**‘To the exclusion of the rights of the mother’: legal barriers to Aboriginal mothering in the Stolen Generations era**

Debate within the wider community following the publication of the *Bringing Them Home* Report in 1997 often centred around whether Indigenous child removals had been acceptable by the standards of the time in which they occurred and were an attempt by white authorities to act in the ‘best interests’ of the children who were removed.[[1]](#footnote-1) Little mention was made in these debates of the impact of Aboriginal ‘protection’ legislation, which acted to constrain the rights of Indigenous parents in relation to their children in comparison with those of other Australian parents. Under this comprehensive legislative framework, in a number of Australian states and territories a state-appointed ‘Aboriginal Protector’ was the legal guardian of all Indigenous children until they were up to 21 years old; all Indigenous children in these jurisdictions were deemed wards of the state, which limited their parents’ ability to legally challenge state decisions about their removal. This article explores in detail the impact of Aboriginal protection legislation on the rights of Indigenous parents, particularly mothers.[[2]](#footnote-2)

My research has involved detailed analysis of state and federal legislation relating to Indigenous parenting rights, for example, constraints on the guardianship status of Indigenous parents, and discriminatory provisions limiting their access to social security benefits and payments. It also involved thematic analysis of 134 oral history interviews, 130 of which were drawn from the National Library of Australia’s *Bringing Them Home Oral History Collection* and four of which I undertook myself. *[[3]](#footnote-3)* In addition, I considered accounts of Aboriginal child removal and Aboriginal mothers’ experiences from other sources, including excerpts contained within the *Bringing Them Home* Report and from various anthologies and oral history collections, autobiographical writings by Aboriginal women containing accounts of child removal, as well as letters, records, etc. reproduced in secondary sources that were relevant to my research. Some of the themes which emerged from my research were inductive, drawn from my research data, and others were a priori, drawn from issues, themes and theories identified in the academic literature.[[4]](#footnote-4) Repetition of issues across multiple sources was one important way I identified themes; but I also actively sought points of difference or what are sometimes described as ‘outlier’ accounts, and looked for the ‘strategic use of silence’ by research participants, recognising that sometimes what is not said can be as important as what is said, particularly when dealing with an event as traumatic as child removal. [[5]](#footnote-5)

This research has been important in documenting the structural and systemic nature of disadvantage facing Indigenous mothers in the Stolen Generations era.[[6]](#footnote-6) Black sociologist Joyce A. Ladner called on feminist researchers exploring issues of race to redefine the ‘problem’ they were investigating.[[7]](#footnote-7) Indigenous academic Linda Tuhiwai Smith argues that ‘…many researchers, even those with the best of intentions, frame their research in ways that assume that the locus of a particular research problem lies with the indigenous individual or community rather than with other social or structural issues’.[[8]](#footnote-8) This article focuses specifically on the findings of my research into the impact of state protection legislation on Indigenous parenting rights, which I argue is an important aspect of understanding child removal policies and practices in the Stolen Generations era. Rather than seeing child removal as arising from the ‘problem’ of Aboriginal parenting, this article focuses on identifying and exploring some of the structural barriers experienced by Aboriginal mothers in the Stolen Generations era, highlighting the impact of institutionalised racism expressed through legislation and the policies implemented by welfare agencies, government departments, mission officials and others involved in the administration of Aboriginal affairs at this time.

State-based Aboriginal ‘protection’ legislation in Australia imposed constraints on many aspects of the lives of Indigenous people, including restrictions on their freedom of association, freedom of movement, the right to marry, freedom from arbitrary interference in family and home, property ownership rights, freedom of religion, the right to vote and to participate in government, the right to social security, the right to work and to just and favourable conditions of work, the right to education, the right to an adequate standard of living, breaches of the principles of non-discrimination and equality before the law; and so on. These curtailments were specifically targeted to Indigenous Australians and did not operate to limit the rights and freedoms enjoyed by other Australians, except in their interactions with Indigenous Australians.

Analysis of the impact of Aboriginal protection legislation is not a new area of historical enquiry, and my research builds on the insights identified by a number of historians who have previously explored this area in depth. It is important to understand the context in which Aboriginal ‘protection’ legislation first emerged from the mid-nineteenth century and was eventually implemented comprehensively across all Australian states and territories with the exception of Tasmania. Aboriginal protection legislation did not develop in a vacuum – it reflected the broader societal concerns and interests that the legislation was designed to implement or guard against. Changes to Aboriginal Protection legislation over time reflected changing white priorities in relation to Aboriginal people; the relationship between Aboriginal welfare legislation and the concerns of white Australians has long been noted.[[9]](#footnote-9) A detailed overview of the clauses within ‘protection’ legislation impacting on Aboriginal parents is provided in Table 1.

It has been argued that the Australian legislation needs to be seen within a global paradigm of protection, and that the 1890s witnessed an expansion of ‘progressive governmental intervention and social regulation’ in settler liberal democracies.[[10]](#footnote-10) At Federation, Aboriginal ‘natives’ were excluded from the newly-formed federal government’s Constitutional ‘race power’, leaving the management of Aboriginal affairs a state issue. The policy objective of creating a ‘white’ Australia led to the introduction of restrictions on non-white immigration, the deportation of ‘undesirable’ population groups, and an increased focus on ‘managing’ Aboriginal populations.[[11]](#footnote-11) A complex array of at-times contradictory factors impacted on the development of the ever-encroaching web of Aboriginal ‘protection’ legislation in the first decades of the twentieth century. The seemingly mutually-exclusive policies of segregation and absorption at times operated concurrently, and the intersection of ‘philanthropic, ameliorative, punitive and even genocidal’ rationales have been identified as underpinning so-called ‘protection’ policies.[[12]](#footnote-12) Aboriginal child removal policies in Australia were critical to achieving the objective of ‘absorption’, and were influenced by the new ‘sciences’ of anthropology, psychology and eugenics, leading to extreme levels of state intervention in the lives of Aboriginal people.[[13]](#footnote-13) It is important to recognise both the continuities and the discontinuities between the various phases of child removal, and to acknowledge differences in the implementation of policies at a state level.[[14]](#footnote-14) For example, the size of the non-white non-Indigenous population in each state has been identified as a crucial factor in state approaches to the ‘absorption’ of Aboriginal people.[[15]](#footnote-15)

The family also emerged during this time period as a major social institution of interest to the state, and motherhood became an increasing focus of state regulation, as maternity began to be associated with ‘problems of infanticide, population control, poverty, and colonial, national and racial instability’.[[16]](#footnote-16) Historians have identified the relationship between the promotion of white motherhood and the denigration and active discouragement of Aboriginal motherhood during the Stolen Generations era.[[17]](#footnote-17) Intersectional approaches have identified that motherhood has had at times a special status and standing in black communities, operating as a site of resistance and liberation for some black women, and this has provided an important counterpoint to white constructions of black motherhood as deviant and deficient.[[18]](#footnote-18) Poverty, social disadvantage, racism and discrimination had a very real impact on Aboriginal motherhood in the Stolen Generations era, with the legacy of this history of disadvantage continuing to impact in manifest ways on Aboriginal families today. Welfare approaches have tended to focus blame on individual parents for their failings, and governments and welfare agencies remain unwilling or unable to identify and address structural and systemic disadvantages arising from issues such as poverty and the social impact of racial discrimination.[[19]](#footnote-19) Historically in the Stolen Generations era, systemic barriers to motherhood such as legal inequalities, discrimination in access to family-based social security payments, the impact of mission policies requiring mothers to work and removing children to mission dormitories, and the heightened surveillance and supervision of Aboriginal families living on missions and reserves, all contributed significantly to Aboriginal child removal at this time.[[20]](#footnote-20) The deep impact of these structural issues on the ability of Aboriginal mothers to maintain the integrity of their families remains an under-acknowledged aspect of our understanding of the Stolen Generations era.

*Overview of state and federal laws relating to Aboriginal parents*

As highlighted above, child removal policies and practices differed from state-to-state; there was not a uniform Australia-wide approach to this issue. Prior to federation each of the colonies was effectively a separate state body, and subsequent to federation the federal government was explicitly precluded from legislating for Indigenous Australians by Section 51 (xxvi) of the Constitution, so it is quite difficult to construct a coherent picture of the different policies and practices being implemented in each state and territory, and it would be difficult to argue that there was a truly ‘national’ approach to Indigenous issues prior to 1967.[[21]](#footnote-21) There were significant differences in the approach to child removal in different states and at different times; several different phases in child removal policy have been identified, including the colonial era, the era of ‘protection’ and segregation, the era of ‘merging’ and ‘absorption’, and the era of assimilation.[[22]](#footnote-22) Tasmania ‘did not acknowledge that it still had an Aboriginal population’ after its efforts to massacre Tasmanian Aborigines in the nineteenth century[[23]](#footnote-23), and therefore did not develop separate laws and policies targeting Aboriginal children. In Victoria, Aboriginal children were removed to ‘mainstream’ child welfare institutions (although without the need for a court process), and a separate Aboriginal ‘welfare’ administration did not develop.[[24]](#footnote-24) From the early twentieth century in NSW, many Aboriginal children were institutionalised in ‘training institutions’ developed specifically to accommodate Aboriginal children; this ‘apprenticeship’ scheme was conceived as a mechanism to break up Aboriginal families and communities.[[25]](#footnote-25) In South Australia, as in a number of other states with large Aboriginal populations, a state ‘Protector’ was appointed as the legal guardian of all Aboriginal children and had sole decision-making power to remove children for training or to determine if they were ‘neglected’.[[26]](#footnote-26) In Queensland, segregation on missions rather than assimilation remained a strong focus. The Northern Territory and West Australia were home to by far the largest numbers of ‘full-blood’ Aborigines living a ‘traditional’ lifestyle, and these states were the major proponents of schemes designed to ‘breed out the colour’ of their Aboriginal populations.[[27]](#footnote-27) The eastern states dismantled their ‘protectionist’ legislation much earlier than did Western Australia, the Northern Territory, South Australia and Queensland, which continued to operate a separate legislative and administrative regime for Indigenous peoples into the 1950s and 1960s.[[28]](#footnote-28) However, while state policies and practices differed, it is possible to identify that ‘similar attitudes influenced legislators throughout Australia to pass laws marginalising Aboriginal people’.[[29]](#footnote-29)

