



Unit 4: Representative Democracy. The story of voting rights in Australia including for Aboriginal and Torres Strait Islander people and women – Year 5 - C & C Strand: Government & Democracy

Topic 5.2: The Constitution and the right to vote in Australia

Right to vote – what does the Constitution say?

One of the things you would expect to find in Australia's Constitution is the right to vote, as it is a key part of our democracy. Yet there is no right to vote set out in the words of the Constitution. This was largely because voting was a controversial issue at the time the Constitution was being drafted.

Women were campaigning for the right to vote, and had been given the vote in South Australia, and later Western Australia, before referendums (i.e. votes) were held to approve the Constitution. Other Australian colonies did not want to be pressured into giving women the right to vote. So rather than risk federation being voted down in those colonies, [sections 8](#) and [30](#) of the Constitution said the first franchise (i.e. the right to vote) was the franchise that already existed in each State, and then left it to the Commonwealth Parliament to set its own franchise in the future.

What else does the Constitution say about the right to vote?

[Sections 7](#) and [24](#) of the Constitution say that the Houses of Parliament shall be 'directly chosen by the people'. This means that 'the people' must elect their representatives in Parliament. The word 'directly' is there to ensure that this is done by direct voting, rather than through an [Electoral College](#), as is used in the United States to elect the President.

But who are 'the people'? It can't mean everyone. For example, it wouldn't mean that five year olds can vote. But what are valid reasons for excluding people from voting? Voting laws that existed in the Australian colonies in the 1800s excluded people

from voting for all sorts of reasons, including that they did not own property, had committed certain criminal offences, were in receipt of charity or held certain occupations. Most of these grounds for exclusion would be considered unacceptable today, but were seen as normal then. Women were also excluded from voting. There were even court cases that said that women were not 'persons' and therefore could not vote. But by the 1890s in the Australian colonies this was beginning to change.

Another major area of exclusion was based on race. People could be excluded from voting if they were Aboriginal and Torres Strait Islander people or came from non-European backgrounds, such as immigrants from Asia, Africa and the Middle East. In those days race was sometimes used as a reason to keep out certain immigrants or limit their rights in Australia.

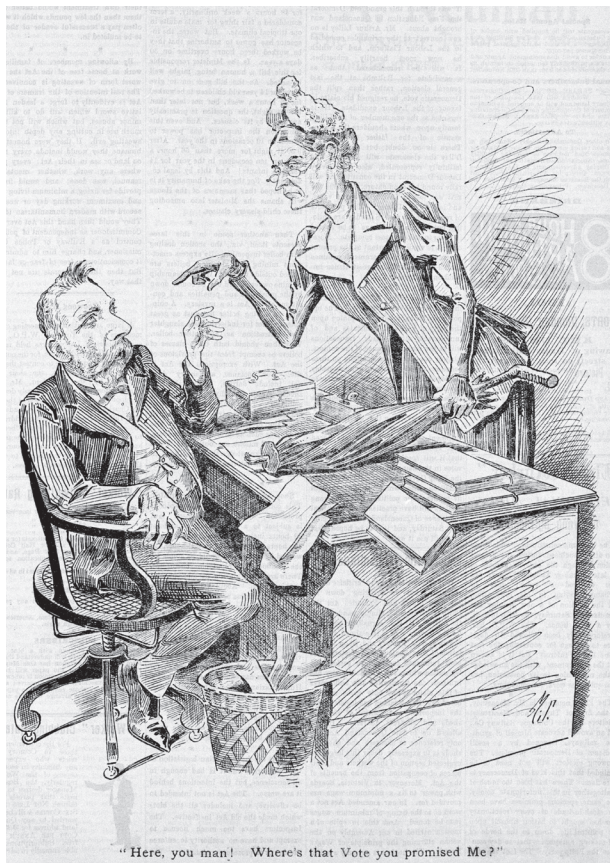
Women – sections 41 and 128 of the Constitution

The South Australian delegates to the Constitutional Convention in 1897 at which the draft Constitution was being debated pushed for the inclusion of a right to vote that would apply to all adults. They failed, because some of the other colonies still objected to women having the right to vote. But the South Australian delegates stressed that as women and Indigenous people in their colony had the right to vote, they did not want them to be denied that right in federal elections. So a compromise was agreed. [Section 41](#) was included so that adults who had the right to vote for the lower House of a State Parliament, while they continued to hold that right, could not be prevented from voting at Commonwealth elections.

As things turned out, women did not need to rely on section 41, because they were given the right to vote in 1902 when the Commonwealth Parliament passed its first franchise law. But section 41 should have been useful to protect the

right to vote of Aboriginal and Torres Strait Islander people and immigrants from non-European countries, who had obtained the right to vote in a State. Unfortunately, this was often not the case, as sometimes section 41 was ignored or applied narrowly. In the end, it became an ineffective protection.

[Section 128](#) allows changes to the Constitution to be made with the approval of the people in a referendum. To pass, a change needs to be approved by a majority of voters overall, and a majority of voters in a majority of States. But if some States doubled their number of voters, by including women, then they would have disproportionately large numbers in the overall count. So section 128 said that until the Commonwealth set a uniform franchise, only half the votes in States which had adult suffrage (i.e. where women could vote) would be counted. Again, this didn't need to be used, because a uniform franchise was passed in 1902.



The Worker | 1900 | Scott, Monte
Source: State Library of Queensland

Race – sections 25 and 127

Each State was allocated a certain number of Members of the Commonwealth Parliament, based upon its population. [Section 25](#) said that

if a State discriminated against the members of a race by preventing them from voting in State elections, it couldn't then claim those excluded people as part of its population for the purpose of getting more Members of Parliament at the Commonwealth level. The State would effectively be punished for its discrimination by ending up with fewer representatives at the Commonwealth level. Section 25 is based on a provision from the United States Bill of Rights.

