



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

Compulsory voting – burden or privilege and responsibility?

Compulsory voting is uncommon in Western democracies. Some people regard compulsory voting as undemocratic because it forces you to choose from among candidates, rather than allowing you the choice not to choose. They ask why we should force the uninterested to vote. Isn't it better to leave voting to those who want to vote?

Others argue that we can only know the will of the people if everyone votes. This prevents elections from being hijacked by the wealthy or extremist groups, who are better able to get people to turn up to vote. If only 40% of people vote, and one side wins with just over half the vote, then that means that perhaps only 21% of the people supported the victorious party. This makes people doubt the legitimacy of the government. But when 95% or more of the electorate votes, we can be more confident that the outcome reflects the will of the majority of the people, even if we don't like the result.

The history of compulsory voting in Australia

Compulsory voting was introduced in Australia in stages. First, in 1912, the enrolment of eligible voters became compulsory at the federal level. There was no obligation to vote, but compulsory enrolment was considered the best way of creating accurate lists of who can vote, so as to avoid voting fraud. When people objected to the compulsion involved, the Commonwealth Minister, King O'Malley, pointed out in the House of Representatives on 4 December 1911, that

other matters were already compulsory, such as the registration of births, deaths and marriages, vaccinations, military service and the census. Certain professions, such as doctors, were required to be registered, it was compulsory to notify officials about cases of infectious disease and there was compulsory education for children. He asked, how could anyone therefore object to the compulsory enrolment of those entitled to vote?

In 1914, Queensland went a step further, legislating for compulsory voting as well as enrolment. This became an important precedent. At the 1922 federal election, only 58% of voters turned up to vote. But in Queensland, 82% of voters did so. It seemed that they had become used to voting at the State level, so did it at the federal level too. This encouraged federal Members of Parliament to support compulsory voting, and in 1924 a law requiring compulsory voting in federal elections was passed with support from both sides of Parliament.

Other States followed, from Victoria in 1926 to South Australia in 1942. Voting only became compulsory for Indigenous Australians in 1983, because only then were they required to enrol to vote. Compulsory voting is now a normal part of Australia's voting system and opinion polls routinely show strong public support for it.

What does compulsory voting mean?

Section 245 of the *Commonwealth Electoral Act 1918* (Cth) says that it is 'the duty of every elector to vote at each election'. It is an offence to 'fail to vote' at an election, with a penalty of a small fine of \$20, or more if it is contested in court. Exemptions are made for certain voters, such as those in Antarctica or otherwise overseas, and a person is excused if he or she has a 'valid and sufficient reason' for failing to vote, such as illness or incapacity.

But what does 'to vote' mean? Does it mean that you have to fill out a valid vote on the ballot paper, or is it enough to turn up at the polling booth, take a ballot and put it in the ballot box without marking it?

Sections 233 and 239-240 of the *Commonwealth Electoral Act* say that an elector shall mark his or her vote on the ballot paper. The law therefore makes marking a choice on the ballot paper compulsory. But because it is a 'secret ballot' a person could not be fined for marking an informal vote (i.e. one that is blank or not validly filled out), because there would be no evidence of it (unless the voter publicly admitted that he or she had not validly voted, or the voter was witnessed taking the ballot paper directly from the poll clerk to the ballot box without marking it). There is still a legal duty to mark a vote on a ballot paper, even if it is unlikely that a person would be caught for failing to do so.

Why is this important? The objections to compulsory voting are reduced if a voter can fulfil their legal duty by voting informally if they object to all the candidates. In South Australia, for example, the law allows voters to leave their ballot blank. In India, the Supreme Court decided in 2013 that democracy was 'all about choice' and that the people must have the choice to vote for 'none of the above'. It saw this as an essential part of freedom of expression.

Problems also arise where it is compulsory to list all candidates in the order you prefer. What if you feel you can only rightly vote in favour of two candidates, but have to give preferences to candidates that you completely oppose? What if your preferred two candidates are eliminated, and your preferences are used to elect a person against your will? Does this represent your will and is it a true choice?

What does the Constitution say about compulsory voting?

The Commonwealth Constitution does not say anything about whether voting should be compulsory or voluntary. (In comparison, section 11B of the NSW Constitution says that voting is compulsory at NSW elections.)

