

Prisoner voting

Advising agencies	Ministry of Justice
Decision sought	This analysis has been prepared for the purposes of supporting decisions to be taken by Cabinet regarding any change to the law on prisoner voting.
Proposing Ministers	Minister of Justice

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

Currently all sentenced prisoners are disqualified from voting. The Supreme Court has found that the disqualification places an unreasonable limit on the electoral rights guaranteed under the New Zealand Bill of Rights Act 1990 (NZBORA). The Waitangi Tribunal (the Tribunal) also found in its recent report *He Aha I Pērā Ai? The Māori Prisoners' Voting Report* that the disqualification was a serious Treaty of Waitangi breach and has a disproportionate effect on Māori. The disqualification has been shown to act like a de facto permanent disenfranchisement, as many people affected are not re-enrolling once leaving prison.

Waitangi Tribunal found that community engagement is not enough to overcome the effect of the disqualification. Any change to voting or enrolment eligibility requires legislative change.¹

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

In light of the Waitangi Tribunal's recent report and the declaration of inconsistency upheld in the Supreme Court in *Taylor v Attorney General*, the Minister of Justice considers it appropriate for Cabinet to consider the current law around prisoner voting rights.

The Minister of Justice is presenting four options to Cabinet:

- option 1: remove any disqualification from voting for sentenced prisoners (as recommended by the Waitangi Tribunal). This could be implemented for the 2020 general election,
- option 2: return to the pre-2010 law, disqualifying from voting only those prisoners with a sentence of three years or more. This could be implemented for the 2020 general election,
- option 3: while retaining the ban on voting, ensure prisoners are re-enrolled on release by changing the law to suspend prisoners' enrolment (rather than removing prisoners from the roll). The suspended roll would not be able to be in place until after the 2020 election. Therefore, this option includes a temporary

¹ Waitangi Tribunal. (2019). *He Aha I Pērā Ai? The Māori Prisoners' Voting Report* (report no. 2870) at pp ww.

measure where people would be automatically re-enrolled after leaving prison until the suspended roll could be implemented.

- option 4: both options two and three.

The Ministry of Justice's preferred option is to repeal section 80(d) of the Electoral Act 1993 and allow all sentenced prisoners to vote (option 1). This option would be the most consistent with the Treaty of Waitangi and the Bill of Rights Act 1993 and the most consistent with fundamental democratic values. This change would be consistent with the objective of maximising participation in the electoral system.

Section B: Summary Impacts: Benefits and costs

Who are the main expected beneficiaries and what is the nature of the expected benefit?

Prisoners and recently released persons will principally benefit from these proposals. The benefits gained through any of these options are non-monetised and relate to the ability of prisoners and recently released people to exercise their electoral rights. There is also a general societal benefit in improving the quality of our democracy through increased participation.

Where do the costs fall?

If Cabinet chooses amendment or repeal of the disqualification (option one or two), then extra administrative costs will fall on the Electoral Commission (the Commission) to provide voting services to a wider population of prisoners. The Electoral Commission would be able to meet these costs within baseline.

Options one and two are likely to involve additional periodic costs for the Department of Corrections (Corrections) e.g. increased work for staff, support to assist prisoners with literacy issues to complete forms. Further work would be required to quantify these costs. If additional costs are required, Corrections may seek funding to address them as part of future cost pressure funding bids.

If Cabinet chooses to change the law so that the ban on prisoners from voting acts more as a suspension from the electoral roll (option three or option four), then implementation will have further administrative costs for the Commission including ICT costs. These costs are estimated to be up to \$1.5 million. There will also be some ongoing costs in maintaining a suspended roll.

The Corrections will also have administrative costs associated with options three and four. These costs will be able to be met within current agency baseline.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?

Timing

There is a timing risk with every option. If Cabinet chooses to repeal or amend the disqualification, there is a risk the required legislation will not be in place before the 2020 election given the constrained timeframe. However, both the repeal or amendment options (options one and two) would be relatively simple to draft. If Cabinet chooses to progress law change, we would work towards timeframes that would mean that the legislation would be able to be implemented before the 2020 election. Given the constrained timeframe, there may also be a risk that the Commission will not have enough time to sufficiently plan the

operational delivery of voting services in prisons for the 2020 general election. If prisoners are not able to access voting services, there is a risk that prisoners will still be effectively disenfranchised. However, the likelihood of this happening is low. Both options have been used in New Zealand in the past and have been successfully implemented in the past.

Option three and four are the most difficult legislatively and operationally for the Electoral Commission. A suspended roll option would not be able to be implemented until after the 2020 election due to the extra time needed to put it in place. If Cabinet agreed to option four, we would progress with legislative change before the 2020 election. The three-year disqualification would be in place ahead of the election, and automatic re-enrolment would be in place temporarily until a suspended roll is implemented. The suspended roll element of the option would be implemented after the 2020 election.

Implementation

There is moderate implementation risk with options three and four, as having a new kind of roll type or automatic re-enrolment is relatively novel for New Zealand. However, the Commission is experienced at delivering new electoral changes, and implementing this option after the 2020 election would give it time to deliver these changes. Mitigations would be worked through if option three or four is progressed as more detailed policy is developed.

Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.

The Ministry’s preferred option, a removal of any disqualification of prisoners from voting, is compatible with the Government’s ‘Expectations for the design of regulatory systems’. The other options are mostly consistent with the expectations however, they do not support compliance with the Crown’s Treaty of Waitangi obligations and New Zealand’s international human rights obligations.

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?

This Regulatory Impact Statement draws on findings in New Zealand and in international jurisprudence in relation to the current laws’ human rights impacts and consistency with NZBORA.

We have also drawn on the Waitangi Tribunal’s report *He Aha / Pērā Ai?* in relation to Treaty implications. The Ministry of Justice and the Electoral Commission provided evidence to the Tribunal on behalf of the Crown for this inquiry, particularly around the disproportionate impact on Māori. We are confident in the strength of this evidence. However, there is limited evidence on the impact of the right to vote on facilitating prisoners’ reintegration into society or recidivism.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:

Ministry of Justice

Quality Assurance Assessment:

The Ministry of Justice's RIA QA panel has reviewed the regulatory impact assessment on prisoner voting prepared by the Ministry of Justice and considers that the information and analysis summarised in the regulatory impact assessment meets the quality assurance criteria.

Reviewer Comments and Recommendations:

We consider that the analysis contains all the necessary information, is clear, and provides a logical, balanced assessment of the options and their costs and benefits. We note that consultation has been limited due to timing constraints, which has been signalled in the analysis, however we consider this limitation is unlikely to have had a material impact on the analysis and the extent to which it can be relied on by decision-makers.

Impact Statement: Prisoner Voting

Section 1: General information

Purpose

The Ministry of Justice is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet.

Key Limitations or Constraints on Analysis

Consultation

The right to vote is a fundamental human right, and considering the recent Court and Tribunal findings, it is appropriate to address the issues the Court and Tribunal identified. We have consulted with the Electoral Commission, the Department of Corrections, Crown Law and Treasury on this Regulatory Impact Assessment and associated Cabinet paper but have not been able to consult wider than this prior to Cabinet policy decisions.

