



# ABORIGINAL HOUSING AND HOUSING ACTIVISM IN NEW SOUTH WALES

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## A HISTORY

Paul van Reyk



*Artwork by Luke Penrith: The boomerangs represent roofs on houses – houses along the river, in the hills, the cities and along the coast.*

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# Acknowledgement of Country

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The Tenants' Union acknowledges that Aboriginal and Torres Straits Islanders were the first sovereign nations of the Australian continent and its adjacent islands, and that these lands were possessed under the laws and customs of those Nations. The lands were never ceded and always remain Aboriginal and Torres Strait Islander Country. Our office is on the lands of the Gadigal Country.

We acknowledge that the land, sea, sky, and waterways are of spiritual, social, cultural, and economic importance to Aboriginal and Torres Strait Islander peoples and support their right to culture, language, land, and various notions of self-determination.

We acknowledge the strength and resilience of Aboriginal and Torres Strait Islanders in the face of past and present structural racism implemented through government policies and practices that impact on housing, encompassing home ownership and tenancy. We recognise, respect and value Aboriginal and Torres Strait Islander Peoples, their communities and their advocates who have taken action to bring about change in these policies and practices and those who continue to do so. We acknowledge their successes.

We commit to working in partnership with them as they continue to seek justice in housing and tenancy.

The Tenants' Union supports the reforms called for in the Uluru Statement from the Heart. We actively support Aboriginal people in their struggle for Treaty, Voice and Truth. As a first step we support the establishment of a First Nations Voice, in a form determined by Aboriginal and Torres Strait Islander Peoples and enshrined in the Constitution.



# Publication notes

## **Aboriginal Housing and Housing Activism in New South Wales: A History**

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The Tenants' Union of NSW has produced this monograph to document the work of Aboriginal housing activists in New South Wales. The Tenants' Union is the main resourcing body for the Tenants Advice and Advocacy Services in NSW, and a community legal centre specialising in NSW residential tenancies law. We are an independent, secular, not-for-profit membership-based co-operative. We work to promote the interests of Aboriginal tenants; boarders, lodgers and other marginal tenants; private rental tenants; public and community housing tenants; and land lease community residents. We are committed to working towards housing justice in partnership with Aboriginal and Torres Strait Islander Peoples, their communities and advocates.

### **Acknowledgement of previous work**

The Tenants' Union of NSW acknowledges the project performed and submitted by Ivan Simon and Ruth Simon of the previous Dtarawarra Aboriginal Resource Unit. This work which related to and informed this paper detailed the historical legislative framework that impacted on the housing and socio-economic circumstances of Aboriginal people and communities. These legislative structures and policies are still having impacts on Aboriginal communities, particularly on designated Reserves and Missions. The previous work of the Dtarawarra Aboriginal Resource Unit provided a strong basis and impetus for the compilation and completion of this document.

### **Artwork by Luke Penrith**

The artwork used on the cover and in the margin of this publication is by Luke Penrith. The Tenants' Union was pleased to be able to commission Luke to produce this housing-inspired artwork in 2021. Luke is a contemporary Aboriginal Artist whose ancestry is connected through the Wiradjuri, Wotjobaluk, the Yuin and the Gumbaynggirr Nations. Luke says about this work: 'The boomerangs represent roofs on houses – houses along the river, in the hills, the cities and along the coast.'

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### **Warning for Aboriginal readers**

This paper contains some stories and images of Aboriginal people who have passed away. Including their names and their images allows an accurate record to be kept. We acknowledge that in some Aboriginal communities, seeing the names and images of the deceased may cause sadness and distress, particularly to relatives of those people. We ask readers to proceed with caution and to accept our apologies for any sadness caused through these necessary inclusions.

### **Terminology and spelling**

Some of the terms to describe Aboriginals and Torres Strait Islanders in this paper are used directly from the historical sources from which the material is sourced. The Tenants' Union does not condone these terms and means no offence by their use to outline the views held in the past. There is some variation in the spelling of many Aboriginal names and words, due largely to the inconsistent practices of white observers and recorders over the years. When citing from source material we have retained the spelling as found in the original source.



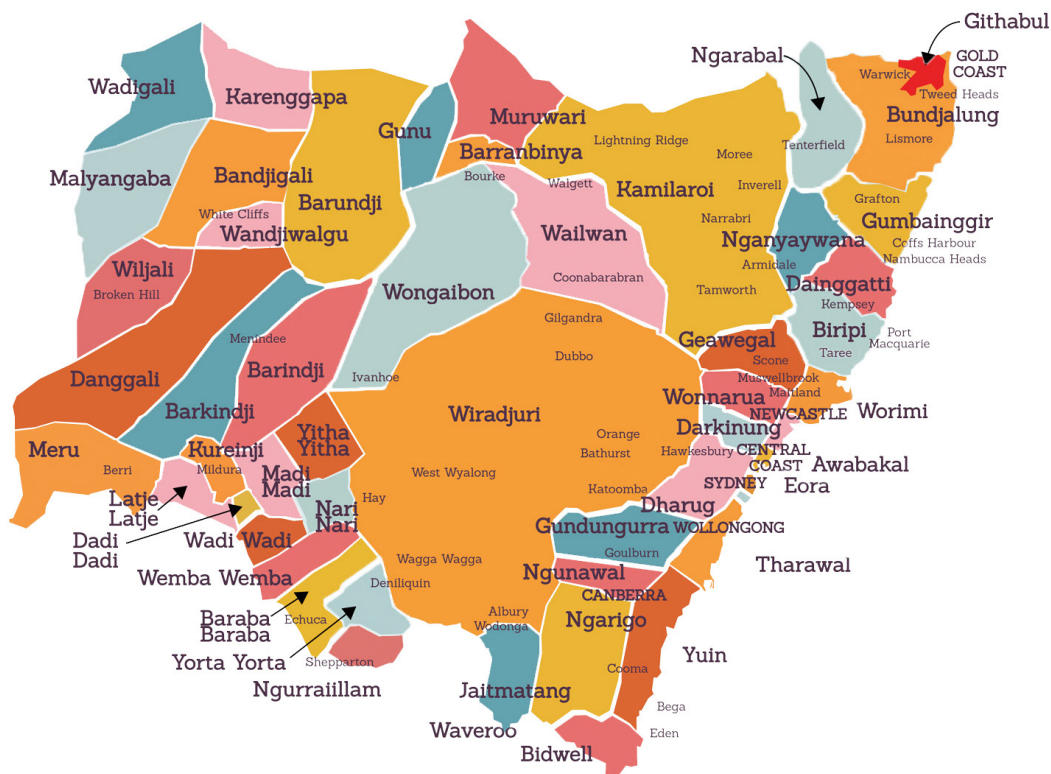


# 1. A clash of cultures

## 1.1 Sovereign nations: Aboriginal People and land pre-colonisation

The first humans to begin living in what is now called Australia are thought to have arrived as much as 65,000 years ago and to have rapidly spread across the continent within 156-208 generations.<sup>1</sup> The earliest evidence of Aboriginal people living in New South Wales comes from human remains at Lake Mungo in the Southwest of the state that are dated to around 42,000 years ago.<sup>2</sup> Recent scientific modelling suggests that at the time of colonisation there may have been as many as 750,000 Aboriginal Australians living across the continent.<sup>3</sup> Also, at the time of colonisation there were an estimated 250 distinct language groups and 800 dialects.<sup>4</sup> The *Reconciliation NSW* map below shows the recognised areas of the nations in New South Wales.

Map of Aboriginal Languages and Nations



Map used with permission. © Reconciliation NSW  
The Tenants' Union is a proud member of Reconciliation NSW.

Reconciliation  NSW

- 1 Corey J. A. Bradshaw, Kasih Norman, Sean Ulm, Alan N. Williams, Chris Clarkson, Joël Chadœuf, Sam C. Lin, Zenobia Jacobs, Richard G. Roberts, Michael I. Bird, Laura S. Weyrich, Simon G. Haberle, Sue O'Connor, Bastien Llamas, Tim J. Cohen, Tobias Friedrich, Peter Veth, Matthew Leavesley & Frédéric Saltré, 'Stochastic models support rapid peopling of Late Pleistocene Sahul', *Nature Communications* (2021) 12:2440 accessed 30 April 2021 at doi.org/10.1038/s41467-021-21551-3 | www.nature.com/naturecommunications
- 2 ia.anu.edu.au/biography/mungo-man-27704 accessed 26 November 2021
- 3 aboriginalheritage.org/history/history/#:~:text=It%20is%20estimated%20that%20over,the%20island%20continent%20in%201788.
- 4 aiatsis.gov.au/explore/living-languages accessed 26 November 2021



Within each nation, Aboriginal people lived in small family groups, commonly called clans. Several clans together formed what is now called a nation. These family groups built semi-permanent dwellings and travelled around their sovereign area responding to seasonal changes and changes in the availability of food resources. Tjukurpa, or Dreaming, stories defined the area of land that belonged communally to a clan and a nation. Tjukurpa stories described the spiritual connections and obligations to the land, its resources, members of a nation and between the nations. One of these obligations to other clans was to seek permission to travel on or through another clans' land.

## 1.2 Dispossession and resistance

In 1770, James Cook, undertook a voyage to observe the transit of Venus and confirm the existence of a large landmass in the southern Pacific. Cook claimed the eastern coast of this landmass for the British Crown, naming it New South Wales. Cook, supported by Joseph Banks, his botanist, and James Matra, signed on as an Able-Bodied seaman for the trip, claimed that the Indigenous people he met during his voyage up the east coast showed no sign of having any laws or custom or usage that indicated that they claimed ownership of the land. Cook's claim was an entirely strategic one, claiming ownership of land before the French, with whom Britain was at war at the time. This would become the rationale for Governor Burke officially proclaiming in 1835 that Australia was a *terra nullius*, a land belonging to no-one.

By the later years of the 18<sup>th</sup> century the British Crown was increasingly running out of options for holding convicts. Many were already being held in 'hulks' on the Thames River. After the American War of Independence ended in 1783, Britain could no longer transport convicts there either. In response to this, Banks, Matra, and others proposed to the British Crown establishing a colony in New Holland (the name of the southern land at the time – Australia was not named as such until 1824) which would act as a penal settlement, a staging port for trade with East Asia, new land in which to produce raw materials and goods for the British trade and as a strategic military outpost.

There were two views of the law of possession of land in the eighteenth century. One was that a people's presence on land gave them ownership. When a land was settled by others the settlers and the Indigenous people were to have shared rights to the land through treaties. The other view held that the right to land came from making it productive, cultivating crops and raising cattle and sheep. The Crown, influenced by Cook, Banks and Matra, took the view that as the Indigenous people they met did not appear to engage in farming or herding, they did not own the land and so there was no need for a treaty.<sup>5</sup>

The Crown agreed, and in 1777, a fleet of seven ships carrying soldiers, convicts, and some free settlers under the command of Arthur Phillip (Governor of New South Wales 1788-1792) set sail for what was at that time called New Holland. The fleet arrived in January 1788 at the southern side of a wide bay which Cook had named Botany Bay (now called Kamay, Dharawal for fresh water). Finding the area unsuitable for a colony, Phillip sailed a short distance further north and entered a wide bay that looked more promising. The fleet landed on Gadigal Country on what is now called Sydney cove and the first displacement of Aboriginal people from their traditional lands began.

Phillip's order from the Crown was to make the colony self-sustaining as soon as possible. To that end, he was authorised to grant land to the military, to free-settlers and to emancipated convicts and those convicts whose term had expired. None of the land was ceded or sold or otherwise made over to the Crown by the Gadigal and Dharug peoples.

Despite Phillip and many colonists coming to recognise that Aboriginal peoples did consider they had ownership of the land, the justification of *terra nullius* continued to be used to seize Aboriginal land. In addition, during the 18<sup>th</sup> century, agricultural land had been increasingly privatised through Enclosure Acts in Britain. Under these Acts, land that had once been held

5 Richard Broome, *Aboriginal Australians. A history since 1788*, Allen and Unwin, Crows Nest, 4th edition 2010, p. 19



'in common' by a group of farmers was increasingly parcelled up into lots owned by individual families. These families in turn held exclusive rights over the use of their land. Boundaries were re-drawn, and fences built. This new system was rolled out in the new colony. This was completely in opposition to the way land and its ownership was understood by Indigenous people.

As the colony grew, the process of land theft and privatisation continued. Indigenous peoples were either forced onto the lands of others or continued to live on the stolen land but increasingly without access to their food resources and culturally significant spaces. Colonists fenced off stolen land depriving Aboriginal people of their food resources and cutting them off from fresh waterways, trade routes and ceremonial grounds.

