

Cabinet

New Zealand Flag Referendums (First Flag Referendum) Amendment Order 2015

Proposal

- 1 This paper seeks approval of a proposed Order in Council, the New Zealand Flag Referendums (First Flag Referendum) Amendment Order, which will amend the New Zealand Flag Referendums (First Flag Referendum) Order 2015, to allow for the inclusion of a fifth alternative flag design on the voting paper for the first referendum.

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 The New Zealand Flag Referendums Act 2015 received Royal Assent on 14 August 2015 and came into effect on 15 August 2015.
- 6 On 31 August 2015, Cabinet authorised the submission to the Executive Council of the New Zealand Flag Referendums (First Flag Referendum) Order 2015 and the New Zealand Flag Referendums (Second Flag Referendum) Order 2015, pursuant to the New Zealand Flag Referendums Act 2015. [CAB-15-MIN-0048]
- 7 The two Orders in Council included:
 - 7.1 the four flags for the first referendum;
 - 7.2 the dates for the closing of the referendum roll for the first and second referendums;
 - 7.3 the dates for the close of the voting period for the first and second referendums; and
 - 7.4 the official description of the current New Zealand Flag (for voting dictation purposes).
- 8 The Orders in Council were made on 31 August 2015 and came into effect on 1 September 2015. [CAB-15-MIN-0048]

- 9 On 22 September 2015, the Green Party indicated its intention to introduce a Bill to amend the New Zealand Flag Referendums Act 2015 to allow a fifth design, 'Red Peak', to be added to the voting paper for the first flag referendum, following public support for the design.
- 10 On 22 September 2015, the Attorney-General directed Parliamentary Counsel to arrange for legislative drafting resources to be made available to James Shaw, Green Party List Member of Parliament, to assist with the drafting of an amendment Bill to the New Zealand Flag Referendums Act 2015.
- 11 On 23 September 2015, the Prime Minister, the Leader of the House and I agreed that the Government would introduce the Bill if the Green Party was not successful in introducing it to Parliament.
- 12 The New Zealand Flag Referendums Amendment Bill was introduced by the Government on 23 September 2015. The Bill was passed on 24 September 2015, and received Royal Assent the same day. The New Zealand Flag Referendums Amendment Act 2015 came into force on 25 September 2015.

Order in Council

- 13 The New Zealand Flag Referendums (First Flag Referendum) Amendment Order will amend the New Zealand Flag Referendums (First Flag Referendum) Order 2015, to:
 - 13.1 insert a new clause prescribing the 5 alternative flag designs that are to appear on the voting paper for the first flag referendum; and
 - 13.2 insert a new Schedule showing the 5 alternative flag designs (ie the 4 alternative flag designs chosen by the Panel, and the 'Red Peak' design).
- 14 The Order in Council will come into force on Friday 2 October 2015.

Timing and 28-Day Rule

- 15 A waiver of the 28-day rule is sought, on the basis that the Order in Council has little or no effect on the public, or confers only benefits on the public by providing more choice in the first flag referendum. I consider a waiver of the 28-day rule is appropriate.

Compliance

- 16 The draft Order in Council complies with:
 - 16.1 the principles and guidelines set out in the Privacy Act 1993;
 - 16.2 relevant international standards and obligations;
 - 16.3 *LAC Guidelines: Guidelines on Process and Content of Legislation*;
 - 16.4 the New Zealand Bill of Rights Act;
 - 16.5 the Human Rights Act 1993; and
 - 16.6 the principles of the Treaty of Waitangi.

Certification

17 Parliamentary Counsel has certified the Order as being in order for submission to Cabinet.

Publicity

18 The Order will be published at www.legislation.govt.nz on Thursday 1 October 2015.

Consultation

19 The Order in Council was 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. The Electoral Commission was informed.

Recommendations

20 I recommend that Cabinet:

- 1 **note** that two Orders in Council were made on 31 August 2015, prescribing dates for the close of the first and second referendums, dates for the close of the rolls for the first and second flag referendums, and prescribing 4 alternative flag designs to appear on the voting paper in the first flag referendum;
- 2 **note** that on 22 September 2015, the Green Party indicated its intention to introduce a Bill to amend the New Zealand Flag Referendums Act 2015 to allow a fifth design, 'Red Peak', to be added to the voting paper for the first flag referendum;
- 3 **note** that on 22 September 2015, the Attorney-General directed Parliamentary Counsel to arrange for legislative drafting resources to be made available to James Shaw, Green Party List Member of Parliament, to assist with the drafting of an amendment Bill to the New Zealand Flag Referendums Act 2015;
- 4 **note** that on 23 September 2015, the Prime Minister, the Leader of the House and the Responsible Minister agreed that the Government would introduce the Bill if the Green Party was not successful in introducing it to Parliament;
- 5 **note** the New Zealand Flag Referendums Amendment Bill 2015 was introduced by the Government on 23 September 2015;
- 6 **note** that the Bill was passed on 24 September 2015 and received Royal Assent the same day, and the New Zealand Flag Referendums Amendment Act 2015 came into effect on 25 September 2015;
- 7 **note** the Responsible Minister's intention to recommend to the Governor-General that an Order in Council is made, pursuant to the New Zealand Flag Referendums Amendment Act 2015, in order to:
 - 7.1 insert a new clause prescribing the 5 alternative flag designs that are to appear on the voting paper for the first flag referendum; and
 - 7.2 insert a new Schedule , showing and describing the 5 alternative flag designs that are to appear on the voting paper for the first flag referendum (ie the 4 alternative flag designs chosen by the New Zealand Flag Consideration Panel, and 'Red Peak');

- 8 **authorise** the submission to the Executive Council of the New Zealand Flag Referendums (First Flag Referendum) Amendment Order;
- 9 **note** that a waiver of the 28-day rule will be required to allow the administration of the two flag referendums to proceed, on the basis that the Order in Council has little or no effect on the public, or confers only benefits on the public by providing more choice in the first flag referendum;
- 10 **note** that the Order in Council comes into force on 2 October 2015;
- 11 **agree** to a waiver of the 28-day rule so that the Order in Council comes into force on 2 October 2015.

Hon Bill English
Deputy Prime Minister

____/____/ 2015