

Supplementary Analysis Report – Implementing a ban on prisoner voting, and the voting rights of detained people

Decision sought	<i>This Supplementary Analysis Report provides analysis on Cabinet’s decision to disqualify all prisoners serving a prison sentence from enrolling to vote, and on the Minister’s delegated decision that people who have committed a crime but who may not be in prison on mental health grounds or due to an intellectual disability are able to vote.</i>
Agency responsible	<i>Ministry of Justice</i>
Proposing Ministers	<i>Minister of Justice</i>
Date finalised	<i>17 June 2025</i>

In April 2025, Cabinet agreed to ban all prisoners serving a prison sentence from voting in local and central elections. Currently prisoners can enrol to vote if they are serving a sentence of less than three years.

At the time Cabinet made this decision, a Regulatory Impact Statement was not available due to time constraints. It was agreed that supplementary analysis would be made available when Cabinet considers introducing the Electoral Matters Legislation Amendment Bill. This analysis is contained in Section B of this Supplementary Analysis Report (SAR).

Cabinet also agreed that the Minister would consider the voting rights of those who have committed a crime but who may not be in prison on mental health grounds or due to an intellectual disability (detained people). The Ministry has provided advice to the Minister of Justice on this issue. Under the Ministry’s and the Minister’s preferred option, all detained people will be able to vote, but will lose the right to vote if they are transferred back to prison to complete the rest of their sentence. Analysis of this decision is contained in Section C of this SAR.

Sections A and D of this SAR apply to both prisoner voting and voting rights of detained people.

Summary: Problem definition and options

What is the policy problem?

The Government is committed to placing a greater emphasis on personal responsibility and accountability, particularly for the perpetrators of serious criminal offending. This emphasis involves clearly communicating to New Zealanders, and particularly the perpetrators of crime, the notion that civic rights stem from adherence to a set of civic responsibilities. The Government's view is that prisoner voting policy settings are a poor reflection of this principle and, as such, important criminal justice objectives, such as deterrence, culpability, and punishment are poorly served.

We note that public sentiment on the issue of whether prisoners should have the right to vote and, if so, to what extent, remain strongly divided. Where some see voting as a fundamental right that should be afforded to all, others see a voting disqualification for prisoners as an appropriate response to serious or repetitive offending.

Cabinet also agreed that the Minister would consider the voting rights of those who have committed a crime but who may not be in prison on mental health grounds or due to an intellectual disability (detained people). The Act has generally treated prisoners and detained people as the same in terms of voting rights. When a full prisoner voting ban was progressed with the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 (the 2010 Act), the voting rights of detained people were not amended, resulting in some inconsistencies in the law.

What is the policy objective?

In relation to prisoner voting the Government's objective is to emphasise personal civic responsibility, alongside rights.

In relation to detained people, the policy objective is to ensure that policy settings around voter disqualification reflect the purpose of detainment (i.e. prisoners are managed within the criminal justice system, whereas detained people are managed within the health system).

What policy options have been considered, including alternatives to regulation?

In relation to prisoner voting, the only option considered at Cabinet was to amend the Electoral Act 1993 (the Act) to disqualify all prisoners serving a prison sentence from enrolling on the electoral rolls. This was the Minister's preferred option in the Cabinet paper.

While only one option on prisoner voting was considered at Cabinet, for the purposes of this SAR, the following options were considered:

- the status quo (only prisoners serving a terms of more than 3 years are disqualified);
- disqualification of all prisoners sentenced to a term of imprisonment;
- remove any disqualification for prisoners sentenced to a term of imprisonment of any length.

In relation to voting rights of detained people, the following options were considered:

- the status quo (detained people who are detained for more than 3 years are disqualified);
- all detained people are disqualified from voting, regardless of whether they have been sentenced and convicted, and their place or length of detention;
- anyone convicted and sentenced to prison is disqualified from voting, regardless of being held in a prison or a hospital/secure facility;
- those who have not been sentenced and convicted can vote, and voting rights are

retained/regained for special patients/care recipients.¹

Non-regulatory options were not considered as voter eligibility rules are set out in the Act.

What consultation has been undertaken?

We were not able to consult prior to Cabinet decisions being made, due to the timeframe for developing this proposal. When the issue of prisoner voting has been considered previously:

- the overwhelming majority of submitters (93 percent) on the 2010 Act opposed a ban on prisoner voting.²
- 78% of submissions supported the Electoral (Registration of Sentenced Prisoners) Amendment Act in 2020 (the 2020 Act), which provided voting rights to prisoners serving a prison sentence of less than 3 years (the current status quo).³ Around half of those submissions expressly supported all prisoners voting.
- The Independent Electoral Review's 2023 report recommended removing the disqualification of prisoners from the right to vote, noting that it will better uphold te Tiriti/the Treaty.⁴

The Ministry consulted with core agencies prior to the Minister's decision relating to the voting rights of detained people. In relation to prisoner voting, we consulted with core agencies on the workability and ease of implementation when preparing this SAR.

Is the preferred option in the Cabinet paper the same as preferred option in the SAR?

No. The Ministry's preferred option is to remove all disqualifications on prisoners being able to vote (with the exception of anyone sentenced for a corrupt practice under the Electoral Act, for electoral interference).

Summary: Ban all prisoner voting (Cabinet paper option)

Costs (Core information)

There may be some additional upfront direct costs for the Electoral Commission, Department of Corrections and the Ministry of Health to implement the Cabinet decision, but these costs are not anticipated to be material.

A ban on prisoner voting is likely to be found to be inconsistent with the New Zealand Bill of Rights Act and New Zealand's international human rights obligations. The ban also will breach the Crown's obligations under the Treaty of Waitangi.

Benefits (Core information)

Aligns with the Government's commitment to placing greater emphasis on personal responsibility and accountability, particularly for the perpetrators of serious criminal offending. Some victims of crime may feel that a ban on prisoner voting rights means that prisoners are held more accountable for their offending.

¹ Special patients refers to people who are detained in a hospital under mental health legislation, and special care recipients refers to people who are detained in a secure facility under intellectual disability legislation. For more information, on the meaning of these terms in the context of the Electoral Act 1993, see **Appendix 2**.

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

³ Ministry of Justice *Electoral (Registration of of Sentenced Prisoners) Amendment Bill – Departmental Report* (8 May 2020).

⁴ Independent Electoral Review Panel *Final Report: Our recommendations for a fairer, clearer, and more accessible electoral system* (November 2023).

Balance of benefits and costs (Core information)
Does the SAR indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?
No.

Summary: Allow all prisoners to vote (Ministry's preferred option)

Costs (Core information)
There may be some additional upfront direct costs for the Electoral Commission, Department of Corrections and the Ministry of Health to remove all disqualifications from prisoners voting. These costs are estimated to be slightly higher than the Cabinet decision, but not material.
Benefits (Core information)
Both direct and indirect benefits of alignment with broad criminal justice objectives, fairness, domestic and international human rights, democratic values and Treaty of Waitangi obligations.
Balance of benefits and costs (Core information)
Does the SAR indicate that the benefits of the Ministry's preferred option are likely to outweigh the costs?
Yes

Summary: Voting rights for detained people

Costs (Core information)
There may be some additional upfront costs for the Electoral Commission, Department of Corrections and the Ministry of Health to implement the Minister's decision, but these costs are not anticipated to be material.
Benefits (Core information)
The Minister's decision relating to detained people is more aligned with New Zealand's domestic and international human rights obligations, as they will be able to vote regardless of the length of their detention.
Balance of benefits and costs (Core information)
Does the SAR indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?
In relation to the prisoner voting ban, the benefits do not outweigh the costs. In relation to the voting rights of detained people, the benefits do outweigh the costs.

Implementation, Limitations and Constraints on Analysis

Implementation
The Electoral Commission, the Department of Corrections and the Ministry of Health will be primarily responsible for implementing the changes set out in this SAR. In feedback on the workability and ease of implementation of these changes, agencies have advised that the policy proposals set out in this SAR are workable and easy to implement, resulting in only minor operational changes. In consultation with core agencies, no major implementation risks have been identified. Some agencies have noted that the changes will result in an update to some operational processes, particularly around sending notification status changes/enrolment

information to the Electoral Commission, updating guidelines and ensuring clear communication between relevant agencies – these are unlikely to result in a substantial increase in work. There is a small risk that, in transferring to/from a hospital or secure facility, some regulated groups (i.e. prisoners and detained people) may be unsure about their enrolment status, rights, and obligations. To mitigate against this risk, the legislation will require Corrections and Health staff to provide clarity on enrolment statuses, rights and obligations, of prisoners and detained people who are transferring between their respective facilities.

