



Submission: Electoral (Registration of Sentenced Prisoners) Amendment Bill

About the New Zealand Council for Civil Liberties

1. The New Zealand Council for Civil Liberties is a watchdog for rights and freedoms in New Zealand. The Council is a voluntary not-for-profit organization that works through education and advocacy to promote a rights-based society and prevent the erosion of civil liberties.
2. We wish to appear before the Committee to make an oral submission.

Introduction

3. The Council supports the right of all New Zealanders to vote in elections.
4. The Council is disappointed that this bill continues the fiction that voting is not a basic human right. We do not believe that acknowledging the rights of some people in prisons whilst rejecting the same right for other people in prisons can be based on values or principles. Or, to quote Justice Minister Andrew Little, "As a basic principle [people in prisons] should have a right to say who is governing the community that they will be released free into once they've completed their sentence."
5. People who have been imprisoned for more than 3 years can still be affected by decisions made by governments – for example double-bunking, work policies, and other issues affecting their wellbeing – so they should be able to have their say on who is elected to form a government.



6. The Council opposed the prisoner voting ban before the Select Committee in 2010¹ and 2019², on the grounds that it violates section 12 of the New Zealand Bill of Rights Act (1990) (NZBORA).

Voting is a Human Right

1. Article 21(3) of the United Nations Declaration of Human Rights, to which New Zealand is a signatory, states that:
“The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”³
2. Article 25 of the International Covenant on Civil and Political Rights, which New Zealand has ratified, states that “Every citizen shall have the right and the opportunity ... to vote.”⁴
3. Section 12 of NZBORA states that “Every New Zealand citizen who is of or over the age of 18 years ... has the right to vote.”⁵
4. The rights and freedoms set out in NZBORA may only be limited under section 5 of the Act where it is ‘reasonable’, ‘prescribed in law’ and where the limitation ‘can be demonstrably justified in a free and democratic society.’

The Prisoner Voting Ban violates Human Rights

5. In 2010, the Electoral Act 1993 was amended by the *Electoral (Disqualification of Convicted Prisoners) Amendment Bill*, to add section 80(1)(d), the prisoner voting ban. In 2010, Chris Finlayson, who was then the Attorney-General, declared “I consider that the Bill appears to be unjustifiably inconsistent with the electoral

¹https://www.parliament.nz/en/pb/sc/submissions-and-advice/document/49SCLO_EVI_00DBHOH_BILL9745_1_A53637/new-zealand-council-for-civil-liberties

² <https://nzcl.org.nz/content/submission-electoral-amendment-bill>

³ <https://www.un.org/en/universal-declaration-human-rights/index.html>

⁴ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

⁵ <http://www.legislation.govt.nz/act/public/1990/0109/latest/DLM225511.html>



rights affirmed by section 12 of the Bill of Rights Act.”⁶

7. In 2015 the High Court, in *Taylor v Attorney-General*, declared that:
“Section 80(1)(d) of the Electoral Act 1993 (as amended by the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010) is inconsistent with the right to vote affirmed and guaranteed in s12(a) of the New Zealand Bill of Rights Act 1990, and cannot be justified under s5 of that Act.”⁷
8. In 2017, the Court of Appeal dismissed the Attorney General’s appeal of the High Court decision, indicating their agreement with the High Court.⁸
9. In 2018, the Attorney General appealed again to the Supreme Court, who also agreed with the High Court.⁹
10. In 2019, the Waitangi Tribunal ruled that:
“Section 80(1)(d) of the Electoral Act 1993 breached the principles of the Treaty. The Tribunal further found that the Crown has failed in its duty to actively protect the right of Māori to equitably participate in the electoral process and exercise their tino rangatiratanga individually and collectively.”¹⁰
11. The Council notes with approval that the Ministry of Justice, in their regulatory impact assessment of this bill¹¹, agrees with all of the Council’s arguments, and recommends that section 80(1)(d) should be repealed.

Recommendation

12. The New Zealand Council of Civil Liberties recommends the rights of New Zealanders who are in prisons be restored by repealing section 80(1)(d) of the Electoral Act.

⁶ Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electoral (Disqualification of Convicted Prisoners) Amendment Bill
<https://www.justice.govt.nz/assets/Documents/Publications/BORA-Electoral-Disqualification-of-Convicted-Prisoners-Amendment-Bill.pdf>

⁷ *Taylor v Attorney-General*[2015] NZHC 1706, [2015] 3 NZLR 791 [Taylor(HC)] at [79]

⁸ *Attorney-General v Taylor*[2017] NZCA 215, [2017] 3 NZLR 24 (Kós P, Randerson, Wild, French and Miller JJ) [Taylor(CA)].

⁹ <https://www.courtsofnz.govt.nz/cases/attorney-general-v-arthur-william-taylor/@@images/fileDecision>

¹⁰ https://forms.justice.govt.nz/search/WT/reports/reportSummary.html?reportId=wt_DOC_151635085

¹¹ <https://www.justice.govt.nz/assets/Documents/Publications/5v7kp3-RIA-Prisoner-Voting.pdf>