The Institute of Policy Studies, School of Government at Victoria University of Wellington

POLICY Quarterly

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VICTORIA UNIVERSITY OF WELLINGTON TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI
SCHOOL OF GOVERNMENT TE KURA KAWANATANGA

Editorial Note

The eight articles in this issue of *Policy Quarterly* cover a range of important contemporary policy problems: two are of a broadly constitutional nature (the design of electoral rules, and the use of urgency in the parliamentary process); two are concerned with climate change (the implications of the Durban conference in December 2011, and the control of agricultural emissions in New Zealand); and two address issues of particular relevance to sub-national governments (the National-led administration's proposals for local government reform, and the options for the delivery of urban water services). The penultimate article explores the funding of tertiary education in New Zealand and presents the results of a small survey of tertiary students on their understanding of the current funding arrangements, while the final article examines some of the current anomalies and inequities concerning overseas pensions policy and recommends various policy changes. Rather than attempting to summarize the main themes and conclusions in these articles, I will instead focus on just one topic, namely the review of New Zealand's mixed member proportional (MMP) electoral system.

First some background: in a referendum on electoral reform, held on 26 November 2011, voters chose by a clear majority to retain MMP. The question of whether New Zealand should fundamentally change its electoral system has thus been settled for the time being – proportional representation is here to stay. The task now is to decide what amendments, if any, should be made to the rules governing the MMP system. To this end, the Electoral Commission is undertaking an independent review of some of the current electoral arrangements and is due to report to the Minister of Justice by the end of October. At present, the Commission is in the process of receiving submissions.

Two of the various matters under review are closely interlinked. The first is whether there should be a change to the *party vote threshold* (i.e. the proportion of party votes that a party must secure in order to be eligible for an allocation of list seats). Currently, this is 5%. The second issue is whether there should be a change to the *electorate seat threshold* (i.e. the number of electorate seats that a party must win in order to be eligible for an allocation of list seats). Currently, this is just one seat.

Compared with most other proportional electoral systems (of various types), New Zealand has a relatively high party vote threshold. Elsewhere, the minimum party vote threshold is generally lower – if not much lower – than 5%. For instance, in Norway and Sweden the threshold is 4%, in Denmark and Israel it is 2%, and in Finland, the Netherlands, Portugal and South Africa it is even lower.

Against this, compared with other mixed member systems of proportional representation (i.e. where there are both electorate and list seats) the electorate seat threshold in New Zealand is low. Having said this, there are many different systems of proportional representation and even where there is a minimum party vote threshold there are often exceptions (e.g. for ethnic minority parties). As a result, the *effective* thresholds for parliamentary representation are typically lower than the specified party vote thresholds.

As Jack Nagel highlights in his perceptive and informative analysis in this issue of *Policy Quarterly*, the low electorate seat threshold in New Zealand has partially offset the high party vote threshold, thereby generating a reasonably high level of proportionality at each of the six MMP elections since 1996. Moreover, as he persuasively argues, "a high degree of proportionality is important not just to serve representational values, but also to achieve majoritarian goals: a government supported by a majority of voters, a governing party that represents the median voter, and specific policies acceptable to majorities that may – and should – differ from issue to issue. The higher the threshold, the less the likelihood that a PR system will actually deliver a high degree of proportionality".

His analysis is important because many people believe that the current low electorate seat threshold is a serious problem. This is partly because it encourages inter-party game playing and tactical voting (with an undue media focus on party leaders having cups of tea or coffee in Auckland cafes!). But worse, it can generate results that are unfair in the sense that the representation of the smaller parties in Parliament bears little relationship to their share of the party vote. For instance, a party with just under 5% of the party vote but no electorate seats will miss out on parliamentary representation, whereas a party with barely 2% of the party vote but at least one electorate seat can secure two seats in the legislature. Accordingly, it is argued that the threshold should either be raised (e.g. to two or three seats) or there should be no provision for a party to receive list seats if it wins less than 5% of the party vote. But as Nagel's analysis indicates, altering the electorate seat threshold without any corresponding change to the party vote threshold would almost certainly reduce the proportionality of the MMP system and this would be undesirable. On this basis, if the electorate seat threshold is raised (or abolished), there should be a reduction to the party vote threshold; the two changes must go hand in hand.

But at what level should the party vote threshold be set? There are several competing considerations, and certainly no correct answer. On the one hand, the principle of proportionality is undoubtedly important. It embodies the desire for electoral fairness for parties and voters; it is also critical for democratic legitimacy. On the other hand, international experience suggests that very low thresholds (e.g. 1-2%) can result in a proliferation of parliamentary parties which can complicate the process of government formation and reduce governmental stability and effectiveness. Such outcomes are not inevitable, but they are certainly a risk.

Bearing such considerations in mind, some advocate a 4% threshold, while Nagel proposes 3%. Interestingly, the Parliamentary Assembly for the Council of Europe recommends that any threshold *not exceed* 3%. My inclination is to support Nagel's view. After all, a 4% threshold is still relatively high by international standards and would require in the vicinity of 100,000 party votes. This is a reasonably demanding tally. In a country that is becoming increasingly multicultural and pluralistic, we would do well to ensure that significant minority voices are not excluded from our Parliament. At the same time, a 3% threshold is probably sufficient to help deter the splintering of existing parties and avoid a proliferation of very small, and potentially ineffective, parliamentary parties.

Three per cent may or may not be a popular option, but I hope that these comments and Nagel's article contribute usefully to the debate.

Finally, it is my pleasure to welcome on board Bill Ryan as my co-editor. Likewise, I would like to thank retiring Board Member, Mike McGinnis, for his contribution to Policy Quarterly over the past two years. Thanks, also, to David Bromell, Peter Hughes and Valentina Dinica for their continuing service on the Board, and a warm welcome to Guy Beatson (Ministry for the Environment), Don Gray (Ministry of Health), Gerald Minee (The Treasury) and Mike Reid (Local Government New Zealand) for their willingness to join the Editorial Board.

Jonathan Boston
Co-editor

Jack H. Nagel

Evaluating Democracy in New Zealand under MMP

In the debate that culminated in the November 2011 referendum, arguments for and against New Zealand's mixed-member proportional (MMP) electoral system focused on two values: governmental strength and representational fairness.

Both opponents and defenders of MMP treated governmental strength as an important consideration, but they assessed it differently. Advocates of change favoured the first-past-the-post (FPP) or supplementary member (SM) alternatives because they believed either would deliver a higher probability of single-party majority governments. Under FPP ministries not requiring bargaining across party lines would form quickly after elections, avoid concessions to minor-party 'kingmakers', act decisively to solve policy problems, and remain stable until the next election, when voters could hold them unambiguously accountable for performance in office. Supporters of MMP countered that the excessive power of one-party governments ('elective dictatorships') in 1984–1993 was a major reason why voters had chosen MMP over FPP in the 1992 and 1993 referendums. In their view, the improbability of one-party majorities under MMP provides a needed check on the leading party by compelling it to negotiate and compromise with smaller parties and thus produces better-considered, wiser, more moderate policies.

Representational fairness, in contrast, was a value that cut only one way, in favour of MMP. Because it allocates list seats by a compensatory formula, MMP is designed to ensure proportional representation (PR) for all parties that meet the party vote threshold or win an electorate seat, and no one disputed that it has fulfilled that promise. Besides fairness to parties, MMP also indirectly promotes more nearly proportional representation for ethnic minorities and women because parties have an incentive and a means to appeal for their party votes through nominations to lists. MMP, combined with retention of dedicated Māori seats, has consistently elected Māori MPs in numbers roughly commensurate to the Māori population. MMP has also helped

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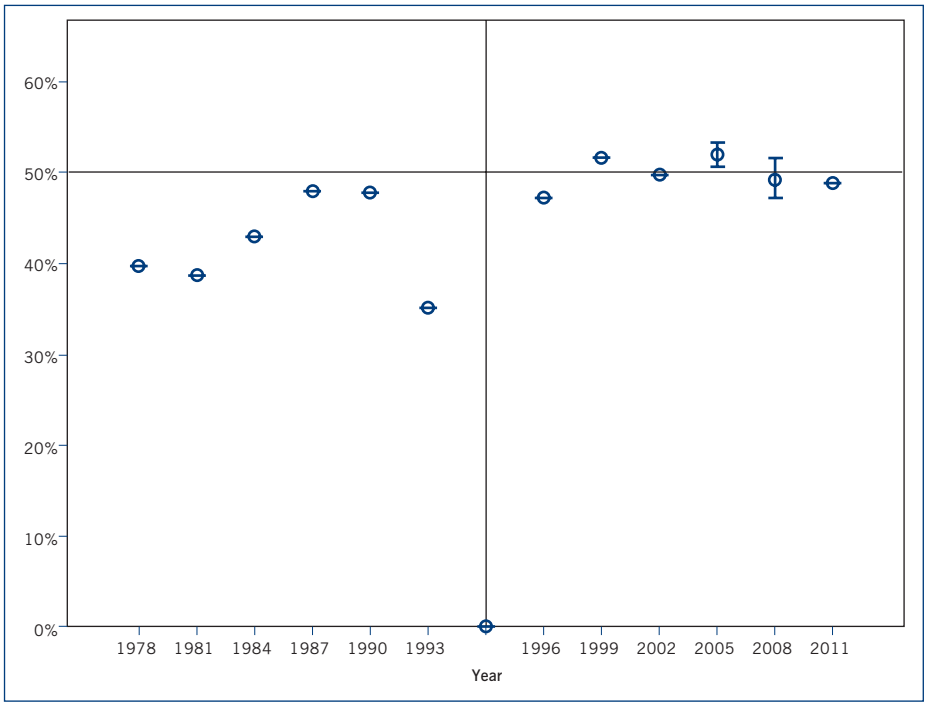
elect higher percentages of women, Pasifika and Asian MPs. For many supporters of MMP, representational fairness is the primary goal and virtue of the system. Opponents did not attack this attribute, but they obviously gave it less weight. The decision of the Campaign for Change to support SM rather than FPP as the preferred alternative to MMP was no doubt a bow to the value of diversity in representation, but at a less than proportional level, so as to produce a greater likelihood of strong, one-party governments.

Discussions framed by the alleged trade-off between effective government and fair representation have been typical in debates over electoral systems worldwide. Both values are certainly important. From the viewpoint of modern democratic theory, however, one must apply four additional tests in order to evaluate the performance of any electoral system: (1) Do majorities rule? (2) Do governments represent the median voter? (3) Are there any permanent minorities or any parties perpetually in power? (4) Do minorities impose centrifugal policies?

Figure 1: Electoral bases of parliamentary majorities



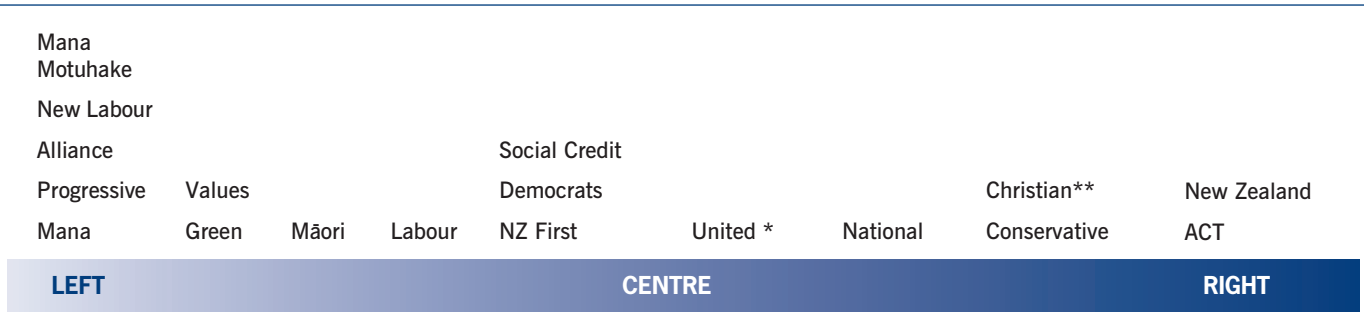
Do majorities rule?

The real issue at stake in debates over governmental power is not so much whether the government is too strong or too weak, but whether the policies it enacts enjoy sufficient support outside Parliament. Although the FPP voting system is often justified (and analysed) in terms of majority rule, it awards every seat to the candidate winning a mere plurality of votes in the electorate, which need not be a true majority unless there are only two candidates.[1] When minor parties receive a non-trivial share of votes, as was true of every New Zealand election from 1954 on, the aggregation of plurality victories across the country typically 'manufactures' a parliamentary majority for the winning party, even though it may have received the support of less – often much less – than a majority of voters.[2] After the last six elections under FPP (1978–1993), over-representation of the governing party (it was always a single party) ranged from a low of 22% in 1987 to a high of 45% in 1990, with a mean of 37%.[3] As Jack Vowles (1991) elegantly put it: 'The essential flaw in our present [FPP] arrangements is a simple one: power is given to minorities who think they have a majority.' In contrast, although MMP does not guarantee perfectly proportional representation, it has dramatically reduced the boost given to the governing party or coalition. Their over-representation after the first six MMP elections ranged from a high of 8% for the first MMP government in 1996 down to zero in 2005, with an average of 4.7%.

Over-representation of the government means that legislative majorities can rest on electoral bases comprising less – sometimes much less – than a majority of voters. Figure 1 illustrates this phenomenon, again comparing parliaments after the last six FPP elections with those after the first six elections under MMP. On the assumption that parties vote as unified blocs, the graph displays the percentage of popular votes received by the party or parties comprising a minimal parliamentary majority (also known as a 'minimum winning coalition').[4] Under FPP, a single party always had a majority of MPs in the immediate post-election period. The votes received by those governing parties ranged from near-majorities of 48% for Labour in 1987 and 47.8% for National in 1990 down to just 35.1% for National in 1993. Under MMP the figure becomes more complicated, because no majority government has formed except for the initial coalition of National and New Zealand First in 1996, which had a bare majority of 61 seats. To pass any bill, a minority government must depend on votes (or abstentions) from another party or parties. Most minority governments have had agreements of support or co-operation with more than one small party. The graph shows the electoral support for all the minimal winning coalitions a government could form with the aid of one or more of those minor parties (though of course some bills enjoyed broader assent). In 2008, for example, the bottom of the vertical line represents a parliamentary majority consisting of National and the Māori Party, which together received 47.3% of the party vote. The top of the line shows the vote for a legislative majority consisting of National and the Green Party, with which National had an agreement of co-operation, albeit a very limited one. Together they won 51.7% of party votes. The circle shows the mean popular support for all minimal legislative majorities that the National government could achieve, which was 49.2%.[5]

In the last six elections under FPP, the electoral support for parliamentary majorities fluctuated widely, but never reached an absolute majority. Its average

Figure 2: Left–right ordering on economic policy dimension of parties contesting elections in 1978–2011



*United NZ, Future NZ, United Future

**Christian Coalition, Christian Heritage

Figure omits parties that never elected an MP and never exceeded 1% of the vote.

level was just 42.1%. In contrast, in the six MMP elections, popular support for minimal legislative majorities has been tightly clustered around the 50% line with an average level of 49.8%. Thus, if MMP has not always delivered rule by strict electoral majorities, it has certainly come very close.

Do governments receive support from the median voter?

Another way of getting at the question of majority rule is via the concept of the median voter, which plays an important role in democratic theory. If voters' ideological preferences can be arranged along a one-dimensional spectrum – for example, from left to right – then the median voter occupies a position such that equal numbers of other voters are to the left and right of that individual. The position favoured by the median voter *ought* to win, according to a widely accepted test for majority rule known as the Condorcet criterion. That is, if voters were asked to choose between the median position and any other point on the spectrum in a series of one-on-one votes, a majority would always choose the median. A longstanding argument in favour of FPP held that pragmatic politicians would in fact converge toward the magical median, thus delivering the outcome that theorists believed should happen (Downs, 1957). Unfortunately, recent evidence from comparative politics shows that FPP systems on the whole perform less well than PR according to the median test (Powell, 2000; McDonald and Budge, 2005). Scholars have advanced a variety of reasons (not mutually exclusive) that might explain why major-party leaders under FPP do not consistently adopt policies favoured by the median voter: a third party (such as the Liberal Democrats in Britain) may occupy the centre ground; internal party nomination processes (such as party primaries in the US) may pull candidates away from the centre; strategists may fear that ideological voters, funders or activists will abstain or defect to extremist minor parties if they are not offered 'a choice rather than an echo'; and leaders themselves may be ideological 'conviction' politicians rather than opportunistic office-seekers.

How has New Zealand performed according to the median-voter test under FPP and MPP? To answer this question requires two strong assumptions:

1) We must be willing to arrange parties along a single dimension, which in this analysis will be left–right positions on major economic policy issues. Clearly, parties often appeal to voters by taking stands on cross-cutting non-economic issues – e.g., environmental, social and cultural policies, law and order, foreign policy, Māori rights. Nevertheless, in New Zealand as in many other democracies the economic dimension is dominant in most elections. Figure 2 shows the left–right economic positions that I posit for all significant parties that contested one or more elections from 1978 to 2011 – as before, the last six under FPP and the first six under MMP.
2) We must assume that the left-right policy preferences of voters correspond to the positions of the parties they vote for. Again, this is obviously not true in many instances: voters may choose according to non-economic issues, their liking for party leaders, or the overall state of the economy; but this assumption also seems reasonable as a first approximation, for purposes of a broad-brush analysis.

Drawing on those two assumptions and the vote totals received by parties enables us to determine the party chosen by the median voter in each election.[6] In Table 1, the first column lists those parties. Subsequent columns answer three tests of whether the median voter's position was likely to influence legislation: First, was the party of the median voter also the party of the median MP on conventional left-right issues? Second, was the party favoured by the median voter a party of government, either as a one-party government or as a member of a coalition? Third, if the median voter's party was not in government, did it sign a formal agreement of support or co-operation with the government?

As Table 1 shows, not one of the last six parliaments under FPP satisfied any of the median-voter tests. In five instances the median position was occupied by Social Credit or its successor, the Democrats.[7] In the final FPP election, one of the major parties – Labour – finally won the median mandate; but because the majority favouring the left and centre-left was split between the Alliance (18.2%) and Labour (34.7%), National emerged with a bare plurality of votes (35.1%) and an equally bare majority of MPs (50 of 99).

The record under MMP is dramatically different. After the first four MMP elections, the party of the median voter was both the party of the median MP and a party of government. In 2008,

Table 1: Influence of the median voter after elections under FPP and MMP

		Was the party of the median voter...		
Election	Party chosen by the median voter	the party of the median MP?	a party of government?	a party supporting or co-operating with the government?
1978	Social Credit	NO	NO	NO
1981	Social Credit	NO	NO	NO
1984	Social Credit	NO	NO	NO
1987	Democrats	NO	NO	NO
1990	Democrats	NO	NO	NO
1993	Labour	NO	NO	NO
1996	NZ First	YES	YES	–
1999	Labour	YES	YES	–
2002	Labour	YES	YES	–
2005	Labour	YES	YES	–
2008	United Future	NO	NO	YES
2011	National	NO	YES	–

Table 2: Years as part of government or ally of government

Party or group	1996–1999	1999–2002	2002–2005	2005–2008	2008–2011	2011–2012/14	Years with influence to 2012	Years with influence projected to 2014
ACT	*1*	0	0	0	*3*	*1/3*	31%	39%
National	**3**	0	0	0	**3**	**1/3**	44%	50%
United Future	*1*	0	*3*	*3*	*3*	*1/3*	69%	72%
NZ First	**2**	0	0	*3*	x	0/0	31%	28%
Labour	0	**3**	**3**	**3**	0	0/0	56%	50%
Alliance/ Progressive/ Mana	0	**3**	**3**	**3**	0	0	56%	50%
Greens	0	*3*	*3*	*3*	*3*	0/0	75%	67%
Māori Party	x	x	0	0	*3*	*1/3*	50%*	60%*
MPs from Māori electorates	**2 + 1****	**3**	**2+1****	**3****	*3***	*1**/3***	100%	100%

Bold: years as governing party or member of governing coalition
Italic: years with formal agreement of support or co-operation with government
x: not represented in Parliament during this period
* Māori Party percentages based on years since 2004, when the party was founded.
** MPs representing Māori electorates were sometimes from more than one party. In years marked by double asterisks, some MPs representing Māori electorates had ties to government and some did not. See note 8
Sources: Malone, 2008, pp.46-7; Boston, 2011, pp.92-9; Miller and Curtin, 2011, p.112; plus news articles for 2011–.

tiny United Future was the party of the median voter in the electorate, but National was the party of the median MP as well as the main party of government. United Future's sole MP, Peter Dunne, wielded some influence through a support agreement with National which gave him two portfolios outside cabinet, as minister of revenue and associate minister of health. In 2011 United Future and National swapped the median distinctions, while National remained in government.

Are there permanent minorities or perpetual parties of government?

Although rule by majorities is a key test of democracy, the case for majority rule breaks down – both morally and practically – if any significant minority never shares in power. MMP guarantees minority parties a proportionate share of seats (if they surpass either of two thresholds), but fair representation for minorities is merely symbolic if they never achieve substantial influence over policy. Of course, after any given election or on any given legislative vote there will be winners and losers – a majority and a minority; but over time there should be multiple and changing majorities, so that every majority is temporary and no minority is permanent, thus providing every group or interest with opportunities to influence policy and a stake in the political system (Miller, 1983; McGann, 2006). Assessing the health of democracy in this dynamic sense requires experience over time, which New Zealand has acquired after six elections under MMP.

Table 2 demonstrates the sharing of influence since the introduction of MMP. The cells record the number of years following each election in which a group represented in Parliament enjoyed some influence over policy, either as part of a governing coalition (bold numerals) or through a formal agreement of support or co-operation with a minority government (italic numerals). The first eight rows represent political parties. The last row attempts to assess the influence of Māori as a group by tracking the participation in governments of MPs representing Māori electorates. There were, of course, other Māori MPs elected from party lists or (less often) general electorates, but members elected from Māori electorates, whether or not they stood as candidates of a predominantly Māori party, should be especially attuned to, and inclined to advocate, the distinctive interests of Māori people. In years when more than one party elected MPs in Māori constituencies, the table credits Māori

with influence if any of those MPs were members of a governing party or a party supporting or co-operating with government.[8]

By scanning across the first eight rows of the table, one can readily see that all of the eight political parties have enjoyed periods of influence as a governing, supporting or co-operating party. In other words, no party has been a permanent minority, perpetually denied influence. The experience of Māori under MMP is even more impressive. As the last row of Table 2 shows, at least some MPs representing Māori electorates have been members of governing or allied parties continuously since the inception of MMP. The final two columns summarise the record by showing the percentage of time that each party and members from Māori seats have had influence over government. The first of these columns covers 1996–2012, assuming that the National-led government elected in 2011 and its agreements with other parties remain effective for a year. The final column projects to 2014 on the assumption that current arrangements continue for the better part of three years, until a new election after a normal parliamentary term.

Not only has no party been permanently excluded, but also the sharing of power over time has been remarkably even. If the current alignment continues until 2014, the smallest share of time with influence for parties that existed in 1996 will be 28% for New Zealand First (or 33% excluding 2008–11, when the party had no MPs). The largest share is United Future's 72%. Three other parties, including National and Labour, will be at 50%. The corollary of these results is that no party has been perpetually in government. Although partisans mourn when their favourites are relegated to the opposition benches, the expectation that a party will always have power tends to breed complacency, opportunism and corruption. The fact that the two major parties have been equally often in government and opposition should be taken as a sign of the health of New Zealand democracy under MMP. It is also desirable that no smaller party or parties be perpetually in power. United Future's 72% is offset by the fact that for more than half of that time the party had only one MP, the durable Peter Dunne. As for the seemingly permanent incorporation of MPs representing Māori electorates, that can be seen against the larger context of the 129 years before MMP, when Māori were usually under-represented and marginalised. The continuous influence of Māori MPs over ministries has brought little danger of stagnation, because those Māori members have belonged to four different parties.

... if small parties exploit favourable bargaining positions to impose undiluted versions of their preferred policies, thus causing great distress among the majority, then their power is dangerous to the polity and difficult to defend from the viewpoint of democratic theory.

Do minorities impose centrifugal policies?

In one situation, minor-party influence over policies is entirely consistent with majority rule. That is the case when the minor party occupies the median position on an issue dimension and uses its voting power – either as a coalition partner or as an ad hoc ally on a particular bill – to moderate a relatively extreme policy that one of the major parties would otherwise prefer. In this scenario, the influence of the minor party enables an outcome closer to the preference of the median voter to prevail. Since the advent of MMP, both New Zealand First and United Future (in its various incarnations) have tried to play the centrist role on the main left–right spectrum.

Often, however, minor parties espouse policies that a majority would not endorse. Some stake out positions on the flanks of the primary dimension: ACT on the right, the Alliance/Progressives on the left. Frequently, small parties attract their most intense support by emphasising issues that cut across the conventional left–right dimension. For some minor parties, the cross-cutting dimension is their *raison d'être* and the source of their identity as a party. Environmental and related 'post-materialist' issues play that role for the Greens, as have Māori concerns for several parties. In other cases, minor parties with a well-defined left–right identity try (perhaps opportunistically) to attract additional support by also taking up a cross-cutting issue – immigration for New Zealand First in 1996, social conservatism for United Future in 2002, and law and order for ACT in 2008.

When a small party advocates non-majoritarian policies, it is not undesirable for it to win some concessions. If such a party continually had no success, the voters who support it could become permanently aggrieved, isolated and alienated from the body politic. In New Zealand, that danger is most obvious with respect to Māori as a visible and self-conscious minority, but it could also apply to other groups who feel intensely about their concerns. On the other hand, if small parties exploit favourable bargaining positions to impose undiluted versions of their preferred policies, thus causing great distress among the majority, then their power is dangerous to the polity and difficult to defend from the viewpoint of democratic theory. A conspicuous contemporary example of this problem in a PR system is the ability of Shas and other ultra-orthodox parties is Israel to impose their religious policies against the wishes of the more tolerant and secular majority.

Critics of PR electoral systems often invoke such instances of minor parties

imposing unpopular policies. That was the essence of the 'tail wagging the dog' argument against MMP. In fact, however, the same phenomenon occurs – but less transparently – under FPP. 'Broad church' parties are themselves coalitions of factions with differing priorities. Their internal politics can result in a pattern of 'minorities rule' through explicit or implicit logrolls. That is how economic liberalisers in New Zealand enacted a radical, frequently unpopular programme under one-party governments in 1984–93 (Nagel, 1998).

Have minorities that gained representation under MMP been able to impose extreme or unpopular policies? As an observer who has followed New Zealand politics only intermittently and mostly from afar, I am not equipped to answer this question, because it requires detailed knowledge of policies over the past 16 years. Nevertheless, it is my impression that governments under MMP have usually avoided paying high prices for small blocs of votes, whether organised through separate parties or as factions within a major party. A possible exception occurred in 2010, when John Key's government supported ACT's harsh three-strikes criminal justice policy, despite the reputed disagreement of National's own minister of justice, Simon Power, who did not manage the bill in Parliament.[9] More often, governments have conspicuously succeeded in resisting or moderating narrowly-based demands. Governments led by Helen Clark refused to accede to the ban on genetically-modified foods desired by the Greens, and allowed Tariana Turia to walk out of the Labour caucus and launch the Māori Party rather than capitulate to her on the foreshore and seabed issue. When the Māori Party subsequently became part of the National-led government in 2008, Prime Minister Key managed to attract its support with concessions that were not too distressing to the Pākehā majority. Inability to prevail on their most cherished policies has surely contributed to the difficulty minor parties have had in maintaining electoral support (Bale and Bergman, 2006; Miller and Curtin, 2011).

Although Prime Ministers Clark and Key have been impressively skilful at manoeuvring within the multi-party MMP environment, they have also benefited from favourable circumstances.

The parliamentary configurations Clark and Key faced enabled their minority governments to form legislative majorities with any of several partners, thus usually denying excessive bargaining power to any minor party.

The possibility that a small party can wield power out of proportion to its numbers is no chimera. A party's relative bargaining power in a game based on votes can be measured using the Banzhaf power index, which is the number of times a party is critical to a winning coalition divided by the total number of times all parties are critical.[10] Party A is 'critical' to a coalition when the coalition wins with A's votes and loses without them. The relation between power and votes is not linear, but depends on configurations of voting blocs in relation to the number of votes required to win (typically a majority in legislatures). For example, if parties A, B and C have 51, 45 and 5 votes respectively, then any coalition with A is winning and any coalition without A loses. Thus, A's Banzhaf power equals 1, while B and C have no power. But if just one seat switches so that A has 50 votes and B 46, while C remains at 5, then each party is critical to two winning coalitions (A to AB and AC, B to AB and BC, and C to AC and BC). Now all three parties have equal Banzhaf power (.33 each) – even little C.

