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Historical context to migration

We will decide who comes to this country and the circumstances in which they come.

Former Prime Minister John Howard, 28 October 2001,
Liberal Party election launch

1.1 Introduction

It is not possible to understand the ongoing immigration debate and current immigration policy in Australia without some understanding of its genesis and development, particularly since white settlers first arrived in the late 18th century. Until late into the 20th century, issues that are fundamental to human diversity, particularly race and colour, were overt policy considerations that found their way, one way or another, into Australian legislation. Innate factors of birth and others of conscience, such as religion or political opinion, continue to figure in debate about who is entitled to live in Australia. In recent times, the debate has centred on 'boat people', and in the wake of the 11 September 2001 Al-Qaeda attacks on the United States, the issue of religion has been an undercurrent in the focus on terrorism.

The immigration debate is never far from the surface. When former Prime Minister John Howard made the statement quoted at the head of this chapter, it was nothing new. Similar expressions have been made by members of the judiciary and politicians of all hues since before Federation.

When the Labor Party was in the throes of completing a largely bipartisan overhaul of the migration legislation in the late 1980s, the then Immigration Minister, Senator Robert Ray, made a similar comment when he announced the Labor government's response to the Fitzgerald Report.[1] He told Parliament:

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[1] S. Fitzgerald, 'Immigration: A Commitment to Australia', *The Committee to Advise on Australia's Immigration Policies* (Canberra, AGPS, 1988).

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> The Australian Government alone will determine who will be admitted to Australia consistent with laws enacted by the Federal Parliament to regulate immigration.[2]

Justice Isaacs summarised the early view of the High Court Bench when he held that:

> The history of this country and its development has been, and must inevitably be, largely the story of its policy with respect to population from abroad. That naturally involves the perfect control of the subject of immigration, both as to encouragement and restriction with all their incidents.[3]

His Honour was reflecting the opinion of the first Attorney-General of the Commonwealth, Alfred Deakin, who had argued:

> The most powerful force compelling the colonies towards federation has been the desire 'that we should be one people and remain one people without the admixture of other races'.[4]

As Kathryn Cronin has pointed out, 'Australia has consistently held fast to the principle that immigration must be controlled.'[5]

1.2 Historical developments[6]

1.2.1 The period before 1778

Australia was an ancient landmass when the first Australians, the ancestors of the Aborigines, arrived around 40 000 years ago. Nobody really knows why they came to Australia. In modern-day Australia, the concept of the immigrant may be misplaced when applied to Australia's first settlers. Nevertheless, since time immemorial, people have been motivated to migrate from one place to another for a vast array of reasons, such as seeking wealth and opportunity; finding freedom; escaping oppression, violence or natural disaster; pursuing adventure and discovery; exercising force and expanding territory; or reuniting with family or friends. In some cases, groups of slaves or convicts have been forced against their will to move to another location. In other cases, there might have been no particular reason, and settlement at a new location was the result of an accident such as being blown off course or having a trip interrupted by unforeseen or unavoidable circumstances.

2 Senate Hansard p. 3753: Ministerial statement made to the Senate on 8 December 1988.
3 *R v Macfarlane; Ex Parte O'Flanagan and O'Kelly* [1923] HCA 39 (23 August 1923), (1923) 32 CLR 518.
4 A. Markus, *A Fear and Hatred: Purifying Australia and California 1850–1901* (Sydney, Hale & Iremonger, 1979).
5 K. Cronin, 'A Culture of Control', in J. Jupp and M. Kabala (eds), *The Politics of Australian Immigration* (Canberra, AGPS, 1993), p. 84.
6 The following brief history, including extracts from other authors, is predominantly derived from the excellent online course 'In Search of Australia: Historical Perspectives' developed for the Central Queensland University by M. Saunders, S. Mullins and J. Cryle. In addition, it is partly compiled from a number of DIMIA Fact Sheets (Nos 4, 6 and 8).

