

Cabinet

New Zealand Flag Referendums (First Flag Referendum) Order 2015

New Zealand Flag Referendums (Second Flag Referendum) Order 2015

Proposal

- 1 This paper seeks approval of two draft Orders in Council, the New Zealand Flag Referendums (First Flag Referendum) Order 2015, and the New Zealand Flag Referendums (Second Flag Referendum) Order 2015 (the Orders in Council), which will bring provisions of the New Zealand Flag Referendums Act 2015 into force.

Policy

- 2 On 28 October 2014, Cabinet agreed to a process to consider changing the New Zealand Flag. [CAB Min (14) 34/1]
- 3 This process included the establishment of the New Zealand Flag Consideration Panel (the Panel). The Terms of Reference for the Panel required it to design and lead the public engagement process to consider changing the New Zealand Flag, and to report back to me with recommendations for a reasonable number (5-6) of alternative flag designs for inclusion in a referendum. [CAB (14) 541]
- 4 On 23 March 2015, Cabinet agreed the Panel would select the four alternative designs for the first referendum voting paper, which Cabinet would then authorise for inclusion in the Order in Council which is required to prescribe the designs to appear on the first referendum voting paper [CAB Min (15) 9/14].
- 5 On Monday 10 August 2015 the Panel published a longlist of 40 designs. The purpose of publishing the longlist was to continue the transparent approach employed to date with all aspects of the project, and to flush out any potential copyright or other issues with any of the longlisted designs.
- 6 The Panel reported back to me on the outcome of its public engagement process on Friday 28 August 2015. The process resulted in (all numbers to 7 August 2015):
 - 6.1 850,000+ visits to the Panel's websites;
 - 6.2 1,180,000+ people reached by social media;
 - 6.3 6000+ visits to workshops and information stands;
 - 6.4 43,000+ people shared what they stand for at www.standfor.co.nz;
 - 6.5 1,616 news items;
 - 6.6 500,000 views of video content on the Panel's websites, including 140,000+ views of a short video on the history of the New Zealand Flag;

6.7 2,000,000+ page views of the alternative flag design gallery at www.flag.govt.nz;

6.8 10,292 flag design suggestions to www.flag.govt.nz.

7 The Panel has selected four alternative designs for the first referendum voting paper.

8 In choosing the four designs from the longlist, the Panel has taken into account a wide range of considerations, including the input received through its engagement activities, the principles of good flag design, and a range of intellectual and cultural property matters.

9 Consistent with its with its Terms of Reference, once the four designs have been announced, the Panel 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 flag designs.

Orders in Council

10 The Orders in Council will bring provisions of the New Zealand Flag Referendums Act 2015 into force.

11 The Order in Council relating to the first flag referendum includes:

11.1 the date for the closing of the roll for the first flag referendum (Friday 23 October 2015);

11.2 the date for the close of the first flag referendum (Friday 11 December 2015);

11.3 for each of the four flag designs that will appear on the first referendum voting paper:

11.3.1 an image;

11.3.2 an official description, to be used for voter telephone dictation, if required;

11.3.3 the technical specifications, including a diagram.

12 The Order in Council relating to the second flag referendum includes:

12.1 the date for the closing of the roll for the second flag referendum (Thursday 4 February 2016);

12.2 the date for the close of the second flag referendum (Thursday 24 March 2016):

12.3 the official description of the current New Zealand Flag, to be used for voter telephone dictation, if required.

13 The Orders in Council will come into force on 1 September 2015.

Timing and 28-Day Rule

14 A waiver of the 28-day rule is sought. The Orders in Council provide for decisions necessary for the administration of the referendums. The process for determining the four flags to be considered in the first referendum has been well-publicised to date as well as the in-principle dates for the referendums. Following approval of the Orders in Council, there will be a high level of advertising and promotion of the four flags, including the media announcement by the Flag Consideration Panel (paragraph 21 below refers). The Electoral

Commission's public information campaign will inform the public of the voting periods and the date by which people need to be enrolled. The public are still able to enrol after the closure of the roll specified in this Order. Therefore, I consider a waiver of the 28-day rule is appropriate.

Compliance

- 15 The draft Orders in Council comply with:
- 15.1 the principles and guidelines set out in the Privacy Act 1993;
 - 15.2 relevant international standards and obligations;
 - 15.3 *LAC Guidelines: Guidelines on Process and Content of Legislation*;
 - 15.4 the New Zealand Bill of Rights Act; and
 - 15.5 the Human Rights Act 1993.

