

# ALSWA

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## ALSWA SEEKS TO GIVE ABORIGINAL YOUTH A VOICE

Aboriginal youth could soon be given a direct line to Perth's 'decision-makers' if a submission to the Office of Youth Affairs is successful.

ALSWA has proposed an 'Aboriginal Youth Speaks' Reconciliation event for around April next year which would bring together 100 selected Aboriginal young people and representatives from Government and private agencies including the Police Service, the Ministry of Justice, the Education Department, the Office of Youth Affairs, the Department of Family and Children's Services, and the Department of Premier and Cabinet. Senior representatives of major churches, welfare groups and political parties would also be invited to participate.

ALSWA Community Legal Education officer Ashley Truscott, who is organising the submission to the Office of Youth Affairs, said the purpose of the event would be to give Aboriginal young people an opportunity to tell Perth's major decision makers what needed to be done, from a youth perspective, to achieve reconciliation in areas of importance to young people. Aboriginal speakers would be selected from schools and agencies and workshopped through development of individual papers on a wide range of topics.

The speakers would intersperse with performance events during a one-day forum at a major Perth venue. Parents and friends would be invited to observe. The forum would conclude with a Reconciliation dinner.



## 'BONO' WINS AWARD FOR EXCELLENCE

ALSWA Court Officer Robert Bonson (pictured above with colleague Mark Radovanovic) has been given special recognition by the National Youth Law Centre, for his outstanding and consistent excellence in the representation of children in the Criminal Justice system. Mr Bonson was nominated for the award by the Legal Aid Commission's Youth Law Unit on the basis of 'excellent' representation of Aboriginal youth in the Perth Children's Court. The award is usually given to a member of the legal profession, but the Awards Committee, based in NSW, decided to give a separate award to Mr Bonson, based on the submissions made by the Youth Law Unit.

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## **CEO TAKES ON THE 'UGLY AUSTRALIAN'**

ALSWA CEO Dennis Eggington has responded to a letter in *The West Australian* (25/9), claiming that the remarks attributed to the writer would shame the majority of Australians, who were hopefully more honest, more informed and more compassionate.

Mr Eggington said the writer's claim, that Aboriginal people 'had it better than the average person' was plainly ludicrous.

He said for over two centuries the Aboriginal community had suffered premeditated physical and cultural genocide. The community had been marginalised and oppressed and, as a consequence, its contemporary position, at the bottom of the ladder on all social indicators, was acknowledged world-wide as a disgrace.

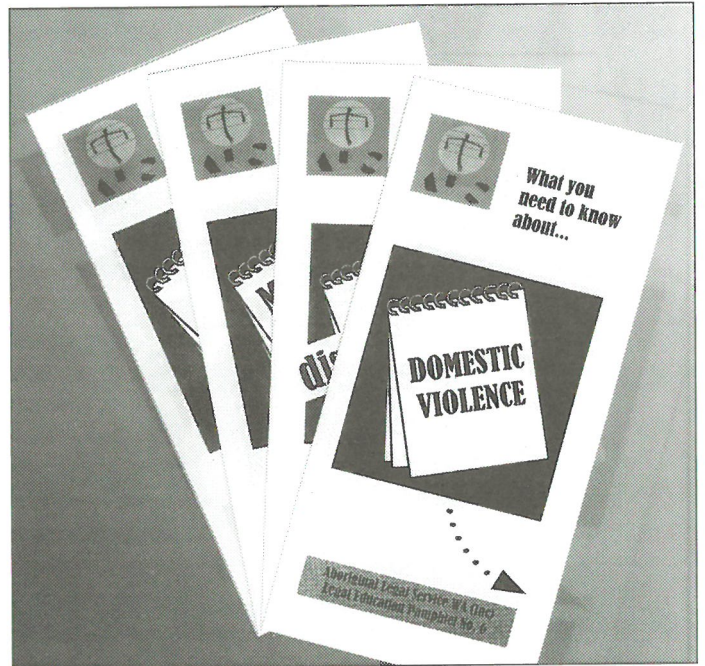
Mr Eggington said the writer used a 'blame the victim' approach that typified the level of contempt that a minority of 'red-necks' in the community still had for Aboriginal people.

Nevertheless, given society's reluctance to include Aboriginal people in the mainstream of Australian life, it was somewhat ironic and contradictory for the writer to complain, in terms of envy, about 'special services'. "if we've got it so good, would he like to change places?"

Mr Eggington said the writer represented the public face of 'the ugly Australian'. "We draw some comfort from the fact that most would disagree with his derogatory and disrespectful views".

He called on others who were deeply offended by the writer's intemperate attack, to speak out against such provocative demonstrations of intolerance and prejudice.

A survey of 'Letters to the Editor' in the week following publication of the letter revealed that, while some correspondents supported the writer's views, there was strong support for the Aboriginal position.



## **NEW BROCHURES NOW AVAILABLE**

ALSWA has published a further four Legal Education brochures in its current series. The topics covered include Domestic Violence, Restraining Orders, Making a Will, and Discrimination.

The brochures are the second lot to be published in a series that will ultimately feature 24 separate titles dealing with separate aspects of law.

The first brochures published included information on What to do when Arrested, Compensation for Motor Vehicle Injuries, Criminal records and Going Surety.

The next series will feature information on Bail, Living to a Budget, Understanding the Court System, and Legal Rights and Obligations.

The brochures already published are available from ALSWA offices throughout the State.

