

Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025

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Submission By: ATSILS
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Committee Secretary
Justice, Integrity and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: JICSC@parliament.qld.gov.au

Dear Committee Secretary,

Re: Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025

Thank you for the opportunity to provide comments on the Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025 (Bill). The Aboriginal and Torres Strait Islander Legal Service (ATSILS) strongly objects to amendments in this Bill which propose to increase the current restrictions on a prisoner's right to vote, where a prisoner may only vote in Queensland state and local elections if they have been sentenced to a jail term of less than 3 years, to prisoners that have an imprisonment sentence of one year or longer. The right to vote is a fundamental human right enshrined in article 25 of the United Nations International Covenant on Civil and Political Rights and is also legislated in section 23 of Queensland's *Human Rights Act 2019*. Furthermore, in our view, increasing these restrictions in the manner proposed does not meet the proportionality test, as established and applied in caselaw.

Preliminary consideration: Our background to comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander peoples across Queensland. The founding organisation was established in 1973. We now have 25 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality

legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander peoples.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by over five decades of legal practise at the coalface of the justice arena and we, therefore, believe we are well placed to provide meaningful comment, not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

Comments on Bill

The Bill, as drafted, will have the effect of significantly increasing the current restrictions on a prisoner's right to vote. Currently, a prisoner may only vote in Queensland's state and local elections if they have been sentenced to a jail term of less than 3 years. The Bill, if enacted, would increase this restriction, and the quantum of prisoners affected, to prisoners that have been sentenced to an imprisonment sentence of one year or longer.

The right to vote is a fundamental civic right and a critical mechanism for participation in the democratic process.

We respectfully draw the Committee's attention to:

- (a) **Article 25 of the United Nations International Covenant on Civil and Political Rights (ICCPR)** which provides that every citizen shall have the right and the opportunity without unreasonable restrictions to take part in the conduct of public affairs, directly or through freely chosen representatives, and to vote at genuine periodic elections¹; and

¹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 25.

(b) Section 23 of the *Human Rights Act 2019* (Qld) which provides:

23 *Taking part in public life*

(1) *Every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or through freely chosen representatives.*

(2) *Every eligible person has the right, and is to have the opportunity, without discrimination—*

(a) to vote and be elected at periodic State and local government elections that guarantee the free expression of the will of the electors; and

(b) to have access, on general terms of equality, to the public service and to public office.; and

(c) Section 15 of the *Human Rights Act 2019* (Qld) which relates to the right to equality before the law, given the inevitable disproportionate impact that the proposed amendments would have on Aboriginal and Torres Strait Islander prisoners due to overrepresentation in the prison population.

Furthermore, the matter of restrictions on a prisoner's right to vote has been the subject of the landmark 2007 High Court case *Roach v Electoral Commissioner* (2007) 233 CLR 162. In this case, laws introduced by the then Howard government removing the right of all sentenced prisoners to vote in federal elections was challenged on the basis of constitutionality. We note that the plaintiff in the matter was an Aboriginal prisoner who was detained at the Dame Phyllis Frost Centre in Deer Park. The case traversed issues relating to the rights of prisoners, the rights of Indigenous peoples, the right to vote and the right to participate in the democratic process. The High Court upheld the right to vote, finding that the government had acted unlawfully and unconstitutionally in imposing a blanket ban denying certain prisoners the right to vote, and that the relevant amendments were inconsistent with the system of representative democracy established by the constitution. The High Court upheld the validity of the laws providing that prisoners serving a sentence of three years or longer were not entitled to vote. In coming to this decision, the High Court applied a proportionality test and determined that amendments which disqualified prisoners serving sentences of three years or longer was a proportionate restriction.

We also note the 2005 United Kingdom case of *Hirst v the United Kingdom (No 2)* [2005] ECHR 681 which also dealt with a blanket ban on voting for convicted prisoners in the UK. Notably, in *Hirst*, it was held that the right to vote is fundamental to

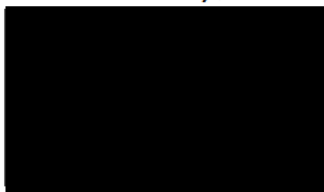
establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law and that prisoners continue to enjoy all the fundamental rights and freedoms guaranteed by the Convention, except the right to liberty. It was also held that the rights were not absolute and that limitations were possible, but such had to be for a legitimate aim and be proportionate. Fundamentally, in the context of the proportionality test, it was found that the 48,000 affected prisoners was a significant number, that the ban included a wide scope of offenders and sentences and that it was not apparent that there was any direct link between the facts of any individual case and the disenfranchisement.

The proposed amendments in the Bill significantly curtail the fundamental human rights enshrined in article 25 of the ICCPR and section 23 of the *Human Rights Act*. They are also at odds with established caselaw. Furthermore, they will have a disproportionate impact on Aboriginal and Torres Strait Islander peoples who are overrepresented in the prisoner population. Contributing factors to that overrepresentation include long-standing structural disadvantage, the impacts of systemic racism that continue to persist and socio-economic inequality. Lowering the threshold for loss of voting rights would, in effect, result in a form of indirect racial discrimination. It would further exclude Aboriginal and Torres Strait Islander peoples by excising a larger cohort of individuals from participating in the democratic process. It would also further exclude Aboriginal and Torres Strait Islander peoples from self-determination by diluting their political voice in decisions that directly affect their peoples and communities.

Accordingly, the proposed amendments imposing further restrictions on a prisoner's right to vote should be removed from the Bill.

We thank you for the opportunity to provide feedback on the Bill.

Yours faithfully,



Shane Duffy
Chief Executive Officer