

REGULATORY IMPACT STATEMENT: CONSIDERING CHANGING THE NEW ZEALAND FLAG

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Justice. It analyses the implications of regulatory options for a referendum process to consider changing the New Zealand national flag. There will be a further RIS at a later point on the regulation of referendum advertising and any further detailed policy decisions with regulatory impacts relating to the flag process.

This RIS also identifies financial and non-financial implications of a change in the flag, where these are known. The referendum process could be binding and therefore the implications of a binding vote to change the flag need to be identified.

Limits on the options analysed

Based on existing Cabinet decisions, the RIS does not consider alternatives to a referendum process as the mechanism to change the flag.

Limitation on the analysis undertaken (assumptions)

A comparative analysis is used for assessing referendum options. In the time available we have not been able to collect data (e.g., a survey of public understanding of different referendum structures).

A number of assumptions are required to enable the impact of the options to be analysed. This means the nature and rigour of analysis of options will be affected. Where possible, we have tested the sensitivity of the assumptions by indicating the impact if the assumptions are incorrect.

Cabinet has indicated its preference for a public engagement process prior to the referendum process. Accordingly, we have assumed that:

- the public engagement process seeking flag designs will be implemented effectively (with no significant intellectual property rights issues with the alternative flag designs shortlisted), and
- the New Zealand public will be interested and engaged in this process.

A quantitative framework has been mainly used for Part 2, which identifies the costs of changing the flag. The identification and analysis of impacts of changing the flag has been constrained:

- by the limited commercial information publicly available
- because the flag is used widely by business, other organisations and individuals for purposes not prescribed by legislation, assumptions about business behaviour have been required to analyse the financial impact on businesses, communities (including groups with specific interest in the flag like the military) and individuals.



David King
General Manager, Civil and Constitutional Policy
Ministry of Justice

Context

1. This Regulatory Impact Statement (RIS) is prompted by the need to prepare advice on the best process for consideration of changing the national flag (the New Zealand Flag). The Prime Minister, Rt Hon John Key, announced in March 2014 that, if re-elected at the 2014 General Election, his Government would hold a public discussion and a vote on New Zealand's flag. Following the election, he indicated this would happen during 2015.
2. Legislation is required to enable any referendums and to provide for consequential amendments following the result. A change in the flag will require amendment of the Flags, Emblems, and Names Protection Act 1981 (FENPA).

The New Zealand Flag

3. New Zealand's current flag dates from 1902. Previously, the flag of the United Tribes of New Zealand and later the Union Flag ("Union Jack") were used as our national flag. The current flag is formalised as New Zealand's flag in the FENPA.
4. The current flag appears as part of other flags, emblems and documents including the New Zealand Coat of Arms, driver licences, military flags or ensigns, and the New Zealand Police and Fire Service flags. The flag is also incorporated in a number of trademarks, and private business logos and marketing materials. FENPA also describes New Zealand's national flag as the symbol of the wider Realm of New Zealand (includes the Cook Islands, Niue, Tokelau and the Ross Dependency).

Why do we need to consider a new flag?

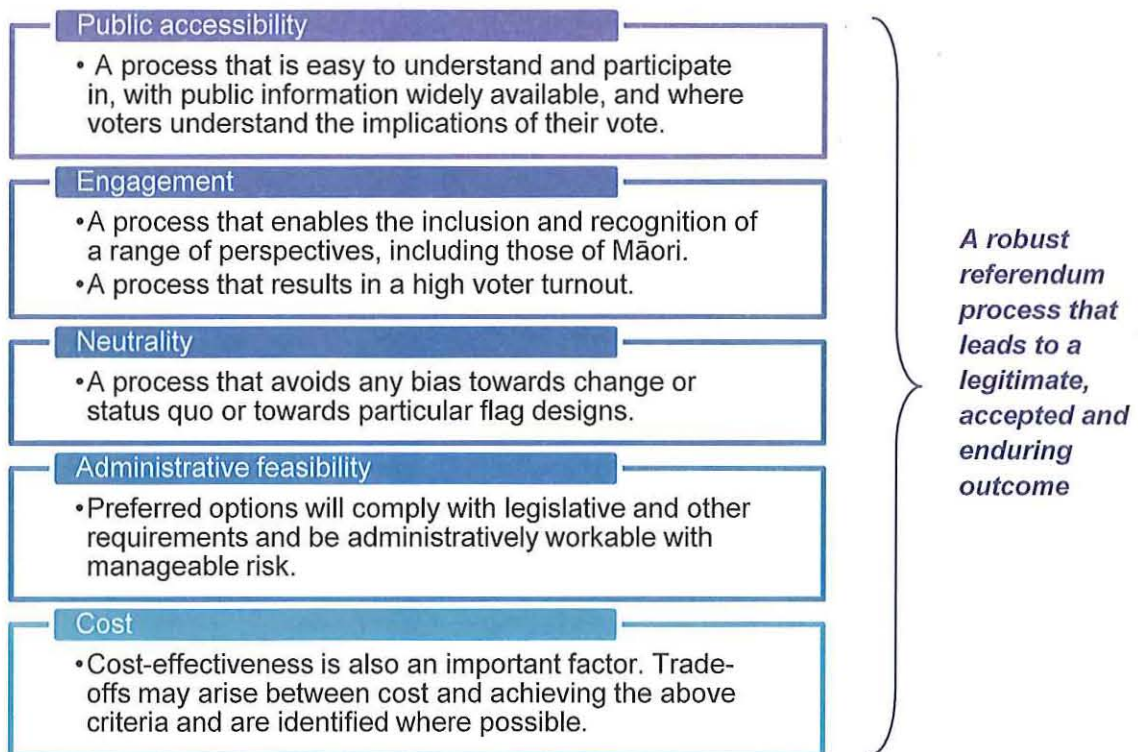
5. Since the 1960s, New Zealanders have been debating whether the current flag should be replaced. This debate has gathered pace since the 1990s, taking place online and through the media. However, there has never been an official forum in which a formal public debate could take place.
6. Some New Zealanders consider the current flag no longer adequately represents the country as it has undergone significant change since 1902. New Zealand has:
 - grown in confidence as an independent, sovereign nation located in the Pacific
 - acknowledged the Treaty of Waitangi as a founding document of government in New Zealand, and Māori culture and heritage as central to our national identity
 - loosened its ties with the United Kingdom, while continuing to acknowledge the British element of New Zealand's heritage and retaining the Sovereign as our Head of State
 - been transformed by migration from the Pacific, Asia, and elsewhere, greatly increasing New Zealand's cultural diversity
 - developed an identity grounded in this land and its stories
 - become a more outward-looking country that trades with the world.

