



Teacher Reference Document 8



AUSTRALIAN
CONSTITUTION
CENTRE

Unit 2: How British laws and principles, including the rule of law, were brought to Australia by the First Fleet in 1788 and their impact on Aboriginal and Torres Strait Islander peoples – Year 4 - Civics and Citizenship (C & C) Strand: Laws and Citizens

Topic 4.2: A conflict of laws and perspectives

Governor Phillip's Commission and Instructions

Before [Governor Arthur Phillip](#) was sent out with the first fleet to New South Wales, he was given various documents, including a Commission (which gave him certain powers) and [Instructions](#) on how to operate the new colony. These were formally issued by the King, but were written by the responsible British Minister, [Lord Sydney](#). Lord Sydney believed that convicts should be given the chance to redeem themselves (ie prove they could be good people) in new colonies that had been granted local self-government.

The Commission and the Instructions provided both for the creation of a convict settlement largely run by the military, and a civilian community that was intended to grow over time and develop a British model of Government. Little consideration was given to the impact that any of this would have on the Aboriginal and Torres Strait Islander peoples to whom the land belonged.

The amount of land claimed in the Commission by the British was enormous – greater even than the area claimed by Cook. It went from the tip of Cape York to the bottom of Tasmania, and west to about half-way across Australia, in the middle of what is now South Australia and the Northern Territory. The claim was unrealistically large, because the British could not hope to control such an area from a tiny settlement in Sydney. But the aim of the claim was to put off other colonisers, such as the French, from settling any of this area. In this, it was successful.

Governor Phillip's Commission also required the Governor to do his utmost to obey laws relating to trade and navigation.

Governor Phillip was authorised to appoint Justices of the Peace, Coroners and Constables and other officers to ensure the 'better administration of justice'. He could grant pardons and raise forces to defend the colony from 'enemies, pirates and rebels'. He could impose martial law (ie rule by the armed forces, rather than government) during a time of invasion and construct fortifications.



Captain Arthur Phillip 1786
| Francis Wheatley
Source: Wiki Commons

Land, First Nations peoples and the emancipation of convicts

Governor Phillip's Instructions contained a particular reference to how the local Aboriginal peoples should be treated.



The founding of Australia by Capt.
Arthur Phillip RN, Sydney Cove,
Jan 26th 1788

Source: State Library of NSW

Unlike the Instructions to Cook, this time the Instructions did not mention 'consent', but ordered as follows:

'You are to endeavour, by every possible means, to open an intercourse [i.e. discussion and interaction] with the natives, and to conciliate their affections, enjoining all our subjects to live in amity and kindness with them. And if any of our subjects shall wantonly destroy them, or give them any unnecessary interruption in the exercise of their several occupations, it is our will and pleasure that you do cause such offenders to be brought to punishment according to the degree of the offence. You will endeavour to procure an account of the numbers inhabiting the intended settlement, and report your opinion to one of our Secretaries of State in what manner our intercourse with these people may be turned to the advantage of this colony.'

In summary, this instructed Phillip to open up discussions with the Aboriginal peoples of the area, be friendly to them and cooperative. He should punish any of his own people who killed or mistreated any Aboriginal person, and he should report back to Britain about their numbers and how interaction could prove to be beneficial to the colony.

While this was a positive approach, it contained qualifications. First, the Instructions only recommended punishment of the 'unnecessary interruption' of the activities of Aboriginal people, which suggested that necessary interruptions were allowed. It was most likely accepted that it was 'necessary' for Aboriginal peoples to be removed from living or engaging in their daily activities in the area of the settlement or those areas being farmed.

Second, Phillip's Commission gave him the power to grant land from the 'Crown' (ie the King as head of the British Empire) to settlers. There was an assumption that the underlying right (known as the 'radical title') to all land and waters in the area claimed as the colony was held by the British Crown. This ignored Aboriginal property rights.

Third, the Instructions also required that the land be cultivated (as farming was necessary to grow food for the survival of the colony – especially because the colonists were unfamiliar with bush tucker).



