Electoral (Disqualification of Convicted Prisoners) Amendment Bill

Initial Briefing for the Law and Order Committee

26 June 2010
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Electoral (Disqualification of Convicted Prisoners) Amendment Bill

Initial Briefing for the Law and Order Committee

Purpose

1 This briefing provides the Law and Order Committee with initial advice on the Electoral (Disqualification of Convicted Prisoners) Amendment Bill. It advises the Committee about current legislation, considers the Bill’s proposed amendments, describes current policy and practice, the prison population and the purposes and principles of sentencing, and provides an overview of potential operational and policy implications for consideration.

2 The briefing is in four parts:

- Part 1 – Current law, its history, and proposed changes
- Part 2 – Current policy and practice
- Part 3 – Operational implications
- Part 4 – Policy implications.

Executive Summary

3 The Electoral (Disqualification of Convicted Prisoners) Amendment Bill (the Bill) proposes to amend the Electoral Act 1993 so that any person detained in prison on conviction is disqualified for registration as an elector.

4 Electors (prisoners) serving sentences of life imprisonment, preventive detention or imprisonment for three years and over are disqualified from registering under the Electoral Act. The Department of Corrections and the Electoral Enrolment Centre have policies and processes in place to identify and de-register these electors.

5 Potential operational implications of the Bill being enacted are as follows:

- there will be additional (but manageable) administrative requirements on the Electoral Enrolment Centre from the increased volume of disqualified electors (prisoners)
- the decrease in the volume of eligible electors will reduce the administrative requirements on the Department of Corrections

6 Policy implications for consideration are as follows:

- The Attorney-General has advised “that the blanket disenfranchisement of prisoners appears to be inconsistent with section 12 of the NZ Bill of Rights Act and that it cannot be justified
under section 5 of that Act”. Enactment of the Bill would also be inconsistent with the International Covenant on Civil and Political Rights and is therefore likely to engender adverse comment from the United Nations General Assembly of which New Zealand is a party.

- The disqualification of convicted prisoners from registration as an elector would have a disproportionately negative effect on Māori who are over-represented in the prison population.

- The need to re-enrol as an elector may extend an already disproportionately negative effect on ex-prisoners.

- An anomaly would be created in that prisoners with a sentence of imprisonment of less than three years who are detained in a prison would be ineligible to vote but a prisoner detained in a hospital or secure facility for up to three years would be eligible to vote.

- A prisoner may be convicted and remanded in custody until sentencing but at sentencing may receive a non-custodial sentence. Disqualifying a person on conviction, rather than sentencing, is therefore problematic.

- The Bill as drafted amends s 80(1)(d)(iii) of the Electoral Act and makes subsections 80(1)(d) (i) and (ii), that disqualify prisoners sentenced to preventive detention or a life sentence, redundant.
Part 1 - Current law, its history, and proposed changes

7 Part 1 of this report describes the sections of the current Electoral Act 1993 that the Bill seeks to amend, the history of prisoner voting rights in New Zealand, the amendments proposed by the Bill, and recent developments in prisoner voting rights in comparable international jurisdictions.

Overview of Current Law on Prisoner Voting Rights

8 Section 80 of the Electoral Act 1993 specifies those persons who are disqualified for registration as electors (and therefore cannot vote).

9 Section 80(1)(d) of the Electoral Act disqualifies from registration any person in prison under a sentence of life imprisonment, preventive detention, or who is sentenced to imprisonment for a term of three years or more who is detained in prison. The disqualification applies once the Department of Corrections (the Department) notifies the Electoral Enrolment Centre (EEC) through the Chief Registrar of Electors. Persons sentenced to life imprisonment or preventive detention and who are on parole, i.e. are no longer detained in a prison, qualify for registration as electors.

10 Section 80(1)(c) of the Electoral Act disqualifies special patients from registering as electors who have been compulsorily detained in a hospital or secure facility for more than three years.

11 Section 81(1) of the Electoral Act requires prison managers to notify the Chief Registrar of Electors of details of sentenced prisoners, including if they are disqualified from registration under section 80(1)(d), within seven days of the receipt of that person into prison.

12 Prisoners who are eligible to vote (i.e., those serving a sentence of less than three years and those remanded in custody who have or have not yet been convicted) are able to make a special vote before polling day. The same rules apply to other voters who are unable to get to a polling station on election day.

1 A special patient is defined in the Mental Health (Compulsory Assessment and Treatment) Act 1992 as a person who has been declared unfit to stand trial; or acquitted on the ground of insanity; or following conviction, is found to be mentally impaired; or after being imprisoned, becomes the subject of a compulsory treatment order under the Mental Health (Compulsory Assessment and Treatment) Act 1992; or a compulsory care order under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or after being imprisoned, becomes mentally disordered and is detained as a special patient (and would otherwise be subject to section 80(d) of the Electoral Act).

