sorry books and issued an apology already.

5. What is your attitude to Indigenous self-determination. If supportive, how would you ensure that the concept is actively reflected in Government policy?

The Australian Democrats support Indigenous self-determination. We support the establishment and continued existence of ATSIC as well as adequate funding for its role and responsibility. As such we believe that ATSIC should be the primary source of Government policy on Indigenous affairs.

6. Do you support increased funding of and autonomy for Indigenous service providers such as Aboriginal Legal and Medical Services, or do you favour the concept of mainstreaming?

The need for culturally specific and relevant service providers to Indigenous peoples should be without question. The Australian Democrats believe that this is an essential element to self-determination. We reject the concept of mainstreaming. We do however believe that funding

should be allocated from "mainstream budgets" as determined by advice from ATSIC.

7. In Government, what do you intend to do about ameliorating the social and economic disadvantages suffered by Australia's Indigenous peoples?

It is the objective of the Australian Democrats in Government to create the economic, social and legal framework which will enable Australia's Indigenous peoples to exercise the right to determine and manage their own lives and future, including the right to maintain their traditional cultures, customs and life styles. To achieve this objective the Australian Democrats:

- acknowledge the spiritual attachment of Australia's Indigenous peoples to this land extending back in time over many thousands of years;
- affirm that Indigenous people have never surrendered this land to the British colonisers and their successors;
- support the right of Aboriginal and Torres Strait Islander people to gain appropriate recognition of their traditions as a fundamental component of reconciliation and Australian nationhood;

(continued next page)

'We support compensation for Stolen Children'

Democrats make promises

from previous page

- will seek where practicable to return the land base and sacred areas to its original inhabitants or their descendents,
- where it is agreed that it is inappropriate to restore land to the Indigenous people, they shall be given land relevant to their needs or receive compensation for their dispossession.
- support the recognition of Native Title as a valid form of land ownership.
- support the existence of a national body representing Aboriginal and Torres Strait Islander people which has the capacity to act and respond to Government at the national level and for the receipt and disbursement of Commonwealth funds.
- Will act to address disadvantages faced by Aboriginal and Torres Strait Islander people in the areas of health, housing, education and the legal system.
- Will recognise that Indigenous people should have hunting and fishing rights in accordance with their traditional practices.
- Recognise the need to evolve an intervening accommodation between Customary Law and current Australian law, placing much greater opportunity and responsibility of Tribal elders of both sexes to have increased authority to order the lives, rules and sanctions in their communities.
- Will work to ensure that all appropriate channels for communications with Indigenous people are used.
- Will promote awareness of our Australian Aboriginal heritage.

8. What is your response in relation to One Nation Party's racist political agenda?

The Australian Democrats totally reject the policies of One Nation. After the formation of the party, it was a decision of the Australian Democrats to list One Nation candidates last for preferences.

We also produced a document *Why*

Pauline is Wrong which gave accurate and credible evidence concerning the lies being circulated by the One Nation Party.

9. In a rewritten constitution, as would be required if Australia was to become a republic, would you support a Bill of Rights with recognition of the special rights of Indigenous Australians?

The Democrats support a Constitutional Bill of Rights that reflects the special rights of Indigenous Australians.

10. What solutions would you seek to reduce the over-representation of Australia's Indigenous peoples in the criminal justice system?

The Australian Democrats believe that the over representation of Australia's Indigenous peoples in the criminal justice system is the result of, but not limited to, the dispossession from country and alienation from family. Other factors were:

- The Stolen Generations
- Education inequity
- Health - particularly substance dependency
- Racially and culturally biased judiciary
- Racial discrimination
- Culturally insensitivity by law enforcement and judicial officers and the law
- Non-recognition of Customary Law
- lack of full implementation of the recommendations of the *Royal Commission into Aboriginal Deaths in Custody*.

ALSWA TEAM SHINES IN LOCAL COMPETITION

The ALSWA men's basketball team are as yet unbeaten in the competition at Belmont. Pictured from left to right are (back) Joe Whittle and Tom Cannon; (front) Kenny Griggs; Richard Ridgeway and Raymond Farmer. Victor Woodley, Damien Yarran and Ashley Truscott are members of the team but were unavailable for the photograph.



ALSWA ELECTION 7 OCTOBER 1998

Aboriginal and Torres Strait Islander people
intending to vote for the election of a
new Executive Committee for the
Aboriginal Legal Service of Western Australia Inc (ALSWA)
must be members of ALSWA.

Membership forms are available from all ALSWA offices
and must be returned to ALSWA by
31 August 1998

Nominations for election to the Executive Committee
(and future regional committees) are open now, and will close
9 September 1998

Postal voting forms,
for those unable to vote at official polling booths,
will be available from ALSWA offices from
September 9, 1998
and must be returned to ALSWA by
23 September 1998

Posters, giving all details of the 1998 election process
will soon be displayed in all ALSWA offices.
For further details, please contact ALSWA on
(08) 9265 6666 or 1800 019 100 (toll free)
or call at any ALSWA office.