

## 澳洲國家與原住民族的和解\*

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### 摘要

在 1910-70 年代之間，總共有十萬名澳洲原住民族孩童被迫就讀住宿學校，他們不止面對肢體、心裡的霸凌，甚至於還遭到性侵害，給原住民族社會帶來嚴重的傷害。澳洲政府從 1990 年代展開新的原住民族政策，在 1991 年成立「原住民族和解委員會」，致力和解。本文嘗試理解委員會成立的背景、運作的方式、以及調查的結果，同時探討政治上的角力、以及論述上的爭辯。

**關鍵詞：**澳洲、原住民族和解委員會、原住民族、和解、轉型正義

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It begins, I think, with that act of recognition. Recognition that it was we who did the dispossessing. We took the traditional lands and smashed the traditional way of life. We brought the diseases. The alcohol. We committed the murders. We took the children from their mothers. We practised discrimination and exclusion. It was our ignorance and our prejudice. And our failure to imagine these things being done to us.

Paul Keating (1992)

Reconciliation will not work if it puts a higher value on symbolic gestures and overblown promises rather than the practical needs of Aboriginal and Torres Strait Islander people in areas like health, housing, education and employment. It will not work if it is premised solely on a sense of national guilt and shame. Rather we should acknowledge past injustices and focus our energies on addressing the root causes of current and future disadvantage among our indigenous people. Nor will the reconciliation process work effectively if one of its central purposes becomes the establishment of different systems of accountability and lawful conduct among Australians on the basis of their race or any other factor. The reconciliation process will only work effectively if it involves and inspires all Australians.

John Howard (1997)

The Australian people do not want to embroil themselves in an exercise of shame and guilt. The Australian people know that mistakes were made in the past. The Australian people know that injustices occurred. The Australian people know that wrongs were committed. But for the overwhelming majority of the current generations of Australians, there was no personal involvement of them or of their parents. To say to them that they are personally responsible and that they should feel a sense of shame about those events is to visit upon them an unreasonable penalty and an injustice, and that is why this motion does not seek to do that. Indeed, I am not alone in saying that; it has been recognised by a number of representatives of other parties who have spoken to this issue.

John Howard (1999)

It's not worth the effort and distracts us from what we simply must do as a nation if we are to go forward in a true sense of reconciliation. The notion of "practical reconciliation" is also a furphy. Although issues of the health, housing and education of Indigenous Australians are of key concern to a nation,

they are not issues that are at the very heart or the very soul of reconciliation. But they are – quite simply – the entitlements every Australian should enjoy. The tragedy is that they are entitlements successive governments have denied. Why should they be given some higher order of things in the reconciliation process? Reconciliation is about far deeper things – to do with nation, soul and spirit. Reconciliation is about the blood and flesh of the lives we must lead together not the nuts and bolts of the entitlements as citizens we should all enjoy.

Mick Dodson (2000)

... when it comes to the harder issues associated with recognising and giving effect to the broader and fundamental implications of reconciliation, only a minority of Australians are prepared to countenance real equality... In other words, non-Indigenous Australians are keen to embrace the rhetoric of reconciliation, so long as it doesn't require them to take effective action to share the country's abundant resources and political power. Most are not prepared to make any significant adjustments in how they live their lives, or how they see their future.

Aden Ridgeway (2001)

... whiteness needs to be interrogated as a special form of privilege. However, the real challenge for white feminists is to theorise the relinquishment of power so that feminist practice can contribute to changing the racial order. Until this challenge is addressed, the subject position middle-class white woman will remain centred as a site of dominance.

Aileen Moreton-Robinson (2001: 186)

## 壹、前言

一般所謂的轉型正義 (transitional justice)，是指威權體制下的國家在走向民主化過程，如何面對過去的不公不義 (injustice)，包括 1990 年代的東歐共黨政權、1980 年代的拉丁美洲軍事政權、以及 1970 年代的南歐右派政權，當然，往前可以擴及德國納粹政權，往後也包含亞非國家的獨裁政權。基本上，由戰犯到威權統治者，我們可以看到轉型正義所要處理的主要是人權戕害、或是司法不公，也就是把焦點放在自由權、以及公民權。

不過，轉型正義作為一個課題、或是研究領域，已進入新的境界，也就是西方自由式民主國家<sup>1</sup> ( liberal democracy ) 內部對於弱勢者的結構性暴力<sup>2</sup>，特別是社會權、以及經濟權的剝奪或壓抑，或稱為「轉型正義的正常化」( 施正鋒，2017a )。在這當中，又以美國、澳洲、紐西蘭、及加拿大等所謂墾殖國家 ( settler state ) 的轉型正義最特別；儘管這些國家相對上算有比較成熟的民主體制，然而，從發現、探索、征服、剝奪、支配、到同化，這些國家必須面對一個事實，原住民族 ( indigenous peoples ) 目前的困境根源墾殖者不請自來的原罪，而尋求和解 ( reconciliation ) 則是道德救贖、社會整合、及國家正當的確立所必須，這就是原住民族的轉型正義。

大體而言，轉型正義的途徑分為失憶、除罪、補償、真相、整肅、審判、以及報復，我們可以歸納為加害者、真相、及受害者等三個面向 ( 圖 1 ) ( 施正鋒，2010：266；2017a：75 )。不管稱為「真相委員會」( truth commission )、還是「真相和解委員會」( truth and reconciliation commission )，這是一種相對上比較薄弱的轉型正義途徑，也就是說，選擇採取真相調查、讓真相水落石出<sup>3</sup>。

澳洲政府從 1990 年代展開新的原住民族政策，在 1991 年成立「原住民族和解理事會」( Council for Aboriginal Reconciliation, CAR )，於 2000 年提出報告，教育社會大眾認識原住民族歷史文化的性質比較高。加拿大政府針對原住民族悲慘的住宿學校經驗<sup>4</sup>，在 2008 年成立「原住民族真相和解委員會」( Truth and Reconciliation Commission of Canada )，於 2015 年完成調查報告。紐西蘭則設置「外坦吉特別法院」( Waitangi Tribunal )，接受

<sup>1</sup> 或稱為「已經確立的民主國家」( established democracy )。

<sup>2</sup> 有關於結構性暴力 ( structural violence )，見施正鋒 ( 2009：8-10 )、以及 Bretherton ( 2006 )。

<sup>3</sup> 國家的調查委員會 ( commission of inquiry ) 大體有三種：首先是由國會或是行政部門針對特定事件、或議題所成立的特別委員會，前者在任務完成即解散，後者則比較像是諮詢單位；接著是常設的人權保障獨立機構，包括人權委員會或監察機關 ( ombudsman )；再來就是為了處理轉型正義所特别成立的真相委員會，這是一個任務行的編組，通常是在撰寫調查報告以後就解散。

<sup>4</sup> 加拿大從 1870 年開始設置「印地安住宿學校」，共有十五萬名原住民族孩童被迫就讀，他們不止面對肢體、心裡霸凌，甚至於還遭到性侵害，給原住民族社會帶來嚴重的傷害 ( 施正鋒，2017a )。

