



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

## Making the Constitution – Where were the Women?

When we look at [photos](#) of the people who negotiated and wrote the words of the Constitution – it is notable that they were all men. Why? [Where were the women?](#)

In the 1800s, there were strong expectations as to how women and men should behave. The role of women was in the domestic sphere – caring for the home and family. The role of men was in the public sphere – going out to earn a living and participating in the public life of politics and business. The notion of women making public speeches, engaging in political debates and even entering a polling booth, would have been quite alien, and even shocking, for much of the 1800s.

But the campaign for the right of women to vote grew in the later nineteenth century and largely coincided with the campaign for federation. Throughout the 1890s there was a significant change in the extent to which women participated in the public sphere, so that by the end of that decade they had a markedly different role than at its beginning.

### The exclusion of women from public life

A first draft of the Commonwealth Constitution was prepared at a Constitutional Convention (ie a large meeting) in 1891. The participants were all politicians representing their colonies. Women were prevented, by law, from voting or being Members of Parliament. They were therefore not in the room when the Constitution was being drafted, and could not contribute to it.

While they might, in their homes, have influenced the ideas that their husbands and male relations relied on when writing the Constitution, women could not participate directly.

After the first draft of the Constitution failed to be supported by the colonial Parliaments, the federation movement died and was then revived by the people in groups, such as Federation Leagues and the Australian Natives' Association. But these groups also excluded women from participation, so again their capacity to influence was limited.

### Women formed their own organisations

Women started to form their own organisations, as a means of participating in public life. In the 1880s, a branch of the 'Woman's Christian Temperance Union' (the WCTU) was established in most colonies.

*Edith Cowan was the first woman to be elected to any Parliament in Australia and only the second in the British Empire to take a seat in Parliament  
Source: State Library of Australia*



It was formed by women who were concerned about the domestic violence and poverty that affected women and children as a result of excessive drinking by men. While its main aim was to restrict or abolish the sale of alcohol, it also developed policies and campaigned in other areas of concern to women, such as the right to vote, equal pay for equal work, public health and the welfare of children. It encouraged women to get involved in public debates and to organise so as to obtain influence.

By the 1890s women were increasingly gathering in groups. Some were directed at charity or education, such as [literary societies](#) and reading groups. Others were more political, such as the Womanhood [Suffrage Leagues](#). In Perth, the Karrakatta Club was established as a place for women to engage in political discussion in 1894. Its first Secretary was [Edith Cowan](#), who later became the first woman elected to an Australian Parliament. These women's organisations became involved in arguing for and against federation, particularly in the lead-up to the referendums on the subject.

## Petitioning the Convention

One way in which women influenced the drafting of the Constitution was through [petitions](#). The Constitutional Convention received petitions from the WCTU and the [Womanhood Suffrage League](#) arguing for equal voting rights for men and women. Women also petitioned for a reference to God to be included in the Constitution and in favour of temperance. Some argued that the new capital of the federation should be an alcohol free zone!

What effect did they have? [Section 41](#) was included in the Constitution to ensure that those women who had the right to vote at the State level would not lose it at the federal level. This protected the right of South Australian women to vote. Women also managed to get [section 113](#) included. The intention behind it was to allow a State to ban the sale of alcohol (known as '[prohibition](#)') without breaching free trade requirements. A reference to God was also included in the [preamble](#) (ie the introductory words of the Constitution Act), in response to all the petitions. So while no women were involved in writing the Constitution, they did have an influence on at least three provisions in the Constitution.



*Catherine Helen Spence*  
*Source: History Trust of South Australia*

## The power of the vote and campaigning

In South Australia, the influence of women was heightened once they obtained the right to vote. They were able to vote for delegates to the Constitutional Convention in 1897, where a second attempt was made at drafting a federal Constitution. One woman, Catherine Helen Spence, became the first female political candidate in Australia when she ran for election to the Convention. She did not win – she came 22nd out of 33 candidates – but she was still more popular than 11 men. Her [chances of success](#) were spoiled by the fact that the Premier publicly claimed that if she was elected, she would not be able to take up her position as a delegate. It was not clear why. In addition, no political party supported her, but she was listed as one of the '10 best men' by a Liberal organisation.

Spence's candidature showed that if given a chance, women would vote and run for office. It also showed that women have a range of different interests and will vote on the policies, rather than the sex, of a candidate. On the subject of Federation, some prominent women, such as [Rose Scott](#), opposed it. Scott argued that it would be a financial disaster for New South Wales, unless the federal treasurer was a woman. Another woman, Caroline Bateson, advised Western Australia 'to [keep Federation out](#) as well as rabbits'.

