The Cook Islands: seat for overseas voters abolished

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The Cook Islands is a self-governing state which established free association with New Zealand in 1965. The suffrage in relation to Cook Islanders living outside the Cook Islands has been an important issue in Cook Islands electoral politics.

In 1965, when the constitution and electoral laws were drafted, external voting was not an issue and was not thought of. Some Cook Islanders lived abroad, mainly in New Zealand and Tahiti, but there was no international air service, shipping was irregular and expensive, and the Cook Islands principle of 'rangatira ki te ara' implied that those who had gone away should not interfere in what went on at home. In 1974, however an international airport was built, regular and relatively cheap international flights were introduced, and at the same time party political competition was intensifying.

The Cook Islands electoral system had provision for an external seat from 1981 until 2003, and an overseas member was thus elected at general elections in 1983, 1989, 1994 and 1999 (see Hassall 2001; and Crocombe 1979). The Legislative Assembly had 22 members in 1965, the number of seats being subsequently increased to 24 in 1981 (with the constitutional amendment the Assembly was renamed 'Parliament') and to 25 in 1991.

External voting was established in 1981 through an amendment to the Electoral Act 1966 (Constitution Amendment (No. 9) Act) so that an 'overseas constituency' became one of the legislature's 24 seats. The Electoral Act of 1966, with amendments as of 6 May 1989, Part II Constituencies, 5 (x), reads: 'The Overseas Constituency, being the islands comprising New Zealand and all other Areas outside the Cook Islands'. This means the whole world except the Cook Islands. At that time the great majority of overseas Cook Islanders were in New Zealand.

Article 28C of the constitution provided for the election of a member for the overseas constituency who was residing 'in New Zealand or elsewhere outside the Cook Islands', who was a Cook Islands citizen and who was enrolled as an elector in the overseas

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constituency. Article 28 (b) provided for the election of a member by 'postal vote, special vote, or by vote cast at one or more polling places situated outside the Cook Islands'. Voting was not compulsory, but registration was, and failure to register was an offence liable to a fine not exceeding 100 New Zealand dollars (NZD) (the currency used in the Cook Islands) on a first conviction (although there is no evidence that this fine was ever imposed).

The seat was established in the context of the growing number of Cook Islanders living abroad but the specific voting provisions restricted the number of islanders eligible to vote, since it only applied to those who had lived abroad for less than three years and who intended to return home to live permanently. This amounted to a small fraction of the total number of overseas Cook Islanders. It was the result of a move by the Democratic Party (DP) then in power to restrict the future influence of those whom they regarded as mostly loyal to the Cook Islands Party (CIP). This legislation was passed following efforts by political parties to mobilize external electors at general elections in 1974 and 1978, which the Cook Islands courts had subsequently found to be illegal. In those elections, the major political parties had chartered aircraft to fly in those who were registered as 'absentee voters'. In the 1974 elections the DP chartered an aircraft to transport approximately 75 voters to Rarotonga, and in the 1978 elections both the DP and the CIP chartered aircraft.

Both parties now realized that the increasing number of prospective absentee voters could swing the results of an election, and thus made elaborate efforts to register voters who were resident in New Zealand. Democratic Party voters paid for the charter air fares while the Cook Islands Party members were told that their flights would be free of charge. After the CIP victory in 1978, in which the 'fly-in' votes had been a decisive factor, the DP filed election petitions, challenging, among other things, the legality of the votes won by flying in voters at no cost or heavily subsidized by the CIP using government funds. On 24 July 1978 the Supreme Court determined that eight of the CIP's 15 seats had been gained by 'unlawful conduct' in that the CIP fly-in votes were tainted by bribery and corruption. These seats were awarded to the DP, and the CIP lost power. (High Court of the Cook Islands, Misc. nos 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32.78, in the Matter of Elections of Members of the Legislative Assembly of the Cook Islands, unreported. See also Henry 2003.)

The use of 'flying voters' was made possible by the vagueness of the definition of 'ordinary residence' in the constitution, but there was no constitutional provision for external voting outside the Cook Islands, because when it was drafted in 1964 there were few Cook Islanders in New Zealand and no air service.

Following the establishment of the external seat in 1981, a debate ensued about whether Cook Islanders who had chosen to live elsewhere should have full representation in the Cook Islands legislature, and the high cost of the public sector in general (particularly in the context of the Cook Islands' small and struggling economy) brought into question the cost-effectiveness of the external seat. The cost of administering the external seat has never been made public. A 1998 Commission of Political Review was unable to determine exact costs but estimated that the costs of external voting—the salary costs, fares, living costs and so on of the team of officials sent from the Cook Islands to visit communities of Cook Islanders in New Zealand and Australia to advise them about

the provisions—were too high, relative to the numbers of voters concerned, to make it worthwhile. Even the administrators of political parties agreed that there was too little interest among expatriate Cook Islanders to make the effort worthwhile. Moreover, under the terms of the free association arrangement between the Cook Islands and New Zealand, all Cook Islanders are New Zealand citizens and are therefore entitled to vote in New Zealand elections; New Zealand citizens can similarly move to Australia quite easily and take up citizenship rights in that country.

In a the general election of March 1994 voters were also asked at referendum whether the overseas constituency should be abolished. Approximately 55 per cent of the population voted in favour of keeping the seat, and the government thus took no action to remove it. However, although on this occasion the voters agreed to the continuance of the seat, public support for it declined within a few years.

In practice, while there are more Cook Islanders living outside their home country than in it, few have been motivated to register and vote in Cook Islands general elections. Out of approximately 60,000 Cook Islanders resident in New Zealand and 45,000 in Australia, only 737 registered as voters for the 1994 general election and some 569 Cook Islanders abroad actually voted (Cook Islands News and ABC News, 18 September 2002). (In 1994 there were four candidates for the overseas seat.) The reasons for the low registration numbers include a tendency for Cook Islanders to describe themselves on official forms as New Zealand citizens or as Maori, sometimes out of fear that they might be removed from these countries in the same manner as Samoans and Tongans are (although this is based on ignorance of the law, because Samoans and Tongans have less right of entry to New Zealand than Cook Islanders).

In 1998 the Commission of Political Review recommended a number of changes to the Cook Islands constitution, including reducing the number of parliamentary seats to 17—a formula that did not include an overseas seat (Commission of Political Review 1998). The future of the external seat gradually became the subject of intense speculation. At the general elections in 1999 three of the four political parties fielded candidates for the overseas seat, although an inquiry that suggested that the overseas seat cost some 100,000 NZD each year was a factor in a large proportion of the Cook Islands public favouring its abolition. In 1991 the High Court also ruled that candidates who are normally resident abroad are ineligible to represent Cook Islanders in Parliament.

In 2000 there were an estimated 55,000 Cook Islanders in New Zealand and another 30,000 in Australia. However, only 6,000 of these were eligible to vote because they had been abroad for less than three years.

In 2003 some 2,000 voters signed a petition calling not only for abolition of the overseas seat but also for a reduction in the parliamentary term from five years to three, a reduction in the number of MPs and a reduction in funding for ministerial support. When the legislature voted in 2003 on whether to abolish the overseas seat even its incumbent, Dr Joe Williams, agreed to its abolition.