毛利人針對土地權、及資源所提出的訴願，進行調查、建議、調解、或判決，是比真相委員會稍強的準司法機構。

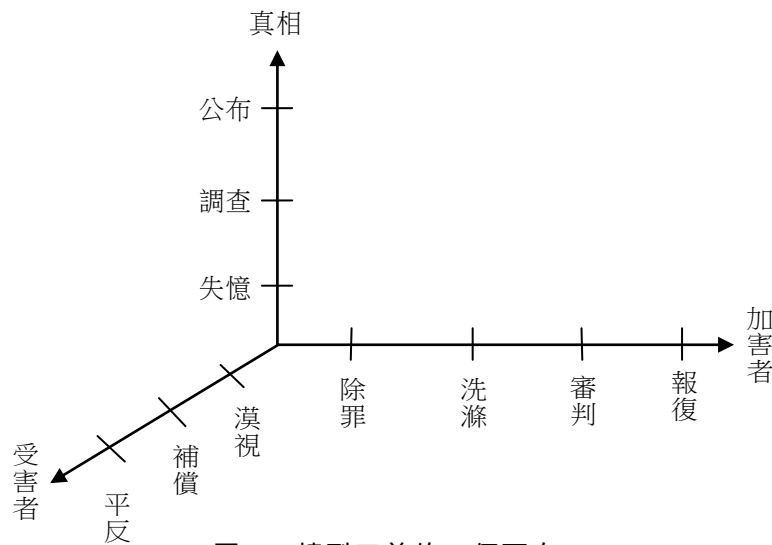


圖 1：轉型正義的三個面向

民進黨在 2016 年立委選舉贏得國會絕對多數席次，在新的會期立即展開『促進轉型正義條例』的推動，而原住民族立委也相繼提出五個有關於原住民族轉型正義的草案，希望能獲得併案討論；也就是說，在國民黨黨產、司法不公、政治檔案、以及威權象徵的課題外，能在「其他事項」納入原住民族的轉型正義。民進黨立委站在戰術上的考量，不願意節外生枝，因此「期待」另外處理，講白一點，就是認為原民立委是在藍營指使下「來亂的」，罔顧其中一位提案立委陳瑩是民進黨唯一民選的。

比較特別的是這些立委、以及相關學者的論述，與轉型正義及和解的精神背道而馳。第一種說法是由法律學者提出來的，認為轉型正義只適用由威權走向民主化，換句話說，就是要處理蔣介石、蔣經國父子的政治壓迫，甚至於就是要處置國民黨黨產。如前所述，這是對轉型正義的最狹義解釋，完全無視政治哲學的論理、以及國際上的實際作法。如果民進黨黨團堅持分開處理，那麼，就應該把該條例的名稱加上「威權時期」，否則，既然要使用全稱，就不應該刻意排除原住民族的轉型正義，Hobbs (2016)

稱為「典範轉型」(paradigmatic transition)。

第二種是歷史學者的說法，主張原住民族的轉型正義是「歷史正義」，跟一般人的轉型正義不同。這樣的觀點忽略掉一個事實，也就是原住民族目前所遭受到的政治壓制、經濟剝奪、社會歧視、以及文化同化，其實是因為四百多年來墾殖者開發的惡果。如果硬要如此歷史斷裂，不免讓人質疑是企圖擺脫墾殖者後裔、以及國家（外來政權）的責任。換句話說，承認過去不光彩的殖民歷史，目的是在針砭當下的結構性、以及文化性暴力。

第三種說法是立委的危言聳聽，認為如果要追究歷史，屆時，要是連平埔族都出來要求還我公道，豈不所有漢人都要搬到澎湖、甚至於金門馬祖？這樣子的說法是蠻橫的，宛如「我們家很窮、所以無法歸還贓物」，與西方國家認為原住民族的土地使用方式是暴殄天物、是無主之地（*terra nullius*）看法相近，彷彿搶人田產、甚至於燒殺擄掠是必要的，毫不掩飾社會達爾文主義的思維，無形中美化先人開山撫番的直接暴力。

第四種說法與前者相近，以為威權時期的轉型正義有黨產可以討回，言下之意是原住民在過去所遭受的不義是歷史事實，木已成舟，已經沒有辦法挽回。問題是，至少就山地原住民族而言，傳統領域在日本時代被充公、戰後被國民政府順手接收為國有地，一個是強盜、一個是小偷，買賣贓物是非法的，豈可一副肉鹹鹹的姿態？更何況，如果這些土地因為有保育的需要，國家也應該合理補償，不應該把責任推給日本殖民政府、好像大家都是無辜的局外人。

終究，新上任的蔡英文總統堅持在總統府設置真相委員會就好，位階也比較崇高，也就是「總統府原住民族歷史正義與轉型正義委員會」。相對之下，原住民族主張如果要分開處理，原住民族的轉型正義委員會應該仿效「不當黨產處理委員會」，由國會立法賦予調查權，否則，「沒有調查權、就沒有真相」。蔡總統在 2016 年 8 月 1 日代表政府向原住民道歉，然而，卻被質疑只是華麗而不實的儀式、甚至於就是謊言，特別是政府在年初公布令人詬病的『原住民族土地或部落範圍土地劃設辦法』，引起族人的強烈反彈，進而在總統府前的凱達格蘭大道宿營抗議迄今（施正鋒，2017b）。

坊間對於澳洲的原住民族和解頗為讚譽，特別是總理 Kevin Rudd<sup>5</sup> 在 2008 年的道歉，恐怕與一般的認識有相當大的差距，而東施效顰般的形式挪移，也不能真正達成與原住民族的實質和解。我們先前已經針對加拿大的原住民族真相和解委員會做了初步研究，發現由於沒有調查權，加拿大真相會並因此不能傳喚證人、或調閱文件，寫出來的調查報告根本沒有約束力、甚至於被嗤之以鼻（施正鋒，2017a）。在這裡，我們嘗試理解原住民族和解理事會成立的背景、運作的方式、以及調查的結果，同時探討政治上的角力、以及論述上的爭辯。

## 壹、澳洲原住民族政策的發展

澳洲原本是英國的殖民地，長期以來就有歧視原住民族的傳統，即使在 1901 年由六塊殖民地結合為聯邦、正式開國，傲慢的種族主義<sup>6</sup> 依然是立國精神，白人深信殖民文化、文明社會、及政治制度遠優於原住民族野蠻的一切；也就是說，澳洲是建立在通盤否定原住民族既有的政治、經濟、及社會權利，否定原住民族的歷史、文化、人性、甚至於生命，同時拒絕他們有參與國家建構的機會（Dodson & Strelein, 2001: 826-27）；事實上，當年英王訓令海外取得土地進行墾殖之前必須獲得當地人的同意<sup>7</sup>，然而，James Cook 艦長以當地是無人／無主之地<sup>8</sup> 為由而沒有費心簽訂條約，以

<sup>5</sup> 有關於澳洲歷年來的總理名單，見附錄 1。

<sup>6</sup> 根據 Goldberg (2002)，種族主義分為自然主義 (naturalist)、以及歷史主義 (historicist) 兩大類：前者相信種族的差異是天生的、無可避免的，而後者以為非白色人種經過妥適的教化，可以變成文明人。換句話說，前者認為純種的原住民族早晚要銷聲匿跡的 (die-out)，而混血的原住民族透過調教及人工繁殖 (breed-out，也就是跟白人通婚、不可內婚)，應該有機會變成白人 (Manne, 2008)。澳洲是在二十一世紀由自然式的種族主義調整為歷史式的主族主義 (Bretherton & Mellor, 2006: 84)。

<sup>7</sup> 正式用字是「take possessions of convenient situations」with「the consent of the natives」(Byrnes & Ritter, 2008: 56)。

<sup>8</sup> 事實上，歐洲人前來開發之際，澳洲原住民在 30~100 萬，分屬 500 多個社群 (Short, 2003: 492)。即使經過一百多年的殖民統治，原住民族在澳洲建國之際還是實質有效大多數的地方 (Dodson & Astrelein, 2001: 829)。

致於讓澳洲國家存在的正當性一直未能獲得確定。

殖民政府自始把原住民族視為資源在管理，日後的澳洲憲法 (*Commonwealth of Australian Constitution Act, 1900*) 未把原住民族當作公民 (第 127 條)，而且又把原民事務的立法權交給各省因地制宜 (第 51.26 條)、形同自我放棄國會的相關立法權，聯邦政府因此樂得採取放任的態度<sup>9</sup>；儘管 1967 年的修憲公投刪除了國會原住民族立法的排除條款、各省議會不再獨佔原住民族事務的立法權，同時也廢除第 127 條，然而，原住民族從此宛如憲法上的隱形人、更不說權利保障的入憲，換句話說，聯邦政府只不過是將支配原住民族的政策主導權納為己有 (Willimas, 2000: 649, 652-53; Dodson & Strelein, 2001: 829-30)。