There will be some opportunity for the public to input after Cabinet decisions. Any change will likely be made through a standalone amendment Bill. There would be public consultation through the Select Committee process. Furthermore, if Cabinet agrees to a suspended roll option, we intend to undertake targeted consultation with Māori about how that could best be implemented as this option would not be implemented before the 2020 General Election.

Uncertainty of impact of change

We have reliable findings that show the impact of the disqualification on prisoners' rights. The Tribunal heard evidence of the impact of the disqualification on themselves and their whānau. However, we do not have evidence on the impact of disqualification in relation to reintegration into society or recidivism.

Responsible Manager (signature and date):

8 November 2019
Chris Hubscher, Electoral and Constitutional Policy
Policy Group, Ministry of Justice.

Section 2: Problem definition and objectives

2.1 What is the context within which action is proposed?

New Zealand's electoral system

A core commitment of representative democracy is that all members of a society have an equal right to take part in selecting those who will make the laws for them. Our system is also aimed towards maximum enfranchisement and participation. New Zealand extends the right to vote widely with permanent residents entitled to vote, not just citizens.

Electoral Act 1993

The Electoral Act 1993 (the Act) is the framework for the electoral system. It establishes the Electoral Commission which is the main vehicle for operationalising the Act. Section 4C of the Act states the objective of the Electoral Commission is to facilitate participation in parliamentary democracy, promote understanding of the electoral system, and maintain confidence in the administration of the electoral system.

Criminal justice context

As well as punishment and deterrence, New Zealand's criminal justice system supports the principle of reintegration of prisoners. For example, the Sentencing Act 2002 states that one of the purposes of a Court sentencing or otherwise dealing with an offender can be to assist in the offender's rehabilitation and reintegration.² The Corrections Act 2004 also states that one purpose of the corrections system is to contribute to the maintenance of a just society by assisting in the rehabilitation of offenders and their reintegration into the community.³

How is the situation expected to develop if no further action is taken

All prisoners will continue to be unable to vote and the law disqualifying prisoners from voting will continue to have a negative impact on Māori electoral participation. Māori in particular are affected by the disqualification, making up 51.3 percent of the current prison population of 9,252.⁴ This contributes to the already below-average rate of participation by Māori in the electoral system. The disqualification also prevents Māori prisoners taking part in the Māori Electoral Option, which determines the number of Māori seats. Crown evidence presented to the Waitangi Tribunal shows Māori are currently 11.4 times more likely to be removed from the electoral roll as a result of receiving a prison sentence than non-Māori. This is a significant increase on the pre-2010 amendment, where in 2010 Maori were 2.1 times more likely to have been removed from the roll as a result of a prison sentence compared to non-Māori.

2.2 What regulatory system, or systems, are already in place?

Current law

The Act sets out who is qualified to vote. This includes any person who is qualified to be registered as an elector and is registered as an elector as a result of having applied for registration as an elector before polling day. However, there are some exceptions to who can be qualified to register as an elector. Section 80(d) of the Act disqualifies for registration as electors all people sentenced to a term of imprisonment.

² Sentencing Act 2002 s 7(1)(h).

³ Corrections Act 2004 s 5.

⁴ Prisoner facts and statistics – June 2019. Accessed 1 October 2019 <

https://www.corrections.govt.nz/resources/research_and_statistics/quarterly_prison_statistics/prison_stats_june_2019>

Background information on the current law

In 2009, a Member's Bill in the name of Paul Quinn, the Electoral (Disqualification of Sentenced Prisoners) Bill (the Bill), was introduced that disqualified all sentenced prisoners (excluding those in remand) from being able to vote. The Bill passed and was incorporated into s 80(d) of the Act.

History of prisoner voting

The disqualification of sentenced prisoners from voting has changed several times:

- Initially prisoners were only disqualified if they committed certain serious offences.
- In 1956 a complete ban of sentenced prisoners from voting was first introduced.
- In 1975 the ban was removed completely, before being reintroduced in 1977.
- The Electoral Act 1993 changed the blanket disqualification so that it only applied to those serving sentences of three years or more, in light of the passage of NZBORA.

How the current system works

Corrections informs the Commission of every person that is sentenced to a period of imprisonment. This requirement is established in law. If that person is registered as an elector on the electoral rolls, the person is disqualified and is taken off the electoral roll.

Upon release, Corrections provides the person with enrolment papers. However, Corrections does not currently have legislative authority to inform the Electoral Commission of the person's release and the Commission is not provided with an address. This means the Commission is not able to directly communicate with prisoners on release about enrolling or re-enrolling. The Commission reaches a person that needs to re-enrol through community engagement, data matches (with the Ministry of Social Development, NZ Transport Agency and the Department of Internal Affairs), and public information and advertising campaigns in the lead-up to an election. The Commission also works with Community Corrections to find opportunities to provide enrolment support for people on probation and conditional release.

Discussion for a three year threshold

The 1986 Royal Commission on the Electoral System said that imprisonment could be looked on as the temporary exclusion of a person from the community, causing a person to temporarily lose the rights associated with membership, including the right to vote. The Royal Commission had "some sympathy with the view, which we think is widely held, that punishment for a serious crime against the community may properly involve a further forfeiture of some rights such as the right to vote".⁵ It recommended that those who have been sentenced to a long period of imprisonment should lose the right to vote, noting that they can be viewed in the same way as citizens absent overseas for three years or more.⁶

In the *Taylor v Attorney General*, Heath J also considered the rationale for disqualifying prisoners from voting. He noted that:

the notion of a "social contract" has been invoked as a principle that supports the view that (at least some) serving prisoners should be disenfranchised". On one occasion,

⁵ Report of the Royal Commission on the Electoral System Towards a Better Democracy (Government Printer, 1986) at p 237.

⁶ At p 241.

that was expressed as those “who infringe the laws of society to the extent that they are put into penal institutions should not be entitled to exercise a vote in a general election”.⁷

Heath J commented that there are “powerful arguments” that the three-year threshold was justifiable in a free and democratic society.⁸ However, In the foreword to the Waitangi Tribunal’s report Judge Savage commented that the Tribunal could see “no utility whatsoever in any restriction on prisoner voting”.⁹

2.3 What is the policy problem or opportunity?

Under the status quo all prisoners are disqualified from voting. This raises several issues.

