



# ***Your Legal Rights***

Edition 8, Dec. 2006



## *Christmas Message from the Chairperson*

On behalf of Board and Staff of Aboriginal Legal Rights Movement Inc, I wish readers, colleagues, and clients of ALRM and Community Members a Merry Christmas and Happy New Year.

2006 has been a challenging year for ALRM faced with escalating costs and increased demands for services with no increase in funding. The most significant success in 2006 is without doubt ALRM being awarded the Legal Aid Service Contract by the Commonwealth Attorney General. The Attorney-General Philip Ruddock visited ALRM on 23 January 2006 and formally announced the success of ALRM in the Contract.

Other achievements are outlined in ALRM's Annual Report, which may be obtained from any office of ALRM.

Please enjoy the holiday season with family and friends and those of you travelling on our roads, may your journey be safe and enjoyable. I hope Santa brings you and your family every happiness to carry into the New Year.

*Barbara Wingard*  
**Chairperson**



## *Christmas Edition*

### *Message from the CEO Neil E Gillespie*

This is our final issue of *Your Legal Rights* for 2006 and I wish the staff, readers and all Community Members a Merry and Holy Christmas and a Joyous and Prosperous New Year.

I confirm that the Aboriginal Legal Rights Movement Inc Annual General Meeting took place on 24<sup>th</sup> October with the most significant announcement being the Financial strength of ALRM. Our financial base increased from \$2,678,633 in 2005 to \$3,545,099 for year ended 30<sup>th</sup> June 2006. This significant achievement was a result of strong financial management by the Board and Staff.

The other key decision of the Annual General Meeting was the appointment of new Auditors Hayes Knight.

I now turn to our last Board meeting held in Ceduna recently:-

1. I am pleased to report ALRM is publishing a book to commemorate the 40<sup>th</sup> anniversary of the May 1967 Referendum. This publication will be a collation of writings and contributions from a number of prominent Australians.
2. A decision was made to make available some of ALRM's legal capabilities on a fee for service basis in an endeavour to increase our revenue base.
3. I have been asked to review ALRM's internal and external communications with a view to improving the way we communicate with our community and other key stakeholders.
4. ALRM is negotiating with the State Government with a view to overcoming the State's reluctance to contribute to our legal aid operations.

One final piece of good news. ALRM was recently provided a small grant of \$12,500 to enable us to purchase badly needed furniture. I am appreciative of the State Government through Community Benefit SA in providing these funds to enable us to purchase replacement furniture that is sadly needed.

Finally, I wish everyone a safe and happy holiday season. For those travelling on the roads please take care and enjoy the ride.

*Neil E Gillespie*  
**CEO**

## **BIRTHDAY!!**

**Koonibba Community is celebrating 100 years. The ALRM and all staff extend their best wishes to the Community.**

## **Sweet dreams are made of this:**

Two Aboriginal students have won scholarships to help them realise their dreams of studying at university or TAFE.

Telisha Green, from Wirreanda High School and Kristen Forbes, from Windsor Gardens Vocational College gained Dame Roma Mitchell Scholarships worth \$2000 to help them complete SACE studies.

Sourced from a story in The Advertiser  
09/11/06

## **CONGRATULATIONS!!**

WELL DONE TO YEAR 12 STUDENT CELIA COULTHARD WHO HAS WON A 3 YEAR SCHOLARSHIP TO THE REGENCY HOSPITALITY SCHOOL. THIS IS VALUED AT \$25,000 PER YEAR AND CELIA IS THE SECOND INDIGENOUS STUDENT FROM ROSS SMITH SECONDARY SCHOOL TO BE AWARDED THIS SCHOLARSHIP IN 2 YEARS.

SOURCED FROM ROSS SMITH SECONDARY SCHOOL NEWSLETTER 08/11/06

**ALRM now has a Free Call number for clients: 1800 643 222**

The number is accessible from fixed phone lines or from mobile phones within South Australia.

