ACTIVITY 4

Changing the law — what was the role of Cabinet and Parliament?

This activity helps students explore the material in the ***Parliamentary and Cabinet debates 1964–66 and Cabinet Decision 1967*** sections of the website **http://www.nma.gov.au/indigenousrights/**

As you have now seen the main aim of the Aboriginal reform organisations and their supporters was to bring about a change to two parts of the Constitution — s.127, which stopped Aboriginal people from being included in the census, and s.51 (xxvi) which stopped the Commonwealth Parliament from passing legislation specifically relating to Aboriginal people.

These changes to the Constitution could only be made after a referendum — a popular vote — showed that a majority of total voters in Australia, and voters in a majority of States (four out of six, ACT and NT residents did not have a vote at this stage), voted in favour of the changes.

Parliament had to pass an Act to authorise the referendum; and Cabinet had to authorise the Government to introduce and pass the legislation.

So, let's see how this process was achieved. The ***Collaborating for Indigenous Rights*** website includes much material from Commonwealth Parliament and Cabinet. Much of it will be difficult for students to work through. Here we have suggested a way of minimising the reading of the sometimes difficult and dense material so that you get the best information in the easiest way.

The 1964 legislation

Several Bills were introduced into Commonwealth Parliament — in 1964, 1965 and 1966 — before one was passed in 1967 authorising the referendum.

The debates that reveal most about parliamentarians' attitudes on the issue are those during the 1964 Bill. That bill was introduced by the ALP Opposition (O), and included the two changes that were eventually voted on in 1967. At this time, however, the Government (G) opposed them.

1 Go to the Bill on the ***Collaborating for Indigenous Rights*** website, and allocate each of the references in the table below to a small group. That group should then summarise and report on the politicians' arguments, ideas and attitudes. The reports should follow the sequence in the table. Where several politicians made comments on the one issue or question, then the groups should report in that order. This will help the whole class to appreciate the differences of opinion that existed in some cases.

SOURCE 4.1

1964 *Hansard* pages 1902–17
http://www.nma.gov.au/indigenousrights/subsection0ff1.html?ssID=26

Aspects – what the politicians said about:	Calwell (O) Pages:	Snedden (G) Pages:	Bryant (O) Pages:	Barnes (G) Pages:	Beazley (O) Pages:
Why s.127 was included in the 1901 Constitution.	1902				
Why it was no longer appropriate.	1903				
But did it cause problems? Was it having any harmful effect?		1905		1913	
Why s.51(xxvi) was introduced. Consider the role of Queensland and Pacific Islands labour.	1903-4				
Was it causing any problem now? Was it appropriate or not? Was it even a positive benefit?	1904	1906			
What was meant by positive and negative discrimination.		1907			1916-17
Attitudes to what was happening to Aboriginal people – assimilation. How would changes affect this?	1904-5	1905	1910-11	1915	
International considerations.	1904				
Public opinion.		1906	1909-10		
Attitudes to role of the Commonwealth and its resources.			1912		
Problems caused by trying to create a uniform law.		1907-8			

