

The Cabinet Manual : Evolution with Time

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Introduction

The Cabinet Manual is a fascinating document. It is fascinating because it reflects who we are in a constitutional sense. As New Zealand has evolved and matured as an independent nation, the Cabinet Manual has kept pace, clarifying and reflecting the changes to executive government, which is the heart of our constitutional structure.

When the 2001 edition of the Cabinet Manual was launched, Sir Geoffrey Palmer wrote in *Wellington Watch*:

New Zealand's constitutional arrangements are extraordinarily unusual in international terms. We do not have a written constitution. We have a Constitution Act 1986 that can be repealed by a simple majority in Parliament. And many of these important features of our system of government are contained in constitutional conventions. These are customs or practices usually not legally enforceable. The Cabinet Manual is the most authoritative account of many of these conventions. It gives a better indication of how the Government actually works than the Constitution Act. The Manual is therefore an extraordinarily invaluable document for public servants, Ministers, MPs and anyone else who wants to know how the procedures of government operate.

The evolution of the Cabinet Manual gives real insight into our political and constitutional history. Behind almost every paragraph there is a story of some kind or other. It is the goal of this paper to breathe some life into what some might think of as a rather dull read.

One might easily form the erroneous impression that the Cabinet Manual is dull, especially if one reads the introduction to the very first edition of the Manual, issued in 1979:²

This Manual consolidates the rules, precedents, conventions and procedures that have evolved since 29 January 1948 when the Secretary to Cabinet was first admitted to the Cabinet Room and a systematic record of the proceedings of Cabinet became possible.

That statement is still true in 2006, but it does not tell the whole story. After all, the Cabinet Manual is the executive's document, and life in the executive is never dull.

The aim of this paper is to introduce the Cabinet Manual in all its simplicity, subtlety, complexity and nuance. It will provide context – a brief overview of the executive, and particularly the Cabinet system. It will explain how these elements are reflected in the current content of the Manual. It will describe the Manual's development, focusing particularly on the changes that have occurred since the advent of coalition and minority governments in 1996. It will describe the process of updating the Manual – who undertakes that task, and to whom they are accountable. There are also some brief reflections on the future of the Manual.

¹ This paper incorporates some material included in a speech entitled "Cabinet Government Under MMP : Supporting the Constitutional Architecture", given by Marie Shroff, then Secretary of the Cabinet, in 1999.

² Cabinet Office Manual, 1979 ed, from Patrick Millen's Introduction and Historical Note

1. What does the Cabinet Manual cover?

Introduction

The Cabinet Manual is all about the executive – its key players, institutions and relationships. These institutions and relationships are succinctly and elegantly described in a six page introductory essay to the New Zealand constitution, written by the Rt Hon Sir Kenneth Keith and entitled “On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government”. First prepared as the introduction for the 1996 edition of the Manual, the essay was updated by Sir Kenneth in 2001 and continues to withstand the test of time.

Chapter one

Having set the scene with Sir Kenneth’s introductory essay, chapter one of the Manual begins, naturally, with the Sovereign in right of New Zealand, and her representative the Governor-General. The Office of Governor-General is constituted by Letters Patent, issued by the Sovereign under the royal prerogative.³ The Letters Patent set out the formal parameters of the role, and delegate the Sovereign’s authority to the Governor-General.

It is from these Letters Patent that legal authority for the executive flows in New Zealand. In addition to appointing Ministers and presiding over the Executive Council, the Governor-General represents the Sovereign in the Parliament and appoints members of the judiciary. The Governor-General is therefore involved in a formal sense in all three branches of government in New Zealand. The document that provides for the office of Governor-General and delegates the Sovereign’s authority, therefore, is fundamental. The original Letters Patent, signed by the Queen, are bound in magnificent gold-embossed red moroccan leather and displayed in the Cabinet room on the 10th floor of the Beehive. They are also reproduced as Appendix 1 to the Manual.

Chapter one of the Cabinet Manual outlines the formal and constitutional aspects of the Governor-General’s role. It also explains the powers, functions and meeting procedures of the Executive Council and the role of the Clerk of the Executive Council. Some fundamental constitutional concepts are set out in chapter one – the apolitical nature of the office, for example, and the fact that the Governor-General almost always acts on the advice of Ministers. Without these provisions, the Governor-General’s statutory powers appear limitless – and undemocratic. The Manual, which authoritatively explains the conventions by which the Governor-General operates, completes the picture.

