# Law at a glance worksheet

## Justices

Familiarise yourselves with the case law on this worksheet and prepare a list of questions to ask the legal teams.

## Legal teams

Familiarise yourselves with the case law on this worksheet. Prepare your arguments to present to the court. You will also need to provide a written summary of key arguments to the justices prior to the hearing.

A table like the one below can be used to summarise key points:

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| --- | --- |
| **KEY ARGUMENTS** | **PRECEDENT CASES** |
|  | King v Jones (1972) |
|  | R v Pearson (1983) |

## The scenario

South Australia has lowered the voting age for state and local elections to 16-years-old. Alex Lee, a 16-year-old from Adelaide, attempted to vote in the most recent federal election. Although enrolled to vote, Alex was not allowed to vote on polling day for the federal election. Alex has decided to challenge the Australian Electoral Commissioner in the High Court and argue that they should have been allowed to vote. Alex argues section 41 of the Australian Constitution – which states that any adult person who has the right to vote in state elections cannot be prevented from voting federally – gives them the right to vote in federal elections.

## Section of the Australian Constitution in dispute:

Section 41 (abridged) – No **adult person** who has or acquires **a right to vote** at **state** elections shall, while the right continues, be prevented by any law of the Commonwealth from voting at **Commonwealth** elections.

#### A matter of interpretation

The 2 questions the court will need to consider are:

1. What is the meaning of an ‘adult person’ under this section? Could Alex Lee be defined as an ‘adult person’?
2. If Alex Lee is an ‘adult person’, does this section guarantee their right to vote in federal elections?

After hearing arguments from both sides, it is up to each High Court judge to decide how they interpret section 41 in relation to this case. In arriving at their decision, they will need to consider:

* how the section has been interpreted by other judges in precedent—past—cases.
* how the section should be interpreted today, considering the current social context.

## What is the meaning of an ‘adult person’?

### Key precedent case: King v Jones (1972)

**Facts**: In 1972 South Australia and Western Australia lowered the voting age for state elections from 21 to 18-years-old. Susan King, an 18-year-old in South Australia, tried to enrol to vote in federal elections. Her enrolment was refused because the law stated the voting age for federal elections was 21. King argued in the High Court that she had a right to vote in federal elections under section 41 of the Constitution.

**Issue**: The main issue considered by the Court was the meaning of the words ‘adult person’ under section 41.

**Verdict:** The High Court unanimously decided Susan King was not an adult person.

**Reasoning**: The Court held that the meaning of ‘adult‘ for the purposes of section 41 was fixed with the meaning it had in 1901, which was 21.

**To consider**: In 1973 the Parliament of Australia passed a law to lower the voting age to 18-years-old for federal elections.

* How and why has ‘the ordinary legal meaning’ of an adult changed since 1972?
* What factors should be considered when defining what it means to be adult?
* Can Alex Lee be considered an adult by today’s standards?

## Does section 41 guarantee a right to vote in federal elections?

### Key precedent case: R v Pearson (1983)

**Facts**: In 1983 a federal law stated that, if you enrolled to vote after 6pm on the day a federal election was called, your enrolment would not be processed until after the election. Four adult citizens from New South Wales who were enrolled to vote in state elections, tried to enrol to vote in the 1983 federal election after the cut-off time. When they were refused, they took the case to the High Court, arguing that section 41 meant they had a constitutional right to vote in the upcoming federal election.

**Issue**: The main issue considered by the Court was whether section 41 guaranteed the 4 adult citizens a right to vote in the federal election.

**Verdict:** A majority of 6 judges found that section 41 does not guarantee a right to vote in federal elections.

**Reasoning**: The majority argued that when the Constitution was written the purpose of section 41 was to make sure those who could vote in state elections could also vote federally but only up until the newly created Australian Parliament made laws to define who could vote (which it did in 1902). Anyone who enrolled to vote at a state level after 1902 could not rely on this section to give them a right to vote federally.

#### To consider:

* If section 41 did guarantee a right to vote, the states could have influence over who could vote in federal elections. What could be the consequences of this?
* The dissenting judgement in R v Pearson argued that the plain words of section 41 did guarantee a right to vote. Justice Murphy said that ‘a right to vote is so precious that it should not be read out of the Constitution by implication’. To what extent do you agree with this statement?