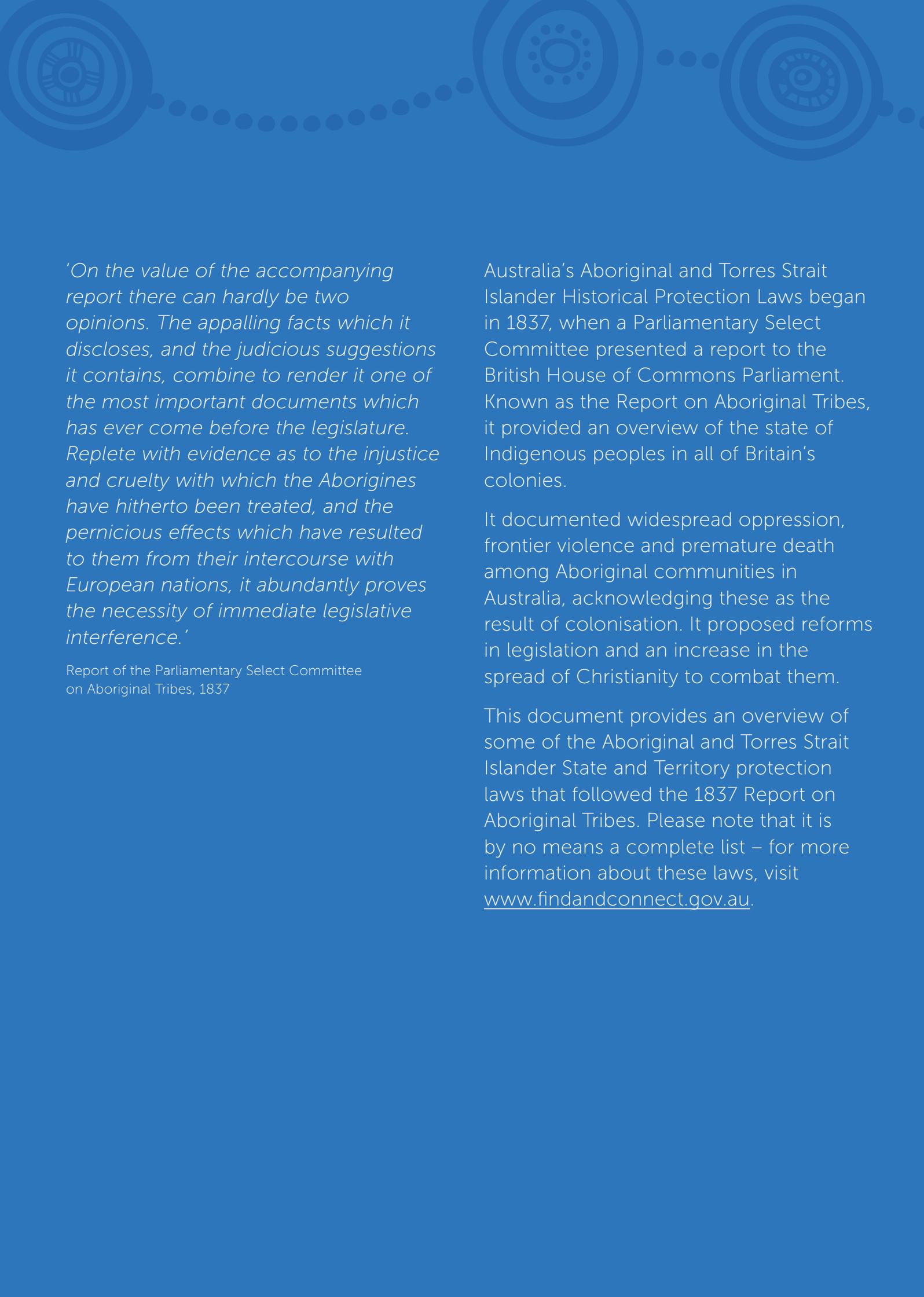


**ABORIGINAL AND
TORRES STRAIT ISLANDER**

Historical Protection Laws and Institutions



HealingFoundation
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'On the value of the accompanying report there can hardly be two opinions. The appalling facts which it discloses, and the judicious suggestions it contains, combine to render it one of the most important documents which has ever come before the legislature. Replete with evidence as to the injustice and cruelty with which the Aborigines have hitherto been treated, and the pernicious effects which have resulted to them from their intercourse with European nations, it abundantly proves the necessity of immediate legislative interference.'