The disqualification is an additional punishment

Some view imprisonment as the punishment, and there is no need to also remove electoral rights. The House of Lords has said prisoners retain all civil rights not taken away as a necessary incident of incarceration (e.g. freedom of movement). Removing the right to vote is an additional punishment on top of incarceration, rather than incidental to it.¹⁰

The disqualification breaches the Crown’s obligations under the Treaty of Waitangi

The Waitangi Tribunal found that the Crown failed to actively protect Māori rights and failed in its duty of informed decision-making, which contributed to the Act breaching the Treaty.¹¹ The Tribunal also found that the Crown breached its duty of active protection in consideration of the Bill. Although the Department of Corrections’ departmental briefing to the Select Committee explained the extension of the disqualification from voting could have a disproportionate effect on Māori, the Crown did not take any further steps to determine the extent of that impact, or the specific effect the legislation would have on Māori and Crown rights and obligations under the Treaty.¹² Furthermore, the effect that the current law has had in the proceeding nine years has been significant and cumulative. The Tribunal found that by failing to propose the repeal of the provision once those effects were recognised, the Crown failed in its duty to actively protect the right of Māori to equitably participate in the electoral process.¹³

The current law has a disproportionate effect on Māori

Drawing on Crown evidence, the Tribunal found that in 2018 Māori were 11.4 times more likely to be removed from the electoral roll because of a prison sentence than non-Māori, compared to in 2010 before the complete disqualification where Māori were 2.1 times more likely to be removed from the electoral roll because of a prison sentence.¹⁴ This indicates that Māori are being sentenced to a periods of imprisonment of less than three years at a significantly higher rate than non-Māori.

⁷ *Taylor v Attorney General* [2015] NZHC 1706 at [25].

⁸ *Taylor v Attorney General* [2015] NZHC 1706 at [78].

⁹ At x.

¹⁰ *R v Secretary of State for the Home Department, Ex p Anderson* [1984] QB 778 at [790].

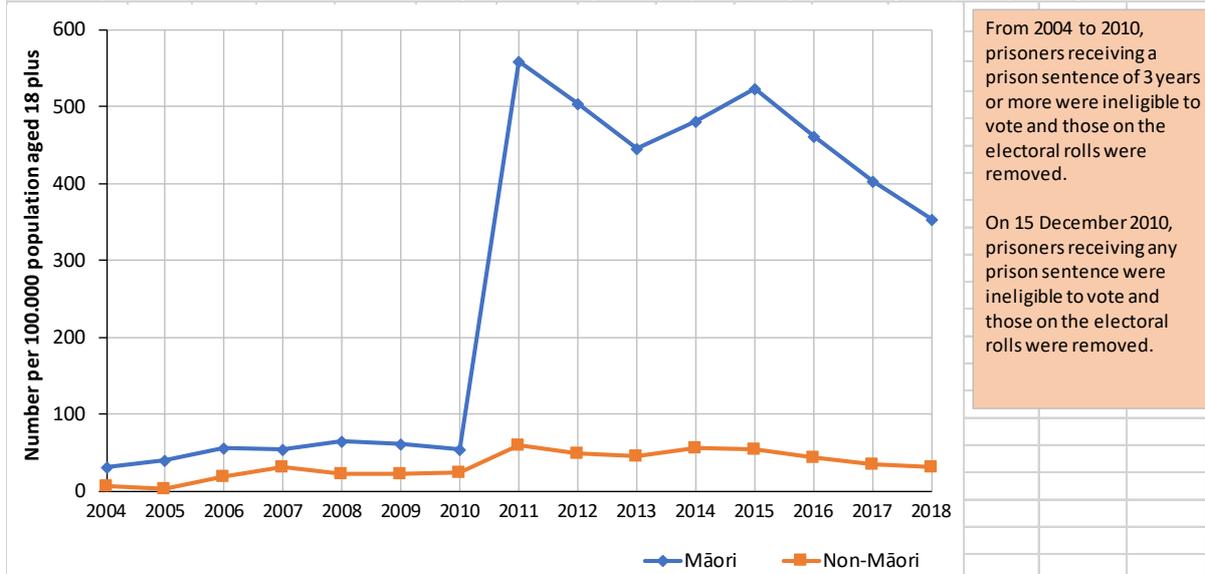
¹¹ Waitangi Tribunal. (2019). *He Aha I Pērā Ai? The Māori Prisoners’ Voting Report* (report no. 2870) at pp 32-33.

¹² *Ibid.*

¹³ At pp 16-19.

¹⁴ At 18-19.

Number of persons removed from Electoral roll following sentence of imprisonment per 100,000 population aged 18 plus, by ethnic group: 2004-2018



From 2004 to 2010, prisoners receiving a prison sentence of 3 years or more were ineligible to vote and those on the electoral rolls were removed.

On 15 December 2010, prisoners receiving any prison sentence were ineligible to vote and those on the electoral rolls were removed.

The current law removes right of Māori prisoners to participate in the Māori electoral option
 The Māori electoral option (MEO) a period where people of Māori descent are able to switch between the Māori and general roll is only held once every five years. If a Māori person is in prison during the MEO period, they would not be able to change rolls for another five years. This effectively deprives that person from being able to exercise this right.

The current law is operating as a de facto permanent disqualification

Many of those who are removed from the electoral roll (both Māori and non-Māori) do not re-enrol. Of the 4,164 Māori imprisoned in 2018, only 39 per cent were removed from the roll. The remainder had been taken off the roll previously or never enrolled before. Similarly, only 34 per cent of the 2,985 non-Maori imprisoned in 2018 were removed from the roll. This data suggests that many that are imprisoned are not taking the 'extra step' to re-enrol after being taken off the electoral roll initially. In the Waitangi Tribunal proceedings, the Crown accepted that the disqualification of prisoners was acting as a permanent rather than a temporary ban.

The impact of the disqualification on the number of Māori on the electoral roll is also increasing over time. The Ministry of Justice estimates that by December 2020, under the current law, approximately 32,000 people will have been removed from the electoral roll since December 2010, with a number of people removed multiple times. Almost 60 percent of those removed are Māori. This impact is significantly more than it would have been if the law had remained at the pre-2010 position. The Ministry estimates that by December 2020, if the law had not been changed in December 2010, only 5,000 people would have been removed off the roll – a 27,000 decrease on the current law.¹⁵ Furthermore, under the pre-2010 law, 48 percent of those removed would be Māori. This is approximately 12 percent less than the current law.

The current law affects families and communities

The Tribunal found that the impact of the law extends beyond prisoners. People are likely to leave prison with a diminished identity as a voter, which also affects their whānau and community. The Tribunal found that Māori imprisoned for their first election are less likely to

15 Affidavit of Robert Donald Lynn, Ministry of Justice in the matter of the Treaty of Waitangi Act and the Māori Prisoners Voting Rights Inquiry (22 March 2019).

form a voting habit because of the evidence it heard about the importance of voting in the first ten years that a person is eligible.

