

ALL-PARTY PARLIAMENTARY GROUP ON THE CONSTITUTION

Monday 17 January 2011, 7pm

Notes for Presentation

New Zealand Experience of the Cabinet Manual: Lessons to be learnt for United Kingdom

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Introduction

“The Cabinet manual is an authoritative guide to central government decision-making for Ministers, their offices and those working within government. It is also a primary source of information on New Zealand’s constitutional arrangements, as seen through the lens of the executive branch of government. The Cabinet Manual guides Cabinet procedure and is endorsed at the first Cabinet meeting of a new government to provide for the orderly re-commencement of the business of government.”

(The above statement is taken from the *New Zealand Cabinet Office website* and succinctly describes the purpose and function of the Cabinet Manual in New Zealand.)

“New Zealand’s system of Cabinet government is one of the great strengths of our political system. Cabinet provides the forum in which Ministers collectively consider, debate, and decide on the key issues facing the nation.

Cabinet is not a creature of legislation – its procedures are not governed by statute. The *Cabinet Manual* guides Cabinet’s procedure. The *Cabinet Manual* is an authoritative guide to central

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government decision making for Ministers, their offices, and those working within government. ... Successive governments have endorsed the *Cabinet Manual* as a sound, transparent and proven basis on which to operate.

The *Cabinet Manual* does not effect change but, rather, records incremental changes in the administrative and constitutional arrangements of executive government.”

(*Cabinet Manual 2008, Foreword* Helen Clark, Prime Minister.)

“The Manual(s)... description of principles includes the discussion of constitutional conventions of government. However, the Cabinet (Office) Manual does not purport to be a final articulation of conventions which form part of our written constitution. It is descriptive rather than prescriptive.”

(John McGrath QC former Solicitor General, Justice of the Supreme Court of New Zealand, “*The Crown, the Parliament and the Government*” *Harkness Henry Lecture*, Waikato Law Review (2000))

On the question of the role of officials, Rebecca Kitteridge, former Secretary of Cabinet, made the following observation.

“I think any concern of this nature can be answered by focusing on the function and audience of the Manual. It is not New Zealand’s de facto constitution. The general public is not the primary audience, although it is widely publicly available. It is the executive’s own internal practical working guidelines. ...The Cabinet Office officials responsible for working with the Manual are responsible to the Prime Minister and the Governor-General for the content, for applying its guidance to particular fact situations, and for policy related to the Manual.”

(*The Cabinet Manual: Evolution with Time*, Public Law Forum 2006)

The above statements contain the following points to note about the New Zealand context in which the Cabinet Manual functions.

1. New Zealand has an unwritten constitution. There is however a collection of statutes and conventions that comprise the constitutional arrangements. All this legislation is subject to amendment and abolition by simple majority in the Parliament, with the exception of

few provisions in the Electoral Act 1999, which itself however is subject to simple majority repeal.

2. Cabinet government is at the centre of New Zealand's constitutional arrangements. There is no formal legal recognition of the Cabinet in New Zealand's constitutional arrangements. This is one reason why a document like the Cabinet manual is important to provide transparent guidance for best practice for executive decision making.
3. The Cabinet Manual has evolved and developed incrementally much like a dictionary and is reviewed every 5 to 6 years. The Cabinet Office Manual as a guide to Ministers and officials began in 1948 with the admission of the Cabinet Secretary to Cabinet meetings. Prior to this point the Cabinet rules and procedures were a closely guarded secret. There was a consolidation in 1979 with restricted distribution. In 1991 a loose leaf form was available to all public officials. In 1996 the first bound form of the Manual was available to the public and in 1998 this version went online. The Manual was revised in 2001 and 2008. In 2001 the name changed from Cabinet Office Manual to Cabinet Manual to signify its shift from Cabinet Office procedures to a focus on principles of executive government. The Cabinet Manual is complemented by the *Cabinet Office Step by Step Guide* which contains more detailed advice to public officials on the administrative processes of Cabinet government.
4. The Cabinet Manual has no legal status. It is descriptive and not prescriptive. There is no 'penalty' for not observing the advice in the Manual. Any sanction for non observance is the knowledge that it is known the recommended procedure has not been followed and this may result in negative publicity.
5. While the Cabinet Manual is drafted by Cabinet Office Officials, it is approved by the Prime Minister after consideration by the Cabinet. In the preparation of a revision of the Manual, the draft is prepared by Cabinet Office officials and submitted for peer review to a group of senior public officials from Crown Law, Ministry of Justice, the State Services Commission, and the Treasury. Specific chapters also submitted to relevant officials, such as the Ombudsman, Privacy Commission and Clerk of the Parliament.
6. The Cabinet Manual was not the result of the introduction of the mixed member electoral system (MMP). The complexity of MMP government has made the Cabinet Manual an important source of information of best practice for government decision making. It

removes uncertainty in situations such as government formation, or the operation of collective responsibility in coalition/minority government.

7. The Cabinet manual is now seen as an essential element of transparent governance. If New Zealand did not have a Cabinet Manual it would have to be invented to accommodate the demand from the public for more transparency in government decision making.
8. An observation by Rebecca Kitteridge, former Secretary of Cabinet may be relevant to conclude this section. She stated the Cabinet Manual is “Like good wine and cheese, it takes time”. It is a work in progress and as such should remain relevant to those who use it.

Lessons for the United Kingdom from the New Zealand Experience

1. Constitutional arrangements are a reflection of the political history and culture of a country.
2. A Cabinet Manual is not a de facto written constitution.
3. A Cabinet Manual is subject to revision to reflect current practice.
4. The content of the Cabinet Manual is controlled by the Prime Minister and Cabinet, not the officials.
5. A Cabinet Manual can provide certainty and authoritative guidance to best practice by executives in their decision making.
6. The Cabinet Manual provides transparency in government decision making.
7. The Cabinet Manual has become part of normal accepted constitutional arrangements.

Conclusion

I have not commented on the contents of the New Zealand Cabinet Manual but am happy to answer questions on the format and content.

On a personal level, as both a Minister and Speaker of the Parliament I found The Cabinet Manual a very helpful guide to best practice. I was particularly pleased to see the inclusion in the 2008 revision of a section on Ministers and the Law and the role of the Attorney General. I had been asked to advise Ministers on legally related matters and having accepted best practice recorded in the Cabinet Manual would have assisted both me and the Ministers (in New Zealand

the role of Attorney General is a political office, with the Solicitor General being the head of the Crown Law Office that advised the Attorney General and Cabinet on legal matters). The Cabinet Manual was also particularly useful when explaining to the media the appropriate procedure and best practice in particular situations, such as government formation, Ministers' responsibilities, and collective responsibility in an MMP system.