



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

## Migrants and their right to vote in Australia

The right to vote in Australia is confined to Australian 'citizens' (apart from one exception discussed below). 'Citizens' include migrants born overseas who have been naturalised as Australians. Before federation, some Australian colonies denied the vote to certain people from non-European countries, even if they had been naturalised.

In Western Australia, 'Aboriginal natives of Asia or Africa' were not allowed to vote and in Queensland 'Aboriginal natives of... India, China or the South Sea Islands' were also excluded. The word 'Aboriginal' here meant 'indigenous' or 'native' to those places. The Northern Territory (which was part of South Australia) denied the vote to immigrants from India and others who were not born British subjects, or were not naturalised persons from European or American backgrounds. Other Australian colonies did not discriminate in this way.

[Section 25](#) of the Commonwealth Constitution recognised that a State might continue to exclude people from voting on the basis of their race and punished the State by reducing its proportionate representation in the House of Representatives if it did so. Section 25 was based on the [14th amendment](#) to the United States Constitution, which was intended to discourage discrimination against freed slaves.

### The Commonwealth Franchise

Despite the intent behind section 25, the Commonwealth Parliament imposed racial discrimination in its [Commonwealth Franchise Act](#) in 1902. Although the draft law proposed by the Government did not include such discrimination, it was changed during the debate. The new section 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 the Electoral Roll unless so entitled under section

forty-one of the Constitution'. Māoris had long had the vote in New Zealand and were therefore permitted to vote in Australia if they were residents.

[Section 41](#) of the Constitution protected the federal voting rights of people who were enrolled as voters in the States. It was put there to protect the existing rights of South Australian women, who could already vote in their colony from 1895 and did not want to lose their rights at the federal level. It should also have prevented people from being excluded from voting at the federal level on the basis of their race, if they were given voting rights at the State level. But there was some uncertainty as to whether section 41 only applied to people enrolled to vote before the Commonwealth first passed its law about the franchise in 1902, or to anyone who gained a right to vote in a State after 1902.

