

# POLICY Quarterly

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# Restoring What?

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## Editorial Note

This issue of *Policy Quarterly* commences with two articles on the critical and enduring quest for a just society – 'just' in its varied and manifold dimensions.

The lead article is the inaugural lecture by Chris Marshall – the first Professor of Restorative Justice in the School of Government – on the question: 'Restoring What? The practice, promise and perils of restorative justice in New Zealand'. Marshall's answer engages with the approach of the American judge, Ross London, in the recent book *Crime, Punishment, and Restorative Justice*. According to London, the overriding goal of the criminal justice system – and hence of all sentencing and punishment – should be to restore trust in the offender and in society. This approach rests on a fundamental proposition – that the principal harm of crime is the loss of trust. As Marshall argues, "This loss is only so devastating a problem because we are irreducibly social creatures, who only ever exist in an intricate network of relationships. The malice of intentional wrongdoing serves to violate the trust on which these relationships depend." Viewed from this perspective, the policy challenge is to devise a criminal justice system that helps to heal broken relationships and re-establish trust. But how? The answer, Marshall contends, resides in the principles, priorities and practices of restorative justice. These include, for example, encounters between victims and offenders, truth-telling, accountability, confession, contrition. Only through such methods, it is argued, can genuine healing, forgiveness, and reintegration be promoted. Only in this way can real trust be restored.

Marshall recognises, of course, that incorporating the principles of restorative justice into the criminal justice system is neither simple nor without risk. As he argues, "Peril exists on all sides. Restorative justice is imperilled by the possibility of institutional capture and control, and by the dilution of its distinctive values. The justice system is in peril of having its adherence to procedural fairness and equality of outcome compromised by idiosyncratic and potentially anarchic restorative justice processes. Both threats are real, though they may often be exaggerated." Nevertheless, he concludes with the hope "that, in this wonderful country of ours, ever conscious of the perils entailed we may continue to work together – as practitioners, policy makers, politicians and ordinary citizens – to move the vision of restorative justice, and all that it promises, from the margins of our consciousness to the mainstream of how we live together in society, in faith, hope and charity."

Professor Marshall now has the daunting challenge, but also the wonderful opportunity, of using his wealth of expertise, scholarship and experience to help policy-makers extend and improve the practice of restorative justice, both within this country and beyond. Such practices are relevant, of course, not only in the criminal justice system, but also across many other important areas of human endeavour such as education, health care, the social services, and defence and international relations. It has been encouraging in recent years to witness the strong interest in many government departments and agencies in the idea of restorative justice. Hopefully, this will provide a firm foundation of support on which Professor Marshall can build.

While Marshall's article focuses on the concept of restorative justice, the next piece, by David Bromell, is devoted to a related and equally important idea, namely ensuring that everyone in society has 'a fair go'. With his usual analytical flair and sharp insight, Bromell

explores what 'a fair go' means in practice and how it might be achieved. Given the current public concern in New Zealand about matters of inequality and poverty, his analysis is highly pertinent and deserves careful reflection.

The remainder of this issue of *Policy Quarterly* examines three very different sets of issues. First, Patrick Nolan explores New Zealand's poor productivity record and what to do about it. In particular, he summarizes the nature and initial findings of the Forward Looking Agenda of Research (FLARE). The main purpose of FLARE is to produce an agenda to aid in the coordination and collaboration of research work on understanding and improving New Zealand's productivity performance.

Second, aspects of public management are explored by three contributors. Liz Brown examines the findings of the National Integrity System Assessment conducted by Transparency International New Zealand during 2013. Her argument, in short, is that "serious and urgent action" is needed to protect the integrity of our governmental and non-governmental institutions, systems and processes; there is no room for complacency.

Next, and closely related to the theme of integrity, Michael Macaulay considers the Open Government Partnership (OGP) – established in 2011 and comprising 63 nations – to which New Zealand signed up in late 2013. The OGP has two dimensions. At the national level, it involves a partnership between governments and civil society organisations to effect reforms in various areas. Globally, it provides a platform for nations to share good ideas and practice, and collaborate in areas of transparency, integrity and public safety. Macaulay crisply summarizes the history, goals and targets of the OGP and explores how New Zealand might meet its obligations under the partnership.

The third piece with a public management focus is by Al Morrison, a Deputy Commissioner within the State Services Commission. His article briefly reviews the efforts of various governments over the past three decades to enhance the performance of New Zealand's public sector, before turning to the recent policy initiatives under the Better Public Services reform programme. These initiatives include measures to enhance inter-agency collaboration, strengthen the quality leadership and improve the quality of services and the stewardship of resources – all worthy goals, but will the reforms deliver?

The next set of three articles focus on different aspects of environmental management: Adrian Macey outlines a strategy for enhancing New Zealand's efforts to mitigate climate change; Jessika Luth Richter and Lizzie Chambers discuss the development and performance of New Zealand's Emissions Trading Scheme, drawing in particular on the results of a survey conducted in April 2013 of stakeholders' perceptions of the scheme; and Jim Sinner and Natasha Berkett explore the potential for collaborative planning in the management of freshwater resources, especially in New Zealand.

Lastly, John Martin pays a warm tribute to a talented, dedicated and far-sighted New Zealander, Ken Piddington. Ken made a huge contribution to public life over many decades, including during his later years as a Senior Associate of the former Institute of Policy Studies. He will be greatly missed.

Jonathan Boston

Chris Marshall

# RESTORING WHAT?

## The practice, promise and perils of RESTORATIVE JUSTICE in New Zealand

### Introduction

In the opening pages of his recent book *Crime, Punishment, and Restorative Justice*, American author Ross London tells of what prompted him to embark on the journey of discovery that led to the writing of the book.<sup>1</sup> After more than 25 years of professional involvement in the criminal justice system as an attorney, a public defender and a municipal judge, London found himself asking the question: ‘Is this the best we can do?’

The conventional justice system, he knew, has its merits. Evolving over centuries, it has proved reasonably effective in keeping crime under tolerable levels of control, while at the same time giving place to an ever-expanding body of basic human rights. Yet, reflecting on personal experience London was left, even on his better days, with a hollow feeling inside, a feeling that the system was *not* actually achieving much good at all.

Despite the efforts of many brilliant minds and the expenditure of vast sums, we have managed to create a criminal justice system that transforms innumerable personal misfortunes into yet other calamities. Victims, who have suffered the trauma of crime, enter the portals of this system with high expectations of justice, only to find themselves wandering its halls feeling bewildered, unfulfilled, and used. For those accused of a crime,

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Chris Marshall is the inaugural Professor of Restorative Justice in the School of Government at Victoria University of Wellington. Professor Marshall has published widely in the areas of New Testament studies, Christian ethics and restorative justice.

entry into the system portends the beginning of a personal nightmare of dehumanization, ruinous financial losses, and unending suspicion ... As a criminal justice professional, I came in contact with hundreds of human beings caught up in this labyrinth. Time and again, I saw the same look of despair on those who emerged from the process, embittered, exhausted, and defeated. (London, 2011, p.1)

Pondering this dismal state of affairs, London decided that the American criminal justice system is 'fundamentally flawed'. The problem is not with the people who administer the system. Judges, he notes, with precious few exceptions are no fools. The problem is

break the cycle of crime, blame, and punishment. (ibid., pp.2-3)

Searching for answers, London took himself back to graduate school to study criminology. Criminologists, he found, had lots of interesting things to say about crime, but shared little agreement on its causes or on how best to reduce it. Detached from the real world of legal practice, they proposed theories of punishment that bore no relation to 'the reality of sentencing practice I had seen in every courtroom I had ever entered' (p.5). He also found that, as a breed, criminologists tended to be even more cynical and confrontational than are the most hardened trial attorneys.

But some good did come of his induction into criminology: he

theorists are yet to adequately bridge the gap between *informal* justice (that is, the private justice of personal encounters between individuals in conflict) and *formal* justice (the demands of the public justice system, which must operate in the interests of society as a whole) (p.20, cf. pp.41-56, 161-206). Until it finds a way to reconcile these two domains, restorative justice risks remaining on the sidelines of the criminal justice system, doomed ultimately to irrelevance and marginality.

To help overcome this dilemma, London offers his own recipe for how restorative justice can move 'from the margins to the mainstream'. Some of his proposals are peculiar to the American system, and there are features of his analysis with which I would take issue. But in building his case London introduces one fresh, overarching concept to the debate that I have found particularly helpful, and to which I will return in due course. First, however, let me locate the debate in a broader historical context.

#### Emergence of restorative justice

The whakapapa of the restorative justice movement is complex and disputed, with different scholars tracing its emergence to different influences. This is hardly surprising. Social reform movements nearly always have fibrous root systems rather than a single taproot: they are shaped by a wide array of historical forces and draw sustenance from a diversity of sources. Nonetheless, a good case can be made for commencing the modern restorative justice story in Canada in 1974, where a Mennonite probation officer, Mark Yantze, and a volunteer prison worker, Dave Worth, with permission from the sentencing judge took two young men who had vandalised 22 properties in their small town to meet their victims to discuss reparation and to offer to do community work. After the meetings, the judge ordered the youths to pay restitution to the victims as a condition of probation.

That experience led to the birth of the first 'victim offender reconciliation program' – or VORP – which was established in Kitchener, Ontario in 1976, and two years later in Elkhart, Indiana. As the name suggests, the aim of VORP was

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with the *adversarial* nature of the system itself, with its 'winner takes all' approach to litigation in which success for one side invariably means defeat for the other, and a defeat of sometimes crushing proportions.

It seemed to me that, in devoting all of its efforts to the tasks of determining culpability and imposing sanctions, the criminal justice system had succeeded in becoming an efficient instrument for condemnation and exclusion, but had utterly failed as an instrument of healing and reconciliation. The system that had evolved as a powerful instrument for apprehending criminals, assessing blame, and imposing punishment was oddly indifferent to the need of the victim, the offender, and the community to

encountered the work of Howard Zehr and John Braithwaite and their 'beguiling' notion of restorative justice. Immersing himself in their writings, and of others in the so-called restorative justice movement – which he characterises as 'a veritable "Noah's ark" of criminal justice critics, idealists, and reformers'<sup>2</sup> – London concluded that 'the original visionaries of restorative justice have bequeathed to the world a wonderful gift: an idea to transform criminal justice as we know it' (pp.6, 269). It is an idea that has 'engaged the energies and excited the hopes of criminal justice reformers throughout the world over the last several decades', and will continue to do so (p.315). But it is also an idea, London says, whose potential remains seriously under-realised – partly because of the ideological blind spots and romantic illusions of some of its proponents, and partly because restorative

to bring victims and offenders together, with a mediator, to talk about the wrong that had been done and to discuss how it could be repaired, thus hopefully paving the way for reconciliation to occur. Intellectual capital for this new approach, which was soon being replicated elsewhere in America, came principally from the work of criminal justice historian Howard Zehr. In the training manuals, promotional materials and other literature Zehr produced, a new way of thinking and talking about the problem of crime and the requirements of justice began to take shape, though it was not initially called 'restorative justice'.

The programme flourished over the next 15 years, and began to attract international attention, especially after the publication of Zehr's influential 1990 book *Changing Lenses: a new focus for crime and justice*. In 1994 the victim-offender mediation process was endorsed by the American Bar Association, and the following year by the National Association for Victim Assistance. By the end of the 1990s the idea of restorative justice had become familiar to criminal justice reformers and scholars all around the world, and it is today considered one of the most fertile fields of criminological thought. It has been called one of the 'big ideas' in contemporary justice studies, and even the most significant innovation in the administration of justice since the emergence of the nation state (see Marshall, 2012, pp.4-7, 301-3; also Johnstone, 2012, pp.1-8, 133-59).

What began, then, as a trickle near Toronto has since become a torrent. There are over 400 victim-offender mediation schemes in the United States alone, and a comparable number in Europe. It is estimated that similar programmes now exist in over 100 countries, with more and more governments showing interest in the potential of restorative justice to curtail crime and reduce its costs to society. Significant multinational bodies, such as the United Nations, the Council of Europe and the European Union, have issued conventions calling on member states to develop restorative options and specifying standards of good practice. Academic engagement with the subject has also exploded. There are now

hundreds of scholars working in the field, dozens of conferences held every year, and mountains of secondary literature that grow higher by the day.

The speed with which all this has happened is quite extraordinary. Clearly there is something about the idea of reframing or reimagining the criminal justice problem in relational and reparative terms, rather than in solely legal and retributive terms, that has resonated with people all around the globe. The reason it has done so, I suspect, is that the notion of restorative justice signals that justice is about concrete change. It is not just about abstract principles, or legal doctrines, or human rights, or metaphysical beliefs; it is about changing things on the ground. True justice restores what has been lost;

transgressions and needs of their young people. It was not, as is sometimes claimed, a conscious attempt to recover Māori customary practices for dealing with family or tribal conflict; rather it was a bureaucratic endeavour to provide a simpler, more flexible, and culturally more appropriate way of processing young offenders.

It was also not a conscious attempt to introduce restorative justice philosophy into the mainstream system. The working party that crafted the legislation had no awareness of restorative justice theory as it was emerging overseas. It was only after Youth Court judge Fred McElrea encountered Howard Zehr's work during a period of sabbatical leave in England in 1993 that FGCs began to be hailed as an

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it rectifies or repairs what has been broken; it transforms people's lived experience. That way of conceiving of justice intuitively makes sense to people, even if they do not know how to define it, or describe it, or achieve it in practice.

#### **New Zealand's chapter in the story**

Within this larger narrative of origins Aotearoa New Zealand has its own chapter to tell. This, too, is a complex and perhaps disputed story, which there is no space to lay out in detail here. But two key 'moments' are worth noting. The first was the passing in 1989 of the Children, Young Persons and Their Families Act, which mandated the use of so-called 'family group conferences' – or FGCs – for all young offenders (except those guilty of murder or manslaughter). This was an entirely new mechanism, intended to, among other things, recognise the rights of children, honour Treaty of Waitangi obligations, and allow families to take leadership in dealing with the

internationally unique example of state-sponsored restorative justice, and on a colossal scale. Whether that is true or not depends on how strictly one defines restorative justice. But there can be little doubt that the participatory, whānau-based format of the FGCs was well suited to producing restorative outcomes, and the impact of the new system in reducing incarceration rates of young people was dramatic. Many other countries have since followed New Zealand's lead in this innovation, and we are still regarded internationally, rightly or wrongly, as something of a mecca for good youth justice policy (MacRae and Zehr, 2004; Lynch, 2012).

The second key moment in the New Zealand story was in 1994 when Judge McElrea invited the Reverend Douglas Mansill, a Presbyterian minister in Auckland, to facilitate the first adult restorative justice conference, based on the FGC precedent. Other conferences soon followed, and within the space

of a few years community groups of voluntary facilitators, beginning with Te Oritenga in Auckland, had sprung up all over the country, offering restorative justice services to their local courts, with the support of sympathetic judges. This remarkable groundswell of community-based activism, together with the backing of key political and judicial figures, led to a four-year-long court-referred pilot scheme trialling the use of restorative justice conferencing for adult offenders in four district courts (2001–04). It also enabled the incorporation of the first explicit reference to restorative justice in four key pieces of legislation: the Sentencing Act 2002, the Parole Act 2002, the Victims' Rights Acts 2002 and the Corrections Act 2004. Over the ten years

the ever-widening range of application of restorative justice principles and practices, which creates significant problems for defining the field and distinguishing its normative features. The question 'What is restorative justice?' is actually becoming harder, not easier, to answer as time passes. The second trend is the mounting interest governments are taking in restorative justice, which raises the knotty issue of how restorative justice can be integrated into the mainstream system of social control and punishment without compromising its ideals or blunting its radical edge. Both these trends are widely discussed in the academic literature, and in the practitioner community, so let me say something more about each.

## Some theorists place predominant emphasis on the noun 'justice', and limit restorative justice to a particular way of pursuing justice after the occurrence of a crime, one which focuses on a respectful, facilitated encounter between victim and offender.

since, government has continued to fund the provision of adult restorative justice services through community providers at a fairly modest level. But there has been a notable increase in commitment over the past couple of years, including Ministry of Justice support for moving boldly into the two most challenging areas of practice (both excluded from the pilot): those of sexual offending and family violence.

A great deal more could be said about the current restorative justice scene in New Zealand. There are some facets that are unique to us, especially with respect to the Treaty context which frames how we must wrestle with justice issues in this society. But most of what is happening in New Zealand is characteristic of 'second wave' trends in restorative justice internationally.

Two of these trends are worth highlighting, because both raise fundamental issues of principle. The first is

### An expanded field of application

Perhaps the most striking development over recent decades has been the substantial increase in the range of application of restorative justice principles and procedures, both within the criminal justice system and beyond it. Within the system, restorative justice has always been predominantly used for young offenders and for offences of a relatively minor nature. This is partly because it has been much easier to commend restorative priorities to politicians and policy makers in this space, in view of the long-standing belief that youngsters who offend, because of their immaturity, require interventions of care and support, not merely of punishment. But, while remaining most firmly rooted in the youth jurisdiction, there has been a progressive expansion of restorative justice into the adult domain as well, and with respect to crimes of the most serious nature.

In fact, contrary to what most people assume, research confirms what practitioners know to be true from experience: namely, that restorative justice is most effective when the crime is most serious. The greater the trauma involved, the more powerful restorative approaches can be (Strang and Sherman, 2007, pp.21, 37, 68, 70, 75). Indeed, in the most recent survey of research, published in November 2013, the authors conclude that 'there can be high confidence of good results with violent crime, and somewhat less confidence with property crime', so that the common strategy of 'banishing restorative justice conferences to low-seriousness crimes is a wasted opportunity. If governments wish to fund restorative justice at all, this evidence suggests the best return on investment will be with violent crimes, and also with offenders convicted after long prior histories of convictions' (Strang et al., 2013, p.48; also Joudo Larsen, 2014, pp.vii, 10, 23, 32, 33).

As well as an expanded reach within the justice system, there has also been a remarkable outward 'migration' of restorative practices into other spheres of social life, where they have been used to address more everyday problems: disruptive behaviour in schools, anti-social activities in the community, interpersonal conflicts and employment grievances in the workplace, incidents of abuse in residential and daycare facilities, misconduct in sports teams, disputes between neighbours and community-level conflicts, disciplinary procedures in the armed forces, student misconduct in higher education, and complaints against corporate bodies for non-compliance with regulatory schemes. The application to schools has been particularly impressive and inspirational. There has also been a migration 'upwards' from the domestic sphere to the sociopolitical sphere, where restorative practices have been used to deal with episodes of political violence, gross violations of human rights, hate crimes, ethnic conflict and genocide, and the destructive legacy of historical wrongs, such as slavery, racial discrimination and colonial land confiscations.

Each of these new spheres of application has unique challenges. But

in every case the concept of *a justice that remedies, not merely retaliates* has provided a constructive new lens for viewing the issues at stake and for developing a range of distinctive processes to address them.

#### Problems of definition

But distinctive in what way? What qualifies some practice or procedure or perspective as restorative justice? How should the term be defined and what limits should apply to its application? There has never been full agreement on this issue, and it has become more contentious than ever.<sup>3</sup> Some theorists place predominant emphasis on the noun 'justice', and limit restorative justice to a particular way of pursuing justice after the occurrence of a crime, one which focuses on a respectful, facilitated encounter between victim and offender. Others give more force to the adjective 'restorative' and broaden the designation to include any approach to human conflict that promotes collaborative decision-making and peace-building in place of antagonism, coercion and exclusion. Some widen it even further to embrace a whole way of viewing the world and living within it 'restoratively', in every department of life.<sup>4</sup>

Rather than choosing between these options, or abandoning the label as now so inclusive as to be meaningless, it is better to envisage a continuum between minimalist and maximalist conceptions of restorative justice. The spectrum ranges from those who restrict the category to a particular criminological procedure, at one pole, to those who apply it to an entire way of life at the other, with applications to personal, political and professional conflicts falling at points in between (Johnstone, 2012, p.157). Within each application there is also a continuum between *interventions* that are minimally restorative and those that are maximally restorative. Practice models, for example, which work solely with one party to an offence – be it the victim, offender, or those secondarily caught in the slipstream – will only be partially restorative in effect, whereas models that enable all the parties involved to collaborate on devising a mutually beneficial solution have the potential to be maximally restorative (Zehr, 2002, pp.54-7).

For all its fluidity and multiplicity of uses, there remains something recognisably distinctive about a restorative framework for approaching personal and social harms, something that marks it out as different from business as usual; something that sets it apart from both retributive and rehabilitative approaches that have long dominated the penal landscape. Restorative justice shares with retributivism a concern to rectify the imbalances created by crime in a morally serious manner, and it resembles utilitarianism in its rejection of avoidable suffering in the quest for resolution. Where it departs from both, however, is in the thoroughgoing 'relationalism' of its undergirding concepts of justice and

To speak of crime as injury is not mere emotionalism; it is how victims actually experience crime and other injustices. Victims usually know themselves to be victims because they *feel* violated, not because they realise some legal rule has been broken. It is the very pain of such violation, and the visceral resentment it always triggers, that helps us to locate the presence of an injustice. Philosophers may not be able to agree on how to define 'justice', but they can usually agree on where injustice has occurred. Injustice manifests its presence as intentional injury to the innocent and as a contemptuous disrespect of their rights. That, essentially, is what crime is too.

This leads to the second distinguishing

**... [Annalise Acorn] notes, justice does not reside in any second-order tokens, such as retributive punishment, nor in any of the procedural steps in the restorative process, such as personal encounter, confession, restitution or forgiveness.**

justice making. The distinctiveness of these concepts is easiest to describe in criminal justice terms, but the analysis can be extended by analogy to other domains as well.

#### Three core convictions

Restorative justice practice is informed or controlled by three core convictions or foundational assumptions. The first is an understanding of *crime as injury more than infraction*. Crime is not viewed simply as the breaking of the law, or the transgressing of some moral or spiritual code; it is the harming of actual persons, the infliction of real personal losses, the tearing of the web of relationships that interconnect us in society: the wounding, indeed, of our very humanity. Not all harms are crimes, of course, and not all crimes cause equal harm. But what fundamentally marks out crime as wrong is that it injures, or seriously threatens to injure, the persons involved and violates their relational integrity.

feature of restorative philosophy: *its notion of justice as the existence of right-relations* between persons. The injury done through criminal or other intentional wrongdoing is fundamentally a relational injury. It is the dishonouring of the kind of relationship that ought exist between the parties as fellow citizens and fellow human beings. In her searing critique of restorative justice, Canadian legal scholar Annalise Acorn identifies this as *the* key idea that sets restorative justice apart from other theories of justice – its notion of justice as right-relation and crime as wrong-relation. For restorativists, she notes, justice does not reside in any second-order tokens, such as retributive punishment, nor in any of the procedural steps in the restorative process, such as personal encounter, confession, restitution or forgiveness. It inheres rather in the establishment of a right-relationship between the parties. 'The justice to be restored is the experience of relationships of mutuality, equality, and respect in community. And

it is this extravagant ambition – this understanding of justice in terms of an idealised conception of right-relation – that is the single distinguishing element of restorative justice’ (Acorn, 2004, p.22).

Acorn goes on to object strongly to such a conception of justice because it sets the bar impossibly high. It requires of victims a supererogatory devotion to forgiveness and reconciliation, while denying them their right to seek a total disconnection from their abuser – which is what victims of sexual or domestic violence, in particular, often want and require. ‘They don’t want right-relation,’ Acorn exclaims. ‘They want no relation. And they want to be able to look to a powerful and trustworthy state capable of prohibiting relation’ (p.116).

But Acorn misses the point. To speak

at their relational core (including their relationship to themselves), and distorts the rightful conditions that bind them together in community, then justice must require the repairing or healing of the injury. This is something the punitive justice system largely fails to deliver, because punishment does little or nothing to heal, either the offender or the victim. Long ago, George Bernard Shaw put his finger on the problem of punishment for offenders: ‘If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him. And men are not improved by injuries’ (Shaw, 1961, p.26).

The problem for victims is even greater. A system that devotes almost all its energies and resources to punishing offenders has little left over for victims. It

actually restore? This question may be answered in various ways. Some stress the role of material and financial restitution, the making good of the physical losses caused by the crime. Others emphasize the rehabilitation of offenders, their reintegration into law-abiding society. Others speak of the restoration of the victim’s dignity, or mana, or sense of security and peace of mind. Some deny that anything is restored, objecting to any suggestion that the clock can be turned back and the past retrieved. There are some losses that can never be made good, such as the life of a murder victim, or the independence of someone disabled by a drunk driver, or the innocence of a child subjected to sexual abuse; and even lesser offences change things for ever. Others object to the implication that justice is being restored, since justice may never have existed in the first place. As I was frequently asked in Taiwan, how can you have restorative justice in an unjust society? What is needed is not a return to some imaginary justice of the past, but a *transformative* justice that works for social change.

Clearly, then, the phrase itself is ambiguous. But, to my mind, what is fundamentally in need of repair are the *relationships* violated by the wrong. This includes the relationship between victim and offender, and also the relationships each has to others in their wider social group which have also been affected. These relationships are not being restored to what they were before; they are being restored to ‘rightness’, to what they ought to be like in the circumstances. Even if the parties never knew each other personally prior to the crime, their co-participation in the criminal event has created a relationship between them, an unhealthy and destructive relationship that needs to be restored to a rightful condition. The same applies to all the other layers of relations that constitute us as social creatures, since we are relational beings all the way down.

Because interpersonal relationships are reciprocal and storied realities, one of the most effective ways to initiate change is by means of direct or mediated encounter between the parties: a meeting where the story of the damage done through the

## ... a meeting where the story of the damage done through the collision of their lives in the wrongful event is told as truthfully and fully and compassionately as possible, and where all those directly affected together decide what is needed to write a new chapter ...

of justice in the wake of crime as the recovery of right-relations is not to imply the emergence of a new-found intimacy and mutuality between the parties. It is to suggest, rather, the restoration of *rightness* to their relationship. The relationship is righted or rectified or ‘right-wised’ because the wrongs that have blighted it have been exposed and dealt with, not because new depths of intimacy and respect have arisen. It is therefore a *healthier* relationship than it was before and, in that sense, a ‘right’ relationship. But it is not necessarily a closer or ongoing relationship, which may not be the right kind of relationship for the parties to have anyway (see further Marshall, 2012, pp.302-12).

This brings us, then, to a third distinctive theme in restorative justice philosophy: its understanding of *justice-making as repair*. If crime injures persons

may be true in some cases that knowing that the person who wronged them is being punished may help a victim’s emotional recovery (more research is needed on this question: see London, 2011, pp.98-103). But it will only ever be of limited help, for punishment itself does nothing to redress the physical, relational, moral and material dimensions of the harm inflicted. Whatever other social good the punitive justice system may achieve (and there is some), it is not empowered to heal. Something more powerful than punishment is needed to loosen ‘the bond of victimisation’ that binds victims and offenders together in the pain and shame of the criminal event and to bring repair.

### Restoring what?

But what, precisely, *is* this damage that needs repair? What does restorative justice



collision of their lives in the wrongful event is told as truthfully and fully and compassionately as possible, and where all those directly affected together decide what is needed to write a new chapter in the saga, so that the relationship can be restored to rightness. That is the heart of restorative justice.

### Restoring trust

Before finishing, I want to return to Ross London's work which I mentioned at the outset, both because it serves to sharpen the focus even further on what restorative justice restores, and because it does so in a way that has direct bearing on that second big trend I noted in restorative justice internationally, the growing interest of governments in the approach.

In his somewhat protracted analysis, London is often quite critical of the rhetoric surrounding restorative justice in the literature. He especially dislikes the common claim that it is an entirely 'new paradigm' for doing justice, fundamentally incommensurate with the values of the prevailing system (pp.262-72, cf. pp.13-22). To assert, as proponents often do, that restorative justice is both a new paradigm and the recovery of ancient or indigenous ways of achieving justice is self-contradictory. It can't be both. It is also self-defeating. Exaggerated claims of novelty will only serve to keep the practice on the margins of the mainstream justice system, as an exotic diversionary strategy for petty offending rather than as a comprehensive model for systemic change.

Yet, while denying that it is a wholly new paradigm, London still thinks there is something genuinely new about restorative justice. Its greatest innovation is not its creation of a new set of criminal justice practices, such as victim-offender mediation or family group conferences. What is 'wholly original and crucial' is its goal of repairing the harm of crime. 'Whereas the traditional goals of the criminal justice system are to deter, censure, incapacitate, and rehabilitate offenders, restorative justice poses an entirely new and original goal: *repairing the harm of crime*' (p.24).

What, then, London asks, is the harm that needs to be repaired? I have

made a case for seeing it as the damage done to the relationships that bind us together in society and comprise our essential humanity. But London finds that explanation too generic and abstract. It doesn't help us, for example, to distinguish between the kind of relational damage caused by crime and the kind caused by non-criminal wrongs, such as jealousy, insensitivity, gossiping and so on. It is better, he thinks, to see relational damage as the result of the harm, not as the harm itself. The real harm associated with the commission of crime is the *loss of trust*. It is the betrayal of the most basic expectations we have of our fellow human beings – which is, put simply, to live by the negative form of the Golden Rule, 'not to do unto others as you would not

simply presumes the minimal expectation that he or she will play by the same rules, so that society can accommodate their presence without fear or force. Of course, even this minimal expectation still presupposes relationship. Mutual trust is meaningless outside of a relational context. Even if the parties to a crime had no previous personal relationship, in so far as their common membership of society necessitates mutual trust they were still in relationship.

That said, I am persuaded that there is much to be gained from focusing specifically on the relational component of trust. It helps to explain, for example, the power of the central elements of restorative justice dialogue, such as story-telling, accountability, emotional

## All members of society, ... have a legitimate interest in seeing crime prosecuted and punished, as a necessary precondition for the existence of social trust.

have them do unto you'. If we are to live together in security and peace we need to trust that everyone will abide by this rule, that they will not try to overcome our will through fear or force or fraud. Crime confounds this expectation. Crime shows that we can no longer trust the person who has broken the rules and threatened our safety. The wrongdoer has proven themselves to be 'untrustworthy', an outsider to the law-abiding community.

What is most needed, then, in the wake of crime is to regain trust in the offender. Not a perfect trust, but a basic trust that he or she will respect the rights, feelings and values of others and regulate his or her behaviour without the need of external coercion. Offenders must prove their readiness to be readmitted to the moral community by showing their trustworthiness again.

The virtue of focusing on the restoration of trust rather than the restoration of right relations, London suggests, is that it does not presume the existence of a previous or ongoing personal relationship with the offender; it

honesty, apology, restitution, community engagement and commitment to moral change. These are precisely the things needed to heal breaches of trust and restore relationships to rightness.

Even more telling is the way trust functions as the common property of both personal and social relationships. The trust of personal relationships depends on having subjective knowledge of the individual to be trusted. The trust of social relationships, on the other hand, requires an objective confidence that the wider social order will operate predictably and fairly according to agreed-upon standards, and that even strangers will hold themselves accountable to the Golden Rule.

One critical prerequisite for the existence of social trust is confidence that the state will act to redress the breaches of trust that occur through criminal offending and enforce the standards of behaviour encoded in the law. If the state fails to do so it denies its own legitimacy. All members of society, therefore, have a legitimate interest in seeing crime

prosecuted and punished, as a necessary precondition for the existence of social trust. This is one of government's primary responsibilities, one that some restorative justice advocates are too quick to decry. Rather than disparaging the punitive system root and branch, they should affirm the state's obligation to sustain the reservoirs of social and personal trust in society, and commend restorative justice as a promising new tool for doing so more effectively.

#### Towards a restorative justice system

London's chief concern is to find a way of straddling the divide between the informal

itself is 'an extraordinarily poor way of restoring trust in either an offender or in society' (p.105, emphasis added). It is only when punishment is accompanied by such 'indicia of trust' as acceptance of blame, empathy, remorse, apology and restitution that evidence exists for rebuilding personal trust.<sup>5</sup> This is where restorative justice has a powerful role to play. An offender's willingness to engage in a dialogue with his victims, and with the community he has betrayed, provides a unique setting for honest explanation, acceptance of moral responsibility, manifestations of empathy, voicing of apology, and a commitment to future

and in society', London writes, 'we can devise a criminal justice system that promotes genuine healing, forgiveness, and reintegration' (p.89).

The key to this integration is the recognition that the principal harm of crime is the loss of trust. This loss is only so devastating a problem because we are irreducibly social creatures, who only ever exist in an intricate network of relationships. The malice of intentional wrongdoing serves to violate the trust on which these relationships depend, and when that happens it is the core business of restorative justice practice – encounter, truth-telling, accountability, confession, contrition and restitution – that has unrivalled power to begin to heal the breach.