Limitations and Constraints on Analysis

The Minister of Justice directed a process that did not include public consultation ahead of policy decisions at Cabinet. The Minister directed Justice officials to prepare Cabinet materials on Friday 21 March 2025, seeking approval to disqualify all sentenced prisoners from enrolling, remaining enrolled and voting. The first draft of these Cabinet materials were presented to the Minister on Monday 24 March 2025. The limited timeframes and lack of consultation to date have left some gaps in the analysis. For example time and consultation constraints have meant that officials have been unable to develop a complete picture of the scale and extent of the policy problem. Public engagement on proposals in this SAR will occur as part of the Select Committee process.

Constrained scope of options considered

In relation to prisoner voting, the time constraints and Ministerial direction has meant that only one option, a total ban on prisoner voting, was considered at Cabinet. These time and scope constraints have limited our ability to conduct in depth analysis to:

- test assumptions underpinning the problem definition and proposed response;
- investigate and understand the full range of potential unintended consequences;
- undertake consultation with affected groups, particularly prisoners, detained people and the broader public to understand their views and formulated additional policy options.

Limitations on consultation

A side effect of limited consultation has meant that we have had to rely on a range of proxies which, while not a substitute for proper policy consultation, can give some insights about what key stakeholders – including prisoners and the broader public – may think about the proposed policy. For example, in our analysis, we have drawn on some of the following sources as proxies for consultation:

- submissions made to select committees considering the 2010 and 2020 Acts;
- the Independent Electoral Review's 2023 report, *Our recommendations for a fairer, clearer, and more accessible electoral system*;
- the Waitangi Tribunal's He Aha i Pērā Ai? The Māori Prisoners' Voting Report; and
- our 2019 Regulatory Impact Statement, *Prisoner Voting*.

These sources can provide some information about stakeholder views and implications. However, as they are not a substitute for a bespoke consultation process we could have undertaken with more time, they can generally only provide insights at a high level.

Gaps in data

Finally, we note that data on the effectiveness on prisoner voting disqualification on things like deterrence, culpability and punishment is extremely limited in both an international and national context. The Ministry is not aware of any empirical research that demonstrates that prisoner voting bans are effective in deterring further offending or aiding rehabilitation and integration.

That prisoner voting has been considered many times by officials, the Courts, the Waitangi Tribunal and independent panels means that some of the implications of a prisoner voting ban can be easily mapped out. To that end, the Ministry has drawn on the 2015 High Court

declaration that the prohibition on prisoner voting is inconsistent with the right to vote in the New Zealand Bill of Rights Act 1990 (BORA) (subsequently upheld by the Court of Appeal in 2017 and the Supreme Court in 2018),⁵ the 2019 Waitangi Tribunal's *He Aha i Pērā Ai? The Māori Prisoners' Voting Report*,⁶ and the work the Ministry undertook in respect of the 2020 Electoral (Registration of Sentenced Prisoners) Amendment Act⁷ in developing our preferred option.

In conclusion, the constraints placed on the policy development process means the analysis in this RIS should be considered with a moderate degree of confidence.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager signature:

Kathy Brightwell
General Manager Civil and
Constitutional
17 June 2025



Quality Assurance Statement

Reviewing Agency: Ministry of Justice

QA rating: Partially meets

Panel Comment:

A panel within the Ministry of Justice reviewed the Supplementary Analysis Report "Implementing a ban on prisoner voting and the voting rights of detained people" on 17 June 2025.

The panel considers that the information and analysis summarised in the SAR partially meets the Quality Assurance criteria.

The SAR clearly sets out the limitation and constraints on analysis, which include short timeframes and no public consultation. The SAR notes, and the panel agrees, that these constraints have limited the ability to clearly define the size and scale of the problem. Proxies for consultation indicate that views on prisoner voting, and whether to limit prisoner voting, are strongly divided.

The panel considered that Cabinet can rely on the analysis in the SAR for decision-making. The SAR draws extensively on previous consultation on prisoner voting (though this doesn't cover voting rights for detained people). The analysis and conclusions are supported by a clear analytical framework, which includes implementation considerations.

⁵ [Taylor v Attorney-General \[2015\] NZHC 170](#); [Attorney-General v Taylor \[2017\] NZCA 215](#); [Attorney-General v Arthur William Taylor \[2018\] NZSC 104](#)

⁶ Waitangi Tribunal *He Aha i Pērā Ai? The Māori Prisoners' Voting Report* (2020).

⁷ Ministry of Justice *Prisoner Voting* (8 November 2019).

Section A: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. A core commitment of representative democracy is that all members of a society have an equal right to take part on 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.
2. The Electoral Act 1993 (the Act) sets out the voter eligibility rules. Section 74 of the Act provides that New Zealand citizens and permanent residents who are over the age of 18, are qualified to enrol, and can vote in local and general elections, and stand as candidates. Section 80 of the Act then sets out a number of grounds on which people who would otherwise be qualified to enrol, may be disqualified. This includes, *inter alia*:
 - prisoners serving a sentence of more than three years;
 - those who have committed a crime but detained in a hospital or secure facility on mental health grounds or because of an intellectual disability (“detained people”) for three or more years; and
 - a person whose name is on the Corrupt Practices List, having been convicted of an electoral offence under the Act (whether sentenced to a term of imprisonment or not).

Prisoner voting rights have changed several times in recent years

3. The disqualification of sentenced prisoners has changed several times since the Act came into force in 1993. The Act originally banned prisoners from voting if they were serving a sentence of more than three years.
4. The 2010 Act imposed a blanket ban on all sentenced prisoners. However, this Act did not make changes to the voting rights of detained people, who continued to be able to vote if detained for a period of three years or less.
5. The blanket ban was subsequently lifted by the 2020 Act, which returned to the position that only those sentenced to prison for three years or more are banned from voting.
6. There were a number of challenges to the blanket ban:
 - 6.1. A report under section 7 of BORA was presented by the then Attorney-General when the 2010 Act was introduced, which noted that the complete disqualification of all prisoners was inconsistent with BORA.⁸ This report also noted the inconsistency with voting rights of detained people;
 - 6.2. In 2018 the Supreme Court upheld a Declaration of Inconsistency with BORA in response to proceedings from then prisoner Arthur Taylor;⁹
 - 6.3. In 2019 the Waitangi Tribunal found that the prisoner voting ban was inconsistent with the purpose of the corrections system and constituted a serious breach of the Treaty of Waitangi. The Tribunal also criticised the process by which the 2010 Act was passed, finding that the Crown had failed to consult Māori and failed to

⁸ 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).

⁹ Taylor v Attorney General [2018] NZSC 104 at [71]

provide sufficient information to the Select Committee about consistency with the Treaty.¹⁰

How is the status quo expected to develop if no action is taken?

7. All prisoners over the age of 18 sentenced to a term of imprisonment of three years or more will continue to be unable to vote.
8. As at 31 March 2025, there were 5,942 offenders in prison who were serving a prison sentence. As at 28 March, 2025, 2,107 prisoners were serving a term of imprisonment for under three years, constituting 0.049% of the total voting population. This does not include prisoners on remand.
9. Corrections data shows that in 2024, 85 percent (5,756) of adult offenders receiving prison sentences had sentences of under 3 years compared with 1,026 receiving sentences of 3 years or more. Full details on numbers of offenders by offence division and maximum penalty are provided in **Appendix 1**.
10. The status quo will continue to have a disproportional impact on Māori than non-Māori. For example, while Māori make up approximately 17.5 percent of the general population, 49 percent of adults receiving a prison sentence of 3 years or more are Māori. Of the adult women sentenced to a term of imprisonment of more than 3 years, Māori account for 65 percent.
11. Māori make up 53.4 percent of special patients. Between 1 July 2022 and 30 June 2023, the total number of special patients was 461.¹¹ Special patients detained in a hospital were over six times more likely to be male (86.6%) than female (13.4%). The most common age groups were 25-29 and 30-34 years.

Are there any previous government decisions, legislation, or Regulatory Impact Statements (RIS) in this area that are relevant to this problem?

12. The Ministry of Justice previously prepared a RIS in 2019 (the 2019 RIS) for the 2020 Act.¹² As the Ministry's analysis and approach to prisoner voting rights is largely unchanged since 2020, this SAR draws extensively on the 2019 RIS.

What is the policy problem or opportunity?

Prisoner voting

13. We note that time constraints have meant that we have not had an opportunity to undertake public consultation to develop an understanding of the full scale of the policy problem. This has meant that we have had to rely on a range of proxies which, while not a substitute for proper policy consultation, can give some insights about what key stakeholders – including prisoners and the broader public – may think about the proposed policy. Stakeholder views are discussed in paragraphs 27-37, below.
14. The proposed prisoner voting disqualification stems from the Government's commitment to placing greater emphasis on personal responsibility and accountability, particularly for the perpetrators of serious criminal offending.

