

ALSWA

Published by the Aboriginal Legal Service of Western Australia (Inc) Mar/Apr 1999

CUSTOMARY LAW A PRIORITY FOR NEW ALSWA PRESIDENT

The Australian justice system is failing Aboriginal people according to newly elected President of the Aboriginal Legal Service, Mr Glen Colbung.

Mr Colbung said the wider justice system discriminated against Aboriginal people because it did not take account of imperative cultural and historical factors that influenced Aboriginal attitudes towards society.

"The only way to achieve equity under the law is for the law to encompass the cultural and historical beliefs of Aboriginal people as expressed through Aboriginal Customary Law", he said.

"This is particularly important in communities where Aboriginal Customary Law is still the primary influence on Aboriginal lives, such as those in rural and remote areas".

ALSWA has initiated a Customary Law Project aimed at incorporating principles of Aboriginal Customary Law into the wider justice system. The project has the support of Aboriginal communities throughout the State and has

attracted the interest of the judiciary and the WA Police Service.

A series of meetings has already been held, but the project will now be given higher priority under Mr Colbung's presidency.

Mr Colbung said before planning further meetings with the WA Police Service, Aboriginal Justice Council and the Ministry of Justice, he intends to consult the Aboriginal community about the direction of the project.

"There needs to be a marriage between Aboriginal Customary Law and Western Law so Aboriginal people will not face a situation of double jeopardy".

The new President represents the Southern region on the 23 member ALSWA Executive Committee. Committee membership comprises 14 elected members (two each from Central, Southern, Murchison-Gascoyne, Pilbara, Goldfields and East and West Kimberley regions, and chairpersons of the nine ATSIC regional areas across the State.



GLEN COLBUNG

Mr Maitland Hedlam of Murchison-Gascoyne was elected Vice-President. Mr Colbung is the 12th President of ALSWA since the Service began operating in 1973, and a former Vice-President.

Mr Colbung was elected to the National Aboriginal Conference in 1978 and re-elected in 1982.

He has been a member of the Aboriginal Cultural Materials Committee; the Aboriginal Lands Trust; the Aboriginal Housing Board; the State Aboriginal Justice Committee; is chairperson of the Southern Aboriginal Corporation; and has served two terms as councillor on the ATSIC Kaata Wangkinyiny Regional Council.

INSIDE:

Page 4:
ALSWA responds to
racist petition

Page 8:
Harmony : needs
versus wants

Page 10:
UN told of concerns
with preamble

ALSWA CRITICAL OF LABOR 'DEAL MAKERS'

ALSWA was recently moved to protest the behaviour of a number of Labor politicians for participating in discussions with the State Government aimed at 'doing a deal' in relation to Native Title Legislation.

ALSWA Executive Officer Glenn Shaw said ALSWA had been of the opinion that the position put forward by the ALP, in both houses of State Parliament in December 1998, was the formal position of the ALP. Anyone digressing from that position needed to be pulled back into line by the Party.

Mr Shaw said the position of the ALP, though not the preferred position of Aboriginal people, was a far better position from which to negotiate than that of the Government. For members of the ALP to break ranks to service their individual political agendas, with Aboriginal rights as the sacrifice, was treachery.

He said the work done in the Parliament by Eric Ripper, Tom Stephens and Geoff Gallop last year, to turn the Government's proposed legislation into something more accommodating of the rights and interests of the Aboriginal community, and of industry, should have been commended, not condemned.

The proposals put forward by the political ideologues, who ran the campaign to invert the ALP's December proposals, would have cost the taxpayers billions of dollars in compensation, and would have led to ongoing litigation, which was something only in the political interests of the Court Government.

It was ironic that while the Australian Government defended its treatment of Aboriginal rights in relation to Native Title before the United Nations, the ALP in Western Australia was preparing to sacrifice the rights of Indigenous people on the altar of political expediency.

Publication Details

ALSWA is published by the Aboriginal Legal Service of Western Australia (Inc) PO Box 8194 Stirling Street East Perth WA 6849 (Tel 9265 6666 or toll free 1800 019 900). 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 write to the Editor at the above address.

PREMIER'S NATIVE TITLE ADVISOR SHOULD GO: CEO

ALSWA CEO Dennis Eggington has called for Vera Novak, Premier Court's chief advisor on Native Title policy matters, to be removed from office to avoid potential conflict of interest situations.

Ms Novak is Assistant Director-General of the Ministry of Premier and Cabinet's Native Title and Strategic Issues division. She has a 25 per cent stake in a company whose leases are in areas under Native Title claim.

Mr Eggington said Ms Novak should never have been given the job she currently holds because of the impact that her conflicting interests could have on Aboriginal people trying to claim Native Title.

He said the potential for personal financial gain could have encouraged Ms Novak's willing participation in Richard Court's ongoing determination to frustrate the legitimate Native Title process in this State.

"The Premier's opposition to Native Title is well documented, as is his ability to manipulate the truth in defending these types of situations. He is the master of the double standard.

"ALSWA agrees with ALP suggestions that Ms Novak should be removed from any involvement whatsoever with Native Title matters.

