Te Kura Kāwanatanga – School of Government, Te Herenga Waka – Victoria University of Wellington

POLICY Quarterly

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FOCUS ON REGULATION

Te Kura Kāwanatanga – School of Government, Te Herenga Waka – Victoria University of Wellington

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Editorial: The victory of Trumpism

Donald Trump's remarkable victory over Vice-President Kamala Harris in November 2024 has prompted numerous explanations and theories. Some of these focus on distinctive US circumstances; others point to the wider forces that are influencing, if not undermining, democratic governance globally. Some highlight the various proximate causes of popular discontent, including inflation and immigration; others emphasize deeper societal trends, such as the longer-term impacts of globalization and neo-liberal policies, including greater income and wealth inequality and reduced social mobility.

Of those focusing on the underlying or more fundamental causes of Trump's re-election, and indeed his ascendancy in American politics over the past decade, the prominent Harvard philosopher Michael Sandel offers an intriguing analysis – one which, if valid, is highly relevant for the future of democratic governance.

Sandel's perspective on the 2024 US presidential election draws heavily on his recent books, *The Tyranny of Merit* (published in 2020) and *Democracy's Discontent* (the second edition was published in 2022). While emphasizing various long-term societal trends, Sandel does not deny the relevance of the various proximate factors that typically affect election results, such as the personalities and attributes of the candidates, politically-salient events, contemporary economic conditions, campaign strategies, and so forth. In this regard, many circumstances favoured Trump in 2024, among them:

- President Biden's unwise decision, despite his advanced age and failing health, to seek re-election and his subsequent failure to stand aside sufficiently early to enable the Democratic party to conduct a proper selection process.
- The generally negative public attitudes towards the Biden Administration, influenced partly by a relatively high inflation rate between early 2021 and mid-2023 and a perceived failure to control illegal immigration.
- The fact that over 50% of those polled by Gallup in September 2024 thought that they were worse off than four years earlier, coupled with low levels of economic confidence, notwithstanding rising average real incomes per capita and strong economic growth (certainly by OECD standards).[1]
- The repeated failures of the justice and political systems to render Trump ineligible for re-election, notwithstanding the tragic events of 6 January 2021 and numerous other crimes and misdemeanours.
- The failure of Kamala Harris to present herself as a candidate for change, despite widespread public dissatisfied with many existing policy settings and outcomes.
- The role of social media, including widespread misinformation and disinformation campaigns, and the increasing public mistrust of elites, experts, and empirical evidence.

But underlying these proximate factors, according to Sandel, are several deeply-rooted sources of popular discontent – sources which Trump effectively exploited and capitalized upon. One of these is economic, the other is cultural; but they are connected.

First, the economic: since the neo-liberal policy reforms of the 1980s – which witnessed large reductions in income tax rates for the better off, labour market deregulation, and extensive trade liberalization – the divide between the 'winners' and 'losers' in the US has widened dramatically. The incomes of unskilled and semi-skilled workers have been largely stagnant in real terms for several decades. By contrast, those of the top 10% (and especially the top 1%) of earners have increased dramatically. Wealth inequality has similarly mushroomed. Moreover, not only have many workers faced static living standards, but they have also had to contend with less secure employment, with all the related consequences – increased financial hardship, greater housing insecurity, reduced access to health care, heightened psychological stress, and the sense of being left behind.

For various reasons, the Democratic party – despite its traditional focus on the needs of 'working people' and its concern for social justice – has consistently failed to confront the problem of income and wealth inequality. Unsurprisingly, therefore, many lower-income people have gradually abandoned the Democratic party. Hence, according to exit polls in November 2024, Trump secured marginally more support than Harris from those with family incomes under US$50,000. Also, a clear preponderance of white voters without a college (i.e. tertiary) education supported Trump: 63% in the case of women; 69% in the case of men.[2]

Sandel also emphasizes a second significant source of discontent, namely cultural grievances. One of these is the divergent impact of meritocratic ideas on social status and self-worth. Modern meritocracies value and reward those deemed to be meritorious, typically as judged by qualifications, expertise, and economic contribution. But while those so favoured can take pride in their achievements, the less fortunate face a more demoralizing experience – that is, a sense of failure and being rendered second-class. Supposedly to blame for their lot in life, they often feel belittled by the educated and scientific elites. Meritocratic triumphalism, according to Sandel, creates fertile soil for populist rhetoric and anti-establishment catchcries.

If Sandel's analysis is correct, part of the political and policy response to Trumpism – and its populist counterparts elsewhere in the democratic world – must be a renewed commitment to the common good, solidaristic values, reduced income and wealth inequality, and economic and societal resilience. Of course, that is much easier said than done. Politically, strategies to aggravate inequalities, racial tensions, and social divisions are comparatively simple; strategies to achieve the reverse are much harder.

Moreover, the medium-term outlook globally is far from sanguine. There is the prospect of increasing climate-related disasters, AI-related disruptions, ongoing geo-political instability, growing public indebtedness, another pandemic, trade-wars, and major economic corrections. It will require formidable political leadership to navigate these challenges, revitalize democratic institutions, and build a fairer, more sustainable world. But from whence will this leadership come?

Jonathan Boston, Editor

1 See https://news.gallup.com/poll/652250/majority-americans-feel-worse-off-four-years-ago.aspx

2 See: https://www.nbcnews.com/politics/2024-elections/exit-polls

Derek Gill, Stevie Shipman and Karl Simpson

The Growth in the Supply of Legislation in New Zealand

Abstract

The number of words used in the New Zealand statutes has grown steadily since 1908, but dramatically from the 1960s. The growth rate is similar under both Labour and National administrations and does not coincide with conventional narratives of deregulation and re-regulation.

This growth in the New Zealand statute book was not the result of technical factors such as plain language drafting or greater use of secondary rules. Instead, the growth reflects substantive factors, with increases in the depth and the breadth of regulation. Regulatory inflation and policy accumulation are general trends not unique to New Zealand. More research is needed to underpin careful stewardship of the stock of regulation without resorting to arbitrary policy rules such as a 'two for one' policy.

Keywords policy accumulation, regulatory inflation, stock of regulation, New Zealand legislation

Derek Gill has spent most of his career working on public management and public regulatory issues at the New Zealand Treasury, at the OECD, as a deputy at what is now called the Public Service Commission, and as a researcher at the School of Government at Victoria University of Wellington. He is a board member at IPANZ and several other NGOs, and a research associate at NZIER and the School of Government. This article is prepared in his university capacity. **Stevie Shipman** is a research analyst at the Parliamentary Counsel Office and is pursuing degrees in law and commerce at Victoria University of Wellington. **Karl Simpson** is deputy chief parliamentary counsel for system and stewardship at the Parliamentary Counsel Office. During his career, Karl has served as a policy adviser, lawyer and senior manager, and as a member of the Legislation Design and Advisory Committee – the common thread being legislative and regulatory design. His contribution, and that of the Parliamentary Counsel Office, to this article (along with the underlying dataset) reflect the office's objective: promoting high-quality legislation that is easy to find, use and understand, and to that end, exercising stewardship over New Zealand's legislation as a whole.

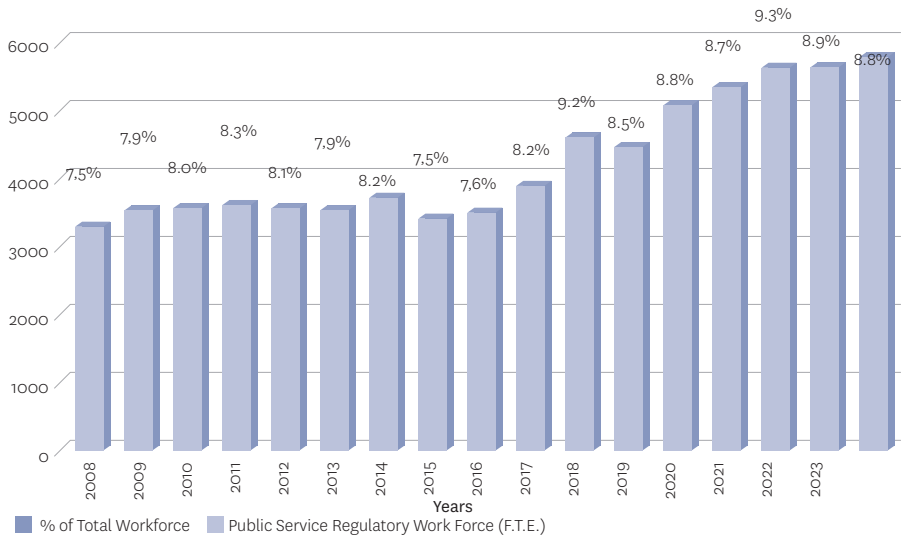
> Counting regulations in a meaningful way and measuring their cumulative economic impact are both astonishingly difficult tasks.
>
> —Stuart Shapiro, 2023

Introduction: the changing role of the state – shrinking or growing?

The role of the state and how that has changed in New Zealand is a contentious issue and the debate is often conducted in an evidence-free zone. On the one hand, claims are made about the shrinking or hollowing out of the state, while counterclaims are made about regulatory inflation and the growth of the state.

Previous research reported in *Policy Quarterly* in 2016 by Gill and Gemmell looked at the state in New Zealand from a range of perspectives – the state as producer, employer, investor, spender and taxer. To oversimplify a more complicated story, outside of privatisations of producers of market goods and services, the size of the New Zealand state has not changed very much since the early 1970s relative to the economy as a whole. This dataset is currently being updated for more recent

Figure 1: Regulatory workforce of the public service



Source: Public Service Commission

developments, including a rapid expansion in state spending and employment under the Ardern administration and the extent to which this can be explained by programmes that were a response to Covid-19. These findings will be published in a forthcoming issue of *Policy Quarterly*.

New time series data on the size of the regulatory state

'Regulation' is used here in the broad sense of the verb 'to regulate'. Government regulation means the use of legal instruments to give effect to a government policy intervention. As such, it can be distinguished from other interventions, such as spending on subsidies, transfers or taxation. Because of a lack of data on regulation, the earlier research avoided addressing the issue of the 'state as a regulator'. This was a major omission, as inspectors and regulatory officers are the single largest occupation in the public service workforce, and this grouping does not include public servants who are involved in the design of regulations and other occupations involved in the administration of regulations. This article summarises the key findings from an exploratory study undertaken jointly by Karl Simpson of the Parliamentary Counsel Office, Stevie Shipman and Derek Gill that addressed the state's role as a regulator. The project developed a measure for the regulatory state, the size of the statute book, and then explored how it has changed over time in New Zealand. The project had two parts: developing a consistent time series on the regulatory stock, and then undertaking an initial exploration of the drivers of the trends and patterns that emerged.

Specifically, the project has generated a time series of stocks and flows of all primary legislation (number of public Acts, pages and words) since 1908. In addition, consistent time series flow data is now also available for selected secondary legislation and administrative instruments since 1908, with stock and flow data from 2008. We have focused on principal public Acts, which means that for the estimates of the regulatory stock, the effect of amendment acts or new acts replacing existing acts – such as the Public Service Act 2020 replacing the State Sector Act 1988 – are netted out.

The analysis undertaken to date was a first-pass examination of trends with the aim of encouraging other researchers to explore the dataset in more detail. The project had a positive not normative focus, focusing on 'what is' instead of 'what ought to be' with the aim of creating a more informed understanding of the factors contributing to the growth in the statute book.

All measures can be misleading, but some are useful

As the opening quotation highlights, assessing the size of the regulatory state is a difficult and nuanced topic that is often avoided because of a shortage of reliable data and the absence of a single, robust theoretical framework that can be applied. Our newly developed dataset seeks to overcome the first obstacle – lack of reliable data. The resulting dataset highlights some interesting patterns and challenges.

John Dillinger, a notorious bank robber during the Great Depression, apparently said that he robbed banks because 'that's where the money is'. In this project we focused on the statute book, as that is where the data was. There are several other potential measurement points with respect to the regulatory state – inputs, outputs and impacts.

The regulatory workforce

On inputs, there is some occupational data available from the Public Service Commission on the number of public servants who are inspectors or regulators. However, there are a number of limitations with this series: it is only available since 2008; it does not include the wider state sector, where the majority of public employees work; it has data quality problems, as some agencies' occupational coding is quite idiosyncratic; and it does not capture policy analysts involved in the design of regulations or other occupations involved in the administration of regulations. Currently, there is no definitive measure of the regulatory workforce in all public agencies or the New Zealand-wide regulatory workforce, although the Ministry for Regulation is planning to address this issue starting in 2025.

Figure 1 shows the number of public servants who are classified as inspectors or regulators (excluding tax inspectors and prison officers) and the percentage share of the total public service workforce. It shows that the regulatory workforce in public service departments was relatively stable in the Key–English National administration (2008–16), but grew rapidly thereafter, making up an increasing share of the public service workforce and nearly doubling in size.

Regulatory compliance burden

On outputs, the OECD standard cost model provides a systematic and internationally comparable approach to capturing regulatory burden. Previous New Zealand research (Destremau and Gill, 2015) assessed the costs facing New

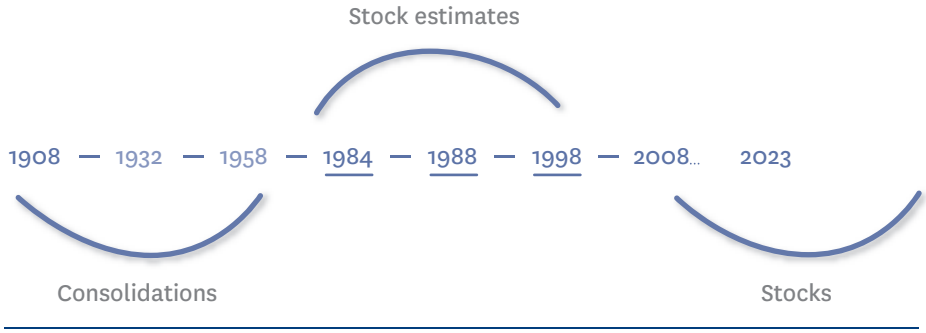
Zealand businesses in complying with New Zealand government taxes and regulations. The central estimates for 2012 for the compliance cost for regulation was NZ$2.8 billion (1.4% of GDP), compared to NZ$2.2 billion (1.1% of GDP) for taxation. While these are large numbers, the estimates are in line with comparable jurisdictions. However, there were very wide confidence intervals around the central estimates due to data quality concerns and data gaps. New Zealand currently lacks consistent cross-sectional data on compliance costs across firm sizes, and there are no estimates available on how regulatory burdens have changed over time.

Regulation costs and benefits

On impacts, there has been no systematic research undertaken in New Zealand. The OECD 2023 product market regulation (PMR) indicators place New Zealand on the OECD average for product market regulatory settings that encourage competition and ensure a level playing field among firms. This ranking is a significant relative decline from the leading position New Zealand enjoyed in the 1990s. However, the OECD's survey only covers selected economic regulations affecting business, which is only a small part of the overall regulatory framework.

In the United States there are estimates using bottom-up cost benefit and top-down econometric methods that yield dramatically different results. Bottom-up estimates based on the major new rules examined by the Office of Management and Budget suggest that the benefits from those individual new regulations typically outweigh the costs by between four and eight times (Shapiro, 2023, p23). In contrast, some top-down econometric studies generate extensive costs of regulation (Crain and Crain (2014) estimate 12% of GDP), due to the combined effects of administrative compliance burdens and regulation slowing down the growth in innovation and productivity. These later studies have come under sustained criticism both for the robustness of the findings and for lack of attention to estimating the potential benefits from regulation. As Shapiro observed, 'it is reasonable to argue that there has not yet been a top-down study of regulatory impact that meaningfully addresses the cumulative effect of regulations. Perhaps such a study is impossible' (Shapiro, 2023, p.27).

Figure 2: Joining up electronic data and paper records



Source: Parliamentary Counsel Office

Green tape or red tape?

The more fundamental point is that the overall impact of regulation is ambiguous in terms of its effect on efficiency and the distribution of costs and benefits. While government regulatory action generally starts with positive intentions, there are legitimate concerns about 'red tape', compliance costs and perverse outcomes. By contrast, 'green tape' regulation plays a positive role, including providing regimes that are enabling and empowering. As Gill emphasises:

> A well-designed regulation plays an important role in promoting productivity and economic development, thereby enhancing the wider social wellbeing ... Looking back in history, the introduction of legislation enabling the creation of the limited liability company was crucial to transforming England into the 'workshop of the world' and enabling the industrial revolution to spread throughout the West. A more recent example is the European Union's adoption of the GSM standard, which became the global standard for cellphones, thereby enabling a global market for devices. (Gill, 2024, p.2)

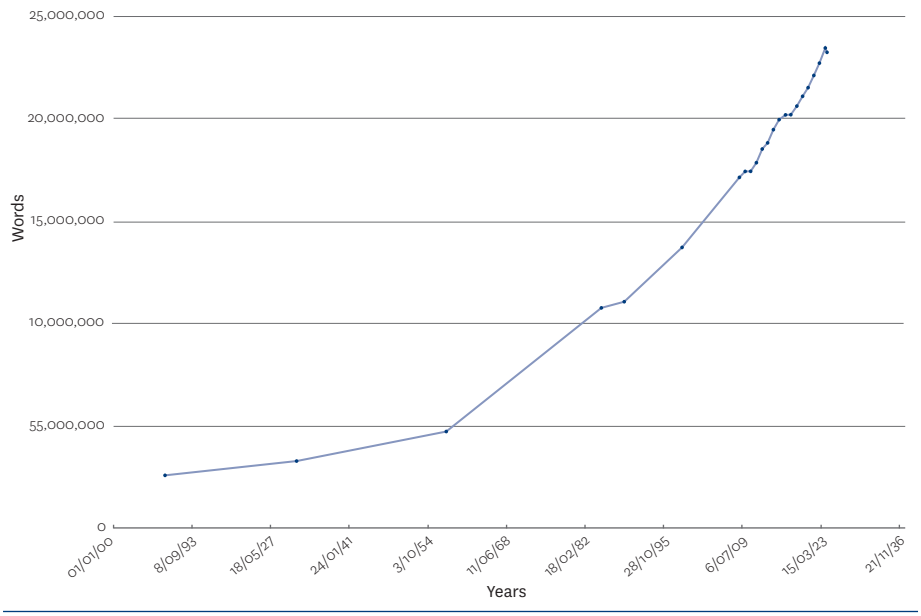
As Geoff Lewis observed recently, '[r]egulations can both support and damage productivity', although he also noted there is 'a tendency towards excessive regulation' (Lewis, 2024). See Gill (2011, at 7.7.2) for a discussion of the bias towards using regulations rather than spending or other budgeted interventions.

Defining and measuring government regulation

In this project we used a narrow legal definition of government regulation: statutes and secondary legislation, including regulations made by order in council and other instruments, published by the Parliamentary Counsel Office. We are aware that a significant proportion of secondary legislation is published by public agencies outside the public service (including, for example, transport rules) and by local government, and that some broader definitions of regulation are valid. However, legislation made by Parliament and central government and published by the Parliamentary Counsel Office was the best place to start because systematic structured sources of data were readily available. There has been little change in the number of words used in imperial, local, provincial and private Acts since 1908 (Shipman, 2024). The discussion which follows therefore focuses on principal public Acts, as these make up almost all of the statute book and account for all the growth that has occurred.

Creating the dataset required joining disparate paper records and electronic datasets, as shown in Figure 2. The Parliamentary Counsel Office has structured reliable electronic data since 2008 associated with the New Zealand Legislation website. This dataset provides robust data on stocks and flows of new primary and secondary legislation (number, pages, words) published by the office from 2008 to 2023. The stock data only includes principal public Acts, whereas the flow data also includes amendments Acts, which are subsumed into the principal Act when they come into force.

Figure 3: Consistent growth in the stock of words in force in Public Acts



Source: Parliamentary Counsel Office

The Parliamentary Counsel Office also has reliable data for flows of new primary legislation for every year prior to 2008, derived from electronic scanning of the annual bound volumes of statutes. This provides robust data for flow – the number of Acts and words enacted each year. This flow data represents the inflows of Acts and words, but outflows (i.e., repeals) are not possible to derive from this data. As a result, a different method was required to derive annual stock data.

Paper-based consolidations, which included all acts in force at a point of time, were available for 1908, 1932 and 1958, which enabled the creation of stock estimates for these data points. Filling in data points during the intermediate years between 1958 and 2008 involved some sustained research effort to combine the table of New Zealand Acts and ordinances, the reprinted Statutes of New Zealand series and New Zealand Statutes volumes. This provided stock estimates for 1984, 1988 and 1998 (see Shipman, 2024 for a discussion).

Rapid growth in the supply of primary regulation

Our resulting estimates of regulatory stocks over time provided interesting and often unexpected patterns. In summary, we found that:

- The stock of words in public Acts has accelerated dramatically from around 1960. There has also been a marked increase in the number of words over the 15 years since 2008 (36% growth – about 2.4% per year).
- The stock of the number of Acts in New Zealand grew, but at a slower rate than words, then levelled off before the 1980s. That means that the average length of each principal Act is increasing.
- That growth means that the stock of current legislation has doubled in size since 1988, to more than 23 million words (whereas in 1908 it was just 2.5 million words).
- Flow is also ramping up: over the last ten years, Parliament has enacted more than a million words a year on average. Every year, New Zealand replaces many old laws and enacts a lot of new – and often longer – laws. However, the flow of new Acts has declined since the peak recorded in the 1980s to long-term historical levels, again reflecting that Acts are growing in length.
- The size of the stock of secondary legislation that the Parliamentary Counsel Office publishes is growing at almost the same rate as primary legislation. This means that there is no evidence of systematic substitution between primary legislation and secondary regulations. This analysis cannot (yet) take into account the full extent of secondary legislation published by other agencies, but we expect to see similar trends.

Figure 3 shows the growth in the word count of the statute book from 1908 through to 2023. It measures the stock (i.e., the words used in public Acts that were in force in those years). For most of the 20th century limited data points are available (1908, 1932, 1958, 1984, 1988), but after 2008 robust annual data is available. The long-term trend is upwards sloping, with a turning point (evident in the flow data) in the early 1960s. Converting this to the number of paper volumes, in 1908 this consolidated 'statute book' filled six volumes; in 1988 it filled 25; in 2008, 40; and by early 2024 it filled 55.

While the general long-term trend growth in primary public regulation was not unexpected, the shape and rate of change were a surprise. The recent growth does not coincide with conventional narratives (including by one of the authors) of deregulation in the 1980s and early 1990s, followed by regulatory reform and growing regulatory management since the early 21st century. Deregulation resulting in the repeal of existing statutes would result in limited flow (repeal Acts are brief) and a consequent fall in the stock. Instead, New Zealand seems to fit with Vogel's hypothesis (Vogel, 1996) that regulatory reform in advanced industrial countries simultaneously leads to freer markets and more rules.

The number of public Acts has levelled off

Given the growth in the number of words in the statute book, we expected to see similar trends in the stock of public Acts in force. But what we found regarding the stock of principal public Acts in force was surprising, with the number of acts levelling off before the 1980s (see Figure 4). This shows that Acts are getting longer, rather than there being more of them. Note that the dip in 2017 reflects the impact of the clean-up achieved by the Statutes Repeal Act 2017.

Figure 5 shows the annual flow of new public Acts (including amendment Acts). This includes a peak in 1990 before a steady decline thereafter. The rapid growth in the flow of new Acts post-World War Two fits with the perception of the growth in the regulatory state over that time with the expansion of the regulation of consumer and workplace safety and environmental

standards, as well as economic activity in the era. However, it is harder to identify the trend to re-regulation and regulatory reform after the 1990s in the macro-level data.

The levelling-off in the stock and the flow of new public Acts may partly be the result of changes Parliament adopted in 1995 to the formal rules around the scope of legislation. These changes were based on the principle that each bill should have only one broad subject area and limited the circumstances for introducing an omnibus bill.[1] This may also have contributed to the consolidation of existing principal Acts, such as the Contract and Commercial Law Act 2017, and reduced the proliferation of new principal Acts.

More recently, the introduction of the regulatory stewardship approach in the State Sector Amendment Act 2013 has meant departments are more likely to treat all the legislation in the relevant regulatory system as part of a coherent whole, bringing separate Acts together, as well as making them more likely to repeal redundant Acts. (See Denny Kudrna's article in this issue of *Policy Quarterly* on regulatory stewardship generally and regulatory systems amendment bills in particular.)

These are fruitful areas for further research at the regulatory system or domain level. It would also be instructive to isolate the impact of the rapid reforms of the fourth Labour government (1984–90), as the number of words increased while the number of Acts in force declined slightly.

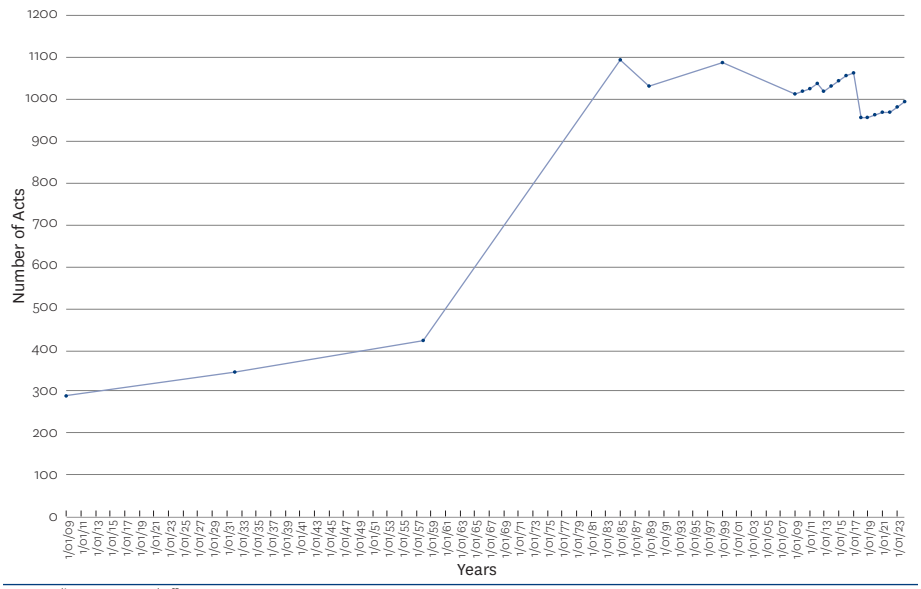
The flow trend in words aligns with the stock trend

While the number of principal Acts enacted per year has shown a decrease in recent years, the number of words enacted per year has increased, albeit with significant volatility year on year. Figure 6 shows the flow in words contributed by principal and amendment Acts every year from 1909 to 2023. This trend is reasonably consistent with the growth in stock described above.

New Zealand is not an outlier

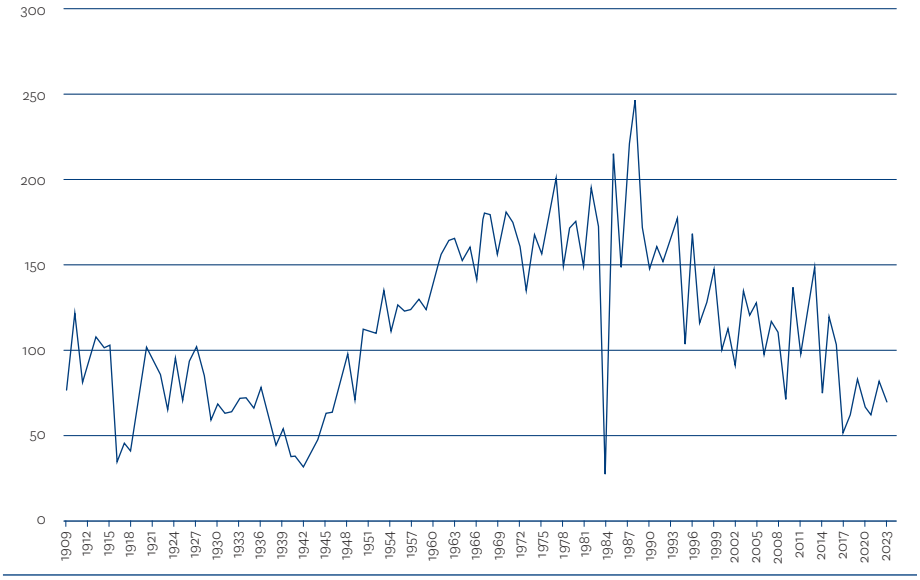
Looking at the data for other jurisdictions as well as the academic literature, it is clear that in the growth in its statute book New Zealand is not an outlier. The policy accumulation literature suggests

Figure 4: Levelling out of the stock of the Public Acts in force



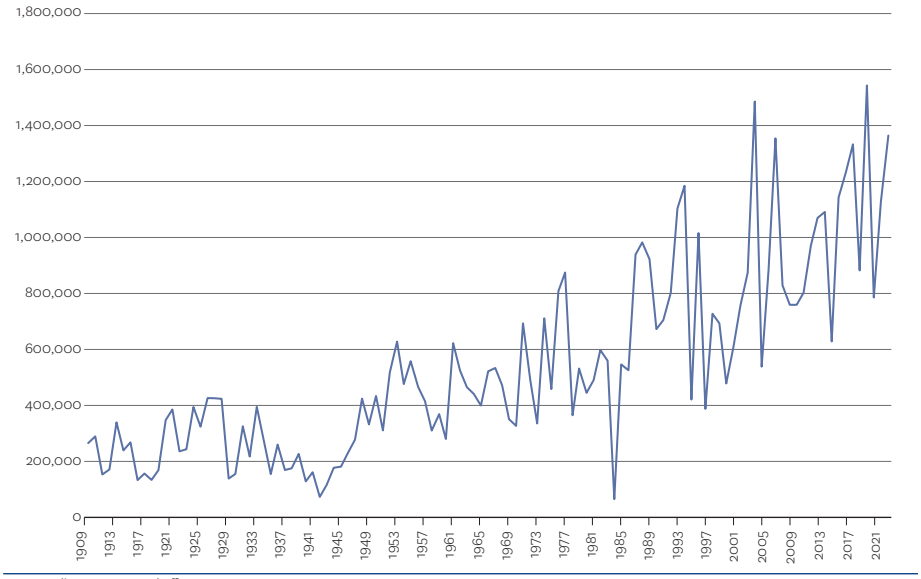
Source: Parliamentary Counsel Office

Figure 5: Flow in the number of new Public Acts since 1909



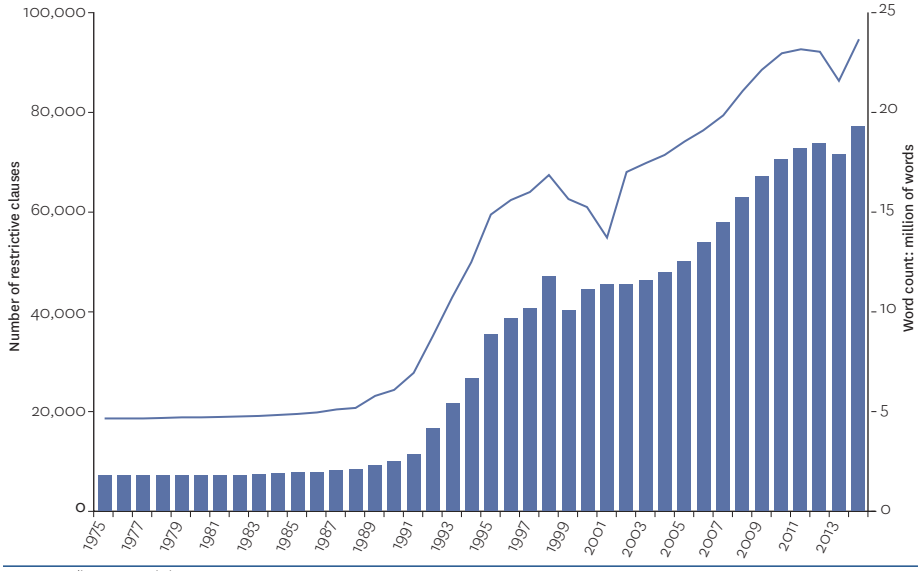
Source: Parliamentary Counsel Office

Figure 6: Growth in the flow of words in Public Act from 1909 to 2023



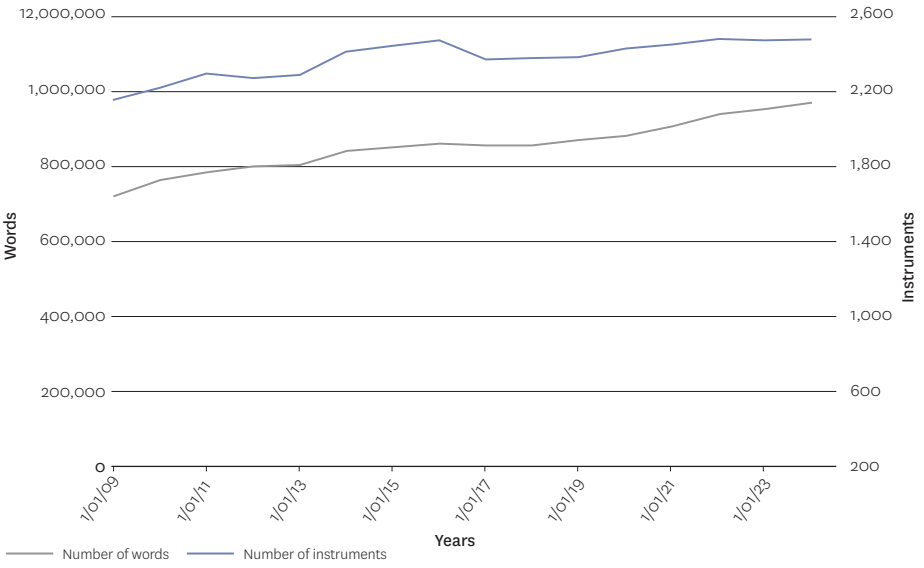
Source: Parliamentary Counsel Office

Figure 7: Similar growth in total words and restrictive words used in the Australian Federal Statute book



Source: Australian Law Commission

Figure 8: Steady growth in secondary legislation instruments and words



that government regulation is part of a wider trend across OECD countries that includes policies, targets and other instruments as well as regulatory rules (see Hinterleitner, Knill and Steinebach, 2023 for a survey).

Looking across the Tasman, Figure 7 shows two series: first, the growth in the number of words in Australian federal statutes, and second, the number of restrictive words that the laws contain. (The latter refers to the text analysis technique developed by the Mercatus Institute to estimate the number of binding constraints imposed by using the words 'shall', 'must', 'may not', 'required' and 'prohibited'.) Both series show a steady rate of increase since 1990. The Australian data covers a much shorter period (from 1975), but the inflexion point appears to be much later in Australia compared to that of New Zealand. There is scope for further econometric analysis to explore the determinants of the growth rates and inflexion points across a range of countries.

Form versus substance – what contributes to the growth in the regulatory stock

Thus far we have discussed the datasets developed on the stock and flow of primary and selected secondary legislation. We now turn to exploring what would explain the growth in the size of the statute book. In order to assess whether this growth reflects technical legal changes rather than a substantive increase, we explored two broad lines of enquiry.

The impact of plain language drafting

One possible technical legal factor is the impact of changes in drafting style with the introduction of plain language drafting after 1999. A small sample of rewrites was inconclusive on the impact, with some increasing the word counts and some reducing. To illustrate the order of magnitude of the possible impact, a drafting style increase of 5% would create a 0.5% p.a. initial increase in the word stock in Acts before tapering off.

It is important to note that the formal introduction of plain language drafting style in 1999 significantly post-dates the turning point in the early 1960s. Secondly, since 1990, word count stock growth is consistently above 2% p.a., which is significantly more than the likely effect of plain language drafting, estimated at around 0.5% p.a. increase from 1999. On balance the judgement was reached that the likely effect of plain language drafting was a significant but small positive effect.

Impact of secondary legislation

The other potential technical legal change relates to the possibility that there was a systematic change in regulatory style with the locus of rule-making shifting from primary to secondary legislation. Figure 8 shows the steady growth in the number of instruments as well as the number of words in secondary legislation published by the Parliamentary Counsel Office since 2008. It suggests that there is no evidence of systematic substitution between primary and secondary legislation, as the latter is growing at a similar rate to the former. A future line of enquiry would be to analyse the growth in secondary legislation published by other agencies or in other forms of regulation. That data is not, however, readily available and would require analysis of individual regulatory systems.

Increases in the breadth/reach of government regulation

Since technical legal changes don't appear to explain much of the growth in the statute book, an alternative line of enquiry would be the extent to which the growth reflects an extension and breadth of coverage in the regulatory state. This expansion could reflect new frontiers, such as space policy (for example, the Outer Space and High-altitude Activities

Act 2017), new technologies, and growing social complexity and diversity. It is possible that these new domains are more complex and integrating the new regime into the corpus of law requires more clauses because it is necessary to deal with possible interactions with existing Acts. Wagner's law of increased state activity suggests that public spending increased faster than GDP. Applied to regulation, this suggests that increasing living standards would lead to increased demand for regulations such as environmental protection.

Expansion of the breadth of legislative coverage would be expected to result in a growth in the number of statutes and the predominance of principal Acts over amendment Acts. However, Figures 4 and 5 show that the overall stock of the number of statutes in force has levelled off, while the number of new Acts has declined steadily since the peak recorded in the 1980s.

Figure 9 shows that more words are contributed by principal Acts than amendment Acts. However, looking through the volatility, there appears to be a trend growth in amendment Acts consistent with more intensive regulation in the same domain. At the same time, the word growth seen in principal Acts is consistent with increases in the breadth and reach of regulation. It is not possible to draw clear conclusions from the relative use of amendments and principal legislation at the aggregate level, because either a new principal Act or an amendment Act could be used to regulate a new area or to adjust regulation of an existing area. The choice of whether to amend, or to repeal and replace, an existing principal Act is based on a number of factors, including how frequent and substantive prior amendments have been, and whether the change is thought to be fundamental or adjusting. The current data is therefore inconclusive as to whether regulation of new areas is a significant factor.

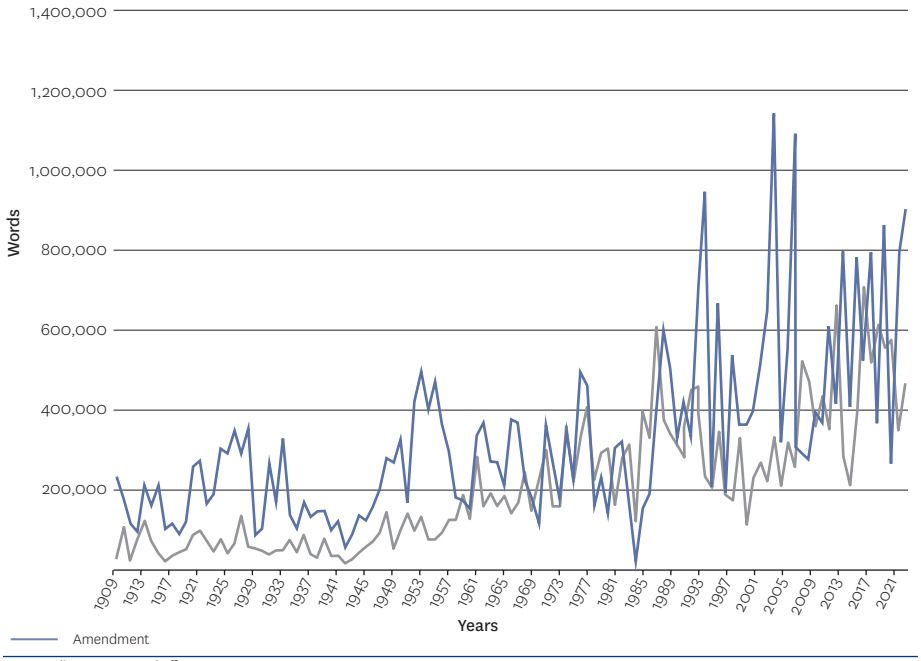
Increases in the depth and granularity of statutes

If technical factors and the increased coverage of legislation does not account for the extent of the growth in the statute book, then the remaining contributing factor is the increase in the depth and granularity of statutes. Here it is only possible to speculate on the factors that might contribute. These include:

- a shift to regulating with greater specificity, as over the last 30 years New Zealand has gone through a shift from liberalisation to re-regulation as successive governments have sought to control regulatory risks (such as the reform of the Building Act);
- a shift to more risk-focused or performance-based regulation – the 'smarter' or more nuanced we want to be with regulation, the likelihood that more categories and complexity are required increases. This is usually accompanied by both regulator discretion and the use of secondary legislation, so smarter regulation does not necessarily mean less regulation;
- increasing international pressures to regulate, as with more interconnected markets comes more pressure for regulation (for example, anti-money laundering);
- an increasing demand for rules or limits around the use of administrative discretion, as stakeholders often seek more certainty and prescription in law in order to increase its predictability and lessen the legislative risks for them.

Further analysis is required to unpick the relative importance of these explanations. The most fruitful line of enquiry is likely to be to perform a comparative analysis of regulatory systems.

Figure 9: Steady but volatile growth in the flow of words used in new principal and amendment acts since 1908



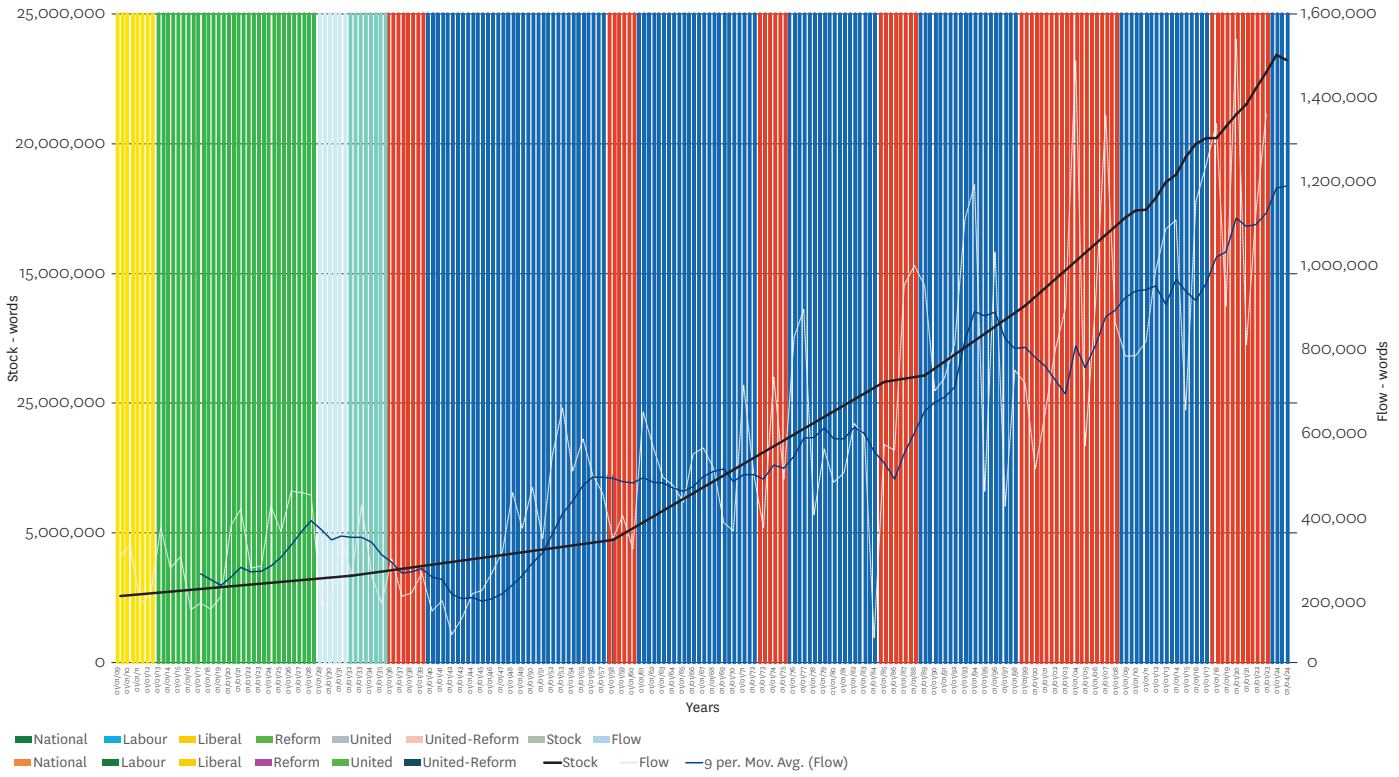
Source: Parliamentary Counsel Office

Understanding the causal factors that drive the growth in government regulation

A brief literature scan identified a plethora of potential drivers and some literature at the sectoral level (regulation of the environment or of infrastructure), but there is currently no systematic cross-sectoral empirical analysis or testing of the 'relative importance of the various drivers of policy growth and how they interrelate'. Hinterleitner, Knill and Steinebach (2023) provide a useful synthesis of the multidisciplinary literature, drawing from political science, law, public administration and economics. Their review identified one demand-side and three supply-side drivers in operation. On the demand side, they highlighted the increasing societal complexity and interconnectedness, which requires more rules. On the supply side they suggested the roles of:

- 'political competition' – policy growth is an unintended side effect of competition for votes;
- 'institutional fragmentation' – the distribution of policymaking power across governance layers, producing complex, cobbled-together policies;
- bureaucratic processes:
  - 'rachet effect' – policy accumulation over time as new rules are added but rarely removed;
  - 'rules breed rules' – cascading effects where rules at one level lead to more rules at other levels.

Figure 10: The growth in the stock of government regulation by political administration



Source: the authors

The analysis presented about the lack of clear evidence on increases in the breadth and reach of regulation raises doubts that new developments have contributed to the accelerating growth in the words used in the statute book since the 1980s. Some of the concerns about 'rules breeding rules' cascading through the levels of governance seem more applicable to EU jurisdictions with multiple levels of government than to New Zealand with its very centralised unitary state.