7. The main arguments for the status quo and for flag change are set out below:

Case for the status quo	Case for change
<p>Some New Zealanders have attachment to the history and traditions they see represented in the current flag, and argue that the flag itself is part of New Zealand's history as it:</p> <ul style="list-style-type: none"> demonstrates New Zealand's strong historical ties to the United Kingdom and history as part of the British Empire reflects New Zealand's location in the South Pacific is the flag New Zealanders have fought and died under. <p>Others do not feel strongly about the current flag but do not see a pressing need for change.</p>	<p>Some New Zealanders feel the current flag:</p> <ul style="list-style-type: none"> represents New Zealand's British heritage, but does not obviously represent the heritages of our nation's other peoples (e.g., Māori and Pacific peoples) includes the Southern Cross but this does not distinguish New Zealand from other states in the region (in particular, the New Zealand and Australian flags are sometimes confused internationally) does not help New Zealand to project a strong image internationally, in order to enhance our status as an independent participant in international forums and our brand as a trading nation.

Objectives and assessment criteria

- A national flag is a unifying symbol of sovereignty, heritage and values. Any process considering change must be robust in that it leads to a legitimate outcome which is accepted by the public. The overarching objective is a referendum result that is enduring, whether this is the status quo or change.
- In assessing whether the referendum will achieve a legitimate, accepted and enduring outcome, we consider the following criteria:



10. In evaluating the options the criteria that are most relevant to legitimacy are public accessibility, engagement and neutrality. An option will undermine legitimacy more if it scores poorly on these three criteria. For constitutional matters we place a particular emphasis on public accessibility.
11. Cost and administrative feasibility are considered. However, options that do not meet these criteria do not undermine the overarching objective of legitimacy as significantly as options that do not meet public accessibility, engagement and neutrality.

Regulatory Impact Assessment

Decisions to date and limitations on analysis

12. A number of decisions have been made by Cabinet limiting the focus of this RIS (CAB Min (14) 8/22 refers). In March 2014, Cabinet noted that, as a modern, independent nation, the time has come to consider changing the design of the flag. Cabinet agreed that the process to consider changing the New Zealand Flag should include the following aspects:
 - 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;
 - public engagement, including the opportunity for people to submit designs and suggestions, and input from design experts;
 - a commitment that any decision to change the New Zealand Flag be made through a referendum; and,
 - 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. We have not considered status quo as a feasible option due to the decisions already made by Cabinet. We have therefore limited the focus of the RIS to (1) assessing options for each of the regulatory issues relating to the referendum/s, and (2) identifying the financial costs and practical impacts of changing the flag.

PART 1: REFERENDUM PROCESS OPTIONS

15. There are three key areas of the referendum process that have regulatory impacts and are analysed by this RIS:
 - the type of referendum (postal, ballot or online);
 - the structure of the referendum and questions, including the number of referendums and the voting system;
 - the status of the referendum (binding or indicative).
16. Additional policy decisions will be required as a Bill is drafted. If required, these will also be assessed in a further RIS.
17. In particular, the regulation of advertising related to the referendum will be considered in a further RIS, when further decisions on this issue are made.

A) Type of referendum

18. A referendum is a vote by all enrolled voters on some matter. This can be held by postal vote, by stand-alone ballot or ballot in conjunction with a general election. This RIS considers the first two referendum options in addition to online voting. We have not considered holding a ballot together with a general election due to the Prime Minister's indication that the process should be completed before the 2017 General Election.
19. It is difficult to draw conclusions about expected voter turnout with a postal or standalone ballot referendum from any recent New Zealand examples. Recent ballot referendums have been held with general elections rather than standalone. Equally, it is difficult to draw conclusions from low voter turnout in recent postal referendums as this may be context-dependent and influenced by the particular issues and questions.
20. However, we might expect that consideration of the New Zealand Flag is an issue New Zealanders will find engaging. This could mean higher voter turnout, as long as the referendum is well-timed and the question(s) well-framed.
21. The limitations on estimating turnout mean we cannot test the sensitivity of these assumptions under different referendum options.

Option 1: Postal vote

Referendum day set by Order in Council, voting period begins 3 weeks in advance. Voting papers and information posted to eligible electors, including overseas voters with a registered overseas address. Returned papers are electronically counted after poll closes

Advantages	Disadvantages	Conclusion
<p>Simple to administer.</p> <p>Requires less preparation time (~ 6 months) once decisions on voting system and ballot paper are made.</p> <p>Lowest in cost (\$9-13m).</p> <p>3 week voting period offers voters flexibility in when they vote.</p>	<p>Voters need to be present at their registered address in order to vote.</p> <p>This method entails a small increase in risk of voter fraud compared with a standalone ballot.</p>	<p>We recommend this option.</p> <p>Timing should be considered carefully, as people are less likely to be at their home addresses during holiday periods.</p>

Option 2: Standalone ballot

Conducted similar to a general election. Voting papers are issued and counted by polling place.

Advantages	Disadvantages	Conclusion
<p>Voting is potentially marginally easier, as voters do not need to be present at their registered postal address.</p> <p>However, there is no evidence that there would be a higher turnout with this option compared with a postal vote.</p>	<p>This method is more subject to time pressures as it requires ~12 months preparation.</p> <p>Higher in cost (\$31-36m).</p>	<p>We do not recommend this option.</p> <p>It requires significant resources and preparation time for the Electoral Commission.</p> <p>It is not clear that this more resource-intensive process would better achieve objectives.</p>

Option 3: Online (electronic) vote

While not currently available in New Zealand, we have considered whether this referendum could be an opportunity to trial online voting. Any online option would be supplementary to other voting methods such as a postal vote.

Advantages	Disadvantages	Conclusion
<p>This option offers the possibility of greater ease and accessibility of voting.</p>	<p>High cost and administrative burden associated with attempting to develop a secure and tested online voting system within a short timeframe.</p> <p>Additional cost in that physical ballot voting would have to be offered alongside this option.</p>	<p>Not viable within time constraints.</p>

B) Referendum structure

22. The structure of the referendum includes three key aspects with significant regulatory impacts: the number of referendums, the structure of the question(s) and the voting system used. We have considered these three aspects together due to the interrelated nature of the impacts.
23. The timing of the referendum process is assumed to be the same as in the Cabinet paper. If there are two referendums, the first would be in November/December 2015 and the second in April 2016. If a one referendum option is chosen we are assuming, for the purposes of this RIS, that the referendum will take place in November/December 2015.

