

## FACT SHEET 20

# Responsible and Representative Government and what does the Constitution say about the right to vote?

## What is responsible government?

Under the Australian Constitution, the principle of responsible government works alongside the principle of the separation of powers. Responsible government ensures the government is accountable to the Parliament. For example, the ministry is drawn from within the Parliament and the government must maintain the confidence of a majority of the members to remain in government.

The political doctrine of responsible government was developed in England in the eighteenth and nineteenth centuries to explain and justify the political changes that were then occurring. These changes included the increasing political importance and power of the House of Commons (Australia's equivalent is the House of Representatives), the requirement that the monarch act only upon the advice of his or her ministers, the requirement that ministers be members of parliament, the development of the Cabinet, and the creation of a professional and impartial public service.

## What is representative government?

The political idea of representation is based on the idea that some person or institution acts on behalf of the people, by representing their beliefs, attitudes, and perspectives. The Australian political system is one in which the people vote to elect members of Parliament to represent them, hence we have a system of representative government.

## Who has the right to vote?

Who has the right to vote has changed significantly over the decades since the Australian Constitution commenced in 1901. It is important, in understanding our democracy today, to have knowledge of people and events that brought about significant changes in who has the right to vote and stand for election in Australia. The story

of the evolution of the right to vote is a fascinating timeline demonstrating remarkable changes in the decades since federation in the Australian people's beliefs and attitudes.

The Australian story of the right to vote demonstrates that it is our contemporary democratic opportunity, right, and responsibility to vote. It also shows the importance of being informed about the important issues facing our nation in each and every federal election and referendum as they occur.

## What does the Constitution say about the right to vote?

One of the things you would expect to find in Australia's Constitution is the right to vote, as it is a key part of our democracy. However, voting was a controversial issue at the time the Constitution was being drafted. In the late 1890's women across Australia were campaigning for the right to vote. Women in South Australia were granted the right to vote in 1895, and women in Western Australia were granted the right to vote in 1900 before the colonial referendums were held to approve the Constitution. Other Australian colonies did not want to be pressured into giving women the right to vote. So rather than risk federation being voted down in those colonies, [sections 8](#) and [30](#) of the Constitution said the first franchise (i.e. the right to vote) was the franchise that already existed in each State, and then left it to the Commonwealth Parliament to set its own franchise in the future.

## What else does the Constitution say about the right to vote?

[Sections 7](#) and [24](#) of the Constitution say that the Houses of Parliament shall be 'directly chosen by the people'. This means that 'the people' must elect their representatives in Parliament. The word 'directly' is there to ensure that this is done by

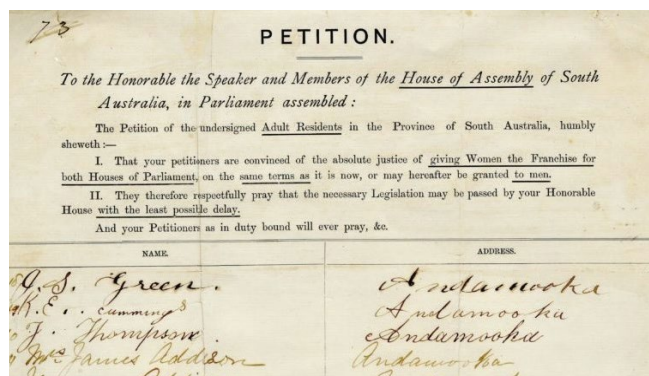
direct voting, rather than through another system such as an Electoral College, as is used in the United States to elect the President.

But who are 'the people'? It can't mean everyone. For example, it wouldn't mean that five-year-olds can vote. But what are valid reasons for excluding people from voting? Voting laws that existed in the Australian colonies in the 1800s excluded people from voting for all sorts of reasons, including that they did not own property, had committed certain criminal offenses, were in receipt of charity, or held certain occupations. Most of these grounds for exclusion would be considered unacceptable today but were seen as normal then. Women were also excluded from voting. There were even court cases that said that women were not 'persons' and therefore could not vote. But by the 1890s in the Australian colonies, this was beginning to change.

Another major area of exclusion was based on race. People could be excluded from voting if they were Aboriginal and Torres Strait Islander peoples or came from non-European backgrounds, such as immigrants from Asia, Africa, and the Middle East. In those days race was sometimes used as a reason to keep out certain immigrants or limit their rights in Australia.

## Women – sections 41 and 128 of the Constitution

The South Australian delegates to the Constitutional Convention in 1897 at which the draft Constitution was debated pushed for the inclusion of a right to vote. They failed because some of the other colonies still objected to women having the right to vote. But the South Australian delegates stressed that as women in their colony had the right to vote, they did not want them to be denied that right in federal elections. So, a compromise was agreed. Section 41 was included so that adults who had the right to vote for the lower House of a State Parliament, while they continued to hold that right, could not be prevented from voting at Commonwealth elections. Once the Commonwealth Parliament passed its first franchise law in 1902 which gave women the right to vote, the protection in section 41 was not required to allow women to vote in federal elections.



