



Unit 7: The Australian Constitution and its three key institutions of government and how the Separation of Powers (SoP) protects democracy and the people – Years 6 and 7 - C & C Strand: Government & Democracy
Topic 6.3: The Australian Constitution and its three Key Institutions of Government

Who can stand for Parliament?

Qualifications to stand for Parliament

Section 34 of the Commonwealth Constitution sets out the original qualifications of Members of Parliament but allowed Parliament to change them. Members had to be at least 21 years old, have lived in Australia for at least three years and be qualified to vote. They also had to be a 'subject of the Queen' from birth or naturalised at least 5 years before running for Parliament.

Parliament has since legislated in section 163 of the *Commonwealth Electoral Act 1918* to set out the new qualifications. They are that a Member must be:

- 18 years or over;
- an Australian citizen; and
- qualified to be a voter.

This means a person cannot stand for Parliament if he or she is disqualified from voting – eg if he or she is of 'unsound mind' or serving a sentence of imprisonment of 3 years or longer, or has been convicted of treason or treachery and has not been pardoned. In addition section 386 of the *Commonwealth Electoral Act* stops a person from standing for Parliament for 2 years if he or she is convicted of certain election offences, such as electoral bribery.

Disqualification from standing for Parliament

Section 44 of the Constitution sets out disqualifications. They prevent a person from being validly elected to either House of Parliament, if he or she is disqualified on or after the date he or she nominates to run in the election.

*Parliament
House, Canberra
Source: Istock*





House of Representatives
Source: Wiki Commons



Senate
Source: Wiki Commons

The disqualifications also apply to validly elected Members of Parliament, who later become disqualified. As soon as a disqualifying event occurs (eg a Member becomes bankrupt), the Member's seat becomes automatically vacant.

Section 44 sets out five different ways in which a person can be disqualified. In a simplified summary, they are:

1. being a dual citizen;
2. being convicted of a criminal offence that could be punished by imprisonment for one year or more, and not having completed serving the sentence;
3. becoming bankrupt;
4. holding another paid government job; and
5. profiting financially from an agreement with the Commonwealth Public Service.

Dual citizens

In 2017-18 a number of Members in both Houses of Parliament discovered that they were disqualified because they held dual citizenship – i.e. they were citizens of both Australia and another country. This can be hard to know, because it depends upon the citizenship laws of other countries, which change a lot and can be written in other languages or interpreted in ways that are not obvious in Australia. Citizenship can be acquired because of where a person is born, or it can be inherited from one's parents or grandparents, or even sometimes great-grandparents. One person may have citizenship in a number of other countries.

The reason behind this disqualification is to ensure that Members of Parliament are fully committed to Australia and don't have any foreign ties that they might treat as more important than Australia's best interests.

Some Members of Parliament thought that if they did not know about their foreign citizenship, it could not influence their conduct and therefore could not be a reason to disqualify them. They also argued that they should only be disqualified if they chose to take up or keep foreign citizenship.

The High Court disagreed and in the case of *Re Canavan* it strictly applied the rules. If a person was still a foreign citizen at the time he or she was nominated to stand for Parliament, he or she was disqualified and incapable of running, even if he or she had taken all reasonable steps to get rid of the foreign citizenship. Only in rare cases, such as where the other country refuses to allow its citizens to get rid of their citizenship, would the High Court allow exceptions.

Criminal conviction

Having a past criminal conviction does not disqualify a person from standing for Parliament (except for treason, treachery and some electoral offences). However, if a person has been convicted of an offence which could be punished by imprisonment of more than a year, and has either not yet been sentenced or not yet served their sentence by the time of nomination, they cannot validly be elected.

For example, if a person was convicted of theft immediately before nominating to stand for election, he or she is disqualified from standing for election, even if the conviction is later 'annulled' (i.e. wiped out) after the election is held. If the annulment only applies for the future and does not retrospectively wipe out the conviction in the past, it does not affect the disqualification.

Bankruptcy, government offices and government contracts

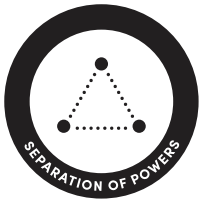
Being disqualified for becoming bankrupt is relatively straightforward. There are legal processes for people to sue someone who has not paid their debts and send them into bankruptcy. If a court decides a person is bankrupt, that prevents them from standing for Parliament or sitting as a Member of Parliament, until they have been 'discharged' after having complied with all the conditions of the bankruptcy.