在 1970-80 年代，澳洲原住民族運動的重心在土地權、自決權、以及主權，尤其是要求跟政府簽訂條約；從 1980 年代末期到 1990 年代，原民的訴求轉為比較廣泛的和解，大體是對政府表達的善意暫且停聽看<sup>10</sup>；進入二十一世紀，又回到比較明確的權利保障主軸。相對地，政府長期以來的政策目標是同化<sup>11</sup>，一直到 1970 年代，面對原住民族運動挑戰、以及國內外輿論的抨擊，不得已將基調改為生活的改善，也就是帶有福利殖民主義的整合；進入 1990 年代，政府不敢明目張膽擺出父權的姿態，開始採取含

<sup>9</sup> 當年的澳洲憲法是六個殖民地之間的協定，對於人權保障的關照不多 (Williams, 2000: 647)。憲法第 51 條的文字是「The Parliament shall, subject to this Constitution, have power 12 to make laws for the peace, order, and good government of the Commonwealth with respect to: ..... (xxvi) the people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws」；第 127 條是「In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.」有關於當年制憲有關於原住民條款的背景，見 Williams (2000)、以及 Peterson 與 Sanders (1998)。

<sup>10</sup> 也就是看政府如何面對即將到臨的澳洲開發／入侵兩百週年 (1788-1988)。

<sup>11</sup> 在一開頭的一百年，原住民族被當作敵人、而非公民；白人假設原住民族是垂死的種族，政府的責任是提供「安寧枕頭」(smoothing the pillow)；接下來，既然原住民族並未如預期滅種，接下來的作法是保護主義，同時將他們教化為白人，因此，直到二次大戰結束，同化還是國家政策，包括「好心地」把原住民族的小孩強制帶去寄宿學校 (Byrnes & Ritter, 2008: 56; Reilly, 2008: 7)。換句話說，政府的保護／照顧是建立在原住民族願意 (would) 接受教化、或是可以 (could) 同化的前提 (Bretherton & Mellor, 2006: 82)。



混的和解政策。我們可以這樣說，在傳統的同化政策與原住民族權利保障之間，和解的推動表面上看起來是起碼的妥協、儘管如此，端賴和解的內容，不免還是整合政策的舊酒新瓶（圖 2）。

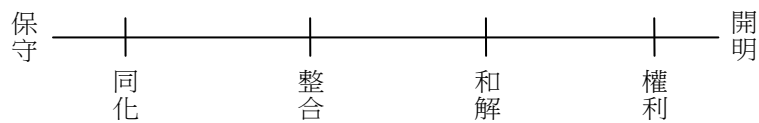


圖 2：澳洲的原住民族政策

其實，早在 1820 年代，就有教會人士提原住民族仗義執言，政府的回應是設置保留區、提供教育及福利、並承認土地使用權，對於原住民族的土權諱疾忌醫；從 1960 年代開始<sup>12</sup>，澳洲原住民族受到黑人民權運動影響，演就政府縱容白人礦場及牧場擴充、加上工資低廉，結合 NGO、學界、及一些政治人物，先向國會陳情、後走法律途徑，不果，只好採取罷工佔地等抗爭手段，終於成功逼迫 Fraser 的自由黨聯合政府（1975-83）通過『北領地原住民土地權法』（*Aboriginal Land Rights (Northern Territory) Act, 1976*），授與原住民在北領地保留區的土地權、同時讓原民有取回傳統領域的機制，而各省也只好配套立法（Kerr, 1991: 5；Magallances, 1999: 251；Brafield, 2006: 83；Short, 2003: 493-94）。

戰後，澳洲的原住民族政策大致上延續自來的同化作法，一直要到 Whitlam 的工黨政府（1972-75）上台，才開始有比較積極的作為，包括在 1973 年創立「原住民族事務部」（Department of Aboriginal Affairs）、以及在 1975 年通過『反歧視法』（*Racial Discrimination Act*）；面對自決、或是自治的要求，Whitlam 表面上言聽計從，其實是以提高原住民族參與決策來支應，而接任的自由黨 Fraser 政府蕭規曹隨，只是在名目上強調自我管理、避談自決或是自治<sup>13</sup>。

<sup>12</sup> 事實上，現代的澳洲原住民族運動可以溯自 1920 年代，主要是在抗議政府的所謂「保護」政策，特別是各省政府的歧視性措施，要求自由、正義、公民權、以及土地權（Short, 2003: 493）。

<sup>13</sup> 譬如國會在 1976 年通過的『原住民族會議及組織法』（*Aboriginal Councils and Association*

工黨的 Hawke 政府 ( 1983-91 ) 雖然選前誓言推動原民事務的改革，上台後卻食言而肥，於 1986 年因為臣服資源產業而放棄原住民族土地權的立法，政治誠信大為損傷；同樣地，他在慶祝澳洲開發兩百年的文化節上 ( 1988 ) 接受 *Barunga Statement* 時，還誓言政府會跟原住民族簽訂條約，不久就傳出「一般百姓對於這個問題還需要教育」的說法，也難怪原住民族事務部長<sup>14</sup> ( Minister for Aboriginal Affairs ) Robert Tickner 會在國內外大談「沒有正義就沒有和解」 ( there can be no reconciliation without justice )，因此，Hawke 在交棒前所成立原住民族和解理事會 ( 1991 )，只能算是柿子揀軟的吃 ( Brennan, 2004: 149-50 ; Short, 2012: 294 ; Tickner, 1992 )。

## 貳、原住民族和解理事會十年和解的努力

原住民族和解理事會是在朝野共識下，透過國會所通過『原住民族和解理事會法』 ( *Council for Aboriginal Reconciliation Act, 1991* ) 在 1991 年設立的，成員有 5~25 人，包括原住民至少 12 人 ( 主席必須是原住民 )、托雷斯海峽島民至少 2 人、以及 11 各界人士 ( 含 3 名政黨代表 )，全部由政府指派，算是原住民族事務部長的政策諮詢顧問。理事會的任務是推動原住民族與主流社會的和解，尤其是透過教育跟討論，讓大家瞭解原住民族的「文化、成就、以及獨特的地位」 ( cultures and achievements and of the unique position )，特別是「過去的剝奪、以及持續的劣勢」 ( past dispossession and continuing disadvantage )；該法特別要求理事會廣徵眾議，看看是否在十年內能達成和解的正式文件，不過，並沒有直接明言的就是條約、或是協定 ( Brennan, 2004: 151 )。

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Act)，讓原住民族的部落或社區可以申請法人，表面上的理由是促進自治，因此，有三千多個大大小小的團體、公司、或是信託基金出現 ( Hocking, et al.: 2010: 107 ; Watson, 2006 )。

<sup>14</sup> 澳洲政府從 1968 年開始設有原住民族事務部長，最早直屬總理辦公室，後來則與其他部會合併，才有自己的公署，一直到 2015 年才又回到原點。有關於澳洲原住民族事務部會的發展，見 Wikipedia ( 2017: Minister for Indigenous Affairs (Australia) )。

『原住民族和解理事會法』並沒定義什麼叫做和解、也沒有規範原住民族和解理事會要如何來進行。根據 Brennan (2004: 152-53) 的觀察，理事會把大部分的資源跟時間用在進行溝通、以及提高意識，換句話說，他們不僅要跟決策者對話，還採取動之以情、說之以理的途徑，想辦法來鼓舞一般大眾參與。首先，理事會舉辦各種活動還引起媒體注目，包括全國型的大會、政治領袖及原住民領導者的演講、舉辦認識跨文化的工作坊給媒體工作者、公布有關原住民議題的社會意向民調結果、每季發行通訊、散發海報、分送徽章及貼紙。

第二項工作是在地方上找出所謂的熱心人士 *Australians for Reconciliation*，委託這些人協調成立了 400 多個學習小組，讓非原住民有機會深入瞭解原住民的歷史文化，號稱「人民運動」(people's movement)。重頭戲則是為準備正式和解文件所從事的諮商，一方面由委員到全國各地傾聽社區的看法、並且與各層面的領導者交換意見，另一方面則是進行問卷調查、及研究，先後出版了 *Going Forward: Social Justice for the First Australians* (CAR, 1998) 及向總理跟國會所遞交的最終報告 *Reconciliation: Australia's Challenge* (CAR, 2000a)。

