



Out of Country Voting & Out of Constituency Voting

A PIANZEA Discussion Paper

*Pacific Islands, Australia and New Zealand
Electoral Administrators Network*

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Introduction

This discussion paper looks primarily at out of country voting (OCV), what it is, why you would have it, the challenges involved in implementing it, the political considerations and the methods used to facilitate it. It also briefly looks at out of constituency voting, what it is, why have it and some of the challenges involved in implementing it. The second half of the paper looks at some models for OCV and out of constituency voting used in the Pacific region.

Out of Country Voting

What is OCV and who would use it?

Out of country voting (OCV), sometimes referred to as voting abroad, overseas voting, absentee voting or external voting is the process where eligible citizens living, travelling overseas or displaced in another country can vote in their home country's elections. In this paper we will use the term out of country voting as it easily identifies the subject and process.

OCV can facilitate voting for a range of different people, such as:

- Migrant workers
- Posted diplomats
- Military forces serving overseas
- Displaced persons
- Citizens travelling or holidaying overseas temporarily
- Citizens living overseas permanently but who retain their citizenship
- Students studying overseas

OCV is increasingly under consideration in the Pacific region as more and more Pacific Islanders are living overseas, in countries such as New Zealand and Australia. For example;

The Australian census shows a steady growth of people claiming Pacific Island heritage (excluding Maori) living in Australia. In 2006 112,133 identified as Pacific Islanders. In 2011 it was 150,068 and in 2016 it was 206,673¹.

In which type of elections does OCV apply?

OCV can be applied to national, provincial and local elections and referendums. OCV can also be used for plebiscites². In each case it depends on the country context and their legislative provisions.

¹ James Batley, 2017, "What Does the 2016 Census Reveal about Pacific Islands Communities in Australia?", *In Brief 2017/23*, http://bellschool.anu.edu.au/sites/default/files/publications/attachments/2017-09/ib_2017_23_batley_revised_final_0.pdf

² Direct voting by citizens on issues of national importance for example a change to the national anthem or flag. Distinguished here from referendums which traditionally apply to the changing of a Constitution.

Election principles and the application to OCV

Principles underpin all good election administration. These principles include equality, transparency, inclusivity, impartiality, universality, service mindedness, timeliness and the secrecy of the vote.

It is important to recognise that these principles apply just as much to OCV as they do to in-country voting. For example, an election management body (EMB) wouldn't apply the principles of secrecy of the vote and timeliness of process to one constituency in their country and not to another constituency. It would be seen at best as incompetence and at worst as showing partiality. The application of electoral principles needs to be universal. They need to apply to each voter individually and equally.

As the casual reader will note, the challenges of applying these principles to OCV are increased markedly in comparison to in-country voting. We will look at the details of challenges to implementing OCV later in the paper.

Why provide OCV?

Many countries now have large diasporas. This is very much the case for small Pacific Island states, as citizens go in search of work and education opportunities. For example, in the 2018 New Zealand census 243,978 or 15.5% of Auckland's population identified as being Pacific Islander. Samoans (48.6%) were the largest group, followed by Tongans (25.6%) and then Cook Island Maori (19.1%)³.

Citizens living overseas may demand inclusion in the electoral process as part of their citizenship rights. Political parties and candidates wishing to tap into potential support, will want to extend the franchise to potential supporters. Diplomats and military personnel serving their country may feel it is their right to take part in the vote given the service they are rendering for their country.

“Pacific Island governments have made gaining greater access to the labour markets of Australia and New Zealand an explicit policy goal. They see it as a crucial element in long-term job creation and social development”⁴. These Pacific Island states clearly recognise the importance of remittances for their economies. Citizens working overseas sending money back home may feel that since they are contributing to the upkeep and building of their country they also should have a say in how it is governed.

With the world subject to the COVID-19 pandemic many international borders are closed, leaving citizens unable to return home. During this time elections will inevitably be held. EMBs may be encouraged to provide an OCV option for these citizens.

Finally, citizenship itself implies certain benefits and responsibilities, one of which is involvement in the democratic process.

³ Auckland Council Research and Evaluation Unit, 2020, “*Pacific Peoples in Auckland*”, <https://knowledgeauckland.org.nz/media/1447/pacific-2018-census-info-sheet.pdf>

⁴ Nic Maclellan and Peter Mares, 2006, “Remittances and Pacific Development”, in *Globalisation and Governance in the Pacific Islands*, ed. Stewart Firth, <https://press-files.anu.edu.au/downloads/press/p55871/html/ch08s02.html>

Types of OCV

In-Person voting

The elector votes in-person at a specific place. This may be a diplomatic mission, an embassy, high commission or consulate or a polling place specifically set up to take votes.

Counterpart EMBs may come to an arrangement where they will provide voting facilities and staff to take the votes on behalf of another country.

Postal voting

A voter completes a ballot paper, places it into a specific sealed envelope and posts that ballot paper back to their EMB or a specific location designated to receive postal votes. The postal vote typically requires a witness to verify the identity of the voter and that the ballot paper has been completed by the voter without interference.

Countries and EMBs that use postal voting will typically have a postal vote register, a subcategory on their voter registers that identifies that the elector is requesting a postal ballot paper. At the time of the election, once the voter registers are closed and the nomination of candidates has been completed and the ballot papers printed the EMB can then send the ballot paper and return envelope to the voter.

Application for postal votes may be sourced from a variety of places not just directly from the EMB, for example political parties. However, all applications will go to the EMB so that a verification process can take place and the correct and genuine ballot paper can be sent to the voter.

Votes taken at diplomatic missions or in-person voting centres may be classified as postal votes⁵. In this case the elector completes the ballot paper places it into the official envelope and the diplomatic mission or specific voting centre mails the votes taken as part of their diplomatic mail bag or specific courier service.

Proxy vote

A citizen abroad may nominate a proxy i.e. someone who casts the vote for that person at a polling place in the home country.

Electronic voting or E-voting

Voting may take place via the internet, telephone or even a fax machine. The ease and availability of e-voting has to be balanced with the challenges of cyber security, the need for transparency and the necessity of secret voting.

A variation of this is the ability to download the ballot paper from the EMB website once you have located yourself on the voter list. The ballot paper can then be completed, mailed back by post, faxed or scanned and uploaded to the EMB or scanned and emailed to the EMB.

We can see that the application of the principles that underpin good electoral administration discussed earlier becomes much harder to apply in an OCV context. For example, how do

⁵Each country will have specific legislation, procedures and processes. In the Australian context these votes are classified as pre-poll declaration votes.

EMBs ensure secrecy of the vote, how do EMBs meet the timeline challenges or how can the principle of inclusivity and universality be met within such a challenging logistical environment? All types of OCV come with a range of challenges that need to be addressed.

Political considerations

Often an EMB will face pressure from political parties or candidates to provide OCV. They may of course have very legitimate reasons why OCV should be implemented. However, careful consideration needs to be given to the political context when considering OCV. Will the inclusion of OCV have a major impact on the election of a government? Will there be repercussions if this were the case? Will OCV create tension, disputes and possibly violence?

A political party that has come to power and then consolidates that power over a period time may have “driven” opposition supporters and potential opposition leaders overseas. The provision of OCV, even if done with the best intentions could inflame the situation. The EMB could be seen as being engaged in political behaviour. This is not to say an EMB shouldn’t provide OCV but rather an EMB needs to think very carefully about the political context and ensure they are not being pushed into acting in a partisan way.

If a country has a large overseas population compared to the domestic population the provision of OCV can have influence on the electoral result. Domestic populations may be aggrieved that a population no longer living within the country can have such an influence on its governance.

Some electoral systems such as those based on single member constituencies are “susceptible to influence by a small number of votes”⁶. Small number of overseas voters can change the outcome of the election. EMBs must always be mindful of the repercussions of implementing new processes.

