

Local Government (Empowering Councils) and Other Legislation Amendment Bill 2025

Submission No: 040

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Committee Secretariat

Local Government, Small Business and Customer Service Committee

Legislative Assembly of Qld

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Please accept this submission on behalf of myself

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16/12/25

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Abbreviations used in this submission

LGA – Local Government Act 2009 Qld

LGEA – local Government Electoral Act 2011 Qld

QEA- Queensland Electoral Act

ECQ- Electoral Commission of Qld

Hanks- Hanks Australian Constitutional Law and Commentary 10 th Ed, Meagher et al , Lexis Nexis Butterworths 2016

OIA- Office of The Independent Assessor

I am a former law student and not a lawyer. Though I have written and won a number of constitutional arguments in my cases in the Qld Magistrates Court, District Court, Court of Appeal and Special Leave and Outline of Argument in Coleman v Power in The High Court. Anything I have lost, it was because 'I WUZ ROBBED' !.

The legal fact is that the Office of the Parliamentary Counsel was required to provide legal advice to the government at the time in regards to the lawfulness of all legislation. This is though the Qld Legislative Standards Act dictates they must adhere to that governments agenda.

There will be advice relating to the validity of the Councilor Complaints and Conduct tribunal provisions and I demand it be released by the government. It can only shame the previous government and anyone who seeks to retain it in place. In any event , the fundamental legislative provisions including the Kable principles are on the Parliamentary Counsel website <https://www.oqpc.qld.gov.au/instructing-oqpc/flps/oqpc-guide-to-flps>

It would be a little silly if that advice were any different.

Who Can nominate for election

I would simply refer the committee to Jenny Hills decision Local Government Assoc of Qld (Inc) v State of Qld [2001] QCA 517

<https://archive.sclqld.org.au/qjudgment/2001/QCA01-517.pdf>

COUNCILLORS INTERESTS

Im against diluting any of the matters that councilors must declare an interest for. I would add, that donations to a team of candidates, or to a party that a councilor belongs to regardless of whether that person is an independent be an interest also. There should be no dilution or repeal of councilors dishonesty provisions.

In 2016 the Jenny Hill team in Townsville took donations from the developer Maidment. These still haven't been declared as can be seen by the archived returns on the ECQ site.

On 22/11/16, all team Hill Councilors declared an interest in the vote on extending the Sanctum development at Mt Low despite over 25 objections from council planning staff. Because, they said, they HAD taken donations. Still undeclared which is an offence This was a Maidment development. Under the law at the time, they passed the decision to the Labor aligned and Team Hill appointed CEO for approval. The minutes on the website have still not been amended in any way.

https://www.townsville.qld.gov.au/_data/assets/pdf_file/0015/26106/OC-mins-22.11.16.pdf

Powers to approve developments have now been given to CEO's without public consultation and environmental laws and planning laws have been further diluted to allow donor developments to be waived through. These laws must be strengthened not diluted. However, you are going to do what you do because its who you all are.

A CEO's interests should include whether they had any political association with the council majority, or THEIR political associations or parties or donors prior to appointment.

The local government and all planning court laws must be amended to state categorically, that no decision must be made in favour of a political donor. That such a decision would be unlawful.

Yes, the definition of close associate must be amended, but to include family members or past and current employees and subsidiaries of donors.

Along with introducing a purpose provision into the QEC to compel action by the ECQ, The QEC should be amended to go back to disclosing the names, addresses, email and phone details of donors and donor agents. And the law should changed so that it is published on the ECQ website. Where cover names have been used previously, these detailed the ultimate source in many cases. The wilful neglect by ECQ Senior officers provisions of the QEC should be amended to include staff and the criminal code provision of refusal to perform a duty by a public officer should be added to it. That this be added to the purpose of the acts and functions of the ECQ.

JUDICIAL POWER AND THE VALIDITY OF THE COUNCILLOR COMPLAINTS AND CONDUCT TRIBUNAL SYSTEM

I argue the entire councilor complaints system is arguably constitutionally invalid for the following reasons. And this is how I would challenge it if I were a councilor subject to the stuff then Councilor Sri was. I wouldn't refer to the Qld Human Rights Act as I would try to seek compensation if it were me.

For a century the high court has said a tribunal cannot be invested with judicial power. *Burns v Corbett 2018 HCA 15 at [1]-[5], [43]-[52] , R v Kirby , Ex Parte Boilermakers Society of Australia , Boilermakers case (1956) 94 CLR 254 at 270 , Kable v The DPP at p111, 139-140*

Both the assessor/OIA and the Councilor Complaints Tribunal have been granted powers, and have been shown to have ‘adjudicated issues’ (*Burns v Corbett 2018 HCA 15 at pars 1-5*) ‘that yield matters’ that arise under the constitution. (*Kable v DPP (1996) 189 CLR 51 at 141* per Gummow J. , Hanks at p 975)

Regardless of whether the political conduct of lefties attempting to hold crooked right wingers to account is amended to be misconduct from a ‘standard of behaviour’ , or conduct breach, as to what that is can be is still to be determined by a resolution of a majority of council. And, complaints can still be lodged. This is regardless of whether or not it occurred in Qld. A lefty councilor could attend a protest interstate and the right wing and/or crooked majority could make that misconduct by resolution. A council could back a dodgy development by a state donor or federal donor and a protest against that could be declared misconduct. A councilor could make statements deemed to be controversial on other social or political issues as with what happened in Brisbane, and that could be deemed misconduct.