Indigenous resistance to this theft grew. In September 1794 a Hawkesbury settler and his servant were killed by a party of Aboriginal people and food and clothing was taken. A few days later the settlers retaliated, killing seven or eight of the Aboriginal people they hunted down.<sup>6</sup> This was the first recorded instance of what is now called the Frontier Wars, battles in which Aboriginal people sought to regain control of their land and resources and colonists retaliated with lethal force. An estimated 20,000 Aboriginal people were killed in the Frontier Wars across Australia between 1788 and the mid-1930s.<sup>7</sup>

Despite these clear assertions of land and food sovereignty, Phillip and successive Governors did not make moves towards treaties. Under Governor Macquarie (1810-1821), over half a million acres of Aboriginal land across New South Wales was granted to colonists.<sup>8</sup>

### 1.3 Early Aboriginal petitioners for land

Some Aboriginal people did attempt to gain access to land. In 1857, John Goggey petitioned the New South Wales Governor to prevent the encroachment by Thomas Rowley onto a piece of land at William's Creek, a tributary of the George's River at what is now the Sydney suburb of Holsworthy. The land had been granted to Captain J.T. Williams but had been left vacant and the Goggey family, John claimed, had been living on part of it without interference for 'upwards of twenty-two years' His petition 'Humble sheweth... That a Person in the name of John Rowley had turned him off the Said land without showing just claim. Petitioner therefore a Supplicant at the Hands of your Excellency, requireth that divine prorogation to be executed, which should alone stoppeth the Other and the Petitioner will be in duty Bound'.<sup>9</sup> However, the surveyor general's office responded that since the land was nor Crown land, there was little they could do.<sup>10</sup>

As more and more settlers pushed for land, other Aboriginal people petitioned the government for tenure over parts of their traditional lands: the Goulburn Valley people in 1859, the Yuin on the mid-south coast of New South Wales in the 1860s, the Gandangara people in the Burratorang Valley, west of Sydney in the early 1870s. Heather Goodall and Allison Cadzow write that 'they all wanted land in perpetuity, as an inalienable freehold tenure. Their goals included gaining land from which they could earn a living in the new economy, sometimes drawing on traditional subsistence harvesting as well as from cash incomes'.<sup>11</sup> In many cases the government said there was no policy under which tenure could be granted. In other cases, the government granted land as Aboriginal reserves.

6 George Megalogenis, *Australia's Second Chance* (Sydney, 2015), p. 18

7 [lens.monash.edu/@politics-society/2021/04/23/1382962/the-frontier-wars-undoing-the-myth-of-the-peaceful-settlement-of-australia](https://lens.monash.edu/@politics-society/2021/04/23/1382962/the-frontier-wars-undoing-the-myth-of-the-peaceful-settlement-of-australia)

8 Grace Karskens, *The Colony. A History of Early Sydney*, Allen and Unwin, Crows Nest, 2009, p. 226

9 Heather Goodall and Alison Cadzow, *Rivers and Resilience. Aboriginal People on Sydney's Georges River*, UNSW Press, 2009, p.59

10 Heather Goodall and Alison Cadzow, *Rivers and Resilience*, p. 61

11 Heather Goodall and Alison Cadzow, *Rivers and Resilience*, p. 73-74



## 2. Aboriginal confinement

### 2.1 Reserves and Missions

Since the 1770s British abolitionists had been calling for Britain to cease the slave trade to its colonies in the Caribbean. In 1833, the British Parliament passed the Slavery Abolition Act. The faction in the British government who had supported the Act, now began to raise questions about the treatment of Indigenous people in British colonies, including in Australia. A Parliamentary Select Committee on Aboriginal Tribes (British Settlements)<sup>12</sup> was established and its Report was published in 1837. The Committee investigated the situation of 'Aborigines' in New Holland and Van Dieman's Land (now Tasmania).

In its report on the people of New Holland said:

*In the formation of these settlements it does not appear that the territorial rights of natives were considered, and very little care has since been taken to protect them from the violence or the contamination of the dregs of our countrymen... Many deeds of violence have undoubtedly been committed by the stock-keepers (convicts in the employ of farmers at the outskirts of the colony), by the cedar cutters and by other remote free settlers, and many natives have perished by the various military parties sent against them.*<sup>13</sup>

The Report did not make any recommendations.

At the same time there was growing concern among the colonial governments of the colonies in Australia at the increasing occupation of Crown land by 'squatters', free-settlers or emancipates turned pastoralists who pegged out Crown land as their 'runs'. Laws were passed to bring squatters under a leasing scheme. Aboriginal people on land that was leased retained the right to live on the land and continue to use it for food and ceremonial purposes. However, pressure mounted on the governments to release more land for pastoralists and to set aside land for towns and for agriculture. This was seen to conflict with the rights of use of the land by Aboriginal people. A way out of the dilemma had to be found.

In 1842 the British parliament passed *An Act Regulating the Sale of Waste Lands in the Australian Colonies* setting out how the Crown could sell land to private individuals. The Act also allowed the Crown or anyone acting on behalf of the Crown to exempt from sale or other disposal of 'such lands as may be required... for the Use or Benefit of the Aboriginal inhabitants of the Country'.<sup>14</sup> This was the solution to the perceived conflict of rights. As a result, 'Where Aboriginal people had become displaced by European settlement in the towns and farming districts, reserves were one way of providing them with a place to live. The setting aside of suitable areas of land for small reserves was also favoured in the unsettled districts'.<sup>15</sup>

In 1849, the Executive Council of the New South Wales government agreed that 'beyond the settled districts, a suitable number of reserves of moderate extent should be made for the use of the Aborigines'.<sup>16</sup> The Council noted, however, that the reserves should not be established to 'secure for the Aborigines the means of subsistence', but that they should still have 'the right of wandering in quest of food over all lands which the Crown tenants may leave in a

12 The term 'Aborigines' in the title was used in the wider meaning of Indigenous people and not specifically referring to Indigenous Australians

13 William Ball, Aldine Chambers, Hatchard and Son, *Report of the Select Parliamentary Committee on Aboriginal Tribes (British Settlements)*, London, 1837, p. 10 accessed at apo.org.au 11 June, 2021

14 *An Act for Regulating the Sale of Waste Land belonging to the Crown in the Australian Colonies* accessed at digitalcollections.qut.edu.au/4668/1/AustralianColonialWasteLand1842.pdf, 18 June, 2021

15 Henry Reynolds and Jamie Dalziel, 'Aborigines and Pastoral Leases – Imperial and Colonial Policy 1826-1855', *UNSW Law Journal* 19(2) p.330, accessed at austlii.edu.au/au/journals/UNSWLJ/1996/17.pdf, 18 June 2021

16 Extract from a minute Number 49/51 dated October 15, 1849 cited in Henry Reynolds and Jamie Dalziel, 'Aborigines and Pastoral Leases'





unimproved state'.<sup>17</sup> That is, that reserves would exist as well as the right to occupation and use of pastoral lands.

Three forms of land set aside for Aboriginal people were developed: self-managed reserves, missions, and Aboriginal stations.<sup>18</sup> The first two are described here. Aboriginal stations are described in the next section.

## Self-managed Reserves

In 1850, 35 small Aboriginal reserves were created in districts across NSW that were being used for pastoralism, which at that time was most of NSW except Sydney and some coastal areas. From 1883 onwards, those living on these reserves received rations and blankets from the Aboriginal Protection Board (APB) (see below). Those living on the reserves remained responsible for their own housing. The reserves at Forster and Burnt Bridge were examples of these. By 1911, there were 115 reserves comprising 26,000 acres, of which 75 were created at the request of Aboriginal communities. Most of these were farmed and managed by Aboriginal people and not controlled by the APB. 'As Aboriginal people remember these lands, they usually recall them as being owned primarily by one man, or a married couple, but there were mutual expectations that kind members would come to live and work on the land and share its produce at different times of the year'.<sup>19</sup>

## Missions

Missions were set up by churches and religious individuals on land granted to them by the government. Christians had been actively working to convert Aboriginal people since the earliest years of the colony. Bennelong, a Wangal man captured and trained by Arthur Phillip, along with Colebee, to be a go-between and interpreter, and who adopted British



Unidentified Aboriginal mission in NSW, from the Tyrell collection, National Library of Australia, Australian Consolidated Press, 1880-1910, printed 1981. <https://catalogue.nla.gov.au/Record/4085278>

dress and behaviours, was baptised around 1821. Reverend Lancelot Threlkeld started a mission at Lake Macquarie in 1827 among the Awabakal and Reverend William Watson established a mission at Wellington Valley in 1832 to bring Christianity to the Wiradjuri.

*[Missionaries] observed Aboriginal culture and learned an Aboriginal language, although usually with the intention of subverting the cultures... Reverend Threlkeld advised: 'first obtain the language, then preach the Gospel, then urge them from Gospel motives to be industrious'... A superintendent of agriculture at [Wellington Valley] taught 'habits of industry, order and subordination', and a number of young Wiradjuri men were employed there as agricultural labourers.*<sup>20</sup>

Missions provided food and clothing and so were attractive to Aboriginal people dispossessed of their land and so their food resources. Attendance at religious services was often a condition of receiving food and working on mission buildings. Missions were underfunded and were often unable to raise sufficient food. 'When food was available at the missions, Aboriginal people gathered, no doubt out of curiosity as well... Once supplies failed, their efforts faltered... Above all, the missions failed because Aboriginal people resisted their overtures.'<sup>21</sup>

17 Extract from a minute Number 49/51 dated October 15, 1849 cited in Henry Reynolds and Jamie Dalziel, 'Aborigines and Pastoral Leases'

18 'Living on Aboriginal reserves and stations', [environment.nsw.gov.au/chresearch/ReserveStation.htm](http://environment.nsw.gov.au/chresearch/ReserveStation.htm) accessed 21 June 2021

19 Heather Goodall, *Invasion to Embassy. Land in Aboriginal Politics in New South Wales, 1770 – 1972*, Sydney University Press, 2008, p. 115

20 Richard Broome, *Aboriginal Australians*, p. 31

21 Richard Broome, *Aboriginal Australians*, p. 32



# 3. Protectionism

## 3.1 George Thornton and the beginning of protectionism

Not all Aboriginal people in New South Wales lived on reserves or missions during the mid to late 1800s.

Some worked as station hands on pastoral properties where they lived in sub-standard huts or traditional camp structures, receiving rations in lieu of pay, and supplemented their food by continuing to hunt and gather. Rations were at times withheld when the station owner accused them of not working hard enough, for being absent when they attended to cultural matters such as funeral rites, or for other infringements of station 'rules' imposed by the owner.

In rural and coastal areas others lived in settlements on the edges of towns, becoming known as 'fringe dwellers', others in their traditional lands that were now held in private hands, and others by beaches and rivers near to their traditional lands from which they might go to the missions for food and other necessities. As they were not generally documented in the official record, it is hard to say definitively how many of these encampments there were.

In Sydney, Aboriginal families continued to live along the southern foreshore of the harbour at Rushcutters Bay and Rose Bay, at La Perouse and on the northern foreshore of the harbour and at Manly.<sup>22</sup>

A community also lived in the government boatsheds on what is now Bennelong Point on the eastern side of Circular Quay. Aboriginal people were visiting relatives in Sydney or coming down for cultural business, to receive rations and for the annual distribution of blankets. Settlers in Sydney grew increasingly intolerant of this community, urged on by the press. At the same time the government grew alarmed at what it saw as unregulated movement of Aboriginal people throughout the newly established state. These fears were stoked by George Thornton, who had served in a number of elected capacities in the colony. Thornton argued that Aboriginal people should be stopped from coming into Sydney, and that the government should provide rations, blankets, and fishing boats to keep them in their traditional lands.

When the infant son of a couple who had been living in the boatshed drowned, Thornton advised Sir Henry Parkes, the Premier, to take steps to remove residents from the boatshed. Parkes agreed and used the offer of a free steamer passage back to their lands as a successful inducement. Seizing his advantage, Thornton pushed Parkes further, resulting in his appointment as Protector of Aborigines in 1881 with the 'authority to dispense and expend moneys set apart for the sustenance and comfort of the Aboriginal race, to distribute articles of food and clothing among persons belonging to said race and to give advice and instructions to other persons who may be variously concerned in the care and treatment of the said race.'<sup>23</sup>

## 3.2 The Aborigines Protection Board

Thornton's term as Protector was short-lived. As Protector he took a particular interest in the community at La Perouse on two grounds. First, it was far enough away from the centre of Sydney not to pose a problem. Second, the community at La Perouse had established a small commercial craft fishing industry, the latter with boats and nets bought for them by some Sydney philanthropists, and Thornton saw this as a model for developing self-sufficiency in Aboriginal communities and so reducing government expenditure on rations and blankets. He

22 Paul Irish, *Hidden in Plain View. The Aboriginal People of Coastal Sydney*, NewSouth, Sydney, 2017, p. 1068-109

23 Paul Irish, *Hidden in Plain View*, p. 117



wrote in a letter to the *Evening News*, 'I think they should be helped, but also be made, as far as possible, self-reliant. They are all young and able men, mostly half-castes'. To this end, he reduced rations from a weekly universal right to a needs-based request system.<sup>24</sup>

These moves put him at odds with members of the Aborigines Protection Society (APA), a missionary organisation founded by Daniel and Janet Matthews who had established the Maloga Mission at Moama on the New South Wales side of the Murray River. The APA wrote to Parkes accusing Thornton of withholding rations at Christmas. George Gibbs, the incoming Premier, was favourable to the APA and at their urging removed Thornton as Protector and established the Aboriginal Protection Board (APB) in 1883.

This marked the beginning of the expansion of government control over Aboriginal people in NSW.

