



Unit 5: Australian identity, federation and the Constitution including the intentions of the framers – Year 6 - Civics and Citizenship (C & C) Strand: Citizenship, Identity & Diversity

Topic 6.1: How and why the Australian Constitution came to be

The failure of the 1898 referendum in New South Wales to approve the Constitution

When the Commonwealth Constitution was first being drafted in 1891, there was a debate about how it should be approved. The New Zealand delegate, [Sir George Grey](#), suggested that the people should vote on it in a referendum to be held in each colony. [Sir Samuel Griffith](#), one of the leading drafters of the Constitution, objected. He thought that it was too complicated a matter to be decided by the people in a vote. In the end, the 1891 Convention agreed to leave it to each of the colonial legislatures to decide how the Constitution should be approved by their colony.

The neglect and revival of the draft Constitution

But after the Convention ended, the colonial Parliaments had other priorities and neglected the draft Constitution. In New South Wales, Parkes was no longer Premier and his successor, [George Reid](#), was suspicious of federation. He thought that the other States would spend recklessly and rely on New South Wales to foot the bill. The Labor Party, on whose support Reid relied, opposed federation. It was concerned that it could be used as a source of oppression against workers. Once New South Wales lost interest, so did the other colonies.

Federation was revived by the people, particularly those living along the Victoria-New South Wales border. They were not keen on paying tax on goods as they crossed the border and preferred the idea of a federation that was a free trade zone. At a conference in [Corowa](#) in August 1893, they proposed that each colony enact legislation to support an elected Convention to produce a revised Constitution.

This time, however, the difference would be that the process for giving effect to the Constitution would be set in stone (or, at least, legislation) in advance. They proposed that each colony enact legislation that enabled not only the election of the members of the Convention, but also, once the Constitution was completed, a referendum of the people in each colony to approve it.

This provoked greater interest in federalism. [Robert Garran](#) said that when the people voted for their representatives at the Convention, they knew that 'the gun was loaded' and that they would be called upon to vote on the resulting Constitution. It had suddenly become real, rather than another political promise.

The Enabling Acts

[New South Wales](#), Victoria, South Australia and Tasmania all enacted 'enabling' legislation to allow this to occur. Western Australia said it wouldn't hold a referendum unless its Parliament approved of the Constitution first. Queensland was consumed by an internal fight about whether it should be one colony or three, and didn't participate.

Because there was no compulsory voting at that time, some were concerned that approval by the people might not be representative of their views, if not enough people voted. So the enabling legislation for Victoria and New South Wales said the referendum would only pass if it was approved by a majority of those voting and there were at least 50,000 votes in favour. In Tasmania a minimum of 6000 votes was required. There was no minimum in South Australia.

Later, anti-federalists in the NSW Parliament shifted the goal posts by requiring 80,000 affirmative votes for the referendum to pass. This would prove to be a critical change.

The referendum campaign

The Convention completed a new draft Constitution and the referendum campaign began in 1898. Federation was opposed by people with varied political beliefs. Conservatives argued that it would massively increase the tax burden in States such as New South Wales, which would have the burden of supporting the smaller States. The Labor Party was worried that the Governor-General would have excessive powers and that the workers would be crushed by the military. The Labor Movement objected to the 'disproportion of representation in the Senate, with its [enormous power for evil](#)'. The [Australian Socialist League](#) added that the equal representation of the States in the Senate was unfair, subverting majority rule.

In New South Wales, the *Daily Telegraph* led with regular bombshell attacks on federation, many of which were inconsistent. It sought to inflame conflict between New South Wales and Victoria, arguing that the reason all sides had come together to support federation in Victoria was due to the 'one article in their political creed', being '[the plunder of New South Wales](#)'. There was so much 'fake news' that Robert Garran and his federalist friends formed a committee which wrote articles refuting all the false claims. They sent their refutations to newspapers around the colony.



The 'Herald' And 'Mail' Branch Office, King Street | The Sydney Mail | 11 June 1898
Source: National Library of Australia

The results

On the evening of the referendum in June 1898, federalist campaigners gathered in a hotel room overlooking the offices of the Sydney Morning Herald where the [votes were displayed on a great board](#) outside as they were counted. Huge crowds flocked in the streets below to watch the historic moment. Garran, [Edmund Barton](#) (later Australia's first Prime Minister) and [Bernhard Wise](#) huddled at the window, watching as the votes were recorded, with the Yes vote clearly ahead. When the number of Yes votes reached the 80,000 threshold they cheered their lungs out, almost falling out the window in their excitement.