## **We Are Family**

ALRM staff have been busy in the lead up to the festive season collecting donations from businesses and other organisations to provide a single large donation to Aboriginal Family Support Services. Any donation over \$2.00 is tax deductible. The current total stands at:

**\$1,600.00 (as of 15/12/06)**

**If you would like to make a donation to this important service please contact:**

**Josie Jones, Finance Administrator  
on 8113 3700**

**Go on, dig deep, after all it is Christmas**

## **PAYOUT DEAL FOR 'STOLEN' GENERATIONS**

On October 18th this year the Tasmanian government issued a government apology and announced a \$4 million compensation scheme for indigenous children removed from their families under assimilation policies.

The scheme will involve the appointment of an independent assessor who will consider individuals' testimonies and inspect government records to test claims of wrongful removal by welfare agencies, mostly from the 1930's to the 1950's. Those found to have genuine cases will then receive compensation from a funding pool - to be capped at about \$ 4 million. The Tasmanian Aboriginal Centre has already identified 40 individuals with "solid claims" for compensation.

This is the nation's first compensation package for those who suffered under assimilation policies and has been lauded by Aboriginal leaders as a model for other States to follow. TAC legal adviser Michael Mansell said that he hoped other States would examine and adopt the Tasmanian model and that the Prime Minister would rethink his opposition to an apology for the stolen generations. "This is a very groundbreaking decision and not just the other States but John Howard should take a very close look" he said.

Some claimants told The Australian newspaper the scheme would allow them to "begin to forgive". Annette Peardon, 57 said she and two siblings were taken from their mother on Flinders Island, ostensibly because of 'maternal neglect'. She disputes this; remembering a clean home with sufficient food. Ms Peardon's subsequent childhood was marked by "physical, emotional and sexual abuse" at institutions and foster homes, she said. While she found her mother after turning 21, her sister and brother were never reunited with her. "It broke her spirit - she had three children taken away and only one went back", Ms. Peardon said.

Sourced from an article by Matthew Denholm in the Sydney Daily Telegraph.

## **ABORIGINAL VISITORS SCHEME**

The Aboriginal Visitors Scheme (AVS) are looking for more Aboriginal people within all areas as far as Mid North region, Port Pirie, Port Augusta, Whyalla and the River land as well as the Adelaide metropolitan area. AVS provides care, comfort and support to Aboriginal people whilst they are in police custody.

The Aboriginal Visitors Scheme is a means of reducing the likelihood of deaths in police custody. It is an Aboriginal-controlled program involving the Aboriginal community and Police. Aboriginal Visitors are rostered to the following police stations: Adelaide, Elizabeth, Holden Hill, Port Adelaide, Sturt, Christies Beach, Kadina, Murray Bridge, Port Pirie, Port Augusta and Whyalla.

Visitors make sure detainees are not alone and that they are treated properly. The visitor will observe conditions and ensure the duty of care obligations are undertaken by the police. If a detainee has any concerns or problems, they are able to discuss them with the visitor.

Aboriginal Visitors Scheme needs you. Are you community minded and want to help people? We are looking to recruit more visitors. Visitors are paid for their time attending to a detainee and are reimbursed for kilometres travelled.

**For more information please contact John Carbine, AVS Manager on (08) 8113 3777**

### **DO YOU HAVE A MATTER BEFORE THE COURT AND USE DRUGS?**

**If so.....**

**You may be eligible for free drug treatment as part of the court process**

**For more information ring C.A.R.D.S. on: 8204 8614**

**C.A.R.D.S.  
COURT  
ASSESSMENT  
REFERRAL  
DRUG  
SCHEME**

## GET THE FACTS: KNOW YOUR RIGHTS

**THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION (HREOC) HAS RECENTLY LAUNCHED A BROCHURE AND INFORMATION KIT FOR ABORIGINAL WOMEN ON DISCRIMINATION AND THEIR RIGHTS. THIS KIT WAS ADVERTISED IN THE KOORI MAIL. FOR MORE INFORMATION LOG ONTO [WWW.HUMANRIGHTS.GOV.AU/GET\\_THE\\_FACTS](http://WWW.HUMANRIGHTS.GOV.AU/GET_THE_FACTS)**

### Do you require Confirmation of Aboriginality?

If anyone from the community needs their "Confirmation of Aboriginality" approved by the Board, they need to submit the form to the Chief Executive's Office.