The disqualification is an unreasonable infringement of a person's electoral rights

Prior to the 2010 bill being enacted, the Attorney General presented a report to Parliament noting that the disqualification was inconsistent with the electoral rights affirmed by section 12 of NZBORA and could not be justified. The Attorney General's key findings were:

- the objective of the Bill (serious offenders forfeiting their right vote) is not rationally linked to the blanket ban on prison voting given that people who are not serious offenders, for example fine defaulters, will also be disenfranchised;
- its effect would be both over and under inclusive, given that its impact would depend on when an offender was sentenced relative to the electoral cycle; and
- the restriction on the right to vote was not minimal.¹⁶

This reasoning has also been accepted in the Courts. In 2013, then-prisoner Arthur Taylor sought a formal declaration that the disqualification is inconsistent with section 12 of NZBORA. The High Court agreed and issued a declaration of inconsistency, which was upheld in the Court of Appeal and Supreme Court in 2018.¹⁷ At the High Court, when justifying issuing a declaration of inconsistency, Heath J adopted the reasoning of the Attorney-General in his report to Parliament, and additionally stated there is inconsistency in the application of s 80(d), as it does not apply to those in home detention.¹⁸

The disqualification may amount to discrimination

The data presented at the Waitangi Tribunal inquiry on the impact of the disqualification could support the view that the law is also inconsistent with section 19 of NZBORA. Section 19 affirms the right to be free from discrimination on the basis of race, national or ethnic origin. The Court of Appeal in *Ngaronoa v Attorney General* found that the impact of the prohibition on Māori as a group was so small that there is no material disadvantage to Māori.¹⁹ The Court did not have the benefit of the data presented to the Waitangi Tribunal.

The disqualification goes against New Zealand's international human rights obligations

The right to vote is recognised by Article 25 of the International Covenant on Civil and Political Rights (ICCPR). The United Nations Human Rights Committee considers blanket prisoner voting bans as inconsistent with the ICCPR and as serving no rehabilitative purpose. It has noted the "significant racial implications" of prisoner voting prohibitions, given the disproportionate representation of ethnic minorities in most prison populations.

The law may also be inconsistent with New Zealand's obligations under the International Convention on the Elimination of All Forms of Racial Discrimination due to its disproportionate effect on Māori. Article 5(c) states that parties are to prohibit and eliminate racial discrimination and to guarantee political rights, especially electoral rights. It may also be inconsistent with the Declaration on the Rights of Indigenous Peoples. The Declaration states that Indigenous peoples have the right to maintain and strengthen their distinct

16 Christopher Finlayson *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electoral (Disqualification of Convicted Prisoners) Amendment Bill* (17 March 2010) at 2-4.

17 Taylor v Attorney General [2018] NZSC 104 at [71].

18 Taylor v Attorney General [2015] NZHC 1706 at [34].

19 Ngaronoa v Attorney General [2016] NZHC 355 at [144].

political institutions, while retaining their right to participate fully in the political life of the State.²⁰

The disqualification is out of step with international jurisprudence

Courts in several jurisdictions have criticised blanket bans on prisoner voting.

- **Australia:** In 2006, Australia introduced a complete prohibition on prisoner voting, reversing a partial prohibition that had been in place.²¹ This prohibition was overturned by the High Court which found that the Constitution enshrined a limited right to vote.²²
- **United Kingdom:** All prisoners are currently disqualified from voting. The prohibition on prisoner voting has been subject to a number of rulings by the European Court of Human Rights (ECtHR). The ECtHR found a blanket prohibition was disproportionate and thus violated the European Convention on Human Rights.²³
- **Canada:** Currently, all prisoners are eligible to vote. In 2002, the Supreme Court of Canada found that any prohibition on prisoners voting was unconstitutional as it was an unreasonable limit on the right to vote. The Court held that such a prohibition could not be demonstrably justified in a free and democratic society.²⁴ This lifted a partial prohibition allowing persons serving prison sentences of less than two years to vote federally.²⁵ It also lifted all restrictions on prisoner voting at the provincial level.
- **Europe:** Across Europe, there are no prohibitions on prisoner voting in 22 countries;²⁶ limited and targeted prohibitions in 14 countries;²⁷ and complete prohibitions in 7 countries.²⁸ Several prohibitions on prisoners from voting have been lifted as a result of recent European Court of Human Rights rulings.

2.4 Are there any constraints on the scope for decision making?

Suspended roll constraints

A suspended roll would be a new roll type. Creating a new roll type would be complex, both for the Commission to implement and in terms of the legislative change required. This option would require establishing new functionality in the Commission's ICT systems and data sharing agreements between the Commission and Corrections. The necessary legislative amendments for a suspended roll could be made prior to the 2020 election but, because of the new ICT functionality required, it could not be implemented prior to the 2020 election.

Electoral Amendment Bill

There is currently an Electoral Amendment Bill already before the Justice Select Committee. This aims to increase the ease of enrolment and voting, including introducing election day enrolment. Prisoner voting changes are not within the scope of this current Bill. A separate standalone amendment Bill would be needed, if law changes are to be progressed.

20 N General Assembly, United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295, article 5.

21 The Commonwealth Franchise Act 1902 prohibited persons serving prison sentences of one year or longer from voting. This qualification was relaxed in 1983, and then 1995, to limit the prohibition to persons serving prison sentences of five years or longer.

22 *Roach v Electoral Commissioner* [2007] HCA 43.

23 *Hirst v the United Kingdom (No 2)* (2006) 42 EHHR 41 (ECHR).

24 Article 1 of the Charter allows Charter rights to be subject to "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Section 5 of the NZBORA is based on this.

25 Prisoners had been prohibited from voting since 1898. The Canadian Charter of Rights and Freedoms, which came into effect in 1982, enshrined the right to vote, which resulted in legal challenges on the prohibition.

26 Austria, Albania, Croatia, Cyprus, Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Macedonia, Moldova, Monaco, Montenegro, Netherlands, Norway, Serbia, Slovenia, Spain, Sweden, Switzerland and Ukraine

27 Belgium, Bosnia and Herzegovina, France, Germany, Greece, Iceland, Italy, Luxembourg, Malta, Norway, Poland, Portugal, Romania and Slovakia

28 Armenia, Bulgaria, Estonia, Georgia, Hungary, Russia and the United Kingdom.

2.5 What do stakeholders think?

Views on the 2010 law changes

The overwhelming majority of submitters at the Select Committee stage opposed the 2010 Bill. Of the 55 written submissions on the Bill, 51 people opposed the Bill outright.²⁹

- 36 submitters believed the Bill breached NZBORA and could not be justified.³⁰ 28 submitters also believed it was contrary to international human rights obligations.
- 30 submitters were concerned that disqualifying all convicted prisoners is an arbitrary ban that is disproportionate to the seriousness of the crime(s) committed.³¹
- 23 submitters submitted that disqualifying prisoners from voting does not fit with rehabilitation and preparing prisoners to reintegrate back into the community.³²

Two submitters explicitly supported the Bill; one of whom was Paul Quinn, the Bill's sponsor. These submitters argued the disqualification of all prisoners is appropriate because prison is reserved for either the more serious offences or repeat offenders.³³ They also argued that losing the right to vote upon going to prison is consistent with the loss of other rights.³⁴

Electoral Amendment Bill submissions

The Electoral Amendment Bill is before Select Committee. 23 submitters supported repealing the current disqualification. This included the Human Rights Commission which stated that "the right to vote is arguably the most important civic right in a free and democratic society".

Howard League Petition

In May 2019, the Howard League presented a petition to Parliament, asking for the prisoner voting disqualification to be removed. Over 2,000 people signed this petition; more than half of these signatories were prisoners.