Administrative challenges of OCV

There are a great many challenges to delivering OCV. Following are just some of them:

Legislative

Does the current legislation allow for OCV? If not, can it be amended? Will it have multiparty support? The legislation must be sound enough to allow an EMB to deliver a service it desires while also being sound enough to be defensible in court and in the court of public opinion.

Who manages the process within the EMB?

OCV is a challenging and specialised area. It will require adjustments throughout the EMB in processes and procedures. It will also require specific staff to take responsibility for the management of OCV.

⁶ P. Erben, B. Goldsmith, A. Shujaat, “*Out-of-Country Voting: A Brief Overview*”, IFES White Paper Series, April 2012, p,2

Cost

OCV can be cost prohibitive. Erben, Goldsmith and Shujaat in their paper *Out-of-Country Voting: A Brief Overview* suggest that OCV can cost somewhere between five to 10 times more than an in-country ballot⁷.

Cost factors can include freight, staff rates in other countries, security, hiring of venues, the building of IT infrastructure and additional outreach costs.

Operational challenges

Overseas electors may be spread across a wide area in one country or may be spread throughout many countries. This will mean the logistical challenges and costs could be significant. EMBs will have to address staff training, public outreach, delivery of voting material, security of voting material and the return of the ballots and accompanying paperwork.

To address this the EMB could consider implementing a voter threshold. The EMB could determine a threshold number of electors and if more than this number is met then OCV is offered.

If engaging a counterpart EMB or using your foreign service, this will also involve training of staff and potentially give you less control of the process. It may also incur additional costs as foreign EMBs or your own foreign service may try to recoup their expenditure.

In-person polling places will also need to hold enough ballot papers for every constituency in the country.

Postal service overseas and postal service in-country

Whilst postal voting is less costly than in-person voting it does come with its own challenges. How reliable is the postal service in the other country? How reliable is it in your own country? Elections are very time sensitive. EMBs, voters, candidates and political parties are all required to meet various strict timeframes. Reliability of postal services is therefore crucial.

Does your legislation allow for postal voting and does the legislated timeframes allow for the flexibility needed in using a postal service?

Meeting principles such as maintaining the secrecy of vote, protecting the voter from undue influence, guaranteeing the security of the ballot are significant challenges in postal voting.

Postal voting also requires additional infrastructure within the EMB to cater for the production, monitoring and receipt of postal votes.

Timeframes

As noted above, elections are very time sensitive. OCV processes must consider the many and varied deadlines within an election. Measured against this might be different time zones in multiple countries and the logistical challenge of moving material back and forth over long distances.

⁷ Erben, Goldsmith, Shujaat, “*Out-of-Country Voting: A Brief Overview*”, p,1

Security

Security of the election process is a significant factor in any in-country election. For example, securing the ballot papers, securing polling places, ensuring voters are not intimidated, protecting political parties and candidates and protecting EMB staff. These challenges are exacerbated when needing to provide the same level of security across multiple countries some of which may be quite unstable.

Equal access

A clear principle that underpins elections is the equal treatment of voters and other stakeholders. This needs to be considered during voter education and information, the provision of voting services and right through to valuing votes equally and informing stakeholders of decisions and results. When you have small pockets of voters spread across multiple countries this makes the implementation of this principle very challenging. The financial cost itself could be very high.

Another important consideration is the provision of the vote for people with disabilities. Your own country may have excellent facilities for people with disabilities thus allowing in-country voting services, but other countries may not have that same level of service or infrastructure to cater for people with disabilities.

Eligibility

There are a number of eligibility considerations. How do you define eligibility? Does your legislation take OCV into account? What about dual citizens? In addition to these questions there is the challenge of verification. How do you prove someone is eligible, especially when they are in a different country? If you have a procedure such as inking a finger to show you have voted, is this feasible to implement overseas?

Boundary delimitation

Electoral boundaries are configured around the number of voters within a constituency. Electoral boundaries may consider community of interest and geographic features. These guidelines are complicated when having to consider overseas electors. Which constituency will you put them into? Will they form their own constituency? Will they vote for a president or a senate but not a local member(s) or will they qualify for one and not the other(s)?

Monitoring

One of the roles of an EMB is to monitor the activities of stakeholders such as political parties and candidates. This becomes much harder to do across multiple countries. For example, activities such as monitoring advertising and expenditure or bribery and application of political pressure. Who if anyone will undertake this function overseas? Will it even be possible?

Outreach

EMBs have an obligation to provide voter education and voter information (public outreach). Applying the principles of equality, universality and with service mindedness becomes challenging when you may have small number of electors spread across multiple countries. You may provide education and information for example by post or via the internet, but how

will you know you have reached your target audience and target numbers and how will you test the effectiveness of the material?

E-voting

E-voting provides countries with a genuine opportunity to provide OCV. However e-voting does come with significant challenges, including secrecy of the vote, information technology infrastructure requirements and security of processes.

Since the 2016 USA Presidential election, EMBs around the world have become very aware of the danger around cyber security. Security of processes is the number one issue around e-voting. It is not just about maintaining the secrecy of the vote but preventing manipulation of the processes including the receipt of ballots, results tabulation and denial of service.

Deciding on OCV: a decision-making process

Following are eight points to guide you in your decision-making process:

1. Be clear on your principles and apply them to OCV
2. Have clear objective criteria
3. Consult widely
4. Ensure the process is legislatively sound and can be defended in court
5. Be transparent in your decision-making process
6. Inform all stakeholders
7. Educate all stakeholders
8. Design and deliver a service that is realistic

Conclusion

There are a number of strong reasons to consider providing OCV. However, there are numerous challenges that will need to be addressed before an OCV service is considered and provided. It is important to remember that good electoral administration is underpinned by clearly defined principles. These principles have to also be applied to the OCV context.

Out of Constituency Voting

What is out of constituency voting?

Out of constituency voting, sometimes called absentee voting, is when an elector is outside their constituency on polling day but still casts their ballot for the constituency where they are registered. They may do this at special polling places, through postal ballots or may attend a polling place and cast a declaration absentee ballot. More details of these methods below.

Why do it?

One of the principles governing good electoral administration is service mindedness. The principle reason is to facilitate voting for all eligible citizens without them having to return to their home constituency. It is much easier to facilitate than OCV but it still does have its challenges.

Methods

Note that in some countries the following methods are mixed and matched. In some cases, electors can choose to receive their ballot paper one way and return it another.

In-person

There are broadly two methods for in-person voting. Firstly, a voter casts their vote at a specially designated polling place. The second is that the voter casts their vote at any polling place but their votes are kept separate and either returned to their home constituency for counting or sent to a specific counting centre where they are counted. The votes are then added to the votes of their home constituency.

Depending on the process adopted by the EMB, voters may have to prove their identity, have their name marked off the voter register before receiving their ballot. The ballot paper can then be kept with other ballots from their home constituency. For example, in a specific ballot box for that constituency.

Alternatively, voters may have to complete a declaration, typically on a declaration envelope, providing their details along with some form of ID. Their completed ballots are then placed within a sealed and separate envelope⁸. The sealed envelope containing the ballot is then placed within or attached to the declaration envelope. The whole envelope is returned to their constituency, the details checked and verified before the envelope containing the ballot is separated from the declaration envelope, preserving the secrecy. The envelope containing the ballot is opened, the ballot removed and admitted to the count.

Postal

Voters apply to the EMB for a postal vote. The EMB sends the elector a declaration envelope, so that they can provide their details. They also include a separate envelope for their completed ballot and their ballot paper. Their completed ballots are then placed within the sealed and separate envelope. The sealed envelope containing the ballot is then placed

⁸ In some countries, such as Australia, the votes are placed directly into a specially designed declaration envelope, not a separate envelope.

within or attached to the declaration envelope. The whole envelope is returned to their constituency, their details checked and verified before the envelope containing the ballot is separated from the declaration envelope, preserving the secrecy. The envelope containing the ballot is opened, the ballot removed and admitted to the count.

E-voting

Voting by email, directly online, by telephone or by fax.