Drawing a long bow?? I doubt it. Its who you all are. Your political party shirt gets kicked under the cupboard when you take donations from opposition lobbyists or you are on the same donor boards after politics.

I simply give the example of what happened to then Brisbane City Councilor Jonathan Sri when he published matters relating to racism and the Qld Police on his personal facebook page. This would be admissible in a Chapter 3 Court exercising judicial power in a ‘Constitutional facts inquiry’ which is also relevant to my argument about the validity of s45A and 45AA of the Local Government Electoral Act see *Kvelde v NSW [2023] NSWSC 1560 at pars [55]-[65]* <https://www.caselaw.nsw.gov.au/decision/18c5af7c0dffcf5160213c43>

Article, ‘41 Misconduct complaints against Brisbane councillor Jonathan Sri dismissed’, Lucy Stone ABC Online 18/8/21 <https://www.abc.net.au/news/2021-08-18/complaints-against-brisbane-councillor-jonathan-sri-dismissed/100383256>

He had to suffer over 40 complaints to the assessor and OIA on this matter alone. It required the adjudication of matters arising under the constitution because discussion of matters relating to police conduct are political communication per se (see *Coleman v Power High Court and Qld Court of Appeal , Brown v Tasmania, John Fairfax v AG NSW [2000] NSWCA 198 at pars [92]-[98]* <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2000/198.html>

and

Clubb v Edwards pars [[2019] HCA 11 at pars [12]-[40] <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2019/11.html>).

This is so regardless of whether it is ultimately protected, because it requires **adjudication** of those issues. I have searched but cant find an OIA decision on that matter. Whilst the matter was dropped, there was arguably no valid power to investigate it under this system as the

system was invalid as soon as the matter concerns freedom of communication anyway. There was no constitutional challenge that I'm aware of.

Thus, conduct outside of council chambers anywhere by a lefty activist councilor, whom these laws were directed at, could be DEEMED to be against majority council made policy which would be against the opposition platform such a councilor had been elected on. In effect, the powers could be used to force a person not to say anything in opposition to the majority platform see s150K and 150L(c) LGA. A form of re-education and conscription. Subject to the normal criminal laws, anti terror laws and anti discrimination laws, you could not do this to a federal or state parliamentarian. The freedom of communication must be exercised in equality by members of the body politic *Unions NSW v NSW no2* at [39]-[40], you could not do this to citizens at large.

The second way these powers are unconstitutional is that they have the character of judicial power independent of freedom of communication issues *R v Davison* (1954) 90 CLR 353 at 366-370, *R v Trade Practices Tribunal; Ex Parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 351 at 374, *Precision Data Holdings v Wills* (1991) 173 CLR 167 at 191, *Brandy v HEREOC* (1994) 183 CLR 245 at 270-271, *Burns v Corbett* at [27], *Hanks* 10th ed at 869-910.

The assessor , OIA and tribunal have powers to PROSECUTE s150AJ(1)(a) , s150AN, s150AQ,s150AR , s150AS , 150CS , s150CU , s150DL(1) , s150DSA same immunities as supreme court judges but no tenure

It is not a voluntary arbitration.

A person can be suspended from meeting and office, be dragged through a lengthy and emotionally, financially stressful process

The powers affect rights, liberties, and property;

A person can be subject to warrants as a result and have their property damaged or destroyed and impounded;

Its Legal in character;

There are binding determinations to impose penalties, fines, gag orders, apologies, suspension from elected office and removal from elected office

The notices and decisions of the Assessor, OIA and Conduct tribunal are shoddy, merely summaries, not fully public. They are not consistent with how decisions are to be written for a court of appeal, given these are issues concerning the exercise of judicial power. I refer the committee to this article '**THE CONSTITUTIONAL DUTY TO GIVE REASONS FOR JUDICIAL DECISIONS**', LUKE BECK , [2017] UNSWLawJl 34 Archived on <https://classic.austlii.edu.au/au/journals/UNSWLawJl/2017/34.html>

Its no answer to say that any decision of the councilor conduct tribunal can be reviewed by QCAT under s150AS(3) , s150AT,s150ATA and s150ATB as the decision to recommend

suspension or dismissal in s150AS(3) and (4), s116, s120, 122 of The LGA is arguably invalid and a tribunal can't be invested with judicial power.

Again, a tribunal cannot be invested with judicial power. The minister can't be invested with judicial power either. In this case the judicial/ political matters complained of must be dealt with in accordance with the principles of CH3 of the constitution. And in accordance with the nature of the exercise of judicial power in a free and democratic society based on international Grund norms Nicholas v R [1998] HCA 9; 193 CLR 173; 151 ALR 312; 72 ALJR 456 <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1998/9.html>

Where the freedom of communication is invoked, and the exercise of judicial power is invoked, an appeal must lie to a supreme court exercising judicial power and ultimately an appeal to the high court. That would include something said in the course of an election campaign, regardless of whether it is ultimately protected. Again, it's the adjudication of matters arising under the constitution that invokes it.

