# Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025

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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,

**Inquiry into the Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025**

Thank you for the opportunity to provide feedback on the inquiry into the Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025 (**the Bill**).

This response has been compiled with input from our Human Rights and Public Law Committee and Criminal Law Committee.

Our submission is limited to the provisions in the Bill amending the Electoral Act 1992 (Qld) (Electoral Act) to prohibit persons serving a sentence of imprisonment or detention of one year or longer from voting in State elections, referendums and local government elections.

In respect of these amendments, it is our view the Bill's stated objectives, to enhance civic responsibility and prevent elections from being influenced by those who disregard the rule of law, are fundamentally flawed and unsupported by evidence.

We note there is no evidence of a widespread call by the community for such amendments. In our submission, there has been no material change of circumstances since the passage of the Electoral and Other Legislation Amendment Bill 2019 which amended the Electoral Act so that only persons serving a sentence of three years or longer are disqualified from voting.

QLS does not support the proposed changes to prisoners' voting rights on two bases. First, there is little evidence that the amendment is required in Queensland and therefore will not achieve the stated policy objectives. Second, the amendment would lead to the abrogation of human rights without adequate justification.

We note these reservations are not only held by us but have also been expressed by other key stakeholders who have submitted responses to this inquiry.

Accordingly, we urge the Committee to carefully consider the rationale for lowering the threshold for prisoner disqualification, and the policy objectives it seeks to achieve, having regard to the concerns set out below.

**Amendments to the Electoral Act in the Bill (Clauses 4, 5 and 6)**

**1. The arbitrary nature of a one-year threshold**

The High Court's decision in *Roach v Electoral Commission* (2007) 233 CLR 162 (**Roach**) provides critical guidance on establishing a non-arbitrary threshold for prisoner disenfranchisement, grounding such restrictions in the seriousness of offending and individual culpability. The Court determined that while a blanket ban on prisoner voting is unconstitutional, a three-year imprisonment threshold is a reasonable measure because it serves as a reliable proxy for what constitutes a serious crime. Offending at this level distinguishes individuals whose conduct is grave enough to warrant a 'penalty enhancement', the symbolic removal of the right to vote, in addition to incarceration.

The *Roach* case rests on the principle that the removal of voting rights must be a proportionate consequence of punishment for serious criminal offending rather than an automatic result of any term of imprisonment. Consequently, when evaluating the proposed shift to a one-year threshold, the Committee must carefully balance the importance and achievability of the stated policy objectives against the profound impact on the fundamental rights of affected persons. This consideration demands a thorough consideration of the core objectives of the justice system, alongside established case law and the fundamental legal principle that the right to vote is the cornerstone of democratic legitimacy.

The Explanatory Notes and Statement of Compatibility do not provide any detailed consideration of evidence or empirical data to justify the proposed lowering of the disqualification threshold. There is also no evidence offered in support of the implied correlation between removing voting rights from prisoners serving sentences of one or two years, and the achievement of the Bill's stated policy goals. In the absence of any evidential basis, the reasoning is purely speculative. In our view, the shift from a three-year to a one-year threshold is an arbitrary and disproportionate measure.

A sentence of one year imprisonment often encompasses low-level offending. In criminal law, criminal offending is categorised as summary (or simple) offences and indictable offences. Typically, penalties for summary offences range from fines to imprisonment for a period of not exceeding three years. On the other hand, indictable offences constituting more serious offences, attract penalties that are generally more severe and can result in longer terms of imprisonment. This category of offending includes violent offences, sexual offences and serious drug offences.

If enacted, the proposed one-year disqualification threshold will capture categories of offending such as trespass, unlawful assembly and unlawful possession of suspected stolen property[1], which, in the wider context of criminal law, do not necessarily constitute serious offences. Contrary to the Bill's Statement of Compatibility, which asserts that a one-year offence is typically reserved for conduct causing 'significant harm' or posing a 'considerable threat to public safety', these offences frequently fall short of that gravity.

[1] *Summary Offences Act 2005* (Qld) sections 9, 10A and 15. Other examples include wearing or carrying a prohibited item in a public place (s. 10C), unlawfully entering or remaining on particular land (s.13), unregulated high-risk activities (s.14), possession of implement in relation to particular offences (s.15), imposition (s22).