2 When all groups have reported on their individual elements you should be able to complete the following summary sheet:

A SUMMARY OF THE IDEAS AND ATTITUDES IN THE 1964 COMMONWEALTH PARLIAMENTARY DEBATES

1	The legislation of 1964 was introduced by _____
2	His role in Parliament was _____
3	The aim of the legislation was to hold a _____ to change the _____
4	The two parts to be changed were section _____ which _____ And section _____ which _____
5	Mr Calwell explained that the reason for the existence of s.127 in the 1901 Constitution was to do with Queensland and Pacific Islanders, that is: _____
6	His attitude to this section was that it was no longer appropriate because _____ _____
7	He believed that it was important to get rid of it because _____
8	Calwell also explained that the reason for the existence of s.51 (xxvi) in the original Constitution of 1901 was _____ _____
9	His attitude to this section now was that it was not necessary because _____
10	He believed it was important to get rid of it now because _____
11	He also felt that there was an international element – that because Australia was a member of the United Nations Organisation other countries could say that Australia was _____
12	Calwell also believed that Australians had to examine their consciences because _____ _____
13	His attitude to the issue of assimilation, that is the inclusion of Aboriginal people into white society, was _____ _____
14	Mr Calwell was followed by Mr Snedden. His position was _____ which means that he was in charge of _____
15	He agreed with Calwell that s.127 was _____
16	But he believed that the effect of s.127 in practice was _____ and therefore it did not need to be removed.
17	His attitude to s.51 (xxvi) was, not that it was dangerous to Aboriginal people, but that it was in fact a safeguard to make sure that laws could not be passed that _____
18	Snedden believed that the assimilation of Aborigines meant that any law should affect all races _____ _____
19	His attitude to discrimination, whether positive and helpful or negative and hurtful was _____ _____
20	He also argued that since the Aboriginal people of one State were likely to have very different needs to those in another State, it was not possible for the Commonwealth to pass a law that _____
21	The next speaker was Mr Bryant. His attitude was _____
22	He argued that in terms of freedom, Aboriginal people, in comparison to other citizens, were _____ _____
23	He made his point about the complexity and unfairness of laws by saying that any Aboriginal person needed a staff of three people, whose job was: one to _____ another to _____ and a third to _____
24	He said that a main reason to pass over the power to make laws about Aboriginal people to the Commonwealth was financial: that the resources of the Commonwealth to deal with problems, compared to the resources of the States, was _____ _____

The process of introducing a referendum

While our main concern is a study of the legislation as passed and put to a referendum in 1967, that legislation had to be authorised by a process of Cabinet.

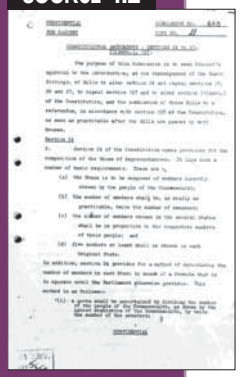
You can follow the Cabinet process through the documents on the ***Collaborating for Indigenous Rights*** website.

Cabinet is the meeting of senior Ministers of the Government who make various decisions, including what legislation to allow to be introduced into Parliament.

In 1964 the Opposition, the Australian Labor Party, introduced legislation to authorise a referendum to change the Constitution by repealing s127, and amending s 51 (xxvi). That legislation was not passed.

In February 1965 Attorney-General Billy Snedden put a proposal to Cabinet that the Government should introduce similar legislation, together with a proposal to break the 'nexus' — that rule in the Constitution that the numbers of members in the House of Representatives should always be as near as practicable double the number of members in the Senate. The Government wanted to be able to change the numbers of members in the House as required as the population grew and population distribution shifted, without always having to adjust the number of Senators as a consequence.

SOURCE 4.2



CABINET: February 1965

National Archives of Australia, A5827/1, vol. 20
http://www.nma.gov.au/indigenousrights/subsection0ff1.html?ssID=26

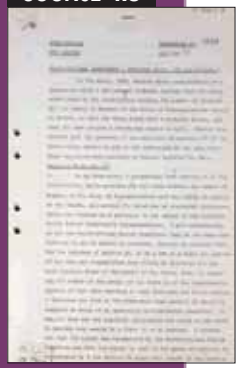
1 Look at pages 11–12 paragraphs 24–26, 28–30:
- What was Snedden's attitude to public opinion on changing the constitution?
- What does this suggest about the results of the petition campaigns of the early 1960s?
- What was the reason for the existence of s.127?
- How had its reasons for existence been changed by a) modern conditions, and b) the 1962 legislation giving Indigenous people the right to vote in Commonwealth elections, and c) international developments?

2 Look at pages 13–14, paragraphs 37–38:
- What does Snedden see as the attitude of the public towards issues of discrimination?
- What is Snedden's own attitude towards the effect of s.51 (xxvi) as discrimination?
- What are his reasons for supporting its amendment?

3 Look at page 14 paragraph 39:
- What did Snedden see as the likely practical effect of the change on the balance of power between the Commonwealth and the States?

Snedden recommended that changes to s.127 and s.51(xxvi) be put, but Cabinet only agreed to s.127.

SOURCE 4.3



CABINET: August 1965

National Archives of Australia, A5827/1, vol. 31
http://www.nma.gov.au/indigenousrights/subsection0ff1.html?ssID=26

4 Look at page 5 paragraph 13:

Snedden again argued to include s.51(xxvi) in proposed constitutional changes. Summarise his main arguments about a) public opinion, and b) the attitude of the Opposition.

5 Look at pages 6–8 paragraphs 15–19:
- What are Snedden's arguments about discrimination, and about the use of Commonwealth powers?
- What does Snedden see happening with Commonwealth involvement in Indigenous matters if the Constitution is amended?

