



Index and Introduction



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

C&C Strand: Laws & Citizens (made simple for year 4 in their history studies of the First Fleet and as an extension of topic 4.1)

Curriculum: Year 4: HASS F6: events around the establishment of the First Fleet and the key people involved, such as Captain Arthur Phillip, marines and convicts ([AC9HS4K03](#)) including the effects of contact with other people on First Nations Australians and their Countries/Places following the arrival of the First Fleet ([AC9HS4K04](#))

Area/Questions and Five Takeaways:

1. What type of laws and customs did Aboriginal and Torres Strait Islander peoples have prior to the First Fleet arriving?
2. What type of laws did the British bring with them on the First Fleet?
3. What is meant by the doctrine of *terra nullius* and why did the High Court *Mabo* decision in 1992 overturn it?
4. What is meant by holding 'sovereignty' over a territory?
5. What does a court do?

Topic summary:

- Students understand the different nature of the laws and institutions brought to Australia with the British on the First Fleet in 1788, compared to existing Aboriginal and Torres Strait Islander laws and customs.
- Students explore the systems of law, customs and governance of the Indigenous Peoples who occupied Australia for more than 60,000 years before the British arrived. Noel Pearson has contributed resources to help build this understanding.
- Students understand how the constitutional principle of the "rule of law" was brought to Australia and ensured the law applied to everyone, including convicts. They understand that the colonies had courts of law that dealt with punishment in criminal and civil matters.
- Students gain a basic understanding of the types of British laws that applied to the places they colonised: the "common law" (which has been developed by courts over many centuries) and "statutes" (which are passed by Parliaments, and called "Acts of Parliament" or "legislation").
- Simple classroom courts are encouraged for role play with sample cases given from historical and contemporary perspectives.

Achievement Standards:

By the end of Year 4, students describe the diversity of experiences of people in Australia prior to and following 1788. They describe the events and causes of the establishment of the first British colony in Australia. They describe the effects of colonisation upon [First Nations](#) people and environments.

Teacher Referendum Documents (TRDs) and Lessons Index

- **TRD 5: Indigenous law and lore pre-1788**
 - Lesson One: Indigenous law and lore pre-1788
- **TRD 6: Captain (Lieutenant) Cook's Instructions**
 - Lesson Two: Captain Cook and his secret instructions
- **TRD 7: Why the British colonised Australia**
 - Lesson Three: Why the British colonised Australia
- **TRD 8: Governor Phillip's Commission and Instructions**
 - Lesson Four: Governor Phillip's Commission and Instructions on how to govern the colony
- **TRD 9: Terra Nullius – What was its effect on Aboriginal and Torres Strait Islander peoples?**
 - Lesson Five (a): Terra Nullius – 'land belonging to no one'.
 - Lesson Five (b): Terra Nullius: How did British laws impact on Aboriginal people?
- **TRD 10: What law did the British bring to New South Wales?**
 - Lesson Six: Introducing the law the British brought to the penal colony of New South Wales and the difference between common law and statute law.
- **TRD 11: Civil Death and Civil Rights in Colonial New South Wales – (Give me back my parcel)**
 - Lesson Seven: A Case Study on the story of convicts Henry Kable and Susannah Holmes and their baby. Attempts to apply the British principle of the 'rule of law'.
- **TRD 12: The First Criminal Court in Australia**
- **TRD 13: Thomas Barrett – thief, mutineer, forger and artist – the first convict hanged in Australia**
 - Lesson Eight: the First Criminal Court in Australia and the story of Thomas Barrett – Thief, Mutineer, Forger and Artist – the first convict hanged in Australia.
- **TRD 14: What kind of government did the British impose in New South Wales?**
 - Lesson Nine: What kind of government did the British impose in NSW?

Special First Nations Peoples Disclaimer: In some First Nations communities hearing recordings, seeing images or the names of deceased persons, may cause sadness or distress and, in some cases, offend against strongly held cultural prohibitions. The AIATSIS website has more information.

Special Terminology First Nations Peoples: Teachers may note that much of the above discussion refers to Aboriginal people, rather than 'Aboriginal and Torres Strait Islander peoples'. This is because the original terminology, including in the 1960s, did not make this distinction. Teachers should take care to contextualise this historical usage and contrast it with the terminology used more accurately today.

It is often said that Aboriginal and Torres Strait Islander people were not counted in the census until after 1967. That is not true. They were counted from the very first census if they lived near settlements - just not if they were in remote areas that the census officials did not reach. The census figures in the first part of each census excluded what they described as 'full-blood' Aboriginal people, but included all other Aboriginal people. 'Full-blood' Aboriginal people were, however, included in tables at the end of each chapter in the census. Teachers should be aware that this terminology used in the census is now viewed as offensive and may be regarded as disturbing to students. Accordingly, teachers may wish to be cautious in its use and careful to contextualise it if using it in class. Census reports contain a wealth of material about the lives of Aboriginal and Torres Strait Islander people, but the description and categorisation of that information would need to be contrasted with the attitudes of today.

In Unit 2, Teacher Reference Document (TRD) 10, in discussing 'when the British arrived in 1788' the First Nations Peoples name of Warrane' (pronounced Wah-rang) has been added. In other units when teaching about place names, teachers are likewise encouraged to use the First Nations Peoples' name.