Number of referendums

24. Options with one or two referendums will determine whether there is a desire for change, what the preferred alternative flag might be, and whether this alternative is preferred over the current flag. This can be done in a number of different question structures.
25. If two referendums are held instead of one, this will have impacts in terms of cost (\$9-13m per referendum), and a slightly increased risk of voter fatigue.

Questions

26. All options assume the alternative flag design or designs are determined through the preceding public engagement process that Cabinet has indicated will take place.
27. We have not included referendum options where the public would vote on whether they want to change the flag before being presented with alternative flags. These options are not seen as viable. Voters' response to whether they want to change the flag will be strongly influenced by the alternative designs. Asking people to vote without seeing what these alternative designs look like would risk the legitimacy of the referendum process.

Voting system




28. We consider there are two feasible voting systems.

First Past the Post (FPP)	Preferential Vote (PV)
How does this impact voters?	
<p>Voters place a tick beside the option they most prefer. Winning flag (or answer) will be the one with the most votes.</p>	<p>Voters number flags on the ballot in order of preference. If no flag has over 50% of first preference votes, then the flag with the fewest is removed from contention. Voters for this 'losing' flag then have their second preferences counted. This method continues until a flag has over 50% of votes.</p>
<p>Voters are familiar with this system, but it can be less representative where there are a range of options to choose from.</p>	<p>Voters are less familiar with this system as it is only used in District Health Board elections and some local government elections. The use of PV may complicate wider ongoing voter education regarding general elections.</p> <p>More votes may be ruled invalid if there is a strict requirement for voters to rank all available options. Allowing voters to rank fewer than the full range of options means it is possible that no option gets a majority.</p> <p>Good public education could mitigate the risks of this option.</p>
How is this administered?	
<p>This system is simple to administer, with Electoral Commission counting systems already in place.</p>	<p>This would require the Electoral Commission to adapt current counting systems under time pressure. This would involve added cost.</p>
What are possible outcomes?	
<p>Good for answering binary questions or assessing level of support for various flag designs. If there are multiple alternatives there is a risk with FPP that the strongest alternative may not emerge. In a FPP referendum with multiple alternatives, the pro-change vote will be split and the alternative flag with the most votes is unlikely to have more than 50% of the votes.</p>	<p>This system means that if a majority desire change, a broadly supported alternative flag can emerge through second preferences. This may benefit durability and legitimacy of process and of any change in flag. After preferences are allocated, one flag will achieve more than 50% of the votes.</p>

Options

29. Based on the three structural issues outlined above, we have identified seven feasible options for a referendum on change in New Zealand's flag. The table on the following page indicates how each of these options meets the process objectives.

Referendum option	Public accessibility	Engagement	Neutrality	Administrative feasibility	Cost
Option 1: Single referendum, FPP vote between current flag and one alternative	High achievement of objective	Medium	Low	High achievement of objective	High achievement of objective
Option 2: Single referendum, preferential vote between current flag and 3-4 alternatives	Medium	High achievement of objective	High achievement of objective	Medium	High achievement of objective
Option 3: Single referendum, question one asking whether to change, question two being a FPP vote between 3-4 alternatives	Medium	Medium	Low	High achievement of objective	High achievement of objective
Option 4: Two referendums – R1 being a FPP vote between 3-4 alternatives, R2 being a FPP vote between preferred alternative and current flag	High achievement of objective	Medium	Medium	High achievement of objective	Low
Option 5: Two referendums – R1 being a preferential vote between 4-5 alternatives, R2 being a FPP vote between preferred alternative and current flag	Medium	High achievement of objective	High achievement of objective	Medium	Low
Option 6: One or two referendums – R1 question one asking whether to change, question two being a FPP vote between 3-4 alternatives; if over 50% vote for change then R2 is FPP vote between preferred alternative and current flag	Medium	Medium	Medium	High achievement of objective	Medium
Option 7: One or two referendums – R1 is a FPP vote between current flag and 3-4 alternatives and if no flag gets over 50% then R2 is a run-off between the top two flags.	High achievement of objective	High achievement of objective	Medium	High achievement of objective	Medium

	High achievement of objective
	Medium
	Low

Criteria applied to referendum structure

Public accessibility - a referendum process that is easy to understand and participate in, where voters understand the implications of their vote.

Engagement - voters have a range of options, and feel like their vote is counted and accurately reflects their views. Also considers potential voter fatigue.

Neutrality - a process that avoids any bias towards change or status quo or towards particular flag designs.

Administrative feasibility - a process that is administratively easier for the Electoral Commission and have manageable risk to processes.

Cost

Conclusion

30. In this section we discuss the most preferred options of 2, 4, 5 and 7. These options are the highest scoring against the three most important criteria (for achieving legitimacy and an enduring result) of public accessibility, engagement and neutrality.
31. For more detailed discussion of the strengths, weaknesses and key tradeoffs associated with each option, see Appendix 1.

Option 2 - Single referendum, preferential vote between current flag and 3-4 alternatives

Advantages

32. Option 2 involves a single referendum, reducing cost and the chance of voter fatigue, and has a number of benefits in terms of engagement and neutrality. Preferential voting allows votes for change to be aggregated to produce an alternative with broad support. It also involves a simple question to voters along similar lines as Option 7.

Disadvantages

33. The Electoral Commission has expressed concern that options involving preferential voting would be more complex for voters and would increase voter confusion, harming public accessibility.
34. The Commission indicated that the use of preferential voting for this particular referendum may lead some voters to be confused about whether FPP or preferential voting in being used in future referendums and parliamentary elections that are conducted by the Electoral Commission.
35. Any impacts on increased rates of invalid votes also affect the legitimacy of the outcome¹.

Conclusion

36. The suitability of this option will depend on the weighting placed on the concerns about public understanding and perception of preferential voting, and the greater administrative burden for the Electoral Commission.
37. Option 2 will be preferred if priority is placed on both:
 - neutrality and engagement, and
 - reduced cost and the possibility of completing the referendum process before 2016.

Option 4: Two referendums – R1 being a FPP vote between 3-4 alternatives, R2 being a FPP vote between preferred alternative and current flag

Advantages

38. FPP voting and one clear question for each referendum makes this option publicly accessible.

¹ In the 2010 District Health Board elections, voter turnout was 49% with the percentage of informal, invalid or blank votes at 16%. In the 2013 Citizens initiated referendum on asset sales, voter turnout was 45% with less than 1% informal, invalid or blank votes.

Disadvantages

39. As with Option 7, this option may not produce the most competitive alternative flag to go to the run-off. This is because the FPP voting system is likely to split the pro-change vote which could harm neutrality.
40. There is also a risk to engagement with this option as voters will not be able to express support for the current flag in the first referendum, potentially decreasing turnout and limiting voters' choices.

