



Your Legal Rights

Christmas edition

Edition 12, Dec. 2007

Financial Counselling and Consumer Protection in the APY Lands

It has been a long haul for the people in the Lands to have access to services that many people take for granted.

However, with the creation of the position of financial counsellor based in Port Augusta servicing the Lands, it seems that the times are changing for the better.

ALRM has been working toward the ongoing delivery of service to the Lands, in relation to financial counselling and consumer protection. Our Port Augusta office is in a prime position to deliver that service.

During the last six months we have been scoping the need and issues that require attention in the Lands and a volume of concerns have surfaced.

There is a definite lack of banking resources with no service at all to deposit cash. This is problematic on many levels. ALRM is working with the Department of Health and Aging toward a proposal with a major bank, regarding the roll out of banking services on the Lands. This proposal incorporates a whole service package with local people being trained to assist people in the community with day to day banking.

“ALRM is becoming a loud voice in the Lands and continues to offer protection for the consumer.”

Another project ALRM has been working toward delivering in the Lands, involves the Public Trustee and the provision of a culturally appropriate service to assist people managing day-to-day expenses while any surplus is saved. This is a different service from that which has previously been offered by Public Trustee; it is voluntary, transparent and the client has the ultimate say on how their money is managed. ALRM is promoting the incorporation of financial literacy training as an essential part of this service

ALRM is becoming a loud voice in the Lands and continues to offer protection for the consumer. We are keeping a close watch on trading practices in the Lands and are working closely with ASIC and OCBA toward stamping out unconscionable trading and unfair sales tactics. By making our presence known we are asserting Anangu rights as consumers, and letting vendors know we are watching and are currently gathering evidence to ensure unscrupulous practices are stopped. We are largely speaking about Book Up, abuse of the Centrepay system and used car and furniture sales. For far too long traders have been getting away with breaching Federal and State laws in relation to trade practices and ALRM wants to put a stop to these practices.

ALRM is holding workshops/information days in each of the communities beginning with Amata, Ernabella, Frengon and Indulkana through December. We are meeting with people in family and community centres and TAFE's to speak about debt tjukur (debt story) and Mani Ngulaku Tjunanyi (saving money). At these meetings we discuss the financial issues that are affecting Anangu people. We assist with budgeting, financial literacy, saving techniques and consumer legal issues. We finish the day with cold tinned peaches and cream, which go down very well indeed.

As you can see there are some great developments afoot and many new strategies in the pipeline.

If you would like to speak to ALRM about any consumer of financial issues or would like to talk about issues in the Lands please call Renee Ellis on (08) 8642 4366.

CHRISTMAS MESSAGE FROM THE CHAIRPERSON

On behalf of the Board of Aboriginal Legal Rights Movement, I wish all a very Merry Christmas and a Happy New Year.

I am pleased to report that ALRM has been offered an extension of 3 years to our existing legal aid funding which expires 30 June 2008. Negotiations will take place shortly between ALRM and our funding agent and it is hoped that the incoming Government will honour its commitment to fund ALRM on parity with mainstream legal aid.

I confirm that progress is being made to prepare ALRM to relinquish the Native Title Representative Body Status to another organisation representing Native Title Claimants.

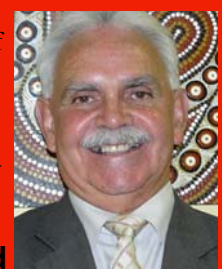
It is expected that this will occur on 1 July 2008.

A list of our major achievements is published in ALRM 2006-2007 Annual Report and may I encourage you to access it from our website or through a hard copy from any of our offices.

Please enjoy the holiday season with family and friends and those of you who are travelling; may your journey be safe and enjoyable.

I sincerely hope Santa brings you and your loving family every happiness in this most joyous time of the year.

Frank H Lampard



CHRISTMAS MESSAGE FROM THE CEO

Another successful year of operations by ALRM is almost completed. This has not occurred by accident but by due diligence by the Board, Management and Staff in executing their responsibilities in a professional and committed manner.