Whatever the reason the first humans came to Australia, there has been an ongoing influx of migrants and visitors ever since, the migrants arriving in waves that have been influenced by both push and pull factors. By the time Europeans started arriving in Australia to settle, in the late 18th century, there were more than 250 000 Aborigines in Australia, living in hundreds of tribes in any areas that could provide adequate sustenance. Intense migration by European settlers during the following two centuries decimated that original population through disease, dispossession and cultural oppression, not to mention direct attack by white settlers.

It was the British colonial government that first formalised controls on the mode of entry to Australia. The north and northwest Australian coast and nearby northern islands had been visited by explorers and adventurers from various European colonial powers between the 16th and 18th centuries, largely in search of gold, silver and spices. Finding nothing of real promise and weighed down by the costs of distant exploration, those visitors did not settle in Australia. James Cook was the first to recognise the potential for settlement. Having been sent to Tahiti in 1769 to track the Transit of Venus across the sun in order to establish co-ordinates to be used in assessing the distance between the earth and the sun, he headed south, circumnavigated New Zealand and then headed west. He arrived at the southeast corner of Australia and then sailed north, charting the eastern coastline. He formally claimed the eastern part of Australia for the British Crown in 1770, first naming it New Wales and then later New South Wales.

1.2.2 Early white settlement – the first wave[7]

Six years later, in 1776, the British lost their American colonies in the War of Independence and needed to find new land that would be suitable for displaced loyal American colonists, and would meet the requirements of the British policy of transporting convicts in order to alleviate overcrowding in penal institutions. The colonists displaced in America largely returned to England or migrated to Canada and the West Indies. However, the British Crown determined the early course of white settlement and created the first wave of modern migration when it decided to send convicts to New South Wales. In the following decades, the British established and expanded a series of colonies significantly populated by transported convicts. The purpose of colonial expansion was partly to foster agriculture, particularly the wool industry, and partly to create trade in goods, such as sealskins and whale oil, but largely to protect territory and allay suspicion and fears of French intentions to claim Australia, particularly during and following the Napoleonic Wars. New colonies were established in Van Diemen's Land (now known as Tasmania), Victoria, South Australia and Western Australia, each with its own administration. Trade and national security remain factors that feed into immigration policies and programs.

7 See M. Dugan and J. Szwarc, *There Goes the Neighbourhood!* (Melbourne, Macmillan, 1984), pp. 192–94 for a clear chronological representation of waves of migration.

Contracts for transporting convicts were let to private ship owners, but following an unacceptably high incidence of death during the voyages to the new colonies, regulations were introduced to provide for adequate food and water, and a bonus was paid for safe delivery of prisoners. By 1802, the British Government had adopted a system of sending convicts twice a year in ships specifically designed for the purpose, under the direction of a Transport Board and commanded by Navy officers. After their arrival, some of the convicts worked on public projects and some were assigned as labour for free settlers. After serving part or all of their sentences, some were granted tickets of leave and could work for themselves, while others were emancipated and could also receive grants of land.

1.2.3 The first colonial emigration programs

At a time when the Industrial Revolution was causing dislocation in agricultural Europe, the growing colonies encountered labour shortages and, at the same time, the transportation system created imbalances between the numbers of convicts and free settlers and between men and women. The Crown set about redressing the shortages in its Australian colonies by establishing assisted migration schemes, often coupled with land grants or the release of Crown Land for auction, collectively described as the Wakefield principle and administered by the Colonial Office through Her Majesty's Colonial Land and Emigration Commissioners.[8] These schemes generally involved subsidised or free passage to the Australian colonies to counteract the attraction of America and Canada, which were far cheaper to reach.

In subsequent assisted migration schemes over the next few years, significant numbers of women from Ireland and England migrated, including many who had been poor or institutionalised; they were largely exploited by being put into menial domestic service after their arrival in Australia.

By the time the first wave of migration was coming to an end, towards the middle of the 19th century, many of the factors that are still considerations in immigration policy had already emerged, such as a need to meet short-term economic demands, family issues, the responsibilities of carriers and problems of settling into a new country.