While there had been earlier autobiographical writings by Aboriginal people identifying the issue of child removal in Aboriginal communities, historian Peter Read's work put the issue of ‘the Stolen Generations’ very firmly on the non-Indigenous political landscape as a major human rights violation experienced by Aboriginal people. [[30]](#footnote-30) Noting that ‘White people have never been able to leave Aborigines alone. Children particularly have suffered’, Read identified the impact of Aboriginal protection legislation on child removal in NSW, arguing that its intention was to *permanently* separate Aboriginal children from their families and communities.[[31]](#footnote-31)

The *Bringing Them Home* Report provided a detailed overview of all state laws applying to Indigenous children in the appendices to the Report.[[32]](#footnote-32) This information provided the basis for *To Remove and Protect: laws that changed Aboriginal lives*, a detailed online exhibition compiled by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) providing information about all state and territory laws applying specifically to Indigenous children, as well as general child welfare and adoption laws, and providing the full text of the annual reports of all state and territory Aboriginal ‘protection’ boards.[[33]](#footnote-33) The AIATSIS site contains summaries of the provisions contained within each piece of legislation relevant to Indigenous child removal. However, reflecting the common interpretation of the removal of Indigenous children as a violation of the rights of the child, the focus of *To Remove and Protect* is on legislation applying to Indigenous *children* rather than to Indigenous parents. Some of the clauses within the various state and territory protection acts that make specific reference to Indigenous parents are not highlighted in either the *Bringing Them Home* Report appendices or the AIATSIS summaries, as the purpose of these summaries was to highlight ‘laws applying specifically to Australian *children*’.[[34]](#footnote-34) In exploring the impact of historic child removal practices on Indigenous communities, inquiries such as *Bringing Them Home* in Australia and the Truth and Reconciliation Commission in Canada have tended to focus on the child victims of such practices, rather than on others who have been impacted, such as parents.[[35]](#footnote-35)

Chapter 13 of the *Bringing Them Home* Report traces the legislative framework under which Indigenous child removal was authorised, and argues that the separations were unlawful even by the legal standards of the time in which they happened:

The Australian practice of Indigenous child removal involved both systematic racial discrimination and genocide as defined by international law. Yet it continued to be practised as official policy long after being clearly prohibited by treaties to which Australia had voluntarily subscribed.[[36]](#footnote-36)

While Australia might have had a moral obligation to abide by the terms of the international human rights treaties it was a signatory to, Australia’s commitments to such treaties do not take immediate effect on ratification but require specific domestic legislation to be legally enforceable.[[37]](#footnote-37) As the Australian Human Rights Commission reminds us, ‘Without such legislation there is no legal way within the Australian court system to ensure that the rights in any international human rights treaty will take precedence over any state or territory legislation that is inconsistent with the treaty’.[[38]](#footnote-38) Australia ratified the *Convention for the Prevention of the Crime of Genocide* in 1949 and the *Convention on the Elimination of all forms of Racial Discrimination* in 1975; the federal *Racial Discrimination Act* was passed in 1975, however genocide was not made a crime punishable under Australian law until the *International Criminal Court Act* was adopted in 2002.[[39]](#footnote-39) This has contributed to the legal difficulties facing many Stolen Generations compensation cases, as racially discriminatory laws were not prohibited in Australia until the passage of the *Racial Discrimination Act* in 1975.[[40]](#footnote-40)

*Deprivation of parental rights*

A short section within Chapter 13 of the *Bringing Them Home* Report is headed ‘Deprivation of parental rights’. This section notes that Indigenous parents were stripped of their parental rights contrary to established common law principles in Western Australia from 1905 – 1963; the Northern Territory from 1910 – 1964; South Australia from 1911 – 1962; and in Queensland from 1939 – 1965.[[41]](#footnote-41) In Victoria, while Aboriginal parents theoretically retained custody rights in relation to their children, from 1890 the Board of Protection oversaw arrangements for the care of Aboriginal children and had the power to remove Aboriginal children without the need of a court process.[[42]](#footnote-42) Similarly, in NSW from 1915 onwards the Aboriginal Protection Board had the power to remove all Aboriginal children without parental consent or court process, a clear distinction between the rights of Aboriginal and non-Aboriginal children[[43]](#footnote-43) – and, I would also note, the rights of their parents. The Australian Capital Territory was covered by the provisions of the *NSW Aboriginal Protection Act* until 1954, when the *Aborigines Welfare Ordinance* was passed into legislation; it included among its provisions authorisation for the Minister to ‘provide for the maintenance, welfare and training’ of Aboriginal children, though it differed from most other state and territory legislation by stipulating that this was ‘*on the application of their parent or guardian’*.[[44]](#footnote-44) In Tasmania, as highlighted previously, separate legislation relating to the removal of Aboriginal children was not passed, apparently because the state refused to acknowledge that Aboriginal people still resided there;[[45]](#footnote-45) unlike all the other states Aboriginal child removals in Tasmania were therefore governed by mainstream child welfare legislation. The *Bringing Them Home* Report noted a division dating from the 1940s onwards between two approaches to child removal, with some states (New South Wales, Tasmania and Victoria) applying the same laws and standards to Aboriginal as to non-Aboriginal families although in a discriminatory and unfair manner, while the other states (Western Australia, Northern Territory, South Australia, Queensland) continued to operate separate Indigenous administrations and legislative frameworks, eventually dismantling these from the 1950s onwards.[[46]](#footnote-46) Although the Stolen Generations era is typically seen to have ended in 1969 with the dismantling of the remnants of state-based ‘protection’ legislation, Charles Rowley’s comprehensive study of policy and practice in relation to Aboriginal people published in 1971 urged the removal of ‘the vestiges’ of the limitations that were still imposed on Aboriginal parental rights ‘as soon as possible, with departments of child welfare or equivalents in each State acting for all children, under common legislation and regulations’.[[47]](#footnote-47)

The *Bringing Them Home* Report made the important point that while any person’s parental rights have always been subject to suspension or termination by legal process, the rights of Indigenous parents were removed purely on the basis of their status as Indigenous people, and not because of individual findings of parental misconduct or judgements made on a case-by-case basis about what would be in the best interests of the child/children under their care.[[48]](#footnote-48) Clearly, the legislation that appointed the Protector of Aborigines (or equivalent position) the legal guardian of *all* Indigenous children in these states and the Northern Territory was based on the assumption that in *every* case, Indigenous parents were incapable of performing their parental duties themselves. Such legislation reflects the belief of white officials, as one Aboriginal mother I spoke to characterised it, ‘that they could do better at raising our kids’[[49]](#footnote-49).

The sense of powerlessness engendered in Aboriginal mothers by their lack of legal rights is expressed in a number of accounts of their experiences of child removal.[[50]](#footnote-50) One mother I interviewed spoke about her sense of hopelessness and the lack of avenues for her to seek redress after her baby daughter was taken from her in the 1960s and removed to an unknown location: ‘I was just devastated that I didn’t have, you know, came back to find my baby missing. But who could I go to, you know?...There was no one to go to about it…’[[51]](#footnote-51)

Even in child removals which happened late in the Stolen Generations era when the guardianship status of Indigenous parents had notionally been restored, Aboriginal mothers still faced huge disadvantages within the legal system. Heather Vicenti, an Aboriginal mother who experienced the removal of five of her children, has written in her autobiography about the legal inequities she faced in West Australia in 1965. She was without legal representation on the day the court passed judgement on her capacity to care for her children:

I was alone on the day, unsupported, unrepresented, and had no knowledge of the procedure involved….I was completely intimidated by the process. I was not notified of my rights, there was no adjournment to obtain legal advice, and I had no assistance with what was in fact a contested hearing or trial. What happened was, to my mind, a gross miscarriage of justice, a travesty.[[52]](#footnote-52)

*The impact of limitations on Aboriginal mothers’ guardianship status*

With regard to the legal guardianship of Indigenous children, initially ‘protection’ legislation in a number of states did not apply in a blanket fashion to every Indigenous child. South Australian legislation originally gave Aboriginal parents the right to consent to apprenticeship arrangements made in relation to their children ‘if living and within the Province’, and limited the Protector of Aborigines’ legal guardianship of Aboriginal children to those ‘whose parents are dead or unknown, or either of whose parents may signify before a magistrate his or her willingness in this behalf’.[[53]](#footnote-53) Similarly, Queensland’s initial legislation only applied to ‘half-caste’ children who were orphaned or ‘deserted’ by their parents.[[54]](#footnote-54) In both of these states as well as in the Northern Territory and Western Australia, the legal guardianship provisions were eventually extended to encompass ‘the child of any Aborigine’. It is also possible to trace the gradual emergence of provisions bringing Indigenous child removal more in keeping with mainstream child welfare processes, including the requirement for Aboriginal children who were declared neglected or uncontrollable to appear before a court in New South Wales from 1940 onwards;[[55]](#footnote-55) and the *NT Welfare Ordinance* requirement from 1953 for the removal of a ‘ward’ under fourteen years to be authorised in writing by the Administrator.[[56]](#footnote-56)

