

## Office of the Deputy Prime Minister

Cabinet

**Process to consider changing the New Zealand Flag****Proposal**

- 1 This paper recommends a process to consider changing New Zealand's national flag (the New Zealand Flag), within the parameters set by Cabinet in March 2014. I seek approval for funding, to terms of reference for two groups, and to legislative drafting to enable the process to commence.

**Executive Summary**

- 2 In March 2014, Cabinet noted that as a modern, independent nation, the time has come to consider changing the design of the New Zealand Flag. Cabinet agreed the high-level parameters for the process, and invited me to recommend a process to consider changing the New Zealand Flag, within those parameters.

- 3 I propose a binding two-stage postal referendum process. This paper outlines three options for structuring the voting process, and asks Cabinet to indicate its preferred option. Briefly, the three options are:

**Option 1: Two referendums, first using preferential voting**

- 3.1 Voters rank 3 to 4 alternative flag designs; preferential voting determines the most preferred alternative flag design; in second referendum, voters indicate whether they prefer the alternative design or the current New Zealand Flag;

**Option 2: Two referendums, first using first-past-the-post (FPP) voting**

- 3.2 Voters use single vote to determine the most preferred alternative flag design from among 3 to 4 alternative flag designs; in second referendum, voters indicate whether they prefer the alternative design or the current New Zealand Flag;

**Option 3: Two referendums (second only if required), first using FPP voting**

- 3.3 Voters use single vote to determine the most preferred alternative flag design from among 3 to 4 alternative flag designs and the New Zealand Flag; if one flag gets more than 50% of the votes, this flag wins; if not, the two designs with the most votes go forward to a second referendum vote.

- 4 The lead-up to the first referendum is the same for each option. A high-profile public engagement process will be held, with a panel of New Zealanders asked to recommend a shortlist of alternative flag designs.

- 5 Two groups have an important role to play in the process: a cross-party group of MPs (the CPG) and an independent, non-parliamentary panel of New Zealanders (the Flag Consideration Panel [the FCP]).

- 6 The CPG will be established immediately and will be responsible for considering and nominating suitable candidates for the FCP. The CPG will also focus on the draft legislation enabling the referendums, as new legislation is required (the New Zealand Flag Referendum Bill). The CPG will review the draft Bill to ensure there are no gaps or issues of significant concern, and that the referendum questions and voting system are clearly expressed, and make recommendations to the Responsible Minister as necessary. The CPG will be supported and advised by officials.
- 7 The FCP will be established by mid-February 2015 and will lead the public engagement process. The FCP will publicise the process, and seek alternative flag designs and suggestions from the public. It is likely to hold a design competition from which it will choose a shortlist of the most popular alternative flag designs. The FCP will also need to ensure that the potential designs are workable. The FCP will be supported and advised by a project secretariat.
- 8 As Responsible Minister I will have oversight of the process, and will report back to Cabinet during the process for critical decisions as required. I also seek Power to Act for a small group of Ministers to enable further detailed policy and legislative matters to be decided during the process.
- 9 Project funding is required, mostly for the referendum and public engagement process. The project is estimated to cost \$25.724 million over the financial years 2014/15 and 2015/16.
- 10 The timetable, while feasible, is tight. A schedule of key dates follows. The diagram at Appendix 1 also refers. (Note that the timetable and diagram allow for two referendums to be held, although if referendum Option 3 is preferred, it is possible that only one referendum will be needed, if one flag receives more than 50% of the vote in the first referendum.)

#### New Zealand Flag project timetable: key dates\*

*\*dates subject to legislative and parliamentary processes*

| Date                  | Action  |
|-----------------------|---|
| After 28 October 2014 | Following Cabinet decisions:<br><i>Drafting instructions to PCO</i><br><i>Forward terms of reference for CPG and FCP to Party leaders</i> |
| November 2014         | Secretariat established (within DPMC)   |
| By mid-November 2014  | CPG established and holds first meeting   |
| By 12 December 2014   | CPG makes nominations for FCP members to Minister (sounding of possible candidates in December-January)                                   |
| In late January 2015  | CPG considers draft Bill  |
| By 16 February 2015   | Cabinet appoints FCP, members announced   |
| In February 2015      | CPG considers final draft Bill  |
| By 9 March 2015       | Cabinet approves Bill for introduction<br>FCP holds first meeting and plans public engagement process                                     |
| By 13 April 2015      | Minister approves public engagement process   |
| On 4 May 2015         | FCP public engagement process launched  |
| By 21 August 2015     | FCP reports to Minister on outcome of process, with shortlist of alternative flag designs   |
| By 24 August 2015     | Bill receives assent  |
| By 31 August 2015     | Minister takes alternative flag designs to Cabinet  |

|                                     |  |
|-------------------------------------|--|
| By 14 September 2015                | Cabinet approves flag designs for voting and ballot papers finalised by Order in Council |
| On 15 September 2015                | Electoral Commission public education campaign begins in advance of first referendum     |
| On 28 October 2015                  | Ballot papers printed for first referendum   |
| From 20 November – 11 December 2015 | First postal referendum held<br><i>Final result declared 15 December 2015</i>            |
| In late January 2016                | Electoral Commission public education campaign begins in advance of second referendum    |
| From 1 April 2016 – 22 April 2016   | Second postal referendum held  |
| 26 April 2016                       | Final result declared  |
| May 2016 forwards                   | Implementation – <u>if</u> change is an outcome of the process                           |

## Background

- 11 On 10 March 2014, Cabinet invited me, supported by officials from the Department of the Prime Minister and Cabinet, the Ministry for Culture and Heritage, the Ministry of Justice, and other officials as appropriate, to provide advice to Cabinet by 31 October 2014 on a process to consider changing the New Zealand Flag [CAB Min (14) 8/22 refers].
- 12 At that meeting, Cabinet agreed that the recommended process should include the following aspects:
  - 12.1 all political parties represented in Parliament after the 2014 General Election being invited to nominate an MP to join a cross-party committee on the New Zealand Flag;
  - 12.2 public engagement, including the opportunity for people to submit designs and suggestions, and input from design experts;
  - 12.3 a commitment that any decision to change the New Zealand Flag be made through a referendum; and,
  - 12.4 a commitment that retaining the current flag will be a possible outcome and there must be no presumption in favour of change.
- 13 Cabinet also agreed that the recommended process needed to uphold the integrity of the final decision.
- 14 On 11 March 2014 the Prime Minister gave a speech about the need to discuss the flag formally, carefully and respectfully, allowing all New Zealanders to have their say. He gave a high-level outline of how the process would run. The Prime Minister also indicated a timeframe for the process as follows:
  - 14.1 the public engagement process to begin after Anzac Day 2015, following Gallipoli anniversary commemorations;
  - 14.2 the referendum process to be concluded suitably in advance of the 2017 General Election, to allow this to proceed unimpeded.
- 15 Since March 2014, officials have been considering a process to consider changing the New Zealand Flag, within the parameters already determined by the Prime Minister and Cabinet. There are different options for structuring the referendum voting process, which are detailed

in the Regulatory Impact Statement (RIS) attached at Appendix 4. Three of these options are discussed at paragraphs 42-48 below and Cabinet is asked to indicate its preferred option. New legislation is required to enable the referendums.

