

CHAPTER 5

UNDER THE ACT

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ABORIGINES were out of place in the world of white Australians. They were used as cheap labour on northern cattle stations, as casual rural labour in the south, and as domestic servants. But they did not belong. Europeans believed that their fate was to die out. Even the constitution appeared to predict their extinction; it required that they be excluded in reckoning the population of Australia.

White Australians believed in a law of nature ordaining that inferior 'races' died out in the presence of superior peoples. Donald Thomson, a very sympathetic student of Aboriginal life, noted in December 1937 that it was 'evident to any scientific observer who examines the evidence, that wherever the white or Asiatic races come into contact with the aborigines the latter first become degenerate and ultimately die'. In the same year Daisy Bates published *The passing of the Aborigines*. The passing was popularly symbolised by Truganini, 'the last of the Tasmanians', whose skeleton was a prize exhibit in the Tasmanian Museum.

Most white Australians saw the Aborigines as a relic of the stone age, as a lower order of humanity, possibly even subhuman. The anthropologist Norman Tindale reported that tourists visiting Lake Tyers reserve in Victoria treated it as a 'kind of zoological garden and place of amusement, where aborigines and near-aborigines can be seen and discussed almost as though they were an animal species'. The University of Adelaide sponsored expeditions to the interior to investigate, among other things, the human capacities of Aborigines—the strength of leg, arm and back muscles, endurance, speed and accuracy of movement, eyesight, and ability to feel sensations, including pain. In association with Harvard University it also sponsored an investigation to determine whether 'half-caste' Aborigines were amenable to 'civilization'. Aborigines of full descent, who were not expected to survive in significant numbers into the 1940s, were not considered.

By government estimate there were about 76 000 Aborigines of full and part descent, or slightly over 1 per cent of the population. This figure can be disputed.



Commemorative sticker, Shepparton centennial celebration. The Yota-yota Aborigines lived in the area where Shepparton, Victoria, is now situated. When Shepparton celebrated its centenary in 1938 it reflected on this past while confidently looking to a prosperous future, secured by the fruit preserving and canning industry.



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It included an estimate of 10 000 nomadic Aborigines in Western Australia said to be beyond the reach of Europeans, an estimate probably too high by about 90 per cent. On the other hand the population of the four eastern states, stated to be about 35 000, was probably underestimated by about 20 per cent, as people of mixed descent merged in the general community were not counted.

A more accurate estimate would put the Aboriginal population at about 69 000. Some two-thirds of these lived in northern Australia. Excluding people of mixed descent living among whites, the Aboriginal population of Western Australia and of Queensland was about 17–19 000. There were about 15 000 Aborigines in the Northern Territory, about 10 000 in New South Wales, about 5 000 in South Australia, in Victoria about 800 and in Tasmania fewer than 300. People excluded from the count would have increased the minimum Aboriginal population of Queensland to about 22 500, that of New South Wales to over 11 000 and that of Victoria and Tasmania to at least 2200.

The number of people of mixed descent who were counted had increased significantly, from 9900 in 1911 to 24 700 in 1938. This was thought to have great significance. As would be expected, most were in areas of longest European settlement: in the Northern Territory only 6 per cent of the Aboriginal population was of mixed descent, in Western Australia 27 per cent, Queensland 36 per cent, South Australia 45 per cent, Victoria 90 per cent, New South Wales 93 per cent and Tasmania nearly all.

Unlike other Australians, any person classified as an Aborigine could be denied elementary human rights. In most states an Aborigine 'under the act' could be

deprived of freedom of movement and association, have his or her children taken away, and lose control over personal property. How often this actually happened depended on which region or state the Aborigine lived in, and on the attitude of the Europeans who chanced to be in authority.

