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

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Wellbeing and Public Policy

can New Zealand be a leading light for the 'wellbeing approach'?

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VICTORIA UNIVERSITY OF WELLINGTON TE WHARE WĀNANGA O TE ŪPOKO O TE IKA A MĀUI

Institute for Governance and Policy Studies

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Editorial – Wellbeing, well-becoming and other societal goals

This issue of *Policy Quarterly* leads with an important article on 'wellbeing and public policy' by Dan Weijers and Philip Morrison. Specifically, it focuses on some of the key themes and issues discussed at the Third International Conference on Wellbeing and Public Policy, held in Wellington in early September 2018.

The conference was timely. Internationally, it is widely recognised that economic growth constitutes an insufficient societal goal. Inclusion, fairness, and sustainability are also vital. Locally, the coalition government attaches high importance to 'wellbeing'. In early 2018 the Prime Minister, Jacinda Ardern, and the Minister of Finance, Grant Robertson, announced that the 2019 budget would be a 'wellbeing budget'. Presumably, this means that the government's funding priorities will be guided by wellbeing indicators and related policy analyses, with the aim of improving specified wellbeing outcomes. Alongside a modified budgetary process, the government also announced in early 2018 its intention to develop a strategy for child and youth wellbeing as part of its efforts to tackle child poverty – via the Child Poverty Reduction Bill. Drafting the first such strategy is underway, and the relevant empowering legislation will be enacted shortly.

Additionally, the Local Government Act is being amended to require local authorities and regional councils to promote the social, economic, environmental and cultural wellbeing of citizens and communities. These so-called 'four wellbeings' were central to the 2002 version of the Local Government Act, but were subsequently removed from the legislation by the former National-led government.

A focus on human wellbeing, of course, is not new. For millennia, many philosophers and political leaders have argued that the pursuit of wellbeing and/or related notions – such as happiness, flourishing, wellness and well-becoming – should be a major, if not the pre-eminent, goal of public policy. Michael Joseph Savage, in defending his government's landmark Social Security Bill in 1938, contended that: 'the people's wellbeing is the highest law, and so far as this Government is concerned we know no other'. Similar sentiments abound in political discourse.

Within the academic world, wellbeing has received growing attention in many disciplines, not least economics, philosophy, politics, and psychology. For many researchers, wellbeing constitutes a critical – if not *the* critical – test of the goodness or rightness of human experience. And to argue that governments should *not* promote their citizens' wellbeing would be counter-intuitive.

Yet wellbeing raises fundamental conceptual, analytical, and ethical issues. What exactly does it mean? What are its defining features, components and determinants? How should it be measured? How might it best be improved? And how should it be distributed, including spatially and temporally? Some of these issues are technical, others normative. Weijers and Morrison provide readers with a thoughtful overview of some of these topics, including a useful list of references.

Their analysis will not be repeated here. But several observations deserve comment. First, while human wellbeing, both now and in the future, is vitally important, it can never capture everything that matters. Ethically, a good society and a good life consist in more than high levels of wellbeing, however measured. To be sure, it is desirable for every human being to have the opportunity to flourish in all manner of ways. But it is also important that they seek to live virtuous lives, enjoy a full range of rights, and are treated with justice and compassion. Yet living virtuously will not always maximise life satisfaction or longevity. On the contrary, it may require profoundly sacrificial actions.

Second, an undue or inappropriate focus on *human* wellbeing runs the risk of anthropocentrism. Arguably, there is a case for protecting endangered species and ecosystems on the grounds that they have intrinsic value, not merely because their loss might reduce human wellbeing in some way at some point in time.

Third, 'wellbeing' is necessarily a human construct. How it is conceptualized and measured is profoundly influenced by philosophical judgements. One of these is whether to favour a broadly liberal or communitarian approach. From a communitarian perspective, wellbeing is inherently group-focussed and group-oriented. Accordingly, it is strongly shaped by a person's culture, including various distinctive and enduring social entities or groups (e.g. families/whānau, religious communities, schools and clubs) and involuntary social attachments, especially those within close family contexts. In keeping with this approach, communitarians highlight the critical role of human interdependence, the irreducibly social character of various collective goods (e.g. language), the socially-constrained nature of individual preferences, choices and life-plans, and the need for effective collective action in order to achieve many of the goals which individuals seek.

Fourth, as I have written about with my colleague Amanda Wolf, there are grounds for rejecting a predominantly individualistic conceptualization of wellbeing. Under such an approach, wellbeing is conceived simply as an outcome state where individuals possess – or fail to possess – certain qualities or attributes. In other words, the components of wellbeing are viewed as qualities or attributes that can be acquired or achieved, and are thus deemed to inhere uniquely within individuals. Rather, there is a case for supplementing such an approach with a more *relational* conceptualization. From this standpoint, wellbeing is not only a psychological property of individuals, but is something which is co-constituted in relationships with other people. As such, it entails a fundamental 'we-ness' or togetherness. It is thus inherently interpersonal and dynamic. Equally, it involves a process of *becoming* or *well-becoming* with others via continuing processes and interactions. The challenge, of course, is how to operationalise a relational conceptualization and apply it in specific policy contexts.

Overall, then, the current focus on wellbeing in New Zealand is very welcome. It represents a positive corrective from a narrow emphasis on economic growth. But the pursuit of a good society should not be reduced to maximizing human wellbeing or ensuring that wellbeing is fairly distributed. Many other things matter. This includes the numerous virtues, rights, and other valuable goods that contribute to a just and peaceful society, as well as safeguarding the future – for *all* living things.

Jonathan Boston, Editor

Dan Weijers and Philip S. Morrison

Wellbeing and Public Policy

can New Zealand be a leading light for the 'wellbeing approach'?

Reflections on the Third International Conference on Wellbeing and Public Policy, Beehive and Victoria University of Wellington, 5–7 September 2018[1]

Abstract

Delegates left the Third International Conference on Wellbeing and Public Policy with great expectations following three days of inspirational addresses by some of the world's most prominent thinkers and policymakers. In this article we ask: what is required for a wellbeing approach to public expenditure to be successfully implemented and sustained?

The wellbeing approach arose out of concerns about whether the current suite of measures used by policymakers provides sufficient information on the full range of contributors to or components of the good life. Sometimes divided on what wellbeing is and how to measure it, proponents of the wellbeing approach agree that the ultimate goal of public policy should be to improve wellbeing for all citizens. In order for this wellbeing approach to be successful, we believe it must address three main challenges: measurement, representation and engagement. We must be clear about how well-being will be measured, whose wellbeing we will assess, and the extent to which all New Zealanders are represented in the conversations that will determine the first two issues.

Keywords wellbeing, happiness, measurement, representation, engagement, Living Standards Framework

Dan Weijers is a lecturer in the philosophy programme at the University of Waikato, a co-editor of the *International Journal of Wellbeing*, and a co-organiser of the *International Wellbeing and Public Policy* conference series. **Philip S. Morrison** is Professor of Human Geography at Victoria University of Wellington. His main research focus is on the geographies of subjective well-being and their implications for public policy. Philip was chair of the organising committee for the Third International Wellbeing and Public Policy Conference.

Box 1: Keynote speakers

- Martijn Burger is assistant professor of industrial and regional economics and academic director of the Erasmus Happiness Economics Research Organisation, both at Erasmus University Rotterdam.
- Jan-Emmanuel de Neve is associate professor of economics and strategy at Saïd Business School, a fellow of Harris Manchester College at the University of Oxford, associate editor of the *World Happiness Report*, deputy principal investigator for the What Works Centre for Wellbeing and research advisor to Gallup.
- Edward Diener is alumni distinguished professor of psychology (emeritus) at the University of Illinois, professor of psychology at the University of Utah and the University of Virginia and research advisor to Gallup on measuring psychological well-being.
- Carrie Exton is leader of the Monitoring Well-Being and Progress section at the OECD and lead author and coordinator of the OECD's flagship well-being report, *How's Life?*
- Carla Houkamau is associate professor in the Department of Management and International Business and associate dean for Māori and Pacific development for the Business School at the University of Auckland.

The Third International Conference on Wellbeing and Public Policy and the 'wellbeing approach'

Hundreds of delegates left Wellington on 7 September with great expectations after three days of inspirational addresses. None left more impressed than the keynote speakers invited from Europe and the United States (see Box 1), where progress on wellbeing and public policy seemed to them sluggish by comparison.

The reasons for the keynote speakers' buoyancy are significant: their discovery of a government placing wellbeing front and centre of its policy agenda, encountering an audience of nearly 400 each day, and having a choice of over 150 presentations across multiple streams. The streams included planning for wellbeing, the Living Standards Framework, and diversity and wellbeing, as well as housing, ageing, children, youth, gender, community, consumption, disasters, work, sustainability, technology and urban living; there were also papers on theory, measurement and indicators of wellbeing.[2]

A striking feature of the conference was the apparent presence of a shared vision of a wellbeing approach to public policy. Probably even proponents of the well-being approach were surprised to see so many government representatives, academics and community representatives coming together to discuss how public policy might improve the wellbeing of all New Zealanders. This was momentous because the wellbeing approach is an important departure from the policymaking status quo. The wellbeing approach arose out of concerns about whether the extant suite of measures used by policymakers (think GDP etc.) provides sufficient information on the full range of contributors to or components of the good life. Sometimes divided on what wellbeing is and how to measure it, proponents of the wellbeing approach agree that the ultimate goal of public policy should be to improve wellbeing for all citizens.

In his speech to open the conference the minister of finance, Grant Robertson, drew attention to the rationale behind, and the importance of, the wellbeing approach:

> [I]t is my job to ensure that the country's finances are managed well, but that is not the end of the story. The economy is not an end in itself, it is the means to the end of allowing our people to live good and fulfilling lives.
>
> And so it is from this position that a focus on wellbeing for me and for our Coalition Government is an obvious direction … I believe that this work on wellbeing is likely to be the most significant legacy this Government can leave for future generations. (Robertson, 2018)

James Shaw, minister of statistics, added: 'GDP statistics measure current economic activity in terms of through-put. But they ... don't take account of the quality of social relationships, economic security and personal safety, health, and longevity' (Shaw, 2018).

New Zealand is clearly at a turning point in terms of what guides public policy. In this reflection on what transpired over the three days we highlight several key points and the challenges they raise; specifically, we ask what New Zealand has to do now to live up to the high expectations of the keynote speakers and to become a leading light on wellbeing and public policy internationally.

It is helpful in addressing this question to recognise some of the milestones in a potted history of well-being as a concept of interest in public policy. Table 1 lists side by side a number of the key steps taken towards the wellbeing approach internationally and in New Zealand.

A review of the timeline in Table 1 reveals that an important turning point was the recognition that 'what is measured gets attention', as Professor Diener noted in his keynote address, and 'what gets measured gets managed', as James Shaw, minister of statistics, reminded us on the third day. A key step in that direction was taken nearly a decade ago in the *Report by the Commission on the Measurement of Economic Performance and Social Progress*, commissioned by the French president at that time, Nicolas Sarkozy, which stated, quite simply: 'The decisions they (and we as individual citizens) make depend on what we measure, how good our measurements are and how well our measures are understood' and 'what we

pursue determines what we measure' (Stiglitz, Sen and Fitoussi, 2009, p.9).

Indeed, the issue of measurement remains at the heart of any wellbeing framework. But increasingly and quite centrally it is the way measures are interpreted, including their behavioural underpinnings, that remains central to their effective use in public policy. This was the challenge highlighted by Minister Shaw when he spoke of turning what we measure into information: 'Stats NZ provides a pool of data from which Treasury and others make their analysis and interpretations and turn it into information' (Shaw, 2018).

The operation of turning wellbeing measures into information sounds easy. However, the vast international industry that is contemporary wellbeing research is largely a reflection of just how difficult it can be to turn wellbeing measures into information that policymakers can use, not to mention the even more difficult task of achieving consensus on exactly how that should be done. The variety of available conceptual lenses, theoretical frameworks and value judgements that can affect how data is transformed into information makes the task much more complex than it might first appear. We elaborate on this important challenge and others below.

Table 1: A short history of wellbeing and public policy

International	New Zealand
1965: 'Cantril's ladder', in *The Pattern of Human Concerns* (Cantril, 1965)	1984: Statistics New Zealand Social Indicators Survey
1968: Robert F. Kennedy famously points out the failings of GDP as a measure of what 'makes life worthwhile' (Kennedy, 1968)	1988: *Counting for Nothing,* a critique of GDP for excluding essential aspects of well-being (Waring, 1988)
1973: 'Does money buy happiness?', the first paper on the Easterlin Paradox (Easterlin, 1973)	1988: The Royal Commission on Social Policy investigates what New Zealanders want from public policy
1974: First issue of *Social Indicators Research,* the first academic journal dedicated to interdisciplinary well-being research	2001: Ministry of Social Policy publishes the first *Social Report,* which presents measures of New Zealanders' well-being
1976 *The Quality of American Life* (Campbell, Converse and Rodgers, 1976), seminal book on quality of life measurement	2002: Statistics New Zealand publishes *Monitoring Progress Towards a Sustainable New Zealand*
1979: 'Equality of what?', Amartya Sen's first publication on his influential capabilities approach (Sen, 1979)	2002: *Investing in Well-being: an analytical framework* (Annesley et al., 2002)
1981: *The Sense of Well-being in America,* (Campbell, 1981), seminal articulation of the concept of well-being and its measurement	2002: Local Government Act 2002
1984: 'Subjective well-being', a primary article on the topic (Diener, 1984)	2005: 'Social well-being in New Zealand and the correlates of life satisfaction' (Smith, 2005)
1997: First meeting of the International Society for Quality of Life Studies	2006 'Measuring Māori wellbeing', New Zealand Treasury guest lecture (Durie, 2006)
2000–05: Researchers call for scientific measures of happiness for policymaking (e.g. Diener, 2000; Layard, 2005; Diener and Seligman, 2004; Frey and Stutzer, 2002, Kahneman et al., 2004; Marks and Shah, 2004;)	2007: 'Subjective wellbeing and the city' (Morrison, 2007)
2004: The Australian Treasury publishes a conceptual framework to integrate well-being and public policy that does not include any new measures (Australian Treasury, 2004)	2008: First wave of the New Zealand General Social Survey: the survey was designed explicitly around a well-being framework and included measures of subjective well-being
2008: Bhutan makes gross national happiness their policy focus	2009: Statistics New Zealand publishes its *Framework for Measuring Sustainable Development*
2008: French President Nicolas Sarkozy charters the Commission on the Measurement of Economic Performance and Social Progress	2011: Treasury publishes its Living Standards Framework
2009: The report of the Commission on the Measurement of Economic Performance and Social Progress, edited by Stiglitz, Sen and Fitoussi, is published	2012: Treasury trials the living standards policy analysis tool
2009: *Well-being for Public Policy* (Diener et al., 2009)	2012: The First International Conference on Wellbeing and Public Policy, Wellington
2010: British Prime Minister David Cameron announces the government will investigate and measure well-being	2012: 'The determinants of subjective wellbeing in New Zealand: an empirical look at New Zealand's social welfare function' (Brown, Wolf and Smith, 2012)
2011: *How's Life?*, a guide to measuring well-being among OECD countries (OECD, 2011), is published, and the Better Life Index website to encourage greater public engagement with well-being measures	2018: Local Government Act (Community Well-being) Amendment Bill
2012: The United Nations hold a high-level meeting on 'Happiness and Wellbeing: defining a new economic paradigm'	2018: The New Zealand Treasury develops a well-being dashboard based on the OECD's Better Life Index
2012: The first *World Happiness Report* recommends using measures of subjective wellbeing because 'they capture best how people rate the quality of their lives' (Helliwell and Wang, 2012, p.11)	2018: Finance Minister Grant Robertson announces a Wellbeing Budget for 2019
2013: The OECD publishes formal guidelines on measuring subjective wellbeing (OECD, 2013)	2018: Statistics New Zealand starts work on the project 'Indicators Aotearoa New Zealand – Ngā Tūtohu Aotearoa: measuring our wellbeing'
2014: The Second International Conference on Wellbeing and Public Policy, New York	2018: The Third International Conference on Wellbeing and Public Policy, Wellington
2015: The United Nations Sustainable Development Goals incorporate well-being with health as one of the goals	
2015: Wales passes the Well-being of Future Generations Act	
2016: The United Arab Emirates appoints a minister of state for happiness and well-being	
2017: Wales publishes 'National Indicators: mapping to well-being and UN Sustainable Development Goals'	
2017: Germany publishes *Government Report on Wellbeing in Germany,* based on a sophisticated engagement programme, the National Citizens' Dialogue	

Wellbeing policy in New Zealand

As emerged during the conference, the New Zealand approach to wellbeing policy seems to rest on two main pillars: a conceptual framework that is the Treasury's Living Standards Framework (Treasury, 2011) and a robust set of indicators produced in large part by Statistics New Zealand (2018) as part of its Indicators Aotearoa New Zealand project.

Treasury's Living Standards Framework is a tool designed to enable sustainable intergenerational wellbeing to reside at the centre of its policy advice, government expenditure and long-term management of the country's asset stocks: natural, social, human and financial/physical. Indicators Aotearoa New Zealand is being developed by Statistics New Zealand as a multiple data source for measuring wellbeing, initially at the level of the country as a whole.

Statistics New Zealand has been 'working with Treasury to ensure Indicators Aotearoa New Zealand aligns with

Treasury's Living Standards Framework' (Statistics New Zealand, 2018). It is responding to the Conference of European Statisticians' recommendations on measuring sustainable development, which consolidate previous work undertaken by the Stiglitz, Sen and Fitoussi report (2009); the European Commission communication on 'GDP and beyond'; the EU group on 'Measuring progress, wellbeing and sustainable development'; and the OECD forum Measuring and Fostering the Progress of Societies (2007). As such, the indicators being developed go well beyond economic measures such as GDP to include measures of wellbeing and sustainable development, as well as incorporating a range of cultural perspectives, including te ao Māori. Following six months of public consultation and technical workshops in September and November, Statistics New Zealand is preparing for a summit in December 2018 to finalise its indicator selection. A peer review will follow in January–February 2019. A visible step in its outreach is the video on its website, which asks, 'What matters to you and your whānau, here and now, and in the future?'[3]

The process outlined above started over a decade ago, as shown in Table 1. In 2011 the New Zealand Treasury published its Living Standards Framework as part of an international drive to develop at least conceptual wellbeing frameworks for policy. But Treasury went further still by developing the Living Standards Tool (Treasury, 2014) to aid in policy evaluation. The tool, which was widely discussed at the First International Conference on Wellbeing and Public Policy held in Wellington in 2012, encouraged not just thinking about potential wellbeing impacts of policy, but also measuring those impacts. Treasury's work on wellbeing and public policy impressed the international experts, causing some to suggest that New Zealand was among the leaders in this area internationally. Within Treasury the wellbeing agenda has had several champions, but the development of practical applications of the wellbeing approach has been slower than expected. A change of government and of policy priorities in 2017 has provided new impetus in government departments, and especially Treasury, for the ongoing development of the wellbeing agenda. The notion of a Wellbeing Budget for 2019 could promote enough significant work to position New Zealand alongside Wales and the other nations outlined in Carrie Exton's keynote address, notably France's new budget law (2015), Italy's budget reform law (2016), and Sweden's new measures for wellbeing presented alongside its Spring Budget Bill (2017).

> Using only objective measures would be problematic as it might result in resources being directed towards something that was perceived to be a contributor to wellbeing but actually makes no difference...

Challenges

Enhanced wellbeing may be the goal but the most important lesson we have drawn from the conference is that the process is as important as the goal. If New Zealand is to pick up the torch and be a leading light again, it must face three main process-related challenges. The first is the *measurement* of wellbeing, from its collection on the ground to its actual use in policy formulation. The second is *representation* – ensuring that *all* voices are heard and that people feel that *their* wellbeing, what matters to *them*, their whānau and their community, is recognised, measured and acted upon. The third challenge is *engagement and embedding* – ensuring there is sufficient initial and, particularly, ongoing engagement with all levels of government and the increasingly diverse citizenry of New Zealand.

Measurement

The critical issues in the measurement of wellbeing are what to measure, how to measure and how to construct a model of wellbeing out of those measures. An important decision regarding the what and the how is whether to use objective or subjective measures of wellbeing or both. We define subjective measures of wellbeing as measures of how people evaluate their lives, in whole or in part.[4] Examples include survey questions about how satisfied you are with your life as a whole and whether you feel lonely, etc.[5] We define objective measures of wellbeing as measures of the actual or reported levels of externally verifiable potential contributors to or components of wellbeing. Objective measures of wellbeing include independent records, such as hospital records of the amount of care someone received, but the term also embraces self-reported measures about the dollar amount of your income or whether you are employed, as well as other readily verifiable characteristics.

Objective measures of wellbeing have been used for a long time. A wellbeing approach to policy focused on objective measures of wellbeing simply broadens the range of such measures used in order to better account for more of the things that seem to contribute to or be an integral part of living a good life. The importance of objective measures of wellbeing is well understood by policymakers. This is also increasingly true of subjective measures (e.g. Stiglitz, Sen and Fitoussi, 2009; Michalos, 2011).

There is a strong case for using both objective and subjective measures. Using only objective measures would be problematic as it might result in resources being directed towards something that was perceived to be a contributor to wellbeing, but actually makes little difference to how people themselves evaluate their own lives. On the other hand, Sen (1992) and others have pointed out, using only subjective measures for policymaking is also

problematic, since it would run the risk of failing to target resources towards those with objectively poor lives who have adapted to their situations so well they are subjectively satisfied with their life.[6] For Sen, it is not sufficient that a person scores highly on a conventional subjective wellbeing scale; there must also be evidence of capabilities – the genuine opportunities and abilities required to live a life they have reason to value. Sen's capabilities approach is reflected in the *Report by the Commission on the Measurement of Economic Performance and Social Progress* (Stiglitz, Sen and Fitoussi, 2009), the OECD's *How's Life?* wellbeing framework (2011) and the Living Standard's Framework (Treasury, 2011; Weijers and Mukherjee, 2016).

Another issue raised in connection with using subjective measures of wellbeing to guide policy is that we do not know enough yet about how they work in response to the levers of policy. This claim becomes less plausible every year, given the pace of research in this field. There already exists, for example, a vast body of literature seeking causal connections between individuals' attributes, social interactions, and physical context such as the sensitivity of life satisfaction to shocks, including changes in GDP (Deaton, 2012), discrete events like natural disasters (Kimball et al., 2006), changes to location-based conditions, such as airport noise (van Praag and Baarsma, 2005), or the differential effect of urban residence (Morrison, 2011). Many more examples appear in the annual *World Happiness Report* (e.g. Helliwell, Huang and Wang, 2017).

But even if we agree that both subjective and objective measures of wellbeing should be used, there is still a lot of work to be done on how best to incorporate them into a model of wellbeing that is useful for policymakers. The main options and recent policy examples are discussed in Weijers and Mukherjee (2016). A fraught issue is whether and how to weight the domains thought to contribute to wellbeing. Weighting the domains seems to amount to making value judgements on behalf of citizens. Unfortunately, not weighting them may have the same effect: no weightings could in practice mean equal weightings, arbitrary inclusion of a limited range of domains, or reporting on all the domains, but then making a decision that is not strongly guided by any particular domain even if it seems highly important.

At the conference, Keith McLeod (2018) offered a starting point for measuring multidimensional wellbeing using the Living Standards Framework. His aim was to measure and reflect the wellbeing of New Zealanders across different areas of their lives. The method uses the respondents' three value assessment (poor, good, very good) of the contribution each of eight domains (excluding subjective wellbeing) make to their wellbeing. McLeod (p.18) distinguished between descriptions of 'multidimensional wellbeing', where he examined all measured Living Standard Framework domains at once using a dashboard-type approach, and a newly developed 'multi-domain' wellbeing measure, which is an aggregate measure that seeks to reflect a person's overall well-being across a 'poor' to 'very good' well-being continuum over domains including health, housing, knowledge and skills, social connection, and others. Average scores on equally weighted domains are added together to yield the multi-domain measure in recognition of the fact that the impact of state investment is rarely confined to a single domain, but spreads over many. A primary driver of this work is the recognition of multiple disadvantages experienced by relatively more vulnerable populations.

While positively correlated with life satisfaction, the multi-domain measure is, according to Treasury, designed to be a complement rather than a substitute. This is certainly interesting work, but it does not settle the issue of how overall measures of subjective wellbeing, such as life satisfaction, will fit into the wellbeing model. Although such holistic subjective measures have their problems, they may be suitable ultimate indicators of wellbeing[7] (perhaps as a composite index that could include a range of holistic subjective and objective measures). The advantage of a model of wellbeing with an ultimate measure of wellbeing that has substantial subjective content is that it would incorporate respondents' own implicit weighting of the various domains of their lives. As such, it would allow individual citizens to have at least most of the final word on how their life is going for them and (implicitly) the relative impact of the various domains on their wellbeing.

The advantage of a model of wellbeing with an ultimate measure of wellbeing that has substantial subjective content is that it would incorporate respondents' own implicit weighting of the various domains of their lives.

A very important aspect of the measurement of wellbeing has been highlighted by Mason Durie (2006). Not only did he draw our attention to the fact that different populations within a society define wellbeing in different ways; he also distinguished between wellbeing measured at the level of the individual, the group and the population as a whole. Each is a different unit of analysis. While the research literature on wellbeing has focused strongly on the individual, the policy analysis has tended to focus primarily on the (national) population. Sitting in the middle, underdeveloped by both, is the group, a notion that embraces the family, wider family (including whānau) and the community, depending on the circumstance. The wellbeing of the group constitutes both a research and policy frontier in large part because it invites a

much deeper, nuanced understanding of social interactions, which 'is confined in the literature mainly to research on relativities (e.g., the impact of relative income versus personal income on personal wellbeing). The importance of addressing this lacuna becomes apparent once we consider how communities are going to respond to the opportunities to address the four well-beings as enabled by the 2018 amendment to the Local Government Act 2002.

Representation

Measures of life satisfaction and other holistic measures of subjective wellbeing act as a sort of democratic poll, allowing a direct representation of popular sentiment on the state of people's lives. They allow individuals to be represented in the wellbeing distribution. By contrast, the multidimensional and multi-domain measures focus on the representation of domains, such as health, employment and environment. Holistic subjective measures allow individuals to then identify their own level of wellbeing in a given distribution (e.g., as life satisfaction on a 0–10 scale). Multi-domain measures allow individuals (and groups) to view how the domains they care about are represented and interconnected at any given level of multi-domain wellbeing.

While one can compare the wellbeing of different regions and communities (as well as many non-spatial subsets of the population, such as age groups) on the basis of their collective weighting of the domains important to them (as the OECD does for countries, for example), it is not always appropriate to assume subpopulations are homogeneous in their views on what contributes to well-being. As keynote speaker Carla Houkamau pointed out, just as they exhibit differences in their subjective wellbeing, so they will differ according to the weight they place on different contributors to that wellbeing (the domains). For this reason, holistic subjective wellbeing measures may better represent the layers of diversity in New Zealand.

The way we represent individual responses to wellbeing questions is particularly important in an age of increased sensitivity about inequality. The average may be the typical default measure, but one thing we have learned in the last few years is that the distribution may actually matter more than the average (think Trump and Brexit). When Carrie Exton quoted a member of the UK public saying, 'That's your bloody GDP, not mine', the political implications were clear: not everyone experiences the benefit of a rise in average GDP equally or even positively. Indeed, as inequality rises, it is technically possible for the majority not to benefit at all from a rise in average GDP (Stiglitz, 2013); significant minorities may be languishing and elites may be flourishing in ways unrevealed by the average. The underlying problem with representing wellbeing as an average is, quite simply, that the same mean can be produced from a variety of different distributions, so well-being scores can become more unequal without widening gaps or movements within the distribution being obvious to observers of the mean.

We already know that average levels of wellbeing are negatively related to the high levels of urban agglomeration, even though there remains an ongoing debate over why …

Martijn Burger highlighted a related issue in his keynote address. Burger's geographical focus drew our attention to the marked spatial disparities in wellbeing, not only globally but also within countries. The nature of these disparities depends on the scale. We already know that average levels of wellbeing are negatively related to high levels of urban agglomeration, even though there remains an ongoing debate over why (Morrison, 2011). We now also understand that the dispersion in well-being widens with urban size, as does inequality based on other measures. Such results are further challenges to our understanding of the nature of the well-being of the group, the geographic group, as opposed to the individual or the country as a whole.

To an increasing degree we are recognising that wellbeing itself is sensitive to inequality (Oishi, Kesebir and Diener, 2011; Pickett and Wilkinson, 2010). So, the fact that inequality remains high in New Zealand in terms of income, health and wealth means that the spread of wellbeing outcomes in New Zealand is also likely to be wider than it would be if inequality were reduced. Any failure to carefully measure the distribution of wellbeing at the level of the individual (as well as the group) has the potential to derail the wellbeing approach in New Zealand. This critical issue was not lost on the minister of health, David Clark:

> The disparities different people currently face are largely preventable, yet they persist across the health and disability system and have done so for decades. This failing costs us as a country – both in terms of quality of life for individuals and required funding. The Indian economist and philosopher Amartya Sen once said 'I believe that virtually all the problems in the world come from inequality of one kind or another.' … I share his view and want New Zealand to have a health system delivering high-quality health outcomes for all people, so they can reach their full potential no matter their ethnicity, socioeconomic status or health status. (Clark, 2018)

Issues of inequality are inevitably linked to power and its distribution within society. The prospect of the wellbeing approach succeeding as a framework for allocating public funds at all scales of society will depend heavily on ensuring that all 'wellbeings' are represented,

whether the unit of interest is the individual, the neighbourhood, the school board, the river catchment, the hapū or the nation as a whole. A key step in ensuring such a connection is what we refer to as engagement and the process of embedding.

Engagement and embedding

It remains to be seen whether all of New Zealand's diverse and underprivileged groups will accept more recent developments, such as Treasury's Living Standards Dashboard, as inclusive enough. Statistics New Zealand staff have consulted widely as part of the Indicators Aotearoa New Zealand project, but this does not mean that most people have engaged in the process. An on-going worry for the wellbeing approach is that the public will reject the models and measures of wellbeing created by policymakers. Such rejection would be understandable, especially if the question, 'Why is the government telling us what the good life for New Zealanders is, rather than asking us?' becomes a major talking point in the media. If the finance minister's proposed Wellbeing Budget 2019 does not connect with the public or demonstrate its relevance to the values of both sides of the party-political divide, then New Zealand's inaugural Wellbeing Budget may also be its last.

Several issues may well determine whether the excitement about wellbeing and public policy generated by September's conference will still be felt in the Beehive in 20 years' time. Treasury and Statistics New Zealand are already working hard on integrating wellbeing into their policy work. Whether civil servants continue to develop and refine this wellbeing approach will depend on what they are directed to do by future governments. And, hopefully, future governments will be heavily influenced by the public (by far the biggest stakeholder group to get engaged with this new economic paradigm).

An avenue for encouraging future governments to persist with the wellbeing approach is to embed it in the relevant statutes. For example, a new measuring, monitoring and reporting act, like the Social Reporting Act once proposed, would help future-proof the relevant collection of data and reporting of wellbeing information. Perhaps an amendment to the Public Finance Act could have similar effects. Taking the statutory route may work, but its chances of success depend heavily on cross-party support for such an initiative.

Another way for the wellbeing approach to persist through changes in government is for it to be widely supported by New Zealanders. This support is unlikely if New Zealanders are not given the means and opportunity to meaningfully exercise their democratic freedoms by having a say in what the ultimate goals of public policy should be. Public support may also be generated if they see physical expressions of a commitment to a wellbeing approach on the ground, in their community, among their neighbours and in their children's futures. In this respect, there is a possibly underappreciated role to be played by the revised Local Government Act. Instead of being viewed separately, the national Living Standards Framework and the four wellbeings from the Local Government Act ought to be presented and operationalised as a unified framework with a common objective. The act has a key role to play in linking the Living Standards Framework at the national level with the wellbeing of local communities. And here the lessons from the conference were rather important, particularly in terms of who was represented.

The potential for a broader education of the public on the potential benefits of a wellbeing approach and how they might be realised is considerable. Many New Zealand citizens and politicians might worry that a focus on wellbeing would distract from the important economic goals of economic growth, a more robust and innovative economy, low unemployment and creating a highly skilled workforce. However, what we have learned at this conference is how potentially powerful an impact raising wellbeing (and narrowing its distribution) can have on productivity, economic growth and innovation. Instead of viewing wellbeing simply as an *outcome* of public and private investment, the international research community is rapidly appreciating the role of wellbeing as an *input*, with a major causal role in other outputs of interest, such as increased future earnings, positive social relationships and better health and more (De Neve et al., 2013; De Neve and Oswald, 2012). A happy person, Diener explained, is more likely to be an engaged and productive worker: they will take fewer sick days and be a better colleague and corporate citizen. Research even shows that a happier person takes fewer risks while driving, resulting in fewer and less severe accidents (Isler and Newland, 2017). A happy worker is therefore more likely to show up at work and be more useful when there. Considering the range of positive effects enhanced worker wellbeing has, it becomes apparent that improving the subjective wellbeing of New Zealanders is likely to create a stronger and more internationally competitive economy. We also know that reducing inequalities, including in the distribution of wellbeing itself, has a range of positive effects on outcomes of national interest (Goff, Helliwell and Mayraz, 2016).

The need for engagement and embedding follows a recognition of the diversity of the New Zealand population, as Mai Chin reminded her audience at the conference. This heterogeneity takes many

All told, even though New Zealand is one of a few countries leading the field, a range of challenges stand in the way of New Zealand becoming a leading light in the wellbeing approach to public policy.

forms, which means that even a broad-based wellbeing approach may not elicit support from all New Zealanders. New Zealand is one of the most diverse nations in the OECD (Office of Ethnic Communities, 2016), and, as keynote speaker Carla Houkamau pointed out, many New Zealanders exhibit considerable diversity *within* their groups in addition to any general differences that might exist between them and other groups. If consultation processes or wellbeing frameworks fail to appreciate these layers of diversity, then many New Zealanders will not feel included in or supportive of the wellbeing approach.

During the keynote panel discussion Gabriel Malhouf asked the speakers to address any inadequacies they saw in the OECD Better Life model of wellbeing being applied to New Zealand. In response, Carla Houkamau pointed out that the OECD model does not have a domain for spirituality or religion, which are very important for particular groups, including Māori and Pacific New Zealanders. As other presentations at the conference showed, many working on indicators in New Zealand are aware of this issue. But the question remains: have the efforts to engage with a diverse range of New Zealanders been extensive enough?

Conclusion and looking ahead

All told, even though New Zealand is one of a few countries leading the field, a range of challenges stand in the way of New Zealand becoming a leading light in the wellbeing approach to public policy. Most notable is the conceptual challenge of creating a policy-apt model of wellbeing, one that works at the individual, community and national level. There remain associated measurement issues at these different scales and a number of aggregation issues persist in linking one with the other. Closely associated with both are distributional questions – the way levels of wellbeing and contributors to wellbeing vary across the country, among individuals and communities, and in big cities and small towns. All this is complicated by issues of heterogeneity in a multicultural environment.

There also remains the complex, conceptual and technical challenge of turning available data on wellbeing into policy-relevant information. The roles of Treasury and Statistics New Zealand appear to be clearly demarcated. Statistics New Zealand's role appears to end with the production of indicators of wellbeing (direct and indirect). How these indicators are then used – how this data is turned into information – is the job of someone else: Treasury certainly, but also New Zealand's research community, councils and community groups. Their capacity to undertake that transformation will be critical to the success of the wellbeing approach. An important step in this process lies in recognising the gaps in our data collection. This will be an ongoing process and channels for communication of these data needs will also have to be clear and transparent. Individuals and groups will want to be able to locate themselves not only in multi-domain frameworks based on indicators, but also within distributions of subjective wellbeing assembled at different levels of aggregation: cities, regions, health boards, catchments and so forth. This in turn will place considerable pressure on making measures of subjective wellbeing at least widely collected in the major surveys administered by Statistics New Zealand, as well as those surveys run by other organisations such as the city-based Quality of Life Project.

We hope that these challenges can be overcome because not only would that result in New Zealand joining the likes of Wales and other nations as leading lights in wellbeing and public policy, but it would also likely result in the wellbeing approach being successful in New Zealand. Only then will wellbeing have a chance of being, in the minister of finance's words, 'the most significant legacy this Government can leave for future generations'.

1 The first in this series of conferences was held at Te Papa and Victoria University of Wellington in 2012. The second in the series was held at Hamilton College in New York in 2014. The fourth in this series is being planned for Melbourne in 2020. The series is organised by Aaron Jarden, Philip Morrison and Dan Weijers. This third in the series was hosted jointly by Victoria University of Wellington, the Treasury and the International Journal of Wellbeing, and was sponsored by Allen + Clarke, Deloitte, Statistics New Zealand and the Faculty of Health, Victoria University of Wellington. The authors would like to acknowledge the hard work of the rest of the organising committee for this conference: Samuel Becher, Arthur Grimes, Aaron Jarden, Suzy Morrissey and Conal Smith.

2 The conference website features the full programme, abstracts, and slides from some of the presentations: https://www.confer.nz/wellbeingandpublicpolicy2018/programme/.

3 https://www.stats.govt.nz/consultations/indicators-aotearoa-new-zealand-nga-tutohu-aotearoa-consultation.

4 How to define subjective and objective measures is a matter for debate too, but we present only our view to expedite the discussion.

5 For general background on the issues involved with subjective measures of wellbeing for use in public policy, see Weijers and Jarden, 2013.

