Electoral (Disqualification of Convicted Prisoners) Amendment Bill

Member's Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Electoral (Disqualification of Convicted Prisoners) Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

This is a Member's bill in the name of Paul Quinn. It seeks to amend section 80(1)(d)(iii) of the Electoral Act 1993 with the aim of disqualifying a person serving a sentence of imprisonment from registering as an elector. Currently the Act disqualifies a person serving a sentence of imprisonment of 3 years or more, imprisonment for life, or preventive detention. The bill as introduced would reinstate the law in this respect as it was between 1956 and 1975 and between 1977 and 1993.

Title of the bill

A majority of us recommend changing the title of the bill from Electoral (Disqualification of Convicted Prisoners) Amendment Bill to Electoral (Disqualification of Sentenced Prisoners) Amendment Bill, and amending clause 1 so that the title of the Act would be the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010.

The intent of the bill, as set out in the general policy statement, is to disqualify from voting a person serving a sentence of imprisonment, not a person who has been convicted. Disqualifying a person upon conviction would be problematic as they might subsequently receive a non-custodial sentence, or a prison sentence equal to or shorter than the time they had already served on remand in custody.

Disqualification for registration

A majority of us recommend amending clause 4 to repeal and replace paragraph (d) of section 80(1) of the Electoral Act, so that a person detained in prison under a sentence of imprisonment would be disqualified from registering as an elector. Replacing paragraph (d) in its entirety would remove redundant subparagraphs and allow clearer, simpler language.

Disqualification from registration would apply only to those sentenced to a term of imprisonment after the commencement of the legislation.

A majority of us recommend amending clause 5 to allow consequential amendments to section 81(1) of the Act, to accommodate the proposed change from "convicted" prisoners to "sentenced" prisoners. A majority of us also recommend further amendments to clause 5 to repeal paragraph (c) of section 81(1), which would no longer be necessary, and to include a definition of "prison manager". The meaning of the term would be as established by the Corrections Act 2004.

Process of deregistering prisoners

We examined the possibility of streamlining the process of deregistering prisoners by transferring from the Department of Corrections to the Ministry of Justice (Courts) the implementation of the requirement (in section 81 of the Electoral Act) to notify the Chief Registrar of Electors. We also considered the possibility of streamlining the re-registration process. Because of administrative and technical

complexities, however, we concede that it would not at present be practicable to amend the Act in this way. The Electoral Enrolment Centre has proposed working with the Department of Corrections to develop a national procedure to encourage prisoners to re-enrol upon release from prison. We are pleased that this proposal has the support of the department and expect the introduction of a re-enrolment procedure in due course.

New Zealand Labour Party minority view

The Labour Party opposes the Electoral (Disqualification of Convicted Prisoners) Amendment Bill on the grounds that it is constitutionally flawed and that no substantive case has been put forward in favour of this change.

The right to vote is a fundamental and constitutional right in New Zealand. The New Zealand Bill of Rights Act 1990 states:

> Every New Zealand citizen who is of or over the age of 18 years—
>
> (a) Has the right to vote in genuine periodic elections of members of the House of Representatives, which elections shall be by equal suffrage and by secret ballot

The Attorney-General has rightly found that the Electoral (Disqualification of Convicted Prisoners) Amendment Bill is unjustifiably inconsistent with the electoral rights affirmed by this section of the Bill of Rights Act.

The New Zealand Parliament is almost unique as a democracy in that there is no constitution or court that places restrictions on what it can do. Historically Parliament has been conscious of this and therefore acted cautiously on constitutional issues. Preceding the passage of the Bill of Rights Act there was considerable debate about entrenching this legislation to protect the fundamental rights that it contains. Parliament chose not to entrench it but on the understanding that the intentions in the Bill of Rights Act would not be tampered with without good and compelling reasons.

This Member's bill seeks to truncate this fundamental right in the Bill of Rights Act. The significant challenge for the bill therefore is: What is the case for doing this?

The Member has given no substantial reasons for making the proposed change to the Electoral Act.