From 1883 onwards, the APB established a new regime of reserves and stations. These were managed by staff appointed by the Board who increasingly had control over the lives of the Aboriginal people on the reserve and station, including control over movement of residents off the reserve and entry of non-resident Aboriginal individuals onto the reserve, control of food through rationing (though some were allowed to have small garden plots and continue hunting and fishing), and control over marriages between members of the community. Aboriginal people were not allowed to speak their language. Managers could, and did, evict people who they decided were 'troublemakers' or accused of infringing reserve rules. Those living on the reserve worked as farmhands, labourers, or domestic servants. A variable level of education was given to the children. Managed reserves/stations included Purfleet and Karuah on the mid north coast of New South Wales.

Under the Aborigines Protection Act 1909 the APB became the legal guardian of all Aboriginal children in the State. In 1911, the APB established the Cootamundra Girls Home and in 1924 it established the Kinchela Aboriginal Boys Training Home. Aboriginal children were forcibly removed from their families and sent to these homes where the girls were trained for domestic service and the boys as stock workers and labourers. The girls were often sent to Sydney after their training and placed as indentured servants in white homes, where they could be kept in service till 21 years of age. The boys often worked as stockmen and farmhands on pastoral properties. The children in both homes were subject to abuse.

The APB's policies of segregation and 'protection' resulted in the disruption of families and communities for decades and their impacts continue to have deep impacts on Aboriginal communities and families in New South Wales. The children forcibly removed under the APB and under similar practices in the other states of Australia are called the Stolen Generation.

By 1939 over 180 Aboriginal reserves and missions were set up for the protection and control of Aboriginal people. Most were located a distance from town centres, services, and facilities.

### 3.3 The Cumeragunja 'Walk-off': A short-lived victory for self-determination

In 1863, a group of Kulin from Central Victoria petitioned the Victorian government for the right to live on traditional lands at Coranderrk. The government responded by declaring the area an Aboriginal reserve. Here the Kulin cleared land, built permanent dwellings, began farming and a small-scale craft business. The men occasionally worked as labourers on nearby properties. By 1875 the community was virtually self-supporting, in part because of success in growing hops for the Victorian liquor trade. The Victorian government, however, would not grant the Kulin individual blocks of land or the title to the reserve.<sup>25</sup>

In 1881, a group of 40 men living at David Matthew's Maloga mission, who had heard of the success of the Kulin at Coranderrk, petitioned the New South Wales government for land on

24 Paul Irish, *Hidden in Plain View*, p. 118

25 Richard Broome, *Aboriginal Australians*, pp. 83-84



which to farm and raise stock and so come in a few years to support themselves. In 1883 the government set aside 730 hectares as an Aboriginal reserve near Maloga. But residents grew resentful of Matthew's control and in 1888 most moved to the newly created government reserve nearby which they named Cumeragunja. By 1898, after several petitions, 20 individual blocks were operating on 300 acres of land, as well as a communal farm.<sup>26</sup> The farms were successful, with wheat harvests at or above the average yield per acreage at the time. The returns were not, however, sufficient to provide adequate for the families and members often worked for other farmers in the area.

However, pressure from farmers and pastoralists in the area for more land continued to grow. In 1907, owners of neighbouring properties petitioned the NSW Chief Secretary to revoke the reserve lands and remove the Aboriginal residents. The APB meanwhile had decided to farm Cumeragunja for its own profit and in the same year it took back all the individual blocks (claiming the landholders had neglected the blocks), appointed a non-Aboriginal manager, and put workers chosen by the manager on a wage. In response, residents confronted the Manager. The APB 'forcibly remove[d] the "culprits" and "undesirable residents" from the station, a measure which it was apparently able to achieve without the powers of the 1909 Act'.<sup>27</sup>

The APB's plan to make a profit from its farming venture was unsuccessful, and in 1921 the APB sent a Board member, B.J.Doe, to report on the venture. Based on Doe's report the APB sold its stock and machinery and leased most of the reserve to white farmers and a sawmiller, with the Cumeragunja residents limited to 14 of the 2,800 acres of the reserve.<sup>28</sup>

Resident action continued with further expulsions resulting. The APB then established a police station on the reserve for three months between December 1921 and March 1922. This exercise of authority had the desired effect of reducing disputes between residents and the manager. Many now left the reserve for near parts of rural Victoria and to Melbourne. A program of renovation of some of the houses on the reserve by the APB between 1921 and 1926 amounted to little more than the patching up of houses that had already been built 20 or 30 years before. To further discourage 'light caste' or able-bodied Kooris from returning to Cumeragunja after they had been engaged on seasonal work, 21 houses were pulled down and burnt by the management. In 1927 the inadequate water supply failed altogether and was not repaired until 1934, so for that seven years the growing of vegetables around the huts to supplement the meagre rations was impossible. The residents petitioned the APB for reallocation of the farm blocks in 1927. 'They were, however, curtly dismissed by the Board, which informed them 'that the experiment of farm block farming was tried at Cumeragunja and proved a failure, and the Board has no intention of altering the present system'.<sup>29</sup>

In November 1938, having endured decades of dissatisfaction with the operation of the APB and the administration of the reserve by a succession of Station Managers, residents sent a petition to the APB through William Cooper, Secretary of the Australian Aborigines' League (AAL) and a former resident of the mission.

Sir

*We the undersigned residents of the Cummerooganga (sic.) Mission Station Petition for an order removing our present Manager and Matron Mr & Mrs McQuiggan as we are not satisfied with the management treatment to us. Complaints will be made if required.*

The APB did not acknowledge receiving the petition nor did it reply. It did bring the petition to the attention of McQuiggan who retaliated by pasting it on his office door and 'inviting' those who wanted to disassociate them from it to strike their names off it.

This was the last straw for residents. The residents sought advice from Aboriginal activist Jack Patten who was born in Cumeragunja and was living at La Perouse. In 1937 Patten

26 Richard Broome, *Aboriginal Australians*, pp. 88 - 90

27 Heather Goodall, *Invasion to Embassy*, p. 150

28 Heather Goodall, *Invasion to Embassy*, p. 154

29 Heather Goodall, *Invasion to Embassy*, p. 156





and William Ferguson published a manifesto, *Aborigines Claim Citizenship Rights*, organised the 1938 Day of Mourning Protest and led a delegation to meet the Prime Minister.



*Day of Mourning, 26 January 1938. Pearl Gibbs, Margaret Tucker, Bill Ferguson, Jack Pattern, Mrs Murray.*  
<https://collection.sl.nsw.gov.au/record/n5IVBkx9/N3NwppwQaLXpBj>

Following his advice, on 3 February 1939 two hundred residents walked off the mission, crossed the Murray River and made camp near the town of Barmah, vowing they would not return until McQuiggan was dismissed and an inquiry into the management of the mission was held.

*'The initial demands of the strikers were those of their petition of November 1938, but by August [1939] the focus on McQuiggan had broadened to a reassertion of the long standing Cumeragunja and AAL demands. The strike call become one for a royal commission, not just to have McQuiggan*

*removed, but to gain the return of the farm blocks to the Cumeragunja owners, for support in agricultural development plans for the whole reserve, for the abolition of all boards of control and for full citizen's rights'.<sup>30</sup>*

The residents in the encampment initially received food support from the Victorian government under pressure from social justice reformers. The children of residents were permitted to attend the Barmah public school. By October 1939, the Victoria government agreed to stop providing food relief to the residents and stop their children from attending the Barmah primary school under sustained lobbying by the Protection Board.

Those who walked off did not however return to Cumeragunja but continued to live in the surrounding areas in New South Wales and Victoria. They did not return even after the McQuiggans were sacked in February 1940 for failing to squash the dispute in the first place.<sup>31</sup>

The residents continued to hold out hope that they would be given legal right to farm the reserve land. In April 1964 the leases of the white farmers were cancelled. The residents had raised £5000 towards building their farms. The agreement allowing them to farm the reserve was finally signed off in May 1966.<sup>32</sup> Cumeragunja Pty Ltd was registered in 1965. On 9 March 1984 ownership of the land was passed to the newly created Yorta Yorta Local Aboriginal Land Council. Many Aboriginal families still live on Cumeragunja.

The actions of the APB at Cumeragunja were repeated across the State. Between 1913-1927, 75 per cent of all of the reserve land revoked was from Aboriginal controlled farming lands of the NSW coast, from the Bellinger River in the north to western Sydney.<sup>33</sup>

### 3.4 The Australian Aborigines Progressive Association

As the APB proceeded with revoking reserve land under pressure from pastoralists and agriculturalists, and removed Aboriginal children from their families, Aboriginal individuals and communities increasingly looked for ways to challenge unjust policies and practices.

Fred Maynard, Syd Ridgeway and Lionel Lacey, whose families had been directly affected by reserve land revocation, were working on the waterfront in Sydney in the 1920's. They were members of the Waterfront Workers Union and through the Union had met the Sydney chapter of Jamaican black activists Marcus Garvey's Universal Negro Improvement Association

30 Heather Goodall, *Invasion to Embassy*, pp. 298 -99

31 Heather Goodall, *Invasion to Embassy*, pp. 302-303

32 Heather Goodall, *Invasion to Embassy*, p. 377

33 Heather Goodall, *Invasion to Embassy*, p. 163



(UNIA) founded in 1912. Articles about the treatment of Aboriginal people had appeared in *Negro World*, the newspaper of the UNIA with headlines such as 'Race Horrors in Australia Unspeakably Vile' and 'Killing off the Black Australians.'<sup>34</sup>

In 1924, the three men formed the Australian Aborigines Progressive Association (AAPA) with an explicit platform calling for Aboriginal people to regain control of their lands, stopping the removal of children from their families, gaining equal citizenship for Aboriginal people, protecting Aboriginal cultural identity, and disbanding the APB to be replaced with an organisation controlled and run by Aboriginal people. The only non-Aboriginal member of the AAPA was Elizabeth McKenzie Hatton, who served as Secretary. The AAPA supported her work of establishing a refuge for Aboriginal girls absconding from indentured apprenticeships.<sup>35</sup>

The AAPA held its first conference on 27 April 1925, in the inner-city Sydney suburb of Surry Hills with more than 200 people attending, gaining prominent media coverage. The 1926 conference was addressed by south coast Aboriginal activist Jane Duren who described the situation of the Aboriginal community in the town camp at Bateman's Bay on the south coast of NSW. Duren had been battling since 1918 with the local council and the citizens' Progress Association who wanted to close the camp and turn it over to urban expansion.

In 1917, Maynard, Duren, and other members of the AAPA publicly debated with senior members of the Australian Board of Missions opposing the push from missionary organisations for establishing a 'native state' within the Northern Territory which, while understood as a philanthropic proposal by the churchmen, would have necessitated the removal of Aboriginal people from places like Sydney to the remote interior of the continent. ... [They] rejected the proposal insisting that they wanted secure land in their own country as their primary demand.'<sup>36</sup>

The AAPAs activities – its annual meetings and ceaseless lobbying of politicians – led to repressive action by the APB and police. AAPA members were intimidated by police, threatened with jail and with having their children removed. The leadership of the AAPA was vilified in the press and false reports on their character and associations made to politicians including the NSW Premier Jack Lang. Faced with this massive exercise of state power, the AAPA stopped its public activity at the end of 1927. Some members continued their activity as private individuals, but this too had ceased by the 1930s.<sup>37</sup>

### 3.5 Aboriginal housing activism during the Depression of 1929-1932

The Great Depression impacted heavily on Aboriginal individuals and communities in New South Wales. As unemployment grew, Aboriginal workers were 'last hired and first fired' where they competed for work with non-Aboriginals. While non-Aboriginal workers were able to get some income relief, the NSW government determined that Aboriginal workers were only entitled to the dole if they could prove 'that they had done a white man's work' prior to becoming unemployed. Few could demonstrate this, and many were forced to move onto or close to APB stations so they could get rations.<sup>38</sup> Others lived at camps with other unemployed families like that at Happy Valley at La Perouse.

Landlords in the Depression years were rarely sympathetic to tenants who, with reduced wages or on the dole, could no longer pay the rent and carried out forced evictions. Aboriginal families joined others to attempt to stop police from carrying out the eviction orders. In Bankstown, Nobby Eatock, a unionist and member of the Communist Party, was one of those active in these struggles. He was violently arrested at one of the evictions.<sup>39</sup>

34 *Formation of the AAPA*, nma.gov.au/defining-moments/resources/formation-of-the-aapa accessed 29 June 2021

35 Heather Goodall and Alison Cadzow, *Rivers and Resilience*, pp. 142-43

36 Heather Goodall and Alison Cadzow, *Rivers and Resilience*, pp. 146-47

37 *Formation of the AAPA*, nma.gov.au/defining-moments/resources/formation-of-the-aapa accessed 29 June 2021

38 Heather Goodall, *Invasion to Embassy*, pp. 215-216

39 Heather Goodall and Alison Cadzow, *Rivers and Resilience*, pp. 149



# 4. Assimilation

## 4.1 The 1937 Native Welfare conference

In 1937, the Commonwealth Government convened a Native Welfare conference with the heads of Aboriginal affairs administrations across all jurisdictions (Commonwealth, State and Territory) but with no representation from Aboriginal organisations or communities. 'To that date,' wrote historian Richard Broome, 'the "doomed" race idea had prevailed in official circles, and across society generally, but governments now decided Aboriginal people had a future and planned accordingly.'<sup>40</sup>

It was the views of Auber Neville, Chief Protector of Aborigines in Western Australia 1915-1940, which influenced the policy framework adopted by all the jurisdictions. 'The conference, following Neville's view, determined: "the destiny of the natives of aboriginal origin, but not of the full blood lies in their ultimate absorption by the people of the Commonwealth and it therefore recommends that all the efforts be directed to that end."<sup>41</sup> This ushered in the era of assimilationist policies across Australia.