Even seemingly procedural paragraphs may represent really important constitutional norms. Take, for example, paragraph 1.33:

The Governor-General may wish to ask questions at the Council meeting. For this reason, Ministers with items on the agenda should make a special effort to attend. If they are unable to do so, they must brief another Minister to represent them.

This paragraph breathes practical life into the constitutional convention, most famously formulated by Walter Bagehot, that the Sovereign (or, in the New Zealand context, the Governor-General) has the right to be consulted, the right to encourage, and the right to warn.⁴

³ Letters Patent Constituting the Office of Governor-General of New Zealand, 1983

⁴ W. Bagehot, *The English Constitution* (2 ed., Kegan Paul, 1904, p.75; see also clauses XVI and XVII of the Letters Patent Constituting the Office of Governor-General of New Zealand, 1983

Successive Governors-General have taken this right seriously, and the most convenient forum for talking to Ministers is the weekly Executive Council meeting. They take a lively interest in both the agenda items and, more generally, the ongoing conduct of government. So it is really important for Ministers to turn up and be ready to engage on the issues.

Before leaving chapter one, I should briefly explain the role of the Executive Council. The Executive Council can generally be seen as the equivalent formal body to that of Cabinet, although its membership is broader and includes Ministers outside Cabinet. It is legally constituted under the Letters Patent 1983,⁵ and is the collective forum in which Ministers advise the Governor-General to take formal actions like making regulations, or statutory appointments that are required by legislation to be made by the Governor-General in Council.

Chapter two

Chapter two of the Cabinet Manual focuses on Ministers. It discusses the appointment, office and role of the Prime Minister, other Ministers (including Associate Ministers and acting Ministers) and Parliamentary Under-Secretaries. It sets out the guidelines on Ministers' interests and conflicts of interest. It covers litigation involving Ministers, judicial review and the relationship between Ministers and the judiciary. It sets out key principles and processes concerning Ministers' overseas travel. It also discusses the relationship between Ministers and officials (both in the public service and the wider state sector).

For a good description of the Prime Minister's role, or an explanation about how portfolios are allocated, or what happens when Ministers are sued, this is the chapter to read. It was significantly developed and expanded in the 2001 edition (see sections 3 and 4 below).

Chapter three

Chapter three, which deals with Cabinet decision-making, is at the very heart of the Manual. Much of the other information in the Manual has its source elsewhere – in the Letters Patent, for example, or the Constitution Act – but, as its name suggests, the Cabinet Manual itself is the primary authority on the conduct of Cabinet government in New Zealand.

It is very important to have guidance on the principles and procedures governing Cabinet decision-making, because Cabinet itself has rather an elusive character. Peter Hennessy, the author of a book about the Cabinet system in Britain, prefaced his attempt to define Cabinet by saying that it is “a subject of endless dispute almost worthy of the arguments on transubstantiation which accompanied the reformation.”⁶

Cabinet government is both simple and complex. At its simplest, the Cabinet is the most senior committee in the government, a collective forum for Ministers to decide significant issues relating to their functions, powers and responsibilities. J.B. Ringer encapsulates its main functions neatly in saying “Cabinet is a body ... with enormous power in practical terms. It is the real decision-making body of government. Cabinet decides on policy, approves the content of government-sponsored legislation, decides on government expenditure, and co-ordinates the administration.”⁷

⁵ Letters Patent Constituting the Office of Governor-General of New Zealand, 1983, clause VII

⁶ Hennessy, P., *Cabinet*, 1986, Basil Blackwell Ltd, Oxford, p.viii

⁷ Ringer, J.B., *An Introduction to New Zealand Government*, 1991, Hazard Press Ltd, Christchurch, p.63

The elusive nature of Cabinet arises from the fact that, although it is so powerful, it is informal in nature. Cabinet, as an entity, is not created by legislation, or by any Letters Patent, or by any other legal document. It dates from Britain in the 1600s, when the King required a forum to discuss matters of state with his advisers. As democracy evolved, and the power of the Ministers increased, the Sovereign's participation in decision-making waned. Finally, in the 1780s, the King stopped attending Cabinet completely. Ministers, in Cabinet, would collectively decide the issues of the day, and would then advise the King what executive action should be taken.

