

Machinery of Government — Process Review



REVIEWING GOVERNANCE & STRUCTURES

Introduction

Machinery of government refers to the governance and structures of government and how they work. It includes the changing set of organisations within government, their functions and governance arrangements, and how they work together to deliver results for Ministers and the public. Traditionally, changes to the machinery of government have been understood as structural changes (requiring legislation or Orders in Council to affect). In this guidance we are taking a wider view of the term and now include system-design changes that are non-structural in nature as well.

The State Sector Act 1988 covers ‘machinery of government’ (though it is no longer referred to as such in legislation) and assigns the following responsibilities to the State Services Commissioner:

“For the purpose of carrying out the Commissioner’s role, the principal functions of the Commissioner are to —

- (a) review the State sector system in order to advise on possible improvements to agency, sector, and system-wide performance; and
- (b) review governance and structures across all areas of government, in order to advise on—
 - (i) the allocation and transfer of functions and powers; and
 - (ii) the cohesive delivery of services; and
 - (iii) the establishment, amalgamation, and disestablishment of agencies; and...”

Purpose of this Guidance

We want our guidance to help you to:

- Understand the range of architecture tools – soft, medium and hard solutions – and what they can be used for
- Be aware of the underlying principles and concepts that SSC will be thinking about when they advise you
- Scope your initial thinking about your problem definition and possible architecture options before calling on SSC for further advice
- Do your due diligence – work through what might be involved in implementing your advice before final decisions are taken
- Be able to look up key information in one place

This paper is written for public servants and other employees in the State Services who deal with machinery of government issues. Proposals to modify the governance and structures of government ought to be developed in a classic policy process, using some specialised knowledge.

This guidance aims to set out the main lines of thinking to inform high quality policy advice on such issues. It is not a compendium as it does not cover all the possible machinery of government questions or solutions but it should help you to understand what kinds of system design solutions are likely to fit your problem best.

This guidance does not offer a prescription of what needs to happen, but sets out key steps that are likely to be taken over the process of reviewing machinery of government arrangements. As machinery of government changes differ in scale and speed, the process for making changes needs to remain flexible.

When to use this guidance

This guidance should be used when you are considering a review of structural, governance or collaborative arrangements. Machinery of government changes can be costly and disruptive so you need to be clear about the problem that is to be addressed and why a machinery of government change is likely to help.

Some reasons for undertaking machinery of government changes are:

- Shifting decision rights to improve governance and/or risk management
- Reducing fragmentation
- Improving cohesion of functions and agencies as a system
- Improving transparency and accountability and strengthening independent oversight and/or investigation functions
- Organising around shared problems
- More responsive, effective and efficient delivery of services to ministers and the public
- Enabling more effective and sustainable orientation of services around individuals, groups and locations

It can be tempting to see a machinery of government change (particularly structural change) as a solution to a wide range of problems that might include leadership, inter-agency relationships, employment relations, culture or capability. Even when a machinery of government change is needed, it is unlikely to be the full solution.