It is important to acknowledge the aspects of Aboriginal protection legislation that distinguished Indigenous child removals from those of non-Indigenous children under general child protection laws. The most significant of these was the appointment of a designated state official as the legal guardian of *all* Indigenous minors (and in some cases Indigenous women up to the age of twenty-one years) in Western Australia, South Australia, Queensland and the Northern Territory, ‘notwithstanding that the child has a parent or other relative living’. The West Australian legislation made specific reference to mothers; the *WA Aborigines Amendment Act* 1911specified that the Chief Protector was the legal guardian ‘of every aboriginal and half-caste child…to the exclusion of the rights of the mother of an illegitimate half-caste child’.[[57]](#footnote-57) The Northern Territory took legal guardianship one step further and from 1918 applied similar powers in relation to Aboriginal adults; the Chief Protector had the power ‘to undertake the care, custody, or control of any aboriginal or half-caste, if in his opinion it is necessary or desirable in the interests of the aboriginal or half-caste for him to do so’.[[58]](#footnote-58) As late as 1953 the NT Director of Native Welfare was appointed ‘the legal guardian of all aboriginals’.[[59]](#footnote-59) This legislation was replaced with a supposedly ‘mainstream’ piece of legislation, the *NT Welfare Ordinance* 1953, which made no direct reference to Aboriginal people and was aimed at ‘state wards’; however, as no one who was eligible for registration on an electoral roll could be declared a ‘ward’ under this legislation, this Ordinance ‘could only apply to Aboriginal people’.[[60]](#footnote-60) Under Clause 24. (1) of this Ordinance, the Director of Welfare was appointed the guardian of all wards ‘as if that ward were an infant’, except under specified exemptions.[[61]](#footnote-61)

In New South Wales, although Aboriginal parents were not stripped of their legal guardianship status, the Aboriginal Protection Board (APB) had the power to ‘assume full control and custody of the child of any aborigine’, on the grounds that such a removal would be in the interests of the ‘moral or physical welfare’ of the child.[[62]](#footnote-62)

Aboriginal mothers did not have standard custody rights until the 1970s.[[63]](#footnote-63) This is in contrast to white mothers who gained equal custody rights with their husbands in 1934.[[64]](#footnote-64) Challenging the perception that Aboriginal child removal reflected the ‘standards of the day’, awareness existed of the disparity in the rights of Aboriginal parents, and there were contemporary campaigns by feminists attempting to change the discriminatory provisions in Aboriginal protection legislation. The Australian Women’s Charter 1946-1949 recommended:

that legislative amendments be made to recognise Aboriginal parents’ custody rights; that the law controlling the guardianship of Aboriginal children contain the same provisions as the law controlling other children; that Aboriginal people not be removed to, or held in, institutions except by a magistrate’s order, after they have appeared before a court; and that Aboriginal parents be given the same opportunity as other parents to appear before a court to offer evidence that they are suitable persons to have care and control of their children.[[65]](#footnote-65)

However, it would be almost two decades before these changes were actually implemented in many states and in the Northern Territory.

*The impact of the lack of judicial review*

Protection legislation gave authorities the blanket power to support the removal of ‘the child of any aboriginal’, often without the requirement for removals to be considered and justified on an individual or case-by-case basis. Even in jurisdictions where authorities were required to satisfy themselves that removal was in the interests of the child, there were few opportunities to dispute such a determination, as another distinguishing feature of Aboriginal protection legislation was the lack of inbuilt checks and balances such as judicial monitoring and review for decisions involving Indigenous children.[[66]](#footnote-66) The only specific reference to the right of appeal in early protection legislation is in the *NSW Aborigines Protection Amending Act* 1915, which gave parents the right of appeal against actions of the APB; however, such appeals could only be made on a ground involving a question of law, or on the basis that insufficient evidence existed to support the original conviction, order or sentence.[[67]](#footnote-67) Only in Victoria were the provisions of Aboriginal protection legislation explicitly made subject to mainstream child welfare legislation.[[68]](#footnote-68) In Queensland in the 1930s with the passage of the *Aboriginals Preservation and Protection Act* 1939, the legislation was specifically worded to override ‘mainstream’ adoption legislation; the Director of Native Affairs was given the power to make arrangements for the ‘legal custody’ of Aboriginal children to any person ‘deemed suitable to be given legal custody of such children’, irrespective of the provisions of *The Adoption of Children Act* 1935 (Qld)*.[[69]](#footnote-69)* In all states except Tasmania and Victoria, Indigenous child welfare was separated from mainstream welfare provision and separate institutions were developed to house removed Indigenous children. These features of the protection legislation in place in every state and territory except Tasmania highlight the legal impediments that Indigenous parents would have faced in retaining custody of their children in the face of attempts to remove them, and in attempting to secure the return of their children subsequent to their removal; they literally had no legal grounds to challenge the decisions being made about their children in most Australian states and territories, let alone access to the resources needed to mount such a legal challenge.

*Successful legal challenges to Aboriginal child removal*

Although the overwhelming majority of the sources I analysed described Aboriginal parents’ powerlessness to prevent child removal, it is also important to acknowledge that in some instances authorities actually assisted Aboriginal parents to regain custody of their children. Heather Vicenti’s autobiography *Too Many Tears* includes copies of correspondence she sent to the Native Welfare Department in WA requesting the return of her child, who had been placed for adoption with his paternal grandmother soon after his birth in 1956. Vicenti successfully argued that she now had the financial means to support her child, and had a carer to look after him while she was working; her letter stated: ‘I do not wish to have my baby adopted by anyone else as I can look after him myself. I am appealing to you to help me get my baby back’.[[70]](#footnote-70)

Vicenti’s autobiography reproduces a letter from the Commissioner of Native Welfare, written in his capacity as Heather's legal guardian (as she was then aged under twenty-one years) to object on her behalf to this adoption.[[71]](#footnote-71) This seems to align with the account of a senior bureaucrat in Native Welfare in WA in the 1960s who had worked as a patrol officer in the Stolen Generations era; he describes a cultural shift in the Department following the appointment of a new Commissioner in 1948, and states that child removal on anything other than welfare grounds would have been ‘anathema’ to the new Commissioner.[[72]](#footnote-72) Vicenti’s application to have her child returned was successful, and he was returned to her care when he was six months old.[[73]](#footnote-73)

That Vicenti’s successful application for the return of her son is a shift from earlier approaches to requests for the return of removed children in West Australia is highlighted by another letter reproduced in *Too Many Tears*, dated 21 July 1944 and sent by the Commissioner of Native Affairs to a de-identified individual rejecting a mother’s request for her child's return:

I regret it is not possible to agree to XXX request. XXX is a near-white boy. He is being reared as a white child at Sister Kate's Home, and in due course he will be placed out to employment, and will live as a white person. It would be detrimental to his future welfare to permit him to return to his mother who lives in association with natives. If this was agreed to it would undo all the good work in rearing XXX to white standards. Children placed with Sister Kate are never released to their parents. This would be a direct contradiction of the principle of their segregation from native persons, as they are placed with Sister Kate for this very reason. By Section 8 I am XXX legal guardian up to 21 years, notwithstanding that his mother is alive, and since the principal consideration is the lad's welfare I regret I am unable to accede to XXX request. If I did so I would be inundated with similar requests from other native mothers.[[74]](#footnote-74)

Haebich discusses a similar legal case to that of Heather Vicenti’s, which took place in the Northern Territory in 1958, involving the return of three Aboriginal children to their parents who had been discharged from a leprosarium. Haebich notes that in situations such as these where Aboriginal parents were classified as wards, the state official appointed as their legal guardian had a duty to pursue their legal interests.[[75]](#footnote-75) These examples highlight the importance of the legislative framework; where laws existed that protected or supported the parental rights of Indigenous people, they could be used to challenge and overturn child removal. Unfortunately, such examples of successful legal challenges to child removal by Indigenous parents appear to be rare.

*Other impacts of protection legislation on Aboriginal parents*

Protection legislation impacted on Aboriginal parents in a number of other ways. In New South Wales, communication with removed children was only possible with the authorisation of the Board or equivalent.[[76]](#footnote-76) A number of interviews I analysed in the NLA Oral History collection describe the interviewees’ discovery as adults of letters held in their welfare files that had been sent to them by their parents but which they never received. Removal of children from ‘Aboriginal institutions’ was an offence in a number of states (including New South Wales, the Northern Territory, South Australia, and Western Australia [[77]](#footnote-77)). Obstructing officers performing their duties relating to the legislation, which would have included any attempts to ‘obstruct’ child removal, was also an offence in some states (the Northern Territory, Queensland, South Australia, and Victoria).[[78]](#footnote-78) Aboriginal parents could be compelled to pay maintenance for the support of their removed children (the Australian Capital Territory, New South Wales, the Northern Territory, Queensland, South Australia, and Western Australia[[79]](#footnote-79)); this included all the states where Aboriginal parents were not in fact the legal guardians of their children, but nonetheless could still be compelled to contribute financially towards their upkeep after their removal.

Although there were undoubtedly national patterns detectable in the waves of state and territory Aboriginal protection legislation, with very similar acts and clauses often being adopted in different states and territories within similar timeframes, there are also regional variations, with some clauses tailored to what were obviously seen to be particular problems or issues experienced in a specific state or territory. In NSW and the ACT, clauses appear from the 1940s in protection legislation allowing Aboriginal parents or the child’s guardian to apply to admit their children to the control of the Aboriginal Protection Board.[[80]](#footnote-80) The type of scenario that this legislation might have been aimed at is mentioned in several Aboriginal women’s autobiographies. Ruby Langford discusses being in a position of severe financial distress and initiating discussions with authorities to relinquish her children into state care.[[81]](#footnote-81) Again in NSW, from 1943 the *Aborigines Protection (Amendment) Act* authorised the Aboriginal Protection Board to make payments to foster parents[[82]](#footnote-82), reflecting the shift in NSW from segregation of Aboriginal children in training institutions towards assimilation into white families that has been previously noted in other research.[[83]](#footnote-83)

In the Northern Territory, the passage of the 1918 *Ordinance* allowed for Aboriginal children to be removed interstate.[[84]](#footnote-84) A number of interviews in the NLA oral history project undertaken with Aboriginal people from the Northern Territory related their experience of being sent interstate, some were wartime evacuees but there were also a number who were sent to Victoria, South Australia and even Tasmania simply to attend high school.