*Petition with 11,600 signatures presented to the SA Parliament in 1894 requesting that women be granted the right to vote. Source: House of Assembly, Parliament of South Australia*

Section 128 allows changes to the Constitution to be made with the approval of the people in a referendum. To pass, a change needs to be approved by a majority of voters overall, and a majority of voters in a majority of States. But if some States double their number of voters, by including women, then on one view they would have disproportionately large numbers in the overall count. So section 128 says that until the Commonwealth sets a uniform franchise, only half the votes in States which had adult suffrage (i.e. where women could vote) would be counted. Again, this didn't need to be used once the uniform federal franchise was introduced in 1902.

## Race – sections 25 and 127

Each State was allocated a certain number of Members of the Commonwealth House of Representatives based upon its population. Section 25 provides that if a State discriminated against the members of a race by preventing them from voting in State elections, it couldn't then claim those excluded people as part of its population for the purpose of getting more Members of Parliament at the Commonwealth level. The State would effectively be punished for its discrimination by ending up with fewer representatives at the Commonwealth level. Section 25 is based on a provision from the United States Bill of Rights.

Section 127 also stated that when calculating the population of a State under the Constitution, Aboriginal people shall not be counted. Mostly this section was relevant to financial calculations of what tax should be returned to the States in the transitional period after federation. But it also applied to calculations about how many Members of Parliament each State would receive.

When these provisions were debated, the South Australian delegates expressed concern that they might be interpreted as preventing Aboriginal people from voting. But they were assured that this was not so. Neither section 25 nor section 127 would prevent anyone from voting. It would be up to the Commonwealth Parliament to decide on the franchise. In addition, section 41 would protect the voting rights of anyone who already had the right to vote in the State.

When the Commonwealth Parliament enacted its voting law in 1902, Aboriginal and Torres Strait Islander peoples were denied the right to vote, except those who had their rights protected by section 41 of the Constitution. Section 127 was removed from the Constitution by the 1967 referendum.

## The franchise expands

During World War II, voting rights were expanded on a temporary basis in 1940 to all members of the Defence Force who served outside Australia. This right lasted until six months after the end of the war.

In 1949 the *Commonwealth Electoral Act 1918* (Cth) was changed to ensure that Aboriginal and Torres Strait Islander peoples who had been members of

the Defence Force could vote in Commonwealth elections, as could those who were currently enrolled in a State (even if they were not enrolled before 1902).

This meant that Aboriginal and Torres Strait Islander peoples who lived in New South Wales, South Australia, Victoria and Tasmania could vote in federal elections from 1949.

But Indigenous people who lived in Western Australia, Queensland and the Northern Territory could not vote in federal elections until the Commonwealth Electoral Act was again changed in 1962 allowing all Indigenous people to enroll to vote.

In 1962 Indigenous people were given the right to vote in Western Australian and Northern Territory elections. Queensland was the last State to allow Aboriginal and Torres Strait Islander people the vote in 1965. While a common misconception is that the 1967 referendum granted Aboriginal and Torres Strait Islander people the right to vote, the referendum had nothing to do with that right.

The enrolment of Indigenous people only became compulsory in 1983, making it the same right for all eligible Australian voters.



*Indigenous recruits from Lake Tyers | 1940 | They had the right to fight, but only had a temporary right to vote in federal elections if they served in the armed forces outside Australia. The right lasted until 6 months after the end of the war but was restored permanently in 1949. Source: State Library of Victoria*

## Migrants and their right to vote in Australia

The right to vote in Australia is confined to Australian 'citizens' (apart from one exception discussed below). 'Citizens' include migrants born overseas who have been naturalised as Australians. Before federation, some Australian colonies denied the vote to certain people from non-European countries, even if they had been naturalised. Today, people can vote at the Commonwealth level if they are Australian citizens and not otherwise disqualified.

People who live permanently in Australia and were on the electoral roll before 26 January 1984 because they were 'British subjects' (including people from the United Kingdom, Canada and New Zealand) have been allowed to remain on the electoral roll and can still vote, even though they have not taken out Australian citizenship. No one is excluded from voting anymore on the ground of race. Even though the Constitution does not include an express right to vote, the High Court decided in the *Roach v Electoral Commissioner* (2007) case that the Constitution impliedly protects a 'universal franchise' and that exceptions to that need to be for a substantial reason compatible with

representative government as prescribed by the Constitution. This would mean that laws excluding people from voting on the basis of race would likely be constitutionally invalid.

However, people can still be excluded from voting if they are not citizens of Australia. This means that permanent residents and people in Australia on visas can be excluded from voting. Australian citizens who have moved overseas permanently, or do not intend to return to live in Australia within 6 years, are also excluded from voting.

### Is there a constitutional right to vote today?

The Constitution has not been altered to include an express right to vote. But the High Court, as discussed above, has interpreted sections 7 and 24 of the Constitution to mean that the Constitution requires a 'universal franchise', but that some people can be excluded for a 'substantial reason' that is compatible with the democratic system of government. So you can exclude children under 18 years of age, non-citizens and some prisoners from voting, but not people just because of their sex or their race.



New citizens living in Newcastle, NSW, take the Australian Oath of Allegiance with the Mayor.  
Source: City of Newcastle



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