Treaty of Waitangi

- 16 In my view, the draft Orders are consistent with the principles of the Treaty of Waitangi.
- 17 An application is currently before the Waitangi Tribunal to hold an urgent hearing on the Government's decision to consider changing the New Zealand Flag. The claimants have submitted that the delivery of ministerial advice to the Governor-General to appoint the dates for the first referendum should not occur until the Tribunal has had an opportunity to make a recommendation on this matter. A further submission from the claimants' counsel was submitted on 28 August 2015, urging the Tribunal to make its decision promptly.
- 18 The Crown has opposed the application for urgency on the basis that the grounds for an urgent hearing have not been made out. In particular:
- 18.1 the claim has been brought belatedly;
 - 18.2 the Crown's decision to initiate the New Zealand Flag consideration process was consistent with its kawanatanga right under Article One;
 - 18.3 the engagement process has appropriately provided for Māori participation in the New Zealand Flag consideration process, and has been consistent with the Treaty partner status and tino rangatiratanga of Māori;
 - 18.4 there is no significant and irreversible prejudice; and
 - 18.5 there are alternative remedies that it is reasonable for the applicants to use: they have had the opportunity to engage in the process, and can participate in the New Zealand Flag referendums and organise to campaign for a particular outcome in those referendums.
- 19 The latest date on which it is possible to make the Orders in Council, in order for the first referendum to be held between 20 November and 11 December as currently planned, is Monday 14 September.

Certification

20 Parliamentary Counsel has certified the Orders as being in order for submission to Cabinet.

Publicity

21 Subject to the Orders being made, the Panel intends to announce the four flags at a press conference at 10am on Tuesday 1 September 2015.

22 The Panel's Terms of Reference provide for the Panel's report to the Responsible Minister to be made available to the public after the four flags have been announced. The report will be made available on the Panel's website www.flag.govt.nz.

Consultation

23 The Orders in Council were drafted by Parliamentary Counsel in consultation with the Flag Project Secretariat, the Ministry of Justice, the Ministry for Culture and Heritage, and the Department of the Prime Minister and Cabinet.

Recommendations

24 I recommend that Cabinet:

- 1 **note** that the New Zealand Flag Consideration Panel (the Panel) reported back to the Responsible Minister on Friday 28 August 2015 on the outcome of its public engagement process;
- 2 **note** that the Panel's Terms of Reference required it to report back with recommendations for a reasonable number (5-6) of alternative flag designs for inclusion in a referendum [CAB (14) 541];
- 3 **note** that on 23 March 2015, Cabinet agreed the Panel would select the four alternative designs for the first referendum voting paper, which Cabinet would then authorise for inclusion in the Order in Council which is required to prescribe the designs to appear on the first referendum voting paper [CAB Min (15) 9/14];
- 4 **note** the four alternative designs for the first referendum voting paper, as selected by the Panel;
- 5 **note** the Responsible Minister's intention to recommend to the Governor-General that Orders in Council are made covering the following aspects, pursuant to the New Zealand Flag Referendums Act 2015:
 - 5.1 the four flags for the first referendum;
 - 5.2 the dates for the closing of the referendum roll for the first and second referendums;
 - 5.3 the dates for the close of the voting period for the first and second referendums; and
 - 5.4 the official description of the current New Zealand flag (for voting dictation purposes);

- 6 **authorise** the submission to the Executive Council of the:
- 6.1 draft New Zealand Flag Referendums (First Flag Referendum) Order 2015; and the
- 6.2 draft New Zealand Flag Referendums (Second Flag Referendum) Order 2015;
- 7 **note** that a waiver of the 28-day rule will be required to allow the administration of the two flag referendums to proceed, noting that:
- 7.1 the process for determining the four flags to be considered in the first referendum has been well-publicised to date as well as the in-principle dates for the referendums;
- 7.2 subject to recommendation 6, there will be a high level of advertising and promotion of the four flags, including the media announcement by the Flag Consideration Panel;
- 7.3 the Electoral Commission's public information campaign will inform the public of the voting periods and the date by which people need to be enrolled; and
- 7.4 the public are still able to enrol after the closure of the roll specified in the Orders in Council;
- 8 **note** that the Orders in Council come into force on 1 September 2015;
- 9 **agree** to a waiver of the 28-day rule so that the Orders in Council come into force on 1 September 2015;
- 10 **note** that, subject to recommendation 6, the Panel intends to announce the four flags at a press conference at 10am on Tuesday 1 September 2015; and
- 11 **note** that, subject to recommendation 6, the Panel's report to the Responsible Minister will be made publicly available following the Panel's press conference on Tuesday 1 September 2015.

Hon Bill English
Deputy Prime Minister

____/____/2015