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

POLICY Quarterly

Volume 11 – Issue 3 – August 2015

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Policy Quarterly (PQ) is targeted at readers in the public sector, including politicians and their staff, public servants and a wide variety of professions, together with others interested in public issues. Its length and style are intended to make the journal accessible to busy readers.

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Co-Editors: Jonathan Boston and Bill Ryan
Editorial Board: Guy Beatson, David Bromell, Valentina Dinica, Don Gray, Gerald Minnee, Mike Reid and Andrea Schollmann

ISSN: 2324-1098 (Print)
ISSN: 2324-1101 (Online)
Volume 11, Issue 3 – August 2015
Copy Editor: Rachel Barrowman
Design & Layout: Aleck Yee
Cover Photography & Design: Aleck Yee
Production: Alltex Design
Proof Reader: Vic Lipski

VICTORIA UNIVERSITY OF WELLINGTON TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI
Institute for Governance and Policy Studies
A research institute of the School of Government

Editorial Note

Poor Policy?

This issue of *Policy Quarterly* gives particular attention to two policy issues that have figured prominently in recent public debate in New Zealand: first, the problem of child poverty and the government's announcement of measures to address this problem via a Child Hardship Package in the 2015 Budget; and second, the ethics of active voluntary euthanasia (and the related subject of physician assisted suicide). In each case, there are four articles. Readers are thus provided with different insights and perspectives on two very different, yet equally complex and vitally important, policy issues. In addition, there are articles on a range of other significant topics.

The package of measures announced in the Budget to assist low-income families is undoubtedly welcome. The additional financial assistance, to take effect in April 2016, coupled with an increase in the value of targeted subsidies for childcare, will bring much needed, albeit modest, relief to many struggling families. Other recent policy initiatives, for example in housing and health care, will also help.

Nevertheless, as highlighted by contributors to this issue of *Policy Quarterly*, the Budget package is open to a range of criticisms. It is largely short-term and ad hoc in nature. It lacks ambition. There is no long-term vision. There are no explicit targets, goals or performance measures.

Surprisingly, the package provides the greatest relative benefit to small families, even though poverty rates are higher for families with three or more children. Similarly, it maintains a family assistance regime which gives disproportionate financial help to families with teenagers, even though those with young children generally have greater needs.

The package is also complex. It will be costly to implement. It will add to compliance costs and transaction costs. It complicates an already convoluted benefit system and confusing regime of family tax credits.

Worse, the package will make relatively little difference to rates of child poverty, whether measured on the basis of income or material hardship. For instance, according to a rough estimate by officials, the rate of severe material hardship for children is likely to fall by around 1%, from about 10% (or 100,000 children) to about 9% (or 90,000).

Why will the package have such a minimal impact, despite being tightly targeted and ostensibly designed to benefit the most deprived families?

First, it is limited both in scope and scale. For some families, the extra help will be little more than 50 cents per day per person. Second, some of the additional financial assistance will be lost via reductions in other forms of targeted or conditional assistance (e.g. income-related rents and Temporary Assistance Support payments). Third, the package does nothing to rectify the lack of full annual indexation for certain forms of social assistance, including the Accommodation Supplement. Fourth, the package raises the abatement rate for Working for Families tax credits from 21.25% to 22.50%.

The failure of the Child Hardship Package to ensure that family assistance in New Zealand is properly indexed both to prices and wages, together with a harsher targeting regime and compliance requirements, has obvious implications. After a temporary respite generated by the rise in the value of welfare benefits and the in-work tax credit, the position of low-income families (whether in receipt of benefits or market incomes) will deteriorate: over time, many such families will become worse off, both in real terms and relative to those on much higher incomes or receiving New Zealand superannuation. For the children of the poor, this is not good news.

Policy inconsistencies also abound. As mentioned, the Child Hardship Package contains no targets for reducing child poverty. In some ways this is strange. After all, the government has announced specific medium-term targets, under the Better Public Services initiative, for a range of important social outcomes. Many of these outcomes are closely related to child poverty. Such targets include cutting the incidence of rheumatic fever and the physical abuse of children, improving infant immunization rates, increasing participation rates in early childhood education and enhancing NCEA Level 2 pass rates. Why, then, the reluctance to set clear medium-term or long-term goals for alleviating child poverty?

But maybe change is on the horizon. In late September 2015 world leaders will gather in New York for a high-level plenary session of the General Assembly. Their purpose is to adopt the so-called Sustainable Development Goals (SDGs). These Goals have been patiently negotiated by the international community over recent years and will replace the Millennium Development Goals (MDGs), which applied to developing countries during 2000-15.

There are 17 SDGs and numerous sub-goals; their target date for realization is 2030. Unlike the MDGs, the SDGs apply to all countries, both developed and developing. But they are aspirational rather than legally binding.

Nevertheless, the first goal – and undoubtedly one of the most important – is to 'end poverty in all its forms everywhere'. The goal includes various specific targets. Currently these include: by 2030, to 'eradicate extreme poverty for all people everywhere, currently measured as people living on less than $1.25 a day'; and to 'reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions according to national definitions'.

Assuming New Zealand endorses the SDGs, it will be making a public commitment to reduce poverty – not merely for children, but for all its citizens. While the target of cutting poverty rates by 50% (using various measures) by 2030 is not binding, it nevertheless reflects the ambition of the international community. Interestingly, too, it is broadly in line with the recommendations of the Expert Advisory Group on Solutions to Child Poverty in New Zealand in 2012.

Arguably, such a goal is achievable, at least for children. It would bring our rates of child poverty and material hardship close to those of Scandinavia. But securing it would require major policy changes and concerted effort. Is there the political will for such effort? Probably not. But it will be interesting to see how seriously the New Zealand government takes its SDG commitments and how it chooses to express any anti-poverty targets.

Jonathan Boston (Co-editor)

Russell Wills

Has Budget 2015 Solved Child Poverty?

The New Zealand public spoke and the pollsters listened: child poverty consistently ranks among the top concerns of New Zealanders (Levine, 2014). And the prime minister listened too. In September 2014, after securing a healthy election victory, he proclaimed that he was going to step in and tackle child poverty (Fox, 2014). The policy analysts in a range of government agencies were set a task: come up with a package for Budget 2015 that helps children in poverty, that doesn't cost too much and that won't reduce the incentive to work.

This article will demonstrate that the policy analysts did the best they could with the brief they were given. However, because the brief from ministers was narrow, the impact will be limited. The job of reducing child poverty in New Zealand is far from over.

Russell Wills is the New Zealand Children's Commissioner, and has made addressing child poverty one of the priorities of his term as commissioner. He is also a practising paediatrician.

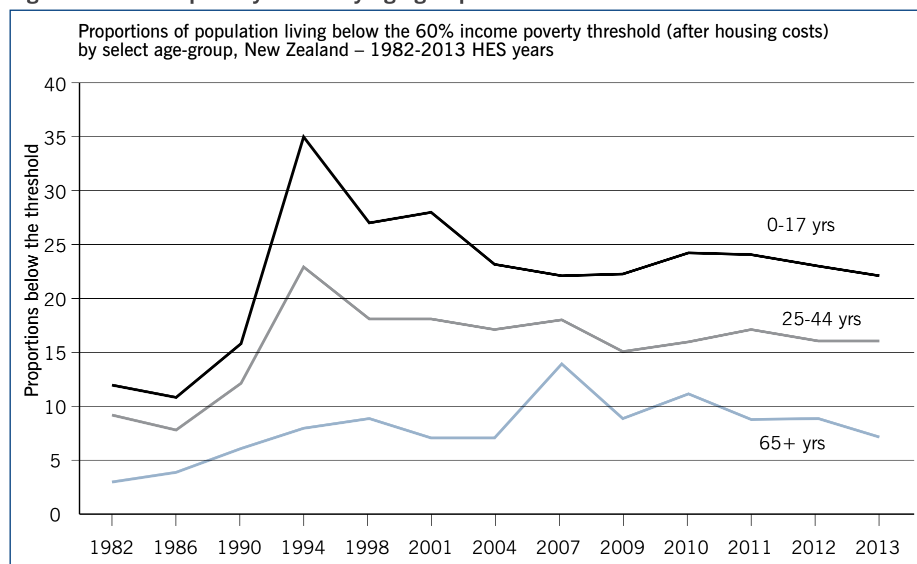
Child poverty is a wicked policy problem

Wicked problems (Briggs, 2007) are typically difficult to solve due to incomplete or contradictory knowledge, the number of people and opinions involved, the large economic burden, and their interconnectedness with other problems.

The facts of child poverty in New Zealand are well traversed in *Solutions to Child Poverty in New Zealand: evidence for action* (Expert Advisory Group, 2012) and *Child Poverty in New Zealand* (Boston and Chapple, 2014). The synopsis is that, regardless of the measure used, child poverty is high relative to past levels, all other age groups, and most other developed countries. According to the Child Poverty Monitor, as many as 24% of children in New Zealand (260,000) live in income poverty and 17% (180,000 children) experience material hardship (Child Poverty Monitor, 2014). Figure 1 shows income poverty trends by age group over the past three decades.

As with all wicked problems, there is no single solution. All evidence shows that significant and durable reductions

Figure 1: Income poverty trends by age groups



Source: Derived from Perry (2014)

Table 1: Material hardship – number of items that a family lacks out of 17 items

Dep-17 score	6+	7+	8+	9+	10+	11+
All ages (%)	14	11	8	6	4	3
0–17 years (%)	21	17	13	10	8	6
# of children (000)	220	180	140	100	80	60

Source: Perry (2015)

in child poverty take time and money. Actions are required to address a range of interrelated areas, including:

- affordable, safe, healthy homes;
- stable, nurturing families;
- supportive communities;
- adequate income to meet needs;
- a supportive education sector; and
- accessible health services.

Responsibility for addressing child poverty is a shared responsibility between parents, wider family members, communities, non-governmental organisations and government alike. The package of support included in Budget 2015 is focused on one aspect of child poverty: adequate income.

What did the government ask of policy analysts?

The regulatory impact statement (RIS)[1] prepared by the responsible agencies noted that the government's objective for this package of changes was:

> to take immediate action to reduce material hardship amongst children, particularly those living in deeper levels of material deprivation, while taking into account:
>
> - supporting financial incentives and workforce attachment for households with children;
> - supporting children's development;
> - managing fiscal costs and ensuring value for money for tax payers. (Department of the Prime Minister and Cabinet, Ministry of Social Development and Treasury, 2015, p.14)

Within this framework, analysts used the following criteria to assess options:

- effectiveness of targeting;
- impact on work incentives/ employment outcomes;
- timeliness (that the package could be implemented within a year of Budget 2015);
- level of administrative complexity;
- costs to not exceed NZ$250m per year; and
- not cutting across existing work streams.

Policy options were developed which canvassed a range of possible levers, including the family tax credit, accommodation supplement, benefit rates and the in-work tax credit.

So what did Budget 2015 deliver for child poverty?

Renaming the problem

The first thing to notice about the Budget 2015 package is that the aim of the government has shifted from 'tackling child poverty' to 'providing some support to children living in severe material hardship'. This new discussion of severe material hardship required a new set of measures and thresholds. The Ministry of Social Development stepped into the breach by deconstructing the current Material Wellbeing Index (MWI) and using core elements to develop a 17-item deprivation index, aptly named Dep-17 (Perry, 2015). The Dep-17 provides a simpler and more intuitive way of communicating hardship when focusing on those at the low end of the MWI living standards scale. The MWI surveys essential items families regularly do without or have recently done without due to unaffordability. The 17 items include postponing visit to the doctor, putting up with feeling cold, having two pairs of shoes, and meals with meat (or other protein).

According to the MWI, 17% of children, or 180,000, are living in material hardship, defined as missing out on seven or more of the 17 items on the Dep-17. Perry suggests that the 'more severe hardship zone' be defined as those missing out on nine or more items (Perry, 2015, p.17). As shown in Table 1, this would mean 10% of New Zealand children (100,000 children) are living in severe material hardship. The table makes it clear that where we draw the line to define 'severe' hardship is arbitrary.

Budget 2015 package

The substantial elements[2] of the child hardship package in Budget 2015 include:

- an increase in the benefit rate for families with children by $25 per week;
- an increase in the maximum rate of the Working for Families (WFF) in-work tax credit by $12.50 per week;
- an increase in the abatement rate for WFF tax credits by 1.25 percentage points;

- an increase in child care assistance by $1 per hour for the poorest working families;
- increases in work availability obligations for beneficiary parents that:
  - lower the age of the youngest child at which part-time work search obligations begin (from age 5 to 3 years);
  - increase the hours of part-time work sought from 15 to 20 hours a week;
  - add a new requirement for sole parent support recipients to reapply for the benefit and reconfirm eligibility on an annual basis.

The total value of the package is $790 million over four years, with an estimated ongoing cost of $237 million per year from 2018–19.[3]

What will this package mean for children?

The regulatory impact statement shows the complexity of modelling and analysis required to design, effectively target, and monitor the impact and costs of changes to the benefit and income support systems and subsidies. The modelling provided in the RIS demonstrates aggregate increases for families with children ranging from $17.50 to $49.58 per week, depending on income source, number of hours worked, ages of children and accommodation type. The greatest increases were for a couple with four children, receiving child care support and working 40 and 20 hours ($49.58); and a sole parent with two children, receiving child care support and working 30 hours ($44.90).

The aggregate gains appear to meet the policy objectives in that incomes are increased, increases are largely targeted to those in greater need, and child care costs (noted as a barrier to re-entry to work) are reduced. The public servants did their job well. The package achieved the policy objectives they were given. My concern is that the objectives set by ministers were too limiting to make the difference that children need.

Increases to the benefit rate

The gap between market and benefit incomes has steadily grown over the past three decades, because benefit incomes are not indexed to the median wage and the tax system has become less progressive. This has been well documented in the OECD's recent economic survey of New Zealand (OECD, 2015). Overall, the increase in benefit rates accounts for just over half the value of the total package. It is pleasing to see an increase in benefit rates (especially as this is the first increase in benefit rates in over 40 years). A further step of indexing these rates to a proportion of the growth in the median wage would lock in that change; without indexing rates to the median wage – as national superannuation is indexed – the gains will inevitably be eroded over time. Why would we index a benefit for older people to the median wage but not do this for children?

A weekly rise in benefits of up to $25 for families in greatest need will be helpful for a family with one child, though less so for those with more children, as the increase is per family, rather than per child. Children living in hardship in larger families, where poverty is more prevalent, will see less effect from these changes.

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Increase of the in-work tax credit and WFF abatement rate

Increasing the maximum in-work tax credit by $12.50 per week will be helpful for children in working families on very low to moderate incomes. Again, the impact for a child living in a larger family, where poverty is more prevalent, will be relatively small. The WFF abatement is the rate at which the WFF payment decreases as income increases above a designated threshold. Increasing the abatement rate means families with incomes over $36,350 will have tax credits reduced more quickly. For families with incomes over $88,000 the impact of the abatement will be greater in dollar terms than the increase in the in-work tax credit, so these families will be worse off due to the combined changes.

Millions of dollars in savings will be generated through the increased abatement, and used to offset the increase in the maximum in-work tax credit. Increasing the abatement rate is effectively a redistribution of income from families with moderate-to-low incomes to families with very low incomes. The amount of this saving was not set out separately in the RIS.

Increase to child care assistance for some families

Currently, child care assistance is available for families on low incomes, with a maximum subsidy of $4 per hour per child. The change will add a new category for the poorest working families, with a higher subsidy of $5 per hour for families with one child and gross weekly income below $800. This tightly targeted element of the Budget package accounts for more than $100 million of new investment over four years and will benefit approximately 18,000 low-income working families by an average of $22.96 per week. Considering the increased obligations to work, additional child care support is certainly warranted. The cost of quality child care continues to be a barrier for many families entering and sustaining employment.

Work obligations

International research indicates that a parent obtaining paid employment with sufficient earnings can be a powerful and effective way to lift children out of poverty. However, an adequate safety net is also required for those who are unable to work and to acknowledge the impact

of economic conditions where jobs are scarce. This is particularly true for sole parents, as they face considerable challenges in supporting their children through paid employment and meeting their child care needs (Garden, 2014).

Gaining appropriate, sustainable employment simply will not be achievable for some families. If the jobs do exist, employment needs to be family-friendly, with hours of work coinciding with availability and affordability of good quality child care. Placing more work obligations on beneficiaries may not necessarily result in any more parents moving into employment, but it will put added pressure and compliance obligations on those already in stressful circumstances. It will also cost the taxpayer more. More than $22 million of the Budget 2015 package is allocated to increased implementation costs for the Ministry of Social Development associated with managing the additional work obligations and the re-application requirement.

What difference will these measures make?

There is no doubt that having extra resources available in very low income families (whether that is from a benefit rate increase, in-work tax credit increases or higher child care subsidy) will be a welcome support to those families. It will likely reduce the poverty gap by lifting those at the very bottom of the income scale, but the increase will not be sufficient to lift many of these families out of poverty on any of the widely used income-based or hardship measures. This simply reflects the fact that the gap is very wide and will take more time and resources to narrow. Moreover, while increased income is important, for some of the neediest families it will not be sufficient to overcome the many complex issues they face. Therefore, the overall impact on alleviating hardship of this proposed package is likely to be small.

The RIS notes that it is difficult to calculate what impact the package will have on material hardship. Nevertheless, officials indicated that, as a rough estimate, the number of children in severe hardship was likely to fall by around 10% – from 100,000 to 90,000 – and that the depth of hardship on others will be alleviated. We will need to watch for improvements to child poverty measures, including the new DEP-17, to see if any changes are apparent from 2017-18 onward. The measure of success of this package to address child material hardship, therefore, is whether it can reduce the numbers of children in hardship over time.

> The current ad hoc and complex system produces perverse and unintended consequences that excellent policy work can only partly address.

What is missing in this package?

Comprehensive system review

Family income, and therefore child material hardship, is directly influenced by government policy on tax and income support. Getting that system performing well is critical if child poverty is to be reduced. Relevant parts of the tax and benefit systems include parents' employment earnings, WFF tax credits, benefit support, and other subsidies such as housing and child care assistance. The Budget 2015 package of changes to address child material hardship addressed some parts of the system. However, it fell well short of the independent and comprehensive review of all child-related benefit rates and relativities recommended by the expert advisory group (Expert Advisory Group, 2012).

The current ad hoc and complex system produces perverse and unintended consequences that excellent policy work can only partly address. For example, the package generates a saving of $23 million over four years to the income-related rent subsidy. This is because giving an income increase to families in social housing also effectively increases the rent they are required to pay. Plus, we know that some families on low incomes are actually worse off as a result of the flow-on impacts of the changes: for example, losing more in the WFF abatement increase than they gain from the in-work tax credit increase. Including a top-up payment provision in the package for 'unintended losers' just adds another ad hoc fix to a patched-together system.

An overall plan

The investment in narrowing the gap between very low incomes and most widely accepted poverty thresholds is welcome and will be helpful for many families. It is positive that the government has recognised that the gap has grown too wide and is materially affecting health and education outcomes for children. While welcome, however, these changes are not the same as a plan to reduce child poverty over time. That is what we need. And while it is stated that the deeper causes and consequences of poverty and hardship (for example, in housing, cost of health care and education, parenting support) are to be addressed in other government work, we should expect to see this commitment explicitly outlined.

Conclusion

So, has child poverty been solved now, allowing government to move on to other issues? Not yet. Officials certainly can be given credit for fulfilling their brief, but the narrow focus of that brief means that the package announced in Budget 2015 will make only a small impact on child poverty.

I am pleased that the government has recognised that incomes for families with children matter by raising incomes for both beneficiary and working families. But wicked problems are not easy to solve. Addressing child poverty is going to need a longer-term approach, better planning and design, greater investment, and actions across a range of interrelated areas. Surely our children deserve nothing less.

1 Regulatory impact statements are required alongside all major regulation, legislation or policy change to help ensure that the process is open and transparent. An RIS provides a high-level summary of the problem, the options and their associate costs and benefits, and the proposed arrangements for implementation (http://www.dpmc.govt.nz/sites/all/files/publications/ris-budget15-cmh-may15.pdf).

2 There are other, lesser elements to address flow-on impacts, but these are not discussed here.

3 Unless otherwise stated, all figures are based on those reported in the RIS.

Acknowledgements

I would like to thank Donna Provoost for her assistance with the preparation of this article.

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	Title	Speaker/Author	Date and Venue
School of Government with PSA, IPANZ, Skills	***The Public Sector Conference:*** *Stewardship Today for the Generations of Tomorrow*	Register at publicsectorconference.org.nz	16 September 2015 Intercontinental Hotel, Wellington
Institute for Governance and Policy Studies	*NZ is Corruption-free – or is it? Why do we need the Organised Crimes and Anti-Corruption Legislation Bill?*	Souella Cumming, Fiona Tregonning	Tue 25 Aug, 5:30-6:30pm GBLT3, Government Buildings Lecture Theatre 3 RSVP igps@vuw.ac.nz
Health Services Research Centre	*Investing for Success: Social Impact Bonds and the future of public services*	Jenesa Jeram, Dr Bryce Wilkinson	Wed 2 Sept 12:30-1:30pm GBLT3, Government Buildings Lecture Theatre 3 RSVP not required
Health Services Research Centre	*20,000 Days and Beyond Evaluation of CMDHB's Quality Improvement Campaigns*	Lesley Middleton, Luis Villa, David Mason, Jacqueline Cumming, Janet McDonald	Report out now
Health Services Research Centre	*Eldercare work, migrant care workers, affective care and subjective proximity*	Kirsten Lovelock, Greg Martin	Forthcoming in Ethnicity & Health

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Bryce Wilkinson

Budget 2015 the government's welfare policy, a positive view

Introduction

Nearly four years ago, Prime Minister John Key announced a major reform of the welfare system. He defined the problem with the existing system in the following terms:

> The stand-out feature of New Zealand's benefit system is how passive it is. For the most part it simply hands over benefits and leaves people to their own devices. Most beneficiaries are not expected to be available for work, or to take up work if it is offered to them. Naturally, many don't.
>
> The benefit system also lacks a focus on intervening early. We know, for example, that the longer people stay on a Sickness Benefit the more it gets entrenched. (Key, 2011)

Bryce Wilkinson is a Senior Research Fellow with The New Zealand Initiative in Wellington.

He reported that around 328,000 people of working age (one in eight) were receiving a benefit. More than 170,000 had been on a benefit for at least five out of the last ten years. Two hundred and twenty thousand children were living in benefit-dependent households. He summed up the problem as being one of 'poor outcomes for beneficiaries, for their children, for society and for taxpayers', outcomes not intended by the architects of the welfare state.

Key's remedy was not to abolish the welfare state. To the contrary, he observed:

> I've often said that you measure a society by how it looks after its most vulnerable. But you also measure a society by how many vulnerable people it creates. At the moment it is creating too many vulnerable people and trapping them in a life of limited income and limited choices.

His remedy was instead to turn it from a passive to an active state that does not treat people as passive recipients of welfare, focuses on what they can

achieve, and challenges them to achieve it while providing support, training and opportunities to return to work sooner rather than later.

Budget 2015 continues to implement this direction.

The short-term political side show: the first real benefit increase since 1972

The Budget increases base benefits for the first time since 1972. According to the Budget speech by the minister of finance, Bill English, benefit payments will increase from 1 April 2016 for 'around 110,000 families, with 190,000 children' (English, 2015a). The potential increase is $25 per week after tax, or $1,300 a year. To put that in perspective, $25 a week is 8.4% of the $300.98 net of tax payable weekly from 1 April 2015 to someone on the sole parent benefit with an 'M' tax code;[1] better than nothing for those families, of course, but not a game changer.

The Budget also increases fiscal assistance for low-income working families. 'Working families earning $36,350 a year or less before tax will get $12.50 extra a week from Working for Families, and some very low-income families will get $24.50 extra.' Qualifying working families earning more than $36,350 a year will get less than $12.50 a week. 'Around 200,000 working families will benefit from these changes, with about 50,000 of them being families earning $36,350 or less' (see English, 2015b). The combined total of 310,000 families represents 27% of the nation's Statistics New Zealand estimated 1,136,397 families.

Budget 2015 also increases child care assistance to make it easier for parents to move from welfare to work and to lower the cost of child care for around 40,000 low-income working families. The Budget speech put the total cost of the package at around $240 million in each full year. Spread over 310,000 families, it would average out at $774 per family. It notes that this is on top of Budget 2014's pre-election $500 million children and families package, which included free doctors' visits and prescriptions for all children under 13.

Politically, the additional spending on low-income and beneficiary families makes it harder for the Labour and Green parties to get traction. Even so, the additional amounts per household are small relative to the potential annual variability in household expenses. No significant and enduring change in circumstances in aggregate will result from this measure. Work and work skills remain critical to escaping hardship.

The government's real welfare goal: securing better outcomes

The government's real programme for alleviating hardship is now unfolding. Its focus is commendably far-reaching and long term. It is aimed at addressing root causes. It is aimed at getting better outcomes rather than merely increasing funding for inputs or outputs. It recognises that getting better outcomes is hard. Many of the problems are close to intractable.

Desired outcomes

In a presentation to church leaders in May 2015, the minister of finance summarised the government's desired outcomes as including:

- Reduce the numbers on a working age benefit for a year or more;
- increase participation in early childhood education;
- increase infant immunisation and reduce rheumatic fever;
- reduce the number of assaults on children; and
- increase the proportion of 18-year-olds with NCEA 2. (English, 2015c).

Means: more stringent work testing

English observed in his Budget press release the same month that '[t]wo-thirds of New Zealand children in more severe hardship have a parent on a benefit, with nine out of 10 being sole parents'. He concluded that '[t]he best thing we can do for those children is to get their parents into sustainable, full-time work, where that is possible' (English, 2015b). Accordingly, the Budget proposes to make eligibility for base benefits dependent on more stringent work tests. Even so, Treasury's Budget 2015 projections do not appear to be anticipating a material reduction in benefit numbers as a result. For example, Treasury's December 2014 half-year update projected that there would be 65,000 sole-parent beneficiaries in fiscal year 2019; so did Budget 2015.

Means: better information

Securing better outcomes for those the welfare state should be helping requires a better understanding of what their situation is and of what works and what doesn't. The government has found that state information systems have been lacking in revealing both the real nature and extent of the problems being faced by those experiencing material hardship and the efficacy of existing programmes. It has made the collection of better information a priority.

The government's innovative analysis of lifetime welfare costs quantifies some things that should be obvious. The more a child has come to the attention of state corrective agencies by age five, the bleaker that child's future in terms of education, benefit dependency, crime and, no doubt, health. On the government's analysis of children born in 1990, the estimated fiscal cost to age 35 of a child who had not come to the attention of the Department of Corrections, Child, Youth and Family or Work and Income officials by age five was likely to be less than $50,000 (English, 2015c, p.8). The cost was likely

The more a child has come to the attention of state corrective agencies by age five, the bleaker that child's future in terms of education, benefit dependency, crime and, no doubt, health.

to be more than three times higher for a child who had come to the attention of just one of those agencies by age five, more than four times higher in the case of attention from two agencies, and over $250,000 if all three agencies had become involved by age five. In short, the pre-school environment is very important.

An actuarial assessment on behalf of the government by Alan Greenfield, Hugh Miller and Gráinne McGuire (2013) from Australian actuarial firm Taylor Fry also demonstrated that the younger the age at which a person first enters the benefit system, the greater their likely lifetime welfare costs (Greenfield, Miller and McGuire, 2013). English reports that those who enter the benefit system between the ages of 16 and 19 account for 81% of the Crown's assessed actuarial liability in respect of welfare (English, 2015c, p.11).

In a competitive environment, the need for repeat business provides a powerful incentive to satisfy the needs of the situation.

Means: the social investment approach

The minister of finance has also observed that what state agencies think are priority solutions for the targets of state welfare programmes are not necessarily what the recipients themselves consider to be priorities for improving their circumstances. Innovative solutions are needed, and the state does not have a monopoly on such solutions. In some cases, local solutions to local problems may be better than those imposed from Wellington.

The problems faced by many welfare recipients are complex and diverse. Near-intractable problems don't have easy solutions. Many apparently promising solutions will have disappointing outcomes. So the government is tapping into the ability of the community at large to come up with solutions. English calls this a 'social investment' approach (English, 2015a). Social investment he describes as a new process that will help the government to:

- get better information about outcomes and services;
- evaluate spending effectiveness and calculate return on investment; and
- buy what works, and reprioritise funding for what doesn't. (English, 2015c)

The European Commission defines social investment as follows:

> Social investment is about investing in people. It means policies designed to strengthen people's skills and capacities and support them to participate fully in employment and social life. Key policy areas include education, quality childcare, healthcare, training, job-search assistance and rehabilitation.[2]

The government's existing programmes that involve private parties with an outcome focus include its children's teams, social sector trials, public–private partnership programme (e.g. Wiri prison), its social housing programme, Whānau Ora, partnership schools and its pilot social impact bond programme. Budget 2015 provided a further $50 million over four years for Whānau Ora. On 1 June the government announced that it would be proceeding with four pilot social bonds as part of its social investment approach. It revealed that Budget 2015 had set aside $29 million for this purpose. The first social bond will provide employment services to people with mental health conditions (see Davidson, 2015). That looks like a worthwhile but challenging task.

A 2015 report by Jenesa Jeram and the author for The New Zealand Initiative explained the concept of social impact bonds (Jeram and Wilkinson, 2015). It reviewed the (limited) overseas experience with them to date and examined their potential application to New Zealand. The essence of a social impact bond is that the government only pays for success.[3] Private investors bear the financial cost of failure. Either way, all observers learn from the experience. The need is to find what works.

Opposition to the social investment approach

It would be a churlish person indeed who did not want to see better outcomes for welfare beneficiaries, in the short and long terms. Yet for existing providers of social services the government's social investment approach is both a threat and an opportunity. Strong opposition to alternative arrangements, even very small pilot projects, can be expected from those who see it as a threat to their established positions. Even the information provided by a failed pilot programme could be a threat to some and an opportunity for others.

Privately provided programmes are a potential threat to publicly provided programmes. One concern is that for-profit providers' incentives might be less well aligned with recipients' needs than not-for-profit incentives. However, how well or poorly incentives are aligned depends heavily on degrees of transparency, contestability and contractual quality, including recipient empowerment. In a competitive environment, the need for repeat business provides a powerful incentive to satisfy the needs of the situation. A surgeon working for a profit does not want a malpractice suit; nor does a teacher or social service provider want to get paid less or to face a charge of child abuse or elderly neglect. Milton Friedman once pointed out that incentive alignment is most problematic when someone is spending the money of strangers for the benefit of other strangers (Kharkof, 2011). That problem bedevils much government spending, regardless of whether actual provision is bureaucratic, for-profit or not-for-profit. By harnessing competition for delivery and ideas, increasing contractual clarity and improving the information

base, social bonds can hope to improve incentive alignment.

Another argument, most to be expected from those associated with publicly provided programmes, is that involving private providers undermines the public sector ethos. The knee-jerk 'privatisation' bogey is also likely to be invoked in this context. However, public providers don't have a monopoly on compassion, or competence. Voluntary charitable organisations have existed for a lot longer than the welfare state. The government's focus is rightly on finding what works. As Deng Xiaoping reportedly said, 'It doesn't matter if a cat is black or white, so long as it catches the mouse.'[4]

One argument that potentially concerns opponents and supporters alike is that a social investment may fail to improve outcomes, and perhaps even worsen them. Judging this on a case-by-case basis requires an assessment of the deficiencies in both the existing and proposed programmes. Keen debate which focuses on robust assessments is a desirable thing. Obviously, the hope is that political processes will favour adopting a programme with real potential for success.

It is worth noting here that people will always differ about the wisdom of a particular investment because they have different information sets, different interests and different views about how the future is likely to unfold. Such differences are reflected in the enormous variety of private charitable organisations in New Zealand. As explained in The New Zealand Initiative's report, social impact bonds can provide social services entirely independently of government. Private philanthropists or community organisations seeking particular social outcomes can use the social impact bond structure to focus willing social service providers on achieving those outcomes. Those who believe the project will fail don't participate. Non-participation is not possible when government chooses between contending uses of funds. Those who disagree cannot opt out of funding the chosen programme. However, where the government pays only for success, the argument for not proceeding on the grounds of fiscal cost is less convincing.