Recent scholarship also suggests that globalisation and liberalisation are often accompanied by the expansion of regulatory rules and agents (Vogel, 1996). However, this literature seems to focus on the regulation of economic transactions, so its generalisability is unclear. Nevertheless, it appears to have limited applicability to other regulatory domains, such as criminal law, and human and civil rights.

Role of political competition

One line of enquiry which does readily lend itself to examination is the role of political competition. Overseas studies have found that political competition affects what domains are regulated and that political competition does not significantly change the trend rate of growth in the stock of public regulation.

Causal empiricism based on Figure 10 suggests little significant difference in the growth rate in the words in the statute book under different administrations, with the steady growth in the stock and the smoothed trend of the new flow slowly accelerating over the period. The lack of annual stock data before 2009 makes formally testing the impact of different political parties in government difficult.

Although annual stock is not available before 2009, it is possible to calculate the approximate compound annual growth rate (CAGR) between National-led and Labour-led administrations since 1984 using the nearest available data point. Table 1 shows the compound annual growth rates for different administrations. After allowing for plain language drafting post 1999, there is no significant difference between administrations. In short, the time period appears to have more explanatory power as the CAGR was 1.5% in early 20th century, 1.5% in the 26 years to 1958, and an average of over 2% post 1990.

Caveats cautions and conclusions

All good research needs to be accompanied by appropriate health warnings and caveats. As H.L. Mencken observed, 'For every complex problem there is an answer that is clear, simple, and wrong'.[2]

Table 1: Compound annual growth rates in the words used in the statute book under recent administrations

Period	Labour	National
1984-1988	0.6%	
1989-1998		2.1%
1999-2008	2.5%	
2008-2017		1.9%
2018-2023	2.1%	
Average GAGR	1.7%	2.0%

Source: the authors

In this research we have collected data to count the number of statutes, as well as the words (and the pages) in those statutes. This was based on data availability, but also because words in statutes are often used as a proxy for the growth in the supply of regulation. In focusing on words as a measure, we are also conscious of several caveats:

- more words may provide more clarity, increase regulatory effectiveness and reduce administrative compliance costs;
- not all rules are equally enforced (law in action);
- more words may not result in more stringent regulations or more intensive enforcement;

- there is growing scholarly attention to the role of soft law, including private standards and regulations, in shaping economic activity and wider social interactions.

In short, more words in government regulations may imply more complexity, but does not automatically mean there is increased regulatory intensity or burdens of compliance. Alternative approaches, such as the standard cost model, attempt to assess the intensity of regulation, but this requires consistent data on administrative burdens which is not currently available in New Zealand.

Nonetheless, this line of enquiry has opened up some important questions. It suggests that the stock of central government regulation has grown significantly. While US data suggests that the estimated benefits from new regulations typically outweigh the costs by between four and eight times (Shapiro, 2023, p.23), poor regulations impose unnecessary costs relative to the benefits. Poorly designed new regulations layered upon earlier rules result in complex, poorly integrated policy regimes, which raises compliance costs and reduces the effectiveness of regulations. The limited available evidence for New Zealand suggests that the administrative and compliance costs of regulation are significant (1.4% of GDP in 2012). The overseas evidence suggests that the cumulative burden of regulations falls most heavily on smaller businesses and people who are more disadvantaged (Herd and Moynihan, 2018). Unpacking what is contributing to the growth in the regulatory stock provides the understanding required to underpin efforts to reduce the burden of regulations. This is particularly important when the costs are disproportionate to the benefits or fall disproportionately on the most disadvantaged, who are least able to adjust their circumstances.

The literature on policy accumulation highlights that New Zealand is not immune to the broader policy accumulation whereby regulatory rules combine with other policy interventions and policy targets to create a more general problem of policy growth.

Both of these issues – the growth in the regulatory stock and the wider accumulation of policy – are worthy of further investigation. In other countries – notably the Trump administration in the US – the growth in the number of regulations and words within those regulations is used as a measure of the growth of the regulatory state. This becomes the basis for the need for 'regulatory rescission' and recourse to arbitrary policy rules such as a 'two for one' policy. Without a systematic empirical investigation of the attributes of the growth and the factors acting as drivers in New Zealand, we risk ad hoc policy responses that do not address the root causes or even the main symptoms of policy growth.

1 See discussion in Clerk of the House of Representatives, 2024, chapter 34.10 on omnibus bills.
2 https://en.wikiquote.org/wiki/H._L._Mencken.

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Denny Kudrna

Regulatory Stewardship
an empirical view

Abstract

Regulatory stewardship aims to ensure that various parts of a regulatory system work together to achieve its objectives, allowing regulators to keep the system fit for purpose over time. A novel dataset shows that regulatory stewardship is increasingly integrated into agency practices in New Zealand and has outlasted previous regulatory initiatives. Furthermore, regulatory systems amendment bills (RASBs) have doubled the rate of legislative adaptation, while broadening their scope and significance. Regulatory systems amendment bills provide a scalable model for tackling future regulatory challenges.

Keywords primary and secondary legislation, legislative adaptation, regulatory stewardship, regulatory systems amendment bills

Policy accumulation over recent decades has resulted in the multiplication of legislation in New Zealand (Gill, Shipman and Simpson, 2025), Australia (McLaughlin, Sherouse and Potts, 2019), the United States (McLaughlin et al., 2022) and the EU (Fernández-i-Marín et al., 2024; Adam et al., 2019). Major innovations, shifting societal expectations, pressure from interest groups, the outsourcing of state functions and the deregulation of network industries have created a demand for more regulation across various domains (Hinterleitner, Knill and Steinebach, 2023; Productivity Commission, 2014, pp.31–6). Democratic governments respond to such needs by producing more and increasingly complex legislation and regulations.

While the number of public Acts in New Zealand remains relatively stable at between 1,000 and 1,100, their word count has increased from 11 million in the early 1980s to nearly 24 million in 2024 (Gill, Shipman and Simpson, 2024). During the same period, the number of new Acts and amendments adopted by the New Zealand Parliament per year decreased from a peak of 200 to below 100 per year, while the total annual word count nearly doubled to close to a million words.

The relationship between the number of words in legislation and the ultimate social and economic outcomes is not straightforward. Lengthier legislation may lead to greater clarity and reduced uncertainty, making economic calculations easier and facilitating more investment. For instance, developing the 'outer space and high-altitude activities regulatory system' enabled rocket launches from New Zealand and attracted investment in related industries (Ministry of Business, Innovation and Employment, 2023). However, a higher word count and unintended interactions among increasingly complex regulatory systems

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can also create unnecessary burdens that are costly to comply with. A review by the Ministry for Regulation documented an example where education, building standards and fire safety regulations imposed mutually inconsistent requirements regarding the height of door handles in early childhood education centres, making compliance practically impossible (Ministry for Regulation, 2024a, p.56).

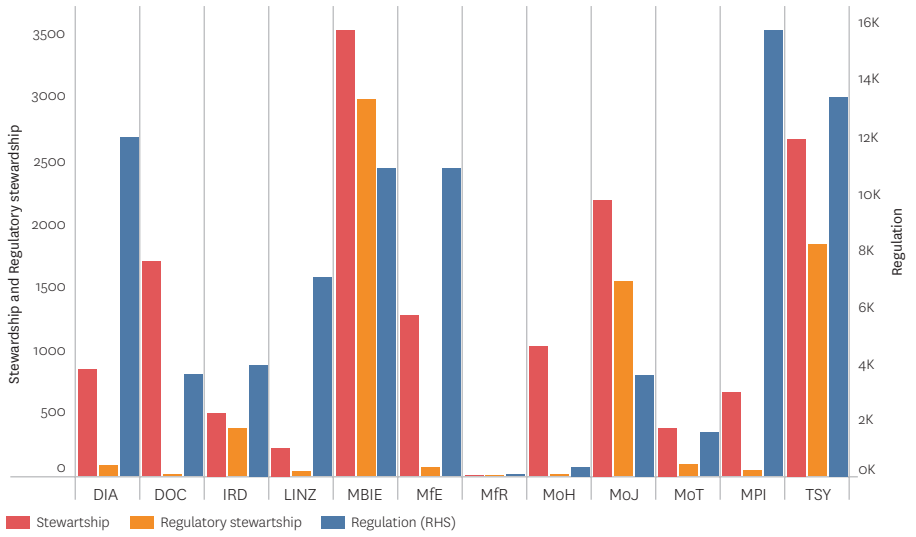
In contrast, the relationship between the number of words and ensuring that legislation remains fit for purpose is straightforward. The more words there are, the greater the capacity required to maintain the legislation. In this regard, legislation is no different from other types of infrastructure: for example, more roads requires increased spending on road maintenance. A paradox of legislative maintenance is that ensuring that millions of words remain fit for purpose amid changing circumstances requires the public service and Parliament to produce even more words in amendments. The key to success lies in their ability to formulate amendments that enhance the enabling aspects of legislation while mitigating the burdensome ones. This challenge is often complicated by the differing views of key stakeholders on what constitutes an enabler or a burden.

Recognising this challenge, the OECD (2020) formulated best practice principles for reviewing the stock of regulation. It argued that ex post reviews of existing regulations should be a permanent part of the regulatory cycle, comprehensive, include an evidence-based assessment of the actual outcomes from regulatory action, and contain recommendations to address any deficiencies. However, the OECD also observes that ex post review tends to be a 'forgotten child' of regulatory policy, as it is costly, and governments may fear that a review will reveal that a regulation has not helped solve the problem it was designed to fix.

New Zealand's regulatory stewardship aligns with the goals of the OECD principles, but has evolved to economise on limited public service resources and parliamentary time. Stewardship is defined as the governance, monitoring and care of regulatory systems to keep them fit for purpose and minimise regulatory failures (Treasury, 2022). The concept was introduced in 2013 when stewardship became a statutory obligation imposed on chief executives of public agencies by the amendment of the State Sector Act 1988. The following year, the Productivity Commission (2014) examined regulatory institutions and practices and identified gaps and opportunities for improvement. The government's response to this inquiry helped launch regulatory system reporting and the Government Regulatory Practice Initiative (G-REG), which provided modest investment in the regulatory capabilities of public servants. In 2016, the Ministry of Business, Innovation and Employment introduced the regulatory systems amendment bill, as recommended by the Productivity Commission. In 2020, the regulatory system stewardship and assurance leadership role was assigned to the secretary to the Treasury, and in 2023 it was transferred to the chief executive of the new Ministry for Regulation.

The evolution of stewardship in public policy has attracted some attention in academic literature. Some authors highlighted the risk of stewardship becoming a 'magic concept', which can be helpful (Pollit and Hupe, 2011), but may also become a rhetorical smokescreen, creating an illusion of activity without delivering meaningful improvements (Gill, 2023; Scott and Merton, 2021; Moon et al., 2017). Others have concentrated more on the innovative aspirations of regulatory stewardship (Ayto 2014), such as treating regulatory systems as assets that must be properly maintained and adapted to provide intended net benefits amid changing circumstances (Radaelli, 2022). However, a recurring complaint is the lack of data on practical operationalisation and evidence of its impacts (Van der Heijden, 2021). This article seeks to address this gap by compiling data on agencies' regulatory stewardship efforts and outputs in the form of regulatory systems amendment bills (RASBs).

Figure 1: Mentions on agency websites



Note: DIA: Department of Internal Affairs; DOC: Department of Conservation; IRD: Inland Revenue; LINZ: Land Information New Zealand; MBIE: Ministry of Business, Innovation and Employment; MfE: Ministry for the Environment; MfR: Ministry for Regulation (established in March 2024); MoH: Ministry of Health; MoJ: Ministry of Justice; MoT: Ministry of Transport; MPI: Ministry for Primary Industries; TSY: The Treasury.
Source: Google search of top-level domains of listed agencies.

Regulatory stewardship of regulatory systems

A distinguishing feature of New Zealand's regulatory stewardship is the focus on a regulatory system. Unlike regulatory impact analysis focused on a single legal instrument, stewardship is more comprehensive, covering 'a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome' (Ministry for Regulation, 2024a). The downside of an encompassing system definition is the lack of clarity and some arbitrariness in delineating the system.

The starting point for defining a regulatory system is identifying a lead agency that administers the most important

Table 1: Regulatory Stewardship Effort

Agency	Systems	Description	Strategy	Assessment	Collaboration	Intent	Annual Report	BIM	Minister
MBIE	17	✔	✔	✔	✔	✔	✔	✔	
IRD	7	✔	✔	✔		✔	✔		
DIA	14	✔	✔	✔		✔	✔	✔	
MPI	6	✔	✔	✔			✔	✔	
MoT	1	✔	✔	✔		✔	✔		
LINZ	4	✔	✔	✔		✔		✔	
MfE	10	✔	✔	✔			✔		
TSY	5	✔					✔	✔	✔
MoJ	52	✔				✔	✔	✔	

Note: The coding was conducted at the agency level by identifying the following eight aspects of stewardship activity:
(1) Description: the lead agency describes the regulatory system on its website (any time in 2013–24)
(2) Strategy: the lead agency outlines a regulatory stewardship strategy for the regulatory system (any time in 2013–24)
(3) Assessment: the lead agency conducted evaluations or assessments of a regulatory system (any time in 2013–24)
(4) Collaboration: documented collaboration across agency silos (such as regulatory system charters; any time in 2013–24)
(5) Statement of intent: regulatory stewardship is mentioned in the statement of intent/expectations (latest)
(6) BIM: Regulatory stewardship was referenced in the briefing for the incoming minister (2023)
(7) Annual reports: the lead agency reports on regulatory stewardship in annual reports (the latest available – 2022/23)
(8) Ministerial speech: the lead agency minister mentioned regulatory stewardship in a speech (any time in 2013–24).
The threshold for coding any aspect as present was low: anything beyond merely listing keywords was coded as evidence of corresponding stewardship practice. Data relies exclusively on information in the public domain and, therefore, omits internal stewardship activities that agencies do not report externally.

acts underpinning the system. In 2015, the minister for regulatory reform asked major regulatory departments to start reporting on their systems and strategies (two more agencies were asked in 2020, and two joined voluntarily). While Figure 1 documents that these agencies discuss regulation and stewardship on their websites, Table 1 systematically summarises their reporting, highlighting available information on their systems and reported stewardship activities.

The threshold for coding any aspect as present was low: anything beyond merely listing keywords was coded as evidence of corresponding stewardship practice. Data relies exclusively on information in the public domain and, therefore, omits internal stewardship activities that agencies do not report externally.

Table 1 indicates that about 116 systems were described in public documents at some point since 2016. This is about 60% of the estimated 200 regulatory systems in New Zealand (Productivity Commission, 2014; Ministry for Regulation, 2024a). However, differing and evolving approaches to system definition complicate this conclusion. For example, the Ministry of Justice has defined 52 regulatory systems and comes closest to understanding each Act as a regulatory system. At the same time, these systems are grouped into seven broader categories, which could be considered overarching systems. This is consistent with the approach of the Ministry of Transport, which has shifted from its earlier focus on road, air, rail and maritime systems to a broader understanding of transport as a single regulatory system. However, reliance on overarching systems can increase complexity and complicate collaboration on regulatory stewardship, especially when the definition is not aligned with established stakeholder understanding.

In addition to the 80 or so undescribed systems, there are gaps and overlaps among existing descriptions, as agencies gradually clarify their roles and system boundaries. The Ministry of Business, Innovation and Employment and the Ministry for Primary Industries have made the most progress in systematically mapping the stakeholders involved in their systems. Some undescribed systems result from a lack of clarity regarding which agency is responsible for the underlying Acts. Following various agency closures, the Department of Internal Affairs inherited responsibilities that do not align with its current policy portfolio, and which are only gradually being reassigned to the current lead agencies. Some agencies, such as the Police, Corrections and NEMA (the National Emergency Management Agency), have not been asked to report on their systems because their focus is primarily on implementation, and the advantages of applying a stewardship lens to single-system agencies are less evident.

Table 1 also indicates that cross-agency collaboration and ministerial interest are the weakest aspects of stewardship practice. Most agencies gradually introduce terms of reference for collaboration, but only the Ministry of Business, Innovation and Employment has introduced formal systems charters. While these charters clarify the system definition and agency responsibilities, the Council of Financial Regulators remains the only example of formally institutionalised collaboration. Since the Public Service Act 2020 assigns stewardship obligations to chief executives, ministers are accountable only indirectly. Ministers tend to tolerate stewardship as long as it doesn't compromise their policy priorities, but they do not promote it in their speeches.

Table 1 provides a snapshot of data that masks the fluctuating commitment to regulatory stewardship over time. Initially, some agencies reported annually, but after the 2017 election the commitment of the government and agencies waned. The more recent reporting has not been regular, except for the mentions in annual reports, which often avoid specific findings or commitments. At the same time, some agencies, such as Inland Revenue, have returned to regulatory stewardship to frame their longer-term policy activities.

Overall, the available evidence demonstrates that regulatory stewardship persists a decade after its introduction. Despite caveats about the consistency of agencies' commitment, collaboration across silos and absence of government support, regulatory stewardship continues to be practised. It has survived four government constellations and outlasted its predecessors, such as the Best Practice Regulation initiative (Treasury, 2017; Mumford, 2011). Moreover, evidence from the most recent crop of corporate documents indicates that stewardship is becoming more firmly embedded. However, the most successful aspect of regulatory stewardship practice is that it generates a sustained stream of ideas for regulatory system adaptations. These ideas are increasingly channelled into a novel

legislative tool that helps to keep regulatory systems fit for purpose.

Regulatory systems amendment bills

RASBs have emerged in response to the 2014 Productivity Commission recommenda-tions. They utilise parliamentary time more efficiently, while maintaining adequate scrutiny over bulk changes to the legislation underpinning regulatory systems. Their efficiency stems from better use of existing expert insights, agencies' expertise in excluding politically contested changes, and Parliament's willingness to employ the omnibus procedure flexibly. The combination of these factors has enabled more agencies to adapt more systems in a shorter time, effectively doubling the rate of legislative adaptation compared to a plausible counterfactual scenario. Moreover, trends indicate an increasing proportion of more significant changes and a heightened focus on eliminating rules. This suggests a strong potential for keeping regulatory systems fit for purpose and responding to the government's burden-reduction objectives.

The Productivity Commission inquiry found that two thirds of agencies had to work with outdated legislation and recommended a new procedure to economise on parliamentary time. The Ministry of Business, Innovation and Employment (2016) delivered the first regulatory systems amendment bill proposal, aiming to: clarify and update statutory provisions to better give effect to the purpose of the Act; address duplication, gaps, errors and inconsistencies within and between different pieces of legislation; keep regulatory systems up to date and relevant; and remove unnecessary compliance and implementation costs. The procedural requirements for regulatory systems amendment bills are a combination of established statutes amendment bills[1] and stand-alone Acts (Table 2). However, they remain formally undefined in the Cabinet Manual or Parliament's standing orders.

Table 2 outlines descriptive characteristics of RASBs that contribute towards their efficiency in quickly introducing numerous changes. Regulatory systems amendment bills are more efficient than statutory amendment bills because they introduce more significant changes in a single omnibus proposal, and individual changes do not require unanimous approval from all members of Parliament. Additionally, any policy agency can prepare regulatory systems amendment bills, and, unlike statutory amendment bills, they do not need tight coordination by the Ministry of Justice. At the same time, they are more efficient than single-subject Acts because they can target a broader range of Acts. Thus, a single slot in the legislative plan can be used to update more laws and regulatory systems. However, unlike stand-alone Acts, RASBs are restricted to changes that can achieve near-unanimity in the Business Committee, which excludes alterations to the fundamental design or politically contentious aspects of a regulatory system. In short, the key to the efficiency of regulatory systems amendment bills lies in Parliament's consent to the flexible use of omnibus bills in implicit exchange for agencies' restraint in proposing structural or politically contested changes.

Table 2: Legal instruments to keep regulatory systems fit for purpose

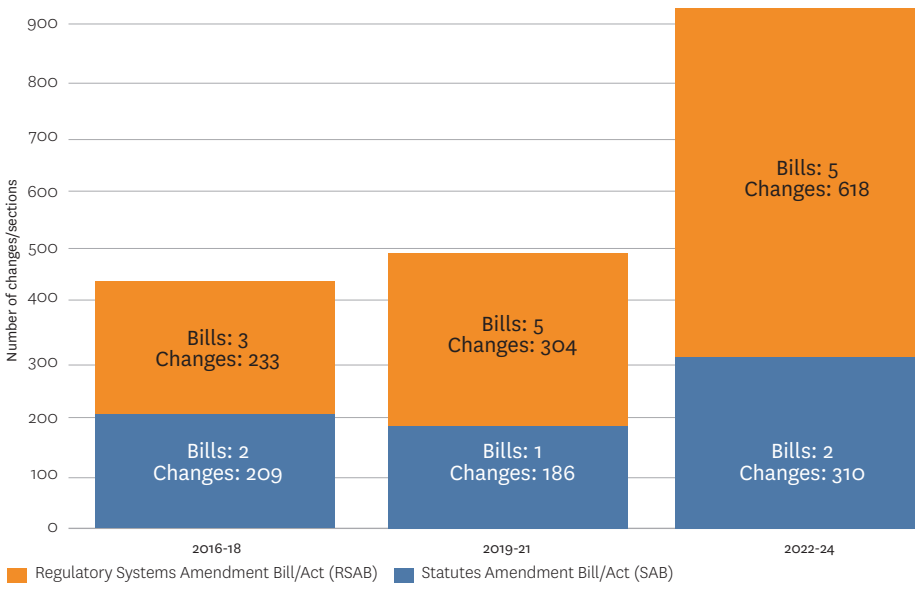
	Statutes Amendment Bills (SABs)	Regulatory Systems Amendment Bills (RSABs)	Standalone Acts and Amendments
Change type	Technical, short, and non-controversial changes	Changes with broad political support that keep regulatory systems fit for purpose	Changes to any aspect of a regulatory system
Legal type	Omnibus bill[1]	Omnibus bill[2]	Single subject area bill[3]
Decision rule	Unanimity (a clause is struck out if any member objects)[4]	Near-unanimity (cross-party in Business Committee)[5]	Majority[6]
Proposing agency	Ministry of Justice prepares proposal for the Parliament[7]	Policy department prepares Cabinet paper	Policy department prepares Cabinet paper
Parliament bandwidth	One every year or two (16 adopted since 1997)	Legislative plan[8] (13 adopted or under consideration since 2016)	Legislative plan[8] (about 80 a year)[9]
Typical scope	About 130 changes to 35 Acts related to any policy domain	About 70 changes to 10 Acts related to the Agency's regulatory systems	As many changes as needed to one or a few Acts in a single policy domain
Average time in parliament[10]	14 months	9 months	Typically 12 to 24 months

Notes:
[1] Standing order 266(1)(f)
[2] Standing order 267(1)(c)
[3] Standing order 264
[4] Standing order 313(2)
[5] Standing order 78
[6] Standing order 140(2)
[7] Cabinet Office circular CO(22)4: Statutes Amendment Bill for 2023
[8] Cabinet Office circular CO(24)6: 2025 Legislation Programme: Requirements for Submitting Bids
[9] Based on a Gill, Shipman and Simpson (2025) data for 2016–23
[10] Statutory amendment bill and regulatory systems amendment bill data based on actual averages for adopted bills since 1997 and 2016 respectively

Parliaments generally insist on single-domain bills to ensure transparency, accountability and focused legislative scrutiny (Wilson, 2023, pp.432–6; Krutz, 2001). Omnibus bills can bundle multiple unrelated provisions into a single proposal, obscuring the intent and impact of specific measures, which makes it difficult for parliamentarians and the public to fully understand and debate their implications. Statutory amendment bills are exempt from the general prohibition as they are explicitly limited to 'technical, short, and non-controversial changes' and are decided unanimously (see Cabinet Office circular CO(22)4).

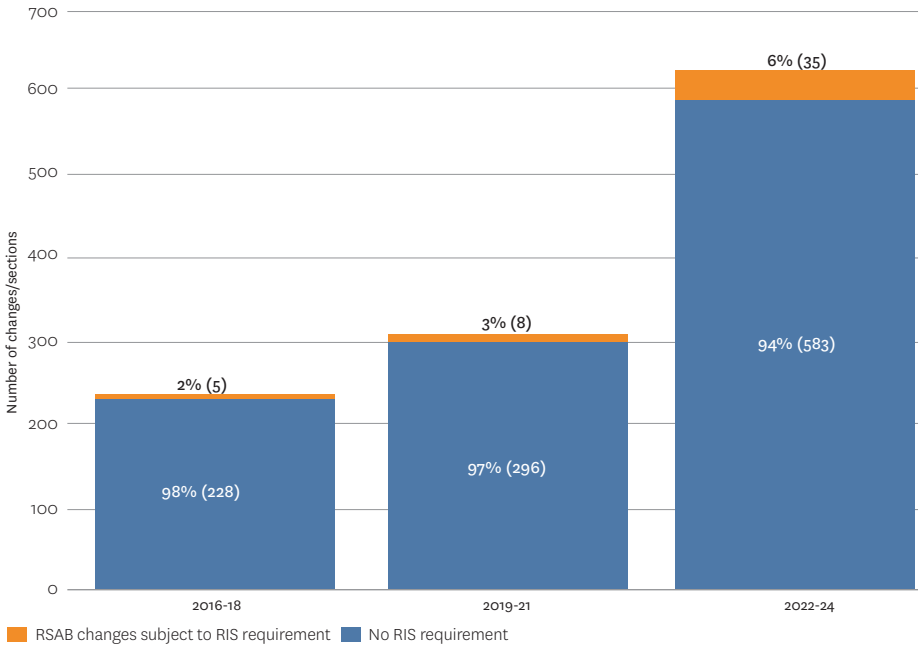
Regulatory systems amendment bills are omnibus bills that are less constrained in scope and decision-making procedure than statutory amendment bills, which raises scrutiny concerns. They are intended to keep systems fit for purpose, which requires more than just changing non-controversial technicalities. The mutual understanding between agencies and

Figure 2: Regulatory systems amendment bill impact on legislative adaptation



Note: Given the specific structure of regulatory systems amendment bills and statutory amendment bills, the number of sections broadly corresponds to the number of changes introduced by each bill.
Source: author's analysis of data on five statutory amendment bills (2016–24) and 13 regulatory systems amendment bills (2017–24) scraped from legislation.govt.nz

Figure 3: Increasing proportion of more significant changes



Note: Estimates based on AI-assisted matching of regulatory impact assessment (RIA) topics to RSAB sections. A one-to-one relationship exists between RIA and RSAB items, except for MPI's RSAB proposal, where a single RIA item translates to changes of 15 sections across nine acts.

parliamentarians is evolving, but currently agencies strive to include measures that: make continuous improvements without major policy or system design changes; do not create significant financial implications; and attract broad political support in Parliament (Ministry of Justice, 2024). In addition, agencies also try to maintain quick adoption timelines by targeting proposals to a specific select committee and keeping their length manageable.

While RASBs can be adopted by a simple majority in the final reading, they must achieve near-unanimity in the Business Committee to be introduced to Parliament. In a typical composition of the New Zealand Parliament, near-unanimity necessitates the support of both major parties in coalition and opposition, with no more than one of the smaller parties expressing disagreement. However, the Business Committee's rules (standing order 78) and established practices strongly favour unanimous decisions (Smith, 2021).

Nevertheless, regulatory systems amendment bills allow for more significant changes to pass under less stringent decision criteria than statutory amendment bills, creating a risk that if they are used excessively, the Business Committee may refuse their introduction to Parliament.

Agencies recognise this risk, as the criticism of omnibus-based business law reform bills by select committees led to their discontinuation in the 2000s (Wilson, 2023, p.434). Agencies also face a 'tragedy of the commons' situation when a controversial proposal from one agency can trigger a parliamentary veto against the flexible use of omnibuses, thereby blocking the regulatory systems amendment bill pathway for all agencies. An informal inter-agency group works to mitigate this risk by sharing the accumulated know-how from successive bills, formulating accepted practices, and enhancing their scrutiny.

Once agreed upon by the Business Committee, any regulatory systems amendment bill omnibus is subject to the standard parliamentary procedure of the first reading, select committee, second reading, house committee, third reading and royal assent. On average, regulatory systems amendment bills attract about 14 submissions in select committees. This attests that stakeholders can identify changes that affect them within the omnibus bill or are alerted by agencies' informal consultations with stakeholders. However, the best evidence that regulatory systems amendment bills maintain the balance between efficiency and legitimacy comes from data on their adoption over time.

Since 2016, nine RASBs have been signed into law (see data appendix).[2] Four more were progressing through the parliamentary process in 2024,[3] and policy agencies were preparing at least another two. Figure 2 shows that regulatory systems amendment bills at least doubled the rate of adaptation in each three-year period compared to a scenario relying only on statutory amendment bills. The overall number of changes (proxied by the number of sections) increased by 113%, and the number of Acts (a reasonable proxy for the number of updated regulatory systems) increased by about 60%. Moreover, the development of this new legislative arrangement has enabled eight agencies to prepare RASBs, thus increasing the

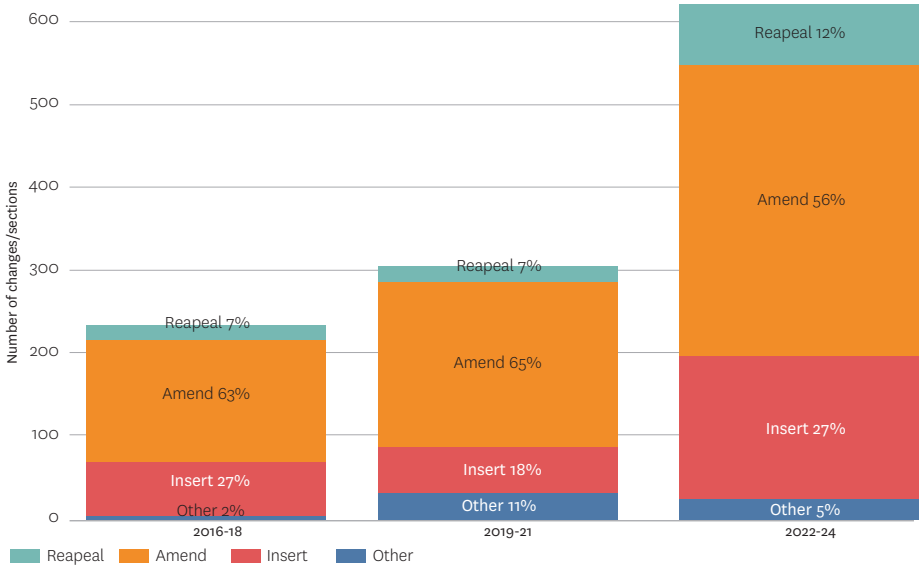
adaptation opportunities previously limited to the Ministry of Justice.[4]

While regulatory systems amendment bills have increased the rate of legislative adaptation, a question arises as to whether they have lived up to their broader mandate to include more significant changes necessary for keeping regulatory systems fit for purpose. Judging the substantive significance of a legislative change is a very knowledge-intensive task which requires a solid grasp of the given regulatory system. Fortunately, agency experts must make this judgement to comply with the regulatory impact assessment requirement. The current New Zealand rules require any government regulatory proposal to be subjected to regulatory impact assessment unless exempted on the grounds of 'no or only minor impacts on businesses, individuals, and not-for-profit entities'. This implies that the number of changes not exempted from the regulatory impact assessment requirement serves as a proxy for a proportion of more significant changes in any individual regulatory systems amendment bill. The requirement separates non-controversial technicalities in statutory amendment bills that are always exempted on minor impact grounds from significant changes that are more likely to succeed in fulfilling the regulatory systems amendment bill mandate to keep legislation fit for purpose.

Figure 3 indicates that the proportion of changes significant enough to trigger the regulatory impact assessment requirement has recently tripled to 6% compared with the initial 2016–18 period. This indicates that regulatory systems amendment bill are no longer limited to technicalities and are starting to deliver on their distinct mandate. Finally, the increasing number of significant changes also suggests that they can deliver even more of them.

A related question is whether the increased volume and significance of changes align with the burden reduction objectives of the current government. While assessing the likely impacts of over 1,800 legal changes is both knowledge- and labour-intensive, quantitative text analysis can provide some estimate of the proportion of regulatory rescissions. Nearly all sections of statutory amendment bills and regulatory systems amendment

Figure 4: Estimating the types of changes



Note: Quantitative text analysis estimates based on the frequency of legal keywords in a section. In case of a draw, the coding prefers the less frequent category.
Source: author's analysis of data on 13 regulatory systems amendment bills (2017–24) scraped from legislation.govt.nz

bills include an operational keyword indicating the type of change being made to the amended Act. Extracting these keywords and their synonyms indicating the intent either to insert, or amend or repeal the legislation generates proportions depicted in Figure 4. While amendments and insertions are the most frequent, the proportion of repeals has nearly doubled to 12% during 2022–24 compared to the previous periods. While this proportion is only an approximate estimate, it shows that regulatory systems amendment bills provide a viable instrument for a government intent on reducing the number of regulatory provisions and the compliance burdens that these may create.

A notable feature of regulatory systems amendment bills is that they also provide ways of reducing regulatory burdens without repealing rules. The common theme of many changes requiring a regulatory impact assessment was standardising regulatory processes and decisions. Since agencies steward multiple systems (see Table 1), they can compare regulatory burdens across their systems and, with feedback from stakeholders, identify the most effective implementation procedures. Regulatory systems amendment bills then enable them to replicate best practices across all their systems. The burden-reducing impact of standardisation gets further multiplied as regulated parties no longer need to devise specific compliance procedures for each system when common procedures apply across multiple systems. In this context, the Ministry for Primary Industries (2022) used its regulatory systems amendment bill to standardise procedures across systems including agriculture, animal welfare and biosecurity. The Department of Internal Affairs (2016) clarified local electoral roles and standardised various filing requirements for local governments. The Ministry of Transport (2019) introduced transport instruments to land and maritime systems after they proved efficient for adaptation to changing international rules in civil aviation.

Overall, the empirical evidence suggests that regulatory systems amendment bills are making a difference. They enable agencies and Parliament to deliver more (and more significant) changes to more regulatory systems, stewarded by more agencies in less time than a plausible alternative scenario based on some combination of statutory amendment bills and stand-alone acts. Importantly, the higher efficiency of regulatory systems amendment bills is not a result of their reduced scrutiny, which makes them sustainable over time as Parliament is less likely to constrain the use of the omnibus procedure. In this context, the RASB process is best understood as a procedural innovation that shifts the legislative possibility frontier

without requiring unsustainable compromises between efficiency and legitimacy.

The fundamental innovation that keeps regulatory systems amendment bills balanced stems from the better use of technical and political knowledge accumulated by experts in stewarding agencies. People involved in everyday operations, interacting with regulated parties and other stakeholders, learn about the system's errors, loopholes, gaps, overlaps and unnecessary burdens. They are aware of various absurdities arising from outdated requirements, unintended consequences, or unexpected interactions among ever more complex systems. Sometimes they can address them on the operational level, or, if rooted in some technicality, try to get them into the next statutory amendment bill. However, before regulatory systems amendment bills, more significant legislative changes had to wait years until a suitable single-subject bill got a slot in the legislative plan (or until a very public and visible regulatory failure pushed the amendment to the top of the legislative plan). Regulatory systems amendment bills provide a timely outlet for these expert insights.

While expert knowledge is necessary for the success of regulatory systems amendment bills, it is not sufficient. Regulatory systems typically combine uncontroversial technical rules with – often hard-fought – political economy compromises. Major stakeholders understand that seemingly innocuous changes may have dramatic distributive consequences, and they stand ready to defend their interests. Agencies preparing regulatory systems amendment bills need to possess good knowledge of the political economy landscape to avoid reigniting political conflicts that could derail the process of preparation and adoption. The prohibition on altering a system's structure and the emphasis on broad political support for regulatory systems amendment bill measures help to prevent attempts to relitigate contested system features.

The degree of political controversy surrounding regulation also influences the broader usefulness of regulatory systems amendment bills. When stakeholders perceive a regulatory system as a zero-sum game, they may attempt to obstruct even mundane changes out of concern that these may advantage the opposing side: farmers may oppose proposals from environmentalists, unions proposals from employers, and 'nimbies' proposals from 'yimbies', or vice versa. The range of proposals that can achieve broad political support is smaller when regulation becomes hostage to zero-sum politics, which diminishes the regulatory systems amendment bill's potential to maintain regulatory systems. Nevertheless, New Zealand politics is not deeply polarised on most regulatory matters, so the set of pragmatic improvements is likely to be substantial, suggesting an opportunity for scaling up regulatory systems amendment bills.

> The cross-party support in Parliament and the growing expectation that regulatory systems amendment bills are integral in chief executives fulfilling their stewardship obligations ...

Regulatory systems amendment bills can also complement the regulatory impact assessment process by evolving into a full-fledged ex post regulatory management tool. While regulatory impact assessment improves the quality of regulatory proposals through ex ante scrutiny, it struggles to influence politically salient proposals, particularly following elections, after major scandals or during crises, when regulatory impact assessment requirements get sidelined. During such times, political imperatives lead to hastily adopted legislation, the implementation of which is likely to create disproportionate complexities and compliance costs. The ex post regulatory systems amendment bill can enable lawmakers – once the political salience decreases – to streamline and integrate the new legislation better into the existing systems to avoid excessive changes and associated compliance costs.

The need to maintain technical and political knowledge connects regulatory systems amendment bills to the practice of regulatory stewardship. Agencies investing in active stewardship are more likely to compile comprehensive ideas for improvements and turn them into proposals that introduce significant changes without overstepping political constraints. In turn, regulatory systems amendment bills can ensure greater return on an agency's stewardship investment and provide clear evidence that its chief executive is delivering on their statutory stewardship obligations.

The innovative aspects of regulatory stewardship build on the strengths of the New Zealand policy environment. The willingness of Parliament to make flexible use of omnibus bills is rooted not only in the veto of the Business Committee, but also in the relatively high trust between agencies and Parliament. Similarly, the extensive expert and political consultations of RASB proposals are enabled by dense informal networks among agencies and stakeholders (substituting for more systematic reviews and consultations expected by the OECD best practices). While the preparation costs of RASBs are considerable, the high trust and informal environment lower them enough to enable large agencies to fund the process from their baselines without dedicated project funding from the government. As a result, the regulatory systems amendment bill process is akin to a low-cost version of a formal ex post regulatory stock management tool (OECD, 2020) that is – at least so far – robust enough to avoid poor quality or biased outputs.

Conclusions and policy implications

Regulatory stewardship and RASBs are genuine policy innovations. They enable regulatory agencies to adapt more regulations and regulatory systems faster than was possible before their introduction. Since 2016, only about 1.5% of words adopted by the New Zealand Parliament have been regulatory systems amendment bills, but they updated about 10% of existing Acts by introducing over 1,800 changes, of which about 50 were significant enough to require a regulatory impact assessment.

Regulatory stewardship and regulatory systems amendment bills have the potential to achieve even more in keeping regulatory systems fit for purpose. The trend of introducing significant changes and the capacity to respond to evolving government regulatory priorities illustrate this potential. The cross-party support in Parliament and the growing expectation that regulatory systems amendment bills are integral in chief executives fulfilling their stewardship obligations as defined in the Public Service Act also underline this.

Stewardship and regulatory systems amendment bills put New Zealand among the regulatory policy innovators in the OECD (2021, p.87). The new Ministry for Regulation should support further development of this approach. RASBs provide an additional tool alongside the Ministry for Regulation's regulatory reviews, and are particularly useful in regulatory systems that do not require structural changes. In such cases, the ministry can ask the agency's chief executive to deliver a burden-reducing regulatory systems amendment bill for a system without initiating a costly review. This would mirror the current approach to fiscal policy, where the government can ask for a specific expenditure reduction without a fiscal baseline review.

The Ministry for Regulation should also think strategically about its support for regulatory stewardship and RASBs. This should entail a careful design of new regulatory initiatives so that they leverage existing achievements and avoid crowding out ongoing stewardship and regulatory systems amendment bill work. While regulatory systems amendment bills can be used to implement legislative changes derived from the Ministry for Regulation's reviews, using them for contested reforms may undermine their cross-party support and efficiency. Finally, as the experimentation matures, formalising RASB requirements in the standing orders and strengthening the cross-agency network overseeing their development should be on the ministry's agenda.

1 The New Zealand convention is to call a legislative proposal a bill until it is adopted by Parliament and signed by the governor-general, at which point it becomes an Act. Therefore, most statutory amendment bills and regulatory systems amendment bills become statutory amendment Acts and regulatory systems amendment Acts when adopted and signed, while some are split into multiple Acts focused on specific policy domains.

2 This is available at tinyurl.com/rsabs.

3 The Regulatory Systems (Social Security) Amendment Bill was discharged when the minister failed to turn up for the first reading, but it is likely to be reintroduced.

4 Bills were completed by the Ministry of Business, Innovation and Employment, the Ministry of Transport, Department of Internal Affairs, Ministry for Primary Industries, Ministry of Social Development and Ministry of Education, while the Department of Conservation, Ministry for the Environment and Ministry of Justice are in the process of preparing their first regulatory systems amendment bill.

Data appendix: tinyurl.com/rsabs

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Marie Doole and Theo Stephens

Drain the Swamp to Save the Swamp

mitigating capture in environmental regulatory systems

Abstract

Regulatory capture undermines the integrity and effectiveness of environmental regulatory systems by allowing the power of vested interests to undermine the public interest in nature (i.e., humanity's collective interest in a healthy and sustainable biosphere). Mitigating the capture of environmental regulatory systems necessitates a deliberate rebalancing of the power of different actors within a democratic context to reduce the typical dominance of vested interests. This rebalancing must address both the narrative framing and direct capture actions of vested interests (Ulucanlar et al., 2023). Cumulatively, the mitigation strategies we propose (promoting evidence-based policy, rigorous analysis, transparency and supporting public interest advocacy) will support that rebalancing.

Keywords regulatory capture, environmental regulatory systems, the public interest, mitigation strategies

Marie Doole is an independent researcher and consultant, specialising in research, strategy and regulation related to the environment. **Theo Stephens** is a retired conservation scientist with interests in freshwater ecology, community restoration and environmental economics.

Regulatory capture is a harmful and pervasive check on the effectiveness of environmental regulatory systems' ability to serve and protect the public interest[1] in a healthy and sustainable environment at all spatial scales. The often-subtle nature of capture makes it challenging to detect and thus address, but address it we must. There is an urgent need to better safeguard the integrity of environmental regulatory systems,[2] to mitigate the legacy of harm arising from undue influence, and to avoid more damage in the future.

The focus of this article is on the impact of regulatory capture in the environmental arena because this is where our expertise lies, but regulatory capture is harmful wherever it occurs. Our analysis and proposals have a wider application across other regulatory systems and domains. Vested interests, in whatever sphere, generally have the resources and motivations to exert influence on public narratives in their favour and to participate in democratic processes. It is understandable and predictable that such vested interests take opportunities to frame issues for their benefit. Their success and the degree of erosion of public interest

depends on actions to moderate that influence – by system actors and the wider community.

Regulatory capture is globally pervasive. Prominent examples of regulatory capture include outcomes associated with the failure of Australia's Civil Aviation Safety Authority (Ilyk, 2008), the Deepwater Horizon oil spill, the global financial crisis of 2007–8 (Baker, 2010) and Australia's banking royal commission (Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, 2019). These outcomes preserved and protected the interests of the regulated entities, sometimes at great public expense. Given the considerable negative impact of capture on regulatory systems, regulatory capture must be addressed and mitigated wherever possible.

The undesirable impacts of capture on protecting the public interest in nature (which we interpret broadly to include all aspects of ecological health and integrity) include harms such as pollution, habitat loss for development purposes, and unsustainable extraction. We argue that addressing capture is a necessary precondition to protect the public interest in nature (i.e., humanity's collective interest in a healthy and sustainable biosphere) – and, in particular, to prevent serious harm to the biophysical world caused by: a) the misalignment of commercial interests and the public interest; and b) the asymmetry of political power resulting from concentrated private capabilities versus a dispersed and uncoordinated public. A failure to address regulatory capture can also result in reputational harm for regulators, undermining of societal and political trust, delegitimisation of regulation (see Yackee, 2022) and worsening severity of effects of capture overall if unaddressed (Saltelli et al., 2022).

The essential impact of capture is a shift in the balance of power away from the regulatory system's public interest goals and towards those of the regulated community. This leads to trade-offs and decisions becoming increasingly favourable to (vested) regulated parties'[3] interests at the expense of the public interest. Examples include more liberal legal frameworks for politically powerful industries (even where adverse impacts of their activities are similar to, or more serious than, those of others subject to regulatory control); a propensity for project approval even where existential risks are evident (e.g., allowing development in areas highly prone to flooding, fire or land instability); and a reluctance to take compliance and enforcement action. These outcomes combine and compound, allowing vested interests to externalise their costs, inevitably diminishing public wellbeing.

The undesirable impacts of capture on protecting the public interest in nature ... include harms such as pollution, habitat loss for development purposes, and unsustainable extraction.

Capture is but one of many factors that can lead to adverse environmental outcomes. The deprioritisation of environmental values in favour of other interests is not necessarily indicative of capture, since it is normal in a democracy to have multiple interests with competing objectives, and policy trade-offs are to be expected. Deep uncertainty, lack of information, poor policy and institutional design, cognitive biases (as well as values and preferences) of key actors, weak participatory mechanisms, capability deficits, and limited technical oversight have impacts resembling capture. They can occur because of capture, but also without capture. As noted by Rex (2018), it is critical to delineate capture from the legitimate exercise of democratic rights.