- 16 As the referendum process will be binding, the RIS also considers the implications of changing the flag, in terms of cost, and the impact on individuals and agencies who use the flag. The RIS is discussed further at paragraphs 80-82.
- 17 While this work has considered implementation issues, change will only occur if this is what New Zealanders indicate they want, through the referendums. As noted above, there is no presumption in favour of changing the flag. It is important to acknowledge that there will be sectors of the community who do not favour change. Equally, there will be supporters strongly in favour in change, and who will be vocal about their preferred alternative flag designs. The FCP has an important role to play in leading the public discussion about the flag, and ensuring the views of all New Zealanders are reflected.

## **Process for considering change**

### *Guiding principles*

- 18 The following principles should guide the overall process to consider changing the New Zealand Flag. The process should be:
  - 18.1 *independent*: the process is as apolitical as possible, with multi-party support and public input into decision-making;
  - 18.2 *inclusive*: all perspectives are invited and considered from within New Zealand's diverse communities, including Māori as tangata whenua;
  - 18.3 *enduring*: the outcome (whether change or status quo) is upheld and not revisited for a significant period;
  - 18.4 *well-informed*: the public has access to information to enable it to make decisions;
  - 18.5 *practical*: the process is workable, cost-effective, and implementation is possible;
  - 18.6 *community-driven*: designs and suggestions come from the community;
  - 18.7 *dignified*: the process upholds the importance of the flag as a symbol of our nationhood;
  - 18.8 *legitimate*: all legislative and other requirements are followed; and
  - 18.9 *consistent* with the Crown's Treaty obligations.

### *Ministerial responsibility*

- 19 Subject to the Prime Minister's approval, I will be the Responsible Minister for the overall process. I will be supported by officials from the Department of the Prime Minister and Cabinet, the Ministry of Justice, the Ministry for Culture and Heritage, and other agencies as required.
- 20 I will report back to Cabinet during the process for critical decisions that are required (paragraph 23 below refers). I also seek authorisation for a group of Ministers, comprising the Responsible Minister, the Leader of the House, the Minister for Arts, Culture and

Heritage, and the Minister of Justice, to have Power to Act to make decisions on policy, legislative and other issues that may be required throughout the process.

- 21 I will work closely with two key groups with an important role to play in the process - the New Zealand Flag Cross-Party MPs' Group (the CPG, discussed at paragraphs 24-30 below) and the New Zealand Flag Consideration Panel (the FCP, discussed at paragraphs 31-41 below) - to ensure that they are established, and have access to the information and resources they need to do their work.
- 22 I will also lead the progress of a New Zealand Flag Referendum Bill (discussed at paragraphs 49-55 below) through the House, to enable two postal referendums to occur by May 2016. (The Bill will need to provide for two referendums, even if Option 3 is chosen and only one referendum is required, if one flag gets more than 50% of the votes.)
- 23 I will report back to:
- 23.1 the Cabinet Appointments and Honours Committee on the persons to be appointed to the FCP, including the Chair and Deputy Chair, taking into account the CPG's nominations, by 2 February 2015;
  - 23.2 the Cabinet Legislation Committee, on the New Zealand Flag Referendum Bill, taking any recommendations from the CPG into account, by 27 February 2015;
  - 23.3 Cabinet on decisions made under Power to Act, as required; these are likely to be decisions of the following nature:
    - 23.3.1 further detailed policy decisions that arise during the legislative drafting process, including the regulation of referendum advertising; and
    - 23.3.2 approval of the public engagement process planned by the FCP;
  - 23.4 Cabinet on the alternative flag designs to be voted on in the first referendum, based on the outcome of the FCP's public engagement process, by 31 August 2015;
  - 23.5 Cabinet on the outcome of the referendum process, and on the next steps required, including non-legislative options for implementation if change is an outcome of the process.

#### *New Zealand Flag Cross-Party MPs' Group (the CPG)*

- 24 The role of the CPG is to ensure that the parameters of the discussion about the national flag are established on cross-party grounds. The Prime Minister has written to all political parties represented in Parliament (including the National Party), inviting them to nominate an MP to join the CPG. The Terms of Reference for the CPG (attached at Appendix 2) will be forwarded to all party leaders once agreed by Cabinet. Officials will provide support and advice to the CPG.
- 25 The CPG's responsibilities are described below.

#### **CPG's first task (immediate): nominate candidates for the FCP**

- 26 The CPG will develop nominations for the FCP, which will lead the New Zealand Flag public engagement process. The FCP members will be the "face" of the New Zealand Flag discussion (well-known New Zealanders are likely members), and should represent a cross-

section of New Zealand society, with members reflecting the following criteria, and having an understanding of all that goes to make up New Zealand's sense of national identity:

- 26.1 national geographic coverage;
- 26.2 Māori representation;
- 26.3 representation of Pacific Island and ethnic communities;
- 26.4 a variety of age groups; and
- 26.5 gender balance.

27 The FCP is discussed further at paragraphs 31-41 below and the proposed Terms of Reference for the group are attached at Appendix 3.

28 For the public engagement process to begin in May 2015, it will be important to establish the FCP early in the year. To this end, it is proposed that the CPG make nominations for candidates to me by 12 December 2014. This will allow potential candidates to be informally and confidentially 'sounded' over the December – January period, to enable me to take appointments to APH by February 2015, and for the FCP to meet by late February or early March.

**CPG's second task (medium-term): oversee quality and implementation of referendum legislation**

29 I propose that the CPG focus on the quality of the referendum legislation. New legislation is required (the New Zealand Flag Referendum Bill). The CPG will review the draft Bill to ensure there are no gaps or issues of significant concern, and that the referendum questions and voting system are clearly expressed, and make recommendations to the Responsible Minister as necessary.

30 The CPG's role in this regard is as follows:

*On establishment in late 2014:*

- 30.1 be briefed on key elements of the proposed legislation, including Cabinet decisions on whether the referendums should be binding or indicative, conducted by postal or standalone voting, the referendum structure (depending on which option is chosen), and the timing of the referendums;
- 30.2 consider issues related to the regulation of referendum advertising (this may prove to involve some complexity);

*In early 2015 (after the House resumes):*

- 30.3 review and comment on an early draft of the Bill, in particular:
  - 30.3.1 the framing of the referendum questions (in line with the preferred option chosen by Cabinet);
  - 30.3.2 the form of the ballot paper; and
  - 30.3.3 ensuring there are no gaps or issues of significant concern;

*In February 2015 (before Bill is approved for introduction):*

30.4 review and comment on the final draft of the Bill, before approval for introduction is sought;

*After Bill is introduced:*

30.5 be briefed by the Electoral Commission on its plans for implementation.

### *New Zealand Flag Consideration Panel (the FCP)*

31 The role of the FCP is to design and lead the public engagement process over the New Zealand Flag.

32 The FCP will be established by mid-February 2015 and will lead the public engagement process. The FCP will publicise the process, and seek designs and suggestions from the public. It is likely to hold a design competition from which it will choose a shortlist of the most popular alternative flag designs. The FCP will also need to ensure that the potential designs are workable.

33 The FCP (including the Chair and Deputy Chair) will be appointed by Cabinet on my recommendation, having been informed by the CPG's nominations.

