



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 - Adults and children

The Commonwealth Constitution does not say who can vote in federal elections. But it does say in section 41 that no 'adult person' who has or acquires the right to vote in State elections shall be prevented from voting in federal elections. Who is an 'adult person'? Does it depend upon what people thought at the time the Constitution was enacted, or does it depend upon what people think now? In 1900 an 'adult person' was someone who was 21 years of age, or older. Now we think of 18 as the age at which people become adults.

Before federation, the colonies used 21 as the age at which a person could first vote. When the Commonwealth Parliament passed its first law about who could vote in federal elections, it too said that a person had to be 21 years of age or older to vote.

War and the right to vote

If people can be sent off to war to fight for Australia at the age of 18, it seems unfair if they cannot vote. This point was made during World War I. As a consequence, section 39(2) of the [*Commonwealth Electoral Act 1918*](#) gave all current and former members of the armed forces, who were British subjects and had lived in Australia for the previous 6 months, the right to vote in Commonwealth elections regardless of their age. But this provision had a time limit. It only lasted until 3 years after the end of the war. Then the minimum voting age went back to 21.

The same problem arose during World War II. The [*Commonwealth Electoral \(War-time\) Act 1943*](#) allowed serving and discharged members of the defence forces who were under 21 to vote in federal elections if they had served, or were serving, outside Australia during the war.

Voting Under Fire
Source: Australian War Memorial





*The 2022 Commonwealth election
Source: AEC*

In the 1960s the issue was complicated by the laws that allowed 20 year olds to be conscripted to national service. They could be sent to fight in Vietnam. Again, it was argued, that if this was so, they should also have the right to vote. In 1966 a [law was passed](#) to give Members of the Defence Force, who were involved in active service overseas in South-East Asia, the right to vote, even if they were under 21. But this did not extend to other national service conscripts who served within Australia.

Lowering the voting age to 18

The Labor Party tried and failed in 1968, 1971 and 1972 to get the voting age lowered to 18. Some saw their campaign as being about political advantage, as young people are more likely to vote for Labor. Others saw it as a matter of fairness. If 18 year olds can engage in other adult activity, such as working full-time, paying taxes, marrying and joining the armed services, then they should also have the right to vote.

At the State level, the voting age was lowered to 18 in New South Wales and Western Australia in 1970. South Australia lowered the voting age to 18 in 1971. In 1972, three South Australians, who were between 18 and 20 years old, then applied to be enrolled on the Commonwealth's electoral roll. One of them was Susan King, the daughter of the South Australian Attorney-General. Their applications were rejected and they challenged this in the High Court.

They argued that section 41 of the Constitution protected their right to vote at the federal level, because they had a right to vote at the State level. Susan was represented in the High Court by Lionel Murphy, who was soon to become the Attorney-General of the Commonwealth at the next election and later a High Court judge.

Section 41 of the Constitution applies to an 'adult person', so it was necessary for Susan to convince the High Court to interpret 'adult person' as including an 18 year old. Murphy argued on Susan's behalf that 'adult person' means a mature person and that in 1972 an 18 year old South Australian fitted that description. He said that 18 year olds could marry, they could be convicted of criminal offences and sentenced to death under the (then) Commonwealth law and could be required to serve in the armed forces. He presented evidence to the Court to show that 18 year olds are accepted in the community as adults.

The High Court in [King v Jones](#) rejected the argument that section 41 applied to 18 year olds. It looked to the historical meaning of 'adult' at the time that the Constitution was enacted in 1900. Back then, an adult was a person who was 21 years old, or older. The Justices pointed out that the word was intended to have a certain meaning that would apply uniformly across the country – not a meaning that could be changed by any State. They did not consider it appropriate to change its meaning in the same way as community views have changed, as they considered the word was chosen to achieve stability and certainty.

There had previously been a debate about whether section 41 of the Constitution should be interpreted narrowly, so that it only protected the rights of people who had been enrolled to vote before the Commonwealth passed its own franchise law in 1902, or whether it should be interpreted broadly, so that it protected the rights of anyone who had a right to vote at the State level at any time. As Susan had obtained the right to vote well after 1902, section 41 would only be relevant to her if the broad view was taken. But the Court did not find it necessary to decide which approach to take, because it decided that she was not an 'adult'.

In a [later case](#), the Court took the narrow view of section 41. This means that it no longer protects voting rights, because all people who were enrolled to vote in 1902 are now dead. Section 41 is therefore dead too.

Even though Susan lost her case, Labor was soon elected to power at the Commonwealth level and in 1973 lowered the voting age to 18.

