



HIGH COURT OF AUSTRALIA

Public Information Officer

30 August 2007

VICKIE LEE ROACH v ELECTORAL COMMISSIONER AND COMMONWEALTH OF AUSTRALIA

Chief Justice Murray Gleeson made the following statement:

Prior to an amendment of the *Commonwealth Electoral Act* in 2006, prisoners serving a sentence of three years or longer were not entitled to vote. In 2006, the Act was amended to provide that prisoners serving any sentence of imprisonment were not entitled to vote.

The plaintiff challenged the validity of the 2006 amendment. The plaintiff also argued that, if the 2006 amendment were invalid, either the pre-2006 legislation did not continue to apply, or, if it did, it also was invalid.

The Court, by majority, upholds the challenge to the 2006 amendment. It also holds that the pre-2006 legislation continues in force and is valid. Reasons for the decision will be published at a future date.

The order of the Court is as follows:

The questions stated in the Amended Special Case filed on 9 July 2007 be answered as follows:

- (1)
 - Q. Are sections 93(8AA) and 208(2)(c) of the Act, and section 221(3) of the Act to the extent that it gives effect to these provisions, invalid because they are contrary to sections 7 and 24 of the Commonwealth Constitution?
 - A. Sections 93(8AA) and 208(2)(c) of the Act are invalid.
- (2)
 - Q. Are sections 93(8AA) and 208(2)(c) of the Act, and section 221(3) of the Act to the extent that it gives effect to these provisions, invalid because they are beyond the legislative power of the Commonwealth conferred by sections 51(xxxvi) and 30 of the Constitution and any other head of legislative power?
 - A. Unnecessary to answer.

(3)

Q. Are sections 93(8AA) and 208(2)(c) of the Act, and section 221(3) of the Act to the extent that it gives effect to these provisions, invalid because they are contrary to:

- (i) The freedom of political communication implied in the Constitution; or
- (ii) A freedom of participation, association and communication in relation to federal elections implied in the Constitution?

A. Unnecessary to answer.

(3A)

Q. If the answer to question 1, 2 or 3, is “yes”, are sections 93, 109, 208 and 221(3) of the Act as in force prior to the amendments (including repeals and substitutions) made to those and related provisions by the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2006* (Cth), section 3 and Schedule 1, items 3, 4, 13, 14, 15, 50, 61 and 62 in force and valid?

A. The provisions listed in the question are in force and valid.

(3B)

Q. If the answer to question 3A is “no”, are sections 93 and 109 of the Act as in force prior to the amendments (including repeals and substitutions) made to those and related provisions by the *Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Act 2004* (Cth), s 3 and Schedule 1, items 1-5 in force and valid?

A. Question 3B postulates a relevant distinction between the text of the *Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Act 2004* (Cth) and the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004* (Cth), but, given the answer to question 3A, unnecessary to answer.

(3C)

Q. If the answer to question 3B is “no”, are sections 93 and 109 of the Act as in force prior to the amendments (including repeals and substitutions) made to those and related provisions by the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004* (Cth), section 3 and Schedule 1, items 6, 7, 46, 71 and 95 in force?

A. Question 3C postulates a relevant distinction between the text of the *Electoral and Referendum Amendment (Prisoner Voting and Other Measures) Act 2004* (Cth) and the *Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Act 2004* (Cth), but, given the answer to question 3A, unnecessary to answer.

(4)

Q. Who should pay the costs of the special case?

A. The plaintiff should have one half of her costs of the amended special case.

(5)

Q. Should the Court grant the plaintiff the relief claimed in paragraph 1 of the application for an order to show cause, namely a declaration that sections 93(8AA) and 208(2)(c) of the Act are invalid and of no effect?

A. Unnecessary to answer, given the answer to question 1.

I publish that order.