34 As noted above, the FCP members will be the "face" of the New Zealand Flag discussion, and are likely to include well-known New Zealanders. A key feature of this group is that it is independent and non-partisan. Proposed Terms of Reference for the FCP are attached at Appendix 3.

35 It is likely that the public engagement process will include some or all of the following approaches (within the available budget):

35.1 establishing an official website promoting the New Zealand Flag discussion, and providing a vehicle for people to forward designs and suggestions;

35.2 arranging a public design competition;

35.3 holding a "roadshow" or similar national programme of activity by which FCP members meet and talk with communities about the New Zealand Flag;

35.4 social media activities; and

35.5 traditional media activities (public notices, television advertising, etc).

36 The FCP may also decide to directly commission designs, which are then promulgated for public feedback.

37 An important part of the FCP's role will be to ensure that a range of suitable alternative designs are available, that any proposed designs are workable, and that there are no impediments to the choice of proposed designs. The designs must meet accepted design standards, and there must be no legal or other barriers to their use. To this end, the FCP will need to seek input from flag and other design and tikānga Māori experts, and carry out due diligence in relation to the final designs selected.

- 38 The FCP's public engagement process will be launched on 4 May 2015, after Anzac Day 2015. The FCP will report to me by 21 August 2015 with a shortlist of alternative flag designs to be voted on in the first referendum.
- 39 The alternative flag designs will then be included in the ballot papers finalised by Order in Council.
- 40 The FCP will continue its public communications role in the lead-up to the referendums by providing information on the alternative flag designs. This will be separate from, and complementary to, the Electoral Commission's role in providing information to the public about how to vote and encouraging participation. The two groups will need to work closely together to ensure that public communications are co-ordinated.

### *Project secretariat*

- 41 A project secretariat will provide support and advice to the FCP, with the assistance of officials and other agencies as may be required. The secretariat will be located within the Department of the Prime Minister and Cabinet and will report to the Clerk of the Executive Council.

### **Options for referendum structure**

- 42 There are different options for structuring the referendum voting process, which are detailed in the Regulatory Impact Statement (RIS) attached at Appendix 4. Cabinet is asked to indicate its preference from the three options below. The options are:

#### **Option 1: Two referendums, first using preferential voting (PV)**

- 42.1 Voters rank 3 to 4 alternative flag designs; PV determines the most preferred alternative flag design; in second referendum, voters indicate whether they prefer the alternative design or the current New Zealand Flag;

#### **Option 2: Two referendums, first using first-past-the-post (FPP) voting**

- 42.2 Voters use single vote to determine the most preferred alternative flag design from among 3 to 4 alternative flag designs; in second referendum, voters indicate whether they prefer the alternative design or the current New Zealand Flag;

#### **Option 3: Two referendums (second only if required), first using FPP voting**

- 42.3 Voters use single vote to determine the most preferred alternative flag design from among 3 to 4 alternative flag designs and the New Zealand Flag; if one flag gets more than 50% of the votes, this flag wins; if not, the two designs with the most votes go forward to a second referendum vote.

- 43 The difference between Options 1 and 2 is the voting system used for the first referendum. In Option 1, voters number the alternative flag designs in order of preference (eg, 1 to 4). If no flag has more than 50% of first preference votes, the flag with the fewest votes is removed from contention. Voters for the flag that has been removed then have their second preferences counted. This method continues until a flag has over 50% of votes. The benefit of PV is that it finds the overall most preferred alternative design.
- 44 In Option 2, voters have a single vote to indicate their most preferred alternative flag design in the first referendum. Potentially, however, it creates a scenario whereby the flag that



‘wins’ the first referendum has substantially less than 50% of votes (eg with four designs, a flag could win with 26% of the vote).

- 45 FPP is, however, administratively simpler and the Electoral Commission recommends it be used for postal referendums, based on public understanding of the system. The Electoral Commission would require additional funding to modify its postal ballot scanning and vote counting software, if Option 1 is preferred. The estimated cost is \$500,000.
- 46 Like Option 2, Option 3 uses FPP for the first referendum. There is a possibility of cost-savings if one flag gets more than 50% in the first referendum, meaning the second referendum is not triggered. However, the chances of this are reasonably low. There is a possibility that the current New Zealand Flag is not chosen as one of the top two options in the first referendum, which means that it would not appear in the second referendum.
- 47 In both Options 1 and 2, the current New Zealand Flag does not appear in the voting paper for the first referendum. This might disengage some voters who want to see the current New Zealand Flag (as they might not understand that there will be a second referendum).
- 48 The key differences among Options 1 to 3 are shown the summary table below. A more detailed assessment of the range of possible options is given in the Regulatory Impact Statement (RIS) attached at Appendix 4.

### Options for referendum structure

| Options   | Number of referendums   | Voting type                          | Advantages/disadvantages   |
|---|---|--------------------------------------|--|
| <b>Option 1:</b><br>3 to 4 alternative designs ranked, then overall most preferred design has run-off with current flag             | Two   | Preferential (first)<br>FPP (second) | Preferential voting (PV) finds the overall most preferred alternative flag design. But PV may be complex for voters, and estimated to cost extra \$0.5m for Electoral Commission (EC).<br>Current flag doesn't appear in 1st referendum (risk of disengagement). |
| <b>Option 2:</b><br>3 to 4 alternative designs put to vote, flag with most votes has run-off with current flag                      | Two   | FPP (first)<br>FPP (second)          | FPP is administratively simpler and less confusing for public (recommended by EC). But top flag in 1st referendum might have substantially less than 50% of votes.<br>As for option 1, current flag doesn't appear in 1st referendum.                            |
| <b>Option 3:</b><br>Current flag and 3 to 4 alternative designs put to vote, flag that gets over 50% of votes wins; if none reaches | One or two (second triggered if one flag doesn't get more than 50% of votes in first) | FPP (first)<br>FPP (second)          | FPP is administratively simpler and less confusing for public (recommended by EC).<br>Possibility for cost savings if second referendum not  |

## New Zealand Flag Referendum Bill

- 49 Whichever option for the referendum structure is preferred, new legislation will be required. I propose that a New Zealand Flag Referendum Bill provide for the referendum process. While the Referenda (Postal Voting) Act 2000 enables a government-initiated referendum to be set up by Order in Council, given the likely high level of public interest in the project I believe that full parliamentary and public scrutiny of the proposed referendums through a Bill is warranted. A Flag Referendum Bill also provides for the complexities of the two referendums proposed, as well as the option of making the outcome binding. A binding referendum will give New Zealanders certainty that the result will be implemented and is therefore more likely to encourage participation. If the referendum is binding and there is a vote to change the flag, then no further legislation would be required to change the New Zealand Flag.
- 50 The Bill potentially involves a number of complex policy issues that have not been covered in previous referendum legislation. If the referendum is binding then the Bill will need to cover implementation and transitional provisions, and potentially control any rights to the new flag design. The regulation of referendum advertising will need to be adjusted to deal with two referendums in close proximity while avoiding impact on existing uses of flags and designs.
- 51 The Bill will also involve complex issues around the design of the voting paper. These include the wording of the questions, the design of the ballot paper when the flag designs are unknown, and of information provided to voters. A mechanism in the Bill to insert the alternative flag designs into the voting paper is also required as the alternative flag designs will not be known until the FCP reports back.
- 52 I propose to instruct Parliamentary Counsel Office to draft a Bill providing for:
- 52.1 Two postal referendums to consider the New Zealand Flag (legislation will need to empower both, whether or not a second referendum proceeds);
  - 52.2 The outcome of the referendums to be binding;
  - 52.3 The questions to be asked in each referendum;
  - 52.4 The timing of the referendums;
  - 52.5 Eligibility to vote (only those persons eligible to enrol on the New Zealand electoral roll will be able to vote in the referendums);
  - 52.6 All aspects of each referendum's administration and voting paper other than the alternative flag designs;
  - 52.7 A regulation-making power to insert the alternative flag designs into a ballot paper by Order in Council. All other aspects of the voting paper, other than the flag designs, will be in the Bill as introduced to allow full select committee scrutiny;
  - 52.8 Implementation and transitional arrangements should New Zealanders decide that the flag should change.

