

Hon Kiri Allan
Minister of Justice

Proactive release – Electoral Amendment Regulations (No 2) 2022

Date of issue: 12 September 2022

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1	Electoral Amendment Regulations (No 2) 2022 <i>Cabinet paper</i> Office of the Minister of Justice 25 August 2022	Released in full
2	Electoral Amendment Regulations (No 2) 2022 <i>Cabinet Minute LEG-22-MIN-0143</i> Cabinet Office 25 August 2022	Released in full

Office of the Minister of Justice
Cabinet Legislation Committee

Electoral Amendment Regulations (No 2) 2022

Proposal

- 1 This paper seeks authorisation for the Electoral Amendment Regulations (No 2) 2022 (the Regulations) to be submitted to the Executive Council.

Policy

- 2 On 2 May 2022, Cabinet agreed to amend the Electoral Regulations 1996 to support the delivery of elections [CBC-22-MIN-0026 and CAB-22-MIN-0150 refers]. On 1 June 2022, the Electoral Amendment Regulations 2022 came into force, which implemented changes to make it easier for people to vote in the Tauranga by-election that was held on 18 June 2022. These (No 2) Regulations implement the remaining amendments agreed by Cabinet on 2 May 2022.
- 3 The proposed amendments in this paper respond to recommendations made by the Electoral Commission (the Commission) and/or the Justice Committee in their respective reports on the 2020 General Election.

Allowing overseas voters and witnesses to use electronic signatures

- 4 The Regulations enable the marks and signatures of overseas voters and witnesses produced through physical action to be electronically captured (for example, using technologies such as signature pads, touch pads/track pads, mouse and touch pens). Voters and witnesses will not be able to type in their name using a keyboard for their signature.
- 5 At the 2020 General Election, 94% of overseas voters used the Commission's 'download/upload service' to vote. This requires voters to print their voting papers, manually mark them and then upload a scan or photograph of the completed papers. The Commission's report into the 2020 General Election highlighted that overseas voters find it increasingly difficult to access a printer. Access issues were exacerbated by the pandemic and more overseas voters were wanting a digital option for marking and signing their voting papers.
- 6 On 2 May 2022 Cabinet agreed to amend the Electoral Regulations to allow overseas voters' marks and signatures to be captured electronically. Cabinet also authorised me to make minor and consequential policy decisions that may arise during the drafting process. Under this authority granted by Cabinet, I have decided to extend the ability to make electronic marks and signatures to the following additional people:
 - 6.1 witnesses of special voter declaration forms where the voter is able to mark or sign a special voting paper electronically. Witnesses are

required to sign the special vote declaration that has to be uploaded with the voting paper;

6.2 voters in New Zealand who are issued with and return special votes electronically because they have satisfied the Electoral Commission that it is impractical for them to vote in a polling place due to a significant event. This will avoid voters impacted by a significant event having to print and manually complete their special voting papers; and

6.3 voters in remote locations in New Zealand as specified in Part 4 of the Electoral Regulations.¹ This ensures all categories of remote voters covered by Part 4 have the option to mark and sign papers electronically, enhancing their ability to participate in elections.

7 This amendment will not impact the integrity of overseas votes, which are already subject to the following security checks:

- a unique reference number which allows duplicate votes (where voting papers are returned multiple times) and dual votes (where a voter votes multiple times) to be excluded;
- only allowing electronic signatures using physical action, and not typed signatures;
- CAPTCHA tests to determine the user is human; and
- security testing, accreditation of systems, and encryption.

Providing dictation voting for overseas voters who have a disability

8 Currently, dictation voting is only available for voters in New Zealand who are blind, vision impaired or have a physical disability and require assistance to mark the ballot paper.

9 The Regulations will enable the Commission to provide dictation voting for disabled people who are unable to mark a ballot paper, through telephone services operating within New Zealand business hours, at the same time the service is being offered to voters in New Zealand.²

Miscellaneous amendments

10 The Regulations make a number of miscellaneous amendments to ensure the Regulations are fit for purpose, including:

10.1 *special votes* – the Regulations will extend the deadline to receive special votes for general elections from 10 to 13 days to accommodate public holidays potentially falling within the current 10-day timeframe;

¹ Part 4 provides remote special voting for voters in Tokelau, Campbell Island, Raoul Island, Ross Dependency, vessels, offshore installations, remote islands administered by Department of Conservation, and remote locations overseas.

² Services will be provided within New Zealand business hours. The Electoral Commission has advised this means services will be available Monday to Saturday, between the hours 9am to 7pm, during the advance voting period for the 2023 General Election. These hours will enable voters from different time zones to access the service at a reasonable time, either during the daytime or early evening in their country of residence.

- 10.2 *incorrect placement of voting papers* – the Regulations allow a Returning Officer to open the compartments of the envelope to correct the placement of papers if they believe papers have been placed in the wrong compartment of the envelope; and
- 10.3 *updating or removing redundant provisions* – the Regulations are updated to remove the requirement to use gummed paper and references to the use of facsimiles have been removed. These changes ensure the Regulations are fit for purpose and accommodate changes to operational practices.
- 11 The Regulations also extend the deadline for applications for remote voting. Currently the application deadline for remote special voting is no later than 4pm on the Thursday before polling day. However, ordinary votes can be cast until 7pm on polling day. Cabinet agreed to extend the timeframe to noon on polling day for remote voting applications for electronic and dictation voting.
- 12 Under the authority granted by Cabinet to make minor and consequential policy decisions that may arise during the drafting process, I have decided to extend the deadline to noon on polling day for all special voters using telephone dictation (which include those with a disability). This is for consistency with the extensions for remote voting applications for electronic and dictation voting.

