

Cabinet

Cabinet Manual 2017

Proposal

- 1 This paper seeks approval of the revised text of the Cabinet Manual, for publication in April 2017.

Background

- 2 The Cabinet Manual is the 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 constitutional matters. The Manual is reviewed regularly to reflect developments in the administrative and constitutional arrangements of central executive government and relevant Cabinet decisions on matters covered in the Manual. The current edition was issued in 2008.
- 3 The Cabinet Manual is part of New Zealand's constitutional arrangements, documenting the executive's view of how it functions and the main conventions that operate within government. The Manual provides guidance rather than prescribing rules, and generally contains settled understandings of government practice rather than leading change.
- 4 The Cabinet Office commenced a review of the Cabinet Manual in 2016, with the agreement of the former Prime Minister. All government departments and Ministers' offices were invited to provide comments on the current Manual, and make suggestions for changes they considered necessary. The text was also updated to reflect legislative developments since 2008, and to incorporate guidance issued by Cabinet minutes or Cabinet Office circulars. The revised text also includes guidance on some matters about which the Cabinet Office has provided advice since 2008.
- 5 Other agencies were consulted on particular chapters or sections of the paper, including the Parliamentary Counsel Office, Office of the Clerk of the House of Representatives, Legislation Design and Advisory Committee, Office of the Privacy Commissioner, Office of the Ombudsmen, and the Parliamentary Service.
- 6 The revised text was reviewed by an interdepartmental officials group coordinated by the Cabinet Office, comprising senior representatives of the Department of the Prime Minister and Cabinet, the State Services Commission, the Treasury, the Crown Law Office, and the Ministry of Justice. The text has also been provided for comment to a ministerial reference group comprising the Prime Minister, the Deputy Prime Minister/Minister of State Services, the Minister of Finance, the Minister of Justice, and the Attorney-General, and by the Leader of the House.
- 7 Sir Kenneth Keith, ONZ, has also revised his introductory essay on the Constitution of New Zealand.

- 8 A summary of the main changes to the Manual is set out in this paper. The full revised text of the Manual is appended to this paper. The attached version has been further amended following previous discussion at Cabinet (see paragraph 9). Cabinet is asked to approve the text, subject to minor amendments, for publication in April 2017.

Previous consideration by Cabinet

- 9 Cabinet considered the updated Cabinet Manual text at its meeting on 27 February, and asked for some further work to be done on a number of the proposed amendments, including advice on the rationale for a number of the changes. Following discussion at Cabinet, the following paragraphs have been revised:
- 9.1 The duties of a Parliamentary Private Secretary have been added (2.52)
 - 9.2 The guidance on speaking engagements, endorsements, and non-ministerial activities has been re-ordered, and new headings inserted (2.94 – 2.106)
 - 9.3 Advice about endorsement has been restructured to clarify that organisations cannot use either a Minister’s presence at an event or photos from the event to suggest ministerial endorsement of an organisation (2.100)
 - 9.4 Charitable fundraising guidance has been updated (2.102)
 - 9.5 The section on provision of references has been amended to clarify that a reference is a personal view of the person writing it, not a ministerial view (2.105)
 - 9.6 The section on use of information after leaving office has been updated to clarify that the guidance applies to confidential or commercially sensitive information while it is not in the public domain (2.106)
 - 9.7 Material about the relationship between Ministers and officials has been updated to clarify that ministerial directions to chief executives are not, of themselves, improper (3.22(c)) and to note ministerial accountability to the House (3.22(d)).
- 10 Cabinet requested further information about a number of matters in the section on the relationship between Ministers and officials:
- 10.1 The expectation that briefings are provided in writing (3.22(b)) reflects the requirements of the Public Records Act 2005 and the “no surprises” guidance circulated to Ministers and chief executives last year.
 - 10.2 The material about chief executives’ stewardship responsibility (3.22(d)) reflects the 2013 amendments to the State Sector Act 1988.
 - 10.3 The new paragraph regarding interactions with officials (3.22(f)) comes from the letter of appointment sent to Ministers by the Prime Minister.

Comment

- 11 Proposed changes to the Cabinet Manual are shown as tracked changes in the attached copy. The main changes to each chapter are summarised below, with paragraph references provided. To make it easier to follow, some minor changes (such as corrections to punctuation, capitalisation, internal reference styles, references to

legislation, the movement of text within chapters, and changes in paragraph numbering) are not displayed as tracked changes.