In the 1930s European legislators were widening the definition of 'an Aborigine', in order to formalise control over an increasing population of mixed descent. Administrators hoped that a wider definition would give them, among other things, more control over sexual relations and marriage choices, and so halt the growth of the 'half-caste' population. In 1934 Queensland redefined Aborigines as persons of full descent and 'half-castes', including 'any person being the grandchild of grandparents one of whom is an aboriginal', and any person of Aboriginal extraction who 'in the opinion of the Chief Protector is in need of . . . control'. In 1936 Western Australia deleted reference to caste and defined persons ranging from 'full blood' to certain classes of 'quadroons' or persons 'only one-fourth of the original full blood'. People of mixed descent might be exempted from the legislation, but exemptions could be partial and were revokable.

In reality such definitions were useless. Very few Aborigines had opportunity to complain about their treatment, legal or not, and no official had the genetic information to comply with the full requirement of the law. Several states acknowledged the latter and legitimised definition on the basis of physical appearance, placing the onus of proof on persons wishing to appeal against an official classification. In effect, an Aborigine was a person whom an administrator decided was Aboriginal, however remote his or her descent.

To control Aborigines, each state except Tasmania established a bureaucracy headed by public servants: a chief protector in Queensland, the Northern Territory and South Australia, a commissioner of native affairs in Western Australia, and the executive member of a board for the protection of Aborigines in New South Wales and Victoria. Below them were a few officials in central offices and on some reserves, but most routine control was the responsibility of part-time protectors of Aborigines, called guardians in New South Wales. Almost all these protectors were police officers, who assumed the function in addition to their normal duties.

"NATIVE" MEANS—

- (a) any person of the full blood descended from the original inhabitants of Australia;
- (b) subject to the exceptions stated in this definition any person of less than full blood who is descended from the original inhabitants of Australia or from their full blood descendants, excepting however any person who is—
 - (i) a quadroon under twenty-one years of age who neither associates with or lives substantially after the manner of the class of persons mentioned in paragraph (a) in this definition unless such quadroon is ordered by a magistrate to be classed as a native under this Act;
 - (ii) a quadroon over twenty-one years of age, unless that person is by order of a magistrate ordered to be classed as a native under this Act, or requests that he be classed as a native under this Act; and
 - (iii) a person of less than quadroon blood who was born prior to the 31st day of December, 1936, unless such person expressly applies to be brought under this Act and the Minister consents . . .

"Quadroon" means a person who is descended from the full blood original inhabitants of Australia or their full blood descendants but who is only one-fourth of the original full blood.

West Australian Parliamentary papers

The powers conferred on administrators varied, being widest in Queensland and Western Australia, increasingly comprehensive in New South Wales after an act of 1936, and most limited in Victoria. There was no legal limit on the freedom of Tasmanian Aborigines, but elsewhere legislation was designed to deny Aborigines freedom of movement and residence. In most states the law could compel Aborigines, either singly or in groups, to move from a town, the environs of a town or a municipal district, and in South and Western Australia and the Northern Territory authorities could also prohibit districts to Aborigines not in lawful employment. In all mainland states officials could compel Aborigines to reside in a specified location such as a government reserve, and in Western Australia authorities could make them live in a designated region. The responsible minister in Queensland could order an 'uncontrollable' Aborigine to be placed in prison indefinitely, without appeal.

On reserves administrators could legally attempt to obliterate Aboriginal culture, and take all necessary steps to maintain 'discipline and good order', including interfering with domestic life and private correspondence and imposing short terms of imprisonment. It was an offence for an Aborigine to enter or leave a reserve without permission.

Association between Aborigines and other Australians could be restricted severely. The restriction was generally presented as a means of protecting Aboriginal women, but it could go further, as when penalties were imposed for persuading or attempting to persuade an Aborigine to leave a reserve or place of employment, and for 'removing' an Aborigine from one state to another. It was an offence for Europeans to enter an Aboriginal camp or reserve, in New South Wales to 'lodge or wander in company with any aborigine', and in Victoria to 'harbour an aboriginal' unless he or she was exempted from the act or in lawful employment. Except for lawfully married couples, sex between an Aborigine and a European was an offence, and it was illegal for Aborigines to marry without consent. In all mainland states except Victoria the authorities had power to take any Aboriginal child from his or her parents. Only in New South Wales was there provision for a right of appeal.