Another consideration in assessing the likelihood of achieving better outcomes is the degree to which those receiving the social services in question wish to secure the better outcomes for themselves. If they do not, it might be hard to find a social service provider who would be willing to take up the challenge.

Some opposition will be ideological: to what degree should working-age welfare be an entitlement or a privilege? The move to a more stringent work test looks like a shift. Ultimately, the degree is a political decision. But the choice should be informed by evidence as to the effects of the choice. The accumulating evidence of bad outcomes on average for children born into sole-parent, welfare-dependent situations is grim.

The Budget speech reported that the number of children in benefit-dependent households has fallen by 42,000 over the past three years.

There will be failures. It will be as important to learn from the failures as from the successes. But failures on a small scale are less damaging than system-wide failures. It is the evidence of the latter that is driving the government's programme.

Job creation: economic growth

Whereas Budget 2015 acknowledges the importance of paid work for alleviating hardship, the government's minimum wage policy works to defeat that purpose. On the OECD's latest statistics, in 2013 New Zealand's minimum wage was 59.5% of the median full-time wage.[5] Only four countries in the 28-country database had a higher ratio. On 1 April 2015 the government increased the minimum wage by 3.5% '[w]hile annual inflation is only 0.8%' (see Woodhouse, 2015).

The Budget speech's section on raising economic growth highlighted increased government spending on education and research and development. Nothing much can be expected from that given the weak discipline on spending quality; to its credit the speech made no claim of a material effect. Budget 2015 was notably light on policies to lift economic growth, as Oliver Hartwich, executive director of The New Zealand Initiative, observed at the time (Hartwich, 2015a). He reinforced that message a few weeks later when the OECD released its latest economic survey of New Zealand. Hartwich pointed out that an annex to that survey identified a considerable number of recommended structural measures to lift economic growth and productivity that the government was actioning only in part, and in some cases not at all (Hartwich, 2015b). The latter category included the need to make New Zealand's foreign direct investment screening regime more transparent, to eliminate all remaining tariffs and to raise the age of eligibility for New Zealand superannuation.

Concluding comments

The Budget speech reported that the number of children in benefit-dependent households has fallen by 42,000 over the past three years. That is plausibly a good thing for those children, but it would be wrong to presume that it was. There is much material deprivation in low-income working families too.

The enduring remedies are higher real wages and less chronic welfare dependency. Securing those goals requires in good part higher labour productivity and/or greater household work effort. Wage earners can raise their productivity by investing in skills. But they can't do much individually about the myriad ways in which governments reduce economic growth, productivity and household real

incomes through ill-justified regulations and wasteful government spending. For example, undue regulatory barriers to jobs and high Auckland house prices relative to incomes are 'made by government' phenomena. Spending on cycleways, the America's Cup and sports stadiums is money not available for household budgets or spending on public goods.

Real action to reduce regulatory costs in respect of Auckland housing in particular has become critical, as the government is painfully aware. The outcome of the recent Northland by-election could be seen as a gift to Auckland property owners and speculators. Prior to that outcome the government intended to move to reduce the anti-subdivision bias in the Resource Management Act. More generally, MMP can make it hard for an internally-agreed major party in a government coalition to take effective action, other than on a confidence and supply matter. It also makes coalition governments more likely. Parliamentary majorities all too often need to be cobbled together by non-transparent back-room deals on an issue-by-issue basis. No great policy coherence can be expected. Notwithstanding any benefits from MMP, the cost may be high.

Faster productivity growth and greater job creation would be far more effective in raising living standards in the longer term than any redistributive policy. In summary, the government's welfare policy is incremental; but it does represent a radical change from the earlier failed, relatively passive system. The Budget's growth policy is not so much incremental as lame.

1 See http://www.workandincome.govt.nz/map/deskfile/main-benefits-rates/sole-parent-support-current.html.
2 http://ec.europa.eu/social/main.jsp?catId=1044.
3 In any particular case the government may choose not to fully transfer the financial risks to private parties.
4 http://www.brainyquote.com/quotes/authors/d/deng_xiaoping.html.
5 https://stats.oecd.org/Index.aspx?DataSetCode=RMW.

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Philippa Howden-Chapman, Kim O'Sullivan, Sarah Bierre, Elinor Chisholm, Anna Hamer-Adams, Jenny Ombler and Kate Amore

What Effect Will the 2015 Budget Have on Housing?

Introduction

Less than a month after the 2015 Budget a coroner released a report on the tragic 2014 death of Emma-Lita Bourne, who had been living with her family in a state house in Ōtara until unexpected complications of a respiratory infection led to her death in Starship Hospital. For the first time a coroner implicated poor housing as a cause, stating that 'Whether the cold living conditions of the house became a contributing factor to the circumstances of Emma-Lita's death cannot be excluded' (Shortland, 2015, p.9). The house was cold and mouldy and the family had been unable to afford any heating.

Philippa Howden-Chapman, Kim O'Sullivan, Sarah Bierre, Elinor Chisholm, Anna Hamer-Adams, Jenny Ombler, and **Kate Amore** are all researchers in the He Kainga Oranga/Housing and Health Research Programme, University of Otago, Wellington and funded by the Health Research Council.

Soon after, the minister of building and housing, Nick Smith, announced that he was introducing minimum standards for all rental housing covered by the Tenancy Tribunal – private, state and community housing, as well as boarding houses, caravan parks and cabins. The aptly named minimum standards included requirements for a smoke detector and insulation to 1978 standards (rather than current levels) and regulatory changes related to the Tenancy Tribunal (Cabinet Social Policy Committee, 2015). These events, which evoked considerable public outrage in the case of the toddler's death and a mixed response in the case of the introduction of minimum standards, provide a lens to focus on housing policies that were, and were not, addressed in the Budget.

Background

In the 2013 census, home ownership, at 64.8% of households, was at the lowest rate since 1951 (61.5%).[1] The government's emphasis in the public debate has been on the supply of land as a panacea for the lack

of affordable housing for home ownership, through the creation of housing accords and special housing areas, and changes to the Resource Management Act (English and Smith, 2013). At the end of the June 2015 quarter, 32.5% of households and around 50% of people were renting (Statistics New Zealand, 2015). In the run-up to the Budget there was considerable media discussion about the lack of affordable housing for those wanting to buy a house, but there was little focus on affordability in the rental market, despite recent Ministry of Business, Innovation and Employment (MBIE) reports showing the cost of renting in Auckland rising 5.8% and in Christchurch 1.9% in real terms (MBIE, 2015). Using a different base, the Trade Me website reported that over the last five years the median weekly rent across New Zealand rose 20%, from $340 to $420, considerably above consumer price inflation (Trade Me, 2015).

In contrast to many European countries, where social housing makes up the majority part of the rental sector (Andrews, Sánchez and Johansson, 2011), state-owned housing in New Zealand makes up less than 5% of the housing stock (69,000 houses) and is a shrinking proportion of rental housing: the proportion of households renting with Housing New Zealand has decreased from 14.6% of renting households in 2001 to 12.7% in 2006, and 11.6% in 2013 (Statistics New Zealand, 2013). There are an additional 14,000 council houses and 5,000 community houses (Housing New Zealand, 2013).

There has been little government recognition that policies about home ownership interact with policies about rental housing, including state housing. With the introduction of renewable tenancies in state housing, forcing regular reassessments of tenants' right to stay on, the housing insecurity experienced by people in private rentals, camping grounds and boarding houses has been largely extended to state tenants. Indeed, state housing is now essentially part of an integrated, insecure public/private rental market, despite Housing New Zealand tenants being among the poorest and most socially disadvantaged households in New Zealand (Baker, Zhang and Howden-Chapman, 2013). This is the result of the tightening inclusion criteria for Housing New Zealand tenants over almost a decade, now operationalised by the Ministry of Social Development.

In 2010 the government-appointed Housing Shareholders' Advisory Group described Housing New Zealand as a 'near-monopoly provider' and provided a bleak view of the government's future role in state housing (Housing Shareholders' Advisory Group, 2010). Focusing on just one part of the market, those eligible for income-related rents, this narrow reference to Housing New Zealand as a monopoly has continued, with Housing New Zealand reframed not as an organisation providing help but as the problem, despite the government's requirement for it to contribute increasing amounts of tax, dividends and surpluses (New Zealand Government, 2015; Johnson, 2013):

> 'The government needed to be more creative about how it recycled the Crown's capital,' Minister English said. 'The traditional model of everything being done by Housing Corp as a monopoly has left us with some good stock, and some very poor stock, and some people living in unacceptable circumstances,' he said. 'We're still the biggest slum landlord in the country by a long-shot.' (Tarrant, 2012)

The conclusion drawn by the government was that rather than investing in Housing New Zealand to enable it to upgrade its housing stock and services, Housing New Zealand needed to be dismembered and a significant proportion of its properties sold, as a way of providing opportunities for community housing providers, which were judged by the government to be more capable and efficient. This policy has been controversial because of the lack of evidence that the proposed changes would be more effective, efficient or compassionate than the existing system.[2]

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The sale of Housing New Zealand properties, even at heavily discounted prices, would, however, support efforts by the government to reduce the fiscal deficit. Social housing is currently valued at $17 billion on the government's balance sheet and is one of the government's major assets, although that valuation reflects market prices which often take them beyond the reach of low- and middle-income earners, while at the same time likely exceeding the value the houses would fetch if there was an obligation to keep current tenants on.

Apart from concern expressed by the children's commissioner's Expert Advisory Group on Solutions to Child Poverty (Expert Advisory Group on Solutions to Child Poverty, 2012), and researchers (Bierre, Howden-Chapman and Early, 2013; Johnson, 2013), both the Productivity Commission (New Zealand Productivity Commission, 2012) and the OECD (OECD, 2015) have been unusually outspoken in their criticism of the government's lack of attention to social housing supply. However, the government's priority has been to free up former Housing New Zealand land for private development, rationalised

on the basis of sparse evidence that reducing the proportion of social housing in any community and any development benefits either the tenants or the community.

In 2009 the government invested $52 million in the Tāmaki Transformation Company, which had been set up by the previous government (Heatley, 2009). In 2012 previous assurances to the existing state housing residents that the number of state houses would not be reduced were set aside when the government launched the Tāmaki Redevelopment Company, a public/private partnership in which the government has a majority share (Heatley, 2012). In April 2015 the minister of building and housing announced a $200 million loan to the company to build around 7,500 new houses in Tāmaki to replace the 2,500 existing properties currently owned by Housing New Zealand (New Zealand Parliament, 2015).

Changes to the Hobsonville Land Company are instructive as to possible further future policy directions of the Tāmaki Redevelopment Company, which could potentially remove the building or retention of any state-owned housing. The Hobsonville Land Company was established by the previous, Labour government with a grant that was designed to encourage mixed development, including rental and state housing, rather than a development that reduced the level of social housing. In 2011 the company had been repurposed under the Housing Act for 'state housing purposes' so that the Crown was not required to offer the land back to its previous owners or their successors under section 40 of the Public Works Act 1981. In 2012 the current government decided to reframe the goal of mixed development at Hobsonville and approved the Hobsonville Divestment Plan. This plan explicitly excluded state housing and effectively replaced the need for subsidies for 'state housing purposes', previously defined in a 2011 Cabinet paper as housing where a household spends no more that 30% of its gross income on housing costs (Cabinet Economic Growth and Infrastructure Committee, 2012). As far as it is possible to tell from redacted official papers, this was replaced with a more limited and complicated requirement, backed up by a 'positive covenant in sales agreements', that an estimated 500 houses or 15% should be 'affordable' houses (priced from $200,000 to $400,000), of which 50% should be within the 'absolute definition of affordable housing' (Department of Building and Housing and MBIE, 2012). No decision was taken about whether these smaller houses should be ring-fenced for those on low incomes, opening the door for windfall profit-making. The main goal was that the Crown achieve a commercial return from the development with less Crown participation.

The 2015 Budget and housing

Despite previous announcements concerning the supply of housing, largely but not exclusively focused on Auckland, housing policy formed a small, but important, part of the Budget policy initiatives announced by the minister of finance, Bill English, on 21 May 2015 (English, 2015). The Auckland focus continued with the Budget announcement that the government was setting aside a $52 million capital contingency to facilitate housing development on Crown-owned land in Auckland, although the conditions and recipients of this development remain unclear. Despite criticism that the residential rebuild in Canterbury had been left to developers who had no financial interest in building homes for low-income families (Howden-Chapman et al., 2014), there was no specific budget allocation for residential housing in Christchurch equivalent to the Tāmaki Redevelopment Company or the Hobsonville Land Company projects.

One of the announcements in the Budget that was largely welcomed was the strengthened rules on property investment and the introduction of what is essentially a capital gains tax to ensure that 'people buying and selling properties for profit – including foreigners – are paying their fair share of tax' (O'Sullivan, 2013). It was announced that buyers will be required to provide an IRD number when buying a property which is not to be their own home, and if they sell a residential property other than their own home within two years of purchase they will have to pay 'income' tax (in effect, a tax on gains). These tax changes will be implemented on 1 October 2015.

A more substantial change announced was an increase in welfare benefits of $25 a week for families with children, the first such rise since 1972, aside from adjustments for inflation. This announcement was also widely welcomed; however, the changes will not take effect until July 2016. Subsequently released Cabinet papers included references to Treasury briefing papers which argued that the increase should be paid through the accommodation supplement (available for private rental and mortgage payments, but not social housing), rather than through benefits. It may be that Treasury's preference arose from a concern about rising housing costs. However, the government decided to give untargeted benefit increases (Cabinet Social Policy Committee, 2015).

The minister reiterated previous announcements that the government was selling some Housing New Zealand properties for 'use as ongoing social housing run by community housing

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providers'. He largely avoided discussing the reduction of Housing New Zealand's role to that of a property asset manager and stated that the government was committed to 'providing more social housing places, more diverse ownership of social housing, and helping tenants' transition to housing independence when they are able to'. To support this transition, the Budget included a modest '$35 million of operating funding over four years and $29 million reprioritised from other areas'. Additionally, the Māori Housing Strategy, which 'aims to improve housing for Māori families and grow the Māori housing sector', was also allocated operating funding of $35 million.

Post-Budget housing announcements

In Parliament on 17 June, three weeks after the Budget, the prime minister summarised a number of current government housing policies: the Homestart package; ongoing developing of land at Weymouth though the social housing fund; 240,000 homes insulated and in some cases heated under the Warm Up New Zealand: Heat Smart programme; and a further 46,000 houses insulated under the Warm Up New Zealand: Healthy Homes extension (Key, 2015).

In July the minister for building and housing, Nick Smith, responded to the public concern surrounding the Emma-Lita case and rental housing standards in general by announcing the details of the minimum standards he had prefigured (Cabinet Social Policy Committee, 2015). He stated: 'This pragmatic package of tenancy law changes will make homes warmer, drier and safer for hundreds of thousands of New Zealand families without imposing excessive bureaucracy or cost' (Smith, 2015). He proposed a number of amendments to the Residential Tenancies Act 1986: a new requirement for smoke alarms in all residential properties; new requirements for ceiling and underfloor insulation (where possible) to be phased in between 2016 and 2019, with accompanying disclosure requirements for landlords; changes to enable faster resolution of tenancy abandonment cases; and changes intended to strengthen the enforcement power of the act.

The amendments relating to Residential Tenancies Act enforcement seek to address the fact that tenants can be discouraged from asserting their rights to adequate housing by fear of endangering their tenancy. Under the new law tenants will have four weeks to apply to the tribunal on the grounds of retaliatory notice rather than the two weeks they presently have, and landlords who give retaliatory notices will be subject to an increased maximum penalty of $2,000 (Cabinet Social Policy Committee, 2015, p.3). However, as Auckland Deputy Mayor Penny Hulse pointed out, 'The new standards rely on tenants making a complaint about the state of their rental accommodation'. This means that the risk remains that tenants will choose not to complain about poor housing, particularly, as Hulse also noted, in places where there is a shortage of rental housing. 'We believe the Government has a clear role in ensuring rental properties meet the standard, rather than the onus being on tenants' (Auckland Council, 2015).

Another policy change which seeks to give teeth to the Residential Tenancies Act grants MBIE more power to investigate breaches of the act. Section 109 of the Residential Tenancies Act currently states that if a landlord has committed an unlawful act, such as rented out a house which is below a reasonable standard, and if it is in the public interest to restrain the landlord from renting the property out in the same condition, the tribunal can make an order to prevent that. A recent extensive review of rental laws, *Paper Walls*, suggested that MBIE could have used its existing powers under section 124 to take over the direct monitoring of remediation, as, by the remediation stage, a tenant 'who has worked through the Tribunal process for damages, a work order, and even exemplary damages, may have been drained enough without taking on showing the need for an order that they are unlikely to benefit from themselves' (Rogers, 2013, p.28). However, the Cabinet paper states that MBIE has used this power to take over or commence proceedings on behalf of a landlord or tenant, only twice in the last 20 years, and that 'anecdotal evidence indicates that fear of retribution may dissuade some tenants from pursuing complaints'. The Residential Tenancies Act amendments encourage MBIE to exercise these powers by granting the right to investigate and take action directly against landlords, without requiring the cooperation of a tenant, 'where severe breaches are alleged, and there is a significant risk to tenant health and safety' (Cabinet Social Policy Committee, 2015, p.11). It will be important to monitor the extent to which MBIE uses these powers to investigate severely substandard housing.

The government has chosen to introduce the standards regarding insulation and smoke alarms in preference to implementing a rental housing warrant of fitness ...

The government has chosen to introduce the standards regarding insulation and smoke alarms in preference to implementing a rental housing warrant of fitness, which would ensure all houses passed comprehensive minimum health and safety standards. Five councils and the New Zealand Green Building Council stated publicly in 2013 that they were working with the University of Otago, Wellington to pre-test a rental warrant of fitness for all types and tenures of rental housing (acknowledged in the Cabinet paper), which had been developed and piloted by He Kainga Oranga, the Housing and Health Research Programme for over

a decade (Gillespie-Bennett et al., 2013). However, MBIE commissioned a parallel study of state housing. The results of the councils' and University of Otago's pre-test were made public in 2014 and showed that the rental warrant of fitness was considered fair and acceptable by 85% of the landlords in the study. Although most rental properties failed, relatively small amounts of money were required to bring most of the surveyed properties to the minimal standard (Bennett et al., 2014). The results of the MBIE study were released in July, and are comparable: while only 4% of the 400 properties were fully compliant (despite the minister's predictions that 'almost all HNZ properties are expected to pass the minimum standard': Smith, 2013), it was judged that an additional 48% could be remediated to meet the comprehensive standards within two days (Bosch, 2014).

The minimum standards and enforcement regime proposed in the Residential Tenancies Act amendments are not evidence-informed. The regulatory impact analysis for these minimum standards, as Treasury observed, did not meet the quality assurance criteria: it lacked analysis and there had been inadequate consultation (Cabinet Social Policy Committee, 2015). There are no plausible reasons given by the minister as to why the insulation required under his proposed private rental regulations has reverted to the initial 1978 requirements for existing housing, now almost 40 years old. The thickness of insulation required in 1978 was just over half the standard of the Energy Efficiency and Conservation Authority's Warm Up New Zealand programme (70mm versus 120 mm), and was superseded for improved energy efficiency and because procurement policies are now geared to the higher-standard materials. By contrast, after 2011 Housing New Zealand remediated all properties built before 2000 to current EECA standards where practicable (Housing New Zealand, 2013). While requiring landlords to insulate their properties is a step forward, holding them to lower standards is a retrograde step. It appears to be a continuation of the government's practice to act incrementally, when slightly more costly actions would have far-reaching positive consequences for energy efficiency, health and CO2 emissions in the future (Boardman, 2012; World Health Organization, 2011).

Moreover, the cost-benefit analysis of the Warm Up New Zealand programme included heating, and it demonstrated the high benefit/cost ratio of the whole package (Grimes et al., 2011). This has been neglected by the minister, who stated that heating is already required in the Residential Tenancies Act. This Act does not in fact refer to heating, but incorporates the Housing Improvement Regulations 1947, which require a fireplace or an approved form of heating in the lounge. It has been widely interpreted that an approved form of heating could include an electric socket, though a 2011 District Court case found this to be inadequate and ordered compensation to a tenant where the landlord had failed to provide some form of inexpensive heater to meet the regulations.[3] Heating costs for tenants are likely to remain high without requirements for an efficient and cost-effective heating source and insulation levels that meet the Building Code and are known to improve the thermal efficiency of a home.

Given that there is an excess winter mortality of 1,600 people in New Zealand aged over 65 each winter (Davie et al., 2007), and that these people are more likely to be low-income people living in rental properties (Hales et al., 2012), it is of concern that the government is sanctioning lower standards for the most vulnerable groups (Howden-Chapman et al., 2012). Given these housing-related winter deaths, which do not occur in colder climates (Healy, 2003), it appears these lives are valued less than those of people who die in house fires. The cost-benefit judgement of installing the smoke detectors appears to be based on assumptions about efficacy and compliance. By contrast, the basic rental warrant of fitness proposed and tested by He Kainga Oranga includes the key, critical items that have been shown to warrant social investment, with randomised control trials clearly demonstrating reductions in the burden of disease and injury (Howden-Chapman et al., 2007; Howden-Chapman et al., 2008; Keall et al., 2015).

Discussion

The government's housing policy has locked onto the supply side of the housing market, encouraging developers to build high-end affordable housing, and making feeble attempts to stem speculation by minimally taxing capital gains. On the demand side, the Budget contained little to bolster poor tenants' ability to pay, although the benefit increases (around 8% on the base rate) will help some. Despite the government's proclaimed social investment approach, it remains unclear from the 2015 Budget and the housing policies that (loosely) accompanied it whether the government is prepared to invest in refurbishing and funding new social housing or rental housing to acceptable modern standards. While the minister of building and housing has been quick to establish regulation and funding for resolving whether a rental property has been abandoned by tenants so that it can be re-let more quickly, there has been no attempt by the government to try innovative policies, such as the proposed

The government's housing policy has locked onto the supply side of the housing market ... [while] making feeble attempts to stem speculation by minimally taxing capital gains.

New York tax surcharges to discourage non-resident property speculation and stem the rise in vacant properties, which is not being adequately monitored in New Zealand (Adler, 2014).

There has been little recognition that policies on home ownership interact with policies on public and private rental housing. The government clearly recognises that housing is an important part of the economy, but the minister of finance's Budget and the minister of building and housing's announcements that followed it are only small steps in addressing the housing needs of vulnerable New Zealanders, particularly those dependent on rental housing. The quality of New Zealand's rental housing in particular is poor and the modest measures announced in and around the Budget, while offering some help in limited areas, are unlikely to make a significant difference.

1 http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/century-censuses-dwellings/ownership.aspx#.
2 There is no country in the world where social housing is provided without a subsidy. The subsidy the government is offering has to date failed to attract community providers to purchase state housing in bulk. Providers, such as the Salvation Army, have little experience of building or maintaining housing at anywhere near the scale of housing being provided by central and some local governments, and declined the open invitation to buy at a substantial bulk discount. Indeed, in the 1990s, when the government last sold swathes of state housing, organisations that purchased state houses, even at a major capital discount (60%) on their current QV value, found the financial returns unpromising, even though they were still operating in the private rental market, although in the lowest quartile of market rent. The housing sold to these organisations was older, often requiring major upgrades, meaning 'the economics of managing a portfolio of houses is clearly a challenge even for well-established community organisations'. 'With all costs taken into account, and leaving aside the non-cash valuations of the balance sheet, there has been little or no net cash return for Turst House from housing' (Norman and Teahan, 2015, p.57).
3 *Complete Property Management Limited v White* DC Christchurch CIV-201 0-009-3562, 3 February 2011.

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Susan St John

Reflections on the Budget 2015 Child Hardship Package

Introduction

The 2015 Budget contained benefit rate increases for beneficiaries with children and some minor adjustments to work-based child-related tax credits. The significance of these increases when other policies are taken into account suggests a reshuffling of money in which much of the distributional effect will be minimal and offset. For children it resembles the ambulance at the bottom of the cliff rather than a structural review of child-related income policies that might be reformist, preventative and inclusive. The cost to society is more complexity in the benefit system and a cementing in of reliance on work-related child tax credits that have unproven worth either in incentivising work or in reducing child poverty. A rational policy-making approach with the clear aim of child poverty reduction, measurable outcomes, agreed criteria and a process for evaluation might have suggested that a different policy direction was more appropriate and more likely to be effective.

Susan St John is an Associate Professor in the Department of Economics at the University of Auckland

Poverty or hardship?

The very real problems of struggling low-income families were highly visible in the debate leading up to the 2014 election. Reflecting the pressure from numerous

child advocacy groups, the prime minister, John Key, promised to prioritise child poverty. In the lead-up to the 2015 Budget, however, children's groups were worried that the government would take an excessively targeted approach to reducing child poverty by concentrating its effort on only the narrowly defined 'vulnerable children' living in the most dysfunction situations. For example, the minister of finance, Bill English, appeared to think the group to be assisted was only about 12,000 children when he said that 'the roughly 1.05% of New Zealand children who are in complex families … need the sort of intense intervention by social services' (Hosking, 2015).

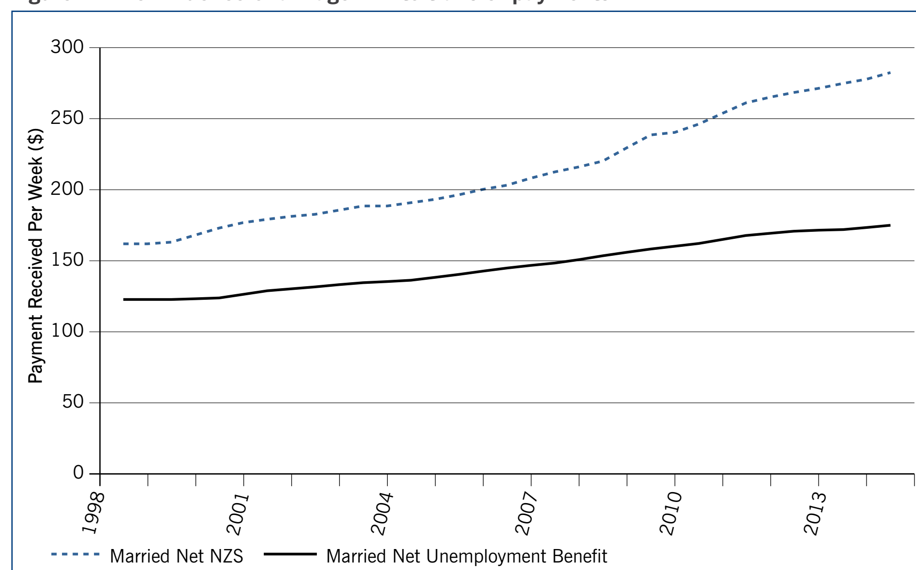
Other indicators of political sentiment came from various pre-Budget comments that income measures of poverty were flawed and overstated the problem and that hardship indicators were preferable. The prime minister dismissed the much-used statistic of 260,000 children in poverty based on the 60% income poverty line (from Perry, 2014) and claimed that 60–100,000 was more realistic. Pre-Budget the Ministry of Social Development released an update of the 2008 hardship report that had informed the Budget decision-making, also reinforcing this perception:

> Household income is often used as an indicator of household material wellbeing. There is no doubt that income is a very important factor in determining a household's level of material wellbeing – especially for those with a minimal stock of basic household goods and appliances and low or zero cash reserves – but it is not the only factor. (Perry, 2015)

The regulatory statement released at the time of Budget 2015 reiterated that

> the Government's overall objective was to take more immediate action to reduce material hardship amongst children … The focus for this package was on children experiencing material deprivation at the more severe end of the spectrum. (Department of the Prime Minister and Cabinet, Ministry of Social Development and Treasury, 2015, p.2)

Figure 1: The influence of a wage link to transfer payments



Source: Author's calculations

While the preference of the government may have been the alleviation of only the worst hardship rather than poverty prevention, the child hardship package will have a more generalised impact. Implicitly the government acknowledged that lack of income was a long-term driver of deprivation. A policy focus specifically on hardship would have been very problematic in design.

Child hardship package

The $790 million child hardship package announced in the 2015 Budget sounded impressive but is to be spent over four years, and does not start until 1 April 2016. Of the approximately $240 million per annum, the most significant change is an increase for families on benefits of a net $25 a week, accounting for around $132 million per annum.

While this policy was widely praised as the first time any government had increased benefits in real terms since 1972, welfare benefits had actually been cut significantly in real terms in 1991, and again for many beneficiaries with children with the introduction of Working for Families in 2005. Indexation to the consumers price index (CPI) alone affects the relativity of benefits to wages and to wage-linked New Zealand Superannuation. Figure 1 shows the difference a wage link has made since the late 1990s to the married rate of New Zealand Superannuation compared to the jobseeker (unemployed) married rate. As discussed below, only some parts of Working for Families (WFF) have ever been indexed to the CPI, and since 2012 even the partial CPI adjustments are not made automatically on an annual basis. This means that income support specifically for children has fallen even further behind benefits.

As benefits became less adequate over time, many beneficiaries have required additional means-tested payments. Some of the $25 increase to benefits will result in less supplementary support, especially via the accommodation supplement, income-related rents for those in social housing, and the temporary additional support payments. Such a shift of money from complex means-tested supplements to the core benefit rate is desirable, but limits the potential of the announced benefit rate changes to reduce hardship.

Reinforcing the 'work first' approach, parents on a benefit who are able to work must seek and be available for work, and be subject to work test obligations, once their youngest child turns three years of age, rather than five as now. Work obligations for all such parents increase from the current 15 hours to 20 hours a week. Sole parents must reapply each year in a new form-filling interview process that jobseekers already go through, increasing the barriers to benefit access for families with children. Beneficiaries

who must work more hours and thus face higher child care costs will be assisted by an increase in child care subsidies. The subsidy rate increases from $4 an hour to $5 an hour for up to 50 hours of child care and out-of-school care per week at an annual cost of around $32 million.

The other part of the package, accounting for around just $71 million annually, was an increase in WFF tax credits but only for non-beneficiaries. The weekly base rate of the in-work tax credit increases by $12.50, and the minimum family tax credit by $12. These child-related tax credits are paid only when families fulfil the criteria of minimum hours of work (20 hours for a sole parent and 30 hours for a couple) and being off-benefit.

The in-work tax credit increases were confined to low-income 'working' families by a higher abatement (an increase from 21.25% to 22.5%) of WFF tax credits above the threshold. The threshold was unchanged but had been reduced by $450 to $36,350 in 2012, with further reductions signalled out to 2018. The KiwiSaver kick-start subsidy of $1,000, which is of the most assistance in relative terms to the lowest paid, was also abolished, largely affecting only younger people who have not yet joined.

The 2015 Budget changes for families sit within the context of a new approach to welfare. This sees an intensification of the relentless focus on paid work as the solution to poverty, including child poverty. Investment in this approach since 2012 has been about not more money for families but more money for the infrastructure of management of beneficiaries into work. Harsh sanctions have applied to those who fail to meet reporting and monitoring criteria, with as many as 80,202 sanctions applied to working-age main-benefit recipients between July 2013 and September 2014. Front-line agencies report ever-growing levels of societal distress:

> What we do know is the reality of a sudden reduction of an already inadequate income to cover basic life necessities (rent, electricity and food) is further debt to family, friends or third-tier money lenders. Financial sanctions mean more family stress, particularly for those without family/social supports or who have more complex needs. For these people financial sanctions simply undermine any ability to be self-sufficient and to lead better lives. (New Zealand Council of Christian Social Services, 2015)

All adult benefits are too low and if all rates had been increased by at least the 8.4% represented by the $25 given to sole parents, and indexed in future to wages, there would be some inroads into adult poverty.

