

Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Deb Frecklington, Attorney-General and Minister for Justice and Minister for Integrity make this statement of compatibility with respect to the Electoral Laws (Restoring Electoral Fairness) Amendment Bill 2025 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The overarching policy objectives of the Bill are to improve and restore the fairness and equality to the regulation of elections in Queensland and increase public confidence in Queensland's electoral processes.

The Bill includes amendments:

- prohibiting persons serving a sentence of imprisonment or detention of one year or longer from voting at State elections and referendums and local government elections;
- applying existing caps on political donations for State elections to financial years, broadly aligning with the length of Commonwealth gift cap periods;
- removing the ban on political donations from property developers and related industry bodies for State elections, as well as refining and targeting the ban for local government electoral purposes (including through closing loopholes and anti-circumvention measures);
- allowing loans from financial institutions to be used for electoral expenditure for State elections, broadening electoral funding sources to include regulated lenders;
- enhancing the independence of registered political parties by enabling them to conduct preselection ballots without the oversight of the Electoral Commission of Queensland (ECQ); and
- changing authorisation requirements for election materials and how-to-vote cards for State elections to apply to the period 12 months before an ordinary general election (rather than the current period between the day after the issue of the writ and polling day) and to allow post office boxes or other prescribed addresses to be used.

Human Rights Issues

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the HR Act)

Increasing restrictions on voting by persons serving sentences of imprisonment or detention

(a) the nature of the right

The following rights are engaged by amendments to limit the entitlement to vote to persons serving a sentence of imprisonment or detention of one year or longer, and related amendments authorising the use of information about persons serving sentences of imprisonment or detention:

- taking part in public life (section 23 of the HR Act);
- freedom of expression (section 21 of the HR Act);
- humane treatment when deprived of liberty (section 30 of the HR Act); and
- privacy and reputation (section 25 of the HR Act).

The amendments in the Bill limit the right to take part in public life by prohibiting persons serving a sentence of imprisonment or detention of one year or longer from voting at State and local government elections and thereby expanding the class of persons who are not entitled to vote.

The amendments in the Bill could potentially be argued to limit the right to humane treatment when deprived of liberty because, by limiting the right to take part in public life, the amendments will impact persons serving relevant terms of imprisonment beyond the impacts which necessarily result from deprivation of liberty.

The amendments in the Bill limit the right to privacy and reputation as the ECQ will receive personal information from the Chief Executive of Queensland Corrective Service and the Chief Executive under the *Youth Justice Act 1992* about the expanded class of persons serving sentences of imprisonment or detention.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of excluding persons serving sentences of imprisonment or detention of one year or longer from voting is to enhance civic responsibility and respect for the rule of law. This purpose incorporates reciprocity of rights and obligations and acknowledges that serious offending may warrant temporary suspension of the right to vote, and recognises that there is legitimate interest for society in promoting recognition of responsibilities as well as rights.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations help to achieve the purpose of enhancing civic responsibility and respect for the rule of law as, by restricting eligibility to vote for certain persons who have reached a threshold of serious offending, a clear message is sent that participation in the democratic process carries with it responsibilities to the laws which govern and protect society. This public policy approach is also taken in other States and Territories.

The link between restricting eligibility to vote and enhancing civic responsibility was affirmed by the European Court of Human Rights in the matter of *Scopola v Italy* [No 3] [2012] ECHR 868, where a temporary ban on voting for people serving a sentence of imprisonment of three years or more and a lifetime ban on voting for people serving a sentence to five years of imprisonment was found not to contravene article 3 of Protocol No 1 to the European Convention on Human Rights, which protects the right to vote.

The Court affirmed that the rights guaranteed by article 3 are “crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law”. It observed that the rights are “not absolute”, with states “afforded a margin of appreciation” to reflect their own “democratic vision”. Disenfranchisement must be proportionate, but proportionality can be attained by a legislature determining the specific circumstances under which disenfranchisement is appropriate and balance the competing interests to avoid any “general, automatic and indiscriminate” restriction.

