

26 June 2020

Attorney-General

**Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2) (23045/3.0) –
Consistency with New Zealand Bill of Rights Act 1990
Our Ref: ATT395/318**

1. We write to advise you of Crown Law's view on whether the Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2) ('the Bill') is consistent with the rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990.¹
2. This advice was required urgently, as the Bill is expected to be considered by Cabinet this Monday, 28 June 2020.
3. The Bill seeks to rectify the inconsistencies that will be introduced into the Electoral Act 1993 as a result of the amendments made by supplementary order paper to the Electoral (Registration of Sentenced Prisoners) Amendment Bill during Committee on 24 June 2020.²
4. In our view the Bill does not engage any of the rights affirmed in the New Zealand Bill of Rights Act 1990. It is therefore not inconsistent with the Bill of Rights Act.

Summary

5. Under the Electoral Act 1993, as amended in 2010, all prisoners are disqualified from being registered to vote. When the Electoral (Registration of Sentenced Prisoners) Amendment Bill passes into law, only those prisoners serving a sentence of imprisonment of three years or more will be disqualified.
6. Prior to its being considered by Committee of the Whole House, the Electoral (Registration of Sentenced Prisoners) Amendment Bill also included various amendments to the Electoral Act to assist those prisoners who will be eligible to vote. Those measures included:
 - 6.1 requiring prison managers to advise prisoners serving a sentence of less than three years' imprisonment, and prisoners to be released after a longer sentence, about registering as electors;
 - 6.2 requiring prison managers to ask prisoners whether they want their details sent to the Electoral Commission; and

¹ A copy of the Bill is enclosed with this advice.

² The third reading of the Electoral (Registration of Sentenced Prisoners) Amendment Bill was on 24 June 2020.

- 6.3 requiring the Electoral Commission to treat receipt of a prisoner's details as the receipt of an application to register as an elector.
7. However, amendments were made to the Electoral (Registration of Sentenced Prisoners) Amendment Bill by supplementary order paper in Committee. One of these, introduced by Golriz Ghahraman, sought to remove the prisoner voting disqualification entirely, thereby allowing all prisoners to be registered on the electoral roll. It also sought to introduce several consequential amendments in relation to the enrolment of prisoners, so as to reflect the complete removal of any restriction on the voting of any prisoners:³
- 7.1 requiring Prison Managers to advise all prisoners they are qualified to be registered as an elector and that in order to vote it is necessary to enrol; and ask a prisoner whether they want their enrolment details sent to the Electoral Commission;
- 7.2 removing the provision in the Electoral (Registration of Sentenced Prisoners) Amendment Bill that requires the Department of Corrections to assist prisoners serving a sentence of three years or more with enrolment upon release;
- 7.3 requiring Prison Managers to collect information from all prisoners who wish to enrol and sending this to the Electoral Commission; and
- 7.4 removing the requirement in the Electoral Act 1993 that the Electoral Commission remove from the electoral roll the name of every person notified to them under s 81 (the provision requiring Corrections to inform the Electoral Commission about prisoners sentenced to three years or more).
8. The amendment which would have removed voting restrictions for all prisoners did not pass. However, the consequential amendments did. This resulted in the Electoral (Registration of Sentenced Prisoners) Amendment Bill being internally inconsistent.
9. The Bill seeks to rectify these inconsistencies by removing the changes made to the Electoral (Registration of Sentenced Prisoners) Amendment Bill by Golriz Ghahraman's supplementary order paper and reinstating the pre-Committee provisions of the Electoral (Registration of Sentenced Prisoners) Amendment Bill whilst retaining the minor amendments made by the supplementary order paper introduced by the Minister of Justice.⁴ Specifically, the Bill:
- 9.1 requires Prison managers to advise only prisoners aged 18 years or older who are serving a term of imprisonment of less than 3 years about registering as electors in accordance with the requirements of the Electoral Act and ask whether they want their enrolment details sent to the Electoral Commission;

³ A copy of this supplementary order paper is enclosed with this advice.

⁴ A copy of this supplementary order paper is enclosed with this advice.

- 9.2 requires Prison Managers to advise prisoners who are to be released after serving a sentence of imprisonment for a term of 3 years or more about registering as electors in accordance with the requirements of the Electoral Act and to ask whether they want their enrolment details sent to the Electoral Commission and facilitate their registration as an elector if they do want their details sent;
- 9.3 amends prison managers' duties to collect and send enrolment information to the Electoral Commission to include enrolment information collected through the requirement set out at 8.2, as well as 8.1;
- 9.4 requires a prison manager to inform the Electoral Commission if the overall length of a prisoner's sentence of imprisonment or sentences of imprisonment subsequently change so that they become disqualified for registration as an elector; and
- 9.5 reinstates the ability for the Electoral Commission to remove from the electoral roll the names of prisoners who are disqualified from registration as electors under s 80(1)(d) of the Electoral Act.


Analysis

10. On 14 February 2020 we advised that the Electoral (Registration of Sentenced Prisoners) Amendment Bill was not inconsistent with any of the rights and freedoms that are affirmed by the Bill of Rights Act. In reaching this conclusion we gave particular consideration to the right to vote that is affirmed by s 12 and the right to be free from discrimination that is affirmed by s 19.
11. This Bill simply restores measures which were part of the Electoral (Registration of Sentenced Prisoners) Amendment Bill and which were aimed at facilitating the registration on the electoral roll of those prisoners who would be eligible to vote, because of the reduced restrictions introduced by the Electoral (Registration of Sentenced Prisoners) Amendment Bill, or who become eligible after their long-term sentence of imprisonment comes to an end.
12. The measures do not place any restrictions on the voting of prisoners who are either now entitled to vote or will, following assent being given to the Electoral (Registration of Sentenced Prisoners) Amendment Bill, be entitled to vote. It does not remove assistance to prisoners who are either now entitled to vote or will, following assent being given to the Electoral (Registration of Sentenced Prisoners) Amendment Bill, be entitled to vote.
13. For the above reasons, in our opinion it is not inconsistent with either s 12, s 19 or any of the other rights and freedoms affirmed by the New Zealand Bill of Rights Act.

Conclusion

14. In our opinion the measures in this Bill are not inconsistent with the rights affirmed by the New Zealand Bill of Rights Act.

15. In accordance with Crown Law policy, this advice has been peer reviewed by Peter Gunn, Team Manager/Crown Counsel.



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Noted



Hon David Parker
Attorney-General
26 / 6 /2020