

## Indigenous voting rights in Australia

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One of the more persistent Australian political myths concerns the 1967 Aborigines constitutional referendum. Many seem to believe that the referendum gave Aboriginal people the vote — or at least their ‘civil rights’.<sup>1</sup> In fact, it did neither.

This note briefly discusses the changes made by the amendment of the Constitution, and then spells out the situation concerning Aboriginal voting rights in 1967. It makes no attempt to ask why this myth emerged. Interested readers may choose to consult *The 1967 Referendum, or When Aborigines Didn’t Get the Vote*, published in 1997.<sup>2</sup>

### *The 1967 Aborigines Referendum*

Many Aboriginal people and their supporters believed the Commonwealth Constitution discriminated against Aboriginal people. Ss 51 (xxvi) and 127 read:

51. The Parliament shall, subject to this Constitution have power to make laws for the peace, order, and good government of the Commonwealth with respect to:-

. . . (xxvi) The people of any race, other than the aboriginal people in any State, for whom it is necessary to make special laws.

127. In reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted.

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\* Politics and Public Administration Group, Parliamentary Library. Views expressed in this article are those of the author and do not necessarily reflect those of the Department of the Parliamentary Library

<sup>1</sup> One academic text refers to the ‘Aboriginal Rights Referendum’, Jean Holmes and Campbell Sharman, *The Australian Federal System*, Allen & Unwin, Sydney, 1977, p. 87.

<sup>2</sup> Bain Attwood and Andrew Markus in collaboration with Dale Edwards and Kath Schilling, *The 1967 Referendum, or When Aborigines Didn’t Get the Vote*, Australian Institute of Aboriginal & Torres Strait Islander Studies, Canberra, 1997.

In 1967 Australians were asked if they approved the proposed law for the alteration of the Constitution entitled:

An Act to alter the Constitution so as to omit certain words relating to the People of the Aboriginal Race in any State and so that Aboriginals are to be counted in reckoning the Population.

This meant that the Commonwealth was to be granted power to make laws for Aboriginal people in the States. It also guaranteed that Aboriginal people would henceforth be counted in each national census. There was nothing in this to do with civil or voting rights, though there were many misleading statements about Aboriginal 'rights' uttered during the referendum campaign.

### ***Indigenous voting rights as at 1967***

When the colonial constitutions were written they contained no specific barriers to voting by indigenous Australians. It is highly unlikely, however, that any indigenous people who were recognised as such would have been on any of the electoral rolls because of the view that Aboriginal people were not intelligent enough to do so.

It is possible that some light-skinned indigenous people may have been on the electoral rolls, but this would have been possible only if they were not recognised as being of indigenous origins.

### **Colonial, State and Territory voting**

#### **New South Wales**

No restrictions were placed on Aboriginal enrolment or voting. However, from 1858 anyone receiving aid from 'any public charitable institution' was not entitled to be enrolled. People living on Aboriginal stations and reserves were deemed to be in receipt of aid, and therefore could not enrol. This restriction was removed from legislation in 1926.

Despite this, it is known that some Aboriginal people were on the electoral roll by the early 20<sup>th</sup> century. In 1902, former Premier William Lyne claimed he had seen Aborigines voting, though he gave no evidence of where and when this had occurred.

It is uncertain when the franchise was first used in a regular fashion in the 20<sup>th</sup> century. Compulsory voting was introduced in 1928, though for many years the compulsion for Aboriginal people to enrol was not enforced. By 1961, 472 of 1042 station residents who were entitled to enrol had done so.

#### **Victoria**

No restrictions were placed on Aboriginal enrolment or voting, though it is unlikely that any would have done so in the 19<sup>th</sup> century. Compulsory enrolment and voting was introduced for Victorians in 1926 though, as in New South Wales, this was not enforced in respect of indigenous voters. Despite this, apparently a 'very high percentage' were enrolled and exercising their right to vote by 1961.

## Queensland

Legislation passed between 1872 and 1930 effectively barred Aboriginal people from enrolling and voting in Queensland elections. By the 1960s, however, 'half-castes' exempted from the provisions of the *Aboriginal Preservation and Protection Act 1939–1946* could exercise the vote.

The *Elections Acts Amendment Act 1965* allowed Aborigines, Torres Strait Islanders and 'half-castes', to enrol and vote, though enrolment was not compulsory.

## Western Australia

The *Constitution Act 1889* did not specifically bar Aboriginal people from enrolling, but this oversight was corrected by the *Constitution Act Amendment Act 1893* which added to the Constitution the words: 'No aboriginal native of Australia, Asia, or Africa' could enrol 'except in respect of a freehold qualification'. This included 'persons of the half-blood'.

The *Natives (Citizenship Rights) Act 1944* gave any adult person 'who is a native within the meaning of the Native Administration Act, 1905–1941' the right 'to make application for a Certificate of Citizenship'. If the Certificate were granted, 'the holder of a Certificate of Citizenship shall be deemed to be no longer a native or aborigine'. Such a person would have 'all the rights, privileges and immunities and shall be subject to the duties and liabilities of a natural born or naturalised subject of His Majesty'. This presumably included the right to vote, something that was confirmed in the *Electoral Act Amendment Act 1951*.