2 A disqualification under section 80(1)(c) takes effect only after the person has been detained for more than three years. (Note: there is no general disqualification for civilly committed patients.)
History of the Current Law

13 The Electoral Act 1956 disqualified from registration any person “detained in any penal institution pursuant to a conviction” and certain persons detained in a hospital under the Mental Health Act 1969.

14 The Electoral Amendment Act 1975 removed the disqualification of prisoners as electors, but it was reimposed by the Electoral Amendment Act 1977.

15 Ministerial sponsored reviews of the prison system that reported in 1981 and 1989 “…saw it as illogical to disenfranchise only convicted persons in prison when there was a range of other sentences available for dealing with offenders which would not lead to disenfranchisement, and furthermore was out of keeping with modern concepts of human rights”.

16 The review groups recommended that the right to vote be restored to inmates, with the latter review recommending that they be disqualified from being nominated as a candidate for election.

17 The current inclusion of prisoners (other than prisoners or special patients serving a sentence for more than three years) dates from 1993. It is based on a recommendation of the 1986 Royal Commission on the Electoral System.

18 The Royal Commission recommended that prisoners should be able to vote. The recommendation was made after consideration of issues such as voting as a privilege rather than a right, administrative issues including what electorate a person could register in, contemporary penal thinking at the time, and consistency between treatment of persons convicted of the same type of offence but who receive different penalties.

19 However, the Royal Commission had “…some sympathy with the view, which we think is widely held, that punishment for a serious crime against the community may properly involve a further forfeiture of some rights such as the right to vote.” Accordingly the Royal Commission recommended that “…the disqualification should be limited to prisoners serving a sentence equal to or greater than the maximum period of continuous absence overseas consistent with the right to vote, namely 3 years.”

Amendments Proposed by the Bill to the Electoral Act 1993

20 In Parliament on 17 March 2010, Paul Quinn MP (National) moved that the Electoral (Disqualification of Convicted Prisoners) Amendment Bill be read for a first time. “Clause 4 of the Bill amends section 80(1)(d)(iii) to provide that any person detained in prison on conviction is disqualified

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4 Prison Review Te Ara Hou:The New Way Ministerial Committee of Inquiry into the Prisons System
5 Report of the 1986 Royal Commission on the Electoral System (pp236 & 238)
for registration as an elector. Clause 5 amends section 81(1)(c) to provide that a prison manager must forward to the Chief Registrar of Electors a notice that a person who has been sentenced to imprisonment has been received into that prison."

21 The proposed amendments in the Bill make changes to current policy and practice. Table One compares existing policy and practice with the proposed amendments as drafted in the Bill.

Table One: Comparison of Matters pre and post Proposed Amendments

<table>
<thead>
<tr>
<th>Matter</th>
<th>Electoral Act 1993</th>
<th>Electoral (Disqualification of Convicted Prisoners) Amendment Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disqualification from registration as an elector</td>
<td>Persons disqualified from registration as electors are those detained in a prison under a sentence of imprisonment for life, or a sentence of preventive detention, or a sentence of imprisonment for a term of three years or more.</td>
<td>Persons disqualified from registration as electors are those detained in a prison under a sentence of imprisonment for life, or a sentence of preventive detention, or convicted and detained in prison.</td>
</tr>
<tr>
<td>Timing of disqualification from registration</td>
<td>Prisoners are disqualified once they have been sentenced to one of the disqualifying sentences or sentence length, and are detained in a prison.</td>
<td>Persons are disqualified once they have been sentenced to one of the disqualifying sentences, or from the time they are convicted, if they are detained in prison.</td>
</tr>
<tr>
<td>Notification of disqualification from registration</td>
<td>Prison manager shall, within seven days of a person sentenced to imprisonment being received into prison, forward to the Chief Registrar of Electors a notice providing whether or not the disqualification for registration provisions apply.</td>
<td>Prison manager shall, within seven days of a person sentenced to imprisonment being received into prison, forward to the Chief Registrar of Electors a notice that the disqualification for registration provisions apply.</td>
</tr>
</tbody>
</table>

International Developments on Prisoner Voting Rights

22 A brief overview of recent developments in prisoner voting rights in international jurisdictions with electoral systems similar to New Zealand follows.
United Kingdom

23 The United Kingdom has a blanket disqualification of sentenced prisoners.

24 In 2004, in Hirst v United Kingdom (No 2) [2004] ECHR 122, the European Court of Human Rights ruled that the United Kingdom’s blanket disqualification of sentenced prisoners breached their human rights. That decision was confirmed in 2006.

25 The UK Government published public consultation papers on the issue of prisoner voting rights in 2006 and 2009. The results of the consultation process have not yet been published. The final form of the UK response to the European Court of Human Rights’ ruling is yet to be determined but is likely to involve legislative change given the United Kingdom authorities’ commitment in December 2006 to undertake a two-stage consultation process with a view to introducing the necessary draft legislation before Parliament in May 2008.