¹⁰ Waitangi Tribunal *He Aha i Pērā Ai? The Māori Prisoners' Voting Report* (2020).

¹¹ Ministry of Health *Office of the Director of Mental Health and Addiction Services: Regulatory Report 1 July 2022 to 30 June 2023* (13 February 2025).

¹² Ministry of Justice *Prisoner Voting* (8 November 2019).

15. In its 2023 report, the Independent Electoral Review noted that public views on prisoner voting can be strongly divided. Some argue that democratic participation is premised on upholding certain responsibilities (i.e. respect for the rule of law) in exchange for certain rights (i.e. voting) whereas others support easing or entirely removing prisoner voting disqualifications.¹³
16. The Government's position is that prisoner voting settings under the status quo do not adequately reflect the balance that must be struck between New Zealanders' civic responsibilities, respect for the rule of law, and the integrity of the electoral system. As such, the Government's view is that a sentence of a term of imprisonment for any length is reflective of a serious level of offending in need of an appropriate response that adequately balances New Zealander's rights and responsibilities in our democracy.

Voting rights of detained people

17. Cabinet has delegated authority to the Minister of Justice to report back to Cabinet on whether detained people should also be disqualified from voting.
18. The Act has generally treated prisoners and detained people as the same in terms of their voting rights. Before 2010, and currently, this means that prisoners sentenced to more than three years are disqualified from voting, as are detained people who are detained for more than three years.
19. While a full prisoner voting ban was in place between 2010 and 2020, the rules were not changed for detained people. This was noted by the then Attorney-General on the introduction of the ban in 2010. He observed that it introduced "irrational inconsistencies in the law where mentally impaired prisoners detained in a hospital or secure facility for less than three years could vote while all prisoners serving sentences less than three years in prisons would be disenfranchised".¹⁴
20. As with prisoner voting, our time constraints have meant that we have not had an opportunity to undertake public consultation to develop an understanding of the full scale of the policy problem. However, the numbers of detained people are very small. As mentioned in paragraph 11, from 1 July 2022 to 30 June 2023, the total number of special patients was 461. Special patients detained in a hospital were over six times more likely to be male (86.6%) than female (13.4%). The most common age groups were 25-29 and 30-34 years. Māori are disproportionately subject to special patient status, as they make up 53.4% of special patients.
21. The number of special care recipients is unclear as many have their orders extended by the Family Court, meaning they no longer come under section 80 of the Act. The Ministry of Health estimate this group is likely to be around 10 – 15 people.

What objectives are sought in relation to the policy problem?

Prisoner voting

22. In relation to prisoner voting, the objectives of the policy are to:
 - 22.1. Ensure the criminal justice objectives of deterrence, culpability and punishment are better reflected in New Zealand's criminal justice system; and

¹³ Independent Electoral Review Panel Final Report: Our recommendations for a fairer, clearer, and more accessible electoral system (November 2023).

¹⁴ 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).

- 22.2. Ensure that the justice system sends a clearer signal to New Zealanders on the value afforded to the rule of law, civic responsibilities, and the integrity of the electoral system.

Detained people

23. In relation to detained people, the policy objective is to ensure that policy settings around voter disqualification reflect the purpose of detainment (i.e. prisoners are managed within the criminal justice system, whereas detained people are managed within the health system).

What consultation has been undertaken?

24. No public consultation was undertaken on the proposal before Cabinet decisions were made to ban prisoner voting or before the Minister made decisions on the voting rights of detained people. However, the Electoral Matters Legislation Amendment Bill will be subject to public consultation as part of its Select Committee process.
25. While we were unable to consult specifically on this proposal, there are a number of proxies we have used to gather indicative views, including:
- 25.1. submissions made to the select committee considering the 2010 and 2020 Acts;
 - 25.2. the Independent Electoral Review's 2023 report, *Our recommendations for a fairer, clearer, and more accessible electoral system*;
 - 25.3. the Waitangi Tribunal's He Aha i Pērā Ai? The Māori Prisoners' Voting Report; and
 - 25.4. our 2019 Regulatory Impact Statement, Prisoner Voting.
26. With more time, we would have consulted with a wider range of stakeholders, including Māori, prison advocacy groups, and human rights organisations. Where relevant, we have sought to incorporate the views referenced below in our assessment of options related to prisoner voting.

What do stakeholders think?

Views on the 2010 law changes

27. 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 it outright.¹⁵ Key themes from submitters opposed to the 2010 Act are as follows:
- 27.1. 36 submitters believed the Bill breached BORA and could not be justified.¹⁶ 28 submitters also believed that the 2010 Act was contrary to international human rights obligations.¹⁷
 - 27.2. 30 submitters were concerned that disqualifying all convicted prisoners was an arbitrary ban that is disproportionate to the seriousness of the crime(s) committed.¹⁸

¹⁵ Department of Corrections *Electoral (Disqualification of Convicted Prisoners) Amendment Bill – Departmental Report for the Law and Order Committee* (16 August 2010).

¹⁶ At [6]

¹⁷ At [7]

¹⁸ At [6]

27.3. 23 submitters argued that disqualifying prisoners from voting does not fit with rehabilitation and preparing prisoners to reintegrate back into the community.¹⁹

28. Two submitters explicitly supported the Bill, one of whom was the Bill's sponsor. These submitters argued that the disqualification of all prisoners is appropriate because prison is reserved for either the more serious offenders or repeat offenders.²⁰ They argued that losing the right to vote upon going to prison is consistent with the loss of other rights.

Views on the 2020 law changes

29. When prisoner voting settings were changed to the current status quo with the progression of the 2020 Act, similar themes were raised both in support and opposition to prisoner voting. The Justice Committee received 2,578 written submissions. Of those submissions, 2,020 (78%) submitters supported the 2020 Act and 538 (21%) did not support the Bill. 20 submitters had an unclear position.

30. Over 60 submissions on the 2020 Act mentioned the impact of prisoners having voting rights on victims of crime. These submitters argued that giving prisoners the right to vote diminishes the experiences of victims and does not reflect the serious impacts of prisoners' crimes on victims. That prisoners retain voting rights, these submissions argued, is hurtful to victims.

Independent Electoral Review

31. In 2023, the Independent Electoral Review Panel (the Panel) delivered its final report which, among other things, considered the issue of prisoner voting in its public consultation. As mentioned above, views on prisoner voting across New Zealand remain strongly divided. The Report noted many similar themes in favour of and in opposition to, a prisoner voting disqualification. Where some suggested the status quo is appropriate, others supported a total removal of any disqualification for prisoner voting rights. Others suggested that the disqualification should go further and apply to people serving sentences of home detention as well.

32. The Panel formulated the view that all prisoners should have the right to vote, noting that voting is an inherent right that should not be removed without strong justification. The Panel considered a prisoner voting disqualification is unfair as people can receive differential sentences for the same, or very similar, crimes. The Report also noted concerns with inconsistencies with human rights, and the Treaty of Waitangi, particularly as prisoner voting bans have a disproportionate impact on Māori prisoners in particular. The Panel recommended granting all prisoners the right to vote.

33. Although the Panel did not make any recommendations on detained people, it noted the importance of people detained in hospitals and secure facilities having access to ways of enrolling and voting to ensure they can exercise their voting rights.²¹ When the Panel consulted with mental health and disabled persons' organisations, staff, volunteers and peer support workers stressed the importance of being able to support people to vote and being appropriately informed about their voting rights.²²

Waitangi Tribunal Report

34. As mentioned above, in 2020, the Waitangi Tribunal's *He Aha i Pērā Ai? The Māori Prisoners' Voting Report*, found that the prisoner voting ban, as implemented by the

¹⁹ At [9]

²⁰ At [4]

²¹ Independent Electoral Review Panel at [198]

²² At [272]

2010 Act, was inconsistent with the purpose of the corrections system and constituted a serious breach of the Treaty of Waitangi.

35. 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:

- 35.1. 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 2;
- 35.2. 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;
- 35.3. because Māori are disproportionately imprisoned they are disproportionately affected by the loss of prisoner voting rights, impacting on both individuals and the community;
- 35.4. disenfranchising sentenced prisoners affected the Māori electoral population, which may reduce the number of Māori electoral seats;
- 35.5. the Crown failed to adequately consult Māori or consider the Treaty when amending the legislation that disenfranchised a significant number of Māori; and
- 35.6. the legislation was a breach of the Crown's obligations and duties to actively protect constitutional rights.

Consultation with other agencies

- 36. We have consulted with a range of core agencies – including the Electoral Commission, the Department of Corrections and the Ministry of Health – on the workability and ease of implementation of the proposals related to prisoner voting.
- 37. Our consultation with core agencies on the voting rights of detained people has informed the analysis in this SAR. Overall, core agencies are supportive of the policy proposals in this paper in relation to detained people. Agencies have advised that the changes proposed in this policy are workable and easy to implement. We discuss this further below, in the sections discussing marginal costs, benefits, and implementation.

