

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

Government Bill

Explanatory note

General policy statement

This Bill makes changes to the Electoral Act 1993. It remedies inconsistencies in its provisions about enrolment of sentenced prisoners, which were introduced by the amendments in the Electoral (Registration of Sentenced Prisoners) Amendment Act 2020.

The Electoral (Registration of Sentenced Prisoners) Amendment Act 2020 was intended to both enfranchise people who are serving a sentence of imprisonment for a term of less than 3 years and introduce requirements for prison managers to assist prisoners with enrolling. Prisoners sentenced to less than three years would be given the opportunity to enrol to vote while in prison and prisoners sentenced to three years or more would be given the opportunity to be enrolled on release from prison.

The Electoral (Registration of Sentenced Prisoners) Amendment Bill was changed by Supplementary Order Paper No 518 (**SOP 518**) at its committee of the whole House stage.

The primary change that SOP 518 proposed was to repeal section 80(1)(d) of the Electoral Act 1993, thereby allowing all prisoners to enrol to vote. This change was not agreed during the parliamentary process.

The SOP also made several changes to Part 2 of the Electoral (Registration of Sentenced Prisoners) Amendment Bill dealing with the enrolment of prisoners. These changes were consistent with the policy in the SOP to allow all prisoners to enrol to vote. However, they were agreed to during the committee of the whole House stage even though the change to allow all prisoners to enrol to vote was not agreed. The result is that the Electoral Act 1993 is now internally inconsistent as a result of the passage of the Electoral (Registration of Sentenced Prisoners) Amendment Bill and now places unworkable obligations on the Department of Corrections (**Corrections**).

and the Electoral Commission. Those obligations are not in line with the intended policy that only prisoners serving sentences of less than 3 years should be able to enrol to vote.

This Bill corrects these inconsistencies by repealing the changes that were made to the Electoral Act 1993 by SOP 518 so the law is internally coherent, and consistent with the intended policy of the Electoral (Registration of Sentenced Prisoners) Amendment Act 2020. In particular, the Bill—

- only requires Corrections to assist prisoners received into prison to enrol to vote if they are sentenced to less than 3 years' imprisonment (and therefore qualified to enrol to vote):
- reinserts the requirement on Corrections to assist prisoners sentenced to 3 years' or more imprisonment to enrol to vote before they are released:
- requires the Electoral Commission to remove from the electoral roll when notified by Corrections the names of prisoners who are disqualified from enrolling to vote.

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=302>

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 registration of sentenced prisoners as electors

Clause 4 amends section 80(1A) of the principal Act to include reference to *new section 86AB* (inserted by *clause 6*). Section 80(1A) provides how sentences of imprisonment for a fixed term being served cumulatively are to be treated for the purposes of section 80(1)(d)(iii).

Clause 5 amends section 86A of the principal Act to require prison managers to advise only prisoners aged 18 years or older who are serving a term of imprisonment of less than 3 years about registering as electors in accordance with the requirements

of the principal Act and to ask whether they want their enrolment details sent to the Electoral Commission.

Clause 6 inserts *new section 86AB* into the principal Act, which requires prison managers to advise prisoners who are to be released after serving a sentence of imprisonment for a term of 3 years or more about registering as electors in accordance with the requirements of the principal Act and to ask whether they want their enrolment details sent to the Electoral Commission.

Clause 7 amends section 86B of the principal Act so that a prison manager's duties under this section apply also in any case where a prisoner referred to in *new section 86AB* wants their enrolment details sent to the Electoral Commission to facilitate their registration as an elector. *New section 86B(5)* is also inserted to require a prison manager to inform the Electoral Commission if the overall length of a prisoner's sentence or sentences of imprisonment subsequently changes so that they become disqualified for registration as an elector.

Clause 8 amends section 86D of the principal Act to include references to *new section 86AB* (inserted by *clause 6*) so that a prison manager may delegate their functions under both sections 86A and 86B, and *new section 86AB*.

Clause 9 amends section 86E of the principal Act to include reference to *new section 86AB* (inserted by *clause 6*) so that when carrying out duties under *new section 86AB* a prison manager must communicate with a prisoner in a way that the prisoner can reasonably be expected to understand.

Part 2

Amendment relating to removal of names from roll

Clause 10 amends section 98 of the principal Act to reinstate subsection (1)(f)(ii), which was repealed by section 8 of the Electoral (Registration of Sentenced Prisoners) Amendment Act 2020. This will enable the Electoral Commission to remove from the electoral roll the names of prisoners who are disqualified from registration as electors under section 80(1)(d) of the principal Act.

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 Bill (No 2) **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 registration of sentenced prisoners as electors**

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4 Section 80 amended (Disqualifications for registration)

In section 80(1A), replace “86A and 86B” with “86A, **86AB**, and 86B”.

5 Section 86A amended (Registration of prisoners serving sentence of imprisonment of less than 3 years)

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Replace section 86A(1) with:

- (1) This section applies when—
- (a) a prisoner who is 18 years or older—
 - (i) is received into a prison to serve a sentence of imprisonment for a term of less than 3 years; or
 - (ii) has their sentence of imprisonment reduced or altered on appeal, or following a retrial, to a term of less than 3 years; or
 - (b) a prisoner turns 18 years while serving a sentence of imprisonment for a term of less than 3 years.

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6 New section 86AB inserted (Registration of prisoners released after serving sentence of imprisonment of 3 years or more)

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After section 86A, insert:

86AB 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, if the prisoner is 18 years or older,—
- (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,

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- 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
- (b) ask the prisoner whether they want their enrolment details sent to the Electoral Commission to facilitate their registration as an elector. 5
- (2) If the prisoner wants their enrolment details sent to the Electoral Commission to facilitate their registration as an elector, section 86B applies.
- 7 Section 86B amended (Prison manager to collect and send enrolment information to Electoral Commission)**
- (1) In section 86B(1), after “section 86A”, insert “or **86AB**”. 10
- (2) Replace section 86B(2) with:
- (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 15
- (b) after the prisoner’s release from prison, if the information is collected from a prisoner referred to in **section 86AB**.
- (3) After section 86B(4), insert:
- (5) If, at any time after a prison manager sends a prisoner’s information to the Electoral Commission, the overall length of a prisoner’s sentence or sentences of imprisonment changes 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. 20
- 8 Section 86D amended (Delegation of prisoner manager’s functions under sections 86A and 86B)** 25
- (1) In the heading to section 86D, replace “**86A and 86B**” with “**86A, 86AB, and 86B**”.
- (2) In section 86D(1) and (2), replace “86A and 86B” with “86A, **86AB**, and 86B”. 30
- 9 Section 86E amended (Prison manager to communicate with prisoner in way prisoner can understand)**
- In section 86E, replace “86A and 86B” with “86A, **86AB**, and 86B”.

Part 2

Amendment relating to removal of names from roll

10 Section 98 amended (Removal of names from roll by Electoral Commission)

- (1) In section 98(1)(f)(i), after “Commission”, insert “; or”. 5
- (2) After section 98(1)(f)(i), insert:
- (ii) is notified to the Electoral Commission under section 81.