

ALSWA

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ALSWA APPOINTS FIRST WOMEN'S CONTACT OFFICER

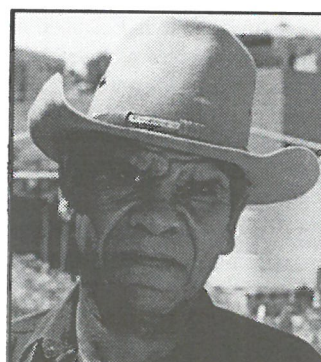
Long-serving ALSWA Court Officer Katrina Carlisle (pictured below), has been appointed the first Women's Contact Officer (WCO) for the Aboriginal Legal Service of Western Australia.

The WCO will work with the Community and Public Interest Unit. The duties of the position include promoting the role of the WCO to Aboriginal communities; dealing with conflict of interest situations; educating Aboriginal women as to their legal rights; and where necessary, referring Aboriginal women to relevant agencies to ensure they receive a quality service in a culturally-appropriate manner.

Ms Carlisle said there has been constant demand for a WCO within ALSWA as the Service was often viewed as a men's legal service which neglected the needs of Aboriginal women. (continued on page 7)



Michael Blurton



Clarrie Cameron

New members take their seats on ALSWA Executive Committee

Michael Blurton, elected to the ALSWA Executive Committee in the October 98 election, will represent the Central region.

Mr Blurton is a Noongar, born in Quairading, and is married with three children. He is a former ATSIC Perth Regional Councillor and ALSWA staff member and has an extensive knowledge of the problems of Aboriginal community problems.

Mr Blurton has been working for the Noongar Land Council and has acquired considerable knowledge of Native Title matters in Western Australia. Mr Blurton shares Central region representation with re-elected member Ms Lorraine Whitby.

Clarrie Cameron has been elected to represent the Murchison-Gascoyne region on the ALSWA Executive Committee.

Mr Cameron contributed to the development of ALSWA in the early 1970's as a member of the Aboriginal Justice Committee which was established to first address the legal needs of Aboriginal people in this State.

He worked at the Aboriginal Affairs Department during the 1970's before becoming a volunteer Court Officer for the Mid-West region and later an ALSWA Court Officer in Port Hedland in 1980. His experiences have made him more aware of the need for a culturally appropriate legal service for Aboriginal people. (see page 3)

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Was genocide a part of Australia's colonial history?

by Ashley Truscott

Whether or not the treatment of Aboriginal people in the early days of colonisation in Australia constituted genocide is a topic that is debated at length. The removal of Aboriginal and Torres Strait Islander children from their families, and the massacres that occurred in the early days of colonisation are just a couple of the emotive issues that surround the debate.

The Oxford English Dictionary defines genocide as the deliberate extermination of a people or nation. If that definition is applied to Australia's treatment of Aborigines, arguments arise as to whether the removal policies and massacres were part of a dedicated plan to deliberately rid the country of Aboriginal people.

Recommendation 10 of the Report on the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, 'that the Commonwealth legislate to implement the *Genocide Convention* with full domestic effect', has been ignored. The Federal Government response has been that 'no genocide occurred, therefore there is no need to implement the Convention'.

The Federal Government's thinking is narrow in that it relies on a simple dictionary definition to rationalise what actually happened in the colonising process. The United Nations Convention of Genocide defines genocidal acts in some depth. One of its principles states that 'the removal of children from their families and communities for the purpose of extinguishing their culture was a genocidal act'. Sir Ronald Wilson, who headed the National Inquiry agrees, stating 'the often forceful removal of Aboriginal children from their families, was genocide' (*Bringing Them Home* video).

It could be described as genocide by stealth. Early colonisers, frustrated at Aboriginal resistance to the stealing of their land, set about killing Aboriginal people. In some parts of the country this dubious method of protecting stolen lands became a game. Prizes (or bounties) were offered to those who could collect the most Aboriginal heads in a hessian bag.

Whole tribes of Aboriginal people were massacred, as occurred in Tasmania where it was policy to kill any Aboriginal person on sight. Horrendous reports exist of Aboriginal babies buried in the sand, with only their heads above the ground - these to be kicked off as a game. Aboriginal women were raped with bayonets and men's scrotums were made into tobacco pouches.

In an associated genocidal tactic poison flour and smallpox-infested blankets were distributed to Aboriginal communi-

Doing Articles



Article Clerk Andrew Matthews recently joined the Civil Unit. Andrew is a descendant of the Injibandi people of the Pilbara and grew up in Gosnells. After working at the Australian Taxation Office, Andrew decided he wanted to make a difference in his community and undertook law studies at the University of Western Australia. Andrew has just completed his Law degree and is happy to be doing his articles at the ALS.

ties. Introduced diseases, including syphilis, also took a heavy toll.

Despite all this, Aboriginal people survived and the colonisers realised that other tactics were needed. With the population decimated as a result of superior numbers and industrialised technology a way had to be found to 'control' those who remained.

The 1905 Act in this State was designed so that Government could remove 'half-caste' Aboriginal children, under the age of 16 years, from their families, and rear them in institutions, to facilitate their assimilation.

These removal and assimilation policies had a devastating effect upon Aboriginal people and continue to do so, as evidenced by the position of Aboriginal people on the bottom rung of the ladder on social indicators such as education, employment, housing, health and general socio-economic status.

In the minds of many Aboriginal people there is no doubt that genocide was and is very much a part of Australia's history. In the quest for reconciliation between black and white in Australia the Government needs to acknowledge the fact, and to apologise on behalf of its colonial forebears.

This will be a step towards reconciliation in the new millennium. (See story on page 4: National Sorry Day)

ALSWA CALLS FOR ROYAL COMMISSION INTO WA PRISONS

Community rallies against brutal treatment of inmates at Casuarina Prison

ALSWA CEO Dennis Eggington has called for an urgent Royal Commission into the State Prison system, before the already volatile situation worsens.

Mr Eggington's comments followed the so-called Christmas Day riot at Casuarina Maximum Security Prison and the subsequent escape of 22 prisoners from WA prisons (most escapees have since been captured or turned themselves in).

Mr Eggington rejected the idea of a separate inquiry into the Christmas day 'riot' saying that the incident was the result of years of tension and frustration felt by prisoners at the hands of prison officers.

He said the whole WA prison system needed to be thoroughly analysed because it was clear from recent events there were urgent problems that needed addressing.