Section B: Assessing options to address the policy problem in relation to prisoner voting

What criteria will be used to compare options to the status quo?

38. As our position on prisoner voting has not changed, we are using very similar criteria as outlined in the 2019 RIS:
- 38.1. *Consistency with broader criminal justice objectives* – including rehabilitation, reintegration, deterrence, culpability and punishment.
 - 38.2. *Fair* – electoral law and procedures should provide, and be perceived to provide, a level playing field for all electors.
 - 38.3. *Consistency with fundamental democratic values* – electoral law should be consistent with our democratic values and promote electoral participation, including compliance with BORA and international human rights standards.
 - 38.4. *Consistency with the Treaty of Waitangi/te Tiriti o Waitangi* - actively protects Māori citizenship rights, including rights to political representation, and does not disproportionately affect Māori.
 - 38.5. *Workability and ease of implementation* – changes are clear and simple to implement. Rules are easy to understand for users.
39. In relation to criterion 1, consistency with broader criminal justice objectives, we note that occasionally objectives of justice, such as rehabilitation and punishment, can be in conflict. For this reason, given that the Government has signalled a greater emphasis on individual responsibility, accountability and messaging around the respect for the rule of law, we have weighted the principles of deterrence, culpability and punishment more heavily in our assessment of this criterion. However, we have still considered other objectives of justice, including rehabilitation and reintegration in our assessment of options.

What options are assessed in this SAR?

40. The only option considered by Cabinet was a total ban of prisoner voting (option 2). However, for the purpose of this SAR, this option was considered alongside the status quo (option 1) and the Ministry's preferred option (option 3 – removal of any disqualification for prisoners sentenced to a term of imprisonment of any length).

Option One – Prisoners sentenced to a term of three years or more are disqualified (status quo)

41. As outlined in Section A, the status quo is that prisoners sentenced and serving a term of imprisonment of less than three years will retain the ability to enrol and vote in general and local elections and be able to stand as candidates. Prisoners serving a sentence of three years or more are disqualified from voting.
42. In our assessment against the criteria in our 2019 RIS, the Ministry assessed that disqualifying prisoners sentenced to a term of three years or more from voting, when compared to a total ban:
- 42.1. is more consistent with the principles of rehabilitation and reintegration;
 - 42.2. will result in fairer outcomes but will still continue to have a disproportionate impact on Māori;

- 42.3. is more consistent with fundamental democratic values, including the Crown's obligations under the New Zealand Bill of Rights Act and some of our international human rights commitments;
- 42.4. is more consistent with the Crown's obligations under the Treaty of Waitangi, but still results in a disproportionate impact on Māori; and
- 42.5. results in slightly different, yet ultimately similar challenges in workability and ease of implementation.

Stakeholder views

- 43. We note that this option aligns with some stakeholders who – when prisoner voting has been raised previously – have argued that a prisoner voting disqualification for those serving sentences of three years or more is an appropriate limitation on voting rights and is proportionate to the serious level of offending. This view was shared in relation to both the 2010 and 2020 Acts and the Independent Electoral Review's 2023 report.

Option Two – Disqualify all prisoners sentenced to a term of imprisonment

- 44. Under this option, all prisoners sentenced and serving a term of imprisonment of any length are disqualified from voting. Those who are not serving a term of imprisonment, for example those on remand and home detention, will continue to be able to vote.

Consistency with broader criminal justice objectives

- 45. On the face of it, this option appears to align more with the Government's stated objective of placing a more concerted emphasis on personal responsibility and accountability. To the extent that the removal of the right to vote communicates the Government's view that civic participation rests on adherence to certain responsibilities, such as respect for the rule of law, this option emphasises some of the functions of denouncement, punishment and deterrence.
- 46. We note that New Zealand-specific research on prisoner voting and its application in a criminal justice context is limited. However, the Ministry is not aware of any compelling empirical evidence that shows the removal of prisoner voting rights is effective in deterring criminal offending, improving rehabilitation or improving prisoner experiences of reintegration.
- 47. In addition we consider that voting disqualification does not usefully contribute to reintegration, rehabilitation, deterring offending, or helping victims feel safer. Removing the right to vote is arguably an additional punishment, on top of incarceration. In his forward to the Waitangi Tribunal's prisoner voting report, Judge Savage's comment noted that the Tribunal could see no utility whatever in any restriction on prisoner voting.²³

Fairness

- 48. Electoral fairness, and the perception of electoral fairness, is critical to a well-functioning advanced liberal democracy. This option provides a level playing field for everyone serving a prison sentence, in that they will all be treated the same and be unable to vote.
- 49. However, this option creates unfairness because those sentenced but not serving a prison sentence, for example those on home detention, will be able to vote. This

²³ Waitangi Tribunal *He Aha i Pērā Ai? The Māori Prisoners' Voting Report* (2020).

discrepancy does not occur under the current rules, because the maximum sentence for home detention is 12 months.

Consistency with fundamental democratic values

50. The removal of core democratic rights in a modern representative democracy risks undermining public trust in New Zealand's system of democracy and the principle of equal participation.
51. A complete prisoner voting ban is inconsistent with section 12 of BORA, as noted by the then Attorney-General in his report on the 2010 Act. The inconsistency could not be justified because:
 - 51.1. the objective of the Act/Bill (serious offenders forfeiting their right to 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;
 - 51.2. 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
 - 51.3. the restriction on the right to vote was not minimal.²⁴
52. The Courts have adopted similar reasoning in *Taylor v Attorney General*. In 2013, then-prisoner Arthur Taylor commenced court proceedings, along with four others, and sought a formal declaration that the prohibition was inconsistent with the right to vote in BORA. The Court agreed, and a declaration of inconsistency was issued by the High Court in 2015, and upheld by the Court of Appeal in 2017 and the Supreme Court in 2018.
53. In addition, the data on the extent of the disproportionate impact on Māori identified during the Waitangi Tribunal proceedings could support the view that the law is also inconsistent with the right to be free from discrimination on the basis of race, national or ethnic origin, as affirmed in the Human Rights Act and BORA. It may therefore engage section 19(1) of BORA, and if so, may not be justifiable under section 5.
54. A prisoner voting ban is also inconsistent with 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 communicated its View that a blanket prisoner voting ban breached Article 25 in November 2023. The Government Response was provided in 2024, which noted that while the blanket ban had been replaced with a partial ban by the 2020 Act, the targeted disqualification was justified.²⁵
55. A voting ban may also be inconsistent with New Zealand's:
 - 55.1. 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 racial discrimination and to guarantee political rights, especially electoral rights;
 - 55.2. Support for the *Declaration on the Rights of Indigenous Peoples* - which states that Indigenous peoples have the right to maintain and strengthen their distinct political institutions, while retaining their right to participate fully in the political life of the State; and

²⁴ 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).

²⁵ [International Covenant on Civil & Political Rights | New Zealand Ministry of Justice](#)

- 55.3. Obligations under Article 29 of the *United Nations Convention on the Rights of Persons with Disabilities* (which also relates to the right to vote) – due to its disproportionate impact on disabled people. Data from the 2023 Census showed that disabled people were overrepresented in the prison populations.²⁶

Consistency with the Treaty of Waitangi/te Tiriti o Waitangi

56. In its 2019 report into the 2010 Act the Waitangi Tribunal identified the following Treaty principles as being relevant to its inquiry:
- 56.1. Kāwanatanga and tino rangatiratanga and, in particular, the duty of informed decision-making;
 - 56.2. Active protection; and
 - 56.3. Equity and good government.
57. It concluded that the manner in which the Crown offered support and advice to the Law and Order Select Committee failed to provide sufficient information about the specific effect of the legislation on Māori and Crown rights and obligations under the Treaty. In so doing, the Crown had failed to actively protect Māori rights and interests and failed in its duty of informed decision-making under the principle of partnership.
58. A total prisoner voting ban will disproportionately impact Māori. When adjusted for differences in populations aged 18 plus, Māori were 10.7 times more likely than non-Māori to receive a prison sentence of under 3 years. In contrast Māori were 5.7 times more likely than non-Māori to receive a prison sentence of 3 years or more (84 per 100,000 population aged 18 plus compared with 15 per 100,000 population aged 18 plus for non-Māori).
59. The data presented at the Waitangi Tribunal inquiry on the impact of the disqualification support the view that a prisoner voting ban is discriminatory against 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 before the complete disqualification in 2010 where Māori were 2.1 times more likely to be removed from the electoral roll because of a prison sentence. This indicates that Māori are being sentenced to a period of imprisonment of less than three years at a significantly higher rate than non-Māori.
60. There is considerable risk that a total ban will compound an already below-average rate of democratic participation by Māori (See Figure 3 of **Appendix 1**). Electoral Commission statistics show Māori are already less likely to enrol to vote, and turnout by voters of Māori descent, although improving, is still lower than among voters of non-Māori descent. Data also shows that under the previous ban, more Māori were removed from the electoral roll than non-Māori (see Figure 4 in **Appendix 1**).
61. We note that all of the rights and interests identified by the Tribunal remain relevant to our assessment of this option. Specifically, the lack of consultation with Māori on policy that disproportionately engages Māori prisoner voting rights risks failing in the Crown's duty of informed decision-making. Furthermore the limitation of certain electoral rights in a way that disproportionately impacts Māori is a clear limitation on the right of Māori to participate equitably in New Zealand's electoral system. In the Ministry's view, this would