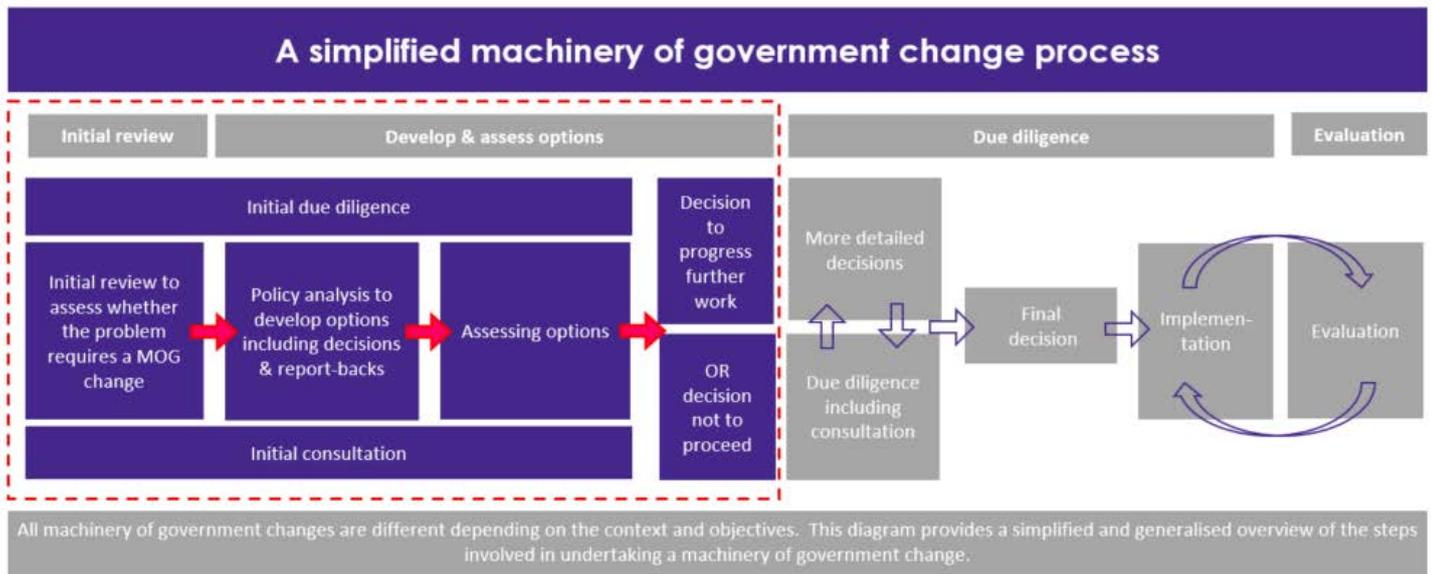
Involving SSC

Ministers are required to consult the Minister of State Services on machinery of government issues (Cabinet Manual, section 5.14). Agencies must therefore consult the State Services Commission about any proposals to change machinery of government. Based on the State Sector Act 1989, machinery of government includes the range of things we consider here as system design – not just the establishment or disestablishment of agencies, but also collaborative governance to support cohesive delivery.

You should contact SSS early in your process – through your usual contact if you have one or email mog@ssc.govt.nz.

GUIDANCE REVIEWING MACHINERY OF GOVERNMENT

The diagram below sets out a simplified and high level view of the steps involved in the process of making Machinery of Government changes. In practice the process is highly iterative and dynamic.



This guidance document deals with the first two stages: initial planning and developing options. Together these stages would constitute a Machinery of Government review. Further documents offer guidance on due diligence and evaluation.

What is a Machinery of Government review?

A Machinery of Government review is essentially a policy project and involves the same process as developing any strategic policy advice for Ministers – defining the problem, carrying out analysis, developing and assessing options, consultation and engagement. [The Policy Project](#) has developed a range of tools that can help with the development of policy advice.

A review might address a number of different aspects of performance, governance and structures, depending on the circumstances and complexity of issues to be addressed. Reviews arise in different ways – projects to improve cross-agency working often emerge from a need to coordinate or collaborate on services, while structural reviews could be initiated by Ministers, SSC or senior leaders in response to a crisis, changing circumstances, priorities or in response to an inquiry.

SSC, in its role as the government’s policy advisor on system performance, governance and structures, will often lead a review however reviews are also led by agencies providing advice to their Ministers. All changes to governance and structures must involve SSC, although SSC’s level of involvement will be determined by the nature, complexity and context of the proposal. Other agencies may be involved depending on the circumstances.

How to approach a MoG review?

Machinery of government is a complex area and there are many statutory and contractual ‘fishhooks’ to be aware of. Structural advice often results in decisions that directly affect the portfolios of Cabinet Ministers and the careers of state servants. For this reason, advice can require a careful balance between the right of Ministers’ to discuss issues in confidence and the need to inform and engage with affected agencies and individuals. In the early stages, Ministers may request that advice is developed in confidence and at short notice to inform a decision about whether or not to proceed further.

