ALSWA

Special NATIVE TITLE edition

February 1998 No. 6 Published by the Aboriginal Legal Service of Western Australia (Inc)

BATTLE TO SAVE NATIVE TITLE IS ON

ALSWA's Land and Heritage Unit Executive Officer Glenn Shaw expects that a conservative win in a double dissolution election in mid-1998 will see Prime Minister Howard's preferred changes to the Native Title Act 1993, in accord with his 10 point plan, forced through in a joint sitting of the Parliament.

Indigenous Australians and their supporters will be faced with lengthy and very expensive litigation in the High Court of Australia if they seek to have the legislation revoked.

Mr Shaw made the forecast in a position paper written for this special edition of ALSWA, in which he reviews recent Native Title Working Group (NIWG) action and considers the task that lies ahead for Aboriginal people.

"The current situation, in regard to the Wik /Native Title debate is that the Federal Government has rejected the NIWG's suggested amendments to the Federal Government's proposed amendments to the Native Title Act 1993, and this has set the scene for a double dissolution election to be held close to the middle of 1998.

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ELECTION '98: ALSWA TO SURVEY POLLIES

INSIDE

In the leadup to a likely double dissolution election in mid-1998 ALSWA has decided to survey all politicians and political candidiates as to their attitudes to issues of relevance and importance to the Indigenous peoples in this State.

While the main focus of the survey will be on Native Title issues, those surveyed will be asked to spell out their attitudes to major social and economic issues including health, education, employment, housing, social

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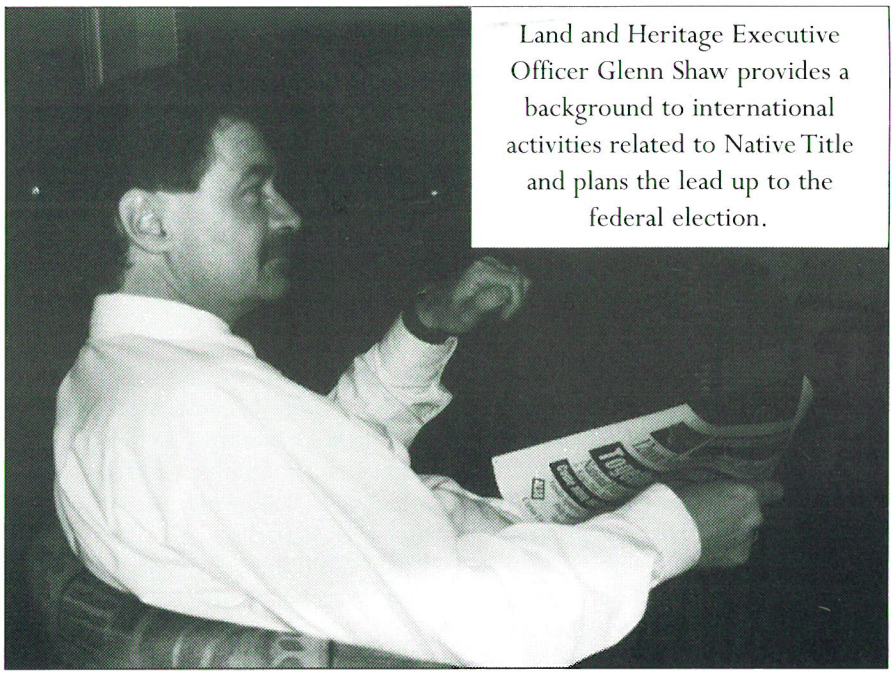

Land and Heritage Executive Officer Glenn Shaw provides a background to international activities related to Native Title and plans the lead up to the federal election.

NATIVE TITLE DEBATE

(from page one)

"This position has been engineered by the Federal Government and is not a situation created by the Aboriginal and Torres Strait Islander communities as the Prime Minister would have us believe" Mr Shaw said.

He said the story of how the present position had been arrived at was an intriguing and frustrating one. "I will attempt to put the process in focus so that people can understand the bloody mindedness of the Federal Government and most particularly the Prime Minister, John Howard.

"On December 23, 1996, the High Court decision on the Wik case was handed down. In essence it said that there was an ability for the rights of pastoralists (to carry out the activities identified under their pastoral leases), and for Native Title, to co-exist. In cases where there was a conflict of interest the rights of the pastoralist would prevail.

"The Federal Government had previously told rural Australia that, in its opinion, the issuing of a pastoral lease would extinguish Native Title and that the High Court would support this view.

"When the High Court brought down an unfavourable decision, however, the Federal Government decided to legislate to change current land tenure laws across the country.

"This needed to be done without perceptibly impairing or extinguishing the rights of Aboriginal and Torres Strait Islander peoples in the process.

"Quite clearly, when the High Court brought down its decision in the Wik case, it had clarified the situation regarding Native Title and pastoral leases by stating that the rights of the latter would prevail - so obviously the people with the most to lose in that decision were the Aboriginal and Torres Strait Islander peoples, who nevertheless were prepared to live with that decision. The big winners were the pastoralists.

"The Prime Minister then set about developing his '10 Point Plan' which was to deliver certainty and fairness for all stakeholders, but he forgot one important ingredient and that was to consult all the stakeholders before releasing his package.

"The Prime Minister did, however, attend a meeting of pastoralists in Longreach in Queensland where he got a strong message that they would not accept his plan because it did not go far enough. At the same time he heard rumbles within the National Party that some were not in agreement with his plan.

"Mr Fischer, National Party leader and Deputy Prime Minister commented in the media that 'the 10 Point Plan delivered bucket loads of extinguishment'. This was something the Government did not want said in the public arena because it could be seen as discriminatory legislation. Nevertheless the Prime Minister continued to sell his 10 Point Plan as being fair and just, and still manage to get only tepid support.

"It was at this particular point in time that the National Indigenous Working Group on Native Title (NIWG) decided it needed a concerted effort by all participants to effect change and so it was decided that it needed a permanent presence in Canberra for the life of the debate on the Wik Amendments.

"Accordingly it was organised for a coordinator and support staff to be located in Canberra in the Indigenous Land Council premises, a place from which to distribute information.

"The NIWG kept developing our position to combat the discriminatory nature of the 10 Point Plan (a copy of which we received approximately seven weeks after the Prime Minister had provided it to the National Farmers Federation) and to formulate a position which would provide certainty to all stakeholders in line with the High Court decision on Wik.

"We had several discussions with the Wik Taskforce from the Department of Prime Minister and Cabinet, in an attempt to have the 'draft' legislation reflect the needs of Indigenous people, but met with little or no success in this approach.

"At the same time there were many socially conscious community groups which decided it was time to speak out. Several of them approached the NIWG to discuss what they could do to assist us in the struggle to have the legislation overturned or at least amended so that it would be a fairer document.

"Out of the initial discussions with community groups we saw the formulation of DONT (Defenders of Native Title); ANTaR (Australians for Native Title and Reconciliation) and the involvements of groups such as CAA (Community Aid Abroad).

"We also saw statements from such collectives as Prominent Australians; a full page advertisement in *The Australian* by the Deaths In Custody Watch Committee of WA, and a plethora of supporters making anti-10 point plan statements.

"The NIWG then stepped up its campaign and called upon members of the Working Group to become more involved in the process because we were embarking on national and international campaigns. It was then that the tide started to turn in our favour.

"ALSWA, as a member of the NIWG agreed to be the host organisation for funding provided by ATSIC for the establishment and ongoing work of the NIWG and for setting up an office in Canberra.

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CEO RESPONDS AS 'WEST' FIRES 'CHEAP SHOT' IN FISHING RIGHTS ROW

ALSWA CEO Dennis Eggington has questioned the veractiy of an editorial in 'The West Australian' which asserted that ALSWA president Ted Wilkes was damaging the significance of Aboriginal culture in the eyes of the wider community with his claim that urban Aborigines should be exempt from fishing laws.

Mr Eggington took issue with a number of points in the December 30 editorial in a letter to editor Paul Murray: "Your assertion that Mr Wilkes' attempt to represent an Aboriginal family's marroning expedition as somehow culturally distinct from other people with other cultural backgrounds, lacks credibility.

"This conveniently ignores the facts that Mabo No.2 and the Native Title Act recognise, for the first time in this country, the unique and culturally important pre-existing rights of Aboriginal people to their land and customary practices.

"The Native Title Act seeks to protect traditional rights and interests including fishing and hunting. Aboriginal peoples' rights are culturally distinct because they, of their very nature, only reside with Indigenous people; they pre-exist the rights and interests of those who came later, and they continue to exist unless they have been lawfully extinguished. Whether Mr Wilkes could prove the required traditional connection to such rights and interests is a question of fact.

"However, in Mr Wilkes' case, because there was a legal ruling by the Magistrate that any claimed Native Title rights and interests were totally irrelevant to the Fish Resources Management Act, under which Mr Wilkes was charged, no evidence was able to be led to show that connection. For you to make a judgment on the credibility of Mr Wilkes' case, where no evidence was led, and no testing of the facts was possible, is inappropriate and irresponsible.

"You acknowledge that special exemptions from fishing and hunting laws are justified in the cases of Aboriginal groups following traditional lifestyles, but draw a distinction between "urban Aborigines" and those living in the Pilbara or Kimberley.