6 A response Nussbaum refers to as preference deformation (Nussbaum, 2000).

7 Keynote speaker Emmanuel De Neve advocated for this approach when advising the United Arab Emirates on well-being and public policy. Specifically, he recommended using a measure of life satisfaction (a subjective measure) as the ultimate measure of wellbeing.

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Hannah Blumhardt

Trashing Waste
unlocking the wasted potential of New Zealand's Waste Minimisation Act

Abstract

Ten years on from the enactment of the Waste Minimisation Act 2008, New Zealand's waste policy remains sorely neglected. Successive governments have left the act largely unimplemented, allowing market failures, path dependence and fragmentation to deepen throughout New Zealand's waste and recycling system. In 2017 a new minister assumed the waste portfolio, declaring an intention to use the Waste Minimisation Act to reverse New Zealand's 'rubbish record on waste'. This article outlines a range of policy solutions available to the government, analyses why these policy tools have been underutilised to date, and proffers a roadmap for overcoming the identified obstacles.

Keywords waste, Waste Minimisation Act, circular economy, recycling

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Rubbish, in modern societies, is often treated as 'out of sight, out of mind' – discarded into the nearest receptacle and promptly forgotten. In New Zealand, this philosophy has apparently also infiltrated waste policymaking. Over three decades, successive governments have resisted regulating to improve the country's waste management system or encourage waste minimisation, despite numerous domestic and international commentators recommending urgent policy reform. This neglect may explain New Zealand's position as one of the world's most wasteful countries per capita, with fragmented waste and recycling systems lagging behind those in other high-income countries.

In this context, the 2008 Waste Minimisation Act (WMA) was a watershed moment. This ambitious legislation endowed the minister for the environment with multiple policy levers for reducing waste. Originally a private

member's bill (of Green MP Nandor Tanczos), it was adopted as a government bill and passed with cross-party support after an unusually long two-year select committee process. The act generated hope that change was finally afoot after decades of legal uncertainty and deregulation in the waste sector. Regrettably, ten years on, the WMA's implementation has been disappointingly lacklustre, its regulatory provisions mostly languishing unutilised (Hannon, 2018).

Recently, reason for hope has reemerged. Following the 2017 election, a new minister – Green MP Eugenie Sage – assumed the waste portfolio, espousing an explicit willingness to implement the WMA to tackle New Zealand's 'rubbish record on waste' (Sage, 2018c). In August 2018 she announced a waste work programme (Sage, 2018a). While this is encouraging, the task ahead remains complex, yet urgent. Persistent policy stagnation has entrenched pre-existing market failures, path dependence and fragmentation in New Zealand's waste management system. To overcome these challenges, the government must successfully translate rhetoric into evidence-based action, relatively rapidly. Achieving this requires adequate consideration of:

- the nature of New Zealand's waste problems;
- internationally accepted policy solutions and the WMA's potential to be an effective policy instrument;
- why New Zealand has continually failed to achieve meaningful waste policy reform;
- a clear strategy for overcoming obstacles to the WMA's implementation.

New Zealand's waste woes

Determining the scale and nature of New Zealand's waste problems is hampered by severe data deficiencies, which have attracted international and domestic criticism.[1] World Bank data suggests New Zealand is the most wasteful country in the OECD, and the world's tenth most wasteful country, per capita (Hoornweg and Bhada-Tata, 2012, p.82). Since 2009, New Zealand's recorded quantity of net waste disposed of in levied landfills has risen by 35%, with a 20.1% increase between the last two levy review periods[2] (Ministry for the Environment, 2017a, p.9).

> New Zealand's disposal-oriented, unco-ordinated waste system, lacking in policy or financial support for recycling, resource recovery or waste reduction contradicts waste policy trends internationally, …

However, levied landfills represent just 11% of New Zealand landfills, handling around 30% of total waste (Tax Working Group, 2018, p.69). Data on the remainder is extremely poor: of the 381 known, non-levied consented landfills, filling rates are available for just 17% (Cocks, 2017, pp.7, 9).

Solid waste management carries fiscal and environmental costs, demanding expensive infrastructure for collection, sorting, disposal, and remediation of contamination from incineration or burial (Hoornweg and Bhada-Tata, 2012, pp.4–7). The Auckland region alone spends $126 million annually on such services (Auckland Council, 2018, p.15). Unfortunately, waste systems are not impermeable. Plastics leakage into marine and terrestrial environments presents a global emergency also afflicting New Zealand (World Economic Forum, Ellen MacArthur Foundation and Mckinsey & Company, 2016, pp.15, 17; Horton et al., 2017). Meanwhile, although modern landfills have sophisticated methane and leachate capturing systems, New Zealand's older or closed landfills (more than 1,000 sites) generally do not, so can pollute the surrounding environment (Ministry for the Environment, 2001, p.1). Many are vulnerable to extreme weather events, which compromise capping and expose rubbish.[3] Furthermore, illegal dumping is a persistent problem, while most rural waste is burned or buried in private, unmonitored dump sites, risking soil, waterway and groundwater contamination (Matthews, 2014, pp.i-ii; GHD, 2013, p.ii; Ministry for the Environment and Statistics New Zealand, 2018, p.67).

Avoiding these negative outcomes requires, first, diverting recoverable materials from disposal. However, New Zealand recovers just 28% of total waste (Wilson et al., 2017, p.17), thanks to uncorrected market failures, particularly externalised disposal costs and insufficient incentives to develop appropriate processing infrastructure (Ministry for the Environment, 2014, p.5). New Zealand's small, geographically dispersed population threatens recycling's economic viability, escalating transportation costs and constricting growth of onshore processors (OECD, 2007, pp.56–7; Davies, 2009, pp.173–4; Ministry for the Environment, 2009, pp.14–15; OECD, 2017, p.23). While there is a domestic bottle-to-bottle glass recycler in Auckland, high transportation costs mean significant quantities of recyclable glass (especially in the South Island) ends up in landfill or stockpiles or is otherwise suboptimally diverted. Meanwhile, underdeveloped onshore processing capacity has resulted in precarious over-reliance on recycling export markets[4] (WasteMINZ, 2018, p.4; Ministry for the Environment, 2009, pp.14–15). Indeed, China's 2017 decision to block recycling imports with contamination rates above 0.5% has plunged New Zealand's recycling system into 'crisis' (WasteMINZ, 2018, p.4).

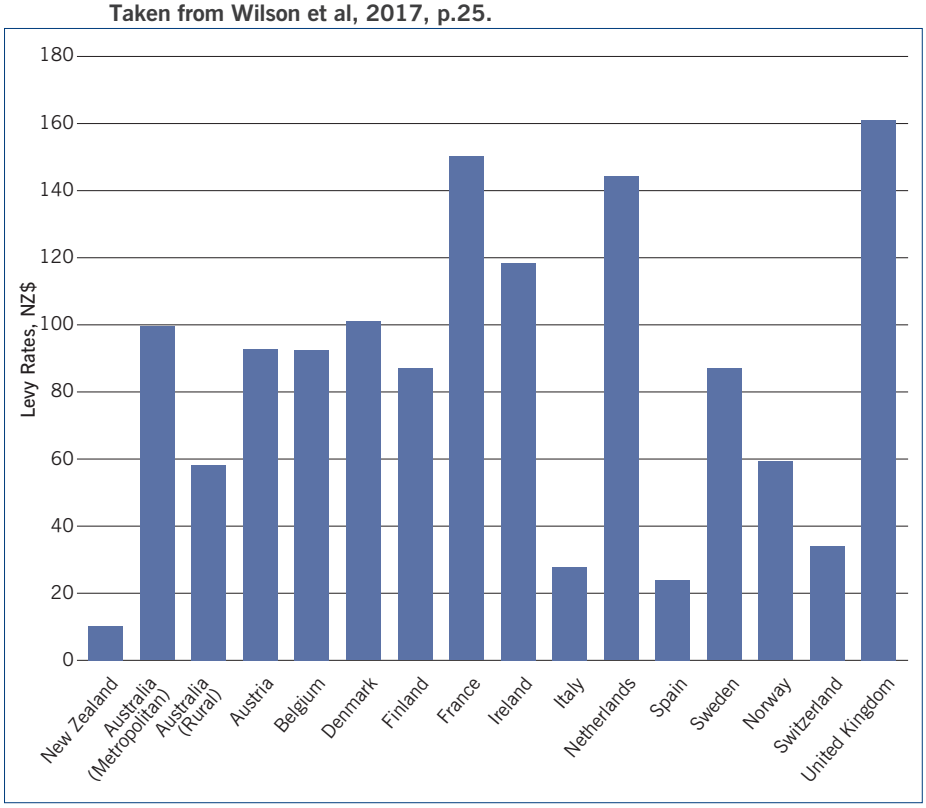
New Zealand's waste disposal levy – $10 a tonne for waste deposited at a 'disposal facility'[5] – is currently too low in comparision with other levy-imposing countries (see Figure 1) and too narrowly applied to incentivise waste reduction (Wilson et al., 2017; OECD, 2017, p.73). New Zealand lacks comprehensive

municipal collection and composting of organic waste – the largest single proportion of household waste and roughly 25% of total waste going to levied landfills – because landfilling is currently cheaper (Ministry for the Environment, 2017a, p.21; Wilson et al., 2017, pp.8–9). Similarly, construction and demolition waste constitutes roughly 50% of landfilled material, despite being mostly recoverable, as non-levied landfills accept this waste stream (Wilson et al., 2017, p.9). New Zealand also has low recovery rates for problematic waste items, including tyres and electronic waste (OECD, 2007, pp.56–7; Hannon, 2018). For example, only around 30% of end-of-life tyres are diverted from landfill, compared to 80–90% in countries with regulatory frameworks (Ministry for the Environment, 2014, pp.21–2).

Compounding matters, New Zealand's waste system is fragmented, amplifying the country's already small economies of scale. Numerous actors, from local government and the private and community sectors, operate in the waste sector, with no obvious oversight or direction (Davies, 2009). Virtually no national guidelines exist for data collection or service provision. Unmediated fragmentation has exacerbated a competitive, sometimes hostile, ethos among stakeholders (Oakden and McKegg, 2011, pp.30–1). The collaboration and shared expertise New Zealand requires to escape its waste problems are compromised without a national referee to arbitrate the sector's advocacy and level playing fields (Coutts, 2018, p.23). However, the Ministry for the Environment arguably lacks the expertise to fulfil this function (Hannon, 2018, pp.12–13; Davies, 2009, p.168).

This patchy policy environment also produces inefficiencies. Local government has responsibility for waste and recycling services, but mostly contracts the private sector, with variable standards of service, council control and oversight (Davies, 2009, p.168; Ministry for the Environment and Statistics New Zealand, 2018, p.66). Privatisation often fosters path dependence; commercial sensitivities thwart improved data collection, while resource-constrained territorial authories often contract 'the lowest cost or most convenient services', producing inferior quality recyclable materials (WasteMINZ, 2018, p.9; see also Coutts, 2018, p.22). These contracts' long duration and investment in equipment suited to the contracted systems shoehorn services towards low-value recycled product.

Figure 1: Levy Rates for Active Waste in Different Countries (NZ$). Taken from Wilson et al, 2017, p.25.



Meanwhile, the waste minimisation burden largely falls on non-state actors, who rely on moral suasion and voluntary efforts with high opportunity costs. Without government regulation of frequently littered waste streams, volunteers spend hundreds of thousands of hours annually at clean-up events (Davies, 2017, pp.33–4). Proactive businesses have adopted waste minimising practices, but these cost time and money and expose them to freeloading. Community composters and resource recovery groups lead efforts to divert waste streams like organics, construction and demolition waste and electronics, developing considerable expertise and resilience in challenging policy environments, but many face obstacles to remaining viable or upscaling without policy reform.[6] While voluntary and community efforts are necessary and laudable, relying on them without supporting regulation or adequate investment is an inefficient (and unfair) path to national waste reduction (Parliamentary Commissioner for the Environment, 2006, p.78).

Many commentators have urged central government leadership to address New Zealand's waste problems (ibid., p.8; Davies, 2009, p.173; WasteMINZ, 2018; TA Forum, 2018; Hannon, 2018). However, successive governments have struggled to establish and/or sustain any strategic response. The 2002 New Zealand Waste Strategy's overarching 'zero waste' vision and 30 waste minimisation targets were overturned in 2010 before any change materialised (Hannon, 2018, pp.27–9). Similarly, although the WMA's enactment was successful, its implementation has not been (ibid., p.16).

Policy solutions at home and abroad

New Zealand's disposal-oriented, uncoordinated waste system, lacking in policy or financial support for recycling, resource recovery or waste reduction contradicts waste policy trends internationally, which generally espouse a hierarchy of actions prioritising waste minimisation and resource recovery over treatment and disposal (Wilson et al., 2017, p.21; Hoornweg and Bhada-Tata, 2012, p.27). While New Zealand pays lipservice to this hierarchy, applying it requires high-level

policy redesign decoupling economic growth and waste production.

For the last 150 years, global economies have followed linear 'take–make–dispose' patterns, extracting earth's resources to manufacture products that are sold, used, then disposed of at the end of their life (World Economic Forum, 2014, p.13). Apart from producing excessive waste, linear consumption erodes resource productivity because valuable, often finite resources are routinely lost to the economy through landfilling or incineration (ibid., p.21). Accordingly, experts such as the Ellen MacArthur Foundation advocate transition towards circular economies that 'design out waste' (ibid., 2014, p.15). Materials stay in the economy through 'closed-loop' systems achieved via product redesign and effective resource recovery, facilitated by industry–government–retailer co-ordination.

While fundamentally challenging the status quo, the circular economy has acquired international currency. The World Economic Forum describes it as 'a trillion-dollar opportunity, with huge potential for innovation, job creation and economic growth' (ibid., 2014, p.3). In 2015 the European Commission adopted a Circular Economy Action Plan, containing extensive, measurable targets. In New Zealand, acceptance of the circular economy concept is growing. The Sustainable Business Network recently noted that circularisation of Auckland's economy could contribute $8.8 billion to Auckland's GDP by 2030 (Sustainable Business Network, 2018). Minister Eugenie Sage openly supports addressing New Zealand's waste problems through circular economy principles (Sage, 2018b).

However, such large-scale transformation of entrenched economic structures requires concrete policies and government oversight to ensure nationally consistent, mandatory measures that level playing fields (Ellen MacArthur Foundation, 2015). Key policies include:

- banning or regulating certain products that cannot be circularised;
- landfill levies to disincentivise waste production and incentivise resource recovery;
- mandatory economic instruments, such as deposit refund or product stewardship schemes, to encourage circular business practices for problem waste items; and
- national strategies and comprehensive data collection to drive and monitor progress.

In 2006 New Zealand's parliamentary commissioner for the environment recommended many similar policies in a report imploring the Ministry for the Environment to incentivise better waste management through economic instruments. Then, the government had fewer tools at its disposal. Now, the WMA permits both economic instruments and command and control measures that could soften market failures and enable circularisation. These tools offer significant untapped potential to rapidly improve New Zealand's waste policy landscape through national co-ordination, disincentivising linear disposal and mandating circularity.

> According to WasteMINZ's Territorial Authority Forum, increasing and expanding the waste disposal levy 'is the single most powerful tool available to government to reduce waste and improve resource efficiency and recovery'

Achieving national co-ordination

Successful circular economies presuppose co-ordination, good data and shared purpose. New Zealand's ad hoc, fragmented waste and recycling systems operating in an information void are anathema to circularity. An obvious policy action is to begin mandating data collection on the quantity, composition and treatment of waste and recovered materials, which section 86 of the WMA permits.[7] Next, binding national standards for territorial authorities could help standardise best-practice waste and recycling services, reduce regional variation and enable nationwide public information campaigns on household recycling and waste minimisation. Under section 49 of the WMA the minister can set performance standards for territorial authorities' implementation of waste management and minimisation plans, potentially including: standards for spending levy income; target recovery, recycling and reuse rates; targets for reinvigorating community-based recycling; and best-practice minimum standards for waste and recycling services, including baseline contract conditions and adequate weighting of social/environmental outcomes when evaluating tenders.

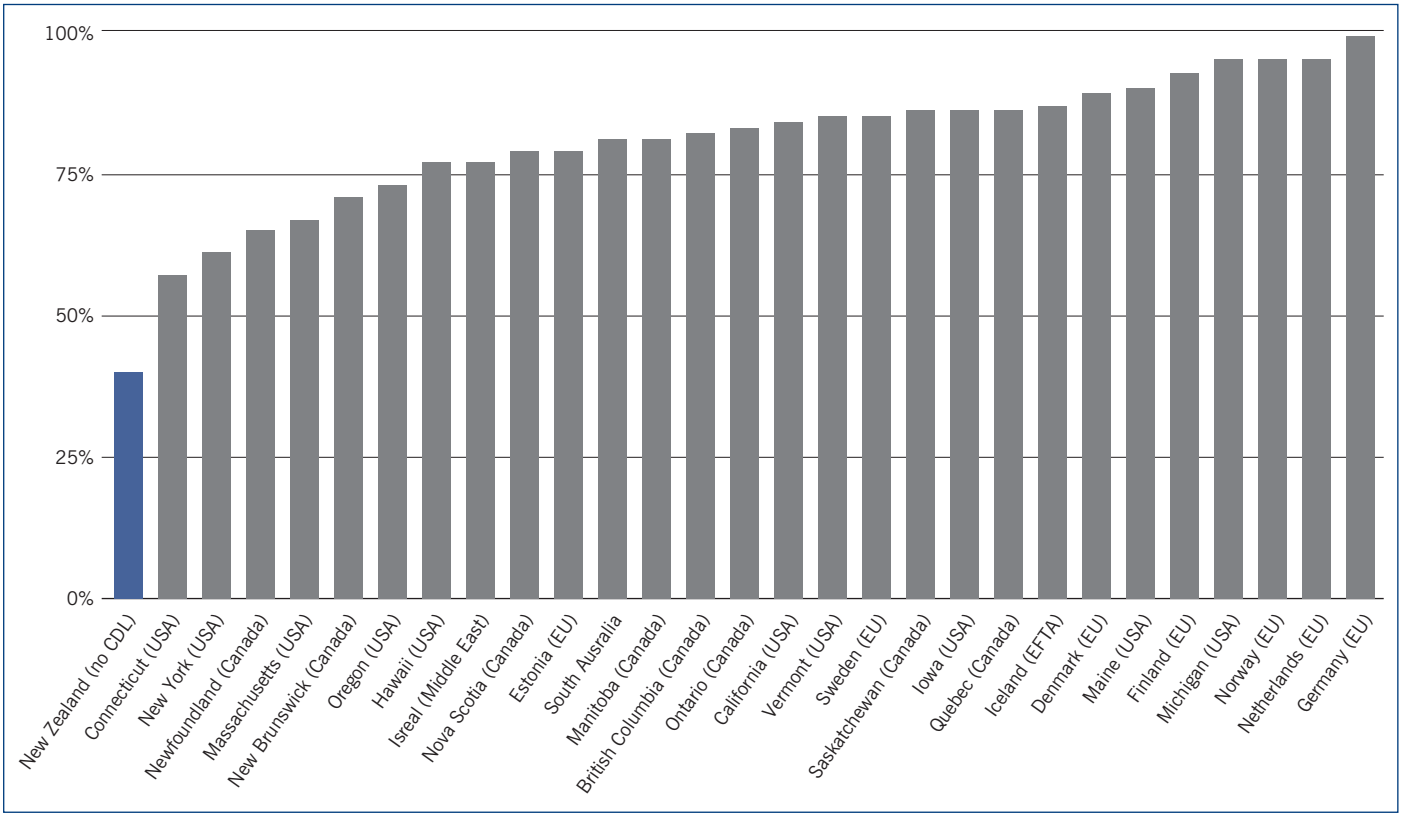
Disincentivising linear disposal/incentivising alternatives

Ban/control certain items

The Sustainable Business Network notes that '[b]anning or severely restricting ... troublesome materials, like micro beads or single use plastics, could help to focus innovation on circular economy solutions' (Sustainable Business Network, 2018, p.30). To ameliorate New Zealand's recycling crisis, WasteMINZ also suggests 'actively restricting the use of products or materials for which there is no viable recovery pathway (such as some types of plastic)' (WasteMINZ, 2018, p.9). Removing these items from the waste stream encourages movement up the waste hierarchy.

International precedent exists for such regulatory action, particularly for the linear economy's *sine qua non*, single-use plastics. Several Pacific Island states – including Vanuatu, Niue and Samoa – have banned or are developing bans for certain single-use plastics, including bags, straws and polystyrene (Buchanan, 2018). In late October 2018 the European Parliament voted to adopt the European Commission's proposed directive to ban ten single-use plastic items (including plastic cotton buds,

Figure 2: New Zealand's Container Return Rates Compared to Countries or States with CDS (taken from Envision, 2015, p.50; corrected)



cutlery and straws), set national reduction and/or recycling targets for non-banned plastic products, oblige producers to fund clean-ups and incentivise development of alternatives (European Parliament 2018. The European Parliament and Council have already mandated that member states levy or ban single-use plastic bags (Directive 2015/720/EC).

The WMA permits similarly proactive policies. Under section 23(1)(b) the minister can control or prohibit the sale and manufacture of products containing specified materials. Yet section 23 has been used only twice: to ban the sale and manufacture of personal care products containing plastic microbeads (2017), and to propose phasing out single-use plastic bags (2018). While necessary and welcome, both actions followed long-standing public campaigns, avid local government lobbying and/or voluntary retailer phase-outs (Ministry for the Environment, 2018b, p.20). The government could use section 23 much more ambitiously and proactively.

Waste disposal levy

Linear activity is insurmountable while disposal costs undercut recovery costs. According to WasteMINZ's Territorial Authority Forum, increasing and expanding the waste disposal levy 'is the single most powerful tool available to government to reduce waste and improve resource efficiency and recovery' (TA Forum, 2018, p.6). Overseas experience demonstrates that landfilling responds to price signals, so higher, comprehensive landfill levies should help reduce disposal rates (Tax Working Group, 2018, p.69; World Economic Forum, 2014, p.26). Under section 41 of the WMA the government can redefine 'disposal facility' to cover all landfill sites and prescribe a higher levy; rate – whether small, incremental increases or a hike to $140 a tonne, as Wilson et al. (2017) propose. Most local authorities support increasing and expanding the levy; the Tax Working Group recently indicated its support too (TA Forum, 2018, p.6; Tax Working Group 2018, p.70).

As levy revenue is redirected to waste minimisation activities through the Waste Minimisation Fund,[8] a higher, comprehensive levy would also increase available revenue for addressing onshore infrastructure gaps and boosting recycling's cost-competitiveness (Wilson et al., 2017, p.47; WasteMINZ, 2018, p.8). However, two reviews of the levy's effectiveness have described the Waste Minimisation Fund's current allocation as 'largely ad hoc and predominantly applicant-driven rather than being directed purposefully' (Ministry for the Environment, 2017a, p.70). Similarly, perceptions have developed of ministers adopting a 'pick winners' approach to allocation (Hannon, 2018, p.31). Future use of levy revenue should follow 'a clear strategic framework' (Wilson et al., 2017, pp.17) and include increased transparency of central government's WMA funding powers.

Mandating circularity

Deposit refund systems

Alongside disincentivising disposal, requiring adoption of circular business practices is critical. A simple measure permitted by section 23 of the WMA are mandatory deposit return schemes, such as a container deposit system for beverage containers (already in use in much of Australia, South Africa, the United States and Europe). As Figure 2 shows, New Zealand's bottle recovery rates are low (around 40%); roughly a billion bottles go to landfills or are discarded as litter annually (Envision New Zealand, 2015, p.8). International evidence demonstrates that container deposit systems reduce beverage container littering drastically (Davies, 2017) and can increase collection/

recovery rates to 80–95% (Envision New Zealand, 2015). They also improve the quality of recovered material (Davies, 2017, p.36; European Commission, 2018, p.2) – an antidote to New Zealand's current recycling contamination rates (Envision New Zealand, 2015, p.22) – and could finance transporting glass bottles from across New Zealand to Auckland's recycler. Increased glass bottle recovery rates could also facilitate bottle reuse systems (Envision New Zealand, 2015, pp.77–8), 'a signature example of closed regional and local loops' (World Economic Forum, 2014, p.30).

A container deposit system is low-hanging policy fruit, attracting over 90% of councils' support and 83% of the public's (TA Forum, 2017, p.11). An independent cost–benefit analysis of a New Zealand system estimated overall net benefits of between $184 million and $645 million, with the best case scenario showing benefits six times the costs and the worst case scenario benefits twice the costs (Davies, 2017, p.41). Waste consultancy Envision New Zealand has already crafted a New Zealand blueprint after reviewing and consolidating international best practice. Experts agree that capacity exists through the country's recycling centres and transfer stations (Davies, 2017, pp.20–1; Envision New Zealand, 2015, p.26).

Product stewardship

Numerous waste streams could be better managed through product stewardship schemes, which make manufacturers and others involved in a product's life cycle responsible for ensuring that product's effective reduction, reuse, recycling and recovery and managing any harm caused if/when it becomes waste (WMA, s8). As such, product stewardship is a polluter pays approach, transferring 'the responsibility and cost of product waste disposal from local authorities and ratepayers to producers and consumers' (New Zealand Product Stewardship Council, n.d.). Product stewardship can include advance disposal fees being built into a product's purchase price, producer responsibility to take back products for recycling, or mandatory recovery rates for packaging.

Generally, product stewardship schemes incentivise design of easily repairable, upgradeable, recyclable or compostable products, shifting commercial activity up the waste hierarchy. They can also iron out market failures undermining resource recovery. For example, recycling rate targets and advance disposal fees for imported tyres could lift recovery rates and foster 'a commercial environment for investment in end-use markets' (Rose, 2015, p.12). For packaging, mandatory product stewardship could align materials going to market with New Zealand's recycling infrastructure capabilities or incentivise adoption of easily reusable packaging (WasteMINZ, 2018, p.5).

The WMA provides a legislative framework for both voluntary and mandatory product stewardship schemes. To date, 15 voluntary schemes have been accredited, but no mandatory scheme. Voluntary mechanisms have a place, but are more appropriately 'short-run, stopgap' measures, given their well-recognised limitations (Parliamentary Commissioner for the Environment, 2006, p.80). They struggle to achieve high diversion rates or economies of scale that permit efficient resource allocation, because of low participation rates; lack of binding targets; over-reliance on consumer goodwill; and vulnerability to the freeloader problem, whereby industry players choosing not to redesign, recover, reuse or recycle gain competitive advantage over those who do (ibid., pp.47, 79–80; Envision New Zealand, 2015, p.51; Hannon, 2018, p.14). By 2014 New Zealand's 11 accredited voluntary product stewardship schemes had diverted just 1.4% of the country's total waste to disposal facilities (Ministry for the Environment, 2014, p.1).

Mandatory product stewardship schemes are politically and logistically feasible. The Ministry for the Environment has acknowledged successful international examples for waste streams such as tyres, electronic waste and agricultural chemicals (ibid., pp.6, 16, 22, 25), which already regulate many international businesses operating in New Zealand. Furthermore, various industry groups have approached successive governments seeking regulation (ibid., pp.8, 10; TA Forum, 2018, p.11). Countless bodies have recommended that New Zealand implement mandatory schemes, including the OECD (2007), the parliamentary commissioner for the environment (2006), local government (TA Forum, 2018) and the New Zealand Product Stewardship Council. Ministry-initiated public consultations and working groups involving industry and other experts on various waste streams have demonstrated significant support for mandatory schemes (Ministry for the Environment, 2010a, 2014, pp.17, 22, 25–6, 2015; Rose, 2015, p.11).

The WMA permits many politically and logistically feasible policy reforms that could ameliorate New Zealand's waste woes. However, the overwhelming theme since its enactment has been wasted potential...

Why has New Zealand failed to achieve meaningful waste policy reform?

The WMA permits many politically and logistically feasible policy reforms that could ameliorate New Zealand's waste woes. However, the overwhelming theme since its enactment has been wasted potential (Hannon, 2018). Behind the scenes, various obstacles impede even minimal advances in waste policy.

Lack of political will

Waste has been low on the political agenda, diminishing central government accountability for inaction. Functioning waste management systems – featuring

collection, removal, disposal in covered holes and valleys or shipping overseas – generally reduce waste's public visibility. Astoundingly poor data on waste also masks the scale of the problem, and regional variance in services thwarts national information campaigns. Public awareness about the WMA is 'extremely low' (UMR Research, 2011, p.4).

Fortunately, public scrutiny of waste issues is increasing, catalysed by international documentaries revealing the extent of marine plastic pollution, notably David Attenborough's *Blue Planet II*, and primetime television footage of New Zealand's mountainous recycling stockpiles. The present government's willingness to use the WMA coincides with this upsurge in public consciousness.[9] However, most public attention focuses on the issue of plastic, rather than the WMA's neglect or waste generally. While the plastic case study indicates that increased public pressure can foster a positive climate for waste policy reform, whether similar public pressure bears upon arguably less capitivating waste-related issues is doubtful.

Governance gap

Central government holds the powers to reform waste policy, but local government is charged with day-to-day management of rubbish and recycling and setting objectives and methods for local waste management and minimisation (WMA, s43). Arguably, central government's practical detachment from these tasks has shielded it from a sense of urgency regarding policy reform and the deleterious impacts of reform not being implemented. To redress this governance gap, local government holds 'an important voice' (Envision New Zealand, 2015, p.9). Indeed, many councils list lobbying central government to implement the WMA as an action under their waste management and minimisation plans.

However, rather than clear channels of waste-related advice, 'a perceptible disconnect' exists between central and local government perspectives (Hannon, 2018, p.13). Councils' overwhelming support for activating the WMA's policy levers – including bottle deposits and mandatory product stewardship – has elicited little response, raising a red flag regarding the policy creation process. For example, in 2016, in evidence before a select committee considering a petition to ban single-use plastic bags, the Ministry for the Environment reportedly responded to an observation that 89% of councils supported a ban by stating that 'councils had not brought any problems with current policy initiatives to its attention' (Local Government and Environment Select Committiee, 2016, p.7).

Preference for voluntary measures over mandatory measures

Long-standing ideological preference for voluntary schemes has impeded mandatory measures in waste policy (Envision New Zealand, 2015, p.46; Davies, 2009, p.165; Hannon, 2018). In 2006 the parliamentary commissioner for the environment lamented that New Zealand policymakers seemed 'fixated on voluntary measures' for addressing waste (2006, p.7). Some predicted that this fixation would relax in the post-WMA era (Davies, 2009, p.173). However, a 2014 Ministry for the Environment consultation document on priority products for mandatory product stewardship stated that since the WMA's enactment, encouraging voluntary schemes had been the government's 'first priority'; although submissions on the ministry's 2009 consultation mostly supported priority product declarations, these were not progressed 'because Government wanted to allow time for voluntary measures to demonstrate their effectiveness' (Ministry for the Environment, 2014, p.1, 2009, p.8).

Persistent inclination toward voluntary schemes across successive governments may suggest preference for this position within the Ministry for the Environment itself. In 2003 the then minister's consideration of mandatory waste levies was 'canned' because of a 'reprioritisation in the ministry' towards working with industries to encourage 'voluntary recycling' (Collins, 2003). The waste section of the ministry's 2017 *Briefing to the Incoming Minister* did not mention mandatory measures, section 23 of the WMA or product stewardship, despite explicitly referring to 'legislative levers' to address waste. Instead, the document emphasised the waste disposal levy and the Waste Minimisation Fund, adding that '[n]on-regulatory tools, such as guidance and voluntary initiatives, can also help minimise waste' (Ministry for the Environment, 2017b, p.14).

> While many New Zealand industries support mandatory policies to address waste, the Packaging Forum does not, sometimes appearing to successfully halt policies otherwise garnering strong public and local government support, like container deposit systems …

Endemic indecisiveness on waste policy, even when ministers have expressed an intention to act, also suggests bureaucratic inertia. In 2014 the then minister stated, 'the time has come to consider appropriate mandatory approaches for selected priority waste streams' (Ministry for the Environment, 2014, p.1), yet none eventuated. Perusal of ministry publications over decades shows repeated cycles of consultation on the same waste issues, generating substantially similar submissions from the same stakeholders. Yet their demonstrable preference for mandatory product stewardship has been routinely and inexplicably ignored. The parliamentary commissioner for the

environment observed similar policy vacillation in the pre-WMA era (Parliamentary Commissioner for the Environment, 2006, p.8).

Industry influence

The pro-voluntary approach happens to align with the interests of certain industrial sectors that have consistently opposed mandatory measures in waste policy. Internationally, industry opposition to such measures is well documented (Tombleson and Farrelly, 2016, p.10; Envision New Zealand, 2015, pp.10, 17). While many New Zealand industries support mandatory policies to address waste, the Packaging Forum does not, sometimes appearing to successfully halt policies otherwise garnering strong public and local government support, like container deposit systems (Packaging Forum, n.d.; Ranford, 2018).

Perceived ministerial deference to business preference is a recurring complaint (Davies, 2009, p.168; Hannon, 2018). In 2006 the parliamentary commissioner for the environment revealed that 'We were advised by a senior MfE official that neither economic instruments nor regulation will be introduced by the Ministry to manage waste unless industry wants these policy tools to be used' (Parliamentary Commissioner for the Environment, 2006, p.55). Also recurrent is an accommodating tendency to 'encourage' business to develop product stewardship schemes (Ministry for the Environment, 2010b, p.2), rather than simply requiring schemes to be developed. A common feature over the last 20 years are 'vague and voluntary' packaging accords with industry that have proved largely ineffectual (Hannon, 2018, p.41).

The Ministry for the Environment has awarded substantial Waste Minimisation Fund grants to industry techniques of deflecting regulation, particularly anti-littering campaigns. In the 1950s the international packaging industry began developing such campaigns alongside increasing use of single-use packaging, to focus attention on consumer behaviour and 'avoid discussing the responsibility of the producer to reduce or redesign packaging' (Murray, 2017, p.20). The industry-initiated Keep New Zealand Beautiful and Be a Tidy Kiwi campaigns are domestic examples. Though now independent, both campaigns still work alongside the Packaging Forum. Over $4 million has been allocated to various anti-littering projects, including Keep New Zealand Beautiful's 'Do the Right Thing' campaign, the Packaging Forum's 'Litter Less Recycle More' programme, the Marlborough Litter Project, and Sustainable Coastlines' litter review (Ministry for the Environment, n.d.).

The Packaging Forum has also secured central government support for an 'eco-system' of proxy schemes (Envision New Zealand, 2015, p.8) that essentially delay mandatory options, creating the illusion of progress. This 'tokenistic approach' allows industry groups to 'make minimal efforts at implementing product stewardship programs that achieve low return rates', reducing product stewardship 'to an extended PR exercise' (Tombleson and Farrelly, 2016, p.11). The Packaging Forum has received over $3 million in Waste Minimisation Fund grants for the Public Place Recycling Scheme and the Soft Plastics Scheme (Ministry for the Environment, n.d.), and routinely refers to both schemes' existence to support its arguments that mandatory schemes are unnecessary (e.g. Packaging Forum, n.d., 2016a, 2016b).

Lobbying is not necessarily negative; it can be 'grease in the wheels of a well-functioning democracy' or resource-wasting 'sand' (Anderson and Chapple, 2018, p.10). In the cases described, the packaging industry's lobbying behaves as sand because its schemes receive 'significant amounts of public and private funding' in place of their (probably cheaper, more effective) mandatory counterparts (Envision New Zealand, 2015, pp.10). The Ministry for the Environment has previously been open about this either/or approach: for example, opposing a petition to ban single-use plastic bags by citing its preferred 'non-regulatory approach' of 'changing behaviour (through the promotion of slogans such as "Be a Tidy Kiwi"), community involvement, and voluntary initiatives' (Local Government and Environment Select Committee, 2016, p.7).

> In the waste policy context, easy wins are issues the public and local authorities (and perhaps even industry) largely support, and which overseas jurisdictions have already successfully adopted.

Strategising to overcome obstacles

Table 1 summarises progress to date on policy reform under the Waste Minimisation Act. The new minister has acknowledged that the WMA has been 'gathering dust', stating she intends 'to take it off the shelf and start using it' (Sage, 2018d). Her recently announced waste work programme will explore using the WMA to: increase and expand the waste levy; improve waste data; fund onshore waste and recycling infrastructure; and increase product stewardship schemes for problem waste streams (Sage, 2018a). However, the preceding analysis suggests that obstacles to using the WMA are pernicious and that 'good words' do not necessarily engender action (Davies, 2009, p.168). Currently the government lacks a clear strategy to avoid the pitfalls that stymied previous governments, a fact already reflected in some of its policy approaches. Outlined next is a roadmap for gaining and maintaining momentum in waste policy reform.