I take this opportunity to wish ALRM staff, clients, readers and all community members a Merry and Holy Christmas and a Joyous and Prosperous New Year.

The Chairperson has referred the reader to our Annual Report and some of our significant achievements which I now detail below:

- The new Board took office early in the year under the Chairmanship of Frank H Lampard. I welcome our new members and thank the outgoing members including immediate past Chairperson Barb Wingard whose support and counsel was invaluable to me.
- A new financial counselling service was introduced in July 2007 as were two restorative justice programs.
- We have completed a full review of our Policies and Procedures manual which will be considered by the Board at its next meeting.
- Success was achieved in a number of Native Title activities with details available in our Annual Report.
- ALRM has advocated to the Australian Government and the National Indigenous Council to review and alter the public policies regarding funding of Aboriginal legal Aid and Family Violence Prevention Legal Services. Hopefully the incoming Rudd Government will fund these programmes to the same extent that mainstream services are funded. It is also expected that improved working relations by the Rudd Government with the States will result in a better deal for our mob in SA.
- The media has taken up ALRM's call to replace the Police Complaints Authority with an Independent Commission Against Corruption. All that is needed is State Government resolve to make this happen and bring us in line with other States.
- It is pleasing to report that ALRM was able to send a number of Board members and staff to United Nations training courses in Canberra and to the UN Permanent Forum on Indigenous Issues in New York.
- We were also able to secure capital funding from the Commonwealth Government to undertake badly needed repairs to our premises. ALRM staff have worked in an environment of old and dilapidated furniture for many years so it is pleasing to receive this funding.
- It is doubly pleasing to report that ALRM published its book "Reflections: 40 years on from the 1967 Referendum" with financial assistance from the State Government and Reconciliation SA. Copies of the book can be obtained from ALRM offices on receipt of a small donation. The book provides a number of insights into changes that have occurred over the last 40 years.
- ALRM has been engaged in the Trevorrow Stolen Generation case for many years and which reached a satisfactory conclusion earlier in the year. We have also successfully represented families in a number of Coronial Inquiries into Aboriginal Deaths.

It is with a sad heart that I acknowledge the passing of a number of very prominent Aboriginal people and family members. These include the sad loss of Dr Doreen Kartinyeri and Dr Dennis List. Our prayers and condolences go to the families of those passing in 2007.



Neil E Gillespie
Chief Executive Officer

Finally, I wish everyone a safe and happy holiday season and a season of hope and anticipation that 2008 will bring dramatic change to the quality of life for Aboriginal people with the election of a caring and responsible National Government.

How to pay an overdue court fine

(Even if you can't afford to pay it now)

More information from
Courts Administration Authority
Court Fine Hotline 1800 659 538.

Legal Profession Bill update

Earlier this year an article appeared in Your Legal Rights on the Legal Profession Bill. This is a follow up report on significant progress that has occurred throughout the year.

Each of the matters which had been raised by ALRM have been dealt with by further minor amendments and significant progress has now been made in the legal recognition of ATSILS as Community Legal Centres through the Bill which is now before Parliament.

The Bill as presently before Parliament will satisfy the requirements for ALRM as a Native Title Representative Body and any future representative body that may eventually be created.

Key features of the Bill are

- Recognition of ALRM as a Community Legal Centre which operates as a not for profit provider of legal services to the Aboriginal and Torres Strait Islander Communities of South Australia. There is now no limitation on the kinds of clients who can engage the service, so corporate clients can be engaged.
- Recognition of ALRM, the incorporated association as being a Community Legal Centre which will now also be recognised as being a *Law Practice* in its own right, which can employ legal practitioners to be called "legal practice associates". Those legal practitioners will have a right of appearance in South Australian courts and tribunals.
- As a Law Practice ALRM will be able to operate a corporate solicitors trust account through the legal practice associates.
- Problems with the definition of controlled money, have been resolved, so grant or contract money from Government to ALRM for the provision of legal services are now specifically exempted from the definition of controlled money.
- Part 7. This is an entirely new Part, which ALRM had initially been told could not be enacted until 2010. It provides the basis for the employment of legal practitioners and the relationship of clients to ALRM.

