

# KELLEHERS AUSTRALIA

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## Change the Date<sup>[1]</sup>

Compounding the clash of jurisprudential settings, Australian settlement was itself unique and dramatically different from that of other colonized First Nation Peoples. It ignored the very existence of Aboriginals.

“The six colonies established on the Australian continent were the only colonies in the history of British colonialism founded without any recognition of the rights of the indigenous peoples to their lands and without any treaties.”<sup>[2]</sup>

In 1770, as England raced France for additional territory and wealth opportunities, British sea captain, James Cook, sailed west from New Zealand reaching the southern coast of New South Wales on 20 April 1770. He then sailed north, landing at Botany Bay, a harbor several kilometers south of Sydney Harbour on Australia’s east coast. He then charted the Australian coast to the north tip of Queensland. Without more ado, following secret instructions from the British Admiralty, presumably pursuant to emerging European international law principles, on Possession Island on 22 August 1770, he “hoisted English Coulers” and, with three volleys of small Arms, declared the entire coast and adjoining seas to be a British possession<sup>[3]</sup>.

Immediately prior to this action, Australia comprised multiple sovereign nations not dissimilar to the national configurations in Europe at the time, each with clear boundaries, different languages and differing laws. These nations had a degree of commonality across the continent, including established arrangements for trade and passage according to their differing individual national laws. Religion was extremely important to all the sovereign nations in both Australia and Europe at the time, but in Australia, without exception, the land was regarded as sacred.

Upon Cook’s return to England, the British Government determined to initiate settlement at Botany Bay. Its instructions to the First Governor on 25<sup>th</sup> April 1787 were:

“...You are to endeavor by every possible means to open an intercourse with the natives and to conciliate their affections, enjoining all our subjects to live in amity and kindness with them. And if any of our subjects shall wantonly destroy them or give them any unnecessary interruption in the exercise of their several occupations, it is our will and pleasure that you do cause such offenders to be brought to punishment”<sup>[4]</sup>.

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Considerable “interruption in the exercise of their... occupations” did, in fact, occur over following years, decades and centuries. Aborigines were dispossessed parcel by parcel as British settlement expanded. Dispossessed under the new regime, Aborigines were excluded as voters under it and could not assert their interests within it. Regulation of land ownership and resource management by the settlers was based on the fictional principle that the land belonged to no-one prior to European settlement[5].

Constitutional change in 1967 brought little alteration to Aboriginal ability to assert rights to land and continued possession. Constitutional change in 1967 brought little alteration to Aboriginal ability to assert rights to land and continued possession.

Australia’s history of dispossession of indigenous Australians is and should be painful for all Australia. On, 26 January, ‘Australia Day’ this painful history is relived and reinforced annually. We, at Kellehers Australia, believe that real change starts with small actions, so we remain open on 26 January in support of Change the Date.

Leonie Kelleher

25 January 2018

*Kellehers Australia are proud to work alongside Australian Aboriginal Communities.*

*We support the ‘change the date’ movement and as such will remain open on 26 January 2018*

[1] Extract from Leonie Kelleher’s PhD, Schumpeter’s Bahnbrechen Considered in The Light Of Native Title Legislation and Indigenous Entrepreneurship, 2012

[2] Brennan 1998, p. 5

[3] Lord High Admiral of Britain 1768

[4] King George III 1787, p. 14

[5] Chase 1990, Chesterman & Galligan 1997, Howitt 2001, Kidd 1997

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