Table 1: Utilisation of policy levers available under the Waste Minimisation Act 2008

Policy levers	Progress thus far	Outcome
Declare certain products 'priority products', triggering requirement for mandatory product stewardship scheme (ss9, 10)	Two public consultations on possible products to be declared 'priority products': · 2009: agricultural chemicals, waste oil and refrigerant gases · 2014: electrical and electronic equipment, tyres, agrichemicals and farm plastics, refrigerants and other synthetic greenhouse gases.	2009 consultation: Majority of submissions support priority product declaration for proposed products. Many also recommend additional priorities (e-waste, tyres and packaging). 2014 consultation: Majority of submissions support priority product declaration for proposed products (with proviso that any mandatory product stewardship schemes are well designed). A number also identify additional priorities (packaging and/or plastic bags). To date, no priority products declared.
Accredit voluntary product stewardship schemes (s11)	Fifteen voluntary product stewardship schemes developed to date (see full list: http://www.mfe.govt.nz/node/23986/).	As of 2014, voluntary schemes had diverted 1.4% of New Zealand's total waste from landfill.
Control or prohibit the manufacture or sale of products containing specified materials (s23)	2017: Regulations made prohibiting sale or manufacture of personal care or cleaning products containing plastic microbeads. 2018: Government begins public consultations on proposed mandatory phase-out of plastic bags by mid-2019.	
Levy waste disposed of at a disposal facility, at default rate of $10 a tonne (s26).	2009: This section of the act came into effect in July.	Total revenue raised between 1 July 2009 and 30 June 2016 = roughly $193 million. However, net waste to levied landfills has increased by 35% since 2009.
Power to prescribe levy rate other than the default rate (ss27, 41)	Power has not been used.	
Redistribute levy income towards projects to promote or achieve waste minimisation (s38)	2009: This section of the act came into effect in July.	Roughly $85.5 million allocated to the Waste Minimisation Fund between 1 July 2009 and 30 June 2016. Data not collected on tonnes of waste minimised from funded projects.
Redefine 'disposal facility' to expand application of levy to more landfills (s41(a))	Power has not been used.	Levy applies to only 11% of New Zealand landfills, which handle about 30% of the total waste stream.
Minister may set performance standards for territorial authorities' implementation of waste management and minimisation plans (by notice in the *New Zealand Gazette*) (s49)	Power has not been used.	
Regulatory power to require operators of disposal facilities or any class of person to keep and provide records and information (s86)	2009: regulation made requiring disposal facility operators to keep records and information to enable accurate calculation of amounts of levy payable to operator.	Limited data kept on quantity and composition of waste (including diverted waste) to levied landfills, which is only 30% of New Zealand's total waste stream. Scope of information kept does not include information on what happens to diverted material.

Start with the low-hanging fruit

Given limited public awareness on waste, and a history of industry opposition, the government should first adopt easy wins carrying low political risk. Recently the leader of the opposition dismissed the government's proposed single-use plastic bag ban as 'low-hanging fruit' (cited in Woolf, 2018). Certainly, the proposal is neither proactive nor visionary. However, there is logic to tackling easier issues first, provided such actions represent the

beginning of concerted policy reform, not the sum total. In the waste policy context, easy wins are issues the public and local authorities (and perhaps even industry) largely support, and which overseas jurisdictions have already successfully adopted. A plastic bag ban demonstrates these characteristics, but so too do container deposit systems, proactively applying section 23 to other single-use plastics attracting public ire, and raising and expanding the waste disposal levy.

Take action within the present electoral cycle, especially for mandatory product stewardship

The waste work programme's timelines (undisclosed) are critical for predicting whether the programme can surmount ministry consultation cul-de-sacs and transition from investigation to action within one electoral cycle. In particular, New Zealand cannot continue postponing mandatory product stewardship schemes. The programme's planned consideration of product stewardship is predominantly investigative,[10] so is not yet significantly distinguishable from previous Ministry for the Environment scoping exercises. The habit of conducting consultations and working groups, fostering the impression action will follow, only to ignore the findings and prolong the status quo has already partially eroded the goodwill the ministry relies on for policy input (Hannon, 2018, p.16). A prolonged investigation over multiple electoral cycles also risks delay, repetition or reversal should the minister or government change.

Ideally, the minister should commit to declaring at least one priority product within the present electoral cycle. End-of-life tyres represent an easy win because a comprehensive mandatory product stewardship blueprint already exists (developed by the Tyrewise Working Group with Waste Minimisation Fund funding: see Tyrewise, 2013). While Sage identified end-of-life tyres as a potential candidate for mandatory product stewardship, she also foreshadowed further consideration, triggering exasperation from Tyrewise representatives.[11] Rather than investigating further, Tyrewise's proposal should be put to public consultation promptly, with a view to declaring tyres a priority product before the next election. Alongside such a declaration, a longer investigative process for other, less scrutinised potential priority products (i.e. e-waste, agricultural waste and plastic packaging) may well be appropriate, but should be initiated soon.

> Ultimately, democratising the policy creation process is essential not only for triggering policy reform, but also for ensuring that any forthcoming implementation of the WMA achieves the best results possible on a range of measures

Remove barriers to long-term waste policy progress

Certain matters obstructing waste policy progress require reform to future-proof waste minimisation. Improving New Zealand's waste data is paramount; postponing this action has already squandered decades of potential data gathering, triggering ripple effects of delay throughout waste policy.[12] Improving central government accountability is also necessary, including reintroducing national waste minimisation targets into the New Zealand Waste Strategy (WasteMINZ, 2018, p.8).

Ideological aversion to mandatory measures should be overcome through greater willingness to discuss them publicly. This topic need not be taboo: the inclusion of mandatory measures in the WMA (passed with cross-party support following two years of select committee debate) indicated a hard-won political consensus regarding their appropriateness for New Zealand. The present minister has at times been overly tentative about discussing mandatory waste policy,[13] although gradually this appears to be changing. Maintaining strong, unequivocal language regarding key mandatory measures is needed to normalise the concept, prime the public for their use, and allay suspicions about continued susceptibility to backroom lobbying.

Reflect the waste hierarchy in policy priorities

Adhering to the waste hierarchy, which prioritises preventing waste over managing or diverting it, is crucial for circularising the economy. Many of the government's actions thus far continue pre-existing approaches of shoehorning policy towards industry self-regulation and linear end-of-life 'solutions' rather than upstream regulation. In June 2018 the minister announced a $2.7 million grant to Sustainable Coastlines for more anti-littering activities, and a non-binding, voluntary Plastic Packaging Declaration involving some New Zealand businesses pledging to use '100% reusable, recyclable or compostable packaging by 2025' (Ministry for the Environment, 2018a, p.1). While such measures are not intrinsically flawed (though their cost-effectiveness is questionable), they must be accompanied by mandatory mechanisms to minimise waste.

In this respect, the waste work programme is vague about the desired policy tools for circularising New Zealand's economy. Expanding the levy and redirecting the Waste Minimisation Fund towards improved onshore recycling and recovery infrastructure is clearly a focus. While absolutely necessary, increased subsidies for these activities remain a partial and expensive approach to waste minimisation, especially for small economies like New Zealand where

circularising may be more efficiently achieved through policies that reduce waste at source. The country's high per capita rate of waste sent to landfills also suggests that potential gains can still be made by reducing wasteful consumption. These factors also support foregrounding mandatory product stewardship and use of section 23 in the policy mix.

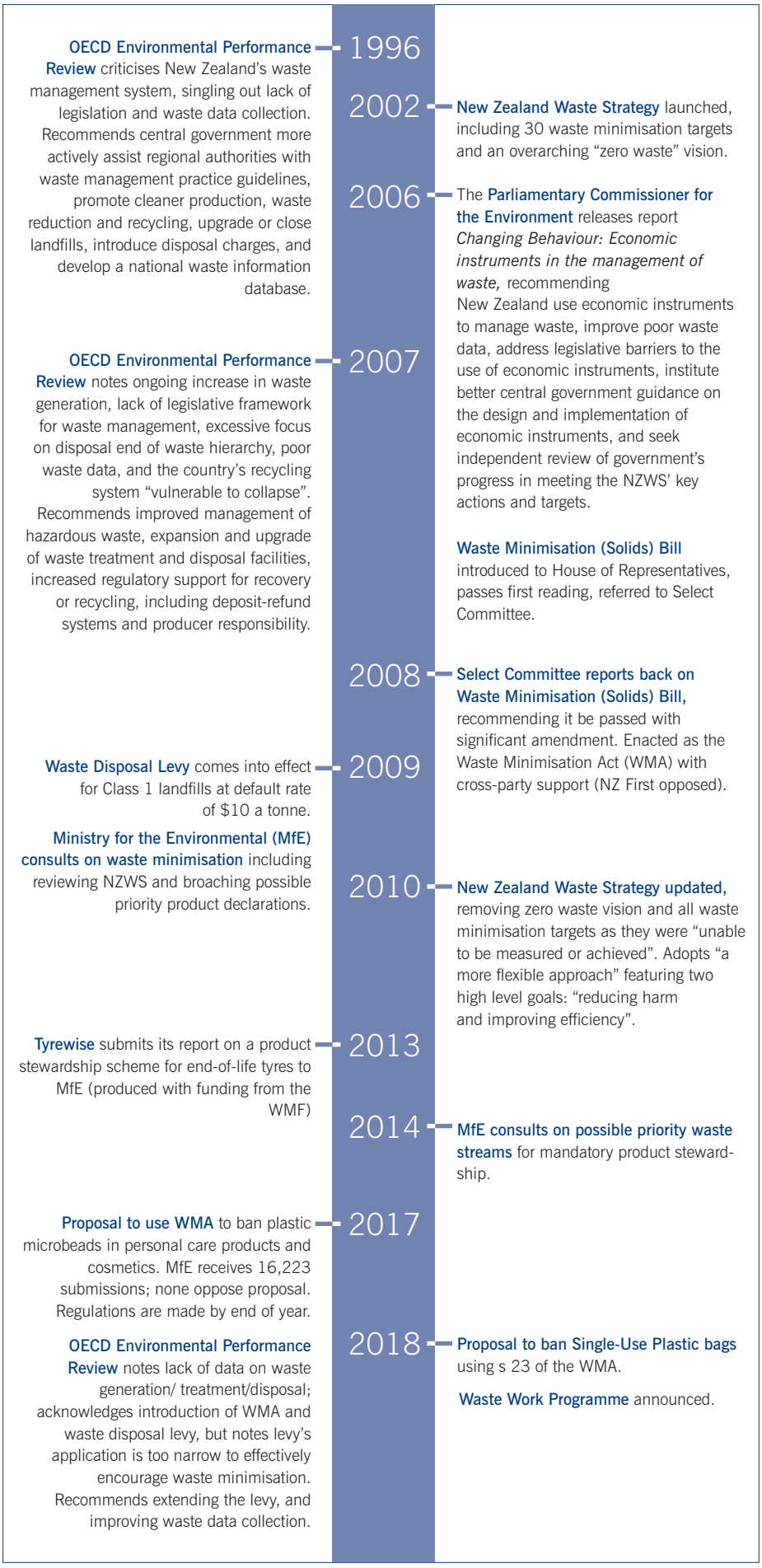
Democratising the policymaking process

History indicates that broaching mandatory measures will provoke the packaging industry's opposition. Government should prepare to respond by reinforcing mandates through more robust communication with other stakeholders. This is no call to sideline industry, but simply underscores that industry's role in developing schemes to regulate its own practices should occur 'in co-ordination with non-industry not-for-profits or environmental groups, and with government oversight, and not in opposition to them' (Tombleson and Farrelly, 2016, p.11).

Fostering opportunities for relevant stakeholders to support effective, rationalised use of the WMA is also needed to surmount knowledge and governance gaps central government faces in better managing particular waste streams or recycling systems. Stakeholders' primary opportunity for deeper engagement with the Ministry for the Environment is through the Waste Minimisation Fund process, but further avenues to shape proactive policy setting are also appropriate. The present government's establishment of a taskforce working with local government and industry representatives to address the present recycling crisis is heartening (Sage, 2018d), and the approach could also be applied to policy development or to securing a shared understanding about the kind of waste system that policy reform and investment should strive for.

However, ensuring plurality and representativeness of voices is critical. Failure to implement policies garnering local government, non-profit and public support demonstrates that central government must democratise how it listens. Particular areas requiring attention include overcoming the central–local government disconnect, and leaving greater room for volunteers, not-for-profits

Figure 3: Three decades of New Zealand waste policy events



and community recyclers to contribute their specific expertise on various issues, including how best to develop New Zealand's recycling infrastructure. The minister should also be prepared to scrutinise instances where ministry advice deviates markedly from local government perspectives. Ultimately, democratising the policy creation process is essential not only for triggering policy reform, but also for ensuring that any forthcoming implementation of the WMA achieves the best results possible on a range of measures (social, environmental, economic).

Conclusion

New Zealand's waste and recycling system faces numerous problems exacerbated by decades of government neglect. The last decade has been particularly inexcusable given the Waste Management Act's available policy tools, which could have facilitated New Zealand catching up with international waste policy innovations. Instead, policy stagnation has proliferated market failures, path dependence, fragmentation and inconsistency throughout New Zealand's waste management system. The present government's stance gives cause for optimism, particularly the minister's approval of the circular economy concept and avowed willingness to use the WMA, manifested in the recently announced waste work programme. However, to effect a sustained break from New Zealand's 'rubbish record on waste', central government must transcend persistent obstacles to implementing key waste policies and successfully transition from investigation mode to concrete policy action sooner rather than later. This includes urgently improving New Zealand's waste data, devising national best-practice standards to guide stakeholders, increasing and expanding the waste levy, and adopting mandatory measures to address problem waste streams.

1. Including three successive OECD environmental performance reviews over three decades.
2. That is, between 1 July 2009–30 June 2012 and 1 July 2013–30 June 2016.
3. A recent example occurred on the West Coast following Cyclone Fehi (Neilson, 2018).
4. Currently New Zealand exports roughly 50% of paper, 90% of plastics and 90–100% of metals for recycling (Wilson et al., 2017, p.111).
5. Defined as Class 1 landfills accepting household waste – just 11% of New Zealand's landfills.
6. For example, uptake of their services generally depends on individuals' willingness to pay, while many community recyclers struggle to compete with major waste companies' economies of scale and market dominance (Davies, 2009).
7. Sub-section 86(b) creates the regulatory power to require any class of person to keep and provide records and information that would assist the compilation of statistics relevant to waste management and minimisation.
8. Levy revenue is also directed to territorial authorities to spend in accordance with their waste management and minimisation plans (ss30–3).
9. When announcing the waste work programme, Eugenie Sage (2018d) referred to Ministry for the Environment surveys showing that half of respondents rate waste's environmental impacts as one of the top three issues facing New Zealand over the next 20 years. Prime Minister Ardern confessed when announcing the proposed ban on single-use plastic bags that 'I … underestimated the strength of feeling among everyday New Zealanders around this issue … The biggest issue I get letters on from the public are about plastics' (Radio New Zealand, 2018).
10. The press release announcing the waste work programme states that the Ministry for the Environment will lead work on 'whether to implement a greater mix of voluntary and mandatory product stewardship schemes' (Sage, 2018a).
11. David Vinsen, a member of the working group, stated: 'They'll be talking … to the same people about the same thing, and they'll get the same outcome – when in fact what they have now is a turn-key solution' (cited in Reymer, 2018).
12. For example, a report into better management of electronic waste noted that it could not recommend a mandatory product stewardship scheme because severe data shortages prohibited assessment of the scale of the waste stream and any harm it might be causing (SLR Consulting NZ, 2015, pp.iii-iv).
13. For example, Sage recently highlighted product stewardship as key to 'how we'll make the transition' to a circular economy, but referred only to voluntary schemes (Sage, 2018b, p.10). She has also remained mostly tight-lipped about container deposit systems.

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Kevin Jenkins

‘Can I See Your Social Licence Please?’

Abstract

The concept of a ‘social licence to operate’ has become ubiquitous in recent years, but there is no agreed definition, and its meaning continues to mutate as it spreads to ever more domains. The concept was first floated by a mining company executive after a disaster at a mine in the Philippines in 1995, and it spread exponentially. A small but growing body of academic research and commentary is bringing some rigour, but is not keeping pace with its rate of mutation. The narrative around the term is now more valuable than the term itself, which should be retired.

Keywords social licence, acceptance, trust, governance, democracy, business

Everyone has a story about a practical driving test, but my mate Bruce’s takes the biscuit. Dropped off at the testing station in 1970s Hastings, he was pleased to find that all he had to do was drive around the block – a flat rectangle with little risk of meeting any other traffic, and only left turns. The kicker, though, was that the fellow testing him finished his instructions with ‘I’ll wait here’. Yep, that’s right, Bruce did his practical driving test alone. Thankfully, the rest of us won’t put up with that any more – there’s no longer a social licence for dodgy driving licence tests. But wait a minute, what is this ‘social licence’ thing? And how does one pass *that* test?

It’s everywhere

From where I sit, at the intersection of business, research and policy administration, talk of ‘social licence’ seems to be everywhere nowadays. The term is being applied broadly to new contexts all the time. In June 2018, for example, you could read about Fonterra losing its social licence (New Zealand Herald, 2018), at the same time as government was seeking to develop a social licence for personal data use (Data Futures Partnership, 2018). The term is sucking up a big swathe of the public policy discourse around issues of community support, social acceptance and public opinion in relation to business ventures and government initiatives.

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The current flowering of the 'social licence' concept began in the 1990s in connection with the mining industry

The signs are that 'social licence' is not just one of those fungal phrases that pop up all over the policy discourse and then as quickly die away. A look around the literature shows that the concept has an interesting history, apparently some staying power, and potentially significant relevance to public issues in Aotearoa, including in te Tiriti o Waitangi contexts. But sometimes it's hard to tell what users of the term mean by 'social licence'. They seem to assume a common understanding and reasonably consistent usage, yet it's far from clear that this in fact exists.

In this article I'll explore the origins and development of the 'social licence' concept in the extractive industries, and its relevance and risks for public discussion today. This will include a look at different models that academics have put forward for understanding the concept.

I'll argue that the term has passed its use-by date; that it's not helping discussion around public policy and democratic processes. The problem is that it suggests something sharp-edged and clearly defined, when in fact this terrain is inherently fuzzy and indistinct and various definitions have been put forward. It would be better to focus instead on the more specific, more substantive concepts that have been advanced in efforts to analyse and break down the concept's apparent subject matter. The 'pyramid model', for example, which I'll refer to below, distinguishes between different levels of community acceptance and approval, from simple acquiescence through to active co-governance and participation.

Origins and development of the term

Many talk of the term originating in the 1990s, but you can trace it back further in anthropological use in the sense of 'conferring permission to act', particularly in the context of doing otherwise prohibited things without sanction (University of Auckland and Statistics New Zealand, 2016). For instance, a mid-1970s anthropological study recorded that 'Drunks are accorded great social licence in Oaxacan villages' (Dennis, 1975, cited in Gehman, Lefsrud and Fast, 2017).

You can arguably trace the idea a further 200 years back to Rousseau – to the 'social contract' and the sovereignty of the people to legislate. Gehman, Lefsrud and Fast's 2017 review of the concept of social licence observed that it has 'long been understood to play a vital function in society whereby social norms can precede and supersede legal rules'. In other words, sometimes social norms might lead to new law, and sometimes they might effectively override or nullify existing law.

Emergence in the context of the extractive industries

So it's not novel to note that there is more to a society accepting an activity than legal compliance; that idea has been around for a while. But Gehman, Lefsrud and Fast's review confirms that our current understanding of 'social licence' depends greatly on its emergence in the 1990s in relation to the extractive industries. There was then increasing pressure internationally for social and environmental issues to be considered alongside the economic returns from mining, oil and gas operations, and increasing conflict between mining operators and community groups (Fraser, 2017).

One of the events that focused attention on 'social licence' and that was specifically linked with the emergence of the term was a 1996 disaster in Marinduque in the Philippines, at the Marcopper mine operated by Canadian company Placer Dome. This saw the evacuation of 20,000 villagers and the destruction of a region's water supply when several million tonnes of tailings waste poured into the Boac River. The disaster (among other forces) prompted a shift in the Philippines government's regulatory response. New legislation intended to enable mining was revised to establish a more demanding regime, with tighter operating conditions and requirements for miners to consult with local authorities and indigenous groups (De La Cruz, 2017).

In the aftermath of the disaster, according to Gehman, Lefsrud and Fast, a Placer Dome executive described the challenge facing the industry as a matter of 'obtaining a social license to operate', and so the specific usage began its spread. They cite a 2000 article by Susan Joyce and Ian Thomson as an early attempt to 'provide the term with substance'. Joyce and Thomson listed 'social risks' facing mining companies in Latin America, noting that, at the project level, those risks threatened 'social acceptability' by posing 'problems of legitimacy'. They also surveyed the use of the term, finding that

'scholars have concluded that the concept of social license to operate initially emerged as little more than a memorable turn of phrase'. They cited Morrison (2014), who called it 'a term largely invented by business, for business'.

But nearly 20 years later, the issue of social risk for business endures, and 'social licence' is now the common parlance for discussing it. A 2017 Canadian PhD thesis in mining engineering (Fraser, 2017) put it this way: 'a failure to earn stakeholder approval has emerged as one of the leading causes of project delays and a key strategic risk'. The author notes that from 2008 until 2016 the multinational firm EY included the failure to earn 'a social license to operate (SLO)' as one of the top ten business risks for the mining sector. 'In other words, for mining companies, whose projects can be built only where the deposit exists, and where the life of mine can extend several decades, generating value for both company and community is becoming a strategic imperative.'

A slippery but well-used concept

Depending on where and who you read, social licence ranges from an emerging concept to a well-established, although possibly inadequate, mechanism within discussion about development.

Justine Lacey wrote that there was 'increasing debate in the academic literature over how to define SLO and what (if any) value the concept brings to our understanding of the social aspects of sustainable development' (Lacey, 2013). Gehman, Lefsrud and Fast emphasise a tension here, namely that use of the term was exploding while at the same time the concept had 'so far … only tenuous scholarly footing'. Looking at North American print media, they found that the phrase appeared in fewer than ten articles a year from 1997 through to 2002, but in more than 1,000 from 2013 to 2015, and over 2,000 in 2016.

The sharp expansion in use has been reported in New Zealand too. A 2016 survey noted local usage ranging across the forestry, farming, wind energy, dairy, pulp and paper, agriculture, unconventional gas and aquaculture industries (Edwards and Trafford, 2016). The survey drew on the work of John Morrison (2014) to burrow into issues of legal status and general scope, and concluded:

> SLO does not mean any diminution of existing legal requirements, but is an additional step. Further, [Morrison] brings in the implied element of risk, describing SLO in part as a negotiation of equitable benefits and impacts of an operation within the community … This is relevant for not only a single operation, but also industry-wide practice. (Edwards and Trafford, 2016, p.166)

'Social licence' in Aotearoa: recently observed extensions

The following is a compressed, high-level traverse across four key areas of operation in this country. It reveals some interesting common elements in the expanding use of 'social licence' in Aotearoa.

While the concept of a social licence to operate has been a big part of the 21st-century mining landscape, in New Zealand it has bloomed across a wider range of productive industries …

The jump from mining into primary industries and tourism

While the concept of a social licence to operate has been a big part of the 21st-century mining landscape, in New Zealand it has bloomed across a wider range of productive industries (Edwards and Trafford, 2016). In 2018, it is certainly as relevant to farming, forestry, aquaculture and tourism as it is to mining and oil and gas.

Tourism New Zealand board member Raewyn Idoine has noted that dairy farming's 'social license disqualification' is a cautionary tale for tourism: 'Everybody loved farmers until they started polluting streams and rivers and making butter cost too much' (Cropp, 2017). Tourism professor David Simmons from Lincoln University also pointed to the need for the tourism industry to attend to its social licence to operate. He warned that when New Zealanders 'go to their favourite places and find them trashed or overrun with freedom campers and the like, they may go "this is not what we expect, tourism has not kept its social contract"' (Cropp, 2017).

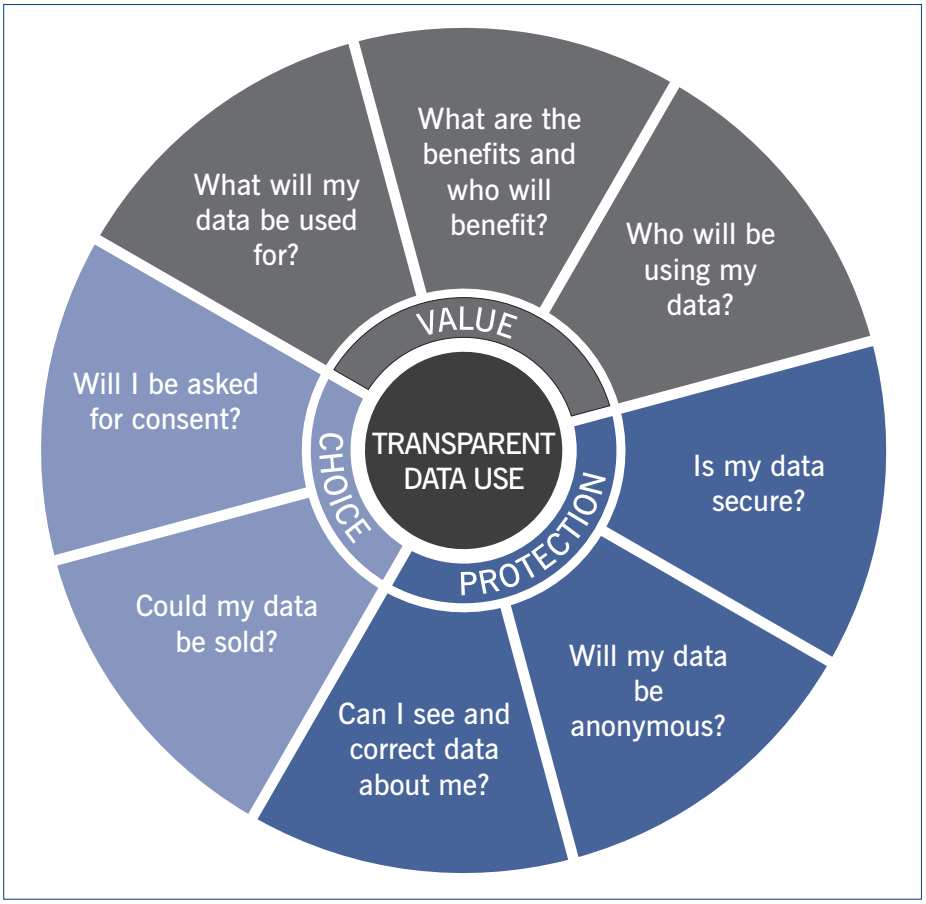
At least two of the current government-funded national science challenges focus specifically on investigating social licence. In May 2017 a new project in the Our Land and Water programme was launched, for Scion to explore 'the importance of trust and social licence in the primary sectors to enhance productivity and sustainable growth in New Zealand'. Another research project within the Our Seas programme is developing frameworks for achieving and maintaining social licence for marine industries. The proposal notes that this requires teasing out meaning and application in different contexts, including reference to te Tiriti o Waitangi, kaitiakitanga and associated co-governance aspirations of iwi. A land-based concept also has to stretch to fit the marine environment, including offshore operations where communities of interest can be on very different social-geographic scales and are not always well-defined (National Science Challenges, n.d.).

The leap to green initiatives …

Similarly, obtaining social licence has become an issue for pest management programmes and other state and community efforts with environmental and conservation goals. Here's a voice from the blogosphere: Mike McGavin, a keen tramper who blogs at *Windy Hilltops*:

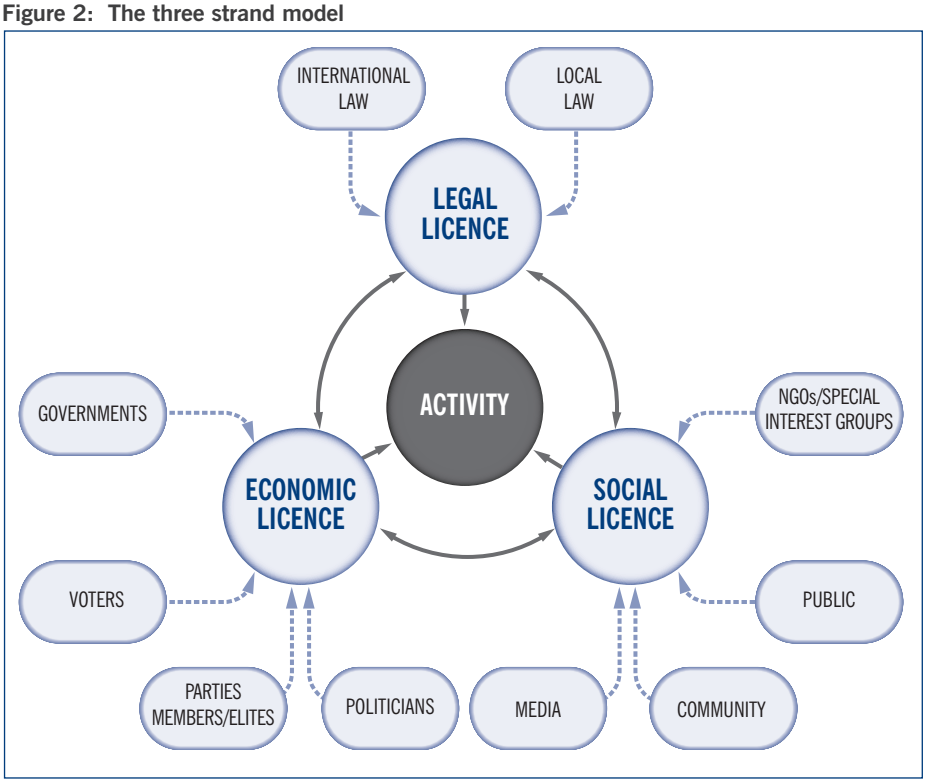
> People need to care about the outcome [of an initiative] before they can give a social licence, and so when people can be steered towards understanding what

Figure 1: Transparent Data Use Dial



Source: Data Futures Partnership, 2018

Figure 2: The three strand model



Source: Gehman et al, 2017

> might be at stake, in part through the enthusiasm for and engagement with … local projects, it's a crucial thing for goals like Predator Free 2050. (McGavin, 2017)

This widens the application of the concept – from permission for a profit-making activity to continue, to an idea of social consensus that might be applied to a range of activities or projects across the public, private and community/NGO sectors. 'Social consensus' is in fact the term favoured by Sir Peter Gluckman, then the chief science advisor to the prime minister (Gluckman, 2017).

… and new technology …

Gluckman's arguments are couched generally, with pest control programmes an extension of his discussion of social licence for new digital, engineering or biological technologies. Echoing John Morrison on the relevance of risk, Gluckman argued that the choices communities make about new technologies are driven by their perception of risk, and that this isn't new. The breadth and pace of innovation is now growing exponentially, however, and 'what is relatively new … is the ability of democratic society to have some say in how technologies evolve, and how they are used and controlled'.

He provided an array of examples of these debates and of different assessments of risk. Assisted reproduction, folic acid supplements and the fluoridation of water have all been debated extensively. We might be hesitant about introducing a new drug if we bear the cost and the risk and a large pharmaceutical company gets much of the benefit. On the other hand, we readily accept smartphones despite the cost and risk to privacy, because the benefits to us as individuals are clear. Gluckman also emphasises how different societies take different views – he points to how gene modification and editing are seen differently in Europe and the US. He writes that this is:

> a complex topic involving different perceptions of risk and benefit, and different views of different stakeholders. It varies for different types of technology and is managed differently for different types of product. Depending on the technology and the societal response, it may involve regulators and formal processes, it engages politicians or it is driven by the market place.

… and right into our private lives

The Data Futures Partnership has developed 'A path to social licence: guidelines for trusted data use'. These

focus on eight questions, under three headings, that organisations can address in order to explain how they collect and use data, to better build trust with clients and the wider community (see the Transparent Data Use Dial in Figure 1). These need satisfactory answers if people are to feel comfortable about data use.

This is work required by the recent government drive to improve the statistical evidence base for public programmes, particularly in the sensitive social area.

A walk around the models

So what models or analyses of social licence have been put forward by people who have time to think about this at length? I found the Canadian review by Gehman, Lefsrud and Fast (2017) particularly useful for its comparison of three variations, as follows.

The three strand model

This places social licence in the context of different factors that enable businesses to operate successfully. Gehman, Lefsrud and Fast cite a study of pulp mills (including in New Zealand) that concluded that firms in 'closely watched industries' depend on three strands to operate, as shown in Figure 2.

- *legal licence* relates to statutory obligations and regulatory permits;
- *social licence* relates to the demands of stakeholders;
- *economic licence* relates to the demand for profit by shareholders and others.

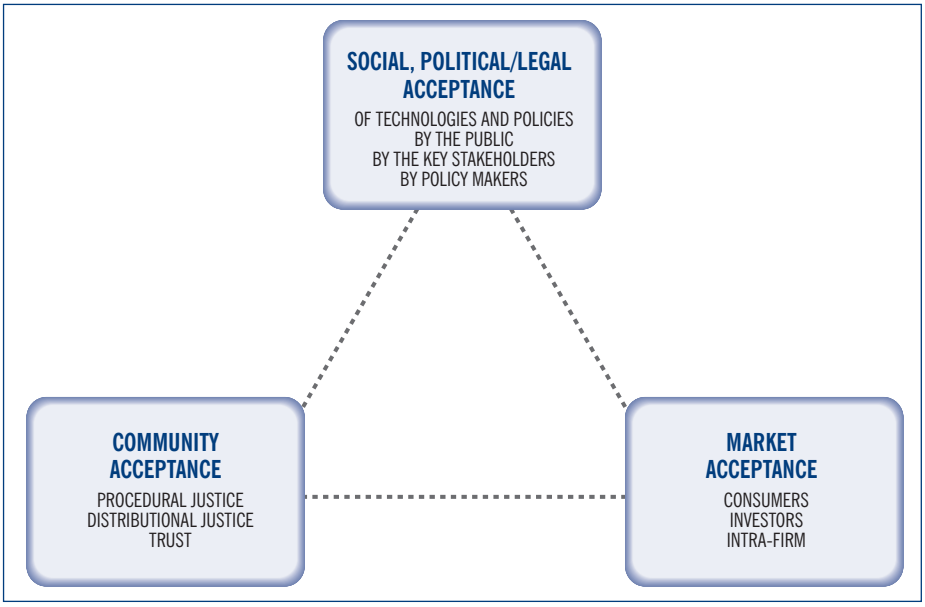
The authors cite later research testing this model that hypothesised that social licence has five factors: environmental impact; customer power; customer interest; corporate/brand visibility; and community pressure (pp.297–8). The researchers (Lynch-Wood and Williamson, 2007) concluded that at least two of these factors must be in play for a small or medium enterprise to go beyond compliance.

The triangle model

This model grew from the notion of social acceptance that emerged in the 1970s and 1980s in the context of overseas moves to develop renewable energy policies. It views social licence to operate as resulting from three areas of acceptance necessary 'to generate policy maker support for the financial and regulatory incentives required to overcome entrenched interests and the path dependency of conventional fossil fuel energy systems' (Gehman, Lefsrud and Fast, 2017, p.299):

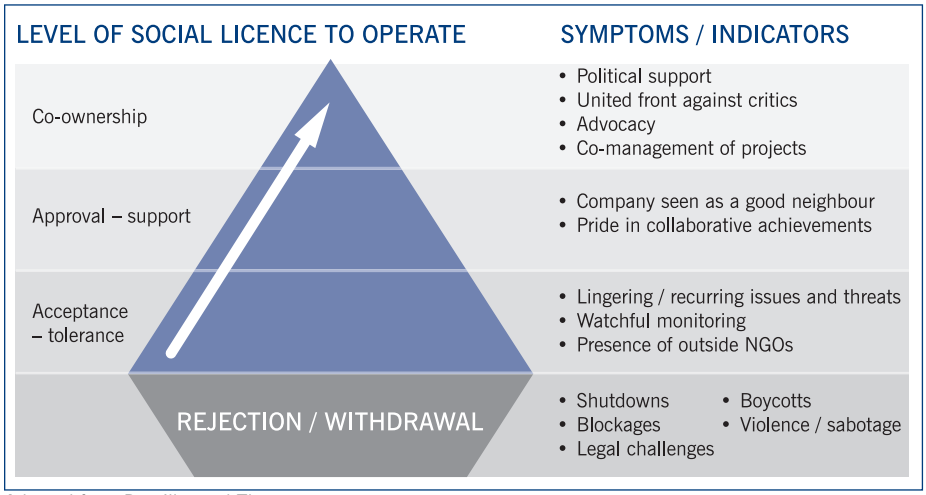
- *socio-political acceptance* is broad acceptance by the public, employees and policy makers;
- *community acceptance* is by the local community;
- *market acceptance* is the widespread adoption of an innovation.

Figure 3: The triangle model



Source: Gehman et al, 2017

Figure 4: The pyramid model



Adapted from Boutiller and Thomson

The pyramid model

The triangle model considers three areas of acceptance, but the 'pyramid model' grapples with the idea of acceptance itself (Thomson and Joyce, 2008). This model was developed iteratively by mining industry consultants over more than a decade from 2000 (Gehman, Lefsrud and Fast, 2017). Starting at the bottom and moving up through the three layers of the pyramid, we get this:

- *legitimacy*, at the base, is about conforming to established legal, social and cultural norms: this distinguishes between projects that do not have acceptance and those that have gained acceptance through 'playing by the rules';
- *credibility* is about being believed: this second layer distinguishes between projects that have merely been accepted and those that have been approved through negotiation;
- *trust*, at the top of the pyramid, is defined as 'the willingness to be vulnerable to risk or loss through the actions of another': this distinguishes between projects that have merely been

approved and those where stakeholders also have a sense of co-ownership.

There's also a fourth, underground layer, where you find projects that fail to achieve even base-level legitimacy, so that their social licence is withheld or withdrawn altogether.

The pyramid model is arguably a kind of learner–restricted–full structure, where the level of trustworthiness demonstrated by the licence applicant determines the level of trust the licence issuer accords to them, and potentially the scope of the permitted activities at each level. The pyramid model has been adopted by the Australian Centre for Corporate Social Responsibility, and adapted by Ngāti Porou Fisheries in developing its Land Based Aquaculture Assessment Framework (Land Based Aquaculture Assessment Framework, n.d.).

More generally, and more importantly, Malpass's narrow conception of democracy appears to leave no meaningful space for the kind of broad range of interactions and negotiations that are critical to democratic society.