Table 3 displays parties' shares of seats and power following the six MMP elections. Both measures are expressed as decimals ranging from 0 to 1.0.[11] The two major parties appear on the left of the table, while minor parties are to the right. There are two important observations to make about this history. First, only in 1996 did a minor party have a share of power that was both considerably greater than its seat share and equal to the power of a major party. After that first MMP election, New Zealand First had 23% of the bargaining power, which was a 64% bonus over its seat share and equal to the power of the much larger Labour caucus. New Zealand First's actual power position was even more advantageous than those *a priori* numbers indicate. The power indexes in the table are based on all logically possible coalitions, but in fact certain coalitions were politically infeasible. The ideological gulf between the Alliance and ACT ruled out any coalition that included both of those parties, and the longstanding rivalry for power between Labour and National apparently prevented serious consideration of a grand coalition of the two big parties. If one computes Banzhaf indexes based only on the remaining, feasible coalitions, then New Zealand First had 44% of the power, more than either of the major parties. National was second with 33%, and Labour and the Alliance trailed with 11% each. ACT and United had seats, but no power. Admitting coalitions that included both National and Labour would markedly change those results by reducing the power of New Zealand First.

Second, after every election since 1996 there was no clearly dominant power leader among the minor parties, and the multiple leaders had equal or nearly equal shares of power. There were two such leaders in 2005 (with a third not far behind); three in 2008 and 2011; and four in 1999 and 2002. Moreover, as events proved, in each of those five parliaments, multiple minor parties were sufficiently

compatible with a major party to reach agreements of coalition, support or co-operation.

In short, the birth trauma of MMP in 1996 resulted not just from Winston Peters' hard bargaining, but also from the configuration of seats that gave him the power he so eagerly exploited; and from the unwillingness of National and Labour to consider a grand coalition. Similarly, the happier history of MMP after subsequent elections depended not only on the acumen of Helen Clark and John Key, but also on dispersal of seats and voting power among multiple minor parties. The parliamentary configurations Clark and Key faced enabled their minority governments to form legislative majorities with any of several partners, thus usually denying excessive bargaining power to any minor party.

Table 3: Parties' shares of seats and power following MMP elections

		National	Labour	ACT	United	NZ First	Green	Alliance/ Progressive	Maori	Mana
1996	Seats	.37	.31	.07	.01	.14	–	.11	–	–
	Power	.39	.23	.08	0	.23	–	.08	–	–
1999	Seats	.33	.41	.08	.01	.04*	.06	.08	–	–
	Power	.17	.41	.10	.01	.10	.10	.12	–	–
2002	Seats	.23	.43	.08	.07	.11	.08	.02*	–	–
	Power	.06	.71	.06	.04	.06	.06	.01	–	–
2005	Seats	.40	.41	.02*	.02*	.06	.05*	.01	.03	–
	Power	.24	.31	.03	.05	.15	.12	.02	.08	–
2008	Seats	.48	.35	.04*	.01	0	.07	.01	.04	–
	Power	.64	.09	.09	0	–	.09	0	.09	–
2011	Seats	.49	.28	.01	.01	.07	.12	–	.02	.01
	Power	.73	.05	.02	.02	.05	.05	–	.05	.02

*Party was awarded list seats because of an electorate victory, although it received less than 5% of the party vote.

Conditions (and choices) favouring healthy democracy under MMP

To sum up, after a rocky start MMP has had a strongly positive performance as judged by several tests from contemporary democratic theory. Parliamentary majorities have been based on electoral majorities or near-majorities. The party of the median voter has always been a party of government or, in one instance, a party allied with the government. All parties, and the Māori minority, have participated in or influenced governments a significant share of the time; and no party has been perpetually in power. Minor parties have influenced legislation, but have seldom been able to impose polices that were strongly objectionable to a majority of voters.

Understanding the reasons for such favourable outcomes may help to perpetuate them in the future. I suggest that four interdependent conditions help account for the health of New Zealand's democracy under MMP: (a) a high degree of proportionality; (b) numerous minor parties in Parliament; (c) minority governments; and (d) the absence of pariah parties.

Proportionality

Consistently majoritarian outcomes – legislative majorities supported by electoral majorities and median-voter support for a party of government – depend on minimal deviations from proportionality between parties' seats and votes. Use of a PR formula and MMP's branding as a 'proportional' system do not guarantee highly proportional results, because the 5% threshold can easily result in numerous 'wasted' votes. Two initially under-appreciated features of New Zealand's version of MMP have lessened the impact of that threshold. These are, of course, the retention of Māori electorates and the alternative threshold which allows any party winning an electorate seat to share proportionally in the allocation of list seats. On four occasions, minor parties that received less than 5% of the party vote achieved representation because they won Māori electorates; and in six instances (marked by asterisks in Table 3) minor parties won list seats because they won a general electorate.

Multiple minor parties

Proportionality, aided by the two factors just mentioned, has contributed to the presence in Parliament of multiple minor parties, ranging from a low of four in 1996, through five in 1999, 2002 and 2008, to six in 2005 and 2011. Permissive electoral rules alone do not guarantee that minor parties will win seats. Also important has been the societal potential for multiple cross-cutting issue dimensions and the willingness of politicians to exploit some of them. Before the first MMP election, I predicted that the dominant left–right dimension by itself would probably support only two parties in the long run, and that the staying power of the cleavage between economic liberalisers and interventionists (which had spawned three new parties) was limited (Nagel, 1994; Curtin and Miller, 2010). The withering away of the Alliance/ Progressives and ACT has confirmed that prediction. By the same logic, would-be centrist parties have prospered only by also campaigning on one or more cross-cutting issues, such as immigration and corruption for New Zealand First or social conservatism for United Future New Zealand in 2002. Other minor parties have defined themselves by stands on more enduring cross-cutting dimensions, post-materialism and ethnicity. Thus the Greens have been present in every MMP parliament (including as a constituent party of the Alliance in 1996), and minor parties depending on Māori voters and electorates have won seats in four of the six MMP elections.

Minority governments

Tempted by the bait of seemingly complete control that an absolute majority confers, a party can be lured into paying a high price to swing voters or to a pivotal minor party. The facade of majority government

too often conceals a logrolled reality of minorities rule over specific policies. Paradoxically, minority governments are more likely to deliver true majority rule, because they can form ad hoc coalitions one issue at a time, thus enacting laws that are likely to conform to the wishes of the median voter on each separate policy dimension. Since 1999, New Zealand's major parties have been wise in not pushing too hard to form majority coalitions, and their leaders have been skilful in managing the intricate multi-party dance of legislation. They could not have succeeded, however, if there were not multiple potential partners available. If a minority government had only one route to a legislative majority, the party or parties that controlled that route could exploit their power, even if they stayed outside government. The existence of several minor parties, many of them with equivalent legislative power, has given every MMP ministry after the first at least two different paths to a parliamentary majority.

Absence of pariahs

After Weimar Germany, the most oft-cited examples of dysfunctional PR systems are post-war Italy and contemporary Israel. Although Italy is usually invoked because of its unstable, short-lived cabinets, at a deeper level it suffered from too much stability. Italy's largest party, the Christian Democrats (DC), was perpetually in government, surrounded by a revolving cast of smaller parties. Assured of power, Christian Democrat legislators became egregiously corrupt, resulting in scandals that led to their party's demise and the replacement of PR in 1993 by a rather unsuccessful (and short-lived) mixed-member majoritarian system (supplementary member, in New Zealand parlance). In Israel, as noted earlier, the problem has been the excessive power wielded by small parties representing the ultra-orthodox religious minority. Both the Italian and Israeli failures of PR have depended on a sometimes overlooked cause: the presence in each country's legislature of significant pariah parties. In Italy, the Communist Party (PCI) commanded the second largest bloc of seats, ranging from 19% to 36%, but none of the democratic parties would contemplate entering a coalition with them. Without Communist votes, it was arithmetically impossible to form a legislative majority that did not include the Christian Democrats, so the latter were assured a large share of power (Gambetta and Warner, 2004). In Israel, the continuing excessive power of ultra-orthodox parties results in part from the same cause. The Knesset typically includes several small Arab parties, which usually win 5–10% of seats, but other parties have been unwilling to depend on votes from these non-Zionist parties for fear of provoking a backlash among Jewish voters.[12] Therefore, major parties often have no alternative but to deal with the ultra-orthodox, who frequently occupy the pivotal position when governments must be formed. Thus the presence of significant pariah parties directly manifests one democratic failure – the existence of a permanent minority – and indirectly causes two others – perpetually governing parties and excessively powerful minor parties. The success of MMP in New Zealand has resulted in part from the absence of any perpetual pariah, although New Zealand First (or, more precisely, its leader) has at times held that dubious distinction vis-à-vis one or the other of the major parties, which helps explain its last-place position in Table 2.

The success of MMP in New Zealand has resulted in part from the absence of any perpetual pariah, although New Zealand First (or, more precisely, its leader) has at times held that dubious distinction vis-à-vis one or the other of the major parties...

Practical implications

I will conclude with implications of the preceding analysis for the Electoral Commission as it reviews the finer points of MMP, and for political leaders as they continue to operate within an MMP system.

The first question on the Electoral Commission's review agenda is whether to change either of the alternative thresholds a party must reach to be included in the allocation of list seats. As I have tried to show, a high degree of proportionality is important not just to serve representational values, but also to achieve majoritarian goals: a government supported by a majority of voters, a governing party that represents the median voter, and specific policies acceptable to majorities that may – and should – differ from issue to issue. The higher the threshold, the less the likelihood that a PR system will actually deliver a high degree of proportionality. Thus far, New Zealand's alternative threshold of an electorate victory has partially offset the rather high main threshold of 5% of the party vote. If the Electoral Commission decides to eliminate the electorate route to list seats (and there are reasons to do so that this article has not addressed), then I would recommend lowering the party vote threshold to 3%.

To political leaders, especially of the major parties, the main implication of this analysis is simply to keep up the good work. After early learning pains, they have shown ingenuity and skill in managing the tricky processes of government-formation and legislation in a multi-party environment. Still, it may be worth underscoring three guidelines that can contribute to continued success. First, minority governments are a good thing, especially if the alternative is to make binding commitments that give too much power to minorities, whether voting blocs in the electorate or parties in parliament. Second, room to manoeuvre, and thus to serve democratic ends, increases when no party is treated as a pariah. A party may arise that is truly beyond the pale – anti-democratic, racist, or opposed to the continued existence of New Zealand as a nation – but, short of such extremes, it is

best to look beyond difficult personalities and personal animosities to the greater good. Third, if an anti-system party does arise, or if a minor party excessively exploits an unusually strong power position, then major parties always have the recourse of putting aside their historic rivalry by forming a temporary grand coalition.

1 The more accurate term for FPP is 'single-member plurality' (SMP), but I will follow the labels used in the referendum.
2 Indeed, as New Zealanders saw in 1978 and 1981, it is possible under FPP for a party to win a majority of seats even though it receives less than a plurality of votes nationwide.
3 Over-representation is calculated by dividing the party's percentage of seats by its percentage of votes, subtracting one, and then multiplying by 100. All votes and seats reported in this article are from the website of the New Zealand Electoral Commission or the commission's printed compendia.
4 A minimal majority commands a majority of MPs, but includes no party whose votes are not essential to pass a bill.
5 In 2008 there was one other legislative minimal majority – National and ACT, with a combined 48.6% of party votes. United Future also had a support agreement with National, but its single vote was never essential, as long as all members of National and one of the other co-operating parties voted for a measure. In 1999 there was only one minimal majority – the Labour–Alliance coalition plus the Greens; but the minority coalition could also reach a majority with the help of New Zealand First, with which it had no formal agreement. The 2002 Labour–Progressive government could prevail with the aid of either United Future or the Greens. In 2005, the Labour–Progressive government could pass bills with the support of NZ First plus United Future, or NZ First plus the Greens. Minimal winning coalitions in the current Parliament consist of National plus the Māori Party or National plus ACT plus United Future.
6 To determine the party of the median voter, first adjust party votes to sum to 100% by correcting for fringe parties that received some votes but are not listed in Figure 2. Then start with the party on the extreme left and cumulate party votes until the total exceeds 50%. The party that puts the total over 50% represents the median voter. Starting at the extreme right gives the same result as long as there is no exact 50-50 division. It might seem that the median voter test is merely another way of saying that the government rests on a numerical majority of votes, but that is not necessarily so. If an odd-bedfellows coalition formed between parties on the left and right wings, the party representing the median voter would not be included, even though the electoral support base of the government could exceed 50%.
7 Besides its idiosyncratic economic doctrines, Social Credit in its earlier days had appeals that could be characterised as right-wing, and it always depended heavily on protest voters, but by the 1970s it had 'evolved into a mildly reformist centre party' (Miller, 1985, p.212).
8 The parties of Māori MPs with influence thus defined and their number of MPs compared with the number of Māori electorates are as follows: 1996–98, NZ First (5 of 5); 1998–99, Mauri Pacific (3 of 5); 1999–2002, Labour (6 of 6); 2002–04, Labour (7 of 7); 2004–05, Labour (6 of 7); 2005–08, Labour (3 of 7); 2008–11, Māori Party (5 of 7); 2011– , Māori Party (3 of 7).
9 I owe this example to Jonathan Boston.
10 Another well-known voting power measure is the Shapley-Shubik index, which gives results generally similar but not identical to the Banzhaf index. See Felsenthal and Machover (1998).
11 Calculators for Banzhaf indexes are available at a number of sites on the internet. I used the one provided by Temple University at http://www.math.temple.edu/~cow/bpi.html. In using Table 3, readers should note that, unlike seat shares, shares of power are not additive. To use the example in the text, if B and C coalesced, their combined power would be 1.0, not .67.
12 In New Zealand, according to Sorrenson (1986, pp.B-45-6), the dependence of Peter Fraser's Labour government in 1946–49 on the votes of the four Māori MPs was probably 'a significant factor' in its defeat. That dependence 'was ceaselessly panned in the pro-National press', as in cartoons that "showed Fraser forever pandering to a grass skirted Māori mandate". The consistent influence of Māori MPs over MMP mandate governments shows how far New Zealand has come.

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Elizabeth McLeay, Claudia Geiringer
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'Urgent' Legislation in the New Zealand House of Representatives and the Bypassing of Select Committee Scrutiny

The day after the opening of the new Parliament in December 2008, the National Party minister and Leader of the House, Gerry Brownlee, moved a motion to accord urgency to certain aspects of business. This was passed by 63 votes to 52, with the Māori Party abstaining. It was resolved 'that urgency be accorded the introduction and passing of Government bills dealing with taxation, employment relations, bail, education and sentencing', and some other aspects of House business (New Zealand House of Representatives (NZHR), 2008). Although National had insufficient votes to govern on its own (58 in the 122-seat House) it knew that the House would approve the urgency motion because National had the support of three other parties, the Māori Party (five), the ACT party (five) and United Future (one), giving the government a secure majority so long as either ACT or the Māori Party voted for its bills and procedural motions. The above bills were not referred to select committees for public submissions and scrutiny.

'Urgency' has been possible since 1903 (Martin, 2004, p.193; McGee 2005, p.153). When urgency is successfully moved by the political executive, the House sits for extended hours. Additionally, the normal passage of bills through the House can be abbreviated. Bills awarded urgency

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are debated in the House, but the stand-down periods between the stages of the bill accorded urgency disappear. Any or all stages of the bill can be accorded urgency, and if the urgency motion includes both the first and second stages of the bill the select committee stage is eliminated (NZHR, 2011, SO 55, 56). Legislation can, if so wished by a determined government, be passed in a single sitting. Once a government has majority support in the House, even only a simple majority, bills can be rapidly fast-tracked through the unicameral Parliament by being declared to be urgent and the necessary support being obtained. Governments do not have to provide full formal public justification for so doing.

'Extraordinary urgency' is somewhat different, and dates from the 1985 changes to the standing orders (NZHR, 1985). 'Extraordinary urgency' has to be successfully moved if the government wants to sit all night. The threshold is slightly higher than for ordinary urgency in that 'the Minister shall inform the House of the nature of the business and the circumstances which warrant the claim for extraordinary urgency' (NZHR, 2011, SO 57(2)). Since the 1995 standing orders changes (Standing Orders Committee, 1995) the Speaker has been required to approve extraordinary urgency: 'Extraordinary urgency is designed to facilitate the passing of a particularly urgent piece of legislation, such as Budget legislation or legislation to deal with the collapse of a commercial or financial organisation, or a matter involving state security' (McGee, 2005, p.155). It 'may be claimed only if the Speaker agrees that the business to be taken justifies it' (NZHR, 2011, SO 58(3); McGee, 2005, p.155). Like ordinary urgency, extraordinary urgency needs only a simple majority of votes to be approved by the House.

So, when National fast-tracked some of its key legislative measures during its first months in office, was it in fact behaving any differently from previous governments? The advent of a proportionally elected House of Representatives after the implementation of the mixed-member electoral system (MMP) in 1996 had seemed to slow down the legislative process, including reducing the number of bills passed under urgency. Was this not the case after all? More fundamentally, has the use of urgency detrimentally affected the quality of legislation and New Zealand democracy? These were some of the key questions we asked when we began research on the use of urgency in the New Zealand legislative process. The full results of that research are available in Geiringer, Higbee and McLeay, *What's the Hurry? Urgency in the New Zealand legislative process 1987–2010* (2011). This article focuses primarily on the most radical form of urgency: bills that pass through the House without being referred to select committee, in particular bills that were fast-tracked in this way after the introduction of MMP in 1996.

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If judgments are to be made on the strengths and weaknesses of taking urgency, especially urgency bypassing select committees, normative criteria need to be formulated against which to assess the legislative process and its democratic and constitutional implications. In the next section of this article we briefly discuss the democratic principles that define good parliamentary practice in so far as the legislative process is concerned. We then discuss the main findings on the use of urgency, before focusing on the most extreme cases of taking urgency – fast-tracking bills to the extent that the select committee stage is avoided. The final section briefly explains the impact of the 2011 standing orders changes on the practice of urgency and assesses their adequacy in so far as the select committee stage of the legislative process is concerned.

The principles of good law-making

Drafting laws is one of the central roles of government; and approving them after appropriate discussion, criticism, scrutiny and amendment is one of the central roles of all legislatures aspiring to be democratic. In order to evaluate the part played by expedited legislation within this crucial policy process we needed to identify the principles of democratic and effective legislative processes and outputs. Building on the list designed to help evaluate fast-tracked bills in the British Parliament (House of Lords Select Committee on the Constitution, 2009), we developed 10 criteria that distinguish good lawmaking per se (Geiringer, Higbee and McLeay, 2011b, pp.15-19). These are:

1 Legislatures should allow the time and opportunity for informed and open policy deliberation.
2 The legislative process should allow enough time and opportunity for the adequate scrutiny of bills.
3 Citizens should have the opportunity to participate in the legislative process.
4 Parliaments should operate in a transparent manner.
5 The House should strive to produce high-quality legislation.
6 Legislation should not jeopardise fundamental constitutional rights and principles.
7 Parliament should follow stable procedural rules.
8 Parliament should foster, not erode, respect for itself as an institution.

9 The government has a right to govern, as long as it commands a majority in the House.
10 Parliament should be able to enact legislation quickly in (actual) emergency situations.[1]

As can be seen, the ten principles include standards that relate to due process as well as to the production of good quality policy, the statutes themselves. In fact, we saw the various principles as intrinsically interrelated: without good process, good law is much more difficult to achieve. This is because statutes are almost always complex, many are multifaceted in terms of their policy ramifications, and precise and defensible wording is essential. It can generally be assumed that, because of policy complexity and the contestability of determining the public good, the more expert and participant appraisal that occurs, the better the end product will be. Moreover, and conversely, in a democratic state, legislatures lack legitimacy when their law-making does not follow the formal and normal procedures, is secretive rather than transparent, and is elitist rather than participatory. Nonetheless, as criterion 10 indicates, in certain circumstances fast-tracking legislation can be justified. Indeed, in a time of crisis it might be essential.

The normal legislative process in New Zealand generally complies with the high democratic and constitutional standards we identified, fulfilling most of the above 10 criteria. Although certainly not flawless, the pathway of bills through the House, with its three stages, committee of the whole, stand-down periods and select committee scrutiny, generally follows a predictable and considered process, allowing time for reflection and deliberation, examination and amendment, by elected officials, public servants and citizens alike. In particular, the open and participatory select committee process, with considerable revision and amendment powers in the hands of the committees, enhances the legislative process, going some way to compensating for the lack of an upper house (Palmer, 1987, p.236).

The question is, however, whether, in terms of both process and quality, legislation passed under urgency can achieve the high standards outlined above. Certainly, bills that escape the usual scrutiny and debate run the risk of infringing the democratic values outlined. Without extensive further research we cannot tell whether or not urgency invariably or even mostly has a detrimental impact on the actual quality of legislation. Interview data, however, and many comments during parliamentary debates revealed a range of examples of bills that participants and observers believed contained shortcomings because they were rushed through the House. Further, it was observed, bills passed through urgency had frequently been subsequently amended. Note that the Standing Orders Committee that reviewed the House's processes in 2011, when commenting on the consequences of abbreviated time frames imposed on select committees for reporting back to the House on bills, observed that, 'The truncation of the select committee process can have serious implications for legislative quality' (Standing Orders Committee, 2011, p.40). It follows that elimination of the select committee stage altogether can have even more serious effects on the quality of bills.

Even if the democratic criteria around flawed process (deliberation, opposition, amendment and so forth) are alone considered, however, there is reason to be anxious about fast-tracking bills for no justifiable reason. How severe is the actual problem, and has the pattern of usage of urgency changed from time to time? And how does select committee consideration fit into the patterns thus discovered?

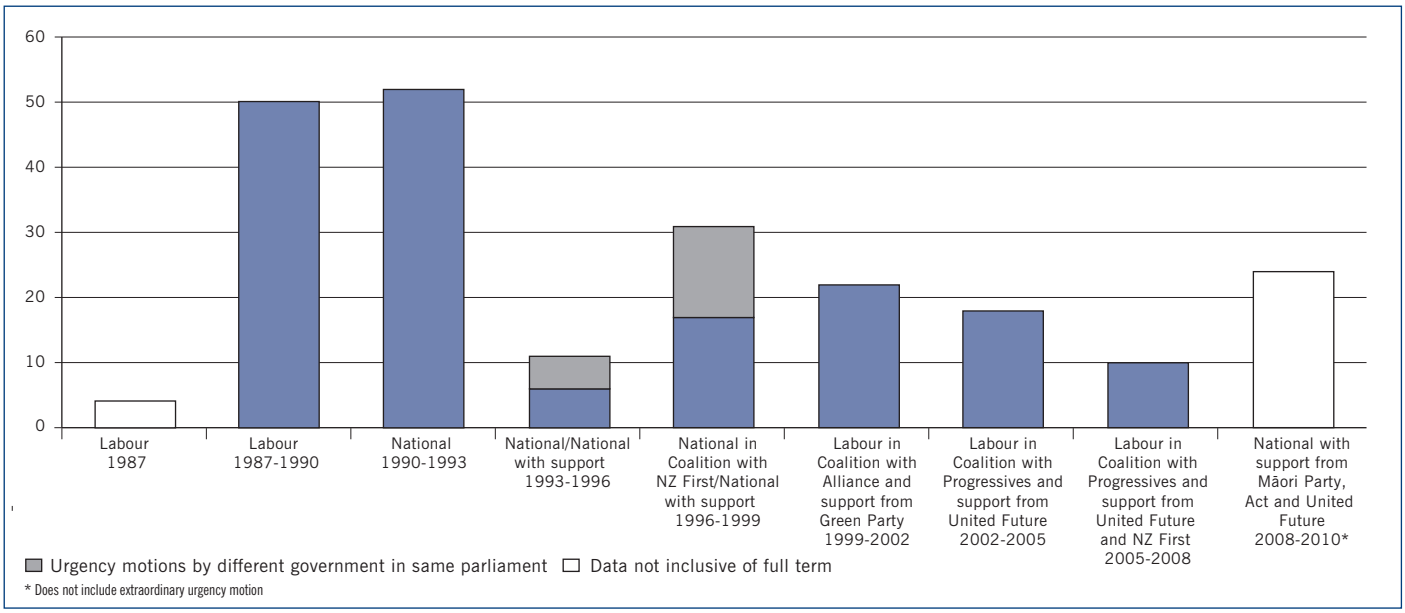
... the open and participatory select committee process, with considerable revision and amendment powers in the hands of the committees, enhances the legislative process, going some way to compensating for the lack of an upper house ...

Urgency: patterns and explanation

In order for us to gain the full picture of what had been happening when the House took urgency we needed to gather and analyse empirical data that had generally been lacking (but see Malone, 2008). Hence we constructed databases that included every urgency motion, and every urgency bill introduced into the House, between 1987 and 2010. During this time the House approved 221 urgency motions that related to the passage of bills. There were also eight motions concerning bills accorded extraordinary urgency, which has a higher threshold for approval, as explained. The data had to be analysed bill-by-bill as well as by parliamentary motion, because under standing orders single motions could include a number of bills, as shown in the December 2008 example. Between 1987 and 2010, the urgency motions included 1,608 bills, some being granted urgency at more than one stage of their progression though the House. In all, 830 bills were introduced that were accorded urgency at some stage or other of their passage through the House. The apparent discrepancy between these figures is explained by the fact that bills can be divided or split after introduction (see Geiringer, Higbee and McLeay, 2011b, pp.8-10 for a fuller explanation).

For various reasons, including pinpointing the governments responsible for putting particular bills into the House under urgency, we categorised the bills according to their year of introduction (ibid., p.9). These data

Figure 1: Urgency motions moved by Parliament, 1987-2010



gave us the fundamental statistics we needed in order to assess the frequency and distribution of urgency bills between different parliaments and governments.

By extending the time period under analysis back to the beginning of the 1987 Parliament, we could include two houses elected under the previous electoral system (first-past-the-post (FPP)), each governed by a different parliamentary party, Labour (in its second term) between 1987 and 1990, and National from 1990 to 1993. These two administrations were the last single-party majority governments to be formed during the 1987–2010 research time period. From midway through the last FPP-elected Parliament (1993–1996) until the end of our data collection period in 2010, every government had to seek support from one or more other parliamentary parties in order to pass its legislation, either through formal governing coalition with another party or parties and/or legislative support arrangements.

We chose not to analyse pre-1987 parliaments because in 1985 the House adopted radically new standing orders, thus making earlier sessions more difficult to compare with the post-1987 parliaments. Not only was all legislation except for money bills referred to select committee after the 1985 reforms, but also the category of extraordinary urgency was added to the standing orders. As it happened, the 1987–2010 data period was almost perfectly enclosed by two sets of rule changes that had an impact on urgency. There were the 1985 changes already mentioned. Then, in 2011, the House modified standing orders again in a way that affected fast-tracking legislation (NZHR, 2011). (Our data, however, do not include 2011, the last year in which the 2008 standing orders were in operation and the year in which a general election was held.)

The statistics were supplemented by 19 in-depth interviews with key participants and observers (including one response via email) (Geiringer, Higbee and McLeay, 2011b, pp.10-11). These conversations provided contextual information on urgency and general perceptions of the legislative process and the parliamentary legislative culture. In particular, the interviews enabled identification of the reasons for, and different uses of, taking urgency.

The broad pattern of bills introduced under urgency is depicted in Figure 1 (Geiringer, Higbee and McLeay, 2011b, p.69). As can be seen, both of the single-party majority FPP governments were very high users of this process. The National-led governments between 1996 and 1999 also employed urgency very extensively. Between the 1999 and 2008 general elections there were three Labour-led governments that were less prolific users of urgency, a situation that changed after the election of the National-led government in 2008. MMP appeared at times to have moderated the use of urgency by placing minor parties in potential negotiating positions. Such parties, for example the Green Party, could forestall the use of urgency if they so wished, not necessarily by voting against the parliamentary motion but by putting their views about this procedure to the dominant governing party with some force behind the scenes, thus forestalling urgency motions in the House. MMP, however, while providing the opportunity for the smaller parties to argue or act against the use of urgency, could not of course guarantee it, for much depended on precisely how the votes were distributed among the government-supporting parties and the attitudes towards parliamentary procedure of those parties, including how they, and their senior legislative partners, chose to interpret their formal and informal support agreements (Geiringer, Higbee and McLeay, 2011b, especially pp.99-119). Hence the contrast between the different levels of usage by different governments.

Without knowing how many bills in total proceeded through the House between 1987 and 2010, however, we could not confirm that particular governments and parliaments were in fact prolific or modest users of urgency. High rates of urgency use might simply have reflected particularly high numbers of bills put through the House by particular governments, for example. Table 1 shows the percentages of bills introduced under urgency as proportions of the total

numbers of bills introduced (Geiringer, Higbee and McLeay, 2011b, p.72). It confirms the general trends outlined above, but places the performances of the three Labour-led governments between 1999 and 2008 in a less laudable light, although it must be remembered that the figures for the National-led government elected in 2008 are incomplete.

Table 1: Percentages of bills accorded urgency, 1987–2010

Parliament	Bills introduced	Accorded urgency	%Urgency
1987-1990	262	188	71.8
1990-1993	229	135	59
1993-1996	207	43	20.8
1996-1999	273	151	55.3
1999-2002	206	82	39.8
2002-2005	202	73	36.1
2005-2008	238	66	27.7
2008-2010	211	75	35.5

Not all uses of urgency have similarly dramatic effects on the passage of bills. Some uses of urgency are plainly relatively benign, taking just one stage under urgency, for instance. Taking urgency that bypasses the select committee stage, in contrast, is a much more radical and potentially worrying form of fast-tracking bills, given how little scrutiny they are then given. This happens when bills are either passed through all their stages under an urgency motion, or, since the 2003 standing orders changes (NZHR, 2003), when urgency is accorded in the one motion for at least the first and second readings of a bill. The next section of this article discusses this phenomenon in more detail.