Other women, such as Maybanke Wolstenholme, who formed the Women's Federal League, supported federation. She argued that section 41 would protect the right of South Australian women to vote in federal elections, and that this meant that if there were to be uniform voting rights, all women would get the vote.

So Maybanke [campaigned](#) strongly for Federation, sometimes giving speeches on the same stage as Edmund Barton. She acted as his ally in the federal cause, even though Barton had opposed votes for women. Perhaps her support helped change his mind about the political role of women and the female franchise.

Women's [views](#) were [reported](#) in the [newspapers](#) before the referendums and they wrote articles which the press [published](#). Women therefore had some influence on the Constitution and its adoption, but they cannot claim to be framers of the Constitution. If a Constitution were being written for Australia today, it would be a very different matter, as some of the best constitutional experts in Australia today are women. The times have changed.



Maybanke Wolstenholme (1845-1927)  
Australian suffragist  
Source: State Library of Australia



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

## Making the Constitution – Where were Indigenous Australians? Why the lack of diversity

### A lack of ethnic diversity

Photos of the authors of the Constitution (who are known as the 'framers' or are sometimes called the 'Founding Fathers') are not only remarkable for the absence of women. There was also a distinct lack of ethnic diversity. The framers were white men from British backgrounds. Most were middle class merchants, pastoralists or lawyers. Almost all were current or former Members of Parliament. There were no migrants from Asian or Pacific Islander backgrounds.



Federal Convention, Adelaide,  
South Australia | 1897

Source: State Library of South Australia

Despite there being a significant Chinese community in Australia as a result of the gold

rushes, they were not involved in the drafting of the Constitution. However, the Chinese community did, in general, support Federation, as it was hoped that it would end the harassment they often faced from border officials when they sought to cross from one colony to another.



George Reid | c. 1890

Source: National Library of Australia

At the time the Constitution was being drafted, many politicians opposed the immigration of people from non-white racial backgrounds. George Reid explained this view to the NSW Parliament in 1896, saying:

*'The white and coloured races in this country have never mixed, and never will mix, and the more contiguous they are the more likelihood there is for bad feeling, which sometimes degenerates into*



Prime Minister Albanese with members of the Referendum Working Group comprised exclusively of Indigenous Australians, Thursday March 23, 2023  
Source: Albanese Twitter

*brutal violence. The Chinese in this country, on many occasions, have been subjected to most cruel and inhuman treatment. No one can justify that. When a man is allowed to come into the country he should be treated on perfectly level terms. But the greater question is whether we, in Australia, are prepared to allow that sort of immigration, when we know, as a matter of experience and of fact, that there is no desire on the part either of the whites or the coloured races to merge in a common citizenship.'*

This is the complete opposite of the multicultural country that Australia is today, where the contributions of different cultures are regarded as strengthening and enhancing the nation and people from all cultures have merged in one common citizenship. But back in the 1890s, difference was still feared and attempts were made to exclude it.

One consequence was that the colonies sought to impose laws that restricted the immigration to Australia of persons from non-white racial backgrounds and to prevent them from being naturalized and becoming full subjects of the Crown. This prevented many immigrants from obtaining the right to vote, which in turn impeded

them from becoming Members of Parliament or participating in the framing of the Constitution.

## The exclusion of Aboriginal and Torres Strait Islander people

Even more noticeable from the photos of the framers of the Constitution is that there were no Aboriginal or Torres Strait Islander people amongst them. Today, this would be inconceivable. The Commonwealth Government in the development of its proposed 2023 referendum on an Aboriginal and Torres Strait Islander Voice was advised by a Referendum Working Group comprised exclusively of Indigenous Australians.

But in the 1890s, Aboriginal and Torres Strait Islander people were given little regard and were treated as a 'dying race'. It was believed that through inter-marriage, Aboriginal and Torres Strait Islander people would become assimilated into the broader community rather than maintaining distinct identities.

Again, voting restrictions played a role. In Queensland and Western Australia, Aboriginal people and Torres Strait Islander people were

denied the vote and therefore were unable to be Members of Parliament. As the framers of the Constitution, whether appointed by Parliament or elected as delegates, were almost exclusively Members of Parliament in the various Australian colonies, this was a structural impediment to Indigenous involvement in the framing of the Constitution.

In those other States where Indigenous men (and women in South Australia) had the right to vote, they were often discouraged from voting or were unable to do so due to other disqualifications. Moreover, it seems likely that many would have rejected the idea of being involved in the white-man's legal system in such a way, instead preferring to function within their communities according to their own law.

