

# Timeline of Legislation Affecting Aboriginal People

The information in this handout, aimed at South Australian middle and senior years learners, is of legislation which specifically affected Aboriginal people, not only in South Australia but with interstate comparisons as well. The information is adapted from Indigenous people and the law in Australia, Chris Cunneen and Terry Libesman, Butterworths Legal Studies Series 1995 together with South Australian Aboriginal Studies documents.

A strategy for classroom use is as a class select three events, one each from protection, assimilation and self-determination, and critically analyse the intentions of the legislation then compare this with the known or probable effects of the legislation. Individual, pairs or small groups of students could then similarly choose three events to critically analyse then share their findings with the class. The purposes are to show that intentions do not always result in intended outcomes; that it is easier to be critical in retrospect; and, to learn skills to act or respond as appropriately as possible in the future.

Possible positive intentions	Possible negative intentions	Legislation affecting Aboriginal people	Possible positive outcomes	Probable negative outcomes
The British colonists wanted Aboriginal people to become like them, thinking that their culture was 'advanced'	This would leave Aboriginal lands more freely accessible to British farmers.	1842 South Australia The Waste Lands Act allowed for reserves to be set aside to encourage 'civilised' habits among the native population by farming. Most of the sixty reserves were later rescinded.	Aboriginal people had somewhere they were allowed to live for a short time.	The reserves were too small for farming, far too small for traditional hunting and gathering of food and too small for sustainable living. Possibly resulted in 'blame the victim'. How might they have learnt the skills needed for farming?

Perspectives to consider could include political (who has the power), legal (Aboriginal law v. British, Colonial or Australian law), social (effects on particular groups), economic (in whose interests?), environmental impact.

Finally, the class could discuss very recent or planned legislation to critically analyse. Cross cultural and global comparisons can be made to transfer skills learnt through this process. If possible invite an Aboriginal person to be involved in the class activity either in person or via telephone, fax or email link ups.

## PROTECTION

**1834 South Australia** Foundation Act passed in British Parliament for establishment of the South Australian colony in what is described as 'waste and unoccupied'. This Act made provision for 300 000 square miles to become the territory in which British settlers could begin the colony of South Australia. The Letters Patent relating to the Act said that nothing could be done which would "affect the rights of any Aboriginal natives of the said Province to the actual occupation or enjoyment in their own persons or in the persons of their descendants of any lands therein now actually occupied or enjoyed by such natives".

Sympathizers in England knew of the ill treatment of Aboriginal people in the other Australian colonies but their attempts to protect Aboriginal rights failed. Although the Letters Patent had the force of law, they were virtually ignored by the settlers and authorities.

**1836 South Australia** Protector of Aborigines appointed to provide 'protection in the undisturbed possession of their property rights to such lands as may be occupied in any special manner'. Protector was to 'make (Aborigines) friendly to the settlers, induce them to labour, lead them to civilisation and religion'. They become British subjects but their evidence is not allowable in court.

**1842 South Australia** The Waste Lands Act allowed for reserves to be set aside to encourage 'civilised' habits among the native population by farming. Most of the sixty reserves were later rescinded.

**1844 South Australia** Ordinance 12 provides for the protection, maintenance and upbringing of orphans and other destitute children of the Aborigines. The Protector of Aborigines becomes the legal guardian of all children of mixed descent. Evidence of Aborigines sometimes allowed in court.

**1856 South Australia** Protector's office abolished and the South Australian Commissioner of Crown Lands entrusted with the 'care' of Aboriginal people. Commissioner distributes flour and blankets and arranges medical attention.

**1869 Victoria** Aborigines Protection Act 1869. No specific powers or duties.

**1870s Queensland** Torres Strait Islands annexed by Queensland. Islands within 60 miles of coast became part of the colony of Queensland.

**1879 Queensland** Torres Strait Islands as far north as New Guinea became part of Queensland.

**1881 New South Wales** Protector appointed.

**1886 Victoria** Aborigines Protection Act 1886 gave Board regulatory powers to issue rations, clothing, blankets, etc.

**1890 Victoria** Previous act repealed and new wide powers concerning living, working, education and provisioning of Aborigines and 'half-castes'

**1893 South Australia** Fisheries Amendment Act meant that only Aboriginal people could fish in certain places

**1895 South Australia** The Opium Act meant opium could not be sold, bartered, exchanged, given to Aboriginal people other than as medicine

**1897 Queensland** Aboriginal Protection and Restriction of the Sale of Opium Act provides for Superintendents to direct Aboriginal people where to live. No right of appeal.

**1904 Queensland** Torres Strait Islanders under the control of the Chief Protector and subject to the same legislation as Aboriginal people in Queensland

**1905 Western Australia** Aborigines Act 1905 provides for management of reserves and some medical care and rations as well as employment relations. Protectors (who were police officers) were established in various districts. Provisions stopped cohabitation between Aboriginal and others.