這份最終報告除了回顧原住民族的歷史、紀錄委員會十年來的努力、以及展望未來的挑戰，並向政府做了六項建議：(一) 各級政府合作致力改善原住民族的生活，(二) 採納和解文件的原則記策略，(三) 在憲法前言承認原住民是澳洲的「第一民族」(the First Peoples)、並且修憲禁止種族歧視，(四) 肯定十年來的和解努力、支持新成立的基金會「澳洲和解」(Reconciliation Australia) 來傳承推動，(五) 承認這塊土地是為經過條約獲同意所開發、和解的最佳方式是締結條約或協定，以及(六) 建議國會立法(附草案) 規範協定或是條約的程序來處理和解的課題。

其實，大家所期待的是附錄裡頭的「全國和解文件」(National Reconciliation Documents)，包含一份『澳洲走向和解宣言』(*Australian Declaration towards Reconciliation*) (CAR, 2000b)、以及『和解路徑圖』(*Roadmap for Reconciliation*) (Car, 2000c) (附錄 2、3)。宣言開宗明義揭槩對於和解精神的承諾，指出原住民族是土地的原始擁有者及守護者，提醒殖民地的墾

殖並未取得同意或是透過條約，呼籲面對事實及療傷止痛的勇氣，敦促一方道歉並表達悔意、另一方則接受道歉並原諒，誓言停止不公不義、扭轉劣勢、尊重自決權，四項和解路徑圖則是針對和解過程、權利保障、克服劣勢、以及經濟自立，提出一些原則性的看法。整體來看，和解的目標是教育一般大眾、而非替原住民族伸張正義，完全無視受害者的需要，也沒有針對和解的過程提出具體的建議 ( Short, 2012: 294 )。

### 參、三種和解各自表述

根據 Byrne ( 2005 )、以及 Burrige ( 2009 ) 的觀察，如果以和解這個大框架來看，澳洲三十年來的原住民族政策可以約略三大類、或是成分 ( 圖 3 )：

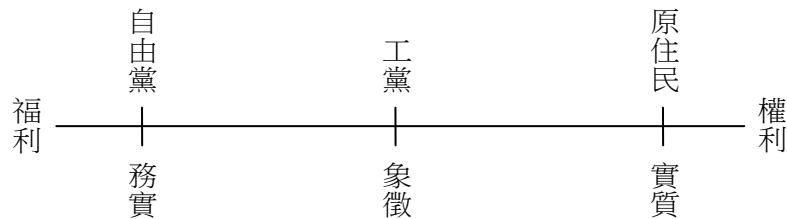


圖 3：和解的三種詮釋

(一) 原住民族堅持的「實質的和解」( substantive reconciliation ) 又稱為以權利為基礎的和解( right based reconciliation )、真正的和解、硬和解，強調主權、條約、補償、土地海域權，接近於聯合國『原住民族權利宣言』( United Nations Declaration on the Rights of Indigenous Peoples, 2007 )；(二) 工黨政府所倡議的「象徵性和解」( symbolic reconciliation )，這是一般老百姓比較熟悉的和解模式，又稱為軟和解、或是修辭般的和解( rhetorical reconciliation )，採取儀式、遊行、或是大會等方式來大眾鼓舞大眾，看來比較不會針鋒相對，當然也比較不痛不癢、或流於應付了事，甚至於暗藏整合的玄機；以及(三) 自由黨政府所推動的「務實的和解」( practical reconciliation )，認為應該把重點放在改善原住民族的社會經濟地位，主張衛生健康、提供住宅、以及教育才是要務，表面上強調個人公

民權的平等，實際上卻是希望原住民接受主流社會的文化價值及生活方式，也就是如假包換的同化政策，真正的目的是確立現狀<sup>15</sup>。

其實，澳洲原住民族在 1970 年代便主張跟政府簽訂條約，把運動的焦點放在土地權、自決權、及主權，特別是民選的聯邦政府諮詢機構<sup>16</sup>「全國原住民族會議」(National Aboriginal Conference, NAC) 推動在澳洲開發兩百年之際 (1988) 簽署，並與白人知識份子所組成的「原住民族條約委員會」(Aboriginal Treaty Committee) 攜手，而當時在野的工黨也樂於吸納。然而，Hawke 政府 (1983-91) 上台後，因為受到礦業公司所在的有錢省份壓力 (譬如西澳)，認為立法訂約的障礙在於政治現實，開始思考如何兩邊討好。這時候，NAC 為了幫政府找台階下，想出一個兩全其美而比較不敏感的字眼 *makarrata*<sup>17</sup>，依然不被當道所喜，在 1985 年就被廢掉了。儘管 Hawke 在 1988 年接受 *Barunga Statement* 時重申條約或協定 (compact) 的承諾，卻加上一句「名稱沒有感性那麼重要」；緊接著，他又強調「必須諒解原住民善道、朝向和解的感受」，可以聽出來政府亟欲脫身，基調已經悄悄調整為和解了，而條約運動也逐漸衰退 (Burrige, 2009: 113; Short, 2003: 494)。Hawke 為了修補雙方的關係，在 1990 年設置民選的諮詢機構「原住民暨托雷斯海峽島民委員會」(Aboriginal and Torres Strait Islander Commission, ATSIC)<sup>18</sup>，用來安撫對於條約的期待，這時候，原住民族事務部長 Robert Tickner 便開始著手原住民族和解理事會的規劃了 (Sanders, 2002: 2)。

<sup>15</sup> 見 Gunstone (2008)、Short (2003)、以及 Sanders (2002) 的嚴厲批判。

<sup>16</sup> 有關於澳洲原住民族的代表性組織 (representative body)，見 Creative Spirits (n.d.)。

<sup>17</sup> 終結紛爭、恢復正常關係，也就是協定的意思。

<sup>18</sup> 這是國會立法設置的半官方原住民族代表性機構，冠冕堂皇的理由是推動自治的機制，可以說是白人與原住民族社區之間的緩衝，其實是幫忙聯邦政府執行一些衛生、教育、以及社會福利發放的業務 (Hocking, et al.: 2010: 107-108)。歷任的主委 (主席) 包含 Lowitja O'Donoghue (1990-96)、Gatjil Djerrkura (1996-2000)、Geoff Clark (2000-2004)、以及 Lionel Quartermaine (2003-2004) (Wikipedia, 2017: Aboriginal and Torres Strait Islander Commission)。

在 1991 年，國會所成立的「原住民羈押死亡調查委員會」(Royal Commission into Aboriginal Deaths in Custody) 公布了五冊報告，揭露在 1980 年代被羈押的原住民死亡率特別高，相信這與原住民族被殖民的歷史經驗有必然的關係，建議政治領袖必須關注原住民與非原住民之間的和解<sup>19</sup>。這時候，Hawke 政府便順勢提案成立原住民族和解理事會，並獲得朝野一致支持，正式高舉聽起比較沒有那麼刺耳的和解政策<sup>20</sup> (Brennan, 2004: 149-50)。Keating 政府 (1991-96) 接棒上台，在 1992 年底針對聯合國所推動的「原住民族年」發表演說 (Keating, 1992): 「我們帶來疾病、酒精、我們犯了謀殺最、我們把小孩從母親手中帶走、我們實施歧視及隔離，這些都源由我們的無知與偏見」，聽來相當動人，益發讓社會覺得和解的迫切性，原住民族對政府重燃希望，對於和解理事會也有很大的期待 (Burrige, 2009: 114-15; Short, 2012: 295)。整體來看，不管是 Hawk、還是 Keating 擔任總理，工黨政府採取的是象徵性和解，頂多只願意談到原住民族的自決權、或土地權，避談條約，大體是修辭多於行動、甚至言行不一<sup>21</sup> (Gunston, 2008; Short, 2012: 296)。