In keeping with its historical evolution and its British roots, the Cabinet in New Zealand has never had any legal status. It takes no formal executive action. It has no legal relationships with the Governor-General, or the public service, or the legislative or judicial branches of government. Instead, the legal functions and powers of executive government are those of individual Ministers, or the Governor-General on the advice of Ministers (either individually or tendered in the formal collective forum of Executive Council), or statutory officers. So, for example, in formal terms it is not Cabinet that advises the Governor-General to make Orders in Council or to make statutory appointments, but Ministers.

Cabinet's relationship with the public service is also indirect. Departments do not submit papers to Cabinet. Officials may draft them, but Ministers sign and submit them – once they are happy with them. Departments do not receive Cabinet minutes directly, either. The Cabinet Office sends the minutes to Ministers' offices, and they are referred on to departments from there.

Similarly, it is not Cabinet, but individual Ministers, who are accountable to Parliament for ministerial actions and for the actions of departments.

In fact, a diligent law student could be forgiven for concluding, having searched the statute books and Letters Patent, that Cabinet government does not exist in New Zealand. That is why the Cabinet Manual is so useful – because, as Sir Geoffrey Palmer commented in the quote with which this paper begins, it gives a better indication of how the government actually works than the Constitution Act does. For in fact, in terms of public perception, and political and administrative reality, the concept of “the government” has its clearest embodiment in the collective Cabinet, rather than individual Ministers.

So how do things actually work? Who decides on the membership of Cabinet? Who or what determines its procedure? For example, how often Cabinet will meet? Or what constitutes a Cabinet meeting? Or what the agenda will be? Who decides the outcome of an issue if Cabinet is divided? Or determines whether there is a quorum?

There are provisions on all of these matters in chapter three of the Manual. These provisions should not be viewed in black letter law terms, however. It is important to remember that Cabinet is an informal body. A breach of the provisions in chapter three is not unlawful and is not justiciable. Judges sometimes get into difficulty when they try to give legal recognition to Cabinet's role in the formal processes of government.⁸

⁸ See, for example, the judgment in *Unitec Institute of Technology v. Attorney-General*, High Court, 7 July 2005, Millar J

Cabinet Office staff, with the authority of the Prime Minister and Cabinet, administer the Cabinet system in accordance with the Manual, and so are seen by some as the rule-keepers. It is better, however, to view the role of the Cabinet Office as supporting and facilitating a sound decision-making process. Cabinet Office staff respect and enforce the rules because they understand the underlying reasons for them. Papers need to be submitted by the deadline of three working days before committee meetings, for example, to give Ministers enough time to read them and to formulate their views. The discussion at Cabinet is confidential because that enables Ministers to have a frank exchange or to advance unfashionable views without worrying about how they may be perceived externally. And so on.

Because Cabinet is an informal body, of course, the rules can be changed and exceptions made to them. The Cabinet Office exercises its discretion on minor matters, but on more significant exceptions to Cabinet procedures, it is the chair of Cabinet – the Prime Minister – who makes the call. This point is discussed further in section 4 below.

Chapter four

Chapter four of the Manual explains how transitions between administrations occur. It sets out the relevant principles and procedures, including government activity in the pre-election period, the operation of the caretaker convention, government formation, the provision of information by the public services to negotiating parties, briefings for incoming Ministers, and the law and procedures concerning incoming and outgoing Ministers.

This chapter was developed in direct response to the introduction of New Zealand's proportional representation system of voting, which is discussed further in section 4 below.

Chapter five

Chapter five provides an overview of the main principles and procedures concerning the development of legislation at the executive level. In this context, it discusses select committees, caucus and caucus committees, and how Ministers and officials should deal with them. It also discusses the process for presenting international treaties to the House of Representatives, the Crown's financial veto, and the government's role concerning referenda initiated under the Citizens Initiated Referenda Act 1993.

Chapter six

Lastly, chapter six focuses on aspects of the Official Information Act, the Privacy Act and the Ombudsmen Act that are of particular relevance to Ministers and Cabinet.

Appendices

I have already mentioned the Letters Patent, which are at appendix 1 of the Manual. There are also some "whole of government" guidelines at appendices two and three of the Cabinet Manual: the Guidelines for Government Advertising, and the Cabinet Directions for the Conduct of Crown Legal Business. The Cabinet Office does not administer these guidelines, but they were issued under Cabinet's authority and the Cabinet Manual has, in the past, been seen as a convenient and authoritative home for them.

