

MARTIAL LAW PROCLAMATIONS IN COLONIAL AUSTRALIA

Working schedule and doctrinal note, 1790-1854

Why martial law matters: Martial law was an exceptional emergency mechanism used when ordinary civil authority was considered inadequate. It did not itself establish that a war existed. Ben Hingley identifies seven pre-Federation Australian episodes; only two concerned Aboriginal frontier conflict - Bathurst in 1824 and Van Diemen's Land from 1828. The other episodes arose from a food emergency, convict rebellion, governmental overthrow, bushranging and Eureka.

Period / duration	Proclamation / authority	Location	Purpose / circumstances
19 Mar-27 Aug 1790 ~5 months (161 days)	Major Robert Ross / council of officers	Norfolk Island	Following the wreck of HMS Sirius and a severe food emergency, martial law protected stores, regulated scarce provisions and enabled court-martial jurisdiction where no criminal court existed. It was discontinued once supply ships relieved the island. Emergency administration; no rebellion or frontier conflict.
5-10 Mar 1804 5 days	Governor Philip Gidley King	Parramatta, Castle Hill, Hawkesbury and adjoining districts, NSW	Convict uprising. The districts were proclaimed in a "STATE OF REBELLION". Troops defeated the rebels at Vinegar Hill; courts-martial and executions followed. A same-period general order authorised persons found outside after sunset to be "apprehended or shot".
26-27 Jan 1808 ~1 day	Major George Johnston - NSW Corps	Sydney, NSW	During the overthrow of Governor William Bligh, Johnston purported to proclaim martial law. Hingley treats this as an unusual and legally doubtful martial-law episode accompanying a military coup. The proclamation was revoked the following day.
25 Apr-2 Oct 1815 ~5 months (160 days)	Lieutenant-Governor Thomas Davey	Van Diemen's Land	Declared against violent bushranging, murder and armed robbery, in circumstances where serious criminal cases otherwise had to be tried in Sydney. Court-martial jurisdiction was used against civilian offenders. Macquarie condemned the measure and ordered its repeal.
14 Aug-11 Dec 1824 119 days	Governor Sir Thomas Brisbane	Bathurst district / country west of Mount York, NSW	After escalating violence between Wiradjuri people and colonists, Brisbane declared martial law because ordinary civil powers were said to be inadequate. The proclamation invoked "summary justice" and the use of arms beyond the ordinary rule of law "in times of peace", while also directing restraint and protection of women and children.
1 Nov 1828-Jan 1832 ~3 years 2 months	Lieutenant-Governor George Arthur	Van Diemen's Land - settled districts; extended island-wide 1 Oct 1830	Declared amid sustained Aboriginal-settler violence. The regime was later extended across the island and accompanied military and civilian operations, including the 1830 General Movement / Black Line. Hingley describes the martial-law period as lasting about three years; it was revoked in January 1832 after the final major surrenders.
Declared 4 Dec 1854; operative 6-9 Dec ~3 days operative	Lieutenant-Governor Sir Charles Hotham	Ballarat / Buninyong district, Victoria	Declared after the Eureka Stockade but did not come into operation until noon on 6 December, three days after the fighting. Arms and ammunition were confiscated, meetings and signal fires prohibited, and a curfew imposed. Martial law was revoked on 9 December.

Working interpretation: The comparison is the point. Martial law was used for very different emergencies and therefore cannot itself classify the underlying event as a war. Among these seven episodes, Van Diemen's Land from 1828 is the clear duration and intensity outlier.

Publication caution: "Civil war" has no single historical or legal threshold. The modern non-international armed-conflict test discussed on page 2 is used only as an analytical cross-check and is not applied retroactively as the governing law of the 1820s.

Principal source: Ben Hingley, "A 'Nursery of Martial Law': Proclamations of Martial Law in the Australian Colonies 1790-1853", Journal of the Royal Australian Historical Society 110(2) (2024), 181-208. Date refinements are noted in the source list on page 2.

DOCTRINAL NOTE: MARTIAL LAW, WAR AND THE TASMANIAN EXCEPTION

1. What did martial law actually establish?

Martial law did not itself establish that a war existed. It was an assertion of exceptional executive and military authority in circumstances in which the ordinary civil power was considered inadequate. Its practical effect depended upon the particular proclamation and the circumstances in which it was invoked.

That distinction matters because martial law was used in colonial Australia in circumstances ranging from convict rebellion and civil disorder to frontier violence. Its invocation establishes that government considered an emergency sufficiently serious to justify exceptional measures. It does not answer the separate historical question whether the opposing violence constituted warfare.