- 53 Some matters require further consideration before policy decisions can be made. To enable drafting to proceed quickly, I seek Cabinet’s authorisation for Power to Act to make the further policy decisions required to draft the Bill, in consultation with other Ministers as required. The first priority will be decisions on the regulation of referendum advertising. This will include consideration of whether there should be regulation and, if so, how “referendum advertisement” will be defined, how promoters of a particular flag design should be regulated, and an appropriate time period for regulation in respect of each referendum. A particular challenge is to avoid inadvertently capturing existing use of flags and symbols.
- 54 Further policy matters will be considered within the following framework:
- 54.1 Cabinet’s decisions arising from this paper; and
  - 54.2 the guiding principles used during development of this paper.
- 55 To support parliamentary debate, I recommend that the draft New Zealand Flag Referendum Bill is considered by the CPG before the Bill is finalised and submitted to the Cabinet Legislation Committee. This will be an opportunity both to test the Government’s preferred process and explore any issues that have arisen during drafting. This will be particularly important as I am proposing a shortened legislative process (including a four-month select committee process).

## **Considerations**

### *Risks*

- 56 The initial task for the CPG, of nominating members to the FCP, has to be completed in a relatively short time frame to ensure the FCP can be appointed and hold its first meetings early in 2015. If other parliamentary parties do not prioritise the nomination of a member to the CPG, the timetable could be compromised. To mitigate this risk, the Prime Minister has written to the other parliamentary parties to outline the proposed process and call for nominations to the CPG, with the Terms of Reference to follow once agreed by Cabinet. Officials will work closely with the CPG to provide it with sufficient support for its immediate tasks.
- 57 The timetable proposed for the flag consideration process is very detailed, and allows little room for slippage. It will require the flag referendum legislation to be a priority in terms of House time. If the Select Committee process results in significant change to the Bill, there is a risk the timing of the first referendum will be affected. Giving the CPG the opportunity to review and comment on the draft legislation will assist in mitigating this risk.
- 58 Effective public engagement is key to reaching an enduring outcome. A high level of public engagement will be critical in terms of promoting interest in the debate and encouraging design contributions, and to maximise voter turnout for the referendums. The FCP’s engagement strategy, and the public education programme run by the Electoral Commission and the FCP in the lead up to the referendums, will play important roles in mitigating any risks to public engagement.

### *Treaty of Waitangi implications*

- 59 The flag consideration process is an opportunity for the Crown to demonstrate its commitment as an honourable and reasonable Treaty partner. A good process should reflect the following:

- 59.1 *Demonstrating good faith kawanatanga:* the flag is a symbol of state and of national identity; the flag consideration process is an exercise of kawanatanga relating to that symbol. Māori can expect to be involved in any process relating to symbols that reflect our nation.
- 59.2 *Māori as citizens:* Māori are citizens of New Zealand as well as the Crown’s Treaty partner. The Crown has a duty to ensure Māori citizens as individuals (as well as members of iwi/hapū) are involved in making decisions on matters that affect them.
- 59.3 *Respect for taonga works and mātauranga Māori:* New flag designs may incorporate elements of taonga works and mātauranga Māori (such as traditional cultural expressions, symbols, and knowledge). The FCP will need to identify whether existing Māori interests and rights are being affected.

60 The Crown needs to consider its obligations throughout each stage of the flag consideration process.

#### *Other flags with official status*

61 In considering the national flag, it should be noted that New Zealand has other flags with official status, and that different flags may be used depending on the context. In 2009 Cabinet noted, following a public consultation process, that the Tino Rangatiratanga Flag is the preferred national Māori flag, and that it complements the New Zealand Flag [CAB Min (09) 44/15 refers]. The FCP will need to take the status of this and other flags into account during the public engagement process. If, as a result of the referendums, the New Zealand Flag changes, this will not affect the official status of other flags.

#### *New Zealand Flag as a symbol of the Realm of New Zealand*

62 The Flags, Emblems, and Names Protection Act 1981 describes the New Zealand Flag as the “symbol of the Realm, Government, and people of New Zealand”. While the Cook Islands, Niue, and Tokelau each have their own flag, considering a change to the New Zealand Flag will mean that the Governments of the Cook Islands, Niue and Tokelau will need to be consulted on the process and its outcome.

### **Financial implications**

63 This work is currently unfunded. Costs of the public engagement and referendum process will be incurred over two financial years (2014/15 and 2015/16). Initial estimated costs are set out below, divided into the main workstreams and based on two postal referendums. I also recommend a contingency fund of \$1 million be set aside for the project due to the variable nature of some of the major costs (see paragraph 64 below).

|                             | \$                                  | 2014/15     | 2015/16     | TOTAL       |
|-----------------------------|-------------------------------------|-------------|-------------|-------------|
| Public Consultation Process | Flag Consideration Panel Governance | \$232,520   | \$232,520   | \$465,040   |
|                             | Communications and Engagement       | \$2,740,000 | \$1,261,000 | \$4,001,000 |
|                             | Website                             | \$644,000   | \$132,000   | \$776,000   |
|                             | Public events and meetings          | \$104,250   | \$104,250   | \$208,500   |