But it was all a mistake. Someone had accidentally counted some of the results twice. The correct figure did not make the 80,000 requirement, even though a majority were in favour. Only [71,595](#) had voted for the Constitution in New South Wales. Even though it was a clear majority of voters (beating the 66,228 votes for 'No'), it was not enough to meet the 80,000 votes required by the enabling Act. The referendum failed. The federalists sank into despair and trudged home. The referendum had succeeded in the other three colonies, but in practice, federation could not proceed without NSW.

	NSW	Victoria	South Australia	Tasmania	Total
For	71,595	100,520	35,800	11,797	219,712
Against	66,228	22,099	17,320	2,716	108,363
Majority	5,367	78,421	18,480	9,081	111,349



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Topic 6.1: How and why the Australian Constitution came to be

Success of the 1899 referendum to approve Federation and the Constitution

After the devastating failure of the referendum to approve federation in New South Wales in 1898, how was the position so quickly reversed in 1899, with federation starting on 1 January 1901?

The influence of 'Yes/No Reid'

An important influence on federation in New South Wales was its Premier, George Reid. Reid had walked both sides of the fence on federation. When it came to the 1898 referendum, everyone waited to see which side he would support. He waited until shortly before the referendum was held before giving a speech. In it he criticised numerous aspects of the draft Constitution, and then declared that while he would personally vote for it, as he would not be a 'deserter to the cause', he would not recommend to voters to vote one way or the other. While he had not deserted the cause of federation, he seriously damaged it. His chopping and changing resulted in his nickname of 'Yes/No Reid'.

Once Reid saw that there was majority support for federation in New South Wales at the 1898 referendum (even though not the 80,000 needed to pass), he jumped back in favour of achieving it. He sought negotiations to alter the draft Constitution so that it would be more likely to pass a second time. At first, the other Premiers refused to take him seriously, especially as Reid was about to face an election and it seemed to be just a ploy to win back the support of federalists. But after Reid scrambled back into power at the New South Wales election, the Premiers agreed to a meeting at which alterations could be made to the draft Constitution that had previously been approved by the Convention.

The Premiers' Conference

The Premiers met in Melbourne on 29 January 1899. This time all, including Queensland, participated and reached a unanimous compromise agreement. Reid was successful in securing agreement that the capital of Australia would be in its own territory within New South Wales, but with the concessions that it be at least 100 miles from Sydney and that until the new capital was established, Parliament would sit in Melbourne.

Greater protection was also given to State boundaries from amendment, by requiring a vote of the people of the affected States. When a joint sitting was to be held to resolve a deadlock between the Houses, it would be decided by a vote of an absolute majority of members, rather than the previous special majority of three-fifths.

In addition, the constitutional amendment procedure was to be amended so that one House of the Commonwealth Parliament could not block a referendum being put to the people. Some financial changes were made as well to satisfy the concern of New South Wales that high uniform tax rates would have to be imposed to carry the financially weaker States.



Premiers' conference meeting
in Melbourne in 1899
Source: National Archives of
Australia



Instead, section 96 of the Constitution was introduced, to allow special emergency support to prop up a failing State, and certain restrictions on Commonwealth spending could be removed by the Commonwealth Parliament after a transitional period of 10 years, meaning that the Commonwealth would have greater access to the tax money received, so it could impose lower taxes.

While these financial changes were intended to gain New South Wales support, on the basis that they would result in lower uniform taxes in the short-term, they were to have serious long-term financial consequences for New South Wales and all the States.

The Referendum Campaign

Legislation enabling a second referendum was then passed in New South Wales. This time a simple majority of votes would be enough for it to pass. Reid had great difficulty in getting the NSW upper House, the Legislative Council, to pass this Act and had to ask the Governor to 'swamp' the Legislative Council with 12 new Members in order to get it through.

Opposition to federation in New South Wales was largely led by Dr MacLaurin, the Chancellor of Sydney University, who preferred unification over federation. He was also concerned about the failings of the provisions of the Constitution dealing with federal-state financial relations.

The 1899 referendum in Queensland
Source: State Library of Queensland

The Labor Party also continued to oppose federation on the ground that it breached the principle of majority rule (as each State had equal representation in the Senate) and gave too great powers to the Governor-General.

The *Daily Telegraph* again ran daily scare campaigns, particularly in relation to tax. It used a technique, seen quite often in contemporary times, of labelling people and events in a misleading, dismissive or contemptuous way. For example, it referred to the draft Constitution, as revised at the Premiers' conference, as the '[Secret Conference Bill](#)' and labelled those who supported it as the '[Any-Pricers](#)', because they wanted federation at any price. It said that New South Wales was '[mocked](#)' in the provision concerning the capital. It claimed the capital would be based in Melbourne, perhaps forever, and at least until the Parliament decided to establish a seat in New South Wales. It could then be built on the Murray River virtually in Victoria! Taking up a line that was also run during the republic campaign in 1999, the *Daily Telegraph* argued that: 'Federation under this or any Bill could [not add one jot](#) to the rights, or privileges or glories which, as subjects of the British Empire, we now enjoy'.



