



## Minute of Decision

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### Update on the Process to Consider Changing the New Zealand Flag

**Portfolio: Deputy Prime Minister**

On 2 February 2015, Cabinet:

#### Background

- 1 **noted** that on 28 October 2014, Cabinet agreed to a process to consider changing the New Zealand Flag (the Flag) [CAB Min (14) 34/1];
- 2 **noted** that as part of this process, the New Zealand Flag Cross-Party MPs' Group (CPG) was established and met during November and December 2014 to consider its two discrete tasks, namely to:
  - 2.1 nominate suitable candidates for the New Zealand Flag Consideration Panel (the FCP) to the Responsible Minister by 12 December 2014;
  - 2.2 focus on the quality of the legislation enabling the referendum process, before the New Zealand Flag Referendums Bill (the Bill) is approved for introduction to the House;
- 3 **noted** that:
  - 3.1 the CPG agreed that for its role to be most effective, it should be able to make recommendations on matters relating to the flag referendum process that may have already been subject to Cabinet and Ministerial decisions;
  - 3.2 on 1 December 2014, Cabinet agreed that the Responsible Minister may bring policy decisions made by Cabinet, or by Ministers with Power to Act, in relation to the flag referendum legislation back to Cabinet for further consideration if the CPG members as a group agree that a policy should be reconsidered [CAB Min (14) 38/15];

#### New Zealand Flag Cross-Party Members' Group's recommendations

- 4 **noted** that the CPG has made recommendations on three aspects of the flag consideration process which have already been the subject of Cabinet or Ministerial decisions;

### Voting system and number of flags on voting paper in first referendum

- 5 **noted** that Ministers with Power to Act have agreed that the voting options on the voting paper in the first referendum will be three alternative flag designs, on the basis that the voting system to be used in the first referendum will be single vote (first past the post);
- 6 **agreed**, instead, that the:
- 6.1 first referendum will be optional preferential voting;
- 6.2 voting options on the voting paper in the first referendum will be four alternative flag designs;

### Timing of second referendum

- 7 **noted** that while the dates of the second referendum will be set by Order in Council, as noted in paragraph 15 below, the second referendum is currently planned for 1 to 22 April 2016, with final results available on Tuesday 26 April 2016, which is the day following Anzac Day 2016;
- 8 **agreed in principle, subject to** paragraph 15 below, that the second referendum will be held during March 2016;
- 9 **noted** there is a risk that the second referendum would need to be delayed if there is an application to the High Court for an inquiry into the conduct of the first referendum;
- 10 **noted** that should an inquiry be lodged, the Deputy Prime Minister will report to Cabinet on the scope, likely timing, and cost of the inquiry, and the implications for the timing of the second referendum;
- 11 **invited** the Deputy Prime Minister to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions;

### New Zealand Flag Cross-Party MPs' Group convened as special select committee

- 12 **invited** the Deputy Prime Minister to work with the Leader of the House and the Office of the Clerk to develop a proposal for consideration by the House Business Committee, by which the CPG, supplemented with additional members as necessary, is established as a special select committee to consider the Bill;

### Decisions made by Ministers with Power to Act

#### Regulation of referendum advertising

- 13 **noted** that Ministers with Power to Act have agreed that the regulation of referendum advertising will consist of:
- 13.1 a definition of a referendum advertisement based on that used in the 2011 MMP referendum but exempting flags which are voting options, and images of these flags and related symbols by themselves without any accompanying words about voting in the referendum;
- 13.2 a requirement from the point of enactment of the Bill that referendum advertisements, in broadcast and print media (including billboards) only, must contain a promoter statement;

**Transitional issues if there is a vote in favour of changing the Flag**

- 14 **noted** that Ministers with Power to Act have agreed, if the second referendum results in a vote in favour of changing the Flag, that:
- 14.1 the Flags, Emblems and Names Protection Act 1981 should be amended to:
    - 14.1.1 change the Flag on a date to be set by Order in Council but no later than six months after the result of the second referendum is declared;
    - 14.1.2 recognise the historic (but not official) status of the old Flag and the right of any individual or group to continue to use or display that Flag;
    - 14.1.3 allow the Minister responsible for that Act to prescribe rules for the use of the old Flag, or other national or historic flags, in relation to government land or buildings, and to issue rules of general conduct and etiquette (but which do not have the force of law) for those flags;
  - 14.2 the Ship Registration Act 1992 should be amended to allow for a period of six months after the change of the Flag, New Zealand-registered ships (other than New Zealand Government ships) to fly the old Flag, the new Flag, or the marine Flag of New Zealand;
  - 14.3 the Land Transport (Driver Licensing) Rule 1999 should be amended to provide that driver licences can display the old Flag until their expiry;

**Mechanism for setting referendum dates**

- 15 **noted** that Ministers with Power to Act have agreed that the Bill will enable the Governor-General to set the final day of both voting periods by Order in Council;

**Alternative methods of voting for certain groups of voters**

- 16 **noted** that Ministers with Power to Act have agreed that specific groups of voters who find it difficult to cast a postal vote should have the following alternative methods of voting:
- 16.1 voters in non-remote overseas locations: returning completed voting paper by fax or by uploading it to the secure Electoral Commission website;
  - 16.2 voters on fishing or naval vessels or in specific remote locations: voting by telephone dictation, receiving voting paper by fax or by email, returning voting paper by fax or by uploading it to the secure Electoral Commission website;
  - 16.3 voters in New Zealand and unable to mark voting paper without assistance due to blindness or other disability: voting by telephone dictation;

**Financial implications**

- 17 **noted** that the additional costs to the Electoral Commission associated with preferential voting can be managed within budget;

## Publicity

- 18 **invited** the Deputy Prime Minister to inform the CPG of Cabinet's decisions relating to the submission under CAB (15) 23 as soon as practicable;
- 19 **noted** that the submission under CAB (15) 23, including its appendix, will be made publicly available after the CPG has been informed.

Secretary of the Cabinet

Reference: CAB (15) 23

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