

POLICY Quarterly

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Editorial Note

Advancing Better Government

Almost two years ago, on 29 September 2014, the Council of Victoria University of Wellington approved the University's new *Strategic Plan*. Developed under the leadership of the new Vice-Chancellor, Professor Grant Guildford, the Strategic Plan embraces five 'primary strategies' and five 'enabling strategies'. The first primary strategy requires the University to 'adopt a distinct academic emphasis' – one that 'draws upon its position as New Zealand's globally ranked capital city university'. Consistent with this approach, eight multidisciplinary themes were highlighted:

- advancing better government
- cultivating creative capital
- spearheading our digital futures
- enabling our Asia-Pacific trading nation status
- stimulating a design-led, high-value manufacturing region
- enhancing the resilience and sustainability of our natural heritage and capital
- improving health and wellbeing in our communities
- enriching national culture, civil society and global citizenship.

This special issue of *Policy Quarterly* focuses on the first of these eight themes – advancing better government. But what does this goal mean? What are the defining features of governing well? And what are the requirements for better government in New Zealand at this particular moment in history?

Any answers to such questions are bound to invite controversy. For thousands of years, and certainly since great philosophers like Plato and Aristotle, the characteristics of *good* government have been vigorously contested. And if the nature of good government remains unresolved, then what is required to make it *better* will inevitably be disputed.

For at least three decades, neo-liberalism (or market liberalism) has been highly influential in political discourse and policy circles, particularly in developed countries like New Zealand. Socialist and social-democratic ideas, by contrast, have been on the defensive. And post-materialist conceptions of public value, the good society, and better government, such as those advanced by Green parties and ecological economists, have only slowly gained traction.

The currently ascendant neo-liberal creed draws on multiple theoretical foundations and philosophical traditions. But among its common threads are the celebration of individualism over communitarianism, competition over cooperation, market forces over state direction, and the roles and preferences of consumers or clients over those of citizens. In its more extreme versions it commends selfishness over altruism, greed over generosity, and private indulgence over public virtue.

To the extent that neo-liberals speak of social justice, they typically prioritize non-egalitarian principles: market rewards based on merit, skills, contribution, and effort trump the equalizing of outcomes and opportunities or meeting human needs – certainly if needs are broadly conceived. Viewed from this standpoint, poverty and material deprivation result mainly from personal failure; they are not primarily symptoms of structural injustice or bad luck. Hence, 'throwing money' at social problems rarely provides a solution. Nor is there a case for mitigating gross income and wealth inequality: doing so, it is claimed, will weaken entrepreneurship and stymie economic growth. Government failure, after all, can pose a greater risk than market failure.

Given these philosophical presuppositions, the policy prescription for 'advancing better government'

is unmistakable: better government means less government. To be better, the state must be smaller and less obtrusive. This implies less taxing, spending, and regulating; it means stronger protection of fundamental liberties, especially the right to own and enjoy one's property; and it means less governmental coercion and a rejection of paternalism. After all, if individuals are the best judges of their own interests, then 'nanny' states have no place in a neo-liberal world.

Hence, to the greatest extent possible, governments should be neutral with respect to the good life. They should serve as impartial referees, maintaining a level playing-field, and letting the competitive dice fall where they will. The state should not encourage, let alone impose, any particular ethical norms or conceptions of the good society on its citizens. Instead, individuals must be allowed to formulate and pursue their own life plans, free from external constraint and subject only to the harm principle – namely, that they do not inflict significant harm on others.

Yet, after more than three decades of ideological dominance, the central tenets of the neo-liberal creed remain highly problematic. Mounting empirical evidence suggests that *less* government does not automatically ensure *better* government, and it certainly does not guarantee improved societal outcomes. Light-handed regulation can contribute to grave injustice, as well as great physical and social harm. Less environmental protection may be defended by advocates of property rights, but its downside is a less sustainable future. Less investment in prevention may reduce public expenditure today, but it can simply impose even larger costs tomorrow. Less state coercion may remove restraints on private coercion and monopoly power, undermining rather than enhancing individual liberty. Above all, being smaller does not guarantee superior wisdom, prudence, foresight, honesty, efficiency, effectiveness, resilience or stewardship. Indeed, if smaller government reduces the state's capability and capacity, the quality of governance may be diminished, not strengthened.

By the same token, any suggestion that *bigger* government is always *better* is equally mistaken. Accordingly, all ideological assumptions and assertions must be exposed to rigorous scrutiny and reasoned deliberation; they must be tested against the best available evidence. The aim, in other words, must be to avoid simplistic platitudes, slogans, and sound bites. Equally, there must be clarity about values, principles, goals, and standards. Robust ethical analysis must go hand-in-hand with detailed empirical inquiry.

This special issue of *Policy Quarterly* offers eleven perspectives on the broad theme of 'advancing better government'. While the topics are diverse, they all have a strong New Zealand focus and significant policy implications. In no order of importance, the contributions cover: the nature of anticipatory governance; improving disaster risk reduction and emergency management; the implications of climate change for managing natural hazards; communicating policy risk; strengthening the role of scientific evidence in policy-making; clarifying the constitutional role of the public service; reducing the stewardship deficit in health policy-making; enhancing the quality of citizenship education; improving the fairness of the tax system; and regulating foreign trusts. To set the scene, Norman Gemmill and Derek Gill explore the evolving size and shape of the New Zealand state.

I am grateful to all the contributors and I trust that readers will be both provoked and better informed.

Jonathan Boston, Editor

The Myth of the Shrinking State?

What does the data show about the size of the state in New Zealand, 1900-2015

As every student knows, the economic reforms of the fourth Labour government after 1984 reduced the size of the state. One of the elements of the government's programme of economic liberalisation was to exit from state trading activities by first corporatising and then privatising the activity. The trading activities in question ranged from telecommunications and banks to hotels, a printing business and a shipping line. In 1984 government spending was

about 40% of GDP, and the government employed 31% of the workforce. As former Treasury secretary Graham Scott put it, a key objective of the reforms was 'to get the government out of activities it was inherently poor at managing and to improve those functions which remained the core responsibilities of government' (Scott, Ball and Dale, 1997). Successive National administrations have maintained the 'small state' rhetoric under the banner of fiscal prudence.

If shrinking the state was a core aim, then, one would expect to see the shrinkage in the data. But, as we show in this article,¹ the truth of the matter is more complicated. If you are expecting to find a shrinking state, and you look in the right place, you can just discern it, but in many ways the state is no smaller now than it was in 1984, when New Zealand's 'quiet revolution' began (James, 1986). It all depends on where you choose to look and what you look for.

In this article we present the data using a variety of lenses – the state as taxpayer,

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spender, producer, employer, investor and steward – to assess how the size and shape of the state has changed. We would have liked to be able to present data on the state’s role as a regulator, but no comprehensive time series are available.² We focus on historical trends in New Zealand, as international comparisons are already available with the OECD’s, *Government at a Glance*, and David Rea’s 2009 article in *Policy Quarterly*. Almost all the data and graphs used in this article are available on a public website, <https://data1850.nz>.

Getting and spending

To begin, we will consider the government’s role as taxpayer and spender. How have various ratios of tax revenue and public expenditure to GDP varied over time? The size of government expenditures, E, and its revenues, R, are perhaps the most commonly cited indicators of government size. E and R are typically presented as ratios to GDP. This is a useful measure of size, but it is misleading in one respect: such ratios are not *shares* of GDP. That is, they do not represent the government’s share of total real or nominal resources

in the economy. The E/GDP ratio is not bounded by 0 and 1, because E, the numerator, includes transfer payments that are not included in GDP. Likewise, tax revenues, a component of R, are transfers from taxpayers to the state, and also not a component of GDP.

With that in mind, then, what does the data tell us? Figures 1A and 1B show the ratio of central government expenditure to GDP from 1876 to 2015 and from 1972 to 2015 respectively. These data show central government spending, which comprises the government’s use of real

Figure 1A: Central government as spender (as percentage of GDP) 1876–2015

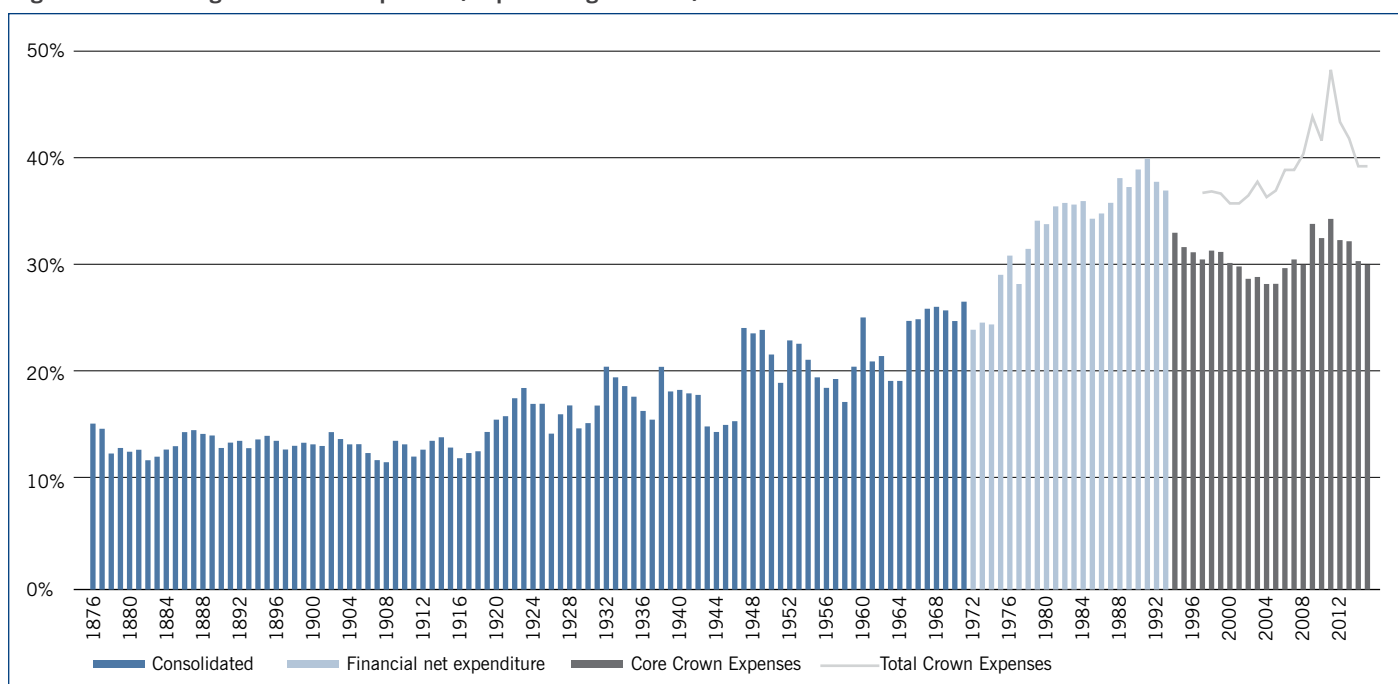


Figure 1B: Central government as spender (as percentage of GDP) 1972–2015

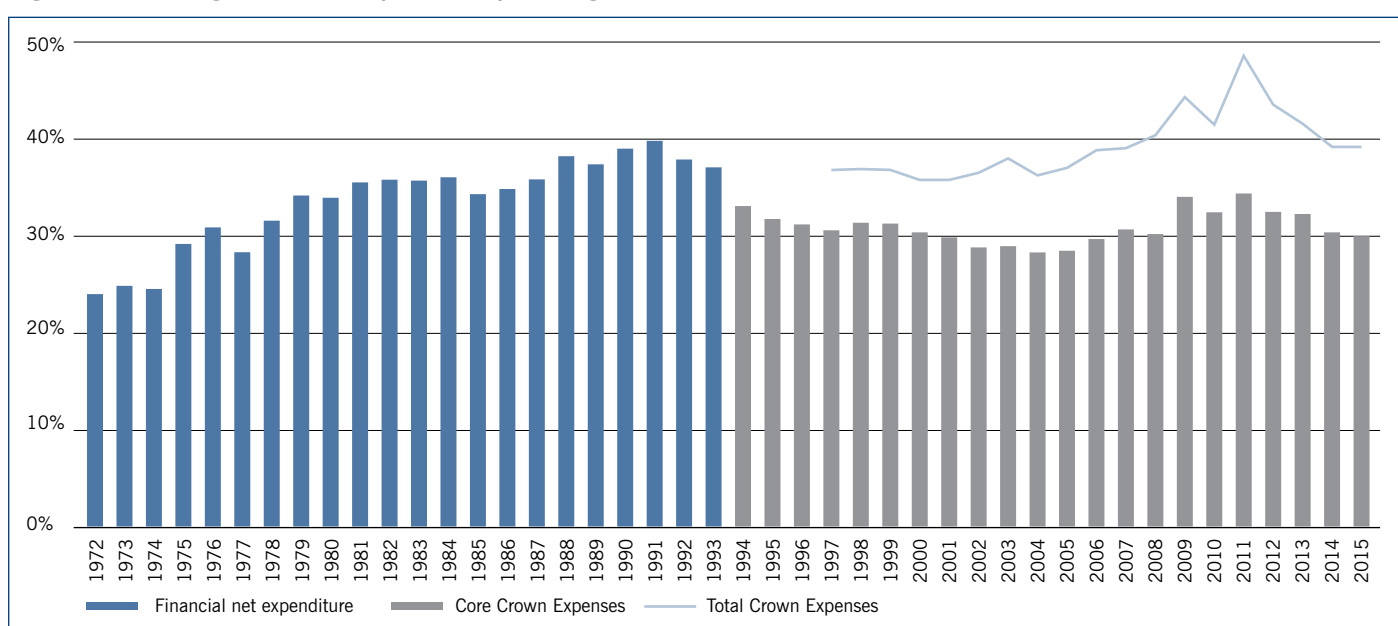


Figure 1C: Components of government spending (as percentage of GDP) 1972-2015

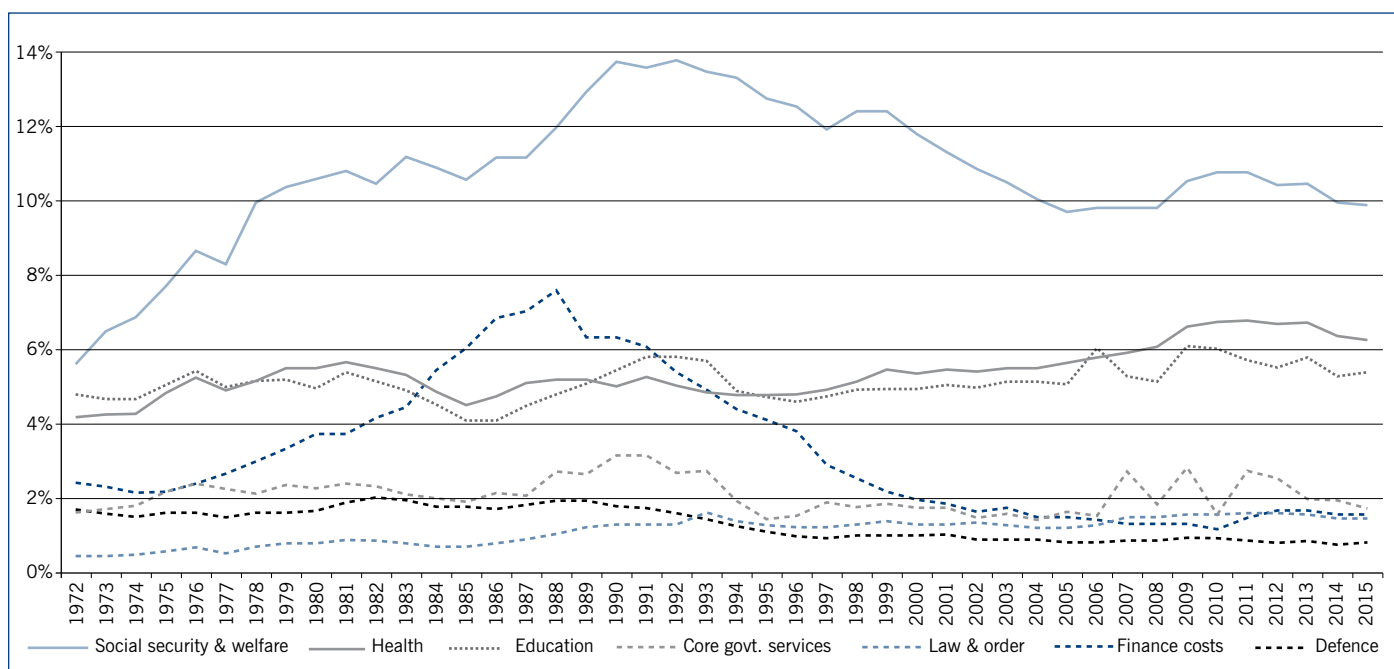
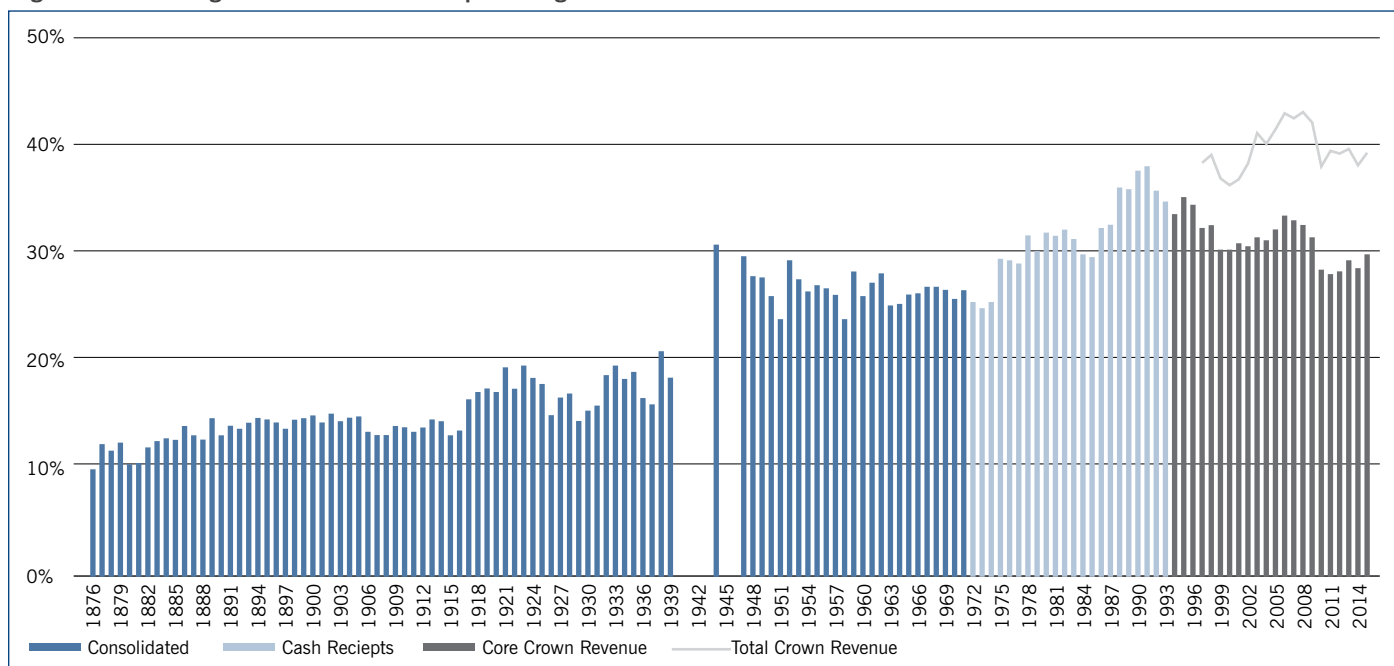


Figure 2A: Central government as taxpayer (as percentage of GDP) 1876-2015



resources along with subsidies, transfer payments, debt servicing and other expenditures.³ We observe that overall government expenditure stayed constant at around 15% from 1876 to 1947, with higher values during the Great Depression of the 1920s and 1930s and during the Second World War. Expenditure ticked upwards to 24% in 1948,⁴ marking the start of a general expansion that was to last until 1990, when it reached 39% of GDP. Spending trended downwards after the ‘mother of all budgets’ of 1991 and has stayed around 30% ever since, apart

from recent upticks in response to the global financial crisis and the Canterbury earthquakes. But despite these shocks, so close together, expenditure stayed below 35% of GDP, and is now back down to 30%.

Case proved, perhaps? Not when we look harder at what the government has been spending on. It is apparent from Figure 1C that most of the big-ticket items have stayed remarkably constant or even increased since 1972. Health spending has grown steadily, from just over 4% of GDP in 1972 to just over 6% in 2015, and law

and order has seen even steeper growth. Spending on early, school and tertiary education has also grown over the same period, though it has fallen back from its high point of just over 6% in 2010. But what of core government services? Here spending has been more volatile, but nonetheless it is a fraction higher in 2015 than it was in 1972. The two items that initially rose and have subsequently fallen over the period are social security and welfare. Social welfare spending rose by 4% of GDP in the 1970s, associated with the introduction of New Zealand

Figure 2b: Components of government taxation (as percentage of total revenue), 1903-2015

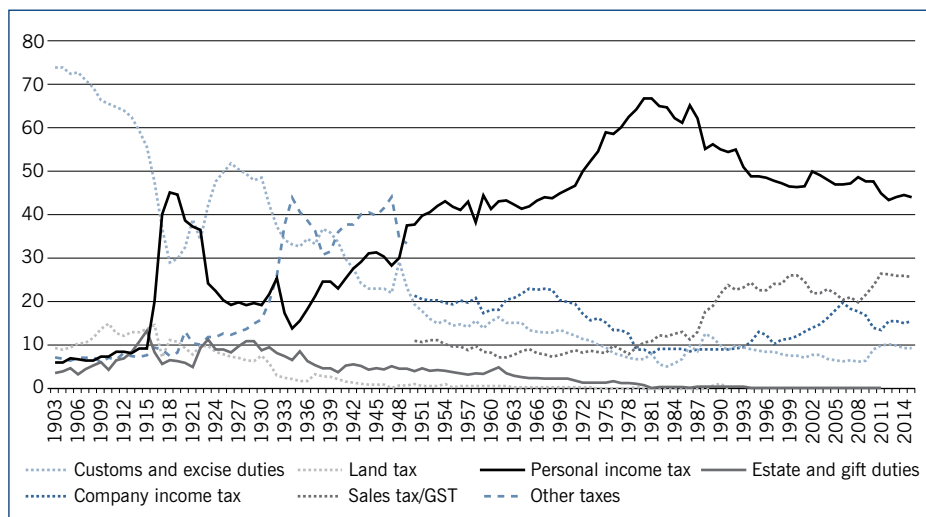


Figure 3a: General government production (as percentage of GDP), 1972-2013

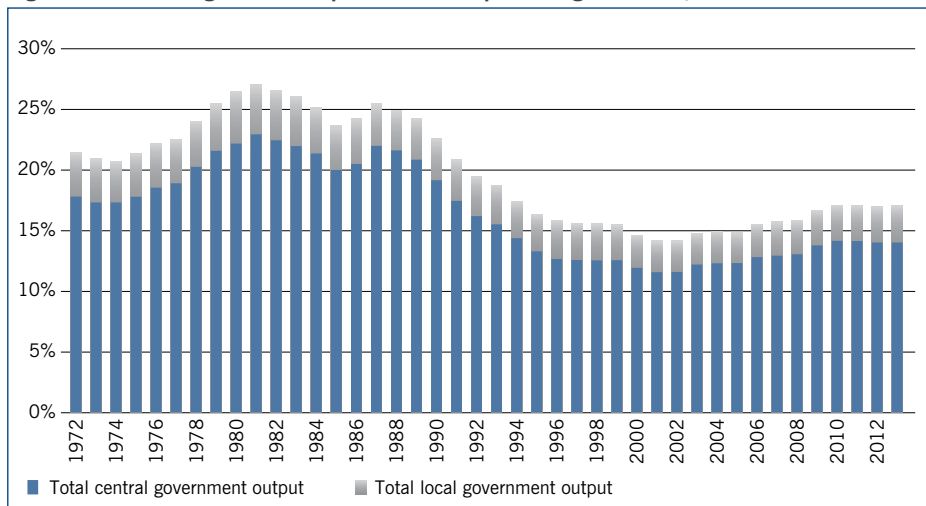
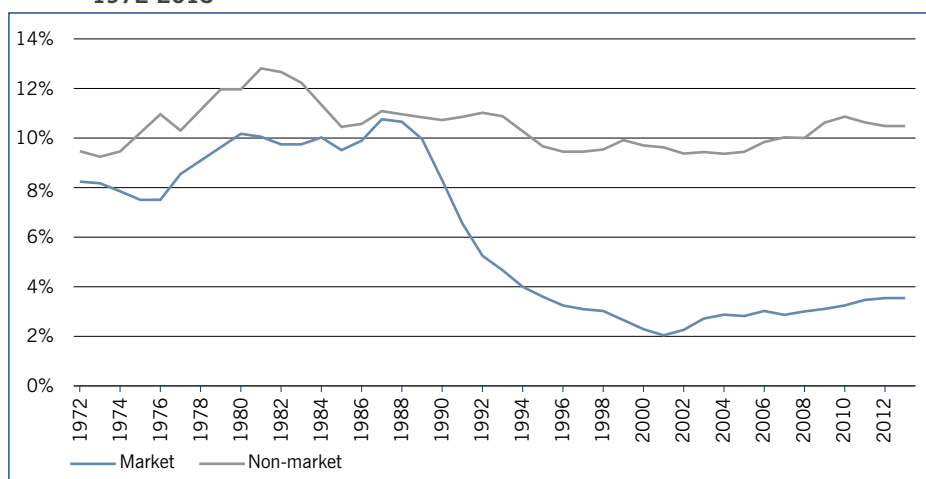


Fig. 3b: Central government market & non-market production (as percentage of GDP) 1972-2013



Superannuation (NZS), and further increased in the 1980s with the growth in numbers on benefits, to reach nearly 14% of GDP in the late 1980s; it has fallen since to 10% with the increase in the age of eligibility for NZS. Debt servicing costs, which exploded to nearly 8% in 1988,

were brought below 2% by 2000, where they have stayed ever since.

What of the outlook for expenditure? The Treasury projects the growth in health spending to continue and even accelerate, thanks to the ageing population (Treasury, 2013). So, at least from this source, one

could expect the state to expand in the coming decades.

What about government revenue? The story about tax broadly mirrors the spending story, with tax revenues pretty flat from 1876 to 1916, at 10–15%, rising to 15–20% in the decades before the Second World War. The data for 1940–45 are unreliable or missing, but, as Figure 2A shows, the wartime tax rate of around 30% persisted in the post-war decades. By the early 1970s it was down to 25%. Central government taxation rose steadily from then on, peaking at nearly 40% of GDP in 1990, before falling back to the long-term average of 30%. Was the global financial crisis the cause of the dip below 30% around 2010? Perhaps, but the 2010 tax reforms are also part of the story. The global financial crisis can be seen in the minor decrease in 2009, indicating that it had only a minor initial impact on New Zealand. By contrast, local government rates have been relatively stable at around 2% of GDP over the whole period since 1993.

But looking at total tax as a percentage of GDP obscures the big changes in tax composition since 1900. Governments collect taxes for different purposes: to pay for public services, to promote income or wealth distribution, and to encourage or discourage certain activities. Customs and excise revenue accounted for the lion’s share of tax revenue at the beginning of the 20th century, with land and estate taxes making up the balance. Personal income tax took over from customs and excise revenue during the First World War, before falling back for another 30 years; since 1950 it has been the principal source of tax revenue, peaking at 67% in 1980, but staying under 50% since the early 1990s. Sales tax, introduced in 1951, accounted for around 10% of the total until October 1986, when GST was brought in. GST was much broader based than the sales tax it replaced, and now accounts for around 25% of the tax take, so the proportion coming from income tax has fallen steadily since 1987. Company tax was introduced in 1951. It has never amounted to more than 25% of the total, and is currently around 15%. In 2011 the company tax rate was reduced to 28%, the top personal income tax

rate was reduced to 33% and GST was increased to 15%.

Producing, consuming and investing

Another useful way to look at the size of the state is to consider its other roles. The state is both a producer and a consumer, an investor and also an employer. When thinking about how big the state is, it is instructive to look at these functions too. Aside from employment, they can all be measured as a percentage of GDP, in order to reveal the long-term trends.

Government production is made up of two components, market and non-market. Market production is the value added by government-owned organisations which sell their output, such as coal or electricity. (Value added is the difference between the sales revenue and the cost of production, such as labour, raw materials and capital depreciation.) Non-market production refers to the services produced by the government (such as defence, law and order, or regulations) that consume real inputs (labour, raw materials and capital depreciation) but for which there is no market price and no arm's-length sales transaction for the outputs. (Note that total government spending, as described above, includes transfer payments such as pensions and benefits; government production *excludes* transfers. That also means that the ratio of government output to total output, GDP, is bounded by 0 and 1.)

The data on general government production from 1972 to 2013 do show a shrinking state. As Figure 3A shows, government production of all kinds (central and local, market and non-market) peaked in 1982 at 27% of GDP, and fell steadily from 1988 to 2002, rising a little over the next decade but staying well under 20%. Disaggregating the data into central government market and non-market production reveals just where the shrinkage came from. The changes were in market production (Figure 3B). In 1972 it was a shade over 8%, and it peaked in 1987 at just under 11%; thereafter the range of privatisations by successive administrations meant that, by 2000, market production had fallen to as low as 2%.

Figure 4: Government final consumption expenditure (as percentage of GDP) 1972–2015

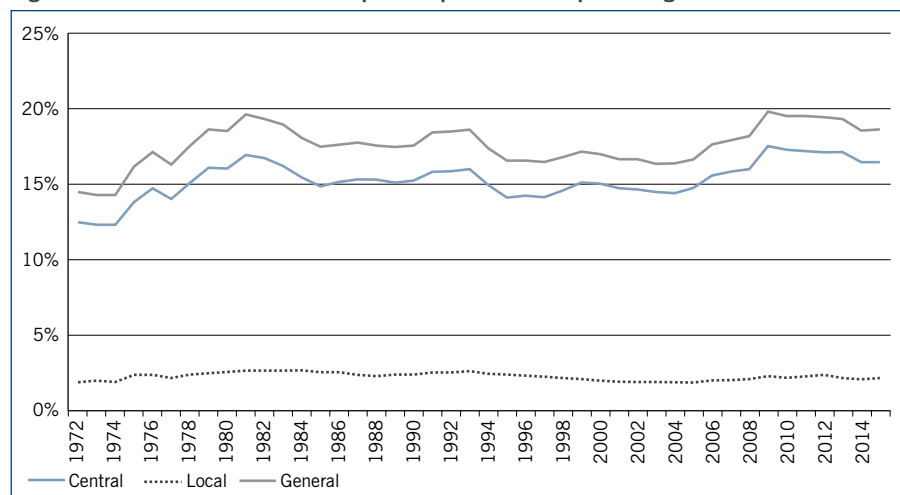


Figure 5A: Government as an investor (GFCF as percentage of GDP) 1972–2015

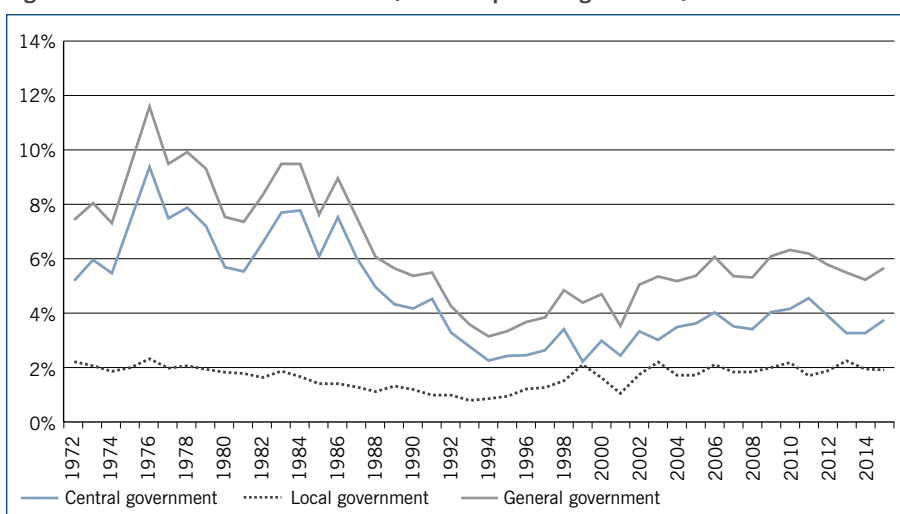
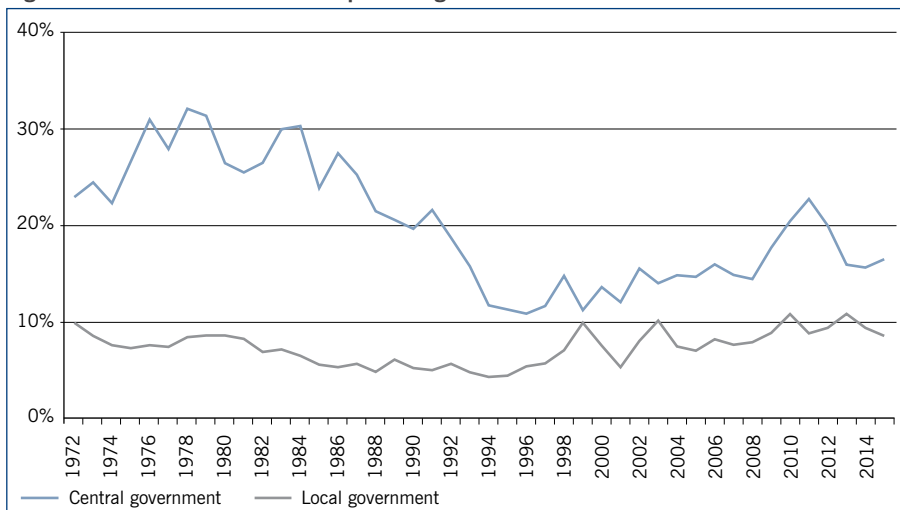


Figure 5B: Government GFCF (as percentage of total GFCF) 1972–2015



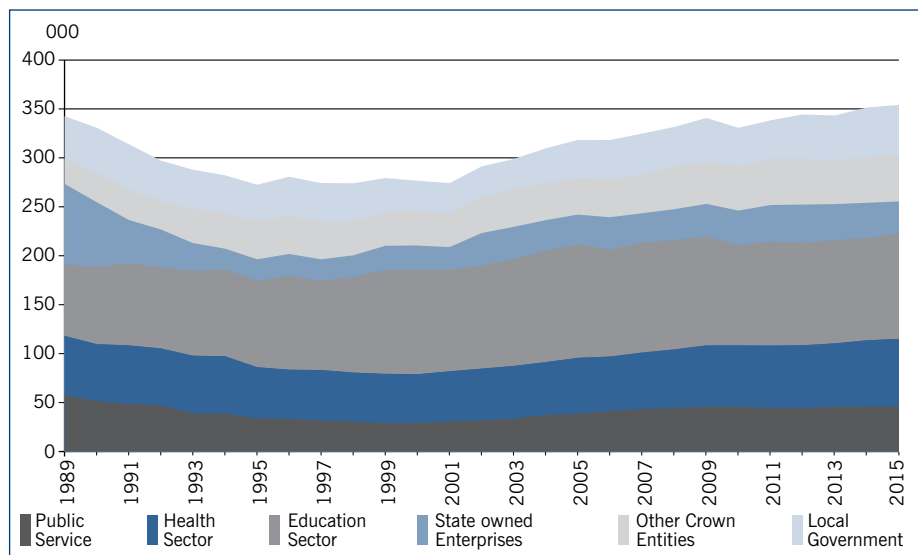
Interestingly, non-market production has come down as well, but with different inflexion points. It peaked earlier, easing back from 1981 to 1985 and again from 1993 to 1997. But overall the fall in government production is attributable to the wave of privatisations from 1987 to

1999, begun under Labour and continued under National. A similar pattern can be seen in local government production, which, although modest in size compared with central government, peaked in 1980 and has fallen pretty consistently ever since.

Table 1: Public sector employment change (as percentage of start year), 1989–2015

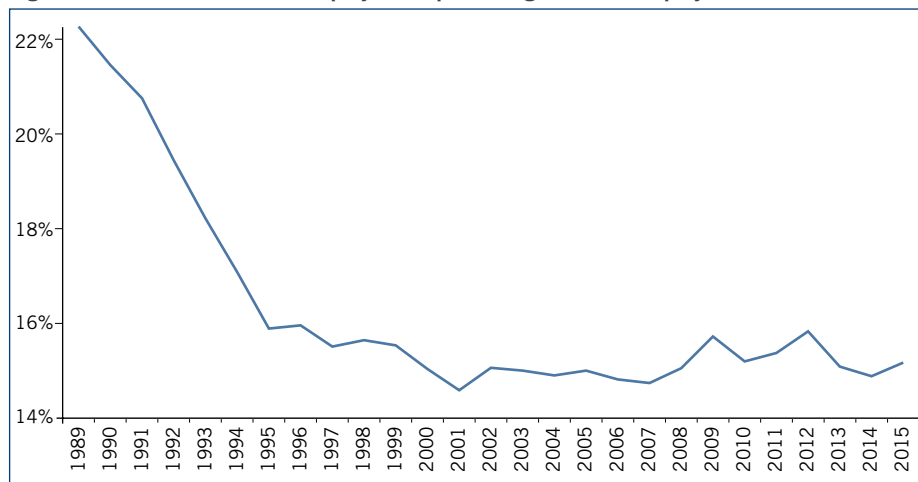
	Public service	Health sector	Education sector	State-owned enterprises	Other Crown entities	Local government	Public sector
1989–2015	80%	115%	149%	40%	185%	115%	103%
1989–2001	60%	87%	133%	36%	117%	67%	83%
2001–2015	150%	134%	104%	140%	137%	164%	129%

Figure 6: Government as an employer by category type (FTE), 1989–2015



Source: State Services Commission and Statistics New Zealand

Figure 7: Government as an employer (as percentage of total employment) 1989–2015



Source: State Services Commission and Statistics New Zealand

Case closed? Perhaps not. The consumption figures tell a different story.

Government final consumption refers to the non-market services that the government produces (such as law and order, defence, regulations) that consume real inputs (labour, materials, capital depreciation) in order to produce non-market outputs. ‘Consumption’ means the consumption of real resources, less any fees or charges, so it excludes transfer payments and capital spending. In New Zealand, central government spending

on consumption is much larger than that by local government, which has stayed flat since 1972. As Figure 4 shows, central government consumption had fallen to 15% before the reforms of the 1980s took effect. It rose markedly in 2008, with a minor reduction since.

So what of government investment? Investment or gross fixed capital formation (GFCF) measures all investment in physical fixed capital assets (including new investment replacing worn out or depreciated capital stock). The results are interesting (Figure

5A). Once again, total government GFCF peaked (at 12% of GDP) in 1975, fell sharply from 1987, and bottomed out in 1994, then growing modestly to 5.5% by 2014. Local government’s share of the total has stayed about 2% for the whole period; all the changes have been in central government investment.

Another way of looking at investment is to compare it, not with GDP but with private sector investment – that is, total gross fixed capital formation – for the same period. Central government investment fell from 1988 to a low of a little over 10% of total GFCF in 1996, but rose to around 15% through the 2000s, with a sharp rise from 2009 to 2013, peaking at more than 20% in 2011. This would appear to be the product of two quite short-term effects: a fall in private sector investment after the global financial crisis, and a rise in central government investment related to the Canterbury earthquakes.

