

## 10.

## Global comparison

**Note:** This overview is based primarily on the Bringing them home report and provides a background to the policies and practices that authorised the removal of Aboriginal and Torres Strait Islander children from their families. It is not intended to be used as a comprehensive historical document.

### ‘Unoccupied’ land

Aboriginal people and their ancestors have occupied Australia for at least 40 000 years. They had with their own systems of law, languages and cultural practices. Although Indonesian traders had visited Australia in the 15th century it was not until the mid 1500s that European powers began to consider the possible existence of a ‘great southern land’.

Spanish and Portuguese explorers and merchants often chanced upon Australia’s shores by accident, reporting back to their governments. Dutch explorers such as William Jansz, Dirk Hartog and Abel Tasman made sightings and landings on Australia’s shores. These early colonial powers were mainly interested in commerce rather than settlement.

Some 140 years after the Dutch named this land mass ‘New Holland’, James Cook led the journey on the Endeavour. He was commissioned by the British Government to make three voyages, and to consider the trading and settlement possibilities. On 23 August 1770, after landing at Botany Bay, Cook claimed the land for the British Crown and named it New South Wales.

It was some 16 years before the British Government looked at settling New South Wales. Unlike many of Australia’s other colonies, New South Wales was initially set up as a penal colony. The traditional view is that Britain sought to relieve the pressure on its prisons. A growing urban underclass in its cities was causing increased crime and the loss of the American colonies necessitated a search for new places to deport convicts.

On 26 January 1788, the First Fleet landed carrying some 1 000 people, more than 700 of whom were convicts. The British also brought over a system of law, administration and cultural practices. Their vision of settlement was based on the European doctrine of *terra nullius*, or unoccupied land. This justification for settlement was used in spite of contact with Aboriginal people since Cook’s landing. No treaty or agreement for land use was made.

### Early colonisation

The New South Wales settlement was soon filled with convicts, colonial administrators and military police from Britain. Resistance and conflict between Europeans and Aborigines began almost immediately. Captain Phillip estimated there were 1 500 Aborigines living in the Sydney region.

Aboriginal communities who lived on or near the settlements were forced back into the territories of other communities. They protested against the colonial land claims and development. This pattern was followed once penal colonies were set up in Van Diemen’s Land (Tasmania) in 1803 and in Queensland in 1824.

Food and natural resources were major problems for settlers – the climate and geography were also very different from that in Europe. Human resources were also limited. There were very few farmers, carpenters and engineers, all needed to create a self-supporting colony. Health was also a problem for the settlers, though not as great a problem as the introduced diseases (carried on the First Fleet) were for Aboriginal people. In 1789 smallpox decimated the Aboriginal population of Port Jackson, Botany Bay and Broken Bay.

In 1790, a second fleet of migrants arrived from Britain – this time most on board were free settlers. Governor Phillip encouraged them to establish farming and grazing to the north and west of the settlement. Gradually, the colony began to grow and become self-sufficient.

During this expansion and exploration conflict between Aboriginal peoples and European settlers heightened, with quite violent consequences in many cases. In 1799 a six year period of resistance to white settlement by Aborigines in the Hawkesbury and Parramatta regions commenced. In Queensland, settlers poisoned Aboriginal people at Kilcoy Station in 1842 and there were attacks on Aboriginal camps at Breakfast Creek in 1860.

The situation was much worse in Tasmania, where an outright guerrilla war took place between Aboriginal people and settlers. In 1830, Governor Arthur tried unsuccessfully to drive all the remaining Aboriginal people in eastern Van Diemen's land on to the Tasman Peninsula.

Even in the later settlement of Western Australia, violent conflict occurred after areas were settled. For example, at the Battle of Pinjarra Governor Stirling led an expedition and opened fire against a group of Indigenous people after they had been involved in conflict with the local settlers.

According to British law, Aboriginal people became British subjects upon settlement. Governor Phillip was instructed to 'open an intercourse with the natives' and ensure their protection. Later on, settlements in South Australia and the Northern Territory were established with similar instructions – protection of Aboriginal people. After all, as British subjects (like the free settlers) they were entitled to equal treatment, at least theoretically.

## The first removals

Apart from this conflict, many Aboriginal children were separated from their families by settlers for use as cheap labour on farms and stations:

**... the greatest advantage of young Aboriginal servants was that they came cheap and were never paid beyond the provision of variable quantities of food and clothing. As a result any European on or near the frontier ... could acquire and maintain a personal servant.**

(Reynolds, Henry, 1990: *With the White People*. p169.)