Influences and challenges in Aotearoa

Te Tiriti o Waitangi

The interests and voices of a country's indigenous peoples of course need to be a central element in considerations of 'social licence' issues. In Aotearoa we already have a distinctive and relatively well developed framework for these discussions, te Tiriti o Waitangi, the Treaty of Waitangi, the partnership between the Crown and Māori that imposes a number of obligations on both sides. Challenges to the 'social licence' concept from Māori perspectives have invoked te Tiriti and questioned some basic assumptions about exactly to what or whom the 'social' in 'social licence' is supposed to refer, and questioned the adequacy of the term in contexts involving the interests of iwi and Māori.

Ruckstuhl, Thompson-Fawcett and Rae (2014) argue that in fact te Tiriti has a longer track record as a way for Māori to permit or withhold consent than the recently arrived 'social licence'. Referring to the decision of Brazilian oil company Petrobras to give up exploration licences in the face of opposition from local iwi and other obstacles, the authors write:

> What the Petrobras case makes clear is that for iwi like Te Whānau-ā-Apanui, a social licence has to be considered in the context of the Treaty of Waitangi, signed in 1840 and often described as Aotearoa New Zealand's founding document. Social licence will be granted only when it goes beyond regarding iwi as 'stakeholders', which limits the indigenous Māori voice to an aggregated 'social' voice and masks the specific history and experience of Māori. Instead, we suggest that the Treaty-based partnership approach, developed over the past 40 years as a result of changed legislation in the 1970s, has much to offer as a process for engaging in meaningful dialogue with Māori communities to assess the impacts of mining within a context of shifting social expectations and concerns about resource exploitation.

An element of the wider Tiriti framework is that concepts of partnership and consultation are embedded in some New Zealand legislation. The Resource Management Act 1991 regulates how councils, stakeholders, communities, industry and tangata whenua engage to manage and sustain natural and physical resources and mitigate effects (Parliamentary Commissioner for the Environment, 2002). The Crown Minerals Act 1991 requires the permitting body, New Zealand Petroleum and Minerals, to consult with iwi and hapū whose rohe (traditional area of occupation) may be directly affected by new mineral permits (New Zealand Petroleum and Minerals, 2018). In this mining context, much effort and thought has been invested into ways of interacting effectively, such as the best practice guideline for engagement with Māori around mineral permits developed by the Ngāti Ruanui iwi of Taranaki (Te Rūnanga o Ngāti Ruanui Trust, 2014).

So within this overall Tiriti framework, people and organisations in Aotearoa have for some time already been negotiating, in a shared territory, relative economic, social, cultural and environmental costs and benefits.

A social license for data use?

Another challenge invoking te Tiriti o Waitangi has come from Māori participants in the Data Futures Partnership initiative, which aims to build social licence for data use. Te Mana Raraunga is the Māori Data Sovereignty Network, committed to protecting and securing Māori rights and interests in data. Its May 2017 statement introduced the concept of 'cultural licence' and raised fundamental questions about who 'issues' a social licence – individuals or communities:

> Te Mana Raraunga sees the need for a clear distinction to be made between individual and collective acceptance of data use and sharing. In the context of the Partnership's work, we view *Social licence* as the ability of an organisation to use and share data in a legitimate and acceptable way, based on the trust that *individuals* have. We view *Cultural licence* as the ability of an organisation to use and share data in a legitimate and acceptable way, based on the trust that *iwi and Māori Treaty partners* have.
>
> We are concerned that the Partnership's approach to social licence is conflating individual and community acceptability of data use and sharing. There are many instances where individual-level data can be aggregated

to identify population groups or collectives such as iwi or Māori entities. In this context the individual's barometer of trust in relation to their own personal data is an insufficient indicator of the group's level of comfort with the use of data about them. While an individual's acceptance can inform social licence, group acceptance through mandated structures is a more appropriate barometer of trust for data that can be aggregated to represent a group. This is particularly important for any Māori collective (e.g. whānau, hapū, iwi) that has an interest in aggregated data sets.

Is a legal licence the only valid form of social licence?

Luke Malpass from the New Zealand Initiative, the business-backed research organisation, has argued there is a problem with this 'so-called social licence' (Malpass, 2013). In an article entitled 'Rule of law or social licence to operate?', he summarised the social licence concept as being 'a way of asking: does this project continue to have community support?'. He objects that: 'You cannot apply for it, there are no fees to pay, no compliance conditions and no objective criteria on which you can base your claim.'

Malpass argues that Parliament is the ultimate expression of community will, and that you can't elevate 'community' to a higher level of authority than laws and regulations. He cites examples from Australia, including the withdrawal of a fisheries licence by an environment minister, as showing the risk that 'law-abiding businesses, making investment decisions in good faith, may find the rug pulled out from under them by social licence concerns'. He argues that Aotearoa already has an issuing system for social licences: namely, the 'laws passed by Parliament, consisting of elected representatives and the courts that enforce them'.

Malpass concludes his article: 'For anyone caring about the rule of law, the social licence is a concept that should be viewed with suspicion.' But it seems a stretch to draw a line, as Malpass implicitly does, from a government decision to withdraw a licence because of 'social licence' concerns to a threat to the rule of law. There's no violation of the rule of law if the minister's decision is made lawfully under the discretion granted by Parliament through statute. In any case, if the decision wasn't made lawfully – if the minister breached administrative law principles by, for example, taking into account irrelevant considerations – then there's a legal remedy in the form of judicial review. All kinds of law-abiding people with all kinds of interests – commercial, environmental, recreational – may find themselves on the disappointing end of a lawful government decision. That's the way things go in a democratic society.

More generally, and more importantly, Malpass's narrow conception of democracy appears to leave no meaningful space for the kind of broad range of interactions and negotiations that are critical to democratic society. Healthy democracy consists of many different conversations – of different types, through different channels and between different groups of people. I like Amartya Sen's understanding of democracy as 'government by discussion', a concept he notes was developed by John Stuart Mill. Sen wrote: 'Democracy has to be judged not just by the institutions that formally exist but by the extent to which different voices from diverse sections of the people can actually be heard' (Sen, 2009).

The limits of a metaphor

Luke Malpass, who describes the social licence concept as 'pernicious', is something of an outlier among the commentators I've read in this field. His objections aren't about the usefulness of the term; they're much more fundamental than that. However, I think his objections highlight the limitations of this immensely popular term for clarifying our thinking on important issues.

The word 'licence' can, of course, be applied meaningfully in many contexts, but it seems to me the work this word is doing in the phrase 'social licence' is essentially metaphorical. We're invited to think of the plastic cards in our purses and wallets that entitle us to drive, or of the exploration permits granted by New Zealand Petroleum and Minerals – in other words, official permission with sharp, distinct edges.

As with any metaphor, 'social licence' takes us on a leap from the concrete, the well-defined and the familiar to an unexpected new field, giving us that seat-of-the-pants recognition and the shock of the new at the same time. That's what can make many metaphors so appealing and useful. But some metaphors are more appealing than they are useful.

As with any metaphor, 'social licence' takes us on a leap from the concrete, the well-defined and the familiar to an unexpected new field, giving us that seat-of-the-pants recognition and the shock of the new at the same time.

The term 'social licence' now appears to be monopolising how we think about and name the key issues. It's in the air, and people seem to be taking it up to describe their thoughts. The problem is that the metaphor suggests something clear edged and well defined. But the real-world things that 'social licence' seems to refer to – community support, public pressure and so on – are inherently fuzzy edged. At the same time, the definitions put forward for the term itself have varied significantly. Because of this, the metaphor obscures rather than clarifies. Luke Malpass's questions about, for example, how and where you apply for your social licence are perfectly reasonable ones, and these

questions are prompted by the term 'licence' itself.

We need to take more linguistic and analytical care in this area, and work with more specific and more substantive concepts, like those examined by the pyramid model. Rather than speaking of the granting and withdrawal of a 'licence', it would be more clarifying to ask exactly what a given initiative project might aspire to, and what a healthy democratic society might expect it to aspire to: for example, merely passive acquiescence from the community, or more active and participatory forms of approval and endorsement?

A new landscape of political exchange

One of the more substantive concepts that could help us here, and that focuses on specific kinds of relationships and interactions, is 'networked governance'. Here's Gehman, Lefsrud and Fast (2017) once more:

> The emergence of social license mirrors a broader trend towards 'networked governance,' or a shift from traditional hierarchal and centralized governance to a more horizontal mode ... democratic accountability derives as much from judgments of the target population of policy initiatives, as much as from officials acting as the final decision-makers.

As Gehman, Lefsrud and Fast allude to, the explosion in 'social licence' discourse is not, of course, simply random fashion. It reflects a changing social, political and technological environment, including the emergence of more 'networked governance', the exponential pace of new technology, and massive and instant communications. It reflects in part the ability of interest groups to rally high-profile support very quickly, so that government, business and NGOs must now reckon with the fact that popular support for their projects can be won or lost in hours and days rather than over months and years. If people in New York want to track what's going on at a mine in the Philippines, social media and instant global communication make this infinitely easier than it was in the mid-1990s.

So, as Ruckstuhl, Thompson-Fawcett and Rae (2014) commented, new factors in political exchange have transformed the landscape. These include not just 'the prevalence of global communication technologies', but also expectations (captured in the 2007 United Nations Declaration on the Rights of Indigenous Peoples) that the 'free, prior and informed consent' of an indigenous people will be gained before any initiative or action is taken that affects them.

Those developments have all shaped and boosted the 'social licence' discussion. The challenge now is to transcend the limitations of that term for working in and around public policy issues in that new landscape.

Back on the road

We can scoff at laughable practices in New Zealand in the olden days, and often with justification: in 1973 road fatalities peaked per head of population (and per vehicle, and numerically at 843),[1] due to primitive cars with poor brakes, narrow tyres and no seat belts, along with a drink-drive culture, narrow, badly cambered roads, and of course poor driving instruction and testing.

I'm sure we're all glad we don't just send newbies round the block nowadays. The quality of the licences that we issue matters. If there's a workable and useful analogy here, it's perhaps that the health of the mechanisms for expressing or withholding social approval also matter a great deal in a democratic society. To quote Amartya Sen again, democracy needs to be seen in terms of 'the capacity to enrich reasoned engagement through enhancing informational availability and feasibility of interactive discussions'.

1 https://www.transport.govt.nz/resources/road-safety-resources/road-deaths/annual-number-of-road-deaths-historical-information/.

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Colin James

The Wisdom of Crowds *versus* the Madness of Crowds

Abstract

Declining trust in northern liberal democratic institutions poses serious challenges to legislatures (parliaments). That mistrust extends to traditional media at a time when new digital media are fanning 'fake news' and a 'madness of crowds'. Will the 'wisdom of crowds' on which liberal democracy critically depends prevail over the 'madness'? Can parliaments resolve that tension positively? In New Zealand trust in political institutions is still high, but voter turnout has slid, especially among the young. Parliament has work to do.

Keywords Parliament, liberal democracy, trust, reform

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'Trust in Parliament in a post-truth world' was the title of the Australasian Study of Parliament Group's annual conference in Brisbane in July.[1] It is a pertinent question at a time when populism has been rising in liberal democracies and may rise more.

As David Solomon argued at that conference, parliaments like ours are in a sense the trustees of democracy and of the people's interests (Solomon, 2018). That voting turnouts have been declining, particularly among younger cohorts, suggests that parliaments like ours are decreasingly seen as living up to that trustee role. If so, liberal democracy is at risk. That is all the more so if the information the people are getting from and about Parliament is distorted or fragmented; if we are in fact living in a 'post-truth' world.

Truth and politics are not symbiotic. There is much truth in politics. But there

is also much adaptation of truth to need, desire, ideology and ambition. Parliaments are infused with politics. So truth and parliaments in liberal democracies are jostling bedfellows.

In a liberal democracy, as in Aotearoa New Zealand, Parliament is the 'speaking place' for and on behalf of citizens. It is citizens' representative in the power structure. It sets society's formal rules and sets penalties for breaking those rules. It is ultimately superior to the executive. As the 'speaking place' and maker of the rules, Parliament is critical to civic well-being. If Parliament falls short, civic well-being is damaged.

A representative democracy

Our Parliament is representative because it has been impossible to gather all citizens together to make decisions. Parliament filters citizens' views, wishes, prejudices and impulses to enable informed and workable resolutions of citizens' contests of wills. The 'crowd' elects representatives to Parliament and Parliament distils the 'crowd's' needs and wants and, at its best, resolves them.

In its modern form, this representative democracy is around a century and a half old. In the preceding era of oligarchic parliaments only a select elite of property owners and aristocrats were directly represented. The rest of the population – the 'crowd' – at most 'consented' and did so passively; 'acquiesced' is a better term.

Oligarchy was thought appropriate because the 'crowd' – the 'demos', from which 'democracy' is derived – was not to be trusted. A.C. Grayling, in his recent book, quotes Plato as saying the 'demos' was 'driven in unruly fashion by emotion, self-interest, prejudice, anger, ignorance and thoughtlessness into rash, cruel, destructive and self-destructive action'. Grayling interprets Plato as calling the demos

> a numerous body without a head ... too vulnerable to being captured by the emotion of the moment, by the phenomenon of the 'madness of crowds' which panic or anger can prompt, or which demagogues are by definition skilled at arousing and exploiting. (Grayling, pp.2, 4)[2]

In short, the risk of tyranny was thought greater from democracy than from monarchy or 'open oligarchy'. Around 2,400 years later, Lee Kuan Yew, founding and decades-long prime minister of Singapore's benign autocracy with parliamentary trappings, echoed Plato: 'I do not believe that democracy necessarily leads to development ... The exuberance of democracy leads to undisciplined and disorderly conduct' (Kurlantzik, 2013, p.79, quoted in Micklethwait and Woolridge, 2015, p.138). Better to hand over decisions to Lee's technocratic elite.

The term 'madness of crowds' comes from Charles Mackay's resonant 1841 book, *Extraordinary Popular Delusions and the Madness of Crowds* (Mackay, 1852),[3] which documents 'moral epidemics' such as the tulipmania in Holland in the early 17th century and the South Sea Bubble in Britain a century later, to which one might now add events such as the late 1990s tech bubble and the collaterised debt obligations which led to the 2008 global financial crisis – and, currently, wild house prices.

The good news for democracy was that, as the industrial revolution reshaped European and North American economy and society and lifted rising numbers out of poverty, the elites realised that direct representation – what might be called 'active consent' – could safely be extended to those rising classes, and, moreover, had to be if social order and cohesion were to be maintained. The theory that underpinned, or grew out of, this evolution was, Grayling says, 'that the ultimate source of authority should lie in democratic assent and that government should be and could be sound and responsible' (Grayling, 2017, p.5). New Zealand was in 1893 the first country to take this to its logical conclusion with universal suffrage, including women and indigenous Māori.

The decline of bounded rationality

To channel the 'crowd's' preferences, demands and needs into practical programmes, parties evolved, with programmes and ideologies. Over time parliaments in liberal democracies, particularly after 1945, came to be dominated by parties of the centre-left and centre-right, alternating in office and operating within informally understood policy boundaries which could be pushed to the left or to the right but within limits. Minority parties outside those boundaries, to the left or right or to the sides, were just that, minorities.

Bounded rationality still reigns in this country, where a recent survey found a marked lift since 2016 in trust and confidence in the government, ministers and MP ...

This might be termed the era of bounded rationality. Most of the people most of the time thought the system more or less worked, at least while their material standard of living kept rising and they felt reasonably safe and secure in their identity as one of a people in a nation. There was a high level of trust, the glue that holds liberal democracies together (Fukuyama, 1995).

Bounded rationality still reigns in this country, where a recent survey found a marked lift since 2016 in trust and confidence in the government, ministers and MPs, thanks probably to the election of a remarkable young woman prime minister (Institute for Governance and Policy Studies, 2018).[4] But in northern hemisphere liberal democracies, the centre-left/centre-right hegemony has ended and with it bounded rationality. That is because the material standard of living of a growing number of people in those liberal democracies has stalled or fallen or become insecure, and/or they feel that migrants and other intrusions from outside, such as

hyperglobalisation, are unstitching the fabric of what they think of as 'their' 'nation'. As a result, they no longer feel represented by, nor do they trust, the centre-left/centre-right cabal. They see these parties as agents of a self-perpetuating, detached elite: the 'other', not 'us'; those who are 'there' not 'here', to paraphrase David Goodhart (Goodhart, 2017).[5]

The vehicles of protest range from the far right to the far left to the oddball (as in Italy) and from parties or movements to demagogues such as Boris Johnson or Donald Trump, or fresh-faced saviours such as Emmanuel Macron.[6] In the still new post-1990 democracies of eastern Europe, autocracy is on the rise, supported by voting majorities (in part the result of liberals having left for western Europe after the collapse of the Soviet Union) (Krastev, 2018, pp.54–5). Some autocratic regimes in the Middle East have widespread popular backing (Fromer, 2018).[7]

In the established liberal democracies the parties posing as alternatives to the elite appeal more for what they are against than what they purport to be for, except where they promise the restoration of 'order'. Even where old centre-left and centre-right parties seem to be still running the show, as in Britain and the United States, those parties are deeply, possibly existentially, riven: within those parties the moderate liberal-social democratic centre-left and moderate liberal-conservative centre-right, the upholders of liberal democracy, are in eclipse. The May/June issue of *Foreign Affairs* asked on its front cover, 'Is Democracy Dying?'[8] Books and articles in this vein are multiplying.

In short, in liberal democracies the 'crowd' is no longer moderated by moderate parties. The 'elites' accordingly are agitated.

In his book Grayling charts first the birth and evolution of liberal democracy, then its descent into what he sees as failure. His three main reasons for 'why representative democracy has failed to deliver on the promise of its design' are: the redirection of the system by those who take control in the interests of their class or party; failure to educate the 'demos'; and 'interference and manipulation by agencies with partisan interests ... to get the democracy to deliver their preferred outcomes' (Grayling, 2017, p.133).

Grayling ends on Brexit, condemning the bumbling mishandling by an elitist cabinet of what its toff prime minister asserted was an advisory, non-binding referendum. But Grayling's Anglocentricity blinds him to what a quick check with Switzerland or even New Zealand could have taught David Cameron about referendums, notably to do them in stages with opportunity for reflection, which might have resulted in a Remain vote. Anglocentric Grayling wants referendums abolished or at most subjected to a supermajority. He does not see they could be usefully refined.

Grayling's other Anglocentric shortsightedness is to predicate his book on representative democracy as if that is what democracy is. It isn't. Representation is only one channel through which the demos – the 'crowd' – can exercise – and moderate – its will.

> The new-era robber barons, Facebook, Google, Amazon and other social media, have sucked much of the advertising lifeblood out of traditional media and by doing that have diminished the role of traditional media's fact-seeking journalists.

Other ways of doing democracy

There have long been, and now there is a growing number of, alternative ways to express opinion, to develop ways of thinking, to assemble and assess evidence, to build coalitions, to work through competing options for action, reach consensus or a majority agreement and mandate action. These have ranged from riots and organised protest, through petitions that attract support from the 'crowd', to pressure and interest groups, constitutional conventions and, more recently, citizens-initiated referendums, citizens assemblies and juries, expert working groups and collaborative governance consensus-seeking by competing interest groups. Some of these are sanctioned by Parliament, some not. That some are not sanctioned highlights a core characteristic of representative democracy: that, apart from periodic elections, it operates only by the 'consent' or 'acquiescence' of the 'crowd' and that consent can be, and occasionally is, withdrawn or made conditional. (The same goes, by the way, for autocracy.)

The turn to populism in northern liberal democracies amounts to at least a partial withdrawal of consent and acquiescence. This has happened before from time to time in liberal democracies, most tragically in the swing from the Weimar Republic to Nazism in the early 1930s. But the latest populist surge has some distinct characteristics.

One is the breadth of reaction across many countries, most recently Sweden, which for decades was the liberal-democratic archetype. The other is the new mechanisms digital technology has made available to the 'crowd' and to those who seek to feed on and influence the 'crowd'. Far more populous 'crowds' can be reached and can interact across far greater distances than in the pre-digital era, and those connections are made faster than lightning. And the larger the crowd, the more irrational its members can be. We are still learning the implications for everyday life of that connectedness. Also, what the 'crowds' say about themselves and to others can be harvested and processed by artificial intelligence computers – and misused – in ways 20th-century statisticians and marketers – and crooks – could only dream of.

As a swelling flow of new books underlines,[9] these new technologies have wreaked serious damage on the keeper of 'truth', the fourth estate, which provided channels of information to and from the citizens and their representatives and so was a check on Parliament, however imperfect. The new-era robber barons, Facebook, Google, Amazon and other social media, have sucked much of the advertising lifeblood out of traditional media and by doing that have diminished the role of traditional media's fact-seeking journalists. They channel 'news' according to their users' clicks, reinforcing preference, prejudice and preconception. They carry bots: automated accounts which autonomously spread messages (astroturfing), amplify allies' messages (propaganda) and dampen opponents' messages (roadblocking). An Illinois University study found that during the 2016 United States election a fifth of election-related Twitter messages were generated by such bots.

As a result, real news is garbled and the spread of 'fake' news is enabled. That is the antithesis of truth and the enemy of the trust on which representative democracy depends. It fuels what Jamie Bartlett in *The People vs Tech* calls 'hyperpartisan' group loyalty to parties or demagogues or biases (Bartlett, 2018, p.43).[10] Bartlett sees digital technology as incompatible with democracy and says it is set to destroy democracy if politicians don't bring it under control.

Facebook and the other robber barons also harvest personal data, which can then be processed by artificial intelligence to target bots. This can be used by political consultants and their clients, and by hostile governments or crooks to distort voting, as in the United States presidential election and the Brexit referendum. Add in the hacking of emails and websites and the malign use of digital technology. Representative democracy and its parliaments face potentially existential threats.

That's the bad news: the fuelling of a fulsome 'madness of crowds' with distorted, fabricated and malicious ideas. This is the 'post-truth'.

Moreover, this digitised world is the one younger people – the 20-somethings and younger – have grown up with. They think differently, cohort by cohort. The under-20s are different from the over-20s and both think differently from the 30-somethings. And the under-10s? Don't ask. Representative democracy is less central to the under-30s' lives, thinking, expectations and hopes than to older cohorts'. Unsurprisingly, voter turnout in elections has declined here and in other democracies (at least where voting is not compulsory).

The good news

But there is also good news. The new media and the other threads of the web also can and do enable and fuel a 'wisdom of crowds'. They enable participation in ways that in the past were difficult to organise or not even imaginable. Might those ways of 'collective problem solving' deliver for politics what the peer-to-peer commons does in generating Wikipedia entries, or what a swarm of brains 'hived' (Bartlett's word) by the internet can do in finding solutions to complex digital technology issues, as described by Nigel Shadbolt and Roger Hampson in *The Digital Ape* (Shadbolt and Hanson, 2018)?[11]

There is 'crowd funding' of new business startups, charities and other ventures. In 2016 an iconic beach was rescued into public ownership through a website which the 'crowd' could join and contribute funds to. Pressure groups which used to organise through in-person meetings now operate digitally – as, for example, two justice reform groups, JustSpeak and People Against Prisons. Informal movements can be much more easily generated, as in the overthrow of the Egyptian regime in 2011 or the #MeToo movement exposing sexual harassment. The misnamed 'Arab spring' was transitory. We have yet to see whether #MeToo evolves into a durable, influential political force. But they do appear to be pointing to the development, however unevenly, of alternative ways of doing democracy.

I term this 'distributed democracy' (James, 2017b, pp.252, 254), by analogy with distributed generation of electricity by householders, small groups, factories and building managers through photovoltaic cells, biofuels, wind micro-turbines and combined generation using processing heat and feeding that back into the grid. Shadbolt and Hampson call it 'liquid' or 'delegative democracy' (Shadbolt and Hampson, 2018, p.118).

The good news for parliaments is twofold. First, even with distributed electricity generation the need persists for big generators and a grid. Likewise, for as long as there are sovereign nation states, maintaining social order needs central authority and assignment of power and so a national legislature and government. (I leave aside here the argument that cities will, or may, over time take over much of what states do, which I explored in a talk late last year (James, 2017a).)

Second, while distributed democracy leaves room for 'madness of crowds', it also makes room for 'wisdom of crowds', and that wisdom can be superior to leaders' assumed wisdom. That distributed wisdom can apply even in autocracies which claim that all wisdom lies in the centre, as, for example, China's emperor, Xi Jinping, does. For any regime to endure it needs to be attentive to the 'crowd's' needs, desires, attitudes, moods and currents. The difference is that in democracies the leaders' hold on power is likely to be shorter than in autocracies, so those leaders – and their parliaments – need to be more attentive and responsive to the 'crowd'.

… while distributed democracy leaves room for 'madness of crowds', it also makes room for 'wisdom of crowds', and that wisdom can be superior to leaders' assumed wisdom.

So we might say democracy is an interplay, a tension between the 'madness of crowds' and the 'wisdom of crowds'. Both have always been in play. Liberal democracy works well when the 'wisdom' prevails over the 'madness', as it did in liberal democracies during the six decades when the bounded rationality of the centre-right/centre-left hegemony prevailed, and with it, stability. But over the past decade or so the 'madness of crowds' has been rising, aided by digital technology. This fragments or degrades liberal democracy. Freedom House, which monitors the rise and fall of democracy, reports that 2017 was the 12th consecutive year of 'decline in global freedom', not least in that self-proclaimed bastion of modern democracy, the United States (Abramowitz, 2018).[12]

Is this surprising? After all, the Vasco da Gama era, the 500-year Euro-American dominance of the global economy and politics, has ended and with it the Euro-American dominance of ideas, in new science and of how to organise societies, their economies and their politics. China and India, both reclaiming their pre-da Gama eminence, along with other emerging centres of power are bidding for leadership in science and societal and political organisation (Kaplan, 2018).[13] Sure, the trend of the past 200 years or so has been towards liberal democracy. But the recent lapse noted by Freedom House cannot be assumed to be temporary. Xi Jinping, Vladimir Putin, Viktor Orban and Recep Erdoğan and their devotees have ambitions directly contradictory to liberal democracy.

That's the gloomy trend. But in liberal democracies, 'madness' has not vanquished 'wisdom'. The foundations are still sound even if the superstructure needs repairs.

A case for optimism

So is there a counter-trend?

Here's a wild idea. The monarchies and autocracies which were upended by the revolutions of 1848 across continental Europe quickly re-established their authority. But some undercurrents continued to flow and decades later – in some cases up to a century and a quarter later – those undercurrents rose to the surface in the form of representative democracies. So were there undercurrents in the 1968 wave of unrest which swept through liberal democracies, Czechoslovakia and in a muted form elsewhere behind the Iron Curtain? And, if so, are there elements of those undercurrents that promise the rescue or redevelopment of liberal democracy? Candidates include peace, individuality combined with communal inter-responsibility, freedom and equality of human rights, and even a 'new leftism'. But even if such undercurrents are flowing, which cohort will bring them to the surface: the 30-somethings or the 20-somethings or the under-20s? And will that be too late to rescue liberal democracy from the growing cancer of the 'madness of crowds' and the rising pressure of alternatives such as Xi Jinping's?

It is too early to address, let alone answer those questions. Any answers may rest on too flimsy a hypothesis. But there is a case for optimism. The Canadian cognitive psychologist and linguist Steven Pinker has presented mountain ranges of evidence that humans across most of the world are treating each other better century by century and decade by decade: hugely less poverty, hugely less untreatable disease, even less war and homicide (in liberal democracies), underpinned by greater personal freedom and rights (Pinker, 2011, 2018). That points not to the triumph of autocracy but towards something that might look more like a descendant or outgrowth of, or migration towards, liberal democracy.

One reason we have become despondent and why large minorities have turned away from liberal democracy is the relentlessly negative tone of the traditional media. We play up the bad, the disgusting, the violent, the worst side of human nature. We think that is what readers/listeners/viewers want. Entertainment trumps information. That negative tone was no better encapsulated than in the first words of the *New York Times*' emailed weekend briefing of 20 May on the royal wedding: 'Let's start with some good news for a change.'

Pinker overstates his case. But the underlying point, I think, has merit. If so, there is life and value yet in liberal democracies – upsides worth developing, including in the capacity for distributed democracy to build the 'wisdom of crowds'.

> Chris Hipkins' glib dismissal on 6 September of the Appropriations Review Committee report on resourcing MPs (Appropriations Review Committee, 2018) as 'dead in the water' demeaned Parliament in a way that invites distrust.

Parliament's need to pick up its game

If that is to be so, parliaments will be critical to building the wisdom and quelling the madness. As the law-making meeting places, the 'places to talk', parliaments can take initiatives that can influence the course of debate, argument and resolution. A quick list for the New Zealand Parliament might go something like this:

First, stamp out bad behaviour. Question time (despite some innovative attempts at corrective action by Speaker Mallard) is a disgrace, to Parliament and the nation. It is a sufficient reason not to vote, or at least not to vote for incumbents. Partisanship cannot be eliminated because politics begets tribes with different ambitions for themselves, their supporters and the country. But airing those differences should be by principled debate, not snide, personalised, denigrating and partisan argument and catcalling.

Second, rework debate in a much strengthened committee structure to get more focus on improving legislation and informing it with disinterested expert, especially scientific, evidence.

Third, help MPs behave more like the responsible representatives they need to be by beefing up resources: good salaries; more administrative support in Parliament and in electorates or, in the case of list MPs, in the area they choose as their base; strong research support, including funded access to private and academic experts and scientists for evidence; and access to departmental advice.

Chris Hipkins' glib dismissal on 6 September of the Appropriations Review Committee report on resourcing MPs (Appropriations Review Committee, 2018) as 'dead in the water' demeaned Parliament in a way that invites distrust. Hipkins' title, leader of house, suggests he is the guardian of Parliament, but actually he was acting as an officer of the executive, lording it over MPs and Parliament. For as long as this overlordship persists, Parliament will earn its growing disrepute. Mindless media carping at Simon Bridges doing his proper job going round the country listening and Jacinda Ardern participating in the strategically important South Pacific Forum doesn't help.

Fourth, reduce voter cynicism about who really runs the show (shadowy figures behind political parties) by greatly increasing public funding of political parties and tightening rules limiting private donations, and requiring information on donations to be widely distributed publicly, by way of social media, so people who don't normally engage in politics see who is paying whom.

Fifth, related to that, generously publicly fund something like Radio New Zealand to produce a platform of factual, fact-checked information that other serious media, and even social media, can draw on. Also, publicly subsidise selected serious media websites, such as Newsroom.

Sixth, related to that, start looking for ways to mandate the curation of social media and hold the curators to account. Obvious mechanisms are tax and regulation, but regulators will need to be very nimble, fast and innovative to keep up with changes in technologies, algorithms and platforms. That means competing on price with the tech industry.

Seventh, set up an independent fiscal commission appointed by the whole of Parliament and convert some other commissions into parliamentary commissions similarly appointed. That could include, for example, the Human Rights Commission and the planned Climate Commission, among others. But first rewrite the appointment, dismissal and oversight rules of such commissions to ensure proper, open, just process.

Engaging the 'crowd'

Eighth, adopt the principle of subsidiarity and enable and mandate local councils to take more power and do more.[14] Councils vary greatly in quality but they are closer to their segments of the 'crowd'. If well resourced, councils might prove able to develop internet-based ways of engaging and drawing from the 'crowd' positively to develop 'wise' policies and programmes the 'crowd' can see, respect and value as relevant and can see are not the preserve of a distant elite. Parliament could learn from such experiments and innovations.

So, ninth, following on from that, start to take Parliament and decision making to the people, through innovative use of digital technology to inform, consult, engage and involve voters in more complex decisions than binary yes–no referendums. That could mean taking collaborative governance, citizens juries and assemblies and deliberative polling much wider than small samples and securing voter responses with blockchain technology to encourage interaction.

How far could that go? Nigel Shadbolt and Roger Hampson muse on 'citizen internet panels', and even a 'national panel' comprising millions of people. 'Decisions that affect a lot of people should involve a lot of people,' they say, even suggesting that 'new legislation, in principle, could be crowd-sourced' (Shadbolt and Hampson, 2018, pp.304–5). Jamie Bartlett offers a long list of aspirational corrective measures, including reining in and fully taxing the digital giants like Google, Facebook, Amazon and Apple and 'policing the algorithms' (Bartlett, 2018, p.207ff).

To a fading baby boomer like me the Shadbolt–Hampson musings stray into science fiction territory. But in the digital world much that was science fiction 40 or 50 years ago is fact now. Why not new ways of doing democracy if the alternative is outdated, outmanoeuvred, outsmarted and illegitimate parliaments? We in liberal democracies need parliaments, to focus politics and ideas and execute policies and decisions. But those parliaments need to be modern, as they learnt they needed to be in the 19th century when the aristocracy and upper classes were challenged by the merchant and industrial classes and a new industrial working class.

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How all this evolves – and especially whether facts and common sense, which are the nearest we can get to 'truth' in politics, prevail – will be a large factor in the evolution of trust in Parliament.

The fundamental point is that democracy is the property of the demos and the optimist in me says that ultimately the decisions the demos makes rest on the 'wisdom of crowds'. There is room for optimism that the wisdom of the crowds might yet trump the madness of the crowds. If so, liberal democracy has a way to go yet.

1 This article is adapted from a paper delivered at the Australasian Study of Parliament Group conference, Brisbane, 17–18 July 2018, and a subsequent presentation in Wellington.

2 Grayling also quotes (p.3) Sir Winston Churchill as saying, 'the strongest argument against democracy is a few minutes conversation with any voter' because it reveals the ignorance, self-interest, short-termism and prejudice typical of too many voters', and satirist H.L. Mencken's quip, 'Democracy is a pathetic belief in the collective wisdom of individual ignorance.'

3 In the foreword to the 1932 edition Bernard M. Baruch, in the aftermath of the 1929 stockmarket crash, quoted Friedrich Schiller: 'Anyone taken as an individual is tolerably sensible and reasonable – as a member of a crowd, he at once becomes a blockhead'. Baruch went on to talk of 'crowd-thinking, which often becomes crowd madness'.

4 Trust and confidence were much higher among older than younger age groups.

5 Goodhart used the terms 'nowhere' and 'somewhere'.

6 I covered these developments (as up to July 2017) in some detail in James, 2017, pp.15ff.

7 Fromer writes of these countries: 'democracy may be the problem, not the solution. Instead of moderating extremism, the will of the majorities in these countries has been driving it.'

8 Article titles included 'The big shift: how American democracy fails its way to success', 'The age of insecurity: can democracy save itself?', 'The end of the democratic century: autocracy's global ascendance', 'Autocracy with Chinese characteristics' and 'Eastern Europe's illiberal revolution'.

9 Carlos Lazada (2018) surveys five of this burgeoning range of new books on 'truth', 'fake news' and the like: Lee McIntyre, *Post-Truth,* Cambridge, Mass: MIT Press, 2018; Jennifer Kavanagh and Michael D. Rich, *Truth Decay: an initial exploration of the diminishing role of facts and analysis in American public life,* Santa Monica: Rand, 2018; Amanda Carpenter, *Gaslighting America: why we love it when Trump lies to us,* New York: Broadside, 2018; Michiko Kakutani, *The Death of Truth: notes on falsehood in the age of Trump,* New York: Tim Duggan Books, 2018 (forthcoming) and Simon Blackburn, *On Truth,* New York: Oxford University Press, 2017.

10 Bartlett notes: 'Crowds certainly are wise when it comes to solving technical, non-value-based problems like fixing computer bugs but politics is very different' (p.44).

11 They describe the evolution of Wikipedia on p.103ff, and on p.251 the development in 48 hours of a data set into a comprehensive website pinpointing on maps accident blackspots for cyclists in London.

12 The report said that 'since the 12-year global slide began in 2006, 113 countries have seen a net decline, and only 62 have experienced a net improvement'. It noted also that 'the United States retreated from its traditional role as both a champion and an exemplar of democracy amid an accelerating decline in American political rights and civil liberties'.

13 Robert Kaplan (2018) calls this a return to 'Marco Polo's world': that is, to the global balance applying before the European expansion that followed Vasco da Gama's explorations.

14 On 15 July Local Government New Zealand and the New Zealand Initiative launched a 'localism' project promoting decentralisation. A summit is timed for February 2019.

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Stephen Knight-Lenihan and Kate Scanlen

Climate-compatible Development in New Zealand

Abstract

Like many countries, New Zealand is grappling with how to reduce greenhouse gas emissions while adapting to climate change. We are working through a Zero Carbon Bill and the implications of transitioning to a low-carbon economy. The country is being told it needs a more co-ordinated and effective way to prepare for climate change impacts, as local government is formulating adaptation and mitigation strategies in an uncertain and, as discussed below, at times confusing legal and policy framework.[1]

Potentially helpful is a concept evolving internationally, climate-compatible development. This promotes the idea of explicitly combining strategies and policies for emissions reductions and adaptation initiatives while enabling improvements in human well-being. This article explores the usefulness of such a concept for New Zealand.

Keywords climate change, adaptation, mitigation, local government

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Policy on reducing greenhouse gas emissions or offsetting them (mitigation) and adapting to climate change impacts has evolved separately in New Zealand. This approach is changing as the country considers legislation to reduce emissions (Ministry for the Environment, 2018), while clarifying what needs to be done to adapt (Climate Change Adaptation Technical Working Group, 2018), because impacts are already occurring (Ministry for the Environment and Statistics New Zealand, 2017).

A challenge is avoiding contradictory outcomes due to poor policy integration between adaptation and mitigation, while enhancing potentially complementary actions. Climate-compatible development aims to avoid clashes and contradictions within and between the economic, social and environmental sectors and create more effective outcomes (Bickersteth et al., 2017).

Climate-compatible development evolved as a response to climate change in developing economies. This influences the definition, assumptions and approach,

particularly its emphasis on social justice. The historical, cultural and governance framework is different for developed economies. Despite this, climate-compatible development might be relevant to New Zealand.