The *Native Administration Act Amendment Act 1954* said that any Aboriginal person who had honourable service in New Guinea or beyond the limits of the Commonwealth as a member of the armed forces, 'shall be deemed to be no longer a native for the purpose of this or any other Act'. This gave such persons the vote.

The *Electoral Act Amendment Act 1962* gave Aboriginal people the right to enrol and vote in Western Australian elections.

## South Australia

No restrictions were placed on Aboriginal enrolment or voting. In fact, however, most indigenous people were disqualified by the residential qualification which required that all voters reside at a particular address for a specified period. For those who might have been able to enrol, little was done to encourage them to do so before the 1890s. It is known that some settlement Aborigines were voting by 1896.

A number of South Australian Aborigines were removed from the electoral roll after the introduction of joint Commonwealth–South Australian rolls in 1921 — this may have also occurred in New South Wales and Victoria. By the 1960s, although enrolment for Aboriginal voters was not compulsory, if an Aboriginal person was enrolled, he or she was required to vote.

## Tasmania

No restrictions were placed on Aboriginal enrolment or voting. Government policy having been that the Aboriginal community had 'died out' in 1876, the consequence was that for many years the Tasmanian Parliament ignored the presence of the mixed-

race Tasmanian Aboriginal community. It is therefore quite likely that Tasmanian Aborigines were voting before the end of the 19<sup>th</sup> century, but no evidence has been found to confirm this. An electoral roll search might well indicate the presence of Aboriginal names on the rolls in the 19<sup>th</sup> century, particularly in Launceston, where former Islanders tended to live, though there is no obvious way to ascertain if any voted.

It is uncertain when the franchise was being used by indigenous people in the 20<sup>th</sup> century, even though compulsory voting was introduced in 1928.

### Northern Territory

Prior to 1911 the Northern Territory formed part of South Australia. This meant that there was no specific barrier to Aboriginal voting. There seems to be no evidence that any did so.

From 1911 until 1978 the Commonwealth was responsible for the Territory. The *Northern Territory Electoral Regulations* stated that

No aboriginal native . . . shall be entitled to have his name placed on or retained on any Roll or to vote at any election unless—

(a) he, being an aboriginal native of Australia—

(i) is not a ward as defined by the *Welfare Ordinance 1953–1960* of the Territory;  
or

(ii) is or has been a member of the Defence Forces.

By 1961, of some 17,000 Aborigines in the Northern Territory, 89 had not been declared wards or had been removed from the Register of Wards, and were therefore eligible to register and to vote. All of the Territory's indigenous residents gained the vote with the passage of the 1962 Commonwealth legislation mentioned in the next section.

### The Commonwealth franchise

The *Commonwealth Franchise Act 1902* was quite specific: 'No aboriginal native of Australia Asia Africa or the Islands of the Pacific except New Zealand shall be entitled to have his name placed on an Electoral Roll unless so entitled under section forty-one of the Constitution'. Section 41 of the Constitution ensured that Aborigines who were enrolled in their States as at 1 January 1901 could exercise that right in Commonwealth elections.

Section 41 had been given a very narrow interpretation over the years, and it was felt necessary to pass the *Commonwealth Electoral Act 1949* which guaranteed the vote in Commonwealth elections to Aboriginal people enrolled in their States.

The *Commonwealth Electoral Act 1961* recognised Aboriginal participation in the armed forces: 'An aboriginal native is not entitled to enrolment unless enrolled for his/her State lower house, but could do so if he 'is or has been a member of the Defence Force'.

The *Commonwealth Electoral Act 1962* gave all Aboriginal people the right to enrol and vote in Commonwealth elections. Enrolment was not compulsory, but if enrolled the Aboriginal voter was required to vote.

***In conclusion***

It can therefore be seen that despite the belief that the 1967 Referendum gave indigenous people the vote, this was a right that some had exercised for many years, and all had been guaranteed it five years earlier. ▲

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## **Parliamentary Studies Unit, Monash University**

A Parliamentary Studies Unit (PSU) has been established at Monash University to fill what is seen as a void in research and expertise related to parliaments and their role in good governance. There is no Australian centre of excellence on parliamentary institutions. Internationally, the Centre for Legislative Studies, University of Hull is one of the few such institutions. There are very few academics in the field, as evidenced by the small membership of the IPSA Legislative Specialists Research Committee.

The PSU operates under the umbrella of the National Centre for Australian Studies (NCAS) in the School of Political and Social Inquiry. The major activities arising from the Program are currently the SPIRT-funded “Parliament of Victoria Research Project” and participation in similar projects funded by the Commonwealth Parliamentary Association in two developing countries. Journal articles and expert commentary will also be contributed.

Its objectives are to be pursued through original research, collaboration with other academic and parliamentary institutions in Australia and internationally, the Australasian Study of Parliament Group, the Commonwealth Parliamentary Association, the International Parliamentary Union, the Commonwealth Secretariat and other relevant bodies and participation in and the conduct of conferences and publications.

The PSU is jointly directed by Dr Colleen Lewis and Hon Dr Ken Coghill, former member and Speaker in the Victorian Parliament.