[Section 127](#) also stated that when calculating the population of a State under the Constitution, Aboriginal people shall not be counted. This was aimed at stopping some States from trying to inflate their population numbers by claiming unknowable numbers of Aboriginal people in remote regions. Mostly it was relevant to financial calculations of what tax should be returned to the States in the transitional period after federation. But it also applied to calculations about how many Members of Parliament each State would receive.

When these provisions were debated, the South Australian delegates expressed concern that they might be interpreted as preventing Aboriginal people from voting. But they were assured that this was not so. Neither section 25 nor section 127 would prevent anyone from voting. It would be up to the Commonwealth Parliament to decide on the franchise. In addition, section 41 would protect the voting rights of anyone who already had the right to vote in the State.

When the Commonwealth Parliament enacted its voting law in 1902, Aboriginal and Torres Strait Islander people were denied the right to vote, except those who had their rights protected by section 41 of the Constitution. Section 127 was removed from the Constitution by the 1967 referendum.

Is there a constitutional right to vote today?

The Constitution has not been altered to include an express right to vote. But the High Court, in a [case](#) about prisoners' voting rights, interpreted sections 7 and 24 of the Constitution to mean that the Parliament cannot exclude people from voting on grounds such as race or sex. The Houses of Parliament have to be 'directly chosen by the people'.

The Court concluded that the Constitution requires a 'universal franchise', but that some people can be excluded for a 'substantial reason' that is compatible with the democratic system of government. So you can exclude children, non-citizens and some prisoners from voting, but not people just because of their sex or their race.



Topic 5.2: Lesson/ Activities One

What does the Constitution Say?



AUSTRALIAN
CONSTITUTION
CENTRE

Introduction to the right to vote according to the Constitution and how women and Aboriginal & Torres Strait Islander people achieved it

Time/Lesson	Learning Goal
<ul style="list-style-type: none">1 hour	To <u>describe</u> the significance of people and events/developments in bringing about changes in who has the right to vote and stand for election in Australia. To <u>identify</u> key events in the evolution of the right to vote. To understand the <u>cause and effect</u> of various events in the development of voting in Australia. To <u>understand</u> what discrimination is.
Rationale	Success Criteria
To understand that the right to vote has changed over time, students must have knowledge of the changes made to the voting process. Students have an understanding of the comprehension skill of cause and effect.	Students <u>sequence events</u> to gain an understanding that the right to vote process changed over time. They <u>identify</u> key events and <u>explain</u> the reason that these events were important to the developing of the voting process in Australia.
Teaching Reference Document	
TRD 19: Right to Vote – What does the Constitution Say?	
Resources	
<ul style="list-style-type: none">Cut and paste timeline activityScissorsGlueOwn choice timeline resources (paper, computers, various)https://www.aec.gov.au/About_AEC/25/theme1-voting-history.htmhttps://explore.moadoph.gov.au/timelines/the-right-to-vote#milestone=first-parliamentary-election	
Tuning In	
<ul style="list-style-type: none">View https://www.abc.net.au/education/btn-history-of-voting/13871054 Note, this video is largely accurate except for the statement that in 1949 only Indigenous people who had served in the armed forces were given the vote. In fact, all Aboriginal & Torres Strait Islander people who had the right to vote in a State (i.e. NSW, SA, Vic and Tas) could vote in federal elections from 1949.)	
Teacher Instruction	
<ul style="list-style-type: none">Revise lesson.Using the timeline resource provided either by the AEC or MOAD-OPH, and the jigsaw method, students co-create a timeline of voting rights in Australia.	

Group/Independent Learning

Timeline activity.

The development of voting over time, significant events and people.

Students construct a timeline of voting rights over time.

Students identify 4 – 6 (depending on ability) events from the activity that they identify as key events or people in the right to vote timeline. Include events.

Students choose 5 photographs (from the internet) to represent these events and caption them. You may like to offer a choice on how to present. i.e. Microsoft word, Canva (online), Cut and paste.

Wrapping It Up

- Students discuss the events that they have identified and justify their choices – think-pair-share, small group or whole class groupings.
- They specifically identify factors that were cause and effect events in the evolving process of voting.
- Discussions surround the significance of groups of people in their timeline and how relevant it is now.

Differentiation

Support

Elicit understanding of each event through discussion. Have students put events into their own words. Support students who may require help identifying the importance of events. This can be done in discussion prior to or during sequencing.

Extension

Extension students may like to research and include additional events. They should also research the topic of discrimination and laws that apply around this topic.

A voting game could be played where the class divides into groups. Each group decides on an issue the class will vote on and as well who will not be able to participate in the vote, eg should boys and girls play in the same sport teams? (one sex is not allowed to vote). Discuss the result and why people voted for and against it. Discuss discrimination. Then redo the vote with the whole class voting and see if the same result occurs.

Assessment Strategies

In the wrapping it up phase the students discuss their understanding of the events that they have sequenced. These can be used as formative assessment of this skill or as a part of a summative assessment folio using the criteria from the Standard Elaborations (below).

HASS Skill – Timeline

	A	B	C	D	E
Timeline	<u>purposeful</u> sequencing of information about events, the lives of individuals and selected phenomena in chronological order using timelines	<u>effective</u> sequencing of information about events, the lives of individuals and selected phenomena in chronological order using timelines	sequencing of information about events, the lives of individuals and selected phenomena in chronological order using timelines	<u>partial</u> sequencing of information about events, the lives of individuals and selected phenomena in chronological order using timelines	<u>fragmented</u> sequencing of information about events, the lives of individuals and selected phenomena in chronological order using timelines

