



Cabinet

CAB Min (11) 16/17

Copy No: 18

Minute of Decision

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Consideration of Constitutional Issues: Constitutional Advisory Panel

Portfolios: Deputy Prime Minister / Maori Affairs

On 18 April 2011, following reference from the Cabinet Domestic Policy Committee (DOM), Cabinet:

- 1 noted that on 6 December 2010, Cabinet agreed that, in relation to the Consideration of Constitutional Issues, the first report back to DOM would seek agreement to the proposed approach to stage one of the engagement process, clarify the issues, and develop the strategy for engagement [CAB Min (10) 44/3];
 - 2 noted that on 6 December 2010, Cabinet agreed that:
 - 2.1 the public engagement will not begin until after the formation of a new government following the 2011 general election, and that it will involve two sequential programmes:
 - 2.1.1 an information and education programme - to stimulate public debate and awareness of New Zealand's constitutional arrangements and issues arising;
 - 2.1.2 a public discussion programme – to seek the views of all New Zealanders (individuals, groups and organisations), including seeking the views of Maori in a manner that is reflective of the Treaty of Waitangi relationship;
- [CAB Min (10) 44/3]
- 3 rescinded the decision referred to in paragraph 2; and instead
 - 4 agreed that the public engagement will not begin until after the formation of a new government following the 2011 general election;
 - 5 agreed that the initial stage of the Consideration of Constitutional Issues be focussed on:
 - 5.1 stimulating public interest in, and awareness of, New Zealand's constitutional arrangements and issues arising;
 - 5.2 establishing a forum to develop and share a range of views on constitutional issues, including seeking the views of all New Zealanders, including Maori, in a manner that is reflective of the Treaty of Waitangi relationship;

- 5.3 developing an understanding of the range of perspectives on New Zealand's constitutional arrangements, including the range of topical issues requiring further discussion, debate and policy consideration;
6. approved the revised terms of reference for the Consideration of Constitutional issues, including terms of reference for the Constitutional Advisory Panel (CAP), attached as Appendix 1 to this minute, subject to the inclusion of the Cabinet Office in the list of agencies in paragraph 5 and any minor editorial or typographical amendments that may be required;

Responsibilities of the Constitutional Advisory Panel

7. agreed that the specific responsibilities of the CAP be to:
- 7.1 develop a strategy for implementing the initial stage of the Consideration of Constitutional Issues;
 - 7.2 develop, in consultation with the responsible Ministers, a strategy to manage interaction with other government projects;
 - 7.3 establish a forum for developing and sharing information and ideas on the constitutional topics (for example, by seeking opinion pieces and establishing a website);
 - 7.4 report to the responsible Ministers with advice on the constitutional topics, including any points of broad consensus where further work is recommended;
 - 7.5 provide regular updates to the responsible Ministers and the Cross-Party Reference Group of Members of Parliament throughout the Consideration of Constitutional Issues;
 - 7.6 provide input into monitoring and evaluating the Consideration of Constitutional Issues;
8. agreed that the CAP's proposed strategy will need to ensure that the views of all New Zealanders (individuals, groups and organisations) including those of Maori (iwi, hapu, whanau), will be sought in a manner that is reflective of the Treaty of Waitangi relationship and responsive to Maori consultation preferences;
9. agreed that the terms of reference will require the CAP to submit a final report to the Deputy Prime Minister and Minister of Maori Affairs by September 2013, with advice on topics where further work is required;

Form of the Constitutional Advisory Panel

10. agreed that the CAP be established as an independent group of constitutional and other experts, to establish a forum for sharing information and ideas on constitutional issues within the scope of the Consideration of Constitutional Issues;

Constitutional Advisory Panel - size and membership criteria

11. agreed that there will be 10 members on the CAP, including the two co-chairs;

- 12 agreed that the CAP members should be New Zealand citizens who collectively:
- 12.1 are representative of wider New Zealand society;
 - 12.2 are able to relate to a wide range of New Zealanders;
 - 12.3 have expertise and specialist skills such as an academic understanding of constitutional matters, community relations, journalism;
 - 12.4 are seen as fair, open to a range of views, and with no conflict of interest;
- 13 agreed that the co-chairs should have governance experience, and significant mana and standing with Maori and the wider general public;
- 14 agreed that one co-chair should be knowledgeable in tikanga Maori and preferably fluent in te reo;

Costs associated with the Constitutional Advisory Panel

- 15 agreed that the CAP may commission external specialist advice related to the Consideration of Constitutional Issues within Cabinet-approved parameters, budget, and processes;