ALSWA is published monthly by the Aboriginal Legal Service of Western Australia (Inc), PO Box 8194 Stirling Street, East Perth WA 6849. It includes materials from a number of sources, some of which do not necessarily represent the views of the organisation. For contributions or enquiries please contact the Editor at the above address.

## Self defence plea avoids charge of manslaughter

A Supreme Court decision has cleared a Kimberley woman of manslaughter charges after she stabbed and killed a man while he was raping her. ALSWA Solicitor David Saylor, Counsel Peter Collins and Principal Legal Officer David Imlah represented the woman who pleaded guilty to manslaughter charges, arguing that she was defending herself from the man when she stabbed him.

In an interview with *The Kimberley Echo*, Mr Saylor said it was 'just' that she did not go to jail but 'unjust' under the law of the State that she had to plead guilty to the charges. The Prosecution claimed that under Western Australian law she was guilty and should have been given a prison sentence.

The State's Criminal Code says that a person can only use self-defence as a defence in a murder or manslaughter case if the person feels that he or she is in danger of death or grievous bodily harm (GBH). (Fear of GBH does not evidently include fear of being raped).

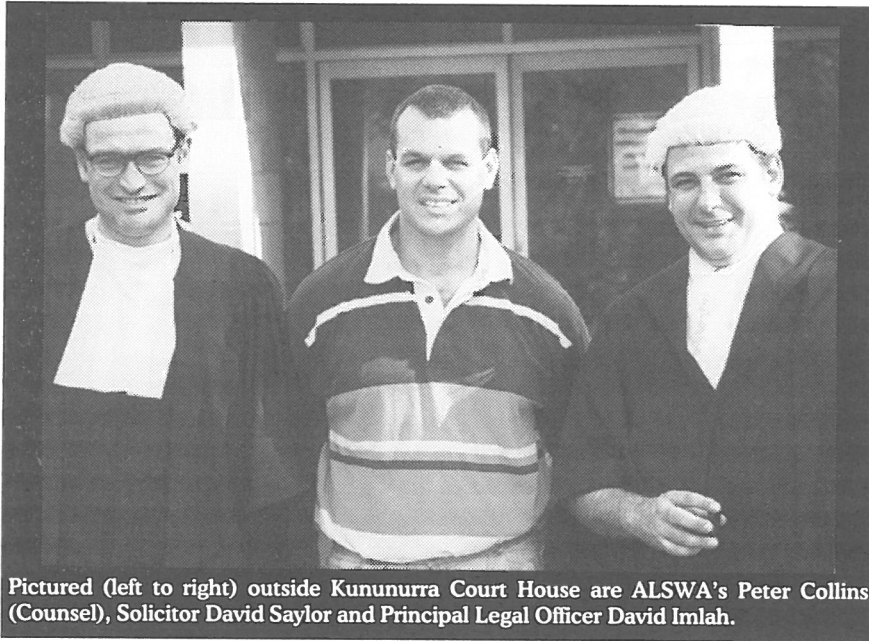
Mr Saylor said people had to make the decision as to whether it was a life threatening situation before they acted, even when being raped. "They have to put these calculations through their head: Am I going to die or am I going to suffer GBH? What sort of force should I use?"

In murder and manslaughter cases, involving sexual assaults, the person is only allowed to use proportional force to that used against them. People defend-

ing their homes from attack are able to use reasonable force to stop the intruders. Mr Saylor said the woman had to calculate in her mind whether the person attacking her was going to cause her permanent damage, before defending herself.

Supreme Court Judge Neville Owen raised the issue of sexually transmitted diseases and AIDS as a factor in sexual assault cases. He said it was feasible that a woman could claim she feared she was going to die from an STD, allowing for a self-defence case against a charge of murder or manslaughter. "I think people should be able to use this defence, but the provision in the criminal code has to be measured so that people use it in the right case" the Judge said.

Crown Prosecutor Ron Birmingham QC said after the case there was a chance the Department of Public Prosecutions may appeal the case to the Court of Criminal Appeal.



Pictured (left to right) outside Kununurra Court House are ALSWA's Peter Collins (Counsel), Solicitor David Saylor and Principal Legal Officer David Imlah.

Mr Saylor said he would be disappointed if the Crown appealed the case. However, while it would be unfair to the client if the Crown did so, it could create greater recognition of the case, and may lead to a more rapid change in the law. "Western Australia criminal law is governed by a criminal code created by the Parliament. The Common Law used in States like Victo-

ria and New South Wales, however, is a Judge-made law".

"Common Law provisions say the force used by the accused person must be proportionate to the attack, but when a person is defending themselves, they cannot think about exactly what actions should be taken to avoid the attack on them. In WA they have that obstacle".

ALSWA has contacted the WA Women's Legal Service, which may approach Members of Parliament with proposed changes to the law.

ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA (INC)

## **ALSWA ELECTION PILBARA & WEST KIMBERLEY REGIONS 11 - 15 JANUARY 1999**

### **YOU MUST BE A MEMBER OF ALSWA TO VOTE**

Aboriginal and Torres Strait Islander people intending to vote for the election of a new Executive Committee, in the above regions, for the Aboriginal Legal Service of Western Australia (Inc.) (ALSWA) must be members of ALSWA. Membership forms are available from all ALSWA offices. Completed forms must be returned to the Returning Officer

ALSWA, PO Box 8194, Stirling Street, East Perth, 6849,  
(Fax (08) 9221 1767) by 5pm 15 January 1999  
These forms will also be available at all polling places.