In most states, permission had to be obtained, generally from a protector, before Aborigines could be employed. The more demanding permits stipulated the nature of employment, the length of service up to one year and the remuneration. Except in Queensland it was unusual for Aborigines working in northern Australia to be paid cash. Northern Territory legislation prescribed a minimum wage of 5s a week, but an employer was exempted if he was feeding the dependants of a worker. Where Aborigines were paid cash they usually got only part of their earnings. The rest went to an official, supposedly for safekeeping. Officials could legally control the financial affairs of all Aborigines: the South Australian chief protector, for example, could 'take possession of, retain, sell, or dispose of any ... property, whether real or personal'.

Discrimination against Aborigines was also written into more general legislation. Queensland Aborigines, for example, were barred from voting in state elections, and only 'half castes or persons of greater proportion of white blood' were eligible for the commonwealth franchise. Commonwealth legislation for old age and invalid pensions and the maternity benefit excluded Aborigines, although those persons of less than 50 per cent Aboriginal 'blood' not living on government reserves could qualify.

The impact of these laws on Aborigines varied greatly. Those in 'supervised camps' ranged from 21 to 27 per cent of the population in the Northern Territory, South Australia and Western Australia, to between 33 and 41 per cent in the eastern

Jimmy Sharman's boxing troupe at Sydney's Royal Easter Show, 1938, had, as usual, Aboriginal membership. Photograph by L. Pimblett, 1938.





mainland, reaching the peak in Queensland. But 'supervised camps' included religious missions and government reserves on which supervision was nominal. Perhaps only about 10 per cent of Aborigines lived on supervised government reserves at any one time. On the other hand, outside the eastern states between 40 and 46 per cent of the population was 'nomadic' and beyond European control: in Queensland 9 per cent was, in New South Wales 5 per cent and in Victoria 1 per cent. Another 45 to 55 per cent of adults in the east and 26 to 37 per cent on the rest of the mainland were regularly employed and therefore beyond close government control. Although some administrators aspired to control all Aborigines, governments would not pay for that, and there were too few bureaucrats to control a whole population. One of the more efficient administrations, in New South Wales, had no complete record of Aborigines under the act, or even of those living on reserves, yet its budget was being reduced further.

In 1936 managers of New South Wales reserves were instructed to cut spending, even though rations were already inadequate, houses were in need of repair or replacement, and urgently needed dental services were not being provided. In December 1936 only £3 was allocated to purchase Christmas gifts for girls in service and in hospital, yet next year £400 was found to celebrate Edward VIII's accession, including money for souvenirs to be hung in each home. In the Northern Territory the 'half-caste' institution at Alice Springs was in a desperate state of disrepair. One official described it as 'nauseating and long overdue for demolition', and another observed that the 'whole place stinks and is in an exceedingly bad condition'. Police often brought light-skinned children into this hovel, but nobody took an interest in their welfare. Late in 1937 24 children under the age of seven were there without their mothers. In the Darwin Compound two years earlier 44 'half-caste' children lived in a basic four-roomed house, short of

Aborigines at Alexandria station on the Playford River, Northern Territory, c1938. Aboriginal workers formed the basic labour force of the northern cattle industry.

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Children at Bathurst Island mission, c1938.

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beds and other necessities. Their food was considered unfit for human consumption. Throughout the Territory, and in most areas elsewhere, serious medical problems were ignored. For example, the only medical facility in Alice Springs, the Australian Inland Mission hostel, refused to admit Aborigines.

In the Northern Territory, administration was especially lax, consisting of a chief protector who was also chief medical officer, an assistant chief protector, a patrol officer, a clerk, four employees on reserves in Darwin and Alice Springs and fewer than forty police officers throughout the Territory. In addition to their police duties, protectors in remote areas were expected to supervise the employment of Aborigines, report cases of ill-treatment and illness, order and distribute rations to the aged and indigent, and diagnose, order medicines for and treat people who fell ill. There were also a few schoolteachers in the 'half-caste' homes, the number at Alice Springs increasing from two to three in 1938. Although some children of full descent got a little education on missions, the idea of government-run education for such children had been approved only in principle. Only about 500 of the Aboriginal population of 15 000 were resident on government reserves. The government spent about £1 per person a year on Aborigines as well as paying a subsidy of £2510 to the nine missions in the Territory.