The First Fleet entering Port Jackson, January 26, 1788
Source: Wiki Commons

In addition there was the 'emancipation' of convicts. If convicts were well-behaved and hard-working, the Governor was given power to end their prison sentences. This meant that they ceased to be convicts and became free settlers in the colony. As part of this rehabilitation, emancipated convicts were granted land. According to the Instructions, 'every male shall be granted thirty acres of land, and in case he shall be married, twenty acres more, and for every child who may be with them at the settlement at the time of making the said grant, a further quantity of ten acres'. It was a condition of the grant of this land that the emancipated convict live on the land and cultivate it, which necessarily excluded Aboriginal peoples from it.

The result was that the colony quickly expanded, pushing the local Aboriginal peoples off their own lands, causing great tensions and sometimes violence. The Instruction to 'conciliate affections' (ie be friendly) was never really practical in circumstances when land was being taken, cultivated and built on, and Aboriginal peoples were being dispossessed, often by violent means. Aboriginal people were hardly likely to see this as a sign of friendliness.

While there is much better knowledge today of frontier conflicts, even old histories, such as *History of New South Wales From the Records* (1889) by George Barton (older brother of Edmund Barton), recognised how conflict grew. Barton noted that although Governor Phillip had 'endeavoured to establish a good understanding with the natives', not everyone else would follow his example or obey his orders. Aboriginal peoples, who were 'friendly at first, were provoked from time to time by the convicts, and of course retaliated; every act of retaliation increased the ill-feeling on both sides, and at last led the way, in after times, to open violence and bloodshed'. Some Aboriginal leaders, such as Pemulwuy, led resistance attacks and maintained ongoing warfare. In some cases there were official military operations against Aboriginal people and [massacres](#).

The intention that the Aboriginal peoples be treated with 'amity and kindness' was not fulfilled. Instead there was a painful history of dispossession, exclusion, discrimination, violence, disease and massacres. It is this history that the 'truth-telling' call of the Uluru Statement seeks to lay bare for all Australians to see as part of the journey of reconciliation.



Topic 4.2 Lesson/ Activities Four



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Governor Arthur Phillip's Commission and Instructions on how to govern the colony of New South Wales

Time/Lesson

- 1 hour

Learning Goal

To understand the impact of the First Fleet settlement, aiming to develop a British model of Government, on the Aboriginal peoples who had occupied the land for over 60,000 years.

Rationale

For students to understand that Governor Phillip's instructions to treat the Aboriginal peoples 'with kindness' were inconsistent with his other instructions and powers to grant land to British free settlers and emancipated convicts, dispossessing Aboriginal people of their homes, hunting grounds and their Country .

Success Criteria

Students understand what and why things went wrong for Governor Philip when he tried to implement his instructions and why the British model of Government with all land considered to be owned by the Crown was incompatible with the legal and spiritual relationship of Aboriginal peoples to their lands and waters.

Teaching Reference Document:

TRD 8: Governor Phillip's Commission and Instructions

"Governor Phillip's Instructions contained a particular reference to how the local Aboriginal peoples should be treated. Unlike the Instructions to Cook, this time the Instructions did not mention 'consent', but ordered as follows:

You are to endeavour, by every possible means, to open an intercourse [i.e. discussion and interaction] with the natives, and to conciliate their affections, enjoining all our subjects to live in amity and kindness with them. And if any of our subjects shall wantonly destroy them, or give them any unnecessary interruption in the exercise of their several occupations, it is our will and pleasure that you do cause such offenders to be brought to punishment according to the degree of the offence. You will endeavour to procure an account of the numbers inhabiting the intended settlement, and report your opinion to one of our Secretaries of State in what manner our intercourse with these people may be turned to the advantage of this colony."

Resources

- Instructions for Governor Philip - https://www.foundingdocs.gov.au/resources/transcripts/nsw2_doc_1787.pdf
- The AIATSIS Map of Indigenous Australia found in TRD 9, Terra Nullius, can be used to show the diversity of Aboriginal and Torres Strait Islander nations at the time the First Fleet arrived.

Tuning In

- Visit: <https://www.foundingdocs.gov.au/item-did-35.html>
- Discuss the poster "unfound document wanted" on this website.