### **NOMINATIONS FOR ELECTION ARE NOW OPEN**

Nominations for election to the Executive Committee (and future regional committees) are now open.

Nomination forms are available from all ALSWA offices. Completed forms must be returned to the Returning Officer  
ALSWA, PO Box 8194, Stirling Street, East Perth, 6849,  
(Fax (08) 9221 1767) by 5pm 14 December 1998

### **POSTAL VOTE REQUEST FORMS**

Postal vote request forms, for those unable to vote at official polling booths, are available from ALSWA Perth office from 14 December 1998. Completed forms must be returned to the Returning Officer

ALSWA, PO Box 8194, Stirling Street, East Perth, 6849,  
(Fax (08) 9221 1767) by 5pm 28 December 1998

### **FURTHER INFORMATION FROM ALSWA OFFICES**

Posters, giving all details of the 1998 Pilbara & West Kimberley Regions Election, will be displayed in ALSWA offices in those regions. Please direct enquiries to ALSWA on

(08) 9265 6666 - 1800 019 900 (toll Free), Fax (08) 9221 1767

Authorised by David Imlah, Returning Officer, Aboriginal Legal Service of Western Australia (Inc)  
PO Box 8194 Stirling Street, East Perth, 6849

## **POLICE AT FITZROY CROSSING UNDER SCRUTINY**

ALSWA CEO Dennis Eggington and Civil Solicitor Tom Cannon will visit Fitzroy Crossing soon to attend a community meeting which has been called to discuss the relationship between Aboriginal people and local police officers.

The call for a community meeting came after an accident in which an Aboriginal man died when struck by a vehicle. At the time of printing Police had taken no action against the driver.

Dickie Bedford, of the Kimberley Aboriginal Language and Culture Centre (KALAC) has organised the meeting to examine ways in which the relationship between Police and the Aboriginal community could be improved.

A full report of the meeting, and of any actions subsequent to it, will be published in the next edition of ALSWA.

## **COURT OFFICER BEATS THE ODDS**

ALSWA Court Officer Charmaine Randall recently beat the odds on behalf of a client whose incarceration was a 'foregone conclusion', by keeping him out of jail.

Ms Randall represented the man at Central Law Courts. He was facing imprisonment after being charged with 1 count of Damage, 1 count of Disorderly Conduct, 1 count of False Name and 3 counts of Breach of Bail.

The client advised her he wanted to plead guilty to all charges and that he was also on a suspended sentence. A suspended sentence is a prison term which is triggered when the defendant is convicted of a further offence (which carries as part of its penalty a term of imprisonment) during the suspension period.

The client had been given the suspended sentence for breaching a Community Based Order and had already been given fines for two other offences committed whilst subject to the Order.

In order to have the suspended sentence discounted, the Court must be shown that it would be unjust in all the circumstances, to send the man to prison.

Ms Randall conducted a lengthy plea for her client before the matter was stood down for a pre-sentence report. She appeared again and gave the Magistrate further reasons why her client should not be imprisoned. The Magistrate eventually agreed and placed the man on a further suspended sentence.

The client was understandably thankful for Ms Randall's efforts on his behalf.

## **SEASONS GREETINGS**

*This edition of ALSWA is the last for 1998. Members of the Executive Committee, Management and Staff of ALSWA wish all their clients, colleagues, families and friends a joyful Christmas and a peaceful New Year.*

# HOW ALSWA AND COMMUNITY LEGAL CENTRES COULD WORK TOGETHER

Address by Deputy CEO Colleen Hayward  
to the Annual General Meeting of the Federation of Community Legal Centres

Members of the Federation of Community Legal Centres (CLC's) have been told by ALSWA Deputy CEO Colleen Hayward (pictured) that ALSWA and CLC's have more in common than they do differences.

cases, even at the Legal Aid Commissions rates for which a number of private firms agree to act. We simply can not do it.

"So how do we help one-another? Well, we would like to be able to refer some of our clients to you, especially in situations of conflict. Similarly, depending on the areas you cover, you may have clients whom you would like to refer to us.

"Exactly how all of this might happen needs still to be considered and discussed in much more detail, but it is not beyond the realms of possibility.

"We have all been facing an increased demand for our services and are grossly under-funded against all indicators but especially relative to need. Our services have already identified key areas of additional work we need to do if only we had the resources.

"We all face fairly regular threats to our ongoing operations, generally by politicians as they come up with new and better ways to enhance their images without any regard about the impact they have on our current clients.

"Our genesis is a result of our clients not being able to access or not wanting to access private legal firms because of our clients socio-economic situation that prevents them from paying large legal fees and to even feel confident that a private firm would be interested in their plight.

"We have all had to rationalise our services and the way we provide them in ways that cause us personal and professional dilemmas.

"We also run on 'goodwill' to such an extent that, from time to time, we have difficulty attracting and retaining staff and the quality staff that we do have are so overworked they face burn-out as a very real possibility.

"Although our organisations have different histories, locations and client bases, I do feel that we face the same or similar issues, pretty well on a daily basis.

"Now if even some of the aforementioned assumptions are correct, it seems to me that we would all gain more than we would lose, if we have a process whereby we could support one another and work together in a co-operative way and by design rather than by chance.

"ALSWA for instance cannot deal with our current level of client needs and your organisation probably cannot either. For all of us, this situation becomes even more exaggerated when we are dealing with a situation of client conflict.

"None of us has the financial means to brief out all such



"Would you like the ALSWA to provide your staff with cross-cultural awareness training or assist in providing training to people in your organisation who deal with Aboriginal people?