In many cases, particularly with large or complex reviews, it will be appropriate to conduct the review in two stages:

1. Initial planning and briefing:

Defining the problem and opportunity, considering the current situation, defining the scope of the project and possible terms of reference, briefing to enable decision-makers whether to proceed further.

2. Develop and assess options:

More detailed analysis and the development and assessment of options, carrying out initial due diligence and preparing outputs to support decision-making. This stage culminates in a decision in principle on a course of action: either to proceed with due diligence on a particular option, or not to proceed further.

Through the process is presented in a linear, step-by-step manner, you should treat it as an iterative and flexible process. Not all of the steps discussed may be necessary – particularly if a review considers only non-structural changes and is relatively simple – but it is important they are given consideration.

STAGE 1 – INITIAL PLANNING

Context and Problem Definition

Careful consideration of the context can help inform early stage decisions about the nature of the issue and scope of the review and will help with the development of options.

Some questions that might help with this include:

- What is the status quo?
 - What is the history of current arrangements?
 - Have there been past attempts to address the issue and what was the result?
- What is changing now that has to be addressed?
 - Has the government modified its objectives for an activity?
 - Have other players emerged with substantially similar roles?
 - Do international agreements or other developments call for a change in the way a certain activity is carried out?
- What are the relationships and overlaps with other agencies?
- What is the role of government in relation to the issue under consideration?
- What are the government's priorities for the relevant agency(ies), sector and the system as a whole?
 - What is the broader strategic direction relating to how government is organised?
- What is the nature of the problem?
 - Is it a shared problem across other agencies?
 - Is it a strategic direction issue? Policy? Internal functions? Service delivery?

As with any policy problem, it is important to have a clear definition of the problem(s) and objectives for the review that are agreed on by all the key players. Without pre-empting the solution, consider what the desired end-state may be and what other measures might help you get there.

Cross-Agency Working

A key element to consider early in the process of developing options is the nature of the problem; is it a shared problem that may require cross-agency working or one that is independent to a department? In many cases it will be clear from the context and problem definition whether the problem is shared or not however it can be useful to consider whether the problem relates to:

- Common outcomes – addressing issue and problems that cross agency boundaries
- Common functions – bringing together resources, skills and assets to create efficiencies and economies of scale
- Common customers – organising and integrating services around the customer

If you have identified that your issue is a shared problem that may require cross-agency working then it may be helpful to consider the current state of collaboration around the issue. You should take stock of current cross-agency working arrangements - what aspects are and are not working? What is the history of working together and the nature of relationships between agencies involved?

Defining the Scope

The scope of a machinery of governance review can vary widely and might encompass:

- A specific issue relating to a single agency or function
- A number of agencies within a single sector

- Multiple themes that relate to a number of agencies
- The whole of the public management system

The scope of the review should include which agencies and/or functions are being reviewed and should be informed by your problem definition. The scope should be restricted to the problem that has been identified and it should be agreed with key decision-makers.

Planning the Project

As with any significant project, a project plan will need to be developed and appropriate governance and management arrangements determined at an early stage – although these may not be implemented until the scope of the project has been agreed with key decision makers. Project planning will need to address engagement, communications, consultation and reporting arrangements.

Project governance questions that should be considered include:

- Is there a lead agency?
- Would a governance group/steering group be useful (especially for cross-agency issues)?
- Is there a project sponsor with an appropriate level of seniority?
- Which agencies will be represented on the review team?
- Which agencies and stakeholders will be consulted?
- What level of involvement will central agencies have?