Sections 7 and 24 of the Commonwealth Constitution, however, say that the two Houses of the Commonwealth Parliament must be 'directly chosen by the people'. This leads to two opposing arguments, depending on whether you focus on the words 'chosen' or 'people'. On the one hand, the High Court has said that this 'choice' must be genuine and free. Some say that forcing voters to give preferences for candidates they oppose breaches sections 7 and 24 of the Constitution because this is not a free choice and does not represent their will.

On the other hand, some say that the Houses are not truly chosen by 'the people' if only some of the people vote. Compulsory voting ensures that that Houses are truly chosen by 'the people', and not a minority. Some High Court judges have previously argued that the Constitution requires greater, not less, participation of the people in elections. If this approach were followed, it would make it difficult to remove compulsory voting.

Voting is a civic duty

Voting in Australia is treated as both a privilege and a civic duty. Part of being a citizen is not only accepting the advantages of citizenship, but also the responsibilities and duties, such as voting in elections and referendums. Being compelled to turn up and mark a ballot paper now and then is not a great burden. It is certainly less of a burden, for example, than sitting on a jury or undertaking compulsory military service. But while it is a small duty, it is one of the most important duties that citizens exercise, as it protects the democratic system and ensures the government is legitimately elected by a majority of the people.





Topic 5.2: Lesson/ Activities Eight

Compulsory voting – Burden or
privilege or responsibility?



AUSTRALIAN
CONSTITUTION
CENTRE

Time/Lesson

- 1 hour

Learning Goal

To identify groups that have previously had to fight for the right to vote and to consider how that may shape their views on whether compulsory voting is a burden or a privilege. To experience the difference that compulsory voting can make. To understand the difference between treating people exactly the same and treating them fairly in a way that takes into account relevant differences.

Rationale

Students have explored the changing nature of the right to vote under the Australian Constitution. They have considered the exclusion of various people throughout history and how these people have had to fight for their right to vote. They have empathised with affected groups and viewed the issues from multiple perspectives. This activity affords them the opportunity to synthesise their understanding and apply it in a practical context. It allows them to communicate their views on contentious issues and then experience what it is like to give effect to those views by voting, or fail to influence a vote by abstaining.

Success Criteria

Students communicate their understanding of how different groups may feel about compulsory voting laws. They consider the evolution of the right to vote under the Constitution over time and experience the effect of voting or abstaining from voting.

Teaching Reference Document

- TRD 28: Compulsory Voting – Burden or Privilege and Responsibility?

Resources

- Printed ballot papers on which students can mark a Yes/No vote in secret.
- A class list which could be used as an electoral roll to mark off who chose to vote and who abstained.
- A ballot box (which could be a cardboard box with a slit in the top) in which to place them.

Should it be compulsory for Aboriginal and Torres Strait Islander people to enrol to vote?

- In 1962, when the Commonwealth law was changed to ensure that all Aboriginal people and Torres Strait Islanders had the right to vote in Commonwealth elections, no matter which State or Territory they came from, the law expressly made enrolment to vote voluntary (not compulsory) for them.
- Some people argue that this was discriminatory because they were treated differently by being given the freedom to enrol and vote, but not the obligation to do so. They say that Indigenous Australians only achieved equal voting rights in 1983 when the law was changed to make voting enrolment compulsory for everyone.
- On the other hand, the reason enrolment was made voluntary for Indigenous Australians in 1962 was out of respect for the fact that some Aboriginal and Torres Strait Islander people lived separately from Australian society in their own communities. It seemed unfair to force them to vote in a political system that they may not accept or have no practical engagement with, or to fine them for not voting.
- Hold a class discussion on whether fairness always require treating everyone exactly the same, or should differences sometimes be taken into account to ensure fairness? For example, is it fair for 6 year olds to compete against 18 year olds in a sporting competition? If we accept that fairness may require rules to be adjusted to accommodate genuine differences (eg in age, weight or strength), then how do we decide which differences to take into account and which ones we should not, because it is unfair discrimination (eg refusing someone the right to vote because of their sex or race)?