Main changes to each chapter

- 1 Chapter 1: Sovereign, Governor-General, and the Executive Council
 - Adds a section on the Sovereign and references to the Crown (1.2 – 1.4)
 - Updates information on the use of the titles The Rt Hon and The Hon (1.65 – 1.70)
 - Adds information on the Order of Precedence (1.77 – 1.79)
- 2 Chapter 2: Ministers of the Crown: Appointment, Role, and Conduct
 - Details the work undertaken by a Parliamentary Private Secretary (2.52)
 - Updates Ministers' conduct material in line with expectations set out by the Prime Minister in the letters of appointment sent to Ministers (2.56)
 - Updates material on pecuniary interests to reflect changes in the Standing Orders (2.58, 2.84 – 2.89, 2.96 – 2.98, 2.120), including clarifying the process to be followed where a Minister wishes to retain a gift from a non-government organisation (2.88, 2.89)
 - New material on interactions with groups outside government (2.82 – 2.83)
 - Clarifies section on speaking engagements and endorsements (2.94 – 2.101)
 - New material on fundraising for charities, in response to requests to the Cabinet Officer for advice from Ministers who wish to fundraise for particular charities, adapted from the UK *Ministerial Code* (2.102)
 - New provision about providing references (2.105)
 - New provision about use of information after leaving office, adapted from the Australian *Statement of Ministerial Standards* (2.106)
 - Amends the section on government advertising and publicity to capture the principles set out in the *Guidelines for Government Advertising* (2.107 – 2.110) – see also separate discussion below.

3 Chapter 3: Ministers of the Crown and the State Sector

- Updates to reflect changes to legislation including the State Sector Act 1988, Public Finance Act 1989, and Crown Entities Act 2004
- Amendments to allow for the possible structural changes arising from the New Zealand Security and Intelligence Bill and updates to description of the make-up of the public sector (3.3 – 3.5, 3.30)
- Paragraphs relating to the relationship between Ministers and officials are amended to:
 - include the expectations set out by the Prime Minister in letters of appointment sent to Ministers (3.22(f))
 - incorporate elements of the recent guidance to chief executives on the 'no surprises' principles (3.13 and 3.22(a) and (b))
 - note Ministers' accountability to the House and that officials provide information that supports that accountability (3.22(d))
 - reflect chief executives' stewardship responsibility added by State Sector Amendment Act 2013 (3.11(c) and (d), 3.12, 3.22(d))
 - include the expectation that briefings are provided in writing, for consistency with legislative requirements (3.22(b))
 - restate the duty of officials to provide free and frank advice (3.59) and note the duty of Ministers to consider it (3.8)
- New guidance on public statements by officials on policy matters, as the Manual previously covered only statements as private individuals (3.70)

4 Chapter 4: Ministers, the Law, and Inquiries

- Updates material on judicial review (4.20, 4.21, 4.24)
- New guidance noting that Ministers may be indemnified in situations other than legal proceedings, such as inquiries (4.43)
- The section on inquiries is amended significantly to reflect the provisions of the Inquiries Act 2013 (4.74 – 4.120)

5 Chapter 5: Cabinet Decision Making

- Adds three new consultation requirements for Cabinet papers at paragraph 5.14, clarifies expectations about departmental consultation at paragraphs 5.19 and 5.20, and adds a paragraph on Māori, stakeholder, and public consultation (5.22)
- Adds a paragraph documenting that Parliamentary Under-Secretaries are covered by collective responsibility (5.31)

- Updates material on preparing and submitting Cabinet papers to refer to papers being informed by evidence and to reflect the introduction of CabNet (5.39 – 5.55)
- Updates regulatory impact analysis requirements to reflect current Treasury guidance (5.75)
- Updates section on international treaties to provide further context, with input from the Ministry of Foreign Affairs and Trade (5.77 – 5.81)

6 Chapter 6: Elections, Transitions, and Government Formation

- Adds material on the role of officials in policy development in the pre-election period, including guidance on references to government policy in election material (6.12 – 6.15)
- Updates section on outcome of elections to better link with material elsewhere in the Manual (6.18 – 6.20)
- Updates guidance on release of information to incoming Ministers to reflect the current practice (6.67)

7 Chapter 7: The Executive, Legislation, and the House

- Adds section on revision bills (7.16 – 7.18)
- Updates regulatory impact analysis requirements to reflect current Treasury guidance (7.23, 7.35, 7.75)
- Adds requirement to consult the Ministry of Justice where legislation might affect Treaty of Waitangi claims (7.34)
- Updates material on the Legislation Design and Advisory Committee to set out its new structure and functions (7.37 – 7.41)
- Updates types of omnibus bills on advice from the Office of the Clerk (7.68)
- Updates regulations sections to reflect changes made by the Legislation Act 2012 (7.82 – 7.101)
- Adds section on Ministers and the House to cover some of the non-legislative interactions between Ministers and the House, particularly questions (7.102 – 7.107)
- Updates section on international treaties, particularly in relation to national interest analysis requirements, with input from the Ministry of Foreign Affairs and Trade (7.123 – 7.133)

8 Chapter 8: Official Information and Public Records

- Updates introductory material to better reflect the Official Information Act presumption that information is available except where good reasons exist to withhold it (8.1 – 8.6)