The government as employer

What do the employment figures tell us about the size of the state? The employment data set covers a shorter period than the other time series, because comparable data are only available from 1989.

In absolute numbers, total public sector employment declined from 1989 to 2001, recovered slightly under Labour to 2007, and finished very slightly higher (103%) in 2015 than in 1989. But these are gross figures. As Table 1 shows, education (49%) and health (15%) employment have grown during the period, and Crown entities have almost doubled in size (85% higher), while the core public service has indeed shrunk, to 80% of the 1989 figure. Local government has expanded from 31,000 employees in 2001 to 51,000 in 2015.

The breakdown by category for the period 1989–2015 is shown in Figure 6, using QES data supplied by the State Services Commission. While public sector employment has grown overall, so has the overall labour force. Figure 7, which shows public sector employment as a percentage of total employment, illustrates a dramatic fall, thanks to strong job growth in the private sector. The government employed more than one in five people in 1989, but the proportion

fell dramatically over the next five years, and is today less than 15%.

The government as fiscal steward

Finally, what about the government's role as a fiscal steward? 'Stewardship' is the management of the government's overall fiscal position, including the Crown balance sheet. This is an important consideration, because focusing solely on taxes paid and current government services produced ignores whether the services are funded from taxes or debt and whether the government is building or depleting its stock of assets.

Over the last 40 years the Crown's net debt and net worth positions have fluctuated markedly.⁵ As Figure 8 shows, the central government net debt/GDP ratio went through three distinct phases. There was a rapid deterioration in net debt after the mid-1970s, when the growth in tax revenue was insufficient to match the rapid growth in pension spending, other benefit spending and debt servicing. There was a steady improvement after 1991, with growing fiscal surpluses, GDP and population growth all reducing the ratio of net debt to GDP. After 2008, the global financial crisis and the earthquakes of 2010 and 2011 pushed the government's finances back into a temporary deficit.

Table 2 shows the changes since the first Crown balance sheet was produced in 1992. What is notable is the rapid growth in the stock of fixed investments and the value of financial assets, such as the Cullen Fund, and with the full funding of ACC.

Governments can shift resources between generations by running primary fiscal surpluses which can then be used to bequeath future generations lower debt, a stock of financial assets (such as the Cullen Fund), or an increased stock of fixed assets. In essence, what the analysis of the Crown's balance sheet shows are massive indirect transfers between generations through the change in the Crown's fiscal balance and net worth.

Plus ça change, plus c'est la même chose

In conclusion, then, there is clear evidence that the state's role as a producer of market outputs has shrunk since the 1980s and with that its role as employer, but for a

Figure 8: Government as borrower – Crown net debt (as percentage of GDP), 1972–2015

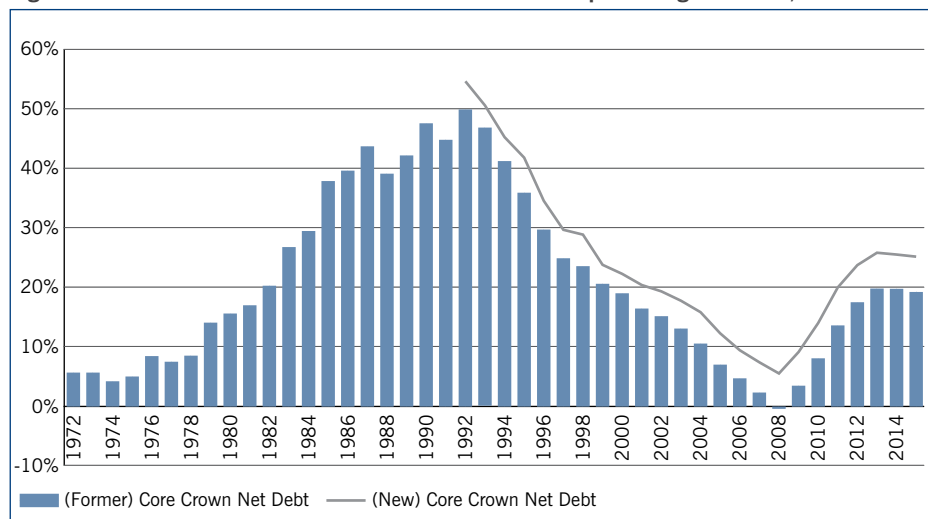
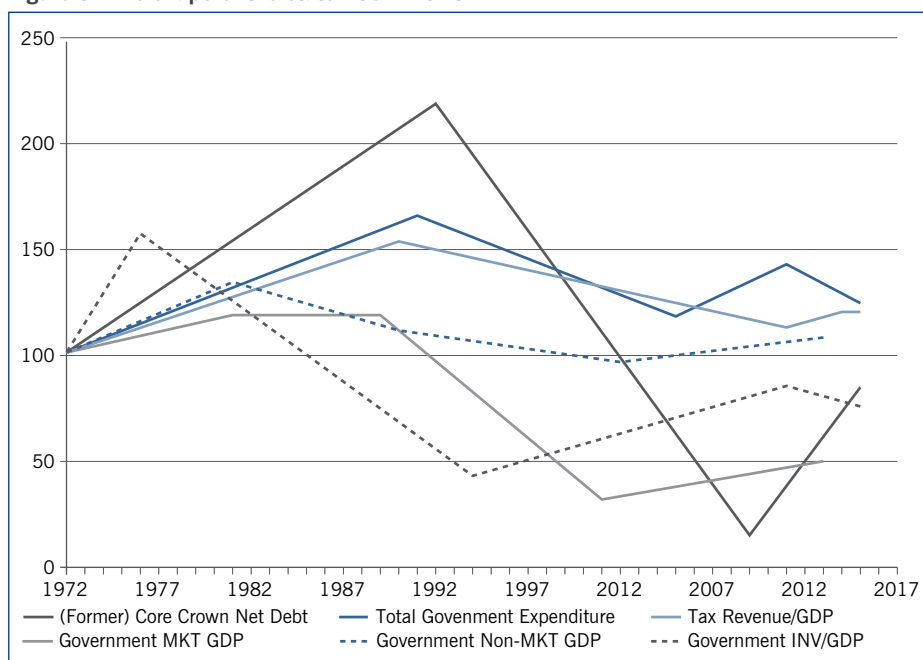


Table 2: Crown balance sheet – selected assets and liabilities

(\$billion)	1993/94	2002/03	2012/13	2015/16 (forecast)
Financial assets	8	16.5	44.0	45.2
Fixed assets	21	52.7	110.0	117.3
Total assets	54	100	244.4	260.5
Gross debt	30.9	38.2	100	110
Net worth	(5.6)	23.8	70	83
Net worth (% GDP)	-3.8%	17%	32%	33%

Note: 1993/94 data is not strictly comparable with subsequent years shown in the table due an accounting change in the way Crown entities and state-owned enterprises were consolidated in the Crown accounts.

Figure 9: The shape of the state 1972-2015



range of other measures the state's relative role has stayed the same. The overall Crown balance sheet shows the greatest variation, with a rapid deterioration until 1991/92 and then strengthening remarkably thereafter. Which measures should you focus on? It all depends on which question you want to answer, and hence what lens you look through.

Most of the data series show that various downward trends began just before the reforms came into effect in 1988, or soon afterwards. Furthermore, the relative size and role of the state have remained pretty stable over many decades. The exception is the state's role in market production and investment, which was greatly reduced by the privatisations in the 1980s and 1990s.

Figure 9 summarises – in stylised form – changes in the main lenses that varied over the post-1972 period, picking out the key turning points but removing other fluctuations. The figure also anchors all of the indices at 100 in 1972 so that relative changes in each can readily be compared. It serves to highlight our conclusion that the lens you focus on will influence the conclusion that you draw.⁶

Despite the rhetoric, there is little sign in the data of the hollowing out or shrinking of the state, though some changes following the 1980s reforms

have persisted. Instead, we see in the data some signs of a ‘quiet revolution’ in the significant changes in the *shape* of the state.

1 A more detailed technical paper which documents the data sources and methods used is available at www.nzpublicfinance.co.nz. The authors are grateful for the research assistance provided by Loc Nguyen with the graphs and data in this paper.
 2 The time series that are available on the size of the regulatory state in New Zealand have only partial coverage. The OECD product market regulation indices cover three decades, but the coverage is limited to the services sectors (transport utilities, etc.): <http://www.oecd-ilibrary.org/content/workingpaper/362886816127>. There is survey data that can be used to estimate the costs businesses face complying with the government’s regulatory requirements. No data has been collected on the administrative costs incurred by government.
 3 Comparable linked data is not available on spending by

local authorities, but local government is included in the discussion of taxing, investing, producing and stewardship in this article. Almost all the data and graphs used in this article are available on a public website, <https://data1850.nz>. The data in Figures 1A and 1B amalgamate several data series: the ‘consolidated series’ of central government expenditure from Statistics New Zealand’s long-term data series (1876–1972); expenditure on a ‘net financial’ basis (1972–93); and for ‘Crown expenses’ (1994–2015). The 1994–2015 series is shown for both ‘core’ and ‘total’ Crown; the latter also includes arm’s-length public bodies such as Crown entities and state-owned enterprises.
 4 See the discussion by Matthew Gibbons (Gibbons, 2015) about the concerns with the quality of the consolidated fiscal series before 1972 which suggests that peacetime central government expenditure was higher in the 1930s, 1940s and 1950s.
 5 Local government, by contrast, has experienced very small swings, as discussed by Nicholls and Gill (2012).
 6 If you are interested to learn more about the trends, a more detailed technical paper is available at www.nzpublicfinance.co.nz. To check out the trends yourself by graphing and exploring the data using the different lenses in this paper, go to <https://data1850.nz/>

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Title	Speaker/Author	Date and Venue
Institute for Governance & Policy Studies <i>Surveillance Matters: Your life in a surveillance society</i>	Professor William Webster, Director, Centre for Research on Information Surveillance & Privacy, Stirling University	Tuesday 16th August – 5:30 – 6:30pm Rutherford House Lecture Theatre 2 RSVP: igps@vuw.ac.nz
Chair in Digital Government <i>How the NZ Government is improving open data release and online engagement</i>	Rowan Smith, Susan Carchedi, Mark Kirkpatrick, Department of Internal Affairs	Wednesday 17th August – 12:30 – 1:30pm Old Government Buildings Lecture Theatre 1 RSVP: e-government@vuw.ac.nz
Health Services Research Centre <i>Rethinking Research for Health</i>	Professor Mike Berridge, Malaghan Institute	Wednesday 17th August – 12:30 – 1:30pm Old Government Buildings Lecture Theatre 3 (ground floor) RSVPs not required
Institute for Governance & Policy Studies <i>Developing Age-Friendly Communities</i>	Professor Christopher Phillipson, co-director Manchester Institute for Comparative Research on Ageing	Monday 29th August – 12:30 – 1:30pm Old Government Buildings Lecture Theatre 3 (ground floor) RSVP: igps@vuw.ac.nz

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Jonathan Boston

Anticipatory Governance

how well is New Zealand safeguarding the future?

The future whispers while the present shouts.
– Al Gore

The attributes of anticipatory governance

Good governance has many attributes. Among these are anticipating tomorrow's problems, protecting the long-term public interest, and endeavouring to 'future-proof' the state (Boston et al., 2014). Sound *anticipatory* governance, in other words, is a critical ingredient. It is fundamental to advancing better government. But what exactly does it mean? Here are some suggestions.

Anticipatory governance is forward-looking (Fuerth with Faber, 2012, 2013). It takes the long view, regularly scanning the horizon for warning signals, as well as new, but often unexpected, opportunities. It assesses the long-term consequences of today's decisions and events, seeking wherever possible to minimise future harms. It considers risks – especially systemic risks – over extended timeframes and develops the capability and tools for rigorous risk management. It posits a range of scenarios and conducts regular 'stress tests' to ascertain the robustness of current institutional, policy and regulatory

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settings. It recognises the importance of resilience and the interconnected nature of its various dimensions (i.e. economic, social, infrastructural, institutional, environmental and cultural). It does not yearn for false certainties. Instead, it embraces the need, given a dynamic and unpredictable world, for anticipatory planning and adaptive management. It recognises that the past may provide little guidance to the future. After all, long-standing trends may cease and gradual adjustments may be superseded by non-linear changes: disruptive technologies, natural disasters, systemic financial failures or abrupt climatic shifts may fundamentally alter a nation's trajectory.

For such reasons, anticipatory governance is proactive. It values vigilance, preparedness, precaution and wise stewardship. As a general rule, it favours prevention over cure. It commends good evidence, critical evaluation and continuous improvement. It celebrates creativity, curiosity, innovation and imaginative reflection. It endorses a holistic approach to assessing performance: it focuses not only on fiscal deficits, but also on social, ecological and democratic deficits. Equally, it acknowledges the threat posed by deficits in adaptive capacity (Lawrence, 2016), all the more so in an era of remarkable technological advances, unprecedented environmental changes and multiple hazards.

In protecting future interests, anticipatory governance seeks robust, yet flexible, democratic institutions and processes. In so doing, it is alert to the insights of behavioural economics and social psychology, especially the influence of cognitive biases on decision-making (Kahnemann, 2011; Thaler and Sunstein, 2008). Likewise, it recognises the dangers of path dependence, vested interests and political myopia. For such reasons, it chooses institutional mechanisms, analytical tools, policy frameworks and 'commitment devices'¹ which bring the long term into short-term focus and ensure that tomorrow's interests are actively considered – and properly represented – in today's decisions. The goal, in short, is to embed the future in the present, thereby ameliorating the presentist bias

that often afflicts democratic processes (Healy and Malhorta, 2009; Heller, 2003; Jacobs, 2011, 2016; MacKenzie, 2013; Thompson, 2005, 2010).

Of course, the attributes of anticipatory governance enunciated above are ambitious and demanding. They serve as an ideal to which governments should aspire. In practice, for understandable reasons, most fall short. Yet, against such an ideal, how well does New Zealand perform? What is the quality of our anticipatory governance? What strengths and weaknesses are apparent? How well positioned is New Zealand to meet the challenges of the 21st century? To what extent are the country's governance arrangements and policy frameworks likely to protect the long-term public interest – both the interests of our 'future selves' and those of future generations?

This article ponders these questions. First, it highlights briefly the wide range of risks, both global and local, that contemporary governments must confront. One of these is endogenous: it is the risk to good governance from within – namely the failure of policymakers to exercise proper foresight. Second, it outlines various criteria for assessing the quality of anticipatory governance. Third, on the basis of these criteria it briefly evaluates the quality of New Zealand's policymaking institutions and frameworks. Finally, it suggests a number of reforms to enhance good anticipatory governance.

Several caveats deserve mention. The topics under discussion here are large and complex. They cannot be adequately addressed in a short article. Accordingly, the following analysis is partial and incomplete: it is an aperitif, not a full-course meal. Further, while this article comments on governance arrangements in New Zealand at both the central and subnational levels, the primary focus is on central government. In part this reflects the limitations of space. But it also recognises that New Zealand is a highly centralised unitary state, with the central government having responsibility for most of the important areas of public policy, such as health care, education, social services, taxation and transfer payments, including the regulation of

private sector activities that are vital to risk management (e.g. the provision of telecommunications infrastructure).² Finally, in an interdependent world with numerous supranational challenges – including many global collective action problems – that require international cooperation for effective solutions, nation states have only a limited capacity to navigate their own course, let alone fully protect all their future interests.

Facing an uncertain future

In considering the quality of anticipatory governance it is imperative to recognise that the future is uncertain. We cannot know for sure what will happen, even tomorrow. Major, unexpected and hard-to-predict events – or what are variously called 'black swans' or 'wild cards' – are inevitable (Smil, 2006; Taleb, 2007). And the further we probe into the future, the deeper the level of uncertainty we encounter. The quest for sound anticipatory governance, therefore, must start on the basis of both realism and humility about what we can reasonably foresee or predict. As Donald Rumsfeld, the former US secretary of defence, famously put it in 2002: 'there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns – the ones we don't know we don't know'.

Despite such 'unknown unknowns', many of the risks that governments face, both now and in the more distant future, can be readily identified. Of course, the number of such risks is very large, and their likelihood and potential impacts are highly variable. To assist with the task of assessing the nature and seriousness of such risks, many international organisations, think tanks and businesses prepare regular, detailed risk analyses. One such example is the World Economic Forum, which publishes an annual report on global risks. This is based partly on an international survey of leaders from business, government, academia, civil society organisations and international organisations. Table 1 summarises 28 types of global risks, grouped into five categories: economic, environmental, geopolitical, social and technological. The risks listed here represent those which

Table 1: Global risks* as assessed by the World Economic Forum in 2015

	General category	Type of risk	Description
1	Economic	1 Asset bubble in a major economy	Unsustainably overpriced assets, such as commodities, housing, shares, etc. in a major economy or region
		2 Deflation in a major economy	Prolonged ultra-low inflation or deflation in a major economy or region
		3 Energy price shock to the global economy	Sharp and/or sustained energy price increases that place further economic pressures on highly energy-dependent industries and consumers
		4 Failure of a major financial mechanism or institution	Collapse of a financial institution and/or inefficient functioning of a financial system with implications throughout the global economy
		5 Failure/shortfall of critical infrastructure	Failure to adequately invest in, upgrade and secure infrastructure networks leads to a breakdown with system-wide implications
		6 Fiscal crisis in key economies	Excessive debt burdens generate sovereign debt crisis and/or liquidity crises
		7 High structural unemployment or underemployment	A sustained high level of unemployment or underutilisation of the productive capacity of the employed population
		8 Unmanageable inflation	Unmanageable increase in the general price level of goods and services in key economies
2	Environmental	1 Extreme weather events (e.g. floods, storms, etc.)	Major property, infrastructure and environmental damage as well as human loss caused by extreme weather events
		2 Failure of climate change adaptation	Governments and businesses fail to enforce or enact effective measures to protect populations and to help businesses affected by climate change to adapt
		3 Major biodiversity loss and ecosystem collapse (land or ocean)	Irreversible consequences for the environment resulting in severely depleted resources for humankind as well as industries such as fishing, forestry, pharmaceuticals
		4 Major natural catastrophes	Major property, infrastructure and environmental damage as well as human loss caused by geophysical disasters such as earthquakes, volcanic activity, landslides, tsunamis or geomagnetic storms
		5 Man-made environmental catastrophes (e.g. oil spill, radioactive contamination)	Failure to prevent major man-made catastrophes causing harm to lives, human health, infrastructure, property, economic activity and the environment
3	Geopolitical	1 Failure of national governance	Inability to efficiently govern a nation of geopolitical importance due to weak rule of law, corruption, illicit trade, organised crime, impunity or political deadlock
		2 Interstate conflict with regional consequences	A bilateral or multilateral dispute between states escalates into economic (e.g. trade/currency wars, resource nationalisation), military, cyber, societal or other conflict
		3 Large-scale terrorist attacks	Individuals or non-state groups with political or religious goals successfully inflict large-scale human or material damage
		4 State collapse or crisis (e.g. civil conflict, military coup, failed states, etc.)	State collapse of geopolitical importance due to internal violence, regional or global instability and military coup, civil conflict, failed states, etc.
		5 Weapons of mass destruction	Nuclear, chemical, biological and radiological technologies and materials are deployed, creating international crises and potential for significant destruction
4	Societal	1 Failure of urban planning	Poorly planned cities, urban sprawl and associated infrastructure create social, environmental and health challenges
		2 Food crises	Access to appropriate quantities and quality of food and nutrition becomes inadequate, unaffordable or unreliable on a major scale
		3 Large-scale involuntary migration	Large-scale involuntary migration due to conflict, disasters, or environmental or economic reasons
		4 Profound social instability	Major social movements or protests (e.g. street riots, social unrest, etc.) disrupt political and social stability, negatively affecting populations and economic activity
		5 Rapid and massive spread of infectious diseases	Bacteria, viruses, parasites or fungi cause uncontrolled spread of infectious diseases (e.g. due to resistance to antibiotics, antivirals and other treatments), leading to widespread fatalities and economic disruption
		6 Water crises	A significant decline in the available quality and quantity of fresh water, resulting in harmful effects on human health and/or economic activity
5	Technological	1 Breakdown of critical information infrastructure and networks	Systemic failures of critical information infrastructure (e.g. internet, satellites, etc.) and networks negatively impact on industrial production, public services and communications
		2 Large-scale cyber attacks	State-sponsored, state-affiliated, criminal or terrorist large-scale cyber attacks cause an infrastructure breakdown and/or loss of trust in the internet
		3 Massive incident of data fraud/theft	Criminal or state-sponsored wrongful exploitation of private or official data takes place on an unprecedented scale
		4 Massive and widespread misuse of technologies	Massive and widespread misuse of technologies, such as 3D printing, artificial intelligence, geo-engineering and synthetic biology, causing human, environmental and economic damage

Source: World Economic Forum (2015), pp.53-54

*A global risk is defined as an uncertain event or condition that, if it occurs, can cause significant negative impact for several countries or industries within the next decade.

Table 2: The five top global risks in terms of likelihood and impact, 2013–15

Ranking	2013		2014		2015	
	Likelihood	Impact	Likelihood	Impact	Likelihood	Impact
1st	Severe income disparity	Major systemic financial failure	Income disparity	Fiscal crises	Interstate conflict with regional consequences	Water crises
2nd	Chronic fiscal imbalances	Water supply crisis	Extreme weather events	Climate change	Extreme weather events	Rapid and massive spread of infectious diseases
3rd	Rising greenhouse gas emissions	Chronic fiscal imbalances	Unemployment and underemployment	Water crises	Failure of national governance	Weapons of mass destruction
4th	Water supply crises	Diffusion of weapons of mass destruction	Climate change	Unemployment and underemployment	State collapse or crisis	Interstate conflict with regional consequences
5th	Management of population ageing	Failure of climate change adaptation	Cyber attacks	Critical information infrastructure breakdown	High unemployment and underemployment	Failure of climate change adaptation

Source: World Economic Forum (2015), p.14

were thought in 2015 to pose the greatest threat over the coming decade.

The annual assessments undertaken by the World Economic Forum also identify the top five global risks, first by their likelihood, and second by their potential impact. The results for 2013, 2014 and 2015 are outlined in Table 2. Whatever the validity of such assessments, several matters are interesting to note. For one thing, at least a third of the global risks rated among the top five over the past three years relate directly or indirectly to climate change (e.g. water crises, extreme weather events and the challenges of adaptation). For another, about a quarter concern economic management (e.g. large fiscal imbalances, systemic financial failures and high unemployment). Significantly too, whereas severe income inequality figured prominently in both 2013 and 2014, it was not included among the top five risks in 2015. By contrast, interstate conflicts and the failure of national governance did not register among the top five risks in either 2013 or 2014 but were included in 2015 – no doubt reflecting the widening conflicts in the Middle East and North Africa and the destabilising political impacts of the mass migration of displaced people. The significant changes in the top-ranked risks over a relatively limited time horizon highlights not only how quickly risk perceptions can adjust but also the wisdom of regular monitoring and re-evaluation.

New Zealand faces a distinctive set of risks (Basher, 2016; Department

of the Prime Minister and Cabinet, 2007; Local Government New Zealand, 2014; Warren, 2014). In particular, it is exposed to a range of significant natural hazards, such as earthquakes, volcanic eruptions, tsunamis and extreme weather events. Also, its economy relies heavily on primary production and is thus vulnerable to adverse impacts from pests and diseases. The enormous damage caused by the Canterbury earthquakes during 2010–11 (estimated at about \$40 billion) highlights the scale of the risk (and potential contingent losses) from major seismic events near significant population centres.

Political risks – inadequate foresight and a presentist bias

As noted earlier, there is another kind of risk that deserves specific mention, namely that governments will fail to give proper attention to readily detectable threats or fail to pay sufficient heed to major societal trends or emerging opportunities. For instance, governments may be slow to adjust their regulatory policies to reflect changing technologies (e.g. drones or autonomous vehicles) or social conditions (e.g. evolving family structures). Likewise, they may fail to consider the economic and social implications of major technological innovations, such as advanced robotics and artificial intelligence. In short, governments may fail to exercise proper foresight – by anticipating problems, considering the available policy responses (including the option value of delay), and adjusting their policy settings to reflect

new evidence, evolving risk assessments and other changing circumstances.

Among the risks which may be overlooked or poorly addressed by governments is a particular class of policy problems variously referred to as ‘looming’, ‘creeping’, ‘slow’, ‘slow-burner’ or ‘emerging’ (European Environment Agency, 2013; Olson, 2016). Such problems tend to grow gradually and sometimes imperceptibly, with a long time lag between cause and effect. The negative impacts may be on the radar and their potential to cause significant long-term harm may be evident (at least to the relevant experts), but they generally lack vivid, dramatic or unmistakable early warning signals which can serve to mobilise public concern, thereby prompting a governmental response. As a result, creeping problems often receive much less attention from policymakers than they deserve. This, in turn, may reduce or even eliminate the possibility of implementing low-cost solutions and shift the burden of mitigation onto future citizens and taxpayers. Worse, in some cases the failure to intervene early may lead to serious and irreversible damage, with huge potential implications for the well-being of future generations.

Among the many contemporary ‘creeping’ problems facing governments are the following:

- long-term demographic changes such as population ageing;
- the growing obesity pandemic;
- the spread of antimicrobial resistance;

- the gradual increase in traffic congestion in major urban areas;
- the growing economic and environmental impacts of climate change and the related acidification of the world's oceans;
- the gradual loss of freshwater supplies due to the depletion of aquifers, deteriorating water quality, the over-allocation of freshwater resources, and changing climatic conditions;
- the increasing damage to ecosystem services from pollution, pests, soil erosion and the loss of habitats; and
- the gradual loss of biodiversity and wilderness areas.

There are at least four reasons why governments may fail to address creeping problems expeditiously or effectively (Boston, forthcoming; Jacobs, 2011; Olson, 2016). First, the problem may not be detected sufficiently early by the relevant authorities, or the nature of the risks may be poorly communicated to those within the policy community who are responsible for taking action. Failures of this nature may be attributed to poor monitoring, inadequate reporting, ambiguous or conflicting evidence, a lack of imagination (e.g. a failure to think through the possible consequences carefully and logically), excessive governmental secrecy, and a human tendency to underestimate and downplay future risks.

Second, there may be attentional deficits within the governmental system and the wider polity (i.e. the phenomenon of 'out of sight, out of mind'). Policymakers are faced with numerous urgent problems and multiple demands. These can easily distract them and result in only limited attention being given to creeping problems and other longer-term challenges. Similarly, in the absence of vivid and unambiguous warning signals, there will be little pressure from the public for governments to take precautionary measures or early remedial action.

Third, many creeping problems are 'trans-boundary' (or even cross-border) in nature and thus require coordinated responses from several tiers of government and/or from multiple organisations. But securing the necessary coordination is often hard because of the siloed structure

of government departments and agencies and the absence of structures and incentives to deal with systemic and cross-cutting risks.

Fourth, and related to this, many creeping problems are relatively 'wicked' in the sense that they have multiple causes and lack complete or definitive solutions. Additionally, the available strategies to ameliorate them typically generate significant intertemporal trade-offs. That is to say, the costs – whether fiscal or regulatory – fall disproportionately in the near term while the benefits often take many years to be realised. Non-simultaneous exchanges or cost-benefit asymmetries of this nature are inherently challenging politically (Jacobs, 2011). They require what are often referred to as 'hard

more reluctant to take decisive measures to confront a creeping problem. The net result is that such problems are likely to be tackled late or inadequately (or both).

The imposition of price-based policies in Australia and New Zealand to reduce greenhouse gas emissions provides a good example. On both sides of the Tasman, governments delayed enacting effective policies to mitigate climate change for many years. And almost as soon as price-based policies had been implemented they were either overturned or significantly watered down by a new government (Chapman, 2015).

In summary, sound anticipatory governance requires policymakers to identify, assess, manage and mitigate

... sound anticipatory governance requires policymakers to identify, assess, manage and mitigate multiple risks.

calls'. Understandably, governments may be fearful of the electoral consequences and thus reluctant to take preventative steps. Accordingly, despite the long-term risks being widely recognised and despite expectations that any delay in responding will impose greater overall costs, measures to mitigate the problem may be postponed. Alternatively, governments may act half-heartedly, choosing policies which minimise any short-term political damage.

There is also a risk of dynamic or time inconsistency (Elster, 2000; Hovi, Sprinz and Underdal, 2009; Kyland and Prescott, 1977). To be effective, many policies require sustained effort over lengthy periods and major changes in mass behaviour or social institutions. Yet governments cannot bind their successors. Significantly, too, most policies are reversible, at least to some degree. If policies aimed at mitigating future risks are unpopular or impose significant costs on powerful groups, a future government may decide to weaken or even terminate them. Mindful of such risks, policymakers may be even

multiple risks. In fulfilling these responsibilities they confront the challenge that some of the measures required for prudent long-term governance are politically unattractive. In such circumstances there is a constant risk that short-term considerations will prevail, thereby increasing the costs imposed on future generations. A presentist bias in policymaking is all the more concerning given humanity's ever-increasing capacity to inflict widespread, severe and persistent harm. The quest for sound anticipatory governance, therefore, must include the design and implementation of mechanisms to ameliorate this bias.

Assessing the quality of anticipatory governance – possible criteria

How might we assess how well governments are protecting the long-term interests of their current and future citizens? Put differently, how should the quality of anticipatory governance be evaluated? To address such questions properly would be a major undertaking. Here some brief observations and initial suggestions must suffice.

First, assessing the quality of anticipatory governance is part of the wider task of judging the overall quality of governments, public institutions and systems of public governance. Good governance must be anticipatory. But it must also be many other things: legal, honest, legitimate, democratic, effective, efficient, fair, accountable and much else. There is, however, no clear boundary to delineate the *anticipatory* part of good governance. Anticipatory governance is not simply about good planning for the future. And even if it were, good planning is demanding and requires many things: comprehensive and reliable information,

projections of existing trends (Aaron, 2000). Historical data, after all, may be unreliable for judging future performance – whether that of our economy, public institutions or regulatory frameworks. And abrupt economic, social, cultural, environmental or technological changes may render current trajectories invalid. At the same time, currently available data are not totally irrelevant. Indeed, in some cases existing data are extremely useful for assessing whether particular long-term interests are being adequately protected. For instance, if there is evidence of widespread environmental degradation

in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions.

But while resilience can be defined, assessing the resilience of systems, governments, individual public institutions, societies or communities is far from straightforward. Resilience has many features (e.g. robustness, redundancy, resourcefulness, responsiveness, and the capacity to recover or recuperate) (World Economic Forum, 2013, pp.38-9). Its relevance spans multiple policy domains and institutional contexts. And while there are numerous possible indicators, the relevant data are often unavailable. Assessing resilience also raises important issues of judgement. What criteria, for example, should be used to assess the capacity of an economy to absorb a major financial shock or a community to cope with a large seismic event? How much cushion against possible adverse outcomes is desirable? How much in-built redundancy should there be? What level of risk is acceptable? How much is it reasonable to spend on risk reduction? And who should be the judge? This is not to suggest that answers to such questions are impossible, but every answer is likely to be problematic in some way. Much the same conclusion applies to the challenge of defining and applying other important principles and concepts of relevance to protecting future interests, such as the nature of intergenerational justice, sustainability and good stewardship (Arrow et al., 2004; Brown Weiss, 1989; Chichilnisky, 1996; Zuber, forthcoming).

Third, as suggested earlier, sound anticipatory governance has many different dimensions and attributes. Accordingly, multiple criteria are needed to assess how well a particular government – and the wider system of public governance – is performing. While some of these criteria may be output- or outcome-oriented, others will focus on how political institutions and policymaking processes are designed. Hence, they will be concerned with values, norms, principles and

... while resilience can be defined, assessing the resilience of systems, governments, individual public institutions, societies or communities is far from straightforward.

excellent monitoring and reporting, capable staff, adequate resources, sound analytical tools and robust decision-making processes. Accordingly, assessments of anticipatory governance take us well beyond the confines of specific activities like strategic planning, foresight methods, risk management or emergency management.

Second, all assessments of the quality of governance involve the exercise of judgement and are potentially controversial. In the case of anticipatory governance there are some very obvious challenges. For one thing, our knowledge base is limited. We lack the luxury of jumping decades or centuries forward in time and then looking back to assess how well the governments of the early 21st century prepared for, and navigated, the future. Historians many generations from now will enjoy the benefit of such hindsight, but we do not. Hence, any assessment today will necessarily be imperfect and incomplete.

For another, we cannot simply rely on current performance data or

and species loss, then the long-term implications are unmistakable: future generations will inevitably be harmed.

There is a further problem assessing the quality of anticipatory governance. While numerous criteria can be suggested, many of these are hard to operationalise and apply. For instance, one of the many possible tests of good anticipatory governance is whether policymakers and public managers value and promote *resilience*. The idea of resilience – which is the focus of increasing attention internationally – includes flexibility and adaptability, the capacity to bounce back to a desired equilibrium after a shock, and the ability to absorb chronic stresses or abrupt impacts without serious damage or disruption (Warren, 2014). As defined in the United Nations International Strategy for Disaster Reduction (2009), it means:

The ability of a system, community or society exposed to hazards to resist, absorb, accommodate to and recover from the effects of a hazard

procedures. Crucial here is whether long-term costs and benefits, as well as significant risks and opportunities, are brought adequately into short-term political focus. Of importance in this regard is whether governments make use of analytical tools, policy frameworks and decision-making processes that encourage reflection on long-term policy issues and incentivise decision-makers to devote some of their limited time, mental energy and political capital to protecting future interests. This, of course, begs many questions. How, for instance, can the ‘voice’ of the future be adequately represented in day-to-day decision-making? How can political incentives be altered so that governments feel obliged to address creeping problems? How can policymakers be encouraged to make ‘hard calls’? How can governments increase the durability of policy decisions which entail complex and often politically charged non-simultaneous exchanges? How, in other words, do we avoid immediate concerns crowding out or constantly trumping future interests?

While there are no simple solutions, there are certainly ways of structuring institutional arrangements, analytical frameworks and political processes such that long-term considerations are more likely to figure in the decision-making calculus (see, for instance, Ascher, 2009; Boston, forthcoming; Boston and Prebble, 2013; González-Ricoy and Gosseries, forthcoming; Helm, 2015; Jacobs, 2011; James, 2013; Mansbridge and Martin, 2013; Ostrom, 2009; Reeves, 2015). These include:

- requiring policymakers to have regard to the best available scientific evidence;
- ensuring a high level of transparency in decision-making at all levels of government;
- using analytical frameworks to formulate policy advice that capture the full range of likely costs and benefits (e.g. direct and indirect, tangible and intangible, etc.);
- ensuring that the impact of choosing different discount rates is fully transparent;

- instituting commitment devices that require the policy ‘system’ to conduct regular foresight exercises, undertake periodic long-term forecasts and projections, and develop long-term plans (e.g. for conservation, infrastructure and other forms of public investment);
- requiring governments to set explicit, meaningful and measurable targets (and related milestones) for improving outcomes, especially regarding significant long-term policy challenges;
- establishing independent future-

possible criteria for assessing the quality of anticipatory governance. Under the approach adopted, 17 types of criteria are organised within seven broad categories: overarching principles; planning processes and foresight; policy and regulatory frameworks; the representation of future interests; performance measures and reporting; resilience, risk management and emergency management; and mechanisms for problem solving and consensus building. While relatively comprehensive, the table is far from complete. Under each category additional types of criteria could be added – such

... there is little prospect of developing a single aggregate indicator or composite measure of the quality of anticipatory governance.

oriented institutions to provide an authoritative ‘voice’ for otherwise poorly represented long-term interests;

- encouraging respectful deliberation and informed, reasoned debate via the use of participatory mechanisms, multi-stakeholder forums and collaborative policymaking processes;
- nurturing trust, shared values and common goals; and
- seeking cross-party agreements where durable long-term commitments are needed to address major policy problems.

Finally, there is little prospect of developing a single aggregate indicator or composite measure of the quality of anticipatory governance. There are simply too many different variables and they cover too many different kinds of performance. Instead, a better approach would be to employ a performance dashboard with multiple criteria and a simple scoring regime. This enables comparisons over time and between governments, but of course it lacks the simplicity of a single metric.

With these various considerations in mind, Table 3 outlines some of the

as those of relevance to different tiers of government, specific institutions or discrete policy domains (e.g. culture and heritage, health, taxation, security, defence and international relations). Similarly, many extra performance indicators could be added. Moreover, the approach sketched here provides no ranking of the various criteria. Nevertheless, it serves as a useful starting point and a good basis for further discussion and refinement.

The quality of anticipatory governance in New Zealand

How does New Zealand fare against such criteria? Currently, no comprehensive or detailed evaluation is available. There are, however, assessments based on some of the suggested criteria. For instance, Ken Warren (2014) has helpfully analysed the resilience of New Zealand’s economy and society, with particular reference to four types of capital (financial, human, social and natural). Drawing on studies of this nature and other available data (e.g. Ryan and Gill, 2011), it is reasonable to conclude that many of New Zealand’s governance arrangements, policy settings and regulatory frameworks are appropriately future-focused and suitably anticipatory.