Lowering the voting age to 16

Some now argue that the voting age should be lowered to 16. This is because many of the actions taken in our country today (eg on climate change) can have serious consequences for Australians many decades into the future. Some people under 18 already pay tax, work and have married. [Arguments](#) for and against lowering the voting age are discussed [here](#).

Some countries, such as [Austria](#), have already introduced voting for 16 year olds. Sometimes the voting age is lowered for a particular occasion, such as the vote on [Scottish independence](#) in 2014, and then [extended](#) to all elections.

Lowering the voting age raises a question of how compulsory voting should apply. While some 16 and 17 year olds might be well-informed and want to vote, there may well be others who are not interested or equipped to vote and would think it unfair if they were fined for not voting. For this reason, some have argued that voting should be voluntary for 16 and 17 year olds, and then compulsory once a person turns 18.

What do you think? Should 16 and 17 year olds be allowed to vote and should they be required to vote?



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

Right to vote - Other qualifications and disqualifications

The right to vote (the 'franchise') has been restricted on the ground of age, race, citizenship, sex and conviction of crimes. But there have also been many other grounds upon which people have been qualified or disqualified from voting. They include the following:

Property ownership and income

In the nineteenth century, voting was often restricted in the Australian colonies to those who owned property, or leased property of a particular value, or had a certain level of income. The idea was that those who were rich contributed to the system of government by paying taxes and should therefore be the ones who benefited from the right to vote. This was because one of the roles of Parliament is to determine how taxes are spent.

There had long been a catch-cry of 'no taxation without representation'. But it also worked in the reverse – that representation was confined to the most well off, who paid the most taxes. It also meant in some of the colonies that a person who owned property of sufficient value in different electorates could vote in each of those electorates. This was known as plural voting. A rich person with lots of different properties could therefore exercise greater political power by having a right to vote in a number of different electorates on election day.

When the Commonwealth Constitution came into force, it banned plural voting at the federal level. [Section 30](#) says that in choosing Members of the House of Representatives, 'each elector shall vote only once'. Property ownership or income were never qualifications for voting at the Commonwealth level.

Receipt of charitable aid

In the nineteenth century, the laws in New South Wales, Victoria, Queensland and Western Australia excluded people from voting if they lived in charitable institutions or received public charitable aid. This meant that people who were poor, disabled or otherwise disadvantaged had no power to influence the laws that affected them. It also meant that many Indigenous people, in colonies where they were not excluded from voting on a race basis, were still denied the right to vote because they lived in missions that were considered charitable institutions. While these disqualifications applied in the colonies, and for a while in the States, they did not apply at the Commonwealth level.

Mental incapacity

[Section 93](#) of the *Commonwealth Electoral Act 1918* (Cth) says that a person who 'by reason of being of unsound mind, is incapable of understanding the nature and significance of enrolment and voting' is not entitled to be on the electoral roll or to vote. A person's name can be removed from the electoral roll if a registered doctor supports this action with a certificate declaring that due to unsoundness of mind the person is incapable of understanding the nature and significance of voting. This can be used, for example, so that those suffering from serious dementia are not fined for failing to vote when they can no longer understand their obligation to do so.

Residence

In the past there have been restrictions on voting based upon how long a person has lived in the relevant colony, as well as how long they have lived in the electorate concerned.

These days, a person can [enrol to vote](#) in an electorate if he or she has lived at an address in the electorate for the last month. But if the person moves house to another electorate and [does not change his or her enrolment details](#) in time before the next election, he or she cannot vote under their old address and may temporarily lose their right to vote.

There are special provisions to allow [homeless persons](#) to vote and people in Australia's territory in [Antarctica](#) and those based overseas.

Graduate electorates

For a short period, from 1876 to 1880, the graduates of the University of Sydney had their own electorate in New South Wales. This followed a British tradition of granting special voting rights to graduates, even if they did not satisfy the property rights needed to get a vote.

The Members elected by University graduates to hold the seat were first, William Windeyer, later to become a Justice of the Supreme Court of New South Wales, and next, Edmund Barton, later to become Australia's first Prime Minister and one of the first Justices of the High Court.

Employment

In some colonies, such as New South Wales and Queensland, people could be excluded from voting because of their employment in particular jobs that required impartiality. This applied to police and members of the army and navy. Because their role was to defend and protect the government, regardless of who comprised the government, it was thought that they should not commit themselves to supporting one party or another by voting.