The last two disqualifications, concerning government offices and contracts, are directed at preventing Members from financially profiting from their political role, or being 'influenced' in how they vote in Parliament by the Government handing them extra jobs or contracts that will make them a lot of money.

The intention behind the disqualification for holding a government office (known as an 'office of profit under the Crown') is to prevent conflicts of interest – eg a judge could not be elected as a Member of Parliament because he or she already holds a government office. One effect is that public servants, such as school teachers or police, have to resign from the public service before they can nominate to stand for Parliament.

The disqualification for having a financial interest in an agreement with the Commonwealth Public Service is the most difficult one to apply. Everyone one has some agreements with the public service (eg buying a passport), so there must be some exceptions. But the High Court has struggled to explain how the line is drawn and when this condition applies. Does it affect doctors who have agreements with Medicare, or owners of childcare centres who receive Commonwealth rebates for childcare fees? There are still many uncertainties about how this disqualification applies. But the intention behind it is to prevent Members of Parliament from potentially using their privileged position as a parliamentarian to profit personally from government contracts.





Topic 6.3 and 7.1: Lesson/Activities Six

Who can stand for Parliament?



AUSTRALIAN
CONSTITUTION
CENTRE

Time/Lesson

- 1 hour

Learning Goal

For students to understand who is entitled to stand for the Commonwealth Parliament and the grounds for the disqualification of people from standing for, or sitting in, Parliament.

Rationale

Students understand who is qualified and disqualified to be a Member of Parliament and consider how this affects democratic representation.

Teaching Reference Document

- TRD 59: Who can stand for Parliament?

Resources

- Internet classroom access
- 'Why is Australia's parliamentary citizenship saga so complicated?', ABC: <https://www.youtube.com/watch?v=28By6eShMqw>
- 'Dual Citizenship Scandal in Australian Politics', BTN: <https://www.youtube.com/watch?v=rVY3APJ3IS4>
- Copy of the Australian Constitution or internet access to it

Teacher Instruction

- Teacher discusses TRD 59 and summarises who can stand for Parliament.
- The class discusses why the qualifications and disqualifications were set out in the Constitution. What is the difference between qualifications and disqualifications? Note that the qualifications can be changed by passing ordinary legislation, while the disqualifications can only be changed by amending the Constitution, which requires a successful referendum. Ask students to brainstorm why this may be. Was it because the framers of the Constitution were concerned that if one side had control over both Houses of Parliament it could change the disqualification provisions to ban all members of the other main political party from ever being elected to Parliament? For example, what if Parliament could pass a law disqualifying anyone who had ever been a member of a trade union from standing for Parliament, or what if it disqualified anyone who owned property worth more than \$2 million from standing for Parliament, or anyone who had ever been arrested at a protest? Should the temptation to do that be kept out of the hands of Parliament, with disqualifications instead only being able to be changed by the people in a referendum? But on the other hand, does this have the effect of freezing inappropriate disqualifications in the Constitution and excluding a significant portion of the public (i.e. dual citizens) from standing for Parliament?
- Explore in more detail the dual citizenship disqualification. Watch the BTN video. How many students in the class have dual citizenship? What would they have to do to be eligible to be elected as a Member of Parliament? How would they feel about giving up their other citizenship?

Assessment

Organize a debate between students about whether the Constitution should be amended so that dual citizens can sit as Members of Parliament.

Extension Activities

- Ask students to imagine that they are writing the Constitution from scratch. What type of qualifications should be required to be a Member of Parliament and what sort of things should disqualify a person from being a Member of Parliament? Ask students to think outside the box and identify what really matters and should be required of our representatives. What qualities are needed - eg integrity, intelligence, fairness? Is there any way you could test for them and disqualify those who fail? Should there be a minimum or maximum age to be a Member of Parliament? Should there be a limited period of time you can be a Member? Should certain experience be required before a person is allowed to stand for Parliament?
- Students could present the outcome of their work as a report, advocating completely new qualification and disqualification provisions, or a speech to the class, or a 3 minute video presenting the issues and a proposed solution. This work could be done individually or in groups.
- Extra points could be given to students who draft the words of a new constitutional provision.