The Kable principles and lack of an appeal to the high court where the exercise of judicial power or matters arising under the constitution are concerned.

“.... there is nothing anywhere in the Constitution to suggest that it permits of different grades or qualities of justice, depending on whether judicial power is exercised by State courts or federal courts created by the Parliament.” Gaudron J at p103

“..... Once the notion that the Constitution permits of different grades or qualities of justice is rejected, the consideration that State courts have a role and existence transcending their status as State courts directs the conclusion that Ch III requires that the Parliaments of the States not legislate to confer powers on State courts which are repugnant to or incompatible with their exercise of the judicial power of the Commonwealth” Ibid p103

*“That is the antithesis of the judicial process, one of the central purposes of which is, as I said in *Re Nolan; Ex parte Young* [143], to protect “the individual from arbitrary punishment and the arbitrary abrogation of rights by ensuring that punishment is not inflicted and rights are not interfered with other than in consequence of the fair and impartial application of the relevant law to facts which have been properly ascertained”. Ibid p107”*

“....the Constitution requires a judicial system in and a Supreme Court for each State and, if there is a system of State courts in addition to the Supreme Court, the Supreme Court must be at the apex of the system. With the abolition of the right of appeal to the Privy Council, therefore, this Court is now the apex of an Australian judicial system’ McHugh J at p113

‘.....a State law that prevented a right of appeal to the Supreme Court from, or a review of, a decision of an inferior State court, however described, would seem inconsistent with the principle expressed in s 73 and the integrated system of State and federal courts that covering cl 5 and Ch III envisages.” Ibid p114

See also Burns v Corbett 2018 HCA 15 at pars [20], [26], [53]-[55]

As in the case of *Kvelde v NSW* at pars [98]- [139], I reckon a lefty councillor who is in the same position as then Councillor Sri was could take pre-emptive legal action. In this case, to

strike down the councillor complaints and tribunal system completely, because they expect their actions once labelled a behavioural or conduct breach to be simply deemed misconduct by a majority resolution , whether or not it is outside the chambers or the state itself. That's because, if any other citizen would be able to protest against council policy and condemn it, and the freedom must be exercised in equality by members of the body politic, and a councillor is being treated different, then that councillor also has a special interest.

WHAT TO REPLACE THE COUNCILLOR COMPLAINTS AND CONDUCT TRIBUNAL WITH

I refer to the previous Qld CJC Shepherdson Inquiry Report into electoral fraud, the CCC Belcarra Report into the lack of integrity in council elections and donations system, and the recent CCC Operation Murray Report into then Townsville Mayor Troy Thompson (Linked below) . The common theme running through all these reports over 2 decades, despite it not being in terms of reference, is that time limits for prosecution of offences, and the summary or indicatable nature of offences are an issue in enforcing electoral integrity provisions and code offences because it takes too long to uncover those offences . In the QEC and Justices Act and limitations of Actions Act, the time for prosecuting summary offences is one year from the date of the offence. In the Qld Criminal Code its 4 years for indictable offences. When this became public, the parliament abolished most of the criminal code electoral integrity offences in case time limits were abolished.

The answer to what should replace the councillor complaints and conduct tribunal system is very simple. Reinstate all the previous criminal electoral integrity offences that would apply to that past conduct, which was an offence at the time in the exact terms and abolish all time limits for prosecution of electoral and governmental and public service/sector integrity offences. This would not be struck down as retrospective because it was an offence at the time (Polyukovic). Create new criminal integrity offences relating to interests and make them all indictable with no time limits. That the CCC be given back power to investigate all matters that were given to the complaints and tribunal system. That the CCC Act be amended so all integrity matters are serious and are corruption issues ,That the CCC have powers like the NSW ICAC. That serving police who join parties or groups that were or are in receipt of proceeds of crime in the terms of the state and CTH Acts be treated more harshly as their integrity laws require it . That the CCC can recommend prosecutions. That the place for prosecution of those offences be a CH3 court. The way the CCC described its lack of power to prosecute seems to be in line with the judicial power cases.

That the ECQ be given powers and funding to aggressively follow up ultimate sources of donations and donations that are proceeds of crime.

NSW Magistrate Farnan "The community is entitled to expect that those who hold high public office will conduct themselves with integrity," Quoted in- Article' Former MP Daryl Maguire jailed for giving misleading evidence at ICAC' by Jamie McKinnell Wed 20 Aug 2025 ABC online -link

<https://www.abc.net.au/news/2025-08-20/daryl-maguire-jailed-for-giving-misleading-evidence-at-nsw-icac/105657684>

In relation to the lying about qualifications and military history by the former mayor of Townsville prior to his election, I note that the provisions dealing with misrepresenting a candidate at an election is still on the books. That in drug law, you can be done for supplying to yourself. That misrepresenting yourself could be picked up if time limits were abolished for summary electoral offences. These matters should be used to create an offence of forgery of qualifications, whether written or orally or on official documents or not and adding that a person can be charged with fraud for dishonestly obtaining the benefit of office and its renumeration. You can use that for donations offences too.