²⁶ Whaikaha have advised that disabled men were 3.3 times as likely as non-disabled men to be in a prison or penal institution. Disabled Māori men were 2.3 times as likely as non-disabled Māori men, and 10.7 times as likely as all non-disabled men to be in a prison or penal institution. This equates to a rate of 124.3 per 10,000 disabled Māori men compared with 11.6 per 10,000 non-disabled men.

constitute a clear and serious breach of the Treaty of Waitangi. This has important implications for Māori and for the honour of the Crown as Treaty partners.

Workability and ease of implementation criterion

62. Reinstating a prisoner voting ban requires a simple legislative change to the Electoral Act. It would also be relatively easy to implement as there are already systems in place between the Electoral Commission and the Department of Corrections to track those entering and leaving the prison system. Corrections have noted that, as notifications would need to be sent to the Electoral Commission for all sentenced prisoners, rather than just those sentenced to a term of imprisonment for three or more years, there may be additional work for both Corrections and the Electoral Commission.

Stakeholder views

63. Option two aligns with some stakeholders who – when prisoner voting has been raised previously – have argued that a person’s loss of voting rights is consistent with a breach of civic responsibilities. Some victims may feel that prisoners having a right to vote perpetuates harm for victims or does not adequately hold prisoners accountable for offending. While this view has featured in submissions on both the 2010 and 2020 Acts and the Independent Electoral Review’s report, they generally make up a minority view. For example, in submissions on the 2020 Act, approximately 21% of submitters supported this view.

Option Three – remove any disqualification for sentenced prisoners from voting

64. This option would allow all sentenced prisoners to vote when they are in prison. We consider this option is the most aligned with BORA, New Zealand’s international human rights obligations and the Crown’s Treaty obligations. It also recognises fundamental democratic values as it respects a person’s right to vote and encourages electoral participation. This position is consistent with the Ministry’s position on the 2020 Act.
65. In our assessment against the criteria in our 2019 RIS the Ministry assessed that removing any disqualification for sentenced prisoners from voting, when compared to a total ban:
- 65.1. is more consistent with the principles of rehabilitation and reintegration;
 - 65.2. will result in fairer outcomes as it provides more consistency between imprisoned and otherwise sentenced people, and removes the disproportionate impact of any disqualification between Māori and non-Māori;
 - 65.3. is the most aligned with fundamental democratic values, including the Crown’s obligations under the New Zealand Bill of Rights Act and our international human rights commitments;
 - 65.4. is more consistent with the Crown’s obligations under the Treaty of Waitangi, and upholds the right of Māori to equitably participate in the electoral process and exercise tino rangatiratanga individually and collectively. It also better reflects the Crown’s obligations to reduce inequity between Māori and non-Māori and actively protect Māori interests; and
 - 65.5. would be simple to implement, and workable for the Electoral Commission to extend voting services to prisoners.

Stakeholder views

66. Option three is most aligned with many submitters on both the 2010 and 2020 Acts. In relation to the 2020 Act, for example, 958 submitters (47%) expressly supported the Act, but also noted that it should go further and allow all prisoners to vote.²⁷ Based on claims brought to the Waitangi Tribunal in relation to the 2010 Act, and previous litigation brought before the Supreme Court in 2018, we also expect this option to receive the most support from prisoners, and particularly Māori prisoners. In previous engagements on this issue, many stakeholders have expressed the view that the restoration of voting rights for all prisoners is most consistent with New Zealand's human rights framework, the Treaty of Waitangi, and the principles of rehabilitation and reintegration. However, some victims may feel that granting full rights to prisoners diminishes the experiences of victims and causes further harm.

How do the options compare to the status quo/counterfactual?

	Option 1: Prisoners sentenced to 3 years or more disqualified (status quo)	Option 2: All sentenced prisoners disqualified	Option 3 – No disqualifications
Broader criminal justice objectives	0 Partially emphasises personal responsibility and respect for the rule of law Allows for rehabilitation and community reintegration of some prisoners	+ Clearly emphasises personal responsibility and respect for rule of law. – Limited evidence of effectiveness with deterrence, rehabilitation and reintegration	– Less emphasis on personal responsibility and respect for the rule of law. + Allows for rehabilitation and community reintegration of all prisoners
Fairness	0 Disqualification depends on sentence length; otherwise all sentenced prisoners are treated the same	– All sentenced prisoners serving a term of imprisonment are treated the same. Prisoners serving home detention are not. + Some victims of crime may feel the loss of voting rights is a fair response for the harm they have suffered	+ All sentenced prisoners are treated the same, regardless of where serving their sentence (all are able to vote)
Democratic values	0 Disenfranchises fewer prisoners from electoral rights than a total prisoner voting ban.	– – Inconsistent with domestic and international human rights obligations	+ + Most consistent with domestic and international human rights obligations
Treaty of Waitangi	0 Actively protects voting rights for a larger group but still has a disproportionate impact on Māori.	– Breaches Crown obligations for a larger group of Māori sentenced prisoners	+ + Does not breach Crown obligations

²⁷ [Departmental Report – Electoral \(Registration of Sentenced Prisoners\) Amendment Bill at \[5\].](#)

Workability	0 Easy to continue operationalising the existing scheme.	0 More prisoners may need to be deregistered but no system changes required	+ No requirement to track and deregister disqualified sentenced prisoners
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What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

67. The Ministry's preferred option is Option 3, allowing all sentenced prisoners to enrol to vote.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the SAR?

68. No. The Minister's preferred option is Option 2, as disqualifying all prisoners from voting is aligned with the Minister's policy objectives of ensuring justice principles of deterrence, culpability and punishment are better reflected in New Zealand's justice system, while clearly signalling the value afforded to the rule of law, civic responsibilities and the integrity of the electoral system.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups – prisoners, Māori prisoners	High. The preferred option in the Cabinet paper will disenfranchise all prisoners in general, and Māori prisoners specifically. Māori prisoners will be disqualified from voting at a much higher rate than non-Māori.	High	High
Electoral Commission	Low. No real impact as no system changes required. The Electoral Commission would likely need to remove more people from the electoral roll, but this would not be administratively burdensome.	Low	High
Corrections	Low. There may be some additional periodic costs for Corrections – e.g. increased work for staff in notifying the Electoral Commission of disqualification of a higher proportion of prisoners.	Low	High
Others	High. A prisoner voting is likely to be considered inconsistent with BORA, New Zealand's international human rights obligations and the Treaty of Waitangi.	High	High
Total monetised costs	Unknown		
Non-monetised costs	High	High	High

Additional benefits of the preferred option compared to taking no action			
Regulated groups – prisoners, Māori prisoners	Low. The Ministry has not identified any benefits to prisoners.	Low, as no benefits to prisoners	High
Electoral Commission	Low. No real impact as no system changes required.	Low	High
Corrections	Low. No real impact as no system changes required.	Low	High
Others	Some victims of crime may feel that a ban on prisoner voting rights holds prisoners accountable for their offending.	Unknown	Low, based on a small proportion of anecdotal evidence given at Select Committee
Total monetised benefits	Low	Low	High
Non-monetised benefits	Low	Low	High

What are the marginal costs and benefits of the Ministry's preferred option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups – prisoners, Māori prisoners	Low. The Ministry has not identified any additional costs for prisoners.	High	High
Electoral Commission	Low. No real impact as no system changes required. The Electoral Commission would likely need to add more prisoners to the electoral roll and there may be some additional costs associated with running elections in prison.	Low	High
Corrections	Low. There may be some additional periodic costs for Corrections – e.g. providing information on voting entitlements to a higher number of voters, sending information to the Electoral Commission.	Low	High
Others	Some victims may feel that granting prisoners full voting rights diminishes the experience of victims and causes further harm.	Unknown	Low, based on anecdotal evidence
Total monetised costs	Unknown		
Non-monetised costs	Low	High	High
Additional benefits of the preferred option compared to taking no action			

Regulated groups – prisoners, Māori prisoners	High. The Ministry's preferred option would grant full electoral rights to prisoners and Māori prisoners in particular. This is likely to increase electoral participation for this group. Option is more consistent with rehabilitation of offenders and reintegration into society.	High	Medium
Electoral Commission	Medium. Change is likely to marginally increase participation among New Zealand prisoners and improve voter participation as a whole.	Medium	High
Corrections	Low. No real impact as no system changes required.	Low	High
Others	N/A	N/A	N/A
Total monetised benefits	Low	Low	High
Non-monetised benefits	Medium/High	Medium	High

Section C: Assessing options to address the policy problem in relation to detained people

What criteria will be used to compare options to the status quo?

