



**Justice and Electoral Select Committee
Youth Parliament 2010**

Inquiry into the process for deciding whether to retain or change the New Zealand flag

**Submission by Constitutional Policy, Ministry of
Justice**

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Inquiry into the process for deciding whether to retain or change the New Zealand flag

Introduction

- 1 The Ministry would like to make a submission to the Youth Parliament, Justice and Electoral Select Committee on the topic “Inquiry into the process for deciding whether to retain or change the New Zealand flag”. The Ministry intends to provide the Committee with a range of possible options and principles to take into account in its consideration of the topic.
- 2 The national flag is a symbol of national identity. It is a symbol that people living under the flag identify with and one that identifies New Zealand on the international stage. Therefore it is important to carefully consider the process for deciding whether to retain or change the flag.
- 3 The Ministry would like to submit on two points:
 - The possible structures within which to frame the process
 - Consultation principles and examples of different types of consultation
- 4 We have also included examples of structures that have been used in the past in **Appendix 1**.

Possible structures

Principles for choosing an appropriate structure

- 5 Deciding a process for policy change needs to be considered on a case-by-case basis. What is appropriate for one issue might not be appropriate for another. There are however, a set of principles that can be applied to identify the best process.
 - **Appropriateness for issue:** the form of structure needs to be appropriate to the subject matter in terms of the scope (regional or national), who to consult and the appropriate types of questions.
 - **Impartiality and credibility:** the form of structure should be, and be seen to be, independent of any inappropriate political or executive interference and should be credible with both the public generally and with all sections of society (including Māori).
 - **Mana and respect:** the form of structure should display influence and authority with decision-makers and accordingly claim the respect of New Zealanders.
 - **A wide focus:** the form of structure should have the ability to be informed by a wide range of interested groups and the general public.

Possible structures within which to frame the process

- 6 A number of possible structures are available within which to carry out the process of deciding whether to retain or change the flag.

a. Commissions of Inquiry (standard or Royal): Commissions of inquiries are established under a statute. Standard commissions are often asked to investigate why a situation came about and then to recommend policy or legislative changes to prevent it from happening again. Commissions of inquiry have been established where there is considerable public anxiety about the matter and a major lapse in Government performance appears to be involved.

Royal Commissions focus on policy matters such as areas of public policy, social policy and the state services. They have been established where the issue is in an area too new, complex or controversial for mature policy decisions to be taken. Often, circumstances giving rise to the inquiry are unique with few or no precedents.

b. Ministerial inquiries: A ministerial inquiry is a non-statutory inquiry established by a Minister into an area of administration they are responsible for. Ministerial inquiries are usually convened to look into matters of policy which are (or have been) controversial or are of strong public interest. Ministerial inquiries remain under the control of the relevant Minister.

c. Select Committee inquiries: Select Committees are empowered to look into any aspect of government policy, finance and administration in departments under their jurisdiction. Issues suitable for a select committee inquiry are likely to be those which would benefit from input from a wide range of interested groups and the general public. Select Committee inquiries are usually composed of Members of Parliament from all parties represented in the House and are therefore political in nature.

7 See the attached **Appendix 1** for examples of the use of the above structures and information about their timeframes and costs.

Consultation

8 Regardless of which structure is used, it is likely that consultation will be required.

Principles of consultation

9 Some principles of consultation to bear in mind are:¹

- Communicate a genuine invitation to give advice and a genuine consideration of that advice
- Provide adequate time for parties to make their submissions
- Provide parties with sufficient information to make informed submissions
- Record feedback carefully and summarise objectively
- Consider submissions with an open mind before the final decision is made
- Identify impartially the best solution to the problem, regardless of whether this favours any particular interests. Consultation is not a process of negotiation or the achievement of a consensus.

¹ Department of Internal Affairs *Consultation Guidelines* (2005) www.psi.govt.nz.