The *Legal Profession Bill* answers all major concerns which had been raised by ALRM.

ALRM also acknowledge the assistance of the Commonwealth Attorney General's Department in its dealings with state officials in achieving the outcomes that are represented by the Bill.

ALRM Christmas Services



ALRM Office **will be closed** from Saturday 22 December till Wednesday 2 January.

Limited services will be available in our office throughout this period as listed:

- **December 27 and 28** - we will have a receptionist, one field officer and one duty solicitor available to handle any queries or emergencies.

Emergency contact

From December 29 to January 1 field officers will be on call and can be contacted through our toll free number

1800 643 222

Season's Greetings

ALRM Board and staff wish you and your family a very safe and happy Christmas.

We look forward to working with you in 2008.

Merry Christmas



South Australia mourns the passing of a fearless woman

South Australia has lost one of its most important Aboriginal elders with the passing overnight of Doreen Kartinyeri, a Ngarrindjeri woman.

Dr Kartinyeri passed away at the Maitland Hospital after a long battle with illness.

“Dr Kartinyeri was a leading Aboriginal historian and prominent Aboriginal rights campaigner who was loved and respected by all who knew her,” said ALRM CEO, Neil Gillespie.

Dr Kartinyeri, who was awarded an honorary doctorate in 1995 by Adelaide University for her work documenting the history and genealogy of many of South Australia’s Aboriginal families.

She became a prominent figure in SA history as the leading proponent of the “secret women’s business” at Hindmarsh Island, which was found by a Royal Commission to have been fabricated. Much to the delight of Dr Kartinyeri, the findings of the Royal Commission were called into question by the Federal Court and she was vindicated.

Dr Kartinyeri was particularly honoured to receive the NAIDOC (National Aboriginal and Torres Strait Islander Day of Observance) Aboriginal Person of the Year Award in 1994.

Dr Kartinyeri was an accomplished author, publishing several books, including Ngarrindjeri Nation - Genealogies of Ngarrindjeri Families (2006), the Rigney Family Genealogy (1983) and The Kartinyeri Family Genealogy (1989) and The Wilson Families Genealogies (1990 - Vol 1-3) and Narungga Nation (2003).



Above: Dr Kartinyeri

“Her passing leaves us with heavy hearts, but her legacy lives on in her published works and in the lives of those she touched,” said ALRM Native Title Unit’s Parry Agius.

“Dr Kartinyeri did a lot of work with us over the years and she always provided a valued, professional opinion. She was a stickler for detail, her knowledge of the history of Aboriginal families was outstanding.”

Dr Kartinyeri had nine children and was loved by dozens of grand-children and great grandchildren.

**ALRM has a freecall
number for clients
1800 643 222.**

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

Financial Counselling through ALRM

This service is provided free. Financial counselling services are confidential.

Please call us on 1800 643 222 (the call is free).

Restorative Justice Projects

by Chris Charles

ALRM has received funding from the Commonwealth for two projects in restorative justice for Aboriginal people in South Australia. One is in the Anangu Pitjantjatjara Yankunytjatjara Lands (APY Lands), the other is in sub-urban Adelaide.

A scoping study was carried out on the APY Lands project, to ensure that proper consultation took place and a final report of the Study will be considered by the ALRM Board, the APY Land Council and Government before a decision is made on implementation.

What is restorative justice?

As the criminal justice now operates, Aboriginal people often expect to be *victims of the criminal justice system*; they expect harsh treatment that will further alienate them. They fear custody and they fear death in custody. They also have an abiding sense of injustice.

It would be difficult, but necessary to bring those issues into the restorative context for Aboriginal people to get any sense that they were being treated seriously.

Restorative justice principles will be harder to apply in a nation where Reconciliation as a cultural project for transformation of dominant attitudes only receives lukewarm responses and endorsement.