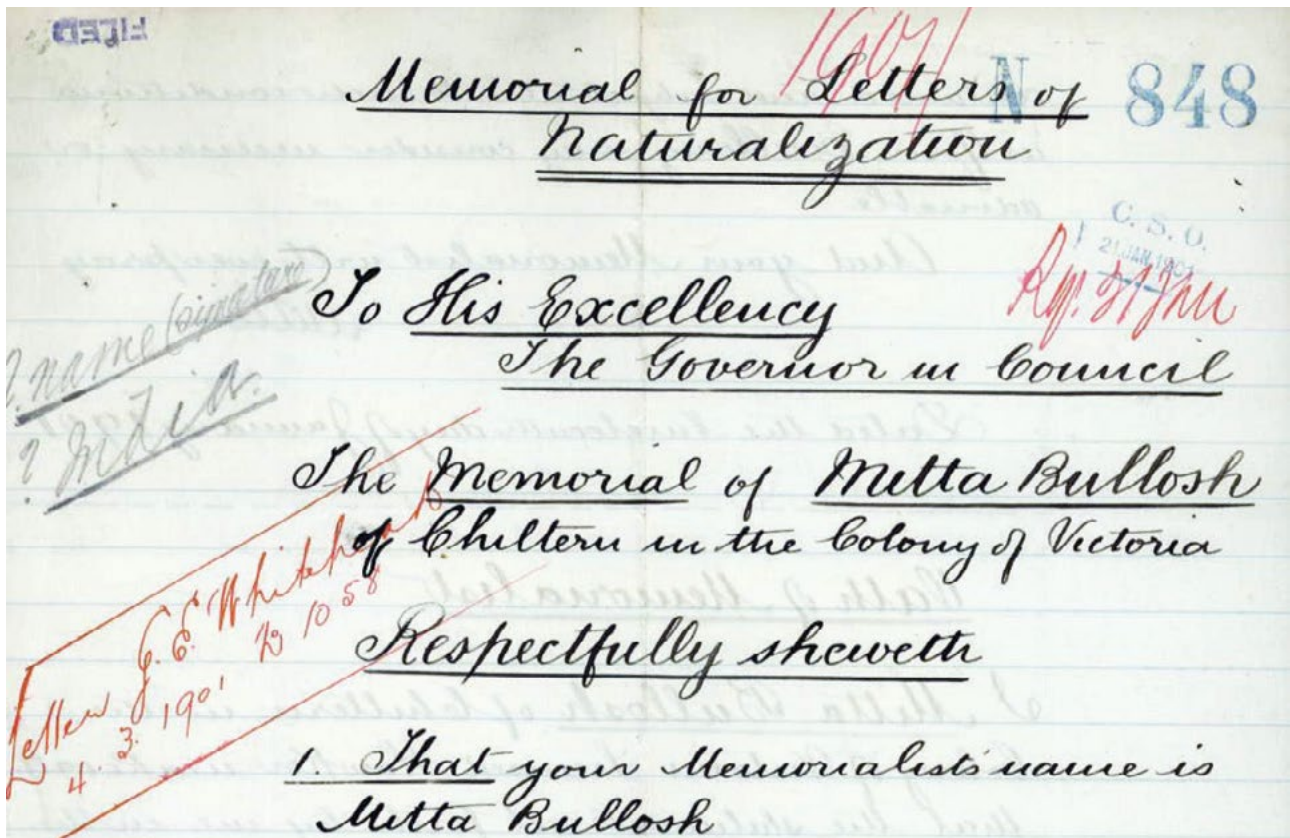
### BRITISH INDIANS

#### COMMONWEALTH VOTING RIGHTS.

Melbourne, Dec. 11.

The right of natural born British Indians to have their names placed on the Commonwealth roll is apparently to be admitted by the Federal Crown Law authorities. The appeal against a magisterial decision has been abandoned.

When the matter came before the High Court Mr. J. H. Keating, representing Mitta Bullosh, the Indian whose name the magistrate ordered should be placed on the roll, announced that he would ask the court to interpret section 41 of the Constitution. The hearing was set down for February, and an application will now be made on behalf of the Federal Crown Law Office for a dismissal of the appeal on the grounds of "want of prosecution."



## The Bullosh case

Mr Bullosh Naturalization | 1901  
Source: National Archives of  
Australia

Mr [Mitta Bullosh](#) came from India in 1882 and lived in Melbourne. He was a 'natural born subject of Great Britain' because India was part of the British Empire. He tried to enrol to vote in 1924 for Victorian elections and for Commonwealth elections. His Victorian application succeeded, but his Commonwealth application was rejected because he was considered to be an 'aboriginal native of Asia'. He took action in a [court](#) to have his name inserted on the Commonwealth electoral roll under section 41 of the Constitution. The magistrate agreed with Bullosh that he was entitled to vote in Victorian elections, and as a consequence, section 41 of the Constitution protected his right to vote in Commonwealth elections. He ordered that the Commonwealth enrol Bullosh to vote.

The Commonwealth decided to appeal the decision. But the [appeal was withdrawn](#) after the Indian Government complained to the British Colonial Office about the treatment of Indians in Australia. The British Government also took the view that it was wrong to discriminate against Indians, who were part of the British Empire. The Commonwealth Government surrendered on this point and changed the law in 1925 to give Indians living in Australia the right to vote in Commonwealth elections. Mr Bullosh was therefore victorious for all Indians in Australia. It was also a significant blow for the 'White Australia policy'.

But the [newspapers](#) noted that this case did not affect the right to vote of [Chinese people](#) in Australia. Bullosh had the right to vote in Victoria because he was a British subject born in India. Chinese people were not British subjects and had been excluded since 1903, as part of the White Australia policy, from being naturalised as Australians. This meant that they could not qualify to vote in those States, such as Victoria, which did not discriminate on racial grounds in relation to voting, but still required that voters be British subjects or naturalised.

A contrasting case is that of Mr Jiro Muramats. He had been born in Japan but had succeeded in being naturalised in Australia. He managed to get on the Western Australian electoral roll, despite the Western Australian law that disqualified from voting any 'aboriginal native of... Asia'. He then claimed a right to be enrolled at the Commonwealth level, due to the application of section 41. He failed, because the [High Court](#) accepted that he was disqualified under the State law, so that section 41 did not operate.

"D"

**CERTIFICATE OF SUMMARY CONVICTION OR ORDER.**

VICTORIA.

No. 114.