Museum of Australian Democracy - Documenting a democracy

Teacher Instruction

- Note that reference is only made to Aboriginal people, rather than Aboriginal and Torres Strait Islander peoples, in these lessons and materials, because Governor Phillip's initial settlement did not extend to the Torres Strait.
- Teacher reads TRD 8 Governor Phillip's Commission and Instructions and highlights the key points including that the land claimed for the British Crown was enormous and went from the tip of Cape York to the bottom of Tasmania and west to about half-way across Australia. Students look at the land claimed on a [map of Australia](#). They discuss that prior to 1788 it was all occupied by Aboriginal and Torres Strait Islander peoples but that the British treated Australia as 'terra nullius', that is, land belonging to no one.
- The class discusses the powers given to Governor Phillip such as the power to ensure justice and defend the colony. Students demonstrate they understand the 'emancipation' of convicts - that if they worked hard the Governor was given power to end their prison sentences and grant them land. How would this help the new colony? Convicts were also given land grants once their sentences had expired, starting with [James Ruse](#) in [1791](#).
- Discuss Governor Phillip's instructions to be friendly with the Aboriginal people and punish his subjects if they killed or mistreated Aboriginal people. Ask the class to imagine what actually happened when the Aboriginal people lost access to their land and British farms and homes were built there. Do they think this was fair? How would they feel if they were a member of an Aboriginal family that was displaced from their land? Could this happen in Australia today? Is it possible to just take someone's land? Sometimes the government compulsorily acquires homes and land from people to build a freeway or a train line or other things needed by the broader community, but it does so under a law and pays compensation for it. Aboriginal peoples were not given compensation for their land and they did not regard land as something that could be sold. They saw themselves as belonging to the land. Aboriginal peoples and the British had completely different ideas about ownership of land. Can you see how this might result in serious disagreements and even violence?
- Students write their own responses to the above questions and the responses are used as assessment for this topic or kept in a student portfolio of work for this topic.

Wrapping it up

- Class gathers together to discuss Governor Phillip's instructions recommending punishment of the 'unnecessary interruption' of Aboriginal activities despite it being 'necessary' to restrict access of Aboriginal people from their lands that now contained areas of British settlement or farming. Could there have been a better way for both the British and the Aboriginal and Torres Strait Islander peoples to share the land (co-exist) such as through signing an agreement or a treaty?
- Students write an individual piece answering the question: 'Imagine that another country invaded Australia, imposed its laws and took ownership of the land - how would you feel and what would you do?'

Differentiation

Governor Phillip was instructed to 'conciliate the affections' of Aboriginal people. What does conciliate mean here? (Check the dictionary.) Over 200 years later, we are called on to join in 'reconciliation' with Aboriginal and Torres Strait Islander peoples. What does reconciliation mean? Students research the meaning of 'reconciliation' and how to give practical effect to it: <https://www.narragunnawali.org.au/curriculum-resource/31/reconciliation-in-action-primary>. Students reflect on whether we can achieve reconciliation today, in contrast to the failure by Governor Phillip to 'conciliate affections' in the past.

Assessment strategies

HASS Skill – Question Posing: In the introduction phase the students write a set of questions. These can be used as formative assessment of this skill or as a part of a summative assessment folio using the criteria from the Standard Elaborations (below).

HASS Skill – Collection of information: Using a retrieval chart is a research skill. This can be used as formative assessment of this skill or as a part of summative assessment folio using the criteria from the Standard Elaborations (below).

HASS Skill – Source Analysis: If using a source analysis in this activity





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HASS Skill

	A	B	C	D	E
Inquiry Question	development of clear and informed questions to frame an investigation	development of informed questions to frame an investigation	development of appropriate questions to frame an investigation	guided development of questions to frame an investigation	directed use of questions to frame an investigation
Research	location and considered collection of data and information from a range of relevant sources	location and informed collection of data and information from a range of sources	location and collection of data and information from a range of sources	location and guided collection of data and information from a range of sources	use of directed data and information from a range of sources
Source Analysis	considered examination of sources to: <ul style="list-style-type: none"> determine their purpose identify different viewpoints 	informed examination of sources to: <ul style="list-style-type: none"> determine their purpose identify different viewpoints 	examination of sources to: <ul style="list-style-type: none"> determine their purpose identify different viewpoints 	partial examination of sources to: <ul style="list-style-type: none"> determine their purpose identify different viewpoints 	fragmented examination of sources to: <ul style="list-style-type: none"> determine their purpose identify different viewpoints