'More importantly, the Premier should be called upon by the Parliament to explain his actions - and in the event of an unsatisfactory explanation, he should go as well'.

INADEQUATE FACILITIES

(from page eleven)

This was a common sense approach that tempered the punitive emphasis of the criminal justice system, particularly where it related to minor offenders.

Ms Hayward said that, at any event, it was totally inappropriate to send children away from family and community 'on remand' when charges had not been tested in court and where no finding of guilt had been made.

Prison lockdown raises suicide fears

ALSWA CEO Dennis Eggington has warned that a suicide epidemic could sweep through Casuarina prison if the current lockdown does not end soon.

Mr Eggington said reports from ALSWA Court Officers visiting the prison indicated that a number of Aboriginal prisoners were severely at risk, while the general morale of all prisoners had dropped to an all-time low.

He said depression had led to incidents of self-mutilation, with some prisoners indicating they were prepared to end their lives if the harsh lockdown situation continued. Physically and emotionally they were at the end of their tether.

Mr Eggington said the regime implemented at the prison, since the so-called Christmas Day riot, had become a nightmare for prisoners, and if something was not done urgently, some could take, what must be for them, the only way out.

"I fear for their state of mind and for their physical and emotional safety, in what has become, overtly, a highly aggressive and hostile environment".

He said prison at the best of times, despite the misconceptions of some in the community, was a harsh and degrading place, where small 'privileges' assumed disproportionate importance in prisoner's lives.

"Take away those privileges and you take away all dignity and hope. People are reduced to a status much worse than that of animals.

"Indeed, if you kept an animal locked in a small cell for 23 hours a day the wider community would be in uproar. How much worse it is that the incarcerated in this instance are human beings - and yet the government has failed to act".

"If deaths in custody result from this appalling situation, blood will be on the hands of Premier Court and his government, and the fact that they have neglected to fulfill their duty of care will haunt them in the legal actions that are sure to follow".

"remove
privileges and
you remove
all dignity
and hope"

Preamble cynical and manipulative

ALSWA CEO Dennis Eggington has joined a chorus of Aboriginal protest over Prime Minister Howard's proposed Constitutional preamble, which he describes as cynically manipulative.

Mr Eggington said the Prime Minister, through deliberate choice of wording, was designed to manipulate the Aboriginal community into accepting obsequious status to other Australians, and manipulate the wider community into endorsing the subservient status of Aboriginal rights, culture and spirituality.

The preamble denied Aboriginal ownership of the Australian continent, an ownership which is acknowledged as having existed for some 60,000 years but which, according to latest anthropological theories, may have existed for over 800,000 years.

Instead, the preamble patronisingly 'honours the ancient and continuing culture' of Aboriginal people, effectively dismissing them as no more than a cultural curiosity, to be exploited in the nation's frantic search for a sound identity.

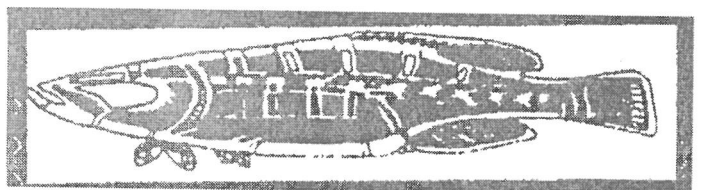
"the preamble
dismisses us
as a mere
cultural
curiosity"

The preamble also, in relying on 'hope in God', to develop and maintain this identity, effectively denied the spiritual beliefs of Aboriginal people as reflected in the Dreaming - the blueprint for construction of Aboriginal culture and identity.

iginal culture and identity.

Mr Eggington said the Prime Minister's preamble would place Aboriginal people in a situation of 'double jeopardy'.

While locking them into a status equivalent to flora and fauna, it would effectively lock them out of the social, economic and political machinations of what could have been a dynamic working nation. (See story page 10)



COUNTRY MLA CIRCULATES 'BLACK-BASHING' PETITION

Carnarvon MLA Rod Sweetman has taken to 'black-bashing' in his attempts to shore up electoral support in his Ningaloo electorate. Mr Sweetman has circulated a petition seeking support for a number of draconian measures targeted at Aboriginal people - though he has been cunning enough not to identify his quarry by race.

The 10 point petition seeks the support of the people of the town of Carnarvon in calling for boot camps, Home West evictions, segregated housing, recriminalisation of drunkenness, random detention of young people, reintroduction of a voucher system for 'drunk' social security recipients, and alternative classrooms for 'troublemakers'.

The petition has attracted the attention of the media, with the West Australian running a two page feature and the ABC filming a story for its 7.30 Report.

ALSWA CEO Dennis Eggington and Carnarvon ALSWA Solicitor Deen Potter have each criticised the MLA and the apartheid nature of his petition, but the State Government has remained silent. Premier Court, by choosing to ignore the matter, could be seen as offering tacit support to the MLA in his 'One Nation' style campaign against Aboriginal people in the town.