Of course, efforts to integrate restorative priorities and practices into the mainstream justice system, and into the social order at large, are not without risk. Peril exists on all sides. Restorative justice is imperilled by the possibility of institutional capture and control, and by the dilution of its distinctive values. The justice system is in peril of having its adherence to procedural fairness and equality of outcome compromised by idiosyncratic and potentially anarchic restorative justice processes. Both threats are real, though they may often be exaggerated.<sup>6</sup> It is my hope that, in this wonderful country of ours, ever conscious of the perils entailed we may continue to work together – as practitioners, policy makers, politicians and ordinary citizens – to move the vision of restorative justice, and all that it promises, from the margins of our consciousness to the mainstream of how we live together in society, in faith, hope and charity.

## Of course, efforts to integrate restorative priorities and practices into the mainstream justice system, and into the social order at large, are not without risk. Peril exists on all sides.

justice of victim-offender encounter and the formal justice of the public system. The key to unifying these two domains, he believes, is to understand both as ways of serving the larger goal of restoring trust. The criminal justice system exists to uphold the necessary conditions for social trust. This requires it to employ all the procedural safeguards enshrined in the mainstream retributive system, such as due process, just deserts, equal access, predictability, proportionality, consistency and so on. These principles help to satisfy society's need for certainty and security. But within these objective parameters judges still need to address the problem of personal trust attaching to the individual offender. In sentencing, judges should be guided, London suggests, by three simple but penetrating questions: Why don't I trust this person to re-enter society right now? What must he or she do, and over what period of time, to demonstrate their trustworthiness? And what evidence do I have to help me answer these questions? (p.55).

While the lawful imposition of punishment may be necessary to *sustain* social trust, he writes, punishment by

change, all of which are the seeds of renewed 'trustability'.

Crucially, everything an offender does in such a setting to regain trust also benefits his victims. As well as meeting their needs for information, reassurance and vindication, it helps them to restore their trust 'that the world is inhabited by people who are much like ourselves: people with a conscience, with empathy; people who play by the same rules as we do and, if they break those rules, understand the wrong they have committed and accept the agreed-upon consequences of their wrongdoing' (p.105).

#### Conclusion

London makes an intriguing case for the integration of restorative justice processes into the criminal justice system in a way that both supports and transforms mainstream practice. It supports the mainstream system by endorsing its necessary function of upholding the rule of law and protecting the innocent, and it transforms it by proposing a new way of understanding the overriding goal of sentencing and punishment. 'Guided by the goal of restoring trust in the offender

1 This article is the edited text of Professor Marshall's inaugural lecture, delivered at Victoria University on 25 March 2014.

2 On restorative justice as a social movement, see Umbreit and Peterson Armour (2010), pp.1-33.

3 As Umbreit and Armour (2010, p.318) comment, 'the identification of a program as "restorative" can be confusing because others cannot determine if the word refers to the movement's values and principles, its aims and outcomes, its specific processes, its programs, or combinations thereof'.

4 Johnstone (2012, p.156) observes that, 'increasing numbers of people are seeking not only to reform "external" organisations and social practices in line with the ideas of restorative justice, but to practice principles such as these in their own lives and to encourage others to do so. Nor, for many, is this an optional extra. Rather, there is a fairly widespread view among campaigners for restorative justice that it would be contradictory and self-defeating to seek to "restoratise" the societal response to crime while behaving non-restoratively in the workplace and in our everyday lives. Trying to transform ... society's response to crime is now

just one concern ... of a social movement which aims to propagate a new way of seeing the world and living in it'.  
5 'By voluntarily submitting to a deserved punishment, the offender indicates that he respects the rules of the game of reciprocal altruism; by his apology, he expresses his renunciation of the contempt he has shown for the rights of the victim and for all those who play by the rules; by his agreement to make restitution, he expresses his agreement

not to profit from his freeloading; by his voluntary agreement to submit to rehabilitation, he expresses his desire for commitment to change; and, finally, by the totality of these actions and expressions, he indicates his desire to return to the good graces of the moral community' (London, 2011, p.83).

6 'Commentators have asked whether restorative justice practices can co-exist alongside formal criminal justice

approaches and given the widespread acceptance of restorative justice, evident in the expansion of restorative justice to encompass adult offenders and more serious offences, this question seems to have been answered. Restorative justice practices provide an important supplement to the sanctions placed on criminal behavior by the traditional criminal justice system' (Joudo Larson, 2014, p.35).

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# The New Electoral Politics in New Zealand

Edited by Jack Vowles

Around the world there was unusual interest in New Zealand's electoral politics during the 1990s, because of the country's adoption of the Mixed Member Proportional (MMP) electoral system. Since then, international interest has lapsed. Yet at the 2011 election, at a concurrent referendum, New Zealanders voted to retain the MMP system. Among other inquiries, this book asks the question: why?

Since the 2005 election, there are signs that New Zealand has adapted to MMP and become accustomed to a 'new electoral politics'. Voting choices have become less volatile between elections and during campaigns. The two main parties, National and Labour, have retained their dominance of the votes, but in their respective terms of government they have been obliged to share power with other parties. At the next election in 2014, as in 2011, the choice appears to be between a National government, with perhaps one or two minor parties in support, or a Labour and Green Party coalition. Yet other parties could still complicate the picture: in particular, Winston Peters' New Zealand First.

Looking back to the 2011 election and before, this book lays out the current state of the play in New Zealand's electoral politics. Despite its reservations about MMP, the National Party has done very well under that system,

particularly since 2005, with a vote share and polling that made it well within reach of a single-party majority in 2014. For these reasons, apparently, National appears unwilling to change the MMP system in ways recommended by an Independent Review. Various chapters in this book explore these questions, as well as others, including voter turnout decline, attitudes to welfare reform, women's representation, changes in Maori politics, and the growing importance of immigration in New Zealand politics and society.

**Jack Vowles** is Professor of Comparative Politics at Victoria University of Wellington. Other contributors to the book are Peter Aimer (formerly at the University of Auckland), Gerald Cotterell, Jennifer Curtin, Louise Humpage, Aimee Matiu, Raymond Miller, Ann Sullivan, and Martin Von Randow (all currently at the University of Auckland), Charles Crothers (AUT University), Jeffrey A. Karp (Australian National University) and Thomas Lundberg (University of Glasgow).

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# The New Electoral Politics in New Zealand

Edited by Jack Vowles



**Institute for Governance and Policy Studies**

A research institute of the School of Government

David Bromell

# 'A Fair Go' in Public Policy

## Introduction

In the context of the 2013 retirement income review (CFLRI, 2013), Kathryn Maloney and Malcolm Menzies from the Commission for Financial Literacy and Retirement Income put the question to me: what does 'a fair go' mean in public policy?<sup>1</sup> I mentioned this in a chance conversation with Colin James, who suggested tackling the question in an active, verbal sense ('a fair go'), rather than attempting to elaborate on 'fairness' as an abstract noun. Consequently, this paper does not propose 'a theory of fairness' as a proxy for, say, a theory of distributive justice, or a theory of social justice, even a non-ideal theory of justice (cf. Arvan, 2014; Simmons, 2010). My aim is more modest: to provide a framework for public reasoning in contexts where there is argument across the political spectrum about whether a public policy gives people who are affected by it 'a fair go'. This approach is based on three assumptions.

1. A great deal of public policy-making involves arguments about who gets what, when and how, relative to others, and who pays (cf. Laswell, 1950).
2. These arguments take place within a society that exhibits deep diversity, including a plurality of values. People do not necessarily want, or value, the same things to the same extent, in the same way (Bromell, 2009a).<sup>2</sup>
3. There is not and never will be a perfectly just world, or a perfect social system, or a perfect set of institutional arrangements and regulations. As Sen (2009) has argued, we need to abandon pretensions to 'transcendental institutionalism' and focus instead on advancing justice, rather than perfecting it. He proposes 'government by discussion': the exchange of public reasons to arrive at partial rankings and limited agreements about practicable options to make life better for people than it is now.

Etzioni (2014) has similarly urged us to view public policy as a fixer-upper, rather than a new construction. Policy-

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making is less about defining a goal, considering options to get there and implementing the most cost-effective option than it is about asking what can be done with the conditions we have been given and the unfolding trends we may ride, and working out how we might make things better than they are now, within the resources at our command. Thus the argument that follows is based on a further (fourth) assumption:

- 4 The vast majority of public servants, whether elected or appointed, enter public life not for the naked exercise of power, nor predominantly to satisfy and advance our own interests, but because we want to make a difference and improve outcomes for our fellow citizens as well as ourselves.

#### Making sense of moral judgements

Something of a consensus has emerged in recent years between anthropologists, animal behaviourists, psychologists, neuroscientists, game theorists and behavioural economists that a concern for fairness is a 'wired' trait in humans (Alesina and Angeletos, 2005; Fehr and Schmidt, 2003; Gazzaniga, 2005; Pfaff, 2007; Hausman, 2008; Crockett, 2009; Corning, 2011). This trait has also been found to exist, at least rudimentarily, in some non-human primates (Brosnan and de Waal, 2003; Bräuer and Hanus, 2012). The norm of fairness seems to be universal, and a product of both nature and nurture, like the acquisition of language. Like language, development occurs as children mature from reliance on simple decision rules (equal shares, taking turns, tossing a coin, drawing straws) to more complex considerations of age, merit, social relationships and 'us/them' distinctions, all shaped by the values, customs, rules, stories and practices of a given society (Almås et al., 2010; Corning, 2011, p.7).

Corning (2011) concludes that 'altruistic sharing backed by a threat of punishment for selfish violations is a fundamental element of human nature, coupled with the strong expectation for reciprocity from others'. Accordingly, he argues that 'the standard neoclassical economics model of a rational, calculating, acquisitive economic man

(*Homo economicus*) is a caricature that obscures a much more complex reality' (Corning, 2011, pp.9, 82; cf. Sen, 1977).

In other words, the moral judgement 'that's not fair' is first a feeling, an emotional reaction, voiced as an objection to an actual or proposed state of affairs or distribution of benefits and costs. Emotions play a more prominent role in social decision-making than we often care to admit (Sanfey, 2007; cf. Hume, 1777, part I, opening para.). As Haidt (2012, p.48) puts it, 'Moral reasons are the tail wagged by the intuitive dog'. We characteristically proceed from an emotion or intuition to a moral judgement ('fair enough'/'that's not fair').

## The notion of 'a fair go' is, of course, relevant not only to retirement income policy ... but also to matters as diverse as poverty, income inequality and redistribution

Only when we ourselves have second thoughts, or are challenged by others, do we apply reasoning, somewhat after the fact, in order to explain and justify our moral judgements to ourselves and to others.

I have argued elsewhere (Bromell, 2012) that public policy-making needs to go beyond ostensibly 'values-free', empirical analysis of 'the evidence' and 'what works', and find ways to engage in co-production with citizens of the sort that factors into policy making explicit critical reflection and public deliberation on purpose, values and emotions. Freiberg and Carson similarly invite us to recognise emotion and affect within 'a reasoned and open dialogic process of policy formulation' (Freiberg and Carson, 2010, p.161).

#### A Kiwi preoccupation

A 'wired' concern for fairness is amplified in the New Zealand context by a cultural preoccupation with 'a fair go' that is reflected in everyday habits of thought and speech: a fair go, fair play, fair share, fair enough, fair game, a fair shake of the

sav, fair's fair. Consider, for example, the extraordinary longevity of the consumer affairs television programme Fair Go, which first screened in 1977 and is one of New Zealand's longest running and highest rating programmes.

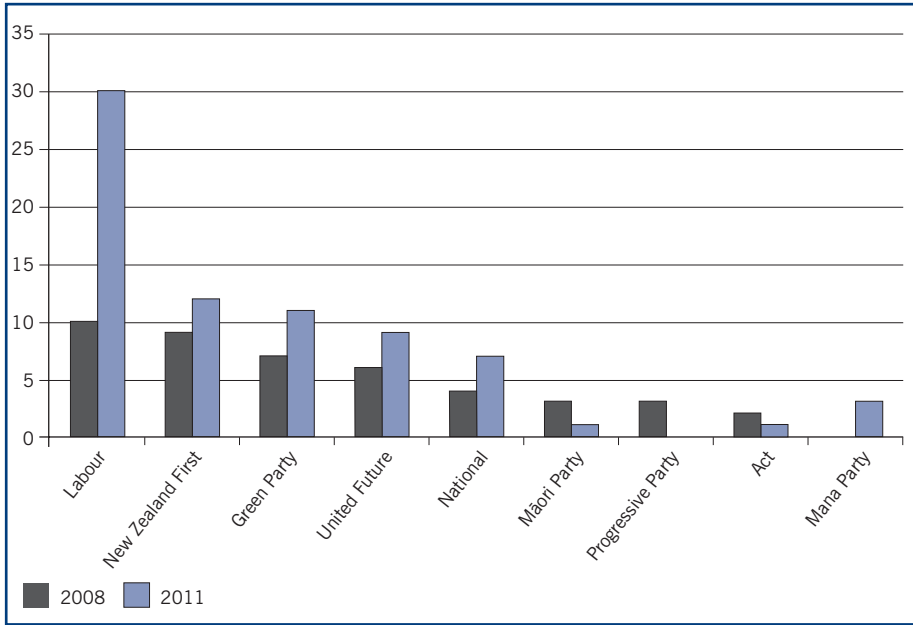
On a visit to New Zealand, historian David Fischer noticed how frequently New Zealanders talk about fairness, and reflected on his fellow Americans' characteristic preoccupation with liberty or freedom. In an extended comparative study (Fischer, 2012), he explains this in two ways. First, the United States and New Zealand are products of different waves of imperial expansion, in reaction to different social conditions and pressures.

The United States was settled in the 17th century by people who felt themselves to be victims of tyranny and persecution. Consequently they elevated the principle of liberty.<sup>3</sup> New Zealand on the other hand, was settled in the 19th century by people who felt they were victims less of tyranny than of social injustice and gross inequity. Consequently they elevated the principle of fairness.

Secondly, the US and New Zealand afforded different material conditions. In the US, many Americans continue to have a sense of boundlessness and opportunity ('Go west, young man!'), of living in 'the land of the free' in a universe without limits. In New Zealand the young nation quickly ran up against resource constraints. Climate and soil were not as kindly as first thought, and survival depended on developing cultural norms, social practices and political institutions to encourage and enable fairness, sharing and redistribution. Anne Salmond notes, for example, that:

In their dislike of the aristocratic monopoly of land and waterways

Figure 1: Occurrence of 'fair' and its cognates in 2008 and 2011 general election party manifestos<sup>4</sup>



at home, the settlers fought for the establishment of the Queen's Chain, and made successive attempts to break up large estates. Part of their legacy is the idea of the 'fair go', a powerful motif in our society, along with a marked dislike of arrogance and pretension. (Salmond, 2012, p.4)

**Policy relevance and political rhetoric**

The notion of 'a fair go' is, of course, relevant not only to retirement income policy – the context in which the question was first put to me – but also to matters as diverse as poverty, income inequality and redistribution (Rashbrooke, 2013; Stiglitz, 2013); education; housing; health care and medical rationing (Koch, 2002), including access to pharmaceuticals (Coyle, 2012); settlement of historic Treaty of Waitangi grievances; sentencing guidelines; resource management, including the use of fresh water; risk management in the use of new technologies (McComas and Besley, 2011); and the sale of shares in state-owned assets (Salmond, 2013). Fairness is critical for the stability and sustainability of public policy (Alesina and Angeletos, 2005, p.974). If regulation is perceived to be fair, it is more likely to win cross-party support and less likely to be subsequently amended or repealed.

Given its currency as a vernacular concept in New Zealand, political rhetoric commonly appeals to 'a fair go'.

For example, 'a fair go for the ordinary [or 'decent'] bloke' was a favourite slogan of 'Rob's Mob' and Sir Robert Muldoon when he was prime minister and leader of the National Party from 1975 to 1984. (Perhaps it is fortunate that 'Rob's Mob' did not elaborate on its aspirations for 'the ordinary woman'.) The 1986 Royal Commission on the Electoral System identified ten criteria for evaluating electoral systems, with many involving 'fairness' – to Māori, to ethnic minorities and to political parties: 'For New Zealanders an electoral system – and, more broadly, a political system, or a set of government policies – is defensible only if seen to be "fair"' (Levine, 2012).

More recently, the words 'fair', 'unfair', 'fairness' and 'fairly' were used 74 times in political party election manifestos in 2011, an increase of 68% over their use in the 2008 election.

While questions are increasingly asked about whether New Zealanders do indeed get 'a fair go' (Kilgallon, 2013), the concept of fairness still resonates and continues to be used in political rhetoric. For example, David Clark, candidate and subsequently (following the 2011 election) MP for Dunedin North, wrote a blog post in August 2010 that argued:

The reason people choose to stay in New Zealand, or return to New Zealand, is tied up with the type of

society we have. People love New Zealand because they feel at home here. You and I value access for everyone to quality health care. All New Zealanders value schools that are safe with dedicated teachers, and an education system that delivers quality results for our kids. These values are rooted in the fact that New Zealanders have an underlying sense of fairness. It is what makes New Zealanders tick. We love to see everyone having a fair go. Our pride in our identity as New Zealanders is tied up with a sense of fairness. (Clark, 2010)

In everyday discourse and in political rhetoric, New Zealanders seem to appeal more commonly to 'a fair go' than to 'rights' or to some or other theory of justice. This may have wider significance. The notion of 'a fair go' appears to bridge a gap between more abstract accounts of political principles and the actual beliefs – and actions – of political actors (Klosko, 1992, p.xii). As Sen notes, 'we have good reason to be persuaded by Rawls that the pursuit of justice has to be linked to – and in some sense derived from – the idea of fairness', which is foundational and in some sense prior to development of principles of justice (Sen, 2009, p.54). It may be more productive, therefore, to think critically about what 'a fair go' means in public policy and to structure policy debate in these terms, than to attempt to assess or justify policy options in terms of 'rights' (Walzer, 1981; cf. Geiringer and Palmer, 2003, 2007) or by appeal to some or other theory of justice.

While New Zealanders seem to value the idea of 'a fair go', we do not often pause, however, to bring to this explicit critical reflection or to clarify what 'a fair go' means in public policy (Kerr, 2005, p.23). The remainder of this article provides a framework for public reasoning and comparative assessment of 'a fair go' in public policy.

**Context, relationships, time**

The framework I propose is designed to facilitate an exchange of public reasons where there is argument about what 'a fair

go' means in relation to a specific policy or set of policies. It is important, therefore, to clarify at the outset the context, relationships and temporal dimensions of the policy problem. What is fair depends on the people who are the participants, and their relationships and interactions within a specific context at a particular point in time (Corning, 2011, p.19; Fleurbaey and Maniquet, 2011, p.234):

*Context:* In what context has the question of 'a fair go' arisen? What do we want to change? What are the goals (outcomes) and objectives (results) we want to achieve?

*Relationships:* Who are the key 'stakeholders' (interested and affected parties)? What is the nature of the relationship between them? Are there existing agreements, contracts or treaties between the parties?

*Time:* What time constraints do we face? What time trends can we observe, and what are the implications of those trends now and in the future? How are costs and benefits currently allocated between past, present and future generations?

#### **Fair process**

The next stage in my argument is to consider, in the context of public policy-making in a liberal democracy, what 'a fair go' requires procedurally, because 'how things work' is as important as 'what works'. The procedures that govern public services, and the perceived fairness of how rules are set and implemented, can significantly determine public responses: 'These responses can condition trust in public services, and determine how willing people are to cooperate with service providers: cooperation that, in turn, can be crucial to achieving the objectives of a service' (Pearce, 2007, p.11). Fair process requires *impartiality* (equal consideration of interests), *deliberative fairness* (how the rules are set), *transactional fairness* (how the rules are operationalised – and playing by the rules once set) and *transitional fairness* (how rules are revised or repealed, and the timing of policy implementation).

#### **Impartiality**

Impartiality declines to introduce private considerations into decisions that should be made on public grounds (Barry, 1995, p.13). It respects equality of moral worth, equal consideration of interest – i.e. 'democratic equality' (Anderson, 1999) – and principles of natural justice. Justitia wears a blindfold when she weighs our competing interests and passes judgement. Everyone counts for one, and none counts for more than one – a foundational, and at the time radical, idea in Bentham's utilitarianism.

Impartiality is why we have due process, and formal separation of powers between the monarch or head of state, the legislature and the judiciary. Impartiality

is why public sector ethics matters. There is, or should be, no place in public policy for mates' rates, special access to decision makers and backroom deals.

Fairness as impartiality precludes permanent special group rights, including special political representation based on ancestry or ethnic identity (Bromell, 2008, 2009a, 2009b). As Brian Barry argues in presenting his theory of justice as impartiality:

The underlying assumption here is that claims to special advantages based simply upon membership of a certain bloodline, ethnic group or race are too transparently self-serving to form a basis of agreement that others can seriously be asked to assent to. More deeply, the whole idea that we should seek the agreement of everybody rests upon a fundamental commitment to the equality of all human beings. (Barry, 1995, p.8)

#### **Deliberative fairness**

Secondly, 'a fair go' requires deliberative fairness, which is about how the rules are set. Deliberative fairness is why we have

democracy, or government by discussion, in which eligible citizens and permanent residents participate in the proposal, development and creation of laws, either directly, or indirectly through the free and fair election of representatives.

Deliberative fairness requires commitment to public justification: Rawls' 'reflective equilibrium' 'overlapping consensus' (Rawls, 2001, pp.29-38 and 2005, pp.133-72), or Sen's 'open' (as opposed to 'closed') impartiality (Sen, 2009, pp.124-52), together with the social, economic and cultural conditions that enable the free and equal participation of citizens in political self-determination.

Deliberative fairness requires an exchange of public reasons, given the

## **Administrative consistency is part of what we examine when asking whether someone is getting 'a fair go' in public policy.**

inevitable arguments about what 'a fair go' means in any particular case. For this reason a government may publish a 'white paper' or discussion document and receive submissions from the public. Parliament, through the select committee process, invites and hears submissions on legislation before the House. Parliamentary debates test the rationale for policy change. The media interview politicians and probe the reasons for doing this and not that.

The question 'is it fair?' is illuminated, Barry (1995, p.113) suggests, by phrasing it as, 'could it reasonably be rejected?' As Barry points out, appeal to public reason does not, however, restrict us merely to logical deduction in the public sphere, or to ostensibly 'neutral' or 'value-free' language and modes of reasoning and communication (cf. Bromell, 2011; Bradstock, 2010, 2012; Boston, 2013):

Historically, reason has been contrasted with authority, prescription, revelation, or coercion as a basis for the justification of institutions. In this context, 'reason' means reasoned argument, from premises that are in principle open

to everyone to accept. We can add a contemporary gloss to this by saying that these are premises which reasonable people, seeking to reach free, uncoerced agreement with others, would accept. (Barry, 1995, p.7)

Amartya Sen has similarly argued that:

Rationality is in fact a rather permissive discipline, which demands the test of reasoning, but allows reasoned self-scrutiny to take quite different forms, without necessarily imposing any great uniformity of criteria. If rationality were a church, it would be a rather broad church. (Sen, 2009, p.195)

## ... we need to arrive at a social evaluation of what 'a fair go' means in a specific context, at a particular point in time, through negotiated agreement ... of alternatives ...

### *Transactional fairness*

Thirdly, transactional fairness is about how rules are operationalised and about playing by the rules once set. Implementation planning frequently involves communications with people who will be affected by new or changed rules. There may be a phase-in, or amnesty, period, but within a reasonable period of time we expect the same rules to apply to people in the same situation in the same way. Administrative consistency is part of what we examine when asking whether someone is getting 'a fair go' in public policy.

Playing by the rules once set also requires transparency and rights of review and appeal. This is why it is important to preserve the independence of the judiciary. It is why we have legislation like the Official Information Act 1982, the Local Government Official Information and Meetings Act 1987 and the Public Finance Act 1989. It is why we have the ombudsmen, the Office of the Auditor-

General, select committee hearings, the Privileges Committee of Parliament, parliamentary commissions and inquiries, appeals and tribunals, parliamentary questions, televised parliamentary debates and the publication of Hansard. Transactional fairness is about keeping the buggers honest.

### *Transitional fairness*

Fourthly, fair process requires reasonableness in how rules are changed or repealed, and, in particular, the timing of policy implementation. The 1988 Royal Commission on Social Policy reflected that:

Changes must be able to be implemented in an orderly manner which does not cause undue disruption to the lives of

New Zealanders; nor should they undermine people's legitimate expectations of security and certainty, and, too, of the role that government plays in their daily lives. It is also important that the reasons underlying the proposed changes are understood in the community. (Royal Commission on Social Policy, 1988, vol. 2, p.740)

Retirement income policy is one example. If a government were suddenly to change the policy settings for New Zealand Superannuation without any transitional period, a cohort of older people would be affected with no time or opportunity to prepare for changes to the amount of entitlements, criteria or age of eligibility. And any transition from a pay-as-you-go (PAYGO) system to a save-as-you-go (SAYGO) system would need to be managed carefully to avoid the transition generation being called on to pay twice: once for their parents' generation, and

once for their own retirement. As Ross Guest argued in a background paper prepared for the 2013 retirement income policy review:

People's income tends to be highly variable over their lifetime. They prefer to have much less variability in their consumption. But in order to smooth their consumption they need to be able to make plans, which requires stable policy. Some change is inevitable but policy stability requires that change occur after due deliberation and that people have adequate time to adjust. (Guest, 2013, p.25)

Another example is tertiary education funding policy for student support. Changing the eligibility or amount of student allowances, or the terms and conditions of student loans, is bound to raise questions of transitional fairness and intergenerational equity, particularly where students have committed to a lengthy period of education and training.

### *Fair outcomes*

'A fair go' in public policy requires more than fair process. Outcomes, or results, also matter and need to be seen to be fair, and especially our outcomes relative to one another. As Bräuer and Hanus note, 'Humans have a sense of fairness, i.e. an interest in the ideal of equity. This sense allows them to compare their own efforts *and subsequent outcomes* with those of others, and thus to evaluate and react to inequity' (Brauer and Hanus, 2012, p.256, emphasis mine).

Fair outcomes cannot, however, be defined in the abstract, in advance, once and for all. Rather, we need to arrive at a social evaluation of what 'a fair go' means in a specific context, at a particular point in time, through negotiated agreement (based on public reasoning) of alternatives that can be concretely realised and that take account of the values and priorities of the people involved, and of relativity or interpersonal comparison. As Harry Frankfurt opens his paper on 'Equality as a moral ideal':



First man: 'How are your children?'  
Second man: 'Compared to what?'  
(Frankfurt, 1987, p.21)

I am thus arguing for Sen's 'realisation-focused comparison' through the exercise of practical judgement, rather than the sort of 'transcendental institutionalism' (Sen, 2009, introduction) whereby technocrats set out to create a 'perfectly just' system or arrive at 'a single, uniquely rational, determinate answer' (Gaus, 2010, p.64). Moreover, as Klosko reminds us, 'because of the inevitable imperfection of all social arrangements, a certain measure of unfairness should be expected and accepted' (Klosko, 1992, p.66).

There are at least two ways we might proceed, both of which require comparative assessment of policy options against each other and the status quo. The first approach is to assess the substantive fairness of policy options by the extent to which they contribute, or might reasonably be expected to contribute, in a significant and measurable way to an overall increase in well-being and to improvement in the distribution of well-being. The second approach is to assess the substantive fairness of policy options against the extent to which we can reasonably expect them to actualise an agreed set of values or normative precepts.

These two approaches are not mutually exclusive, and there is no reason why both might not be employed within a framework for comparative assessment and public deliberation. It is important, however, to keep any such framework at a relatively high level, and to avoid over-specification that becomes restrictive or exclusionary.

#### Living Standards Framework

To adopt the first approach (a policy is substantively fair if it improves overall well-being and the distribution of well-being), we might assess fair outcomes against the five dimensions of the Treasury's Living Standards Framework (Treasury, 2013): economic growth, sustainability for the future, increasing equity, social infrastructure and reducing risks. The Treasury framework uses a capital stocks and flows approach (i.e., financial and physical capital, natural

capital, social capital and human capital) to enable evidence-informed evaluation along these lines:

#### *Economic growth*

- Does this [policy or set of policies] improve the opportunities or incentives for higher incomes or greater economic growth?
- Does this remove obstacles that hinder resources moving to their most efficient use, or enhance the ability of people to take up new opportunities?

#### *Sustainability for the future*

- Does this impact on the capital stocks for future use (e.g. physical capital, human capital, or the sustainability of the environment?)

#### *Increasing equity*

- Does this impact on the distribution across society (both intra- and

intergenerational)?

- Does this improve opportunities for people to improve their position?

#### *Social infrastructure*

- Does this impact on core institutions that underpin our society (e.g. trust in the rule of law, democracy, Crown–Māori relationship, cultural identity)?
- Does this impact on the trust and connections between people?

#### *Reducing risks*

- Does this impact on New Zealand's ability to withstand unexpected shocks?
- In particular, does this impact on our macroeconomic position (debt, deficits, inflation, etc.)?

In other words, if there is agreement that the five dimensions of the Living Standards Framework broadly capture outcomes desired by a majority of New Zealanders, and that a particular policy

is more likely than alternative policies to achieve better results across these five dimensions, then we might arrive at a working agreement that a policy is substantively 'fair'. A particular policy, or set of policies, gives the people affected by it 'a fair go' when it improves their overall well-being, and the distribution of well-being, now and in the future.

#### Values-based assessment

An alternative (or additional) approach is to assess the substantive fairness of a policy by reference to an agreed set of values or normative precepts. Proceeding in this way prompts explicit deliberation on the kind of society we want to create, inhabit and bequeath to the next generation, and the quality of life we wish to enjoy with one another now and in the future. Corning proposes a biosocial contract based on

## Public policy should promote and facilitate 'reciprocity between the state and its citizens and among citizens themselves' ... so that together we can live, live well and live better.

three normative precepts in his book on 'the fair society':

- Goods and services must be distributed to each of us according to our basic needs (in this there must be equality).
- Surpluses beyond the provisioning of our basic needs must be distributed according to 'merit' (there must also be equity).
- In return, each of us is obligated to contribute proportionately to the collective survival enterprise in accordance with our ability (there must be reciprocity). (Corning, 2011, p.154)

Isbister (2001), in envisioning social and economic fairness, appeals to three dimensions of social justice, noting that these can and do conflict with each other: 'People deserve to be treated as equals, they deserve to be free, and they deserve

to get the best they can out of their limited resources' (Isbister, 2001, p.4).

Any selection of values or moral precepts for the sort of deliberative framework I am proposing will inevitably be somewhat arbitrary. The values set needs to be sufficiently 'broad church' to enable people with diverse conceptions of the good, and rival political theories, to engage with one another in 'realisation-focused comparison'. (Imagine, for example, a utilitarian, a libertarian, an egalitarian and a communitarian engaged in debate about which policy is most likely to give people 'a fair go'.) The point is not that the values set be comprehensive, but that it resonate sufficiently with a broad range of protagonists to keep them 'at the table' long enough to arrive at a practical political consensus, so that decisions can be made and action occur.

With this in mind, I propose four values for starters: freedom, equity, efficiency and reciprocity.

#### *Freedom*

Freedom can be understood both negatively (freedom from ... oppression, discrimination, domination, humiliation or disrespect) and positively (freedom for ... and freedom to ... the capabilities to lead a life one has reason to value) (Berlin, 1969; Honneth, 2004; Sen, 1999, 2009, pp.225-68; Pettit, 2008). Negative freedom requires us to reflect on whether a policy once operationalised intrudes to an unjustifiable extent on the liberty of the individual. Positive freedom requires us to factor in the social, economic and cultural conditions that enable people to pursue their own conceptions of the good. As Anderson notes:

Libertarians tend to identify freedom with formal, negative freedom; enjoying the legal right to do what one wants without having to ask anyone else's permission and without interference from others. This definition of freedom neglects the importance of having the means to do what one wants. (Anderson, 1999, p.315)

Critical enablers of positive freedom are access over a complete life to primary health care, education and training,

appropriate housing, and opportunities to engage in meaningful paid work. This in turn implies that our pre-eminent social obligation in 'a fair society' is first to meet the basic needs of our fellow citizens (Corning, 2011, ch.7).

#### *Equity*

After basic needs are met and the enablers of democratic equality are assured, 'a fair go' requires equity in the sense of proportional equality in the distribution of costs and benefits. Equity does not mean treating everyone equally. (I have incorporated equality in the assessment of fair process: impartiality in the sense of equality of moral worth, and equal consideration of interests.) In considering the distribution of benefits and burdens, equity takes account of factors such as age (Atkinson, 1983, ch.7), needs, luck (Dworkin, 1981), agreements (e.g. treaties), merit, effort and contribution. It allows for social recognition of unequal needs, unequal talents and abilities, unequal application of those abilities, and unequal contributions to the common good: 'No doubt talented people do not deserve any moral credit for their native talents. But they do deserve moral credit for *developing* their talents and *using* them for our common benefit' (Harsanyi, 2008, p.74, emphasis his).<sup>5</sup>

Fairness thus requires breadth of consideration (Hooker, 2005). It requires us to distinguish between different sources of inequality, rather than assuming that everyone should necessarily have, or get, the same. Equity also challenges us to consider the intergenerational accumulation of advantage and disadvantage, in order to ensure that future as well as present generations get 'a fair go'.