The purpose of this article

Deliberate strategies to mitigate capture may limit some of its adverse consequences and avert future capture. Addressing capture requires a deliberate rebalancing of power in favour of the public interest in a healthy and sustainable environment. This article supports strategies to effect that rebalancing.

More specifically, the aim of this article is to:

- build on our first publication by considering how capture can be managed and mitigated;
- explain why capture matters and promote closer and more urgent attention in New Zealand;
- identify the settings in which different mitigation approaches are likely to succeed or fail;
- outline a framework for identifying where capture is occurring, with a focus on environmental regulation; and
- suggest mitigation options for inclusion in a regulatory system to safeguard against capture.

Due to underlying power asymmetries, there are few simple policy interventions to address capture. Indeed, disrupting the asymmetries is vexed and unlikely at least in the short term – for example, they continue to constrain the success of liberal democracies in addressing existential threats such as climate change (see Boston and Lempp, 2011).

Revisiting murky waters

Doole, Stephens and Bertram traversed several definitions of capture, concluding that capture can best be considered as:

> the processes and conventions by which vested interests excessively influence a regulatory system, becoming particularly problematic if the public interest is undermined for the benefit of regulated parties. Capture may range from subtle to blatant and have impacts from individual transactions to constitutional settings. It can occur at

all stages of the political and policy cycle and at agency and individual levels. Its impacts are typically cumulative in increasing the likelihood that the public interest outcome(s) of the regulatory system will be compromised. (Doole, Stephens and Bertram, 2024, p.47)

Furthermore, capture is a risk that pervades a regulatory system, not just the operational front line, with the article providing examples of the various forms that capture can take. A simple methodology described a nuanced and evidence-based diagnosis and assessment of capture:

- the *motivation* behind the behaviour is to secure personal or sector benefit, generally at the expense of the public interest;
- *condition*s in the regulatory system allow capture to occur (noting that capture is rarely explicitly unlawful);
- the *consequence* of capture is averse to the public interest.

Meeting these three tests provides greater confidence that capture is occurring, which helps differentiate undue influence from non-capture issues. The purpose of a structured approach to diagnosis is to help avoid both spurious identification of capture[4] and its (we would suggest) more common spurious dismissal.

Why New Zealand must pay closer heed to the risk of capture

Regulatory capture, whether in the environmental domain or more generally, has received little discussion or scholarship in New Zealand and limited formalised response. New Zealand has enjoyed an enviable international reputation for negligible corruption, resulting in complacency and lack of vigilance, thereby enabling the current prevalence of capture. Also, the sensitivity of the topic likely has a chilling effect on open analysis and discussion by regulatory agency leaders.

However, for many reasons, New Zealand's political context – particularly at the time of writing – is objectively vulnerable to capture. The reasons include:

- challenges to implementation of the separation of powers, aggravated by changes in the operation of the public service over past decades (e.g., the attrition of 'free and frank' advice);[5]
- a focus on criminal fraud and corruption (which may be an extreme form of capture or simply criminal behaviour), with less attention to activity that is probably not criminal, but is capture;
- a keen embrace of neoliberalism favouring small government and enhanced corporate power, with a narrow conception of the public interest that ignores elements valued by some (e.g., environmental sustainability, health, wellbeing and social cohesion);
- a small economy and at times an overt political focus on economic outcomes over environmental outcomes, which emboldens vested interests to exert their influence;
- a small, unicameral Parliament that also lacks some of the checks and balances commonplace in other jurisdictions;
- a unitary state with weak sub-national government;
- limited constraints on campaign/political finance.

New Zealand historically ranks low for perception of corruption, as highlighted by the Corruption Perceptions Index administered since 1995 by Transparency International. The Corruption Perceptions Index is not a measure of corruption, but a measure of the perception of corruption in public services, based on a suite of data sets. In 2015, New Zealand scored 91 on the scale of 0–100 (100 is 'very clean'), and in 2023 was 6 points lower at 85, reflecting a downward trend in perception which likely lags actual practice by a year or more.

Recent analyses support the case for attention here:

- Chapple (2024) highlights the declining trust in the public system and failures to progress key recommendations, such as a beneficial ownership register (recently paused) and the development of a national anti-corruption strategy.
- The OECD (2024) refers to New Zealand's vulnerability to undue influence.
- The Helen Clark Foundation's report by Yasbek (2024) highlights a suite of issues related to access money and official information.
- Death and Joy (2024) highlight changes in university systems, suggesting that funding challenges and alignment with vested interests are undermining the ability of our tertiary institutions to act as 'critic and conscience' of society.
- Rashbrooke and Marriott (2023) analyse the role of political funding and the need for law reform.

These examples suggest that existing checks, balances and watchdogs are not sufficiently guarding against capture and corruption in New Zealand.

These examples suggest that existing checks, balances and watchdogs are not sufficiently guarding against capture and corruption in New Zealand. The next section briefly reviews what these are.

Existing watchdogs

Various mitigation measures are 'baked into' our system of government and provide accountability and transparency that would not otherwise occur. Checks and balances of note in the environmental domain are outlined in Table 1, with these existing alongside monitoring and oversight roles exercised by the parliamentary commissioner for the environment, and government ministries and departments (e.g., the oversight role of councils and the Environmental Protection Authority by the Ministry for the Environment). Other agencies and

Table 1: Monitoring roles that may assist in highlighting capture in environmental regulatory systems

Agency	Summary of role
Office of the Controller and Auditor-General (OAG)	The controller and auditor-general is an independent officer of Parliament with a suite of functions under the Public Audit Act 2001. Most of the work (88%) is focused on how public organisations (of which there are about 3,400) operate. The primary function of the OAG is reporting, providing valuable transparency for important environment issues – e.g., councillor involvement in enforcement decision making, and the reorientation of the Department of Conservation.
Office of the Ombudsman	The ombudsman plays a key role in ensuring fairness and transparency in the public service, receiving and investigating complaints relating to any of the nearly 4,000 public entities in the ombudsman's remit. The ombudsman's work focuses particularly on one aspect, official information management, but also involves protection of people making disclosures about serious wrongdoing, and providing advice to the public sector and submissions on laws, policies and good practice guidelines. The ombudsman's workload has grown significantly in recent years, with 2023–24 seeing the highest number of complaints and protected disclosures ever lodged (Office of the Ombudsman, 2024).
Serious Fraud Office (SFO)	The SFO's focus is financial crime, with a specific mandate to address fraud, bribery and corruption. The very high test of 'serious fraud' means much of the subtle impact of capture falls largely outside the SFO's remit, with SFO initiatives having limited if any reach into environmental regulatory systems.

organisations that address matters related to capture include the Public Service Commission,[6] the Electoral Commission, the judiciary and the Human Rights Commission (see further analysis in Chapple, 2024).

Oversight and accountability fall unevenly across all levels of government (e.g., many accountability measures relevant to central government do not apply to local government). Together, these factors create fertile ground for capture risk. Two examples are:

- Local body politicians are subject to a code of conduct under the Local Government Act 2002, the enforcement of which is devolved to the elected representatives in that same jurisdiction. No process for addressing complaints against the code is included in the Act and no sanctions exist for its breach (Local Government Commission, 2021).
- The solicitor-general's prosecution guidelines, which are mandatorily observed by central government agencies, do not formally apply to local government. The guidelines (recently updated) contain advice for public agencies, including the management of conflicts of interest, matters to consider when contemplating prosecution, and matters related to open justice and the media (Solicitor-General, 2025). While many councils attest to observing them, the opaque status of council prosecutions for the purpose of the Criminal Procedure Act 2011 (prosecutions by councils do not meet the definition of a public prosecution) allows them to fall from view.

Yasbek (2024) suggested local government as an important area for future research and analysis of corruption risks. It seems likely that the existing suite of checks and balances is not placing sufficient focus on regulatory capture.

We argue that more proactive and effective capture mitigation is a necessary precondition for protecting the public interest in a healthy and sustainable biosphere, which faces considerable threat from: a) the misalignment of commercial interests and the public interest; and b) the asymmetry of political power resulting from concentrated private capabilities versus a dispersed and uncoordinated public. Taking a proactive approach aligns with recommendations in Chapple (2024) for New Zealand to adopt a 'positive prevention' strategy in respect of corruption, which has significant overlap with capture. To address capture effectively, it is important to weed it out wherever it prospers. To that end, New Zealand must broaden its perception of what capture looks like. We turn now to the Ulucanlar framework, which supports that broadening.

The Ulucanlar framework

Ulucanlar et al. (2023) carried out a systematic review of the literature on the undue influence of 'corporate political activity' – which we interpret as a synonym for capture by vested interests, at least in broad terms.[7] These authors divided strategies to influence the operation of regulatory systems into 'framing strategies' and 'action strategies'. We find considerable parallels between how environmental regulatory systems operate and this dual influence of vested interests. Research demonstrates that corporate political activity can be a successful non-market strategy to ward off requirements related to human rights, health, the environment and labour (Hadani, Doh and Schneider, 2018). Therefore, we apply the framework proposed by Ulucaniar et al. to New Zealand's environmental context.

Framing strategies influence public discourse in a variety of ways, including how policy actors are perceived (e.g., proponents of public health measures are characterised as 'misguided' or bringing about a 'nanny state', while corporate actors are victims, struggling with conducting ordinary business in the context of excessive and costly regulation). In other examples, framing influences perceptions of the significance of the problem (usually it is trivialised compared with other issues framed as being more pressing). Finally, framing strategies also seek to influence what solutions are 'acceptable' (favouring voluntary approaches) or undesirable (statutory interventions – often presented as being 'incoherent', 'unworkable' or otherwise imposing unnecessary burdens).

Action strategies move from the public discourse to focusing on how vested interests influence the policy process. Ulucanlar et al. (2023) identified six primary strategies, most of which overlap in practice. A key strategy is to seek access to decision makers and influence the policy process at all levels to 'shape, delay or stop' policies. Other strategies include:

- manufacturing support for industry-aligned policy through media influence;

- conjuring doubt where it does not really exist (e.g., Oreskes and Conway, 2010); and
- developing parallel interventions to displace the need for regulation.

All action strategies involve a proactive programme of reputation management to facilitate success.

This binary categorisation serves as a useful conceptual guide to recognise and mitigate capture in its multiple forms. Ulucanlar et al. (2023) call for more effort to address the strategies of regulated entities, including noting that these predictable strategies should not be seen as ordinary and legitimate phenomena in a participatory democracy, but rather as a corruption of democracy (p.18). Thus, moderating influence to within appropriate limits is the key challenge. In part, the success of these interventions depends on appropriate structural settings, which we turn to next.

We note that vested interests may also make objectively fair assertions, or otherwise genuinely have an interest in the public interest outcomes intended by the regulatory system (e.g., an aligned interest such as safety). Indeed, vested interests may engage in positive community participation and philanthropy, and may marshal effective voluntary approaches to some issues. Further, unintended issues may arise due to poor policy design rather than being the result of capture. For example, policy staff may have limited understanding of implementation issues and so design a regime that is difficult to implement and imposes unfair costs. Applying critical analysis to claims is an important underlying element of contesting them where claims are found to be valid (e.g., there is an issue with the clarity or reasonableness of the law), then it is in the public interest for regulatory stewardship processes to effectively address these matters.

Table 2: Potential mitigations against 'framing strategies'

Framing strategy and description	Possible mitigations for regulatory systems
Vested interests as the 'good' actor	· transparency obligations (i.e., applied to and implemented by vested interests) to ensure the 'full picture' of responsibility is presented · autonomy in the system is earned through good behaviour – generating trust, rather than assertion of power · where strategic alignment is pursued (e.g., collaboration and partnership), interactions with policy and regulatory functions must be clearly set out and transparent, with explicit calling-out of the regulatory capture risk alongside mechanisms to avoid it · additional scrutiny for monopoly providers to disrupt information asymmetry (see Rex, 2018, p.277)
Policy agencies and civil society as the 'bad actors'	· robust instruments (e.g., regulatory impact statements) to accurately and comprehensively justify interventions · coherent work programmes published that nest interventions in an overall strategy · use of regulatory system experts and associated researchers to communicate the problem definition via public webinars and other accessible events and publications · provide support for participation in processes of civil society, including indigenous communities and public interest advocates · distinguish vested interest from public interest advocates · demonstrate effectiveness and efficiency in achieving the outcomes of the regulatory system via transparency about performance of the regulatory system and its actors
Trivialisation of the problem	· public sharing of policy development documents and associated evidence comprising the justification for action · demonstrate the impacts of the proposed activities with robust and verified science · robust exploration of alternatives and a clear value proposition to the public for the interventions proposed · provide robust compliance data, including the nature of the non-compliances encountered, dominant issues, representation of industries, and resulting environmental harms and penalties imposed
The acceptable or 'good' solution	· economic narratives that demonstrate the socialisation of harm to the community and where the benefits lie · robust reporting obligations and transparency checks, particularly where voluntary initiatives as alternatives to regulation are publicly funded (as many are)
The unacceptable or 'bad' solution	· rigorous policy processes and good regulatory practice, demonstrable through transparent audit and sharing of key documents · ensuring policies are thoroughly and empirically costed and public benefit is demonstrable · leadership bravery to provide publicly available advice that is free and frank and clearly sets out the reasons why action is required

Contesting framing strategies

According to Ulucanlar et al. (2023), there are five framing strategies commonly used by vested interests:

- painting themselves as the 'good actor';
- casting policy agencies and civil society advocates as 'bad actors' and undermining them;
- trivialising the scale of the problem;
- promoting targeted, non-regulatory interventions of a minor scale;
- denouncing broad statutory solutions as unacceptable.

We describe these strategies below and identify some regulatory system responses. Table 2 contains a summary of mitigation measures suitable for particular circumstances.

Good actors

Emphasising their legitimacy, vested interests make claims to influence public policy, including touting their interests as reflecting the public interest, and maintaining that they are socially responsible and open to partnerships. Claims used to quell the impetus for regulatory restrictions include the economic importance of the industry, their legitimate existence as companies and generators of GDP (as opposed to sustainable wellbeing), and their importance nationally or locally. 'Backbone of the country', 'core regional

money earner', 'essential employer/job creator' are well-worn tropes. This strategy can see the industry claiming to be unfairly demonised despite its status as a responsible actor and champion of the public interest. Regulatory systems must contest these narratives, not through ad hominem attacks but through instituting appropriate system 'guard rails' on vested interests' influence and ensuring a robust evidence base for policy and regulatory measures.

Regulatory system actors = bad actors

Painting regulatory system actors and civil society groups as bad actors is a more aggressive version of the previous strategy. Vested interests seek to undermine the credibility or question the motives or competence of regulatory agencies, with accusations of 'revenue gathering', 'nanny state' and 'slippery slopes' towards hidden agendas. Regulatory agencies can contest these criticisms of incompetence and hidden agendas by ensuring operational transparency (publication of strategies and policies, demonstrating staff competence and reporting activity and outcomes). Undermining civil society groups typically involves casting them as 'vested interests' with agendas at odds with the public interest. With such groups, regulators need to be clear about the distinction between the genuine public interest and vested interests and engage with them accordingly.

Trivialisation

Vested interests aim to decouple industry action from perceived harm or shift blame onto other sectors of society in a context that undermines the need for broad governmental intervention. For example, vested interests distract by emphasising the severity of more narrow impacts to trivialise the extent and impact of much broader drivers of harm. Providing counter evidence to highlight the problem and its relative importance is required to combat trivialisation, including the rationale for how regulatory work is prioritised. The trivialisation narrative can be quelled through professional communication of a sound evidence base and the appropriate design of policy and regulatory interventions.

Acceptable solutions

Vested interests aim to paint voluntary, harm reduction or highly targeted interventions as acceptable, thus limiting the impact on their business models. Persistent advocacy in favour of soft or voluntary interventions at the expense of the public interest in a healthy environment must be contested through political bravery and robust evidence of policy effectiveness and the need for intervention.

> … reputation management by regulated parties is harmful where it undermines the integrity of a regulatory system, helping to maintain the efficacy of the other strategies.

Unacceptable solutions

Vested interests undermine the need for existing and future interventions by the state with a suite of criticisms. These include that: the intervention is disproportionate; consultation has been inadequate; international competitiveness will be harmed; and perverse consequences will occur. A good policy process – including ample consultation and engagement, canvassing the experiences of comparable jurisdictions and robust analysis of the underlying proposals – will support regulatory systems' resilience to these capture strategies.

Contesting action strategies

Ulucalnar et al. (2023) identify six action strategies used by vested interests to achieve capture:

- accessing and influencing policy spaces;
- using the law to obstruct policies;
- manufacturing public support for industry positions;
- shaping evidence to manufacture doubt;
- displacing and usurping initiatives;
- managing reputation to corporate/industry advantage.

We describe these strategies and identify some appropriate regulatory system responses. Table 3 contains a summary of mitigations suitable for particular circumstances.

Accessing and influencing policymaking

Vested interests access 'policymakers and policy spaces' through financial resource provision, threats (usually public), revolving door employment opportunities, and direct appointment to governance positions while being active industry participants. Once a new policy is introduced, undermining by vested interests may continue with non-compliance or by constructing administrative barriers to detection (e.g., refusal to share data). Responses to questionable (but lawful) action strategies rely on clear guard rails in which reasonable opportunity for participation is provided in a proportional and fair manner, having regard to the extent to which vested interests, and others, should be able to participate.

Using the law to obstruct

Vested interests may take legal action against state intervention (e.g., questioning the legality of regulatory tools) or otherwise chill regulatory systems by threats of legal action. Regulatory systems as a matter of culture must be prepared to stand by their decisions and rigorously defend their policy frameworks. Obviously, a strong evidence base, rigorous analysis and robust processes make successful defence much easier, which signals the importance of evidence-based policy, cleverly designed to identify and address capture, and well-considered and evidenced regulatory interventions that demonstrably address public interest requirements in accordance with the solicitor-general's prosecution guidelines discussed above.

Manufacturing public support

Vested interests establish alliances, third-party activities and media influence (which may soon include the use of artificial intelligence and deep fakes as the technology evolves) to advance their agendas. Regulatory systems must be able to contest dishonest narratives in the media, as a primary means by which the population receives information. This requires a robust alignment between policy and regulatory teams and their communications and engagement functions.

Shaping evidence

Vested interests produce opposing science or otherwise raise fears and cast doubt regarding the basis of agency policy and actions, and over-emphasise complexity and impracticality. Fear, uncertainty and doubt usually enable activities to proceed at the expense of the public interest, because these typically favour vested interests. Manufacturing doubt by suggesting the 'jury is out' on key underlying reasons for policy interventions has the potential to delay, defer or stop interventions on behalf of the public interest.

Displace and usurp initiatives

Actions to displace and usurp regulations undermine the rationale for public action. Examples include advocating for harm reduction in preference to regulation, normalising ineffective interventions, and seeking to substitute existing or proposed regulations with voluntary codes.

Reputation management

Vested interests put considerable energy into highlighting corporate social responsibility actions, seeking high-status individuals and organisations with which to publicly align. Equally, they defame researchers, advocates and organisations that question their impacts or business models. This reputation management by regulated parties is harmful where it undermines the integrity of a regulatory system, helping to maintain the efficacy of the other strategies. Regulatory systems must ensure that they clearly communicate their activities and that their activities are being monitored and measured in ways that demonstrate the public value

Table 3: Potential mitigations against 'action strategies'

Action strategy and description	Possible mitigations for regulatory systems
Access and influence policymaking	· policy staff must be sufficiently skilled to formulate policy and understand the problem to be solved · ensure consultation is fair and considers all views (e.g., rushed and targeted consultation of industry invites capture and tells it to 'pull up a chair') · operational staff must have the capability, policies and work tools to make sound regulatory decisions, and ensure standards are met and regulated parties are held to account · proactive risk and issue management throughout the policy and operational process (e.g., training courses for staff and proactive monitoring of risks and incidence of capture from leadership to operational front line) · insulation of staff from direct lobbying approaches by elected representatives and others (interface controls) · revolving door management strategies for employees recruited from a regulated community; targeted, special training and oversight to build confidence that these employees are working for the regulator and the public interest by applying their industry subject matter knowledge in a regulatory context; autonomy in regulatory decision making to be earned through good performance and reliable decision making aligned with agency objectives · codes of conduct and conflict-of-interest policies must cover all staff, including governance, executive management staff, policy staff, operational staff, contractors and consultants; these administrative policies must be fully enforced and regularly updated to reflect current circumstances · operational systems to ensure good regulatory decision making that follows established standards (SG guidelines, *The Judge Over Your Shoulder*, agency regulatory strategies and policies) – this can include separation of decision making regarding the nature of compliance and enforcement actions from operational staff who engage with regulated parties; decision-making processes and panels that explicitly include policy, legal and subject matter experts while retaining the independence of the delegated decision maker to make the decision · ensuring effective design of operational compliance regimes using appropriate expertise (e.g., ensure that sufficient powers, unfettered flow of data and appropriate sanctions are in place)
Use the law to obstruct policies	· sufficient legal resourcing to defend against obstructive action · careful construction of regulatory interventions to minimise opportunity for obstruction · rigorous defence of the public interest in accordance with statutory objectives (beware the apologist regulator) · clear signalling by regulators of areas of focus based on areas of known risk and concern · publication of regulatory actions and the basis for them – taking account of relevant privacy and legal constraints
Manufacture public support for corporate/industry positions	· a coherent communications strategy highlighting reasons for policies and areas of focus, the problems they are trying to address and the evidence upon which they are based · having communications and engagement staff with regulatory experience who understand how to deftly frame problems and solutions to the public to minimise opportunity for misinformation · use diverse media to deliver the message, including those most appropriate for the regulated community · provide FAQs or other channels for people to enquire as to the implications of the policy for them and to seek clarification on areas of ambiguity
Shape evidence to manufacture doubt	· rigorous proposals that have already been subject to expert vetting · adequate science and technological expertise within policy agencies to avoid knowledge asymmetry (i.e., regulated communities have more expertise than agencies) · disclosure obligations for research and advocacy funding · tax the regulated parties to fund independent research
Displace and usurp initiatives	· regulatory backstops to 'soft' approaches, such as a trigger for strong intervention after a short period if effectiveness is not demonstrated · policies that make it clear that the 'right regulatory tools will be used at the right time', based on assessment of actual negative impact, or risk of negative impact of non-compliance, history of compliance and attitude of regulated parties to future compliance
Manage reputations to corporate advantage	· regular reporting on the regulatory system, including case outcomes and trends in public values that regulators are tasked with protecting · normalise open and transparent sharing of regulatory data · active communications, particularly to counter false claims

being delivered by the system (e.g., robust regulatory stewardship and open and transparent communication of activities help contest rival claims).

The above strategies often interact and overlap. Normalising less-effective interventions is a key strategy that may co-exist with trivialisation and is bolstered by reputation management and doubt manufacture. Each strand reinforces the others. Holistic approaches to mitigation of capture can consider the interplay of the strategies and address them in a more sophisticated way than if they are considered in isolation.

Many mitigations are not just technical fixes but instead rely on the influence of culture within the regulatory system. Sound leadership, a culture of respect for evidence, clear internal strategy and buy-in by staff, and robust monitoring and reporting are all critical to resisting capture.

Summary of key themes of mitigation approaches

Mitigating regulatory capture implemented via framing and action strategies requires nuanced and purposeful planning and execution. Regulatory system integrity must be upheld and the urge to align with vested interests and weaken rules in the face of pressure must be resisted to avoid the erosion of public support. Many mitigations are not just technical fixes but instead rely on the influence of culture within the regulatory system. Sound leadership, a culture of respect for evidence, clear internal strategy and buy-in by staff, and robust monitoring and reporting are all critical to resisting capture.

Other key themes that arise in Tables 2 and 3 include:

- proactive communication strategies to use the power of the fourth estate to communicate about the regulatory regime (e.g., publishing prosecution results to effect general deterrence and highlight patterns of non-compliance);
- providing guidance and support for what constitutes acceptable participation and how normal activities (engagement) can be undertaken, rather than focusing solely on prohibitions;[8]
- having a culture which recognises the statutory role of regulatory systems and the 'problems' they are fixing; all staff must be able to clearly articulate the purpose and strategy of the system, with leadership reinforcing and safeguarding that purpose;
- ensuring adequate capacity and capability in the regulatory system to inform both policy development and effective delivery;
- ensuring robust policy processes, a focus on quality regulation, evidence-based problem definition and impact assessment;
- having individual conduct controls within regulatory systems, including standards, codes of conduct and disclosure obligations with meaningful consequences/sanctions for breach and organisational systems ensuring appropriate implementation;
- recognising the importance of independent oversight and audit (with a specific mandate to address capture);
- ensuring transparency mechanisms to promote openness and assist in detection of capture;
- having monitoring and performance reporting to demonstrate the specific strategies to address capture and provide evidence of their effectiveness or otherwise;
- supporting the full suite of the regulatory role, including punitive action where needed to effect behaviour change;
- operationalising robust regulatory stewardship (see Treasury, 2022; Ministry for Regulation, 2024b), identifying system inconsistencies and expediting advice to recommend changes to regulatory systems where they are proving ineffective at achieving public interest outcomes.

Further considerations in formulating anti-capture strategies

Mitigation strategies will be more effective where they:

- are cognisant of existing/baseline capture, as this influences the likely success of interventions;
- adopt nuanced approaches to complex matters (e.g., the revolving door); and
- recognise how structural elements like funding arrangements influence capture.

The capture baseline

There is much emphasis in the literature on prevention or avoidance of capture as if regulatory systems responding to the risk do so from a 'clean slate' position (i.e., no extant capture; rather, it is only a potential risk). But regulatory systems exist in varying states of compromise and the need to address capture can arise within a compromised state (e.g., through a change in leadership or a regulatory crisis). The practical consequence of an already-captured regime is that many of the mitigations we propose are unlikely to be seriously contemplated, and even less likely to be effective where it is highly compromised, so approaches need to be cognisant of this.

For many regulatory systems locally and globally, there are strong indications that capture is already present and providing material benefits to its proponents. When capture is effective at the political level (via campaign funding, for example), it can be more challenging for the regulator to avoid being undermined by the controlling minister/board. The duties of the minister or board to uphold

the public interest may get lost where there is determination or incentive to run with the regulated community's narrative, and the regulator is often poorly placed to contest the consequences of this. Thus, operational approaches to managing capture risk will only be partially effective in this context.

Indications of capture include:

- unwillingness by senior leadership to present advice that could be considered contrary to the views of, or politically inconvenient to, those responsible for the regulatory system in question (e.g., the minister);
- a tendency for regulators to consider the perspectives of civil society actors[9] in the same way as those of the regulated industry without appreciating the distinction that arises from the regulator's responsibility to serve the public interest;
- a strong preference for light-handed regulation, partnership and voluntary methods instead of firmer approaches (e.g., punitive enforcement) where the public interest would be better served by the latter;
- internal and external policies that favour vested interests over the public interest (e.g., councils requiring that officers give notice for compliance inspections when non-notice or random inspections are provided for in the law and more likely to detect non-compliance);
- subject-matter experts (including experts in the matter under regulation and experts in the design and application of appropriate outcome-based regulatory systems) struggle to influence the advisory system, leading to proposals that do not reflect the best available information, expertise or likelihood of delivering beneficial outcomes, but rather appeal to vested interests' objectives;
- reluctance to undertake compliance and enforcement action generally, or specifically against politically powerful entities or industries (sometimes detectable via a sharp reduction in enforcement).

It is also important to consider that different political ideologies lend themselves to different solutions. Some solutions may be feasible in the context of a centre-left government but be unsupported by a centre-right government. In developing mitigation strategies, therefore, proponents should consider the political context in which they operate. Strategies more likely to be effective in a left-leaning government may include those that emphasise the public interest role of regulation and the wider, long-term social, environmental and economic impact of externalising costs. Right-leaning governments tend to have a narrow view of what comprises the public interest, greater appetite for short-term gain at greater long-term cost, less concern for non-market values and little regard for sustainability. The challenge for actors in the regulatory system is to maintain a focus on outcomes that are consistent with the public interest in a way that responds to changing political or ideological drivers, without compromising the integrity of legal and regulatory frameworks (while acknowledging that Parliament may change the frameworks as a result of prevailing political or ideological perspectives).

Strategies finding favour with right-leaning governments are likely to be few in number and limited in scope, probably focusing on the near-term competition, productivity and innovation-sapping consequences of externalised costs. Perversely, strategies that give strength to narrow 'NIMBY' interests may also find favour because privileged communities are a core electoral base for right-leaning governments. Strategies that interfere with mutually beneficial financial arrangements between vested interests and political parties are also unlikely to be supported by the mainstream political parties.

Strategies to combat capture must take account of the baseline level of capture in a regulatory system. Contesting extant versus potential capture likely requires different approaches. Addressing extreme levels of capture may require seismic interventions, such as dismantling political party funding systems, wholesale replacement of agencies, or restructuring to remove senior staff likely to perpetuate capture-related risks.

> … to effectively manage the risks posed by those coming through the revolving door, training and support to ensure they apply their knowledge as regulators … rather than in accordance with industry culture and practice is essential.

Understanding the nuance of the revolving door

The issue of revolving doors between industry and regulators is complex, deserving specific attention in approaches to mitigating capture. Some scholars consider the theory of revolving doors enabling capture to be largely unproven (Rex, 2018), and that it can in fact have benefits. While acknowledging that exchanging staff does not automatically result in capture and can disrupt knowledge asymmetries in ways that are valuable for the public interest, it does not follow that it is a spurious concern. Arguably, the particular risk posed by a 'revolving door' is highly contextual and thus encourages a nuanced analysis in each regulatory system.

Limiting the risk posed by revolving doors depends partly on purposeful hiring strategies to ensure diversity, and the tracking of movements between the two 'sides' coupled with triggers or additional checks put in place at strategic and

operational levels. A study in Quebec, Canada found that the problem of cultural capture and 'lobbying from within' because of a weakly managed flow of staff to the regulator was evident, but the impetus to tighten restrictions was very limited (Yates and Cardin-Trudeau, 2021). Transparency without action misses opportunities to protect the public interest.

The value of industry expertise in a regulatory system is undeniable, particularly in novel or emerging regulatory areas or those that otherwise rely on rare and highly specialised knowledge. However, to effectively manage the risks posed by those coming through the revolving door, training and support to ensure they apply their knowledge as regulators (an area of expertise in and of itself) rather than in accordance with industry culture and practice is essential. Autonomy can be earned over time as confidence in conduct grows.

The rising incidence of capture and corruption in New Zealand underscores the need for environmental regulatory systems to energetically mitigate capture and its effects.

The influence of structural settings (e.g., funding, mandate)

The structural and institutional settings in New Zealand's environmental regulatory systems are diverse and where they invite capture, they are difficult for actors within the system to overcome. As highlighted in Doole, Stephens and Bertram (2024), capture can be cumulative, meaning the adverse impact of capture early in a process is compounded through the system. Accordingly, capture mitigation strategies that prioritise efforts to limit upstream influences may be more effective than those focused on more minor drivers later in the process. Examples include the funding model for the regulatory system, the institutional arrangements and the nature of the regulated community.

The funding model for a regulatory system is likely to have significant impacts on its resilience to capture. For example, where a regulatory system is funded through direct levies on industry, there is an ongoing opportunity to undermine the regulatory system by influencing decisions about the resources available to actors in the regulatory system. This opportunity comes after influence on the setting and design of the levy itself. Funding models can be instruments of capture (e.g., limiting funding to politically challenging functions), while adequate funding supports capture mitigation in a variety of ways.

The influence of institutional arrangements on capture requires contextual consideration. The risk of capture may be different where:

- regulators have overlapping roles, such as allocation of public funding for the regulated sector or orchestration of partnerships and other collaborative approaches; regulatory functions may be chilled by the influence of dual and duelling mandates or on the losing side of competing agendas where the regulatory function is seen to undermine other objectives;
- the regulatory role is exercised by a dedicated agency versus one with a mix of roles (for example, a comparative analysis of Ireland and the United States indicated that stand-alone agencies are more susceptible to regulatory capture than functions embedded in larger government departments (Turner, Hughes and Maher, 2016)).
- Whether the regulatory function/s are centralised (e.g., the Environmental Protection Authority) or deployed through a distributed delivery system (e.g., councils under the RMA) will also likely affect the types of capture encountered.

Developing a strategy to mitigate capture necessitates understanding the nature of the regulated community/ies. Regulated parties, as noted by Rex (2018), vary in their levels of coordination and sophistication with respect to capture. This differs considerably across domains, regulatory systems and industries wielding influence, but is a critical factor to consider in what elements of capture a mitigation approach should target and in what priority sequence. For example, in small jurisdictions, a very close relationship with regulated parties can arise and the limited diversity in interactions can mean poor decision-making patterns can be overlooked that might have been noticed in a regime that is more diverse, including comprising a variety of different functions (e.g., policy, funding, regulatory etc.).[10]

Limited guidance exists on the design of regulatory systems and agencies to avert the risk of capture (e.g., the Legislation Design Advisory Council's 2021 guidelines do not mention it). Ensuring that design processes account for capture risks is critical to achieving the public interest purposes of regulation. We suggest that architects of public agencies carefully analyse how institutional settings may invite or limit capture and identify where these settings may need adjustment in response to legislative amendments or agency reorganisations.

The need for disruptive strategies

The mitigations outlined in Tables 2 and 3 will only rebalance rather than disrupt asymmetric power structures. Mitigations to address governance capture are needed to achieve disruption. While seemingly radical, many such mitigations are common in other jurisdictions, but have not been instigated in New Zealand due to the feeble vigilance mentioned earlier. Examples of disruptive mitigations include:

- requiring that political donations from vested interests cannot be accepted

unless matched by donations from registered public interest groups (or such donations are banned altogether);
- elected officials at all levels of government must declare connections to and alignments with industry groups;
- where alignments above exist, the members cannot participate in decision making concerning allocation of rights, responsibilities and resources to these groups;
- significant sanctions and penalties administered independently for false or misleading declarations of the nature discussed above, breaches of codes of conduct (such as in local government) and scurrilous behaviour in policy processes by vested interests;
- giving registered public interest groups special status for advocacy (such as immunity from security requirements or cost decisions);
- generous public funding to challenge regulatory decisions and other participatory processes (e.g., plan development);
- creating a dedicated institution to detect and expose capture and corruption (e.g., a similar institution to the Independent Commission Against Corruption (NSW) or the Independent Broad-based Anti-Corruption Commission (Victoria) in Australia).

Conclusion

Regulatory capture must be better addressed as a precondition for protecting nature from the impacts of development and extraction. The rising incidence of capture and corruption in New Zealand underscores the need for environmental regulatory systems to energetically mitigate capture and its effects. We argue that mitigating capture in environmental regulatory systems necessitates a deliberate rebalancing of power among different actors to reduce the typical dominance of vested interests.

Capture occurs both as direct actions and as more insidious intrusions designed to set agendas and frame or reframe public debate (including perceptions of the severity of issues). The rebalancing must contest both the narrative framing and direct capture actions of vested interests. Strategies to address capture should thus encompass interventions that recognise these characteristics and provide the skills and resources to effectively implement them.

1 Note our discussion in Doole et al. (2024) on what constitutes the 'public interest'. The definition of the public interest from New Zealand Ministry for Regulation (2024a) is: 'Public interest means making decisions or taking actions that benefit society in general, rather than serving the needs of an individual or a group'.

2 For the purposes of this article a regulatory system is defined as 'a set of formal and informal rules, norms and sanctions, given effect through the actions and practices of designated actors, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome' (Ministry for Regulation, 2024a).

3 A regulated party is a person or organisation that must comply with the laws and societal expectations of behaviour. This may be in their personal, social, recreational or work lives. Usually, people want to comply and act in the best interests of others, so regulation needs to give clear guidance on how to do so (Ministry for Regulation, 2024a).

4 See discussion in Rex, 2018 about the tendency for capture to be alleged with scant evidence. We note, however, that the absence of clear evidence in any instance should not be assumed to mean that capture has not occurred, as it is by nature readily concealed. A balanced approach is necessary.

5 We note the findings of the IPANZ survey that cast aspersions on the resilience of the concept of 'free and frank' advice in the current public service.

6 Transparency International's recent report (Chapple, 2024) recommended that the Public Service Commission further strengthen public service integrity leadership in response to declining standards identified in the study.

7 Ulucanlar et al. (2023) applied their own findings to a narrow depiction of regulatory capture. Because we have defined capture as an impact on the regulatory system, their conceptualisation is very much more relevant.

8 A robust regulatory system requires engagement between regulated parties and regulators (including policy agencies). Effective problem definition, communications programmes, policy development and implementation rely on this engagement.

9 This does not suggest that civil society advocates should be above scrutiny; they can, in fact, be agents of capture when they are set up to advocate for outcomes aligned with vested interests under the guise of the public interest.

10 For instance, an analysis of US Forest Service field officers demonstrated patterns of such affinity with local interests in some instances that the individuals no longer acted in the interests of the regulator or the public (see Kaufman, 1960).

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Barry Mosley

Weathertightness, Economic Loss, Equity and Remedies

Abstract

New Zealand's leaky housing crisis, generally associated with the period between 1995 and 2004, has left a legacy of costs which continue to thwart the provision of affordable and healthy housing. Furthermore, those displaced and financially harmed by the deregulation of building standards under the Building Act 1991 face arbitrary time frames in which to seek appropriate remedies. The model of applying a limitation defence in circumstances of systemic failure has contributed to inadequate accountability and weak incentives for performance in the building industry. This article explores the causes of the leaky housing crisis, including the political impetus to reduce building construction costs, and suggests how similar systemic failures can be avoided in the future.

Keywords systemic failure, intertemporal costs, inefficient resource allocation, appropriate legal remedies, accountability and incentivisation

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Genesis of the leaky building crisis in New Zealand

Political elements

The leaky housing crisis in New Zealand is generally associated with a period commencing in the mid- to late 1990s following the implementation of the performance-based Building Code, which replaced the former, prescriptive standards system. Contributing to this crisis were several factors which largely centred around a political ambition to position New Zealand's building system on a more self-regulatory axis. This goal was primarily realised through the Building Act 1991 passed by the fourth National government, which provided for more liberal building standards and building certification by private companies.

The Building Act 1991 introduced the possibility of easily applied 'off the shelf solutions' and for compliance with standards to be achieved by design-led solutions. Central to this initiative was a desire to achieve greater efficiency in regulation. Efficiency in regulation was not considered to be promoted where there was only one or a very limited number of building standards in place for any built feature. The philosophy of the legislative framework was to enable lower-cost solutions to be implemented if these could

meet the relevant performance standard. Later, the Hunn report[1] was to identify the importance of any review of the Building Act ensuring that any gains in compliance process efficiency were not achieved through the compromising of standards or quality. Moreover, the Hunn report was to emphasise the need to ensure that any approved documents for house construction considered the 'whole-of-life' costs, as opposed to merely the initial capital cost.

Arguably, both the legislative framework and new products going into house construction were not adequately supported by research and funding. The practice around product appraisal was found to need considerable improvement. For example, the Hunn report identified the need for more proactive and independent research from the Building Industry Authority on the matter of weathertightness.

Had more robust research and analysis been undertaken, there may not have been the acceptance of cladding systems which allowed the ingress of moisture into timber framing (ConsumerBuild, 2011). Of particular note was the 'Mediterranean' style of cladding for dwelling construction which increased the likelihood of water penetrating the timber structure, and was often associated with recessed windows, flat roofs, minimal eaves, balustrade balconies, and structural elements which penetrated exterior cladding (ConsumerBuild, 2012). Better understanding, research and inspection could have avoided leakiness associated with high-density housing, a lack of drainage from the bottom of walls and poorly constructed flashings around doors and windows. Furthermore, the results associated with the 1995 changes made to the New Zealand standard for timber treatment – which allowed the use of untreated *Pinus radiata* timber in the construction of buildings – may well have been avoided (Molloy, 2009).

Another recognised contributor to the New Zealand leaky building crisis was a decision by government to drop the building apprentice training scheme. The Hunn report identified significant issues around the available training for builders and the need for national registration. Also identified in this analysis was the absence of appropriate tertiary learning opportunities for building inspectors and building certifiers. Many of these matters persist today.

The construction of what is considered to be a cheap housing option may, in fact, not be as cheap as first thought, and bring with it intertemporal costs which disproportion-ately fall on the less wealthy or the unlucky.

Other systemic failings

Other recognised contributory factors to the leaky building crisis included the actions of territorial authorities where building consents issued had deficient documentation, and inspections were not completed prior to the issue of Building Code compliance certificates. These were significant factors, as detail supplied around weathertightness and flashings was often inadequate. Today, much more extensive information is required around cladding and weathertightness. However, the current National-led government's proposal to enable some inspection and approval to be based on photographic evidence in lieu of a physical inspection by a certified building inspector is seen by many to carry inherent risk and has raised concerns.

The Hunn report identified several other systemic elements that warranted consideration or improvement. These included: guidelines and criteria for weathertightness when issuing a code compliance certificate;[2] guidance documents on the Building Act and companion documents; information on land information memorandums (LIMs) detailing the maintenance requirements of building features such as cladding systems; the possibility of an occupation certificate in the absence of a code compliance certificate, certifying the building as satisfactory for human occupation based on compliance with the Building Code.

Estimates of the cost of the leaky building crisis in New Zealand range widely. One estimate put the cost at $11.3 billion for a stock of 42,000 buildings (PricewaterhouseCoopers, 2009; NZ Herald, 2009) other building experts have expanded this estimate to $23 billion for a stock of 89,000 buildings.

Historical motivation of the actors

Historically, reducing costs has been a key incentive for both government and many of the players in the building and construction industry. However, in the absence of appropriate regulation which maintains acceptable baseline standards for house construction, incentives exist for houses to be built in such a way and at a cost which results in suboptimal outcomes. The construction of dwellings with building features that could be considered so cheap as to be misaligned to environmental conditions, or that possess high likelihood of significant failure, raises social equity and ethical issues. The construction of what is considered to be a cheap housing option may, in fact, not be as cheap as first thought, and bring with it intertemporal costs which disproportionately fall on the less wealthy or the unlucky. This is counter to the premise that the purchase of a dwelling comes with an implicit guarantee that the dwelling will remain dry and warm and provide for healthy residential living.

Of interest is who gains and who loses over time from this scenario, and, just as importantly, where real harm can be shown to result, are there personal remedies and are they appropriate? Some of these matters are explored further in the following case study.

A case study – the legacy

Around 2000, a 61-unit townhouse complex was built in Mount Albert, Auckland. In 2024 the complex was found to have systemic defects which had contributed to moisture ingress. Of significant note were the findings of: defective detailing of flashings around parapet walls and structural transitions; inadequately detailed roof and wall junctions; entrance canopy supports, inter-storey joints and cantilevered joists passing through fibre cement cladding, all reliant on textural coating and sealant for weather tightness; and inadequate detailing of joinery. The absence of a building cavity in the townhouses worked to prevent any release of moisture, promoting a damp atmosphere around wooden structures and decay in the timber framework.

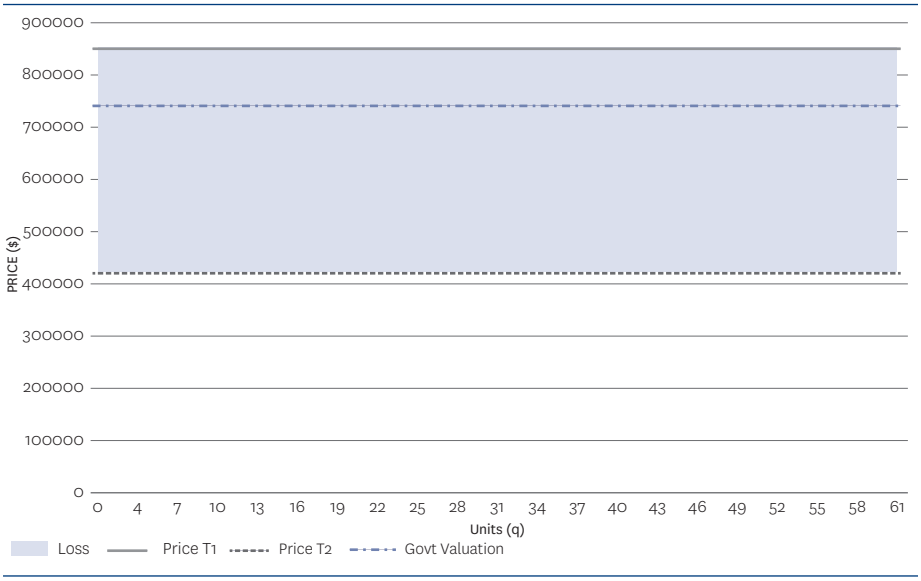
In some cases, the degree of decay resulted in unsafe structural elements that needed to be blocked off from residents. These problems were the result of poor building practice at the time of construction and the failure of the responsible authorities (in this case, private building inspectors acting on behalf of the territorial authority, Auckland City Council) to perform adequate inspections and detect defects such as incorrectly installed flashings.

The market responded to the situation unequivocally, as shown in Figure 1. From a height of $850,000 for a unit, the next sale price was recorded at approximately $420,000. This reflects a total economic loss of approximately $26.2 million across the complex (Coursey, 2004).

There are several ways of viewing the resulting market outcome. One perspective is that there has been a transfer of profit to the building industry larger than what would have occurred had the units been constructed to a higher standard more appropriate for the climatic conditions and at greater cost. More succinctly, the market outcome can be seen to represent a subsidy to industry and a cost to future owners, as quantified by the shaded area in Figure 1. The shaded area in Figure 1 could also be seen to approximate an inefficient allocation of resources.

Another perspective is that the shaded area simply approximates the cost of premature obsolescence allowed to be built into the construction of the units through government policy. In this way it can be seen as an intertemporal cost which falls on subsequent unit owners.