The forms can be obtained from Debbie Crkovnik. Please ring on 1800 643 222 or visit our website on [www.alrm.org.au](http://www.alrm.org.au) to get the form.

### Financial Counselling is available at ALRM's Adelaide Office.

This service is provided free of charge and is confidential.

Please ring Margaret Gipson on Free Call no. 1800 643 222

How to pay an overdue court fine (Even if you can't afford to pay it now).

To find out more please ring Courts Administration Authority on Court Fine Hotline 1800 659 538.

### Youth Detention Centre contravenes UN Child Protection Laws

In her 2005-06 Annual Report, Pam Simmons, South Australia's Guardian for Children & Young People writes that the Magill Youth Detention Centre (home to children as young as 10) "contravenes UN Rules for the Protection of Juveniles Deprived of Liberty, and is potentially in violation of...the UN Convention on the Rights of the Child".

Jay Weatherill, State Families Minister, said the Government's replacement plans could still be five years away; although he said money was being spent in the "short term" to "bring it up to scratch".

According to Ms Simmons however, "modification" was not the answer.

Magill accommodates an average of 25 children (mostly those under State care) each day. There were 941 admissions in 2005.

Sourced from a story by Kara Phillips in The Advertiser 22/11/06

### ALRM FIELD OFFICERS

Phone: 8113 3777

ALRM Field Officers are here to help you if you need legal assistance. They are your first point of contact with ALRM.

You can contact a Field Officer 24 hours a day, seven days a week, so you won't be alone in your trouble. They will listen to your questions, and find ways for you to get the help and information you need.

**If clients are picked up after hours on call out and bailed they need to advise the Field Officer who attends the police station that they request an ALRM**

**Solicitor to represent them at their next court hearing.**

## **THE CRIMES AMENDMENT (BAIL & SENTENCING) BILL**

### **BY C.J. CHARLES, GENERAL COUNSEL**

The Crimes Amendment (Bail and Sentencing) Bill 2006 was passed through the Senate on Thursday December 7th 2006. It will become law upon receiving the Royal Assent.

#### **What does the Bill actually do?**

In the following paragraphs I will summarize the most important and damaging aspects of the Bill. I have omitted reference to the innocuous sections for the sake of brevity. Item 4 of the Bill removes the term 'cultural background' from paragraph 16A(2)(m) of the Crimes Act. The effect of this amendment will be that a court will no longer be expressly required to consider a person's cultural background when passing sentence on that person for committing a Federal offence.

New subsection 15AB(1)(b) prohibits a bail authority from taking into account any form of customary law or cultural practice when considering whether to grant bail to an alleged offender. According to the Explanatory Memorandum, this amendment "helps establish the principle that neither customary law nor cultural practice can be used to mitigate an alleged offender's criminal behaviour and on that basis allow an alleged offender to be granted bail". The ALRM submission to the Senate Standing Committee on Legal & Constitutional Affairs regarding this aspect of the Bill made the following points:

3.79 Matters of mitigation are not normally taken into account in relation to bail applications, since the bail discretion may be applied whether the person would be pleading guilty or not guilty and is made in the context of the presumption of innocence. In that circumstance a provision which prevents a court from taking into account customary law or cultural practice as a reason for excusing, justifying etc alleged criminal behaviour, in relation to a bail application for the offence charged may not be relevant to the consideration of bail in any event.

3.80 ALRM submitted further that "either the paragraph is too narrowly drawn to achieve what was intended, or else it is not clear what actually was intended by the provision".

