COPP 9.5 Prisoner Taxation and Voting

Prison

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| PrinciplesAs referenced in the *Healthy Prisons Framework:*The Superintendent shall provide access to prisoners who are eligible to vote and enable prisoners to receive campaigning and political manifestos in advance of election day.Staff shall assist prisoners who are eligible to vote and access political and campaigning information  |

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# Scope

This Commissioners Operating Policy and Procedure (COPP) applies to all public and private prisons administered by or on behalf of the Department of Justice (the Department).

# Policy

Prisoners are responsible for completing and submitting their tax returns.

Prisoners who are entitled to vote during a Commonwealth or State election, must be afforded the opportunity to do so; including the opportunity to complete a postal vote.

# Tax Returns

### Prisoners shall complete tax returns using the paper based TaxPack method and lodged via the postal system, mailing direct to the Australian Taxation Office (ATO) in accordance with COPP 7.1 – Prisoner [Communication](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/prison-copps.aspx).

### Prisons, at the start of each financial year shall obtain sufficient TaxPacks and make them available to prisoners as required.

### All prisoners can seek assistance from the ATO by telephone to complete tax returns, who also provide specific support for indigenous clients and language assistance through the Translating and Interpreting Service for persons from a non-English speaking background (refer COPP 7.1 – [Prisoner](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/prison-copps.aspx) Communications, Appendix A: Pre-Registered and Confidential Numbers).

### Funds received by prisoners from the lodgement of tax returns shall be managed in accordance with [COPP 8.4 Prisoner Finances](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/prison-copps.aspx).

# Commonwealth and State Elections

## Eligibility to vote

### It is compulsory to vote in Commonwealth and State elections if a person is:

1. 18 years of age or over, and
2. an Australian citizen (or a British subject who was on the Commonwealth electoral roll on 25 January 1984).
3. Serving a full-time prison sentence of less than 3 years (Commonwealth Election)
4. Serving a sentence of less than one year (State Election)

## Ineligibility to vote

Commonwealth elections

### A prisoner is not entitled to have their name placed or retained on any Electoral Roll or to vote at any Commonwealth election, in accordance with Legislation[[1]](#footnote-1), if that person:

1. by reason of being of unsound mind (eg Mentally Impaired Accused (MIA) prisoners) is incapable of understanding the nature and significance of enrolment and voting
2. has been convicted of treason or treachery and has not been pardoned
3. Is serving a prison sentence of three years or more

State elections

### Legislation[[2]](#footnote-2) disqualifies a prisoner from enrolling and voting in State elections, if the prisoner:

1. has been convicted of treason
2. is serving or yet to serve indefinite imprisonment[[3]](#footnote-3)
3. is subject to an order under the Criminal Code[[4]](#footnote-4)
4. is taken to be a Mentally Impaired Accused (MIA) as defined in the *Criminal Law (Mentally Impaired Accused) Act 1996*
5. is subject to deportation proceedings[[5]](#footnote-5)

## Enrolment

### Eligible prisoners, like all other persons, are required by law to enrol for Commonwealth and State elections and once enrolled, notify the AEC of any subsequent change of address.

### Prisoners whose voting rights were ceased are entitled to apply to be re-enrolled as electors on completion of their prison sentence.

### If a person is serving a term of imprisonment or is remanded in custody, they are deemed temporarily absent from their usual place of abode (and applicable electoral ward) and their usual address may be retained on the voters roll[[6]](#footnote-6).

### Prisoners enrolled to vote prior to their imprisonment may continue their enrolment using their private address.

### Prisoners who have no fixed place of abode must enrol using the prison address.

## Electoral enrolment forms

### Both the Australian Electoral Commission (AEC) and the Western Australian Electoral Commission (WAEC), have the "Electoral Enrolment” form on their respective website www.aec.[gov](https://www.aec.gov.au/).au and [www.elections.wa.gov.au](file:///C%3A%5CUsers%5Csmitdan%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CGQLC5GZ4%5Cwww.elections.wa.gov.au). The form is a multi-purpose form and covers:

1. enrolment for Commonwealth, State or local government elections in Western Australia (WA)
2. changes to enrolled address.