Figure 1: Economic Loss $26.2m



At the price point shown in Figure 1, the economic loss for this one complex approximates to $26.2 million. To restore and recover lost market value by way of reroofing, recladding and reconstruction to new 2024 Building Code standards would cost approximately $12.2–$18.3 million. This pathway will inherently result in more expensive units, as the owners in subsequent sales will be motivated to pass on the cost incurred in restoring value. For the last sale price in the series at $850,000, the owner would be disadvantaged by any sale price below approximately $1.1 million.

This case is also symptomatic of a policy implementation gap where a central government policy initiative to enable greater deregulation of the building industry and introduce lower-cost building solutions has resulted in unanticipated and undesirable economic and social outcomes.

Responsibility and accountability

Responsibility can be considered akin to 'ownership'. If responsibility is accepted, then there is a higher likelihood that actors will seek to achieve appropriate standards, and accountability will follow. The Hunn report indirectly supports this notion. The authors of the Hunn report found the view that 'no-one takes overall responsibility for the project anymore' expressed with reference to many building projects. The report observed:

> The respective roles and responsibilities of architects, main contractors, sub-contractors, specialist sub-trades and project managers and developers become very complicated, hard to define and consequently unclear and hard to understand. There can be over 50 sub-contractors on a large site. The co-ordination and sequencing of cladders, flashers, plumbers for instance is often difficult and not given adequate priority due to time and cost constraints. Such an environment results in poor planning, co-ordination and a lack of individual responsibility and co-operation between the various sub-trades. It has been reported to the Overview Group that more and more often responsibilities and liabilities are being passed 'down the line' to the sub-contractors and sub-trades. Whatever the reality of this, the circumstances result in a collective system failure – and buildings that leak. (Hunn, 2003, p.9)

Given the density of development occurring in major New Zealand cities and the scale of construction, it is possible to have reservations about whether this aspect of the weathertightness problem has been resolved and the lines of responsibility are now both transparent and unambiguous. One way to address this matter may be to prescribe professional responsibilities, something that I am not aware has been attempted in any relevant legislation to date. Barrett and Fudge identify the significance of clarity in implementing

public policy: 'The statute (or other basic policy decisions) contains unambiguous policy directives and structures the implementation process so as to maximise the likelihood that target groups will perform as desired' (Barrett and Fudge, 1981, p.275).

It seems astonishing that the Hunn report was able to identify that, at a detailed technical level, two fundamentals of good, detailed construction design were occasionally being bypassed. The first was a means of getting the water away and a means of drying out any wet elements within buildings. The second was the lack, or misuse, of flashings at junctions and penetrations: it noted that these were being dispensed with or detailed or constructed inadequately. Furthermore, the report noted that the consensus from builders was that the incremental cost of incorporating such features in the original construction was not significant to the bottom-line capital cost and they would have significant whole-of-life cost benefits. Despite this, the legislation in place enabled these two fundamentals to be largely sidestepped without sanction.

The Hunn report recognised the need to consider what further measures might be desirable to improve the accountability of all parties in the building sector (including owners) for the quality of construction (including weathertightness) within the framework of the then performance-based system. It drew on a report from the New South Wales legislature which considers that the building regulation system should rely on three core pillars: namely, responsibility, accountability and liability. The authors of the Hunn report state in their findings:

> Having completed the investigations recorded in the previous sections of this report, we have come to similar conclusions as our Australian colleagues. The single thread that runs through the multi-faceted building sector we have portrayed, is the seeming lack of accountability. The practical effect of the current system when it comes to the crunch of litigation (and as we have said that is where the battle over weathertightness tends to be fought) is to dump most of the responsibility on the building inspector. It should be apparent from what we have said that this is not a true reflection of the building process. While we have found that this part of the process requires significant improvement, the number of parties required to arrive at the end product should be mirrored in the system of 'responsibility, accountability and public liability. (Hunn, 2003, p.41)

The ten-year liability clock is a 'blunt' mechanism which continues to promote repetitive recladding of buildings and system failures at a frequency which diverges significantly from the structural life of most buildings.

This clearly suggests that had there been better accountability in place and effective consequential liabilities, New Zealand may not have experienced the pain around leaky buildings that has occurred.

Liability

Current remedies

Unfortunately, any legal remedy in the Mount Albert case and similar cases is time-constrained by section 91(2) of the Building Act, which states that civil proceedings may not be brought against any person ten years or more after the date of the act or omission on which the proceedings are based. This is what can only be considered an arbitrary determination written into law. Not all building owners could expect that the problems to be experienced would expose themselves in the first ten years from the date of construction. It would be more equitable to require any legal proceeding to be based on a building being constructed during the period associated with the leaky building crisis and the known systemic failures, namely 1995–2004.

Neither of the main political parties (i.e., Labour and National) have any willingness to remedy this situation, largely because of the anticipated cost – which some commentators estimate could be in the tens of billions. Consequently, the owners of most leaky dwellings and buildings are left unaided to undertake and bear the cost of expensive repairs.

Law change

Allowing the limitation defence of the Limitation Act 1950 (i.e., a ten-year time limitation for bringing civil proceedings) to be applied to any systemic failure such as the leaky building crisis does little to disincentivise political and technical failure, or incentivise at the macro level the expected appropriate level of performance – in this case, quality-built dwellings. Systemic failure, where significant cost is passed on to individuals largely through the actions of policymakers and public bodies in conjunction with industry, should be dealt with quite differently in law. In such cases it should not be time-constrained and a more qualitative assessment of the merits of any case should be applied.

What the current situation does, in relation to cladding and weathertightness, is to incentivise cladding systems to achieve a life of ten years. Arguably, the weathertightness of a building should align closer to its structural life, and this should be the basis for exploring where responsibilities and accountability sit, and reasonable tests should apply based on the facts.

There are strong arguments that a special tribunal should be in place with inquisitorial powers to investigate where building failure associated with the likes of

weathertightness or structural failure results, and it should not be subject to an arbitrary time limit of ten years. Such a tribunal should be able to reach findings on responsibility (for government, public bodies, professionals and building owners with duties around maintenance) and liability.

Furthermore, the forum for these matters to be resolved, such as a weathertightness tribunal, should involve transaction costs that do not unreasonably limit participation, and appropriate compensation should be available to those harmed. This is the only way to prompt actors to take responsibility and inject real accountability for those involved in and responsible for shaping New Zealand's building industry.

Scope for improvement

The Hunn report and its findings clarified many of the failures associated with the New Zealand leaky building crisis. However, the information derived from its inquiry suggests that there is a greater need to define responsibilities and achieve a much-improved level of accountability. This could be attempted by way of an initial focus on the nature of the leaky building problem and the critical elements associated with achieving weathertightness. Learning from where the main problems have occurred could be the basis for introducing a matrix or schedule into the appropriate legislation.

The current situation also signals a strong need for further reform of the Building Act if better performance is to be incentivised. The ten-year liability clock is a 'blunt' mechanism which continues to promote repetitive recladding of buildings and system failures at a frequency which diverges significantly from the structural life of most buildings. The ten-year limitation needs to be replaced with mechanisms that allow a tribunal to use inquisitorial powers to derive responsibility and determine liability based on tests of reasonableness. The current absence of a weathertightness tribunal or a legal recourse beyond ten years for these issues is quite inequitable.

The information in the Hunn report, along with the preceding analysis, highlights how inefficiency in the building industry can be directly addressed by ongoing improvements around responsibility, accountability and performance. This is especially important at a time when major cities in New Zealand are looking to high-density housing options involving large capital values. Shortcuts based on low-cost options do not align well with this environment and have historically been shown to produce inefficient outcomes.

Similar systemic failures must not be repeated. Proper accountability is critical. Central government has a key role in ensuring that the incentives are in place to achieve a strongly performing building industry that produces quality and sustainable housing solutions for the New Zealand people.

The incentives still exist for numerous actors to promote low-cost and low-quality outcomes in the construction of housing in New Zealand. A good example of this is the current National-led government's consideration of amending the existing, but recently introduced, Building Standard (May 2023) for insulation in dwellings. This was introduced with an extremely high level of public support by way of submission and in response to the issue of cold damp houses and associated health problems (Gibson, 2024). However, in part as a response to complaints from industry that the current standard imposes unnecessary cost, the government embarked on a plan to revisit the standard.

Housing is where most individuals store their wealth. A weak legislative framework around the industry players and regulators, combined with constrained legal remedies, can only continue to promote inequity and lead to housing which is both more expensive and involves a significant, inequitable transfer of costs. One pathway to improve this situation would be to establish a weathertightness tribunal which was capable of setting aside any arbitrary time limitation to proceedings, particularly where systemic failure has resulted in significant financial loss.

1 On 18 February 2002, the Building Industry Authority appointed a Weathertightness Overview Group to inquire into the weathertightness of buildings in New Zealand in general, and in particular into concerns regarding housing that was leaking, causing decay. The report of the Weathertightness Overview Group to the Building Industry Authority is known as the Hunn report.

2 A code compliance certificate is issued at the completion of construction, certifying that the building has been constructed to the requirements of the Building Code.

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Karen J. Baehler

Federal Workforce Reforms in Trump's Second Term: two scenarios

Abstract

Five early proposals from the second Trump administration add up to a potentially dramatic shift of power within the executive branch of the federal government and between the executive and legislative branches. With help from conservative think tanks and the Republican-led Congress, the 2024 election has opened the door to an increasingly powerful US presidency and an ever-weaker constitutional order.

Keywords public administration, federal workforce, federal bureaucracy, federal civil service, Trump reforms, separation of powers, free and frank advice

This article examines the implications of the second Trump presidency for United States governance, with a focus on the future of the federal public service. What should we expect?

No single federal workforce action by the Trump team has attracted as much attention as the mass deportations of undocumented migrants, the tariffs and tariff threats, the commandeering of the US Treasury's payment system by political operatives, and the pardons granted to violent insurrectionists who stormed the US Capitol on 6 January 2021. Taken together, however, Trump's plans to remake the federal bureaucracy pose a threat to the constitutional balance of power. They bring significant combined potential to diminish not only the non-partisan core of the executive branch, but also, indirectly, the entire legislative branch.

Five policies

Trump and his proxies promised to 'dismantle the deep state' throughout the recent presidential campaign. By 'deep state' they mean an imagined horde of bureaucrats who conspire to abuse their authority and expropriate government resources to pursue their own personal agendas, which include spreading 'woke propaganda' and sabotaging Trump's agenda at every turn (Project 2025, 2023, p.9). The new rhetoric often includes accusations of widespread corruption in the federal workforce, which feed off Trump's vengeful disdain for career federal employees in the Department of Justice and several security agencies who participated in official investigations of

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wrongdoing in his campaigns, businesses and previous conduct in office.

Experts searching for evidence of a deep-state cabal in the federal bureaucracy have found deep knowledge, deep professional norms, deep understanding of what the law requires, and deep suspicion of arbitrary decision making by executives (Skowronek, Dearborn and King, 2021). They have found an administrative state thick with management layers, but decidedly not 'unified or singular' (Rosenbloom, 2022). Most of the time, federal workers are quietly operating programmes authorised and funded by Congress, eager not to run afoul of statutory law. Contrary to the deep-state narrative, it is notoriously difficult to organise cooperative initiatives across so-called departmental silos (Peters, 2018). Rather than being monolithic, this 'structurally and institutionally fragmented' federal government 'operates under a massive and varied legal regime framed by constitutional law, administrative law, and judicial decisions as well as presidential executive orders, memoranda, proclamations, and other directives' (Rosenbloom, 2022). Boring? Exasperating at times? Yes, certainly, but hardly a Leviathan.

Although the spectre of a deep state does not withstand scrutiny, most of the Trump proposals for administrative reform assume a nest of scheming, rogue bureaucrats who must be flushed out.

Reclassification of career civil servants

Trump throughout his recent campaign pledged to reinstate an executive order from the end of his first term that allows flexibility in hiring and firing individuals in a newly defined class of federal jobs. He followed through on this promise immediately after his inauguration.

Originally known as Schedule F and now as Schedule Policy/Career, the new class of positions is exempted from civil service and merit system rules that have long protected non-partisan positions from politicisation. Positions eligible for reclassification are characterised by 'policy-determining, policy-making, or policy-advocating' responsibilities because, according to the stated rationale, presidents should have more control over employees whose work shapes the direction of the president's policy. The order also focuses on jobs involving confidential information, which satisfies Trump's desire to prevent and punish the types of leaks he experienced in his first term.

> One of President Trump's inauguration-day directives requires relevant categories of workers to return to in-person work full-time in their offices – a move expected to cause further resignations, which some welcome with enthusiasm ...

Under the 2020 executive order's specification of policy-relevant roles, experts estimate that up to 50,000 of the nation's two million-plus federal civil service positions could be subject to reclassification. The 2025 version adds positions with 'duties that the Director otherwise indicates may be appropriate for inclusion in Schedule Policy/Career', which opens the door to many more possible reclassifications. At present, 4,000 political appointee positions are controlled by the White House.

Administrative leave

Upon taking office, Trump immediately ordered federal agencies to send home all workers in diversity, equity and inclusion (DEI) roles, with paid leave. A plan for laying off those workers en masse is quickly developing.

Beyond DEI, an inauguration-day memo from Trump's new acting director of the federal personnel office encouraged agency heads to place on paid leave employees whose jobs might be eliminated once agencies decide how to streamline their operations. Two weeks later, Trump placed on administrative leave nearly the entire staff of the US Agency for International Development, including most of those working overseas, and closed the agency's Washington headquarters.

Broader lay-offs

Between the election and inauguration, Trump tasked the so-called Department of Government Efficiency (DOGE), an informal advisory body, with developing a plan to rescind large numbers of regulations and remove large numbers of 'unelected, unappointed civil servants within government agencies' who promulgate those regulations (Musk and Ramaswamy, 2024). Cutting regulations justifies cutting workers, according to this proposal's 'industrial logic', because fewer workers will be needed to enforce fewer regulations. The original DOGE plan included an assertion of broad presidential power over executive personnel to instate mass reductions in force (lay-offs) in allegedly overstaffed agencies (ibid.). Agency heads were instructed on inauguration day to identify recent hires who are within their one-year probationary periods. Those employees represent fat targets for lay-offs because they lack merit system appeal rights.

Another of Trump's inauguration-day executive orders established DOGE as an office within the Executive Office of the President and tasked it with modernising federal IT systems. Since then, DOGE operatives have focused on shutting down websites and seizing control of key databases, including personnel records and the federal government's central payment system.

Making federal employment less attractive

Multiple proposals in the Trump orbit aim to encourage civil servants to resign

voluntarily, which takes pressure off lay-off plans. Among these are reductions in retirement payouts and mandatory increases in employee contributions to retirement and health-care insurance benefits, versions of which are now being considered by Republican members of Congress for inclusion in an upcoming bill (Wagner, 2025a).

One of President Trump's inauguration-day directives requires relevant categories of workers to return to in-person work full-time in their offices – a move expected to cause further resignations, which some welcome with enthusiasm: 'That's a good side effect of those policies', said billionaire Vivek Ramaswamy, one of the original DOGE leaders (quoted in Katz, 2024).

Impoundment of spending

The original DOGE plan (Musk and Ramaswamy, 2024) asserts that any president can decline to spend funds appropriated by Congress if they deem the spending wasteful or if the original authorisation for the relevant programme has expired. This hypothesised power depends on a novel reading of the laws surrounding federal spending.

Can he do it?

Commentators frequently refer to guard rails in the US system designed to prevent excessive concentration or abuse of power in any of the branches. Judicial decisions will largely determine the success of Trump's federal workforce policies. The country's capacity to mount court challenges will depend on the willingness and capacity of state-level attorneys general and civil society organisations to sue the federal government.

Constitutional guard rails

The authors of the Constitution famously created a system of dispersed authority consisting of the separation of powers doctrine, according to which the three branches of government operate independently while also checking and balancing each other; the two-chamber structure of the Congress (House and Senate); and federalism, described by the less well-known concept of a 'compound republic' in which sovereignty is distributed between the national and state governments according to the Constitution's delegation of powers, which includes the Tenth Amendment's reservation of non-delegated powers to the states and the people.

The authors of the Constitution famously created a system of dispersed authority consisting of the separation of powers doctrine, according to which the three branches of government operate independently while also checking and balancing each other ...

The Constitution enumerates the functions of the president in article II and, importantly, requires the president to 'take Care that the Laws be faithfully executed' (article II, section 3). These eight words, known as the 'take care clause', remind us that article I invests 'all legislative powers' with Congress; the president cannot make law. The ability of Congress to check the president relies on constitutional provisions for overriding a presidential veto, constitutional impeachment processes, and legislative oversight functions based on implied rather than enumerated powers under the Constitution. Application of these checks depends heavily on the willingness of Congress to investigate and challenge the president's moves where needed. Sadly, when members of Congress place party loyalty over their constitutional obligations, and when the president's party commands majorities in the House and Senate, as the Republicans do now, we cannot rely on these checks. Things could change, however, if Trump's personal popularity sharply declines and members of his own party begin to distance themselves from him.

The courts represent a second constitutional guard rail. There isn't space here to discuss specific efforts to shore up the legal guard rails associated with each of the five policies, but one deserves mention. The Biden administration last year issued a final rule regarding 'involuntary movement of Federal employees and positions' between categories of employment, i.e., reclassification. Under that rule, such workers retain the legal protections associated with their original positions and can appeal their reclassification to the Merit Systems Protection Board, a three-member panel appointed by the president. Whether the Biden rule can slow or stop the roll-out of Trump's plan depends on how courts apply the Biden rule and decide the underlying issues. The 2025 executive order commences the process of rescinding and replacing the Biden rule, but this will take time. One prominent expert anticipates that should challenges to reclassification reach the Supreme Court, Trump likely would win the argument on constitutional grounds (Kettl, 2024).

The courts will be busy. A large and diverse array of civil society organisations immediately filed legal challenges against Trump's many inauguration-week executive orders, and more are planned. Trump surely will appeal any cases he loses, and some cases will undoubtedly reach the Supreme Court.

While judicial processes are guaranteed to slow the five policies, the direction of final court decisions is difficult to foresee. Trump's willingness to test all the boundaries of presidential power at once – flooding the zone – is unprecedented. Developments in judicial philosophy have been trending towards support for stronger presidential power, which improves Trump's odds of prevailing. As he becomes ever bolder about appointing judges at all levels based on political loyalty rather than competence, his odds further improve.

Civil society guard rails

Unions, good-government-oriented think tanks and advocacy organisations play vital roles in sustaining legal pressure on Trump's federal workforce agenda. The ability of these groups to mount lawsuits depends on funding, which flows from membership fees and donations. Memberships and donations depend, in turn, on public awareness of threats, which depends on the media's willingness to tell the public what they need to hear rather than what they want to hear. The higher education establishment also matters here. The principle of academic freedom enables, and we might say obligates, university faculty to apply standards of evidence and logic to the wide variety of claims made in the public square. Peer-reviewed research informs arguments in the courts.

Trump and his proxies understand these dynamics. Their multi-pronged strategy for weakening civil society guard rails ranges far and wide, from challenging the non-profit tax status of organisations they don't like to daily attacks on legitimate media organisations, to transforming the system of accreditation for universities by firing what Trump referred to during the campaign as 'the radical left accreditors that have allowed our colleges to become dominated by Marxist Maniacs' (quoted in Reich, 2025). Republican members of Congress are also considering large increases in the tax rate on university endowments (Guggenheim, 2025). Regarding unions, there isn't space here to note the many proposals now under discussion in the White House and among Republicans in Congress 'to weaken and, in some cases, perhaps even dismantle the federal-sector unions that have protected government workers for decades' (Jamieson, 2024).

Delays caused by judicial challenges and other forms of civil society resistance may give the public time to catch up to events and change direction by voting Republicans out of their current majorities in the House and Senate in the 2026 mid-term election. All workforce policies discussed in this article are executive actions, however; none require congressional approval.

Accidental guard rails: impediments to implementation

Successfully enacting a new policy through legislation or by executive fiat does not guarantee successful execution. Many of Trump's proposals aim to improve his odds of implementation success by dramatically reducing the number of people required to get the work done (i.e., cutting the federal workforce) and increasing his control over the people who remain. Ironically, before he can achieve those aims, he must navigate the current bureaucracy and comply with existing laws.

In an ideal world, resources would shift away from less effective programmes to more effective programmes; understaffed agencies would add positions; and the whole process would occur in cooperation with Congress.

The return-to-office orders, for example, immediately confront the problem that fully remote workers have no offices to return to: where will they sit? In addition, under existing rules, agencies may have to pay some formerly remote workers transit subsidies now that they are commuting, and agencies may have to raise locality pay for workers required to move to a location with a higher cost of living (Sahadi, 2025).

Implementing job reclassification also poses challenges. In Trump's first term, agencies stalled in providing lists of employees to reclassify. Only the Office of Management and Budget provided a complete list before Trump left office in 2021. Even if agencies do not stall this time, the potential firing and hiring burden will be enormous, and many people with the requisite skills simply may not want to apply for these jobs. Among the current 4,000 political appointee positions, many have gone unfilled for years under many previous presidents, including Trump in his first term. The new category (Schedule F/Policy/Career) could produce even more long-term vacancies.

Two scenarios

What if all five policies described above jump the guard rails? What then should we expect? Among the nearly infinite number of possible scenarios, here are two that highlight key factors.

Best case

This scenario depends on people of goodwill within the government responding constructively to Trump's proposals and proclamations.

If the job reclassification scheme jumps the guard rails, for example, agencies in the best-case scenario would apply it narrowly to a small number of positions with heavy decision-making duties. They would resist pressures to reclassify expert adviser positions. If such resistance is only partially successful, and if filling a lot of reclassified career positions proves difficult, Congress would respond to the vacuum by increasing its own expert workforce. Some state governments would do the same. Data collection and analysis initiatives in other countries and in multinational organisations would step up. In the best-case scenario, these developments would help fill gaps. (Moving expertise to Congress would not reduce the partisanship problem, however.)

Real government efficiencies are surely possible if pursued with the public interest in mind. In the best possible scenario, agencies find constructive ways to streamline operations, and Congress allows them to make major reorganisations. In an ideal world, resources would shift away from less effective programmes to more effective programmes; understaffed agencies would add positions; and the whole process would occur in cooperation with Congress.

Likewise for lay-offs: in the best-case scenario, these would never be applied

across the board, but rather strategically, agency by agency, based on capacity and performance considerations, without interference from the president's vengeance agenda. Many talented people surely will leave federal employment if the Trump workforce agenda prevails. But, as noted, implementation matters. Rational and respectful approaches could encourage some talented people to stay in place.

DOGE's original terms of reference included scrutiny of federal contracts with potential for 'massive cuts among federal contractors … who are overbilling the government' (Shen, 2024). If DOGE in its new, official guise pursues this goal with integrity, much of value could be accomplished. Shining a light on contractors could lead to significant cost savings and improvements in the delivery of public services.

In previous interviews, DOGE leaders pledged to collect suggestions from federal workers about efficiencies that could be introduced in their areas of work – an idea often floated by good-government groups. This initiative could yield constructive suggestions, but only if federal workers trust that their ideas will not be twisted and misused.

One inauguration-week directive includes a few changes to the federal hiring process that good-government groups have hailed as potentially constructive (Wagner, 2025b). These include giving candidates better and more timely information about the status of their application; explaining hiring decisions, 'where appropriate'; and upgrading technology associated with hiring.

Worst case

Observers refer to Trump's worker reclassification scheme as a 'powerful tool for turning the federal government into an extension of [the president's] will' (Beauchamp, 2025). Public administration scholar Don Moynihan calls it 'the most profound change to the civil service system since its creation in 1883' (Moynihan, 2023). Assuming this policy survives judicial challenges, the number of federal positions that could be granted as favours in return for political support could increase ten-fold, and likewise for the number of federal workers vulnerable to ideological purges.

Given the disdain for expertise among Trump's supporters, likely targets of reclassification and removal could include climate scientists, labour economists, NASA engineers, human rights lawyers, equal opportunity analysts, and many others …

Given the disdain for expertise among Trump's supporters, likely targets of reclassification and removal could include climate scientists, labour economists, NASA engineers, human rights lawyers, equal opportunity analysts, and many others whose jobs, by virtue of their potential advisory functions, may be caught in this web. Results of such a purge would significantly impair the collection and distribution of data needed to track everything from student test scores to sea level rise. The capacity of members of Congress, state officials, academics, and outside groups to analyse policy effectiveness and develop better policy proposals would decline.

The reclassify–fire–politicise scenario might sound outlandish but for the fact that the process has begun, and literally with a vengeance (Moynihan, 2024a). Tom Jones, a former Capitol Hill aide to Republican senators, received $100,000 from the Heritage Foundation in 2024 to develop lists of federal employees who may threaten expeditious implementation of Trump's agenda (Mascaro, 2024). The effort began with the DHS (Department of Homeland Security) Watchlist, 'a project to create a list of the subversive, leftist bureaucrats with authority over Federal immigration policy who can be expected to obstruct an America First president's border security agenda' (from the American Accountability Foundation website). The list, including photographs, was made publicly available on dhswatchlist.com.

People on such lists have much to fear, not only from online trolls, but also from MAGA supporters eager to show their loyalty to Donald Trump. These include the 1,500 January 6 insurrectionists pardoned by Trump on inauguration day. Through blatant intimidation, watchlists and similar tactics are likely to discourage some efforts to challenge the Trump agenda, and the implications for morale throughout the federal workforce are painfully obvious (Moynihan, 2024b).

Meanwhile, elsewhere in the worst-case scenario, if the Trump administration can find backdoor ways to circumvent legal and procedural guard rails, it can apply whatever criteria it likes for identifying regulations to rescind, workers to lay off, and even whole departments to cut. Such criteria will likely centre around Trump's personal grievances and political calculations – a strategy designed to keep the plutocrats beholden to Trump.

If successful, the five policies could conceivably lead to a massive shrinkage of the federal workforce, with nearly all remaining workers serving at the whim of the president. During a rally prior to his inauguration, Trump referred to his planned hiring freeze by saying, 'Most of these bureaucrats are being fired; they're gone … It should be all of them' (quoted in Wagner, 2025c). At the signing ceremony for the executive order on reclassification of career officials, Trump offered this comment: 'We're getting rid of all the cancer, the cancer caused by the Biden Administration' (ibid.).

Why the worst-case scenario should cause alarm

Roll-backs of worker benefits, weakening of federal-sector unions, lay-off threats and realities, politicisation of the non-partisan career service, and increasingly coarse rhetoric about 'crooked' federal workers and deep-state conspiracies: the

multi-pronged anti-government fusillade has potential to decimate internal federal worker morale, public trust in institutions across the board, and the ability of agencies to recruit talent.

Trump's worker reclassification scheme is at the centre of the burn-it-down agenda. Many critics have characterised worker reclassification as a move backwards towards the 19th century's 'spoils' approach to federal personnel management. Under that system, 'virtually every job in the civil service was given out by a politician in return for political support' and 'opportunities for state capture by big business interests' were thoroughly exploited (Fukuyama, 2024). Hence the term, which recalls the adage, 'to the victor belong the spoils of war'.

Conservative intellectuals appear to be flirting with a revival of the old patronage system. According to the Project 2025 report:

> The civil service was devised to replace the *amateurism* and *presumed* corruption of the old spoils system, wherein government jobs *rewarded loyal partisans* who might or might not have professional backgrounds. Although the system *appeared to be sufficient* for the nation's first century, *progressive intellectuals and activists demanded* a more professionalised, scientific, and politically neutral Administration. (Project 2025, 2023, p.71, emphasis added)

One of the authors of that report, Paul Dans, who was chief of staff in the Office of Personnel Management in the first Trump administration, is on record as saying: 'We're at the 100-year mark with the notion of a technocratic state of dispassionate experts. The results are in: It's an utter failure' (quoted in Berman, 2023).

The boldness of these statements is remarkable. The spoils system is not just 'presumed' corrupt. It was indeed 'hugely corrupt' – observably and undeniably so – with graft and theft of public funds often going unpunished (Fukuyama, 2024; White, 2017). Rewarding 'loyal partisans' with jobs may sound benign, but it inevitably results in a system that distributes public services in the same way, via trading favours. The 19th-century federal service was also plagued by incompetence, a far more serious problem than 'amateurism' (Fukuyama, 2024). How could this have been 'sufficient' for the time?

Try as they might, the authors of these executive orders cannot disguise the politicisation agenda, which extends well beyond politicising career public servants within the executive branch to unbalancing the relationship between the branches of government as well.

Note the anti-'woke' dog whistles as well: the quotes above not-so-subtly discredit the move to professionalise the federal workforce by branding it a 'technocracy', which conjures Leviathan again, and by attributing it to 'progressive intellectuals and activists', thereby signalling to the conservative audience a connection to the left's agenda. These authors also omit the significant role of business leaders in pushing for civil service reforms in the 1870s and 1880s and the fact that Progressive Era reformers were Republicans, not Democrats.

The ideology behind reclassification threatens the foundations of the professional, non-partisan civil service. All public servants (including political appointees, by the way) take an oath to 'support and defend the Constitution of the United States … [and] bear true faith and allegiance to the same' (5 US Code 3331). They do not pledge an oath to the president, despite misleading characterisations found in the Project 2025 report, which asserts a 'fundamental premise that it is *the President's agenda* that should matter to the departments and agencies that operate under his constitutional authority' (Project 2025, 2023, p.44). This statement reveals a deep misunderstanding of the federal civil service, whose work is framed first and foremost by the statutory laws that govern its agencies. Congress enacts the laws; the president signs them; and employees in the executive branch abide by those laws and implement the programmes authorised and funded by Congress. If things are working as intended, the president ensures that this process proceeds faithfully.

The failure of the Project 2025 authors to even mention statutory law when declaring what 'should matter to the departments and agencies' may help explain an earlier sentence in the same chapter: 'The *President* must set and enforce a plan for the executive branch. Sadly, however, a President today assumes office to find a sprawling federal bureaucracy that all too often is carrying out its own policy plans and preferences' (ibid., p.43).

Perhaps what this hypothetical president finds, but does not recognise, is a federal bureaucracy implementing the laws enacted by Congress. When a president and his team come into office with little to no government experience and with deep personal disdain for government, they may struggle to grasp the concept of civil servants faithfully executing laws regardless of whether those laws accord with any specific president's preferences. Project 2025's twisted arguments logically allow the term 'rogue bureaucrat' to be applied to civil servants who refuse to break laws the president doesn't like. Such disregard for the law is deeply dangerous.

The new executive order on reclassification (section 6(b)) includes

language reminiscent of the earlier quotation from Project 2025:

> Employees in or applicants for Schedule Policy/Career positions are not required to personally or politically support the current President or the policies of the current administration. They are required to faithfully implement *administration policies* to the best of their ability, *consistent with* their constitutional oath and *the vesting of executive authority solely in the President.* Failure to do so is grounds for dismissal. (emphasis added)

Although it is nice to see a Trump executive order acknowledging the constitutional oath, the new language still manages to misrepresent the primary role of federal workers as faithfully implementing 'administration policies' rather than 'the Laws'. In the current environment, when many of the president's executive policies aggressively challenge congressional statutes the president does not like, the substance of this executive order essentially tells career civil servants they may be fired for choosing to follow current law rather than implementing illegal Trump administration policies.

What's more, a separate inauguration-week executive order introduces what some experts call a 'loyalty test' for all career federal workers (Wagner, 2025b). The new federal hiring plan to be developed under that order will prioritise recruitment of individuals who are 'passionate about the ideals of our American republic' (with no further definitions) and ensure that individuals are not hired if they are unwilling to 'faithfully serve the Executive Branch' (rather than the Constitution and the laws of the land).

Try as they might, the authors of these executive orders cannot disguise the politicisation agenda, which extends well beyond politicising career public servants *within* the executive branch to unbalancing the relationship *between* the branches of government as well. Take, for example, the assertion in the original DOGE plan that presidents can decline to spend appropriated funds or nullify regulations by decree. These propositions expand executive power by encroaching on Congress's spending and lawmaking powers. Trump's favourite business elites may cheer these efforts, but the legislative and judicial branches should be wary.

Conclusion

Presidents of both parties have long complained about bureaucratic inefficiencies and the massive amount of time and effort needed to move the ship of state. The federal bureaucracy has many flaws; extensive reforms are needed. I don't know anyone who disagrees with that premise. But the substance of the reforms matter, as does their larger impact on the health of the constitutional republic.

Way back in 1993, President Bill Clinton, a Democrat, put Vice President Al Gore in charge of creating 'a government that works better and costs less'. The Clinton-Gore plan to 'reinvent' the US federal service followed on the heels of major state sector reforms in New Zealand in the 1980s and early 1990s, and comparisons were often made.

Many have criticised those earlier reforms for pursuing short-sighted (and often elusive) efficiencies and undermining government's capacity to pursue public ends, but in retrospect, they were mere baby steps. The Trump administrative agenda doubles down on the short-sighted priorities while also redefining public ends to mean what one individual – the president – prefers. Conservative pundits and intellectuals are aiding and abetting this constitutional distortion through circuitous arguments that equate demoralising and dismantling the federal workforce with democratic accountability: the president is elected, so the argument goes; bureaucrats are not; ergo, the president, who embodies the public will, should have direct control over every federal worker. This is one of the most dangerous arguments in recent memory.

The five policies examined in this article, if enacted, add up to a significant step along the path towards consolidated *and personalised* presidential power. The above scenarios describe how additional increments of presidential power come at the expense of free, frank and non-partisan competence in the executive branch, and at the expense of the lawmaking and spending powers of the legislative branch.

The longer Congress and the courts allow the Trump charade to continue, the more dangerous it becomes. For now, civil society remains the bulwark.

Postscript

This article was submitted for publication on Jan. 26, 2025. Since then, the Trump White House has undertaken more sweeping actions to test the limits of presidential control over federal workers and federal spending. These include firing independent oversight officials at 17 federal agencies; preparing to fire FBI agents and Department of Justice prosecutors who worked on investigations into the Jan. 6, 2021 attack on the U.S. Capitol; threatening layoffs and encouraging "deferred resignations" across the federal workforce; freezing trillions of dollars in federal grants and loans (and then rescinding the freeze); and plugging an easily hacked, external computer server into the central personnel agency's data system to collect information about federal workers and send email blasts across the entire executive branch. By sowing confusion and chaos, these actions are increasing both the probability and magnitude of the worst-case scenario described above. The best-case scenario still offers alternative pathways should political winds begin to shift.

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Daniel J. Fiorino

What Does a Second Trump Term Mean for US Environmental Policy?

Abstract

What can we expect in environmental, energy and climate policy from a second Trump term? Given the slim Republican majorities in the House and Senate, legislative change in core environmental laws is unlikely. The new administration's impacts will be felt in budgets and regulatory actions under existing laws. Where there are statutory mandates, such as the Clean Air and Clean Water Acts, opportunities for deregulation will depend on the care taken to justify actions and the outcome of judicial reviews. The most significant effects of the new administration will occur in climate mitigation, where there is little existing law and the incoming president has expressed hostility to acting.

Keywords environmental policy, climate policy, Trump administration, deregulation

Despite his criminal convictions and role in the assault on the Capitol in 2021, Donald J. Trump has been elected for a second time as president of the United States. This article considers what the second Trump term may mean for environmental, climate and energy policies in the United States. The short answer, as one of my students put it the day after the election, is that 'it is not going to be good'. Yet having strong regulatory laws for most environmental issues and the razor-thin majorities Trump has in Congress suggest a more nuanced answer.

The US enacted a series of strong regulatory laws for dealing with pollution in the period 1970–90: the Clean Air Act of 1970, Clean Water Act of 1972, Endangered Species Act of 1973, Safe Drinking Water Act of 1974, the Resource Conservation and Recovery and Toxic Substances Control Acts of 1976, and the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) in 1980. These laws establish the legal authority of the federal government to regulate many forms of environmental pollution.

What is ironic is that every one of these, except for the Superfund, was signed into law by a Republican president. Indeed, many early leaders on environmental issues came from the Republican as well as the Democratic parties. But the Republican Party now is generally seen as something less than a leader on environmental issues, especially climate change. What was largely a consensual issue in the 1970s has become one of the most fundamental areas of partisan division. Recent polling by the Pew Research Center rates climate change as the issue with the largest partisan gap (Pew Research Center, 2020; Newport, 2023). The second most partisan issue is

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often listed as 'other environmental issues'. Later I consider reasons why environmental protection has become such a contentious issue.

The clearest target of a second Trump presidency is climate change. The historical alliance of the Republican Party with fossil fuel interests has made its elected officials sceptical of public policies that restrict use of fossil fuels. In the US, support for fossil fuels has a regional cast. Every one of the states that relies heavily on fossil fuels economically leans Republican: Texas, West Virginia, Oklahoma, Louisiana, Wyoming and Alaska are examples. The fossil fuel industry is a bedrock source of support for the Republican Party, not only the industry itself but in voters' dependence on jobs and economic vitality.

The Republican Party's emergence as a right-wing populist party strengthens that scepticism (Fiorino, 2022). Right-wing populist parties around the world generally are hostile to scientific and other forms of expertise, and they view any efforts at multilateral cooperation with suspicion (Huber, 2020). Of course, global climate progress depends heavily on scientific expertise and multilateral problem-solving. Right-wing populism also reflects a strong nationalism that in the US is expressed as commitment to developing domestic oil and gas resources. The historical and regional alliance of the Republican Party with fossil fuel interests thus is strengthened by its emergence as a populist political party.

Environmental policy where there is existing legislation

The Republican Party captured not only the presidency in the recent elections, but both chambers of Congress. With legislative majorities in both the House of Representatives and the Senate, what are the odds of legislative change in bedrock laws like the Clean Air and Clean Water Acts? They are slim, at best. The Republican majority in the House is small; only a few defections would cost it a majority. Many Republicans from competitive districts, looking ahead to the congressional elections in 2026, would not want to be seen as gutting long-standing environmental laws. There is a bit more wiggle room in the Senate, but the Senate operates, except for budget bills which may be considered under 'reconciliation' matters, on rules calling for a 60-vote majority. We are unlikely to see legislative pullback where strong regulatory laws currently exist.

> Trump has vowed to remove the US yet again from the Paris Agreement, which would largely remove the US from global efforts to address the causes and many of the consequences of climate change.

The effects of the second Trump term are more likely to be felt in how the major environmental laws are implemented and in the resources available to environmental agencies like the Environmental Protection Agency (EPA). Even that may not be as bad as it might have been. In his first term, Trump called for a cut in the EPA's budget of about one third (Foran, 2019). The eventual cut from Congress, with both houses having Republican majorities, was far smaller. President Trump has tasked two unelected outsiders – Elon Musk and Vivek Ramaswamy – with finding ways to cut significantly federal spending; the outcome of this exercise could squeeze environmental and other agency budgets even further, although Congress will have the final say.

Nonetheless, the Trump presidency will not be good for environmental programmes, especially those affecting the fossil fuel industry. The Supreme Court already has done much of the work of deregulating many sources of water pollution, especially wetlands across the country, in removing federal authority under the Clean Water Act in the decision *Sackett v. EPA*. In this decision, the Supreme Court interpreted the Clean Water Act in a way that removed national authority over wetlands and other water bodies not defined as 'waters of the United States'. With respect to clean air, the goal of protecting the fossil fuel industry (which is the cause of most climate and health-related emissions) will be paramount in this administration, to the extent that the Clean Air Act and the rulings of federal courts allow.

For other issues, we can expect the Trump administration to take positions favouring business interests and limiting the resources available for implementing statutory authority. This is especially likely in decisions made to implement the reauthorised and strengthened Frank R. Lautenberg Chemical Safety for the 21st Century Act, which updated the 1976 Toxic Substances Control Act. The programme for which major change is less likely to occur is Superfund: this establishes authority and funding for cleaning up hazardous waste sites.

Climate mitigation and adaptation

Climate mitigation is another story. Donald Trump has described the science around climate change as 'a hoax' (Cheung, 2020). He has expressed hostility to electric vehicle mandates and incentives and claimed on multiple occasions, without evidence, that wind-generated energy is a cause of cancer. He has stated his contempt for multilateral alliances and action of various kinds, extending even to the North Atlantic Treaty Organization (NATO), which the Republican Party has supported since NATO was created in 1949. His energy policy has consisted largely of the mantra 'drill baby, drill', a clear commitment to expanding domestic fossil fuel supplies. He has vowed to roll back efforts of the Biden administration as reflected in laws like the Inflation Reduction Act, which authorised tax incentives for clean energy and other climate mitigation. Furthermore, Trump has vowed to remove the US yet

again from the Paris Agreement, which would largely remove the US from global efforts to address the causes and many of the consequences of climate change.

On top of all of this, the US lacks a national regulatory law on climate mitigation, so there are no existing legal mandates as with issues like clean air and water, chemicals, endangered species and hazardous waste. This removes the constraints in reversing many policies adopted by President Biden. In the first Trump term, his administration had a high reversal rate in the federal courts, largely because actions were poorly justified (Adler, 2019). From all accounts, Trump appointees are better prepared this time around, and they may not suffer the same levels of judicial rejection.

The Trump administration will not pursue any new mitigation policies. The extent to which his administration will be able to roll back Joe Biden's climate initiatives is an open question. Trump has on many occasions vowed to reverse the provisions of the Inflation Reduction Act. To fundamentally reverse them would require legislation. The catch is that the bulk of the funding goes to districts represented by Republicans (Gaffney, 2024). How much of the Biden climate plan may be reversed through administrative action is a complex issue.

Here is where federalism may prove to be a benefit for environmental goals. The US principle is that, when the federal government acts on issues where it has the legal authority, states must follow federal law, which the US constitution establishes as the 'supreme' law of the land. If the federal government has enacted laws on climate mitigation, and if this action were to be upheld in the courts, state policies would have to conform to federal law, as is currently the case under laws like the Clean Air Act. Because the national government has not enacted regulatory laws for climate mitigation, states are able to adopt policies independently of the federal government. Indeed, states like California, New York, New Jersey and Maryland have adopted progressive laws and goals on climate mitigation. The lack of federal regulatory legislation allows states to be more progressive than the federal government likely would have been.

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Of course, the limitation is that politically conservative states, many with economic dependence on fossil fuels, are not adopting progressive mitigation policies. As a result, the conservative states have much higher per capita climate-related emissions than states that have adopted strong climate goals and policies. Indeed, for many conservative states, the goal now appears to be to increase emissions by promoting fossil fuels and delaying a clean energy transition. Just as liberal states may be competing to deliver progressive climate policies, so conservative ones may be in a competition to adopt the most regressive policies. Still, federalism may have the effect of promoting more effective mitigation in many states.

Climate adaptation is more complicated than mitigation, both practically and politically. The burdens of adaptation are likely to fall more on state and local governments. It is hard to ignore climate change when there is water in the streets, whole suburbs are on fire, or sea levels are rising. Indeed, the politics of adaptation differ from the politics of mitigation. It is more difficult to depict the problem as scientific hoax or the result of somebody else's actions. What is likely is that the federal government will be less involved than it would have been in adapting to such impacts as extreme weather, wildfires, sea level rise and droughts, all of which are likely with a changing climate. There may be less funding available for resilience, and certainly there will be less support for state and local planning for climate impacts. But it will be difficult to ignore the problem entirely.

On mitigation, the Trump administration will recognise the role of federalism and is likely to go after states where there are grounds for questioning progressive climate policies. One area where this could occur is in California's authority under the Clean Air Act to issue more stringent standards than the federal government. In a predecessor law leading to the Clean Air Act of 1970, the California congressional delegation worried that its aggressive air quality goals would be compromised by less stringent federal standards. They were successful in getting a provision included in the law that created authority for the California waiver, which enabled the state to seek a waiver from the federal government to adopt more stringent standards than national ones. In 1977 amendments to the Clean Air Act, Congress granted authority to other states to adopt the California standards if they chose to do so. Fourteen states and the District of Columbia now use the California standards, amounting to some 40% of the new passenger vehicle market. The Trump administration challenged this authority in the courts in its first iteration, and it is likely to do so again (Davenport, 2019).

Environmental issues and partisanship

Why has the relative political consensus that led to transformative laws in the 1970s evaporated? Why do environmental issues, most of all climate change, reveal large partisan gaps?

The short answer is that environmental issues have changed, and the political system has changed. To some degree, environmental advocates are victims of their own success. Evidence of air and water pollution is not as visible as it was in the 1970s. The more we learn about air

pollution, to take one example, the more reason to be concerned, especially given the health impacts in vulnerable communities. But this is evidence based on scientific analysis, and a large part of the US population is sceptical of scientific expertise, which is part of the explanation for the large partisan gap in attitudes towards environmental issues. The policy interventions also differ from those of the 1970s. Policies for addressing climate change call for basic changes in the way Americans move around, generate electricity, manufacture goods, grow food, and in other economic and social activities.

The political system has also changed (Karol, 2019). When the Clean Air Act was enacted in 1970 and signed by President Richard Nixon, trust in government registered in the range of 60%; more recently, it has stood near 20% (Pew Research Center, 2023). The 'environmental decade' of the 1970s unfolded in the context of high trust in government and scientific expertise, but that is gone. On top of this, the Republican Party, with Trump as cheerleader, has engaged in climate denial and encouraged doubts about the science on the environment and other issues (Brule, 2020; Dunlap, McCright and Yarrosh, 2016). In the current political environment, science-based policymaking is, at least for the moment, on thin ice. This loss of confidence in expertise may be the most lasting and concerning legacy of a second Trump administration.

Postscript on Environmental Protection and the Trump Administration

Only seventeen days after his inauguration, Donald Trump is fulfilling expectations about the damage he could do to environmental protection (Millman and Noor 2025). Not content to encourage career officials at federal agencies to resign with a promise of being paid through the fiscal year, the administration is considering firing more than a thousand probationary employees at EPA alone (those in their first year of federal service). A particular target is eliminating anything that shows concern for racial injustice or gender inequity. The administration has abolished EPA's Office of Environmental Justice and External Civil Rights. EPA has had an Office of Environmental Justice since 1992, despite changes in parties of presidents since then. The administration also announced it would weaken the Environment and Natural Resources Division of the Department of Justice, which defends federal actions in court (Joselow and Ajasa 2025).