On 31 January 1938, a deputation of about 20 people presented the Prime Minister, Joseph Lyons, with a proposed national policy for Aborigines. Their request was for Commonwealth control of all Aboriginal matters, with a separate Ministry of Aboriginal Affairs; an administration advised by a Board of six, at least three of whom were to be Aborigines nominated by the Aboriginal Progressive Association; and full citizen status for all Aborigines and civil equality with white Australians, including equality in education, labour laws, workers compensation, pensions, land ownership and wages. Lyons replied that, under the Constitution, Commonwealth control was not possible.

## 4.2 The Aboriginal Welfare Board

The policy of assimilation was enshrined in New South Wales through the *Aborigines Protection (Amendment) Act 1940*. The APB was replaced by the Aboriginal Welfare Board (AWB) which embarked on a program of housing construction initiatives on stations and reserves, town housing programmes as inducement for people to leave reserves and stations, as well as additional funding to assist Aboriginal people find employment, maintain and assist them while employed, or otherwise facilitate the process of assimilation.

The underpinning policy direction of this was not benevolent, however. 'The Protection Board', wrote historian Heather Goodall, 'had been happy if adult Aboriginal people could demonstrate economic independence, and until 1936 refused to have anything to do with Aboriginal people who were not living on reserves. For the Welfare Board, this was not enough. It was resolved to intervene in the lives of all Aboriginal people, at the most fundamental levels wherever they lived and however successful they might have been previously in escaping from Board influence.'<sup>42</sup>

One way the AWB moved to do this was through the creation of District Welfare Officers (DWOs) placed in towns seeing a growth in Aboriginal residents looking for work in the immediate post-war years. 'The DWOs were placed in those towns which the AWB felt were most "troublesome" and they had as their specific goal to "assist and guide" Aboriginal people towards 'successful assimilation.'<sup>43</sup>

40 Richard Broome, *Aboriginal Australians*, p. 211

41 Richard Broome, *Aboriginal Australians*, p. 211

42 Heather Goodall, *Invasion to Embassy*, pp. 317-318

43 Heather Goodall, *Invasion to Embassy*, p. 315





## 4.3 Exemption Certificates

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Another strategy to achieve the end of assimilation was the system of 'exemption certificates.' In 1943, NSW followed the lead of the other States and Territories awarded these certificates to Aboriginal people 'deemed not to be an aborigine [sic]' (*Aborigines Act (Amendment) Act, 1943 (NSW), section 18c*).<sup>44</sup> The system was introduced to embed further the racist practice of segregating individuals and families of 'mixed blood', who were considered more able to assimilate, from their 'full blood' relations and communities.

For some, the exemption certificate lessened the likelihood that their children would come under the scrutiny of the AWB which continued the practice of removal of children. People with exemption certificates were forbidden from entering missions and stations to visit kin and they were also expected to sever their cultural ties. They constantly lived under the threat that any infringement of these conditions would lead to revoking of the certificate.

The AWB also encouraged acceptance of exemption with the promise of housing in towns in areas of their choice.

## 4.4 The AWB and housing as a strategy for assimilation

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The experiences of residents on reserves under the operation of the APB and in town camps were destabilising. Each change in their economic circumstances and in policy of the AWB had destabilising impacts on Aboriginal families and communities. Many left the reserves to look for accommodation in towns, but they found themselves discriminated against in the rental market, often being told there was nothing to rent, being offered slums, or housing at the edges of towns. The AWB wanted to use housing as a tool for assimilation. It pursued this by trying to 'peppercorn' housing for Aboriginal people, scattering them throughout a town, but failed to realise how deep racism was in rural towns. The APB and Aboriginal families looking for town rentals faced:

*an informal and unspoken alliance between landlords, real estate agents and local councils... The keystone of this whole system was the segregation of residential dormitory areas... It was the fundamental core of the rural structure of racial hierarchy and power relations which the Welfare Board expected to breach when it boasted to Aborigines that it could provide them with a 'house in town.'*<sup>45</sup>

The AWB in 1949 estimated that 600-700 houses were needed to meet the need at that time. It embarked on a building program but from 1946-1960 only 39 houses were built for Aboriginal people inside municipal boundaries.<sup>46</sup>

What happened at Coonamble is typical of what happened in other areas. Aboriginal families had been living on the opposite bank of the river to the town in shanty accommodation with no electricity or water supply. With the support of the AWB some white townsfolk had formed an Aboriginal Welfare Association which put a proposal to the local council to buy some trams no longer being used in Sydney and set them up as housing for Aboriginal families. The council refused on the grounds that the height of the interior of the trams did not conform to council building regulations. The council had also repeatedly refused the AWBs request to buy land on which to build housing within the council boundary.

When some blocks of land came up for sale, John Waterford, a member of the Aboriginal Welfare Association bought them in his name. He then informed the council that he intended to transfer the land to the AWB. The council initially agreed but faced strong resident demand that the transfer be blocked.

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44 Lucinda Aberdeen and Jennifer, *Black, White and Exempt. Aboriginal and Torres Strait Islander Lives Under Expansion*, Aboriginal Studies Press, 2021, p. 33

45 Heather Goodall, *Invasion to Embassy*, pp. 317-319

46 Heather Goodall, *Invasion to Embassy*, p. 322





The council held a public meeting of which the Aboriginal townfolk were not informed and to which they were not invited. The council had, however, invited the recently formed Sydney-based white-supporter-based Aboriginal-Australian Fellowship. The AAF accepted the invitation and told the Aboriginal families about the meeting. A group of Aboriginal women went to the meeting as the men were at work. When the vote was called, at first they did not take part. The first vote was tied, and the chairperson refused to cast the determining vote.

Kathleen Boney addressed the meeting saying:

*We do want to live in town, we do want our children to go to school, and we do want to live in proper houses...*

A second vote was called for and this time the Aboriginal women raised their hands, and the motion was passed in favour of the transfer. Four houses were eventually built.<sup>47</sup>

The AWB also continued the policy of concentrating Aboriginal communities in fewer reserves by revocation of reserves and physically forced transfer to the remaining reserves, bringing together communities that did not always share the same law and cultural practices and further adding to resource sustainability on the concentration reserves. Many who were transferred left to return to their former reserves or on the fringes of towns.

In 1964, Jack Horner, secretary of the Federal Council for Aboriginal Advancement investigated the AWBs use of reserve land. He found that in 1938 around 15,000 acres had been held under the AWB as reserves and stations but by 1964 13,543 acres had been revoked or leased to white farmers and graziers leaving just 1,500 acres accessible to Aboriginal communities.<sup>48</sup>

## 4.5 The NSW Housing Commission and the Housing for Aborigines (HFA) Scheme

The New South Wales Housing Commission was established under the *Housing Act, 1941* and began operations in 1945.

The role of the Commission was to:

- (a) initially conduct investigations to determine ways of providing “adequate housing accommodation upon reasonable terms or at reasonable rentals”.
- (b) determine ways to co-ordinate the activities of the Co-operative Building Societies and the Rural Bank of New South Wales in relation to both the construction and financing of houses.
- (c) obtain co-operation with local councils to ensure the provision of adequate housing at reasonable terms or at reasonable rentals.
- (d) recommend further necessary legislation.
- (e) examine housing conditions within a given locality and publish the results.
- (f) publish general information about housing.
- (g) take steps to improve the standard of housing and land subdivision for housing.<sup>49</sup>

In 1945 the first Commonwealth State Housing Agreement was agreed under which both parties provided funds to build public housing. ‘The suburban estates which were created under this agreement were more than just places to accommodate the increase in population caused by burgeoning fertility rates and post-war immigration. They were also designed as environments which would encourage residents to become good citizens, to live respectable lives based on wage labour, moral probity, the nuclear family and conventional gender relations.’<sup>50</sup>

47 Heather Goodall, *Invasion to Embassy*, pp. 337-341

48 Heather Goodall, *Invasion to Embassy*, p. 380

49 [researchdata.edu.au/housing-commission-new-south-wales/164305](http://researchdata.edu.au/housing-commission-new-south-wales/164305) accessed 20th August 2021

50 George Morgan, ‘The moral surveillance of Aboriginal applicants for public housing in New South Wales’, *Australian Aboriginal Studies*, 2, 1999, p. 4



Aboriginal people were eligible under the 1941 Act to apply for public housing but faced the same kind of prejudice when applying:

*These people are Aboriginals. There is another baby on the way since the application was filled in... there are now seven people sleeping in one room. I could not make any rec. other than bad. They should have better conditions but not as tenants of the Commission.<sup>51</sup>*

Unsurprisingly there were few applications in the following decades.

The AWB, faced with the continuing backlash from communities and local government authorities in rural areas, turned to urban relocation now as part of the policy of assimilation. It began leasing properties from the NSW Housing Commission. 'The decision, the Board pointed out ominously, would be a "test of the determination and ability of Aborigines to fit into the [white] community."<sup>52</sup>

Almost immediately after the AWB began its push to get Aboriginal people to accept accommodation in Housing Commission premises in Sydney, the first conflict flared up with an Aboriginal community facing eviction from public land on which they had been living. Wodi Wodi families had been living in a recreation reserve and adjacent land at Hill 60 near Port Kembla in the Illawarra region since the Depression. Faced with an AWB instruction that they were to move into Housing Commission premises planned for the area, the Aboriginal families refused to leave. In 1957 the AWB began evictions. In early 1958 Jack Tattersall wrote to the Minister of Lands on behalf of ten of the families asking that houses be built for them on the land they had lived on for many years. They were supported in this by the Waterside Worker's Federation of which some of the men of the families were members and by the South Coast Trades and Labour Council. It looked as though they had been successful when in August 1961 the government agreed to set aside thirteen blocks on the site and the AWB agreed to construct houses on the blocks. The AWB, however, soon declared that it had funds only sufficient to build six houses. The other families, the AWB declared, 'did not contain sufficient Aboriginal blood to be classified as Aborigines within the meaning of the Act.' The campaign continued until in 1962 a single-acre Aboriginal reserve was declared on the site and just six houses built on it.<sup>53</sup>

In 1967, a Joint Parliamentary Committee into Aboriginal Welfare recommended under Section IV, that 'housing of aborigines should be the responsibility of the Housing Commission; no further houses should be built on reserves; rental-rebate system to accord with income levels; short-term furnishing loan; no "hand-outs."<sup>54</sup> The 1967 Parliamentary Committee recommended that Aboriginal people move to larger centres and this was supported by the new Directorate of Aboriginal Welfare which replaced the AWB in 1969 (see below).

The extent of the task facing the Commission was quantified in 1968 by Ian McKay, Chairman of the Housing Committee of the Royal Australian Institute of Architects:

*It appears reasonable to assume that 80% of aborigines in the Sydney Metropolitan Area are in dire need of re-housing (approximately 8,000). It seems certain that 2,659 aborigines on reserves, stations and settlements need re-housing, and it is certain that all those living in riverbank settlements need re-housing (approximately 7,000: i.e., of 23,130 aborigines in NSW 18,000 need re-housing). The Aborigines' Welfare Board builds approximately 86 houses annually, which is only half the number required to cope with population increase alone. On the other hand, the Housing Commission completed 5,390 units in 1965-66 and had a further 3,800 under construction at 30<sup>th</sup> June 1966... It would cost in the order of \$25,000,000 to completely correct the existing situation.<sup>55</sup>*

51 Inspector's note, NSW Government Archives, Files of the Housing Commission, file ST2374, box 10/41266, cited in George Morgan, 'The moral surveillance of Aboriginal applicants for public housing in New South Wales,' *Australian Aboriginal Studies*, 2, 1999, p. 4

52 Heather Goodall, *Invasion to Embassy*, p. 347-48

53 Heather Goodall, *Invasion to Embassy*, pp. 366-367

54 Ian McKay, 'Housing for aborigines in New South Wales,' *Architecture in Australia*, June 1968, p. 490

55 Ian McKay, 'Housing for aborigines in New South Wales', p. 489



In response in 1969 the government established the Housing for Aborigines Scheme. Under the Scheme a proportion of the public housing stock managed by the Housing Commission was earmarked for Aboriginal people. The Scheme 'reflected a desire to hasten the process of moving the residents from government reserves and unofficial camps into the social mainstream.'<sup>56</sup> As with other Housing Commission applicants, Aboriginal applicants were visited in their current home by a Commission officer who inspected both the applicant and their housing. The inspectors made recommendations to a Housing Application Committee made up of a representative from local government, one from the local RSL, one from the local CWA, and one nominated by the local state MP who decided on the need and suitability of the applicant. Aboriginal applicants, in line with assimilationist policy were expected to embrace a lifestyle at odds with their culture and traditional way of life, to live in dwellings designed for 'respectable' nuclear families and to weaken ties to their extended kinship and community networks. Some accepted this as the price of getting a house, others did not.