Types of consultation

10 Possible types of consultation include:

- written submissions
- oral submissions
- written surveys (completed face-to-face)
- written surveys (self-completed)
- telephone surveys
- interactive web sites
- face-to-face interviews
- public meetings or hui
- focus groups
- citizens' juries²
- citizens' panels³

11 **Referenda:** A referendum is a questionnaire that is put to all electors, either in conjunction with a General Election or as a stand-alone ballot by post. The referendum can be indicative or binding. Referenda are useful where issues are easy to understand and where the community is well-informed. It is also considered useful where it is appropriate that everyone has the opportunity to have their say.

12 See **Appendix 2** for the advantages and disadvantages of the different consultation types and when they may be useful.

Consulting Māori

13 Māori, as tangata whenua, have a unique relationship with government. The Treaty obliges government to ensure that Māori have an opportunity to contribute to the decision making process on matters that affect them.⁴

14 The key elements of good consultation with Māori are:⁵

- Get to know your Māori stakeholders and develop a good working relationship with them
- Listen and try to understand what issues Māori may regard as significant
- Make sure you allow enough time for Māori groups to respond
- If there are significant issues, consult with Māori face-to-face in an environment and in a way that makes them feel comfortable
- Be flexible and respectful of cultural differences
- Remember there is a range of Māori groups and complex relationships between them, so do not make assumptions about what Māori will regard as significant

² Citizens' juries consist of a small panel of non-specialists, modelled on the structure of a criminal jury. The group sets out to examine an issue of public significance in detail and deliver a "verdict".

³ A Citizens' Panel is a large, demographically representative group of citizens used typically by a statutory agency to assess public preferences and opinions.

⁴ Working with specific groups Māori www.goodpracticeparticipate.govt.nz.

⁵ Local Government New Zealand, the Department of Internal Affairs and SOLGM *The Knowhow Guide to Decision Making under the Local Government Act 2002* (2003).

Appendix 1: Examples of structures used in previous inquiries

Structure	Subject matter	Process/timeframe/costs
Standard or Royal Commissions of Inquiry	Royal Commission on the Electoral System ⁶ and referenda	<p>The Royal Commission on the Electoral System was formed by the Government in 1985 and reported in 1986. The Commission examined various voting systems and recommended that the voting system Mixed Member Proportional (MMP) be adopted in New Zealand amongst others. Not all recommendations were adopted by the Government.</p> <p>In 1992 and 1993, two referenda were held, resulting in the adoption of MMP. In 1992 a stand-alone postal indicative referendum was held asking voters whether they wished to retain the voting system existing at the time First-Past-the-Post (FPP) or wished for a change to the voting system. The cost is estimated to be around \$18 million although this amount included another campaign that was not directly related to the referendum.</p> <p>In 1993 a referendum was held in conjunction with the 1993 General Election asking voters to choose between FPP and MMP. This resulted in a change to the voting system to MMP that was first used to elect Members of Parliament in the 1996 General Election. The cost is estimated to be \$26 million although this amount includes cost that related to administration of General Election.</p> <p>Note the above estimated costs are indicative only.</p>
	Royal Commission on Auckland Governance ⁷	<p>The Royal Commission on Auckland Governance was established by the Government in October 2007 to investigate, and make recommendations on, local and regional government arrangements for the Auckland region in the future.</p> <p>The Commission consisted of three Commissioners, who were distinguished members of society and experts in their fields - law, public sector, academia and business.</p>

⁶ Report of the Royal Commission on the Electoral System www.elections.org.nz.

⁷ Royal Commission on Auckland Governance www.royalcommission.govt.nz.