Urgency used to avoid the select committee stage of the legislative process

In the New Zealand House of Representatives almost all bills are routinely referred to their subject select committee after their first reading. These 13 subject committees are multifunctional in that, as well as scrutinising bills, the committees hear and recommend on petitions, scrutinise the estimates and deal with the financial reviews of the government agencies within their areas of jurisdiction, can initiate and conduct inquiries (without the permission of the House itself), and examine international treaties (McGee, 2005, pp.236-42).

As far as their legislative roles are concerned, the committees have the power to recommend amendments to the House (ibid., pp.351-8). The committees usually have six months in which to conduct their scrutiny of bills, although they may seek permission from the Business Committee to extend that time. Conversely, sometimes, and sometimes controversially, governments give committees less than the usual time to report back to the House. The committees advertise for submissions, will accept them from anyone (not always the case in other parliaments), and hold public hearings where submitters have the opportunity to make their points to the committee in public. However, committee deliberations are held in private. The committees have considerable powers, although when governments hold the majority on committees (not always the case since the adoption of MMP) government and government-supporting members can dominate the decision-making process. After 1985, an opposition MP always chaired the Regulations Review Committee. Committee chairpersons, who are in formal terms elected by their committees, have not had casting votes since the 1995 standing orders changes. Since 1996 some opposition MPs have chaired committees, although there has been some variation in the extent to which governing parties have allowed these positions to go to MPs not of their own persuasion. Because governments can and do very often dominate the committees, therefore, the select committee process is far from perfect when considered as a constraint on the executive.

Despite the deficiencies of the New Zealand select committee system, referral to select committees strengthens the legislative process (Ganley, 2001; McLeay, 2006; Palmer and Palmer, 2004, pp.197-8, 160-75). It allows time for reflection on the content and detail of bills, it provides the opportunity for amendment and correction, it encourages participation by members of the public, and it enhances the transparency of different viewpoints. On balance, the select committee stage contributes to fulfilling the criteria for good law-making outlined earlier. Despite its manifest strengths and its particular importance for a unicameral parliament, however, between 1987 and 2010 select committee scrutiny was bypassed 88 times (an average of 3.7 occasions per calendar year). Unsurprisingly, this figure is very close to the 81 occasions when bills were passed through all their stages in one sitting. (This is almost always the case for bills granted extraordinary urgency.) Notable offenders were the two pre-MMP single-party majority governments, with a total of 33 bills escaping select committee scrutiny in just six years. Labour between 1987 and 1990 put through more bills in this category than National between 1990 and 1993. Other culprits were the two post-MMP National-led governments (1996–1999 and 2008–2010).

But were the bills put through the House without select committee scrutiny justifiably hastened because they concerned genuinely 'urgent' matters? Or, on the other hand, did they concern policy matters that should have been fully discussed and scrutinised in select committee? Given the importance of select committees in New Zealand's unicameral Parliament this issue deserved further investigation. Accordingly, we examined all 55 bills in the post-MMP period (1996–2010) that were not referred to select committees. We were particularly interested in the more recent period because one of our goals was to analyse the impact of MMP, in particular the influence of the smaller parties, on the practice of urgency (not fully discussed in this article).

Table 2: Bills not referred to select committee between 1996 and 2010

1996–1999 (20 bills) National–NZ First coalition; and National-led minority governments	
A: Identifiable rationale	*Voting at 3rd Reading*
*Customs and Excise Amendment Bill 1998 (extrordinary urgency)	Opposed by Labour and Alliance parties
*Estate Duty Repeal Bill 1999 (omission of select committee stage not criticised by opposition)	Unopposed
Farm and Fishing Vessel Ownership Savings Schemes (Closure) Bill 1998 (essentially a tidying up bill)	Unopposed
Immigration Amendment Bill (No. 2) 1999 (response to anticipated event; process criticised)	Opposed by Labour and Alliance parties and N. Kirton
Māori Reserved Land Amendment Bill (No. 2) 1998 (remedial; process criticised)	Opposed by Labour and Alliance parties
Oaths and Declarations (Validation) Amendment Bill 1998 (remedial)	Unopposed
Stamp Duty Abolition Bill 1999 (extraordinary urgency)	Opposed by Alliance Party
B: Non-identifiable rationale	*Voting at 3rd Reading*
*Accident Insurance Amendment Bill 1999	Unopposed
*Broadcasting Amendment Bill (No. 3) 1999	Unopposed
*Copyright (Removal of Prohibition on Parallel Importing) Amendment Bill 1998	Opposed by Labour and Alliance parties
Education Amendment Bill 1998	Opposed by Labour and Alliance parties
Fire Service Amendment Bill 1998	Opposed by Labour, Alliance and United parties
Immigration (Migrant Levy) Bill 1998	Unopposed
*Social Security Amendment Bill (No. 5) 1998	Opposed by Labour and Alliance parties
Social Welfare (Transitional Provisions) Amendment Bill 1998	Opposed by Labour, Alliance and NZ First parties, and N. Kirton and C. Fletcher
State Sector Amendment Bill 1997	Opposed by Labour, Alliance and United parties
State-Owned Enterprises (Contact Energy Limited) Amendment Bill 1998	Opposed by Labour, Alliance and NZ First parties and N. Kirton
*State-Owned Enterprises (Meteorological Service of NZ Limited and Vehicle Testing NZ Limited) Amendment Bill 1999	Opposed by Labour, Alliance and NZ First parties and N. Kirton
Tariff (Zero Duty) Amendment Bill 1998	Opposed by Labour, Alliance and NZ First parties
C: Tax measures	Voting at 3rd Reading
*Taxation (Parental Tax Credit) Bill 1999	*Unopposed*
1999–2002 (7 bills) Labour–Alliance minority government	
A: Identifiable rationale	*Voting at 3rd Reading*
Customs and Excise Amendment Bill 2000 (extrordinary urgency)	Opposed by National, ACT, NZ First and United parties
Customs and Excise Amendment Bill (No. 5) 2002 (extraordinary urgency)	Opposed by National, ACT, NZ First and United parties
Local Government (Rodney District Council) Amendment Bill 2000 (preemptive legislation; process criticised by ACT)	Unopposed
Road User Charges Amendment Bill 2002 (timing of charges involved; process criticised)	Opposed by ACT and NZ First parties
B: non-identifiable rationale	*Voting at 3rd Reading*
Local Government (Prohibition of Liquor in Public Places) Amendment Bill 2001	Opposed by National, ACT, Green and United parties
Tariff (Zero Duty Removal) Amendment Bill 2000	Opposed by National, ACT and United parties

C: Tax measures	*Voting at 3rd Reading*
Taxation (Tax Rate Increase) Bill 1999	Opposed by National, ACT, NZ First and United parties
2002–2005 (4 bills) Labour–Progressive minority government	
A: Identifiable rationale	*Voting at 3rd Reading*
Customs and Excise (Alcoholic Beverages) Amendment Bill 2003 (extraordinary urgency)	Opposed by National, NZ First and ACT parties
B: Non-identifiable rationale	*Voting at 3rd Reading*
Electoral (Vacancies) Amendment Bill 2003	Opposed by National, NZ First, ACT and United parties
Immigration Amendment Bill (No. 2) 2003	Opposed by National, NZ First, ACT and Green parties
C: Tax measures	*Voting at 3rd Reading*
*Future Directions (Working for Families) Bill 2004	Bill was divided
2005–2008 (4 bills) Labour–Progressive minority government	
A: Identifiable rationale	*Voting at 3rd Reading*
Biosecurity (Status of Specified Ports) Amendment Bill 2005 (retrospective validation of non-intended illegal action)	Unopposed
B: Non-identifiable rationale	*Voting at 3rd Reading*
Appropriation (Parliamentary Expenditure Validation) Bill 2006	Opposed by National and ACT parties. Green Party abstained
C: Tax measures	*Voting at 3rd Reading*
*Taxation (KiwiSaver and Company Tax Rate Amendments) Bill 2007	Opposed by National and ACT parties. Māori Party abstained.
*Taxation (Personal Tax Cuts, Annual Rates, and Remedial Matters) Bill 2008	Unopposed
2008–2010 (20 bills) National minority government (incomplete parliamentary term)	
A: Identifiable rationale	*Voting at 3rd Reading*
Civil Aviation (Cape Town Convention and Other Matters) Amendment Bill 2010 (technical bill on issue that had been topic of inquiry by a select committee)	Unopposed
Crown Retail Deposit Guarantee Scheme Bill 2009 (extension of existing scheme; process criticised)	Unopposed
Electoral Amendment Bill 2009 (repeal of an act, with interim measures)	Opposed by Green Party
Excise and Excise-Equivalent Duties Table (Tobacco Products) Amendment Bill 2010 (extraordinary urgency)	Opposed by four ACT MPs.
Immigration Act 2009 Amendment Bill 2010 (rectified omission in earlier act)	Opposed by Green Party
Policing (Constables' Oaths Validation) Amendment Bill 2009 (rectified legislation that validated certain actions)	Unopposed
Summary Proceedings Amendment Bill (No. 2) 2010 (rectified legislation)	Unopposed. Green Party abstained
B: Non-identifiable rationale	*Voting at 3rd Reading*
Bail Amendment Bill 2008	
Corrections (Use of Court Cells) Amendment Bill 2009	Opposed by Green Party
Education (National Standards) Amendment Bill 2008	Opposed by Labour and Green parties
Electricity (Renewal Preference) Repeal Bill 2008	Opposed by Labour, Green, Progressive and Māori parties
Employment Relations (Film Production Work) Amendment Bill 2010	Opposed by Labour, Green and Progressive parties

Employment Relations Amendment Bill 2008	Opposed by Labour, Green and Māori parties
Energy (Fuels, Levies, and References) Biofuel Obligation Repeal Bill 2008	Opposed by Labour, Green, Māori and United Future parties
Environment Canterbury (Temporary Commissioners and Improved Water Management) Bill 2010	Opposed by Labour, Green, Māori and Progressive parties
Policing (Involvement in Local Authority Elections) Amendment Bill 2010	Opposed by Green and Māori parties
Sentencing (Offences Against Children) Amendment Bill 2008	Unopposed
C: Tax measures	*Voting at 3rd Reading*
*Taxation (Budget Measures) Bill 2010	Bill divided
*Taxation (Budget Tax Measures) Bill 2009	Unopposed
Taxation (Urgent Measures and Annual Rates) Bill 2008	Opposed by Labour, Green and Progressive parties

* Asterisked legislation was included in a Budget day urgency motion.

The criteria for justifiable and non-justifiable non-referral of bills to select committees are inevitably contestable. However, we divided the bills into three main groups: bills that had identifiable reasons for select committee avoidance (group A); those that did not (B); and bills concerning tax measures where avoidance of select committee scrutiny was institutionally the practice but actually debatable (C). This did not mean that we agreed that those bills in the A (or indeed the C) category had democratically justifiable reasons for going through the House under urgency and without select committee scrutiny. It simply meant that they fulfilled one or more rationales for being fast-tracked in this way.

In the first group, A, the bills with identifiable rationales for this form of fast-tracking, were placed in that category because they complied with at least one of four criteria relating to content, or one of three criteria relating to process (see also Geiringer, Higbee and McLeay, 2011b, pp.81-4). Identifiable reasons could be related to the content and policy goals of the bills. Thus, these bills were fast-tracked for at least one of the following reasons:

- to reduce the potential for speculative behaviour;
- to respond to an unexpected event or court decision;
- to remedy an anomaly, oversight or uncertainty in existing legislation; or
- to respond to external factors creating a deadline for the proposed legislative change.

Alternatively, or as well, identifiable rationales could be provided on the grounds of particular processes and procedures:

- they had been granted extraordinary urgency, and therefore had been approved by the Speaker of the House;
- both the bill received unanimous support in the House, as indicated by voting at the third reading, and also the omission of the select committee stage was not criticised by MPs; or
- the bill repealed an act that itself had gone through select committee scrutiny and the repealing legislation received widespread (if not complete) parliamentary support.

We identified 19 bills in the A category, 34.5% of the total number (55) between 1996 and 2010. Table 2 includes the rationale for escaping select committee scrutiny for each of the 19 bills.

Into the second, B category went all those bills for which we could identify none of the above rationales for their fast-tracking. Note that often these bills proposed major policy, even constitutional, change. Thus, an argument can be made that they should have been referred to select committee because their policy impact on citizens was potentially significant or because they concerned important issues about rights and responsibilities. We identified 27 bills, 49.1% of the total of 55, that, when judged against our criteria for good legislative processes outlined above, should have been referred to their relevant select committees.

Category C included the nine bills that were tax measures. These bills historically have often been treated as 'urgent', in part because of fitting in with the timetable of the tax year. Thus we followed tradition and did not place them in the reprehensible B grouping. Nevertheless, where such measures involve significant policy changes there is a strong democratic case for referring these also to select committee. If we had classified tax measures as B, then the picture would have changed quite dramatically, with the majority of the bills that escaped select committee scrutiny between 1996 and 2010 falling into that category. The picture becomes even blacker if we believe that some of the bills we placed in the A category had unconvincing or weak rationales for select committee avoidance.

When arranged in terms of the governments responsible for this radical fast-tracking of bills, it can be seen that there was considerable variance among the different governments and parliaments, as can be seen from Table 2 (an expanded version of Geiringer, Higbee and McLeay, 2011b, p.83, Table 4.4).

Table 2, as well as listing the bills that were not considered by select committees between 1996 and 2010 according to the governments in office at the time, also provides information as to whether or not the bills were contested by opposition parties at the time of their third readings. It should be noted, though, that there were many occasions when opposition parties allowed uncontested third readings, having earlier criticised the lack of select committee consideration. Over the whole period, eight of the 19 bills in the A category (containing those bills where there were identifiable reasons for skipping the select committee stage) were

unopposed at their third readings, and a further four bills were unopposed by the other major party but opposed by one of the smaller parties. In comparison, of the 27 bills without rationales for non-select committee consideration, a mere four were unopposed, with two further bills opposed by just one of the smaller parties. These results give some further credence to the categorisation: some bills are more controversial than others and these certainly should be placed before select committees. But it might be that for similar sorts of reasons – issue salience, policy complexity and issue contestability – some bills that we put in the A category should have also gone to select committees.

To summarise so far, although the number of bills put through the House without being referred to select committee is not large when placed against the total number of bills that are processed through the House under urgency, there are too many examples of important bills that are expedited in this way without sufficient cause. This is a case of political executives abusing the democratic process.

Having established that governments use urgency very frequently and at times abuse it to bypass the select committee stage, we should ask: Why do governments use urgency? (Geiringer, Higbee and McLeay, 2011b, pp.45-65). The answers are many and complex, as we found when we discussed this issue with participants, but the first of these is to prioritise government business over other House business (such as members' bills, and also, at times, question time) in order to get government legislation through Parliament. Especially for a government that has a heavy legislative programme, urgency is seen as a way of getting legislation passed through, in part, increasing the time spent in plenary sessions of Parliament. This is seen as an acceptable strategy despite the possible detrimental effects on Parliament's reputation and the quality of the acts passed in this way. Further, not only is Parliament a competitive environment, with the opposition parties chipping away at government policy, but also cabinet ministers compete amongst themselves for parliamentary time. And they have public servants who are also energetically promoting their pet schemes and draft bills. (Although we did not have the resources to interview public servants about this, we heard anecdotal evidence suggesting that, sometimes at least, the public service pushes for bills to be made urgent.)

Having established that governments use urgency very frequently and at times abuse it to bypass the select committee stage, we should ask: Why do governments use urgency?

Thus, there is considerable pressure on governments to implement their legislative programmes.

New governments in particular, on the evidence of the interviews and the patterns of urgency usage (Geiringer, Higbee and McLeay, 2011b, pp.84-7), are impatient to implement their policies, and, indeed, at times have promulgated the wholly indefensible view that because they have a 'mandate' their key policies should be able to escape the usual measured legislated process. At times, also, governments have chosen to use urgency for tactical reasons, perhaps to get a controversial issue out of the way or to embarrass the opposition and starve it of parliamentary time.

All governments want to get their legislative programme through the House, and almost all governments face the problem of too many bills to introduce and pass in too little time. Urgency has been the main weapon wielded by governments to deal with the problem of too little time and too much legislation, as our figures and interviews demonstrated.[2] It is little surprise, then, that such a useful and expedient practice as urgency has been a feature of the House for well over a century. Yet, at the same time, the New Zealand House of Representatives has changed both its rules and its practices around urgency. It has evaluated its processes from time to time, adapting them somewhat to changing attitudes about due process, accountability and participation, even though, in our view, the House has not gone far enough, especially concerning permitting bills to skip the select committee stage of the legislative process. This is the topic of the last part of this article.

Urgency, select committee referral and parliamentary reform

When the Standing Orders Committee reviewed the House rules in 2011 there had been some adverse publicity around the use of urgency by the National-led government elected in the 2008 general election. It was unsurprising, then, that a number of the submitters to the review (including the authors of this article) proposed changes to the rules on taking urgency (Geiringer, Higbee and McLeay, 2011a). In the event the committee made several recommendations of relevance to urgency, all subsequently formally adopted by the House.

First, ad hoc extensions to the House's sitting hours were permitted, with formal notice having been given the week before to the Business Committee, as an attempt to increase the parliamentary time available to governments (Standing Orders Committee, 2011, pp.15-16). The select committees cannot meet during extended sittings unless they have been given permission to do so, either by the House or by the Business Committee. So there could be adverse effects on the committees' work schedules and capacity to deal with their workloads. Other, streamlining measures have also been put into place (see also the discussion in Geiringer, Higbee and McLeay, 2011b, pp.132-8).

Second, instructions to select committees were made debatable

(Standing Orders Committee, 2011, p.41). After bills are read a first time they stand referred to a select committee (unless the bill is under urgency). The member in charge of the bill moves a motion that nominates the committee that is to consider it. As part of that motion, which until 2011 had been non-debatable, special instructions could be given, including permitting select committee sittings during House sittings (posing difficulties for the smaller parties) and abbreviating the usual six-month time frame for committees to report back. Such instructions are now to be debatable except when these instructions only reduce the time for reporting back to between four and six months. The aim is to provide a disincentive to imposing shorter deadlines by taking up time in the House to debate such measures.

Another change relevant to urgency procedures is a requirement that the person who moves an urgency motion now must provide greater specificity about the reason for doing so, although the instruction is not as strong as we recommended (Standing Orders Committee, 2011, p.17). Unfortunately, the committee did not take up our recommendation that greater transparency be given to bills being dealt with under urgency by requiring a separate motion for each separate bill (see Geiringer, Higbee and McLeay, 2011b, pp.153-7).

And what did the committee recommend to constrain the avoidance of the select committee stage of the legislative process, the most worrying use of urgency of all? Most unfortunately, no reform was recommended, despite some 'tut-tutting' about the practice expressed in the committee's report (as we saw above). In our submission we recommended that the Speaker be given a role similar to that the presiding officer already has in relation to taking extraordinary urgency. Thus, the Speaker would have to approve the circumstances under which the select committee might be bypassed (Geiringer, Higbee and McLeay, 2011a). The committee rejected this recommendation on the grounds that such an innovation would make the Speaker's role more political (NZHR, 2011a, p.17). The Green Party's proposal that all bills accorded urgency for the first and second stages would go to a select committee for between three and five sitting days was also dismissed (Graham, 2010, recommendation 12).

It is a pity that the 2011 Standing Orders Committee did not address the most serious infringement of the principles of good law-making: using urgency in such a way that select committee consideration is bypassed.

It is a pity that the 2011 Standing Orders Committee did not address the most serious infringement of the principles of good law-making: using urgency in such a way that select committee consideration is bypassed. It remains to be seen whether present and future governments continue to abuse the legislative process in this undemocratic way.

1 Apart from the House of Lords report (2009), we drew especially upon the following sources when developing the 10 criteria: Barnett and Higbee, 2009; Butler and Butler, 2005; Consultative Steering Group on the Scottish Parliament, 1998; Craig, 2007; Geiringer, 2007; Held, 2006; International Institute for Democracy and Electoral Assistance, 2011; Joseph, 2007; McGee, 1995; McGee, 2005, p.4; Mulgan, 2004; and Wheare, 1963.

2 The problem of adequate time for legislation and the possible problems of the House's sitting hours and sitting days is a whole separate issue which we do not discuss here. Although the time issue was not the focus of the urgency project, Geiringer, Higbee and McLeay (2011b) devote some time to the problem, and the authors' submission to the Standing Orders Committee (2011a) also contains some data on it.

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Adrian Macey

The Road to Durban and Beyond

The Progress of International Climate Change Negotiations

Following a familiar pattern of UN climate change negotiations, the 2011 Durban conference of the parties (COP17) was concluded by sleep-deprived delegates well after its scheduled end, after crises and last-minute drama. Just what it might mean for the future was not immediately obvious to observers. Early reactions ranged from seeing yet another failure by governments to grasp the seriousness and urgency of climate change – 'a disaster for us all'[1] – to much more positive assessments. The executive secretary of the UNFCCC (the United Nations Framework Convention on Climate Change), Christiana Figueres, described Durban as 'without doubt … the most encompassing and furthest reaching conference in the history of the climate change negotiations'.[2]

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To make sense of the outcome, it helps to view the short history of these negotiations through a political lens. Each conference of the parties, besides whatever operational decisions it takes and work programmes it initiates, is a snapshot of the international community's political take on climate change. In this sense, Durban can be seen as the product of Montreal (2005), Bali (2007) and Copenhagen (2009) conferences of the parties, with clear political steps forward every two years. That is not to say the intervening COPs, Nairobi (2006), Poznań (2008) and Cancún (2010), made no contribution. They all helped advance the negotiations; Cancún indeed probably saved the multilateral process. But the intervening year COPs lacked the political impact of the others, and produced no new framing of the negotiations.

The Framework Convention and the Kyoto Protocol

Going back still further, the political history begins with the negotiation

of the framework convention in 1992, the first multilateral treaty on climate change. Informed by the first assessment report of the Intergovernmental Panel on Climate Change (IPCC), the UNFCCC sets out the core objective of stabilising greenhouse gas concentrations at a level that would avoid dangerous human-induced climate change. The principles by which this objective is to be achieved include what must be the most frequently quoted words in the UNFCCC: 'common but differentiated responsibilities and respective capabilities' (CBDR). CBDR can be seen as a very broad guiding principle for burden-sharing. Taken together with the principle of equity, it justifies the recognition in the convention that developed countries should take the lead in combating climate change. The convention also introduced a fundamental and fateful separation of parties into two classes: annex I and non-annex I, with annex I consisting of developed countries (approximately reflecting OECD membership in 1990) plus economies in transition.

The convention contains a legally binding requirement on all parties to take measures to mitigate climate change, but no mechanism that will ensure this happens. Its only quantified goal is a non-binding target for annex I parties as a whole to return their emissions to 1990 levels by the year 2000.

The convention can be regarded as the first phase of the quest for a comprehensive multilateral climate change framework containing both principles and effective action. The second phase was the Kyoto Protocol, concluded in 1997 but only entering into force in 2005. The protocol provided for the first time clear accounting rules, a firm aggregate reduction target for greenhouse gas emissions, legally binding country-by-country quantified commitments, and compliance provisions. It introduced international carbon market mechanisms to help achieve mitigation at least cost, notably the innovative Clean Development Mechanism. The quantified economy-wide mitigation commitments ('qelros') listed in an annex to the protocol resolved burden-sharing among annex I parties for the first commitment period, 2008–2012. But the protocol did not address mitigation amongst non-annex I parties.

At Montreal in 2005, the built-in deadline in the Kyoto Protocol to begin negotiations on further commitments for annex I parties was the catalyst for developed countries to try to bring developing country emissions into the framework.

The protocol retained the political balance of the convention. Indeed, that the political balance between annex I and non-annex I obligations was unchanged was explicit in the Berlin Mandate's stipulation that there would be no new commitments for non-annex I parties.[3] The protocol can be seen as a tighter and more detailed specification of annex I obligations, implementing the principle of 'taking the lead'.

Towards a comprehensive climate change regime

The third phase of negotiations began in 2005. The core objective of the convention, together with the principles on which it and the protocol were built, remained valid but could not chart a way forward. The stabilisation goal was not quantified, either as a temperature limit or a greenhouse gas concentration. Further, the absence of the United States, the largest emitter, and Australia from the Kyoto Protocol made even annex I commitments incomplete. Even more important for the future, projections of global emissions showed that by the end of the Kyoto Protocol's first commitment period, China would have overtaken the United States as the largest emitter. Developing countries in aggregate would also have overtaken annex I parties, and would be the dominant source of most of the emissions growth to 2050 and beyond.

At Montreal in 2005, the built-in deadline in the Kyoto Protocol to begin negotiations on further commitments for annex I parties was the catalyst for developed countries to try to bring developing country emissions into the framework. This meant putting the negotiations on a broader footing. The absence of the United States from Kyoto meant that the developed countries' objectives could not be met simply by complementary provisions under the convention for developing countries. But any shift towards quantified mitigation commitments from developing countries was resisted as contrary to the burden-sharing principles of the convention. In practice, CBDR and the annex I/non-annex I dichotomy were combined in political rhetoric to prevent a smooth evolution of the climate change regime to reflect the changing global economy. There was too much vested interest in the status quo to allow the interpretation of these principles to evolve.

This led to a 'two-track' situation. For two years after Montreal the tracks had unequal status. The first track was a formal negotiation under article 3.9 of the Kyoto Protocol; the second a 'dialogue' under the convention which introduced the term 'long-term cooperative action' (LCA). Somewhat reminiscent of the Berlin Mandate, the decision creating the dialogue stated that it would not open any negotiations leading to new commitments. The dialogue's value was to introduce some of the themes that would later be taken up in negotiations, once the politics allowed it.

Politically, there was thus an imbalance from the point of view of annex I parties. It was unrealistic to expect them to implement further commitments without the United States and emerging

economies. But developing countries also complained of an imbalance. They saw annex I parties upping demands on developing countries while neither demonstrating sufficient ambition over their own commitments nor recognising the importance of adaptation, finance and technology to developing countries.

Bali, in 2007, was the turning point into a full negotiation, albeit still with two tracks, with a new political balance which took account of these concerns. The convention mandate, which retained the 'LCA' title, could be read as applying to all parties, even though developing countries at this point insisted that annex I Kyoto Protocol parties must make their commitments under Kyoto. Some new language was necessary to effect this political shift. The distinction between commitments and actions was introduced to get around the difficulty for the United States of the legally binding implication of 'commitment', and at the same time to make a distinction between the nature of what developing and developed countries would commit to. The terms 'measurable, reportable, verifiable' and 'nationally appropriate mitigation actions' (NAMAs) applied to developing country mitigation implied some quantification, but not so far as to make the actions legally binding or qelros. At Bali the central importance to progress in the negotiations of the relationship between the United States and China and other major developing country emitters became apparent. Legal parallelism was and remained a central theme of the United States, including at Durban. This meant that while the content of commitments could be differentiated, thus respecting the CBDR principle, their legal force had to be equivalent.

The annex I/non-annex I dichotomy was blurred in the Bali mandate (the Bali Action Plan), which refers to 'developed' and 'developing' countries, though of course the Kyoto track of solely annex I commitments continued independently. Though it was not initially made explicit, there was a strong wish among most annex I parties for a legally binding outcome under the convention track, as much to bring the US under equivalent obligations to other developed countries as to include the emerging economies. The emerging economies were not able to agree to a legally binding outcome; the requisite constructive ambiguity was achieved by the term 'agreed outcome', the meaning of which was argued over for the next four years. The concept of comparability was also introduced, primarily aimed at the United States, to indicate that the United States would be expected to take on commitments under the convention of comparable ambition to those of other annex I parties under the protocol.

Highly inefficient and cumbersome from a negotiating perspective, the separation of the two tracks became a theme of the post-Bali negotiations, as much for the United States, for whom the Kyoto Protocol was toxic, as for developing economies anxious to avoid being pressured into Kyoto-type commitments. For most developed countries this mode of negotiation was a second-best option, one better than the third-best that Montreal had delivered but inferior to a single negotiation. A supposed 'firewall' between the two tracks was invented, much invoked by developing countries, and tacitly supported by the United States. Efforts by chairs and moderate countries to engage in 'across the tracks' discussions to achieve some coherence on common issues such as accounting rules were always controversial and never got off the ground in the formal settings.

Bali's contribution was also to identify the elements needed in any comprehensive regime. They included mitigation, of course, but also adaptation, finance, technology, and reducing emissions from deforestation (REDD+), together with openings towards possible sectoral approaches and new market mechanisms.