The campaign, according to some in Carnarvon, follows anti-social behaviour that has 'held the town to ransom'

and prompted many to consider 'taking up arms' and forming vigilante groups. Residents, it was claimed, are afraid to walk the streets at night.

Mr Potter told the West Australian that, while Carnarvon, like any town, had a problem with anti-social behaviour,

the town's crime problems had improved in the three years that he had been there.

Many offences with which he dealt, involving young people, were less serious than the home invasions and crime in Perth.

Mr Potter said there was a strong suspicion in the town that Mr Sweetman had created the controversy to improve a failing political profile.

ALSWA CEO Dennis Eggington told the ABC's 7.30 Re-

port that all Mr Sweetman had achieved was to stir up trouble and deepen divisions between groups in the town.

He said the draconian proposals put forward by the MLA were insensitive, unworkable and reminiscent of the uglier racist attitudes of the past. In political terms, the man was a dinosaur.

He said the most serious implication of the MLA's actions could be found in the failure of Premier Court or the Liberal Party machine to intervene in Mr Sweetman's deliberate attempts to score cheap political points.

MLA proposals clearly impossible

Geraldton Solicitor Steve Sharratt claims that the amendments Mr Sweetman is proposing would require amendments to the Young Offenders Act, Children's Court Act, Criminal Code, Residential Tenancies Act, Social Security Act (Cth), Police Act, and Education Act, and creation of a number of new Acts.

He said the proposed amendments would apply not only to Carnarvon but to the whole State, and in the case of the Social Security Act, the whole country. This was somewhat excessive given that the MLA was purportedly trying to solve what he perceived to be a local problem.

In responding to the various proposals, Mr Sharratt said it would be inappropriate to treat juvenile offenders more harshly than adult offenders, as adults did not have boot camps and the last boot camp idea was an expensive and futile experiment.

He said under section 138B of the Child Welfare Act, Police could already apprehend children who were truanting, in moral danger, or misbehaving, and take them to responsible adults or hold them in a suitable place, if a responsible adult was not found.

Mr Sharratt said that segregated housing said it all. It was obvious Mr Sweetman wanted Aboriginal people to be placed in houses away from the so-called concerned residents of the Carnarvon area, a concept totally unacceptable.

CAUTION URGED ON 'SAFER WA' STRATEGY

The Safer WA background paper, published recently by the State Government, appears to represent at best a parenthood type statement, big on rhetoric and light on detail.

It is difficult not to be suspicious that the concept is designed far more to ameliorate public dissatisfaction with existing Government policies and programs in the area of law and justice ("they're not tough enough"), than it is to provide a carefully and comprehensively thought-out strategy to reduce crime.

For example, on page three, the paper states that the Safer WA Council will focus on (among other things) 'crime reduction to improve quality of life', when in terms of the Aboriginal community in particular, if not the entire community in general, it should go the other way - improving quality of life to achieve crime reduction!

Do they really not understand that it is gross *inequality* of life that drives many people to criminal activity?

Further, given the 'nexus' between the Aboriginal community and crime (at least in the minds of those that are looking for a 'tougher' approach) should not ALSWA - as the peak body concerned with that nexus in WA - be afforded greater involvement than merely as a member organisation of the Police Minister's Council? For example, what about special representation on the Chief Executive Officer's Working Group?

Certainly the entire 'tone' of the background paper is reactive and overwhelmingly punitive e.g. tougher legislation, increased police powers, \$1m a year for security programs (as opposed to *half* that for 'community based crime prevention activities').

It could be said that the summary says it all: (i) 'A process designed to enable *local communities* to identify the priority law and order issues *in their area*, and to develop effective local solutions; (ii) 'Enhanced opportunities for *local communities* to influence overall policies in regard to law and order'.

These are geographic considerations. The 'problem' of criminal activity is not geographic. It is political, social, cultural and economic.

At the risk of being thought cynical, it could be suggested

JOINT ACTION PROMPTS QUICK AGENCY RESPONSE

A combined effort by ALSWA, the Derbal Yerrigen Health Service (DYHS) and the *Aboriginal Independent* has resulted in two Aboriginal children being returned to their parents, and the family being provided with accommodation by Homeswest.

A supporting mother with five children and two grandchildren had lived on the streets for six months after being forced to leave their home because of anti-social behaviour by neighbours.

Family and Children's Services had then taken two children from the mother, whose talks with Homeswest to provide alternative accommodation had failed.

In a media conference organised by the *Aboriginal Independent*, ALSWA CEO Dennis Eggington called on Homeswest and Family and Children's Services to take immediate action before the situation worsened.

Mr Eggington said society could not go into a new millennium with children still being taken away from families and proper housing not being supplied to the those needing it.

He said the Government talked of reconciliation while at the same time ignoring the needs of Aboriginal people.

Soon after the media event, it was reported to ALSWA that Family and Children's Services had returned the children, admitting they had had no grounds on which to remove them. Homeswest too had contacted the mother with an offer of immediate alternative accommodation. Mr Eggington welcomed the agencies response to the situation but suggested it should not have been allowed to develop in the first place.

that, given the geographic emphasis, the Safer WA initiative appears to be designed primarily to keep criminals out of those *local communities* that inhabit our blue-rinse conservative electorates.