26 In December 2009, the Council of Europe’s Committee of Ministers adopted a resolution “expressing serious concern” about the UK Government’s delay in implementing the European Court of Human Rights’ judgment.

Republic of Ireland

27 In the Republic of Ireland prior to 2006, prisoners could register as electors, but only sentenced persons who have been released on parole or temporary release could exercise their right to vote. In Breathnach v Ireland [2001] IESC 59, [2001] 3 IR 230, the Supreme Court dismissed an appeal against a High Court decision declaring unconstitutional the State’s failure to provide prisoners with facilities to enable them to vote.

28 In 2006, the Government passed the Electoral (Amendment) Act 2006 which allows prisoners to cast postal votes in the “home” electorate in which they are registered.

Australia

29 In Australia all sentenced prisoners were disqualified from voting in Senate and House of Representatives elections by federal legislation in 2006. In Roach v Electoral Commissioner [2006] HCA 43, [2007] 233 CLR 162, the High Court declared the 2006 federal legislation disqualifying all sentenced prisoners from voting unconstitutional. However, a majority of the High Court upheld a 2004 amendment that disqualified prisoners serving a sentence of three years or more from voting.

30 The question of “excluding from the franchise” prisoners serving a sentence of three years or more, and persons of unsound mind (i.e. the appropriateness of the current restriction, or any restriction) was included
**Canada**

31 In *Sauvé v Canada (No 1)* [1993] 2 SCR 438, the Supreme Court ruled that the Canada Elections Act’s blanket disqualification of prisoners contravened section 3 of the Canadian Charter of Rights and Freedoms (the Charter) which guarantees all Canadian citizens the right to vote.

32 Shortly before the Court delivered its judgment in *Sauvé (No 1)*, the Government passed an amendment to the Canada Elections Act limiting the disqualification of prisoners to those serving prison sentences of two years or more. In *Sauvé v Canada (No 2)* [2002] SCC 68, [2002] 3 SCR 519, the Supreme Court ruled that this provision was also in breach of the Charter. It was not a “justified limitation” under section 1 of the Canadian Charter of Rights and Freedoms that forms Part 1 of the Constitution Act 1982 (the equivalent of s 5 of the New Zealand Bill of Rights Act).

33 While the prisoner disqualification provision has not been formally repealed, it has no legal effect and cannot be enforced. All prisoners can vote at federal elections. Polling stations are set up in prisons. Prisoners vote by special ballot.

**Hong Kong**

34 In Hong Kong, provisions in Legislative Council Ordinance (Cap 542) disqualified all prisoners from being registered as an elector and voting. In *Chan Kin Sum Simon v Secretary for Justice* [2008] HCAL 79, the Hong Kong High Court ruled that this was an unreasonable restriction of the right to vote protected under BL 26 and Article 21 of the Hong Kong Bill of Rights (Cap 383, 1991).

35 During February and March 2009, the Hong Kong Government undertook public consultation on options for relaxing the restrictions on prisoners’ voting rights, and the practical arrangements for prisoner voting. Public submissions were in favour of removing the existing restrictions.

36 The disqualification provisions were repealed by the Voting by Imprisoned Persons Ordinance (No 7 of 2009), which came into force in October 2009. Prisoner voter registration is based on the prisoner’s last residential address. Practical arrangements for voting include the establishment of dedicated polling stations in prisons or other suitable places such as police stations.
Part 2 – Current Policy and Practice

37 Part 2 of this report describes the administrative requirements for enabling prisoners to vote under the current Electoral Act, the processes for disqualifying prisoners from enrolling to vote, re-enrolment arrangements, the purposes and principles of sentencing, and a snapshot showing some of the characteristics of prisoners.

Department of Corrections Policy and Practice – Prisoner Voting

38 To enable staff of the Department of Corrections (the Department) to comply with the legislation applicable to the operation of the business, the Department has a series of operations manuals with the requirements of the legislation and regulations for staff to follow. The manual that contains the Department’s prisoner voting policy and practice is the Prison Services Operations Manual (the Manual).

39 The authority for the Department’s prisoner voting policy is sections 72(5) and 80(1)(d) of the Electoral Act 1993 and section 161 of the Corrections Act 2004. The policy is provided in section F.03 of the Manual as follows:

"1. Prisoners entitled to vote at general elections including referendums are provided the opportunity to vote.

2. Prisoners must be registered to vote.

3. Prisoners are entitled to be registered to vote if they are a New Zealand citizen or have permanent residency unless they are:
   a) serving a sentence of life imprisonment
   b) serving a sentence of preventive detention
   c) serving a term of imprisonment of three years or more
   d) under a compulsory treatment order issued pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992."

40 Section F.03 also contains instructions on registering prisoners to vote, rights of prisoners registered to vote, and prisoner voting. Section F.03 is attached as Appendix A.