Waitangi Tribunal Report

There were nine claimants in the inquiry. One of the claimants took the claim on behalf of Māori prisoners and Māori generally. The claimants argued that:

- the right to register as an elector, to exercise a vote, and to exercise the Māori electoral option are fundamental rights guaranteed both as a citizenship right granted under article 3, and as an expression of tino rangatiratanga granted under article 2³⁵
- any limitation on the ability for Māori to register to vote, to exercise their vote, or, to exercise the Māori electoral option is a breach of those rights guaranteed to them
- because Māori are disproportionately imprisoned they are disproportionately affected by the loss of prisoner voting rights, impacting on both individuals and the community

²⁹ Department of Corrections, *Electoral (Disqualification of Convicted Prisoners) Amendment Bill Departmental Report for the Law and Order Committee* 16 August 2010 at [2].

³⁰ At [14].

³¹ At [20].

³² At [33].

³³ At [4].

³⁴ At [18].

³⁵ Waitangi Tribunal He Aha I Pērā Ai? The Māori Prisoners' Voting Report (Wai 2870, 2019) at [p7].

- disenfranchising sentenced prisoners affects the Māori electoral population, which may reduce the number of Māori electoral seats
- the Crown failed to adequately consult Māori or consider the Treaty when amending the legislation that disenfranchised a significant number of Māori, and
- the legislation is a breach of the Crown's obligations and duties to actively protect the constitutional rights of Māori and should be repealed.

Cabinet Paper and Impact Statement Consultation

We have consulted with the Electoral Commission on the workability of any of the options in the Cabinet paper. The Commission has advised that a suspended roll option will require significant changes to its IT systems if option three or four is chosen.

We have also consulted with the Department of Corrections. It advised that to implement any of the options, it would need to look at communication and messaging to staff and prisoners, training for staff and equipping and resourcing the sites. Depending on the chosen option, there are potentially additional costs and operational requirements. Options three and four may require new ICT functionality and data sharing arrangements to be introduced, but these costs could be met within Corrections' baseline.

Corrections advised that Options one and two are likely to involve additional periodic costs (e.g. increased work for staff, support to assist prisoners with literacy issues to complete forms). Further work would be required to quantify these costs. If additional costs are required, Corrections may seek funding to address them as part of future cost pressure funding bids.

We have also consulted Treasury and Crown Law. The Ministry of Justice has not been able to consult other stakeholders as we have prioritised working within timeframes that would enable a change for the 2020 general election. If Cabinet agrees to any option, the public will be able to engage at the Select Committee stage of the Bill. If Cabinet chooses a suspended roll option, then we will undertake targeted consultation with Māori on the detail of how this option could work in practice.

Section 3: Options identification

3.1 What options are available to address the problem?

Status quo

Currently s 80(d) of the Act disqualifies all prisoners who are sentenced to a period of imprisonment from voting. This excludes some groups of prisoners, such as prisoners on remand.

The Electoral Commission is already taking non-regulatory steps to improve procedures for re-enrolling prisoners. The Commission liaises with Corrections to ensure Corrections Officers can provide prisoners with enrolment information as part of the release process. The Tribunal acknowledged these efforts but also found that they were not enough to overcome the effects of removing prisoners from the electoral roll.

The status quo, as discussed in section 2.3, is inconsistent with fundamental democratic values. It is inconsistent with NZBORA, our international obligations, and breaches the Treaty of Waitangi in several respects.

Option 1: remove any disqualification for sentenced prisoners from voting

This option would allow all sentenced prisoners to vote when they are in prison. Under this option, complete repeal of s 80(d) of the Act is required.

The Ministry of Justice considers this the best option as it is consistent with NZBORA, New Zealand's international human rights obligations and the Crown's treaty obligations. It also best recognises fundamental democratic values as it respects a person's right to vote and encourages electoral participation.

Option 2: allow prisoners that received a sentence of less than three years to vote

This option would allow sentenced prisoners to be able to vote when they are in prison if they have been sentenced to prison for less than three years. An amendment to the disqualification s 80(d) of the Act is required to allow the Electoral Commission to provide these services to eligible prisoners. This would take the law back to the pre-2010 status quo. If a Māori person is in prison while the Māori Electoral Option is held and is serving a sentence of three years or more, under this option they would not be able to switch rolls.

This option is less inconsistent with NZBORA than the status quo. The rationale for a three-year disqualification could potentially be a justifiable limit on electoral rights. At the time it was enacted in 1993, the then Solicitor-General considered the three-year threshold to be a justified limit on the right to vote in section 12 of NZBORA. The Attorney-General did not present a section 7 report drawing the House's attention to any NZBORA compliance issues. As noted above, the High Court has also indicated that this option may be justifiable in a free and democratic society. However, the position internationally is not clear (discussed above).

This option would be inconsistent with the Treaty of Waitangi. The evidence presented at the Waitangi Tribunal shows Māori would still be 2.1 times more likely to be removed from the roll compared to non-Māori as a result of receiving a prison sentence. The Waitangi Tribunal has stated that it doesn't recommend returning to a 3 year ban, as Māori would still be disproportionately affected. This would be inconsistent with the principle of active protection and protecting the right for Māori to exercise tino rangatiratanga collectively or individually. However, this option would be a significant mitigation on the effect of a disqualification as compared to the status quo. It would also allow a significant population of Māori prisoners to exercise tino rangatiratanga compared to the status quo.

Option 3: Change the law to suspend prisoners' enrolment, while retaining the ban on prisoner voting

Rather than changing who is disqualified from voting, the law could be changed to attempt to address the problem of released prisoners not re-enrolling on release. There are different ways this could be done, but all would require changes to the Act.

Option 3A: creating a suspended roll

This option would create a new suspended roll. When a person receives a sentence of imprisonment, Corrections would notify the Electoral Commission. The Commission would then suspend their enrolment by placing them on this new roll. Corrections would then advise the Commission of their release, and the Commission would lift the suspension, so the person would immediately be able to vote on release. Prisoners who are not currently enrolled could also elect to be placed on the suspended roll while in prison. Māori prisoners could still participate in the Māori Electoral Option.

This option does not address the Treaty of Waitangi breaches found by the Waitangi Tribunal. It also would not address the inconsistency with section 12 of NZBORA regarding electoral rights. However, this option would attempt to address one of the problems identified by the Tribunal. This is that, in practice, the disqualification of sentenced prisoners from voting is operating as a permanent rather than a temporary ban.

This option would be a practical way for the government to assist prisoners to engage or re-engage with the democratic process on release. However, it is not a complete solution. Not being able to vote while in prison could still affect a prisoner's long term civic engagement. Also, if the Electoral Commission never receives an up to date address when a prisoner leaves prison, an individual may eventually be placed on the dormant roll and later removed from the roll. Former prisoners are more likely to move address frequently, particularly when first released.