He said the treatment of inmates was not just a prison system issue, but a human rights issue, because many of the prisoners' basic human rights, as outlined in the United Nations Draft Declaration on the Rights of All Peoples, had been denied them.

Mr Eggington said ALSWA was in touch with Human Rights and other relevant organisations and would press for a Royal Commission into the decay of the WA prison system under the current Government.

In early January, concerned relatives of Aboriginal and non-Aboriginal prisoners held a meeting at the Derbal Yerrigen Health Service and voted to rally at the prison to highlight poor treatment of inmates including bashings, solitary confinement, and forced transfers.

Mr Eggington said the rally was designed to bring attention to continuing problems in the Justice System and to reinforce the need for a Royal Commission.

Official reports indicate the so-called riot broke out on Christmas Day between 5 - 7 pm (during exercise time) when prescribed medications were stolen by inmates from trolleys in the prison store room. While normally locked it had been, for an unexplained reason, left open. This version of events has been refuted by prisoners.

It is further reported that inmates began taking the medication and passing it around to others and thus were already under the influence before prison officers discovered what had happened.

Many prisoners who were not involved in the stealing and taking of drugs tried to get back into their cells but were locked out and became mixed up in the chaos. Prison officers and metropolitan security unit officers attacked prisoners who were locked out of their cells and units. Prisoners either defended themselves or climbed onto the roof to avoid being bashed.

Prisoners claim that some of their number were knocked

unconscious and continued to be kicked and hit by prison officers. Others, with no way to defend themselves, were beaten as they lay on the floor.

Many of the prisoners apprehended during the riot were subsequently relocated to other prisons including Albany, Canningvale and Greenough (Geraldton), or held in solitary confinement, while others were detained in the special handling unit.

It was reported that, on a number of occasions, half a dozen prison officers had entered

prisoner's cells, wearing masks, and had beaten prisoners with batons, leaving them without medical attention or bedding for several days.

There had been little communication from the Justice Ministry and prisoners were still 'in the dark' as to the outcome of the incident. Visits and phone calls were cancelled, and privileges taken away, though these were gradually being returned.

ALSWA Court Officers Charmaine Randall and Kenny Griggs took instructions from prisoners involved in the alleged Christmas Day riots, and then protested outside Casuarina Prison.



ALSWA Executive to meet in February

The first meeting of the ALSWA Executive Committee for 1999 has been scheduled for February 15 - 19 in Perth. Several new members recently elected will join re-elected members to discuss issues of importance to the Aboriginal community. At the time of going to print election results from the East Kimberley and the Pilbara were unavailable. A full list of members will be printed in the next edition of ALSWA.

PM needs to rein in Young Liberals on 'sorry day' statement

ALSWA has called on the Prime Minister, John Howard, to pull the Young Liberal Movement into line following their call for the National Sorry Day concept to be abandoned.

ALSWA Deputy CEO Colleen Hayward said the Prime Minister should honour his re-election commitment to make reconciliation a first priority for his Government. As an immediate measure of his sincerity he should officially sanction National Sorry Day and legislate it into the calendar.

Ms Hayward said ignorance shown by the Young Liberals while not excusable, was understandable, given the appalling lack of education within the Australian school system about Aboriginal history.

To correct this, the Prime Minister should also undertake to fund a national education campaign to make all Australians aware of the true horror of the colonisation period.

"When the Prime Minister was a boy Aboriginal people in the Kimberleys were being tied to trees and set alight. He should understand that such tragic events cannot be forgotten and forgiven in a mere fifty years. He should understand the hurt is too recent, too raw.

"If he is serious about reconciliation let him show true courage and leadership and promote it by whatever means necessary: make National Sorry Day a recognised annual event; fund national education programs on Aboriginal history and culture; and promote an awareness campaign within the Young Liberal Movement.

"For the Young Liberals to suggest that National Sorry Day be replaced by a day of thanksgiving is repulsive. The only explanations can be that they are too young to understand or too spoilt and pampered to care about anyone but themselves.

"If John Howard does nothing, if he does not at least attempt to control the extreme right wing within the Young Liberal Movement, then he colludes with them in yet another betrayal of Indigenous Australians".

Ms Hayward said there was considerable misunderstanding about the Sorry Day concept. "We are not asking Australians to say sorry for any personal part in the awful events of the past, but to say to Aboriginal people 'we are sorry this happened to you'.

"Would anyone have a problem with saying to the Jewish people 'we are sorry about what happened to you in World War II'?"

ALSWA challenges Campbell to public debate on Native Title

Dumped Kalgoorlie MHR Graeme Campbell, the self-proclaimed 'champion' of Aboriginal rights while in office, had recently turned his bitterness on the Aboriginal community by seeking to regenerate the fiction of Terra Nullius.

ALSWA CEO Dennis Eggington said he was disgusted that Campbell, who exploited Aboriginal people as a means of clinging to office for so long, would target them in revenge for being removed from office.

Mr Eggington called on the ousted politician to debate him publicly on Native Title issues. "Let's see if he has the guts to face the people and justify his outrageous statements.

"Campbell has long been known as a person motivated solely by self-interest. When he needed us, he wooed the Aboriginal vote, boasting of how he represented in his former electorate more Aborigines than any other politician.

"Now that he no longer needs the Aboriginal vote he is prepared to sacrifice our rights for the sole purpose of furthering his own".

Mr Eggington said Campbell needed to be exposed as the modern-day 'Benedict Arnold' that he was. "I am prepared to meet him any day, anywhere, to challenge his ugly racist views".

Sophie moves to Perth



Former Bunbury Secretary Sophie Parravicini recently joined the Perth office as Secretary for the Criminal Unit. She said the change of office would be a challenge because of the extra number of staff members she was now working with.



Bonson acknowledges help of colleagues in winning award

ALSWA Court Officer Robert Bonson, who recently accepted an award from the National Youth Law Centre for his outstanding and consistent excellence in the representation of children in the Criminal Justice system, has praised ALSWA staff for their efforts in representing Aboriginal people.

Mr Bonson said the award should be viewed in the context of ALSWA's representation in the Courts. The fact that it was acknowledged outside the Service was the result of a co-ordinated effort, and not just the effort of any one individual.

"I accept the award on behalf of all the hard-working and dedicated staff of ALSWA and especially the Criminal Unit. The award highlights the value and importance of Court Officers within the Service".