Van Diemen's Land was nevertheless exceptional. George Arthur declared martial law in the settled districts on 1 November 1828. By 1830 the government resorted to the General Movement or Black Line, involving more than 2,200 military personnel, settlers, police and convicts. The National Museum describes the situation by 1830 as approaching a "virtual state of war".

Most strikingly, Arthur's own Executive Council justified martial law partly on the ground that the civil power was insufficient to suppress the violence. Yet the same Council minutes referred to the Aboriginal opponents as lacking a **"government amongst themselves"**. Arthur's Solicitor-General, Alfred Stephen, subsequently said that martial law placed Aboriginal people within the prescribed districts on the footing of **"open enemies of the King"** in a state of **"actual warfare"** against him.

Those expressions are important contemporaneous evidence. But they are not conclusive. They tell us how the colonial government characterised the emergency and the legal consequences it wished to attach to it. They do not by themselves establish the nature or organisation of the opposing side.

2. Tasmania is the strongest Australian case on intensity

Of the Australian frontier episodes, Van Diemen's Land presents the strongest case for something resembling an armed conflict. The violence was prolonged; military patrols were deployed; martial law continued for years; the government organised roving parties; and in 1830 more than 2,200 people were mobilised for the Black Line.

If the case is cross-checked against the modern law of non-international armed conflict—not because twentieth- and twenty-first-century international humanitarian law governed Tasmania in 1828, but simply as an analytical discipline—the **intensity** element presents little difficulty.

Modern International Humanitarian Law (IHL) looks to such matters as the gravity and frequency of armed clashes, duration, geographical spread, the forces mobilised, casualties, weapons and the extent to which government has been forced to resort to military rather than ordinary policing measures. Tasmania exhibits several of those indicators.

The difficulty lies elsewhere.

3. The unresolved question is organisation: who was the Aboriginal belligerent?

Modern IHL, as summarised by the International Committee of the Red Cross (ICRC), requires two cumulative elements before internal violence becomes a non-international armed conflict: sufficient **intensity** and sufficient **organisation** of the non-State armed group. Intensity alone is not enough. The organisation inquiry asks whether there is, at least to some degree, a command structure, capacity to transmit and enforce orders, ability to plan and coordinate operations, logistics, recruitment and the capacity to sustain military operations.

Applied as an analytical cross-check to Van Diemen's Land, this is the much more difficult question.

Tasmanian Aboriginal society was fundamentally organised around relatively small kin-based groups. The University of Tasmania's *Companion to Tasmanian History* describes the family-based clan or hearth group as the basic building block of larger Aboriginal groupings. Plomley described the social organisation more starkly as little more than assemblages of families, with leaders but no chiefs "in the political sense".

Even the larger entities commonly described today as "nations" or "tribes" should not simply be assumed to have been unified political units. Recent demographic scholarship notes that the bands themselves had names, while relatively few Aboriginal terms survive for the larger groupings; those larger groupings have generally been described through European classifications. Plomley initially reconstructed 46 bands across Tasmania and later 57; Jones considered there was evidence for at least 53.

That matters. A map divided into nine "nations" can visually suggest nine political entities. It does not establish nine governments, nine armies or nine chains of command. The same caution applies to the Oyster Bay and Big River labels. Linguistic reconstruction indicates a close relationship between the speech recorded from those areas, but common or closely related language does not establish common government or military command. People from different bands plainly could cooperate and at times did so. That is evidence of cooperation. It is not automatically evidence of a permanent political union.

Nor is there secure evidence of an Aboriginal high command directing a unified Tasmanian resistance.

Tongerlongeter illustrates the evidentiary problem particularly well. He is now frequently presented as a major resistance leader. Yet Nicholas Clements himself acknowledges that Tongerlongeter is **not mentioned by name until four days before the 1831 armistice**, that only two retrospective accounts survive concerning his wartime actions, and that the specifics of his role in the resistance cannot now be known with certainty.

That does not prove he was unimportant. It does mean that portraying him retrospectively as commander of a coherent Aboriginal war effort goes materially beyond what the surviving contemporary evidence can directly establish.

What the evidence supports more securely is a pattern of **local bands and family groups, sometimes acting independently and sometimes cooperating with others**. Cooperation may have been tactically important. But occasional or even repeated cooperation is not the same thing as permanence of alliance, common command, a mechanism for issuing and enforcing orders, or a political authority capable of committing the participating groups to a continuing war.

Modern IHL makes the same distinction. A shared enemy, common outlook or affinity between separate groups is not by itself sufficient to turn them into a single organised belligerent. What matters is evidence of actual coordination structures and operational integration.