The result was that where 3 per cent of the AWB stock had been in Sydney, by 1976, 49 per cent of HFA houses were in the Sydney, Newcastle, and Wollongong areas. The Housing Commission also acquired or constructed HFA houses in rural centres like Wagga Wagga, Nowra, Tamworth, Kempsey, Armidale, and Dubbo. One of the assimilationist practices in siting of HFA housing was to 'peppercot' them, that is scatter them among houses for non-Aboriginal tenants of the Commission.

Some Aboriginal families were relocated to larger centres under the Aboriginal Family Resettlement Scheme jointly funded by federal and state governments. Those applicants who were successful were provided with counselling support at the new locations aimed again at assimilation and surveilling conformity to white standards. The scheme ended in the early 1980s.

In 1999, George Morgan reported on his research into tenancy files of Housing Commission officers. He concluded that the files demonstrated that:

- there were many who saw the prospect of Commission housing as a way to escape from their communities and from the cultures of poverty, hopelessness, and addiction which they had experienced there;
- some of these showed a desire to conceal their Aboriginality from neighbours and other local people, or at least not to divulge the fact that they had Aboriginal family connections, largely to avoid the racism which they anticipated would result from their identifying; and
- others still did not pass but nevertheless sought to distance themselves from their relatives.

Despite the introduction of the HFA, the 1971 Census found that 20 per cent of Aboriginal people in New South Wales continued to live in improvised dwellings: sheds, tents, garages, or humpies.<sup>57</sup>

*'Until 1981 there was no identified Aboriginal representation on housing committees to address the particular needs of Indigenous people. This meant, among other things, that decisions on where to site HFA houses were made without reference to the communities whose members could expect to be accommodated there.'*<sup>58</sup>

56 George Morgan, 'The moral surveillance of Aboriginal applicants for public housing in New South Wales, *Australian Aboriginal Studies*, 2, 1999, pp. 3-4

57 George Morgan, 'The moral surveillance', p. 5

58 George Morgan, 'The moral surveillance', p. 7



# 5. From assimilation to self-determination

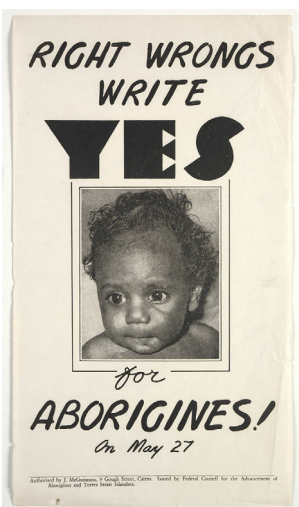
## 5.1 The 1967 Commonwealth referendum

In 1956, Aboriginal women Pearl Gibbs and Faith Bandler formed the Aboriginal-Australian Fellowship. 'The Aboriginal people in New South Wales were totally controlled by the [State] government... Pearl's one ambition was to demolish that Board. She had sat on it and represented her people on it... She said 'the Board should be destroyed because it controls my people's lives'.<sup>59</sup>

The AAAF held its first public meeting at the Sydney Town Hall on 29 April 1957, filling the whole downstairs area and much of the upper level. The flyer for the meeting said its purpose was 'to discuss ways and means of raising the living standards of Aborigines and their integration into the Australian community'.<sup>60</sup>

The meeting also launched a petition which Jessie Street, by then a long-time women's rights and supporter of Aboriginal activism, had spoken to Faith Bandler about the year before. 'She rang me up late one night in 1956 (she always rang very late or very early) and said in her lovely, cultivated voice: "You can't get anywhere without a change in the Constitution, and you can't get that without a referendum. You'll need a petition with 100,000 signatures. We'd better start on it at once."<sup>61</sup>

The first of these petitions was presented to the House of Representatives by Labor MHR Leslie Haylen on 14 May 1957. A series of similar petitions followed from the Federal Council for Aboriginal Advancement and Labor Party members.



1967 Referendum poster. <https://collection.sl.nsw.gov.au/record/9yMdd229/weL5QdeBAXjZx>

Finally, in 1967, a nationwide Referendum was conducted that significantly changed the relationships between the Commonwealth government and Aboriginal people. The referendum put this question to eligible voters in Australia:

*Do you approve the proposed law for the alteration of the Constitution entitled 'An Act to alter the Constitution so as to omit certain words relating to the people of the Aboriginal race in any state and so that Aboriginals are to be counted in reckoning the population'?*

The proposed law, *Constitution Alteration (Aboriginals) 1967*, sought to give the Commonwealth Parliament power to make laws with respect to Aboriginal people wherever they lived in Australia. It also sought to make it possible to include Aboriginal people in national censuses.<sup>62</sup>

Almost 94% of eligible voters cast their ballot with a significant majority in all six states and an overall majority of almost 91 per cent voting 'Yes'.

While Aboriginal people expected some immediate action there was little change at the Commonwealth level of benefit. Instead, by September, they were confronted by the bitter reality of a government reluctant to make any change in existing policies. Then in 1967 the government created a small Office of Aboriginal Affairs without any powers or funds.

59 'Faith Bandler on The Aboriginal Australian Fellowship', 1993, nfsa.gov.au ID. 403180, accessed 17 September 2021

60 nma.gov.au/\_data/assets/pdf\_file/0010/692614/new-deal-for-aborigines.pdf accessed 17 September 2021

61 nationalwomenslibrary.org.au/

62 'The 1967 Referendum', aph.gov.au/About Parliament





## 5.2 The *Aborigines Act 1969 (NSW)*, and establishment of the Aboriginal Land Trust and the Aboriginal Advisory Council

In 1969, as a result of the 1967 Parliamentary Inquiry, the NSW government passed the *Aborigines Act 1969* 'to make provisions with respect to matters concerning Aborigines; to repeal the *Aborigines Protection Act, 1909*, and certain other Acts'.<sup>63</sup>

The AWB was divested of all land, Aboriginal children's homes, reserves and town blocks on which the AWB had built housing. These now came under the direct control of the Minister for Child and Social Welfare. All children who had been wards under the AWB became wards of the State in the same system as that existing for non-Aboriginal children.<sup>64</sup>

The Act established an Aboriginal Advisory Council (AAC) consisting of ten members:

- The new position of Director of Aboriginal Welfare
- Nine Aborigines(sic) appointed by the Governor living in New South Wales three of whom would be Ministerial appointments (one of whom would be a woman) and six to be elected by Aboriginal individuals registered to vote in each of the six districts in the state.<sup>65</sup>

The functions of the Council were to:

- (a) report to the Minister on such matters relating to Aborigines as may be referred to it by him;
- (b) advise the Minister on matters relating to Aborigines.<sup>66</sup>

Under the Act the Minister could 'make a loan to an Aboriginal:

- (a) to purchase or erect a home in New South Wales;
- (b) to make additions, alterations, or renovations to a home in New South Wales; or
- (c) to acquire furniture for a home in New South Wales.<sup>67</sup>

The Directorate of Aboriginal Welfare Services was set up in the Department of Child Welfare and Social Welfare. Through the Directorate all child and social welfare services were made available to Aboriginal children. The Directorate would not deliver services directly but could allocate responsibility for services to Aboriginal people to other Government departments. The Directorate was responsible for policy planning, providing advice and allocating funds to the appropriate agencies, such as the NSW Health and Housing Commissions and the departments of Education and Technical and Further Education.<sup>68</sup>

In 1973, the NSW government passed the *Aborigines (Amendment) Act*. Under the Act all members of the AAC were to be elected. The Act also established the Aboriginal Lands Trust. The Trust was vested with freehold ownership of Aboriginal land, with the right to sell, lease, buy and claim land in the interests of Aboriginal people. The Trust was able to act independently of the State Government and was granted access rights to hunting and fishing, and mineral rights and control apart from gold, and later coal.<sup>69</sup>

By 30 June 1979 the Trust had title to more than 150 parcels of land. 'With the transfer of more than 900 houses and shacks, with an average of two to three families per house, it was responsible for providing services for between 8,000 and 9,000 of the approximately 40,000 Aboriginal people living in New South Wales'.<sup>70</sup>

63 *Aborigines Act*, [legislation.nsw.gov.au/view/pdf/asmade/act-1969-7](http://legislation.nsw.gov.au/view/pdf/asmade/act-1969-7) accessed 27 August 2021

64 *Aborigines Act* s6 & s7

65 *Aborigines Act* s8 & s10

66 *Aborigines Act* s9

67 *Aborigines Act* s16

68 Aboriginal Welfare Directorate, [researchdata.edu.au/aborigines-welfare-directorate/164662](http://researchdata.edu.au/aborigines-welfare-directorate/164662) accessed 27 August 2021

69 Sue Norman, 'The New South Wales Aboriginal Lands Trust and its place in history', *Australian Aboriginal Studies* 2011/2 p. 91

70 Sue Norman, 'The New South Wales Aboriginal Lands Trust' p. 94



## 5.3 Campaigning for land rights

In 1966, Vincent Lingiari, a Gurindji man, led a walk-off of 200 Aboriginal workers on the Wave Hill cattle station in the Northern Territory over wages for Aboriginal workers on cattle stations who were generally paid less than non-Aboriginal workers. The Gurindji set up camp at Wattie Creek on their traditional lands. As the walk-off continued, their demands broadened into a claim for ownership of the land, the first claim by an Aboriginal group in Australia. The Gurindji wanted to reclaim their millennia long ownership of the land, ownership that had been disregarded as pastoral lands were sold and leased.

The walk-off continued for nine years until 1976 when the Commonwealth passed the *Aboriginal Land Rights (Northern Territory) Act 1976*. This act gave Aboriginal Australians freehold title to traditional lands in the Northern Territory and, significantly, the power to negotiate over development including pastoral and mining works on those lands, including what the kind and amount of compensation they could receive for loss of their land.

In New South Wales during the 1960s Aboriginal reserve land continued to be revoked as successive governments leased or sold the land to white agriculturalists and the increasing demands of tourism interests.

In response a statewide conference of Aboriginal people was held in November 1970 in Sydney. A Land and Rights Council was formed with a broad brief for activism on Aboriginal matters with the priority being securing control of land. This was followed in 1971 by the establishment of the NSW Aboriginal Lands Board. 'The Lands and Rights Council and the Lands Board' wrote Heather Goodall, 'allowed a forum for [Aboriginal communities in New South Wales] to plan a concerted campaign to challenge the dislocation and dispossession policies of the NSW government.'<sup>71</sup>

Hope for change at the Commonwealth level were dashed in 1972 when the McMahon Coalition government in response to a High Court judgement on a claim by the Yirrkala people in the Northern Territory agreed to leasehold over some reserves in the Territory but did not recognize traditional ownership as a reason to give Aboriginal people tenure of these reserves. Wiradjuri writer and activist Kevin Gilbert had suggested setting up an Aboriginal 'embassy' as a symbolic protest at ongoing dispossession. A group of activists in Sydney – Bill Craigie, Tony Rorie and Michael Anderson among them – 'equipped with signs drawn in Sydney and a beach umbrella and some plastic picked up from a supporter in Canberra' set up an



Aboriginal protesters against the 'land rights fraud' outside Parliament House, Canberra. Published in *Tribune*, 1-7 February 1972. State Library & SEARCH Foundation.

Embassy on the lawns of Parliament in the early hours of Australia Day, 26 January 1972. Placards they held read:

**LAND RIGHTS NOW OR ELSE**

**LEGALLY THIS LAND IS OUR LAND. WE SHALL TAKE IT IF NEED BE**

**LAND NOW NOT LEASE TOMORROW.<sup>72</sup>**

71 Sue Norman, 'The New South Wales Aboriginal Lands Trust', p. 400

72 Heather Goodall, *Invasion to Embassy*, pp. 401-402



Within days of the Embassy being established the attention of NSW activists turned to Woodenbong on the north coast where the Housing Commission had evicted Harold Brown, his wife Val Close, and their four children from their home on the reserve for failure to pay rent. Harold Brown had been stood down from two jobs in succession as a result of cutbacks at the timber mill at which he worked. Despite the other residents of the reserve taking up a collection to pay immediate rental arrears, the Housing Commission forcibly evicted the Browns in mid-February. A meeting of the reserve community passed a formal motion:

*We the residents of Muli Village Woodenbong, refuse to pay any further rent for the houses we occupy on the reserve until Mr and Mrs Brown are re-instated in the house they have occupied at Woodenbong for the last twelve months.*<sup>73</sup>

As the rent strike continued, the community took up their demand for secure tenure over the land. The Housing Commission and the Department of Child Welfare threatened to remove their children and declare them wards of the state.

At the NSW Aboriginal Lands Board conference in April that year, the government's plans to continue to dispose of reserve land was prominent. The focus was on the upcoming sale of Kinchela.