It is important that confidentiality requirements and expectations are agreed and communicated with all parties. These should be regularly reviewed as the project progresses. Key considerations include:

- Requirements of Ministers
- Avoiding unnecessary uncertainty and concern for potentially affected employees for a change that may not happen
- The rights of employees to be kept informed
- Minimising rumours and leaks
- Minimising the risk of employee disengagement in affected agencies
- The need for engagement and input from potentially affected agencies
- The need to access information for decision-making

A project team ought to be established. Depending on the type of review and the context, the skills and capabilities most likely required in, or available to, the team include:

- Analytic and strategic thinking skills
- Communication skills
- Understanding of the Public Management system
- Understanding of the sector/agency under consideration
- Project management
- Business analysis and financial skills
- Commercial expertise depending on the context
- HR
- Legal
- Relationship management

Terms of Reference

For any significant review, terms of reference should be prepared. These should be agreed and signed off by the project sponsor (who may be a minister or a senior official). There is no prescribed format for a terms of reference but it should include the description and explanation of key elements including:

- Context
- Desired state
- Scope/assumptions
- Deliverables
- Consultation
- Timeframe

Consultation and Engagement

The degree of consultation and engagement that is undertaken before a decision or in principle decision is reached will depend on the context, agreement with decision-makers and any confidentiality undertakings. At the very least, stakeholders and affected parties for consultation should be identified at this stage. If a Cabinet paper is to be submitted, this will require formal consultation with affected agencies.

If proposals are kept confidential at this stage, this may limit opportunities to gain the full range of information and input needed to inform decisions. It will also limit opportunities to create engagement and ownership of the change which has particular significance when considering cross-agency working.

Initial Briefing

It is important to engage with responsible ministers and their offices from the outset, as well as any other key decision makers. At this first state in the review process it is likely to be appropriate to brief Ministers on the review to test the proposed purpose, scope and any initial thinking and to decide whether or not to proceed. Briefings might also include the proposed governance and confidentiality arrangements, input and views from stakeholders and potentially affected parties as appropriate at this stage as well as plans for communication and consultation.

Where a review has been initiated by Ministers, an early briefing helps to clarify and ensure a shared understanding of what is proposed. Where Ministers are involved in setting terms of reference, they may wish these to be noted by Cabinet committee.

STAGE 2 – DEVELOP OPTIONS

Building on the context and problem definition and within the scope and purpose of the project, the next stage is to develop and assess system design solutions. This stage is expected to culminate in an in principle decision.

Developing Options

Previous guidance on developing options for Machinery of Government changes focused on establishing what structural form was required to solve the problem. This guidance introduces a more comprehensive suite of system design options designed to provide possible solutions at different levels of government and complexity of problems. As with the development of any policy advice, the key question to consider in developing options is how each possible solution will address the problem, and how it will contribute to the desired end state.

Options for change are often divided into those that require structural change (that is, usually requiring legislation or orders in council) and those that do not. Non-structural options can provide greater flexibility and can often be implemented more quickly and cost effectively. On the other hand, they can create more complexity and can take time and effort to establish. You should always consider non-structural change and the status-quo as possible system-design solutions.

System Design Toolkit for Shared Problems

The system design toolkit is intended to give those grappling with cross-agency problems an easier way to find the types of solutions that might be most appropriate for them. System design options to support cross-agency working around shared problems are often thought of as being on a spectrum that increases in intensity – that is, the extent of alignment of work, goals and strategies – and the toolkit has been designed to reflect this.

The toolkit has been developed using four sources of knowledge:

- The experience and evidence of what has been – and is being – attempted and successful in the New Zealand state sector;
- Evidence and examples of cross-agency working overseas;
- Academic literature and the input of a number of leading public management academics; and
- Ongoing evaluation which will test the solutions as they are used

Solutions that are non-structural in nature could include:

- Delegation of authority
- Soft and middle solutions in the toolkit
- Statutory independence for individuals or functions within an organisation
- Advisory committees and other mechanisms to build stakeholder voice
- Internal restructuring (e.g. to improve transparency)

If it is clear that structural options may be appropriate, further guidance on the possible forms is available. The ‘Organisational Forms’ diagram and supplementary guidance on Departmental Agencies and Schedule 4A companies provide an overview of the structures currently possible and when they should be used.¹

¹ An explanatory note to accompany the Organisational Forms diagram is in development and will be published shortly.