In the Queensland context sentences of one year or more reflects the court’s recognition of serious criminal offending. For youth offenders, while the *Youth Justice Act 1992* provides that the court cannot have regard to any principle that a detention order should only be imposed as a last resort, detention is not a sentence of first resort. This is also true when sentencing adult offenders convicted of offending involving violence or resulting in physical harm to a person (that is, where the *Penalties and Sentences Act 1992* provides that the principle of imprisonment as a last resort does not apply). Terms of detention and imprisonment are imposed where a non-custodial sentence would be inadequate to fulfil the objectives of sentencing—namely, punishment, rehabilitation, deterrence, recognition of the victim’s harm, denunciation and the protection of the community. This approach emphasises the seriousness of custodial sanctions and affirms that detention or imprisonment is appropriate when a lesser penalty (e.g. probation or community service order) would not sufficiently reflect the gravity and nature of the offence. A sentence of one year or more is considered substantial and is typically reserved for conduct that violates core societal standards, results in significant harm, or presents a considerable threat to public safety.

In addition, section 44(ii) of the Australian Constitution provides that a person who has been convicted and is under sentence for any offence punishable under the law of the Commonwealth or of a State by imprisonment for one year or longer is incapable of being chosen or sitting as a senator or a member of the House of Representatives. Likewise, in Queensland, sections 64(2)(a) and (b) of the *Parliament of Queensland Act 2001* provides that

a person is disqualified from being elected as a member of the Legislative Assembly if they are subject to a term of imprisonment or, within two years of the day of nomination, have been sentenced to more than one year's imprisonment. This is an indication that a sentence of imprisonment for one year or more, in our legal system, is considered sufficiently serious to mark a repudiation of civic responsibility, and in the case of section 44(ii) of the Australian Constitution, has constitutional significance.

Accordingly, the imposition of a sentence of one year or longer signifies that the offending conduct is of such gravity that continued participation in civic processes—such as voting—may reasonably be suspended for the duration of the sentence.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are other less restrictive alternatives which would correspond with higher thresholds for sentences of imprisonment or detention before restricting the right to vote. This is because any threshold longer than one year would be less restrictive as it would result in less persons being prohibited from voting..

However, as noted above, 'the margin [of appreciation] in this area is wide' and that 'there are numerous ways of organising and running electoral systems' whereby it is the particular historical, social and political context of the state which would inform whether a particular limit fell within that margin of appreciation (*Scopola v Italy [No 3]* [2012] ECHR 868). That is to say, while these less restrictive alternatives might be readily available, there is nevertheless a range of reasonable options open to the legislature to determine the appropriate threshold.

An alternative that sets the disqualification to a longer period of imprisonment would not achieve the purpose of enhancing civic responsibility and respect for the rule of law to the same extent. Any longer period would necessarily be less effective in achieving the purpose.

Accordingly, having regard to the seriousness of offending for which varying sentences of imprisonment or detention are available, it is considered necessary to set the threshold at which voting is restricted to sentences of one year or more. It is considered that this threshold falls within the set of reasonable measures which would achieve the purpose.

In relation to the right to privacy and reputation, it is necessary to allow information about persons serving sentences of one year or more to be provided to the ECQ in order to administer changed requirements for entitlement to vote, and so support the purpose of the amendments. As sharing this information is critical to the operation of the amendments, there are no reasonably available alternatives.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On one side of the scales, the protection of the right to take part in public life by way of voting, and the related limits to expression and privacy, are of critical importance to a democracy. Any

limitations on this right must be done thoughtfully and with restraint, as this bedrock democratic right underpins the very civic responsibility and rule of law sought to be enhanced by the provisions. To that end, the amendments recognise this by adopting an appropriate threshold for seriousness of offending which is rationally connected to the idea that a person has repudiated those societal values.

