Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025

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Submission By: Queensland Council for Civil Liberties
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The Secretary
Justice, Integrity and Community Safety Committee
Parliament House
George Street
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Dear Madam

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

The Queensland Council for Civil Liberties (QCCL) appreciates the indulgence given by the Committee in extending the time for this submission to be lodged

Kindly accept this submission on the above Bill.

This submission deals only with this legislation insofar as it concerns prohibiting people serving a sentence of imprisonment or detention for one year or longer from voting in State elections, referendums and local government elections. The fact that we do not comment on any other aspect of the legislation should not be taken as a statement of our views in respect of them one way or the other.

In *Roach v Electoral Commissioner* [2007] HCA 43, the High Court held a law of the Commonwealth which prohibited any person while in prison from voting constitutionally invalid as a breach of sections 7 and 24 of the Commonwealth Constitution. Three members of the Court being Gummow, Kirby and Crennan JJ upheld a law which prohibited those serving a sentence of three years or more from voting. Gleeson CJ agreed in that result and would have upheld a law prohibiting prisoners serving lesser terms from voting as valid, although he did not specify how far he would be prepared to go. In the case of *Hirst v the United Kingdom (2) (6/10/2005)* the Grand Chamber of the European Court of Human Rights struck down a law of the United Kingdom which prohibited any person who was in prison from voting. The Canadian Supreme Court in *Sauve v Canada (No 1)*[1992] 2 SCR 438 also struck down a law which barred all prisoners from voting. Then in *Sauve v. Canada (No 2)* [2002] 3 SCR 519 the Supreme Court of Canada struck down a law which prohibited prisoners serving two years or more from voting holding that that restriction was inconsistent with the Canadian Charter of Rights.

We note that on its face this law would not pass muster with the above Courts[1]. It is our view that the reasons of principle given by those Courts for reaching their conclusions apply equally to this law.

The Council has, at all times, been opposed to the disenfranchisement of prisoners. The concept of the civil dead no longer has any place in our law. Prisoners are human beings and ought to be treated with dignity. They are in prison as punishment not for punishment.

[1] The only doubtful case is the High Court given the unclear position of Gleeson CJ, but we would think the current Court would find a majority in favour of invalidity under the Commonwealth Constitution of an equivalent Commonwealth Statute.

Section 15(2) of the *Human Rights Act* provides that everyone is entitled to enjoy their human rights without discrimination. Subsection 1 of that section says that every person has the right to recognition as a person before the law. The provision clearly extends to prisoners. In our submission, this legislation violates both those principles.

It is argued that disenfranchisement is a form of punishment. It is hard to see how this is so on any theory of punishment. Given the fact that the person is in prison, it is hard to see how disenfranchisement acts as a deterrent. It cannot be said to be punishment made to fit the crime because it is imposed arbitrarily. It is imposed simply if you are set a certain level of imprisonment. As it is not specifically decided by a Court in the context of a specific crime that disenfranchisement is to be included in the punishment, it cannot represent punishment designed to fit the crime.

Another argument advanced in support of prisoner disenfranchisement is that it is said to be needed to protect the integrity of the electoral system. However, prisoners have no control over the electoral process. They are in prison so therefore any attempt to corrupt the process would be very difficult. There is no evidence that they vote as a group and even if they did, given the extent to which they are disbursed throughout the State, prisoners could not possibly effect an electoral result.

In the end the argument in favour of disenfranchisement comes down, as the Supreme Court of Canada noted in *Sauve (No2) supra,* to the proposition that it serves a necessary symbolic end, such as reinforcing the moral community in which we live. Like the majority in that Court, we find symbolism an inadequate justification for inflicting the loss of a fundamental civil right where condign punishment has already been imposed and is already redolent of the community's strong disapproval of the crime.[2]

On the other hand, casting people out of the opportunity to participate in their community may in fact adversely affect the possibility of rehabilitation. The positive benefits which may come from denying this right are outweighed by the negative aspects. Denying inmates the right to vote imposes negative costs on inmates and on the penal system. It removes a route to social development and undermines correctional law and policy directed towards rehabilitation and integration

We trust this is of assistance to you in your deliberations.

Please direct correspondence concerning this letter to [redacted].

Yours Faithfully

[redacted]

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
3 February 2026

[2] See the excellent discussion in Graeme Orr *Ballotless and Behind Bars: The denial of the Franchise to Prisoners* 26 Fed L R 55 at 71-2