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6 S 72(5) – Rules for determining place of residence within New Zealand.
7 S 80(1)(d) – Disqualifications for registration.
8 S 161 – Right of member of Parliament to visit prisons.
Section I.06.01 of the Manual contains the instruction, as per s 81(1) of the Electoral Act, to notify the Chief Registrar of Electors of a prisoner’s sentence upon being received into prison, as follows:

“I.06.03 Notification of sentence to Chief Registrar of Electors

1. Receiving officer must complete the I.06.Form.02 Notification of sentence to Chief Registrar of Electors and must forward it to the Chief Registrar within 7 days of the prisoner’s reception. This form is completed in every case where a person is sentenced to imprisonment and is received to serve part or all of that sentence.”

The prison manager provides the Chief Registrar of Electors with the prisoner’s name, date of birth and address prior to imprisonment. It is also indicated whether or not the prisoner is serving a sentence of imprisonment for life, a sentence of preventive detention, or a sentence of imprisonment for a term of three years or more. A copy of the form is attached as Appendix B.

Electoral Enrolment Centre Procedures – Removing Prisoners from the Roll

The EEC receives from prison managers I.06.Form.02, advising details of all persons sentenced to imprisonment and received into prison to serve part or all of that sentence. The EEC checks those details against the electoral roll and removes the names of prisoners ineligible to be electors. A letter confirming the action taken is sent to the prisoner.

The EEC has advised that 1,367 electors were removed from the roll in the three year election cycle between 17 September 2005 and 8 November 2008 after receiving a prison sentence of three years or more or a life sentence or sentence of preventive detention. This number is much smaller than the number of prisoners disqualified from voting under the Electoral Act, and indicates that approximately 75% of prisoners were not enrolled to vote before being sentenced to prison.

Re-enrolling Prisoners

Currently, the Department issues persons leaving prison with an electoral roll re-enrolment pack as part of its National Procedure for Releasing a Prisoner. The onus is then on the elector (ex-prisoner) to take the initiative and (re)enrol.

This process, and the stocktake by Registrars of Electors coming up to an election, are the only processes for triggering re-enrolment procedures when a prisoner whose name has been removed from the roll is released and is again eligible to enrol to vote.

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9 S 81(1) – Detention in prison pursuant to conviction
10 A receiving officer is a corrections officer who initiates procedures for the prisoner’s entry to and induction into the prison.
Electors (ex-prisoners) whose names have been removed from the roll remain on the EEC’s database (but not on the active roll or the dormant roll). The EEC is able to link these historical records if a new enrolment application is received. A copy of the enrolment form is attached as Appendix C.

Because a “prison” does not come within the definition of residence for electoral purposes under s 72(5) of the Electoral Act, an elector (prisoner) who completes a new enrolment application will ordinarily be (re)enrolled in the electorate he or she last resided in. This is the case even if the elector (prisoner) will not be returning to live at that address or in that electorate.

The reason for this is the criteria in s 74(1)(c)(i) which provides an elector is eligible to enrol in the electorate which is “the last in which that person has resided for a period equalling or exceeding 1 month”.

In the event that the elector (ex-prisoner) will not be returning to his or her previous address, that person will be advised to put their current address as their mailing address but their enrolment will be for the “old” electorate until the one month period in section 74(1)(c)(i) has passed.

The EEC diaries such records for follow up to ensure the elector’s enrolment details are updated after the one month residency requirement has been met.

Example: Prisoner A is enrolled in the Auckland Central roll before she is sentenced to a term of six years’ imprisonment which she serves at Arohata Prison in Wellington. After her release, Prisoner A decides to stay in Wellington.

Prisoner A completes a new electoral enrolment application. Until she has lived at her Wellington address for one month, Prisoner A will be enrolled on the Auckland Central roll. After one month has passed, Prisoner A will be able to complete a “change of address” form which will enable her to enrol in the appropriate Wellington electorate.

Special Votes

Prisoners who are eligible to vote cast a special vote before polling day (section 61(1) of the Electoral Act sets out the grounds for eligibility, e.g., “the person [will be] absent from the district on polling day”). There is no category of “prisoner vote” and numbers of prisoners voting are not recorded separately from other special votes.

The local Returning Officer for the electorate in which the prison is located asks the prison manager to supply a list of prisoners who are eligible to vote and who wish to do so. That list is checked against the
Sentencing of Offenders

54 A wide range of offences are committed that attract sentences of imprisonment of different lengths, depending on factors in sections 7 to 10A of the Sentencing Act 2002.

55 Section 7 outlines the purposes, in no particular order of importance, for which a court may sentence or otherwise deal with an offender, as follows:

“(a) to hold the offender accountable for harm done to the victim and the community by the offending; or

(b) to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm; or

(c) to provide for the interests of the victim of the offence; or

(d) to provide reparation for harm done by the offending; or

(e) to denounce the conduct in which the offender was involved; or

(f) to deter the offender or other persons from committing the same or a similar offence; or

(g) to protect the community from the offender; or

(h) to assist in the offender’s rehabilitation and reintegration; or

(i) a combination of 2 or more of the purposes in paragraphs (a) to (h).”