In a restorative system, it is not the performance of submission and guilty plea within an abstract justice system that matters; it is the face-to-face interaction of humans that matters. Victim and the accused; all need to "strip off the masks" to allow for the adjustments of attitude and conscience which restorative justice requires.

In the context of Nunga courts it is assumed that the humanising influences of the court itself will assist this process. The presence of significant others, of elders and respected persons, of Aboriginal symbols in the courtroom and the levelled social field of the court table - not the Magistrate high on the bench, are all factors which are said to humanise the court process.

For Aboriginal defendants and for other minority groups, particularly those who have been institutionalised and brutalised by the system as it presently operates, this is a real challenge.

The assumptions of a restorative system may be problematic for those already alienated from society and the idea that a Nunga court shaming process could bring the person back into society may be a vain hope in some cases. This would be the more so where psychiatric and personality disorders or drug and alcohol induced forms of mental handicap are involved - the hard cases where existing damage to individuals needs more careful attention than a sympathetic reception at a court appearance.

Thus the context of the offender, the victim and the crime and the social and political context of its commission need to be considered to see whether restorative principles could be usefully applied to a given situation. Questions as to the nature, motives for and seriousness of an offence and the existing expectations of the major players need to be considered.

Restorative Justice in remote South Australian Aboriginal Communities

A crime committed by an Aboriginal person upon another Aboriginal person, in a very specific cultural context known to them both, might or again might not allow for restoration between their families or kin groups and then the role of the Court system might be to get out of the way to allow that to happen.

The Court and lawyers' role might be; to allow for the relevant parties to create an effective restoration between them and to ratify it, during or after the event.

I want now to examine the contexts in which this might or might not be possible.

The concept of restorative justice has a great deal of merit in relation to the APY Lands. It should be borne in mind that traditional Aboriginal society is stateless, and that issues were traditionally resolved as between families on the basis of a mutual obligation of reciprocity. It is on that basis that many traditional punishments took place and the notion of payback and the restoration of peace through readjustment between families and groups was and is maintained. Adjustment for wrongs was immediate and personal, not delayed and impersonal and imposed from without by a court.

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Learn how to save on your gas and electricity bills

Home Energy Review, run by Uniting Care Wesley, is a free service that can help you understand how your household uses electricity and gas.

You could learn ways to use less electricity, or get tips on how to make your home more comfortable in summer and winter, while keeping your energy bills under control.

A home energy review takes about 90 minutes and is carried out in your home with the help of a trained Home Energy Adviser. Together you'll probably look at your old energy bills, hot water system, window blinds, lights and other appliances.

The home energy adviser can also install a free energy-saving retrofit kit (low-energy light globes, AAA-rated showerhead and draft stopper).

This is a free service for householders with a low income (eg with a Health Care Card or Pensioner Concession Card) or with unaffordable energy bills.

To apply call Western Region Energy Friends on 8245 7199 and leave your name, address and contact phone number.

Make your dollars go further over Christmas

Our financial counsellors put together these little tips to help you stretch your dollars further over the holiday season.

Lay-by! Lay-by is the best option – then you have something to aim for and you only pay off what you can afford.

Grocery **shop on the last day** of a holiday or weekend – products are often reduced at that time.

If you are short of cash **speak to your providers** – often electricity, gas and telephone providers will cut you some slack over the Christmas period allowing you to catch up in the New Year.

If you are paying off a loan to the bank and are short of cash **speak to the bank** they may offer a reduced payment option for a short period.

Look around for bargains, remember that you are the consumer and the sales people want your money. Tell sales people if you have seen the item on sale somewhere else or ask for discount I often say “I would like to arrange discount who do I speak to”. You will be surprised, you will often get discount.

Set a budget and stick to it for example \$20 present for Billy means \$20 only. Look around for something that is value for money in that price range.

Take a **calculator** with you to the shops – this will save a budget blow out.

Most importantly keep a sense of humour, **have a laugh** at the hoards of people busying around sales like ants on an insect – things are quite funny when you look at it that way.