2. The status of the Cabinet Manual

I turn next to the issue of the status of the Manual. In 1999 John McGrath, QC, then Solicitor-General, gave a speech in which he addressed this issue. He said:⁹

The Manual is, as its preface states, ‘an authoritative guide to central government decision-making ... (and) a primary source of information for those outside government on constitutional and procedural matters’. The Manual’s authority derives from the Cabinet’s decision, taken at the outset of each new administration, to adopt the Manual’s procedures ... It stipulates standards of government administration to the extent of outlining relevant conventions and practices seen as in accordance with them.

“In brief, the Manual describes the underlying structures, principles and values of government. Much of its guidance concerns administrative practices to be followed by Ministers and public servants in the government’s decision-making process.

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

The Cabinet Manual does not rule Cabinet; rather, its authority derives from Cabinet. Just as Cabinet is not a legally constituted body, the Manual is not a legal document. The Manual, however, effectively provides a convenient, transparent and proven basis on which successive governments have chosen to operate.

Instead of reinventing the wheel at every change of government, successive administrations have over many years, chosen to adopt the processes set out in the Manual, developing those processes where necessary. The Manual therefore serves as a bridge between administrations.

Although the Manual has a venerable lineage, it is not set in stone. It is updated from time to time by Cabinet to reflect established changes in Cabinet procedures, and constitutional developments. It is like a dictionary – authoritative, but essentially recording the current state of the constitutional and administrative language. The Manual may influence the development of that language, because it is widely used as a reference text for the inner workings of government. People quote from it; they use it to defend or attack the actions and behaviour of executive government. However, like any good dictionary, the Manual cannot be rigidly prescriptive. It must change with the times, responding to and reflecting the changes and developments in the political, administrative and constitutional vernacular. By reflecting and promulgating those developments, the Manual gives them the weight of its authority. There is therefore a somewhat symbiotic relationship between the Manual and the administrative and constitutional environment in which it exists.

Like a dictionary, the Manual often lags a little behind the development of constitutional vernacular – for good reason. For a new word to be included in a dictionary, there must be evidence that it has become established in the popular lexicon. It is the same with many administrative practices recorded in the Manual.

⁹ McGrath, QC, J., “The Crown, the Parliament and the Government”, Harkness Henry lecture, 11 August 1999

The key point is that although amendments to the Manual may *reflect* and *promulgate* change, they do not, in themselves, *effect* change. Change is effected by new legislation, or Cabinet minutes, or judicial decisions, or amendments to the Standing Orders. Even rules on the processes of executive government, which may not be recorded anywhere except in the Manual, are approved by Cabinet at the time the Manual is issued. Their authority derives from Cabinet.

The fact that the Manual cannot, by itself, effect change is even more significant in respect of those provisions that articulate elements of the constitution. Clearly the constitutional conventions exist independently of the Manual, although they are authoritatively expressed there. So, for example, changing the provisions of the Manual relating to the constitutional powers of the Prime Minister, in the absence of separate constitutional developments, will not have any effect on the conventions themselves.

3. Evolution of the Manual

The fact that the Manual now includes very important material regarding the law, conventions and practices governing the executive has been a significant development. It was not always so. When one looks back at some of the earliest guidance issued by the Cabinet Office, before the days of a consolidated Manual, one can see that things have moved along quite a bit. On 16 January 1880, for example, Ebenezer Fox, then Secretary of the Cabinet, issued the following edict:¹⁰

The attention of Ministers has been drawn to the inconvenience resulting from the practice which has grown up, of Officers leaving the Buildings daily for luncheon, and the Government Offices being practically deserted in the middle of the day.

Ministers cannot find any authority for this practice, which is in direct contravention of the last order issued on the subject. The inconvenience caused by this proceeding is very serious, and Ministers have decided that it must be stopped.

In consideration of this decision, the official hours of attendance will be terminated at four o'clock instead of half-past four, except on Saturdays, the existing rule as to that day remaining unchanged.

It must therefore be understood that, in future, Officers in the Government Buildings are not, except when special permission is given, to absent themselves from their Offices for luncheon.

Heads of Departments will see that this rule is strictly enforced.

