

Hon Kiri Allan
Minister of Justice

Proactive release: Amendment to Oaths and Declarations (Māori Language) Regulations 2004

Date of issue: 27 October 2022

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1.	Amendment to Oaths and Declarations (Māori Language) regulations 2004 <i>Cabinet Paper</i> Office of the Minister of Justice 17 October 2022	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none">• Section 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protects the confidentiality of advice tendered by Ministers of the Crown and officials.• Section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty.
2.	Amendment to Oaths and Declarations (Māori Language) regulations 2004 <i>Cabinet Minute CAB-22-MIN-0436</i> Cabinet Office 17 October 2022	Release in full.

Office of the Minister of Justice
Cabinet Legislation Committee

Amendment to Oaths and Declarations (Māori Language) Regulations 2004

Proposal

- 1 This paper seeks policy approval and authorisation for submission to the Executive Council of the Oaths and Declarations (Māori Language) Amendment Regulations 2022 (the Amendment Regulations).

Policy

- 2 Section 17 of the Oaths and Declarations Act 1957 (the Act) sets out the English-language version of the oath of allegiance. Section 20 of the Act sets out the Parliamentary Under-Secretary's oath. Section 4(2) of the Act provides for both oaths to be taken as affirmations.
- 3 The oath or affirmation of allegiance must be taken by the judiciary and Executive Councillors under the Act. It is also required to be taken by all new members of Parliament under the Constitution Act 1986.
- 4 The Parliamentary Under-Secretary's oath is taken by all new Parliamentary Under-Secretaries.
- 5 The English-language version of these oaths and affirmations, as set out in the Act, require the oath taker to specify the name of the reigning Sovereign. This means that, following the death of Her Majesty Queen Elizabeth the Second, all oaths and affirmations taken in the English-language versions now refer to 'His Majesty' and/or 'King Charles the Third' as necessary.
- 6 Section 4A of the Act provides that if a te reo Māori equivalent of any of the oaths or affirmations set out in the Act are prescribed by regulations, using that te reo Māori equivalent has the same effect as using the oath or affirmation set out in the Act.
- 7 The te reo Māori versions of the oath or affirmation of allegiance, and the Parliamentary Under-Secretary's oath or affirmation, are set out in the Oaths and Declarations (Māori Language) Regulations 2004 (the Regulations). The te reo versions refer specifically to Kuini Irihāpeti te Tuarua (Queen Elizabeth the Second), and do not provide for the substitution of the name of the reigning Sovereign.

Proposed changes to the Oaths and Declarations (Māori Language) Regulations 2004

- 8 Section 5 of the Constitution Act allows for references to the Sovereign to be read as also referring to their heirs and successors. This means that oaths

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and affirmations sworn to Queen Elizabeth the Second/Kuini Irihāpeti te Tuarua remain legally binding, as the reference to the Queen as Sovereign is read as a reference to her heir as well.

- 9 An oath or affirmation of allegiance should be sworn to the current Sovereign. The fact that the Regulations refer only to Queen Elizabeth the Second/Kuini Irihāpeti te Tuarua and not her heirs and successors could give rise to questions as to the validity of any oath or affirmation sworn or affirmed to King Charles the Third/Kīngi Tiāre te Tuatoru.

10 **Section 9 (2) (g) (i)**

- 11 It is appropriate and desirable that the oath or/affirmation of allegiance and the Parliamentary Under-Secretary's oath or affirmation, when taken in te reo Māori, is made with reference to King Charles the Third/ Kīngi Tiāre te Tuatoru.

- 12 I propose to amend the Regulations to enable the oath or affirmation of allegiance, and the Parliamentary Under-Secretary's oath or affirmation to be taken in te reo Māori with reference to King Charles the Third/ Kīngi Tiāre te Tuatoru.