In 1809, Lachlan Macquarie was appointed Governor. During this time missions and government-run institutions for Indigenous children were started. The first of these, the Native Institution, was funded by Governor Macquarie near Parramatta in 1814. It soon became clear to Aboriginal families that its purpose was to distance children from their families and communities. The school was closed down in 1820.

Major changes came after the *British Select Committee* held its inquiry into the treatment of Indigenous people in Britain's colonies. The report noted the particularly bad treatment of Aboriginal people in Australia. The Committee recommended that a 'protectorate system' be established in the Australian colonies. Under this system, two policies were to be adopted:

- segregation, by creating reserves and relocating Aboriginal communities to them
- education, which should focus on the young and relate to every aspect of their lives.

The system took some time to be adopted in Australia. Victoria was the first colony to do so, with its parliament passing the *Aborigines Protection Act* in 1869 and appointing the Aborigines Protection Board. The Board was responsible for putting the system in place. By 1911, the Northern Territory and every state except Tasmania passed similar laws and appointed similar boards. Most of them also appointed a Chief Protector who was given wide powers to control the lives of Aboriginal people. In some states, including the Northern Territory, the Chief Protector was also made the legal guardian of every Aboriginal child.

The laws essentially gave 'Protectors', who were usually police officers, the power to manage and control the reserves, and to send Aboriginal and Torres Strait Islander children to schools, institutions and missions. In the name of protection, Aboriginal people were subject to near-total control. Their

entry and exit from the reserves was controlled, as was their everyday life on the reserves, their right to marry and their employment.

Tasmania was the exception to this trend. Until the late 1960s, Tasmanian governments insisted that Tasmania did not have an Aboriginal population, just some 'half-caste' people.

## Merging and absorption

**Note: Throughout this section it is necessary in the interests of accuracy to quote the language of the times. Much of this language was and is offensive to Indigenous people. The terms 'full descent' and 'mixed descent' were not used. Instead categories of 'full blood', 'half Caste', 'quadroon' and 'octoroon' were applied.**

By the turn of the century, it became apparent that although the full-descent Aboriginal population was in decline, the mixed-descent or 'half-caste' population was growing. While this concerned many non-Aboriginal people, the government saw new possibilities for addressing the 'Aboriginal problem' in this trend. The problems posed by segregation, such as ongoing hostility, could be solved by merging the mixed-descent population into non-Aboriginal society. Others saw opportunities for biologically controlling the Aboriginal population.

Employment and education were central to merging Aboriginal people, particularly children, into non-Aboriginal society. State and territory governments shifted their policies to both of these, and did so armed with the powers granted by laws under the protectorate system. Under these policies, Aboriginal children could be separated from their families and sent to work for non-Aboriginal people or to schools/missions. At the same time, they were encouraged to give up their Aboriginality.

Governments began to change the protection legislation to suit this policy. The laws not only expanded the powers of 'Protectors', but also changed the definition of 'Aboriginality'. The new definitions drew differences between 'full-bloods' and 'half-castes', and applied laws differently to each group. This allowed the government to divide the groups and order separations and merging. For example, those defined as having a certain amount of European blood were prevented from living on the reserves and forced either to live in camps or in non-Indigenous areas. People within this definition who remained on the reserves were removed.

During the 1920s, every state and territory government opened schools and training institutions. Indigenous children were also sent to missions, usually run by church groups. Many of these institutions were some distance from the reserves, thus further separating children from their families and communities. The children normally lived in dormitories and the education they received covered every aspect of their lives. Indigenous languages and cultural practices were usually forbidden, and the discipline was severe.

Even though governments focused much attention on setting up these schools, they gave them little financial support. Conditions were harsh and the occupants often lacked adequate food, basic facilities and medical treatment. Many institutions were also overcrowded; conditions in the Northern Territory were particularly bad. At The Bungalow, near Alice Springs, 50 children and 10 adults were living in just three exposed sheds. The quality of education was also poor – often it was simply training for manual or domestic labour.

A number of Chief Protectors, such as Dr Cecil Cook (NT) and A.O. Neville (WA), saw in this new policy the possibility of biologically controlling the Indigenous population:

**Generally by the fifth and invariably by the sixth generation, all native characteristics of the Australian aborigine are eradicated. The problem of our half-castes will quickly be eliminated by the complete disappearance of the black race, and the swift submergence of their progeny in the white.**

(Dr Cecil Cook, as quoted in Hollinsworth, D (1998). *Race and Racism in Australia*.)