原住民族和解理事會的目標有三，教育社會大眾有關於和解及原住民族議題的重要性、推動改善原住民社經條件的承諾、以及瞭解某種和解文件的可欲性，不碰其他議題；Howard 自由黨政府 (1996-2007) 上台後改弦更張進一步退卻為務實的和解，號稱全心全力扭轉原住民族在健康、教育、住屋、以及就業的劣勢 (Gunston, 2008)。在 1997 年由原住民族和解理事會所召開的澳洲和解會議 (Australian Reconciliation Conference) 上，Howard 總理夸夸而談他的務實和解途徑，提到如何現實地與歷史互動、不

<sup>19</sup> 報告書總共做了 339 項具體建議 (第五冊)。Russell-Mundine 與 Mundine (2016: 84) 認為，這些建議的最大缺點是這裡所鼓勵的和解過程，其實是逃避正視殖民般的權力關係、以及造成的痛苦。

<sup>20</sup> 末代 ATSIC 主委 Geoff Clark (1999-2004) 日後甚至於直言，這是總理 Hawk 霸王硬上弓 (Gunstone, 2009: 43)。

<sup>21</sup> 在 Mabo 判例 (1992) 出來後，國會在礦業公司的強力遊說下通過『原住民族土地權法』 (Native Title Act, 1993)，就是要確保未來談判之下，把原住民族框架在現有不公平的權力結構下 (Short, 2012: 295)。

應該為了過去的錯承擔責任<sup>22</sup>，當他指出原住民族在開發過程所遭受的待遇（treatment）是澳洲歷史中「最嚴重瑕疵的一章」（the most blemished chapter in our history），與會者群起背向他來表達抗議（圖 4）；終究，他絕口不提道歉，只願意說「悲痛」（deep sorrow）、以及「難過」（sorry），也讓人覺得誠意不足。次年，Howard 雖然稍有讓步，卻依然只願意表達「個人的歉意」（personal apology）（Corntassel & Holder, 2008: 476；Sanders, 2002: 3）。



來源：Albrechtsen（2015）。

圖 4：1997 年的澳洲和解會議

在這同時，醞釀十年的「失去的世代」（Stolen Generations）因為各界的揭露終於引起社會關注，特別是藝文界，包括 Edwards 與 Read（1989）所編輯的書《失去的小孩》（*Lost Children*）、原住民族歌手 Archie Roach（1990）所寫的歌曲〈他們把小孩帶走〉（*Took the Children Away*）（附錄 4）、以及 Pilkington（1996）的《循著防兔圍籬》（*Follow the Rabbit-Proof Fence*）<sup>23</sup>。面對輿論的壓力，官方的「人權及機會平等委員會」（Human

<sup>22</sup> 原文是「Our purpose in doing so should not be to apportion blame and guilt for past wrongs, but to commit to a practical programme of action that will remove the enduring legacies of disadvantage.」

<sup>23</sup> 後來改拍成電影，改名為 *Rabbit-Proof Fence*（2002）（Wikipedia, 2017: *Rabbit-Proof Fence*）

Rights and Equal Opportunity Commission) 在 1995 年展開調查<sup>24</sup>，在 1997 年公布報告《帶他們回家》(*Bringing Them Home*)，認為政府強行帶走原住民族小孩的作法是比種族歧視更為嚴重的滅種行徑，建議政府正式道歉<sup>25</sup>，也將和解引入新的成分。Howard (1999) 除了老生常談原住民族所受的苛待 (treatment) 是國家歷史中「最嚴重瑕疵的一章」，他的基本立場依然是當代的人沒有必要為過去政府的政策負責<sup>26</sup>；至於道歉，Howard 用字遣詞小心翼翼，使用「深切而真誠的遺憾」(deep and sincere regret)。

在 1999 年，原住民族和解理事會提出和解文件草案，由於避談主權、以及條約，原住民相當不滿，連 ATSI 主委 Gatjil Djerrkura 都表達憂心<sup>27</sup> (Gunstone, 2009: 38-40)。終究，放在最終報告《和解：澳洲的挑戰》(*Reconciliation: Australia's Challenge*) 中的「全國和解文件」(2000)，並沒有提到實質的原住民族權利；儘管『澳洲走向和解宣言』提及原住民族的自決權，卻侷限在「這個國家的生命之內」(within the life of the nation)；同樣地，這裡的道歉也被抨擊是有條件的，也就是「一方道歉並表達悔意、另一方則接受道歉並原諒」，並非真正的道歉<sup>28</sup>，與原先的其大差距很大

(film)，台灣譯為聳動但走精的《末路小狂花》。

<sup>24</sup> 委員會並沒有傳喚證人的權力，也不能進行交叉結辯，只能鼓勵受害者把自己經歷講出來 (Brynes & Ritter, 2008: 62)。由於相關的資料多半被政府、或是教會銷毀，這些證詞無法的法律效用自然大打折扣 (Bretherton & Mellor, 2006: 91)。

<sup>25</sup> 人權及機會平等委員會盧列五種政府應該做的修復方式：承認及道歉、保證不會重蹈覆轍、歸還、復原、以及金錢賠償 (HREOC, 1997: 245)。由於建議並沒有約束力，受害者只能走司法途徑向政府求償；到目前為止只有一個成功的案例，不過，理由是原告肢體被傷害、而非政策的受害者 (Brynes & Ritter, 2008: 59)。

<sup>26</sup> 原文是「I have frequently said, and I will say it again today, that present generations of Australians cannot be held accountable, and we should not seek to hold them accountable, for the errors and misdeeds of earlier generations.」

<sup>27</sup> Howard 上台沒多久就大刪 ATSI 的預算，最後，乾脆在 2004 年以帳目不清加以廢除，改立諮詢機構「國家原住民族理事會」(National Aboriginal Council) (Hocking, et al., 2010: 108-11)。

<sup>28</sup> 見 James (2007: 139) 有關於真正政治道歉的八個要件：正式書寫紀錄、盧列所犯的錯、承擔責任、表示懊悔、答應不會再犯、不要求原諒、不是偽善或恣意、表達道歉是誠摯的。Corntassel 與 Holder (2008: 470) 直言紅花必須先插前面，也就是說，在討論重建關係、或是恢復尊嚴之前，必須先有實質的歸還動作、不能只有象徵性的空嘴哺舌。



(Gunstone, 2009: 42)。眼尖的人更注意到，這項宣言的標題是「走向和解」(towards Reconciliation)、而非「為了和解」(for Reconciliation) (Sanders, 2002: 10)。

在報告書《和解：澳洲的挑戰》正式出爐後，意興闌珊的總理 Howard 足足等了兩年才做出回應<sup>29</sup>。他表示支持諸如「原住民族土地使用協議」(Indigenous Land Use Agreement, ILUA) 般的協定<sup>30</sup>，但認為條約的說法會造成國家的嚴重分裂、會破壞澳洲是單一民族的概念，畢竟，國家是不可以分割的、怎麼可以自己跟自己簽條約 (Gunstone, 2009: 45, 47)？其實，Howard 早在擔任反對黨領袖之際 (1988)，就認為條約之議相當荒謬 (Short, 2012: 294)。同樣地，Howard 所任命的原住民族和解理事會第二任主席 Evelyn Scott (1997-2000) 也認為，當下討論條約是歧路亡羊、反而會給原住民族造成更大的傷害，主張應該繼續加強對於社會的教育<sup>31</sup> (Gunstone, 2009: 44)。Howard 政府留下來的和解遺緒<sup>32</sup> 就是每年 5 月 26 日「慶祝」的「國家道歉日」(National Sorry Day)、以及位於舊國會議事廳前面的景點「和解廣場」(Reconciliation Place)<sup>33</sup>。

目前，接替原住民族和解理事會的是由政府捐款 550 萬成立的基金會「澳洲和解」，工作項目之一是改善社會對於原住民族的態度包括就業、以及採購；由於沒有法定的調查權，基金會不能向各部門調閱資料、或是要

<sup>29</sup> 在正式公布最終報告《和解：澳洲的挑戰》的盛會 Corroboree 2000 上，Howard (2000a) 只發表了簡單的聲明，重複務實的和解、避談道歉，被與會者喝倒采 (Australian Politics.com, 2000)。在報告書正式遞交給政府後，Howard (2000b) 依然重申和解的務實層面，表示會根據政府先前表達的立場審視報告的建議，弦外之音就是不會考慮條約、或是道歉 (Sanders, 2002: 11)。我們只找到政府回應的執行摘要 (Commonwealth Government, 2002)。