16

[Fees related information withheld]

- 17 noted that a secretariat led from the Ministry of Justice will support the CAP, and that the CAP's direct costs for 2010/11 and 2011/12 will be met from Ministry of Justice baselines;

Fiscal implications

- 18 [Fees related information withheld]

- 19 noted that for the 2011/12 year:

19.1 [Fees related information withheld]

19.2 the cost of specialist advice can be estimated once the CAP has commenced work preparing the proposed strategy for the initial stage of the Consideration of Constitutional Issues;

- 20 noted that \$1.5 million has been identified within the Ministry of Justice baseline for the Consideration on Constitutional Issues work in 2011/12 ;

- 21 **noted** that as part of Budget 2011, Ministers have agreed to reprioritise \$0.5 million in 2011/12, and \$1.5 million in 2012/13, within Vote Maori Affairs to support robust and inclusive engagement on constitutional issues, which utilises innovative and culturally appropriate mediums for engaging with iwi/ Maori communities;
- 22 **noted** that the full costs of the Consideration of Constitutional Issues are not funded for 2012/13 and outyears, and that costs cannot be met from the Justice sector, which is facing other significant cost pressures into the foreseeable future;
- 23 **noted** that the Ministry of Justice and Te Puni Kokiri are further considering how they will accommodate the costs of the Consideration of Constitutional Issues for 2012/13 and outyears within baselines;

Further reports

- 24 **noted** that the Deputy Prime Minister and the Minister of Maori Affairs will report to the Cabinet Appointments and Honours Committee on proposed appointments to the CAP, following consultation with the Cross-Party Reference Group;
- 25 **invited** the Deputy Prime Minister and the Minister of Maori Affairs to report to DOM by February 2012 seeking agreement to:
- 25.1 the CAP's proposed strategy for developing a forum to share information and ideas on constitutional issues, including how the Panel will engage with and seek the views of all New Zealanders including Maori, in a manner that is reflective of the Treaty of Waitangi relationship, and responsive to Maori consultation preferences;
- 25.2 a proposed strategy to manage interaction with other government projects;
- 25.3 the budget for the forum to share information and ideas on constitutional issues;
- 26 **invited** the Deputy Prime Minister and the Minister of Maori Affairs to report to DOM by September 2012 with a progress report on implementing the forum to share information and ideas on constitutional issues, including progress on engagement with all New Zealanders, including Maori, in a manner that is reflective of the Treaty of Waitangi relationship, and responsive to Maori consultation preferences;

Publicity

- 27 **noted** that the paper under CAB (11) 213 (excluding budget sensitive or fees-related information) and the revised terms of reference for the Consideration of Constitutional Issues will be published on the Beehive website.

Secretary of the Cabinet

Reference: CAB (11) 213

Distribution: (see over)

BUDGET : SENSITIVE

CAB Min (11) 16/17

Distribution

BUDGET : SENSITIVE

Annex to CAB Min (11) 16/17

APPENDIX 1

Consideration of Constitutional Issues: Terms of Reference

TERMINOLOGY

CAP: the Constitutional Advisory Panel

Responsible Ministers: the Deputy Prime Minister and the Minister of Māori Affairs

Secretariat: Ministry of Justice

Background

1. The Relationship and Confidence and Supply Agreement between the National Party and the Māori Party (16 November 2008) agreed to establish a group to consider constitutional issues, including Māori representation.

Ministerial responsibilities

2. The Deputy Prime Minister and the Minister of Māori Affairs will jointly lead a consideration of constitutional issues. They will consult with a cross-party reference group of members of Parliament on major findings and reports before reports are made to Cabinet.
3. The Deputy Prime Minister and the Minister of Māori Affairs will oversee a programme of engagement with the public. That programme will include the appointment of one or more advisory panels to provide expert and community perspectives on matters of substance and process.
4. The Deputy Prime Minister and the Minister of Māori Affairs may also receive and consider research and recommendations from officials, experts and the public on New Zealand's current constitutional arrangements, and possible areas for reform.
5. The Deputy Prime Minister and the Minister of Māori Affairs will report to Cabinet on the Consideration of Constitutional Issues and will be supported by a senior officials group including the Ministry of Justice (leading the Secretariat), Treasury, the Department of the Prime Minister and Cabinet, Te Puni Kōkiri, Department of Internal Affairs and Crown Law. Support will include administration services and policy advice.
6. The Deputy Prime Minister and the Minister of Māori Affairs will submit a final report to Cabinet by the end of 2013, with advice on the constitutional topics, including any points of broad consensus where further work is recommended.