This poses clear threats to the quality of environmental programs and enforcement, but it also undermines the administration's own efforts. It takes work to deregulate, and sloppy analysis is not likely to fare well in the courts. Environmental justice will not go away. And cutting staff is not a sound foundation for deregulation. Beyond this, businesses depend on capable agencies for permitting decisions, chemical approvals, and more. A flailing EPA could hurt US businesses more than deregulation may help. And firing experienced lawyers is not the way to defend against lawsuits that are already being filed. The administration is undermining its own goals as well as causing damage that could take decades to repair.

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Reynold J.S. Macpherson

Minoritarian Co-governance in Rotorua District Thwarted by Pluralistic Majoritarianism, 2013–23

Abstract

Based on qualitative research, including participant observation, this article examines Rotorua Lakes Council's 2013–23 pursuit of 50/50 co-governance with Te Arawa iwi. Despite some Treaty-based support, public opinion leaned towards equal suffrage. Te Tatau o Te Arawa nominees were given places on council subcommittees with voting rights. Concerns over authoritarianism, financial mismanagement, secrecy and homelessness then spurred opposition to 50/50 co-governance. A 2021 local bill for full co-governance was denied over potential Bill of Rights conflicts. The Local Government Commission's determination of proportional representation for Rotorua, using general, Māori and rural wards, highlights New Zealand's struggle to balance majority rule and minority protections. Pluralistic majoritarianism is suggested as a pathway to more inclusive governance in local and central governance.

Keywords minoritarianism, majoritarianism, co-governance, Rotorua Lakes Council, Te Arawa, Ngāti Whakaue, Rotorua District Residents and Ratepayers

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The research challenge which this article examines was to explain policymaking and implementation regarding local governance. In Hodgkinson's (1983) taxonomy of the policy cycle, policymaking in public administration comprises the philosophical processes of determining purposes and their rightness, the strategic processes for evaluating circumstances and determining options and their consequences, and the political processes for articulating policy and mobilising support and resources. Policy implementation includes the cultural processes of reconstructing organisational norms and services, the management processes for planning and achieving intended change, and the evaluation processes for measuring outcomes against objectives, prior to reviewing outcomes and the primary purposes before beginning the next policy cycle.

Between 2013 and 2023, the author employed various qualitative research methods, including historical analysis, documentary analysis and observational

techniques, to explore the intricacies of council policymaking through a case study (Creswell and Poth, 2018) of Rotorua Lakes Council's 2013–23 pursuit of co-governance with Te Arawa iwi. Historical analysis entailed an examination of previous events, agreements, policies and institutional developments that influenced the evolution and culture of local governance (Yin, 2016). Documentary analysis involved a systematic review of pertinent documents, such as meeting minutes, journalistic reports, strategic assessments and policy papers (Bowen, 2009).

Additionally, observational techniques provided an opportunity for the researcher to gain contextual richness by closely monitoring policymaking processes in authentic settings (Yin, 2017). As a participant observer, the author actively contributed to the phenomena under investigation, thereby capturing nuanced insights into the organisational dynamics and decision-making mechanisms at play (Spradley, 2016).

Serving as a founding member and leader of both the Rotorua Pro-Democracy Society and the Rotorua District Residents and Ratepayers Association (RDRR), the author was strategically positioned to clarify insider perspectives. His tenure as an elected member of the Rotorua Lakes Council from 2019 to 2022 deepened his comprehension of the political landscape and leadership dynamics (DeWalt and DeWalt, 2011). This dual role as both researcher and practitioner enabled a more immersive and reflective analysis of the changing context.

While participant observation is instrumental in providing valuable insider insights, it may also introduce subjectivity due to the researcher's active engagement in the studied phenomena (DeWalt and DeWalt, 2011). To counteract potential biases associated with this role, the author employed triangulation (Denzin, 2012; Patton, 2015), reflexivity (Finlay, 2002; Berger, 2015) and peer debriefing (Lincoln and Guba, 1985). These approaches and techniques enhance the rigour and validity of the findings by incorporating multiple perspectives and acknowledging and controlling for the researcher's biases, ultimately leading to a more balanced and objective analysis of the data.

The practical context: a contested surge of minoritarianism in Rotorua

Minoritarianism is defined as a political ideology or system in which political power and decision making are disproportionately held by a minority group, as opposed to being representative of the majority (Dahl, 1989; Lijphart, 1999).

According to the 2018 New Zealand census, approximately 42% of the population in the Rotorua district identified as Māori, though this figure includes those below voting age (Statistics New Zealand, 2018a). Regarding the Māori electoral roll, about 28% of eligible voters in the Rotorua electorate chose to be on the Māori roll for the October 2022 local elections, with a decrease to around 22% for the 2023 general election (Statistics New Zealand, 2018b, 2023).

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Several significant events provide the context for this analysis. First, in the Environment Court's ruling in *Ngāti Pikiao Environmental Society Incorporated v Bay of Plenty Regional Council* (2013), Justice J.A. Smith ruled that Rotorua District Council officials had failed to notify and consult stakeholders who would likely be affected by a proposed waste water reticulation and treatment system. He cited the Local Government Act 2002, which defines notification and consultation as mandatory for effective decision making (Local Government Commission, 2022). Council officials were reprimanded for this and other instances of inappropriate policymaking.

However, a council report (Rotorua Lakes Council, 2014b) subsequently claimed that the court had instructed the council to enhance iwi consultation and involvement. This diffused and shifted accountability for the failings of officials to the council more broadly, elevated the court's decision from hapū (tribal) to iwi (confederation) level, and was claimed by senior officials and the iwi to make iwi participation in council decision making compulsory. Justice Smith's ruling did not prescribe any specific policymaking model or co-governance arrangements.

In a second significant event, in early 2014, the newly elected mayor and her majority on council quickly adopted Rotorua Lakes Council as the operational name of the council and renamed Rotorua's civic centre after a Ngāti Whakaue celebrity. They translated their electoral mandate into a vision statement, 'Rotorua 2030: tatau tatau, we together' (Rotorua Lakes Council, 2014a), reflecting Te Arawa leaders' world view (often generalised as te ao Māori). However, the third of six commitments for achieving this vision, the creation of 'a new partnership model with Te Arawa', uniquely lacked an electoral mandate.

Third, the council presented 2014 as a year of 'policy development' (ibid.). In January the mayor established the Te Arawa partnership and people (youth, families, and older persons) portfolio, led by a political ally, to coordinate governance policy development with the Te Arawa Standing Committee, who only consulted with Te Arawa stakeholders (hapū, land trusts and other entities). The processes muddled policymaking and policy implementation.

In February 2014, a cultural engagement audit – commissioned by the incoming council in 2013 – was redirected by the mayor to draft options for a Te Arawa partnership model. The subsequent and confidential Hovell report (Hovell, 2014) proposed a Māori Advisory Board

independent of the council that was to be representative of Te Arawa entities. The Te Arawa Standing Committee was then deemed 'no longer fit for purpose', allegedly due to the council's statutory roles under the Resource Management Act 1991 and the Local Government Act 2002. The Māori Advisory Board was renamed Te Tatau o Te Arawa and given roles that raised it from having policy advisory to policymaking functions. The Hovell report did not provide details on how Treaty of Waitangi 'mandates' were to be reconciled with the legal rights of citizens to democratic decision making. It also lacked explanations of how the examples cited illustrated principles of good governance or justified co-governance as an extension of Māori consultation as required by the Resource Management and Local Government acts.

The leaking of the Hovell report ignited polarised responses in the Rotorua community. Supporters cited the mayor's previous personal commitment to a co-governance partnership between the council and Te Arawa, referenced historical contributions by Ngāti Whakaue and Te Arawa and evoked Māori sovereignty under the Treaty as justifications. Critics, however, rejected the idea of granting political power to nominees not elected by all voters in the district, challenged the mayor's electoral mandate to introduce aspects of co-governance with disproportionate decision-making power for a minority, and argued that the process did not respect the public's democratic rights, particularly the requirements for notification and authentic consultation before the council made decisions.

The sponsors of the Hovell report on council and the Te Arawa Standing Committee convened a Te Arawa hui-a-iwi at Te Papaiouru Marae, Ōhinemutu, on 25 May 2014. It was resolved that standing committee members, led by Arapeta Tahana, would consult Te Arawa marae to refine the model and seek its endorsement before presenting it to Rotorua Lakes Council later that year. Between mid-September and early December 2014 they consulted about 300 people across nine Te Arawa marae, with logistical support from the Te Arawa partnership unit of council. No public consultations were offered by the council during this period; nor were there any press releases from Te Arawa.

> The [Rotorua Pro-Democracy] society … questioned the autocratic approach involved, pointing out that dissent and debate are essential to a healthy democracy, as is holding the mayor's 'power bloc' of elected loyalists and senior officials publicly accountable.

Elected council members were briefed confidentially by the Te Arawa Standing Committee on 18 December 2014, just before the Tahana report (Tahana, 2014) was presented for discussion at the council meeting, with immediate endorsement sought. A council official explained that the 'agreed themes for an improved model' (Gaston, 2014, p.3) had been negotiated by the mayor, three Te Arawa-affiliated councillors and the Te Arawa Standing Committee. The 'agreed themes' were about implementing the Te Arawa partnership model using a partial co-governance model, with eight goals: clarifying purposes and functions; strengthening the partnership with the council; affirming iwi/hapū rangatiratanga (chieftainship); connecting with stakeholders; advocating for Te Arawa interests; enabling Te Arawa to 'own the agenda and pathway'; and allocating budgets to support those engaged in the project (ibid., p.24).

Elected members of council voted in favour of the model, pending the outcomes of a special consultative procedure. This violated the consultation and authorisation process required by the Local Government Commission (2022) and raised concerns about predetermination and the absence of public notification and stakeholder consultations. Residents and ratepayers initially lacked the information and organisation they needed to question the partnership model and its implementation by the Te Arawa partnership plan. The Rotorua Pro-Democracy Society was established in January 2015 and used three methods to question governance policymaking.

First, a leading New Zealand expert in administrative law, Andrew Butler, was consulted and advised that the Te Arawa partnership model was illegal because it 'constrains the RDC's powers to appoint committees in a manner inconsistent with the LGA's provisions', and enables the council to 'abdicate its discretionary power' and to take 'irrelevant considerations into account' when appointing committees. Moreover, he said, the Treaty of Waitangi is 'not expressly incorporated in either the LGA or the RMA, … provisions relate to consultation and not partnership', and provisions 'refer to contributions to decision-making and not to decision-making power'. While the Te Arawa partnership model 'focuses on one iwi' and 'the need to improve iwi consultation', it does 'not give the RDC the authority to operate beyond its mandate as defined in the LGA and RMA'. Finally, he argued, 'the concept of democratic local governance is integral to the LGA's expressed purposes', which 'encompasses principles of accountability, transparency, proportionate representation of all communities, including future interests' (Butler, 2015).

Second, Butler's advice was set aside by the majority on council and officials in favour of the advice that they had received from a local legal firm and the 'agreed themes'. Since the society lacked the financial capacity to mount a judicial

review, it decided not to expose ratepayers to even more spending by council on legal advice and turned to political methods to challenge the mindset and power of the current majority on council.

Third, the society offered a practical alternative to the Te Arawa partnership plan being promoted by the mayor, the majority of councillors and senior officials. In February 2015, when the council approved a statement of proposal for a special consultative procedure, by a vote of eight to five, the society posted substantial legal and procedural criticism of both the statement of proposal and special consultative procedure on its website, mounted a media campaign, and proposed a democratic governance model. The society's proposals were ignored.

Further, the mayor rejected the society's role as a 'loyal opposition': that is, offering constructive criticism of the council's policies and actions while remaining loyal to the interests of residents and ratepayers. The society also questioned the autocratic approach involved, pointing out that dissent and debate are essential to a healthy democracy, as is holding the mayor's 'power bloc' of elected loyalists and senior officials publicly accountable. The concept of 'power blocs' refers to coalitions formed among political parties, interest groups or influential individuals who collaborate to influence policy or electoral outcomes.

The Rotorua Pro-Democracy Society also noted that leadership appointments on council with commensurate salaries were in the gift of the mayor. Appointees who joined the society were dismissed and criticism ignored, deepening factional divisions. All proposed improvements to the statement of proposal and special consultative procedure and to democratise the Te Arawa partnership plan using a democratic governance model were deflected. Information published by officials openly promoted the partnership plan option. The 'information sessions' led by senior officials and Te Arawa activists were supervised by the lead of the Te Arawa partnership and people portfolio.

Gaslighting increasingly became the norm, with society members accused of racism and divisive behaviour by the power bloc supporting the partnership plan. Society members who were also councillors faced calls to abstain from voting or to resign. Councillors who questioned the plan were accused by those who supported it of having predetermined positions and of disrespecting alleged obligations related to the Treaty and the Fenton Agreement (see below).

Lawfare became evident at an extraordinary council meeting on 17 February 2015 when the chief executive warned councillors to keep an open mind to avoid accusations of predetermination. Critics saw his warning as explicitly targeting those opposed to the partnership plan and accused him of stifling free speech. His intervention generated public outrage about the abuse of power; there were questions about the propriety of his involvement and calls for a politically neutral public service. The society explained these 'political games' on its Facebook page and urged citizens to defend democracy by writing submissions and letters to the editor of the *Rotorua Daily Post*.

When the Te Arawa partnership plan was provisionally adopted by eight votes to five on 26 May 2015, it was realised by members of the society that minoritarianism and co-governance had to be either accepted or more actively resisted. They decided to reorganise as the Rotorua District Residents and Ratepayers association, with four purposes: to restore democracy; to restore law and order; to restore financial prudence; and to restore policymaking power (to elected members). By the time of its inaugural meeting on 25 September 2015, the Rotorua District Residents and Ratepayers had negotiated a constitution and rules, with criteria for the endorsement of candidates. It then registered as an incorporated society. It raised funds, endorsed candidates and campaigned in support of its four purposes during the triennial elections held in October 2016, 2019 and 2022.

Hence, between 2016 and 2019, a series of confrontations between the Rotorua District Residents and Ratepayers and the council led to legal actions over electoral irregularities (Holland, 2016; Macpherson, 2018), appeals to the Office of the Ombudsman over secrecy that were eventually upheld (Office of the Ombudsman, 2023), challenges to major and debt-funded development projects (e.g., Rotorua District Residents and Ratepayers, 2018), and over the growth of a homelessness 'industry' in the wake of the Covid-19 pandemic which saw crime flourish to unprecedented levels and the council refusing to adjust its financial strategy. Thirteen code of conduct complaints against the author were accepted by the mayor from the chief executive, senior officials and political affiliates, and resulted in bans from two key subcommittees (Desmarais, 2022a) and the Free Speech Union complaining to the auditor-general (Free Speech Union, 2022). In the association's view, the mayor's authoritarian leadership style and ideological biases prevented constructive dialogue and pragmatic decision making within the council. The confrontations between the association and the council underscored the need for greater transparency, accountability and responsiveness in local governance.

> … when the proposed Te Arawa partnership model model for consultation was adopted by seven votes to four, it was greeted with a triumphant haka from the predominantly Māori audience.

Co-governance took centre stage again in 2021–22 during Rotorua's representation review. The first model proposed by Rotorua Lakes Council for public

consultation comprised four seats for a general ward, two seats for a Māori ward and four seats at large. This 'mixed model' (Desmarais, 2021a) attempted to blend co-governance and democratic values. The disproportionate number of seats allocated to those on the Māori roll arguably offended the principle of equal suffrage and ignited fierce debates. While some members saw the introduction of a Māori ward as a step towards apartheid, Rotorua District Residents and Ratepayers overall supported its adoption as respecting the right to freedom of association, but rejected the proposed allocation of seats as disproportionate to electoral populations.

The author's attempts to address the fundamental clash of governance values at a crucial council meeting on 31 August 2021 were thwarted by constant interruptions permitted by the mayor. These tactics prevented a clarification of the advantages and risks associated with the proposed degree of co-governance. When the author walked out in protest, another councillor, who was subsequently elected mayor on 8 October 2022, attacked the disregard for democratic processes. Nevertheless, when the proposed Te Arawa partnership model model for consultation was adopted by seven votes to four, it was greeted with a triumphant haka from the predominantly Māori audience.

The suppression of dissent continued at the public hearings on 18 October 2021. A senior representative from Te Tatau o Te Arawa, and the author, as Rotorua District Residents and Ratepayers chairman, were barred from asking questions of submitters under the guise of preventing conflicts of interest. Some submitters called for a one-seat rural ward. Most presenters denounced the council's four, two, four model as undemocratic and potentially illegal, with the notable exception of representatives from Ngāti Whakaue, the largest hapū within Te Arawa and members of the mayor's power bloc. Despite clear warnings that the model violated the principle of equal suffrage, the advocates of 50/50 co-governance remained steadfast in their belief that the Treaty and the Fenton Agreement validated the morality and legality of their proposal (Desmarais, 2021b).

Subsequent council meetings were marred by procedural manipulation and legal manoeuvring (Desmarais, 2022a). When an interim one general, one Māori, eight at large, and openly co-governance model was then proposed by the mayor, it triggered outrage from Te Tatau o Te Arawa, who insisted that voters in the Māori ward were due three seats out of ten. Its adoption, through the mayor's casting vote, confirmed that the mayor's power bloc had pursued a 50/50 co-governance outcome against the advice and preferences of all other interest groups.

Given the more favourable legislative environment, even though Rotorua already had a Māori ward in place for the 2022 local elections, the council advanced a local bill that sought to establish equal representation between Māori and non-Māori in local governance.

In response to the passage of the Electoral (Māori Electoral Option) Act 2022, Rotorua Lakes Council authorised its chief executive to submit a proposal for a local bill advocating a 50/50 co-governance model, comprising three Māori ward councillors, three general ward councillors and four at-large councillors. The 2022 Act eliminated binding polls previously required for establishing Māori wards, which allowed the general voting population to veto their creation if five per cent of voters requested a poll. This mechanism had limited the ability of councils to advance Māori representation unless it was broadly supported by the general electorate, which was often not the case.

Given the more favourable legislative environment, even though Rotorua already had a Māori ward in place for the 2022 local elections, the council advanced a local bill that sought to establish equal representation between Māori and non-Māori in local governance. The rationale, however, relied on the simplistic dualism of te ao Māori versus te ao Pākehā to frame representation in absolute and opposing cultural terms (see Webster and Cheyne, 2017). It failed to recognise the subtleties and intersections between the two poles and overlooked the fluidity, diversity and intersectionality within these identities in a community famous for its manaakitanga (hospitality) and easy interculturalism. The general election in October 2023 gave the incoming National–ACT–New Zealand First coalition government a mandate to restore the veto mechanism.

When the Rotorua Lakes Council's local bill proposing a full co-governance model (three general, three Māori, four at large) was introduced in Parliament, advocates highlighted its alignment with the Treaty of Waitangi and the Fenton Agreement. However, its critics argued that the model violated fundamental democratic principles and was not needed. Although the bill passed its first reading, it faced scrutiny at the Māori Affairs Committee, chaired by a Labour list MP from Rotorua.

In response, groups such as the Rotorua District Residents and Ratepayers and other stakeholders appealed Rotorua Lakes Council's decisions and actions to the Local Government Commission. At the Local Government Commission hearings in March 2022, proponents of a seven general ward, three Māori ward model criticised the interim co-governance model and the local bill. They argued that the processes lacked adequate consultation and raised concerns about the anti-democratic nature of co-governance, which they believed

could have a negative impact on broader representation.

Ultimately, the Local Government Commission determined a new three Māori, six general, one rural ward model for Rotorua. This model was aligned with democratic principles, commission guidelines, and the preferences of groups such as Te Tatau o Te Arawa and rural lobbyists and with Rotorua District Residents and Ratepayers' original proposal. The final blow to the co-governance proposal came when the attorney-general ruled that the local bill would breach the Bill of Rights Act 1990 by discriminating against voters on the general roll. This ruling, along with the Local Government Commission's decision, marked the end of Rotorua Lakes Council's push for co-governance, symbolising what appeared to be a triumph for democratic and pluralistic majoritarianism over minoritarianism.

The central policy context of co-governance and democracy

Democracy Action defines co-governance as

> an emerging and developing model of decision-making in New Zealand. The term refers to a shared governance arrangement – with representatives of iwi on one side, and representatives of central and/or local government on the other, each side having equal voting rights at the decision-making table. (Democracy Action, 2023)

As highlighted in the previous discussion, many of the 28% minority of the voting population who are on the Māori roll in the Rotorua district believe they are entitled to co-governance, commonly citing both the Treaty of Waitangi and the Fenton Agreement as justifications. It was also clear that members of Te Tatau o Te Arawa elected from Te Arawa felt entitled to equal suffrage. The legal and political basis for such claims is complex and contested.

The English draft of the Treaty of Waitangi aimed to transfer the governance authority of around 540 Māori chiefs to Queen Victoria. However, the authoritative Māori version, te Tiriti o Waitangi, signed by most chiefs, guaranteed them tino rangatiratanga – a term encompassing sovereignty, self-determination and autonomy – in perpetuity. While the obligations implied by the Treaty have been politically contested, neither version of the Treaty explicitly mentions co-governance. Sovereignty is now vested in the New Zealand Parliament, allowing successive governments to take differing stances on co-governance (Orange, 2013).

The Fenton Agreement of 1880, specific to Rotorua, was another pivotal historical document, albeit unrelated to co-governance. The agreement sought to establish a township, preserving Crown access to Rotorua's thermal resources while allowing Māori landowners – primarily hapū of Te Arawa iwi (Ngāti Whakaue, Ngāti Rangiwewehi and Ngāti Uenukukōpako) – to benefit economically without relinquishing land ownership. The agreement, based on a 99-year lease system, did not address co-governance (Manley, 2017).

Partnership emphasises collaborative decision making between the Crown and Māori, participation reflects Māori engagement in governance, and protection underscores the Crown's duty to safeguard Māori rights, including cultural and land-related rights ...

The contemporary belief in co-governance rights among Māori voters stems from historical interpretations of the Treaty of Waitangi, particularly through the lens of the Waitangi Tribunal. Established in 1975, the Tribunal has played a central role in interpreting the Treaty, giving rise to the principles of partnership, participation and protection. These principles have framed co-governance discussions, especially in areas like natural resource management, exemplified by the co-governance model for the Waikato River. Partnership emphasises collaborative decision making between the Crown and Māori, participation reflects Māori engagement in governance, and protection underscores the Crown's duty to safeguard Māori rights, including cultural and land-related rights (Orange, 2013; O'Malley, 2014).

Nonetheless, while Carwyn Jones identifies key features of co-governance between Māori and the Crown, highlighting the benefits of shared decision-making frameworks that respect Māori rights and promote effective governance by integrating Māori perspectives (Jones, 2023), co-governance remains legally ambiguous. While some argue that it aligns with the Treaty's principles, others contend that co-governance is not explicitly mandated by law, leaving its application subject to ongoing political negotiation (Hayward, 2020; Williams, 2021). In sharp contrast, there is no ambiguity about the purpose of the Local Government Act (s3) 'to provide for democratic and effective local government that recognises the diversity of New Zealand communities'.

Definitions of democratic governance tend to stress key principles such as popular sovereignty, political equality, accountability, and equal suffrage, with some variations. For example, in *Democracy and its Critics* (1989), Dahl characterises democracy as requiring active citizen participation and political equality through effective institutions. He outlines democracy's core principles, emphasising that all citizens should have an equal and genuine opportunity to participate in decision-making processes, a fair voting system, and freedom of expression and association. He sees democracy as a 'polyarchy', where the system includes not only citizen

participation but also other institutions, such as elected officials, inclusive suffrage and access to alternative information sources, ensuring political equality.

Tocqueville (1835–40) presents democracy as a system where political power is derived from the populace, with authority ultimately resting in the hands of the people through mechanisms like voting and civic engagement. This approach emphasises the significance of equality and individual liberty within democratic frameworks. Dewey (1916) sees democracy as not merely a form of government but a way of life, where active participation and deliberation among citizens are central. This interpretation underscores the importance of a community-oriented approach to governance, fostering democratic engagement beyond formal political processes.

The concept of equal suffrage, often expressed by the slogan 'one person, one vote, one value', meaning votes of equal value, is commonly regarded as integral to democratic governance (Smith, 2006). Equal suffrage ensures that all eligible citizens have the same right and the same opportunity to vote and also that their votes are given the same electoral weight, which are essential for political equality and proportional representation. By guaranteeing that every vote is counted equally, equal suffrage helps to uphold the democratic principles of fairness and inclusivity, ensuring that all voices are heard fairly in the electoral process. There are many exceptions internationally intended to achieve other purposes.

All districts in New Zealand are required to conduct a representation review as part of the regular six-year cycle mandated by the Local Government Commission (Local Government Commission, 2024). This is to assess and adjust the electoral representation policy for each district to reflect population changes. It includes assessing the number of councillors and their electoral divisions, and ensuring fair representation for all areas and constituencies within each district.

Co-governance structures in New Zealand have emerged as a significant mechanism to acknowledge the implications of the Treaty and to embed Māori partnerships in decision-making processes. These arrangements reflect the evolving nature of the Crown–Māori relationship, seeking to recognise Māori rights and interests in various sectors, such as natural resource management, local governance and health services. Different models of co-governance have developed, often shaped by Treaty settlements, legal precedents and government reforms.

> One major limitation [co-governance in New Zealand] is the ongoing legal and constitutional ambiguity surrounding the Treaty's place in New Zealand's legal framework.

One of the primary models of co-governance is rooted in Treaty settlements between the Crown and Māori iwi. These settlements frequently include provisions for the co-management of natural resources and the restoration of Māori authority over land and water. A notable example is the Waikato River Authority, established as part of the Waikato-Tainui settlement, which operates under a 50/50 partnership between iwi and the Crown. This co-governance model underscores both parties' responsibility for the health and well-being of the Waikato River (Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010). Another significant case is the settlement with Tūhoe, which granted legal personhood to Te Urewera (formerly a national park), facilitating joint governance between Tūhoe and the Crown (Te Urewera Act 2014).

Similarly, the Whanganui River settlement of 2017, which recognised the river as Te Awa Tupua and a legal entity with its own rights, further illustrates the co-governance model. Governance of the river is shared between the Crown and Whanganui iwi, with both parties acting as stewards of its well-being (Ruru, 2018). This model aligns with Māori conceptions of the environment, where natural entities are regarded as living beings deserving of respect and care (Charpleix, 2018). Ngāi Tahu's co-management of conservation areas in the South Island, including national parks and fisheries, is another example of how Treaty settlements have facilitated co-governance frameworks (Te Rūnanga o Ngāi Tahu, 2020).

Co-governance also plays a crucial role in local government, particularly through advisory committees and formalised co-management structures. Three examples follow. The Bay of Plenty Regional Council's komiti Māori, an advisory group, helps guide regional governance decisions by incorporating Māori perspectives (Bay of Plenty Regional Council, 2020). The Independent Māori Statutory Board within Auckland Council plays a pivotal role in advancing Māori viewpoints in planning and governance throughout the Auckland region (Auckland Council, 2020). The regional planning committee of Hawke's Bay Regional Council (Hawke's Bay Regional Council, n.d.) provides equal decision-making authority between council members and local Māori representatives. This partnership focuses on resource management and regional planning, includes Māori perspectives in policy decisions, and aims to foster collaboration that respects Māori values while supporting sustainable regional development.

Co-governance models have also been established in the health and social services sectors. A prominent example is Whānau Ora, a Māori-led initiative that empowers Māori communities to govern and design health and social services that align with their cultural needs and priorities (Boulton, Simonsen and Walker, 2013). The 2020 Health and Disability System Review recommended the establishment of a

Māori Health Authority to formalise co-governance in the health sector and ensure that Māori perspectives are central to decision making (Health and Disability System Review, 2020).

Despite these developments, co-governance in New Zealand faces several challenges. One major limitation is the ongoing legal and constitutional ambiguity surrounding the Treaty's place in New Zealand's legal framework. While the Treaty is increasingly recognised as a foundational document for co-governance, it is not fully entrenched in law, meaning that its obligations are subject to changing political and legal interpretations (Williams, 2021). This uncertainty can limit the enforceability of co-governance agreements and result in disparities in the protection of Māori rights across different contexts.

Another significant challenge is the power imbalance between Māori and the Crown as a major funder and regulator. Although co-governance aims to foster equal partnerships, the Crown often retains significant control, particularly in areas where state institutions dominate decision-making processes. For example, in natural resource management, co-governance bodies frequently operate within legislative frameworks where the Crown has the final say, thereby reducing Māori partners to advisory roles rather than equal decision makers (Jones and Jenkins, 2017).

Economic and resource constraints also pose barriers to the effectiveness of co-governance. Many Māori iwi and hapū involved in co-governance lack the financial and administrative capacity to engage on an equal footing with Crown partners. While Treaty settlements provide some compensation, they are often insufficient to redress the historical loss of land and resources (Palmer, 2008, 2018). Moreover, co-governance bodies often rely on Crown funding, which can create a dependency that undermines Māori autonomy.

Cultural challenges further complicate co-governance. Although many models incorporate Māori and iwi world views and tikanga (customary practices), these values are not always fully integrated into decision-making processes. Instead, mainstream governance frameworks often prioritise Western legal and administrative norms, which can marginalise Māori perspectives and reduce the potential effectiveness of co-governance (Charpleix, 2018).

Finally, political and bureaucratic factors present ongoing obstacles. Changes in government leadership and policy priorities can disrupt long-term co-governance agreements, while bureaucratic inertia can slow the implementation of co-governance frameworks (Palmer, 2018). For instance, the National–ACT–New Zealand First coalition government elected in October 2023 has initiated a comprehensive review of legislation referencing the 'principles of the Treaty of Waitangi', aiming to either replace or repeal those references, except where they relate to finalised Treaty settlements (Walters, 2024). The proposal also introduces the possibility of a referendum on the Treaty Treaty Principles Bill (2024), although this is not guaranteed. Such reforms could reshape the legal and constitutional status of the Treaty significantly (RNZ, 2024; *Jurist News*, 2024) and future co-governance arrangements.

To conclude this section, co-governance in New Zealand can be seen as an attempt to better reconcile Māori rights and values with the democratic purposes, structures and processes of central and local governance. However, the processes have been hindered by legal uncertainties, power imbalances, economic constraints, and cultural and political challenges. Addressing these limitations will require stronger legal frameworks, better resource allocation, and greater clarity around commitments to integrating Māori knowledge into governance.

The theoretical context of local governance policymaking

Majoritarianism is an ideology that asserts that political decisions should be guided by the preferences of the majority and serves as a key criterion for democratic governance. It is based on the idea that the majority, whether in an electorate or within legislative bodies, holds the most legitimate source of political authority. In majoritarian systems, majority rule is seen as the best method for ensuring that government actions reflect the will of the largest segment of the population (Arneson, 2003). It is manifested through majority voting in elections and legislative decisions.

> … majoritarianism can lead to the exclusion or marginalisation of minority groups, particularly if there are no institutional mechanisms to protect minority rights or facilitate multiple forms of engagement … or to prevent authoritarianism …

However, critics point out that majoritarianism can lead to the exclusion or marginalisation of minority groups, particularly if there are no institutional mechanisms to protect minority rights or facilitate multiple forms of engagement (Lijphart, 1999) or to prevent authoritarianism (Mounk, 2018). While majoritarianism emphasises majority rule, it may conflict with pluralist approaches, which aim for broader inclusion of diverse groups in decision making.

There are potential solutions. Lijphart (1969) introduced the concept of 'consociational democracy' as a framework for power sharing in deeply divided societies, emphasising measures like grand coalition, mutual veto, proportionality and segmental autonomy to foster stability. The 1998 Good Friday Agreement established a consociational model of power sharing in Northern Ireland that includes cross-community governance, proportionality

through the single transferable vote system, cultural equality, and special voting mechanisms that provide veto rights for minority groups. Key executive roles are shared equally between unionist and nationalist leaders, ensuring balanced representation and decision making across community lines, aimed at fostering cross-community collaboration and reducing conflict (Northern Ireland Assembly, n.d.).

Unlike majoritarianism, which is premised on the will of the majority, minoritarianism operates under the assumption that certain minority groups, whether defined by wealth, ancestry, expertise or social status, are more suited to govern due to their perceived superior knowledge, skills or resources. This ideology often surfaces in oligarchic, tribal, technocratic or elite-driven systems where a select few dominate governance (Dahl, 1956).

The core assumption of minoritarianism, the belief in the supremacy of a minority – that certain groups possess specialised knowledge, entitlements, skills or resources that equip them to make better political decisions in the interest of society as a whole – is often coupled with a belief in the inefficiency of majority rule, suggesting that the broader population may lack the necessary understanding or competence to engage in effective governance. Consequently, minoritarianism is frequently justified as a means to preserve stability, conventions and order, with the belief that entrusting governance to a small, capable elite can prevent the disorder or chaos that might result from mass decision making (Lijphart, 1999).

Minoritarianism is typically reinforced through various mechanisms that centralise power in the hands of elites. One such mechanism is elite governance, where political authority is concentrated within a small group of influential individuals (Arneson, 2003). Another mechanism is the use of restrictive electoral systems that limit broader participation or disproportionately empower minority groups. This can include gerrymandering, or the establishment of legislative structures that grant certain minority groups greater influence than their numbers would suggest under conditions of equal suffrage. Additionally, minoritarianism often manifests through lobbying and other forms of elite influence, where powerful interest groups or corporations disproportionately shape policy decisions to reflect their interests (Winters, 2011).

The policy outcomes in minoritarian systems also tend to reflect the interests of the ruling minority, often exacerbating economic and social inequalities and contributing to a sense of injustice among the majority.

Despite its claims to efficiency and stability, minoritarianism poses significant risks to democratic governance. By concentrating power in the hands of a minority, it erodes the principle of political equality, marginalising the voices of the majority and undermining democratic legitimacy. This can lead to the disenfranchisement of the broader populace, as citizens may feel their participation in political processes is ineffective or undervalued. The policy outcomes in minoritarian systems also tend to reflect the interests of the ruling minority, often exacerbating economic and social inequalities and contributing to a sense of injustice among the majority. Over time, unchecked minoritarianism can facilitate the emergence of oligarchic or authoritarian regimes, where a small group consolidates power at the expense of democratic institutions (ibid.; Lijphart, 1999).

Issacharoff and Pildes' review of majoritarianism and minoritarianism in United States law around democracy (Issacharoff and Pildes, 2023) examines the inherent tensions between majority rule and the protection of minority rights in democratic governance. They recommend reforms in democratic institutions, particularly in electoral processes, to ensure that minority groups are not systematically marginalised. They emphasise the need for structural safeguards, such as independent courts and proportional representation, to prevent majoritarian excesses. They also advocate for clearer standards in judicial review to address the evolving challenges posed by democratic instability and electoral manipulation.

An historical study of minoritarianism in the United States (Levitsky and Ziblatt, 2023) confirmed these trends and found that minority politicians tend to use four main methods to distort or subvert the purposes for which laws had been written:

- exploiting gaps or ambiguities in the law and violating norms to deny the spirit of legislation;
- making excessive or undue use of the law or rules;
- selective enforcement of the law or rules;
- lawfare – that is, weaponising the law by using litigation, legal threats or regulatory actions to gain an advantage, suppress opposition or undermine adversaries, typically through narrative management, gaslighting and manipulating meeting procedures.

The cumulative effect of such methods can be to tilt the political landscape in favour of minoritarian incumbents in power. For example, Levitsky and Ziblatt trace the formation of anti-democratic alliances to a shared and outsized fear of losing power that turns incumbents, activists and parties against democracy, most especially in times of far-reaching change when social status is put at risk.

In Canada, Kymlicka has called for greater minority rights in democracies, particularly by using a theory of 'liberal multiculturalism'. He argues that

traditional liberal democracies, which emphasise individual rights and majority rule, often fail to protect cultural minorities. He advocates for group-differentiated rights to ensure the cultural survival and political autonomy of minorities, such as indigenous peoples, alongside the rights of the majority (Kymlicka, 1995). He asserts that accommodating minority group rights by institutionalising minority protections is essential for democratic legitimacy in diverse societies, bridging liberalism and multiculturalism (Kymlicka, 2001). Parekh (2006) noted that multicultural majoritarianism can be limited to reconciling the tensions between majoritarian governance and the need for multicultural recognition without necessarily catering for political pluralism.

Barry (2002) counters Kymlicka's theory of multiculturalism, arguing that group-differentiated rights for cultural minorities conflict with liberalism's core principles of individual rights and equality. He asserts that liberalism should prioritise universal equality before the law, without granting special rights based on cultural identity, as this could lead to unequal treatment and undermine social cohesion. He concludes that the state should remain neutral regarding cultural practices, allowing individuals the freedom to assimilate or pursue their own choices without state intervention. Barry's critique emphasises the risk of multicultural policies entrenching cultural divisions and thereby hindering equal citizenship, a key condition of democracy.

Discussion

The political philosophies underpinning the events in Rotorua district reflect key tensions between minority and majority rule, legal principles and pluralism. Minoritarianism is evident in the growing influence of Te Arawa representatives within the decision-making processes, challenging traditional democratic norms. Majoritarianism is seen in opposition groups' emphasis on equal suffrage and democratic accountability, particularly in response to perceived imbalances.

The debates highlight the complexity of managing diverse identities and affiliations in governance. Stakeholders' interests, however, extend beyond simple Māori and non-Māori categories, as individuals often identify with multiple communities, values and interests. This heterogeneity introduces competing perspectives within the governance models, reflecting a broader challenge in accommodating a society where affiliations are layered and pluralistic. Recognising this multiplicity requires more nuanced governance approaches that can adapt to the varied, overlapping loyalties and needs that characterise modern citizenship. Further, legal interpretations played a critical role, with rulings prioritising democratic principles over co-governance structures.

The 2023 National–ACT–New Zealand First coalition's decision to review all legislative references to the principles of the Treaty of Waitangi, except those relating to finalised Treaty settlements, could lead to a reversion to constitutional majoritarianism and some minimalism in Treaty obligations.

The political philosophies evident in the development of co-governance models at the central level in New Zealand reflect tensions between biculturalism, legal pluralism and liberal democracy. Co-governance, rooted in Treaty of Waitangi principles variously proposed by judges and the Waitangi Tribunal but yet to be legislated, for example stressing partnership, participation and protection, seeks to integrate Māori sovereignty (tino rangatiratanga) with Crown sovereignty. This bicultural approach emphasises shared governance over resources and public services, but often conflicts with majoritarianism and the liberal democratic ideal of equal suffrage. Ongoing debates highlight power imbalances, legal ambiguity, and evolving interpretations of the Treaty's role in governance structures.

The 2023 National–ACT–New Zealand First coalition's decision to review all legislative references to the principles of the Treaty of Waitangi, except those relating to finalised Treaty settlements, could lead to a reversion to constitutional majoritarianism and some minimalism in Treaty obligations. This shift could diminish the institutional role of bicultural co-governance frameworks by reducing or eliminating Treaty-based partnership principles in law. The implications may involve a rolling back of Māori decision-making rights in governance, weakening biculturalism and amplifying tensions between Treaty-based rights and universal democratic principles such as equal suffrage and liberal individualism. On the other hand, such changes could be regarded as relatively marginal and accepted as part of the ongoing cycle of policy review in the New Zealand Parliament, where sovereignty resides.

The political philosophies reflected in the broader theoretical, American and Canadian contexts related to co-governance highlight tensions between majoritarianism and minoritarianism. To reiterate, majoritarianism emphasises political authority based on majority rule, often valuing democratic legitimacy through electoral processes, but risks marginalising minority groups when unchecked by institutional protections. Critics argue that majoritarianism can erode democratic inclusivity and lead to authoritarian tendencies.

Conversely, minoritarianism asserts the legitimacy of governance by elite minorities, justified by claims of superior knowledge,

skills or historical rights. Minoritarianism often manifests in oligarchic, technocratic or elite-driven systems, creating unequal political landscapes where a select few dominate. This ideology risks undermining democratic equality and consolidating power in ways that exacerbate social and economic inequalities.

In the United States, recent analyses demonstrate the shift between majoritarian and minoritarian dynamics, emphasising the need to protect minority rights within a majority system while also guarding against the rise of factional minority rule. Methods such as legal manipulation and selective enforcement have been observed as means by which minority groups subvert democratic principles, exacerbate political instability and disenfranchise the majority.

In contrast, the Canadian approach to minority rights focuses on liberal multiculturalism. Proponents like Kymlicka argue for group-differentiated rights to protect minority cultures, particularly indigenous peoples, as essential to democratic legitimacy. This philosophy seeks to reconcile liberalism's emphasis on individual rights with the need for cultural preservation, advocating for structural safeguards to ensure equal political autonomy for both majority and minority groups. Critics of this approach, such as Barry (2002), warn that granting special cultural rights undermines liberal egalitarianism and risks entrenching social divisions.

These competing philosophies underscore the complexities inherent in democratic governance, where tensions between majoritarian rule, minority protections and cultural pluralism must be continually negotiated.

Conclusion

The Rotorua case study, when viewed in national and international contexts, underscores significant tensions between minority and majority rule in democratic governance. Nationally, co-governance debates in New Zealand reflect deeper tensions between biculturalism, based on the Treaty of Waitangi, and the liberal democratic ideal of equal rights for all citizens.

Internationally, these dynamics parallel broader debates in countries like the United States and Canada, where tensions between majoritarian rule and the protection of minority rights are similarly pronounced. In the former, scholars have noted shifting concerns between upholding majority rule and safeguarding minority rights, particularly in the context of electoral processes and judicial interpretations, reflecting broader concerns about factional minority rule and the manipulation of democratic principles by elites. In Canada, the approach to minority rights, particularly through liberal multiculturalism, seeks to protect the cultural autonomy of groups such as indigenous peoples by advocating for group-differentiated rights consistent with multicultural majoritarianism, thereby attempting to reconcile the protection of minority cultures with liberalism's emphasis on individual rights. However, critics argue that such policies risk entrenching cultural divisions and undermining democratic equality.

This article recommends pluralistic majoritarianism as a pragmatic approach to integrating minority groups into governance while upholding majority rule, to balance inclusivity with democratic authority. In a pluralistic majoritarian framework, majority rule would be preserved, but mechanisms would be introduced to ensure that minority voices are recognised and considered in decision-making processes. This approach contrasts with multicultural majoritarianism, where majority rule could become synonymous with dominant cultural supremacy, potentially sidelining minorities and fostering divisiveness on a simplistic dualism of te ao Māori versus te ao Pākehā.

Pluralistic majoritarianism aims to create a political environment where power sharing becomes a structural norm, encouraging various groups to contribute to governance without allowing any one cultural or social perspective to overwhelm the political landscape. Through this system, governance processes are inclusive by design: they support consultation, negotiation, and possibly shared leadership among diverse stakeholders, while ensuring that final decisions are still grounded in majority rule. This balance aims to accommodate minority interests without diluting the authority of the majority, preventing either a 'tyranny of the majority' or a 'tyranny of the minority'.

By avoiding the pitfalls of multicultural majoritarianism, pluralistic majoritarianism seeks to foster a sense of shared civic identity that respects cultural diversity within a unified political framework. The approach could include legislative reforms that guarantee minority rights, participatory decision-making structures, and educational programmes to promote cultural understanding. Ideally, it allows for greater social cohesion and stability, as minority groups feel acknowledged and integrated, reducing the motivation to challenge or destabilise the majority structure.

A pluralistic majoritarian model might offer a balanced path forward to robust, inclusive governance in diverse societies. This model respects majority rule while incorporating mechanisms that ensure that minority perspectives are factored into decision making. Unlike multicultural majoritarianism, which can allow a dominant culture to marginalise minority voices, pluralistic majoritarianism integrates minority viewpoints within a majoritarian structure, fostering a balance of inclusivity and democratic authority. Such a model could potentially help address concerns in diverse communities like Rotorua, preserving both democratic values and social harmony.

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James Allan Jones, Ryan Greenaway-McGrevy and Chris Crow

Using Council Valuation Records to Estimate Auckland's housing stock

Abstract

New Zealand lacks timely estimates of its total and regional dwelling stocks. Such estimates would be useful for evaluating various policies to encourage housing supply. To address this deficiency, we propose and implement a method for estimating Auckland's dwelling stock based on its district valuation roll (DVR). The district valuation roll is an administrative dataset maintained by all local councils for the purpose of levying property taxes. The estimates imply that there were 609,055 dwellings in Auckland as of August 2024, an increase of about 91,000 units – or 18% – since the Auckland Unitary Plan became operative in November 2016. We anticipate that DVR-based estimates can be constructed for other regions.

Keywords housing, dwelling stocks, measurement, valuation rolls, zoning reform

Timely estimates of regional residential dwelling stocks are unavailable in New Zealand. Estimates of dwelling stocks are included in the census, but these occur on a five-year cycle. Statistics New Zealand published experimental estimates on a quarterly basis until March 2017, after which the series was discontinued.

Regularly updated estimates of dwelling stocks would be helpful for a variety of reasons, including the evaluation of policies intended to encourage housing supply. For example, Auckland upzoned approximately three quarters of its residential land in November 2016 under the Auckland Unitary Plan to support medium- and high-density housing in residential areas. While this zoning reform preceded a significant increase in new dwelling consents (Greenaway-McGrevy, 2023), it also enabled the tearing down or removal of existing dwellings, meaning that the effect on the city's housing stock is difficult to infer on the basis of consent data alone. Demolition of buildings under three storeys does not require a consent, meaning there is no direct administrative record of gross reductions in the dwelling stock from redevelopment. In addition, a consent does not necessarily result in a completed dwelling.

