

Voting Rights of Prisoners

AUSTRALIAN DEMOCRATS ACTION PLAN
VOTING RIGHTS OF PRISONERS
ELECTORAL MATTERS & PUBLIC ADMINISTRATION

Australia's system of government is founded on the sovereignty of its citizenry whereby the people possess the ultimate power over the system of government. Any move that disenfranchises any group of citizens inevitably undermines that sovereignty. It is important to understand that, whilst prisoners are deprived of their liberty while in detention, they are not deprived of their citizenship. Prisoners should be accorded the right to vote because it is a fundamental right of citizenship.

Our Action Plan

“Australia has a proud history of promoting the universal franchise. However, one aspect of Australian electoral policy that does not accord with this history is the persistence to disenfranchise prisoners despite the international trend to uphold the right of all citizens to vote.”

Senator Andrew Murray
Spokesperson
on Electoral Matters &
Public Administration

- Continue to move amendments to give all persons in detention the right to vote except those convicted of treason, those of unsound mind or those who have had their right to vote removed by a judge as part of their sentence.
- Work to protect what is a fundamental right for all Australian citizens to ensure this right is not removed for political gain or expediency.

Voting Rights of Prisoners under Federal Law

Since 1902 certain prisoners were not entitled to vote under federal law. Until 1983, persons sentenced or subject to be sentenced for an offence punishable by imprisonment for one year or longer could not vote. From 1983 to 1995 the period was five years. From 1995 to 2004 the period of disqualification was to apply to those actually serving five years or longer. From 2004 to 2006 the threshold was reduced to three years. Persons on remand could vote.

Persons released on parole and other similar release schemes in Australia are entitled to vote, making it a little better than the American system, where once imprisoned, you lose the right to vote forever.

The Electoral & Referendum Amendment (Electoral Integrity & Other Measures) Act 2006 disenfranchised all persons serving a term of imprisonment. This measure has the dubious distinction of moving closer to similar policy in the United States, the world leader in both imprisonment and criminal disenfranchisement.

The Howard Government's 2006 changes to prisoner voting rights were overturned by the High Court in August 2007 in a 4-2 decision. The Court held that voting in elections lies at the heart of that system of representative government and disenfranchisement of a group of adult citizens without a substantial reason would not be consistent with it.

The High Court found that the net of disqualification was cast too wide and went beyond the rationale for justifying a suspension of a fundamental incident of



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Last updated 3/10/2007

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citizenship. By contrast they considered the three-year criterion in the pre-2006 legislation did sufficiently distinguish between serious lawlessness and less serious but still reprehensible conduct.

The Court also observed that a prohibition on prisoners voting imposed stricter standards upon eligibility to vote than the Constitution imposes upon eligibility to stand as a candidate for federal election. Section 44 of the Australian Constitution provides that anyone serving or facing a sentence of one year or longer is disqualified from standing for or remaining in the federal parliament.

Why Denying the Vote to Prisoners is Wrong

- To deny those imprisoned one of the most basic rights of citizenship is to impose an extra-judicial penalty on top of that judged appropriate by the court.
- It also does not fit with Australia's tradition of leading the way in advancing the universal franchise. Nor does it fit with recent international court decisions that have declared prisoner voting bans invalid in Canada, the United Kingdom and South Africa.
- There is no logical connection between the commission of an offence and the right to vote. Consider a case where a journalist is imprisoned for refusing to name a source on principled grounds. Should he or she be denied the vote?
- To complicate this further, there is no uniformity amongst the states, or between the states and the Commonwealth, as to what constitutes an offence punishable by imprisonment. For example, in Western Australia, there is a scheme whereby defaulters lose their drivers licence rather than be imprisoned as in other states. Why should an Australian citizen in WA who defaults on fines retain the right to vote, when a citizen in another State is jailed for defaulting and loses his/her federal voting rights? There is no equity in this situation and on this ground alone, this provision is untenable.
- Denying prisoners the vote does not in any way act as a deterrent to committing crime.
- Although Australia's Constitution does not explicitly guarantee citizens the right to vote, there is an implied right under the requirement of representative government or one "directly chosen by the people".
- Australia is a signatory to the *International Covenant on Civil and Political Rights*, which compels the conclusion that every adult citizen shall have the right to vote without distinction and regardless of their circumstances.

Justifiable Exceptions

An exception to the above arguments is when a person has been convicted of a crime against citizenship, namely treason or treachery, as described in the criminal Code. In these cases, the right to vote should be removed.

The Democrats believe that a convicted person's right to vote can only be removed by the determination of a judge unless of unsound mind. Removing a citizen's rights should be a matter for the Courts, not for the *Commonwealth Electoral Act*.



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