The Government's 'genuine concern' about the 'quality of life' of people living in Balga, Girrawheen, Lockridge or Koondoola is doubtful. If Safer WA only achieved a situation where criminal activity was restricted to such 'working class' areas doubtless the Government would see it, and claim it, as a huge success.

POLICE OFFER HELP WITH ALSWA YOUTH FORUM

The WA Police Community Services Command (PCSC) has expressed interest in becoming involved in the planning and organising of ALSWA's proposed Youthspeak event, to be held later this year.

Superintendent Max Jones, who recently transferred out of the PCSC to be replaced by Superintendent Graham Lamp, said the Youthspeak forum was an excellent idea in which Police would be keen to be involved. There was a possibility that the event could attract a Community Policing Grant of up to \$5000.

He saw it as an opportunity to build better relationships between Aboriginal youth, the Police, and the community at large. It would also give Police a better understanding of the issues and problems that concerned Aboriginal young people. ALSWA is waiting on the WA Office of Youth Affairs for news of its grant application to fund the event.

ALSWA HAS
INTRODUCED A NEW
SERVICE FOR
ABORIGINAL WOMEN

WOMEN'S
CONTACT
OFFICER

For details please call
Katrina Carlisle
(08) 9265 6666

HIGH COURT REJECTS COURT'S NATIVE TITLE GAMES

The High Court of Australia has rejected an application by WA and the Northern Territory to have part of their appeal against Justice Lee's Miriwung-Gajerrong decision heard by the High Court instead of the Full Bench of the Federal Court.

ALSWA Land and Heritage Solicitor Kathryn Shain briefed Anne Sheehan and Michael Barker QC, who appeared on behalf of the Miriwung and Gajerrong people to oppose the applications.

On Friday 12 March 1999, High Court Chief Justice Gleeson and Justice McHugh were scathing in their refusal of the State and Northern Territory's request.

Chief Justice Gleeson said it was important to dispel the notion that a decision of a Court (any Court) was only provisional. He said uncertainty in the law lead to compromise and then to settlement.

Justice McHugh said the Federal Court should be seen as much a specialist tribunal in relation to Native Title as it was in tax matters.

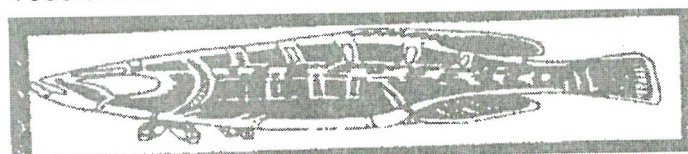
Native Title matters needed to be progressed slowly and follow appropriate procedures or otherwise mistakes could happen.

ALSWA Solicitor Scotty Hammond agreed with Chief Justice Gleeson's comment that uncertainty could generate agreement and it was the interests of all parties involved that this should be allowed to happen, rather than continuing to litigate everything to do with Native Title.

"The State Government should heed the comments of the High Court and recognise that Native Title exists and accommodate that fact.

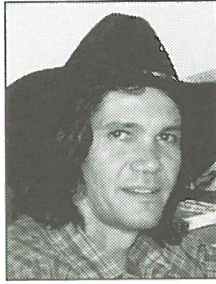
"It is well overdue that an acceptance of Native Title by the State and Northern Territory Governments be forthcoming. Working with Aboriginal people to achieve 'certainty' is the only course to pursue".

It is expected that the appeals to the Full Bench of the Federal Court will be heard in June 99.

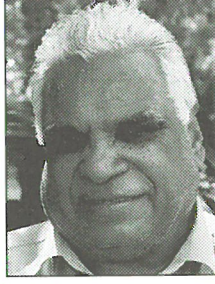




David Saylor



Steve Carter



Frank Chulung

SBS FILM SHOWS ALSWA IN THE KIMBERLEY

SBS has recently screened an Alley Katz Productions film examining how justice is dispensed in the far-flung reaches of the Kimberley region in WA's north. Though entitled "Here Comes the Judge" the film records the day-to-day experiences of ALSWA Solicitor David Saylor during his first week on-the-job as Solicitor with ALSWA's Kununurra office.

Secondary to this central theme, the film follows Magistrate Col Roberts as he flies 'the circuit' from Broome, to Halls Creek, to Kununurra, to Wyndham, to Kalumburu - and back to Broome, accompanied by an entourage including Police prosecutor and Legal Aid Commission lawyer.

At many of the stops, where the Magistrate's Courts are sometimes convened in make-shift accommodation, the group is joined by Mr Saylor (travelling by four-wheel drive) and local ALSWA Court Officers, representing between them the Aboriginal people that come before the bench.

ALSWA Court Officers Steve Carter (Halls Creek) and Frank Chulung (Kununurra) are seen assisting Mr Saylor in taking instructions and gathering evidence on behalf of ALSWA's clients. Producer Alan Carter said the film was two years in the making. He had chosen to feature the Kimberley circuit because it was the largest in Australia, and the most isolated.