As the scheduled conclusion of the Bali Action Plan approached, negotiations were heading for a train wreck. None of the fundamental issues had been resolved; at one point there were about 300 pages of negotiating text, with 3,000 square brackets indicating areas of disagreement. Added to this was a lack of trust, made more acute by shortcomings in the management of the pre-Copenhagen process by the incoming Danish presidency. A symptom of the trust deficit was the Danes' having to change the signage part way through the conference from 'COP 15' to 'COP 15 CMP 5',[4] in response to complaints from some developing countries that the Kyoto Protocol was being airbrushed out of the negotiations. Previous conferences had used 'COP X' without incident.

The last-minute rescue of the conference by a handful of world leaders through a side deal – the Copenhagen Accord – was, in retrospect, a decisive political intervention.

The last-minute rescue of the conference by a handful of world leaders through a side deal – the Copenhagen Accord – was, in retrospect, a decisive political intervention. Despite not being agreed by the COP, it introduced a new framing of the negotiations. Its main political advances were to agree on the global goal of limiting warming to 2°C above pre-industrial levels, to extract mitigation pledges from all parties that mattered, some at the conference itself and others in the months that followed, and to address accountability of developing countries' mitigation actions. Developing countries' actions would be subject to a form of peer review through 'international consultations and analysis', a concept that was to be further developed in Cancún and Durban. Close in importance were the provisions on finance, which included an immediate and unconditional injection over three

years of $US10 billion per year, an aspirational target of mobilising $US100 billion dollars from a range of sources by 2020, and the establishment of a Green Climate Fund. The core political bargain was the two-way conditionality between developing country mitigation and long-term finance.

The decisions of Cancún, concluded over Bolivian objections in successive moments of high drama, brought both the political gains of the Copenhagen Accord and the mitigation pledges it had attracted into the UNFCCC, and thereby into the formal negotiations. Cancún also set up a work programme, institutions, architecture and rules to operationalise the political gains.

The impact of the LCA and other related COP decisions is to provide a structure for mitigation commitments and associated needs such as finance, technology and adaptation, applicable to all parties up to 2020.

2011: The Durban year

Unlike Mexico and Denmark, who put their stamp on the preparations from early in their year, South Africa as incoming presidency gave few early signals of its approach. One point repeatedly made, however, was that the process would be open and inclusive and there would be no secret text. South Africa apparently did not want to risk a third contested ending to a COP in as many years.

Another political reframing occurred during this year. The core political issues that would have to be resolved at the COP were explored in informal meetings of ministers and senior negotiators. Parties themselves were noticeably clearer and more direct about their demands than in previous years. Three issues dominated the political discussions: the second commitment period of the Kyoto Protocol; finance (principally the Green Climate Fund); and the mandate for a negotiation of a new, comprehensive agreement. Because of intertwining conditionalities, none of the three could be achieved without the other two. For the United States, not a demander of a new negotiating mandate, what mattered most was strict legal parity of mitigation commitments with China. 2011 also saw a stronger political role being played by the BASIC[5] countries – the major emitters among developing countries. Arguing on the basis of equitable access to sustainable development, they maintained that they still needed room to increase their emissions; their mitigation pledges to 2020 would thus slow emissions growth, but would not be a net reduction.

What of mitigation ambition, which is surely the core of the whole negotiation? The major players – the United States, the EU and BASIC countries – had signalled that they would maintain their existing pledges, but would not improve them. The economic recession severely limited flexibility, and it would not have been a propitious time to put pressure on governments to offer more. Nor were annex I parties going to be able to finalise the conversion of their pledges to qelros at Durban. So there could be no realistic expectations that Durban would deliver higher ambition. The common lowering of expectations on ambition among the major players had a liberating effect on the negotiations. It must be said that this exercise in realpolitik deeply disappointed small island states, least-developed and African countries, who continued to hold out for greater ambition, and for a global temperature goal of 1.5°C.

The recognition of the importance of the second commitment period by developed countries, even the United States, which had earlier virtually ignored the Kyoto Protocol negotiations, was a useful signal. 'Preserving Kyoto' became an iconic theme and a touchstone of the whole climate change negotiation in the media. But the intense political focus on the second commitment period as an end in itself made it easier to reach a deal, since content was less in the spotlight. Several parties – Canada, Japan and the Russian Federation – had stated that they would not be making mitigation commitments under Kyoto. Australia and New Zealand were equivocal. Whether or not there would be a second commitment period became dependent on the European Union. The percentage of global emissions covered by likely Kyoto committers – around 15% and declining – meant that the Kyoto Protocol could not realistically be the vehicle for annex I mitigation commitments beyond 2020. That gave the EU leverage for achieving its balancing requirement of a negotiation towards a legally binding agreement that would encompass all major emitters.

Once this had been accepted, the previous status of the Kyoto Protocol as the instrument by which all annex I parties except the United States made their commitments was lost. So was any thought that a two-treaty outcome to the negotiations could work. A more stable and long-term solution was needed. So 2013–2020 came to be seen, and more and more referred to, as a transition period. To allow this to go unchallenged was a substantial concession by developing countries, and opened the way to a new negotiating mandate.

For those annex I parties not making commitments under Kyoto, and for all developing countries, the LCA had the task of constructing a parallel framework to ensure that there was full coverage of mitigation up to 2020. The challenge was to find equivalent disciplines to those embodied in Kyoto's reporting and accounting rules. The elements, from Bali and Cancún, were all there, but this negotiation was far less mature than the Kyoto Protocol track. It had started two years later, and there was a large volume of unagreed and still not fully digested text.

In keeping with its approach earlier in the year, South Africa chose not to step in at Durban and take over from the chairs of the two ad hoc negotiating groups to craft a deal. There were some informal consultations under the presidency – 'indabas'– in parallel, but these were always to feed back into the negotiations under the chairs. Very late in the conference South Africa invited some ministers, including Tim Groser from New Zealand, to facilitate agreement on the sticking points under the LCA. South Africa presided over discussions on the new negotiating mandate, which did not have a home in either negotiating group. A late and successful intervention by the COP president called for adoption of the Kyoto Protocol and LCA decisions and the new mandate as a package. The result was that, although it might have taken longer than necessary, and came close to failure, there can be no doubt that there was a full consensus on the outcome and that Durban was a party-driven result. That is a firmer base on which to negotiate than either Copenhagen or Cancún.

The Durban deal

Results under the Kyoto Protocol, the convention and the new mandate are a surprisingly coherent package.[6] The Kyoto Protocol establishes the second commitment period, thus avoiding a legal vacuum after 2012. A more important achievement under Kyoto for the longer term was the settling of most accounting rules for the second commitment period. The post-2012 rules on land use change and forestry (LULUCF), which were unfinished business from 10 years earlier, were finalised with a package centred on the new concept of reference levels, and other rule changes. The market mechanisms were also maintained intact, whereas they had been under threat during the negotiations.

The impact of the LCA and other related COP decisions is to provide a structure for mitigation commitments and associated needs such as finance, technology and adaptation, applicable to all parties up to 2020. In combination with the Kyoto Protocol, 80% of global emissions are now covered. The distinction between qelros and actions is retained, thereby maintaining some of the long-standing dichotomy among parties. It sets out a viable alternative to the Kyoto Protocol's model, having to meet similar concerns of comparability, transparency and review. The Durban outcomes under the convention can be seen as building blocks which will be part of the new regime to be negotiated by 2015, and to apply from 2020. The Kyoto Protocol and convention outcomes are complementary, and make the transition period complete.

The biggest political advance of Durban is, of course, the mandate for a new negotiation, the Durban Platform for Enhanced Action (DPA), towards 'a protocol, another legal instrument or an agreed outcome with legal force' under the convention, 'applicable to all'. There is still some constructive ambiguity in the term 'outcome with legal force', found in the final 'huddle' in the plenary. But the context of these words gives, compared to Bali's 'agreed outcome', a stronger implication of something closer to a legal instrument than to a set of non-binding decisions. The words 'applicable to all' also strengthen the political framing in the same direction. The mandate leaves open how the Kyoto Protocol and LCA results will be incorporated in a new agreement; there is no explicit requirement to retain the annex I/non-annex I dichotomy. Nor is CBDR restated.

And ambition? There was no progress at Durban that could be measured in tonnes of CO_2. But ambition was not ignored. It is hard to imagine stronger political language than the 'grave concern' expressed at the gap between aggregate efforts and any emissions trajectories that could achieve the 2°C target. The DPA mandate is unequivocal that it 'shall' raise ambition. A work plan on increasing ambition will be established. The approach to increasing ambition is consistent across the Kyoto Protocol, the LCA and the DPA. A review is to take place in 2013–2015, which will include consideration of the IPCC's fifth assessment report. What the IPCC has to say about global goals (whether expressed as temperature, peaking year or emissions reduction) and the means of attaining them will come under intense scrutiny, even more so than the fourth assessment report. It is very likely that aggregate efforts will still be inadequate in 2015, in which case there will be pressure on parties to do more. That was why many developing countries would not accept an eight-year second commitment period at Durban, even though, to be coherent with LCA, it is the only logical one. The outcome under the LCA will apply to 2020, so if the Kyoto Protocol's second commitment period were to end in 2017 a potential three-year gap under the protocol would create uncertainty. The need to decide on five or eight years may give developing countries some negotiating leverage to trade off eight years for something more on ambition.

The model of accountability for emissions reductions that is being explored under the pledge and review approach emerging from the LCA is one of peer pressure and transparency.

The model of accountability for emissions reductions that is being explored under the pledge and review approach emerging from the LCA is one of peer pressure and transparency. This would operate more like some OECD or World Trade Organization review mechanisms, and less like the legally binding with compliance provisions model of Kyoto. This does not necessarily make it less effective. It has been recognised that the will of states to do

what they say is not synonymous with the degree of 'bindingness' of any obligation.[7] Within a legally binding framework, such as the convention itself, there may be effective non-legally binding disciplines. This is often described as a 'bottom-up' approach, in contrast to Kyoto's supposed 'top-down' model. But just as Kyoto is not entirely top-down, this convention model is not purely bottom-up. A top-down approach is still necessary to assess collective progress against global goals, and indeed to address the global goals themselves. The integrity of the system will still need to be ensured by rigorous rules and enforcement of reporting of emissions.

It is worth noting the contribution New Zealand made to the Durban outcome. Being represented as Kyoto Protocol chair, and having Tim Groser facilitating core political elements of the LCA gave New Zealand the major role in achieving the mitigation package across the two existing tracks of the negotiation. In addition, New Zealand officials were influential in several areas of the discussions.

New Zealand's interests emerged intact. New Zealand retained its flexibility on not only where its mitigation commitment will be made, but also the final figure. There were notable gains for New Zealand in the new Kyoto Protocol forestry rules, which achieved provisions New Zealand had been seeking on land use flexibility and harvested wood products, as well as reference levels, a way of smoothing out the effects of longer-term planting and harvesting trends. Advances on market mechanisms and on agriculture were also welcome. The certainty over the Kyoto accounting rules should be helpful to the emissions trading scheme.

Prospects

The initial challenge for the negotiations is logistic more than political. Three ad hoc negotiating bodies will meet during 2012: the Kyoto Protocol and the LCA groups in their final year, and the new DPA. The LCA still has much work to conclude. Several other new bodies, including for adaptation, finance, technology and response measures, have to be fitted into the tight schedule. Already most negotiating meetings have been limited to 90 minutes, which means not much more than an hour of actual negotiating time. The absurdly high number of meetings, many overlapping, makes huge demands on small delegations and on the secretariat which must service them. There is also more work required in capitals to prepare the submissions invited on nearly 40 separate subjects for 2012. This could all spell a procedural quagmire.

Negotiators may struggle with their workload in 2012, and the DPA may make a slow start, but this takes nothing away from the political gains made at Durban. Following the two-yearly cycle of political progress, Durban should be good for at least another two years, perhaps even longer this time. The UNFCCC has four years to conclude an agreement, twice the time it took to negotiate the Kyoto Protocol.

The elements of the new regime are likely be those listed in the DPA and in the Bali Action Plan before it. The neatest solution to legal form would be for another protocol under the convention, with common rules which might incorporate much of the Kyoto Protocol *acquis*. One would also expect much of the LCA outcome to be reflected in the new instrument. The core mitigation component of the future regime will thus logically be a merging of Kyoto and the convention, with commonality of treatment among major emitters, whether developed or developing. Mitigation commitments are likely to be more varied, with other measures such as intensity targets co-existing alongside economy-wide emissions caps. The distinction between major emitters and groups such as the small island states and least-developed countries may replace the annex I/non-annex I dichotomy. If this does happen, CBDR can still be respected by invoking 'national circumstances'.

There are many uncertainties as the transition period approaches. Carbon prices remain depressed as a result of economic recession and uncertainty about the future of climate change negotiations. Durban did not lift the market. Will the major economies continue to direct their own countries down the path of low emissions growth so that there are incentives to keep up investment in the green economy? Will the United States be able to deliver on its 2020 mitigation pledge? Will the politics allow a step change in ambition in 2015? Will the international community come up with a way of dealing with the unfinished business of air and maritime emissions, on which the UN has made no real progress? How will the BASIC countries use their increasing weight, in terms of both their economies and their emissions? Will the UNFCCC adopt more efficient modes of negotiation in 2013?

The political groundwork has been done to allow the completion of the third phase of the international response to climate change. If the political will holds, and some creative thinking is applied, this could settle the legal framework to mid-century, without needing constant renegotiation. But it will be two or three years before it will be possible to judge whether or not the UNFCCC executive secretary was right in what she said in January 2012.

1 Claudia Roth, co-chair of the German Greens, quoted in *Deutsche Welle*, 12 December 2011, www.dw.de/dw.
2 Speech to World Future Energy Summit, Abu Dhabi, 12 January 2012, unfccc.int/files/press/statements/application/pdf/120119_speech_wfes.pdf.
3 Decision 1/CP.1 in document FCCC/CP/1995/7/Add.1, 6 June 1995.
4 CMP is the acronym for the Conference of the Parties of the Convention serving as the Meeting of the Parties to the Kyoto Protocol.
5 Brazil, South Africa, India and China. BASIC meets quarterly at ministerial level, and has continued to be active since Durban, for example in opposing the European Union's carbon tax on airlines.
6 For a summary and analysis of the Durban results, see http://www.iisd.ca/climate/cop17. The Durban texts are on the UNFCCC website: unfccc.int/meetings/durban_nov_2011/meeting/6245.php.
7 See, for example, Daniel Bodansky and Elliott Diringer, *The Evolution of Multilateral Regimes*, Washington, DC: Pew Center, 2010.

Hugh McDonald and Suzi Kerr

Why Do New Zealanders Care About Agricultural Emissions?

'… under the current emissions trading scheme … Federated Farmers struggles to see a future for food production in New Zealand and therefore strongly argues for the exclusion of biological agricultural emissions from food production from the ETS.'

(Federated Farmers of New Zealand, 2011)

'By lobbying to be let off the hook, Fonterra and the rest of the agriculture sector want to perpetuate … the subsidy other sectors and taxpayers are making to cover farming's ETS liabilities. It's time for agriculture to enthusiastically take up its responsibilities in the ETS.'

(Rod Oram, 2011)

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Agricultural emissions account for more than 46.5% of New Zealand's total greenhouse gas (GHG) emissions (Ministry for the Environment, 2011) and 13.5% of global GHG emissions (IPCC, 2007c). Excluding agriculture from global mitigation commitments has been shown to increase the cost of containing warming to 2°C by as much as 15–50% (Reisinger and Stroombergen, 2012).[1] Clearly, the question of what response will effectively address these emissions is critically important to New Zealand and the world. However, as the above quotations illustrate, current views on what shape that response should take are polarised. This polarisation may have been exacerbated by the government's initial framing of the emissions trading scheme as a response to a specific international obligation under Kyoto, a motivation that seems less salient since the Durban conference. Designing agricultural emissions policy will require balancing these views, and the views of all other New Zealanders, whose aims for agricultural emissions policy may bring in further dimensions. Implicitly, this involves optimising a social welfare function that considers the aims and motivations

of all New Zealanders. This article contributes to the agricultural emissions policy discussion by stepping back and considering these underlying motivations: why do individuals, communities, companies and government in New Zealand care about how agricultural emissions are addressed?

We argue that New Zealanders' diverse individual motivations can be grouped under three headings: (1) concern about the direct impacts of climate change on New Zealand and the world; (2) pressure from others based on their concern about climate change, be that from international countries and organisations or from climate-conscious consumers; and (3) concern about complementary environmental or social goals that are positively affected by addressing emissions. This framework is useful in setting out how our underlying motivations should shape our responses, and highlights the importance of choosing responses that will be robust in the face of future uncertainties.

Understanding stakeholder aims and concerns is critical for a second reason. Implementing complex policy with a large number of actors and involving difficult and expensive monitoring, such as agricultural emissions policy, requires a high degree of voluntary compliance. Stakeholders, such as farmers and rural communities, are more likely to voluntarily comply when policy responses address, at least in part, their concerns and motivations (OECD, 2000). Explicitly considering the underlying motivations of all New Zealanders will assist in ensuring that policy responses appeal to a wide range of constituents, and will make implementation simpler and far more effective at achieving the many aims New Zealanders hold for addressing agricultural emissions.

Motivations for addressing agricultural emissions

Different New Zealanders will be motivated to address the issue of agricultural emissions for different reasons and to differing degrees; indeed, some will not be interested in addressing it at all. This article does not attempt to present a consensus view of why New Zealanders should address agricultural emissions, or aim to present any specific group's or individual's motivations. Instead, it aims to set out all of the possible motivations to act that well-informed and rational New Zealanders might hold, and investigate how these different motivations should shape the sort of responses we make. Understanding these underlying motivations is essential for the design of effective policy: we need to understand what it is we want to achieve before we can consider what will achieve it.

... by 2070, global climate impacts on agriculture will have led to reduced international agricultural production and higher prices for New Zealand exports, and that New Zealanders will benefit economically from these indirect effects.

Motivation one: climate change is likely to cause serious damage and reducing agricultural emissions will help to reduce the risk

Climate change could affect New Zealanders either directly (through physical changes brought about by global temperature rises) or indirectly (through flow-on effects from physical changes in other countries that are then transmitted to New Zealanders – for example, through trade). We might also be concerned about the negative impacts that climate change will have on others in the world. This motivation is predicated on the accepted likelihood that, globally, climate change will cause damage and that reducing agricultural emissions will help reduce this damage (IPCC, 2007a and 2007b).

Direct impacts on New Zealanders

In a recent summary of science assessing the likely direct physical impacts of climate change on New Zealand, the authors find that the physical effects on New Zealand over the next half century are expected to be mild, particularly when compared with other countries (Ministry for the Environment, 2008). Average temperatures across New Zealand are expected to increase by approximately 1°C by 2040 and 2°C by 2090 (relative to average temperatures in 1990). Rainfall is expected to decrease in the north and east of the country and increase in the south, although there is large variability across specific locations and seasons in these estimates. On the positive side, New Zealand would face significantly fewer days with frosts, and improved pastoral productivity over much of the country. However, research suggests that extreme events (droughts and floods) will become more common and more serious (McMillan et al., 2010).

Indirect international impacts on New Zealanders

New Zealanders could also be affected by global climate change through international effects that are transmitted to New Zealand from overseas. These indirect effects would result from physical climate change effects on other countries, their responses to these effects, and the flow-on effects on the goods and services that New Zealand imports and exports. A recent paper by Stroombergen (2010) looks at one possible path: international agricultural prices. He finds that, by 2070, global climate impacts on agriculture will have led to reduced international agricultural production and higher prices for New Zealand exports, and that New Zealanders will benefit economically from these indirect effects.[2] These benefits could be somewhat muted if agriculture production worldwide increases due to increased carbon fertilisation. Stroombergen also finds that these indirect effects are likely to significantly outweigh any direct

economic impacts of climate change on New Zealand agriculture.

Climate change may also lead to economic and political instability, and is likely to affect migration flows. These could all have large indirect effects for New Zealanders, although the size of these impacts is impossible to assess accurately (Burson, 2010).

Direct and indirect international impacts

Current research shows that the negative effects of global climate change outside New Zealand are likely to be widespread and serious (IPCC, 2007b). We may be motivated by altruism and a sense of justice to minimise these effects.

Motivation two: pressure from others based on their concern about climate change

Another possible motivation for addressing agricultural GHG emissions is that we face pressure from others outside New Zealand who are concerned about climate change. This international pressure could come from two distinct sources: from national governments or international organisations such as the UN; additionally or alternatively, we might be motivated to act because of pressure or opportunities coming from climate-concerned international consumers or markets.

Pressure from other national governments or international organisations

New Zealanders are likely to face the cost of agricultural emissions whether or not we have a domestic policy that accounts for them. New Zealand is a signatory to the Kyoto Protocol and is committed to taking responsibility for any emissions above 1990 levels over the period 2008–2012.[3] While future Kyoto commitment periods are not certain, it is highly likely that there will continue to be an international carbon price and carbon market of some form (Emissions Trading Scheme Review Panel, 2011). Also, regardless of the state of these international agreements, the New Zealand government has made commitments to take responsibility for New Zealand's emissions going forward. This includes a commitment to making a 10–20% cut in emissions relative to 1990 emissions by 2020,[4] and a 50% emissions cut by 2050 (Smith, 2011). New Zealand will face international pressure to meet these commitments regardless of whether a formal global agreement is reached.

Alongside these formal external pressures to 'pull our weight', New Zealanders may be motivated to address agricultural emissions because we individually desire New Zealand to be viewed in a good light by the rest of the world. A favourable international image also has benefits for New Zealand at the macro level, including increased tourism and economic opportunities (Ministry for the Environment, 2001) and co-operative relations with other countries in trade, investment, security and bio-security. Credibility on climate issues also increases New Zealand's ability to influence the design of future international climate agreements (such as, for example, international carbon accounting rules).

There is a risk that if we do not adequately address agricultural emissions, we may be closed out of international markets or lose our position as a favoured supplier to large buyers.

Pressure from international consumers and markets

New Zealanders may be motivated to act due to pressure and opportunities from climate-concerned international markets and consumers. There is a risk that if we do not adequately address agricultural emissions, we may be closed out of international markets or lose our position as a favoured supplier to large buyers. Consumer demand for New Zealand products may also fall if we are seen as emissions-intensive producers (Saunders and Barber, 2008). However, climate-conscious consumers also offer opportunities. If New Zealand producers can meet the concerns of these consumers they may be able to access higher-value markets. Saunders et al. (2011) argue that New Zealand producers could receive substantial price premiums if our agricultural output is perceived internationally as of low emissions intensity.

Efficiency motivations

If New Zealanders want to decrease countrywide GHG emissions, we may want to address agricultural emissions because it is an efficient way to achieve our targets. New Zealand's Emissions Trading Scheme Review Panel (2011) concluded that agricultural emissions abatement opportunities exist, and that as a result agricultural emissions should be addressed within the emissions trading scheme for efficiency reasons. Reisinger and Stroombergen (2012) model the costs of meeting global GHG targets under different policy settings. They find that excluding agricultural emissions from international climate mitigation results in significantly higher costs of meeting GHG targets, both internationally and for New Zealand. Agricultural emissions make up almost half of New Zealand's gross emissions. Under our current commitments, and at a conservative carbon price of $NZ25, by 2020 New Zealand agricultural emissions will have an annual opportunity cost of $1 billion.[5] If New Zealanders could costlessly reduce emissions from agriculture even by 10% we would benefit annually by $100 million.[6]

Additionally, omitting agriculture from efforts to reduce greenhouse gas emissions would create inconsistencies and distortions. We might want to avoid these inconsistencies based on equity grounds: if the New Zealand government regulates to internalise the cost of other industries' emissions (as is New Zealand's current approach through the emissions trading scheme), then it seems reasonable that agriculture industries also should bear the cost of their emissions. We might also wish to be consistent across industries to avoid distorting investment incentives.

If agricultural producers do not face the external costs of their emissions as other industries do, the incentive to shift resources away from emissions-intensive industries such as agriculture will be distorted; agricultural production will in effect be subsidised.[7] Incentives to invest in technologies to reduce agricultural emissions would also decrease.

Interest in complementary goals

A final motivation for addressing agricultural GHG emissions may be that the same actions we implement to address agricultural emissions will also advance other goals we have. Complementary goals could consist of complementary environmental outcomes, such as improved water quality, increased biodiversity, or decreased soil erosion. They could also include rurally-focused aims such as long-term rural sustainability, resilience of rural communities, or increased farm profitability (through improved on-farm efficiency). While it is unlikely that we would choose to address agricultural emissions solely to achieve a complementary goal, recognising that some New Zealanders are motivated by complementary goals could alter the way we choose to respond to agricultural emissions, and increase the constituency of New Zealanders who will support actions that address them.

Actions we take to address agricultural emissions that also contribute towards complementary goals should be enhanced to take into account their additional benefits. Likewise, any actions that are aimed at affecting some other outcome, but that also have positive agricultural emissions impacts, should be strengthened.

Relationships among the different motivations

These different motivations are related to and interlinked with each other. The relationship between motivations one (a desire to avoid climate change) and two (international and commercial pressure to reduce emissions) is of particular interest, as this relationship is liable to change as (or if) international agreements (or informal commitments) to limit GHG emissions become more stringent. This interplay has implications for the responses we should make.

In the short term, acting optimally to influence long-run climate mitigation, acting to meet short-term international obligations, and acting to take advantage of commercial opportunities lead to somewhat different actions. For example, any actions that decrease emissions are useful for mitigating climate change, but appealing to climate-conscious consumers requires mitigation that is visible and marketable: effort needs to be expended on marketing and not just on the mitigation.

... when we make long-run investments or decisions with long-run implications, we should make them in accordance with the need to avoid global climate change and to meet our international emissions commitments ... and not to meet international consumer pressure.

However, as international agreements become more stringent over time, the two motivations can be addressed with similar responses. This becomes clearer when we consider the impact of international agreements: their aim is to assign the external cost of GHGs produced to the country that produced them. Governments of countries then decide whether and how to pass the costs of emissions on to their own citizens and businesses. These global agreements are not currently stringent enough to limit GHG production to a globally optimal level. As a response, some consumers and markets are willing to pay a premium or offer preferred access to producers whose products are less emissions intensive. These consumers and markets are implicitly pricing the emissions mitigation carried out by these producers that is not currently internalised by global emissions agreements. As the stringency of agreements increases, the previously external cost of emissions will be internalised to the country of origin: consumers and markets will be less willing to pay a premium for low emissions production. The motivations to reduce emissions to meet our international commitments and avert global warming will align and increase and the motivation to reduce emissions due to consumer pressure will decrease, and in the long run may be wholly captured by the international agreements. Consequently, when we make long-run investments or decisions with long-run implications, we should make them in accordance with the need to avoid global climate change and to meet our international emissions commitments (motivations one and two), and not to meet international consumer pressure.

The relationship between motivations one and two illustrates the underlying, and potentially conflicting, goals inherent in any decision to address agricultural emissions: maximising environmental outcomes and maximising economic outcomes. In the short term these two goals are often substitutes, and maximising one goal comes at the expense of the other. For example, decreasing the GHG production of New Zealand's farms involves costly mitigation. In the short run, requiring this will maximise environmental outcomes at the expense of economic outcomes. However, as described above, in the long term New Zealand's economic and environmental outcomes are inextricably intertwined. While the short term may invite different responses for each goal, in the long run the ideal response for each is similar. New Zealand's future economic outcomes depend heavily on the future environment: significant global warming will restrict future economic outcomes, and in the long run the emissions content of production is likely to be internalised and faced by the country of origin, if not by the producer. Consequently, maximising long-run environmental outcomes is crucial for both environmental and economic reasons.

Factors influencing the intensity of response

The intensity with which we should address agricultural emissions depends on the number of motivations to act that we hold, and how strongly we hold each motivation. Other factors include how effective we expect our response will be at addressing our motivations, the opportunity cost of acting, and the potential for counter-productive outcomes, such as emissions leakage or decreased food security. The timing of our response is also of importance: when should we act?

New Zealanders' possible impact on climate change

Any GHG emission reductions that we carry out in New Zealand will have a very small direct effect on global emissions because of New Zealand's size. This of course is true of any small country's or region's actions. Our reduction efforts could still be important for controlling global emissions for two reasons: technology and policy transfer; and building global co-operation.

Technology and policy learning and transfer

If New Zealand can learn how to design policy to effectively and efficiently control agricultural emissions without excessive social cost, and we are able to communicate this to other countries, we will potentially be able to reduce the cost of emissions reductions in other countries. This could lower other countries' emissions by reducing their resistance to policies that control agricultural emissions, and ensuring that they adopt already-proven policies. While this could be achieved through research alone, demonstration of technologies and policies that observably reduce emissions without unacceptable human or financial costs will be more compelling. We are also likely to learn by doing in ways that we cannot through research alone.

Building global co-operation

Achieving global co-operation on an issue that affects all sectors and individuals, involves considerable uncertainty, and is likely to be costly presents a particularly recalcitrant problem. The core challenge is that every individual, sector and country has an incentive to 'free-ride', as no one has a large individual impact on the problem, and people face significant direct costs of action for an infinitesimal decrease in their own risk of facing climate change costs. While rational, purely self-interested humans would achieve little co-operation, the work of Elinor Ostrom and others has shown that most humans are not purely self-interested, and that in an indefinitely repeated game, when leaders display co-operative behaviour and the cost of co-operating is reduced, high levels of co-operation can occur (Ostrom, 1990). New Zealand has disproportionate visibility in the climate sphere. Our efforts will likewise have disproportionate impact on others' willingness to act by both building trust and demonstrating that reductions can be achieved without undue social cost.