Table 3: Suggested criteria for assessing the quality of anticipatory governance

	Types of criteria	Brief comment	Examples of possible policy requirements and performance indicators
Overarching principles			
1	Policy settings should be consistent with well-established principles of intergenerational justice.	While there are many different principles of intergenerational justice, there is wide support for the view that current generations should not inflict serious, widespread or irreversible harm or act in ways that compromise the capacity of future generations to meet their needs. Ideally, current generations should act in ways that ensure that future generations are better off – as judged on the basis of multiple criteria.	<ul style="list-style-type: none"> • There should be legislative requirements for governments to adhere to well-established principles of intergenerational justice. • There should be legislative requirements for governments to report periodically on whether their policies are consistent with well-established principles of intergenerational justice. • There should be legislative requirements for governments to publish annual data of relevance to distributional and other issues with intergenerational dimensions, including a composite index of intergenerational fairness.
2	The principle of sustainability should be embedded in all relevant policy frameworks.	The concept of sustainability is open to multiple interpretations, including the distinction between ‘strong’ and ‘weak’. Important in this regard is the issue of whether, and to what extent, different kinds of capital (e.g. financial, manufactured, human, social and natural) are substitutable.	<ul style="list-style-type: none"> • There should be legislative requirements for governments to comply with various principles of fiscal responsibility, including achieving and maintaining prudent levels of public debt. • There should be legislative requirements for governments, at a minimum, to maintain the aggregate level of renewable natural capital. • There should be legislative requirements for the economic rents from the depletion of non-renewable natural capital to be used to fund efforts to enhance stocks of renewable natural capital. • There should be legislative requirements for comprehensive environmental accounting, including the valuing of ecosystem systems. • There should be effective measures to protect biodiversity.
3	Policymakers at all levels of government should be obliged to adhere to the precautionary principle.	There are many different versions of the precautionary principle, with widely divergent implications for decision-making. Key issues include: when and how a precautionary approach is applied; where the burden of proof should rest for demonstrating the existence or absence of a threat of harm; how the potential threats should be balanced against other relevant considerations; and how responsibility for any harm should be allocated.	<ul style="list-style-type: none"> • There should be legislative provisions requiring decision-makers to give effect to the precautionary principle – ideally at the stronger end of the potential spectrum of possible interpretations, with the burden of proof resting with those proposing actions that may generate a new risk or threat of harm.
4	Public sector managers should be required to exercise proper stewardship (or kaitiakitanga) of their organisations.	The notion of stewardship, while closely related to sustainability, has implications not only for durability and resilience but also for the prudent and responsible management of resources.	<ul style="list-style-type: none"> • There should be legislative provisions requiring public sector managers to exercise good stewardship of their organisations, including their assets and liabilities, their long-term sustainability, their overall health and capability and their capacity to offer high-quality advice to successive governments. • There should be legislative provisions requiring public sector managers to ensure good regulatory stewardship – in the sense that the regulatory frameworks they administer are fit for purpose, implemented in a cost-effective manner, and reflect changing needs and circumstances.
Planning processes and foresight			
5	Governments should be required to undertake long-term planning of public infrastructure.	The proper maintenance, renewal and improvement of public infrastructure is of critical importance for protecting future interests. There is no agreement, however, on what constitutes an optimal level of investment in infrastructure or how the impacts of long-term trends, such as sea-level rise, should be taken into account.	<ul style="list-style-type: none"> • There should be requirements for central and subnational governments to prepare plans and strategies for the management of public infrastructure over a long time horizon (e.g. 30 years+). • The planning of public infrastructure should have proper regard to the evolving risk environment, including the long-term impacts of climate change and the need for adaptive management.
6	Governments should be required to undertake long-term planning across the full range of their investment activities.	There is a question mark over what constitutes an ‘investment’, how ‘returns’ on investments should be assessed, and when and how investment criteria should be applied in allocating public resources.	<ul style="list-style-type: none"> • Governments should be required to publish periodic national investment statements assessing the shape, health and evolving value of the Crown’s portfolio of assets and liabilities, and forecast changes in the portfolio’s composition and size. • Investment-intensive government agencies should be required to prepare long-term investment plans.
7	There should be robust foresight processes at all levels of government, including requirements for independent bodies to report periodically on major risks and vulnerabilities across the full range of policy arenas.	There are many different methods and processes for undertaking foresight, including horizon scanning, trend analysis and technology assessment. There is merit in institutionalising foresight processes within both the executive and legislative branches to ensure that risks are identified and that proper attention is given to creeping problems.	<ul style="list-style-type: none"> • There should be a legislative requirement for the government to produce a periodic report on the future, identifying major risks and vulnerabilities as well as creeping problems, and outlining its plans to address these risks and problems. • There should be a parliamentary committee for the future with responsibilities to undertake horizon scanning, investigate long-term policy problems, monitor governmental efforts to mitigate and manage risks, and review the government’s report on the future. • There should be requirements for the treasury/finance ministry to produce periodic reports on long-term fiscal issues, looking out at least 40–50 years. • There should be a foresight unit within a central agency with a mandate to undertake foresight projects on major policy issues, conduct assessments of the impact of significant new technologies, and coordinate the foresight activities of government departments and agencies.

Types of criteria	Brief comment	Examples of possible policy requirements and performance indicators
Policy and regulatory frameworks		
8	The long-term costs and benefits of different policy options should be clearly identified and made transparent to policymakers.	<ul style="list-style-type: none"> Whenever policy options entail long-term costs and benefits a range of discount rates should be applied in order to ensure that the implications of the discount rate are ascertained. If there is a risk of irreversible and/or catastrophic long-term impacts, an extremely low discount rate should be applied.
9	Regulatory frameworks should ensure that all significant negative externalities are properly internalised.	<ul style="list-style-type: none"> Regulatory frameworks should ensure that all significant negative externalities, such as damaging environmental and health impacts, are properly priced.
10	There should be rigorous systems for policy learning.	<ul style="list-style-type: none"> All significant policies and regulatory frameworks should be periodically reviewed and evaluated. Governments should be required to report on their responses to all major policy evaluations.
The representation of future interests		
11	There should be independent public institutions with a legislative mandate to speak on behalf of clearly specified future-oriented interests.	<ul style="list-style-type: none"> There should be an independent public institution to monitor environmental performance and safeguard environmental interests. There should be an independent public institution to represent the interests and defend the rights of children. There should be an independent public institution with a specific mandate to study creeping problems and publish periodic reports on major long-term risks.
Performance measures and reporting		
12	There should be comprehensive and holistic measures for assessing economic, social and environmental performance and regular reporting of outcomes across the full range of policy domains.	<ul style="list-style-type: none"> There should be legislative provisions requiring governments to publish comprehensive data on performance across all policy domains. The information reported needs to be presented in ways that enhance understanding, highlighting warning signals and making feedback 'intelligent'.
13	Governments should be required to publish comprehensive national balance sheets covering all forms of capital, not merely public sector financial liabilities and assets.	<ul style="list-style-type: none"> There should be legislative requirements for governments to publish comprehensive national balance sheets. Companies should be required to publish accounts that are consistent with the conventions, standards and practices associated with sustainability reporting or integrated reporting.
Resilience, risk reduction and emergency management		
14	There should be comprehensive policies for disaster risk reduction and strengthening the resilience of all critical infrastructure and systems.	<ul style="list-style-type: none"> Policy frameworks should be consistent with international best practice, such as the goals and principles of the Sendai Framework for Disaster Risk Reduction (2015). This includes a strong emphasis on disaster risk management, preventing new risk, reducing existing risk and strengthening resilience, and covers both natural and man-made hazards, including environmental, technological and biological hazards and risks. All subnational governments should be required to produce periodic reports on their resilience.
15	There should be a substantial sovereign wealth fund.	<ul style="list-style-type: none"> There should be a substantial sovereign wealth fund – or several funds, each with clearly specified purposes. There should be clearly specified criteria for determining the circumstances under which such funds can be drawn down.

Types of criteria	Brief comment	Examples of possible policy requirements and performance indicators
16	There should be regular 'stress tests' to evaluate the resilience and adaptive capacity of public institutions, policy settings and regulatory frameworks.	In the context of deep uncertainty and unavoidable risks, it is imperative to seek a high level of resilience and adaptive capacity, at multiple levels of governance. <ul style="list-style-type: none"> Public institutions should be required to stress-test their resilience periodically, using a range of criteria. There should be regular independent reviews of whether current policy settings and regulatory frameworks are fit for purpose.
Mechanisms for problem solving and consensus building for long-term policy challenges		
17	Governments should use a wide range of participatory processes for policymaking on long-term issues.	Participatory processes of various kinds can be useful in enhancing public understanding, building trust, securing agreement on shared goals, and negotiating solutions to complex intertemporal issues. <ul style="list-style-type: none"> There should be a significant public investment in deliberative processes, multi-stakeholder forums and collaborative governance arrangements, especially for issues with significant intertemporal dimensions and where solutions require non-simultaneous exchanges.

Institutional strengths

To start at the positive end of the spectrum:

- current legislative frameworks in important policy areas such as fiscal management, resource management and public management embrace one or more of the overarching principles identified in Table 3;
- under section 10(1)(b) of the Local Government Act 2002, local authorities are required 'to meet the current *and future* [my emphasis] needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions';
- the rules governing financial management and accounting in the public sector embody a high level of transparency and ensure that the depreciation of assets is fully costed;
- the Reserve Bank operates an exacting system of prudential supervision of the financial sector;
- those responsible for managing public infrastructure and determining other kinds of capital investment are required to produce multi-decadal plans;
- major departments like the Treasury and the Ministry for the Environment have comprehensive and holistic analytical frameworks to guide their policy analyses, with attention being given to multiple goals and the full range of capital stocks;
- the Treasury is required to produce regular long-term fiscal statements looking out 40 years;
- there is strong support for evidence-based policymaking, underscored

- in recent years by the appointment of chief science advisors in many departments;
- there are independent public institutions, such as the parliamentary commissioner for the environment and the children's commissioner, to represent important future-oriented interests;
- there are requirements for public agencies to monitor, assess and report performance on a relatively comprehensive basis;
- there are detailed requirements for risk management and emergency management;
- there are several public funds that are designed to pre-fund future liabilities, including the National Disaster Fund for major natural disasters, the New Zealand Superannuation Fund to cover part of the cost of future public pension liabilities in the context of an ageing population, and a fund administered by the Accident Compensation Corporation to cover the full lifetime costs of accident claims;
- multi-stakeholder mechanisms are employed from time to time to explore and negotiate solutions to important long-term policy challenges (e.g. freshwater management).

Institutional weaknesses

That said, there are also many areas where the requirements for good anticipatory governance (e.g. in terms of institutional mechanisms, regulatory frameworks and decision-making processes) are deficient. Important weaknesses include:

- the limited attention given to the principles of intergenerational justice in decision-making on policy

- issues with major intertemporal implications;
- the relatively weak application of the precautionary principle and the goal of sustainability, especially in the areas of resource management and environmental protection;
- the lack of any high-level foresight unit in central government or requirements for all departments and major agencies to conduct regular foresight exercises, such as horizon scanning, the identification of creeping problems and the formulation of strategies to address them;
- the absence of requirements for governments to prepare periodic reports on the future, including on major long-term issues;
- the lack of a parliamentary select committee with a mandate to focus on future-oriented policy challenges and intergenerational issues;
- the limited requirements for governments to protect the nation's aggregate level of renewable natural capital or retain a substantial part of resource rentals within a sovereign wealth fund (e.g. to compensate future generations for the loss of non-renewable natural capital);
- the absence of comprehensive wealth accounting or national balance sheets covering most or all forms of capital;
- the relatively limited application, at least to date, of the Treasury's Living Standards Framework to policy analysis and governmental decision-making;
- the use of a relatively high discount rate in cost-benefit analyses (up to 8%);

- the absence of a comprehensive national policy framework for managing the impacts of climate change;
- the limited investment in assessing the economic, social and environmental implications of new technologies;
- the absence of: 1) a comprehensive national risk register; 2) a comprehensive risk assessment and plan for risk reduction; 3) regular stress-testing of resilience and adaptive capacity; and 4) regular reporting on disaster events, disaster risks and actions to reduce disaster risks (although natural hazards are well identified, a National Hazards Research Platform was established in 2009 to provide long-term funding for research on natural hazards, and one of the 11 National Science Challenges focuses on Resilience to Nature's Challenges) (Basher, 2016); and
- the relatively modest use of deliberative processes, multi-stakeholder forums and collaborative governance mechanisms to address major long-term policy challenges – although such arrangements are now viewed more favourably by the current government.

In summary, the New Zealand policy system lacks many of the commitment devices, both of a substantive and a procedural nature, that oblige decision-makers to take future-oriented interests into account, adhere to future-related policy principles or report regularly on their performance in addressing long-term policy challenges. Such devices cannot, of course, guarantee that governments will make decisions that protect future interests, but they can help reduce the extent to which such interests are ignored.

Policy outcomes – a very mixed record

The weaknesses in institutional design identified above have almost certainly contributed to New Zealand's very mixed performance in recent decades, as judged by various economic, social and environmental indicators. On the one hand, there are important policy domains, such as fiscal and monetary policy, where

strong commitment devices have been implemented to protect future-oriented interests (i.e. via the Public Finance Act 1989 and the Reserve Bank Act 1989). With little doubt these devices have had a positive impact on decision-making and policy outcomes. Over recent decades, for instance, New Zealand has achieved an enviable record with regard to inflation (except for asset prices) and fiscal management – as reflected in the substantial reduction in net public debt since the early 1990s (Buckle and Cruikshank, 2013; Gemmell and Gill, 2016).

incentives for building low-cost homes and substandard regulation (Howden-Chapman, 2015);

- serious traffic congestion arising from poor traffic management and inadequate investment in public infrastructure, especially in Auckland;
- weak environmental performance, arising in part from the poor management and inadequate protection of certain forms of renewable natural capital (e.g. freshwater) (Joy, 2015);

... current governance arrangements include a range of procedural and substantive commitment devices to encourage decision-makers to consider future-oriented interests, some of these devices are weak and the existing framework contains important gaps.

On the other hand, there are many policy areas where outcomes have been far less satisfactory, often with significant intergenerational implications. Examples include:

- relatively high rates of childhood poverty and material deprivation, including the limited public investment in mitigating disadvantages experienced during early childhood (Boston and Chapple, 2014);
- high (and increasing) rates of adult and childhood obesity, with almost a third of adults (i.e. those aged 15 years and over) obese in 2014/15, a further 35% of adults overweight but not obese, and a third of children either obese or overweight (Ministry of Health, 2015);
- major housing challenges, including serious overcrowding, homelessness and low-quality private rental accommodation, the product of, among other things, inadequate investment in social housing, weak

- one of the world's worst records for the loss of native habitat and biodiversity (e.g. 799 native species were 'threatened' in 2011, of which 417 were in a 'critical' state, 175 'endangered' and 207 'vulnerable'; 40% of bird species and 85% of native lizards were threatened or at risk) (Brown et al., 2015; Warren, 2014);
- a very high rate of soil being lost to the oceans annually (i.e. about ten times the global average) (Hicks et al., 2011); and
- high greenhouse gas emissions per capita due in part to ineffective price-based mechanisms and deficient regulatory frameworks (Chapman, 2015).

These poor outcomes reflect the failure of successive governments to exercise wise stewardship and adopt an anticipatory approach to policymaking. Too often governments have been unwilling to make hard policy choices, confront vested interests and impose non-simultaneous

exchanges. Similarly, unlike the situation in some other democracies (e.g. in Scandinavia), they have been reluctant to use multi-stakeholder mechanisms to secure negotiated solutions to complex and controversial intertemporal issues.

Suggested reforms

The weaknesses outlined above provide a good indication of how New Zealand might strengthen its anticipatory governance. Five possible areas of reform deserve highlighting.

First, while New Zealand's current

(Karacaoglu, 2015). But in its current form it lacks sufficient specification to guide policymaking. In part this is because some of the five goals to which the framework gives priority are inadequately stipulated. For instance, it is unclear what is meant by the goal of *equity* (e.g. which material principles of justice are relevant for policy purposes and how they should be prioritized). Nor does the framework provide much guidance about the meaning of, or requirements for, intergenerational fairness. Similar weaknesses are evident in its approach to *sustainability*. Equally

authorities, with more exacting biophysical bottom lines (especially for air, water and marine resources); tighter rules to protect renewable natural capital, perhaps along the lines proposed by Dieter Helm (2015); greater compensation for future generations to reflect the irreversible loss of non-renewable resources; and a comprehensive strategy to decarbonise the economy and prepare for the adverse impacts of climate change (especially sea level rise) (Lawrence, 2016). But given the political power wielded by narrow commercial interests over recent decades, achieving the required reforms will be hard.

Fourth, New Zealand has an abysmal record for child abuse, neglect, childhood material deprivation and obesity. Children represent the country's future. A failure to safeguard their interests is damaging to their future life course, thereby increasing long-term fiscal costs and reducing social and economic returns. Accordingly, policies to improve childhood outcomes – especially for the least advantaged – must be an integral part of any strategy to enhance anticipatory governance. In this regard, developing an official index of intergenerational fairness might help focus the attention of citizens and policymakers on whether current policy settings unduly favour particular generations (see Leach and Hanton, 2015). Also critical is the need for a well-designed social investment approach – the foundations of which are slowly emerging (James, 2016).

Finally, as suggested earlier, there is a case for experimenting with new ways of confronting creeping problems and finding lasting solutions to long-term societal challenges with politically unpalatable intertemporal trade-offs. There is good international evidence that deliberative mechanisms, multi-stakeholder forums and collaborative processes can be useful in exposing influential groups to the best available evidence, building a common understanding of the policy options and negotiating durable agreements (James, 2013; Mansbridge and Martin, 2013). Policymakers must be more willing to employ such institutional arrangements in the interests of better long-term governance.

New Zealand has taken significant steps to this end in recent decades, most notably in the fields of fiscal policy, infrastructure planning, public investment and public sector management.

governance arrangements include a range of procedural and substantive commitment devices to encourage decision-makers to consider future-oriented interests, some of these devices are weak and the existing framework contains important gaps. Among the changes needed are additional legislative requirements for governments to set measurable goals and specific targets, especially in policy domains with significant intertemporal implications. Further, both the executive and legislative branches should be required to conduct regular foresight exercises. To assist with such efforts a permanent, high-level foresight unit modelled on those in Britain, Canada or Singapore should be established. Governments should also be obliged to publish a comprehensive register of systemic risks and regularly update it. Each of these proposals would be reasonably cheap to implement.

Second, the Treasury's Living Standards Framework represents a valuable and important step towards developing a more holistic – and future-focused – approach to policy analysis which encompasses the full range of capital stocks and policy impacts

significant, the application of the Living Standards Framework is limited by the absence of a system of comprehensive wealth accounting and national balance sheets incorporating most or all forms of capital (see Arrow et al., 2012; Hamilton, 2014; Hamilton and Hartwick, 2014; Hamilton and Hepburn, 2014). Without reliable data on the nation's comprehensive wealth and more specific knowledge about how various policy decisions will affect particular types of capital (including, for instance, the quality and quantity of various ecosystem services), there is an increased risk of policymakers short-changing the future. Addressing these conceptual, analytical and methodological deficiencies will require a substantial commitment of intellectual resources.

Third, and related to this, New Zealand has been poor at protecting some of its vital natural capital (e.g. soil and freshwater) and minimising biodiversity loss. This suggests the need for more powerful institutional voices to represent environmental interests, as well as significant policy reforms to minimise negative environmental externalities. Among the changes required are: stronger national guidance for local

Conclusion

Advancing better government requires improved anticipatory governance. As argued in this article, such governance has many attributes. Above all, it means taking care of tomorrow today. Plainly, this is a difficult task. Governments face a daunting array of risks, incessant demands, complex policy trade-offs, and much uncertainty – indeed, often deep uncertainty. Moreover, there is a constant risk that the urgent problems of today will divert attention from, and thwart efforts to address, the problems of tomorrow. As a result, future generations may be needlessly and unjustifiably burdened. To mitigate such risks, governments must take countervailing measures. In particular, they need strong commitment devices that oblige policymakers to look beyond their immediate horizons. This includes institutional mechanisms and procedural requirements that bring the

long term sharply and repeatedly into short-term political focus, such as regular, dedicated and independent analyses of intergenerational issues. Governments also need, in the face of numerous unavoidable risks, to pursue strategies to enhance societal resilience and adaptive capacity.

New Zealand has taken significant steps to this end in recent decades, most notably in the fields of fiscal policy, infrastructure planning, public investment and public sector management. But in many other fields, especially social and environmental policy, the current policy institutions and frameworks are deficient. As a result, the country is running substantial social and ecological deficits and accumulating large liabilities. In some cases, regrettably, the consequences will be irreversible. We have a responsibility to future generations to do better.

This article has offered some initial thoughts on the nature of anticipatory governance, how it might be assessed and how it can be improved. We all have an interest in taking up the challenge. Safeguarding our future depends on it.

- 1 The concept of a 'commitment device' refers to a mechanism that is designed to change the structure of intertemporal pay-offs and/or limit future discretion by binding a person, organisation or government to a particular course of action. Commitment devices can take many different forms, from marriage vows to multi-party agreements. In the policy realm they can include constitutional or quasi-constitutional mechanisms, procedural and substantive devices, and mechanisms that are designed to insulate decisions from short-term political influence (e.g. transferring decision-rights to an independent group of experts) (see Boston, forthcoming; Reeves, 2015).
- 2 Resource management and environmental protection are major exceptions to these centralising tendencies.

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High Stakes – Disaster Risk in New Zealand

Introduction

New Zealand faces significant risks associated with natural hazards (Department of the Prime Minister and Cabinet, 2011) and is one of the most vulnerable countries to such risks for its size (Insurance Council of New Zealand, 2014). The 2010–11 Canterbury earthquake sequence resulted in 185 deaths, a \$40 billion rebuild cost, equal to about 15% of GDP, and now over five years of continuing disruption and trauma for thousands of people (Potter et al., 2015). A recent Wellington City Council report put the cost of a large earthquake in that city at \$12 billion for building and infrastructure damage alone, plus an annual GDP loss of \$10 billion.

Floods, landslides, drought and storms are frequent hazards. Coastal settlements are exposed to tsunami and the effects of sea level rise. Climate change will exacerbate weather-related risks. Volcanic risks exist for Auckland and central North Island cities and towns. Animal epidemics could cause very great national economic cost. The possibility of urban flooding, large-scale industrial and transport accidents and

extensive fires, including those as a result of earthquakes, cannot be ignored. The recent ‘leaky home’ problem, estimated to have cost over \$11 billion (PricewaterhouseCoopers, 2009), must rank as New Zealand’s worst ‘industrial’ disaster.

Disaster risk is clearly a matter of national importance and considerable policy interest. Yet this review finds that there are significant shortcomings in how it is recognised and managed. Steps to address the problems are proposed.

Language, concepts and international context

New Zealand can draw on extensive experience and thinking in other countries concerning disaster risk. In 2005, United Nations member governments agreed on the ten-year Hyogo Framework for Action to reduce disaster risk globally, but New Zealand paid little attention to the framework and its guidance over the following decade. Nevertheless, national progress reports were prepared, and there are signs that the 2015 successor agreement, the Sendai Framework for Disaster Risk Reduction, will be actively implemented here.¹

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A good example of a comprehensive national approach is that of Japan, which each year prepares a white paper on disaster management (Bosai Hakusho) for the Diet's consideration, based on comprehensive inputs from all ministries (Government of Japan, 2011). This describes the disaster events of the year, reviews relevant policies and programmes, and sets out intentions for further planning and countermeasures. The process provides a powerful vehicle for national review and action and for reinforcing awareness of risk.

Concepts and language are important in disaster risk reduction. Disaster

Christchurch earthquakes, the massive \$40 billion loss represented the risk that had accumulated over the 160 years of the city's development through a myriad of decisions about where people settled and how they built their structures.

Disaster risk reduction is a policy objective: to reduce risk rather than let it grow and accumulate. Disaster risk management is the means to achieve the objective, by addressing the historical, present and emergent drivers of risk. This involves four steps: (1) identify and assess the risks (covering hazards, exposures and vulnerabilities); (2) reduce the exposures of populations and assets to the hazards

(RMA), the Earthquake Commission Act 1993, the Civil Defence Emergency Management Act 2002 and the Building Act 2004. The Public Finance Act 1989 is also very relevant.²

Under the RMA, disaster-related risk management is mainly the responsibility of territorial government, via regional policy statements, land use planning, resource consenting and infrastructure investment. Projects to systematically assess and pursue resilience are under way in the biggest cities. The Ministry for the Environment administers the RMA and provides national support, such as guidance on flood risk management and climate change. The ministry is currently facilitating progress on a government bill to amend the RMA, including, notably, to add 'the management of significant risks from natural hazards' as a matter of national importance in section 6 of the act, a move the government has identified as a priority for action by 2018.³

The Civil Defence Emergency Management Act includes risk and its reduction as one of the six elements of its purpose. Risk is included in its definition of "civil defence emergency management" and in the advisory and planning tasks of the director of civil defence and emergency management. However, the actual management of risks, including risk reduction, is not set as a national responsibility but is devolved to regional groups, whose members are territorial governments. Unlike the case of emergency management, little direction is provided in the act on necessary risk-reducing actions apart from hazard assessment. The Ministry of Civil Defence and Emergency Management's website reflects the same emergency preparedness and management perspective; information on risk and risk reduction is scarce and hard to locate. Where risk is referred to, it is mostly as the somewhat ill-defined term 'hazard risk'. Although the ministry is the national focal point for disaster risk reduction with the United Nations, prior to the 2015 Sendai Framework it did not actively promote international agendas and campaigns in its own programmes or with other relevant government agencies.

More specific risk-oriented direction may be found in the 2007 National

Disaster risk reduction is a policy objective: to reduce risk rather than let it grow and accumulate.

is defined in the United Nations International Strategy for Disaster Reduction (UNISDR) as an outcome: 'A serious disruption of the functioning of a community or a society', rather than a hazard or event. Risk is defined as 'The combination of the probability of an event and its negative consequences'. Risk thus has two distinct connotations: the probability aspect, such as in 'the risk of an accident'; and the consequences aspect, such as in quantifiable 'potential losses'. Here we put the emphasis on the second connotation.

A basic concept is that the risk at a particular place and time results from the combination of the hazards present, the exposure of populations and assets to the hazards, and the vulnerabilities of those populations and assets to the hazards. Where and how people live and how assets are designed and managed determine the exposure and vulnerability, and thus the amount of risk. The large M7.8 earthquake in Fiordland in 2009, for example, caused few losses because few people or assets were present. Conversely, a minor hazard (wind and rain) combined with high exposure and high vulnerability led to the national leaky home catastrophe. In the case of the

(e.g. do not build on floodplains or on liquefaction-prone soils); (3) reduce the vulnerabilities to the hazards (e.g. through good building design, preparedness and emergency management); and (4) transfer the remaining unavoidable risk by means of insurance, other risk-financing tools and the exchange of social capital.

This concept of disaster risk shifts the spotlight away from events and hazards to emphasise the role of society in creating risk. However, in many countries the paradigm of 'disasters as events' dominates, where the emphasis is on hazard assessment, preparedness and emergency management, and, when necessary, recovery. The event paradigm is typically accompanied by under-investment in risk reduction activities. The term 'resilience' extends the event paradigm and is attractive, implying dynamic systems and proactive roles for at-risk communities, though it is more complex than risk and harder to define and measure.

Acts and actors in disaster risk and its reduction

The principal statutes dealing with disaster-related risk in New Zealand are the Resource Management Act 1991

Civil Defence Emergency Management Strategy. Currently this is under consultative review, with the intention to replace it with a National Disaster Resilience Strategy that is better aligned with the Sendai Framework. The ministry also administers the contestable Civil Defence Emergency Management Resilience Fund, in 2016 awarding a total of \$889,000 to territorial governments and CDEM groups for eight projects.

The Ministry of Business, Innovation and Employment is significantly engaged in risk issues. Among other things it recently coordinated the development of a new act to standardise the identification and remediation of earthquake-prone buildings and is consulting on a new system to manage buildings and life-safety risks after emergencies. It handles the government's response to the costly leaky home problem; supports the Natural Hazards Research Platform; and implements the National Science Challenge programme, whose 11 components include the Resilience to Nature's Challenges research programme.⁴ Nonetheless, the concept of risk as an overarching strategic issue is not apparent in the ministry's strategy and reports.

The Ministry of Health is active in health-related disaster preparedness and response, as are the regional health boards – for example, through guidance materials to help citizens and health facilities in disasters – and it is responsible for national pandemic planning and response. However, there appears to be no recognition of disaster risk as a national strategic threat to the functioning of hospitals and health facilities or of the international guidance on this matter (World Health Organization, 2015).

The Public Finance Act 1989 directs the management of public assets and liabilities. It requires the prudent management and forecasting of the fiscal risks facing the government. Disaster risk is not routinely considered, although the impacts of the Canterbury earthquakes were a key element of the 2013 budget policy statement. Treasury's latest annual report has several disaster risk-related items, including the transition of the Canterbury Earthquake Recovery Authority to become an agency within

the Department of the Prime Minister and Cabinet, the reform of natural disaster funding arrangements for local government infrastructure, and the allocation of \$500 million for the Crown-owned entity which took over the claims liabilities of then financially challenged insurer AMI on 5 April 2012. But disaster risk is not referred to as a strategic issue and is absent from Treasury's new Living Standards strategic framework.

Risk as quantifiable potential loss is central to the Earthquake Commission Act. The commission and its Natural Disaster Fund have played a key role in the recovery of Christchurch, meeting claims

department. The system takes an 'all hazards' approach, ranging across cyber attacks, natural hazards and terrorism threats. But no mention is made of any work programmes to pursue the assessment and reduction of disaster risks.

Many organisations outside government administration are actively involved in risk and its management. The Crown research institutes and universities generate knowledge on natural hazards and provide advice to the government and the public, including through the risk analysis tool Riskscape.⁵ Along with the state-owned MetService, they

The Public Finance Act ... requires the prudent management and forecasting of the fiscal risks facing the Government

for over \$9 billion. The commission also devoted \$19.6 million to research services and education last year, among other reasons to encourage the adoption of risk reduction behaviour and enable reinsurers to more effectively price New Zealand risk. A risk orientation is also present in New Zealand's external aid programme, where a strong commitment to strengthening resilience and reducing risks accompanies the traditional commitment to humanitarian response.

Across government, national security issues are coordinated by the Domestic and External Security Coordination Committee, which comprises relevant ministers supported by an officials committee. Hosted in the Department of the Prime Minister and Cabinet, this system provides the means to coordinate action on wide-ranging risk matters, albeit with a prime focus on security and intelligence. The principles of operation, roles of agencies, and identification of the chief executive of the Department of the Prime Minister and Cabinet as the national focal role for security have been published (Department of the Prime Minister and Cabinet, 2011). In 2013 the Ministry of Civil Defence and Emergency Management was incorporated into the

operate early warning systems for most natural hazards. Professional engineering societies provide public guidance, such as on assessing and improving earthquake resilience of buildings. Risks associated with lifelines – transport routes, electricity, water, food supplies, etc – have been subject to study and remediation by regional multi-party lifelines groups.⁶ The insurance industry develops risk models based largely on publicly generated hazards and land use information, for risk assessment and risk pricing, and has paid out \$15 billion to the Christchurch recovery. The Insurance Council of New Zealand has promoted the need for more coherent national approaches to reducing risk related to natural hazards through a set of legislative and strategic recommendations (Insurance Council of New Zealand, 2014.) These include establishing an agency to oversee risk reduction, developing a national plan and reviewing legislation.

Critical issues and shortcomings

New Zealand has many well-developed institutions and capacities to address disaster risks, but there are significant shortcomings in concept, management and governance. The government is heavily

involved in the financial consequences of the Canterbury earthquakes: i.e. in dealing with risk *after* the fact. But it is less well engaged in risk issues and their management *before* the fact. The main concerns are as follows:

- The concept and language of risk, as potential loss, is not well articulated in the relevant laws, institutions, documents, processes and web presence of public organisations. Even where referred to, it is usually subordinate to other concerns and is not seen in dollar terms. Sovereign disaster risk management (Bauer and Parker, 2015) is not explicitly recognised. The multi-billion-dollar scale of potential future losses remains largely invisible, including in the critical field of public finance.

vaguely approaching the Japanese white paper process. Governance of risk is spread across many acts, and risk management is spread across many departments and levels of government, without obvious integration.

- Leadership on risk-related matters lies out of sight within government structures, resting mainly with the chief executives of Ministry for the Environment and the Department of the Prime Minister and Cabinet and director of civil defence and emergency management, all of whom have other extensive responsibilities. There is no public face or champion for systematic disaster risk reduction, nor evidence of leadership through public statements on the topic.

the risk estimates were unsound. The construction of an emergency water reservoir for Wellington Hospital is currently mired in disagreement among the government, hospital board and city council over who should pay for it.

- Information on disaster risk and its reduction is often hard to find in government websites, documents or policies, and there is minimal cross-referencing between agencies. Information on disasters as a national financial or sovereign risk is almost totally absent. The Ministry of Civil Defence and Emergency Management's page of introduction on the DPMC website makes no mention at all of risk and its management; it is solely focused on emergency management. The ministry's own home page has a wider view but is also largely concerned with emergency management and preparedness. The national progress reports under the Hyogo Framework are not presented on the website; instead one is directed to a United Nations' site.
- There appears to be no public database of disaster losses upon which policy and mitigation investment might be founded and progress in risk reduction monitored, other than ad hoc lists mainly of historical shipwrecks and other transport accidents. New Zealand is not alone in this respect: many countries are currently developing such databases. By contrast, the insurance/reinsurance sector has long maintained detailed databases on losses and risks.
- Current arrangements do not properly engage civil society actors or recognise their interests in and capacities for disaster risk reduction. There is no national platform for disaster risk reduction.⁷ The Civil Defence Emergency Management Act does not refer to non-government actors, and the national strategy ineffectually states that the government expects that other parties 'will come to understand that they too, have an important role to play

The multi-billion dollar scale of potential future losses remains largely invisible ... risk and risk reduction are not systematically governed or managed on a national scale.

- Historically, international agendas concerning disaster risk and its reduction have been poorly acknowledged. New Zealand largely ignored the guidance of the 2005–15 Hyogo Framework for Action. While local expertise and approaches are desirable and can provide effective solutions, this period was a lost opportunity to move ahead and improve, and it shows in inadequacies in respect to concept, national approach and civil society engagement.
- Risk and risk reduction are not systematically governed or managed on a national scale. As far as the author can determine, there is no national assessment of risk, no national plan of action to address the sources of risk, no annual report on national risk status, and minimal budgets devoted to risk reduction. There is nothing even

It is worth noting the proposal of the reinsurer Swiss Re that all countries should have a public office of country risk officer to provide oversight and holistic management of national risk.

- The devolution of risk reduction action to regional and local authorities, and to district health boards, is problematic. It invites inconsistent approaches across the nation and sub-optimal investment in risk reduction (note that disaster costs are funded largely through national mechanisms of taxation and insurance). Local governments have limited capacity to generate funds for risk reduction investment and limited access to technical expertise. Recently the attempt by Kapiti Coast District Council to place coastal risk information on property land information memoranda was rejected by the High Court on the basis that

... and will plan accordingly'. Risk reduction involves diverse knowledge and difficult trade-offs and decisions, such as on land uses, which in turn require sustained partnerships across public and private sectors. The regional lifelines groups are a good example of this approach.

Proposed actions and conclusion

In the light of the foregoing discussion, the following nine proposals are made for upgrading New Zealand's approach to disaster risk.

- Identify disaster risk and its reduction as a core concern of government and require that it be considered as part of whole-of-government policy processes.
- Review all legislation concerning disaster risk and develop the amendments necessary to give force to the implementation of comprehensive risk reduction.
- Review and rationalise the roles of different levels and parts of government in disaster risk reduction and formalise upgraded mechanisms for coordination.
- Institute a mandatory annual report to Parliament on disaster events, disaster risks and disaster risk reduction action, covering all relevant acts and programmes, modelled on Japan's annual white paper process.
- Strengthen the financing of risk reduction through a coordinated and appropriately supported national portfolio of funding mechanisms.
- Provide a strong and publicly visible 'home' for risk reduction action

within government, led by a senior officer fully devoted to the topic and responsible for promoting external partnerships and disseminating public information.

- Establish a multi-party national platform on disaster risk and its reduction, and encourage the formation of similar regional and special-interest platforms.
- Establish a public database on disaster losses, along with the necessary national data collection programme.
- Significantly improve the level of information provided on disaster risk and its reduction through government and other public websites and in the media.

The nine proposals are straightforward in principle but will require leadership and awareness raising, including at political level. Action need not await the outcome of any review of legislation; improvements can be initiated immediately, alongside efforts to implement the Sendai Framework. A central feature is the annual reporting process, which should be pursued as a multi-agency process with full engagement of all involved.

The appointment of a champion for disaster risk reduction within central government, ideally designated chief risk officer or similar, is critical. The role needs to be outward-looking and actively engaged with civil society and information dissemination. A survey of existing investment in risk reduction is a necessary step toward developing a portfolio of funding. The loss database should be hosted in a scientific institution

and should make use of existing international methodologies for database design and the collection of past and future loss data.

The essence of a national platform is the voluntary participation of diverse actors, from government and civil society, for dialogue, information sharing, coordination, joint project initiatives and norm setting. Substantial upgrading of government websites and public resources is needed to support informed civil society engagement in disaster risk reduction.

In conclusion, the invisibility, uncertainty, multiple roots and long-term characteristics of disaster risk undoubtedly present a great challenge for its governance and management. But the stakes are high, with potential disaster losses of hundreds of lives and billions of dollars – it is vital that the issue be given greater attention and that more systematic national action is undertaken to protect the nation's future.

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1 See www.unisdr.org and www.preventionweb.net for access to the Hyogo and Sendai frameworks, the national progress reports and the 2009 UNISDR Terminology on Disaster Risk Reduction. The author was involved in the drafting of the Hyogo Framework and the terminology while engaged in the UNISDR secretariat.

2 The material in this section is drawn from government entities' annual reports, statements of intent and websites. A number of other relevant acts are listed at www.civildefence.govt.nz.

3 Ministry for the Environment, 2015.

4 See <http://www.naturalhazards.org.nz> and resiliencechallenge.nz.

5 Drawn from relevant government entities' annual reports.

6 See <http://www.civildefence.govt.nz/cdem-sector/lifeline-utilities/>.

7 National platforms are promoted in the Hyogo and Sendai frameworks and now exist in 54 countries.

Judy Lawrence

Implications of Climate Change for New Zealand's Natural Hazards Risk Management

Introduction

The significant challenge posed for current and future generations by the impacts of climate change (IPCC, 2014) raises questions about whether 'better government' is required for adequate responses. Climate change exacerbates current natural hazard risk and creates impacts not experienced before. The Intergovernmental Panel on Climate Change (IPCC) concluded with 'very high confidence' that impacts from recent climate extremes reveal significant exposure and vulnerability of human systems to 'current climate variability' (IPCC, 2014, p.6). This 'adaptation deficit' (IPCC, 2014; Parry et al., 2009) highlights the sensitivity of society and its underpreparedness to change. The concentration of development in low-lying coastal areas and on flood plains that will be increasingly exposed to climate change impacts,

such as sea level rise and high-intensity rainfall events, compounds the problem. Such impacts will exacerbate the challenges faced by decision-makers when they are under pressure to restore normality as quickly as possible following extreme events. Such pressures fall on the emergency management system, flood risk management and the planning system. However, learning from these events is slow to be integrated into risk reduction planning.

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One reason for this is that people differ in their perception of risk, based on their different values and knowledge (Adger et al., 2009). This can create contested spaces: on the one hand, if decision-makers anticipate change before it happens they receive opprobrium; on the other, if they wait until the damage has occurred, councils are exposed to liability for damages, and lock-in to escalating risk can result. Such a 'no-win' situation can contribute to whether current natural hazard management practices will be sufficient for the rate and scale of the changes coming, and, if not, whether they can be adapted or will require new institutions to build adaptive capacity. This is essentially a question of 'better government' that has the levers for anticipating the change and thus reducing the risks.

The IPCC suggested strategies to manage the intersection of extreme climatic events and climate change adaptation, such as better integration of actions across portfolios to reduce the compounding effect of several hazards (IPCC, 2012), and that offer benefits in the near term as well as reduction in vulnerabilities in the longer term. But is the climate change risk being adequately characterised, and are the connections between emergency management, natural hazards planning and climate change adaptation working in practice? Will the recent focus globally¹ on 'resilience' provide a better framing of the challenges and enable adaptive responses to changing climate risk profiles?

Using insights from a New Zealand-based empirical study of the adequacy of institutional frameworks and practice for adapting to climate change (Lawrence, 2015), this article shows how climate change impacts and current natural hazard risk responses can increase the level of residual risk (the unavoidable risk), and thus challenge the capacity of the emergency management, flood risk reduction and planning systems to address those risks.

Context

The institutional framework for natural hazard management is set within a complex web of different statutory

instruments that rely for their effectiveness on a high degree of co-ordination across all governance scales – of emergency management, preparedness, and risk reduction through structural protection and land use planning.

Two statutes govern and enable the funding of flood risk management in New Zealand: the Soil Conservation and Rivers Control Act 1941, administered by regional councils to prevent damage from floods and prevent and mitigate soil erosion; and the Land Drainage Act 1908, administered by regional and district councils to maintain watercourses and drains. The Resource

focused predominantly on emergency event response and recovery. This has resulted in less attention being given to reduction of risk and to readiness (Glavovic, 2014). Such allocation of attention emanates from the historical focus on catastrophic disasters, such as major earthquakes. Timeframes are different between emergency response and recovery activities, and natural hazard risk reduction through structural protection and land use planning: immediate emergency response and recovery occur within short-to-medium timeframes; protection and planning over longer timeframes. The institutional

The institutional system demonstrates fragmentation, time inconsistency and a different focus of respective expertise, leading to a lack of co-ordination ...