EMBs can also provide a combination of electronic and non-electronic processes. For example, the elector can download and print the ballot paper and then fax it back, enclose it in an envelope and return it or scan and upload it or scan and email it back to the EMB.

Proxy vote

An elector located outside their constituency may nominate a proxy i.e. someone who casts the vote for that person at a polling place in their home constituency.

Challenges

Legislative

Does the current legislation allow for out of constituency voting? If not, can it be amended? Will it have multiparty support? The legislation must be sound enough to allow an EMB to deliver a service it desires and it also must be sound enough to be defensible in court.

Administrative and logistical

Out of constituency voting can be administratively challenging, verifying voter details, using more resources, additional staffing and specific training. One of the key challenges is ensuring the voter gets the correct ballot paper(s) and that the ballot paper(s) returns to the correct constituency.

While logistically out of constituency voting is easier to administer than OCV it can still provide significant challenges for EMBs in the Pacific, given the complexities of inter-island travel, or in the case of a country like Papua New Guinea having to traverse difficult mountainous terrain.

Secrecy

Ensuring the secrecy of the vote is also challenging. For example, smaller number of voters casting their votes makes it easier to be identified. Also, the use of postal or e-voting processes requires complex provisions in handling ballots and voter details.

Cost

Additional services require additional funds. Implementing out of constituency voting will add to the overall cost of the election, including more paper, more envelopes, additional training, specific staff requirements, additional venue hire, IT infrastructure build and maintenance, and additional security measures.

Deciding on out of constituency voting: a decision-making process

The eight points listed above under OCV apply just as much to out of constituency voting decision making:

1. Be clear on your principles and apply them to OCV
2. Have clear objective criteria
3. Consult widely
4. Ensure the process is legislatively sound and can be defended in court
5. Be transparent in your decision-making process
6. Inform all stakeholders
7. Educate all stakeholders
8. Design and deliver a service that is realistic

Conclusion

In conclusion out of constituency voting may be easier to administer than OCV but it still does have its challenges for EMBs. This is particularly so in a region like the Pacific, where there are numerous island communities and constituencies, and in some cases high mountains separating small villages and dividing constituencies.

Models of Out of Country & Out of Constituency Voting Used in the Pacific Region

Following are some models that are currently used in the Pacific region. These examples are there to spark interest. Specific and detailed descriptions should be sought from their respective EMBs. With thanks to the EMBs for the provision of the information.

Autonomous Region of Bougainville

Legislative provisions

The Bougainville Elections Act 2007 and Regulations made under that Act provide for the voting options for the Autonomous Bougainville Government (ABG) elections.

Relevant legislative provisions can be found in Appendix One.

A range of special voting options are available under the Act and Regulations, including out of constituency voting. Out of constituency voting requires the voter to collect and return their voting papers in-person to the designated Special Voting Polling Places (SVPP), unless they are prevented from doing so by incapacitation, hospitalisation, etc (see Regulation 7(8) in Appendix One). OCV has not been specifically considered for ABG elections.

Methodology and implementation

The Office of the Bougainville Electoral Commissioner (OBEC) has three workstreams for out of constituency voters:

- Bougainvilleans inside Bougainville (BiBs)
- Bougainvilleans outside Bougainville in Papua New Guinea (PNG) (BoBs), and
- Visiting polling teams for those who are in hospital and other institutions.

A separate roll is prepared for BoBs to assist with conducting polling outside Bougainville. Due to limited resources, polling for BiBs and BoBs is limited to some key locations:

- For BiBs, generally these facilities are available only in the three regional centres in Bougainville
- For BoBs, to date SVPP have been located in six locations in PNG where there are known to be high levels of Bougainvilleans residing. Voter registration is also conducted at these locations.

During the Bougainville Referendum special voting was made available across all polling locations in Bougainville, and the PNG Electoral Commission provided polling at each of the 21 Provincial Offices in PNG as well as some other high-density locations. OBEC is looking into ways to achieve similar coverage for ABG elections.

Challenges

While technically BiBs and BoBs can take their vote away from the SVPP, most in practise complete them at the SVPP, and this reduces the number of visits to SVPPs.

The SVPPs must hold the rolls for all constituencies, as well as sufficient ballot papers for all constituencies. This is the primary reason for limiting the number of SVPPs (although all polling places were designated as SVPPs to permit other forms of special votes to be collected in the field). The risk of multiple voting is minimised as the voters' fingers are inked on voting, and scrutineers also play a role in ensuring voters do not vote more than once.

The Regulations require the voter to make application for their special vote, and then to make a declaration when they vote. Similar information is required for both purposes. OBEC has the authority to design the forms used for the special votes (see Regulation 7 Appendix One) including that the same form may be used for the application for the special vote and for the declaration when the voter does vote. As most out of constituency voters vote in-person at the SVPP, the same form was used and the application made at the same time as voting.

At the 2015 ABG elections some of the public misunderstood the BiBs voting and attempted to prevent the polling and the counting of the BiBs and BoBs votes. Once the process was explained and the special rolls for the BoBs voters showed to the objectors, the situation was accepted. Because of this, for the Referendum significant effort was put into public education about out of constituency voting and other forms of special voting by way of video (via public display, the internet, and sharing on USBs) and the voting options were fully accepted for the referendum and also at the 2020 ABG elections.

Additionally, rolls from the ordinary voting places were sent to the SVPP for verifications against special rolls before admitting a voter to vote, providing greater confidence in the special voting process. However, this requires the SVPP to remain open after all ordinary voting places have closed.

The range of special voting options introduced at the Bougainville Referendum were so successful that OBEC is now working on a package of legislative reforms and associated procedures for their implementation at ABG elections (subject to achieving the legislative reforms).

Bougainville Referendum on Independence 2019

Legislative provision

The first time that OCV had been conducted for a Bougainville electoral event was at the 2019 Bougainville Referendum on Independence. The relevant legislative provisions are set out in the Organic Law on Peace-Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum 2002 (the 'Organic Law'), especially in Schedule 1.

Both OCV, and out of constituency voting, were provided for by way of postal voting (see Appendix One, Sch1.47 (a)(i) and (f)). Throughout the Organic Law various provisions made it clear that for a 'postal' vote, the referendum papers could not only be posted but could also be collected from and delivered to the Returning Officer (RO) by the voter or by someone else on behalf of the voter. This was key to the success of the program, as there is no operational postal service in Bougainville.

Relevant legislative provisions can be found in Appendix One.

Availability

Due to the importance and sensitivity of the referendum, the Bougainville Referendum Commission ('BRC') determined to make voting available for as many eligible Bougainvilleans as possible, within the financial means of the BRC.

Under Sch 1.2 of the Organic Law the BRC was able to delegate powers of the RO any other person. Powers of the RO for all constituencies ('voting districts' in the Organic Law) were delegated to officials managing special voting places so they could issue and receive postal and other forms of special votes.

Postal vote packs contained all the relevant documents and envelopes, as well as information for voters on how to complete their postal vote. Because this was a new procedure for Bougainville, information about OCV and postal votes was disseminated through a variety of channels and available via the internet for those overseas.

Postal votes were able to be collected from and delivered to:

- For voters within Bougainville but outside their constituency, special voting places were established in each of the three regional centres within Bougainville
- For voters outside Bougainville but within PNG, a voting place was established at each Provincial office in PNG and some other locations with high density of Bougainvillean population (the PNG Electoral Commission assisted with this activity)
- For voters outside PNG, BRC officials were able to travel to PNG High Commissions at locations where there was high density of Bougainvillean population in Australia and Solomon Islands.

Voters in other overseas locations were able to apply for their postal vote by email or other electronic means such as texting their details (see Appendix One, Sch 1.171), and have the voting papers couriered to them and return the completed papers by courier. Voters travelling out of PNG on the day of polling applied for postal ballots before departing PNG, ballots were then sent to their country of destination to complete and returned via postal service to BRC.

Methodology and implementation


Postal voting. See above for greater detail.