69. We have used similar criteria to assess options relating to the voting rights of detained people as for the overall prisoner voting ban, but they have been slightly amended to reflect this specific cohort of people.
70. The policy intent for the proposals related to detained people reflects that detained people are not prisoners but are special patients or special care recipients detained under health or intellectual disability legislation, rather than criminal justice legislation. Given that the purpose of detainment in this specific context is focused on healthcare, we do not consider criterion related to emphasising criminal justice objectives is appropriate. The criteria we have used are:
- 70.1. *Effectiveness* – alignment with prisoner voting disqualification;
 - 70.2. *Consistency with fundamental democratic ideals* – consistent with our democratic values and promote electoral participation, including compliance with BORA and international human rights, particularly the rights of persons with disabilities;
 - 70.3. *Consistency with the Treaty of Waitangi* - actively protects Māori citizenship rights, including rights to political representation, and does not disproportionately affect Māori.
 - 70.4. *Workability and ease of implementation* – changes are clear and simple to implement. Rules are easy to understand for users

What options are being considered?

71. We considered the following options:

Option One – Status Quo

72. Under section 80 of the Act, people who have been detained *for more than three years* in specific circumstances are unable to vote. They can be broadly categorised into two groups:
- 72.1. People who have not been convicted and/or who have not been sentenced:
- anyone found unfit to stand trial or acquitted on account of insanity but detained under an order or direction under sections 24, 31 or 33 of the Criminal Procedure (Mentally Impaired Persons) Act 2003;
 - anyone convicted of an imprisonable offence and not sentenced, but instead ordered to be detained as a patient or care recipient; and
 - anyone detained in prison on remand, made subject to a compulsory treatment or care order, and subsequently detained in a hospital or secure facility.
- 72.2. People who have been convicted and sentenced:
- Anyone convicted of an imprisonable offence, sentenced to prison and then ordered to be detained in a hospital or secure facility;
 - Anyone detained in prison as a sentenced prisoner, and then later made subject to a compulsory treatment or care order and detained in hospital or secure facility; and
 - Anyone detained in prison as a sentenced prisoner and later transferred to a hospital for voluntary mental health treatment.
73. **Appendix 2** sets out further information on people disqualified from voting under section 80 of the Act.
74. This option is partially aligned with New Zealand’s international obligations as it recognises the right to vote for those detained for three years or less. It is not aligned with the proposed prisoner voting ban, and it disproportionately impacts Māori as Māori make up the majority of special patients as set out in paragraph 11.

Option Two – all detained people are disqualified from voting

75. Under this option, all detained people would be disqualified from voting, regardless of whether they have been sentenced and convicted, and their place or length of detention.
76. This option is administratively simple and reflects the clear position that once the right to vote has been lost because a person is detained, it is not regained until the person has been released, from either prison or from being detained (if that period is longer).
77. However, under this option people who are currently able to vote because they have been detained for less than three years will not be able to, including some who have not been convicted. This does not align with decisions to ban the vote for sentenced prisoners only, and may exacerbate the discrimination and stigma for those living with mental illness or intellectual disabilities. This option is the least aligned with BORA and international human rights conventions. It would disproportionately affect Māori who are overrepresented among this cohort of people.

Option Three – anyone convicted and sentenced cannot vote, regardless of where they are detained

78. Under this option, those who have been convicted and sentenced to prison would lose their right to vote, regardless of where they are being detained. This includes anyone:
- 78.1. convicted of an imprisonable offence, sentenced to prison and ordered to be detained in a hospital or secure facility;
 - 78.2. detained in prison as a sentenced prisoner, and subsequently made subject to a compulsory treatment or care order and detained in a hospital or secure facility; and
 - 78.3. detained in prison as a sentenced prisoner and subsequently transferred to hospital for voluntary mental health treatment.
79. Under this option, the following people would retain the right to vote regardless of the length of their detention:
- 79.1. anyone found unfit to stand trial or acquitted on account of insanity;
 - 79.2. anyone convicted of an imprisonable offence and not sentenced, but instead ordered to be detained as a special patient or special care patient; and
 - 79.3. anyone detained in prison on remand, made subject to a compulsory treatment or care order, and subsequently detained in a hospital or secure facility.
80. This option aligns more closely to Cabinet decisions relating to sentenced prisoners than option 2, as those who haven't been convicted or sentenced have different voting rights than those serving a prison sentence. It is also more aligned with BORA and international human rights conventions, as voting rights are retained for those who have not been convicted and sentenced.
81. The Ministry of Health and the Electoral Commission have advised that this option will be relatively straightforward to administer as those affected would be known at the time they are made subject to an order or sentence by the courts (rather than after a certain period of detention has passed).

Option Four –Special patients/care recipients can vote

82. Under this option, detained people are able to vote, but they will lose the right to vote if they are transferred back to prison to complete the rest of their sentence.
83. This option recognises that detained people are managed under mental health or intellectual disability legislation rather than criminal justice legislation. The purpose of their detention has changed to care, treatment and/or rehabilitation, with options for leave to support community reintegration.
84. This option is potentially more aligned with BORA and international human rights conventions than the other options, as voting rights are reinstated for special patients/care recipients. This option also has a less disproportional impact on Māori.
85. This option is the most administratively complex but not prohibitively so. While the Electoral Commission does have communication lines with the Ministry of Health, this option may increase the complexity of determining eligibility. However, the initial assessment of the Electoral Commission is that no system changes are required to implement this option.

86. The Department of Corrections would need to maintain clear lines of communication with the Ministry of Health to communicate when prisoners were moving between being detained and imprisoned. This could require repetitive work in terms of sending multiple disqualification notifications on reception/return to prison, and for the Electoral Commission who would process these notifications. The Ministry of Health, Corrections, and the Electoral Commission have advised that existing communication channels and processes around enrolment could be utilised for this purpose and that any increase in workloads will not be too onerous on implementation agencies.

How do the options compare to the status quo

	Option 1: Status quo (all 0)	Option 2: All detained persons are disqualified	Option 3: Anyone convicted cannot vote	Option 4: Detained people can vote
Effectiveness Alignment with prisoner voting disqualification	Those who have not been convicted will not be able to vote if detained for more than three years	— Those who have not been convicted will not be able to vote, regardless of detention length	— Consistent with voting ban for sentenced prisoners	— Consistent with voting ban for sentenced prisoners, recognises different purpose of detention in a hospital/secure facility
Consistency Consistent with democratic ideals	Recognises special patients/care recipients can vote if detained for less than 3 years	— — Those who have not been convicted will not be able to vote	— Does not recognise different purpose of detention in a hospital/secure facility	— — Recognises the status of special patients/care recipients and different purpose of detention in a hospital/secure facility
Treaty of Waitangi	Māori detained people can vote if detained for less than 3 years	— — Disproportional impact on Māori	— Disproportional impact on Māori, but less than option 2	— Māori special patients /care recipients can vote
implementation Practical and simple to implement.	Will require tracking of length of detention	— — Simple to administer as everyone treated the same	— — Should not require system changes. Relatively simple to administer as based on initial conviction	— Should not require systems changes, but more disqualification notifications expected on reception to health facility/return to prison

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

87. The preferred option is Option 4 as it is the most aligned with the criteria.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Regulated groups – special patients/care recipients	Low. No costs for special patients/care recipients. If special patients/care recipients are transferred back to prison, there may be some confusion with subsequent voter disqualification.	Low	High
Electoral Commission	Low. No real impact as no system changes required. The Electoral Commission would need to ensure some resource is dedicated towards opening and maintaining communication with the Ministry of Health.	Low	High
Corrections	Low. There may be some additional periodic costs for Corrections, particularly with managing people transferring to/from prison.	Low	High
Ministry of Health	Low. There may be some additional periodic costs for Health – e.g. developing guidance for staff around voting entitlements, notifying Electoral Commission when patients leave a hospital or secure facility, communicating with Corrections.	Low	High
Others	N/A		
Total monetised costs	Unknown.		
Non-monetised costs	<i>Low</i>	<i>Low</i>	<i>High</i>
Additional benefits of the preferred option compared to taking no action			
Regulated groups - special patients/care recipients	High, on-going. Extended voting rights for special patients/care recipients and increased access to electoral participation.	High	High
Electoral Commission	Medium. Change is likely to marginally increase participation among New Zealand prisoners and improve voter participation as a whole.	Low	High
Corrections	Low. No real impact as no system changes required.	Low	High
Others	N/A	N/A	N/A
Total monetised benefits	Unknown		

Non-monetised benefits	Medium/High	Medium	High
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Section D: Delivering an option

How will the proposal be implemented?