Programme of engagement

7. Engagement and information sharing are important precursors to any discussion on changes to New Zealand's constitutional arrangements. Public understanding and acceptance is needed for enduring constitutional arrangements that reflect the values and aspirations of New Zealand as a society.
8. To facilitate the Consideration of Constitutional Issues the Deputy Prime Minister and the Minister of Māori Affairs will oversee a programme of engagement with New Zealanders.
9. The purpose of the programme of engagement is to inform and engage New Zealanders on constitutional issues. In particular, it is to stimulate public debate and awareness of constitutional issues by providing information about New Zealand's constitutional arrangements.
10. The programme is intended to provide the Deputy Prime Minister and the Minister of Māori Affairs with an understanding of New Zealanders' perspectives on this country's constitutional arrangements, topical issues and areas where reform is considered desirable. The Deputy Prime Minister and the Minister of Māori Affairs will then recommend to Cabinet whether any further consideration of particular issues is desirable.

Subject matter of the Consideration of Constitutional Issues

11. The Consideration of Constitutional Issues will include the following topics:

Electoral matters

- Size of Parliament
- The length of the term of Parliament and whether or not the term should be fixed
- Size and number of electorates, including changing the method for calculating size
- Electoral integrity legislation

Crown-Māori relationship matters

- Māori representation, including Māori Electoral Option, Māori electoral participation, Māori seats in Parliament and local government
- The role of the Treaty of Waitangi within our constitutional arrangements

Other constitutional matters

- Bill of Rights issues (for example, property rights, entrenchment)
- Written constitution

12. Other issues are likely to arise during public engagement. The Deputy Prime Minister and the Minister of Māori Affairs will report to Cabinet on these matters, advising whether the issue appears to be of widespread interest and merits further consideration.

13. The Deputy Prime Minister and the Minister of Māori Affairs will be mindful of other Government initiatives with constitutional implications, and will aim not to duplicate or undermine these initiatives. The Deputy Prime Minister and the Minister of Māori Affairs will also keep their ministerial colleagues informed on progress with the Consideration of Constitutional Issues with the aim of ensuring wider Government initiatives with constitutional implications are cognisant of progress.

Constitutional Advisory Panel

14. In accordance with paragraph 3, the Constitutional Advisory Panel (CAP) is an independent group established to implement the initial stage of the Consideration of Constitutional Issues. The initial stage will involve:

- a. preparing and commissioning opinion pieces on the topics within the scope of the Consideration of Constitutional Issues; and
- b. establishing a forum for sharing information and ideas on those topics amongst New Zealanders.

Responsibilities

15. The specific responsibilities of the CAP are to:

- a. report, by December 2011, to the Responsible Ministers on a proposed strategy for implementing the initial stage of the Consideration of Constitutional Issues;
- b. report, by December 2011, to the Responsible Ministers on a proposed strategy to manage interaction with other government projects;
- c. establish a forum for developing and sharing information and ideas on the topics within the scope of the Consideration of Constitutional Issues, to seek the views of

- all New Zealanders including Māori, in a manner that is reflective of the Treaty of Waitangi relationship and responsive to Māori consultation preferences;
- d. report, by September 2013, to the Responsible Ministers with advice on the constitutional topics, including any points of broad consensus where further work is recommended;
 - e. provide regular updates (at least every 6 months) to the Responsible Ministers and the Cross-party Reference Group of members of Parliament throughout the Consideration of Constitutional Issues; and
 - f. provide input to monitoring and evaluating the Consideration of Constitutional Issues.
16. The CAP will report through the CAP co-chairs to the Deputy Prime Minister and Minister of Māori Affairs.
17. The Māori co-chair of CAP is responsible for ensuring that the CAP undertakes appropriate consultation processes with Māori, and will report to the Deputy Prime Minister and the Minister of Māori Affairs (the Responsible Ministers) about that process on an ongoing basis.

Form

18. The CAP will comprise a maximum of ten members, including the two co-chairs, chosen and appointed by the Responsible Ministers on the basis of their knowledge of the constitutional topics and their ability to articulate the issues to a wide audience.
19. The CAP is convened by the Responsible Ministers and its Terms of Reference and deliverables have been determined by Cabinet. The CAP is not a legal entity and does not have the power to contract in its own name.

Support

20. The CAP will be supported by a secretariat based in the Ministry of Justice which will provide project management support including budget management, and manage access to governmental and external expertise.

