



Electoral (Registration of Sentenced Prisoners) Amendment Bill

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Report of the Justice Committee

May 2020

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Hon Meka Whaitiri
Chairperson

Electoral (Registration of Sentenced Prisoners) Amendment Bill

Recommendation

The Justice Committee has examined the Electoral (Registration of Sentenced Prisoners) Amendment Bill and the petition of Christine McCarthy for the Wellington Branch of the Howard League for Penal Reform—Let Prisoners Vote. We have been unable to reach agreement on whether to recommend that the bill be passed.

Introduction

The Electoral (Registration of Sentenced Prisoners) Amendment Bill would amend the Electoral Act 1993 to enable prisoners with sentences shorter than three years to vote.

Section 80(1) of the Electoral Act defines groups of people who may not register as voters. Paragraph (d) disqualifies all sentenced prisoners from voting. Clause 5 of the bill seeks to change this so that only prisoners serving the following sentences would be disqualified:

- life imprisonment
- preventive detention
- terms of three years or more.

Clause 7 would insert new sections 86A to 86E into the Act to establish a process for encouraging eligible prisoners to register as voters. Under new sections 86A and 86B, prison managers would have to engage with eligible prisoners about registering to vote. This would happen either when they are due to be released from a sentence of three years or more, or as soon as is reasonably practicable if they are serving a sentence of less than three years.

Clause 8 would replace section 115 of the Act to allow certain prisoners' details to be entered on the "unpublished" electoral roll. This option would be automatically available to prisoners who considered that their safety, or that of their family, would be at risk if their details were in a publicly available electoral roll. This differs from the situation that applies to other electors, as under new subsection (3), the Electoral Commission would not have to consider the normal criteria of the person's safety or that of their family before putting the prisoner on the unpublished roll.

"Let Prisoners Vote" petition

Alongside this bill, we considered the petition of Christine McCarthy for the Wellington Branch of the Howard League for Penal Reform: Let Prisoners Vote. The petition requests:

That the House of Representatives repeal section 80(1)(d) of the Electoral Act 1993 to enable all New Zealand prisoners to be eligible to vote in New Zealand elections.

We considered the petition as part of our consideration of the bill. We received written submissions from the petitioner and the Ministry of Justice.

Submissions received

We received 2,580 submissions on the bill. Most were from individuals. There were 32 submissions from organisations.

Most of the submissions (78 percent) supported the bill. About half of these suggested that the bill should go further and allow all prisoners to vote—not just those serving less than 3 years.

A minority (21 percent) of submitters did not support the bill. Most of those submitters recommended retaining the current law so that no sentenced prisoners would have the right to vote.

It was not clear what the opinions were of the small number of remaining submissions.

Submissions in support of the bill

Human rights

One argument in favour of the bill was that it upholds human rights. Some submitters referred to a declaration by the High Court that the existing law is not consistent with the New Zealand Bill of Rights Act 1990 (NZBORA). Some referred to the report that the former Attorney-General made to the House on the 2010 bill that removed prisoners' right to vote.¹ That report said the 2010 bill was inconsistent with the right to vote affirmed in section 12 of NZBORA. Some submitters also referred to New Zealand's obligations under international law.

We note that there is no report from the Attorney-General under NZBORA on the current bill because he did not find that it was inconsistent with the rights in NZBORA.

Discrimination against Māori

We heard that the current law discriminates against Māori because Māori are over-represented in prisons. It was submitted that the bill helps to address this problem.

Submitters also pointed to the recent report of the Waitangi Tribunal on prisoner voting, *He Aha i Pērā Ai? The Māori Prisoners' Voting Report*.² In that report, the tribunal found that the current disqualification of sentenced prisoners was a serious breach of the Treaty of Waitangi and had a disproportionate effect on Māori. It found that disqualification acts like a permanent disenfranchisement as many people do not re-enrol once leaving prison.