While other governments and Chief Protectors did not voice similar opinions, these extreme views provide insight into the possible underlying intentions of the policy in all states and territories. Many practices did target anything that would lead to the continued existence of a 'full-blood' population. For example, young women were the first to be targeted for separation and merging. This was just as much about controlling reproduction as it was about cheap domestic labour.

Despite the force of this new policy, merging failed. While mixed-descent Indigenous children were formally merged into non-Indigenous society, they simply did not 'become white'. On the contrary, those who were merged simply faced extreme disadvantage on two counts. Firstly, by being separated from their families and communities, and secondly, by facing discrimination when they entered non-Indigenous communities. An urban underclass of Indigenous people was also starting to grow in the cities.

## Assimilating Indigenous peoples

In 1937, the first Commonwealth-State Native Welfare Conference was held, attended by representatives from all the states (except Tasmania) and the Northern Territory. This was the first time Indigenous affairs were discussed at a national level.

The discussion was dominated by the Chief Protectors from Western Australia, Queensland and the Northern Territory, each of whom presented quite strong arguments in favour of assimilating Indigenous people into non-Indigenous society. In spite of previous failings of assimilation policies, the Conference agreed that assimilation should be encouraged:

**... this conference believes that the destiny of the natives of aboriginal origin, but not of the full bloods, lies in their ultimate absorption by the people of the Commonwealth, and it therefore recommends that all efforts be directed to that end.**

(Commonwealth of Australia. 1937.

*Aboriginal Welfare: Initial Conference of Commonwealth and State Aboriginal Authorities.*

Canberra: Government Printer.)

In practical terms, this meant another change in laws. After 1940, Indigenous children were governed by the general child welfare laws, which also applied to non-Indigenous children. Under these laws, a child could only be removed if found to be 'neglected', 'destitute' or 'uncontrollable'. These laws appeared to treat all children equally. However, in defining 'neglect', government officials also considered that poverty came into this meaning, thus justifying a ground for separation of Aboriginal and Torres Strait Islander children from their families.

Neglect and destitution were also features of most Indigenous peoples' lives precisely because of the treatment received from a history of colonisation. The application of these general laws only disadvantaged Indigenous people further by not addressing the underlying issues.

Unlike previous policies, this assimilation also meant increased monitoring and surveillance of Indigenous lives. For example, in some states, welfare workers were employed to inspect houses and monitor child attendance at school. These officers also had very close relationships with the police.

Thus, while the new laws promised change, in practice it was more a case of continued discrimination. The same welfare staff and police who had previously separated Indigenous children from their families were now responsible for enforcing the new laws.

During the 1950s and 1960s, even greater numbers of Indigenous children were separated from their families to advance the cause of assimilation. This placed an increasing burden on the schools and institutions, which were receiving even less funding. Child welfare departments responded by placing Indigenous children in foster homes or putting them up for adoption, rather than sending them to institutions. In 1971, for example, more than 97 percent of foster-care children in the Northern Territory were Indigenous.

By the early 1960s, it was clear that Indigenous people were not being assimilated – the policy had failed. Discrimination by non-Indigenous people and the refusal of Indigenous people to surrender their lifestyle and culture were standing in the way.

The promise of change came in 1967, with the successful constitutional referendum. The referendum altered the constitution to remove references to ‘Aboriginal people’ so that all people in Australia were to be subject to the same laws, and Indigenous people would be included in the census. Further, it gave the federal government powers to make laws for Indigenous people. As a result, a national Office of Aboriginal Affairs was established.

## Self-management and self-determination

Article 31 of the Draft Declaration on the Rights of Indigenous Peoples describes Indigenous self-determination in practical terms:

**Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resources management, environment and entry by non-members, as well as ways and means for financing these autonomous functions.**

In this context, self-determination is about achieving the full and effective participation of Indigenous peoples in Australian society. This involves recognition of the cultural distinctiveness and diversity of Indigenous people. Recognition of Indigenous customary law and practices is also a vital part of this push for self-determination.

By the early 1970s Indigenous people were working with some non-Indigenous people to lobby and protest to government for land rights, cultural property rights, recognition of disadvantage suffered from colonisation including the taking away of Indigenous children and a range of other social justice issues. The importance of self-determination was viewed by Indigenous people as essential to the full realisation of human rights.

Historically, the term self-determination was first applied to Indigenous policy by the incoming Whitlam Government in 1972. It replaced the by then largely discredited policy of assimilation, and included plans to address the very high rates of separation of Aboriginal and Torres Strait Islander children from their families.

