

Associate Professor Grant Duncan – written evidence (RCM0003)

House of Lords Constitution Committee Inquiry into Revision of the Cabinet Manual

1. I teach and research in politics and public policy, employed at Massey University since 1993. I belong to no political party. Peer-reviewed publications relevant to this matter are listed below.
2. This submission is made as an academic observer. The opinions are my own. I was invited to make a submission.
3. As noted in the committee's call for evidence, the UK Cabinet Manual was 'inspired in part' by the New Zealand example. This submission is based on the New Zealand Cabinet Manual.

What role does, and should, the Cabinet Manual play as a public facing document?

4. The guidance of the New Zealand Cabinet Manual performs a number of valuable public roles.
5. Prime ministers often cite it when responding to political controversies, especially regarding ministerial conduct. It is not unusual for a prime minister to say publicly that a minister has or has not acted in accordance with the guidelines in the Cabinet Manual. Ministerial conduct is covered by the NZ Manual, comparable to the UK's Ministerial Code, so the committee may wish to treat this point separately.
6. The most important function of the NZ Cabinet Manual is to clarify constitutional conventions for the benefit of the political actors themselves (some of whom may be unfamiliar with them) and for the benefit of civil servants, journalists and the public at large. This was particularly important following the transition from first-past-the-post elections to the mixed-member proportional system from 1996.
7. Multi-party coalitions and confidence-and-supply agreements are now the norm in the formation of governments in Wellington. The Cabinet Manual provides guidance for the political parties and leaders, and clarity for the public, should there be any doubts.
8. The NZ Cabinet Manual provides valuable guidance for the conduct of elected members and career officials around sensitive issues such as pre-electoral restraint, caretaker government, multi-party negotiations, and cabinet collective responsibility.
9. I often cite the Cabinet Manual in classes, as it is largely the best available plain-English explanation of the NZ constitution and the operation of cabinet. Sir Kenneth Keith's Introduction is clear and authoritative; it serves as a very useful reference.
10. In the absence of a written 'Constitution of Aotearoa New Zealand', the Cabinet Manual is a very valuable source of guidance and information.

Should the Cabinet Manual be updated and, if so, what changes are required?

11. Yes. The UK Cabinet Manual is now out of date to the point of misrepresentation. The call for evidence listed some important developments that should already be reflected in a new edition of the Cabinet Manual.
12. By way of comparison, the UK Ministerial Code was updated in 2019 under the auspices of prime minister Boris Johnson.
13. The NZ Cabinet Manual was revised, for example, to include 'agree to disagree' exceptions to the collective cabinet responsibility convention. This practice was already in place (from 2000) when it was written into the Manual. The exceptions to unanimity gave flexibility for smaller coalition and supporting parties to differentiate their policies publicly in between elections. By putting them into writing, the prime minister at the time (Helen Clark) helped to prevent misunderstandings among reporters and the public. These exceptions were also used by the subsequent prime minister, John Key, effectively creating a new convention.
14. The Cabinet Manual follows constitutional change; it should not cause change. The fact that the NZ Cabinet Manual's current edition may be out of date is no cause in itself for great alarm, as it has no effect in law.
15. As far as I know, no court in New Zealand has cited the Cabinet Manual as anything more than background information. It is not seen as prescriptive.
16. If the current prime minister takes no steps to update the Cabinet Manual, then a future one probably will. If the UK Cabinet Manual doesn't presently reflect constitutionally important changes, such as Brexit, then what's the worst that can happen?
17. An out-of-date Cabinet Manual can lead to confusion among members of the public or the media who may read it as authoritative.
18. A suspicion could arise that the prime minister and cabinet do not wish to clarify the effects of constitutionally significant changes. Ambiguity, rather than clarity, around executive powers under changing conditions may be preferred by the government of the day. This is speculation, not fact; but, in the interests of transparency and trust, a government would quieten such speculation.
19. By way of comparison, if the first meeting of the cabinet of an incoming government in New Zealand refused or omitted to endorse the Cabinet Manual as its operational guidelines, there would be questions about the new government's intentions and commitments regarding constitutional conventions and political norms. It would make no difference to their statutory obligations, on the other hand.
20. Similarly, if the New Zealand government refused or omitted to update the Cabinet Manual, in spite of significant constitutional changes, then observers (including myself) would ask if the government of the day was unwilling to clarify the operational effect of these changes, especially if they implied constraints on executive powers.

What approach should the Government adopt to ensuring the Cabinet Manual is kept up to date?

21. The NZ Cabinet Manual is written and revised by and for the executive – and for the information of other political actors and the public.
22. The NZ Cabinet Secretary manages updates. As I understand it, anyone can recommend amendments for the next minor revision or new edition.
23. Revised editions are signed off by the prime minister and the secretary of the cabinet. (See page xviii of the NZ Cabinet Manual.)

Recognising the Cabinet Manual is an Executive document, what role, if any, should Parliament have regarding its revision?

24. The NZ Cabinet Manual does not have parliamentary approval. Debate and approval in parliament would give the Cabinet Manual an authority (and hence possibly justiciability?) that it should *not* have.
25. The authority of the NZ Cabinet Manual arises from its evolution over time. It has been signed off and updated by successive governments as the 'operating manual'; it's been recognised and cited by members on all sides of the House of Representatives. It therefore has cross-party recognition and political legitimacy.
26. All members of parliament are free to suggest amendments, as are civil servants and members of the public.
27. I respectfully submit, however, that parliament has no formal role in the revision of the Cabinet Manual.

Can any lessons be learned, or adopted, from other jurisdictions without a codified constitution?

28. Yes. I respectfully submit that the committee can learn from the experience of the New Zealand Cabinet Manual.
29. As a distant observer, it seems extraordinary that the UK government has not hastened to produce a revised edition of the Cabinet Manual to reflect (at least) the exit from the EU.

13/04/2021

Relevant peer-reviewed references

Duncan, G. (2015). New Zealand. In Galligan B., Brenton S. (eds), *Constitutional Conventions in Westminster Systems: Controversies, Changes and Challenges*. Cambridge: Cambridge University Press (pp. 217–232).

Duncan, G. (2015). New Zealand's Cabinet Manual: How Does It Shape Constitutional Conventions? *Parliamentary Affairs*, 68(4), 737–756.

Recent books

Duncan, G. (2019). *The Problem of Political Trust: A Conceptual Reformulation*. London: Routledge.

Duncan, G. (forthcoming 2021). *How to Rule? Arts of Government from Antiquity to Now*. London: Routledge.