

Handout: Aboriginal People and the Australian Constitution (1901)

Section 127 (now repealed) of the Constitution said:

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

Section 41 of the Constitution says:

No adult person who has or acquires a right to vote at elections for the more numerous House of the Parliament of a State shall, while the right continues, be prevented by any law of the Commonwealth from voting at elections for either House of the Parliament of the Commonwealth.

These sections of the Constitution meant that Aboriginal people were not counted in the census but, like all adult Australians, they could vote in federal elections if they also had the vote in their home State or Territory. However, in the Commonwealth Franchise Act of 1902 the following clause was inserted:

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 41 of the Constitution.

The same Act that gave the right to vote to all women in Commonwealth elections actually took it away from some Aboriginal people. (All Aboriginal men and women received the right to vote in federal elections in 1962.)

Section 51 of the Constitution said:

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 race in any State, for whom it is deemed necessary to make special laws.

(The words 'other than the aboriginal race in any State' were struck out following the 1967 referendum.)