

# Departmental Disclosure Statement

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Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2)
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

29 June 2020.

## Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information.....	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features.....	8

## Part One: 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.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<i>He Aha I Pērā Ai? The Māori Prisoners' Voting Report</i> , Waitangi Tribunal, August 2019.	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
Prisoner voting; Ministry of Justice; 8 November 2019. This was published at: <a href="https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/">https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/</a>  This regulatory impact statement was prepared for the policy decisions that led to the Electoral (Registration of Sentenced Prisoners) Amendment Bill. The Electoral (Registration of Sentenced Prisoners) Amendment Bill (No 2) is based on the same policy decisions.	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The Regulatory Impact Statement did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Analysis Team based in the Treasury. The Regulatory Impact Statement was assessed internally by the Ministry of Justice Regulatory Impact Assessment Quality Assurance Panel. It was determined to meet the quality assurance criteria.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Ministry of Justice analysed the Bill and has not identified any conflicts between the Bill and New Zealand's international obligations. The Regulatory Impact Statement contains discussion of the international human rights implications of the policy proposals.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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This Bill ensures the intended policy approach to the Electoral (Registration of Sentenced Prisoners) Amendment Act is correctly implemented in legislation. The Ministry of Justice identified that the policy changes improved the consistency with the Treaty of Waitangi of the policy in this area significantly compared to the status quo, although Treaty issues remained. Substantial analysis of the Treaty of Waitangi implications of the policy is contained in the Regulatory Impact Statement.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Advice has been provided to the Attorney-General by the Crown Law Office. This advice will be available on the Ministry's website at <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/</a>
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
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<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
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<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
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### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
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The amendments to section 86A and section 86B and the insertion of new section 86AB provide for Corrections to collect enrolment details from prisoners with their consent and send these to the Electoral Commission to facilitate their enrolment.
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<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
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The Privacy Commissioner was consulted about the policy as intended to be implemented in the Electoral (Registration of Sentenced Prisoners) Amendment Act and had no concerns. As this Bill is correcting the enrolment provisions to implement the original policy, we have not consulted further with the Privacy Commissioner.

### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
The Electoral Commission, the Department of Corrections and the Treasury were consulted on the policy and the draft Bill.	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

### Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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