Management Act 1991 (RMA) provides a statutory framework for natural hazards management to reduce risk through policies and measures in regional and district plans. This sits alongside the general powers conferred by the Local Government Act 2002 to carry out local public services through long-term plans, including any structural protection.

The emergency management system manages disaster risk at the national and local levels of government under the Civil Defence Emergency Management Act 2002. The National Civil Defence Emergency Management Strategy 2007 (soon to be renamed the National Disaster Resilience Strategy) sets out four types of risk-management activities – readiness, response, recovery and reduction – known as the 4Rs.² The Earthquake Commission Act 1993 provides insurance funding for residential property damage from natural disasters, administered by the Earthquake Commission and funded through a levy on private property insurance for underwriting damages up to \$100,000 per event.³

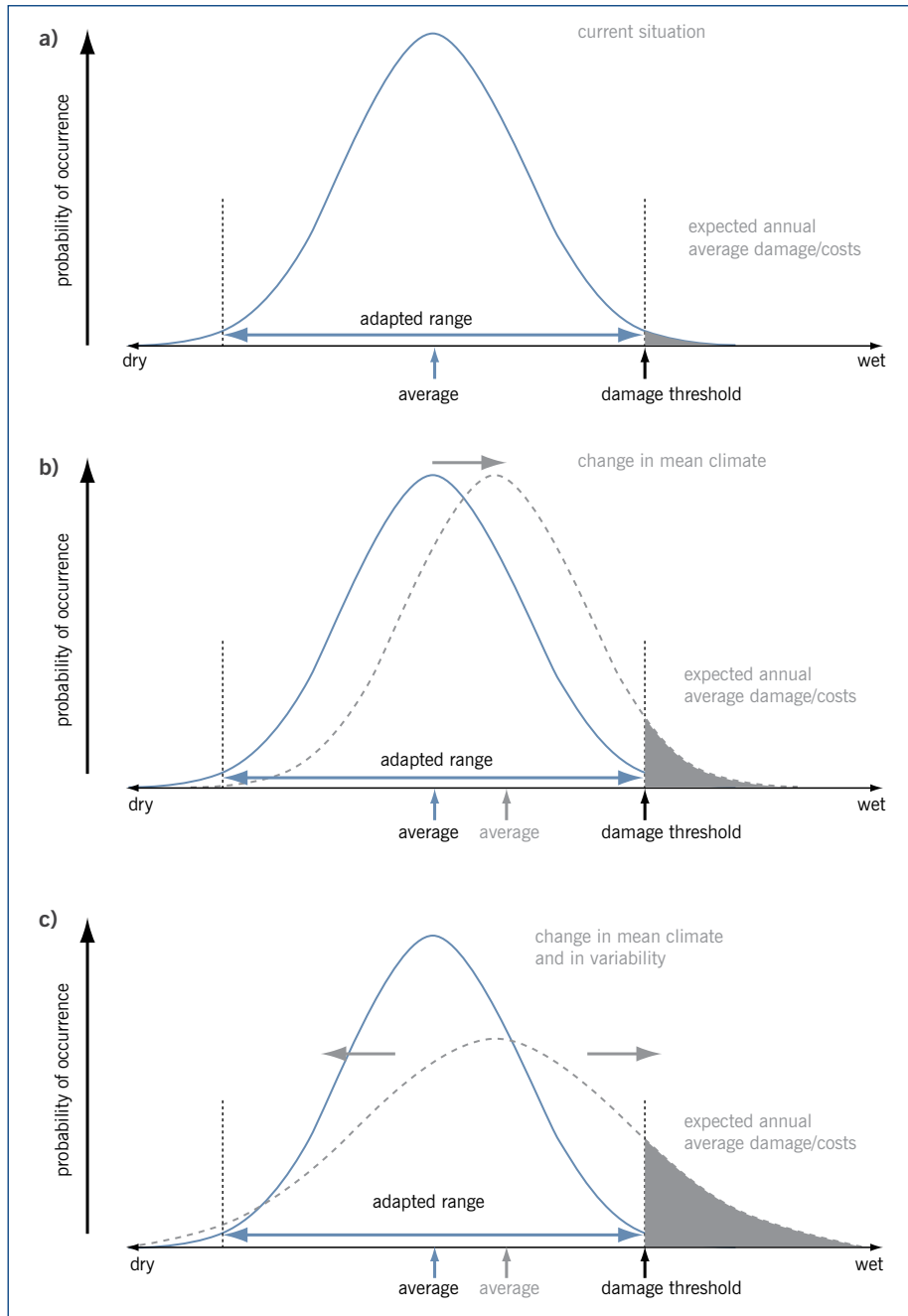
Emergency management operating at district, regional and national levels has

system demonstrates fragmentation, time inconsistency and a different focus of respective expertise, leading to a lack of co-ordination (ibid).

A recent shift in emphasis towards disaster risk reduction conveys sudden events; but not all climate change risks manifest as 'events'. The practice of using static measures such as stopbanks and fixed hazard zones to manage flood and coastal inundation sets up societal expectations of 'safety' within the bounds of those measures. Such practices can mask consideration of residual risk under current conditions, and residual risk as it increases relative to the static protection level as the climate changes. This can lead to path dependency if the measures cannot be adapted to the change over time and spatially. Thus, decision choices are constrained.

The global efforts at integration under a 'resilience' rubric (Gunderson and Holling, 2002) have gained currency in New Zealand (National Infrastructure Unit, 2013). This framing could address climate change impacts, since the theory suggests that there are shifts over thresholds between stability domains –

Figure 1. Changes in extremes with changes in mean climate



Source: Andy Reisinger adapted from IPCC (2012) Figure SPM3

stretched. In many cases it is the extremes that lead to the most noticeable and significant impacts on human activities. First, changes in mean conditions can increase damage costs at the extremes and lead to damage thresholds being exceeded. For example, Figure 1 shows how a shift in mean conditions from the current situation (diagram a) affects the frequency of the extreme conditions (diagram b), by increasing expected annual average damages; and how a shift in variance (diagram c) means more variable weather, which increases the damages from the extremes even further.

Second, Figure 1 also illustrates how changes will challenge the adaptive range of human activities by reaching a damage threshold (black arrow in diagram c), where the coping range for a particular type of extreme event is exceeded. Where the coping range is already exceeded from the current conditions shown in diagram a, and the changes shown in diagrams b and c occur, the coping capacity will be challenged (Burton, 2009; Parry et al., 2009). The gap between the current state of a system and a state that minimises adverse impacts from existing climate conditions and variability is called an adaptation deficit (IPCC, 2014).

Third, the frequency and intensity of heavy rainfall events will increase as a result of climate change. We do not know how frequent or how intense they will be, or exactly when these conditions will occur. But we do know that these uncertainties are unlikely to be resolved (if at all) before decisions are made about the location of development and infrastructure that will be affected within the lifetime of those developments. Figure 2 is illustrative of how increased flood frequency in the Hutt River catchment in New Zealand is affected by two different emissions scenarios for a range of different climate models (Lawrence et al., 2013). For a design flood flow of 2,300 cubic metres per second (the black horizontal dashed lines in both graphs), the current annual exceedance probability of 0.23% (one-in-440-year event) would increase to about 1% (one-in-100-year event) by the end of the century under a low-emissions trajectory (left-hand graph), and to just over 2% (one-in-50-year

changes described by Walker et al. (2004) as the capacity to create a fundamentally new system when ecological, economic or social structures make the existing system untenable. For this to happen, the characteristics of climate change impacts across a range of scenarios, and their relationship to emission reduction trajectories, need to be better understood.

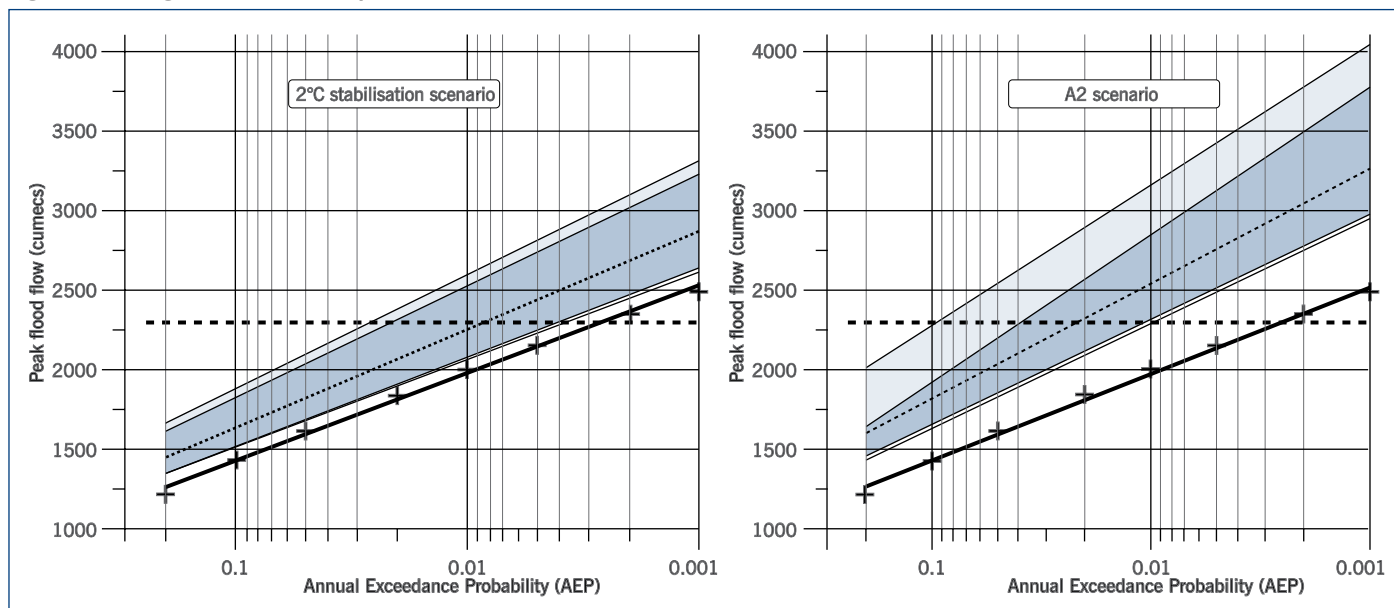
Climate change as an exacerbator of hazard risk

The IPCC concluded that continued higher amounts of warming are increasingly

likely, since the pace and scale of actions to date to reduce emissions fall short of what is required to reduce the chance of dangerous climate consequences.⁴ This means that more severe, frequent and ongoing impacts from climate change are highly probable.

Several characteristics of the changing climate will pose new risks (e.g. rising seas and groundwater), and will also combine to exacerbate existing risks (e.g. rainfall events and drought). The capacity of the emergency and flood risk management and planning systems to cope with extreme events when they occur will be

Figure 2: Changes in exceedance probabilities under different emission scenarios.



Source: Lawrence et al., 2013

Note: The black crosses and solid line show estimated exceedance probabilities for a range of design flood volumes. The dotted line shows the flood volumes for alternative emissions scenarios in 2090 (left: 2°C stabilisation; right: A2 SRES emissions) for a range of climate models. The light grey band shows the full model range, whereas the dark grey band shows the 10–90 percentile model range. The black dashed line shows the volume of the current design flood of 2,300 m³/s, with an estimated current AEP of 0.23%.

event) under a high-emissions trajectory (right-hand graph).

A fourth characteristic of changing climate impacts is different from the natural hazards that emergency management and planning measures have had to address to date. Permanent and ongoing incremental increases in coastal inundation from sea level rise or the interaction of sea level rise with groundwater levels (Manning et al., 2015) pose further hazard risks that do not occur as a disaster 'event'.

These impacts will also increase the residual damages that occur when current design 'protection' levels are exceeded, through increased frequency and intensity or rising seas. These have profound implications for the ability of emergency management, natural hazard management and planning measures to respond and to assist recovery, because the scale of residual damage will be increasing spatially as well as in severity. In addition, sea levels will be rising concurrently around the country. The impacts will affect the ability of sea walls and levees to contain inundation; flash flooding will render inadequate storm water systems designed for lesser magnitude of rainfall events and result in more widespread surface flooding; and ongoing sea level rise and storm tide (high tide plus storm

surge) inundation will threaten coastal areas.

Such changes in climate impacts will challenge assumptions about the location and numbers of exposed and vulnerable people who require egress from damaged areas, and the logistics of response operations. Greater frequency of climate events will also affect the ability of communities to recover between events, further exacerbating current risk and the ability to respond and recover. Furthermore, human exposure to natural hazard risk shows no sign of reducing; existing land uses tend to become permanent, thus creating a compounding effect. While attempts to address the legacy effect of path dependency have been discussed and contested – e.g. planned retreat from such locations – in many places (Glavovic and Smith, 2014; McDonald, 2010; Reisinger et al., 2015; Rosenzweig et al., 2011), the effect of climate changes on the capacity for emergency management, natural hazard risk management and planning for increased residual risk is less often discussed. Despite calls for more integrated planning and the potential for risk reduction through the RMA (Glavovic, Saunders and Becker, 2010), planning, engineering and emergency management approaches have been slow

to converge (Lee, 2010), due, in part, to the dominance of a disaster event management discourse (Glavovic and Smith, 2014). However, as a consequence of the 2010–11 Canterbury earthquakes (a large shock) two discourses have emerged that have the potential to modify the disaster event discourse. 'Resilience' is beginning to frame infrastructure and city planning, and 'risk reduction' has emerged in the Local Government New Zealand initiative to set up a 'risk agency'. These broader framings could encompass climate change impacts if the discourse embraces an understanding of changing climate risk profiles.

This raises an issue of the *capacity* of institutions to address variations in climate that are outside the range of societal experience (Dovers and Hezri, 2010), making adjustments difficult or challenging institutions' and society's ability to cope at a fundamental level. These challenges will be on top of existing adaptation deficits where current infrastructure, for example, is outside its coping range already (Office of the Auditor-General, 2014). A further compounding factor is that current Earthquake Commission policy settings that replace assets in the same location without adapting to the changing risk, will increase exposure, creating further legacies that will challenge emergency and natural hazards management and climate change adaptation.

Emergency and planning responses

How do the emergency management, natural hazard management and planning practices currently operate and how might they be entrenching natural hazard risk?

Emergency management

Emergency management practice is largely reactive; it focuses on readiness, response, and recovery from disaster events. Warning systems and preparedness by homeowners are anticipatory, but only for those things that individual property owners can influence (Lawrence, Quade and Becker, 2014). The focus is on events rather than incremental increases in hazard risk, such

to integrate its activities across the whole region on which resilience depends. Meanwhile, the Greater Wellington Regional Council is preparing a natural hazards management strategy, but has a constrained mandate for implementation which relies upon separate units of local government. Consequently, integrated practice is unlikely to eventuate without integrated governance.

Nevertheless, it has taken the Canterbury earthquakes in 2010 and 2011 to raise awareness among decision-makers and practitioners nationally of the scale of disruption that can occur if such widespread hazard risk is inadequately

... integration of ... activities has proven difficult due to the fragmented nature of the statutes, and their governance being in separate units of local government and at different levels of government.

as coastal inundation from sea level rise, or the interaction of sea level rise with groundwater levels. Reactive practice emanates from the statutory framework and disciplinary practices within which the different advisors and decision-makers operate. Some operate within the same institutional frameworks by being located within the same organisation (e.g. regional councils); others are distant and separated by and within their institutional and organisational arrangements (emergency management).

For example, while there are some signs of emergency management starting to integrate across governance scales in the Wellington region (the Wellington Regional Emergency Management Office integrates its activities across nine local government councils, lifeline utilities, welfare agencies, emergency services and response teams), this integration has not extended to system integration across functions, such as structural protection and land use planning, nor to managing climate change impacts. Also, Wellington City Council has become one of the 100 Resilient Cities, but without a mandate

anticipated. What emerged in Canterbury under special legislation from national government was a special-purpose recovery agency – CERA (the Canterbury Earthquake Recovery Authority) – with a sunset clause, followed by the location of recovery and rebuild functions within the Department of the Prime Minister and Cabinet. Whether this will enable a more anticipatory form of risk reduction to emerge is unclear, since attempts by the Christchurch City Council to address climate change and natural hazard risk in its new district plan have been challenged.

In New Zealand, as elsewhere in the world (Carlman, 2005), new institutional design that follows disasters tends to focus on the particular type of disaster that has just occurred (despite the publication in 2007 of a National Hazardscape Report).⁵ For example, after the Indonesian tsunami in 2004 the government focused on tsunami risk and warning (Glavovic, Jones and Johnston, 2008); after the Canterbury earthquakes, earthquake-related natural hazards were the focus of institutional reform (an amendment

to the Local Government Act (section 101B) providing for infrastructure planning over 30 years to manage risks relating to natural hazards; a proposal to elevate consideration of natural hazards to 'matters of national importance' in part 2 of the RMA; and the preparation of a national policy statement on natural hazards). The current review of the National Civil Defence Emergency Management Strategy has signalled a move to managing risk rather than managing disasters, but 'disasters' still appears in the strategy title, and there is no direct link thus far being made in the RMA amendments between natural hazards and the existing statutory provision 'to consider the effects of climate change'. Such a link would make integrated planning for disaster and climate change risk easier for councils to address.

Flood risk management and planning for changing climate risk

Reduction of risk is addressed by flood risk managers, planners and asset managers under the Soil Conservation and Rivers Control Act, the Local Drainage Act, the Local Government Act and the RMA. However, integration of these activities has proven difficult due to the fragmented nature of the statutes, and their governance being in separate units of local government and at different levels of government.

Structural protection under the Soil Conservation and Rivers Control Act exhibits time- and space-bound characteristics that constrain consideration of changing climate risk profiles. For example, flood schemes have finite design capacity, which entrenches asset growth and potential super-design failures (breach and overtopping) that have higher residual damages than if there was no failure. The impact of structural protection has been widely recognised for decades in New Zealand (Ericksen, 1986) and elsewhere (Burby, 2006; Burby and French, 1981), but change has been slow. It is only recently that new approaches have begun to be applied in New Zealand that enable changing climate risk to be factored into flood scheme reviews in an anticipatory way using adaptive pathways planning (Lawrence and Haasnoot, under

Greater Wellington Regional Council, 2015 review). The current wide exposure to risk and entrenched settlement patterns, creating a legacy effect due to path dependency of past decisions, are compounded by a poor perception by communities of the changing climate risk profile (Lawrence, Quade and Becker, 2014) and embedded expectations of ongoing 'protection'.

Land use planning measures have been included in most flood risk management plans under the Soil Conservation and Rivers Control Act for major rivers in New Zealand (Wellington Regional Council, 2001), recognising the limitations of structural protection measures: that they often do not address the residual risk, can give a false sense of security for further development, and have increased the potential exposure of people and assets at risk. Complementary planning recommendations by regional councils need to be translated into regional rules for them to be given effect by territorial local government. Most regional councils have been reluctant to use the statutory provision to constrain existing land uses, and planning measures for changing hazard risk consequently have not been routinely included in district plans. Where territorial local authorities have attempted to do so they have borne the brunt of community reaction at a local level, leaving other councils reluctant to progress natural hazard risk reduction for which they are mandated.

The tools of planning have also entrenched risk, due to their static space- and time-bound nature. For example, hazard lines on maps and floor level restrictions will eventually prove inadequate in the face of ongoing sea level rise. Where such approaches are contested, the courts become the default decision-makers, because they have to interpret the meaning of risk-based approaches to decision-making based on different interpretations by expert witnesses appearing before them. One recent example illustrates the legacy that the emergency management and planning system will inherit. Here the Environment Court interpreted the requirement in the New Zealand Coastal Policy Statement to consider climate change enhanced

hazard risk over 'at least 100 years.' For a new subdivision in a remote coastal area the court in *Mahanga E Tu Inc v Hawkes Bay Regional Council and Wairoa District Council*⁶ addressed the risk by placing the responsibility for future risk management back on the consent holder to move dwellings when a prescribed distance from the encroaching sea was reached. This was despite the proposed development being in a regulated coastal hazard zone that was so designated as a precautionary measure to discourage development. Underlying this decision was the notion of voluntary assumption of risk, reference to which has become

emergency management system may not have the capacity to support those bearing the risk in the future. This is quite apart from the possibility that conditions of consent could become unenforceable in the future, thus creating a moral hazard for future generations.

The notion of 'acceptability' of risk begs the question, to whom will the risk be acceptable: current or future generations? Making judgements about future acceptability and tolerability is at best speculative; at worst it transfers the risk to those managing emergencies and to funding agencies at a later point in time. The notion that risk can be mitigated in

The notion of 'acceptability' of risk begs the question, to whom will the risk be acceptable: current or future generations?

a growing trend in Environment Court practice, as shown in *Hemi v Waikato District Council*:

We agree that there is an element of 'voluntary assumption of risk' by people who choose to live near the coast in situations such as this, and the Court's concern must be whether such risk is acceptable on all of the facts presented to it, rather than whether such risk is able to be avoided absolutely.⁷

Three practice concepts are used as risk heuristics in the court's decision-making: the voluntary assumption of risk; 'acceptable' levels of risk; and whether the risk can be mitigated. The implications of such concepts applied in practice are significant for the emergency management system, natural hazard risk management and planning practice. The 'voluntary assumption of risk' has potential to mislead as sea levels rise and flood frequency and intensity increase. Those who assume the risk today will not be those who experience the risk in the future. An increasingly burdened

most cases sets up expectations that there will be ongoing protection (Burby et al., 2001). When decision-makers focus only on mitigation of harms, this can lead to structural protection measures that create further legacy effects by creating a false perception of 'safety' (Burby, 2006). By so doing, residual risk is ignored. Such court-derived mitigation measures and conditions do not appear to consider that many properties can be affected concurrently, rendering building removal impractical, especially if alternative sites have not been identified. Mitigation here means reduction of harm, not elimination of harm, although those relying on mitigation often perceive mitigation as risk elimination.

Decision-making institutions have tended to entrench societies' need for certainty over time, which is not surprising, as they are expressly designed to confer certainty for societal functioning (Ruhl, 2012). As a result, institutions exhibit time and space constraints in their design and practice (e.g. levees, sea walls, hazard lines) and decision-makers do not have reason to consider the future consequences of decisions today and

Box 1: Institutional framework and practice adequacy criteria

- 1) Understanding and representing the changing climate risk characteristics that alter the residual risk to be managed:
 - uncertainty treatment
 - lifetime of decisions
 - framing of climate change risk
 - consistency and accessibility of climate risk information.
- 2) Designing governance and regulatory institutions and practice tools that 'fit' the scale and interplay necessary to manage the changing characteristics of climate risk:
 - precautionary decision-making
 - risk consideration over long timeframes
 - experimentation and learning
 - codification of changing risk and complementary measures
 - monitoring and transition to new institutions.
- 3) Developing organisations and emergency response, recovery and readiness practices that have the capability and capacity to respond to changing climate risk in emergency situations without entrenching risk exposure and vulnerability that make future responses more challenging:
 - organisational learning across disciplines and scales
 - capability to lead and anticipate complex and changing risk across scales and functions
 - community engagement to reflect values.

Source: Lawrence, 2015

how they might address future change that at present appears uncertain. Such practice can also reduce consideration of residual risk under current conditions, and residual risk as it increases relative to the static protection level as the climate changes. If the measures cannot be adapted to the change over time or spatially, this will constrain decisions or choices in the future.

A 'new' normal under a changing climate?

Climate change impacts will challenge the emergency management and natural hazards management and planning systems' capacity to respond because of scale, spatial and frequency changes. How these systems can adapt to the changing climate risk is yet to emerge in the form of new practice approaches. While resilience framing holds promise, it is largely untested.

One of the enablers of integrated practice is to address the inherent fragmentation across different statutory frameworks that have their own

entrenched disciplinary processes and tools for management of hazard risk. Better integration of climate change adaptation, natural hazards planning and emergency management has been suggested by Smith and Glavovic (2014) through: alignment of terminology; better linking of spatial and temporal scales of decision-making; linking top-down and bottom-up policies and practices; aligning risk frameworks, their practice and communication; mainstreaming financing strategies across development, risk reduction and adaptation; and coordination across governance frameworks and networks.

Scholars of institutional theory (Ostrom, 1990, 2009, 2010; Young, 2002) discuss nested institutional forms that govern the behaviours of the players according to their distinct roles and the dependencies between them. However, in New Zealand such a nested form has not adequately motivated anticipatory planning for considering climate change impacts. Institutional dependencies,

combined with a high level of devolution and fragmentation of responsibilities, act as barriers, rather than fostering the interconnectedness envisaged by Ostrom and Young. Current governance and institutional rules typically result in incremental adaptation that addresses current climate variability; they will be stretched by climate changes that fall outside the range of climate experienced to date, while an adaptation deficit already challenges those responsible for major assets.

Research that informed this article (Lawrence, 2015) derived a three-part typology and criteria for identifying the adequacy of current institutional frameworks and practice for climate change adaptation decision-making. It addresses interrelated barriers to implementation. For example, fragmented practice has its source in fragmented statutes, the disciplinary traditions of the practitioners who frame climate risk differently, and practitioners who are unable to implement climate change adaptations because of the social, cultural and political contexts within which decisions are made. The barriers compound and broadly relate to the concepts of 'fit', 'interplay' and 'scale' (Young, 2002). The typology could be applied to address implementation barriers that impede integration of climate change adaptation with emergency and natural hazard risk management. The three-part typology and criteria are shown in Box 1.

Climate change adaptation discourse highlights the local level as the appropriate locus of action (Adger et al., 2005; Agrawal, Kononen and Perrin, 2009; Wilson, 2006). However, most countries exhibit tiered governance and fragmented institutional mandates and measures that require integration and actions at all levels (Glavovic and Smith, 2014). Nalau, Preston and Maloney (2015) suggest that the 'adaptation is local' mantra does not hold true because of the multi-level nature of climate risk governance (Cash, Adger and Berkes, 2006), and that scale will determine the most appropriate level at which to implement adaptation. In other words, some actions are better supported at national level (national guidance); others at local levels (spatial

Table 1: Enablers and entry points

Entry points	Central government	Regional government	Territorial local authorities	Courts
Understanding and representing uncertainty and dynamic change characteristics of climate change	<p>Amend national guidance to make uncertainties and dynamic change more prominent and add tools that can manage uncertainty and changing risk.</p> <p>Reflect uncertainty and dynamic change in standard scenarios.</p> <p>Undertake regular updates under the environmental reporting legislation climate domain.</p>	<p>Use dynamic adaptive pathways planning to address uncertainty and dynamic change.</p> <p>Make climate change information available early in planning processes and regularly update to reflect changes.</p> <p>Stress-test a range of response options using scenarios.</p> <p>Review and adjust using decision triggers to shift between pathways.</p>	<p>Implement dynamic adaptive pathways for spatial planning.</p> <p>Use regional climate risk information and make it publicly available early in planning processes.</p> <p>Stress-test a range of response options using scenarios.</p> <p>Review and adjust using decision triggers to shift between pathways.</p>	<p>Reflect the New Zealand Coastal Policy Statement policies in decisions.</p>
Governance and regulation	<p>Exercise partnership with local government in climate change adaptation.</p> <p>Support governance integration between regional and local scales.</p> <p>Promulgate a national policy statement for climate change.</p> <p>Make explicit links between the RMA, Local Government Act, Building Act and Soil Conservation and Rivers Control Act for consideration of climate change risks.</p> <p>Add climate change to the Earthquake Commission Act provisions for monitoring and updating Crown contingent risk.</p> <p>Make climate change risk monitoring a part of the environmental reporting legislation climate domain.</p>	<p>Partner with territorial local authorities for managing climate risk.</p> <p>Promulgate regional rules for climate hazard risk; avoid future climate risk in decisions for new developments; adopt transitional adaptive measures for existing uses.</p> <p>Undertake regional climate hazard risk assessments and integrate with other hazard risk planning.</p> <p>Highlight decision timeframes and lead times for decision implementation.</p>	<p>Align local spatial planning with regional climate risk.</p> <p>Link with regional councils to develop regional hazard assessments and spatial plans that address uncertainties and dynamic change.</p> <p>Implement regional rules that avoid future climate risk in decisions for new developments and adopt transitional adaptive measures for existing uses.</p> <p>Highlight decision timeframes and lead-times for decision implementation.</p>	<p>Consider the practical implications of 'voluntary assumption of risk' and 'acceptability of risk' for future generations.</p> <p>Practise avoidance of future climate risk in decisions for new developments and adopt transitional adaptive measures for existing uses that highlight decision timeframes and lead times for decision implementation.</p>
Organisations and actors	<p>Institutionalise adaptive management in the institutional framework.</p>	<p>Share practice models between governance scales and functional areas that address uncertainty and dynamic change and that address intergenerational equity of outcome.</p> <p>Engage with communities early and continuously using a range of interactive and visual tools.</p> <p>Develop new practice norms through education and action research.</p> <p>Use boundary organisations to facilitate practice change, mindful of cognitive behaviours of the actors.</p>	<p>Share practice models between governance scales and functional areas that address uncertainty and dynamic change and that address intergenerational equity of outcome.</p> <p>Engage with communities early and continuously using a range of interactive and visual tools.</p> <p>Use boundary organisations to facilitate practice change, mindful of cognitive behaviours of the actors.</p>	<p>Use informal educative opportunities for understanding changing climate risk and options for addressing it.</p>

planning affecting values). The typology and criteria presented here address the locus of action by highlighting, first, the character of the climate change problem, and then asking whether governance scale, institutions, organisations and their actors 'fit' the problem. This typology can inform the design of new approaches where the system is challenged by uncertainty and changing climate risk. Institutional enablers and entry points for addressing the shortcomings of the current natural hazards and climate change decision-making system are shown in Table 1.

Successes⁸ in New Zealand integrating natural hazard risk and climate change effects management have exhibited the following characteristics: comprehensive assessment of hazard risk; a strategic approach that has continued over decades, integrated with development strategies; high levels of staff continuity; highly integrated function operations within unitary⁹ governance arrangements; ongoing community engagement at critical stages; political leadership; and consistency of approach. Immediate enhancements to the integration of natural hazard risk and climate change effects could include: reflection of

'risk' instead of 'disasters' in the title of the new Civil Defence Emergency Management strategy; linking of 'climate change effects' to natural hazards in the RMA amendments to 'matters of national importance'; integration of the operational requirements of the RMA, Soil Conservation and Rivers Control Act, Local Drainage Act, Building Act 2004 and Local Government Act; changing the Building Code standard of 2% annual exceedance probability for flood risk in light of changing climate risk; and funding institutions for adjustments to climate change impacts.

Conclusion

Advancing better government implies that governance, institutional frameworks and practices can enable the big issues facing our society to be addressed. Climate change raises questions about whether our institutions and practices are adequate for responding in the interests of current and future generations. This article has raised issues about whether emergency management, natural hazard management and planning practice can adapt to changing climate risk profiles without failing. The changing risk profiles need attention in an integrated manner so

that decisions can be made that are robust over a range of possible future scenarios. Single policy responses have the habit of boomeranging and cascading across other domains when tested in real-life settings, and could prove highly costly over time. Changes will be required to the current governance and institutional arrangements to enable implementation of robust and flexible strategies and plans as risk profiles change. The opportunities for institutional strengthening suggested in this article could complement current efforts to improve risk management of natural hazards by building a more integrated risk reduction system and improving our ability to respond to the compounding effects of climate change.

- 1 See www.100resilientcities.org/.
- 2 <http://www.civildefence.govt.nz/cdem-sector/national-disaster-resilience-strategy-development/>.
- 3 This level is currently being reviewed.
- 4 IPCC, 2013; Rocha et al., 2015.
- 5 <http://www.civildefence.govt.nz/resources/national-hazardscape-report/>.
- 6 *Mahanga E Tu Inc v The Hawkes Bay Regional Council and the Wairoa District Council*, [2014] NZEnvC 83, 10 December 2014.
- 7 *Hemi v Waikato District Council*, [2010] NZEnvC A688, 24 June 2010.
- 8 Success in this context means that policies have been implemented in district plans with few challenges and are currently operative.
- 9 Unitary governance is where regional and territorial local government functions are governed by the one unit of local government.

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Robert Kirkby and Martin Fukac

Managing and Communicating Risk and Uncertainty in Macroeconomic Policymaking

Introduction

In policymaking, as in life, we often must make decisions without knowing how the future will play out. Taking uncertainty into account when making macroeconomic policy allows policymakers to help improve economic outcomes. This article considers three aspects of improving outcomes for fiscal and monetary policymaking: considering risk and uncertainty in decision-making; communicating risk and uncertainty; and designing better tools to communicate risk.

To start with, it is useful to differentiate between risk and uncertainty, terms that are often used interchangeably.¹ Risks are what we might call the 'known unknowns'. They are future events for which the past provides guidance on both their likelihood of occurring and their effects,

and we can insure ourselves against them. An example of a macroeconomic risk for the New Zealand economy is exchange rate movements: there is a long history of exchange rate movements which we can use as a basis for assessing the likelihood of small or large changes in the future.

Risk lends itself to measurement and quantification by statistical tools. Using such tools is a useful and important part of policymaking. Further, the results of such measurement and quantification can, and often should, be communicated to the public.

By contrast, uncertainty captures the 'unknown unknowns', often called Knightian uncertainty following the pioneering work of Frank Knight (1921). Uncertainty is about events that cannot be foreseen or defined *a priori*. Their likelihood of occurrence and macroeconomic impacts are not quantifiable because the past is considered to provide little guide to the future. Hence, statistical tools cannot be used to evaluate the likelihood of future outcomes. By definition it is difficult to discuss specific uncertain events, and so we focus here on uncertainty as a concept. If we can describe likely events and the damage they may then do, they are risks, not uncertainties.

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But how should we react to the genuine uncertainties? Optimal behaviour when faced with uncertainty is to minimise the potential damage from worst possible outcomes. This is known as maximin (i.e. maximize the minimum) in the technical literature. But how should this concept be applied in practice? A good response is to think about strategies to build resilience capable of cushioning against adverse outcomes. We may not know what all the uncertainties are, but we can think about our ability to absorb these uncertainties as they unfold. Some uncertainties will be positive, and these can be treated as windfalls. In this vein, we will describe how such resilience might be evaluated and communicated as a worthwhile answer to the difficulties of describing uncertainties and the impossibility of quantifying them.

Dealing with risk and uncertainty is a fruitful area for advancing better government through collaboration between academics and those who make policy. It requires an understanding of the available tools with their strengths and weaknesses, an area in which academia has a definite strength, while government advisers and decision-makers bring an understanding of where such analyses might be applied to inform and improve policy.

How do policymakers take risk and uncertainty into account when making decisions?

Macroeconomic policies are often made with the goal of reducing economic fluctuations and the risks around them. Uncertainties around future policy reactions can be converted into risks by outlining how policymakers would react in various scenarios (Ilut and Schneider, 2014), to reduce risk around the policies themselves (Fernández-Villaverde et al., 2015)² and to reduce the size of economic fluctuations (Bekaert, Hoerova and Duca, 2013). Lowering economic and policy risk by identifying possible risks and using them to inform policymaking cultivates an economic environment in which businesses tend to invest more and employ more people (Bloom, Bond and Van Reenen, 2007; Bloom, 2009). Likewise, if consumers perceive income certainty they

will tend to spend more (Bertola, Guiso and Pistaferri, 2005). Conversely, more risk – other things being equal – means less income, less investment and more unemployment. Reducing risk can thus help to both increase the level of GDP and reduce fluctuations in GDP.³

In New Zealand, as one of the two pillars of macroeconomic policy, fiscal policy contributes to reducing economic uncertainty by keeping public finances in order, sustaining a stable tax system and ensuring predictable expenditure policies. As the second pillar, monetary policy contributes to reducing economic uncertainty by maintaining price stability through a transparent and predictable interest rate policy.

In practice, policymaking by monetary and fiscal authorities for macroeconomic risk management purposes typically consists of four basic steps: the identification and quantification

of risks and alternative scenarios that have been considered. On the other hand, we seldom find in available documents formal probabilistic assessment of projected economic conditions or cost–benefit analysis. We are among those who argue that more can be done in these areas in New Zealand. We return to this point in the final sections of this article, where we talk about tools for communicating risk outlooks and cooperation between government institutions and academia.

We often look to the past for guidance on which policies appear to work or not work in order to make better policy. Whether this is done informally through discussion or formally as a statistical analysis of past policies, it is important that we are aware that the past was, at the time, a risky future. Orphanides (2001) shows how the uncertainty in the real-time data has real consequences if we

... we seldom find in available documents formal probabilistic assessment of projected economic conditions or cost–benefit analysis.

of risk; decisions about whether to mitigate risks; decisions about whether to make provision for risks; and decisions about whether to accommodate for residual risks (IME, 2016). A variety of analytical tools support those decision-making processes. A typical set of heuristic methods includes: general probabilistic assessment of current and projected economic conditions based on historical risk valuation; the classification and valuation of risk that can be controlled or reacted to; assessments of specific alternative risk scenarios, and which risks are simply beyond the control of policymakers; and the cost–benefit analysis of policy options.

In international comparisons, many observers rank New Zealand practices among the most advanced (for example, on the monetary policy framework see Svensson, 2009; for fiscal policy see Ter-Minassian, 2014). The standard practice is

ignore it and simply look at historically revised data when evaluating monetary policy decisions of the past. For example, with hindsight, revised data may show that a recession was not as large as was thought at the time and that monetary policy was overly loose.

Risk analysis can be very extensive, and for those interested in an academic reading on policy and uncertainty we suggest *Public Policy in an Uncertain World: analysis and decisions* by Charles Manski (2013). However, there is a limit to what policy can achieve with respect to reducing and managing risks. Kydland and Prescott (1977) teach us that good policy does not need to, and often should not, try to react to every single development.

On the other hand, no matter how many risk scenarios policymakers consider, they will still face uncertainty – the ‘unknown unknown’. What should

policymakers do when faced with such uncertainties? There are two angles to the answer. The first is operational: what is the first best response when the unknown unknown materialises? To minimise mistakes in such situations, robust control theory recommends that policymakers follow heuristics ('rules of thumb'). Rules of thumb support robust decisions that help minimise the *ex post* adverse outcomes in the case of uncertainties (see, for example, Dupuis, James and Peterson, 2000; Hansen and Sargent, 2001).

The second response is building the resilience of the economy. Instead of only trying to consider what uncertainties the economy faces, we might also consider how to improve the ability of

they are unknown and unknowable. However, we can discuss the concepts of uncertainty and resilience. Policymakers can discuss resilience and weaknesses (we will later describe ways to measure resilience). Thinking about how to deepen resilience and remove weaknesses provides a sensible strategy for dealing with uncertainty.

Should risk and uncertainty be communicated?

The potential power of communicating policy is captured in the term 'open mouth operations' coined by former Reserve Bank of New Zealand governor Don Brash. He observed that he seemed to be able to move interest rates simply by talking, without conducting the actual open

There are two main reasons to believe that risks should be communicated. The first is to explicitly acknowledge that government policy is being made in a risky world. This includes acknowledging whether or not policymakers are explicitly accounting for risks in their decisions, or are simply making decisions as if things were certain. Being open in communicating the particular risks in the face of which policy was made helps the public better understand policymakers' objectives and reasoning. The second is to help justify any future recalibration of policy. If risks were not initially communicated, any subsequent policy adjustments may appear to be an 'about face'. This greater public understanding is likely to make subsequent policy adjustments easier to implement politically.