Conclusion

41. This option has strong public accessibility, but there are risks to both engagement and neutrality. This option will be preferred if priority is placed on both:
 - public accessibility, and
 - a system that presents only alternatives first, and guarantees a run-off between an alternative flag and the current flag.

Option 5: Two referendums - R1 being a preferential vote between 4-5 alternatives, R2 being a FPP vote between preferred alternative and current flag

Advantages

42. Option 5, like Option 2, has a number of benefits to neutrality and engagement. Because the first referendum involves preferential voting the winning flag is likely to have broad support and will lead to a more competitive second referendum.

Disadvantages

43. As with Option 2, there are concerns about public accessibility with preferential voting in the first referendum. However, because there is a second referendum with FPP voting some of the concerns about the overall legitimacy are decreased as ultimately it will come down to a clear run-off.
44. As with Option 4, there is a risk to engagement with this option as voters will not be able to express support for the current flag in the first referendum, potentially decreasing turnout and limiting voters' choices.

Conclusion

45. The suitability of this option will depend on the weighting placed on the concerns about public understanding by the Electoral Commission. These concerns are lessened in comparison to Option 2, which does not involve a second FPP referendum.
46. This option will be preferred if priority is placed on both:
 - neutrality and engagement, and
 - a system that presents only alternatives first, and guarantees a run-off between an alternative flag and the current flag.

Option 7: One or two referendums – R1 is a FPP vote between current flag and 3-4 alternatives and if no flag gets over 50% then R2 is a run-off between the top two flags

Advantages

47. This option puts the current flag against 3-4 alternatives and gives voters a simple question along the lines of: what would you like the flag of New Zealand to be? This simple question and the FPP voting system means it scores highly for public accessibility.
48. Option 7 avoids the need for a second referendum if there is a clear preference from New Zealanders for either the status quo or for a particular alternative flag design. This has the potential for cost savings and for benefiting public engagement.

Disadvantages

49. Option 7 does have a weakness in the first referendum. This is because the FPP voting system is likely to split the pro-change vote which could harm neutrality. If no flag reaches 50% in the first referendum an alternative flag that may not have the broadest support is likely to run-off against the current flag in the second referendum. This would harm neutrality.
50. There is also a risk that people choose not to engage with the first referendum as they expect a second referendum, which may then not be triggered.

Conclusion

51. This option will be preferred if priority is given to the accessibility and ease for both voters and implementation by the Electoral Commission. Compared to other options, this option appears to better balance public accessibility with the other criteria of engagement and neutrality.

C) Binding or indicative referendum

52. Referendums can be either indicative or binding. An indicative referendum is non-binding and does not require the result to be acted upon. A binding referendum has been defined as:

“A referendum the result of which the government or Parliament is legally obliged to implement, or which the government or Parliament has undertaken to implement, or the result of which automatically brings an Act of Parliament into force (e.g., the Electoral Act 1993) [MMP Review Committee, 2001].”

53. Even though a referendum may be indicative (not legally binding), the Government can commit itself to act on the results. However, for the purposes of this analysis ‘binding’ means that the referendum legislation provides for an amendment to the Flags, Emblems, and Names Protection Act 1981 if there is a vote for a change.
54. Because a binding referendum process is a viable option, we have subsequently addressed the impact of changing the flag. While it is the implementation of the referendum result that has cost implications, not the binding or non-binding status of the referendum, we have taken costs into account where practicable. What is difficult to quantify at this are whether the benefits of a decision to change the flag outweigh the costs. See Part 2 for further discussion.

Option 1: Binding referendum

This would require legislation to be in place ready to implement the outcome of the referendum. Commencement provisions could be in place and contingent on the required level of votes.

Advantages	Disadvantages	Conclusion
<p>Presents a clear process with automatic legislative change as the outcome.</p> <p>Voters may feel they have more efficacies with the decision in their hands.</p> <p>This may benefit engagement and turnout.</p>	<p>If the Government wanted to overturn the result, because questions have arisen around the outcome, it would have to do so through primary legislation.</p>	<p>We recommend this option.</p> <p>Other options risk engagement and public acceptance of the referendum process, as there may be ambiguity about whether any result will be implemented.</p>

Option 2: Indicative referendum

The Government would not be legally bound by the result of an indicative referendum.

Advantages	Disadvantages	Conclusion
If questions of legitimacy, neutrality or clarity arise regarding the referendum process or result, then this option offers the flexibility to respond to that.	Risks to turnout, trust and public acceptance if a referendum result is subject to Government discretion. This option would mean that the outcome, and the pathway to it, is not clear to the public.	We do not recommend this option. People are less likely to engage with a non-binding referendum and there may be concerns about neutrality if the ultimate decision remains with the Government.

Option 3: Binding, with a change in flag requiring a supermajority of votes

A supermajority requirement means an alternative would only replace the current flag if it won, for example, 2/3 or 3/4 of votes.

Advantages	Disadvantages	Conclusion
Any new flag design would necessarily have very broad support.	Not neutral between votes for change and votes for the status quo. If the status quo is maintained despite a majority for change, the result will not be durable and debate over the flag will continue. There is also a risk this option may result in low public engagement and turnout due to the high threshold required.	We do not recommend this option. A supermajority requirement would be unusual in a referendum, as most constitutional provisions can be amended by either a simple majority in Parliament or in a referendum.

Regulation of referendum advertising

55. A further RIS will accompany the decisions on the regulation of referendum advertising.
56. That RIS will look at the two broad options of either no regulation of advertising, or setting up a regulatory regime. How a regulatory regime would work will also be explored.
57. If advertising is regulated, there are three key questions which will need to be considered for different regulatory regimes:
 - What will the definition of “referendum advertisement” include and, therefore, what is the breadth of material that will come under any regulatory regime?
 - What should the regulatory regime involve (this could include, for example, requiring a promoter statement or setting an expenditure limit for promoters)?
 - What time period will the regulatory regime cover, in particular will adjustments need to be made if there are 2 referendums rather than 1?