Robert Garran described it as a 'daily joy to demolish these bogeys in the Press and on the platform'. He revived a committee of pro-federation friends who spent their days and nights countering 'the morning alarms of the *Telegraph*'. This time they were more successful in calming fears about the effects of federation.

"Mercury " & "Tasmanian Mail " offices, Hobart, Federation referendum results | 1898
Source: Mercury Historical Collection | Libraries Tasmania

The results

The NSW referendum was held on 20 June 1899. This time, it succeeded with a yes vote of 107,420 against a No vote of 82,741. Interestingly, while there was a slim majority in favour of federation in the city, and a slim loss in the suburbs, there was major support for federation in country electorates.

New referendums had to be held in the other colonies as the Constitution that they had previously approved in 1898 had been altered at the Premiers Conference.

South Australia had already taken the opportunity, when it had a general election, to run its referendum in April 1899. Again, it passed easily. Victoria and Tasmania waited to see whether the New South Wales referendum passed first, before running theirs in July 1899. Both passed with increased majorities in favour of federation.

Queensland then held a referendum in September, also approving federation. This was enough to proceed, even though Western Australia was still uncertain whether to join. The results were:

	NSW	Victoria	Sth Australia	Tasmania	Queensland	Total
For	107,420	152,653	65,990	13,437	38,488	377,988
Against	82,741	9,805	17,053	791	30,996	141,386
Majority	24,679	142,848	48,937	12,646	7,492	236,602





Topic 6.1: Lesson/ Activities Four

Words into action: Drafting the
Constitution



AUSTRALIAN
CONSTITUTION
CENTRE

Time/Lesson	Learning Goal
<ul style="list-style-type: none">2 hours	<p>The key events and the reasons for federation</p> <p>A draft of the Constitution was revised aboard the Queensland Government steamer, <i>The Lucinda</i>, with only a small group of men involved.</p> <p>It took more than one referendum for the Constitution to pass.</p> <p>Edmund Barton and Alfred Deakin were key players in the final stages of the creation of the Constitution and taking it to England to have it passed by the British parliament and gaining Queen Victoria's royal assent.</p> <p>There is no Bill of Rights for the Australian people in the Australian Constitution.</p>
Rationale	Success Criteria
The process of drafting of the Constitution.	<p>Students will understand that...</p> <ul style="list-style-type: none">A collective written agreement can change a country.Voting is a powerful tool in bringing about change.
Teaching Reference Document	
<ul style="list-style-type: none">TRD 42: Overview of how the Constitution came to beTRD 43: Getting the British to pass the ConstitutionTRD 44: Why is the Constitution in a British Act of Parliament?TRD 45: The failure of the 1898 referendum in NSW to approve the ConstitutionTRD 46: Success of the 1899 referendums to approve Federation and the Constitution	
Resources	
High Court exhibition	
Thinking routine: Tug of War	

Teacher Instruction

Lesson outlines and guiding questions:

Discuss the advantages of Sir Samuel Griffith, Edmund Barton and Charles Kingston boarding *The Lucinda* in order to do the 'serious work' of revising a draft Constitution (away from distractions, like-minded people, committed focus) . What were their goals? Students to record the goals of the day. Design a poster to show the main features of the Constitution they were drafting:

- A bicameral Parliament with a House of Representative and a Senate.
- Responsible government, where the government comes from elected parliamentarians.
- The distribution of powers in a federal system between the Commonwealth and the States.
- A High Court established to interpret the Constitution and decide appeals.

Consider why Andrew Inglis Clark wanted some rights included in the Constitution but the majority felt that Parliament, a responsible government, and the common law would be enough to protect rights. Use the thinking routine 'Tug of War' to consider the pros and cons of having the rights of the Australian people listed in the Constitution (as with the USA) or not.

Discuss situations where voting is involved (elections, student leaders, sports captains) What factors affect how people vote? What are the features of the campaigns, or voting process? Use research to consider how the comments of George Reid may have had an impact on the referendum vote in 1898. Role-play election speeches from Edmund Barton, Alfred Deakin and George Reid. Write their campaign slogans.

Write a diary entry, or create a filmed diary entry, describing the how people felt in 1899 when the referendums in 5 colonies were successful. Choose a perspective from a politician (Barton, Deakin, Reid, Clark), a man from the general public, a woman from the general public, a non- European immigrant, or an Aboriginal or Torres Strait Islander person.

Discuss the fact that Britain proposed some changes to the Constitution before it was passed by the UK Parliament. Why did Deakin and Barton feel that the draft Constitution should not be changed once the people had approved it in a referendum? Was this unusual for the time? What did Deakin and Barton mean by saying that the people are as much sovereign as the Queen?