|   |  |                    |                     |                     |
|---|--|--------------------|---------------------|---------------------|
|   | Secretariat  | \$665,401          | \$613,236           | \$1,278,637         |
|   | Total Public Consultation Process  | \$4,386,171        | \$2,343,006         | \$6,729,177         |
| Policy and Legislation                        | Ministry of Justice policy resource (eg Bill development, select committee advice) | \$261,743          | \$65,435            | \$327,178           |
|   | Ministry of Arts, Culture and Heritage policy resource                             | \$127,846          | \$0                 | \$127,846           |
|   | Ministry of Justice Travel (select committee hearings)                             | \$4,800            | \$0                 | \$4,800             |
|   | Ministry of Justice Specialist services (eg Crown Law advice)                      | \$25,000           | \$0                 | \$25,000            |
|   | Total Policy and Legislation   | \$419,389          | \$65,435            | \$484,824           |
| 1st postal Referendum                         | Enrolment drive - update campaign only   | \$0                | \$1,800,000         | \$1,800,000         |
|   | Postage outbound and inbound 70% turnout   | \$0                | \$2,550,000         | \$2,550,000         |
|   | Software, printing and distribution  | \$350,000          | \$1,000,000         | \$1,350,000         |
|   | Temporary staff and operating expenses   | \$400,000          | \$1,380,000         | \$1,780,000         |
|   | Public education campaign (referendum process – EC)                                | \$0                | \$1,350,000         | \$1,350,000         |
|   | Public education campaign (flag options – FCP)                                     | \$0                | \$1,500,000         | \$1,500,000         |
|   | Total 1st postal referendum  | \$750,000          | \$9,580,000         | \$10,330,000        |
| 2nd postal Referendum                         | Enrolment drive  | \$0                | \$0                 | \$0                 |
|   | Postage outbound and inbound 70% turnout   | \$0                | \$2,550,000         | \$2,550,000         |
|   | Software, printing and distribution  | \$0                | \$1,200,000         | \$1,200,000         |
|   | Temporary staff and operating expenses   | \$0                | \$1,710,000         | \$1,710,000         |
|   | Public education campaign (referendum process – EC)                                | \$0                | \$1,350,000         | \$1,350,000         |
|   | Public education campaign (FCP)  | \$0                | \$250,000           | \$250,000           |
|   | Total 2nd postal referendum  | \$0                | \$7,060,000         | \$7,060,000         |
| Management, administration and implementation | DPMC Management and Administration   | \$0                | \$120,000           | \$120,000           |
|   | Total Management, administration and implementation                                | \$0                | \$120,000           | \$120,000           |
| Contingency                                   | Total contingency  | \$500,000          | \$500,000           | \$1,000,000         |
| <b>Total Cost</b>                             |  | <b>\$6,055,560</b> | <b>\$19,668,441</b> | <b>\$25,724,001</b> |

64 There are a number of major variable costs which could affect the total referendum costs:

64.1 the content of the voting paper (one or more questions) and the size of the envelope required;

- 64.2 it is unknown how many electors will return their voting form;
  - 64.3 the information that will go into voting packs about the substance of the referendums;
  - 64.4 the price of bulk mail may increase (impacts both the costs of an enrolment update campaign and postal referendums); and
  - 64.5 the type of campaign to be undertaken to inform people about how to take part, what the referendums are about, and encouraging participation.
- 65 This paper seeks new funding from the between-Budget contingency which will be appropriated to Vote Prime Minister and Cabinet, Vote Justice, and Vote Arts, Culture and Heritage.
- 66 I also seek Cabinet's agreement to pre-commit further funding in 2015/16 of up to \$19.668 million against the Budget 2015 operating allowance. The final amount will be confirmed through the Budget 2015 Cabinet paper.
- 67 The Ministry of Justice, the Ministry for Culture and Heritage, and the Department of the Prime Minister and Cabinet have all undertaken initial policy work using existing resources. Additional funding is sought due to the additional workload (within tight timeframes) and the impacts on reprioritising other portfolio projects.

#### *Referendum and public engagement costs*

- 68 The estimated costs for the referendums have been based on the following assumptions:
- 68.1 FPP voting will be used (should a preferential voting system be used, the Electoral Commission will require further funding for software changes); and
  - 68.2 voter turnout of 70% (should turnout exceed this, the Electoral Commission will require further funding for postage and processing costs).
- 69 The estimated cost of \$1.8 million for the enrolment drive in advance of the first referendum provides for a low-level enrolment update campaign (ie, a flyer to all households and newspaper advertising). The electoral roll was last updated before the 2014 General Election, and the Electoral Commission notes that 20% of New Zealanders move home each year. To mitigate the risk of a large number of returned voting papers and potentially low turnout, the Electoral Commission recommends that a full enrolment update campaign should be undertaken to maintain and increase the roll. This would cost an additional \$4 million and would include an enrolment pack to be mailed directly to each voter (\$2 million) and increased advertising (\$2 million).
- 70 The estimated costs of \$1.35 million for each of the public education campaigns by the Electoral Commission for the first and second referendums provide for reasonably basic campaigns. The Electoral Commission notes that this will not cover a mass reach campaign (eg, TV advertising) and will only likely target people who are already engaged in the process. An additional \$3 million would be required for the Electoral Commission undertake a campaign similar to that used for the 2011 voting system referendum.
- 71 \$4 million has been estimated for the FCP's communications and engagement process. This will include a high-profile public information campaign (TV, radio, online, local and community newspapers, network newsletters and websites) from May to August 2015, when

the FCP is actively publicising the process and seeking designs and submissions, and includes all design and collateral implementation costs. The amount also allows for communications around the result of the public engagement process, and for the FCP to maintain its social media presence during the two referendums.

### **Legislative implications**

- 72 The New Zealand Flag Referendum Bill is not on the 2014 Legislation Programme. I recommend that the Bill be included on the 2014 Legislation Programme with a category 6 priority (drafting instructions to be issued to the Parliamentary Counsel Office in 2014).
- 73 I note that the Responsible Minister will seek to include the New Zealand Flag Referendum Bill on the 2015 Legislation Programme with a category 2 priority (must be passed in 2015).
- 74 The New Zealand Flag Referendum Bill will bind the Crown.

### **Human rights implications**

- 75 An informed and robust public debate is essential to the integrity of the referendum process, which may result in a change to the New Zealand Flag. Accordingly, rules limiting or regulating referendum advertising should be carefully considered. Public participation and free speech should be encouraged, while ensuring the identity of advertisers is transparent.
- 76 The rationale for regulating advertising is to avoid one set of voices overwhelming others. On the other hand, regulation should not unduly stifle freedom of expression by advertisers.
- 77 The options for regulating referendum advertising will be the subject of discussion with the CPG, in order to strike an appropriate balance between participation and freedom of expression, and transparency.

### **Gender implications**

- 78 There are no specific gender implications.

### **Disability perspective**

- 79 There are no impacts on people with disabilities arising. The process must be accessible for persons with disabilities, including the public engagement process, and the referendums.

### **Regulatory impact analysis**

- 80 The regulatory impact analysis requirements apply to the proposal in this paper and a Regulatory Impact Statement (RIS) has been prepared and attached at Appendix 4.
- 81 The Ministry of Justice's internal RIS quality assurance panel has reviewed the RIS and associated material prepared by the Ministry of Justice. The panel considers the information and analysis summarised in the RIS *meets* the quality assurance criteria.
- 82 A further RIS may be required on any detailed policy issues with a regulatory impact considered by Ministers under the Power to Act.

### **Consultation**

- 83 The following departments and agencies were consulted in the preparation of the draft Cabinet paper: the Treasury, the Department of Internal Affairs, the Ministry of Business,

Innovation and Employment, the Ministry of Transport, New Zealand Trade and Enterprise, the State Services Commission, Te Puni Kōkiri, the New Zealand Defence Force, the Electoral Commission, and the Ministry of Foreign Affairs and Trade.

## **Publicity**

- 84 A high level of public engagement is required for this process to be successful. Given this, as soon as practicable after decisions have been made on this paper, I propose to release a media statement confirming the process and timeframe to consider changing the New Zealand Flag, and noting that the Prime Minister has written to all party leaders inviting them to nominate a representative for the CPG.
- 85 The process must be as transparent as possible. I recommend that this Cabinet paper and its appendices be made publicly available as soon as practicable after decisions have been made on this paper.