Challenges

As the Referendum was a stand-alone event, with a universal ballot paper across all constituencies, the BRC did not have to deal with the usual challenges of OCV which requires the special voting places to hold sufficient quantities of the voting papers for all constituencies.

The Organic Law provided for the postal vote declaration and certificate to be printed on the postal voting envelope. There were concerns about protecting the identity of voters, the secrecy of the vote during the scrutiny process, and protecting the declaration itself from becoming damaged in transit. Another provision in the Organic Law (s62) allowed the BRC to implement administrative measures to address inconsistencies, gaps or uncertainties in the operation of the law, and this provision was used to introduce a secrecy envelope (for ballot papers to be sealed inside before inserting them in the envelope bearing the declaration) and an outer transmission envelope.

The Referendum Regulations provided for the inking of fingers of voters when casting their vote in-person. Because voters could have someone else collect and return their postal vote, there was no provision for inking the voters' fingers. However voters were marked on the roll when they were issued a postal vote and checked off during the scrutiny, and for any special vote voters had to declare that they had not already voted, so the risk of voters attempting to vote more than once was minimised.



The Organic Law provided for a range of offences in relation to special votes, including tampering with votes or failing to deliver postal votes, witnesses interfering with a voter, voting more than once, etc, and a summary of relevant offences and penalties was included on all declaration forms to inform the public about this.

The postal voting and other forms of special voting introduced at the Referendum were so successful that both the OBEC and PNGEC intend to implement them for their general electoral events going forward.

Tokelau

Legislative provision

There is no provision for OCV or out of constituency voting in the Tokelau Election Rules 2019. There is, however, provision in the Tokelau Election Manual.

Extracts from the Tokelau National Election Procedures Manual can be found at Appendix Two.

Availability

Out of country voting

OCV is available only to those electors in Samoa on election day.

Out of constituency voting

Like OCV, out of constituency voting is available only to those electors in Tokelau and Samoa on election day.

Methodology and implementation

Each village (three villages) plus the Tokelau Office in Samoa have their own election committee – four Election Committees altogether. Village election committees are responsible for voter registration and the finalisation of voter rolls. On Election Day all four election committees work together to conduct the election and to ensure all absent ballot papers are scanned and emailed to the correct village.

Absent ballot boxes are clearly marked and set aside to ensure they don't get mixed up with local ballot boxes.

Communications between committees are done via email and phone.

Leaders of village election committees are responsible for issuing ballot papers to voters from other villages.

Absent ballot boxes are open at 3pm. Absent ballot papers are scanned and emailed by the leader to the appropriate village as soon as possible to include in their count.

Challenges

- A voting process used by one of the villages requires voters to stay close-by the voting venue all day. So, while this system/process may be fine for Tokelau as it is a very small island, it is definitely not suitable for voters voting in the Tokelau office in Samoa. As a result, voters casting their votes from Samoa cannot take part during the entire election process as the process is very lengthy.
- Secrecy of the vote is a challenge, especially when in some villages there may be only one elector voting out of their constituency. In this situation the Committee Members will know who that voter voted for because there were no other voters from that particular village.

Australia

Legislative provision

Electoral legislation is governed by the Australian Constitution, the Commonwealth Electoral Act and The Referendum Machinery Provisions Act.

The significant legislative provision that drives electoral administration in Australia is compulsory enrolment and voting. This therefore requires the Australian Electoral Commission (AEC) to provide opportunity for all electors to vote.

It is not compulsory for electors who are overseas on polling day to vote. However, the AEC provides a range of options to cater for electors who do wish to vote. See below for more detail.

It is compulsory to vote for all electors who are out of their constituency and not overseas on polling day. The AEC provides a range of options. See below for more detail.

Relevant legislative provisions can be found in Appendix Three.

Availability

If you are overseas and are intending to return to Australia within six years you can register as an overseas elector.

If you are already enrolled, you can apply up to three months before, or within three years after, you leave Australia. To do this, electors complete and submit a: *Registration as an overseas elector form*.

This form provides the elector with an option to become a general postal voter who will automatically receive a postal vote in the mail approximately two to four weeks after the announcement of the federal election.

If you are not enrolled, and have been overseas for less than three years, you may still be eligible to enrol if you are:

- an Australian citizen aged 18 years or older, and
- intending to return to Australia within six years.

You cannot enrol for an overseas address – instead you must enrol in the electorate you were entitled to enrol before you left Australia.

If you are moving overseas indefinitely, and do not intend to return to Australia, you are required to complete and submit an *Overseas Notification Form*.

Your name will be removed from the electoral roll and you will not be able to vote in any federal elections held while you are overseas. Should you return to Australia to live permanently, you may re-enrol after you have been at your residential address for a period of one month.

If you are the child of a person who is registered as an overseas elector you can enrol and vote in federal elections if you:

- have never been enrolled

- are an Australian citizen
- are 18 years or older and had not turned 18 before leaving Australia, and
- intend to return to live in Australia within six years after your 18th birthday.

If you wish to enrol to vote, you must complete and submit an: *Enrol to vote as the spouse, de facto partner or child of an overseas elector for federal elections form*.

Methodology and implementation

Out of country voting

In-person voting: you can vote in-person at an Overseas Voting Centre. Overseas Voting Centres are established at selected Australian Embassies, Consulates and High Commissions for each federal election. A list of Voting Centres is made available when a federal election has been announced.

Postal voting: After an election is announced, you can apply for a postal vote online. The AEC will send you your postal vote which will consist of your ballot papers, a return post envelope, a declaration envelope to record your details, and a guide on how to complete. Once you have completed your ballot paper(s) you seal the ballot paper(s) in the declaration envelope and place the declaration postal vote envelope into the return post envelope and post it back to the AEC. If you are registered as a general postal voter your ballot papers are sent without needing to apply.

Once it reaches the AEC the postal votes are sorted into, and sent to, their home constituencies. The home constituencies check the details on your declaration vote envelope. If you are an eligible elector you are marked off the voter register as having voted and the declaration envelope is admitted to the pile of envelopes containing ballot papers. The ballot papers are extracted from the declaration envelope with the side containing the voter's details face down which is then removed before the ballot papers are unfolded and counted, thus maintaining the secrecy of the vote.

Special Provisions for electors working in Antarctica (or on a ship that is in transit to or from the Antarctic): Telephone voting is available if you are an elector working in Antarctica (or on a ship that is in transit to or from the Antarctic) and you can cast your vote through the AEC's telephone voting service. (Note this service is also available for electors who have low vision or are blind).

Out of constituency voting

There are a range of provisions for electors who will be out of the constituency on polling day.

In-person at an early voting centre: If you can't get to a polling place on election day you can vote at an early voting centre in Australia. A list of early voting centres will be available in the weeks after an election is announced.

Postal voting: After an election is announced, you can apply for a postal vote to have your ballot papers sent to you in the mail. You can apply online via the AEC website, or by completing a postal vote application form available from AEC offices at election time. If you are registered as a general postal voter your ballot papers are sent without needing to apply.

Voting on election day in your State or Territory (but still out of your constituency): you can vote at any polling place in your state or territory on election day.

Travelling interstate? If on election day you are outside the state or territory where you are enrolled, you will need to vote at an interstate voting centre, if you have not already voted another way.

Challenges

Some of the challenges with conducting out of country voting include:

Determining where to conduct in-person voting. Challenges include:

- Non-ballot material such as voting screens, ballot boxes, declaration envelopes, etc. must be sent to each overseas location in advance of the election.
- Once ready, ballot papers for every constituency in Australia (151 divisions and eight states/territories) must be printed, allocated, and sent by diplomatic mail to each overseas location in time to commence early voting.
- Department of Foreign Affairs and Trade staff must be trained to issue declaration votes to Australians from the overseas locations and at the conclusion of the polling period reconcile, sort, and return to Australia by diplomatic mail all used and unused ballot material including ballot papers.
- Upon receipt in Australia, all declaration envelopes must be collated and sorted and sent to the home constituency for eligibility checking. Envelopes must be received prior to the 13th day after close of polling.
- At the 2019 federal election 60,710 Australians cast their vote at one of 85 overseas locations. The Australian High Commission in London issued 12,952 in-person votes during the early voting period.