Depriving prisoners serving a sentence of at least one year of the right to vote is also inconsistent with the rehabilitative aim of imprisonment. To this end, we note one of the overarching purposes of the *Corrective Services Act 2006* (Qld) is crime prevention through the humane treatment, supervision and rehabilitation of offenders. The proposal is also inconsistent with the rehabilitative aim of prison and by consequence also inconsistent with s.9(1)(b) of the *Penalties and Sentences Act 1992* (Qld) which includes the rehabilitation of an offender as a primary sentencing consideration.

Further, the summary offences referred to above often disproportionately impact already marginalised groups in our society, including homeless adults, adults with mental health issues and Aboriginal and Torres Strait Isander people. In this regard, the Statement of Compatibility and Explanatory Notes reveal a significant lack of engagement with the disproportionate impact the further prisoner voting restrictions will have on Aboriginal and Torres Strait Islander people, who are imprisoned at significantly higher rates. The latest Closing the Gap[2] data indicates that Aboriginal and Torres Strait Islander adult incarceration rates are worsening and are not on track to meet reduced targets. Despite these factual trends, the Statement of Compatibility does not analyse how lowering the disqualification threshold will amplify the disenfranchisement of Aboriginal and Torres Strait Islander prisoners.

## 2. Inconsistency with human rights norms

Imprisonment is about loss of liberty, not the arbitrary forfeiture of fundamental civic rights. These include the right to life, to be treated with dignity, the right to legal representation, a fair trial, recognition and equality before the law and taking part in public life[3]. Unless there are substantive reasons that can be demonstrably justified in a free and democratic society, imprisonment should not remove the right to vote.

The proposed prohibition on voting for prisoners serving a sentence of one year or longer is inconsistent with both international and domestic human rights standards.

Article 25 of the International Covenant on Civil and Political Rights guarantees the right of every citizen to vote without unreasonable restrictions. The *Human Rights Act 2019* (Qld) protects the right to take part in public life, including the right to vote. Expanding the class of disenfranchised citizens, without adequate justification, unnecessarily abrogates this right[4].

## 3. History of changes to prisoner voting laws in Queensland

Prior to 2019, Queensland maintained a blanket ban on prisoner voting, which was amended to a three-year disqualification threshold primarily to 'improve consistency' with Commonwealth law. However, a reasoned, cogent basis for this specific limit was absent from the primary legislative supporting materials.

This lack of principled rationale continues with the Bill, which proposes narrowing the prisoner cohort further. While the Bill's supporting materials claim the changes will enhance civic

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[2] Productivity Commission Closing the Gap Annual Data Compilation Report July 2025

[3] *Human Rights Act 2019 (Qld)* sections 15, 16, 23, 30 and 31.

[4] Comparative case law where restrictions on voting for prisoners serving sentences of 2 years (Canada - Sauvé v Canada (No 2) (2002) 3 SCR 519) and 1 year (ECtHR - Frodl v Austria [2010] ECHR 508; UN Human Rights Committee - Kim & Ors v Korea (CCPR/C/143/D/3660/2019, 14 March 2025) were considered contrary to human rights/Constitutional protections as there was insufficient justification for the restrictions.

responsibility and prevent the influence of elections by those who show a disregard for the rule of law, it fails to provide a robust justification for why a one-year sentence is non-arbitrary measure of culpability.

We note the Statement of Compatibility seeks to justify the one-year threshold by reference to section 44(ii) of the Australian Constitution, which prevents anyone serving a sentence of one year or longer from being elected to the Senate or House of Representative. We also note similar provisions in the *Parliament of Queensland Act 2001* (Qld)[5] disqualify individuals from the Legislative Assembly if they are subject to such a sentence, suggesting the one-year term marks a significant 'repudiation of civic responsibility' in the legal system.

In our view, it is reasonable to hold elected officials to a higher standard given their positions of public trust, relying on that rationale to justify removing prisoners' voting rights overlooks a fundamental principle that imprisonment entails a loss of liberty, not a forfeiture of fundamental civic rights, without appropriate justification.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted] or by phone on [redacted].

Yours faithfully

[redacted]

Peter Jolly
**President**

[5] Section 64(2)(b)