6 Look at page 11 paragraph 30:
- What argument does Snedden stress now to Cabinet to have them accept the changes?

7 Look at pages 11–13 paragraphs 30–34:
- Snedden outlines three different possible approaches. Which does he recommend, and why?

SOURCE 4.4

PARLIAMENT: November 1965

Hansard, Parliamentary Debates, House of Representatives, 11 November 1965, pp. 2635-2640
http://www.nma.gov.au/indigenousrights/subsection0ff1.html?ssID=26

Cabinet again rejected Snedden's proposals. To see the reasons Prime Minister Robert Menzies gave for this, look at pages 2638–2640 of the debates on the 1965 Bill.

SOURCE 4.5

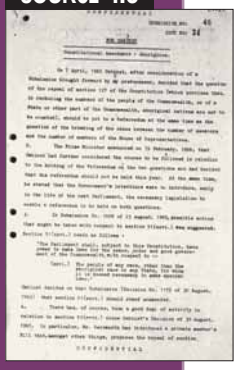
PARLIAMENT: March 1966

Hansard, Parliamentary Debates, House of Representatives, 10 March 1966
http://www.nma.gov.au/indigenousrights/subsection0ff1.html?ssID=26

Government backbencher William Wentworth introduced a bill to include the change to s.51(xxvi) in the proposed set of referendums to be held. He did so for two main reasons: because he believed the Commonwealth should have the freedom and power to act in the area and legislate against existing State discrimination, and to prevent further racial discrimination. Look at pages 121–125 to see Wentworth's explanation of these ideas.

Look also at pages 125–136 and the speeches of Beazley, Erwin, Bryant, Robinson, Cross and Cleaver to see liberal attitudes at the time, and for many anecdotes that help us understand people's behaviour, opinions and values at that time.

SOURCE 4.6



CABINET: January 1967

National Archives of Australia, A5842/2, vol. 1, submission 46, decision 1979
http://www.nma.gov.au/indigenousrights/subsection9bad.html?ssID=27

The issue was raised again, this time by the new Attorney-General, Nigel Bowen.

Look at pages 1–5 paragraphs 1–12 for a good summary of events between 1965 and 1967.

8 Look at pages 5–7 paragraphs 13–16:
- Why does he reject this idea?

9 Look at pages 7–8 paragraphs 18–19:
- What is the importance of public opinion in Bowen's recommendation?

Cabinet now agreed to put the changes to both s127 and s51(xxvi) in a Bill authorising a referendum, and this was passed.

10 What does this process tell you about:
- The role of Cabinet in the process to bring about change through a referendum on the Constitution?
- The role of Parliament in this process?
- The role of individual members of parliament in it?
- The role of parties?

11 Why do you think the Government finally decided to allow a proposed change to the Constitution to be put to the people?

Would the voters now accept the proposed changes? To explore the campaign to convince voters to support the proposed change look at the next Activity.

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FOR CABINET

SUBMISSION NO. 660

COPY NO. 53

CONSTITUTIONAL AMENDMENTS : SECTIONS 24 to 27, 51(xxvi.), 127.

The purpose of this Submission is to seek Cabinet's approval to the introduction, at the commencement of the March Sittings, of Bills to alter section 24 and repeal sections 25, 26 and 27, to repeal section 127 and to alter section 51(xxvi.) of the Constitution, and the submission of those Bills to a referendum, in accordance with section 128 of the Constitution, as soon as practicable after the Bills are passed by both Houses.

Section 24

2. Section 24 of the Constitution makes provision for the composition of the House of Representatives. It lays down a number of basic requirements. These are -

(a) the House is to be composed of members directly chosen by the people of the Commonwealth;

(b) the number of members shall be, as nearly as practicable, twice the number of senators;

(c) the number of members chosen in the several States shall be in proportion to the respective numbers of their people; and

(d) five members at least shall be chosen in each Original State.

In addition, section 24 provides for a method of determining the number of members in each State by means of a formula that is to operate until the Parliament otherwise provides. This method is as follows:-

'(i) A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators;

C.3473

CONFIDENTIAL

FOR CABINET

SUBMISSION NO. 1009

COPY NO. 33

CONSTITUTIONAL AMENDMENTS : SECTIONS 24-27, 127 and 51(xxvi.)