"Our view is that this is, with respect, a dangerous line of argument likely to draw a distinction in the minds of the community between 'deserving' and 'undeserving' blacks. Arbitrary distinctions along such ill-conceived lines were used to justify the removal-of-children policies which were mainly directed at 'quadroon', 'half-caste' or white-looking children who were not regarded as 'real Aborigines'.

"The issue is really whether a traditional Native Title right exists. In the Pilbara or the Kimberley, Aboriginal people may be able to show a wider range of traditional rights to land, fishing, hunting, camping, ceremonial purposes and the like. In those areas where dispossession of Aboriginal people was greatest, such as the south-west, there may be only limited rights left, such as those traditional uses of the land for fishing or hunting or camping purposes.

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Political Survey

(from page one)

security and over-representation in the criminal justice system.

The preamble to the questionnaire reads: "The prospect of a Federal Election in 1998 is very real. Aboriginal and Torres Strait Islander peoples and their supporters, like all Australians, are naturally interested in your views, and the views of all politicians, on a wide range of socio-economic issues.

"As one means of monitoring what you and others have to say we will be carefully examining media coverage of the election campaign, and look forward to receiving any information that you may wish to send us directly. Naturally, our primary focus is on issues of particular relevance and importance to Indigenous Australians.

"As you would be aware Aboriginal and Torres Strait Islander peoples, on all major social indicators (such as health, education, employment and so on), continue to languish behind the wider community to a degree that equates with the position of peoples in many third world countries.

"Political parties, despite the rhetoric of election campaigns, have largely failed to deliver on these issues, and while we acknowledge the efforts of some individual politicians to effect productive change in policy, we have generally been disappointed with the lack of commitment and resolve at party and parliamentary level.

"Foremost among our concerns, of course, is Native Title. Despite judicial recognition of Indigenous rights in land, the current Government has sought to ensure that we remain dispossessed and appears set to make this a major focus of its election campaign. The Opposition, on the other hand, could be said to be ambivalent about what its position will be, should it win Government.

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FISHING RIGHTS ROW

(from page three)

"However, whatever the extent of the rights and interests which continue, they should be able to be recognised and respected, rather than wiped out simply because an Aboriginal person lives in an urban environment.

"You suggest that there may be conflict of interest if ALSWA was to lodge an appeal. We have prepared fishing law test cases which relate to Native Title rights to fish in the Kimberley, the Pilbara and the south-west. Any appeal on Mr Wilkes' behalf would be on a point of law, challenging the Magistrate's ruling that Native Title rights and interests, the Native Title Act and the Racial Discrimination Act have no relevance to fishing prosecution.

"We are of the view that this is an important point. Mr Wilkes is as entitled as any other Aboriginal person to utilise ALSWA's undoubted expertise in this area, and if his case has sufficient legal merit to warrant an appeal we will not hesitate to do so. Accordingly, the implication of possible impropriety if we press ahead with this matter is a cheap shot and unworthy of inclusion in your newspaper's usually carefully-worded editorials".

THE EDITOR'S REPLY TO MR EGGINGTON

"Your letter shows how difficult this issue is to discuss logically. For example, Mr Wilkes may have traditional rights over land and waterways with which he has a demonstrated continuous link, but does this extend to a man-made dam on Crown land where only simple streams existed during the time of Mr Wilkes' old people? And even though these rights – if established under the Native Title Act – might exist, are they any stronger than the prescribed fishing and hunting rights of other Australians?

"You say Mr Wilkes' rights are a question of fact, but concede they have not been established in a Court because of the way the Magistrate ran the case. Therefore they are not a question of fact, but merely a proposition. In an open debate, any commentator has a right to reflect on Mr Wilkes' claim. The corollary would be that any claim has to be accepted and respected on face value which is clearly farcical and has recently been debunked by the likes of Noel Pearson.

"Your next point about the Native Title rights of Aborigines living urban lives is at the heart of the issue argued in the editorial. Dispossession clearly did have the effect of diminishing the Native Title rights of many Noongars and as tragic and regrettable as this might be, it is the reality on which the editorial was based. There is little in the Mabo judgement which would be of comfort to your argument. This is not a matter of 'deserving or undeserving' people as you claim, but exactly the same rationale which caused the Indigenous Land Fund to be established at the time of the framing of the Native Title Act.

"You say our line of argument was dangerous. The real danger is for Aboriginal groups to continue to push unrealistic and unachievable claims in the face of an increasingly hostile public. This merely fuels the fires of those who oppose legitimate Aboriginal aspirations. Finally, the point we made about a potential conflict of interest over Mr Wilkes' position was not a cheap shot but another political reality. The whole editorial was about political realities, and sadly (ALSWA) is blind to many of them".

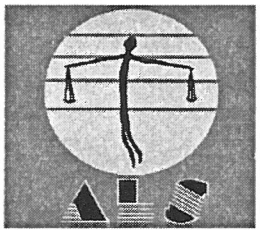
POLITICAL SURVEY

(from page three)

"Indigenous Australians are aware of the power of the vote. To make an informed choice about which of the major parties it would prefer to see in Government, we seek to know your views, and those of your colleagues, on Native Title and on a host of other issues.

"To assist us in this regard we have developed a questionnaire that fulfils a dual purpose. Firstly, it alerts you to the issues that are regarded as particularly important from an Indigenous viewpoint, and secondly it enables our supporters and us, to collect the information we need to assist us to decide where our vote should be cast.

"We intend, as a service to the Indigenous constituency, to compile responses and publish them widely within that and the wider constituency".



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Stock Exchange asked to investigate Anaconda

ALSWA, on behalf of Native Title claimants in the north-east Goldfields, has asked the Australian Stock Exchange to investigate statements made by Anaconda Nickel in regard to its proposed $950 million Murrin Murrin project east of Leonora.

Key Native Title claimants, the Bibila Lungutjarra and Goolburthunoo peoples, say the mining company included inaccurate information in its quarterly report to the Australian Stock Exchange for the period ending September 30 last year.

The report indicated that Anaconda had made Native Title agreements that called for grant of all titles covering ore reserves, but this was not so; the grant of up to 20% of the identified ore body at Murrin Murrin had not yet been negotiated.

The claimants have written to the Australian Stock Exchange, through ALSWA, requesting that Anaconda be required to explain the statement so that shareholders, potential shareholders, joint venturers and lenders can find out the true state of negotiations between the parties. The letter to the Exchange states: "The agreement signed by our clients with Anaconda in April 1997 enabled construction of the plant at Murrin Murrin and grant of infrastructure tenements relating to construction and use of the plant for the life of the project. It also enabled the grant of certain other tenements that were expressly identified in (clause 4A of) the agreement.

"There are several outstanding mining lease applications both at Murrin Murrin and at the Yundamindra Project and future mining tenement applications, the process and consideration for grant of which is yet to be negotiated between the parties.

"Our clients had hoped that inaccuracies in information released to the public about Anaconda's negotiations would have been corrected by the company in the course of negotiations, but this has not been done".

The Stock Exchange in Perth has forwarded the letter to the Sydney Stock Exchange to follow up. The claimants first alerted the public in October 1997 that inaccurate information about the Murrin Murrin and Yundamindra projects was contained in a report to the Stock Exchange by stock adviser Prudential Bache.

COMPANY'S LATEST CLAIMS CONTESTED

Following reported comments by Anaconda Chief Executive Andrew Forrest that the company had shelved plans to mine 15-20% of its targeted WA ore bodies because of a dispute with the Bibila-Lungutjarra and Goolburthunoo claimants, group spokesman Murray Stubbs made the following statement:

"Anaconda Chief Executive Andrew Forrest has accused us of reneging on our April agreement: this is not so. That agreement was a brief preliminary agreement entered into in good faith due to the company's insistence that we give a quick consent to allow commencement of the construction of the plant at Murrin. It was never our intention that this brief agreement was to cover the mining project as a whole: this is the subject of a further agreement still to be negotiated.

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Njamal elders invite pastoralists to meet on East Pilbara claim

In the wake of recent publicity surrounding the Wik decision and changes to the Native Title Act, three respected Njamal elders, Peter Coppin, Teddy Allen and Lenny Stream, have made a statement through ALSWA about their claim in the East Pilbara. The statement was directed at the wider community, but in particular at pastoralists and other interest holders within the claim region. [In June 1997 the Njamal people, represented by ALSWA, submitted a Native Title Claim (WC 97/45) over their traditional country south-east of Port Hedland - an area which includes Marble Bar and Nullagine and in some parts extends to the edge of the Western Desert].

The Elders' statement reads: "The Njamal people are the traditional owners of this country. We have never lost our timeless connection to it and we have maintained our customs and our law to this day, even though much of our land has been covered by pastoral leases and mining tenements.

"We were very pleased to hear about the Wik decision because it meant that white people's law recognised that our rights to this land still existed. Even though it means that the pastoralist's rights are greater than our rights where they conflict, we accept this decision.

"Even before Wik it was never our intention to displace people living on the stations or to interfere with pastoralist's rights. Many Njamal people have worked on the stations in the Pilbara for much of their lives and enjoyed good relationships with the pastoralists.

"In the days before the strike we gave our labour to the stations free, as did other Aboriginal workers. This helped to build the pastoral industry in the Pilbara and it is disappointing

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CARNARVON PACT PROVES NATIVE TITLE PROCESS WORKS

An historic land use agreement between Aboriginal people in the Carnarvon area, the State Government and the Shire of Carnarvon, has been heralded by Aboriginal spokesman Ron Crowe as clear evidence that the 'right to negotiate' process under the Native Title Act can and does work.

