

## INFORMATION NOTE

### Voting right of prisoners

#### 1. Background

1.1 At the meeting of the Panel on Constitutional Affairs on 15 December 2008, the Panel requested the Research and Library Services Division to conduct a research on the voting right of prisoners in overseas places to facilitate Members' discussion on the situation in Hong Kong. This note provides information on the voting right and arrangement, if any, of convicted prisoners in the United Kingdom (UK), Australia and Canada.

#### 2. The United Kingdom

2.1 In the UK, the majority of convicted and detained prisoners are not entitled to vote, while only those who are imprisoned for contempt of court or for default in paying a fine can vote. However, on 6 October 2005, the Grand Chamber of the European Court of Human Rights delivered a judgment on the UK's policy of voting right of prisoners. The judgment concluded that the UK was in breach of Article 3 of Protocol 1 of the European Convention on Human Rights and Fundamental Freedoms<sup>1</sup>, and as a consequence, the UK was required to give proper consideration to possible changes to the law that would bring it into line with the Convention. As such, in December 2006, the UK government published a consultation document entitled *"Voting Rights of Convicted Prisoners Detained within the United Kingdom: The UK Government's response to the Grand Chamber of the European Court of Human Rights judgment in the case of Hirst v. The United Kingdom"* which proposed a two-stage consultation process before putting the proposals to the Parliament. The first stage was concluded in March 2007 and it considered the principle of prisoner enfranchisement and the options available following the judgment, including whether the UK government should:

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<sup>1</sup> Article 3 of Protocol 1 states that "[t]he High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

- (a) retain the current ban on voting right for convicted prisoners;
- (b) enfranchise prisoners sentenced to less than a specified term;
- (c) allow sentencers to decide on withdrawal of franchise;
- (d) enfranchise all tariff-expired life sentence prisoners (i.e. prisoners kept beyond the original length of their sentence for whatever reason);
- (e) enfranchise prisoners found guilty of election offences; and
- (f) enfranchise unconvicted and convicted offenders detained in mental hospitals.

2.2 As regards the commencement of the second stage of the consultation which will examine the possible impact of implementing the change in the UK legislation on the conduct of local and national elections, the Parliamentary Under-Secretary of State, Ministry of Justice, Lord Bach, responded during the House of Lords sitting on 15 December 2008 that he could "*not tell when the second-stage consultation [would] begin.*"<sup>2</sup>

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<sup>2</sup> House of Lords (2008).

### 3. Australia and Canada

3.1 In Australia<sup>3</sup> and Canada<sup>4</sup>, convicted prisoners are entitled to register and vote. The table below lists the key features of the voting arrangement in these two places.

**Table – Key features of the voting arrangement of convicted prisoners in Australia and Canada**

	Australia	Canada
Relevant legislation	Commonwealth Electoral Act 1918.	Canada Elections Act.
Prisoners who can register and vote in federal elections	<ul style="list-style-type: none"> <li>• Australian citizen;</li> <li>• 18 years old or above; and</li> <li>• serving a sentence of less than three years, serving a sentence of periodic detention, on early release, or on parole.</li> </ul>	<ul style="list-style-type: none"> <li>• Canadian citizen;</li> <li>• 18 years old or above; and</li> <li>• regardless of the length of term serving.</li> </ul>

<sup>3</sup> In Australia, since 1902, not all prisoners have been entitled to vote under federal law. Until 1983, prisoners sentenced to imprisonment for one year or longer could not vote. From 1983 to 1995, the sentencing period under which voting was not permitted 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.

In June 2006, the Australian government enacted the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006 (Electoral Integrity Act) under which it barred all prisoners' voting right in federal elections. This blanket ban was challenged and, on 30 August 2007, the High Court ruled that in the case of *Roach v Electoral Commissioner*, the legislation in place prior to the Electoral Integrity Act was valid and should continue to apply, i.e. the ban only applies to prisoner who is serving a sentence of three years or longer.

<sup>4</sup> In October 2002, the Supreme Court of Canada ruled that, in the case of *Sauvé v. Canada (Chief Electoral Officer)*, the former section 51(e) of the Canada Elections Act which prevented inmates who were serving sentences of two or more years from voting was in breach of section 3 of the Charter of Rights and Freedoms. As a result, all prisoners may now vote in federal elections, by-elections and referendums regardless of the length of the term they are serving.

**Table – Key features of the voting arrangement of convicted prisoners in Australia and Canada (cont'd)**

	<b>Australia</b>	<b>Canada</b>
Registration arrangement	The prisoner can fill out an <i>Electoral Enrolment of a Prisoner</i> form and mail the completed form to the Australian Electoral Commission.	A staff member in each institution is appointed as the liaison officer to facilitate the process of registering and voting. The prisoner can fill out an <i>Application for Registration and Special Ballot</i> form, which is available from the liaison officer once an election has been called. The prisoner returns the completed application form to the liaison officer who validates it.
Registered address of the prisoner	<p>The registered address is the electoral area:</p> <ul style="list-style-type: none"> <li>• in which the prisoner was last eligible to be registered (this will generally be the place where he last lived for at least one month);</li> <li>• in which one of his kin is currently registered if he has not previously been eligible to register;</li> <li>• in which he was born, if neither of the above apply; or</li> <li>• with which he has the closest connection if he was not born in Australia.</li> </ul>	<p>The registered address is the electoral district where the prisoner ordinary resides before imprisonment and it is the first of the following places:</p> <ul style="list-style-type: none"> <li>• his residence before being incarcerated;</li> <li>• the residence of the spouse, the common-law partner, a relative or dependant of the prisoner, a relative of his spouse or common-law partner, or a person with whom the prisoner would live if not incarcerated;</li> <li>• the place of his arrest; or</li> <li>• the last court where the prisoner was convicted and sentenced.</li> </ul>

**Table – Key features of the voting arrangement of convicted prisoners in Australia and Canada (cont'd)**

	<b>Australia</b>	<b>Canada</b>
Voting arrangement	<p>A registered prisoner can vote:</p> <ul style="list-style-type: none"> <li>• by post; or</li> <li>• in person with a prison mobile polling team. During an election, some prisons are visited by mobile polling teams who are staff of the Australian Electoral Commission setting up polling facilities to collect the votes of prisoners. These booths operate in the same way as ordinary polling places with voting screens and ballot boxes.</li> </ul>	<p>A registered prisoner can vote:</p> <ul style="list-style-type: none"> <li>• by post; or</li> <li>• in person in a correctional institution or a federal penitentiary on the 10<sup>th</sup> day before polling day. When required, the liaison officer establishes a mobile polling station within a correctional institution to take the votes of prisoners who are confined to their cells or in an infirmary.</li> </ul>
Provision of election materials	A prisoner can request election materials from the prison mobile polling team.	A list of candidates will be posted in one or more conspicuous places in the correctional institution.

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## Hong Kong

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