On 7th April, 1965, Cabinet after consideration of a Submission which I had brought forward, decided that the nexus established by the Constitution between the number of Senators and the number of Members of the House of Representatives should be broken, so that the House might have a flexible future, and that for that purpose a referendum should be held. Cabinet also decided that the question of the abolition of section 127 of the Constitution should be put to the referendum at the same time. These decisions were recorded in Cabinet decision No. 841.

Sections 24-27 and 127

2. In my Submission, I recommended that section 24 of the Constitution, which provides for the nexus between the number of Members of the House of Representatives and the number of members of the Senate, and section 27, which was an incidental provision, should be replaced by a provision to the effect of the Constitutional Review Committee's recommendations. I also recommended, as did the Constitutional Review Committee, that at the same time sections 25 and 26 should be repealed. Section 25 provides that, for the purposes of section 24, if by a law of a State all persons of any race are disqualified from voting at elections for the more numerous House of Parliament of the State, then, in reckoning the number of the people of the State or of the Commonwealth, persons of that race residing in that State are not to be counted. I expressed the view in the Submission that section 25 should be repealed as being of an apparently discriminatory character. It has not ever had any practical application and could in any event be avoided very easily by a State if it so desired. I pointed out that its repeal was recommended by the Constitutional Review Committee and that its repeal as part of the group of sections to be replaced by a new section 24 might well result in the section

That very briefly explains the purpose of the Bills before the House this afternoon. I am one of the representatives of the State which produces the largest number of beef cattle in the Commonwealth. Whilst I represent a very highly industrialised city electorate many of my constituents are engaged in the processing of beef in the large meat works in the city of Brisbane. Some of these meat works are located in my electorate of Griffith. I speak on behalf of these people and in their interests because they are just as much involved in the prosperity of the meat industry as is the man who wears the big hat and rounds up his beasts and fatlings in the rural areas of Queensland. Lest some honorable members wonder why I am making these observations it would be as well to make clear that I am speaking for my own electors of Griffith who are engaged in the preparation of beef for export and the hauling of beef cattle to abattoirs. I speak also for the waterside workers who load the beef for export.

As I said, Queensland has the largest number of cattle in the Commonwealth. If you will permit me, Mr. Deputy Speaker, I shall give the beef cattle numbers, which I think will be of some interest. Statistical returns show that for the year ended 31st March 1965 there were 6,333,000 head of beef cattle at pasture in Queensland. This is an increase over previous years back as far as 1956. It is pleasing to know that although the State is suffering from a devastating drought the figure for the period up to 31st March this year, at any rate, shows an increase in the number of beef cattle in the State. It is true that there are large numbers of beef cattle in other States. For the same period the beef cattle numbers of New South Wales were 3,450,000.

Mr. Duthie.—The Tasmanian figure would be interesting also.

Mr. COUTTS.—Since the honorable member for Wilmot has made that observation I shall give the figures for the other States. The beef cattle numbers for Victoria for that same period were 1,415,000; for South Australia, 434,000; for Western Australia, 1,039,000; and for Tasmania, 219,000. I ask for leave to continue my remarks at a later stage.

Leave granted; debate adjourned.

Sitting suspended from 6 to 8 p.m.

CONSTITUTION ALTERATION (PARLIAMENT) BILL 1965.

Bill presented by **Sir Robert Menzies**, and read a first time.

Second Reading.

Sir ROBERT MENZIES (Kooyong—Prime Minister) [8.0].—I move—

That the Bill be now read a second time.

This is a Bill of immense importance but of not great complexity in itself. It is designed to break the nexus—a term which we have all come to understand—created by section 24 of the Commonwealth Constitution. Section 24 states—and I want to state this matter with all possible clearness because I think that is vital to an understanding of it—

> The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

The phrase "as nearly as practicable, twice the number of the senators" is something that has to be borne in mind in the whole parliamentary and public consideration of this matter. I do not undertake to be dogmatic as to what is meant by the phrase "as nearly as practicable", because, after all, if there are 60 senators it is quite practicable to have 120 members of this House, yet we have 122 plus 2 who do not have a general vote. But it is quite clear that "as nearly as practicable" imposes genuine limits, however they may be defined, on the number of people in this House.

