

## **ROACH v ELECTORAL COMMISSIONER & ANOR (M19/2007)**

Date special case referred to full court: 2 May 2007

This matter concerns the constitutional validity of s93(8AA) of the *Commonwealth Electoral Act 1918* (Cth) (the Act).

The plaintiff is an Australian citizen of indigenous descent. She is over 18 years of age and currently enrolled to vote. She is also currently serving a full time sentence of imprisonment for breach of State law, having been convicted in 2004. She will not be eligible for parole until August 2008. The earliest possible date for the next federal election is 4 August 2007 and the latest possible date is 19 January 2008. Thus the plaintiff will be serving her sentence whenever the next general election takes place.

Amendments made by the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* (Cth) to the Act, came into operation in June 2006. Section 93(8AA) of the Act now provides that any person serving a sentence of imprisonment at the date of the election is not entitled to vote. (Prior to the amendments, the position was that any person serving a sentence of three years or more was disqualified from voting). By reason of s93(8AA) and s208(2)(c) of the Act, the plaintiff will not be entitled to vote at the next election.

The plaintiff commenced proceedings in this Court by way of an application for an order to show cause, seeking constitutional writs and a declaration that s93(8AA) and s208(2)(c) of the Act are invalid. The plaintiff maintains that the criterion for disenfranchisement is arbitrary and consequently not consistent with representative democracy. Further she maintains that it is contrary to the freedom of political communication and the freedom of political participation.

The Attorneys-General for New South Wales and Western Australia are intervening.

The issues raised by the special case are:

- are ss93(8AA) and 208(2)(c) of the Act invalid because they are contrary to ss7 and 24 of the Commonwealth Constitution?
- are ss93(8AA) and 208(2)(c) of the Act invalid because they are beyond the legislative power of the Commonwealth conferred by ss51(xxxvi) and 30 of the Constitution or any other head of legislative power?
- are ss93(8AA) and 208(2)(c) of the Act 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?