

INDIGENOUS EXPERIENCES OF THE AUSTRALIAN DEMOCRATIC PROCESS

Unit 5: The Australian Nation (Secondary)

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The Unit:

Looks at current issues impacting upon indigenous people and gives students the opportunity to question whether or not the Australian national image is an accurate reflection of Australian society.

AUDIENCE

Secondary Students

The main aim of this unit is for students to develop and demonstrate their own understandings in terms of national identity and citizenship. They should be encouraged to express their own opinions and it is important to ensure a safe, secure and trusting environment, free of racism. Therefore, teachers will need to explore their own cultural understandings and be able to encourage students to support a society that accepts all peoples and recognises the significance of Indigenous people and history in the development of the nation.

Please consult with your local Indigenous community, family groups and peoples to assist in the further development and implementation the unit. This could provide the opportunity for Educators to build meaningful relationships between themselves, the school, their Indigenous communities, family groups and other peoples. At all times, Indigenous cultural protocols will need to be respected. It is vitally important to create the space for students to hear the voices of experience.

PURPOSE

Students will demonstrate an understanding that societies change over time and so to does the concept of national identity. Students will have the opportunity to question whether or not the current Australian identity is an accurate reflection of Australian society.

LINKS & RESOURCES:

Video: Yolgnu Boy

Handout 1: Glossary

Handout 2: Video worksheet

Handout 3: Mandatory Sentencing

Video: The Making of the Australian flag.

Handout 4: Icons and Symbols

Video: Opening/Closing ceremony of the Sydney 2000 Olympic Games.

Handout 5: Our values

Handout 6: Our future vision

Martin Luther King Jr's speech "[I have a dream](#)"

Speech *by Tim Goodwin* Guest speaker at the dinner held in conjunction with the *2001 Discovering Democracy National Forum*

[Redfern Park Speech by Paul Keating presented at the launch of the International year of the World's Indigenous People](#)

[Royal Commission into Aboriginal Deaths in Custody](#)

[Council for Aboriginal Reconciliation Learning Circle Kit](#) this kit also has a series of information sheets relating to indigenous issues.

[National Native Title Tribunal](#)

[General site for Aboriginal Studies resources](#)

[ATSIC](#)

[Issues 2/00](#)

Links to Local Curriculum and Discovering Democracy

Please see tables included in the Introduction/Overview

Focus Question 1: What are some of the current issues impacting on Indigenous people in Australian Society?

Case Study: MANDATORY SENTENCING

Mandatory Sentencing refers to the practise of parliament setting a fixed penalty for the commission of a criminal offence.

It has a long history. In the 18th and 19th Century, it was used for a wide range of offences but it was abandoned in favour of Parliament setting only a maximum penalty with the sentencing judge responsible for determining the appropriate sentence for individual offenders. Some minor offences, for example speeding, still carry mandatory penalties but the courts still have discretion.

TODAY, mandatory sentencing refers to a form of sentencing that involves the imposition of a significant minimum penalty - usually a jail sentence with penalties escalating for subsequent offences.

Both the Northern Territory and Western Australia have enacted this form of mandatory sentencing law.

In the Northern Territory:

Mandatory Sentencing for Property Offences

The *Sentencing Act 1995 (NT)*: Relates to persons of or over the age of 18 years. (Up until recently applies to persons of or over the age of 17 years)

Offence type: includes a wide range of property offences: e.g. theft, criminal damage, unlawful entry to buildings, unlawful use of a motor vehicle, receiving stolen goods.

The NT Legislation sentencing is based upon the number of appearances an offender makes before a court to be sentenced in relation to property offences:

For Adults:

First offence	Imprisonment for not less than 14 days (unless exceptional circumstances)
1 previous offence	Imprisonment of not less than 90 days
2 or more previous offences	Imprisonment of not less than 12 months

Juveniles in NT (15 and 16 years):

First offence	Wide range of options
2 nd appearance	Min 28 days detention or special program
3 rd or subsequent appearance	Min 28 days detention

In Western Australia:

Mandatory Sentencing for Home Burglary - 1996 Amendments to the Criminal Code (WA)

This legislation only occurs with the offence of home burglary.