The *WA Native Administration Act* 1936 included a clause which appears to have been aimed at preventing Aboriginal parents from prostituting their children to pearlers. Clause 44 of the Act made it an offence for ‘Any native who, being the parent or having custody of any female child apparently under the age of sixteen years, allows that child to be within two miles of any creek or inlet used by the boats of pearlers or other sea boats’. While some have argued that protecting Aboriginal girls from sexual intercourse was a ‘major motive’ behind efforts to remove Aboriginal children believed to be at risk in Western Australia,[[85]](#footnote-85) others have highlighted white discomfort with racial ‘miscegenation’, particularly between Aboriginal women and Asian men (many pearling luggers were operated by Japanese crew) in the years immediately preceding the second world war, arguing that ‘it was Aboriginal women’s sexual activity with “alien” men, particularly “Asiatics”, which finally prompted dramatically contrasting government interventions and media exposure’.[[86]](#footnote-86) Irrespective of the real motivations of legislators, the perceived need to explicitly legislate for this scenario is very revealing of white attitudes towards Aboriginal parents as fit carers for their children.

*Limitations on accepting Aboriginal women’s testimony about the paternity of ‘half-caste’ children*

In relation to the enforcement of fathers contributing towards child maintenance payments, a clause appeared in the protection legislation of all states with the exception of Tasmania and Victoria[[87]](#footnote-87) stipulating that Aboriginal women’s testimony as to the paternity of their ‘half-caste’ child would not be accepted ‘upon the evidence of the mother, unless her evidence be corroborated in some material particular’. The wording of this clause is almost identical in New South Wales, the Northern Territory, South Australia and Western Australia, with the Queensland legislation instead stipulating ‘…no man shall be taken to be the father of any such child which is illegitimate upon the oath of the mother only.’[[88]](#footnote-88) Apart from reflecting a deep-seated contempt toward the veracity of Aboriginal women, such clauses in legislation purportedly intended to ‘protect’ Aboriginal people are suggestive that the interests of white legislators lay with protecting the white men accused of fathering ‘half-caste’ children, rather than the Aboriginal mothers left to raise their children without financial support.

*The legacy of the ‘protection’ era on Aboriginal parenting*

The passing on of parenting skills inter-generationally has been defined as one of the most important functions of the family.[[89]](#footnote-89) The importance of family life and continuity of mothering in child development was recognised in the mid-twentieth century through John Bowlby’s influential work, yet institutionalisation appears to have continued to have been the preferred option for many Indigenous children.[[90]](#footnote-90) The impact of being raised in institutional care or in abusive or unloving foster care relationships on Aboriginal people’s capacity to develop close relationships as adults, and to function effectively in family life, was addressed in the *Bringing Them Home* Report, which described this impacting inter-generationally in cycles of child removal occurring within Aboriginal families.[[91]](#footnote-91) The high level of intervention by various missionaries, reserve managers and welfare agencies in Aboriginal families over decades has also left a legacy, undermining parental authority and de-skilling Aboriginal parents. Indigenous legal scholar Kylie Cripps comments that ‘It is easy to blame the mother and/or the Indigenous community for the dysfunction that exists’, while the role of the state in enabling the conditions of systemic poverty and neglect that many Aboriginal children live in is ignored.[[92]](#footnote-92) Commenting on the complicity of the state in justifying the disproportionate rates of removal of Indigenous children both in the past and today, Cripps highlights the need for welfare agencies to move away from pathologising individual parents, to provide real and meaningful support for Indigenous families and communities, and the need for a rights-based approach to the issue of child removal, one in which the legacy of the past is acknowledged:

Acknowledging the past is fundamental to moving forward, as is treating mothers as citizens with rights and enabling them to utilise those rights to determine a safer future for themselves and for their children.[[93]](#footnote-93)

*Conclusion*

This article has identified a range of impacts of Aboriginal protection legislation on Aboriginal parents, particularly mothers, in the Stolen Generations era. These legal impediments to Aboriginal motherhood resulted in unfair and unequal treatment of Aboriginal mothers vis-à-vis other Australian mothers, contributing towards all Aboriginal mothers being placed at greater risk of child removal, irrespective of the love and care provided by individual Aboriginal mothers. The contribution of white authorities, including legislators, to creating the conditions that led to Indigenous child removal, is an important avenue for further research which will deepen our understanding of the at-times contested history of the Stolen Generations.

**Table 1: Aboriginal ‘Protection’ legislation clauses impacting on Aboriginal parents**

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| **STATE** | **ACT** | **YEAR** | **CLAUSE** |
| ACT |  | 1909 | NSW legislation applied to the ACT prior to 1954 – refer NSW section of table below. |
|  | *Aborigines Welfare Ordinance* | 1954 | 2. *NSW Aborigines Protection Act* 1909 no longer to apply to the ACT.  5. (1) (e) Authorises the Minister ‘on the application of a parent or guardian of a child admit the child to his control and provide for the maintenance, education and training of the child.’  11. (1) ‘Where it appears to the Minister to be in the best interests of an aboriginal or the wife or the children of an aboriginal, the Minister may direct an employer of the aboriginal to pay the wages of the aboriginal to a person authorized in writing by the Minister.’ |
| NSW | *Aborigines Protection Act* | 1909 | 16 (1) Requirement for near relatives to pay maintenance for Aboriginal children aged 5-16 years.  (c) If the child is illegitimate, no maintenance order shall be made against the alleged father ‘upon the evidence of the mother, unless her evidence be corroborated in some material particular’. |
|  | *Aborigines Protection Amending Act* | 1915 | 13A. ‘The Board may assume full control and custody of the child of any aborigine, if after due inquiry it is satisfied that such a course is in the interest of the moral or physical welfare of such child.  The Board may thereupon remove such child to such control and care as it thinks best.  The parents of any such child so removed may appeal against any such action on the part of the Board to a Court as defined in the Neglected Children and Juvenile Offenders Act, 1905, in a manner to be prescribed by regulations.’[[94]](#footnote-94) |
|  | *Aborigines Protection (Amendment) Act* | 1936 | Section 13 amended by adding clause (2) making it an offence to take away a child from any school, home, or institution without the consent of the Board, irrespective of the consent of the child. |