56 Section 8 of the Sentencing Act covers the principles of sentencing, for example, that the court:

- must take into account the gravity of the offending in the particular case, including the degree of culpability of the offender; and

- must take into account the seriousness of the type of offence in comparison with other types of offences, as indicated by the maximum penalties prescribed for the offences; and

- must impose the maximum penalty prescribed for the offence if the offending is within the most serious of cases for which that penalty is prescribed, unless circumstances relating to the offender make that inappropriate; and

- must impose a penalty near to the maximum prescribed for the offence if the offending is near to the most serious of cases for
must take into account the general desirability of consistency with appropriate sentencing levels and other means of dealing with offenders in respect of similar offenders committing similar offences in similar circumstances; and

must take into account any information provided to the court concerning the effect of the offending on the victim; and

must impose the least restrictive outcome that is appropriate in the circumstances, in accordance with the hierarchy of sentences and orders set out in section 10A.

Sections 9, 9A and 10 of the Sentencing Act deal with aggravating and mitigating factors the court must take into account, when applicable, in sentencing or otherwise dealing with an offender. Examples of these aggravating factors are as follows:

- the offence involved actual or threatened violence or the actual or threatened use of a weapon; and
- that the offence involved unlawful entry into, or unlawful presence in, a dwelling place; and
- that the offence was committed while the offender was on bail or still subject to a sentence; and
- the extent of any loss, damage, or harm resulting from the offence; and
- particular cruelty in the commission of the offence; and
- that the victim was particularly vulnerable because of his or her age or health; and
- premeditation on the part of the offender and, if so, the level of premeditation involved; and
- the number, seriousness, date, relevance, and nature of any previous convictions of the offender and of any convictions for which the offender is being sentenced or otherwise dealt with at the same time.

Examples of mitigating factors are as follows:

- the age of the offender; and
- whether and when the offender pleaded guilty; and
- the conduct of the victim; and
- the offender has, or had at the time the offence was committed, diminished intellectual capacity or understanding; and
- any remorse shown by the offender.
Section 10 of the Sentencing Act provides that the court must take into account an offer, agreement, response, or measure to make amends when it is genuine and capable of being fulfilled and it has been accepted by the victim as expiating or mitigating the wrong.

Section 10A of the Sentencing Act provides the hierarchy of sentences and orders, of which a sentence of imprisonment is the most restrictive and discharge or order to come up for sentence if called on is the least restrictive.

Prison Population

Table Two shows the number of people in prison as at 15 June 2010, grouped by sentence length and most serious offence type. The table includes people remanded in custody who have been convicted of a crime and are awaiting sentence. It also includes people remanded in custody who have been accused of a crime or crimes pending court appearance(s) who would not be affected by the Bill’s proposed amendments.

The bracketed figure under each number is that category as a percentage of the total prison muster.

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11 The most serious offence is selected according to the Ministry of Justice seriousness score.
### Table Two: Prison Population as at 15 June 2010

<table>
<thead>
<tr>
<th>Offender Status</th>
<th>Assault, abduction, threats</th>
<th>Burglary, conversion, theft</th>
<th>Driver licence and conduct</th>
<th>Drug, liquor, gambling</th>
<th>Drunk and drugged driving</th>
<th>Fraud, receiving</th>
<th>Homicide</th>
<th>Misc. against good order †</th>
<th>Property damage and endangerment</th>
<th>Robbery</th>
<th>Sexual offences</th>
<th>Not applicable or not yet determined</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remand – Accused</td>
<td></td>
<td></td>
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<td></td>
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<td>1,434</td>
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<td>(16.6%)</td>
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<td>Remand – Convicted</td>
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<td></td>
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<td>(4.7%)</td>
<td>404</td>
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<td>(4.7%)</td>
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<tr>
<td>Sentenced to less than 3 years</td>
<td>614 (7.0%)</td>
<td>740 (8.5%)</td>
<td>219 (2.5%)</td>
<td>259 (3.0%)</td>
<td>197 (2.3%)</td>
<td>117 (1.4%)</td>
<td>13 (0.2%)</td>
<td>161 (1.9%)</td>
<td>59 (0.7%)</td>
<td>218 (2.5%)</td>
<td>124 (1.4%)</td>
<td>12 (0.1%)</td>
<td>2,733 (31.6%)</td>
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<tr>
<td>Sentenced to 3 or more years</td>
<td>698 (8.1%)</td>
<td>348 (4.0%)</td>
<td>17 (0.2%)</td>
<td>387 (4.5%)</td>
<td>12 (0.1%)</td>
<td>51 (0.6%)</td>
<td>148 (1.7%)</td>
<td>24 (0.3%)</td>
<td>56 (0.6%)</td>
<td>588 (6.8%)</td>
<td>1,050 (12.1%)</td>
<td></td>
<td>3,379 (39.0%)</td>
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<tr>
<td>Sentenced to Life or PD</td>
<td>15 (0.2%)</td>
<td>1 (0.0%)</td>
<td>3 (0.0%)</td>
<td>461 (5.3%)</td>
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<td></td>
<td>711</td>
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<td>(8.2%)</td>
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</tr>
<tr>
<td>Total</td>
<td>1,327 (15.3%)</td>
<td>1,089 (12.6%)</td>
<td>236 (2.7%)</td>
<td>649 (7.5%)</td>
<td>209 (2.4%)</td>
<td>168 (1.9%)</td>
<td>622 (7.2%)</td>
<td>185 (2.1%)</td>
<td>115 (1.3%)</td>
<td>810 (9.4%)</td>
<td>1,401 (16.2%)</td>
<td>1,850 (21.4%)</td>
<td>8,661</td>
</tr>
</tbody>
</table>