<sup>30</sup> 國會在 Mabo 判例 (1992) 後通過『原住民族土地權法』(1993)，鼓勵原住民族跟公家機構、礦業公司、或是牧場談判有關於傳統領域的協定，有點放領的味道。

<sup>31</sup> 根據前 ATSIC 主委 Lowitja O'Donoghue 的說法，原住民族和解理事會從頭到尾不談原住民族主權，主要是因為 Geoff Clark、Evelyn Scott、以及 Gustav Nossal 從中作梗 (Gunstone, 2009: 46)。姑妄聽之。

<sup>32</sup> 這是人權及機會平等委員會在調查報告《帶他們回家》(1997) 所建議的。

<sup>33</sup> 左邊是澳洲國家圖書館、右邊是澳洲國立美術館，參見 Department of Families, Community Services and Indigenous Affairs (n.d.) 的介紹。

求報告，當然也就無法正確監督政府的和解進度 (Stolper, 2012, et al., 2012; Byrne, 2005: 8)。工黨 Rudd 政府 (2007-10) 捲土重來後，終於在 2008 年正式向原住民族道歉，由務實的和解回到象徵性的和解<sup>34</sup>。大體而言，整體社會認為與我不相干、自我感覺良好，無法理解白人對於原住民族造成的傷害，而和解也不過是整合政策的門面 (Brennan, 2004: 159; Short, 2003: 506; Belanger, et al., 2009: 4)。至於原住民族和解理事會在最終報告所建議的和解法案，也就是由原住民族直接與聯邦政府談判，當然也就成為無人問津的明日黃花。

#### 肆、和解的再理解

由真相、道歉、原諒、正義、到和解，表面上，轉型正義是一連串的因果關係、其實，前件是後件的必要條件；我們甚至於可以說，沒有真正的和解就沒有政治民主，沒有政治民主就沒有社會和平 (圖 5) (施正鋒, 2017a: 154、101)：先有真相才有道歉、先有道歉解才有原諒、先有原諒才有正義、先有正義才有和解<sup>35</sup>。在澳洲，有人把和解當作目標在追求，有人則視為權宜的政治策略，當然也有人認為只是外交辭令應付了事 (Bretherton & Mellor, 2006: 94)。這也就是澳洲實質和解、象徵和解、以及務實和解的寫照。同樣地，Hobbs (2016: 513-14) 也認為，轉型正義除了作為學術研究的對象、或是領域，如果以位階、或是抽象程度來看，可以是崇高的目標、政治競逐的場域、或是技術性的機制；等而下的政客，甚至於將轉型正義矮化為形式上的道歉，事實上是嘗試著將現有的結構性支配、或是暴力加以正常化。Russell-Mundine 與 Mundine (2016: 88) 甚至於指控，和解只不過是用來轉移焦點、試圖將原住民族所努力的去殖民運動加以消音，另一方面跟非原住民族曉以大義、要他們對原住民族客氣 (nice) 一點，至少在表面上要裝作有心「納入」(inclusion) 的樣子，另一方面則裹脅原住

<sup>34</sup> 有關於澳洲、加拿大、以及美國道歉的比較，見 Belanger 等人 (2009)。

<sup>35</sup> 有關於原諒的宗教意涵、以及政治運用，見 Bole 等人 (2004)。

民族繼續接受政府所從事的同化政策，行禮如儀，不會對現狀造成太大的騷動。

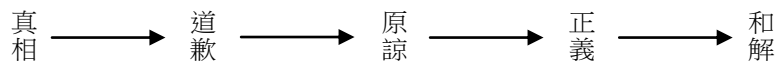


圖 5：由真相到和解的轉型正義過程

Hobbs (2016) 主張跳出現有的思考框架、挑戰當下的「典範」，也就是不應該將轉型正義侷限於匡正威權時代的人權侵犯。他指出，轉型正義是多面向的：就受害者而言，除了個人、也有集體<sup>36</sup>；就加害者來說，除了個人刑法上的罪刑、還有國家的無形暴力；就權利來看，除了政治自由的壓迫、更有社會經濟權利的剝奪，前者是要消極地恢復負面的人權、後者才是積極地保障正面的人權。更重要的是時間層面，一般人只看到立即的威權統治過去，忽視壟殖國家裡頭原住民族目前所遭遇的劣勢，是由殖民的過去持續到現在所造成的，如果不願意積極做通盤的反省、進行實質的復權或補償，光是靠廉價的戲劇性儀式，把手段當作目標，零零碎碎地進行所謂可行的措施，也不過是複製現有的父權恩寵作法、甚至於骨子裡就是新殖民主義。

原住民族和解理事會在最終報告《和解：澳洲的挑戰》(2000) 承認，並不是所有的澳洲原住民族贊同和解這一回事，畢竟，這是別人做錯事，而我們又沒有犯錯，為什麼要和解？相對地，Howard (1997, 1999) 一再質疑，當代的澳洲人為何要替祖先所犯的錯承擔責任<sup>37</sup>？Russell-Mundine 與 Mundine (2016: 90-92) 指出，和解 (re-concile) 意味著重新回到既有的關係 (existing relationship)，問題是，非原住民跟原住民從來就沒有正面的關係，又何來和解？誠然，對於非原住民而言，那些不光彩的過去令人不舒

<sup>36</sup> Dodson 與 Strelein (2001: 833) 指出，這是試圖在自由主義下將平等加以個人化，也就是否定原住民族的集體權。

<sup>37</sup> 這裡牽涉到政治哲學所謂的「跨世代責任」(transgenerational responsibility) 概念 (Belanger, et al., 2009: 3)，必須另外討論，請見 Kukathas (2003)。

服，然而，如果連歷史都不敢誠實面對，又如何侈談原住民族的權利恢復？終究，主流社會也不過是跟國家共謀演出一齣感人的和解戲碼，低成本地清理戰場、想辦法速戰速決。

在過去四十多年來，由於原住民族權利意識抬頭，澳洲社會不太敢公然顯露種族主義的言語、或是行為；相對之下，儘管政府在表面上揚棄父權般的保護、或是照顧政策，卻也不願意挑戰社會的主流價值，因此，從 1990 年代開始，和解成為政黨在政治場域上的熱門台詞，原住民族和解理事會也就是在這樣的脈絡下應運而生。只不過，由於政治立場不同，始作俑者工黨主張象徵性的和解，自由黨強調務實的和解，而原住民族則堅持實質的和解，要求跟政府簽訂條約來確認主權、自決權、以及土地權，即使是自由黨 Howard 執政時期的 ATSCI 主委 Clark (2000) 都直言不諱自決是核心原則、而條約是必要的。工黨政府支持原住民參與決策、以及管理，最多可以接受到某種形式的協定；對於自由黨而言，原住民族政策目標則放在生活的改善，鼓勵所謂的自我管理 (self-management)、或是自我培力／自強 (self-empowerment)，不談自治 (self-government)。

總而言之，澳洲政府對原住民族的和解，依照我們流行的說法是劃錯重點，也就是顧左右而言他。Short (2003: 500) 一語道破，政府把重點放在所謂的「社會正義」(social justice)，也就是表面的社經劣勢，其實是故意忽略背後的結構性問題；Byrne (2005: 5) 質疑，為何這些不同的和解工作不能同步進行，呼應坊間「先求有、再求好」說法問號。原住民族裔的前參議員 Aden Ridgeway (1999-2005) 說，對於非原住民族而言，只要不影響到國家資源、以及政治權利的分享，精明的他們當然會張臂擁抱和解的修辭；換句話說，大多數的人可不願意大幅調整他們的生活方式、或是如何看未來。

Reilly (2008) 道破國王的新衣，認為這些和解的作為只是讓原住民講講個人故事、發洩一下，並沒有看到國家或非原住民的真正的反省，充其量只不過是強化國家的控制<sup>38</sup>。即使是多元文化課程對原住民族的介紹，基