Adults (18 yrs)	3 rd or subsequent offence	12 months imprisonment
Young persons (under 18 yrs)	3 rd or subsequent offence	12 months imprisonment OR Intensive Youth supervision order

Consider the accusation that the law is **RACIST** - is there any evidence is there to support this?

OTHER ISSUES to be considered when looking at Mandatory sentencing.

1. Constitutional considerations.
2. Separation of powers.
3. International human rights obligations

Constitutional Considerations

Commonwealth Government does not have the power to legislate directly either in relation to Children or Criminal law, these are the responsibilities of the States.

Constitutional powers. The Commonwealth Government could legislate against mandatory sentencing using the following sections:

- Territories Section 122
- External Affairs Section 51 part xxix

If the Commonwealth Government did pass legislation, the State and Territory laws would no longer exist. This is because under Section 109 of the Constitution, Commonwealth legislation can prevail over State law if State law is inconsistent or contradictory.

Separation of powers

(1) Functions of Government can be divided into three categories:

- Legislative
- Executive
- Judicial

(2) Each should be independent of the other (checks and balances)

- Some argue that mandatory detention laws undermine the independence of the judiciary. In proposing schemes of mandatory sentences, the politicians are calling into question the sentencing patterns and procedures that have been developed by courts.
- Justice Adams of the Supreme Court of NSW: "*To remove judicial discretion in such a vital area of the liberties of the subject is tantamount to a vote of no confidence in the judiciary.*"

International Obligations

- Commonwealth Government has responsibility for matters such as foreign affairs and defence and it is the Commonwealth Government that enters into treaties or conventions and the Commonwealth is responsible for the maintenance of obligations incurred through conventions.
- At international law Australia cannot argue that it is a state law which breaches any obligations under international law
- *The International Covenant on Civil and Political Rights (ICCPR)*
 - Australia ratified in 1980.
 - Prohibits arbitrary detention (article 9(1))
 - Sentences must be reviewable by a higher tribunal (article 14(5)).

Mandatory detention raises particular concerns in relation to children, arising from Australia's obligations under the United Nations *Convention on the Rights of the Child* (CROC). The Convention applies to everyone under the age of 18. Australia ratified the Convention in 1990:

- In all actions concerning children, the best interests of the child shall be a primary consideration (Article 3(1)).
- Detention of children must only be used as a last resort and for the shortest appropriate period (Article 37(b)).
- Sentences must be reviewable by a higher or appellate court (Article 40(2)(b)(v)).
- Children who come into conflict with the law must be dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence (Article 40(4))

In 1997 United Nations Committee on the Rights of the Child stated, in relation to Australia:

"The situation in relation to juvenile justice and the treatment of children deprived of their liberty is of concern to the Committee ... The Committee is particularly concerned by the enactment of new legislation in two States, where a high proportion of Aboriginal people live, which provides for

mandatory detention and punitive measures of juveniles, thus resulting in a high representation of Aboriginal juveniles in detention."

Learning Activities

1. **Handout 2** Watch the film Yolgnu Boy. The study guide is very useful and is available at www.yolnguboy.com. There are a number of themes in the film but the main idea would be to promote discussion about issues confronting indigenous youth and the clash of culture. This would be an excellent link into the English Viewing strand and provides opportunity for cross curricula learning activities. Use the handout to provide a starting point for the unit.
2. Link back to the activities in Unit 4 dealing with the statistics (Focus Question 3). Brainstorm some of the issues confronting Indigenous people on a national, state and local level. Allow students some time to go and find an article (newspaper, magazine, internet article) that describes a current issue. Pin the articles on a board or on a wall so all students can view them.
3. **Handout 3** Use the Case Study to investigate the issue of Mandatory Sentencing. The magazine [Issues](#) 2/00 has some very good resources relating to this issue and would be useful in this activity. The handout has a series of questions relating to the notes above along with some questions to promote class discussion.
4. Students to conduct research into a current issue confronting indigenous people. They could select one of the issues from the brainstorming activity. Allow them to focus on a local, state or national context. The [ATSIC](#) web site is a good starting point for looking at issues and identifying issues.