On the other side of the scales, it is critical for responsible democracies to promote civic responsibility and protect the rule of law. The measures proposed only go as far as is necessary to achieve this purpose by being appropriately targeted, and in this manner do not undermine the democratic process. Achieving this purpose outweighs the impact on human rights, and therefore the amendments are considered compatible with human rights.

(f) any other relevant factors

Not applicable.

Applying existing caps on political donations for State elections to financial years

(a) the nature of the right

The following rights are engaged by amendments applying existing donation caps to financial years:

- taking part in public life (section 23 of the HR Act);
- freedom of expression (section 21 of the HR Act); and
- freedom of association (section 22 of the HR Act).

The amendments promote the right to take part in public life by increasing opportunities for persons make political donations, which can then be applied to electoral expenditure by the recipients of those donations and allows them to exercise their voices in relation to the public life of the State.

The amendments promote the freedom of expression by increasing opportunities for information to be conveyed by a registered political party, candidate or other entity that is facilitated by electoral expenditure for State elections funded by political donations.

The amendments promote the right to freedom of association by allowing increased financial support in the form of political donations to be provided to a registered political party, candidate, elected member or other entity engaging in electoral expenditure for State elections.

The amendments could potentially be argued to limit the right to take part in public life. This may be based on the view that there is potential for risks of corruption and undue influence by effectively allowing more political donations from an individual donor to be made to a registered political party, candidate, elected member or other entity. However, the cap on political donations will be retained, which will sufficiently secure the actual and perceived integrity of State electoral and political processes by reducing the risk that a single person or entity can have an improper, corrupting or undue influence on political parties and candidates through donations.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of any limitation on the right to take part in public life is to reduce the level of restriction on funding sources which may be applied to electoral expenditure at State elections, while continuing to limit potential risks of corruption and undue influence and ensure a level playing field between as between donors through the caps on political donations. This in turn promotes the right to take part in public life, the right to freedom of expression and the right to freedom of association in the ways described above.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

To the extent that there is any limitation on the right to take part in public life, the limitation helps to achieve the purpose by applying the same donations cap over a shorter period. This enables more political donations to be made by an individual donor between election cycles that can be applied to electoral expenditure and thereby promotes the right to take part in public life, the right to freedom of expression and the right to freedom of association in the ways described above.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

To the extent that there is any limitation on the right to take part in public life, there are not considered to be any less restrictive and reasonably available ways to achieve the purpose.

Retaining the existing donation cap periods (based on election cycles) or applying the donations cap to a longer period of time than financial years would not achieve the purpose to the same extent. Further, longer donation cap periods would involve more restriction on funding sources for electoral expenditure in State elections, meaning relevant rights would not be promoted to the same degree, and the purpose would not be achieved to the same degree.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Protecting the right to take part in public life by reducing the scope for a single person or entity having an improper, corrupting or undue influence on political parties and candidates through donations is important and, in my view, will continue to be achieved under the amended donations caps. As noted above, the amendments in effect support election participants to act in the public interest rather than being subject to such influence, and therefore supports a properly functioning democracy and the integrity of representative government.

Any limitation on the right to take part in public life would be minor, and the ultimate effect of promoting rights and participation in the electoral process outweighs any such impact.

- (f) any other relevant factors

Not applicable.

Removing the ban on political donations from property developers for State elections, and targeting the ban to local government elections only

(a) the nature of the right

The following rights are engaged by the amendments to remove the ban on political donations to property developers for State elections and limit the ban to political donations for local government electoral purposes:

- taking part in public life (section 23 of the HR Act);
- freedom of expression (section 21 of the HR Act);
- freedom of association (section 22 of the HR Act).

The amendments promote the right to take part in public life by increasing opportunities for persons to contribute to and exercise their voices in relation to the public life of the State by making political donations which may be applied to electoral expenditure for State elections.