### The face sheet of the form contains the contact details and address for lodging the form.

### Eligible Prisoners who have been in custody in excess of one month and who are released from prison to Freedom, Parole or other conditional release, shall be provided with a copy of the Enrolment/Change of Address form upon request.

### Eligible prisoners, serving a sentence or extended period on remand who wish to enrol or change their enrolment address shall be provided with an enrolment/change of address form upon request and offered assistance to complete and lodge the form, if required.

## Voting

### All voting in Commonwealth and State elections within each prison shall be arranged on a mutually agreed date and time between the AEC and the prison. Superintendents shall provide facilities to enable eligible prisoners’ privacy to vote in a commonwealth or state election, while under the appropriate supervision of Prison Officers.

### Superintendents shall ensure eligible prisoners are provided with general electoral information prepared by the Electoral Commission or political party (eg ‘how to vote’ information and candidate campaign material).

### Prison staff must not under any circumstances, limit, suggest, or indicate to a prisoner as to how the prisoner should record their vote.

### Each prison shall ensure postal ballot papers sent to eligible prisoners from the AEC are managed in accordance with [COPP 7.1 – Prisoner Communications](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/prison-copps.aspx).

### Superintendents shall create an Operational Order to provide staff with guidance around local voting processes.

# Annexures

## Related COPPs

* [COPP 7.1 – Prisoner Communications](https://dojwa.sharepoint.com/sites/intranet/prison-operations/Pages/prison-copps.aspx)

## Definitions and acronyms

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| Term | Definition  |
|  AEC | Australian Electoral Commission |
|  ATO | Australian Taxation Office |
| Commissioner’s Operating Policy and Procedure (COPP) | Operational Instruments that provide instructions to staff on how the relevant legislative requirements are implemented. |
| Tax Return | Any return required by the Australian Tax Office (ATO) to be made regarding a prisoner’s taxation obligations and includes TaxPack and Business Activity Statement (BAS) forms. |
| Prisoner | Any person in lawful custody and referred to as a prisoner in s. 3 [*Prisons Act 1981*](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_751_homepage.html); also includes a person not yet in the custody of a prison, but in the custody of a Contractor under the court security and custodial services contract. |
|  WAEC | Western Australian Electoral Commission |

## Related legislation

* *Criminal Code Act Compilation Act 1913*
* *Criminal Law (Mentally Impaired Accused) Act 1996*
* *Electoral Act (WA) 1907*
* *Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Act 2011*
* *Migration Act 1958*
* *Sentencing Act 1995*

# Assurance

It is expected that:

1. Prisons will undertake local compliance in accordance with the [Compliance Manual](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/monitoring.aspx).
2. The relevant Deputy Commissioner within Head Office will undertake management oversight as required.
3. Operational Compliance will undertake checks in accordance with the [Operational Compliance Framework.](https://dojwa.sharepoint.com/sites/intranet/department/standards/Pages/monitoring.aspx)

Independent oversight will be undertaken as required.

# Document Version History

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| --- | --- | --- | --- | --- |
| Version no | Primary author(s) | Description of version | Date completed | Effective date |
| 1.0 | Operational Policy | Approved by the Director Operational Projects, Policy, Compliance and Contracts | 24 June 2021 | 19 July 2021 |
| 2.0 | Operational Policy | Approved by the Deputy Commissioner Operational SupportD23/919938 | 24 October 2023 | 29 November 2023 |

1. Schedule 2, Part 1 Amendments, 2 (8b), (8AA) *Electoral and Referendum Amendment (Enrolment and Prisoner Voting) Act 2011* [↑](#footnote-ref-1)
2. s. 18 *Electoral Act (WA) 1907* [↑](#footnote-ref-2)
3. Part 14 *Sentencing Act 1995* [↑](#footnote-ref-3)
4. s. 279 (5)(b) *Criminal Code Act Compilation Act 1913* [↑](#footnote-ref-4)
5. *Migration Act 1958* [↑](#footnote-ref-5)
6. s. 17 *Electoral Act (WA) 1907* [↑](#footnote-ref-6)