PART 2: FINANCIAL AND OTHER IMPLICATIONS OF CHANGING THE NEW ZEALAND FLAG

58. This section focuses on identifying the financial and regulatory impacts on government, businesses, individuals and community organisations of changing the New Zealand Flag.
59. This section is included as the referendum process may be binding and it is important to identify the range of impacts of a binding vote to change the flag.
60. We have focussed on the costs of changing the flag noting that no private individual or business would be required to use the new flag.
61. We recognise however that depending on the new flag design, there may be benefits to New Zealand's brand which could assist New Zealand's export industry and tourism, and that a factor in the decision to change the flag is whether there are net benefits in change. However, the benefits are difficult to quantify and are dependent on the design of the flag, so giving an indication of the range of costs is all that can be done at this point.
62. We have attempted to identify, and focussed our analysis on, the key groups who use, or are directly impacted by a change of, the national flag. The identification and analysis of impacts of changing the flag have been constrained by the:
- unique nature of this process. There are no comparable domestic or international examples;
 - limited commercial information publicly available; and
 - varying extent to which the national flag is used by business, individuals and sporting, cultural and community groups.
63. Due to these constraints, our ability to quantify the costs has been limited and we have made some behavioural assumptions of the impacted groups.
64. Below we have estimated the financial impacts on central government, local government, private sector and community and sporting sectors. Further detail is in Appendix 2.

Sector	Cost	Cost
<i>Central government</i>	Replacement of flags	\$0.66 million
	Replacement of NZDF uniforms	\$1 – 2 million
	Government trademarks Flags on government ships Flags on drivers licences	Unknown
	Publicity and celebration of new flag	Unknown
	<i>Local government</i>	Replacement of flags
<i>Business</i>	Cost to flag/souvenir manufacturers	Unknown
	Costs associated with changing trade marks marketing material and product packaging	Unknown

Sport	Costs associated with flag use at events, on uniforms/property and changing branding and marketing material	Unknown
-------	---	---------

Other non-financial impacts

65. The legislation governing the New Zealand Flag is the Flags, Emblems and Names Protection Act 1981 (FENPA). From a legislative point of view, the Flag could be changed by a relatively straightforward consequential amendment to FENPA to replace the design in Schedule 1 to the Act with a different design. It is not anticipated that this would impose additional costs or delays in implementation.

Consequences for other legislation of changing the Flag

66. Section 58 of the Ship Registration Act 1992 provides that New Zealand Government ships shall fly the New Zealand Flag and other New Zealand ships shall fly either the New Zealand Flag or the marine flag of New Zealand. 'New Zealand Flag' is defined as the flag depicted in Schedule 1 to FENPA.
67. Clauses 62 and 63 of the Land Transport (Driver Licensing) Rule 1999 provide that New Zealand driver licences must include an image of the New Zealand Flag. 'New Zealand Flag' is not defined.
68. No amendments would be required to these pieces of legislation in order for a new Flag to replace the current one for the purposes specified in the legislation.² There would, however, be practical consequences, which are discussed below. Legislation might need to provide for a transitional period during which the previous Flag can still be used.

Mitigation

69. A transition period would mitigate the financial and practical impacts of changing the Flag although the mitigation effect depends on the sector. For example central and local government buildings might be expected to start flying any new flag soon after the decision. The length of the transition period would also depend on the context. For example:
- Uniforms (for example, the New Zealand Defence Force) displaying the current flag could remain valid until natural replacement;
 - Existing driver licences depicting the old Flag could remain valid until their expiry, while new licences could start depicting the new Flag;
 - It might be necessary to allow for a period during which New Zealand ships could fly the old Flag, the new Flag or the marine flag.
70. A transition period would enable businesses, private individuals, community organisations and sports groups to transition to using the new flag in their own time.
71. No compensation would be provided to businesses, individuals, community organisations and sporting groups arising from the adoption of the new flag.

² For completeness, we note that the phrase 'New Zealand Flag' is also used in the Fisheries Act 1996 and the Major Events Management Act 2007 (and, of course, in the New Zealand Flag Notice 1986).

Consultation

72. The following departments and agencies were consulted in the preparation of this RIS: the Department of the Prime Minister and Cabinet, the Ministry for Culture and Heritage, 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.
73. Feedback from agencies have been summarised and incorporated into the analysis. In particular, we received strong feedback from the Electoral Commission about preferential voting. They are concerned that preferential voting would increase voter confusion and the complexity of filling out the voting papers could increase invalid votes.

Conclusion

	Options	Preference
A) Type of Referendum	<ol style="list-style-type: none"> 1. Postal vote 2. Standalone ballot 3. Online in addition to postal or ballot 	Preferred
B) Referendum structure	<ol style="list-style-type: none"> 1. One referendum, FPP vote between current flag and one alternative flag. 2. One referendum, preferential vote ranking current flag and 3-4 alternatives. 3. One referendum, part one being a vote between change and no change to the flag, part two being FPP vote between 3-4 alternatives. 4. Two referendums. First referendum is FPP vote between 3-4 alternatives. Second referendum is FPP vote between favoured alternative and current flag. 5. Two referendums. First referendum is preferential vote ranking 4-5 alternatives. Second referendum is FPP vote between favoured alternative and current flag. 6. Two referendums. First referendum has two parts – part one being a vote between change and no change, part two being FPP vote between 3-4 alternatives. Second referendum triggered if result in part one is 'change', and is FPP vote between favoured alternative and current flag. 7. Two referendums (run-off). First referendum is FPP vote between current flag and 3-4 alternatives. Second referendum triggered if no flag gets over 50%, and is FPP vote between two most preferred flags. 	Options 2, 4, 5 and 7 meet more of the objectives than options 1, 3 and 6.

C) Binding or indicative referendum	<ol style="list-style-type: none"> 1. Binding referendum 2. Indicative referendum 3. Binding referendum with supermajority requirement 	Preferred
-------------------------------------	--	------------------

Implementation Plan

74. If there is a decision to change the existing flag there will need to be a legislative process for amending FENPA (as already outlined) and a process for seeking the Queen’s approval to the new flag design.
75. The referendum-enabling legislation could provide for an amendment to FENPA, only coming into force should the referendum outcome result in a decision to change.
76. If the flag was to change, consideration would need to be given to the celebration of the first day of the new flag and publicity about the new flag. There may be significant costs associated with this.
77. Consideration would also need to be given to the status of the current flag. The Ministry of Transport suggested that the current flag could be given “historic status” and used for ceremonial events.
78. As mentioned above it is expected there would be a transition period to mitigate the financial and practical impacts of changing the flag.
79. New Zealand Trade and Enterprise support a transition period of at least 12 months, particularly if the intention is not to compensate businesses for obsolete packaging and promotional material. Twelve months grace would be needed to enable old stock to be utilised and packaging changes made.

Monitoring and Evaluation

80. No formal review is planned. The Flag Consideration Panel will report on its process to the Responsible Minister.
81. The Electoral Commission reviews each electoral event from an administrative perspective. Any issues identified by the Commission will be considered as part of any review of the current legislation and for any future referendum and electoral events.

