



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 – Aboriginal and Torres Strait Islander people

There is a long history of Indigenous Australians being discriminated against regarding voting rights. But it is often treated in a simplistic and inaccurate way – eg claims that no Aboriginal or Torres Strait Islander person could vote until 1962 or 1967. The [timeline](#) is more complex. Here is the more detailed story.

The right to vote in the colonies

Initially, there were no race-based exclusions from voting in the Australian colonies. The right to vote at the first colonial elections in 1843, however, was restricted to men who owned property or paid a certain amount of rent. As the British had refused to recognise the ownership of land by their Traditional Owners and many had been progressively moved off those lands as they were sold or occupied by squatters, it was the new colonist land-owners and squatters who obtained the right to vote, not Aboriginal and Torres Strait Islander people.

As the right to vote expanded to men over the age of 21, two colonies passed laws to deny the vote to Aboriginal and Torres Strait Islander men unless they met certain property requirements. Queensland did so in 1885 and Western Australian in 1893. Later, in 1922, Indigenous men and women were also denied the vote in the Northern Territory.

New South Wales, Victoria, Tasmania and South Australia did not expressly deny Indigenous people the right to vote. But Indigenous people could still find themselves without a vote for other reasons. For example, in New South Wales people were denied the right to vote if they were in receipt of charitable aid, and in Victoria if they were inmates of charitable institutions.

Indigenous people who were supported on reserves or missions or in charitable institutions could therefore be excluded from voting. Indigenous women were denied the right to vote in most colonies because they were women, rather than because of their race.

Some Indigenous men were on the electoral rolls and did vote in the 1800s. South Australian Indigenous women also voted from 1896, once women got the right to vote. So if the question is when did Indigenous people first vote in Australia, the answer is some time in the late 1800s.



*Portrait of A. and Eggie Sumner
at Point McLeay | 1895
Indigenous women at Point McLeay
exercised their right to vote in 1896.
Source: State Library of South Australia*



Indigenous people and federation

The referendums to approve federation in the 1890s and the first federal elections in 1901 all took place on the basis of the colonial/State franchise. This meant that some, but not all, Indigenous people could vote at them. Many did not, as voting was not compulsory, but we know that some did. For example, in 1901 a local newspaper report from Darlington Point, on the Murrumbidgee River in NSW, said that Indigenous people seemed to enjoy voting in the federal election and that readers should not begrudge 'the dispossessed population their Electors' Rights' for 'at the base of it are original rights which have been on our part shamefully disregarded'. One Aboriginal man in Collarenebri was even charged in 1901 with voting twice.

The Commonwealth Constitution did not deny Indigenous people the right to vote. While section 127 of the Constitution said that Indigenous people were not to be counted for some purposes, it was made clear during the Constitutional Convention at which the Constitution was drafted that this did not affect voting rights. It was to be left to the new federal Parliament to determine what the franchise would be in the future. But the South Australian representatives were worried that the new federal Parliament would deny their enfranchised women and Indigenous people the vote in federal

Indigenous recruits from Lake Tyers | 1940 | They had the right to fight, but only had a temporary right to vote in federal elections if they served in the armed forces outside Australia. The right lasted until 6 months after the end of the war, but was restored permanently in 1949.

Source: State Library of Victoria

elections. So section 41 of the Constitution was inserted to calm these fears. It says that no adult who has or acquires the right to vote for the lower House in a State shall be prevented by a Commonwealth law from voting in Commonwealth elections.

The federal franchise

The Commonwealth Government did not initially propose to deny the vote to Indigenous people. The *Commonwealth Franchise Bill* that it introduced into Parliament did not include such a clause. But it was amended during the debate to exclude the Indigenous people of Australia from voting, unless their voting rights were protected by section 41 of the Constitution. The section as finally agreed said: 'No aboriginal native [*sic*] of Australia Asia Africa or the Islands of the Pacific except New Zealand shall be entitled to have his name placed on an Electoral Roll unless so entitled under section forty-one of the Constitution.'