It was a way of trying to keep them 'above politics', just as the Queen does not vote and traditionally, the Governor-General and Governors choose not to vote while they are in office. They advise the Electoral Commission of this so they are not fined.

Domestic violence, vagrancy and failing to provide maintenance

New South Wales, when it was a colony, had the most extensive list of exclusions from voting. They denied the right to vote to anyone who within the previous year had been convicted of being 'an habitual drunkard, an idle and disorderly person, or incorrigible rogue, or a rogue and vagabond'. These provisions were directed at people who had no means of support and who begged or stole for a living (in the days before social welfare). They were not considered worthy of a vote in those days, because they were not seen as contributing to society. Views are quite different today, recognising the inherent worth, dignity and rights of each person.

In addition, any man who had not complied with a court order requiring him to pay maintenance to his wife or children, or who had been convicted of an aggravated assault upon his wife, was disqualified in New South Wales from voting for a year.

It is interesting that in the nineteenth century, when women and children were often treated as the property of a man, his domestic abuse and failure to fulfil his financial responsibilities to his family were regarded as sufficiently serious breaches of the community's standards for a man to be punished by losing his civic right to vote.



Topic 5.2: Lesson/ Activities Six

The Constitution and the Right to Vote in Australia



AUSTRALIAN
CONSTITUTION
CENTRE

Time/Lesson	Learning Goal
<ul style="list-style-type: none">1 hour	To <u>identify</u> the reasons why Australians were denied the right to vote in the past and why more people have the right to vote today.

Rationale	Success Criteria
The value students place on the right to vote is affected by their understanding of past restrictions on that right and how people have had to struggle to achieve the vote. Examining past exclusions also reveals how in the past people were valued, dismissed and excluded and causes us to reflect on how we regard people today.	Students can identify different grounds for exclusion from voting in the past and can understand why people are treated differently today and the franchise is much broader. Students see the value of the right to vote.

Teaching Reference Document
<ul style="list-style-type: none">TRD 25: Right to Vote – Adults and childrenTRD 26: Right to Vote – Other qualifications and disqualifications

Resources
<ul style="list-style-type: none">Voting Age Experiment - BTN: https://www.youtube.com/watch?v=hN6ouVkjKm4Voting Age Experiment Results - BTN: https://www.youtube.com/watch?v=ea1yLhlw-5sVoting at 16: Does it make a difference? - BBC My World: https://www.youtube.com/watch?v=FBIZFfznOgPush to lower the Voting Age - The Project: https://www.youtube.com/watch?v=pYxS6Ud989U

Tuning In
<ul style="list-style-type: none">Watch one or more of the above video resources concerning the question of lowering the voting age. Hold a class discussion of the arguments for and against doing so.Waleed Aly on 'The Project' (see above resource) said that the voting age should be lowered to the age of six, as voting should start with your formal education. Ask students whether they agree, and if not, at what age should people start to vote? What problems might arise if six year olds had to vote?

Teacher Instruction
<ul style="list-style-type: none">Discuss the different grounds set out in TRD 26 for granting or refusing people the vote.Ask students to categorise them according to the underlying reasons. Such a categorisation might include the following: lack of capacity (age and mental incapacity); perceived valuable contribution to society (property owners and university graduates); impartiality (people holding particular jobs needed to be seen as impartial); perceived lack of contribution to society (people in receipt of charity); breach of society's standards (domestic abuse). Ask student why we see some of these things differently today. Discuss the idea of universal rights and equal human dignity - that a person receiving unemployment bene its and a property owner should have the same right to a vote.

Wrapping It Up

The history of the franchise has been one of its expansion so that more people can have a say and influence upon government. Discuss how enfranchising a group can affect the type of issues in election campaigns and the type of laws that get enacted. If 16 and 17 year olds could vote, what different laws might we see?

Assessment

During World War I, World War II and the Vietnam War, laws were temporarily changed so that Australians serving overseas could vote in elections, even if they were otherwise disqualified, eg because of their age. Ask students to choose a war and then imagine they are a campaigner who wants to ensure that all serving soldiers during that war should be able to vote. Task students with writing a 500 word submission to the Minister for Defence which gives reasons for extending the right to vote to serving members of the Australian Defence Force. Assess on the basis of: (a) understanding of the issue; (b) use of logic and evidence; and (c) persuasiveness.

Extension

The franchise has expanded significantly over the last 200 years. Ask students to look ahead and ask how the franchise might expand further in the future? Might the franchise contract? What reasons do you think would justify taking away someone's right to vote? Is that consistent with principles of equality, fairness and human dignity?