Mr Bonson said that in the past 8-9 years, representation of juveniles in Western Australia had been politically volatile. Juveniles were several times more likely to be confronted by police, arrested, brought before the Courts and sentenced to detention, than others.

Mr Bonson also observed, however, that the number of Aboriginal juveniles sentenced to detention had decreased markedly, which could be credited in part to ALSWA staff involvement in their representation.

CEO rejects French's criticisms of Representative Bodies

ALSWA has challenged Justice Robert French's comments about Aboriginal Representative Bodies hindering Native Title claims because of inexperience and inefficiency. CEO Dennis Eggington claims it is instead the failure of Government to make a sincere commitment to Native Title which has led to problems among some Aboriginal Representative Bodies.

Mr Eggington said the former National Native Title Tribunal President had merely highlighted the problems caused by the Federal Government's failure to give proper resources to Representative Bodies, coupled with the effects of Federal and State opposition to Native Title.

He said Governments had not put enough resources into making sure Representative Bodies functioned efficiently and carried out their responsibilities. When the High Court finally recognised Native Title in its Mabo judgement, the Federal Government had done its best to marginalise the concept by handing responsibilities for Representative Bodies to the Aboriginal and Torres Strait Islander Commission (ATSIC).

Mr Eggington said the decision was so important that the Government should have made a special effort to ensure Representative Bodies would operate effectively, instead of fobbing off the responsibility to ATSIC.

"Representative Bodies have been judged all too hastily. Such organisations take a great deal of time to build up the expertise needed for their success and to gain the appropriate funding to attract people experienced in the field. I am somewhat surprised Justice French did not make any reference to ALSWA's successful role as a Representative Body in winning the first mainland Native Title claim in the Courts - the Miriwung Gajerrong ruling".

Mr Eggington said more resources should also have been allocated for education of the community about Native Title so that there was a better understanding of the complex issues involved.

(Justice French has since alleged that his comments were misreported by the media.)

ALSWA Goodbyes

The Executive Committee, management and staff of ALSWA farewell Land and Heritage Solicitor David Puls and Anne DeSouza, Research Officer Denise Cook, Port Hedland Court Officer Suzette Councillor, Kalgoorlie Solicitor Andrew Parker, Albany Secretary Mandy Khan and thank them for the service they have given to the organisation.

Traditional concerns taken into account by Kununurra District Court Judge

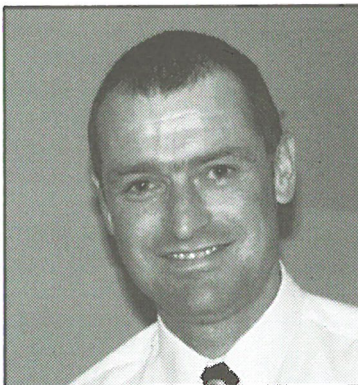
To restore peace in a traditional community, a Kununurra District Court Judge has acknowledged the concerns of the community by releasing a man who had been held responsible for the death of a family member.

The accused man had been taken into police custody before he received traditional punishment. He was in custody for several months, and while there, other members of his family had been punished for his wrong doing.

This had caused the man great distress. He wanted to be released as soon as possible so that he could be subjected to his traditional punishment. Judge Fenbury acknowledged traditional concerns by releasing the man so that the punishment could be administered as quickly as possible, in a move aimed at restoring peace to the community.

In another story, a traditional man from Kintore in the Northern Territory has had a charge of manslaughter dismissed at a preliminary hearing in the Halls Creek Court of

Petty Sessions. The man and his wife were travelling on the back of a vehicle on a dirt road in the north of the State. It was alleged that the man had pushed his wife off the back of the vehicle causing her to fall to her death. The man told police that his wife was intoxicated and had fallen off the vehicle herself.

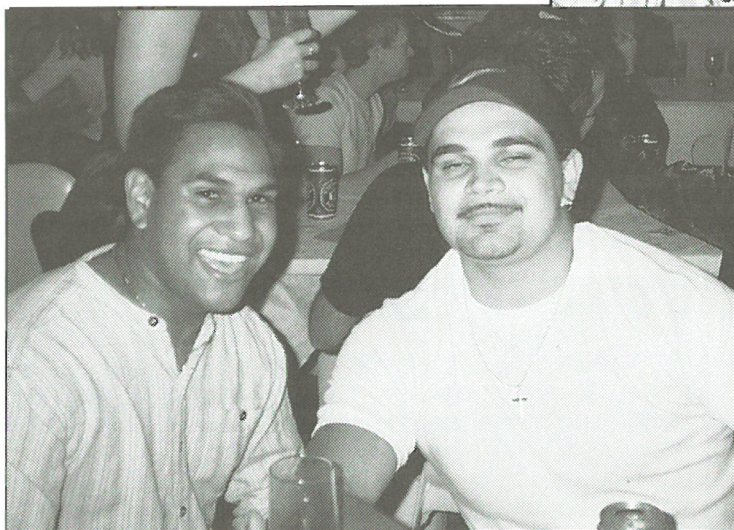


ALSWA Solicitor Peter Collins (pictured), who represented the man in Court, submitted to the Magistrate that a jury could not be satisfied beyond reasonable doubt that the man had caused the woman's death.

The Magistrate accepted Mr Collins submission and discharged the man.

ALSWA is published by the Aboriginal Legal Service of Western Australia (Inc), PO Box 8194 Stirling Street, East Perth WA 6849 (Tel. 9265 6666). 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.

Party time!



Left: ALSWA Staff Damien Yarran (left) and Kenny Griggs enjoy themselves at the ALSWA Christmas Party which was held at the WA Rowing Club on Barrack Street Jetty. Above: ALSWA's Robert Bonson with David and Glynis Ozies having a good time at the party.

NEWSWATCH

Does Senator Herron read his mail?

ATSIC Chairman Gatjil Djerrkura has expressed surprise at statements by the Minister for Aboriginal and Torres Strait Islander Affairs, Senator John Herron, regarding proposed changes to ATSIC's electoral system.

The Minister suggested in his statement that the Deputy Chairman, Commissioner Ray Robinson, and Shadow Minister, Daryl Melham, did not understand that, under the ATSIC Act, he must give effect to the recommendations of a Review Panel, convened under Section 141 of the Act, by tabling proposed changes in both Houses of Parliament.

Mr Djerrkura had written to Senator Herron on 13 November last year to advise him that the ATSIC Board of Commissioners had expressed serious concerns about proposed changes contained in a report from the Section 141 Review Panel.