In this article we use Auckland Council's district valuation roll (DVR) to estimate the region's dwelling stock. This administrative data is kept for the purposes of levying municipal taxes. Because separate inhabited dwellings are recorded as different units, the DVR can be repurposed to produce dwelling stock estimates.

We produce estimates for the 2013–24 period. Our DVR-based estimates are very close to discontinued experimental estimates provided by Statistics New Zealand over the period that the two time series overlap (2013–17). The Statistics New Zealand experimental estimates also align with census-based estimates for the relevant quarter. DVR-based estimates are

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consistently 1.5–1.8% smaller than the experimental estimates, suggesting that the two measures differ by a small and stable relative factor. Potential reasons for the discrepancy are the time lag associated with updates to the DVR, and the tax incentive for owners to not correct undercounts.

The DVR-based estimate of Auckland's housing stock was 609,055 units as of August 2024. This implies a net addition of approximately 91,000 dwellings since the Auckland Unitary Plan became operative in November 2016, an increase of approximately 17.6%.

DVR-based measures would also prove useful in other districts that have implemented housing supply policies. Beginning in 2017, Lower Hutt implemented a sequence of zoning changes to encourage medium- and high-density housing, and Wellington, Upper Hutt and Porirua have recently followed suit. DVR-based measures for these authorities would assist in assessing the impact on the local housing stock. Because all authorities must maintain a district valuation roll, this article provides guidance on how such measures could be developed.

In the next section we describe the institutional features of administrative data collection and how the estimates are constructed. The following section presents the results, and compares the totals to census and other discontinued measures of the dwelling stock.

Methodology

Rating valuations

Section 5 of the Rating Valuations Act 1998 requires territorial authorities to maintain property valuation records for every property in their jurisdiction in a district valuation roll. These datasets are collected and kept according to a set of implementation rules (the rating valuations rules) drafted by the valuer-general and published by Land Information New Zealand (LINZ, 2010).

The primary purpose of the district valuation roll is to enable municipal taxes, referred to as council rates. These are applied to properties, or 'rating units', within the council's jurisdiction.[1] A rating unit generally refers to a portion of a property with an individual 'record of title', which is a legal record held by LINZ which describes the legal owner(s), boundaries, rights and restrictions applied to a property. A record of title can encompass multiple properties: for example, one legal property which contains multiple, separate dwellings. These are generally entered as one rating unit on the DVR and assigned multiple 'units of use'.

> … the total number of residential [separately used or inhabited parts] is a better reflection of the total number of dwellings than the count of rateable units because it addresses the circumstances where multiple dwellings are covered by the same title.

The salient information on the DVR for dwelling estimates are the 'units of use' and 'actual property use' fields, which are defined below.

Units of use

The Rating Valuations Act allows for multiple units of use under an individual rating unit. This accords with local councils generally needing to provide services on a per unit of use basis, rather than per legal property or per entry on the DVR.

Auckland Council classifies units of use based on the 'separately used or inhabited parts' (SUIPs) of a property. An SUIP is defined as 'any part of a rating unit that is separately used or inhabited by the ratepayer, or by any other person having a right to use or inhabit that part by virtue of a tenancy, lease, license or any other agreement'.[2] Under this definition, parts of a rating unit will be treated as 'separately used' if they have different use categories – for example, a shop with accommodation above will be treated as two SUIPs. Similarly, multiple instances of the same use category will also be classified as separately used, for example if a property contains multiple commercial outlets, such as a food court or shopping centre. In the same vein, a residential property with a separate dwelling, such as a self-contained 'granny flat', will be classified as having two SUIPs. For the purposes of the district valuation roll, vacant land is also defined as a type of use.

If the separate parts of a rateable unit are contiguous[3] and used by the same owner(s) as a single unit, then they are classified as one SUIP. For example, a residential property with a self-contained granny flat will count as one SUIP if the flat is internally accessible from the main residence, and both parts are used together as a single family home.

Commercial accommodation, such as motels, hotels and some rest homes, are treated as having one SUIP, regardless of the number of rooms. If there are multiple businesses within the unit – for example, if the accommodation has a commercial cafe – then it would be treated as having two SUIPs. Retirement villages or rest homes that have 'licence to occupy' titles are treated as having an SUIP for each part of the property covered by a separate licence to occupy.[4]

Thus, the total number of residential SUIPs is a better reflection of the total number of dwellings than the count of rateable units because it addresses the circumstances where multiple dwellings are covered by the same title. However, this is still potentially an undercount of total dwellings in a region due to the incentives for property owners to minimise their tax liabilities. Rates are charged per unit of use, and, to maintain low rates bills, individual owners may not be forthcoming if the council has undercounted the number of separate dwellings on their property. Similarly, owners may structure their property so that it technically counts as one dwelling, despite having multiple units of use.

It is also possible that units of use overstate the number of dwellings. This

would occur, for example, if a property used to comprise multiple units, and was rated as such, but is now being used as one contiguous dwelling. However, the property owner can object to their valuation and reduce their rates bill to accord with their actual units of use. Hence, for units of use to overcount the number of dwellings, the current owners would need to be either unaware that they are overpaying, or be indifferent to overpaying.[5] The recent roll-out of green food-waste bins in Auckland provides insight into this issue. These bins were provided on a per unit of use basis, so owners may have found that they had more bins than they expected. Anecdotal reports suggest that this may be the case. However, while no record has been kept of the number of owners who objected to their valuation specifically on the basis of paying for too many units, the total number of requests for review of a property's rates (for any reason) over the period of the green bin roll out (1 June 2023–1 March 2024) was approximately 450 out of about 540,000 residential rating units. This represents a miniscule proportion of all residential dwellings.

Based on the incentives for property owners to leave undercounting of units of use uncorrected, and the relatively small number of overcounted units of use indicated by the roll-out of the green bins in Auckland, it is reasonable to conclude that units of use are likely undercounted in the DVR data. Unfortunately, this is a limitation of the DVR, although there is no reason to believe that this undercount will vary systematically over time, and hence it should not undermine the usefulness of changes in the estimates.

Actual property use

Each record within the DVR is assigned an 'actual property use'. This field allows us to distinguish residential units from units used for other purposes. The DVR implementation rules produced by the valuer-general contain prescriptive categories to describe the actual property use of a rating unit. This is defined as 'the activity, or group of interdependent activities having a common purpose, performed on land or building floor space at the date of inspection'. This is captured through a two-character numerical code referring to the primary and secondary level. The primary code refers to the broad classification, such as rural, industrial, commercial or residential. The secondary codes are subcategories within the broad classification. For example, within the primary level code 9, which denotes 'residential', there are secondary codes referring to whether the property is a single unit or part of a multi-unit complex.[6] Table 1 presents the actual property use codes and their descriptions.

... in this study, the individual units within a rest home would be considered residential dwellings, while the rooms of a hotel or motel would not, since the former represents long-term residences, and the latter generally temporary accommodation.

Specific codes exist to capture situations of 'multi-use', where the multiple uses for a rating unit do not fall within the same use category. When multi-use occurs within a broad use category, such as commercial or residential, the secondary code will indicate multi-use. For example, a commercial property with two separate commercial uses, such as retail and offices, would be classified as code 80: this is made up of primary code 8 for 'commercial' and secondary code 0 for 'multi-use within commercial'.

Primary code 0 refers to the situation where multiple uses occur at the broad classification level: for example, commercial shops on the ground floor of a building with residential accommodation above. In these cases, the secondary code refers to 'major-use', which is the broad use category which contributes the greatest proportion of assessed rental.[7] If assessed rents are equal, the use with the greatest floor area is determined to be the major use. For example, in the case of shops with accommodation, the code would be 08 for commercial or 09 for residential, depending on which category – commercial or residential – represented the major use.

Although the categories are prescriptive, the rating valuations rules provide no specific definitions for how to classify a property use into each category. This lack of guidance is arguably less relevant for the primary level categories, such as commercial or residential, which have self-evident definitions. But it is relevant for the secondary classification code. In practice, classification is generally left to the ratings valuers, who have typically taken a 'common sense' approach to determining the appropriate use category. For Auckland Council, various internal guidance documents have been produced over the years to assist valuers in determining a property's use. These have informed the examples of each use category we list in Table 1 and which we use to base our classification of non-vacant residential dwellings on the DVR roll on. For example, in this study, the individual units within a rest home would be considered residential dwellings, while the rooms of a hotel or motel would not, since the former represents long-term residences, and the latter generally temporary accommodation.

Timing and triggers for updates to the district valuation roll

The Rating Valuations Act obligates local councils to undertake mass revaluations of all properties on their district valuation roll every three years. Significant revaluations and updates to the roll occur on this cycle. However, local councils also require their DVRs to be up-to-date with new construction or changes to existing properties. Hence, a number of events can trigger an update of the DVR at any point in time. For example, entries on the DVR may be created or updated when LINZ registers a property transfer, such as a sale; when an owner objects to their

Table 1: Rating units categories

Primary Category		Secondary Category Example		Example	NVR*
Code	Description	Code	Description		
0	Multi-use at the primary level	0	Vacant or intermediate		No
		1	Rural industry		No
		2	Lifestyle		Yes
		3	Transport		No
		4	Community services		No
		5	Recreational		No
		6	Utility services		No
		7	Industrial		No
		8	Commercial		No
		9	Residential		Yes
1	Rural Industry		All categories		No
2	Lifestyle	0	Multi-use within lifestyle		Yes
		1	Single unit	Single dwelling on lifestyle property over 1ha	Yes
		2	Multi-unit	More than one dwelling on lifestyle property over 1ha	Yes
		9	Vacant	Vacant land	No
3	Transport		All categories		No
4	Community services		All categories		No
5	Recreational		All categories		No
6	Utility services		All categories		No
7	Industrial		All categories		No
8	Commercial		All categories		No
9	Residential	0	Multi-use within residential		Yes
		1	Single unit excluding bach	Standalone dwelling on single lot	Yes
		2	Multi-unit	Cross-leased properties, units, flats, town-houses, multiple houses	Yes
		3	Public communal unlicensed	Motels, Holiday parks, Camp grounds, Guest houses	No
		4	Public communal licensed	Restaurant & Func. Centre, Hotel	No
		5	Special accommodation	Retirement Villages, Rest homes, Accommodation for the disabled, Council housing for elderly	Yes
		6	Communal residence dependent on other use	Convent, Presbytery	No
		7	Bach	Single dwelling, inferior quality or for part-time usage	Yes
		8	Car parking	Car parking	No
		9	Vacant	Vacant land	No

* NVR is 'non-vacant residential' and refers to categories that have been determined to reflect residential uses for the purpose of counting total dwellings in this study. Vacant land is excluded. For more details on the use codes, see LINZ, 2010, section C.3 of the ratings valuation rules.

valuation or notifies the council of some change in their circumstances; or when mandatory council inspections reveal that various stages of consented building work are completed, including the final inspection, or the issuance of a code of compliance certificate (which signifies completion).

Local councils have annual rating periods for the purpose of levying taxes. For Auckland Council this runs from 1 July to 30 June. This annual cycle results in significant updates to the Auckland DVR between April and June each year, in time for the new ratings period beginning 1 July. Generally, no matter when in the year a new property is added to the roll, the owner does not begin to be charged until the start of the following rates year. Thus, new properties completed in July or August might not receive their first rates invoice until the following July.

There is no set period for a recently created property to appear on the DVR. Factors can include how much detail is needed to ascertain a valuation for that specific property, and the current workload of the valuations team and corresponding subcontractors. A new property may show up relatively quickly, particularly if it is part of a sale of a number of similar properties, which could aid in desk valuations. However, the entry may still take some time to appear on the roll. New entries are more likely to be added during the next April–June updating cycle.

When an entry on the DVR is created or updated, the ratings valuers are required to check and review all valuation data. Hence, any valuation review of a property should include a review of the fields relevant to this study, such as actual property use and the units of use. These may also be reviewed as part of the general revaluation or in other specific instances where necessary, such as following changes to rating policy.

Data

Auckland's district valuation roll

Data is historical extracts of Auckland's DVR at a specific point in time between 2013 and 2024. From August 2017 this data is available at a monthly frequency. Prior to this, only one extract for the roll is available in each year, namely July 2013, September 2014, January 2015 and August 2016.

As noted, while the roll can be updated at any time, a large number of updates are likely to occur between April and June in order to meet the 1 July start date for the rating year. Thus, the January 2015 extract is likely to undercount additional properties created since the September 2014 extract; the other three extracts occur soon after the 1 July deadline. From August 2017 onwards, when

extracts are available for any month, we select annual extracts from August for two reasons. First, this matches the month of the one extract available for 2016. Second, August is immediately after the start of the ratings cycle, and thus it will include all the updates to the DVR between April and June. Using August also ensures that we capture any updates that may have just missed the 1 July deadline.[8]

Extracts provided to us from before 2013 are not in a format consistent with subsequent extracts, and are formatted in a way that makes it impossible to produce accurate estimates of the total number of SUIPs. For example, there is an extract from 2012 that has over 550,000 rateable units, which is far in excess of the 520,000 rateable units from the July 2013 extract, suggesting that there are duplicate entries. However, unlike subsequent extracts, the 2012 data does not have legal property descriptions or unit numbers for multiple addresses at the same street number, making it impossible to tell whether multiple entries at the same street address are duplicates or not.

As discussed above, ratings units contain properties that are used for a variety of purposes in addition to residential dwellings. Our estimate of the number of dwellings is comprised of codes 02, 09, 20, 21, 22, 90, 91, 92, 95 and 97. The estimate of residential dwellings is comprised of the SUIPs in these codes. (See Table 1.)

Residential dwelling estimates

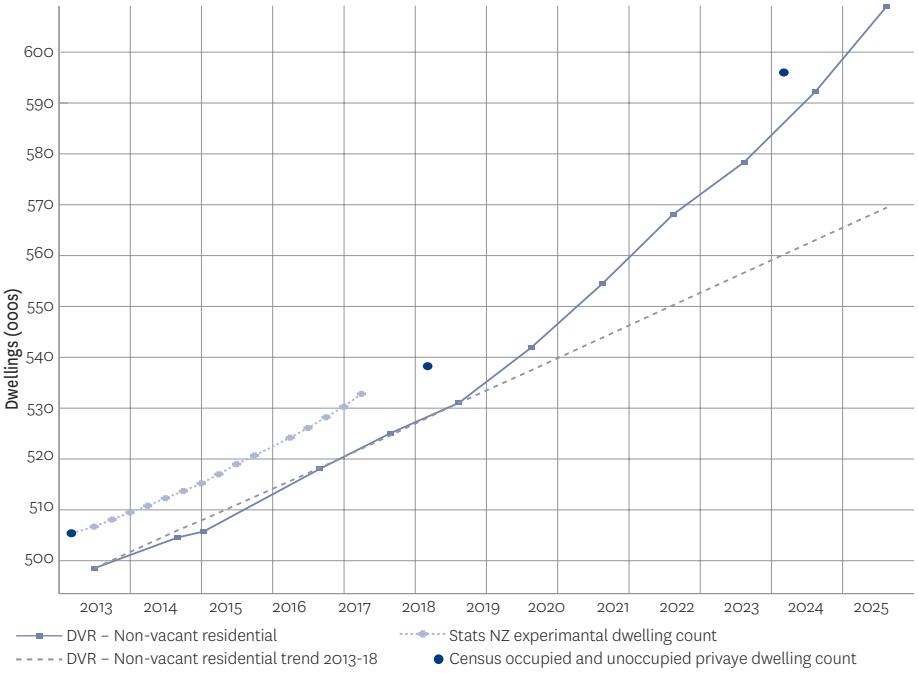
Table 2 shows the DVR-based estimates. We include counts of all rateable units alongside counts of units classified as residential. The DVR-based measure is in the final column, which is the sum of all SUIPs classified as non-vacant residential units. In August 2016, three months prior to the Auckland Unitary Plan becoming operative, the dwelling count was 518,045.[9] By August 2024 it had reached 609,055, an increase of approximately 91,000 dwellings.[10]

Figure 1 plots the dwelling stock estimates. For comparison, we also include experimental and census estimates from Statistics New Zealand. Census estimates are every five years, while the experimental estimates were quarterly, from 2001 to Q1 2017. We also superimpose a trend on the DVR-based estimates that passes through the July 2013 and August 2018 observations.

Table 2: Auckland's rateable units, 2013-2024

Year	Month of extract	All rateable units		Non-vacant residential units	
		count	sum of SUIPs	count	sum of SUIPs
2013	July	521,661	592,922	453,241	498,516
2014	September	528,413	600,956	458,680	504,575
2015	January	529,651	602,252	459,807	505,744
2016	August	541,216	617,012	470,177	518,045
2017	August	548,799	626,277	475,461	525,091
2018	August	559,716	636,929	483,346	531,048
2019	August	569,023	649,630	491,976	541,924
2020	August	578,576	662,137	501,813	554,461
2021	August	590,607	675,459	513,421	568,088
2022	August	601,243	687,669	522,754	578,400
2023	August	616,063	704,077	535,266	592,257
2024	August	630,596	720,668	550,114	609,055

Figure 1: Estimates of dwellings in Auckland, July 2013 to February 2024



Notes: DVR-based estimates are the sum of separately used or inhabited parts (SUIPs) of all non-vacant rating units that are used for residential purposes. DVR-based estimates for September 2014 and January 2015 are likely to be biased downwards as these observations are not taken immediately after the beginning of the annual ratings cycle on 1 July. Statistics New Zealand dwelling counts are the experimental estimates that ended in March 2017. The DVR trend line is fit to the July 2013 and August 2018 observations. Years on the x-axis correspond to January of each year.

DVR estimates are slightly lower than Statistics New Zealand experimental estimates, but the difference is rather consistent, ranging from 1.53% to 1.84%. The Statistics New Zealand estimate for the end of Q2 2013 is 506,700, while the DVR estimate for July 2013 is 1.62% smaller, at 498,516. The Statistics New Zealand estimate for Q3 2014 is 513,700, while the DVR estimate for September 2014 is 1.78% smaller, at 504,575. The Statistics New Zealand estimate for the end of Q4 2014 is 515,200, while the DVR estimate for January 2015 is 1.84% smaller, at 505,744. Finally, the Statistics New Zealand estimate for Q2 2016 is 526,100, while the DVR estimate for August 2016 is 1.53% smaller, at 518,045. Notably, the differences are larger for measurements taken later in the ratings year, namely September and January. As noted earlier, measurements taken right after the 1 July start of the ratings period are likely to be the most accurate, given the substantial updates to the roll between April and June.

The March 2023 census provides a much more recent official dwelling count to which to compare the DVR estimate. The census dwelling count was 596,007 in March, compared to 592,257 in the August DVR estimate, which is just 0.63% smaller.

The discrepancy between the DVR estimates and the census-based estimates may be due to the financial incentive for

property owners to not correct undercounts (see the discussion above). It may also be an artefact of the delay in new properties being added to the DVR, whereas census counts are a direct, up-to-date measure at a point in time. Because the number of dwellings in Auckland is growing over the sample period, a delayed measure will always lag behind an up-to-date count.

The potential drawback of using extracts from early in the calendar year is apparent when comparing the estimates to the 2013–18 trend: the January 2015 extract is below trend, whereas the July and August measurements are remarkably close to trend. The September extract is also slightly below trend. This accords with the premise that extracts from soon after the beginning of the valuation cycle on 1 July are likely to be more accurate.

There is a notable change in trend from August 2018 onwards. Apart from the September 2014 and January 2015 measurements, estimates between 2013 and 2018 almost exactly fit a linear trend that corresponds to an increase of about 6,400 dwellings added per year. After 2018 there is an abrupt shift in the trend, as the increase almost doubles to about 12,200 dwellings added per year. This is likely to reflect the impact of the Auckland Unitary Plan becoming operative in November 2016. As of July 2024, the median time to dwelling completion ranges between 1.27 and 1.53 years (Greenaway-McGrevy and Jones, 2023). However, the completed dwelling may not show up on the DVR until April, May or June following completion. Thus, consents issued after the Auckland Unitary Plan became operative are likely to start showing up in our dwelling stock estimates on or after the August 2018 extract date. The break in trend from this point onwards accords with the timing of the full implementation of the unitary plan. Using the 2013–18 trend as a crude counterfactual implies that the zoning reform almost doubled the rate to which the housing stock was being added. This accords with results from Greenaway-McGrevy (2023), who found that the reform increased the number of consents issued by over 80% between 2017 and 2022.

Comparison with consents

It would be useful to match additions to the DVR to building consents in order to assess how much of the increase in the dwelling stock occurred under the more relaxed regulations of the Auckland Unitary Plan. Unfortunately, matching the data is exceedingly difficult because there is no identifier linking consents to unit records on the valuation roll.

As discussed above, consented dwellings issued soon after November 2016 (when the Auckland Unitary Plan became operative) are likely to start showing up on the DVR-based dwelling stock estimates on or after the August 2018 observation date. Assuming a two-year lag between consent and a dwelling appearing on the DVR provides a very rough indication of how many consents result in additions to the estimated dwelling stock. Between August 2018 and August 2024, the dwelling stock estimate increased by 78,007 (= 609,055 – 531,048) units. This compares to a total of 93,840 dwellings consented between September 2016 and August 2022.[11] Assuming a 93% completion rate on consented dwellings implies that one dwelling was demolished for every nine completed, on average.[12]

Conclusion

We propose and implement a method for estimating Auckland's dwelling stock using the district valuation roll. The estimates indicate that, as of August 2024, the region's dwelling stock has increased by about 91,000 dwellings since a widespread zoning reform was passed in 2016. This is equivalent to a 17.6% increase in the dwelling stock to date.

We anticipate that district valuation rolls can be used to produce regular estimates of the dwelling stock for any territorial authority in the country. The data is feasibly available at any frequency, although the annual tax cycle suggests that the measure will be most accurate immediately after the beginning of the tax period on 1 July each year.

1 Some properties are exempt from rates, such as universities, schools, public hospitals and churches.
2 Auckland Council's definition of an SUIP differs slightly from a unit of use under section C.4(b) of the rating valuations rules, which state: 'Each physical component within a rating unit, which is capable of separate use, constitutes a single unit of use.' The units of use field in Auckland Council's DVR roll follows the SUIP classification, and as such, 'SUIP' and 'units of use' are used interchangeably throughout this article. Other districts may employ a slightly different definition of a unit of use.
3 The Rating Valuations Act classifies land that is part of the same title and 'separated only by a road, railway, drain, water race, river, or stream' as contiguous.
4 For additional details, see page 92 of Auckland Council's annual budget for 2023–04: https://www.aucklandcouncil.govt.nz/plans-projects-policies-reports-bylaws/our-plans-strategies/budget-plans/Documents/annual-budget-2023-24-volume-1.pdf.
5 Cases where owners are aware that they are overpaying their property taxes, but choose not to reduce their bill, are considered unlikely.
6 For more details, see LINZ, 2008, section C.3.
7 Rental refers to the estimated market value to rent that part of the unit for its current usage.
8 The dates are 01/07/2013, 12/01/2015, 29/08/2016, 28/08/2017, 13/08/2018, 19/08/2019, 17/08/2020, 15/08/2021, 15/08/2022, 15/08/2023 and 15/08/2024. The date for the September 2014 extract was not recorded.
9 Unfortunately, there is no historical extract closer to November 2016, when the Auckland Unitary Plan became operative. The zoning reform had a limited impact from September 2013 under the Auckland housing accord, which allowed developers to build under the relaxed regulations of the proposed unitary plan in exchange for a 10% affordable housing provision. (See Greenaway-McGrevy and Jones, 2023 for details.)
10 Many of these additional dwellings would have been consented prior to the Auckland Unitary Plan becoming operative, but after the Auckland housing accord that enabled limited upzoning under the proposed plan.
11 Source: author's calculations from Statistics New Zealand's data on monthly building consents by territorial authority, available at https://infoshare.stats.govt.nz/.
12 Greenaway-McGrevy and Jones (2023) provide completion rates by year of consent in Auckland. We use 93% because approximately this percentage of dwellings consented in 2018 and 2019 had a final inspection by July 2024. Meanwhile, over 95% of dwellings consented between 2018 and 2021 had a first inspection. Estimated demolition ratios are higher if a lower completion rate is assumed, and vice versa.

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Bill Rosenberg

How Can We Make Independent Public Policy Institutions a Less Fragile Species?

Reflecting on the closing of the Productivity Commission

Abstract

In late November 2023 the staff and commissioners of the New Zealand Productivity Commission Te Kōmihana Whai Hua o Aotearoa were shocked to learn that the newly elected coalition government would be abolishing the commission. It was disestablished just three months later, having functioned for 13 years. The commission's primary task was to provide the government with independent policy advice, via inquiries requested by the government of the day. From an historical perspective, the commission's closure was unfortunately par for the course. Few independent government institutions providing economic and social policy advice have survived even that long. This article explores the factors which contribute to these short lives, and the factors which contribute to the effectiveness of such institutions, and suggests ways in which they can be made less fragile.

Keywords independent advisory institutions, designing public institutions, policy advice, governance, politicisation, durability

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In late November 2023 the staff and commissioners of the New Zealand Productivity Commission Te Kōmihana Whai Hua o Aotearoa were shocked to read in a newly released agreement between the ACT and National parties on the formation of the newly elected coalition government that they would be closing down the commission. It was closed down just three months later, at the end of February 2024, 14 years after its establishment by another National-led government in 2010.

From an historical perspective, the commission's closure was unsurprising. Few independent government institutions whose primary role is the provision of economic and social policy advice have survived even that long. This article is not primarily concerned with the particular circumstances surrounding the demise of the Productivity Commission. Rather, it draws on this experience and that of similar institutions in order to explore the factors which contribute to these short lives and, having identified them, propose ways to strengthen the effectiveness and longevity of these institutions. Realistically, however, some factors are impossible to guard against: a government that is determined to sweep away certain institutions or

thinking cannot, in New Zealand's unicameral system, easily be stopped.

The importance of such institutions lies in their ability to address complex, long-term questions that may be controversial or require a specific focus or specialist expertise. Without advice on such questions, governments risk 'flying blind' because they cannot adequately consider the long-term impacts of their decisions. They may not identify looming issues, or the significance of them, before the issues reach a critical state or become difficult or impossible to address effectively. While government departments address some such issues, their resources tend to be focused on providing advice to ministers on issues of the day, so short-termism is an inherent problem, it is difficult for them to devote substantial time – a year or more – to a single issue, they may lack the required expertise, and their advice can be constrained by silos. Independence, both from private vested interests and from particular ministers, agencies or silos, is valuable in its own right.

Conceptually, such organisations could be public or private and have a range of different forms of ownership and governance. The focus here is on public bodies which have a reasonable degree of political independence, and whose purpose and function is to provide research-based policy advice and analysis to the government, for these reasons:

- Government (public) institutions rather than private ones are the focus because they are expected to have a public purpose and serve the public interest. With sufficient statutory independence, they can be, and can be seen to be, offering analysis and advice that is largely free of the influence of the government of the day.[1] They can also be free of the vested interests or ideological approaches that are often present in private 'think tanks' either under the influence of their permanent funders or as a result of needing to continue to attract contracts upon which their existence depends.
- Independence needs to be assured in some way. This can be achieved principally through statutory protection, governance arrangements (including appointment processes) and, as a practical matter, stable funding. Independence is distinct from advice provided from within government departments, which, while required to be 'politically neutral' and 'free and frank' under the principles of section 12 of the Public Service Act, must also, sometimes despite their best advice, carry out their minister's will and often act under pressures of ministers and time.
- The provision of research-based policy advice is distinct from pure research and indicates that the policy advice provided by such bodies is evidence-based.

I refer to such institutions as 'independent public policy institutions' or IPPIs.

While the Productivity Commission had an economic focus to its work, the scope of this article is wider because the interest is in independent policy advice rather than the precise subject matter. In any case, there are relatively few examples of such institutions with an economic focus. On the other hand, I do not wish to stray too far into other subject areas, such as the natural sciences or technology, because there may be other survival factors at work, such as the relatively uncontentious nature of some (not all) of their work, and the public view of such scientists as being research-based and apolitical (a view which unfortunately appears to be changing). I therefore limit the scope mainly to social science research and policy, including economics.

The article proceeds as follows. It first outlines the types of institutional forms available in New Zealand and their pros and cons for IPPIs. It then considers the factors influencing their survival or otherwise. Finally, it considers possible methods for laying a foundation for the success of IPPIs and lengthen their lives. Examples of New Zealand IPPIs, including the Productivity Commission, are used where relevant to illustrate my arguments.

> The principal current institutional forms most likely to be considered an [independent public policy institution] are those specified under the Crown Entities Act 2004 …

Institutional forms of IPPIs

The principal current institutional forms most likely to be considered an IPPI are those specified under the Crown Entities Act 2004, particularly autonomous Crown entities and independent Crown entities, and possibly Crown research institutes (which are Crown entity companies[2]). All have a responsible minister, and their independence is controlled by the degree to which the minister can direct them, and the ease with which he or she can dismiss board members.

However, there are other possibilities. Officers of Parliament such as the parliamentary commissioner for the environment have considerably more independence, being appointed by and reporting to Parliament (through the Officers of Parliament Committee) rather than a minister.

Arrangements with less statutory independence include research units within government departments or Crown research institutes, Crown agents (also under the Crown Entities Act), departmental agencies (department-like agencies which are hosted within a department, from which they may have some independence), centres within universities, earlier forms of entity used in New Zealand, or a bespoke form perhaps based on an overseas example. Table 1 summarises the advantages and disadvantages of the various forms other

Table 1: Possible institutional forms of IPPIs

Form	Main legal basis	Advantages	Disadvantages	Examples
Crown agent	Crown Entities Act	Under less ministerial control than a department	Must comply with direction by minister to *give effect* to a government policy; board members, unless elected,[3] can be dismissed at its minister's discretion.	Accident Compensation Corporation Tertiary Education Commission
Autonomous Crown entity	Crown Entities Act	Under less ministerial control than a Crown agent	May be directed to *have regard to* a government policy; board members, unless elected, can be dismissed at any time for a reason the minister considers justified.	Infrastructure Commission Retirement commissioner
Independent Crown entity	Crown Entities Act	High degree of statutory independence. May not be directed by minister, unless there are specific provisions in another Act. Board members can be dismissed at any time only by the governor-general for just cause on the advice of the minister in consultation with the attorney-general.	Ministerial appointments to boards may create concerns that the selection is politically biased (true for all Crown entities). Directly subject to government funding decisions Less independence than officers of Parliament	Law Commission Human Rights Commission Climate Change Commission Productivity Commission (before being disestablished)
Officers of Parliament	Specific Acts	Highest degree of statutory independence. Appointed by, report to and can be dismissed only by Parliament	Parliament appears reluctant to create such positions: there are only three.	Ombudsman Controller and auditor-general Parliamentary Commissioner for the Environment
Research unit within government department or Crown research institute	Authority of chief executive	Close to main 'client' (the host entity), so relevance to funder is clear. Funding flows from host.	Independence and funding depend on chief executive and financial state of host. May not be seen as independent externally. Unlikely to survive host's merger or closure.	Research unit in Department of Labour until department's closure and absorption into MBIE in 2012
Departmental agency	Public Service Act 2020	Similar status to a department	Similar status to a department. Reports to a minister and depends on goodwill of host department.	Ministry for Disabled People (within MSD) Aroturuki Tamariki –Independent Children's Monitor (within Education Review Office)

than the last three. I go into more detail in the following sections.

Prior to the Crown Entities Act 1992, IPPI-type organisations took a variety of forms. An example is given below (the New Zealand Planning Council) whose board included the relevant minister and the secretary for the Treasury, through which it was funded.

Though not a comprehensive analysis of institutional types, Skilling (2018) surveyed productivity institutions in some small advanced economies. The New Zealand Productivity Commission, an independent Crown entity, was modelled on the Australian Productivity Commission, which has a similar independent status and is a descendant of a series of government bodies beginning in 1921. Ireland's National Competitiveness and Productivity Council (established in 1997) is an independent body providing advice to the government, with a 'balanced' ministerially appointed council made up of experts, representatives of employer and employee bodies, and heads of three related government bodies. It draws on a related department (which has representation on the council) for research (National Competitiveness and Productivity Council, 2020). Sweden's agency, Growth Analysis, is also a standing body with its own staff, working by government commission under the supervision of a ministry while taking an independent position, but its institutional characteristics are not clear. Denmark has had a series of expressly time-limited institutions generally made up of representatives from unions, business and experts and including senior ministers (two were chaired by the prime minister), and one made up solely of experts. Norway had a time-limited commission of experts modelled on Denmark's experience. Singapore also has convened time-limited institutions, with members including ministers, unions, business and academics. Supported by government officials, they prepared reports to the government using committees which included external experts and stakeholders, and public consultation.

Factors affecting the fragility of IPPIs

When it was being disestablished, the Social Policy Evaluation and Research Unit or 'Superu' (another short-lived IPPI, formerly the Families Commission) commissioned David Preston (a former senior Treasury and Department of Social

Welfare official) to provide, with reference to Aotearoa,

> A history of agencies, programmes and other initiatives (e.g. reviews of the social sciences) which have attempted to boost the use of research and evidence in social policy. This will not be a history for the sake of history. Rather, it will aim to identify the common reasons why most of the previous attempts have not survived, so as to inform future initiatives.

For Whom the Bell Tolls: the sustainability of public social research institutions in New Zealand (Preston, 2018) (henceforth 'Preston') provides valuable insights and history, providing many examples of relevant institutions. The analysis is largely of institutions focused on social science, but overlapping with other areas and including economics.

Preston (pp.67–9) identifies the following 'institutional success factors', in addition to the general ones of 'competent professional staff and good management'.

A clearly defined field of research

Preston observes that when operating with too broad a field of interest, it is difficult for staff to maintain the depth of expertise that single sector researchers can provide (p.69). In the context of Aotearoa, this often comes down to focus on a single sector or topic (perhaps risking maintenance of silos), although even education or productivity are sufficiently multifaceted to create difficulties for a small institution to cover in depth. Size is a factor: a larger institution, which larger countries can afford, can maintain specialists whose expertise can assist many areas of inquiry.

Well-identified research priorities

Preston describes this as 'the need to produce research which meets the needs of its clients, either the government directly or the public sector agency commissioning the research or providing the grants' (p.67). He comments that this is almost automatic for units within government departments and for agencies which rely on research contracts for most or all of their funding. However, it is a perennial problem for public institutions which must both be seen to maintain their independence and carry out work which the government of the day considers relevant. There is a constant risk that 'meeting the needs of its clients' becomes, or is seen as, a euphemism for following the political agenda of the day.

A stable long-term funding model, at least for baseline funding

Preston makes clear that '[h]aving a stable and appropriate long term funding model is important to publicly owned social research organisations'. While departmental research units can be funded from the department's own appropriations, independent institutions require 'some form of block grant for at least base line funding to recognise the role they performed in providing information and advice to the government'.

Effective relations with the departmental policy and service delivery agencies

Preston observes that :

> 'Effective' does not always mean 'harmonious', however, even when the research unit is within the department concerned. 'Effectiveness' can have several meanings. Policy effectiveness involves being close to the policy action and being able to provide useful information, even if its value is only recognised retrospectively ... When there is a good relationship with a sector department, and the institution is seen as providing valuable research information, the department tends to act as an advocate for the institution.

Approximately half a century ago a statutory body with a mandate to provide economic policy advice to the government was established by a National Party government; fourteen years later it was abolished by another National Party government ...

Reframing the factors

Given this discussion of Preston's factors for survival, I reframe them for clarity and practicality as follows. They are listed roughly in what I judge is declining order of importance:

1. the ability to respond to the needs of the government of the day without compromising independence;
2. funding models that provide secure baseline support for maintenance of expertise and long-term thinking;
3. political, multi-party acceptance of the need for such long-term institutions despite political risks;
4. a manageable breadth of required expertise given the size of the institution and the resources available to it;
5. independence from other government agencies while maintaining good working relationships with them.

These require a mixture of structural attributes, such as a statutorily independent form, and careful management, particularly by the IPPI itself, ministers and other government agencies. I consider these attributes in more detail after looking at some examples.

Examples

An example from Preston underlines the non-uniqueness of the Productivity Commission's demise with remarkable parallels. Approximately half a century ago a statutory body with a mandate to provide economic policy advice to the government was established by a National

Party government; fourteen years later it was abolished by another National Party government with four months notice:

> The New Zealand Planning Council (1977–91) was set up as an advisory body to Government in an era when economic planning was in vogue. It commissioned research projects across a wide range of sectors and produced policy reports. By 1991, its long term planning focus was unwelcome to the government of the day and it was abolished. (Preston, 2018, p.15)[4]

For both organisations, it appears that the kind of advice the institutions were providing was no longer welcome. I will return to this example below.

Other examples provided by Preston which are of interest in the present context include the Commission for the Future (1977–82), established at the same time as the Planning Council, and with an even shorter life. The Families Commission/Superu (2003–18) lasted about as long as the Planning Council and the Productivity Commission. Another entity which had a particularly short life was the New Zealand Institute for Social Research and Development, a Crown research institute for the social sciences, which survived only three years, 1992–95, unable to attract sufficient contract research on which the government required it to depend.

On the other hand, the New Zealand Council for Educational Research (NZCER), an example of a single-sector IPPI (and in practice mainly the compulsory education sector), was established in 1934 and is still going strong. Preston also includes the Health Research Council (established in 1938), although this is predominantly a research funder.

Other commissions with a research and policy advice role and the status of either autonomous Crown entity or independent Crown entity are relevant. Two were relatively recently established: the Infrastructure Commission Te Waihanga (established in 2019, an autonomous Crown entity) and He Pou a Rangi Climate Change Commission (established in 2019, an independent Crown entity). The longer-lived commissions with this role are Te Ara Ahunga Ora Retirement Commission (established in 1995, an autonomous Crown entity), Mana Mokopuna – Children and Young People's Commission (first established in 1989 as the children's commissioner, taking a number of statutory forms, most recently an independent Crown entity),[5] Te Kāhui Tika Tangata Human Rights Commission (established in 1977, an independent Crown entity) and Te Aka Matua o te Ture | Law Commission (established in 1985, an independent Crown entity). Of these, Preston looked only at the Law Commission, and then only in passing, limited by the scope of his report.

It is notable that all of these longer-lived commissions except for the Law Commission include among their responsibilities some form of adjudicatory or monitoring function tied to legislation, and in the case of Mana Mokopuna the United Nations Convention on the Rights of the Child, mainly related to human rights. Plausibly, this is a survival factor, but one that is not available to all IPPIs. The Climate Change Commission also has statutory responsibilities related to the Climate Change Response Act 2002, but it is too soon to tell whether that protects it.

The three officers of Parliament are instances of a different form of independent public body. They are directly responsible to Parliament rather than to a minister, and cannot be dismissed or disestablished other than by a resolution of Parliament. All have been in existence for many decades. The youngest, the parliamentary commissioner for the environment Te Kaitiaki Taiao a te Whare Pāremata (established in 1986) fits the IPPI model well with its relatively broad remit of investigating environmental concerns and producing independent reports and advice.[6]

Table 2 lists the IPPIs I have identified which existed for part or all of the period since the 1980s.

Preston also looks at research units within government departments and agencies, including the Department of Labour, Ministry of Social Development, Ministry of Education, Accident Compensation Corporation and Ministry

Table 2: IPPIs since the 1980s, with lead political party of governments responsible

IPPI	Established	Government	Disestablished	Government
Commission for the Future	1977	National	1982	National
Families Commission/Social Policy Evaluation and Research Unit (Superu)	2003	Labour	2018	National/ Labour
He Pou a Rangi Climate Change Commission	2019	Labour		
Infrastructure Commission Te Waihanga	2019	Labour		
Institute for Social Research and Development	1992	National	1995	National
Mana Mokopuna – Children and Young People's Commission	1989	Labour		
New Zealand Council for Educational Research Rangahau Mātauranga o Aotearoa	1934	United/ Reform		
New Zealand Planning Council	1977	National	1991	National
Parliamentary Commissioner for the Environment Te Kaitiaki Taiao a te Whare Pāremata	1986	Labour		
Productivity Commission Te Kōmihana Whai Hua o Aotearoa	2010	National	2024	National
Te Aka Matua o te Ture | Law Commission	1985	Labour		
Te Ara Ahunga Ora Retirement Commissioner	1995	National		
Te Kāhui Tika Tangata Human Rights Commission	1977	National		

of Health. The lives of these units depend on the needs and the nature of the departments. Large departments that are core to government and have existed over many decades tend to have long-lived research units. Others have more uncertain lives, and even well-established units can disappear in organisational restructuring. For example, the Department of Labour had a well-regarded research unit which was lost when the department was merged into the Ministry of Business, Innovation and Employment. They are also subject to ministerial intervention and influence, and, depending on the minister, an expectation of deference towards him or her.

> inaccurate. Publication of the issue was delayed until public interest in the topic died down and it was decided to cease publication of the Journal, apparently to avoid future difficulties with Ministers. (p.31)

Similarly, Preston records that some topics were 'subject to a culture of control about what is publicly released' (p.70).

It is notable that among the IPPIs identified, all the closures were by National-led governments. By contrast, National-led and Labour-led governments each set up about half of the IPPIs (seven and six respectively out of 13).[7] This record is despite Labour-led governments seeing some IPPIs as being unsympathetic to them, as discussed below. The only formal exception is Superu, whose closure was begun by a National-led government and completed by an incoming Labour-led one. All the disestablished institutions were set up by National-led governments except for Superu, which, as the Families Commission, had been established by a Labour-led government.

> Rather than abolish the [Planning] council, the [National] government could have changed the membership of its board and recast its terms of reference, preserving the expertise of its staff and their collective institutional knowledge.

An example provided by Preston of the hazards of organisational changes and relationships with ministers is the fate of the *Social Policy Journal of New Zealand.* The journal was initiated in 1993 by the Social Policy Agency, a business unit within the Department of Social Welfare, to provide 'a way of disseminating policy and research findings related to the wider social services sector', and attracted external contributions. The Social Policy Agency itself was merged back into a new Ministry of Social Policy (with the Department of Social Welfare's corporate office) in 1999, but the journal survived until 2010.

> No official reason was ever given for the closure of the Journal. However, informal sources commented that an article about to be published included information which indicated that a statement made by a Minister was

Discarding rather than adapting existing institutions contrasts with the Australian Productivity Commission (a model for the New Zealand Productivity Commission at its establishment). This was formed in 1998 by merging three existing bodies, which in turn had histories of mergers and changed functions of organisations going back to 1921 (Productivity Commission (Australia), 2003).

Further discussion of the survival factors

The ability to respond to the needs of the government of the day without compromising independence

As already observed, this is a perennial problem for public institutions which must both be seen to maintain their independence and carry out work which is seen as relevant to the government of the day and the public. This dilemma becomes particularly acute when there is a significant change in the philosophical or ideological framework of an incoming government or a powerful government department, particularly Treasury.

As Preston suggests, it is very likely that important factors in the Planning Council's demise were its unwillingness to adopt enthusiastically the new agenda of the neoliberal reformers of the 1984–90 Labour government, the National government elected in 1990, and Treasury, the lead agency in the reforms. Treasury, also responsible for the council's funding and with its secretary on the board, recommended the council's abolition (Kelsey, 1997, p.64).

McKinnon documented in his official history of the Treasury that it was opposed to planning and was 'determined to wean ministers from Keynesian thinking'. For example, Treasury was abandoning the objective of full employment, which was core to the council's work and the post-WWII policy consensus, had fundamental differences with the council over the significance of New Zealand's chronic balance of payments problems, and some within the council favoured a more gradualist approach to economic liberalisation than the lead political and bureaucratic reformers (see, for example, Hawke, 2012, pp.22, 24; McKinnon, 2003, pp.288–9).

The council's demise at the reformers' hands was despite it having published papers which were highly influential among those leading and advocating for the reforms (see, for example, Bertram, 1993, pp.37–9).

An IPPI may put itself at risk if it takes its independence too much to heart. As Fischer put it with reference to the Planning Council:

> Perhaps of greater concern is the extent to which a body which is not independently funded can retain an independence in its publications. The right to publish, if not carefully used, could be seen as the right to self-destruct. (Fischer, 1981, p.21)

The National government had other options. Rather than abolish the council, the government could have changed the membership of its board and recast its terms of reference, preserving the expertise of its staff and their collective institutional knowledge. It could also have welcomed – or at least tolerated – the informed advice which the council could have provided, contesting that coming from Treasury. But, as Bertram and Kelsey documented, it was but one of a large number of institutions, including other sources of alternative policy advice, which were shut down during that period – a modus operandi.

The Productivity Commission's statute, the New Zealand Productivity Commission Act 2010, mandated its 'responsible minister' to give the commission its inquiry topics (s9). This was arguably designed to tread the narrow path between meeting the needs of the government of the day and maintaining the institution's independence. Yet this was not well understood by some members of the public, and it appears some politicians, who criticised the commission rather than the government for its inquiry topics.

Nonetheless, the commission had a reasonable strike rate in its recommendations being agreed to by the government of the day (between 51% and over 90% depending on the inquiry reviewed), shown in a paper published by the Productivity Commission shortly before its closure, *How Inquiries Support Change: lessons learnt from Productivity Commission inquiries* (Productivity Commission, 2024, p.35).