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| NSW (cont) | | *Aborigines Protection (Amendment) Act* | 1940 | | Section 7 (2) ‘The board may on the application of the parent or guardian of any child admit such child to the control of the board.’  13. (1) Any person attempting to communicate with wards without the consent of the board, or to enter any Home ‘shall be guilty of an offence against this Act’.  13A. (5) and (6) – introduces the requirement for a court process for children apprehended as or charged with being neglected or uncontrollable. | |
|  | | *Aborigines Protection (Amendment) Act* | 1943 | | 11D. (1) (c) Board authorised to make payments to foster parents. | |
|  | | *Aborigines Act* | 1969 | | Repealed the *Aborigines Protection Act* 1909. | |
| NT | |  | 1863 | | South Australian legislation applied to the Northern Territory from 1863-1911 – refer South Australian section of table below. | |
|  | | *Northern Territory Aboriginals Act[[95]](#footnote-95)* | 1910 | | 6. (4) Duty of the Northern Territory Aboriginals Department to ‘provide, when possible, for the custody, maintenance and education of the children of aboriginals.’  9. (1) ‘The Chief Protector shall be the legal guardian of every aboriginal and half-caste child, notwithstanding that child has a parent or other relative living, until such child attains the age of eighteen years  9. (2) Every Protector shall, within his district, be the local guardian of every such child within his district.  16. (1) The Chief Protector may cause any aboriginal or half-caste to be kept within the boundaries of any reserve or aboriginal institution | |
| NT (cont) | |  |  | | 16. (2) Any aboriginal or half-caste who refuses to be so removed, or resists such removal…shall be guilty of an offence against this Act.’  19. Removal of ‘any aboriginal’ from a reserve or aboriginal institution is an offence under the Act.  22. Intermarriage of Aboriginal females with non-Aboriginal males is subject to written permission of the Protector.  47. Maintenance of ‘half-caste’ children (2) ‘Provided that no person shall be taken to be the father of such child unless the evidence of the mother be corroborated in some material particular.’  49. (1) Regulations may be made (b) ‘Providing for the care, custody, and education of the children of aboriginals and half-castes:  49. (1) (c) Enabling any aboriginal or half-caste child to be sent to and detained in an aboriginal institution or industrial school:  49. (1) (d) For the control, care, and education of aboriginals or half-castes in educational institutions…  49. (1) (e) Prescribing the conditions on which aboriginals or half-caste children may be apprenticed to or placed in service with suitable people’  51. Obstruction of officers executed their powers under the Act is unlawful. | |
|  | | *Aboriginals Ordinance* | 1911 | | 3. (1) ‘...the Chief Protector shall be entitled at any time to undertake the care, custody, or control of any aboriginal or half-caste if in his opinion it is necessary or desirable in the interests of the aboriginal or half-caste for him to do so.’ | |
|  | | *Aboriginals Ordinance* | 1918 | | 5. (d) Duty of the Protector ‘to provide, when possible, for the care, custody, and education of the children of aboriginals.’  6. (1.) ‘The Chief Protector shall be entitled at any time to undertake the care, custody, or control of any aboriginal or half-caste, if in his opinion it is necessary or desirable in the interests of the aboriginal or half-caste for him to do so, and for that purpose may enter any premises where the aboriginal or half-caste is or is supposed to be, and may take him into his custody.  7. (1.) The Chief Protector shall be the legal guardian of every aboriginal and of every half-caste child, notwithstanding that the child has a parent or other relative living, until the child attains the age of eighteen years, except while that child is a State child… | |
| NT (cont) | |  |  | | 7. (2) Every Protector shall, within his district, be the local guardian of every such child within his district, and as such shall have and may exercise such powers and duties as are prescribed.’ | |
|  | |  |  | | 13. (1.) The Administrator empowered to ‘declare any mission station, reformatory, orphanage, school, home or other institution established by private contributions to be an aboriginal institution for the maintenance, custody, and care of aboriginal and half-caste children…’  13. (6.) ‘Every aboriginal and half-caste child for the time being an inmate of any aboriginal institution shall be under the control and supervision of the Superintendent.’  15. (1.) Protector authorised to remove any aboriginal, any half-caste female, or any half-caste male under the age of eighteen years, between districts, reserves, institutions or even inter-state.  20. Causing, assisting, enticing or persuading an aboriginal to leave a reserve or institution is an offence against the Ordinance  44. (2.) Contributions to maintenance of half-caste children ‘Provided that no person shall be taken to be the father of the child unless the evidence of the mother is corroborated in some material particular.’  53. (1.) Consorting with a female aboriginal or half-caste an offence.  54. Offence to hinder or obstruct or refuse assistance to officers executing any power or duty of the Ordinance.  67. (1.) (b) Regulations may be made ‘providing for the care, custody, and education of the children of aboriginals and half-castes;  67. (1.) (c) Enabling any aboriginal or half-caste child to be sent to and detained in an aboriginal institution or industrial school;  67. (1.) (d) providing for the control, care and education of aboriginals or half-castes in aboriginal institutions and for the supervision of such institutions;  67. (1.) (f) prescribing the conditions on which aboriginal and half-caste children may be apprenticed to or placed in service with suitable people.’  68. 1910 Aboriginals Act and 1911 Aboriginals Ordinance repealed. | |
|  | | *Aboriginals Ordinance* | 1953 | | 3. (c) Terminology ‘half-caste’ removed from the Ordinance and subsumed within definition of ‘aboriginals’.  7. ‘The Director is the legal guardian of all aboriginals.’ i.e. not just children | |
| NT (cont) | *Welfare Ordinance* | | | 1953 | | 17. (1.) Introduces the requirement for written authorisation from the Administrator to be provided to the Director for the removal of a ward under the age of fourteen years from his parents.  24. (1.) The Director is the guardian of wards ‘as if that ward were an infant’ except under specified circumstances.  30. (1.) Establishment of a Tribunal to which people can appeal against being classified as wards.[[96]](#footnote-96)  32. (2.) Grounds for appealing status as a ward are that regard to a person’s manner of living, and ability without assistance to manage their own affairs, their standard of social habit and behaviour and their personal associations, they do not ‘stand in need of the special care and assistance provided for under this Ordinance.’ |
| QLD | *Aboriginal Protection and Restriction of the Sale of Opium Act* | | | 1897 | | 31. (7) Providing for the transfer of any half-caste child, being an orphan, or deserted by its parents, to an orphanage. |
|  | *Aboriginal Protection and Restriction of the Sale of Opium Amendment Act* | | | 1934 | | 10 (b) Half-caste children living with and supported by a parent who is not subject to the Act are exempted from summary removal to reserves or institutions. |
|  | *Aboriginals Preservation and Protection Act* | | | 1939 | | 12. (7) Authorises provision for the care, custody and education of the children of Aboriginals  17. (1) In all cases where any child whose mother is an aboriginal, and whose age does not exceed sixteen years, is being maintained at the cost of the State or the mother of the child, the father of such child shall, according to his ability, pay or contribute to the support of such child while it continues to be so maintained.  17. (2) ‘…no man shall be taken to be the father of any such child which is illegitimate upon the oath of the mother only.’  18. (1) ‘The Director shall be the legal guardian of every aboriginal child in the State while such child is under the age of twenty-one years, notwithstanding that any parent or relative of the child is still living, |
| QLD (cont) |  | | |  | | and may exercise all or any powers of a guardian where in his opinion the parents or relatives are not exercising their own powers in the interests of the child.’  18. (3) Notwithstanding anything contained in *The Adoption of Children Act 1935*, the Director may execute agreements for the legal custody of aboriginal children to aboriginal or other person who are deemed suitable to be given legal custody of such children.  37. (d) Resisting, assaulting or obstructing a protector or any other officer exercising his powers under the Act is an offence. |
|  | *Torres Strait Islanders Act* | | | 1939 | | 21. Specified clauses of the Aboriginals Preservation and Protection Act 1939 are deemed to apply to Torres Strait Islanders – including the provisions relating to the maintenance of children (see s. 17 of the 1939 Act above), and the appointment of the Director of Native Affairs as the legal guardian of all Torres Strait Islander children (see clause 18.1 of the 1939 Act above). |
|  | *Aboriginal and Torres Strait Islander Affairs Act* | | | 1965 | | 8. (1) (b) and (c) defines categories of ‘assisted Aborigines’ and stipulates that any children born to assisted Aborigines are also subsumed within this category; (e) the Director can declare a child born by or to an assisted Aborigine to be an assisted Aborigine.  8 (2) (a) (b) and (c) defines categories of ‘assisted Islanders’; (e) the Director can declare a child born to an assisted Islander to be an assisted Islander.  60. (13) Authority to make regulations for the care of children of assisted Aborigines or assisted Islanders other than such children who are in the care, protection and control of the Director of the State Children Department.  60. (14) Authority to make regulations for the employment and apprenticeship of children of assisted Aborigines or assisted Islanders. |

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| SA | *An Ordinance for the Protection, Maintenance and Upbringing of Orphans and other Destitute Children and Aborigines Act* | 1844 | Provisions for the binding apprenticeship of ‘any half-caste or other Aboriginal child’; requires the consent of either of the parents ‘if living and within the Province, but if otherwise, then without such consent.’  V. The Protector of Aborigines appointed the legal guardian ‘of every half-caste and other unprotected Aboriginal child, whose parents are dead or unknown, or either of whose parents may signify before a Magistrate his or her willingness in this behalf.’ |
|  | *Aborigines Act* | 1911 | 10. (1) The Chief Protector shall be the legal guardian of every aboriginal and every half-caste child, notwithstanding that any such child has a parent or other relative living, until such child attains the age of twenty-one years, except whilst such child is a State child.  10. (2) Every Protector shall, within his district, be the local guardian of every such child within his district.  36. Relating to maintenance payments. Again, in (2), ‘no person shall be taken to be the father of such child unless the evidence of the mother be corroborated in some material particular.’  38. (b) Authority to make regulations for the care, custody and education of ‘the children of aboriginals and half-castes.’ (c) Enables detention of Aboriginal children in institutions; (d) regulations may be made for ‘the control, care and education of aboriginals or half-castes in aboriginal institutions’; (e) prescribes conditions of apprenticeship and placement in service |
|  | *Aborigines (Training of Children) Act* | 1923 | 6. (1) Chief Protector authorised to commit any Aboriginal child to any institution until the child attains the age of 18 years (may be 21 years for females under 7 (2)). |
|  | *Aborigines Act* | 1934 | 10. (1) The Chief Protector shall be the legal guardian of every aboriginal and every half-caste child, notwithstanding that any such child has a parent or other relative living, until such child attains the age of twenty-one years, except where such child is a State Child.  36. Maintenance of half-caste children (2) Maintenance payments may be ordered ‘f the paternity of the defendant and his ability to contribute to the support of the child are proved to the satisfaction of the  court…Provided that no person shall be taken to be the father of such child unless the evidence of the  mother be corroborated in some material particular.’ |
| SA (cont) |  |  | 38. Authorises the detention of any aboriginal child to any institution.  40. Age limit – the training and control provisions are limited in their application to ‘legitimate’ Aboriginal children aged 14 and over, and ‘illegitimate’ Aboriginal children of any age who are deemed to be neglected or otherwise deemed to be appropriate people to be dealt with under the Act.  42. Regulations may be made (ii) providing for the care, custody and education of the children of aboriginals and half-castes; (iii) enabling any aboriginal or half-caste child to be sent to and detained in an aboriginal institution or industrial school; (v) prescribing conditions of apprenticeship or placement in service |
|  | *Aborigines Act Amendment Act* | 1939 | 21. Removing an Aborigine from an Aboriginal institution is an offence under the Act.  34a. Non-Aboriginal people consorting with a female Aborigine is an offence under the Act.  36. Maintenance of Aboriginal children (1) Father to contribute towards maintenance of Aboriginal children who are not ‘full-blood’ (2) ‘Provided that no person shall be taken to be the father of such child unless the evidence of the mother be corroborated in some material particular.’  38. (1) Approval of Children’s Welfare and Relief Board required for committal of Aboriginal children to institutions; children can be detained till aged 18 years, or for females age 21 years. |
|  |  |  | 40. (2) ‘The parent of every child to whom this section applies who fails to cause the child to attend at a school on each occasion when the school is open for instruction shall be guilty of an offence against this Act and liable to a penalty’  43. Obstructing officers in their execution of the powers and duties of the Act is an offence |
|  | *Aboriginal Affairs Act* | 1962 | Repeal of the 1934 and 1939 Acts, the newly established Aboriginal Affairs Board is now longer the legal guardian of Aboriginal children.  20. Change of wording – now talking about Aboriginal people agreeing to enter and remain within institutions; however, leaving the institution before completion of training under (3) is still an offence under this Act. (4) Consent of governing body of the institution required to keep or remove an Aboriginal person from an institution.  31. Obstructing officers is still an offence. |
|  |  |  | 40. (1) iv – vi still authorises the making of regulations for the care, maintenance and education of Aboriginal children, the care of Aboriginal people in Aboriginal institutions, and prescriptions on the apprenticeship or placement in service of Aboriginal children.  Amended by the Aboriginal Affairs Act Amendment Act 1966/7 (established Reserve councils) and 1968 (abolished Register of Aboriginal people).  Repealed by the Community Welfare Act 1972 |
| TAS | - |  | No specific legislation targeting Aboriginal people; Aboriginal children in Tasmania were removed under general ‘child welfare’ legislation. |
| VIC | *Aboriginal Protection Act* | 1869 | 2. (v) Regulations may be made for the ‘care custody and education of the children of aborigines’. |
|  | *Aboriginal Protection Act* | 1886 | 8. Authorises regulations to be made for prescribing the conditions under which ‘half-caste infants’ may be apprenticed or licensed. Also ‘For the transfer of any half-caste child being an orphan to the care of the Department for neglected children…subject to the provisions of any law for the transfer of orphan children.’[[97]](#footnote-97) |
|  | *Aborigines Act* | 1890 | 6. (v.) Regulations may be made for the care custody and education of the children of Aborigines.  (x) Regulations may be made prescribing conditions of apprenticeship or licensing of ‘half-caste infants’. |
|  | *Aborigines Act* | 1910 | ‘To extend the powers of the Board for the protection of Aborigines’. The Board is authorised to exercise the powers conferred on it by the 1890 Act to ‘half-castes’ as well as to Aboriginal people. |
| VIC (cont) | *Aborigines Act* | 1915 | 6. Regulations may be made (v.) For the care custody and education of the children of Aborigines.  6. (ix.) For prescribing the conditions on which ‘half-caste’ infants may be apprenticed or licensed.  6. (x.) ‘For the transfer of any half-case child, being an orphan, to the care of the Children’s Welfare Department or any institution within Victoria for orphan children, subject to the provisions of any law…for the transfer of orphan children’.  13. Obstruction of officers executing their duties under the Act an offence. |
|  | *Aborigines Act* | 1928 | 6. (v.) Regulations may be made for the care custody and education of the children of Aborigines.  6. (ix.) For prescribing the conditions on which ‘half-caste’ infants may be apprenticed or licensed.  6. (x.) ‘For the transfer of any half-case child, being an orphan, to the care of the Children’s Welfare Department or any institution within Victoria for orphan children, subject to the provisions of any law…for the transfer of orphan children’.  13. Obstruction of officers executing their duties under the Act an offence. |
|  | *Aborigines Act* | 1957 | Disbanding the Board for Protection of Aborigines and establishing an Aborigines Welfare Board. |
| WA | *An Act to prevent the enticing away the girls of the Aboriginal Race from school or from any service in which they are employed* | 1844 | ‘…any person who shall be convicted…of having enticed or persuaded any girl of the Aboriginal race to leave school without the previous consent of a Protector of Aborigines, or of the Master or Mistress of such school, or the service in which she has been engaged, without the previous consent of her master or mistress, shall forfeit and pay any sum not exceeding Two Pounds for the first offence, and Five Pounds for the second or any subsequent offence…’ |
|  | *Aborigines Protection Act* | 1886 | 6. (3) One of the duties of the Aborigines Protection Board shall be ‘To submit to the Governor any proposals or suggestions relating to the care, custody, or education of the children of Aboriginals.’  18. (a) Prohibition against making contracts of employment or service with any ‘Aboriginal’ under the age of fourteen. |