A special screening of the film was held at ALSWA's office in Perth before it went to air. Chief Executive Officer Dennis Eggington said he was pleased with the end result. The film had shown the difficulties inherent in providing quality legal services in such harsh and isolated conditions, and was a testament to the enthusiasm and diligence of the ALSWA staff that were featured.

The film had also confirmed the role of alcohol as a major

Magistrate accepts use of traditional punishment

A Magistrate's Court at the Balgo Community, 320 kilometres south of Halls Creek, has accepted that a man charged with two counts of unlawful wounding had legitimately used a form of traditional punishment under Aboriginal Customary Law.

Unlawful wounding charges are the most serious that can be heard by a Magistrate and can lead to sentences of imprisonment ranging from two to five years.

The man was charged after he caught two nephews trying to steal petrol from his vehicle for the purpose of sniffing, and decided to punish them traditionally. This was done by using a crowbar to hit them on the thigh. One youth suffered a small wound while the other needed three stitches.

The man told ALSWA Solicitor David Saylor that under Aboriginal custom, the boys were considered not only nephews, but sons, and it was his duty to punish them in an attempt to deter them from stealing and sniffing petrol.

Mr Saylor made enquiries with three community elders who confirmed that the man was acting in accordance with Aboriginal Customary Law.

Mr Saylor told the Magistrate that when the man struck the boys, he was imposing a form of traditional punishment and the locations and types of wound were consistent with traditional punishment.

The Magistrate, who found the man guilty, accepted Mr Saylor's submissions and placed the man on an Adult Conditional Release Order for six months with a \$100 fine if the order was broken.

Part of the order was for the man to seek the advice of the elders before imposing traditional punishment.

Mr Saylor said he was very happy with the end result and pleased the Magistrate took into consideration the practice of traditional punishment in remote Aboriginal communities.

factor in bush crime - while acknowledging the enormous social and political problems that forced people to seek refuge in substance abuse. Mr Carter said it was possible that the film would be screened by some independent theatres.

HARMONY A BALANCE BETWEEN WHAT WE WANT AND WHAT WE NEED

Address by Colleen Hayward in celebration of National 'Harmony Day' March 21 1999

ALSWA Deputy CEO Colleen Hayward has told guests at a National Harmony Day celebration in Perth that it is difficult balancing what people *want* to hear with what they *need* to hear. Any address needed to mix factual reality, even if this was a bit uncomfortable, with enough positive direction so that people did not lose heart.

Harmony day is designed to promote and celebrate Australia's community harmony, and highlight the fact that whatever people's backgrounds and beliefs there are shared values such as justice, fairness, equality, friendship and a "fair go" which unite all Australians.

Ms Hayward said the message needed to combine recognition of the contribution people made, with enough criticisms and challenges to ensure that people did not get complacent and think that they had done all there was to do.

In defining harmony, Ms Hayward said the word had 'two groups' of meanings.

"The first grouping considers the concepts of compatibility and uses synonyms like accord, rapport, agreement, equanimity (serenity, patience), unanimity, friendship, concord (peace, unity, consensus, harmony) and amity (tolerance, friendship, and goodwill).

"The second grouping considers the concepts of symmetry and uses synonyms like conformity, congruence, balance, regularity, consistency and consonance (conformity and accord).

"It will not surprise you to know that my leanings are towards the first group. Aboriginal and Torres Strait Islander people, and those of you who work in Aboriginal agencies and organisations, will know that the difference in meanings and interpretation of terms usually ends up with Aboriginal people on the down-side of the equation.

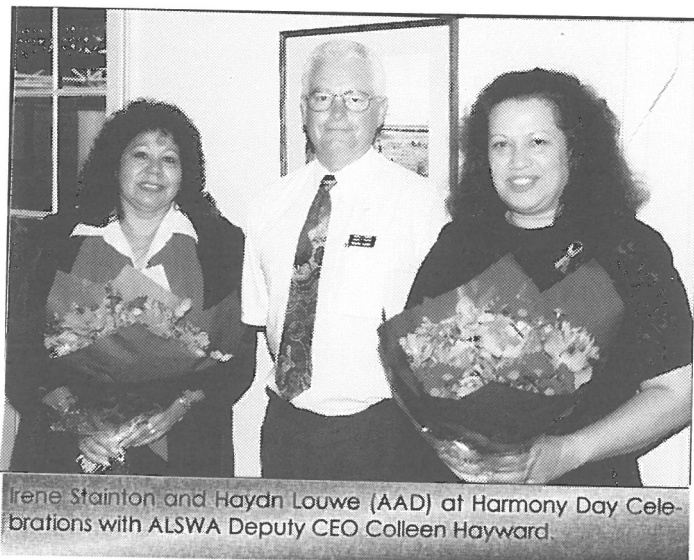
"We know that many people in positions of power and influence, especially those in government (regardless of their political persuasion) interpret the meaning of "harmony" to be in the second grouping of terms - the grouping that tries to present us all the same.

