

Voting is one of the fundamental rights of Australian Citizens and during 1983 to 1995 legislation was created for the Commonwealth Electoral Act disqualifying prisoners serving over a five year sentence in prison from voting in the election. From 2004-2006 the act was extended so that prisoners who were serving a sentence of three years or over were banned from voting. A further amendment was made in 2006 by John Howard which forbids any sentenced prisoner to vote in the countries election.

Vicki Roach was convicted in 2004 with

Vicki Roach had challenged the Electron Commissioner because she believed that it was a basic right for a citizen of this country to be able to vote in the election. Upon hearing the question asking her why she had decided to challenge John Howards amendments to the act she said; "These were his exact words — prisoners are an undesirable element of society and unlikely to vote anyway. I've never been a big fan of John Howard and I thought, 'how dare he?'" Vicki Roach who is also an Indigenous Activist said; "Indigenous Australians are disproportionately represented in prisons: they constitute one per

cents should have the privilege to vote even if they were offenders. Additional to this they also mentioned that Australia's government was a responsible government which is "a particular way of governing through elected representatives. Under this system,

decision to overrule the 2006 voting amendment reached by a majority vote of 4-2, however 2004 voting laws still were valid which meant that anyone who had a prison sentence for 3 years or over could not vote. On the 26th of September 2007 the High Court delivered its reasons for judgment stating that the amendment was inconsistent with our system of democracy which the Constitution seeks to establish and was against the implied meaning of section 7 and section 24 – "directly chosen by the people".



Prisoners have the right to Vote



charges of robbery and seriously injuring a man while trying to flee from the police. Roach was sentenced in Dame Phyllis Frost Centre in Deer Park with a total of six years jail including a four year non-parole period. With the help of the Human Rights Law Centre Roach decided to challenge the 2006 amendments to the Commonwealth Electoral Act banning any sentenced prisoner to vote; furthermore she also decided to challenge the 2004 legislation that banned any prisoner with a sentence of three or more years from voting.

Roach had come from an aboriginal descent and was a member of the 'Stolen Generation'. Vicki was removed from the care of her mother when she was at the age of two and detested her Christian foster parents who she always rebelled against. By the age of fourteen Roach was addicted to heroin and at the age of seventeen Roach was arrested because she was caught using Heroin. Between the years of 1976 and 2003 she had 125 convictions with the verdict of being guilty and 23 court appearances before her latest sentencing in 2004.

cent of the population but make up 22 per cent of inmates. The electoral change therefore resulted in disproportionate disenfranchisement of indigenous people, silencing their political voice." She took the case to court because she felt that Indigenous Australians would be deprived due to the amendments in the act.

Roach was not the only person to believe that the 2006 amendments to the constitution were unreasonable, the Human Rights Law Centre Believed that the case raised major issues regarding prisoners' rights, Indigenous rights, the right to vote, representative democracy and responsible government. Prisoners, just like all other people, are entitled to enjoy their human rights "The United Nations Human Rights Committee has made it clear that prisoners enjoy all the rights in the International Covenant on Civil and Political Rights." The Human Rights Law Centre argued that this means prisoners were entitled to vote. They also brought up that Australia was a representative democracy which means that it is a form of government founded on the principle of elected individuals representing the people; this should mean that all citi-

zens should have the privilege to vote even if they were offenders. Members of the government also are Members of Parliament." The Human Rights Law Centre also stated that the due to the large amount of Aboriginals in proportion to the Indigenous society, that were imprisoned for short periods of time the Aboriginal society would not have their full voice in the election and that was a breach of Indigenous rights. The amendments to the Electoral Act were challenged by the grounds that they were; "contrary to sections 7 and 24 of the Constitution, which require that the Senate and the House of Representatives be 'directly chosen by the people'; beyond the legislative powers of the Commonwealth; inconsistent with the implied rights to freedom of political participation and communication and not reasonably appropriate or adapted to a legitimate end and incompatible with Chapter III of the Constitution in that they amount to punishment."

The hearing for Roach vs Electoral Commissioner was held from the 12th of June to the 13th of June 2007 and was heard by a Full Court at the High Court of Canberra.

On the 30th of August 2007 the court made a

When this landmark decision was presented to the media and to the public there were many conflicting attitudes towards the issues of the case. Some people believed that prisoners should have the right to vote saying "Convicted prisoners should have had their rights to freedom revoked for not following the regulations their society has put in place. They should not then have say in how that society is governed. They must realise that those are the consequences of their offence and perhaps will think again before re-offending once freed and readmitted into society." However most people believed that the decision that was reached was a victory for Representative Democracy as mentioned in this article by the Sydney Morning Herald; "the legislation that removed the right of all prisoners to vote was found to be unconstitutional. This was the first time the court recognised an implied right to vote in Australia's constitution."

Although Vicki Roach would not be able to vote because of her six year sentence, her image as a woman that had done wrong had changed and she was viewed as somewhat of a hero. Roach was given the nickname Eddie Mabo of electoral law. She was able to outline the rights of many aboriginals that were in Prison for minor offences. This decision was viewed as a victory for Indigenous rights as statistics had shown that Indigenous people are 13 times more likely to be jailed for minor charges than other Australians. Vicki was able to re-enforce the rights to be able to vote for the prisoners who were imprisoned for a short period of time. Vicki Roach's case enable the courts to overrule John Howards amendments to the Electoral and Referendum stating that prisoners sentenced with any sentence were not allowed to vote. However the 2004 amendments to the referendum were still in use which meant that any prisoner with a sentence 3 years or over is not capable of voting in the election. Vicki Roach now works as an oral historian at the Koorie Heritage Trust and is writing an autobiography and family history. She has completed a master's degree in professional writing and has earned a PhD in creative writing while living at the Dame Phyllis Frost women's prison. She has written poetry and a novel and was a "peer educator" at the jail. Roach is also a passionate activist for Indigenous rights.

The current voting rights for prisoners state that people who have been sentenced for more than 3 years in prison do not have the right to vote in federal elections while they are serving their sentence even if they are on the electoral role.