Climate-compatible development: the concept

The Intergovernmental Panel on Climate Change recognises that both mitigation and adaptation are essential for all countries (Klein et al., 2007). Mitigation focuses on reducing emissions of the range of gases contributing to enhanced climate change. Adaptation looks to reduce the impacts of climate change on human society and ecological systems. Impacts include, but are not confined to, more frequent and/or intense droughts and floods, enhanced coastal erosion and storm surges, the spread of pests and disease, reduced food security, and social disruption.

While mitigation is vital for reducing the probability and scale of future impacts, many climate change effects are now unavoidable and must be prepared for. The United Nations' Sustainable Development Goals, including eradicating human poverty and increasing equality, add another dimension to policy development (Granoff et al., 2015). A co-ordinated approach reduces the risk of undermining certain aspects of climate change preparation, or sustainable development (Locatelli et al., 2015; Kongsager and Corbera, 2015; Kongsager, Locatelli and Chazarin, 2016). Joint pursuits may create better or even synergistic outcomes (Bickersteth et al., 2017). For example, adaptation may build resilience for a mitigation strategy, which means it will last longer than otherwise (Locatelli et al., 2015). An example is changing agricultural systems to cope better with drought, and in doing so improving soil condition and so improving atmospheric carbon sequestration and storage. Knowing this shapes how the adaptation project is delivered.

From a broader view, pursuing mitigation will always improve adaptation strategies by reducing the scale of future impacts of climate change (Klein et al., 2007). However, there is difficulty attaching measurable benefit to marginal increases in mitigation, making local benefit–cost assessments difficult. Understanding this is important to ensure that policy evolution accounts for efficient and effective ways to manage climate change. It may be possible to take a global carbon budget approach (Le Quéré et al., 2017) whereby sources and sinks at different scales are cumulatively significant. Combined with estimated risk of significant impacts from exceeding global average temperature limits (Lehner et al., 2018), this adds weight to reducing emissions over adapting to effects. A manifestation of this is the January 2018 launch of the United Nations QUIAO Plan funding instrument for developing economies. The plan includes support for development initiatives that identify the climate mitigation and adaptation potential of ecosystems as part of climate action and nature conservation.[2]

Facilitating resulting trade-offs to minimise contradictions and take advantage of synergies will have policy and regulatory implications.

Policy integration

Climate-compatible development is similar in approach to that used for strategic environmental assessments. Strategic environmental assessment is a tool used to assess programmes, policies and plans from a strategic perspective, and preferably prior to implementation, in terms of their effect on identified environmental outcomes (Therivel, 2010; Paridário, 2012). From this perspective, climate-compatible development could be used to assess current programmes, policies and plans in terms of:

- how they account for climate change adaptation;
- how they account for emissions reductions;
- how they address cross-sector aspects of both adaptation and mitigation;
- what interim targets have been identified;
- the provisions for monitoring and reporting; and
- implications for not meeting targets.

Table 1 provides an example of what this process might look like, applying climate-compatible development to a hypothetical proposal to build 1,000 new homes on greenfield land. The objective is to identify policies, plans or programmes that potentially reinforce or contradict each other, and/or provide opportunities for other co-benefits. The issue of monitoring and accountability is not addressed here, as that requires analysis beyond the scope of this article. Much of the assessment will be after the fact: that is, once policies, plans or programmes are in place. Ideally, eventually, this should be done during the drafting of them.

Facilitating resulting trade-offs to minimise contradictions and take advantage of synergies will have policy and regulatory implications. Three examples of how these implications might be accounted for relate to transport funding, local government warnings to and restrictions on landowners relating climate change impacts, and the use of existing statutory processes to integrate both adaptation and emissions management.

Transport funding

The Government Policy Statement on Land Transport provides funding guidelines for achieving government transport goals. The New Zealand Transport Agency's economic evaluation manual provides procedures for funding applications to evaluate the economic efficiency of transport investment and assess alternatives. The current iteration of the Government Policy Statement on Land Transport (2018) shows a greater awareness of the emissions implications of transport than previous versions, and the 2016 economic evaluation manual introduced climate

Table 1: Climate-compatible development pillar identification matrix, modified from the work of Harkes et al., 2015. Black text is a positive and blue a negative trade-off

Intervention	Adaptation outcomes	Mitigation outcomes	Development outcomes	Co-benefits
Subdivision of 1,000 new lots	– Reduction in agricultural land for food production – Risk from any potential natural hazards in area increases OR – Reduced exposure if climate change impact projections accounted for in location	– High-density subdivision increases emission efficiency of land use – Opportunity to reduce emissions if build in energy efficiency – Urbanisation of green/natural space that could be used for carbon sequestration – Increased demand for driving	– New land available for development – New housing stock may reduce dwelling costs BUT – Higher up-front build costs for efficient housing	– Attach ecological enhancement requirements to consents for carbon sequestration and storage, biodiversity, and cultural and recreational values
Dwelling design and construction x1,000	– Designed for current and future climate change impacts OR – Fail to incorporate adaptation requirements, leaving houses exposed to hazards	– Sustainable design incorporated from outset: double glazing, insulation envelope, water tanks, solar to reduce energy OR – Follow current practice and fail to integrate such features	– Work for design, construction and real estate sectors and demand for building materials – Potential for investment in innovative sustainable housing designs and solutions	– Increase to Auckland housing stock: potential benefits in affordability – Quality homes and better public health
Transport: private vehicle, public transport, walking and cycling.	– Increased access reduces risk from natural hazards by providing exit strategies – Road access may induce further development in more exposed areas – needs to be accounted for	– From outset designed for better pedestrian and cyclist outcomes to help reduce emissions BUT – This may create 'sustainability ghettoes', where active transport occurs within a subdivision but driving is required outside it – Production/construction emit greenhouse gases and these need to be offset – Induced road transport increases emissions	– Work for road-building sector – Increased access across new areas – Generates demand for vehicle (motorised and non-motorised) sales and maintenance – Integrates with other public transport and action travel options – May generate more road traffic and congestion	– Active transport can improve population health and create demand for local goods and services
Underground infrastructure – electricity, water, wastewater, stormwater, fibre internet	– Increased capacity pre-built to account for demands of future climate change – Exposure to intruding groundwater or increased flooding	– Fibre internet creates opportunities to work from home, reducing need to drive	– More public assets – More opportunity to establish self-employment/small business and a flexible economy to help the transition to a low-carbon system	– Water-sensitive design minimises offsite stormwater flows, reduces pollution, and augments biodiversity and recreational and cultural values

change impact assessment procedures, which were absent from the 2013 manual.

Despite this, there is no mandated ability to link emissions implications with urban development generally, or resource consents for subdivisions specifically. An example is peri-urban development aimed at reducing housing costs which exposes purchasers to higher commuting costs. This compromises attempts to reduce emissions from transport. In addition, if, carbon prices rise subsequently (or in the case of Auckland, a regional fuel tax is applied), this imposes disproportionate extra costs on those who may have fewer transport alternatives.

If a cross-sector climate-compatible development-type approach were being taken, both the Government Policy Statement on Land Transport and economic evaluation manual would cross-reference to emission reduction targets, thereby enabling the New Zealand Transport Agency (which must give effect to the policy statement) and local government (which applies for transport funding using the economic evaluation manual guide) to include targets in any benefit–cost analysis. The result might be a need to subsidise the building of lower cost inner-city housing at a level that is in proportion to the assessed future liabilities of not meeting emissions reductions

targets. This could occur under the proposed Zero Carbon Act.

Local government warning about climate change impacts

As an adaptation example, courts have been clarifying what councils can and cannot include in land information memoranda (LIMs) or proposed plan changes in terms of warnings about, or avoidance of, climate change-exacerbated hazards. Essentially, councils can act cautiously and restrict activities as long as actions rest on sound evidence and are proportional (Iorns Magallanes, James and Stuart, 2018). But this is an ad hoc guide and there is a lack of certainty for landowners and councils.

Our own analysis of recent court cases suggests that courts reinforce a conservative (take no action) approach by regulatory authorities. This is because, in order to demonstrate negligence, landowners need to show that councils have a duty of care, that this duty was breached, and that the breach led to a particular impact. It has been very difficult to date for landowners to prove this in court (see *Resource Planning & Management Limited v Marlborough District Council; Monticello Holdings v Selwyn District Council; Weir v Kapiti District Council*).[3] It is argued that this is changing and that councils and insurers will end up with 'unexpected liabilities' in future (Storey and Noy, 2017, p.69). However, currently, councils wishing to be more proactive may end up attracting legal action by property owners concerned about the erosion of existing use rights. So it is a matter of weighing up current legal and financial liability against what might happen in the future, and when.

The above reinforces previous calls for clarity over how communities need to respond to climate change impacts (Parliamentary Commissioner for the Environment, 2015). It also raises broader issues of accountability. If councils (or governments) know of dangers, what responsibilities do they have for responding to them? We return to this below.

The role of the insurance industry needs to be clarified. Insurers need to work closely with councils to identify ways to reduce hazard exposure. A recent *Resilient Cities Report* notes that insurers are 'in a unique position to leverage and incentivise local governments to undertake appropriate preventive measures' (ICLEI, 2018, p.18) and co-design infrastructure with local government. The report notes innovations including 'resilience bonds', whereby insurers provide necessary financing liquidity to put in resilience measures such as flood barriers. As cities capitalise on savings from avoided disasters, insurance costs drop.

Globally, coastal wetlands reduce the probability of human-enhanced climate change occurring through carbon sequestration and storage, as well as providing coastal protection, which reduces the scale of climate change impacts.

Combining adaptation and mitigation

The final example of policy implications looks at the potential for combining emissions management and adaptation by conserving and enhancing coastal wetlands.

Globally, coastal wetlands reduce the probability of human-enhanced climate change occurring through carbon sequestration and storage, as well as providing coastal protection, which reduces the scale of climate change impacts.[4] Carbon sequestration and storage capacity is difficult to assess. However, using climate zone delineation based on global studies and species and habitat comparability, and making conservative estimates of the past and current extent of coastal wetlands, inferences can be drawn (Khodabakhshi, 2017). Auckland is used as an example.

Using a social cost of carbon[5] estimate of US$220 per tonne (Moore and Diaz, 2015), Khodabakhshi concludes that carbon sequestration and storage services of mangrove forests and saltmarshes in the Auckland region are worth about US$9.6 million per year. By extension, recent wetland losses are worth about US$4.4 million per year in terms of forgone carbon sequestration and storage services. Consequently, per hectare sequestration and storage benefits associated with individual parts of the Auckland coastline can be estimated. Notably, this would not include any benefits associated with protecting coastlines, terrestrial, estuarine or marine biodiversity, or water quality.

The benefits of wetlands for coastal protection are site-specific. Protecting assets by maintaining or enhancing coastal wetlands may be economically significant, depending on the value of the assets. On the other hand, wetland restoration may require removing coastal development, with associated direct costs, or, alternatively, ruling out certain development, with associated opportunity costs. Hence the value of protection will depend on the value of existing infrastructure.

If a development in a particular catchment could demonstrate benefits to coastal wetland protection or enhancement through either avoided reclamation, or direct protection, this could contribute to compensating for emission impacts of the development. This would be in addition to any protection (adaptation) benefits linked to the specific infrastructure being protected.

Difficulties arise as parts of the Auckland coastline that historically had sandy beaches now have wetlands, particularly mangroves. While this compensates ecologically, in part, for mangroves lost through such activities as reclamation, it creates tension due to local amenity and other ecosystem value losses. Mangrove management involves controlling catchment sedimentation rates

associated with changing land use – from native bush to forestry and farming, and urbanisation. Directly removing mangroves is a temporary solution. Debates on the proposed Thames–Coromandel District Council and Hauraki District Council Mangrove Management Bill capture this tension. Another significant technical challenge is that those shorelines most needing protection from storm surges may not overlap with areas that see coastal wetlands establishing.

Accepting these technical challenges, what is also required is a policy framework working across land use and aquatic systems. The National Policy Statement for Freshwater Management and the proposed Zero Carbon Act offer such a frame.

The 2014 National Policy Statement for Freshwater Management sets objectives and limits for freshwater quality and quantity standards to be achieved by managing land use at a catchment level through freshwater management units. Regional councils and unitary authorities must comply with these environmental bottom lines, and have the discretion to go beyond these minimums.

Achieving freshwater improvements in some catchments requires land use changes. This is in order to reduce the source of contaminants in the first place. In addition, improvements can be made through riparian planting and re-establishing or creating wetlands to filter out contaminants, along with other ecologically-based design features aimed at significantly reducing storm water run-off (Auckland Council, 2015). This opens up opportunities for riparian and wetland planting to also contribute to both climate change adaptation and mitigation, as well as biodiversity enhancement.

In terms of climate-compatible development, the National Policy Statement for Freshwater Management establishes a catchment-based system that particularly suits adaptation initiatives, where land use changes associated with development could be used to directly benefit adaptation within the same catchment. Contributing to adaptation is not required as part of the policy statement. However, if property owners and developers could earn extra credits for contributing to adaptation, this could provide additional incentives to improve ecological values.

While carbon sequestration and storage would benefit systems outside the catchment as much as within it, the additional dimension of earning carbon credits could further boost riparian and wetland enhancement. Credits could be used to help offset extra costs of undertaking such actions as fencing off and/or planting alongside waterways. Enhancing coastal waterways would contribute to improving water quality, while also potentially improving adaptation values.

The policy enabling this approach could result from the Zero Carbon Act. One option proposed during public consultation on the bill is managing short-lived (methane) and long-lived (carbon dioxide and nitrous oxide) greenhouse gases differently (Ministry for the Environment, 2018). If this was done, and depending on the price of carbon and the evolution of the New Zealand emissions trading scheme, the prospect of short-term (pine) and long-term (native) offset plantings may become a more refined process. This could lead to targeted planting meeting a range of sequestration and other benefits relating to, for example, erosion control and biodiversity goals.

Currently it is difficult for local government to implement initiatives to address emissions (Resource Management Act, ss 70A and 104E), due to the centralised New Zealand emissions trading scheme.

Limitations of climate-compatible development

The integrated approach of climate-compatible development demands a high level of specialised knowledge and resources to avoid costly mistakes (Locatelli et al., 2015; Kongsager, Locatelli and Chazarin, 2016). An intimate understanding of local conditions, including the views and wishes of the local people, is important (Leventon, Dyer and Van Alstin, 2015; Kongsager and Corbera, 2015). There remains the potential for adaptation and mitigation projects to clash, or development and climate change goals being at odds (Klein et al., 2007; Locatelli et al., 2015; Ficklin et al., 2017).

Equally, attempts are being made to combine science, policy formulation and community input. The Hawke's Bay Regional Council's approach to coastal management is an example.[6]

Currently it is difficult for local government to implement initiatives to address emissions (Resource Management Act, ss 70A and s104E), due to the centralised New Zealand emissions trading scheme. Equally, while local government is required to address adaptation (RMA, s30(1)(c)(iv)), to date there has been a reluctance to explore more long-term and revolutionary adaptation options. An unpublished review by Kate Scanlen, one of the authors of this article, established the extent to which provisions preparing Auckland for climate change were weakened between the original proposed Auckland Unitary Plan and the final version.

For climate-compatible development to work, it would be necessary to integrate climate change more thoroughly into risk assessment and benefit–cost analysis for development projects. At present, climate change is largely absent from this critical area, with the exception of hazard risk management. This process may not necessarily require approaching a project with the intention of making every action a mitigation/adaptation measure. Rather, decision-makers must ensure that actions do not undermine mitigation or adaptation goals, and aim to find potentially synergistic

climate-compatible outcomes at the most efficient cost.

The example of coastal wetlands illustrates this point. Other examples include using forestry to offset emissions while providing soil stabilisation and water collection to buffer against increasingly intense storm events; or using electric vehicles to reduce road transport emissions while contributing to an alternative electricity source. The latter would be part of creating distributed and renewable energy projects, contributing to avoiding emissions from the increasing use of gas- or coal-fired generation to meet population growth, while increasing energy supply resilience to increasingly damaging storm events. However, such apparent additional benefits require close scrutiny. For example, alternative energy production and distributed energy systems create significant challenges around integrating into the national grid.

Conclusions

Climate-compatible development collects together ideas and concepts that are not necessarily new. Its contribution is to emphasise the need to think about adaptation and emissions reductions as an integral part of economic development. In this context, we advance the following proposals.

- Legislation addressing mitigation and adaptation needs to be reviewed and aligned. It is anticipated that this will be done as part of reviews of the New Zealand emissions trading scheme and the proposed Zero Carbon Act.
- The question of liability needs to be addressed, in relation both to adapting to climate change impacts and meeting emissions reduction targets. The former currently sits with communities and local government, while the latter has been seen primarily as a fiscal risk borne by the state. An equity principle could be applied. Individuals and communities overtaken by climate change-related events need to be helped by wider society, given its contribution to greenhouse gases. In return, councils need to be protected from unwarranted legal action in order to avoid the 'chilling' of effective adaptation action. The associated principle is that individuals investing in assets known to be exposed to climate change-related hazards may not be eligible for compensation for either an impact, or a perceived loss of property rights due to council planning provisions.
- Insurance costs and availability will have a role in this process. For example, the insurance industry influences development pathways, and innovative arrangements could be made linking improved community resilience to climate change impacts to reduced insurance costs. Equally, the insurance industry can identify hazard exposure and generate a response more quickly and directly than policies or plans. Ensuring this is done in a co-ordinated way is important.
- In tandem, there should be stricter requirements on communities to reduce emissions. Failure to achieve reductions should be met by a required action to mitigate, including to offset emissions.
- An assessment of the emissions reduction and adaptation implications of all district and regional plans, and significant national policies, should be undertaken. This is in order to identify whether and how actions complement or contradict other actions. Where there is a contradiction, compensatory action should be identified.
- The last point reinforces the value of identifying co-benefits. The coastal wetland example demonstrates how ecological enhancement that improves ecosystem functioning in principle improves adaptation and mitigation, as well as creating economically sound investments. The latter comes about through reduced exposure to risks that are both physical (due to poor adaptation) and financial (emissions offset costs from exceeding allocations).

Finally, there remains the challenge of the resourcing needed for assessing ways to adapt and mitigate, as well as to monitor success. However, this challenge exists with or without climate-compatible development. More fundamentally, climate-compatible development's overt linking of mitigation and adaptation is within a framework that assumes that action can occur while still improving human well-being. As indicated in this article, such an assumption may no longer apply.

1 http://www.lgnz.co.nz/our-work/publications/climate-change-project-on-a-page/.
2 https://www.unsouthsouth.org/2018/01/13/united-nations-launches-qiao-united-action-plan-on-climate-change-and-conservation/.
3 *Resource Planning & Management Limited v Marlborough District Council* HC Wellington CIV-2001-485-814, 10 October 2003; *Monticello Holdings v Selwyn District Council* [2015] NZHC 1674; *Weir v Kapiti District Council* [2013] NZHC 3522.
4 Material in this section is summarised from Khodabakhshi, 2017 and Knight-Lenihan, 2017.
5 The social cost of carbon is the estimated price of the economic or social costs or damages caused by each additional tonne of CO_2 emitted, and has been commonly used to assess the benefits of climate change mitigation policies (Nordhaus, 2014).
6 https://www.hbrc.govt.nz/hawkes-bay/coast/coastal-hazards/.

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Benjamin Dudley Tombs and
Ben France-Hudson

Climate Change Compensation
an unavoidable discussion

Abstract

Climate change will cause significant loss and damage throughout New Zealand. This will affect everyone. When considering the options for responding, compensation will inevitably be raised, as either a requirement or a policy choice. Many people, however, appear reticent to engage with 'compensation' either as a word or as a concept; preferring to avoid it altogether. This article argues that compensation will be an unavoidable part of the discussion about how best to respond to the challenges of climate change. It is an integral aspect of the law of compulsory acquisition and the Public Works Act. It sits in the background to both legal and popular understandings of other statutory regimes such as the Biosecurity and Earthquake Commission Acts. This article explores the ramifications of this observation from a legal perspective and suggests that careful thought should be given, as soon as possible, to the development of a principled approach to compensation for climate change loss and damage.

Keywords climate change, compensation, acquisition, legal precedents, ethical principles

There's one issue that will define the contours of this century more dramatically than any other, and that is the urgent and growing threat of a changing climate.

U.S. President Barack Obama (Obama, 2014)

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Climate change will cause a range of problems, with inevitable loss and damage for individuals, businesses, and government (PCE, 2015; Abbott, 2014). How best to adapt to these challenges is a question currently receiving significant attention (Cooper and Pile, 2013; NZCPS, 2010; Hayward, 2008). It is clear that adaptation will result in increasing and 'unavoidable' costs to

the public (AOSIS, 2008, p.2; Vanhala and Haestbak, 2016). In this context the question of compensation is critical, both for adaptation strategies which involve the acquisition of land, and where a choice is made to pay people for the loss or damage they have suffered. However, extended consideration of the role of compensation has been largely absent from discussions so far, particularly from a legal perspective. Indeed, our experience has been that discussion of compensation engenders anxiety in many people working on climate change issues, a number of whom appear to have a preference to avoid the term altogether.

In this article, we argue that the idea and expression 'compensation' is an unavoidable aspect of the climate change adaptation discussion and explore the consequences of this. Compensation is an intrinsic aspect of the law of compulsory acquisition. It will also have to be discussed when deciding whether to make payments to people who have suffered loss or damage. The term is well understood and used by both lay people and experts. Euphemisms, such as 'assistance' or 'transitional assistance', may appear attractive and as softening reality. In our view, however, they distract from the key policy choices that will need to be made, and from the established place of compensation in the law. This has a number of ramifications. In particular, it suggests that careful thought should be given, as soon as possible, to the development of a principled approach to compensation in the climate change context.

Compensation Anxiety

As the most recent report of the Intergovernmental Panel on Climate Change makes clear, climate change will have a wide range of effects and many of these will cause individuals, business and states loss and damage (IPCC, 2018). How best to respond is a question currently occupying many scholars and policy makers. At a practical level central and local government are taking a number of initiatives (Storey et al, 2017). For example, the Climate Change Adaptation Technical Working Group was tasked with considering how New Zealand might build resilience to the challenges of climate change. It touches on compensation when noting the importance of ensuring New Zealand has the financial capacity to deal with adaptation to climate change, where the costs will fall and how those costs can be funded. In making its recommendations it encourages the investigation of what an appropriate funding mechanism might look like and how future costs might be reflected in investment and planning decisions (Climate Change Adaptation Technical Working Group, 2018, Actions 16 and 17). Scholars are also beginning to engage with the issue. In considering the question of climate change funding in some detail, Boston and Lawrence (2017, 2018) have highlighted the profound ethical and administrative issues that need to be addressed in developing any principled approach to compensation. Although there is a vast legal literature on the law of takings and compensation, very little of it addresses the emerging question of compensation in the context of climate change (although see (Berry and Vella, 2010) which considers the question of regulation, property rights and managing coastal hazards).

The absence of detailed discussion is surprising, given the important role compensation could play in this sphere and the widely held popular expectation that governments will provide compensation payouts for climate change loss and damage (Boston and Lawrence, 2017 p12; McCrone, 2018). However, the view of the general population appears to be in stark contrast to the views of many of those on the front line of decision making. Indeed, our experience, supported by anecdotal evidence, is that the term 'compensation' when used in the context of climate change causes deep concern and anxiety in policy circles. There appears to be an informal consensus that the word should not be used in this context at all. Rather, to the extent the state may pay people money as a result of the effects of climate change, other terms (usually some variant on 'assistance') are seen as more appropriate. There may be a number of reasons for this, including the sheer size of the fiscal risk that will accompany climate change (Boston and Lawrence 2018; Hino, 2017; Verchick and Johnson 2013; Alexander, 2011; Nicholls et al, 2010), and the other challenges climate change poses on ethical and political levels. Questions regarding how to equitably distribute the costs of climate change have yet to be answered (Hayward, 2008, and 2017). The role of individual responsibility remains unclear, as are the precise obligations of the state. Moreover, gaining clarity in relation to these considerations may simply be a precursor to further questions, including what might get compensated, and (equally importantly) what might not. In such an atmosphere of uncertainty, anxiety is understandable. In our view, however, while these are ultimately questions that will be answered on the basis of policy, from a legal perspective compensation as a word and a concept is unavoidable in this context.

> New Zealand has a tradition of compensation across a wide range of areas which can be described as both institutionalised and ad hoc.

The Unavoidability of 'Compensation' in this Context

The idea of compensation is not difficult. As Dixon J noted in *Nelungaloo Pty Ltd v Commonwealth* ([1947] HCA 58; (1947) 75 CLR 495 at 571):

> … "compensation" is a very well understood expression. It is true that its meaning has been developed in relation to the compulsory acquisition of land. But the purpose of compensation is the same, whether the property taken is real or personal. It is to place in the hands of the owner

> expropriated the full money equivalent of the thing of which he has been deprived.

It is inevitable that compensation as an idea and expression will arise in the context of climate change. Damage and loss are certain. Potential responses include payments for that loss, or acquisition of property to avoid further, or future, harm. New Zealand has a tradition of compensation across a wide range of areas which can be described as both institutionalised and ad hoc. It is important to recognise that any approach adopted in New Zealand will be informed by both historical practice and societal expectation. The concept of compensation has been integral to schemes in the past, it is an important concept legally, and appears to form part of everyday discussion of what the responses to climate change might involve.

No area demonstrates the unavoidability of compensation between than the law surrounding the 'taking', or acquisition, of private property by the state.

'Takings' of private property

No area demonstrates the unavoidability of compensation better than the law surrounding the 'taking', or acquisition, of private property by the state. A familiar example is the power of the Crown to compulsorily acquire land under the Public Works Act 1981 for a range of 'public works', such as infrastructure projects including roads and airports. There is a very long tradition of law relating to these powers and this will inevitably be triggered where any state driven response to climate change affects private property rights.

As observed by the Supreme Court in *Waitakere City Council v Estate Homes Ltd* [2007] NZSC 112, [2007] 2 NZLR 149, the Magna Carta 1297, c 29 remains statutory authority that anything amounting to a taking (or acquisition) of private property must be authorised by a statute allowing for the acquisition in clear terms (at [45]; Imperial Laws Application Act 1988, Schedule 1; Corfield and Carnwath, 1978, p.1). This suggests that where the state decides it is necessary to acquire land in the context of climate change (or takes steps which amount, in law, to a taking) it will have to be authorised to do so by way of clearly worded legislation. Crucially, compensation is an integral part of the compulsory acquisition process and will have to be considered as part of the development of any legislative schemes. As noted by Donovan LJ in *Birmingham Corporation v West Midland Baptist Trust* [1970] AC 874:

> … in any developing community there must be a power to take land from private owners for public purposes; and *in society where private ownership of land is permitted justice requires that compensation should be paid for such takings*. (emphasis added).

The Supreme Court echoes this in *Waitakere City* where it also observed that one of the effects of Magna Carta is that where a statute authorises the acquisition of land the statutory practice is "to confer entitlements to fair *compensation* where the legislature considers land is being taken for public purposes under a statutory power" (*Waitakere City Council v Estate Homes Ltd* at [45] (emphasis added)). Moreover, the Supreme Court stressed that the courts have been "astute to construe statutes expropriating private property to ensure fair compensation is paid" (citing Taggart, 1998 pp. 104 – 105). This is reinforced by the Privy Council's discussion in *Director of Buildings and Lands v Shun Fung Ironworks Ltd* [1995] 2 AC 111 at 125 where it noted:

> … the board is guided by the well-known principle that a statute should not be held to take away private rights of property without compensation unless the intention to do so is expressed in clear and unambiguous terms.

Nonetheless, it is important to note that there are no explicit legislative prohibitions on state acquisition of property in New Zealand. There is no 'constitutional protection' of private property as found in Australia (Commonwealth of Australian Constitution Act 1900, s 51(xxxi)) or the United States (United States Constitution, Amendment 5). Parliament could, therefore, conceivably pass legislation acquiring land without compensation in the context of climate change. However, there is a strong general presumption against uncompensated acquisition. As Sir Geoffrey Palmer explains:

> … it is a recognised principle that the state should not appropriate private property for public purposes without just compensation. But in New Zealand, absent any statutory obligation such as that contained in the Public Works Act, it is a principle that has to be honoured by the executive and Parliament. It cannot be implemented by the Courts. (Palmer, 2001, p.168)

However, from a property lawyer's perspective, it is also almost inconceivable that the state would ever take property without compensation. It also seems extremely unlikely from a political perspective. Certainly, we can say that if the Crown were to attempt to do this it would have to be authorised to do so by very clearly worded legislation and a public outcry could be anticipated. Indeed, when the Crown does take property, even with an offer of compensation, it tends to be highly contentious.

The traditional approach to compensation is reflected in at least two existing legislative schemes allowing the state to either acquire property, or when state action in relation to property causes loss or damage. The Public Works Act 1981 embodies the most straightforward system of compensation for public works in New Zealand. The basic proposition is that the

Crown (or occasionally other public bodies) may acquire land for public works. Where the land cannot be acquired voluntarily, it can be acquired compulsorily. In either case 'full compensation' must be provided (s 60). Equally illustrative, are the compensation provisions of the Biosecurity Act 1993. The overall purpose of this legislation is to preserve the integrity of New Zealand indigenous flora and fauna. The Act provides for compensation to be paid to individuals in a number of circumstances where measures taken under the Act impact on their private property. For example, the recent Ministry for Primary Industries (MPI)-led response to *mycoplasma bovis* has involved an element of compensation (MPI, 2018). Section 162A of the Act provides that in certain circumstances a person or business is entitled to 'compensation' where the MPI has exercised powers and a loss has resulted, either because property has been damaged or destroyed, or because restrictions have been imposed on the movement of goods. In relation to *mycoplasma bovis* compensation has flowed for losses incurred as a result of MPI directives to shield the dairy economy by culling dairy herds (MPI, 2018).

In line with the Supreme Court's comments in *Waitakere City* both the Public Works Act and the Biosecurity Act demonstrate the clarity adopted by legislation providing for state interference with private property rights. They also illustrate the presumption that compensation will be paid in this context. Both Acts explicitly use the word 'compensation' and each serve to highlight that successive New Zealand governments have made an explicit policy choice to ensure that individuals whose property is affected by governmental intervention are compensated.

Of course, there are many state actions that can be taken in relation to private property that do not amount to acquisitions. There is no presumption of compensation for 'regulatory takings' (the imposition of policies or rules on private property justified as safeguards on the grounds of public health) such as most regulations imposed by the Resource Management Act 1991 (see s 85; Palmer, 2017, para 15.1.01). Authorities will have recourse to many climate change response measures that will fall short of a 'taking', but compensation will need to be considered where people are denied the ability to use or live on their land as a result of public decision making, even if this does not amount to a full acquisition by the Crown.

Overall, it would be an incredible break with past tradition if, in the context of climate change, the state took steps to take private property (or took actions which amounted in law to a taking even if there is no acquisition by the state) and did not provide compensation. It is also difficult to see how the word compensation could be avoided in this context. Any euphemism for a taking (such as 'transitional assistance') would be likely be treated as just that, would not necessarily be of legal effect, and would be best avoided.

… We want the risk that has been thrust upon us dealt with – compensated in the form of payment or mitigated in the form of hazard protection …

Payments for loss and damage outside the law of takings

Beyond the narrow confines of the law on takings, however, it must also be recognised that New Zealand has a long tradition of the state making payments to people who have suffered damage to their property as a result of adverse events (Boston and Lawrence, 2017). In our view, although it might be possible to argue that such payments are not 'compensation' in a strict sense as they are not necessarily payments made as a result of state action incurring a loss, the reality is that most people would view such payments as compensation.

The Earthquake Commission Act 1993 provides a good example. In addition to establishing the Earthquake Commission (EQC) the Long Title to the Act indicates that its overall purpose is to 'to make provision with respect to the insurance of residential property against damage caused by certain natural disasters'. This includes, but is not limited to, earthquake, natural landslip or tsunami (s 2; Boston, 2017). Where land is damaged the EQC may pay the affected owner various sums, within certain specified limits (s 19). The language of 'insurance' is interesting here, as it technically avoids the use of 'compensation'. However, this does not stop people using the word 'compensation' in the EQC context. For example, in 2005 the (then) general manager of EQC noted:

> We pay compensation for land around a property that is damaged and cannot be used again … EQC's recent claims history has featured an increasing proportion of payouts in compensation for loss of land. For example, over 60 per cent of the amount payable to residents of the Bay of Plenty following the storm in May is compensation for land loss. (Bridges and Conchie, 2005)

This suggests that even where the word compensation is carefully avoided people are likely to adopt the word in any event. Indeed, the use of the word compensation in a vernacular rather than specific sense appears quite common. For example, a recent newspaper article considering whether Brighton and Southshore in Christchurch have a habitable future in light of sea-level rise quotes one resident as stating 'We want the risk that has been thrust upon us dealt with – compensated in the form of payment or mitigated in the form of hazard protection' (McCrone, 2018).

Clearly, legislators have choices about how they frame payments made to individuals for loss. This need not involve 'compensation' per se. For example, the

residential red zones declared in Christchurch after the Canterbury Earthquakes of 2010/2011 involved a Crown offer to purchase insured residential properties in those red zones (Tarrant, 2011; *Quake Outcasts v Minister for Canterbury Earthquake Recovery* [2015] NZSC 27, [2016] 1 NZLR 1) and not 'compensation' as such. That said, the Cabinet Paper outlining the proposal and seeking Cabinet agreement drew a distinction between the suggested approach to insured and uninsured properties partly on the basis that the Crown offering to buy uninsured proprieties would 'compensate for uninsured damage' (at para [32] and 6.1). This also suggests that even when framed as an offer to purchase, decision makers were thinking in terms of 'compensation'. The Supreme Court itself certainly seems to have framed the scheme in terms of 'compensation' as well, with the majority observing that it was not to be taken as 'suggesting that the decisions to compensate at 2007 rateable values for the insured group … was in any way inappropriate' (at [160]). It follows that there will be no escaping either the word, or the concept, of compensation when confronting the question of how to respond to the effects of climate change.

Compensation for Climate Change

Acquisition, Damage and Loss

The fact that compensation is unavoidable in this context has a number of ramifications. It suggests that it is critical to consider: whether compensation will be provided (and how to make it clear it is not to be provided if that is the policy choice made); under what circumstances compensation must be provided; whether any current scheme may already mandate compensation; and what new schemes need to be developed. As noted, in the context of compulsory acquisition compensation is almost certain to be required, although it may arguably not be required for state actions that do not amount to a taking.

Clarity will help those tasked with the ultimate decision about whether or not compensation is to be provided in this context. It is also important because decisions in this sphere are likely to influence how climate change responses are both framed and developed. Whether or not compensation is legally required will be an important starting point in discussions about whether people should move, or be moved, away from high risk areas. Even if there is no legal requirement but there is a moral imperative to compensate (or if compensation may be necessary to achieve a particular end without protracted and risky litigation) clarity will be crucial.

The premise underpinning the Crown's powers under [the Public Works Act] is partly based upon the Crown holding radical title to most of the land in New Zealand, but also that where land is acquired for a public work, the collective return supersedes the cost to the individual.

Clearly, New Zealand has a strong societal expectation of compensation and a culture of government action to recompense for individual loss (Boston and Lawrence, 2017). However, it appears that none of the existing frameworks are robust enough to deal with the effects of climate change. For example, while the regime set up under the Earthquake Commission Act does respond to some types of natural hazards (for example payments under the Earthquake Commission scheme for land slips or increased flooding vulnerability) (Earthquake Commission Act 1993, Part 2), this is no guarantee that it will remain fit for purpose in the context of climate change (Boston and Lawrence, 2018).

In essence the EQC is a reactive body not dissimilar to a publicly funded insurer. The premise is that the government has a role to play in facilitating recovery in the aftermath of predetermined unforeseeable and catastrophic events. However, access to its funds is limited to those people who have taken out private insurance (s 18) and it is funded by way of a levy collected as part of those private insurance policies. Presumably, one of the policies underpinning this scheme is that it is justified on the basis that the compensation paid out to those affected will not only assist them individually, but also provides benefits on a community level. While anecdotal evidence suggests that some interested parties consider that this framework may be called upon to address natural hazards caused by climate change, this is far from certain given it has not been developed in the context of climate change and will not cover all of the potential events that climate change may cause, nor does it cover all of the people who are likely to be affected. Moreover, the approach the scheme takes to 'insurance' (or 'compensation') may also fit uneasily with the effects of climate change. A payment calculated on the basis of how much it might cost to remediate land may not be appropriate in circumstances where land no longer exists or cannot be remediated for a reasonable cost. Given the predicted effects of climate change payments calculated on the basis of one-off, discrete events, would also need to be reassessed (Boston and Lawrence, 2017).

Similar observations can be made about the Public Works Act. The premise underpinning the Crown's powers under this Act is partly based upon the Crown holding radical title to most of the land in New Zealand, but also that where land is acquired for a public work, the collective return supersedes the cost to the individual. Thus, the Crown (and in some cases others) is empowered to take land for a 'public work' which is defined, in essence, as 'a Government … work that the Crown … is authorised to construct, undertake,

establish, manage, operate or maintain …' (s 2). Although broadly defined, it is not clear that a 'managed retreat' (a planned and progressive retreat from high risk areas (Nolon, 2014)) would amount to a 'public work'. The purpose of taking land in this context would be to abandon it completely, not to develop it. Moreover, the purpose of the Act itself may sit uneasily with the imperatives of climate change. It appears to be predicated on the idea that land can be acquired to avoid the problem of holdouts, facilitate economic development and increase aggregate social wealth. However, this appears irreconcilable in a situation where land is acquired to avoid harm and with the intention it be abandoned. How to calculate the quantum of compensation may also need to be reconsidered. Compensation under the Public Works Act is calculated by way of a number of rules including that the value of the land is to be assessed on the basis of the amount the land would realise if sold on the open market by a willing seller and a willing buyer (s 62). Whether such an approach would remain appropriate where the land may have no value at all, and where the risk associated with that land has been known for some time, are questions that would need to be considered. It seems likely that complete acquisitions in the context of climate change would need bespoke legislation, within which the role of compensation would need careful thought.