Determining 'Form'

Any Machinery of Government change should be underpinned by the idea that *form ought to be based on governance of functions and powers*. To determine what form this may be, the two following issues should be clarified:

- What are the desirable governance and accountability requirements?
- What organisational form provides the best fit with the desired governance and accountability regime?

Well-informed judgements about organisational choice cannot jump from a general idea about an organisational role to a clear-cut decision on the most appropriate organisational form. Key questions to consider are:

- What role?
- What objectives and functions?
- What powers?
- What funding?
- What risks?
- What governance?

Assessing Options

Assessment of options should consider how each potential solution will address the issues or problems and what are the trade-offs between them. It should draw on the information gathered and analysis carried out thus far. Criteria for assessing options will need to take into account the context and desired state established in the project planning stages (and the Terms of Reference). Criteria should include:

- Costs and benefits
- How each option will affect service delivery, core functions and performance
- Sustainability and future viability
- Anticipated costs and risks of implementation
- Legal considerations and requirements

Machinery of Government options should be considered from a number of different perspectives including wider system and sector, governance and accountability, and performance. The following key questions indicate criteria for assessing options from the different perspectives:

This is a similar approach to how SSC will consider any Machinery of Government proposal.

Perspective	Key questions to consider
System/ sector	<ul style="list-style-type: none">• How does the option fit with the wider strategic context?• How will it affect cohesion and integration of services around the customer?• How will the option work with the wider sector and system and how will it add to the cohesion of the system?<ul style="list-style-type: none">— How well aligned is the option with the wider system and sector, eg are the goals and objectives aligned?— Will the option increase fragmentation of the State services system?— Will it create overlap and/or duplication?— Will it create gaps?• Sustainability and future viability – will the option be able to adapt and respond to changing circumstances?• What are the risks from a system and sector perspective?• What other opportunities might this option give rise to?

Governance/ accountability	<ul style="list-style-type: none"> • Are roles, mandates and lines of responsibility clear? • Does the option create any conflicts of interest? • Does the option affect decision rights and/or transparency of information for Ministers? • How will independence regarding the exercise of statutory functions be managed? • What are the risks from the perspective of Ministers and how will they be managed?
Performance	<ul style="list-style-type: none"> • How will the option improve performance? • How will it affect the delivery of core functions and services? • How will it affect capability and/or capacity? • How will it affect costs and savings over time? • Is the option manageable in terms of size, span of control, and scope and grouping of functions? • Is the option appropriate to the scale of the service or function involved? • What are the risks to performance and how will they be managed?
Implementation	<ul style="list-style-type: none"> • How easy will it be to implement and what are the issues? • What are the likely costs of implementation? • What are the likely timescales? • What are the risks to performance and the delivery of core functions and services during implementation and how will they be managed?

In the process of assessing options it may become clear that other, unconsidered solutions may be appropriate. The process of developing options and assessing them ought to be iterative. It should also involve consultation and engagement and initial due diligence.

Initial Due Diligence

Due diligence refers to the detailed examination of all aspects of a machinery of government change proposal in order to be as fully aware as practicable of the implications of a change before a decision is made. It involves systematically gathering and considering a wide range of information to inform decision-making. Initial due diligence is usually carried out to inform policy analysis being undertaken to develop options. Often, at this stage, it is a desk-top exercise.

More in-depth due diligence is carried out once an in principle decision has been made. Further guidance on Due Diligence is available.

Depending on the scale and context, it may be necessary to undertake further due diligence work before an in principle decision can be made.

Requirements may include a:

- Business case
- Cost-Benefit analysis
- Regulatory impact assessment

[The Treasury](#) offers guidance to producing these.

Next Steps

If an in principle decision is made to proceed with a proposal, further work will usually involve more development (if needed) of a preferred option (or more than one option if requested by Cabinet), along with detailed due diligence, implementation planning, and further consultation. This work will lead to a final decision about whether to proceed with the proposed change.

Once changes have been implemented it is important to complete an evaluation of the process and outcomes.

Further guidance on completing due diligence and evaluations (specific to Machinery of Government changes) are available.