These conditions gave most Aborigines virtually no protection. T.G.H. Strehlow, the newly appointed patrol officer, observed that 'The Aborigines Ordinance is so little known in Central Australia that it would appear only fair to give offenders a warning before prosecuting them'; 'most "native reserves" exist only on paper and are a joke to all bushmen, prospectors, doggers [dingo hunters], and lubra-hunters'. Despite elaborate legislation a similar want of protection and control apparently

In 1938 photographers employed by the Western Australia Government Printer documented aspects of life throughout the state, including this 'Native camp at Ord River'.

WESTERN AUSTRALIAN
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prevailed in much of Western Australia and South Australia, and perhaps the remote regions of Queensland and New South Wales. In Western Australia, of a total Aboriginal population in excess of 17 000, only about 1000 resided on government reserves and 2500 on missions.

Victoria also exercised limited control as a matter of policy. Since 1886 the Victorian government had attempted to reduce the Aboriginal population on reserves by refusing residence to most light-skinned people. The only sizeable reserve, Lake Tyers, had a population of about three hundred. New South Wales, which at one time followed a policy similar to Victoria's, was attempting to concentrate Aborigines on reserves, although residence was still considered a privilege and 'troublemakers' were expelled. New South Wales spent much more on its Aborigines than did the Northern Territory—five times the amount per head by one measure—and maintained a relatively elaborate administrative structure. There were 71 reserves, of which 21 were staffed full-time, as well as the Cootamundra Girls Home (established in 1911) and the Kinchella Boys Home (1924). Eighty-one government employees worked on reserves, including seventeen specially designated teachers and 24 women paid as matrons whose husbands were manager-teachers. Almost 30 per cent of Aborigines lived on reserves. The largest, at Brewarrina, had a population of 380, Quirindi 277, Cummerooonja 248, Woodenbong 203 and Burnt Bridge 202. Between 1929 and 1936, 678 children were taken from their parents and made wards, while many other children were taken into the child welfare system.

Queensland too had a substantial administration which, unlike New South Wales, tried to control all people of Aboriginal descent. There was no policy of merging people of less than '50 per cent Aboriginal blood' in the general community; 'half-castes' were kept under close watch and exemptions given them were frequently revoked; 'troublemakers' were not expelled from reserves but put under stricter control, often on Palm Island. Yet even in Queensland only 3000 of about 19 000 Aborigines lived on government reserves; another 4500 were on religious missions. Queensland institutions were larger, however, than elsewhere: the populations of Palm Island, Cherbourg and Woorabinda were 1248, 995 and 692 respectively, while of the fourteen missions four had populations over three hundred.

For all the haphazard diversity of administrative arrangements, Aborigines shared a common lot of neglect and disadvantage. All persons deemed to be Aboriginal were denied basic rights. Full citizenship, social welfare, equal educational and job opportunities were withheld from them. Their inferior position was clearly established in law and practice. Some might find themselves outside the scope of a current definition or exempted from a piece of legislation, but at any time definitions might be altered, exemptions revoked and Aboriginal lives changed significantly by the whim of administrators. When in 1936 Western Australian amending legislation broadened the definition of an Aborigine, a number of people in the southwest who owned farms, exercised the vote and educated their children in state schools suddenly had to apply for exemption tickets. In March 1938, after the attacks in Darwin by Aborigines on two European women described in chapter 4, it was decided to enforce rigidly the prohibited area regulations of the Aborigines Ordinance. Aborigines had to be in the native compound by sunset and remain there till dawn unless provided with written authorisation to be absent. Even in daytime they were forbidden to be on the streets unless specifically authorised by a protector. In Darwin as elsewhere, Aborigines did their best both to placate and avoid white Australians, for in the presence of whites it was impossible to tell what might happen.



Aboriginal elder of the Aranda people, Haasts Bluff near Alice Springs, Northern Territory, 1934.

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Stockmen, c1938.

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