APPENDIX 1: OPTIONS FOR REFERENDUM STRUCTURE

Options	Advantages	Disadvantages	Conclusion
<p><i>Option 1: Single referendum, FPP vote between current flag and one alternative flag</i></p>	<p>Accessibility: A single, simple referendum is easy for voters.</p> <p>Administrative feasibility: This is the least complex process for the Electoral Commission to administer, with existing systems able to be employed.</p> <p>Lower cost, and allows for the possibility that the referendum process is completed before 2016.</p>	<p>Engagement: Disadvantages for representation with fewer options for voters, fewer perspectives represented and preferences not accounted for.</p> <p>Neutrality: Significant bias towards the status quo. This is because voters' input and choices, and therefore the consideration of change, are constrained.</p>	<p>We do not recommend this option.</p> <p>While the public may understand this option well, weaknesses create significant risks to their acceptance and engagement with the process, and to the durability of result.</p> <p>An exceptional public consultation and design phase leading to the single alternative flag would be necessary if the above weaknesses to representation, neutrality and acceptability were to be mitigated. If our assumption of adequate public engagement prior to the referendum is incorrect, this will compound the weaknesses of this option.</p>

Options	Advantages	Disadvantages	Conclusion
<p><i>Option 2: Single referendum, preferential vote ranking current flag and 3-4 alternatives</i></p>	<p>Engagement: All voters, including those favouring the current flag, are given the opportunity to have some input into any alternative flag. Voters have more input and choices, with more perspectives represented and true preferences accounted for.</p> <p>More voters may be willing to consider change as they can still express a second (or third etc.) preference for the current flag.</p> <p>Neutrality: Benefits with a voting system and question that is neutral between options and accounts for ranked preferences. Pro-change votes can be aggregated to produce a competitive alternative flag.</p> <p>This option avoids the minor risks of bias from tactical voting or from split pro-change vote.</p> <p>Lower cost, and possible to complete process before 2016.</p>	<p>Administration/accessibility: Preferential voting is less familiar and accessible to voters, more complex for the Electoral Commission to administer, and entails an added cost to the Electoral Commission to redesign its counting systems.</p> <p>Neutrality/accessibility: There is a minor risk that some people perceive a presumption in favour of change given the question presents multiple alternatives alongside the current flag, in a single question. Other options have the current flag as a standalone option or question.</p>	<p>The suitability of this option will depend on the weighting placed on the concerns about public understanding and perception of preferential voting, and the greater administrative burden for the Electoral Commission.</p> <p>This option will be preferred if priority is given to neutrality and engagement, reduced cost and the possibility of completing the referendum process before 2016, and the chance of producing an alternative flag with broad appeal.</p>

Options	Advantages	Disadvantages	Conclusion
<p><i>Option 3: Single referendum, question one asking whether to change, question two being a FPP vote between 3-4 alternatives</i></p>	<p>Lower cost, and possible to complete process before 2016. Simpler to administer than some other options.</p> <p>Engagement: All voters can express their support for change or status quo, but also consider alternatives regardless of how they vote in question one.</p> <p>Neutrality/engagement: Less risk that voters in favour of the status quo will vote tactically for weak alternatives, or that they will not vote at all.</p> <p>If the majority do prefer change then the referendum result will reflect that, without the complexity of preferential voting.</p>	<p>While neutral between change and status quo, if the flag changes it is likely that it will be to a design without 50% support.</p> <p>Engagement/neutrality: The first question does not reflect that some people may support change to a specific alternative while the current flag is their second preference. A vote for change may depend on the alternative, and this structure does not allow for this. This may discourage votes for change.</p> <p>Accessibility: Voters may be confused by this referendum structure, for example whether they can vote in both parts.</p>	<p>We do not recommend this option.</p> <p>There is likely to be bias towards the status quo because voters do not know what alternative design will win the second question.</p>

Options	Advantages	Disadvantages	Conclusion
<p><i>Option 4: Two referendums – First referendum is FPP vote between 3-4 alternative flags, second referendum is FPP vote between favoured alternative and the current flag</i></p>	<p>Accessibility: The second referendum presents a clear choice between the current flag and one alternative.</p> <p>Engagement: For the first referendum, all voters, including those favouring the status quo, are given the opportunity to have some input into any alternative flag.</p> <p>Administrative feasibility: This option is administratively simple, as the Electoral Commission has existing systems to count FPP referendums and there is only one question per referendum.</p>	<p>Engagement (turnout): Voters are unable to express a preference for the current flag in the first referendum. This is potentially confusing for voters and may also risk engagement.</p> <p>Engagement: The voting system is less representative of voters' preferences.</p> <p>Neutrality (and engagement): The voting system is less representative of voters' preferences, and less likely to produce the strongest alternative flag.</p> <p>This is because the voting system is likely to split the pro-change vote. This means an alternative with minority support (which may not be the alternative with broadest support) is likely to run-off against the current flag.</p> <p>With Referendum 1 there are other minor risks to engagement and neutrality:</p> <ul style="list-style-type: none"> to public understanding as those favouring no change are presented only with alternatives in Referendum 1 (may be perceived as presumption in favour of change) that voters feel they should vote for one of the alternative flags most likely to win, rather than their preferred option that voters favouring the current flag vote tactically, preferring that a weaker alternative runs off against the current flag. <p>Two referendums entails greater cost and administrative complexity.</p>	<p>The suitability of this option will depend on the weighting placed on risks to public engagement and durability and the reduced chance of producing a strong alternative flag.</p> <p>A very strong public education phase could help mitigate the risks to voter turnout/engagement.</p> <p>This option will be preferred if priority is given to:</p> <ul style="list-style-type: none"> the accessibility and ease for both voters and for the Electoral Commission , and a system that presents only alternatives first, and guarantees a run-off against the current flag.