Public administration has certainly moved on since those days, and the guidance issued by the Cabinet Office has moved with it. I am not suggesting for one moment that the Cabinet Manual is free of operational rules.¹¹ But the context in which Ministers operate has changed hugely. Their relationship with departmental heads has fundamentally altered as a result of the State Sector Act. They are also subject to greatly increased scrutiny and demands for accountability, which has also influenced the content of the Manual.

¹⁰ Extract reprinted in the introduction to the Cabinet Office Manual, January 1979 ed

¹¹ See, for example, paragraph 3.43 on the circumstances in which Associate Ministers may sign Cabinet papers.

This last point was neatly summarised by Bill Blick, previously of the Department of Prime Minister and Cabinet in Canberra, in relation to the Australian equivalent:¹²

Governments have introduced guidelines of this kind over time mainly in order to reduce their vulnerability to criticism, and it is hard to imagine how any modern governments could not have some set of rules of this kind. It seems an inescapable fact of public life that whenever a major question of a public official's behaviour arises, a rule, guideline or process will be developed, if one did not previously exist, to deal with such questions in future.

Most of the time, the reason for changes to the Manual will be obvious. In the next review, for example, changes will clearly be needed to reflect the enactment of the Crown Entities Act 2004, and the fact that the Ministers' Assets and Interests Register has been replaced by the Members of Parliament Pecuniary Interests Register.

Other changes are more subtle. If some provisions have been expanded or changed, there may be a story behind it – some situation will come up that shows that there is a gap that needs to be plugged. One example of this is the section starting at paragraph 3.25 of the Manual, regarding the exercise of Ministers' statutory powers and functions in the collective Cabinet context. These paragraphs make the point that, although many statutes provide for individual Ministers to take particular actions or decisions, the Ministers do so within the framework of Cabinet collective responsibility. If the decision or action would affect the collective interest of the government, therefore, the Minister should not take the relevant action or decision without consulting relevant colleagues at an early stage and submitting a paper to Cabinet.

This section of the Manual, which appeared for the first time in the 2001 edition, did not develop in a vacuum. There had been a number of incidents where departmental officials had taken the view that because the legislation gave some statutory power to their Minister, it would be quite wrong – in fact it would invite judicial review – if that matter were to be discussed at Cabinet.

The Cabinet Office, on the other hand, held the view that a Minister can generally consult with whomever he or she pleases before reaching a decision, and that where the collective interest of the government is affected, it would be appropriate to consult with Cabinet colleagues. If the decision is major or likely to be controversial, it is important to let his or her colleagues know what he or she is planning to do so that they are fully informed and able to defend the Minister's actions.

This point can be illustrated with a hypothetical example. Say, for example, a Minister has the statutory responsibility to set a levy that affects a significant proportion of the population. The legislation makes it clear that the Minister's decision in setting the levy must be based only on certain specified factors. Naturally, those factors do not include taking into account what his or her Cabinet colleagues think. But the decision is going to be controversial. It is likely to have fiscal implications. A significant increase in the levy may have implications for economic development, or home ownership, or retirement savings, so there may be real implications for other Ministers' portfolios. From a collective responsibility perspective, and from a political management perspective, it is therefore really important to take this matter to Cabinet for discussion. It is also possible that, in the course of the discussion at Cabinet, the Minister gains further information, relevant to the decision-making factors set out in the statute, which causes him or her to change his or her decision as to the appropriate level for the levy. That is not improper. The Solicitor-General has confirmed that in this kind of situation, so long as Cabinet does not purport to take the decision for the Minister, there should be no risk of judicial review.

¹² Blick, B., "Ministerial Responsibility in Practice: A Commentary", National Council of the Institute of Public Administration, Australia, 1999, p.58

Accordingly, knowing the clear views of the Prime Minister and Cabinet about statutory decision-making in the collective context, a section about it was included in the 2001 edition of the Manual.

Similarly, there was a gap, in terms of knowledge, regarding section 7 of the Constitution Act. That section provides that any function, duty or power exercisable by or conferred on any Minister of the Crown may, unless the context otherwise requires, be exercised or performed by any other member of the Executive Council. This is a very useful and flexible provision – for those who know about it. If one does not know about it, the absence of one’s Minister overseas, just when you need him or her to take some formal statutory action, can create quite a panic.