Report of the Parliamentary Select Committee on Aboriginal Tribes, 1837

Australia's Aboriginal and Torres Strait Islander Historical Protection Laws began in 1837, when a Parliamentary Select Committee presented a report to the British House of Commons Parliament. Known as the Report on Aboriginal Tribes, it provided an overview of the state of Indigenous peoples in all of Britain's colonies.

It documented widespread oppression, frontier violence and premature death among Aboriginal communities in Australia, acknowledging these as the result of colonisation. It proposed reforms in legislation and an increase in the spread of Christianity to combat them.

This document provides an overview of some of the Aboriginal and Torres Strait Islander State and Territory protection laws that followed the 1837 Report on Aboriginal Tribes. Please note that it is by no means a complete list – for more information about these laws, visit www.findandconnect.gov.au.



VICTORIA

Aboriginal Protection Act 1869

In effect: 1870-1890

This Act was the first of many that established a system of control over the lives of Aboriginal people in Victoria. It established the Board for the Protection of Aborigines, which controlled access to food and supplies, health care, education and employment. It also allowed for Aboriginal people to be removed from stations and reserves across the state and gave the Board responsibility for the 'care, custody and education' of Aboriginal children. It extended the definition of Aboriginality to include 'half-castes' and people 'habitually associating and living with Aborigines'. It was repealed by the *Aborigines Act 1890*.

Aborigines Act 1915

In effect: 1915-1929

This Act consolidated existing laws relating to Victoria's Aboriginal people. It repealed the *Aborigines Act 1890* and the *Aborigines Act 1910*. Under this legislation, the Governor in Council had authority over where Aboriginal people lived, the terms within employment contracts between Aboriginal people and non-Indigenous employers and the circumstances under which Aboriginal children could be 'licenced or apprenticed.' In 1929 it was repealed by the *Aborigines Act 1928*.

Aborigines Act 1928

In effect: 1929-1957

This Act was written to consolidate existing laws relating to Aboriginal people in Victoria. It granted the Governor in Council the authority over the care, custody and education of Aboriginal children, and the terms within employment contracts between Aboriginal people and non-Indigenous employers. It was repealed by the *Aborigines Act 1957*.

Aborigines Act 1957

In effect: 1957-1959

This Act was created after the *McLean Inquiry's Report on the operation of the Aborigines Act [1928]*. It repealed the *Aborigines Act 1928* and replaced the Board for Protection of Aborigines with the new Aborigines Welfare Board. It also established a new position for the Superintendent of Aborigines Welfare, who was also the Executive Officer of the Board. The function of the Board as described in the Act was to 'promote the moral, intellectual and physical welfare of Aborigines [...] with a view to their assimilation into the general community'. It was repealed by the *Aborigines Act 1958* in April 1959.

WESTERN AUSTRALIA

Aborigines Protection Act 1886

In effect: 1887-1906

The Aborigines Protection Act established the Aborigines Protection Board, one in a line of many Aboriginal Protection authorities throughout the 19th and 20th centuries that regulated the lives of Western Australia's Aboriginal people. Board members were appointed Protectors of Aborigines and had the authority to nominate other Protectors to the Governor. The Board was also responsible for managing funding granted by the Legislative Council and for providing reports about the wellbeing of Aboriginal people in the state. The Act was repealed by various amendments over the years. Part I was repealed by the *Aborigines Act 1897* and Parts II, III, IV and V were repealed by the *Aborigines Act 1905*. The rest was repealed by the *Statute Law Revision Act 1964*.

Aborigines Act 1905

In effect: 1906-1964

This Act controlled the lives of Aboriginal people for nearly 60 years. Described as an Act to 'make provision for the better protection and care of the Aboriginal inhabitants of Western Australia,' it appointed the Chief Protector of Aborigines as legal guardian of every Aboriginal child under 16. It also allowed authorities to 'send and detain' Aboriginal children in institutions and in work or 'service', and it also restricted marriage between Aboriginal women and non-Indigenous men to the discretion of the Chief Protector. It was repealed in 1964 by the *Native Welfare Act 1963*.

QUEENSLAND

Aboriginals Protection and Restriction of the Sale of Opium Act 1897

In effect: 1897-1939

This Act was written to better control the supply of opium, especially where it was being passed on to Aboriginal people. It also established reserves where Aboriginal people were taken after being forcibly removed from their families, on the claim that they were being removed there to protect them from the influences of European vice and disease. However, these reserves later became labour reserves where Aboriginal people were exploited. The Act also established positions for 'Aboriginal Protectors', who were appointed from the civil service, the police force and religious institutions. It was repealed by the *Aboriginals Preservation and Protection Act 1939*.