		<p>The Commission published a discussion document with the issues they wanted input on. A separate background paper was published with an outline of local governance issues for Māori. The Commissioners consulted with various groups and individuals, reviewed submissions, conducted hearings and undertook their own research. They reported back to the Governor-General with recommendations in March 2009.</p> <p>The process took about a year and a half.</p>
Ministerial inquiries	Ministerial inquiry into the Electricity Industry ⁸	<p>In February 2000 a Ministerial inquiry was established to examine whether the existing regulatory arrangements were able to meet the Government's objective of an efficient, reliable and environmentally sustainable delivery of electricity to consumers.</p> <p>A three-person Ministerial inquiry panel was appointed, made up of experienced experts in the field. The Inquiry panel called for public submissions over a period of two months. It received written submissions and held oral hearings in five cities. The Inquiry published an issues document as a background for people making submissions.</p> <p>The inquiry reported to the Minister of Energy in June 2000. The Inquiry made conclusions that some changes to the current regulatory regime were needed and made recommendations to the Government on what should be done. It was then up to the Government to consider the panel's recommended changes and decide how to proceed.</p> <p>The budget for the inquiry was \$850,000.</p>
Select Committee inquiries	Inquiry into the implementation of the National Certificate of Educational Achievement (NCEA) by the Education and Science Committee ⁹	<p>In 2002 the Education and Science Committee resolved to conduct an inquiry into the implementation of the National Certificate of Educational Achievement in October 2002. The inquiry sought to identify problems associated with the implementation, evaluate the response of the Minister of Education and official to these issues and consider any other matter.</p> <p>The Committee was made up of ten Members of Parliament who was appointed at the beginning of the parliamentary term to consider matters relating to education and science.</p>

⁸ Ministerial Inquiry into the Electricity Industry: Website www.med.govt.nz.

⁹ Report of the Education and Science Committee *Inquiry into the Implementation of the National Certificate of Educational Achievement* (December 2002) www.parliament.nz.

		The Committee met twice in October, four times in November, and three times in December to hear submissions from organisations and individuals, and to consider the matter. The Committee reported back to Parliament in December 2002.
Others	Choosing a Māori flag	<p>In 2009 the Minister of Māori Affairs was charged with undertaking consultation with Māori to agree on a preferred Māori flag to be flown alongside the New Zealand flag on Waitangi Day.¹⁰</p> <p>Over July and August 2009, twenty-one public hui were held nationwide, and written and online submissions were invited from Māori and other interested New Zealanders. Four flags of national significance were identified for consideration as the preferred national Māori flag.</p> <p>At each hui participants were asked two questions with a number of multi-choice answers:</p> <ol style="list-style-type: none"> 1. Of the four flags outlined, which would you choose as a national Māori flag to represent Māori? 2. On what occasions should a national Māori flag be flown? <p>Over 1200 submissions were received with one option preferred by 80% of the submitters as the preferred national Māori flag.</p>

¹⁰ Guidelines for Flying the National Māori Flag www.tpk.govt.nz.

Appendix 2: Analysis of different consultation types¹¹

	Advantages	Disadvantages	When useful
Written submissions	<ul style="list-style-type: none"> • Gives everyone the opportunity to have their say • Easily collated and recorded 	<ul style="list-style-type: none"> • Low response rates therefore may not be representative • Time consuming to prepare • Off-putting to those unfamiliar with the process • Excludes the illiterate • Less appealing for oral cultures 	<ul style="list-style-type: none"> • For complex or technical issues • For legislative issues
Oral submissions	<ul style="list-style-type: none"> • Appropriate for oral cultures • Can be held in venues that are familiar to participants (e.g. marae) 	<ul style="list-style-type: none"> • Can be intimidating for those not used to public speaking • Submissions may be difficult to interpret • Requires taking a record of the discussion 	<ul style="list-style-type: none"> • When consulting with oral cultures • When consulting with those unable to communicate in writing
Written surveys (completed face-to-face)	<ul style="list-style-type: none"> • Often quick and easy to complete • Large numbers so able to obtain a representative view • Information collected can be represented statistically • Cheaper than using interviewers 	<ul style="list-style-type: none"> • Little scope for in-depth comment • Does not allow for two-way dialogue • More costly to conduct than self-completed questionnaires • Can be costly to process 	<ul style="list-style-type: none"> • When gauging views on relatively straightforward issues • Where the questions and issues are understood but need to be quantified • When attempting to consult with a large number of people • When quantitative rather than qualitative data is required
Written surveys (self-completed)	<ul style="list-style-type: none"> • Cheap • Less scope for interviewer bias • Easier to reach people geographically dispersed 	<ul style="list-style-type: none"> • Questions may be misinterpreted • May be unrepresentative depending on who decides to complete them • Response rates are generally poor • Excludes the illiterate • Less appealing for oral cultures • Does not allow for two-way dialogue 	<ul style="list-style-type: none"> • When issues are clear-cut and can be spelled out simply in a survey form • When attempting to consult with a large number of people

