

# Prisoners win right to vote

**A well directed pro bono strategy underpinned the recent successful High Court challenge which gives prisoners back their voting rights.**

Vickie Roach was sentenced in 2004 to at least four years in prison for negligently causing serious injury through a car accident. She is an Indigenous Australian woman and is currently held at the Dame Phyllis Frost Centre in Deer Park.

Following Howard government amendments in 2006 to the *Commonwealth Electoral Act*, all prisoners, including Ms Roach, were deprived of the right to vote in federal elections.

On 5 March, the Human Rights Law Resource Centre (HRLRC) commenced legal action in the High Court of Australia to challenge the constitutionality of the federal government's legislation. In its orders handed down on 30 August, the High Court ruled the government had acted unlawfully and unconstitutionally by imposing a blanket ban denying prisoners the right to vote.

The issues raised in the case were of broad public interest. The High Court was asked to consider important questions about the right to vote, prisoners' rights, Indigenous rights, representative democracy and responsible government. The High Court's decision recognises the fundamental human right to vote and that the government cannot take that right away in an arbitrary and disproportionate manner. Indeed, the decision of the Court has significant value for the validity of the upcoming federal election by reinstating the right to vote to around 8000 of Australia's prisoners.

Mr Lynch described the Court's decision as a victory for democracy.

"It's an affirmation that the legislative and the executive power of the government is not unconstrained and that meaningful representative democracy requires that people be enfranchised and have their say," he said.

- beyond the legislative powers of the commonwealth; and
- incompatible with chapter III of the Constitution, in that they amount to an additional punishment.

Ms Roach and her legal team contended that the impugned provisions were not reasonably appropriate or adapted to any legitimate end. In its decision, the Court ordered that the blanket disenfranchisement provisions were invalid. The reasons for the Court's decision will be published at a later date.

The federal legislation struck down by the High Court was directed towards excluding prisoners from participation in society on the most fundamental level. This approach is in direct conflict with Australia's obligations under the International Covenant on Civil and Political Rights, which provides that every citizen has the right to vote and to participate in public life.

One of the guiding principles identified at the 2005 national pro bono conference was the importance of ensuring that pro bono work reaches those most in need, assisting as many individuals as possible to access and achieve justice. By taking her case to the High Court, Ms Roach gave a voice to a largely overlooked and excluded segment of Australian society. This would not have been possible without the substantial pro bono assistance she received from her committed team of legal professionals.

With the introduction of the Victorian Charter of Human Rights and Responsibilities, the Victorian government will find itself more accountable than ever before to its obligations under international human rights law. And while human rights law provides a vital gateway, it is the legal profession's ongoing pro bono contribution that will ensure the voices of individuals, such as Vickie Roach, are given a fair hearing. ●

***"Meaningful representative democracy requires that people be enfranchised and have their say."***

The case brought together legal practitioners from diverse sectors of the community, including corporate lawyers, members of the bar, not-for-profit sector community legal centres and university academics.

This type of pro bono strategy, where different interest groups work in a pro bono capacity towards a common goal, is increasingly seen as a model that can assist people to realise their rights.

The HRLRC was provided with substantial pro bono assistance from an experienced legal team, comprising Ron Merkel QC, Michael Pearce SC, Kristen Walker and Fiona Forsyth of counsel, and Peter O'Donahoo, Neil McAteer, Emily Howie, Peter Haig and Ben Rechter of Allens Arthur Robinson.

"Working pro bono, Vickie's legal team has made an outstanding commitment and contribution. They brought exceptional professionalism, intellect, rigour, experience and enthusiasm to the matter, often under very heavy workloads and time constraints," Phil Lynch, director of the HRLRC, said.

Ms Roach's case also raised wider social justice issues in relation to Indigenous Australians. She is one of the disproportionately high number of Aboriginal people held in custody in Australia that would have been discriminated against by the legislation.

Similar legislation taking away the right of prisoners to vote has been struck down in other jurisdictions, including in Canada, the United Kingdom and South Africa. Each of these jurisdictions contains constitutional or legislative protection of human rights, throwing into sharp focus the absence of a federal bill of rights in Australia.

The prisoner disenfranchisement provisions of the Act were challenged on the grounds that they were:

- contrary to ss7 and 24 of the Constitution, which require that the Senate and the House of Representatives be "directly chosen by the people";
- inconsistent with the implied rights to freedom of political participation and communication;

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