

THE LAW AND ORDER COMMITTEE
Electoral (Disqualification of Convicted Prisoners) Amendment Bill

Submission of Tony Ellis

1. The Committee will have been made well aware of the grave human rights concerns the Electoral (Disqualification of Convicted Prisoners) Amendment Bill presents. This is obvious from the section 7 report, and will have been made clear in the submissions of others, including the New Zealand Law Society.
2. I will not repeat these complaints. However, it may be helpful for me to provide additional international human rights material that strengthens the case against the Electoral (Disqualification of Convicted Prisoners) Amendment Bill.
3. In *Hirst v the United Kingdom*, 17 judges comprising of the Grand Chamber of the European Court of Human Rights in 2005 found:

82. Therefore, while the Court reiterates that the margin of appreciation is wide, it is not all-embracing. Further, although the situation was somewhat improved by the 2000 Act which for the first time granted the vote to persons detained on remand, section 3 of the 1983 Act remains a blunt instrument. It strips of their Convention right to vote a significant category of persons and it does so in a way which is indiscriminate. The provision imposes a blanket restriction on all convicted prisoners in prison. It applies automatically to such prisoners, irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances. Such a general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation, however wide that margin might be, and as being incompatible with Article 3 of Protocol No. 1.

4. The Judgment also sets out the relevant rights in the International Covenant on Civil and Political Right, and General Comment of the Human Rights Committee views on the issue

III. RELEVANT INTERNATIONAL MATERIALS

A. The International Covenant on Civil and Political Rights

26. The relevant provisions of the International Covenant on Civil and Political Rights provide:

Article 25

“Every citizen shall have the right and the opportunity, without any of the

distinctions mentioned in Article 2 [race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status] and without unreasonable restrictions:

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote ...”

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

...

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. ...”

27. In General Comment no. 25(57) adopted by the Human Rights Committee under Article 40 § 4 of the International Covenant on Civil and Political Rights on 12 July 1996, the Committee stated, inter alia, concerning the right guaranteed under Article 25:

“14. In their reports, State parties should indicate and explain the legislative provisions which would deprive citizens of their right to vote. The grounds for such deprivation should be objective and reasonable. If conviction for an offence is a basis for suspending the right to vote, the period of suspension should be proportionate to the offence and the sentence. Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.”

- 5. It is clear that International human rights institutions view interference in the right to vote – even with convicted prisoners – unsympathetically. There is simply no justification for removing the right of short-term prisoners to vote. It is irrational, unreasonable, and abhorrent in a modern democracy.
- 6. I would like to appear in person to speak to my submission.

**TONY ELLIS
BARRISTER**