SOUTH AUSTRALIA 2008 NAIDOC COMMITTEE

EXPRESSIONS OF INTEREST

The Department of the Premier and Cabinet is inviting interested Aboriginal and Islander people to apply for membership to the 2008 National and Torres Strait Islander Committee (NAIDOC), South Australia.

The Committee will be responsible for applying for grants and organising activities to be held during NAIDOC Week (6-13 July 2008).

Interested Aboriginal and Islander people will need to submit a written application addressing the following criteria:

- **Demonstrated understanding of NAIDOC**
- **Experience in Aboriginal focus event coordination**
- **Ability to communicate effectively with all members of the Aboriginal community including youth and elders**
- **Deal effectively with the non-Aboriginal community**
- **Ability to provide contribution on a voluntary basis**

All submissions and enquiries are to be directed to Ms Nerida Saunders, Director, Culture and Heritage, Aboriginal Affairs and Reconciliation Division, Department of the Premier and Cabinet, GPO Box 2343, Adelaide SA 5001.

Telephone: 08 82268922 by 21 December 2007.

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 Leonie Tremayne. Please ring on 1800 643 222 or visit our website on www.alrm.org.au to get the form.

Restorative Justice Projects

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At first blush the communitarian nature of traditional society suggests its immediate suitability for restorative principles; as if they could be in some way engrafted on to tradition. But that tradition has had its authority eroded and undermined in numerous ways; nothing is simple anymore.

Indeed traditional society on the APY lands is under enormous pressure, not least from the effects of petrol sniffing.

Restorative justice might also mean *restoring* to Aboriginal groups their ability to apply principles of reciprocity and dispute resolution. This raises again the difficult question of traditional punishment. Yet an important aspect of recognising traditional punishment is that it allows for peace making within Aboriginal communities. Peace making within communities is a high priority because it is about the maintenance of Law and Order.

Recognition of Aboriginal Customary law is thus also about the maintenance of lawfulness and *restoration* of the ability of Aboriginal societies to regulate themselves.

Nevertheless a restorative Justice Program need not be about restoring traditional authority to keep peace by force of personality and of spears. Reciprocity and restoration principles may be applied and adapted to allow for the restoration of peace and order by other forms of restoration.

Generalised restitution, self imposed temporary exile, being sent to a Tawarra camp, or to an Aboriginal correctional facility on the lands in question are the kinds of options that Aboriginal communities and a restorative justice system need and which were either acknowledged or recommended by the State Coroner of SA in 2002 and again in 2005.

It seems clear that for restorative justice principles to be successful communities and community based courts need lots of options and suitable facilities to enable their orders to be effective and to create the social space for restoration to take place.

THE DEATH OF DR DENNIS LIST

The Board and staff of Aboriginal Legal Rights Movement Inc note with sadness the passing in November 2007 of Dr Dennis List.

Dennis List was an academic attached to the University of South Australia who was able to apply his theoretical understanding of "scenario planning" to the practical problems that faced the Aboriginal Legal Rights Movement in 2001-2 and beyond. ALRM was facing the prospect of transfer of government responsibilities from ATSIC to ATSISS and eventually to the Attorney General's department and a very uncertain future in the coming world of tenders and contracts.

It was a time of considerable uncertainty for ALRM and instability in the governance of the organisation. Dr List came to ALRM and provided to the staff, the then Council and members of the Aboriginal community planning workshops in which various scenarios for the organisation were mapped out and anticipated. The set of four scenario planning workshops which Dr List facilitated were very helpful in framing the strategy that led to preparation of the tender process for ALRM as well as the strategy that led to the Annual General Meeting in 2003 and the adoption of the new constitution. When the inevitable process of tendering began, Dr List once again came to assist ALRM in the preparation for tender process.

Dr List gave unstintingly of his time and effort in support of ALRM and what was realised to be a very difficult time for the organisation. All of us were saddened to hear of his passing and ALRM expresses sympathy to his widow and family as well as to his University Colleagues.