**1908 South Australia** The Licensing Act reworded to say liquor could not be supplied

to Aboriginal people

**1909 New South Wales** Aborigines Protection Act. Half of the board consists of graziers. Act remains in force until 1969. Duties included police issuing rations to 'deserving' cases, forcing children to attend school, withholding rations to coerce Aboriginal people to move, deciding whether Aboriginal people should see doctors, patrolling and maintaining order on reserves, expelling 'trouble makers', removing 'neglected' children from their parents and sending them to 'training homes' until 14 years of age, instituting proceedings against parents who resist this, expelling light-coloured people from reserves and preventing them mixing with their families on reserves, removing whole Aboriginal communities from certain localities.

**1910 Northern Territory** Aborigines Act means Aboriginals Department had duty to 'exercise a general supervision and care over all matters affecting the welfare of the Aboriginals, and to protect them against injustice, imposition and fraud.' Chief Protector is legal guardian of all Aboriginal children. Aboriginal people could be confined to reserves. An Aboriginal woman could not marry a non-Aboriginal man without the written permission of the Protector. Aboriginal people could not be employed without a licence.

**1911 South Australia** Aborigines Act almost identical to above (South Australian government made laws also for the Northern Territory). Government have power to segregate Aboriginal people onto reserves and arrest them for leaving or refusing to go there.

**1911 Australia** By this time all states and territories with the exception of Tasmania had passed some form of 'protection' legislation with an emphasis on segregation and restriction. There was an assumption that Aboriginal people were 'a dying race'. However, by the 1920s it was apparent that the so-called 'half-caste' population was increasing.

**1915 South Australia** Crown Lands Act empowered Governor to lease up to 160 acres of land to an Aboriginal person

**1923 South Australia** Aborigines (Training for children) Act meant that Aboriginal children could be removed from their families and sent to institutions until they were adults.

## ASSIMILATION AND INTEGRATION

**1934 South Australia** Aborigines Act meant free movement for Aboriginal people only through exemptions and permits. Offence for females to wear male clothing or be with males.

**1939 South Australia** The Aborigines Act Amendment Act of South Australia makes the Aborigines Protection Board the legal guardian of all Aboriginal children. The Exemption Certificate is introduced which allows certain Aborigines to become 'non-Aborigines' if they behave as the government wants. If not exempted, Aboriginal people cannot open a bank account, buy land or legally drink alcohol. Exempted people are not permitted to live on reserves or mix with non-Aborigines.

**1951** By this time all Australian governments at least claimed that they were acting in accordance with an assimilationist policy. Assimilation meant 'in practical terms that, in the course of time, it is expected that all persons of Aboriginal birth or mixed blood in Australia will live like white Australians.'

**1961** An agreed definition is formulated as follows: 'The policy of assimilation means that all Aborigines and part-Aborigines are expected eventually to attain the same manner of living as other Australians and to live as members of a single Australian community enjoying the same rights and privileges, accepting the same responsibilities, observing the same customs and influenced by the same beliefs, as other Australians.' Assimilation could be seen positively as providing for equality with non-Aboriginal people or negatively as the eventual disappearance of Aboriginal people.

**1962 Commonwealth** Electoral law changes to conform the federal voting rights of adult Aborigines.

**1962 South Australia** Aboriginal Affairs The Act giving the power to remove Aboriginal people to reserves is abolished as are exemption certificates. Having left a reserve, Aboriginal people have to apply for permission to revisit it.

## SELF DETERMINATION AND LAND RIGHTS ACTS

**1965 South Australia** Aborigines and Historic Relics Preservation Act of SA provides some protection of sacred sites, burial sites and other significant locations

**1966 South Australia** Prohibition of Discrimination Act provides for elimination of discrimination in housing, employment and supply of services.

**1966 Commonwealth** Cattle Station decision introduces equal wages and award conditions for Aboriginal workers in the pastoral industry. Prior to this wages were often half that of non-Aboriginal workers and were sometimes paid to the Protector and sometimes paid in kind, ie clothing, rations.

**1966 South Australia** Aboriginal Land Trusts Act establishes a trust to hold the title to former reserves and other parcels of land in South Australia. The trust leases out the land to individuals and communities.

**1967 National referendum** gives the Commonwealth power to make laws overriding states for Aboriginal people, Aboriginal people to be counted in the census along with other Australians.

**1967 South Australia** Licensing Act means Aborigines now able to purchase liquor

**1968 South Australia** Aboriginal Affairs Act Amendment Act means young people can no longer be forcibly removed to institutions

**1970 Victoria** Aboriginal Lands Act confers freehold title for Lake Tyers Aborigines to be managed by a committee of seven elected members.