<sup>38</sup> 唯有 Vijayarasa (2007) 比較天真，建議進一步成立真相調查委員會。

本上也是假動作，一方面鼓勵認識、另一方面則是加以牽制（Hattman & Akinson, 2006: 694）。根據原住民族作家 Alexis Wright（1997）的說法，這是試圖把一群生氣的虎頭蜂放在潘多拉盒子裡頭。在 2000 年雪梨奧運時，澳洲原住民女選手 Cathy Freeman 點起聖火、而且贏得四百公尺金牌，大家如醉如癡，彷彿原住民族必須向所謂的主流社會證明什麼價值似的，唱歌、運動、保育……，然後，繼續維持現狀、回到自在的地帶過正常的日子。根據澳洲和解的最新調查（2016），就種族關係、平等、團結、整合、以及歷史等五個層面看，仍有三分之一的人不相信原住民族小孩被政府帶走的事實、將近六成的原住民族仍然有被歧視的感覺。折騰半天，究竟和解是為誰（for whom）？答案很清楚，是為了安慰非原住民族的良心罷了。



來源：Stephens（2000）

圖 6：澳洲原住民女選手 Cathy Freeman

## 附錄 1：澳洲歷年來的總理名單

姓 名	黨 籍	任 期
Sir Edmund Barton	保護主義黨黨	1901/01/01 - 1903/09/24
Alfred Deakin	保護主義黨黨	1903/09/24 - 1904/04/27
Chris Watson	工黨	1904/04/27 - 1904/08/18
George Reid	自由貿易黨	1904/08/18 - 1905/07/05
Alfred Deakin	保護主義黨黨	1905/07/05 - 1908/11/13
Andrew Fisher	工黨	1908/11/13 - 1909/06/02
Alfred Deakin	聯邦自由黨	1909/06/02 - 1910/04/29
Andrew Fisher	工黨	1910/04/29 - 1913/06/24
Joseph Cook	聯邦自由黨	1913/06/24 - 1914/09/17
Andrew Fisher	工黨	1914/09/17 - 1915/10/27
Billy Hughes	工黨	1915/10/27 - 1916/11/14
	民族工黨	1916/11/14 - 1917/02/17
	民族主義黨	1917/02/17 - 1923/02/09
Stanley Bruce	民族主義黨 (聯合政府)	1923/02/09 - 1929/10/22
James Scullin	工黨	1929/10/22 - 1932/01/06
Joseph Lyons	聯合澳洲黨 (聯合政府)	1932/01/06 - 1939/04/07
Sir Earle Page	國家 (聯合政府)	1939/04/07 - 1939/04/26
Robert Menzies	聯合澳洲黨 (聯合政府)	1939/04/26 - 1941/08/28
Arthur Fadden	國家 (聯合政府)	1941/08/28 - 1941/10/07
John Curtin	工黨	1941/10/07 - 1945/07/05
Frank Forde	工黨	1945/07/06 - 1945/07/13
Ben Chifley	工黨	1945/07/13 - 1949/12/19
Sir Robert Menzies	自由黨 (聯合政府)	1949/12/19 - 1966/01/26
Harold Holt	自由黨 (聯合政府)	1966/01/26 - 1967/12/19
John McEwen	國家 (聯合政府)	1967/12/19 - 1968/01/10
John Gorton	自由黨 (聯合政府)	1968/01/10 - 1971/03/10
William McMahon	自由黨 (聯合政府)	1971/03/10 - 1972/12/05
Gough Whitlam	工黨	1972/12/05 - 1975/11/11
Malcolm Fraser	自由黨 (聯合政府)	1975/11/11 - 1983/03/11
Bob Hawke	工黨	1983/03/11 - 1991/12/20
Paul Keating	工黨	1991/12/20 - 1996/03/11
John Howard	自由黨 (聯合政府)	1996/03/11 - 2007/12/03
Kevin Rudd	工黨	2007/12/03 - 2010/06/24
Julia Gillard	工黨	2010/06/24 - 2013/06/27
Kevin Rudd	工黨	2013/06/27 - 2013/09/18
Tony Abbott	自由黨 (聯合政府)	2013/09/18 - 2015/09/15
Malcolm Turnbull	自由黨 (聯合政府)	2015/09/15 -

來源：Wikipedia (2017)。

## 附錄 2 : Australian Declaration towards Reconciliation<sup>39</sup>

We, the peoples of Australia, of many origins as we are, make a commitment to go on together in a spirit of reconciliation.

We value the unique status of Aboriginal and Torres Strait Islander peoples as the original owners and custodians of lands and waters.

We recognise this land and its waters were settled as colonies without treaty or consent.

Reaffirming the human rights of all Australians, we respect and recognise continuing customary laws, beliefs and traditions.

Through understanding the spiritual relationship between the land and its first peoples, we share our future and live in harmony.

Our nation must have the courage to own the truth, to heal the wounds of its past so that we can move on together at peace with ourselves.

Reconciliation must live in the hearts and minds of all Australians. Many steps have been taken, many steps remain as we learn our shared histories.

As we walk the journey of healing, one part of the nation apologises and expresses its sorrow and sincere regret for the injustices of the past, so the other part accepts the apologies and forgives.

We desire a future where all Australians enjoy their rights, accept their responsibilities, and have the opportunity to achieve their full potential.

And so, we pledge ourselves to stop injustice, overcome disadvantage, and respect that Aboriginal and Torres Strait Islander peoples have the right to self-determination within the life of the nation.

Our hope is for a united Australia that respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all.

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<sup>39</sup> CAR (2000b).

### 附錄 3 : Roadmap for Reconciliation<sup>40</sup>

#### The National Strategy to Sustain the Reconciliation Process

The National Strategy to Sustain the Reconciliation Process sets out ways to build on progress towards reconciliation between Aboriginal and Torres Strait Islander peoples and the wider community after the Council for Aboriginal Reconciliation completes its term.

These measures address practical, cultural and spiritual dimensions of reconciliation.

#### **Essential actions include:**

##### *LEADERSHIP FOR THE RECONCILIATION PROCESS*

All levels of government, the private sector, community and voluntary organisations publicly support the ongoing reconciliation process, provide resources and increasingly involve Aboriginal people and Torres Strait Islanders in their work.

A foundation, Reconciliation Australia, is established to maintain a national leadership focus for reconciliation, report on progress, provide information and raise funds to promote and support reconciliation activities.

State, Territory and local reconciliation groups, involving Aboriginal and Torres Strait Islander people and people from the wider community, lead and support action that promotes reconciliation.

Australian parliaments and political parties address the low level of Indigenous representation in the political system.

##### *EDUCATION FOR RECONCILIATION*

Schools, tertiary education institutions and employers require and support the culturally appropriate teaching of the truth of Australia's history that includes Indigenous perspectives and addresses racism.

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<sup>40</sup> CAR ( 2000c ).



The media feature stories that promote reconciliation and challenge racist stereotyping.

*PEOPLE'S MOVEMENT FOR RECONCILIATION*

Communities celebrate significant dates and events and take joint action to achieve agreed reconciliation goals.

*PROTOCOL AND CEREMONY*

All parliaments, governments and organisations observe protocols and negotiate with local Aboriginal and Torres Strait Islander elders or representative bodies to include appropriate Indigenous ceremony into official events.

*SYMBOLS OF RECONCILIATION*

Governments, organisations and communities negotiate to establish and promote symbols of reconciliation. This would include changing the date of Australia Day to a date that includes all Australians.

*FORMAL RECOGNITION OF THE DOCUMENTS OF RECONCILIATION*

All parliaments and local governments pass formal motions of support for the documents of reconciliation.

## The National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights

This strategy proposes a number of actions, including some constitutional and legislative processes, to assist the progressive resolution of outstanding issues for the recognition and enjoyment of Aboriginal and Torres Strait Islander rights. It aims to ensure:

that all Australians enjoy, in daily life, a fundamental equality of rights, opportunities and acceptance of responsibilities; and

the status and unique identities of Aboriginal and Torres Strait Islander peoples as the first peoples of Australia, and achieve recognition, respect and understanding in the wider community.