The Local Government Electoral Act amendments and current s45A and s45AA and appeal validity issues

The recent Townsville Mayoral By-Election has thrown up disturbing issues around

- The integrity of the electoral roll ;
- The reasons for conducting postal ballots;
- The ability of Australia Post to deliver and return ballots in time where technology has reduced delivery days;
- The prudence of conducting postal ballots in short time frames where those issues coincide;
- The constitutional validity of the power to order a postal ballot by the minister on recommendation of the ECQ , or if the law is changed, by order of the ECQ.

The Townsville Council voted to ask the ECQ for a postal ballot they said- because of the costs would be lower, and in the media release used the phrase voter fatigue
<https://www.townsville.qld.gov.au/about-council/news-and-publications/media-releases/2025/september/council-votes-to-recommend-by-election-via-postal-vote>

Text of Qld Minister for Local Government media release giving costs reasons for calling a postal vote. <https://statements.qld.gov.au/statements/103626>

The purposes of the Qld Local Government Electoral Act 2009

3. Purposes of Act

The purposes of this Act are to—

- (a) ensure and reinforce the transparent and equitable conduct of elections of councillors of Queensland's local governments, including, for example, by minimising the risk of unequal participation in the electoral process and ensuring a fair opportunity to participate in the electoral process; and
- (b) ensure and reinforce integrity in Queensland's local governments, including, for example, by minimising the risk of corruption in relation to—
 - (i) the election of councillors; and
 - (ii) the good governance of, and by, local government.

The is no corresponding purposes section in the Qld Electoral Act, only the bare minimum functions in s7 of that act. That act needs to be overhauled by democratic people to give the ECQ a proactive -aggressive democratic activist edge.

Under s7, and s101 LGEA, Dametto was declared elected and the poll concluded, AND he was sworn in as Mayor, before the final day for ballots to be received. This, they said, was because the receipt of any more votes would not affect the *outcome*. In hindsight that is correct, however, on the voting figures below, those extra 39,914 votes that were missing were relevant to whether a successful mayoral candidate could achieve %50+1 of the enrolled voters without the ECQ fiddling the results page. The *result* WAS affected.

The election wasn't disputed under s139 -s148 of The QEA. The strongest case was in the possible challenge to the decision for a postal ballot. Equal participation in the election doesn't stop with the result. Normal voters and small money candidates are denied equal participation in the court process for financial reasons, the inability to get legal representation without money, and the not being familiar with the forms and formalities of legal and court processes (*Dietrich v R*) . I wouldn't brag that the decision to ask for or recommend, or hold a postal ballot election wasn't challenged.

I argue that the process of calling for a postal ballot under s 45AA LGEA was disproportionate and allowing a postal ballot for reasons of costs when they arnt sure of how many people are actually still in the electorate , that they are at the correct addresses for the mailout , or that the votes would get to them on time, and be returned on time was not consistent with the purposes of the LGEA . Clearly , the ECQ failed to properly perform its legislative function in s7 (f) of the QEA to implement strategies to maintain the integrity of the electoral rolls. That being the case, *conveniently* , s148(2)(b) of The QEA says the supreme court , court of disputed returns -*must not inquire whether the electoral roll, or any copy used at the election, was in accordance with this Act*. Again, in a constitutional facts inquiry- THAT would be relevant. Arguably, that provision could be held invalid too.

The Electoral Commission of Qld knew at least since *Tanti v Davies* that postal voters in Townsville can be left behind in great numbers by failures of the system.

<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/qld/QSC/1995/298.html>

All of the Electoral Commissions are aware of what happened in the 2013 Federal Election when the High Court overturned the WA senate election and ordered it be held again.

<https://www.hcourt.gov.au/cases-and-judgments/cases/decided/case-c172013> Judgement here at par [17] <https://www.hcourt.gov.au/sites/default/files/eresources/2014/HCA/5.pdf>

This was a result of the loss of 1370 ballots from the entirety of the WA Electorate (Despite Keeltys lack of integrity in the Ben Roberts Smith matter – His report to the AEC) Inquiry into the 2013 WA Senate Election p8

https://www.aec.gov.au/about_aec/Publications/files/inquiry-into-the-2013-wa-senate-election.pdf ABC story ‘AEC confirms WA Senate election result 4/11/2013

<https://www.abc.net.au/news/2013-11-04/wa-set-to-head-back-to-polls-in-six-senate-by-elections/5066718>)

The Council, Minister and ECQ threw integrity out the window in favour of their convenience. It also affected small money candidates ability to access voters at the ballot box and favoured big money candidates. The decision to hold the postal ballot was also disproportionate. **Arguably, a normal in person election would have had a higher turn out on the previous figures.** Not only that, but because consideration of these issues requires a constitutional facts inquiry, and matters arising under the constitution involves judicial power, this excludes the operation of the Administrative Review Act in relation to the making of recommendations. The LGEA says that there are no appeals from either the ECQ’s decision or the ministers decision. Those provisions are arguably invalid, or could be found invalid because of a denial of an appeal on constitutional grounds taking into account a wider array of constitutional fact issues.