1.2.4 The gold rushes and the second wave

A second wave of migration accompanied reduced transportation and consequent labour shortages in the 1840s and 1850s and the gold rushes provoked by the discovery of gold in 1851. During the 1850s, more than 600 000 immigrants arrived in Australia. Unlike the first wave, which was predominantly British and Irish, this wave of miners, merchants, tradesmen, manufacturers

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8 State Records New South Wales: Concise Guide to the State Archives (H–K): Immigration, www.records. nsw.gov.au/cguide/hj/immig.htm.

and other entrepreneurs included significant numbers of non-British Europeans and a number of non-Europeans, particularly from China. It greatly increased the population of indentured Chinese labourers brought to Australia to meet labour shortages in the growing agricultural sector in the 1840s. By 1861, there were 40 000 Chinese in Australia. Many Chinese migrants came to Australia under what was known as the 'credit-ticket' system,[9] whereby Chinese merchants advanced money in exchange for an agreement to work overseas for a low fixed wage, or to make regular repayments of both loan and interest on the security of the emigrant's title to village land, or on the persons of his wife and children.

In the meantime, the assisted migration schemes continued and the earlier requirements to be married or to repay the loan advanced for passage were largely discarded, as illustrated in an article in the *Illustrated London News* of 12 August 1848 which reported on the imminent departure of an emigrant ship from London, bound for Moreton Bay:

> We should first explain that it is not as generally known as it should be, that the Government gives free passage (including food), to New South Wales and South Australia, to agricultural labourers, shepherds, female domestic and farm servants, and dairy maids; also, to a few blacksmiths, wheelwrights, carpenters, and other country mechanics . . .
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> The conditions may be learned from 'The Colonisation Circular', issued by her Majesty's Colonial Land and Emigration Commissioners . . . emigrants must be of good character, and recommended for sobriety and industry.
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> . . . on their arrival, a Government Agent gives advice as to wages, and places where they will get work. No repayment is required. The full particulars are furnished at the Government Emigration office, 9, Park Street, Westminster, or by agents in most other large towns.
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> . . . [at the Emigration dépôt] the applicants [are] examined as to the state of their health by the surgeon appointed to the ship in which they are to embark . . .
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> . . . The passengers were agricultural laborers and artisans from various parts of England and Scotland, from the infant in its mother's arms to those in mid-life.[10]

The schemes were popular with the Irish escaping the potato famine and Scots escaping the Clearances, as well as other Europeans avoiding the privations brought by wars, religious repression and economic necessity, although the Australian colonies had serious competition from America and other colonies. Some of the schemes sought to encourage family reunion as well as the migration of skilled labour, as exemplified in the public notice taken from the *Belfast Banner* and published in Port Fairy (Victoria) in April 1858. It advertised:

> Persons wishing to bring their relatives and friends from the United Kingdom to Victoria can secure passages for them in vessels chartered by Her Majesty's Government, on the following conditions –

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9 Chinese Heritage of Australian Federation 'Brief History of the Chinese in Australia', www.chaf.lib.latrobe.edu.au/education/history.htm.
10 ARTEMISIA London to Australia 1848, www.theshipslist.com/ships/australia/artemisia.htm.

1. The persons eligible for passages under these regulations are agricultural labor-
ers of every kind, domestic servants, railway laborers, mechanics, and artisans,
and their wives, children and near relatives. They must be in sound health, free
from all bodily or mental defects, of good moral character, sober, industrious
and accustomed to work for wages, at the occupation specified in the application
forms . . .

9. Persons resident in Victoria, therefore, desirous of availing themselves of the
advantages of these regulations should apply at the following offices . . . [23 offices
around Victoria] . . . Form A should then be filled in by the applicant, signed by
him, and left with the officer. He will then be informed of the amount required
to be paid, and of the outfit [Form C]. So soon as the amount mentioned shall be
paid to the Assistant Immigration Agent, or Receiver and Paymaster [as the case
may be] the money, or a Treasury receipt for it, is to be sent to the Immigration
Agent Melbourne, with the application forms [marked C] and a statement of the
sums paid for passages and outfit. The Immigration Agent will then transmit a
certificate for the persons nominated either to the office at which the money was
paid, or to such address as the applicant may request. This certificate must be sent
by the applicant to his friends in the United Kingdom.