What are the facts? In 1949, following the increase in 1948 of the House of Representatives from 74 to 121 members with full voting rights and of the Senate from 36 to 60 senators, each member of this House represented, on the average, 66,000 people. Today, such is the growth of the population that each member, on the average, represents not 66,000 people but 94,000 people. Without a constitutional change, how far can we increase the number of members of this House, increasing the numbers to

25th parl (1st session) pp 121 – 136

COMMONWEALTH OF AUSTRALIA

SPEECHES IN DEBATE

ON

CONSTITUTION ALTERATION (ABORIGINES) BILL 1966

(Bill presented by Mr. Wentworth)

[*From the "Parliamentary Debates," 10th March* 1966]

Bill presented by **Mr. Wentworth,** and read a first time.

Second Reading.

Mr. WENTWORTH (Mackellar) [11.18]. —I move—

That the Bill be now read a second time.

This is a bill designed to put a third question to the people at the foreshadowed referendum. A short time ago there was some degree of urgency about this Bill because the referendum was to take place on 28th May 1966. Now that the referendum has been postponed there is not the same degree of urgency, particularly since our Constitution provides that a Bill for its alteration evaporates, in effect, unless it is put to a referendum within six months of being passed through this House. In those circumstances it would be inadvisable for this House to finalise the Bill before the date of the referendum is known. The consideration of this Bill is urgent but its finalisation is urgent no longer.

In common with other members of this House I welcomed the Government's decision to put to a referendum a proposal to repeal section 127 of the Constitution which provides that Aborigines shall not be counted for certain purposes. This is good, but does it go far enough? I believe that it does not go far enough, and I have two motives in bringing before the Parliament this expanding Bill which provides that there shall be more responsibility on the Commonwealth to help the States to deal with Aborigines and to prevent racial discrimination in Australia.

Let me refer first to the Aborigines themselves. I think that everyone who has had contact with Aborigines, as I have, has a personal liking for them and a feeling that we have a responsibility to them. They are nice, good people. Most of us would also have some sense of failure in relation to the way in which we have dealt with our Aborigines in the past. This is a failure which perhaps is not peculiar to the Australian people. Other people, not only white people, have sensed it elsewhere outside Australia. However, there is an inherent difficulty in dealing with this problem. It is not just a matter of saying: " We will regard the Aborigines as merely poor white people ". They are not. They are special people and they do need and deserve some special help. We have a special responsibility in this sphere. Hence, in a sense, some discrimination is still necessary but it must be discrimination in their favour, not discrimination against them.

The Commonwealth so far, except in the Northern Territory, has had no direct responsibility in this sphere but there is a feeling that it should assume some greater degree of direct responsibility. That feeling stems from several sources. First, the Aborigines themselves want this to happen. If we were dealing with the rights of trade unionists or companies or pastoralists or any other group in the community we would consult with that group. The Aborigines are such a group and should be the first people to whom we would turn before deciding anything relating to their future. What do they want? What are their feelings in this regard? As a result of inquiry and a very considerable degree of contact with Aborigines, I know—I think the House would agree with me on this—that they want the Commonwealth to assume a greater degree of responsibility towards them, their rights, their opportunities and their advancement.

SUBMISSION NO: 46

COPY NO: 34

FOR CABINET

Constitutional Amendment : Aborigines.

On 7 April, 1965 Cabinet, after consideration of a Submission brought forward by my predecessor, decided that the question of the repeal of section 127 of the Constitution (which provides that, in reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives are not to be counted), should be put to a Referendum at the same time as the question of the breaking of the nexus between the number of senators and the number of members of the House of Representatives.

2. The Prime Minister announced on 15 February, 1966, that Cabinet had further considered the course to be followed in relation to the holding of the referendum on the two questions and had decided that the referendum should not be held this year. At the same time, he stated that the Government's intentions were to introduce, early in the life of the next Parliament, the necessary legislation to enable a referendum to be held on both questions.

3. In Submission No. 1009 of 23 August, 1965, possible action that might be taken with respect to section 51(xxvi.) was suggested. Section 51(xxvi.) reads as follows :

> '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.'

Cabinet decided on that Submission (Decision No. 1175 of 30 August, 1965) that section 51(xxvi.) should stand unamended.

4. There has, of course, been a good deal of activity in relation to section 51(xxvi.) since Cabinet's Decision of 30 August, 1965. In particular, Mr. Wentworth has introduced a private member's Bill that, amongst other things, proposes the repeal of section