Nonetheless, where Aboriginal people did vote, it affected how their representatives at the Constitutional Conventions behaved during the debates on the drafting of the Constitution. For example, one South Australian delegate, Dr Cockburn, objected to the exclusion of Aboriginal people from being counted, in section 127 of the Constitution. He argued that Aboriginal men in his colony voted and their right to do so should be protected. He said he could point to places where 100 or 200 Aboriginal people voted. Alfred Deakin and Edmund Barton responded that section 127 would not affect their right to vote. Dr Cockburn responded that as a matter of principle, Aboriginal people should not be deducted from population counts. Richard O'Connor then argued that the South Australians had ensured the protection of Aboriginal voters by the insertion of section 41 into the Constitution.

The debate closed when Mr Walker pointed out that the effect of Aboriginal exclusion from population counts was to the financial benefit of South Australia. The State would have to pay for federal costs based on its population, he said, and if Aboriginal people were excluded from the population count, the State would pay less. At that point Mr Cockburn gave up and section 127 was approved. It was later repealed in the 1967 referendum.

Finally, in the 1890s there was little political organisation across Aboriginal or Torres Strait Islander peoples to support lobbying for involvement in the drafting of the Constitution. Political engagement tended to be confined to particular areas and peoples, such as the Kulin people in [Coranderrk](#) in the 1870s, who skilfully used the media and political lobbying to protect their rights.

Widespread organisation of this kind did not arise, however, until the 20th century, after Federation, through the establishment of organisations such as the Australian Aborigines' League and the Aborigines Progressive Association. There was no collective voice for Aboriginal and Torres Strait Islander peoples in the 1890s that could represent their political interests or give them a role in the drafting of the Constitution.

As far as is known, those involved in writing the Constitution did not consult or seek to involve any Aboriginal or Torres Strait Islander peoples in their endeavour. That would not happen today. Why?





## Topic 6.1: Lesson/ Activities Six

Silent voices and discrimination:  
Where were the women?



AUSTRALIAN  
CONSTITUTION  
CENTRE

### Time/Lesson

- 1 hour

### Learning Goal

Students understand the role of the Australian people in making the Constitution –whose voices were heard and whose were not heard.

### Rationale

Students will understand that...

- Significant decisions are sometimes made without consulting all involved.
- Women, Indigenous Australians and many immigrants were excluded from deciding.

### Success Criteria

Students will know...

- Women could not officially vote for, or against, Federation in all colonies.

### Teaching Reference Document

TRD 47: Making the Constitution – Where were the Women?

### Resources

- Thinking routine: The 3 Whys
- Thinking routine: Think, Pair, Share and Resource 2

### Teacher Instruction

#### [Lesson outlines and guiding questions:](#)

- Conduct class votes regarding fun activities but randomly exclude part of the class (eg based on eye colour). Use the thinking routine, 'The 3 Whys' to discuss how this can help students empathise with people who were excluded from voting on whether to federate.
- Discuss the fact that women and Indigenous Australians were omitted from the development of the Constitution although the right of women to vote in a federated Australia was a hot topic at the Constitutional Conventions.
- Create profile posters of either Rose Scott, Maybanke Wolstenholme, or Catherine Helen Spence, detailing their role in women's rights and Catherine Helen Spence's role in seeking to be part of the Constitutional Convention.

### Differentiation/Enrichment

Differentiation opportunities:

- Lesson activities allow for different learning styles and differentiation by outcome.
- Thinking routines can be used as templates with suggested responses, as support where required.
- Discover Maybank Wolstenholme Anderson and Catherine Spence and Edith Cowan in unit 13: Topic 9.3:: Women's voting rights under the Australian Constitution.

## Assessment Strategies

Assessment tasks following lesson activities:

- Write, or film a persuasive speech, persuading the Australian public, to:
  - let Australian women from all colonies vote for, or against Federation.



# Thinking Routine

## The 3 Whys

1. Why might the fact that woman members of the population were excluded from the Federation discussion and voting matter to me (or to a person living at that time)?
2. Why might it matter to people around me [family, friends, city, nation]?
3. Why might it matter to the world?

# Thinking Routine

## Think, Pair, Share

Think, Pair, Share involves posing a question to students, asking them to take a few minutes of thinking time and then turn to a nearby student to share their thoughts.

*Why was Catherine Helen Spence pictured on the special 2001 Federation \$5 note instead of the Queen?*

## See, Think, Wonder

- How is it different for women today than it was in 1901?
- What rights do women have today that they did not have in 1901?
- What types of discrimination do women still face today, despite having the right to vote and having female members of Parliament?
- Indigenous Australians were not consulted when the Constitution was enacted? Would that happen today? What has changed?