*'With the sale of Kinchela looming, the Lands Board activists felt they needed to take more dramatic action. Lyn Thompson and Kaye Bellear went to [Minister for Social Welfare, Child Welfare and Aboriginal Affairs] Waddy's house one evening shortly after the Lands Board conference. They set up an L. J. Hooker sign on his front lawn, having repainted the name to 'L. J. Koori' in an ironic reversal to point to his role as a real estate agent putting Aboriginal land on the market. Then Lyn and Kaye challenged Waddy to his face, knocking on his door and walking straight into his living room as so many Welfare officers had done to so many Aboriginal families. With Waddy flustered and trying to ring police to demand the trespassers be removed, Lyn and Kaye insisted he tell them how he would feel if his home were to be sold from under his feet. They were still demanding his answer as the police led them away.'*<sup>74</sup>

On National Aborigines Day, 14 July 1972, Aboriginal activists and the supporters, unionists, students, and left-wing political parties march from Redfern to the centre in a Black Moratorium, emulating the earlier anti-Vietnam war moratoriums. The demands were:

1. Absolute ownership, including mineral and forestry rights, of all reserves and traditional areas to be vested in the Black communities associated with those areas.
2. Full compensation for all land seized since 1770.
3. The right and power of Black communities to control their own lives and their land.
4. Support for all Black struggles, including those for health, employment, housing, education, and an end to all discriminatory legislation.

The rallying cry was *Ningla a-na: Hungry for our land*, the succinct potent words of Bundjalung elder Milli Boyd.

## 5.4 The establishment of the Aboriginal Housing Company (1973)

The early 1970's saw the establishment of the first two Aboriginal community-controlled organisations aimed at meeting the need of both city and rural Aboriginal people facing discrimination and culturally inappropriate service delivery. In 1970 the Aboriginal Legal Service (ALS) was established in Redfern to address systemic issues in the legal system by providing representation for individuals, reduce incarceration and to curtail police harassment of Aboriginal people. In 1971 the Aboriginal Medical Service (AMS) was established in Redfern, the first community-controlled health service in Australia. 'Aboriginal activists,' wrote Johanna Perheentupa in her study of Aboriginal activism in the 1970s, 'claimed the ownership of social and geographic spaces in the settler colonial city in their struggle for self-determination.'<sup>75</sup>

73 Heather Goodall, *Invasion to Embassy*, pp. 401-403

74 Heather Goodall, *Invasion to Embassy*, pp. 405

75 Perheentupa, Johanna, Redfern, *Aboriginal activism in the 1970s*, Aboriginal Studies Press, Canberra 2020, p. 158





At the same time, the operation of the Aborigines Land Trust came under criticism. Sue Morgan writing about the operation of the Trust has argued that this was 'partly due to limited understanding of what the Trust was doing (the head of the Aboriginal Legal Service, Paul Coe, publicly stated that the Trust held only a 99-year lease and not the full freehold title of lands under its control) and partly due to the poor standard of Trust housing'. Morgan also points out, however, that conflict arose because:

*'the Trust was ideologically opposed to granting title to individual communities; it argued that New South Wales had seen the greatest impact of European control and disruption, resulting in a large proportion of Aboriginal people relating to each other on a kinship rather than a tribal basis. It was concerned that many Aboriginal people would be denied land and thus be disadvantaged by the granting of land rights to tribal groups.'*<sup>76</sup>

Aboriginal people wanting to rent houses in the inner-city also faced discrimination in securing rental properties. When they were successful the accommodation was often sub-standard: non-existent plumbing, a lack of hot water, bedroom numbers and sizes not adequate to accommodate large extended families were common conditions. In response, Joyce Gubbay and Dick Blair began to work on a proposal for an Aboriginal housing project.

At the same time, Gordon Briscoe, one of the founders of the AMS, identified a need to accommodate homeless Aboriginal people with alcohol dependence squatting in buildings in Redfern. IBK Constructions had purchased some of the buildings, intending to renovate them for residential use and proceeded to forcibly evict them. Police arrested some of those squatting in other vacant premises. Father Ted Kennedy, Fergus Breslan and John Butcher from the Redfern Parish began to house these Aboriginal men in a school hall at the rear of the presbytery. 'Bob Bellear and the priests quickly realised the potential of the boarded-up empty terraces as a territorial base from which to launch the campaign for Aboriginal housing' wrote Perheentupa. 'Bellear came up with a plan to purchase the whole block bordered by Caroline, Eveleigh, Vine and Louis Streets, consisting of 65 houses (four acres of land) from the developers. He was supported in his plans by his wife Kaye, the priests, Bob Pringle (President of the New South Wales Builders Labourers Federation) and Colin James (architect and lecturer at Sydney University)'. Pringle brought the threat of work bans to bear in IBK and two houses were set up to house the Aboriginal men from December 1972.<sup>77</sup>

The activists formed the Aboriginal Housing Company and in April 1973 the newly elected Whitlam Labor federal government granted the company \$530,000 to buy and renovate 41 terraces owned by IBK. The AHC was incorporated in July 1973. 'Throughout the 1970s', wrote Perheentupa, 'the AHC survived the intense local and police resistance and managed to increase its hold on property in the inner city and double in size. It created affordable Aboriginal housing while reviving and building the inner-city Aboriginal community. Its claim to urban land radically increased the Indigenous presence in inner Sydney and the AHC, more forcefully than any of the other organisations, argued for the right to belong in the city and questioned the legitimacy of the non-Indigenous occupation of the city'.<sup>78</sup>

## 5.5 The establishment of the NSW Aboriginal Land Council (1977) and achieving land rights in NSW

Meanwhile, the push for Aboriginal land rights continued unabated. In October 1977, 200 representatives of Aboriginal organisations and groups, and individual Aboriginal activists, met over three days at the Black Theatre in Redfern to discuss the way forward for securing land rights in New South Wales. The conference called for full recognition of Aboriginal land rights and the abolition of the Aboriginal Lands Trust. The conference called for community ownership of land based on traditional ownership rights, cultural heritage, and social and economic needs; direct control by local communities over the land they claimed/occupied;

76 Sue Norman, 'The New South Wales Aboriginal Lands Trust', p. 94

77 Perheentupa, Johanna, *Redfern*, p. 162-4

78 Perheentupa, Johanna, *Redfern*, p. 170-77





and compensation for loss of land, loss of livelihood, and damage to culture and society. Thirty-one representatives were elected to form the NSW Aboriginal Land Council (NSWALC).

In 1978 representatives met with the Labor Premier Neville Wran to press their demands. As a result at the State Labor Conference that year the party adopted the land rights platform as developed at the Redfern meeting in October 1977.<sup>79</sup>

Following the State election in 1978 the government set up the Select Committee of the Legislative Committee Upon Aborigines. The Terms of Reference of the Committee were to inquire into:

- The causes of socio-economic disadvantages of Aboriginal people, particularly in the areas of housing, health, education, employment, welfare and cultural issues;
- Effectiveness of commonwealth / state arrangements in Aboriginal Affairs; and
- Land rights for Aboriginal people in NSW.

The Committee released its first findings in August 1980. Under the leadership of the Chairman of the Committee, Maurie Keane, the Committee made several ground-breaking recommendations.

- The repeal of the *Aborigines Act 1969* to be replaced by an Aboriginal Land Rights Act. Aboriginal people should be able to claim land including Crown, lease and freehold.
- A funding model for land rights based on 7.5 per cent of state land tax, with half of this allocation stipulated as going into a capital investment fund and the remaining for immediate projects and administration.
- A system of community councils reporting to regional Aboriginal land councils.
- Aboriginal Land and Compensation Tribunal to hear and determine land claims, grievances, and report to Parliament.
- An Aboriginal Land and Development Commission to support the regional land and community councils in land purchasing advice and financing.
- An Aboriginal Heritage Commission to protect and maintain sites.

The Committee understood the granting of lands rights as 'an act of elementary justice' and due compensation for wrongful dispossession.<sup>80</sup>

## 5.6 The NSW Aboriginal Land Rights Act 1983

The report of the Select Committee, while welcomed by Aboriginal activists, came under fire from mining, tourism, forestry and pastoral industry groups and organisations. In August 1980, the Sydney Morning Herald quoted the Premier, Neville Wran, and Attorney-General, Frank Walker, as saying that financial constraints would limit the implementation of the Committee's recommendations. However in September 1981 as the government headed for another election, Wran announced that the Ministry for Aboriginal Affairs would develop draft land rights legislation and that former reserve lands held by the Aboriginal Lands Trust would be returned to local Aboriginal community ownership.

The government published the Green Paper for the draft legislation for public comment in February 1983, just seven weeks before it was to be debated in Parliament.<sup>81</sup> 'The NSWALC state conference in February 1983 with representatives from all affiliated Regional Aboriginal Land Councils (RALCs), were very critical of the draft legislation and said the Green Paper was not a 'land rights settlement' and, 'It does not compensate us for our loss or suffering'.<sup>82</sup> Others, such as Bob Bellea, Chair of the State ALP Aboriginal Affairs Policy Committee, along with the Uniting Church Board for Social Responsibility, said the Green Paper was out of step with the Select Committee proposals, 'lacked principles' and amounted to a 'betrayal'.<sup>83</sup>

79 [alc.org.au/our-history](http://alc.org.au/our-history) accessed 24 September 2021

80 Heidi Norman, 'From Assimilation to self-determination. The Report of the Select Committee upon Aborigines', *Journal of Indigenous Policy*, Issue 7, p. 77

81 Heidi Norman, 'From Assimilation to self-determination', p. 80

82 Heidi Norman, 'From Assimilation to self-determination', p. 80

83 Heidi Norman, 'From Assimilation to self-determination', p. 81



Later that year the *Aboriginal Land Rights Act 1983* was passed. The Act replaced the *Aborigines Act 1969*.

At the same time Parliament passed the *Crown Lands (Validations of Revocations) Act* which retrospectively validated the revoking of reserved lands that had been occurring since the late 1800s described earlier in this paper.<sup>84</sup>

## 5.7 NSW Aboriginal Land Councils

The *Aboriginal Land Rights Act* abolished the existing Aboriginal Lands Trust and its nine-member council, and all property of the Trust was transferred to the Minister for Aboriginal Affairs pending their eventual transfer to relevant Aboriginal Land Councils.<sup>85</sup>

Local Aboriginal Land Councils (LALC) which had been growing in number now would be regulated by the NSW Aboriginal Land Council and the Minister for Aboriginal Affairs under the *Aboriginal Land Rights Act (ALRA) 1983(NSW)*. They could operate social housing schemes only with the approval of the NSW Aboriginal Land Council and must comply with certain conditions.<sup>86</sup>

As at 2021 there are 120 LALCs with a membership of 23,000 making NSWALC the largest member based Aboriginal organisation in Australia.

In 2014 amendments were introduced to the *NSW Aboriginal Land Rights Act (ALRA)* for the provision of residential accommodation by a LALC to its members and others as a 'community benefits scheme' (CBS). The 2014 amendments required NSWALC to approve the ongoing provision of the community benefits scheme for the provision of residential accommodation by a LALC if the LALC is not a registered Aboriginal housing organisation, within the meaning of the *NSW Aboriginal Housing Act 1998* or a registered community housing provider meeting all the requirements under the Community Housing Providers National Law NSW each LALC must be approved by the NSWALC to be eligible for such schemes by 1 January 2016.

Through consultation with the LALC's and the approval of the Minister for Aboriginal Affairs the new *Community Benefits Schemes (Residential Accommodation)* or CBS (RA) was published in the Government Gazette on the 14<sup>th</sup> of August 2015 and the policy took effect from that date.

NSWALC developed a Guide, an electronic application and budget package for LALC's to assist with the understanding of the process and the statutory requirements that must be met to gain NSWALC approval. After its development and release, there were an estimated 42 LALC's who were required to seek NSWALC approval for the operation of their CBS(RA).

NSWALC may attach conditions before approval is given. The conditions identify detailed actions which are to be met within a specified timeframe in order that the requirements of the Policy are met. The Policy and ALRA require that NSWALC not approve a LALC's CBS(RA) unless it can be satisfied that:

- The proposed scheme complies with the ALRA and regulation;
- The proposed scheme is consistent with any applicable policy of the NSWALC;
- The proposed scheme is consistent with the Community, Land and Business plan of the LALC;
- The proposed scheme is fair and equitable and will be administered in a way that is responsible and transparent;
- The proposed scheme is not likely to prevent the LALC from being able to meet its debts as and when they fall due; and
- The need for the proposed scheme is not otherwise being adequately met.<sup>87</sup>

84 Heidi Norman, 'From Assimilation to self-determination', p. 83

85 [www.records.nsw.gov.au](http://www.records.nsw.gov.au)

86 [legalanswers.sl.nsw.gov.au/tenants-rights-manual-practical-guide-renting-nsw/aboriginal-housing](http://legalanswers.sl.nsw.gov.au/tenants-rights-manual-practical-guide-renting-nsw/aboriginal-housing)

87 [alc.org.au/land-councils/social-housing.aspx](http://alc.org.au/land-councils/social-housing.aspx)



# 6. Aboriginal Tenant Advice & Advocacy Services

## 6.1 Tenancy Law in NSW

Landlord and tenant legislation was introduced in NSW in 1847. However, it gave tenants only a small measure of protection: the Law simply stopped landlords pursuing extreme measures in seeking to recover unpaid rent, and it set out prescribed procedures for evicting tenants. When the 1850s Gold Rush led to steep rent increases, a *Tenements Recovery Act* in 1853 replaced the previous Act but provided only marginal improvements. In particular, it failed to improve the quality of rental housing. In 1899, a *Landlord and Tenant Act* was introduced, which was also based on a feudal system of land tenure. Staggeringly, this legislation remained the basis of residential tenancies legislation until passage of the *Residential Tenancies Act 1987* almost 90 years later. Like earlier legislation, it was limited to prescribing eviction procedures landlords must follow.