Amendment to terms of reference

21. These terms of reference may be amended only with the agreement of the Responsible Ministers and the Co-Chairs. The Responsible Ministers may need to seek Cabinet agreement to any proposed change.

Budget: Sensitive

Office of the Deputy Prime Minister
Office of the Minister of Māori Affairs

Cabinet Domestic Policy Committee

CONSIDERATION OF CONSTITUTIONAL ISSUES – CONSTITUTIONAL ADVISORY PANEL ESTABLISHMENT

Proposal

1. The Deputy Prime Minister and the Minister of Māori Affairs, the responsible Ministers for the Consideration of Constitutional Issues seek approval of:
 - 1.1. the Terms of Reference for the Consideration of Constitutional Issues;
 - 1.2. the form, responsibilities, membership numbers and selection criteria for the Constitutional Advisory Panel; and
 - 1.3. related financial matters.
2. We also seek the Cabinet Domestic Policy Committee's agreement to recommend that Cabinet rescind the 6 December 2010 decision on the two-staged approach to public engagement [recommendation 12, CAB Min (10) 44/3 refers]. We consider that this change will provide greater flexibility to develop a more focussed strategy for public debate.

Executive summary

3. On 6 December 2010 Cabinet agreed the purpose, scope and Terms of Reference for the Consideration of Constitutional Issues. Cabinet also agreed that the responsible Ministers would report to the Cabinet Domestic Policy Committee seeking agreement to the proposed approach to stage one of the public engagement process of the Consideration of Constitutional Issues [CAB Min (10) 44/3 refers].
4. This paper outlines the proposed approach to the initial stage. It focuses the role of the Constitutional Advisory Panel (CAP) on requesting, preparing and commissioning opinion pieces on the topics within the scope of the Consideration of Constitutional Issues. The CAP will also have responsibility for developing a forum that enables New Zealanders to consider and respond to those opinion pieces.
5. We recommend the CAP have 10 members (including the 2 co-chairs) with a range of constitutional and other expertise.
6. Fees for the CAP members are consistent with the Cabinet Fees Framework. Fees and other costs will be managed within the Ministry of Justice baseline for the 2010/11 year. There is likely to be \$1.5 million available within Vote Justice baseline for the costs of the Consideration of Constitutional Issues for the 2011/12 year. The

Ministry of Justice has indicated a cost pressure for this work of \$1m in each of the 2012/13 and 2013/14 financial years.

Background

Previous Cabinet decisions

7. On 6 December 2010 Cabinet agreed:
 - 7.1. that the Deputy Prime Minister and Minister of Māori Affairs will jointly lead the development of a programme to inform and engage with New Zealanders on constitutional issues and consider matters arising from that engagement;
 - 7.2. that the Deputy Prime Minister and Minister of Māori Affairs will be supported by a Constitutional Advisory Panel [CAB Min (10) 44/3 refers].

Consultation and the Cross-party Reference Group

8. On 6 December 2010 Cabinet also agreed that the responsible Ministers would consult with a reference group of members of Parliament from parties across the House on major findings and reports before Cabinet reports were made [CAB Min (10) 44/3 refers].
9. In December 2010 all Parliamentary political parties were invited to nominate a representative to participate in the Cross-party Reference Group of members of Parliament. The Cross-party Reference Group will enable a range of Parliamentary perspectives to inform the development and implementation of the Consideration of Constitutional Issues.
10. The representatives nominated by the Parliamentary parties are:

Representative	Party
Hilary Calvert, MP	ACT
Metiria Turei, MP	Green Party
Hon David Parker, MP	Labour Party
Rāhui Katene, MP	Māori Party
Amy Adams, MP	National Party
Hon Peter Dunne, MP	United Future

11. The Cross-party Reference Group was consulted on 6 April 2011 on the issues in this paper. Comments from the Reference Group are set out in the Consultation section of this paper.