Nevertheless, the Budget changes to benefit rates moderate the strict work-first approach. As the minster of finance, Bill English, explained: 'This package strikes a balance that offers more support to low-income families with children, while ensuring there remains a strong incentive for parents to move from welfare to work' (English and Tolley, 2015).

Child hardship package and child poverty

If child poverty was the main problem for the Budget to address, then the package should be judged against its measured reduction in child poverty indicators. A well-designed package would have certain clear principles or criteria and evolve from a consideration of all possible options. For a limited fiscal cost, cost effectiveness as a criteria would clearly be important (St John and Dale, 2012). The Budget provided no policy analysis along these lines and gave the impression that these minimal changes would be the last that should be expected in this term of government.

Core benefit rates

Prior to WFF, higher benefit rates for parents partially met the needs of their children. In 2005, when WFF was introduced, the child-related part of the benefit rates was removed for couples and sole parents with two or more children.[1] This was one of the reasons many low-income families found themselves no better off despite the intention of WFF to address child poverty. The other explanation was that they were left out of $60 or more per week by exclusion from the in-work tax credit (St John and Craig, 2004). The key reform of WFF was to clearly set core benefit rates for adults and use the family tax credit, given to all children on the same basis of low parental income, as the principal way in which families of different sizes and ages of children were assisted.

The 2015 Budget, however, re-introduces a family element into the structure of benefit rates. This confuses the role of adult benefits and benefits for children and muddles the goals of policy. For example, a reduction in overall poverty is a separate policy goal. The OECD has recently given the New Zealand government some strong messages on the need for such poverty reduction:

> Increasing main (basic) benefits and indexing them to median wages would reduce poverty across all beneficiary classes, including single-person households (below age 65), who have the second-highest relative risk of poverty (OECD, 2015, p.39).

All adult benefits are too low and if all rates had been increased by at least the 8.4% represented by the $25 given to sole parents, and indexed in future to wages, there would be some inroads into adult

poverty. If reducing child poverty is the focus, a different policy tool to the flat-rate $25 per family on benefits is required. A fixed payment gives less per person the bigger the family size. Data show 79% of children in hardship live in households containing two or more children and almost half (46%) in households with three or more (Perry, 2015, p.24). For a four-child, two-adult family less than $4 per week for each person will have a minuscule effect on living standards, yet we know from Perry (2015) that one quarter of children in the severest poverty are in larger families.

The work of Boston and Chapple shows that significant amounts are needed to lift beneficiary families over the familiar 50% and 60% after-housing-costs poverty lines (Boston and Chapple, 2014, p.97). Table 1 shows that a flat $25 per family is clearly not enough for even the one-child family.

Table 1: Additional weekly income needed for families on benefits to get over four poverty lines.

	Before Housing Costs		After Housing Costs	
Benefit category	50% 2012 median	60% 2012 median	50% 2012 median	60% 2012 median
Sole parent one child	$0	$30	$82	$148
Sole parent two children	$0	$78	$111	$194
Couple one child	$0	$69	$156	$244
Couple two children	$0	$110	$184	$286

Source: Chapple & Boston, (2014).

The OECD notes that the use of supplementary means-tested payments for the very worst-off families and their lack of access to the full WFF benefits explains why living standards of those on benefits have fallen so far behind:

> Poverty rates could be cut by increasing social benefits, which have been falling relative to wages as they are indexed to the Consumers Price Index. In addition to these main benefits, most beneficiaries receive supplementary benefits (a variety of means-tested benefits available to both beneficiary and working households) targeted at vulnerable families. However, increases in supplementary benefit payments have been smaller for beneficiary households than for low-income working households owing to the introduction of Working for Families, which provides greater benefits to low-income working households than beneficiaries. (OECD, 2015, p.38)

The increase of a flat $25 per family in 2016 complicates the rates by now needing to distinguish between parents who are married and will get a $12.50 increase each, and others who may have shared care arrangements. Students with children are included, necessitating a new category of 'student with dependent spouse with children' (Inland Revenue, 2015, p.29). The minister stated that the purpose is 'to ensure that the children of low-income students share these gains and to reward students' efforts through study, rather than creating an incentive to move back on to a benefit' (Tolley, 2015). This is very interesting as it illustrates the complexities and unintended consequences that arise when goals are muddled and policy is not based on clear principles. Thus, for example, given the intent to make it clear that student allowances are not benefits, there can now be no justification for denying students the in-work tax credit for their children.

Tax credits

As the OECD insists, all beneficiaries need more income, not just some. This requires an across-the-board increase and indexation to median wages. The link to wages is crucial. Once the adult benefits are increased and indexed, WFF child-related tax credits are the best way to recognise the needs of children in low-income households. These need to be given to all low-income children on the same basis if reducing child poverty is the goal. Budget 2015 helps only those families in low-paid work who meet rigid work criteria and makes only very minor adjustments to these work-related tax credits.

The increase in the base rate of the in-work tax credit by $12.50 to $72.50 per week for low-income working families from 1 April 2016 is a mere inflation adjustment. It leaves hanging what changes to the in-work tax credit are appropriate for larger families where the fourth and subsequent children currently get another $15 each. The in-work tax credit was never automatically inflation-adjusted along with other parts of WFF. One interpretation of this may be that the government was happy to see it lose value and importance. That it was also the subject of a lengthy court case, *CPAG v the Attorney General* (2002–2011), in which the courts accepted that it is discriminatory (but not illegal) with a harsh impact on the left-out poorest children, may have had something to do with its neglect until now (Child Poverty Action Group, 2014).

Unfortunately, the Budget increase to the in-work tax credit reinforces the use of complex work-based measures to meet the needs of children. Had the family tax credit been the tool used and increased by $12.50, all low-income children would have benefited. The leakage to better-off families could have been reduced by offsetting reductions in the in-work tax credit. As argued strenuously over the years by the Child Poverty Action Group, the most cost-effective way to reduce the worst child poverty is still to join the in-work tax credit to the first-child family tax credit (St John, 2015).

Much was made in the Budget of an increase for some low-income working families of another $12 a week. This comes from an increase to the minimum family tax credit, another work-based tax credit that gives guaranteed minimum income to those with children (see Figure 2). However, only 3,500-4,000 families will be entitled to this extra $12 a week, at the minimal cost to the government of only $1.8 million annually. To put this in context, the government will spend $27 million over four years to administer the child hardship package, including around $5 million per annum for annual benefit reapplications and new work obligations (Inland Revenue, 2015, p.23).

Figure 2: Family income and tax credits

<table>
<tr><td colspan="2">Parental tax credit</td></tr>
<tr><td colspan="2">In-Work tax credit</td></tr>
<tr><td colspan="2">Family tax credit</td></tr>
<tr><td>Minimum Family tax credit</td><td rowspan="2">income floor $22,776 net guaranteed</td></tr>
<tr><td>Earned income</td></tr>
</table>

The minimum family tax credit is a very unsatisfactory and complex part of family assistance. As it entails a 100% effective marginal tax rate, it is one of the worst designed work incentives imaginable (O'Brien and St John, 2014).

Figure 2 shows the fixed guaranteed income floor: any additional earned income simply reduces the minimum family tax credit. The figure illustrates how WFF tax credits are added on top of this minimum income to compensate for the costs of children. The family tax credit, the in-work tax credit and the parental tax credit for newborns are paid weekly to the caregiver and are abated sequentially in that order from the threshold of $36,350 family income.

Data obtained from Inland Revenue under the Official Information Act shows that few families are receiving this payment at any point in time, but the numbers have increased steadily since 2010. Of the 10,386 families entitled to the minimum family tax credit between 2010 and 2014, 67% were on it for a year or less, and only 13% for three–five years. Table 2 shows that the number of couples on the minimum family tax credit has fallen by a quarter since 2010, while sole parent numbers have increased by 58%. At July 2015 there were nearly 4,000 families receiving the minimum family tax credit, and of these 89% were sole parents. The new work obligation for sole parents to work 20 hours is likely to further increase these numbers on this precarious tax credit as they are cajoled into coming off the benefit system.

Indexation issues

History tells us that indexation of benefits and pensions to the CPI alone is a recipe for alienation and poverty. The indexation policies for WFF are therefore unusual and perverse. While the WFF tax credits (but not the in-work tax credit) were originally indexed to the CPI, in 2011 a rule was introduced to make adjustments only when cumulative inflation reached 5%. Cumulative inflation since September 2011 has not yet exceeded 5%, so there has been no adjustment to date to any part of WFF and under current projections none will be made until 2017. Families will thus have endured five years of no adjustment to their tax credits while costs such as rents, power, transport and child care have steadily risen.[3]

The changes announced in Budget 2011 were designed to reign in the costs of WFF by making it more targeted, with savings accruing over time. The changes would accrue in the future and the changes to overall WFF may have appeared minor and remote. The minister of finance claimed that '[t]hese changes are expected to generate $448 million of savings over the four years to 2014/15. As a result, the total cost of WFF will reduce from $2.8 billion in 2011/12 to $2.6 billion in 2014/15' (English, 2011).

O'Brien and St John (2014) argue that these savings were grossly understated, because the projected savings were measured against the actual 2011 cost of WFF. The true cumulative savings from 2011/12 to 2014/15 from less-than-full CPI indexation, a higher abatement rate and a reduction in the abatement threshold is actually around $1.1 billion (O'Brien and St John, 2014). Compared to the costs if there had been full CPI indexation of the threshold from the inception of WFF, the savings grow rapidly. If indexation had been to wages to reflect the growth in living standards, the savings would be even more pronounced. The pain of this policy change for working families is very significant.

Because the next cumulative 5% inflation adjustment is not expected until 2017, the 2015 Budget advances by one year (to 2016) the timing of the increase to the abatement rate by 1.25% to 22.5% to recoup some of the cost of the increase to the in-work tax credit. One of the background papers provided in July 2015[4] suggests that there may be a further increment to the abatement rate in 2017 to 23.75%, and that the rate will eventually be increased to a maximum of 26.25% in 2023 (Inland Revenue, 2015, p.6). As well, there will be reductions in the threshold for abatement at each 5% adjustment phase until it falls to $35,000. This represents a significant and sustained reduction in the assistance for low-income working families and has ongoing ramifications. For example, the calculation of the living wage has to take these cuts into account (O'Brien and St John, 2014).

To gauge the impact on low-income families affected by the abatement, had the threshold of $35,000 been CPI-linked from 2005, in 2015 it would be $43,500. The current threshold is $36,350, so that a family in 2016 on $43,500 is $1,608 worse off than they would have been with proper CPI indexation of the threshold alone. In Australia, not only are the tax credits for children much more inclusive of all children, indexation of all tax credits and thresholds is an annual event. In 2015 the corresponding threshold for abatement of the Australian family tax benefit A is $51,027.[5]

With the clear possibility that inflation will rise (as the exchange rate falls in 2015), the policy changes set in train since 2011 and reinforced by the 2015 Budget will be harsh indeed on the working poor.

Table 2: Marital status of people entitled to minimum family tax credit as at July 2015[2]

Tax year	2010	2011	2012	2013	2014
Couple	568	510	492	478	419
Sole	2,244	2,293	2,598	2,895	3,555
Number entitled to MFTC	2,812	2,803	3,090	3,373	3,974

Working for Families

The structure of WFF is very complex, with different rules of eligibility for different parts. The two tax credits of the in-work tax credit and parental tax credit (for newborns) are confined to those who

are off-benefit and meet work-based rules. The evidence suggests that the first few years of a child's life are the most crucial, and the poorest families are those with the youngest children. While the 2014 Budget increased the parental tax credit for babies born on or after 1 April 2015, from $150 a week to $220 a week, and extended the payment period from eight weeks to ten weeks, it remains unavailable to families on benefits. There was no attempt in the child hardship package to secure more income for the very poorest babies who continue to miss out.

When fully implemented in 2007, WFF made a significant difference for families that gained the full amount. Without this improvement in weekly child payments, child poverty would have been very much higher. Perry noted, however, that children in workless households were little helped by WFF:

> From 1992 to 2004, children in workless households generally had poverty rates around four times higher than for those in households where at least one adult was in full-time work. From 2007 to 2012, the difference was even greater – around six to seven times higher for children in workless households. This to a large degree reflects the greater WFF assistance for working families than for beneficiary families … The fall in child poverty rates from 2004 to 2007 for children in one-full-time-one-workless 2 parent households was very large (28% to 9%), reflecting the WFF impact, especially through the In-work Tax Credit. (Perry, 2014, p.156)

The biggest problem is that WFF does not put the needs of the child at the centre of policy design (St John, 2014). It excludes the poorest children for a good part of it, and its critical purpose has become lost in a morass of arguments over entitlements, overpayments, abatements and work tests.

The in-work tax credit and work incentives

The justification of the use of the in-work tax credit to incentivise work has rarely been scrutinised, but it is clearly ineffective in protecting vulnerable children whose parents, for whatever reason, cannot work.

The slight impact, if indeed any, on work incentives for a handful of sole parents does not justify the harm to 230,000 children whose families have been left out and left behind (St John and Dale, 2012). The latest evaluation of the work incentive effect from Treasury suggests that, overall, hours worked may have actually fallen: there was a very small increase of 0.6 hours a week for sole parents, but a fall of 0.5 hours a week for partnered women (Mok and Mercante, 2014). There is no attempt in this Treasury paper to reflect on the costs of this policy to those families excluded from it when it achieves little or no work incentive effects.

In the aftermath of the global financial crisis, child poverty rates began to rise in the OECD generally. At the release of an OECD report on family well-being, *Doing Better for Families*, the secretary-general, Angel Gurría warned that

> [f]amily benefits need to be well designed to maintain work incentives, but they need to be effective in protecting the most vulnerable, otherwise we risk creating high, long-term social costs for future generations (OECD, 2011).

The current system for WFF is far too complex and convoluted. The minimum family tax credit, the in-work tax credit and the parental tax credit are all very badly designed. They pose dangers when a parent moves off a benefit into insecure work, or loses work hours in a natural disaster or in an economic downturn, or in an increasingly casualised and insecure job market. Some of the absurdities of the design can be seen from examples on the Inland Revenue website, as discussed in Child Poverty Action Group (2012).

It is sometimes argued that the in-work tax credit is justified because there are extra costs of working. When there are very young children, for example, the costs of child care may be very high. A major source of extra costs arises because the formerly unpaid work of child-rearing is crystallised as a real cost once it is outsourced to the private sector. The in-work tax credit, however, is ill-suited to meeting the child care needs of families in different circumstances. It may be paid in full, for example, to a caregiver who is not in paid work when her partner fulfils the work criterion.

If the state must provide subsidies to make work pay, the much promulgated view that paid work alone is the way out of poverty is further undermined. It needs to be acknowledged that when children are small, their care is inevitably expensive. The cost is either explicit, if the care is outsourced, or implicit when a parent forgoes paid work to do it. This suggests that our policies need to better recognise the unpaid work of caregiving. If the in-work tax credit was given to all caregivers who are not themselves in paid work, it could be used to help pay for any outside child care if needed.

Conclusion

Current benefit policy is almost entirely focused on moving people from a benefit

Current benefit policy is almost entirely focused on moving people from a benefit into paid work, with little consideration of income adequacy, or the short- and long-term health and well-being of children.

into paid work, with little consideration of income adequacy, or the short- and long-term health and well-being of children. It is acknowledged that paid work is part of a poverty reduction and elimination strategy, but it is only a part. Beneficiaries with children often cannot undertake paid work because of personal needs and circumstances. Others cannot find work that allows them to meet their parenting obligations satisfactorily. It is unacceptable that these families live in poverty because of the currently inadequate levels of social assistance, originally introduced to keep families out of poverty.

In addition, as the data on the distribution of child poverty indicate, paid work in itself does not guarantee that children will move above the poverty line: 37% of the children living in poverty are in households reliant solely on market income. Nor does it suggest that WFF payments for children are overly generous. Moreover, current policy is cutting the real value of WFF over time for low wage earners, with perverse effects.

The 2015 Budget was a missed opportunity to thoroughly review the nature of WFF and examine whether the current indexation rules, the fixed hours of work requirements and off-benefit rules operate in the best interests of children, or are appropriate in the changed labour market of the 21st century. We are at a critical tipping point. The 2015 Budget changes are better than no extra spending on families, but in many ways they take us in the wrong direction. A different policy frame might focus more clearly on immediately alleviating child poverty, especially the worst child poverty, and on providing an inclusive, preventative income floor. Most New Zealanders now recognise that persistent child hardship has a very high cost both for society and for the children themselves.

1 The sole-parent rate was still higher than the childless rate of benefit but that is best seen as a recognition that a sole parent has a handicap in working akin to being an invalid.
2 Official Information Act request from the Child Poverty Action Group to IRD, July 2015.
3 The CPI has been kept low by the high exchange rate affecting many goods such as travel that low-income families do not enjoy.
4 See http://www.treasury.govt.nz/publications/informationreleases/budget/2015/other-s-w/index.htm#socdev.
5 See Australian Government, Department of Human Services for full details: http://www.humanservices.gov.au/corporate/publications-and-resources/a-guide-to-australian-government-payments.

Acknowledgements
Helpful comments and suggestions on an earlier draft from Professor Jonathan Boston and Dr M. Claire Dale are gratefully acknowledged. The views expressed here are the author's own.

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Andrew Geddis

Aid in Dying in the High Court

Seales v Attorney General

As her inevitable death from brain cancer approached, a 42-year-old lawyer named Lecretia Seales wanted the option of receiving aid in dying from her (unnamed) general practitioner, who in turn was willing to provide that aid.[1] Seales' own actions would not breach the law; it has not been an offence in New Zealand for anyone to attempt to end her or his own life since 1961. However, should a doctor aid Seales to do so, she or he ran the risk of arrest and prosecution for breaching the Crimes Act 1961. A doctor who directly administers a lethal dose of medication at Seales' request for the purpose of ending her life might be prosecuted for murder or manslaughter under section 160 of the Crimes Act. Providing Seales with a lethal dose of medication in the knowledge she may self-administer it to end her life some time in the future might lead to a prosecution for aiding or abetting suicide under section 179.

Andrew Geddis is Professor of Law at the University of Otago. His research interests include election law, constitutional theory, rights law and contract law.

In order to provide her doctor with legal certainty, Seales sought declarations in the High Court regarding the current law's application to her situation. In essence, she wanted the court to find that a doctor who provides aid in dying at the request of a terminally ill, competent individual falls outside the above provisions of the Crimes Act. Alternatively, if the court could not make such a declaration, Seales wanted it to find that the law's effect in preventing her from gaining access to aid in dying is inconsistent with the New Zealand Bill of Rights Act 1990. The resultant judgment by Justice Collins in *Seales v Attorney General*[2] thereby provides us with a somewhat definitive statement of the present law, as well as important findings about that law's justifiability.

The reach of the Crimes Act

In regards to the first issue – whether the Crimes Act's prohibitions cover the actions of a doctor who supplies aid in dying directly to a patient, or who gives it to a patient to self-administer at a later date – Justice Collins answered in the affirmative. His honour found that a doctor who directly administers a

fatal drug to Seales with the intention of terminating her life breaches section 160 by killing another person through an 'unlawful act' (*Seales*, at [112]). Somewhat strangely, the exact nature of that unlawful act was not specified; his honour suggested that the doctor 'probably' would commit an assault on Seales, or 'in all likelihood' would administer a poison with the intent to cause grevious bodily harm (*Seales*, at [113]-[114]). Nevertheless, his honour was satisfied that, under section 160, a doctor's direct administration of aid in dying would amount to murder or manslaughter.

By the same token, Justice Collins also ruled that the section 179 prohibition on aiding or abetting suicide covers providing the means to self-administer aid in dying. His honour found that the legislative provision's intent was to preserve 'the sanctity of human life', not simply to protect the vulnerable in society (*Seales*, at [132]). As such, Seales' decision to take a fatal drug with the intention of ending her own life would constitute a 'suicide' under the Crimes Act as her death would be intentional, voluntary and caused by the drug taken (*Seales*, at [144]). A doctor who provided her with a fatal drug knowing she was contemplating using it to end her own life would thus fall foul of section 179 (*Seales*, at [145]).

Justice Collins' interpretation of the Crimes Act provisions is an orthodox, albeit conservative, one. It certainly was not the only way the legislation *could* have been read (Tucker and Geddis, 2015). Nevertheless, his honour's judgment is dispositive of the question whether any form of aid in dying currently is permitted under the Crimes Act 1961. It is not.

Consistency with the New Zealand Bill of Rights Act

Having found that the Crimes Act could not be interpreted in a manner that permitted aid in dying, Justice Collins then turned to examine whether this outcome is consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act. Two rights were at issue: the section 8 right not to be deprived of life; and the section 9 right not to be subjected to cruel, degrading or disproportionately severe treatment.

> ... a unanimous Canadian Supreme Court recently held that a total pro-hibition on aid in dying breached the equivalent guarantee in the Canadian Charter of Rights and Freedoms (which is, in turn, the model for our Bill of Rights Act).

Regarding section 8, a unanimous Canadian Supreme Court recently held that a total prohibition on aid in dying breached the equivalent guarantee in the Canadian Charter of Rights and Freedoms (which is, in turn, the model for our Bill of Rights Act).[3] It found that the prohibition's effect was to cause some terminally ill people to end their lives sooner than they otherwise would choose to and it was not necessary to impose this outcome on competent, consenting, terminally ill individuals in order to protect generally the lives of vulnerable members of society.

Although this Canadian precedent is not binding in New Zealand, the links between our New Zealand Bill of Rights Act and the Canadian Charter imbue it with very strong persuasive authority. Unsurprisingly, therefore, Justice Collins accepted that a prohibition on aid in dying has the same potential consequence in New Zealand regarding individuals ending their lives prematurely (*Seales*, at [166]). However, his honour then found that this consequence did not breach Seales' section 8 right to life, as, in distinction to Canada, any deprivation of life was 'on such grounds as ... are consistent with the principles of fundamental justice' (*Seales*, at [186], [191]).

With respect, this conclusion is hard to sustain. Justice Collins based his contrasting treatment of the right on an alleged difference in intent behind Canada's and New Zealand's criminal law prohibition on assisting suicide. Canada's legislature was concerned only to protect the lives of *vulnerable* individuals, while New Zealand's wanted to protect the lives of *all* persons. Therefore, his honour concluded, it is not inconsistent with the principles of fundamental justice for New Zealand's prohibition to apply more broadly and capture individuals in Lecretia Seales' position.

I think this is wrong (Geddis, 2015). His Honour's basis for distinguishing between the Canadian and New Zealand parliamentary intent is somewhat flimsy. Furthermore, by accepting a broad, generic legislative purpose such as 'protecting the sanctity of life', the analysis of whether the effect of the law in question is consistent with the principles of fundamental justice is hopelessly short-circuited.[4] At no point, therefore, does Justice Collins confront the important question: why *should* the state have in place a law that causes competent, rational, terminally ill individuals to take their own lives early? What justification can there be for producing such an outcome?

Consequently, I think Justice Collins was mistaken to conclude that the Crimes Act prohibition on aid in dying is consistent with the section 8 right not to be deprived of life. That error may not have changed his honour's conclusion as to how the Crimes Act can be interpreted. But his honour should have considered whether to issue a declaration that the current law is inconsistent with the rights and freedoms guaranteed in the New Zealand Bill of Rights Act.

In regards to Seales' section 9 right, Justice Collins' reasoning was more

robust. In line with overseas authority,[5] his honour found that the state's prohibition on receiving aid in dying did not subject Seales to 'treatment' at all (*Seales*, at [205]-[207]). Consequently, while the effect of the prohibition may be cruel, degrading and disproportionately severe, this did not trigger the relevant right under the Bill of Rights Act.

Other findings in the judgment

While the practical effect of Justice Collins' judgment is that, for the moment, a doctor cannot lawfully provide aid in dying even to a competent, terminally ill patient, there are additional aspects of his Honour's judgment worth highlighting as we consider the next steps to take. As his Honour notes: 'Although Ms Seales [did] not obtain[] the outcomes she sought, she has selflessly provided a forum to clarify important aspects of New Zealand law' (*Seales*, at [211]). In the course of the trial a great deal of evidence was proffered on some contested matters relating to aid in dying. This enabled Justice Collins to draw some important factual conclusions.

The first conclusion relates to arguments that aid in dying is unnecessary as it is possible to manage a dying person's symptoms and concerns so that they do not suffer in the process. Justice Collins concluded from the evidence presented that existing palliative care could not guarantee Seales would not suffer pain during the dying process (*Seales*, at [37]-[43]), while 'many of the experts, including those relied upon by the Attorney-General accept that palliative care may not be able to address Ms Seales' psychological and emotional suffering' (*Seales*, at [44]). Consequently, while aid in dying is by no means a replacement for good palliative care, neither can good palliative care provide a guarantee of a peaceful, painless, dignified ending. Just as importantly, the availability of aid in dying can provide a sense of control and reassurance to a patient facing the end of her life which complements the goals of palliative medicine (*Seales*, at [59]-[61]).

The second important conclusion is in respect of claims that if aid in dying is permitted, vulnerable groups inevitably will be victimised by the process. In particular, the Crown argued that *no* person could possibly properly consent to aid in dying, as *all* terminally ill people are in such a vulnerable state. Once again, Justice Collins rejected this assertion on the evidence before him. His Honour stressed that it is 'important to ensure that medical judgements are not based upon assumptions as to vulnerability. To do otherwise would devalue respect for the principle of individual autonomy' (*Seales*, at [81]). In respect of Seales' own position, Collins J found that the 'statement of her belief that she is not vulnerable must be respected. Ms Seales' application for the declarations she seeks is a rational and intellectually rigorous response to her circumstances' (*Seales*, at [81]).

So after considering all the evidence given by experts on each side of the debate, Collins J found as a factual matter that there was no guarantee that medical science could give Seales a painless, dignified death. He also found that she was not in a vulnerable state when she asked to have control over the circumstances of her own death so as to avoid the possibility of a painful, undignified death; indeed, her decision to seek this was one worthy of our full respect.

These factual findings then underpinned this important conclusion later in Justice Collins' judgment:

> By focusing upon the law it may appear that I am indifferent to Ms Seales' plight. Nothing could be further from the truth. I fully acknowledge that the consequences of the law against assisting suicide as it currently stands are extremely distressing for Ms Seales and that *she is suffering because that law does not accommodate her right to dignity and personal autonomy*. (*Seales*, at [192] (emphasis added))

Therefore, while Justice Collins may have found that current law cannot provide Seales with access to aid in dying and that this outcome is consistent with the comparatively narrow range of rights protected by the New Zealand Bill of Rights Act, his Honour's judgment by no means says that the law we have is desirable. To the contrary, preventing those in Lecretia Seales' position from gaining access to aid in dying denies individuals very important individual rights. It forces them to die in undignified ways and so denies them recognition of their status as rational, competent individuals able to choose in their own best interests.

A law that has this effect on individual citizens is a bad one for us as a society. So when Justice Collins notes in his judgment that it is for Parliament to change the law, we should understand what lies behind his lament that this institution 'has shown little desire to engage in these issues' (*Seales*, at [211]). It ought to do so, because while current law on this issue may be clear, it also is wrong.

Postscipt

Lecretia Seales passed away from natural causes the day before Justice Collins' decision was publicly released.

1 One of the marks of disagreement in this field is that those on opposing sides cannot even agree on a common terminology for the matters at stake. I will use the term 'aid in dying' to refer to a fatal dose of medication provided at the request of a terminally ill, competent individual who is suffering intolerably for the purpose of ending his or her life at a time of his or her own choosing. If that marks me out as a proponent of legal change in this area, that is because I am.

2 [2015] NZHC 1239.

3 *Carter v Canada (Attorney General)* [2015] SCC 5.

4 See *Carter v Canada (Attorney General)* [2015] SCC 5, at [77]-[78].

5 In particular, *Roderiguez v British Columbia (Attorney General)* [1993] 3 SCR 519; *R (Pretty) v Department of Public Prosecutions* [2001] UKHL 61; [2002] 1 AC 800.

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Jack Havill

Physician-assisted Dying

The term physician-assisted dying refers to where, at the request of a mentally competent person, a medical practitioner actively hastens death, by either providing the means by which the patient can take drugs themselves, or directly administering the drugs by injection. An example of prospective legislation for physician-assisted dying in New Zealand, consistent with several other legalised jurisdictions, can be found in Maryan Street's End of Life Choice Bill (2012). Under this bill, individuals may seek medical assistance to die under defined circumstances. He or she (18 years or over) must suffer from either:

(a) a terminal illness or other medical condition likely to end his or her life within 12 months (e.g. terminal cancer), or
(b) an irreversible physical or mental condition that, in that individual's view, renders his or her life unbearable (e.g. motor neurone disease).

Safeguards include that the individual must request assistance in writing twice, with a seven-day interval, from a medical practitioner who will certify:
(a) the qualifying condition exists;
(b) there has been no coercion from family or others;
(c) the patient is mentally competent;
(d) advice has been given of treatment options, including palliative care; and
(e) advice is given to talk to family and seek counselling.

In addition, a second medical practitioner must agree with the above. Detailed documentation is sent by the medical practitioners involved to a central registrar who will report to a government-appointed review committee, who will in turn report to Parliament.

Jack Havill is a retired intensive care medicine specialist. He was director of the Waikato Intensive Care Unit for 26 years, dean of the Joint Faculty of Intensive Care Medicine (Australia and New Zealand) 2004–2006, and served briefly as head of the Waikato Clinical School. He is currently president of the Voluntary Euthanasia Society of New Zealand. In 2005 he was made an Officer of the New Zealand Order of Merit for services to medical research and intensive care.

Ethical and related issues

Many issues are raised by opponents of physician-assisted dying, a number of which are addressed here.

Sanctity of life

In the Western world of medicine, this important concept seems to be derived from: (a) the biblical commandment 'Thou shalt not kill' (from the Ten Commandments); and (b) the classical Hippocratic oath, which says – in this context – 'I will neither give a deadly drug to anybody who asked for it, nor will I make any suggestion to that effect'. More modern oaths usually do not mention the Hippocratic oath (Orr, Pang and Pellegrino, 1997).

The sanctity of life is not absolute. We condone killing someone in certain circumstances: for example, police

shooting to protect others, and in a just war. There are situations where the action of the medical practitioner will result in an earlier death than otherwise would have occurred, action such as refusal of therapy, withdrawal of therapy, and terminal sedation in palliative care. However, the basic ethical assumption 'in favour of life' is a central tenet of our civilisation. So, what is the issue which really matters here? From time to time the individual will find the release of death to be more important than hanging on to a miserable existence of unbearable suffering, or stretching out the end of a terminal disease. In other words, death which brings an end to suffering is a benefit.

In a strange twist to the arguments for and against physician-assisted dying, the absence of a lawful solution allowing assistance to die may actually shorten life. Sometimes the individual knows that they are weakening as the end approaches, and they commit suicide while they still have the strength to. This was one of the conclusions in a recent Supreme Court of Canada judgment (Supreme Court of Canada, 2015).

The difference between physician-assisted dying and the withdrawal of life-saving therapy

Medical practitioners have long held the principle that 'passive euthanasia' (withdrawal of support causing death) is very different from active physician-assisted dying. It is claimed that there is a 'bright line' between the two types of actions. In intensive care situations, where life support is being withdrawn because further treatment is considered futile and harmful, the 'bright line' of difference often disappears. The effects can be far more dramatic. Examples include the withdrawal of blood pressure-supporting drugs where life is dependent on them, and the withdrawal of a respirator from a patient dependent on it for life

The Supreme Court of Canada stated in February:

> the current unregulated end-of-life practices in Canada – such as the administration of palliative sedation and the withdrawing or withholding of lifesaving or life-sustaining medical treatment – can have the effect of hastening death and that there is a strong societal consensus that these practices are ethically acceptable. After considering the evidence of physicians and ethicists, [it was] found that the 'preponderance of the evidence from ethicists is that there is no ethical distinction between physician-assisted death and other end-of-life practices whose outcome is highly likely to be death'. (Supreme Court of Canada, 2015)

From an ethical point of view the act of assistance under the carefully prescribed conditions can be considered beneficial to the patient, a compassionate act and respectful of their autonomy ...