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Risks from action

The cost of reducing emissions will limit the extent to which New Zealanders will want to respond to these motivations to do so. One factor will be the expense of decreasing emissions: the cost of contributing may be perceived as high relative to the gains that would result. The opportunity cost may also limit action: New Zealanders may want to spend their money addressing other issues. Others may believe that our best response is to focus only on adaptation rather than on emissions control. Along with these, there are two interrelated reasons why acting may be counter-productive: emissions leakage and food security. These may result in New Zealanders choosing not to act on agricultural emissions even if we are concerned about climate change.

Emissions leakage

One potential concern is that reducing emissions in New Zealand will be ineffective because of 'emissions leakage'. When agricultural emissions are reduced, the resulting increase in agricultural production costs may mean that some exported products are no longer competitive, or that products imported from countries with less stringent climate policies are substituted for domestic products. This could lead to some agricultural production relocating to countries without climate policies. This leakage would lead to job losses in New Zealand but no change in global GHG emissions. If international production is more emissions intensive than the New Zealand production, then leakage could even increase global emissions.

While leakage is a potential result of addressing agricultural emissions, Kerr and Zhang's (2009) survey of existing empirical evidence on the responsiveness of livestock production in New Zealand to changes in profit finds that, although there would be significant hardship for farmers, there is unlikely to be significant leakage at carbon prices of around $25 per tonne of CO_2. Given the proposed policy of output-based free allocation of allowances to agricultural producers, leakage is likely to be even lower than Kerr and Zhang's estimates (Greenhalgh et al., 2007).

Food security

Another potential concern is that decreasing agricultural emissions will reduce food production and food security and may mean that more people go hungry. However, this would occur only if the only response to agricultural emissions policy is a reduction in food production (e.g. stock numbers are decreased to reduce emissions) and this food is not replaced elsewhere (either as dairy/meat or something else of equal nutritional value), and richer people who have more than adequate food are not the only ones affected. Even in

Table 1: Choosing appropriate responses given our motivations

	Responses		
	Visible/verifiable	Technology change	International communication and co-operation
Motivation one: avoid climate change	Needs to be visible and/or verifiable to the farmer. Needs to be verifiable and visible to New Zealand regulators if national policy. Effort needs to be visible internationally to encourage others.	Mitigation technologies. Some measurement and monitoring technologies.	Co-operate on mitigation development. Share technologies and knowledge we develop. Actively disseminate knowledge.
Motivation two: meet international pressure			
– from countries or international organisations	Must be verifiable by international organisations.	Verifiable mitigation methods.	Demonstrate to international parties that we are meeting commitments.
– from international consumers/markets	Must be visible to consumers.	Visible mitigation methods. Marketing technologies.	Show effort that is convincing to international consumers.
Motivation three: achieve complementary goals	Effect on complementary goals needs to be visible to communities of interest.	Technologies that positively affect our complementary goals.	None unless community of interest is international, such as biodiversity.

this situation, any decreases in food production as described above could be compensated for in three ways. The first is through rises in the price of food that New Zealand previously provided (e.g. dairy, lamb or beef), which induces an increase in production elsewhere. The second is if investment capital that would have been deployed for food production in New Zealand moves to a food sector in another country. The third is if land that was used for food production is converted to forestry in New Zealand, and the resulting increase in timber supply lowers global timber prices and hence reduces demand for land for plantation forestry elsewhere, thus freeing up agricultural land internationally. Obviously, all these effects will be extremely small for any New Zealand policy, but we can expect them to be larger if we set a precedent for efforts by much larger countries.

There are clear contradictions between food security and emissions leakage fears. If food production decreases in New Zealand are directly replaced internationally with the same type of food (e.g. dairy or meat), then leakage will have occurred, but there will be no decline in food security. If, instead, decreases in New Zealand food production are not replaced overseas then there may be some decrease in food security, but no emissions leakage will have occurred. If leakage is a serious problem, then food security is not. Kerr and Zhang (2009) conclude that it is unlikely that significant levels of emissions leakage or food insecurity will result from the introduction of New Zealand's emissions trading scheme with a carbon price of around $25.

Timing of response

Regardless of our motivation, we may be able to decrease future costs (or take full advantage of future opportunities) if we begin to transition our economy to lower emissions now. This is true if we are personally motivated by currently-held concerns about climate change, or expect to be motivated by them in the future: GHGs emitted now stay in the atmosphere and contribute to global warming long into the future. While the most prominent agricultural greenhouse gas, methane, has a relatively short lifespan in the atmosphere (approximately 12 years), nitrous oxide has a lifetime of more than 100 years (IPCC, 2007a). Nitrous oxide makes up approximately a third of New Zealand's agricultural emissions, equivalent to 17% of New Zealand's total emissions (Ministry for the Environment, 2009). This may lead us to focus more on reducing nitrous oxide, as its effects are long lasting, and only focusing on mitigating methane emissions to meet short-term goals or to avoid climate tipping points. We might also be motivated to begin time-consuming processes immediately. Research, learning and adoption all take time to produce useful outputs; if we want to enjoy their benefits in the future we need to start these processes now.

Immediate action is also justified if we are motivated by pressure from other national governments or international organisations. The commitments made by the New Zealand government need to be met in the short term (Kyoto obligations), medium term (2020 targets) and longer term (2050 targets), and will require short-term action.

What are the implications of these motivations for our responses?

Discussion up to this point has considered why New Zealanders want to address agricultural emissions, and, implicitly, what it is we want to achieve. In this section we consider the characteristics of responses that will address these different motivations. When thinking about the best way for New Zealanders to address agricultural emissions we need to consider which one (or combination) of the motivations outlined above is behind our actions. Effective policy will address the underlying motivation New Zealanders have for responding. Depending on our motivation, we will require our responses to achieve different levels of verifiability or visibility, will have different priorities for technological change, and will focus more or less on co-operating and communicating with actors outside New Zealand. These dimensions are summarised in Table 1.[8]

If we are motivated by concern about climate change (motivation one), then any actions that decrease emissions will be valuable. Our response will need to be visible to those carrying out the mitigation (so that they know they are making a difference), and will need to be verifiable and visible in ways that encourage others to also decrease their emissions. This motivation will require technological progress focused on developing new and improved agricultural emissions mitigation methods, and the communication of these findings to New Zealand farmers. We will also want to co-operate internationally on mitigation development and actively share new technologies and knowledge. New Zealand's participation in the Global Research Alliance on agricultural GHGs is an example of a response which addresses this first motivation.[9]

Addressing international climate-conscious consumer pressure will require that our actions and efforts are highly visible internationally. Developing effective ways to market our mitigation efforts to international consumers will be important. Our response will need to focus on mitigation methods that are visible and verifiable over those which have real but less verifiable environmental effects.

If instead our concern is assuaging international pressure from other countries or international organisations, such as the UN, we will require a response with a focus on mitigation that meets internationally agreed-upon standards of verification.[10] In the short run, we may be able to assuage international pressure through clever marketing and negotiation of favourable rules, but in the long run we will need to respond with integrity. Demonstrating integrity will require technological progress that results in improved abilities to measure, monitor and verify mitigation. A strong response will require new or improved mitigation methods. Demonstrating the rigour of these mitigation methods will require significant international communication.

Responses to address complementary goals (motivation three) need not be as verifiable, but instead will have to have real impact on complementary goals. Technological development will need to focus on mitigation methods that have positive impacts on GHG emissions and on complementary goals: for example, if our complementary goal is improving water quality, we will need to focus on mitigation methods that have positive effects on GHG emissions and also on water quality, such as nitrogen inhibitors.

If, as is likely, we are motivated to address agricultural emissions by some combination of these motivations, then our response should balance these different elements. Considering our response in terms of addressing our motivations in this way will be a useful way to consider appropriate policies.

Robustness

While we can control or influence many of the factors that will affect the success of our agricultural emissions response, some factors are beyond our control. These uncontrollable factors can be grouped under two headings: climate factors and international factors. Climate factors include the seriousness of the climate problem in the future, the existence and stringency of any binding global agreement, and the development of technologies for cheap and effective mitigation. International factors out of our control include world population growth, the global economy and agricultural prices (both partly driven by climate change itself), and the existence of trade barriers. Different possible outcomes (and combinations of outcomes) of these factors will affect the success of our response; we need to consider their robustness to these factors when designing responses.

Robust responses will be those that are flexible, scalable and cost-effective. The need for flexibility is clear: we need to avoid locking ourselves into any set approach to addressing agricultural emissions, and to be able to alter our approach as new mitigation options arise or opportunity costs of responding are faced. Our response will also need to be easily up- or downscaled: we need to be able to alter the intensity of our response in reaction to the seriousness of climate change and to other countries' responses. Our response will also need to be high value: that is, effective at addressing our motivations and low-cost.

Discussion

Designing effective agricultural GHG emissions policy first requires an understanding of the well-informed concerns and motivations of New Zealanders because we are trying to maximise the welfare of all New Zealanders, and because we need voluntary compliance to make implementation possible and to encourage strong behavioural change. New Zealanders also need to be mindful of the many uncontrollable factors that will influence the success of any response we make. We should attempt to ensure that our response is robust in likely future scenarios by building in flexibility, scalability and cost-effectiveness.

If we believe that New Zealand is likely to face a price on carbon emissions in the future, explicit or otherwise, then when making decisions with long-term consequences New Zealanders should focus on responses that will sustainably decrease global agricultural GHG emissions, rather than attempting to appeal to international consumers or regulators. These responses will be characterised by integrity, significant international engagement and co-operation, and a focus on policy and mitigation technology development.

Finally, there is an opportunity to broaden the consensus for addressing agricultural emissions by focusing on outcomes other than climate change. New Zealanders are motivated to address agricultural emissions for a wide range of reasons, not only because they personally care about helping New Zealand meet international emissions commitments or reducing the risk of climate change. Focusing on responses that have positive complementary impacts on GHG emissions and also on issues that potentially resistant New Zealanders care about, such as water quality or on-farm efficiency, may promote action on agricultural emissions.

1 Additionally, higher costs of achieving climate targets will inherently make reaching agreement on co-operative global climate action more difficult.

2 Stroombergen's result assumes no change in extreme events such as floods and droughts, or extreme human responses (such as financial crises or war).

3 That is, to either have net emissions that are on average no higher than our gross emissions in 1990, or buy carbon allowances on the international market to make up the difference.

4 This commitment came as part of New Zealand's association with the Copenhagen accord. This commitment is conditional on a number of issues, such as commensurate efforts by other countries, an acceptable global agreement, and effective rules managing land use, land use change and forestry (LULUCF), among others (Smith and Groser, 2010).

5 The Ministry for the Environment projects agricultural emissions in 2020 to be equal to 39,072,000t of CO2 equivalent, an 8% increase on 2010 agricultural emissions (2009).

6 This benefit could come from decreased costs of buying international allowances to cover our emissions, or from increased incomes from the sale of surplus allowances internationally.

7 Because agricultural emissions in other countries are currently unregulated, the appropriate incentives to invest in low-emissions agricultural production are distorted internationally, and the pricing of emissions in New Zealand may lead to leakage. The issue of leakage is discussed below.

8 Note that this section is not concerned with 'selling' policy to different stakeholders with different motivations to act. Instead, it outlines the characteristics of responses that will best meet different motivations.

9 The Global Research Alliance is a voluntary, collaborative international agreement that aims to 'find ways to grow more food without growing GHG emissions'. More information can be found at http://www.globalresearchalliance.org.

10 Our current ETS addresses this motivation. For example, it requires forests to be at least 30m wide to meet international monitoring requirements, ignoring the benefit of riparian plantings, and does not allow pre-1990 forest to be cleared and replaced with new forests that will have identical storage capacity (Karpas and Kerr, 2011).

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Christine Cheyne

Better Local Government Reform Proposals: Improving or Diminishing Local Government?

In March 2012 the then minister of local government, Nick Smith, announced a new, eight-point plan for reforming local government. The so-called Better Local Government proposals include:

- refocusing the purpose of local government;
- introducing fiscal responsibility requirements;
- strengthening council governance provisions;
- streamlining council reorganisation procedures;
- establishing a local government efficiency taskforce;
- developing a framework for central/local government regulatory roles;
- investigating the efficiency of local government infrastructure provision; and
- reviewing the use of development contributions.

The government's intention is to address the first four points in legislation to be introduced into Parliament in May 2012 and passed by September, to enable the Local Government Commission to consider council reorganisation proposals in time for the October 2013 local government elections. The remaining four points are intended to be encompassed in reform legislation in 2013.

Within a week of the announcement of the Better Local Government reforms the minister had resigned all his portfolios and an interim minister, Gerry Brownlee, had taken over the reins. He has since been replaced by a new minister of local government, David Carter. As well as the loss of the minister who championed the reforms, key information in the appendix to the Better Local Government proposals had been removed from the Department of Internal Affairs (though not the Beehive) website copies of the document.[1] Thus, what is possibly a significant policy reform programme has had a somewhat inauspicious beginning.

The minister in the foreword to Better Local Government asserts that 'The Government recognises the importance of local democracy and the key role mayors, regional chairs, councillors and board members play in their communities.' Referring to provisions for Local Government New Zealand to have a role in designing new fiscal responsibility

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requirements and involvement in the efficiency taskforce, in work on infrastructure, the regulatory framework and the development levies, the minister claims that the proposed changes are 'about central and local government working together in challenging financial times to secure a brighter future for New Zealand' (Department of Internal Affairs, 2008, p.3).

To test whether this claim is more than wishful thinking (or, worse, a cynical manipulation of the leadership of local government) it is important to scrutinise whether and how the reforms might improve local government as opposed to diminishing it.

Shifting local–central relations

The reform proposals have significant implications for the relationship between the two spheres of government. While it is pleasing to see that Local Government New Zealand has been given some scope to represent the local government sector in the reform process, this appears to be fairly limited and on terms dictated by central government. If reforms are imposed from outside (above), the current perception that central government is acting as 'Big Brother' will be difficult to escape, and the risks accompanying greater centralisation will be magnified. In a comparative look at New Zealand and recent reforms of local government in the United Kingdom, Reid (2011) has drawn attention to the increasing centralisation that was apparent in local government reform initiatives of former minister Nick Smith's predecessor, Rodney Hide:

> Where the coalition government in Britain appears committed to reversing the country's centralised approach to decision making by empowering councils and communities, there are reasonable arguments to say that the opposite is occurring in New Zealand …. (Reid, 2011, p. 57)

The president of Local Government New Zealand has expressed his organisation's broad support for the proposals, saying that 'LGNZ supports transparency and everyone knowing where their powers and responsibilities end'. However, he cautioned that 'the devil is in the details'. Thus far, details are somewhat scant.

Some significant areas of difference between local and central government representatives are already apparent. For example, local government rightly considers that its primary accountability is to communities. Therefore, central government's proposals for new fiscal responsibility arrangements may become a source of tension. It is salient to note advice in December 2011 in the briefing to the incoming minister of local government by the Department of Internal Affairs:

> Within the Local Government portfolio, local authorities operate autonomously of central government and are empowered to choose which activities to undertake and how to pay for them. They make these decisions in consultation with the local communities that supply much of their funding. They are accountable to these communities, not Ministers – including the Minister of Local Government. (Department of Internal Affairs, 2011, p.3)

While local government was given a power to promote the four well-beings, this is not a prescription; indeed, the 2002 Act sought to avoid *prescription* and instead be permissive.

As well as tensions between local and central government politicians, there is disagreement within local government as to the merits of the reforms. For example, the proposal to strengthen the power of mayors has been objected to by some elected members concerned that an outcome of this will be the 'desexing' of other councillors. Similarly, divergent ideological positions and institutional locations (for example, whether in regional councils or territorial authorities) of those in local government are reflected in differing degrees of support among elected members for proposals for streamlining council reorganisation procedures.

The importance of an autonomous sphere of local government

The *Better Local Government* proposals tend to indicate that central government overlooks or misunderstands the accountability mechanisms (for example, consultation and auditing) incorporated in existing local government legislation. These are grounded in recognition of local government's relative degree of independence from central government. It has its own financial base and electoral mandate, supplemented by strong requirements for consultation. Moreover, the proposals reflect a poor appreciation of the vital contribution of community leadership and the diversity of communities and environments. A fundamental feature of New Zealand's environmental administration, since 1991 in particular, is its significantly devolved nature. While there is undoubtedly centralisation occurring, with, for example, the recent establishment of the Environmental Protection Authority, and a desire for streamlined planning, there is no plan to alter fundamentally the devolution of environmental planning.

Refocusing the role of local government and introducing fiscal responsibility

Much concern has been expressed by central government about the enlargement of local government's role in the decade since the passage of the Local Government Act 2002. However, this concern is often misplaced. While local government was given a power to promote the four well-beings, this is not a prescription; indeed, the 2002 Act sought to avoid *prescription* and instead be permissive.

Consistent with the sustainable development principle of the Local Government Act and the sustainable management purpose of the Resource

Management Act 1991, local government has a role in enabling people and communities to provide for their social, economic, environmental and cultural well-being. This does not mean that local government must undertake the full array of tasks associated with promoting the four well-beings, but it does provide councils with discretion about how to promote sustainability. Refocusing the purpose of local government and introducing a fiscal responsibility requirement are likely to become a further source of tension in reform deliberations if these prevent local government from responding to community aspirations and needs.

Refocusing and fiscal responsibility requirements must, instead, be consistent with the sustainability mandate of the Resource Management Act, Local Government Act and other statutes. Greater efficiency and effectiveness in local government expenditure decisions can be achieved instead through stronger accountability provisions. Local Government New Zealand has expressed support for transparency and clear parameters about powers and responsibilities, but this places a duty on central government also to exercise its responsibilities. For example, in the area of climate change, international networks of local governments have been formed to respond to community concerns about lack of responsiveness by central governments to climate change obligations (see, for example, Betsill and Bulkeley, 2006; Bulkeley and Newell, 2010).

Short-term so-called fiscal responsibility has, in fact, been demonstrated to produce deferred maintenance and a backlog of infrastructure spending. Data are provided in *Better Local Government* to support an argument that, in contrast with the decade 1992–2002, in which rates increases were only slightly above the rate of inflation, in the following decade they increased by an average of 6.8% per annum, more than double the rate of inflation. This appears to be ideologically driven, with the minimal rates increase associated with the previous National government, and the much higher rates increases linked to the Local Government Act 2002 passed by the Labour government. However, as Local Government New Zealand has been at pains to explain, and as demonstrated by the independent Local Government Rates Inquiry (2007, p.2), increased local authority expenditure has been 'driven by expenditure on infrastructure renewal, expansion and upgrading'.

The Local Government Rates Inquiry's independent research also indicated that 'local authority operating expenditure is forecast to stabilise in real terms (after adjustment for inflation) and decline as a percentage of GDP as capital expenditure and rate of growth in the associated operating costs decline' (Local Government Rates Inquiry, 2007, p.2). The inquiry panel recommended that councils give better consideration to the affordability of rates and reassess forecast infrastructure expenditures in long-term council community plans (LTCCPs), but also recommended some additional sources of funding to replace rates (not increase expenditures). As well, the auditor-general's report on the 2006 LTCCPs indicated that by 2016, despite record levels of capital expenditure, local authorities as a whole would have low debt and would have accumulated significant reserves brought about by the funding of depreciation (Controller and Auditor-General, 2007, p.29).

Allowing a suitable level of discretion can maintain a balance that recognises local government as a sphere of government essential for constitutional reasons, namely to act as a check on the power of central government.

Better Local Government and earlier ministerial comment (as well as some media and public comment) express dissatisfaction with council spending priorities and debt in what central government considers should be an era of austerity. As referred to above (and in note 1), numerical errors in data on council debt arising from the method used to calculate the average rate increase for territorial authorities for the period 2002–10 led to removal of data from at least one website version of *Better Local Government*. In addition, considerable caution needs to be exercised when drawing conclusions about forecast debt. Data used for the claim that debt is forecast to rise from $7.016 million in 2010 to $10,996 million in 2015 is drawn from council spending plans in 2009–19 LTCCPs. These plans must be reviewed every three years and when the 2012 LTCCPs are adopted in June 2012 it is likely that significant reprioritisation of spending will have occurred in response to recent and current challenging economic conditions. Importantly, there is widespread misunderstanding of the drivers of debt and a continuing failure to address in a systematic manner the recommendations resulting from the extensive and rigorous analysis undertaken by the Local Government Rates Inquiry.[2]

The suggestion by central government that expenditure growth be restricted to 'no faster than inflation and population growth, except in extraordinary events' risks generating many unintended negative impacts, as has often occurred with rates-capping, especially if there is little scope for local government discretion and punitive measures are imposed where expenditure exceeds what is allowed. A collaborative approach taken towards managing local government expenditure increases, with full involvement by local government in determining criteria for exemptions, defining extraordinary events and identifying other unanticipated burdens (such as regulatory requirements), could reduce the likelihood of unintended negative impacts. However, even a so-called collaborative approach of this nature is predicated on the notion that central government has a mandate to intervene in local government, and on a lack of constitutional recognition of the autonomy of local government.

Improving efficiency, defining regulatory roles

As noted above, four of the eight proposals announced in March are for work that will be encompassed in a later reform bill. They focus on the regulatory role of local government and efficiency of infrastructure provision. Details are sketchy and depend on further review and investigation. It is somewhat worrying that central government is narrowly concerned with provision of infrastructure at least cost rather than best price, which internationally is regarded as industry best practice. The expert advisory group to be appointed to investigate efficiency of infrastructure provision will ideally draw on national and, in particular, international best practice, such as that developed in the construction industry.[3]

Better and stronger local government: discretion not diminution

A significant test of the reform proposals is the extent to which they alter the balance of power between local and central government. Allowing a suitable level of discretion can maintain a balance that recognises local government as a sphere of government essential for constitutional reasons, namely to act as a check on the power of central government. A diminution of the health and autonomy of local government weakens not just local democracy but democratic institutional arrangements and processes.

The prime minister's reported comments suggest that the government recognises that it is inappropriate for central government to seek to demarcate too strictly the role and responsibilities of local government:

> What we're saying is, here's the demarcation line – it's a little narrower than it was in the past, but there's still plenty of scope. Now there can easily be a public good in hosting an event like Volvo round-the-world yacht race. There's clearly a public good for Auckland – it'll bring tourist dollars in.[4]

While he proposes the use of a public good test, it would seem that such a test needs to be applied broadly rather than narrowly.

Conclusion

Local government reformers in New Zealand would do well to look beyond these shores to consider processes and institutional innovations adopted elsewhere. In the United Kingdom the Coalition government recently announced the establishment of a new Mayors Cabinet that will ensure that directly elected mayors have a voice at the heart of government.[5] In New Zealand, a central-local government forum was established in the first term of Helen Clark's Labour-led government in the early 2000s, but its role has not been significantly strengthened and expanded as it could have been in the last decade.

Closer to home, the New South Wales local government minister has set up an independent expert panel to investigate ways to create stronger and better councils in the future.[6] It has just over a year to report to the minister and will consult widely with communities and local government stakeholders. This kind of independent inquiry suggests a much more robust and collaborative process than the New Zealand government's reform proposals, which have been decided by Cabinet with no opportunity for public input and, unless Local Government New Zealand was consulted on the draft Cabinet paper, none even from the local government sector.

Local government, like central government, is far from perfect and requires continuous improvement. However, New Zealand's communities, local government and democratic arrangements are not well served by ad hoc and fragmented reviews that lack a strong and clear vision for local government as a sphere of government which plays a vital constitutional role.

1 Local authority financial statistics have been deleted from the Department of Internal Affairs website copy of *Better Local Government* because there are numerical errors resulting from the methods used by the Department to calculate the average rate increase for territorial authorities for the period 2002–10.

2 The analysis of the Local Government Rates Inquiry has been endorsed more recently in the December 2011 draft report on housing affordability by the Productivity Commission, which notes, 'annual rates are low, and have been falling, relative to house prices' (New Zealand Productivity Commission, 2011, p. 79).

3 See, for example, http://www.constructingexcellence.org.uk/ and its New Zealand counterpart.

4 See http://www.stuff.co.nz/dominion-post/news/politics/6609436/Key-Council-core-functions-to-be-narrower.

5 See http://www.communities.gov.uk/news/localgovernment/2115512.

6 See media release, 20 March 2012, at http://www.dlg.nsw.gov.au.

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Keith Miller

Urban Water Services Solutions, Problems and Options

A number of bodies have advocated reform of urban water service delivery in recent times, including removal from local authority ownership and control. Water services are estimated to have a replacement cost of about $33 billion, with annual operating expenditures of $1.7 billion and annual capital expenditure of about $1.1 billion (SPM Consultants, 2009, pp.63-71).

This article describes some of the reform proposals that have been made; considers what, if any, problems there may be with current arrangements for water services delivery; develops some criteria against which to assess reform options; and discusses the strengths and weaknesses of different reform options against those criteria. Different options have different strengths and weaknesses: if reform is to occur, decision makers will need to consider what their policy priorities are in choosing which option to pursue.

Reform proposals

Reform proposals have included those of GHD Ltd and PricewaterhouseCoopers (2008), the Turnbull Group (2009) and the Land and Water Forum (2010). Common features of these proposals are the delivery of urban water services by corporate bodies, with a central regulator and universal metered charging to promote demand management. Typically these models are expected to be more efficient than the current model of local authority delivery, which results in 67 service providers to constituencies ranging in size from 1.48 million people (Auckland city) to 640 people (Chatham Islands).

Outside these specific proposals, the Royal Commission on Auckland Governance recommended that water services for Auckland be delivered by a single, council-controlled organisation, putting day-to-day management of water services outside the control of elected representatives in that city (Royal Commission on Auckland Governance, 2009, pp 567-611). The government's National Infrastructure Plan evaluated water infrastructure as the worst managed of the five sectors it considered. In particular, it evaluated the regulation of the sector, investment analysis and funding mechanisms as ineffective (New Zealand Government, 2011, executive summary). The plan did not distinguish between urban and rural water services, however. It is not clear to what degree these problems were perceived as universal

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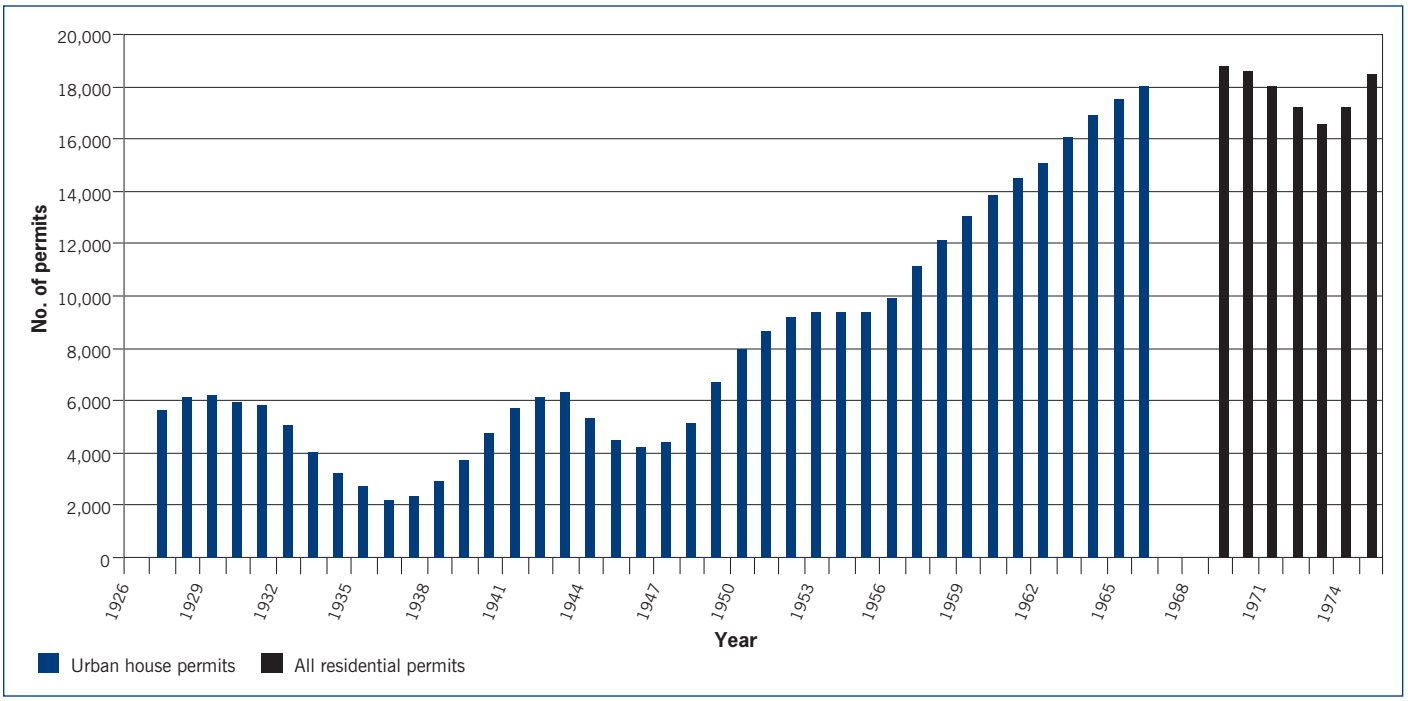
Figure1: Residential building permits-five year rolling average



Source: Data extracted from New Zealand yearbooks. Until 1965 the yearbooks distinguished between residential building permits in urban areas and others. From 1965 they recorded all residential building permits without distinguishing those issued in urban areas.

or specific to particular sub-sectors of the water services industry.