"Would your organisation benefit from a knowledge of how the ALSWA para-legal staff work - what they can and can not do, and how we run our intensive in-house training program for them?

"Would it be more cost effective for your organisation to be able to brief to us, and vice versa and would your clients benefit from some of our newly developed community legal education programs?

"If you thought yes to one or more of those questions, then perhaps the time is right for us to sit down and talk about what we do and how we do it together. For the ALSWA the time is definitely right.

"We know that it can work - it is already working in other States. One of my tasks here in Melbourne for instance is to learn more about the agreement between the Victorian ALSWA and that State's Women's Legal Service.

"We want you to know what we do and how we do it so that you are in a better position to support us and vice versa.

"In some areas of our operations, we already have Memoranda of Understanding with other organisations. This process is supported because it means all parties have had a direct input and maintain the control they need.

"We will be pleased to work with CLC's individually or through the Federation, and await your deliberations".

# NEWSWATCH

## **ALSWA takes message on sovereignty to United Nations in Geneva**

ALSWA CEO Dennis Eggington will address the Working Group on the 'Draft United Nations Declaration on the Rights of Indigenous Peoples' in Geneva in December of this year.

Mr Eggington's costs for the 10 day visit to Switzerland will be covered by the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations.

The Working Group, established in accordance with a Commission of Human Rights resolution, is chaired by Mr Jose Urrutia of Peru. The Group is charged with the responsibility of preparing a document to be presented to the General Assembly of the United Nations for consideration and adoption during the International Decade of the World's Indigenous Peoples.

The Group has held six formal meetings and 16 informal plenary sessions since its inception in October 1997. A total of 346 people attend the meetings of the Group, including representatives of 45 governments and 123 Indigenous and non-governmental organisations.

ATSIC is the sole Australian Indigenous organisation to be given special consultative status to the Commission, though Mr Eggington's invitation was issued by the Group itself.

In Geneva, Mr Eggington plans to speak on the right of Australia's Indigenous Peoples to claim sovereignty to their land and to have that claim recognised in Australian and International law.

While there he will meet with members of international organisations to discuss the sovereignty issue.

### **Thank You from Katrina**

Court Officer Katrina Carlisle has thanked everyone who contributed to a 'whip-round' after an amount of money was stolen from her purse outside the Perth office recently. In a message to staff Katrina said the caring and kindhearted giving was much appreciated.

## **Annual Report available soon**

The 1997/98 ALSWA Annual Report is in the process of production and will be available before the end of the year.

The Annual Report carries reports from the Chief Executive Officer, the Deputy Chief Executive Officer, the Principal Legal Officer, the Executive Officer of the Land and Heritage Unit, and the Accountant.

It will be available from all ALSWA offices.

## **ALSWA Election Results**

*East Kimberley*  
Judy Butters and Trevor Bedford.

*Central*  
Michael Blurton and Lorraine Whitby.

*Southern*  
Glen Colbung and Trevor Penny.

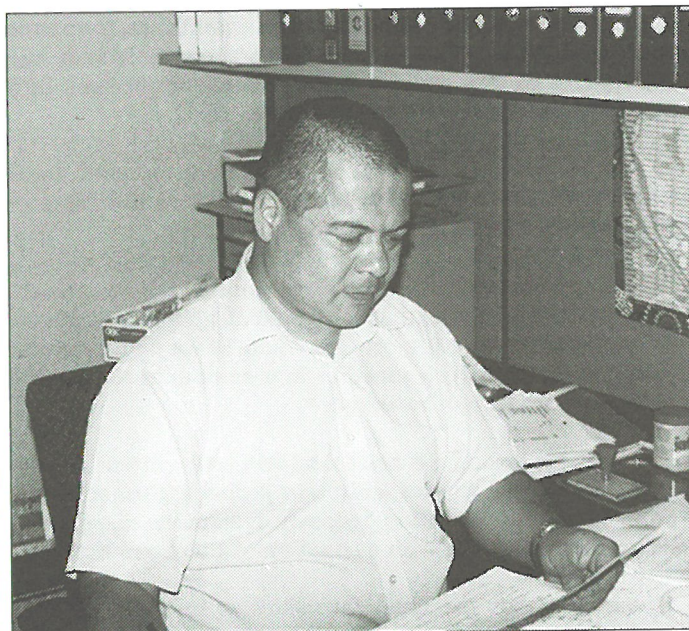
*Goldfields*  
Ron (Doc) Reynolds and Bruce Smith.

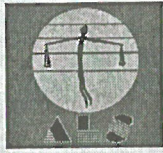
*Murchison-Gascoyne*  
Clarence Cameron and Maitland Hedlam.

A date has yet to be set for elections in the East Kimberley and Pilbara.

## **VAUGHAN TAKES HIS LEAVE**

Accounts Officer Vaughan Wiley (below) will soon leave ALSWA after spending four years keeping its accounts in order. Vaughan is a popular member of staff who will be sadly missed by his colleagues.





# ALSWA Legal Education Series

## WHAT YOU NEED TO KNOW ABOUT DOMESTIC VIOLENCE

Domestic Violence is any form of abuse that occurs within a family. Abuse may be physical, sexual, social, psychological, and verbal. It includes threats between married and de-facto partners and ex-partners, or family members.

Physical Violence and threats of violence are criminal offences.

Physical Abuse includes hitting, punching, slapping or other forms of physical contact which cause harm.

Sexual Abuse involves forcing another to participate in any way in sexual activity without their consent.