10. Persons residing at a distance from any of the places not mentioned in the list
appended to clause 9 may be supplied with the application form [A] at the near-
est Post Office . . . which, after having been duly filled up and signed, should be
transmitted to the Immigration Agent in Melbourne by whom every information
will be furnished . . .

11. Should the persons nominated decline or be unable to emigrate the money paid
towards their passages will be refunded to the depositor in this colony . . .

12. Should the applicant wilfully misrepresent particulars respecting the persons nom-
inated, the deposits made towards the passages will be liable to forfeiture.

13. Persons resident in Victoria desirous of introducing female domestic servants,
through the agency of their friends in the United Kingdom, will be allowed to
do so upon depositing with the Immigration Agent in Melbourne, an amount in
accordance with the scale set forth in the 4th clause of the regulations.[11]

1.2.5 Self-government and the 'White Australia' policy

With the granting of internal self-government through the *Australian Colonies
Act 1850* (Imp.),[12] the regulation of entry to Australia was passed from colonial
authorities in London to each colony, which administered its own immigration
policies. The emerging colonial governments then started to introduce legisla-
tion that restricted entry to their respective colonies. The Victorian example is
instructive. In 1855, the Victorian Parliament enacted legislation that restricted
the number of Chinese permitted to land to one for every ten tonnes of a ship's
cargo, and that required ship captains to pay a head tax of £10 on every Chinese
migrant landing at a Victorian port.[13] That legislation also provided for taxes
on Chinese residents to pay for their protection and supervision by Protectors

11 J. Fawcett, *Genseek*, www.hotkey.net.au/~jwilliams4/d5.htm.
12 13 & 14 Vict, c 59.
13 *Chinese Immigration Act 1855* (Vic).

on each goldfield, ostensibly in response to goldfield riots and the expression of blatant anti-Chinese sentiment. The head tax laws were a failure, as ship owners merely bypassed Victoria and landed their Chinese passengers in South Australia and New South Wales, from where they walked to the goldfields.

That law was repealed in 1857 but reinstated after a series of anti-Chinese incidents. It was then fortified with new legislation requiring adult Chinese males to produce a receipt for their entry tax and pay an additional residence tax of £1 every two months. The new Act included a clause that denied any Chinese miner the right to take legal action for the recovery of a mining claim, property or damages, giving European claim-jumpers virtual immunity.

The NSW government introduced similar legislation after the Lambing Flat riot in 1861, adding a clause that denied the Chinese the right to naturalisation. However, by 1867 the eastern colonies had repealed the discriminatory legislation. The sense of European superiority was never far below the surface, though, and it continued to manifest itself in various forms.

In the mid-19th century, the principles that inform modern immigration policy were continuing to evolve and expand. Chain-family migration and assisted passage were becoming commonplace, and nascent concepts of restriction of entry, family and economic sponsorship, fees paid in advance, payment of administrative fees, penalties for providing misleading information and the existence of migration agents had emerged.

1.2.6 After the gold rushes

The gold rushes ushered in the spread of population centres from the coast to inland areas. In their wake, and with the ensuing diminished opportunities in rural areas, a number of people left Australia. However, the majority stayed, providing labour and accelerating the death of the transportation system. Most of the Chinese population moved to urban areas and established occupations such as market gardening, retailing and other small business pursuits. They often worked for themselves or for each other, and while the pastoralists who had brought Chinese workers to Australia as cheap, indentured labour began to complain that they were demanding excessive wages, they were often willing to work for lower wages or in less desirable conditions than the European labourers. This led to confrontations with the emerging labour movement, particularly when Chinese labour was hired to break a miners' strike in 1873 and again a few years later to undercut seamen's wages, thereby contributing to the dismissal of many seamen and provoking the seamen's strike of 1878. There have been ongoing repercussions since those first days of antagonising the labour movement, as the movement has remained suspicious of migrants, seeing them as threats to both the availability and the conditions of employment.