At the same time as New Zealanders have been considering these matters, the Australian Productivity Commission has released a two-volume report on its inquiry into Australia's urban water sector (Productivity Commission, 2011). Reform advocates, therefore, have many alternatives available to them.

What is less clear from the discussions to date is what the problem is with the present arrangements; or, alternatively, what is the opportunity being missed. Also missing is an analytical framework which allows the strengths and weaknesses of different options to be tested. And before digging into those issues, it is important to define the scope of the services being discussed.

Typically, urban water services are regarded as three networks: a water supply network, a sewage disposal network and a stormwater network. In a few cases stormwater and sewage disposal share a common network. However, this is quite rare in New Zealand. From a policy perspective it may be better to view them as two: an integrated water supply and sewage disposal network and a separate stormwater disposal network. The reason for viewing water supply and sewage disposal as one network is that almost every appliance from which water is supplied to a property is placed immediately over a connection to the sewer network: e.g. a kitchen sink, a dishwasher, a shower. Obviously, some water supplied does not make it into the sewer network – for example, water used for gardening, or, in a business setting, water incorporated into a manufactured product. However, most water supplied to properties is subsequently removed and treated through the sewerage network.

Stormwater can be thought of separately for two reasons. The first is that the water/sewer network is used exclusively for services to private properties. Stormwater networks are used both by private properties and also by public properties, especially roading networks. The second is that demand for stormwater services is primarily determined by climate, rather than by human activity and decision. These characteristics create significant differences between stormwater and the other networks in terms of policy options and issues around demand management and regulation. For this reason, the remainder of this article limits its discussion to options for managing water supply and sewage disposal services.

Problem identification

Evidence of problems or significant deficiencies in the delivery of these services is hard to come by. The major reason for this is that these services are currently delivered by local authorities, and to date no comprehensive national monitoring regime has been considered necessary. Local authorities are accountable to their communities, not to central government, and until recently have not been required to separately report on these services in their planning and reporting documents.

A variety of potential problems can be identified. One relates to the cost of providing these services to small communities, many of which may be lacking in wealth. For example, ratepayers in the community of Benneydale, in the Waitomo District, pay $1,400 per annum each for their water supply and a further $1,000 each for sewage treatment and disposal (rates for other services are on top of these charges). This is despite a government subsidy of 95% of the capital cost of their water supply upgrade. In larger communities ratepayers would typically pay somewhere between $500 and $1,000 for these two services in total. Given costs of this magnitude, it is not surprising that councils are cautious before they invest in improving

the standard of these services to small communities.

Another potential problem lies in the possible need to replace ageing pipes. Figure 1 shows residential building permit data from 1926 to 1974. From 1926 until about 1948, residential building permits fluctuated between roughly 4,000 and 6,000 annually. In the post-war period there was a steady increase in residential building permits through to the mid-1960s, when they settled at about 16,000–18,000 annually.

Normally councils do not fund the cost of the initial reticulation installed when subdivision occurs. This cost falls to the developer and is passed on to homebuyers in the purchase price of their property. The cost passes to the ratepayer when the second generation of reticulation is installed. Council accounting policies typically show useful lives for water services reticulation to be from 60 to 100 years. With 60 years having passed since the commencement of the post-war increases in house construction, the data suggests that councils are now entering a period in which they will need to increase their expenditure on reticulation renewals from previous levels. This cost will be most burdensome for communities that initially grew after World War Two but whose growth has since stabilised or declined. In communities that have continued to grow there will be a broader rating base to support the additional expenditure.

However, there are several features of the present system that ensure funding will be available for this purpose. They include the balanced budget requirement of the Local Government Act 2002 and the requirement to produce audited long-term plans. From 2012 each major infrastructure service must be separately reported upon, with financial forecasts (in a standard format) specific to that service. The Secretary for Local Government is required to prepare a set of standard non-financial performance measures for these services also, although these are not in force for the 2012 long-term plans.

A third potential problem is that demand is being poorly managed. A charging model where the amount of service consumed has no influence on the cost to the user encourages excessive use. This in turn will require investment in service capacity that is inefficient. A simple response to this would be to introduce meters for these services. Universal metering occurs in Auckland, Whangarei, Tauranga and Nelson, as well as in other, smaller communities. However, proposals to introduce it elsewhere usually arouse quite passionate opposition. Some is based on a belief that this is the first step towards privatising water services and some is based upon fears for those on low incomes.

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Much of this debate is ill-informed, because actual analysis of the costs and benefits of metering is rare. A rigorous study of the benefits of demand management techniques was conducted by Smith et al. (2010). This study examined Tauranga City Council's decision to introduce universal water metering in 2002. This deferred the development of a new water source for the city costing about $70 million in 2009 values by approximately 15 years. The study found benefits with a net present value of $53.3 million in 2009 dollars. The benefits to the council were split fairly evenly between capital and operating costs, since the deferral also resulted in cost savings from items such as reduced electricity consumption which applied both to water and to wastewater treatment (Smith et al., 2010, pp.29-30).

These problems are issues about financing and investment. Māori have a quite different perspective. Issues of water use and abuse have been a major concern to Māori. Of the first 25 reports issued by the Waitangi Tribunal, 11 focused specifically on alleged Treaty breaches over waterways and harbours.

A particular issue for Māori is the discharge of sewage effluent into water. This is unacceptable to Māori as it debases water spiritually. Māori have a strong preference for land-based disposal of wastewater. This problem is compounded in coastal areas because Pākehā prefer disposal sites to be away from beaches and areas that can be used for recreation. Therefore, Pākehā tend to favour disposal sites along rocky coastlines. However, those coastlines are often prolific in shellfish and kaimoana and therefore very important to Māori. Taylor comments, 'the cultural value of kaimoana is important because it maintains tribal mana and standing' (Taylor, 1984, p.26). With so much Māori land having been alienated, traditional rights to coastal fishing grounds are particularly important to Māori.

A more recent articulation of Māori values about water is in the Land and Water Forum report. It comments:

> We have recognised that the relationship between iwi and freshwater is founded in whakapapa, that freshwater is recognised by iwi as a taonga of paramount importance, and that kaitiakitanga – the obligation of iwi to be responsible for the well-being of the landscape including water and waterways – is intergenerational in nature and has been and may be expressed and given effect to in many different ways. (Land and Water Forum 2010, vii)

A respected Māori leader, Mark Solomon, says: 'Iwi Māori believe water is not only a source of food and physical sustenance, but a source of mana and spiritual sustenance, being linked to and

reflective of the well-being of Iwi Māori. Water was, and is, also critical to the economic survival of iwi, particularly in relation to both customary and commercial fisheries, papakāinga and housing, as well as horticultural and agricultural land use.' He continues, 'the health and wellbeing of water resources, in all their forms, is inextricably linked to the health of Iwi Māori.' Further he comments: 'How and by whom, decisions are made in relation to natural resource, including freshwater, are pivotal issues for Iwi Māori as they materially affect environmental outcomes, and the ability of Iwi and hapu to exercise their mana and kaitiakitanga', and that 'the role of Iwi Māori as treaty partners must be recognised and provided for through effective participation and involvement at all levels of decision-making over fresh water resources: local, regional and central government' (Solomon, 2010, 43, 44).

Any reform of governance arrangements for urban water services has potential implications for Māori which may need to be considered in evaluating options.

Evaluating reform options

Criteria for evaluating reform options also need careful consideration. Promoting efficiency is clearly one criterion, although what that means needs further exploration. The Australian Productivity Commission (Productivity Commission, 2011, p.68) has identified three components of economic efficiency:

- *allocative efficiency*, achieved where resources are used to produce those goods and services that provide the greatest benefit to consumers relative to costs. Benefits in this sense include non-financial benefits such as environmental benefits;
- *productive efficiency*, achieved by the production of goods and services at least cost; and
- *dynamic efficiency*, achieved by the timely introduction of technology change to achieve more efficient production in the future. Dynamic efficiency requires that options that create an environment that is conducive to ongoing innovation be taken into account.

Since allocative efficiency includes non-financial values, debates about the level of service provided by water services can be included under the broad heading of allocative efficiency.

However, opponents of reform raise equity issues. A frequent theme expressed by those opposed to metering, corporate forms of water service delivery and the use of public–private partnerships (PPPs) is that access to water is a right. Any attempt to use commercial models for delivering water, whether by use of metering of public supplies, by using council-controlled organisations, or by any of a variety of methods of private participation in delivery is strongly opposed. Opponents perceive such changes as threatening the 'right' of people to an adequate water supply (see, for example, Human Rights Commission, 2010; Right to Water, 2010). Another aspect of this debate arises in respect of funding water services to small communities. Current funding arrangements ensure that whatever costs arise in providing water services, they are predominantly met at a local level through property taxes. This may result in charges that are so high that equity issues arise. Given the obvious necessity of water to life, the concern is legitimate and needs to be addressed in any reform model.

A frequent theme expressed by those opposed to metering, corporate forms of water service delivery and the use of public–private partnerships (PPPs) is that access to water is a right.

Finally, the recognition of Māori values and aspirations does not fit comfortably within either of these perspectives. They fit more readily within a legal perspective, since they rest on rights contained within the Treaty of Waitangi. Furthermore, aspects of Māori values tend to the absolute and do not allow for the type of trade-offs that are inherent in concepts of efficiency and equity.

A reasonable model for evaluating reform options, therefore, would consider at least these three criteria of efficiency, equity and consistency with Māori values.

Using these criteria, it soon becomes evident that different reform options have different strengths and weaknesses. The following section briefly discusses specific reform options and which of the evaluation criteria they address. Options discussed are metering, PPPs, using council-controlled organisations to deliver water services, delivery by a Crown entity or entities, and possible improvements to the present model.

Reform options

Metering

Metering addresses issues of allocative efficiency. It has no impact on dynamic or productive efficiency but, as discussed earlier, raises equity issues. It may indirectly address some Māori concerns about the protection of water environments. However, it does nothing to give Māori a role in governance decisions about water. A critical issue with metering is when is the appropriate time to introduce it? Metering both requires investment capital and creates administrative costs. The benefits derived from metering need to exceed those costs. This is most likely to arise when significant capital investment in additional supply or treatment capacity can be deferred.

Public–private partnerships

Public–private partnerships come in many forms, and it is important to be clear what type of partnership is being discussed in this context. One type is a concession arrangement. This involves a private company operating a water service owned by a government agency and deriving its income from direct charges to customers. In New Zealand the former Papakura District Council entered into a concession arrangement for the supply of water

services in its district. Such arrangements are prevalent (but not universal) in France, and have been promoted in Third World countries as a means of incentivising extension of services to unconnected properties.

Empirical evidence to support the efficacy of concession arrangements is notably absent. Chong et al. (2006, p.163) tested the price for the supply of 120 cubic metres of potable water across 3,650 suppliers in France. After controlling for a large number of variables, such as population size, level of tourist demand, population density, and different source water quality requiring different levels of treatment, and excluding the effects of taxes on price, they concluded that concession arrangements resulted in higher prices (by about 15% on average), and that the difference in prices charged was statistically significant. This doesn't necessarily mean that concession arrangements are less efficient than public supply. However, if they are more efficient it highlights an equity issue about how difficult it is for public entities to capture through their contracts a sufficient share of the benefits for consumers.

A different type of PPP is one where a private company constructs a facility (in water services usually a water treatment plant or sewage treatment and disposal plant) and operates it for a long period of time, usually 20 years or more. Frequently the private partner owns and finances the plant for the duration of the contract.

Apart from the generalised argument that private service providers are more motivated to seek efficiency than public providers, a particular feature of PPPs which should encourage innovation is the fact that the model more strongly encourages providers to take a 'whole-of-life' costing approach to the design and construction of a facility. This should lead to greater consideration of likely operating costs in the design and construction process than traditional procurement achieves. As formal PPPs are relatively recent innovations, few have reached the end of the partnership and been handed on to the commissioning body for subsequent operation. Thus, formal ex post evaluation has not yet been possible.

Since a PPP as described doesn't involve any direct effect on pricing, it appears to be neutral in regards to allocative efficiency. However, to the degree that the output specification freezes today's specification of non-price attributes into the future, it inhibits enhancements of allocative efficiency that are not reflected in pricing: for example, environmental outcomes. It does not preclude such enhancements, since the outputs can be renegotiated. However, if the private partner over-charges for enhancements, improvements in allocative efficiency will be inhibited.

A Crown entity ... has problems in relation to allocative efficiency. It will need to develop a methodology for determining the standard of service it will supply to small communities.

PPPs appear to be neutral in relation to equity considerations because they don't affect issues of pricing and access.

To the extent that PPPs freeze management arrangements, they inhibit any change in management structure or practice that evolves to reflect Māori values and aspirations.

Council-controlled organisations

If the concern with present service delivery arrangements is that elected representatives are not the best group of people to make most decisions about water services operations, then another option is that recommended by the royal commission for Auckland: place them in council-controlled organisations (CCOs). This leaves ownership in public hands but puts management into the hands of an appointed board. This might reduce allocative efficiency, in that trade-offs between expenditure on water services and other local authority services would be inhibited. However, having organisations with governing bodies focused exclusively on these services might encourage a greater focus on productive and dynamic efficiency. There is no inherent effect on equity in using CCOs to deliver services, compared to direct council delivery. However, councils could look to include suitably qualified people from relevant iwi on the boards of these CCOs, which might go some way to meeting Māori aspirations to participate in governance decisions on water matters.

Crown entities

A further option is to deliver these services through a Crown entity or entities. This is the model used in Scotland, where a Crown entity, Scottish Water, provides water services to all of Scotland. However, Scottish Water is more heavily regulated than a New Zealand Crown entity or state-owned enterprise is. A separate body, the Water Industry Commission for Scotland, sets water services prices and monitors Scottish Water's investment programme: in effect, it approves Scottish Water's business plan.

A single Crown entity seems to have little incentive to enhance productive and dynamic efficiency. In Scotland, the performance of Scottish Water can be readily compared with the performance of private water utilities operating in England and Wales. This, combined with price regulation, provides incentives for continuous performance improvement. Finding suitable comparators for a monopoly water services provider in New Zealand would appear to be problematic. Furthermore, New Zealand has generally preferred a lighter-handed regulatory regime than applies to Scottish Water. If a single national monopoly were the best solution, then this would appear to raise similar issues in other utilities sectors. For example, would a single national electricity lines company be better than the present arrangement of a national grid operator and local lines companies?

A Crown entity also has problems in relation to allocative efficiency. It will need to develop a methodology for

determining the standard of service it will supply to small communities. If it adopts a national pricing structure, this will incentivise gaming for investment in uneconomic supplies. It will also remove the opportunity for local trade-offs to be made between the standard of water services supplied and other government services. However, assuming a Crown entity had a preference for charging by meter and did not have access to property taxes as a charging mechanism, it would improve allocative efficiency as metering was rolled out.

A Crown entity might better deal with equity issues than the current model. It would have the incentive to introduce nationally consistent policies for the treatment of consumers with low incomes and/or specific needs for high water usage, and these could be reinforced through the approval of its statement of intent.

A single Crown entity would not obviously facilitate Māori participation in governance decisions about water usage. This is because Māori participation needs to be at the iwi and hapu level, and a single national entity would struggle to achieve that. It might, however, have the ability to facilitate some outcomes that Māori desire, such as a greater level of land-based wastewater disposal, since it would have the scale to research and develop best practice techniques in this area.

An alternative to a single Crown entity is to have a number of regionally-based entities. Just how many would be needed to balance the various considerations is difficult to tell. However, a number of entities would allow performance comparisons to be made, which might provide stronger incentives for productive and dynamic efficiency. Depending on the boundaries chosen, it might also be possible to provide iwi with a governance role in such entities.

Improving the present model

Rather than simply abandon the present model of local authority delivery of these services, another option is to make improvements to it. Many of the changes in water services delivery overseas are in response to long-term financial neglect by public suppliers, or to existing fiscal constraints that prevent responsible authorities from investing adequately in water services. Ensuring that the present system delivers adequate funding for investment in water services would then make change in New Zealand a matter of choice rather than financial necessity.

The present system relies on the balanced budget requirement of the Local Government Act 2002 and the auditing requirement for long-term plans, especially the requirement for the auditor to report on 'the quality of information and assumptions underlying the forecast information provided in the plan' to ensure adequate funding is set aside for replacement of infrastructural assets when necessary. In this sense the approach to infrastructure funding is indirect.

... councils tend to introduce metering as a last resort when supply is extremely constrained. However, as the earlier discussion showed, metering not only defers capital investment, it lowers operating costs for both water and sewage treatment.

The balanced budget requirement results in local authorities setting aside a sum equal to their depreciation expense for capital purposes. However, as the auditor-general has previously commented, 'the depreciation charge over the life of an asset will equal the renewal cost of the asset only by chance' (Auditor-General, 2000, p.21). In addition, the present legislation doesn't require the depreciation funding to be applied to asset replacement, or even to the particular service concerned. There is nothing to stop councils using the funds to acquire new assets the public desire, even if that compromises their long-term ability to fund future asset replacement.

Relying on the balanced budget requirement and the ODRC (optimised depreciated replacement cost) method of valuing assets to fund asset replacement is obviously substantially better than ignoring the issue, but it does not provide a complete solution. One possible approach would be to require councils to prepare forecasts covering a period of three or four decades of the funding needed for water services asset renewals, and to specifically set aside the required amount for that purpose. The money would be ring-fenced and could not be spent for the acquisition of other assets. If that approach produced an operating deficit, that could be acceptable. This approach would distinguish between accounting and funding. It would tackle funding issues directly, rather than relying on accounting methods to achieve outcomes they are not designed for.

Allied to this approach could be a formalisation of the requirement to produce and publish asset management plans. At present their statutory foundation is tenuous, lying only in the auditor-general's interpretation of the reporting requirements for long-term plans. Any dilution of the long-term planning requirement could undermine the asset management planning process in local government.

To summarise, the present financial management system has considerable strengths and has ensured significant funding for investment in water services since it was introduced. However, it does take an indirect approach to ensuring adequate investment in local government infrastructure, including water services, and a more direct approach may be better still.

While local authorities are not direct competitors and therefore have no incentive to hide information from each other, they also have no particular incentive to collaborate. Indeed, where parochialism is strong, co-operation can

be shunned for fear that it is a signal that adjoining councils should amalgamate.

Given that the most effective way to improve allocative efficiency is water metering, the industry could develop tools to help councils evaluate when introducing metering is cost-beneficial. At the moment, councils tend to introduce metering as a last resort when supply is extremely constrained. However, as the earlier discussion showed, metering not only defers capital investment, it lowers operating costs for both water and sewage treatment. Evaluation of the benefits of metering is therefore more complex than simply a decision about capital investment. At the same time, if the industry wants to overcome objections to metering, it could also develop tools for social impact analysis of metering and best practice guidance around rate remission and other social assistance policies to go with metering decisions. These might counter the fears of some metering opponents and make its introduction more politically acceptable.

There are several actions the local government sector could advance to improve productive efficiency in water services delivery. A key issue is determining the optimal time at which reticulation should be replaced. As pipes age, the quality of service will deteriorate, but knowing when it is more efficient to replace a pipeline than repair it is not obvious. The true cost of either option needs to include the costs to consumers of planned and unplanned interruptions, also. Economic analysis of that kind is not routinely undertaken by local authorities, yet there is no obvious incentive for the private sector to carry out this research since it is unlikely to generate a product with a large market potential.

The second action is to explore collective purchasing options. This might be especially useful in the purchase of treatment plant equipment, which will typically involve imported equipment produced in small production runs. This would involve the sector sharing investment plans and co-ordinating approaches to that. It is noteworthy that central government is rediscovering centralised purchasing after largely abandoning it in the reforms of the 1980s.

The third is to examine the potential of shared services for delivering water services to small communities. Local authorities are gradually developing shared services approaches throughout New Zealand, although on a somewhat ad hoc basis. Shared service models could achieve productive efficiencies without trading off the allocative efficiency inherent in local decision making.

A fourth potential area for improving productive efficiency would be to develop techniques for evaluating whole-of-life costing in treatment plant investment. It seems absurd to resort to PPPs as the only effective way of linking treatment plant design and operating cost considerations.

Conclusion

To conclude, there are a variety of ways in which water services delivery could be reformed or improved. Different options have different strengths and weaknesses. A key issue is whether perceived shortcomings in the present service delivery arrangements are of such significance that substantial reform is warranted. The reporting arrangements that have prevailed to date make this difficult to assess. Changes in those reporting arrangements which will commence with the 2012 local authority long-term plans may go some way to improving reporting on these services.

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Rachel Baxter

Sharing the Private and Public Costs of Tertiary Education

Do University Students Know How Heavily Their Education is Subsidised and How Would Increases in Course Fees Change Their Study Behaviour?

The direct costs of tertiary education are shared between students and government on the basis that there are both private and public returns from tertiary education, and because the government has limited financial resources to commit towards tertiary education. However, the question 'who should pay?' is controversial. In 2005 the New Zealand general election was won arguably as a result of a promise to make student loans interest-free for New Zealand-based borrowers (Roy, 2011).

A key policy decision for government is how best to share the costs of tertiary education, including the extent to which it should allow course fees – the largest direct private cost – to rise. Government fee regulation prohibits tertiary education organisations (TEOs) from increasing course fees by more than 4% per year in most cases.

It is difficult to have an informed debate about whether there should be changes to how the public and private costs are shared unless there is a good understanding of the current cost-sharing arrangements. The likely impact of changes in cost-sharing arrangements on study behaviour is also an important factor for government to consider. This article outlines the findings of a survey designed to understand university students' knowledge of the government subsidies that go towards their education. Prior to this study being undertaken, no previous research appeared to exist on this issue in New Zealand. The survey also considered the likely impact of course fee rises on students' study decisions.

Three hundred and thirty-four students undertaking two 100-level papers[1] at Victoria University of Wellington in the second trimester of 2011 were surveyed. The survey covered questions about:

- students' understanding of government expenditure on tertiary education;

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- students' understanding of how course fees charged in New Zealand compare with those charged overseas;
- how changes in course fees might influence students' study decisions;
- students' demographic and education profile, and whether they receive direct financial aid from government.

New Zealand government expenditure on tertiary education and how it compares internationally

Total expenditure

For the year ended 30 June 2010, total nominal government expenditure on tertiary education was $4.46 billion, made up of:

- $570 million on student allowances (non-repayable grants);
- $1,525 million on student loans (generally repaid through the tax system);
- $2,364 million on funding to TEOs (tuition subsidies and research funding). (Ministry of Education, 2011c)

Student loans represent a government subsidy to students because of loan write-offs, doubtful debts, the timing of repayments, and because of the government's cost of capital/opportunity cost of capital. For every $1 that is lent through the student loan scheme, the government writes down 44.7 cents in its books (Ministry of Education, 2011c). That is, for every dollar the government lends, 55.3 cents is treated as an asset and 44.7 cents as an expense. Approximately 20c in every $1 lent is written down as a result of the interest-free student loan policy.

The course fees TEOs charge also have a direct impact on the total level of government expenditure on tertiary education, because increases in course fees lead to increased borrowing through the student loan scheme. While course fee regulation was re-introduced in 2001 under the guise of making tertiary education more affordable for students, the student loan costs to government from fee increases are now so high that affordability to government has now become a barrier to relaxing fee regulation. Borrowing for course fees accounted for 64% of total borrowing under the student loan scheme in 2009 (Ministry of Education, 2010a).

Figure 1: Nominal government expenditure on tertiary education, years ending 30 June 2002-2010

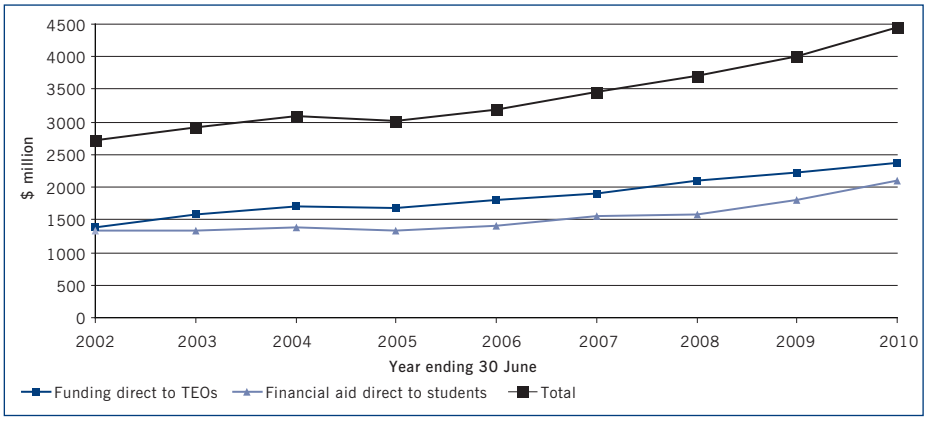


Table 1: 2011 university equivalent full-time student SAC funding rates

EFTS subsidy category		Level of study		
		Undergraduate	Taught postgraduate	Research-based postgraduate
Arts	A	$6,014	$7,591	$8,028
Engineering	C	$11,060	$14,057	$15,129
Education	I	$8,569	$10,759	$11,196
Commerce, law	J	$6,014	$7,591	$8,028
Science	L	$10,338	$13,033	$13,910

Source: Tertiary Education Commission, 2011

Figure 1 shows how nominal expenditure on tertiary education has changed over time. In real terms, government expenditure on tertiary education has increased by 32% between 2001/02 and 2009/10 (Ministry of Education, 2011a).

Tertiary education also accounts for a significant proportion of the government's total education expenditure. In 2009/10 approximately 36% of the government's total education expenditure was spent on tertiary education (primary, secondary and tertiary education expenditure only) (Ministry of Education, 2011b).

Per student

The bulk of the government's contribution to TEOs is made through tuition subsidies, called student achievement component (SAC) funding. SAC funding rates are set per equivalent full-time student and differ depending on the type of study and level of study. For example, science study attracts a higher funding rate than business study, and postgraduate study attracts a higher funding rate than undergraduate study. Table 1 shows SAC subsidy rates for the most common areas of study for the students surveyed.

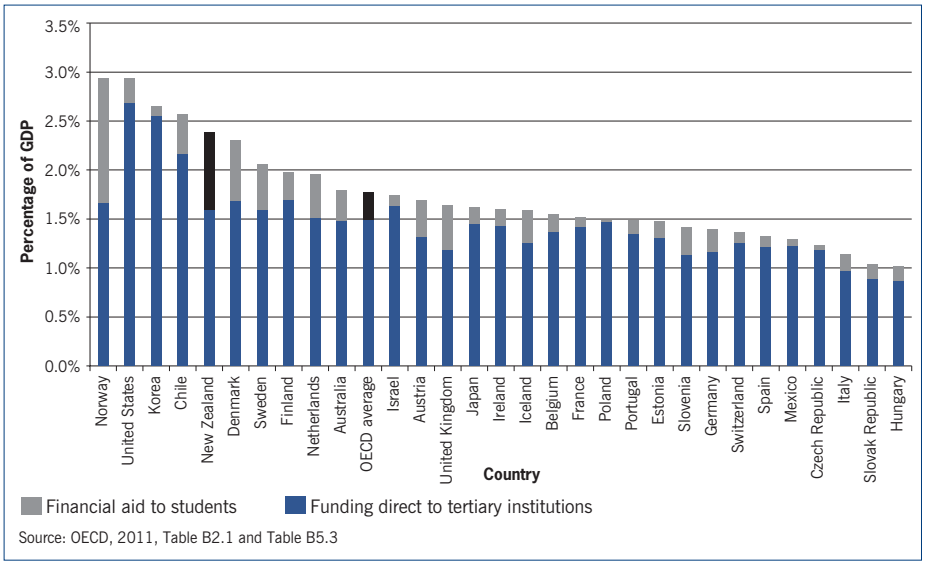
Excluding the implicit government subsidy through the student loan scheme, tertiary education students' share of the direct cost of tertiary education fell from 32% in 2000 to 27% in 2010 as a result of fee regulation policies (Ministry of Education, 2011c). When the implicit government subsidy for student loans is taken into account, on average students paid 16%, and government 84%, of the direct cost of tertiary education in 2010.[2]

International comparison

As shown in Figure 2, New Zealand's total expenditure on tertiary education is relatively high as a percentage of GDP: the fifth highest of all OECD countries in 2008.

