

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 <i>Waste Lands Act</i> 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 Most of the sixty reserves were later rescinded.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.

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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 self-determination 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.