There has been no public groundswell for such a change and no public debate on the matter.

No evidence was submitted to the committee that could suggest that this bill would show any positive influence on reducing crime or recidivism. The committee itself has no evidence that this change would either reduce crime or reduce recidivism. With no evidence of any positive change for society, there is no justification for truncating an individual right under the Bill of Rights Act.

There is no analysis in the explanatory note as to what harm this bill is designed to remedy by returning to the pre-1993 situation where a person serving a term of imprisonment for a term of less than 3 years was not able to register as an elector. It says:

> The change in 1993 was based on a recommendation of the 1986 Royal Commission on the Electoral System (the Commission). The recommendation was supported subsequently by advice from the Solicitor-General in 1992 (who considered whether it complied with the Bill of Rights and, finding that it did not, found merit in differentiating on the basis of the seriousness of the offence).

The New Zealand Bill of Rights Act was passed in 1990, so the commission's thinking was ahead of its time. On a point of principle, the commission felt that the right to vote should only be forfeited in more serious cases.

This was an important differentiation for the commission to make—it is important to note that the worst criminals (i.e. any who have been sentenced to more than 3 years' imprisonment) are *already* disqualified from registering as electors. So this bill is not about removing rights from our worst criminals; this bill would not make any difference to their current situation. It would, however, result in the disenfranchisement of the majority of people who go to prison even for a short period of time, as they would have to re-enrol on release. It is difficult keeping people enrolled when they have become marginalised and this will only exacerbate the situation.

The Attorney-General has noted in relation to this bill, that for the New Zealand Bill of Rights Act, inconsistencies are justified where the provision serves an important and significant objective, and where there is a rational and proportionate connection between the provision and said objective. The stated objective of the bill is to disenfranchise the most serious offenders.

It is concluded that the objective of the bill—to disenfranchise the most serious offender—is *not rationally linked to the blanket ban on prisoner voting*. The reasons for this are:

- Not every person serving a sentence of imprisonment is necessarily a serious offender, and people who are not serious offenders will be disenfranchised. The example given is a fine defaulter, who may be imprisoned, yet qualifies as a serious offender.
- An irrational inconsistency is created where mentally impaired prisoners who are detained in a hospital or secure facility for less than 3 years can vote, while all prisoners serving sentences of less than years in prisons cannot vote. Currently, both groups are treated the same.
- The blanket ban on prisoner voting is both under- and over-inclusive. It is *under*-inclusive in that a prisoner convicted of a serious violent offence who serves a two-and-a-half year sentence in prisoner between general elections will be able to vote. And it is *over*-inclusive in that someone convicted and given a one-week sentence that coincided with a general election would be unable to vote. Given that the disenfranchising provisions of this bill depend entirely on the *date* of sentencing—which bears no relationship either to the objective of the bill or the conduct of prisoners—it is not rational and not proportionate to the "problem" that its promoter is trying to remedy.

Put simply, the breach of the Bill of Rights Act is not justified.

The justice system is the place for setting the appropriate sentence for a crime.

Those who are concerned about New Zealand constitutional arrangements express concern that constitutional rights are not taken seriously enough and have insufficient safeguards against change. This bill *will* heighten those concerns.

New Zealand has a proud history of promoting suffrage and the passing of this bill would be a backwards step.

For all of these reasons—particularly the curtailing of fundamental and constitutional rights, the illogicality of this bill, the fact it will have no effect on reducing crime or recidivism, and the fact that the

proponent of this bill has made no case to justify making a constitutional change—the Labour Party is opposed to this bill.

Green Party minority view

The effect of passing this bill would be that any person imprisoned in New Zealand at the time of a General Election would be unable to register as an elector, and therefore would be unable to vote, no matter what the length of their prison sentence. The rationale appears to be that all convicted prisoners should have their right to vote taken from them as a further punishment for their offending.

The bill offers remarkably little in the way of any evidence or arguments as to why this would be a good or desirable change. There has been no evidence provided that this bill will reduce crime or facilitate the reintegration of prisoners into society.