Some possible areas of study could include:

- The Stolen Generation
- Land Rights (MABO and the WIK decision) - Heritage rights
- Mandatory sentencing
- Zero tolerance
- Intellectual property rights
- Deaths in Custody
- Funding

Assessment: Produce a written report on an issue confronting indigenous people in Australian society. Describe the issue, presenting opposing views (if any), present information about what is being done to address the issue and any further solutions or suggestions that you could make. Present your findings to a small group (peer assessment)

Focus Question 2: What does it mean to be Australian today?

Learning Activities

1. Blackboard the statement "What does it mean to be Australian?" A good starting point would be to present images of Australians from the past. Ask students to consider the idea of a multicultural society and link back to the previous discussions on myths and stereotypes.
2. **Handout 4** View the opening or closing ceremony (or both) of the Sydney 2000 Olympic games. As students watch the ceremonies, get them to select 8 to 10 icons or symbols of Australia. Get students to present their icons/symbols to the class or in small groups. Ask them to consider the following question: "What sort of image of Australia was portrayed to the rest of the world and how accurate is this image?" Students to briefly present group or individual responses to the class.
3. **Handout 5** Students to make rough notes on what values which would be considered 'Australian'. Break the class into groups of 5 to 6 students. Assign each group a particular heading:
 - **SOCIAL**
 - **POLITICAL**
 - **ECONOMIC**
 - **ENVIRONMENTAL**
 - **SPIRITUAL**

Students to discuss and record the values or important aspects of their heading.

JIGSAW: In their existing groups, each student is assigned a number from 1 to 6. Bring the class back together, then split class into 6 new groups according to the number that they have been given.

E.g. All students given number 1 form the new group 1. Hopefully, each new group will have at least one person represented from the previous groups.

Allow time for short discussion of their findings and then ask students to record the main ideas on their handout.

Get each group to present to the whole class, one thing that they found out about the Australian identity.

Assessment: Rewrite or create the Australian anthem or design a new flag which represents the values that you believe reflect the Australian nation.

Focus Question 3: What future vision do we have of the Australian Nation?

DISCOVERING DEMOCRACY: DISCOVERING IDENTITY

By Tim Goodwin

Guest speaker at the dinner held in conjunction with the *2001 Discovering Democracy National Forum*.

Thank you. Thank you for inviting me to speak to you tonight. I consider it an honour and a privilege. Firstly I must acknowledge the traditional custodians and protectors of this land, my brothers and sisters of the Ngunnawal tribe, the elders who hold the keys to the past, and the young people who hold the key to the future, while both are just as important as the other. My thanks must go to Joan Warhurst and Joy Duffield for their support and help to get me organised for tonight. Considering I am not the most organised person, it was necessary for them to help me out. It is interesting to be a youth surrounded by older, not old mind you, but older people. At the functions I attend it is usually the opposite way round.

When thinking of what I could say tonight, I looked hard at the two key words of this forum, *Discovering Democracy*. To truly discover the way Australia views the importance of civics and citizenship and the education of both. And finally I came to the issue I'm obsessed with, an underlying factor that must be considered when we consider the issues talked about over these two days, that of our identity. Who am I, who are we? Lets put it into context. I'm 17. I'm young. I'm inquisitive. I'm overly diplomatic. I watch too much TV. I'm both unsure and all knowing, because I'm 17. If any of you have had a 17-year-old child then you know what I mean. I'm confident yet withheld. I'm passionate. I'm not physically strong, but spiritually, I sure am. I'm Aboriginal. I'm of the Yuin people; my traditional land is on the south coast of NSW. I have a black mother and a white father, yet I'm no less or no more than any other Indigenous person. I'm Australian. I'm so complex, yet to my mother I'm so easily read. And I'm here, living life and enjoying it. Australia, as a nation, is just like a 17-year-old. Its young, yet free. Its still carving its place in society, still finding out where it fits in the grand scheme of things. It's learning about itself, where it's come from, where it is, and where it is going. It sometimes try's to ignore its mistakes, don't we all, but it needs to realise that the past, its mistakes and successes, have all moulded it into who it is today. It's still treading the line of freedom and protection. Australia is still unsure of whether to let go of Mother Britains arms, but that is a different speech at an entirely different forum. Australia is at many times full of youthful energy and optimism.