¹ That report is found at www.justice.govt.nz/assets/Documents/Publications/BORA-Electoral-Disqualification-of-Convicted-Prisoners-Amendment-Bill.pdf

² The report is found at https://forms.justice.govt.nz/search/Documents/WT/WT_DOC_151635085/He%20Aha%20i%20Pera%20Ai.pdf

Other arguments in support of the bill

Some submitters said that allowing prisoners to vote helps with their rehabilitation into society.

We also heard that allowing prisoners to vote would strengthen democracy in New Zealand because more people would be able to vote.

Submissions that the bill should allow all prisoners to vote

Some submitters (37 percent) said that the bill should go further and allow all prisoners to vote. They saw no good reason for allowing only those with sentences of less than three years to vote. Many of these submitters noted that full prisoner voting was recommended by the Waitangi Tribunal in its report on prisoner voting. We heard that the bill was a good step towards full prisoner enfranchisement.

Submissions against the bill

Arguments from those who did not support the bill included the following:

- By breaking the rules of society, prisoners have forfeited their right to vote.
- The awareness that they could lose the right to vote might act as a deterrent, discouraging people from committing crimes.
- Voting could negatively affect prisoners' rehabilitation. Rehabilitation should include work towards earning back responsibilities and privileges such as voting.
- Giving prisoners the right to vote is hurtful to victims because it ignores the serious effects that prisoners' crimes have on victims.
- Prison sentences are only given to people who have committed serious crimes or a serious number of crimes. Any sentence of imprisonment reflects a crime serious enough to remove voting rights.
- It would be extra work and cost for the Department of Corrections and electoral officials to implement the bill.
- Prisoners would not be able to access appropriate information from inside prison, including media programmes and election campaign information.
- Prisoner voting is banned in other countries.
- Parliament is the final decision-maker and does not have to follow the courts or the Waitangi Tribunal in enacting legislation.

Consideration of the bill during pandemic lockdown

The Chairperson called for the submissions on the bill on 20 March 2020, and set a closing date of 24 April 2020. The committee endorsed the Chairperson's call for submissions at its meeting on 9 April 2020, although could not reach agreement on the closing date. We heard oral submissions on the bill in April and May 2020, during the COVID-19 lockdown. We note that 115 submitters objected to this timing. They said that it was inappropriate to progress the bill during the COVID-19 pandemic and that submissions should be delayed until after the lockdown had ended.

Three-year threshold for prisoner voting

We received numerous submissions about which prisoners should be allowed to vote.

Some submitters said that a voting ban should apply to all prisoners; some said it should apply to none. Some submitters proposed that it should apply for terms of less than three years; others more than three years. We also heard that prisoners with long sentences who had less than three years left to serve should be eligible to vote.

Some said that the rationale for the three-year threshold should be explained. One submitter said that two years was appropriate because that is the maximum sentence for a “Category two” offence under the system that categorises offences on the basis of maximum penalty applicable. We also heard that only those who had committed certain types of offence should be barred from voting; submitters suggested violent offences and electoral offences, or that the judge should decide at sentencing.

Some submitters felt that the law should be stricter than it is currently. For example, it was suggested that those on home detention should be banned from voting, also, that prisoners should not be allowed to vote for a number of years after they are released.

Proposals to amend the enrolment provisions

We received some specific recommendations for improving the enrolment provisions set out in clause 7, proposed new sections 86A to 86E. They included the following:

- New section 86A(1) should be amended so that it covers:
 - o prisoners who are not eligible when they first enter prison, but who turn 18 while in prison
 - o prisoners whose sentence is reduced to less than three years on appeal.
- New sections 86A(1) and 86B(1) should be amended to make it clear that they only apply to prisoners who are 18 years or older.
- New sections 86A(1) and 86C(2) should be amended to specify that the prison manager must communicate with a prisoner in a way that the prisoner can reasonably be expected to understand.

Unpublished roll

We received 38 submissions commenting on the provision in clause 8, new section 115, that would facilitate a prisoner's name being placed on the unpublished roll. Some said that it should not be easier for prisoners than for others to get onto the unpublished roll. Others supported the provision.