Timeliness of postal voting

- Postal vote packs are sent to overseas postal voters as early as possible once ballot papers are available. This typically occurs around 2 ½ weeks prior to election day which places time pressure on the voter receiving them before election day, which is the latest date they can cast their vote.
- Once the postal vote packs leave Australia, we have no control over how long they take to be delivered to voters.
- Similarly, when a voter mails their postal vote back to Australia, we have no control over how long it takes to arrive. It must be received by the AEC before the end of the 13th day after election day.

At the 2019 federal election 51,691 postal vote packs were mailed to overseas voters.

New Zealand

Legislative provision & availability

The Electoral Act 1996 and Regulations made under that Act provide for the voting options for the New Zealand elections.

A range of special voting options are available under the Act and Regulations, including out of country voting and out of constituency voting, with the majority of the detail confined to the Regulations which are extremely prescriptive.

Any voter who cannot be marked off a voting place roll casts a special vote. This happens if the voter:

- is not enrolled by Writ Day, so their name is not on a printed roll at a voting place
- votes outside their electorate at a voting place not issuing ordinary votes for their electorate
- casts a takeaway or postal vote because they are unable to visit a voting place
- uses the telephone dictation voting service because they are unable to vote independently at a voting place
- votes from overseas
- is on the unpublished roll.

A special vote consists of a special vote declaration and the voting papers. The special vote declaration contains the voter's personal details and must be witnessed. The special vote envelopes contain two pockets, for the declaration and the ballot papers to be kept separate to preserve the secrecy of the vote. After the close of polling the declarations are checked for completeness and voter eligibility including that the voter is enrolled, before the vote is admitted to the official count.

Further legislative provisions can be found in Appendix Four.

Methodology and implementation

Out of country voting

Voters can obtain voting papers in the following ways (see Reg 44A):

- Download voting papers from the Electoral Commission's website (as long as they can log in and locate themselves on the electronic version of the electoral roll – see Reg 45A)
- Apply to the Electoral Commission for postal voting papers
- Vote in-person at an overseas post

Voters can return voting papers in one of the following ways:

- Upload a scan or photograph to the Electoral Commission's secure website (see Reg 47B)
- Fax to the Electoral Commission (see Reg 47A)
- Post to the Electoral Commission (see Reg 47)
Post or hand deliver to their nearest overseas post (see Reg 47)

This is a mix-and-match service, voters can obtain voting papers via one means (e.g. postal vote) and return them by another means (e.g. upload).

All NZ overseas diplomatic missions operate voting places, and this model has worked extremely successfully under an MOU between NZEC and MFAT. The diplomatic staff deliver the voting service and are trained remotely using a mix of hard copy instructions and e-learning. The overseas posts can issue and receive votes in-person as well as postal votes. The Overseas Voting Team is available 24/7 during the polling period to answer queries from voters or mission staff. Voting material are dispatched to the missions and returned to NZ using secure courier.

OCV votes are processed at a centralised processing centre, rather than being dispersed out to the various electorates.

Out of constituency voting

Voters cast their votes in-person at a voting place (unless they qualify for another form of special voting, for example, if they are unable to attend a voting place due to infirmity).

Where the voter can be marked off the roll at the time of voting, they can be issued an ordinary vote. Therefore, all voting places hold the electoral roll for their own electorate and for each of their neighbouring electorates, to reduce the number of special votes.


Voters casting their vote at a voting place more distant from their home electorate are issued a special vote. During the count the votes are qualified by first checking the declaration (without opening the ballot papers): where the voter is not qualified to vote their vote is not qualified, where they are qualified to vote but not in the electorate they voted for, their party vote will qualify (as under Mixed the Mixed Member Proportional system this is a nationwide vote) but their candidate vote will not qualify.

See Appendix Five for further information on the special vote.

Challenges

A continual challenge with OCV and out of constituency voting is the increasing number of special votes processed at the count, which require significantly more time than processing ordinary votes. This has ramifications for when the election results can be released. Therefore, NZEC is continually looking at ways to reduce the number of special votes and ways to ensure that voters who cannot be located on the local electoral roll are voting for the appropriate electorate so their candidate votes can be included. Some of the solutions implemented to date include:

- Increasing the number of voting places that hold rolls for neighbouring electorates. To effectively manage voting place flow, voters casting votes in these electorates are directed to issuing officers who are issuing votes for these electorates
- Separate issuing points in a voting place for issuing special votes
- All voters are issued an EasyVote card, which is an administrative tool (not an ID card) which includes information about the voter's electorate and roll, so they can easily be directed to the appropriate vote issuing point and located on the relevant roll
- The introduction of electronic roll look-up functions in voting places, to verify which roll the voter is on when they don't bring their EasyVote card and direct them to the appropriate issuing point.



A key solution being sought in relation to out of constituency voting is legislative change to permit NZEC to mark voters off an electronic roll. This would extend the use of the electronic rolls (currently NZEC can use electronic data to locate the voter, but not to mark them off the roll), and would permit all voting places to issue ordinary votes for those voting outside their electorate.

For OCV, the legislative cut-off for the receipt of postal votes often means many votes arrive too late to be included in the count. Although postal voting remains as a legislative option, NZEC actively encourages voters to utilise other quicker means of voting. The introduction of the vote upload system assisted with this, and the majority of voters now use the electronic download system to obtain their votes and the upload system to return their votes.

Faxing voting papers caused a number of problems, particularly in relation to breaks in the transmission which meant NZEC often only received part of the voting papers or received them a number of times as the voter experienced transmission challenges their end. NZEC was generally able to identify these as 'duplicates' (and therefore discard them) rather than 'dual votes' which would mean all of that votes would have to be disallowed. The vote download and upload systems have now almost completely replaced fax as a method of transmitting voting papers.

Appendix One

Key provisions of the Bougainville Elections Act and Regulations

Note: Provisions particularly relevant to the OCV strategy and referred to in this paper are shaded grey for ease of identification.

118A Special voting arrangements

The regulations may prescribe special voting arrangements to enable an elector to vote if the elector will, during the polling period, be—

- (a) an electoral officer; or
- (b) a member of the Police, or otherwise providing election-related security; or
- (c) prevented by illness or physical disability from attending a polling place; or
- (d) absent from the single member constituency where the elector is enrolled.

Electoral (Special Voting Arrangements) Regulations 2015

5 Absent elector voting arrangements

- (1) This regulation applies if an absent elector is, or is scheduled to be, absent from the constituency in which they are enrolled to vote during the polling period for that constituency.
- (2) An absent elector is entitled to vote in accordance with the arrangements set out in these Regulations.

6 Special voting polling places

- (1) The Commissioner may, by written notice, appoint places to be special voting polling places.
- (2) The Commissioner shall, as soon as practicable after the close of nominations, prepare a special voting polling schedule showing the anticipated dates and times, within the polling period for an election, during which the polling booths will open at the special voting polling places.
- (3) The Commissioner shall take such action as is considered necessary or desirable to ensure adequate publicity for the special voting polling schedule.
- (4) As far as possible, polling booths shall open in accordance with the special voting polling schedule.
- (5) The Commissioner may, where it becomes impracticable to adhere to the special voting polling schedule, vary the schedule, in which case the provisions of this regulation shall, as far as practicable, be observed in relation to the variation.

