



**Supreme Court of New Zealand
Te Kōti Mana Nui**

14 DECEMBER 2018

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

HINEMANU NGARONOA & OTHERS v ATTORNEY-GENERAL

(SC 102/2017) [2018] NZSC 123

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

Background

At issue in this appeal is whether the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010 (the 2010 Amendment), which extended the prohibition on voting to all serving prisoners, was enacted lawfully. The question turns on whether section 268 of the Electoral Act 1993 (the 1993 Act) required Parliament to pass this amendment with a supermajority constituting 75 per cent of all the members of the House of Representatives. This did not occur.

The 1993 Act provides the legal framework within which people may exercise their right to vote in New Zealand. Section 74 of the Act provides, amongst other things, that every adult person who meets certain qualifications can register as an elector of an electoral district. Prior to the 2010 Amendment, section 80 disqualified prisoners serving sentences of life imprisonment, preventive detention or a term of three years or more from voting. The 2010 Amendment extended this provision to disqualify all prisoners from voting.

Section 268 of the 1993 Act creates a number of “reserved provisions” designed to entrench certain aspects of the electoral system. In particular, section 268(1)(e) provides that the reserved provisions include:

section 74, and the definition of the term adult in section 3(1), and section 60(f), so far as those provisions prescribe 18 years as the minimum age for persons qualified to be registered as electors or to vote.

The question the courts have been asked to determine is what is meant by section 268(1)(e)? Does the wording mean that all of the eligibility criteria listed in section 74 are to be treated as reserved provisions, requiring a supermajority before amendment?ⁱ Or does it only entrench those provisions relating to the minimum age?

In the High Court the appellants claim for, amongst other things, a declaration that the 2010 Amendment was invalid was unsuccessful. That was because the High Court found that section 268(1)(e) reserved or entrenched only the minimum voting age. The Court of Appeal dismissed this claim on the same basis.

The Supreme Court’s decision

The Supreme Court gave leave to appeal on the question of whether the 2010 Amendment purported to amend a reserved provision of the 1993 Act and thus required a 75 per cent majority to be passed.

The appellants argued that the right to vote and the minimum age were intrinsically linked and therefore the effect of section 268(1)(e) was to entrench those aspects of section 74 that were fundamental to the right to vote, but not what they described as the modalities or mechanical provisions, such as stipulations as to place of residence. They argued the right to vote at the age of 18 was consequently protected by the reserved provision. In the alternative, they argued that all of section 74 was entrenched.

The case for the Attorney-General was that the language of section 268(1)(e) was clear and that all that was entrenched was the minimum voting age. It was also submitted that there was no basis for the Court to make the distinction between fundamental aspects of the right to vote and the mechanical provisions. The Attorney-General accepted that if the Court found that section 268 meant that a supermajority was required, the 2010 Amendment was invalidly enacted and of no effect.

The Court has dismissed the appeal. The majority, comprising William Young, Glazebrook, O’Regan and Ellen France JJ, found entrenchment extended only to the minimum age requirements in section 74 and that the text of the statute could not be read in any other way. This interpretation was reinforced by both the legislative history and the statutory purpose. Because no other interpretation was possible, the

majority considered it unnecessary to consider whether section 6 of the New Zealand Bill of Rights Act 1990 may affect the interpretation of the provision. They further rejected the appellants' argument that section 268(1)(e) distinguished between the fundamental aspects of the right to vote and the modalities of voting.

Finally, William Young, Glazebrook, O'Regan and Ellen France JJ considered they did not need to decide what the effect of not complying with any requirement for a supermajority provision would have been because it did not arise.

The Chief Justice dissented. Elias CJ considered that the natural reading of section 268(1)(e) was that it entrenched all qualifications for electors in section 74. This was reinforced both by the provision's purpose which was to entrench fundamental parts of the electoral system, in this case the universal franchise, and by section 6 of the New Zealand Bill of Rights Act because such an interpretation would promote and protect the right to vote. She also considered that this interpretation was not inconsistent with the legislative history.

Contact person:

Kieron McCarron, Supreme Court Registrar (04) 471 6921

ⁱ Section 74(1) reads as follows:

74 Qualification of electors

- (1) Subject to the provisions of this Act, every adult person is qualified to be registered as an elector of an electoral district if—
- (a) that person is—
 - (i) a New Zealand citizen; or
 - (ii) a permanent resident of New Zealand; and
 - (b) that person has at some time resided continuously in New Zealand for a period of not less than 1 year; and
 - (c) that electoral district—
 - (i) is the last in which that person has continuously resided for a period equalling or exceeding 1 month; or
 - (ii) where that person has never resided continuously in any one electoral district for a period equalling or exceeding 1 month, is the electoral district in which that person resides or has last resided.