Create a mind-map to show thinking around Barton's statement of 'a nation for a continent, and a continent for a nation'

Differentiation/Enrichment

Differentiation opportunities:

- Tasks and investigations allow for students to show their understanding in different styles.
- Students can be provided with research material about the key people, in order to support their research.
- Students can extend their poster with additional details.
- Students can be supported with templates of the thinking routines, showing sentence starters etc to aid use and discussion.

Assessment Strategies

Assessment tasks following lesson activities:

Base on diary entry, or mind-map, or filmed diary entry, or individual student research material



Thinking Routine

Tug of War

1. Present the dilemma of whether rights should be included in the Constitution.
2. Identify the factors that “pull” at each side of the dilemma. These are the two sides of the tug of war.
3. Ask students to think of “tugs”, or reasons why they support a certain side of the dilemma. Ask them to try to think of reasons on the other side of the dilemma as well.
4. Generate “what if?” questions to explore the topic further.



Topic 6.1: Lesson/ Activities Five



AUSTRALIAN
CONSTITUTION
CENTRE

What were the incentives for
the colonies to join as a nation?
What a state to be in!

Students will understand that...

There were incentives for the separate states to join as a Federation

- Compromise needed to be sought, in order for the colonies to agree to join the Federation.

Students will know...

- Australia was comprised of 6 self-governing colonies before Federation in 1901 and the names of the colonies.
- Some descriptors of the 6 colonies.
- 4 main reasons for Federation.
- Some disadvantages and advantages for each colony agreeing to join the Federation.

Assessment task following lesson activities:

- **(Option 1)** Create an artwork that shows the colonies arguing the case for and against Federation. Consider characteristics that would visually distinguish the colonies (industry/agricultural/landmark) and possible speech bubbles to show key statements.
- **(Option 2)** Personify the states and create a role-play to have them make their case for, or against Federation, using the descriptors explored in the lesson.

Lessons outline and guiding questions

- Why should separate colonies join together as a larger federation? Explore and discuss the four main reasons for Federation: **National Pride, Defence, Immigration** and **Trade**.
- What are the benefits of 'national pride'? Does it make a more cohesive and supportive society? Should people still identify strongly with their State or Territory? Do you identify more as a Western Australian/Tasmanian/Territorian, etc, or as an Australian? Can these identifies every conflict?
- What are the benefits and risks of having a single Defence Force, rather than separate ones for each colony?
- What problems might arise from each colony having different immigration rules, when immigrants can then easily cross land borders from one colony to another? Is it better to have one immigration policy? What if that policy is unfair? Is it better for there to be choice and competition among colonies for migrants? Might some colonies prefer a more liberal immigration policy because of their specific need for workers?
- Would the economy become more productive if there was free trade within a Federation, with no taxes on goods crossing borders and no protection of workers in one State from competition from workers from other States? What if a State wants to protect an industry to preserve its continuation in the State? What if a State wants to tax particular goods (eg cigarettes) because it thinks they are dangerous? Should the Constitution allow it to do so?
- Use a Lotus Diagram to organise and develop thinking around each of the four reasons.
- How would you feel if Australia decided to combine with neighbouring countries to form one nation? What would be your argument for and against?
- Use Circle of Viewpoints thinking routine to explore the perspectives of the colonies. Create a T bar diagram to show the advantages and disadvantages for the colonies to federate.

Differentiation Opportunities

- The performance tasks and lesson activities allow children to show their understanding in different styles.
- Templates of the thinking routines can be provided for all children to access them, with example options.
- Key words should be discussed, displayed and pre-taught, in order for all students to be involved in discussion and questioning.
- Maps of Australia (including surrounding countries) should be provided and discussed to ensure understanding of all students.
- Ideas can be recorded in written form, or through audio and visual recording, using digital media.

Resources

- Lotus Diagram – Reasons for Federation
- Thinking routine: Circle of Viewpoints
- Possible interactive digital display – map of Australia, showing the colonies. Students tap on each colony and when doing so, it separates and highlights, showing other icons on which to tap. Each icon reveals something of interest about that colony pre- Federation (produce, industry, stance on tariffs, premier etc.)



Thinking Routine

Circle of Viewpoints

1. Brainstorm a list of different perspectives.
2. Choose one perspective to explore, using these sentence-starters:
 - I am thinking of ... the topic ... from the viewpoint of ... the viewpoint you've chosen.
 - I think ... describe the topic from your viewpoint. Be an actor—take on the character of your viewpoint.
 - A question I have from this viewpoint is ... ask a question from this viewpoint.

Example:

- I am thinking of Federation from the viewpoint of South Australia.
- I think women might lose the vote if the states Federate.
- A question I have from this viewpoint is how will women's rights be protected and will all of the women in Australia have the vote?