**Item 5 inserts new subsections 16A(2A) and (2B) into the Crimes Act. The former expressly prohibits a court from accepting a 'customary law or cultural practice' as an excuse or justification when sentencing a person for having committed a Federal offence. The Explanatory Memorandum explains that Item 5 enacts COAG's decision, made on July 14th 2006, that no customary law or practice can provide a "reason for excusing, justifying, authorising, requiring or rendering less serious the criminal behaviour to which the offence relates". This outright prohibition on courts taking into account customary law in sentencing effectively singles out those groups to which issues of customary law may be relevant - Aboriginal & Torres Strait Islander people. HREOC, the Law Council of Australia, the Australian Law Reform Commission and many Aboriginal legal services including ALRM made submissions to the Senate Standing Committee opposing the Bill. The Committee (which was dominated by Government members) recommended against Item 4 and also recommended substantial alterations to the other provisions. The following are excerpts from the Committee's Report which exemplify its courageous stand against imprudent and damaging government legislation:**

3.96 In relation to sentencing, the Bill has a limited (but not insignificant) scope in its application to Federal offences. Further, in some respects the Bill is superfluous because it does little to change the reality of the current situation particularly in relation to notions of customary law as a 'defence', and to the consideration by courts of the circumstances of offenders outside their criminal behaviour. However, the committee considers that the most concerning feature of the Bill is the symbolic message it sends to the judiciary (and the community at large), and the judicial uncertainty it may create.

3.97 The Bill is also likely to have significant consequences if a similar approach is adopted in the states and territories. As evidence to the inquiry strongly indicated, the Bill will inevitably impact most on Indigenous Australians and those with a multicultural background.

**The Committee was also sceptical of the Attorney General's Department opinion that the Bill was not discriminatory because it maintains formal equality before the law and gave expression to that in paragraph 3.97:**

3.97 The committee notes the Department's assertion that the Bill is not discriminatory; that the Bill may be drafted in a way that accords with principles of formal equality but, clearly, in practice it is likely to apply only to certain categories of offenders. It does not therefore provide substantive equality to Indigenous offenders or offenders with a multicultural background.

## **THE CRIMES AMENDMENT (BAIL & SENTENCING) BILL (CONT:)**

**This is an opinion with which ALRM most wholeheartedly agrees. It will also provide to ALRM and other indigenous legal services common ground with other services for multicultural and racial minority groups.**

**With paragraph 3.99 the Committee cut to the chase in its criticism of the Bill:**

3.99 The committee is also concerned about the Bill's removal of the phrase 'cultural background' from paragraph 16A(2)(m) of the Crimes Act. The committee does not accept the Department's explanation that this will ensure the law applies equally to all persons. Evidence received in the course of the committee's inquiry strongly suggests that, in practice, this will not be the case. The proposal is at odds with well-established common law principles relating to the relevance of cultural background and customary law to sentencing decisions. The committee notes further that the Federal Parliament gave bipartisan support to the insertion into the Crimes Act of the 'cultural background' requirement in 1994. The committee is concerned about the complete absence of consultation in the present case in relation to removing the phrase, despite its specific introduction in 1994. In addition, the committee note that, while the Bill's stated aim is to address violence and child abuse in Indigenous communities, its implications are much wider.

### **What are the implications of the passing of the Bill?**

**The most immediate and stark implication is summed up by the Senate Committee's concluding remarks in paragraph 3.103:**

3.103 The committee is also mindful of evidence arguing strongly that the Bill conflicts with every major inquiry into the role of cultural background and customary law in the Australian legal system, including several ALRC reports and recommendations of the Royal Commission into Aboriginal Deaths in Custody.