"I stated quite clearly in my letter that I recognised the Minister was required by the Act to give effect to the recommendations arising from the Boundaries Review, regardless of his own personal views of the proposed changes.

"I pointed out to the Minister that, given these objections, Commissioners would be making representation to a number of members of the Federal Parliament seeking their support to disallow the proposed amendments flowing from the Review Panel report.

Mr Djerrkura expected Senator Herron to understand opposition from Commissioners to the proposed changes to the electoral system.

"Senator Herron has either clearly forgotten, or chosen to ignore, this letter".

Preparing the ground for a national apology

ATSIC Chairman Gatjil Djerrkura recently welcomed a call by NSW Opposition Leader, Kerry Chikarovski, for a formal apology from the Federal Government to the Stolen Generations.

Mr Djerrkura said he found it encouraging that Mrs Chikarovski, as the new Coalition Leader in NSW, had recognised the strength of the growing reconciliation movement.

He said he could not agree more with Mrs Chikarovski that the 'unfinished business' needed resolution before the new millennium.

"I also find it very encouraging that a conservative leader is willing to stand up and represent the strength and feeling in the general community that an apology is an entirely appropriate gesture - a gesture of inclusion, as opposed to division.

"No one side of politics can claim to have the sole moral authority to resolve these issues. Thinking, feeling and concerned individuals from all sides see the wisdom and desirability of a national apology.

"I hope Mr Howard sees that the way is opening before him to do what is just, what is necessary and what his supporters know is morally correct. I hope that he makes the most of this prepared ground and acts with wisdom to support a national apology within the next year".

ALSWA appoints first Women's Contact Officer

(from front page)

Ms Carlisle previously studied at Edith Cowan University and worked for the North Innaloo Primary School's Aboriginal Homework Centre as a tutor. She has also been involved in development and implementation of programs designed to enhance the learning and social behaviour of Aboriginal children.

She said her experience with Aboriginal women as Court Officer over the past four years, throughout the State, had helped her understand the underlying issues affecting Aboriginal women today.

Ms Carlisle will be involved in educating Aboriginal women on issues of health, sexual assault, the law, and in advising them where to get help when in a domestic violence or other dangerous situation.

She will determine if conflict exists in enquiries related to legal representation of Aboriginal women, and will explain the conflict policy to applicants for legal representation who could be affected by that policy. If appropriate, applicants will be referred to other agencies such as the Women's Legal Service.

As part of her role Ms Carlisle will follow the matter through to ensure that the recommended services are provided in a culturally appropriate manner. This could require cross cultural awareness training for those agencies not currently culturally sensitive or aware. Ms Carlisle took up her position on February 1.

Civil Unit recovers more in Criminal Injuries Compensation

ALSWA's Civil Unit has recovered nearly \$400,000 in awards for Criminal Injuries Compensation since the beginning of the 1998/99 financial year. This already represents a highly significant increase in awards recovered on the previous financial year's total of about \$22,000. Awards already recovered during this financial year, on behalf of 33 clients, range in size from \$1000 to \$50,000. The number of clients receiving awards in the previous financial year totalled 35.

Federal Court rules Native Title exists in Miriuwung Gajerrong claim..

Federal Court Judge, Justice Lee, ruled that the Miriuwung and Gajerrong people (represented by ALSWA) had Native Title over more than 7,500 square kilometres of the East Kimberley.

Justice Lee's ruling found that Native Title had been successfully established by the Miriuwung and Gajerrong peoples. It recognised substantial Native Title rights, including rights to possess and occupy the land, to control access to land, to trade in resources on the land, and to control the use and enjoyment of the land and its resources.

He said Native Title existed in the region with some exceptions. Roads, public reserves, power and telephone stations and some agricultural land were areas that extinguished Native Title.

The Miriuwung Gajerrong claim represented over 100 traditional owners and made history at a number of levels. It was the first Native Title claim in Western Australia and one of the first in Australia and was the first mainland Native Title claim to be determined by the Federal Court.

It was the first claim in which the Federal Court ordered that gender restricted evidence be given confidentially, a decision later upheld by the High Court.

ALSWA CEO Dennis Eggington said Justice Lee's ruling was the most significant decision of all because it took into con-

sideration areas of freehold, lease land, pastoral land, waterways, and public works. It was as important as the Mabo decision itself.

Justice Lee's ruling ended 30 years of fighting by the Miriuwung and Gajerrong peoples for their traditional country but a new battle has begun with the State and Northern Territory Government's decision to appeal Justice Lee's ruling.

Premier Richard Court said the State Government believed an appeal was necessary because the judgement had raised a number of questions and doubts as to the nature of Native Title and the way in which it interacts with other titles.

Mr Court was concerned about the ownership of resources because the Federal Court ruling was not consistent with the concept of Crown ownership of minerals and petroleum.

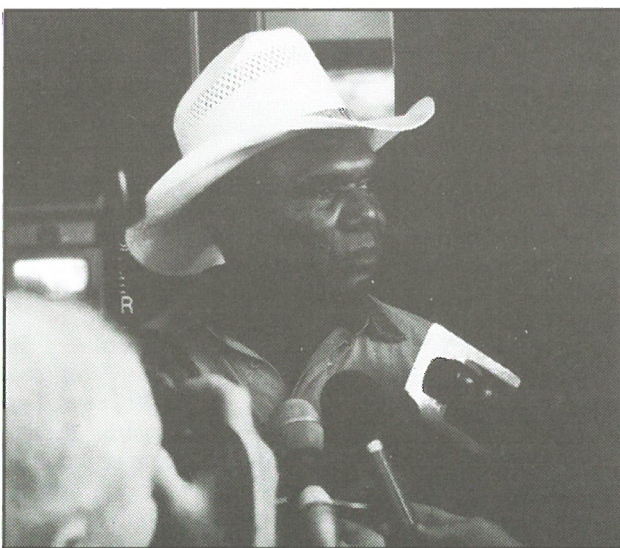
'...an appeal by the State is only going to be a time-wasting exercise and a further waste of taxpayer's money...'
- Glenn Shaw

He said the law on Native Title remained very uncertain and could only be clarified by legislation or through appeals to higher Courts.

The State Government cited 92 grounds of appeal against Justice Lee's ruling. The main issues were Justice Lee's definition of Native Title as an interest in land, rather than as a bundle of rights with respect to land.