Social Abuse involves preventing a person from having social contact with friends, using the telephone or leaving the house.

Economic or Financial Abuse is not allowing a person to have any money of their own.

Psychological Abuse involves using power games or mind games on another person.

Verbal Abuse involves constantly insulting or 'putting down' a person.

Threats are statements of intent to harm people, animals or property.

If you or your children are being threatened with harm, and fear for your safety, contact the Police immediately on:

- 000 if it is life threatening;
- 9222 1111 Police Headquarters;
- 131 444 for your nearest Police station.

The Police do not need a warrant to enter your house if you asked them to enter, even if another person in the house says 'no'.

They can also arrest and charge the offending person. The Police will ask you for a statement of events, before or after the arrest. If the police lay charges then the matter goes to Court.

If you have been injured in a domestic dispute you should seek medical attention immediately.

You should take note of the doctor's name, address and date as a record. It may be useful to take photographs of any injuries to yourself and/or your property as evidence.

When leaving a violent home you should try to get legal advice about how to protect your interests.

It is also important to take your children with you, if possible, so they remain in your custody. This may avoid problems over custody later on.

If you think that the person who is being violent, threatening, harassing or abusing you is going to continue with their behaviour, you can apply for a 'Restraining Order'.

A Restraining Order is a Court order that restrains the person (the respondent) from continuing to harm you (the applicant) and can be worded to fit particular situations.

There are two types of restraining orders: Violence Restraining Orders and Misconduct Restraining Orders.

Applications for Orders can be heard by a Court of Petty Sessions or over the phone by an authorised Magistrate (24 hour service).

If your application for a Restraining Order is successful and given to that person (served), it can prevent the respondent from coming near you or your property.

Services that can help;

**Crisis Care** - If you need urgent counselling on matters involving violence, or threats of violence, you can call Crisis Care.

Crisis Care is a 24 hour service that can provide information on refuges and other services that are available. Crisis Care is not a law enforcement agency.

Tel: (08) 9235 1111  
Toll free: 1800 199 008

**Women's Refuge and/or Women's Refuge Multicultural Service**

Women who feel that it is safer for them to leave home with their children can go to a Women's Refuge. These provide temporary shelter and protection and support for women and their children.

They can also help find short-term accommodation, provide emotional and physical support and put people in contact with welfare and legal services.

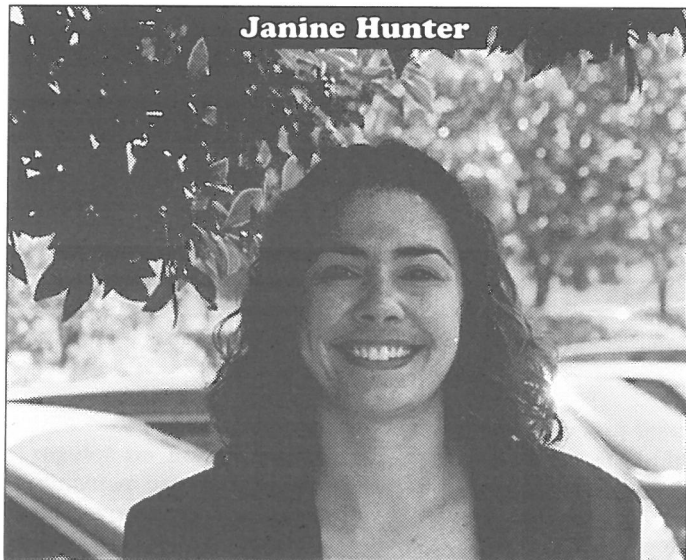
You should tell the Women's Refuge that you are leaving home so they can make sure that there is room for you. Refuges are shared houses where you have your own room.

This allows time for you to think and decide your next move. Women that work at refuges are familiar with domestic violence situations.

Tel: (08) 9277 1642 or  
(08) 9325 7716

You can contact the Aboriginal Legal Service of Western Australia (Inc) on (08) 9265 6666 or 1800 019 900 (toll free) for referral to Women's Refuges in metropolitan and country areas.

**Janine Hunter**



## HIGH GRADES LEAD TO CAREER IN ACCOUNTING

Janine Hunter has recently been employed as Accountant in the Perth ALSWA office on a full-time basis.

Janine was born in Perth and is related to the Bynder and Pilkington families. She grew up in Swan View and studied at Swan View Senior High School. Janine enjoyed her mathematics and business studies classes at school (in which she achieved the highest grades) and decided to pursue a career in that area.

She has a Bachelor of Commerce Degree from Curtin University of Technology and a Business Studies Degree from New Zealand TAFE. Janine previously worked at the Australian Taxation Office and lectured at Curtin University in Aboriginal Community Management. She also travelled the State to talk to Aboriginal community groups about Community Management.

Janine is completing an Australian Certified Certificate of Practicing Accountant's Scholarship. Janine has a Scuba Diving certificate and enjoys diving as well as getting outdoors and into the outback to see the country. Her work at ALSWA will be supervised by Andrew Grist.