Mr Crowe, chairman of the Gnulli Committee, which represents the Native Title claimants involved (ALSWA represented the Gnulli Committee in the negotiations), revealed that the land use agreement, and a section 34 agreement, had been signed by all parties, allowing the Government and the Shire to proceed with development of an area for housing, commercial, tourism, and community purposes under the name 'Carnarvon Facsine'. (A section 34 agreement is one that is lodged with the Tribunal to enable compulsory acquisition of the area, allowing the development to go ahead).

He said the negotiators had begun in January 1996 following discussions whereby the Native Title holders would get limited recognition, including vague promises of employment and contract opportunities, for not lodging a Native Title claim to the area. One significant problem was the State Government's unwillingness to recognise the need for arrangements that would ensure such opportunities were available beyond the first stage of the nine stage project. Ultimately, intervention by the National Native Title Tribunal by way of mediation under section 31 (2) of the Act overcame this obstacle.

The agreements considerably advanced the process by which land would be made available and funding obtained for an Aboriginal Cultural Centre in Carnarvon and also secured the appointment, on an ongoing basis, of an Aboriginal Economic Development Officer in Carnarvon.

Mr Crowe said the agreements provided greatly enhanced recognition of Aboriginal people in the area through protection of significant sites and the use of names of significance to local Aboriginal people in the development.

Mr Crowe said the Native Title holders had never had a major objection to the development provided their concerns were properly addressed. "It was a matter of respect, of the State and the Shire asking before they went ahead - a sense of working together rather than ignoring what people might feel about development on their country.

"So much of what happened to our country in the past was done without agreement or involvement of Aboriginal people (other than using them as forced labour in the original construction of the Facsine), and there was a history of Aboriginal people being shifted to accommodate development without them having a say or deriving any benefits."

He said crucial elements in arriving at an agreement were the high level of co-operation within the Aboriginal community and the coordinated approach and active cooperation between the Yamatji Land and Sea Council and ALSWA, which represented the Gnulli committee in the negotiations.

The benefits flowing from the agreement would be for the Aboriginal people and the Carnarvon community generally.

For example, the cultural centre would help develop Aboriginal talent and encourage tourism, and increased employment and contract opportunities would ameliorate the effects of current social and economic disadvantage.

ALSWA believes that the experience gained by the Gnulli Committee in negotiating the agreements will be useful in similar future negotiations between Aboriginal Native Title holders and the State Government.

NATIVE TITLE ISSUE SHEETS AVAILABLE SOON

ALSWA, in the lead up to the Federal Election which is expected to be between May and October this year, is developing Issue Sheets which provide answers and explainations to some of the more frequently asked questions about Native Title.

The Issue Sheets will be one-page explanations which attempt to provide some balance to the misinformation and deliberate distortion of the issues surrounding Native Title. The Issue Sheets are also intended to draw the public's attention to the Howard Government's treatment of Aboriginal and Torres Strait Islanders since it gained office. The Coalition has desecrated the ATSIC budget, refused to apologise for the removal of children and has proposed changes to vital legislation dealing with Aboriginal land, heritage and racial discrimination.

It is hoped that the Issue Sheets will be used by schools, support groups such as ANTaR, the Churches, Unions and other groups which seek accurate information on Native Title and other Aboriginal issues. They can also be used by the media in the development of stories during the election.

THE TRUTH ABOUT AMITY

Deputy CEO Colleen Hayward has taken *The West Australian* to task over an article entitled 'Aborigines clash on gas deal benefits' (December 24).

The article concerned an alleged conflict between Aborigines in the south-west and the Noongar Land Council over benefits from a deal with developers over what could be Australia's biggest onshore gas field.

In her response to allegations contained within the article, Ms Hayward said in a letter to the Editor "The Aboriginal Legal Service of WA represented the Noongar Land Council in the Amity Oil negotiations. An agreement was successfully negotiated and was approved of at the time by the traditional owners.

"After ALSWA stopped acting in relation to the matter, a dispute arose about distribution of monies. At that point both traditional owners and the Noongar Land Council were advised to seek independent legal advice.

"The action of your reporter in naming an employee of ALSWA without fully checking the facts is regrettable, and creates an impression of lack of professionalism within the organisation. We expect your newspaper to apologise for the poor writing".

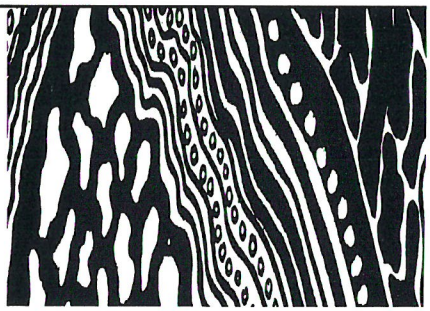
ALSWA's Land and Heritage Unit also took exception to the article and issued a statement: "The article (in *The West Australian*) concerned a dispute between certain Noongars in the south-west and the Noongar Land Council over benefits from 'an historic deal with developers (over) what is probably Australia's biggest on-shore gasfield'. It reported one Elder's criticism of the Land Council and his complaint that negotiators did not know that their ALSWA lawyer was also representing the Land Council.

"The facts are that in December 1995 the Noongar Land Council, acting on the concerns of a number of traditional owners, formally requested that ALSWA provide legal advice and assistance in regard to the proposed gas exploration project. A formal grant of legal assistance was made to the Land Council and the terms of the grant were made known to the traditional owners.

"Both ALSWA and the Land Council worked together with the traditional owners over a number of months in order to obtain a satisfactory agreement and this was successfully negotiated in May 1997. The agreement was approved of at the time by the traditional owners.

"ALSWA ceased acting in relation to the matter shortly after the agreement was finalised. Subsequently a dispute arose between some of the traditional owners and the Land Council about management and distribution of monies. There was no conflict of interest as far as ALSWA was concerned because it was no longer acting in relation to the matter when the conflict emerged. Any accusation that ALSWA acted wrongly is incorrect".

ALSWA CAMPAIGNS TO REPEAL 'THREE STRIKES' FROM LEGISLATION



ALSWA has embarked on a campaign seeking support from State politicians for the removal of the 'three-strikes' provisions in WA's *Young Offenders Act.*

The sections have been heavily criticised by civil rights groups and the Australian Law Reform Commission as being in breach of Australia's obligations under the UN Convention on the Rights of the Child.

A number of Judges and Magistrates have dodged its application through loopholes and technical exceptions or have drawn attention to the rigidness and inflexibility of the legislation which effectively binds their hands in the determination of a young person's future.

The effectiveness of a law which is condemned by sections of the community, particularly by those whose duty it is to uphold the law through its application, must be questioned.

Judges, Magistrates, Court Officers and lawyers are the people who have to deal with, and see, the result of legislation which is draconian and has a disproportionate impact on WA's Indigenous children.

ALSWA calls on the Government to listen to these groups and implement changes which will instead empower children to make changes in their lives.

COPIES OF THE BOOKLET 'STRIVING FOR JUSTICE' ARE AVAILABLE AT ALL ALSWA OFFICES

NATIVE TITLE DEBATE

(from page two)

"The Western Australia Aboriginal Native Title Working Group (WANTWG) also received a small amount of funding to run a similar campaign in Western Australia, and set about picking a team of personnel to undertake development and implementation of a strategy.

"The international campaign started with a group of Indigenous people meeting with the First Nations People in Canada and the United States and spreading the word as to what was happening in Australia. The First Nations People gave us support and best wishes for the forthcoming struggle, and told of their own struggles and the processes they used to achieve goals in their relevant countries.

"Another delegation of Indigenous people travelled to Europe to address Governments and meet with dignitaries. Again the delegation received encouragement and was invited back to provide an update at a later stage.

"A third delegation went to South Africa and the United Kingdom, with a view to becoming delegates to the Commonwealth Heads of Government meeting (CHOGM) in Edinburgh.

"This particular delegation got the most media attention because it sought to meet with President Nelson Mandella to ask him to intercede with Prime Minister John Howard at the Edinburgh Meeting. This delegation consisted of Michael Mansell (Tasmanian Aboriginal Centre) Geoff Clark (ATSIC Commissioner for Native Title) and myself.

"The Delegation was initially refused exit from the country at Melbourne International Airport, but eventually continued on as planned to South Africa, London and Edinburgh.

"We met with members of the Confederation of South African Trade Unions (COSATU) and with a senior advisor from the South African Government, making it clear that we were hoping President Mandella would discuss the 10 Point Plan with Prime Minister John Howard.

"We soon discovered that the Department of Foreign Affairs had forwarded a fax to the South African Government from Senator Nick Minchin giving a profile of the delegation and suggesting we 'tell the truth' about the 10 Point Plan.

"We were more than happy to do this, so that the South African Government could see quite clearly how discriminatory the legislation is. The senior advisor we met with suggested we look at the 1913 South African

Land Act, and see the similarities in the intent, because this legislation was the first stage in establishing the apartheid system in South Africa.

"After leaving South Africa we traveled to London to meet with Labour politicians in the British Parliament. Again, we also achieved much more than was originally anticipated. Upon arriving in London we were met by Les Malezer (Foundation for Aboriginal Islander Research Action, Brisbane) and set about contacting various politicians.