Options	Advantages	Disadvantages	Conclusion
<p><i>Option 5: Two referendums – First referendum is preferential vote ranking 4-5 alternative flags. Second referendum is FPP vote between current flag and the alternative receiving the most votes in first referendum.</i></p>	<p>Engagement: All voters, including those favouring the current flag, are given the opportunity to have some input into any alternative flag. Voters have more input and choices, with more perspectives represented and true preferences accounted for.</p> <p>Neutrality: There are benefits with a voting system that accounts for ranked preferences. Pro-change votes can be aggregated to produce a competitive alternative flag.</p> <p>Accessibility: The second referendum presents a clear choice between the current flag and one alternative.</p>	<p>Engagement: Voters are unable to express a preference for the current flag in the first referendum. This is potentially confusing for voters and may also risk engagement with the first referendum.</p> <p>Accessibility/administrative feasibility: As with Option 2, PV is less familiar to voters, more complex for the Electoral Commission to administer, and entails a cost to the Electoral Commission to redesign its counting systems.</p> <p>Neutrality: With Referendum 1 there is a minor risk that voters favouring the current flag vote tactically, preferring that a weaker alternative runs off against the current flag.</p> <p>Two referendums entails greater cost and administrative complexity.</p>	<p>There is some risk to public understanding, and some added administrative complexity.</p> <p>While this option could produce a strong alternative, there are risks to public engagement with this process.</p> <p>A very strong public education phase could help mitigate the risk to voter turnout/engagement.</p>

Options	Advantages	Disadvantages	Conclusion
<p><i>Option 6: Two referendums – First referendum has two questions, first question asks if voters want to change the flag, second question is FPP vote between 3-4 alternative flags. Second referendum (only occurs if first vote is for change) is FPP vote between current flag and the alternative receiving the most votes in first referendum.</i></p>	<p>Accessibility: The second referendum presents a clear choice between the current flag and one alternative.</p> <p>Possibility of a durable result arising from the first referendum if a significant majority votes for the status quo. This would avoid a second referendum, reducing cost and administrative burden.</p>	<p>Accessibility: Two referendums, one with two parts, is a more complicated process. This system was used in the 2011 MMP referendum and was difficult to communicate to the public.</p> <p>Two referendums means greater cost and administrative complexity (although there is uncertainty as to whether Referendum 2 will be triggered).</p> <p>Neutrality: There is some risk to legitimacy and to perceptions of neutrality given a second referendum is only activated with a vote for change. This means votes for change and for status quo are not treated equally; voters have to vote twice for change.</p> <p>Neutrality (and engagement): The voting system is less representative of voters' preferences, and less likely to produce the most competitive alternative flag.</p> <p>This is because the voting system is likely to split the pro-change vote. This means an alternative with minority support (which may not be the alternative with broadest support) is likely to run-off against the current flag.</p> <p>With Referendum 1 there are other minor risks to neutrality and engagement:</p> <ul style="list-style-type: none"> • that voters feel they should vote for one of the alternative flags most likely to win, rather than their preferred option; • that voters favouring the current flag vote tactically, preferring that a weaker alternative runs off against the current flag. <p>There is also some risk that people choose not to engage with the first referendum as they expect a second referendum, which may then not be triggered.</p>	<p>We do not recommend this option.</p> <p>Weaknesses mean there are risks to representation and neutrality, and also to the public understanding of the referendum process.</p> <p>The status quo could be retained even if a majority voted for change in Referendum 1. This may not lead to a durable result.</p> <p>If the status quo wins narrowly in Referendum 1 then questions over the current flag could remain. This risk is disproportionate to the cost savings from avoiding a second referendum.</p>

Options	Advantages	Disadvantages	Conclusion
<p><i>Option 7: Two referendums – First referendum is single tick between current flag and 3-4 alternative flags. Second referendum (only occurs if no flag receives 50% of votes in first referendum) is FPP vote between two flags receiving the most votes in first referendum</i></p>	<p>Accessibility: This option retains the simplicity of FPP voting, while the possibility of a run-off between the two most popular flags offers additional choice and clarity without assuming the current flag will be amongst these.</p> <p>A winning flag will definitely win 50% of votes under this option and there are reduced opportunities for bias from tactical voting.</p> <p>There is a greater chance of avoiding a second referendum, reducing voter fatigue, cost and administrative burden.</p>	<p>Two referendums means greater cost and administrative complexity (although there is uncertainty as to whether Referendum 2 will be triggered).</p> <p>Neutrality (and engagement): The voting system is less representative of voters' preferences, and less likely to produce the most competitive alternative flag(s).</p> <p>This is because the voting system is likely to split the pro-change vote. This means an alternative with minority support (which may not be the alternative with broadest support) is likely to run-off against the current flag.</p> <p>Engagement: With Referendum 1 there is a minor risk that voters feel they should vote for one of the flags most likely to win, rather than their preferred option.</p> <p>There is also some risk that people choose not to engage with the first referendum as they expect a second referendum, which may then not be triggered.</p>	<p>The suitability of this option will depend on the weighting placed on the reduced chance of producing a strong alternative flag with FPP voting and the potential for added cost of a second referendum.</p> <p>This option will be preferred if priority is given to the accessibility and ease for both voters and for the Electoral Commission.</p>

APPENDIX 2: ECONOMIC IMPACT OF CHANGING THE FLAG

Economic Impact on Central Government

82. The impact of changing the flag will have a direct economic impact on government agencies.
83. Based on information provided by Government agencies, the estimated cost to replace the current stock of flags is \$0.66million. This is set-out in more detail below. This cost is solely related to replacing the current New Zealand Flag. As noted below, there are other flags that are based on the New Zealand Flag (such as the Red and White Ensigns). However, there is no requirement that these change as a result of a change to the Flag.
84. Our approach to estimating the cost is to recognise that differences in prices depend on the category of flag. This method applies the average unit costs provided by the Ministry of Foreign Affairs and Trade, Parliamentary Services, VIP Transport and the New Zealand Police to establish an average cost for each category of flag which can then be applied to all departments. The total cost for each category of flag is then added up for an overall total cost. This method assumes that the unit costs provided by the four departments reflect the unit costs of all departments.

Agency	Standard (outdoor) flags-assumed	Standard (indoor) flags-assumed	Car pennants and table flags	Ceremonial flags
Department of Conservation	20			
Department of Corrections	17	1		
Department of Internal Affairs	25	29	62	
DPMC	8	4		7
Government Communications Security Bureau	8			4
Ministry of Business, Innovation and Employment	4	1		
Ministry for Culture and Heritage	9	2		
Ministry of Defence		1	2	
Ministry of Foreign Affairs and Trade ³	318	106 (+4)	477 (+6)	
Ministry of Health	5	2		

³ Assumption made that 10 flags for domestic use are interior and car/table flags.

