

**SUBMISSIONS BY THE AUCKLAND DISTRICT LAW SOCIETY
ON THE ELECTORAL (REGISTRATION OF SENTENCED PRISONERS) AMENDMENT BILL**

23 APRIL 2020

INTRODUCTION

The ADLS Criminal Law Committee (“Committee”) welcomes the opportunity to make written submissions on the Electoral (Registration of Sentenced Prisoners) Amendment Bill (“EAB”). The Committee is comprised of counsel from the defence bar in the Auckland region.

SUBMISSIONS ON THE GENERAL POLICY STATEMENT

1. The Regulatory Impact Assessment produced by the Ministry of Justice provides the main policy decisions taken by the Government relating to the contents of this Bill.
2. There is particular reference to the findings from the Waitangi Tribunal’s recent report *He Aha I Pera Ai? The Maori Prisoners’ Voting Report*.¹ The report identifies the disqualification of prisoners’ voting rights as a serious Treaty of Waitangi breach and that it has disproportionately effected Maori. The disqualification has been shown to act like a de facto permanent disenfranchisement, as many people affected are not re-enrolling once leaving prison.
3. Prior to the 2010 law change, disqualifying all prisoners from voting (compared to those serving sentences of 3 years or more), Maori were 2.1 times more likely than non-Maori to have been removed from the electoral roll as a result of a prison sentence.² Currently under the 2010 law change, Maori are 11.4 times more likely to be removed from the electoral roll as a result of receiving a prison sentence than non-Maori.³ This is a significant increase on the pre-2010

¹ *He Aha I Pera Ai? The Maori Prisoners’ Voting Report*, Waitangi Tribunal, August 2019.

² Prisoner voting; Ministry of Justice; 8 November 2019.

³ Above n 2.

amendment and highlights how Maori in particular are disproportionately affected by the disqualification, making up 51.3 percent of the current prison population.⁴

4. The Criminal Justice system supports the principle of reintegration of prisoners. For example, the Sentencing Act 2002 states that one of the purposes of a Court sentencing or otherwise dealing with an offender can be to assist in the offender's rehabilitation and reintegration.⁵ The Corrections Act 2004 also states that one purpose of the corrections system is to contribute to the maintenance of a just society by assisting in the rehabilitation of offenders and their reintegration into the community.⁶
5. The disqualification of prisoners' voting rights is an additional penalty beyond the punishment of imprisonment. The House of Lords has said prisoners retain all civil rights not taken away as a necessary incident of incarceration (e.g. freedom of movement). Removing the right to vote is an additional punishment on top of incarceration, rather than incidental to it.⁷
6. The EAB attempts to provide a solution to this by enfranchising people who are serving a sentence of imprisonment for a term of less than 3 years and better facilitate participation in the electoral system of prisoners who are to be released from prison following a sentence of imprisonment for a term of 3 years or more.
7. With respect to the key amendments identified in the EAB in the explanatory note, the following comments are being made.
 - 7.1 The change in status of Prisoners' voting rights will remove the current inconsistency of the electoral rights affirmed by section 12 of NZBORA. The objective of the 2010 Amendment (serious offenders forfeiting their right to vote) is not rationally linked to the blanket ban on prison voting given that people who are not serious offenders were also disenfranchised. The proposed changes will enable the objective of the 2010 Amendment to be retained whilst eliminating the unjustified blanket ban on those who are not classed as serious offenders.
 - 7.2 The EAB hasn't gone far enough in returning to the 1993 Act where there was no ban on prisoners' voting. This is highlighted in the first proposed option given by the Ministry of

⁴ *Prisoner facts and statistics*

⁵ Sentencing Act 2002 s 7(1)(h).

⁶ Corrections Act 2004 s 5.

⁷ *R v Secretary of State for the Home Department, Ex p Anderson* [1984] QB 778 at [790].

Justice in their regulatory impact assessment, to remove any disqualification from voting for sentenced prisoners (as recommended by the Waitangi Tribunal).

PART 1 – AMENDMENTS RELATING TO THE DISQUALIFICATION OF SENTENCED PRISONERS FOR REGISTRATION AS ELECTORS

Clause 4 amends section 3 of the principal Act, which is the interpretation provision. This clause inserts a definition for prison manager, used in new sections 86A to 86C (inserted by clause 7).