4. The impact of MMP

Another significant influence on the development of the Cabinet Manual over the last decade has been the introduction of MMP and, with it, the arrival of coalition and minority governments. The changes to collective responsibility that were reflected in the 2001 edition is one example, and there may be some further tweaks required to those provisions in the next edition. But MMP has had a much broader and deeper effect on the Cabinet Manual than just the collective responsibility provisions (which comprise only 5 of the 535 paragraphs in the Manual). It became clear during the first term of MMP that the Manual needed to spell out some constitutional conventions that previously had either gone without saying or had not ever had to be considered. The Manual had been updated in 1996 in anticipation of MMP (including, for example, provisions on the application of the caretaker convention), but the actual experience of coalition and minority government – particularly the 1996-1999 period – demonstrated the desirability of setting out authoritative guidance on constitutional principles and procedures in advance of political events, rather than formulating advice on the spot.

Chapter four of the Manual, which deals with elections, transitions and government formation, is the most obvious example of this. The material in that chapter was almost entirely new in 2001. Among other things, it sets out the principles that will guide the Governor-General during the government formation period or during a political crisis – based on speeches given by the then Governor-General, Sir Michael Hardie Boys, from 1996 to 1998.

Other parts of the Manual are also a direct result of developments under MMP, although less obviously so. One example relates to the role of Associate Ministers. During this country’s first experience of coalition government, there was some confusion as to the relative status of the portfolio Minister and the Associate Minister, where they came from different political parties. In some cases, the Associate Minister had different priorities from the portfolio Minister, creating difficulties for officials. The provisions in the Manual were expanded in 2001 to state clearly that the portfolio Minister always retains overall control over the portfolio, and that the Associate Minister has delegated responsibility only.

The 2001 edition of the Manual also articulates in greater detail the constitutional functions and powers of the Prime Minister. Paragraph 2.5 explains that, by constitutional convention, the Prime Minister alone has the power to advise the Governor-General to appoint or dismiss Ministers, or to dissolve Parliament and call an election – so long as he or she has the confidence of the House of Representatives. The need for such a rule is self-evident, whether the government comprises a single party or a coalition. It would be totally unsatisfactory if, after an argument between two Ministers, the Governor-General were to receive advice from both, each advising the dismissal of the other. Although this constitutional convention predates MMP, the more fluid political context meant that it was spelled out in the 2001 edition of the Manual.

Paragraph 2.8 (also new in the 2001 edition) states: “As the chair of Cabinet, the Prime Minister approves the agenda, leads the meetings and is the final arbiter of Cabinet procedure.” This paragraph may seem innocuous and administrative, but in fact it is very important.

The importance of this aspect of the Prime Minister’s constitutional position was illustrated during the first term of MMP, when for the first time the Prime Minister chaired Cabinet meetings at which the smaller coalition partner was represented in reasonable force. As you know, Cabinet generally operates in the spirit of consultation and consensus. I believe that the parties did their best to work together in ways that would achieve that. There were, however, some disagreements about Cabinet procedures. You may recall that the break-up of the coalition government in 1998 was triggered by a disagreement about the Cabinet quorum provisions in the Manual.

The events that followed demonstrated that the Prime Minister’s ultimate authority, while rarely exercised, is crucial. The Prime Minister is “*primus inter pares*” – first among equals.¹³ She or he occupies a position of “exceptional and peculiar authority” in Cabinet, because she or he has the ultimate right of veto – that of appointing and dismissing Ministers.

Having said that, of course there are many democratic checks and balances that prevent the Prime Minister from despotic behaviour in relation to the appointment and dismissal of Ministers and the operation of Cabinet. These checks and balances are largely political: a Prime Minister who abuses the system risks losing his or her support base. They are also constitutional: the Governor-General will not act on the advice of a Prime Minister who has demonstrably lost the support of the House.

5. Other changes

The experience of MMP was the main driver of the significant changes made to the Cabinet Manual in 2001, but I would also like to mention three other non-MMP-related changes that have occurred over time.

The first is that, in 2001, much of the detailed procedural guidance about Cabinet and Cabinet committee processes (for example, the format of Cabinet papers, how many copies are required in the Cabinet Office, and what forms must accompany papers when they are submitted) was removed from the Manual. This change was possible because of the publication of the *Cabinet Office Step by Step Guide*, which has since 2001 housed the detailed administrative processes of Cabinet government, and is regularly updated. The consequence is that the key constitutional and administrative principles and procedures appeared with greater clarity in the Manual.