Discovering Democracy is therefore in many ways discovering identity, that which has made us into the form of democracy we so strongly protect. Though to truly discover our identity we must always look at what has come before us. As an Indigenous person, 40,000 years and more have influenced the very person I am now. Most especially the last 200 years have drastically affected the make-up of who I am. I carry thousands of years of identity on my shoulders, and I am only 17 years old. Who could ever say then that the past is only the past, for the past will forever be held in the future. We do not live there, the past cannot be let to overwhelm us, but it must be carried with us as a remembrance, a reminder of what has gone before.

It was then interesting to hear at the opening of the forum both Mirrabee Williams and Dr. David Kemp mention the importance of a truthful complete history. If any of our major events, good or bad, are left out in the teaching of history, we cannot hope to complete an identity. In this year of the Centenary of Federation we hear of the peaceful means in which we became a united country. We often hear of the Australian spirit being

forged on the shores of Gallipoli and the battlefields of France. We see the Sydney Harbour Bridge, the Opera House, Uluru, and the Great Barrier Reef. Today we hear of the valiant efforts of our troops in East Timor, and the valiant efforts of the troops in Canberra, Commander Howard screaming, 'It's not a new tax; it's a new tax system.' But have we truly learnt about the massacres and unannounced wars that occurred after colonisation, the fact that neither women nor Aboriginal people had hardly any say on Federation? Have we learnt about the truth of the Stolen Generation, that Indigenous people were not really citizens in this country until 1967? I am sorry to concentrate on these major racial problems, but we, and especially our youth, need to learn about these things to be able to decipher for ourselves what being an Australian really means. For the National Youth Roundtable, I interviewed young Indigenous people in this region about the identity issues they faced in such a modern, fast-paced society. My report was titled 'Two Worlds, One Spirit – Our Identity'. For too many young people it is like that. We are one person, but we have to fit into so many holes, too many stereotypes, and not enough acceptance. One of my major findings was that nobody wanted to be told who they were, they didn't want to have to fit neatly and nicely into a packaged box, they wanted to decide by themselves who they were. Do we have any grounds to disagree?

Then, at the International Youth Parliament in my working group titled Culture and Identity, we talked at great lengths at what makes a personal, cultural and national identity. Really, for us, it came down to three major phases; Preserving, Maintaining and Evolving. And what exactly do these words represent? A journey. I was so pleased to see today on the PowerPoint display in front of me that amazingly powerful word, Journey. Life is a journey. We choose so many different paths, take so many wrong turns, cross paths with many important people that love and influence us. And Australia's journey is no different, we will take wrong turns, we will change and we will gain knowledge from the experiences we have. We must Preserve that which is important to us, our fighting spirit, our quest to survive against the sometimes harshness of life, our passion for natural beauty. We must continue to Maintain all the important values we hold dear in our lives, of freedom and tolerance, of unity in diversity. And finally we must do the inevitable, and Evolve, to decide what needs fixing and fixing it, to right wrongs and to move into a hopeful future together as both one and many.

That is why Reconciliation is so important. To truly be a united Australia our citizens need to actually feel united. So many Aboriginal and Torres Strait Islanders don't and many people don't want to be, which is of course sad. Reconciliation has been turned into a situation involving the word 'Sorry', vilification, compensation, anger and frustration, fear of persecution, prosecution and blame. But it's about something so much greater, about no longer worrying about difference, but instead accepting and embracing it. Without difference wouldn't we be a boring bunch of sad souls. I take joy in learning different cultures traditions and customs, because then sharing mine makes me feel so important, and gives me a meaning, and most importantly gives me an identity.

Australia needs to do that, for all of us to share our difference, to be proud of it, to discover everyone else's diversity and then realise our own. And finally all this equals a complex Australian identity. I for one do not want it to be nice and neat, to be simply defined, to be uncomplicated and straightforward. I want to know that as an Australian I share a vast land of beauty and brilliance with inspirational company, boasting the same common goal, to be ourselves in a free and equal society. We should not fight those who do not accept others, for they will never share our vision, and will never be completely Australian.