The State Government will ask the High Court to clarify that Native Title rights were only suspended, not extinguished, by the granting of pastoral leases or other land uses.

Traditional owner Ben Ward said the Miriuwung



Traditional Owner Ben Ward told the media he was very happy with Justice Lee's decision.

ALSWA CEO Dennis Eggington and Ben Ward confront the media together after the ruling was handed down.



..but the WA and NT Governments file an appeal before the Full Bench

and Gajerrong people were motivated by a desire to protect their country and culture - not greed, and they had no



Traditional owners Ben Ward (left) and father Jeff Janama were all smiles outside the Federal Court building in Perth.

intention of charging visitors to enter their traditional land or to charge farmers to use water off the land.

He said they did not want to stop all development on their land but wanted to be involved in projects providing jobs and income.

ALSWA Land and Heritage Executive Officer Glenn Shaw said that

uncertainties which may have arisen from the Federal Court ruling could be solved through negotiation, mediation and consultation with traditional owners instead of changes to legislation and appeals.

Mr Shaw said the State Government needed to accept the Federal Court's ruling that Native Title existed on mainland Australia. He urged the Government to view the Miriung Gajerrong decision as an opportunity for open discussion on Indigenous Land Use Agreements and Regional Agreements.

"The State Government's decision to appeal Justice Lee's ruling will be a time-wasting exercise, that can only result in a further waste of taxpayer's money.

"The State Government needs to accept the concept of Native Title and negotiate with the Miriung and Gajerrong traditional owners about those aspects of Justice Lee's ruling with which it disagreed.

"There are better ways to settle uncertainties arising from the decision than going through the Court system with another lengthy and expensive legal battle. The issue of who owns resources is a major concern for the Government only because some State MP's, whose electorates contain mineral and petroleum projects, see the decision as a political liability.

"They are prepared to further their political interests at the

expense of the rights of the Miriung and Gajerrong people. Native Title claims differ in terms of Aboriginal traditions, culture and geographical location. No claim is identical, and no one ruling will apply to all Native Title claims, as has been evidenced by the Mabo judgement, the Wik decision and now the Miriung Gajerrong ruling.

"There needs to be acceptance by the State Government that the only way to overcome uncertainties is through negotiation and mediation, not through the Courts".



Michael Barker QC (centre) who represented the Miriung and Gajerrong people, is pictured here speaking with the media.

ALSWA CEO Dennis Eggington said the Federal Court ruling could be viewed as the most significant decision of all because it took into account areas of freehold, lease land, pastoral land, water ways and public works. ALSWA considered it to be the most important decision since the Mabo decision itself.



Aboriginal people still victimised: Crime Report

The Crime Research Centre of the University of Western Australia recently released its latest report on Crime and Justice Statistics for Western Australia in 1997. The report shows some significant trends for Aboriginal people in this State. Aboriginal people continued to be the most highly victimised section of the Western Australian community, according to the Report.

In 1997, Aboriginal people were four times more likely to be a victim of violence than non-Aboriginals. Three quarters of Aboriginal victims were women (compared with less than half of all non-Aboriginal victims). Arrests in general, increased by 6% more than the previous years totals and a significant increase of 13% for Aboriginal people compared to only 3% for non-Aboriginals. There had been a general decline in arrests throughout the 1990's but the number of adult Aboriginals arrested by police had increased consistently.

In 1997, the annual arrest rate for non-Aboriginals was 1.6% and 13.7% for Aboriginal people. Based on these figures, Aboriginal people were over-represented in 1997 police arrest statistics by a factor of 8.3 which effectively meant they were eight times more likely to be arrested by the police than non-Aboriginal people. The arrest rate of Aboriginal women increased from 1,063 in 1990 to 1,992 in 1997 - an increase of 87%. The large increase in female arrests related mostly to good order offences such as disorderly conduct and resisting arrest.

The Report indicated that Aboriginal people were more likely to be held in custody after being arrested (39.7% compared to 31.8% of non-Aboriginal people) and less likely to be summonsed (14.4% compared to 28.7% of non-Aboriginals).

A greater proportion of Aboriginal people (45.8%) were granted bail than non-Aboriginals (39.5%). The use of formal cautions and the proportion of juvenile Aboriginal offenders receiving these cautions had increased since 1995. However, cautioning was still under-utilised in areas outside the Perth metropolitan region (60% of cautions were issued in Perth). Aboriginal women, generally, served shorter sentences than any other sex-race group.

For example, 82% of female Aboriginal people served less than one year, compared to 43% of female non-Aboriginal people, 59% of male Aboriginal people and 42% of male non-Aboriginal people served sentences of less than twelve months. To some extent, this difference could be explained by differing offending patterns (recall that many Aboriginal women were arrested and charged for good order offences).

Interest in Native Title



Kim Griggs, younger brother of Court Officer Kenny Griggs, has started work in the Land & Heritage Unit as Office Clerk. He has found work in the Unit interesting, especially Native Title. Kim is a Koori who enjoys playing baseball and doing dot paintings.

Other factors were also at play. For example, almost half of all Aboriginal females entering prison in 1997 were there for reasons of fine default. (*Crime and Justice Statistics for Western Australia 1997*).

ALSWA CEO Dennis Eggington said he was not surprised that Aboriginal people were still the most highly victimised group in society. He said that Aboriginal people needed to be accepted into the whole fabric of society and there needed to be an endemic change before the Crime and Justice Report told a different story about Aboriginal people.

NEED FINANCIAL ADVICE?

THE ABORIGINAL LEGAL SERVICE
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ALSWA SEEKS UNITED NATIONS SUPPORT FOR INDIGENOUS REGIONAL GOVERNMENT

A revolutionary concept that would see a layer of Indigenous regional government added into the present three-tier system of government in Australia was presented to the United Nations in Geneva recently by ALSWA CEO Dennis Eggington.

Mr Eggington, who addressed the Working Group on Indigenous Human Rights, said the concept would give total responsibility for Indigenous affairs to regional Indigenous governments representing Indigenous nations, such as the Noongar nation in the south-west of Western Australia.

In return, Indigenous regional governments would recognise the post-colonial legitimacy of the Australian Federal and State Governments and Shire and Town Councils, and their right to govern Australia as a whole, including Indigenous Australians in matters not reserved for Indigenous self-government.