New Zealand does, however, spend a much higher proportion of its tertiary education budget on financial aid to students than most OECD countries do. OECD countries spend, on average, 21% of their government tertiary education budgets

Figure 2: Expenditure on tertiary education as a percentage of GDP (2008)



Source: OECD, 2011, Table B2.1 and Table B5.3

on financial aid to students; New Zealand spends more than double this, with 41.6% of government expenditure committed to aid to students. Only three OECD countries – Chile, Norway and the United Kingdom – spend a higher proportion.

Commentary from universities on tertiary education funding tends to focus on the fact that they receive less direct government funding than other OECD countries in per-student dollar terms. In 2008, New Zealand's per-student expenditure on tertiary institutions was 23% below the OECD average. Spending was also below that of the countries we often compare ourselves to: Australia, Canada, the United Kingdom and the United States. However, this simply reflects New Zealand's lower economic resources (Ministry of Education, 2010b). As a proportion of GDP, New Zealand's funding of tertiary institutions was slightly higher than the OECD average for the same period.

Students' understanding of New Zealand government expenditure on tertiary education was poor

Students were asked multi-choice questions about their understanding of government expenditure on financial aid to students, funding direct to providers, total expenditure on tertiary education, and how New Zealand government expenditure compares to that of other OECD countries.

In general, students had a poor understanding about the subsidies that go towards their education, and typically underestimated the subsidy levels that exist:

- Nearly 70% of students underestimated the proportion of government expenditure spent on direct financial aid to students.
- 67% of students underestimated the amount the government writes down its books for every $1 lent through the student loan scheme because of the interest-free student loan policy and because some people do not repay their loans.
- The majority of students underestimated the direct tuition subsidy that Victoria University receives for each equivalent full-time student enrolled.
- 57% of students underestimated the proportion of the government's total education expenditure that goes towards tertiary education.
- 96% of students underestimated the increase in real government expenditure on tertiary education that occurred between 2001/02 and 2009/10.

Students also did not have an accurate picture of New Zealand's tertiary education expenditure relative to other countries:

- Most students thought that OECD countries spend a similar proportion of their tertiary education budget on financial aid to students, despite New Zealand spending almost double this proportion.
- 58% of students incorrectly thought that OECD countries spent a higher proportion of their GDP on tertiary institutions than New Zealand does.

Students were asked how confident they were about the answers they had provided about government expenditure on tertiary education. The responses are shown in Figure 3. Only 6% of students indicated that they were reasonably confident or very confident of the answers provided, with a third of students indicating that they were just guessing.

In general, responses differed little by demographic, education or financial aid profile, suggesting that no one group is any more informed than another about government expenditure on tertiary education.

The survey sample included 76 international students. These students would be expected to know very little about the subsidies that the New Zealand government puts towards tertiary education given that they do not benefit from them. However, the responses provided by international students differed little from those provided by domestic students.

Why the poor understanding of government expenditure on tertiary education is not a surprise

There is little public debate on how tertiary education costs should be shared, and there is a lack of easily accessible public information about subsidy rates. As a consequence, it is not surprising that students had a poor understanding of government expenditure on tertiary education. Understanding the tuition subsidy system and rates requires a ministerial determination to be downloaded – not something that most people would be aware of, or know where to find. The government agency websites most likely to be used by students and their families (StudyLink, Careers New Zealand and Inland Revenue) also contain no information about subsidy rates. (The Ministry of Education's website does contain some useful information, but is only likely to be accessed by people seeking out information on the topic.)

TEOs also do not voluntarily inform current or prospective students about

the subsidies received from government, and there is no government requirement for this to occur. There may actually be a strong incentive for TEOs not to provide such information, as it may result in students being more likely to question the value for money that is received from TEOs.

In the last two years ministers have begun to comment on occasion on the tertiary education costs government faces. Some policy changes have been made at the margins because of the government's current financial position, with some resulting commentary from ministers (for example, commentary relating to policy changes in the budgets of 2010 and 2011) (see for example Joyce, 2010, 2011a, 2011b; Q+A, 2011). However, any media coverage on the tertiary education costs faced by government is generally reactive, in response to comments made by politicians, rather than proactive investigation of the matter of how costs should be shared.

Changes that could be made to improve understanding of government expenditure on tertiary education

There are a number of changes that could be made to improve awareness of government expenditure on tertiary education, which are outlined in Table 2. Ultimately, there needs to be an appetite from ministers to put these actions into place. Raising awareness of government expenditure on tertiary education will inevitably have an associated political risk – the government rightly or wrongly being accused of wanting to push more of the cost burden onto students, with the implication that this is an unfair thing to do.

How fee increases may change study behaviour

There is a significant international body of literature on the impact of course fee rises on study. As standard economic theory would suggest, the literature typically finds that as course fees rise, demand for tertiary education decreases (see for example Leslie and Brinkman, 1987; Heller, 1999; St John and Starkey, 1995; Neill, 2009; Dearden, Fitzsimons and Wyness, 2011). However, the effects are not felt proportionately:

Figure 3: Students' confidence in their answers about understanding of government expenditure on tertiary education

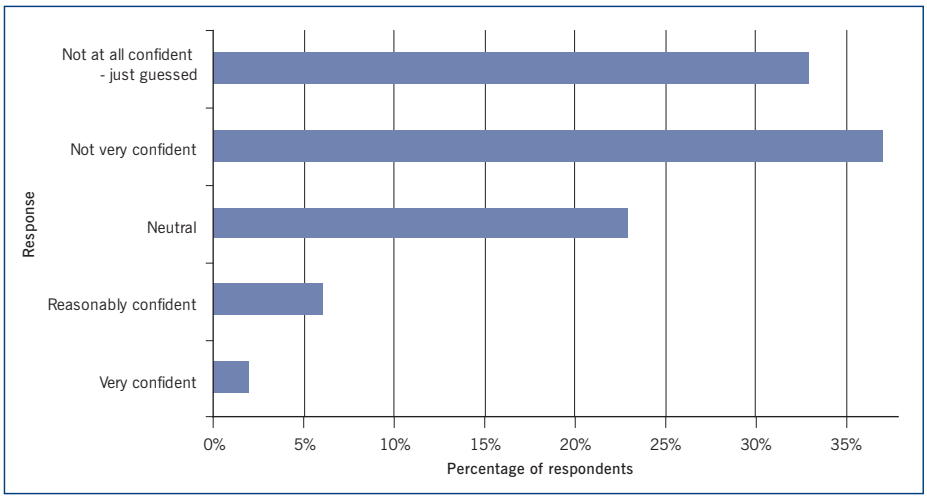
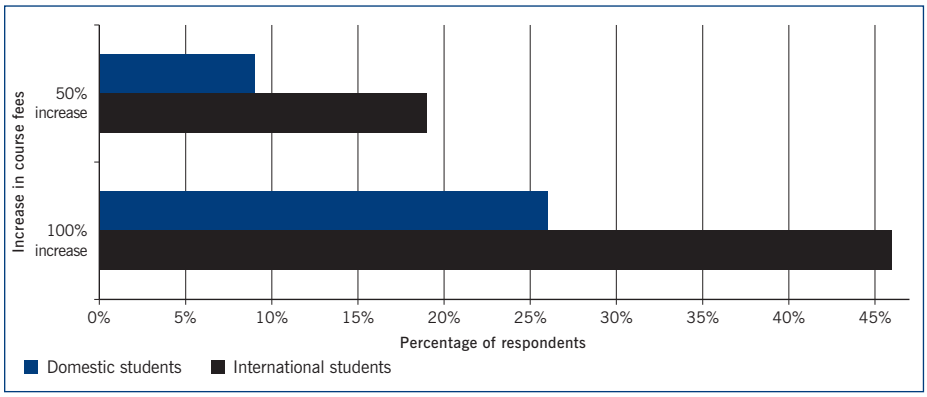


Figure 4: Proportion of students who indicated that they would stop studying altogether if course fees were to increase



low-income students are more price sensitive than high-income students. That is, demand for tertiary education is likely to decrease more rapidly for low-income students than for high-income students as a consequence of fee rises.

Students were asked how increases in course fees of 50% and 100% – both during study and prior to study beginning – would change their study behaviour. Students were informed that the average course fee for full-time university students increased by 22% between 2003 and 2007 (Ministry of Education, 2010a). The increases in course fees suggested were therefore much more significant than those that students have faced in recent years. Most students indicated that they would continue to study, regardless of the level of the fee increase and when the increase occurred. The majority of students indicated that they would look to borrow more money through the student loan scheme to pay for the additional cost, which, in turn, will lead to changes in the composition of the government's tertiary education expenditure. Whether government's overall costs increase depends in part on whether it reduces the number of student places it funds. Looking for a part-time job or increasing the number of hours worked during study became more popular.

Price sensitivity did rise rapidly. The proportion of domestic students who would give up study increased almost threefold in the case of a 100% fee increase compared to a 50% increase (see Figure 4). Interestingly, the amount of the fee increase was a more important factor than when the fee increase occurred. International students were much more price sensitive than domestic students.

A 50% increase in course fees would lead 26% of international students to stop studying (compared to 9% of domestic students). A 100% increase in course fees would lead to 46% of international students choosing to stop studying (compared to 26% of domestic students). This higher

rate of international students discontinuing study may be because the students view New Zealand as one of many potential study destinations (whereas New Zealand students may have other reasons, such as family ties, as additional reasons to continue study here). Research by Education New Zealand and the Department of Labour found that the relative cost of study may be a driving factor for international students choosing to study in New Zealand (Education New Zealand and Department of Labour, 2007).

Student allowance recipients (a proxy for low socio-economic status) were less price sensitive than non-student allowance recipients at a 50% fee increase, which is contrary to what the literature suggests. However, student allowance recipients were more price sensitive at a 100% fee increase.

More work is needed before fee regulation policy is relaxed

Universities argue that they should have greater flexibility around student course fees if the government does not invest more money in tertiary education (New Zealand Vice-Chancellors' Committee, 2008), and the government has indicated that there will be no significant cash injections into tertiary education in the foreseeable future (Joyce, 2010). However, more work is needed before fee regulation policy is relaxed to enable fees to rise more quickly.

First, there needs to be an understanding of the reasons why some students are likely to choose not to study at higher fee levels. Even with fee increases

Table 2: Potential changes to improve understanding of government expenditure on tertiary education

Potential change	Commentary
Publish long-term cost forecasts	Long-term government tertiary education cost forecasts could be published and commented on, enabling people to form a view on whether the current policy settings are sustainable. This approach would be consistent with recommendations in the government's recent review of expenditure on policy advice (Scott, Duignan and Faulkner, 2010, p.49).
Publish the tertiary education policy work programme	The government's tertiary education policy work programme could be made publicly available, enabling people to be aware of the issues that the government is considering and the priority it has given to them. There are examples of this occurring elsewhere within government: the tax policy work programme is published annually, for example (Inland Revenue, 2010).
Take a more public approach to significant policy issues	A more public approach could be taken to preparing advice on significant policy issues than is currently being taken. For example, the Minister for Tertiary Education, Skills and Employment has indicated that he has commissioned a review of tuition subsidy levels from the Ministry of Education. This is a significant policy issue; any changes to subsidy rates will inevitably have an impact on current cost-sharing arrangements between the government and students. However, it is unclear from public information what the objective, scope, timing and resources dedicated to this review is, or what advice is being sought externally. Taking a more public approach to significant policy issues would also be consistent with recommendations in the government's review of expenditure on policy advice (Scott, Duignan and Faulkner, 2010, p.49).
Provide information on government agency websites in an easily accessible format	Government agencies could modify their websites to provide information on government expenditure on tertiary education in a format that is understandable to the layperson.
Show subsidy rates on invoices to students	TEOs could be required to provide details of subsidy rates to students. For example, TEOs could be required to provide a statement on fee invoices, such as: *In addition to the fees outlined in this statement, the New Zealand Government has contributed a tuition subsidy of approximately $6,500 this year towards the cost of your tertiary education.* *The Government makes a further financial contribution to the costs of your education through research grants to tertiary providers, and through the provision of student loans and allowances.* *For more information about Government subsidies towards your tertiary education go to www.governmentagencywebsite.govt.nz* The potential costs of implementing such a requirement would need to be considered. TEOs would inevitably resist such a change. They would likely argue that: • it would result in an unnecessary administrative burden, with students ringing to understand what the commentary meant; • their systems could not cope; • it is too difficult to calculate tuition subsidy rates for an individual student.
Regularly publish advice from officials	Much of the policy work undertaken by officials is not publicly available, unless requested under the Official Information Act 1982. Although the Ministry of Education appears to have made more of an effort in the past two years to make its advice more accessible, it is still the exception rather than the norm for its advice to be made public. The research work undertaken by the Ministry of Education is published regularly.
Adopt and adapt key information sets	The United Kingdom is introducing 'key information sets', which are comparable sets of standardised information about undergraduate courses (Higher Education Funding Council for England, 2011). They are designed to provide information in an easy-to-read format for prospective students. Such an item could be adopted here and adapted to also include information about government subsidies towards tertiary education.

of 50% and 100%, the literature suggests that the average private returns from tertiary education in New Zealand (in the form of higher incomes) would continue to be positive (see OECD, 2011). It would, therefore, be useful to explore the reasons behind some students indicating they would give up study, and whether these students are aware of average private returns of tertiary education.

Second, alternative options to relieve cost pressures that would result in fewer people choosing to study should be investigated. While most students indicated that they would continue to study if fees increased significantly, a number said they would not. It would be useful to explore whether there are other options which would have a lesser impact on the numbers of people studying than fee rises. For example, would adding interest on student loans (and passing the reduction in cost to government onto TEOs in the form of more student places or higher SAC funding rates) result in the same reduction in people studying as increases in fees?

Third, while most students indicated that they would continue to study at higher fee levels, the longer-term consequences of fewer people undertaking tertiary education study, and the potential consequences of increases in hours worked during study, need to be considered.

Conclusion

Deciding how the costs of tertiary education should be shared is an important public policy issue. Yet people's understanding of the current cost-sharing arrangements has previously not been explored in the New Zealand literature. While only one small group of stakeholders was surveyed, the research reported here raises questions about the quality of information students and the public have about the costs of tertiary education paid for by government. Some simple steps could be taken to improve people's knowledge of the tertiary education costs and policy issues government faces. Further research could also be undertaken to explore a wider group of students' and/or members of the public's understanding of government tertiary education expenditure.

Making a decision on how the costs of tertiary education should be shared involves deciding how quickly course fees can rise. Relaxing fee regulation is seen as an easy answer by universities to increase the revenue they receive. While most students surveyed said that they would continue to study if fees increased significantly, a number said they would not. Before fee regulation is relaxed, more work is needed to understand whether there are other policy options that would have a lesser impact on the numbers of people studying, and to explore why students would choose to give up study even when the average private returns to tertiary education are likely to be positive.

1 POLS 114, Introduction to Comparative Politics and FCOM 111, Government, Law and Business

2 Shares of total costs are calculated as follows:
- the full cost of tertiary education = SAC funding + domestic course fees;
- government's share = SAC funding + write-down on fees-lending;
- students' share = total fees – write-down on fees-lending.

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M. Claire Dale and Susan St John

New Zealand's Overseas Pensions Policy

Enduring Anomalies and Inequities

Introduction

As in most industrialised countries, demographic ageing in New Zealand is putting pressure on the public retirement pension scheme. The increasing mobility of citizens adds to the complexity of determining fair policies for pension eligibility and portability.

> The global trends of population ageing and increasing labour mobility require suitable and equitable policies for public pension portability. An increasing number of New Zealanders spend some years working overseas; and an increasing number of overseas-born citizens immigrate to and retire in New Zealand. Both these groups may have contributed through taxation and/or through compulsory or voluntary payments, into superannuation or pension schemes, perhaps in more than one country. Both are affected by the pension policies of the countries where they have contributed, and to which they wish to retire. (Dale, St John and Littlewood, 2009, p.4)

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The foundation of New Zealand's pension system is New Zealand Superannuation (NZS). Although NZS is 'generally acknowledged to be the simplest retirement set-up in the OECD' (Rashbrooke, 2009, p.98), retirement income policy is influenced by multiple and sometimes competing objectives, including financial affordability, political sustainability, income adequacy and intergenerational equity (Retirement Commission, 2010, p.52).

NZS is a universal, flat rate, taxable pension funded out of current taxation on a pay-as-you-go (PAYG) basis. Its design continues to 'ensure that old age is not a period of continuing poverty and hardship, regardless of the quality of life people have experienced before then' (Cook, 2006, p.14). The current adequacy of NZS is evidenced by the low levels of poverty among those aged 65 and over. In fact, overall 'poverty rates for those aged 65+ have been considerably lower than those for the rest of the population over the full period from 1982 to 2010' (Perry, 2011, p.130).

Access to NZS is remarkably open. An applicant who is a New Zealand resident is required to have lived for only 10 years in New Zealand, with five of those after the age of 50 (the 10(5) rule). A contributory record is not required, making New

Zealand unusual in the OECD. The years-based residency qualification establishes an 'all or nothing' threshold: there is no pro-rata entitlement; however, those who do not meet the 10(5) rule may qualify under a reciprocal social security agreement.

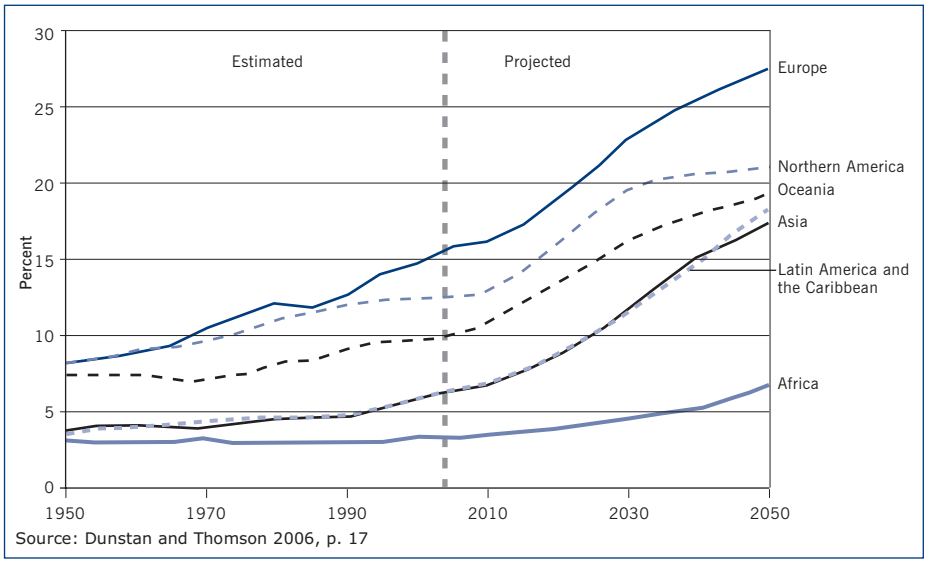
Accessing NZS is a matter of a straightforward interview at a Work and Income New Zealand office for most 65 year olds. It may take a matter of only a few minutes with the correct supporting documents. For some who have spent time abroad or who immigrated to New Zealand, however, it can be far less straightforward. Any entitlement to a state pension from another country may reduce their NZS, sometimes to zero under section 70 of the 1964 Social Security Act (the direct deduction policy, DDP)[1] even when residency requirements have been met.

At 31 July 2010, out of a total population of approximately 4.3 million, 561,053 New Zealand residents aged 65 and over were receiving either NZS or the veteran's pension, and over 10% of these were also entitled to an overseas pension (Ministry of Social Development, 2011, pp.316-8).

Between 2007 and 2011, the Retirement Policy and Research Centre (RPRC) at the University of Auckland, in collaboration with the Human Rights Commission, and more recently with the Centre for Accounting, Governance and Taxation Research of Victoria University, produced numerous research publications and convened forums on the issues of overseas pensions in New Zealand and pension portability.[2] The findings were that while the DDP may appear to save the government money, there are important fiscal sustainability issues raised by New Zealand's overseas pensions policies. More immediately, New Zealand's overseas pensions policies are inequitable in many respects and prevent the possibility of concluding reciprocal social security agreements with some countries, for example Austria, Germany, Switzerland, Sweden and the United States (Ministry of Social Development, 2008a).

The issues are complex, and likely to get more so as the population ages. This article first argues that the DDP must be seen in the demographic context in New Zealand, and then outlines the current plight of retirees with entitlements to overseas pensions. Possible short-term reforms are proposed, with a change in residency suggested as one option for a longer-term solution which may also reduce future fiscal vulnerability of New Zealand's retirement income policies.

Figure 1. Proportion of population aged 65 and over by global region, 1950-2050



Source: Dunstan and Thomson 2006, p. 17

Demographic pressures

New Zealand is not alone in the transition to lower mortality and fertility rates (see Figure 1). Globally, the proportion of the population aged 65 and over is expected to rise from the 8% of 1950 to at least 21% by 2050 (Department of Economic and Social Affairs, 2008). Currently the proportion of the New Zealand population that is over age 65 sits at just over 13%, and this is projected to increase to 15% within the next five years and to 21% by 2031 (Jackson, 2011, p.3). Jackson (2011, pp.9-10)[3] warns that Statistics New Zealand's projections for average months life expectancy gained each year, even using the low mortality assumptions, may be too conservative. Regardless of whether pensions are contributory, funded or PAYG, there will be emerging tensions:

> The steady increase of older age groups in national populations, both in absolute numbers and in relation to the working-age population, has a direct bearing on the inter-generational and intra-generational equity and solidarity that are the foundations of society. (Department of Economic and Social Affairs, 2008)

While the rest of the OECD is acknowledging the costs directly related to their ageing populations (Chand and Jaeger, 1996; Bongaarts, 2004; McDonald, 2005), New Zealand appears to be focusing more attention on the 'welfare crisis' posed by the 13% of working-age residents currently on welfare benefits (Welfare Working Group, 2011; Ministry of Social Development, 2012).

New Zealand faces a rising burden of retirement pensions, even with high labour force participation rates for those aged over 65,[4] and even after the introduction in 2003 of the New Zealand Superannuation Fund, which partially pre-funds NZS and smoothes the tax burden of the cost of NZS between generations of New Zealanders.[5]

In contributory PAYG schemes, to keep annual budgets in equilibrium as the population ages contribution rates must be driven up, benefit levels reduced, qualification age increased and/or a means test introduced. In New Zealand's case, where eligibility for the age pension is based not on contributions but on a minimal residency test, the same parameters affect fiscal sustainability and perceptions of equity. Cost pressures are also expected to increase in the health sector, including greater demand for long-term care.

Gross expenditure on NZS for 2011/12 is projected to be $9.6 billion. Without allowing for longevity improvements, the

Table 1: MSD clients receiving an overseas pension, by main countries of origin

Country	2004	2010	% increase
Australia	914	7,248	693%
Canada	306	1,152	276%
China	166	494	198%
Fiji	45	115	156%
Germany	87	245	182%
Ireland	91	207	127%
Netherlands	2,400	3,539	47%
Switzerland	82	191	133%
UK	37,754	44,681	18%
USA	98	447	356%

(Source: Ministry of Social Development 2011, pp. 316 - 318)

net cost to the taxpayer, which excludes the long-term care and health costs of increasing numbers of superannuitants, is projected to double between 2005 and 2050 as a proportion of GDP (Bell et al., 2010). In this context, policies around the way in which immigrants and emigrants gain access to NZS are increasingly important in terms of both equity and fiscal sustainability.

As noted, a high proportion of retirees have access to some overseas pension, but the decision to settle and retire in New Zealand is usually made well before retirement age. Between 2002 and 2011, net permanent and long-term migration to New Zealand was positive. In the year ended February 2012, however, there were 83,900 permanent and long-term arrivals, but there was an overall net loss of 4,100 migrants, and the highest net loss ever of 39,100 people to Australia (Statistics New Zealand, 2011).

Factors affecting migrants' decisions include the institutional set-up of the country, the taxation and benefit regime, the physical environment and schooling system; and individuals take account of 'their access to the labour market, relevant net amounts of (household) income to be earned, local costs of living, and the existence of networks of co-nationals or members of their ethnic groups who moved to the host country at an earlier stage' (Munz and Werding, 2005, pp.204-5). Individuals also migrate from low-wage countries to high-wage countries, and although it may appear that wages (net of taxes) are the main driving force behind migration decisions, Wildasin (1999, p.16) notes that differentials in public pension provision between countries are not an insignificant motive.

On the other hand, Munz and Werding (p.205) note that public pensions can entail an 'entrance fee' for potential migrants, and therefore can 'create a barrier for voluntary migration, even where it would be beneficial in terms of an optimal factor of re-allocation'. In the case of migration to New Zealand, the DDP may be considered by some as a fairly steep 'entrance fee' (Dale, St John and Littlewood, 2009, p.8).

The issues are complex, despite differences in pensions policies that on their own appear to make retiring in New Zealand relatively attractive.

Pension portability and reciprocal social security agreements

A social security agreement aims to co-ordinate the social security systems of two countries. It serves to eliminate residence and citizenship barriers to access to social security and ensure that individuals who have divided their working lives between two countries receive appropriate coverage when they retire in their country of choice. New Zealand has nine bilateral social security agreements: with Australia, Canada, Denmark, Greece, Ireland, Jersey and Guernsey, the Netherlands and the UK. The social security agreements vary but allow people to use their residency in New Zealand to qualify for a state pension in the agreement country or to receive up to 100% of NZS (Ministry of Social Development, 2008a). In the 1980s, after migration patterns globally increased and diversified, general portability provisions were introduced that allowed superannuitants to take 50% of their gross NZS with them. The amendments to the New Zealand Superannuation and Retirement Income Act (NZSRI Act) 2010 then extended 100% (gross) NZS portability on a pro rata basis to non-agreement countries.

The 2010 amendments largely addressed the potential inequities for pensioners who leave New Zealand after qualifying for NZS. However, the amendments did not address the anomalies and inequities for those who retire in New Zealand with an entitlement to an overseas pension. They also introduced some further anomalies: for example, by allowing gross NZS to be taken to other countries regardless of whether tax is deducted in those countries as it is for superannuitants in New Zealand.[6]

Section 70 and the direct deduction policy

Even if the residency requirement is met, the chief executive of New Zealand's Ministry of Social Development (MSD) may apply section 70 of the Social Security Act 1964, the DDP, if a resident receives a 'state pension' from another country that is analogous to NZS. 'Analogous' is clarified as meaning:

> the benefit, pension or periodical allowance, or any part of it, is in the nature of a payment which, in the opinion of the [chief executive], forms part of a programme providing benefits, pensions, or periodical allowances for any of the contingencies for which benefits, pensions or allowances may be paid under ... the New Zealand Superannuation and Retirement Income Act 2001 ... which is administered by or on behalf of the Government of the country from which the benefit, pension or periodical allowance is received ... . (Social Security Act, 1964, section 70)

Table 1 shows the growth in the numbers of recipients of NZS who also have an overseas pension by the major countries of origin, some of whom may be returning New Zealand citizens. While some of these overseas pensions may not be deductible and there may be some double counting, most of the total

of 59,300 pensioners are affected by the DDP (Ministry of Social Development, 2011).

The purpose of section 70 is to eliminate the possibility of a person receiving two state old age or other pensions, known colloquially as 'double-dipping'. This policy is based on the reasonable belief that an immigrant to New Zealand should not be advantaged over a New Zealand resident who has spent their entire life in New Zealand. An individual retiring in New Zealand with large retirement savings in a state fund in another country paid out as a pension may receive no NZS, despite having spent long periods of their working life in New Zealand. At the same time, a further consequence of the 2010 amendments to the NZSRI Act is that immigrants subject to section 70 who choose to stay in New Zealand can be treated less generously for NZS than if they decide to leave (Dale, St John and Littlewood, 2010; Dale and St John, 2011; Smith, 2011).[7]

Complexity and inequity arise with interpretation and application of section 70, and with definitions of 'state pension'. Many superannuitants argue that part or all of their overseas pension has arisen from their own and their employers' contributions and is akin to a supplementary pension scheme outside the basic state pension, analogous to KiwiSaver,[8] for example, rather than to NZS. If people feel they have not been treated fairly they can make a complaint to the chief executive of the MSD, who can order a hearing by the Social Security Appeal Authority. If not satisfied with the outcome, the complainant may then take their issue to the Human Rights Commission. If the Human Rights Commission agrees there may be valid grounds for a complaint, an opinion may be sought from Crown Law.[9]

Unfortunately, those difficulties and apparent injustices resulting in the many complaints brought to the Social Security Appeal Authority and the Human Rights Commission in recent years have produced little resolution for complainants. People have subsequently taken their complaints on to the retirement commissioner, the RPRC, members of Parliament and the media.

While the ministry's response has been that they apply the law correctly, it is noteworthy that their frequent reviews of New Zealand's pension system and its relationship to those of other countries (Ministry of Social Development, 2004, 2005, 2008a, 2008b) have produced many recommendations, including the following (2008a, pp.13-21):

- remove foreign state pensions built up by voluntary contributions from the scope of section 70 of the Social Security Act;
- discontinue the policy of deducting a person's overseas pension from their partner's NZS entitlement;
- clarify the wording of section 70 so it is in plain English, and set out each country's pension regulations.

In particular, deducting foreign state pensions built up by voluntary contributions, and deducting a person's overseas pension from their partner's NZS entitlement, could be considered to be human rights infringements.