Ministry of Justice	46			
Ministry of Primary Industries	3	2		
Ministry of Transport	2			
New Zealand Customs Service	12	4		
New Zealand Defence Force	600			
New Zealand Police ⁴	157	36		
New Zealand Trade and Enterprise		55		
Parliamentary Service	40			
Serious Fraud Office		1		
State Services Commission	1			
Te Puni Kokiri	3			
The Treasury		1		
TOTAL	1278	249	547	11

Type of Flag	Standard (outdoor) flags-assumed	Standard (indoor) flags-assumed	Car pennants and table flags	Ceremonial flags	
Approx. cost per unit	\$459 ⁵	\$180 ⁶	\$50 ⁷	\$440 ⁸	
Number of flags	1278	249	547	11	
Total est. cost.	\$586,602	\$44,820	\$27,350	\$4,840	\$663,612.00

⁴ Plus additional \$5,000 miscellaneous (coffin flags, flags for deployment and overseas posts)

⁵ Average cost per unit based on prices provided by Police \$90, MFAT \$550, Parliamentary Services, \$500, DIA \$699. Note VIP Transport sum does not include \$2,000 Executive Wing Rooftop Flag.

⁶ Average cost per unit based on prices provided by Police \$174, MFAT \$72, DIA \$299

⁷ Based \$65 per unit provided by MFAT and Parliamentary Services (car pennants) and \$40 and \$29 per unit provided by MFAT and DIA (table flags).

⁸ Based \$440 cost per unit provided by MFAT

85. We note that the number of flags held by schools is not included in the sum of total flags. As these are likely to be high users (approx. 2600 schools), the absences of these figures in the costings may have a significant impact on the overall estimate. Similarly, including costings from local councils, airports and ports (if these are not owned by a council), tertiary providers, state owned enterprises such as NZ Post, KiwiRail and other entities likely to encounter significant costs (Air New Zealand, NZTA (Driver Licenses)) may have a significant impact on the estimated total cost.
86. In addition to fiscal impacts for replacing current stocks of flag, the New Zealand Defence Force has estimated it would cost approximately \$1 – 2 million to replace uniforms that include the flag. Uniform costs do not apply to other domestic emergency services such as the New Zealand Police.
87. NZTE has identified additional fiscal impact. NZTE uses the trademarked FernMark design as part of its corporate brand (as do a number of New Zealand Government agencies including MFAT, ENZ, etc). It appears on a range of merchandise, signage, and design (e.g. websites) and is widely used as the recognisable symbol for New Zealand in offshore promotions.
88. A decision would need to be made as to whether the current FernMark would need to change to the new flag design. This would require a new set of brand standards to be developed for the Government agencies currently using the FernMark and costs could be mitigated with a 12 month transition time. If the new flag is significantly different to the FernMark then it may be decided to retain the existing FernMark as the consistent brand symbol.
89. We have not included existing costs to central or local government agencies for replacing flags on an annual basis. We note, however, that if certain agencies are regularly replacing flags, there may be an opportunity for a natural substitution of the new flag design at the point when the existing version is replaced due to natural wear and tear.
90. If a new Flag were to be adopted, other potential economic impacts include the following:
- New Zealand Government ships would need to fly the new Flag, and other New Zealand ships currently flying the Flag would need to fly either the new Flag or the marine flag of New Zealand.
 - New Zealand driver licences would need to depict the new Flag.
 - Other emblems and flags in which the Flag appears might also need to be changed, as noted below.
91. The current Flag appears as part of other flags, emblems and documents, including driver licences; military flags or ensigns; and the New Zealand Police and New Zealand Fire Service flags. Similarly, the Customs flag is the New Zealand Ensign with the addition of the words 'NZ Customs Service'.⁹ Only drivers' licences are statutorily required to include the Flag.

⁹ Customs and Excise Act 1996, s 8.

Economic Impact on Local Government

92. We have estimated costs to local government. There are 78 local authorities (including territorial authorities and regional councils). It is assumed that the majority, if not all, fly at least one national flag. In the case of the larger authorities, such as the Auckland Council, the number is likely to be higher. Based on costs of \$459 per flag, it is estimated that the total minimum cost to the local government sector will be in the vicinity of \$35,802.

Impact on business

93. We have identified the following private sector groups as likely to be directly impacted by changing the flag, although the impact on these groups will vary with the extent of their usage:
- flag manufacturers;
 - businesses that include the flag in branding/marketing/packaging material;
 - souvenir manufacturers and retailers.
94. There are currently three flag manufacturers in New Zealand that make Flags in accordance with the approved design: Flagz Group Limited in Auckland, Flag Makers in Wellington and Adams Flags in Dunedin. With sufficient notice of a change, it is expected that they should be able to transition smoothly to making the new Flag.
95. We do not have information regarding the number of businesses both in New Zealand and in export markets that use the current flag in their branding, marketing material and product packaging. There are no known rules or regulations that require businesses to use the flag in their trademarks, marketing material or product packaging, its use is voluntary.
96. The Intellectual Property Office of New Zealand has identified there are around 34 trade mark registrations that currently incorporate the New Zealand Flag. It is reasonable to assume that the flag has been incorporated into and used in non-registered trade marks. It is not possible to quantify the actual use of the flag by businesses or the costs to them associated with changing the flag used in their trade marks, marketing material and product packaging. This has constrained our ability to quantify the financial impacts on the flag suppliers and businesses using the flag.
97. Souvenir manufacturers and retailers may be left with excess stock. However, there may also be increased demand for business as people seek to purchase items reflecting any new flag.
98. Depending on the particular design chosen for the new Flag, an individual or private sector organisation might hold copyright or a trade mark for that design or a design closely resembling it (for example, the silver fern). The implications of such rights in the design would need to be worked through by the Flag Consideration Panel as part of its due diligence process before recommending preferred designs.

Impact on sporting organisations

99. Sport New Zealand advised that the NZ Flag is widely used for international competitions/tours involving New Zealand sports teams, so each national sports organisation (NSO) is likely to have access to a NZ Flag. However, in terms of use by sporting bodies for branding and marketing purposes (e.g. uniforms, bags, promotional material etc) Sport New Zealand's sense is that the traditional New Zealand colours and silver fern are more likely to be used.
100. The New Zealand Olympic Committee provided the following advice on potential fiscal impacts of changing the flag:
 - In official international meetings NSOs and the NZOC often have the Flag displayed, usually on a seating arrangement, and flown in and around the meeting venues where appropriate.
 - The NZ Flag is flown at stadia, and used during ceremonies.
 - The same would probably occur at World Championships for NSOs.
 - The NZOC typically includes elements of the Flag (i.e. Southern Cross) in uniforms, along with the silver fern.
 - In media coverage of sports events, the Flag is used quite extensively to demark which country an athlete represents.
101. We do not have information on the number of souvenir manufacturers and retailers; businesses, sporting and cultural organisations; and community organisations and individuals who use the flag. Using the average price of a flag, it would cost these groups individuals approximately \$180 - \$459 (depends on quality of flag) should they wish to replace an existing flag.