Mayoral candidate Joanne Keune did attempt to extend the time for receipt of votes but the Qld Court of disputed returns said neither the LGEA nor the QEA allowed the court to do this. Nothing in the text of s38 of the LGEA or s99B and s100 of the QEA allowed for an adjournment or delay in this circumstance.

If the challenge was a constitutional one from the vote to ask for a postal ballot to the making of the decision, arguably, there was more compelling justification for an in person election. A challenge to the election result is another matter .The task was to ensure the maximum turnout, maximum participation and compliance with s3 LGEA.

In McCloy v NSW [2015] HCA 15 it was said

[81] The second stage of the test – necessity – generally accords with the enquiry identified in Unions NSW [103] as to the availability of other, equally effective, means of achieving the legislative object which have a less restrictive effect on the freedom and which are obvious and compelling. If such measures are available, the use of more restrictive measures is not reasonable and cannot be justified.

[82] It is important to recognise that the question of necessity does not deny that it is the role of the legislature to select the means by which a legitimate statutory purpose may be achieved. It is the role of the Court to ensure that the freedom is not burdened when it need

not be. Once within the domain of selections which fulfil the legislative purpose with the least harm to the freedom, the decision to select the preferred means is the legislature's [104].

See also Brown v Tasmania [2017] HCA 43 Per Geagler J at par [200]

Clearly, neither Townsville City Council, the ECQ or government were in the democratic head space to minimise the risk of unequal participation in the electoral process or to ensure and reinforce integrity of the election.

It was a choice by them between costs and integrity. If they needed the money, they could have either stopped wasting it on future climate disasters or hit up their fossil fuel donor cronie mates for royalties.

There is another matter that is invoked, and that is an entitlement to public funding relative to the percentage of the vote obtained by candidates. The lost votes affect the outcome of that matter. This is relevant to the enforcement of the Qld Electoral Act and LGEA provisions when a result of a local government election is ultimately known. This can't be properly enforced or lawfully administered if a large part of the ballots have not been returned.

<https://www.ecq.qld.gov.au/election-participants/state-election-participants/candidates/claiming-election-funding>

It's not just legislation that can be unconstitutional. It can be actions and decisions of government and governmental bodies in their terms, operation and/or effect. The Constitution goes through ALL LAW AND PRACTICES. ABC v Lenah Game Meats per Kirby at pars [204]-[210] <http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2001/63.html>

Rowe v Electoral Commissioner [2010] HCA 46

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2010/46.html>

French CJ

1. *The Constitution requires that members of Parliament be "directly chosen by the people" [1]. That requirement is "constitutional bedrock" [2]. It confers rights on "the people of the Commonwealth" as a whole [3]. It follows, as Isaacs J said in 1912, that [4]:*

"The vote of every elector is a matter of concern to the whole Commonwealth". Individual voting rights and the duties to enrol and vote are created by laws made under the Constitution in aid of the requirement of direct choice by the people.

2. *An electoral law which denies enrolment and therefore the right to vote to any of the people who are qualified to be enrolled can only be justified if it serves the purpose of the constitutional mandate. If the law's adverse legal or practical effect upon the exercise of the entitlement to vote is disproportionate to its advancement of the*

*constitutional mandate, then it may be antagonistic to that mandate. If that be so, it will be invalid. Laws regulating the conduct of elections, "being a means of protecting the franchise, must not be made an instrument to defeat it"[\[51\]](#). As the Court said in *Snowdon v Dondas*[\[6\]](#):*

"The importance of maintaining unimpaired the exercise of the franchise hardly need be stated."

Unions NSW v New South Wales [2019] HCA 1 <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2019/1.html>

*[40] Those submissions should not be accepted. The requirement of [ss 7](#) and [24](#) of the [Constitution](#) that the representatives be "directly chosen by the people" in no way implies that a candidate in the political process occupies some privileged position in the competition to sway the people's vote simply by reason of the fact that he or she seeks to be elected. Indeed, to the contrary, [ss 7](#) and [24](#) of the [Constitution](#) guarantee the political sovereignty of the people of the Commonwealth by ensuring that their choice of elected representatives is a real choice, that is, a choice that is free and well-informed[\[44\]](#). Because the implied freedom ensures that the people of the Commonwealth enjoy equal participation in the exercise of political sovereignty[\[45\]](#), it is not surprising that there is nothing in the authorities which supports the submission that the [Constitution](#) impliedly privileges candidates and parties over the electors as sources of political speech. Indeed, in *ACTV, Deane and Toohey JJ* observed that the implied freedom[\[46\]](#):*

"extends not only to communications by representatives and potential representatives to the people whom they represent. It extends also to communications from the represented to the representatives and between the represented."

Justification – a reasonable necessity?