Creating a new roll type would be relatively complex, both in terms of drafting the legislative change and for the Electoral Commission to implement. Some details would still need to be worked through, such as who would have access to the suspended roll, the necessary information sharing between Corrections and the Electoral Commission and amending the Māori Electoral Option and Māori electoral population calculations as necessary.

The Commission has advised that this option will have significant system implications for the Commission's enrolment management system because it will affect access to roll information, party and candidate extracts, extracts for research, interaction with the dormant roll, look-up functions, business rules regarding eligibility to exercise the Māori Electoral Option, need for changes to automated correspondence, potential exceptions to the one-month rule, among other things. Further exceptions to business rules within the Electoral Commission's internal ICT system may be needed, for example, to deal with sensitive releases and a stand-down period to enable a person sufficient time to consider whether they need to go on the unpublished roll before details are added to the public roll.

Option 3B: changing the law to re-enrol prisoners on release

An alternative option would be to continue to remove prisoners from the roll when they enter prison but automatically re-enrol them when they are released. Corrections would be

empowered to share information on released prisoners with the Electoral Commission and the Commission would place those prisoners back on the roll. They would be placed back on the roll at whatever address the Electoral Commission had for them before they went into prison, unless the prisoner provides an updated address.

Automatically including a person's name, residential address and occupation on the publicly available roll on release could raise additional risks to both the released prisoner and people living at the relevant address. Additional provisions may need to be made to deal with sensitive releases and a stand-down period to enable a person sufficient time to consider whether they need to go on the unpublished roll before details are added to the public roll.

This option does lack many of the advantages of a suspended roll (eg, a prisoner would not be able to participate in the Māori Electoral Option under this option) but would still be an improvement on the status quo.

Option 4: Both option 2 and option 3

This option would include

- prisoners serving sentences of less than three years can enrol and vote (the pre-2010 law), and
- other prisoners are placed on a suspended roll while in prison or automatically re-enrolled when they leave prison.

This option would both lessen the disproportionate impact on Māori and make the current ban on sentenced prisoners from voting more temporary in nature. It would better align with fundamental democratic values as it would allow far more prisoners to exercise their right to vote. However, the same issues around implementation complexity and Treaty consistency would as discussed for option three would still apply.

3.2 What criteria, in addition to monetary costs and benefits, have been used to assess the likely impacts of the options under consideration?

Criteria

An overarching principle of New Zealand's electoral system is that voting should be as easy and freely accessible as possible to ensure maximum enfranchisement. Voter participation is a vital part of a healthy democracy. We consider part of encouraging participation is providing a simple, coherent enrolment experience with high integrity. Unreasonable rules and operational procedures that are a barrier to participation have a serious effect on the democratic rights of all New Zealanders.

The law in this area also has an effect on our wider democratic values. Our law should be consistent with our democratic values, including our rights under instruments such as NZBORA and the International Covenant on Civil and Political Rights. These instruments protect and promote human rights and fundamental freedoms in New Zealand.

This issue also has significant interactions with the Crown's obligations under the Treaty of Waitangi. The Treaty is New Zealand's founding document and an important source of the

constitution. It is important for our rules to honour the principles of the Treaty, and for the Crown to act in a way that respects the relationship between Māori and the Crown.

It is also important to consider the implementation and workability of any of these options. Implementation and continued operation of this work needs to be smooth and easy for all to understand and use.

Finally, it is important to consider the options' consistency with broader criminal justice principles from legislation such as the Sentencing Act 2002 and Corrections Act 2004.

With this in mind, we have used five primary criteria to analyse these options:

- **Consistency with the Treaty of Waitangi** – electoral law should reflect the Crown's Treaty obligations.
- **Consistency with fundamental democratic values** – electoral law should be consistent with our democratic values, including compliance with NZBORA and international human rights standards.
- **Fair** – electoral law and procedures should provide, and be perceived to provide, a level playing field for all electors.
- **Workability and ease of implementation** – Changes are clear and simple to implement. Rules are easy to understand for users.
- **Consistency with broader criminal justice principles** - including rehabilitation and reintegration of prisoners.

3.3 What other options have been ruled out of scope, or not considered, and why?

Allowing prisoners to enrol but not to vote

This option looked at amending the Act so prisoners remained on the electoral roll but were no longer entitled to vote. This option would mean prisoners would still be enrolled on release and eligible to vote, without taking any active steps. This option was ruled out because allowing prisoners to remain on the roll but not vote would mean a fundamental shift in how we think about the electoral roll. The function of the roll in the Act is that it determines who is eligible to vote. Any change to this function could have future, unwelcome, precedential impact. This change would also potentially be confusing for prisoners to understand (they would be told they are enrolled but not allowed to vote). It would also artificially inflate the roll by around 10,000 people, meaning voter turnout statistics are slightly less accurate or need to be adjusted taking into account data from prisons.

Different criteria for prisoner disqualification (e.g. different sentence length)

The Ministry ruled out further consideration of disqualification at different sentence lengths (ie, disqualification for prisoners sentenced to seven or two years imprisonment). A three year ban was recommended by the Royal Commission in 1986 as an appropriate level for disqualification, as the seriousness of crimes that receive a three or more year sentence "should involve a further forfeiture of some rights, such as the right to vote".³⁶ Furthermore, a three year ban was the position in place immediately before the current law.

³⁶ Royal Commission on the Electoral System *Report of the Royal Commission on the Electoral Commission: Towards a Better Democracy* (1986) at 236.

Section 4: Impact Analysis

Key: We have used a scale of **-5** to **+5** to demonstrate whether an option is worse or better than the status quo. We have chosen to do this because of the substantial variation between the options in terms of improving on the status quo.