#### *Efficiency*

Efficiency requires us to make the best use of available resources to achieve desired social ends (Isbister, 2001, p.21). Sometimes we talk about this as 'cost effectiveness' or 'value for money'. A policy that expends public monies to little good effect, or that uses inefficient means to achieve a good that might have been achieved at less cost, does not deliver 'a fair go' either to the recipient of the service or to the taxpayers who fund it.

Including efficiency in the assessment of 'a fair go' protects against a risk highlighted by Kaplow and Shavell: 'virtually any method of evaluation that gives weight to notions of fairness will sometimes lead to choices that make all persons worse off' (2002, p.xviii). Indeed, there seems little to commend a policy option if there is another policy option that is likely to produce or contribute to greater well-being for everyone (Fleurbaey and Maniquet, 2011, p.235).<sup>6</sup> Zajac argues that:

all other factors being equal, one might consider economic efficiency to be a necessary fairness condition in any reasonable definition of fairness, while granting that, depending on the definition of fairness, some economically efficient allocations may be fairer than others.<sup>7</sup> (Zajac, 1995, p.14)

#### *Reciprocity*

Reciprocity means give and take, over a complete life, with opportunities to belong, participate and contribute to the collective enterprise proportionately in accordance with our ability (Corning, 2011, p.154). Public policy should promote and facilitate 'reciprocity between the state and its citizens and among citizens themselves' (Conrad, 1981, p.19), so that together we can live, live well and live better. As Rawls puts it, 'we are not to gain from the cooperative labors of others without doing our fair share' (Rawls, 1971, p.112).

Reciprocity does not, or ought not, occur only between 'people like us' or near neighbours within the immediate circle of our moral concern. Reciprocity challenges us to transcend tribalism, embrace our common humanity and expand the 'we' (Singer, 1982). In response to large-scale natural disasters, for example, we commonly witness reciprocity at work between, and not only within, nation states.

Reciprocity makes 'a fair go' sustainable. As Barry notes: 'If I am motivated by a desire to behave fairly, I will want to do what the rules mandated by justice as impartiality require so long as enough other people are doing the same. Thus, people motivated by fairness reinforce

**Table 1: Things to think and talk about when assessing ‘a fair go’ in public policy**

UNDERSTAND THE POLICY CONTEXT AND IDENTIFY GOALS AND OBJECTIVES				
<b>Context</b>	In what context has the question of ‘a fair go’ arisen? What is the policy problem? (What do we want to change or achieve?)			
<b>Relationships</b>	Who are the key ‘stakeholders’ (interested and affected parties)? What is the nature of the relationship between them? Are there existing agreements, contracts or treaties between the parties?			
<b>Time</b>	What time constraints do we face? What time trends can we observe, and what are the implications of those trends now and in the future? How are costs and benefits currently allocated between past, present and future generations?			
MULTI-CRITERIA COMPARATIVE ASSESSMENT OF POLICY OPTIONS				
<i>Criterion</i>	<i>Status quo</i>	<i>Option 1</i>	<i>Option 2</i>	<i>Option 3</i>
FAIR PROCESS				
Impartiality				
Deliberative fairness				
Transactional fairness				
Transitional fairness				
Assessment of procedural fairness				
FAIR OUTCOMES				
<i>Assessed against the five dimensions of the Living Standards Framework</i>				
Economic growth				
Sustainability for the future				
Increasing equity				
Social infrastructure				
Reducing risks				
<i>And/or assessed against an agreed set of values, for example:</i>				
Freedom				
Equity				
Efficiency				
Reciprocity				
Assessment of outcome fairness				
OVERALL ASSESSMENT				

one another’s motives’ (Barry, 1995, p.51).

**A matrix for comparative assessment**

Table 1 summarises the approach I am proposing to the comparative assessment of policy options and the justification of ‘a fair go’ in public policy.

While assessment of options against each criterion should be quantified where possible, this matrix is offered not as a tool for technocrats to employ behind closed doors in a misguided attempt to design ‘perfect systems’, but as a framework to guide public deliberation (‘things to think and talk about’). Quantification can and should inform public policy-making, but

empirical analysis is not the cure for all policy ills.<sup>8</sup>

Central to ‘a fair go’ in public policy is what Cohen (1991) calls the interpersonal test, or what Sen (2009, pp.xii–xiii) means by ‘public reasoning’. The approach outlined in this article intends to support citizen engagement and deliberation, through a public exchange of reasons, on practicable options to make our life together fairer than it is now:

the fact that fairness norms do not work like utopian thinkers would like them to work should not discourage us from trying to use them in the manner in which they actually do work. Others are free to toy with

grandiose plans to convert our planet into a new Jerusalem, but bourgeois liberals like myself are content to aim at finding workable ways of making life just a little bit more bearable for everyone. (Binmore, 2008, p.332)

- 1 Cf. the Commission’s own excellent background paper on ‘the citizenship dividend’ (CFLRI, 2012).
- 2 As Rawls (2005, p.4) noted: ‘The political culture of a democratic society is always marked by a diversity of opposing and irreconcilable religious, philosophical, and moral doctrines. Some of these are perfectly reasonable, and this diversity among reasonable doctrines political liberalism sees as the inevitable long-run result of the powers of human reason at work within the background of enduring free institutions.’
- 3 For example, Milton Friedman’s ‘Fair versus free’ argues uncompromisingly for the priority of liberty: ‘There is a real role for fairness, but that role is in constructing general rules and adjudicating disputes about the rules, not in determining the outcomes of our separate activities’ (Friedman, 1992).
- 4 Analysis courtesy of Adrienne Fletcher, Knowledge Services, Ministry of Social Development. The Mana Party was formed in April 2011 following Hone Harawira’s resignation from the Māori Party. The Progressive Party did not contest the 2011 election.
- 5 In arguing (contra Rawls, 1971, pp.65, 101-04) that ‘justice itself requires us to reward superior performance in a suitable manner’, Harsanyi nevertheless concurs with Rawls that ‘we must not create needless economic and social inequalities’, and maintains that ‘such a policy would be fully compatible with significantly smaller economic and social inequalities than we have today’ (Harsanyi, 2008, p.76).
- 6 Fleurbaey and Maniquet do not treat efficiency as a criterion of fairness; rather, they introduce considerations of fairness into welfare economics as a useful way of addressing ‘second-best policy problems’. In defining social ordering functions, efficiency is their central value (Fleurbaey and Maniquet, 2011, pp.22, 234).
- 7 Zajac notes (1995, pp.14, 77) that the relationship of Pareto efficiency to fairness is a crucial issue, for at least three reasons:
  - strict Pareto optimality rarely exists: almost every policy change generates some losers;
  - if a Pareto-improving move were to be identified and implemented, how should gains from the exchange be divided?;
  - Pareto optimality may be possible in a static, risk-free world with perfect information, but policy-making happens in a risky, dynamic world of imperfect information.
- 8 Chavas and Coggins (2003, p.226) report that, on their analysis, ‘while better information typically generates improved efficiency, it can also contribute to unfair allocations. It also stresses the effects of asymmetric information in the evaluation of equity.’

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Patrick Nolan

# LIFTING New Zealand's Productivity a research agenda

Sebastian Edwards (2013) wrote that when it comes to the economy New Zealand appears to exhibit 'Woody Allen syndrome'. In most of Allen's movies, he observed, the main character is leading what appears to be a charmed life ('interesting friends, a nice apartment, and a well-paying job') but he still worries a lot. New Zealanders too 'worry a lot. They worry about the economy and about the country's position in the world.' And, as Edwards went on to note, as 'Woody's movies progress, the viewers realise that, although he is sweet and loveable, he has certain traits that could be

improved on. ... Similarly, and in spite of New Zealand's wonderful showing in ranking after ranking, there are a number of areas where reforms would make the country's position in the world even better.'

So it is with New Zealand's productivity, which is a measure of the economy's ability to turn resources into goods and services. The latest figures suggest we are doing well. Over the last couple of years measured sector output, labour productivity and multi-factor productivity have all been growing. And not only is labour productivity growth picking up, but labour inputs are slowly increasing too. Yet, when considered in a wider context, the picture is not quite as

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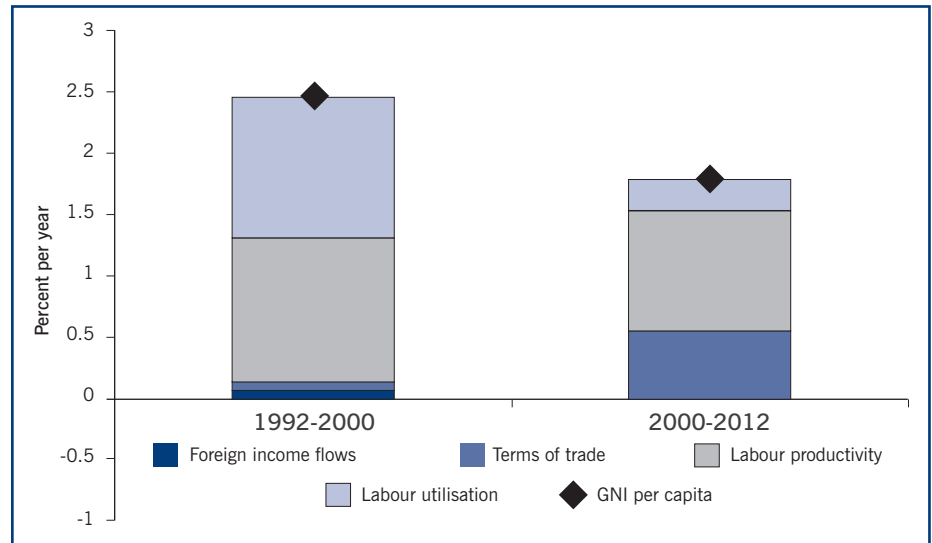
Patrick Nolan joined the Productivity Commission as a Principal Advisor in the Economics and Research team in February 2014. Before this he spent five years as the Chief Economist of Reform, a cross-party British think tank focused on public services and economic prosperity. Patrick completed his PhD on Working for Families in the School of Government at Victoria University of Wellington.

rosy. Labour productivity growth since the global financial crisis, and indeed throughout the 2000s, has been below that of the 1990s. New Zealand is still below the OECD average for output per capita and labour productivity. And there is a question of how much of the ‘rock star’ growth expected in the next year or so will be due to terms of trade increases and the Christchurch rebuild. These factors will only take the economy so far. We need to continue to lift our productivity.

The community of researchers working to address these productivity-related issues in New Zealand, however, is small and spread across a number of organisations. There are gains to be made from coordinating research efforts. With this in mind, a Productivity Hub has been established as part of the Government Economic Network. In July 2013 the Productivity Hub held a symposium to discuss New Zealand’s relatively poor productivity growth compared to other OECD countries, and opportunities to turn this around. Following on from this symposium, the Productivity Hub’s governance board set out to develop a Forward Looking Agenda of Research (FLARE). The goal is to produce an agenda to aid in the coordination and collaboration of research work on understanding and improving New Zealand’s productivity performance. This article outlines the findings of the FLARE process so far.<sup>1</sup>

This interest in productivity is not new. Indeed, it is more than 50 years since Conrad Blyth began his work measuring productivity at the New Zealand Institute of Economic Research (Blyth, 1961). Given this, the approach taken to developing FLARE was not to develop a definitive review of the literature, but to highlight major findings, information gaps and relevant questions. A proposed agenda for addressing these questions was also developed. The objective is to move beyond simply identifying problems to, in turn, more closely identifying which policy changes would be most effective in lifting New Zealand’s productivity and the trade-offs involved in them. It is likely that there will be debate over the findings and questions. It is also likely that the

Figure 1: Sources of income growth in New Zealand



Source: Conway and Meehan, 2013, p.9

research agenda will evolve as progress is made and new knowledge generated. This is perfectly natural for a topic as complex and important as productivity. This is why the Productivity Hub’s governance board felt that it was important to publish this article summarising their assessment. This is not a final word, but hopefully the start of many more conversations on lifting productivity.

#### What do we know about productivity?

The first step in developing FLARE was to pull together what we already know about New Zealand’s productivity experience and organise the major findings into ‘buckets’: in particular, productivity performance, resources (e.g. natural and intangible assets, people and capital) and intermediate outcomes (e.g. innovation, international connections and macro settings).

#### Productivity performance

In the long run productivity is probably the single most important factor in determining a country’s wealth and well-being (Krugman, 1994). Take New Zealand since the early 1990s. As shown in Figure 1, increases in labour productivity have made a bigger contribution to lifting gross national income (GNI) than any other thing, accounting for over half of all GNI growth. Yet this contribution must be seen against a backdrop of slowing income growth over the 2000s. This largely reflected a slow-down in the growth

in labour utilisation, as the recovery from high unemployment and labour participation moved towards natural limits. But growth in labour productivity slowed also (Conway and Meehan, 2013).

To some degree the effect of this slowing growth in labour utilisation and productivity was offset by changes in New Zealand’s terms of trade (the ratio of export prices to import prices). As the governor of the Reserve Bank noted last year, New Zealand’s terms of trade were around 20% higher than the average for the 1990s (Wheeler, 2013). This improvement, along with a rebound following the Canterbury earthquakes and the global financial crisis, goes some way to explaining the current period of high growth. Yet this will only take the economy so far, and consideration must be given to the long-run drivers of economic performance.

The importance of lifting productivity becomes clearer when focus shifts from the past to the future. Like many other countries, New Zealand faces future challenges, including demographic change, environmental pressures, and constraints and changes in the distribution of income and wealth (Upton, 2013). In relation to the first, as Statistics New Zealand’s (2011) median population projections show, between 2016 and 2061 the number of people over the age of 65 is projected to increase by 142% to 1,905,000 (from 788,000). The increase in people over 65 makes up 79.3% of total

projected population growth over these years, and the median age will increase from 37.3 to 44 years, which will be reflected in higher dependency ratios. Important changes in the composition of the population will also take place, with the Māori and Pacifica populations, in particular, gaining population share (Boston, Callister and Wolf, 2006).

The fiscal effects of these demographic changes, such as on New Zealand Superannuation and health expenditure, have been widely canvassed (Treasury, 2013). What has been less widely canvassed is the economic effect of these demographic changes, including on productivity. Guest (2013) showed that population ageing affects productivity through the dependency ratio (ratio of

relatively efficient at utilising this resource base (indicated by a relatively low natural resource depletion as a share of GNI (World Bank, 2013)), there is concern over the management of some resources (such as water), and how natural resources are accounted for in the national accounts and productivity statistics. These resources are not only valuable in themselves, but play a key role in shaping New Zealand's intangible assets (e.g. New Zealand's 'clean and green' reputation). A gap in the knowledge of the full contribution of environmental assets creates a risk that they will be undervalued (Clough, Hickman and Stevenson, 2013; Kerr, Coleman and Pemberton, 2013; Green Growth Advisory Group, 2011). There are also gaps in our understanding about

to people management practices (Green et al., 2011). There has also been debate over labour market regulations, which affect the availability, flexibility and cost of labour (Frances, 2004). It has also been noted that gains could be made through better matching of skills and employers' needs, improved links between employers and the education and training systems, and workplace training (Timmins et al., 2012; Barnes and Dixon, 2010). Migration, or making New Zealand 'a place where talent wants to live', to use Paul Callaghan's phrase, could also play a role through increasing labour market density (McGuinness, 2013). And, finally, while the school system does relatively well, this does not mean that there is no scope for improvement, particularly given the tail of underperformance.

To a large degree the economy's capacity to utilise natural resources and people depends on capital. Hall and Scobie (2005) argue that, in comparison with Australia, New Zealand has had a low ratio of labour-to-capital prices, meaning that it has been relatively cheaper for businesses to hire more workers than to invest in physical capital. This high cost of capital relative to labour has been seen as a product of low national savings (although there is debate over this) and a shallow financial sector, which, in turn, lowers capital intensity and negatively affects productivity (Dupuy and Beard, 2008; Cameron et al., 2007; Mason and Osborne, 2007; Mazur and Alexander, 2001). But the cost of capital is not the only challenge. The capacity of firms to make the most of capital spending is important too. Information technology (ICT) is a good example. This has been shown to make a strong contribution to labour productivity growth (Statistics New Zealand, 2013), yet the advantages of spending on new technology will only be fully realised when firms move beyond simply 'computerising' or 'web-enabling' existing processes. This is especially important in New Zealand, as, although our investment in ICT as a share of GDP is about average compared to a selection of other OECD countries, the small size of the economy means that a relatively higher proportion of GDP needs to be dedicated to this to achieve equivalent ICT capability (as many ICT

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elderly dependents to workers), the second demographic dividend (potential increase in savings as working lives increase) and age complementarities (different skills) of workers. This, he goes on to show, could have an aggregate negative impact on living standards of somewhere between zero and 15% over the next 40 years. The width of this range highlights not only the inherent uncertainty of projections of the national economic impact of ageing, but also the value of getting the policy response right. An environment where workplaces successfully utilise the complementary skills of both younger and older workers is, for instance, more likely to face a loss in living standards closer to the zero end of the range rather than the 15% end.

### Resources

New Zealand's abundant natural resources are an important factor in production (Upton, 2013). Yet, although we are

which industries are more or less eco-efficient, and how structural economic change has influenced national-level eco-efficiency measures. More generally, it has been argued that New Zealand needs to build more products around our existing biological base (with a stronger focus on intellectual property) (Maré, 2013; Smith, 2006).

People are an important resource too. New Zealand generally does relatively well in utilising the labour available (as indicated by labour participation rates). Further, while the quality of labour is only partly captured in schooling, this metric indicates that New Zealand produces good-quality labour by international standards. Yet this is not reflected in returns to education, as, despite having long working hours, New Zealand's per capita GDP is low. This raises a number of issues. One is the weak nature of managerial capital in New Zealand, particularly when it comes



costs reflect a world price) (Productivity Commission, 2014).

#### *Intermediate outcomes*

New Zealand's economic geography means that it requires a set of structural policies that are attractive and welcoming enough to overcome distance and size and attract the drivers of prosperity – investment, skills and ideas (Guillemette, 2009). There is a reasonably broad consensus on this, but less well understood is how specific interventions and approaches could help address these challenges. Further, as good as New Zealand's reforms to the business environment have been in the past, the world is not standing still. Approaches that were once world-first are now more common; there are signs that industry concentration has increased; and regulatory risks and costs have risen in key areas. While New Zealand remains an entrepreneurial country – in the sense that it is relatively easy to start a firm – innovation and international engagement are persistent concerns.

Innovation is important, as not only can it push out the technological frontier, it can help move laggard firms up to it. There is a popular view that New Zealanders are characterised by 'ingenuity and innovation'. However, the economy-wide evidence for this claim is mixed. Crawford et al. (2007) argue that New Zealand's performance in patents and private research and development (R&D) share is on a par with (or even above) what would be predicted given our distance from major R&D-performing countries, population, average firm size and industry composition. However, while the OECD (2013) ranks New Zealand sixth in terms of academic publishing rates (publications in the top-quartile journals per GDP), we are only 19th in terms of patenting rates (based on triadic patent families: a set of patents in different countries that protect the same invention). On per capita expenditure on R&D by business we rank 31st.

Further, without outperforming other countries in the upstream generation of innovation (such as patents and private R&D), New Zealand cannot expect to match other countries in commercialising and capturing value from innovation.

Innovation requires knowledge absorption and knowledge application (Lewis, 2008). Not only does the technological frontier need to be pushed out, but firms need to make the most of these opportunities through developing new ways of working. However, the low level of business R&D implies not only limited knowledge creation but also an inability to absorb innovation from elsewhere. Further, as Knuckley and Johnston (2002) showed, the R&D efforts that are undertaken tend to be by a small group of 'leader firms' (which they defined

Nonetheless, as important as international connections are (and they are important), maximum gains come when these connections are supported by strong domestic productivity performance.

By the end of the 1990s New Zealand was considered a world leader in implementing product-market regulation that was supportive of competition in areas where it was viable. Since then, the intensity of reform has fallen and New Zealand has lost some of its policy advantage (Conway, 2011). This may be especially problematic given the 'low

## **By the end of the 1990s New Zealand was considered a world leader in implementing product-market regulation that was supportive of competition in areas where it was viable.**

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as the top 20% in terms of practices and outcomes). The size of the New Zealand economy may make leveraging off public R&D efforts particularly important (Crawford et al., 2007).

There is an important distinction between an economy being open (an absence of formal barriers to flows taking place) and being connected (high actual flows). New Zealand is relatively open but only moderately well connected (Skilling, 2012). The flows of people and inward investment are relatively high; but imports, exports and outward direct investment are low. New Zealand firms' exports are not well integrated into global value chains, and they have difficulty assessing and absorbing technological developments. Foreign direct investment and outward direct investment could provide important mechanisms for building these international connections (Wilkinson, 2013). Regulatory coordination, particularly between New Zealand and Australia, can play an important role too (Productivity Commission, 2012; Guerin, 2005; Goddard, 2002).

density' nature of the New Zealand economy and where New Zealand sits relative to the world technological frontier. But the optimal stance of regulation requires careful thought. Take competition policy. It could be that strengthening competition will reallocate resources to more productive firms and thereby increase overall productivity. However, an alternative view is that larger firms and/or firms cooperating with one another may be more likely to achieve innovation, which is also an important driver of productivity.

There is also a question of whether the balance of the economy is right – particularly the role of consumer spending and investment in housing assets – given the relative capital shallowness of the New Zealand economy. As Helm (2012) argued in the United Kingdom, irrespective of whether it is funded domestically or from overseas, investing in infrastructure requires an economy 'to create the space to pay the bills, to provide the savings, to go into the investment'. In short, it is necessary to consider

sacrificing some current consumption to invest in the long-term drivers of growth. Further, while New Zealand has declining productivity relative to other countries, it also has an exchange rate that could be argued to be persistently overvalued. This high exchange rate may reflect traditional economic drivers, such as the terms of trade, relative cyclical economic performance and inflation outcomes (McDermott, 2013); but it also may, at times, have partly reflected the interaction of monetary and fiscal policy (with expansionary fiscal policy potentially meaning that monetary policy

- added value (additionality): addressing a clear gap in understanding and not duplicating work elsewhere;
- contribution to capacity building: the potential to be a catalyst for other work (opening avenues for further research) and to contribute to staff development;
- feasibility: attainable objectives, realistic scale, timescale, scheduling and resource costs; and
- scholarly importance: contribution to theory and methodological development.

- How does productivity vary across firms and sectors?
- Which firms and sectors have the highest productivity growth (i.e., who are the star performers)?
- What characteristics (age, size, capital intensity, ownership, use of migrant labour, R&D, etc.) do they share (or differences do they have) relative to low-productivity growth firms and sectors?

Although these are largely descriptive questions, they are nonetheless important, as clearly identifying what you are dealing with is a useful starting point for analysis. Further, this descriptive analysis will provide a basis for an improved understanding of how changes take place at the level of the firm. As Sautet (2000) noted, many currently accepted theories of the firm cannot provide insights into important market phenomena such as entrepreneurship. The conceptual insights generated will then, in turn, lead to further empirical questions, some of which may be suited to the LBD, and some of which may require other approaches (such as case studies). This iterative process of data analysis and theory-building will help researchers move beyond simply identifying problems to more closely identifying which policy changes could be most effective in lifting New Zealand's productivity.

The remaining questions can be grouped into four key themes. The first relates to the efficiency of resource allocation in New Zealand. As Restuccia (2014) and Bertelsman and Doms (2000) have shown, the systematic reallocation of employment and hours can explain many countries' experiences of productivity catch-up, slow-down or stagnation. It appears also worth considering this in the New Zealand context, as the firm-level distribution of productivity appears to be wide and so the potential benefits of improved resource allocation could be significant. There are also important regional economic questions, with there being a sizeable productivity premium in Auckland, around half of which can be attributed to industry composition (Maré, 2008). It would thus be useful to know what factors influence the speed with which low-productivity firms can

## There would ... be value in understanding how effective New Zealand firms and research institutes are in bringing innovations to market ... as well as whether the market rewards more innovative firms with more resources ...

had to be tighter than otherwise) (Brook, 2012).

### A Forward Looking Agenda for Research

The objective of FLARE is to provide a list of relevant research projects which would advance understanding of New Zealand's productivity issues and ultimately improve policy. A short-list of proposed projects for the next two years is shown in Figure 2. A short-list has been chosen because, although lifting productivity requires action across a range of fronts, longer lists fail to illustrate priorities and can distract from difficult questions. Further, as is common in research, this agenda will evolve as progress is made and new knowledge generated (or as the military adage goes, 'no plan survives contact with the enemy'). The projects on this short-list have been prioritised based on judgements about their:

- impact on policy outcomes: relevance to key government priorities and direct potential to influence policy and/or practice;

The projects will make use of a partnership with Motu Economic and Public Policy Research to exploit Statistics New Zealand's Longitudinal Business Database (LBD). The LBD is a rich resource for understanding New Zealand firms and can provide a uniquely detailed view of their behaviour and performance across a broad range of topics (Fabling, 2009). The aim is to not only produce new research reports but, more generally, to build broader practitioner capability with these data: a primary objective is to ensure that more people can work with these data and, as a result, expand the set of research projects undertaken with them. This approach should also help to contribute to efforts to improve measures of productivity and understanding of their limits, including the differences between firm-based and economy-wide (macro) measures.

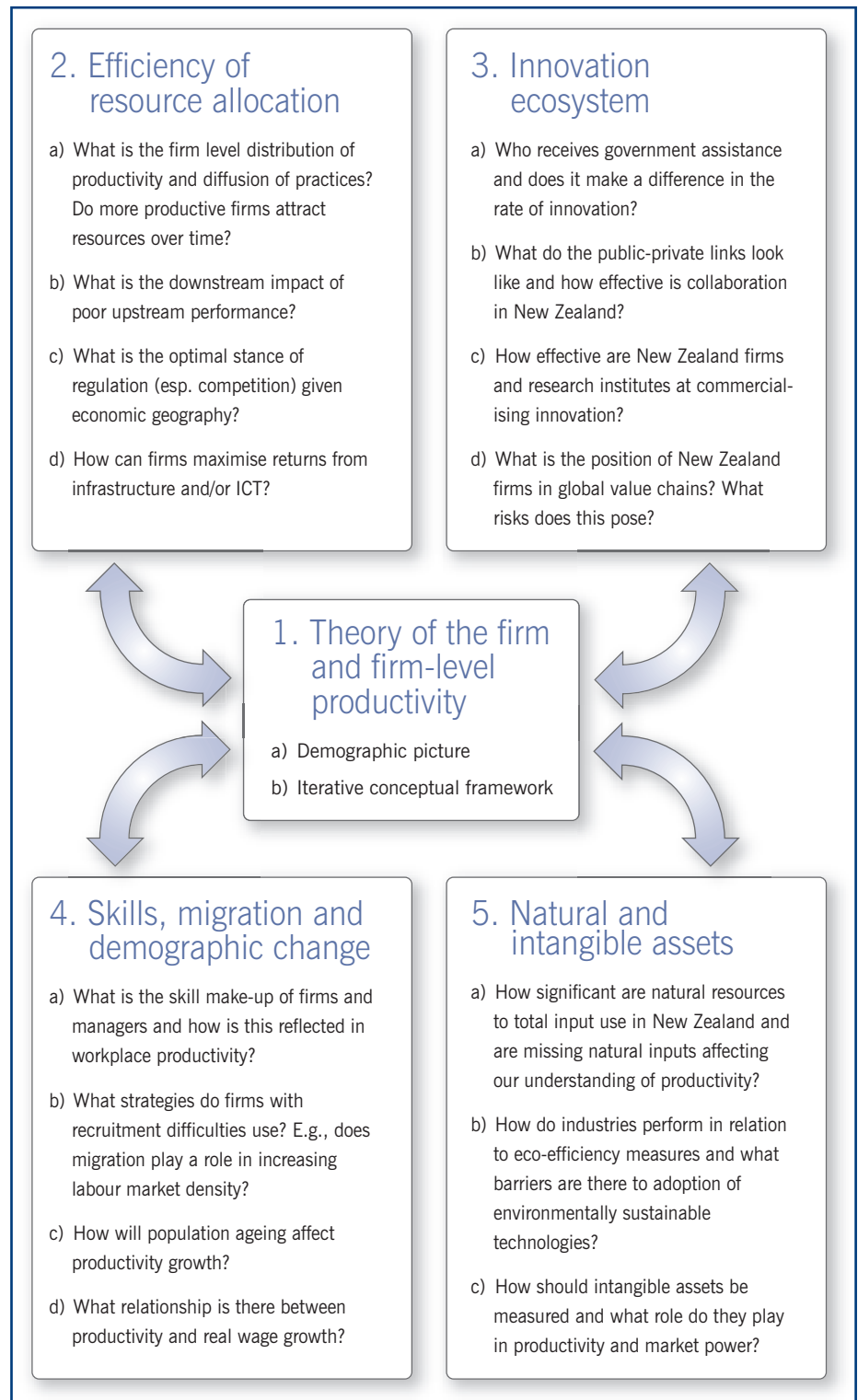
One early output will be more detailed data on the demographic characteristics of firms in New Zealand. Key questions include:

catch up to high-productivity firms. This, in turn, highlights the importance of how innovation, technology and management practices are diffused across firms, and the potential roles that small markets, limited international connections and competition (or collaboration) could play. Reallocation can also raise important political economy issues (Grennes, 2003).

The second theme relates to the innovation ecosystem. This is a topic of perennial concern but also substantial government activity over many years. We need to better understand not only who receives government assistance, but what difference this makes to the rate of innovation and productivity growth. The case for any intervention needs to be made, and, as the OECD has noted (Warwick, 2013), more monitoring and evaluation of industrial policy initiatives is likely to be valuable. The right mechanisms for and approaches to support (for example, direct grants versus tax relief, or targeted versus horizontal approaches) must be chosen.<sup>2</sup> There is also growing interest in how New Zealand researchers and organisations (including business, iwi and other community groups) collaborate with each other. A better understanding of these science-to-business links, along with the role that the public sector does and should play in these, would be valuable (Māori Economic Development Panel, 2012). There would also be value in understanding how effective New Zealand firms and research institutes are in bringing innovations to market (both domestic and international) and capturing the value from innovations, as well as whether the market rewards more innovative firms with more resources (and, ultimately, whether such firms are more likely to survive).

The third theme brings together important questions regarding skills, migration and demographic change. Like many other countries, New Zealand has to adjust to demographic change. Not only is the population getting older, but the ethnic composition of the population is changing too. As a result, it will be more important for firms to utilise the skills of all population groups (people of different ages, for example).

Figure 2: Proposed priority projects for the next two years



Source: Productivity Hub

This shows the importance of the ‘race between education and technology’ and of educational infrastructure evolving so that the supply of skills more closely matches changes in demand (Goldin and Katz, 2008). It also shows the importance of improving management practices. Further, while migration already plays a key role in the New Zealand labour

market, this could (along with capital deepening) help offset a shrinking labour force: the strategies that firms use in this area are crucial. It would also be useful to better understand the relationship between productivity growth and real wage growth, including the effect this may have on different population groups.

The fourth theme highlights the importance of natural and intangible assets. While New Zealand has abundant natural resources, continuing to manage these effectively will be essential. These assets are not only valuable as traditional factors in production, but play a key role in shaping New Zealand's intangible assets (such as the benefit from New Zealand's 'clean and green' reputation). Intangible assets (brands, patents, franchises, software, research programmes, ideas and expertise) have become an increasingly important factor in production, but are not measured or understood particularly well in New Zealand. While these questions raise significant measurement challenges, this does not mean that robust measurement should not be attempted. As the Australian Productivity Commission has noted, valuing 'environmental outcomes in these types of situations, while difficult and sometimes contentious, may assist with making trade-offs in a more considered way' (Baker and Ruting, 2014, p.11).

## Conclusion

There is a line attributed to Ernest Rutherford which goes: 'we've got no money, so we've got to think'

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(Andrade, 1964). This gets to the heart of New Zealand's economic challenge. Productivity is important everywhere, but even more so for a small and remote country like New Zealand. And this is a challenge for economic research too. Many of the conventional drivers (e.g. physical capital investment; years of schooling) do not adequately explain our productivity performance. Further, not only does the question appear more complex here, but the domestic capacity to undertake research is small and spread across a number of organisations. This article has thus outlined efforts by the Productivity Hub to develop a shared agenda for research on understanding and improving New Zealand's productivity, particularly at the level of the firm. The objective is to move beyond simply identifying problems and to, in turn, more closely identify which policy changes would be most effective in lifting New Zealand's productivity.

1 Readers are welcome to direct questions or comments on the FLARE process or on this article to the author at patrick.nolan@productivity.govt.nz or on 64 4 903 5172.

2 When it comes to government support for business, the OECD has distinguished between 'targeted' and 'horizontal' approaches (foundational policies) (Warwick, 2013). Targeted approaches are restricted to particular firms or sectors, while horizontal approaches apply more generally and can include improving the regulatory environment and the performance of regulatory institutions. On targeted policies, there is a question of whether firm size or age should be seen as the main driver of innovation and growth.