Take earthquake insurance as an example of the second point. Suppose the risk of an earthquake occurring is viewed as having increased, because, say, of a better scientific understanding of the causes of seismic activity. This suggests that the insurance premiums should rise. If the risk and its subsequent increase have been communicated, then it will be understood that this rise has not involved any change in policy, but simply reflects the same policy being updated to reflect evolving circumstances. The understanding of higher risk of an earthquake is also likely to trigger a market response, such as better household preparedness or changes in the building code.

But can regular communication help make things clearer and reduce the level of risk? One example of communication reducing the level of risk is from exchange rate regimes. Fixed exchange rates in one sense should be more predictable, but in practice they are subject to periodic large and sudden revaluations. Allowing the exchange rate to float – so that it reflects existing market perceptions of risk – can actually make its movements more predictable. It communicates the necessary (price) information for the market participants: the private sector accepts and adapts to the exchange rate risks as part of its business environment. Floating the exchange rate

[A case for] communicating risks is simply that the analysis of these risks will often already have been undertaken as part of policymaking, and this information may be valuable in and of itself.

the economy to 'roll with the punches'. An example in fiscal policy is the idea of 'fiscal space': that is, ensuring that the country is positioned such that should adverse uncertainties become manifest, it is possible to implement fiscal policies to counter them. The experience of Ireland and Spain during the recent global financial crisis illustrates the value of such 'fiscal space': both countries found themselves in a position where fiscal austerity was necessary, despite being undesirable during a recession; if they had gone into the crisis with greater fiscal space and resilience they would have been able to avoid this. The aim of such policies should be to enhance the resilience and adaptability of the economy to absorb adverse economic shocks arising from the 'unknown' in the long term. Examples for fiscal policy of measuring such resilience include fiscal space and fiscal stress tests, both of which are described in more detail later.

As mentioned above, uncertain events by definition cannot be directly measured;

market operations the Reserve Bank uses to steer short-term interest rates. But just communicating policy is not a panacea. Poor or unclear communication might work against policy actions, weakening their effect. Evidence from monetary economics, for example, emphasises the role of good, clear communication in reinforcing the effects of monetary policy actions.⁴

So, good, clear communication of policy in general is important. Can the same be said of communication of risks and uncertainties? Since uncertain events involve the unknowable, these events cannot be readily communicated. Hence, we will focus here on risk. The communication of macroeconomic risks faces a similar challenge to the one we saw in making policy in the face of risks: communication should not add to existing risks. So how might communicating risks help to reduce their material impacts if realised? Is it even possible to be clear about risks?

eventually reduces the risk of building macroeconomic imbalances and systemic vulnerability to crisis (Ghosh and Ostry, 2009).

A further case for communicating risks is simply that the analysis of these risks will often already have been undertaken as part of policymaking, and this information may be valuable in and of itself.

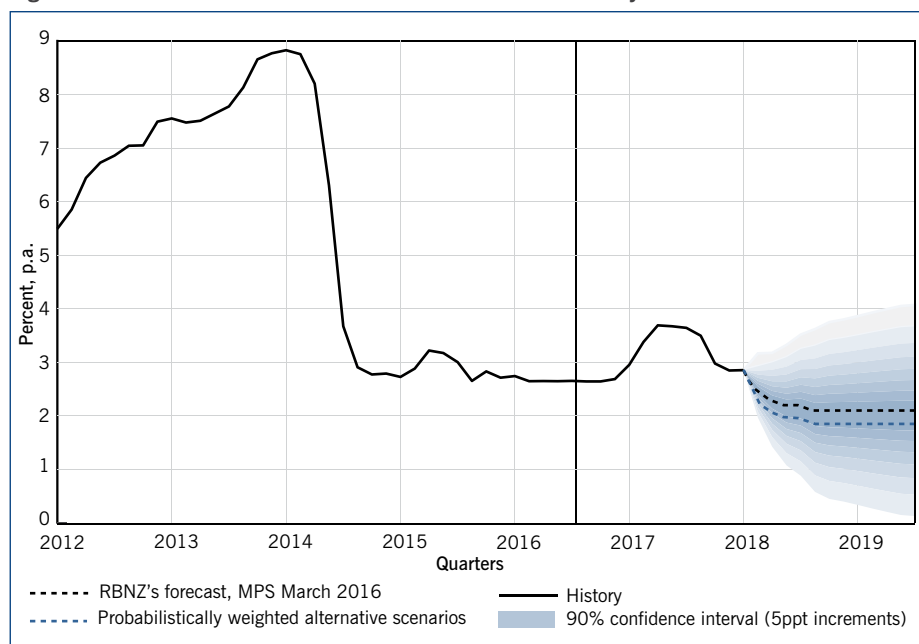
Of course, there may be a limit to how much can and should be communicated. The United States Federal Reserve board of governors' choice to publish their Tealbooks and Bluebooks with a time lag is an example of constraining the degree of communication in order to protect the quality of policy deliberations. A former vice-chairman, Don Kohn, has argued that although prompt publication of such documents may be useful from the public's perspective, it is not so clear that it is desirable from the institution's perspective. The main concern was that the board staff would be more cautious (and thus less open) in putting their recommendations forward if they knew they were going to be made public with the decision.

We now turn to economic resilience. We feel that evaluation and communication of resilience, both qualitative and quantitative, would be beneficial for two reasons. First, the need to communicate issues of resilience to the public would help focus policymakers on thinking through the issue clearly. Second, and most importantly given the difficulties relating to resilience to uncertainty, it will allow for open feedback from the general public. Some of this feedback will be in the form of direct submissions to government agencies, but much is likely to be simply public discussion in the news media and online. Discussion of resilience is likely to be mostly qualitative, given the unquantifiable nature of uncertainty. There will be a lesser role for quantitative assessments, such as measuring fiscal space and implementing stress tests. Stress tests involve quantitatively looking at how the economy would react to combinations of major shocks which would be large by historical standards.

Tools to communicate risks

This section examines some examples of informal and formal (statistical)

Figure 1: An illustrative fan chart for RBNZ forecast of 90-day interest rate



Source: Reserve Bank of New Zealand; authors' calculations
 Note: The fan chart in this figure is for illustrative purposes only. The Reserve Bank does not publish its forecast with any measure of confidence. We construct the confidence intervals using a vector autoregressive model of CPI quarterly inflation, GDP quarterly growth, 90-day rate and quarterly percentage change in the real trade-weighted index of exchange rates. The model was estimated on quarterly New Zealand data from 1995q1 through 2015q4.

communication of risks in the practice of monetary and fiscal policy in New Zealand, the United Kingdom and the US; we also draw some general lessons for policy more broadly.

Verbal communication

Central banks have been at the forefront in communicating policy. For instance, the Reserve Bank of New Zealand publishes a monetary policy statement accompanying every decision on setting interest rates, explaining the bank's views on the state of the economy and why it made the decision it did.⁵ These statements include some discussion of both uncertainty and risk, but do not extend to a formal evaluation of risks. There is also typically an accompanying series of research papers and notes providing deeper analyses of specific topics.

Other central banks take this a step further and release the minutes of their policy deliberations (for example, the Bank of England, the US Federal Reserve System and the Reserve Bank of Australia). Releasing the minutes is seen not only as a way to communicate why certain policy decisions were made; by revealing internal disagreements at these meetings the minutes also provide a gauge as to how much confidence

there was around reaching the final decision and guide expectations about risks surrounding future economic outcomes. Some market analysts set up word-counters: if statements are longer than average, this may signal that decisions were hard to make; repetition of particular words may signal specific policy biases. This informal measure of risk is seen as an important part of communicating the monetary policy decisions of these central banks.

We turn now to considering a few examples of more formal analysis (with an acknowledgement that these methods are appropriate only for risk and not for uncertainty): the use of fan charts, alternative scenarios and identification of the nature and sources of risks.

Fan charts

One example of formally communicating risk is the Bank of England's fan charts.⁶ Each quarter the Bank of England releases an inflation report⁷ which contains forecasts of short-term interest rates, inflation or GDP growth, forecasts that are not just a single path (or 'baseline forecast'). 'Uncertainty' around the forecasts is shown in the form of fan charts showing a range of possible future outcomes, along with

Table 1: Sources of risks for net core Crown debt projections: illustration

Fiscal year	Macroeconomic risks	Fiscal risks	Statistical error risks
2015	0%	0%	100%
2016	20%	49%	32%
2017	25%	63%	12%
2018	27%	64%	9%
2019	27%	65%	8%
2020	27%	65%	8%
2021	27%	66%	7%
2022	26%	69%	5%
2023	26%	72%	3%
2024	25%	74%	1%

Source: Authors' calculations

Note: For illustration purposes only. Units are the percentage shares of total risk. The results above are taken from the authors' work on measuring uncertainty around the government's target of reducing the value of net public debt to below 20% of GDP by around 2020.

estimations of how likely they are to occur.

In Figure 1 we present an illustration of what a fan chart for the Reserve Bank of New Zealand's forecast of the interest rate on the 90-day bank bill, the key money market rate, might look like. The Treasury in its budget and half-year economic updates regularly publishes a similar measure of risk for its public revenue projections. The left-hand side of the figure simply shows historical outcomes, and so we just have the solid line. At present all the Reserve Bank publishes is a point forecast for interest rates, which is here shown as the dotted line extending into the future. But the future is uncertain, and while the present forecasts simply present a single future, a fan chart provides much richer information about other likely future outcomes. These likely alternative futures are represented by the shaded regions. The darker regions represent the central outcome, with lighter regions indicating progressively less likely outcomes.

While the Treasury and Reserve Bank discuss risks in their economic forecasts, their probabilistic evaluation is not as systematic as it could be and it is often limited to a handful of forecasted variables. We believe that fan charts, or some other way of illustrating the probabilistic measure of confidence about the economic outlook, should be routinely reported for every macroeconomic variable that the Treasury and Reserve Bank forecast. Enhancing

their communication in this way would benefit public discussion about economic policy and help build its credibility. Such measures of confidence will shed light on how optimistic or pessimistic those forecasts are.

Alternative scenarios

Another common communication tool is the assessment of plausible alternative scenarios. Fan charts provide information about the likely distribution of economic outcomes for all possible risks and combinations of them that the economy faced in the past. However, the economy might be subject to very specific headwinds or tailwinds. The alternative scenarios evaluate the economic impact of these specific risks. When assigned probabilistic weights and aggregated, the alternative scenarios measure helps to reduce the balance of prevailing risks. We should stress that the alternative scenarios are a measure of perceived risks and are therefore inherently subjective.

At its full width the shaded area in the fan chart in Figure 1 displays the likely outcomes in 90% of possible futures, an assessment based on all the economic outcomes seen over the past 20 years of a stable monetary policy regime. The dashed line represents the probabilistically weighted alternative economic scenarios. The purpose of the alternative scenarios is to help narrow, and point to, skewness in the uncertainty distribution and inform the decision-makers about the likely direction of the risks. In the case shown

in Figure 1, the probabilistic summary of alternative scenarios points to risks being skewed to the downside over the forecast horizon, informing the policymaker that they are more likely to face downside than upside risks.

Risk classification and identification

Not all risks can be controlled for or are worth responding to. For macroeconomic risk management in practice, we also need to understand the sources of risk. A useful tool is a structural macroeconomic model that allows us to identify the main structural drivers of risk that underpin fan charts such as the one above. Using such models for structural decompositions of historical risks helps identify risks that can be fully or partially controlled, and those that are simply uncontrollable and must be accepted.

For example, current research on the sources of risks for the government net debt projections classifies risks into three main categories: macroeconomic uncertainty, statistical uncertainty and fiscal uncertainty. Table 1 illustrates the risk classification. Governments have no control over statistical risk (for example, GDP figures are subject to data revisions). Governments have only modest control over macroeconomic risk arising from external sources, such as the level of Chinese demand, the exchange rate, foreign competition, droughts and so on. The level of fiscal policy risks is, however, under the government's control, especially over longer periods of time.

The risk classification yields useful insights. For example, most of the risks related to statistical confidence are over short time horizons, and thus the government could not control or reduce these risks. Policymakers may, however, choose to create a buffer capable of absorbing the consequences of these risks, and the risk identification and quantification allows us to evaluate the size such a buffer would need to be. Or they can communicate risks by making clear that debt level targets are best understood as a general goal, not as something to be hit with precision. By contrast, over longer time horizons the majority of the risks fall into the category of fiscal policy risks

(i.e. risks around tax revenue outcomes or expenditure policy), and are thus within the government's ability to control and reduce by communication or guidance.

Conclusion

We conclude that greater awareness of the risk landscape in which policy decisions are made leads to better policy, and allows for the possibility of better communication of policy decisions to the public. The Treasury and Reserve Bank of New Zealand currently include a discussion of various risks in their public communications, but would benefit from better and more systematic communication of these risks to the public. Publishing measures of statistical

confidence for economic projections or assumptions underlying economic policies should be the new practice. Doing so will require an effort to separate what events are considered to be quantifiable risks and what are uncertainties.

Adoption of some of the tools for formally analysing risk that we have discussed may be difficult for institutions without advanced analytical capabilities. But it represents a perfect opportunity for cooperation between government agencies and universities. Academic research can help to advance better government in this area by providing key analytical capability and build internal government capability through education and training.

- 1 There is also an aspect of ambiguity in the context of risks and uncertainties that can give rise to heterogeneous expectations (Hansen and Sargent, 2012), but we will leave this aspect out of the present discussion.
- 2 For example, consider the 'debt ceilings' in the United States. These impose a dollar limit on the amount of debt that the US government can issue. But Congress can approve a budget for spending and revenue that would necessitate an amount of borrowing in excess of this limit. This creates a risk relating to what would actually happen if the debt ceiling is not raised, and this risk is created by the policies themselves.
- 3 This latter point of reducing fluctuations in GDP should not, however, be over-interpreted as saying that the level of uncertainty is more than a minor contributing factor to recessions (Bachmann and Bayer, 2013; Bachmann, Elstner and Sims, 2013; Jurado, Ludvigson and Ng, 2015).
- 4 See <http://www.voxeu.org/article/central-bank-communication>; <http://www.voxeu.org/article/measuring-clarity-central-bank-communication>.
- 5 The Reserve Bank has been releasing monetary policy statements going back to 1996: see http://www.rbnz.govt.nz/monetary_policy/monetary_policy_statement/.
- 6 The Bank of England was one of the first central banks to introduce this communication tool.
- 7 <http://www.bankofengland.co.uk/publications/Pages/inflationreport/default.aspx>.

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Shaun C. Hendy

Science for Policy

the need for a Commission for Science

Introduction

There is growing interest in the use of scientific research for informing public policy (Gluckman, 2011). Science has shown itself increasingly able to make predictions of catastrophic harms many decades in advance, as well as suggesting ways in which these harms may be avoided. Scientific methodologies are now also being drawn on in many other areas of policy. Randomised controlled trials (RCT) and related statistical and experimental techniques are starting to be used to evaluate the effectiveness of existing policy and to experiment with the development of new policies, for instance (Pearce and Raman, 2014).

More recently, government itself has become an important source of scientific knowledge, and it is likely to become even more important in the coming decades. In New Zealand the Integrated Data Infrastructure (IDI) has become a unique and powerful source of socio-economic data that captures many aspects of the lives of residents and citizens (Statistics New Zealand, 2016). The IDI is used by independent researchers, as well as by researchers within government agencies such as the Ministry of Social Development, to inform operational practice and public policy, as well as to study the effectiveness of these policies. Indeed, the Ministry of Social Development has built a substantial data science team which carries out research commissioned by its policy branch (Ministry of Social Development, 2016).

Scientific research, however, requires more than just data and skilled researchers who can apply appropriate statistical techniques to this data. Modern science needs to be practised under the open scrutiny of other researchers to function effectively (Miguel et al., 2014). Peer review, for instance, while still necessary, is no longer regarded as sufficient to correct scientific fraud (Stroebe et al., 2012). Furthermore, the public increasingly has expectations that the conduct of scientific research be open to their scrutiny as well (Yarborough, 2014). As a result, a need has been identified for new institutions for the governance of evidence-based

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polymaking (Pearce and Raman, 2014). In this article I propose a Parliamentary Commission for Science, an organisation that would be responsible for ensuring the scientific use of evidence by government and fostering corresponding levels of trust in the public.

Transparency in science

Transparency and openness are believed to be a crucial component of the scientific approach to producing objective knowledge. A recent review of studies of the relationship between the consumption of sugary drinks and obesity found that those funded by drinks companies or the sugar industry were five times more likely to find no link than those that were not (Bes-Rastrollo et al., 2013). An important source of such biases is the tendency for studies that produce results unfavourable to the funder to go unpublished. Parties with an interest in the results may wittingly or unwittingly seek out researchers whose methodologies are more likely to produce favourable results, as these researchers will have a track record that tends to favour the funder. Even in the absence of end-user funding, researchers can face incentives that do not favour the publication of null results (Miguel et al., 2014). Bias then arises from an incomplete scientific literature which contains too few null results and an excess of false positives. Without a record of the unpublished work of scientists, science may not be objective.

Transparency also influences the public's assessment of scientific integrity. A 2014 UK survey of public attitudes to science revealed that 83% of those surveyed agreed that it was important to have some scientists who are not linked to business, while 77% believe that the independence of scientists can be compromised by the interests of their funders (Castell et al., 2014). Openness is required not only to ensure that science continues to function properly, but also for maintaining public trust in science (Yarborough, 2014).

These factors have led to calls for increasing openness in science (Miguel et al., 2014). The open science movement encourages researchers to make all stages of the scientific process accessible to the public and other researchers. In some

fields of research it is becoming common to openly register studies and an intention to publish before the research commences. The American Economic Association, for instance, has established a public register for RCT studies in economics and social science (www.socialscienceregistry.org). However, open science practices are not yet standard in the science community: they have not been codified in the Royal Society of New Zealand's (2012) professional standards, for instance. This has important implications for the utility of science advice for policy.

Government use of scientific research

The prime minister's chief science advisor, Sir Peter Gluckman, took stock of the New Zealand public sector's use of scientific

accommodate political concerns. While acknowledging that there could at times be legitimate reasons for delay (to allow time for government to develop a policy response, for instance), he found that delay was also being used to minimise the political impact of findings that were inconvenient or embarrassing for the government. Such delays are detrimental to the value of the research, and can reduce the ability of the public and independent experts to scrutinise evidence that underpins policies, potentially harming the public (Sedley, 2016).

Such delays can occur in the New Zealand context. A recent Treasury-commissioned study of the 90-day employment trial legislation¹ by researchers from Motu Economic and

Parties with an interest in the results may wittingly or unwittingly seek out researchers whose methodologies are more likely to produce favourable results,...

evidence as recently as 2013. Gluckman concluded that there was 'significant unevenness across government regarding departmental use of and respect for research-derived evidence'. He made two key recommendations: 1) 'The establishment of government-wide formal protocols to guide policy makers in sourcing quality research-based advice'; and 2) 'The appointment of Departmental Science Advisors to major ministries' (Gluckman, 2013, pp.31, 24). Since this stocktake, a network of eight science advisors has been established across government (Office of the Prime Minister's Chief Science Advisor, 2015).

A more recent inquiry – the Sedley inquiry – into the use of research by policymakers identified similar problems in the UK. Sedley had a particular focus on the necessity for transparency in the use of research commissioned by government. In particular, Sedley found that the publication of research findings was sometimes subject to delay, to

Public Policy Research was subject to months of delay before its release (Office of the Minister of Finance, 2016). Motu is an independent research organisation which only undertakes externally funded projects that it can publish openly.² Making use of the IDI, Motu researchers found that 90-day employment trials had not met several of the stated policy objectives that supported their introduction. Release of the study's results was delayed several times by the Treasury, with researchers being told that the government needed time to inform Cabinet and to formulate a policy response.³ Upon release, however, government ministers resorted to the use of anecdotal evidence in an effort to undermine the report's findings (Radio New Zealand, 2016).

It also appears that the eventual release of the study by Treasury was sparked by a media request for the results under the Official Information Act (Office of the Minister of Finance, 2016). A journalist had learnt about the study after a

joint Treasury/Ministry of Business, Innovation and Employment briefing on the research project was mistakenly advertised as a public seminar.⁴ It is impossible to know how much longer the release of this research would have been delayed without this inadvertent public disclosure. Delays in the release of government-commissioned research reduce the quality of public discourse, undermine public trust in research and compromise the scientific literature (Selby, 2016).

Similar concerns must apply to delays in publishing research that is carried out within government agencies. There is currently no systematic way of identifying delays or missing studies conducted internally by government. Yet if government is to use research effectively, whether internally or externally conducted, it must ensure

register of all externally commissioned government research'; b) undertake 'routine publication of research government has considered in policy formulation with, if appropriate, reasons for rejecting it'; and c) provide 'a clear statement of the current requirements for prompt publication and adherence to them' (Sedley, 2016, p.7).

The role of a Parliamentary Commission for Science

I have argued elsewhere for the creation of a Parliamentary Commission for Science (Hendy, 2016). This organisation would be modelled on the role of the Parliamentary Commissioner for the Environment, and would carry out several of the functions envisioned by the Sedley inquiry. The commissioner for the environment is accountable to Parliament rather than to a minister or ministry, and

instances where staff turnover had left departments and ministries unable to access their own commissioned research.

Another important role of the Parliamentary Commission for Science would be reporting on and monitoring the integrity of the public research system, both inside and outside government. Yarborough argues for the need to 'routinely conduct confidential surveys in individual laboratories, institutions and professional societies to assess the openness of communication and the extent to which people feel safe identifying problems in a research setting' (Yarborough, 2014). In New Zealand a government researcher could seek to notify research misconduct or incorrect use of research under the Public Disclosures Act 2000, but none of the current authorities specifically named in the act have scientific expertise. The Parliamentary Commission for Science should be added to the list of authorities named in the Public Disclosures Act, occupying a similar place in the legislation to the parliamentary commissioner for the environment.

Summary

I have argued that new institutions are needed to govern the way scientific research is used and conducted by government. In New Zealand, a Parliamentary Commission for Science would fulfil such a role, being responsible for: reviewing the government's processes for generating and utilising scientific evidence, and reporting on this to Parliament; maintaining a register of internally and externally commissioned research by government, together with a pre-analysis plan with timelines (where appropriate); requesting, and then publishing, policy outcomes of each research project; investigating any matter where scientific misconduct may have occurred; and reporting, on a request from the House or any select committee, on any petition, bill or any other matter which may need scientific input.

I have argued that new institutions are needed to govern the way scientific research is used and conducted by government.

a high degree of transparency as the science community is learning to do. Sedley considers concerns that increased transparency might dampen policymakers' willingness to commission research, but notes that UK departments that have operated public research registers do not appear to have reduced their use of research in policy.

While Gluckman considers transparency in his stocktake, his corresponding recommendation is limited to public access to the data and does not extend to the advice or research itself: 'Provide greater transparency regarding the use of research-informed data' (Gluckman, 2013, p.6). The Sedley inquiry's recommendations go significantly beyond this, requiring that scientific *advice and the research* it is based on be made public. Specifically, Sedley recommends that government: a) establish 'a standardised central

is appointed by the governor-general at the recommendation of Parliament for a five-year term. A similar arrangement for a Parliamentary Commission for Science would offer the necessary independence from the government of the day needed for such functions.

In particular, the commission would maintain a register of internally and externally commissioned government research which provided publication and review timelines, the stated goals of the research and a description of the methods to be used. It would have powers to track how this research was used once published, including requesting (and then publishing) policy reasons for the rejection of any evidence. It is worth noting that public registration of commissioned research would also enhance that research's value by making it available to policymakers across government: Sedley noted several

1 Employment Relations Amendment, section 67A.

2 A. Grimes, personal communication, 2016.

3 I. Sin, personal communication, 2016.

4 Ibid.

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Chris Eichbaum

A Constitutional Personality

does the New Zealand public service possess one, and is it in good order?

Constitution, noun: a body of fundamental principles or established precedents according to which a state or other organisation is acknowledged to be governed.

Acknowledged, adjective: accepted as valid or legitimate.

Constitutional, adjective: relating to an established set of principles governing a state.

Personality, noun: the combination of characteristics or qualities that form an individual's distinctive character.

The first part

On 4 May 2016 the *Dominion Post* published an editorial, as it is wont to do on matters it deems of sufficient importance. This editorial was entitled 'Servants of the people, not govt'. For the purposes of this article it is tempting to reproduce the editorial in its entirety.

Typically such pieces are written with an efficiency of expression that generates maximum impact. Such was the case here. The point of departure was an announcement by the government of the appointment of Peter Hughes as the next state services commissioner, with his appointment to take effect following

the end of the term of the incumbent on 4 July 2016. The editorial praised the appointment and Hughes, and was somewhat critical of the incumbent, Iain Rennie. Others can judge.

In the second paragraph the editorial notes that:

The commissioner's job is very tough. They must uphold the independence of the civil service while remaining the loyal servant of the government. This is a difficult balancing act and not all Hughes' predecessors have managed it.

The real import of the editorial is to be found in its title, which is quite provocative. A more tempered (and some would no doubt say constitutionally accurate) title might have read: 'Servants of the people and the government'. But editorials are about making a point, and this one does. Having rehearsed the

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putative strengths of the appointee and the limitations of his predecessor, it goes on to state:

The Key Government has shown a certain disdain for the civil service. Its set of goals for the bureaucracy is pitched high, as it should be.

This is not a Government that encourages its advisers to proffer unwelcome advice. In that it is not alone, of course, but sometimes officials should be brave and tell the minister something he or she doesn't want to hear. Hughes' job as commissioner is to show some spine and to back top officials who do likewise.

The Government has also shown a cynical attitude towards its responsibilities under the Official Information Act, with ministers regularly taking the maximum amount of time allowable to respond to requests. This is to flout the spirit of the law. Here, too, Hughes' approach will be watched with interest.

Good judgement is essential in government, although most voters would laugh at anyone who suggested it. People are rightly cynical about politics; in the struggle for power, however, the greatest political virtue is wisdom – and it's also the rarest.

The role of the sage adviser might seem outmoded. It's not.

The editorial goes on to note, approvingly, the appointment of Principal Youth Court Judge Andrew Becroft as the children's commissioner.

When we deconstruct the editorial it contains both positive and normative elements. Both can be discerned from the following summary:

- The public service has a duty of service to the people of Aotearoa/New Zealand. That duty takes the form of some measure of independence.
- The public service has a duty of loyalty to the government of the day, including to seek to realise the objectives or results set for it by that government.

- The duty is codified, in part by statute.
- The duty is not being discharged as it should be.
- The state services commissioner needs to ensure that the civil service is able to meet the duties and responsibilities it carries.

At the risk of doing considerable violence to what I would describe as an extremely well-crafted editorial, let me distil it down to a single statement: the New Zealand public service enjoys a constitutional personality (or identity) and as such it is vital to the integrity, efficiency and effectiveness of our system of government and governance that the personality is recognised, respected and

protected. It is this that forms the thesis, provocation or disruption that this article advances. The objective – as perhaps also of the writer(s) who produced the *Dominion Post* editorial – is to encourage a conversation.¹

The second part: of constitutions and the public service

What then of the constitution of Aotearoa/New Zealand and what it says about the public service? As often stated, New Zealand is a member of a small club of three (the other two being the United Kingdom and Israel) whose constitutions are not codified into a single document, typically a 'higher' law. It is incorrect to say that the New Zealand constitution is largely uncodified. It is correct to say that the codification takes many forms, and the law is but one.

That leads us to a second characteristic of New Zealand's constitutional arrangements, although this is a common feature of a number of nations: that the constitution combines law and convention. One of the 'go to' readings

for the constitutional innocents one encounters in university classes (and it is noteworthy that these 'innocents' are not confined to undergraduate classes) is the impressive essay which acts as an extended introduction to the New Zealand *Cabinet Manual* – itself one of the more important elements of New Zealand's constitutional arrangements.² That introduction, entitled 'On the constitution of New Zealand: an introduction to the foundations of the current form of government', is by Sir Kenneth Keith. It notes the many sources of the constitution, including the conventions. It is perhaps for legal scholars to debate, but one might assert that the *Cabinet Manual* itself is, by way of its content and its status, a convention of the

... New Zealand is a member of a small club of three ... whose constitutions are not codified into a single document, typically a 'higher' law.

constitution. It is not a legal document, and on that basis not enforceable before a court. And as Sir Kenneth notes:

Constitutional conventions are of critical importance to the working of the constitution, even though they are not enforceable by the courts. In 1982, the Supreme Court of Canada summarised the constitutional position in that country in an equation: constitutional conventions plus constitutional law equal the total constitution of the country. (Cabinet Office, 2008, p.2)

This is, of course, an interesting formula for the purposes of engaging others in discussion about the nature of the constitutional arrangements of Aotearoa/New Zealand. An invitation to consider whether the formula 'works' for New Zealand provides a useful segue into considering the status of the Treaty of Waitangi. That is outside of the scope of the present discussion, but, solely for the record, adding the treaty to the

formula does, in my view, provide a more complete picture.

Sir Kenneth does note the public service in his introductory essay, thereby indicating that it is part of the constitutional fabric. Moreover, he notes that a number of statutes set out in some detail the role of the public service, including the State Sector Act 1988, the Public Finance Act 1989 and the Official Information Act 1982. He goes on to observe that:

Constitutional principles and that legislation support four broad propositions (among others).

Members of the public service:

- are to act in accordance with the law;
- are to be imbued with the spirit

It is the case that constitutions that are porous, flexible, iterative, not fully codified in law and almost exclusively not entrenched are likely to evolve over time.

- of service to the community;
- are (as appropriate) to give free and frank advice to Ministers and others in authority, and, when decisions have been taken, to give effect to those decisions in accordance with their responsibility to the Ministers or others;
- when legislation so provides, are to act independently in accordance with that legislation.

Public servants meet those obligations in accordance with important principles such as neutrality and independence, and as members of a career service. (ibid., pp.4-5)

The tenor is consistent with the normative thrust of the editorial reviewed earlier. What is clear is that there is acceptance that such matters do form part of the constitutional fabric, and that they are manifest in both law and convention.

The third part

At an informal seminar in which I first attempted to present these issues to colleagues and seek comment and guidance, one colleague posed the question: 'Have you read and reflected on Scott's *The New Zealand Constitution?* ... you may find it is useful given the kinds of issues you have an interest in.' I replied that I had not but that I would, and I did. It was excellent advice.

It is the case that constitutions that are porous, flexible, iterative, not fully codified in law and almost exclusively not entrenched are likely to evolve over time. Indeed, that is one of the arguments advanced in support of the kind of constitutional arrangements we are endowed with. And so we do find constitutional change, and some of it of

a very significant kind: the Electoral Act 1993 is an exemplary case in point. One might add parenthetically that there is also at times some disquiet as to how 'low' the threshold is – in terms of procedural requirements – to change or modify those constitutional arrangements. Indeed, the *Cabinet Manual* is, one might argue, the province of the executive branch of government, and – presumably by convention – is ratified by an incoming government at the first meeting of the Cabinet. It is in no way to question the integrity of the document – it is a document of substance and its status appears to be acknowledged and respected by political and administrative actors across the board – to note that it can be, and indeed has been, modified without reference to the legislative branch of the state.³

But to return to Scott. Scott characterised his work in his preface as an 'essay in constitutional analysis'. The author died on 19 July 1961, and a

publisher's note indicates that he was not able to manage the final stages of proofing.⁴ I suspect that Scott might well also have added some additional prefatory comments. One dives into the issues as one would into a cold bathing pool. There is no introductory chapter. Chapter 1, entitled 'The Constitution', provides an overview of the Constitution Act 1852 – an act repealed by the Constitution Act 1986, which may, in the fullness of time, be itself subject to further repeal. Certainly, the principal architect of the 1986 legislation makes no secret of his desire to prosecute a change of this kind.

Scott's 'essay' consists of seven chapters. What is interesting is that institutions and not broad branches or functions provide the chapter titles. And so chapter 2 is 'Parliament', not 'The Legislative Branch' or something similar. The head of state – as an institution – is granted a chapter in its own right. Chapter 4 is on 'Cabinet'. Chapter 5 is on 'The Public Service', and it is this chapter that I want to comment on here. The fact that the public service features in an essay on the constitution of New Zealand is in itself a significant statement. It is not my intention to traverse all of the issues that Scott addresses in this chapter. What can be said, however, is that the provenance of these issues is to be found in the settlement that produced the 1912 Public Service Act. And what should also be emphasised is that, in very large part, it is that settlement that continues to underpin the constitutional role of the public service in New Zealand. So, notwithstanding the organic nature of New Zealand constitutional arrangements, there is, at least in respect of the nature of the public service and attendant constitutional rights and responsibilities, an unbroken thread that has been in place for over a century. There is on that basis nothing improper in following that thread back to 1962 and dwelling on Scott's reflections at that time.

Scott observes that

The central *constitutional facts* about government employment in New Zealand are the absence of political patronage and the correlative neutrality of the public

service. Appointment depends on qualifications, and promotion depends on merit and seniority. (Scott, 1962, p.137, emphasis added)

A perennial tension is between a duty of service to the government of the day and a duty of care to the public interest. It is worth quoting Scott at some length:

Public servants owe a duty of loyalty to their minister and to the government generally ... Statements of the content of the duty of loyalty are seldom precise, but those that are precise are often contradictory. The extreme views are: (1) that the duty of loyalty is subject to the exception that public servants should protect the public interest from the marauding activities of politicians; and (2) that public servants should do all they can to help the government to win the next election. (p.140)

For his part, Scott is highly dismissive of the first and much more accepting of the second. Where the public interest lies is a matter of opinion. What matters more is that it is ministers who are responsible:

The case for giving political power to ministers in a parliamentary democracy is not that they can always be guaranteed to know with a mechanical perfection where the public interest lies, but that they are responsible; so our constitutional system is not subverted by the errors of judgement that ministers, being human, are bound to make, but is subverted by the obstruction of ministerial wishes by politically irresponsible public servants. (ibid.)

For Scott, the protections against overt politicisation in policymaking (and he uses the example – more important under a first-past-the-post electoral system, but still material – of advantaging ‘marginal electorates’) are to be found in the capacity of an opposition to expose

it. However, there is something noble, but one might argue considerably naïve, in Scott’s assertion that:

If a government neglects long-term considerations, and is returned at the next general election (as is usual in New Zealand), it will suffer during the next parliamentary term. Whether it is re-elected or not, it will be criticised for taking a short-term view ... For a public servant who feels that the government is taking any kind of partisan attitude instead of promoting the national interest, the best tactic is to co-operate loyally in the administration of government policy, and leave the electors to punish the government. (p.141)

For Scott the protections against overt politicisation in policymaking ... are to be found in the capacity of an opposition to expose it.

One is tempted to reflect on both how much times have changed and how much they have not.

Scott then turns to ‘advice on policy’. Here, one might argue, there is less naïveté and a greater measure of acuity:

A permanent head’s duty is to see that his minister receives the best information and advice his department can offer. To say no more would be to leave the matter nebulous, for value-free social science is a chimera, and so is a social technology that could infer the line of policy development from the logic of the situation. (ibid.)

But Scott then takes the argument into undisputedly constitutional terrain by posing the question ‘whether the permanent head should take account of the anticipated reactions of citizens’ (p.142). He then proceeds further into what he characterises as even more difficult territory in examining the tension between the imperatives of partisan

considerations and robust policy advice, and on these matters he is unequivocal:

Where a permanent head thinks the minister is wrong about the merits of a policy, or wrong in allowing himself to be influenced by considerations of political principle or of political interest, he owes it to the minister to say so. He owes the duty of offering disinterested and fearless advice, and should argue as strongly as he feels is justified. (ibid.)

And so, in a somewhat different institutional context – but arguably one that is constitutionally little changed – we have a strong articulation of the doctrine, or perhaps more correctly convention, of

free, frank and fearless advice.

And what of independence? For Scott this is clearly problematic, and he cites a case where advice provided by a government department to a tribunal (the Price Tribunal) was at variance with the stated policies of the government of the day.

The doctrine of responsible government appears to have been overlooked in a recent instance where comment was made that certain submissions were the views of the Department concerned and not necessarily the views of the Minister in charge. Constitutionally, such comment is fallacious and tends to undermine the convention that the public servant is anonymous and only the Minister has identity. (p.147)

For the purposes of this article, the word personality might be substituted for identity. There may well be a constant and unbroken thread that starts with the Public Service Act 1912, but on the matter

of 'independence' there is continuity in some respects, and a marked discontinuity in others.⁵

The fourth part: a duty to whom?

A leading Canadian legal scholar, Lorne Sossin, has written extensively on the constitutional status of the public service (see, for example, Sossin, 2005). That body of work is relevant to the present discussion, and will be the subject of further examination. But we have narrowed our theme down to independence, or more correctly constitutional independence, and Sossin's work speaks directly to this.

servants' duty to the Crown to uphold the public interest permit, or even require, them to refuse instructions from the government of the day? What constitutional doctrines enable bureaucrats to remain protected from the undue interference of their ministers? What safeguards ensure that civil servants cannot use their positions to partisan ends? Is bureaucratic independence, to the extent it is safeguarded, consistent with democratic principles? Could it be used to frustrate the legitimate

the day? And what of 'the state': is that synonymous with the Crown?

The fifth part

In February 1985 the head of the British civil service, Sir Robert Armstrong, issued what is known as the Armstrong Memorandum. Paragraph three reads as follows:

Civil Servants are servants of the Crown. For all practical purposes the Crown in this context means and is represented by the Government of the day. There are special cases in which certain functions are conferred in law upon particular members of or groups of members of the public service, but in general the executive powers of the Crown are exercised by and on advice of Her Majesty's Ministers, who are in turn answerable to Parliament. *The Civil Service as such has no constitutional personality or responsibility separate from the duly Constituted Government of the day ...* (quoted in Maer, 2015, emphasis added)⁶

Constitutional reviews ... have resulted in recommendations identifying weaknesses in the present constitutional arrangements relating to the role and functions of the public service.

Sossin argues that in the Canadian context:

the civil service is subject to a dense network of constitutional provisions, conventions, and principles and that our democratic institutions and practices would be meaningfully enhanced if these rules, principles, and conventions were more fully elaborated. Civil servants are the guardians of a public trust underlying the exercise of all public authority. Their ability to maintain the integrity of that trust and, when called upon, to 'speak truth to power' depends on a measure of independence from undue political influence. Neutrality, integrity, professionalism, and trust, on this view, are inextricably linked to the norm of bureaucratic independence. (Sossin, 2005, p.1)

This leads Sossin to pose a number of questions:

To what extent, and in what circumstances, does public

goals of democratically elected governments that rely on the civil service to implement their policies? (ibid., p.3)

These are all questions worthy of serious consideration.

To anticipate the conclusion Sossin arrives at: it is not to vest in the public service as an institution a distinctive constitutional personality, but instead to confer on those with particular responsibilities within the public service (most notably the public servant 'whosoever by reason of their discretionary or decision-making authority has a duty to discharge a public trust through conduct or action that political interference might undermine' (ibid., p.19)) certain constitutional obligations. Suffice to say I disagree, but that is for another time.