Andrew works on a part-time basis and is also involved with the Fremantle Yacht Charters. He recently spent two years as Accountant for the West

## ALSWA helps father get unsupervised access

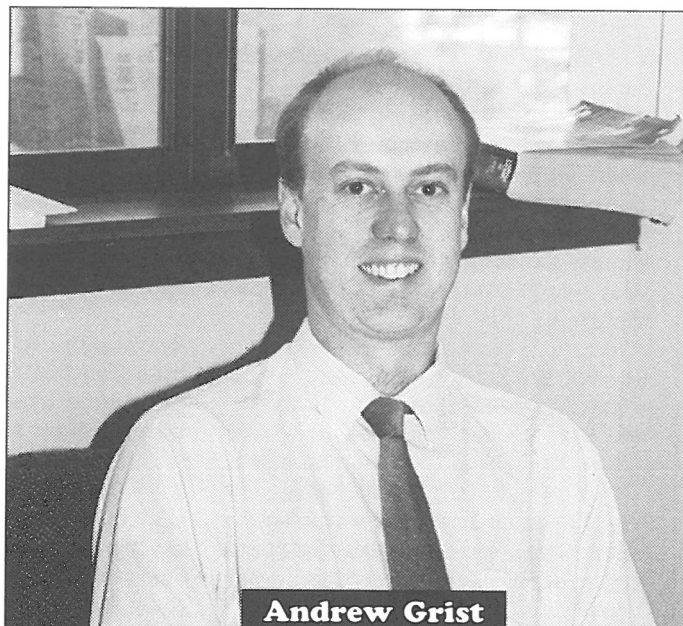
ALSWA Family Law Solicitor Paul Anthony recently helped a father get unsupervised contact with his four year-old daughter on the basis that he attend a course to improve his parenting skills, after the mother had wanted supervised visits.

The mother and father lived in a defacto relationship for just over a year and separated around January 1995 when the child was six months old. The father had no contact with the child until Christmas 1996 and irregular contact since.

Both parents participated in a Family Law conference at the Legal Aid Commission in March 1998. The parents reached an agreement at the conference, that the father see his daughter each alternate Sunday from 10am to 5pm. (continued next page)

Pilbara Land Council and has worked at the Ngu-rawaana Aboriginal Corporation and the Nganga Nyungah Moora Joorga Aboriginal Corporation. Andrew also worked for law firm - the DCH Legal Group.

Andrew has a Certificate of Practicing Accountants (CPA) and a Business degree. He was born in Mt Barker and grew up in Albany. Andrew enjoys sailing and playing football.



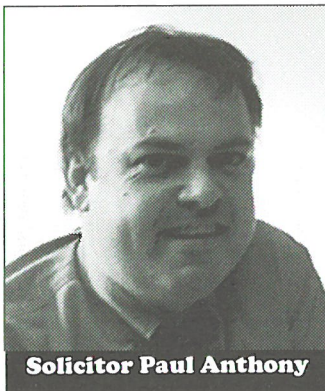
**Andrew Grist**

## (Continued from previous page)

The arrangement was to continue for twelve weeks after which time contact was to be reconsidered.

The father only had four visits with the child before the agreement was made and wanted to see the child more often. The mother felt the father did not have the capacity to care properly for the child and wanted supervised contact to protect the child's physical and emotional needs.

The father provided evidence from friends and family members that he had a close and loving relationship with his daughter and that he had a lot of experience in caring for young children.



**Solicitor Paul Anthony**

The Magistrate granted the father reasonable contact to the child from 9am to 5pm on Sundays for 6 out of the next 8 weeks. The situation will then be reassessed to evaluate whether the father can have overnight contact with the child.

(The Legal Aid Commission has commenced a pilot project to assist clients reach agreement about Family Law matters without going to the Family Court. The conferences are chaired by an experienced Family Law practitioner whose role is to assist in defining the issues to be decided.)

## Children to stay in WA

ALSWA's Family Law Unit has assisted a mother to keep her two children in Perth after separating from her husband in South Australia. The mother and father began living together in early 1991 in Western Australia. They separated on a number of occasions and moved back and forth between South Australia and Western Australia after the birth of their daughter in 1992 and their son in 1994.

The family lived in South Australia from 1995 until the date of their separation in September 1997. The children lived with their mother following the separation and the father had irregular contact with the children. In July 1998, the mother's brother from Perth (her only surviving relative) was involved in a horrific car

accident in which he sustained extensive injuries. The children spent two weeks with the father while the mother travelled to Perth to look after her brother.

The mother decided to move to Perth to look after her brother and upon arriving back in Perth she filed an interim application that the children live with her. The father wanted the wife and children to return to Adelaide or instead have the children stay with him in Adelaide.

The Magistrate awarded residence to the mother because she had good reason to live in Western Australia and it was important for her emotional and psychological health to be able to remain in Western Australia.

The Court said the father should have reasonable contact with the children for the period of two weeks once every three months (the mother was to provide transport for the children to South Australia at her expense) and telephone contact regularly.

## Family Court Amendment Act

The new Family Court Act and regulations came into effect on 26 September 1998. The Act is likely to have a significant impact on the Aboriginal community as it introduces new concepts relating to parental responsibility for ex-nuptial children (where parents are not married), in line with those already introduced by the Commonwealth for nuptial children (where the parents are legally married).

They repeal Section 35 of the Family Court Act 1975 which previously gave the mother of an ex-nuptial child sole guardianship and custody rights to the exclusion of the father until the Court made an order to the contrary.

References to guardianship, custody and access have been repealed. The new laws emphasise the requirement that both parents have responsibility for their children whether they are living together or separated, until the Court makes an order to the contrary.

The change in law also recognises the special needs of Aboriginal and Torres Strait Islander children. A matter the Court must consider, when determining what is in a child's best interests before making an order, is 'any need to maintain a connection with the life style, culture and traditions of Aboriginal and Torres Strait Islander Peoples'.