During the Great Depression of 1929-33 families of unemployed workers were evicted for not being able to pay their rent, and this led to a great deal of tension and militant action. The Anti-Eviction Campaign of 1930-31 was organised by the Unemployed Workers Movement in Sydney, and their tactics included occupations and, as a last resort, sieges. There were major confrontations between tenants and police in Bankstown and Newtown in Sydney, and at Tighes Hill in Newcastle.

In 1939, all States in Australia agreed at a Premiers' Conference to allow the Commonwealth to control rents during the Second World War. It was considered to be in the national interest that rents remain stable while everyone was contributing to the war effort. In 1948, with the war over, there was a referendum, and the Commonwealth Government lost the power to control rents. However, the Labor Government in NSW kept the wartime rent controls in place. It was the only State to do so. Up to 1968 many private tenants in NSW were 'protected tenants' under the 1948 law, with regulated rents and controls on evictions; although houses built after 1954 were not protected.

From 1945 to 1968 home ownership increased dramatically. This was the main reason why there was a smaller private rental sector than before, and proportionally fewer private tenants. Estate agents and landlords lobbied to get rid of rent control, arguing that it stopped people investing in rental property. However, the evidence is that rent control legislation in the 1920s to 1940s did not discourage investment in rental housing.

## 6.2 Tenant advocacy services begin in NSW

In 1968 the Coalition Government under Premier Robin Askin (later Sir Robert) changed the law so that rent could now be increased unless the tenants proved they couldn't pay market rent. Once no new protected tenancies could be created, the number of protected tenants began to drop substantially. Legal protections won earlier in the century were lost by most tenants, who were now covered by the 1899 law, which left them vulnerable to rent increases and evictions for no reason.

By 1975 most tenants were not protected by rent control, and many were having serious problems: shoddy housing; landlords refusing to do repairs; estate agents entering unannounced; blatant racial discrimination against Aboriginal people and migrants; and if tenants complained or got off-side with the landlord, they could be evicted.

In Redfern, South Sydney Community Aid was assisting tenants. In 1974 Robert Mowbray was a social work student doing his final field work at South Sydney Community Aid. 'It was put to me that there were a lot of tenants coming into the agency having hassles with landlords and real estate agents-so why not do a research project and see if something could come out of that.'<sup>88</sup> Something did. The Whitlam Government's Social Welfare Commission

88 Mowbray, Robert, Interview for Tenants' Union of New South Wales 40th Anniversary video



gave South Sydney Community Aid funds for a Tenants' Rights Project in 1975-76. Funding was also received from the Department of Christian Citizenship of the Methodist Church (which later became the Board for Social Responsibility of the Uniting Church in NSW). That project employed Robert Mowbray. It produced a 'Tenants' Rights Manual' for people advising tenants, and a 'Your Rights as a Tenant in NSW' handbook for tenants. The handbook was translated into five languages.

Shelter NSW was formed in 1974 to seek better housing for low-income people. On 17 March, 1975, a Tenancy Working Group of Shelter held its first meeting. It aimed to:

- bring together individuals and organisations concerned with tenancy issues,
- make recommendations on policy matters relating to tenancy,
- take action to secure a more equitable landlord-tenant relationship, and
- stimulate and provide support for tenants' organisations.

The Tenancy Working Group wanted to form an organisation of tenants. They saw the need to become an incorporated organisation, partly to attract funds for tenants' services, and partly to protect members from being sued if they highlighted bad practices of landlords and real estate agents. The Tenants' Union of NSW had its formation meeting on August 17, 1976. The name 'Tenants' Union' was influenced by that of the Tenants' Union of Victoria, which was formed in 1974 and had a funded worker from its beginning. By 1983 there were thirty-six tenants' services based in community centres throughout NSW. Most were giving tenants advice only a few hours a week.

In 1985 Labor Minister for Housing Frank Walker announced that he would establish the Housing Information and Tenancy Services (HITS) Program, a network of twenty-one independent tenants' advice services throughout NSW, to be set up in 1986 and 1987, and the Tenants' Union would be funded to resource them.

On 2 December 1988 the Liberal Minister for Housing Joe Schipp announced that the HITS Program of tenants' advice services would be completely defunded, as of 30 March 1989.

Schipp finally backed down on many of his amendments and the *Residential Tenancies Act 1987* (as amended) came into force in October 1989. It included a Residential Tenancies Tribunal and some important changes in areas such as repairs and privacy. But it did not include protection from unfair evictions or unfair rent increases, the reforms that tenants needed most.

Deirdre Grusovin was also busy at that time with HomeFund. Under the HomeFund Scheme for first home buyers, people could buy a home with a small deposit. Their early loan repayments were relatively small, but they increased gradually. The Scheme presumed that the borrower's wages increased and their property's value went up. Joe Schipp expanded HomeFund from 1988 and used it to give loans to people on low, fixed incomes.

In 1993 Robert Webster, Minister for Housing in the Liberal government wanted to clean up the HomeFund mess. The Trade Practices Commission was asking the Government to compensate the victims, and the Auditor General threatened to give the NSW Government its first ever qualified audit, because the Government did not know how much money it owed due to HomeFund. Joe Schipp was dropped from the Cabinet altogether, and it was reported then that on at least one occasion he refused to come out of his office to attend Parliament. Labor and the non-aligned Independents had set up a Parliamentary Inquiry into HomeFund, and it was all hurting the Government in the opinion polls. Webster wanted it sorted out in the last session of Parliament in 1993.

There was a new Housing Minister and Director-General, who were willing to listen to ideas put up by the community sector. A model for refunding tenants' services had been supported in the Mant Report. The Government was under heavy pressure to fix up HomeFund. A \$100 million surplus was held by the Rental Bond Board. The Government did not have a majority in the NSW Parliament and needed to get legislation through Parliament before it could use the Rental Bond Board's surplus money.

The Minister accepted the committee's recommendations, to provide \$2.2 million a year to fund a program which was based roughly on the Tenants' Union's model. In June 1994 he launched the Tenants Advice and Advocacy Program.





## 6.3 Establishing the Aboriginal Tenants Advice & Advocacy Services

*'Housing is an integral part of need for Aboriginal people. We were placed on missions, removed from our land, we had no housing. The kind of housing that was provided or was available to Aboriginal people due to their economic status, and as I said the removal from our land, there had to be some kind of program of housing for Aboriginal people. Obviously into the 1920's, 1930's we were still living in tin humpies, 40s, 50s tin humpies on missions and then governments started to move towards housing programs for Aboriginals, their HFA program, the Aboriginal Housing Office.*

*Then I suppose... the next link in the chain, there was Aboriginal land rights, housing, and all those other services that other Australians have around health and that sort of thing and then tenancy.'*

– Jim Allen, Manager Murra Mia<sup>89</sup>

In the early 1990s, Jim Allen, Ivan Simon and Tom Slockey were approached to establish an Aboriginal tenant advice service in New South Wales. They held consultations with Aboriginal communities in Wagga Wagga, far west New South Wales, Dubbo, and Grafton and with the Tenants' Union of NSW.

The Management and Advisory Services Aboriginal Corporation tendered for a service in Bateman's Bay and were funded for one worker. Seth Merritt was hired. Murra Mia, as the only service at that time, covered most of New South Wales. A second service was established in Dubbo with Cecil See and then Warren Wilson. In 1996, a service was set up in Grafton with the Webb brothers as advocates. Funding was also provided to the South Sydney Aboriginal Resource Unit to provide support to the Aboriginal tenancy services. Lana Mundine was the first Coordinator. Subsequently Wayne Carr was hired as a tenancy advocate. Subsequently Fair Trading approached Tranby National Indigenous Adult Education and Training to auspice service but Tranby suggested the Dtarawarra Aboriginal Resource Unit which had a strong record of management of a range of Aboriginal community programs and of providing advice to local government.

As at 2021 there are four Aboriginal Tenants Advice and Advocacy Services (ATAAS) in NSW – the three original services and a fourth located in Sydney – and an Aboriginal Resource Unit to provide support for the ATAASs.



*Some of the Tenant Advocates of the Aboriginal Tenants' Advice and Advocacy Network in 2015: (from back left to right) Stephen Fields, Jim Allen, Brett Webb, Merinda Dutton, Donna Connors, John Mewburn, Martin Bligh, Robyn Dundas, Linda Simon, and Terry Kapeen.*

89 Jim Allen interviewed for Tenants' Union of New South Wales 40th anniversary

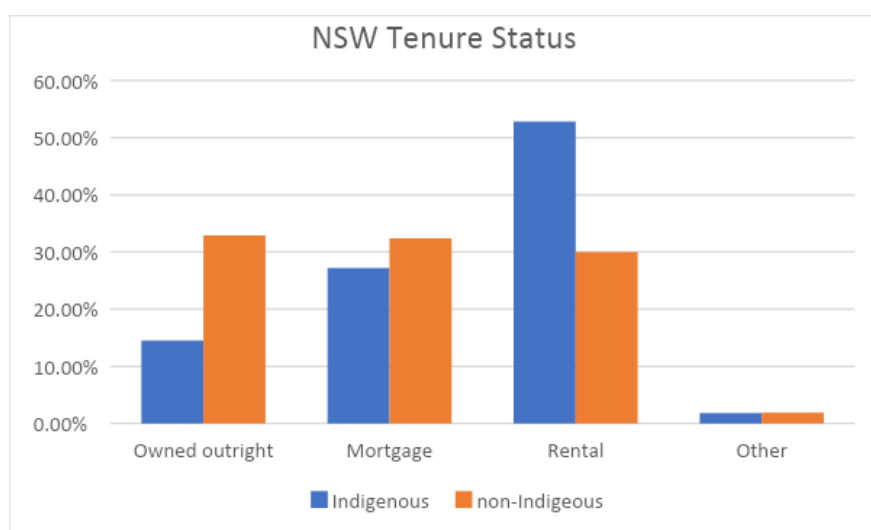


# 7. Aboriginal housing in NSW in 2023: Unfinished business

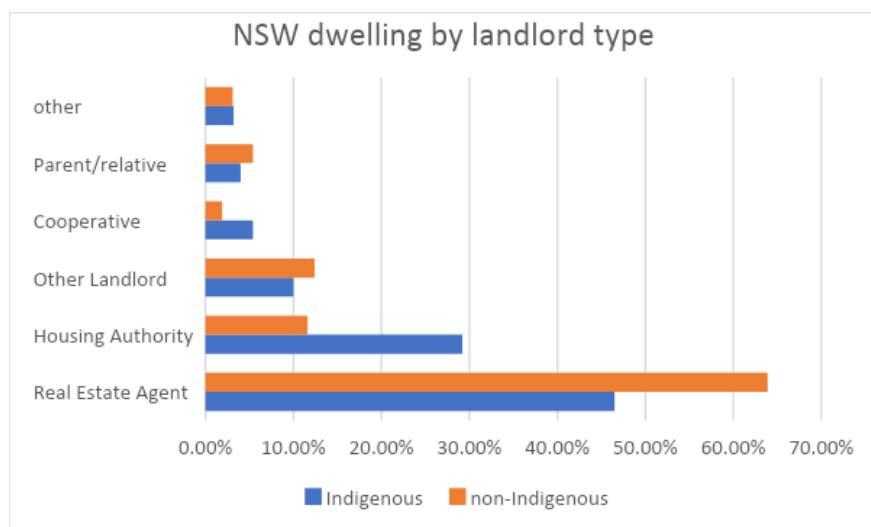
While there have been significant gains for housing provision Aboriginal and Torres Strait Islander people in NSW, much needs to be done. In 2020, a housing target was included in the revised *National Agreement on Closing the Gap*: People can secure appropriate, affordable housing that is aligned with their priorities and needs'.<sup>90</sup> This section summarises the 'unfinished business' in NSW for this target to be met.