"We met first with the Trade Union Congress in London and asked it to mention our struggle to Prime Minister Tony Blair and request that he also discuss the matter with Prime Minister John Howard.

"Because they too were to meet with President Mandella, we asked that they also reinforce our earlier request. This was agreed to by the General Secretary of the Trade Union Congress and also by the Coordinator of International Operations for the Trade Union Congress. The Trade Union Congress suggested we write to Prime Minister Blair outlining our concerns and making a formal request for action.

"We then met with Jeremy Corben, a Labour Party Member and also a member of the Human Rights Committee within the British Parliament. Jeremy recommended we meet with Bernie Grant, the only black member of the British Parliament who is Chairperson of the Antislavery Commission and a member of the Human Rights Committee of the British Parliament.

"Bernie confirmed that we would deliver a letter to Prime Minister Blair at 10 Downing Street, accompanied by he and Jeremy Corben As luck would have it, we delivered our letter at 1.30pm, an hour before Prime Minister Howard, so we had access to the Australian media contingent.

"We delivered our letter to 10 Downing Street and Bernie Grant and Jeremy Corben made media statements in support of our stance and told the media they would assist us in any way possible to defeat the legislation.

"We then travelled to the Commonwealth Heads of Government Meeting in Edinburgh only to find we did not have delegate status and therefore could not get into the Meeting.

"Aden Ridgeway (New South Wales Land Council), whom we met up with in Edinburgh, had access to media and we received some coverage on what we were doing. We also publicly sought a comment from President Mandella on what he thought about the 10 Point Plan.

"He said 'I am prepared to mediate in the dispute' which was enough to get Prime Minister Howard to respond 'President Mandella should not interfere in the internal affairs of Australia'.

"What the Prime Minster forgot to mention was that President Mandella had qualified his statement by saying 'I would hope this matter could be resolved internally'. This omission did not win Prime Minister Howard any points with other delegates at CHOGM . (continued page nine)

NATIVE TITLE DEBATE

(from page nine)

"After leaving Edinburgh on our way back to Australia we provided a short briefing to the Parliamentary Committee on Human Rights in the British House of Commons, and also met with Lord Whitty from the House of Lords who wished to be kept advised of developments in the 10 Point Plan debate. We were invited back to give updates as the legislation went through the amendment stages.

"Shortly after our return to Australia the Amendment Bill went into the Parliament. After the Second Reading Speeches it was forwarded onto the Senate for discussion and possible amendments.

"The process in the Senate is a very simple one in that the various political parties either agree with the amendments being put forward by Government; put up their own amendments; or adopt an amendment being put forward by another party or independent. This continues until all amendments are done and the amended Bill then goes back down to the House of Representatives.

"During the debate in the Senate, the NIWG, in conjunction with various Indigenous lobbyists, met with the Labor Party, Greens, Greens WA and Independent Senators with a view to having our position reflected in the amendments.

"We were successful in a number of areas which included retaining the two Rights to Negotiate and having the Racial Discrimination Act apply to the Native Title Act. However, many clauses which were extremely discriminatory were left in the Amendment Bill. At the completion of the Senate session the Senate decided to vote the amended Bill up to the House of Representatives (controlled by the Howard Government) to see whether it accepted the amendments, amended them or rejected them, thus commencing the process for a possible double dissolution election.

"As we now know the House of Representatives rejected the amendments put forward by the Senate and has directed that the original Amendment Bill be put before the Senate in March 1998, with a view to having the debate once again in an attempt to have it consistent with the 10 Point Plan.

"The process from here on in is somewhat unclear, in a legal sense, because there is some uncertainty about the double dissolution process and whether the Governor General can be requested to dissolve both Houses of Parliament immediately upon the receipt of the amended Bill (if it is not to the liking of Government) or whether it has to go back a third time to ascertain if the Senate stands by its amendments.

"Either way, if the Amended Bill is not to the liking of the Government there is a great likelihood of a double dissolution election by the first week in October (at the latest), but most likely in either June or July. This will involve a full Senate election and the election of all House of Representative members.

"The greatest concern with this election is that it will be based on race, and this will not reduce the ongoing tensions between Black and White Australia. It will also place Australia internationally in the same position as South Africa, during the apartheid regime, where elections had a strong racial connotation".

STICK WITH WIK!

Deputy PM Fischer's *Native Title Made Easy* pamphlet contains much inaccurate and misleading information. For ALSWA's position on the issues see overleaf

PRESIDENT TO SENATE : STAND FIRM AGAINST 10-POINT PLAN

The Senate must maintain its stand on Howard's 10 point-plan legislation if it wants to avoid perpetuating the genocide that started with the colonisation of Australia.

Ted Wilkes, Aboriginal Legal Service Chairperson, claims that Howard's 'final solution' to the Native Title debate will rank in history with the apartheid regime in South Africa.

"Howard's legislation will effectively bury Aboriginal rights and aspirations alongside the bones of the millions of Aboriginal people murdered in the colonisation process".

Mr Wilkes has appealed to the ALP, the Democrats, the Greens, and Senator Harradine to stand firm when the legislation is returned to the Senate for debate in March this year.

He said the legislation had been rejected by Aboriginal Australians, by unions and churches, by the international community, and by a large number of fair-minded Australians.

"Howard has missed an opportunity to be a Prime Minister of vision, integrity and conscience. It is now up to the Senate to protect the rights that Aboriginal people have fought so hard for, for two centuries, and which have been validated by the High Court in the Mabo and Wik decisions".

He said Australia stood at the crossroads, between racial harmony and racial conflict. The outcome was in the hands of the Senate – and Aboriginal people trusted that the Senate would not let them down.

10 PT PLAN - FISCHER'S FALLACIES

1 ***Validate certain acts between 1 Jan 1994 and 23 Dec 1996***	***Problem:*** The Government believes that the validity of acts or grants over pastoral and other lease land between the passage of the *Native Title Act* and the *Wik* decision will remain in doubt which means that grants of leases, permits, mineral exploration licences and other acts could be contested in court. ***Solution:*** The Government plans to pass legislation which will guarantee the validity of acts or grants over pastoral and other lease land between 1 Jan 1994 and the 23 Dec 1996.
2 ***Confirmation of common law status of Native Title***	***Problem:*** Native Title claims continue to be made over all land titles, as well as over community facilities such as schools, hospitals, roads and railways. This is despite the High Court's decision that grants of exclusive possession completely extinguish Native Title. ***Solution:*** The Government wants to pass legislation that confirms exclusive tenures such as freehold, residential, commercial and agricultural leases in statute where it is already recognised in the common law and confirmed by the High Court.
3 ***Protect essential services***	***Problem:*** The *Native Title Act* gets in the way of the provision of essential services such as new water pipelines, telecommunications, roads, sewerage and drains to all citizens. ***Solution:*** Essential government services be provided to the public without extinguishing Native Title.
4 ***Streamline the "right to negotiate"***	***Problem:*** The 'right to negotiate' is a statutory procedural right for mining and for some compulsory acquisitions. When the current Act was passed, it was not envisaged that the 'right to negotiate' would apply over pastoral lease land and other leases as it now does because of the *Wik* decision. Native Title claimants have greater procedural rights than pastoral leaseholders. ***Solution:*** The 'right to negotiate' will be replaced by State-based regimes over leased land, which give the same procedural rights that pastoral leaseholders have for mining and that freeholders have for compulsory acquisitions.
5 ***NativeTitle and pastoral leases***	***Problem:*** Pastoralists do not know what their rights are and how best they can manage their properties in the future. They also do not know if they can validly do things that are otherwise legal under their leases (such as building dams). Normal government action like case-by-case lease upgrades or issuing permits for particular activities can only be done with the agreement of the Native Title holders or by acquiring and extinguishing any Native Title. ***Solution:*** The Government wants to provide pastoralists with a permit which acts as an extension to their rights so that they can embark on activities such as farmstay tourism and other incidental activities, provided the dominant land use remains primary production. Native Title will be suppressed under these permits on the relevant area for the term of the permit. Native Title holders will be entitled to compensation.
6 ***Statutory access rights***	***Problem:*** There is no provision for protecting registered Native Title claimants' existing access to pastoral lease land. ***Solution:*** When registered claimants' show that they had, at the time of the Wik decision, physical access to pastoral lease land their continued access would be legislatively confirmed until their claim is determined. This would not affect existing access rights under State or Territory legislation.
7 ***Future mining activity***	***Problem:*** The mining and resource industries lack security for existing projects and new projects are being delayed. Mining projects are subject to a double 'right to negotiate' with Native Title holders or registered claimants – both at the exploration and mining stages. There is no effective screening test for claims, so unmeritorious claims remain on the register and gain the 'right to negotiate'. Governments, mining and resource companies must deal with all registered Native Title claimants, even those making unsustainable ambit claims. ***Solution:*** For mining on vacant Crown land, there would be a higher registration test for claimants seeking the 'right to negotiate', so that mining companies would only need to negotiate with claimants whose case is strong. The 'right to negotiate' procedures would be streamlined and Native Title holders would have only one negotiation right per project. For mining and other non-exclusive tenures (eg. national parks) the 'right to negotiate' would apply unless a State regime, which is agreeable to the Commonwealth, is put in place which gives Native Title holders procedural rights at least equivalent to those of other interests in land.
8 ***Water resources and air space***	***Problem:*** The capacity of governments to regulate and manage water and airspace is not clear. ***Solution:*** The Government plans to pass legislation which will make the ability of governments to regulate and manage surface and subsurface water, aquatic resources and airspace beyond doubt.
9 ***Better manage NativeTitle claims***	***Problem:*** As at 6/1/98 there were 699 Native Title claims, many overlapping and often involving substantial numbers of respondents. There is no real acceptance test for claims and no proper registration test for access to the 'right to negotiate'. Native Title processes are separate from State and Territory land management systems leading to unnecessary delays and confusion. ***Solution:*** To put in place a higher registration test for new and existing Native Title claimants to gain the 'right to negotiate'. The handling of claims would be streamlined and the States would be encouraged to manage claims within their own systems. Introduce a sunset clause of 6 years for all Native Title claims.
10 ***Agreements***	***Problem:*** Agreements about Native Title are legally uncertain, and are thus not always a viable alternative to expensive and time-consuming litigation. Miners, governments and others who negotiated in good faith with Native Title claimants could find their agreement worthless and give them no certainty. Regional or large scale agreements to deal sensibly with Native Title, land management are very difficult to achieve. ***Solution:*** Legal certainty would be guaranteed for voluntary agreements about Native Title.