Indigenous regional government would be constituted under Local Government Acts and would be similarly financed by a combination of rates and Federal and State grants. Members would be elected from within specific Indigenous nations, with Chief Ministers of each regional government being delegates to State and Federal Indigenous councils that would replace ATSIC.

Mr Eggington said the concept did not require any more constitutional change than had already taken place with the Australia Act of 1986, which decolonised the States. The concept reflected the intent of Article 31 of the United Nations Declaration on the Rights of Indigenous Peoples which provides for autonomy in matters relating to culture, religion, education, information, media, health, housing, employment, social welfare, economic activity, land and resource management, and environment.

He said Indigenous regional governments would claim exclusive jurisdiction over these matters, and in particular exclusive authority to administer Native Title within their borders. This would mean that disputes and overlapping claims within regional boundaries would be adjudicated by democratically elected regional governments.

Mutual recognition of the concept by legislation would constitute a treaty for the unified but multilayered government of all Australians, with other layers of government getting out of the business of Aboriginal Affairs and completely dismantling the existing apartheid bureaucracy.

Mr Eggington said the concept would increase the pride and standard of living of Indigenous Australians and bring many benefits to the rest of the community. He expected Australian Federal, State and Local governments to show a positive interest in the proposal.

Mr Eggington told the United Nations that the colonisation era in Australia officially ended just 13 years ago, with the proclamation of the Australia Act on October 6, 1986.

He said it was a constitutional Act that ended Australia's demeaning status as a federation of self-governing prison colonies of Great Britain and it provided Australia with full sovereignty, and separation of powers between executive, legislature and judiciary.

**'It offends most
Australians'
sense of a fair
go, and it
must and
will change'**

"Basic British human rights, guaranteed by the Magna Carta (1215) and the Bill of Rights (1689), were withheld from British citizens in Australia and denied to the Indigenous population.

"No treaty was ever made with any of our Indigenous nations, and their property was stolen lawlessly by force. The sovereignty of those Indigenous nations, which had never been surrendered to the Crown, was ignored, and the ownership of the land denied.

"Instead, a system of apartheid was introduced which saw Indigenous communities administered by an authoritarian Aboriginal Affairs bureaucracy. The system failed then to recognise the most basic rights of Indigenous people, and continues to do so.

"It offends most Australians' sense of a fair go, and it must and will change.

"The Courts now uphold Magna Carta rights. Reconciliation between black and white Australians is gaining ground despite the best efforts of vested interests to maintain and compound division.

"Before colonisation, Australia was owned by a number of self-governing Indigenous nations, with systems of law and recognised borders. This has not changed. The nations still exist, despite official non-recognition and persecution. All Indigenous Australians today identify with one nation, or another".

(For full address, please write to the Editor at ALSWA.)

WAANTWG brings State Government's Native Title Bills to a halt

Land & Heritage Executive Officer Glenn Shaw

Through a process of lobbying by ALSWA, the Australian Labor Party (ALP), Democrats, the Greens and the Western Australian Aboriginal Native Title Working Group (WAANTWG), negotiator Patrick Dodson and a legal support team led by Michael O'Donnell were able to make substantive changes to the State Government's Native Title Bills.

State Native Title Bills

ALSWA and WAANTWG were faced with a set of Government Bills that were trying to codify Native Title and the rights and interests of Native Title claimants. State Parliament attempted to remove rights and extinguish Native Title through three pieces of legislation: the Titles Validation Bill, the State Provisions Bill and the Acts Amendment Act Bill.

Titles Validation Bill

The Titles Validation Bill had the potential to do the most damage to Native Title. It could have extinguished Native Title over a vast area of Western Australia. The greatest change achieved was the removal of what was known as the extinguishing schedule.

The extinguishing schedule was replaced with an amended schedule prepared by the ALP which identified all categories of leases that would extinguish Native Title. The categories were freehold, commercial, residential, conditional purchase and special purpose leases.

WAANTWG believed the amended schedule included too much potential extinguishment. The ALP disagreed, however, with a Democrats and Greens proposal that the schedule should be scrapped altogether. The ALP, Democrats and Greens voted on a block of crucial amendments to the Government's Bills. WAANTWG was pleased with the opposition parties had succeeded in amending an horrific piece of legislation.

State Provisions Bill

This Bill was designed to establish the State Native Title Commission and Alternative Procedures to the Right to Negotiate as well delineate the areas over which it applied.

The opposing parties lobbied in the upper house and to a lesser degree the lower house.

With the support of WAANTWG, the opposing parties managed to achieve significant changes, none more important than to have the Minister's decision (when he/she intervened) overturned by the State Parliament. It was a significant breakthrough in State Parliament. There may be potential to have a parliamentary review of the actions of Ministers.

The negotiating team attempted to have the Intertidal Zone (land between the high and low water mark) included in the Right to Negotiate. It was agreed to by the opposition

parties but the Government turned it into a point of order as the Speaker decided the State could not include it.

WAANTWG plans to lobby for it to be included once the Bills are back in Parliament during March 1999.

Acts Amendment Act Bill

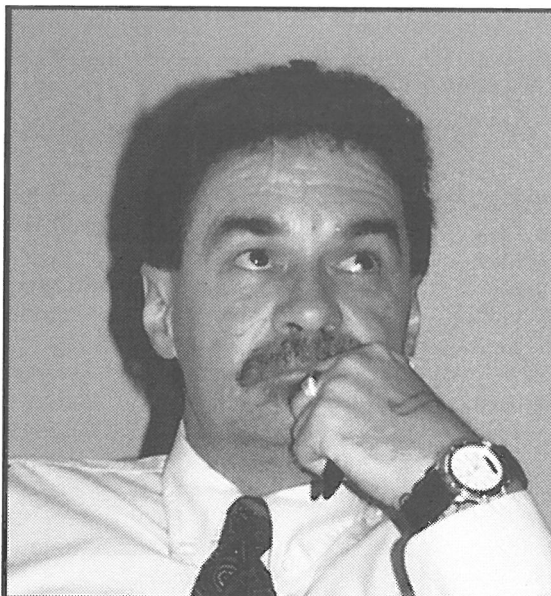
The Acts Amendment Act Bill had the least potential to damage Native Title. If passed, the Mining Act, Fisheries Act, Petroleum Act and the Land Administration Act would have been amended to be consistent with the new Native Title Act.

There was insufficient time for a thorough debate with the opposition parties about the Acts Amendment Act Bill, but WAANTWG plans to lobby again when the Bills are back in Parliament.