## Acknowledgements

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Liz Brown

# Overview of the New Zealand National Integrity System Assessment 2013

In 2012 Transparency International New Zealand (TINZ) decided that during 2013 it would conduct a National Integrity System (NIS) assessment for New Zealand. New Zealand has always rated highly on the Corruption Perceptions Index (CPI) published by Transparency International, and in recent years has consistently ranked first or first equal. However, the CPI is precisely what its name suggests, an index based on perceptions of a country's corruption status, the perceptions being those of a number of international agencies. TINZ considered the time was ripe to test the reality behind the perceptions and assess the strengths and weaknesses of New Zealand's system.

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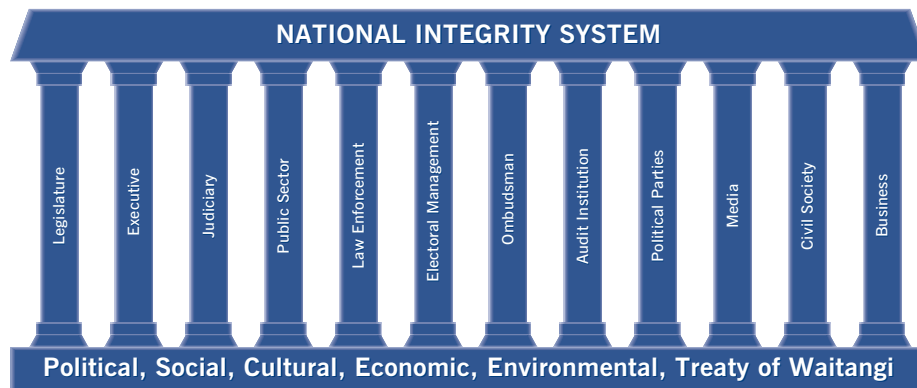
The year 2013 seemed particularly appropriate for the assessment as it was ten years since TINZ's first NIS assessment, and was also the centenary of the Public Service Act 1912 (which came into effect in 1913). Sadly, it also marked the death of Jeremy Pope in 2012, a New Zealander who was one of the founders of Transparency International and the pioneer of the concept of a national integrity system. The 2013 report is dedicated to his memory.

While the assessment found that current perceptions of New Zealand's integrity are generally warranted, its core message is that it is beyond time for serious and urgent action to protect and extend integrity in New Zealand.

## **The National Integrity System**

A good working definition of a National Integrity System is 'the institutions, laws, procedures, practices and attitudes that encourage and support integrity in the exercise of power' (Brown, 2005, p.1). An assessment of it is an evaluation of the principal governance systems in the relevant country that, if they function well

and in balance with each other, constitute an effective protection against the abuse of power. Those governance systems form the pillars of the 'temple' that is used as a graphic representation of an NIS. The pillars rest on foundations, which are the key norms, ideals and ethics of the various aspects of society. If the foundations are sound, then they are capable of supporting a sound NIS. In an NIS assessment, the foundations are assessed along with the pillars.



### Adapting the assessment methodology

The methodology developed by Transparency International for the assessment of an NIS is intended for use by any country at any level of development and is focused on corruption and on anti-corruption activity. It needed some adaptation to reflect the particular characteristics of New Zealand's NIS, and also to make it more relevant to an environment in which corruption, though undoubtedly present, is not endemic. Accordingly some changes and additions were made:

- The Treaty of Waitangi, as one of New Zealand society's key foundations and a major safeguard against the abuse of majority power, was included among the foundations and also integrated across the individual pillar assessments.
- A further additional foundation was the environment. A high-integrity society needs to be underpinned by sound environmental values and governance practices to avoid the exploitation of power over the environment to the detriment of society as a whole.
- Selected issues were examined and analysed in depth, and some were the subject of supplementary or additional papers.

### Assessing the NIS

Each pillar of the NIS was assessed using a set of indicator questions developed by Transparency International to measure the following aspects of its functioning, both in law and in practice:

- its capacity: the extent of its resources and its independence from unwarranted external interference;

- its governance: its accountability and transparency, along with the means by which its integrity and that of its members or employees is assured;
- its role: the extent to which it can and does contribute to the integrity of the system as a whole.

Each pillar was also assessed for compliance with any specific obligations under the Treaty of Waitangi, and in more general terms for activities relevant to the Treaty. This part of the assessment used indicators developed by TINZ after much discussion and consultation with interested parties.

Similarly, each of the pillar foundations was assessed using either the indicators developed by Transparency International (political, social, cultural and economic foundations) or indicators developed by TINZ (Treaty of Waitangi and environment).

The assessment process involved desk research and more than 100 interviews and consultations. A public workshop at the launch of the project in November 2012 helped to identify issues that were likely to arise and also to identify potential interviewees. Further workshops to present and discuss emerging findings were held in Wellington in May 2013 and in Auckland in August 2013. A final workshop in Wellington in September 2013 considered the draft report.

### The foundations of the NIS

The foundations of New Zealand society were generally found to be sound and to support a high-trust society, economy and polity, with a general culture that does not tolerate overt corruption. Political and civil rights are assured, elections are free and fair, and there is wide support for democratic institutions. However,

economic inequality is a threat to social cohesion, and there are perceptions of the level of fraud and corruption that suggest public recognition of the need for a more proactive approach to the protection of New Zealand's integrity.

### Political-institutional

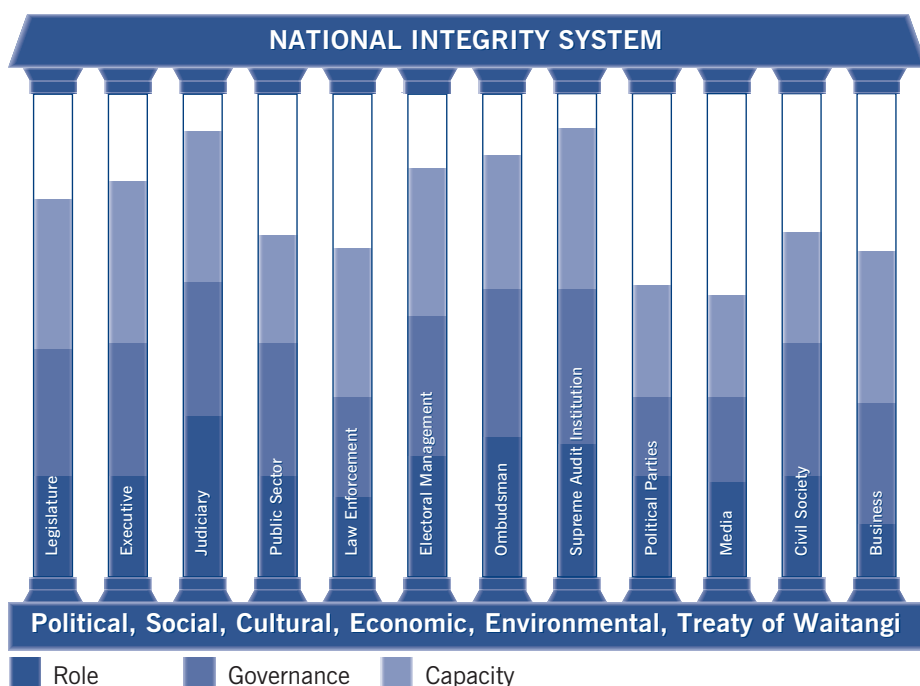
In general, democracy in New Zealand is consolidated and stable. Most political institutions function effectively and the political and civil rights of citizens receive adequate protection. International surveys generally give New Zealand a high ranking. However, there is a decline in confidence in political parties and in politicians generally.

### Sociopolitical

While social divisions exist in New Zealand, especially along economic and ethnic lines, diversity is generally accepted. Divisions and differences seldom result in significant conflict. There is a weakness in the link between society and the political system, due in part to the weakness of political party organisations and unions, and in part to a civil society that is healthy and active but generally focused on non-political functions. A strong history of Māori political activism and a well-organised environmental movement stand out as exceptions.

### Socio-economic

New Zealand generally has a high standard of living, low inflation, and good access to housing and public services. It is still seen as a good place to bring up children and to form new businesses. There is evidence that these qualities are currently fragile, especially taking into account the growth in economic inequality since 1985. The need for business innovation is recognised, but



there has been limited commercial success in this area and private investment is low.

**Socio-cultural**

New Zealand’s cultural identity is predominantly bicultural, with some multi-cultural characteristics. Egalitarianism is important, though decreasingly so. There is general confidence in the public service, in the way democracy has developed and in the trustworthiness of individuals.

**Socio-environmental**

Allocation of access to natural resources and the control of pollution do not appear to have been subject to corrupt practices, although compliance with the relevant regulations is variable. More needs to be done to ensure the integrity of New Zealand’s claim to be ‘clean and green’. Some important environmental issues are not being addressed effectively and the quality of environmental governance is variable. The system is generally appropriate for local issues, but inadequate for addressing national, systemic and cumulative issues. There are active civil society organisations, including iwi organisations, and some recognition of the legitimacy of Māori values in resource management.

**Treaty of Waitangi**

The Treaty forms a general framework for the approach to relations between

the government and Māori, although it is not enforceable in law unless specifically incorporated into legislation. Māori rights are still vulnerable to majoritarian will. The Waitangi Tribunal and the Treaty settlement process go some way to addressing Māori grievances and historic injustices.

**The pillars of the NIS**

None of the pillars of the NIS was found to be weak, and some, especially among the watchdog agencies such as the Office of the Auditor-General, were found to be very strong. Nor were there gross disparities between pillars, although the media and the political parties were distinctly weaker than the average.

The diagram above shows the comparative performance of the pillars in the three aspects of capacity, governance and role. In order to enable international comparisons of relative pillar rankings, the Treaty of Waitangi aspect was not included.

**The legislature**

The introduction of proportional representation has increased Parliament’s effectiveness as a check on the executive (although the executive continues to dominate), and it is more representative of the community. A backlog in the legislation process is being addressed. However, inter-party contestation dominates

the parliamentary culture to the detriment of other important functions. There is a need to strengthen Parliament by giving more attention to the quality and constitutionality of law-making and to the effectiveness of public spending.

Legislative processes are generally transparent and there are excellent opportunities for the public to participate in the work of select committees. Parliamentary administration is less transparent and the Official Information Act should be extended as recommended by the Law Commission (New Zealand Law Commission, 2012).

Parliament’s integrity systems lack formal regulation, but the rules about integrity are clear, fairly applied and effective. There is a reluctance to address new risks or respond to rising expectations of integrity: there is no formal code of conduct, and Parliament has declined proposals for the regulation of lobbying and for independent oversight of members’ travel expenses.

Assorted mechanisms give Parliament adequate powers for holding the executive to account. Its oversight of fiscal management is only moderate by the standards of international good practice and there is a low level of direct public engagement on the budget process.

Parliament is directly and continuously engaged in Treaty of Waitangi matters and appears to give effect to its spirit and principles.

**The political executive – Cabinet**

The Cabinet has great power to make policy decisions and the prime minister is powerful within it because of the right to allocate and change ministerial portfolios. It has some powers that in other countries have constitutional or statutory protection, such as the power to appoint board members to most statutory bodies. There has been public concern over some appointments that were seen as political patronage.

There is a tradition of effective self-regulation through the Cabinet Manual, reporting of public sector activity to Parliament, the independent scrutiny of officers of Parliament, the Official Information Act and the use of parliamentary questions. This generally



provides a high level of transparency and accountability for decision-making and implementation, and also promotes ministers' integrity.

In other respects the power of Cabinet is not effectively balanced, and there are concerns about the relative dominance of the executive. In making appointments, Cabinet may introduce candidates outside the normal assessment process; ministers may resist the appropriate independence of the public sector by failing to encourage or listen to free and frank advice; local government roles may be shifted to central government; and Cabinet (and individual ministers) may resist the spirit and intent of the Official Information Act in dealing with requests for information. Ministerial accountability for the collective coherence and effectiveness of policies is relatively weak. The Cabinet Manual acknowledges the status of the Treaty of Waitangi as a founding document of government in New Zealand. In general Cabinet appears to be meeting its Treaty-related responsibilities.

#### *The judiciary*

The judiciary is one of the strongest pillars of the NIS and has high standards of accountability, transparency and integrity. It is an important check on executive decision-making. There are some specific transparency issues in relation to the judicial appointment process (the government has announced changes to this process), the absence of a requirement for financial disclosure, a lack of regular public reporting on the activities of the judiciary, and some weaknesses in public access to court information.

There have been recent reviews of the administration of justice from the perspective of value for money and 'customer satisfaction'. The effects on the judiciary of resultant changes are not yet apparent, but there is the potential for the perception of some conflict between measures intended to improve efficiency, on the one hand, and the need to preserve the rule of law and rights of access to justice on the other.

The judiciary recognises the constitutional status of the Treaty of Waitangi. There is a separate legal regime concerned with Māori land, and the Waitangi Tribunal makes

recommendations on claims relating to the practical application of the Treaty, though there is a weakness in that its powers are recommendatory only. Judicial education includes awareness of the promotion of the Treaty in the context of New Zealand's conditions, history and traditions. There are Māori judges, especially in the district courts, but only three with acknowledged Māori heritage in the High Court.

#### *The public sector*

Of all the pillars, the public sector was the one most intensively studied. Specialist researchers contributed in the fields of

While procurement processes have improved considerably, specific enhancements are still needed, especially in record-keeping. The public sector has been helpful in promoting integrity among exporters, but could do more to encourage integrity-focused education and training in wider civil society.

The public sector complies with its legal responsibilities under the Treaty of Waitangi, but little priority is given to oversight and policy development in this area. Māori are reasonably well represented among public service employees, but much less so on Crown entities.

**... one reason why the law enforcement agencies did not rate particularly highly: they are multi-purpose bodies and there is no agency with a close focus on the prevention, detection, investigation and prosecution of bribery and corruption.**

Crown entities, environmental governance, fiscal transparency, local government and public procurement. Their work was used in writing this section of the report and was also published as supplementary or additional papers.

At a general level, the institutional and governance arrangements strongly support ethical behaviour, suppress corruption, and promote transparency and high levels of operational accountability. There are, however, pressures (including from chief executive appointment policies and heavy use of organisational restructuring) that have promoted fragmentation and affected the capacity of the public service to provide free and frank advice and to assure high-quality regulatory processes. Evidence of the impact of public sector policies is insufficient to ensure that they are fit for purpose. Local government's important role in implementing national regulations is impaired by an incoherent interface with central government.

At a practical level, there has been resistance to the obligations established by the Official Information Act.

#### *Law enforcement agencies*

While New Zealand has a number of agencies with law enforcement functions, the relevant agencies for the purposes of the NIS assessment were the Police and the Serious Fraud Office. Both were found to be adequately resourced and generally independent and accountable, with, by international standards, low levels of internal corruption.

In a standard NIS assessment there is one pillar for law enforcement agencies and another for anti-corruption agencies. As New Zealand has no dedicated anti-corruption agency, the two pillars were combined for this assessment. This is one reason why the law enforcement agencies did not rate particularly highly: they are multi-purpose bodies and there is no agency with a close focus on the prevention, detection, investigation and prosecution of bribery and corruption. The Serious Fraud Office prioritises bribery and corruption cases, but it has no statutory obligation to do this, and no formal role in prevention or education.

Another reason for the rating is that, in considering the role of the agencies,

the assessment considers the law that they enforce as well as the scope of their activities. The most relevant law in New Zealand is found in the Secret Commissions Act 1910 and the Crimes Act 1961, both of which are recognised to be outdated and in serious need of review and revision. In addition, New Zealand has yet to ratify the United Nations Convention against Corruption, and a recent review by an OECD working group found slow progress in complying with some of the requirements of the OECD Convention on Combating Bribery of Foreign Public Officials.

## In the past two decades mainstream media has become more bicultural, but it still lacks some proficiency in its relationship with Māori and its coverage of Māori issues.

Both the Police and the Serious Fraud Office have taken action to improve their relationship with Māori and the Police actively recruit Māori, but Māori remain over-represented in the criminal justice system.

### *Electoral management body*

The Electoral Commission has a reputation as an impartial and trust-worthy institution, with particular credibility in administering general elections. It is adequately resourced, accountable, and transparent in most aspects of its activities, and there are no concerns about its integrity.

There is some concern about the performance of the Electoral Commission's function in distributing election broadcast advertising, and in some areas, particularly the regulation of political party financing, it has limited powers. Most of the perceived problems with the electoral system, such as a decline in voting, fall outside its area of responsibility.

The Electoral Commission has a special role in administering the Māori vote and intends to reduce barriers to the participation of Māori in elections. Māori voters have a high level of satisfaction with the election process.

### *The ombudsman*

The Office of the Ombudsman meets high standards of independence, accountability and integrity. It is an important check on the exercise of administrative power and on the proper use of the official information legislation.

Funding has not kept up with an increase in complaints and with the allocation of new functions, and a substantial backlog was found to have developed. It is not clear whether a recent increase in funding will be sufficient to eliminate the backlog, and there is no funding for educational and oversight activities.

Ombudsman staff receive training in the Treaty of Waitangi and information is available in te reo. There are some outreach programmes in areas with a high Māori population.

### *Supreme audit institution*

The Office of the Auditor-General is highly rated for transparency, accountability and integrity. It is independent and well resourced. It is effective in its role of financial auditing, but could do more to evaluate the effectiveness of public spending. It has made significant efforts to improve its responsiveness to Māori.

### *Political parties*

While political parties are not public institutions, they play a significant part in the operation of several other pillars and they receive significant public funding. It is therefore of concern that they form the weakest pillar, with only moderate levels of accountability and transparency. There are problems with the financing of political parties, and especially with the opacity of their finances, both as regards donations and as regards indirect public funding.

The representational and engagement abilities of political parties are limited,

their membership low and their relationship with voters weak. However, they do play a strong role in highlighting and combating impropriety and potentially corrupt practices in public life.

Political parties have no legal or special obligations under the Treaty of Waitangi, but most parties take the Treaty seriously and pay special attention to its ramifications for public policy. Māori institutions are generally strong and support political activism.

### *Media*

The media is generally free and independent. It is active and successful in informing the public about the activities of government and in investigating and exposing cases of corruption, although there is little investigative journalism and reporting is often superficial and focused on the sensational. Transparency and accountability are adequate.

The media is not diverse in terms of ownership or content, and it is doubtful whether the mainstream media adequately reflects the entire political spectrum. The main barriers to greater diversity are economic. The commercial environment does not encourage the development of public- and community-oriented media and the state plays only a limited role.

In the past two decades mainstream media has become more bicultural, but it still lacks some proficiency in its relationship with Māori and its coverage of Māori issues. However, a genuine attempt is being made to work in partnership, respect and participation with Māori. The recent development of Māori media has been significant.

### *Civil society*

The groups that make up civil society are highly diverse, representing a wide range of non-government and non-business aspects of society. The NIS study did not cover the entire range, and generally excluded religious and sporting bodies and professional associations.

Civil society organisations vary widely in their degree of transparency and accountability. Registered charities and incorporated societies generally meet reasonable standards, but it is not always clear who benefits from an organisation's

activities, nor do the public generally know what level of information they should expect. Some organisations take on advocacy and policy reform initiatives, but there is little focus on anti-corruption.

Organisations that are funded by the government to provide services sometimes experience a mismatch between their need to provide services on a long-term basis and the short-term nature of government funding. Some are concerned about restrictions on their advocacy activities. There is also a question about the timeliness of government consultation exercises.

Civil society generally gives effect to and recognises the spirit and principles of the Treaty of Waitangi, but there is wide variation across the range of organisations. There is also some uncertainty about the appropriate action to take in order to reflect Treaty principles and Māori tikanga generally.

#### *Business sector*

Businesses enjoy a high degree of freedom from unwarranted interference. After the collapse of many finance companies in recent years, regulatory frameworks in the financial services sector have been significantly strengthened to include stronger disclosure measures, enhanced licensing, prudential oversight and governance requirements. There is still some lack of transparency and accountability in other parts of the business sector, especially in permitting non-disclosure of beneficial ownership and other financial matters in respect of companies and trusts. Some 'shell companies' involved in questionable activities have incorporated in New Zealand.

There appears to be a low level of anti-corruption awareness and behaviour both domestically and in dealings in offshore markets, and some exporters appear to view potentially corrupt or unethical practices as acceptable if carried out by agents who do not inform them of their practices and over whom

they may have little or no control. The business community generally is not well informed about the criminalisation of bribery of foreign public officials.

The Māori economic base has increased significantly in recent years. Tribal asset-owning bodies are generally registered, with constitutions and associated reporting and fiduciary requirements which govern collective Māori land ownership, Treaty settlement assets, and commercial ventures undertaken under tribal or sub-tribal entities. There is some evidence that asset-holding companies are better advanced than tribal incorporations in

there has been continued passivity and complacency. This is exemplified by New Zealand's failure to ratify the United Nations Convention against Corruption more than ten years after signing the convention, and its failure to fully comply with the legal requirements of the OECD Anti-Bribery Convention more than 14 years after signing it. The core message of the report is that it is beyond time for serious and urgent action to protect and extend integrity in New Zealand.

The analysis of the individual parts of the NIS resulted in the findings outlined above, but also identified six broader

**By international standards there is very little corruption and New Zealand remains legitimately highly rated against a broad range of international indicators of transparency and quality of governance. Successive governments have taken further actions to increase transparency and accountability since the 2003 NIS assessment.**

the establishment of new, legally-binding but culturally-appropriate structures to manage and govern Treaty settlement assets.

#### **Conclusion**

The overall conclusion is that New Zealand's NIS remains fundamentally strong. By international standards there is very little corruption and New Zealand remains legitimately highly rated against a broad range of international indicators of transparency and quality of governance. Successive governments have taken further actions to increase transparency and accountability since the 2003 NIS assessment.

A number of areas of concern, weakness and risk highlighted in 2003, however, remain, in the face of ongoing and new challenges to integrity. In some key areas

themes which cut across the pillars, with effects found in several or all pillars. These were:

- a strong culture of integrity, with most decisions conforming to a high ethical standard, but this culture is coming under increasing pressure;
- the relative structural dominance of the executive branch of government;
- a lack of transparency in a number of areas;
- considerable variations in the degree of formality in the frameworks that regulate the pillars of New Zealand's NIS;
- at times, poor management of conflicts of interest;
- a need for greater emphasis on the prevention of fraud and corruption.

The report makes a large number of detailed recommendations.

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# The Open Government Partnership: what are the challenges and opportunities for New Zealand?

## Introduction

In November 2013 New Zealand signed up to the Open Government Partnership (OGP), which was established in 2011 and comprises 63 nations. The OGP operates as a partnership on two levels: nationally, as a partnership between governments and civil society organisations to effect reforms in various areas; and internationally between nations sharing ideas and good practice and collaborating in areas of transparency, integrity and public safety. Upon announcing New Zealand's participation the state services minister, Jonathan Coleman, declared:

In joining the Open Government Partnership, New Zealand is showing we are committed to promoting open and transparent government, and we look forward to

sharing best practices and expertise with our overseas partners ...

The government has established a number of initiatives which deliver more open and accountable government to New Zealanders. The Better Public Services programme shows how the government is tracking on its commitment to delivering better public services.

Through the Kiwis Count survey, the government publishes up to date information on the quality of service New Zealanders are receiving from public services. (Coleman, 2013)

The conflation of initiatives such as Better Public Services with OGP is very interesting as it arguably broadens the already wide OGP remit, which, as will be shown, is divided into five ‘grand challenges’. However, this article will argue that creating such links allows for a potentially more sophisticated discussion than the common academic approach of seeing integrity and transparency as an additional component to public policy.

I will begin by offering a brief history of the OGP and outlining its goals and targets. I will then look at some of the challenges New Zealand faces in meeting its OGP obligations, as well as identifying a selected number of areas in which reform may be realised. Finally, the article will turn to the ambition above and discuss some of the implications of Coleman’s statement. The OGP is still very much in its infancy, and this article is not meant to be any kind of evaluation, but rather hopes to point the way to areas of future discussion, and, more importantly, future policy initiatives.

#### What is the Open Government Partnership?

The Open Government Partnership was launched on 20 September 2011. In order to gain membership of the OGP, each country must do three things: sign up to the OGP Declaration of Intent; develop an initial two-year action plan; and implement that plan. Currently, 63 countries have signed up to the OGP in four cohorts (see Table 1). Cohort 4 countries, including New Zealand, are in the process of joining the forum and are currently drafting their initial OGP national action plans.

There are a further five ‘expectations’ attached to OGP membership. All signatories are expected to:

1. endorse the high-level Open Government Declaration;
2. make concrete commitments, as part of a country action plan, that are ambitious and go beyond a country’s current practice;

**Table 1: OGP membership September 2011–March 2014**

Members of the Open Government Partnership	
Cohort 1	Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, United Kingdom, United States
Cohort 2	Albania, Armenia, Azerbaijan, Bulgaria, Canada, Chile, Colombia, Croatia, Czech Republic, Denmark, Dominican Republic, El Salvador, Estonia, Georgia, Greece, Guatemala, Honduras, Italy, Israel, Jordan, Kenya, Latvia, Lithuania, Macedonia, Malta, Moldova, Montenegro, Netherlands, Paraguay, Peru, Romania, Slovak Republic, Spain, South Korea, Sweden, Tanzania, Turkey, Ukraine, Uruguay
Cohort 3	Argentina, Costa Rica, Finland, Ghana, Hungary, Liberia, Panama
Cohort 4	Australia, Ireland, Malawi, Mongolia, New Zealand, Sierra Leone, Serbia, Trinidad and Tobago

3. develop country action plans through a multi-stakeholder process, with the active engagement of citizens and civil society;
4. commit to a self-assessment and independent reporting on the country’s progress in implementing its action plan;
5. contribute to the advancement of open government in other countries through sharing of best practices, expertise, technical assistance, technologies and resources, as appropriate. (taken from OGP, 2014, p.3)

It is intended that, by adhering to these goals, national governments will promote transparency, accountability and citizen engagement, all of which contribute to improvements in good governance. The OGP itself provides a support unit and an independent reporting mechanism to enable country evaluation, which is done through OGP progress reports. In joining the OGP, countries commit to ‘foster[ing] a global culture of open government that empowers and delivers for citizens, and advances the ideals of open and participatory 21st century government’.

The scope of OGP is thus, necessarily, very broad, and the general goals of increased transparency, accountability and engagement have been translated into five ‘grand challenges’. These seek to:

1. improve public services;
2. improve public integrity;
3. more effectively manage public resources;
4. create safer communities; and
5. increase corporate accountability.

Within these challenges there is scope for member countries to implement any specific initiatives that each feels are necessary, with the only stipulation being that action plans must include concrete initiatives that can be readily measured.

These are all laudable aims, but it may be tempting for one to exercise a degree of scepticism, if not outright cynicism, about the OGP in light of the myriad examples of government mass-surveillance and misuse of data in recent months. Open government seems a long way from the revelations of Edward Snowden and others. However, putting that debate to one side for a moment, there are a number of initiatives that have developed under the auspices of the OGP that give cause for cautious optimism.

Perhaps most encouraging is that many participating states (both OECD and non-OECD countries) appear to be working in authentic collaborations with civil society. While Mexico’s first iteration of its action plan contained comparatively little civil society collaboration, it has subsequently consulted with civil society by including representatives on its Technical Tripartite Secretariat, a forum comprising representatives from the Ministry of Public Administration, the Federal Institute for Access to Information and Data Protection and the Civil Society Coordinating Committee, to advance its action plan (OGP Mexico, 2014). Due to the initial low levels of engagement with civil society, Mexico’s action plan (2011–13) went through a second iteration, which developed 36 proposals relating to civil society, of which 20 have been achieved: these include open access to

official document archives (proposal 34), improvements to electronic procurement (proposal 17), and development of civil society innovation tools (proposal two) (OGP Mexico, 2013). Several other key commitments, including a criminal investigation website, better environmental reporting and a climate change website, are still being developed. Mexico is currently developing its second (2013–15) OGP action plan and is engaging with over 200 participants (drawn from civil society and a number of other areas) working in nine thematic groups. Not only, therefore, has Mexico's

to build on existing initiatives),<sup>2</sup> but it pointed towards a specific issue for which the UK OGP was heavily criticised. In giving priority to ongoing commitments, the engagement process was severely restricted, and engagement with civil society in particular was negligible. The UK 2012–13 progress report noted that:

The UK Government proposed public consultations on its action plan after submitting it to the OGP. It said consultations would be made via its Public Sector Transparency Board and also by convening and

issues rather than on the action plan itself, and too heavily weighted towards an exclusive and narrowly selected group of stakeholders. In conclusion the progress report suggested that this approach demonstrated 'risks attached to exclusivity and of representing only those selected by government' (ibid., p.21).

What has been heartening to supporters of the OGP is the way in which the UK coalition government has reacted to this criticism. Refreshingly, it has openly acknowledged these criticisms and has recognised that engagement with civil society organisations requires a significant commitment, both temporal and financial. As a result the UK government has made a much more concerted effort at engagement. A Civil Society Network has been established, reporting to the Cabinet Office, which gives civil society organisations direct representation in the action plan process, both broadening and deepening their level of participation. The government's new commitments, such as a commitment to open procurement, are ambitious and levels of engagement are considerably higher.

An immediate example of this more proactive approach is the new commitment to developing a national anti-corruption strategy, which will co-ordinate cross-government activities into one area. As the United Kingdom's approach to anti-corruption work has previously been identified as a 'patchwork quilt'<sup>3</sup> of important but uncoordinated activities, this commitment is extremely welcome. What is perhaps even more welcome, however, is both the number and range of civil society organisations that are involved in developing and implementing the commitment, including the BOND Anti-Corruption Group, made up of Article 19, CAFOD, Christian Aid, Corruption Watch, Global Witness, Integrity Action, ONE, Public Concern at Work, Tearfund, the Corner House and Transparency International UK.<sup>4</sup> It would be fair to say that relationships between some of these organisations and the government have not always been cordial: indeed, it was only in September 2011 that Prime Minister David Cameron responded to Transparency International UK's research into corruption in the UK

## **It would be fair to say that relationships between some [civil society organisations] and the government have not always been cordial: indeed, it was only in September 2011 that Prime Minister David Cameron responded to Transparency International UK's research into corruption in the UK ...**

OGP met nearly two-thirds of its proposals, but it has managed to engage positively with an increasingly broad network of civil society respondents.

A similar story can be found in the UK, which has recently published its second OGP action plan. Of the 37 proposals<sup>1</sup> put forward in the original, 2011–13 action plan, all had been completed or were in progress, including creating an online data monitoring process (proposal 8), establishing a single domain for all online government services (proposal 33), and putting all consultation processes online (proposal 35). However, many of the actions that have been completed were already part of the coalition government's prior commitments to increasing transparency and expanding online services: in other words the original OGP action plan was to a significant degree tailored around existing policies rather than bringing anything new to the table. In essence there is nothing particularly problematic about this approach (indeed, OGP member nations are encouraged

consulting with a wider group of stakeholders specifically to consider the country plan. However, it is not clear to what extent structured external consultation took place, if at all. It seems doubtful that any written submissions regarding the 2011 action plan were received as part of a consultative process; none were available online. At the time of research, no record could be located as to which private sector and non-profit organizations or private citizens had made contributions. (Officials who may have known were either no longer in their positions or were unavailable. There was no online material regarding consultations.) In interviews, officials accepted that forewarning notice and prior consultation were not adequate. (Dunion, 2013, p.19)

Elsewhere the consultation process was criticised as being too London-centric, too heavily focused on implementation

by stating: 'I am concerned that it [the research] reflects a view that corruption is a growing threat but I do not accept that there is a complacency or lack of coherent approach for dealing with the issue' (Cameron, 2011).

These are only two country examples, of course, but progress reports and action plans across the OGP nations frequently tell a similar story: although OGP commitments are a work in progress they are at least progressing – demonstrably so – and they are doing so through serious engagement with civil society organisations and other stakeholders.

### The challenges for New Zealand's membership

In many respects New Zealand starts from a position of strength in terms of the OGP. Some may argue that it seems slightly unusual that it joined comparatively later than other countries, given New Zealand's international reputation for good governance and anti-corruption work. Although debate will continue over issues such as New Zealand's standing as the least corrupt country according to Transparency International's Corruption Perception Index, it is fair to say that New Zealand has long been recognised as a world leader in transparency, integrity and accountability of government. (For an excellent recent analysis of this debate, and the merits of the Corruption Perception Index and other corruption measures, see Gregory, 2014.)