Purpose of the Consideration of Constitutional Issues

12. On 6 December 2010 Cabinet agreed that the purpose of the Consideration of Constitutional Issues is to:
 - 12.1. stimulate public interest in, and awareness of, New Zealand's constitutional arrangements and issues arising;

- 12.2. seek the views of all New Zealanders (individuals, groups and organisations), including those of Māori (iwi, hapū, whānau) in ways that reflect the partnership model and are responsive to Māori consultation preferences;
 - 12.3. understand New Zealanders' perspectives on our constitutional arrangements, including the range of topical issues requiring further discussion, debate and policy consideration; and then
 - 12.4. recommend what further consideration of the issues, if any, is desirable [CAB Min (10) 44/3 refers].
13. Cabinet also agreed that the first report back to the Cabinet Domestic Policy Committee would seek agreement to the proposed approach to stage one of the engagement process, clarifying the issues and developing the strategy for engagement [CAB Min (10) 44/3 refers].
14. Having reflected on the purpose of the Consideration of Constitutional Issues, and what is required to achieve that purpose, we recommend that the initial stage of the Consideration of Constitutional Issues should be focussed on:
 - 14.1. stimulating public interest in, and awareness of, New Zealand's constitutional arrangements and issues arising;
 - 14.2. establishing a forum to develop and share a range of views on constitutional issues, including seeking the views of all New Zealanders, including Māori, in a manner that is reflective of the Treaty of Waitangi relationship; and
 - 14.3. developing an understanding of the range of perspectives on our constitutional arrangements, including the range of topical issues requiring further discussion, debate and policy consideration.
15. We seek the Cabinet Domestic Policy Committee's agreement to recommend that Cabinet rescind the 6 December 2010 decision on the two-staged approach to public engagement [recommendation 12, CAB Min (10) 44/3 refers]. We note that the strategy will need to ensure that the views of New Zealanders (individuals, groups and organisations), including those of Māori (iwi, hapū, whānau), are sought in ways that reflect the partnership model and are responsive to Māori consultation preferences. This change will provide flexibility to develop a more focussed strategy for public debate.
16. On 6 December 2010 Cabinet approved the Terms of Reference for the Consideration of Constitutional Issues [CAB Min (10) 44/3 refers]. Proposed revised Terms of Reference for the Consideration of Constitutional Issues are attached (Appendix 1), which now also include the role, responsibilities and key deliverables for the Constitutional Advisory Panel (CAP). We seek your approval of the revised Terms of Reference.

Establishment of the Constitutional Advisory Panel

Responsibilities of the Constitutional Advisory Panel

17. We recommend that the CAP focus on requesting, preparing and commissioning opinion pieces on the topics within the scope of the Consideration of Constitutional Issues. Those opinion pieces will be publicly available in a forum that enables New Zealanders to consider them and contribute to the debate. In this way, the CAP will lay the groundwork for a wide-ranging, robust, and transparent constitutional debate.
18. We recommend that the CAP be responsible for:
 - 18.1. developing a strategy for implementing the initial stage of the Consideration of Constitutional Issues;
 - 18.2. developing, in consultation with the responsible Ministers, a strategy to manage interaction with other government projects;
 - 18.3. establishing a forum for sharing information and ideas on the constitutional topics (for example, seeking opinion pieces and establishing a website) and seeking the views of all New Zealanders including Māori, in a manner that is reflective of the Treaty of Waitangi relationship;
 - 18.4. reporting to the responsible Ministers with advice on those topics, including any points of broad consensus where further work is recommended;
 - 18.5. providing regular updates to the responsible Ministers and the Cross-party Reference Group of members of Parliament throughout the Consideration of Constitutional Issues; and
 - 18.6. providing input into monitoring and evaluating the Consideration of Constitutional Issues.
19. The deliverables for which the CAP would be responsible are outlined in the attached revised Terms of Reference.

Form of the Constitutional Advisory Panel

20. We recommend that the CAP be established as an independent group of constitutional and other experts to establish a forum for sharing information and ideas on constitutional issues within the scope of the Consideration of Constitutional Issues.
21. We have considered other forms that the CAP could take, including:
 - 21.1. a panel of constitutional experts to develop advice on specific policy options;
or
 - 21.2. a panel to design and implement a wide-ranging public engagement process to inform New Zealanders and discuss their perspectives on constitutional issues.

22. We consider that the nature of constitutional discussions means there should be an opportunity for New Zealanders to provide input into the Consideration of Constitutional Issues. The proposed approach to the form of the CAP will ensure that a range of views are made available to New Zealanders to consider and respond to.
23. The CAP will be supported by a secretariat led out of the Ministry of Justice. The secretariat will provide advice, project and budget management support, and prepare or commission research and advice relating to the Consideration of Constitutional Issues for the CAP, if required.