In the meantime, other groups of non-Europeans had come to Australia, in relatively small but significant numbers. Pacific Islanders were in demand as cheap and competent seamen and were able to command higher wages when

the gold rushes provoked labour shortages in shipping. When the cotton industry was established in Queensland in the 1860s and soon after replaced by the sugar industry, large numbers of Pacific Islanders were 'recruited' (many commentators say they were kidnapped) to work as indentured labour on plantations, despite protests from humanitarians, who saw the process as a new form of slavery, and the fears of the organised labour movement, which felt threatened by what it perceived as cheap, coloured labour.

Japanese divers had also migrated to parts of northern Australia to participate in the pearl industry, particularly from the mid-1880s. Unlike the Pacific Islanders, who remained subservient employees, the Japanese established themselves as owners of a majority proportion of pearling licences and luggers and were integral in establishing the colonies of Queensland and Western Australia as world leaders in the industry. They also had the diplomatic support of the Japanese government, potentially a major trading partner of the Queensland government, as evidenced by the signing of the Anglo-Japanese Treaty of 1894.

1.2.7 The Federation debates

In the two decades prior to Federation, sentiment against non-Europeans reached a crescendo, fanned by groups of exclusionists and nationalists, and led by prominent politicians aspiring to positions of power and influence in the Federation debates, including Henry Parkes and W. Russell. *The Centenary Companion to Australian Federation*[14] lists the arguments that were promoted in favour of restricting non-European immigrants:

● fears that people immigrating in large numbers who looked different and had different customs could 'contaminate' the white population and that people not familiar with British political traditions might undermine Commonwealth political systems;
● with the emergence of the Australian Labor Party in the 1890s, concern about the employment of cheap labour leading to a reduction in wages when the Commonwealth was formed; and
● the desire to prevent the racial conflict that had occurred in America.

The arguments at the end of the 19th century remain familiar at the beginning of the 21st: exaggerated migrant numbers; the fear of hordes of Asians gathering at Australia's doorstep; accusations that potential migrants are a fifth column of aliens who could make Australia militarily vulnerable; exaggerated tales of the occurrence of contagious disease, immorality, violence and crime among them; accusations by the labour movement that migrants are too compliant with the bosses; accusations by employers that migrants are too 'clannish' to provide a cheap and co-operative workforce; migrants being of 'inferior biological stock'. The perceived threats were symbolised in public stereotypes, especially

14 H. Irving (ed.), *The Centenary Companion to Australian Federation* (Melbourne, Cambridge University Press [CUP], 1999).

in illustrated newspapers, where the Chinese were portrayed as ghouls, Pacific Islanders were depicted as so debased and mentally degenerate that they could not control their 'vicious sexual passions', and the Japanese became the 'yellow peril'.

During the 1880s, most colonies reintroduced immigration restriction laws directed at the Chinese. Subsequently, following an agreement reached at an Intercolonial Conference in 1896, the restrictions were extended to cover other coloured races, although Queensland did not adhere to this agreement and continued to use indentured labour on the sugarcane fields in the face of a failing economy.

The 1891 census recorded a population (not including Aborigines, who were not recorded) of 3 174 392 people, including 2 158 975 born in Australia; 470 399 in England and Wales; 226 949 in Ireland; 123 818 in Scotland; 46 623 in Asia; 45 008 in Germany; 10 673 in the Pacific Islands; 10 121 in Sweden and Norway; 7472 in the United States; 6406 in Denmark; 4261 in France; 3890 in Italy; 3044 in Africa; 3027 in Canada; 2881 in Russia; 2086 in Switzerland; and 1639 in the Austro-Hungarian Empire. Asians and Islanders comprised around 50 000 people among a population of more than 3 million, but nevertheless, by the 1890s, the overwhelmingly predominant British population, supported by other Europeans, had engendered a national racial ideology that underpinned Australian immigration policy for the next 70 years or so.