At the same time, the name of the Manual was changed. It was, before 2001, called the Cabinet Office Manual. With the removal of the detailed information about Cabinet Office procedures, and the increasing shift in focus onto the principles of executive government, it seemed more accurate to call it the Cabinet Manual. This change also signalled the fact that the Manual is Cabinet’s document, concerns Cabinet’s own processes and is issued with Cabinet’s authority.

Lastly, access to the Manual has changed. In 1979 it was a restricted document with very limited distribution. In 1991 it became available to all public servants as a loose-leaf publication. The 1996 bound edition was made available for public purchase at Bennetts bookshops. That edition became the first on-line version, in 1998. New Zealand has led other Westminster countries in making this kind of information freely available to the general public.

¹³ Walpole, 1889

6. Process for updating the Manual

I have referred to the Manual as being akin to a dictionary. Anybody who has read the history of the Oxford English Dictionary will be familiar with the process by which it was compiled over 70 odd years. There are wonderful descriptions of the Scriptorium, with pigeonholes overflowing with “slips” from contributors.

The Cabinet Manual is, of course, a more modest endeavour, with somewhat fewer than the 21,500 pages in the Complete Oxford English Dictionary. But the process for amending it is not dissimilar. The world of public administration is forever in flux, and as it changes, “slips” noting amendments to the Manual are put into a file. Any suggestions for change that we receive from officials or academics outside the office are also carefully considered. When a critical mass of change is reached – and we are on the cusp now – the Cabinet Office proposes to the Prime Minister that the Manual be reviewed, and undertakes the review only with his or her blessing.

But the Cabinet Office does not undertake the review alone. Although we undertake the bulk of the drafting, we send the draft chapters to a peer review group, which, in 2001, comprised very senior officials from the Crown Law Office, the Ministry of Justice, the State Services Commission and the Treasury. Other agencies are consulted on chapters of interest to them – we send the chapter on legislation to the Office of the Clerk, and the chapter on Official Information to the Office of the Ombudsmen and the Privacy Commission.

When the draft chapters are finalised, they are submitted to the Prime Minister and then to Cabinet for consideration before being finally edited for publication.

A major review occurs only around once every five or six years. If amendments to the Manual need to be made between reviews, they can be promulgated through some other vehicle such as a Cabinet Office circular. So, for example, when in 1999 the rules about collective responsibility were changed to allow Ministers from different political parties to “agree to disagree”, the amended rules were first published in a circular, and later incorporated into the Manual when it was reviewed a year or two later.

7. Accountability

The process of amendment raises an important question regarding the accountability of those who administer the Manual and are responsible for updating it – namely, Cabinet Office officials. One might question the right of unelected officials to interpret and amend this important document. 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 its primary audience, although it is widely publicly available. It is the executive’s own internal practical working guidelines. The executive is entitled to amend its own working rules, and it is entitled to official support in doing so. The Cabinet Office officials responsible for working with the Manual are responsible to the Prime Minister and the Governor-General for its content, for applying its guidance to particular fact situations, and for policy related to the Manual. We are, of course, also subject to the usual public service accountability mechanisms, including the Official Information Act, select committee appearances and media scrutiny.

8. Where to from here for the Manual?

Lastly – where to from here for the Manual? It will soon be time to start thinking about the next review of the Manual. Among other things, we will need to make some decisions about how the information in the Manual is presented. It has been available online as well as in hard copy for the last five or six years. Personally I am devoted to my well-thumbed book, but the Cabinet Office information manager is very keen to develop an additional web-based tool for presenting the information, consistent with the government web guidelines, so that the Manual can always be kept up to date. I have some reservations about that. There are some advantages in the time lapse between editions. Thinking matures. Dust settles. Sometimes problems resolve themselves. As with wine and cheese, one can say of the Cabinet Manual: good things take time.

9. Conclusion

The Cabinet Manual is a unique document with a lot of stories contained in its pages. It provides an important perspective on the state of our constitutional development and identity.

Anybody who sees possible areas of improvement or development should feel free to write to the Cabinet Office. We will put your slip into the appropriate pigeonhole in our scriptorium along with our own. In a constitutional democracy, it seems only right that everybody has an opportunity for input into a document of this nature.