Constitutional Advisory Panel - size and membership

24. We recommend that the CAP have 10 members, including the two co-chairs. A panel of 10 members provides scope for a diversity of backgrounds and perspectives.
25. We recommend that the CAP members should be New Zealand citizens and/or permanent residents who collectively:
 - 25.1. are representative of wider New Zealand society;
 - 25.2. are able to relate to a wide range of New Zealanders;
 - 25.3. have expertise and specialist skills such as an academic understanding of constitutional matters, community relations, or journalism; and
 - 25.4. are seen as fair, open to a range of views, and with no conflicts of interest.
26. The co-chairs should have governance experience, and significant mana and standing with Māori and the wider general public. One co-chair should be knowledgeable in tikanga Māori and preferably fluent in te reo.

Costs associated with the Constitutional Advisory Panel

Remuneration

27. The CAP is a Group 4 classification in the Cabinet Fees Framework. We intend setting the fees for CAP members at the upper end of the Framework range, in view of the skills required, the significance and sensitivity of the project, and the length of commitment of service expected.
28. [Fees related information withheld]

29.

[Fees related information withheld]

30. Fees for the 2010/11 and 2011/12 financial years will be met from Ministry of Justice budgeted baselines.

Other meeting-related costs

31. CAP travel and meeting-related costs have been budgeted at \$28,000 for the 2010/11 financial year and \$75,000 for the 2011/12 financial year.

Specialist advice and support

32. CAP members will need to access specialist advice, through the secretariat, from technical and engagement experts, for example, for website development, on Māori consultation preferences or to commission papers on particular constitutional issues.

33. We recommend that the CAP should be able to commission external specialist advice where required within Cabinet-approved parameters and processes. This process will be co-ordinated by the secretariat and expenditure will be agreed by the secretariat and co-chairs.

34. The Ministry of Justice estimates that \$100,000 will be required in the 2010/11 financial year for specialist advice to the CAP in preparing the proposed strategy for the forum to share information and ideas on constitutional issues. This cost will be met from Ministry of Justice budgeted baseline.

35. The cost of specialist advice for the 2011/12 financial year has not been estimated. These costs can be estimated once the CAP has commenced work preparing the proposed strategy.

2012/13 and outyears

36. Costs for the 2012/13 and 2013/14 financial years have not yet been estimated or budgeted. These costs can be estimated once the CAP has prepared the proposed strategy. Member fees, travel and meeting-related expenses and other specialist advice and support result in a \$1m cost pressure for this work indicated by the Ministry of Justice for the 2012/13 and 2013/14 financial years.

Next steps

37. We will submit a paper to the Cabinet Appointments and Honours Committee, outlining our recommended appointments to the CAP, following consultation with the Cross-party Reference Group of members of Parliament.

38. We will report to the Cabinet Domestic Policy Committee by February 2012 with advice on the CAP's proposed strategy for the forum to share information and ideas on constitutional issues. This report will include a proposed strategy to manage interaction with other government projects. At that time we will also outline the estimated implementation costs and options for how to accommodate those costs within Ministry of Justice and/or Te Puni Kōkiri baselines.
39. We will report to the Cabinet Domestic Policy Committee by September 2012 with a progress report on implementing the forum.

Consultation

40. This paper was prepared by the Ministry of Justice with input provided by Te Puni Kōkiri. The Treasury, Crown Law and the Department of Internal Affairs were consulted in the development of the paper. The Department of the Prime Minister and Cabinet was informed of the contents of the paper.
41. The Cross-party Reference Group members broadly support the establishment of a CAP that includes a range of skills, is representative of wider New Zealand society and has a balance of views on constitutional issues represented.
42. The Reference Group also sought to clarify that:
 - 42.1. the Māori co-chair of the CAP is responsible for ensuring an appropriate process is used to consult with Māori, rather than being responsible for reflecting a particular Māori perspective within the CAP; and
 - 42.2. all members of the CAP should be actively engaged in the full range of consultation processes used.

Financial implications

43. [Fees related information withheld]
44. Budget Ministers have agreed to allocate \$1 million in 2011/12 only for the Constitutional Review in Vote Justice as part of Budget 2011. Delays in implementing the Consideration of Constitutional Issues are likely to result in savings of \$0.5 million in the 2010/11 financial year. A Vote Justice expense transfer to the 2011/12 financial year of \$0.5 million as part of the March Baseline Update process has been agreed by the Minister of Finance. This means there is likely to be \$1.5 million available within Ministry of Justice baseline to meet Consideration of Constitutional Issues costs for 2011/12.
45. The costs of the Consideration of Constitutional Issues are not funded for 2012/13 and outyears. The Ministry of Justice has indicated a cost pressure for this work of \$1 million in each of the 2012/13 and 2013/14 financial years. Costs cannot be met from the Justice sector, which is facing other significant cost pressures into the foreseeable future.