## Recommendations

86 I recommend that Cabinet:

### *Background*

- 1 note that on 10 March 2014 Cabinet invited the Deputy Prime Minister to provide advice on a process to consider changing the New Zealand Flag, and determined that the process should include the following aspects:
  - 1.1 all political parties represented in Parliament after the 2014 General Election being invited to nominate an MP to join a cross-party committee on the New Zealand Flag;
  - 1.2 public engagement, including the opportunity for people to submit designs and suggestions, and input from design experts;
  - 1.3 a commitment that any decision to change the New Zealand Flag be made through a referendum;
  - 1.4 a commitment that retaining the current flag will be a possible outcome and there must be no presumption in favour of change; and
  - 1.5 the overall process recommended to consider changing New Zealand's flag needs to uphold the integrity of the final decision;

[CAB Min (14) 8/22]

- 2 note that on 11 March 2014 the Prime Minister noted the need to discuss the flag formally, carefully and respectfully, allowing all New Zealanders to have their say, and indicated the timeframe for the process as follows:
  - 2.1 the public engagement process to begin after Anzac Day 2015, following Gallipoli anniversary commemorations; and
  - 2.2 the referendum process to be concluded suitably in advance of the 2017 General Election, to allow this to proceed unimpeded;

### *Overall process and guiding principles*

- 3 agree that a process to consider changing the New Zealand Flag will be undertaken;
- 4 agree to the following principles to guide the overall process to consider changing the New Zealand Flag. The process should be:
  - 4.1 *independent*: the process is as apolitical as possible, with multi-party support and public input into decision-making;
  - 4.2 *inclusive*: all perspectives are invited and considered from within New Zealand's diverse communities, including Māori as tangata whenua;
  - 4.3 *enduring*: the outcome (whether change or status quo) is upheld and not revisited for a significant period;
  - 4.4 *well-informed*: the public has access to information to enable it to make decisions;

- 4.5 *practical*: the process is workable, cost-effective, and implementation is possible;
- 4.6 *community-driven*: designs and suggestions come from the community;
- 4.7 *dignified*: upholds the importance of the flag as a symbol of our nationhood;
- 4.8 *legitimate*: all legislative and other requirements are followed; and
- 4.9 *consistent*: with the Crown's Treaty obligations;

### *Governance*

- 5 note that the Deputy Prime Minister will be the Responsible Minister for the overall process, supported by officials from the Department of the Prime Minister and Cabinet (project lead), the Ministry for Culture and Heritage, the Ministry of Justice, and other agencies as required;
- 6 authorise a group of Ministers, comprising the Responsible Minister, the Leader of the House, the Minister for Arts, Culture and Heritage, and the Minister of Justice, to have Power to Act to make decisions on policy, legislative and other issues that may be required throughout the process;
- 7 agree to the establishment of a Project Secretariat based within the Department of the Prime Minister and Cabinet, and reporting to the Clerk of the Executive Council;

### *New Zealand Flag Cross-Party MPs' Group*

- 8 agree to the Terms of Reference for the New Zealand Flag Cross-Party MPs' Group attached at Appendix 2;
- 9 note that the New Zealand Flag Cross-Party MPs' Group, supported by officials, will:
  - 9.1 nominate suitable candidates for the New Zealand Flag Consideration Panel and report back to the Responsible Minister with nominations by 12 December 2014;
  - 9.2 focus on the quality of the legislation enabling the referendum process, by reviewing the draft Bill to ensure there are no gaps or issues of significant concern, and that the referendum questions and voting system are clearly expressed, and make recommendations to the Responsible Minister as necessary;

### *New Zealand Flag Consideration Panel*

- 10 note that the Prime Minister has written to all political parties represented in Parliament, inviting them to nominate an MP to join the CPG;
- 11 agree to the Terms of Reference for the New Zealand Flag Consideration Panel attached at Appendix 3;
- 12 note that the New Zealand Flag Consideration Panel, supported by the Project Secretariat, will:
  - 12.1 design and lead the public engagement process, to commence after Anzac Day 2015, taking into account the guiding principles agreed by Cabinet;

- 12.2 undertake other research as required to ensure that a range of suitable alternative designs are available, that any proposed designs are workable, and that there are no legal or other impediments to the choice of proposed designs;
- 12.3 report to the Responsible Minister by 21 August 2015 with a shortlist of alternative flag designs, in time for Cabinet to approve the alternative flag designs to be voted on in the first referendum;
- 12.4 assist with ongoing communications to help provide information to the public about the alternative flag designs to be voted on in the first referendum;

*Options for referendum structure*

13 EITHER

(Option 1)

- 13.1 agree the first referendum will be a preferential vote between 3 to 4 alternative flag designs, followed by a second referendum which is a single vote between the most preferred alternative flag design and the current New Zealand Flag;

OR

(Option 2)

- 13.2 agree the first referendum will be a single vote between 3 to 4 alternative flag designs, followed by a second referendum which is a single vote between the most preferred alternative flag design and the current New Zealand Flag;

OR

(Option 3)

- 13.3 agree the first referendum will be a single vote between the current New Zealand Flag and 3 to 4 alternative flag designs: if a flag gets more than 50% in the referendum, this would be the preferred New Zealand Flag, and no further referendum is held; if no flag receives more 50% of the vote in the first referendum, a second referendum would be triggered, which is a single vote between the top two flags in the first referendum;

*New Zealand Flag Referendum Bill*

- 14 agree that a New Zealand Flag Referendum Bill be included in the 2014 Legislation Programme with a category 6 priority (drafting instructions to be issued to the Parliamentary Counsel Office in 2014);
- 15 note that the Responsible Minister will seek to include the New Zealand Flag Referendum Bill in the 2015 Legislation Programme with a category 2 priority (must be passed in 2015);
- 16 agree that the New Zealand Flag Referendum Bill provide for:
  - 16.1 two postal referendums to consider the New Zealand flag (legislation will need to empower both, whether or not the second referendum proceeds);

- 16.2 the outcome of the referendums to be binding;
  - 16.3 the questions to be asked in each referendum;
  - 16.4 the timing of the referendums;
  - 16.5 eligibility to vote (only those persons eligible to enrol on the New Zealand electoral roll will be able to vote in the referendums);
  - 16.6 all aspects of each referendum’s administration and voting paper other than the alternative flag designs;
  - 16.7 a regulation-making power to insert the alternative flag designs into a ballot paper by Order in Council;
  - 16.8 implementation and transitional arrangements;
- 17 invite the Responsible Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the legislative proposals agreed in this paper;
  - 18 authorise the Responsible Minister to make any minor or technical decisions that arise during the drafting process;
  - 19 agree that the draft New Zealand Flag Referendum Bill as approved by the Responsible Minister will be made available to the New Zealand Flag Cross-Party MPs’ Group for its consideration prior to finalisation and submission to the Cabinet Legislation Committee, and to make recommendations to the Responsible Minister if necessary;

*Financial recommendations*

- 20 agree to establish the following new appropriation:

| <b>Vote</b>                | <b>Appropriation Minister</b> | <b>Title</b>                          | <b>Type</b>                 | <b>Scope</b>   |
|----------------------------|-------------------------------|---------------------------------------|-----------------------------|--|
| Prime Minister and Cabinet | Deputy Prime Minister         | Supporting Flag Consideration Process | Departmental Output Expense | This appropriation is limited to advice and services to support public engagement and decision-making in the process to consider New Zealand’s Flag. |

