

External assessment 2021

Stimulus book

Legal Studies

General instruction

- Work in this book will not be marked.

THIS PAGE IS INTENTIONALLY BLANK

Stimulus 1

Excerpts from international laws

Excerpt from Article 25 of the International Covenant on Civil and Political Rights

Every citizen shall have the right and the opportunity ... without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Excerpt from General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service

- 3. ... article 25 protects the rights of 'every citizen'. State reports should outline the legal provisions which define citizenship in the context of the rights protected by article 25. No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status ...
- 4. Any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria. For example, it may be reasonable to require a higher age for election or appointment to particular offices than for exercising the right to vote, which should be available to every adult citizen. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. For example, established mental incapacity may be a ground for denying a person the right to vote or to hold office.

Stimulus 2

Excerpts from the Australian Constitution

Section 7 — The Senate

The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate ...

Section 24 — Constitution of House of Representatives

The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators ...

Stimulus 3

Excerpt from the *Electoral Act 1992 (Qld)*, Section 106 (amended in 2019)

Who may vote

- (3) ... a person who is serving a sentence of imprisonment of 3 years or longer is not entitled to vote at an election for an electoral district.

Stimulus 4

Excerpt from Explanatory Notes, *Electoral and Other Legislation Amendment Bill 2019 (Qld)*

Prisoner voting

Under section 106 of the Electoral Act, a person who is serving a sentence of imprisonment is not entitled to vote at an election for an electoral district. This aligns with the position under the *Commonwealth Electoral Act 1918* prior to the High Court decision in *Roach v Electoral Commission* [2007] HCA 43 which found the previous corresponding Commonwealth provision invalid because it cast the net of disqualification too widely without regard to the culpability of the offender. Clause 27 amends section 106 to provide that only persons serving a sentence of three years or longer are disqualified from voting. This is potentially inconsistent with the fundamental legislative principle that legislation should not adversely affect the rights and liberties of individuals. However, the Bill moderates the current position in favour of a broad class of prisoners, aligns with the current Commonwealth position and has regard to the culpability of a person's offending in disqualifying them from voting.

Stimulus 5

A letter to the editor of a local newspaper

Letters to the editor

Dear Editor,

Being a member of society involves a symbolic agreement to abide by the 'social contract'. This includes obeying laws and being a good citizen. If you can't do this, you shouldn't have the same rights as those who can.

By their very actions, prisoners have demonstrated they are already disengaged from society and are unlikely to vote anyway, so they don't deserve the rights that are held by law-abiding members of society. Remember, voting is a privilege, not an absolute right.

Taking away prisoners' right to vote is not double punishment; it is a consequence of the loss of liberty resulting from imprisonment. Rehabilitation is not the only reason for imprisoning people — punishment is another reason. Once they have paid for breaching the social contract and are released from prison, they have the opportunity to reintegrate into society and they can vote. ■

Concerned Citizen

Stimulus 6

Excerpt from newspaper article: 'A prisoner no more'

Vickie Roach is an unlikely champion of voting rights ... The years between 1976 and 2003 are a blur of court appearances — 125 convictions or guilty verdicts were recorded against her — punctuated by stints in jail.

...

In 2007, while serving a six-year sentence for recklessly causing serious injury in a car crash, she successfully mounted a High Court challenge against the Howard government's ban on all prisoners voting at elections.

...

Roach says the High Court decision was important for all Australians. About 10,000 prisoners were able to vote in the 2007 federal election as a result ... [but the] High Court upheld the legislation existing prior to 2006, which banned prisoners serving sentences of more than three years.

...

To back her argument, Roach echoes the sentiments of Dostoevsky, who had a thing or two to say about crime and punishment. 'A society,' she says, 'should be judged not by how it treats its outstanding citizens, but by how it treats its criminals.'

Stimulus 7

Excerpt from Senate Legal and Constitutional Affairs References Committee report, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia*

The Anti-Discrimination Commission Queensland stated that a number of social and economic drivers relating to the growth of imprisonment rates in Australia have been identified over the years in numerous reports and academic journals. These drivers include:

- socio-economic conditions such as poverty;
- low or under education;
- lack of employment opportunities;
- mental health issues;
- lack of appropriate housing;
- the increasing availability and use of alcohol and drugs;
- the increase and diversity of the population and the challenges this presents;
- social exclusion; and
- systemic discrimination.

... [A] study by Tony Vinson in 2007 ... highlighted the association between crime and disadvantage, indicating that the bulk of crimes are committed by a small population which are densely located within a small number of poorer socio-economic localities.