Indigenous people who already had a right to vote in a State should have retained that right and been able to continue to vote. Some did. Others, however, were wrongly told they were not allowed to vote. Government officials decided to interpret section 41 narrowly so that it only applied to people who already had the right to vote at the State level at the time the Commonwealth enacted its own franchise law in 1902. This meant that Indigenous people who turned 21 (which was voting age back then) after 1902 and became enrolled for State election still could not enrol for Commonwealth elections.

Even worse, if an Indigenous person who was enrolled in their State before 1902 later temporarily lost that right at the State level, they could not re-enrol at the Commonwealth level, even if their right to vote was restored at the State level. This happened quite often, because people were struck off the electoral roll if they were not living at their enrolled address when inspectors visited. Indigenous people often moved around their Country, living in different places, and were therefore wiped off the electoral roll. Once this happened, they could not re-enrol due to the narrow interpretation of section 41.

The franchise expands

During World War II, voting rights were expanded on a temporary basis in 1940 to all members of the Defence Force who served outside Australia. This right lasted until six months after the end of the war.

In 1949 the *Commonwealth Electoral Act* was changed to ensure that Indigenous people who had been members of the Defence Force could vote in Commonwealth elections, as could Indigenous people who were currently enrolled in a State (even if they were not enrolled before 1902). This meant that Indigenous people who lived in New South Wales, South Australia, Victoria and Tasmania could vote in federal elections from 1949. But Indigenous people who lived in Western Australia, Queensland and the Northern Territory could not vote in federal elections until the *Commonwealth Electoral Act* was again changed in 1962. The enrolment of Indigenous people only became compulsory in 1983, making it the same for all Australians.

In 1962 Indigenous people were given the right to vote in Western Australian and Northern Territory elections. Queensland was the last State to allow Aboriginal and Torres Strait Islander people the vote in 1965.

The 1967 referendum had nothing to do with the right to vote.

So the answer to the question of when Aboriginal and Torres Strait Islander people got the right to vote is 1843 at the earliest and 1965 at the latest – with all kinds of variations in between depending on where they lived, their sex, whether they served in the armed forces and whether they were disqualified for other reasons.

You can see now why the answer is not a simple one and why people try to simplify it to a single date - but that this is misleading and does not help us to understand the full picture.





Topic 5.2: Lesson/ Activities Two

Aboriginal and Torres Strait Islander people: A Long History of Discrimination on Voting Rights



AUSTRALIAN
CONSTITUTION
CENTRE

Time/Lesson

- 1 hour

Learning Goal

To identify inequality in people's voting rights throughout history. To understand the perspective of Indigenous People and how discrimination and inequality impacted on their lives and was a violation of their human rights.

Rationale

To understand the importance of the right to vote, students must perceive the benefits of living in a democracy. This enables them to have a point of comparison for critical thinking when considering how it would have felt to Aboriginal and Torres Strait Islander Peoples when they didn't have the right to vote like other Australians.

Success Criteria

Students empathise with Indigenous People and show depth of understanding of how inequalities and discrimination impact upon people's lives. They discuss the issues surrounding inequality and infer meaning from various sources.

Teaching Reference Document

- TRD 19: Right to Vote – What does the Constitution Say?
- TRD 20: Right to Vote – Aboriginal and Torres Strait Islanders

Resources

- [AEC "Electoral milestones for Indigenous Australians" timeline](#)
- National Museum of Australia Digital classroom Resource: ["Our vote equals our future" includes the story and lessons and activities](#)
- <https://aiatsis.gov.au/explore/my-voice-my-country> (the history of Indigenous voting including source materials and lesson activities)
- <https://www.abc.net.au/btn/classroom/history-of-voting/13849266> video of who could vote
- https://humanrights.gov.au/education/teachers?field_year_levels_target_id=790&field_cmn_area_of_work_target_id=All&field_type_of_resource_value=All

Tuning In

View BTN <https://www.abc.net.au/btn/classroom/history-of-voting/13849266>

- Discuss the key events in Australia's history of voting in the lead up to 1962 when the *Commonwealth Electoral Act* was amended to extend the right to enrol and vote to all Indigenous Australians in federal elections regardless of State law. Complete the lessons and activities that accompany the BTN video.