**But there are also implications for the integrity of the Racial Discrimination Act. In accordance with the principles of Neal v R (1982) 149CLR at page 326 equality before the law implies and requires recognition by courts of cultural difference in relation to sentencing matters, and for Aboriginal people, some recognition of customary law as mitigation of penalty:**

**"The same sentencing principles are to be applied, of course, in every case, irrespective of the identity of a particular offender or his membership of an ethnic or other group. But in imposing sentences courts are bound to take into account in accordance with those principles, all material facts including those facts which exist only by reason of the offender's membership of an ethnic or other group. So much is essential to the even administration of criminal justice"**

**Functional recognition of Aboriginal customary law has been carried out by Common law courts throughout Australia for Aboriginal people for over 50 years. Since an equality measure like 16A(2)(m) of the Crimes Act has now been repealed and since the new subsection 16A(2A) expressly prohibiting courts from accepting 'customary law or cultural practice' as an excuse or justification when sentencing operates in the same way, then they both operate to deprive Aboriginal people of an important aspect of equality before the law. This targeting of Aboriginal people and indeed other ethnic minorities hitherto protected by 16A(2)(m) may be contrary to the Racial Discrimination Act. As subsequent Commonwealth legislation those sections of the Crimes Act may operate as an implied repeal of the Racial Discrimination Act to the extent of the inconsistency.**

**Such an erosion of fundamental rights must be a cause for concern to all Australians and raises the question of whether we need an entrenched Bill of Rights in order to protect basic rights and freedoms and the Racial Discrimination Act itself from subversion by capricious Governments.**

**The passing of the Crimes Amendment (Bail & Sentencing) Bill 2006 was also part of the COAG and Indigenous Summit process. Commonwealth grants to the States for vitally needed indigenous substance abuse rehabilitation facilities and programs were said to be tied to the passing of equivalent State legislation. We await the State government response. Apart from the clear threat of Commonwealth tied grants being used to limit the powers of State parliaments, is there not also the spectre that if State legislation is assembled in similar form to the Crimes Amendment (Bail & Sentencing) Bill that it might be contrary to the Racial Discrimination Act?**



## CONNECTING SPIRITS

A GROUP OF Aboriginal and non-Aboriginal students from Meningie Area School and Birdwood High School are currently in Belgium visiting the graves of the Ngarrindjeri Anzacs who were killed in action during World War 1. This trip follows the connecting spirits ceremony in which soil from their graves was returned to the Coorong on Anzac Day 2005. The Belgian media has covered the visit both in print and as a major news story on all of their TV channels. The photo above shows Victor Koolmatrie performing the traditional Ngarrindjeri dance in front of the grave of Private Rufus Rigney at Harelbeke Cemetery in Belgium. On the right is Rita Lindsay reading the welcome. Story & photos: Meningie Area School & Birdwood High School



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**“We acknowledge the sup-  
port of the Australian  
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tion of this Newsletter”**

**ALRM AGM**

ALRM held its Annual General meeting on October 24th 2006

Following the Agenda, Minutes of the last AGM were confirmed.  
The Chairperson and the CEO presented their reports.

Reports of the Auditors and the Finance Section were presented.  
Auditors for the next year were also appointed.

**Tirkandi Mukandi Mukarta-Learning to play smart**



**The South Australian Aboriginal Sports Training Academy is lo-  
cated at Para West Adult Campus, 23 Crafter St,Davoren Park.  
SAASTA’s vision is Tirkandi Mukandi Mukarta (learning to play  
smart) which focuses on supporting young people to achieve at the  
highest level through sports, recreation and the arts. There is an in-  
formation session coming up on February 7th 2007 at 10.00am.  
If you want to know more log on to: [www.saasta.org](http://www.saasta.org) or phone: (08)  
8254 6300**

**CONTRIBUTING TO  
“YOUR LEGAL RIGHTS”**

Contributions to ‘YLR’ are co-ordinated by Sapna Dogra.  
Feedback and new stories are welcome, along with names and addresses  
of people who would like to receive the newsletter.

**Our next issue is due in March 2007  
Phone: (08) 8113 3777 or E-mail: [sapnad@alrm.org.au](mailto:sapnad@alrm.org.au)**