

Wellington Community Justice Project

Submission on the

Electoral (Disqualification of Convicted Prisoners) Amendment Bill



Law and Order Select Committee

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INTRODUCTION

- 1.1 The Wellington Community Justice Project opposes the Electoral (Disqualification of Convicted Prisoners) Amendment Bill. Specifically the Wellington Community Justice Project opposes the bill on the grounds that:
 - a. It can be seen to contradict fundamental Corrections policy; and
 - b. The further disenfranchisement of prisoners runs against the international trend towards protecting prisoner's right to vote.
- 1.2 The Wellington Community Justice Project is a student run group which seeks to address community based issues with the aim of encouraging just and fair outcomes for those who are not in a position to do so themselves.

CONSISTENCY WITH CORRECTIONS POLICY

- 2.1 The Electoral (Disqualification of Convicted Prisoners) Amendment Bill ("Bill") will implement changes contrary to guiding principles of the Corrections Act 2004 and broader Department of Corrections ("Department") policy. Specifically, it will hinder the reintegration of short term prisoners back into the community. The Wellington Community Justice Project is opposed to the Bill for this reason.

Department of Corrections

- 2.2 The Department is responsible for the managing of New Zealand's prisons, managing offenders serving sentences and orders in the community. Further to these roles, the Department also provides the information to assist the Courts and Parole Board in their decision-making roles.¹ The most visible role of the Department is the supervision and management of offenders in prisons.
- 2.3 The most visible role of the Department is the supervision and management of offenders in prison. This role, as with the others, is governed by the Corrections Act 2004. The guiding principles of the Corrections Act 2004 inform the operational

¹ Department of Corrections website, <http://www.corrections.govt.nz/about-us.html>.

policies of the Department. The Statement of Intent is illustrative of the current operational goals and policy of the Department.²

Rehabilitation and Reintegration

- 2.4 The Department must perform their role of managing New Zealand's prisons, and offenders, within the guiding principles of the Corrections Act.³ The relevant guiding principle is as follows:⁴

Offenders must, so far as is reasonable and practicable in the circumstances within the resources available, be given access to activities that may contribute to their rehabilitation and reintegration into the community.

- 2.5 The paramount guiding principle for the Department when making decisions about the management of persons under control or supervision is the maintenance of public safety.⁵
- 2.6 The Department's current Statement of Intent expressly affirms that rehabilitation and reintegration remain a key focus for the Government.⁶ This focus is attained through the provision of rehabilitative programmes that aim to address and/or resolve the factors related to their offending; education and employment opportunities to improve skills and gain employment on release from prison and services to help the reintegration back into society.⁷

Disenfranchisement

- 2.7 To disenfranchise removes the important civil right to vote. The Bill will disenfranchise those who are serving sentences of less than three years. The Wellington Community Justice Project believes that this disenfranchisement will run

² Department of Corrections, Statement of Intent 2010 – 2013, E.61SOI (10), <http://www.corrections.govt.nz/news-and-publications/statutory-reports/statements-of-intent.html>.

³ Corrections Act 2004 s 5 and 6.

⁴ Corrections Act 2004 s 6(1)(h).

⁵ Corrections Act 2004 s 6(1)(a).

⁶ Department of Corrections, Statement of Intent 2010 – 2013, E.61SOI (10) <http://www.corrections.govt.nz/news-and-publications/statutory-reports/statements-of-intent.html>, at 3 and 4.

⁷ Department of Corrections, Statement of Intent 2010 – 2013, E.61SOI (10), <http://www.corrections.govt.nz/news-and-publications/statutory-reports/statements-of-intent.html>, at 5.

contrary to the required operational goals of the Department responsible for managing those in prison.

Implications of disenfranchisement of the Department of Corrections

2.8 To remove the right to vote from prisoners serving sentences of less than three years contradicts the expressly required guiding principle of the Department to provide for reasonable reintegration mechanisms for prisoners. The Wellington Community Justice Project believes that the retention of the right to vote will aid the guiding principle of reintegration in two ways. They are as follows:

- a. Retention of the right to vote ensures that short term offenders do not feel completely isolated from society. This means short term offenders are less likely to experience a self fulfilling prophecy whereby the prison institution is normalised and treated as inevitable. To maintain a connection while in prison will aid the efforts of the Department in reintegrating that offender once released. This connection is supported in the judicial reasoning of the Supreme Court of Canada in *Sauvé v Canada* [1992] 2 SCR 438 in which disenfranchisement was said to undermine civic responsibility and respect for the law.
- b. Retention of the right to vote may operate as an important reintegration mechanism. If promoted to those prisoners who are entitled as a privilege to be entitled to vote, the Department could effectively use the right to vote to illustrate to prisoners how they are a valuable member of society and ensure respect for those that determine the law. This would be the use of franchise as an “educative mechanism”.⁸ The right to vote can help teach democratic value and social responsibility.⁹ This is readily perceived as an effective reintegration mechanism for the Department.