Select Committee on Native Title

Separate submissions were made to the Select Committee on Native Title. The first submission focused on the proposed legislation which was presented in conjunction with WAANTWG. Solicitor Anne Sheehan, Richard Bartlett QC and Michael Barker QC prepared the other submission. It focused on the effect of the Miriung Gajerrong ruling by the Federal Court.

The submissions were thorough and added substance to WAANTWG's argument for the inclusion of amendments to the Titles Validation Bill, State Provisions Bill and the Acts Amendment Act Bill.



Family Law success in 'contact' and 'support' cases

Grandmother gains access to grandson

Family Law Solicitor Paul Anthony has succeeded in securing access for a paternal grandmother to her six-year-old grandson. The boy's father, who was serving a term of imprisonment after being convicted of assault occasioning bodily harm and sexual offences, against the child's mother, also wanted contact with the boy. Attempts to negotiate with the mother had failed, resulting in the Court proceedings.

The grandmother had previously sought contact with her grandson on two occasions but this had been successfully appealed against by the boy's mother because a number of factors had not been dealt with before the sought contact.

The matters included the poor relationship between the mother and grandmother, the father's criminal trial, and the need for a Court-appointed expert to assess the situation before considering contact.

After interviewing all parties involved, the Court expert concluded that the relationship between the boy and his grandmother should be supported in his best interests and that regular contact visits, on a fortnightly basis, be approved.

An interim order application (an order for temporary contact) was filed by the grandmother and adjourned to a final hearing. At the hearing, both parties agreed for the grandmother to have contact with her grandson for three hours each second Sunday for a period of six months. The grandmother recently reported that contact had proceeded well and the mother had since agreed to the grandmother having overnight contact.

Provisions were made in the order for the father to be at liberty to send cards, gifts and letters to his son and for the mother to make these readily available to the child.

Father caught out in support wrangle

Family Law Solicitor Jill Vander Wal has successfully represented a woman who defended an application by her child's father, seeking a departure order from a decision by a Child Support Review Officer refusing to accept the father's stated taxable income, after he tried to offset losses in a primary production investment scheme.

In 1995/96, the father was in receipt of an income in excess of \$60,000 per year. During that year he became involved in a primary production investment scheme that enabled him

Lorraine returns



Family Law Solicitor Lorraine Allen has rejoined ALSWA. Ms Allen previously worked at Legal Aid WA. Lorraine has also worked for the Industrial Relations Commission, Edith Cowan University and numerous Government Departments. She is President of the Hillary's Out of School Care Inc. and tutor at the Kurongkurl Katijin School of Indigenous Studies at Edith Cowan.

to offset losses against his taxable income, giving a net taxable income of \$30,000 and \$20,000 the following year, on which child support was assessed. The Child Support Agency's assessment found that the father had thus overpaid child support by \$7,000.

The mother, who was ordered to pay the \$7,000 back in monthly installments, lodged an application with the Child Support Review Office for a review of the father's taxable income. After extensive investigation it found the father's taxable income was in fact in excess of \$60,000 for the financial years 95/96 and 96/97.

The Review Officer ordered that the father repay the \$7,000. However, notwithstanding the order, the mother continued to pay the debt.

The father then applied to the Family Court for an order that his taxable income be fixed at \$30,000. The mother also filed a cross-application to the Family Court seeking orders that the father's application be dismissed and that he repay the \$7000.

The Court dismissed the father's application and ordered him to pay the mother child support at the sum of \$1,000 per month. The mother was released from any obligation to repay any debt and the father was ordered to reimburse her for the amount she had already paid on the overpayment.



ALSWA Legal Education Series WHAT YOU NEED TO KNOW ABOUT RESTRAINING ORDERS

What is a Restraining Order?

A Restraining Order is an Order made by a Court (or in urgent circumstances by a Magistrate over the telephone) to stop a person from being near certain other persons or places.

Orders are made to stop people from interfering in other people's lives and/or to stop someone threatening violence towards other people. People who disobey Restraining Orders can either be fined or sent to jail.

The people involved in Restraining Orders are:

The Applicant - the person who applies for a Restraining Order; and

The Respondent - the person against whom the Order is made.

Applying for Restraining Orders

Applications for Restraining Orders can be made by:

- a Police Officer on behalf of a person or group;
- a person seeking protection;
- a parent or guardian of a child; or
- a guardian of another person.

Types of Restraining Orders

There are two types of Restraining Orders. They are Violence Restraining Orders and Misconduct Restraining Orders.

Violence Restraining Orders

Violence Restraining Orders are intended to stop a person whom you fear is likely to commit a violent offence against you, your children, or a person for whom you have legal responsibility, from making contact with you or coming near you.

People who feel they are potential victims of violence can contact the Police by telephone (this is a 24-hour service). The Police will then contact a Magistrate to seek a Violence Restraining Order.

The Magistrate may issue an immediate Order, or postpone the matter for a hearing. If the Magistrate feels the respondent needs to be heard, he/she may dismiss the application.

Violence Restraining Orders made by telephone stay in force for 72 hours, or less, if specified in the Order.

Police must serve the Order on the respondent within 24 hours.

Alternatively, people applying for Violence Restraining Orders can go to a Court of Petty Sessions and choose to have a Court hearing with the respondent there or not.

Misconduct Restraining Orders

Misconduct Restraining Orders are intended to stop a person, who may be likely to behave in an intimidating or offensive way towards you, cause damage to you or your property, or breach the peace in any way, from being near you.

Misconduct Restraining Orders can only be started by issuing a summons for the respondent to appear in Court.

If the respondent fails to appear in Court on the date specified, and the Court feels that the service of the summons was effective, the Court may go ahead with the proceedings without the respondent being present.

The Court can adjourn the matter if it feels the service of the summons was ineffective.

To apply for a Misconduct Restraining Order, a person can go to a Court of Petty Sessions and ask for a Restraining Order application. If the respondent is under 18 years, the person seeking the Restraining Order would need to go to the Children's Court.

Misconduct Restraining Orders remain in force for one year or the time specified in the Order.

There is a fee for lodging Misconduct Restraining Orders but if you have financial difficulties, apply to the Clerk of Courts to have the fee waived.

A Restraining Order does not come into effect until it is served on the respondent.

The Court prepares the Order and arranges for the Police to serve it on the respondent.