## **Essential actions include:**

### *EDUCATION*

Governments and their agencies, legal, cultural and educational institutions, Indigenous organisations, and the media work together to improve community awareness and appreciation of Aboriginal and Torres Strait Islander peoples as the first peoples with distinct cultures, rights and status.

### *LEGISLATION*

All governments take steps to ensure the recognition and protection of Indigenous intellectual property as already occurs in some Commonwealth legislation.

All governments ensure their policies and practices observe Australia's international Indigenous and human rights obligations.

State and Territory governments consider giving magistrates and judges the discretion to take account of traditional laws in sentencing, as already occurs in some circumstances in the Northern Territory.

Governments establish legislative processes to deal with the 'unfinished business' of reconciliation, allowing for negotiated outcomes on matters such as Indigenous rights, self-determination within the life of the nation, and constitutional reform.

### *AUSTRALIAN CONSTITUTION*

Government agencies, legal institutions and educational organisations develop and promote community awareness about the Constitution and its application in protecting the rights of all Australians.

Within the broader context of future constitutional reform, the Commonwealth Parliament enacts legislation for a referendum which seeks to:

prepare a new preamble to the Constitution which recognises the status of the first Australians; and

remove section 25 of the Constitution and introduce a new section making it unlawful to adversely discriminate against any people on the grounds of race.

## The National Strategy to Overcome Disadvantage

The National Strategy to Overcome Disadvantage aims for a society where Aboriginal people and Torres Strait Islanders enjoy a similar standard of living to that of other Australians, without losing their cultural identity.

This strategy focuses on education, employment, health, housing, law and justice. Priority must be given to achieving comparable outcomes in health and education. Improvement in these areas is critical to advancing reconciliation. It is important that no person is disadvantaged by the inability of governments and service providers to communicate and cooperate in the delivery of services.

### **Essential actions include:**

#### *PERFORMANCE MEASUREMENT AND REPORTING*

The Council of Australian Governments (COAG) evaluates and updates its National Commitment to Improved Outcomes in the Delivery of Programs and Services for Aboriginal Peoples and Torres Strait Islanders, agreeing on a framework for all governments and the Aboriginal and Torres Strait Islander Commission (ATSIC) to:

- set program performance benchmarks that are measurable, include timelines and are agreed in partnership with Indigenous peoples and communities;
- ensure they have the information systems necessary to monitor performance;
- and
- annually report their performance to parliaments, councils and their constituents against these benchmarks.

Every five years, the Human Rights and Equal Opportunity Commission works with ATSIC to prepare an independent report on the nation's progress in addressing disadvantage.

#### *PARTNERSHIPS AND WORKING ARRANGEMENTS*

Peak business and community groups make commitments to overcome disadvantage, and encourage their members to make similar commitments.

Services are designed and delivered in a way that is driven by local Indigenous people, strengthens local communities, and forges social coalitions

and equal partnerships, drawing on and building the skills and resources of the community.

Service providers, ATSIC and governments identify and eliminate systemic discrimination and racism, beginning with a review of their own practices.

Governments adopt funding arrangements that are flexible and sufficient to meet local needs, and enable the pooling of funds across agencies and between the different levels of government.

Employers link performance-based salaries in all sectors to improvements in Indigenous outcomes, where appropriate.

#### *COMMUNITY AND PERSONAL RESPONSIBILITY*

Indigenous communities, families and individuals take more responsibility for addressing the causes and consequences of disadvantage within their control.

All Australians accept the responsibility to learn more about the causes and extent of disadvantage and reject racism and related behaviour.

### The National Strategy for Economic Independence

The National Strategy for Economic Independence aims for a society where Aboriginal and Torres Strait Islander peoples and communities can share the same levels of economic independence as the wider community.

For most Australians, pathways to economic independence include getting a job and/or running a business.

In both of these cases, an education substantially improves the likelihood of success.

This strategy is not for everyone. For some, economic independence will be defined in terms of their traditional economy and lifestyle.

#### **Essential actions include:**

##### *ACCESS TO JOBS AND RESOURCES*

All employers establish strategies for employing and training more Aboriginal people and Torres Strait Islanders.

Banks and other financial institutions actively adopt culturally-responsive banking and financing regimes and facilitate better access to capital.

Governments increase the value of Indigenous assets by legislating for Indigenous intellectual property and cultural rights and by working in partnership with Indigenous communities to protect biodiversity and rehabilitate and sustain lands and waters under the control of those communities.

#### *EFFECTIVE BUSINESS PRACTICES*

Indigenous people and communities develop their existing competitive advantages in respect of their cultural assets and special knowledge of the land and the environment.

Governments, ATSIC, and the private sector all research and develop successful business models that can be applied in regional and remote communities. Priority should be given to developing commercial activities on Indigenous-owned land.

Private-sector organisations seek opportunities for joint ventures with Indigenous businesses. Governments promote such joint ventures.

Governments and industry work in partnership with Indigenous communities to ensure their projects strengthen Indigenous communities by supporting the local economy and enhancing regional employment opportunities.

#### *SKILLS DEVELOPMENT*

Schools, TAFEs, universities and other education providers, working with families, develop and implement flexible programs to improve student attendance, retention rates, academic results and career pathways.

TAFEs and other vocational education providers target their programs to the employment opportunities in the local labour market, aiming for available jobs or business opportunities on the completion of training programs and schemes.

With local community involvement, education providers, banks and other financial institutions develop money-management programs that increase the capacity of people to plan, save and invest in their future.

Indigenous leaders actively encourage their people to equip themselves with the skills, knowledge and experiences that are valued in the local employment market.

#### 附錄 4 : Archie Roach 的 Took the Children Away ( 1990 )

This story's right, this story's true  
I would not tell lies to you  
Like the promises they did not keep  
And how they fenced us in like sheep.  
Said to us come take our hand  
Sent us off to mission land.  
Taught us to read, to write and pray  
Then they took the children away,  
Took the children away,  
The children away.  
Snatched from their mother's breast  
Said this is for the best  
Took them away.

The welfare and the policeman  
Said you've got to understand  
We'll give them what you can't give  
Teach them how to really live.  
Teach them how to live they said  
Humiliated them instead  
Taught them that and taught them this  
And others taught them prejudice.  
You took the children away  
The children away  
Breaking their mothers heart  
Tearing us all apart  
Took them away

One dark day on Framingham  
Come and didn't give a damn  
My mother cried go get their dad  
He came running, fighting mad  
Mother's tears were falling down  
Dad shaped up and stood his ground.  
He said 'You touch my kids and you fight me'

And they took us from our family.  
Took us away  
They took us away  
Snatched from our mother's breast  
Said this was for the best  
Took us away.

Told us what to do and say  
Told us all the white man's ways  
Then they split us up again  
And gave us gifts to ease the pain  
Sent us off to foster homes  
As we grew up we felt alone  
Cause we were acting white  
Yet feeling black

One sweet day all the children came back  
The children come back  
The children come back  
Back where their hearts grow strong  
Back where they all belong  
The children came back  
Said the children come back  
The children come back  
Back where they understand  
Back to their mother's land  
The children come back

Back to their mother  
Back to their father  
Back to their sister  
Back to their brother  
Back to their people  
Back to their land  
All the children come back  
The children come back  
The children come back  
Yes I came back.

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# The Reconciliation between the State and the Indigenous Peoples in Australia

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## Abstract

In the 1970s-80s, one hundred thousand Indigenous children were forcefully taken away from their parents by the Australian government to be educated at the boarding schools. There were physically and psychologically abused or even sexually assaulted, which had caused serious damages to the Indigenous society. Embarking on a new Indigenous policy in the 1990s, the government established the Council for Aboriginal Reconciliation in order to settle the relations between the state and the Indigenous Peoples. We shall look into the background, operation, and inquires of the Council and explore how politics was intersected as well as what competing discourses were employed.

**Keywords:** Australia, Council for Aboriginal Reconciliation, Indigenous Peoples, reconciliation, transitional justice