Teacher Instruction

Using your knowledge of the story of who voted when analyse the TRD source Right to Vote -Aboriginal and Torres Strait Islanders and discuss the meaning of the words discrimination and racism. Teacher hands around print out of the AEC "Electoral milestones for Indigenous Australians timeline". Students highlight the events they think are most important on the timeline and research that event further to present to the class or as a group. (If working in groups a vote might be required to select the most important event. (The teacher must be aware that the 1967 constitutional referendum on Aboriginal rights had nothing to do with the voting rights story and that this referendum is discussed in a different topic.)

Wrapping It Up

Discuss the meaning of empathy, enfranchised and discrimination. Teachers should be cautious about positionality and privilege when speaking on behalf of an Indigenous person.

Discuss from the perspective of various parties (multiple perspectives)– Indigenous child, adult male, woman, non-Indigenous child etc.

Optional Extra Activity

Optional:

Students use these images of Aboriginal and Torres Strait Islander artists to inspire their own artwork to represent discrimination against Indigenous Australians. They could use a graphic representation or sketch.

Differentiation

Support

- Discuss a comparison of what it was like to live in Australia pre 1788 compared to the first years of the colony and then onto today. The many decades since 1788 have seen many changes to the way we live, the things we need to be happy and content, and the comparatively recent technological explosions. Our thinking and ideas around fairness, discrimination, equality, freedom and responsibilities, human rights and racism, are quite different today from attitudes in colonial times. For many years now our Prime Ministers and other leaders have been discussing the important issue of reconciliation with Indigenous Australians. Have a look at the Reconciliation Australia website. If your class and school have not yet started on a Reconciliation Action Plan (RAP) you might like to discover how this works:

<https://www.narragunnawali.org.au/raps/what-is-a-rap>

Students to respond with 5 points to the questions:

- Australia has one of the oldest continuous cultures in the world. Can learning about Aboriginal and Torres Strait Islander laws, cultures and languages help Australians to be proud of this?
- Will having a better understanding of Aboriginal and Torres Strait Islander law and culture mean that the Australian people are more likely to support modern reconciliation action?
- Is this likely to eliminate racism and discrimination so that we live in harmony with our communities?
- Students can find understanding discrimination challenging. It is difficult for them to differentiate between what is right and what is wrong. They may research discrimination and racism and human rights issues through history such as the US civil rights movement, slavery, and recent racism issues in Australia such as the story of the AFL player, Adam Goodes.

Lessons can be found on the Human Rights educational resources website. https://humanrights.gov.au/education/teachers?field_year_levels_target_id=790&field_cm_n_area_of_work_target_id=All&field_type_of_resource_value=All

Extension

Extension students will be challenged by this activity and should be encouraged to look deeply into the meaning and implications and effects on other people of discrimination and racist remarks. Lessons on the Human Rights Commission website will challenge the students to further understand the deep hurt that racist and discriminatory remarks can have on other people.

- Note of caution to teachers: Comparison of what it was like to live in Australia pre 1788 compared to the first years of the colony and then onto today should be led as strength-based discussion and not reliant on stereotypes or static ideas of Aboriginal and Torres Strait Islander peoples or histories.

Assessment Strategies

In the independent phase the students perform a joint or independently constructed source group presentation. 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). Pictures, posters and protest placards could be used in assessment conditions as a summative assessment tool.

HASS Skill – Source Analysis

	A	B	C	D	E
Source Analysis	<u>considered</u> examination of sources to: <ul style="list-style-type: none">• determine their purpose• identify different viewpoints	<u>informed</u> examination of sources to: <ul style="list-style-type: none">• determine their purpose• identify different viewpoints	examination of sources to: <ul style="list-style-type: none">• determine their purpose• identify different viewpoints	<u>partial</u> examination of sources to: <ul style="list-style-type: none">• determine their purpose• identify different viewpoints	<u>fragmented</u> examination of sources to: <ul style="list-style-type: none">• determine their purpose• identify different viewpoints