Ko te tohu o ngā rangatira, he manaaki i te tangata

The symbol of leadership is caring for people

The RANZCP advocates for the human rights of all people but more importantly the rights of those who have mental health issues and subject to the criminal justice system.
The Royal Australian and New Zealand College of Psychiatrists
Tu Te Akaaka Roa (New Zealand National Committee) and
New Zealand Faculty of Forensic Psychiatry

Submission to the Justice Select Committee
The Electoral (Registration of Sentenced Prisoners) Amendment Bill 2020

About the Royal Australian and New Zealand College of Psychiatrists (RANZCP)

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is a membership organisation that prepares doctors to be medical specialists in the field of psychiatry and addiction, supports clinical practice, advocates for people affected by mental illness and addiction, and advises government on mental health care.

Tu Te Akaaka Roa, the New Zealand National Committee, represents the RANZCP in New Zealand by advocating and working to improve the mental health of our community and by collaborating with a range of stakeholders including NGOs, other health organisations and Government agencies. The RANZCP values the consumer perspective through consumer engagement on our Committees, listening to psychiatrists with lived experience, and consulting with our kaumātua. We work alongside consumers and their whānau guiding them through their journey to recovery.

The Faculty of Forensic Psychiatry is a specialist area within the RANZCP whose role is to provide mental health care to people who have come to the attention of criminal justice services. Forensic Mental Health Services (FMHS) provide mental health care on both an inpatient and outpatient basis. Due to the high level of security, patients who require admission to forensic hospitals have committed a serious offence and therefore require significant mental health risk management.

Our Feedback on the Proposed Bill

The RANZCP supports Option 1 outlined in the Electoral (Registration of Sentenced Prisoners) Amendment Bill. We note the Court of Appeal in New Zealand affirmed the position advanced by the Human Rights Commission in their submission to the High Court¹, declared that a prisoners' right to vote is a human rights issue and opposed the Electoral (Disqualification of Convicted Prisoners) Bill on the basis that it is both inconsistent with the Bill of Rights Act (BORA), places unjustifiable limitations on the rights of prisoners under s 12(a) BORA, and contravenes New Zealand’s international human rights obligations.¹

The RANZCP² maintains that regardless of their prisoner status, that all services must focus on the person, be cognisant of their self and worth, and maintain their dignity throughout their treatment under the Mental Health Act and Human Rights Act. We consider that allowing prisoners to vote enables them to engage constructively with the political process, and if contained within a supported process, then it may facilitate re-entry to society. There is no evidence that prisoners hold unusual or extreme political views compared with the general public, however, they may be more likely to participate in a society they have had a stake in creating.³

We note that voting outcomes of the 2010 UK General Election showed that only half of the psychiatric patients enfranchised by the Representation of the People Act, actually registered on the electoral roll, and only half of those registered then exercised their right to vote on polling day⁷ (compared with 65.1% of the general public).⁵ Lack of awareness, social exclusion, and

¹ In 2015, Arthur Taylor, an inmate at Paremoremo prison, and others brought proceedings in the High Court against the Crown seeking a judicial declaration that section 80(1) (d) of the Electoral Act – which disqualifies prisoners from voting - is inconsistent with section 12(a) the New Zealand Bill of Rights Act, which provides that all people aged 18 and over have the right to vote in a general election.
disillusionment with the political process, were cited as reasons for not voting. Our submission highlights, regardless of the option chosen, the importance of developing a system to support all prisoners to vote, and in particular, those with mental health issues to vote.

A. Mentally Disordered Offenders - People living with mental illness and have a criminal record

Implementation of the proposed Electoral (Registration of Sentenced Prisoners) Amendment Bill, provides an additional opportunity to align human rights alongside societal views and attitudes to people with mental health issues.

Forensic psychiatrists are not in a position to provide support to assist people to exercise their democratic right to vote. They deliver services to Mentally Disordered Offenders (MDO) with:

1. Voluntary mental health assessment and treatment to people in prison
2. Voluntary and involuntary care and treatment to mentally unwell people admitted to hospital from prison or court.

The RANZCP suggests removing barriers to voting for people would increase the ability of MDOs to vote.

1. Stigma and discrimination
   MDOs are a highly vulnerable population. Many experience double discrimination when released from custody, and those with limited social support are more isolated and less likely to participate in civic matters. Additional support and resourcing within prisons and in the community will enable them to exercise their democratic right to vote.

2. Provide options to support rehabilitating MDOs to vote
   Forensic Mental Health Services (FMHS) noted some MDOs will need specialist prison or community rehabilitation services to support them to vote. Some of these prisoners have committed serious crimes in the context of their illness. We also suggest that consideration be given to mentally ill people within FMHS who are defined as ‘special patients’ after being found not guilty on account of insanity or being found unfit to stand trial. This population requires specialist risk management and advice in the context of voting.

3. Better understanding of the scope and complexity of MDO prisoners and where support will be required
   Forensic psychiatrists can also provide advice to assist services with the democratic process, where there is a risk violence and reoffending. The scope of forensic psychiatry crosses involuntary treatment, juvenile offending, competence, diversion of offenders from court to treatment and the provision of medico-legal opinions and expert evidence. We can provide specialist advice on the level of information and support MDOs might need to vote.

4. Informing MDOs to understand their right to vote
   The Health and Disability Commissioner’s, Code of Health and Disability Services Consumers' Rights Regulation 1996 (the Code), are an existing resource and the Code articulates the vision outlined in the NZBORA. We advocate for collaboration between the HDC and the

ii The Term MDO covers both groups
ii Defined under s2(1) Mental Health (Compulsory Assessment and Treatment) Act 1992
Electoral Commission to proactively support MDOs to access information and support*. We also note the low level of literacy reported by the Department of Corrections vi may be a further barrier to voting in prisoner populations.