**1971 Commonwealth** Justice Blackburn decides that Australian common law does not recognise native title in a case based around Gove.

**1972 South Australia** Community Welfare Act repeals the Aboriginal Affairs Act of 1962 and moves away from assimilation to integration including power 'to promote, in consultation and collaboration with the Aboriginal people, the cultural, social, economic and political welfare and development of the Aboriginal people; to encourage and assist the Aboriginal people to preserve and develop their own languages, traditions and arts,' and to research, foster development of councils and associations, business, trade, industry and provide grants, technical and other assistance to advance the development of Aboriginal people.'

**1972 Commonwealth government** establishes a policy of 'self-determination' to 'restore to the Aboriginal people of Australia their lost power of selfdetermination in economic, social and political affairs'.

**1976 Northern Territory** Aboriginal Land Rights (NT) Act allows for transfer of reserves to Aboriginal trusts and for traditional owners to claim unalienated Crown land. Land Council structures are established including Central, Northern and Tiwi.

**1981 South Australia** Pitjantjatjara Land Rights Act allows for Anangu Pitjantjatjara Council to control land in the north west of the state. No proposals to use the land can be carried out without the consent of the traditional owners, including mining, though the Minister can arbitrate.

**1983 New South Wales** Aboriginal Land Rights Act established a system of local land councils and financial compensation to enable Aboriginal communities to purchase land on the open market. The New South Wales Aboriginal Land Council can own land, make grants and make claims for Crown land (but not that in National Parks).

**1984 South Australia** Maralinga Tjarutja Land Rights Act is similar to Pitjantjatjara but without right of veto on mining.

**1985 Northern Territory** Uluru (Ayers Rock) handed back to Anangu.

**1984 South Australia** Equal Opportunity Act Discrimination becomes unlawful in employment, education and the provision of goods and services on the basis of race or ethnic origin, disability, sex, marital status, pregnancy and sexuality.

**1987 Commonwealth** enacts the Aboriginal Land (Lake Condah and Framlingham Forest) Act in Victoria which vests ownership in the elders and decision making in the community as a whole. The title granted is freehold title.

**1991 Queensland** Aboriginal Land Act and Torres Strait Islander Land Act allows for vacant crown land to be claimed on the basis of traditional association, historical association or on an economic or cultural viability needs basis. Vacant crown lands which have not been set aside for public purposes, state forests, timber reserves and town and city land are not claimable, nor are pastoral properties or excisions or stock routes. Only 2% is claimable. There is no land fund for buying or developing lands and no structure to support the making of claims. Land claimed is not saleable.

**1992 Commonwealth** Mabo High Court found that the Murray Islanders in the Torres Strait hold native title to the islands. They found that Australia was not unoccupied on settlement and that the indigenous inhabitants had, and continue

(unless extinguished validly) to have, valuable legal rights to their traditional land.

**1993 Commonwealth** Native Title Act recognises native title rights of Indigenous peoples of Australia who have maintained a 'continuing connection' with their land and waters in accordance with their traditions. Native title is extinguished by valid grants of land to non-Indigenous people.

**1996 Federal High Court** Wik decision stated that native title rights could co-exist with pastoral leases. Where there is conflict in the exercise of those rights, Native Title rights to be subordinate to those of the pastoral lease holder.

**1997** Stolen generations report from the Human Rights and Equal Opportunities Commission outlined the experience of many generations of Aboriginal people who have been forcibly removed from their families. It called for a formal apology and compensation to support communities to heal.

**1998 Commonwealth** Native Title Act Amendment Act reduces Indigenous Australians access and control over lands

**1998 Western Australia and Tasmania** Neither have state land rights legislation. In Western Australia some Aboriginal communities hold 99 year leases over some reserve lands.



# Indigenous Australians and the Legal Profession

The Law Council of Australia acknowledges the Aboriginal and Torres Strait Islander peoples as the original inhabitants and custodians of Australia. The Law Council acknowledges, in particular, the traditional custodians of the Canberra region, the land on which the Law Council of Australia has its offices.