Perhaps a more stinging accusation is that a growing sense of complacency has entered the New Zealand outlook, possibly even as a result of its high international standing. A recent report argued that there may be a sense that New Zealand's overall governance was already considered to be robust enough, and that as a result 'in some key areas there has been continued passivity and complacency' (TINZ, 2013, p.333). Examples of this include New Zealand's continued delay in ratifying the United Nations Convention on Corruption (UNCAC), which was originally signed over a decade ago, and the lack of investigations (or even allegations) around bribery overseas, despite New Zealand incorporating the OECD Convention on Combating Bribery of Foreign Public Officials in International Business

Transactions into part 6 of the Crimes Act 1961 (see Newman and Macaulay, 2013). Decisions over joining the OGP may be seen in a similar light: New Zealand was invited to join (along with a number of other countries) and representatives attended the initial working-level OGP meeting in Brazil in December 2011, yet it took two further years for New Zealand to make the commitment.

Such an accusation may have greater merit, however, if the government had shown no inclination at all to engage in OGP-type activities. Yet several initiatives were announced around the time of

In terms of ownership, the OGP action plan is currently being developed by the State Services Commission, and while there is no doubt that this is an eminently sensible choice, there needs to be genuine support and an infrastructure of collaboration to ensure that the OGP team attains maximum impact. Of chief importance is the need for a clear sense of New Zealand's OGP commitments to be communicated to all relevant departments to enable a free and frank flow of information. The risk for the OGP action plan is not necessarily that it will lack teeth, but rather that there may be a

**... the outcomes-based focus of Better Public Services fits in very neatly with the OGP philosophy of measurable and deliverable results, which means that the New Zealand OGP team are working within a familiar paradigm.**

the OGP being founded, particularly in relation to greater transparency in public data. Chief among these initiatives was the 2011 Declaration on Open and Transparent Government, which heralded the creation of a number of working groups, new principles for data and information management,<sup>5</sup> and an annual evaluation which charts implementation progress. A number of other key initiatives have also been developed, such as the Data Futures Forum (which reports to the ministers of finance and statistics) and the Community of Practice for Online Engagement (co-hosted by the Department of Internal Affairs and Victoria University). In terms of accessibility and transparency of information at least, therefore, any charge of complacency seems premature.

In OGP terms, however, openness of data is only one element of the five grand challenges, albeit one that has figured highly on many countries' agendas. The effectiveness of New Zealand's first action plan arguably rests on three key, interrelated challenges: ownership; engagement; and ambition.

range of initiatives and policies currently being carried out are not fully recognised by the OGP team. If this happens, then it cannot be the fault of one team: the OGP is a very broad-ranging initiative and needs to be consciously recognised as such. As ever, cross-departmental communication is critical and it is hoped that, although SSC are spearheading the action plan, they are being assisted by other departments which are ensuring that information is shared freely.

Clearly this is also an engagement risk: to what extent have all relevant departments been given the information and capacity to engage with the lead team and action plan process? This risk applies equally to broader public consultation. As has been seen in the UK, consultation must be an active process and not one that is seen to be done as an afterthought. There has not been a great deal of publicity around the OGP since the initial announcement in 2013, and the extent to which the project is known, let alone understood, by the public is open to question.

Table 2

OGP Grand Challenges	NIS Recommendations
Improving public services	<ul style="list-style-type: none"> <li>• Strengthen role of permanent public sector in regard to procurement, etc.</li> <li>• Strengthen governance arrangements, executive and Parliament</li> <li>• Publishing a Citizen's Budget</li> </ul>
Improving public integrity	<ul style="list-style-type: none"> <li>• Ratification of UNCAC</li> <li>• National New Zealand anti-corruption strategy</li> <li>• Support and reinforce roles of Electoral Commission, judiciary and ombudsman</li> </ul>
More effectively managing public resources	<ul style="list-style-type: none"> <li>• Strengthen role of permanent public sector in regard to procurement, etc.</li> <li>• Support and reinforce roles of Electoral Commission, judiciary and ombudsman</li> <li>• Greater transparency over public appointments to boards of Crown entities and other public bodies</li> </ul>
Creating safer communities	<ul style="list-style-type: none"> <li>• Strengthen governance arrangements between central and local government</li> <li>• Enhance transparency of the judiciary and court system, including information over judicial appointments</li> </ul>
Increasing corporate accountability	<ul style="list-style-type: none"> <li>• Ensure adequate training on and awareness of corruption and integrity risks in business</li> <li>• Investigate and evaluate the costs and benefits to business of continual vigilance around maintaining and strengthening integrity systems.</li> </ul>

Yet both of these issues are dependent on what the ambition for the OGP action plan is. Jonathan Coleman's announcement clearly links it to Better Public Services, and, as has been mentioned previously, there are numerous existing initiatives that would lend themselves to OGP activities. In adopting such an outlook, the New Zealand government can at least be assured of creating objectives that can, and are, being met. Yet such an approach equally opens up the action plan to the same criticisms as made in the UK: that by leaning on pre-existing arrangements, the risk is that New Zealand's action plan offers very little that is new or innovative, and even less that could be a product of new engagement with stakeholders.

Better Public Services itself, however, covers at least three of the OGP grand challenges (improving public services, more effectively managing public resources, and creating safer communities) and arguably covers aspects of all five of them. Moreover, the outcomes-based focus of Better Public Services fits in very neatly with the OGP philosophy of measurable

and deliverable results, which means that the New Zealand OGP team are working within a familiar paradigm. There are, therefore, some interesting opportunities to anchor OGP within Better Public Services, which could well provide quite a sophisticated way of synthesising New Zealand's domestic policies with global reforms. Obviously there are limits: it would not be helpful to simply replicate Better Public Services reforms directly in the OGP Action Plan, as was the case in the UK. Eyebrows arguably would also be raised if the reference to Better Public Services were limited to one or two BPS result areas. In principle, however, conflating the two programmes is by no means a retrograde step. Yet, as the action plan remains an unknown quantity, the question which goes repeatedly begging is, what will be in it?

**What can New Zealand do?**

It is important to recognise that this article is not intended to offer policy advice, and it would be unproductive to provide a wish-list of initiatives that could be asked of the OGP project. Nonetheless, there are

a number of areas that have recently been identified as possibly dovetailing with OGP, most clearly by the Transparency International New Zealand's 2013 National Integrity System assessment. Transparency International made seven high-level recommendations in its report, and well over 50 more specific recommendations, chief among which was for New Zealand to fully embrace its OGP commitments. Some of its recommendations are clearly long-term: for example, revising the Official Information Act 1982 (TINZ, 2013, p.341) is clearly beyond the scope of the two-year OGP action plan. Others are far more realistic, however: the development of a comprehensive national anti-corruption strategy, for example, would clearly tie into the grand challenge of improving public integrity, and would also provide a number of specific, measurable commitments (ibid., p.332). Some examples from the TINZ assessment have been mapped against the OGP grand challenges in Table 2.

Obviously such ideas are outside the scope of Better Public Services, and therefore may not fit into the current OGP agenda, but it is worth considering that even in a two-year action plan, commitments can be made to ensuring a firm infrastructure for continuing reform. Developing such an infrastructure would deal directly with the issue of engagement, which can build public engagement through online discussion forums and other forms of consultation. There are many important links and networks that have already been developed through the consultation process over Better Public Services, and these should be reopened. Others will need to be developed, but again there are time and resource constraints. What is essential for New Zealand's OGP development is to maintain a sense of realism about what can be done in the first year of membership. As the case studies above have demonstrated, even after a relatively slow start engagement can be created in a meaningful and sustained way, and perhaps the New Zealand OGP team might consider the creation of such consultative groups (a corporate governance group; a civil society group) an end in itself, ready for the action plan.



Creating a balance of short-, medium- and long-term commitments appears to be the key to moving forward. Too few commitments, or using a very narrow focus for commitments, could lead to the charge of lacking ambition. Yet the initial action plan can lay the groundwork for the future by committing to developing the networks and engagement processes to take it forward, beyond Better Public Services and towards a broader remit still.

### Conclusion

The Open Government Partnership presents an excellent opportunity for New Zealand to tackle concerns about complacency over issues of good gover-

nance. Furthermore, it presents an avenue for New Zealand to take a leading role on the world stage in an area in which it already commands a great deal of respect. The challenge now is to balance ambition with realism. The OGP action plan should contain some headline reforms in order to demonstrate New Zealand's commitment to the programme. Yet it does not need to promise too much too soon. The initial action plan can be used to instigate quick wins (such as ensuring the ratification of UNCAC) and provide the infrastructure for future reform (through developing civil society groups, business consultation groups, etc.). There are areas that need a long-term perspective, and these cannot

and should not be tackled in the first OGP action plan. They can and should, however, be addressed as a long-term OGP view, one which fits in neatly with the outcomes and spirit of Better Public Services, and one which will hopefully lead to lasting and positive reform.

- 1 The UK OGP initially put forward 41 proposals but four were withdrawn. It should also be noted that despite its UK focus, there are specific commitments from the Scottish government contained within the UK OGP action plans.
- 2 See <http://www.opengovpartnership.org/how-it-works/action-plans#sthash.PIUJmEFu.dpuf> (accessed 6 April 2014).
- 3 National Integrity System studies.
- 4 Details of the commitment can be found at <http://www.opengovpartnership.org/country/united-kingdom/commitment/anti-corruption> (accessed 6 March 2014).
- 5 See <http://ict.govt.nz/programmes/open-and-transparent-government/new-zealand-data-and-information-management-principi/> (accessed 20 March 2014).

## Appendix 1: The Open Government Partnership Declaration

September 2011

As members of the Open Government Partnership, committed to the principles enshrined in the Universal Declaration of Human Rights, the UN Convention against Corruption, and other applicable international instruments related to human rights and good governance:

We acknowledge that people all around the world are demanding more openness in government. They are calling for greater civic participation in public affairs, and seeking ways to make their governments more transparent, responsive, accountable, and effective.

We recognize that countries are at different stages in their efforts to promote openness in government, and that each of us pursues an approach consistent with our national priorities and circumstances and the aspirations of our citizens.

We accept responsibility for seizing this moment to strengthen our commitments to promote transparency, fight corruption, empower citizens, and harness the power of new technologies to make government more effective and accountable.

We uphold the value of openness in our engagement with citizens to improve services, manage public resources, promote innovation, and create safer communities. We embrace principles of transparency and open government with a view toward achieving greater prosperity, well-being, and human dignity in our own countries and in an increasingly interconnected world.

Together, we declare our commitment to:  
Increase the availability of information about governmental activities. Governments collect and hold information on behalf

of people, and citizens have a right to seek information about governmental activities. We commit to promoting increased access to information and disclosure about governmental activities at every level of government. We commit to increasing our efforts to systematically collect and publish data on government spending and performance for essential public services and activities. We commit to pro-actively provide high-value information, including raw data, in a timely manner, in formats that the public can easily locate, understand and use, and in formats that facilitate reuse. We commit to providing access to effective remedies when information or the corresponding records are improperly withheld, including through effective oversight of the recourse process. We recognize the importance of open standards to promote civil society access to public data, as well as to facilitate the interoperability of government information systems. We commit to seeking feedback from the public to identify the information of greatest value to them, and pledge to take such feedback into account to the maximum extent possible.

### Support civic participation.

We value public participation of all people, equally and without discrimination, in decision making and policy formulation. Public engagement, including the full participation of women, increases the effectiveness of governments, which benefit from people's knowledge, ideas and ability to provide oversight. We commit to making policy formulation and decision making more transparent, creating and using channels to solicit public feedback, and deepening public participation in developing, monitoring and evaluating government activities. We commit to protecting the ability of not-for-profit and civil society organizations to operate in ways consistent with our

## Appendix 1: The Open Government Partnership Declaration (continued)

commitment to freedom of expression, association, and opinion. We commit to creating mechanisms to enable greater collaboration between governments and civil society organizations and businesses.

### **Implement the highest standards of professional integrity throughout our administrations.**

Accountable government requires high ethical standards and codes of conduct for public officials. We commit to having robust anti-corruption policies, mechanisms and practices, ensuring transparency in the management of public finances and government purchasing, and strengthening the rule of law. We commit to maintaining or establishing a legal framework to make public information on the income and assets of national, high ranking public officials. We commit to enacting and implementing rules that protect whistleblowers. We commit to making information regarding the activities and effectiveness of our anticorruption prevention and enforcement bodies, as well as the procedures for recourse to such bodies, available to the public, respecting the confidentiality of specific law enforcement information. We commit to increasing deterrents against bribery and other forms of corruption in the public and private sectors, as well as to sharing information and expertise.

### **Increase access to new technologies for openness and accountability.**

New technologies offer opportunities for information sharing, public participation, and collaboration. We intend to harness these technologies to make more information public in ways that enable people to both understand what their governments do and to influence decisions. We commit to developing accessible and secure online spaces as platforms for delivering services, engaging the public, and sharing information and ideas. We recognize that equitable and affordable access to technology is a challenge, and commit to seeking increased online and mobile connectivity, while also

identifying and promoting the use of alternative mechanisms for civic engagement. We commit to engaging civil society and the business community to identify effective practices and innovative approaches for leveraging new technologies to empower people and promote transparency in government. We also recognize that increasing access to technology entails supporting the ability of governments and citizens to use it. We commit to supporting and developing the use of technological innovations by government employees and citizens alike. We also understand that technology is a complement, not a substitute, for clear, useable, and useful information.

We acknowledge that open government is a process that requires ongoing and sustained commitment. We commit to reporting publicly on actions undertaken to realize these principles, to consulting with the public on their implementation, and to updating our commitments in light of new challenges and opportunities.

We pledge to lead by example and contribute to advancing open government in other countries by sharing best practices and expertise and by undertaking the commitments expressed in this declaration on a non-binding, voluntary basis. Our goal is to foster innovation and spur progress, and not to define standards to be used as a precondition for cooperation or assistance or to rank countries. We stress the importance to the promotion of openness of a comprehensive approach and the availability of technical assistance to support capacity- and institution-building.

We commit to espouse these principles in our international engagement, and work to foster a global culture of open government that empowers and delivers for citizens, and advances the ideals of open and participatory 21st century government.

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# Picking up the Pace in Public Services

## Introduction

Following the reforms of the public management system in the 1980s, legislative change and programmes of work to develop and shape the system have occurred at various times. The work programmes have tended to come and go, with mixed success, each designed around maintaining the strengths that accountability for outputs has brought to public sector agencies while increasing the focus on achieving outcomes.

The Better Public Services programme currently under way is the latest manifestation. In essence, it is about the system reform required to get the public services to think and operate across the whole government system and beyond to effectively address complex issues that have been holding New Zealand back from continuing prosperity, and to create opportunities through collaborative endeavour. As with past efforts, it is about retaining the strengths of individual agency accountability within a system which encompasses collective responsibility. If the stop-go history of reform since the

1980s is to be avoided, then the task for the public sector is to build continuity and momentum around the current reform and embed it into the whole-of-government system. This means a state services system that is widely recognised as supporting the government of the day, meeting agency accountabilities, and being an excellent steward of public resources for the benefit of present and future generations of New Zealanders.

This article traces aspects of the state sector management system from the 1980s to the present day with a view to identifying the threads that weave

through the various periods of activity. The objective is to bring to the surface the continuity of thought and action that is the basis for a smooth and continuous pathway to enduring reform.

## The spirit of reform

In 2013 Parliament passed some significant changes to the State Sector, Public Finance and Crown Entities acts. The two major parties supported the state sector changes, and minor party objections did not run counter to the fundamental direction of change. All parties supported the public finance and Crown entities changes. The direction of change was to strengthen the accountability of state sector agencies to work better together on problems and opportunities that required collaborative effort, and to make it easier for them to do so. The cross-party support may have defined the common position without meeting the full appetite for change, but it was a good indication of the agreed broad direction of change.

The legislative changes were designed to support the government's Better Public Services programme. That programme continues a reform pathway that has been developing through successive governments since the reforms of the 1980s. The reform pathway has not been

1984 'The decision-making processes themselves constrain the Government's ability to act in the community's collective interest.'

*Economic Management*, briefing to the incoming government

1987 'Improved management outcomes will only be possible if the system is treated as a whole.'

*Government Management*, briefing to the incoming government

1996 'The next steps in New Zealand states sector reform...will have to do for outcomes what has been accomplished for outputs.'

Allen Schick, *The Spirit of Reform: managing the New Zealand state sector in a time of change*

2001 'Weaknesses include the lack of a systemic approach to setting outcome goals and priorities.'

*Report of the Advisory Group on the Review of the Centre*

2011 'Getting better outcomes for New Zealanders – within appropriate and constitutional settings – is the highest calling for government and the state services.'

*Better Public Services Advisory Group Report*

smooth, but underlying the fits and starts there is a broad direction of change that has clear and consistent objectives:

- to create a state sector that is increasingly responsive to the needs of New Zealanders in a fast-changing and technological world;
- to deliver the support and services needed for the present and future well-being of New Zealanders and prosperity of New Zealand efficiently and effectively; and
- to work together across the state sector and beyond to address difficult and complex issues and create the opportunities that arise from thinking and operating collaboratively.

It is the last objective of the three that has proved particularly elusive, and the Better Public Services Advisory Group's report of December 2011 focused on meeting that challenge in particular.

The present government and the state sector agencies have picked up the report's recommendations through a number of projects and initiatives. These include the ten result areas; functional leads; heads of profession; shared services; sector group cross-cutting initiatives; a stronger focus on leadership development; and agency and chief executive performance monitoring and management. While

these are all good in themselves and achieving worthwhile results, there is little evidence that they are transforming the way agencies think about their work and operate within a public services system as a matter of course. For the most part agencies have been able to comply without fundamentally changing the way they operate or giving significant benefit and recognition as contributors to a wider public services cause.

The quick wins from simple forms of collaboration are important and relevant. But the real challenge lies at the ambitious end of the spectrum, where complex social, environmental and economic issues demand levels of collaboration that confront the institutional culture and arrangements of the last two-to-three decades. The issues are longstanding and symptomatic of a reform process that has yet to achieve its full objective. The Better Public Services Advisory Group described those issues as 'thorny'. They include New Zealand's relatively poor export performance, education failure, the health and safety of children, management and protection of our natural environment, generational welfare benefit dependency, social housing and other issues that no state sector agency working alone can successfully turn around.

The challenge we face is to retain the prevailing strengths of vertical accountability, and build on to it a greater sense of horizontal accountability. That is the system change required to tackle the thorny issues successfully and create the opportunities that arise from thinking and operating collaboratively. This is not a revelation.

Clear action points have been designed to improve the system since the reforms of the 1980s. Legislative change to support the direction of reform has been developed consistently by successive governments. That is not quite the case with work programmes and projects for change, which have been started, stalled and reinvented in new forms by successive ministers, governments and public service leaders. The different approaches have caused the implementation of system improvement to be patchy. Even so, the direction of travel has been consistent.

This has been most evident in the 2000s, with the *Report of the Advisory Group on the Review of the Centre* (Advisory Group on the Review of the Centre, 2002) and the *Better Public Services Advisory Group Report* a decade later (Better Public Services Advisory Group, 2011) in many respects a mirror image of each other. That a decade separates two clearly compatible reports recommending similar change is evidence that little happened to shift the system. The key elements of the directional change in both reports are a state sector that:

- effectively serves the government of the day, supporting it to achieve its priorities;
- meets the developing and changing needs of citizens and prioritises the things that matter most to them and makes the most difference for New Zealand; and
- efficiently and effectively executes its stewardship role within each agency and across the system.

We have reached a point where the need for the state sector agencies to exercise individual stewardship accountabilities while taking responsibility as stewards across the whole system is urgent. What it will take is momentum around a reform programme which endures beyond changes of government and state sector leaders.

The problem of reform continuity in a democratic political system is well highlighted in a recent study carried out by the Institute for Government in the United Kingdom. The study reviews four distinct reforms between 1987 and 2012. In a foreword to the study, the director of the institute, Peter Riddell, states:

The authors make the key point about the dangers when senior officials and ministers move on, and their successors do not see the need to back a reform agenda associated with their predecessors. This applies not only to ministers of the same party but even more when there is a change of government and new ministers likely to be unfamiliar with Whitehall reforms. (Panchamia and Thomas, 2014, p.1)

The economic and management theories and principles underpinning the New Zealand reforms of the 1980s are well documented, and need no recounting for the purposes of this article. What those reforms confronted was a public service focused on what it took to run the public service, rather than what it took to efficiently and effectively benefit New Zealand and New Zealanders. While the success of those reforms is also well recognised, the main weakness to emerge is around the way agencies have developed into silos and become overly protective of their policy, information and operations. What gets lost in the fragmentation is the collective action required to deliver the common good. The incentives and accountabilities push agencies towards protecting their resources and capability from being diverted into endeavours that compromise their ability to show up well. Over time, an organisational culture is built which makes it very difficult to deal with complex issues that need collective action to resolve.

In essence, this is the failure of the almost singular focus on outputs that was entrenched through the legislation supporting the 1980s reforms. While the focus on outputs did create managerial accountability, it came at the price of too little attention being paid to the outcomes they were designed to achieve.

The focus on outputs was not an oversight. Typically, outcomes sit across a spectrum and require connected-up activity across a broad system to achieve. They were seen as the business of ministers. The combination of ministers being held accountable for their portfolio responsibilities and agencies similarly working to their siloed accountabilities meant that many issues requiring cross-cutting collective action were inadequately addressed.

The impact of putting outcomes in the too-hard basket was a matter of much discussion through the 1990s; in 1995 the State Services Commission and Treasury commissioned Allen Schick, a professor of public policy at the University of Maryland, to review where the reform process was up to and recommend the way ahead. In setting the context, Schick reported:

The organisational cocoon of the old State sector has been broken open and structures reshaped through the application of the reforms' overriding principles. The State sector is more efficient, productive and responsive, and there generally has been significant improvement in the quality of services provided to New Zealanders. However, as with any leading technology, it may now be time to 'debug' elements which have not worked as well as anticipated. (Schick, 1996, executive summary)

Maintaining momentum around reform is a challenge. Inevitably the new becomes the old, shortcomings and unintended consequences emerge, and, unless refreshed, the reform agenda withers on the vine. Reframing is therefore important to the long game of transformational change. As Schick states, 'When it comes to culture, staying power is the all-important indicator. Only after a lapse of years can one ascertain whether the reforms have become the new operating culture or merely the passing fashion of public management' (ibid., p.51).

One of the issues Schick identified as requiring reframing was the issue of accountability. He complimented New Zealand on building accountability into the framework of government to an extent

that no other country had accomplished, but he drew a distinction between accountability and responsibility:

The words lead down very different managerial paths. Responsibility is a personal quality that comes from one's professional ethic, a commitment to do one's best, a sense of public service. Accountability is an impersonal quality, dependent more on contractual duties and informal flows. Ideally, a manager should act responsibly, even when accountability does not come into play. As much as one might wish for an amalgam of the two worlds, the relentless pursuit of accountability can exact a price in the shrinkage of a sense of responsibility ... In the new world of New Zealand management, it is urgent to uphold the old-fashioned tenets of managerial responsibility, while strengthening the modern instruments of managerial accountability. (ibid., pp.84-5)

This is at the heart of the balance the current system reform process needs to achieve: that chief executives are accountable for the stewardship of the people, assets and resources entrusted to their agency's care, but they also have a responsibility for stewardship of the whole public services system.

This is a difficult balance that has significant leadership impacts. The chief executive must be able to judge when the agency needs to contribute to a collaborative exercise, and be prepared to reprioritise agency work to free up the resources so it can do so. In effect, they need to 'take one for the team' when the benefits from collaborative activity come at some cost to their agency activity. The system needs to acknowledge and reward that approach. Likewise, ministers need to sanction the collaborative approach and work within it. Shifting the system in that direction is a challenge to the cautious, risk-averse and compliant culture that a singular focus on output accountability encourages. That is a culture that restrains the passion and commitment of state servants to make a difference. That, in turn, constrains the innovative, experimental approaches

required to work on the important issues that require the public services to work across the system.

During the 1990s the government's approach to the reform process was to introduce strategic result areas (SRAs). SRAs were designed to link the government's long-term objectives with the department's operational activities. The approach continued to locate accountability for outcomes with ministers, while agencies worked to key result areas (KRAs), which in effect meant outputs. The approach had little impact in terms of system change. At the ministerial level, a change in prime minister brought the creation of ministerial teams around particular projects, such as Strengthening Families, which required departments to

senior management, and a programme of innovation.<sup>2</sup>

Cabinet signed off on the State Services Commission's Managing for Outcomes programme in August 2002, effectively endorsing an approach that had been designed earlier. The approach became bogged down in the complexity of linking outputs directly to outcomes. It revealed the weakness of fragmentation, because typically the outcomes to which an agency's outputs contributed could only be achieved by multiple agencies working together, and that wider front was not organised and operating. Some cross-cutting initiatives did emerge, including social sector and economic development theme teams, the justice pipeline and the natural resource sector group. The State

assessment of their current capability to achieve it. (PIF is now evolving into being the lynchpin of a process to set the four-year strategic horizon and create a plan to show how that will be accomplished within budget, and performance measures for the chief executive out of that.) While many positive aspects endured in the wake of this review, they fell well short of transformational system reform. But they did provide a platform for change.

The change of government in 2008 coincided with challenges on three fronts which shifted the context: the global financial crisis; disaster management; and heightened frustration around the continued failure of the state sector to effectively address major issues that were holding New Zealand back. The global financial crisis forced the efficiency agenda to new heights. The government cut agency budgets and demanded that they do 'more for less'. This forced agencies to work out how they could deliver their outputs with fewer resources. They received some support, with greater flexibility to plan and budget on a four-year cycle and to move resources between outputs.

The disaster management came about as a result of the Canterbury earthquakes, the Pike River Mine disaster and the grounding of the ship *Rena* on the Astrolab Reef. All three not only challenged the state sector to collaborate and coordinate, but showed that at such times it was willing and able to do so. That begged the question: why is it so difficult in ordinary times?

Part of the answer to that is, it isn't necessarily. There are numerous examples of agency cooperation. Regional operational agencies, in particular, are typically no strangers to working together and with their wider communities. But it is difficult where organisations have to think and operate across the system when the benefits fall unevenly and at the expense of their priorities and resources. That brings into stark relief the tension between an agency's stewardship accountability and its responsibility to support stewardship of the government system as a whole.

The third front was the heightened level of frustration from ministers that

## Cabinet signed off on the State Services Commission's Managing for Outcomes programme in August 2002, effectively endorsing an approach that had been designed earlier.

work formally together. But that approach went out with a change in government in 1999.

The new government commissioned an advisory group to review the central agencies, which in reality meant a review of how well the public management system was responding to the needs and expectations of ministers and citizens. The advisory group's report – the *Report of the Advisory Group on the Review of the Centre* (2002) – focused on three core areas for change:

- achieving better integrated, citizen-focused service delivery;
- fragmentation and new ways to get agency collaboration on key cross-cutting issues; and
- improving leadership and building workforce capability around a unifying sense of values.

The government responded with regional 'circuit breaker' teams focused on specific issues,<sup>1</sup> Crown entity governance proposals, an executive leadership programme to strengthen

Services Commission designed a set of development goals around a trusted state sector that attracted and developed top talent and made it easy and effective for New Zealanders to access services and work with government. But the goals did not seem to fit into any integrated initiative to determine what that meant at the system level and implement it.

Change over this period tended to be ad hoc rather than enduring and systematic. This was in large part because the relationship between the central agencies was too weak to provide the collective leadership required, which combined with waning ministerial interest.

Ministers reignited their interest in 2006 and adopted a suggestion by the three central agencies to carry out another Review of the Centre, which in effect was a performance review of the public services system. That led to the establishment of the Performance Improvement Framework (PIF), which began as a score-sheet of performance but has evolved into distilling agencies' four-year strategic outlook and an

public spending had risen significantly in the 2000s but with little return for it. The problems that were holding New Zealand back and required collaboration across the system were not being solved, and in some cases getting worse. The government introduced a number of changes, including social sector trials which aimed to address specific issues at the regional and community level, functional leadership initiatives, a requirement for agencies to produce four-year strategic financial and capability plans, and formalised sector groups with designated programmes of cooperative work. It sought new ways to broaden policy advice through sector groups, the establishment of a Productivity Commission to take a broad look at pressing issues, one-off taskforces in tax and welfare reform, contracting social advice through the Families Commission, and new consultation processes through the Land and Water Forum

The three central agencies formed a Corporate Centre (later clarified to include the functional leads, and the government chief information officer in particular) to lead measure and monitor system change. Legislative change strengthened the powers of the state services commissioner, particularly around leadership for system change.

The main focus for public sector reform came with the appointment in May 2011 of the ministerial Better Public Services Advisory Group to report on ways to shift the system. Its report clarified the two key objectives for change. The first is getting better outcomes for New Zealanders. This means mobilising across the public service to tackle the complex and 'thorniest' issues (it cited a list of lingering social, environmental and economic issues). The second key objective is to improve the quality, responsiveness and value-for-money of state services.

The Better Public Services report was in many respects a mirror image of the Review of the Centre a decade earlier, and it spawned a wealth of activity which had its nucleus in ten government result areas. The urgency and pragmatism around all this activity saw the language of outcomes replaced by results. Results in

this context are effectively bite-sized pieces of an outcome (similarly to what were previously called intermediate outcomes). And the government talked about wanting to see tangible progress towards its larger objectives, which in effect was a renaming of outcome indicators.

The open question is whether the sum total of activity from the Better Public Services programme is doing more than extracting compliance that can be delivered without agencies changing their operating model. A review of activity across the system which reported in February this year suggests that agencies are increasingly attuned to the problem-solving and opportunities created from collaborative endeavour, but that we are some distance yet from the system as a

Zealanders. Those social, environmental and economic outcomes have not changed greatly over time, although some issues have become worse and the urgency to address them has become greater. The only area of reform where policy has lurched is over the ownership of the state's commercial assets. That is a defining political issue which sits on the edges of public management reform. In respect to state services, there is a consistent desire to retain the strengths of agency accountability for outputs while attempting to get a better balance between that and achieving outcomes.

Given over a quarter of a century of reform effort, why have the public services been prepared to live with the glaring results of failure for so long?

## For the first time since the 80s, reform had the involvement and backing of ministers and the public sector working in tandem.

whole operating that way as a matter of course. The ambition extends well beyond that to a point where agencies continue to deliver their lead accountabilities, but think and operate innovatively across the system, taking collective responsibility for common goods. That involves transformational change of the current whole-of-government system and a significant shift in the current culture.

### Overview

It is possible to see a consistent direction of reform in government management from the 1980s to the present day, particularly so with the progressive evolution of legislative change to support system change. No government has turned the clock back in any significant way in that respect.

Programmes of change are another matter. They have been periodic, slow and repetitive. Even so, underpinning the repetition of thinking and activity and rebranding that has taken place in fits and starts there is a consistent ambition to achieve the outcomes that will make the most difference to the lives of New

The roles and responsibilities of the central agencies, and the State Services Commission in particular, were significantly reduced by the decentralisation of accountabilities to individual agencies. This led to a sense of a weakened commission that has taken a long time to redefine itself. Consequently, subsequent reform after the 1980s was typically led by ministers, in bursts of activity followed by periods of inertia, each with little reference to the previous activity. Agencies responded to what was required, without embracing the spirit of ongoing reform that would have required them to redress the high degree of autonomy they enjoyed and deliver resources across the system at some cost to their own agency's priorities. In short, the state sector did not take ownership of reform and design, nor lead an integrated programme of change to improve the system.

But there is reason to be optimistic. While ministers generated the Better Public Services programme, the report that crystallised the direction of reform was led by the public sector, working with private sector advisers and engaging with

the public sector chief executives. For the first time since the 80s, reform had the involvement and backing of ministers and the public sector working in tandem.

The state services commissioner, Iain Rennie, has stated that 'this system wide change is the business of the commission, and the only business of the commission' (State Services Commission, 2014, p.4), and he has reorganised the way the commission and the governance of system reform operates to align with that and allow him to focus on leading that system change. This means that state services working co-operatively in the collective interests of New Zealanders is the lens for all the commission's work. 'The State Sector has the mandate from Government and the opportunity to fundamentally reshape how we work and deliver services. We are in the throes of the most significant changes the State Sector has seen for 25 years.' Achieving that level of reform is, says Rennie, 'the most significant changes the State Sector has seen for 25 years, and will result in a fundamental reshaping of how the State Sector works and delivers services' (ibid., p.2).

Public service chief executives affirmed their commitment to that reform at a meeting in March 2014 at Brackenridge retreat, Martinborough, where they crafted and signed their own Brackenridge Declaration.

### Conclusion

There has been a consistent direction of travel for state sector reform across governments since the 1980s. The 2000s has seen a sharp focus on how a fragmented system makes it difficult to get traction on the big, intractable cross-cutting issues that require multiple agency collaboration. These are the issues that, if unchecked, will continue to hold back social, environmental and economic

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## THE BRACKENRIDGE DECLARATION

**WE** are the leadership team of the State Services:

Our purpose is:

*Collective leadership for a better New Zealand*

Towards this we will:

- Be collectively ambitious for New Zealand, by focusing on the needs of our customers
- Mobilise our people and resources to ensure those leading complex system-wide issues are successful
- See past any barriers and make what needs to happen, happen
- Champion state sector reform in our organisations
- Support each other as a team 'out together, back together', pick up the phone
- Collectively and individually support and implement the work of functional leaders
- Own and champion decisions of the State Sector Reform Leadership Group
- Prioritise our biannual State Services Leadership team meetings

progress for New Zealanders. Reforming the public services system to operate this way will not only address historic problems, but create opportunities.