10 PT PLAN - ALSWA'S FACTS

Problem: The Government's amendments will allow both State and Federal Government's to validate invalid or illegal acts done on Native Title land, including acts which extinguish Native Title. ***ALSWA Position:*** The amendments proposed by the Government will only serve to cover up the illegal actions of the WA Government which breached the future acts (s.29) provisions of the *Native Title Act* until their *Land (Titles and Traditional Usage) Act* was defeated in the High Court. Any form of validation of these acts may lead to extinguishment of Native Title, therefore ALSWA is opposed to any amendments which will validate acts between 1 Jan 1994 and 23 Dec 1996. Acts which may be invalid should go through the 'right to negotiate' process which would have initially allowed validation.	*1* ***Validate certain acts between 1 Jan 1994 and 23 Dec 1996***
Problem: The Government is running a scaremongering campaign that Native Title claims can be lodged over Freehold Title. This is a lie; the High Court has already made it clear that Freehold extinguishes Native Title. The Government says pastoral leases do extinguish Native Title to the extent of inconsistency. This is *not* the finding in the *Wik* decision. Confirmation of extinguishment represents the Government's view on what *Wik* should have said. ***ALSWA Position:*** The issue of Native Title claims on Freehold Title is one that has been created by the Howard Government. Such a claim would have no legitimacy under the *Native Title Act*.	*2* ***"Confirmation" of extinguishment of Native Title***
Problem: The *Native Title Act* allows for the continuation of the provision of essential services on Native Title land. The 'right to negotiate' is only ever available in mining matters and compulsory acquisitions where government proposes to benefit a third party. It is extremely important that there is a 'right to negotiate' because the current WA legislation does not adequately protect Aboriginal sites and there may be damage to sacred or significant sites. ***ALSWA Position:*** ALSWA believes that the only reason that the Government is proposing these amendments is to further remove the 'right to negotiate' over future acts on Native Title land.	*3* ***Essential services***
Problem: The Coalition is running a campaign of lies that Native Title claims are stopping mining and development. The effect of the Government's changes would be to remove any effective right to negotiate process in nearly all future acts on Native Title land. This will give mining companies, developers and the State Governments the ability to do acts that will extinguish Native Title with little or no negotiation with Native Title holders. ***ALSWA Position:*** The 'right to negotiate' is the only mechanism that Aboriginal people have to protect their rights. ALSWA vehemently opposes any changes to the 'right to negotiate' provisions.	*4* ***Restricting the "right to negotiate"***
Problem: The Government has tried to "beat-up" conflict between different interest groups on this issue. Pastoralists' rights are spelled out in their leases. The High Court in *Wik* clearly stated that the rights of the pastoralists to carry out legitimate pastoral activities *override the rights of Native Title holders where conflict exists.* ***ALSWA Position:*** The High Court decision in *Wik* provided protection to pastoralists and pastoral activities under their leases which ALSWA respects. Aboriginal people have no concerns with pastoralists undertaking legitimate activities under their leases. No amendment is needed.	*5* ***Native Title and pastoral leases***
Problem: This amendment is destructive of Native Title rights and the Government is being deceptive about its purpose. The amendments propose to protect claimants that had access to their land at the time of the Wik decision. The effect of such amendments would be to sanction the acts of pastoralists that denied Native Title holders access to their land. It fails to recognise the effect of people being removed from country by government policies. ***ALSWA Position:*** Amendments that will remove the ability of Native Title holders to access their traditional country are unjust. These amendments will legitimise the actions of pastoralists who have denied Aboriginal people access to their traditional country. This is unacceptable and is opposed by ALSWA.	*6* ***Statutory access rights***
Problem: The Government claims that the 'right to negotiate' process places restrictions and delays on the mining industry and they want to reduce that right. They want to introduce a higher threshold test for Native Title claimants. ***ALSWA Position:*** The current 'right to negotiate' offers the best method for protection of Aboriginal sacred sites. The Government's amendments will allow ongoing desecration of sites and will ultimately lead to further litigation, creating delays in development and for the mining industry.	*7* ***Future mining activity***
Problem: The management of water resources and airspace is not hindered by Native Title. ***ALSWA Position:*** The amendments proposed will permit regulation and management of water and acquatic resources in a way which will extinguish Native Title rights. The removal of such rights is clearly an impediment to the rights of Aboriginal people, which ALSWA opposes.	*8* ***Water resources and air space***
Problem: The Government is using overlapping claims as the basis for introducing an excessively high and unfair threshold test. ***ALSWA Position:*** Native Title holders and Native Title Representative Bodies agree that there needs to be a better process. ALSWA has made submissions to the Government that a certification process for claims, which will be a statutory function for Representative Bodies, is a far better process than introducing a threshold test which may remove the right for legitimate Native Title holders to lodge claims.	*9* ***Better manage Native Title claims***
Problem: The Government is pointing the finger at Aboriginal people and stating that Agreements struck between government, mining industry, developers and others are still uncertain. This is misleading. ***ALSWA Position:*** Aboriginal people want the right to develop regional and site specific Agreements with any/all people undertaking future acts on their Native Title Land. This will provide binding Agreements upon those undertaking the future act and all Native Title holders for a particular area.	*10* ***Agreements***

CHILDREN'S COURT GIVES MARK SPECIAL INSIGHT INTO JUVENILE PROBLEMS

As a Court Officer in the Children's Court Mark Radovanovic sees first-hand the effects of the self-destructive and anti-social behaviours that some young Aboriginal people indulge in.

One of the biggest problems for juveniles is substance abuse with kids as young as 12 years sniffing paints, glues and petrol. Mark sees this as a real problem for the Aboriginal community.

He estimates about 70% of clients he represents sniff glue, with boys and girls equally represented.

The glue is often stolen from hardware shops, department stores or anywhere else youngsters can get a hold of it.

Mark says young people need to be educated about solvent abuse. As well, rehabilitation centres which deal with the problem before it's too late are urgently needed.

He feels that young people become involved in such problem behaviours because of inadequate education, peer group pressure and following the 'wrong crowd'.

Mark has been employed by ALSWA since 1993, first as a courier (for 6 months) and then a Court Officer. Mark represented clients in adult Courts for the first couple of years, but has worked in the Children's Court for the past 18 months.

He represents and advises clients in Court and also sees clients when they come into the Perth office of ALSWA. Clients that come into the office generally have to see a Court Officer as the first contact. The Court Officer takes instructions down on the matter and gives legal advice. Depending on the seriousness of the matter, it may be then referred to a solicitor.

Mark Radanovic outside the Perth Children's Court
(Story and picture by Damien Yarra)

Mark says there are normally two Court Officers at the Perth Children's Court, he and Rob Bonson. When they arrive at the ALSWA office in the Court a list of all the people going to Court on that day is on their desk

There is also a custody list of all the clients in detention. Once they get the lists they go through and tick Aboriginal client's names, so they know who is going to Court. One of the Court Officers stays at the ALSWA office to see clients as they come into the Court, while the other sees clients who are detained in custody.

The Court Officers take instructions from clients i.e. they find out what the clients are charged with and the circumstances of the offence, and what the clients want to do about their situations.

When the Court Officers are about to go into Court they write a list of how many clients they will be representing and give it to the police orderly, who calls out the names of persons appearing in the Court.

In Court they are often preceded by lawyers representing clients, so while waiting to be heard they take the opportunity to look at the records and the facts of the offences. This is the general procedure of the day's Court, but can change depending on the seriousness of the matters that come up.

Mark points out that he gets satisfaction by getting good results for clients and in seeing that clients are satisfied with the result. He also observes experienced solicitors in Court and gains knowledge that will benefit him in his job. Mark wanted to become a Court Officer to help Aboriginal people get justice and to educate them about law and their rights.

He finds the job of Court Officer very demanding, and says it can be emotionally draining at times, like when being threatened or abused by clients in and out of the Courtroom. As well as Criminal Law, Mark also deals from clients making complaints about police.