## **In adopting this Policy Statement on Indigenous Australians and the Legal Profession, the Law Council of Australia recognises:**

1. that Aboriginal and Torres Strait Islander peoples 1. possess distinct cultures and identities and unique relationships with their lands, waters and resources;
2. that Indigenous Australians have been subject 2. to significant dispossession, marginalisation and discrimination, and continue to experience widespread disadvantage, including in the areas of housing, health, education, employment, access to justice and participation in the political, economic, social and cultural life of the nation;
3. the particular cultural, linguistic, economic and 3. geographic barriers that confront Indigenous Australians seeking legal assistance and access to justice;
4. that too many Indigenous Australians have died 4. in custody and, notwithstanding the important work of the Royal Commission into Aboriginal Deaths in Custody, continue to die in custody;
5. that Indigenous Australians are significantly and 5. unacceptably over-represented in Australian prisons and the criminal justice system;
6. that Indigenous Australians are under-represented 6. in the Australian legal profession;
7. that Indigenous Australians, like all Australians, 7. have a right to equality before the law, due process before the law and to be free from discrimination of any kind, in particular that based on their Indigenous origin or identity;

8. that Indigenous Australians, like all Australians, 8. have the right to physical and mental integrity, liberty and security of person;

9. that Indigenous Australians have the right to self 9. determination and to recognition and protection of their distinct culture and identities, as provided under inter alia the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Declaration on the Rights of Indigenous Peoples;

10. that Indigenous Australians, through their 10. representatives, have a right to be consulted about and participate in decision-making concerning legislative and policy changes affecting their rights and interests;

11. the importance to Indigenous Australians of 11. alternative justice models which involve greater participation of the Indigenous community;

12. that Indigenous Australians may observe their 12. customary laws and that these are sophisticated and complex systems of laws which continue to evolve and which deserve recognition, including where appropriate within the broader Australian legal system; and

13. the significant contribution of Indigenous 13. Australians and their cultures to the Australian community and to the ongoing development of the Australian legal system.

## **Working in partnership with Indigenous Australians, the Law Council commits to: Indigenous Australians and the legal system**

1. promoting, as a matter of the highest priority, 1. methods for reducing the over-representation of Indigenous Australians in the criminal justice system;
2. promoting, as a matter of the highest priority, 2. methods for reducing unacceptable numbers of Indigenous deaths in custody;
3. promoting the development of alternative justice models involving greater participation of the Indigenous community, such as restorative justice models, Indigenous courts and community justice groups;
4. promoting the provision of Indigenous interpreter services and the training of Indigenous interpreters;

5. promoting the conduct of court hearings, in particular native title and land claim hearings, on Indigenous lands and in a culturally appropriate manner;
6. promoting approaches to native title law and practice (including the enactment of appropriate amendments to the Native Title Act 1993 (Cth) and other reforms), which advance the beneficial purpose of the Act and facilitate the timely, efficient and, where appropriate, consensual resolution of claims;
7. promoting measures to protect the intellectual property of Indigenous Australians in their cultural heritage, traditional knowledge and traditional cultural expressions;
8. promoting awareness of Indigenous legal systems, laws and institutions within the broader Australian community and supporting their recognition, consistently with international human rights standards, in the Australian legal system;

#### **Indigenous Australians and the legal profession**

9. promoting the study of law by Indigenous Australians and providing particular support to Indigenous law students;
10. promoting the participation of Indigenous Australians in the legal profession and providing particular support to Indigenous lawyers;
11. promoting participation by members of the legal profession in Indigenous cultural education and training;
12. acknowledging the achievements of Indigenous law students and lawyers;

#### **Protecting and promoting human rights**

13. promoting substantive equality for Indigenous Australians before the law, including effective measures to ensure continuing improvement of their economic and social conditions and to ensure they are able to maintain and strengthen their institutions, cultures and traditions;
14. promoting the right of Indigenous Australians to understand and be understood in legal proceedings, at all times through the use of plain English and, where necessary, through the provision of interpreter services and other appropriate

means acceptable to the individuals concerned;

15. challenging legislation, policies and practices that discriminate against and violate the human rights of Indigenous Australians, and impede substantive equality before the law;
16. promoting implementation of the United Nations Declaration on the Rights of Indigenous Peoples and awareness of its provisions amongst members of the legal profession and the community generally;

#### **Partnerships and reconciliation**

17. the preparation and adoption of a reconciliation action plan, and promoting the preparation and adoption of reconciliation action plans by the Law Council's constituent bodies;
18. working in partnership with Indigenous communities and organisations to promote Indigenous Australians' rights and interests, respect for Indigenous Australian cultures, knowledge, perspectives and practices, and the reinvigoration and strengthening of Indigenous legal systems, laws and institutions;
19. promoting the economic and social empowerment of Indigenous Australians to overcome the economic and social disadvantages to which they have been, and continue to be, subject and supporting them in developing a capacity to participate fully in the broader Australian community, where they so choose;
20. promoting the development of representative Indigenous bodies and their recognition by Australian governments;
21. promoting the development of lasting and equitable settlements between Indigenous Australians and Australian Governments;
22. incorporating Indigenous Australian content and perspectives, as appropriate, into Law Council policies, practices and services; and
23. using this policy statement as a framework for ongoing activities of the Law Council towards reconciliation.