"We need then to look at whether we are the same - whether we are in symmetry with the rest of the Australian population, whether there is a regularity, a balance, a consistency;

- the life expectancy of Aboriginal people is 15 - 20 years less than for non-Aboriginal people. At any age, Aboriginal and Torres Strait Islander people are more than twice as likely to die as are non-Indigenous people. For those aged 25 - 44, the risk is five times the national average;
- the unemployment rate is 38% for Aboriginal and Torres Strait Islander people, compared with 8.7% for the general population;
- 2.2% of Aboriginal and Torres Strait Islander people have tertiary degrees compared with 12.8% of all Australians;
- Aboriginal and Torres Strait Islander people are 17.3 times more likely to be arrested; 14.7 times more likely to be imprisoned; and 16.5 times more likely to die in custody, than non-Indigenous Australians;
- Aboriginal and Torres Strait Islander juveniles aged 10 - 17 years are 21 times more likely to be in juvenile institutions than the rest of the population of that age. In Western Australia, the rate is 48 times greater;
- the number of Aboriginal and Torres Strait Islander people in prison has increased by 61% in the last seven years - almost twice the growth rate of the non-Indigenous prison population;
- Aboriginal people are more likely to be held in custody or detained for less serious offences than non-Aboriginal people. The greatest over-representation of Aboriginal people in custody is for public order offences.

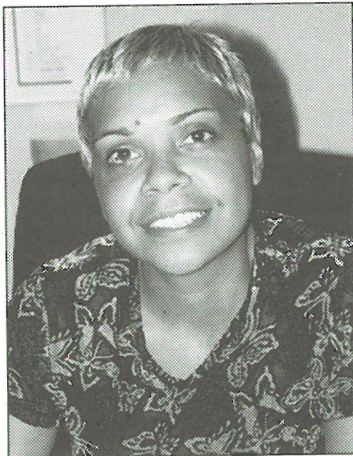
"Clearly, this list of things for us to think about is not exhaustive. I hope, however, that it serves to keep the actual situation of too many Aboriginal people in focus".

Full address available from ALSWA



Irene Stainton and Haydn Louwe (AAD) at Harmony Day Celebrations with ALSWA Deputy CEO Colleen Hayward.

Executive members get support from Regional Coordinator



Jenny Bedford (pictured) has recently been appointed ALSWA's first Regional Coordinator - a position designed to strengthen lines of communication between ALSWA Executive Committee members, regional and central ALSWA offices, and Aboriginal communities.

Ms Bedford will travel throughout the regions promoting ALSWA, assisting

in the development of a proposed ALSWA Community Development Employment Program (CDEP), and coordinating regional meetings on behalf of Executive Members.

She has worked at ALSWA for five years as assistant to the Chief Executive Officer. During that time she has had extensive involvement in the organisation of Executive Committee meetings and has acquired a wealth of knowledge about the structure, policies and operations of the organisation.

Ms Bedford said her previous role also provided her with an invaluable insight into Aboriginal politics at various levels.

Ms Bedford's family comes from Halls Creek in the East Kimberley. Her father is a Kitja man and her mother, a Djaru/ Gurrindji woman. She maintains close cultural ties with her family, which she said was very important for her new role. Her appointment to the new position will allow her greater involvement with the Aboriginal community.

Ms Bedford is a keen sportsperson who has played basketball at the National Level with the Perth Breakers and the Australian Institute of Sport. She is currently a member of the State League Club, East Perth. She also enjoys relating to Aboriginal youth in and around the metropolitan area, through the Aboriginal role model program.

Ms Bedford said she was currently working on a calendar that incorporated the meeting dates of all major Aboriginal committees throughout the State. It included meetings of the ALSWA Executive Committee, and planned regional meetings.

Family violence unacceptable - ATSIC Commissioner

Aboriginal and Torres Strait Islander Commissioner Colin Dillon has told a Police and Indigenous Family Violence conference in Perth that traditional culture should not be used as justification for family violence in the community.

Commissioner Dillon said family violence had no place in any culture and the views of those who tried to cover up family violence by saying it was part of traditional culture must be rejected.

He said traditional punishments were conducted openly and according to strict rules and violence that occurred behind closed doors could never be described as traditional punishment.

"Our communities suffer from high levels of substance abuse because of the impact of marginalisation and high levels of unemployment. These factors have disrupted our society and have contributed to the increase in violence in our communities.

"But just as we cannot find all the answers to these problems within our own communities, we cannot expect to find all the answers to family violence.

Mr Dillon said family violence had a greater effect on women in the Aboriginal community, as evidenced by 1993 statistics that Aboriginal women were ten times more likely to be murdered than non-Aboriginal women.

"In the Northern Territory, Aboriginal women are the victims of 79% of all chargeable offences, while 32% of Aboriginal men in prison are there for sexual assault related offences. In Queensland, one Indigenous woman in three is affected by family violence - compared with one in seven in the wider community.

Commissioner Dillon told the conference that research indicated that many women did not report bashings and other forms of abuse because of fear, because of inaction by authorities and because community members were opposed to bringing in external agencies.