That neither the EQC or Public Works Act schemes will work easily in the climate change context suggests that the existing frameworks need to be revisited, or new ones developed. However, to these existing statutory schemes, a range of what might be termed 'ad hoc' approaches to recovery can be added. The residential red zones declared in Christchurch after the Canterbury Earthquakes of 2010/2011 are perhaps the best example. The Crown offer to purchase affected property was justified for a range of reasons, including the extent of work that would need to be done to remediate such large areas of land and the consequent uncertainty and dislocation for people living in those areas (Tarrant, 2011; *Quake Outcasts v Minister for Canterbury Earthquake Recovery* [2015] NZSC 27, [2016] 1 NZLR 1). Further examples include: the 'liveable homes project' developed by the Bay of Plenty Regional Council to fund the repair of homes after the Edgecumbe floods in 2017 (New Zealand Herald, 2017); the $4 million provided by the Ministry for Primary Industries following the Kaikoura earthquakes to help farmers and growers determine what to do with their land (MPI, 2017); and a Mayoral fund established by the Dunedin City Council in June 2017 to help those affected by flooding in South Dunedin who could not find assistance by other means (Dunedin City Council, 2017). This sort of ad hoc approach to compensating people for the adverse effects of natural events both underlines the expectation held by many that the state will step in when things go wrong (Boston and Lawrence, 2017), but is unlikely to provide an appropriately principled framework for dealing with the anticipated increase in these sorts of events as climate change accelerates. This further highlights the need for careful thought to be given to when compensation will apply, and what alternative approaches might look like. In the absence of detailed discussion it is important to consider how, beyond existing schemes, loss as a result of climate change may be dealt with.

That neither the EQC or Public Works Act schemes will work easily in the climate change context suggests that the existing frameworks need to be revisited, or new ones developed.

Towards a Principled Approach

Beyond the presumption that compulsory acquisition of property will be accompanied by compensation, the question of whether those people whose property or incomes will be affected by climate change should receive compensation is a difficult one (Boston and Lawrence, 2018). It is also, at least at first instance, a policy choice. As noted, a fundamental question is which effects a climate change compensation scheme should cover. One response would be that compensation should only flow for state decisions that impose limits on existing property rights. That is not the only approach, however, and it would be perfectly possible to compensate for any damage to property, or loss of income, caused by adverse events (Boston and Lawrence, 2018; Sprinz and von Bünau 2013).

Ideally, a principled approach to the question of where the costs of climate change should fall would be developed, with consideration of how to implement this legally (and in light of the existing legal landscape) coming once the policy choices have been made, although the law will have an impact on what choices are available.

Consideration of the policy questions has begun. Boston and Lawrence have noted some of the reasons why any public compensation for losses will be complicated to address (2018). They suggest that given New Zealand's tradition of spreading the risk of natural disasters through cost sharing mechanisms, any statement that no compensation will be made in the context of climate change is unlikely to believed. A decision not to compensate would also lead to increased pressure for expensive protective works. Conversely, a decision to compensate would have to account for factors such as perceived inequalities where individuals are compensated in relation to second or third homes, and the risk of 'moral hazard' (the dual concern that people get compensated for risk they have knowingly taken, and that there is less incentive to guard against risk if one knows that compensation will be paid). Any scheme would also need to be consistent and have sufficient cross-party political support to withstand changing administrations over time (Boston and

Lawrence, 2018). While it is beyond the scope of this article to consider the ethical arguments in any detail, it seems inarguable that any regime settled on should be 'consistent with widely accepted principles of social equity (or distributive justice)' (Boston and Lawrence, 2018, citing Kunreuther and Pauly, 2017).

Clearly, law has an important role in this discussion, but it is a subsidiary one, at least at first instance. It helps to shape the start of the conversation as it dictates the state's ultimate powers in this sphere. For example, in the context of takings, it is clear that there are no constitutional impediments to the Crown's ability to compulsorily acquire property. Conversely, it is clear that it can only do so when authorised by a clearly worded statute. This will be accompanied by a strong presumption that compensation will be paid for that taking.

Beyond these factors, law will also have a role in determining both the manner of the imposition of any regime and its governance once put in place. These are factors that should also be considered in developing a principled approach to climate change adaptation in general and compensation in particular. Administrative law, including judicial review, natural justice and access to justice considerations will be unavoidable. The role of existing precedent will need to be considered. The availability of compensation for compulsory acquisition, for example, is guided by a number of existing rules (including that compensation flows for the depreciation in value of the property and not for a loss of profits or income (Palmer, 2017, para 15.5.02)). Whether existing pieces of legislation are fit for purpose will also, ultimately, be legal questions. For example, whether or not the Resource Management Act is the appropriate mechanism for effecting a managed retreat remains open (France-Hudson, 2018). Beyond the question of whether it is possible to use the Act for this purpose, lies the question of whether a decision to 'retreat' should be made at the national or community level. The current scheme of the Act suggests that, for the most part decisions affecting a community should be made by the community, but where large sums of money are involved and difficult decisions need to be made, the local level may not be appropriate (Boston, 2017).

The current scheme of the Act suggests that ... where large sums of money are involved and difficult decisions need to be made, the local level may not be appropriate

Thus, the law will help to identify who (if anyone) is empowered to make a decision, and the process by which such a decision can be made. Law will also provide the options available if new processes are seen as necessary, although ultimately this will be a policy question in the first instance.

Any scheme, ad hoc or comprehensive, will also have to be one that is defensible in terms of an initial plan, policy, and obligations under the law. For example, the majority of the Supreme Court in *Quake Outcasts* ultimately decided in favour of the uninsured land owners, not because a decision against compensating a specific group was unenforceable, but because '[t]he red zone decisions were made on a community wide basis and this suggests a whole of community approach' (at [187]). It followed that uninsured landowners were entitled to some level of compensation because they were part of the community for which the plan had been created. Thus, while the court recognised that a decision not to compensate was perfectly defensible, it could not be made in isolation, and had to have regard to the ultimate purpose of offering compensation to some people. This appears to be in line with Boston and Lawrence's (2018) identification of comparative justice as an ethical consideration in this sphere. If some groups receive compensation and some do not, there ought to be a very good reason distinguishing between them. The law will help to police this boundary, and how it does so is something that can be assessed ex ante in light of existing doctrines and precedent. Indeed the *Quake Outcasts* ruling may already stand as legal precedent for the fact that any action deemed a 'community response' creates an obligation to treat the designated area uniformly. Certainly, such a precedent should inform the development of broader guiding principles in this context, such as ensuring the consistent treatment of people throughout the country and over time.

The law, therefore, in the context of compensation as with everything else, does have a role in the development of a principled approach as it both accompanies some of the ethical decisions that need to be made, but also because it is the only way in which the policy decisions taken can be implemented in practice. This is a critical point and should not be overlooked in the development of tools to deal with the effects of climate change. Careful thought must be given to the desired outcome, how that outcome can actually be implemented and how that implementation will interact with the existing body of law.

Conclusion

Loss and damage is, and will be, a major consequence of climate change. It follows that compensation, both as a word and legal concept, will be unavoidable. Whether or not compensation is paid for any of the effects of climate change is ultimately a policy question. This will be informed by a range of factors including: the grip compensation has on the popular imagination; the legal importance of the concept for state acquisition of private property; and the role that it has played across a number of different statutory and ad hoc response to loss in the past. It is, therefore, important that compensation as a topic is not avoided, but is expressly acknowledged as forming part of the wider discussion about climate change adaptation and how best to respond.

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Carrie Buckmaster

How Could Central Government Better Respond to Sexual Harm in the Public Service?

Abstract

This article draws attention to the nature and impact of sexual harm in the New Zealand public service. It examines the scope and substance of official advice and tools available to public managers when responding to incidents of sexual harm, and builds a set of recommendations for central government. Recommendations include a central register of all complaints and reports of sexual harm to the public caused by public service workers.

Keywords central government, State Services Commission, central register, sexual harm, #MeToo

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The #MeToo movement has lifted a veil, exposed harmful sexual behaviours in the workplace, and demanded that we do better. Public entities, like all employers, have a legislative and moral responsibility to provide a safe working environment. Over and above that, the government is responsible for protecting the public from sexual harm caused by doctors, teachers, police officers and other public service workers. The New Zealand government's strategy for addressing workplace sexual harm has evolved during 2018. In July the Ministry of Business, Innovation and Employment (MBIE) established a central register of workplace sexual harassment complaints. This register was created to better understand the scale of the sexual harassment occurring across New Zealand workplaces (Duff, 2018; Nadkarni, 2018). However, there is no central register of complaints and reports of sexual harm to the public caused by public service workers. Using central registers to analyse

Figure 1: Focus of this article

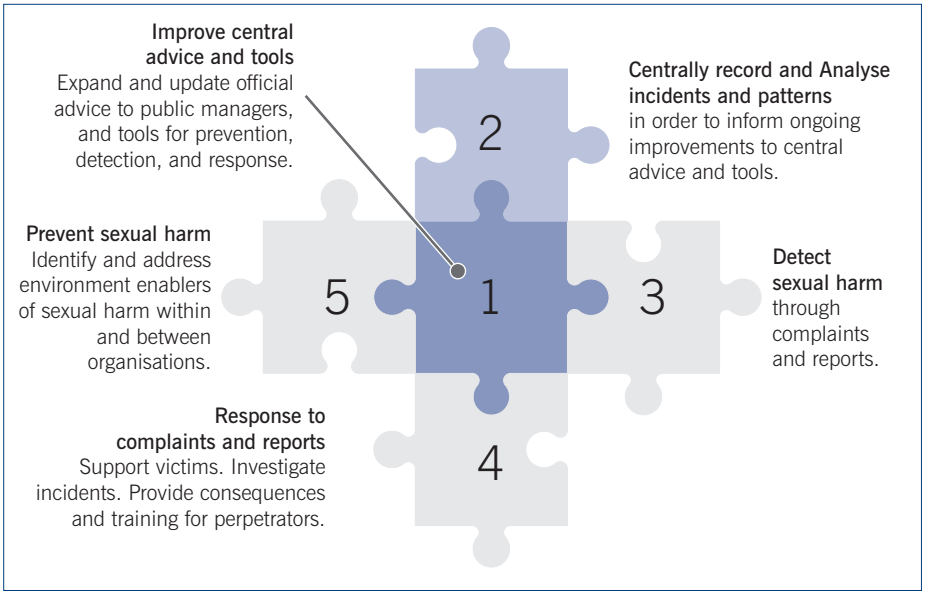


Table 1: Key international and domestic actions in 2018

Month	Jurisdiction	Action taken
February	United Kingdom	The Human Rights Commission calls for non-disclosure agreements about sexual harassment in the workplace to be banned (Mau, 2018).
May	New Zealand	The draft terms of reference for the Royal Commission of Inquiry into Historical Abuse in State Care is published. A component of the inquiry involves looking at the sexual abuse of children under state care from 1950 until 2000. A proposed deliverable of the inquiry is to report on lessons learned and changed practices, and also to identify areas where focus may be needed to make further improvements (Satyanand, 2018).
June	Australia	A year-long national inquiry into workplace sexual harassment is launched (Borys, 2018).
	New Zealand	Informal discussions begin to explore free counselling for victims of workplace sexual harassment via the Accident Compensation Corporation (Radio New Zealand, 2018).
July	New Zealand	MBIE launches a centralised register of allegations of workplace sexual misconduct (Nadkarni, 2018).
	United Kingdom	The House of Commons Women and Equalities Committee calls for new laws to protect workers from sexual harm. The committee chair, Maria Miller, states that government, regulators and employers have been 'dodging their responsibilities', and asks for the same amount of emphasis to be put on tackling sexual harassment as is put on protecting personal data and anti-money laundering measures (Topping, 2018).

the scope and patterns of sexual harm in the public service is one component of a potential future strategy to more comprehensively address the problem. Improving central advice and tools for public service managers is another. These two components (shown in Figure 1) are the focus of this article, which opens by first examining the nature and impact of sexual harm in the New Zealand public service. Second, it examines the scope and substance of central guidance and tools. Third, it prepares a set of potential improvements.

Blurred boundaries: sexual harassment, misconduct and assault

Prior to Lin Farley coining the term in 1975, 'sexual harassment' was literally unspeakable (Swenson, 2017), but the lack of a shared term to describe the behaviour does not mean the behaviour was not occurring (MacKinnon, 1979). Sexual harassment is unwelcome or offensive sexual behaviour that is repeated, or is serious enough to have a harmful effect (Human Rights Commission, 2009). The term 'sexual misconduct' is harder to define comprehensively, as public organisations, and professional standards authorities, can have their own definitions. Consensual sexual interaction can sometimes be determined to be misconduct. For instance, the New Zealand Medical Council takes a zero tolerance position on sexual relationships in the doctor–patient relationship (Medical Council of New Zealand, 2009). The term 'sexual assault' describes a range of sex crimes, including rape, indecent assault and indecent exposure (New Zealand Police, n.d.). This article uses the term 'sexual harm' to encompass all sexual harassment, misconduct and assault.

Stereotypical responses to sexual harm can blame victims for the behaviour, centring around myths that sexual harassment is a form of seduction, that women do not tell the truth and that they secretly want to be sexually harassed (Paludi and Barickman, 1991, p.28). In 2018, 125 years since New Zealand women gained the right to vote, it can be hard to understand why sexual harassment is still so prevalent. Why have we not solved this social problem yet? Fitzgerald theorises:

> This stubborn and pernicious persistence rests largely on (1) a pervasive system of attitudes and beliefs, accruing over centuries and embedded in a variety of cultural institutions, that denies and rationalizes systemic abuse of women; and (2), the organizational and institutional actors that serve to maintain this system, a phenomenon that has come to be known as institutional betrayal. (Fitzgerald, 2017)

The international #MeToo movement, which spread virally in October 2017, placed workplace sexual harm and its persistence and prevalence in the headlines (Frye, 2018). There are signs that this increased awareness may result in the practical policy steps necessary to dismantle enablers of workplace sexual harm (see Table 1).

The impacts of sexual harm

On employees

Workplace sexual harm has the potential to devastate an employee's physical well-being, emotional health and vocational development (Paludi and Barickman, 1991). Sexual harassment affects victims' mental health, and is linked to anxiety, depression, insomnia, headaches, helplessness, debilitating stress, self-blame, shame, self-doubt, decreased motivation and loss of self-esteem (ibid.; State Services Commission, 2015a; Sugrue, 2018). Frequent sexual harassment early in one's career is associated with long-term depressive mental health effects (Houle at el., 2011). Organisational tolerance of sexual harassment (for example, where employees believe that complaints are not taken seriously, feel it is dangerous to complain and see there are few sanctions for offenders) contributes to psychological damage over and above the harm from the harassment itself (Fitzgerald, 2017; Fitzgerald et al., 1997). Research suggests an association between sexual harassment and suicides (Hangartner, 2015).

Sexual harassment in the workplace is linked with physical hardship, loss of income and isolation (Paludi and Barickman, 1991). The Australian federal minister for women, Kelly O'Dwyer, says sexual harassment can be financially disastrous for individuals: 'It might mean that she loses her job or it might mean that she decides to go for another job but can't get a reference from her former employer, it might mean she's being denied promotions' (Ford, 2018). Where public servants sexually harass each other, victims can take extended periods of sick leave, and abandon, or be forced from, their jobs. Colleagues are affected and workplace moral drops. An agency's productivity can decline, its reputation can be damaged, and employment disputes and litigation can result (State Services Commission, 2015a). Public organisations' legitimacy is challenged in different ways by sexual harassment between employees, and by sexual harm caused by public employees and contractors to members of the public.

Workplace sexual harassment may limit the progression of women, and other affected groups, into certain roles in the public service. Having more women in senior leadership positions, and in work environments which are currently predominantly staffed by men, may lead to better responses to sexual harm. An eight-year study of 60 urban areas in the United States found a positive association between the proportion of police officers who are women and the number of reports of, and arrests for, sexual assault. This study made the contribution to academic theory of establishing a case in which representation is likely to occur, even without a conscious effort on the part of the public employee, because of their shared experiences with members of the public (Meier and Nicholson–Crotty, 2006).

Members of the public can also harm public servants. For example, female medical professionals reported sexual harassment by patients as well as by staff in a recent *New Zealand Herald* investigation (Nichol, 2018). Across three years, the Canterbury District Health Board recorded 137 incidents of patients behaving in a sexually abusive manner towards staff (Scotcher, 2018).

On members of the public

Public servants can sexually harm members of the public. To illustrate this, we will look at cases from the police, education and health sectors. In May, police sergeant Kimberlee Frederick Knight Vollme admitted in court to using a work computer to access confidential details of four women, two of whom he is accused of indecently assaulting (Shaskey, 2018). In February 2019 senior police officer Kevin Burke will go to trial on charges of indecent assault, sexual violation and unlawful sexual connection (Hurley, 2018; Owen, 2018).

Another example, from the education sector, and one on which Burke commented publicly prior to his arrest, is the sexual violation of children by Northland teacher James Robertson Parker. In that case early allegations by children did not lead to Parker being removed from a teaching role. Parker went on to abuse children for another 16 years, before pleading guilty to 49 charges of indecent assault and unlawful sexual connection involving a dozen boys aged 11–13 (Radio New Zealand, 2012).

Finally, a 2016 *New Zealand Herald* investigation of sexual misconduct in the health sector found 90 cases of confirmed sexual misconduct from 2006 to 2016, with many practitioners returning to work after violating their oaths. The Health Practitioners Disciplinary Tribunal was found to have a convoluted four-pronged disciplinary system which critics say protects the health professional's reputation over public safety (Carville, 2016).

Sexual assault by police officers, teachers and medical professionals will often have acute and long-term mental health effects on victims.

Sexual assault by police officers, teachers and medical professionals will often have acute and long-term mental health effects on victims. Children who experience sexual abuse suffer fear, helplessness, guilt, shame, responsibility, isolation, betrayal, anger and sadness. Long-term effects of childhood sexual abuse can include depression, low self-esteem, negative body image, dissociation from feeling, social isolation, relationship problems, self-destructive behaviour, sexual difficulties, parenting problems and flashbacks (South Eastern CASA, n.d.).

Employees of third parties contracted to deliver public services on behalf of the government can sexually harm members of the public. Members of the public can sexually harm others while under the care of the public service and third parties – for instance, in foster care situations, mental health care facilities and prisons. The extent of the use of non-disclosure agreements (NDAs) by organisations contracted to provide public services is

unknown. The use of NDAs in relation to sexual harm is arguably unethical, as a lack of information may act as an inhibitor to developing improvements to prevent or limit future sexual harm when delivering public services.

Sexual harm by public service workers, or by other public service users in the care of the state, has effects on the mental health, life paths and financial security of victims, their whānau and their communities. If victims and communities lose faith in the government and its agencies, they may feel they have nowhere to turn to legitimately seek justice. Where the victim is a child, and/or a person with physical or mental challenges or limitations, the public outrage at learning of sexual misconduct can be great. Where a government department or agency is seen to have responded inappropriately to complaints or reports of sexual harm a legitimacy crisis can result.

Employees are protected from sexual harassment by the Employment Relations Act 2000 and the Human Rights Act 1993. However … these legal protections do not appear to be working in practice …

Who do we harm and why?

Public service workers

Although there are many explanations for the drivers of workplace sexual harm, key theoretical frameworks include: 1) the organisational model, and 2) the sociocultural model, which is supported by 3) the power-threat model. The organisational model focuses on formal role-based power, seeing sexual harassment as the result of an unequal and exploitative power relationship within the workforce (Gutek, 1985). The sociocultural model is based on the socialisation of men and women to create and maintain unequal positions of power in society based on gender (Rospenda, Richman and Nawyn, 1998). The power-threat model has been used to explain how sexual harassment is employed as a tool to police the norms of gender, punishing men who are perceived to be 'too feminine' and women who challenge their subordinate position in the gender system (DeSouza and Solberg, 2004; McLaughlin, Uggen and Blackstone, 2012; Waldo, Berdahl and Fitzgerald, 1998).

Sexual harassment can be used as an equaliser against women in power, motivated more by control and domination than by sexual desire (McLaughlin, Uggen and Blackstone, 2012). Research on the Australian public service by Dutch researcher Jan Wynen uncovered patterns of 'contrapower harassment'. Wynen surveyed 102,219 Australian public servants and found evidence that women in public management positions between the ages of 30 and 44 are more likely to be sexually harassed than female public servants without supervisory authority. Their harassers are often men who occupy less powerful formal positions. Women occupying supervisory positions can lay claim to some organisational power, but do not necessarily embody the informal power required to prevent sexual harassment. Wynen recommends that victims of contrapower harassment be enabled, through policy and culture, to come forward without undermining their own authority (Ford, 2018; Wynen, 2016).

Financially vulnerable men and women are more likely to experience sexual harassment, and women are the most frequent targets of unwanted touching and invasion of personal space (Uggen and Blackstone, 2004). European research shows that in many countries non-native workers are more likely to be subjected to harassment (Eurofound, 2015).

Public service users

International research provides clues as to who may be at most risk of sexual harm from the state: We know that people with intellectual disabilities are at a higher risk of experiencing sexual assault, and face additional barriers in addressing this abuse (Bretherton et al., 2016; Faccini and Saide, 2011; Opoku and Kleiner, 2005). A United States study of 771 sex-related arrest cases of 555 sworn officers across 2005–08 found that victims of sex-related police crime are typically younger than 18 (Stinson et al., 2015). In the United Kingdom, a 2016 inquiry by Her Majesty's Inspectorate of Constabulary found that 39% of police sexual misconduct allegations involved victims of domestic violence (Grierson, 2016). With 40% of police call-outs in New Zealand relating to family harm (Lawrence, 2018), protecting victims of domestic violence from further harm is of particular concern.

What is the state of play?

Legislation

The Crimes Act 1961 enables prosecution for multiple different sexual crimes, including forcing sexual activity on a person without their consent, misusing an imbalance of power gained through one's employment position to threaten vulnerable people into engaging in sexual activity, and sexual exploitation of a person with significant impairment (Crimes Act 1961, ss127–44). In practice, many reported alleged sexual crimes do not result in successful prosecution. It is difficult to prove the absence of consent. The section of the act covering inducing consent through (explicit or implicit) threats related to a perpetrator's position of authority (ss129A (5)(c)(i)) is very rarely applied.

Employees are protected from sexual harassment by the Employment Relations Act 2000 and the Human Rights Act 1993. However, as acknowledged by Jan Logie, the parliamentary under-secretary to the minister of justice (domestic and sexual violence issues), these legal protections do

not appear to be working in practice (Long, 2018).

Specific to children and young people

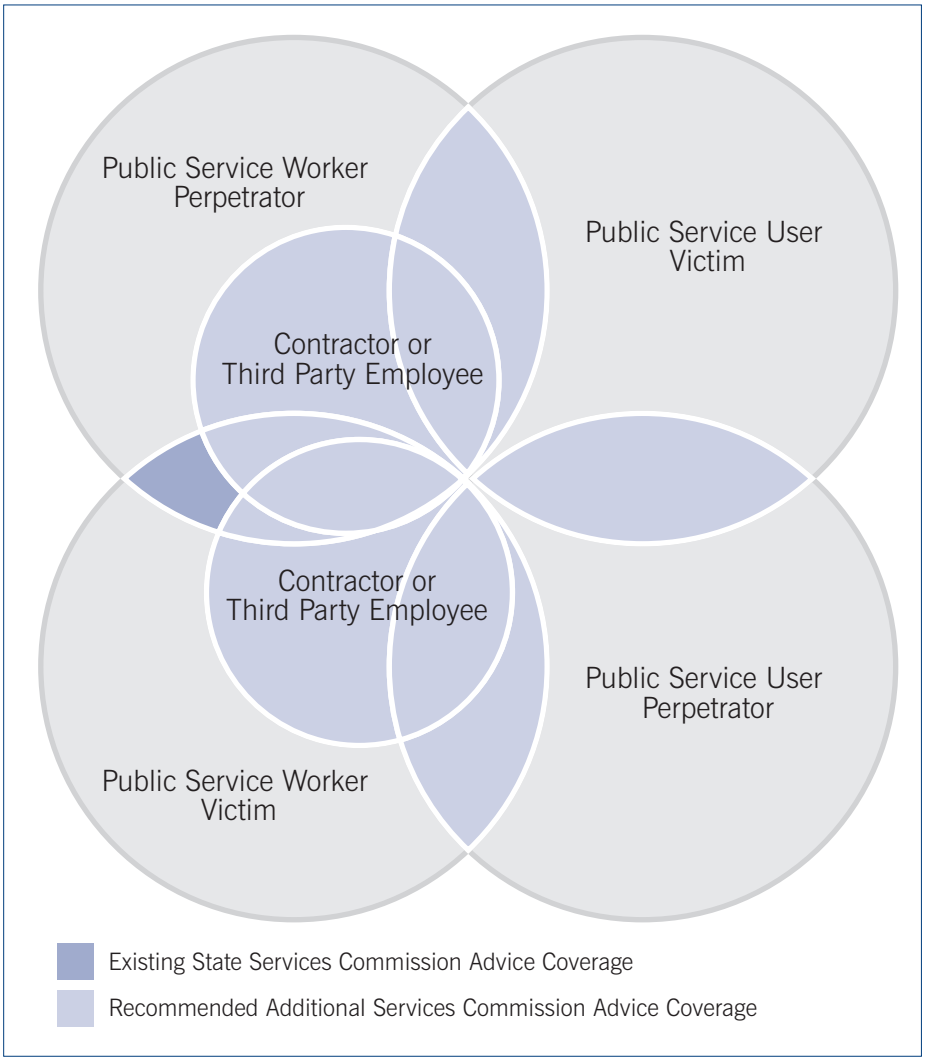
The Crimes Act 1961 has specific legislation for the protection of youth, including the crimes of sexual contact with a child under 12 years old, sexual contact with a young person under 16 years old, and meeting a young person under 16 following sexual grooming (Crimes Act, ss131–4; Rape Prevention Education, 2011). The Vulnerable Children Act 2014 requires any organisation which receives public funds and has a duty of care for children to ensure that criminal history checks occur prior to employment of workers with regular or overnight access to children, and then at least once every three years. The act also requires these organisations to have a child protection policy, which must contain a provision on identification and reporting of child abuse and neglect in accordance with section 15 of the Oranga Tamariki Act 1989. Section 15 of the Oranga Tamariki Act states that anyone with concerns about child sexual abuse may report the matter to the chief executive or a constable.

Central complaints handling

There is no central agency handling all complaints of sexual harm by public service workers. The Independent Police Conduct Authority (IPCA) handles complaints of sexual misconduct by police officers. However, the IPCA is not subject to Official Information Act requests. Increased transparency may drive improvements, by enabling researchers and reporters to analyse patterns in sexual harm and complaint outcomes, and an informed public to hold the New Zealand Police and the IPCA to account when public expectations are unmet. Both the Human Rights Commission and MBIE handle sexual harassment complaints. The Human Rights Commission lost significant credibility when a ministerial review in May found that the organisation failed to deal appropriately with an internal complaint relating to sexual harassment of an intern by a senior manager. In the past three and a half years the Human Rights Commission has received 215 complaints of sexual harassment. MBIE receives around 70 calls reporting sexual harassment a year. Equal employment opportunities commissioner Jackie Blue states: 'We know many are going unreported because they fear retaliation or feel saying something might hurt affecting their reputation or a promotion. No one wins in that situation' (Nadkarni, 2018).

From the first week of July this year MBIE began to log all complaints of sexual harassment they and their mediation services receive in a central register. This register was set up under the direction of the minister for women, Julie Anne Genter, to provide more useful quantitative data on workplace sexual harm (Duff, 2018; Nadkarni, 2018). As a minor, isolated step, it is difficult to see how this register will make a significant difference. Blue has applauded the register as a move in the right direction, but has called for more public education on what workplace sexual harassment is, and how to report it. Blue recommends that a group such as WorkSafe New Zealand records the name of the perpetrator and employer in order to track people who leave an organisation but continue misconduct (Nadkarni, 2018).

Figure 2: Existing and Recommended Scope of State Services Commission Guidance



Official guidance and tools

In 2015, after the resignation of CERA chief executive Roger Sutton following sexual harassment claims, the State Services Commission (SSC) published a sexual harassment policy guideline, reporting framework, checklist and a role card (Anthony, 2018; State Services Commission, 2015a, 2015b, 2015c, 2015d). These documents provide useful guidance on preventing and responding to sexual harassment between employees. However, they do not provide any practical guidance to public managers on how to:

- handle situations involving the sexual harm of members of the public;

- categorise sexual harm complaints and reports, and identify where criminal sexual assault may have occurred;
- understand the power balance between individuals and its effect on the nature of situations;
- avoid the use of NDAs, which may prevent victims from speaking about sexual harassment, assault and misconduct;
- evaluate and address environmental risk factors; and
- understand the limit of internal roles, and the benefits of bringing in external help.

In addition to responding to the six gaps explored below, a regular review of official advice on sexual harm prevention and response frameworks, such as those provided by McDonald, Charlesworth and Graham (2015), is recommended. The SSC already encourages organisations to take a proactive prevention approach and hold regular information sessions for employees on how to recognise sexual harassment, report concerns and use the complaint process (State Services Commission, 2015a).

Expanding the scope of guidance

While the SSC provides guidance on sexual behaviour between employees, there is insufficient guidance on how public managers should deal with situations where there is unwelcome sexual behaviour involving members of the public and employees of third parties contracted by government to deliver public services. It is recommended that the SSC expand the scope of its advice to cover all instances and situations of harm that occur during public service work, or that are enabled by a public service worker's position of trust or information (see Figure 2).

Categorising sexual harm reports and complaints

Where managers do not have adequate tools to help them objectively understand and categorise the types of sexual harm occurring in their organisation they may be more likely to overlook or dismiss potential criminal offences. Some managers harbour subconscious bias and may be affected by an unhealthy team culture. Some managers may not approach sexual harm as seriously as others.

Although developing a catalogue of different types of sexual harm complaints and reports may initially seem a difficult and subjective task, the work to develop a helpful sexual harm categorisation guide can be successfully completed quite quickly. This is demonstrated by the New York Civilian Complaints Review Board's categorisation of police sexual misconduct, which it completed in February 2018. Some examples of non-criminal misconduct complaint categories relevant to the New York Police Department include 'verbal sexual harassment' and 'taking unwarranted photographs or videos'. Examples of potentially criminal complaint categories include 'over-the-clothing groping during frisks' and 'forcible rape' (Civilian Complaints Review Board, 2018).

Organisations that have kept detailed records of sexual harm complaints and reports should be able to analyse their records to develop types of common complaints and reports with examples. Each organisation's categorisation scheme should categorise acts into non-criminal and potentially criminal groups. These categories may help managers better understand the nature of the incident or incidents, and will provide a richer data set for analysis at both an organisation level and across the whole of the public service.

> Power dynamics influence sexual harm. Employees in subordinate positions, and women in supervisory roles between the ages of 30 and 44, may be at higher risk, as are women in general, migrants and the financially vulnerable.

Understanding the impact of power dynamics

The SSC provides no guidance to managers on how to consider the power balance between the parties when understanding the nature of incidents, and how to respond. A drunken kiss at a staff Christmas party between the head of finance and an intern may need to be viewed more seriously than a drunken kiss between two interns. The impact of power dynamics after an unwelcome or harmful workplace sexual act or situation should be considered: for example, have any follow-up actions caused anyone to feel humiliated, threatened, unfairly treated or silenced? The possibility of contrapower harassment should be considered when planning for a safer workplace.

The use of non-disclosure agreements (NDAs)

The SSC provides no guidance on the use of NDAs by public organisations or third parties delivering public services. Secrecy and corporate complicity enable sexual harassment to persist in the workplace (Levine, Lesser and Dudley, 2018). Preventing the use of NDAs where sexual harm has occurred within the public service may lead to more informed discussions of workplace risks, which may in turn lead to better preventative measures.

Identifying and addressing environmental risk factors

Sexual harassment can be viewed not solely as an issue between individuals, but also as a systemic workplace problem in need of a structural solution (Frye, 2018). As well as providing advice on how to address specific allegations, the SCC should provide tips on how to explore and adjust the workplace environment where the unwelcome or harmful sexual behaviour occurred. Interventions organisations can make to make workplaces safer from unwelcome and harmful sexual behaviours include providing bystander intervention training,

and working to create equal opportunities in the workplace, particularly for women (Sugrue, 2018). Many people may wish to avoid the actual and perceived diminished career prospects, and loss of status and power, which can occur when labelled with the terms 'victim' and 'survivor'. Victims, particularly of contrapower harassment, should be enabled, through good culture and policy, to come forward without undermining their own authority (Wynen, 2016).

Bringing in outside help

The SSC could provide advice to managers on how to understand the limitations of their role in resolving sexual harm complaints, and the benefits of bringing in external help. When someone discloses sexual harm it is important, for that person's mental health and recovery, that they feel believed. However, in cases of employee–employee sexual harm a manager may be in a position where they are unable to honestly give this assurance to the complainant. A third party, from, for example, the Employee Assistance Programme or the Sexual Abuse Prevention Network, could assist by providing emotional support. Unions, such as the Public Service Association, can support employees and raise awareness. When sexual harm to the public may be the fault of an organisation, having an independent third party managing or overseeing the complaints process can increase accountability and trust. Where a manager believes there may have been a crime committed, it would be helpful for the SSC to provide advice on how to proceed, and when and how to contact the police. Care must be taken to respect the wishes and autonomy of victims, as additional loss of control may cause additional mental harm and impair recovery.

Conclusion

Power dynamics influence sexual harm. Employees in subordinate positions, and women in supervisory roles between the ages of 30 and 44, may be at higher risk, as are women in general, migrants and the financially vulnerable. Youth, victims of family harm and people with intellectual disabilities are at increased risk of sexual harm from the state. Sexual harm can have acute and long-term effects on victims, and poor responses to complaints can cause further harm. These effects extend beyond just victims, reaching work colleagues, whānau and communities. When public organisations respond ineffectively or inappropriately to complaints or reports of sexual harm a legitimacy crisis can result. This is demonstrated by the public response this year to the mishandling of the sexual harassment of an intern who worked at the Human Rights Commission.

There is significant and increasing public demand for better responses to sexual harm. There is the opportunity, and the imperative, for central government to act to improve management of sexual harm from, and of, public service workers and public service users. There is a good case for the following actions: 1) providing public service managers with comprehensive guidance material on how to better prevent, record and respond to sexual harm; 2) empowering a central body to maintain and analyse a central register of complaints and reports of sexual harm within and from the public service; 3) committing to a continual improvement process. Lessons learned and insights gained from analysis of central register records can inform updates to central guidance material, and prompt new actions to better prevent, detect and respond to sexual harm.

More comprehensive guidance material from the SSC could assist public service managers to:

- take responsibility for all situations involving sexual harm, including where members of the public are harmed, and where third parties contracted to deliver public services are involved; record and handle these situations in the same transparent and accountable manner as incidents of sexual harm involving only employees;
- categorise sexual harm complaints and reports, and identify where criminal sexual assault may have occurred;
- recognise the power balance between individuals and understand its effect on the nature of situations; factor that power balance into training materials, and take it into account when deciding on appropriate disciplinary action;
- stop the use of NDAs which prevent victims from speaking about sexual harm; ensure that contracts with third party providers explicitly disallow the use of NDAs in relation to complaints, reports and incidents of sexual harm;
- conduct thorough risk assessments, and identify and address environmental risk factors;
- stop relying too heavily on internal mechanisms, and bring in external help to meet training, risk assessment, response and remediation needs.[1]

A central register of public service sexual harm would provide policy analysts, researchers, reporters and the general public with access to de-identified information, including the number of known sexual harm incidents per public organisation, the incident categories and the follow-up actions taken. This transparency and accountability could assure the public that sexual misconduct is well managed, and drive improvement where needed. Public safety and transparency must take priority over public organisations' reputations. There is opportunity and the imperative for central government to take action to meet the increasing public demand for better management of sexual harm within, and from, the state.

Ka tika a muri, ka tika a mua, ka rere pai ngā āhuatanga katoa; if all is in order in the front and the back, all will go well.

1 For instance, lawyers can ensure sexual misconduct is clearly defined in the code of conduct, and help develop the sexual misconduct categorisation guide; sexual harm prevention organisations can perform risk assessments, provide staff training, and respond professionally to situations of harm and assist with remediation measures; councillors and representatives from employee unions and advocacy groups can support and assist victims; the New Zealand Police can provide advice and take appropriate action where a crime may have been committed.

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Sam Murray

Breaking the Link Between Disability and Child and Whānau Poverty

Abstract

In New Zealand, disabled children are more likely to live in a one-parent household than are non-disabled children. The primary carers of disabled children have a higher unemployment rate than one-parent households in general. As a result, households with disabled children are significantly more likely to experience income poverty. This is not the case in the United Kingdom, where households with disabled children tend not to be at greater risk of income poverty. A key factor in preventing a greater risk of income poverty is the higher disability-related allowances in the United Kingdom: the median payment rate is almost three times higher than the New Zealand equivalents. There is a clear case for increasing the payment rate of the New Zealand disability-related allowances. There is also a clear case for an overhaul of support for households with disabled children to better enable carers/parents to work and to provide more equitable and effective support.