REGISTER of Convictions, Orders, and other proceedings in the Court of Petty Sessions at *Melbourne*

*Wednesday* the *third* day of *September* 19*24*

No.	Prosecutor, Informant, Complainant, or Applicant.	Accused or Defendant.	How before the Court. (Arrest on View, Warrant or Summons.)	Fees.			Charge, Cause, or Proceeding.	Decision, Memo. of Conviction, or Order.	Remarks.
				£	s.	d.			
1830	<i>Mitta Bullosh</i>	<i>G G Meller</i>	<i>summons 27/9/24</i>		<i>2</i>	<i>6</i>	<i>For an order directing his name be enrolled under a claim for enrolment under the Commonwealth Electoral Act 1918-1922 Roll for the Electoral District of Melbourne</i>	<i>Order that the name of Mitta Bullosh be added to the Electoral Roll for the Electoral District of Melbourne</i> <i>ago Philip Cohen P.M.</i>	<i>stay for 14 days</i>

I, being the Clerk of the Court at which this Register is kept, do hereby certify that the above is a true extract from such Register of the Conviction above set out.

Dated at *Melbourne* this *26th* day of *September* 192*4*

NOTE:—Fee Stamp, 1s., unless issued to an officer not liable to pay fees.

*W. P. Bieske*  
Clerk of Petty Sessions.

## Removal of racial restrictions

The *Commonwealth Electoral Act 1925* addressed both problems, making it clear that a person could vote at the Commonwealth level if he or she was 'a native of British India' or a person who had been naturalised under an Australian law. The racially discriminatory restriction on the franchise was not removed completely until 1961.

## The position today

Today, people can vote at the Commonwealth level if they are [Australian citizens](#) and not otherwise disqualified. People who live permanently in Australia and were on the electoral roll before 26 January 1984 because they were 'British subjects' (including people from the United Kingdom, Canada and New Zealand) have been allowed to remain on the electoral roll and can still vote, even though they have not taken out Australian citizenship.

No one is excluded from voting anymore on the ground of race. The High Court decided in the [Roach](#) case that the Constitution now protects a 'universal franchise' and that any law that excluded people from voting on the basis of race would be invalid. However, people can still be excluded from voting if they are not citizens of Australia, because citizenship is different from race.

Court order that Mitta Bullosh be added to the electoral roll | 1924  
Source: National Archives of Australia

This means that permanent residents and people in Australia on visas can be excluded from voting. Australian citizens who have [moved overseas](#) permanently, or do not intend to return to live in Australia within 6 years, are also excluded from voting. The validity of this exclusion has not yet been challenged in a court. Many countries let their overseas citizens vote in elections, no matter how long ago they left the country.

Should Australia do so too, or is it better that the people who actually live in Australia decide who make the laws within Australia?

**SUBDIVISION OF CARLTON SOUTH, 1931.**

821	Buckman, Mavis Heather, 146 Elgin st., student, F.
822	Buckman, Norman, Post Office, Carlton, postmaster, M
823	Buckman, Rachel, Post Office, Carlton, home duties, F
824	Buhagiar, Charles, 605 Swanston st., setter, M
825	Bullas, May, 210 Cardigan st., home duties, F.
826	Bullosh, Mitta, 162 Berkley st., dealer, M
827	Buntine, Albert, 175 Bouverie st., labourer, M
828	Bunting, John, 282 Cardigan st., labourer, M
829	Bunting, Mary, 282 Cardigan st., home duties, F

Electoral roll | 1931  
Source: Australian Electoral Commission







## Topic 5.2: Lesson/ Activities Five

(Special Extension Lesson)  
"Take the Australian  
Citizenship Test"



AUSTRALIAN  
CONSTITUTION  
CENTRE

### Time

1 hour or this lesson may be undertaken over a term or year to complement other topics and units of work

### Teaching Reference Document

TRD 24: Migrants and their right to vote in Australia

### Teacher Instruction

- Having studied the TRD 24 students are told to imagine they are a new migrant to Australia. They may like to write a story about why they have come to live here, and that may be based on a relative who immigrated. Students study the document "[Australian Citizenship: Our Common Bond](#)".
- The class engages in discussions and debates on core values and what it means to be an Australian citizen.
- Many new migrants in Australia have become leaders in business, their profession, the arts, public service and sport through their hard work and enterprise. Students research their own family immigration stories. They could be first generation stories or go all the way back to convicts. Each student turns their story into an illustrated booklet and reads it as a presentation to the class.

\* Note to teachers: Be aware of cultural sensitivities in your students when exploring the content in this lesson.

### Assessment

Teacher chooses appropriate questions from the practice [Australian citizenship online test](#), which fall within student areas of knowledge and uses them to test students.