The amendments promote the right to freedom of expression by increasing opportunities for information to be conveyed by a registered political party, candidate or other entity that is facilitated by electoral expenditure for State elections funded by political donations.

The amendments promote the right to freedom of association by allowing financial support in the form of political donations to be provided to a registered political party, candidate, elected member or other entity engaging in electoral expenditure for State elections, and to political parties for purposes not related to local government elections, by currently prohibited donors.

The amendments could potentially be argued to limit the right to take part in public life. This is based on the view that there could be corruption risks posed by currently prohibited donors. My view is that the amendments do not limit this right as the corrupt practices intended to be addressed by recommendation 20 of the Belcarra Report will continue to be addressed under the amendments, and therefore the amendments will sufficiently address the relevant corruption risks. Further, the donation caps operate to minimise the risk of undue influence or corruption. It is also noted the current restrictions on prohibited donors actually limits freedom of expression and the right to take part in public life.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of any limitation on the right to take part in public life by removing the ban on property developers for State elections, and limiting the scope of the ban to local government elections, are to:

- create more equal opportunities by allowing property developers to participate in State elections by making political donations in the same way as other donors;
- ensure the property developer donations ban is targeted at local government elections only, as contemplated by recommendation 20 of the of the Belcarra Report; and

- promote freedom of expression by allowing donations from property developers to be used for State electoral purposes including campaigning.

This purpose also in turn promotes the right to take part in public life and freedom of association in the ways identified.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

To the extent that there is any limitation on the right to take part in public life, the limitation helps to achieve the purpose by removing the ban on donations from prohibited donors for State elections, and targeting the ban on donations from prohibited donors for local government electoral purposes. This will promote the rights in the ways identified.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve this purpose. There are also safeguards present in the form of donation caps which continue to mitigate the corruption risks in State elections. The intended purpose is achieved through ongoing targeted measures through the LGE Act.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Addressing corruption risks in the electoral system is undoubtedly important.

As outlined above, however, the purpose of any limitations which might arise is to ensure that measures to address corruption risks are appropriately targeted to those areas where corruption risks have been principally identified as occurring, as contemplated by recommendation 20 of the Belcarra Report. Targeting the amendments only to Local Government elections also creates more equal opportunities by allowing property developers to participate in State elections by making political donations in the same way as other donors (such as unions), and promotes freedom of expression by allowing donations from property developers to be used for State electoral purposes including campaigning. Achieving this purpose outweighs any impact on human rights, and therefore the amendments are considered compatible with human rights.

- (f) any other relevant factors

Not applicable.

Allowing loans from financial institutions to be used for electoral expenditure for State elections

- (a) the nature of the right

The following rights are engaged by the proposal to allow loans from financial institutions to be paid into State campaign accounts and the related amendment:

- taking part in public life (section 23 of the HR Act);
- freedom of expression (section 21 of the HR Act); and
- privacy and reputation (section 25 of the HR Act).

The amendments promote the right to take part in public life by allowing loans from financial institutions to be paid into the State campaign account of a registered political party or candidate, thereby increasing opportunities for these funds to be applied to electoral expenditure for State elections.

The amendments promote the right to freedom of expression by increasing opportunities for information to be conveyed by a registered political party that is facilitated by electoral expenditure for State elections funded by loans from financial institutions.

Requiring disclosure of gifts or loans that enabled a loan from a financial institution promotes the right to take part in public life because the transparency to electors concerning those who provide such enabling gifts is improved.