7 The polling

- (1) At any time from the date fixed for the commencement of the polling period until the date fixed for the end of the polling period for an election as defined in section 70 of the Act, an absent elector may make an application to a Returning Officer or a presiding officer for the ballot papers for the constituency in which they are enrolled;
- (2) An application shall be in an approved form that sets out the elector's name, constituency, a statement relating to their entitlements under s118A and any other details;
- (3) The Commissioner may approve a single or separate form for the purposes of each category under s118A of the Act;
- (4) Nothing in sub-regulation 7(2) or (3) excludes the Commissioner from approving that the application form and the declaration form can be one of the same form;

- (5) Where the Returning Officer or presiding officer is satisfied that the person is an elector and is entitled to receive ballot papers under section 111 of the Act, the Returning Officer or presiding officer shall issue the elector (or for an elector entitled under s118A(c) a person authorised by the elector) with the relevant ballot papers, a declaration form and a special vote envelope;
- (6) An absent elector who receives the ballot papers, declaration form and a special vote envelope shall:
 - (a) mark the ballot papers in private;
 - (b) complete the declaration form and the details on the outside of the special vote envelope;
 - (c) enclose the ballot papers in the envelope;
 - (d) securely fasten the envelope;
 - (e) return the envelope to the Returning Officer or presiding officer prior to the end of the polling period;
- (7) If a voter who claims to vote under paragraphs 118A(a), (b) or (d) of the Act satisfies the Returning Officer or presiding officer that their sight is impaired or that they are so physically incapacitated that they are unable to vote without assistance, the Returning Officer or presiding officer shall permit the voter be provided with assistance in accordance with section 117;
- (8) A voter who claims an absent vote under paragraph 118A(c) of the Act may appoint a person to collect the application form, declaration form and special voting envelope from the special voting polling place. The appointed person may assist the voter to:
 - (a) mark the ballot papers in private;
 - (b) complete the application form, declaration form and the details on the outside of the special vote envelope;
 - (c) enclose the ballot papers in the envelope;
 - (d) securely fasten the envelope; and
 - (e) return the envelope to the Returning Officer or presiding officer prior to the end of the polling period;
- (9) A claim for an absent vote under paragraph 118A(c) of the Act must be supported by:
 - (a) if the voter is in a hospital, a medical practitioner or registered nurse must sign the declaration to verify that the voter is in the hospital; or
 - (b) if the voter is at his or her place of residence, the chief of the village or the chairman of the relevant council of elders must sign the declaration to verify that the voter is prevented by illness or physical disability from attending the polling place.
- (10) The Returning Officer or presiding officer shall deposit the special vote envelope in a sealed ballot box that has been specifically marked as a special vote ballot box.

Key provisions of the Organic Law

Note: Provisions particularly relevant to the OCV strategy and referred to in this paper are shaded grey for ease of identification.

Organic Law on Peace-Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum 2002

Sch.1.47. Application for Postal Vote Certificate, Etc.

- (1) A voter may apply to the Returning Officer for a postal vote certificate and postal ballot-paper if the voter –
 - (a) will not, throughout the polling period –
 - (i) be within his voting district; or
 - (ii) be within 16 km by the nearest practicable route of a polling booth open in his voting district; or
 - (b) will be travelling or be away from his residence under conditions which will preclude him from voting at a polling booth open in his voting district; or
 - (c) is seriously ill or infirm, and by reason of that illness or infirmity will be precluded from attending at a polling booth to vote; or
 - (d) in the case of a woman – will, by reason of approaching maternity or of the necessity to care for her child, be precluded from attending at a polling booth to vote; or
 - (e) is, by reason of his membership of a religious order or of his religious beliefs –
 - (i) precluded from attending at a polling booth; or
 - (ii) precluded from voting at a reasonably accessible polling place; or
 - (f) is residing abroad.
- (2) An application shall be in writing setting out the grounds upon which the applicant claims to vote by post.
- (3) An application under this section may be made in person or by letter or fax⁹ after the tenth day after the issue of the writ to the Returning Officer.
- (4) The Returning Officer shall not accept an application under this section if it reaches the officer after the commencement of the polling period.

Sch.1.55. Directions for Postal Voting

The following directions for regulating voting by means of postal ballot-papers shall be substantially observed: –

- (a) the voter shall exhibit his postal ballot-paper (unmarked) and his postal vote certificate to an authorized witness; and
- (b) the voter shall mark the postal vote certificate to indicate the grounds applicable to him on which he wishes to vote by post, and also strike out the inapplicable grounds; and
- (c) the form of declaration printed on the envelope bearing the postal vote certificate shall, after being filled in, be signed by the voter in the space provided for the signature of the voter in the presence of the authorized witness; and
- (d) the authorized witness shall then and there sign his name in his own handwriting in the declaration printed on the envelope bearing the postal vote certificate in the place provided for the signature of the authorized witness, and shall add the title under which he acts as an authorized witness and the date; and
- (e) the voter shall then and there, in the presence of the authorized witness but so that the authorized witness cannot see the vote, mark his vote on the ballot-paper in

⁹ 'Fax' is defined as 'a facsimile message sent by electronic means', and this definition was considered broad enough to encompass any sort of electronic transmission, including email.

the prescribed manner, fold the ballot paper, place it in the envelope addressed to the Returning Officer for the voting district in which he is entitled to vote; and

(f) the voter shall promptly post or deliver the envelope or cause it to be posted or delivered, to the Returning Officer for the voting district in which he is entitled to vote; and

(g) in the case of a voter suffering from a disability referred to in Section Sch.1.87 the authorized witness shall mark the voter's vote on the ballot-paper and shall then and there fold the ballot-paper so that the vote cannot be seen, place it in the envelope addressed to the Returning Officer, fasten the envelope, and hand it to the voter, who shall post or deliver it, or cause it to be posted or delivered, to the Returning Officer for the voting district in which he is entitled to vote; and

(h) the authorized witness shall not suffer or permit any person (other than the voter) to see or become acquainted with the voter's vote, or to assist the voter to vote, or to interfere in any way with the voter in relation to his vote.

Sch.1.171. Material may be sent by fax.

Where it is impracticable to communicate material relating to the Referendum by post without occasioning undue delay, a fax communicated in the ordinary course shall be deemed to comply with the requirements of this Schedule as if the matter sent through electronic means had been communicated in the manner prescribed by this Schedule.

Appendix Two

Key extracts: Tokelau National Election Procedures Manual

- Absent ballot papers must be only issued by the VEC leader. All absent ballot papers should be kept separate from the village ballot papers and not issued to the issuing officials. The VEC leader should issue ballot papers to all absent voters. (Distribution of Ballot Paper and Rolls p,15)
- Remember to set up a ballot box for Absent votes from the other two villages. These ballot boxes will remain with the VEC Leader and will remain secure throughout the day. The security seals must be recorded on the above worksheet by the VEC. (Sealing of the Ballot Box p,16)
- An absent vote is issued to voters currently on a different island to which they are registered for.

The registration officer is to check they are on the registered roll for appropriate island and mark their name off the roll. Direct them to the Leader who will give them 5 ballot papers for their registered island. The voter should be told to return to the leader to put their votes in the absent ballot box for that island.

After 3pm all absent votes will be scanned and emailed to the appropriate village for inclusion in the count. (Absent Voters p,17)

- The first priority is to scan and email any absent votes from other villages to the appropriate VEC to ensure they can include those results into the count.

You must call (followed up by an email) the other VEC's to report how many absent votes you have for them as soon as you have tallied the number of absent votes you have taken. This is to be very quickly followed up by scanning and emailing those votes so they can be included in the counts. (Close of Votes – Absent Votes-Priority p,18)

- You will be advised of how many absent votes you will be receiving from other islands.

When you receive these votes via email you must print the votes and place them in with the votes from your election venue.

Counting of votes must not commence until all absent votes have been received. (Close of Votes – Receiving Votes from Other VECs p,19)

Appendix Three

Key provisions of the Commonwealth Electoral Act 1918

Commonwealth Electoral Act 1918

(<https://www.legislation.gov.au/Details/C2021C00140>)

193 Authorised witnesses

- (1) An elector whose name appears on a Roll is an authorised witness.
- (2) Outside Australia, the following persons are authorised witnesses:
 - (a) an officer of the Defence Force or of the naval, military or air forces of a Commonwealth country;
 - (b) a person appointed or engaged under the *Public Service Act 1999*;
 - (c) a member of the civil or public service of a State or Territory or of a Commonwealth country;
 - (d) a Justice of the Peace for a State or Territory or a Commonwealth country;
 - (e) a minister of religion or medical practitioner resident in a State or Territory or a Commonwealth country;
 - (f) an Australian citizen.
- (3) A person who is a candidate at an election is not an authorised witness in relation to the casting of a postal vote in that election.
- (4) In this section:

Commonwealth country means a body politic, or part of a body politic, that is a member of the international organisation known as the Commonwealth of Nations.