2.9 The disenfranchisement of prisoners serving less than three years will have the negative impact of the diminution of value of the current reintegration programmes implemented by the Department. As previously outlined, the Department provides reintegration schemes but they will be less effective without the retention of the right to vote. This is due to the fact that disenfranchisement is said to undermine feelings

⁸ *Sauvé v Canada* [1992] 2 SCR 438 at [32].

⁹ *Ibid*, at [38].

of civic responsibility and respect for the law.¹⁰ This is contrary to the governing legislation¹¹ and the Statement of Intent of the Department.

2.10 The Department is guided to have consideration to public safety as paramount when implementing and designing programmes for reintegration. There is no countervailing consideration that retaining the right to vote for prisoners serving short term sentences (less than three years) will be detrimental to public safety. This consideration enhances the arguments for retaining franchise to promote reintegration.

Conclusion on corrections policy

2.11 Due to the conflict of disenfranchisement and the reintegration interests of prisoners', which is a required guiding principle of the Department, the Wellington Community Justice Project is strongly opposed to the Bill. The reintegration principle is important to the Wellington Community Justice Project as it is consistent with our mission of achieving just outcomes in the wider community.

2.12 It is the responsibility of Parliament to ensure that this conflict does not arise.

2.13 It is likely that these arguments pertaining to the disenfranchisement of offenders serving terms of less than three years imprisonment would also apply to all offenders. This submission does not consider this implication as it is outside reasonable contemplation of the Select Committee.

INTERNATIONAL COMPARISON

3.1 The proposal under the disenfranchisement Bill goes against the position of numerous other jurisdictions. Considering the strong international support for retaining the vote for prisoners, the change proposed by the bill would be a step backwards for New Zealand's criminal justice system and human rights standards.

United States

3.2 In the US, four states (Maine, Massachusetts, Utah, and Vermont) have made a strong stance against the disenfranchisement of convicted felons.¹²

¹⁰ *Sauvé v Canada* [1992] 2 SCR 438.

¹¹ Corrections Act 2004.

England and Ireland

3.3 Civil prisoners in the UK sentenced for non-payment of fines still retain the right to vote.¹³ The Irish Republic currently allows convicted prisoners to have postal votes.¹⁴

Germany

3.4 In Germany, all prisoners are allowed to vote while in prison unless the loss of the right to vote is part of the sentence. Courts can only hand out this sentence for specific "political" crimes (treason, high treason, electoral fraud, intimidation of voters etc) for duration of two to five years.¹⁵ All prisoners sentenced to at least one year in prison also automatically lose the right to be elected in public elections for duration of five years, and lose all positions they held as a result of such elections.¹⁶ The law obliges prison authorities to encourage prisoners to assert their voting rights and to facilitate voting procedures.¹⁷

Israel

3.5 Inmates are allowed to vote in Israel, and there is likewise no subsequent disfranchisement of felons following parole, probation, or release from prison.¹⁸ Neither courts nor prison authorities have the power to disqualify any person from exercising the right to vote in national elections, whatever cause of imprisonment (i.e., including politically-related crimes). In fact, local scholarship has suggested that persons at odds with the law maintain a special interest in influencing the political process.¹⁹

China and Portugal

3.6 Disfranchisement due to criminal conviction is an exception, meted out separately. This is usually imposed on a person convicted of a crime against the state or one related to election or public office.²⁰

Other countries

¹² <http://www.hrw.org/reports98/vote/usvot98o.htm>

¹³ <http://www.hrw.org/reports98/vote/usvot98o.htm>

¹⁴ <http://en.wikipedia.org/wiki/Disfranchisement>

¹⁵ <http://en.wikipedia.org/wiki/Disfranchisement>

¹⁶ <http://en.wikipedia.org/wiki/Disfranchisement>

¹⁷ http://www.hrw.org/reports98/vote/usvot98o-04.htm#P112_2733

¹⁸ <http://en.wikipedia.org/wiki/Disfranchisement>

¹⁹ <http://en.wikipedia.org/wiki/Disfranchisement>

²⁰ <http://en.wikipedia.org/wiki/Disfranchisement>

3.7 According to research by Penal Reform International, prisoners have retained the right to vote in countries such as the Czech Republic, Denmark, France, Israel, Japan, Kenya, Netherlands, Norway, Peru, Poland, Romania, Sweden and Zimbabwe.²¹

²¹ http://www.hrw.org/reports98/vote/usvot98o-04.htm#P112_2733