What overseas pensions should count for the DDP?

> Accurate presentation of pension systems of an economy and the comparison of systems across economies are crucial parts of policy analysis. Yet such presentations and comparisons are far from easy. They require a well-thought-out methodology, access to detailed information on national systems, verification of information and results by a network of pension experts to provide feedback to improve the quality and applicability of the research over time. (OECD, 2009, p.3)

Under the current legislation, behind closed doors and with no requirement that the basis of the decision be made public, the chief executive of the MSD determines which overseas pensions are analogous to NZS. Although the decisions are made with legal guidance, remarkably they appear to override any evidence that the particular pension comprises savings additional to the basic state pension. The MSD, in the 2008 review as quoted above, acknowledges that the DDP is applied to foreign state pensions built up by voluntary contributions.

It appears that, in part, the DDP policy remains in place as a result of a lack of appreciation of the structure of overseas pensions. For example, the MSD review (2008) states: 'NZS has a simple period of residence and presence requirement and an "all or nothing" entitlement'. It then states that, by contrast, '[m]ost other countries have pension systems in which a retiree's level of entitlement is based on social security contributions made by that person over the period of their working life' (Ministry of Social Development, 2008a, p.3). This is an oversimplification. Most other countries have a more complex pensions system than NZS, and the boundaries between social insurance and private, occupational pensions are often blurred. Many countries have a basic pension which may be means-tested, and an additional mandatory, contributory employment-based pension, which may or may not be government administered, which will provide an income to the retiree based on their and their employer's contributions. Whether they are voluntary or mandatory, most overseas occupational retirement saving schemes also benefit from state subsidies, usually through the tax system (Rashbrooke, 2009). These two-tier systems are equivalent to NZS plus KiwiSaver, suggesting that that is how they need to be treated under section 70.

The chief executive of the MSD may decide that a particular overseas pension should be taken into account in the calculation of NZS, and that the DDP should apply, if, as stated in section 70 of the Social Security Act, the pension is 'administered by or on behalf of the Government of the country from which the benefit, pension or periodical allowance is received'. Importantly, as Smith (2009, p.16) emphasises:

> under the [DDP], the total amount of a pension paid to a claimant will be determined by New Zealand only. An individual retiring in New Zealand with a generous public pension entitlement from another country could possibly receive no [NZS] thus relieving New Zealand totally from the cost of paying pensions to such individuals despite them having spent

> part of their working lives in New Zealand. On the other hand there is a case for the [DDP] on grounds of preventing a 'windfall' where a person receives two public pensions because they split their working life between two countries and qualified for a public pension in both of them without invoking the totalisation provisions of a [social security agreement].

Inconsistencies in what pensions are considered to be of like nature to NZS have been identified during the RPRC's research. The MSD appears to make its decisions based on which entity is 'providing benefits, pensions, or periodical allowances' (Social Security Act, section 70). However, the 'nature of [the] payment' (another key expression in section 70), or the underlying philosophy of the benefit concerned, should be more material than the identity of the provider or administrator.

The test of the 'state as the pension provider' has led to a number of inconsistencies in the application of section 70. For example, the Tier 2 Canada Pension Plan is included in the DDP, while the equivalent compulsory Chilean arrangement, delivered by private providers, is not. Another example: the UK's state-provided 'state second pension' (S2P)[10] is included in the DPP, while the alternative, equivalent, 'contracted-out' entitlement is not. Yet the alternative scheme is required by UK law to cover the same contingencies that the S2P covers; and the sponsoring employer and employees receive reductions in their National Insurance contributions to pay for the contracted-out benefits.

Another acknowledged difficulty is that some countries' public pensions perform the dual functions of providing retirees with an acceptable standard of living, and providing benefits directly related to the person's period of employment and remuneration (in New Zealand, 'workplace-related provision'). Such a 'hybrid' scheme operates, for example, in Greece. Clearly, a single rule cannot be devised to cover all situations.

Is the DDP justified?

In many cases where the DDP is applied its use is appropriate, although the affected retirees may disagree. The provision of two full basic state pensions where each is designed to protect a basic standard of living would be iniquitous. However, it often comes as a significant shock to a retiree to find that their voluntary retirement savings, set aside out of earned income to improve their quality of life in old age, is deducted by the MSD against their NZS entitlement.[11] Such retirement savings, if set aside from New Zealand-based earnings equivalent to, for example, KiwiSaver or some other occupational superannuation scheme, would not result in a reduction of NZS.

If one partner's NZS is fully reduced to zero because the overseas public pension amount is greater than the rate of NZS, the excess amount is then applied to directly reducing the other partner's NZS.

Importantly, as stated in a 2004 MSD report to the Minister of Finance:

> New Zealand's policies on payment of NZS overseas and of overseas pensions into New Zealand are out of date and inequitable. We are significantly out of step with the 'seamless' provision of social security adopted in Europe and many countries overseas, which impacts negatively on other New Zealand Government priorities concerning positive aging and immigration …The direct deduction policy has remained largely unchanged since its inception in 1938. New Zealand's migration patterns have increased and diversified significantly since then, making the dollar-for-dollar deduction of an overseas pension from a person's New Zealand pension entitlement an inexact and often unfair method of sharing social security costs between countries. Because these policies have been developed in a largely ad hoc manner, they have become inequitable with one another and, in some cases, have diverged from their original policy intent. (Ministry of Social Development, 2004, p.10)

A 2005 report to the Minister of Finance was even more critical:

> There are approximately 51,000 New Zealanders who receive overseas pensions that are directly deducted from NZS. The majority of these people have been in New Zealand for more than 30 years and are living on modest incomes. Seven percent of these people were born in New Zealand. Currently the direct deduction policy produces annual savings for the government of $174 million … The direct deduction and payment overseas rules are an increasing source of dissatisfaction amongst superannuitants. This is partly because of increasing international mobility, which means more people are affected by these rules … Lastly, the policy is difficult to administer because it is not always clear which pensions should be deducted. (Ministry of Social Development, 2005, pp.1-2)

It is cause for concern that some cases reveal a lack of clarity, consistency and accuracy in the way the DDP is applied to overseas contributory pensions. It may be perceived that not only is there an absence of fairness and transparency, there is a violation of the human right to be treated in a non-discriminatory way.

Family status discrimination

One particularly egregious aspect of the current DDP practice is abatement of a person's NZS by reason of their partner's overseas pension. A spouse may lose some or all of their NZS if the partner's overseas pension income exceeds their NZS entitlement. For each of a married couple living in New Zealand with no overseas pension deemed analogous to NZS, the entitlement to NZS is fixed and paid without regard to the other spouse's

NZS entitlements or income.[12] However, if either spouse is entitled to an overseas pension that is deemed to be subject to the DDP, NZS changes from an individual pension to one that is calculated for the couple. As the Retirement Commission's 2010 review stated:

> If one partner's NZS is fully reduced to zero because the overseas public pension amount is greater than the rate of NZS, the excess amount is then applied to directly reducing the other partner's NZS. In some cases it can mean that a New Zealand citizen who has lived and worked all their lives in this country receives no NZS because their partner receives a public pension from overseas. This is an inconsistent piece of policy that goes against the principle of universal individual entitlement and needs to be changed. (Retirement Commission, 2010, p.79)

The official support for section 70 is sometimes stated as a concern that if there is a concession for the current position with regard to those who are entitled to NZS, other 'beneficiaries' may also claim similar treatment in respect of other (non-age pension) benefits. This concern seems unjustified because NZS for those aged over 65, although it is described as a *benefit* in section 3 of the Social Security Act, is not a welfare benefit (Ministry of Social Development, 2011); it is a universal pension, granted as an *individual* entitlement under separate legislation and without regard to the pensioner's own 'other income' or the spouse's income. There is no logic in denying NZS to someone who happens to marry the 'wrong' person when, if they were not married, or were married to someone else, they would receive the full amount. Yet, '[i]n some situations a person can lose complete entitlement to NZS in their own right as a result of their partner's personal overseas state pension offsetting the entitlement of both of them' (Retirement Commission, 2010, p.130).

This practice would appear to meet the stringent tests applied to establish discrimination under the Human Rights Act,[13] and is therefore an indefensible inequity. Fixing this inequity would require an amendment to section 70 of the Social Security Act, and there would be some cost involved; however, MSD's 2009 data showed only 124 pensioners affected, and retrospective payments need not be incurred. While the numbers are likely to rise, the annual cost of fixing this anomaly may be of the order of $2-3 million a year,[14] a small price to pay for fairness, given that the total budgeted cost of NZS in 2011/12 is $9.6 billion (Treasury, 2011).

Improved information

Personal stories related by superannuitants about the treatment of their overseas pensions suggest that the ministry applies the current rules inconsistently. Also, unfortunately, it seems the local MSD offices provide inconsistent and misleading advice on entitlements. The inconsistency is explained in part by the complexity of pensions and social security policy and legislation. However, the emotional and financial cost for all parties of many unsatisfactory reviews and appeals could have been avoided, and the interests of equity, transparency and consistency could be served, if the rules and review decisions were published in an accessible format and by country of pension origin. Also, the reasons behind the classification decisions for each case could be published, and be subject to review and appeal by interested individuals, not necessarily just affected pensioners, as is presently the case. At the end of that process, the review and appeal decision should apply to all affected individuals, even-handedly and openly.

Australians who emigrate to New Zealand at or approaching the state pension age are potentially more favourably treated than New Zealanders who emigrate to Australia in similar circumstances.

It would also be helpful if individuals could apply for a decision, with the appropriate review/appeal processes, before reaching the entitlement age for NZS. This would allow them to make appropriate financial planning decisions for retirement.[15]

The detailed application of the DDP to pensions from countries covered by a social security agreement needs to be easily accessible. Once the features of what constitutes a pension analogous to NZS have been identified, such pensions where the DDP would apply, and their country of origin, could be published by the MSD in all relevant brochures and websites. Until very recently, inaccurate or misleading written material was available to immigrants. For example, the ministry's *Departures and Arrivals* brochures suggested that an immigrant 'may be entitled to two pensions'. The erroneous impression was that the overseas pension did not affect the immigrant's future NZS entitlements. Legally there may be two pensions, but, as the MSD's website explains, 'Generally, you will get paid the same amount as those who have lived all their lives in New Zealand. This amount may be made up of a combination of your New Zealand and overseas benefit or pension payments.'[16]

The MSD is in the process of updating the brochure for each country, and as far as possible is attempting to specifically address each pension to which an immigrant might be entitled, and how that pension might affect the calculation of NZS under the DDP, with illustrative examples. These improved brochures are now available, before immigrants select New Zealand as their destination.

The main countries currently affected by New Zealand's overseas pensions policy (shown in Table 1) are the UK, Australia, the Netherlands, Canada, the United States and China. The ministry could proceed with the suggested reforms on a country-by-country basis, prioritised by the numbers of affected people. As the OECD (2009) notes, descriptions and comparisons within and between pensions systems are not easy,

and are regularly subject to major and minor change. Regular updating of such information is necessary.

The issues noted above were also raised in the *Review of Retirement Income Policy* (Retirement Commission, 2010). These issues affect pensions from all countries, not just from those nine countries with which New Zealand has social security agreements. Unambiguous information needs to be available in all countries from which New Zealand expects to attract migrants.

The special case of Australia

The relationship with Australia requires special attention for both the short and the long term. For example, Australians who emigrate to New Zealand at or approaching the state pension age are potentially more favourably treated than New Zealanders who emigrate to Australia in similar circumstances.[17] As Table 1 shows, the numbers of beneficiaries from Australia affected by section 70 have grown faster than any other group.[18] Australian retirees in New Zealand may enjoy a clear advantage, given that, unlike the universal NZS, the Australian age pension is means-tested, and the Australian employment-based pension can be cashed up and brought to New Zealand without being affected by the DDP. The richest Australian may immigrate to New Zealand, bringing their employment-based savings, and get the full NZS.

Currently there are 17,895 people entitled to an NZS payment in Australia, including 550 clients who get a nil NZS payment because the agreement requires that they are paid the lesser of their entitlement to NZS or their entitlement to the Australian means-tested age pension (Ministry of Social Development, 2011, p.315). While there are presently only 7,240 New Zealand superannuitants with an Australian pension in New Zealand, there are more than 500,000 former New Zealand residents under retirement age now living in Australia (ibid., p.309). In the future, with an increasing state pension age in Australia (rising from 65 to 67 between 2017 and 2023),[19] a harsher income test, and because 'totalisation' can be applied under the social security agreement, New Zealand may become a relatively attractive place for Australians to retire to. The wealthier they are, the less the Australian government pays to offset NZS. This may prove costly and inequitable for the working-age population of New Zealand.[20]

Other costly unanticipated consequences of current policy

An emotional cost, rather than a monetary cost, is implicit in the review and appeal rights expressed in sections 10 and 12 of the Social Security Act. Tracing the relevant case law, and reading the records provided by appellants, shows that reviews and appeals have seldom if ever resulted in the chief executive's decision being overturned to the benefit of the pensioner.

In contrast to New Zealand's 'all-or-nothing' test, nearly all other countries calculate pensions based on periods of residence and/or periods of employment and/or contributions (or those of a spouse) in that country.

While the modest qualification requirements make NZS an easy pension to understand and administer, there are significant difficulties when co-ordinating it with entitlements arising from overseas pension arrangements. Issues already noted are: determining which overseas pensions are 'analogous' and should therefore be offset under the DDP; requested changes create the potential problem of a fiscal 'black hole' as a consequence of adverse selection; the absence of any requirement for contribution to the tax base; and the modest residency-based qualification requirements for a basic universal NZS, may attract retirees from countries overseas where there is not such an accessible and generous recognition of the non-financial contributions and future needs of the aged.

The potentially large fiscal cost in pensions and health care created by this attractive and accessible option for immigrants is exacerbated by the 2010 NZSRI Act amendments, increasing the ease with which emigrants can leave, taking NZS, on a *pro rata* basis, with them to their overseas retirement destination.

Possible solutions

New Zealand's current policy settings and the absence of clear principles have resulted in insufficient weight being given to the right to achieve a degree of income replacement through voluntary supplementation via state-administered (or mandated) arrangements in other countries (Smith, 2009). As already noted, many of the inequities in the treatment of overseas pensions can be resolved by administrative changes.

Section 70 applies to all benefits administered by the MSD, including NZS. Having a single legislative provision that covers all benefits provided by the MSD, and co-ordinating retirement income arrangements of two or more countries, multiplies that complexity. It requires that the MSD has a wide discretion. The 2001 NZSRI Act could be amended to include an equivalent to section 70 designed specifically for NZS.[21] With a separate decision-making power with respect to NZS, the MSD could make decisions on retirement income benefits without needing to be concerned with potential precedents that might affect other welfare benefits. With that separate power, the human rights issues regarding spousal pensions could be resolved.

In contrast to New Zealand's 'all-or-nothing' test, nearly all other countries calculate pensions based on periods of residence and/or periods of employment and/or contributions (or those of a spouse) in that country.[22] Shorter residence or contribution periods mean a smaller state pension. This system obviates the need for a DDP or an equivalent 'harmonisation' provision. To the extent that overseas pensions are portable, each country bears

the pension costs for periods of residence/employment in that country.

For those who emigrate from New Zealand to a non-social security agreement country, the 2010 amendment apportions gross NZS based on the 1/540 rule.[23] The RPRC considered such a reform principle for those who immigrate to New Zealand (Littlewood and Dale, 2010). Under this reform, if the applicant for NZS has a pension from overseas that is analogous to NZS, their entitlement would be 1/540th of NZS for each month of residence in New Zealand between the ages of 20 and 65. Any entitlement to an overseas pension would not be affected; the MSD would not need to know the amount or other terms of the overseas pension, but usual income tax rules would apply to the total income received. For immigrants, this formula would replace the current ten-year residency requirement, and would apportion entitlement to NZS based on the 540-month system that now applies to emigrants from New Zealand after age 65 under the 2010 amendment.

Each country would pay the age pension accrued during the period the person lived/worked in that country. Combining those entitlements would give a full, 'blended' pension without any country subsidising another. Such blending would require changes to current policy and legislation applying to NZS. It also requires every country's pension scheme to be understood and assessed by MSD, with transparent decisions as to what basic pensions would trigger this assessment.

Such changes to NZS would, however, remove the simple, clear, universal basis of NZS and add to the complexity and uncertainty of entitlements, and ensure that at least some immigrants would have insufficient to live on without other welfare assistance. Women are potentially adversely affected if they have only a small or no overseas pension, reflecting limited work experience.

A possible way forward

Rather than tinker with administrative rules in a complex reform to apportion NZS as outlined above, a possible solution may lie in reform of the residency requirement for NZS, and abandoning of the DDP.

The residency requirement for eligibility for NZS, for example, could be increased from the current 10(5) rule[24] to a single test of, say, 25 years' residence between ages 20 and 65. Unlike the current arrangement, there would be no possibility of meeting the requirement using residency after age 65. Where there is a social security agreement, totalisation of years of residence would be possible, but only one pension would then be payable. For example, any entitlement to the United Kingdom's basic state pension may be forgone if those years of residence in the UK were used to qualify for NZS. Where there is no social security agreement, or the 25 years of residence is satisfied without totalisation, any overseas pension would not be taken into account in the calculation of NZS (except as taxable income).

If NZS required at least 25 years' residence between the ages of 20 and 65, it may then be far less important to identify the kinds of overseas pensions that are brought into New Zealand.

If NZS required at least 25 years' residence between the ages of 20 and 65,[25] it may then be far less important to identify the kinds of overseas pensions that are brought into New Zealand. Since 85% of the 51,618 NZS recipients caught by the DDP have lived in New Zealand for more than 30 years (Ministry of Social Development, 2005), a 25-year residency record could largely eliminate the perceived inequities related to the DDP. This policy change would help these retirees, the bulk of whom have modest resources only.

To prevent hardship, and retain the human rights standards for people who do not meet residency of 25 years for NZS, an emergency or other welfare benefit would continue to be available,[26] and any overseas pension would be taken into account in the household income test. That would reduce the income-tested benefit, but not by as much as the existing dollar-for-dollar DDP arrangement. The existing married rate and single rate for NZS would be retained, but every person's entitlement would be individual. This would prevent the current situation where a spouse has their pension reduced when their partner's overseas pension exceeds the NZS married-person rate.

With regard to the trans-Tasman issues, the existing social security agreement with Australia would need to be renegotiated. For example, if a New Zealander retiring to Australia had fulfilled the 25 years in New Zealand, they might get the full *pro rata* NZS with a top-up Australian age pension if they qualify. An Australian retiring to New Zealand would also need to meet the 25-year requirement to receive the full NZS (without totalisation). If totalisation is used to meet the 25 years they should not receive NZS at a greater rate than their entitlement to the Australian means-tested age pension. Under the stricter residency requirement, those qualifying would be able to supplement their NZS with additional retirement income derived domestically, like KiwiSaver, or from state and private sources from overseas.

There are some issues that would need to be resolved that are not addressed in this article, and in any new policy or policy change there are issues at the margin that need to be addressed to ensure new inequities are not created. Some principles would need to be clearly stated to determine what would happen: for example, if someone had resided in New Zealand for 24 years and three months prior to reaching age 65.

The transition from the pension policies that prevail now to the proposed system would require careful consideration. Backdating would not be possible: the new system would need to begin with a 'clean slate'.

In general, this option for reform improves equity and transparency and acknowledges the complexity

of state involvement. Vertical equity considerations may require reform of the taxation of other income and NZS, so that local and overseas retirees with higher incomes, including incomes from lump sum superannuation benefits, pay appropriate taxation. There would be issues, too, around whether the NZS for emigrants would be gross or net in non-agreement countries.

Conclusion

In 2012 section 70 remains in place and intact. Despite the possible human rights implications, the reforms proposed by MSD itself, the Human Rights Commission, the Retirement Commission and the RPRC have not been adopted. Yet few of the immediate recommendations require legislative amendments, or entail significant costs.

This article proposes a particular approach to perceived problems with direct deduction and residency policies. More development of the proposed policy changes would reveal the impact these changes would have on migration, poverty rates, who would gain and who would lose, and how much the new policies would cost.

The recommended administrative changes could be implemented promptly, as they involve modest cost while providing great improvements in human rights and in the equity of New Zealand's overseas pensions policy. This includes, as a priority, removing the marital discrimination. The proposals for changes to the arrangements with Australia and the longer-view options require a research-informed and open discussion with all affected parties, including potentially affected pensioners. Once decisions have been made on the short-term changes and the longer-term reforms contemplated, social security agreements would need to be reviewed, and perhaps renegotiated.

The starting point for the necessary debate is a discussion about the residency requirement. Raising this to a meaningful level, from 10 years currently to 25 years, will help address the fiscal risk posed and the intergenerational burden imposed by an age pension that, in international comparisons, is both generous and accessible.

1 The DDP was originally established by the 1938 Social Security Act.
2 See the appendix for a list of RPRC publications and forums.
3 'We might also ask whether the projected numbers of those aged 65+ years is likely to be accurate. The data … are based on the medium case projections, which assume an increase in life expectancy at birth by 2061 of 7.6 years for males and 6.5 years for females. Several sets of 10 projections in fact exist, three based on higher life expectancy assumptions (Series 7, 8, and 9). However it would appear that all might be a little conservative' (Jackson, 2011, pp.9-10).
4 The labour force participation rate for those aged 65+ rose to 19.5% between December 2010 and December 2011 (Statistics New Zealand, 2012, p.6), although it is likely that at least some of that significant increase was a response to the global financial crisis, and the diminishing of their assets.
5 See http://www.nzsuperfund.co.nz/.
6 Some American states, and some countries, including Chile, do not impose income tax on foreign pensions (http://www.spencerglobal.com/chile-tax-law/35-chile-taxes/115-income-tax-in-chile.html).
7 It is also noted that social security agreements that enable immigrants without sufficient residence for NZS to use residence in the country from which they have emigrated to qualify ('totalisation') may entail other anomalies.
8 KiwiSaver, launched in 2007, is a privately-provided, auto-enrolment, opt-out retirement saving scheme, with modest minimum employer and employee contributions. If an employee becomes a member, the employer's contribution up to 2% (3% from 1 April 2013) is compulsory.
9 Since 2002 the government can also be challenged under part 1a of the Human Rights Act when people feel they have been discriminated against in public policy.
10 Previously called the 'state earnings related pension scheme' or SERPS.
11 It is noted that in January 2012 the Ministry of Social Development deferred the deduction of pension amounts derived from voluntary contributions (personal communication from older people's and international policy unit, MSD).
12 The exception is where a 'young' spouse of a superannuitant applies for NZS before reaching age 65.
13 See http://www.hrc.co.nz/home/hrc/resources/resources.php#case for Human Rights Commission complaints information, and fact sheets covering discriminatory laws: discrimination by the public sector and the private sector.
14 This probable overestimate, based on 2009 data, assumes that full entitlement to NZS for the non-pension spouse is to be restored (http://www.treasury.govt.nz/budget/2010/ise/v10/105.htm).
15 Access to detailed information on overseas pensions is now available in the OECD's Pensions at a Glance series.
16 See http://www.workandincome.govt.nz/individuals/travelling-or-migrating/getting-an-overseas-benefit-or-pension-in-nz.html#Howmuchcanyouget2.
17 See http://www.fahcsia.gov.au/sa/international/ssa/currentagreements/Pages/nz-nz.aspx.
18 In part this fast growth reflects changes made in 2002 to the way the governments of the two countries share the pension costs.
19 The state pension age for the majority of OECD member countries is 65 years, with the exception of France and Turkey with a pension age of 60. Iceland, Norway and the US are phasing in an age of 67, and in 2009 the UK and Australia announced their intention to increase the age of state pension entitlement to 67. See http://www.centrelink.gov.au/internet/internet.nsf/individuals/ssp_age_pension.htm.
20 These issues are outlined in Smith (2011), St John and Dale (2010) and Littlewood and Dale (2010).
21 In some of the benefit 'machinery' provisions, the NZSRI Act is already cross-referenced (e.g. section 71); in other cases where NZS itself may be at issue (e.g. section 71A, section 76), the reference is to the NZS benefit; finally, in other cases there is no specific reference to NZS at all (e.g. section 70A and 72), suggesting that there are no insurmountable barriers to drafting a modernised replacement in the NZSRI Act.
22 Note that Australia, Mauritius, Samoa, Nepal, Lesotho, Namibia, Botswana, Bolivia, Brunei, Kosovo and Mexico City all provide equivalents to NZS, and similar entitlement provisions.
23 Payment will be based on the number of months of residence in New Zealand between the ages of 20 and 65. See: http://www.workandincome.govt.nz/individuals/travelling-or-migrating/pension-going-overseas/residing-in-any-other-country.html#Howmuchcanyouget2.
24 Under the Old Age Pensions Act 1898 the residency requirement was 25 years. By 1937 this had been reduced to 10 years, probably to encourage immigration (Ashton and St John, 1988). Under the 1938 Social Security Act the residency requirement was increased to 20 years, until in 1977, with the introduction of National Superannuation, it was reduced again 10 years (Dale, St John and Littlewood, 2009, p. 11) .
25 Perhaps the requirement would include 10 years from the age of 50 years, meaning New Zealand would be likely to benefit from some mature and skilled contribution from immigrants.
26 In 2010, for example, 4,832 people aged 65+ were receiving an emergency benefit. When they have resided in New Zealand for the required ten years, the majority of these people would transfer to NZS (Ministry of Social Development, 2011, p.117).

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Appendix: Publications and forums toward addressing New Zealand's overseas pensions policy inequities and anomalies

The following publications from the Retirement Policy and Research Centre, University of Auckland, are available on its website, www.rprc.auckland.ac.nz:

Lazonby, A. (2007) *Passing the Buck: the impact of the direct deduction policy on recipients of overseas pensions in New Zealand*

Dale, M.C., A. Lazonby, S. St John and M. Littlewood (2009) *Literature Review: New Zealand Superannuation and overseas pensions,* working paper 2009-1, prepared for the Human Rights Commission

Dale, M.C., S. St John and M. Littlewood (2009) *New Zealand Superannuation and Overseas Pensions: issues and principles for reform,* working paper 2009-2

Dale, M.C., S. St John and M. Littlewood (2010) *New Zealand Superannuation and overseas pensions: reform options 1 and 2*

St John, S. and M.C. Dale (2010) Option 1: *reforming New Zealand Superannuation for a mobile trans-Tasman population*, working paper 2010-2

Littlewood, M. and M.C. Dale (2010) *New Zealand Superannuation and Overseas Pensions: reform option 2*, Working Paper 2010-3

Dale, M.C., S. St John, M. Littlewood and A. Smith (2011) *Overseas Pensions Policy: the next steps,* Working Paper 2011-1

In 2010 two Overseas Pensions Forums were held at the University of Auckland, in conjunction with the Human Rights Commission and the Centre for Accounting, Governance and Taxation Research, Victoria University of Wellington: on 1 February and 25 August. The proceedings of these forums are available on the RPRC website.

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Jackson, N. (2011) *The Demographic Forces Shaping New Zealand's Future: what population ageing (really) means*, Hamilton: National Institute of Demographic and Economic Analysis, University of Waikato

Littlewood, M. and M.C. Dale (2010) *Reform Option 2: New Zealand Superannuation and overseas pensions,* Working Paper 2010-3, Auckland: Retirement Policy and Research Centre, University of Auckland.

McDonald, I. (2005) 'Intergenerational equity', *Agenda*, 12 (1), pp.3-18

Ministry of Social Development (2004) *Review of New Zealand Superannuation Portability: report to Minister of Finance*, Wellington: Ministry of Social Development

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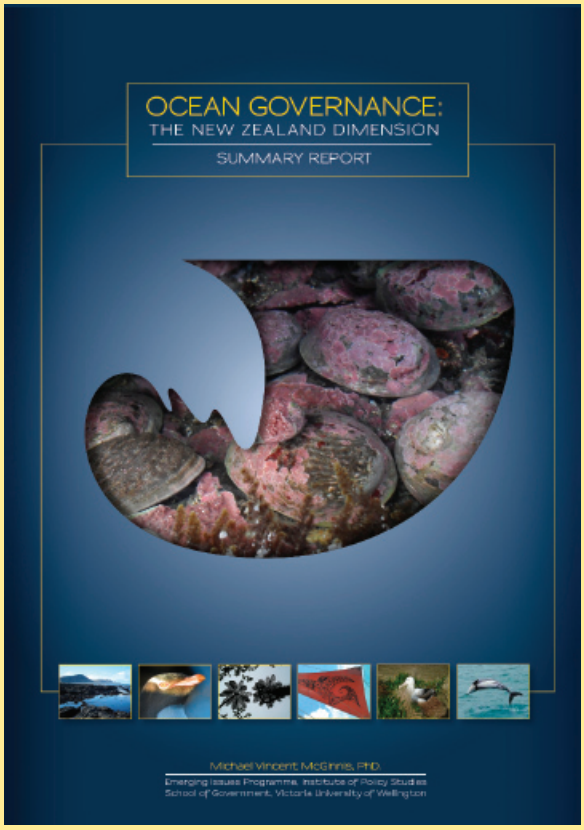

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