	No action	Option 1	Option 2	Option 3	Option 4
Treaty of Waitangi	0	<p>5</p> <p>+++ Removes the disproportionate effect the current law has by allowing all prisoners to vote.</p> <p>+++ Upholds right of Māori to equitably participate in the electoral process and exercise tino rangatiratanga individually and collectively.</p> <p>+++ Reflects the Crown's obligations to reduce inequity between Māori and non-Māori and actively protect Māori interests.</p>	<p>2.5</p> <p>++ Greatly mitigates the disproportionate effect the current law has.</p> <p>++ Upholds right of Māori to participate in electoral process. Greater proportion of Māori in prison can exercise tino rangatiratanga. Actively protects right to vote for larger group.</p> <p>- Although Māori population as a group would proportionately be better off, still has a significant disproportionate effect on Māori.</p>	<p>1.5</p> <p>+ As discussed above, the current law acts as a permanent disenfranchisement. Automatic re-enrolment/suspension of enrolment removes the current barrier of re-enrolment and makes it easier for Māori to exercise right to vote. This supports equity.</p> <p>-- Does not recognise tino rangatiratanga of Māori who are in prison. Does not uphold the right of Māori to equitably participate while in prison.</p>	<p>3</p> <p>++ Same benefits as previous two options; it greatly mitigates the disproportionate effect the current law has, recognises right to tino rangatiratanga and actively protects the right to vote for a larger group of Māori that are in prison. Removes the current barrier of re-enrolment. This makes it easier for Māori to exercise right to vote and supports equity.</p> <p>- However, a three year disqualification option may not be consistent with the Treaty (refer option 2).</p>
Consistency with fundamental democratic values	0	<p>5</p> <p>+++ Most consistent with NZBORA as it removes the possibility of the law being discriminatory on the basis of race and upholds electoral rights.</p> <p>+++ Enables Māori prisoners to engage in the Māori Electoral Option.</p> <p>+++ Allows all prisoners to be involved in electoral practices. This will help prisoners to create or continue their voting habit.</p>	<p>2.5</p> <p>++ Less inconsistent with NZBORA as it is arguably a more justifiable limit on New Zealanders' electoral rights</p> <p>++ A larger proportion of prisoners will be able to participate in electoral processes.</p>	<p>1</p> <p>+ Less inconsistent with fundamental democratic values as it attempts to address the problem of the temporary disqualification acting as a permanent ban.</p> <p>- Prisoners will not have to take an extra step to re-enrol once released, encouraging participation</p> <p>- Does not support electoral rights and still inconsistent with NZBORA.</p>	<p>3</p> <p>+++ More prisoners will be able to participate in electoral system, and those still disqualified at three years will not have to take an extra step to become re-enrolled. This partially addresses both issues identified by the Waitangi Tribunal; disenfranchisement, and the high barrier to re-enrolment.</p> <p>++ Less inconsistent with NZBORA as arguably a more justifiable limit on electoral rights.</p>
Fair	0	<p>5</p> <p>+++ Allows all prisoners to vote, levelling the playing field for imprisoned and non-imprisoned people and between imprisoned and otherwise sentenced people.</p> <p>+++ Removes the disproportionate impact of the disqualification between Māori and non-Māori.</p>	<p>2.5</p> <p>++ Allows a more even playing field by giving the right to vote to more people. However, still disqualifies a number of prisoners, arguably making an arbitrary distinction. Depending on start or length of sentence, the ban may disenfranchise people unequally.</p>	<p>1</p> <p>+ Exercising voting rights once released is the same as those who haven't – no longer have to take an 'extra step' and re-enrol as person will not be struck off the electoral roll once sentenced to a term of imprisonment.</p>	<p>3</p> <p>++ Allows a more even playing field by allowing more people to vote. Also makes it much easier for those sentenced to a period of three years or more to vote once released from prison.</p>
Consistency with criminal justice principles	0	<p>4</p> <p>++ More consistent rehabilitation of offenders and their reintegration into the community.</p>	<p>2</p> <p>+ Somewhat more consistent rehabilitation of offenders and their reintegration into the community.</p>	<p>1</p> <p>+ Is not inconsistent with broader criminal justice principles.</p>	<p>2</p> <p>+ Somewhat more consistent rehabilitation of offenders and their reintegration into the community.</p>
Workability	0	<p>5</p> <p>+++ Repeal of section 80(d) would be required to remove the disqualification. This is a simple change. Regarding ongoing implementation, the Commission would be required to provide greater voting services in prisons (they currently provide voting services to on remand prisoners) but would be simple to implement.</p>	<p>4</p> <p>++Amendment of section 80(d) would be required. This is a simple change. It could also require some legislative change to allow data sharing between the Commission and Corrections. This option would roll back the law to the pre-2010 status quo. Regarding implementation, The Commission would be required to provide greater voting services in prisons but would be relatively simple to implement.</p>	<p>-2</p> <p>--- Requires substantial legislative changes to set up a new, novel roll type. All provisions relating to rolls would need to be changed. Provisions would need to be changed to give authority for the necessary data sharing between Corrections and EC.</p> <p>--- Operationally complex. This option will have significant implications for the Commission's enrolment management system.</p>	<p>-2</p> <p>Amendment to s 80(d) of the Act would be simple change. It could also require a change to allow data sharing between the Commission and Corrections.</p> <p>--- the suspended roll option would require substantial legislative change and operation change (refer option 3).</p>
Overall assessment	0	<p>5 The best option in all respects compared to the status quo.</p>	<p>2 Better than the status quo but has some significant drawbacks with regards to its Treaty consistency.</p>	<p>1 Better than the status quo but has significant drawbacks regarding workability, BORA and Treaty consistency.</p>	<p>2.5 Better than the status quo and somewhat addresses both the issue of disenfranchisement and re-enrolment. However, has some drawbacks regarding workability, BORA and Treaty consistency.</p>

Section 5: Conclusions

5.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives and deliver the highest net benefits?

The Ministry of Justice considers removing the disqualification of prisoners from voting entirely is the best option. It is the only option that removes the significant human rights and Treaty of Waitangi issues in the current law. This option is consistent with NZBORA, our international human rights obligations and the Crown’s Treaty obligations. It would return New Zealand’s law to the position that existed in 1975 - 1977.

In his foreword to the Tribunal’s report, Judge Savage commented that the Tribunal could see no utility whatever in any restriction on prisoner voting. Possible rationales that have been suggested include punishment, deterrence, or breach of social contract. For example, the 1986 Royal Commission on the Electoral System said it had “some sympathy with the view, which we think is widely held, that punishment for a serious crime against the community may properly involve a further forfeiture of some rights such as the right to vote”.

We do not consider any of these provide a good policy rationale for disqualifying prisoners from voting. Imprisonment is the punishment, and there is no merit in also remove electoral rights. The House of Lords has said that prisoners retain all civil rights not taken away as a necessary incident of incarceration (e.g. freedom of movement, freedom of association). Removing the right to vote is an additional punishment on top of incarceration, rather than incidental to it. There is no evidence that suggests disqualifying sentenced prisoners from voting deters people from committing crimes.

Moreover, evidence in the Tribunal pointed to the negative impact of any disqualification such as on a person’s voting habits, and potentially that of their family, in the longer term. Removing the ban on prisoner voting entirely is most consistent with the criminal justice system’s focus on rehabilitation.

In light of the disproportionate impact the disqualification has had on Māori both before and after 2010, removing any form of prisoner disqualification would also be most consistent with the object of ensuring our electoral laws are, and are perceived to be, fair. It would be the best option for encouraging electoral participation, not just by prisoners but also by former prisoners and their whānau.

We therefore consider amending the Act so all prisoners can enrol, vote, and (if Māori) participate in the Māori electoral option is the best option.