However, requiring disclosure of gifts or loans that enabled a loan from a financial institution to a registered political party or candidate limits the right to privacy and reputation because it makes publicly available information about loans sourced from a financial institution by a candidate which is personal information.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to ensure that funding sources for electoral expenditure by registered political parties and candidates are not unfairly restricted to private and unregulated lenders and other types of loans not provided by financial institutions. Requiring disclosure of gifts or loans that enabled a loan from a financial institution to a registered political party or candidate provides transparency and informs the public, including electors, about the financial dealings of election participants and assists them to form judgements about such participants and other actors that seek to influence them, and allow them to be better informed in exercising their right to vote. The limitation is directed at providing transparency for this particular type of dealing and allows the public to assess dealings that have the potential for improper, corrupting or undue influence.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The disclosure arrangements will allow electors to be informed about which financial institutions are providing relevant loans, in acknowledgement of the scope for improper, corrupting or undue influence in such financial dealings, and allows the public to assess the specifics of these dealings.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive reasonably available ways to achieve the purpose. Requiring disclosure is necessary to promote transparency in the way described and thereby allows the

public to assess the specifics of such loans including any potential for improper, corrupting or undue influence.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The interference on the right to privacy is relatively minor in nature as the information required to be disclosed under the amendments relates simply to particular financial information. In contrast, the purpose of increasing transparency which, in turn, helps to combat improper, corrupting or undue influence in the democratic process is of critical importance. In balancing these considerations, then, it is clear that the minor interference with privacy is outweighed by the benefits in achieving the purpose. For this reason, the amendments are considered compatible with human rights.

- (f) any other relevant factors

Not applicable.

Enhancing electoral transparency by amending authorisation requirements for election materials and how-to-vote cards

- (a) the nature of the right

The following rights are engaged by the proposal to amend the authorisation requirements for election materials and how-to-vote cards:

- taking part in public life (section 23 of the HR Act);
- freedom of expression (section 21 of the HR Act); and
- privacy and reputation (section 25 of the HR Act).

The amendments promote the right to take part in public life as the new authorisation requirements will increase transparency for electors in identifying who has authorised election material and how-to-vote cards for a greater period of time in advance of polling day for an ordinary general election.

The amendments engage the right to freedom of expression as they create a greater burden on persons to provide authorisations for election material and how-to-vote cards for a longer period of time in advance of polling day for an ordinary general election.

The amendments promote the right to privacy and reputation because allowing post office boxes as valid forms of address responds to privacy and safety concerns, particularly for candidates who may be required to provide their personal residential address.

However, the amendments may also limit the right to privacy and reputation because authorisations on election materials and how-to-vote cards will be included for a longer period of time in advance of polling day for an ordinary general election.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of any limitations on freedom of expression and the right to privacy and reputation, through amending the definition of ‘election period’, is to ensure greater transparency and awareness about who is authorising material that is provided to electors and the Queensland public more generally, and enable voting choices to be formed taking into account not only any information conveyed through such material but who is responsible for it.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Requiring authorisations for election material and how-to-vote cards for a longer period in advance of ordinary general elections will allow electors to be better informed in relation to who is responsible for the material, and assist them to form their voting choices taking into account not only the information conveyed but the correct source of the information.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive reasonably available ways to achieve the purpose. While a shorter time period could have been adopted, it is considered that the period of 12 months in advance of an ordinary general election is a reasonable length of time taking into account the significant period (four years) between ordinary general elections.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The impact on rights is minor in nature, as the requirements for authorisation are not unduly onerous nor do they apply beyond expressions which relate to election matters. The amendments also do not regulate the content of the material being authorised (other than the authorisation itself).

The purpose of the limitations is to ensure greater transparency and awareness about who is authorising material that is provided to electors and the Queensland public more generally, and enable voting choices to be formed taking into account not only any information conveyed through such material but who is responsible for it. This in turn promotes the right to take part in public life, while addressing privacy and safety concerns associated with providing addresses rather than post office boxes. Achieving this purpose outweighs the impact on human rights, and therefore the amendments are considered compatible with human rights.

- (f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Electoral Laws Amendment (Restoring Electoral Fairness Bill) 2025 is compatible with human rights under the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

DEB FRECKLINGTON
Attorney-General and Minister for Justice
Minister for Integrity

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