Note: Percentages may not add up to 100% due to rounding

† Miscellaneous offences against good order include group assemblies; harassment; obstructing; inciting; trespass; breach firearm controls; breach environment controls; breach safety controls; breach border controls; breach behaviour and good management controls; breach sentence etc.
As at 15 June 2010, 4,090 prisoners (approximately 47% of the prison population) were ineligible to vote under the current Act.

If the Bill were currently in force, 7,227 prisoners (approximately 84% of the prison population) would be ineligible to vote. Accused prisoners equate to just over 16% of the prison muster and would be eligible to vote.

As at 15 June 2010, 740 prisoners are serving less than three years (27% of that population) where the most serious offence is burglary, conversion or theft related. Six hundred and seventy-five prisoners are serving less than three years (25% of that population) where the most serious offence is drugs, drinking and/or driving related. Two hundred and twenty prisoners are serving less than three years (8% of that population) where the most serious offence is related to property damage and offences against good order. These prisoners make up approximately 24% of the sentenced prisoner population and are serving less than three years imprisonment for offences that are largely non-violent and non-sexual in nature.
Part 3 – Operational Implications

67 Part 3 of this report describes the likely impacts the Bill would have, if enacted, on the administrative duties of the EEC and the Department.

Increase in Volume of Disqualified Electors (Prisoners)

68 If passed, the Bill will increase the administrative duties of the EEC. The EEC is accountable to the Chief Registrar of Electors.12 The Department notifies the Chief Registrar of Electors when sentenced persons are received into prison. Approximately 8,90013 notifications of sentences of imprisonment need to be made per annum; of which approximately 4,000 prisoners meet the current disqualification criteria under section 80(1)(d) of the Electoral Act. Approximately 1,000 prisoners are enrolled prior to imprisonment and need to be removed from the electoral roll. Approximately 3,000 prisoners are not registered to vote so cannot then be removed from the electoral roll.

69 If the Bill is enacted, approximately 8,000 prisoners would meet the disqualification criteria. If the ratio of enrolled to not enrolled prisoners in the period of the last electoral cycle were to remain the same, approximately 25% (2,000) of these prisoners would require removal from the electoral roll and would consequently increase the workload of the EEC. Approximately 75% (6,000) of prisoners who met the disqualification criteria would not be enrolled prior to prison so would not need to be removed from the electoral roll.

70 The EEC will also have to re-enrol more prisoners after their sentence ends, depending on whether or not the elector (prisoner) completes and sends off the electoral roll re-enrolment form provided to him or her upon release from prison.

71 The EEC anticipates that the increase in its administrative duties will be manageable within current resources.

Decrease in Volume of Qualified Electors (Prisoners)

72 If passed, the Bill will reduce the administrative burden on the Department. Only accused persons in prison would be eligible to vote. (The matter of the intent of the Bill and how it is currently drafted with regards to convicted or sentenced prisoners being disqualified from registering as electors, is raised in paragraphs 93 to 95.) This will greatly

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12 Parliament has established a new Electoral Commission to integrate the responsibilities of the Chief Electoral Office and the current Electoral Commission. This independent Crown Entity will be fully functional by 1 October 2010.

13 This figure does not include approximately 600 people sentenced to imprisonment and released immediately upon sentencing because the time spent on custodial remand is equal or greater than the imposed sentence.
reduce the complexity of the eligibility stocktake that prison managers undertake at the request of Registrars of Electors prior to an election.

73 There would be no change to the requirement to notify the Chief Electoral Officer when a newly sentenced person is received into prison.

74 There would be no change to the National Procedure for Releasing a Prisoner where re-enrolment packs are issued to prisoners upon release from prison.
Part 4 – Policy Implications

75 Part 4 of this report raises policy implications that the Committee might wish to consider when deliberating on the Bill; namely, human rights, disproportionate and anomalous effects of the Bill, and administering the Bill should it be enacted as currently drafted.