## 7.1 Tenure

NSW has the highest number of Aboriginal and Torres Strait Islander people, totalling 216,000 – 31 per cent of the national total. There is a disparity of home ownership for the Indigenous community compared to the non-Indigenous community in NSW with 65.3% of non-Indigenous owning their homes or paying a mortgage compared to 41.7% of Indigenous people.s.<sup>91</sup>



The other 52.8% of the Indigenous community live in rental properties compared to 30.0% for the non-Indigenous community. The private sector providing 46.5% of rentals to Indigenous households compared to 63% for non-Indigenous households. Indigenous people were less likely to rent from family or relatives than the non-Indigenous community and twice as likely to live in some form of social housing including Aboriginal Land Councils properties.<sup>92</sup>



90 <https://www.closingthegap.gov.au/national-agreement/targets>

91 Chris Angus, 'Indigenous NSW: Findings from 2016 Census Statistical Indicators' 02/18

92 Angus, Chris, 'Indigenous NSW: Findings from 2016 Census Statistical Indicators' 02/18



## 7.2 Need for more housing

In New South Wales, there is a severe shortage of housing for Aboriginal and Torres Strait Islander People. For many, homeownership is not financially accessible and the private rental market is also largely prohibitive, particularly to young people, as a result of high cost, uncompetitive tenancy and work histories and discrimination.<sup>93</sup> This has resulted in a focus on accessing social housing, with its limited availability and lengthy waiting periods. Aboriginal and Torres Strait Islander People are six times more likely than non-Indigenous Australians to live in social housing.<sup>94</sup>

The housing deficit for Aboriginal and Torres Strait Islander tenants equates to approximately 10,855 dwellings for social housing and 13,506 dwellings for affordable housing. These deficits are projected to increase by 62 per cent by 2031.<sup>95</sup> The limited availability of housing in NSW is correlated with high rates of homelessness. Aboriginal and Torres Strait Islander Peoples represent approximately 3 per cent of the overall population in New South Wales, but 20 per cent of the state's homeless population.<sup>96</sup>

## 7.3 Overcrowding

Overcrowding can be defined as occurring when a dwelling size is too small for the size and composition of the household living in it.<sup>97</sup> Aboriginal and Torres Strait Islander Peoples are six times more likely to live in overcrowded conditions than non-indigenous Australians.<sup>98</sup>

There are several factors that lead to overcrowding. Primarily, there is a severe shortage of affordable housing available to appropriately accommodate individuals and families, particularly in rural and remote areas, causing some people to accommodate homeless family and friends. This can result in households comprising of multiple families and generations.<sup>99</sup> Cultural and social factors also influence the way housing is used by Aboriginal and Torres Strait Islander People. It is common for people to host extended family who are visiting to access services, visit family and friends or to attend community events.<sup>100</sup>

It is well established that living in overcrowded conditions can be associated with negative outcomes in relation to physical and mental health, safety, employment and educational participation.<sup>101</sup>

Addressing issues of environmental health including overcrowding is fundamental to improving health outcomes for Aboriginal and Torres Strait Islander people.<sup>102</sup>

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100 J. Andersen, B. Williamson, P. Fernando, S. Redman, and F. Vincent.,

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## 7.4 Repairs and maintenance backlog

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A 2019 survey found that difficulties with obtaining repair and maintenance services from landlords was one of the most common tenancy problems experienced by Aboriginal and Torres Strait Islander tenants in NSW.<sup>103</sup> Indigenous Australians are around 18 times more likely than other households to live in housing that is of poor quality, in poor condition and in need of major repair, with the frequency of problems tending to increase with the level of remoteness.<sup>104</sup>

Public housing tenants in NSW report backlogs of maintenance, in greater numbers than community housing tenants.<sup>105</sup> This trend could be due to the ability of community housing providers to collect Commonwealth Rent Assistance payments, which enables those providers to charge higher rents to fund repairs and maintenance.<sup>106</sup> The repair and maintenance services provided by other social housing providers such as Local Aboriginal Land Councils also tend to be impacted by insufficient funding and resources.

## 7.5 Discrimination

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Discrimination against Aboriginal and Torres Strait Islander renters continues to be an issue. Direct discrimination occurs for example when Indigenous Australian applicants are told dwellings are not available for rent when in fact they are available. Indirect discrimination can occur through the imposition of rules or policies which would have an unfair effect on people of a particular race, for example strict requirements for rental housing applicants such as evidence of private rental histories, which Indigenous households are less likely to have or onerous income or employment criteria.<sup>107</sup>

For some, experiences of discrimination from landlords, real estate agents and neighbours continue throughout their tenancies, acting as a major risk factor for tenancy instability for Indigenous households.<sup>108</sup>

## 7.6 Poor cultural competency of non-Aboriginal social housing staff and providers

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For Aboriginal and Torres Strait Islander tenants, the provision of appropriate housing also requires a proper consideration of the unique experiences and needs of Aboriginal and Torres Strait Islander people, including social and cultural requirements, living patterns and preferences and an understanding of the continuing trauma of colonisation in its many forms. Social housing policies and service delivery practices need to demonstrate flexibility and cultural compassion including recognition and respect of the special status of Australian Aboriginal people and Torres Strait Islanders as First Nations People.<sup>109</sup>

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103 2019 AAC Survey

104 Australia Institute of Health and Welfare (2011) *Housing and Homelessness Services*, Australia Institute of Health and Welfare, Australian Government, [aihw.gov.au/reports/housing-assistance/housing-and-homelessness-services-access-for-abor/contents/summary](http://aihw.gov.au/reports/housing-assistance/housing-and-homelessness-services-access-for-abor/contents/summary), accessed 9 December 2019.

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106 E. Liu, C. Martin C. and H. Easthope, (2019) *Poor-quality Housing*

107 [humanrights.gov.au/our-work/race-discrimination/publications/know-your-rights-racial-discrimination-and-vilification](http://humanrights.gov.au/our-work/race-discrimination/publications/know-your-rights-racial-discrimination-and-vilification)

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Rigid policies that are not compatible with the cultural norms and lifestyles of Aboriginal and Torres Strait Islander People can result in inadvertent breaches of tenancies and lead to evictions, for example, cultural requirements to accommodate long-stay visitors and allocation policies that do not take account of the need for an extra bedroom for visiting kin.<sup>110</sup> Comprehensive cultural competency training is needed across the public and private housing sectors to ensure that housing is suitable for the Aboriginal and Torres Strait Islander people to whom it is provided.

## 7.7 Anti-social behaviour policies/laws disproportionately impacts Aboriginal and Torres Strait Islander people

The social housing system plays an important role in providing a safety net for vulnerable people in NSW and sustaining tenancies for these tenants should be paramount, however recent changes to law and policy in NSW in relation to 'anti social behaviour' proceedings have weakened the rights afforded to social housing tenants. The Department of Communities and Justice introduced its 'Anti-Social Behaviour Management Policy' in 2016, which provides a 'three strikes' regime, by which written strike notices are issued to tenants suspected of antisocial behaviour and termination proceedings are initiated on the third strike. If tenants do not respond to a strike notice within 14 days they are barred from disputing the landlord's allegations in any subsequent proceedings in the NSW Civil and Administrative Tribunal (NCAT).

Under legislative amendments made to the *Residential Tenancies Act 2010 (NSW)* in 2016, social housing tenants are also now subject to mandatory evictions for the illegal use of the property, serious damage to property or injury to a neighbour or the landlord, as well as orders for possession of no longer than 28 days after a termination order is made. These provisions have greatly weakened the discretionary power of the NCAT not to terminate a tenancy where to do so would result in an unjust outcome.

The *Residential Tenancies Act 2010 (NSW)* also provides for 'acceptable behaviour agreements' (ABAs), specifically in relation to public housing. Under these provisions, The Department of Communities and Justice, may request a tenant to enter into an ABA and undertake not to engage in the specified behaviour. Failure to enter into an ABA when requested, and breach of an ABA, is grounds for termination.

Aboriginal and Torres Strait Islander tenants make up only 7.6% of public housing tenancies, however since the introduction of these new laws, almost one third of anti social behaviour allegations have been registered against Aboriginal tenants. 17% of mandatory evictions for severe illegal anti-social behaviour have been for Aboriginal tenants. This data demonstrates a significant over representation of Aboriginal tenancies being impacted by these laws.

## 7.8 Remove 'no grounds' terminations

In NSW landlords are legally permitted to evict tenants without a reason. 'No grounds' termination notices may be given as the fixed term of a tenancy comes to an end, and at any time during a tenancy that is without a fixed term or that has continued past a fixed term (a periodic agreement).

This practice means that tenants can never be certain about how long they will be permitted to remain in their homes. In NSW, if the dwelling is rented through a fixed-term tenancy agreement the landlord can give the tenant 30 days notice to move out of the premises at the end of the agreement, and if the lease is a periodic agreement, the landlord can give the tenant 90 days notice to move out at any time. In many European countries, where no grounds terminations have been abolished, landlords may only terminate tenancies on prescribed grounds for example, if the tenant fails to pay rent or damages the property.

<sup>110</sup> N. Bracketz, J. Davison, A. Wilkinson, A.,



Indigenous households in mainstream public housing, are much more likely than non-Indigenous households to receive tenancy termination notices and to be evicted.<sup>111</sup> Until no ground terminations are abolished, this practice will continue to be major factor contributing to the vulnerability of tenancies for Aboriginal and Torres Strait Islander renters.

## 7.9 Rent setting complexities and issues

Public housing tenants in NSW receive rental rebates, which reduce the amount of rent payable from the market rent for the premises to an amount equivalent to (in most cases) approximately 25 per cent of the tenant's household income. Commonwealth Rent Assistance is also available through Centrelink as a non-taxable income supplement payable to eligible people who rent in the private rental market, community housing or tenants of the Aboriginal Housing Office. However, reports of inaccurate calculations in relation to both rental rebates and Commonwealth Rent Assistance from clients of the Aboriginal tenancy advice services are not uncommon. The methods underpinning these complex calculations and the associated processes of income assessments and rent reviews must be communicated more clearly to tenants to enable tenants to understand their rental payments, improve the transparency around these processes and to ensure tenants are not being overcharged.

For some Aboriginal and Torres Strait islander tenants there is also a dispute regarding whether rent is payable on traditionally occupied land. Deriving from the basis that land was never ceded by the First Nations People, there is a view that rent should not be charged in relation to land which is traditionally occupied. However, there is a differing view that occupying a premises on traditional land, will always require some form of payment to cover the costs of maintaining and repairing the property, whether this be in the form of rent or another type of payment. This is an ongoing and contested issue.

## 7.10 Succession of tenancy and housing occupancy

Familial ties are a significant aspect of Aboriginal and Torres Strait Islander culture and some Indigenous Australian households comprise multiple generations, making succession of tenancy a crucial policy consideration. While community housing providers manage applications for succession of tenancy in accordance with their own individual policies, for public housing tenants in NSW, there is no automatic right of succession by anyone other than a party to the existing tenancy agreement. Succession of tenancy occurs in accordance with the general rules of the public housing 'Changing a Tenancy' policy.<sup>112</sup> Under this policy, to be eligible for a succession of tenancy, a person must submit an application and meet eligibility criteria including being an approved additional occupant of the property for at least two years (or the whole of the tenancy if less than 2 years old), with a satisfactory occupation. If eligibility criteria are met, the Department of Communities and Justice (DCJ) will also grant recognition of tenancy to Aboriginal and Torres Strait Islander people who fall under certain categories, including spouses or de facto partners of the former tenant, carers of children or young persons and Aboriginal and Torres Strait Islander clients not part of the household. If an application for recognition of tenancy from an AHO tenant is denied by DCJ, it must refer its decision to the AHO for review. Referrals for AHO review are not mandatory for Aboriginal or Torres Strait Islander tenants applying for NSW Land and Housing Corporation properties.

Social housing providers must ensure that their succession of tenancy policies are flexible and adequately address cultural considerations and individual circumstances, particularly in relation to long-term social housing tenants who have paid rent for their homes over many years and want their children to succeed their tenancy.<sup>113</sup>

111 Flatau. (2005) *Indigenous Access to Mainstream Public Housing*, AHURI Final Report No. 85. Australian Housing and Urban Research Institute, Melbourne, [ahuri.edu.au/\\_\\_data/assets/pdf\\_file/0011/2063/AHURI\\_Final\\_Report\\_No85\\_Indigenous\\_access\\_to\\_mainstream\\_public\\_and\\_community\\_housing.pdf](http://ahuri.edu.au/__data/assets/pdf_file/0011/2063/AHURI_Final_Report_No85_Indigenous_access_to_mainstream_public_and_community_housing.pdf), accessed 24 February 2020.

112 Department of Communities and Justice (November 2018) *Changing a Tenancy Policy*, [facs.nsw.gov.au/housing/policies/changing-tenancy-policy](http://facs.nsw.gov.au/housing/policies/changing-tenancy-policy), accessed on 23 January 2020.

113 V.Milligan et al (2011) *Urban Social Housing for Aboriginal People and Torres Strait Islanders: Respecting Culture and Adapting Services*, AHURI Final Report No. 172. Australian Housing and Urban Research Institute, Melbourne, [ahuri.edu.au/\\_\\_data/assets/pdf\\_file/0014/2075/AHURI\\_Final\\_Report\\_No172\\_Urban\\_social\\_housing\\_for\\_Aboriginal\\_people\\_and\\_Torres\\_Strait\\_Islanders\\_respecting\\_culture\\_and\\_adapting\\_services.pdf](http://ahuri.edu.au/__data/assets/pdf_file/0014/2075/AHURI_Final_Report_No172_Urban_social_housing_for_Aboriginal_people_and_Torres_Strait_Islanders_respecting_culture_and_adapting_services.pdf), accessed on 12 December 2019.