STATE GOVERNMENT ASKED TO PROVIDE FUNDS FOR STOLEN CHILDREN CASES

ALSWA has called on the State Government to make good its commitment to the 'stolen generation', as implied in its delivery of an apology in May 1997, and provide funding to enable ALSWA to litigate on behalf of some of those affected.

The Howard Government's recent announcement of a funding package of $63 million to address 'stolen generation' matters, in an attempt to address the lingering consequences of past government policies of assimilation and removal, has made no allocation of funds for litigation.

The Federal Government's reluctance to sit down and work with Aboriginal communities in determining how best to spend the money has only worsened the already frayed relationship between Aboriginal communities and a Government which has refused to apologise despite international attention and pressure.

ALSWA was pleased that the WA Parliament gave an apology for the child removal practices which were sanctioned by the State Government of the time, but has called on the current State Government to enhance a commitment to developing more positive relations with WA Aboriginal people by agreeing to set up a partnership with ALSWA and other groups representing the 'stolen generation' to work out the most effective way of using Federal funding.

Mr Howard's refusal to apologise has hindered the healing process which people affected by past policies need to undertake to regain control of their lives.

Tony Buti, ALSWA Human Rights Solicitor and author of *Telling our Story* and *After the Removal* sees a commitment to the inclusion of the Stolen Children in the determination and administration of the funding allocation as crucial for the integrity of the Government's commitment to these people.

"The State Government has to take action and provide funds and a structural arrangement of its own to show its apology is genuine," Mr Buti said.

ALSWA argues that people affected by past policies must be included in the process, not only because they have the experiences and information which the State Government needs in order to determine where best to direct the money, but because it affords the people with an opportunity to regain their hope and their dignity - important aids to self empowerment.

ALSWA WELCOMES CONSTITUTIONAL PARTICIPATION

Four Aboriginal Australians have been appointed as delegates to the Constitutional Convention which is due to convene in February. They include Lois O'Donoghue, Gatjil Djekurra and Nova Perris-Kneebone. The inclusion of Aboriginal representatives has been welcomed by ALSWA

ALSWA has drafted a position paper on the reform of Australia's Constitution and the recognition of Aboriginal and Torres Strait Islander Australian's as the original inhabitants of Australia, that will be presented to the Convention.

ALSWA has also proposed the inclusion of a Indigenous Bill of Rights along the lines of that included in the new South African Constitution.

The Bill of Rights could propose recognition and acknowledgement of the sovereign status of Australia's Aboriginal and Torres Strait Islanders. This would be an important step towards the type of recognition first sought in the 1988 bi-centenary 'celebrations'.

It is also planned to hold an Indigenous Constitutional Reform Symposium in Sydney in March.

This will afford other individuals and organisations, such as ALSWA, a greater opportunity for contribution to the national debate. (cont page 19)

CIVIL UNIT WINS $1.8M DAMAGES FOR CLIENT

ALSWA's Civil Unit has succeeded in securing a $1.8 million settlement for an infant plaintiff for personal injuries sustained in a motor vehicle accident. In the accident the plaintiff suffered severe brain damage. He is now dependent on full time care for his basic needs. At a pre-trial conference in February 1997, the defendant (SGIC) offered $900,000 to cover the plaintiff's future needs for the rest of his life. The offer was considered too low and there were issues which needed further investigation and instructions from the community.

ALSWA has now settled for $1,825,000. This includes amounts of $225,000 for general damages; $6,000 for loss of expectation of life; $150,000 for future economic loss; $10,000 for superannuation; $150,000 for past gratuitous services; $42,000 for interest on gratuities; $750,000 for future care; $110,000 for housing; $200,000 for occupation and speech therapy aids and appliances; $25,000 for motor vehicle; $15,000 for a computer; $10,000 for medications; $5,000 for additional travel costs; $80,000 for future medical care; and $41,000 for Public Trustee management fee.

SEXUAL ABUSE CONVICTION NO BAR TO FATHER'S CUSTODY OF CHILDREN

ALSWA's Family Law Unit had a victory recently in a Family Court trial lasting five days. The trial, involving the custody of three children, was jointly conducted by Family Law Solicitors Paul Anthony and Jill Vander Wal, with assistance from Secretary Kristy Burgess.

In the trial ALSWA represented a father who had consented in February 1997 to the mother of the children having sole custody. In May of that year the mother placed the children in respite care, and while there, two of the children exhibited inappropriate sexual behaviour. Family and Children's Services intervened and removed the children from the mother.

Apparently because the father had previously been convicted of child sexual abuse (in 1990), the Department decided he must have been the perpetrator of whatever had led to the children's behaviour, and that the problem would be resolved by restricting the father's contact with them.

Therefore, when the mother initiated proceedings in the Family Court in August 1997, seeking orders that the father have only supervised access, the Department withdrew its application for a Care and Protection Order and the children were returned to the mother's care.

The father opposed the mother's application and sought custody of the children himself because of misgivings about the mother's capacity to provide for even the most basic needs of the children.

The Court was told that it was clear from the evidence that, since being convicted of the sexual abuse offence, the father had made every effort to make lasting changes to his life. At the time of his conviction the father had alcohol and drug problems. Since the conviction he had avoided alcohol and drugs and, while in prison, had undergone a sex-offender's course. He had also engaged in further education and training and had established a professional career path for himself.

A psychologist giving evidence at the trial testified that, while it was impossible to say that there was no chance of the father re-offending, the risk that he would do so was very low.

As a result, despite his previous conviction, the father was awarded custody of the children because the Court accepted the Court expert's evidence that there was real concern about the mother's ability to 'be able to identify (and be) aware of the needs of the children', whereas the father appeared to 'be able to identify (and be) aware of the needs of the children'.

The Court expert stated further that 'it would appear that the father had much better parenting skills than the children's mother and, in theory at least, he (would be) likely to be able to care for the children on a day-to-day basis'.

DISTANCE DELAYS FAMILY REUNION

Having a Family Court Order made in your favour does not always mean that the problems are fully resolved.

ALSWA Family Court Solicitor Paul Anthony tells of a case wherein a mother who won custody of her children in July 1997 was unable to be reunited with them till December of the same year.

He said the problem began when the father, having been served with our client's application for custody of the children, absconded with them to Queensland.

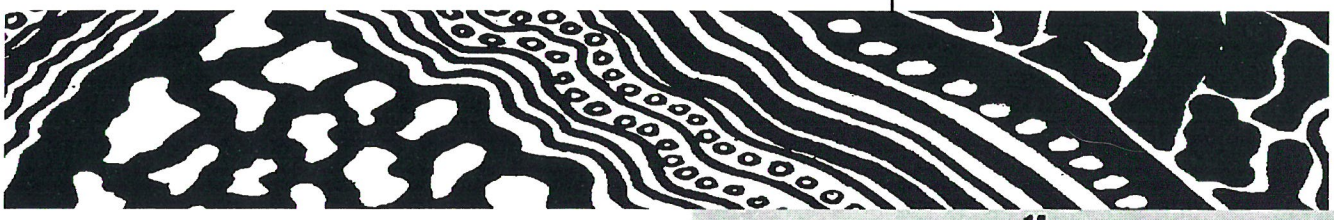
A Recovery Order was immediately issued by the Family Court, allowing the police to collect the children and return them to the parent in whose favour the order was made.

Unfortunately, the police will not execute such an order until arrangements have been made for the children to be either placed on an aircraft to be flown home, or placed in someone else's care.

Mr Anthony said many ALSWA clients could not afford the expense of flying to where the children were to escort them home, or paying for them to be flown home without an escort.

This meant there could be delays of months, or even longer, before children could be reunited with their parent.

In the case in point the mother saved up until December, at which time she flew to Queensland and escorted the children back. The mother is now reunited with two of her children, the oldest preferring to stay in Queensland with the father.



NJAMAL STATEMENT
(from page five)

that our contribution does not seem to have been acknowledged in the recent debate over Wik.

"We have heard that the Government wants to allow the pastoralist's rights to be increased and to take away our right to negotiate on pastoral lease land. The right to negotiate is a very important thing for us because it means that we get to have a say about what happens on our country. Without this right, our Native Title rights do not amount to much and it seems that they will be able to be taken from us very easily. To take away our Native Title rights will mean that our land is lost. Not only to us, but to all future generations to Njamal people.

"We have sent a letter to pastoralists with interests in our claim area, inviting them to meet with us. We believe things can be worked out with pastoralists and other interest holders in this area.

"We are not opposed to mining or development in general, but we have a duty to see that our country is respected. Over the years, we have seen many of our hills destroyed and endless trains that roll past our homes, carrying the minerals that come out of our country.

"Despite this, we still remain the most disadvantaged people in the land, and now it seems that the Government is trying to take from us what few rights we do have.

"We are worried at the amount of fear and bad feeling about Native Title in the local community and we make our invitation once more to pastoralists to meet with us to try and make an agreement that will respect the rights of both ourselves and the pastoralists in the claim area.

"We would also urge the Federal Government not to make laws that will mean that our land will be able to be taken from us."

Magistrate's views of concern to ALSWA

ALSWA CEO Dennis Eggington has written to a Goldfield's Magistrate over comments he reportedly made in the Kalgoorlie Children's Court in early January in relation to the granting of bail for three young Aboriginal offenders from a desert community.