8. The Committee does not have submissions to make on the amendment to the definition for prison manager in Clause 4.

Clause 5 amends section 80(1) of the principal Act, which sets out the persons who are disqualified from registering as electors. Currently, under section 80(1)(d), prisoners serving a sentence of imprisonment imposed after 16 December 2010 are disqualified from registering as an elector and are unable to vote at elections. The amendment replaces section 80(1)(d) so that prisoners serving a sentence of imprisonment for a term of less than 3 years will no longer be disqualified from registering as electors. Prisoners who are detained in prison under a sentence of imprisonment for life, a sentence of preventive detention, or a sentence of imprisonment for a term of 3 years or more (including cumulative sentences that total 3 years or more) continue to be disqualified.

9. The Committee does not have submissions to make on the amendment in Clause 5.

Clause 6 replaces section 81 of the principal Act, which currently provides that when a person sentenced to imprisonment is received into a prison, the prison manager must forward to the Electoral Commission the person's details. New section 81 requires prison managers to forward to the Electoral Commission only the details of those prisoners who, under new section 80(1)(d), are disqualified from registration as electors.

10. The Committee does not have submissions to make on the amendment in Clause 6.

PART 2 – AMENDMENTS RELATING TO REGISTRATION OF SENTENCED PRISONERS AS ELECTORS

Clause 7 inserts new sections 86A to 86E into the principal Act.

New sections 86A and 86B require prison managers to advise prisoners who are serving a term of imprisonment of less than 3 years, and prisoners after serving a sentence of imprisonment for a term of 3 years or more who are to be released, about registering as electors in accordance with the requirements of the principal Act and to ask whether they want their enrolment details sent to the Electoral Commission.

11. The Committee have questions on the appropriateness of time a prisoner is given on deciding whether or not to be registered as an elector. The Committee propose an inclusion that a prisoner

at any time during their sentence can advise the prison manager that they wish for their information to be sent to the Electoral Commission with the intention of become a registered elector.

12. This inclusion is important to allow prisoners an open opportunity to preserve their right to vote. Without this there would be an added stress during the first 7 days of a prisoner's sentence, which is already an unprecedentedly anxious experience.
13. Preventing a prisoner of later changing their mind would go against the purpose this bill intended.
14. Furthermore, the Committee are concerned that ss 86A and 86B do not consider the circumstance of a prisoner who has successfully appealed their sentence.
15. If a prisoner successfully appeals their sentence and it is reduced to below the three-year threshold, the Bill, as it currently is drafted, does not provide a mechanism for these prisoners to provide their details to become registered electors until they are due for release.
16. The Committee propose an addition to s 86B to reflect such a circumstance in order to prevent such people from remaining disenfranchised during their reduced sentence in imprisonment. The addition should provide that the prison manager is required to discuss their eligibility to be registered as prescribed under ss 86A and 86B and that if the person chooses to be registered that the process under s 86C is to be carried out in a timely manner.

New section 86C sets out the enrolment information that a prisoner wanting to enrol as an elector must provide to a prison manager and requires the prison manager to collect and send that information to the Electoral Commission.

New section 86D provides what the Electoral Commission must do on the receipt of a person's enrolment information.

New section 86E confers on a prison manager the power to delegate their functions under new sections 86A to 86C to prison officers.

17. The Committee does not have submissions to make on the inclusion of the new sections 86C, D and E.

Clause 8 replaces section 115 of the principal Act. *Currently, section 115 confers on the Electoral Commission the power to direct that a person's name and particulars not be published on any main or supplementary roll if the Commission considers that the publication of those details would be prejudicial to the safety of the person or the person's family. New section 115 provides that in any case where a prisoner's enrolment information received from a prison manager under new section 86C includes information that a prisoner does not want to have their details published on a roll, the Electoral Commission must automatically enter the prisoner's details on the unpublished roll. No application is required from the prisoner and the Electoral Commission does not have to be satisfied*

that the publication of the prisoner's details would be prejudicial to their safety or the safety of their family.

Clause 9 amends Schedule 1AA of the principal Act to insert a transitional provision relating to this Bill. *It requires a prison manager to comply with new sections 86A and 86C in respect of a prisoner who is currently serving a term of imprisonment of less than 3 years (who, after this Bill is enacted and comes into force, will no longer be disqualified for registration).*

18. The Committee does not have submissions to make on new section 115 and the amendment to Schedule 1AA.

CONCLUSION

Thank you for the opportunity to make submissions on the Bill.

To contact the ADLS Criminal Law Committee for clarification on any matters raised in this submission please contact Committee Convenor Marie Dyhrberg QC: mariedqc@mariedyhrberg.co.nz