The significance of this is that, even though the New Zealand criminal code supposedly prohibits causing death, this is already accepted medically and legally in certain areas of practice. Furthermore, most of these events occur without the consent of the patient.

The difference between 'killing' and physician-assisted dying

Many opponents of physician-assisted dying seem unable to see the vast ethical difference between murder and physician-assisted dying. When a violent unwanted killing occurs it is called murder and ethical principles are broken through harm being caused to the person, breaching the victim's autonomy, lack of compassion, injustice, and the act being contrary to the law. Physician-assisted dying allows an adult competent person to make a written request to a medical practitioner to assist him or her to die. From an ethical point of view the act of assistance under the carefully prescribed conditions can be considered beneficial to the patient, a compassionate act and respectful of their autonomy, and allows them to say a conscious farewell to their family and friends. However, from a legal point of view, our overly broad, disproportionate criminal law on homicide still regards them as the same. Hence the need for a law change.

The difference between 'suicide' and physician-assisted dying

Irrational suicide is impulsive, often violent, and causes extreme distress to family and friends. Almost always the mental condition which leads to the act is treatable and hence reversible. Physician-assisted suicide is a type of physician-assisted dying where, at the request of the patient, the physician prescribes a drug and the patient takes it to end their life. This is called 'rational suicide' and has the same ethical characteristics as described above. Irrational suicide is completely different from physician-assisted dying, yet again the criminal law on abetting suicide regards them as the same and needs changing.

Autonomy of the patient

The autonomy of the patient has become an important ethical principle. In New Zealand, under the New Zealand Bill of Rights Act 1990 a patient can refuse any treatment offered even if it is life-saving. Consent must be gained for invasive interventions. An individual can write a legally enforceable Advanced Care document which prescribes how they should be treated should they become incompetent (Code of Health and Disability Services Consumer's Rights, 2009). However, while an individual can live a full, self-determining life making medical decisions, when it comes to dying

(in New Zealand) they are not allowed to make a decision to determine the manner of their dying, short of committing suicide in isolation.

The 'slippery slope'

There are two components to this concept:

1. shifting ethical norms: these are always changing in society. For instance, slavery was once accepted. Future generations will have to make these decisions for themselves;
2. that the vulnerable will be at risk of being assisted to die against their will.

... palliative care and physician-assisted dying are not mutually exclusive: the former should be universally provided at a high level, and the latter should be available as an adjunct where requested.

In a study from the Netherlands and Oregon, there is clear evidence that the vulnerable are not at an increased risk in this fashion (Battin et al., 2007). The Canadian Supreme Court, considering the body of evidence from jurisdictions allowing legalised physician-assisted dying, stated that

> although none of the systems has achieved perfection, empirical researchers and practitioners who have experience in those systems are of the view that they work well in protecting patients from abuse while allowing competent patients to choose the timing of their deaths.

The court also stated that 'physicians were capable of reliably assessing patient competence, including in the context of life-and-death decisions. … [I]t was possible to detect coercion, undue influence, and ambivalence as part of this assessment process' (Supreme Court of Canada, 2015).

Some particular concerns of opponents of physician-assisted dying include:

Depression abuse. The Maryan Street bill states that the unbearable condition must be 'irreversible'. Most depression is reversible with appropriate care. Rarely, a refractory depression under long-term psychiatric care could possibly be judged to fit the criteria for physician-assisted dying.

Disabled abuse. Patients who are mentally disabled are excluded as a person has to be mentally competent to qualify. If the patient is physically disabled but mentally competent he or she is in no different situation to the non-disabled.

Elderly abuse. The requirements of legislation such the End of Life Choice Bill make abuse of the elderly in the context of physician-assisted dying virtually impossible. The elderly do not qualify for physician-assisted dying by being lonely, depressed, feeling that they are a burden to others or feeling that have completed their life.

Encouraging irrational suicide particularly in the young. There is no evidence to support the contention that physician-assisted dying would encourage suicide. In the Netherlands suicide rates are slightly lower than New Zealand's after 20 years of legalised physician-assisted dying (10/100,000 compared with New Zealand's 10.1/100,000).

Physician-assisted dying impedes the development of palliative care. Experience throughout legalised jurisdictions has confirmed the opposite (Chambaere and Bernheim, 2015).

Palliative and hospice care

Supporters of physician-assisted dying wholeheartedly endorse these modes of treatment and would see most patients as needing these services. In Oregon, 93% of patients who have assisted deaths have been treated in a hospice environment (Oregon Public Health Division, 2014). In the Netherlands and Belgium, palliative care doctors have been some of the leaders in the voluntary euthanasia movement (Bernheim et al., 2008)

However, palliative care cannot always relieve physical suffering, or 'existential suffering' due to loss of autonomy and dignity, and there are a number of patients who ask for physician-assisted dying in spite of good palliative care. Also, terminal sedation refers to the situation where a patient is sedated to the point of deep unconsciousness until death. It is used for relief or management of refractory and unendurable symptoms (breathlessness, nausea and vomiting, agitation, fitting, pain and restlessness). Artificial administration of food and fluid is usually withdrawn. The literature describes percentages of deaths being by terminal sedation varying up to 12% (Onwuteaka-Philepsen et al., 2012). Staff give drugs to relieve suffering and any 'double effect' which may hasten death is regarded as non-intentional. However, it is clear that the patient will die shortly, and where the double effect occurs there is no ethical difference from physician-assisted dying, which is also given to relieve suffering.

Finally, palliative care and physician-assisted dying are not mutually exclusive: the former should be universally provided at a high level, and the latter should be available as an adjunct where requested.

Relationship between doctor and patient

A frequently used argument against voluntary euthanasia is that the physician–patient relationship will be destroyed. The evidence from legalised jurisdictions is against this. Indeed, probably the opposite is true. The physician–patient relationship may be enhanced by the patient knowing

that the physician will not abandon him or her at this particularly moving and intense period of life (an ethical principle of 'non-abandonment'). In 2008 a market research organisation reported that 88% of respondents in Belgium and 91% in the Netherlands trust their doctors, one of the highest rankings in Europe (Gfk, 2008)

Human rights

Closely linked to ethics is a consideration of human rights. The February 2015 Canadian Supreme Court judgment is groundbreaking in this respect. It stated that sections of Canada's criminal code unjustifiably infringe its Charter of Rights and Freedoms:

> and are of no force or effect to the extent that it prohibits physician-assisted death for a competent adult person who (1) clearly consents to the termination of life and (2) has a grievous and irremediable medical condition (including an illness, disease or disability) that causes enduring suffering that is intolerable to the individual in the circumstances of his or her condition. (Supreme Court of Canada, 2015)

It argued that life, liberty, security and equality are all impeded by a ban on physician-assisted dying, which is fundamentally unjust.

Conclusion

In summary, the case for legalisation of physician-assisted dying in New Zealand is compelling, and the concerns promulgated by opponents are usually spurious and unsupported by reliable evidence. The opposing ethical stances on physician-assisted dying held by the New Zealand Medical Association and palliative care organisations in New Zealand are no longer valid.

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John Kleinsman

Euthanasia and Assisted Suicide good or bad public policy?

Laws, like nation states, are more secure when their boundaries rest on natural frontiers. The law that we have rests on just such a frontier – it rests on the principle that involving ourselves in deliberately bringing about the deaths of others, for whatever reason, is unacceptable behaviour. To create exceptions, based on arbitrary criteria such as terminal illness or mental capacity, is to create lines in the sand, easily crossed and hard to defend.

Elizabeth Butler-Sloss, quoted in Bingham, 2013

John Kleinsman is a member of the Care Alliance and director of The Nathaniel Centre, the New Zealand Catholic Bioethics Centre.

This quote from Baroness Butler-Sloss, a former president of the Family Division of the High Court in the United Kingdom, provides a useful description of what is involved in the debate about whether or not to legalise euthanasia and/or assisted suicide. It is a debate about the merits of staying with a long-established boundary which provides a bright line and that is 'natural', versus the merits of exchanging that boundary for one that is 'arbitrary … easily crossed and hard to defend'.

Even a cursory analysis of what has happened in the Benelux countries shows the arbitrariness of the boundaries that were set up around euthanasia and assisted suicide. In these countries the debates that preceded the law change focused on 'difficult cases' involving mostly elderly persons, with terminal illnesses, near the end of life and able to give consent.

The arguments employed at the time were very much focused on the need to help such people avoid unnecessary physical pain. However, the current situation in Belgium and the Netherlands is that euthanasia is available to people who are not dying, persons with dementia and persons with mental illnesses such as depression.

Along with an increase in the scope of those who qualify (bracket creep), there is also a troubling increase in demand. In Belgium the total annual number of euthanasia cases increased from 1,432 in 2012 to 1,807 in 2013, an increase in one year of more than 25%. Going back to 2008 when there were 708 cases, the 2013 figure represents an increase of more than 150% in just five years. There is undoubtedly a significant change that has occurred at a deep cultural level: what we are witnessing in Belgium, as well as the Netherlands, where there is a similar rate of increase, is the normalisation of euthanasia. The sharp increase in demand belies the argument that changing the law is about allowing the small number of high-profile cases that attract media attention to proceed without threat of prosecution. As Robert Preston, former director of the UK think tank Living and Dying Well, notes:

> The point is that legalisation doesn't just reproduce the status quo in legal form … The reality is not like this. Experience shows that enabling laws have a tendency to encourage the acts they enable – because they change the law's underlying social message. (Preston, 2015)

The more recent concerted push in both Belgium and the Netherlands for euthanasia to be available for persons 'tired of life' is further evidence of the arbitrariness of the boundaries set up around euthanasia and assisted suicide. From an ethical perspective it is well described as a re-writing of the narrative about what constitutes a 'good life' and about whose lives are worth living and whose lives are not.

In New Zealand, Maryan Street, author of the 2012 End of Life Choice Bill, has refused to rule out euthanasia for children, stating publicly when asked: 'Application for children with a terminal illness was a bridge too far in my view at this time. That might be something that may happen in the future, but not now' (quoted in Fleming, 2013). Street's view is an honest one and highlights an important point. If we introduce a law allowing voluntary euthanasia or assisted suicide for a prescribed group, then we are effectively opening the door to non-voluntary euthanasia of non-competent persons, including neonates, very young children and persons with dementia. It is a small step but, critically, a logical step. If the purpose in legalising euthanasia is to prevent or end unbearable suffering, then why should some people be excluded? There is no rational basis for restricting the choice to certain groups only, such as those who are adults or competent or suffering from terminal illnesses. What starts out, genuinely, as a voluntary choice for competent adults will soon become a choice exercised on behalf of others unable to make that choice for themselves.

In other words, a law change around euthanasia and/or assisted suicide would take us into the territory of judging the worth of human lives – both our own lives and the lives of those most vulnerable, those unable to articulate their own needs and desires. This is dangerous territory, especially in the current social environment (characterised by ageism and growing levels of elder abuse) and economic environment (characterised by increasing financial constraints on our health-care and elder-care systems).

Furthermore, it has repeatedly been shown in both Belgium and the Netherlands that euthanasia occurs in circumstances where the legal requirements are not met, including the failure to report to the appropriate authorities.[1] These developments illustrate the ineffectiveness of legal safeguards. Why would we think such flagrant abuses would not happen in New Zealand?

Proponents of a law change are aware of the potential dangers but insist that effective protections can be put in place to ensure that people will not feel coerced into euthanasia and/or assisted suicide. So why do I and many others hold a contrary view? Firstly, while legalising euthanasia was supposed to allow the undercover practices that were already happening to be brought into the open and monitored in a more regulated way, thereby making them safer, the evidence (noted above) shows that in Belgium and the Netherlands there continue to be high levels of non-compliance.

If we introduce a law allowing voluntary euthanasia or assisted suicide for a prescribed group, then we are effectively opening the door to *non-voluntary* euthanasia of non-competent persons …

Secondly, the main reasons people favour euthanasia or assisted suicide are not related to extreme physical pain (an experienced palliative-care physician reassures me that these days no one need die in physical pain) but to such things as loss of autonomy (see, for example, Oregon Public Health Division, 2013), feelings of being a burden and dependency on others (see, for example, Malpas, Mitchell and Johnson, 2012), decreasing ability to participate in activities that made life enjoyable, fear of losing control, and social isolation (Steck et al., 2014). Euthanasia and assisted suicide are, in other words, overwhelmingly linked to 'existential suffering', and, critically, existential suffering is inextricably linked to attitudes deeply embedded in our

ableist culture, which is now becoming increasingly ageist, evidenced by growing rates of social isolation and associated poorer mental health among the elderly (La Grow and Neville, 2012).

This is not contentious and cannot be simply dismissed as 'scaremongering'. Pro-euthanasia doctors such as Rob Jonquiere openly recognise that many concerned elderly people will choose euthanasia or assisted suicide for such reasons. Jonquiere has noted:

> The elderly have feelings of detachment … The elderly have feelings of isolation and loss of meaning. The elderly are tired of life … Their days are experienced as useless repetitions. The elderly have become largely dependent on the help of others, they have no control over their personal situation and the direction of their lives. Loss of personal dignity appears in many instances to be the deciding factor for the conclusion that their lives are complete.

Jonquiere has further stated that 'the problem is not so much physical, but social and emotional' (Jonquiere, 2013).

Jonquiere's response to this is to advocate for these people to have the right to die. 'The conclusion that life is completed is reserved exclusively for the concerned persons themselves … They alone can reach the consideration whether or not the quality and value of their lives are diminished to such an extent that they prefer death over life.' This leads him to the brutal conclusion that it is 'never for the state, society or any social system' to question or otherwise interfere in such a person's decision (ibid.).

Looked at through a lens of social justice and inclusion, Jonquiere's analysis and conclusion is deeply disturbing. The intolerable situation that increasing numbers of elderly people are in might be a direct result of neglect, ageism, abuse, ignorance, lack of funding for services, poor public policies or, worst of all, a lack of societal will to care. Jonquiere's conclusion means that the state, which governs over the society in which these persons live, the very same society that will in many cases be complicit in their intolerable condition, can assuage its conscience by sanctioning their deaths.

This raises the spectre of a society in which the needs of the elderly and disabled to overcome isolation, neglect and the ignominy of feeling a burden will be ignored in favour of making it easy for them to 'dispose' of themselves, their real needs for inclusion and care papered over by appeals to the principles of autonomy and compassion which are morally vacuous because the choice to die would, for such people, be a choice made out of desperation, a choice made because of a lack of real choices. Looked at like this, granting 'the right to die' in our current societal context is aptly described as an abandonment of the foundational principles of an ethical and caring society. As an experienced nurse wrote:

> Do assisted-suicide supporters really expect doctors and nurses to assist in the suicide of one patient, then go care for a similar patient who wants to live, without this having an effect on our ethics or empathy? Do they realise this reduces the second patient's will-to-live request to a mere personal whim – perhaps, ultimately, one that society will see as selfish and too costly?' (Valco, 2014)

It is not possible to create laws that will protect persons against this sort of coercion. This is why, when debating the merits and risks of a law change, it is not enough to simply focus on the particular plight of individuals. The 'hard cases' which appear in the media, and which most people fall back on when pressed about their reasons for supporting euthanasia and/or assisted suicide, tell only a part of the story. When contemplating a law change the challenge is to consider its impact on our society, including the unintended consequences. This is what robust social policy thinking does. We are fortunate that we can learn from Belgium and the Netherlands. While they might not have been able to envisage the direction in which the acceptance of euthanasia and assisted suicide would take them, we in New Zealand cannot say the same. To ignore the profound shift in social attitudes and behaviour that we are seeing in such countries is to walk into this with our eyes wide shut.

We must consider the future generations who will inherit the legacy of our policy choices. Personal dignity and a commitment to equality and social justice call for a wholehearted dedication to holistic care and unconditional inclusion for those who are suffering, elderly or disabled. It will require a determined effort to ensure that what makes us distinctively human – our ability to show and receive care – is reflected in familial, social, political and cultural structures. I am in no doubt that the legalisation of euthanasia and/or assisted suicide will undermine our ability and willingness to show such care and practice such inclusion. It is undoubtedly a harder way forward, but also, arguably, a more authentically human response.

All of which explains why many people who are supportive in principle of euthanasia or assisted suicide for the so-called 'hard cases' ultimately oppose their legalisation.

Personal dignity and a commitment to equality and social justice call for a wholehearted dedication to holistic care and unconditional inclusion for those who are suffering, elderly or disabled.

Upholding the status quo will mean denying a small, vocal and strong-minded group of people access to something they see as a 'right'. Is this discriminatory? Arguably yes. But this does not make the current law wrong, because the status quo, imperfect as it is, represents 'the lesser of two evils'. There are many areas in society where the interests of the common good justify placing constraints on the autonomy of individuals. Euthanasia and assisted suicide, with its myriad of complexities and unintended consequences, is one of those areas. There would be a huge price to pay for legalising these practices counted in the additional anxieties and burdens for large numbers of our most vulnerable citizens and, most importantly, lives prematurely ended on the basis of a sad perception by many that their lives were not worth living because they had become a dispensable 'burden' for society.

1 Reporting is mandatory in both countries. In Belgium nearly half of all cases are not reported (Smets et al., 2010) and in the Netherlands at least 20% of cases are unreported (Onwuteaka-Philipsen et al., 2012). In unreported cases there is a higher likelihood that legal requirements are not met, such as the need for a written request (involuntary euthanasia), for consultation with palliative care physicians, and a requirement that only physicians perform euthanasia. In Flanders, Belgium, it was reported that 32% of physician-assisted deaths in 2007 were without explicit patient request (Chambaere et al., 2010). Meanwhile, Smets et al. (2010) also note drugs were administered by a nurse in 41% of unreported cases (none for reported cases).

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Wendi Wicks

The Consequences of Euthanasia Legislation for Disabled People

'Individual actions, which may ostensibly be seen as for humane purposes, can have inimical consequences for a whole category of people.' This is one of the concluding comments in the affidavit from Not Dead Yet Aotearoa (NDYA) in the Lecretia Seales court case (Wicks and Hunt, 2015), and it is the starting point here. The community of disabled people and their interests is the focus of this article, which elaborates on some of the probable consequences of changing the law to legitimise euthanasia or assisted suicide.

Definitional debates will not be addressed here; given that there is wide disagreement, definitional issues are a substantive discussion to be had elsewhere. Rather, this article outlines some of the dangers of euthanasia and assisted suicide legislation for the community of disabled people; in particular, consequences that are likely to arise from any legalisation in New Zealand.

Whether intended or unintended, consequences are real in their effects. To paraphrase the words of Bion of Borysthenes, a Greek philosopher of around 300BC, while boys may throw stones at frogs in fun, the frogs do not die in fun, but in earnest. Similarly, disabled people may be at considerable, albeit unintended, risk from the acts of others.

Wendi Wicks is a the convener of Not Dead Yet Aotearoa (NDYA).

Background

The interrelated concepts of assisted suicide and euthanasia have a large 'footprint', and the space is vigorously contested, with definitions, rights and principles briskly traded. There is also a considerable media campaign being waged, in which slick and disingenuous stereotypes of the motives of those who oppose assisted suicide are disseminated to an audience overly willing to suspend critical analysis. Slick though they may be, the stereotypes are only partial. A large group is absent from adequate discussion; indeed all but invisible in writings on the issue. That group is disabled people.

But this does not imply a lack of interest on the part of the absent ones. For many years disabled people have considered, discussed and debated euthanasia and assisted suicide measures as proposed via laws and policies. As with non-disabled people, there is a range of views on the matter. However, the most recent 'push' for assisted suicide in New Zealand has crystallised concerns among disabled people about the inimical implications

and the absence of their voices. They have come to believe that that absence has signified an implicit assumption that the euthanasia and assisted suicide debate was of little importance to disabled people, and that their views would be those of uncontested support. This has proved to be inaccurate and their unease has intensified.

Although there is regular polling in New Zealand on the topic, there is little information about what disabled people think. But a poll conducted for British disability charity Scope in 2014 found that most disabled people feared that changing the law on assisted suicide would lead to disabled people being pressured to end their lives prematurely (Scope, 2014). While such disability-specific polling has not been conducted in New Zealand, NDYA is confident that the results are similar to the views expressed to it by other disabled New Zealanders.

A disability voice in New Zealand

In response to the concerns expressed, Not Dead Yet Aotearoa was set up to provide a voice for disabled people opposed to euthanasia and assisted suicide early in 2015. NDYA's basis is a disability (human) rights approach, as articulated in the United Nations Convention on the Rights of Persons with Disabilities (United Nations, 2014). This is most notably in relation to article 10 affirming that disabled people have a right to life (not death), and to article 4.3 requiring governments to actively engage with disabled people in relation to law and policy. NDYA is part of a worldwide network of opposition by disabled people to euthanasia and assisted suicide. Thus, there are autonomous Not Dead Yet organisations in the United States, the United Kingdom and Canada, and like-minded bodies in Australia and Ireland.[1]

The legal case taken by Lecretia Seales provided an occasion whereby NDYA could speak out for the collective interests of disabled people in relation to euthanasia and assisted suicide, as it joined a diverse alliance of perspectives in opposition to the case. Our affidavit expressed the organisation's concern that legalisation would present a series of inimical consequences for disabled people. Following from this contribution, it can be expected that NDYA will undertake an active advocacy for disabled peoples' interests in legislative and political avenues. However, it is clear that there remains a considerable lack of public knowledge of what the consequences of legalising euthanasia or assisted suicide are for disabled people; this article aims to contribute information to address this gap.

Stereotypes and consequences

Disabled people already occupy a marginalised and disadvantaged place in society. Who and how disabled people are is not characteristically expressed in affirming and expansive terms. Instead, negative descriptions and terms such as 'dependent', 'loss of dignity', 'struggle', 'deficits', 'unable', 'burden' and 'suffering' (to name but a few) permeate writing and speech. Such terms undermine the innate worth of disabled people. Assumptions such as these about the lives and existence of disabled people are reflected in laws, policies and systems that are based on false ideas and most often designed and run by non-disabled people. The cumulative impact of this is seen in multiple social disadvantage. Disabled people face limited educational and employment opportunities and economic independence. Access to health, transport, housing, home ownership and adequate support services are compromised (Statistics New Zealand, 2014), and poverty is a common experience.

While it is fully acknowledged that disabled individuals can and do achieve many indicators of a good life, it is nevertheless clear that the above snapshot is a fair and accurate collective picture; one where stereotypes and social consequences reinforce one another, and which is still the more common experience for disabled people. In particular, negative stereotypes hopelessly conflate health and disability. Catherine Frazee encapsulates the situation thus:

> The belief that disability and illness inevitably lead to a lower quality of life is widespread both among people working in the healthcare system and people in the general population. This belief often leads to a lack of healthcare options because the idea of trying to prolong a life that is assumed to be unpleasant seems futile. However, this belief is not based on the experiences of people with disabilities, whose perspectives are rarely incorporated into healthcare systems or decision making. (Frazee, 2011)

Additionally, stereotypes are most relevant when considering the wording of euthanasia or assisted suicide legislation. The wording of euthanasia or assisted suicide legislation is phrased in such language as feeds directly into negative stereotypes: a 'terminal illness' or 'irreversible condition' 'makes life unbearable'; 'there is unlikely to be relief of unbearable suffering', 'dependence on others' and a 'loss of dignity'. Given that many disabled people live their lives every day depending on others for support and having an irreversible condition or a disability that is considered to be terminal, such legislative descriptions of their everyday reality as worthy of death would not inspire a calm and confident approach to life. All of the above phrases can be taken to any degree of imprecise and conflicting interpretation.

Legislation and consequences

In a series of video interviews about assisted suicide and euthanasia,[2] British actress Liz Carr points out that laws about assisted suicide have effects far beyond what might be expected, noting that laws brought into being for just some can and will jeopardise others. There is a wider context to (euthanasia and) assisted suicide laws, she says, but that wider context is likely to be overlooked in a focus on giving a legislative 'solution' to concerns for individuals. There are two particularly pertinent illustrations of this: suicide prevention, and abuse and violence.

Our society takes a general approach to suicide that it represents some disorder of thoughts or emotions and that assistance in dealing with this should be given. But legalisation of euthanasia and physician-assisted suicide sends a message that the situation is in effect reversed when

the person is disabled. Philippa Willitts encapsulates this succinctly:

> This huge contradiction says a lot about the value we place on disabled people's lives. We must stop people committing suicide! Oh wait, they're disabled and want to commit suicide? Sure, hand them the pills. (Willitts, 2015)

Diane Coleman makes a similar point, and also highlights the coercive effect of such legislation:

> For individuals who internalise social oppression that declares disability to be undignified, the legalisation of assisted suicide may convey the message that suicide is the best way to reclaim their dignity. It may even convey the message that suicide is the most honourable way to make one last contribution … a mentality that tells the disenfranchised and despised to get out of the way, without ever seriously considering the decisions and motives of the policy makers who shape the culture we live in. (quoted in Wicks and Hunt, 2015, p.16)

Her message is echoed by the Scottish Parliament, which this year considered an assisted suicide bill and expressed its concern not only for the message it would send to certain members of the community, but also that it undermines and damages society as a whole.

Legislation allowing euthanasia or physician-assisted suicide has a very real risk that the 'right to die' is seen to be a 'duty to die' for a disabled person. Abuse and coercion of disabled or older people to follow this legislatively-enabled pathway and 'choose' assisted suicide is a very real possibility. Public declarations have been made in New Zealand by disabled individuals that they would not be vulnerable to any such coercion (so, by implication, the rest of us should be similarly immune, and coercion can only be seen as a figment of the disordered imagination). This perspective lacks credibility: all of us are, at one point or another in our lives, vulnerable to the persuasions, urgings or sometimes coercive arguments of others, and those in a position of relative powerlessness will be more vulnerable than most.

The legalisation of euthanasia or assisted suicide will only provide a tool for the strong against the weak, an argument also made compellingly by Baroness Campbell in opposing the British Assisted Dying Bill at the beginning of this year (Campbell, 2015). As arguably the group most effected by any possibility of euthanasia or assisted suicide legislation, the voices and concerns of disabled people must be involved, as required in the Convention on the Rights of Persons with Disabilities. Legalisation must not be contemplated in our absence.

1 In Australia, Lives Worth Living and HOPE Australia; in Ireland, HOPE Ireland
2 https://www.youtube.com/watch?v=I2IDeMfeYMU&feature=youtu.be.

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Ann Brower and Ike Kleynbos

CHANGES in Urban and Environmental Governance

in Canterbury from 2010 to 2015: comparing Environment Canterbury and Christchurch City Council

This article compares the proximate but not parallel trajectories of Canterbury Regional Council's (ECan) and the Christchurch City Council's changing authority to manage the urban and natural environment from 2010 to 2015. We ask why the trajectories are so far from parallel, and speculate as to why the central government interventions were so different. The apparent mismatch between the justifications for the interventions and the interventions themselves reveals important implications on the national and local levels. Nationally, the mismatch speaks to the current debate over an overhaul of the Resource Management Act. Locally, it informs current discussions in Wellington, Nelson, Gisborne and elsewhere about amalgamating district and regional councils.

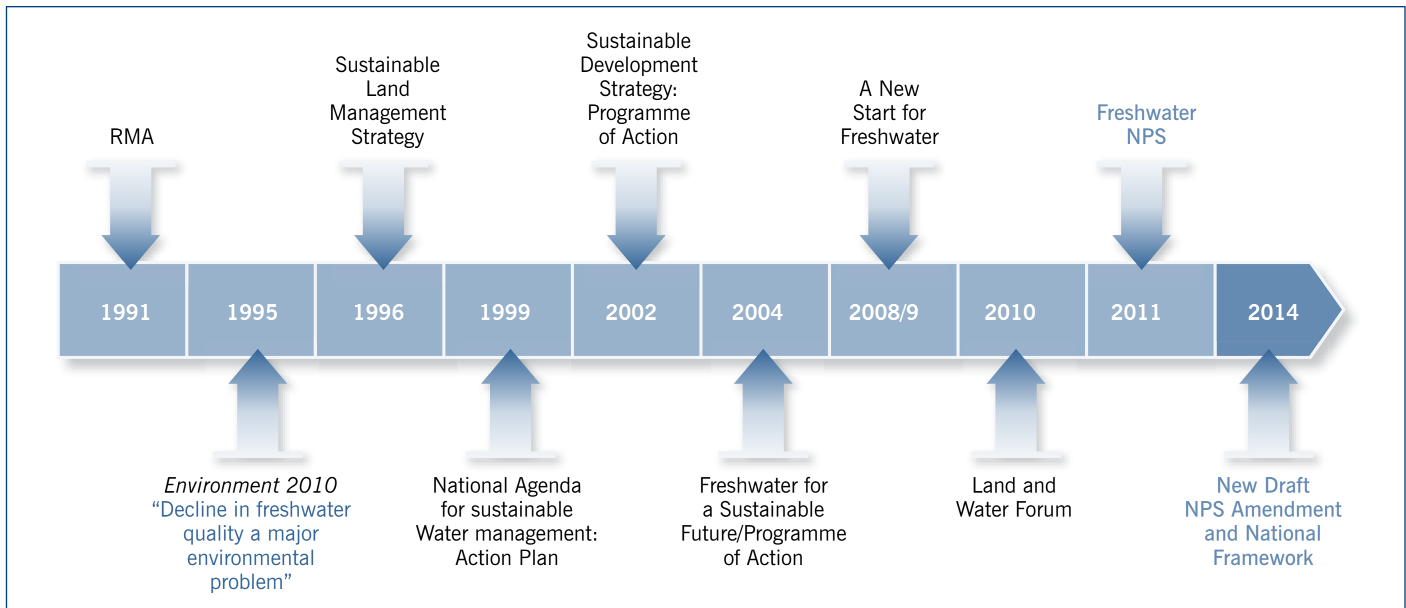
Ann Brower is a Senior Lecturer in Environmental Policy at Lincoln University. She holds a PhD from the University of California, Berkeley, and a master's from Yale.
Ike Kleynbos holds a Bachelor of Environmental Management and Planning degree from Lincoln University and is currently doing postgraduate studies at Lincoln.

Background

Between 2010 and 2012, Canterbury Regional Council and the Christchurch City Council faced governance crises. The former was accused by Canterbury's Mayoral Forum of failing to produce a plan for resource use and of processing resource consents slowly. The latter experienced an 18-month spate of earthquakes that left 80% of the buildings in the central business district on the to-be-demolished list. In the February 2011 quake there were also 42 deaths in city streets, and 133 deaths in city inspected buildings.

In one case the government intervened by suspending local elections indefinitely, replacing the councillors, suspending some jurisdiction of the Environment Court and parts of national legislation in Canterbury, and changing rules for water conservation and use. In the other case, local elections and council remained intact, while emergency powers were

Figure 1: Freshwater Policy: 20 years of policy development and decisions



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granted to a new government department for five years.

One might expect the more drastic and long-lived central government intervention in response to the more drastic crisis. Canterbury defies such expectation. Though the justification for intervention appeared stronger in the earthquake, the less life-and-death crisis received the more drastic intervention. We explore this difference. We find that government interventions go well beyond who is at the top. The method of choosing who is at the top (local elections or government appointment) is but a small part of the changes in natural resource rules in Canterbury. We propose that there might be broader motives, with national implications, for the changes in Canterbury governance, and for the differences observed. Those other motives might be as simple as facilitating irrigation approvals, or as far-reaching as using Canterbury as a testing ground for national changes to environmental laws.

Christchurch and Canterbury before 2010

Under normal circumstances in New Zealand the authority to manage water, soil, geothermal resources, natural hazards, pollution, costal management, land use, subdivision and hazardous substances is devolved and delegated to district and regional councils by way of the Resource Management Act 1991 (RMA). Those district and regional councils enjoy reasonable autonomy, with flexible direction from central government.