88. Decisions in this SAR are being progressed in the Electoral Matters Legislation Amendment Bill. It will be implemented by the Electoral Commission, the Ministry of Health and the Department of Corrections. All core agencies have advised that the policy proposals in this SAR are workable and easy to implement from an operational perspective.

How will the proposal be monitored, evaluated, and reviewed?

89. The Electoral Commission has internal processes to maintain the integrity of electoral rolls. Aspects of the electoral system are regularly reviewed. The 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. Amendments to the Electoral Act are regularly used to improve and modernise aspects of the administration of the system between elections.
90. Some standard measures used to monitor the health of New Zealand's electoral system could be applicable in the context of prisoner voting and the voting rights of detained people. For example, the Electoral Commission monitors data related to voter turnout and enrolment. For instance, as at 31 May 2025, 3,645,070 (88.97%) of the eligible population are enrolled on either the general or Māori roll.²⁸ Voter turnout for the 2023 General Election was 2,858,896 (77.51%) for the general population. Turnout for voters enrolled on the Māori roll was 398,770 (70.33%).
91. There is some evidence that suggests that temporary disenfranchisement can result in longer-term issues with forming voting habits. For example, in evidence given during the Waitangi Tribunal's inquiry Crown officials acknowledged that, although the 2010 ban was supposed to be a temporary suspension of voting rights, evidence suggests that prisoner voting disqualification can act as a de facto permanent suspension due to low rates of re-enrolment on release.²⁹ Although this problem is partially mitigated by section 86AB of the Act, which requires prison managers to advise prisoners of their voting rights and obligations and facilitate enrolment if the prisoner requests, upon release, there may still be some impacts on prisoner voting habits post release. Monitoring enrolment and turnout information for detained people and prisoners over the long-term may therefore provide a useful indicator of effectiveness.

²⁸ <https://elections.nz/stats-and-research/enrolment-statistics/enrolment-by-general-electorate/>

²⁹ Waitangi Tribunal *He Aha i Pērā Ai? The Māori Prisoners' Voting Report* at [8].

Appendix One

Sentenced prisoners by offence seriousness, sentence length and ethnicity

Offence seriousness and type³⁰

- 1 Offenders receiving prison sentences of 3 years or more were extremely more likely than those receiving sentences of under 3 years to have committed the most serious offences. As shown in Figure 1, in 2024:
 - 74 percent of all those receiving prison sentences of 3 years or more committed offences with at least a 14-year maximum penalty compared with only 6 percent of those receiving prison sentences of under 3 years;
 - 4 percent of all those receiving prison sentences of 3 years or more committed offences with a maximum penalty of 5 years or less compared with 57 percent of those receiving prison sentences of under 3 years; and,
 - 32 percent of all those receiving prison sentences of 3 years or more were sexual offenders, while 11 percent had committed robbery, compared only 3 percent and 2 percent respectively of those receiving prison sentences of under 3 years.
 - Of those receiving prison sentences of 3 years or more in 2024, for offences with at least a 14-year maximum penalty: 38 percent committed sexual violence offences; 19 percent committed Class A/B drugs sell/supply/manufacture/import etc. offences; 14 percent committed GBH and other very serious assaults; 13 percent committed robbery/extortion; and 9 percent committed homicides (ANZSOC divisions).
 - Of those receiving prison sentences of under 3 years in 2024, for offences with at least a 14-year maximum penalty: 38 percent committed Class A/B drugs sell/supply/manufacture/import etc. offences; 21 percent committed robbery/extortion; and 12 percent committed sexual violence offences. Percentages were less than 10 percent for all other offence types (ANZSOC divisions).

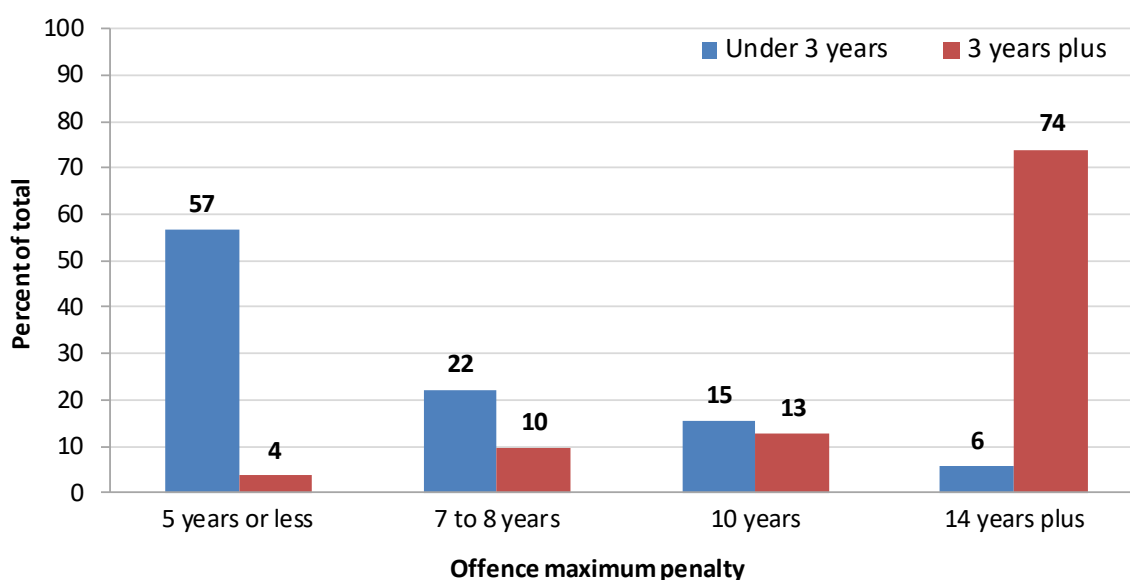


Figure 1: Percentage of offenders receiving prison sentences, by sentence length imposed and offence maximum penalty: 2024

³⁰ The data is provided from two data sources. Proportions and rates of adult offenders receiving prison sentences are compared using Tier 1 Courts data (as at March 2025), while proportions and rates of offenders currently in prison serving a sentence are compared using Corrections data (as at 28 March 2025).

1 Full details on numbers of offenders by offence division and maximum penalty are provided in Table 1.

Table 1: Number of offenders receiving prison sentences with a sentence of under 3 years, by offence (ANZSOC) division and maximum penalty: 2024

ANZSOC division	Maximum penalty					Total
	12 months or less	2 to 5 years	7 to 8 years	10 years	14 years plus	
01: Homicide and related offences		2		11	6	19
02: Acts intended to cause injury	117	931	240	25	21	1,334
03: Sexual assault and related offences		4	63	68	40	175
04: Dangerous or negligent acts endangering persons	28	25		9	3	65
05: Abduction, harassment and other offences against the person	31	23	205		22	281
06: Robbery, extortion and related offences			25	43	71	139
07: Unlawful entry with intent/burglary, break and enter		1		695	20	716
08: Theft and related offences	171	56	522			749
09: Fraud, deception and related offences	6	4	121	14		145
10: Illicit drug offences	48	4	49	10	125	236
11: Prohibited and regulated weapons and explosives offences	17	240	1	2		260
12: Property damage and environmental pollution	25	49	33	4	21	132
13: Public order offences	46	28		9	2	85
14: Traffic and vehicle regulatory offences	23	335				358
15: Offences against justice procedures, government security and government operations	533	503	21		1	1,058
16: Miscellaneous offences	3	1				4
Total	1,048	2,206	1,280	890	332	5,756

Rates of offenders receiving prison sentences by ethnicity

- 2 In 2024, Māori accounted for 64 percent of all adult offenders receiving prison sentences of under 3 years, and 49 percent of those receiving sentences of 3 years or more.
- 3 When adjusted for differences in populations aged 18 plus, Figure 2 shows that Māori were 10.7 times more likely than non-Māori to receive a prison sentence of under 3 years (623 per 100,000 population aged 18 plus compared with 58 per 100,000 population aged 18 plus for non-Māori). In contrast Māori were 5.7 times more likely than non-Māori to receive a prison sentence of 3 years or more years (84 per 100,000 population aged 18 plus compared with 15 per 100,000 population aged 18 plus for non-Māori).