Keywords child poverty, disabled children, children with disabilities, one-parent households, unemployment, United Kingdom, Ongoing Resourcing Scheme

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In New Zealand, having a disabled child increases your chances of living in a low-income household. The key point of this article is that the link between poverty and disability can, and should, be broken. In the United Kingdom, disability-related allowances appear to be more effective at reducing the higher risk of poverty than their New Zealand equivalents. Alongside better support to enable parents/carers of disabled children to work, if they choose, higher disability-related allowances would reduce, or eliminate, the increased risk of poverty for households with disabled children.

Disability has been the focus of several reports in New Zealand on child poverty. Donna Wynd, for example, wrote a monograph for the Child Poverty Action Group on children, disability and poverty (Wynd, 2015). The Expert Advisory Group on Solutions to Child Poverty focused their 21st working paper on child poverty and disability (Expert Advisory Group on Solutions to Child Poverty, 2012). Jessica Suri and Alan Johnson have researched the uptake of the child disability allowance (Suri and Johnson, 2016).

This article builds on the existing work by combining the available information with unpublished data from the 2013 Disability Survey and data from the Ministry of Education's Ongoing Resourcing Scheme (ORS), which is for students with high and very high learning support needs. It also compares United Kingdom and New Zealand data on household income and disabled children, as well as the disability-related allowances available in each country.

Limitations

This article's primary purpose is to expand the data and analysis available on child poverty and disability in New Zealand. The article makes some preliminary suggestions for ways to reduce the high rate of income poverty that disabled children and their whānau experience in New Zealand. It is only a starting point, however, and the subject deserves far more in-depth treatment. This article also has a limited focus on selected socio-economic indicators and household income, and does not seek to examine the diversity among disabled children and their whānau or the depth of their experiences in society.

Box 1: Key findings

In 2013:

- New Zealand households with disabled children were significantly more likely to be in income poverty than all households. This was not the case in the United Kingdom.
- The median payment for children from disability-related allowances in New Zealand was NZ$45.62 a week.
- The median payment for children from disability-related allowances in the UK was NZ$134.36 a week.
- The disability-related allowances in the UK reduced the percentage of households with disabled children under one income poverty measure by four percentage points.
- 30% of the disabled children in New Zealand lived in one-parent households.
- 86% of the disabled children in New Zealand who lived in households earning less than $30,000 a year were in one-parent households.
- The unemployment rate of primary carers of disabled children in New Zealand was 17%.
- 63% of New Zealand households with disabled children say they earn just enough or not enough money.

Between 2008 and 2017:

- Disabled New Zealand students who received support through the Ongoing Resourcing Scheme became more concentrated in lower decile schools.

In 2017:

- Disabled New Zealand students who received ORS support made up 1.7% of all students in decile 1–5 schools, compared to 0.7% of all students in decile 6–10 schools.

Terminology

The United Nations Convention on the Rights of Persons with Disabilities (2008) uses the term 'children with disabilities'. The New Zealand disability strategies use the term 'disabled children' (New Zealand Government, 2001). These terms have a similar meaning, but can have a different emphasis. Using the term 'disabled people', or 'disabled children', stresses that a disability identity can be a source of pride and community for individuals. This is linked to a social model of disability which emphasises the role of society in creating the disadvantage and discrimination that disabled people experience. The disabled person is not the issue; the issue is the barriers and attitudes in society (Office for Disability Issues, 2016, p.13). This article uses the terminology of the New Zealand disability strategies.

Poverty in this article refers to the income of households being a certain percentage below the median household income (three different thresholds are used). This can be more accurately defined as income poverty. Income poverty is ultimately an inadequate way to capture the full risks of financial and material hardship for households with disabled family members. This is because, as will be discussed, disability can generate additional costs. This means households with disabled family members can still experience hardship and profound disadvantage even at median, or higher, household income levels. The available data only allows us, however, to adequately examine income poverty.

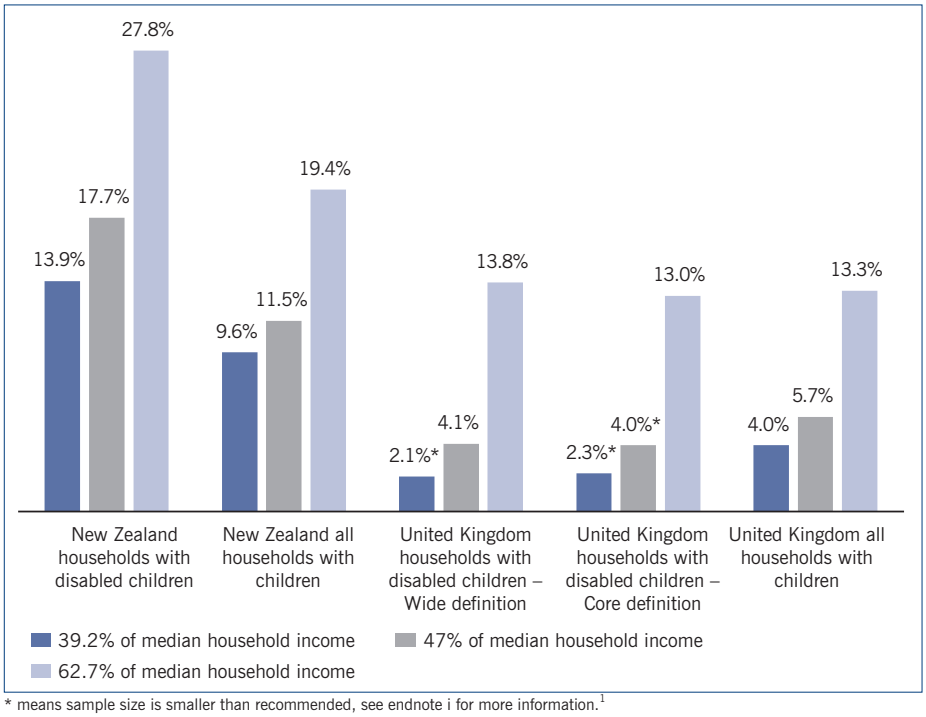
The number of disabled children in New Zealand

The New Zealand 2013 Disability Survey estimated that there are around 95,000 disabled children up to the age of 14, 11% of all children in this age group (Statistics New Zealand, 2014d). For children, the New Zealand Disability Survey uses a series of questions about the difficulty of undertaking certain activities, as well as more diagnostic questions, to determine if the child has a disability (Statistics New Zealand, 2015, p.23).

The definition of a child used in the New Zealand Disability Survey was an individual aged 0 to 14 (Statistics New Zealand, 2014e). Because different questions were asked in the child and adult versions of the survey, the two cannot be easily combined to provide accurate data for wider age ranges. As a result, there is no choice but to use the 0–14 age range for New Zealand Disability Survey data. Using wider age ranges would allow us to better match the eligibility criteria for support such as the child disability allowance and ORS, as well as definitions in domestic law and international conventions (the UN Convention on the Rights of the Child; the New Zealand Vulnerable Children Act 2014).

A smaller number of children access disability-related support. Looking at a similar time period to that covered by the 2013 Disability Survey, as of September 2013, 8,705 children and young people

Figure 1: Percentage of households under each household income threshold 2013 (gross/total income before housing costs)



* means sample size is smaller than recommended, see endnote i for more information.[1]
Sources: Statistics New Zealand, 2014c, n.d.; UK Data Service, 2018

aged 0–14 were receiving Ministry of Health-funded disability support services, although a significant number may be receiving only carer support (Ministry of Health, 2015, p.8). As of July 2013, 5,423 students aged 0–14 were receiving ORS funding (Indicators and Reporting Team, Ministry of Education, 2017a).

Poverty measures and disabled children

Unfortunately, we have no New Zealand data available on disabled children and household disposable income (income after tax), household income after housing costs, or household income adjusted for household composition. This is because disability status is currently not collected in the Household Economic Survey. As a result, we are unable to use several key poverty measures to assess households with disabled children (Boston, 2017).

From the 2013 Disability Survey it is possible to get data on the total/gross household income of households with disabled children before housing costs. The survey data uses the 2013 census household income bands, which means precise matches to poverty lines are not possible. We can get relatively close, though: we have data on the number of households with disabled children that earn less than $25,001 a year (this is 39.2% of median total/gross household income in the 2013 census), $30,000 a year (47% of the median total/gross household income in the 2013 census) and $40,000 a year (62.7% of the median total/gross household income in the 2013 census) (Statistics New Zealand, 2014b, p.36).

Comparing child poverty among disabled children in New Zealand and the United Kingdom

International comparisons of data on disabled children are often difficult because of the different definitions and methodology used, particularly around disability (Blackburn, Spencer and Read, 2010, p.20). Some countries lack data on disabled children and household income: for example, no Australian data is available (Australian Council of Social Service and the Social Policy Research Centre, 2016, p.34). The United Kingdom, however, is one country that does collect statistics on disabled children and household income, through the annual Family Resources Survey. This provides an interesting comparison because, as the following section will look at, the United Kingdom has higher disability-related allowances than New Zealand. We must be mindful, however, of the differences between the data sources.

The two key differences between the New Zealand and UK data are the definitions of a child and of a disability. The definition of a child in the Family Resources Survey is an individual under 16 years of age, or an unmarried or non-cohabiting 16–19-year-old in full-time non-advanced education (Department for Work and Pensions and Office for National Statistics, 2014b, pp.12, 44). As noted above, the 2013 Disability Survey uses the definition of an individual aged 0–14.

Different disability identification questions are also used in each survey, although both question sets are based, at least partially, on the World Health Organisation's International Classification of Functioning, Disability and Health (Office for National Statistics, 2015; Statistics New Zealand, 2015, pp.5, 10). The Family Resources Survey bases the thresholds for disability on the UK Equality Act 2010. There are two thresholds used: a core threshold, under which an estimated 7% of children have a disability, and a wide threshold, under which an estimated 13.4% of children have a disability (Department for Work and Pensions and Office for National Statistics, 2014a, p.61). As mentioned, the 2013 Disability Survey estimated that 11% of New Zealand children had a disability (Statistics New Zealand, 2014d). All three thresholds are used in Figure 1.

As Figure 1 shows, in New Zealand, households with disabled children are more likely to be in income poverty. This is not the case in the United Kingdom. The only exception is disabled children under the wide definition for the 62.7% threshold, where they have a slightly higher chance of being in income poverty.

Comparing the disability-related allowances available in New Zealand and the United Kingdom

The Committee on the Rights of Persons with Disabilities notes that financial support for family carers is crucial to counteract limited access to the labour market and the higher risk of poverty (Committee on the Rights of Persons with Disabilities, 2017, pp.1, 12–13). The Committee on the Rights of the Child similarly stresses the importance of children with disabilities being allocated

adequate budgetary resources as well as having access to poverty reduction programmes (Committee on the Rights of the Child, 2007, p.2).

In New Zealand there are two disability-related allowances available for disabled children. The disability allowance, which is also available for adults, and the child disability allowance. The disability allowance is means-tested and is designed to meet specific disability-related costs, such as doctors' fees, heating or medical alarm rental. The amount each child gets depends on the relevant disability-related costs identified, up to a maximum rate. The child disability allowance is not means-tested and is a fixed amount.

The UK equivalent of these allowances is the disability living allowance (DLA), which is divided into a care component and a mobility component. Neither component is means-tested. The care component has three payment rates and the mobility component has two payment rates. In the UK there are also disability tax credits for which disabled children and their family can qualify (Revenue Benefits, 2018). For a household which qualified for both types of disability tax credit elements, this could add another NZ$144.56 per week to the household's income (National Archives, n.d.). There is no equivalent in New Zealand to these disability-specific tax credits; whānau with and without disabled children qualify for the same Working for Families tax credits.

A higher percentage of children in New Zealand receive at least one type of disability-related allowance. The allowances in the United Kingdom are, however, far higher. In 2013 a disabled child in New Zealand could receive a maximum of $106.16 from disability-related allowances per week, and $60.54 of that is means-tested and only for specific purposes, compared with a maximum of $244.06 per week in the United Kingdom. With both disability tax credit elements, the maximum in the UK is $388.62 per week (National Archives, n.d.).

Further, very few children in New Zealand receive both allowances or anywhere close to the maximum amount for the disability allowance. In March 2013, 39,795 children received at least one of the two allowances, but only 4,710 children received both. The median rate of payment for children who received both allowances was just $60.12, and for the disability allowance component just $14.50. 76% of the children who received a disability-related allowance received just the child disability allowance of $45.62 per week. As a result, $45.62 is the median payment per week for children who received a disability-related allowance in New Zealand.[2]

Table 1: Disability-related allowances and tax credits in the United Kingdom and New Zealand in 2013

Type of allowance	Percentage of all children/ young people aged 17 and under receiving disability-related allowances	Payment rate a week in March 2013 NZ$
UK DLA care and/or mobility	3.0%	$38.13–$244.06 $134.36 (median)
UK DLA care	3.0%	$38.13–$143.73 $96.23 (median)
UK DLA mobility	2.3%	$38.13–$100.33 $38.13 (median)
UK disabled child element (child tax credit)	data not available	$103.01
UK severely disabled child element (child tax credit)	data not available	$41.55
New Zealand child disability allowance and/or disability allowance	3.8%	$106.16 (maximum) $45.62 (median)
New Zealand child disability allowance	3.3%	$45.62
New Zealand disability allowance	0.9%	$60.54 (maximum) $11.40 (median)

Source: Department for Work and Pensions, 2013, 2018; Work and Income, 2013; Inland Revenue, 2013; Office for National Statistics, 2017; Stats New Zealand, 2018a; National Archives, n.d.; Official Information Act responses from the Ministry of Social Development

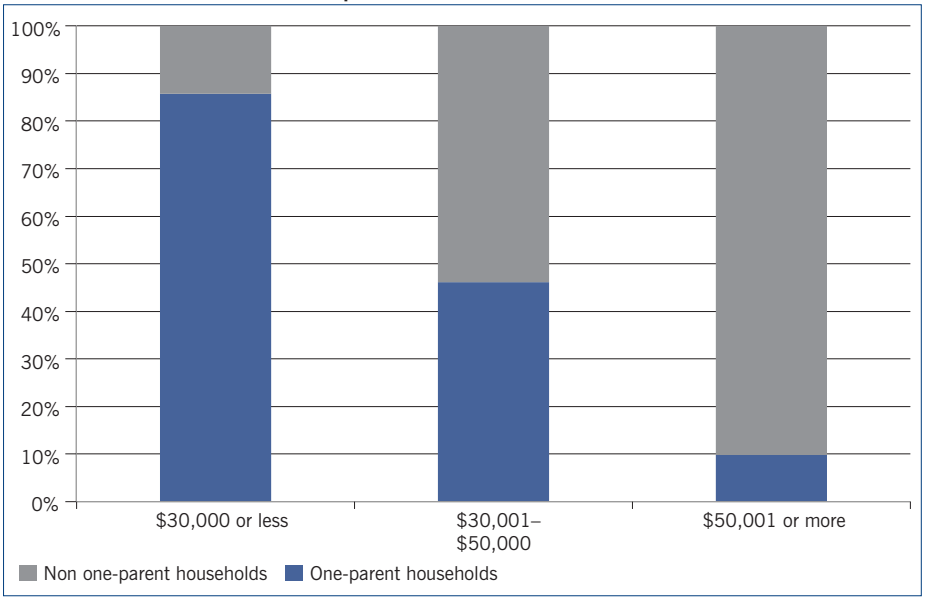
By comparison, in May 2013, 95% of children who received the DLA received $76.26 or more a week from the DLA; 80% of children received the DLA received $114.39 or more a week from the DLA; 34% received $181.89 or more a week; and 12% received the highest amount of $244.06 per week. The median payment for children from the DLA was $134.36 per week (Department for Works and Pensions, 2018).

The UK data allows us to exclude disability-related allowances from household income. Unfortunately, we can only do this for after-tax income adjusted for household composition, so we cannot directly compare the data with the New Zealand Disability Survey household income data. Nevertheless, it allows us to see the impact of the allowances. In the 2012/13 financial year, the DLA reduced the percentage of households with disabled children under the 60% of median household income before-housing-costs poverty measure by four percentage points. This meant that the gap between households with and without disabled children was less than one percentage point (Department for Work and Pensions and Office for National Statistics, 2014b, p.99; Department for Work and Pensions, 2018). This matches older research from 2008/09 which found that the DLA caused a four point drop in the percentage of children in households with disabled children under the 60% of median household income poverty threshold (Children's Society, 2011, p.10).

Disabled children are more likely to live in a one-parent household

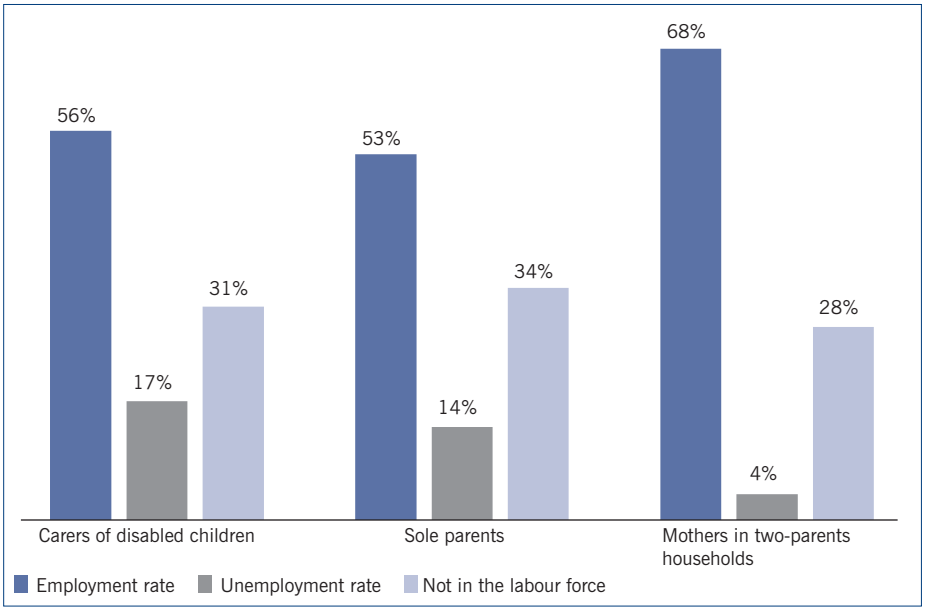
A key factor that increases the risk of disabled children experiencing poverty in New Zealand is the disproportionate number of disabled children living in one-parent households. In the 2013 New Zealand Disability Survey, 30% of disabled children lived in one-parent households (23% in just one-parent households and 7% in one parent with other people households). By comparison, 17% of non-disabled children lived in one-parent

Figure 2: The percentage of disabled children in household income levels by selected household composition



Note: the estimate for one-parent households in the $50,001 or more income range had a sampling error between 30% and 50%, due to low sample size.
Source: Statistics New Zealand, n.d.

Figure 3: Employment status 2013



Source: Statistics New Zealand, n.d., 2014a, pp.11, 14-15

households (14% in just one-parent households and 3% in one parent with other people households) (Statistics New Zealand, 2016, p.4).

We should consider the increased chance of being in a one-parent household alongside data on carers/parents' well-being. In the 2013 Disability Survey, 60% of carers/parents of disabled children reported not having enough time for themselves and 41.5% reported often feeling stressed in the last four weeks; a further 38.3% reported sometimes feeling stressed in the last four weeks (Statistics New Zealand, n.d.). This matches previous New Zealand studies that have found high degrees of stress among carers of disabled adults and children (Milner, Mirfin-Veitch and Milner-Jones, 2016; Jorgensen et al., 2010). It is reasonable to assume that feeling stressed and lacking time may increase the chance of relationship breakdowns and prevent new relationships.

In New Zealand, one-parent households with disabled children make up most of the low-income households with disabled children (see Figure 2). 86% of disabled children who live in households earning less than $30,000 a year are in one-parent households (Statistics New Zealand, n.d.).

Unemployment is high among carers/parents of disabled children

In the 2013 Disability Survey, an estimated 17% of primary carers of disabled children were unemployed (see Figure 3) (Statistics new Zealand, n.d.). To be counted as unemployed the primary carer must have said they had looked for work in the last four weeks. This is a higher unemployment rate than for one-parent households in general or mothers in two-parent households.

Having a disabled child appears to have a similar effect on a primary carer's employment prospects as being a sole parent. A high number of carers of disabled adults and children report that providing care has had an impact on their employment. Carers also report that employment is valuable for them, both for its ability to improve their material well-being and for the social benefits (Milner, Mirfin-Veitch and Milner-Jones, 2016, pp.36–8).

The high rate of primary carers saying they want to work clashes with government policy, which has not prioritised support to help primary carers to work. In some cases, government policy is even hostile to the idea of primary carers working. For example, the government bans the use of the carer support subsidy while the carer is at work (Ministry of Health (2018a). This is significant because carer support is one of the main forms of support for carers/parents with a disabled child/young person under 19. As of September 2016, 12,129 carers/parents of a disabled child/young person aged under 19 were allocated carer support (Ministry of Health, 2017, p.31). The Ministry of Health does plan to remove the ban on carers working while using carer support next year (Ministry of Health, 2018b).

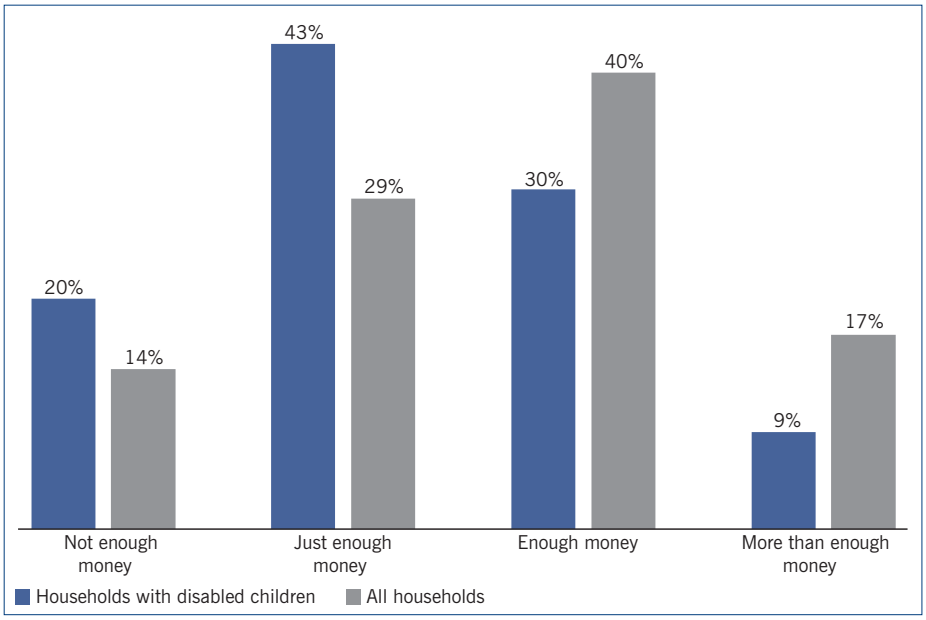
Income adequacy and extra costs

The available evidence is clear that having a disability generates significant extra financial and time costs for disabled children and their whānau (Mitra et al., 2017, p.480; Brown, 2010, p.65). There is wide variation in the international data and research on the exact extra costs. Different research methods generate different estimates. What support the government provides or funds also makes a large difference.

Extra costs mean that more income is needed for disabled people and their whānau to have the same opportunities as non-disabled people (Kuklys, 2004, p.28). They also mean that households with disabled family members may be effectively in poverty and/or material hardship at higher income levels than for households without disabled family members (Parish et al., 2009; Mont, 2014, p.5). UK estimates are that families with disabled children need 10–18% higher incomes than similar families without disabled children to have the same living standard (Blackburn, Spencer and Read, 2010, p.9). This means that while the UK disability-related allowances and tax credits are effective at eliminating the increased risk of income poverty, they may still be insufficient to meet the full extra costs associated with disability. Families receiving these allowances may still be in material hardship (Children's Society, 2011).

While we lack data on extra costs for New Zealand disabled children, in the 2013 Disability Survey carers/parents of disabled children were asked about income adequacy. Some 63% of households with disabled children said they earn just enough or not enough money (see Figure 4). By comparison, only 43% of all households say they earn just enough or not enough money (Stats New Zealand, 2017, n.d.). This lower level of income adequacy is likely to be the result of lower incomes and extra costs.

Figure 4: Income adequacy 2013



Source: Stats New Zealand, 2017, n.d.

The impact of partially funded support

The way disability support services are provided may in fact increase inequality. Apart from ACC, disability-related support is often not designed to meet the full costs associated with disability. For example, carer support is a subsidy that only partially meets the costs of hiring a relief carer, although this may change next year with a major reform of carer support promised (Ministry of Health, 2018a, 2018b). In 2016 research, 66% of carers of disabled people reported using their own financial resources to make up the difference between the carer support payment and the actual cost of respite; 22% of carers had spent more than $1,500 a year on respite (Milner, Mirfin-Veitch and Milner-Jones, 2016, p.41).

Contributory support and subsidies are likely to be regressive for people with lower incomes and/or fewer natural supports. In other words, the ability to use partially funded support is likely to decrease for these people. A contributory disability support system may, therefore, increase inequality between higher and lower income whānau with disabled children, as well as between whānau with disabled children and whānau without disabled children.

Decile data from the Ongoing Resourcing Scheme

One source of data through which to examine socio-economic trends amongst households with disabled children is the decile data on students who receive ORS funding. ORS is for students with high or very high learning support needs and funds support and services for those students (Ministry of Education, 2018). A relatively small number of students receive ORS funding: 6,661 students in 2008 and 9,049 students in 2017 (Indicators and Reporting Team, Ministry of Education, 2017a).

The school decile system measures five socio-economic indicators in meshblocks where students of each school live.[3] This is based on data from the census and schools. The five indicators used, and weighted equally, are:

- the percentage of households with equivalent income in the lowest 20%, adjusted for the number of adults and children as well as the age of children;
- the percentage of employed parents in low-skill occupations;
- the amount of household crowding;
- the percentage of parents with no qualifications; and
- the percentage of parents on income support.

A decile 1 school is in the 10% of schools that have the highest proportion of students who live in disadvantaged meshblocks, according to these five indicators. (Note that while each decile has roughly the same number of schools, they do not necessarily have the same number of students (Ministry of Education, 2017c).)

The indicators are weighted by the number of students attending the school in each meshblock. This means that if students receiving ORS funding are few in number at a school and tend to live in different areas than other students at a school, then the school decile rating may not accurately represent the socio-economic indicators in their meshblocks (ibid.). We can, however, compare two different types of school: special schools, where 92% of all students receive ORS funding, and all other schools, where only 0.74% of students do.[4] I will use the term 'mainstream schools' as a generic term for all non-special schools.

It is possible that the students who receive ORS funding are not representative

Table 2: Students at decile 1–5 and 6–10 schools in 2008 and 2017

	Total 2008	Total 2017	Increase
All students at decile 1–5 schools	317,502	320,273	2,771
All students at decile 6–10 schools	433,539	469,065	35,526
Students receiving ORS funding at mainstream schools deciles 1–5	2,205	2,986	781
Students receiving ORS funding at mainstream schools deciles 6–10	2,176	2,743	567
Students receiving ORS funding at special schools deciles 1–5	1,942	2,599	657
Students receiving ORS funding at special schools deciles 6–10	237	544	307

Source: data from the Ministry of Education data requests team

of students with high or very high learning support needs. The ORS application process is meant to be collaborative between parents/carers and educators (Ministry of Education, 2017a). The application process, or eligibility criteria, could favour, or be easier for, certain groups of students, parents/carers and/or early childhood centres/schools. Despite the limitations, the ORS data is currently one of the most easily accessible and regularly updated data sources that can point to socio-economic trends for students with high and very high learning support needs.

The general trend between 2008 and 2017 was for the number of students in higher decile schools to increase by far more than the number of students in lower decile schools: 93% of the total increase in student numbers was in decile 6–10 schools. Students receiving ORS support do not follow that trend and see larger increases in decile 1–5 schools.[5]

Prior to 2008, students receiving ORS funding were already more likely to be attending a lower decile school, but the differing trends have widened the gap. Students receiving ORS support now make up 1.7% of all students in decile 1–5 schools, an increase of 34% on the 2008 percentage, compared to 0.7% of all students in decile 6–10 schools, an increase of 26% on the 2008 percentage (Indicators and Reporting Team, Ministry of Education, 2017b, 2018b). As a result, in 2017 a student receiving ORS funding is 54% more likely to be in a decile 1–5 school than all other students. The impact is greater on ethnic groups that are less likely to be attending a lower decile school in general. For example, European/Pākehā students receiving ORS funding are 103% more likely to be in a decile 1–5 school than all European/Pākehā students. Asian students receiving ORS funding are 96% more likely to be in a decile 1–5 school than all Asian students (Indicators and Reporting Team, Ministry of Education, 2017b, 2018b).

Lower decile schools receive more general state funding per student and a slightly higher special education grant per student (Ministry of Education, 2017b). This may mean that lower decile mainstream schools are more welcoming of disabled students and/or have better facilities. This, in turn, may make it more likely for a student receiving ORS support to attend a lower decile mainstream school, even if the student does not live in a lower decile neighbourhood. This may drive some of the trend we see for students receiving ORS funding at mainstream schools. It cannot, however, drive the trend for students receiving ORS funding at special schools. Students receiving ORS funding are the overwhelming majority of students at special schools, so the decile data will accurately reflect the neighbourhoods they live in.

Discussion

The 2013 Disability Survey data shows that households with disabled children are more likely to be under the 39.2%, 47% and 62.7% of median household income (total/gross and before housing costs) thresholds than all households with children. This data also shows that disabled children are more likely to live in one-parent households and that their primary carer is more likely to be unemployed.

The ORS data covers changes over time amongst a smaller, and possibly less representative, group of disabled children/young people with high learning support needs. The ORS data suggests that trends for disabled children/young people can run counter to those for other children/young people. In particular, between 2008 and 2017, students receiving ORS funding failed to follow the general trend towards students living in less socio-economically disadvantaged neighbourhoods.

Linking the two data sources together suggests that this lack of improvement may occur because disabled children are more likely to live in one-parent households. Further, even when the disabled child is not in a one-parent household, the impact of disability has similar effects on the primary carer's employment prospects as if they were a sole parent. In addition, there is the impact of extra financial and time costs associated with disability, including the time costs involved in accessing and using government-funded support. These extra costs can increase the material hardship of the household, as well as make economic and educational participation more difficult for carers/parents and for children. Partially funded support is likely to help only some carers/parents meet these costs, specifically those with higher incomes and/or more natural support.

As a result, households with disabled children may be unable to take advantage of improving economic and educational opportunities to the same degree as households with non-disabled children. For example, the growing employment rate since 2013 is unlikely to benefit households with disabled children as much as households without disabled children (Stats New Zealand, 2018b). This would put households with disabled children at a disadvantage, greatly increasing the risk of relative poverty.

The United Kingdom data shows that sufficient disability-related allowances and disability-specific tax credits can sharply reduce the increased risk of income poverty. There is a clear case for increasing the payment rate of the current New Zealand disability-related allowances, and for exploring disability-specific tax credits. Alongside higher disability-related allowances, we need to improve the ability

of support to help a carer/parent work, switch partially funded support to fully funded support, and provide more support to reduce the stress of carers/parents and/or give them more time. This, in turn, should reduce the unemployment rate of carers/parents, as well as help prevent relationship breakdowns or enable sole parents to find new relationships.

The key to reducing inequality between households with and without disabled children is to enable the carers/parents of disabled children to benefit more from improving economic and educational opportunities, either directly through support to work and study or indirectly through greater income redistribution, or, preferably, both.

Data gaps

Disability identification questions are currently not included in the crucial Household Economic Survey. This is the key to getting better data on households with disabled children, including data on disposable income and income after housing costs, as well as income adjusted for household composition. Stats New Zealand is actively exploring ways to integrate a disability screening question set into the Household Economic Survey. The challenge is to develop a relatively short question set that adequately identifies a broad and inclusive sample of disabled children and adults.

Unfortunately, the main disability identification question set now being used by Stats New Zealand, the Washington Group on Disability Statistics short set, is unsuitable for collecting data on disabled children (Statistics New Zealand, 2015, p.10; Washington Group on Disability Statistics, 2017, p.3). This is because disabled children have a very different impairment profile to adults in New Zealand. The two most common impairment types for disabled children are learning and psychological impairments, two areas the short set does not adequately cover. The main areas covered by the short set are areas where disabled children are under-represented, with the exception of communication/speaking (Statistics New Zealand, 2014d; Washington Group on Disability Statistics, 2010).

One possible solution is to use the child functioning question sets developed by the Washington Group and UNICEF (Washington Group on Disability Statistics, 2016). The length of the child functioning question sets is a barrier, however, to their inclusion in non-disability-specific surveys. A solution could be for Stats New Zealand in partnership with others, including non-government organisations, to develop a shorter localised version of the child functioning question sets. An alternative would be a shorter version of the questions for children used in the 2013 Disability Survey.

Until a reasonably short, but reliable, question set is developed for measuring disability status in children, we are likely to lack data on disabled children and their whānau. Without reliable data on disabled children and their experiences, they will be largely invisible in current data initiatives, such as Treasury's Living Standards Dashboard, the targets in the Child Poverty Reduction Bill, and Stats New Zealand's Indicators Aotearoa New Zealand (Smith, 2018; Stats New Zealand, 2018). This is unacceptable from a human rights and social justice point of view, because disabled children and their whānau are among the most disadvantaged and discriminated against groups in society. For this reason, United Nations agencies, disabled persons organisations and non-government organisations recommend that immediate action is taken by national statistics offices to disaggregate more data on disability, especially data on the UN Sustainable Development Goals (Inter-agency and Expert Group on SDG Indicators, 2016).

1 The UK data is from the Family Resources Survey and has been weighted by the recommended grossing factor. Note that the estimates for the UK households with disabled children – core definition for the 39.2% and 47% thresholds and the UK households with disabled children – wide definition for the 39.2% threshold fall under the recommended minimum estimate size (50,000) for reliability used by Department of Work and Pensions and Office for National Statistics, 2014b. For the New Zealand Disability Survey data, the total responding figure is used as the denominator as recommended by Statistics New Zealand (Statistics New Zealand, 2014c).
2 Responses to Official Information Act requests to the Ministry of Social Development.
3 Meshblocks are areas where around 50 households live (Ministry of Education, 2017c).
4 Data from the education data requests team at the Ministry of Education.
5 Ibid.

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Suzy Morrissey

Paid Parental Leave for 26 Weeks great – but what about the rate at which we pay?

Abstract

This article examines the paid parental leave policy in New Zealand. It considers the various design elements of the policy and, in particular, the payment rate. Although the policy ostensibly provides wage replacement, paid parental leave is subject to a cap of approximately the minimum wage. This creates financial pressure for those previously earning a higher amount and may restrict its use by the higher earner in a two-parent family. The article highlights how the rate of payment compares poorly both internationally and against a local example of support for another temporary absence from employment (ACC).

Keywords paid parental leave, parental leave, maternity leave, paternity leave

The Labour–New Zealand First coalition's decision to extend paid parental leave (PPL) to 26 weeks from 1 July 2020 is a welcome move. It continues the trend of regular increases in the duration of PPL since its introduction on 1 July 2002 at 12 weeks. Duration is only one design element of the policy, yet it is the one that has received the most attention. Some changes to expand eligibility have also been made over time. However, there are many other design elements, and this article considers one in particular: the rate of payment. The article considers why the payment rate of PPL is 'silent' within the policy debate. To examine the issue, I first identify the design elements of PPL, then discuss the discourse associated with the payment rate.

PPL does not have a standard definition. It is a policy that is constructed differently in different countries, based on a number of design elements. Table 1 outlines eight design elements and up to five options for each element. The bold and shaded boxes indicate the elements and options that have been chosen in New Zealand's PPL policy.

Leave type

New Zealand has no dedicated paid maternity or paid paternity leave, only transferable paid parental leave, which is allocated initially to the primary carer (usually the mother), and can be transferred to another person if they are to be the primary carer.[1] New Zealand also has two weeks' unpaid partner's leave and 26 or 52 weeks' unpaid extended leave.[2] Partner's leave, shareable parental leave and extended leave reflect options three, four and five in the taxonomy. The lack

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of dedicated paid paternity leave means New Zealand currently compares poorly on an international basis. This is reflected in a description of New Zealand's policies as being among the least comprehensive in the industrialised world (Forbes, 2009, p.15). However, there have been regular calls, over a number of years, for paternity leave to be introduced (Families Commission, 2007; NACEW, 2008; Human Rights Commission, 2010, p.20; Reilly and Morrissey, 2016). Recent research has called for dedicated, non-transferable leave in order to increase the sharing of family responsibilities, with a view to closing the gender pay gap (NZIER, 2016, p.26).

Duration

The duration of parental leave in New Zealand is currently 22 weeks (since 1 July 2018), and this will increase to 26 weeks from 1 July 2020. This reflects option one in the taxonomy table, being short leave, of less than 12 months. The period of parental leave available has increased regularly since its introduction. When New Zealand introduced PPL in 2002 it was 12 weeks. All leave was initially allocated to the mother, but she could transfer any or all of it to a partner. As late as 2001 calls were being made for PPL to be introduced in New Zealand at the ILO Maternity Protection Convention duration of 14 weeks (Ministerial Advisory Group on Equal Employment Opportunities, 2001, p.35). A domestic study conducted after PPL was introduced recognised the range of relevant considerations regarding duration, and suggested that while labour market and gender equity considerations would suggest a short leave period, once biomedical research is included the recommendation becomes at least six months' postnatal leave (Galtry and Callister, 2005, p.239). After conducting its own research in 2007, the Families Commission called for a staggered increase in the duration of PPL, with a view to reaching 13 months' paid leave by 2015 (Families Commission, 2007). This was not achieved. The following year the National Advisory Council on the Employment of Women was also recommending PPL of one year, and suggesting that a first increase to six months should be implemented as an urgent priority (NACEW, 2008, p.10).