4. The numbers reinforce the organisation problem

Nicholas Clements estimated that approximately **1,000 Aboriginal people remained in the principal war zone in 1826**, falling to fewer than 200 by early 1830. That estimate is itself a reconstruction, but it provides a useful sense of scale.

If, purely to illustrate scale, perhaps one quarter of that population were adult males of fighting age, the potential pool would have been of the order of **250 men**. That is not a historical count of combatants and should not be represented as one. Its significance is different: even on that rough assumption, these men were not assembled into a force of 250 under a common command. They were distributed among small kin-based groups operating over a substantial geographical area.

The island-wide ethnographic reconstructions identify approximately 46 to 57 bands, with Jones identifying at least 53. Not every one of those bands was within the principal settled war zone, and it would therefore be wrong simply to divide Clements's 1,000 people by fifty and declare fifty combat units. But the larger pattern is unmistakable: **the social structure was highly dispersed rather than concentrated into a single political or military organisation**.

There may have been temporary alliances. Bands may have combined for particular attacks, travelled together, exchanged information and responded to common dangers. None of that should be minimised.

But it remains necessary to distinguish:

cooperation from command; alliance from political union; repeated raids from an organised campaign; and a common adversary from a common belligerent.

That is precisely the distinction a modern organisation test is designed to expose.

5. Why even Tasmania does not automatically become “war”

Tasmania therefore creates an important asymmetry.

On the **colonial side**, there plainly was organisation: a governor, Executive Council, military hierarchy, regular troops, police, orders, supply, patrols and ultimately a mobilisation of more than 2,200 people.

On the **Aboriginal side**, there plainly was resistance: killings, raids, evasion, retaliation, tactical cooperation and leaders exercising influence within particular groups.

But war is relational. One organised side does not automatically create an organised opposing belligerent.

Indeed, the colonial Executive Council's own reference to the Aboriginal groups having no “government amongst themselves” exposes the difficulty. The government could declare them enemies. It could deploy soldiers against them. It could impose martial law and describe the resulting condition as “actual warfare”. But **the Crown could not create an Aboriginal army merely by deciding to use its own army against Aboriginal people**.

This is why the Tasmanian example should not be resolved merely by citing the Black Line, martial law or Stephen's language. Those matters are powerful evidence of **colonial militarisation and intensity**. They do not independently answer the organisation question on the other side.

The evidence presently available does not clearly establish a permanent Aboriginal command structure, island-wide political authority, hierarchy capable of issuing and enforcing orders, unified strategy, continuing logistical system or permanent coalition binding the different bands into one fighting force.

There were leaders. There was cooperation. There were serious and repeated attacks. There may have been periods when particular groups operated together with considerable tactical effectiveness.

But that is a materially narrower proposition than the existence of an organised belligerent conducting a sustained war.

Working conclusion

Van Diemen’s Land is the strongest possible Australian test case because its intensity is exceptional. That does not eliminate the second half of the inquiry.

On a modern analytical cross-check, the intensity threshold could readily be argued. The organisation threshold is much harder. The historical record reveals numerous small kin-based groups, shifting cooperation and local leadership, but does not clearly reveal the permanent political or military structure that would make those dispersed groups a single organised belligerent.

Accordingly, the careful conclusion is not that Tasmania experienced little violence. It plainly experienced grave and sustained violence. Nor is it that Aboriginal people did not resist; they plainly did.

The question is narrower:

Was that resistance organised in the manner necessary to turn sustained frontier violence into warfare between identifiable belligerents?

On the presently identified evidence, **that remains unproved.**

And if organisation remains problematic in Tasmania—the Australian frontier case with martial law, regular military operations, the Black Line and the strongest contemporaneous language of “war”—it is still less defensible simply to project the label across geographically separate, socially distinct and episodic violence elsewhere on the continent.

Sources and authorities

Ben Hingley, “A ‘Nursery of Martial Law’: Proclamations of Martial Law in the Australian Colonies 1790-1853” (2024) 110(2) *Journal of the Royal Australian Historical Society* 181-208; Ralph Clark, journal transcript, State Library of New South Wales, 27 August 1790; Australian Dictionary of Biography, “Thomas Davey”, and Andrew Bent historical imprint notes; Bathurst Regional Council, Aboriginal Heritage Study and Governor Brisbane proclamations of 14 August and 11 December 1824; Correspondence concerning Military Operations against Aboriginal Inhabitants of Van Diemen’s Land, UK Parliament (1831), including the 1 November 1828 proclamation, Executive Council minutes of 30 October 1828 and 1 October 1830 extension; International Committee of the Red Cross, “How is the Term ‘Armed Conflict’ Defined in International Humanitarian Law?” Opinion Paper (2024), and ICRC Commentary on Common Article 3 (2025).