*[41] The provisions in question in *ACTV* prohibited the broadcasting of political advertisements or information during an election period. They were held to infringe the implied freedom and to be invalid. Invalidity resulted because the nature or extent of the restrictions could not be justified[\[47\]](#). In *Lange*[\[48\]](#) it was observed that the provisions in question in *ACTV* were held to be invalid because there were other, less drastic, means by which the objects of the law could have been achieved. This passage in *Lange* was referred to in the joint judgment in *McCloy*[\[49\]](#), where it was explained that if there are other equally effective means available to achieve the statute's legitimate purpose but which impose a lesser burden on the implied freedom, it cannot be said that one which is more restrictive of the freedom is reasonably necessary to achieve that purpose.*

The Qld Court of Appeal (*WILLIAMS JA for the court*) held that equality before the law was a constitutional principle In re : Criminal Proceeds Confiscation Act 2002 (Qld), Re [2003] QCA 249 (13 June 2003) at Par [52]

<http://www.austlii.edu.au/au/cases/qld/QCA/2003/249.html>

They applied the decision of Gaudron J in *Nicholas v The Queen* [1998] HCA 9; (1998) 193 CLR 173

"[52] In her judgment Gaudron J comes close, in my view, to providing the answer to the question now before this court; she said at 208-9:

"In my view, consistency with the essential character of a court and with the nature of judicial power necessitates that a court not be required or authorised to proceed in a manner that does not ensure equality before the law....."

Clubb v Edwards; Preston v Avery [2019] HCA 11

KIEFEL CJ, BELL AND KEANE JJ

5. *The test to be applied was adopted in McCloy by French CJ, Kiefel, Bell and Keane JJ[5], and it was applied in Brown by Kiefel CJ, Bell and Keane JJ[6] and Nettle J[7]. For convenience that test will be referred to as "the McCloy test". It is in the following terms[8]:*
 1. *Does the law effectively burden the implied freedom in its terms, operation or effect?*
 2. *If "yes" to question 1, is the purpose of the law legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?*
 3. *If "yes" to question 2, is the law reasonably appropriate and adapted to advance that legitimate object in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government?*
6. *The third step of the McCloy test is assisted by a proportionality analysis which asks whether the impugned law is "suitable", in the sense that it has a rational connection to the purpose of the law, and "necessary", in the sense that there is no obvious and compelling alternative, reasonably practical, means of achieving the same purpose which has a less burdensome effect on the implied freedom. If both these questions are answered in the affirmative, the question is then whether the challenged law is "adequate in its balance". This last criterion requires a judgment, consistently with the limits of the judicial function, as to the balance between the importance of the purpose served by the law and the extent of the restriction it imposes on the implied freedom[9].*

S149-158 of The LGEA deal with appeals under the act subject to the judicial power issues . s151 says there is only an appeal from the court of disputed returns on a question of law alone. A constitutional facts inquiry would be required in any appeal, as a matter of law.

39,914 MISSING VOTERS IN THE TOWNSVILLE MAYORAL BY-ELECTION IN COMPARISON WITH PREVIOUS ELECTION FIGURES

Everyone concerned in the decision making in this matter has continued as normal like nothing untoward has happened. **39,914** eligible voters , according to the rolls that the ECQ had, were missing from the count. **This is NOT NORMAL OR ACCEPTABLE.** Like in Rowe v Electoral Commissioner , this dismissal of seriousness would is a defacto unlawful disqualification of those voters right to vote (Roach v R) and equal participation in the political sovereignty of the people (Unions NSW no2 at [40]-[41], Clubb v Edwards)

The 2025 Townsville Mayoral By-Election is by far the worst turn out in all local, state and federal elections since 2020. The figures extracted below.

The 2020 and 2024 Townsville Council Elections were in person voting. In trying to figure out a lower turnout of enrolled voters against the figures is a little difficult. I have chosen to take the 85% turnout for Herbert in 2025, and add the council division turnout results including informals together separately for 2020 and 2024 and 2025 by-election to get the actual turnout .

I add the missing voter difference for each division together and subtract it from the enrolment. Then compare the mayoral vote turnout to that. There doesn't seem to be a breakdown or explanation of postals for 2020-2024. The division results, except for uncontested divisions, seem to be a good indicator of a problem with the rolls, voter apathy, or refusal to participate. The state and Herbert results for missing voters are similar. Again , I would say there would be a problem with the rolls .There cant be THAT many conscientious objectors.

The Herbert electorate doesn't take into account the people living in the northern beaches all the way to Paluma township who are in Kennedy , the people in Dawson from Oononbah and Wulguru. And the council election doesn't include Palm Island.

Then a look at the last 2 state elections for Townsville, Mundingburra and Thuringowa using enrolment subtracting total votes to get missing voters.