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| WA (cont) | *Aborigines Protection Act* (cont.) |  | 36. Any ‘half-caste or other Aboriginal child, having attained a suitable age’ can be bound by indenture as an apprentice until the child attains the age of twenty-one years. Magistrate must satisfy themselves as to the child’s age, and ensure that ‘due and reasonable provision is made for the maintenance, clothing, and proper and humane treatment of any such apprentice.’ |
|  | *Aborigines Act* | 1889 | No specific clauses relating to children or parents. |
|  | *Aborigines Act* | 1897 | 7. (3.) One of the duties of the Aborigines Department shall be ‘To provide for the custody, maintenance, and education of the children of Aborigines.’ |
|  | *Aborigines Act* | 1905 | 6. (3.) Aborigines Department ‘To provide for the custody, maintenance, and education of the children of aborigines.’  8. ‘The Chief Protector shall be the legal guardian of every aboriginal and half-caste child until such child attains the age of sixteen years.’  9. Prohibits removal of ‘any aboriginal, or a male half-caste under the age of sixteen years, or female half-caste’ between districts or inter-state.  17. Unlawful to employ ‘any aboriginal, or a male half-caste under the age of sixteen years, or female half-caste’ except under permit.  25. ‘Any aboriginal who, without reasonable cause, shall neglect or refuse to enter upon or commence  his service, or shall absent himself from his service, or shall refuse or neglect to work in the capacity for which he has been engaged, or shall desert or quit his work without the consent of his employer, or shall commit any other breach of his agreement, shall be guilty of an offence against this Act.’  27. Supervision requirement by a protector or police officer for the employment of ‘Every aboriginal, every male half-caste under the age of sixteen years, and every female half-caste’.  34. Father liable to contribute to support of half-caste child – (2.) ‘Provided that no man shall be taken to be the father of any such child on the oath of the mother only.’  41. ‘Any aboriginal who, being the parent or having custody of any female child under the age of sixteen years, allows that child to be within two miles of any creek or inlet used by the boats of pearlers or other sea boats shall be guilty of an offence against this Act.’ |
| WA (cont |  |  | 42. Marriage of ‘a female aboriginal’ prohibited without written permission of the Chief Protector.44. Persuading or enticing ‘an aboriginal or half-caste girl under the age of sixteen years to leave any school 43. Cohabitation between ‘every male person other than an aboriginal’ with ‘any female aboriginal’ is prohibited.  or aboriginal institution without the consent of a protector, or to leave any lawful service without the like consent, shall be guilty of an offence against this Act.’  60. (c) The Governor may make regulations ‘Providing for the care, custody, and education of the children of aborigines and half-castes:  (d) Enabling any aboriginal or half-caste child to be sent to and detained in an aboriginal institution, industrial school, or orphanage:  (e) For the control, care, and education of aborigines and half-castes in aboriginal institutions, and for the supervision of aboriginal institutions:  (f) Prescribing the conditions on which any aboriginal or half-caste children may be apprenticed to or placed in service with suitable persons’ |
|  | *Aborigines Act Amendment Act* | 1911 | 3. Section 8 of the Aborigines Act 1905 is amended as follows: ‘The Chief Protector shall be the legal guardian of every aboriginal and half-caste child until such child attains the age of sixteen years, to the exclusion of the rights of the mother of an illegitimate half-caste child.’  55A. ‘The governing authority of an Aboriginal Institution shall have and may exercise, in respect of any aboriginal or half-caste child sent to the institution, all the rights and powers conferred upon such governing authority in respect of State Children’. |
|  | *Native Administration Act* | 1936 | 2. ‘Quadroon’ defined under this Act as a person ‘who is only one-fourth of the original full blood’.  3. ‘Quadroons’ may be classified ‘as a native under this Act.’  6. (3.) The Department of Native Affairs shall have a duty ‘To provide for the custody, maintenance, and education of the children of natives’.  8. ‘The Commissioner shall be the legal guardian of every native child notwithstanding that the child has a parent or other relative living, until such child attains the age of twenty-one years.’  12. ‘A native’ may be removed to reserves, districts, institutions or hospitals; refusal to comply is an offence. |
| WA (cont) |  |  | 37. (2) ‘…no man shall be taken to be the father of any such child upon the evidence of the mother, unless her evidence is corroborated in some material particular.’ |
|  |  |  | 44. ‘Any native who, being the parent or having custody of any female child apparently under the age of sixteen years, allows that child to be within two miles of any creek or inlet used by the boats of pearlers or other sea boats shall be guilty of an offence against this Act.’ |
|  |  |  | 45. Marriage prohibition without ‘prescribed notice in writing’ to the Commissioner; for the first time ‘any native who is aggrieved on account of any objection by the Commissioner…may appeal to a magistrate.’  46. Co-habitation or sexual intercourse between natives and non-natives prohibited.  68. Regulations may be made (d) ‘Providing for the care, custody, and education of the children of natives:  (e) Enabling any native child to be sent to and detained in a native institution, industrial school, or orphanage:  (f) For the control, care, and education of natives in native institutions, and for the supervision of native institutions…’ |
|  | *Native (Citizenship Rights) Ac*t | 1944 | Prescribes circumstances in which ‘a native or aborigine’ may be awarded citizenships.  6. ‘…the holder of a Certificate of Citizenship shall be deemed to be no longer a native or aborigine but shall have all the rights, privileges and immunities and shall be subject to the duties and liabilities of a natural born or naturalised subject of His Majesty.’[[98]](#footnote-98) |
|  | *Native Welfare Ac*t | 1954 | Amendment to Section 8 of the Act, as follows: ‘The Commissioner shall be the legal guardian of every native child notwithstanding that the child has a parent or other relative living, until such child attains the age of twenty-one years except while the child is a ward according to the interpretation given to that expression by section four of the Child Welfare Act, 1947; and the Commissioner may, from time to time direct what person is to have the custody of a native child of whom he is the legal guardian, and his direction has effect according to its tenor.’ |

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| WA (cont) | *Native Welfare Act Amendment Act* | 1960 | 2. (c) ‘Quadroons’ and persons less than ‘quadroon blood’ excepted from the definition of a ‘native’. |
|  | *Native Welfare Act* | 1963 | Commissioner ceased to be the guardian of ‘native minors’.  5. (1) Department of Native Welfare established, ‘charged with the duty of promoting the welfare of natives.’  7. ‘It shall be the duty of the Department… (c) to provide for the custody, maintenance and education of the children of natives.’ |

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Anne Maree Payne is a non-Indigenous Australian who currently works as a sessional academic in the Department of Social and Political Sciences at the University of Technology Sydney, where she teaches Aboriginal Political History and a range of equity-related subjects. Her research interests lie primarily in the area of gender and human rights. In 2016 she completed her PhD exploring motherhood and human rights violations, with a particular focus on the experiences of the mothers of the Stolen Generations.