Table 1: PPL design elements and options in New Zealand

Design elements	Options				
	Option one	Option two	Option three	Option four	Option five
Leave type	Maternity leave (mothers only)	Paternity leave (fathers only)	Partners' leave (fathers or same-sex partners)	Parental leave (shareable)	Extended leave
Duration	Short (generally accepted as less than 12 months)	Long (generally accepted as 12 months or longer)			
Transferability	Dedicated (cannot be shared or transferred)	Can be shared or transferred between parents	Can be shared or transferred to another primary carer		
Payment rate	Fixed amount	Full wage replacement	Wage replacement subject to a cap (or maximum amount)	Proportion of wage replacement	Unpaid
Funding	Social security or social insurance	General taxation	Employer and/or employee levy	Employer funded (direct to employee)	
Eligibility	Universal (no criteria apply)	Targeted (means-tested by assets or income)	Targeted (using some other criteria)		
Obligations	None	An action or behavioural requirement			
Taxable income	Yes – forms part of assessable income	No – exempt income	No – excluded income		

Transferability

As noted above, PPL is initially allocated to the mother, but may be transferred to another person if they are to be the primary carer of the child, and this ability to transfer leave to a non-parental carer reflects option three in the taxonomy table. While initial allocation to the mother is a policy design feature that could be challenged as maternalistic, it could also be seen as gender positive, as it recognises the need of a birth mother to have paid leave to provide time to recover. The taxonomy table also indicates extended leave and partner's leave as other types of parental leave available in New Zealand. Extended leave may be transferred but partner's leave cannot. These design features reflect options three and one respectively in the taxonomy. While the non-transferable nature of partner's leave may appear to protect the father's right to care for their child, both the short duration of two weeks and the unpaid nature of the leave mean that this leave offers limited practical support to fathers to care. The amount of PPL transferred to partners has historically been less than 1% (Inland Revenue, 2016), but this could be because of the previously short duration of PPL.[3]

Funding mechanisms

PPL in New Zealand is funded by general taxation, which is option two in the taxonomy table. When PPL was originally recommended in New Zealand by the Alliance party, it was proposed that it be funded by an employer levy (option three in the taxonomy), payable by all businesses irrespective of the number of women they employed. This met with opposition from business groups and was not adopted by the Labour–Alliance coalition government.

Funding PPL through general taxation is rare. Of the 42 countries studied by the International Network on Leave Policies and Research, it was observed that statutory parental leave payments are generally funded by some form of contributory insurance fund, sometimes with contributions from general taxation, but that taxation is generally only used to fund benefits paid to all parents with young children, rather than those taking leave (Blum, Koslowski and Moss, 2017, p.32).

New Zealand does not have a social insurance scheme in the internationally understood sense (option one in the taxonomy). However, it does have ACC (accident compensation), a financially generous scheme that provides financial compensation for anyone in New Zealand for any accident that occurs, if they are required to be absent from their paid employment. 100% of wages are covered for four weeks and 80% of wages may be paid until the person can return to work or reaches retirement age. These numbers contrast starkly with the payment rate of PPL in New Zealand, as will be seen shortly.

In the absence of a traditional social insurance scheme, most forms of state support are funded by general taxation. Although New Zealand's total benefit expenditure is in line with the OECD average (Rea, 2009, p.64), over half of all social assistance is represented by the universal aged pension (Treasury, 2015, p.50) and PPL represents a very small portion of public spending. In 2016/17, expenditure on PPL was $287m (Treasury, 2017, p.188), compared to the total expenditure of $80.5bn (New Zealand Government, 2017, p.6).

Eligibility

Eligibility refers to the criteria applied to determine who is able to receive a transfer, and in the case of family policy it is important to consider whether it is the mother who is eligible for benefits relating to children, or the head of the household, or the highest earner (generally the father).

In New Zealand, eligibility is based initially on the mother, as the father has no independent entitlement to PPL, and, in the case of adoption, it is the primary carer who is initially eligible.

In New Zealand, eligibility is based initially on the mother, as the father has no independent entitlement to PPL, and, in the case of adoption, it is the primary carer who is initially eligible. Eligibility criteria for PPL are work related and require an average of 10 hours a week for any 26 of the 52 weeks prior to birth. This represents option three in the taxonomy: targeted rather than universal, and using a criterion other than means-testing.

Calls to broaden the eligibility criteria for PPL in New Zealand have been made (Families Commission, 2007; NACEW, 2008) and actioned. The Families Commission had called for a reduction in employment restrictions so that casual and seasonal workers would also be eligible (2007), as did the NACEW (2008, p.9), and changes to this effect were introduced from 2016.

Obligations

The next design element is obligations: whether any actions or behaviours are required in return for receiving PPL. The only specific obligation on the part of the person receiving PPL is that they do not return to their employment during that time, other than for a maximum of 52 'keeping in touch' hours, which cannot be taken within the first 28 days after the child is born (Ministry of Business, Innovation and Employment, 2018).

It is now common in many countries for state support more broadly to include an obligation rather than the transfer being provided without any element of reciprocity. As welfare payments are received predominantly by women, any obligations placed on their receipt will produce a gendered effect, and have been suggested to reflect a new meaning of active citizenship (Newman, 2013). A work-related requirement is the most common form, but other behaviour-based obligations also exist.

There are no obligations attached to receiving PPL in New Zealand. This reflects option one in the taxonomy. There are, however, a number of examples of obligations in respect to other forms of state support in the New Zealand policy environment, but these are outside the scope of this article.

Taxable income

The final design element of PPL policy design to consider is whether the payments are subject to taxation. In tax law, amounts that are designed to replace something that is taxable are also generally treated as taxable. PPL payments are taxable income in New Zealand under section CF1(1)(f) of the Income Tax Act 2007. This reflects option one in the taxonomy.

Payment rate

With all the other potential design elements and options outlined, we can now consider payment, first with respect to the options that exist and then in terms of the discourse associated with it.

There are two broad methods for paying PPL. It can be paid either as a fixed amount or as wage replacement. The latter may be subject to a 'cap' or maximum amount beyond which wages are not replaced or paid as a proportion of previous earnings. Payment of PPL as a fixed amount suggests a view of PPL as

state support for a newborn, given the lack of reference to the labour market that the parent (or carer) is absent from during that time. However, payment of PPL as a fixed amount is uncommon. Recent OECD reporting on its member countries indicates that only Luxembourg pays PPL at a flat rate; in all other countries either some form of wage replacement is used or parental leave is unpaid.

Various international organisations provide guidance on an appropriate rate of payment for PPL. The ILO states that the cash benefit for parental leave should be no less than two-thirds of previous earnings or a comparable amount (ILO, 2017). This is the level at which the European Commission describes leave as well paid (Koslowski, Blum and Moss, 2016, p.40). Within the OECD, most countries replace over 50% for maternity leave, and between 40% and 60% for parental leave, although there is considerable variation between countries (OECD, 2016a, pp.2,5). Full wage replacement was suggested by the European Commission in a draft maternity leave directive in 2008, but it was not ratified and was eventually withdrawn in 2015 (Eurofound, 2015). A reluctance to pay PPL at full wage replacement suggests resistance to viewing PPL as an employment-related policy. It also suggests that care work is viewed as less important than paid employment. Monetising the time spent in paid employment and in a caring role, and paying different amounts for those two activities is an explicit statement that one is considered to be worth more than the other.

The rate of payment of PPL is important for all families, but especially for those on low incomes. If leave is not well paid, the most vulnerable workers may not be able to afford to use such policies (McGovern et al., 2000, p.561). However, payment rate is a PPL design feature that is particularly relevant to paternity leave. Research from the OECD (2016b) indicates that in order for fathers to be financially able to take paternity leave it must be equivalent to half or more of their previous earnings. This reflects the gender pay gap, which makes it likely that the father would be providing more financial resources to the family than the mother, and suggests the ineffectiveness of unpaid or poorly paid leave. Research in 35 mostly OECD countries on well-paid father-only leave indicated that fathers do take such leave where it exists (Moss, 2014, p.31) and this has been the experience of the Nordic welfare states (Leira, 2002). Therefore, those who want fathers to take parental leave argue that dedicated paternity leave should be available, and that it should be paid at a decent rate (Lawton and Thompson, 2013, p.7).

When PPL was first introduced in New Zealand it was at 100% wage replacement, subject to a cap of approximately minimum wage, and the cap remains at an equivalent level today. PPL was subject to a cap of $325 per week in 2002, when the average hourly wage was $19.06 (Statistics New Zealand information request) and the minimum wage was $8.00 an hour (Employment New Zealand, 2018a). This made PPL equivalent to approximately 40 hours at minimum wage. In 2018, PPL is subject to a cap of $564.38 per week (Employment New Zealand, 2018b), but average full-time weekly earnings are $1,174.64 per week (Statistics New Zealand, 2017), meaning many families are likely to face financial pressure after a birth. However, the rate at which parental leave is paid in New Zealand has attracted scant attention over the years (an exception is the Families Commission, 2007). This reflects a lack of value placed on the role of carers in New Zealand, and suggests that PPL is not considered to be an employment issue; otherwise, full wage replacement would be a feature of the discourse.

The payment rate contrasts strongly with the payment made under ACC to those who have incurred an injury. In both cases, a temporary absence from work is required, but only one case uses previous earnings as the basis for determining the level of financial compensation. In the United States, where there is no federal PPL, some states pay parental leave as part of their coverage of temporary disability. While this terminology may be challenging, the payment is based on earnings, rather than a lower, welfare-type payment amount or cap.

There were two main discourses at the time PPL was introduced in New Zealand. The first was an equity argument to treat women's temporary absence from employment in the same way as men's. This argument was used by the Alliance, which had campaigned on PPL at the 1999 election, and by the Labour Party, with whom it formed a coalition government. The second discourse related to PPL as a state transfer or welfare payment. It manifested itself as a concern that a high rate of payment might encourage pregnancies by those who couldn't otherwise afford to have a child, and over the inappropriateness of having a welfare payment above the average male wage. This highlights a key complication within PPL policy in New Zealand. Without a social security system, all state transfers are funded by general taxation, which means it faces competition from all other spending initiatives for funding. However, PPL is inherently employment related, making anything other than full wage replacement a deliberate decision, and one that would benefit from scrutiny.

> New Zealand was identified to be an outlier internationally on three counts: by not having any dedicated father's leave; by having a low maximum payment amount for parental leave; and by funding PPL through general taxation.

Conclusion

This article has shown PPL to be a term without a specific description, but provides a useful taxonomy of PPL, and outlines which design elements and options are used in New Zealand.

New Zealand was identified to be an outlier internationally on three counts: by not having any dedicated father's leave; by having a low maximum payment amount for parental leave; and by funding PPL through general taxation. The low payment rate raises the suggestion that the care role is devalued, but the funding mechanism may also be a factor, because funding through taxation means the PPL policy must compete for funding against other spending proposals. However, this constraint has been previously overcome, to enable changes to provide access to PPL for the self-employed, and for those in casual work.

Could the financial constraint be overcome again now? Options include reconsidering the funding model, such as introducing a dedicated employer levy, as originally proposed by Laila Harré, or by expanding the existing ACC scheme. If PPL is a labour market policy, then consideration of labour market options for funding seems appropriate. Alternatively, the cost could be reconsidered as an investment, and funding reprioritised accordingly. If PPL is a state transfer, then consideration of whether the benefits outweigh the financial cost seems appropriate.

What benefits might be possible if, instead of being paid subject to a low maximum cap, PPL was paid to at least two-thirds wage replacement, as recommended by the ILO? Well-paid leave would provide couples with more financial freedom to decide who will undertake care responsibilities. This has been shown to lead to an increase in male carers, although dedicated leave is another key factor in male uptake of parental leave: are we ready to talk about that yet in New Zealand? Well-paid leave could also provide financial freedom of a different kind, by allowing parents greater choice over when to have another child, instead of having to work for long enough between children to save a sufficient amount to replace lost wages. Finally, well-paid leave would signal that New Zealand values the role that parents and whānau play in raising the next generation of New Zealanders. Wouldn't that be worth thinking about?

1 This can include a non-parental carer, such as an extended family member.
2 Extended leave provides for an absence from paid work with job protection (Parental Leave and Employment Act 1987, s23). Note that any period of PPL reduces the period of extended leave available (to a maximum of 26 or 52 weeks' total leave).
3 PPL was for a duration of 12 weeks from 2002 to 2004, 14 weeks from 2004 to 2015, 16 weeks in 2015–16, 18 weeks from 2016 to 2018, and is currently 22 weeks, to be increased to 26 weeks from 2020 (MBIE, 2017).

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William Townsend

Behavioural Economics and Retirement Savings improving KiwiSaver

Abstract

More than a decade after the inception of the KiwiSaver scheme, 431,779 members remain in the default conservative fund into which they were automatically enrolled. These default members are in funds not consciously chosen and which may not be the most financially appropriate for them. A number of common human behavioural biases have likely contributed to why so many default members remain in the default funds. Although the fees charged by default funds are among the lowest in the market, such funds offer substantially lower returns than more growth-oriented funds. These lower returns are likely to lead to a significant shortfall in retirement savings and retirement standards of living for default members. This article summarises the main findings of a research project into these issues and presents policy options and recommendations.

Keywords KiwiSaver, behavioural economics, retirement savings, defaults, behavioural biases

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Traditional neoclassical economics assumes that individuals are rational, self-interested and utility maximising (Mullainathan and Thaler, 2000).[1] Behavioural economics, on the other hand, takes a more realistic and behaviourally cognisant view of human behaviour based on evidence that human beings are fallible, easily confused in complex scenarios, unable to calculate risk accurately and more irrational than neoclassical theory would suggest. As an area of study, behavioural economics has a great deal to offer in considering how New Zealand's national retirement savings scheme, KiwiSaver, should be designed.

The article proceeds as follows: first, background information on KiwiSaver is provided, then a summary of the literature review is presented, followed by an outline of the research's main findings; behaviourally informed policy options are discussed, and to finish a short conclusion is offered.

The KiwiSaver scheme

After more than ten years, KiwiSaver has over 2.8 million members and has become a permanent feature of New Zealand's savings sector (Financial Markets Authority, 2018a). As of March 2018, however, 431,779 KiwiSaver members (15.2% of total

membership) remained in the default conservative fund into which they were automatically enrolled. Collectively, these funds held over NZ$4.6 billion in assets in 2018, with around half of the default members (201,322) not actively contributing (ibid.). This number of default members has remained consistently high over time (ibid.) and there is growing concern that default fund members are missing out on potential retirement savings as a result (Parker, 2017, 2018; New Zealand Herald, 2017; National Business Review, 2018).

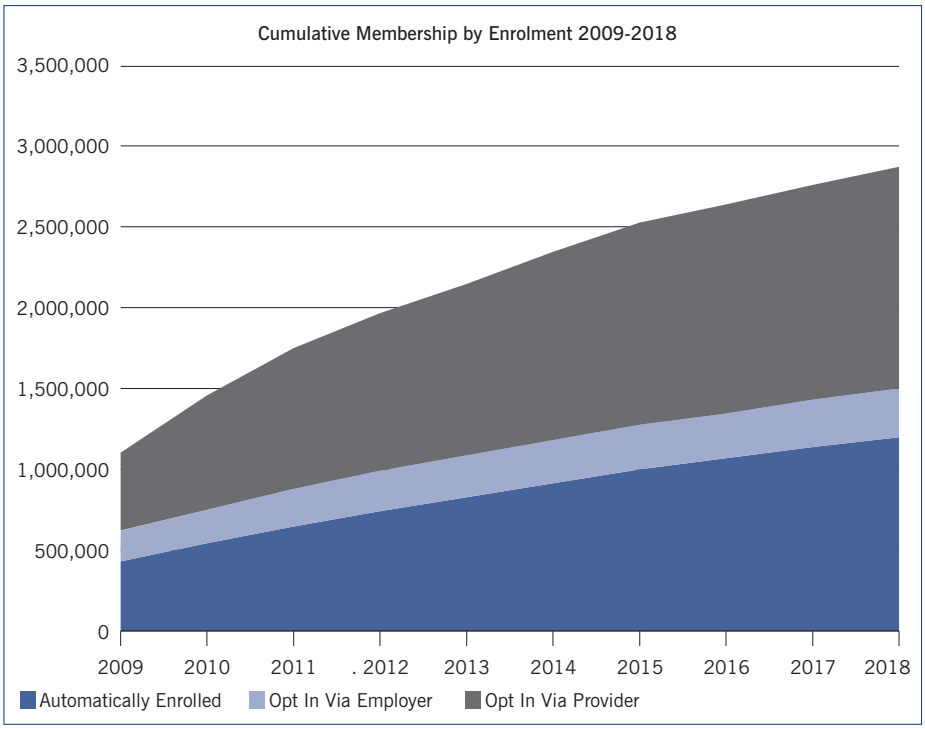
KiwiSaver is delivered by private scheme providers (30 in March 2018), with working individuals making contributions from paychecks at 3%, 4% or 8% and employers contributing a minimum of 3% (Heuser et al., 2015). In June 2018 the Taxation (Annual Rates for 2018–19, Modernising Tax Administration, and Remedial Matters) Bill was introduced into the House: it provides for additional contribution rates of 6% and 10% and limits the length of contributions holidays to one year.

KiwiSaver's statutory purpose under the KiwiSaver Act 2006 is to encourage long-term savings and asset accumulation by those who would be unable to maintain their pre-retirement standard of living with solely New Zealand Superannuation. While not explicit purposes, increasing domestic saving levels and contributing to capital markets development have been identified by market participants and policymakers as additional objectives (ibid.).

The programme uses a form of soft paternalism by allowing individuals to opt out between two and eight weeks after automatic enrolment. The benefits on offer to individuals are also significant, including: employer contributions; the ability to use some funds for buying a first home; (in some instances) a KiwiSaver HomeStart grant; and a government member tax credit of 50 cents in the dollar for employee contributions up to $1042.86. Some of these key features and benefits have been the subject of a number of changes by different governments, such as the contribution rates, tax liabilities, kick-start payment and member tax credit (Stephens, 2014).

As Figure 1 indicates, membership levels have grown substantially more than originally forecast by the Inland Revenue Department and Treasury (who forecast fewer than two million members) (Heuser et al., 2015). Growth of assets under management has also surpassed expectations, with just under NZ$50 billion invested as of June 2018 (Douglas, 2018) and forecasts of NZ$70–80 billion by 2020 (Heuser et al., 2015).

Figure 1: Cumulative KiwiSaver Membership by Enrolment Method, 2009-2018



Source: Inland Revenue, 2018

KiwiSaver's default fund automatic allocation system

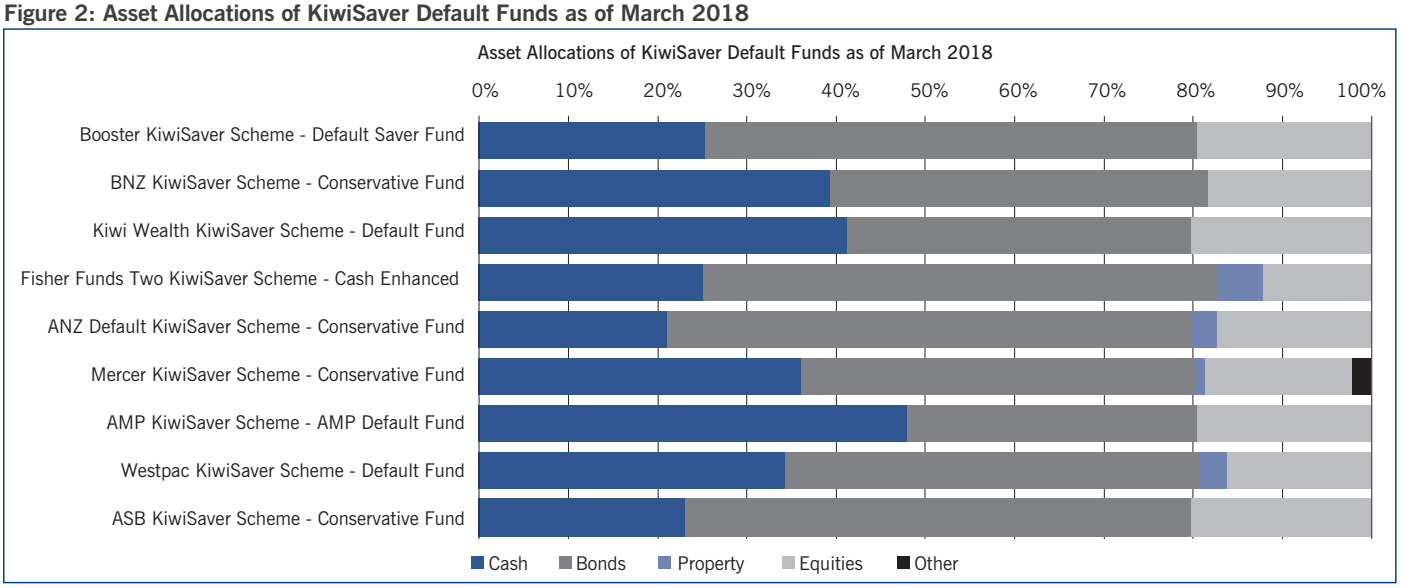
Upon beginning employment for the first time or beginning new employment, a KS2 KiwiSaver deduction form must be completed by employees so that they can be automatically enrolled if they are not already a member or their contribution rate updated. Critically, the form does not allow a fund choice if the individual is being automatically enrolled (as there is only one default fund type) and only requires a contribution rate selection. This means that even those automatically enrolled members who wish to select their preferred fund are unable to do so. Default members are automatically and randomly allocated into one of the nine government-appointed default provider funds, with a default contribution rate of 3% unless a different rate is consciously selected.

KiwiSaver's automatic allocation system into a default fund and contribution rate was chosen following evidence which suggested that in domains where individuals have low financial literacy and less than perfect information, default automatic enrolment produces considerably higher participation rates than voluntary enrolment (Ministry of Business, Innovation and Employment, 2012).

Asset allocations of default funds

The KiwiSaver default fund model was originally intended as a 'temporary parking space' from which default members would subsequently make a conscious fund choice (Ministry of Economic Development, 2008). As a result, a conservative investment approach (an allocation to growth-oriented investments of between 15 and 25%) was taken, with the assumption that market forces would encourage members who would benefit from a more growth-oriented approach to switch funds (Ministry of Business, Innovation and Employment, 2012). Just how conservatively invested the default funds are is depicted in Figure 2. The highest growth-oriented investment allocation is around 20%, with some funds below this (Financial Markets Authority, 2018b). These KiwiSaver default funds are considerably more conservative than the closest equivalent funds in Australia, Britain, Chile and Sweden (MacDonald,

Figure 2: Asset Allocations of KiwiSaver Default Funds as of March 2018



Source: Financial Markets Authority, 2018b

Bianchi and Drew, 2014).

Longstanding investment theory states that more growth-oriented investments, while fluctuating more over the short term, tend to provide higher long-term returns than more conservative investments (Trainor, 2014). The decision to have a conservative default, then, was made despite well-known research, such as that from Madrian and Shea (2001), showing that in the absence of other significant saving (which is typically low in New Zealand), conservative default funds and low default contribution rates risk generating insufficient retirement savings.

As a result of the choice architecture (i.e. the design) of the post-automatic enrolment system, the original expectation that individuals would switch out of default funds failed to eventuate for a substantial number of individuals, many of whom are likely to be less financially literate and capable than the average individual. A significant proportion of these individuals have remained in these potentially inappropriate default funds for many years (Ministry of Business, Innovation and Employment, 2012).

Theory – behavioural biases likely influencing default members

A number of behavioural biases (i.e. systematic patterns of deviation from rational human behaviour) appear to be influencing individuals to take and retain the default fund and contribution rate:

- *bounded rationality:* where individuals fail to act and/or make rationally calculated savings decisions because of the inherent complexity involved and limits in cognitive capacity (Madrian and Shea, 2001; Thaler and Benartzi, 2004; Benartzi and Thaler, 2007; Beshears et al., 2013);
- *inertia/procrastination:* where individuals suffer from inertia and procrastinate when considering, making and revisiting key savings decisions and tasks (Akerlof, 1991; Madrian and Shea, 2001; Iyengar, Huberman and Jiang, 2004; Iyengar and Kamenica, 2006, 2010; Choi et al., 2006; Beshears et al., 2013; Thaler, 2015; Blanchett, 2017);
- *passive decision making:* where individuals take the path or option of least resistance in savings and retirement savings plan decisions and tasks (Madrian and Shea, 2001; Choi et al., 2006; Benartzi and Thaler, 2007; Lee, Xu and Hyde, 2013; Bateman et al., 2016);
- *loss aversion:* where individuals struggle to increase their savings or move into a higher risk fund because they dislike potential losses considerably more than they like potential gains (Kahneman and Tversky, 1979; Benartzi and Thaler, 2007; Thaler, 2015);
- *framing effects:* where individuals make or accept certain savings decisions because of how the selection or choice is framed (Kahneman and Tversky, 1982; Madrian and Shea, 2001; Sunstein and Thaler, 2003; Johnston, Tether and Tomlinson, 2015);
- *present bias:* where individuals struggle to save more or spend time considering savings decisions because they have limited self-control and willpower and prefer immediate gratification over future gains (Benartzi and Thaler, 2007; Beshears et al., 2006; Stango and Zinman, 2009);
- *status quo bias and anchoring/pure endowment effect:* where individuals become anchored to default funds and contribution rates as the status quo and treat them as a superlative endowment (Sunstein and Thaler, 2003; Beshears et al., 2006; Johnston, Tether and Tomlinson, 2015; Thaler, 2015);
- *endorsement effect:* where individuals select or passively take, and often remain, with the default fund and contribution rate because of the conscious or unconscious interpretation that it is endorsed by the administrator or another authority, such as the government (Madrian and Shea, 2001; Beshears et al., 2006; Sunstein, 2013; Thaler, 2015; Blanchett, 2017).

Findings

The research undertaken for this article generated a number of findings in relation to the fees charged and performance of KiwiSaver default funds versus other, conscious choice funds.

Default and conscious choice fund fees

Default members pay lower fees both in dollar terms and as a percentage of funds held (most default funds charge between

0.6 and 0.7%) than those charged by most conscious choice conservative KiwiSaver funds. The default funds also charge lower fees than more growth-oriented conscious funds, although all conservative funds are likely to underperform more growth-oriented ones over the long term. Despite default fees being limited by the default provider's government appointment contracts, there is variation in default fund fees, the lowest being 0.58% and the highest 0.91%. Such a seemingly small difference can have considerable cumulative effects on a default member's final retirement savings, depending on which fund they are randomly allocated into.

Default and conscious choice fund performance

There exists a substantial disparity in performance and returns between conservative funds (including all default funds) and more growth-oriented conscious choice funds (i.e. growth and aggressive funds). Growth-oriented funds have outperformed those in conservative and moderate risk categories in seven of the past ten years (Douglas, 2017). Specifically, peer group return averages for conscious choice growth funds are around double that of default funds over the five-year period to June 2018 (10.7% versus 5.9%) and still around one and a half times that of default funds over a ten-year period (8.4% versus 5.5%) (Douglas, 2018). One group of financial advisers has also claimed that default members' KiwiSaver balances could have been up to 12% higher under a balanced fund and these members have missed out on about NZ$1 billion over the last six years (National Business Review, 2018). Extrapolated over a lifetime, default funds will likely produce considerably lower returns and retirement savings outcomes than other, more growth-oriented conscious choice funds that would be more appropriate for many default members (e.g. given their age and other relevant circumstances).

Default system and fund performance disparity and individual/household-level retirement savings outcomes

At least for some groups of individuals, KiwiSaver has resulted in greater retirement savings than would have been achieved without the scheme (Law, Meehan and Scobie, 2017). However, the findings from the research show that contrary to the purpose of KiwiSaver, in the absence of other private saving over the long term, the default fund's low returns and contributions will likely lead to low household net worth, unsatisfactory retirement standards of living, an over-reliance on New Zealand Superannuation and government welfare, and a resulting low level of financial independence (Frijns and Tourani-Rad, 2015). This is in addition to the range of negative physical and psychological health impacts commonly associated with lower income households (Ministry of Business, Innovation and Employment, 2012). While New Zealand Superannuation provides a minimum retirement income which partially mitigates the risk of insufficient retirement savings, it is unclear how long it will remain at its current levels or in its current form.

> A target date default fund would see the fund manager adjust investment risk and reduce growth asset allocation within the fund as the target retirement year approaches

Behaviourally informed policy options

In what follows, three policy options to improve retirement savings outcomes are assessed, all of which are informed by behavioural economics. The three options are: 1) nudging current members out of default funds with a behavioural communication instrument; 2) policy changes to the default system; and 3) policy changes to increase employee contribution rates. These options are not mutually exclusive and could be combined in various ways to maximise outcomes.

Nudging current members out of default funds with a behavioural communication instrument

Around 330,000 default members have at least 15 years until retirement (Financial Markets Authority, 2018a). For many of these 330,000 individuals, the default fund is likely to be inappropriate based on the length of time remaining until their retirement and the low returns of the default funds.

A prototype notification was developed using behavioural insights to nudge members to make conscious choices that will improve their retirement savings. This prototype notification (see Appendix) is included as an illustration of a possible communication designed to influence KiwiSaver members' choices.

The prototype

The prototype notification was developed as the content of an email and/or printed letter to members in KiwiSaver annual statements. It is designed with reference to behavioural theory to take advantage of behavioural biases and to nudge members to make desirable conscious choices (e.g. switching out of their default fund).

In line with Johnston, Tether and Tomlinson (2015) and the UK Behavioural Insights Team's (2017) recommendations on behavioural insights and financial disclosure, the prototype contains only three key messages (with each clearly signposted). Where technical or detailed information is necessary it is either left for inclusion in a more detailed statement to minimise the cognitive loads of readers and avoid information overload. Critical words, phrases or numbers are emphasised in a different font colour and more complex fund performance information is presented graphically to improve the readability and simplify fund performance.

In accordance with the identified behavioural biases, the communication attends to bounded rationality by simplifying complex information,

presenting technical return data as a simple graph, and colour-coding opening and closing balances to show the change in value. For example, the technical information and assumptions behind the total savings projection nudge were left to a footnote for further reference. The call to action of checking or updating the member's fund is also simplified and inertia/procrastination and present bias are addressed by reversing the onus of action from the member to the provider, with a hyperlink/button which would notify the provider to call the member to discuss switching.

Inertia/procrastination is one of the strongest behavioural biases influencing savings behaviour (Thaler and Sunstein, 2009; Thaler and Benartzi, 2004). As members may also be loss averse, the communication's first key message is framed as a loss to the member of $9,250 in potential returns over the last ten years as a result of not being invested in a more growth-oriented fund. In such a statement, the fund which the member's savings would be compared to would depend on their unique individual information.

In a similar way to framing a loss, the first sentence in the notification appeals to the tendency for individuals to desire conformance with social norms by pointing out that eight out of ten people the member's age are in a more growth-oriented fund. Also, by posing the nudge as a question directed personally to the member, they are more likely to read and consider it (Financial Markets Authority, 2016).

While subject to the availability of provider-specific data and not claiming to be perfectly designed, the prototype is a more behaviourally cognisant form of communicating complex KiwiSaver information to nudge member behaviour and choices than is typically used for KiwiSaver member communications.

Policy changes to default fund

Previous concern with the conservative default

A decision to retain the conservative default was made at the first default provider review in 2012. This was despite officials stating that although a conservative approach reduced the risk of short-term losses from market fluctuations, it also had a greater likelihood of capital erosion from inflation and inadequate retirement savings through low returns (Ministry of Business, Innovation and Employment, 2012). Indeed, KiwiSaver providers, the Capital Markets Development Taskforce and the prime minister's 2009 job summit have all voiced concern about the conservative default and argued for moving to a more growth-oriented default approach (Heuser et al., 2015).

> An auto-escalation system for contribution rates more appropriately targets behavioural biases of KiwiSaver members and averts the possible negative impacts that simply increasing the mandatory minimum KiwiSaver contribution rate may have on low-income savers.

Proposed change

While any more growth-oriented alternative would offer greater returns for default members over time, the research concluded that a target date default fund would provide the greatest potential return for default members, at one of the lowest risks of retirement savings shortfall (MacDonald, Bianchi and Drew, 2014). A target date default fund would see the fund manager adjust investment risk and reduce growth asset allocation within the fund as the target retirement year approaches (Ministry of Business, Innovation and Employment, 2012). For example, with the current retirement age of 65, an individual born in 2000 and automatically enrolled in 2018 would enter a default fund with a target date of 2065. Investment risk would be adjusted downwards over time as the individual nears their approximate retirement age in 2065 (i.e. starting with a high proportion of growth-oriented assets and moving down to a low proportion).

A target date fund default system effectively mitigates the bounded rationality of individuals through simplifying complexity by not requiring a conscious choice from potentially uninformed or behaviourally biased investors at any point during their life. In this way, target date funds offer a simple to understand, 'set and forget' option for members that appeals to inertia/procrastination, present bias, passive decision making and the status quo/anchoring bias that hinder individuals from properly setting and regularly revisiting their retirement savings choices.

Under a target date KiwiSaver default fund, the risk of default members suffering a shortfall by retaining the default fund would be mitigated as the default target fund would dynamically invest to different risk profiles over time. While requiring moderate set-up costs, experimental results show that a dynamically managed life-stage fund, such as a target date fund, involves the least risk in terms of not reaching a common retirement goal of eight times final earnings (although New Zealand Superannuation reduces the amount needed for retirement in New Zealand) (MacDonald, Bianchi and Drew, 2014).

Policy changes to increase employee contribution rates

Simply getting employees to think about the consequences of savings inadequacy is insufficient to produce meaningful behavioural change (Financial Markets Authority, 2016). The research canvassed different ways to increase savings rates which take account of human behavioural biases and found that an automatically escalating default contribution rate would offer improved retirement savings outcomes at minimal mental cost to members.

Automatic escalation

An auto-escalation system for contribution rates more appropriately targets behavioural biases of KiwiSaver members and averts the possible negative impacts that simply increasing the mandatory minimum KiwiSaver contribution rate may have on low-income savers.

As a behavioural nudge, auto-escalation would alter the choice architecture of the default contribution system so that a member's contribution rate automatically (with an opt-out) escalates in increments each year over time up to a set cap. The creators of the original programme of automatically increasing savings rates, Save More Tomorrow (SMarT), found that after four annual increases 78% of those offered the plan joined; 80% of programme members remained in it after four annual increases; and over the course of 40 months the average savings rate for participants increased from 3.5% to 13.6% (Thaler and Benarzti, 2004)

In the absence of any separate increase to the minimum KiwiSaver contribution rate, the yearly automatic increase in contribution rates could, for example, increase in 0.5% increments each year from 3% up to a maximum of 10% after 14 years. Even without a future increase to the employer contribution, combined savings rates for KiwiSaver members could reach 13% of pay, a substantial increase on the current 6% combined default.

Auto-escalation would acknowledge the bounded rationality and passive decision making of individuals in contribution decisions by simplifying the complex problem of increasing savings down to making it the standard default option. It also takes account of inertia/procrastination in that it minimises the cognitive load required to increase contributions by fully automating the process. Also, as it would not necessarily require any future contribution choices or actions, concerns around status quo bias are also mitigated. Requiring and scheduling a current commitment to future contribution rate increases mitigates the present bias issues inhibiting individuals from increasing their rate voluntarily. Loss aversion is also taken into account by the escalations being unlikely to ever materially reduce take home pay, as a result of annual wage growth likely being higher than the 0.5% annual escalations.

Exact design details of an auto-escalation system, such as measures to ensure low-income earners do not end up saving more than they can afford and enabling existing members to participate, are beyond the discussion here, other than to note that an opt-out mechanism would be retained. However, as the SMarT findings above show, auto-escalation could result in substantially higher contribution rates and increased retirement savings for KiwiSaver members over time, especially if combined with the changes to the default funds discussed above.

Policy proposals

In light of the research findings, behaviourally informed notifications should be used across multiple mediums and at different times by default providers, consistent with the Financial Markets Authority's work on behavioural trials. Likewise, when the KiwiSaver default system is next reviewed, a target date fund allocation should replace the current conservative KiwiSaver default fund. Failing this, at the least the default fund should represent a balanced fund so as to reduce the gap between investment mix members' future retirement savings and those of other members who have actively selected their funds.

To ensure no default member is negatively affected by such changes to the system, all current default members should be transferred out and into the applicable default target date fund within one year of commencement, or, if directed by members, transferred to their provider's non-default conservative fund. Finally, as contribution rates are one of the most important factors in attaining sufficient retirement savings, the current default contribution rate of 3% should be replaced with an auto-escalation system, similar to SMarT, to increase future and current member contribution rates.

Conclusion

> Simply getting employees to think about the consequences of savings inadequacy is insufficient to produce meaningful behavioural change.

Default members tend to have trouble with complex KiwiSaver decisions, passively take the path or option of least resistance and delay or procrastinate making a conscious fund choice. KiwiSaver has and will continue to create and provide sufficient retirement savings for some individuals, in many cases beyond that which would have been achieved in the absence of the programme. However, the evidence shows that when combined with the default low contribution rate, the conservative default funds pose a serious risk that default members may achieve insufficient retirement savings and lower standards of living in retirement than expected or desired. In the interests of New Zealanders' futures, these concerns should not go unheeded any longer.

1 All views, opinions, findings and conclusions or recommendations expressed are strictly those of the author. They do not reflect the views of MBIE or the New Zealand government. The ministry and the New Zealand government take no responsibility for any errors or omissions in, or for the correctness of, the information contained in this research.

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Appendix: Prototype behavioural notification

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