

UNIVERSAL ADULT SUFFRAGE

UNIVERSAL ADULT SUFFRAGE (UAS): The idea of allowing people to vote but within reason.

NO UAS → *McKinlay* (minority of Gibbs and Mason JJ) expressed the idea that yes it would be politically incorrect to exclude certain people from voting, but it was sort of up to the Parliament to have the ability to decide who should be able to vote.

UAS → *McGinty* (majority of Brennan CJ, Gaudron and Toohey JJ) said that it would really depart from the 'directly chosen by the people' requirement to deny people franchise on the basis on characteristics like gender and age.

DIS/ENFRANCHISEMENT

DISENFRANCHISEMENT OF PREVIOUSLY QUALIFIED VOTERS

(1) *Roach* → denied the power to vote if serving 3 years+ in prison. Found by the majority to be too much of a departure from 'dcbtp' requirement. INVALID (Gleeson CJ, Gummow, Kirby, Crennan JJ): Not reasonably adapted because sometimes prison sentences weren't about crime but rather about homelessness, etc and that it was unlikely that prisoners had presented this sort of civic irresponsibility so much so that this could disenfranchise their ability to vote.

Principle: REPRESENTATIVE GOVERNMENT, Gleeson CJ says that 'franchise is so critical to representative government... that disenfranchisement of any group of adults citizens on a basis that does not constitute a substantial reason for exclusion of such participation would not be consistent with choice by the people.'

Principle: SUBSTANTIAL REASON, Gummow, Kirby and Crennan JJ say that it will be of a 'substantial reason to disenfranchise if it is reasonably appropriate and adapted to serve an end which is consistent or compatible with the maintenance of the constitutionally prescribed system of a representative government.'

(2) *Rowe* → denied the power to vote once the writs closed later that same day as a new elector. Found by majority (French CJ, Gummow, Bell and Crennan JJ) to be INVALID because it impeded on the operation of a representative government under ss7 and 24. 7-day window to enrol dwindled to 1 day for new electors and 3 for electorate swappers. French CJ in *Murphy* said this 'reduced existing opportunities to vote.'

Principle: ALIGNMENT WITH REP. GOVERNMENT, the majority go on to say that it was invalid to disenfranchise voters for this reason because 'dcbtp' requires an electoral system that aligns with a representative government who were otherwise enfranchised (Gummow and Bell JJ).

Principle: DEMOCRACY, French CJ goes on to say that 'dcbtp' is now informed by UAS, that implicit in ss8 and 30 read with s51(xxxvi) is that democratic content cannot be diminished even if it is subject to adjustment from time to time.

Heydon J (minority) goes on to say that it was a legal duty of these freshly 18-year-olds to actually enrol under the Electoral Act, whereas the majority accepts this, but says that their civic role to vote is prioritised over their legal role.

(3) *Murphy* → unanimous vote that there did not need to be longer than seven days to enrol, that pushing the enrolment up to the polling day far exceeded the scope of 'dcbtp'.

Principle: DEPARTURE FROM MAXIMISING VOTERS, it was not the role of the court to suggest alternatives which extended opportunities for enrolment. That it was not invalid just because there could have been alternative methods that allowed more people to vote.

Principle: QUESTION OF DEGREE, Gageler J says that when there ceases to be a representative government describable as a choice by the people is a question of degree and depends on the common understanding at the time.

(4) *Palmer* → preferred vote conducted before the WA polling booths closed. Palmer argued this 'would impermissibly distort the voting system in a manner that would compromise the representative nature of the future parliament.' The majority dismissed this, saying that this did not give the Electoral Commission any imprimatur (authority) to any candidate or outcome. The minority judgment (Gageler J) said that this would give the appearance of a favouring candidates over the United Australia Party due to the timing of the information by the Electoral Commission.

(5) *Babet* → Unanimous judgment of the High Court that the processes for annual party disclosure can be complied with for the purposes of public transparency etc. so that the Act was not invalid to disallow parties that have voluntarily deregistered from registering again in the same election. It did not 'in whole or part' impair the 'dcbtp' contrary to ss7 and 24 of the CC.