

# **Electoral (Registration of Sentenced Prisoners) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

This Bill makes changes to the Electoral Act 1993 (the **Act**) to enfranchise 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.

### *Prisoner voting*

The Bill amends the Act to allow prisoners who are serving a sentence of imprisonment for a term of less than 3 years to enrol to vote at elections and referendums if, under section 74 of the Act, they are qualified to be registered.

People who are in prison for a sentence of imprisonment for 3 years or more, or a sentence of preventive detention, or a sentence of imprisonment for life, continue to be disqualified from being able to enrol.

### *Enrolling prisoners serving a sentence of less than 3 years*

When a prisoner is received into prison to serve a sentence of imprisonment of less than 3 years, if that prisoner is qualified to vote, a prison manager must, as soon as is reasonably practicable, engage with the prisoner and ask them if they want to enrol. If that prisoner consents, the prisoner must provide their enrolment details to the prison manager and the prison manager must forward those details to the Electoral Commission for processing. Enrolment information will be used by the Department of Corrections only for the purposes of transmission to the Electoral Commission.

### *Enrolling prisoners serving a sentence of 3 years or more*

When a prisoner sentenced to imprisonment for a term of 3 years or more is due to be released from prison, if that prisoner is qualified to vote, a prison manager must, as

soon as is reasonably practicable, engage with the prisoner and ask them if they want to enrol. If that prisoner consents, the prisoner must provide their enrolment details to the prison manager and the prison manager must forward those details to the Electoral Commission for processing. Enrolment information will be used by the Department of Corrections only for the purposes of transmission to the Electoral Commission.

### Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=223>

### Regulatory impact assessment

The Ministry of Justice produced a regulatory impact assessment on 8 November 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides that the Bill comes into force on the day after the date of Royal assent.

*Clause 3* provides that the Bill amends the Electoral Act 1993 (the **principal Act**).

## Part 1

### Amendments relating to 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*).

*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.

*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.

## **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.

*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.

*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).

*Hon Andrew Little*

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Electoral (Registration of Sentenced Prisoners) Amendment Act **2020**.

**2 Commencement**

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This Act comes into force on the day after the date of Royal assent.

**3 Principal Act**

This Act amends the Electoral Act 1993 (the **principal Act**).

**Part 1**

**Amendments relating to disqualification of sentenced prisoners for  
registration as electors**

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**4 Section 3 amended (Interpretation)**

In section 3(1), insert in its appropriate alphabetical order:

**prison manager** has the same meaning as in section 3(1) of the Corrections Act 2004

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**5 Section 80 amended (Disqualifications for registration)**

(1) Replace section 80(1)(d) with:

- (d) a person who is detained in prison under—
- (i) a sentence of imprisonment for life; or
  - (ii) a sentence of preventive detention; or
  - (iii) a sentence of imprisonment for a term of 3 years or more:

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(2) After section 80(1), insert:

(1A) For the purposes of **subsection (1)(d)(iii)** and **sections 86A to 86C**, 2 or more sentences of imprisonment for a fixed term that are at any time directed to be served cumulatively are to be treated as a single sentence of imprisonment for a term equal to the sum of the term of imprisonment of each sentence.

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**6 Section 81 replaced (Detention in prison pursuant to sentence of imprisonment)**

Replace section 81 with:

**81 Prison manager to forward to Electoral Commission details of prisoners disqualified for registration**

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Not later than 7 days after a person described in **section 80(1)(d)** is received into a prison to serve the whole or part of their sentence, the prison manager must forward to the Electoral Commission a notice stating—

- (a) the name, previous residential address, and date of birth of the person; and
- (b) the name and address of the prison.

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**Part 2**

**Amendments relating to registration of sentenced prisoners as electors**

**7 New sections 86A to 86E inserted**

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After section 86, insert:

**86A Registration of prisoners serving sentence of imprisonment of less than 3 years**

(1) When a prisoner is received into a prison to serve a sentence of imprisonment for a term of less than 3 years, the prison manager must, as soon as is reasonably practicable,—

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- (a) advise the prisoner that if they are a New Zealand citizen or a permanent resident of New Zealand (as defined in section 73) and have at some time resided continuously in New Zealand for a period of not less than 1 year they are qualified to be registered as an elector of an electoral district, and are required by section 82 to apply to the Electoral Commission for registration; and

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- (b) ask the prisoner whether they want their enrolment details sent to the Electoral Commission to facilitate their registration as an elector.

(2) If the prisoner wants their enrolment details sent to the Electoral Commission to facilitate their registration as an elector, **section 86C** applies.

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**86B Registration of prisoners released after serving sentence of imprisonment of 3 years or more**

(1) Before a prisoner who is serving a sentence of imprisonment for a term of 3 years or more is released on parole or after serving the full sentence, the prison manager must—