There are, on the other hand, very compelling reasons why the status quo should remain, or why any change should broaden rather than reduce inmates' access to the franchise, and so the Green Party continues to oppose this bill in its entirety.

This bill will do nothing to make our society safer; if anything it will make it more dangerous by further marginalising prisoners.

The balance of submissions has been overwhelmingly opposed to the bill, with the writer of the bill and one other individual being the only submitters in support. There have been 51 submissions opposed to the bill from a wide range of people and organisations including the New Zealand Law Society and the Human Rights Commission.

The Green Party's primary objections to the bill are that:

- it constitutes an unjustified violation of the right to vote that is guaranteed by s12 of the New Zealand Bill of Rights Act 1990 (NZBORA). This has been confirmed by the Attorney-General's report on the bill tabled under s7 of the NZBORA.
- it is certainly contrary to Article 25 of the United Nations International Covenant on Civil and Political Rights (ICCPR) which New Zealand has ratified.
- it is out of line with international law relating to blanket restrictions on the right of prisoners to vote.

If enacted, this legislation would lead to New Zealand violating its obligations under international law, and will lead to criticism by the United Nations and in other international forums.

As was noted by the New Zealand Law Society:

> In comparable jurisdictions such as Canada, Ireland, South Africa, and Australia, the highest courts have in the last ten years held that blanket bans on the right of prisoners to vote are unlawful or unconstitutional. The European Court of Human Rights has held similarly in relation to a blanket ban on prisoners voting in the United Kingdom.

This bill reflects a punitive and irrational approach to the rights of prisoners, and if enacted would be counterproductive as it will further alienate inmates from society, while a major objective of the corrections regime should be to prepare for and facilitate the reintegration of former inmates into society.

Appendix

Committee process

The Electoral (Disqualification of Convicted Prisoners) Amendment Bill was referred to the committee on 21 April 2010. The closing date for submissions was 11 June 2010. We received and considered 54 submissions from interested groups and individuals. We heard 13 submissions.

We received advice from the Department of Corrections.

Committee membership

Sandra Goudie (Chairperson)
Shane Adern
Hon Rick Barker
Dr Cam Calder
Hon Clayton Cosgrove
David Garrett
Raymond Huo (from 21 July 2010)
Melissa Lee
Carmel Sepuloni (until 21 July 2010)
Jonathan Young
David Clendon (non-voting member from 21 July 2010)

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Paul Quinn

Electoral (Disqualification of ~~Convicted~~ Sentenced Prisoners) Amendment Bill

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Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Electoral (Disqualification of ~~Convicted~~ Sentenced Prisoners) Amendment Act **2010**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Electoral Act 1993.

~~**4 Disqualification for registration**~~

~~Section 80(1)(d) is amended by omitting subparagraph (iii) and substituting the following subparagraph:~~

~~"(iii) detention pursuant to a conviction,—".~~

~~**5 Detention in prison pursuant to conviction**~~

~~Section 81(1) is amended by omitting paragraph (c) and substituting the following paragraph:~~

~~"(c) indicating that the provisions of section 80(1)(d) apply to that person."~~

4 Disqualifications for registration

Section 80(1) is amended by repealing paragraph (d) and substituting the following paragraph:

"(d) a person who is detained in a prison pursuant to a sentence of imprisonment imposed after the commencement of the Electoral (Disqualification of Sentenced Prisoners) Amendment Act **2010**:".

5 Detention in prison pursuant to conviction

(1) The heading to section 81 is amended by omitting "**conviction**" and substituting "**sentence of imprisonment**".

(2) Section 81(1)(b) is amended by omitting "; and".

(3) Section 81(1)(c) is repealed.

(4) Section 81 is amended by adding the following subsection:

"(3) In subsection (1), **prison manager** has the meaning given to it by section 3(1) of the Corrections Act 2004."

Legislative history

10 February 2010	Introduction (Bill 117–1)
21 April 2010	First reading and referral to Law and Order Committee

Wellington, New Zealand:
Published under the authority of the House of Representatives—2010