Grant Robertson was the responsible minister for the commission as minister of finance in the Labour-led governments from 2017 to 2023. When it took office, this government was under pressure from some members of the Labour Party to disestablish the commission. They probably had in mind the pro-market orientation of commission reports in its first years under the National-led government, and that the commission was established under an agreement between ACT and the National Party. The founding commissioners included an ACT candidate in the 2005 general election and a principal architect of the controversial 1980s–90s reforms described above, former Treasury secretary Graham Scott, with a prominent figure in implementing the reforms, Murray Sherwin, as chair. Robertson said he resisted this pressure because he considered productivity to be important. He took the orthodox route of replacing the original commissioners as their terms expired. The refreshed board changed direction to the degree that it put a greater emphasis on wellbeing (part of the commission's statutory purpose from its inception), the distributive impacts of productivity, and a broad understanding of productivity that included natural, human and social capital as well as the standard physical capital and labour. This approach was consistent with evolving Treasury, OECD and government thinking on living standards and wellbeing.

A former commission economist and Murray Sherwin considered the commission had been 'politicised' (Heatley, 2023; Tibshraeny, 2023). Of course, in the Labour Party's eyes, and those of some Green MPs too, judging by the parliamentary debate on the closure legislation (for example, Swarbrick, 2024), it was politicised from the start, as Heatley conceded was possible. Claims of politicisation are not unusual for public bodies, referring to either their output or those running them (particularly in senior or governance roles). The claim of bias can refer either to political flavour (ideology) or to party-political favouritism. The two are not necessarily the same: an institution which carefully avoids party-political favouritism could produce output that some may see as biased. That is particularly likely when paradigms of thinking change. The real test is whether the bodies competently perform the function intended for them. However, the frequency of such claims suggests that further protection against politicisation would be useful.

ACT made closing the commission a part of its coalition agreement with the National Party, saying that it was to partially fund a new Ministry for Regulation. The two could, of course, have co-existed, or the commission, which had the skills, could have had the detailed review of regulations added to its work. But the new ministry, unlike the commission, would be under the direct control of its minister.

It is a fact of life that most ministers prefer to have policy organisations under their control. Control lies at the heart of the relationship between ministers and public agencies.

There is a parallel with the demise of Superu. Its winding up was begun by a National-led government which preferred its new Social Investment Agency, established in 2017 (itself replacing the cross-agency Social Investment Unit established a year earlier). The incoming Labour-led government did not revoke either decision. According to Preston, 'Superu did not provide the type of policy-ready programme evaluation that the government wanted' (p.16). The Social Investment Agency was a departmental agency, with much closer control by ministers than Superu, which was an autonomous Crown entity.[8]

It is a fact of life that most ministers prefer to have policy organisations under their control. Control lies at the heart of the relationship between ministers and public agencies.

Funding models that provide secure baseline support for maintenance of expertise and long-term thinking

Fischer described over 40 years ago the perennial tensions between funding and independence. For the Planning Council, its reliance on funding through Treasury may have added to intensifying tensions over policy directions. It is far from an ideal relationship, though, in the case of Treasury, it will always have some influence over the funding of any government organisation. The Productivity Commission's funding was not increased for its first decade, leading to a running down of its independent research function and inter-agency work, and reduced inquiry capacity. It eventually received a nominal increase in its funding in 2021.

The short life of the Institute for Social Research and Development as a fully commercial Crown research institute is an extreme example of the consequences of a lack of stable funding. Some successful institutions have been helped by foundational grants (for example, from the Carnegie Foundation to NZCER for its first ten years), by being part of a university (though with mixed results), and, for private institutions, through not-for-profit and charity status. None, other than NZCER, have assurances of ongoing funding and all still rely to some degree on contract income.

There is also the potential for reliance on contracts to weaken the independence of an institution if it worries that its forthrightness will antagonise potential clients. Stability and certainty in funding supports independence while allowing the institution to take risks.

Almost universally, IPPIs will be considering matters that are medium- to long-term rather than of immediate relevance. Even the time needed for a thorough piece of research, including consultation, literature reviews, original work and report writing, means that immediacy is impracticable. Long-term funding is needed for long-term thinking.

Political, multi-party acceptance of the need for such long-term institutions despite political risks

An independent institution which takes its role seriously will at times tread on the toes of those in power. The response of power holders – who may be politicians and senior officials in government, or powerful or influential private sector interests – determines whether the bruised toes become a danger to the institution. The institution can be protected by institutional structures; conventions that politicians will tolerate such irritations, meaning in practice that they may respond robustly but will not attack the institution's existence or individuals within it; or public opinion in defence of the institution, or at least of a controversial report.

As the New Zealand record shows, institutional structures cannot protect an institution indefinitely, but it is worth considering what might make some structures more effective and resilient than others.

As the New Zealand record shows, institutional structures cannot protect an institution indefinitely, but it is worth considering what might make some structures more effective and resilient than others. I will return to this shortly.

Equally, the record shows that the convention of toleration appears to be weak in New Zealand – perhaps weaker than in Australia, judged by the very different longevity of their respective productivity commissions. But this is hardly conclusive, and a more extensive study would be required to be sure. It would need cross-party consensus on the importance of maintaining such institutions despite disagreements about their outputs from time to time, and probably an explicit agreement, to change this unfortunate state of affairs. It will be salutary to watch the fate of two recent additions to the IPPI stable – the Infrastructure Commission and the Climate Change Commission – both of which have produced reports which have not been welcome in some powerful quarters.

Public opinion is difficult to rouse, particularly for institutions such as the Productivity Commission which relatively few people are likely to have heard of, let alone care deeply about. An example of tolerance set by politicians, as described in the previous paragraph, would help signal the value of IPPIs to the public.

I suggest how changes to the structure of institutions could help reinforce the expectation of independence in the next section.

A manageable breadth of required expertise

While Preston argues that a sector-specific focus safeguarded NZCER, education is a broad field, so it has done well to manage its resources. The longer-lived commissions could also be said to have a relatively narrow focus (while not a 'sector'), but to greatly varying degrees: the Retirement Commission, the Children and Young People's Commission/children's commissioner (although it has recently travelled a rocky road), the Human Rights Commission, and the parliamentary commissioner for the environment. The Law Commission is an exception, given the broad range of legislation it is asked to review, and the parliamentary commissioner for the environment could be argued to have the same problem of covering a very broad subject area as the Productivity Commission.

By their design, the Productivity Commission and the Planning Council strayed from this criterion. The Planning Council had a very broad remit, covering

social, economic and cultural matters, and its publications cover a wide range of issues (New Zealand Official Yearbook, 1978–92; Fischer, 1981). Fischer wrote just four years after the council was formed that 'The extremely broad range of functions prescribed for the Planning Council … creates conflicts for the Council in carrying them out, and also gives rise to high expectations among the Council's clientele' (p.9).

While the Productivity Commission's focus was limited to productivity and its impacts on wellbeing (as described in its statutory purpose),[9] that in itself is a broad topic when its drivers and impacts are considered, and, adding to those, how the different parts of the economy and society affect or are affected by productivity performance. In practice the commission was driven by its statutory duty to carry out inquiries specified by its responsible minister, which covered a broad range of industries, government services and areas of policy, and this breadth was evident with respect to all three of the ministers it served under (English, Joyce and Robertson).

Preston observes that operating with too broad a field of interest makes it difficult for staff to maintain the depth of expertise that single-sector researchers can provide (p.69). That was a constant challenge for the Productivity Commission, exacerbated by its externally controlled inquiry model, which it resolved in part by contracting in specialist researchers and through its consultation processes. The Planning Council made heavy use of contracting and secondments from other government agencies (Fischer, 1981, p.9). But size is a factor: a larger institution could afford to maintain specialists whose expertise might be applicable across several areas of inquiry. Heavy use of contracting to access expertise can mean that building institutional expertise is forever delayed. The maintenance of expertise is a taonga in itself, given New Zealand's size and tendency to lose expertise overseas.

While this factor clearly affects the ability of an institution to do its job well, it is possible to manage, as IPPIs such as the long-lived Law Commission and parliamentary commissioner for the environment have shown despite the broad areas they cover.

Independence from other government agencies while maintaining good working relationships with them

On the face of it, this is in the hands of the IPPI itself. However, in the Planning Council example, there were external factors which led to a deteriorating relationship with its most important agency for both policy and funding purposes, Treasury. Arguably, that occurred because it maintained its independence. Sometimes these relationships can be outside the control of the IPPI and it has to do the best it can in the circumstances.

On the whole, the Productivity Commission appears to have had 'effective' relationships with departments and agencies in Preston's sense, demonstrated in its evaluations of each inquiry, and in the evidence collected in *How Inquiries Support Change*. Staff from some departments appreciated that the Productivity Commission was able to think long-term in a way that they were unable to because of the immediate demands upon them. It also helped overcome the difficulty of silos.

The commission's longer-term view and spanning of silos did create tensions with other agencies at times, shown by them resisting recommendations or showing sensitivity at 'their' turf being walked on. But they also appreciated the analysis it produced. In the end the dissatisfaction of any agency was not evident in its closure, and, in particular, it received generally good support from Treasury until it was closed down.

How could IPPIs be strengthened?

In this section I propose options to address some of the fragility factors identified above. Table 3 summarises the options. Inevitably, each suggestion must balance pros and cons, and often there is no perfect answer. The context will always be important. It is hoped this will start a discussion that can improve the chances of New Zealand maintaining quality, long-lived independent public policy institutions.

> Another method to give the government of the day influence over topics is to have the responsible minister or person who is explicitly expected to represent the responsible minister on the IPPI board.

Responding to the needs of the government of the day without compromising independence

While the balance between relevance and independence is in large part an issue of IPPI structure and political attitudes, which are covered below, it is also about how to give the government of the day sufficient influence over where the IPPI allocates its efforts without compromising the IPPI's independence by influencing the resulting findings and recommendations. While the government of the day is the primary client of the IPPI, other government agencies and the public should not be forgotten. Without their support, changes in policy are unlikely to occur.

The Productivity Commission, similar to some other IPPIs, such as the Law Commission, was required to produce reports on topics (which I refer to as 'inquiries') selected by the government through the 'responsible minister'. This process worked reasonably well, but, as

described further below, it could have been improved by taking a strategic approach to topic selection to create a stream of related topics, while leaving room for topics of more immediate relevance. Terms of reference are critical to success, and need to be negotiated between the minister and IPPI.

Another method to give the government of the day influence over topics is to have the responsible minister or person who is explicitly expected to represent the responsible minister on the IPPI board. This is developed further below.

In either case there must be unambiguous protection for the institution – board and staff in the first case, staff in the second case – to decide how to address the chosen topics, and any self-driven research, free from the influence of the government of the day. That independence should be clear in the institution's statute, with the most likely models being autonomous or independent Crown entity (with modifications suggested below) or parliamentary officer.

It may be that government interest in the institution would be strengthened by giving it the mandate and resources to follow up its reports by monitoring and evaluating how the recommendations are implemented, as *How Inquiries Support Change* suggested (p.43). Findings and further recommendations would be made on matters needing to be addressed by ministers or agencies. Some ministers and agencies may find that threatening, while others might welcome ongoing monitoring of the effectiveness of their decisions.

Funding models that provide secure baseline support for maintenance of expertise and long-term thinking

Assured baseline funding is required for maintaining expertise and to protect against 'influence by starvation', given that a publicly funded agency is always at risk of a cabinet deciding not to fund it adequately or at all.

The ideal would be an endowment, because it provides the greatest self-sufficiency, stability and independence. It could be partially funded from donors (as is not unusual for public universities, both in New Zealand and overseas, taking care that no conditions were attached that compromised independence) or by provision of real assets such as a building. There are options as to its size. For example, the best would be for it to be sufficient for a viable programme of ongoing work of a quantity and quality that is enough to maintain the credibility and reputation of the institution and maintain its expertise. Alternatively, it could cover base funding for the institution's independent work and to maintain a minimum viable level of expertise, accompanied by multi-year funding from the government on agreed work plans. An endowment would require agreement on audit and reporting on the use of the fund. However, I am not aware of any precedents for government-funded endowments in New Zealand other than one to the New Zealand School of Government at Victoria University of Wellington in the mid-2000s, although there are examples of substantial private gifts to public institutions.

> There should be recognition of the need to retain staffing expertise and knowledge in both the size of the institution which is funded (it should be large enough to be able to resource a continuing set of key areas of expertise), and the stability of the funding.

Another mechanism would be to establish an intermediary body (which for brevity I will refer to as the 'independence guardian') between the government of the day and IPPIs as a group. Its own independence would be important, perhaps with it being constituted as an officer or legislative branch department of Parliament. Decisions would need to be made on which institutions it covered. The independence guardian would at minimum report to ministers and Parliament on the IPPIs' financial positions and requirements and negotiate for their funding as a group. It would then make its own decisions, based on criteria agreed with the cabinet (or perhaps in legislation), on how to fund each of them. This is a similar model to the way the Tertiary Education Commission (TEC) funds tertiary institutions, but it would require more independence than the TEC. This would make it conceptually more like the TEC's predecessor, the University Grants Committee, which until 1989 was the intermediary for funding universities, though it is not an exact model.

The independence guardian could do more than intermediate funding: it could recommend candidates for appointment to IPPI boards to their responsible ministers[9] (or, alternatively, make the appointments), monitor appointments to ensure that processes are consistent with legislative requirements, inform the public and government on the activities and role of the IPPIs, encourage collaboration between them, such as in joint inquiries and sharing expertise, and encourage bequests to support their work. To maintain direct ministerial connection with the IPPIs, the relationship between each IPPI and its responsible minister would remain for the purposes of selection and reporting back on inquiries. Formal accountability requirements with respect to finances and fulfilment of statutory responsibilities would be split between ministers and the independence guardian.

Finally, if neither of these options are feasible, multi-year funding should be considered. This would assure each IPPI of ongoing funding for perhaps five years,

with provision for annual adjustments to reflect changes in costs.

There should be recognition of the need to retain staffing expertise and knowledge in both the size of the institution which is funded (it should be large enough to be able to resource a continuing set of key areas of expertise), and the stability of the funding. The more general the scope of the institution, the larger is the pool of expertise that is needed. Elements of contracting, or fundraising outside a baseline, may threaten independence and the ability to maintain sufficient staff with the required expertise and institutional knowledge.

Political acceptance of the need for such long-term institutions despite political risks

Political acceptance is driven by many factors, as with any political decision, and I make no attempt to cover them all here.

One of the critical factors is the governance of the institution, which can take two different forms. One is to make board appointments in a way that as far as possible assures elected governments of all colours that they have not inherited a political partisan. The other is to deliberately give direct influence in the governance of the institution to a minister or their nominee by providing them with a seat on the board, with strong protections for the independence of the inquiry process and hiring of staff within the institution.

In the first model, protection against ministers making overtly political appointments could be strengthened in a number of ways.[11] Appointments could require consultation or agreement with opposition parties. It could use an appointments or nominations panel to, respectively, make the appointments or recommend a list to the minister for final decision. A nomination committee is required for the Climate Change Commission under sections 5E to 5H of the Climate Change Response Act 2002. The danger in these kinds of process is blandness of appointments, making it difficult to encourage change in the direction of an IPPI.

One alternative is to give the process of recommending candidates to the minister to the independence guardian described above. It could go as far as giving the independence guardian the power to make the appointments, but this may be a step too far for ministers. It increases the danger of blandness and concentrates considerable power in the independence guardian.

A further possible step to ensure a balance with the minister's power of appointment is to have some members appointed by a relevant professional body, or nominated or elected by organisations such as central organisations of employers, workers and Māori. Criteria for skill and experience would be required. Ireland's National Competitiveness and Productivity Council mentioned above, NZCER and our tertiary education institutions have models like this.

A further alternative is to make more IPPIs officers of Parliament, where this is appropriate (such as the privacy commissioner), or to extend the officer concept to institutions where their boards are appointed by Parliament. An independent fiscal institution, proposed by the previous Labour-led government, now appears to have support in some form on both sides of Parliament, and one of its proposed forms is as an officer of Parliament or a legislative branch department (Ball, Irwin and Scott, 2024; New Zealand Government, 2018). Funding and accountability would then be through Parliament rather than ministers. This would give them a high degree of independence. However, Parliament has few officers and legislative branch departments, and may be reluctant to have many more.

In the second model, where a minister or their nominee is given a seat on the board, the parliamentary opposition could also be given the right to a nominee for added balance. It would be even more important than in the first model to ensure that the rest of the board, and in particular the chair, create a credible force to maintain the independence of the institution. The mechanisms described in the first model for these other appointments could be used. A key protection would be the relationship between the board and the staff of the institution. The board should not be able to influence the content of inquiry reports in this model, and equally should not influence the appointment of staff.

The second model would not be suitable where an IPPI also has a role in legal adjudication, such as the Human Rights Commission or the privacy commissioner. Public interest in an agency could be strengthened by allowing public input into the selection process for inquiries, or allowing some topics to be selected by public consultation.

Inevitably, in a small country, a manageable breadth of required expertise pushes the scope of an IPPI towards a single sector or subject area, which means that care must be taken to counter the risk of maintaining silos.

A manageable breadth of required expertise

Inevitably, in a small country, a manageable breadth of required expertise pushes the scope of an IPPI towards a single sector or subject area, which means that care must be taken to counter the risk of maintaining silos.

In economic policy a sectoral approach is limiting because of the extensive interactions in the economy. It could instead be limited to a particular policy area, such as macroeconomic policy, productivity, competition or regional development. Management of the scope needs the cooperation of all, including the

responsible minister and the IPPI itself – with the clear understanding that increases in scope need to be resourced adequately.

Larger institutions (e.g., 40 or more staff) would make these issues easier to manage because greater size allows the institution to develop and maintain expertise in a number of areas, giving it the adaptability to address different topics without substantial disruption and outsourcing, and to change direction with a change in the elected government.

Whatever the scope, effectiveness is at a premium in a small institution. A strategic approach to research topics would make more effective and efficient use of staff expertise and resources: an approach that looks ahead to assess what are the most

Table 3: Possible options to strengthen IPPIs

The issue	Possible remedy	Comment
Responding to the needs of the government of the day without compromising independence Direct clients are ministers or the public sector agencies commissioning research. The public is also a client. May be in tension with need to retain independence. Protection is needed against government expectations of following the political agenda of the day. Statutory or institutional structure of institution	· Clear statement of independence in the IPPI's governing legislation · Allow ministers and/or government agencies and/or public to select inquiry topics · Alternatively, the responsible minister or representative is a board member, with other protections in place. · Terms of reference of topics decided in consultation with institution · Strong protections for independence in deciding how the topic, once set, is addressed · Independent capacity to monitor both its subject area and the implementation of its recommendations, and to raise developments that may need to be addressed in more detail or by other agencies · Independent or autonomous Crown entity; or · parliamentary officer; or · new form as suggested below	Public participation could be through a public consultative process. Further details below. See further below.
Funding models that provide secure baseline support for maintenance of expertise and long-term thinking.	· Endowment from either - government; or - partially from donors; - possibly including assets such as a building To cover either - a viable and credible programme of ongoing work, maintaining the institution's expertise; or - base funding for ongoing work and a minimum viable level of expertise accompanied by multi-year funding on agreed work plans · An intermediary body ('independence guardian') that would - report to ministers and Parliament on the IPPIs' resource needs and negotiate funding for them as a group; - fund each IPPI based on objective criteria agreed with the cabinet or in legislation; - optionally: ▫ appoint IPPI board members or recommend candidates to ministers; ▫ monitor appointments to ensure processes are consistent with legislative requirements; ▫ inform the public and government on the activities of the IPPIs; ▫ encourage collaboration between IPPIs; ▫ encourage bequests - Minister would retain relationship for topic selection and some formal accountability requirements; or · Multi-year funding (e.g., five-year bulk grants) with annual cost adjustments · Recognition of the need to retain staffing expertise and knowledge in - the size of institution funded; - the stability of the funding	Stable funding is an important aspect of the institution's independence in practice. An endowment is the ideal way to provide stability and independence. Governments' wish to ensure an endowment is appropriately used can be met by a mixture of governance arrangements and reporting requirements. Elements of contracting, or fundraising outside the baseline, may threaten independence and the ability to maintain sufficient numbers of staff with the required expertise and institutional knowledge. The more general the IPPI's field, the larger the staffing needed in order to cover and retain a range of expertise.

The issue	Possible remedy	Comment
Political acceptance of the need for such long-term institutions despite political risks Governance which maintains confidence in the institution and supports its independence	· Status quo for appointments of commissioners/board; or	Depends on acceptance that while governments led by different political parties may well have different views on the suitability of appointees, there is a public interest in durable IPPIs.
	· Appointment of commissioners/board at arm's length from the government of the day, such as by - cross-party consultation or agreement on appointments; and/or - using a nomination or appointment panel; or - using the 'independence guardian' to recommend (or make) appointments; or - appointment by Parliament rather than minister; or	There is a risk that these methods of appointment lead to a bland board with little interest in new thinking. A nominations panel is similar to the process for Climate Change Commission: see ss5E–5H of the Climate Change Response Act 2002. Officers or departments of Parliament. However, Parliament has been reluctant to create these positions.
	· Minister or nominee made ex officio member of the board: - possibly nominee of opposition for balance; - other members similar to above with strong mandate, particularly the chair, to ensure balance; - protection against board influencing the contents of inquiry reports or staff appointments; - model not suitable for IPPIs with role in legal adjudication	
A manageable breadth of required expertise A sector focus helps reduce breadth of expertise needed. But is in tension with a need to reduce silos.	· Sectoral focus, with structural encouragement to cross silos In economics this is more difficult, but consider · limiting scope (e.g., productivity, macro policy, competition, regional development) · accompanied by requirement for strategic approach to research topics to build expertise. · larger institutions (e.g. 40+ staff)	Structural encouragement to cross silos could include requirements to consult broadly and to address non-sectoral drivers and impacts. A strategic approach to topics would aim to create a predictable and connected research and policy programme. However, for continued relevance, it must leave room for topics raised by issues of the day (such as recent supply chain disruptions). The size of the institution and the number of topics active at one time are important considerations.
Effectiveness as an IPPI	· A strategic approach to selection of major topics for research and policy analysis, agreed with ministers	Aim is to select topics that · matter in the long run; · are relevant to ministers, agencies or the public; · provide the IPPI with some certainty as to what expertise it should build and maintain. But there should be provision for topics of importance that arise unexpectedly.
	· An internal research and policy analysis capacity to raise public understanding, monitor developments and undertake independent research on topics that may become important	An important role is to raise developments that may need to be addressed in more detail or by other agencies.
	· A commitment mechanism that requires responsible ministers to respond publicly within specified time frames to recommendations in reports they have commissioned, including reasons for their decisions and how their government will implement the recommendations	A mechanism for the Climate Change Commission is in s5U of the Climate Change Response Act 2002.
	· Review and evaluate the implementation of previous recommendations at medium-term intervals (e.g., three to five years)	Effectiveness from a public interest viewpoint. It requires additional resources.
	· Require the IPPI to regularly evaluate its own work and publish the results	This was Productivity Commission practice, but evaluating work against long-term outcomes is difficult because causality is usually impossible to establish.
Independence from other government agencies while maintaining good working relationships with them.	· Requirement to use broad range of consultation processes with other agencies, those directly affected by a piece of research, and the public	Expertise in good consultation processes is needed. Consultation is important to gather information that may not be otherwise available.
	· Prioritise topics and research/policy objectives that other agencies may find difficult, such as being long-term, spanning portfolios and/or multidisciplinary	
	· Support agencies in implementing recommendations	The Productivity Commission was not funded for ongoing support, though this may be valuable for both the implementing agencies and the IPPI.

important matters to which the institution should assign its resources. *How Inquiries Support Change* provides an approach. Importance would be judged in consultation with the responsible minister, government agencies and the public, using criteria including the ability of a topic to make a difference in the long run, its relevance, and paucity of research and policy development. The work plan would be formed for the following three to five years in consultation with the responsible minister, allowing the IPPI to build the resources and expertise it anticipates it will need, allowing for some internal research and policy capacity and the ability to respond to emerging issues on which a government might want advice. An important role is to raise developments that may need to be addressed in more detail or by other agencies.

There are other ways that effectiveness can be improved (in addition to generic efficiency measures) which may also be helpful for the government and public. Evaluation of the implementation of previous recommendations at regular three- to five-year intervals would reduce the risk that previous work was wasted, improve the functioning of government, and help the IPPI learn what makes for the most effective recommendations. The IPPI should regularly evaluate its own work and publish the results.

Public confidence that the institution was not wasting public money by reports and recommendations vanishing into the ether, never to be actioned, would be built if there were a commitment mechanism under which the responsible ministers were required to respond publicly to inquiry reports within specified time frames, including their reasons for accepting or rejecting recommendations and how their government would implement recommendations they accept. This would mirror another feature of the Climate Change Commission's legal framework.

The number of topics under investigation at any one time is a key consideration to maintain quality and avoid overload. It must be related to the size of the institution.

Independence from other government agencies while maintaining good working relationships with them

Maintaining the IPPI's independence and reputation for robust analysis is central to this. Independence, crossing silos, and intruding on what is perceived as another agency's business may create tensions at times, but a reputation for even-handedness and sound analysis should help the IPPI get through. Nevertheless, as the Planning Council found, relationships may be disrupted for reasons beyond the IPPI's control.

Some additional measures may help with these relationships, but would need to be adequately resourced. If IPPIs use a broad and inclusive range of consultation processes, other agencies, those directly affected by an inquiry and the public will more likely have confidence in the IPPI's reports. Good consultation processes benefit the IPPI by gathering information that is not available otherwise. Selecting topics for research and policy advice that other agencies find difficult, such as being long-term, spanning portfolios or being multidisciplinary, may help assure agencies that the IPPI is helpful to them as well as fulfilling its public purpose. Finally, the IPPI could provide support in implementing its recommendations to agencies in a way that does not put its independence at risk. (See *How Inquiries Support Change* for further detail on these measures.)

Conclusion

While it is impossible to prevent a government of the day from sweeping aside institutions whose views it does not like – and that was the case for the Planning Council and the Productivity Commission – it is possible to design IPPIs in ways that encourage governments to take a longer-term and more tolerant view. This article has suggested a range of methods.

The purpose is not to prevent institutional change, nor a change of thinking within IPPIs, but rather to provide greater durability and certainty to these valuable institutions. Then they can build the expertise that is difficult to amass in a small country, and help New Zealand develop its evidence base, knowledge and public policy for the long term.

1 In this article, the phrase 'government of the day' is used to refer to the cabinet, individual ministers and the elected representatives in Parliament on whose support they depend, as distinct from the standing apparatus of government or state.

2. The government has announced that Crown Research Institutes will be merged and have a new form referred to as 'Public Research Organisations'. At time of writing, their institutional structure is yet to be made public.

3. Elected members of Crown agents or autonomous Crown entities can be dismissed by the responsible minister only for just cause (misconduct, inability to perform the functions of office, neglect of duty, and serious breach of any of the collective duties of the board or the individual duties of members).

4. 'In the July 1991 Budget the government announced that the New Zealand Planning Council would be abolished; the Planning Council was disestablished on 25 September 1991' (New Zealand Official Yearbook 1992, p.31). The council's mandate was wider than the Productivity Commission's, covering social, economic, cultural and environmental development, though it was chaired for its first five years by a prominent economist (Frank Holmes) and many of its publications were on economic matters. It had independence from the government in its choice of work and in publishing its reports.

5 The latest change to the children's commissioner was made in 2022 and was contentious. The current government has announced that the change will be reversed, though details are not yet clear.

6 See https://pce.parliament.nz/about-us/the-commissioner/ and part 1 of the Environment Act 1986.

7 Or, in the case of NZCER, set up by the National Party predecessors, the United Party/Reform Party coalition (1933).

8 From 1 July 2024 the Social Investment Agency became a stand-alone central agency whose work programme is governed by a group of social investment ministers: https://www.swa.govt.nz/news/were-changing-to-the-social-investment-agency.

9 The Productivity Commission's principal purpose in section 7 of the New Zealand Productivity Commission Act 2010 was:

> to provide advice to the Government on improving productivity in a way that is directed to supporting the overall well-being of New Zealanders, having regard to a wide range of communities of interest and population groups in New Zealand society.

10 The UK has a commissioner for public appointments with a number of functions which include 'ensuring that ministerial appointments are made in accordance with the Governance Code and the principles of public appointments': see https://publicappointmentscommissioner.independent.gov.uk/.

11 A suggestion not included here is to require all board members to submit their resignation to the minister after each election. In my view this is likely to make the process more political rather than less.

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‘Fortress New Zealand’ examining refugee status determination for 11,000 asylum claimants through integrated data

Abstract

This article presents a profile of Aotearoa New Zealand’s asylum claimants – people who have sought recognition as a refugee or protected person and then applied for a temporary visa. Sourcing data from New Zealand’s Integrated Data Infrastructure (IDI), we considered 11,091 refugee claimants between 1997 and 2022. The data suggests that the path to recognition can be long and circuitous, requiring multiple applications before status recognition. The data also reveals a wide health and mental health services uptake gap despite recent policy changes. When read together, we contend that this data supports the notion that everyday, discerning bordering exists in New Zealand through different forms of permeability and permanence based on gender and ethnicity. The article concludes with some insights for future policy directions.

Keywords asylum, resettlement, New Zealand, health service utilisation, mental health, Integrated Data Infrastructure (IDI)

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In 2024, New Zealand saw a significant, five-fold increase in annual asylum applications, reflecting a global increase in forced migration due to ongoing conflicts and political instability (Bonnett, 2024). This rise in the number of asylum claimants – people who apply for protection as refugees within New Zealand – has put renewed pressure on the country’s refugee status determination system amid contemporary global trends of increased securitisation and border control that impede the movement of people (Bello, 2023).

Seeking asylum is a universal human right enumerated in article 14 of the United Nations Universal Declaration of Human Rights (1948). An asylum claimant is one who seeks refugee or protection status due to a well-founded fear of persecution if they were to return to their country of citizenship or habitual origin. The right to become a refugee and protection claimant arises out of New Zealand’s international obligations to such treaties as the 1951 Convention Relating to the Status of Refugees, the 1966 International Covenant on Civil and Political Rights, and the 1984 Convention against Torture. In New Zealand, if a claimant is successful in their application, they are considered a convention refugee and afforded a pathway to permanent

residence. During the refugee status determination process, the government provides temporary protection until the decision is made to either recognise or decline refugee or protected person status.

In this article, we present the notion of 'Fortress New Zealand' – where borders, both physical and administrative, external and internal, serve as formidable barriers to entry and access – as a conceptual framing to examine the country's response to asylum seekers. In particular, we present administrative data on asylum seekers' trajectories to illustrate how borders are managed not only at the point of entry, but also within the country, as claimants face significant hurdles in accessing services and waiting long periods for their claims to be processed.

To further explore the comparatively low level of asylum claims made in New Zealand, this article outlines the characteristics of the individuals seeking refugee or protected person status based on their asylum claim.[1] We focus on the pathways these claimants may take before receiving one of three possible determinations after making their asylum visa application:

1. recognised as a convention refugee: where the individual was recognised as a refugee or protected person;
2. an approved asylum visa, but later they
   a) were rejected for refugee status and left the country;
   b) obtained residence status for reasons other than their asylum claim; or
   c) their claim is still pending at the end of study;
3. a declined asylum visa, which often ends with the individual voluntarily leaving the country, deportation, remaining in the country without authorisation, or a change of pathway to gain residency ending in staying in the country.

We hypothesised that the settlement experiences of people who have been denied a refugee or protection status visa significantly differ from those of the other two groups. This exploratory study uses administrative data from the Integrated Data Infrastructure (IDI) to illuminate asylum seeker demographic profiles. It examines the different visa pathways that asylum claimants experience when making a claim and how these affect their registration for primary healthcare or mental health service utilisation (as a proxy for secondary healthcare service use). The time frame of the study spans from their arrival in New Zealand[2] to the study's end point (or when they left the country). It is through these initial channels of contact with national institutions of government that, we posit, many asylum seekers experience adverse bordering practices.

The concept of Fortress New Zealand was first associated with Robert Muldoon's Think Big programme, which sought to insulate and protect New Zealand from the volatile international economic forces of the late 1970s and early 1980s.

Everyday bordering: extending borders beyond entry

Globally, forced migration and resulting claims for asylum have continued to surge in recent years. At the end of 2023, more than 117 million people were forcibly displaced around the world (UNHCR, 2024). This figure includes nearly 7 million asylum seekers and almost 39 million refugees. While conflict and other factors lead to individuals seeking asylum outside of their home countries, the number of asylum seekers arriving in particular destination countries varies due to a number of variables, such as proximity, stability and personal connections (McAuliffe, 2017). The European Union, United Kingdom and the United States have all seen dramatic increases in asylum claims in the past several years, with, for instance, the European Union reporting a 29% annual increase in claims in 2023 (Eurostat, 2024). Much of the surge in claims across Europe and the United States has been driven, in part, by neighbouring region instability and the geographic proximity that facilitates land or sea voyages.

Yuval-Davis, Wemyss and Cassidy (2019) argue that borders are not merely geographical markers, but are socially constructed and maintained through policies, discourses and everyday practices. These operationalised markers, termed 'bordering', function as physical constraints (mountains, seas and deserts) and virtual or administrative barriers (immigration laws, visa regimes and bureaucratic checks). While New Zealand's geographic isolation serves as a natural barrier to migration, it is the state's administrative and legal mechanisms that particularly reinforce a 'Fortress New Zealand' framing.

Moreover, Yuval-Davis, Wemyss and Cassidy emphasise that bordering is not a static process: it is continuously reshaped by geopolitical events, security concerns and shifts in public discourse. The Covid-19 pandemic further intensified New Zealand's bordering practices, as the government rapidly adopted strict lockdown measures, reinforcing both physical and policy-induced separations from the outside world. In this sense, New Zealand's approach to asylum claimants can be seen as part of a broader global phenomenon of creating differentially impermeable borders.

The concept of Fortress New Zealand was first associated with Robert Muldoon's Think Big programme, which sought to insulate and protect New Zealand from the volatile international economic forces of the late 1970s and early 1980s. Thus, Fortress New Zealand symbolises a physical and policy-induced separation, particularly evident in immigration policies designed to deter migrants, including those with well-grounded claims of human rights

abuses and persecution (Bloom and Udahemuka, 2014; Bogen and Marlowe, 2017; Goff, 2002).

The fortress concept has both an external and internal logic for people seeking asylum and protection within New Zealand. Externally, it is clear how the country's physical geography, combined with increasingly sophisticated identity and surveillance mechanisms (e.g., passport controls, interdiction, inter-country information sharing), effectively situate New Zealand as a fortress that is difficult to access. Internally, even after arrival, access to support and entitlements highlights how the fortress within can impede everyday passage for some and facilitate movement for others. Asylum seekers are a case in point.

Yuval-Davis, Wemyss and Cassidy's concept of 'firewall bordering' (p.22) is particularly relevant when examining New Zealand's asylum and immigration policies. Firewall bordering refers to the creation of multi-layered restrictions, where migrants encounter an array of barriers even before they reach the physical borders of a nation. These barriers, often introduced through international vetting procedures, security checks and visa restrictions, are part of a more extensive system aimed at controlling and filtering who is allowed entry. In New Zealand, these measures have been enhanced post-9/11 through increased security protocols, risk-rating of countries and port-of-entry vetting procedures, all of which contribute to maintaining low levels of asylum claims.

Therefore, geographic separation alone does not fully explain the limited number of asylum claims in New Zealand. In many respects, the country's asylum policies embody the 'virtual bordering' practices Yuval-Davis and colleagues describe, where policies act as pre-emptive barriers long before claimants can physically arrive in the country. Ibrahim and Howarth (2018) describe the justification of these practices as 'othering' asylum seekers, which effectively creates political and social fault lines, constructing 'us' and 'them'.

In addition to physical and administrative barriers that asylum claimants face before entering New Zealand, the concept of bordering continues to apply long after they have arrived in the country. Yuval-Davis, Wymess and Cassidy introduce the notion of 'everyday bordering', which describes how borders are maintained through bureaucratic, social and legal practices within a country. For asylum claimants, these internal borders can be seen in the long waiting times for asylum claims to be finally determined, and in the exclusionary practices that prevent access to essential services such as healthcare, housing and social support (Ferns et al., 2022).

> … asylum claimants are often viewed as a problem population to be limited and controlled, rather than as part of a state's humanitarian response

Once in New Zealand, asylum claimants often face a protracted refugee status determination process, during which their legal status remains uncertain. This liminality – being physically present but not fully included – represents another layer of 'virtual bordering'. The lengthy and intensive decision-making process, often spanning several years, creates a state of insecurity that acts as an internal border, limiting claimants' ability to fully participate in society. The consequent waiting period can be seen as a form of exclusion, as claimants are left in legal and social limbo, unable to plan for their future or access certain services afforded to those with permanent status.

Access to services, particularly mental health services, further illustrates how bordering operates within the country. The findings from this study show that asylum claimants in New Zealand have low rates of mental health service use, despite the documented psychological toll of seeking asylum (Blackmore et al., 2020). This gap between policy and practice reveals another dimension of internal bordering: the formal right to services exists, but informal barriers – such as lack of information, cultural and linguistic obstacles, and the fear of jeopardising their claims – likely contribute to a lack of service uptake. The intersection of these factors creates a system where claimants face ongoing and challenging obstacles even after crossing the national border.

Yuval-Davis's framework helps to explain how borders are continuously reproduced through the institutions that manage asylum seekers' lives. In New Zealand, asylum claimants encounter these 'internal borders' in the form of exclusion from healthcare, employment and social welfare, exacerbating the uncertainty and vulnerability they face. The combination of lengthy asylum claim processing times and restricted access to services contributes to a form of 'bordering within', which reinforces their marginalisation and vulnerability.

This dynamic mirrors broader global trends, where asylum claimants, even when physically present in a country, remain separated from full participation in society due to legal and institutional mechanisms. The exclusionary practices and delays that asylum seekers experience in New Zealand are part of a larger pattern of bordering that reflects the idea of 'firewall bordering' as an effort to manage and control migration not only at the borders of the state, but also through a web of internal policies and practices that act as borders within borders.

Despite this global trend and the associated challenges, New Zealand has not experienced such increases in asylum claims as elsewhere, partly due its geographic isolation, being separated by vast distances of open ocean. As the data discussed in this article will show, the claims made over a quarter of a century numbered only about 11,000, or fewer than 450 per year on average. By contrast, the United Kingdom had more than 67,000 claims in 2023 alone (Home Office, 2024). In summary, we contend that New Zealand's comparatively low levels of

asylum claims are influenced by two main factors: the country's remote location and its current policy settings.

Asylum research

International migration remains a significant political and policy concern in many states. Pressures created by irregular migration, including those movements caused by conflict, pose substantial social, political and economic challenges (Kissoon, 2010). Being a universally recognised human right, people can seek asylum at any point once they arrive in New Zealand. Yet asylum claimants are often viewed as a problem population to be limited and controlled, rather than as part of a state's humanitarian response (Banks, 2008; Bogen and Marlowe, 2017). Thus, the focus is often on preventing asylum seeker arrivals rather than ensuring their safety and community connection (Ferns et al., 2022).

Many asylum claimants are escaping persecution and may have experienced significant trauma. They are thus susceptible to experiencing mental health issues at some stage in their resettlement (Blackmore et al., 2020). While there is a dearth of research into the prevalence of mental health disorders amongst asylum claimants in New Zealand, there is growing evidence in the international literature that these conditions are both widespread and acute (Hocking, Kennedy and Sundram, 2015; Posselt et al., 2020; Turrini et al., 2017). Some research has suggested that those seeking asylum and refugee status have a higher likelihood of depression, anxiety or post-traumatic stress disorder (PTSD) than the general population (Blackmore et al., 2020; Turrini et al., 2017). Moreover, previous research has found that asylum claimants have limited access to specialist support services (Sherif, Awaisu and Kheir, 2022). This evidence underscores the importance of access to support during and after the consideration of an asylum claim.

Moreover, the asylum-seeking process itself, including its often uncertain and protracted nature, can exacerbate the mental health impact of these underlying traumas (Schock, Rosner and Knaevelsrud, 2015).[3] Beyond interviews and other assessments as part of the process, individuals with temporary resident status experience substantial post-migration anxiety, including insecurity regarding their legal status and lasting fear of repatriation and persecution (Ferns et al., 2022; Marlowe et al., 2023; Sama, Wong and Garrett, 2020; Schock, Rosner and Knaevelsrud, 2015; Sherif, Awaisu and Kheir, 2022).

This first-level process typically takes at least six months and often 12 months or more to conclude, and up to two years for Refugee Status Unit or Immigration Protection Tribunal cases, during which time claimants are protected from deportation.

As discussed above, once in New Zealand, asylum claimants face significant barriers to regularising their immigration status and have limited access to essential services. Compared with refugees who have been selected under New Zealand's annual quota system for resettlement (known as 'quota refugees'), asylum claimants receive little support while their applications are pending. Several studies have shown how New Zealand's settlement support is exclusionary and discriminatory, with asylum claimants and convention refugees experiencing a lack of access to interpreters, healthcare, housing, English language tuition, financial support and employment (Bloom and Udahemuka, 2014; Cassim et al., 2022; Uprety, Basnwet and Rimal, 1999).[4]

Our study looked to see if some of these trends were observable within administrative data. The following section briefly reviews the legal process for seeking asylum in New Zealand. The remainder of this article considers characteristics and trajectories of New Zealand asylum claimants to advance understanding of this policy space.

Seeking asylum in New Zealand

The application process to secure asylum in New Zealand

A person who makes an asylum claim must follow a multi-step process for a decision for protection to be reached. The process begins when a claimant makes their claim, which is supported by a written statement. The claimant must then attend an in-person interview with a refugee and protection officer, who, in turn, issues a report about the claim with further questions and raising any credibility issues (which can be extensive). Following this, the claimant responds to the additional questions and concerns raised and makes a final submission in support of their claim, before, finally, a decision is made. This first-level process typically takes at least six months and often 12 months or more to conclude, and up to two years for Refugee Status Unit or Immigration Protection Tribunal cases, during which time claimants are protected from deportation. If a claimant is unable to self-finance, legal aid is available.

Possible asylum process outcomes

There are two outcomes from this process: a claim is recognised and the applicant is considered a convention refugee or protected person, and they can apply to be a permanent resident of New Zealand; or the claim is denied. In nearly all cases, the latter outcome gives rise to a *de novo* appeal to the Immigration and Protection Tribunal.[5] Another avenue is that subsequent claims for protection can be made under a narrower set of conditions. The claimant would need to establish that there has been a 'significant change in circumstances material to the claim since the previous claim was determined' and further that the change is not due to any bad faith (by the claimant) or for the express intention of 'creating grounds for recognition as a refugee or protected

Table 1: Study Subgroups: eventual asylum visa claim outcome[9]

Subgroup number	Subgroup name	Description
1	Eventual Convention Refugee	Asylum claimants who were ultimately granted Convention refugee status or protected person status who received at least one asylum-related visa decision.
2	Approved Asylum Visa	Asylum claimants who were not recognised as a Convention refugee or were not granted protected person status by the end of the study period, but who received at least one approved asylum-related visa decision.[10]
3	Declined Asylum Visa	Asylum claimants who were not recognised as a Convention refugee or protected person by the end of the study period but applied for and were declined an asylum-related visa decision.

person' (Immigration Act 2009, s140; Immigration New Zealand, 2022, p.13).

Social services available to asylum claimants while their claim is pending

New Zealand provides claimants with access to healthcare, the ability to apply for a work visa, and connections to housing, education and financial support services while a claim is being considered (Immigration New Zealand, 2023c). In theory, this allows a claimant the opportunity to live in New Zealand and to support themselves and their family while awaiting a determination of their refugee claim. Applicants who are recognised for protection are better positioned to transition to permanent settlement within their New Zealand community (Immigration New Zealand, 2023b).

Study design

Data for this study was collected from Statistics New Zealand's Integrated Data Infrastructure, an extensive collection of databases containing longitudinal microdata about individuals and households sourced from a range of government agencies (administrative data) and surveys, including the census, the New Zealand Health Survey and the General Social Survey. The IDI has a spine which includes everyone who has resided in New Zealand, through birth records, visa records and tax records (Black, 2016). Data in the IDI is matched through probabilistic linking using name, sex, date of birth and address.[6]

The study population of this study is exclusively identified from administrative data within the decision table of Immigration New Zealand, which is available within the IDI. The earliest records in this database are from 1997, so asylum claimants who arrived in New Zealand before 1997 are not included in the study. Using the Immigration New Zealand decision table, we identified asylum claimants using a combination of the keywords 'humanitarian' and 'asylum seeker' for the 'substream text' and 'criteria text' of an application respectively.

Data sources

The visa data from New Zealand Immigration used to identify our study population contains information on visa types and decision dates. Using this data, we identified all individuals who applied for and received an asylum-related visa decision between 1 January 1997 and 1 January 2022.[7] Using these parameters, we identified a study population of 11,091 individuals.[8]

Defining the subgroups

Following the creation of the study population, we separated individuals into three subgroups based on their asylum visa status to better understand if there were differences between them. These categories are elaborated in Table 1. The categorisation is based on eventual asylum claim outcome. We looked at those with an asylum visa application, and then followed the record to the end of the study or when they were no longer considered an asylum seeker based on their last visa status.

We then sought to determine the length of a person's asylum-seeking period in New Zealand. The start date was defined as the date when a claimant received their first asylum-related visa decision. The end date denoted the conclusion of a claimant's asylum-seeking period in New Zealand and was determined by one of five events:

- becoming a convention refugee;
- permanently leaving New Zealand;
- attaining residence in New Zealand via a pathway other than refugee status;
- death of the claimant; or
- the application was still under consideration at the end point of this study.

Using these start and end dates, we calculated the duration of each individual's asylum-seeking period.