## **Canadian Native Title Decision may have implications for Australian situation**

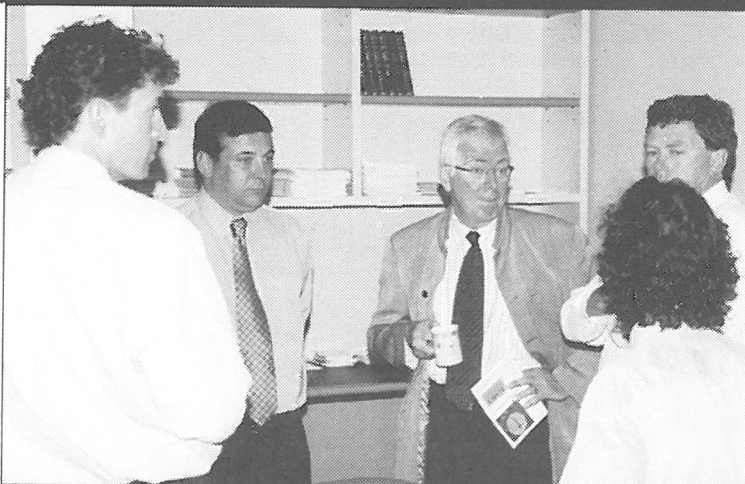
ALSWA recently hosted a visit by two senior members of a Delgamuukw delegation from Canada: Hereditary Chief Midiigim Gyemk and Stuart Rush QC.

The delegation has been travelling around Australia talking to Universities, Aboriginal groups and people involved in Native Title matters, about implications that the recent Delgamuukw decision may have for Native Title in Australia.

Delgamuukw is a Canadian land rights case which is similar to the Mabo No. 2 / Murray Island Case. The case takes its name from the leading chief of the Gitskan people Delgam'uuk, which means 'Talking Copper'.

The case was initiated by the hereditary chiefs of the Gitskan and Witsuwit'en peoples of north-western British Columbia for 22,000 square miles of traditional country, against the Province and the Federal Government.

The case started in 1987 in the British Columbia Supreme Court and finished in 1990. The Supreme Court's decision did not favour the Gitskan people so they appealed the decision in 1993. The appeal found that Native Title rights had not been extinguished to the extent that the Supreme Court had found.



Stuart Rush QC (centre) talks with ALSWA Solicitors (left to right) Bill DeMars, PLO David Imlah, Greg Benn and Noongar Land Council's Mark Rattagan about the historic Delgamuukw case.

The Gitskan people took the case on appeal to the Supreme Court of Canada and in 1994 the Supreme Court gave the claimants leave for two years and signed an accord with the British Columbia and Canadian Governments to negotiate a treaty.

The Province withdrew and the negotiations failed, which led to another Supreme Court appeal in mid 1997. In late 1997 the Supreme Court upheld the appeal, ordered a new trial and dismissed the Province's counter-claim. The Gitskan and Witsuwit'en house (clans) own traditional and oral historical narratives (call addaawak in Gitskan and kungax in Witsuwit'en). These narratives are like title deeds for they detail the actions, events and happenings in which significant ancestors participated and the root of their title to land, wealth and resources.

The trial judge sought to assess their historical veracity in the first instance, rather than to ascertain whether and how they might form part of an Indigenous system of traditional law and custom which defined rights and interests in land, wealth and resources. The Delgamuukw decision was the culmination of more than a century of action by the Gitskan and Witsuwit'en peoples to address the 'Land Question' and to gain recognition of their ongoing title to land and its resources.



Hereditary Chief in the Delgamuukw case Midiigim Gyemk (right) shows ALSWA's Land and Heritage staff Geraldine Hourigan, Nancye Cook and Phil Drayson, the land area under claim.

## Students told to seize educational opportunities

ALSWA Community Legal Education Worker Ashley Truscott has encouraged Aboriginal students to seize the opportunity that education presents.

Speaking during Aboriginal Education Awareness Week, Mr Truscott acknowledged that it was the support of his family that had enabled him to take advantage of that opportunity and complete his secondary education.

Unhappily, however, this had not been the experience of many Aboriginal people. Until the 1950's Aboriginal people were virtually excluded from State schools and the task of educating them left to Church schools. Regretably, the type of education delivered was largely designed to prepare Aboriginal people for labouring or domestic work.

He said there was little encouragement, in earlier days, for Aboriginal people to aspire to further and higher education and change has been slow in coming.

"Today, the law demands that Aboriginal children obtain an education, but at the same time the education system itself tolerates inequities and contradictions.

"The fact that numbers graduating from High School have marginally increased, and tertiary numbers are gradually increasing, has more to do with the introduction of special programs than any endemic change.

"Aboriginal kids still struggle to survive the full twelve years of education. Aboriginal achievement rates are generally lower, Aboriginal truancy rates generally higher. It all has to do with inappropriate curricula, low self-esteem, and limited expectations".