The Fraser Government from 1975 retreated somewhat from the rhetoric of self-determination in Australian Indigenous policy, preferring instead the term ‘self-management’. The retreat was, however, largely symbolic as it overlaid a continuity of institutional development and reform of Indigenous policy and programs, most notably in the development of Indigenous community organisations and through the introduction of land rights legislation in the Northern Territory. In the same year, the federal government passed the *Racial Discrimination Act*. This law made discrimination on the basis of race unlawful.

State and territory governments were also under pressure from Indigenous people and the federal government to bring about change to the way Indigenous children were cared for in state and church run institutions.

At the first Australian Conference on Adoption in 1976, a policy based on self-management and Indigenous control was spelt out. The attention of child welfare workers was directed to the large numbers of Indigenous children who were placed with non-Indigenous families.

For the Aboriginal child growing up in a racist society, what is most needed is a supportive environment where a child can identify as an Aboriginal and get emotional support from other blacks. The supportive environment that blacks provide cannot be assessed by whites and is not quantifiable or laid down in terms of neat identifiable criteria ...

Aboriginal people maintain that they are uniquely qualified to provide assistance in the care of children. They have experienced racism, conflicts in identity between blacks and whites and have an understanding of Aboriginal lifestyles.

The Hawke and Keating governments both used the term self-determination almost interchangeably with that of self-management through the 1980's and early 1990's. The continued activism of Indigenous communities and growing awareness among welfare workers led to further changes in government practices. In 1980, Link-Up (NSW) Aboriginal Corporation was established. The service traced family movements and reunited Indigenous children with their families. Similar services now exist in every state and territory.

In 1981 the Secretariat of the National Aboriginal and Islander Child Care (SNAICC) was established. SNAICC represented the interests at a national level of Australia's one hundred or so Indigenous community-controlled children's services.

In 1983, the Aboriginal Child Placement Principle was developed and introduced into Northern Territory law. The basic requirement of this Principle was that Indigenous families must be the preferred option for placing an Indigenous child in need of alternative care. New South Wales, South Australia, Victoria and Tasmania followed this lead. The Principle was also informally introduced in Western Australia and Queensland.

In the 1990s, a number of significant changes to the way Indigenous people were viewed by non-Indigenous people took place. The most significant of these were:

- the establishment of the Council for Aboriginal Reconciliation by law of the federal Parliament in 1990
- the findings of the Royal Commission into Aboriginal Deaths in Custody in 1991
- the decision of the High Court in *Mabo v Queensland* in 1992
- the *Native Title Act* passed by the federal government in 1993
- the establishment of the National Inquiry Into the Separation of Aboriginal and Torres Strait Islander Children from Their Families in 1995
- the High Court *Wik* decision in 1996
- the Human Rights and Equal Opportunity Commission presents *Bringing them home* – the Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families presented to Federal Parliament in 1997
- the introduction of the *Native Title Amendment Act (Cth)* in 1998
- the People's Walk for Reconciliation in 2000.

## *Bringing them home* report

Throughout these reforms, Indigenous people also pushed strongly for recognition of the policies and practices that authorised the removal of Aboriginal and Torres Strait Islander children from their families since colonisation. Their lobbying and activism placed the issue on the agenda.

In 1995, the Human Rights and Equal Opportunity Commission was asked by the federal government to conduct a National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families. Two years later, the Commission handed down its landmark report called *Bringing them home*.

The report was a detailed national summary of the history of separations. It expressed difficulty in being able to come up with a definite figure for the number of Indigenous children separated from their families; but did estimate that between one in three and one in ten Indigenous children were separated from their families and communities between 1910 and 1970. This figure does not account for separations before 1910.

Most importantly, it found that most families had been affected, in one or more generations, by government policies and laws requiring the separation of Aboriginal and Torres Strait Islander children from their families.

## Links

- *Bringing them home* report: <http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc/stolen/>
- *Bringing them home* Community Guide: [http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc/stolen\\_summary/](http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/hreoc/stolen_summary/)
- *Social Justice Report 2002* – Chapter 2: Self Determination: [http://www.humanrights.gov.au/social\\_justice/sjreport02/chapter2.html](http://www.humanrights.gov.au/social_justice/sjreport02/chapter2.html)
- Australian Museum Online Indigenous Australia: <http://www.dreamtime.net.au>

**Note:** For recent developments and updates on what recommendations have been implemented from the *Bringing them home* report log on to the Social Justice section of the Commission's website at: [www.humanrights.gov.au/social\\_justice](http://www.humanrights.gov.au/social_justice)