

## Hon Andrew Little

Minister of Justice, Minister for Courts

### Proactive release – Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2)

17 August 2020

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	<b>Cabinet Paper Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2)</b> <i>Cabinet Paper</i>	Some information has been withheld in accordance with section 9(2)(g)(i) of the Official Information Act.
2	<b>CBC-20-MIN-0316</b> <i>Cabinet minute</i> Meeting date: 29 June 2020	Some information has been withheld in accordance with section 9(2)(g)(i) of the Official Information Act.

In Confidence

Office of the Minister of Justice

Chair, Cabinet

## **Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2): Confirmation of policy decisions and approval for introduction**

### **Proposal**

1. This paper seeks approval to:
  - 1.1. make amendments to the Electoral Act 1993 to correct inconsistencies introduced through the Electoral (Registration of Sentenced Prisoners) Amendment Bill and
  - 1.2. introduce the attached Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2).

### **Background**

2. In November 2019, Cabinet agreed to amend the Electoral Act 1993 to:
  - 2.1. re-enfranchise people in prison who are serving shorter prison sentences by reverting to the pre-2010 law, allowing all prisoners serving sentences of less than three years' imprisonment to enrol and vote;
  - 2.2. encourage prisoners to enrol to vote once eligible by requiring the Department of Corrections (Corrections) to collect the information necessary for a sentenced prisoner to be enrolled and provide this to the Electoral Commission (the Commission) with the prisoner's agreement;
  - 2.3. require the Commission to enrol the prisoner if it has received sufficient information [CAB-19-MIN-0596 refers].
3. An Electoral (Registration of Sentenced Prisoners) Amendment Bill making these amendments was approved for introduction in February 2020 [LEG-20-MIN-0024 refers].
4. The Bill was introduced on 25 February 2020. Following the Justice Committee's decision not to make any changes to the Bill as introduced, Cabinet agreed in June 2020 to table a supplementary order paper (SOP) making changes to the unpublished roll provisions [CBC-20-MIN-0060 refers].
5. An SOP (SOP 518), in the name of Golriz Ghahraman MP, also proposed amendments at the Committee of the Whole House stage. The primary change SOP 518 proposed was to repeal section 80(1)(d) of the Electoral Act 1993 (instead of amending it to only disqualify prisoners serving sentences of more than three years). If this had been agreed to it would have amended the law so that all prisoners could vote. The amendments pertaining to this change were to part 1 of the Bill and were not agreed.
6. The rest of the SOP made a number of changes to part 2 of the Bill dealing with the enrolment of prisoners. These were essentially consequential to the proposed change to allow all prisoners to vote but were agreed to in Committee of the Whole House, even

though the part 1 changes were not agreed. The Bill, as amended by this SOP, received its third reading on the Parliamentary day of 24 June 2020.

## Policy

7. The result of the changes made in the SOP to part 2 of the Bill is that the law that has been passed is inconsistent. It places unworkable obligations on Corrections and the Electoral Commission, by:
  - 7.1. requiring prison managers to advise all sentenced prisoners who are 18 or over that they are qualified to be registered as an elector and that it is compulsory to enrol, and ask whether they want their enrolment details sent to the Electoral Commission (even those sentenced to three years or more who are disqualified from enrolling);
  - 7.2. requiring prison managers to collect enrolment information from prisoners who wish to enrol and send this enrolment information to the Electoral Commission, even if the prisoner has been sentenced to three years or more. This means the Electoral Commission could potentially receive, from Corrections, enrolment applications for prisoners who are not actually qualified to enrol; and
  - 7.3. removing section 98(1)(f)(ii) of the Electoral Act 1993 which required that the Electoral Commission remove from the electoral roll the name of every person that is notified to them under section 81 (the provision requiring Corrections to inform the Electoral Commission about prisoners sentenced to three years or more). This means that the Electoral Commission will receive the information about who is not qualified from Corrections, but there is no longer a provision requiring the Electoral Commission to remove those names from the electoral roll.
8. The law also no longer has provisions requiring Corrections to:
  - 8.1. assist prisoners serving a sentence of three years or more with enrolment upon release, and
  - 8.2. advise the Electoral Commission if a prisoner's sentence changed (for example, on appeal) in a way that resulted in them becoming disqualified.
9. The SOP removed these provisions as these would not have been necessary if no prisoners were disqualified.
10. I seek agreement to a Bill making changes to correct these inconsistencies.

## Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2)

11. The Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2) makes changes to the Electoral Act 1993 that will remedy these inconsistencies and reinstate the provisions on prisoners' enrolment so that they are consistent with the policy position agreed by Cabinet in November 2019 and the legislative approvals in February and June 2020 [CAB-19-MIN-0596 refers].

## Legislative implications

12. I propose that the Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2) s9(2)(g)(i) [REDACTED]

## **Financial implications**

13. The amendments made by the Electoral (Registration of Sentenced Prisoners) Amendment Bill require additional duties from the Electoral Commission and Corrections to enable prisoners to enrol and vote. The costs can be absorbed within these agencies' baselines [CAB-19-MIN-0596 refers]. If the law is not corrected, the inconsistency created by the current law may create additional unnecessary work for Corrections and the Electoral Commission and therefore increase the cost of administering the new provisions.

## **Impact analysis**

14. The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Assessment on the basis that it removes redundant legislative provisions, which otherwise result in an incoherent Bill.

## **Compliance**

15. The Bill (No 2) complies with:
- 15.1. the principles of the Treaty of Waitangi;
  - 15.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 15.3. the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached);
  - 15.4. the principles and guidelines set out in the Privacy Act 1993;
  - 15.5. relevant international standards and obligations; and
  - 15.6. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

## **Consultation**

16. The Electoral Commission, the Department of Corrections, and the Treasury have been consulted on the proposals in this paper and the draft Bill (No 2).
17. The New Zealand First Party, the Green Party, and the Prime Minister's office have been consulted.

## **Binding on the Crown**

18. Cabinet Circular (02) 4: Acts Binding the Crown: Procedures for Cabinet Decision notes that bills that are amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Electoral Act 1993 does not bind the Crown and it is proposed that this Bill will follow that position. The Bill (No 2) will therefore not bind the Crown.

## **Creating new agencies or amending law relating to existing agencies**

19. The Bill does not create any new agencies or amend the law relating to existing agencies.



### Allocation of decision making powers

20. The Bill (No 2) does not affect the allocation of decision-making powers between the executive, the courts, and tribunals.

### Associated regulations

21. Regulations are not needed to bring the Bill (No 2) into operation.

### Other instruments

22. The Bill (No 2) does not include any provisions empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments (or both).

### Definition of Minister/department

23. The Bill (No 2) does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

### Commencement of legislation

24. The Bill (No 2) will come into force on the day after the date of Royal assent.

### Parliamentary stages

25. As this Bill is a correction of the inconsistencies introduced, I seek agreement for the Government to propose that the Bill (No 2) be progressed through all stages under urgency before the end of June 2020. It is important that a clear law is in place to enable the Electoral Commission and the Department of Corrections to implement the changes in a timely and effective way before the 2020 general election. Given the Bill (No 2) is implementing changes already considered by the Justice Committee, I do not propose that the Bill (No 2) be referred to a Select Committee for consideration.

### Proactive Release

26. I will proactively release this Cabinet paper, with appropriate redactions, in accordance with the Government's proactive release policy.

### Recommendations

The Minister of Justice recommends that the Committee:

1. **agree** that the inconsistencies to the law be corrected and the provisions amended to a position consistent with Cabinet policy approvals in November 2019 and legislative approvals in February 2020 and June 2020;
2. **agree** that the Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2) be accorded s9(2)(g)(i)  
[REDACTED]
3. **approve** the Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2) for introduction;
4. **authorise** the Minister of Justice and Parliamentary Counsel Office to make minor technical and drafting changes to the Bill (No 2) prior to introduction;

5. **agree** that the Bill (No 2) be introduced in the week of 29 June 2020; and
6. **agree** that the government propose that the Bill (No 2) be progressed through all stages under urgency in the week of 29 June 2020.

Authorised for lodgement

Hon Andrew Little  
Minister of Justice



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2)

Portfolio Justice

On 29 June 2020, Cabinet:

- 1 **agreed** that the inconsistencies to the law arising from the passage of the Electoral (Registration of Sentenced Prisoners) Amendment Bill be corrected and the provisions amended to a position consistent with Cabinet policy approvals in November 2019 and legislative approvals in February 2020 and June 2020;
- 2 **agreed** that the Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2) s9(2)(g)(i) [REDACTED];
- 3 **approved** for introduction the Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2) [PCO 23045/3.0];
- 4 **authorised** the Minister of Justice to make minor technical and drafting changes to the Bill prior to introduction;
- 5 **agreed** that the Bill be introduced in the week of 29 June 2020;
- 6 **agreed** that the government propose that the Bill be progressed through all stages under urgency in the week of 29 June 2020.

Michael Webster  
Secretary of the Cabinet