Mr Truscott said education in the new millennia

## Do you have a problem managing your MONEY?

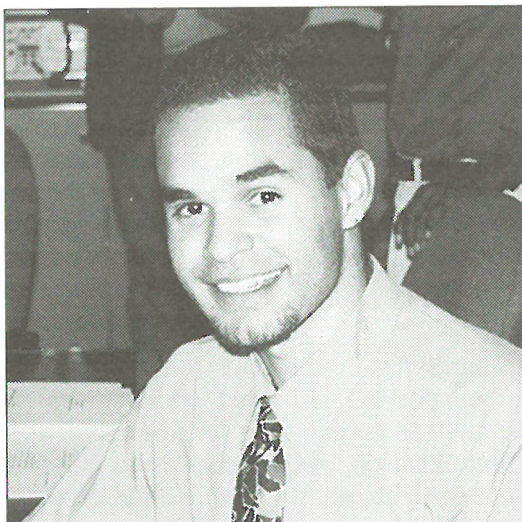
The Aboriginal Legal Service of Western Australia (Inc) provides

### FINANCIAL COUNSELLING WORKSHOPS FOR ABORIGINAL COMMUNITY GROUPS

(And a referral service for individuals with specific financial problems)

Please contact Joslyn Eades or Ashley Truscott  
at the Aboriginal Legal Service of WA (Inc)  
on (08) 9265 6673

needed to take account of these factors more vigorously and more optimistically.



**Ashley Truscott**

"I applaud what is being done at Narrogin and other 'enlightened' State schools, but I do question the overall commitment of governments to true Aboriginal empowerment and self determination through education. Education brings choice and the ability to choose is a very empowering ability indeed.

"I encourage teachers to follow the example of their contemporaries at Narrogin SHS and develop a commitment to excellence in education, as far as their Aboriginal students are concerned. I also encourage Aboriginal students to seize the

opportunity that their education can bring, no matter how difficult it seems at times.

"Hopefully, in the future, many more Aboriginal students will be invited to visit schools to speak about how doors were opened to them through education, as they have been for me."

## CEO LAUNCHES NEW BOOK ON ABORIGINAL PEOPLE AND THE MEDIA

ALSWA CEO Dennis Eggington has launched a book by Perth academic Dr Steve Mickler, which deals with Aboriginal people and the media. Dr Mickler is well known for his examination, over a long period of time, of the often-strained relationship between the two groups.

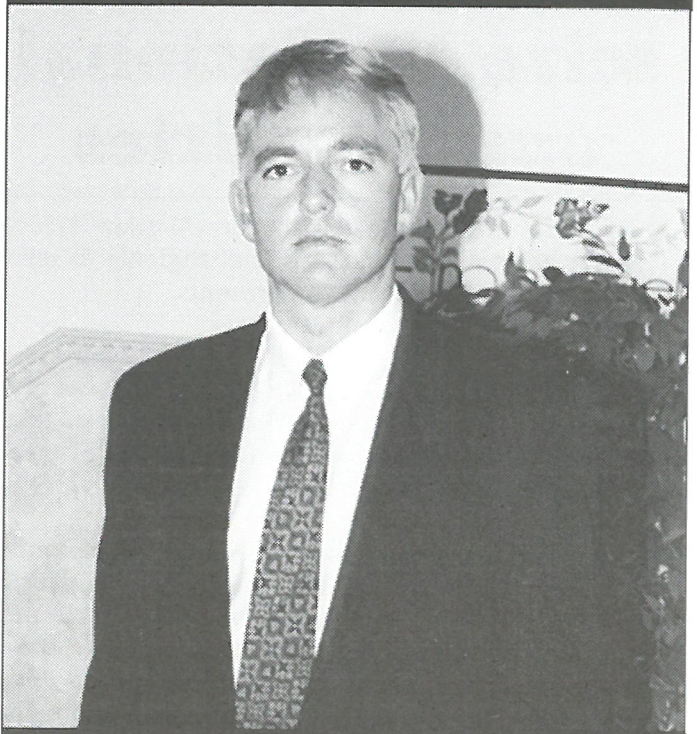
His book, *The Myth of Privilege*, provides a systematic analysis of the history of that relationship, looks at significant events that have become famous or infamous highlights over time, and makes sound suggestions for remedying the problem.

Dr Mickler was the author of an earlier work, *Gambling on the First Race*, which specifically examined talk-back radio and its influence on race relations in Perth. His new book takes a much broader look at media in general.

Launching Dr Mickler's book at the Perth Cultural Centre, Mr Eggington said few would not know of Dr Mickler and his excellent work in monitoring the relationship between the media in Western Australia and the Aboriginal community.

He was a respected teacher, researcher and writer who had managed to objectively analyse the problematic relationship and come up with suggestions for improved relations in the future.

## FAREWELL TONY



Solicitor Tony Shelley has recently left ALSWA, after a period of seven years, to take up work with the National Native Title Tribunal in Sydney. Mr Shelley worked in the Public Interest Unit before a period as acting Principal Legal Officer. For the past 18 months he was Senior Council in ALSWA's land and Heritage Unit. Tony was very popular with both clients and colleagues.

## ALSWA complains to the Australian Press Council

ALSWA has complained to the Australian Press Council (APC) about the increasing tendency for print media in Western Australia to identify offenders and/or suspected offenders as 'Aboriginal'. The complaint states: "Sometimes the reference is qualified, such as for example, 'of Aboriginal appearance'. Notwithstanding the fact that media ethics discourage such identification, judgements as to cultural, national, ethnic or 'racial' background, particularly those based on appearance, are unreliable and unnecessary. The practice simply promotes stereotyping and feeds prejudice.

"The fact that the media also occasionally identifies 'Caucasian offenders is no justification or rationale for discrimination on the basis of cultural affiliation, nationality, ethnicity or 'race', no matter which group is targeted. ALSWA feels the APC, in terms of its responsibility in the arena of print media, should actively discourage the practice, and publicly censure those elements of the print media that offend'.

A similar complaint is being addressed to agencies overseeing ethical standards for electronic media, although the offences in this arena are more often related to erroneous and insulting depictions of Aboriginal people and issues in films and television shows.