

FACT SHEET 12

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 at Federation, 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* (Cth) to set out the new qualifications. They are that a Member must be:

- 18 years or over;
- an Australian citizen; and
- entitled to vote at a House of Representatives election or qualified to be such an elector.

This means a person cannot stand for Parliament if he or she is disqualified *from voting* under s 93 – eg if he or she is serving a sentence of imprisonment of 3 years or longer, has been convicted of treason or treachery and has not been pardoned, or is incapable of understanding the nature and significance of enrolment and voting. 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.



The House of Representatives
Source: Wiki Commons

Disqualification from standing for Parliament

Section 44 of the Constitution sets out five different ways in which a person can be disqualified from standing for Parliament or from being a Member of Parliament. In a simplified summary, they are:

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

Section 44 prevents 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.

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.



The Senate
Source: Wiki Commons



Parliament House, Canberra
Source: Istock

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 might 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* (2017) 263 CLR 284 it strictly applied s 44. If a person was still a foreign citizen at the time he or she nominated to stand for Parliament, he or she is disqualified and incapable of running. Only in rare cases, such as where the other country refuses to allow its citizens to renounce their citizenship and the person has taken all reasonable steps required by the foreign law to get rid of the foreign 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 for a period of 2 years for 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 employment 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 final two disqualifications, concerning government employment 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 to prevent Members of Parliament from potentially using their privileged position as a parliamentarian to profit personally from government contracts.



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