The other important question Sossin poses in more general terms is, if independence is to be sought for the public service, then independence from whom? Public servants discharge their responsibility to the Crown, but is that synonymous with the government of

The Armstrong Memorandum was a direct result of the acquittal of a senior British Ministry of Defence official, Clive Ponting, who was prosecuted under the Official Secrets Act. Ponting had found evidence that directly contradicted the official government account of the decision to sink the Argentinian cruiser the *General Belgrano* in the course of the Falklands war. When his ministerial superiors declined to act on his advice, and continued with the official justification that the Argentinian vessel constituted a threat to the British naval taskforce as it was heading towards the taskforce and was within an 'exclusion zone' (both of which were untrue), Ponting provided his analysis to a parliamentary select committee. After an 11-day trial the jury reached a not guilty verdict over a lunch break.⁷

Ponting's summary of his own defence is illuminating in that he argued that he acted on what he saw as an obligation or duty to the interests of the British state – perhaps the Crown – and that these were not prescribed by and identical to the

interests of the government of the day. Outside the court following the decision Ponting declared:

I did what I thought was right in leaking the documents ... a civil servant is not, in the final analysis, at the beck and call of ministers only. We also serve the wider national interest (quoted in Dalyell, 2003).⁸

The sixth and concluding part

The *Dominion Post* editorial would have it that all is not as well as it might be in the state of Aotearoa/New Zealand. Perhaps the appointment of a new state services commissioner will assist; that remains to be seen. However, the argument advanced here is that the malady identified in that editorial is bigger than one person. The matters are fundamentally constitutional, and if the present constitutional arrangements – whether in the form of statute or convention – are not fit for purpose, then perhaps a constitutional remedy needs to be found. Constitutional reviews, including the most recent (Constitutional Advisory Panel, 2013), have resulted in recommendations identifying weaknesses in the present constitutional arrangements relating to the role and functions of the public service. It is regrettable, not least because of the considerable investment honourable people have made in such

reviews, that there has to date, in terms of a response from government, been a grateful silence and inaction. But there are constitutional architects among us, and there are portents of things to come. Let us hope that the public service features in any emergent constitutional architecture.

- 1 We who have chosen – albeit for a time – to locate ourselves in universities cannot but look on with envy at the impact editorial writers are able to achieve, and hope that one day the metric used to measure the ‘impact’ of what it is that we do in universities will share more than it currently does with measurements of the reach of the print and other media.
- 2 The *Cabinet Manual* also contains a foreword, written by former prime minister Helen Clark, and a preface by former secretary of the Cabinet Diane Morcom.
- 3 A former secretary to the Cabinet, and at the time the deputy secretary, addressed this issue in a paper presented in 2006: ‘The executive is entitled to amend its own working rules, and it is entitled to official support in doing so. The Cabinet Office officials responsible for working with the Manual are responsible to the Prime Minister and the Governor-General for its content, for applying its guidance to particular fact situations, and for policy related to the Manual. We are, of course, also subject to the usual public service accountability mechanisms, including the Official Information Act, select committee appearances and media scrutiny’ (Kitteridge, 2006). That said, it is the case that an important component of New Zealand’s constitutional arrangements can be modified by the executive alone, and it is a legitimate question whether this should, in effect, form part of the prerogative powers of that body.
- 4 It might be argued that, in the light of the earlier observation that the constitution of Aotearoa/New Zealand is an organic work in progress, seeking insight from a work published in 1962 is questionable. There is some merit to that. The world has changed significantly since then and so has New Zealand, in myriad ways, including in its constitutional arrangements. And there is in some respects a dated quality, in the language, but also in comments on political culture (itself not an irrelevant consideration in matters constitutional). The following extract is a case in point. Posing the question of whether a change of government may present difficulties when ministers are required to work with senior officials who have enjoyed a long-standing relationship with the ‘other side’, Scott comments that this is unlikely: ‘Part of the explanation is that changes of government are relatively infrequent in New Zealand; but a more important part of the explanation is the remarkable continuity of policy from one government to another’ (p.143). The first part of that observation is perhaps as relevant now as it was in 1962, but some might question whether the same can be said of the latter part.

- 5 For example, the independence afforded the Reserve Bank pursuant to the Reserve Bank Act 1989 enables and may even encourage that institution to operate at variance with the preferences of the government of the day, and more specifically the responsible minister. While in an ideal situation monetary and fiscal policy will operate in a mutually reinforcing manner, informed by a shared assessment of the environment and agreement on forecasts, that has not always been the case. Moreover, while the practice has not been adopted by recent governors, there have been cases where the governor of the bank has interpreted the institutional independence afforded to the bank as a personal licence to comment on a wide range of policies, not always directly related to the bank’s mandate. Similarly, the Public Finance Act provides a measure of independence to the secretary of the New Zealand Treasury when it comes to matters of economic and fiscal transparency. Section 26W(2)(b) of that act provides that economic and fiscal updates must include ‘a statement by the Secretary that the Treasury has supplied to the Minister, and to any other Minister designated for the purpose of this paragraph, an economic and fiscal update’ and that this must incorporate ‘the fiscal and economic implications of the decisions and circumstances’ referred to in the statement. The detail here is far less important in the current context than the general principle, and it is a principle that I would assert is a constitutional one: specifically, that there are circumstances in which the public service is required to operate independently of ministers in furnishing advice that is public in nature.
- 6 Maer notes that the Armstrong Memorandum was eventually incorporated into a civil service management code. ‘The Treasury and Civil Service Committee report in November 1994 summarised contemporary thinking on the status of the Armstrong Memorandum and argued for its replacement: It recommended the establishment of a civil service code of ethics (para. 103–107) and an independent appeals procedure based on a strengthened Civil Service Commissioner body (para. 108–112). It also called for a Civil Service Act to provide statutory backing to maintain the essential values of the Civil Service (para. 116). It included a draft Code at Annex 1 of its report, upon which it invited detailed comments from the Government. The Government response published in *The Civil Service: taking forward continuity and change* accepted the proposal for a new Civil Service Code, and provided a revised version of the Committee’s draft as an Annex’ (Maer, 2015, p.6).
- 7 For a detailed and insightful analysis of this matter and the issues raised regarding the ethical obligations of civil servants see Uhr, 2005, pp.164–81.
- 8 And it is from this case that we draw the Ponting principle: ‘Loyalty to one’s superiors is only provisional, loyalty to the public interest and to the democratic process are the ultimate obligations of functionaries’ (Uhr, 2005, p.167).

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Verna Smith

The Stewardship Deficit in New Zealand Health Policymaking

Introduction

The autonomy and capacity of a state to make and implement public policy (or to exercise its ‘stewardship’ functions) (WHO, 2000, p.122) is a fundamental characteristic of statehood. ‘Autonomy’ for a state is defined as ‘the ability of government institutions to resist being captured by interest groups and to act fairly as an arbiter of social conflicts’ (ibid.). ‘Capacity’ refers to the ability of government systems to make and implement policy and ‘springs from the expertise, resources and coherence of the machinery of government’ (Buse, Mays and Walt, 2007, p.81). Understanding the nature of autonomy and capacity in a particular state and how well that state is able to maintain or extend its autonomy or capacity to develop effective public policies is important because this enables states to strengthen these characteristics over time.

This article reports on the findings of comparative research conducted in England and New Zealand to explore relative levels of autonomy and capacity for primary health care policymaking in the two countries between 2001 and 2007. England and New Zealand both introduced pay-for-performance schemes in their primary health care systems, with incentives for general practitioners to achieve improved population-based health outcomes. The purpose in both countries was to increase state influence over the quality and allocation of publicly funded primary health care delivered by the medical profession. Policy change was needed to increase preventive and population-based practice among general practitioners, and resolve increasingly visible problems of variation in the quality of, and access to, primary health care which were leading to substantial disparities in health outcomes for some citizens. The highly individualised and treatment-centred practice norms of the general practice profession meant that general practitioners, especially in New Zealand, ‘had their strongest focus on

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patients who walked in the door ... [and] did not understand “disparity” in access to health services very well, feeling little responsibility for a population-based approach to health’ (O’Malley, 2003). The pay-for-performance scheme in New Zealand was aimed at changing this model of practice.

Subsequent research (Smith, 2015) investigated how the ‘stewardship’ functions of each state were exercised in these pay-for-performance policymaking episodes, and the results are reported here. The research also identified how the different contexts within the health system in each country affected the state’s policymaking autonomy and capacity, and which of the two countries was most successful in achieving the outcomes sought. This article also updates progress on the outcomes sought by policymakers, reporting research published in 2014 which rated the New Zealand health system poorly on variables of safe care, access and equity in comparison with England (Davis et al., 2014). This indicates that the steps taken between 2001 and 2007, although laying important foundations for achieving better outcomes, and for subsequent policymaking in New Zealand, have been considerably less successful than those taken in England. In 2016 the New Zealand Ministry of Health published a new health strategy which acknowledged that New Zealand’s health system continues to face significant challenges in terms of access, equity and affordability (Minister of Health, 2016).

It is hoped that the findings reported here will assist New Zealand policymakers to monitor and develop their health policymaking autonomy or capacity, based on evidence about their current performance, and will enable policymakers to consider whether and how to change elements of this context to facilitate more effective policymaking in future. Recommendations for a process of stewardship-building within New Zealand’s primary health care system are made.

Contextual structural and historical considerations for the two case studies

Both countries are Western majoritarian unitary democracies with strongly

adversarial political systems and high levels of autonomy and authority for central government (Richards and Smith, 2002; Shaw and Eichbaum, 2008; Pollitt et al., 2010). They followed similar patterns of national health system establishment in the 1930s and 40s (Lovell-Smith, 1966; Hanson, 1980; Bolitho, 1984; Hay, 1989; Ham, 1992; Fougere, 1993; Tuohy, 1999; Klein, 2006). However, in New Zealand politicians failed to secure a single-payer arrangement for general practice services. The dispute over payment arrangements left a legacy of division and mistrust between general practice organisations and politicians. Later attempts at reform were vehemently resisted by the profession (Hay, 1989). However, both England and New Zealand undertook

They encroached upon doctors’ highly valued professional independence (Immergut, 1990; Freidson, 2001; Burau and Vranbaek, 2008). Medical institutions ‘organize and advance the discipline by controlling training, certification and practice on the one hand and by supporting and organising the creation and refinements of knowledge and skill on the other’ (Freidson, 2001). Pay-for-performance is part of a set of ‘managerial notions that efficiency is gained from minimizing discretion’ (ibid., p.3) and was seen by some general practitioners as the standardisation and commodification of care based on targets set not by the profession but by the funder, and therefore inimical to these norms. However, others were more open

Both countries are Western majoritarian unitary democracies with strongly adversarial political systems and high levels of autonomy and authority for central government ...

similar New Public Management-inspired reforms to introduce competitive and market-oriented approaches into their health systems in the 1990s, driven by concerns about escalating medical costs (Davis and Ashton, 2000; Pollitt and Bouckaert, 2011). In the literature on health system typologies, they are both assessed as being national health systems with comprehensive, universally available health services, largely publicly financed through taxation (Scott, 2001; Burau and Blank, 2006). Despite significant differences of ownership and financing within the general practice subsystem of each country, these shared features of their overarching health systems make them suitable for a most similar systems comparative case study method (Yin, 2009).

Policies to increase funder influence over general practice activities represented a challenge to the set of institutions which permit professional self-regulation and professional autonomy within medicine.

to pay-for-performance approaches, and it was not a new idea in 2001. A small, voluntary pay-for-performance scheme within general practice was introduced in 1990 in England as part of an imposed contract with general practitioners (Klein, 2006). In New Zealand, a variety of pay-for-performance initiatives had been adopted by doctors’ organisations themselves to assist them to fulfil contracts for improved use of pharmaceutical prescribing and referrals to other services. With the election of a new Labour government in New Zealand in 1999 and the re-election of the Labour government in 2001 in England, in both countries politicians decided, in a ‘logic of escalation’ (Pollitt et al., 2008), that those small pay-for-performance measures which had taken root in the 1990s would be scaled up for national implementation, and substantial sums of additional money provided for meeting clinical and organisational quality targets within general practice.

Methods

A comparative case study methodology in a most similar systems design (Yin, 2009) was used, based on purposeful selection of the two case studies. The drivers of non-incremental policy change, including institutions, networks, ideas and socio-economic circumstances (John, 1998), were identified in each policymaking episode and comparatively. The two case studies showed outputs which differed in size, scope and speed of implementation and achieved differing levels of impact upon health outcomes.

A large scheme, which included 146 targets and determined the level of over 30% of the new income of GPs, was jointly designed and negotiated by the government and BMA teams.

The primary research question considered is: in what respects and why did two similar episodes of policy formulation and implementation in two similar jurisdictions follow different processes and have different outcomes? A qualitative methodology, including documentary analysis and semi-structured interviews with 26 decision makers, leaders of and participants in the policymaking process, was used. The data was thematically analysed (Braun and Clarke, 2006), using an inductive approach, and written up as two case study narratives. These cases were then compared, including contextual, structural and historical considerations, to develop a set of similarities and differences. The process sought to 'locate some particular feature in which otherwise very similar nations differ [so that] we are entitled to suggest that it is attributable to one of the few other factors distinguishing them' (Castles, 1991). For this process, the dependent variable was the policy outcome and all other variables, including institutional and structural features, network and group structure, rational choice explanations, ideas and socio-economic factors, were explored as independent variables.

The two case studies

England: the design of the Quality and Outcomes Framework

In England in 2000, the pay-for-performance programme was part of a new National Health Service plan (Secretary of State for Health, 2000) 'to introduce systems where the money spent was linked to performance and where the service user was in the driver's seat' (Blair, 2010). There was also a strong commitment to use the reforms to reduce health inequalities (Comptroller and Auditor General, 2010) by increasing the quality

of care and introducing more preventive practices into primary care services. Both goals were in Labour Party manifestos and ministerial speeches during the election campaign in 2001. During that campaign, general practitioners, who were entirely dependent on state funding for their income, threatened to strike unless a new, improved contract was offered to them.

Once the Labour Party was elected the manifesto promises were immediately implemented. The health policy adviser to the prime minister described the reform process as 'constructive discomfort'. It would put some pressure on professional autonomy within the medical profession through a top-down imposition of standards and targets and by subjecting the profession to competition from other suppliers of medical services. In this reform programme, more money for general practitioners was conditional upon better performance: 'GPs' new contracts will allow them to earn around a third more, linked to markers of quality' (Stevens, 2004). The British Medical Association (BMA) represented all English GPs and was the sole bargaining agent on their behalf. BMA negotiators readily agreed that a pay-for-performance mechanism could form a major part of

a new contract. However, they had little choice; it was hard for them to resist the strong expectations of the secretary of state for health that new money for general practitioners would be subject to pay-for-performance. A participant in the negotiations saw the secretary of state for health as insistent that 'there would be no pay rise for work already being done'. He had a 'bloody-minded determination for performance pay'.

Both parties then sought a large scheme. On the government side, it was believed that the success of early pay-for-performance schemes (Spooner, Chapple and Roland, 2000, 2001) had demonstrated the effectiveness of rewarding doctors for preventive practice, justifying a scheme with as many indicators as possible. For the BMA, the larger the scheme, the more money was available to its members. In addition, the pre-eminent role of the BMA in its relationship with government was at stake. The BMA feared, it was said, that if it could not broker a popular and lucrative national deal for its members, other forms of localised contracting would erode its sole bargaining rights for all GPs.

Medical professionals dominated the membership of the team which designed the pay-for-performance component of the new contract, the Quality and Outcomes Framework (QOF), constituting seven of 11 members. An academic team was recruited as interlocutors to consider evidence for suitable clinical targets for the scheme. Members of the different teams involved had known one another for a number of years in some cases. Almost all were practising GPs for at least a small part of their working week, even when the rest of the week was spent as a medico-politician or academic. A large scheme, which included 146 targets and determined the level of over 30% of the new income of GPs, was jointly designed and negotiated by the government and BMA teams.

The QOF could not be implemented without the design of a major new software application. A participant describes how, having designed an indicator, 'then we had to go on and work out how you would verify it' by extracting performance data from every general

practice. This presented significant practical problems. There were many different suppliers of computer systems for general practice; some practices were not yet computerised; and there were concerns about confidentiality of patient information. Yet this project was achieved in 26 weeks. A 'high trust' system for monitoring and reporting achievements against targets was introduced, along with a provision for independent audit, enabling general practices to monitor their progress and be funded for their achievements against the QOF. The scheme was implemented remarkably quickly by 99% of general practitioners. Within a year of its launch, performance against the targets was higher than expected and payments to general practices under the QOF exceeded budget allocations.

Evaluations of the success of this large pay-for-performance scheme have been mixed and widely reported (Comptroller and Auditor General, 2008; Doran and Roland, 2010). Several studies reported positive results, including a surge in morale and recruitment within the general practice profession, an initial acceleration in quality of treatment for a small number of chronic conditions, and reductions in variation in quality of care related to deprivation (Doran and Roland, 2010; McDonald et al., 2010; Roland and Campbell, 2014). A key study found that there were statistically significant associations between higher levels of achievement on QOF clinical indicators for coronary heart disease, hypertension, congestive heart failure, diabetes and chronic obstructive pulmonary disease and reductions in rates of ambulatory-sensitive hospital admissions for those conditions (Dixon et al., 2010).

New Zealand: the design of the Performance Programme

The New Zealand Labour Party manifesto of 1999 also promised a new focus on improving the quality of primary health care and increasing population-based and preventive health care, seeing general practice services as 'too focused on treatment services at the expense of improving the health of the community' (New Zealand Labour Party, 1999). The

focus on population-based and preventive health care grew out of concerns about disparities in health outcomes within New Zealand. Research had shown that there were 'significant and enduring health disparities relating to both ethnicity and deprivation'. These included a nine-year gap in life expectancy between Māori and non-Māori New Zealanders, and between males living in the most deprived and least deprived geographical areas (Crampton, 2000). Once elected, Labour replaced state funding on a fee-for-service basis with capitation-based funding of primary

Three per cent of GPs worked in not-for-profit community-governed health centres, which had been established to improve access and equity of outcomes for poorer communities. The changes to primary health care governance were implemented by the Labour government despite misgivings in large parts of the primary health care sector. As part of this process, officials recommended the implementation of a national pay-for-performance scheme to improve the quality and equity of pharmaceutical prescribing and referrals to services

Unlike England's single-payer and single-ownership model for general practice, New Zealand had many types of general practice service delivery approaches and ownership forms.

care services (King, 2001). A new network of primary health organisations (PHOs) was formed to manage primary health care services, including general practice services, and people were required to enrol on a PHO register for health care. Targets were set for PHO delivery of preventive as well as curative services.

Unlike England's single-payer and single-ownership model for general practice, New Zealand had many types of general practice service delivery approaches and ownership forms. There were multiple payers for general practice services, creating a wide variety of interest groupings within the heterogeneous primary health care sector. No single organisation existed to represent all general practitioners in their dealings with state funders. Most GPs were members of for-profit independent practitioners' associations (IPAs) (Malcolm and Mays, 1999). 'Almost all' of the IPAs held contracts with the state to manage and improve the quality of prescribing and referral services. For IPAs the reforms meant the end of these lucrative contracts, which had funded quality improvement activities among their members for many years (Crampton et al., 2004).

within a population-based funding framework, now that budget management contracts with IPAs for this purpose had been cancelled. As in England, the idea drew upon successful local initiatives to incentivise performance which had been developed in the primary health care sector in previous years.

A working group of primary health care stakeholders was convened to design the new Performance Programme (PP) for primary health care. Although one of the joint chairs of the group was a general practitioner, GPs were invited to be members of the working group as individuals with no representative mandate for their profession. These GP members also held differing views about the role of general practice, reflective of the professional divisions in the country at large: some were for and some were against a state-led pay-for-performance scheme. The group utilised a variety of consultative methods and the assistance of academics to select a small set of 13 indicators for the PP. The choice of indicators was based pragmatically on data elements already available from central sources, even though they did not relate to many of the major health

outcomes the Ministry of Health was most interested in improving. This was because, unlike in England, efforts to gain access to data within practice management systems were opposed by most New Zealand GPs.

The set of indicators and the funding framework were approved in July 2005. Twenty-nine PHOs participated in the first phase of the roll-out (a number higher than expected), rising to 42 the following year. Payments for performance were made to PHOs, which distributed all or some of these to practices. The number of participants rose to 81 of the then 82 PHOs in 2007. Achievement levels against the indicators averaged 81%

sensitive hospital admissions (Cranleigh Health, 2012).

Findings

To recap, the comparative analysis of the case study evidence set as the dependent variable the policy output and outcomes: namely, the size, scope and speed of uptake of the policy and the health impact achieved by the policy in each country. Independent variables investigated were institutional factors, group/network factors, ideas, socio-economic drivers and rational actor drivers of policy change. The findings showed that politicians in both these Westminster systems successfully planned and implemented

over time to effective mechanisms for collective action and a well-developed working relationship with the state for English GPs. There were ineffective mechanisms for this and a poor and conflict-dominated relationship with the state in New Zealand. Chief among these weaker mechanisms is New Zealand's lack of a mechanism for the general practice profession as a whole to be represented by a bargaining agent and therefore to negotiate new policy proposals directly with state funders. The mandate held by the BMA in England to be sole bargaining agent for general practitioners holding general medical services contracts meant that GPs had trusted delegates representing them in their dealings with the state. Their own well-organised professional forums enabled them to have a voice in discussions about the design of the pay-for-performance scheme. Within the negotiating teams, debates were conducted along familiar collegial, peer-to-peer lines. A GP negotiator for the government side described it thus:

There was no mechanism within the profession in New Zealand for a process of coordinated debate or negotiation with state funders to occur in a similar way.

in 2009 and the budgeted funding for the PP was never fully utilised.

Evaluations found that GPs had mixed views about the effectiveness of the Performance Programme, that it had low visibility among clinicians and that it had a low-profile effect on clinical quality (MartinJenkins, 2008). GPs appointed to the governance group for the PP later regretted the missed opportunity. When informed that

there was a line item for \$35 million but [officials] didn't expect to spend it because people wouldn't achieve the targets ... [i]n the room GPs suddenly had a quick discussion and said so if we lowered the targets we could get all the money and the ministry people nearly fell off their chairs. It was a good example of the thinking of different groups.

A later evaluation did, however, find that there was a statistically significant relationship between achievements under the PP for one of the 13 indicators – immunisation of under-two-years-olds – and vaccine-preventable ambulatory

non-incremental change in their primary health care systems. However, there were certain institutional features which differed between the two countries. In particular, the use of bargaining and negotiation processes supported the large size, scale and speed of design and implementation of the QOF in England, and therefore the level of health outcomes attributable to the scheme. In contrast, New Zealand policymakers did not negotiate the PP directly with representatives of the general practice profession as part of a contract of service. This differentiates the two episodes of policy formulation and implementation in two similar jurisdictions most strikingly, and it is also because of this feature that the outcomes of each scheme differ.

Differences in the institutional framework within the general practice subsystem in each country were found to be the primary driver of policy variation, facilitating change in England but frustrating it in New Zealand. In each country, institutional structures had arisen from highly path-dependent patterns of policymaking over successive decades. These structures had given rise

When I was involved in the negotiation it felt like a practice meeting ... we thought the patients were going to benefit ... we were negotiating this in order to achieve patient benefit. Of all the team that was what we were genuinely trying to do.

Another described the process as 'discussions rather than negotiations. The government people were very well informed. It was between peers ... with very much a shared purpose.'

There was no mechanism within the profession in New Zealand for a process of coordinated debate or negotiation with state funders to occur in a similar way. In the pay-for-performance policy design forums, GPs' voices were to some extent crowded out by those of officials and of other primary health care professionals, such as pharmacists and pathologists. GP participants in the policy design process described it thus:

This was a state-directed programme. I have often reflected that I don't think a single thing [some partici-

pants] said ... was reflected in the programme that was rolled out ... [such as] peer-led, based on feedback and performance data to individuals, the data referenced to colleagues and the group as a whole and using clinical meetings based on the evidence and outlier management visit ... a non-judgemental peer accountability process.

The process was perceived as a threat to professional organisational rules and standards and reduced the willingness, collectively and individually, among New Zealand general practitioners to engage in the policymaking process.

There was also a reduced level of incentive for rational choice drivers to influence New Zealand GPs. They did not depend on the state for their income to the same extent as in England, and could simply raise their fees to patients if they needed to. Unlike the English GPs, who readily agreed to permit the sharing of their practice data with the state in order to increase the size of the scheme and the speed of assessment and payment of performance incentives, the New Zealand GPs declined to do so. A key difference between the two schemes, this affected the size of the scheme, the type of targets that could be set and therefore the level of take-up of the new pay-for-performance policy.

In both countries the offer of a national pay-for-performance scheme was a lucrative inducement to general practitioners to increase preventive and population-based health actions in their medical practice. But in New Zealand the benefits and opportunities of the proposed policy did not outweigh the perceived challenges it presented to general practitioners' professional dominance and associated autonomy, monopoly and right of self-regulation (Freidson, 2001). In 2001, pay-for-performance health policymaking in national health systems was relatively untried. With the passage of time, both schemes have evolved and much new research about pay-for-performance has been completed, and has drawn upon the experience of the QOF development in England. There can also be an assessment of whether improved

population-based health outcomes have been achieved by the initiatives in both countries. Researchers have commented that the research question today is not whether to use pay-for-performance, but how best to incorporate it into financing arrangements for general practice services (Roland and Campbell, 2014).

Discussion

New Zealand has a growing problem with the quality and allocation of its publicly funded health care. There are increasingly visible problems of variation in the quality of and access to primary health care, which are expected to lead to unsustainable costs in the long term (Health Quality and

primary health care policymaking in New Zealand and Australia, where 'a powerful profession appears to have succeeded in securing significant autonomy and self-determination while receiving public funding in return for relatively little specification or monitoring as to how that funding is used', by comparison with England (Smith et al, 2010, p.101). Many building blocks of effective population-based health care are once again at risk, including cost of access, quality and availability of best practice preventive care, and adequate numbers of general practitioners to meet population health needs. The challenge of equalising problems of access remains, with 14%

... New Zealand policymakers continue to exhibit weak stewardship over the primary health care system, ... between the general practice profession, ... and the state, ...

Safety Commission, 2015; Minister of Health, 2016). The steps taken in 2001–07 to initiate an effective framework for population-based approaches within primary health care were partly successful. Ninety-five per cent of New Zealanders are now enrolled in a PHO; they hold a unique patient identifier, and their health status can be proactively monitored and supported to identify and prevent the development of chronic and costly health conditions. Positive progress can be seen. For instance, the gap between Māori and non-Māori life expectancy has narrowed from 8.2 years in 2000–01 to 7.3 years for males and from 8.8 to 6.8 years for females. The success of initiatives such as the immunisation programme for under-two-year-olds, as mentioned above, part of the Performance Programme of incentivised health actions from 2007, has demonstrated the potential of this and a range of other population-based and proactive approaches (Ministry of Health, 2013) to achieve important health gains as well as reduced costs over time.

However, research conducted in 2010 confirmed a stewardship deficit in

of New Zealanders reporting that they are unable to visit a GP because of cost; this figure is worse for Māori (22%) and Pacific peoples (21%) (Minister of Health, 2016, p.20). The projected cost of providing health services through the current model is reported by the minister of health to be unsustainable (ibid., p.11). For instance, preventive treatment approaches to diabetes, which accounted for 14% of hospital bed days in 2013 (Health Quality and Safety Commission, 2015, p.48), are poorly delivered, with only about half of people over 25 years of age with diabetes recorded as being treated for good glycaemic control, including through the prescription of metformin or insulin. The rate of undiagnosed diabetes in England is reported as approximately 27%.¹ Unexplained levels of variation in treatment patterns in this country show, according to the Health Quality and Safety Commission New Zealand, that improvements remain possible. General practice services, which are an essential foundation of population-based health care, are themselves under significant pressure. The Royal New Zealand College

of General Practitioners reports a low and falling ratio of GPs to population in a predicted environment of increasing need (Royal New Zealand College of General Practitioners, 2015, pp.4-5).

It is argued here that New Zealand policymakers continue to exhibit weak stewardship over the primary health care system, and in particular have been unable to develop the necessary quality of partnership between the general practice profession, which holds responsibility for training, certification and practice, and the state, which provides the overwhelming majority of funding for general practice professional development and service delivery. Where existing institutional arrangements fail to resolve abiding

England), there remain many similarities in the institutional, structural and cultural features of the two overarching health systems. There are well-developed linkages between England and New Zealand for policymaking dialogue in both the political and the policy streams. The United Kingdom's health system is currently ranked as much more effective than New Zealand's in a regular health systems monitoring report issued by the Commonwealth Fund, ranking first of eleven health systems for safe and patient-centred care which is accessible on cost grounds (Davis et al., 2014).

However, the two primary health care systems exhibit significant differences relating to the ownership and

physician remuneration schemes. A strong case exists for New Zealand policymakers to seek to emulate the ownership and financing arrangements which exist in England in order to achieve similar levels of influence over the primary health care system. While this would undoubtedly be a radical and costly reform, examination of the evidence base and the cost-benefit case, based on projected levels of forward liability for health care costs, could be undertaken as part of a process of active consideration of a more assertive model of state stewardship of primary health care services.

A key variable to consider in approaching such a radical policy reform is the appropriate scale and pace of change to resolve New Zealand's primary health care stewardship deficit. New Zealand policymakers could support the evolution of both the current general practice institutional forms and interest group structures towards different types of political exchange over time, with incentives for the development of greater trust and collaboration within this subsystem. This would entail, for instance, developing a more consensual and receptive institutional context for the introduction of improved accountability frameworks. Steps to take to provide for the development of such a framework might include:

- Mandating a single national representative body for general practice, perhaps consisting of a forum of representatives from the various segments of the general practice professional community. Such a body would have unrestricted access to government decision-makers regarding policymaking which affected general practice, utilising principle-based bargaining and negotiation processes. This could be expected to lead to the slow building of greater mutual trust, between general practitioners and the representative body and between that body and the state, through repeated examples of consensus-based policymaking that was seen to balance the interests of both parties.
- Supporting the development of a stronger policy community within

A strong case exists for New Zealand policymakers to seek to emulate the ownership and financing arrangements which exist in England in order to achieve similar levels of influence over the primary health care system.

challenges of access and quality within a publicly funded primary health care system, there is a strong case for reform of general practice/state institutional relationships, and for enhancement of institutional forms within the general practice profession itself, to achieve the necessary progress.

Looking forward

As a final contribution from this research, some next steps are proposed for consideration by policymakers in New Zealand which might improve their ability to achieve population-based health outcomes through primary health care services.

First, there is opportunity for a stronger collaboration between New Zealand and England. Despite the different results and the differences between the general practice subsystems in the two countries (which have grown in recent years, with the decision to implement general practice-based commissioning in

management arrangements for general practice, the relationships between the general practice profession and the state, and the structure of the general practice profession. In the period since 2000–01 England has improved its health system performance overall. For instance, in developments since 2004, English policymakers have made step-by-step improvements to their pay-for-performance scheme, including removing the design of the QOF from the collective bargaining environment. It has recently been decided to reduce the component of income which is dependent upon it within the general medical services contract. GPs have undertaken more extensive roles in the commissioning and management of a continuum of medical services in their locality. New Zealand, by contrast, has stalled its development of pay-for-performance frameworks, despite their early signs of promising achievements and international evidence that these form a desirable component of

primary health care (including general practice) to inform policy ideas and develop information and knowledge infrastructure based on evidence. This could include investment of adequate resources to build a comprehensive shared database for primary care service delivery on the model of the QMAS (Quality Management Analysis System, developed by the NHS), and rapid development of an evidence base, shared national service frameworks and quality standards and targets on the model of the domains developed within the QOF.

- Negotiating greater alignment between both interest groups and policy specialists and the two major political parties on key aspects of population-based health policy. A bipartisan agreement to

support the key elements of agreed infrastructure-building over a ten-year period, avoiding the regular cycle of policy windows at election time, which can bring policy reversals, could be a first step towards achieving longer periods of time for policy changes to embed.

Predicted changes within the general practice workforce over the next ten years provide an opportunity to negotiate new terms and conditions of work, new financing and ownership arrangements for state-funded general practice services, and new working relationships between the profession and the state. Forty-one per cent of current general practitioners plan to retire by 2025. Younger GPs are predominantly female, and these younger, female GPs are more likely to work part-time and as employees; it is unclear whether they will continue

working part-time in future years or look to increase their hours either as employees or practice owners (Royal New Zealand College of General Practitioners, 2015). While revolutionary, top-down, non-consensual policymaking, such as has characterised previous episodes of health system reform in New Zealand, is in theory also an option, this would reinforce rather than remedy the fractious relationships which currently exist between the general practice profession and the state. These relationships can only be repaired and better government within the health system advanced by building an environment in which courageous decision-making, skilful relationship-building and collaborative, evidence-based policymaking can be undertaken by both the profession and the state.

¹ <https://www.nice.org.uk/guidance/ph38/chapter/2-Public-health-need-and-practice>.

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CONFERENCE

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Bronwyn E. Wood and Andrea Milligan

Citizenship Education in New Zealand policy and practice

Introduction

The desire to mould citizens through curricula and educational initiatives is reflected in government policy around the world. Schools can be thought of as an aggregation of the values, aspirations and ideals held by society and sites where a range of strategies are employed to attempt to shape young citizens in certain ways (Staehele, 2011). New Zealand is no exception.

From the first Education Act in 1877 through to the

latest New Zealand curriculum (Ministry of Education, 2007), successive governments have attempted to engender the dispositions, skills and understandings perceived as constituting responsible, 'good' citizens through a variety of citizenship education initiatives. However, while there is generally consensus that citizenship education

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is a desirable thing, there is far less agreement about what kind of citizen should be sought and what kind of community best promotes citizenship (Faulks, 2000; Westheimer and Kahne, 2004).

Internationally and nationally we have witnessed a renewed public sector interest in citizenship education in the past two decades. Brooks and Holford (2009) refer to an 'explosion' of interest in citizenship, matched by the development and extension of citizenship education in many countries. In New Zealand, citizenship is a key focus of *The New Zealand Curriculum* (Ministry of Education, 2007), specifically within the

nature of civics and citizenship education (Justice and Electoral Committee, 2016; Ministry for Culture and Heritage and Wellington Museums Trust, 2016; New Zealand Political Studies Association, 2016).

This article locates these recent calls for citizenship education across the New Zealand political spectrum within an historical context, and examines the different versions of citizenship education which have emerged over time. Our central question is: what form of citizenship education could lead to informed, active and critical citizens, and also accommodate the considerable diversity that is a marker of New Zealand

elections). *Citizenship education* focuses on knowledge and understanding and on opportunities for participation and engagement in both civic and civil society. It is concerned with the wider range of ways in which citizens interact with and shape their communities (including schools) and societies (Schulz et al., 2010, p.22).¹

Historical contexts for New Zealand citizenship education

Citizenship has had a long-standing and central presence in New Zealand's curriculum, although there has never been a curriculum subject called 'citizenship education'. Instead, the social studies curriculum has traditionally been the main vehicle for citizenship education in New Zealand, since the Thomas Report (Consultative Committee on the Post-primary School Curriculum, 1944), which first recommended the introduction of social studies as an integrated social sciences course in the post-primary school curriculum. However, it is also important to note that citizenship has always been recognised as an important cross-curricular theme that can be developed through a wide range of informal learning and community participation experiences (Mutch, 2013; Schulz et al., 2010).

Our precis of governments' attempts to socialise young people into becoming certain types of citizens begins in the interwar years with the *Syllabus of Instruction for Public Schools* (Department of Education, 1928), which conceived of schools as microcosms of society in which children were to be 'trained for the wider service of humanity' (p.64) and teachers were to model virtuous behaviour and restraint. However, following World War Two this traditional, conservative citizenship ethic was reshaped to align with the first Labour government's desire for a well-balanced education open to all (Openshaw, 1995). The 1944 Thomas Committee envisioned an effective citizen as committed to democracy and social reconstruction: 'one who has a lively sense of responsibility towards civilised values, who can make firm social judgements, and who acts intelligently and in the common interest' (Consultative Committee on the Post-primary School Curriculum, 1944,

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social sciences but also as a cross-curricular theme. More recently, renewed attention to civics and citizenship education has been stimulated by an awareness of an increasingly diverse society and fears of diminishing social cohesion, alongside concerns about declining traditional democratic participation, and ongoing debates about Crown/Māori relationships. For example, in the past three years public debate on the health of our democracy has been galvanised by national discussions on declining voter participation (Electoral Commission, 2013, 2014; Justice and Electoral Committee, 2016) and the nature of our constitution (Constitutional Advisory Panel, 2013). These have drawn attention to the multiple ways New Zealand citizens describe their sense of identity and belonging and the role and

society today? We examine recent research from New Zealand classrooms to consider what students know, their political aspirations and their experiences of citizenship education. We draw on recent New Zealand and international research to offer a framework for effective citizenship. In conclusion, we argue that realising the potential held by critically active approaches requires cross-sector collaboration that engages with citizenship education's contested past, present and future.

In this article we adopt a distinction that is commonly made between 'civics' and 'citizenship' education, and is employed in the 2009 International Civic and Citizenship Education Study (ICSS). *Civic education* focuses on knowledge and understanding of formal institutions and processes of civic life (such as voting in

p.23). This statement signals a competing vision for citizenship that is repeated in many subsequent curricula, centred on a tension between the cultivation of independent thought and socialisation through the transmission of citizenship virtues. As Eric Archer and Roger Openshaw wryly comment:

Being committed to ‘civilised values’ and being taught to act ‘in the common interest’ do not appear to be self-evidently ‘democratic’, yet these imperatives were, presumably, to override the necessity of ‘forming social judgements’ should the goals conflict in any way. The citizenship transmission leopard, even in its liberal-progressive guise, still displayed its procedural spots. (Archer and Openshaw, 1992, p.24)

This tension between critical citizenship and citizenship transmission remained apparent in social studies curricula in the 1960s and 70s (Department of Education, 1961, 1977). On the one hand, both syllabi were committed to young people’s social and political development. The young citizen of the 1961 syllabus was, for example, to ‘think clearly about social problems’ and take a ‘sympathetic interest’ in the lives of others around the world (p.1). Similarly, the 1977 syllabus guidelines endorsed an inquiry approach to the development of four key dimensions of citizenship: knowledge, abilities, values and social action. However, a spirit of open-ended inquiry was inevitably tempered by a desire for particular commitments. The 1961 syllabus, for example, encouraged adherence to ‘standards of behaviour that are necessary for ... responsible people in our society’ (Department of Education, 1961, p.2). In a similar vein, the child of the 1977 document was expected ‘to respect human dignity, to show concern for others, to respect and accept the idea of difference and to uphold justice’ (Department of Education, 1977, p.5).

Arguably, debates as to what kind of citizen should be endorsed featured most acutely in the curriculum reforms of the 1990s. For the social studies curriculum this led to the development

of three curricula, following the public rejection of the first two developments due to political and ideological divisions (O’Neill, Clark and Openshaw, 2004). Hunter and Keown (2001) summarise the contentious redrafting of the social studies curriculum in the two versions of 1994 and 1996 as involving two dominant discourses of citizenship: broadly speaking, liberal-democratic and neo-liberal. As a compromise position, *Social Studies in the New Zealand Curriculum* (Ministry of Education, 1997) did little to resolve the ideological tensions, instead positioning young citizens as accountable to both agendas (Mutch, 2013).

development approaches (student/child-centred pedagogies), social efficiency approaches (preparing workers who can contribute to an efficient, smoothly run economy) and social reconstructionist approaches (preparing future citizens as agents of social change and social justice) (Kliebard, 1986). Such approaches are less reliant on one essentialist perspective and therefore more capable of meeting the needs of multiple stakeholders (Kennedy, 2008, p.20). While this may meet pragmatic policy needs, it does mean that ideals of ‘effective’ and ‘successful’ citizenship (Ministry of Education, 2007, p.4) can

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During the more recent curriculum review, local, national and global citizenship was identified as an important cross-curricular theme in the 2002 *Curriculum Stocktake Report* (Ministry of Education, 2002). This was taken up in the subsequent *New Zealand Curriculum* (Ministry of Education, 2007), which liberally deploys the language of citizenship in its vision and principles, with the aim of creating ‘critical and creative thinkers’ and ‘informed decision makers’ who are ‘actively involved participants in a range of life contexts’ (p.4). Citizenship aims are most specifically addressed in the social sciences curriculum, which states that students ‘explore how societies work and how they themselves, can participate and take action as critical, informed, and responsible citizens’ (p.17).