Aboriginals Preservation and Protection Act 1939

In effect: 1939-1966

This Act established a position for the Director of Native Affairs, who was appointed the legal guardian of all of Queensland's Aboriginal children under 21 years of age. It also made it mandatory for employers to seek permission from the Director before employing any Aboriginal people. It was repealed by the *Aborigines' and Torres Strait Islanders' Affairs Act 1965*.

Aborigines' and Torres Strait Islanders' Affairs Act 1965

In effect: 1965-1972

This Act, described as promoting the 'well-being [sic] and progressive development of the Aboriginal inhabitants of the State and of the Torres Strait' appointed a Director of Aboriginal and Island Affairs in place of the Director of Native Welfare. The Director no longer held legal guardianship of Aboriginal and Torres Strait Islander children, but he maintained authority to order 'assisted' Aboriginal people to return to a reserve, and to make decisions about the care of children of Aborigines and Islanders who were not living in state institutions. This Act also applied to Southern Papua New Guinea and its adjacent lands, which were proclaimed as a Territory of Australia in 1884. Papua New Guinea obtained independence in September 1975. This Act was repealed by the *Aborigines Act 1971*.

NEW SOUTH WALES

Aborigines Protection Act 1909

In effect: 1909-1969

This Act was the first legislation that made specific provisions for New South Wales' Aboriginal people. Among other things, it repealed the state's *Supply of Liquors to Aborigines Prevention Act* and gave the Aborigines Protection Board new legal powers to:

- remove Aboriginal people camped in the vicinity of reserves, towns or townships to a distance as directed
- remove children from Aboriginal reserves and place them into service
- recover the cost of past or future maintenance of Aboriginal children between 5-16 years from any near relative with the ability to contribute to the cost, even if the child had since died.

It was repealed by the *Aborigines Act 1969* after multiple amendments over the years.

Aborigines Act 1969

In effect: 1969-1983

This Act repealed the *Aborigines Protection Act 1909* and introduced sweeping changes to the way Aboriginal children were cared for by abolishing the Aborigines Welfare Board and placing Aboriginal children into the same welfare system as non-Indigenous children. Children who had been under the care of the Welfare Board became state wards, while institutions housing Aboriginal children were classified as depots under child welfare legislation. It also established the Directorate of Aboriginal Welfare, the Aborigines Advisory Council and the Aboriginal Welfare Services in the Department of Child Welfare and Social Welfare. It was repealed by the *Aboriginal Land Rights Act 1983*.



NORTHERN TERRITORY

Northern Territory Aboriginals Act 1910

In effect: 1910-1918

This Act established the Northern Territory Aboriginals Department, which was responsible for the welfare of the state's Aboriginal people. It appointed a Chief Protector as the legal guardian of every Aboriginal child in the state and introduced regulations for their 'care custody and education' to be made. Under this Act, Aboriginal children were transferred to institutions and industrial schools. It was repealed by the *Aboriginals Ordinance 1910* in June 1918.

Aboriginals Ordinance 1918

In effect: 1918-1953

This ordinance repealed the *Northern Territory Aboriginals Act 1910*, combining it with the *Commonwealth Aboriginals Ordinance 1911*. It maintained many of the regulations in previous ordinances, such as the legal controls the Chief Protector had over Aboriginal people and his status as the legal guardian of every Aboriginal child in the state. It was repealed by the *Welfare Ordinance 1953* after multiple amendments over the years.

Welfare Ordinance 1953

In effect: 1957-1964

The *Welfare Ordinance 1953* came into effect in May 1957. It replaced the Director of Native Affairs with a new position, the Director of Welfare, who was appointed the legal guardian of all Aboriginal 'wards'. The word 'wards' was used in this legislation to replace previous use of the word Aboriginal, however specific limitations were applied exclusively to Aboriginal people through other means. Aboriginal people did not yet have the right to vote and this legislation stated that Australian voters could not be declared wards. The ordinance prohibited wards from living with a 'non-ward' they were not related to and from marrying without the consent of the Director. It was repealed by the *Social Welfare Ordinance 1964*.