¹¹ Local Government New Zealand, the Department of Internal Affairs and SOLGM *The Knowhow Guide to Decision Making under the Local Government Act 2002* (2003)

Telephone surveys	<ul style="list-style-type: none"> • Guarantees a particular level of response • Often quick and easy to complete • More scope for additional comment • Can obtain views of non-users as well as users • Lower refusal rate than postal surveys 	<ul style="list-style-type: none"> • May be seen as an unwelcome intrusion into people's homes • Effectiveness is highly dependent on the survey design • Excludes those without a phone, or with unlisted numbers • Can be expensive, particularly if qualitative feedback is desired 	<ul style="list-style-type: none"> • When gauging views on relatively straight-forward issues • When attempting to consult with a large number of people in a comparatively short period of time
Face-to-face interviews	<ul style="list-style-type: none"> • Opportunities for in-depth responses in response to follow-up questions • Appeals to oral cultures • Minimises respondent errors in interpreting questions • Likely to result in a wide range of views • Flexible enough to allow new issues to be raised and explored • Attractive to people not comfortable speaking in groups 	<ul style="list-style-type: none"> • Expensive to run • Can introduce interviewer bias • Effectiveness is highly dependent on the survey design and interviewer skills • Results can be difficult to interpret • Small numbers of interviewees means that results may not be representative of the wider community 	<ul style="list-style-type: none"> • Where issues are complex and/or open ended
Public meetings or hui	<ul style="list-style-type: none"> • Provides an opportunity for dialogue where clarification can be sought by all parties • Can be used to keep interested members of the public informed while obtaining some feedback • Highly transparent way to demonstrate public consultation • People feel more comfortable in familiar surroundings • Useful when identifying views of a particular sector • Presents personal face of council to the public 	<ul style="list-style-type: none"> • Participation often low • Attendees may not be representative of the wider view • Can be intimidating for those not used to public speaking • Effectiveness is highly dependent on a good facilitator • Can become confrontational if not facilitated well 	<ul style="list-style-type: none"> • For small scale and localised consultation • For issues that impact significantly on particular interest groups

Focus groups	<ul style="list-style-type: none"> • Allows for in-depth discussion of complex issues • Good for gauging the opinions of those who do not normally participate • Can be representative of wider community views depending on composition • Can identify what is important to users • Groups allow participants to spark off each other 	<ul style="list-style-type: none"> • Effectiveness is highly dependent on a good facilitator • Comparatively expensive • Effective participation requires a good grasp of language • Can be unrepresentative of wider community views depending on composition • Lack of confidentiality in a group may inhibit some members 	<ul style="list-style-type: none"> • Where a high level of engagement and qualitative views are sought • Where in-depth discussion on particular issues is sought
Citizens' juries	<ul style="list-style-type: none"> • Good for gauging the opinions of those who do not normally participate • Open, democratic process • Promotes consensus problem-solving • Controlled environment for debate • Likely to have a high quality outcome 	<ul style="list-style-type: none"> • Public expectation that jury's 'verdict' will be actioned • Costly, including compensation for participants • Effectiveness is highly dependent on a good facilitator • May not be accepted by the general public who do not have the benefit of expert advice 	<ul style="list-style-type: none"> • Where a high level of engagement and qualitative views are sought • Where issues are complex and a lot of information needs to be presented and assessed
Referenda	<ul style="list-style-type: none"> • Provides a clear mandate for action • Likely to be very representative of the community's view • Marginal costs relatively low if undertaken in conjunction with an election 	<ul style="list-style-type: none"> • Limited number of questions can be asked • Qualitative responses not possible • Minority voters alienated by acting on the majority vote • Excludes the illiterate 	<ul style="list-style-type: none"> • Where issues are easy to understand • Where the community is well-informed on an issue • Where it is appropriate that everyone has the opportunity to have their say
Interactive websites	<ul style="list-style-type: none"> • Low cost • Accessible locally, nationally and internationally 	<ul style="list-style-type: none"> • Only available to those with access to the internet • Excludes the illiterate 	<ul style="list-style-type: none"> • In association with other methods where views from beyond the local community are appropriate