Timing and 28-day rule

- 13 The Regulations will come into force 28 days after they are notified in the *Gazette*.

Compliance

- 14 The Regulations comply with each of the following:
- 14.1 the principles of the Treaty of Waitangi;
 - 14.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 14.3 the principles and guidelines set out in the Privacy Act 2020;
 - 14.4 relevant international standards and obligation, including under the United Nations Convention on the Rights of Persons with Disabilities; and
 - 14.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 15 There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 16 The Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 17 The amendments included in the Regulations were exempt from the regulatory impact analysis requirements on the grounds that they had no or only minor impacts on businesses, individuals, and not for profit entities.
- 18 The Regulations help address the ability of disabled people to exercise their right to participate in political and public life as provided for under Article 29 of the United Nations Convention on the Rights of Persons with Disabilities. A pragmatic approach is proposed that will enable supports to assist in ensuring votes comply with requirements so they can be received as valid, while also taking reasonable steps to preserve confidentiality for voters.

Publicity

- 19 The Commission will publicise these changes as part of their standard communications to voters.

Proactive release

- 20 This Cabinet paper will be proactively released, with any appropriate redactions in accordance with Cabinet Office Circular CO (18) 4.

Consultation

- 21 The Treasury, the Department of Internal Affairs, Ministry of Foreign Affairs, the Office for Disability Issues, within Whaikaha Ministry of Disabled People, and the Commission have been consulted on these Regulations. The Department of Prime Minister and Cabinet has been informed.

Recommendations

- 22 The Minister of Justice recommends that the Cabinet Legislation Committee:
1. note that on 2 May 2022 Cabinet agreed to amend the Electoral Regulations 1996 to:
 - 1.1. allow overseas voters' marks and signatures to be produced through physical action captured electronically (for example, using signature pads, touch pads/track pads, mouse and touch pens);
 - 1.2. allow the Electoral Commission to offer dictation voting for overseas voters who have a disability which prevents them from marking the ballot paper; and
 - 1.3. make a number of miscellaneous amendments to ensure the Electoral Regulations are fit for purpose and accommodate changes to operational practices; [CBC-22-MIN-0026 and CAB-22-MIN-0150

refers];

2. note that under the authority granted to me by Cabinet to make minor and consequential policy decisions, I have decided to also allow the marks and signatures of the following people to be captured electronically, in the same manner as for overseas voters:
 - 2.1. witnesses of special voter declaration forms;
 - 2.2. those casting a special vote because of a significant event; and
 - 2.3. voters from remote areas as specified in Part 4 of the Electoral Regulations;
3. note that the Electoral Amendment Regulations (No 2) 2022 (the Regulations) will give effect to the decisions referred to in paragraphs 1 and 2 above;
4. authorise the submission of the Regulations to the Executive Council; and
5. note that the Regulations will come into force 28 days after they are notified in the *Gazette*.

Authorised for lodgement

Hon Kiri Allan

Minister of Justice



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Electoral Amendment Regulations (No 2) 2022

Portfolio **Justice**

On 25 August 2022, the Cabinet Legislation Committee:

- 1 **noted** that in April 2022, the Cabinet Business Committee (CBC) agreed to amend the Electoral Regulations 1996 to:
 - 1.1 allow overseas voters' marks and signatures to be produced through physical action captured electronically (for example, using signature pads, touch pads/track pads, mouse and touch pens);
 - 1.2 allow the Electoral Commission to offer dictation voting for overseas voters who have a disability which prevents them from marking the ballot paper; and
 - 1.3 make a number of miscellaneous amendments to ensure the Electoral Regulations are fit for purpose and accommodate changes to operational practices;[CBC-22-MIN-0026];
- 2 **noted** that in April 2022, CBC authorised the Minister of Justice (the Minister) to make minor and consequential policy decisions that may arise during the drafting process [CBC-22-MIN-0026].
- 3 **noted** that the Minister has decided to also allow the marks and signatures of the following people to be captured electronically, in the same manner as for overseas voters:
 - 3.1 witnesses of special voter declaration forms;
 - 3.2 those casting a special vote because of a significant event; and
 - 3.3 voters from remote areas as specified in Part 4 of the Electoral Regulations 1996;
- 4 **noted** that the Electoral Amendment Regulations (No 2) 2022 (the Amendment Regulations) give effect to the decisions referred to in paragraphs 1 and 3 above;

- 5 **authorised** the submission to the Executive Council of the Electoral Amendment Regulations (No 2) 2022 [PCO 24696/9.0];
- 6 **noted** that the Amendment Regulations come into force on 1 October 2022.

Rebecca Davies
Committee Secretary

Present:

Hon Andrew Little
Hon David Parker
Hon Michael Wood (Chair)
Dr Duncan Webb, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

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