Advisers recommended amending clause 8, new section 115, so that the same test is applied for prisoners as for non-prisoners. This would mean that, before entering a prisoner on the unpublished roll, the Electoral Commission would have to be satisfied that the publication of the prisoner's details would prejudice their personal safety or that of their family. The Department of Corrections could help a prisoner complete an application if they

wished to apply. Where appropriate, this would include helping prisoners with evidence to support their application.

Our deliberations

We have not reached agreement on whether the bill should be passed; nor have we reached agreement on what changes, if any, should be made to the bill as introduced. The views of Labour Party members of the committee and National Party members of the committee are outlined below.

Labour Party view

Labour members support the bill and wish to thank all submitters with special mention of the number of young people who wrote and appeared before the committee. We note the advice from officials on proposed changes to clause 8 and support these.

National Party view

National opposes the process, policy, and detail of this bill that is motivated by the current Government wanting to make the rules of the 2020 election easier for its own re-election.

There was no justification for this bill being rushed. The issue of prisoner voting rights is not new. The Government has had ample opportunity to introduce changes prior to a few months before Election 2020.

It was offensive that the Government members insisted on progressing this bill while New Zealand was in weeks of lockdown by blocking motions to seek an extension. The Parliament was adjourned on the basis that only COVID-19 legislation would be advanced. The other two bills before the committee, on sexual violence and first responders, were deferred. Government giving priority to prisoner voting rights over victims of sexual violence and the protection of first responders was wrong. It was also wrong to be advancing this bill when MPs were confined to their homes and when five million New Zealanders had so many of their normal rights suspended.

The normal select committee process was not followed in four aspects. The timeframe was halved from the normal six months to less than three months. The chair set the closure date for submissions without the committee's support. Hearings began before submissions closed. Normal in-person submissions were not allowed.

National's opposition to prisoners voting is both principled and practical. The uncomplicated principle is that people lose rights when sentenced to prison. People are only sentenced to prison in New Zealand for serious offending and often multiple offending. The practical issue is that prisons limit access to candidates, information, and the other aspects of an election campaign that is incompatible with serving a prison sentence. National supports the full restoration of voting rights and an easy process for enrolment when prisoners have served their time.

The provisions in this bill making it easier for prisoners to be on the unpublished roll than their victims or other law-abiding citizens are flawed. This was initially denied by the

Government but was confirmed by submitters and officials. Criminals should never have rights, however technical, in excess of law-abiding citizens.

This bill is the fourth electoral law change to be made by Government without any consultation with opposition parties and intended to be passed by a thin majority. New Zealand is unusual amongst western democracies in not having a written constitution or second chamber to its Parliament.

The Government is undermining New Zealand's conventions around electoral law by repeatedly passing changes that will ease its re-election. Our democracy deserves better.

Appendix

Committee procedure

The Electoral (Registration of Sentenced Prisoners) Amendment Bill was referred to the committee on 18 March 2020. We received and considered 2,580 submissions from interested groups and individuals. This included a written submission from the Department of Corrections in response to certain questions we asked it. We heard oral evidence from 86 submitters via video and teleconference.

We received advice from the Ministry of Justice and the Electoral Commission.

The petition of Christine McCarthy for the Wellington Branch of the Howard League for Penal Reform—Let Prisoners Vote—was presented to the House on 14 May 2019. We received written submissions from the Howard League and the Ministry of Justice. We received an oral submission from the Wellington Branch of the Howard League. We considered those submissions as part of our consideration on the bill.

Committee members

Hon Meka Whaitiri (Chairperson)
Ginny Andersen
Simeon Brown (from 27 May 2020)
Hon Clare Curran
Hon Tim Macindoe (until 27 May 2020)
Hon Mark Mitchell
Greg O'Connor
Chris Penk
Hon Dr Nick Smith

Advice and evidence received

The documents that we received as advice and evidence are available on the Parliament website, www.parliament.nz.