1. John Howard was a prominent spokesperson for the idea that the motivations behind Indigenous child removal were benevolent if misguided (see Robert Manne, ‘The sorry history of Australia’s apology’, *The Guardian*, (26 May 2013), accessed 25 January 2019, <https://www.theguardian.com/commentisfree/2013/may/26/sorry-history-australia-apology-indigenous>). For a detailed exploration of the attitudes of non-Indigenous Australians involved in child removal, see Chapter 4 in Anne Maree Payne, ‘Untold Suffering: Motherhood and the Stolen Generations’ (PhD diss., University of Technology Sydney, 2016).The view that children were removed in the Stolen Generations era in their own self-interest was voiced as recently as 2018 by Prue MacSween on the *Sunrise* program, who commented ‘Just like the first Stolen Generation, where a lot of people were taken because it was for their well-being, we need to do it again perhaps’ (see ‘Seven breaches code over Sunrise segment on Indigenous children’, (4 September 2018), accessed 30 January 2019, https://www.news.com.au/entertainment/tv/morning-shows/seven-breaches-code-over-sunrise-segment-on-indigenous-children/news-story/68dbfb600717bd02d3cab883067f7b09). [↑](#footnote-ref-1)
2. The focus of my research is on Aboriginal mothers and not on Aboriginal parents, for a range of reasons. In the Stolen Generations era, Aboriginal women were frequently heads of household and the sole parents of children, for reasons including the absence of their partners because of the nature of their itinerant labour patterns, unemployment, imprisonment or the impact of social security regulations (aee Jan Pettman, *Living in the Margins. Racism, Sexism and Feminism in Australia*, (North Sydney: Allen & Unwin, 1992), 65-66); or because in the case of white fathers of Aboriginal children, many did not live with the family. [↑](#footnote-ref-2)
3. The NLA’s *Bringing Them Home* Project is comprised of 340 interviews ‘conducted with families and children who experienced separation, as well as with those who cared for them, worked in institutions, and were involved with administration, policy and implementation in a professional capacity....The aim of the project was to record the diverse experiences of people directly affected by Indigenous child separation and to shed light on the policy and legislative frameworks that supported the separations’. *Bringing them home oral history project*, 1998, http://nla.gov.au/nla.cat-vn833081, (last accessed 21 August 2015). [↑](#footnote-ref-3)
4. Gery W. Ryan and H. Russell Bernard, 'Techniques to identify Themes', *Field Methods*, 2003, vol. 15, no. 1, 88. [↑](#footnote-ref-4)
5. Ryan and Bernard, 'Techniques to identify Themes', 92. [↑](#footnote-ref-5)
6. See Payne, ‘Untold Suffering’ (PhD diss., University of Technology Sydney, 2016). [↑](#footnote-ref-6)
7. Joyce A. Ladner, 'Introduction to Tomorrow's Tomorrow. The Black Woman', in *Feminism and Methodology*, ed. S. Harding (Bloomington: Indiana University Press, 1987), 77. [↑](#footnote-ref-7)
8. Linda Tuhiwai Smith, *Decolonizing Methodologies. Research and Indigenous Peoples* (London: Zed Books, Second Edition, 2012), 95. [↑](#footnote-ref-8)
9. Rowley, *Outcasts in White Australia*, 22. [↑](#footnote-ref-9)
10. Tim Rowse, *Indigenous and other Australians since 1901* (Sydney: UNSW Press 2017). [↑](#footnote-ref-10)
11. Andrew Markus, ‘Legislating White Australia, 1900-1970’ in *Sex, Power and Justice. Historical Perspectives of Law in Australia*, ed. Diane Kirkby (Melbourne: Oxford University Press, 1995), 242-3. [↑](#footnote-ref-11)
12. Anna Haebich, *Broken Circles. Fragmenting Indigenous Families 1800-2000* (Fremantle: Fremantle Arts Centre Press, 2000), 143. [↑](#footnote-ref-12)
13. Tony Austin, ‘Cecil Cook, Scientific Thought and ‘Half-Castes’ in the Northern Territory 1927-1939’, *Aboriginal History* 14 (1990): 104-122. [↑](#footnote-ref-13)
14. Russell McGregor, ‘Governance not Genocide. Aboriginal Assimilation in the Postwar Era’, in *Genocide and Settler Society. Frontier Violence and Stolen Indigenous Children in Australian History,* ed. D.A. Moses (New York: Berghahn Books, 2004), 293. [↑](#footnote-ref-14)
15. Ellinghaus, *Taking Assimilation to Heart. Marriages of White Women and Indigenous Men in the United States and Australia, 1887-1937* (Lincoln: University of Nebraska Press, 2006), 190-191. [↑](#footnote-ref-15)
16. Susan C. Greenfield, ‘Introduction’, in *Inventing Maternity. Politics, Science and Literature, 1650-1865*, eds. Susan C. Greenfield and Carol Barash (Lexington: The University Press of Kentucky, 1999), vii-viii. [↑](#footnote-ref-16)
17. See, for example, Fiona Paisley, ‘Feminist Challenges to White Australia, 1900-1930s’ in *Sex, Power and Justice. Historical Perspectives of Law in Australia*, ed. Diane Kirkby (Melbourne: Oxford University Press, 1995), 254; Margaret D. Jacobs, *White Mother to a Dark Race. Settler Colonialism, Maternalism, and the Removal of Indigenous Children in the American West and Australia, 1880 – 1940* (Lincoln: University of Nebraska Press, 2009), xxix-xxx. [↑](#footnote-ref-17)
18. For example, bell hooks, ‘Homeplace: a site of resistance’ in *Yearning: race, gender, and cultural politics*, (Boston: South End Press, 1990), 42. [↑](#footnote-ref-18)
19. Kerry Carrington, ‘Aboriginal Girls and Juvenile Justice: What Justice? White Justice’, *Journal for Social Justice Studies, Special Edition Series, Contemporary Race Relations,* 1990, Vol. 3, 1-18. [↑](#footnote-ref-19)
20. For a detailed exploration of these issues see Payne, ‘Untold Suffering’, Chapter 3. [↑](#footnote-ref-20)
21. Markus, ‘Legislating White Australia’, 239. I was curious to know why people of ‘the aboriginal race’ had been excluded from the ‘race power’ of the Commonwealth by the founders of Australia, but apparently there was no discussion of the implications of the exclusion of Aboriginal people from the scope of Section 51 (xxvi) at the time the Constitution was drafted. See *Recognising Aboriginal and Torres Strait Islander People in the Constitution: Report of the Expert Panel*, January 2012 (last accessed 28 October 2019, <https://antar.org.au/sites/default/files/expert_panel_report_.pdf>, 18. [↑](#footnote-ref-21)
22. Human Rights and Equal Opportunity Commission, *Bringing Them Home. Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Famili*es (Sydney: Commonwealth of Australia), 1997, 27-33. [↑](#footnote-ref-22)
23. Peggy Brock, 'Aboriginal families and the law in the era of segregation and assimilation, 1890s – 1950s', in *Sex, Power and Justice. Historical Perspectives of Law in Australia*, ed. Diane Kirkby (Melbourne: Oxford University Press), 136; see also HREOC, *Bringing Them Home*, 29. [↑](#footnote-ref-23)
24. Shurlee Swain, *History of child protection legislation* (Sydney: Royal Commission into Institutional Responses to Child Sexual Abuse, October 2014), 17. [↑](#footnote-ref-24)
25. Victoria Haskins, ‘“& So We are ‘Slave owners’!”: Employers and the NSW Aborigines Protection Board Trust Funds’, *Labour History* 88 (2005), 148. [↑](#footnote-ref-25)
26. Swain, *History of child protection legislation*, 19. [↑](#footnote-ref-26)
27. Robert Manne, 'Aboriginal Child Removal and the Question of Genocide, 1900-1940', in *Genocide and Settler Society. Frontier Violence and Stolen Indigenous Children in Australian History*, ed. D.A. Moses (New York: Berghahn Books, 2004), 227-8. [↑](#footnote-ref-27)
28. HREOC, *Bringing Them Home*, 250. [↑](#footnote-ref-28)
29. Brock, 'Aboriginal families and the law in the era of segregation and assimilation’, 136. [↑](#footnote-ref-29)
30. See, for example, Theresa Clements, *From Old Maloga (The memoirs of an aboriginal woman)* (Prahran: Fraser & Morphet, 1930); Margaret Tucker, *If Everyone Cared. Autobiography of Margaret Tucker, M.B.E.* (South Melbourne: Grosvenor, 1977); Ella Simon, *Through My Eyes* (Melbourne: Rigby Ltd, 1978); MumShirl, with the assistance of Bobbi Sykes, *Mum Shirl. An Autobiography* (Richmond: Heinemann, 1981). [↑](#footnote-ref-30)
31. Peter Read, *The Stolen Generations: The Removal of Aboriginal Children in New South Wales 1883 to 1969*, (Sydney: New South Wales Ministry of Aboriginal Affairs: Occasional Paper No. 1, 1981). Heather Goodall’s work is also notable for highlightin the gendered nature of child removals, which she argued were primarily aimed in the first decades of the twentieth century at controlling Aboriginal women’s sexuality and reproduction. See Heather Goodall, '”Saving the Children”. Gender and the Colonisation of Aboriginal Children in NSW, 1788 to 1990', *Aboriginal Law Bulletin* 20 (1990): 3. [↑](#footnote-ref-31)
32. HREOC, *Bringing Them Home*, Appendices 1-7. [↑](#footnote-ref-32)
33. ‘ To Remove and Protect: laws that changed Aboriginal lives’, https://aiatsis.gov.au/collections/collections-online/digitised-collections/remove-and-protect (last accessed 28 October 2019). [↑](#footnote-ref-33)
34. HREOC, *Bringing Them* Home, 600, my emphasis. [↑](#footnote-ref-34)