Defending a Restraining Order

To defend a Restraining Order, the respondent has 21 days to lodge a written objection. If the objection is received in time, the matter will be listed for a later date, with both parties present.

Firearms Order

The Court may also make a Firearms Order to stop the respondent from having access to firearms, obtaining a firearm licence, or being in possession of a firearm.

The Police are required to notify any co-licencees and the respondent's employer of the Firearms Order.

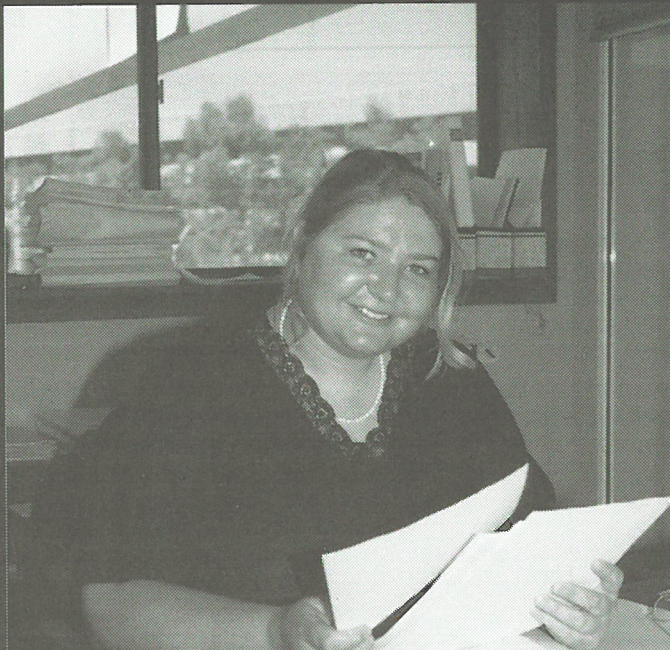
For legal advice
contact the Aboriginal Legal
Service of WA (Inc) on
(08) 9265 6666 or
1800 019 900 (toll free)

Enroute to Africa



Narelle Beine has recently joined ALSWA's Land and Heritage Unit as Secretary. She previously worked at the State School Teacher's Union. Narelle enjoys playing a variety of sports and likes to travel, planning to go to Africa next. She feels working in the Land and Heritage Unit will be interesting and challenging.

Many Interests



Solicitor Alison Hewson has recently joined the Civil Unit. She was born in Albany and attended Applecross High School. Alison studied at UWA where she completed her Arts and Law degrees. She previously worked at Hoffmans Barristers & Solicitors and was a Senior Claims Officer at GIO Australia Insurance. Alison is an artist who enjoys the beach, travelling, camping, fishing, painting and photography.

Early intervention needed to reduce rates of crime

A National Anti Crime Strategy report has revealed that early intervention programs are effective in reducing crime provided they respond to cultural differences.

A survey of Aboriginal communities has indicated strong support for Aboriginal control and administration of intervention services; a demand for detailed consultation on issues relating to family and children services; facilitated access to education; the availability of Aboriginal workers for Aboriginal clients; the introduction of innovative practices in mainstream services in order to increase provision; extended family responsibility for care of children; recognition that the stolen generation has widely impacted on culturally appropriate parenting skills and identification of special needs of children with parents in custody.

The report includes a list of risk-protective factors that impact on the likelihood of persons becoming involved in anti-social and criminal behaviour. (see back page)

Community elders remembered for service to community

The Executive Committee, Management and Staff of ALSWA acknowledge with regret the passing of community elders Septu Brahim, and Everett Kickett.

Mr Brahim, a former member of the ALSWA Executive Committee, was well known in the north of the State as a tireless worker for the rights of Aboriginal people. While a member of the ALSWA Executive Committee, Mr Brahim was involved in countless decisions aimed at improving the access of Aboriginal people in the northwest to better legal services.

Mr Kickett, WA's first Aboriginal police officer and detective, joined the police service prior to the Royal Commission into Aboriginal Deaths in Custody. He was NAIDOC Aboriginal of the year in 1992 and the first Aboriginal prison warden at Fremantle Prison.

On his death on January 12 he was an ATSIC Regional Council member. Mr Kickett was also a foundation member of the State Government's Metropolitan Council of Elders.

ALSWA extends sympathy to both families.

From page 15

Risk and protective factors associated with antisocial and criminal behaviour

R I S K F A C T O R S				
CHILD FACTORS	FAMILY FACTORS	SCHOOL CONTEXT	LIFE EVENTS	COMMUNITY AND CULTURAL FACTORS
prematurity low birth weight disability prenatal brain damage birth injury low intelligence difficult temperament chronic illness insecure attachment poor problem solving beliefs about aggression attributions poor social skills low self esteem lack of empathy alienation hyperactivity/disruptive behaviour impulsivity	<i>Parental characteristics:</i> teenage mothers single parents psychiatric disorder, especially depression substance abuse criminality antisocial models <i>Family environment:</i> family violence and disharmony marital discord disorganised negative interaction/social isolation large family size father absence long term parental unemployment <i>Parenting style:</i> poor supervision and monitoring of child discipline style (harsh or inconsistent) rejection of child abuse lack of warmth and affection low involvement in child's activities neglect	school failure normative beliefs about aggression deviant peer group bullying peer rejection poor attachment to school inadequate behaviour management	divorce and family break up war or natural disasters death of a family member	socioeconomic disadvantage population density and housing conditions urban area neighbourhood violence and crime cultural norms concerning violence as acceptable response to frustration media portrayal of violence lack of support services social or cultural discrimination
P R O T E C T I V E F A C T O R S				
CHILD FACTORS	FAMILY FACTORS	SCHOOL CONTEXT	LIFE EVENTS	COMMUNITY AND CULTURAL FACTORS
social competence social skills above average intelligence attachment to family empathy problem solving optimism school achievement easy temperament internal locus of control moral beliefs values self related cognitions good coping style	supportive caring parents family harmony more than two years between siblings responsibility for chores or required helpfulness secure and stable family supportive relationship with other adult small family size strong family norms and morality	positive school climate prosocial peer group responsibility and required helpfulness sense of belonging/bonding opportunities for some success at school and recognition of achievement school norms concerning violence	meeting significant person moving to new area opportunities at critical turning points or major life transitions	access to support services community networking attachment to the community participation in church or other community group community/cultural norms against violence a strong cultural identity and ethnic pride

Taken from a report by the National Crime Prevention Initiative of the Attorney-Generals Department