5.2 Summary table of costs and benefits of the preferred approach

Option one - remove any disqualification for prisoners from voting (preferred option)

Affected parties	Comment:	Impact	Evidence certainty
Additional costs of proposed approach, compared to taking no action			
Electoral Commission	Re-enrolling prisoners and providing voting services in prisons would have an initial cost. As this falls within usual practice for the Commission and doesn't require system change the cost would be met within baseline.	Low	Medium
Corrections	There would be some additional periodic costs for Corrections – e.g. increased work for staff, support to assist prisoners with literacy issues to complete enrolment forms.	Low	Medium
Monetised Cost	Unknown	-	-
Non-monetised costs	-	Low	Medium
Expected benefits of proposed approach, compared to taking no action			
Electoral Commission	Operationally simpler on an ongoing basis as no requirement to take prisoners of the roll.	Low	High
Corrections	Operationally simpler on an ongoing basis as no requirement to inform the Electoral Commission of new prisoners.	Low	High
All prisoners	Enhanced electoral and democratic rights. Increased rehabilitation and reintegration.	High	High
Māori prisoners	Rights under Treaty of Waitangi upheld.	High	High
General public	Quality of participation is increased as more people can vote.	High	High
Monetised Benefit	-	-	-
Non-monetised benefits	-	High	High

Option two - return to the pre-2010 law

Affected parties	Comment	Impact	Evidence certainty
Additional costs of this approach, compared to taking no action			
Electoral Commission	As for option one.	Low	Medium
Corrections	Corrections would need to adapt its systems to ensure that it only informed the Electoral Commission about prisoners with a sentence of three years or more. Corrections did this pre 2010. There would be some additional periodic costs for Corrections involved with voting services in prisons – e.g. increased work for staff, support to assist prisoners with literacy issues to complete enrolment forms.	Low	Medium
Monetised Cost	-	-	-
Non-monetised costs	-	Low	Medium
Expected benefits of this approach, compared to taking no action			
Prisoners sentenced to less than three years	Enhanced electoral and democratic rights. Increased rehabilitation and reintegration.	Medium	High
Māori prisoners sentenced to less than three years	Rights under Treaty of Waitangi upheld.	Medium	High

General public	Quality of participation is increased as a wider range of people are able to vote.	Medium	High
Monetised Benefit	-	-	-
Non-monetised benefits	-	Medium	High

Option three - a ban on voting but enabling prisoners to remain enrolled

Affected parties	Comment	Impact	Evidence certainty
Additional costs of this approach, compared to taking no action			
Electoral Commission	There would be an initial cost in setting up the necessary system change and then ongoing increased administration cost. This could not be met within baseline.	\$1.5 million	Medium
Corrections	There would be an initial cost in setting up the necessary system change for a ban on voting but not enrolment for prisoners sentenced to three years or more and then ongoing increased administration cost. This cost could be met within baseline.	Low	Medium
Monetised Cost	-	\$1.5 million	Medium
Non-monetised costs	-	Low	Medium
Expected benefits of this approach, compared to taking no action			
All prisoners	Prisoners will not have to take an active step to re-enrol following release from prison. This will ensure prisoners are not disenfranchised for longer than their prison sentence.	Low	Medium
Monetised Benefit	-	-	-
Non-monetised benefits	-	Low	Medium

Option four - both options two and three above

Affected parties	Comment	Impact	Evidence certainty
Additional costs of this approach, compared to taking no action			
Electoral Commission	As for option one and two + option three	\$1.5 million	Medium
Corrections	As for option two + option three	Low	Medium
Monetised Cost	\$1.5 million	\$1.5 million	Medium
Non-monetised costs	-	Low	Medium
Expected benefits of this approach, compared to taking no action			
Prisoners sentenced to less than three years	Enhanced electoral and democratic rights. Increased rehabilitation and reintegration.	Medium	High
Māori prisoners sentenced to less than three years	Rights under Treaty of Waitangi upheld.	Medium	High
All prisoners	Prisoners will not have to take an active step to re-enrol following their release from prison. This will ensure prisoners are not disenfranchised for longer than their prison sentence.	Low	Medium

General public	Quality of participation is increased as a wider range of people are able to vote.	Medium	High
Monetised Benefit	-	-	-
Non-monetised benefits	-	Medium	Medium

5.3 What other impacts is this approach likely to have?

The current law compounds an already below-average rate of democratic participation by Māori. Electoral Commission statistics show Māori are already less likely to enrol to vote. People are likely to leave prison with a diminished identity as a voter, which also affects their whānau and community. The Tribunal found Māori imprisoned for their first election are less likely to form a voting habit because of the evidence it heard about the importance of voting in the first ten years a person is eligible.

Accordingly, we would expect the Ministry's preferred option to benefit electoral participation, not just by prisoners but also by former prisoners and their whānau. As noted in section 2.3, Māori are disproportionately affected by the current law, we therefore expect this option would have equity benefits for Māori voters. The other options may have some positive impact on these issues compared to the status quo, but it is less clear how significant this would be.

5.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?

The Ministry's preferred option, a removal of any disqualification of prisoners from voting, is compatible with the Government's 'Expectations for the design of regulatory systems'. The other options are mostly consistent with the expectations however, they do not support compliance with New Zealand's international human rights obligations and the Crown's Treaty of Waitangi obligations as well as option one.

Section 6: Implementation and operation

6.1 How will the new arrangements work in practice?

All options would require legislative change to the Act. The changes are unlikely to be within scope of the current Electoral Amendment Bill so a separate Bill will be required.

If the law was changed to allow some or all current prisoners to vote (option one, two or four), the Electoral Commission would work with Corrections to re-enrol those prisoners before the 2020 election. The change would need to be signalled as soon as possible and the law change completed by no later than June 2020 to allow the Electoral Commission time to enrol prisoners and plan for greater voting facilities in prisons.

If it was proposed the law be changed to have a ban on voting but not enrolment for some or all prisoners (option three or four), a suspended roll (option 3A) would be the best change in terms of operational feasibility and consistency with the rest of the electoral enrolment system. It would also allow Māori prisoners to participate in the Māori Electoral Option while in prison.

However, the implementation work (including ICT changes) required mean that a suspended roll (option 3A) could not be in place prior to the 2020 General Election. The necessary law change would be able to be progressed. A temporary law change could be made and implemented before the 2020 General Election, to enable automatic reenrolment of prisoners who leave prison (an interim version of option 3B), until a suspended roll was able to be implemented after the 2020 election.

This interim option could be implemented without any change to the Electoral Commission's ICT functionality. It would require training for Corrections staff about making sure prisoners understood the implications of automatic enrolment and the option to update their address and

Electoral Commission staff, who would be re-enrolling a person based on administrative data for the first time.

6.2 What are the implementation risks?

There is little implementation risk with either option one or option two. Both laws have been in place in the past and successfully implemented. There is some implementation risk with option three and option four as having a new kind of roll type or automatic re-enrolment would be relatively novel. However, the Electoral Commission is experienced at delivering new electoral changes. Mitigations will be worked through if this option is chosen as the more detailed policy is developed, this includes having sufficient lead in time and testing of ICT systems.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

The Electoral Commission already collects data each election on enrolment and turnout. We anticipate this data will be able to be used to capture the impact of this change and therefore new data will not need to be collected. The Electoral Commission will monitor the impact of this change.

7.2 When and how will the new arrangements be reviewed?

Aspects of the electoral system are regularly reviewed. The Electoral Commission and the Justice Committee both complete a triennial review after each general election. The public and other stakeholders have an opportunity to submit to the Justice Committee review. The Government's Response to the Justice Committee's recommendations is tabled in the House. Electoral Amendment Bills are regularly used to improve and modernise aspects of the administration of the system between elections.