- 21 approve the following changes to appropriations to give effect to the policy decisions in recommendations 7, 8, 11, 13, 14, 16, and 19 above, with a corresponding impact on the operating balance:

|  | \$m – increase/(decrease) |         |         |         |                    |
|--|---------------------------|---------|---------|---------|--------------------|
|  | 2014/15                   | 2015/16 | 2016/17 | 2016/17 | 2018/19 & Outyears |
| <b>Vote Prime Minister and Cabinet</b>                                 |                           |         |         |         |                    |
| <b>Deputy Prime Minister</b>   |                           |         |         |         |                    |
| Departmental Output Expense: Supporting Flag Consideration Process     | 4.386                     | -       | -       | -       | -                  |
| <b>Vote Justice</b>  |                           |         |         |         |                    |
| <b>Minister of Justice</b>   |                           |         |         |         |                    |
| Multi-Category Expense: Justice Policy Advice and Related Services MCA |                           | -       | -       | -       | -                  |
| Departmental Output Expense: Justice Policy Advice                     | 0.292                     |         |         |         |                    |
| Non-Departmental Output Expense: Electoral Services                    | 0.75                      |         |         |         |                    |
| <b>Vote Arts, Culture and Heritage</b>                                 |                           |         |         |         |                    |
| <b>Minister for Arts, Culture and Heritage</b>                         |                           |         |         |         |                    |
| Multi-Category Expense: Policy Advice                                  | 0.128                     |         |         |         |                    |
| <b>Total operating</b>   | <b>6.056</b>              | -       | -       | -       | -                  |

- 22 agree that any of the additional funding approved in recommendation 21 above which is unspent in 2014/15 be available for transfer to 2015/16, as necessary;
- 23 authorise joint Ministers (ie, the relevant appropriation Minister and Minister of Finance) to confirm the transfer to 2015/16 of any underspends as described in recommendation 22 above, following finalisation of audited year-end accounts for 2014/15;
- 24 agree that the proposed changes to appropriations for 2014/15 above be included in the 2014/15 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
- 25 agree that the expenses incurred under recommendation 21 above be a charge against the between-Budget operating contingency, established as part of Budget 2014;
- 26 agree to further funding in 2015/16 of up to \$19.668 million as a pre-commitment against the Budget 2015 operating allowance;

- 27 note that this pre-commitment will reduce the operating allowance available for Budget 2015 by a commensurate amount;
- 28 note that the final amount appropriated will be confirmed through the Budget 2015 Cabinet paper;

*Publicity*

- 29 invite the Deputy Prime Minister to release a media statement confirming the process and timeframe to consider changing the New Zealand Flag, and noting that the Prime Minister has written to all party leaders inviting them to nominate a representative for the CPG; and
- 30 note that this paper and its appendices will be made publicly available as soon as practicable after Cabinet decisions have been made.

Hon Bill English  
Deputy Prime Minister

\_\_\_\_/\_\_\_\_/2014

**Appendix 1: New Zealand Flag project timetable**

**Appendix 2: Terms of Reference for the New Zealand Flag Cross-Party MPs' Group**

**Appendix 3: Terms of Reference for the New Zealand Flag Consideration Panel**

**Appendix 4: Regulatory Impact Statement**

**Appendix 1: New Zealand Flag project timetable (refer to separate attachment)**

## Appendix 2

# Terms of Reference: New Zealand Flag Cross-Party MPs' Group

### TERMINOLOGY

**The CPG:** The New Zealand Flag Cross-Party MPs' Group

**The FCP:** The New Zealand Flag Consideration Panel

**The Officials' Committee:** The New Zealand Flag Officials' Committee

**The Responsible Minister:** The Deputy Prime Minister

**The Secretariat:** The New Zealand Flag Project Secretariat

### Background and guiding principles

- 1 On 28 October 2014, Cabinet agreed to a process to consider changing the New Zealand Flag.
- 2 Cabinet agreed that the following principles should guide the overall process to consider changing the New Zealand Flag. The process should be:
  - 2.1 *independent*: the process is as apolitical as possible, with multi-party support and public input into decision-making;
  - 2.2 *inclusive*: all perspectives are invited and considered from within New Zealand's diverse communities, including Māori as tangata whenua;
  - 2.3 *enduring*: the outcome (whether change or status quo) is upheld and not revisited for a significant period;
  - 2.4 *well-informed*: the public has access to information to enable it to make decisions;
  - 2.5 *practical*: the process is workable, cost-effective, and implementation is possible;
  - 2.6 *community-driven*: designs and suggestions come from the community;
  - 2.7 *dignified*: the process upholds the importance of the flag as a symbol of our nationhood;
  - 2.8 *legitimate*: all legislative and other requirements are followed; and
  - 2.9 *consistent*: with the Crown's Treaty obligations.

### Ministerial responsibilities

- 3 The Responsible Minister, supported by the Officials' Committee, is leading the overall process and will report back regularly to Cabinet on progress until the project is complete.



## Role of the CPG

- 4 The role of the CPG is to ensure that the parameters of the discussion about the New Zealand Flag are established on cross-party grounds.

### Task 1: Nominate people for a public advisory panel to design and lead the public engagement process

- 5 The first responsibility of the CPG will be to nominate members of a public advisory panel (the New Zealand Flag Consideration Panel, or FCP), which will design and lead the public engagement process over the New Zealand Flag.
- 6 The Terms of Reference for the FCP are attached.
- 7 The FCP members will be the “face” of the New Zealand Flag discussion (well-known New Zealanders are likely members), and should represent a cross-section of New Zealand society, with members reflecting the following criteria, and having an understanding of all that goes to make up New Zealand’s sense of national identity:
- 7.1 national geographic coverage;
  - 7.2 Māori representation;
  - 7.3 representation of Pacific Island and ethnic communities;
  - 7.4 a variety of age groups; and
  - 7.5 gender balance.
- 8 Some knowledge of design and communications principles would be helpful. However, the FCP will be supported by a dedicated Secretariat with relevant expertise, and will have the ability (through the Secretariat) to commission work as required.
- 9 A maximum of 12 members is suggested. The CPG will need to nominate more candidates than will ultimately be appointed, so there are sufficient candidates to choose from if some of the candidates are not proceeded with.
- 10 The CPG’s nominations for the FCP members, taking into account the guiding principles agreed by Cabinet, and the criteria above into account, should be made to the Responsible Minister by **12 December 2014**.
- 11 Cabinet will appoint the FCP members, including the Chair and Deputy Chair, on the advice of the Responsible Minister, informed by the CPG’s nominations.

### Task 2: Role in ensuring quality of legislation

- 12 The other core task of the CPG will be to focus on the quality of the referendum legislation. In this regard, the CPG will:

*On establishment in late 2014:*

- 12.1 be briefed on key elements of the proposed legislation, including Cabinet decisions on whether the referendums should be binding or indicative, conducted by postal or standalone voting, and timing;

12.2 consider issues related to the regulation of referendum advertising;

*In early 2015 (after the House resumes):*

12.3 review and comment on an early draft of the Bill, making recommendations to the Responsible Minister as required, in particular on:

12.3.1 the framing of the referendum questions;

12.3.2 the form of the ballot paper;

12.3.3 ensuring there are no gaps or issues of significant concern;

*In February 2015 (before Bill is approved for introduction)*

12.4 review and comment on the final draft of the Bill, making recommendations to the Responsible Minister as required, before approval for introduction is sought;

*After Bill is introduced:*

12.5 be briefed by the Electoral Commission on its plans for implementation.