The key to getting momentum around such reform is for the public service to create and own a system that is better fitted to delivering the results that governments of the day are committed to delivering. It must also identify and get traction on the long-term issues and opportunities that matter most to New Zealanders and will make the most difference to present and future generations. To endure, that has to attract broad support across the political system, so that it is not associated with a particular regime but is rather seen as the way the public services need to think and operate.

The State Services Commission is currently coordinating the preparation

of a public services brief to the incoming government in an effort to build that support. It will set out reform progress to date, and identify where effort and change is needed to take the public services from good to great. It will not, and should not, surprise in that process. We have known the problems for years, and the levers for change. What we need to do is entrench the common understandings of the problem, and the commitment and effort that is now evident to tackle it. That is what is required to demonstrate value for money from the political-public service system.

- 1 There were three teams established, tasked with reducing the truancy rate, more rapid settlement of skilled migrants, and reducing the fragmentation of funding to community groups dealing with domestic violence.
- 2 The only example cited subsequently was the Department of Conservation's pest eradication programme which moved the mindset from controlling pests to eradicating them.

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# Climate Change towards policy coherence

The fifth assessment report of the Intergovernmental Panel on Climate Change, being released in sections from late 2013 through 2014, is rekindling public interest in climate change. With controversies over the previous report (2007) out of the way, advances in knowledge since then and some improvement in procedures, the findings of the latest report appear more robust. Even though many uncertainties remain, the evidence base for policy is compelling.

The report's first instalment – from working group I on the physical science – has two highly relevant insights for policy. First, limiting global warming is at its centre a problem of cumulative gases (those with a long lifetime in the atmosphere), principally carbon dioxide

from fossil fuels, of course, but also some others, including nitrous oxide, which is a significant proportion of New Zealand emissions. At some point the net emissions of these gases will need to approach zero. Unless one believes that fossil fuels can be eliminated completely in the next

few decades, this implies that negative emissions technologies, such as combined biofuel and carbon capture and storage, will have to be used during the transition. The second insight is greater confidence in mainstream estimates of global warming provided by a combination of research, observational data and models. Extreme estimates of warming, and catastrophic tipping points, while not discounted, seem less likely.

The report of working group II on impacts and adaptation has more information on New Zealand than previous reports. It describes the increased risk of flood damage from storms, and from coastal erosion due to sea level rise. It has useful information on adaptation strategies. The working group III report updates mitigation options, and importantly confirms that the pledges through the United Nations climate change negotiations so far on the table are insufficient to stabilise greenhouse gas concentrations at the desired level. It also assesses the global costs of different mitigation pathways. It demonstrates

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that the case for early action to reduce emissions remains strong.

Such insights are valuable and timely. They coincide with the negotiation of a new climate change agreement under the UN. This is to conclude at the end of 2015 and to take effect from 2020. In what may become seen as the 'post-Kyoto' period, negotiations have the potential finally to produce a truly universal climate change regime – one where, in the language of the negotiations, obligations and commitments are 'applicable to all'.<sup>1</sup> The IPCC's findings will help governments align their domestic and international climate change policies.

The very slow progress of the international negotiations, and other

developed and developing countries). Pressures to increase ambition, especially on industrialised countries, will mean new attention has to be given to long-term domestic policies, since they are the basis for establishing and implementing international commitments.

#### **Abroad: New Zealand and international climate change policies**

New Zealand has historically had a strong voice in the UN climate change negotiations. It was prominent in the original negotiation of the Kyoto Protocol, and New Zealand ministers and officials have played influential roles at climate change conferences since then. A high point of New Zealand influence was the

accompanied at home by a questionable argument that abandoning Kyoto would give New Zealand more influence in the negotiation of the new agreement. Apart from the fact that one could argue precisely the contrary, this put New Zealand's immediate negotiating objectives at risk.

Despite having no target, New Zealand sought access to the Kyoto market mechanisms. Economically and environmentally this would make sense, once New Zealand committed to a target. Developing countries would stand to benefit from offsets that they could provide under the Clean Development Mechanism. But politically this was always going to be a hard ask. Many developing countries saw denial of access to Kyoto markets as 'punishment' for abandoning Kyoto and made this plain in the early days of the Doha conference, as indeed they had earlier in the negotiations.

New Zealand went to the Doha conference with nothing to offer in return for access to Kyoto markets: not only had it no target to inscribe in the annex of commitments ('qelros'), but neither could it commit to supporting the new Kyoto rules it had spent years negotiating. So New Zealand was rebuffed. It was symptomatic of this loss of influence that, in contrast with the year before, New Zealand's two ministers were almost invisible at this conference.

The result was to shut New Zealand out of UN carbon markets from 2013,<sup>3</sup> apart from wash-up accounting for the Kyoto Protocol's first commitment period, which extends to 2015. This leaves New Zealand in the period after the expiry of the Kyoto Protocol's first commitment period until the coming into effect of the new, yet to be negotiated agreement in potential limbo. It is at odds with New Zealand's strong advocacy of markets in the negotiations, and has had consequences at home and abroad. Among New Zealand's negotiating partners there were reactions of both irritation and puzzlement, all the more so since Australia had decided to go with the Kyoto Protocol and had a firm unconditional target. There was particular irritation within the EU that New Zealand was walking away from the rules package on the land sector (LULUCF: land use,

## **New Zealand went to the Doha conference with nothing to offer in return for access to Kyoto markets: not only had it no target to inscribe in the annex of commitments ... but neither could it commit to supporting the new Kyoto rules ...**

pressures, have pushed climate change down the priority list for many governments, New Zealand being no exception. In New Zealand, the twin recoveries from the global financial crisis and the Canterbury earthquakes have meant that GDP growth and reducing business costs have dominated the government's economic agenda. Doubling the value of New Zealand's agricultural exports and exploring oil and gas resources have served these policy needs, and have been pursued without attention to climate change implications, perhaps because climate change measures may appear to serve neither goal. Climate change policies have accordingly been more or less parked. But the international context now again requires states to front up with 'contributions' to the international effort, well beyond 2020 and more likely to 2030 ('contributions' is the new word found at Warsaw in 2013 in lieu of the politically-charged term 'commitments', in order to apply to both

2011 Durban conference, where New Zealand had a major role in two of the three key outcomes (Macey, 2012).

There has been one recent hiccup in the otherwise positive story of New Zealand's influence on climate change negotiations. Unusually, New Zealand entered the Doha Conference of the Parties in 2012 in a weak position. It received in return a reminder that a small country will get results only so long as it is useful to others. On emissions reductions, New Zealand had – and still has – a conditional target range to reduce emissions,<sup>2</sup> dating back to 2009. But at Doha it was impossible to know how far these conditions would be met, and, as New Zealand had no minimum or unconditional target, it had nothing to put on the table. New Zealand could only say that it intended to take up a target under the UNFCCC – the United Nations Framework Convention on Climate Change – rather than the Kyoto Protocol, an announcement that was

land-use change and forestry), where it was felt many concessions had been made towards New Zealand's interests around plantation forestry.

The root of New Zealand's ill-preparedness for Doha was less the international policy settings *per se* than neglect of domestic policy. New Zealand had not done the work to establish an interim unconditional emissions reduction target, and had not decided which accounting rules it would adopt, notably on forestry. These two factors precluded being part of the Kyoto Protocol's second commitment period, which, from a practical point of view, would have been the simplest option. Ironically, several months after the conference New Zealand came up with a modest unconditional 2020 target of 5% below 1990 levels, plus a decision to use the renegotiated Kyoto accounting rules. So, effectively New Zealand will subject itself to Kyoto disciplines up to 2020 with its target, but will receive none of the benefits of its flexibility mechanisms. This potentially limits the ambition of New Zealand's final 2020 commitment, if it is to move into the conditional range of 10–20% below 1990 levels.

The setback at Doha has thus had an impact at home, but it has not prevented New Zealand from working constructively in the international negotiations, as well as on other initiatives. Current themes that New Zealand pursues in the international negotiations are carbon markets, agriculture and rules for the land sector, as well as the structure of the agreement and the form of commitments under it (New Zealand Government, 2013b).

Outside the UN negotiations, New Zealand is promoting the removal of inefficient subsidies on fossil fuels,<sup>4</sup> and has initiated the Global Research Alliance<sup>5</sup> on agriculture and climate change, which now involves 40 countries, both developed and developing. New Zealand also set up the Asia-Pacific Carbon Markets Roundtable which is exploring the potential for a regional carbon market (Ministry for the Environment, 2013b, p.215). It has joined the Climate and Clean Air Coalition (CCAC),<sup>6</sup> which focuses on short-lived climate pollutants such as methane and black carbon. New

Zealand also has a well-directed aid programme on climate change to help Pacific Island countries, with a focus on renewable energy. Finally, it is a tribute to the international reputation of climate change minister Tim Groser that New Zealand is invited to the 'top table' of the Major Economies Forum on Energy and Climate (MEF), a grouping of the world's largest economies, and hence largest greenhouse gas emitters.<sup>7</sup> It is self-evidently the countries in this group that will determine the success or failure of efforts to limit global greenhouse gas emissions, so New Zealand is in an excellent position to have influence.

Such initiatives outside the UN

security concerns, push in the same direction, as is seen by China's large deployment of renewable energies and action to cap emissions from fossil fuel electricity generation plants.

The domestic aspect of this shift is not yet well reflected at government level in New Zealand, where the orientation of climate change policy remains 'neither lead nor lag' and 'fair share' (see, for example, Smith, 2011; Groser, 2014b).<sup>9</sup> Such concepts are a signal about international burden-sharing, and give no sense of the long-term direction of domestic policy and the economy. There has been no comprehensive statement on climate change since the current government

## **There has been no comprehensive statement on climate change since the current government was re-elected (2011), certainly nothing comparable to US president Barack Obama's June 2013 Climate Action Plan ...**

are one aspect of a shift in how many governments are thinking about climate change policies. First, they are looking at international cooperation well beyond the UN agreements. The second and more important aspect of the shift relates to domestic policies. Earlier, and especially before the Copenhagen conference in 2009, the international negotiations were the impetus for domestic mitigation policies. Emissions reductions at home were needed, it was explained, to meet future commitments abroad. But the international negotiations are now much less the reference point for domestic mitigation policy. In the face of increasingly robust science, governments and businesses are thinking more – and for diverse reasons – about how they engage in the global transformation away from reliance on fossil fuels: in other words, how they 'decarbonise' their economies. South Korea, for example, has seen economic advantages for itself in clean technologies, and is host to the new Global Green Growth Institute.<sup>8</sup> Other factors, such as health and energy

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**At home: the state of play of New Zealand climate change policy**

In the absence of a strong national policy statement, most of the recent

government explanations on climate change have to be garnered from answers to parliamentary questions, speeches and op-eds. Taking the longer term first, New Zealand has a gazetted, non-binding, reviewable 'responsibility target'<sup>10</sup> of reducing emissions by 50% below 1990 levels by 2050. This dates from 2011, and was depicted as meeting the 'fair share' criterion, comparable with the targets set by New Zealand's major trading partners. Bundled together with the announcement of this target were elements of a broader, long-term orientation to come. Some other current measures were listed, and the recently-commissioned Green Growth

political parties on an ETS as a core policy instrument, though increasing disagreement on its settings. The stated policy rationale of the ETS is as follows:

The Government has chosen the New Zealand Emissions Trading Scheme (ETS) as its primary tool to reduce emissions, as it is the least-cost way of reducing emissions. The NZ ETS puts a price on emissions and therefore creates a financial incentive for all New Zealanders – especially businesses and consumers – to change our behaviour. The NZ ETS provides an incentive to:

- reduce emissions
- invest in clean technology and renewable power generation, and
- plant trees.<sup>13</sup>

In addition to these policy objectives, there are other claims, including that 'the NZ ETS will strengthen the country's clean green brand'.

With its current settings and in the current international context, the ETS is doing none of these things,<sup>14</sup> and indeed by 2013–14 was probably encouraging more tree felling than tree planting. While from a pure accounting and compliance point of view a low price is simply a market issue, achieving these policy objectives is not. Similarly, in the farming context, the rewards for lower emissions practices being followed by some farmers are all the smaller in the absence of an effective carbon price. So the most important features of the ETS which should advance the long-term transformation of the New Zealand economy are prejudiced by the cheap carbon price, since they reduce incentives to close to zero.

Since its original design – a world-first, all-sector all-gases scheme – the ETS has been weakened by the continued non-inclusion of agriculture and the softening

of settings – for example, the continuation of the 'one for two' transitional measure<sup>15</sup> – compounded by the collapse in carbon prices. The fundamental design of the ETS is not the issue, with one exception. The 100% exposure to the international market has allowed the cheapest carbon units, of whatever quality, to enter the New Zealand system. Over 70% of the units surrendered in 2012 were ERUs (emission reduction units),<sup>16</sup> and in all 82% of the units that year were from offshore carbon markets. ERUs are certainly cheap: less than 10% of the price of the already low New Zealand units (NZUs). They are overwhelmingly of Russian and Ukrainian origin, and are of dubious environmental integrity, thus creating a potential risk to the New Zealand brand – so much so that there is anecdotal evidence that some businesses are opting not to use them.<sup>17</sup>

In the world of carbon markets the adage 'a tonne is a tonne is a tonne' does not hold. There is no single 'international price' because carbon is not a fully internationally traded single commodity, like milk powder. There is a wide range of prices, because neither all units nor all markets are comparable. In April 2014, for example, carbon prices in the main markets in Europe, the US and China were between \$NZ5 and \$12. Quality also varies, from units of high environmental integrity to those of an environmental equivalent of junk bonds. It is notable that in the first biennial report required by the UNFCCC the government is coy about the units in its registry, on the grounds that units held but not yet surrendered to the UNFCCC do not need to be disclosed (Ministry for the Environment, 2013a).

The unconstrained access to international carbon markets risks being inconsistent with the Kyoto Protocol, which states that use of flexibility mechanisms is to be 'supplemental' to domestic action.<sup>18</sup> This was never quantified as a percentage, but it was further specified in a decision that domestic action must be a 'significant element' of the effort made by each Annex I party.<sup>19</sup> This is consistent with the concept of a global transformation towards low-carbon economies rather than paying to pollute. A case could be made that New Zealand's ETS failed this

## The rationale of carbon pricing in New Zealand is explained as: 'we are committed to doing our fair share. That means working at not trying to have policy settings above *the* international price'

Advisory Group was to provide further inputs into policies (Green Growth Advisory Group, 2011).

Since its introduction in March 2011, however, the 50/2050 target has received no official follow-up, and indeed is rarely even mentioned.<sup>11</sup> It was not included in New Zealand's list of policies in the Pacific Islands Forum's Majuro Declaration in September 2013.<sup>12</sup> Given that latest emissions projections are for an approximate doubling of emissions from the international reference point of 1990 levels, even with the use of markets achieving it would be a huge challenge. It would imply a much faster transformation of the New Zealand economy than anything contemplated so far. It is not clear whether this target is still officially considered achievable. If it is, it will be important to give some idea of the pathway to get there, with the policies and measures that would be used.

The government continues to promote the emissions trading scheme (ETS) as the country's primary climate change policy instrument, 'one of the very best in the world' in the words of one minister (Bridges, 2013b). There is bipartisan agreement of the two major

supplementarity test during the first Kyoto commitment period.

The rationale of carbon pricing in New Zealand is explained as: 'we are committed to doing our fair share. That means working at not trying to have policy settings above *the* international price' (Bridges, 2013a, emphasis added). A typical response to criticism of the low carbon price is as follows:

Markets go up; markets come down ... I think it is extremely unlikely that in 27 years, carbon prices – which have got nothing to do with the New Zealand emissions trading scheme; they are all influenced by the international price – will be sitting around the current extraordinarily low levels. (Groser, 2014a)

The implication of these comments is that the rising international price will provide the incentive to reduce emissions. This suggests that the pace of New Zealand's emissions reductions will be determined by the vagaries of international markets. Complete dependence on international markets was never the intention of the ETS, since it has built-in safeguards against a too-high international price, through a price ceiling of \$25 a tonne. What is lacking is a price floor as a domestic policy lever and a low-carbon transition tool consistent with the stated objectives of the scheme. As of the first quarter of 2014, New Zealand's net accounting position under the Kyoto Protocol was using a price of 30 cents a tonne, and NZUs were around \$3.00. Foresters and iwi have asked for a price floor of \$15. The government has rejected such ideas, arguing that at a time of economic fragility such measures would raise costs to New Zealand consumers.

It could be argued that under the original design of the ETS, covering almost 100% of New Zealand emissions, it was appropriate to use it as a single instrument of climate change policy, neutral across all sectors. In this case, with a carbon price potentially through the whole economy, complementary measures would be less necessary. Contrast this with the EU ETS which covers only around 45% of EU emissions.

But with the indefinite exclusion of agriculture – just under half of New Zealand's emissions under the present accounting rules – this question is no longer relevant. The New Zealand ETS at around 54% does not cover much more of the economy than its EU counterpart.

New Zealand's ETS settings have created winners and losers: winners in the livestock sector, the most emissions-intensive of agriculture; and losers in forestry, other less greenhouse gas-intensive land sector uses, and also to some extent the rest of the economy, which has to bear the costs of the 46% of emissions that are outside the ETS

were felled owing to uncertainty and to avoid future liabilities. Planting picked up again as the government provided more certainty about the period 2008–12. Currently timber is profitable for foresters but carbon is not. While the government has blamed foresters for not reading the market better (Groser, 2014a), another specifically New Zealand dimension of the problem is the complaints from iwi who have lost an estimated \$600 million value from the trees on land they were given in settlements under the Treaty of Waitangi (Turia, 2014).<sup>22</sup>

The latest 'snapshot' of greenhouse gas emissions and the Kyoto accounting

## **Overall, the availability of cheap units together with the other settings have taken away the ETS's bite during the first commitment period, and the stockpiled NZUs/AAUs will reduce incentives for transformation during the next commitment period.**

but within New Zealand's international target. The ETS settings have encouraged arbitrage – liquidating deforestation obligations at an insignificant price per tonne through purchasing ERUs, holding on to NZUs in the expectation that they will eventually increase in value, and converting to dairy with a consequent increase in emissions, which do not have to be paid for.<sup>20</sup> This could be seen as a domestic form of the carbon leakage that the government argues will be the case internationally if New Zealand puts a price on emissions where other countries don't.<sup>21</sup>

Under this combination of price factors and settings, the ETS appears to have led in the opposite direction to that of the intended policy, and is most likely to delay New Zealand's transition to a low-carbon economy. Getting offside with the sector on which New Zealand is relying, in all scenarios, to meet future commitments on mitigation is unfortunate. This is the second time that foresters have been disaffected, the first being towards the start of Kyoto's first commitment period, when many forests

position for 2008–12 shows both an increase in emissions, running at 25% above the 1990 level, and a net surplus under Kyoto owing to holdings of forestry and Kyoto units (Ministry for the Environment, 2014). In fact, the expected surplus is very close to the Kyoto units held (90 million). As in the first biennial report, there is no breakdown of these units. It is likely that many of these units will displace NZUs and New Zealand AAUs (assigned amount units), which can be carried over into the next period, whereas Kyoto's flexibility mechanism units can't. However, it is also clear from this report that emissions from agriculture (owing to dairy expansion) and transport are on a rising trend, partly offset by improvements in emissions intensity. This latter trend is a co-benefit, driven by improvements in production efficiency (Clark, Aspin and Reisinger, 2014); it is not attributable to climate change policies or measures.

Overall, the availability of cheap units together with the other settings have taken away the ETS's bite during the first commitment period, and the

stockpiled NZUs/AAUs will reduce incentives for transformation during the next commitment period. In this context it is notable that New Zealand's partly government-sponsored premier annual primary industries conference in May 2014 focused largely on the goal of doubling the value of agriculture exports. There was no mention in the prospectus for the two-day programme of sustainability, future energy sources or climate change.<sup>23</sup>

For the sake of completeness, mention should be made of other government policies and measures, which include sectoral measures in energy, energy efficiency, housing and transport. A full list-

## **A virtuous circle on agriculture might be achieved at home, with action to price or regulate nitrous oxide – the cumulative gas of the two principal agricultural ones – with benefits of both lower emissions and cleaner water.**

ing of these complementary measures is in New Zealand's sixth national communication. These measures appear somewhat piecemeal and overall are not yet strongly coordinated or coherent with the ETS.

The absence of a long-term vision, or a meaningful carbon price, together with piecemeal complementary measures has created a policy vacuum which could delay New Zealand's transformation, and make it harder to make an internationally credible contribution to global emissions reduction. It also potentially stifles low-carbon investment, given that there are no clear signals to business.

To help fill this vacuum some initiatives have sprung up outside or alongside government. The economic consultancy Motu is running a new research programme called Shaping New Zealand's Low-Emission Future: making the NZ ETS effective.<sup>24</sup> Business New Zealand has absorbed the functions of the moribund New Zealand Business Council for Sustainable Development, which has been merged with Business New Zealand's Sustainable Business Forum and

reconfigured into the Sustainable Business Council.<sup>25</sup> The Sustainable Business Council is now working with business on climate change and sustainability. The private sector-led Pure Advantage group, while it has not attracted the bulk of mainstream business, strongly advocates the benefits to New Zealand of green growth.<sup>26</sup> Meanwhile, opposition parties and environmental and youth NGOs continue to push for more government action on climate change.

### **Achieving coherence**

International and domestic policies are both internally incoherent and inconsistent with each other. In order to regain co-

herence, and steer New Zealand through the coming global transformation, there are some obvious steps that can be taken.

First is a statement which shows a shift from compliance and burden-minimisation to economic transformation. Rather than the present government line of waiting to see what the major players do, this could convey an informed vision of the place of the New Zealand economy in a lower-carbon world and how that transformation can be managed. It would logically focus on opportunities for New Zealand, and at the very least could put forward 'no regrets' pathways on which some progress could be made independently of the state of international action. An emphasis on the long-term orientation of this transformation rather than attempting to pick winners through a single prescription would be most effective. Such a long-term view may require revision of the 2050 target, and/or some idea of a strategy to achieve it.

The 2011 Green Growth Advisory Group report was a lost opportunity for policy coherence, since it has

received no formal government response. The report contained a modest set of recommendations, but importantly endorsed the idea of the inevitable transformation towards low carbon growth.<sup>27</sup> It covered broader sustainability issues beyond climate change, for example in recommending a 'conversation' about mining. The global transformation to clean energy will not mean early extinction of fossil fuels, but it will be important to understand how future potential oil and gas exploitation will factor in. What assumptions should be made about the price of carbon, and about investment in carbon capture and storage or other technologies? Is there a risk of stranded assets? How can oil and gas exploitation avoid prejudicing the 'clean, green' brand? There is a polarisation of public discussion on this important issue, between groups seeing oil and gas exploration as an absolute evil and a government view in which climate change is ignored completely in predictions of economic benefit.

Second, the fallacy of the 'international price of carbon' should be dealt to. This makes sense only when seen in narrow terms of compliance with international commitments as a financial operation. It is misleading to talk of this when there are constraints on demand for these units imposed by governments, and New Zealand is unique in having none. However, since New Zealand ETS participants have now lost their access to international units, the government may have to abandon its laissez-faire approach to the price of carbon in the period ahead. Linking with other emissions trading schemes could be one response, but would take time to negotiate. Auctioning of NZUs, which is already allowed for under the ETS, could easily be implemented. The advantage of auctioning is that the government has the scope to determine what price is best to meet the twin objectives of meeting international obligations and steering the economy through its low-carbon transition.

Third, New Zealand has the chance to advocate an approach to agriculture and the land sector that would take account of the special needs of food production

and food security, acknowledge the implications of the science regarding methane as a short-lifetime gas, and encourage optimum land use choices. This does not necessarily mean trying to renegotiate basic rules, but would certainly have the potential to recognise that agricultural methane makes a much smaller contribution to global warming than its current metric would suggest.<sup>28</sup> New Zealand should have high credibility here through its world-leading research on the mitigation of ruminant methane.

A virtuous circle on agriculture might be achieved at home, with action to price or regulate nitrous oxide – the cumulative gas of the two principal agricultural ones – with benefits of both lower emissions and cleaner water.<sup>29</sup> An even-handed approach to the different players in the land sector which treated livestock farmers the same as foresters, orchardists and others, and took account of recreation and tourism values, would be valuable. Such an approach could secure recognition of the limits to New Zealand's mitigation potential in international burden-sharing discussions, while providing an economically rational framework at home.

The whole land sector is the most complex area of the UN rules, and achieving changes will be a challenge because the major players are not demanders here. It will require some solid research, and New Zealand will need allies among the major agriculture-producing nations. At Warsaw in 2013 Tim Groser launched the discussion by calling for a different approach to agriculture under the UNFCCC in order to bring developing countries on board on mitigation. New Zealand's latest submission on land sector accounting (New Zealand Government 2013a) is in this regard rather general and sits on the fence on most key issues, suggesting that New Zealand thinking is not far advanced. Based on the experience of almost two decades of negotiations on LULUCF, there is very little time indeed left to negotiate rules in this highly complex area.

Fourth, to provide an updated evidence base for policy the government could commission further research: for example, on the effects of different

carbon prices or of internationally-pledged reduction targets and mitigation options for New Zealand. This research could contribute to an update of New Zealand's mitigation potential, and could inform the review of the ETS in 2015.

Fifth, the government could re-engage with stakeholders, some of whom are ahead of government in thinking long-term. The private sector could assist in assessing the policy implications of market and broader 'brand' factors. Local government, too, is an important stakeholder in climate change because it bears the responsibility for adaptation, on which it has been calling for more guidance from central government. A sense of long-

term direction from central government on both adaptation and mitigation would give some context for local government, supporting local autonomy without being over-prescriptive. While the main responsibility of local authorities is adaptation, some are also putting in place mitigation policies, as seen, for example in Auckland's Energy Resilience and Low Carbon Action Plan (Auckland Council, 2014). This is consistent with action being taken by major cities around the world.

Sixth, a further opportunity for inputs into policy will be the expert review under the UNFCCC of New Zealand's sixth national communication and first biennial report, which will lead to public and international scrutiny as well as the chance to judge how far New Zealand is leading or lagging. Although the new processes are untested, they should produce insights for government and stakeholders.

Apart from the land sector, where innovative thinking and research are needed, none of this looks too complicated. Moving away from fossil-fuelled energy is obvious; New Zealand

has a head start here, as electricity generation is already 70% renewable and a realistic target exists to increase that to 90% by 2025. This transition is occurring even without a meaningful carbon price, so it can be assumed that it could be faster with one. Given New Zealand's geography, transport stands out as a vulnerable sector where electric and biofuel-powered vehicles and expanded public transport have potential. Progress is being made on energy efficiency. On agriculture, no government is going to send the dairy industry out of business, but it should not be too difficult to determine how far the current model is sustainable in the long term, and what

## **Moving away from fossil-fuelled energy is obvious; New Zealand has a head start here, as electricity generation is already 70% renewable and a realistic target exists to increase that to 90% by 2025.**

policy settings are needed, taking into account other possible land uses, in order to ensure the best economic as well as environmental outcomes.

Thus, the combination of better science, new international deadlines and increasing interest from domestic stakeholders is an opportunity to achieve both policy direction and coherence. There are choices to be made on the long-term policy direction, and on the consequent mix of price and regulatory measures that would best serve it. A renewed sense of direction at home, evidence-based policies, and a credible commitment to international efforts, including leadership in agriculture, looks like an achievable, coherent package that could be brought together during 2015.

1 For background on the recent history of international climate change negotiations, see Macey (2012).  
2 10% to 20% below 1990 levels by 2020.  
3 Apart from access to 'primary CERs', which is not likely to be attractive to New Zealand business.  
4 See [www.mfat.govt.nz/fffsr/](http://www.mfat.govt.nz/fffsr/).  
5 [www.globalresearchalliance.org](http://www.globalresearchalliance.org).  
6 [www.unep.org/ccac/](http://www.unep.org/ccac/).  
7 [www.majoreconomiesforum.org/](http://www.majoreconomiesforum.org/).  
8 <http://gggi.org/>.  
9 'New Zealand is doing its fair share on climate change, taking into account our unique national circumstances, both to restrict our own emissions and support the global efforts

- needed to make the cuts that will limit warming', Groser stated in the government's initial response to the IPCC's working group III report.
- 10 See Smith (2011). The term 'responsibility target' means using a combination of domestic measures and international carbon markets.
  - 11 There has been one recent public mention of it. It was referred to in Parliament by Tim Groser on 8 April 2014 as 'the aspirational target of 2050, when we aim to reduce emissions by 50 percent' (Hansard, vol.697, p.5).
  - 12 [http://www.majurodeclaration.org/the\\_declaration](http://www.majurodeclaration.org/the_declaration). The 50/2050 target was in a draft version of the annex listing measures by country, but did not appear in the final text. The target is, however, listed in New Zealand's sixth national communication to the UNFCCC (Ministry for the Environment (2013b)).
  - 13 <http://www.climatechange.govt.nz/emissions-trading-scheme/about/why.html>.
  - 14 A point made in 2011 by the Ministry for the Environment in its briefing to incoming ministers: 'While the ETS plays the core role in our response to climate change, a price alone will not be sufficient to deliver a smooth and efficient transition to a low carbon economy, particularly in the short term while the price remains comparatively low. Complementary measures will be needed to support investment in longer term abatement and infrastructure. These will likely include measures to promote technological change, innovation and behaviour change' (<http://www.mfe.govt.nz/publications/about/briefing-incoming-minister-2011>, p.20).
  - 15 Emissions-intensive industries have to surrender one unit for every two tonnes of carbon. See <http://www.climatechange.govt.nz/emissions-trading-scheme/ets-amendments/index.html>.
  - 16 See <http://www.climatechange.govt.nz/emissions-trading-scheme/building/reports/ets-report/ets-2012-facts-and-figures.pdf>. This contrasts with the first surrender period (2010), when offshore carbon markets contributed only 1.6% of units surrendered. These were all CERs from the Clean Development Mechanism. See <http://www.climatechange.govt.nz/emissions-trading-scheme/building/reports/ets-report/>.
  - 17 There is a precedent for the government intervening to restrict the use of units of dubious environmental integrity in the ETS. New Zealand followed the EU and Australia in banning CERs and ERUs from HFC-23 and N<sub>2</sub>O industrial gas destruction projects. Additional reasons for the ban were to maintain prospects of linkage with other schemes, and to avoid a price collapse in the ETS. On the reasoning behind this decision, see <http://climatechange.govt.nz/consultation/hfc-23-n2o-cers/consultation-document/index.html>.
  - 18 Kyoto Protocol article 6.1 states: 'The acquisition of emission reduction units shall be supplemental to domestic actions for the purposes of meeting commitments under Article 3.'
  - 19 Decision 2/CMP.1, para 1.
  - 20 One of the original aims of the ETS was to slow such conversions: 'There will be a slower rate of conversion of forestry land to dairy farming as a result of applying the ETS to the forestry sector from 2008. This is likely to be the largest impact of the ETS in the short term' (<http://www.mfe.govt.nz/publications/climate/framework-emissions-trading-scheme-sep07/html/page9.html>).
  - 21 The carbon leakage argument is most frequently used for agriculture, and starts from the increasing demand for animal protein. 'Any attempt to deliberately price carbon to reduce our agriculture output to make some ideological point would not only be an economic mistake of grave proportions, it would worsen the problem of global anthropogenic-induced greenhouse gas warming since the production gap would be filled by less carbon efficient producers than ours' (Groser, 2013).
  - 22 'Some iwi were given forests as part of their Treaty settlement and these were assets with a value of between \$20 and \$30 per carbon credit. These credits have been reduced in value to as little as \$3 per credit, therefore reducing the value of the overall settlements. The loss is expected to be in the hundreds of millions of dollars ... Last month, the Government confirmed they would not intervene to put a fixed price on carbon, despite a possible \$600 million Treaty claim from the Climate Change Iwi Leadership Group due to the reduced value of the carbon credits on their forests under the current failed scheme' (Turia, 2014).
  - 23 <https://www.conferenz.co.nz/conferences/nz-primary-industry-summit>.
  - 24 [http://www.motu.org.nz/research/group/shaping\\_new\\_zealands\\_low-emission\\_future](http://www.motu.org.nz/research/group/shaping_new_zealands_low-emission_future).
  - 25 [www.sbc.org.nz/](http://www.sbc.org.nz/).
  - 26 [www.pureadvantage.org/](http://www.pureadvantage.org/).
  - 27 New Zealand's sixth national communication (Ministry for the Environment, 2013b) states that 'Aspects of greening growth have been integrated into the Government's wider Business Growth Agenda, including a commitment to transition to a low-emissions economy.' But this integration seems far from comprehensive.
  - 28 Methane's global warming potential is 25 times that of carbon dioxide, but as it only lasts about 12 years in the atmosphere is not cumulative. A picturesque analogy to illustrate this point is made by Professor Myles Allen of Oxford University, who likens the long-lifetime gases to the turkey and methane to the cranberry sauce.
  - 29 Agricultural nitrous oxide emissions increased almost 30% between 1990 and 2011. Fertiliser and animal excreta are the two main sources. (Ministry for the Environment, 2013b, p.56.)