Stimulus 8

Maximum penalties for a range of offences under the *Criminal Code Act 1899* (Qld)

Maximum penalty (imprisonment)	Sample offences
Life	Piracy Murder Rape
25 years	Sabotage of a public facility
20 years	Making child exploitation material Indecent treatment of children under the age of 12
14 years	Extortion Indecent treatment of children above the age of 12
7 years	Assaults occasioning bodily harm Bribery of Member of Parliament
5 years	Fraud Wilful damage
3 years	Common assault Riot Abuse of office Deprivation of liberty
2 years	Use of a restricted computer without consent (computer hacking) Indecent act in a public place
1 year	Affray (fighting in a public place)

Stimulus 9

Persons in corrective services in Australia

Persons in full-time custody

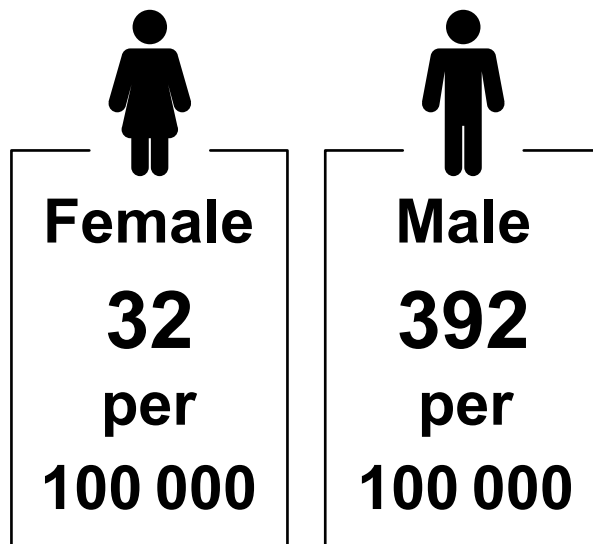
In medium or maximum security custodial facilities, prisoners are confined by a secure physical barrier.



82% in medium or maximum security facilities

18% in minimum security facilities

Daily imprisonment rates compared to total adult population



Males made up 92% of total prisoners in the December quarter of 2020.

Source: Australian Bureau of Statistics

References

Stimulus 1

Excerpt from Article 25

United Nations 1966, *International Covenant on Civil and Political Rights*, www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx | © United Nations, 1966

Excerpt from the Office of the High Commissioner for Human Rights 1996, General comments No. 25, *The right to participate in public affairs, voting rights and the right of equal access to public service* (CCPR/C/21/Rev.1/Add.7), points 3 and 4, <https://www.equalrightstrust.org/ertdocumentbank/general%20comment%2025.pdf>, © United Nations, 1966

Stimulus 2

Excerpt from the *Commonwealth of Australia Constitution Act* (The Constitution), sourced from the Federal Register of Legislation. For the latest information on Australian Government law please go to <https://www.legislation.gov.au>. Used under Creative Commons Attribution 4.0 (CC BY 4.0) licence.

Stimulus 3

Excerpt *Electoral Act 1992* (Qld). Sourced from the Queensland Legislation website at 24 November 2020. For the latest information on Queensland Government legislation please go to <https://www.legislation.qld.gov.au>.

This work is licensed under a Creative Commons Attribution 4.0 International License. **Stimulus 4**

Stimulus 4

Excerpt sourced from *Electoral and Other Legislation Amendment Bill 2019*, Explanatory Notes (page 5) Sourced from the Queensland Legislation website <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2019-001>. For the latest information on Queensland Government legislation please go to <https://www.legislation.qld.gov.au>. Licensed under CC BY 4.0 licence

Stimulus 6

Excerpt from Topsfield, J 2009, 'A prisoner no more', *The Sydney Morning Herald*, 23 May, <http://www.smh.com.au/national/a-prisoner-no-more-20090522-bico.html>. Used with permission.

Stimulus 7

Excerpted from Legal and Constitutional Affairs References Committee 2013, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia*, p.13 https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index Available under Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia licence (CC BY-NC-ND 3.0).

Stimulus 8

Criminal Code Act 1899 (Qld). The Queensland Legislation website. For the latest information on Queensland Government legislation please go to <https://www.legislation.qld.gov.au>.

Stimulus 9

Data sourced from the Australian Bureau of Statistics. <https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release#persons-in-custody>



© State of Queensland (QCAA) 2021

Licence: <https://creativecommons.org/licenses/by/4.0> | Copyright notice: www.qcaa.qld.edu.au/copyright — lists the full terms and conditions, which specify certain exceptions to the licence. Third-party materials referenced above are excluded from this licence.

Attribution: © State of Queensland (QCAA) 2021