5. Encourage MDOs to maintain Enrolment
The RANZCP supports advocates for a system to support MDOs to exercise their right to vote. We suggest that the Electoral Commission work with the Department of Corrections and the Registrar of Electors to ensure all offenders sentenced to imprisonment are systematically enrolled if they are not on the roll.

6. Establish voting equity for Māori MDOs
The Waitangi Tribunal found that Māori are disproportionately affected by section 80(1) (d) of the Electoral Act 1993, exacerbating a pre-existing and already disproportionate removal of Māori from the electoral roll. In 2010, Māori were 2.1 times more likely to have been removed from the electoral roll than non-Māori. In 2018, the number was 11.4 times more likely.7

Due to the low rates of re-enrolment amongst released Māori prisoners, the Tribunal highlighted the rehabilitative opportunity that voting offers to actively protect the right of Māori to equitably participate in the electoral process and exercise their tino rangatiratanga individually and collectively. Claimant Awatea Mita said:

“We have a missed opportunity here. We could be teaching our whānau who are in prisons about the history and Māori experience of voting in Aotearoa, and especially our Māori women who are mothers that will return to their families. To reintegrate into their community understanding the importance of voting could be a means for the intergenerational transmission of a voting culture within whānau that is fully participatory in the political futures of our nation”.8

7. Reduce barriers at the interface of prison and community
MDOs released from remote low-security prisons are more likely to be geographically isolated from their family/whānau and friends and disconnected from their communities. Community facilitation services may also be anxious about engaging with MDOs who have a history of violence and offending.9

The RANZCP advocates for a proactive approach to support MDO voting uptake, such as targeted interaction, improved communication and coordination, between parole and mental health services.

B. A system to support MDOs to vote
There are currently no specialist prison or community rehabilitation options available that support MDOs to vote. Under these conditions, it is likely that MDOs will not vote. Based on our review of potential barriers we advocate for a system that supports MDOs to vote.

In summary:

1. Increase the ability for forensic psychiatrists to provide advice on the level of information and support to that MDOs need to participate in the voting process.

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* Electoral Commission: https://vote.nz/
vi Department of Corrections: 57% of prisoners do not have NCEA Level One Literacy and Numeracy Competency, and that these learners are also likely to have few or no formal qualifications.
https://www.corrections.govt.nz/working_with_offenders/prison_sentences/employment_and_support_programmes/education_and_training
2. Explore how the Health and Disability Commission could inform MDOs to be better informed about their voting rights.
3. Work with the Electoral Commission and HDC to provide MDOs with appropriate information on voting rights.
4. Develop a comprehensive system to maintain enrolment and support voting rights of MDOs including, access, support and voting information.
5. Work proactively with whānau and their communities to support Māori MDOs to exercise their right to vote.
6. Provide voting, support, training and advice for the Corrections workforce, parole services, community mental health services, and other services that interact to support MDOs at the interface of prison, whānau and community.

C. RANZCP Recommendations to support MDOs

1. **Don’t forget the 5 %**
   *Ensure equity of access to voting for all prisoners with complex mental health issues*
   The RANZCP urges the Electoral Commission to develop a voting system with specific support to meet the complex needs of the 5% of MDOs with serious mental health conditions.
   - Prison are not conducive to voting for MDOs because of the loss of continuity due to frequent movement between prisons and the community.
   - Potentially, the prison environment could also be threatening and counter-productive to the voting process. ⁹

2. **Let’s work together**
   *Develop a system that supports MDOs to vote*
   The RANZCP notes that 90% of people in prison have mental health and/or addiction issues¹⁰.
   - Lessons show resilience when there is collaboration across a system.¹¹
   - Increase the uptake of voting by including, MDOs, their whānau and communities in the process.
   - Develop approaches to minimise the experience of mental distress for MDOs during the voting process.

3. **Look at the Evidence**
   *Understand the capability of the system to support MDOs to vote*
   The RANZCP advocates for built in evaluation to understand the impact of voting for MDOs.
   - We reinforce the importance of research to inform system improvements¹².
   - Invest in ongoing evaluation to understand effectiveness, barriers and solutions of MDO voting.
   - Establish public reporting of MDO voting processes.

4. **Get the right people in the right places**
   *Identify the range of people across the prison, whānau, and community interfaces that are able to provide appropriate support to MDOs*
   - Fund training and support to ensure people have the skills to support MDOs to vote.
   - Facilitate resources to assist the Electoral Commission in developing an effective system to support MDO voting.
   - Ensure alignment, collaboration and communication between entities involved
Conclusion

Thank you for the opportunity to comment on the Bill.

The RANZCP supports Option 1vii as we consider this approach is most consistent with New Zealand’s obligation to the Treaty of Waitangi, the Bill of Rights Act 1993 and with fundamental democratic values. This Option would be consistent with the objective of maximising citizen participation within the electoral system.

We have requested in our submission that particular consideration is given to the 5% of Mentally Disordered prisoners with mental illness whose severe and enduring conditions make them especially vulnerable in the voting process. Their needs are complex and they are often not able to advocate for themselves.

References

10 Indig D, Gear C & Wilhelm K. Comorbid substance use disorders and mental health disorders among New Zealand prisoners. 2016. Wellington, Department of Corrections

vii 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.