In 1897, the Colonial Secretary, Joseph Chamberlain, assured the colonial premiers that he sympathised with their strongly held view that there should not be an influx of people alien in customs, religion and civilisation who would impact on the rights of the existing population to employment. When the Australian government passed its first laws in 1901, it implemented policies that reflected Australian nationalism in the late 1880s and 1890s, and the moves to restrict non-European immigration to most of the Australian colonies that dated back to the 1850s.

1.2.8 Federation and 'White Australia' legislation

The 1901 census recorded a population of 3 773 801 (again, not counting Aborigines) of whom 77 per cent were born in Australia and 18 per cent were born in Britain. One of the first Acts to be passed by the new Commonwealth government was the *Immigration Restriction Act 1901* (Cth). It was the cornerstone of a package of legislation that indicated the first federal government's comfort in implementing a policy that effectively discriminated on the basis of race and colour, and that became commonly known as the White Australia policy. The other parts of the statutory package were the *Pacific Islanders Labourers Act 1901* (Cth), which required that the bulk of Pacific Islanders be expatriated by 1907, and section 15 of the *Post and Telegraph Act 1901* (Cth), which provided that ships carrying Australian mail, and hence subsidised by the Commonwealth, should employ only white labour. It was followed by the *Contract Immigrants Act 1905*

(Cth), which required employers to show that they could not recruit suitable local employees and to demonstrate, in effect, that those they intended to recruit from overseas would not contribute to present or potential labour disputes.

Immigration policy and law in the new Federation of Australia was both restrictive and selective, designed to meet economic and political considerations, and founded on the accepted wisdom of a firmly established racial hierarchy. It set out negative criteria to exclude 'immigrants' (not defined in the legislation) rather than positive criteria for entry. The statutory mechanism restricting immigration could not be overtly based on race, as this was officially opposed by Britain and may have offended Britain's ally and Australia's trading partner, Japan. Instead, the filter used for prospective migrants was literacy, assessed by a dictation test. It was not a new idea, as similar legislation had been adapted from laws used in Natal in South Africa and introduced in Western Australia, New South Wales and Tasmania in the late 1890s.

Section 3 of the Immigration Restriction Act defined six classes of prohibited immigrants. Five of the effectively excluded classes were the poor, the insane, the diseased, the criminal and the immoral. The most effective restriction in section 3 enabled the government to exclude any person who 'when asked to do so by an officer fails to write out at dictation and sign in the presence of the officer, a passage of fifty words in length in a European language directed by the officer'. The officers exercised their discretion to administer the dictation test 805 times in 1902–03, with 46 people passing, and 554 times in 1904–09, with only six people being successful. After 1909, no person asked to take the dictation test passed and people who failed were refused entry or deported. The Act, frequently amended, remained in force until 1958.[15]

While the Commonwealth passed laws that restricted the categories of people to be admitted (or excluded), the states remained responsible for the selection of migrants, but they did not provide any assistance during the first five years of Federation. From 1906, the states offered assisted or free passage and some free land, and migration rose to high levels until it was halted by World War I.

1.2.9 Empire-building – the post-World War I wave

Following World War I, the Commonwealth assumed responsibility for selection of migrants and became the principal participant in the Empire Settlement Scheme, designed to 'redistribut[e] . . . the white population of the British Empire' by offering incentives – in the form of assisted passage – to immigrants and subsidised infrastructure and settlement projects to the Commonwealth and the states to provide employment and help 'absorb' the assisted British migrants.

The desire to preserve British culture was reflected in friction with non-British European groups who were perceived to be a threat to the local population. Significant numbers of Italian migrants came to work in the Queensland canefields,

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15 To view a copy of the original Act, see www.foundingdocs.gov.au/places/cth/cth4ii.htm#history.