Mr Eggington said the comments suggested that the Magistrate believed that, in the case of the offenders, there was 'no doubt' they would be better off in custody. They indicated also that the Magistrate believed that children, from a desert community, should be in a strictly-controlled boarding school from four or five years of age, and that this would 'at least' ensure that they would 'learn basic hygiene, English and maths'.

If the statements were reported correctly then the Magistrate's suitability as a Magistrate, especially in the jurisdiction of the Children's Court, was seriously in question.

In his letter Mr Eggington said "The type of thinking that underlies such prejudicial and inappropriate utterances was precisely the type of thinking that influenced government and judicial authorities, from the turn of the century to the mid 1900's, to implement the now infamous 'removalist' policies.

"These policies separated Aboriginal children from their parents and communities in the deluded belief that 'for their own good' they would be better off assimilated into an alien culture rather than left to develop within their own. It is that alien culture that has caused the many problems facing the Aboriginal community today.

"The awful legacy of the assimilation policies can be observed in the current over-representation of Aboriginal people, especially young Aboriginal people, in the criminal justice system of which you, to our detriment it would seem, are a part.

"The legacy can be seen in appalling physical and mental health statistics, in low retention and achievement rates in schools; in poor employment rates; in escalating suicide rates, especially among young Aboriginal males; in the third-world socio-economic status of many Aboriginal communities.

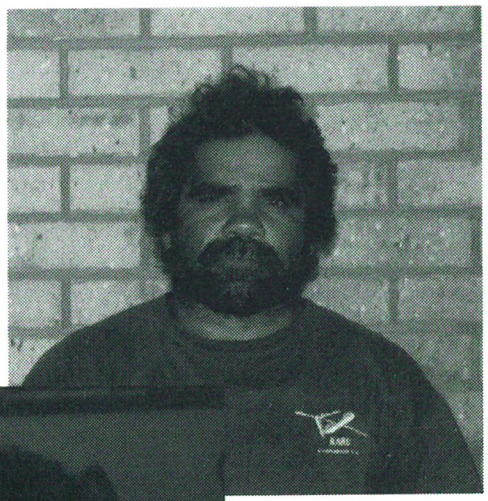
"And yet you would seriously suggest that, in this 'enlightened' era, we should revert to the barbaric practices of the past and take young Aboriginal children from their families and communities and incarcerate them in 'strict' boarding schools? Personally, I would wish that on no child.

"I do suggest, thankfully, that you would get little if any support for such outdated and inappropriate views from your contemporaries within the legal profession. Many who take their responsibilities seriously, have taken the opportunity to learn about Aboriginal people and have thus developed cultural awareness and a sense of respect for indigenous peoples.

"Should you feel inclined to join their enlightened ranks I would be more than pleased to provide you with appropriate information. I await your response".

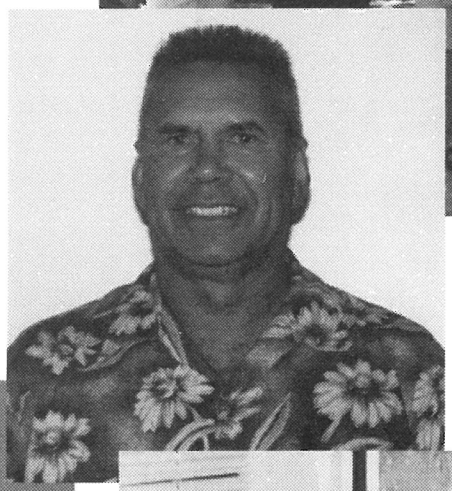
EXECUTIVE COMMITTEE

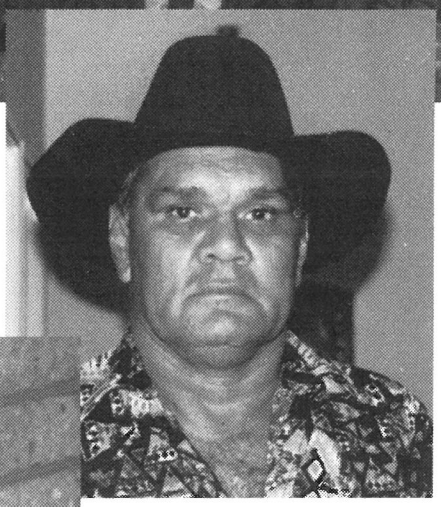
Clockwise from top:
Executive members outside Kalgoorlie Health Service; CEO Dennis Eggington and Chairperson Ted Wilkes; Mervyn Councillor; Treasurer Lorraine Whitby; Mark Ugle; Richard Evans; and (centre) Veronica Williams-Bennell



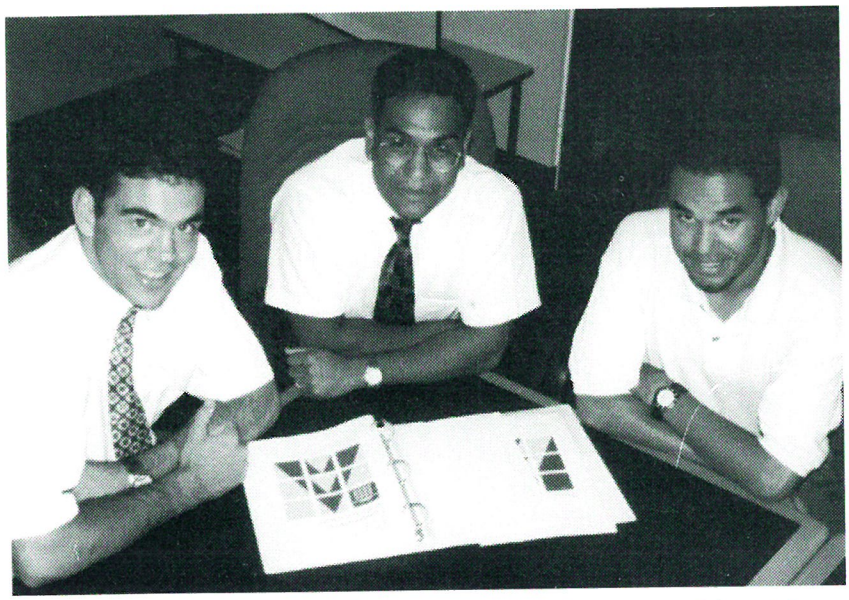
MEETS IN KALGOORLIE

Clockwise from top:
Executive and ALSWA staff members line up for a photograph outside the meeting at the Maku Centre; Trevor Bedford (proxy); Vice-President Glen Colbung; Clem Riley; Paul Sampi; Arthur Slater; and (centre) Kevin Puertollano





Trio in Training



ALSWA has appointed a number of young Aboriginal trainees in its administration, public relations and Land and Heritage areas. The trainees, funded by a Group Training Scheme, will gain experience in all aspects of ALSWA's operations over a period of two years. Pictured are Cory McGrath, Damien Yarran and Ashley Truscott.

'JOY 98'

ALSWA is one of a large number of Aboriginal organisations in the metropolitan area that will participate in JOY '98, the State Government's Youth Expo which is scheduled to March 19-22. The Expo is an important forum for promotion of ALSWA and other Aboriginal service organisations to young people, parents, teachers, youth workers and others.

ALSWA will operate an information booth which will provide visitors with material explaining the importance of culturally appropriate legal services for Aboriginal people, particularly young Aboriginal people. The Service will also conduct a workshop on legal issues which particularly affect the Indigenous community. Joy '98 provides Aboriginal communities with an opportunity to participate in an event which can impact on the wider community.

Newspaper advertisement considered offensive

An advertisement in the *Sunday Times* has been brought to the attention of ALSWA by a concerned reader. The 'homily' in that advertisement reads as follows:

"*Everytime the Aboriginal Industry gets a decision that's not to their liking they drag out the race card by labelling everyone a racist who doesn't agree with them. There are red necks on both sides of the Land Rights debate, and unfortunately it appears that they are the ones representing our indigenous folk*".

ALSWA Deputy Chief Executive Officer Colleen Hayward, in a response to the advertiser, said it was understandable that ALSWA would disagree with the views expressed. "We find it extraordinary that you would use an advertisment, presumably designed to sell motor vehicles, to denigrate the Aboriginal community and its supporters.

"The 'Aboriginal industry', as you so term it, comprises a wide cross-section of Aboriginal leaders and elders who are collectively attempting, through political and other means, to bring about a better life for all members of the Aboriginal community.

"For nearly two centuries, that community has been oppressed and dispossessed by a colonization process that has left a residue of frustration and resentment, against which we have had to struggle, and against which we must continue to struggle.

"The struggle has demonstrated that a major obstacle in our path to empowerment and self-determination, is the ignorance and racism of others. If you were Aboriginal, you would know I mean.

"Aboriginal people accept that some in the community disagree with our views, and many of us are willing, indeed anxious, to engage those persons, not in an exchange of vitriolic abuse, but in constructive dialogue.

"In that spirit we invite you to meet with us to discuss our differing points of view, in an atmosphere, not of confrontation, but of mutual respect".

(Postscript: The advertiser has accepted the invitation to discuss the matter. Talks will be held soon).

CLAIMS CONTESTED

(from page five)

"We have been, and always will be, ready to reach a fair and reasonable agreement with the company, that provides a practical way of giving certainty to the project, while at the same time protecting the country as much as possible, and continuing to allow our access for hunting and camping.

"We cannot believe that Anaconda would deliberately abandon 20 percent of its ore body and stop negotiating a process to secure land that would allow its project to grow.