46. As part of Budget 2011, Ministers have agreed to reprioritise \$0.5 million in 2011/12 and \$1.5 million in 2012/13 within Vote Māori Affairs to support robust and inclusive engagement on constitutional issues, which utilises innovative and culturally appropriate mediums for engaging with iwi/ Māori communities.
47. The full costs for the Consideration of Constitutional Issues cannot yet be estimated because those costs are dependent on development of a forum to share information and ideas on constitutional issues.
48. The Ministry of Justice and Te Puni Kōkiri are further considering how they will accommodate the 2012/13 and outyears costs for the Consideration of Constitutional Issues.

Other implications

Human rights

49. There are no human rights implications from the proposals in this paper.

Legislative implications

50. There are no legislative implications.

Regulatory impact analysis

51. The regulatory impact analysis requirements may apply to some aspects of the Consideration of Constitutional Issues. Regulatory Impact Statements will be prepared for any Cabinet decisions on policy options in the government response to the CAP's report. A Regulatory Impact Statement is not required for this paper as it does not seek decisions on policy options.

Gender implications

52. Gender implications will be relevant when developing the short list of CAP nominees in order to ensure a well-balanced CAP in terms of gender.

Disability perspective

53. This paper has no disability implications.

Publicity

54. This Cabinet paper (excluding budget sensitive or fees-related information) and the Terms of Reference for the Consideration of Constitutional Issues will be published on the Beehive website. The responsible Ministers will jointly announce the appointments to CAP once they are confirmed. Further announcements may be made as subsequent milestones are achieved.

Recommendations

55. We recommend that the Committee:

1. **note** that on 6 December 2010 Cabinet agreed that, in relation to the Consideration of Constitutional Issues, the first report back to the Committee would seek agreement to the proposed approach to stage one of the engagement process, clarifying the issues and developing the strategy for engagement [CAB Min (10) 44/3 refers];
2. **note** that on 6 December 2010 Cabinet agreed that:
 - “12. the public engagement will not begin until after the formation of a new government following the 2011 general election, and that it will involve two sequential programmes:
 - 12.1 an Information and Education programme - to stimulate public debate and awareness of New Zealand’s constitutional arrangements and issues arising;
 - 12.2 a Public Discussion programme – to seek the views of all New Zealanders (individuals, groups and organisations), including seeking the views of Māori in a manner that is reflective of the Treaty of Waitangi relationship [CAB Min (10) 44/3 refers];”
3. **agree** to recommend that Cabinet rescind the decision referred to in paragraph 2;
4. **agree** that the public engagement will not begin until after the formation of a new government following the 2011 general election;
5. **agree** that the initial stage of the Consideration of Constitutional Issues should be focussed on:
 - 5.1. stimulating public interest in, and awareness of, New Zealand’s constitutional arrangements and issues arising;
 - 5.2. establishing a forum to develop and share a range of views on constitutional issues, including seeking the views of all New Zealanders, including Māori, in a manner that is reflective of the Treaty of Waitangi relationship; and
 - 5.3. developing an understanding of the range of perspectives on our constitutional arrangements, including the range of topical issues requiring further discussion, debate and policy consideration;
6. **approve**, subject to any minor editorial or typographical amendments, the revised terms of reference for the Consideration of Constitutional issues, including terms of reference for the Constitutional Advisory Panel, attached as Appendix 1;

Responsibilities of the Constitutional Advisory Panel

7. **agree** that the specific responsibilities of the Constitutional Advisory Panel are to:
 - 7.1. develop a strategy for implementing the initial stage of the Consideration of Constitutional Issues;
 - 7.2. develop, in consultation with the responsible Ministers, a strategy to manage interaction with other government projects;
 - 7.3. establish a forum for developing and sharing information and ideas on the constitutional topics (for example, by seeking opinion pieces and establishing a website);
 - 7.4. report to the responsible Ministers with advice on the constitutional topics, including any points of broad consensus where further work is recommended;
 - 7.5. provide regular updates to the responsible Ministers and the Cross-party Reference Group of members of Parliament throughout the Consideration of Constitutional Issues; and
 - 7.6. provide input into monitoring and evaluating the Consideration of Constitutional Issues.
8. **agree** that the Constitutional Advisory Panel's proposed strategy will need to ensure that the views of all New Zealanders (individuals, groups and organisations) including those of Māori (iwi, hapū, whānau), will be sought in a manner that is reflective of the Treaty of Waitangi relationship and responsive to Māori consultation preferences.
9. **agree** that the Terms of Reference will require the CAP to submit a final report to the Deputy Prime Minister and Minister of Māori Affairs by September 2013, with advice on topics where further work is required;