Human Rights Compliance

76 The Attorney-General has reported to the House of Representatives on the Bill’s consistency with the New Zealand Bill of Rights Act 199014. A copy of the report is attached as Appendix D. In the report the Attorney-General concluded “that the blanket disenfranchisement of prisoners appears to be inconsistent with s 1215 of the NZ Bill of Rights Act and that it cannot be justified under s 5 of that Act”16. 

77 The report did not consider whether the existing provisions on prisoner voting eligibility were consistent with the NZ Bill of Rights Act. If the same provisions were enacted today as proposed, there is a strong possibility that they, too, would be judged as inconsistent with the NZ Bill of Rights Act.

78 Compliance with legislation such as the NZ Bill of Rights Act is of interest to the United Nations Human Rights Council. The Council’s main purpose is to address situations of human rights violations in all 192 UN Member States (including New Zealand) and make recommendations on them.

79 Following the adoption of the Universal Declaration on Human Rights in 1948, New Zealand ratified a number of international conventions including the International Covenant on Civil and Political Rights (ICCPR). The ICCPR is a multilateral treaty adopted by the United Nations General Assembly. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, speech, and assembly, electoral rights and rights to due process and a fair trial. While New Zealand has not incorporated the ICCPR into law, many of the rights contained within it, including electoral rights, are given effect in the NZ Bill of Rights Act.

80 Article 10 of the ICCPR states that “the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation”. Assisting prisoners to reintegrate

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14 Under s 7 of the Bill of Rights Act 1990 and standing order 261 of the Standing Orders of the House of Representatives.
15 S 12 affirms that every New Zealand citizen who is of or over the age of 18 years has the right to vote and stand in genuine periodic elections of members of the House of Representatives.
16 The s 5 inquiry is whether the provision serves an important and significant objective, and whether there is a rational and proportionate connection between the provision and the objective.
successfully into society can be seen to include the right to vote. Article 25 of the ICCPR that states that “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2” and 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”.

81 Enactment of the Bill would be inconsistent with the ICCPR and is likely to engender adverse comment from the United Nations Human Rights Council.

82 Several international courts (including the European Court of Human Rights, the Canadian Supreme Court, and the High Court of Australia) have held that a blanket disenfranchisement of prisoners is:

- a breach of human rights and/or
- unconstitutional.

Impact on Māori

83 The extension of disqualification from voting of convicted and detained prisoners would extend an already disproportionately negative effect on Māori.

84 Māori are over-represented in the prisoner population compared to their representation in the population of New Zealand as a whole. As at March 2010, 51% of the prisoner population identified as Māori. According to the 2006 New Zealand Census, 14.6% of the normally resident in New Zealand population identified as Māori.

85 On a percentage of population basis Māori males are most seriously affected by incarceration. For example, over 3% of 23 year old Māori males are sentenced to prison on any one day, the proportion of NZ European males of the same age is 0.4%.

86 Higher rates of convicted and imprisoned Māori will mean that a much higher proportion of Māori would be excluded from the vote compared to other ethnicities.

17 Article 2 of the ICCPR allows for reservation to the present Protocol for the application of the death penalty in time of war pursuant to a conviction for a most serious crime of a military nature committed during wartime.

18 Offender Volumes Report, 2007, Department of Corrections
Māori electoral engagement data analysis completed by UMR Research for the Electoral Commission in 2006 identified that “lower participation rates amongst Māori mostly reflect the demographic characteristics of the Māori population, rather than factors intrinsic to Māori… That is, Māori are younger and less well-off on average than non-Māori, and these are factors strongly associated with non-voting.”

A subsequent report by UMR Research using 2005-06 data found that the proportion of Māori non-voters who were aged under 30 years fell from 51% to 35%, while the proportion aged 45 or over increased from 12% to 23%.

**Impact on Ex-prisoners**

The disqualification from registration as an elector may act to extend an already disproportionate effect on ex-prisoners, 94% of whom are male. Currently, ex-prisoners who were disqualified from voting whilst in prison must re-register themselves on the electoral roll to vote in a general election. If the Bill is enacted, a greater number of ex-prisoners (including over 3,200 Māori per year, some of whom will only have stayed for a few weeks on remand following conviction and received a community sentence) will have to re-register themselves in order to vote.

**Anomaly with Eligibility to Register of Persons Detained in a Hospital or Secure Facility**

Under s 80(1)(c)(iii) of the Electoral Act, a person is disqualified from registering who has been subject to a compulsory treatment or care order for a period exceeding three years following an application under either s 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or under s 29(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.

The Bill, if enacted, would create an anomaly in that it would disqualify convicted prisoners from registering but would allow some special patients to be registered. For example, a convicted prisoner (disqualified from registering) who serves his sentence in a hospital or secure facility for a period of less than three years would be entitled to re-register to vote. A convicted prisoner serving his entire sentence in prison would not be registered to vote.