194 Postal voting

- (1) The following requirements for postal voting shall be substantially observed:
 - (a) the person voting must show the unsigned postal vote certificate and the unmarked postal ballot paper to an authorised witness;
 - (b) except in the case of a person registered as a general postal voter on the ground set out in paragraph 184A(2)(e) or (f), the person must sign the postal vote certificate in the presence of the authorised witness;
 - (c) the authorised witness shall sign the certificate as witness, adding the date and an indication of the capacity in which the witness acts;
 - (d) the person must then, in the presence of the authorised witness but so that the witness cannot see the vote, mark his or her vote on the ballot paper, fold the ballot paper, place it in the envelope on which the postal vote certificate is printed and fasten the envelope;
 - (da) the person must declare, on the postal vote certificate, that the requirements referred to in paragraphs (a), (b) and (d) were satisfied before the close of the poll;
 - (db) the authorised witness must declare, on the postal vote certificate, that the requirements referred to in paragraphs (a) to (c) were satisfied before the close of the poll;

(e) the person must post or deliver the envelope to the DRO for the Division for which the person is enrolled;

(f) if the person (the **elector**) cannot read or is so disabled as to be unable to vote without assistance, another person chosen by the elector may, according to the directions of the elector, complete the postal vote certificate and do for the elector any act required by paragraph (d) or (e);

(g) directions under paragraph (f) may be given by reference to a how-to-vote card.

(1A) A postal vote by a person outside Australia that does not meet the requirements in subsection (1) concerning an authorised witness is, despite that subsection, taken to meet those requirements for the purposes of this Act if:

(a) the postal vote is accompanied by a signed and dated statement by the person setting out why the person was unable to comply with those requirements; and

(b) the DRO or officer dealing with the postal vote under section 195A is satisfied that the person made reasonable efforts to comply with those requirements; and

(c) the postal vote is accompanied by a photocopy, that is certified by the person to be a true copy, of a part of the person's passport that includes:

(i) the country and date of issue and the number of the passport; and

(ii) the person's name, date of birth and signature; and

(iii) a photograph of the person.

222 Where electors may vote

(1) On polling day an elector is entitled to vote at any polling place for the Division for which he or she is enrolled or to vote as an absent voter, on making a declaration in an approved form, at any other polling place within the State or Territory for which he or she is enrolled at which a polling booth is open.

(1B) In this Part (other than section 245) and in Schedule 3:

(a) a reference to an elector includes a reference to a person who has cast an absent vote under subsection (1A); and

(b) a reference to the Division in which an elector is enrolled includes a reference to the Division in which the person is provisionally enrolled.

(2) Notwithstanding subsections (1) and (1A), where a hospital is a polling place, an elector is not entitled to vote at that polling place otherwise than under section 224 unless an appropriate person on the staff of the hospital has agreed to permit electors generally to vote at that polling place or unless the elector:

(a) is attending the hospital as a patient or as a genuine visitor of a patient; or

(b) performs functions or duties in the hospital.

(3) A declaration made by an absent voter under subsection (1) or (1A) shall be printed on, or securely attached to, an envelope addressed to the Divisional Returning Officer for the Division for which the elector declares that he or she is enrolled.

Appendix Four

Key provisions of the Elections Act 1993 and Regulations

Electoral Act 1993

(web: <https://legislation.govt.nz/act/public/1993/0087/latest/whole.html#DLM309843>)

172 Voting by special voters

- (1) Notwithstanding anything to the contrary in this Act, a special voter may vote at such place (whether at a polling place or not and whether in or outside New Zealand), at such time, in such manner, and upon or subject to such conditions as may be prescribed in that behalf by regulations made under this Act.
- (2) Different methods of voting may be prescribed for different classes of special voters.
- (3) The ballot papers for use by special voters or by any class of special voters may be in such form as is prescribed by regulations, and the consecutive numbers of the special ballot papers for any district may be in a different series from that used for the ordinary ballot papers.
- (3A) The special vote ballot papers may contain the logos submitted in accordance with section 127(7) and (8) or section 143(3A) and (4) or section 146E(4) and (5) or a depiction of those logos in black and white; but nothing in this Act requires the inclusion of those logos on the special vote ballot papers.
- (4) Each constituency candidate may, in writing, appoint 1 or more scrutineers to be present at the office of the Electoral Commission when the Commission is performing its duties in relation to special vote declarations for the district.
- (5) Every scrutineer must, before being allowed to act, declare that he or she will comply with section 203.
- (5A) The declaration must
 - (a) be in a form that the Electoral Commission has approved; and
 - (b) be witnessed as specified in the form.
- (6) If a constituency candidate appoints more than 1 scrutineer under subsection (4), not more than 1 scrutineer for that candidate may be present at any time at the office of the Electoral Commission when the Commission is performing its duties in relation to special vote declarations for the district.
- (7) No candidate shall act as scrutineer under this section.
- (8) Subject to the provisions of this section and section 61, and to the provisions of any regulations made for the purposes of this section, all the provisions of this Act shall, as far as applicable and with the necessary modifications, apply with respect to voting by special voters and to their votes.

Electoral Regulations 1996

(web: <https://www.legislation.govt.nz/regulation/public/1996/0093/latest/whole.html>)

The Regulations are highly prescriptive, with a significant number of provisions that pertain specifically to out-of-country and out-of-constituency voting, shown by the reproduced Contents portion below.

For brevity, only the following Regulations have been reproduced which are generic to special voting options:

- R20 Application for special vote
- R43 Overseas Returning Officers and Overseas Issuing Officers
- R47-47B regarding how special votes may be returned

Eligibility criteria is set out in the Regulations in relation to each of the different classes of special votes. The relevant Contents portion is copied below, and the Regulations can be accessed on the internet at:

<https://www.legislation.govt.nz/regulation/public/1996/0093/latest/whole.html>

20 Application for special vote

An application for a special vote may be made—

- (a) in person by the elector;
- (b) by a written application signed by the elector;
- (c) by a written application signed on behalf of the elector pursuant to an authority signed by the elector;
- (d) in any other manner, if the person issuing the ballot paper is satisfied that the application is made in good faith and that it is not practicable to make it in a manner prescribed by paragraphs (a) to (c).

44A Application for special vote by persons outside New Zealand

- (1) A person who is qualified to vote at an election in any district and who is outside New Zealand (an **overseas elector**) may apply to vote as a special voter.
- (2) An application may be made in any of the ways specified in regulation 20.
- (3) Voting papers may be issued to an overseas elector—
 - (a) in person, under regulation 45; or
 - (b) by post, under regulation 45, if the Electoral Commission considers there is sufficient time for the overseas elector to receive the voting papers by post and make arrangements for their return; or
 - (c) electronically, under regulation 45A.
- (4) In this regulation, **voting papers** means the documents referred to in regulation 43(2) or (3).

45A Electronic issue of special voting papers

- (1) In the case of a general election, the Electoral Commission may, as soon as is reasonably practicable after the close of nominations and at any time before the close of the poll, issue electronically the documents referred to in regulation 43(2) to persons outside New Zealand who are electors of any electoral district.
- (2) In the case of a by-election, the Electoral Commission may, as soon as is reasonably practicable after the close of nominations and at any time before the close of the poll, issue electronically the documents referred to in regulation 43(3) to persons outside New Zealand who are electors of the electoral district in which the by-election is to be or is being held.
- (3) The following provisions apply, with any necessary modifications, to the issue of documents under this regulation:
 - (a) regulation 21(2);
 - (b) regulation 21(4);
 - (c) regulation 21(5)(a)(iv).
- (4) A copy of the official mark of the Electoral Commission must be present on ballot papers and declarations issued under this regulation.

