



HIGH COURT CASE STUDY



AUSTRALIAN CONSTITUTION CENTRE

The right to vote survives incarceration

Roach v Electoral Commissioner
(2007)

Facts of the case

Vickie Lee Roach was convicted in Victoria in 2004 on charges relating to a robbery and seriously injuring a man when she crashed into his car while being chased by police. She was sentenced to a total of six years jail with a four-year non-parole period.

In 2006 the Commonwealth Electoral Act 1918 was amended by the Howard Coalition Government to prohibit all imprisoned people from voting in federal elections. Before this, only prisoners serving a sentence of more than three years had been excluded from voting and were 'disenfranchised'.

Roach was disqualified from voting and decided to challenge the constitutional validity of both the blanket ban, and the ban for sentences over three years.

Issues considered by the court

Sections 7 and 24 of the Constitution provide that our representatives must be 'directly chosen by the people'. What does 'by the people' mean? Is it all people? Can people ever be validly excluded from voting in federal elections?

Decision

The Court found that the blanket voting ban for all prisoners was unconstitutional. However a ban on voting for prisoners serving sentences over three years was constitutional.

Our right to vote can be implied by sections 7 and 24 in the Constitution, because voting is fundamental to our system of representative government.

The High Court found that the right to vote could



Vicki Lee Roach. Source: © Jonny Weeks, the Guardian Australia

only be limited for a 'substantial reason' and any limitation had to be 'appropriate and adapted.'

The blanket ban that prohibited all prisoners from voting was not proportionate. However the ban on those serving sentences of over three years was. This allowed prisoners who would be released

Background to the case

This was a constitutional case. The validity of amendments to the Commonwealth Electoral Act 1918 (Cth) were tested in relation to the Constitution.

Only six judges sat as Justice Callinan was due to retire before the case could be finalised.

After the 2004 election the Coalition Government had a majority in both Houses of Parliament. They were able to pass legislation without much debate or compromise.



Voters at Wirrawe NT. Source: Australian Electoral Commission

The High Court had to decide whether the Coalition Government amendments to the electoral laws were unconstitutional.

Vickie Lee Roach was just nine years old when she started running away from her foster family. Removed from her Aboriginal mother in what is known as the stolen generation at just two, Vickie felt powerless and out of place most of her life. She had turned to a life of drugs and petty crime.

Between 1976 and 2003 Roach amassed a number of convictions and was regularly in and out of jail. While in prison in 2004 she completed a master's degree in professional writing and studied for a PhD. She has written poetry and a novel and was considered a "peer educator" at the jail.

Did you know?

- Unlike other nations, there is no express (written) right to vote in Australia's Constitution. The right has been found to be implied by the High Court, because it

is implicit in the system of representative government created by our Constitution.

- 'Prisoners who are citizens and members of the Australian community remain so. Their interest in, and duty to, their society and its governance survives incarceration.'
- Majority judgment, *Roach v Electoral Commissioner* (2007)
- Voting is not just a right in Australia, but a duty. Unlike in most other countries, it's compulsory here.
- In other parts of the world, including many states in the USA, a person who has served a prison sentence can never vote again.

Chief Justice Gleeson bench. Source: High Court of Australia