Form of the Constitutional Advisory Panel

10. **agree** that the Constitutional Advisory Panel be established as an independent group of constitutional and other experts to establish a forum for sharing information and ideas on constitutional issues within the scope of the Consideration of Constitutional Issues;

Constitutional Advisory Panel - size and membership criteria

11. **agree** that there will be 10 members on the Constitutional Advisory Panel, including the two co-chairs;
12. **agree** that the Constitutional Advisory Panel members should be New Zealand citizens and/or permanent residents who collectively:
 - 12.1. are representative of wider New Zealand society;
 - 12.2. are able to relate to a wide range of New Zealanders;

- 12.3. have expertise and specialist skills such as an academic understanding of constitutional matters, community relations, journalism; and
- 12.4. are seen as fair, open to a range of views, and with no conflict of interest;
13. **agree** that the co-chairs should have governance experience, and significant mana and standing with Māori and the wider general public;
14. **agree** that one co-chair should be knowledgeable in tikanga Māori and preferably fluent in te reo;

Costs associated with the Constitutional Advisory Panel

15. **agree** that the Constitutional Advisory Panel may commission external specialist advice related to the Consideration of Constitutional Issues within Cabinet-approved parameters, budget and processes;
16. [Fees related information withheld]

17. **note** that a secretariat led from the Ministry of Justice will support the Constitutional Advisory Panel and the Panel's direct costs for 2010/11 and 2011/12 will be met from Ministry of Justice baselines;

Fiscal implications

18. [Fees related information withheld]
19. **note** that for the 2011/12 year:
- 19.1. [Fees related information withheld]
- 19.2. the cost of specialist advice can be estimated once the Constitutional Advisory Panel has commenced work preparing the proposed strategy for the initial stage of the Consideration of Constitutional Issues;
20. **note** that \$1.5 million is identified within Ministry of Justice baseline for the Consideration on Constitutional Issues work in the 2011/12 financial year;

21. **note** that as part of Budget 2011, Ministers have agreed to reprioritise \$0.5 million in 2011/12 and \$1.5 million in 2012/13 within Vote Māori Affairs to support robust and inclusive engagement on constitutional issues, which utilises innovative and culturally appropriate mediums for engaging with iwi/Māori communities;
22. **note** that the full costs of the Consideration of Constitutional Issues are not funded for 2012/13 and outyears, and that costs cannot be met from the Justice sector, which is facing other significant cost pressures into the foreseeable future;
23. **note** that the Ministry of Justice and Te Puni Kōkiri are further considering how they will accommodate the costs of the Consideration of Constitutional Issues for 2012/13 and outyears within baselines;

Further reports

24. **note** that the Deputy Prime Minister and the Minister of Māori Affairs will report to the Cabinet Appointments and Honours Committee on proposed appointments to the Constitutional Advisory Panel, following consultation with the Cross-party Reference Group;
25. **invite** the Deputy Prime Minister and the Minister of Māori Affairs to report to the Cabinet Domestic Policy Committee by February 2012 to seek agreement to:
 - 25.1. the Constitutional Advisory Panel's proposed strategy for developing a forum to share information and ideas on constitutional issues, including how the Panel will engage with and seek the views of all New Zealanders including Māori, in a manner that is reflective of the Treaty of Waitangi relationship, and responsive to Māori consultation preferences;
 - 25.2. a proposed strategy to manage interaction with other government projects; and
 - 25.3. the budget for the forum to share information and ideas on constitutional issues;
26. **invite** the Deputy Prime Minister and the Minister of Māori Affairs to report to the Cabinet Domestic Policy Committee by September 2012 with a progress report on implementing the forum to share information and ideas on constitutional issues, including progress on engagement with all New Zealanders, including Māori, in a manner that is reflective of the Treaty of Waitangi relationship, and responsive to Māori consultation preferences;

Publicity

27. **agree** that this Cabinet paper (excluding budget sensitive or fees-related information) and the revised Terms of Reference for the Consideration of Constitutional Issues will be published on the Beehive website.

* 

Hon Bill English
Deputy Prime Minister

Date: 16 / 6 / 11



Hon Dr Pita R Sharples
Minister of Māori Affairs

AP
Date: 16 / 6 / 11

Attachments: *Terms of Reference for the Consideration of Constitutional Issues*