The Resource Management Act aims to 'promote the sustainable management of natural and physical resources' (section 5). The RMA's governance structure allows the government to provide central guidance to district and regional councils in the form of national policy statements (NPS) on resources such as freshwater, biodiversity and the like. Regional councils then use the NPS to establish regional goals (in a regional policy statement); then district councils work within and implement both the national and regional policy statements. This planning hierarchy establishes a system in which local authorities make decisions within central guidelines.

However, these national policy statements have been slow to arrive (see Figure 1). Thus, for freshwater and other resources the RMA planning hierarchy has had little at the top (Oram, 2007; Memon and Gleeson, 1995). This lack of central direction has led local and regional authorities to facilitate strategic land use policy through the Local Government Act 2002, as it offers broader strategic tools than the RMA (Swaffield, 2012). Examples of this include the current Greater Christchurch Urban Development Strategy, and Christchurch's 2006 Central City Revitalisation Strategy. They are strategic attempts to create planning certainty within Christchurch through the direct intervention of a territorial authority.

Perhaps more concerning, this lack of central planning guidance unintentionally reverses the intended hierarchy of the RMA. Rather than planning within the intended hierarchy, communities are instead forced through a bottom-up approach of case-by-case decision-making with its attendant inefficiencies and inequities (Brower, 2008, pp.57-8).

Between 2010 and 2012 both ECan and the Christchurch City Council faced governance crises deemed to be so pressing that the central government intervened. Thus, 'normal circumstances' described above started to change in April 2010 with the passage of the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (ECan Act). They changed again in September 2010 and March 2011 with passage of the first and second earthquake acts.

Environment Canterbury

Let us start with the regional council, Environment Canterbury or ECan. Section 30 of the RMA authorises Ecan, like all regional governments, to manage the water, air and coastal resources of the region. The ECan Act replaced the ECan councillors with government-appointed commissioners, suspended regional elections, suspended jurisdiction of the Environment Court over certain types of decisions, allowed the minister

to selectively suspend sections of environmental law, and changed the rules for river protection (Brower, 2010). The statute set an expiry date, of 2013. In 2013 Parliament amended the act to extend the expiry date to 2016 (Public Act 2013 No. 6). In 2015 Cabinet proposed another amendment, not an expiration. None of this applied to other regions; neither was it quake-induced; nor did it happen overnight.

In 2009 the government commissioned a review of the RMA which suggested abolishing regional councils altogether (Gorman, 2009b). Amy Adams, now minister of justice, reminded then (and now) minister for the environment Nick Smith that the government held the power to sack poorly performing regional and district councils, with solid evidence of that poor performance (ibid.). Smith then threatened to use these powers if ECan failed to speed up consents-processing. Governments had sacked councils before, without special legislation (Staff, 2000, 2001). The communications officer of the Department of Internal Affairs, Tony Wallace, further reminded the public that the government could replace the council only in cases of 'significant and identifiable mismanagement of the resources of the local authority, or [inability] to perform and exercise its duties' (Gorman, 2009b).

Later in 2009 the Canterbury Mayoral Forum wrote to Smith asking for central government intervention in ECan. The government inquiry, led by former National deputy prime minister Wyatt Creech (Gorman, 2009e), suggested 'a new regional authority to handle all water issues', echoing the government's review of the RMA eight months earlier (Staff, 2010). It argued that ECan had suffered from the 'gold rush' effect of the 'first come, first served' case-by-case decision-making for water rights, which slowed consent processing. Creech (Creech at al., 2010) found no current and ongoing substance to the mayors' criticism, instead expressing optimism that systems had been sufficiently amended to allow for adequate consent processing.

Creech was most concerned by the council's ability or otherwise to create effective regional policy. At the time, ECan was in the midst of both reviewing its regional policy statement and creating its natural resources regional plan.[1] Different teams were working on the different plans, creating potential for conflict. Creech argued that this highlighted ECan's inability to create definitive and durable regional policy.

Many have said that the Creech report prompted the ECan Act. But Smith did not need special legislation to replace ECan councillors with commissioners; his government held the power. There are several reasons the government might have gone to the trouble of special legislation to create powers it already had. Perhaps it: 1) was not confident that ECan had breached legislative thresholds; or 2) had other goals. Understanding the rest of the ECan Act sheds light on the possibility of those other goals.

Section 31 of the ECan Act gives the minister for the environment the power to decide where and when environmental law applies in Canterbury. The 'transitional regulations' of section 31 give the minister the power to specify that certain sections of the RMA 'do not apply, despite being applied under this Act; or do apply, despite not applying under this Act' (section 31(b)(i)(A, B)). Constitutional law scholars call section 31 a 'Henry VIII clause', because it creates the authority to dis-apply the empowering legislation (the RMA) selectively and at will without recourse to Parliament (Geddis, in Gorman, 2010). This is akin to selectively beheading inconvenient sections of the RMA, as dear old Henry beheaded inconvenient wives.

Section 31 gives supremacy to subordinate legislation (ECan Act) over primary legislation (RMA). It also allows Parliament to abdicate its authority, by delegating to the political executive (minister for the environment) the power 'to make regulations suspending, amending, or overriding primary legislation' (Joseph, 2007, p.503). New Zealand constitutional law scholar Philip Joseph calls this type of clause 'constitutionally objectionable where they are used for general legislative purposes' (Joseph, 2010, p.195).

Section 52 then restricts Cantabrians' access to the Environment Court. Under the ECan Act, Cantabrians can no longer appeal the substance of regional government decisions about water conservation orders (WCOs) and the regional plan and policy statements. While all other of the ECan Act's provisions were meant to expire at the next election, even with its flexible date and form, section 46(4) excludes the Environment Court from Canterbury water conservation order proceedings. Section 46(4(a)) directs that the revocation of appeals to the Environment Court on WCOs will continue to apply even after the next election (Brower, 2010). This removes the court's 'sober second look' (Waldron, 2008) at the substance of environmental decisions, and risks compromising the quality of decision-making under the RMA in Canterbury. In the end section 46(4) mattered little, as the non-electoral provisions are set to outlast the electoral provisions.

Section 46 also changed the rules for new WCO applications.[2] In all other regions of New Zealand regional councils must prioritise protection of a river's nationally outstanding ecological, recreational, cultural, or wild and scenic

A resource management lawyer acting for the Fish and Game councils of New Zealand commented on Radio New Zealand: 'it's still a possibility that those iconic rivers will remain protected, but I wouldn't bet … on it'

characteristics before allowing resource use, unless the economic potential was important on a national scale.[3] The ECan Act changed the order, so that conservation loses its priority status. In other words, it took the conservation out of water conservation orders. But again, this was only in Canterbury. A resource management lawyer acting for the Fish and Game councils of New Zealand commented on Radio New Zealand: 'it's still a possibility that those iconic rivers will remain protected, but I wouldn't bet … on it' (Baker, quoted in Pettie, 2010).

The Environment Court appeal on the Hurunui River water conservation order was scheduled to begin on 30 May 2010. Parliament passed the ECan Act under urgency in April and changed the rules at half-time on the Hurunui. Jurists view shifting the goalposts at half-time as constitutionally objectionable because it violates the principle of equal application of the law (Joseph, 2007, p.212).4 In other words, the non-electoral provisions of the ECan Act – the authority granted in section 31 to selectively not apply the RMA, the supremacy of subordinate regional legislation, the partially suspended jurisdiction of the Environment Court, and half-time changes to river protection rules – change the shape of regional democracy in Canterbury more than suspending elections did.

On 18 March 2015 Nick Smith released a discussion document proposing a plan for the future of ECan, and invited public submissions. The proposal is to impose a mixed-governance model, with seven elected councillors (in 2016) and six appointed commissioners. Smith said this model for Ecan

> enables a majority of elected representatives while ensuring continued momentum on the Canterbury Water Management Strategy and earthquake recovery work. We considered other options of a fully elected council and alternatives that involved substantive changes to council functions. Our preliminary view is that these carry too many risks given the critical stage of work on the Canterbury Water Management Strategy and the earthquake recovery. (Pearson, 2015a)

Given the government's keen attention to leading the ECan cart to remediate apparent regional policy failures, one would expect similarly enthusiastic attention to the local Christchurch City Council's troubles following the earthquakes of 2010–2011

On 22 June 2015 Cabinet considered and affirmed the proposal (Staff, 2015).

Under the new structure ECan would still enjoy the extra powers, the non-electoral provisions described above. The report also hints, rather openly, that the soon-to-be-released reforms to the RMA will spread Canterbury's special powers, and perhaps its mixed-governance model, around the country. The report states:

> Since the review provisions in the ECan Act came into force, reforms have been proposed to the RMA, which if enacted, would make planning and consenting functions more efficient and effective and will remove the need for the new governing body to have special power. However, a transitional arrangement could be put in place for [Canterbury's] new governing body in 2016, to extend the special powers. This could ensure that there is no period in which there is a need for a return to the standard resource management arrangements before the RMA reforms are implemented. To return to standard RMA arrangements for just a short period may be an inefficient use of resources and a source of confusion for Canterbury communities and other users of the resource management system. (Ministry for the Environment, 2015, p.22)

Whether this statement foreshadows the future of the RMA remains to be seen. If it does portend the contents of already-signalled changes to the RMA, then we might see the rest of New Zealand following the Canterbury model, with its bottom-up collaborative approach to water management in the Canterbury water management strategy and its top-down directive approach to representation in its mixed-governance model. If this comes to pass it would be legislation by synecdoche. Deborah Stone describes synecdoche, a type of symbolism that represents the whole by one of its parts, as common in politics:

> Politicians or interest groups deliberately choose one egregious or outlandish incident [such as Canterbury water] to represent the universe of cases, and then use that example to build support for changing an entire rule or policy that is addressed to the larger universe [of natural resource management in all of New Zealand]. … As with other forms of symbolic representation, the synecdoche can suspend our critical thinking. … The strategy of focusing on a part of a problem … is likely to lead to skewed policy. Yet it is often a politically useful strategy … because it can make a problem concrete, allow people to identify with someone else, and mobilize anger. Also it reduces the scope of the problem and thereby makes it more manageable. (Stone, 2002, pp.146-8)

In its resemblance to a cart leading its horse, legislating by synecdoche turns the

RMA's intended planning hierarchy on its head. Further, it gives policy supremacy to a subsidiary region.

Christchurch City Council

Given the government's keen attention to leading the ECan cart to remediate apparent regional policy failures, one would expect similarly enthusiastic attention to the local Christchurch City Council's troubles following the earthquakes of 2010-2011. The government faced many of the same issues with the Christchurch City Council as it had with ECan – after the September 2010 quake, after the February 2011 quake, and in the building consents crisis of 2013. In each of these cases the government created special powers for the city and district councils, by way of orders in council (Canterbury Earthquake Response Recovery Act 2010), and later for itself (Canterbury Earthquake Recovery Authority Act 2011). But it never sacked the councillors themselves, even though in January 2012 one councillor called for the Christchurch City Council to be disbanded (Gorman and Sachdeva, 2012). CERA – the Canterbury Earthquake Recovery Authority – is due to last only five years and the building consents commissioner stayed just one year, compared to ECan's six and counting.

In contrast to the electoral changes introduced by the ECan Act, which had legal foundations in active statute and precedent, the special powers during a prolonged disaster recovery were not foreshadowed by the Civil Defence and Emergency Management Act. Hence Parliament needed to create them by legislation (Brookie, 2012, p.20; Rotimi, 2010, pp.18-20), just as it needed legislation to enact the non-electoral provisions of the ECan Act described above.

Between 4 September 2010 and 22 February 2011

When the ten-day state of emergency after the 4 September 2010 earthquake ended, Parliament passed the Canterbury Earthquake Response and Recovery Act 2010 (CERR Act, or first earthquake act) under urgency. Section 6 allows the executive to administer quick orders in council that 'may make exceptions from, modify or extend the provisions of any New Zealand statute'.

The orders in council tool in section 3(c) allowed for as-needed and on-demand legislative changes to speed recovery or enhance public safety in the streets of Christchurch, without consultation with Parliament. These exceptions to laws on the books were not limited to public safety or securing the essentials of life, as one might expect in an extended state of emergency. Indeed, critics warned that the expansive powers were vulnerable to abuse (Geddis et al., 2010), and that they granted ministers the 'unfettered right to legislate by decree' (Public Issues Committee of the Auckland District Law Society, 2010). Echoing constitutional concerns over the ECan Act six months earlier, the Auckland District Law Society said: 'for Parliament to transfer such extensive powers to the Crown, and thereby abdicate its own responsibility on behalf of the people, is constitutionally very questionable' (ibid.). The only constitutional law academic who signed the letter objecting to the constitutional 'repugnance' of the ECan Act, but did not sign Andrew Geddis's open letter of concern about the first earthquake act, was University of Canterbury professor Philip Joseph (Geddis et al., 2010). To Joseph, the circumstances of the latter were sufficiently different to and more grave than the former that it was more appropriate to invoke the flexible nature of New Zealand's constitutional arrangements in crafting an effective and equitable response.

Before the CERR Act, Christchurch City Council was bound by the RMA to follow procedures and consent processes for demolishing, constructing or altering buildings. Under CERR Act authority, the Crown issued 14 orders in council amending or repealing existing legislation and regulations, in fields as diverse as resource management, civil defence, historic places and local government. The city council used the special powers granted by orders in council to demolish buildings threatening public safety only three times.[5] Many judged the council harshly for this (Heather, 2012).

After 22 February 2011

The Canterbury Earthquake Recovery Act 2011 (the CERA Act, or second earthquake act) created many of the same special powers that the first earthquake act had. But this time Parliament gave the powers to a new government department – CERA – and instructed councils to act 'as directed'. Further, the CERA Act gave CERA the power to: amend or revoke RMA documents and city plans; close or otherwise restrict access to roads and other geographical areas; demolish buildings; otherwise enter and manage risk on private land and property (with notice in the case of marae and dwellings); and require compliance of any person with a direction made under the act (Buddle Findlay, 2011). The Canterbury Earthquake Recovery Act expires in April 2016, though some of the special powers created by it might persist, according to the minister for earthquake recovery (New Zealand Government, 2014).

> In the wake of the series of earthquakes that left 80% of the buildings in the Christchurch CBD on the to-be-demolished list, the Christchurch City Council faced a predictable flood of building consent applications.

The building consents crisis of 2013

In the wake of the series of earthquakes that left 80% of the buildings in the Christchurch CBD on the to-be-

demolished list, the Christchurch City Council faced a predictable flood of building consent applications. In February 2012 the council announced that it had hired 69 new full-time staff to process consents (Christchurch City Council, 2012). By 1 July 2013 those extra staff were not enough. International Accreditation New Zealand revoked the council's accreditation, and the prime minister held a press conference announcing that he was revoking the council's authority to issue building consents. Revoking a council's authority was 'unprecedented', Key said, but, rather than take unilateral action through an act of Parliament, he, several ministers and officials would meet with the Christchurch City Council to put 'options on the table and seek … council agreement with a proposed course of action' (Key, quoted in Cairns and Young, 2014). Within a fortnight the government had appointed a Crown manager to oversee the building consents department for one year, and the Christchurch City chief executive, Tony Maryatt, had been put on 'gardening leave' indefinitely (Bayer, 2013).

To some commentators' mild surprise, the elected councillors and their mayor kept their jobs throughout (McCrone, 2015).

Allowing the Canterbury case study to guide national legislation looks like legislating by synecdoche.

Discussion

It is timely and instructive to compare the trajectories of Christchurch and Canterbury. It is particularly so as Christchurch looks to a post-CERA city, Canterbury looks to partial regional elections, the government looks set to reform the RMA, and discussions around amalgamation continue in Wellington and elsewhere.

In Christchurch the government faced, and still faces, an unprecedented challenge. Most expected government intervention. Environment Canterbury faced challenges with plenty of precedent, and well-known roots in the national context. The government had several policy options for ECan, each fairly well-trodden paths. It could have followed RMA procedure – adopting national policy statement guidance. A slightly less well-trodden path was replacing elected councillors with appointed commissioners. It is well within the government's power to do so, if the council has documented deficiencies. Yet the government created its own path for ECan, passing special legislation under urgency.

Perhaps among the government's primary goals were the non-electoral provisions of the ECan Act, which changed water conservation orders and affected applicability of both the Environment Court and sections of the RMA. The minister of agriculture at the time, David Carter, said as much in a 2010 speech to Irrigation New Zealand:

> I would have thought what happened recently with Environment Canterbury would be a signal to all regional councils to work a bit more constructively with their farmer stakeholders …We had to act here in Canterbury because the situation was untenable if we are going to seriously make progress in delivering this irrigation. (Carter, quoted in Williams, 2010)

Although 2016 will see partial regional elections return to Canterbury, the non-electoral provisions will remain.

A few months after the ECan Act was passed, the government created special emergency powers for Christchurch City Council, which used them sparingly after the major quakes of 4 September and 26 December 2011 (Heather, 2012). After the 22 February 2011 quake the government handed those same special powers, and more, to a new government department, which used them less sparingly. Then the government revoked consenting authority and replaced a council department for a year in the building consents crisis of 2013.

While the legislative framework surrounding the Christchurch earthquake response is set to expire in April 2016, the ECan anomaly is set to endure. According to our reading, the Ministry for the Environment's proposal for mixed governance seems to imply that the new ECan model will act as a transitional phase, until the proposed RMA reforms spread the non-electoral provisions of the ECan Act to the rest of the country. However, the changed numbers in Parliament following the 2015 Northland by-election might render the government unable to pass its preferred changes.

Conclusion

We are not arguing that any of these actions were frivolous or unnecessary. We note with interest the apparent over-legislation for ECan and under-legislation for Christchurch City Council. There is a discrepancy between well-trodden actions the government could have taken in replacing elected councils, and the actions the government took for ECan instead. This discrepancy suggests that in amalgamation talks, territorial authorities would be wise to be careful what they wish for.

The Canterbury comparison has broader implications for national environmental law and legislative style. The government's 2015 proposed amendment to ECan governance hints that many of the non-electoral provisions of the ECan Act will be echoed in RMA amendments foreshadowed for 2015. Allowing the Canterbury case study to guide national legislation looks like legislating by synecdoche. This echoes constitutional scholars' criticism of the Henry VIII clause, section 32, of the ECan Act. Legislating by synecdoche gives supremacy to a subordinate regional governance model. In other words, it would be the national horse leading the

regional cart from 2010-2015, until the regional cart is able to reform the entire national horse. The former is well within the RMA governance model; the latter is less so.

1 The NRRP was 'stuck' in its schedule 1 phase, therefore still in development and not notified yet. The worry was that when it was notified, it would clash with the regional policy statement. Option 1 of the Creech report suggests the creation of the Canterbury Regional Water Authority, which would create the plan (and the report details how the plan should work), and integrate with the 'remaining sections of the NRRP' (Creech et al., 2010, p.16).

2 Section 199 of the RMA defines WCOs as follows: 'the purpose of a water conservation order is to recognise and sustain –
(a) outstanding amenity or intrinsic values which are afforded by waters in their natural state;
(b) where waters are no longer in their natural state, the amenity or intrinsic values of those waters which in themselves warrant protection because they are considered outstanding.
(2) A water conservation order may provide for any of the following:
(a) the preservation as far as possible in its natural state of any water body that is considered to be outstanding;
(b) the protection of characteristics which any water body has or contributes to, and which are considered to be outstanding, –
(i) as a habitat for terrestrial or aquatic organisms;
(ii) as a fishery;
(iii) for its wild, scenic, or other natural characteristics;
(iv) for scientific and ecological values;
(v) for recreational, historical, spiritual, or cultural purposes;
(c) the protection of characteristics which any water body has or contributes to, and which are considered to be of outstanding significance in accordance with tikanga Maori.'

3 The priority for protection arises from the requirement that 'particular regard' be given to section 199, and then that only 'regard' be given to the matters listed in section 207(a)–(c).

4 Citing Thomas J in R v Poumako [2000] 2 NZLR 695 at 712-713.

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Michael Macaulay and Robert Gregory

So Near Yet So Far

implications of the Organised Crime and Anti-corruption Legislation Bill

When is a bribe not a bribe? A surprisingly large number of times under current New Zealand law. So many, in fact, that its outdated legislation has regularly been cited as a key reason why, despite its deserved reputation for good governance, New Zealand remains one of very few signatories to the United Nations Convention against Corruption (UNCAC) that has yet to ratify it, alongside Syria, Bhutan, Barbados and Japan.[1] The Organised Crime and Anti-corruption Legislation Bill (OCACL Bill) is explicitly designed to change this state of affairs. As stated by Amy Adams, the minister of justice:

Michael Macaulay is the Director of the Institute for Governance and Policy Studies, School of Government, and is the co-editor of the *International Journal of Public Administration*.
Robert Gregory is an Emeritus Professor of Political Science in the School of Government, Victoria University of Wellington. Among his publications are several relating to issues of accountability, responsibility and corruption in New Zealand.

> A range of amendments in the bill will also strengthen New Zealand's ability to combat bribery and corruption. These will enable the Government to ratify the United Nations Convention Against Corruption, which is the first global instrument to address corruption in both the public and private spheres. (Adams, 2015)

An omnibus bill, which was introduced on 25 June 2015 after a second reading in May, the OCACL Bill makes amendments to 12 other acts and covers such subjects as money laundering, drug trafficking and people trafficking. There is no doubt that it does many good things and it is broadly to be welcomed. Yet in terms of bribery and corruption it leaves loopholes that not only potentially damage New Zealand but are inconsistent with the professed desire to ratify UNCAC.

This article will briefly review what the changes to the legislation are in terms of bribery and corruption, and will focus on the arguments surrounding a remaining

loophole which potentially offers a legal defence for bribery of a foreign public official. It will suggest that the existence of this defence is not only wrong in and of itself, it is also potentially counter-productive towards the aim of ratifying UNCAC. It will then discuss two other areas of interest that raise questions that are still to be answered: the role of politically exposed persons and trading in influence.

The catastrophic yet frequently unacknowledged effects of corruption have been noted on many occasions. A study in the UK observed that, whereas some illegal activities get far more attention in the media, such as terrorism, they actually devastate far fewer lives (and kill fewer people) than corruption (Transparency International UK, 2011).[2] The classic case against the manifold threats of bribery is well rehearsed:

> The effects of corruption on society are well documented. Politically it represents an obstacle to democracy and the rule of law; economically it depletes a country's wealth, often diverting it to corrupt officials' pockets and, at its core, it puts an imbalance in the way that business is done, enabling those who practise corruption to win. The language of bribery also deceives, implying that what is being offered or expected is of no consequence. But corruption is not a victimless crime; it leads to decisions being made for the wrong reasons. Contracts are awarded because of kickbacks and not whether they are the best value for the community. Corruption costs people freedom, health and human rights and, in the worst cases, their lives (Kemp, 2014).

In terms of business alone, the World Bank estimates that corruption costs approximately US$1 trillion per year globally. Doing business in corrupt markets has been found to add costs equivalent to a 20% tax on business, with an additional 25% of the cost of procurement contracts in developing countries. Firms that win contracts by paying bribes have been found to under-perform for up to three years before and after winning the contract for which the bribe was paid. Firms that bribe are fixated on sales growth, not on maximising shareholder value. The higher the rank of person bribed, the lower the benefit firms receive, while the size of the bribe more than offsets the value of the contract to the firm (Cheung, Rau and Stouraitis, 2011).

Bribery also has a negative effect on business morale. Healy and Serafeim (2015) argue that there are a number of factors that can adversely affect workers' morale once corruption has been discovered. First, it is important to note who may be involved in the act of bribery itself; the more senior the person, the more negative the impact on workforce morale. Second, who discovered and reported the incident is also important; there is a correlation between being discovered by front-line staff and the way people subsequently feel about the action. Most important of all, however, is the reaction of the firm upon uncovering corruption and bribery. Cases in which the main perpetrator is dismissed are less likely to be associated with a negative impact on firm competitiveness.

Of all these variables, however, by far the least important is the size of the bribe: 'Size does not matter when it comes to bribery … Small or big bribing is bad business in the long term' (ibid.). In short, any size bribe has a detrimental impact.

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Corruption and bribery legislation in New Zealand: the Crimes Act 1961

There are a number of pieces of legislation that currently touch upon aspects of bribery and corruption, including the Serious Fraud Office Act 1990, the Criminal Proceeds (Recovery) Act 2009, the Protected Disclosures Act 2000, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, the Commerce Act 1986 and the Local Authorities (Members' Interests) Act 1968. New Zealand is also subject to extra-territorial legislation, notably the US Foreign Corrupt Practices Act and the UK Bribery Act 2010. Of chief importance, however, are two pieces of legislation: the Secret Commissions Act 1910, which deals primarily with private sector corruption, and the Crimes Act 1961, which outlines offences against public officials and which we will primarily focus on here.

The Crimes Act 1961 creates specific offences of bribery and corruption of: judicial officers (section 101); minister (section 102); members of Parliament (section 103); law enforcement officers (section 104); public officials, including local government officials and members of other public bodies (section 105 and, specifically the corrupt use of official information, sections 105A and105B), and foreign officials (sections 105C and 105D). In terms of domestic bribery the law is unequivocal: a bribe is defined as 'any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect' (section 99). There are no exceptions or grey areas. Sentences are also prohibitive, with maximum imprisonment of either seven or 14 years depending on the offence. In all cases prosecutions can proceed only with the express permission of the attorney-general (section 106(1)).

Bribery of foreign officials, however, is somewhat more complex. The Crimes Act was already the subject of a number of amendments for bribery of foreign officials, which was to bring legislation into line with the OECD Convention on Combating Bribery of Foreign Public Officials (Newman and Macaulay, 2013).

Box 1: Article 16, UNCAC

Article 16. Bribery of foreign public officials and officials of public international organizations

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Incidentally, the OECD convention was invoked in Parliament in May 2015 during questions on the gifting of $6 million of livestock and farm equipment to Saudi Arabian businessman Hamood Al Ali Khalaf, allegedly as an inducement for expediting the free trade agreement (Parker, 2015). Even taking these into account, though, a number of loopholes remained which provided two separate defences for bribery and corruption.

Section 105E states that an offence only occurs if it:

(a) was done outside New Zealand; and

(b) was not, at the time of its commission, an offence under the laws of the foreign country in which the principal office of the person, organisation, or other body for whom the foreign public official is employed or otherwise provides services, is situated.

Section 105C.3 also allows for a defence of bribery, if:

(a) the act that is alleged to constitute the offence was committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action; and

(b) the value of the benefit is small.

This second defence applies to what is commonly known as ‘facilitation payments’ or ‘grease money’. Clearly it would have no bearing on a case such as the one above; but it would apply to payments that are designed to speed up a service or move one to the front of a queue. They are frequently justified as essential for doing business in jurisdictions where such payments are widely accepted, if not the norm. Furthermore, it is argued that *not* engaging in such payments can lead to a diminution of competitive advantage: criminalising small-scale bribes would be bad for New Zealand business. Such a view is challenged, as has been shown, by empirical research, but, nonetheless, how has the OCACL Bill responded to these challenges?

Bribery of foreign public officials

There is no question that the OCACL Bill makes substantial ground in bolstering legislation: for example, increasing the sentencing for private corruption under the Secret Commission Act 1910 to imprisonment for up to seven years. In addition, the Crimes Act has undeniably been strengthened. One major development in terms of the Crimes Act is that the ‘national law’ defence of section 105E has now been dropped altogether. It is no longer relevant whether or not a corrupt act is legal in another jurisdiction; from now on it will be illegal under New Zealand law.

There are still some areas, however, that are open to debate. The first is that the defence of bribery of foreign officials in section 105C.3 remains unchanged. This clause was challenged by three different submissions to the law and order select committee (from the Institute for Governance and Policy Studies, Transparency International New Zealand and the Human Rights Commission) and was also the subject of a supplementary order paper by Green MP David Clendon which asked for its removal (Clendon, 2015).

UNCAC’s wording is unequivocal: bribery is not acceptable no matter how large or small the value, or where the jurisdiction may be. It is as clear for domestic bribery as it is for overseas bribery (see Box 1).

During the first reading debate the defence in section 105C.3 was explicitly linked to the facilitation payments and was addressed by, among others, Amy Adams:

> A final amendment to the foreign bribery offence addresses the existing exception for small payments made to foreign public officials for the sole purpose of expediting a service to which the payer is already entitled, commonly known as facilitation payments. It is important to note that this exception has been part of our law for many years and is important to ensure that New Zealanders acting in good faith are not unintentionally criminalised … I note that this is consistent with the treatment of such facilitation payments in Australia, in the US, and in South Korea, and with operational practice in the UK. (Adams, 2014)

This is an interesting response for a number of reasons. The reference to ‘operational practice in the UK’ is

perhaps a little disingenuous. Such bribes are illegal under UK law, and always have been; long before the advent of the Bribery Act 2010, in fact. It is true that the director of public prosecutions has provided guidance to suggest that it is unlikely that an individual or company would be prosecuted for low-value facilitation payments, but this would apply equally to New Zealand anyway, which requires the assent of the attorney-general for all bribery prosecutions. There is a distinction between making a judgement call on a case-by-case basis, and a legal defence that is backed by legislation, which, under the new provisions of the OCACL Bill, has been blurred.

Similarly, the reference to other jurisdictions is not entirely accurate. While it is true that the US Foreign Corrupt Practices Act allows facilitation payments, the US has come under substantial pressure, particularly from the OECD, to close that loophole. Australia has been repeatedly criticised by both the OECD and the UN for its stance on facilitation payments: in the UN's review of Australia's commitment to UNCAC in 2012, for example, there was substantial criticism and an express call for a review of its policy on facilitation payments. The UN's position was restated yet again during the fifth session of the Conference of the States Parties to the Convention (November 2013), which states: 'It is a different matter if the national law extends only to 'bribes', leaving facilitation payments outside the scope of criminal liability … *In such cases the State party clearly falls short of fulfilling Convention requirements*' (emphasis added).[3] It is also worth stating that other countries have recently altered their own legislation. In 2013, for example, the Canadian parliament passed an act to amend the Corruption of Foreign Public Officials Act to remove facilitation payments as a defence.

The OCACL Bill does, however, tackle facilitation payments in a different way. As the minister of justice suggests, one of the ways that facilitation payments will now be dealt with is through greater transparency. The bill amends section 194 of the Companies Act, which now 'requires companies to keep a record of transactions that constitute acts of the kind described in section 105C(3) of the Crimes Act 1961'. In other words, as long as they are suitably recorded, small bribes of overseas officials will be permissible.

In addition, the facilitation payments issue has been addressed by changing the definition of routine government action in section 105C.1 to:

(c) any action that provides –
- (i) an undue material benefit to a person who makes a payment; or
- (ii) an undue material disadvantage to any other person.

Amending the definition of routine government action to include 'an undue material disadvantage' has twice been identified as the means by which the Crimes Act now facilitates ratification of UNCAC. The Ministry of Justice offered the following justification in the select committee report,[4] and Amy Adams repeated it during her speech to Parliament:

> The bill tightens this already narrow exception, such that it will not now apply to payments that provide an undue material advantage to the payer or an undue disadvantage to anyone else. This *maintains compliance with the UN convention, which requires parties to criminalise payments that provide the recipient with an undue advantage* (Adams, 2014, emphasis added).

These words are worth unpicking a little further. Arguably, Adams' explanation rests on an extremely narrow reading of UNCAC, relying on the minutiae rather than the overall message. It bears restating that UNCAC does not allow any forms of bribery at all. None. Indeed, this is one key reason why the convention does not use the words 'facilitation payments' anywhere in its text; it does not make distinctions between different types of bribes.

Nonetheless, articles 15 (bribery of national public officials) and 16 (bribery of foreign public officials and officials of public international organisations) both explicitly refer to an official acting, or refraining from acting, 'in the exercise of his or her official duties'. It does not distinguish between 'routine government actions' and other types of action. The OCACL Bill clause, therefore, regarding whether or not it offers an advantage or disadvantage is largely immaterial. In addition, however, if a 'routine government action' is defined as one that does not confer an advantage, then defence under section 105C.3 is now redundant. What else can 'expediting a routine government action' possibly mean, other than to confer this advantage? The simplest and most elegant solution would have been to remove 105C.3 (a) and (b) from the Crimes Act.