"We await written confirmation from the Anaconda Board, and the Department of Minerals and Energy, that the dozen or so mining lease applications at Murrin Murrin have been withdrawn.

"If what Mr Forrest has said is true about shelving mining plans, then how come the National Native Title Tribunal will be 'setting the terms for future mining'? If all of the mining lease applications are to be withdrawn then there won't be anything for the Tribunal to do.

"Mr Forrest's comments about us are incorrect. We have had to go to the Australian Stock Exchange and to the media to try to get out the truth about the negotiations.

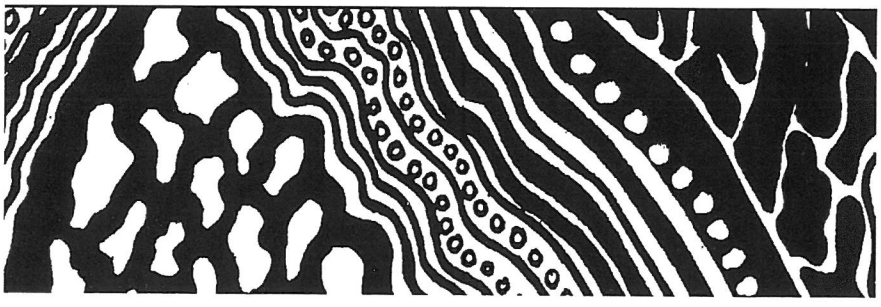
"We were the particular claimants that negotiated the $1 million annual payment to go to a charitable trust set up for all Native Title holders in the north-east Goldfields. We were the claimants who insisted that the company consult with us about protection of the environment, and undertake a social impact study to assess the impact of the mine on our people. We are still trying to get the company to agree not to seek to destroy our Sacred Sites, but they are not interested.

"To get the plant granted, the company insisted on directly approaching old people against our wishes and in the result there was a rift between young and old, and also between us and other claimant groups. The company wrote and circulated a petition against us which they got Aboriginal people, including kids, to sign, and Aboriginal people marched against us in Leonora. These are shameful things.

"Mr Forrest's comments that we are affecting contracts that would be issued to Aboriginal people is not true. There are no company guarantees in place that Aboriginal people will get contracts. This is one of the things, along with jobs and training, and annual payments to help self-determination, that we are still trying to negotiate – not just for the hundreds of people that we represent, but also for fellow claimants in other groups in the north-east Goldfields".

PARENTS THANK ALSWA STAFF

ALSWA Criminal Unit has recently been recognised and commended by the parents of a juvenile offender for its efforts in a case before the Children's Court. The parents were so impressed by the representation, advice and support of staff that they wrote and thanked ALSWA. Their experience had alerted them to the many prejudices and difficulties ALSWA staff face in their work.



CONVENTION

(from page thirteen)

Canberra Current Affairs commentator Duncan Campbell (in *The Australian* of January 21) says this about Aboriginal representation: "The first conclusion to be drawn from the Constitutional Convention when it meets in Canberra's Old Parliament House will be that it is more truly representative of the Australian people than is the present Parliament itself.

"The inclusion in the convention of Aboriginal representatives elected on an open, non-party and State-wide basis will be one of its most distinguishing and encouraging features, But it will also point to the obstacles to indigenous candidates winning seats in Parliament from existing electorates. These are matters that ought not to be bypassed at a time when the Constitution is being overhauled.

"On a rough numerical rule of thumb, there should be much the same level of Aboriginal representation as there is from the ACT. The Territory and the Indigenous community both number about a quarter of a million people. Australia-wide, this might produce two members of Parliament and two senators. Four legislators would scarcely have a dominant effect on decision-making, but two could be influential in the Senate.

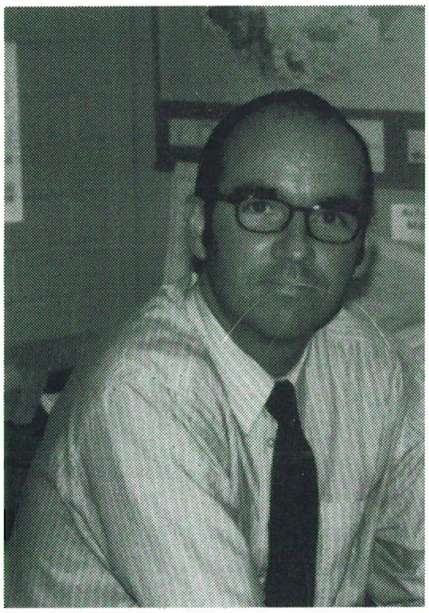
"It will be a tragic loss of opportunity if the Convention is not brought to recommend Aboriginal representation in Parliament. It will be shameful if this national agenda item is left entirely to the Indigenous Constitutional Convention which the Aboriginal and Torres Strait Islander Commission is to mount independently in March.

"This is not to say that there is no role for the Indigenous Convention. The appropriate flow of business would, however, be for ATSIC to pursue and elaborate relevant proposals from the Government's Convention".

ALSWA STAFFERS ON THE MOVE

Connolly undertakes studies in Native Title

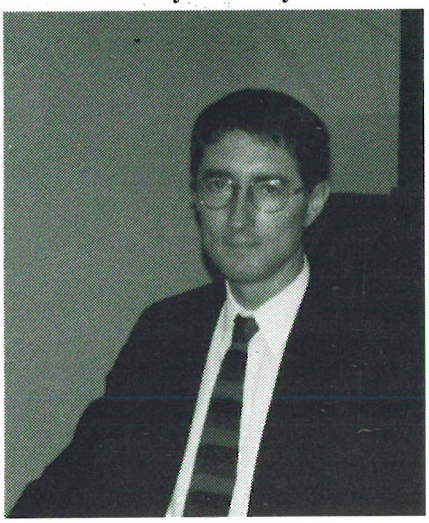
ALSWA Solicitor Tony Connolly is about to leave ALSWA after four years service. Tony has worked as a Solicitor in the Land and Heritage Unit for the past three years where he represented clients in the south-west. Prior to that he worked as a Criminal Solicitor. Tony is leaving ALSWA to undertake PhD studies involving research on Native Title. He claims the most satisfying aspect of his time with ALSWA has been assisting Noongar people learn about Native Title and exercising their rights accordingly.



Tony Connolly

Devereaux returns home to Queensland

Criminal Solicitor Brian Devereaux is leaving ALSWA to return to Queensland to take on private practice. Brian started at ALSWA in April 1994 and has worked ever since with the Criminal Unit. Brian recalls his most important case as one in which six women were charged with assault occasioning bodily harm, arising out of an incident involving tribal punishments. He won the case, which he regards as important because it involved both Aboriginal and Western law.



Brian Devereaux

OBITUARY - STEVEN WINTER

On Christmas day 1997, Steven Winter was killed in a car accident in the Northern Territory. He was driving to Kununurra to have Christmas lunch with his close friend Margie Bourke, ALSWA Solicitor for the East Kimberly region. He had just previously accepted a position as ALSWA Solicitor at Port Hedland, replacing Rod Keely. Steve cut an imposing figure at an extremely solid 6'6", and was highly regarded as a criminal advocate by those who knew him. Originally from Melbourne, he spent time in the legal services of the Australian Army in Townsville before returning to enter the Bar in Melbourne. He practiced successfully as a barrister there for a number of years before his love of the bush, his dogs, and his 4-wheel drive took him to Alice Springs where he worked with CAALAS. He went on to become Deputy Coroner in Darwin. He was to leave that position to join ALSWA. Steve's very dry sense of humour was such that he would have regretted not being able to preside over his own coronial inquest. Tony Shelley taught him to trout fish in the Victorian high country, but he remained conspicuously ineffective at it despite many enthusiastic attempts. He will be greatly missed by many.

R.I.P

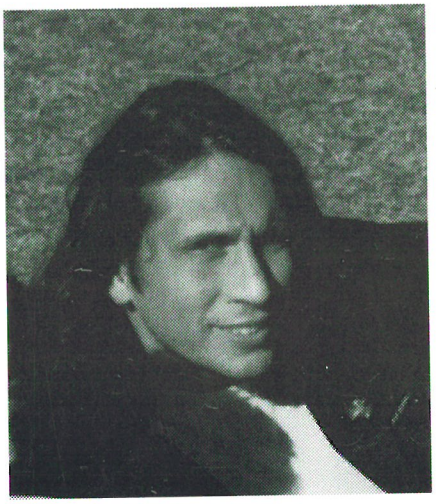
KEVIN INTERESTED IN REGIONAL AGREEMENTS

ALSWA staff member Kevin Dolman is studying for a Bachelor of Laws and Bachelor of Commerce at the University of New South Wales, which has 30,000 students. Kevin has been studying at the Newcastle campus since February 1997 having completed two years at Murdoch University. He is on a professional sponsorship from ALSWA where he started in July 1993 as an Information Officer/Journalist in the Community Unit.

His degrees require five years of study of which he has only two year left to complete. During end-of-year semester breaks he works in ALSWA's Perth office.

Kevin is interested in working on comprehensive regional agreements such as some Canadian Aboriginal people have negotiated. He would like to see them introduced into Australia.

Regional agreements are agreements between Indigenous people, Government and industry on Native Title issues. These are not only related to land but cover social areas like unemployment, education, alcohol and cultural maintenance.



Kevin Dolman