SOUTH AUSTRALIA

Aborigines Act 1911

In effect: 1911-1937

This Act was described as 'an Act to make provision for the better protection and control of the Aboriginal and Half-caste inhabitants of the state of South Australia.' It established a position for the Chief Protector of Aboriginals and for regional 'Protectors' who were given authority to remove children and place them in reserves. In 1937 it was repealed by the *Aborigines Act 1934*.

Aborigines (Training of Children) Act 1923

In effect: 1923-1937

This Act was described as 'an Act to make better provision for the care, control, and training of Aboriginal children, for placing Aboriginal children under the control of the State Children's Council, to amend the *Aborigines Act, 1911*, and for other purposes'. It amended the *Aborigines Act 1911* by widening the definition of 'Aboriginal' and 'half-caste' and by granting the Chief Protector legal guardianship of all 'half-caste' children up to 18 instead of 16 years of age. In 1937 it was repealed by the *Aborigines Act 1934*.

Aborigines Act 1934

In effect: 1934-1963

This Act consolidated and repealed the *Aborigines Act 1911* and the *Aborigines (Training of Children) Act 1923*. It was described as 'relating to the protection and control of the Aboriginal and half-caste inhabitants of South Australia'. It gave the Chief Protector authority to remove Aboriginal children from their homes and the authority to confine Aboriginal people in lock hospitals. The Act was accepted in October 1934 but came into effect in April 1937. It was repealed by the *Aboriginal Affairs Act 1962* in February 1963.

Aborigines Act Amendment Act 1939

In effect: 1940-1963

This Act was created to amend the *Aborigines Act 1934*. While it maintained the system of regional Protectors who had authority to remove Aboriginal children from their homes, it replaced the Chief Protector with the Aborigines Protection Board. Each member of the Board was deemed a Protector of the state's Aboriginal people. This Act also broadened the definition of 'Aborigine' and ended the distinction between 'Aborigines' and 'half-castes'. It also set out some exemptions from the Act, subject to the Board's discretion, before it was repealed by the *Aboriginal Affairs Act 1962*.

Aboriginal Affairs Act 1962

In effect: 1962-1972

This Act was established to repeal the *Aborigines Act 1934-1939*. It replaced the Aborigines Protection Board with the Aboriginal Affairs Board, which no longer held legal guardianship of Aboriginal children. It was repealed by the *Community Welfare Act 1972*.

AUSTRALIAN CAPITAL TERRITORY

Aborigines Welfare Ordinance 1954

In effect: 1954-1965

This Act was established to 'provide for the welfare and control of Aborigines, particularly those at the Wreck Bay reserve' (Jervis Bay). It granted the Minister discretion to remove Aboriginal people from a reserve and to impose a fine and imprisonment as the punishment for any who returned. It also allowed the Minister to apply for a court order to remove Aboriginal people to reserves if they were 'living in insanitary or undesirable conditions' or 'should be placed under control'. It was repealed by the *Aborigines Welfare Repeal Ordinance 1965*.

Aborigines Welfare Repeal Ordinance 1965

In effect: 1965-1977

This ordinance was written to repeal the *Aborigines Welfare Ordinance 1954*, abolishing the discriminatory rules relating to persons of Aboriginal heritage. It was repealed by the *Acts Revision Act 1977*.

TASMANIA

Stolen Generations of Aboriginal Children Tasmania Act 2006

In effect: 2006-present

This Act led to the creation of a five million dollar fund for payments to be made to Stolen Generations survivors as well as the children of survivors who had passed away.

NATIONAL

Aboriginal Child Placement Principle 1999

In effect: 1999-present

This policy was written as a result of the efforts of Aboriginal and Islander Child Care Agencies (AICCAS) to ensure that more children were placed with Aboriginal families when fostered or adopted away from their families. It recognises the harmful effects of forcibly removing children from their families, communities and culture. It was incorporated into Northern Territory welfare legislation in 1983, New South Wales legislation in 1987, Victorian legislation in 1989, South Australian legislation in 1993, Queensland and ACT legislation in 1999, Tasmanian legislation in 2000 and West Australian legislation in 2006.



Historical institution

The Royal Commission into Institutional Responses to Child Sexual Abuse defined institutions as 'any organisation or entity that provides activities or services, through which it has contact with children – like schools, sports clubs, out-of-home care (including kinship care), youth detention and churches'. This includes the missions, reserves, stations and outstations where Aboriginal and Torres Strait Islander children were sent when they were removed from their families and communities.

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