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- View: <https://www.youtube.com/watch?v=RQhCsl-1LU>

Teacher Instruction

- Revise all knowledge about the right to vote over time and how people have been excluded from the right to vote throughout history. Ask students to consider whether people who come from a group that has had to fight for the right to vote are more likely to see voting as a privilege or a burden.
- Identify some important issues the class has agreed needs debate. Examples might include:
 1. Climate change: should it be compulsory by 2030 for Australians to only drive electric cars?
 2. Indigenous rights: should it be compulsory for Indigenous Australians to vote?
 3. Should the voting age be lowered to 16?
- Having finished writing their own views on the topic, a class vote is taken.
- Vote 1: a non compulsory vote is taken. Students are told that they are free not to vote or to vote informally (i.e. leave the ballot blank or not mark a valid vote on the ballot). Have a nominated student, or the teacher, play the role of a poll clerk in marking off the names of those who choose to vote on a class list. Students should vote using a secret ballot system, where they mark their vote on a ballot, fold it in half so the vote can't be seen and deposit it in the ballot box.
- Vote 2: This time require all students to vote with a valid ballot. Does this change the outcome of the vote?
- Ask those students who abstained from voting or voted informally the first time how they felt about not being able to influence the outcome.

Wrapping It Up

- Students have class debates on whether Australia should remain one of the few countries in the world to have compulsory voting or should it be abolished? Can it be abolished? See: 'Some High Court judges have previously argued that the Constitution requires greater, not less, participation of the people in elections. If this approach were followed, it would make it difficult to remove compulsory voting.'
- Students write down their own arguments in point form for whichever side they choose.
- Take a class vote on who wins.

Differentiation

Differentiation is built into this task. Offer children who have difficulty writing an alternative – digital copy, verbal answers. The consolidation and complexity is built into the task through the depth of completion.

Extension

Research how many countries in the world have compulsory voting? Name them and mark them on a map of the world.

Take one of the issues the whole class voted on, now only let 40% of the class vote on that issue. Work out the percentage of the class that voted in favour of the proposition. Point out that if this was a government election, the government would have been elected by only that proportion of the Australian population.

Assessment Strategies

The activity can be assessed on knowledge, understanding and skills ([5.2. Lesson 7. Teacher Resource 1](#))

HASS Skills

| | A | B | C | D | E |
|-----------------------------|---|---|---|--|--|
| Knowledge and Understanding | <u>thorough</u> description of different views on how to respond to an issue or challenge | <u>detailed</u> description of different views on how to respond to an issue or challenge | description of different views on how to respond to an issue or challenge | identification of different views on how to respond to an issue or challenge | <u>statements</u> about different views on how to respond to an issue or challenge |
| Skills – Communication | <u>purposeful</u> presentation of ideas, findings and conclusions in a range of communication forms with <u>considered</u> use of <u>relevant</u> discipline-specific terms and appropriate conventions | <u>informed</u> presentation of ideas, findings and conclusions in a range of communication forms using <u>relevant</u> discipline-specific terms and appropriate conventions | presentation of ideas, findings and conclusions in a range of communication forms using discipline-specific terms and appropriate conventions | <u>partial</u> presentation of ideas, findings and conclusions in a range of communication forms using <u>aspects</u> of discipline-specific terms and appropriate conventions | <u>fragmented</u> presentation of ideas, findings and conclusions in a range of communication forms using <u>everyday</u> language |



HASS Skills

| | A | B | C | D | E |
|-----------------------------|--|---|---|--|--|
| Knowledge and Understanding | thorough description of different views on how to respond to an issue or challenge | detailed description of different views on how to respond to an issue or challenge | description of different views on how to respond to an issue or challenge | identification of different views on how to respond to an issue or challenge | statements about different views on how to respond to an issue or challenge |
| Skills – Communication | purposeful presentation of ideas, findings and conclusions in a range of communication forms with considered use of relevant discipline-specific terms and appropriate conventions | informed presentation of ideas, findings and conclusions in a range of communication forms using relevant discipline-specific terms and appropriate conventions | presentation of ideas, findings and conclusions in a range of communication forms using discipline-specific terms and appropriate conventions | partial presentation of ideas, findings and conclusions in a range of communication forms using aspects of discipline-specific terms and appropriate conventions | fragmented presentation of ideas, findings and conclusions in a range of communication forms using everyday language |