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- (a) advise the prisoner that if they are a New Zealand citizen or a permanent resident of New Zealand (as defined in section 73) they will, on release, be qualified to be registered as an elector of an electoral district, and are required by section 82 to apply to the Electoral Commission, within 1 month after their release, for registration; and 5
- (b) ask the prisoner whether they want their enrolment details sent to the Electoral Commission to facilitate their registration as an elector.
- (2) If the prisoner wants their enrolment details sent to the Electoral Commission to facilitate their registration as an elector, **section 86C** applies.
- 86C Prison manager to collect and send enrolment information to Electoral Commission** 10
- (1) If a prisoner referred to in **section 86A or 86B** wants their enrolment details sent to the Electoral Commission to facilitate their registration as an elector, the prisoner must provide to the prison manager the following information for that purpose: 15
- (a) the prisoner's details specified in section 83(2)(a), (b), (c), (d), (g), and (h); and
- (b) if the prisoner is of Maori descent and at the time of providing their enrolment details is, in accordance with section 76(2), eligible to exercise the option referred to in section 76(1), whether the prisoner's preference is to be enrolled on the Maori electoral roll or General electoral roll; and 20
- (c) whether the prisoner considers that their safety or the safety of their family is at risk and would prefer not to have their name published in any main or supplementary roll. 25
- (2) The prison manager must collect the enrolment information provided by a prisoner and send that information to the Electoral Commission as soon as is reasonably practicable—
- (a) after collecting the information, if the information is collected from a prisoner referred to in **section 86A**; or 30
- (b) after the prisoner's release from prison, if the information is collected from a prisoner referred to in **section 86B**.
- (3) A prison manager may not use or disclose the enrolment information collected from a prisoner other than in accordance with **subsection (2)**.
- (4) If, at any time after sending a prisoner's enrolment information to the Electoral Commission, the overall length of a prisoner's sentence or sentences of imprisonment change in a way that results in the prisoner becoming disqualified for registration as an elector under **section 80(1)(d)**, the prison manager must advise the Electoral Commission. 35



**86D Enrolment information received from prison manager treated as application for registration**

- (1) The Electoral Commission must, for the purposes of this Act, treat—
  - (a) the receipt of a person’s details referred to in **section 86C(1)(a)** as an application by the person to register as an elector of an electoral district; 5  
and
  - (b) the receipt of a person’s preference referred to in **section 86C(1)(b)** to be enrolled on the Maori electoral roll as a request by the person to be registered as an elector of a Maori electoral district.
- (2) If, under **section 86C(2)**, the Electoral Commission receives notice that a prisoner’s preference is not to have their name published in any main or supplementary roll, **section 115(3)** applies. 10
- (3) This section overrides section 83(1) to (4).

**86E Delegation of prison manager’s functions under sections 86A to 86C**

- (1) A prison manager may delegate to 1 or more prison officers the prison manager’s functions under **sections 86A to 86C**. 15
- (2) Subject to any directions or conditions imposed by the prison manager, a prison officer to whom the prison manager’s functions are delegated under this section may carry out those functions in the same manner and with the same effect as if they had been conferred on the prison officer directly by **sections 86A to 86C**. 20
- (3) A delegation must be in writing and may be revoked at any time.
- (4) In this section, **prison officer** means an officer within the meaning of paragraph (a)(ii) of the definition of that term in section 3(1) of the Corrections Act 2004. 25

**8 Section 115 replaced (Unpublished names)**

Replace section 115 with:

**115 Unpublished names**

- (1) This section applies despite sections 101, 104, 105, 107, 108, and 110(3)(c) and (d). 30
- (2) If the Electoral Commission is satisfied, on the application of any person, that the publication of that person’s name would be prejudicial to the personal safety of that person or the person’s family, the Electoral Commission may direct that—
  - (a) the name, residence, and occupation of the person not be published in any main or supplementary roll or in any list or index that may be available for inspection by the public; and 35

- (b) the name and particulars of the person not be available for inspection under section 110(3)(c); and
- (c) the person's application for registration not be available for inspection under section 110(3)(d).
- (3) However, if the Electoral Commission receives, from a prison manager under **section 86C(2)**, enrolment information in respect of any prisoner in which the prisoner has expressed a preference not to have their name published in any main or supplementary roll, the Electoral Commission must, on receipt of that information and when registering the prisoner as an elector, make a direction under **subsection (2)** without—
- (a) receiving any application from the prisoner; or
- (b) needing to be satisfied that the publication of the prisoner's name on a roll would be prejudicial to the prisoner's safety or the safety of the prisoner's family.
- (4) Without limiting the discretion of the Electoral Commission under **subsection (2)**, the Electoral Commission may, on the production of any of the following documents, exercise its power in **subsection (2)** without further evidence or inquiry:
- (a) a protection order that is in force under Family Violence Act 2018 in respect of the person; or
- (b) a restraining order that is in force under the Harassment Act 1997 in respect of the person; or
- (c) a statutory declaration from a constable to the effect that they believe that the personal safety of the person or of the person's family could be prejudiced by the publication of the person's name.

## 9 Schedule 1AA amended

In Schedule 1AA, after Part 1, insert:

- Part 2**
- Provisions relating to Electoral (Registration of Sentenced Prisoners) Amendment Act 2020**
- 3 Interpretation**
- In this Part,—
- Act** means the Electoral (Registration of Sentenced Prisoners) Amendment Act **2020**
- specified prisoner** means a prisoner who—
- (a) is received into a prison before the commencement of the Act to serve a sentence of imprisonment; and

(b) is not, after the commencement of the Act, disqualified under **section 80(1)(d)** for registration as an elector.

**4 Prison manager to assist specified prisoners to register as electors**

A prison manager must, as soon as is reasonably practicable after the commencement of the Act, comply with **sections 86A and 86C** in respect of a specified prisoner as if the specified prisoner were a prisoner referred to in **section 86A** being received into the prison. 5