ALRM FIELD OFFICERS

Aboriginal Legal Rights Movement 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. They will listen to your questions, and find ways for you to get the help and information you need.

Phone: 1800 643 222





Aboriginal Legal Rights Movement Inc.

HEAD OFFICE

321-325 King William St.
Adelaide SA 5000
Phone: (08) 8113 3777
www.alrm.org.au
Email: info@alrm.org.au

C.E.O

Neil E Gillespie

MURRAY BRIDGE

Shop 1, 20 Bridge Street
Murray Bridge 5253
Phone (08) 8532 4788

CEDUNA

Cnr East Tee & Mjerghiny Dr.
Ceduna 5690
Phone: (08) 8625 2200

PORT AUGUSTA

12 Church St. Port Augusta 5700
Phone: (08) 8642 4366

PORT LINCOLN

PLACC Offices
30 Ravendale Road
Port Lincoln 5606
Or
PO Box 800 Port Lincoln 5606
Phone: (08) 8683 4160

NATIVE TITLE UNIT

Level 4, 345 King William Street
Adelaide SA 5000
Phone: (08) 8110 2800
Executive Officer, Parry Agius

We acknowledge the support of the Australian Government in the production of this Newsletter

ALRM opposes changes to Young Offenders Act

by Chris Charles

The Aboriginal Legal Rights Movement has made a submission to the Attorney General regarding the *Young Offenders Act* Amendment Bill 2007.

The Bill was supposed to be an implementation of Social Inclusion Commissioner, Monsignor David Cappelletti's "To Break the Cycle" report however, it was considered by ALRM to have gone well beyond Cappelletti and to have been inappropriate in a number of ways.

The effect of a proposed change to Clause 6 the Bill is to impose a duty upon the court to balance both the protection of the community and the need to rehabilitate the youth.

ALRM recommended that in any amendment to section 3 *Young Offenders Act*, the focus and wording should remain focussed on rehabilitation and care, correction and guidance of the youth. This is reflected in Cappelletti. The requirement in the existing section 3 is that "care, correction and guidance be directed towards a youth's development into a responsible member of the community". ALRM recommended in relation to Aboriginal youths that that requirement should be recast in such a way as to make clear that it is to be read with section 3(3) (e) – maintaining a youth's sense of racial and cultural identity.

Recommendation 7 of the Cappelletti Report endorsed the existing words of section 17 of the *Young Offenders Act*. (Section 17 of the *Young Offenders Act* gives the Youth Court itself the power, in certain cases, to send serious offenders and serious offences for trial and sentence to an adult court and to remove from a particular accused youth the protections, particularly from personal media scrutiny that the *Young Offenders Act* gives.)

Out of caution Cappelletti notes, regarding amendment to section 17 *Young Offenders Act*

"Legislative change in this regard should only be pursued if these provisions are demonstrated to be unworkable."

Under the Bill the DPP would be given the power to determine whether youths be sent directly in the adult court and the Bill takes this power from the Youth Court.

ALRM's view is that it is not appropriate that prosecuting authorities should be the judge and decision maker on the question whether a youth should be dealt with as an adult. Such a question should be determined by a Court of law on the balancing of conflicting interests. **The judges of the Youth Court are very experienced in judging the effectiveness or otherwise of the sanctions they can impose and whether a particular youth and his or her offending are deserving of more serious attention. This power should not be taken from them.**

ALRM is also concerned that Aboriginal youths who are accused of serious offences would be sent straight to committals in the Magistrates Court, by a decision of the DPP, without any involvement of the Youth Court. **The interest of a prosecutor is to pursue successful prosecution and to exercise his powers accordingly. That includes personalised use of the media, which is possible in the Magistrates Court but not the Youth Court. ALRM would be most concerned at the prospects of racially based and personalised media denunciation, possible in the Magistrates Court being inappropriately applied to Aboriginal Youths.**

ALRM opposed the amendments to the *Young Offenders Act* in the amending Bill, but it is yet to be seen whether the advice of ALRM will be heeded by government.