In many ways New Zealand’s current curriculum reflects many others in the Asia–Pacific region, which are a pastiche of multiple traditions of progressivism (Kennedy, 2008) and citizenship education (Barr et al., 1997). These traditions include child

be very vague in practice. Bolstad’s analysis of New Zealand’s ICCS data confirms this by concluding that there is an inconsistent view across New Zealand schools about what ‘civic and citizenship education’ ought to involve and what means are effective in developing students’ competencies (Bolstad, 2012, p.32).

Towards critically active citizenship

Having traced this brief history of New Zealand citizenship education through social studies curricula, we can see some consistent patterns. First, while there has been an ongoing focus on civic education, including through moral inculcation and imparting civic knowledge, this has never been the only approach. Instead, post-1944 approaches have increasingly endorsed the notion of critical and active citizenship, consistent with the view that social studies should support children ‘to interpret and respond to social situations rather than merely describe them’ (Department of Education, 1983, p.3). This shift towards more critically active citizenship is evident

in the language of successive social studies curricula: from clear thinking about social problems (1961), to *how* such problems might be addressed (1977), to 'social decision-making' (1997), to citizens who 'take action' (2007, p.17). However, and secondly, there remain ongoing tensions between the ideals of compliant and more critical and active citizens conveyed in these curricula.

Perhaps the question to turn to is just what kind our society wants. Kennedy and Mellor (2005) suggest that:

This is the key curriculum issue for the future – what should future citizens know and be able to do, and

established social structures and work against injustice in society. In their view, education ideally develops citizens who not only endorse values that support the nation and its government, but actively critique and speak out against aspects of society and governance that they disagree with. In striking a balance between unity and diversity, such a 'critically active' approach invites young citizens to consider critical responses to societal challenges and to understand democracy as a chief means for accommodating difference.

If a critically active citizenship response is desired, just what is happening in New Zealand classrooms? In the next

... there is some evidence that citizenship is not widely recognised by New Zealand teachers as a key goal of the social studies curriculum ... and social studies is not widely recognised by primary students as a curriculum area ...

how can such access to knowledge be guaranteed? Without an answer to this question, the future of democracy may well be at risk. (p.56)

Expressed elsewhere as a tension between 'socialisation and counter-socialisation' (Engle and Ochoa, 1998), the central dilemma for social educators is whether they should stick with the kind of citizenship that is highly adaptable to the status quo (thus creating 'employable and quiet' future citizens/consumers), or whether they should encourage citizens who challenge existing structures (Openshaw, 2004). Westheimer and Kahne (2004) outline three kinds of citizens that democratic societies can work to produce: *personally responsible citizens* have a good character and are honest, law-abiding members of the community; *participatory citizens* actively take part in leadership roles within established community structures to improve society; *social justice-oriented citizens* question

section we explore the current New Zealand research evidence that sheds light on teachers' and students' preparedness for critically active approaches in New Zealand classrooms.

Recent citizenship education research in New Zealand

Significant to our understandings of New Zealand students' knowledge, political aspirations and experience of citizenship education is the 2009 International Civic and Citizenship Education Study (Schulz et al., 2010). New Zealand has participated in this study twice, in 1971 (with eight other countries) and in 2009 (with 38 countries in total). The 2009 New Zealand data were derived from a survey of 3,979 year 9 (13–14-year-old) students from 146 schools, of which Lang (2010), Hipkins (2012) and Bolstad (2012) undertook secondary analyses. This section examines these data, supplemented with further relevant New Zealand-based studies.

Knowledge

The ICCS study showed that New Zealand students had high levels of civic knowledge, repeating a finding from 1971 data where New Zealand students were found to be among the top performing students in the world for civic knowledge. The 2009 study placed New Zealand students' civic knowledge on a par with those of England, Norway, Spain and the Russian Federation, with only ten of the 38 countries ranked higher than New Zealand (Lang, 2010; Schulz et al., 2010). Classroom-based research in primary schools, however, identifies that the lack of attention to social studies teaching and learning has led to a lack of progression in social studies between years 4 and 8 compared to subjects such as mathematics (NEMP, 2005, 2009).

The ICCS data also identifies a gap between high and low achievers in citizenship knowledge, with girls out-performing boys and European and Asian students out-performing Māori and Pacific students (Lang, 2010). This gap is noted in other international comparative tests New Zealand participates in and reflects characteristics such as parental education, more books in the home and non-immigrant backgrounds (May, Cowles and Lamy, 2013). Classroom-based national evaluation research also confirms this civic knowledge gap (NEMP, 2009), and there is evidence of a difference between students in lower-decile schools being taught locally focused content, while those in higher-decile schools receive a more global education (Wood, 2012, 2013a).

Classroom citizenship education teaching and learning

The ICCS study found that teachers were very confident teaching topics in social studies which related to cultural identities, equality, human rights and the environment. Against this, they had only moderate confidence in teaching legal, political and constitutional topics. New Zealand classrooms were more accommodating of diverse opinions than most others in the study, and a higher percentage of principals, teachers and students valued critical thinking as an important component of citizenship

education than in most ICCS countries. However, there is some evidence that citizenship is not widely recognised by New Zealand teachers as a key goal of the social studies curriculum (Barr, 1996; ERO, 2006; Milligan, Taylor and Wood, 2011), and social studies is not widely recognised by primary students as a curriculum area because it is often integrated with other learning areas (NEMP, 2009). Teachers are also somewhat reluctant to implement more critical and participatory approaches to social studies, with a prevailing focus on teaching factual-based lessons (ERO, 2006; Keown, 1998; Wood, 2013b). Aitken (2005) argues that this is because successive curriculum documentation has done little to elucidate the concept of citizenship.

Political aspirations and action

New Zealand students showed average rates of interest in political and social issues, higher than average rates of expecting to vote in national elections in the future (84%), but lower rates of expected adult participation in political activities, such as joining a political party (49%), just below the ICCS average of 50% (Schulz et al., 2010). Just over half of students surveyed felt they had a good understanding of political issues. However, they had much lower levels of self-confidence: only 39% believed that their opinions were worth listening to (Hipkins, 2012). These low levels of political efficacy for New Zealand young people are confirmed in other studies (e.g. Wood, Taylor and Aitken, 2013).

New Zealand students ranked among the highest in the 38 countries for participation in community volunteering, collecting money, and belonging to a cultural organisation or political party/union. However, they had significantly lower involvement in environmental and human rights organisations (7%) and campaigns for an issue (14%) than those in other countries in the study. Qualitative studies confirm that New Zealand children and young people hold considerable interest in a wide range of contemporary social and political issues, often centred on their own schools, communities and regions (Hayward, 2012; Taylor, Urry and Burgess, 2012;

Wood, 2014). Young people's citizenship responses to these issues are often undertaken in small, everyday ways, such as conserving water, which often fly beneath the radar of teacher and adult attention (Wood, 2014).

A rather mixed picture of citizenship education in New Zealand classrooms emerges from these findings. There is some evidence of strong teaching and learning that encourages critically active citizenship, especially in high schools, and the 2013 introduction of 'social action' NCEA achievement standards has opened up potential for further student citizenship action in schools (Taylor, Atkins and Wood, forthcoming).

type of citizenship education that has the potential to shape critical, informed and active citizens, both now and in the future.

First, effective citizenship education needs to be underpinned by *flexible, open and inclusive understandings of how citizenship is constituted*, who belongs in our diverse nation and how people can participate. This principle directly critiques many citizenship frameworks employed by government and non-government organisations, which are essentially normative in their aim of creating a certain type of narrowly defined compliant, neo-liberal and conforming citizen (Kennelly and Llewellyn, 2011).

If citizenship education is concerned with the practice of living and making decisions as individuals and groups, then acknowledging the multiple values and perspectives that are represented in society is essential ...

However, there are lower levels of shared understandings and consistency in citizenship education across New Zealand's schools, with a big gap between high and low achievers, partly stimulated by the undervaluing of social studies as a site for citizenship (Wendt Samu, 1998). Of particular concern are the lower levels of students' political efficacy and knowledge of political institutions and processes (civics). In the final section we propose a set of approaches that could serve to address these gaps and support children and young people's ability to participate in, interact with and shape their communities and society.

A framework for critical, active citizenship education

This section draws on international research findings which emphasise the importance of critically active approaches to citizenship education. We argue that four dimensions of citizenship education together form the building blocks for the

In contrast, we argue that citizenship is experienced and lived by young people in multiple and diverse ways and therefore we need frameworks which include, rather than exclude, such diverse expressions. More inclusive and flexible notions of citizenship are needed which include the ability for all members of society to participate equally and achieve recognition, and which more explicitly recognise the diversity of expressions and understandings of citizenship (Lister, 2007). For New Zealand this means a critical understanding of our colonial past, which has frequently served to exclude and minimise the citizenship rights of Māori, and, more recently, other ethnic minorities (Liu et al., 2005). An inclusive citizenship understanding also encompasses diverse forms of citizen participation which go beyond traditional political expressions (such as voting or joining political parties) to include non-traditional and post-traditional expressions of participation (ECPR,

2004), as well as attending to those who lack the status of citizens (Roseneil, 2013).

Second, effective citizenship education requires considerable *knowledge of the complexity of society and the contested nature of social issues*. If citizenship education is concerned with the practice of living and making decisions as individuals and groups, then acknowledging the multiple values and perspectives that are represented in society is essential (Barr, 1998). Thus, the very nature of society requires the presentation of a less ordered and less certain world. Citizenship education therefore needs to be taught in a way that embraces the contested nature of social issues (Hess, 2009). This then necessitates a classroom climate of criticality and care,

their citizenship actions and dispositions is well established (Harris and Wyn, 2009; Marsh, O'Toole and Jones, 2007; Wood, 2014). Local experiences and knowledge also significantly influence young people's interest in social issues and the extent to which they are informed about current issues. Research has shown that students are more politically motivated by issues which have a direct relevance to their lives and are situated in the 'micro-politics' of their local communities (Harris and Wyn, 2009). This presents a key challenge to educators to allow space for students' interests to form an integral component of citizenship learning, as well as to enable authentic engagement with communities to which they belong.

Finally, effective citizenship education requires *active responses*. When young

also confirms that more active forms of citizenship learning lead to greater levels of political agency in students during school and evidence of greater future engagement in citizen actions (McFarland and Thomas, 2006).

Conclusion

In plural societies such as New Zealand, it is unlikely that complete agreement will ever be reached on the kinds of citizens we want education to shape; nor can we escape the normativity that any citizenship education project entails (Kennelly and Llewellyn, 2011). Citizenship education policy will inevitably inherit an array of contested concepts and 'a plurality of competing and contradictory philosophical ideals and political models of citizenship' (Frazer, 2008, p.282). Our socio-historical analysis of New Zealand's citizenship education through social studies reveals such ideological tensions, which have largely been addressed by trying to meet a variety of political ends: for example, by combining notions of excellence, economic productivity and equity within a single aim (Mutch, 2013). This has led to a lack of clarity in citizenship education in New Zealand policy and practice, presenting a number of challenges to educators who are charged with interpreting and meeting the aims of these competing agendas of citizenship education in New Zealand, as well as to policymakers who attempt to navigate this contested space.

In our view there is a strong case for a 'critically active' form of citizenship education. As we have highlighted, international research evidence strongly points to this approach if we are to meet the needs of an increasingly diverse democracy. Such an approach requires flexible, plural and inclusive understandings of how citizenship is constituted and a deep knowledge of the complexity of society and social issues. Further, approaches which have links to real-world social issues, which build upon the current understandings that children and young people have, and that enable active responses are far more likely to have a long-term impact on citizen formation than learning facts about politics and government. This is

The development of an active and critically informed citizenry begins with the valuing of young citizens and the provision of authentic, democratic opportunities for them to practise citizenship during their school years.

in which the opinions of children and young people are valued and multiple perspectives are heard. Classrooms that are taught in this way have been found to also enhance greater civic engagement. Such classrooms actively follow current events, discuss problems in communities and ways to respond, promote active dialogue and discuss controversial issues, expose students to civic role models and study issues which matter to them (Hess, 2009; Kahne and Sporte, 2008; Kahne and Westheimer, 2006; Schulz et al., 2010).

Third, effective citizenship education requires *critical links to real world social issues*. Such issues need to be ones that young people can engage with and that have significance to their worlds, and worlds beyond. The significance of young people's experiences of places, communities and local issues in shaping

people participate in more active forms of citizenship learning, this results in stronger patterns of future civic participation. Kahne and Sporte (2008) found that offering active citizenship opportunities that focused directly on civic and political issues and ways to act in school had a significant impact in fostering students' commitments to civic participation, even when controlling for prior civic commitments. Importantly, this study also found that students were more likely to express higher levels of commitment to civic participation when they saw examples of neighbours dealing with community problems, and when they felt supported and looked after in their communities. This highlights the importance of commitment to positive citizenship experiences by whole communities, not just schools. Research

not to suggest, however, that there is one standardised blueprint for creating 'critically active' citizens in education contexts. Instead, the principles we have advanced require further creativity and critical engagement to enable communities to navigate differences in societal visions.

How such critically active approaches could be nurtured is an open question. We have shown that social studies education at years 1–13 holds considerable potential to provide a consistent 'backbone' of citizenship education throughout schooling (Aitken, 2005; McGee, 1998), and that New Zealand social studies classrooms are recognised internationally to have high levels of critical awareness and an open classroom climate (Schulz et

al., 2010). However, the status of primary and senior secondary social studies needs elevation if this potential is to be realised (ERO, 2006; Mutch, 2013). Further, clarity about the significance and role of social studies in developing citizenship education aims is also needed (Bolstad, 2012).

The development of an active and critically informed citizenry begins with the valuing of young citizens and the provision of authentic, democratic opportunities for them to practise citizenship during their school years. This requires collaborative, whole-of-government and cross-sector approaches to supporting the existing educational expertise within schools and informal learning contexts, and opportunities

for listening across difference about the kind of citizenship education we want for our young citizens. The task ahead is not to erase difference in the name of cohesion or consensus, but to consider what clarity might be achieved across multiple visions for critical, active citizenship education in this country. In the spirit of conversation, we have offered a critically active orientation as a way ahead, in the full knowledge that, ultimately, citizenship education must be judged by the society it produces (Osler and Starkey, 2005).

¹ We recognise the limitations of any definition of these terms. For further definitions, including 'political literacy', see the Civics, Citizenship and Political Literacy Working Group: <http://nzpsa.com/civics-citizenship-and-political-literacy>.

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Lisa Marriott

Advancing Better Tax Policy

the role of wealth taxes in New Zealand

Introduction

Most OECD countries have seen increasing gaps between the wealthy and the less wealthy in recent decades (OECD, 2008). Most OECD countries are also increasingly concerned about inequality. The measures and impacts of inequality are highlighted in a range of well-known publications (Wilkinson and Pickett, 2010; Corak, 2013; Stiglitz, 2013, 2015; Dorling, 2014; Piketty, 2014; Rashbrooke, 2014b). Suggestions for the causes of inequality are numerous and varied. While the tax system cannot directly address many of the contributing factors, wealth taxes such as capital gains taxes can assist with

the unequal treatment of taxes on income and capital, and taxes such as estate duties or gift duties may help with redistribution of wealth. Taxes such as capital gains taxes assist with the unequal burden of taxes on income and capital, and taxes such as estate duties or gift duties may help with redistribution of wealth. These wealth transfer taxes are not used in New Zealand, with the exception of a small number of specific capital gains measures that typically capture transactions that are businesslike in nature. New Zealand is unusual among OECD countries in not deliberately taxing gains from capital, which are

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generally accepted to contribute to increasing inequality: 'the rich own a disproportionate share of capital and receive the overwhelming share of capital gains' (Stiglitz, 2015, p.187).

This study examines three taxes that have the potential to assist with addressing inequality:¹

- estate taxes: New Zealand removed estate taxes in 1992 and there has been no subsequent attempt to reinstate any form of inheritance or estate tax;
- gift taxes: gifts made after 1 October 2011 do not attract any gift duty in New Zealand; and
- capital gains taxes: New Zealand does not have a comprehensive capital gains tax.

The article reports on the historical background of these taxes to investigate why taxes that have the potential to act in a redistributive capacity have not been successful in New Zealand. In investigating the historical justifications for the tax policy approach adopted, the study questions whether these are still valid in an environment where inequality is increasing across a range of measures. The second purpose of the article is to maintain debate on the tax structure and, in particular, on the current absence of wealth taxes in New Zealand.

The article commences with a brief discussion of the New Zealand tax system and of inequality in New Zealand. A brief historical account of estate taxes, gift duties and capital gains taxes follows. It then considers the future of wealth taxes in New Zealand, with reference to the historical justification of the taxes and the current environment.

The New Zealand tax system

The New Zealand tax system has many strengths, including strong administration and high levels of compliance. There are three ways of taxing: taxing income, taxing expenditure (consumption) and taxing wealth. Wealth is not comprehensively taxed in New Zealand; instead, personal income tax, goods and services tax and company tax account for the largest component of tax revenue collected – forecast to be 81% in 2016/17 (New Zealand Government, 2016).

There are few legitimate opportunities in New Zealand to minimise tax obligations. The primary exception is in relation to capital assets, where gains are not taxed. Income from capital assets (e.g. rents, dividends, etc) is taxed; only the capital gain component is not. The absence of a comprehensive capital gains tax, or other wealth taxes, has attracted criticism from the OECD: 'the lack of a capital gains tax in New Zealand exacerbates inequality (by reducing the redistributive power of taxation)' (OECD, 2013, p.31).

New Zealand has adopted a 'broad-base, low-rate' approach to tax policy. As noted by Inland Revenue,

A range of measures, from health and education through to housing affordability and social connectedness, show increasing gaps between Māori and Pacific people and the European population

the fundamental idea is to have a broadly defined tax base, which allows tax rates to be lower, thereby reducing the costs associated with taxation ... Further, having low rates and a broad base reduces biases between different forms of saving. (Inland Revenue, 2011)

However, the absence of taxes on wealth is not aligned with the broad-base, low-rate philosophy. Moreover, it creates a situation whereby capital assets, such as land, are tax-preferred and generates a preference for saving in the form of property investment. This is in direct contrast with the purported philosophy.

Inequality in New Zealand

Inequality is well-established in New Zealand. The top 10% in New Zealand earn 8.6 times the income of the bottom 10%, once tax and transfers are taken into account (Perry, 2013a). However, recent research suggests that inequality in New

Zealand is increasing, and particularly so for Māori and Pacific people (Marriott and Sim, 2015). A range of measures, from health and education through to housing affordability and social connectedness, show increasing gaps between Māori and Pacific people and the European population (Perry, 2013b; Marriott and Sim, 2015).

Income inequality is higher than the OECD average, with low incomes more prevalent among Māori and Pacific peoples (OECD, 2013). The most recent Gini coefficient, for 2012, was 0.33 (OECD, 2016b). This is the same as Australia's and the OECD average, but higher than Denmark (0.25), Finland

(0.26), Norway (0.25) and Sweden (0.27) (OECD, 2016b).

Figures relating to inequality in New Zealand are not dissimilar to those frequently highlighted in other OECD countries. The wealthiest 1% of New Zealanders own three times as much as the poorest 50%, with the wealthiest 10% owning half of the country's total wealth (Rashbrooke, 2013). The lowest-income earners in New Zealand have seen little in the way of income increases over the past 30 years. Moreover, when housing costs are taken into account, the lowest-income households have less money to spend than 30 years ago (ibid.). Rashbrooke (2014a) observes the significant wealth inequality in New Zealand, which is also reflected in proportionately greater wealth held by New Zealand Europeans as compared to Māori and Pacific peoples.

Estate taxes

Estate duties² were introduced under the Stamp Duties Act 1866, which came into

operation on 1 January 1867. The amount of the duty was specific to the size of the estate. The scale graduated from 1% for estates under £100, increasing by 1% for each additional £100 up to 5% for estates in excess of £500. However, in relation to successions of 'real and personal estate' the duty depended on the relationship of the donor and the donee.³ The primary objective of the duty appears to have been to assist with revenue generation. However, the amount likely to be raised from the new tax was far from clear. Various figures were suggested in Parliament, with perhaps the most honest statement coming from the attorney general, Henry Sewell, who confirmed that 'the Government had no

at a more equitable distribution of wealth.

In addition, there was a view that the state had assisted in the generation of the wealth, and therefore it was reasonable that some be returned to the state:

those who have made their money in this Dominion, and have been enabled to make that money largely by the expenditure and improvements of the State, ... all these are very largely affected in the building up of the wealth of those who have made money in the past.⁶

1950 to less than 1% in 1978 (Goldsmith, 2008, p.272).

The primary concern with estate duty, resulting in the changes proposed in the Estate and Gift Duties Amendment Bill, appeared to be related to farming estates. There was concern at the impact of the estate duty on the 'medium-sized estate', where inadequate provision may have been made for the duty. It was noted in Parliament that 'a high proportion of these estates were those of farmers.'⁷ Farming was a crucial component of the New Zealand economy and farming lobby groups were influential in these changes (Duff, 2005). It was argued that looming estate duties were creating a deterrent for young farmers to continue on family farming operations due to the significant debt that could potentially be required to pay the estate duties when the farm was inherited (Green and McKay, 1980). Raising the threshold level from \$25,000 to \$100,000, with further increases to \$250,000 by 1 April 1982, removed the likelihood that small or medium estates would be liable to estate duty.

With the introduction of the Estate Duty Abolition Act 1993, no estate duty was payable under the Estate and Gift Duties Act 1968 for any person who died after 17 December 1992.⁸ The primary factors contributing to the demise of the estate tax were complexity and a lack of revenue generation. While the tax was not necessarily complex, there were complex avoidance schemes in place, which also contributed to minimal tax revenue generation from the duty. However, gift duty remained payable after this date.⁹

Gift duties

Gift duties were introduced in 1885 in New Zealand (Littlewood, 2012). The original aim was to minimise opportunities for people to avoid the death duties of the time by gifting property before their death. The Deceased Persons' Estates Duties Act 1881 Amendment Act introduced the same obligations for gifts as for estates, which were payable by the donee of the property.¹⁰

Like the estate duty, the gift duty was vulnerable to frequent changes: of rates; exemption thresholds; methods by which the applicable rate of duty was

... the gift duty was vulnerable to frequent changes: of rates; exemption thresholds; methods by which the applicable rate of duty was determined ... and the type of rate ...

data, as the tax was an entirely new one'⁴

When the legislation was amended with the introduction of the Death Duties Act 1909 there was a clear perspective that inheriting wealth, or at least inheriting considerable wealth, was not desirable. The estate duty was described in the House as

the fairest and most equable of all taxes under a rational law, and, provided dependants are properly exempted, death duties are a tax on wealth in the hands of those who did not earn it and to whom the deceased owed no duty.⁵

What was also evident was the opportunity to tax wealth and enable greater redistribution:

This Bill proposes to get at the wealthy classes. On whom does it impose a burden? Practically on no one at all. It is not so much an increase of taxation as a perfectly fair and legitimate attempt to aim

Estate duties were vulnerable to frequent changes of rates, thresholds and application. Littlewood (2012) estimates that in the 1890s approximately 20% of adults dying in New Zealand would bequeath estates that would leave them liable to the estate duty. Seventy years later, most estates were incurring some levy. For example, from 1960 to 1975 between 65% and 80% of estates paid estate duty. Estates of a moderate size (\$20,000 in 1960, \$100,000 in 1975) incurred duty of between 16 and 18% of their aggregate value (Green and McKay, 1980).

The Estate and Gift Duties Amendment Act 1979 changed the thresholds at which estates became subject to the duty, with the effect that the majority of estates were no longer liable to pay any duty. Green and McKay (1980) calculate that at the time of the amendment around 250 estates, or about 1.7% of all estates, would remain liable. By that time taxes collected from estate duties had diminished significantly, from around 4% of total tax revenue in

determined (the value of the gift or the total wealth of the donor); and the type of rate (i.e. flat or progressive).¹¹ Various avoidance mechanisms were generated over the following years, particularly when the gift duty was charged at a lower rate than the estate duty.¹²

Combined revenue from death and gift duties in 1990 was \$79.6 million (ibid., p.5). With the removal of death duties from the end of 1992, revenue collected from gift duties alone had reduced to \$5 million by 1995. Part of the reason for the lack of revenue generation from the tax was the allowable transfer limit. In 2011, when the tax was repealed, gift duty applied when the total value of gifts made by a person in a 12-month period was greater than \$27,000.¹³ The \$27,000 threshold for gift duty-free transfers saw the use of gifting programmes which made the tax relatively easy to avoid. Under a typical gifting programme, assets were sold at market value in exchange for an interest-free, on-demand loan for the value of the asset (Inland Revenue, 2010). Transfer of the legal title for the asset was made, but no payment. The debt was subsequently forgiven by the donor at \$27,000 every 12 months, which was within the allowable gift duty threshold. At the time the gift duty was repealed, such gifting programmes were acknowledged to be widely used (ibid.).

The gift duty had been recommended for repeal by a major tax review committee in 2001 (McLeod et al., 2001), on evidence that it generated little revenue and involved significant compliance costs. At the time it was repealed, 225,000 gift duty statements were filed annually, of which only 0.4% resulted in a gift duty liability. Repeal of the tax was expected to reduce government revenue by \$1.6 million per annum, while saving \$430,000 in annual administrative costs. Compliance cost savings by the private sector were forecast to be \$70 million per annum (Inland Revenue, 2010). Arguments for retention of the gift duty included: protecting the tax base; limiting the ability of individuals to reduce their taxable income by transferring income-generating assets to a trust; creditor protection; manipulation of eligibility for welfare assistance; avoidance of child support liability; and relationship

property disputes. However, none of these issues was felt to be of sufficient significance to not repeal the duty. Thus, after 19 years, the anomaly of retaining gift duties while repealing estate duties was resolved. The Estate and Gift Duties Act 1968 was amended in 2011 with the result that gifts made on or after 1 October 2011 were no longer liable for gift duty.

Capital gains taxes

New Zealand has never had a comprehensive capital gains tax (Burman and White, 2003). As noted, this approach is unusual among OECD countries. The taxation of capital gains is a topic that has generated much debate in New Zealand;

that such a tax would not lower tax avoidance is puzzling, as the absence of a capital gains tax generates incentives to classify taxable income as a non-taxable capital gain in order to avoid a tax liability. The position on fairness is also confusing. As a capital gains tax is likely to fall significantly on those who have more wealth, it is difficult to argue that horizontal equity is not improved with the introduction of a capital gains tax.

More recent commentary on a capital gains tax can be found in the report of the Tax Working Group (2010) and New Zealand Treasury reports (Treasury, 2009, 2013). By 2010 views towards a capital gains tax were noticeably different:

As a capital gains tax is likely to fall significantly on those who have more wealth, it is difficult to argue that horizontal equity is not improved with the introduction of a capital gains tax.

multiple tax reviews have considered the issue. While it is generally accepted that the New Zealand income tax base is effective, it is also recognised that the absence of capital gains taxation is a gap (McLeod et al., 2001; Treasury, 2009, 2013), yet, despite this, historic reviews have not recommended the introduction of one. The 2001 McLeod review, for example, concluded:

We do not consider that New Zealand should adopt a general realisations-based capital gains tax. We do not believe that such a tax would make our tax system fairer and more efficient, nor do we believe that it would lower tax avoidance or raise substantial revenue that could be used to reduce rates. Instead, such a tax would increase the complexity and costs of our system. (McLeod et al., 2001, p.iii)

As wealth or other capital was not taxed at the time of this review, the claim

‘the most comprehensive option for base-broadening with respect to the taxation of capital is to introduce a comprehensive capital gains tax’, the Tax Working Group observed. The primary concerns with the introduction of such a tax related to ‘practical challenges’, and ‘potential distortions and other efficiency implications that may arise from a partial CGT’ (Tax Working Group, 2010, p.7). Multiple reasons were provided by the Tax Working Group for bringing capital gains within the tax net, including:

- adopting an accrual system brings the tax system closer to taxing comprehensive economic income;
- reducing bias in favour of capital assets;
- reducing distortion of investment decisions;
- improving integrity of the system by including a currently untaxed form of income in the tax base; and revenue generation.

The ‘usual’ arguments against a capital gains tax were also identified: the lock-in

effect; what would be included/excluded; administration costs; and whether there are more effective ways of broadening capital gains taxation without a formal capital gains tax.

The future of wealth taxes in New Zealand

The history of wealth taxes in New Zealand suggests earlier favour towards their redistribution potential, but diminishing political and public appetite for them over time. The key current arguments against wealth taxes are that they are complex, generate high compliance costs and do not collect large amounts of revenue. Each of

Typically, discussions on wealth taxes are not far removed from discussions on avoidance arrangements. However, when arrangements are made solely for the purpose of avoiding paying legitimate tax, this can, and should, be treated as tax evasion. Greater investigation, prosecution and sanctions associated with non-compliance with wealth taxes is likely to assist with compliance and deter non-compliance. While it is argued that these activities are costly, this on its own is not sufficient reason to ignore the need for a change of narrative associated with the non-payment of wealth taxes.

Currently in New Zealand, capital accumulates in wealthy families and is passed on through generations potentially untaxed where the assets are not sold ...

these points is addressed in the following sub-sections, which are followed by a discussion of the changing environment in relation to wealth taxes.

Complexity and compliance costs

Complexity and compliance costs have not limited the adoption of wealth taxes in other OECD countries, nor should they necessarily limit their application in New Zealand. The extent to which revenue can be generated from wealth taxes is determined by the quality of the policy, what is included or excluded, and the political concessions that are necessary to introduce such policy. While administrative and compliance costs are frequently raised as an obstacle, there have been no recent estimates of what these costs might be in New Zealand. By way of illustration, the Tax Working Group report (2010) in its discussion of the taxation of capital gains makes eight references to compliance costs and two references to administrative costs, with no quantification of either. However, estimated compliance costs relating to gift duties greatly exceeded revenue generated at the time the gift duty was repealed in 2011.

Revenue collection

One of the primary reasons given for the repeal of estate duty and gift taxes was their inability to collect significant revenue. Current revenue statistics across the OECD for a range of wealth taxes suggest that these remain unlikely to collect significant revenue. With the exception of Belgium, the 15 other countries with estate or inheritance taxes collect less than 1% of their total tax revenue via these means (OECD, 2016a, 4310: estate and inheritance taxes, data as at 2012). Revenue collection is even lower with gift duties, with the highest rate of tax revenue as a proportion of total taxation reported by Korea at 0.674%; the other eight countries all report collecting less than 0.25% of total taxation from gift taxes (ibid., 4320: gift taxes, data as at 2012). In 2014, 11 OECD countries reported recurrent taxes on net wealth, but only Luxembourg (5.8%) and Switzerland (4.2%) collect a moderate amount of their tax revenue from this source. Hungary collects 1.1%, Iceland 1.2%, Ireland 1.3% and Norway 1.1%. Other countries collect less than 1% through this tax (ibid., 4200: recurrent taxes on net wealth, data as at 2014).

Despite the claims of insignificant revenue generation from wealth taxes, various forecasts relating to capital gains taxes suggest that there is reasonable potential for revenue collection. The Labour Party proposed a capital gains tax prior to the 2011 election, and it was forecast to collect \$2.8 billion per annum when it reached a steady state (KPMG, 2011).¹⁴ This is approximately 4% of total tax revenue. The 2010 Tax Working Group report suggested that annual revenue of \$4.5 billion may be gained from a capital gains tax that excluded owner-occupied housing, while observing that in Australia over the previous ten-year period, 3.9% of total annual tax revenue was generated from capital gains tax. Figures from the New Zealand Treasury (Treasury, 2009) forecast \$5.5 billion from a realisation-based capital gains tax excluding the family home, once the tax reached a steady state of collection.

Equity

As noted by Wijnvliet (2014), 'from the perspective of the principle of ability-to-pay, there are no apparent reasons for preferential treatment of capital over labour whatsoever'. Wijnvliet goes on to note that tax equity (ability to pay) supports taxation of all increases in economic power. In a similar manner, Burman and White (2003) observe that the absence of a capital gains tax is horizontally inequitable as taxpayers in similar situations may pay significantly different amounts of tax, depending on how their investments are structured. Moreover, the situation is vertically inequitable, as the absence of taxes on wealth results in the wealthy proportion of the population paying less tax on their gains than less wealthy taxpayers whose income is generated from wages. Currently in New Zealand, capital accumulates in wealthy families and is passed on through generations potentially untaxed where the assets are not sold (and in some cases when they are sold).

One of the arguments frequently raised in support of wealth taxes is their ability to improve the progressivity of the tax system. Data is not available on values that are passed through generations by way of inheritance in

New Zealand. However, Australian data shows that average inheritances of the richest quintile are considerably higher than those received by the middle or poorest quintiles (Grattan Institute, 2015). Hodgson and Sadiq suggest that in Australia only 3% of taxpayers with taxable income below A\$80,000 receive capital gains, compared to 6.6% of taxpayers with income between A\$100,000 and \$150,000, and 19% of taxpayers with total income in excess of A\$500,000 (Hodgson and Sadiq, 2016).

Do the original reasons remain?

The initial reason estate duties were introduced was to assist with revenue generation. However, by the early 1900s a redistribution objective was also evident. In its earliest form the duty collected a moderate amount of revenue, but this deteriorated over time, with little apparent political appetite to address the various avoidance measures that became well-established. The primary reasons behind the dilution, and eventual repeal, of the estate duty appear to be the opposite of those behind their introduction. That is, the splitting up of farms to pay estate duties had become undesirable and the estate duty collected little in the way of revenue. This is likely to reflect both a change in political philosophy away from redistribution, and political manoeuvres to avoid conflict with the powerful agriculture lobby groups.

The reasons behind the introduction and repeal of the gift duty are similar. The tax was initially intended to collect revenue, while supporting the integrity of the estate duty. However, the relatively high exemptions and wide use of gifting programmes allowed for widespread misuse of the scheme and facilitated almost complete avoidance of the tax. Moreover, once estate duties were removed in 1993, there was little to justify the continued existence of the gift duty.

Secondary reasons that were evident in support of taxing wealth included the argument that as the state contributes to any gains made (through supportive policies, economic growth, etc), the trade-off for state support was in the form of taxes on any capital gains made. This argument is not visible today. However,

there is an argument to be made that the government does support capital growth, such as in the form of property rights or regulatory protection, and therefore it may be reasonable to expect a return from this support.

In 1967 the Taxation Review Committee suggested that:

while the community has long accepted that the tax system should operate to reduce inequalities in the distribution of income and wealth, this desire for equality should not be pressed to a point where it could have serious repercussions on personal saving and such incentives

pronounced among Māori and Pacific people.

Political economy

It is not possible to engage in a discussion of capital taxes in New Zealand without reference to the political background that influences likely future avenues of taxation. As will be evident from the brief historical accounts provided above, wealth taxes have become politically unattractive in New Zealand. Duff (2005) suggests that wealth transfer taxes incur considerable political cost and potentially fewer benefits than other tax options that may generate similar levels of revenue. While there may be political cost associated

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to economic activity, as effort, investment, enterprise, and the willingness to take risks.

However, the situation of today has resulted in exactly this outcome: there are strong financial incentives to invest in the relatively low-risk property market due to its preferred tax treatment. Moreover, the presence of tax-preferred investment options, such as investment housing, distorts investment decisions away from what may be a more productive use of investment funds. As demand increases for investment in tax-preferred housing, housing prices increase where demand exceeds supply. This pattern is visible in the current market, and is exacerbated by poor returns on other forms of financial investment. Moreover, it contributes to lower levels of owner-occupation. Recent data shows that owner-occupied housing in New Zealand has reduced from 75.2% in 1986 to 63.7% in 2013 (Statistics New Zealand, 2016). The reduction in owner-occupied housing is even more

with introducing a new tax of such kind, the suggestion that there are few benefits is incorrect. Moreover, their political unpalatability does not make them a poor policy option. Instead, it has the potential to distort the debate on their contribution to society.

Many of the tax policies adopted in New Zealand over the past 20 years have followed the general trend in developed economies: lowering rates on company tax, lowering rates on personal income tax, and removal of distortions in the form of special exemptions and credits. As observed by Swank and Steinmo, 'concerns about efficiency and revenues have seemingly eclipsed the goal of redistribution through steeply progressive rates' (Swank and Steinmo, 2002, p.651). Swank and Steinmo also observe the 'paradigm shift in tax policy' driven by internationalisation competing with pressure for reduced tax rates on domestic capital and labour. However, what they call the 'new political economy of taxation' (ibid.) does not support the

exclusion of capital gains from taxation. Indeed, it provides support for the taxation of capital. New Zealand has followed the global trend in taxation with its broad-base, low-rate philosophy, resulting in increases in the goods and services tax, while the top marginal income tax rate and the company tax rate have decreased. Globally there has also been a move away from taxing wealth in the form of gifts, estates or inheritances. However, there has not been a similar retreat from taxing gains on capital. The complete absence of wealth taxes here is in conflict with both the global approach and New Zealand's own broad-base, low-rate approach to tax, with the exclusion

capital gains tax and a land tax at 0.25% – were not pursued further. The absence of a capital gains tax, and its accompanying distorting impacts, have been highlighted by the New Zealand Treasury in recent years. In 2009 the Treasury observed the 'strong case for reducing and removing the distortions in how we tax capital and capital gains' (Treasury, 2009, p.1). It acknowledges the preferred tax treatment afforded to rental housing as compared to other investment types (Treasury, 2013). The potential to divert income and undermine the integrity and fairness of the tax system is also noted, together with the potential to broaden the base of the tax system with the introduction of a

Conclusion

This article set out to examine whether the historic justifications pertaining to wealth taxes in New Zealand remain valid in the current environment. The original explanations for the presence of estate taxes and gift duties and the absence of capital gains taxes no longer apply: estate taxes and gift duties are unlikely to generate significant revenue; the focus has moved away from deliberate redistribution to a broad-base, low-rate approach to taxation in order that the tax system remains globally competitive; and it is no longer generally accepted that the absence of capital gains taxes is fair or efficient. However, while the narrative associated with wealth transfer taxes has changed, it remains possible and desirable to focus on both redistribution and having a globally competitive tax system. In an environment of increasing inequality there is a robust case for an increased focus on redistribution by way of the tax system.

While there are few strong arguments for reinstating estate taxes and gift duties, there are few strong arguments against introducing a capital gains tax. While such a tax will generate (as yet undetermined) compliance costs, it will collect revenue and reduce current distortions within the tax system. Moreover, a capital gains tax is more aligned with the broad-base, low-rate philosophy than is its absence. Nonetheless, New Zealand's approach to capital gains taxes appears entrenched, despite support for them from international agencies (such as the OECD) and the Treasury.