Sources of study variables

To present a comprehensive snapshot of asylum claimants during this period, we also considered additional variables:

- age at arrival, sex and ethnicity – sourced from the Statistics New Zealand 'Personal Details' table (compiling information from the Department of Internal Affairs, Ministry of Health and the census);
- primary health organisation (PHO) enrolment – using primary healthcare data identifying those who registered with a PHO, available from 2003;
- ethnicity level 2 – this variable has more specific ethnicity information, such as Middle Eastern, African, etc. It is drawn from population demographic data collected by the Ministry of Health. Information is missing for those asylum claimants who did not have a National Health Index (NHI) number during the asylum-seeking period;
- mental health service utilisation – PRIMHD (Programme for the Integration of Mental Health Data) data, available from 2008, was used to identify asylum claimants who had ever utilised specialist mental health services.

Limitations

Our study relied on case decisions in the IDI, which record only final asylum outcomes. This has key limitations. Withdrawn applications are excluded, as are dependants of accepted asylum seekers later assessed under the UN Refugee Convention but not officially classified as asylum seekers. Additionally, categorisation issues mean cases recorded

Table 2: Characteristics of individuals seeking asylum in New Zealand

		Asylum Visa Application Decisions						
Variable		Eventual convention refugee[i] (N=3771)[12]		Approved asylum visa[ii] (N=6465)		Declined asylum visa[iii] (N=855)		Total
		n	col%	n	col%	n	col%	
Start year	1997–2000	1215	32.2%	3939	61.0%	435	50.9%	5589
	2001–2003	696	18.5%	867	13.4%	165	19.3%	1728
	2004–2006	285	7.6%	204	3.2%	66	7.7%	555
	2007–2009	279	7.4%	78	1.2%	48	5.6%	405
	2010–2012	333	8.8%	126	2.0%	36	4.2%	495
	2013–2015	381	10.1%	195	3.0%	15	1.8%	591
	2016–2018	441	11.7%	300	4.6%	15	1.8%	756
	2019–2021	138	3.7%	750	11.6%	75	8.8%	963
Time in the study /asylum seeking period (in months)	<6	504	13.4%	513	7.9%	150	17.5%	1167
	6–12	804	21.3%	672	10.4%	90	10.5%	1566
	12–18.	723	19.2%	735	11.4%	60	7.0%	1518
	18–24	552	14.6%	660	10.2%	60	7.0%	1272
	24–36	669	17.7%	834	12.9%	81	9.5%	1584
	>36	519	13.8%	3051	47.2%	414	48.4%	3984
Gender	Male	2712	71.9%	4482	69.4%	558	65.0%	7752
	Female	1059	28.1%	1980	30.6%	300	35.0%	3339
Age at the first decision date	<15	9	0.2%	[iv]s	s	15	1.8%	s
	15–24	570	15.1%	1029	15.9%	183	21.4%	1782
	25–34	1641	43.6%	2763	42.8%	300	35.1%	4704
	35–44	1023	27.1%	1758	27.2%	240	28.1%	3021
	45–54	351	9.3%	645	10.0%	93	10.9%	1089
	55–64	114	3.0%	183	2.8%	15	1.8%	312
	65+	60	1.6%	78	1.2%	12	1.4%	150

[i] Eventual convention refugee: asylum claimants who were ultimately granted convention refugee status or protected person status who received at least one asylum-related visa decision.

[ii] Approved asylum visa: asylum claimants who were not recognised as a convention refugee or were not granted protected person status by the end of the study period, but who received at least one approved asylum-related visa decision.

[iii] Declined asylum visa: asylum claimants who were not recognised as a convention refugee or protected person by the end of the study period, but applied for and were declined an asylum visa.

[iv]s refers to cells that had to be 'suppressed' where the number was less than six due to the confidentiality rules. This can affect certain column/row totals.

under other categories (e.g., RFSC or 'Section 61')[11] were omitted. Finally, asylum seekers granted protection status immediately were not captured, as their initial applications were not recorded.

This research thus identified inconsistent figures that New Zealand government agencies reported in relation to the total number of asylum seekers. Using data from Immigration New Zealand's website, the Immigration Protection Tribunal, and historical statistics obtained by New Zealand Refugee Law via Official Information Act requests, we found significant discrepancies. While some inconsistencies may stem from human error – such as misreporting ethnicity – or differences in fiscal versus calendar year reporting cycles, these do not fully explain the variations. Consultations across the sector highlighted the complexity of accurately capturing asylum seeker data. These limitations highlight gaps in official data. Future research should address these issues by incorporating qualitative methods to better capture the experiences of asylum seekers missing from IDI records, providing a more comprehensive understanding of their journeys.

Findings: asylum seeker characteristics and trajectories

We identified the 11,091 individuals who had received a temporary visa decision based on an asylum claim over the designated period as: (1) those who were eventually recognised with convention refugee status (34%); (2) those who had at least one approved asylum visa claim (58.2%); and (3) those who were declined an asylum visa (7.8%). We present the findings in three sections: demographic and visa outcomes; income and benefit rates; and mental health service utilisation. We contend that the data supports the concept of Fortress New Zealand through the expansion of the bordering of interdiction and externalisation post-2001.

Demographics and visa outcomes

As shown in Table 2, most asylum claimants were male (69.9%), with the majority falling in the age group of 25–34 years old at the first visa application decision date (42.4%). A considerable proportion of approved asylum claimants arrived between 1997 and 2000 (61.0%), with an additional 13.4% of approved asylum claimants arriving between 2001 and 2006. Among the latest arrivals (2019–21), 14.3% gained convention refugee or protected person status, 77.9% were still in the refugee status determination process as 'approved asylum', and 7.8% were declined.

The time in the study reflects the months between the first asylum visa decision and

Table 3: Number of asylum visa decisions and final outcome across three subgroups

Variable	Level	Eventual convention refugee [i] (n=3771)		Approved asylum visa[ii] (n=6465)		Declined asylum visa[iii] (N=855)		Total
Number of asylum/ refugee-related decisions for a visa decision	1	[iv]s	s	2094	31.9%	723	84.5%	s
	2	756	20%	1479	22.5%	108	12.6%	2343
	3	927	24.6%	1002	15.3%	21	2.45%	1950
	4	738	19.6%	648	9.9%	s	-	1386
	5	444	11.8%	393	6.0%	s	-	837
	6	309	8.2%	285	4.3%	s	-	594
	7	192	5.1%	207	3.1%	s	-	399
	8	135	3.6%	126	1.9%	s	-	261
	9	s	s	81	1.2%	s	-	168
	$ 10+	177	4.7%	150	2.3%	s	-	327
End reason	Gained Convention refugee status	3768	99.9%	NA	-	NA	-	s
	Permanent departure	s		3630	56.2%	492	57.3%	s
	Gained residency	s		1701	26.3%	225	26.2%	s
	Deceased	s		93	1.4%	12	1.4%	s
	End of the study period	s		1035	16.0%	129	15.0%	s

[i] Eventual convention refugee: Asylum claimants who were ultimately granted convention refugee status or protected person status who received at least one asylum-related visa decision.

[ii] Approved asylum visa: Asylum claimants who were not recognised as a convention refugee or were not granted protected person status by the end of the study period, but who received at least one approved asylum-related visa decision.

[iii] Declined asylum visa: Asylum claimants who were not recognised as a convention refugee or protected person by the end of the study period, but applied for and were declined an asylum-related visa decision.

[iv]s refers to cells that had to be 'suppressed' where the number was less than 6 due to the confidentiality rules.
NA: not applicable

[$] for declined asylum claimants, the number reflects on 4 or more decisions to be able to output data.

the end point of the asylum-seeking period. This can be considered alongside the number of visa decisions for asylum claimants in various subgroups. About 50% of all asylum claimants had two years in the claim-determination process. The mostly male population suggests that borders have different forms of permeability.

Table 3 shows that for the declined asylum visa group, the majority (84.5%) made only one application, which was the case for one third of the approved asylum claimants' group. This data shows that of applicants with at least one asylum-related decision, 23.3% applied for five further asylum visas (or more), sometimes exceeding ten visa applications during the study period. Although the proportion who applied more than five times from any group significantly dropped after each application, there was a considerable number of asylum claimants whose case took many years, and who thus had many visa decisions before a final outcome. The high number of repeat applications suggests an internal logic of the fortress through everyday bordering: more than half had to apply for four or more visas.

In addition, Table 3 shows the primary reason for the end of the asylum-seeking period. For those approved or declined an asylum visa, but not recognised as a refugee or protected person, we can see permanent departure from the country for 56.2% of the approved asylum visa group and 57.5% of the declined asylum visa group. Of note, these are more likely the asylum claimants whose last asylum visa application was declined, who would then be expected to leave the country. For those not recognised as convention refugees, approximately 26% gained residency through alternative pathways after several visa applications. We also note that 1.4% of both approved and declined asylum visa claimants died before leaving the country or becoming residents.

Table 4 suggests that New Zealand has discerning borders, as defined by ethnicity and larger ethno-national groupings. The data shows that 78.1% of Middle Eastern applicants (1458 out of a total of 1866) and 54.3% of African applicants (342 out of 630) attained convention refugee status by the end of the study. Conversely, among ethnic groups, those from Pasifika backgrounds (12.5% – 27 out of 216 applicants) and Asian backgrounds (7.1% – 402 out of 5655 applicants) had the highest rates of asylum seeker declines, predominantly involving Chinese and Indian claimants. Such high rates of claims are perhaps unremarkable for two reasons. First, since 1980, Immigration New Zealand figures have increasingly been made up of migrants from China and India (Productivity Commission, 2022). Second, India and China have both had – and continue to have – challenging human rights records (Amnesty International, 2024). Both factors are likely to account for the comparatively large number of asylum claims from these ethnic groups.

Mental health service utilisation rates

Tables 5 and 6 present data on asylum claimants who arrived from 2006 (for the primary health data) and from 2008 (for the mental health specialist service use). The data provides evidence of firewall and everyday bordering: while those who

Table 4: Main ethnic groups[13] of individuals who applied for asylum

Variable	Level n (COL%)	Eventual convention refugee[i] (N=3771)		Approved asylum visa[ii] (N=6465)		Declined asylum visa[iii] (N=855)		Total
Ethnicity (level 1)	European	348	9.2%	765	11.8%	75	8.8%	1188
	Māori	9	0.2%	18	0.3%	s	-	s
	Pasifika	42	1.1%	147	2.3%	27	3.2%	216
	Asian	1494	39.6%	3759	58.2%	402	47.0%	5655
	MELAA[14]	2043	54.2%	1014	15.7%	90	10.5%	3147
	Other	87	2.3%	519	8.0%	33	3.9%	639
Ethnicity (level 2)	Chinese	360	9.5%	837	13.0%	63	7.4%	1260
	Indian	180	4.8%	771	11.9%	132	15.4%	1083
	Southeast Asian	90	2.4%	441	6.8%	48	5.6%	579
	Other/Undefined Asian	609	16.1%	795	12.3%	75	8.8%	1479
	Fijian	27	0.7%	75	1.2%	24	2.8%	126
	Māori (including Cook Islands Māori)	s*	s	s	s	s	s	s
	Other/ Undefined Pacific Island	12	0.3%	42	0.7%	6	0.7%	60
	NZ European / Pākehā	24	0.6%	60	0.9%	6	0.7%	90
	Other/ Undefined European	216	5.7%	453	7.0%	42	4.9%	711
	Middle Eastern	1458	38.7%	387	6.0%	21	2.5%	1866
	Latin American / Hispanic	78	2.1%	141	2.2%	15	1.8%	234
	African	342	9.1%	267	4.1%	21	2.5%	630
	Other/unknown	195	5.2%	624	9.7%	63	7.4%	882
	Missing ethnicity	180	4.8%	1566	24.3	339	39.6	

i Eventual convention refugee: Asylum claimants who were ultimately granted convention refugee status or protected person status who received at least one asylum-related visa decision.
ii Approved asylum visa: Asylum claimants who were not recognised as a convention refugee or were not granted protected person status by the end of the study period, but who received at least one approved asylum-related visa decision.
iii Declined asylum visa: Asylum claimants who were not recognised as a convention refugee or protected person by the end of the study period, but applied for and were declined an asylum-related visa decision.
*s refers to cells that had to be suppressed where the number was less than 6 due to the confidentiality rules.
NA: not applicable

Table 5: Primary Health Organisation registration of asylum claimants who arrived on and after 2006

PHO enrolment	Eventual convention refugee[i] (n=1647)	Approved asylum visa[ii] (n=1494)	Declined asylum visa[iii] (n=198)	Total
Enrolled n(col%)	1008 (61.2)	468 (31.3)	57 (28.7)	1533 (45.8)
Not enrolled n(col%)	639 (38.8)	1026 (68.7)	147 (74.2)	1812 (54.2)

Table 6: Mental health service utilisation of asylum claimants who arrived on and after 2008

	Level	Eventual convention refugee[i] (n=1443)	Approved asylum visa[ii] (n=1413)	Declined asylum visa[iii] (n=147)	Total
Mental health specialist support	Ever contact	168 (11.6)	165 (11.7)	6 (3.4)	339
Months between referral and receiving mental health service support	0–2	45 (26.8)	39 (27.2)	s	s
	3–6	39 (23.2)	30 (18.1)	s	s
	7–12	39 (23.2)	33 (20.0)	s	s
	13–24	36 (21.4)	39 (23.6)	s	s
	25+	9 (5.3)	18 (10.9)	s	s
	[vi]Missing	-	6 (3.6)	-	s

[i] Eventual convention refugee: Asylum claimants who were ultimately granted convention refugee status or protected person status who received at least one asylum-related visa decision.
[ii] Approved asylum visa: Asylum claimants who were not recognised as a convention refugee or were not granted protected person status by the end of the study period, but who received at least one approved asylum-related visa decision.
[iii] Declined asylum visa: Asylum claimants who were not recognised as a convention refugee or protected person by the end of the study period, but applied for and were declined an asylum-related visa decision.
s represents suppressed data for cells with counts less than 6.
[v] This group was refereed but did not receive face-to-face services before the end of the study period.

are able to make it to New Zealand are in theory able to access healthcare, not everyone enrols, raising questions about the informal everyday practices as to how policies are enacted and operationalised.

Significant variations were observed among asylum claimant subgroups based on their final decision/destination in terms of being registered with a primary health organisation or receiving services from a mental health service provider. Within this cohort, 70% of the declined subgroup were not registered with a PHO. The approved asylum seeker subgroup had a registration rate of 31.3%, with 68.7% not having a record with a PHO, while 61.2% of eventual convention refugees and those with protected person status were enrolled with a PHO. Relative to the national registration rate, which is reported quarterly and usually stands at above 95% of the

population, these numbers are significantly lower (Te Whatu Ora, 2024).

Mental health service utilisation trends were even more concerning, with only 3.4% of declined asylum claimants who arrived post-2006 ever utilising mental health specialist services, in contrast to 11.6% and 11.7% for convention and approved asylum visa claimants respectively. The time from referral to service utilisation was slightly higher for those with an approved asylum visa compared with those eventually recognised as a convention refugee. Unfortunately, this time could not be determined for the minimal number of declined asylum claimants who utilised these services.

Discussion

What, then, in the face of New Zealand's geographic isolation and deterrence policy settings, has been New Zealand's experience with asylum claimants in recent decades? The data demonstrates that New Zealand's location and policy have largely prevented the massive influx of asylum claimants experienced in many other regions of the world. Our research suggests that the recent rise in asylum claims is a predictable occurrence, consistent with the rapid surge in migrants, particularly those from India and China following the Covid-19 pandemic. Despite concerns about the recent increase in asylum claims (Kilgallon, 2023), past events have led to similarly high numbers of asylum claims, which later returned to a relatively stable baseline.

The data reveals essential features of New Zealand's asylum seeker population. The most salient features for understanding the structural and institutional barriers asylum claimants face as part of everyday bordering include the variability in the number of visa applications made and the outcomes of these applications. In addition, some features of both the age and ethnicity of asylum claimants are noteworthy, as is the observed variety in service uptake.

Most asylum claimants were in the 25–44 age range, and predominantly male. Men had higher approval rates (35%) for asylum visa claims compared with women (31.2%). Of those asylum claimants whose ethnic identity is known, Middle Eastern ethnicity had the highest proportion of claimants, of whom 78.1% received convention status. The largest proportion of individuals listed as deceased at the end of the study were claimants denied asylum, a group which also had the lowest utilisation of primary healthcare and specialist mental health services. Although our data doesn't encompass asylum claimants arriving before 2006 and 2008 for these services, the available data indicates a disproportionate under-utilisation of services by declined asylum claimants. The number of visa applications varied for different subgroups of asylum claimants. The primary concern arising from this data is the uncertainty associated with each application, especially concerning the purported short-term visa periods and their implications for work and social support rights.

> Under both the International Covenant on Economic, Social and Cultural Rights and the 1951 Convention Relating to the Rights of Refugees, New Zealand has an obligation to ensure that asylum claimants are safe from exploitation and extreme poverty while their claims are heard.

Based on the data presented above, we emphasise several key points:

- Asylum claimants are predominately young (nearly 60% under the age of 34) and male (over two thirds of all asylum claimants).
- Applicants from the Middle East were the highest proportion granted convention refugee status (78%).
- Nearly a quarter of approved and denied claimants found other ways to regularise their immigration status. One possible explanation for this is that some applicants might have chosen to withdraw their application when they discovered other pathways with a perceived lower risk of removal/deportation.
- There was very low PHO enrolment (68.7%) compared with New Zealand overall (95%).
- There were very low rates of mental health service utilisation for both approved (11.7%) and denied asylum groups (3.4%).

New Zealand's approach to asylum seekers, characterised by the country's location coupled with policies of interdiction and externalised border controls and other factors, has resulted in a comparatively low number of asylum claims over the past two decades. The combination of stringent border control measures and the country's geographic isolation has effectively created what some have termed Fortress New Zealand. Policies impacting those who are granted temporary protection under an asylum visa and the relatively low rate of services uptake by asylum claimants also serve to underscore the concept of everyday bordering as integral to Fortress New Zealand.

Despite the global surge in refugee numbers, New Zealand has maintained a relatively stable asylum seeker population, a trend arguably attributed to the 'success' of these policies. However, it is crucial not to see this apparent 'success' as an endorsement of the status quo, particularly given the ongoing increase in global refugee numbers. The policies, while perhaps contributing to these low numbers of asylum claims, raise significant ethical and humanitarian concerns, especially in light of the under-utilisation of health services by declined asylum claimants.

Extending support services for asylum claimants

Under both the International Covenant on Economic, Social and Cultural Rights

and the 1951 Convention Relating to the Rights of Refugees, New Zealand has an obligation to ensure that asylum claimants are safe from exploitation and extreme poverty while their claims are heard. Where specialist services exist, work is only generally enabled by piecing funding together from donations and one-off grants to NGOs (Ferns et al., 2022). These organisations receive almost no dedicated financial support from the government to support asylum claimants. The lack of consistent assistance and clarity of entitlement to specific supports compound the insecurity for asylum claimants during this time-consuming and often emotionally taxing process. These factors are consistent with the findings made by previous research, as outlined earlier in this article.

Public perception and political discourse

Despite public perception and concern and political discourse portraying the number of asylum claimants as problematic (Banks, 2008; Bogen and Marlowe, 2017), decades of data suggests otherwise. As the data presented here suggests, the limited availability of community support has not encouraged numerous arrivals, and the number of unsuccessful claims remains small. This challenges the narrative of the asylum system as rife with abuse. The analysis here gives rise to several areas that we believe require the attention of policymakers. These can be summed up in four action points:

- Ensure streamlined decision making and advocacy by adequate training of the sector to ensure a proper focus on future risk assessments that are tied to issues relevant to the asylum claim, rather than the credibility of the claimant as a whole (Manning, Lemain and Judd, 2024).
- Increase PHO enrolment by asylum claimants during their claim period.
- Improve access to mental health services during the claim period.
- Considering the lengthy period often required to process asylum claims, Immigration New Zealand should consider issuing longer short-term visas or provide a temporary visa which is tied to the progression of an asylum claim. This would likely provide asylum seekers with a higher probability of securing employment, as short-term visa holders are often at a disadvantage in the competitive labour market. Longer-term visas would also arguably allow asylum seekers to contribute to society and feel safe and secure while their claims are being processed.

> … it is clear from the data that there is a high degree of discrepancy between New Zealand's stated policy of providing such services to asylum claimants, and their uptake.

The policy improvements identified above align with both existing scholarship and the findings of this study. While reducing decision wait times can alleviate stress and anxiety for asylum seekers, it is crucial to avoid unduly rapid decision-making processes that may lead to erroneous declines. At the same time, leaving someone without a determination for many years remains a valid concern: the uncertainty caused by prolonged wait times can have a significant impact on mental health. However, quick decision making risks undermining the quality of decisions, particularly in the context of New Zealand's highly individualised and forensic approach, which necessitates detailed case preparation. Rather than focusing solely on expediting decisions, the emphasis should be on ensuring just and accurate outcomes. Additionally, measures should be implemented to provide asylum claimants with timely access to mental health specialists and support services, as we note above, to address their needs effectively without long waiting times or barriers to accessing care.

This third point connects with the second and third policy recommendations: increasing uptake of primary and mental health services during the asylum-seeking process. The data considered above suggests very low uptake of these services, despite the availability of access to both. Future research might delve into the reasons for this from the perspective of the process (implementation of services and the effectiveness of the state's information-sharing capacity) and through an exploration of migrant experiences with the health system and practitioners. In the meantime, it is clear from the data that there is a high degree of discrepancy between New Zealand's stated policy of providing such services to asylum claimants, and their uptake. It is incumbent upon public officials to investigate the reasons for this and to adopt strategies to reduce this gap.

Conclusion

This article has identified several important characteristics of New Zealand's asylum seeker population, including the relatively steady and low number of claims over the duration of the study period spanning more than 20 years. This suggests to us that the combined influence of New Zealand's policy settings and remote geographic location has effectively maintained a relatively stable asylum seeker population. Periods of deviation, such as those figures from the earliest data considered here, are accounted for by global trends that would expectedly result in increased claims.

Another key observation pertains to the process, and recognition of a rise in the number of individuals seeking protection. We observed that individuals often need to submit multiple asylum visa applications over an extended period to be recognised in New Zealand. This underscores the critical and ever-present tension in public services provision between efficiency and a fair and robust process. Efficient handling of claims is undoubtedly important. If such expedited resolution is erroneously paired with a narrative that suggests many claims lack merit, however, it can be used to justify

a process that does not allow full consideration of claims. This is not the direction New Zealand should follow. Any change to the status quo should allow for a more thorough review of claims, guided by New Zealand's values, fidelity to the rule of law and human rights, and our international obligations.

1 Under the Immigration Act 2009, claims for refugee status must be determined before a claim is made for protected person status (section 137). Therefore, for the purposes of this article, the term 'asylum claim' includes claims for refugee and protected person status. The term 'asylum' does not appear in the Immigration Act, but it is used policy documents, the wider literature and in this article in reference to refugee claimants.

2 As measured at the date of the first asylum visa application.

3 We acknowledge the often problematic nature of trauma discourses with respect to asylum claimants and refugees, which often frame individuals as *all* suffering from some form of trauma. This is not the case and we do not wish to perpetuate such a belief here (see, e.g., Jasperese, 2021; Marlowe, 2010; Miller, Kulkarni and Kushner, 2006; Pupavac, 2002). Instead, this article explores New Zealand's policy settings that allow for access to health services, including those for mental health, and asylum claimants' uptake of these services.

4 Some of these practices have shifted in recent years with the New Zealand government's 'refresh' of the refugee resettlement strategy, beginning in 2023. These measures, brought about through community advocacy, sought to enhance access to housing, education, English language training and employment (https://www.immigration.govt.nz/documents/other-resources/nz-migrant-settlement-and-integration-strategy.pdf).

5 The narrow exception being if the Refugee Status Unit has refused to consider a subsequent claim for refugee status if it is satisfied that the claim is manifestly unfounded, clearly abusive or repeats any claim previously made (Immigration Act 2009, s195(1)(b)).

6 Disclaimer: Access to the data used in this study was provided by Statistics New Zealand under conditions designed to give effect to the security and confidentiality provisions of the Statistics Act 1975. The results presented in this study are all the work of the authors, not Statistics New Zealand, nor individual data suppliers. These results are not official statistics. They have been created for research purposes from the IDI, which is managed by Statistics New Zealand. Statistics New Zealand approved the use of the IDI for this project (ref MAA2019-56).

7 It is important to emphasise that this data only captures visa decisions, not visa applications. Consequently, an individual identified as an asylum seeker on a given date by virtue of receiving their first asylum-related visa decision could have applied for asylum in New Zealand – and thus have been an asylum seeker – months before receiving a decision on a visa application. Indeed, given that asylum claimants in New Zealand wait an average of seven months for a decision (Bonnett, 2019), it is probable that many of the individuals in our population were asylum claimants – to the extent that they were seeking asylum – for many months before we were able to identify them.

8 Due to confidentiality rules related to the use of IDI data, this is an approximation.

9 This study tracked asylum claimants who had made and received a temporary visa decision based on an asylum claim. We identified which of those participants were eventually recognised as a refugee/protected person (subgroup 1). We then categorised asylum claimants who had not been recognised as a refugee/protected person as at the time of the study finishing. Those who had received an approved asylum visa (at any time) are subgroup 2. Those who made an application but were declined an asylum visa are subgroup 3.

10 This means that they were approved to be assessed for their claim as an asylum seeker at some point but did not end up receiving convention status, and either left the country, sought residency through different visa categories, died or remained in New Zealand at the end study date. This could potentially include overstayers who had at least one approved asylum visa but were not eventually recognised as convention refugees and had also not secured another pathway to residency.

11 Under the Refugee Family Support Category or as a 'special case' under section 61 of the Immigration Act.

12 This includes asylum claimants who may have had either an approved or a declined asylum visa.

13 Ethnicity categories are based on self-identification. New Zealand allows individuals to select multiple ethnicities. Thus, if an asylum seeker indicated more than one ethnicity, both are represented in the data.

14 Middle Eastern, Latin American and African.

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Te Aorerekura

towards eliminating family violence – reflections from the Atawhai project

Abstract

Family violence is an under-recognised contributor to ill-health. Atawhai, a three-year research project focusing on sustainable responses to family violence in primary healthcare services, suggests that relationships and networks among locality-based service providers and local communities will help in making New Zealand's strategy to eliminate family violence a reality. More is needed than joining up the government agencies delivering services to those experiencing family violence. Building relationships between communities and healthcare providers to harness the contextual and cultural knowledge of those most affected has to be integral to a sustainable response that begins to address the causes of this wicked problem, along with developing place-based solutions.

Keywords family violence, domestic violence, health, New Zealand, *Te Aorerekura*, strategy for elimination of family violence, Atawhai, sustainable response to family violence

Family violence is a key determinant of ill-health inadequately responded to within health systems globally (World Health Organization, 2016). In Aotearoa New Zealand, family violence is defined as 'a pattern of behaviour that coerces, controls or harms within the context of a close personal relationship'

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and is recognised as gender-based, disproportionately affecting women and children (Te Puna Aonui, 2021, p.10), particularly indigenous women, young women and women on low incomes. Population-based data estimates show that nearly two in three Pākehā women, over two in three Māori women, two in five Pasifika women and one in three Asian women will experience a form of physical, sexual, psychological, controlling or economic violence by an intimate partner in their lifetime (Fanslow et al., 2023a, 2023b). The prevalence of family violence compounds with the impacts of colonisation, racism and poverty, resulting in coercive control of women's lives by family members and intimate partners (Family Violence Death Review Committee, 2016; Short et al., 2019; Roguski, 2023; Mellar et al., 2024). Family violence is non-discriminatory, also affecting men, older people, disabled, migrants and LGBTQIA+ communities.

Government response to family violence

The New Zealand government has worked on policies and services to prevent family violence over at least two decades (e.g., Ministry for Social Development, 2002, 2010; Eppel, 2011), but it would be hard to claim much progress other than more awareness of family violence as a social and economic issue (e.g., Controller and Auditor-General, 2021), and certainly not its recognition as a health issue. The focus has largely been on the various departments and agencies of the Crown working better together. The formation of a joint venture involving ten government agencies[1] in 2017 began a refreshed effort by government to stop family violence.

The passing of the Public Sector Act 2020 allowed the joint venture to be formalised as an interdepartmental executive board called Te Puna Aonui and the creation of the 2021 strategy and action plan *Te Aorerekura* (New Zealand Government, 2021; Te Puni Aonui, 2021). Essentially a Crown-centric document, *Te Aorerekura* claims to be 'a new collective path for government, tangata whenua, specialist sectors, and communities ... to eliminate sexual violence and family violence' in Aotearoa New Zealand (Te Puna Aonui, 2021, p.6). *Te Aorerekura* endorses notions of collaboration and shared responsibility for action and impact on reducing family violence across government agencies. It also acknowledges the need to involve local communities and tangata whenua. (See Box 1 for a brief overview of *Te Aorerekura*.) The health system has had little profile to date and remains a minor actor, with the relationship between family violence and ill-health inadequately recognised.

From a traditional institutional accountability viewpoint, implementation of *Te Aorerekura* is the responsibility of Te Puna Aonui. In a report on the progress of *Te Aorerekura* towards eliminating family violence, the auditor-general highlighted the need for Te Puna Aonui to:

> work together and with advocacy groups for those affected by family violence and sexual violence to find safe and appropriate ways to hear directly from people who experience or use violence, to improve how responses to family violence and sexual violence are provided. ... Some people told us that Te Puna Aonui agencies determine the time frames for work and that this has led to some in the community feeling that their work with the agencies was rushed. Others were concerned that, although the agencies ask for community input, they often disregard it. (Controller and Auditor-General, 2023, pp.28, 26)

All six of the auditor-general's recommendations involve working with local communities to partner in development and implementation of programmes and initiatives.

BOX 1 Te Aorerekura: the national strategy to eliminate family violence and sexual violence

Te Aorerekura has a 25-year moemoea (vision) that 'all people in Aotearoa New Zealand are thriving; their wellbeing is enhanced and sustained because they are safe and supported to live their lives free from family violence and sexual violence'.

Te Aorerekura adopts the Tokotoru prevention and well-being model (Te Puna Aonui, n.d.), which highlights three interconnections: strengthening (factors that protect against family violence and sexual violence); responding (holistic early intervention, crisis responses and long-term support); and healing (spaces and support that enable healing, recovery and restoration). Te Tokotoru is reflective of the public health prevention continuum of primary, secondary, tertiary prevention of violence.

The six shifts of Te Aorerekura:

1. Adopting a strength-based wellbeing approach that will integrate all aspects by adopting the Tokotoru model with a focus on changing the social conditions, structures and norms that perpetuate harm.
2. Mobilising communities through sustainable, trust-based relationships and commissioning decisions that are grounded in te Tiriti, and sharing evidence on what works.
3. Ensuring that the specialist, general and informal workforces are resourced and equipped to safely respond, heal and prevent and enable wellbeing.
4. Investing in a Tiriti-based primary prevention model that strengthens the protective factors so that family violence and sexual violence do not occur.
5. Ensuring that accessible, safe and integrated responses meet specific needs, do not perpetuate trauma, and achieve safety and accountability.
6. Increasing capacity for healing to acknowledge and address trauma for people and whānau

In the light of the auditor-general's 2023 observations and recommendations, it is the objective of this article to offer insights from our research on achieving sustainable responses to family violence as a health issue and how this might inform future progress towards the *Te Aorerekura* goal of eliminating family violence in Aotearoa.

Improving health system responsiveness to family violence: the Atawhai study

While the high rates of family violence in Aotearoa are recognised in *Te Aorerekura,* the significant impact on health and wellbeing is poorly articulated. Systemic support for primary care professionals to respond to family violence in practice is lacking despite evidence that primary care is frequently identified internationally as a place support is sought (Australian Institute of Health and Welfare, 2018; Family Violence Death Review Committee, 2014; Fanslow and Robinson, 2004). The Atawhai study built on earlier research that investigated how primary healthcare providers may respond sustainably to those affected by family violence in Aotearoa New Zealand. Findings indicated a complex interaction between the world of the individual health practitioner (personal and professional) and the world of the person accessing care. The authors theorised that a positive and sustainable trajectory of change could emerge when this interaction generates mutual understanding, trust and positives for both provider and the person seeking care (Gear, Eppel and Koziol-McLain, 2018).

The Atawhai study took a step further towards a more systemic response. It endeavoured to answer the questions, what does an effective and sustainable response to family violence look like for primary care, and what influences change in primary care family violence responsiveness?, by drawing on the experience of healthcare practitioners. The multidisciplinary research team of tangata whenua and tangata Tiriti members brought together knowledge of reo, mātauranga, tikanga and local community (the Bay of Plenty, where the research was conducted), as well as skills and experience in the fields of qualitative research methods, violence against women, primary care service delivery, Māori health research, complexity theory and specialist community family violence services (Gear, Koziol-McLain et al., 2024).

> … primary needs differ from place to place, family to family.... contextual and historical factors seemingly unrelated to family violence, such as secure housing, or employment assistance available either before or alongside family violence services [should be accounted for]

With the knowledge that the systems and structures that make up primary healthcare are largely created by the Crown and its agencies, the Atawhai methodology foregrounded te ao Māori, the Māori world view, drawing also on complexity theory and participatory research methodologies. Given the complex systems that create family violence and primary healthcare, this methodological approach aimed to gain insights into how these complex systems operate and might function differently for the benefit of those seeking care. Through a series of whakawhitiwhiti kōrero wānanga (similar to deliberative dialogue workshops), Atawhai identified ways to make it easier for health providers to respond to families and whānau experiencing or using violence (see Gear, Koziol-McLain et al., 2024 for more detail). Participants explored and challenged individual, collective and system understandings about family violence as a determinant of health and what is needed to improve service delivery in primary care settings.

The Atawhai research revealed that effective and sustainable responses to family violence come about through quality, trusted relationships among providers of health and community care and those seeking heath care. The health provider cannot solve the problem of family violence, but can walk alongside whānau and families, offering opportunities for change. In response to this learning, participants founded the Atawhai Network, a locally grown healthcare provider-led network which 'connects health care professionals and organisations with other providers, information and tools to safely journey with whānau and families in their experience of family violence' (Atawhai, n.d.). Practically, the network offers peer support to critically reflect on the problem of family violence and how it is responded to in practice. Small changes by individual learning become amplified through connections, repetition and time, leading to transformative and sustainable change. (See summary of Atawhai in Figure 1.) Atawhai was recognised by the minister for the elimination of family violence and sexual violence in 2022 as exemplifying *Te Aorerekura* shift two, 'Mobilising Communities', by developing high-trust relationships between tangata whenua, tangata Tiriti, healthcare and other family violence service providers in building a community-led collaborative and adaptive response to family violence.

Applying the learnings from Atawhai for more impactful system change

Achieving systemic change is challenging, particularly in a complex, multi-actor world, with many only partially understood cause-and-effect relationships,

Figure 1: Summary of Atawhai findings

ATAWHAI

Making it safe to talk about family violence in health care

Ehara taku toa i te toa takitahi, engari he toa takitini.
My success is not mine alone, it is the success of the collective

Family violence significantly impacts health, hauora and wellbeing.

Health professionals need support to know what to do and how to help.

The limited support for primary care providers to respond to family violence is an urgent issue that demands attention.

ATAWHAI

Atawhai weaves together Te Ao Māori and western science worldviews, working toward equitable outcomes for Māori and non-Māori

THE ATAWHAI KŌRERO

Kōrero about family violence can be many shared moments in time, or wā (time), within a relationship, underpinned by tika (to be right), pono (truth), and aroha (empathy). Atawhai realises that as practitioners, we do not have to 'fix the problem' but be someone whānau and families can trust to walk alongside supporting opportunities for change. Care is always taken so any kōrero is responsive to, and safe for, whānau and families

THE ATAWHAI NETWORK

The Atawhai Network builds confidence and capability for primary care providers to respond to family violence.

Developed and led by primary care professionals, Atawhai creates safe spaces to kōrero about family violence, share skillsets and information and build trusted relationships to be responsive to the complexity and uncertainty involved in family violence.

Example Atawhai Participant Gems

It feels good to know you have colleagues you can call on for help.

You don't have to have a solution, sometimes listening is all that is needed.

PATHWAYS TOWARDS CHANGE

- Establish family violence as a key determinant of ill-health in policy and practice
- Better connect medical and community services
- Advocate for clinical and cultural supervision for practitioners
- Tuituia: Connect to information and support

WHAT INFLUENCES SUSTAINABLE CHANGE?

Building quality relationships among professionals and those seeking care

Critically reflecting on the systems and structures shaping policy and practice

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a long history, diverse cultural perspectives, dominant hegemonies and many entrenched institutional practices. The Atawhai findings underlined the importance of local relationships and networks for appreciating how these factors interact in a local context for responding sustainably to family violence as a health issue.

Actors at the micro level are capable of seeing where their current practices are less effective and can make changes through their own organisations and those around them. Our conclusions are reinforced by Elinor Ostrom's Institutional Analysis and Development framework (Ostrom, 2005) for understanding how structured human interactions create novel and stable solutions. The recently published understanding of systemic change emerging through interactions at the micro, meso and macro levels from the Māori world view by Johnson, Allport and Boulton (2024) also reinforces our conclusions within the Aotearoa New Zealand context.

Essentially, the actors and resources available in each local context are unique. They must be encouraged to evolve into a pattern that works in that context. In the Atawhai research, no two primary care settings were identical and no two primary care professionals responded to family violence in the same way, or provided an identical response pathway. Yet there were common features which act as navigational lights: for example, establishing trusted relationships that enable primary care professionals to walk alongside those experiencing or using family violence and connect them to services they may need over many different moments in time. This allows those affected to return multiple times as needed and begin a pathway of eliminating family violence from their lives. Within the Atawhai Network we heard many anecdotes about how individuals made a difference through strengthened relationships and bringing new resources from their organisations to work against the perpetuation of family violence in the community. But we learned that it is a 'slow burn', with these relationships taking time to build and begin to produce results. They also remain vulnerable to changing personnel through organisational restructuring and changing government priorities, which can decimate networks that have taken years to begin producing results. The Atawhai Network has taken time to form because of the multiple pressures on primary care practitioners and heath sector restructuring, which, continuing as we write, is affecting all in the network.

> It has been argued that the model imposed by the Public Finance Act, channelling as it does all government funding via departments, controlled by a minister, imposes power imbalances that prevent government agencies from being good collaborative partners on hard-to-solve social problems.

Research on government agencies joining up and collaborating with communities internationally and in Aotearoa New Zealand over recent decades finds that it is not easy and takes time (e.g., Ansell and Gash, 2008; Vangen and Huxham, 2014; Eppel et al., 2013). Success comes down to an 'ah-ha' moment, a realisation that continuing to do what has been done to date is not working, and a willingness to do things differently, build relationships and trust with like-minded individuals working together across institutional and cultural settings towards a shared outcome. The Atawhai research process enabled this kind of reimagination, and individuals and organisations discovered new understandings of how they could respond to family violence.

International literature calls for 'integrated' family violence service delivery, which could be viewed as a variant of the notion of joined-up. Reviewing this literature, we found differing understandings of what integration of family violence services looks like based on perspective or world view (Gear, Ting et al., 2024). In the dominant perspective, government agencies tend to take a government services-centric view of being integrated: they try to make their existing services work together through strategies such as co-location, protocols, referrals and warm handovers among service providers. In a second perspective, 'integration' depends on the individual: the type and mix of services provided are discussed, and tailored to an individual's needs at that point in time. This notion of integration is common within a service sector such as health. While there might be negotiation, the service providers (their professions and funders) hold much of the power over what is offered. In a third perspective, 'integration' is about family, whānau and community, context, and connection to the daily lives and relationships experienced. This third perspective recognises that primary needs differ from place to place, family to family. It takes account of contextual and historical factors seemingly unrelated to family violence, such as secure housing, or employment assistance available either before or alongside family violence services. We note that research to inform this latter perspective is currently thin and hard to find (ibid.).

Conclusion: what more for *Te Aorerekura* and systemic change that will lead to the elimination of family violence?

In a complex, adaptive social system, history and the initial conditions are important and need to be taken into account because they are part of the

dynamics shaping the system now and into the future (Eppel, Matheson and Walton, 2011). The dynamism of the system created by interaction among its constituent parts (individuals, organisations and rules) generates feedback loops and patterns that continue to shape and limit what can happen long after they originally came into effect. While the effects of historical colonialism for family violence are well known (e.g., Family Violence Death Review, 2016; Roguski, 2023), the effects of modern institutions, such as the Public Finance Act 1989, also drive how government agencies behave. It has been argued that the model imposed by the Public Finance Act, channelling as it does all government funding via departments, controlled by a minister, imposes power imbalances that prevent government agencies from being good collaborative partners on hard-to-solve social problems.

Everyone wanting to help eliminate family violence needs to work with the implications of a complex system in mind. In practice this means:

- one person or organisation can only partially know the system and no one can know it all;
- there will always be uncertainties and unknowns; and
- relationships and trust are essential for connecting up the system.

Shared knowledge of the system could be improved by:

- creating conditions that share learning – for example, annual wānanga among people working on family violence at the community level to share lessons while avoiding the temptation to abstract to a single view;
- engaging researchers to conduct developmental evaluations; and
- building opportunities to spot the emergence of new and helpful patterns and encourage them.

We note that the *Te Aorerekura* aim of devolving high-trust, low-transactional commissioning to communities is yet to be realised. This means that Te Puna Aonui agencies remain locked into the accountabilities and path dependencies imposed by the Public Finance Act, and the actions to date therefore can only be one part of what is needed in a strategy for eliminating family violence. The next steps need to realise the innovation that is possible from true collaborative power and decision making with local communities. It needs the will of government to create a new funding and accountability model such as that advanced by Warren (2021, 2022), and willingness to trust local groups to make allocative and performance decisions about how best to eliminate family violence in their context. A low transaction cost funding model needs to be deployed quickly, building on the model advanced by Warren and what has been learned through Whānau Ora models (Te Puni Kōkiri, 2019). Rather than waiting until the perfect model is clear, room can be made to learn the way forward and adapt the model along the way.

There has to be acceptance that not every step taken will work well, but can provide the evidence for learning and adapting. An expert group advising the Department of the Prime Minister and Cabinet of Australia has argued that a strategy to eliminate family violence needs to go beyond the agencies delivering family violence services and bring all of the system to bear, including housing, health, education, employment and welfare (Campbell et al., 2024). In particular, it dedicates attention to the role of healthcare, which has had little implementation focus in *Te Aorerekura* so far. The context and local actors need to be visible and active in both the development and the implementation of the next iteration of *Te Aorerekura*.

There also needs to be acceptance that the solutions developed for place A will be different from those needed in place B, because the actors and the context are different. For government agencies this means things won't be neat or neatly the same everywhere. This is because solving hard, entrenched problems requires the messiness of local knowledge and context and tacit knowledge of local actors to remain in play. Through embracing the contextualised richness of this approach, *Te Aorerekura* could become more of a tapestry pattern of local and regional plans that, taken together, create a whole greater than the sum of the parts. Only by recognising that no one can fully know or understand a complex system will the challenging goal of eliminating family violence be achieved.

> Given that family violence is a key determinant of ill-health, there is much more scope for the Crown to deploy all of the systems of government … towards preventing family violence from occurring rather than just making services after it occurs work better.

The Atawhai Network has the potential to be the beginnings of a national network of primary healthcare practitioners committed to playing their role in eliminating family violence: sharing knowledge, experience and resources among individual practitioners and primary healthcare practices around the country. Currently, local efforts, such as the excellent and highly experienced practice in Hawke's Bay (Higgins, Manhire and Marshall, 2015) or the efforts to provide general practitioner training about family violence (see medsac.org.nz) remain isolated. These efforts could become part of a distributed national knowledge and community of practice network. Without ongoing resourcing post-research, the Atawhai Network will likely struggle to maintain itself.

Te Aorerekura shift two directs government agencies towards mobilising 'communities through sustainable, trust-based relationships and commissioning decisions that are grounded in Te Tiriti and sharing evidence on what works' (Te Puna Aonui, 2021, p.38). Atawhai findings endorse this intent and exemplify ways to do this. Institutional changes, such as the new funding and accountability model, are needed for the Crown and its agencies to become a power-sharing collaborator with communities. Given that family violence is a key determinant of ill-health, there is much more scope for the Crown to deploy all of the systems of government – including education, health, welfare and housing[2] – towards preventing family violence from occurring rather than just making services after it occurs work better. Primary healthcare is uniquely positioned to be a leader, as a service whānau and families consistently identify as a place to seek care.

Postscript

On 15 December 2024, the minister responsible for the prevention of family and sexual violence, Karen Chhour, released Breaking the Cycle of Silence: *Te Aorerekura* action plan 2025–2030 (Te Puna Aonui, 2024). This new plan focuses on three areas of the government's response to family violence where it is occurring:

- how the government invests and commissions response services;
- immediate safety of people experiencing family violence; and
- stopping violence.

There are no specifics in the plan about the latter. The plan remains firmly focused on the government's institutions and agencies involved in immediate responses to those experiencing family violence. There is a proposal to work with twelve local communities; the plan's focus is on the governance of these relationships. Along with new approaches to commissioning these local initiatives, there could be an opportunity to value the development of respectful power-sharing relationships with local networks. Using a social investment approach as the plan proposes means working with both the immediate impacts and also the long-term, deeply-entrenched and interconnected causes of family violence in equal measure. Family violence as a contributor to ill-health remains under-recognised in this new plan and the health agencies are minor players.

1 The Accident Compensation Corporation, the Department of Corrections, the Ministry of Education, the Ministry of Health, the Ministry of Justice, the Ministry of Social Development, the New Zealand Police, Ōranga Tamariki, Te Puni Kōkiri and the Department of the Prime Minister and Cabinet.

2 We note that Housing is not part of the current Te Puna Aonui grouping of agencies responsible for *Te Aorerekura*.

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