ECQ Report into the 2024 Council Elections

https://www.ecq.qld.gov.au/_resource/documents/pdf/elections/election-events/lge/2024/2024-lge/Report-on-the-2024-local-government-elections.pdf

Nous review 2024 Council election issues

https://www.ecq.qld.gov.au/_resource/documents/pdf/elections/election-events/lge/2024/2024-lge/FINAL-ECQ-LGE-Election-Day-Issues-Report-20-June-2024.pdf

ECQ report into the 2020 Council Elections

<https://www.ecanz.gov.au/sites/default/files/2023-08/Queensland%20Local%20Government%20Elections%20Report%202020.pdf>

ECQ report into the 2020 State General Election

https://www.ecq.qld.gov.au/_resource/documents/pdf/about-us/publications/statistical-returns/2020-State-General-Election-Report-on-the-Election.pdf

The ECQ 2024 State general election report doesn't really discuss turnout possibly cos its consistently bad but has a map in the appendices <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5825T0674/5825t674.pdf>

JSCEM Final Report into the 2022 Federal Election Chapter 3 on a single national electoral roll

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/2022federalelection/Conduct_of_the_2022_federal_election_and_other_matters/Chapter_3_-_Single_national_electoral_roll

The Former Qld CJC Shepherdson Inquiry Report

<https://www.ccc.qld.gov.au/sites/default/files/2020-01/The-Shepherdson-inquiry-Report-2001.pdf>

Qld CCC Operation Belcarra Report documents <https://www.ccc.qld.gov.au/public-hearings/operation-belcarra-reforming-local-government-queensland>

Report <https://www.ccc.qld.gov.au/sites/default/files/2019-08/Operation-Belcarra-Report-2017.pdf>

The Qld CCC Murray Report into former Townsville Mayor Troy Thompson

https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/CCC-Public-Report_Investigation-Murray_November-2025.pdf

Everyone has to have a CTH MyGov account, especially for social security and taxation purposes. A persons AGE, Addresses and contact details must be correct. There should be no problem with automatic enrollment through MyGov to create a common roll. This seems to be the obvious way to increase or maintain enrolment.

2025 Mayoral postal election results as at 22/11/2025 -last votes were due 25/11/25 and the final total votes are subtracted from enrolment

<https://results.elections.qld.gov.au/TCCMayor2025/072/primary>

Enrollment 142,775

Total Votes including informals 102,861

Subtracting total votes from enrolment the figure is 39,914

Thus the percentage of people 'who voted' is 72.04% . Those 'who did not vote' 27.96%

The Total First preference votes for Dametto 62,649 said by ECQ to be 61.53% of the vote

This is incorrect. 50% of the electors is actually 71,387.5 which makes it 43.9% of the enrolled voters.

After preferences were distributed , Dametto only got 66,092 which the ECQ said was 80.39% of the vote.

This is incorrect . 50% of the electors is actually 71,387.5 which makes it 46.3 % of the enrolled voters

The acts say a candidate must get an absolute majority which is 50% +1.

2024 Townsville council <https://results.elections.qld.gov.au/2024QLGE/072/primary>

Mayoral Percentage of enrolled electors counted: 79.21% counted

Enrolment: 141,424

Total votes 112 020

Missing 29404

Total missing from divisions 1-10 : 22,579

Difference 6825 less votes for mayor

2020 Mayor <https://results.elections.qld.gov.au/lga2020/072/primary>

Percentage of enrolled electors counted: 73.91% counted

Enrolment: 128,601

Total votes 95053

Missing 32 458

Missing from divisions 1-10 : 30,752

Difference 1,706 less votes for mayor

Div 1

2024 Percentage of enrolled electors counted: 80.93% counted

Enrolment: 15,399

Total votes 14 462

Missing 937

2020

Percentage of enrolled electors counted: 72.57% counted
Enrolment: 13,356
Total votes 9693
Missing 3843

Div 2

2024 Percentage of enrolled electors counted: 80.32% counted
Enrolment: 14,194
Total votes 11400
Missing 2794

2020

Percentage of enrolled electors counted: 73.14% counted
Enrolment: 12,299
Total votes 8995
Missing 3304

Div 3

2024 Percentage of enrolled electors counted: 75.04% counted
Enrolment: 14,537
Total votes 10909
Missing 3628

2020

Percentage of enrolled electors counted: 68.81% counted
Enrolment: 13,666
Total votes 9404
Missing 4262