**Drafting of Proposed Amendments**

This section discusses the drafting of the proposed amendments in the Bill. There are two main areas that require consideration: whether it is intended to disqualify from registering as an elector prisoners on conviction or prisoners who have been sentenced to imprisonment; and if s 80(1)(d) could be drafted more clearly.
**Intent of the Bill**

93 Currently, prisoners are disqualified from registering as an elector once they have been sentenced to life imprisonment, preventive detention or prison for three years or more. Clause 4 of the Bill provides that any person detained in prison on conviction is disqualified. However, Clause 5 provides that a prison manager must forward to the Chief Registrar of Electors a notice that a person who has been sentenced to imprisonment has been received into that prison.

94 The Bill as drafted requires a person in prison to be disqualified when convicted. A prisoner may be convicted and remanded in custody until sentencing but at sentencing may receive a non-custodial sentence or a prison sentence shorter than the time the person has already served on remand in custody. In those circumstances the convicted prisoner will be released immediately. Disqualifying a person on conviction, rather than on sentencing, is therefore problematic.

95 Disqualifying a prisoner on conviction could affect a large number of offenders who do not end up in the sentenced prisoner population. Approximately 25% of people remanded into prison over a 12-month period are convicted and sentenced to a non-custodial sentence. Another 35% of people remanded into prison are released because they were convicted and received a prison sentence shorter than or equal to the time they had already served on remand in custody, or (for a small number) they were convicted and received a minor penalty such as a fine, or they were acquitted, or the charges against them were dropped.

**Concise Wording**

96 Clause 4 of the Bill amends s 80(1)(d)(iii) of the Electoral Act to provide that any person detained in prison on conviction is disqualified from registration as an elector. However, part of s 80(1)(d) of the Electoral Act is retained, including s 80(1)(d)(i) and s 80(1)(d)(ii) so that the section as proposed will read:

“The following persons are disqualified for registration as electors: … (d) a person who, under – (i) a sentence of imprisonment for life; or (ii) a sentence of preventive detention; or (iii) any person detained in prison on conviction – is being detained in a prison.”

97 A person sentenced to life imprisonment or preventive detention who is in prison has been convicted. Therefore the proposed amendment to subsection (iii) makes subsections (i) and (ii) redundant. In addition, the last part of s 80(1)(d), (“is being detained in a prison”), will no longer make sense if the amendment is made as currently drafted.
Appendix A: Section F.03 Prisoner Voting - Prison Services Operations Manual

F.03.01 Registering prisoners to vote

1. The prison manager when requested will provide suitable facilities to Local Returning Officers, for the purpose of registering prisoners to vote.
2. The prison manager will identify all prisoners who are eligible to register to vote.
3. The prison manager will ensure that the visiting local returning officers are advised of the security and visiting (PSOM Visits to prisons) requirements expected of them, prior to their visit.

F.03.02 Rights of prisoners registered to vote

1. Party political manifestos / policy materials delivered to prisons are readily available to prisoners.
2. Prisoners are permitted to see or hear party political broadcasts that take place during each prison’s normal radio or television listening / viewing hours.
3. However, political candidates (including members of Parliament) are not permitted to conduct meetings with prisoners, or to canvas individual prisoners in relation to election issues.

F.03.03 Prisoner voting

1. The prison manager will provide suitable facilities to local returning officers and scrutineers to enable them to carry out their functions.
2. The prison manager must ensure that all prisoners who are eligible to vote are given the opportunity to vote.
3. Prisoners who are eligible to vote and are undergoing the penalty of postponement of privileges or cell confinement must be given the opportunity to vote.
Appendix B: I.06.Form.02 Notification of Sentence to Chief Registrar of Electors

Date

Chief Registrar of Electors
Electoral Enrolment Centre
PO Box 190
Wellington 6140

Notification of sentence to Chief Registrar of Electors

Pursuant to section 81 (1) of the Electoral Act 1993, the purpose of this notification is to advise that the following person has been sentenced to a full time custodial sentence and to identify their status under section 80 (1) (d) of the Act.

Surname:
Given names:
Date of Birth:

Residential Address (Prior to Custody):
Street Address:
Suburb:
Town / City:

Name of Prison:
Postal Address:

The person is being detained in prison for:

☐ A sentence of imprisonment for life; or
☐ A sentence of preventative detention; or
☐ A sentence of imprisonment for a term of 3 years or more;
☐ None of the provisions pursuant to section 80 (1) (d) of the Electoral Act 1993 above apply to this person.

Yours sincerely

Prison Manager's name
Prison Manager
Appendix C: Enrolment Form
Appendix D: Report of the Attorney-General on the Electoral (Disqualification of Convicted Prisoners) Bill to the House of Representatives