Mr Dillon, a former police officer, said that while working in the force he handled many domestic violence cases that ended in murder. He had dealt with abused women who did not want to charge their partners because of family pressure, and the feeling that things would get better and they could keep the family unit together.

CONCERNS ABOUT PREAMBLE FORM BASIS OF ADDRESS TO UNITED NATIONS

ALSWA's Glenn Shaw addresses the United Nations Working Group on Indigenous Human Rights

Aboriginal people have every reason to be very concerned with attempts by the Australian Government to marginalise them in the preamble to a new constitution.

ALSWA Land and Heritage Executive Officer Glenn Shaw, recently returned from a visit to Geneva during which he addressed the United Nations Working Group on Indigenous Human Rights, told the gathering that such marginalisation would likely be reflected in the body of the constitution itself.

His visit to Geneva followed one by ALSWA CEO Dennis Eggington, late last year, which resulted in an invitation being issued to the organisation to contribute further to the Working Group's ongoing development of an international charter of Indigenous Human Rights.

Mr Shaw told delegates to the Working Group that 1999, for Indigenous people in Australia, was a 'year of living dangerously', given the approach of a new millennium in which Australia was likely to become a republic.

The Prime Minister of Australia, John Howard, had gone on record as saying that 'prior occupation' by Aboriginal people was acceptable, whereas 'prior ownership' was not. This was clearly not the view of Aboriginal people, who were concerned that denial of ownership would deny any property and legal rights that should emanate from the constitution.

Mr Shaw said a proposal previously put forward by the Aboriginal Provisional Government had far more merit. The proposal recognised the right of Aboriginal and Torres Strait Islander Peoples to self-determination.

He suggested all Australians should seek to have the spirit of such a proposal enacted in a new constitution.

However, given the lack of a forum in which to promote such a proposal, it would be primarily up to Aboriginal people to achieve that end by applying political pressure.

Mr Shaw told the Working Group on Indigenous Human Rights that self-determination was no longer looked on as the catch cry of Government ideologues, but as a political reality by a majority of the Aboriginal and Torres Strait Islander community. The question was still often asked, however, as to what the term 'self-determination' meant. He said if one looked at self-determination from a literary

perspective, it meant the empowerment of a people to take total control of their future. Sadly, it was not the literary perspective that was espoused, but the political one.

"The political perspective of self-determination is the empowerment of the collective, and not the individual as described in the literary position. What is of greater concern is that the empowerment of the collective is to the detriment of the individual. It is argued, in fact, that empowerment of the collective means oppression of the individual.

"Ron Castan QC summed up the situation in an article entitled 'Aborigines, Torres Strait Islanders and the Constitution' when he said 'The Constitution was adopted by popular referendum (of whites) and may only be amended by referendum of all those now entitled to vote'.

"Mr Castan went on to say that 'It was the migrants to Australia, and their offspring, who adopted the Constitution in 1901. In 1967 the Aboriginal people were not asked whether they agreed to unite in one indissoluble Commonwealth'.

"If Ron Castan's comments were used as the basis for logical argument it would be about whether we now need a referendum to ask Aboriginal and Torres Strait Islander Peoples, as to whether we wish to be recognised as Australian citizens, or as a distinct community within Australia.

"We must at some stage decide which direction we as Aboriginal and Torres Strait Islander People wish to progress. If it is to be in the direction of self-determination and ultimately the assertion of sovereignty, then we must first decide what type of self-determination we are discussing - literary or political?

"When stating that there is a lack of a correct forum to raise the issue of self-determination, then the same could be said for the argument of sovereignty.

"We as Aboriginal and Torres Strait Islander Peoples cannot anticipate that the High Court of Australia, established by the Government, will ever agree to sovereignty within Australia for any particular group outside of the collective"

Full address available from ALSWA.

Legal education booklet/video series underway

The first of a series of Community Legal Education booklets, entitled 'Understanding Criminal Law', will soon be available to Aboriginal people throughout the State, from ALSWA regional offices.

The series, which will deal with different aspects of the law, is being produced in response to an acknowledged need within the community - to be aware of rights and responsibilities under the law.

Because of funding restraints, the booklets contain important but basic information for community members. Any person wanting to know more about any aspect of the topics covered by the booklet series is advised to contact ALSWA, where every attempt will be made to provide the information.

The production of a Community Legal Education series will be accompanied by other changes in ALSWA's publishing schedule. The former monthly ALSWA newsletter will now be published bi-monthly and will concentrate on legal, social and political news of special interest to ALSWA's clients and to the legal and political fraternities in Western Australia.

A staff newsletter will be published each alternate month. Another innovation will be the production of Legal Education videos which will be distributed in VHS format to Aboriginal communities.

The first of these will go into production soon. It will feature a general overview of ALSWA's structure, policies and services, as well as information about the Service's new Women's Contact Officer position and about ALSWA's new financial workshop and referral service.

It is intended, as funds become available, to produce further videos featuring information complementary to the Legal Education booklet series.