Div 4

2024 Percentage of enrolled electors counted: 75.14% counted
Enrolment: 14,262
Total votes 10716
Missing 3546

2020 Uncontested

Div 5

2024 Percentage of enrolled electors counted: 80.47% counted
Enrolment: 13,812
Total votes 11 115

Missing 2697

2020 Percentage of enrolled electors counted: 75.38% counted
Enrolment: 13,093
Total votes 9870

Missing 3223

2024 Div 6 Uncontested

2020 Percentage of enrolled electors counted: 75.43% counted
Enrolment: 12,762
Total votes 9626

Missing 3136

2024 Div 7 Uncontested

2020 Percentage of enrolled electors counted: 75.87% counted
Enrolment: 13,604
Total votes 10 321

Missing 3283

Div 8

2024 Percentage of enrolled electors counted: 77.95% counted
Enrolment: 13,768
Total votes 10 732

Missing 3036

2020 Percentage of enrolled electors counted: 74.17% counted
Enrolment: 12,809
Total votes 9500
Missing 3309

Div 9

2024 Percentage of enrolled electors counted: 75.09% counted

Enrolment: 13,533

Total votes 10162

Missing 3371

2020

Percentage of enrolled electors counted: 71.86% counted

Enrolment: 12,084

Total votes 8683

Missing 3401

Div 10

2024 Percentage of enrolled electors counted: 81.20% counted

Enrolment: 13,671

Total votes 11101

Missing 2570

2020

Percentage of enrolled electors counted: 75.06% counted

Enrolment: 11,991

Total votes 9000

Missing 2991

State based on 3 TSV seats ,

2024 Enrolment 111 621, total votes 101 739 , missing 14 569

2020 Enrolment 104,776 , total votes 89,600, missing 15 176

2024 Townsville <https://results.elections.qld.gov.au/SGE2024/townsville/primary>

Percentage of enrolled electors counted: 82.46% counted

Enrolment: 37,874

Total votes 31320

Missing 6554

2020 Percentage of enrolled electors counted: 84.64% counted

Enrolment: 35,337

Total votes 29909

Missing 5428

2024 Mundingburra

Percentage of enrolled electors counted: 86.63% counted

Enrolment: 35,138
Total votes 30441

Missing 4697

2020

Percentage of enrolled electors counted: 87.73% counted
Enrolment: 33,405
Total 29305

Mission 4100

2024 Thuringowa

Percentage of enrolled electors counted: 84.41% counted
Enrolment: 38,609
Total votes 35281

Missing 3318

2020

Percentage of enrolled electors counted: 85.57% counted
Enrolment: 36,034
Total votes 30386

Missing 5648

2022 Herbert (QLD)
Enrolment: 114,164
Votes 98 098
Missing 16 066
Turnout: 85.93%

<https://results.aec.gov.au/27966/Website/HouseDivisionPage-27966-165.htm>

2025 Herbert turnout

Enrolment: 121 280
Votes 103 662

Missing : 17 618

Turnout: 85.47%

<https://results.aec.gov.au/31496/Website/HouseDivisionPage-31496-165.htm>

Text of Council Media Release 29/9/25

Council votes to recommend by-election via postal vote

<https://www.townsville.qld.gov.au/about-council/news-and-publications/media-releases/2025/september/council-votes-to-recommend-by-election-via-postal-vote>

Date published: 29 September 2025

Townsville City Council has resolved to write to the Minister for Local Government and Water – The Hon Ann Leahy MP requesting that a postal vote be used as a method for the by-election.

The Special Council meeting today comes after suspended Mayor, Troy Thompson resigned on Friday, effective immediately.

Section 163 of the Local Government Act 2009 (LGA) requires the filling of the vacant office within 2 months after the office becomes vacant. The Minister will appoint the Electoral Commission Queensland (ECQ) to run a by-election.

A Townsville City Council spokesperson said while the by-election could be conducted as an in person election or a postal ballot, Councillors made the decision based off three main factors, including voter fatigue, ease of attendance, and cost to ratepayers.

“In the space of 18 months Townsville residents have been to the polls three times, including the Local, State and Federal Government elections,” the spokesperson said.

“A postal ballot will help address voter fatigue by providing an easily accessible and convenient way for voters of all abilities to participate without having to attend polling stations in person.”

The spokesperson said during a time where every dollar counted, a postal vote was likely to save ratepayers around \$230,000.

“The estimated costs of the by-election provided by postal vote is still a significant cost at \$760,000.” the spokesperson said.

“We know for our community that every dollar matters, this option is about making sure the most people participate in the democratic process in the most accessible way possible, while putting the least amount of strain on ratepayers,” the spokesperson said.

While Council has made the recommendation to the Minister that the vote take place as a postal ballot, the Minister is required to refer the application to the electoral commissioner for the commissioner’s recommendation about whether the application should be approved.

Once receiving the commissioner's recommendations, the Minister will then make a final decision on both the method of voting and the by-election date. In accordance with legislation the vacancy should be filled within 2 months. It is expected to be finalised by the end of November.

Text of Qld Minister for Local Government media release giving costs reasons for calling a postal vote. <https://statements.qld.gov.au/statements/103626>

Minister for Local Government and Water and Minister for Fire, Disaster Recovery and Volunteers

The Honourable Ann Leahy

Townsville to have its say as by-election locked in

- **Townsville voters to decide new mayor at by-election on 15 November, 2025.**
- **Townsville City Council request for postal vote confirmed.**
- **Minister Leahy has directed the Electoral Commission of Queensland to deliver postal ballots, saving significant cost for ratepayers.**

Minister for Local Government, Water and Volunteers Ann Leahy has granted the request from Townsville City Council to conduct the upcoming by election by full postal ballot.

A full postal ballot will deliver the election in the most efficient way and will help keep the costs of the by-election down for Townsville voters.

The Electoral Commission of Queensland has confirmed it will now deliver a full postal ballot for a 15 November election and will formally publish the Notice of Election early next week.

Minister Leahy said the people of Townsville deserved certainty in their Mayor.

“Townsville residents will finally get to have their say and bring this saga to an end.” Minister Leahy said.

“A speedy process that is as little hassle as possible is what is required here and I’m pleased to be able to make that happen.

“I wish the Townsville voters all the best as they select their next representative.”

Patrick John Coleman

[REDACTED]

PH [REDACTED]

Email: [REDACTED]

16/12/25