- (5) For the purposes of this regulation, documents are issued electronically if the documents are able to be—
- (a) accessed by electronic means, including (without limitation) by means of remote log-on access; and
 - (b) readily inspected and reproduced in a useable form.

47 Special votes may be returned by personal delivery or post

- (1) Any person to whom documents are issued under regulation 45 or 45A may, after voting in the manner prescribed for special voters by Part 2, arrange for an envelope containing the ballot paper, any voting papers, and the declaration to be delivered—
- (a) by hand or by post to—
 - (i) an Overseas Returning Officer; or
 - (ii) an Overseas Issuing Officer; or
 - (b) by post to—
 - (i) a Returning Officer in New Zealand; or
 - (ii) the Electoral Commission
- (2) An envelope delivered by hand or by post under subclause (1)(a) must be received by the Overseas Returning Officer or Overseas Issuing Officer by 4 pm local time on the day before polling day.
- (3) An envelope delivered by post under subclause (1)(b) must be—
- (a) postmarked or date-stamped before polling day; and
 - (b) received by the Returning Officer in New Zealand or the Electoral Commission not later than noon New Zealand time on the ninth day after polling day

47A Special votes may be returned by facsimile

- (1) Any elector to whom documents are issued under regulation 45 or regulation 45A may, after voting in the manner prescribed for special voters,—
- (a) if applicable, remove any gummed paper that is fixed over the consecutive number on the ballot paper or any voting paper; and
 - (b) before the close of the poll, forward the ballot paper, any voting papers, and the declaration to the Electoral Commission by facsimile.

47B Special votes may be returned electronically if secure transmission available

- (1) Electors to whom documents are issued under regulation 45 or 45A may return those documents in accordance with subclause (2) if, for that particular election, a system allowing secure electronic transmission is made available by the Electoral Commission for that purpose.
- (2) If subclause (1) applies, an elector may, after voting in the manner prescribed for special voters,—
- (a) if applicable, remove any gummed paper that is fixed over the consecutive number on the ballot paper or any voting papers; and
 - (b) before the close of the poll, forward the ballot paper, any voting papers, and the declaration to the Electoral Commission electronically in a manner specified by the Electoral Commission on its Internet site.

Relevant Content Portions of the Regulations:

Part 2: Special voting

- 16 List of constituency candidates
- 17 Printing of ballot papers
- 18 Party lists
- 19 Facilities for special voting
- 20 Application for special vote
- 21 Issue of special voting papers
- 23 Hospital votes
- 23A Telephone dictation of vote by special voter with disability
- 23B Appointment of Issuing Officers for dictation voting
- 24 Special vote in district before polling day
- 24A Scrutineers at advance polling places
- 24B Special vote by person affected by significant event
- 24C Special vote by person in isolation or quarantine [Revoked]
- 25 Declaration by special voter
- 26 Witnesses authorised by candidates
- 27 Voting by special voter
- 28 Duty of persons present when vote exercised
- 29 Endorsement of envelopes
- 30 Delivery of special votes to Returning Officer
- 32 Returning Officer to extract declaration form
- 33 Declaration form enclosed in ballot and voting paper compartment
- 34 Disallowance of special votes received late
- 35 Electoral Commission to determine whether person casting special vote is qualified to vote
- 36 Duties of Electoral Commission
- 37 Allowance or disallowance of votes by Returning Officer
- 38 Procedure where vote allowed
- 39 Declaration forms to be held by Returning Officer for scrutiny
- 40 Parcels of forms and envelopes
- 41 Opening of envelopes containing votes allowed
- 42 Parcels to be forwarded to Clerk of House of Representatives

Part 3: Overseas special voting

- 43 Overseas Returning Officers and Overseas Issuing Officers
- 44 Declarations by Overseas Returning Officers and Overseas Issuing Officers
- 44A Application for special vote by persons outside New Zealand



- 45 Issue of special voting papers
- 45A Electronic issue of special voting papers
- 46 Members of Defence Force voting as special voters
- 47 Special votes may be returned by personal delivery or post
- 47A Special votes may be returned by facsimile
- 47B Special votes may be returned electronically if secure transmission available
- 48 Endorsement and posting of envelopes
- 48A Receipt of special votes by facsimile
- 48B Receipt of special votes electronically
- 49 Parcels of spoilt ballot and voting papers, and other papers
- 50 Overseas special votes received in time
- 51 Overseas special votes received late
- 52 Allowance or disallowance of votes of members of Defence Force

Part 4: Voting from Tokelau, Campbell Island, Raoul Island, Ross Dependency, vessels, offshore installations, remote islands administered by Department of Conservation, and remote locations overseas

- 53 Application of Part
- 54 Electoral Commission may appoint Issuing Officers
- 55 Electoral Commission to forward special voting papers to Issuing Officers
- 56 Issue of special voting papers by Issuing Officers
- 57 Electoral Commission may issue special voting papers to special voters
- 58 Dictation of special votes
- 59 Return of special votes
- 60 Receipt of special votes by hand or post
- 61 Issuing Officer may forward special votes by facsimile or electronically
- 62 Receipt of special votes by facsimile
- 63 Receipt of special votes by electronic transmission
- 63A Special votes under this Part received in time
- 64 Special votes under this Part received late
- 64A Parcels of unused and spoilt ballot and voting and other papers

Appendix Five: Special Vote

Issuing a special vote

1 Complete the top

Say: *Hello/Kia ora. Please take a seat. Do you have an EasyVote card or Special Vote slip?*

Voter has an EasyVote card or a Special Vote slip

Say: *Thank you for bringing this to vote.*

Write clearly on the declaration using a **red pen**:

- Electorate name
- If they have an EasyVote card: copy the page and line number in the **Voting card box**
- If they have a Special vote slip: write 'SVS' in the **Index page box**

or Voter does NOT have an EasyVote card or a Special Vote slip

Say: *That's okay. What is your address?
Were you living at this address by Wednesday 23rd August this year?*

If the answer is "Yes", look up the address in the **Index to Places & Streets**

If the answer is "No", ask where they last lived for at least one month. Look up this address.

Ask: *Are you on the General or the Māori roll?*

Using a **red pen** write firmly on the declaration:

- The name of the electorate
- The page number from the **Index** into the **Index page box**

or Voter has partially or fully completed an enrolment form

Say: *Thank you for filling this in. I will quickly check it over and then look up your address in my Index.*

Go to page 12 for enrolment form check instructions.

DECLARATION by Special Voter

1 I am making a special vote because: (tick at least ONE option)
 My name is not on the electoral roll for this electorate or has been wrongly registered.
 I am, or will be, outside of my electorate on election day.
 I am, or will be, unable to attend a voting place in my electorate on election day because of illness, injury, pregnancy or recent childbirth.
 I have a religious objection or attending a religious service on election day.
 I have notified the Returning Officer that I have moved a notice that in the 12 months, when returning postage or return instructions for the following reason:

2 I declare that I am at least 17 years of age and I am eligible to vote in this electorate and I live at the address on the declaration.

My name: **Samyale**
 My electorate: **Albert (Urban)**
 My date of birth: **09 07 1982**
 My contact telephone number: **021 323 4507**
 My current address: **37 Angwhera Rd, Teitoti No. 1, Teitoti**
 Sample town: **Teitoti**
 I have lived at this address for 1 month or more: **Yes**
 I have lived at this address within the last 1 month or more: **No**

My name: **SVS**
 My electorate: **Albert (Urban)**
 My date of birth: **09 07 1982**
 My contact telephone number: **021 323 4507**
 My current address: **37 Angwhera Rd, Teitoti No. 1, Teitoti**
 Sample town: **Teitoti**
 I have lived at this address for 1 month or more: **Yes**
 I have lived at this address within the last 1 month or more: **No**

36 counts
 71 counts

Office: **23 09 2017**
23 09 2017