35. Anne Maree Payne, ‘Motherhood and human rights violations: untold suffering?’, *Australian Journal of Human Rights*, 24 (2) (2018): 145-161. [↑](#footnote-ref-35)
36. HREOC, *Bringing Them Home*, 266. [↑](#footnote-ref-36)
37. Susan Oguro, Anne Maree Payne and Sally Varnham, 'Integrating Human Rights Education into Schools: Legislation, Curriculum and Practice', *International Journal of Law & Education*, 20 (1) (2015): 8. [↑](#footnote-ref-37)
38. ‘Protection of human rights in Australia’, 2010, <https://www.humanrights.gov.au/sites/default/files/content/education/voices_of_australia/Individual%20resources%20and%20downloads/5_RS_protection_hr_australia.pdf> (last accessed 4 February 2019). [↑](#footnote-ref-38)
39. Shirley Scott, 'Why Wasn't Genocide a Crime in Australia? Accounting for the Half-century Delay in Australia Implementing the Genocide Convention', *Australian Journal of Human Rights*, 22, (2004), http://www.austlii.edu.au/au/journals/AJHR/2004/22.html. [↑](#footnote-ref-39)
40. Elena Marchetti and Janet Ransley, ‘Unconscious Racism: Scrutinizing Judicial Reasoning in ‘Stolen Generation’ Cases’, *Social & Legal Studies*, 14 (2005): 542-3. [↑](#footnote-ref-40)
41. HREOC, *Bringing Them Home*, 255. [↑](#footnote-ref-41)
42. Shurlee Swain, *History of Child Protection Legislation*, (Sydney, Australian Catholic University, 2014), 18. [↑](#footnote-ref-42)
43. Swain, *History of Child Protection Legislation,*18. [↑](#footnote-ref-43)
44. *Aborigines Welfare Ordinance* 1954 (ACT), 5. (1) (e), my italics. [↑](#footnote-ref-44)
45. Swain, *History of Child Protection Legislation,* 19. [↑](#footnote-ref-45)
46. HREOC, *Bringing Them Home*, 250. [↑](#footnote-ref-46)
47. C.D. Rowley, *Outcasts in White Australia. Aboriginal Policy and Practice* (Canberra: Australian National University Press, Volume II, 1971), 57. [↑](#footnote-ref-47)
48. HREOC, *Bringing Them Home,* 255. [↑](#footnote-ref-48)
49. Transcript of interview with ‘Ruby’ (Research Participant 1) interviewed by Anne Maree Payne, 13 September 2012, University of Technology Sydney, 49. [↑](#footnote-ref-49)
50. See Anne Maree Payne, ‘Untold Suffering’ (PhD diss., University of Technology Sydney, 2016), Chapter 5 for a detailed analysis of the experiences of Aboriginal mothers of Stolen Generations children. [↑](#footnote-ref-50)
51. ‘Ruby’ interviewed by Anne Maree Payne, 13 September 2012, UTS, 48. [↑](#footnote-ref-51)
52. Heather Vicenti and Deborah Dickman, *Too Many Tears. An Autobiographical Account of Stolen Generations*, (St Albans: Meme Media, 2008), 111. [↑](#footnote-ref-52)
53. *An Ordinance for the Protection, Maintenance and Upbringing of Orphans and other Destitute Children and Aborigines Act* Vict. No. 12. 1844 (SA), s. V. [↑](#footnote-ref-53)
54. *Aboriginal Protection and Restriction of the Sale of Opium Act* Vict. No. 17. 1897 (Qld), s. 31 (7). [↑](#footnote-ref-54)
55. *Aborigines Protection (Amendment) Act* 1940(NSW) s. 13A. (5) and (6). [↑](#footnote-ref-55)
56. *Welfare Ordinance* 1953 (NT) s. 17. (1). [↑](#footnote-ref-56)
57. *Aborigines Amendment Act* 1911(WA), s. (3). [↑](#footnote-ref-57)
58. *Aboriginals Ordinance* 1918 (NT), s. 6. (1). [↑](#footnote-ref-58)
59. *Aboriginals Ordinance (No. 2)* 1953 (NT), s. 7. [↑](#footnote-ref-59)
60. ‘To remove and protect.’ [↑](#footnote-ref-60)
61. *Welfare Ordinance* 1953 (NT), s. 24 (1). [↑](#footnote-ref-61)
62. *Aborigines Protection Amending Act* 1915 (NSW), s. 13A. [↑](#footnote-ref-62)
63. Marilyn Lake, *Getting Equal. The history of Australian Feminism* (Sydney: Allen & Unwin,1999), 83. [↑](#footnote-ref-63)
64. Lake, *Getting Equal,* 86. [↑](#footnote-ref-64)
65. Quoted in Lake, *Getting Equal*, 195-6. [↑](#footnote-ref-65)
66. Australian Human Rights Commission, *The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families, Bringing Them Home. Submission to the United Nations Human Rights Committee* (Sydney: Australian Human Rights Commission, undated), para. 6.7. [↑](#footnote-ref-66)
67. *Justices Act* 1902 (NSW), s. 104. [↑](#footnote-ref-67)
68. *Aborigines Act* 1915 (Vic), s. 6. (x). [↑](#footnote-ref-68)
69. *Aboriginals Preservation and Protection Act* 1939 (Qld), s. 18 (3). [↑](#footnote-ref-69)
70. Vicenti and Dickman, *Too Many Tears,* 79-80. [↑](#footnote-ref-70)
71. Vicenti and Dickman, *Too Many Tears,* 80. [↑](#footnote-ref-71)
72. Frank Gare interviewed by W.J.E. Bannister, 11 March 1999, NLA, Session 1, 00:35:47. [↑](#footnote-ref-72)
73. Vicenti and Dickman, *Too Many Tears,* 80. [↑](#footnote-ref-73)
74. Vicenti and Dickman, *Too Many Tears,* 82. [↑](#footnote-ref-74)
75. Anna Haebich, *Broken Circles. Fragmenting Indigenous Families 1800 – 2000* (Fremantle: Fremantle Arts Centre Press, 2000), 544. [↑](#footnote-ref-75)
76. *Aborigines Protection (Amendment) Act* 1940 (NSW), s. 13 (1). [↑](#footnote-ref-76)
77. *Aborigines Protection (Amendment) Act* 1936 (NSW), s. 13 (2); *Northern Territory Aboriginals Act* 1910 (SA), s. 19; *Aborigines Act Amendment Act 1939 (SA), s. 21; An Act to prevent the enticing away the girls of the Aboriginal Race from school or from any service in which they are employed* Vict. No. VI. 1844 (WA), Preamble. [↑](#footnote-ref-77)
78. *Northern Territory Aboriginals Act* 1910 (SA), s. 51; *Aboriginals Preservation and Protection Act* 1939 (Qld), s. 37 (d); *Aborigines Act Amendment Act* 1939 (SA), s. 43; *Aborigines Act* 1915 (Vic), s. 13. [↑](#footnote-ref-78)
79. *Aborigines Protection Act* 1909 (NSW), s. 16 (1); *Northern Territory Aboriginals Act* 1910 (SA), s. 47; *Aboriginals Preservation and Protection Act* 1939 (Qld), s. 17 (1); *Aborigines Act* 1911 (SA), s. 36; *Aborigines Act* 1905 (WA), s. 34. [↑](#footnote-ref-79)
80. *Aborigines Protection (Amendment) Act* 1940 (NSW), s. 7. (2); *Aborigines Welfare Ordinance* 1954 (ACT), s. 5. (1) (e). [↑](#footnote-ref-80)
81. Ruby Langford, *Don’t Take Your Love to Town* (Ringwood: Penguin Books, 1988), 102-103. [↑](#footnote-ref-81)
82. *Aborigines Protection (Amendment) Act* 1943 (NSW), s. 11D. (1) (c). [↑](#footnote-ref-82)
83. Heather Goodall, 'Assimilation Begins in the Home’: 85. [↑](#footnote-ref-83)
84. *Aboriginals Ordinance* 1919 (NT), s. 15. (1). [↑](#footnote-ref-84)
85. Keith Windschuttle, *The Fabrication of Aboriginal History* (Sydney: Macleay Press, 2009), 443. [↑](#footnote-ref-85)
86. Liz Conor, ‘”Black Velvet” and “Purple Indignation”: Print responses to Japenese “poaching” of Aboriginal women’, *Aboriginal History* 37 (2013): para. 12. Katherine Ellinghaus explores the complex issue of attempts to control Aboriginal marriages, ‘miscegenation’ concerns and ‘absorption’ policies in depth in her book *Taking Assimilation to Heart* (2006). [↑](#footnote-ref-86)
87. Tasmania had no such legislation and the Victorian legislation makes no specific reference to Aboriginal mothers. [↑](#footnote-ref-87)
88. *Aboriginals Preservation and Protection Act* 1939 (Qld), s. 17. (2). [↑](#footnote-ref-88)
89. John Bowlby, *Maternal Care and Mental Health. A report prepared on behalf of the World Health Organization as a contribution to the United Nations programme for the welfare of homeless children*, Second Edition edn. (Geneva: World Health Organization, 1952), 69. [↑](#footnote-ref-89)
90. Haebich, *Broken Circles*, 154; Read, *The Stolen Generations*, 7; Naomi Parry, ‘”Such a Longing”: Black and white children in welfare in New South Wales and Tasmania, 1880-1940’, (PhD diss, UNSW, 2007), 327-8. [↑](#footnote-ref-90)
91. HREOC, *Bringing Them Home*, 222. [↑](#footnote-ref-91)
92. Kylie Cripps, ‘Indigenous Children's “Best Interests" at the Crossroads: Citizenship Rights, Indigenous Mothers and Child Protection Authorities’, *International Journal of Critical Indigenous Studies* 5 (2012), 31. [↑](#footnote-ref-92)
93. Cripps, ‘Indigenous Children's “Best Interests" at the Crossroads’, 32. [↑](#footnote-ref-93)
94. The *Neglected Children and Juvenile Offenders Act*, 1905 stipulated that an appeal may be lodged on the decisions of the court to the Supreme Court or District Court ‘by a child or by a parent on behalf and in the name of his child under Part V of the *Justices Act*, 1902’. Under this Act appeals could only be made on a ground involving a question of law, or due to claims that there was insufficient evidence to support the original conviction, order or sentence. [↑](#footnote-ref-94)
95. This Act was passed by the South Australian government, which was still responsible for the management of the Northern Territory at this time. [↑](#footnote-ref-95)
96. This is the first sign of a changing approach with judicial review of the judgements being made in relation to Aboriginal people. [↑](#footnote-ref-96)
97. This is an important clause highlighting that in Victoria, Aboriginal protection legislation remained subject to the provisions of mainstream child welfare legislation. [↑](#footnote-ref-97)
98. This clause highlights the extent to which ‘a native or aborigine’ did not possess these ‘rights, privileges and immunities’ of citizenship [↑](#footnote-ref-98)