So in conclusion I suggest when you go back to your classrooms, to teach your young

students about the nature of Australia's democracy, to remind them of what I have said, to remind them that being Australian is to decide what being Australian means to them, to accept what Australia means to others, and to realise that the dreams of the future we all have is a collective Australian dream, defined only in the mind of the individual. And extend to them the invitation I now present to you. Join together on a journey into the heart of the Australian identity; remember who you have been, who you are now, and who you want to be in the future. And decide what it truly means to you to be an Australian, whether Indigenous or not, whether male or female, whether younger or older. I will not tell you, nor should anyone else. Make up your own mind, and be yourselves, then you will be Australian.

Learning Activities

1. Read through the speech by Tim Goodwin given at a forum for teachers above. As you read through the speech, ask students to record 4 or 5 points that they either agree or disagree with. Talk about the idea of vision and the sort of vision presented by Tim.
2. Read through other speeches, Martin Luther King Jr, Paul Keating or alternatively get students to find a speech from a person which demonstrates the idea of vision.
3. **Handout 6:** Individually, students are to record their responses on the handout.
4. Allow students time to discuss with other class members about the vision they may have for Australia.

Assessment: Write a speech, poem, story or song which describes your future vision of the Australian nation, state or community in which you live

Handout 1 Unit 5: The Australian Nation

Use the table below to record **YOUR** meaning of the terms (You might like to add some of your own):

Term	Our Group Definition OR My Definition
Mandatory Sentencing	
Stolen Generation	
MABO	
WIK	
Discrimination	
Indirect Discrimination	
Racism	
Democracy	
Human Rights	
No Tolerance	
Multiculturalism	
Aboriginality	
Values	
Morals	
Ethics	
Anthem	

Handout 2

Unit 5: The Australian Nation

Focus Question: What are some current issues confronting Indigenous people in Australian Society?

Film: Yolngu Boy

Yolngu Boy is the story of three boys caught in between the oldest living culture on Earth and living in the modern world, as they defy the law and embark on an epic journey to chase their dream and save their futures.

The film covers a number of themes, as you watch the film, take notes in the spaces provided. What is the film saying about the 5 main themes?

Themes	
Rites of Passage and Personal Growth	The Search for Identity
Friendship	Rules, Rights and Responsibilities
Culture	

Focus Question: What are some current issues confronting Indigenous people in Australian society.

1. What is meant by the term MANDATORY SENTENCING?

2. Give some examples of existing laws that would be referred to as MANDATORY.

3. Many people oppose and others support this type of sentencing. Find out some more information on the issue of MANDATORY SENTENCING and complete the table below:

Arguments supporting	Arguments against

4. Write down your response to the following statements:

Statement	Strongly Agree	Agree	Undecided	Disagree	Strongly disagree
Mandatory Sentencing laws are RACIST and are an example of INDIRECT DISCRIMINATION					
Sentencing should be left up to the discretion of Judges					
Mandatory Sentencing is an effective law and should be retained					
Mandatory Sentencing violates the rights of children					
Mandatory Sentencing violates Australia's international treaty obligations					

Share your responses with a partner or group. After some discussion, write an extended response to ONE of the statements in the space provided.

Focus Question: What does it mean to be Australian?

The Sydney 2000 Olympic Games (Opening/Closing Ceremony)

Icon/Symbol	What it says about Australia/Australians	How Accurate is it?

Focus Question: What does it mean to be Australian?

What values do you think most describe what it means to be Australian in today's society?

HEADING	MAIN POINTS
SOCIAL VALUES (behaviours and attitudes)	
POLITICAL VALUES (the laws, rules and decision making processes)	
ECONOMIC VALUES (satisfying our basic needs,work, money, trade)	
ENVIRONMENTAL VALUES (people and our natural heritage)	
SPIRITUAL VALUES (main beliefs or religion)	

Focus Question: What future vision do we have of the Australian Nation?

Individually, write down your responses to the following questions:

What do you want Australia as a nation to gain?	What are the things about Australia that you cherish and not want to lose?

Share your responses with another person, explain and clarify the types of things that you recorded.

Were there any similarities?

Were there any differences?

Are there any interesting comments that you would make about your partner's responses?