Besides which, removing any further doubt around bribery is something that New Zealand should be leading the way in. It's just the right thing to do. A facilitation payment is still a bribe no matter how small the amount, and such payments inculcate a culture of corruption. Given New Zealand's leadership in the field of ethics and integrity, and also its deserved global reputation for anti-corruption,

> … New Zealand's leadership in the field of ethics and integrity, and also its deserved global reputation for anti-corruption, it seems anomalous that we would wish to leave such a loophole in place.

Box 2: Article 52 (1), UNCAC

Article 52: Prevention and detection of transfers of proceeds of crime

(1) … each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require banks within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained *by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and associates*. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purposes of reporting to competent authorities and should not be so construed as to discourage or prohibit banks from doing business with any legitimate customer [emphasis added].

it seems anomalous that we would wish to leave such a loophole in place. The Serious Fraud Office (in partnership with Transparency International New Zealand and other organisations) now provides anti-bribery and corruption training for businesses operating abroad. It is notable that the training suggests that, as good practice, facilitation payments should not be paid. Removing clause 105C.3 would simply formalise in law this good practice.

There seems to be a somewhat Janus-faced view of the problem. The OCACL Bill offers two solutions to a problem that it suggests is not a big issue. Ironically, both of these solutions still go up against the wording and spirit of the relevant sections of UNCAC.

Politically exposed persons

Another area in which the OCACL Bill seeks to enact greater affinity with UNCAC is money laundering. The explanatory note to the Organised Crime and Anti-corruption Legislation Bill states, *inter alia*, that:

> The Bill also contains amendments to enhance New Zealand's anti-corruption legislative frameworks and bring New Zealand into line with international best practice as set by the United Nations Convention Against Corruption … The Bill is intended to ensure New Zealand's full compliance with the United Nations Convention Against Corruption, while taking into account the existing legislative framework and the extent to which obligations under that Convention can be met through non-legislative means.

One area that has potentially been overlooked, however, is that of 'politically exposed persons'. Legislation on politically exposed persons is found in section 26 of New Zealand's Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which states that:

(1) The reporting entity must, as soon as practicable after establishing a business relationship or conducting an occasional transaction, take reasonable steps to determine whether the customer or any beneficial owner is a politically exposed person.

(2) If a reporting entity determines that a customer or beneficial owner with whom it has established a business relationship is a politically exposed person, then –
  (a) the reporting entity must have senior management approval for continuing the business relationship; and
  (b) the reporting entity must obtain information about the source of wealth or funds of the customer or beneficial owner and take reasonable steps to verify the source of that wealth or those funds.

(3) If a reporting entity determines that a customer or beneficial owner with whom it has conducted an occasional transaction is a politically exposed person, then the reporting entity must, as soon as practicable after conducting that transaction, take reasonable steps to obtain information about the source of wealth or funds of the customer or beneficial owner and verify the source of that wealth or those funds.

But who exactly counts as a politically exposed person? In the New Zealand legislation a politically exposed person is defined as 'an individual who holds, or has held at any time in the preceding 12 months, *in any overseas country* [emphasis added] the prominent public function of' – and these are listed. Anti-money laundering legislation on politically exposed persons, therefore, only applies to persons who have held positions outside the country. It does not apply domestically. Again, this stands in opposition to UNCAC (see Box 2).

Thus, UNCAC makes no distinction between foreign or domestic politically exposed persons (although, notably, it does not use the term politically exposed person directly, unlike the New Zealand legislation). The new OCACL Bill does not update legislation around politically exposed persons at all, and therefore, again, a number of questions emerge. Does the OCACL Bill in fact satisfy the requirements as stated in article 52 (1) of UNCAC? As this article does not distinguish between foreign and domestic politically exposed persons, it must apply to both. And yet the bill says nothing about politically exposed persons, unlike the Anti-Money Laundering and Countering Financing of Terrorism Act, which, however, applies only to foreign politically exposed persons. We recall that the foreign affairs, defence and trade select committee was of the view in 2009 that in regard to the Anti-Money Laundering and Countering Financing of Terrorism Bill, existing legislation was

sufficient to cover domestic politically exposed persons.

As with facilitation payments, there still seems to be a disconcerting attitude that offences in other jurisdictions are not the same as in New Zealand itself. And also, there are still gaps in New Zealand's laws that may yet prevent it from ratifying the UNCAC.

Trading in influence

One area where there has been, however, a clear and concerted effort to fulfil New Zealand's UNCAC obligations is the addition of a new offence of trading in influence. The new Crimes Act, section 105F states:

> Every person is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for that person or another person with intent to influence an official in respect of any act or omission by that official in the official's official capacity (whether or not the act or omission is within the scope of the official's authority).

Introducing such an offence is a very forward-thinking approach and one that clearly brings New Zealand legislation into line with UNCAC (see Box 3).

The creation of this new law is really quite remarkable. There is no equivalent in, for example, the UK legislation, which is often touted as the world's most comprehensive and punitive anti-corruption legislation (see Newman and Macaulay, 2013). Indeed, as recently as February 2015 Transparency International UK called for just such a law to be made (Transparency International UK, 2015). Not only is the new offence admirably succinct; it also refuses to distinguish between domestic and overseas jurisdictions. The explanatory note to the bill simply states that: '*New section 105F* sets out an offence for trading in influence. The penalty is imprisonment for a term not exceeding 7 years.' Perhaps most remarkable, however, is that trading in influence (often referred to as 'influence marketing') has long been identified as the most common form of corruption in developed Western economies. Indeed, Michael Johnston (2006) has labelled trading in influence as one of the four 'syndromes of corruption' that describe and explain corrupt practices in different jurisdictions around the world.

Box 3: Article 18, UNCAC

Article 18. Trading in influence

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

New Zealand obviously prides itself on its reputation for integrity and a lack of corruption. Our arguements do not seek to diminish that. However, it is fair to suggest, using research such as Transparency International New Zealand's 2013 National Integrity System study, that there are problems around 'grey areas': party funding; patronage; perceived nepotism and/or cronysim; unresolved conflicts of interest; misuse of lobbying, etc. (See Transparency Internatonal New Zealand, 2013). These problems are not dissimilar to those found in the US or continental Europe: they are the problems of access versus influence. This was one reason why the Transparency International study also suggested that the time may be ripe to consider introducing in New Zealand the common law offence of misconduct in public office, as exists in Britain and Hong Kong.[5] This law covers corruption offences that are not as serious as those covered in statutory law, but which fall within some of these 'grey areas' of official behaviour. Arguably, the new law of trading in influence goes far beyond this.

It is usually clear who has access to politicians and decision-makers; what is less clear is whether or not this access garners any influence. To use the UK as an example, the Conservative Party 'Leader's Group' allows members direct meetings and engagements with the prime minister for an annual fee of £50,000.[6] The group is fairly transparent and lists its donors/members for all to see.[7] What is never clear, though, is the extent to which this access ever becomes translated into something more tangible. It is clear that the Leader's Group donated £43 million to the Conservative Party during 2012–2014 alone, which, of course, may be dwarfed by donations in the US, for example, but in terms of UK party funding represents a substantial sum (Graham, 2014). Earlier in 2015 a study from Oxford University demonstrated a more worrying trend. Confirming what many suspected, it showed conclusively a link between party donations and peerages: that is, a seat in the House of Lords. These are no mere vanity appointments; party donations are buying people a seat at the legislative table (Mell, Radford and Thévoz, 2015).

Without a second chamber this is something that does not of course affect New Zealand. Yet cash for honours is an issue that continues to raise its head. There is also a New Zealand equivalent of the Leader's Group: the Cabinet Club. Although this has been dismissed as giving 'no suggestion of cash for access' (Bill English quoted in O'Brien, 2014), there is an obvious concern that anonymous donations can grant a person direct contact (however innocent) with a member of the government.

This article is not seeking to cast judgement on current political arrangements. The point is a much broader one. To put it starkly, most of our political institutions and processes rely to some degree or other on influence, not necessarily in the sense of a secret society or a tap on the shoulder, but through the political infrastructure in which we operate: for instance, the lobbying industry and the corporate hospitality sector. These are vital components of our democracy, but it is undeniable that they work on the principle of the buying and selling of access and influence. The extent to which the new offence has been created through legislative logic, to meet the requirements of the UN convention, rather than with any serious consideration to future prosecutions is open to debate.

If nothing else, though, it is to be hoped that this new provision in the OCACL Bill will reactivate much-needed discussions about how such agencies can enhance democracy rather than potentially restrict it.

Conclusion

While there is much to admire in the new Organised Crime and Anti-corruption Legislation Bill, there are still some areas that have been left open-ended. Despite its highly progressive nature, it is difficult to foresee any prosecutions for trading in influence in the near future, not without some serious public debate first. Parts of the OCACL Bill are contradictory: for example, the maintenance of the defence for facilitation payments while the definition of 'routine government business' has been altered. Other sections seem to rub up against the stated aim of ratifying the UN Convention against Corruption. Legislation on politically exposed persons still does not correspond to the requisite article. There remains a loophole for overseas bribery, albeit a relatively small one.

In both cases changes to the legislation would have been easy to make, although perhaps not so easy to enforce. All that needed to be done was to delete section 105C.3 from the Crimes Act and to alter the definition of a politically exposed person in the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to: 'an individual who holds, or has held at any time in the preceding 12 months, the prominent public function of'. Two small changes, but both with significant meaning.

Perhaps the most intriguing aspect, however, is that New Zealand probably will shortly ratify UNCAC. Herein lies the biggest implication of all: not for our country, but for the world. Looking at those who have already ratified the convention, it is clear that many countries are beset with problems of corruption, far more than New Zealand, in fact. Which raises the question: what is the true value of UNCAC and other such agreements? Yet it is easy for healthy scepticism to deteriorate into outright cynicism, and easier still to decry imperfect solutions to agonisingly complex problems.

... one of the explicit ends of the new Organised Crime and Anti-corruption Legislation Bill is to allow ratification of UNCAC, this really should be secondary to improving legislation and providing international leadership in this area.

The point of UNCAC is to provide commitment to, and a platform by which nations can share, a common vision and approach; implementing such will continue to take a long time. While one of the explicit ends of the new Organised Crime and Anti-corruption Legislation Bill is to allow ratification of UNCAC, this really should be secondary to improving legislation and providing international leadership in this area. The new amendments contained in the bill do make legislation more robust, but it still includes some grey areas, albeit relatively small, that go against its own aims. While such debates rage, millions of lives will continue to be degraded or destroyed by corruption on a daily basis, and this surely is the ultimate test: how lives will be improved. Time will tell.

1 It may also be noted that Germany only ratified UNCAC as recently as November 2014. For a full list of signatories see https://www.unodc.org/unodc/en/treaties/CAC/signatories.html.

2 One former chair of the Serious Organised Crime Agency likened the difference in media coverage to that between plane crashes and road traffic accidents.

3 https://www.unodc.org/documents/treaties/UNCAC/COSP/session5/V1388054e.pdf.

4 The select committee reported that: 'The Ministry of Justice departmental report refers to these payments as being for things such as "small payments relating to the grant of a permit or licence, the provision of utility services, or loading or unloading cargo." The Ministry commented that these payments do not yield an "undue advantage", and that measures in the bill to ensure the recording of these payments mitigate any concerns that the exception may be abused.' http://www.parliament.nz/resource/en-nz/51DBSCH_SCR62835_1/fb244777b2a0130a9317026b2332229ea4408543.

5 As defined by the Hong Kong Court of Final Appeal, a MiPO offence is committed where:

> 1. a public official; 2. in the course of or in relation to his/her public office; 3. wilfully misconducts him/herself; by act or omission (for example, by wilfully neglecting or failing to perform his/her duty); 4. without reasonable excuse or justification; and 5. where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the office-holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

The UK definition is similar, but omits the proviso that the misconduct must be serious, not trivial.

6 For all Conservative Party donor groups see https://www.conservatives.com/donate/Donor_Clubs.

7 https://www.conservatives.com/~/media/Files/Downloadable%20Files/Donors/LG%20Meals%20Q4%202014.ashx.

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Restorative Justice Conference Held Recently

Minister of Justice, Amy Adams, opens the conference at Parliament

The appropriateness and effectiveness of using restorative justice in situations of family violence has long been debated. In New Zealand, this debate is no longer hypothetical. The decision of the Ministry of Justice in 2013 to bring family violence within the orbit of restorative justice provision, together with changes to s.24a of the Sentencing Act in 2014 which make an assessment of suitability for restorative justice mandatory in the great majority of cases coming before the District Court, irrespective of the type of offending involved, mean that examination of the proper place of restorative interventions in this area is more urgent than ever.

To promote dialogue on the matter, the **Diana Unwin** *Chair in Restorative Justice* at Victoria University, with funding assistance from the New Zealand Law Foundation, organised a major conference on *Family Violence, the Law and Restorative Justice* at Parliament on 7 May.

The conference was opened by the Minister of Justice and featured **Professor Leigh Goodmark** from the University of Maryland's Carey Law School as keynote speaker. A specialist on gendered violence, Professor Goodmark offered a critique of the direction government policy has taken over the past 40 years and explored the potential of alternative, community-based approaches, such as restorative justice, to address the problem.

A Summary of Proceedings of the conference is available at www.victoria.ac.nz/sog/researchcentres/chair-in-restorative-justice

Chris Whelan

The Role Universities Can Play in Supporting the State Sector

Introduction

Over recent decades most of the developed world has invested significantly in lifting the proportion of the population that has a tertiary education, with a view to increasing what is commonly referred to as human capital. The OECD defines human capital as 'the knowledge, skills, competencies and attributes embodied in individuals that facilitate the creation of personal, social and economic well-being' (OECD, 2001).

New Zealand spends around 1% of its GDP on tertiary education (OECD, 2014) and has seen a significant rise in the proportion of the population with a tertiary qualification over the past couple of decades. In 1991, 8.2% of the working-age population had a degree at bachelor's level or higher (Statistics New Zealand, 1991). By 2013 this had risen to 26.1%. In 1991, having a degree was a way of differentiating oneself to an employer; now it is an expectation for many jobs, including an increasing number in the state sector. This article considers the educational profile of the state sector's employees at the time of the 2013 census, and examines the ways universities are contributing to this profile and to lifting the human capital available to the state sector.

Chris Whelan is the Executive Director of Universities New Zealand – Te Pākai Tara.

Educational profile of the New Zealand state sector

The 2013 census provides the best single source of information on who is employed across the wider state sector. It counts everyone whose salary is primarily paid for by taxpayers or who is in the employ of a Crown entity of some sort. At the time of the 2013 census there were 287,577 people recorded as being employed in the state sector. This represented 14.4% of all New Zealanders in employment. Those 287,577 people were categorised as being employed under 690 distinct job titles, with at least

six people in each category. The 690 job titles do not necessarily match the job title people entered in the free text field when they filled out their census form. The census process tries to match responses to a set of standard job titles, first through an automated character recognition process and then through the best judgement of analysts at Statistics New Zealand.

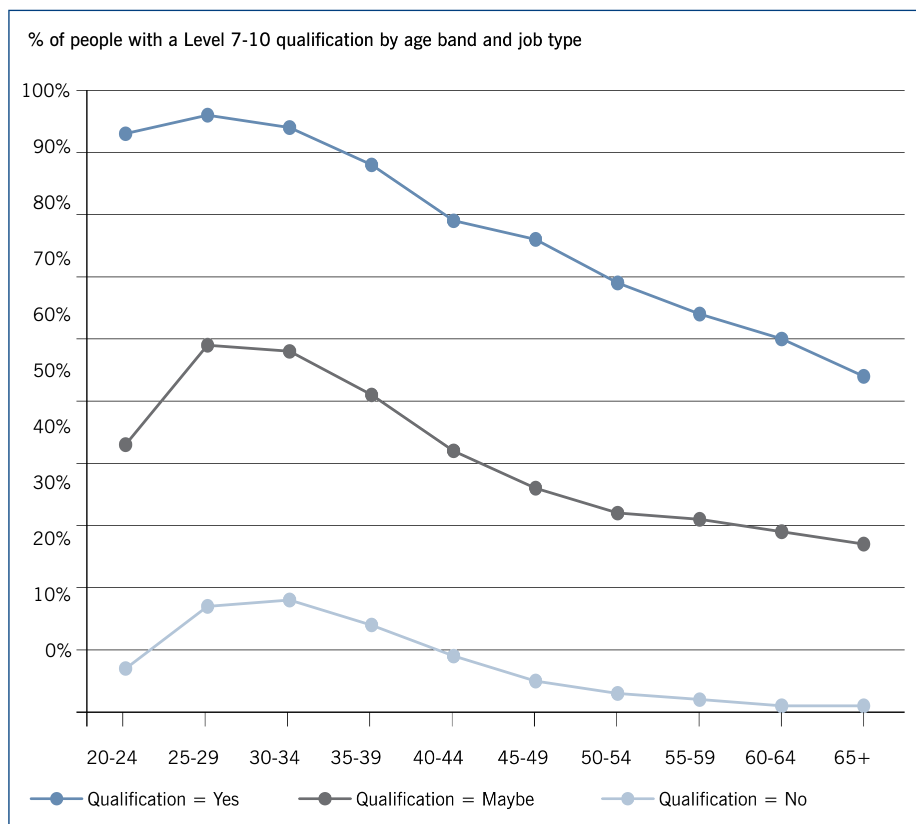
Given the size of the task, a few odd things creep in. For example, according to the census the public service in 2013 was employing six bed-and-breakfast operators, six butchers and small goods makers, nine taxi drivers, nine jewellers and 51 baristas. Notwithstanding this, four job titles account for 25% of all people employed in the wider state sector. They are: (1) primary school teacher; (2) secondary school teacher; (3) registered nurse; and (4) teachers' aide. Another 20 job titles then make up the next 25% of the state sector. These include: (5) general clerk (administrator); (6) university lecturer; (7) police officer; (8) office manager; (9) school principal; (10) policy and planning manager; and (18) policy analyst. The third 25% of all jobs include 68 job titles, and the last 25% 570 job titles.

All 690 job titles were then divided into three categories:

1. jobs where a tertiary qualification is generally a professional requirement: for example, teacher, nurse and university lecturer. In the wider state sector 49% of all people are in these roles, under 195 job titles;
2. jobs where a tertiary qualification is common but many people are doing them without a qualification: for example, computer programmer, project manager, policy analyst, policy and planning manager, and chief executive. In the wider state sector 27% are in these roles, under 160 job titles;
3. jobs where a tertiary qualification is not a requirement: for example, police officer, non-commissioned defence personnel, fire service officer, gardener, administrator. In the state sector 24% are in these roles, under 335 job titles.

Figure 1 shows what percentage of people in each of the three categories had a degree-level qualification in 2015 by five-year age brackets. A degree-level qualification is a qualification at level 7 (bachelor's level) or higher. A level 8 qualification is at honours level, a level 9 qualification is at master's level, and a level 10 qualification is at PhD or doctorate level.

Figure 1 Percentage of the state sector with a degree level qualification (Level 7 bachelor's or higher) by age band and broad job category.



As can be seen, most of those aged 25–29 in jobs where a tertiary qualification would be expected do in fact have a qualification, but this falls away to 70% or lower for those aged 60 and over. This supports the view that more and more professions have adopted tertiary qualifications as an entry requirement over time. For example, 24% of the 1,119 chief executives working in the wider state sector in 2013 did not have a tertiary qualification, but a large majority of those were over 50 years of age.

Why is the top line not at 100% if it represents jobs that theoretically require a tertiary qualification? Looking at the actual census information, the answer appears to be a combination of how the census data has been aggregated and how individuals have represented their job and their qualification level. For example, there are six people who are listed as university lecturers but who are listed as not even holding a high school qualification.

As can also be seen, the numbers of people with tertiary qualifications in the other two job categories have also increased over time, as qualifications have increasingly become a professional requirement, a way for job applicants to stand out, or a way for people to pursue longer-term career opportunities. For example, 31% of the wider state sector's personal assistants, secretaries and receptionists had a tertiary qualification in 2013, 17% at certificate or diploma level and 14% at degree level.

Another question is whether New Zealand is overqualifying its workforce. Table 1 takes just the cohort employed in the wider state sector who were aged 25–34 at the time of the 2013 census.

This cohort is spread across just 368 distinct jobs, with 37.2% in jobs where a tertiary qualification is generally expected, 33.7% in jobs where the need for a qualification varies, and 29.1% in jobs where a qualification is not required. 86.7% of those with a tertiary qualification in this cohort have one at level 7 (bachelor's) or above. This can be compared to the wider New Zealand

Table 1: State sector employees aged 25-34 by job qualification requirement.

	Jobs		People			
Qualification requirement	# of Jobs	% of Jobs	# of People	All People	Lvl 4-6 cert/dipl	Lvl 7-10 degree
Tertiary Qualification Expected	137	37.2%	24,621	52.2%	2.7%	63.5%
Need for qualification varies	124	33.7%	14,445	30.6%	5.0%	19.9%
Qualification not required	107	29.1%	8,094	17.2%	5.6%	3.3%
Totals	**368**	**100.0%**	**47,160**	**100.0%**	**13.3%**	**86.7%**
Qualification *not required but may pathway*	*34*		*4,089*		*3.5%*	*2.0%*
Probably overqualified for their job			*4,005*		*2.1%*	*1.3%*

Table 2: Subjects that NZ state sector employees have qualifications in by broad age band.

Field of Study	Wider State Sector				All NZ
(Lvl 7-10)	Age 20-34	Age 35-44	Age 45-54	Age 55+	All ages
Sciences	4.70%	6.40%	7.40%	8.90%	5.85%
ICT	0.10%	0.30%	0.40%	0.20%	4.52%
Engineering	0.30%	0.60%	1.00%	0.60%	4.39%
Building	-	0.20%	0.10%	0.10%	1.68%
Agriculture, etc	-	0.10%	0.20%	0.10%	1.25%
Medicine & veterinary	39.90%	27.50%	25.90%	21.80%	16.43%
Education	35.30%	39.30%	36.50%	36.00%	16.25%
Business/accounting	3.40%	5.30%	7.00%	5.00%	30.65%
Law	2.00%	2.20%	1.80%	2.30%	1.95%
Economics	0.70%	0.80%	0.90%	0.60%	0.97%
Political Science	1.20%	1.10%	0.70%	0.60%	0.99%
Other - Arts	9.40%	14.00%	15.90%	21.90%	9.06%
Creative Arts	2.90%	2.30%	2.10%	1.90%	5.88%
Food & Hospitality	-	-	-	-	0.13%

population where the proportion with sub-degree tertiary qualifications (19% of the population) is approximately the same as that with degree-level tertiary qualifications (20% of the population).

Of the 107 jobs where a tertiary qualification almost certainly would not be required, 34 are jobs such as farmer, retail manager, police officer, fire service officer, and non-commissioned defence force personnel, although for many of these groups a qualification might potentially open up future opportunities. There are 4,089 people in this category (the second-to-last row of Table 1). The other 73 jobs where a degree-level qualification almost certainly would not be required include roles such as carpenter, motor mechanic, fitter, gardener and green keeper. On the face of it these jobs have fewer progression opportunities for people with a qualification. There are 4,005 people with tertiary qualifications in these roles, 1.3% (52) of whom have level 7 (bachelor's) or higher degrees. These are shown in the bottom row of Table 1.

Table 2 shows what subjects people qualified in across the wider state sector and how that compares with New Zealand generally. Each column in the table adds to 100%, and it shows the percentage of the wider state sector (and New Zealand) by broad age band and broad field of study.

Narrowing the focus down to people identified as being in policy roles in the wider state sector, the census lists 771 policy analysts and 510 policy and planning managers. Given the methodology used to collate the census, it's not certain that all 1,281 of these people were actually working in policy roles in central government, but, assuming a large majority were, it is interesting to see what level they qualified at and what they studied. Table 3 shows their highest qualification level. A large majority are qualified at degree level, but a significant proportion are not. Many of those aged under 40 in policy roles without a degree-level qualification are likely to be found in the defence forces, police, courts, and other departments where people have progressed over time after starting at the department or agency in an operational role.

Table 4 shows the subjects policy analysts and policy and planning managers studied at tertiary level. It is notable that political science and arts graduates make up a little over half (50.8%) of all state sector policy analysts and policy and planning managers under the age of 35. Looking more broadly at the census, 27% of New Zealand's degree-qualified 30–34-year-old arts graduates were working in the wider state sector in 2013.[1] By contrast, only 25% of political science graduates were working in the wider state sector. The single largest concentration of arts graduates is in the teaching profession.

What are universities doing to prepare graduates for work in the wider state sector?

On best estimates, 26% of New Zealanders with a degree (level 7 or higher) are working in the wider state sector.[2] Despite the government being such a large employer, universities only have a few specific programmes aimed explicitly at preparing graduates for the public service:

- Victoria University of Wellington operates the School of Government which provides a range of short-block training courses and longer-term professional development

Table 3: Highest qualification by age band of Policy Analysts and Policy & Planning Managers.

Highest Qualification	25-29	30-34	35-39	40-44	45-49	50-54	55-59	60-64	65+
No Qualification	0%	1%	1%	1%	2%	2%	1%	5%	13%
High School Qualification	7%	11%	13%	16%	20%	20%	19%	15%	18%
Level 4 Certificate	0%	2%	2%	4%	4%	5%	7%	5%	7%
Level 5/6 Diploma	3%	2%	6%	8%	11%	13%	13%	14%	15%
Level 7 Bachelors	44%	36%	30%	29%	27%	23%	21%	21%	21%
Level 8 Honours	24%	19%	17%	16%	11%	13%	11%	11%	9%
Level 9 Masters	21%	26%	25%	22%	20%	20%	23%	24%	15%
Level 10 PhD	0%	2%	4%	4%	5%	6%	4%	5%	3%
TOTAL Level 7-10	90%	84%	77%	71%	63%	61%	60%	62%	47%

programmes weighted towards postgraduate study for people already in the public sector.

- Universities provide the initial education of the teachers, doctors and other professionals who are predominantly employed by the state sector. The same universities offer a range of continuing education programmes for the same professions.
- Most universities offer some programmes, focused around political science departments, aimed at developing knowledge about the machinery of government and policy development.

Universities face challenges in doing more in preparing graduates for work in the state sector. In part this is due to the large range of jobs and skill requirements in the different parts of the state sector. It is also due to the fact that there are few standard qualifications for working for central government, and to the lack of any significant workforce planning or standard educational pathways into the majority of jobs.

Despite this, universities are doing a lot to improve overall graduate employability for all sectors and industries. The government's Tertiary Education Strategy 2014–2019 places a strong priority on universities producing employable, work-ready graduates. There is also an expectation that those graduates will be in numbers that broadly correspond to industry demand. The expectations of students are similarly clear. University students want credentials and a university experience that will make them stand out to potential employers and will lead to meaningful careers and successful lives. A substantial proportion of students are also mature students, coming to university part way into their career. They are generally wanting qualifications that will either help remove perceived barriers to progressing through their career or help them to change career. Universities are doing a lot to meet these expectations.

In 2013 university students were enrolled in one of three types of university programme. These were:

- Profession-led programmes (28%) in subjects such as accounting, law, architecture, engineering, medicine and teaching. These programmes are all accredited by an industry body acting under a statutory authority and often in conformance to international standards. Each profession has a similar body which consults widely with its members and the organisations that employ its members to ensure that the education programmes that produce its members are

Table 4: Subjects studied by tertiary qualified Policy Analysts and Policy & Planning Managers in broad age bands.

	Age Band			
Broad Field of Study	20-34	35-44	45-54	55+
Sciences	4.3%	6.8%	8.5%	3.4%
Information Technology	2.0%	2.8%	2.0%	
Engineering	8.6%	9.9%	10.8%	12.8%
Architecture & Building	0.7%	0.9%	2.3%	2.5%
Agriculture & Forestry	1.3%	2.1%	1.7%	
Medicine & Veterinary	1.0%	1.6%	2.8%	7.4%
Education & Teaching	1.0%	5.6%	5.4%	11.8%
Finance & Accountancy	13.6%	22.8%	30.0%	23.6%
Law	14.0%	8.5%	5.4%	2.0%
Economics	1.0%	1.6%	2.0%	
Political Science	24.6%	12.0%	7.9%	7.9%
Other Arts	26.2%	23.8%	20.7%	28.6%
Creative Arts	1.7%	1.4%	0.6%	
Food & Hospitality				
Total by Age Band	100.0%	100.0%	100.0%	100.0%

Table 5: Percentage of graduates who are unemployed 7 years out of study (by level of study & broad field of study)

Broad Field of Study	Level 1-3	Certificates (Level 4)	Diplomas (Level 5-6)	Bachelor's (Level 7)	Honours (Level 8)	Master's (Level 9)	PhDs (Level 10)
Natural and Physical Sciences	3%	4%	5%	1%	2%	2%	0%
Information Technology	23%	11%	7%	1%	2%	0%	
Engineering and Related Technologies	7%	9%	3%	3%	1%	S	0%
Architecture and Building	10%	5%	2%	3%	S	S	
Agriculture, environment and related studies	12%	15%	2%	1%	0%	S	
Health	8%	7%	4%	0%	S	S	0%
Education	11%	16%	4%	1%	S	0%	
Management and Commerce	15%	10%	4%	1%	1%	S	
Society and Culture	12%	9%	8%	2%	2%	3%	0%
Creative Arts	10%	11%	7%	4%	7%	4%	
Food, Hospitality and Personal Services	17%	13%	8%				
Total Students	**14%**	**10%**	**6%**	**2%**	**1%**	**2%**	**0%**

S = suppressed (the number of graduates is so low that the number has been withheld to avoid identifying individuals)

appropriate. For example, the Institution of Professional Engineers New Zealand (IPENZ) is responsible for registering all engineers who work in New Zealand under powers contained in the Chartered Professional Engineers of New Zealand Act 2002. As part of registering engineers, it assesses and accredits the programmes that educate engineers.

- Industry-focused programmes (53%) in subjects such as the sciences, computing, agriculture, forestry, commerce, marketing, finance, library studies, journalism, economics, sports and recreation, the performing arts, graphic design, and food and hospitality. These programmes are delivered with employment in a particular industry (such as agriculture) or industry function (such as technology or finance) in mind. The programmes are typically delivered by a mix of practitioners and academic staff who have either come from an industry background or work with industry consulting or researching.
- Other programmes (19%) in subjects such as history, philosophy, literature and modern languages. These subjects are often referred to collectively as 'arts' subjects.

The 'other', arts category is popularly perceived as leading to poor employment outcomes for graduates. In fact, outcomes are not significantly dissimilar to those of other graduates. Looking only at 30–34-year-old arts graduates with a level 7 (bachelor's) or higher degree at the time of the 2013 census, 88% were in a job that, on the face of it, probably needed a degree. There is a common belief that arts graduates end up working as baristas or behind the fat fryer at the local McDonald's. For this particular cohort, only 2.4% of them were in jobs such as waiter, cook or sales assistant.

Table 5 shows data from the Ministry of Education's 2014 report What Young Graduates Earn When they Leave Study (Ministry of Education, 2014). It shows the percentage of graduates on an unemployment benefit seven years after graduating.

As table 5 shows, unemployment rates for graduates at level 7 and above are well below the unemployment rates for those with lower-level qualifications. The figures in the column for level 1–3 graduates refer to those who have only a high school qualification or equivalent at NCEA levels 1–3.

A similar trend can be seen with earnings. Table 6 shows age-standardised annual income of people in employment between the ages of 25 and 65 by a mix of broad and narrow fields of study, by level of study at the time of the 2013 census.[3]

By way of contextualising this information, the most recent New Zealand Income Survey (June 2014 quarter) lists median wage and salary income from all sources as $863 per week, or $44,876 per year. Note too that New Zealand universities do not offer degree-level qualifications in alternative health or hospitality and food subjects. Though there is significant variation between the different subjects, it is interesting to see that people with PhDs earn an average of 16% more than master's graduates, who earn 4% more than honours graduates, who earn 9% more than bachelor's graduates, who earn 35% more than diploma graduates, who in turn earn 15% more than certificate graduates and school leavers. Of course, these averages vary significantly from individual to individual and between subjects. In general, degree holders (level 7 and above) can expect to earn another $1.3m over their working lives than people with only a high school qualification.