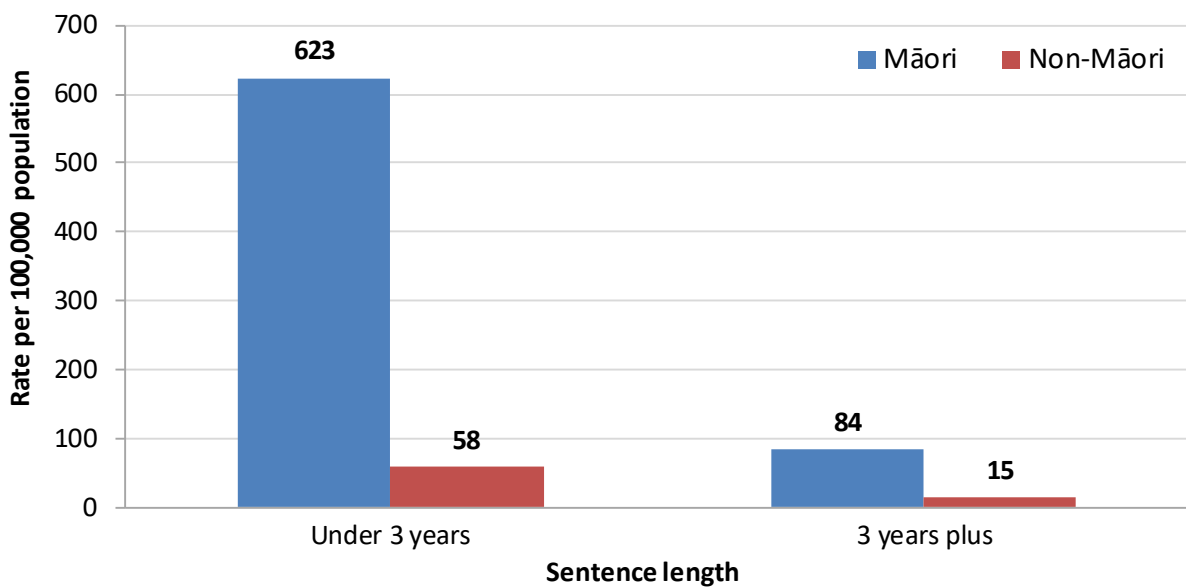


Figure 2: Number of offenders receiving prison sentences per 100,000 population aged 18 plus, by ethnic group and sentence length imposed: 2024

Electoral turnout by descent

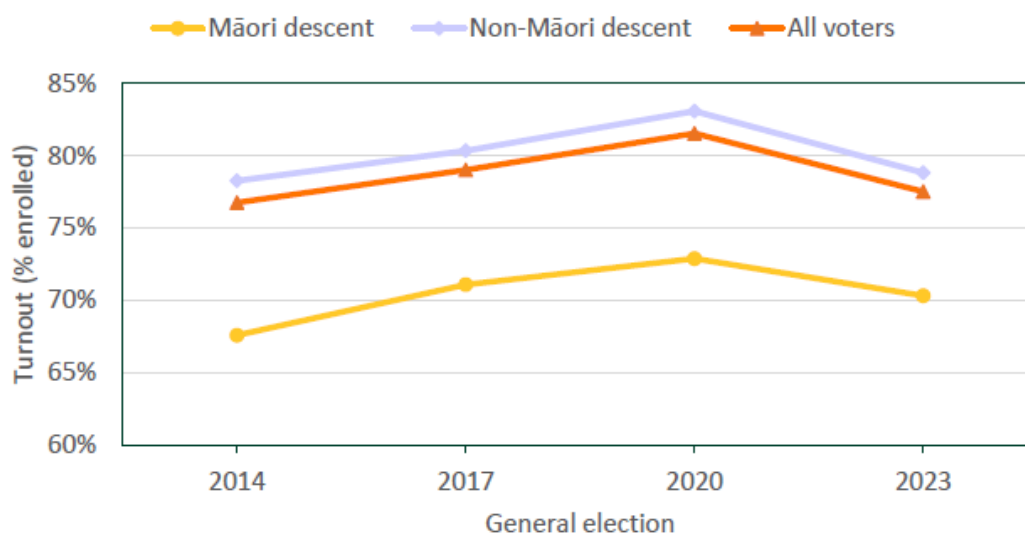


Figure 3: Electoral turnout by descent, 2013-2023

Number of persons removed from the electoral roll following sentence of imprisonment

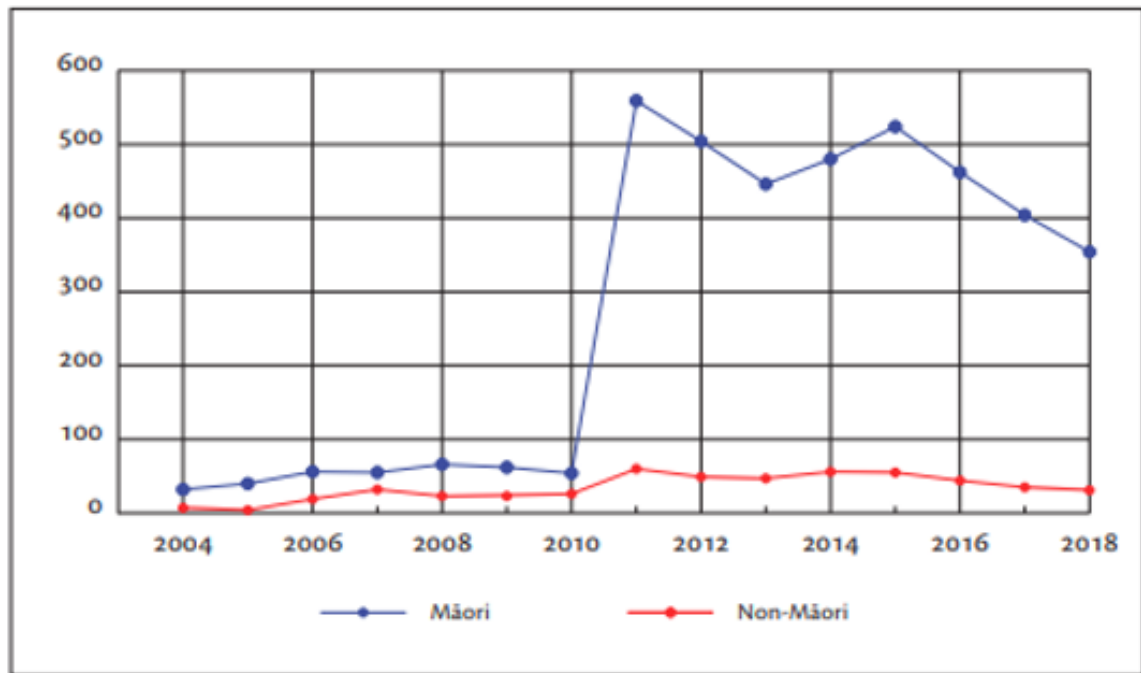


Figure 4: Number of persons removed from the electoral roll following sentence of imprisonment per 100,000 population aged 18 plus

Appendix Two

People detained in a hospital or secure facility who are disqualified from voting

Section 80(1)(c) specifies that the following people who have been detained for more than three years are disqualified from voting if they have been:

- found unfit to stand trial within the meaning of the Criminal Procedure (Mentally Impaired Persons) Act 2003 and ordered to be detained in a hospital as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MHCAT Act) or in a secure facility as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act); or
- acquitted on account of insanity and ordered to be detained in a hospital as a special patient under the MHCAT Act or in a secure facility as a special care recipient under the IDCCR; or
- found unfit to stand trial, ordered to be detained in a hospital as a special patient under the MHCAT Act or in a secure facility as a special care recipient under the IDCCR Act, status changed to special patient or special care recipient, and remains detained in a hospital or secure facility; or
- acquitted on account of insanity, ordered to be detained in a hospital as a special patient under the MHCAT Act or in a secure facility as a special care recipient under the IDCCR Act, status changed to special patient or special care recipient, and remains detained in a hospital or secure facility; or
- convicted of an imprisonable offence, sentenced to a term of imprisonment, and ordered to be detained in a hospital as a special patient under the MHCAT Act or in a secure facility as a special care recipient under the IDCCR Act; or
- convicted of an imprisonable offence and instead of being sentenced, ordered to be detained in a hospital as a patient under the MHCAT Act or in a secure facility as a care recipient under the IDCCR Act; or
- detained in prison (either sentenced or on remand), and subsequently made subject to a compulsory treatment order and detained in a hospital under the MHCAT Act; or
- detained in prison (either sentenced or on remand), and subsequently made subject to a compulsory care order and detained in a secure facility under the IDCCR Act; or
- detained in prison subject to a sentence of imprisonment, and subsequently transferred to a hospital and treated voluntarily under the MHCAT Act.