13 **Section (9)(2)(f)(iv)**

Timing and 28-day rule

- 14 These Regulations will come into effect on 21 October 2022 (the day after they are gazetted).
- 15 With the retirement from Parliament of the former Speaker, the Rt Hon Trevor Mallard, a new Labour list MP is being sworn in on Tuesday 25 October 2022. The new Member has confirmed she would like to swear the oath of allegiance in te reo Māori. I am seeking a waiver of the 28-day rule so the changes can take effect before the Member is sworn in on Tuesday 25 October.

Compliance

- 16 The Regulations comply with each of the following:
- 16.1 the principles of the Treaty of Waitangi;
 - 16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 16.3 the principles and guidelines set out in the Privacy Act 2020;
 - 16.4 relevant international standards and obligations;

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- 16.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Financial Implication

- 17 There are no financial implications arising from the proposal in respect of these Regulations.

Regulations Review Committee

- 18 There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 19 The Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to the Executive Council.

Impact Analysis

- 20 The amendments included in the Regulations are exempt from the regulatory impact analysis requirements on the grounds that it is suitable for inclusion in a Statutes Amendment Bill (as provided for in Standing Orders).

Publicity

- 21 The Order will be published in the Gazette.

Proactive release

- 22 I will proactively release this Cabinet paper following introduction of the amendment to the Oaths and Declarations (Māori Language) Regulations 2004, with any appropriate redactions in accordance with Cabinet Office Circular CO (18) 4.

Consultation

- 23 The Office of the Chief Justice, the Office of the Clerk, Cabinet Office and Crown Law have been consulted on the proposed changes to the Regulations. The Department of Prime Minister and Cabinet has been informed.

Recommendations

The Minister of Justice recommends that Cabinet:

- 1 **agree** to amend the Oaths and Declarations (Māori Language) Regulations 2004 so that the references to Kuini Irihāpeti te Tuarua (Queen Elizabeth the Second) in the oaths and affirmations of allegiance, and the Parliamentary Under Secretary's oath or affirmation, are replaced with Kīngi Tiāre te Tuatoru (King Charles the Third);
- 2 **authorise** the submission to the Executive Council of the Oaths and Declarations Amendment (Māori Language) Regulations 2022;
- 3 **note** that a waiver of the 28-day rule is sought so that the Regulations can come into force as soon as possible so the changes can take effect before a new Member of Parliament is sworn in on Tuesday 25 October 2022;
- 4 **agree** to waive the 28-day rule so that the Regulations can come into force on the day after they are Gazetted.

Authorised for lodgement

Hon Kiri Allan

Minister of Justice



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Amendment to Oaths and Declarations (Māori Language) Regulations 2004

Portfolio Justice

On 17 October 2022, Cabinet:

- 1 **agreed** to amend the Oaths and Declarations (Māori Language) Regulations 2004 so that the references to Kuini Irihāpeti te Tuarua (Queen Elizabeth the Second) in the oaths and affirmations of allegiance, and the Parliamentary Under Secretary's oath or affirmation, are replaced with Kīngi Tiāre te Tuatoru (King Charles the Third);
- 2 **noted** that the Oaths and Declarations (Māori Language) Amendment Regulations 2022 give effect to the decision above;
- 3 **authorised** the submission to the Executive Council of the Oaths and Declarations (Māori Language) Amendment Regulations 2022 [PCO 25083/2.0];
- 4 **noted** that a waiver of the 28-day rule is sought:
 - 4.1 so that the Oaths and Declarations (Māori Language) Amendment Regulations 2022 (the Amendment Regulations) can come into force as soon as possible;
 - 4.2 so that the changes can take effect before a new Member of Parliament is sworn in on Tuesday 25 October 2022;
 - 4.3 on the grounds that the Amendment Regulations have little or no effect on the public, or confers only benefits on the public;
- 5 **agreed** to waive the 28-day rule so that the Amendment Regulations can come into force on 21 October 2022.

Rachel Hayward
Acting Secretary of the Cabinet