There is limited information on how these statistics compare with those for graduates in other countries. Table 7 shows graduate unemployment rates and

Table 6: Age-standardised annual average income of state sector employees in 2013

Mixed Narrow & Broad Fields of Study	Lvls 1-3 (School)	Lvl 4 (Certificate)	Lvl 5 (Diploma)	Lvl 7 (Bachelor's)	Lvl 8 (Honours)	Lvl 9 (Master's)	Lvl 10 (PhD)
Sciences	33,612	35,889	40,610	47,757	52,658	52,638	66,362
ICT	29,903	30,731	44,553	56,441	66,946	56,776	71,476
Engineering	44,315	47,698	55,900	60,998	70,332	66,165	76,660
Architecture & Building	43,791	44,401	47,308	52,511	62,075	53,427	49,103
Agriculture & Forestry	36,448	40,104	45,310	50,866	51,955	51,703	
Health Other (incl nursing)	30,338	28,281	36,442	43,382	51,184	53,718	63,095
Medical (incl Doctors)		31,697	42,416	86,642	100,026	92,459	109,808
Dental	33,600	33,452	39,666	62,691	60,514	88,610	78,802
Veterinary	28,573	30,493	27,837	63,378	53,638	49,281	59,955
Alternative Health	16,011	27,233	23,615	23,696	32,107	37,227	
Education	28,065	26,052	35,083	43,938	46,419	47,644	62,272
Business & Accounting	35,584	37,144	46,086	62,977	62,694	66,653	73,558
Arts	27,061	29,549	34,263	40,401	45,463	47,246	58,476
Political Science			39,110	49,903	59,999	64,871	69,482
Law	45,203	40,692	46,625	76,484	81,107	83,354	73,103
Economics			37,585	57,813	70,938	66,511	86,307
Creative & Performing Arts	30,931	30,669	33,804	34,816	40,643	41,606	45,789
Hospitality & Food	28,577	31,842	31,915	38,232	32,371		

earnings for New Zealand, the United Kingdom and Australia. Comparisons in Table 7 are indicative only, as each country uses slightly different measures or definitions. Graduate information is for bachelor's level graduates four months after graduation for Australia (and limited to graduates who were under 25 years of age and in their first full-time employment in Australia), six months after graduation for the United Kingdom and Australia, and one year after graduation for New Zealand.

The issue of New Zealand's comparatively low median earnings has been extensively analysed in past studies (for example, Zuccollo et al., 2013). Nevertheless, this country's graduate employment rates and earnings relative to the national median for salary and wage earners is good by international standards. One factor in the success of the New Zealand university system in this area is how New Zealand universities collectively oversee the approval of new programmes and monitor the quality of existing programmes.

Table 7: Indicative comparison of employment outcomes[4]

Measure	New Zealand	United Kingdom	Australia
Graduate unemployment rate	2% (2012)	6.7% (2012/13)	11.6% (2014)
Graduate median salary	NZ$37,959 (2012)	£20,000 (2012/13)	$A52,500 (2014)
Graduate median salary in $NZ (approx.)	NZ$37,959	NZ$45,900	NZ$58,800
National median salary	$41,900 (2012)	£26,500 (2012)	$A57,400 (2011)
National median salary in $NZ (approximate)	NZ$41,900	NZ$60,900	NZ$64,300
Graduate median salary as % of national median salary	90.6%	75.4%	91.4%

How does this work? Any time a university wants to add or change a programme it has to put a proposal through a pan-university body, the Committee on University Academic Programmes (CUAP). CUAP meets four times a year and its membership includes one senior academic staff member from each of the universities. CUAP can challenge new programmes or changes to programmes only on quality grounds.

The sorts of things CUAP considers include:

- Is the programme quality and duration consistent with what other universities offer at that level?
- Have relevant employers or industry bodies been consulted and are they supportive of the proposal?
- Is there any chance of confusing or misleading students as to the content

of the programme or what skills and capabilities they will gain through it?
- Has the programme got feedback mechanisms in place (including with employers and graduates) to ensure that graduate outcomes are being realised.

Once CUAP is satisfied that all quality standards have been met, the programme or qualification is approved. Once approved, all programmes are subject to a graduating-year review. In a graduating-year review, the actual outcomes for graduates are tested against the original objectives. This includes talking with employers and graduates and may lead to the programme being redesigned where objectives are not being met.

This process is built around each qualification having a graduate profile. A graduate profile details the skills, knowledge and capabilities that a graduate should possess if they complete the programme successfully. Capabilities are the more generic competencies sought by employers, such as critical thinking, critical reasoning and the ability to work well with others. Often employers rate these capabilities above technical skills. The Office of the Chief Scientist in Australia recently published a survey of employers of science, technology, engineering and mathematics (STEM) graduates (Prinsley and Baranyai, 2014) which found that occupation-specific technical skills rated only eighth of 13 skills and attributes. They were below the more general capabilities of learning on the job, critical thinking, complex problem-solving, creative problem-solving, interpersonal skills, understanding how business operates and time management. This study matches the findings of similar research carried out internationally (for example, Gray and Koncz, 2014; GMAC, 2015, p.26).

All New Zealand university graduate profiles now include a mix of desired skills, knowledge and capabilities. For example, the graduate profile of a Bachelor of Arts programme is shown below. (This real-world example was approved by CUAP during 2014.)

Bachelor of Arts programme graduate profile

- Demonstrate knowledge of the major concepts and theoretical perspectives in their chosen field of study.
- Demonstrate an ability to make connections between knowledge from more than one discipline or field of study.
- Work autonomously and take responsibility for their own learning and development.
- Consider broad social and cultural perspectives in relation to their chosen field of study and area of professional practice.
- Demonstrate an awareness of the ethical responsibilities and challenges in their community of practice.
- Demonstrate an understanding of Aotearoa New Zealand culture and society from the perspective of the Treaty of Waitangi, biculturalism and multiculturalism.
- Use critical thinking skills and strategies that facilitate understanding, explanation, critique, problem-solving, creativity and reflection.
- Apply quantitative and qualitative analysis and reasoning skills.
- Demonstrate information and digital literacy through the use of a range of appropriate tools or methods to locate, access, evaluate or present information.
- Integrate and apply their knowledge and skills in responding to unfamiliar or new situations within the practice/ professional context.
- Work effectively in teams and with people from other linguistic and cultural backgrounds in a range of collaborative contexts.
- Communicate effectively in a variety of formats, both oral and written.
- Develop time-management practices to manage competing demands.

Since the 1980s a combination of internal assessment, student fees and tighter conditions around student living allowances have led to students spending more of their university life in the library and classroom and less participating in clubs and societies and involved in other social activities. The increased focus on graduate employment outcomes has served to push back at this trend somewhat. As mentioned in the introduction, the proportion of people in New Zealand with a degree has more than tripled since 1991. Having a degree was once a way of differentiating oneself to an employer, where now it is an expectation. Employers now are using the broader capabilities and experiences of graduate applicants to shortlist who gets an interview.

All universities are now encouraging students to travel or study abroad. Students are encouraged to learn a language. Arts graduates are encouraged to develop technology and numeracy skills. Students are encouraged to get involved in clubs and to take on leadership roles. Increasing numbers of students are undertaking internships or work placements, and all students are being encouraged to get work referees who can speak to the skills and capabilities that will be relevant to future employers. To give one example, Auckland University of Technology reported that

> The Office of the Chief Scientist in Australia recently published a survey of employers of science, technology, engineering and mathematics ... graduates ... which found that occupation-specific technical skills rated only eighth of 13 skills and attributes.

80% of its bachelor-level graduates in 2014 had done a work placement during their studies and 30% of those graduates had been offered an ongoing job in the placement organisation.

Conclusion

This analysis suggests a couple of areas that would warrant further policy analysis. The government is both the largest purchaser and the largest supplier of graduates. At present the government indirectly influences the profile of these graduates, firstly through general expectations that all graduates will be employable, and secondly through the professional standards bodies that oversee the education provided to the 28% of student's training for professions such as teaching and accounting. At a time when the government is seeking to lift human capital with a view to increasing innovation and national productivity, should parts of the government take a more active involvement in shaping graduate profiles where they are employing large numbers of graduates in non-professional discipline areas?

As the largest employer of graduates, the government has been contributing to national 'qualification creep', where a degree is seen as a requirement for more and more jobs. There would be value in further analysis to ascertain if the government is overqualifying employees in certain areas.

1 For the purposes of this statement, arts graduates are all people recorded as having studied anything in the NZSCED 'society and culture' fields of study, excluding law, economics and political science.

2 According to the 2013 census figures there were 553,797 25–64-year-olds with a level 7 or higher qualification in New Zealand and 143,415 of those were working in the state sector.

3 The age distribution of individuals varies between each subpopulation (characterised by field and level of study). To make the income averages of different subpopulations directly comparable, each income average was adjusted for age – that is, age-standardised. The age-standardised income averages were computed by taking a weighted sum of the age-specific averages within each subpopulation, using weights derived from the age distribution of a reference (or standard) population. The pooled population (which includes all individuals present in New Zealand at the time of the 2013 census) was chosen as the reference population.

4 New Zealand graduate unemployment rates are from Ministry of Education, 2014. United Kingdom statistics come from https://www.hesa.ac.uk/stats-dlhe; also https://www.hesa.ac.uk/pr207. The unemployment statistic relates to full-time first degree leavers 'unemployed and looking for work'. Australian statistics come from http://www.graduatecareers.com.au/wp-content/uploads/2014/12/GCA_GradStats_2014.pdf.

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Upcoming Event

This is a very special event being run by the IGPS and the VUW School of Geography, Environment and Earth Sciences

President Nakao of the Asian Development Bank will be sharing his insights on New Zealand's role in the Asia-Pacific economy and will be highlighting some of the key trends that the region faces.

Takehiko Nakao, President, Asian Development Bank

Monday 31st August – 12:30 – 1:30pm
Old Government Buildings
Lecture Theatre One
RSVP to igps@vuw.ac.nz

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Karl Löfgren and Dona Cavagnoli

The Policy Worker and the Professor

understanding how New Zealand policy workers utilise academic research

been conducted by the prime minister's chief science advisor and the Office of the Prime Minister's Science Advisory Committee, with the particular instrumental purpose of improving the government's ministries and agencies' 'use of evidence in both the formation and evaluation of policy' (Gluckman, 2013, p.3; see also Gluckman, 2011). However, none of these studies have asked how, and to what extent, policy workers in government are utilising academic research in their everyday work.

Introduction

How do policy workers actually use academic research and advice? While there are several recent studies regarding this question from other Westminster jurisdictions (e.g. Talbot and Talbot, 2014, for the UK; Head et al., 2014, for Australia; Amara, Ouimet and Landry, 2004 and Ouimet et al., 2010, Canada), similar academic studies have been rare in New Zealand. So far, most of the local research in this field has

Karl Löfgren is Associate Professor in the School of Government, Victoria University of Wellington.
Donatella Cavagnoli was a researcher with the School of Government, Victoria University of Wellington.

The studies have a prescriptive aim of designing institutional structures, setting standards and establishing conventions for making New Zealand policy-making more evidence-based. Although sympathetic with this aim, we acknowledge that policy workers' actual use of academic output does not match the political aspirations for pure evidence-based/informed policy-making, and that there is a demand for a better understanding of the current situation.

Historically, academics have never truly achieved any prominence in the world of government policy analysis. There seem to be several barriers (in terms of utility, time horizons, language, communication, etc) between what have been called two separate 'communities' (Caplan, 1979; Amara, Ouimet and Landry, 2004). While the academics in their 'ivory tower' can afford (because they enjoy the time and resources) to probe into philosophical matters aloof from real-world problems, the 'beltway' policy workers are subject to executive decisions, tight time constraints and electoral cycles (Caplan, 1979).

Even though the 'two communities' metaphor seems to have gained currency among both academics and policy workers over the years, its accuracy has been questioned for at least two reasons (Newman, 2014). Firstly, technological developments have advanced the access of policy workers to academic research findings. The evolution of new information and communication technologies has made it easy and cheap for policy workers in government to access vast reservoirs of academic knowledge, to identify and make direct contact with academics, and to systematically review the existing body of academic knowledge, all from their office desks. Although university libraries and academic publishers still do not offer full and free access to all academic publishing, much research of relevance to policy advice is often only a Google search away.

Second, even though several studies empirically confirm the picture of two communities – with policy workers not utilising academic research – in general, there are certainly notable individual exceptions. Policy workers do not constitute a homogenous group; they comprise diverse 'communities'. Moreover, some policy domains are by tradition more connected to the academic world and have built both infrastructure and capabilities to tap into the abundance of existing knowledge and evidence (for example, health, environment and education), whereas other domains for a number of reasons lack this capability.

This article is based on an online survey carried out among 230 policy workers in New Zealand ministries and agencies in early 2015. In our search for an analytical framework we borrowed questions from similar studies overseas. We have, in particular, used some of the questions from the so-called 'Sir Humphrey and the professors' study by Colin and Carole Talbot of the University of Manchester (Talbot and Talbot, 2014) of UK senior civil servants. This study, in turn, was inspired by an American study by Paul Avey and Michael Desch (2014) of national security decision-makers. We have omitted some of the questions from these two studies because they were of less importance in a New Zealand context (see below), and added a few questions on policy-relevant training. Some of the alterations are partly the outcome of a dialogue about the UK study with post-experience master's students in public policy at Victoria University of Wellington. This exercise made it clear that some of the original questions did not make sense in the New Zealand policy work community.

> Although university libraries and acdemic publishers still do not offer full and free access to all academic publishing, much research of relevance to policy advice is often only a Google search away

The survey and methods

The first section of our survey seeks to track how useful our respondents find different academic disciplines in their daily policy work. In contrast to the original studies by Talbot and Talbot and Avey and Desch, we have expanded the number of possible disciplines beyond the realms of social science. We sought to expand the domain of inquiry to also include natural sciences and other domains of academic knowledge production. The second set of questions concerns the use of various research outputs, and how easy it is for policy workers to access these. Both this study and the previous ones have avoided limiting academic outputs to the traditional peer-reviewed ones and have included other forms of interaction. However, we have, in contrast to previous studies, omitted ease of access to and use of the different channels, because all policy workers today (at least in Western industrialised democracies) have good access to the internet and consequently to online databases (as confirmed in our study).

The third set of questions relate to the relevance and usefulness of academic outputs. One important question here concerns which academic methods policy workers find useful in their policy work. The fourth set of questions ask how policy workers relate to academic works and academic involvement, and what the role of academics is in the eyes of policy workers. This also includes questions on other relevant sources for policy workers.

The final set of questions refer to the individual training of policy workers. Our aim was to investigate the extent to which policy workers take part in training activities arranged by universities and other institutions, and to what extent these are perceived to be a normal component of their work. The policy portfolio categories we employ are based on the internationally recognised

Figure 1: "Which Policy are you engaged in?" (%). Categories based on COFOG

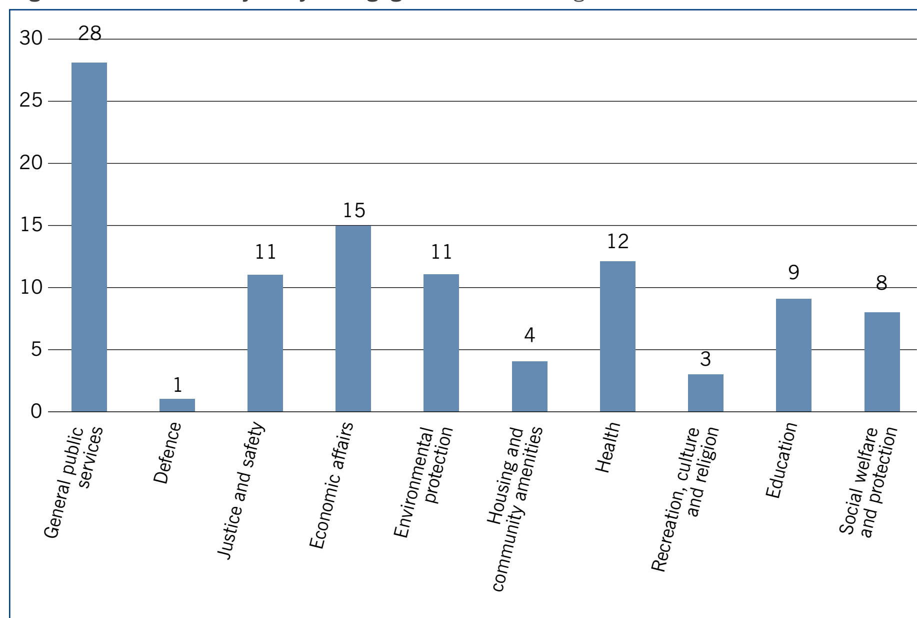
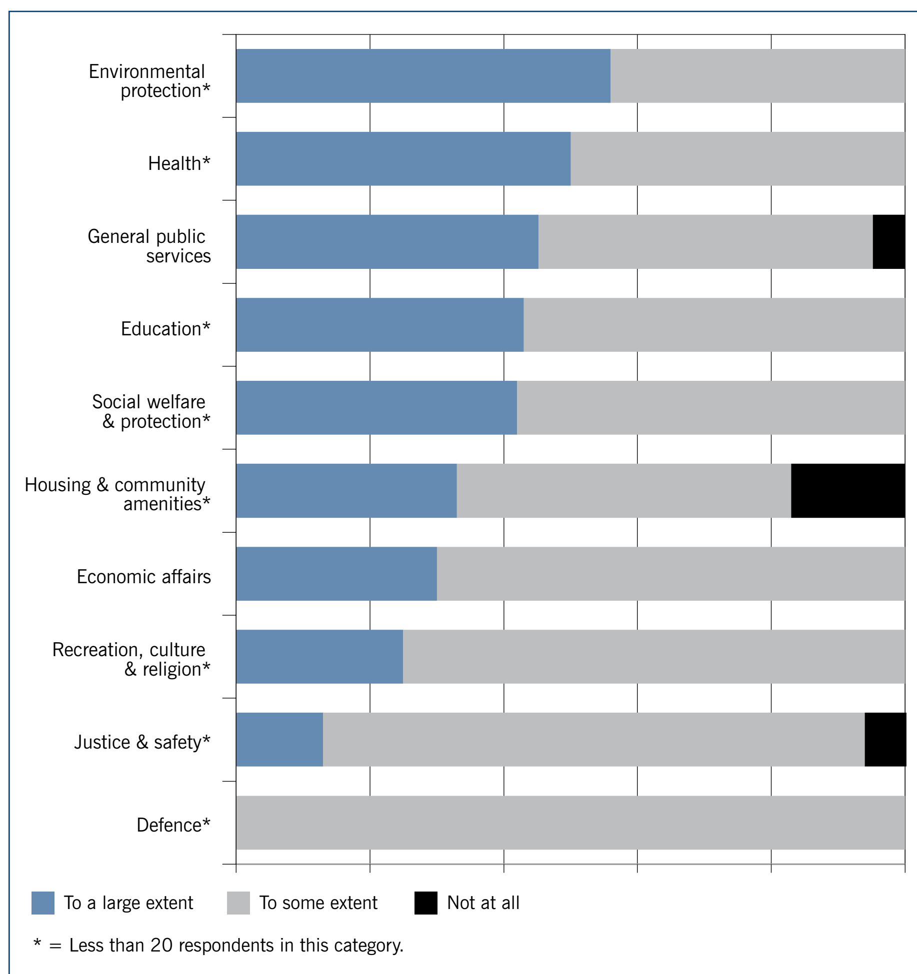


Figure 2: Primary policy area of respondent, by how important are academic sources to your policy work (%).



Classification of the Functions of Government (COFOG) developed by the United Nations.

The survey was undertaken online in March and April 2015 using Qualtrics software. The sampling frame was identified with the active support of the Institute for Public Administration New Zealand (IPANZ) and the Public Service Association Te Pūkenga Here Tikanga Mahi (PSA), using their membership databases to identify relevant respondents. Based on the notion of 'policy workers' (Colebatch, 2006) rather than the more narrow 'policy analysts', we sampled members of the two associations with job titles including 'policy' and/or 'researcher' (the related title 'business analyst' was excluded). Among those we invited to participate, the most frequent job titles were (senior) policy advisor/analyst. In terms of organisations, we included all New Zealand government ministries, both autonomous and independent Crown entities (excluding secondary schools), Crown research institutes, state-owned enterprises, district health boards and local governments (the two last categories comprised small groups, and the local government members were almost exclusively working for the major local councils). We excluded members working in state-owned enterprises that have been privatised, and those in non-governmental organisations (both of which comprised very small groups). A total of 383 invitations to participate were sent out to members of IPANZ (of whom 14 recipients failed to respond) and 998 invitations to our sample frame among PSA members (of whom four did not respond). In terms of the spread of policy areas of the respondents, we received a reasonably fair distribution (see Figure 1) matching the public sector of New Zealand.

We received a total of 220 responses during the four weeks the survey was up and running, thus achieving a response rate of 16.6%. Although rather low, one should bear in mind that our total sampling frame covers a fair share of policy workers in New Zealand. In comparison, the equivalent UK survey received a response rate of just 8%. Also, the actual response rate is probably higher, as there are overlaps in membership of the two associations (the respondents could only respond once because of an IP number block). A rather substantial group of the respondents (32) were also excluded becasue they replied negatively to the first screening question regarding whether they were involved with policy tasks, which we defined as 'gathering/ retrieving, analysing and presenting various forms of relevant information with the intent of providing evidence to

political decision-makers'. It could be that the respondents did not recognise this definition, but it is remarkable that so many employees with the word 'policy' in their job title do not consider themselves to be involved in what we considered to be a rather broad and generic understanding of policy work.

The results

Our first question asked to what extent the respondents felt that academic outputs were important sources of evidence in their policy work. Perhaps unsurprisingly, the vast majority responded that they were an important source (57% to some extent; 41% to a large extent). Cross-tabulating with sector/occupational background gives us an interesting picture. Although the relatively small number of respondents makes these results a little precarious, of note is that those working in the economic affairs area rate all their academic sources as relevant to some extent to their work, while those in the general public services area find some sources not at all relevant to their work.

We also asked the respondents what kind of academic outputs they made use of (see Figure 3). That articles in peer-reviewed journals received the highest number of responses is interesting given that beforehand we had anecdotal evidence that there are obstacles accessing these and that they are usually not written with the intent of converting evidence into policy. However, this finding was also a surprise in the UK study, so there is obviously something here which goes against our stereotypes. In contrast to the UK study, the high number of respondents attending public lectures (61%) probably reflects the high number of public lunchtime seminars organised by IPANZ and academic research centres associated with Victoria University. One response that is worth further exploration is 'other websites' and 'other forms of social media'. These categories could well include co-produced sources such as Wikipedia. Several of the respondents indicated other sources. However, the vast majority of these sources are clearly not academic, but grey literature from governments and think tanks and internal library collections.

Figure 3: Sources of academic output. Several options possible (%).

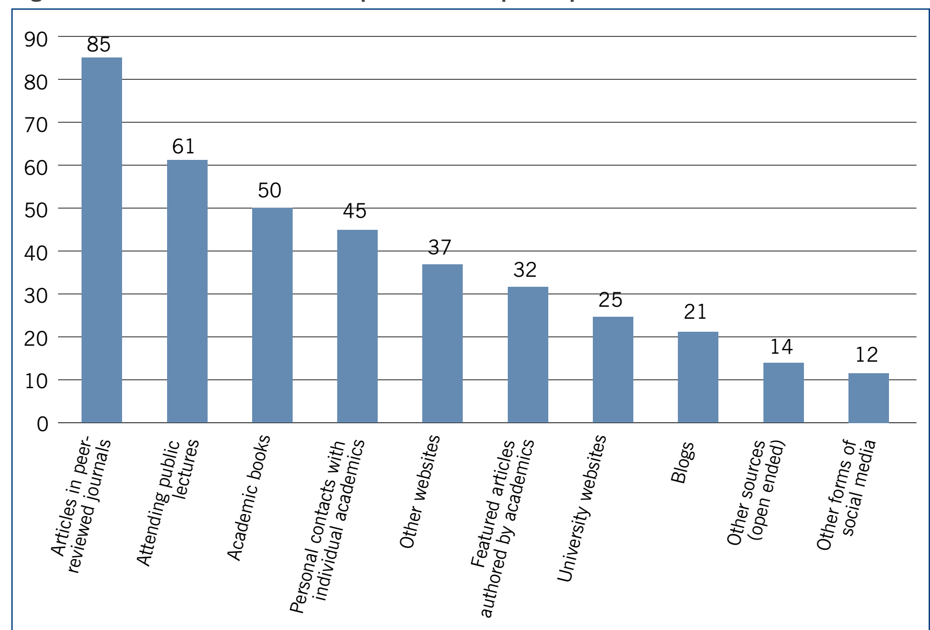
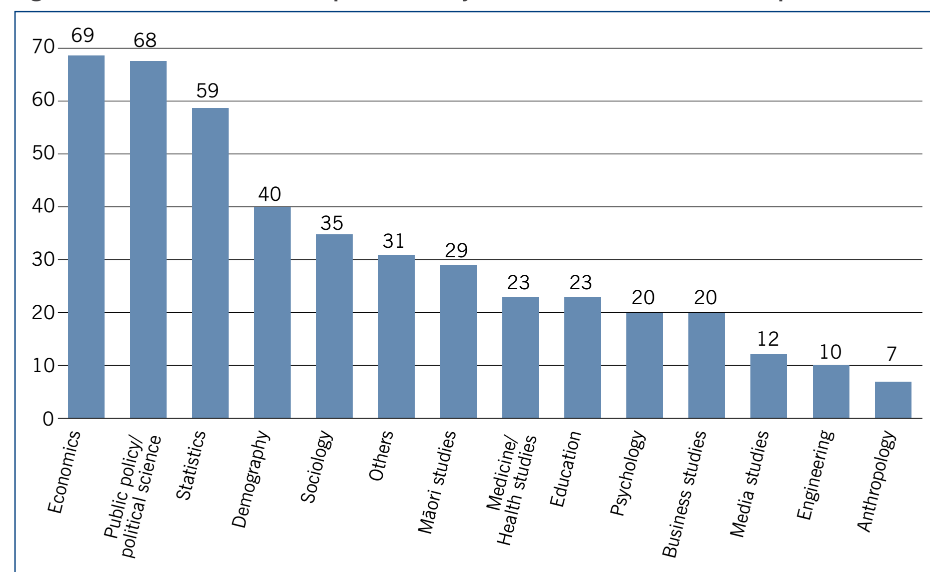


Figure 4: Useful academic disciplines in daily work. More than one answer possible. (%)



A second set of questions sought to establish which disciplines and methods were considered useful in daily policy work (see Figure 4). That the output of traditional social science disciplines (political science/public policy and economics) should be at the top, followed by sector-specific disciplines (e.g. education, health, etc) was something we anticipated, as this was also the case in the UK study. Of note, though, is that 29% of the respondents found Māori studies useful in their work, reflecting the bicultural policy context in New Zealand. It should also be mentioned that among 'others' we found several responses listing disciplines such as 'law', 'history' and 'environmental sciences'. We are not completely sure whether those who have listed law as an open-ended answer have been referring to actual academic legal research, or whether they have just listed law as a prerequisite for policy-making.

Placing the academic disciplines against the policy areas (Figure 5) gives us as a rather predictable result. This shows, for instance, that the discipline of demography was found to be useful particularly for those who are doing general policy services work, and also those in social welfare and protection, education, health and environmental protection. Those working in general public service policy work found business studies/management the most

Figure 5: Disciplines useful in daily work, by primary policy area of respondent (per cent). *=less than 20 respondents.

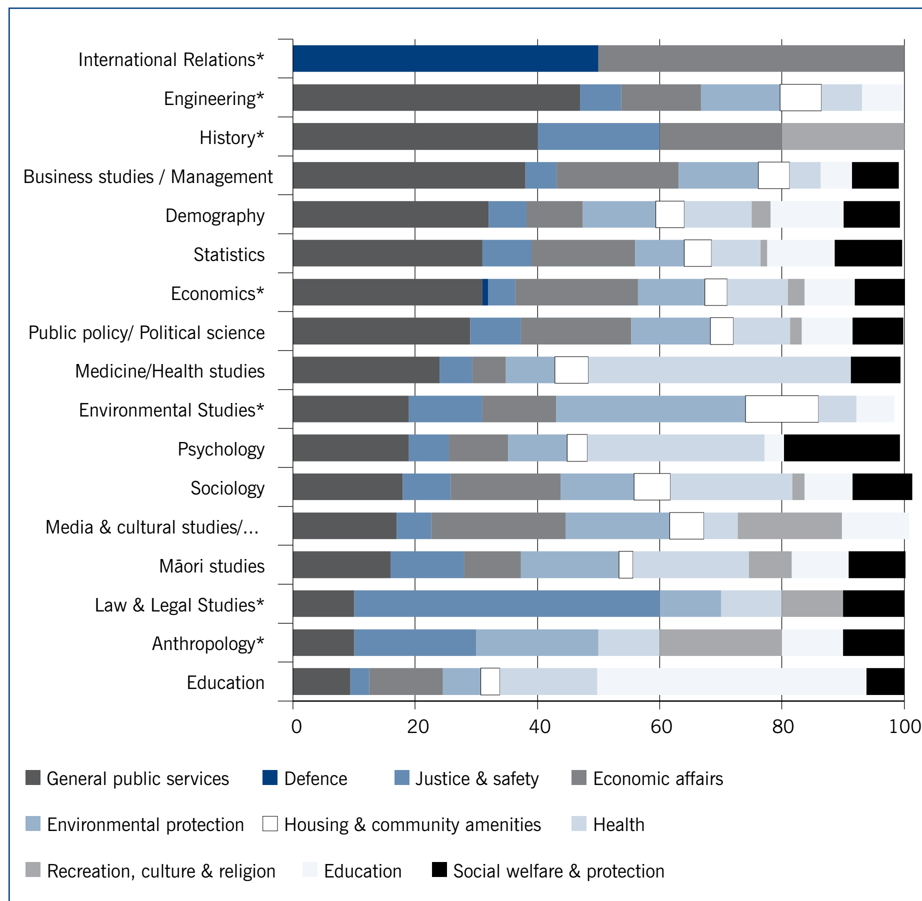
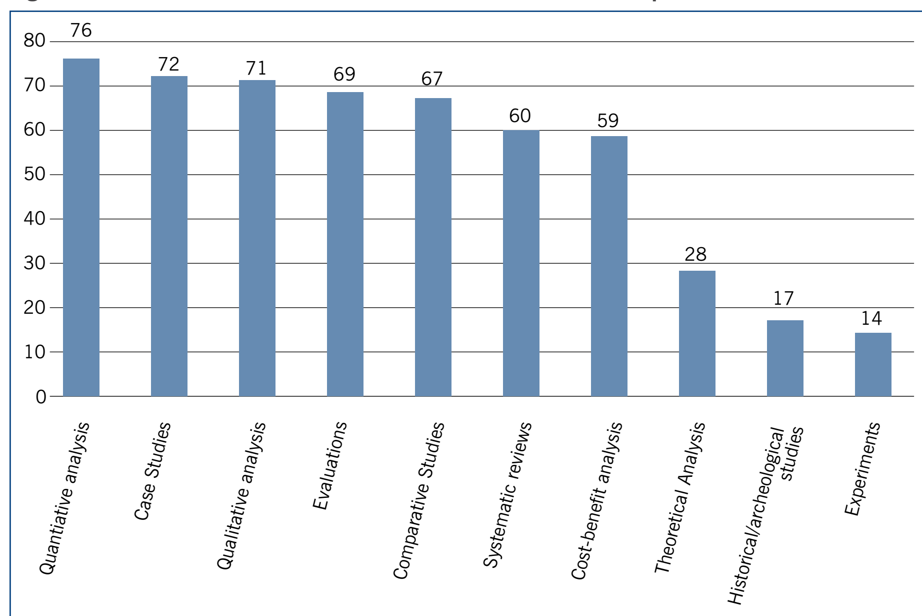


Figure 6: Useful academic methods. More than one alternative possible (%)



useful (discounting the small results for engineering and history), followed by demography and statistics. We will return to this question of usefulness in our final comments.