- Revises section on proactive release of official information, including reflecting the expectation that Cabinet material should generally be released once decisions have been taken (8.14 – 8.19)
- Updates sections on consultation and coordination under the Official Information Act to clarify where Ministers should be consulted about releasing information, and where they should be advised about proposed releases by a department under the ‘no surprises’ principle (8.50 – 8.57)
- Updates section on the Privacy Act and the role of the Privacy Commissioner, including in relation to sharing information between agencies (8.66 – 8.77)
- Updates section on providing information to select committees to provide greater clarity to officials in particular (8.82 – 8.85)
- Adds section on requests for parliamentary information following the work done by the Privileges Committee and the subsequent release of the *Protocol for the release of information from the parliamentary information, communication and security systems* (8.90 – 8.91)
- New section on Ministers and Public Records to reflect updated advice from the Chief Archivist and Ministerial and Secretariat Services in the Department of Internal Affairs (8.92 – 8.119). This section seeks to clarify the record-keeping and disposal responsibilities of Ministers’ offices.

Current Appendix B: Guidelines for Government Advertising

- 12 The *Guidelines for Government Advertising* were approved by Cabinet on 20 November 1989, and have not been updated since. The Department of the Prime Minister and Cabinet and the State Services Commission propose to coordinate a comprehensive review of the Guidelines following the 2017 election (to avoid any change to guidance in the middle of an election period). Any recommended changes arising from that review would be subject to Cabinet approval.
- 13 To allow for the updating process to run separately from the update to the Cabinet Manual, the current Guidelines have been published separately on the Cabinet Office website and will be referenced in guidance material, rather than continuing to form an appendix to the Manual.

Timing

- 14 Following approval by Cabinet, the Manual revision will involve the following stages:
- 1.1 minor editing and proof-reading, indexing: March/April 2017;
 - 1.2 final design work, publication (hard copy and on-line), and printing: April 2017.

Announcement and Publicity

- 15 It is envisaged that the revised Manual will be published both in hard copy and on the web in April 2017. Ministers will be advised of the timing ahead of the release date, and copies of the final Manual will be supplied to Ministers’ offices, departments, the media, and other stakeholders.

- 16 I propose to mark the publication of the revised Cabinet Manual by way of a press release. The Cabinet Office will notify Chief Executives and the public service.
- 17 I intend to release this paper proactively when the revised Cabinet Manual is published.

Consultation

- 18 The Department of the Prime Minister and Cabinet, State Services Commission, Treasury, Ministry of Justice, and the Crown Law Office were involved in the review of the revised text of the Manual, and were consulted on this paper.
- 19 The Deputy Prime Minister/Minister of State Services, the Minister of Finance, the Minister of Justice, the Attorney-General, and the Leader of the House have been consulted on the revised text.
- 20 The Prime Minister indicates that discussion is not required with the government caucuses or with other parties represented in Parliament.

Financial, Legislative, Human Rights, and Regulatory Implications

- 21 There are no financial, legislative, or human rights implications, and a regulatory impact analysis is not required.

Recommendations

The Prime Minister recommends that Cabinet:

- 1 note that in 2015 the Rt Hon John Key agreed that the Cabinet Manual be reviewed;
- 2 note that the text of the Cabinet Manual has been updated and revised to reflect developments in the administrative and constitutional arrangements of central executive government since 2008, and to include guidance on issues about which the Cabinet Office regularly provides advice;
- 3 note that the revised text has been reviewed by an interdepartmental officials group and a reference group of Ministers;
- 4 note that a summary of the key changes to the Cabinet Manual is set out in paragraphs 12 – 19 of the submission;
- 5 agree to the revised text of the Cabinet Manual attached to the submission, subject to editing changes and to minor amendments agreed to by the Prime Minister;
- 6 authorise the Secretary of the Cabinet to reissue the Cabinet Manual, comprising the following:
 - 6.1 Foreword (by the Prime Minister);
 - 6.2 Preface (by the Secretary of the Cabinet);
 - 6.3 Introduction: “On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government”, (by Sir Kenneth Keith, updated);

- 6.4 Chapters 1-8;
- 6.5 Appendix: *Letters Patent Constituting the Office of Governor-General of New Zealand*, issued in 1983 and updated in 1987 and 2006;
- 7 agree that the current *Guidelines for Government Advertising* be made available separately from the Cabinet Manual;
- 8 note that the *Cabinet Directions on the Conduct of Crown Legal Business*, previously published as an appendix to the Cabinet Manual, are now published as a Cabinet Office circular;
- 9 agree that the proposed Foreword and Preface to the Cabinet Manual be submitted to the Prime Minister for approval;
- 10 agree that Ministers, Ministers' offices, and those working in government be required to observe the guidance in the revised Cabinet Manual;
- 11 note that it is planned to publish the revised Cabinet Manual in April 2017.

Authorised for lodgement

Rt Hon Bill English

Prime Minister

Proactively released by the Prime Minister