ALSWA already has available 12 legal education pamphlets dealing with a wide range of legal matters. In addition, it carries stocks of a 'plain English guide' to eligibility criteria for accessing legal representation, and an information guide to ALSWA history, goals, philosophy, structure and funding guidelines. The guide is entitled *Striving for Justice*. Copies of the *Stolen Generations* reports 'Telling our Story' and 'After the Removal' are also available from ALSWA'S Perth office.

Criminal Unit wins appeal against harsh fines

ALSWA Criminal Unit Solicitor Victoria Williams has successfully appealed, in the Supreme Court, a decision by two Kununurra Justices of the Peace who handed down heavy fines for minor offences.

Ms Williams represented a client who was charged with possession of cannabis and possession of a smoking implement. The client had prior convictions for similar offences. The Justices imposed a fine of \$500 on the cannabis charge and \$1000 for possession of the smoking implement.

Mrs Williams argued that the fines were excessive. Recently appointed Supreme Court Judge John McKechnie agreed, and substituted a fine of \$150 on the cannabis charge and \$200 on the smoking implement charge. Justice McKechnie said a second offence of possessing cannabis should usually carry a fine of between \$100 and \$400.

Remand facilities inadequate in northern towns

A 14 year-old boy, on remand for minor offences, was held recently for three consecutive nights in the Broome police lockup, because of a lack of suitable facilities in the town. The only alternative was for the the boy to be flown 2000km to a remand centre in Perth.

Under the Young Offenders' Act, juveniles can be held for up to 72 hours in police custody while on remand, but ALSWA Deputy CEO Colleen Hayward says this is unacceptable.

Ms Hayward said the case highlighted the need for appropriate holding and caring facilities for children in such situations.

She suggested that children be sent home under strict supervision by parents, or that 'remand hostels' or houses be set up, where children could be supervised and cared for by Aboriginal 'parents'.

(continued on page two)

PROFILE - MAITLAND HEDLAM ALSWA EXECUTIVE COMMITTEE VICE-PRESIDENT

Maitland Hedlam is a Yamaji person who was elected to the Executive Committee of the Aboriginal Legal Service of Western Australia (Inc) in the 1998 election, and then voted in as Committee Vice-President by fellow Executive members.

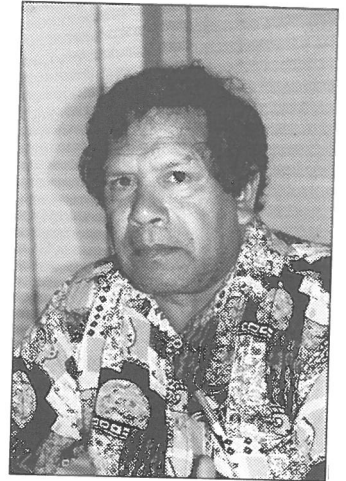
Mr Hedlam represents the Murchison-Gascoyne region where he has lived most of his life, working in primary industries throughout the region.

He attended school in Yalgoo at the Pallotine Mission Centre until sixteen years of age and is currently undertaking the Aboriginal Bridging Course at Edith Cowan University. He has seven children involved in football and

judo, and encourages all young Aboriginal people to set goals in their lives.

Mr Hedlam joined ALSWA's Executive Committee to gain a greater insight into issues affecting Aboriginal people and to demonstrate a leadership role to others in his community.

He is keen to see Aboriginal History and Cultural studies introduced in the curriculum at all levels of the State Education system.



Mum gets her kids back with help of Family Law

ALSWA's Family Law Unit has helped reunite a mother with her two children, aged 10 and 13 years. The mother had separated from her partner, after a four year relationship, in the early 1990's.

The children lived with their mother till late 1998, when the father applied to have the children live with him. The father had had little contact with the children between 1992 and 1997. During that period, the mother had a relationship with another man, which ended when she was assaulted, and needed counselling.

In mid 1998 she moved to Darwin to get a new start. The eldest child stayed with an aunt in Perth for schooling purposes, while the younger stayed with the mother. Later that year, the mother, needing to come back to Perth to look after her unwell father, asked the children's father to look after the youngest child, to which he agreed.

After the mother's father died she returned to Darwin, as her priority hous-

ing had been placed on hold. The children stayed in Perth to complete schooling, one with the aunt and one with the father. At the end of the year, both were expected to return to Darwin. When the time came, however, the father refused to let the child go and filed an application to have both children live with him.

The Court ordered the aunty and the mother not to remove the children from the Perth area, and postponed the matter until January 1999. The mother consulted ALSWA and applied to have the matter held until mid-February, to prepare answering documentation to the father's application. In the meantime, the father was allowed to see the children.

A welfare report confirmed that both children wanted to live with their mother. The Court ordered the father to return them, and that the mother be at liberty to move to Darwin.

It also ordered that the father have reasonable contact with the children.

*Stolen Generations
reports available*

**TELLING OUR
STORY
(\$25.00)**

&

**AFTER THE
REMOVAL
(\$35.00)**

*Plus \$5.00 postage
and handling*

*Copies of
these reports
are available
from ALSWA*

Tel (08) 9265 6666