Moving on from the institutional differences between disciplines, we also asked the respondents what research methods they found useful in their policy-related work (Figure 6).

That traditional policy (analysis) methods such as quantitative methods, evaluations and systematic reviews score reasonably high would probably not surprise anyone. However, that case studies come in second place suggests that less 'positivistic' methods are appreciated by policy workers, and that policy work involves sources at the bottom of the hierarchy of evidence. On that note, it should be mentioned that case studies were considered to be the most useful method among the respondents in the UK study.

The next section of questions referred to access to and usefulness of academic sources. Asked whether in their work context they had easy access to university library databases and other scholarly online databases, 52% of the respondents answered yes. This goes against the common anecdotal evidence that policy workers do not have access to academic outputs such as journal articles. That policy workers do have such access, and use their access, is confirmed in the next result (Figure 7). We asked the respondents about the frequency of making use of academic outputs (e.g. making references in policy briefs, looking up academic sources for evidence). But while policy workers do use academic output, a substantial fraction of them do so on an infrequent basis. The further questions in this section related to enabling and constraining factors for using arguments from academic publications (Figure 8).

That policy relevance, good empirical examples and clarity of arguments are the answer categories with the highest number of responses is probably not a surprise to anyone. However, that academic credentials play almost no role is perhaps something worth further investigation. The question regarding constraining factors for using academic arguments shows a less clear cut result (Figure 9).

While lack of relevance represents the largest proportion of answers, arguments reflecting the 'two communities' idea – too abstract, technical and difficult to apply – seem to be an important theme. It is also worth mentioning that several of the qualitative answers in the 'other' category suggest lack of accessibility in academic writing, with comments such as 'not in plain English language', 'too theoretical and not real-world enough' and 'not focused on the problem at hand'. Moreover, once again there is evidence

that unclear academic credentials are considered to be a constraining factor for using an academic argument. There is reason to further explore what importance academic credentials are given by policy workers. Still, that the most frequent answer is the lack of New Zealand relevance could also indicate that the main problem for using academic arguments is the absence of domestic academic research in the policy field.

The next broad category of questions concerned the views among policy workers regarding the underlying conditions of using academic outputs, and whether academics should be more active. When respondents were asked to rate the importance of academic outputs and general academic expertise to their work on a five-graded Likert scale, the results generated were unclear. The mean value for contribution through academic outputs is 2.73 and for contribution through general academic expertise is 2.90. Yet we may conclude that role of the academic as an (available) expert is perceived to be slightly more important than her/his actual scientific production. When respondents were asked about the attitude of their work environment to using academic outputs we got a less encouraging result. Asked whether managers are encouraging of the use of academic support, on a five-graded Likert scale the mean is 2.75. This indicates to us that management is, if not directly negative, at least not overwhelmingly supportive of policy workers using academic outputs. When asked whether there are other requirements – e.g. legal, terms of reference instructions, etc – it appears the support for using academic outputs is even less. The mean value on a five-graded Likert scale is 2.15 (n=161). Hence we may conclude that the institutional support for use of academic outputs by policy workers is not exactly high.

The next section of questions deals with the involvement of academics in policy work. The overwhelming majority of the respondents (80%) responded positively to the idea of academics being active in policy-making. However, when asked at what stage of the policy process

Figure 7: How often do you make use of academic output? (%)

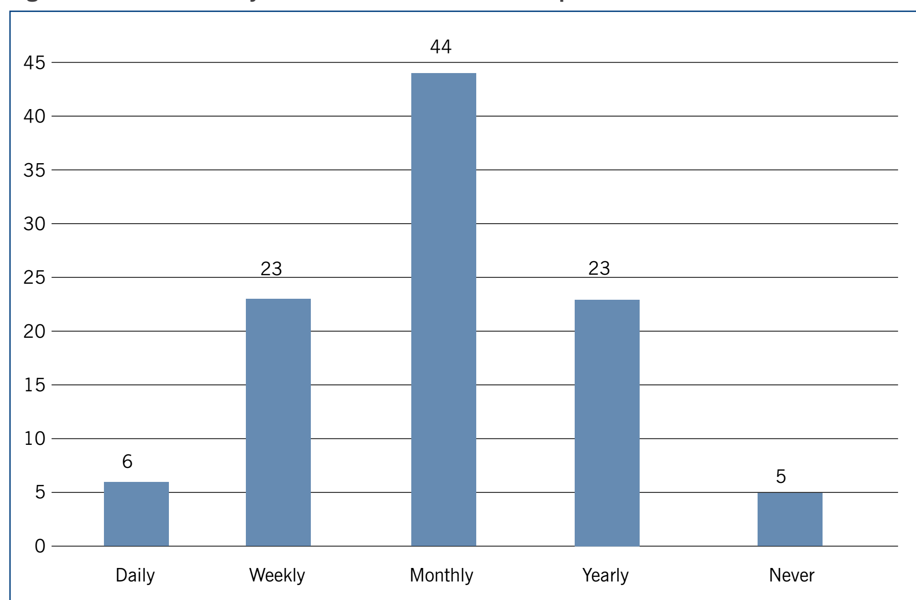


Figure 8: Enabling factors (one alternative) (%)

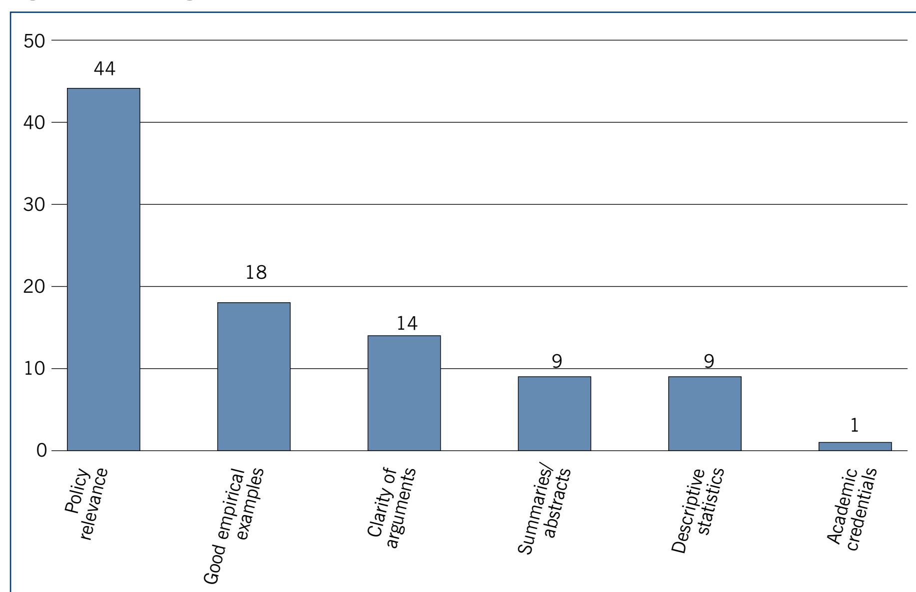


Figure 9: Constraining factors for using academic arguments (%)

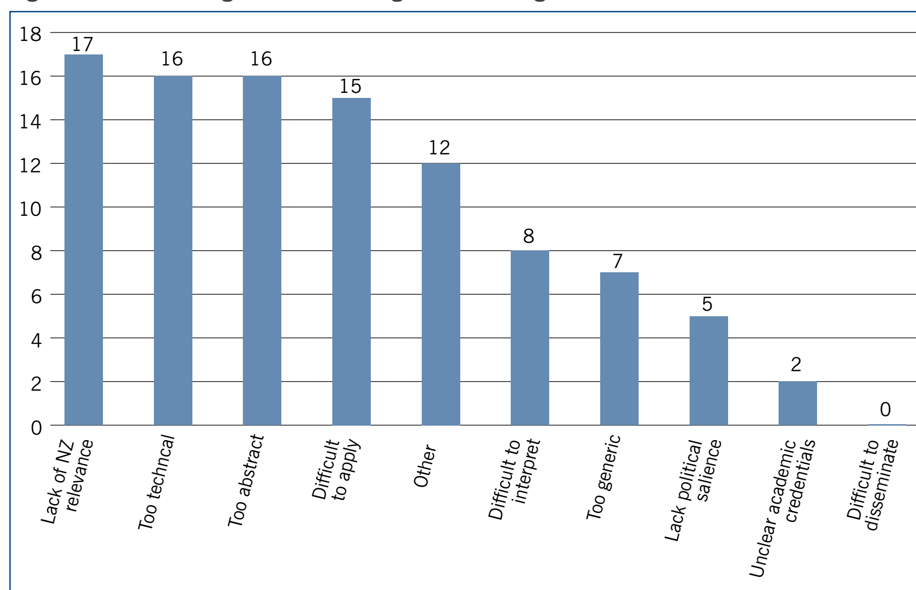


Figure 10: At what stage in the policy process should academics get involved? (%)

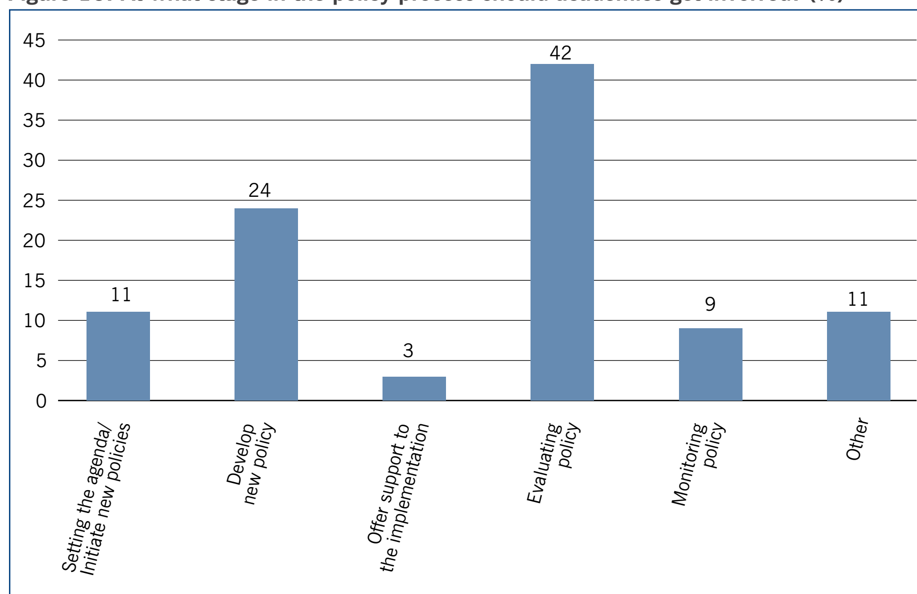


Figure 11: Perceptions on the most important informers of policy expertise (%)

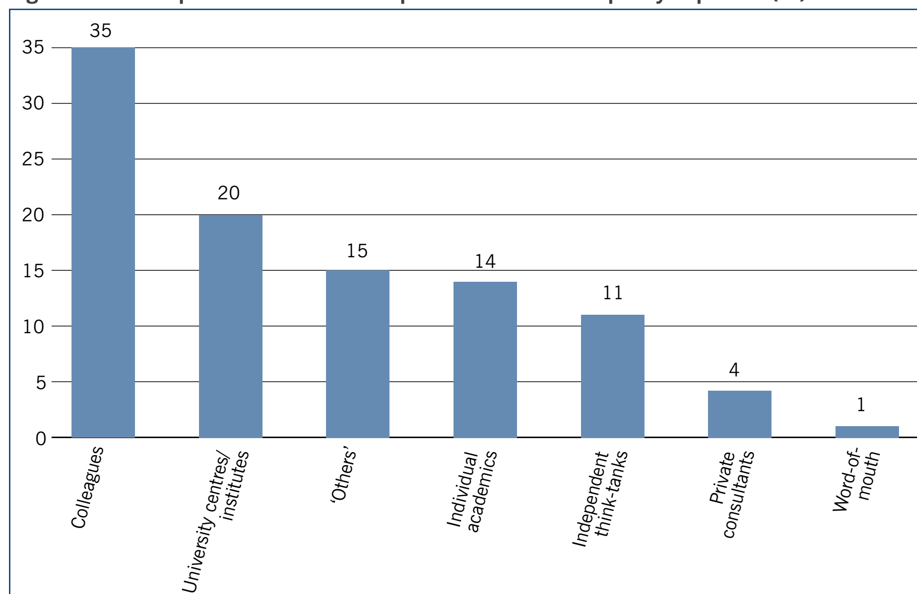
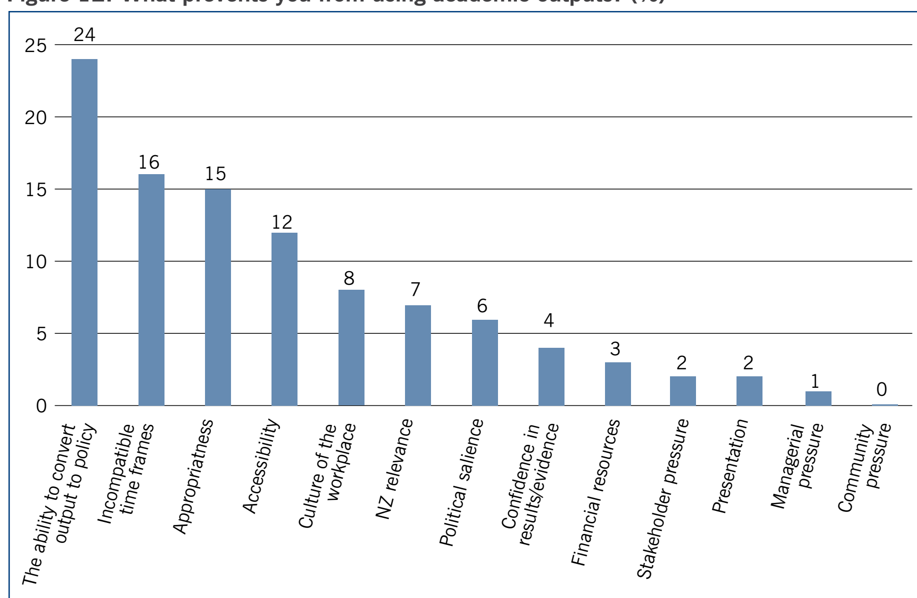


Figure 12: What prevents you from using academic outputs? (%)



academics should be involved, the answers are more spread (see Figure 10).

The weight given to the role of 'evaluator' is an interesting finding. One possible interpretation is that academics are conceived as neutral and non-biased in the political game, and therefore an obvious choice for appraising outputs and outcomes of policy. Equally, the low support for academics taking part in the implementation process is probably a recognition that academics are generally not experts on implementation issues. The category 'others' is full of qualitative responses which mainly criticise the underlying premise of the question that the policy process can be divided into discrete stages, but also addressing the need for impartial advice.

In addition to asking the respondents about the role of academics, we also asked them about their general appreciation of the most important 'informers of policy expertise' (see Figure 11).

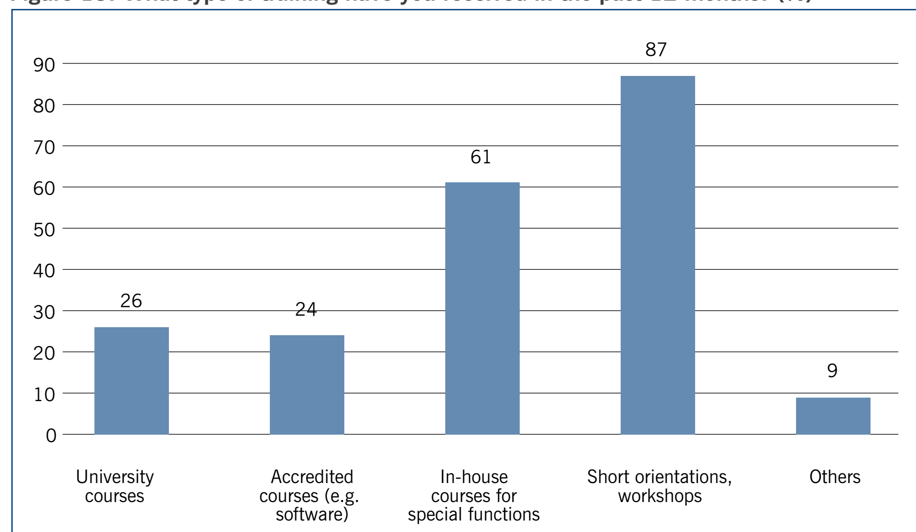
Unsurprisingly, the respondents answered that when they need policy advice they turn firstly to their colleagues. Also as predicted, universities were regarded as second best as 'good informers'. Equally, based on our own anecdotal evidence we also anticipated that private consultants would not be considered to be good informers. The broad category 'others' comprises a rather interesting mix, including 'sector', 'stakeholders', 'ministers' and 'departmental experts'. Some of the respondents also address the point that 'policy expertise' involves understanding both the process (in which colleagues are important) and content (where academics are the most important informers). In conjunction with this question, we also asked the respondents about what they believe prevents them from using academic outputs (see Figure 12).

Once again the main problem seems to be the two different communities of academia and policy workers. Still, it is disconcerting that 8% of respondents in the survey mention the culture of their workplace as a reason not to make use of academic outputs.

The final cluster of questions concerned work-related training in policy analysis and methods. We asked the

respondents whether they were required to attend specific work training, and 46% answered yes. Furthermore, 51% answered that their training was provided in-house. However, what are perhaps more interesting are the responses to the questions about whether the training is useful or not. Training is perceived as useful by the majority of respondents, but there is still a significant group who do not find it useful (18% 'occasionally', 6% 'never'). In terms of courses and training provided by universities and other suppliers, we notice that while many of our respondents have taken courses provided by universities, other forms (and in particular shorter training activities) are the most common (see Figure 13).

Figure 13: What type of training have you received in the past 12 months? (%)



This picture is probably a reflection of the policy-related work conditions in conjunction with scarce resources for staff training in government. Still, it is positive to see that just over a quarter of the respondents have had a chance to take university courses.

Concluding remarks

Despite the necessary reservations because of the low response rate, we think it is safe to offer a few propositions regarding New Zealand policy workers' utilisation of academic output.

First of all – and in fact a by-product to our overarching research questions – there are several indications in our study that policy workers in New Zealand operate differently from the traditional (American) policy analyst, notwithstanding having similar titles, such as 'analyst' or 'advisor'. Our respondents do not really match the ideal of the analyst who, through rigorous, systematic and evidence-based (or at least evidence-informed) analysis, suggests the best policy options. Instead we are witnessing the 'policy craftsman' (to use a term employed by Majone, 1989), who has to balance available (and often incomplete) policy evidence with short time frames, limited resources and political demands. Also, there is reason to suspect that job titles in government containing the word 'policy' probably cover a disparate mix of job descriptions in New Zealand. Certainly, this is not a revelation within the community of practitioners, but it is an important challenge for the ongoing effort to further evidence-based policy-making in New Zealand.

Second, and far from a popular assumption that public sector policy workers do not have access to academic publications, we see a clear indication that not only do a majority (albeit small) of them have access to electronic databases and library catalogues, the vast majority do access and use peer-reviewed scientific material. Although there are differences between policy sectors, the situation is not as bad as commonly believed.

Third, in terms of the usefulness of specific disciplines and methods, we must once again acknowledge that traditional policy-relevant disciplines and methods are far the most preferred, and that the disciplinary and methodological preferences seem to align with the respondents' policy domains (with some notable exceptions).

Finally, we must conclude that, although there are signs of an active use of academic output within the community of policy workers, there are equally signs confirming the picture of two distinct communities. Several of the respondents do, in fact, touch upon the problems of the timeliness, policy relevance and reader accessibility as constraining factors for using academic outputs. Yet we must also conclude that the vast majority of the respondents do make use of academic output and appreciate peer-reviewed academic sources. All this demonstrates that the connection between the professor and the policy worker probably is more complex than we assume, and calls for further research.

Acknowledgements

We would like to thank Lewis Rowland, IPANZ and Kirsten Windelow, PSA for their kind support in helping us with the administration of this survey.

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KNOW YOUR MIND

Geoff Bertram

Research Note: a revised set of New Zealand wealth estimates

In the February 2015 issue of *Policy Quarterly* I presented a table and chart tracing New Zealand's national wealth from 1980 to 2014, including private wealth figures drawn from the Reserve Bank of New Zealand's household-sector balance sheets. Expressed as percentages of GDP, these figures provided estimates of Thomas Piketty's beta (the ratio of national wealth to national income) over those 35 years. In the February 2015 article I compared my results with the beta values calculated by Piketty for a number of other OECD countries over much longer time spans. New Zealand seemed at that point to have a lower beta than the typical developed economy, though with a parallel rising trend (Bertram, 2015, pp.43-5, Table 1 and figures 7 and 8).

Geoff Bertram is a Senior Associate of the Institute for Governance and Policy Studies at Victoria University of Wellington.

Barely had that article been published when in March 2015 the Reserve Bank released a new, revised set of quarterly estimates of household wealth for the period December 1998–December 2014 (Reserve Bank of New Zealand, 2015).[1] The main changes from the earlier Reserve Bank data on household net worth were (1) the inclusion of household equity in non-incorporated enterprises and trusts, which substantially boosts the estimate of net financial wealth; and (2) the reclassification of residential rental properties as business assets, which means that they now appear as part of the financial wealth of households (through holdings of equity in the relevant businesses) instead of as housing wealth. The effect of this second change is to reduce the Reserve Bank figure for households' net equity in housing and land by nearly $100 billion, most of which will have reappeared as financial net wealth in the new statistics.

The overall effect of the revisions is to increase the Reserve Bank's estimate of private wealth, as at 2014, by $231 billion, equivalent to more than 120% of GDP. The impact on my previous estimate of Piketty's beta is substantial, raising the estimate of total national wealth at 2014

Table 1: Changes in estimate of national wealth due to new RBNZ household balance sheet data

Percent of GDP												
Year	Household net wealth						Govern-ment net worth	Total NZ-held net wealth 6+7 (Piketty's beta)	Net foreign holdings of New Zealand assets	Total net wealth incl foreign holdings 8+9	NBR Rich List wealth	Orthodox capital stock
	Equity in housing and land		Other assets		Total household net wealth							
	Calculated from former RBNZ Table C19	Calculated from new RBNZ Table C22	Calculated from former RBNZ Table C19	Calculated from new RBNZ Table C22	Calculated from former RBNZ Table C19	Calculated from new RBNZ Table C22						
	1	2	3	4	5	6	7	8	9	10	11	12
1980					193		na	193*	36	228		354
1990					222		na	222*	62	284	4	279
1993					238		10	247	82	330	4	288
1998					259		10	269	86	355	8	274
1999	158	136	104	211	262	346	6	352	82	435	9	277
2000	147	126	101	213	248	339	8	347	78	425	10	274
2001	143	123	97	198	240	321	10	331	74	405	11	272
2002	146	124	89	192	235	316	14	330	67	397	12	266
2003	171	144	87	208	258	353	21	373	67	441	14	268
2004	209	174	88	220	297	393	28	421	70	491	16	274
2005	232	192	89	217	320	409	35	444	72	517	20	281
2006	245	203	94	247	339	450	52	502	73	575	22	290
2007	269	222	100	260	369	482	57	539	76	616	23	297
2008	234	194	91	235	325	429	57	486	75	561	24	294
2009	223	184	92	236	314	420	53	473	86	559	21	308
2010	228	187	93	240	321	428	50	477	80	558	20	301
2011	216	177	95	244	312	421	40	461	67	528	23	292
2012	219	177	95	250	315	427	29	455	71	527	28	290
2013	238	192	105	255	343	446	32	478	71	550	30	292
2014	223	192	98	252	321	444	33	477	65	543		

* Excluding Government

from 350% of GDP to 480%, which moves New Zealand from its previously estimated position below the comparator countries in Figure 8 of my February 2015 article to a position in the middle of the bunch. This reinforces the conclusion drawn in the article that New Zealand is subject to strong convergence forces operating across the advanced economies, and overturns the anomalously-low value which I previously estimated for beta.

Table 1 here shows how the revised data for the period 1998–2014 change the figures that appeared in Table 1 of my February 2015 article. (In addition, the table corrects an error in the seventh column of the previous table which had subtracted rather than added net foreign holdings of assets.) Figure 1 shows the impact of the new data on the picture of national wealth that was presented in Figure 7 of my February article. Figure 2 presents a revised version of Figure 8 from the February article, showing that, whereas the previous estimates had New Zealand's wealth/income ratio lagging behind that of other developed economies, the new figures place New Zealand up among the others and on the same trajectory.

Unfortunately, the Reserve Bank's revised household data do not extend back before December 1998; hence Figure 1 shows the impact of the new data only for the period March 1999–March 2014. The earlier estimates, although now known to be serious underestimates, are still shown for comparative purposes.

One major issue that remains to be explored is foreign ownership of housing in New Zealand. In Table 1 and Figure 2 the data for total value of housing include foreign-owned housing together with locally-owned, while the data for 'net foreign holdings of New Zealand assets' do not include housing.[2] Given the importance of housing in total wealth, and the considerable recent public interest in foreign purchases of housing stock in New Zealand, this gap in our available statistical information is unfortunate.

Figure 1 New Zealand wealth: effect of the March 2015 revisions in Reserve Bank estimates of household balance sheets

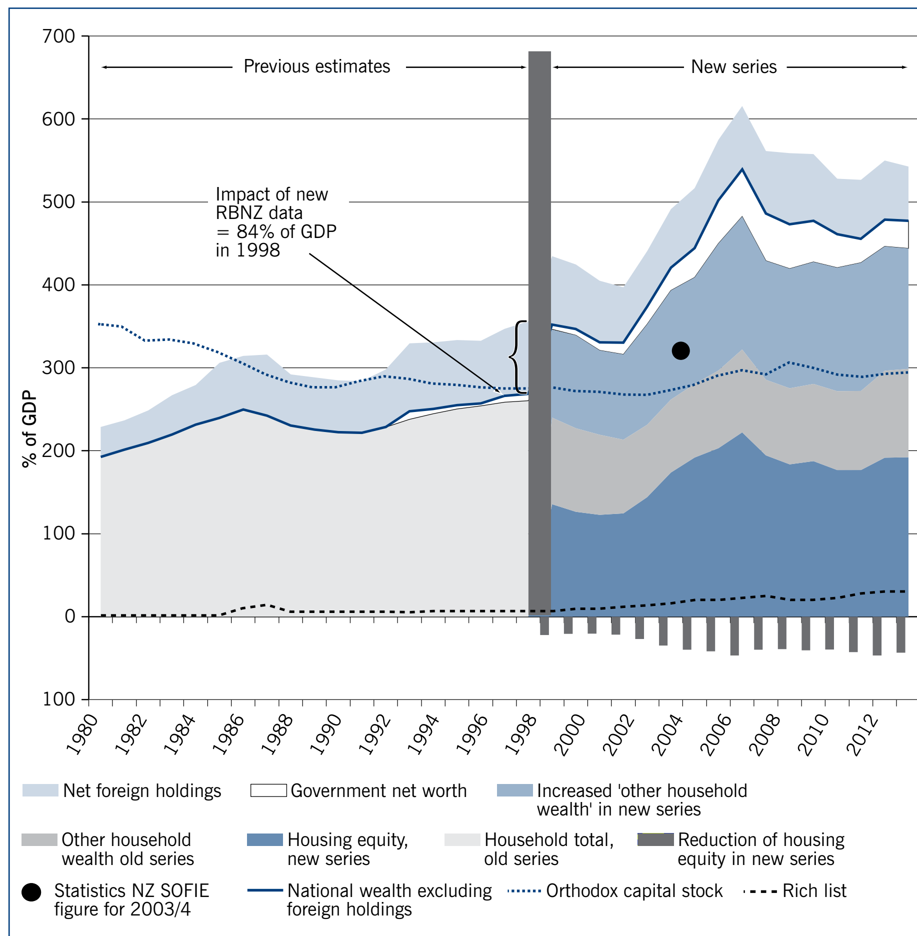
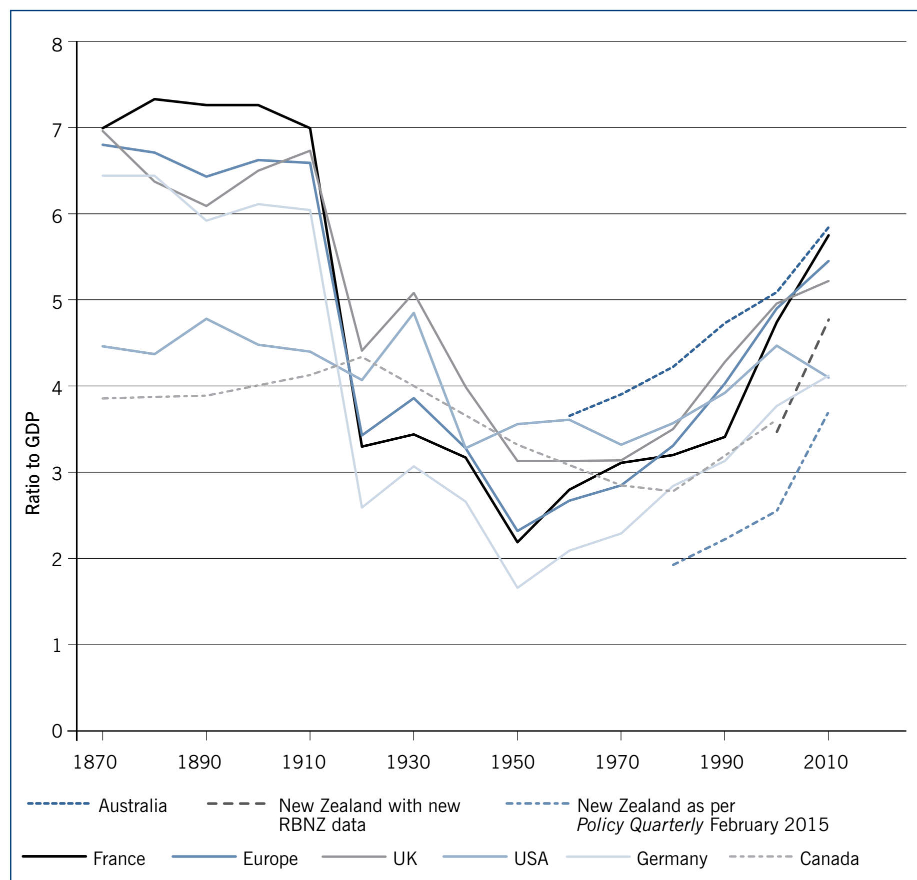


Figure 2 Wealth/income ratios in rich countries 1870-2010[3]



1 The new data are available online at http://rbnz.govt.nz/statistics/tables/c22/hc22.xls: Table C22, 'Household Balance Sheet (NZ$million)'. The Reserve Bank's previous tables C18, C19 and C20 were discontinued, and Table C21 was completely revised all the way back to 1998.

2 In response to my enquiry, the Reserve Bank stated that in preparing its household balance sheet estimates 'we didn't do any adjustment for ownership of housing overseas, nor non-resident ownership of housing in New Zealand. We aren't aware of any reliable estimates of overseas ownership (perhaps the new SNZ household survey on net worth that is in the field now?) and we wouldn't want to adjust only one side of the balance sheet if we did. So technically, non-resident ownership of housing is assumed to be NZ household. However, NZ household ownership of land overseas is not included' (Rochelle Barrow, email, 13 April 2015).

3 Data for the other countries in the figure are from http://piketty.pse.ens.fr/files/capital21c/en/ and http://piketty.pse.ens.fr/files/capitalisback/Australia.xls. The New Zealand data are from Table 1 in the paper.

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