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# Reflections and Outlook for the New Zealand ETS must uncertain times mean uncertain measures?

## Introduction

The New Zealand emissions trading scheme (ETS) was introduced by legislation in 2008. The legislated objectives as stated in section 3 of the Climate Change Response Act 2002 are to ‘support and encourage global efforts to reduce the emission of greenhouse gases by (i) assisting New Zealand to meet its international obligations under the [UNFCCC]

Convention and the [Kyoto] Protocol; and (ii) reducing New Zealand’s net emissions of those gases to below business-as-usual levels’. Beyond this, the New Zealand government has confirmed three objectives for the ETS:

- help New Zealand to deliver its ‘fair share’ of international action to reduce emissions, including meeting any international obligations;
- deliver emission relations

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in the most cost-effective manner; support efforts to maximise the long-term resilience of the New Zealand economy at least cost. (New Zealand Government, 2012; Ministry for the Environment, 2013a)

Criteria used by the Ministry for the Environment to assess the regulatory impact of changes to the ETS (shown in Table 1) give further insight into a possible interpretation of these objectives. Decarbonisation is part of long-term economic resilience, demonstrated by the criteria to ‘provide incentives for the long-term development of low-cost emission abatement technologies’ and to ‘minimise negative/maximise positive wider environmental impacts’ (Ministry for the Environment, 2012c, p.10). Furthermore, a key strategic driver for subsequent amendments made in 2012 was to ensure that the ETS ‘supports the government’s economic growth priorities:

providing more flexibility and mitigating short term costs for business while ensuring clear long term price signals that encourage a smooth transition to a low carbon economy’ (New Zealand Cabinet, 2012, p.1).

The initial design of the New Zealand ETS was heralded as a trail-blazing all-sectors, all-gases, flexible cap-and-trade system (see, for example, Moyes, 2008; Jiang, Sharp and Sheng, 2009). However, it was also criticised for its reliance on offsets (from both forestry and overseas) and lack of ambition in terms of gross domestic emissions reduction (for further criticisms see, for example, Bertram and Terry, 2010). Since its introduction the ETS has also undergone significant change, although the main framework of the scheme has remained intact.

Amendments introduced by the National government in 2009 deferred the imposition of obligations on the ag-

riculture sector and introduced intensity-based allocation for emissions-intensive and trade-exposed industries. ‘Transitional measures’ were also legislated: a ‘two for one’ surrender obligation (whereby emitters in all sectors except forestry are required to surrender only one unit for every two tonnes of emissions) and a fixed price option (effectively a \$25 price cap on the value of a New Zealand unit (NZU)). The measures were argued by the National government as being necessary in the uncertain economic climate and were supported by many industry stakeholder groups. However, they were also criticised for being overly generous with allocation, being even less ambitious than the original scheme design, and putting the interests of some stakeholder groups above others (Hood, 2010; Bertram and Terry, 2010; Bullock, 2012; Richter and Mundaca, 2014). Transitional measures were due to be phased out after 2012, but have instead been retained indefinitely.

This article discusses the development and performance of the scheme since the report of the Emissions Trading Scheme Review Panel in 2011. In particular, the article presents the results of a survey undertaken by the authors in April 2013 of stakeholders’ perception of the scheme and its performance. The survey was designed and administered by the authors using FluidSurveys software.

General questions about the scheme’s objectives and future outlook were asked of all respondents. More targeted questions regarding market and compliance behaviour were asked of respondents who identified themselves as either forestry participants, emitters with direct obligations, emitters indirectly affected by the scheme, carbon traders, or ‘others’, including representatives of non-governmental organisations and policy makers. The survey was advertised through numerous channels, including the Carbon Match website.

The key results of the survey were that considerable regulatory uncertainty has surrounded the scheme; that stakeholders are divided over its future; and that it currently provides no incentive for new planting. Lastly, this article discusses the issue of uncertainty in the scheme and

Table 1: Ministry for the Environment assessment criteria under high-level objectives

High-level objective	Delivering fair share	Delivering cost-effective emission reductions	Long-term economic resilience
Criteria	Facilitate international efforts	Minimise short-term negative economic impacts	Minimise long-term negative economic impacts
	Contribute to NZ international obligations	Minimise costs to businesses	Maintain long-term international competitiveness
	Enhance NZ’s international credibility	Minimise market distortions	Provide incentives for the long-term development of low-cost emission abatement technologies
	Contribute to achieving NZ’s fair share	Minimise risks of trade sanctions	Maximise equity between sectors and socio-economic groups
	Provide incentives to abate	Minimise government’s administrative and implementation costs	Promote intertemporal equity
	Contribute to meeting NZ’s 2050 target	Minimise ETS participants’ compliance and transaction costs	Ensure appropriate risk-sharing between emitters and government costs
		Promote understanding of ETS	Appropriately reflect the Crown’s responsibilities as a Treaty partner
		Minimise fiscal costs/ maximise fiscal savings	Support the development of the Māori economy consistent with their environmental values
		Maximise market liquidity and transparency	Minimise negative/ maximise positive wider environmental impacts
	Facilitate links with other schemes	Ensure the environmental integrity of overseas emission units surrendered in the ETS	

Source: Ministry for the Environment (2012c)

discusses possible scenarios for the future of the New Zealand ETS.

### **The New Zealand ETS as a tool for decarbonisation**

Decarbonisation of the New Zealand economy is considered challenging. Around half of the country's gross greenhouse gas emissions (excluding LULUCF: those from land use, land-use change and forestry) can be attributed to agriculture. While mitigation options exist, the effectiveness of their application varies, as does the estimation of their costs (see, for example, Cooper, Boston and Bright, 2012; Kerr and Zhang, 2009). Dependence on private transport is high, with total emissions from the domestic transport sector making up about 20% of total gross emissions and projected to continue to increase steadily. Demand for car transport is also relatively inelastic to fuel prices due to the country's low population density and culture of mobility and geographic isolation (Ministry for the Environment and Treasury, 2007). Hence emissions reductions in this sector, while possible, are challenging.

In contrast, an average of 70% of electricity in New Zealand is generated from renewable sources, mostly hydro. This already high contribution of renewables means that many low-cost fuel switching opportunities used by other developed countries for emission reductions are not available in New Zealand (OECD, 2011). There is still scope for increased investment in renewable energy, and energy efficiency is attractive in New Zealand. Large-scale afforestation, particularly of marginal and erosion-prone land, as well as avoided deforestation has been argued to be one of the most cost-effective ways of reducing net emissions, at least in the shorter term (Ministry for the Environment, 2008).<sup>1</sup> It is for this reason that New Zealand's key policy tool for reducing emissions, the New Zealand ETS, is the first emissions trading scheme in the world to include forestry both as a source of units for removals and as a direct point of obligation for emissions. Setting aside the debate over whether afforestation simply buys time or in fact is the first rung on the ladder of transition

to a greener economy, a practical aim of the ETS has been to drive afforestation and deter deforestation. Indeed, it is not to industry but to forestry that the vast bulk of issuance of emission units has been made to date (EPA, 2014).

### **Performance of the New Zealand ETS**

The 2011 report of the Emissions Trading Scheme Review Panel found that the ETS was performing to expectations, but also made suggestions aimed at improving the operation and effectiveness of the scheme to ensure it meets its objectives. Broadly speaking, had the review panel recommendations been adopted their

businesses, as well as giving more certainty (Ministry for the Environment, 2012a; 2012c). In practice, the amendments diverged significantly from the panel recommendations. Instead of 'transitional measures' being phased out, these were retained indefinitely and applied to new sectors due to enter the scheme in 2013. The phasing out of 'free' allocations to the industrial sector was postponed indefinitely, removing what would have been a marginal, but annually increasing, pressure on direct industrial emitters and large energy consumers to achieve emissions reductions. Finally, the idea of implementing a general quantitative

**Critics perceive that the ETS is not working as envisaged because the price signal is far too weak to incentivise behaviour change and low-carbon investments while key emitters are shielded from the price and forests are being converted to emissions-intensive dairying ...**

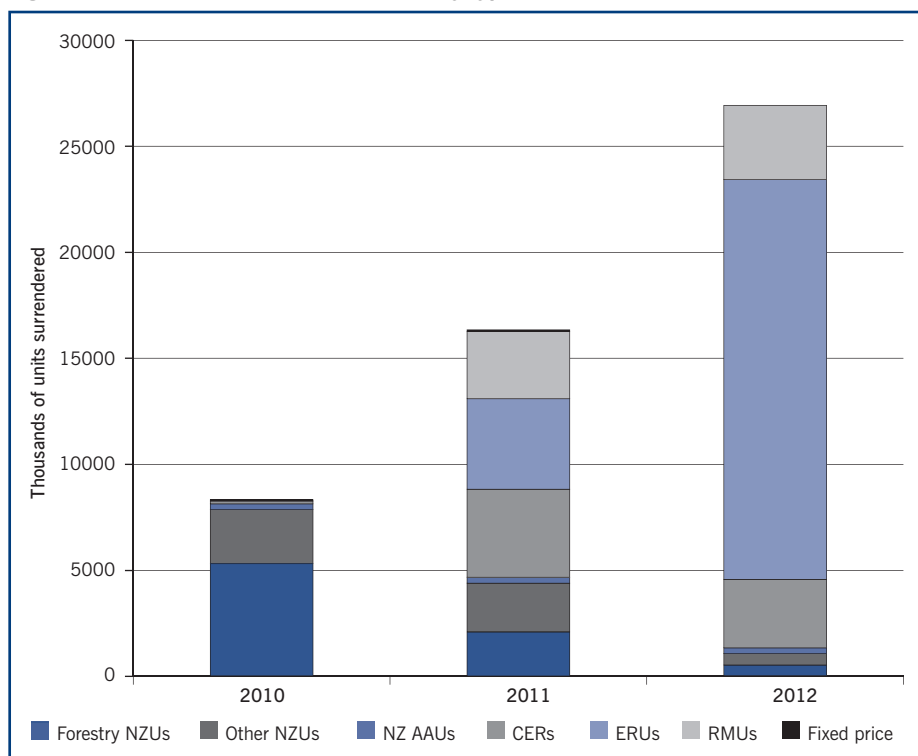
net effect would have been to increase the scope and size of the ETS, relative to where it stands at the time of writing this article (March 2014). The panel recommended that 'transitional measures' – specifically the 'two for one' deal and \$25 price cap – should be phased out (albeit more gradually than originally envisaged). The panel also reaffirmed the 'all sectors, all gases' approach, and said that it was appropriate that agriculture was to be included (with free allocation).

The government's consultation document in April 2012 largely reflected these recommendations, and also proposed a quantitative restriction on the surrender of international units (New Zealand Government, 2012). All else held constant, such a restriction could reasonably have been expected to provide increased continuity of demand and hence greater support for the domestic carbon emissions unit, the NZU. However, actual amendments made later that year focused instead on easing the burden and cost on households and

restriction on the use of United Nations offsets (i.e. 'supplementarity limits') appeared to fall by the wayside and such restriction was not introduced.

It is perhaps the failure to implement this general quantitative limit on offset use which has had the greatest impact on the efficacy of the scheme to date. Those with obligations remain able to use UN offsets for up to 100% of surrender obligations and this will remain the case until at least May 2015. The extreme reliance by obligated participants to date on the cheapest, and in some cases lowest quality, certified emission reductions (CERs), emissions reduction units (ERUs) and removal units (RMUs) has drawn questions internationally over the environmental effectiveness of the scheme. The fact that the concept of 'supplementarity'<sup>2</sup> remains undefined in the New Zealand ETS has been the subject of criticism (see Mundaca and Richter, 2013). It should be noted that while a series of amendments to render certain low-quality offsets<sup>3</sup> ineligible were made,

Figure 1: Breakdown of surrendered units by type



Source: Ministry for the Environment, 2011, 2012b, 2013b

these did not equate to a more general quantitative restriction, and in any event they were made after many of these units were already in the New Zealand registry.

The result is that the scheme’s ability to meet all of the government’s stated policy objectives (as outlined in the introduction above) has been stunted. The 2011 government report on the ETS (Ministry for the Environment, 2011) concluded that the scheme was on course to meet the first two objectives, but the 2011 review panel also concluded that it was still too early to discern the impact of the scheme, particularly in relation to the long-term resilience objective (objective three). The review panel found that there remained a need for a clear price path to incentivise low-carbon investments in order to deliver the government’s third objective (and to continue to work towards the first). Indeed, it is hard to see how the current scheme could be supporting efforts to maximise the long-term resilience of the New Zealand economy at least cost, if this is dependent on the prevailing carbon price and the level of ambition set by the scheme (two determinants highlighted by Ministry for the Environment in their regulatory impact statement regarding the proposed

2012 amendments: see Ministry for the Environment, 2012c, p.22).

Critics perceive that the ETS is not working as envisaged because the price signal is far too weak to incentivise behaviour change and low-carbon investments, while key emitters are shielded from the price and forests are being converted to emissions-intensive dairying (see, for example, Taylor, 2013; many of these arguments were also made in public submissions in the 2012 consultations).

With such unfettered access to UN offsets, over the course of 2011–13 the large surplus of international units, particularly ERUs and RMUs, as evidenced by the volume of these units in the New Zealand Emission Unit Register (see EPA, 2014) EPA, 2013; Ministry for the Environment, 2012b), and their falling prices became the dominant influence over the price of the New Zealand unit, which fell from just over \$20 in late May 2011 to little more than \$6 in late May 2012, to less than \$2 in late May 2013. As market events in the European Union ETS continued to see the price of ERUs and RMUs descend to negligible levels, New Zealand units appeared set to play an ever-diminishing role in the mix of units surrendered each

year by those with obligations under the scheme (see Figure 1).

This trend could have continued for perhaps a decade had the 2012 United Nations climate change conference not had significant implications for the New Zealand ETS in this regard. Indeed, that the price of a New Zealand unit continued to outstrip that of an ERU (which have traded into the New Zealand market for less than 15 cents) can only have been due to the possibility of further policy change which would have the effect of increasing the future carbon price.

It was ironic, then, that it was the New Zealand government’s own international negotiating position and decision not to take on a second commitment under the Kyoto Protocol which delivered this, causing the country to lose access to the Kyoto flexible mechanisms with effect from the conclusion of the true-up period for the first Kyoto commitment period.<sup>4</sup> As a result, from 1 June 2015 Kyoto units will no longer be eligible for use in the New Zealand ETS and New Zealand emitters will no longer have access to the cheap international offsets on which they have relied almost exclusively to date. By default, then, the New Zealand carbon market, historically so highly linked to and affected by the market for Kyoto offsets, looks set to become cut off. While future linking to other markets is, of course, possible, at this stage only units of New Zealand origin will be able to be used for compliance from 1 June 2015 onwards.

Meanwhile, however, as our survey shows, the extensive changes to the domestic ETS design, all in only the first four years of the policy’s existence, have led to considerable uncertainty among stakeholders over the continuing viability of the New Zealand ETS, particularly among foresters. Confidence has waned among foresters, and indeed the sector is set to become a net source of emissions rather than a sink by the mid-2020s. Not only is afforestation due to the ETS not currently indicated, but ongoing participation from the sector on a voluntary basis appears to be at risk, while investments from other sectors in low-carbon technology needed to begin the transition to a greener domestic economy also do not appear to be happening.

## Perceptions of the New Zealand ETS

Our survey highlighted a lack of consensus among participants on whether the ETS is meeting its objectives. Table 2 shows the number and categories of respondents to the survey and responses to the question about the performance of the ETS in relation to its objectives. It is important to note that several of the respondents who agreed that the New Zealand ETS is meeting its objectives noted that they were considering the policy's potential rather than actual performance to date.

One of the stand-out findings of our survey was that most respondents either disagree or strongly disagree that sufficient regulatory certainty has been provided by the government to date. Perhaps most seriously – for a country whose domestic emissions reductions plan appears to be so heavily geared towards afforestation, and indeed for a scheme whose domestic supply potentially relies heavily on the involvement of forestry – of the 85 foresters surveyed not one believed the ETS currently drives any new planting. The situation is particularly serious given that there are costs associated with involvement in the scheme. Indeed, over half of our respondents either disagreed or strongly disagreed that the ETS was a cost-effective way of reducing emissions, while 16.6% responded neutrally to the question.

As mentioned earlier, an important objective of the ETS is longer-term economic resilience, which includes transition to a low-carbon economy. There is cause for concern about whether this will transpire: longer-term decarbonisation will be facilitated by wise investments made in the short to mid term. Of the foresters surveyed, 37% indicated that the long-term carbon price (e.g. to 2020) was a decisive factor for them to stay in the ETS. Most said that the ETS had incentivised new planting in the past (63%), while 35% answered that the ETS had not incentivised new planting at all. No foresters answered that the ETS continues to incentivise new planting. Of those capable of afforestation, none indicated that they would consider doing so below \$10 per tonne of CO<sub>2</sub>e (CO<sub>2</sub> equivalent), and the highest percentage of respondents (43%) indicated that they would only

**Table 2: 2013 NZ ETS Outlook Survey responses to NZ ETS meeting its objectives**

The NZ ETS helps New Zealand reduce its overall emissions											
	Strongly disagree		Disagree		Neutral		Agree		Strongly agree		Total Responses
<b>Foresters</b>	26	30%	28	33%	8	9%	21	24%	3	3%	85
<b>Emitters</b>	2	6%	11	34%	9	28%	9	28%	1	3%	32
<b>Traders</b>	3	23%	6	46%	0	0%	4	31%	0	0%	13
<b>Others</b>	8	21%	13	33%	7	18%	9	23%	2	5%	39
<b>Total</b>	39	23.1%	58	34.3%	24	14.2%	43	25.4%	6	3.6%	169

The NZ ETS is a cost-effective way of reducing emissions in New Zealand											
	Strongly disagree		Disagree		Neutral		Agree		Strongly agree		Total Responses
<b>Foresters</b>	28	33%	20	23%	11	13%	22	26%	5	6%	85
<b>Emitters</b>	2	6%	8	25%	9	28%	13	41%	0	0%	32
<b>Traders</b>	2	15%	6	46%	0	0%	4	31%	1	3%	13
<b>Others</b>	8	21%	13	33%	8	21%	6	15%	4	10%	39
<b>Total</b>	40	23.7%	47	27.8%	28	16.6%	45	26.6%	10	5.9%	169

The NZ ETS helps New Zealand transition to a greener economy in the future											
	Strongly disagree		Disagree		Neutral		Agree		Strongly agree		Total Responses
<b>Foresters</b>	17	20%	29	34%	10	12%	23	27%	7	8%	85
<b>Emitters</b>	4	12%	5	16%	8	25%	15	47%	0	0%	32
<b>Traders</b>	2	15%	6	46%	0	0%	5	38%	0	0%	13
<b>Others</b>	5	13%	11	28%	6	15%	15	38%	2	5%	39
<b>Total</b>	28	16.6%	51	30.2%	24	14.2%	58	34.3%	9	5.3%	169

consider planting if the price was at least \$15–20. (This roughly corresponds with the findings in Manley, 2013.)

Among emitters, 66% of respondents said that the ETS has caused no emission reductions in their company to date, despite the initial prices in 2010–11 of over \$20. A further 6% said that reductions were planned but had not yet eventuated. Of those who could reduce emissions, the majority indicated that they would seek to do so if the price stayed above \$20 (24%) or \$25 (28%). This fact, taken with the perception that the ETS no longer drives afforestation, would appear to indicate that investment in a low-carbon economy driven by the ETS is at a standstill.

### Dealing with uncertainty

The theme emerging from the answers to our survey was that of a lack of regulatory certainty. In response to the statement

‘the Government has provided sufficient regulatory certainty about the NZ ETS’, over 80% of the total respondents either disagreed (31.4%) or strongly disagreed (50.3%). There is great uncertainty about whether the ETS will continue past 2020, with just under half (48%) of the respondents confident that this would be the case. However, in contrast to Australia’s carbon pricing mechanism, the New Zealand ETS’s framework and the policy of carbon pricing at least has support from the major political parties, although bipartisan support of the design remains elusive (though National and Labour nearly came to a memorandum of understanding on this in its early stages: see New Zealand Labour and National Parties, 2007).

The scheme still lacks a sufficient and predictable price signal to give certainty about future costs or to incentivise low-carbon investments. Our survey revealed

that most respondents would ideally like to know the price of carbon for the next three – five years or longer. In proposing the 2012 amendments the government noted that ‘participants will also have more certainty about the price of carbon as the \$25 price cap will be extended’ (Ministry for the Environment, 2012a). The fixed price option provides certainty about the highest potential costs faced by obligated participants and provides a safety valve to that end, with the ETS essentially functioning as a tax if the price of carbon increases beyond \$25. In fact, some businesses in passing on carbon prices to consumers have used

the Iwi Leadership Group claim against the government over the loss in value of carbon forestry (see Reuters, 2014).

The Iwi Leadership Group proposed, along the lines of the price cap, a price floor, which is a potentially proportionate and symmetrical policy response to help address this issue. The price floor mechanism is recognised both in theory (see Aldy and Stavins, 2012; Jacoby and Ellerman, 2002; Philibert, 2006), and in practice with the auction price floors in the California ETS (of \$US10) and the UK (at £16/tonne) (additionally, the original design of the Australian carbon pricing mechanism included an \$15

Committee on Climate Change or the Climate Change Authority in Australia; even the European Commission is assuming more responsibility for the ETS cap, which had formerly been the sum of member states’ caps). Nor does it have the potential command and control power of the Environmental Protection Agency in the United States. The Parliamentary Commissioner for the Environment has an independent role as an advising officer of Parliament and this could be a natural home for such an institution. However, with a very small staff and a large portfolio covering wide-ranging environmental issues, more resources would be needed to expand this role and stronger mechanisms for enhancing its authority to make the government more accountable in its policy targets which deviate from scientific recommendations for seriously addressing climate change.

## **It seems apparent that the ETS with its current settings will cause negligible domestic emissions reductions in the short term and uncertain investment for the longer term.**

the \$25 price cap as a proxy price, when lower-priced units were actually being used for compliance (evidence of this was commented on by the review panel (Emissions Trading Scheme Review Panel, 2011, p.32). While this gives certainty that the businesses will not undercharge consumers (in fact, they are more likely to profit), this practice has already led to disputes (see, for example, Smellie, 2013).

While there is certainty regarding the highest costs of compliance, there is no certainty of any such price to underpin investments in decarbonisation. The range of \$0–25 is a wide margin within which forestry and other investments become viable or not. The deforestation intentions survey (Manley, 2013) and our own survey reveal that the price of carbon in New Zealand is currently not sufficient to deter deforestation or incentivise new planting. In line with results in the Manley survey, our survey indicates that prices over \$10–15 are probably needed to incentivise new planting. Beyond new planting, certainty about the value of existing forestry NZUs is also a point of contention, and the argument behind

price floor). As of the time of writing a floor was also being considered as one of six structural changes to the EU ETS (European Commission, 2014). It may be an option to explore; although an overall cap designed to ensure that supply and demand produces a consistent strong price signal could also help the New Zealand ETS better meet its third objective of incentivising low-carbon investments and transitioning the economy (Mundaca and Richter, 2013).

It is clear that the ETS is still strongly influenced by politics, and this underlies much of the uncertainty and lack of ambition surrounding the policy. One step towards de-politicising the ETS would be the establishment and proper resourcing of a truly independent regulatory authority. The establishment of the Environmental Protection Authority (EPA) as a separate Crown agency in 2011 put the ETS regulatory functions more at arm’s length from ministers (Smith, 2010, p.3). However, the EPA does not advise on the ETS and emission reduction targets in the same manner as independent administrative bodies elsewhere (for example, the UK

### **Outlook for the New Zealand ETS**

New Zealand will meet its Kyoto commitments for 2008–12, but largely due to forestry offsets (under article 3.3) and units acquired under the Kyoto flexibility mechanisms, rather than by absolute reductions in gross domestic emissions, which, on the contrary, have continued to rise significantly even through the first commitment period. Now net emissions (i.e. including emissions and removals from domestic forestry) are rising as well, as the ETS and other economic factors drive deforestation. The latest Ministry for the Environment report projects that net emissions will reach 90 million tonnes of CO<sub>2</sub>e by 2040 (Ministry for the Environment, 2013c). This 50% rise in emissions (from 1990 levels) contrasts starkly with the government’s 2050 target of a 50% reduction, which would be 29.9 million tonnes of emissions. The forest sequestration that has been helping to meet short-term commitments will instead become a liability as large amounts of post-1989 forests are harvested or deforested as predicted in the 2020s and onwards (see Bertram and Terry, 2010).

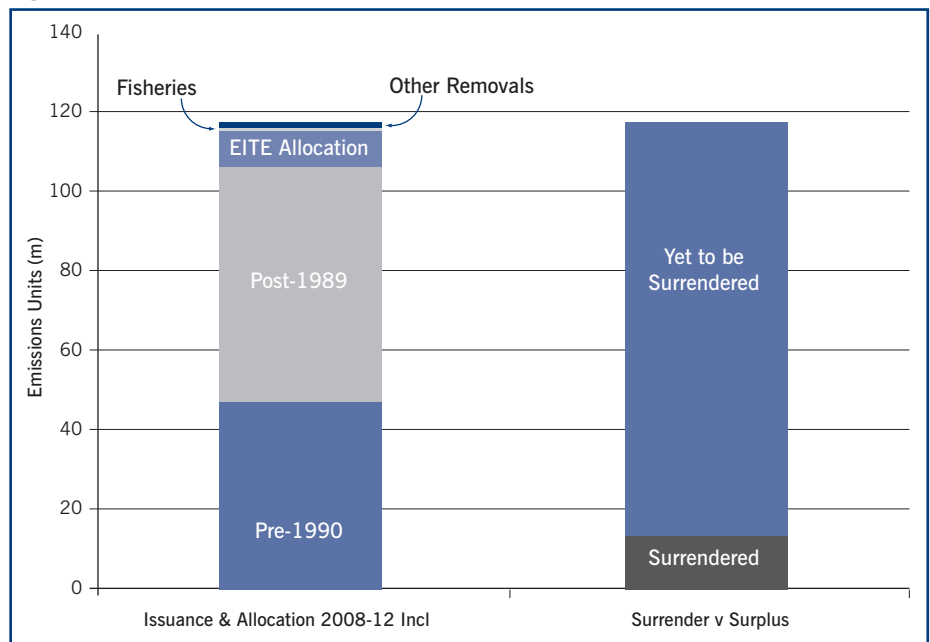
It seems apparent that the ETS with its current settings will cause negligible domestic emissions reductions in the short term and uncertain investment for the longer term. (Even in 2011 the review

panel noted that the impact of the scheme had been low even though price signals then had been higher (Emissions Trading Scheme Review Panel, 2011, p.17.) New forestry investments appear to have been committed to on a lagged basis, driven by earlier (higher) price signals, or indeed by ancillary drivers independent of the price (e.g. log prices). This is consistent with findings from the deforestation survey of 2012, which showed that ‘the ETS scenario leads to higher levels of deforestation than the No ETS scenario’, and predicts greater deforestation rates in the 2020s and continuing conversion of forest land to dairy – all likely contributing to a significant increase in emissions for New Zealand. In fact, that survey even found one respondent intending to implement an accelerated level of deforestation under the ETS scenario in response to current low carbon price: ‘We want to make hay while the sun shines’ (Manley, 2013, p.12).

Our survey indicated a ‘wait and see’ strategy, with 60% of forestry respondents currently in the scheme indicating that they would remain in the ETS but did not intend to trade. Another 15% indicated they would opt out of the scheme, with most indicating that they would surrender international units for their liability and either sell or retain their New Zealand units. However, one of the authors of this article is involved directly in the market and recent observations of market behaviour indicate that this number is likely to increase as those eligible become more fully apprised of their options.

The EPA has already recorded over 545 foresters leaving the scheme, almost all since the carbon price fell below \$10 in mid-2011, and over 400 in 2013. The settings of the ETS also enable post-1989 forest owners to opt their land in and out of the ETS, and this behaviour has been observed. This fact, combined with the fact that any eligible emissions units can be used in order to meet any resulting liabilities under the ETS, has recently presented attractive arbitrage opportunities for forest owners. Indeed, in the 2013 calendar year alone over 92 million Kyoto units were imported into the New Zealand Emission Unit Register, a

Figure 2: Allocation and use of NZUs



Source: Ministry for the Environment, 2011, 2012b, 2013b; 2013d

staggering number given that compliance demand from fossil fuel-related emissions remains less than 20 million tonnes per annum. One possible cause of the influx is that among post-1989 forestry owners, the most economically rational course of action is now to opt out of the ETS and surrender RMUs and ERUs back to the government. This removes the risk from post-1989 land in the sense that it can now be deforested or harvested without further future liability (which could be difficult to quantify given regulatory uncertainty and hence uncertainty about the future price of carbon). In essence, post-1989 foresters can pre-fund future harvest liabilities at negligible cost today. There is a further upside in that foresters who wish to can continue to hold New Zealand units earned to date in the hope of future price appreciation. Indeed, for many older post-1989 foresters ‘de-risking’ NZUs in this way puts them in a position to sell more carbon than if they stay in the ETS.

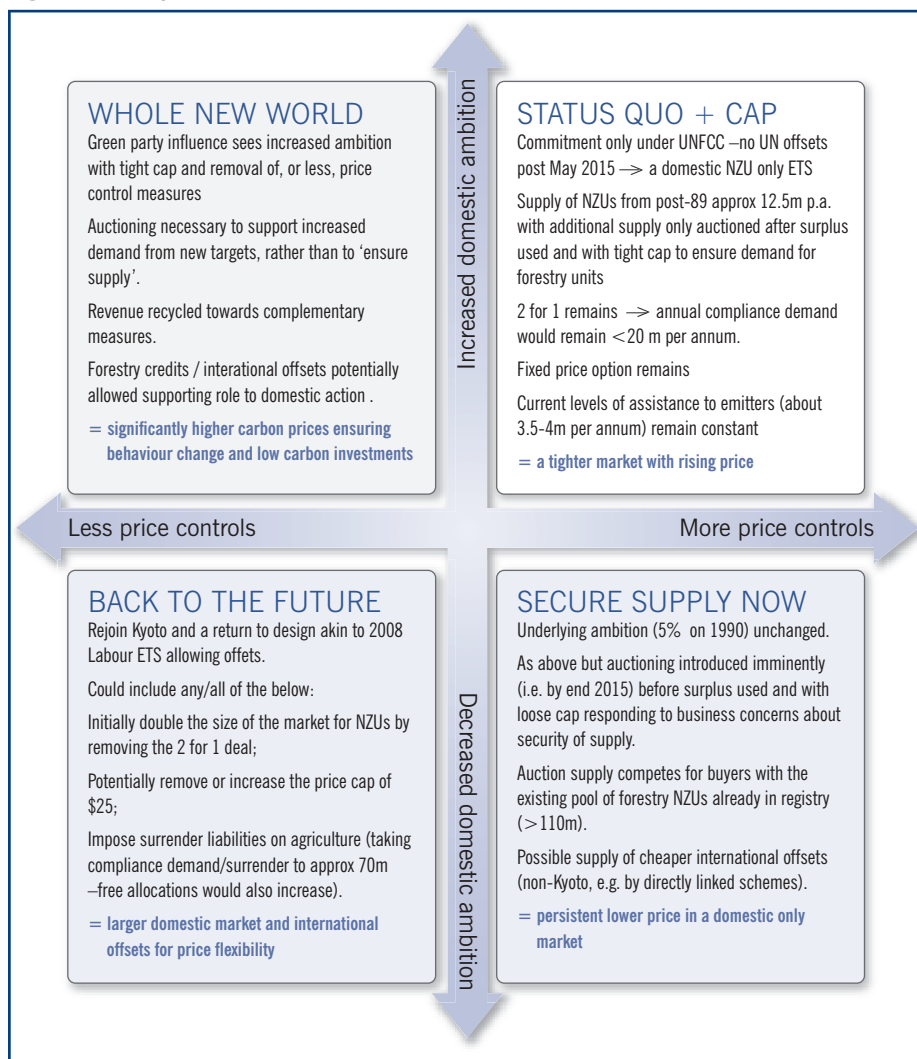
Evidence of the beginning of this trend was also found in the ETS annual report for 2011 (Ministry for the Environment, 2012b): deforestation emissions reported were roughly half actual units surrendered by forest owners. Numbers were small and the trend was relatively recent, with the ‘switch’ point at which New Zealand units started trading consistently above international units occurring around

July 2011. The allure of using ERUs to effectively pre-fund harvesting liabilities means surrender of ERUs by forest owners may remain a dominant theme until mid-2015. Indeed, the scale of issuance to post-1989 foresters and the ongoing availability of cheap ERUs means that there is scope for surrender by forest owners to outstrip surrender from all the other (fossil-fuel emitting) sectors combined.