Taxes on capital can play a central role in addressing inequality (Piketty, 2014). Adjusting the tax system will not resolve the inequality across a range of measures issue in isolation, but it can assist through redistributive impact of taxes, which has diminished over time (OECD, 2013). In a society with inequality across a range of measures there is a convincing case for expanding the broad-base, low-rate approach to taxation through the inclusion of a capital gains tax. Changes to the tax system can make a positive contribution towards ensuring that inequality does not continue to increase in New Zealand.

In a society with increasing inequality there is a convincing case for expanding the broad-base, low-rate approach to taxation through the inclusion of a capital gains tax.

of a key component of the tax base from the tax system.

As noted by Duff (2005), wealth taxes appear to be particularly politically vulnerable. However, as they are unlikely to be paid by the majority of the population, the widespread antipathy to wealth taxes across the political spectrum is puzzling. The majority of the population in New Zealand does not support a capital gains tax, despite the fact that it is likely to affect only a minority. This may arise from widespread misunderstanding of what a capital gains tax is, how it would apply and who it would affect. This lack of understanding, and consequent antagonism, suits the agenda of those who are likely to be affected by wealth taxes.

In 2009 a number of tax changes were proposed, most of which were subsequently implemented: increasing GST; reducing company tax rates; reducing personal income tax rates; removing the 20% depreciation loading; and removing depreciation for buildings. However, two other proposals – a realisation-based

capital gains tax.

In the Treasury's view, 'the ideal reform would be to broaden the tax base through a more comprehensive capital gains tax' (ibid., p.32). This leads to the inevitable question, why has 'the ideal reform' not been introduced when the balance of arguments weighs in support of a capital gains tax? The current government has put forward no strong arguments for the absence of a capital gains tax. Arguments such as the need to include owner-occupied houses are not valid, as it is typical for these to be excluded in capital gains taxes globally. A capital gains tax may not, in isolation, address the high cost of property in New Zealand, but it would go some way to ensuring that property is not a tax-preferred investment. A capital gains tax will be revenue positive. Perhaps most importantly, a capital gains tax will assist with ensuring equitable outcomes from the tax system and reduce the existing privileging of the wealthy.

- 1 Land taxes are another option that could be included in this discussion, but in the interests of space they are not addressed here.
- 2 Estate duties are also known as death duties. They differ from inheritance taxes: estate taxes are charged against the estate of a deceased person, while an inheritance tax is paid by the person who receives the inherited property.
- 3 Stamp Duties Act 1866, schedules II and IV.
- 4 *New Zealand Parliamentary Debates*, 26 Sept. 1865, p.632.
- 5 *Ibid.*, 29 Nov. 1909, p.441.
- 6 *Ibid.*, 29 Nov. p.449, 10 Dec. 1909, p.920.
- 7 *Ibid.*, 5 Sept.1979, p.2755.
- 8 Estate Duty Abolition Act 1993, section 3.
- 9 Estate Duty Abolition Act 1993, section 6.
- 10 Deceased Person's Estates Duties Act 1881, sections 10–11.
- 11 For a comprehensive history of gift duties and estate taxes in New Zealand, refer to Littlewood (2012).
- 12 Such as in the Death Duties Act 1909, under which gift duty was charged at a flat rate of 5% while the top rate for estate duty was 15% (Littlewood, 2012).
- 13 Estate and Gift Duties Act 1968, schedule 3.
- 14 After considerable adverse reaction, the policy was abandoned in 2015. Justification for the retreat from capital gains tax (and inheritance tax) was inadequate resources to fully analyse the policies effectively and the view that the policies should be considered in the context of a wide-ranging review of the tax system as a whole.

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John Prebble

The Panama Papers and Foreign Trusts what should be done?

The Panama Papers and foreign trusts

On 3 April 2016 the International Consortium of Investigative Journalists (ICIJ) and the German newspaper *Süddeutsche Zeitung* announced that for the past year they had been analysing a cache of 11.5 million records, now known as the Panama Papers, taken from the Panamanian law firm Mossack Fonseca. The cache included documents relating to trusts and companies in several tax havens. The ICIJ gave details of a number of users or beneficial owners of these structures. Sixty thousand of the records related to New Zealand.

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At the time of writing, relatively few of the Panama Papers have been analysed, but it appears that most New Zealand-related records involve what are known as 'foreign trusts'. A number of New Zealand companies specialise in setting up and operating foreign trusts for non-residents. Solicitors and accountants often provide the same service. The industry is thought to earn over \$25 million a year (Pullar-Strecker, 2016), though the present author suspects that the sum is rather more.

'Foreign trust' is a concept of the Income Tax Act 2007. Broadly speaking, and over-simplifying, a foreign trust has one or more New Zealand-resident trustees but no New Zealand-source income and no settlor or settlors who are or were resident in New Zealand. Beneficiary residence does not matter, since residents of New Zealand, and thus beneficiaries of any trust who are resident in New Zealand, must pay tax on all income wherever it comes from. Nevertheless, in practice few foreign

trusts have beneficiaries that reside in New Zealand. That is, counter-intuitively, a 'foreign trust' is a trust with at least one New Zealand-resident trustee where the settlor and income are foreign. Generally speaking, as will be explained, New Zealand does not tax the income of foreign trusts.

The concern with foreign trusts is that in addition to legitimate uses, New Zealand foreign trusts can be employed to avoid or evade income tax of other countries, to hold stolen wealth, or as repositories for profits from illegal activities.

On 11 April 2016 the government appointed John Shewan to investigate foreign trusts, to report and to make recommendations as to what, if anything, should be done about them. His report (Shewan, 2016) was published on 27 June. In summary, Shewan recommends that New Zealand should maintain a register of foreign trusts, including their deeds, that discloses settlor(s), protector (if any), trustees and beneficiaries (with provisions for beneficiaries of discretionary trusts) (p.3). The objective is to provide information that Inland Revenue and certain other authorities can search if need be to respond to inquiries from foreign tax administrations and other foreign officials, such as people charged with investigating money laundering. The ministers of finance and revenue responded on 13 July 2016, adopting the recommendations of the report with few modifications (English and Woodhouse, 2016). This article addresses the issue of foreign trusts in general, together with some aspects of Shewan's report. The article focuses on income tax, although the report itself is more wide-ranging. Some knowledge of the history and nature of trusts and of international taxation may help readers to understand the issues.

History and nature of trusts

A trust is better thought of as a remedy or a relationship than as an entity. The trust developed within the common law (that is, judge-made law) in mediaeval England. For instance, when a baron accompanied the king on a crusade he might convey the title to his castle to his neighbour. Having

legal title to the castle, the neighbour could repel adverse claims, both in court and by force if necessary. But what happened if the neighbour refused to re-convey the castle on the crusader's return? Since the crusader had voluntarily granted legal title to the neighbour, the common law offered no remedy.

Such injustice offended the conscience of the king, and, by later delegation, of the king's lord chancellor, and then of the courts of equity. The remedy was to throw the neighbour into prison until he gave common law title to the castle back to the crusader. That is, the system of law that came to be known as 'equity' did not itself effect justice, but compelled defendants to act justly within the common law. Equity operates in the same way today, to prevent people from abusing their rights under the common law.

The crusader's remedy came to be institutionalised as the trust. In conveying title to the neighbour, the crusader was a settlor who settled property on trust. In accepting the property subject to obligations to hold it for the benefit of the crusader and to return it to him the neighbour became a trustee. The beneficiaries of the trust were the crusader, or his heirs if he did not return. The example illustrates that, in contrast to, say, a company, the trust is fundamentally a remedy rather than an entity. It is also a creation of the common law, not of statute.

Property owners began to use the trusts paradigm to answer other needs. For instance, when they foresaw that they would not be able to look after their property personally they 'settled' their property on trustees to look after it and

eventually to distribute it to beneficiaries. A primary example is the deceased estate. The law, and common sense, forbade testators from leaving property directly to infants, so testators appointed trustees to hold their property after death, to pay or to retain income from the property, and to distribute the capital in due course.

Flexibility of trusts

At this point, a particular quality of the common law becomes relevant. Essentially, the common law permits people to do anything that is not forbidden. That is why, with few exceptions, parties can form binding contracts to do almost anything. Trusts reflect the same quality of flexibility. Subject to very few restrictions, settlors can specify precisely how capital and income of a trust must be distributed (fixed trusts), or they

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can leave decisions wholly or partly to the discretion of the trustee, or even of someone else (discretionary trusts). Trusts can substitute for the settlor, for instance, after death, as explained, or they can protect assets: from corrupt governments intent on looting their citizens; from tax gatherers; or from creditors and spouses. Trusts can sometimes protect, or at least hide, assets stolen from the true owner.

The basis for this flexibility is that trust law recognises that property may be subject to two forms of ownership at the same time. Legal ownership vests in the trustee, whose name appears on titles and registers if ownership must be recorded. Beneficial ownership resides in the beneficiaries, but that ownership may in practice be both unknowable and tentative: unknowable to anyone who does not know that the title holder to property

is only a trustee; and provisional because beneficiaries' interests may depend on the exercise of a discretion that has not occurred.

Trusts can be so flexible that the same person may be at the same time all of settlor, trustee and beneficiary, although where a trust has only one person in all these roles the three roles are likely to merge, leaving no trust: only one person holding the property as beneficial owner. Instead, careful drafting can ensure that merger does not occur.

Broadly speaking, national borders do not trouble the common law. The law will, for example, enforce a trust settled in one country, administered in a second and holding property in a third, with trustees resident in a fourth

Fixed and discretionary trusts

In the paradigm of a trust the interests of beneficiaries are fixed. For instance, a trustee of an estate may hold the property of the estate to pay the income to the testator's widow during her life, and, at her death, to transfer the property to the testator's daughter. Or a testator may leave her property to trustees to sell the property and to divide the proceeds equally between her three children.

Discretionary trusts are different and take the concept of flexibility to another level. The settlor or testator may authorise the trustee to divide property between beneficiaries according to the discretion of the trustee or of another nominated person. Often, a trust will empower the trustee to omit one or

New Zealand trusts that were identified in Mossack Fonseca's documents. If so, it is unlikely that there was any intention of passing property to the charities.

Creation and drafting of trusts

People can create trusts orally, by informal action, or even by accident, if they inadvertently put themselves under fiduciary obligations to others. ('Fiduciary' obligations arise where one party owes special duties to put the interests of the other ahead of his or her own. For instance, although the law in general allows contracting parties to exact from each other whatever profit they honestly can, an agent must not profit at the expense of her principal. Likewise, unless there is provision in the document that creates the trust, trustees must not profit from the trust property.) Nevertheless, most trusts are created formally, by recording their terms in a deed, which, in the present context, means essentially a formal document where signatures are witnessed.

Trust deeds are complex, but lawyers who practise in the area have well-developed precedents, so the drafting process is undemanding for the most part. Many provisions of deeds exist to replace common or statute law that would otherwise apply by default. Other provisions are calculated to ensure that the trusts in question do indeed have the tax effects that their authors intend. Mistakes are rare, especially in deeds that are drafted to create trusts that are to be employed in tax planning.

The courts tend to take deeds at face value. For instance, it is common for someone to settle a trust that is to be used by an unrelated family. Later, the substantive settlor may transfer property to the trust. The objective is to circumvent legislation that imposes tax obligations that are defined in terms of settlors of trusts. As far as New Zealand income tax is concerned, section HC 27 of the Income Tax Act 2007 frustrates that stratagem by treating anyone who transfers wealth to a trust as a settlor.

Problems of the regulation of trusts

Before considering the problems that trusts pose for international tax policy, it

People can create trusts orally, by informal action, or even by accident, if they inadvertently put themselves under fiduciary obligations to others.

or fifth, and beneficiaries scattered in a sixth or seventh. A trustee of one trust may hold some or all of the property for the trustee of a second trust, the first often a 'custodian trustee', with no duties other than to obey the commands of the second. Paradigm trustees are individuals, known to law as 'natural persons', but, in the absence of statutory prohibition, companies and other incorporations may be trustees.

There is no trans-national law of trusts. A common law court applies the 'proper law' of the trust, being the law of the jurisdiction that is most closely connected with the trust in question, which may not be the law of the jurisdiction where the court sits. A trust deed may authorise the settlor to override the 'closest connection' test and, within wide limits, expressly choose the proper law to be applied. The deed may authorise the trustees to move the trust's administrative centre to another jurisdiction, usually appointing new trustees and replacing the proper law at the same time.

more beneficiaries altogether. A trust deed may name and precisely identify beneficiaries, or simply define them, for instance by reference to a common grandfather. That is, trustees take decisions about dividing trust property that settlors would take themselves if they retained the property.

The rule in *Saunders v Vautier*¹ provides that if all beneficiaries are of full age and absolutely entitled (that is, broadly, there is no other possible beneficiary), the beneficiaries may combine to require the trustee to transfer the property to themselves. A settlor can prevent this result by, for instance, adding a charity as a beneficiary. There may never be any intention for property to go to the charity, but its presence as a beneficiary means that the family members or others who are the substantive target of the settlor's benevolence cannot compel the trustee to terminate the trust. It is probably for this or similar technical reasons that a number of well-known charities appeared as beneficiaries of

is helpful to list a number of the challenges that trusts pose to any regulatory authority:

- Unlike companies, which are created by the state (mostly under the Companies Act 1993), trusts are constructs of the common law. Just as for contracts or wills, or for private correspondence for that matter, there is no automatic way for the state to find out about trusts or to compose a register.
- Beneficial ownership is separated from legal ownership and possession, which means that it may be hard to discover the beneficial owners of property held by trustees.
- Moreover, where a law provides for registration of ownership, such as in the Land Transfer Act 1952, not only is it not customary to require registration of beneficial ownership, but it may be forbidden.²
- Trust deeds may be so drafted that the anticipated beneficiaries are identified by reference but not named, and may not be identified for many years.
- Conversely, the named beneficiary may be a charity or other not-for-profit organisation that the settlor and trustees never intend to benefit. As mentioned, this may explain why New Zealand trusts among the Panama Papers name a number of charities.
- A trust may empower the settlor, or someone else, to add beneficiaries at a later date. That is, not only are these additional beneficiaries not named in the deed; they are not even described by reference except in rather general terms.

The international tax system

Like most countries, New Zealand employs 'source' and 'residence' to determine whether income is taxable, taxing:

- all income that has its source in this country, whether derived by residents or by non-residents; and
- all income derived by residents, whether having a New Zealand source or a foreign source.

There are two important consequences. First, some income risks double taxation. For example, interest that a New Zealand resident earns in the United States is potentially taxed in both countries. The same applies to, for instance, fees, salaries, dividends, royalties and so on. Like other countries, New Zealand mitigates this burden in a number of ways. The Income Tax Act exempts certain foreign-source income from New Zealand taxation. In respect of some other income, the act grants New Zealand residents credit for foreign taxes imposed at source, subtracting the credit from New Zealand tax imposed on the same income. In addition to these unilateral measures, New Zealand

that is resident in New Zealand. We will call this structure, where foreigners cause foreign-source income that they derive to be paid to a New Zealand bank, Model 1. As explained, New Zealand has no reason to tax the income of Model 1 when the bank receives it.

New Zealand trust taxation

Unlike companies, trusts are not legal persons. That is, trusts' existence comprises only their settlors, trustees, beneficiaries and trust property, and the interrelationships between them. In contrast, companies have an existence independent of their shareholders and directors, albeit a fictional existence created by the law. For trusts, it follows

Using New Zealand-resident trustees to look after the income should not, and does not, make any difference to the income's fiscal status as far as New Zealand is concerned.

has entered some 40 bilateral treaties that operate in the same way, but that are usually more generous towards the taxpayer than is the statute. These treaties are known variously as double tax treaties, agreements or conventions.

The second consequence is that where income does not have a New Zealand source and is not derived by a New Zealand resident, New Zealand makes no claim to tax. This is not surprising: why would New Zealand tax, for instance, a French resident on salary that he earns in Switzerland? But the principle goes further. Suppose that the Frenchman trusts neither French banks nor Swiss banks and asks his employer to pay the salary into an account at the Wellington branch of the Bank of New Zealand. Again, not surprisingly, New Zealand taxes neither the employee nor the bank on the salary, though New Zealand does impose tax on interest that the bank may pay or on fees that it charges, both the interest and the fees having a New Zealand source and the fees being earned by a company

that the law taxes not the trust, but the trustee or the beneficiary. If trustees distribute income to beneficiaries in the year when the trustees derive it the beneficiaries are taxed, broadly speaking as if they derived the income directly rather than via the trust.³ Following the rules explained under the previous heading, tax bites if the beneficiaries are resident in New Zealand or if the income has a New Zealand source. If the income has a foreign source and the trustee pays it to a foreign-resident beneficiary there is no tax. Generally, the same applies for both fixed and discretionary trusts. We will call this structure Model 2.

In policy terms, Model 2 reflects Model 1. In Model 1 the source of the income is Swiss (foreign) and the owner of the income is French (also foreign). Using a New Zealand bank to look after the income should not, and does not, make any difference to the fiscal status of the income as far as New Zealand is concerned. In Model 2 the income is again foreign, as is the beneficial

owner of the income, the beneficiary. Using New Zealand-resident trustees to look after the income should not, and does not, make any difference to the income's fiscal status as far as New Zealand is concerned. True, there is a *legal* difference between the bank and the trustee. Legally the bank is the debtor of the French account holder, whereas the trustees, as trustees, are the legal owners of the income as it passes through their hands or as they add it to the funds of the trust. But, economically, the bank and the trustee perform similar functions of looking after someone else's income. There is no reason of principle for the tax consequences to differ.

... there is not truly a 'regime' at all: merely a category of income that is not taxed because it falls outside the reach of the New Zealand tax system

So much for income that trustees pass on to beneficiaries. Income accumulated by trustees presents different problems for tax policy makers. Since trustees must not personally enjoy their trust income, one might suppose that they should not pay tax on it. But that result would allow trustees to defer tax for as long as they chose. The solution is to tax retained trust income to trustees, treating them as taxpayers who are additional to their personal taxpayer status. That is, trustees are taxpayers in respect of their personal income at the same time as being as many taxpayers as there are trusts of which they are trustees. If the source of the income is in New Zealand there are no issues: the income is simply taxable on the basis of the source rule discussed above. But what questions arise if the income comes from abroad? The answer depends on the residence of the settlor.

New Zealand foreign trusts

If the settlor is resident in New Zealand, the statute taxes the trustee.⁴ This is so

whether the trustee is resident in New Zealand or abroad. But if a foreign-resident trustee does not pay, then the settlor must pay, treated as agent for the trustee.⁵ The policy logic is that if the settlor had retained the income-producing property, and had derived and accumulated the income, New Zealand would tax the settlor. It should make no difference that the settlor has transferred the property to a trustee.

If neither the settlor nor the trustee is resident in New Zealand, and if the income has a foreign source, there is no policy reason (or practical ability) for New Zealand to tax income that the trustee retains. New Zealand simply has no

connection with the income or relevant parties that would justify exacting tax.

The questions that are the subject of this article arise where income is foreign and settlors reside abroad, but they choose trustees resident in New Zealand. This structure is known as a 'foreign trust'. An example of a foreign trust might arise where, say, Mossack Fonseca has a client resident in Malta who wishes to settle income-producing property on trust, perhaps shares in a company registered in Luxembourg. Mossack Fonseca might commission a New Zealand law firm or trust company to establish a trust with a New Zealand-resident trustee for the benefit of the Maltese client and his family, all resident in Malta. How does New Zealand income tax treat dividends that the New Zealand trustee derives from the Luxembourg company?

If the trustee distributes the dividends to the beneficiaries, Model 2 applies. That is, foreign-source income goes to foreign-resident beneficiaries and there is no reason for New Zealand to tax. The same

logic applies if the trustee retains the income, which structure may be called Model 3. No one resident in New Zealand has any interest in the income. From an economic perspective the trustee is a mere custodian.⁶ For this reason of fiscal policy, New Zealand does not tax trustees in a Model 3 or 'foreign trust' structure. Although it is not obvious at first sight, there is no more basic policy reason to tax the trustee in Model 3 than there is to tax the bank in Model 1 or the trustee in Model 2.

A problem arises in that although there is no obvious policy reason to tax earnings retained under a Model 3 structure, countries may do so. New Zealand charged trustees tax on retained foreign-source income until the late 1980s. Other countries still do. The reason is formalistic and legal rather than economic. Lawmakers are persuaded that since trustees are the legal owners of income that arises from trust property, that is sufficient reason to tax them, even if the residence of the trustee is the only connection between the income and the taxing jurisdiction. New Zealand rejected this reasoning in the 1980s in favour of driving tax policy by considerations of economic substance rather than of legal form. Economic substance leads to Model 3, which reflects the paradigm of Model 1: that is, no tax on foreign-source income derived by non-residents.

The foreign trust 'regime' and its 'exemption'

The *Shewan Report* calls the tax law that applies to foreign trusts, which has just been described, the foreign trust 'regime'. This is common usage, and is for convenience used in this article, but the usage can mislead. The reason is that there is not truly a 'regime' at all: merely a category of income that is not taxed because it falls outside the reach of the New Zealand tax system. 'Regime' suggests an intended framework, perhaps calculated to confer tax benefits. That is not so in respect of foreign trusts, where 'regime' is no more than a shorthand reference to the relevant law.

For similar reasons, it can be misleading to think of foreign trusts as beneficiaries of a tax 'exemption' (eg Shewan, 2016, p.16). This is true in

formal terms, but, as explained above, it is no more consistent with fiscal policy and logic to tax the income of a typical foreign trust than it would be to tax the salary of a foreigner who chooses to have the salary paid into a New Zealand bank.

Disclosure

Following robust economic policy in creating a model for trust taxation reveals problems that arise from the nature of trusts. Where foreigners desire to hide foreign property or income, transferring the funds to a New Zealand-resident trustee is an attractive option. For reasons that have been explained, New Zealand has no interest in levying tax on foreigners' foreign-source income and does not do so, even if the foreigners choose a New Zealand bank or trust to look after that income.

From a New Zealand perspective, foreign countries are welcome to tax income of their residents that comes to rest in a New Zealand trust. Alternatively, the foreign country could tax its own resident settlors who have contrived this result, as New Zealand would in corresponding cases of New Zealand settlors. But this is a matter of theory. In practice, if no one reports the income or the existence of the trust, then foreign countries will find it difficult or impossible to levy tax.

New Zealand could mitigate foreign countries' enforcement problems by advising revenue authorities of New Zealand residents who are trustees of foreign trusts, or even by discovering and forwarding information about their trustee income. Until 2006 this was impossible because there was no requirement for New Zealand residents to advise New Zealand authorities that they were trustees of trusts settled by foreigners to derive foreign-source income. In 2006 Parliament added section 59B to the Tax Administration Act 1994, which requires trustees in this position to advise Inland Revenue of the existence and name of the trust and to keep records in case they are asked for information. In addition, trustees must advise the commissioner if a settlor is Australian. The only result was that 'There is now virtually no participation in [New Zealand] foreign trusts from Australia' (Shewan, 2016, p.15). Other countries

rarely ask Inland Revenue about New Zealand foreign trusts because they have no way of knowing that trusts relevant to their inquiries exist. If they suspect that their residents have interests in New Zealand trusts they cannot advance their knowledge without knowing the name of the trust, which is most unlikely to offer any clues as to the identity or residence of interested parties.

Two reasons suggest that New Zealand should be more forthcoming in providing information to foreign tax authorities. The first is that the present decade is seeing a major change in countries' policies towards helping each other to collect tax in general and in

Reputation: is New Zealand a tax haven?

'Tax haven' is not a term of art. Use of the expression can shed more heat than light. Nevertheless, the New Zealand foreign trust regime raises the question whether the country should be so described. The OECD suggests that four qualities define a tax haven (Shewan, 2016, p.44):

- (a) no or only nominal taxes;
- (b) lack of effective exchange of information;
- (c) lack of transparency; and
- (d) no substantial activities; to which the author would add:
- (e) foreign taxpayers' ability to reduce their home country tax in return for a toll.

Historically, countries did not help one another to collect tax, but globalisation, international concern about tax avoidance and increasing international cooperation in general have brought about major changes in this policy.

exchanging information in particular. Historically, countries did not help one another to collect tax, but globalisation, international concern about tax avoidance and increasing international cooperation in general have brought about major changes in this policy. Countries now add extensive mutual assistance and information exchange articles to bilateral tax treaties; there are numerous bilateral tax information exchange agreements; and in 2012 New Zealand signed the joint OECD/Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Cumulatively, these measures impose significant duties on New Zealand to answer requests from treaty partners for taxpayer information. New Zealand law must be amended to give the government power to respond. The second reason for New Zealand to be more forthcoming in responding to requests from foreign governments for information about foreign trusts relates to reputation.

It is true that as a country New Zealand does not fit this description, but it is equally true that the foreign trust regime does. Points (a) and (b) are obvious. Point (c) follows from the very nature of trusts: unless there are specific rules, trusts involve private transactions, without the knowledge of any authorities. And point (d) applies almost by definition to New Zealand foreign trusts, where the only onshore activity involves trust administration. Typically, all of settlors, beneficiaries, investments and income are foreign. Point (e) is clear: foreign residents can hide income in New Zealand for the cost (or toll) of establishing and maintaining a trust structure. A difference is that in New Zealand private enterprise charges the toll, rather than the government, which was, for example, the practice of the Cook Islands at the time of the 'wine box' scandal.

The *Shewan Report* concludes that New Zealand is not a tax haven, although

foreign trusts might be categorised as a 'preferential tax regime' (p.45). While correct as far as it goes, this conclusion may miss the target. The expression 'preferential tax regime' usually refers to a regime that is carved out of an otherwise unexceptionable tax system to offer preferential treatment to an activity or group. For instance, until the mid-1980s New Zealand accommodated farmers with all sorts of tax preferences. In contrast, the foreign trust regime is part of the basic structure of the New Zealand system, which does not tax foreign-

... structures that can hide income from taxation can equally well hide stolen funds, facilitate money laundering, enable the transfer of funds to terrorists, and provide a secure haven for the proceeds of drug dealing and other illegal trades.

source income derived by foreigners. As explained above, it is misleading to call the trusts rules a 'regime' at all, because the 'regime' is a gap. The gap is not unintended, but exists because of fiscal policy. The regime has more in common with, say, Vanuatu, which has never had an income tax. That is, the absence of income tax is fundamental to Vanuatu's fiscal structure. For this reason, Vanuatu is an attractive base for passive investment, just as New Zealand is an attractive place for foreigners to establish trusts. If Vanuatu is a tax haven, and most would agree that it is, then New Zealand is a tax haven in respect of its trust regime.

Despite this categorisation, New Zealand's tax regime is the subject of very little disapproval in foreign official quarters. Reasons appear to include that specialists understand that far from being calculated to help people to dodge tax, the regime is founded in robust fiscal principle, supported by New Zealand's well-deserved reputation as a good international citizen. Another reason

is that despite being available since 1988, the New Zealand regime remains relatively little understood and relatively little used, a factor that may explain why Mossack Fonseca seems to have begun to employ New Zealand trusts in earnest only in 2013 (Reuters, 2016). It may well be that until then Mossack Fonseca had not been fully aware of the potential of New Zealand foreign trusts.

On the other hand, as Shewan points out, there is a great deal of concern within New Zealand. He said:

At a local level the messaging in the media focused in particular on concerns that New Zealand was being described as a tax haven, the reputational consequences of that and the unfairness associated with wealthy individuals being able to escape tax through using offshore trusts. One academic expressed the view that *It's shameful for New Zealand to be caught up in international tax avoidance.*

Shewan concluded, correctly in the view of the author, that where there is smoke there is probably fire: 'there is a reasonable likelihood that the regime is facilitating the hiding of funds or evasion of tax' (Shewan, 2016, pp.42, 40).

Non-tax issues and recommendation

This passage calls attention to an unwelcome by-product of tax havens. This is that structures that can hide income from taxation can equally well hide stolen funds, facilitate money

laundering, enable the transfer of funds to terrorists, and provide a secure haven for the proceeds of drug dealing and other illegal trades. These considerations led Shewan to recommend that New Zealand institute a register for foreign trusts, and that a copy of the trust deed and the following information should be supplied on registration:

the name, email address, foreign residential address, country of tax residence and Tax Identification Number of –

- the settlor or settlors
- the protector, if there is any
- non-resident trustees
- any other natural person who has effective control of the trust (including control through a chain of control or ownership)
- beneficiaries of fixed trusts, including the underlying beneficiary where a named beneficiary is a nominee.
- For discretionary trusts, each class of beneficiary [must] be described in sufficient detail to enable identity to be established at the time of a distribution or when vested rights are exercised (the naming of discretionary beneficiaries being impractical).

[In addition, foreign trusts should] be required to file an annual return with IRD that includes –

- any changes to the information provided at registration
- the trust's annual financial statements
- the amount of any distributions paid or credited and the names, foreign address, Tax Identification Number and country of tax residence of the recipient beneficiaries. (pp.52-3)

Relevant rules relating to money laundering and the reporting of suspicious transactions should be strengthened and information sharing rules reviewed and reformed where necessary. The register would be searchable by regulatory authorities, but not open to the public.

The government's response was by way of a media release dated 13 July 2016,

accepting Shewan's recommendations with few variations (English and Woodhouse, 2016). Inland Revenue is to administer the register, at least initially. The Department of Internal Affairs and the police will be authorised to search it. The media release does not say so explicitly, but presumably Inland Revenue will also be authorised to search, as well as to administer. Otherwise, Inland Revenue would not be able to respond effectively to exchange of information requests.

A public register?

Meantime, the Wellington *Dominion Post* leader of 30 June had argued that the register of foreign trusts should be public, saying:

[Shewan] has too much regard for the privacy of wealthy foreigners. Those who want to use New Zealand's law for complex and remote purposes of their own, even to 'manage family wealth', whatever that might mean, should accept transparency as the price for the privilege. (*Dominion Post*, 2016)

The *Dominion Post's* argument misses several points. First, once the register of trusts has been established it is probable that New Zealand's foreign trust industry will wither. After 2006 Australian residents, faced with much less stringent registration requirements in respect of their New Zealand trusts, almost totally abandoned the New Zealand regime. There is some reason to expect that the same will happen in respect of the rest of the world now that full registration is to be extended to them, though, to be fair to the *Dominion Post*, Shewan takes a different view. He says, on the basis of submissions from trust and company service providers, that many offshore parties who use New Zealand as a safe haven to hold their family wealth report their income correctly to their home jurisdictions (Shewan, 2016, p.18). It would have been informative to know why these clients use New Zealand trusts. A possibility is that they do not trust their home professional advisers to maintain confidentiality, though they do trust their countries' tax authorities in this

respect. (The question of communicating details of wealth to criminals is addressed below.)

Secondly, there is the basic practice of confidentiality in respect of tax matters. We accept this value for New Zealand residents; why not in respect of foreigners who trust us? It is not a question of accommodating foreigners who have criminal or similar activity to hide. If foreigners are foolish enough to try to use a New Zealand trust as a vehicle of concealment, checks by Inland Revenue, the police or the Department of Internal Affairs, sometimes initiated by corresponding agencies abroad, will

establish their targets, both as to persons and as to amounts to demand. Such victims are in a difficult position. Many would be happy to pay the taxes that they owe to their own countries' revenue services, but if the revenue department itself is corrupt, simply paying taxes can lead to having your children kidnapped. Some New Zealand service providers have established and run trusts for people in this position, no doubt thinking it the lesser of two evils to save their clients from criminals at the cost of suspecting that the clients will be safe only if they do not declare their taxable income.

Neither the *Shewan Report* nor

Many would be happy to pay the taxes that they owe to their own countries' revenue services, but if the revenue department itself is corrupt, simply paying taxes can lead to having your children kidnapped.

discover them. If there are foreigners who would like New Zealand trustees to look after their money, being foreigners who have nothing to hide from their own or from New Zealand authorities, but who might not want their neighbours, or, for that matter, criminals, to be able to look them up, why should New Zealand satisfy the neighbours' or the criminals' curiosity?

Settlers as victims of crime

For foreigners, using New Zealand trusts as a shield against criminals is no trivial matter. The present author has not personally established foreign trusts for victims of crime, but he has met victims interested in employing New Zealand trusts to protect themselves in the future.

Currently, a major category of client of the New Zealand trust industry comprises people living in lawless countries where some officials and some staff of banks and other institutions with relevant information are willing to pass the information on to kidnapers and other criminals, who use the information to

the responses of the government nor the *Dominion Post* address this issue. Admittedly, it is hard to see how New Zealand could observe its obligations of information sharing and enforcement of laws against tax evasion, money laundering, terrorism and so on while at the same time affording protection to foreigners who legitimately fear the criminal activity of gangsters or expropriation of their property by corrupt governments. The problem is that measures that can protect people from criminals are the same measures that one might use to hide undeclared income or the proceeds of crime. Some activity within the New Zealand foreign trust industry has hitherto served the first purpose, but Shewan suspects, with good cause, that it has also served the second (p.40). Some structures probably serve both purposes at once. The focus of the report, and of proposed government action, is on the second. Should there be action in respect of the first?

To unpack the question just asked: should New Zealand provide a safe haven for the fortunes of foreigners who live in countries where they are at risk from criminal activity? New Zealand might offer a service similar to that of Switzerland, which helped European Jews to hide wealth from Nazi Germany, though without, one would hope, the occasional sequel of retaining possession of property where owners die (e.g. Volcker, 1999). A related question is: in modern conditions, is it practical to offer a safe haven in this manner?

The *Shewan Report* is commendable, though one might have preferred it to include a section on the position of foreigners who are threatened by disclosure of their wealth to criminals.

Possible safe haven rules

We can test practicality by imagining a possible system. New Zealand could establish the foreign trusts register that the government proposes, but could include a rule that for a list of named countries New Zealand would not respond to requests for information without giving the subject of the request an opportunity to submit that the request should be declined. The procedure could correspond to procedures for extradition requests: New Zealand retains power to decline to extradite prisoners on the basis that, for instance, New Zealand cannot trust assurances of fair procedures by the requesting nation. The author suspects that this approach, attractive as it may seem, is impractical, for several reasons.

First, declining to extradite on the basis of apprehension as to fair treatment is diplomatically awkward, but New Zealand will take this step in order to ensure that prisoners have fair trials and, if found guilty, will not be subject to punishments that New Zealand would not accept. In those circumstances we accept the diplomatic risk of offending requesting countries. But, somehow,

when the matter primarily in question is wealth rather than life and limb, the implied criticism is more likely to be contentious.

Secondly, New Zealand will extradite both without and with a treaty. If there is no treaty, New Zealand retains greater powers to decline to extradite. By extradition treaties, countries mutually agree to limit their power to decline extradition requests. The corollary is that countries are careful about both the parties and the terms of their extradition treaties. But this care need relate only to

the one issue: extradition. In contrast, double tax treaties relate primarily to the relief of double taxation, with exchange of information typically being the subject of only one treaty article. Negotiation of double tax treaties is not easy at any time; adding terms that in effect express a lack of confidence in the tax administration of the partner state would necessarily make the process more difficult.

Thirdly, there the treaty in question is a multilateral convention for mutual assistance, New Zealand will not necessarily know which countries will decide to adhere to the treaty. Further, such treaties typically provide that a requested state may decide to give notice of requests to its own nationals or residents, but not to the nationals or residents of the requesting country. Certain articles of the OECD Convention on Mutual Administrative Assistance in Tax Matters, to which New Zealand is a party, are relevant:

Article 4(3): Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according

to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him ...

Article 7(1)(a) [Spontaneous exchange of information]: A Party shall, without prior request, forward to another Party information of which it has knowledge in the following circumstances: (a) the first-mentioned Party has grounds for supposing that there may be a loss of tax in the other Party.

Article 21(1) [Protection of persons and limits to the obligation to provide assistance]: Nothing in this Convention shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested State.

Article 21(1) might permit New Zealand to decline to transmit information without hearing from a party that is the subject of a request, even where that party is a resident of the requesting state, but article 7(1)(a) would directly attack a structure whereby a resident of a country where tax information is insecure arranged for wealth to be hidden in a New Zealand trust to prevent information going to tax authorities who might pass the information on to criminals. Such a structure *ex hypothesi* involves a loss of tax to the state in question.

It is not impossible that New Zealand could contrive a way to circumvent these rules for the benefit of threatened taxpayers in other countries, but even if that were so, it is not likely that the foreigners in question, knowing that their identities and tax affairs were searchable, would risk confiding their wealth to New Zealand trustees.

Cases of victims kidnapped in countries where information is not secure are tragic. It behoves the government at least to consider: (a) whether New Zealand should attempt to help these people; and, if so, (b) whether such help is practical in the context of the network of obligations that is now part of the international tax system. The author suspects that the answer to (b) will be no, which probably means that question (a) is moot. But government does not

seem to have addressed the matter and the present brief article is not a sufficient basis for a decision of such gravity.

Discretionary trusts

This article has not addressed the question of discretionary trusts in any detail. They are mentioned briefly for completeness. The report recommends in respect of discretionary trusts that the filing requirement should be:

each class of beneficiary [must] be described in sufficient detail to enable identity to be established at the time of a distribution or when vested rights are exercised (the naming of discretionary beneficiaries being impractical). (Shewan, 2016, p.53)

It would seem theoretically possible to draft a trust that appears to relate to residents of country A, whereas the true intended beneficiaries live in country B. This fact may not be registrable for many years, until there is a distribution or until rights vest. Meantime, therefore, country B has no reason to inquire about the trust. Possibly other disclosure

requirements will be wide enough to flush this kind of arrangement out, but the rules will need careful drafting. It may be possible to draft an anti-avoidance rule to require disclosure of facts behind trusts that contrive to escape the rules for registration by the kind of stratagem described here.

Conclusion

For reasons of space, this article is selective in addressing issues that arise in respect of foreign trusts in general and of the *Shewan Report* in particular. The *Shewan Report* is commendable, though one might have preferred it to include a section on the position of foreigners who are threatened by disclosure of their wealth to criminals. The report was produced with remarkable speed. It shows that issues of reputation risk for New Zealand may appear more serious inside the country than looking at New Zealand from abroad (Shewan part 9), but reputational risk could increase. More decisive, however, are New Zealand's increasing obligations to collaborate with other countries in suppressing tax evasion, money laundering, terrorism and other international crime. The rules that apply to foreign trusts must be reformed

to enable New Zealand to comply with its obligations to its treaty partners.

If, contrary to the view expressed in the report (p.18), the implementation of the report's recommendations leads to the demise of the New Zealand foreign trust industry, the real losers will be victims of kidnapping, theft and blackmail who live in countries where privacy of one's personal affairs cannot be taken for granted. These people will in all probability be driven from New Zealand and be obliged to resort to one of the dwindling number of jurisdictions that, for the meantime at least, offer secrecy.

- 1 [1841] EWHC Ch J82; Cr & Ph 240; 4 Beav 115; 41 ER 482
- 2 Land Transfer Act 1952 s. 128, subject to very limited exceptions.
- 3 Trustees must often wait until the end-of-year accounts are made up to know how much income they can distribute. The Income Tax Act allows six months after the end of the year to pay or apply income that will be treated as derived by the beneficiary in the year when the trustee derived it. This essentially machinery provision has no impact on the matters of principle discussed in this article.
- 4 Income Tax Act 2007 s HC 26.
- 5 Income Tax Act 2007 s HC 29.
- 6 This is not to say that the trustee is a 'custodian trustee', who simply looks after property at the behest of an ordinary trustee, though the result would not change if the trustee were a custodian trustee.

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