### **Form of the CPG**

13 It is proposed that the CPG elect a Chair and Deputy Chair at its first meeting, and agree the rules and protocols for how the CPG will operate and make decisions.

### **Support for the CPG**

14 The CPG will be supported and advised by the Officials' Committee, with the assistance of the Secretariat and other agencies as may be required. Support will include policy advice and administration services. The Responsible Minister will liaise with the CPG, as appropriate, to ensure that it has the information and resources it needs.

### **Amendment to Terms of Reference**

15 These Terms of Reference may be amended by Cabinet, on the advice of the Responsible Minister, following consultation with the CPG.

## Appendix 3

### Terms of Reference: New Zealand Flag Consideration Panel

#### TERMINOLOGY

**The CPG: The New Zealand Flag Cross-Party MPs' Group**

**The FCP: The New Zealand Flag Consideration Panel**

**The Officials' Committee: The New Zealand Flag Officials' Committee**

**The Responsible Minister: The Deputy Prime Minister**

**The Secretariat: The New Zealand Flag Project Secretariat**

#### Background and guiding principles

- 1 On 28 October 2014, Cabinet agreed to a process to consider changing the New Zealand Flag.
- 2 Cabinet agreed that the following principles should guide the overall process to consider changing the New Zealand Flag. The process should be:
  - 2.1 *independent*: the process is as apolitical as possible, with multi-party support and public input into decision-making;
  - 2.2 *inclusive*: all perspectives are invited and considered and considered from within New Zealand's diverse communities, including Māori as tangata whenua;
  - 2.3 *enduring*: the outcome (whether change or status quo) is upheld and not revisited for a significant period;
  - 2.4 *well-informed*: the public has access to information to enable it to make decisions;
  - 2.5 *practical*: the process is workable, cost-effective, and implementation is possible;
  - 2.6 *community-driven*: designs and suggestions come from the community;
  - 2.7 *dignified*: the process upholds the importance of the flag as a symbol of our nationhood;
  - 2.8 *legitimate*: all legislative and other requirements are followed; and
  - 2.9 *consistent*: with the Crown's Treaty obligations.

#### Ministerial responsibilities

- 3 The Responsible Minister, supported by the Officials' Committee, is leading the overall process and will report back regularly to Cabinet on progress until the project is complete.

#### Role of the FCP

- 4 The role of the FCP is to design and lead the public engagement process over the New Zealand Flag, which will culminate in a binding postal referendum.

- 5 The FCP members will be the “face” of the New Zealand Flag discussion. A key feature of the group is that it is independent and non-partisan.

## **Responsibilities of the FCP**

### **Task 1: Design and lead the public engagement process, taking into account the guiding principles agreed by Cabinet, and with the support of the Secretariat**

- 6 The FCP will design and plan how it will engage with the public over the flag consideration process, taking into account the guiding principles agreed by Cabinet, with the support of the Secretariat (which will have public communications expertise), and within the available budget.
- 7 The public engagement process will commence after Anzac Day 2015.
- 8 The public engagement process may include some or all of the following approaches (within the available budget):
- 8.1 establishing an official website promoting the New Zealand Flag discussion, and providing a vehicle for people to forward designs and suggestions;
  - 8.2 arranging a public design competition;
  - 8.3 holding a roadshow or similar national programme of activity by which FCP members meet and talk with communities about the New Zealand Flag;
  - 8.4 social media activities;
  - 8.5 traditional media activities (public notices, television advertising, etc).
- 9 The FCP will report to Responsible Minister/s on its proposed public engagement process by **7 April 2015**.
- 10 The FCP will need to have a clear communication strategy. All communications will need to reinforce that retaining the current flag will be a possible outcome and that there is no presumption in favour of change.

### **Task 2: Undertake other research as required**

- 11 The FCP will also need to seek input from flag experts, design experts, tikanga Māori experts, and other experts as required, to ensure a range of suitable alternative designs are available, that any proposed designs are workable, and that there are no impediments to the choice of proposed designs.
- 12 The research may include the following approaches (within the available budget):
- 12.1 surveying;
  - 12.2 commissioning a design agency to create a range of potential designs, and promulgating these for public feedback; and
  - 12.3 commissioning legal assistance to complete domestic and international due diligence on the suitability and availability of proposed designs.

### **Task 3: Report back to Responsible Ministers on findings of the public engagement process**

- 13 The FCP will report back to Responsible Minister/s on its findings by **21 August 2015** in time for Cabinet to approve the alternative flag designs to be voted on in the first referendum.
- 14 The FCP's report is expected to include the following:
  - 14.1 a summary of the processes used to engage with the public;
  - 14.2 any common themes in designs and suggestions from the public;
  - 14.3 any common design elements in flag designs submitted by the public;
  - 14.4 discussion of the process by which the group has narrowed down the selection of alternative designs;
  - 14.5 description of the work the FCP has undertaken to ensure the alternative designs meet accepted design standards and that there are no legal or other impediments to their use;
  - 14.6 recommendations for a reasonable number (5-6) of alternative designs for inclusion in a referendum, together with the current New Zealand Flag.
- 15 Once Cabinet has approved the alternative flag designs to be included in the ballot papers, the FCP's report will be made available to the public.

### **Task 4: Assist with ongoing communication to help provide information about the different options**

- 16 The FCP will continue in its public communications role in the lead-up to the first and second referendums, to help provide information to the public about the alternative flag designs. This will be separate from, and complementary to, the Electoral Commission's role in providing information to the public about how to vote in the referendum process, and encouraging participation. The two groups will need to work closely together to ensure that public communications are co-ordinated.
- 17 Additionally, from time to time, the Responsible Minister/s may call on the FCP for further advice or assistance.

### **Form of the FCP**

- 18 Group members, including the Chair and Deputy Chair, will be appointed by Cabinet on the advice of the Responsible Minister/s (informed by nominations provided by the CPG).
- 19 The Secretariat will work with the Chair and Deputy Chair to prepare an agenda for the first meeting, and cover key matters relating to the New Zealand Flag project. It is expected that the group will need to hold its first meeting by the end of February, to enable it to start planning.
- 20 At the first meeting, the Chair and Deputy Chair will work with group members to agree the rules and protocols for how the FCP will operate.

## **Support for the FCP**

- 21 The FCP will primarily be supported by the Secretariat, with the assistance of the Officials' Committee and other agencies as required. Support will include administration services, such as any website and database administration that may be required. The Secretariat will have the ability to enter into contractual arrangements to support the work of the FCP.
- 22 The Responsible Minister will liaise with the FCP, as appropriate, to ensure that it has the information and resources it needs.

## **Amendment to Terms of Reference**

- 23 These Terms of Reference may be amended by Cabinet, on the advice of the Responsible Minister, following consultation with the FCP.

**Appendix 4: Regulatory Impact Statement (refer to separate attachment)**