This situation, combined with the market behaviour of emitters buying international units, suggests that ERUs will dominate the surrender mix until May 2015. Indeed, 67% of emitters in our survey who managed their company’s obligations expected to surrender almost entirely (over 90%) ERUs in 2014. The result is that there is a large number of New Zealand units that have been issued and not used (see Figure 2). While international units already purchased must either be used by 31 May 2015 or re-exported, NZUs have no such expiry.

In the face of current compliance demand from the non-forestry sectors compared to issuance to date, there is the potential for significant oversupply in the market and thus ongoing low carbon prices even after May 2015. However, there are reasons to believe that this will not be the case. The first is that there appears to be a reluctance among forestry sellers, who tend to be seasoned

Figure 3: Four possible scenarios for the NZ ETS in the near future



long-term investors, to sell at prices lower than what the surveys discussed here indicate. Secondly, as the schematic in Figure 3 illustrates at a high level, there are a number of different political and regulatory scenarios that could see issuance to date used up for compliance much more quickly than under the status quo.

Decisions in Doha have already made a significant change to the outlook of the New Zealand ETS in restricting access to international Kyoto units other than primary CERs. However, the growth of liquidity in the NZU market has undoubtedly been hampered by the lack of supplementarity limits to date. So, against this backdrop of uncertainty we may also see further policy focus on potentially enabling auctioning of units in order to 'assure supply'. Could the market be poised to undergo redesign by default? If so, this will present opportunities to use the design

of the auction to make other fundamental structural changes. At the moment there is neither an auctioning design blueprint nor any information on the prerequisite cap-and-carbon budgeting process that would be necessary to ensure the integrity of such a step. However, these design features will dominate in a closed system and require significant consultation to ensure their robustness and equity. Figure 3 details some of the possible scenarios for the New Zealand ETS in balancing interests between managing the costs to businesses and consumers by having price controls, and managing the ambition to incentivise emissions reductions, behaviour change and longer-term investments. The policy choices have implications for the carbon price (and thereby the costs to emitters or the incentives for low-carbon investments), as well as the domestic environmental performance of the scheme in response to this price. While price controls can

give more certainty about these costs (and incentives if floors are used), the overall level of political ambition is more determinant of the likely price.

Legislative amendments made by the current government in late 2012 mean that auctioning could be implemented via regulation. Thus far, the New Zealand government focus appears to have been on ensuring the lowest cost of compliance to business and households, rather than on providing the price signals necessary to drive investment in decarbonisation as part of ensuring long-term economic resilience. To this end, it is important that the implementation of auctioning, if any, is not driven simply by the need to ensure continuity of supply of emissions units to emitters, but that it is underpinned by an appropriate and effective cap on domestic emissions (the 'responsibility' target to date cannot be regarded as such given that use of imported UN offsets has been unconstrained).

To this end the European Union ETS can offer lessons. While there were mechanisms implemented which provided for relief of pressure, the removal of excess supply has been an issue that continues to prove difficult for the European Commission to address. The over-generous cap in the EU ETS, for example, left a projected surplus of two billion allowances to remain over the entirety of its third phase (until 2020). The recently approved 'back-loading' of new units in the EU ETS (effectively the temporary reduction in previously signalled auction volumes) is the first step in addressing this issue, and longer-term structural reform proposals include a 'stability reserve' which would create automatic adjustments in the supply of units to the market as well as adjustment of the EU cap (European Commission, 2014).

Like the EU ETS, the New Zealand ETS will have challenges in addressing the surplus supply and setting a cap that achieves credible emission reductions, while balancing predictability and flexibility. Given the large volume of New Zealand units issued but not surrendered to date, the strong respect for property rights in New Zealand and distaste for retrospective law making and regulation, the most effective mid-term fixes will



likely be on the demand side. The most obvious would be signalling the removal of the 'two for one' provision and the reinstatement of phasing down the rate of free allocations where applicable. Over the longer term, however, auctioning is highly likely to be required in order to better manage the market and ultimately see emissions reductions take place.

The general election of 2014 has significant implications for carbon market policy. The Labour Party has previously signalled that it would continue to support Kyoto. While this may not even be administratively feasible in the time scale required, if the country were to rejoin then presumably access to UN offsets would be re-enabled. A bill previously introduced by Labour sought to require a minimum of 50% of compliance obligations to be met with NZUs. This again creates uncertainty for the emitters and landowners alike.

## Conclusion

It is clear that the first years of the New

Zealand ETS have lacked regulatory certainty, an essential ingredient for domestic investment that could contribute to the decarbonisation and hence resilience of the economy. While the government has made amendments to the scheme with the goal of providing greater certainty, our survey suggests that significant uncertainty persists. This is likely to undermine or delay the low-carbon investments needed to meet the long-term economic resilience objective of the scheme.

The extreme reliance by emitters to date on international offsets has likewise been to the detriment of carbon forestry domestic action and has delayed investment in long-term projects. It also appears to have been at odds with the goals of international climate commitments. Moving forward, there are a number of opportunities to improve the design of the scheme within the existing legislative and policy framework.

- effective abatement opportunities in other sectors (see, for example, Bertram and Terry, 2010).
- 2 The idea of the flexibilities offered by the Kyoto unit trading was that they should be supplementary to domestic action. Article 17 of the Kyoto Protocol, referring to supplementarity, reads: 'The Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments under Article 3. Any such trading shall be supplemental to domestic actions for the purpose of meeting quantified emission limitation and reduction commitments under that Article' (UNFCCC, 1992, emphasis added).
- 3 <http://climatechange.govt.nz/emissions-trading-scheme/building/regulatory-updates/guidance-emission-reduction-units-certified-emission-reduction-units-ets.pdf>.
- 4 The New Zealand government's negotiating position was to attempt to keep open access to cheaper international Kyoto markets without taking a responsibility commitment in Kyoto II. It was a gamble to expect continued access to cheap Kyoto units for countries unwilling to take on responsibility targets for the second commitment period of the Kyoto Protocol. The decision at Doha to restrict access was not surprising and had been well signalled as a risk given earlier threats by developing countries (Reklev and Allan, 2012).

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<sup>1</sup> There are also critics of forestry's long-term emission reduction potential and arguments that there are many cost-

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Jim Sinner and Natasha Berkett<sup>1</sup>

# Collaborative Planning for Freshwater the challenge of a new paradigm

As New Zealand embarks on a new way of doing freshwater planning it is important to consider the forces driving this change, and some of the fundamental ideas about knowledge and democratic institutions that are being redefined along the way. Understanding these changes will help us to identify some of the challenges we must address to realise the potential of collaborative planning.

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This article draws upon the international and emerging New Zealand literature on collaborative planning, as well as the authors' experience with a collaborative planning process for the greater Heretaunga plains of Hawke's Bay.

### Global pressure on resources and institutions

We now share this planet with seven billion people, and global markets enable consumers in China, India, North America, Europe and Africa to buy food and other products from New Zealand. As incomes rise there is an increasing demand for protein from milk and meat. This growing demand puts pressure on land, water, air and biodiversity in New Zealand as businesses respond to global markets. Resources in New Zealand become increasingly scarce, which means that one person's use of a water body increasingly affects other people and their ability to enjoy that same water body.

## Our institutions ... have proven to be insufficient to deal with increasing pressure on water quantity and water quality. Highlighted below.

Meanwhile, more New Zealanders are expressing their concerns about the environment. In a 2010 survey, water pollution and water-related issues were rated by New Zealanders as the most important environmental issue facing New Zealand (Hughey, Kerr and Cullen 2010).

As a society we manage conflict through our institutions – the laws, norms and cultural practices that guide our behaviour. New Zealand's existing institutions were mostly designed and have evolved in times of relatively abundant resources. These institutions, and in particular our collective practice in how we use them, have proven to be insufficient to deal with increasing pressure on water quantity and water quality, especially during the summer months.

### A call upon values

After more than ten years of reports and policy papers to successive governments on how to fill this institutional need, the national policy statement for freshwater management (NPSFM) was released in May 2011 (New Zealand Government, 2011). The NPSFM directs councils to set limits for water allocation and water

quality. Overall water quality within a region must be maintained or improved, and over-allocation must be remedied. Over-allocation means that community goals set out in a regional plan are not being met and water quantity limits have been exceeded.

The NPSFM says that limits are to be set regionally, based on values. The terms 'value', 'values' and other variants occur 24 times in the policy statement's nine pages of text. There is a list of 'important national values' of freshwater (ibid., 2011, p.4), but no indication of how catchment-level values are to be identified, assessed or balanced to arrive at limits. This is left up

to regional decision-making processes.

There are some bottom lines, however. The Resource Management Act 1991 (RMA) provides broad guidance, for example in section 5 ('safe-guarding the life-supporting capacity of air, water, soil and ecosystems'), and sections 70 and 107 prohibit certain adverse effects on water quality. The NPSFM itself requires that there be no overall decline in water quality within a region, and in late 2013 the minister for the environment released proposals to amend the statement to establish a national objectives framework to set minimum water quality standards for human and ecosystem health. But, assuming that the implementation of the national policy statement is not just about setting limits at these bottom lines, communities will need to identify, assess and balance values to reach decisions on where the limits should be. How is this to be done?

### The paradigm of 'scientific management'

Over the last two decades or more, at least since the enactment of the RMA, resource management in New Zealand has been operating under the paradigm of what has been called 'scientific management'. As defined by Brunner and Steelman,

Scientific management aspired to rise above politics, relying on science as the foundation for efficient policies made through a single central authority – a bureaucratic structure with the appropriate mandate, jurisdiction, and expert personnel. (Brunner and Steelman, 2005, p.2)

This paradigm suggests that through use of science and experts we can compile enough evidence about ecosystems to determine the 'correct' or even 'best' objectives for each freshwater body. In recent years we have added values to this equation. The scientific management paradigm would see this as just another scientific challenge: to identify, measure and balance values so that experts can determine the 'right' management objectives and approaches.

This paradigm has led, for example, to attempts to define objectively 'Water Bodies of National Importance' (Chadderton, Brown and Stephens, 2004), and also to a method to assess the significance of rivers for a range of uses and values (Hughey and Baker, 2010). And there is a growing literature on non-market valuation using techniques such as choice modelling to estimate the monetary value of things that are not traded in markets (Pascual et al., 2010).

However, research over last decade has made it increasingly clear that value and values are often constructed in context: that is, how people value something depends on when, how and by whom the question is asked. If someone asks you, 'What is the value of this lake, river, wetland?', before you answer you are likely to want to know, 'Value to whom? For what? And why do you want to know?' And further, 'How will you use my answer?' This is not necessarily because people are being strategic in their answers – trying to influence a study with policy implications, for example – although they might be. More generally people look for context because they actually need it to define meaning.

The key point here is that value is not always objective and cannot necessarily be determined or measured by experts in ways that are immune from contest in places like council hearings or the

Environment Court. As an example, our case study in the Tasman district in 2012 showed that it is not possible to separate the documentation of values from how those values will be prioritised and given effect to in a regional plan (Sinner and Tadaki, 2013); that is, we cannot describe or measure values without reference to how that description or measurement will be used. Categorisation and measurement of values inevitably also involve framing and value judgments, and they provide the language in which policy options are discussed.

#### A new paradigm

Thus a shift is occurring from a scientific management paradigm to a paradigm of collaborative governance to address complex problems. In this new paradigm there is no 'right answer' or optimal solution. Science is still important to help explain how things work, but cannot tell us what is 'best'. Rather than seeing resource management issues as 'problems to be solved or optimised', we see them as complex systems and 'situations to be improved'.

This paradigm shift has been influenced by Jürgen Habermas, a leading philosopher of the 20th century. Habermas argued that human interaction and social life require agreed meanings to enable coordinated action – for example, to agree on policy for freshwater management – through a process he called communicative reason. Knowledge, Habermas argued, can only be determined based on what people can agree on in 'authentic (open and balanced) dialogue' (Flyvbjerg, 1998; Innes and Booher, 2010). The validity of an argument, and knowledge more generally, is defined as consensus reached without the influence of power: 'all concerned in principle take part freely and equally, in a cooperative search for truth, where nothing coerces anyone except the force of the better argument' (Habermas, quoted in Flyvbjerg, 1998, p.213).

A premise of collaborative governance is that, when considering complex problems with high uncertainty, elected politicians cannot perform authentic dialogue on behalf of their constituents;

people have to speak for themselves, to test their arguments against those of others. When this authentic dialogue occurs we can get a basis for collective action. In other words, we can get agreement on how a community will address a challenge such as how much water to allocate for abstraction and how to manage land use to protect water quality, aquatic ecosystems and mauri (meaning *life force or principle – the essential quality and vitality of a being or entity*).

recognise collaborative processes for freshwater management more formally via amendments to the RMA (Ministry for the Environment, 2013). Yet New Zealand's transition to collaborative planning is still tentative, as councils and stakeholders ponder how it will work and what outcomes it will produce.

Collaborative planning is much more than consultation; it is delegating decision-making to a group of stakeholders (Ansell and Gash, 2007). It requires

## Collaborative planning is ... a way to negotiate a plan of collective action while recognising that people may have different values and different ways of understanding the world.

#### New Zealand's experiment in collaborative planning

Collaborative planning is an experiment in deliberative democracy, a different way of practising democracy at a local level based on the Habermasian notion of authentic dialogue (Dryzek, 2001; Innes and Booher, 2010). We are interested, here, in collaborative planning that explicitly seeks to involve all parties with a stake in a decision. However, collaborative processes may also involve inter-agency co-operation, rather than diverse stakeholders, and hence might not be *per se* 'democratic' (e.g. see Fuller, 2009).

Collaborative planning has 'bubbled up from many local experiments' out of dissatisfaction with the current way of doing things (Ansell and Gash, 2007, p.544). In New Zealand, councils have not set limits or made plans to achieve them (especially for water quality) and a range of stakeholders are not comfortable leaving those decisions with elected politicians. The Land and Water Forum recommended collaborative planning to the government as a new way to set catchment-level limits. This followed research by Guy Salmon and others based on experiences with collaborative governance in Nordic countries (Salmon et al., 2008). The government has accepted this proposition and has proposed to

people to listen to each other and learn to appreciate other values and ways of seeing the world. The central idea of collaborative planning is the Habermasian notion of exploring, constructing and testing values in context to build a vision of the future that everyone can live with, and a consensus on the plan for heading there. If all parties are fully involved and can reach consensus, then the sponsoring agency, for example a regional council, can adopt the consensus agreement without political risk. Conversely, a council decision that deviates from the consensus would be seen as a breach of trust.

Collaborative planning is, therefore, a way to negotiate a plan of collective action while recognising that people may have different values and different ways of understanding the world.

That is the theory of collaboration. However, Michel Foucault argued that Habermas' ideal conditions are never satisfied, because politics is always subject to power (Flyvbjerg, 1998; Pløger, 2001). And therein lies the fundamental challenge facing New Zealand's venture into collaborative planning for freshwater management: how can we construct dialogue to develop a shared understanding among all interested parties, while minimising power

imbalances that could lead to outcomes that are not trusted and supported by the wider community?

#### Sources of uneven power

To address this challenge, the first step is to identify and acknowledge how power imbalances can arise. One of the most obvious is that it is not possible to have everyone in the room: there will be individuals, organisations and discourses that are proportionally under-represented or are not represented at all. It is possible that collaborative planning processes could actually decrease opportunities for public participation, especially if they are

a collaborative planning process it takes good facilitation to ensure that individual viewpoints are heard.

Fourthly, power imbalance can arise around the presentation and use of science (Pløger 2001). In the current planning process under the RMA schedule 1, submitters engage their technical experts to conference with the technical experts of councils at pre-hearing meetings, and to present information at hearings. This conferencing and questioning at hearings allows for a rigorous, robust debate of the scientific facts: in other words, the evidence base for decisions.

In collaborative processes for regional

some of the control of planning processes and empowering people who have not traditionally had decision-making power. Some councils will be more comfortable with this than others, depending on their internal culture.

Will councils embrace the collaborative planning model? Factors which might contribute to reluctance include uncertainty of outcomes and the fear of losing control of the process. What if the participants in the process agree on recommendations that the council is not comfortable with? Councils might also be reluctant because of perceived cost and time requirements. At this stage there is little comparative data on the cost and time required for collaborative planning versus traditional planning processes. Proponents argue that it will cost less in the long run, or will produce more durable outcomes, but the costs might be 'front-loaded' without an assurance that savings will occur later.

Some stakeholders have been reluctant to embrace collaborative planning, with one describing it as 'a surrogate for compromise ... an insidious slippery slope that is fundamentally destructive of our interests' (Johnson, 2013). While participants are unlikely to achieve everything they might like in a collaborative process, the more relevant question is whether they can get a better outcome, in both the short and long term, than if they had pursued a more traditional planning approach.

There is the possibility that through power imbalances and group think environmental outcomes after collaboration could be worse than under the current planning process, if the values of participants are tilted towards jobs and development. The converse also is true (of course): economic outcomes could be worse if the values of participants are tilted towards the environment.

Another challenge with collaborative planning processes is that freshwater management is essentially a wicked problem: that is, there are dozens of interrelated complex issues to address. It is difficult for a roomful of people, each with their respective viewpoints and interests, to stay within the pre-defined scope of the process. This is a boundary problem: what's

## Some stakeholders have been reluctant to embrace collaborative planning, with one describing it as 'a surrogate for compromise ... an insidious slippery slope that is fundamentally destructive of our interests'

linked to restrictions of appeal rights, and increase the opportunity for capture by powerful interests (Rydin and Pennington, 2000).

Another potential source of uneven power arises when sponsoring councils are aligned with politically powerful groups. This is most likely to happen where agency management and elected representatives predominantly share the world view of those politically powerful groups. Council staff can influence a collaborative planning process by organising and directing who gets included in a stakeholder group, meeting agendas, and how agreements are recorded and translated into policy outcomes, for example.

Power imbalances can also develop as a result of 'group think' (Dryzek and Niemeyer, 2008). Studies have shown that a person who has correct factual information about a situation will often not volunteer that information in a group setting if everyone else is united in offering alternative (even if inaccurate) information (Mauboussin, 2009). It takes brave people to resist group think, and in

freshwater planning, council-provided science appears to be the norm. In planning exercises governed by the RMA, this means that scientific debate between the technical experts is not likely to happen until a plan change is notified, i.e. after the collaborative consensus has been reached. Considering alternative science arguments at this stage would seem to be both inefficient and ineffective in terms of process outcomes. Indeed, debating the science at this stage could undermine the entire collaborative process. So ways are needed to provide opportunities to test scientific analysis during the collaborative process.

#### Not business as usual

Enabling constructive, authentic dialogue through a collaborative planning process is likely to require a shift in mindset for council staff and elected representatives. There will need to be recognition that making decisions is not the only way to lead: that is, a council can lead or sponsor a process but allow others in the process to make the decisions. This is another change for regional councils: giving up

in and what isn't? Define the problem too broadly and the complexity will overwhelm the process; define it too narrowly and stakeholders will be disempowered and the options will be too limited for diverse stakeholders to construct an outcome that has something for everyone.

Finally, there is still no clear guidance on how to actually 'do' collaborative planning. Without adequate design, failures are more likely to occur. There may be situations where recommendations cannot be agreed upon, and some processes may 'blow apart', creating as much controversy as, or more than, existed before a collaborative process began. The possibility of failure is risky for politicians, who are generally conservative and mindful of election cycles.

#### Implications for policy analysis

Having considered some of the ways in which power can influence constructive dialogue and some of the challenges of collaborative planning, it becomes clear that design is all-important to achieve successful outcomes.

The promise and the potential for constructive dialogue to deliver freshwater management that is trusted and supported by the communities is most likely to be realised if the following criteria are met:

- the sponsoring council is fully committed to the process and the process is well-resourced;
- the roles of participants, including those of the council, are well understood;
- the scope of the process is well-defined;
- participants are recruited carefully in order to engage a diverse range of views;
- deliberations are informed by science and all parties have an opportunity to present knowledge from their perspectives; and
- skilled facilitation ensures that all perspectives get a fair hearing and that scientific analysis and other forms of knowledge are tested.

As for the provision of expert advice, there are some further implications:

- Those conducting impact assessments and policy analysis

should be conscious of power imbalances and the potential for these to influence how assessments are done and how they are used. How can expert analysis be made accessible to lay people, including those not around the table? How can we ensure that it is not just the powerful who determine the questions and the methods?

- What to assess and how to assess it should be determined together with those involved in a collaborative process, rather than predetermined by the council or an outside expert.
- Categories, indicators and assessment methods have policy implications and are not value neutral. The choice of these can privilege one way of understanding a situation over other ways. For example, assessing a river for 'whitewater kayaking' rather than for 'boating' will engender different meanings and different results (Tadaki and Sinner, 2014). Reporting impacts on GDP will give rise to different conversations than reporting the change in the number of jobs.
- Information is power, and there is also power in choosing the categories of information. While this cannot be avoided, it needs to be recognised and care taken in the choice of categories, indicators and assessment methods. Again, this should be done with stakeholders, not separately by the council or an outside expert.
- For assessments that involve responses from human participants, the answers they provide to questions depend not only on how the questions are asked but on who is asking and how the respondent thinks the information will be used. To take this further, there are many ways to contribute information: should we require people to answer someone else's questions, or can we provide other ways for people to communicate their knowledge, values and opinions?
- Assessments and evidence provided to a collaborative process should be tested during that process rather than at a later hearing, because if it is

found to be inaccurate or incomplete, a consensus can come unstuck.

- In a collaborative process, the expert's role is to inform the discussion, to provide the best science about how A is related to B, and to challenge others' assumptions, intuitions and group think with evidence as a means of promoting a better understanding of a social-ecological system.
- In doing so, the expert or analyst needs to be open to the views of people who see the world differently, and to engage in authentic dialogue with them. Experts might realise and articulate some of their own assumptions and values and how these have shaped their thinking. This raises the further question of who is in fact the expert, and the need to recognise local knowledge as equally legitimate in getting a fuller understanding of a complex system.
- The task of policy analysis should also include consideration of how stakeholders can be involved in monitoring the things they care about – for example, including the impacts of a new development – and how this can be constructed to enable adaptive management with active involvement of stakeholders.

In a true collaborative planning process, the policy analyst or other expert does not have the last word on how to represent policy alternatives. What matters is not what an expert considers to be correct or true, but rather how the stakeholders agree to understand how something works, and how they will work together to monitor and achieve their desired outcomes over time.

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John R. Martin

## Reflections on the Life of Kenneth William Piddington (1933–2014)

Few public servants in the post-war era have made such a significant contribution in so many fields or shown more vision than Ken Piddington. Tragically, Ken was killed in a motor accident near Sanson on 28 February 2014, while en route to his eco-friendly property near Mount Ruapehu.

Born in London to Australian parents, Ken Piddington attended 12 schools in the United Kingdom and Australia before his father, Ralph, took up an appointment as the first professor of anthropology at Auckland University, a position he was to hold until 1974. In at least two areas Ken was to follow his father. The first was in a commitment to 'supporting Māori aspirations': Professor Piddington began the teaching of te reo Māori at Auckland University. (Ken was a fluent te reo speaker.) Secondly, Professor Piddington, like his son, demonstrated 'a keen sense of justice', early in his career earning censure from the authorities for giving publicity to abuses of Aborigines (Metge, 2000). Ken too was notable for his willingness to challenge those in authority.

After graduating in languages from Auckland University, Ken taught briefly, but then in 1959 joined the Department of External Affairs in Paris where he had been studying (and where he met his wife, Pam). After a short period in Wellington (including a spell of secondment to the Treasury) Ken took up his first overseas postings.

New Zealand's external economic policy in the early 1960s was dominated by the United Kingdom's relations with the European Union (then the European



Economic Community of six members, founded in 1957). The High Commission in London and the new New Zealand Mission opened in Brussels in 1961 were at the centre of the negotiations that were launched in 1961 by the Macmillan government, halted by de Gaulle in January 1963, and successfully resumed by Edward Heath in 1970. Ken Piddington, fluent in French, played his part in the intense efforts in Wellington and in European posts devoted to the successful protection of New Zealand's

vital export markets that resulted in the Luxembourg Protocol of 1971.

In the early 70s, after a spell in 1966–67 in Geneva during the GATT Kennedy round of trade negotiations, Ken moved away from New Zealand trade policy into new fields. In 1972 he became the deputy director of the South Pacific Bureau for Economic Cooperation, set up in Suva by the recently-formed Pacific Islands Forum to facilitate member cooperation on trade, tourism, transportation and economic development. Ken made a strong contribution to fostering the beginnings of a regional consciousness in the Pacific. He helped to establish the Forum Secretariat, the Forum Line and the South Pacific Regional Environment Programme. This was the period during which New Zealand began consciously to move from being the administering authority in a number of island territories to establishing its identity with other nations of the South Pacific. As Brian Talboys put it in July 1972, 'if we had a British past we certainly have a Pacific future' (quoted in Henderson, 1999).

Back in Wellington, Ken was seconded in April 1976 from the Ministry of Foreign Affairs to a task force charged, under the leadership of Sir Frank Holmes, to 'study previous experience with planning in New Zealand and to recommend an institutional framework to meet present-day requirements for planning' (Task Force on Economic and Social Planning, 1976, p.3). Various sector councils had been established during the 60s, and in 1968 the Holyoake government mounted a National Development Conference and then set up a representative National Development Council. The Kirk government

abolished the council in 1973, but the notion of ‘planning’ had support among some politicians, the public service and academia. Essentially what was sought was a policy framework with supporting institutions that took the long view and ranged holistically across economic, social and cultural developments. Such a viewpoint characterised Ken Piddington’s approach throughout his life, whatever the policy area in which he was engaged.

The report of the task force, *New Zealand at the Turning Point*, was delivered in October 1976. By May 1977 the New Zealand Planning Council proposed by the task force had held its first meeting. Chaired by Frank Holmes, the council had a diverse membership and was advised by a secretariat led by Ken Piddington. Over the next two years it reviewed a wide range of issues and published a significant number of reports. The Planning Council series included publications on topics ranging across the economic future, taxation reform, the welfare state, employment policy, public expenditure and regional planning.

The publication closest to Ken’s heart was undoubtedly *He Matapuna: a source; some Maori perspectives* (New Zealand Planning Council, 1976), illustrated with Ans Westra photographs and containing essays by Māori who played a notable part in changing cultural attitudes from the 70s and dispelling ‘the assumption of Pakeha superiority’.<sup>1</sup> Each essay was prefaced with a brief commentary which bears the Piddington stamp. The message conveyed was, as Frank Holmes expressed it in the foreword, ‘We must stop using Pakeha values as the sole basis of our planning and policy-making.’

A few months later Ken, spurred by a *New Zealand Listener* editorial, published a response, and then as a planning paper a short essay, *Puzzled, Pakeha?*, in which he reflected on his own experience, including of Māori urban drift to Auckland, and challenged Pākehā to review their attitudes to the changing place of Māori in New Zealand society (Piddington, 1980a, 1980b). This is a piece of well-grounded advocacy that is as relevant today as when it was written over 30 years ago.

The legacy of his father was undoubtedly a significant factor in Ken’s life-long interest in and commitment to encouraging an enlightened approach to bicultural relations in New Zealand. The phrase ‘the principles of the Treaty’ which found its way into wide-ranging legislation is attributed to him. Māori leadership referred to him as a ‘lightning rod’ in transforming the perception of Māori culture in New Zealand society.

Another strong influence on Ken was his close friendship with writer Witi Ihimaera, begun when Ihimaera was serving with the Ministry of Foreign Affairs.

In 1980 Ken Piddington was appointed to head the small Commission for the

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Environment, a position he was to serve in for six years. The substantial role that he was to play in issues about conservation and a sustainable New Zealand (and global) environment had begun. This was the era of Robert Muldoon’s ‘Think Big’ national investment: challenges to environmental values were not surprising. Piddington was not afraid to take up these challenges. Most often cited is his successful advocacy in confrontation with the prime minister over the project to pipe into the sea the polluted waste from the Taranaki synthetic fuel plant. The effect on Māori fishing grounds was the deciding consideration.

Piddington brought to his managerial role at the Commission for the Environment the qualities that had enabled him successfully to lead the team in the Planning Council secretariat,

notably his calm, and a willingness to allow staff a measure of self-expression and to encourage the enrichment of their skills. Ken’s analytical capacity was matched by an ability to express himself with skill orally or in writing.

His next role was to test these qualities severely. On 1 April 1987 New Zealand’s environmental administration was radically changed in accordance with the principles that were to shape the reform of the governmental system in the late 1980s. Non-commercial functions were to be separated from commercial; policy advice was to be separated from operational responsibilities. The Commission for the Environment (along with the Department of Lands and Survey and the New Zealand Forest Service) was abolished. Two policy ministries were established, the Ministry for the Environment and the Ministry of Forestry, and two departments with mixed responsibilities were formed: the Department of Conservation and the Department of Survey and Land Information.

Surprisingly, Ken Piddington was not appointed to head the Ministry for the Environment, which was charged with the primary responsibility for environmental policy advice; the capacity to provide a strategic view was one of his strengths. Instead he was appointed as the first director-general of conservation at the head of a department bringing together the natural resource management functions of Lands and Survey, the Ministry of Agriculture and Fisheries, the Forest Service and Internal Affairs. The ‘green spots’ were to be joined. The director-general carried responsibility for around 2000 staff – in eight regions and 34 districts – nett expenditure of \$106 million and 30% of New Zealand’s land area. This formidable administrative task, constrained by a reduced budget, was approached by Ken and his colleagues ‘with missionary zeal with one arm behind its back’ (Napp, 2007). He was explicit that the new department ‘would shake off the baggage of its parent agencies’.

In 1988 Piddington was headhunted for the newly-created position of director of the environment department at the World Bank (the International Bank for Reconstruction and Development)

in Washington, DC. No position could better employ Ken's diplomatic and environmental experience. In this institution, dominated by economists, only comparatively recently had there been acceptance of the notion that environmental considerations could legitimately be taken into account in assessing the suitability of projects for investment. An important development with which Ken was closely associated was the creation of the Global Environmental Facility to provide funding for global environmental concerns. An account of the establishment negotiations captures Ken's typical approach: 'The Bank should be putting itself in a situation where [it] is not simply reacting to various initiatives, but is taking the lead in putting some of the practical considerations to governments' (Sjoborg, 1994, p.10).

As his close friend and colleague, David McDowell, said in his tribute to Ken at his funeral at Old St Pauls:

He set his legacy in place by helping to mainstream environmental issues in the Bank's work, driving the development of mandatory safeguard policies which required Bank-sponsored projects to have built-in mitigatory and compensatory measures which reduced the social and environmental impacts of large infrastructure projects like dams.

After his 'retirement' to New Zealand in 1992, Ken Piddington became actively involved in energy and climate change

issues, first as adjunct professor at the University of Waikato (where he did considerable work on resource-use taxation) and then as a senior associate of the Institute of Policy Studies at Victoria. An article he wrote for the *New Zealand Herald* in 2001 summed up the position that Ken continued to hold until his death:

There are great dangers ahead for New Zealand in the assumption that we can now return to business as usual. Locally, there are even greater dangers for Auckland if policies are not put in place to head off the creeping effects of the transport crisis, which has made it the country's least-liveable urban area. For the economy at large, there are also costs in avoiding the strategic management of climate change risk. (Piddington, 2001)

Over the past decade Ken published a number of significant articles (for example, Piddington, 2005), made submissions to select committees (for instance, with Professor Frank Scrimgeour of Waikato on the Climate Change (Emissions Trading) Amendment Act 2008), and was an active and respected participant in the Institute of Policy Studies: he acted as IPS coordinator for the successful conference Climate Change and Governance: critical issues for New Zealand and the Pacific in March 2006 and edited the first two editions of *Policy Quarterly*. In recent years Ken devoted time and energy to the

future of the institute, driven by a wish to honour the memory of one of the institute's founders, Sir Frank Holmes, for whom he had great respect.

Ken Piddington maintained his links with the international environmental scene, taking part in successive regional United Nations Environmental Programme meetings of South Pacific and South East Asian heads of environment and conservation departments. Ken was a mentor to many of the participants.

Ken was a friend to so many people in many nations. He was a warm man with a sense of fun; from over 50 years acquaintance, I will recall him as a person with whom, even if paths had not crossed for some time, the friendship of the last occasion was immediately resumed. But at the centre of his life was his family: his beloved wife, Pam (who sadly died in 2006), Graham, Karl, Rosalie and their families. Our thoughts are with them. Ken Piddington is warmly remembered for an outstanding contribution to public welfare in New Zealand and abroad and is sadly missed.

<sup>1</sup> Paul Reeves, Ranginui Walker, Tilly Reedy, Hugh Kawharu, Kara Puketapu, Timoti Sam Karetu, Bruce Stewart, Sid Mead, Rangimarie Rose Pere and Robert Mahuta.

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